

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EPIFANIA PEREZ COLLAZO : CIVIL ACTION
 : NO. 03-5521
Plaintiff, :
 :
v. :
 :
JO ANNE BARNHART, :
COMMISSIONER OF SOCIAL :
SECURITY, :
 :
Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

NOVEMBER 3, 2004

Before the Court are plaintiff Epifania Perez Collazo's objections to the Magistrate Judge's finding that the decision of the Administrative Law Judge ("ALJ") that plaintiff is not disabled and thus not entitled to benefits is supported by substantial evidence in the record. Plaintiff claims she is disabled and thus entitled to benefits as a result of chronic depression and suicidal tendencies and hallucinations. In support of her argument that the ALJ's decision was not supported by substantial evidence, Collazo focuses on two rulings of the Magistrate Judge. First, Collazo asserts that the Magistrate Judge erred by finding that the ALJ properly afforded the opinion of Collazo's treating physician less than controlling weight. (Pl.'s Objs. at 3-4.) Second, Collazo asserts indirectly that the Magistrate Judge should have found that the ALJ failed to

properly consider the combined effect of Collazo's impairments. (Pl.'s Objs. at 5.)

This Court undertakes a de novo review of the portions of a report and recommendation of a magistrate judge to which the plaintiff has lodged objections. Continental Casualty Co. v. Dominick D'Andrea, Inc., 150 F.3d 245, 250 (3d Cir. 1998) (citing U.S. Steelworkers of Amer. AFL-CIO v. New Jersey Zinc, Co., 828 F.2d 1001, 1005 (3d Cir. 1987)); see 28 U.S.C. § 636(b)(1). The Court "may accept, reject or modify, in whole or in part," the findings and recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1). Decisions of the ALJ are upheld if supported by substantial evidence. Burns v. Barnhart, 312 F.3d 113, 118 (3d Cir. 2002). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 565 (1988); Burns, 312 F.3d at 118.

Collazo first objects to the Magistrate Judge's finding that the ALJ's decision to afford the opinion of Dr. Bales, Collazo's treating psychiatrist, less than controlling weight was proper. According to Collazo, the Magistrate Judge placed too great an emphasis on the medical expert's opinion. (Pl.'s Objs. at 3.) Collazo argues that this was error because "the regulations, the Commissioner's rules and Third Circuit precedent "all emphasize a treating physician's opinion over a non-

examining physician's opinion specifically because an ALJ is prohibited from speculating about the substance of the medical evidence, and no such prohibition applies to medical experts." (Pl.'s Objs. at 3.) Collazo further argues that the medical expert's opinion in this case that Collazo's difficulties would resolve if she were to relocate is speculative and, moreover, wholly inconsistent with the consulting psychologist's opinion that her prognosis was favorable with continued family support. (Pl.'s Objs. at 4.)

While Collazo is correct in that "opinions of a claimant's treating physician are entitled to substantial and at times even controlling weight," Fargnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001) (citing 20 C.F.R. § 404.1527(d)(2)), "a [naked] statement by a plaintiff's treating physician supporting an assertion that she is 'disabled' or 'unable to work' is not dispositive of the issue." Adorno v. Shalala, 40 F.3d 43, 47-48 (3d Cir. 1994). "The ALJ must review all the medical findings and other evidence presented in support of the attending physician's opinion of total disability [and in doing so, the ALJ must weigh the relative worth of a treating physician's report against the reports submitted by other physicians who have examined the claimant." Id.; see also Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (stating that if an ALJ chooses to reject the opinion of the treating physician, however, he is prohibited

from making "speculative inferences from medical reports and may reject a treating physician's opinion outright only on the basis of contradictory medical evidence and not due to his or her own credibility judgments, speculation or lay opinion") (quotations omitted).

Section 404.1527 of Title 20 of the Code of Federal Regulations provides a framework in which to analyze the weight to be accorded a treating physician's opinions. According to 20 C.F.R. § 404.1527, the treating physician's opinion is given controlling weight where "the nature and severity of [the claimant's] impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record. . . ." 20 C.F.R. § 404.1527(d)(2).

An examination of the opinion of Dr. Bales, the plaintiff's treating psychiatrist, within this framework reveals that there are proper justifications for discounting Dr. Bales' opinion. First, as the ALJ and Magistrate Judge noted, although Dr. Bales rated Collazo's mental impairments, in a Mental Residual Functional Capacity Assessment, as "markedly limited" in the areas of concentration (R. 234, 268) and ability to complete a normal work week (R. 235, 269), to accept instructions and criticism from supervisors (R. 269), to adapt to changes in the work setting (R. 269), and to set realistic goals or make plans

independently (R. 269), these findings are not entirely consistent with Dr. Bale's own notes which indicated that Collazo's condition was stable on medication (R. 289). Given this inconsistency, the ALJ was not required to give the treating psychiatrist's ratings controlling weight. See Jones v. Sullivan, 954 F.2d 125, 128-29 (3d Cir. 1991) (finding that, in the absence of contradictory medical evidence, an ALJ in a social security disability case must accept the judgment of a treating physician).

Furthermore, the ALJ considered other medical evaluations of Collazo and noted that "no other medical source rated the claimant's mental impairment as 'marked.'" It is appropriate for an ALJ to determine that the treating physician's opinions are not entitled to controlling weight when other medical evaluators come to a contrary conclusion. See Jones, 954 F.2d at 129; see also 20 C.F.R. § 416.927(f)(2)(i) ("Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. . . . However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation."). In particular, the ALJ considered the evaluations of Dr. Steven Rosenfield, a consulting psychologist who examined

the plaintiff, Dr. Thomas E. Fink, a psychologist employed with the state Bureau of Disability Determinations who reviewed the medical evidence of record, and Dr. Richard Saul, a medical expert.

Dr. Rosenfield characterized Collazo's ability to perform the following activities as "Fair:" follow work rules, relate to co-workers, deal with the public, use judgment, interact with supervisor, deal with stresses, function independently, and maintain attention/concentration. (R. 218.) He determined that Collazo's ability to understand, remember and carry out simple job instructions was "Good." (R. 218.) Although Collazo asserts that Dr. Rosenfield offered the opinion that Collazo would have difficulty completing assignments or sustaining work-related activities (Pl.'s Objs. at 5), this characterization of Dr. Rosenfield's opinion is inaccurate. Dr. Rosenfield instead opined that Collazo's "ability to complete assignments and/or sustain work or work-related activities would appear to be primarily a medical determination at this time." (R. 217.) Dr. Rosenfield's prognosis for Collazo was "favorable with continued mental health contact and family support." (R. 217.)

Dr. Fink concluded that Collazo had an adjustment disorder with anxiety and depressed mood. (R. 223.) However, Dr. Fink opined that Collazo's limitations in maintaining

concentration, persistence, or pace was only moderately, as opposed to markedly, limited. (R. 230.) Dr. Fink opined that Collazo's restrictions on daily living and difficulties in maintaining social functioning were only mildly limited. (R. 230.)

Finally, Dr. Saul testified before the Administrative Law Judge that Collazo suffers from a lot of external pressures and has "real life chaos" (R. 61), has an anxiety disorder that was diagnosed as psychosis (R. 63), has auditory hallucinations at night (R. 63), was diagnosed with schizoaffective disorder, and depression with acute psychotic decompensation (R.63), and has chronic depression (R. 63). In all, Dr. Saul concluded that she meets the A criteria for 12.04 affective disorder (R. 64). However, with respect to the "B" criteria, Dr. Saul concluded that her restrictions on activities of daily living are moderate. (R. 64.) Dr. Saul further rated Collazo's difficulties of maintaining social functioning as moderate. (R. 64.) He likewise rated Collazo's difficulties in maintaining concentration, persistence, or pace as moderate (R. 64), contrary to the "marked" rating of Dr. Bales. Dr. Saul also disagreed with Dr. Bale's assessment that Collazo's ability to set realistic goals or make plans independently of others was marked. (R. 66.)

Dr. Saul further opined that Collazo suffered from "reactive depression" resulting from events in Collazo's environment (R. 64) and that without the external pressures Collazo would not be depressed (R. 67). According to Dr. Saul, "there are ways of handling" the external pressures such as through the use of social workers. (R. 62.) Dr. Saul added: "Take her out of the house or manipulate the environment, she'll do fine." (R. 68.)

Collazo challenges the conclusions of Dr. Saul as conjecture not supported by the evidence in the record and, citing the Magistrate Judge's Report and Recommendation, she asserts that there is substantial evidence that "stress was likely to exacerbate [the plaintiff's] conditions." (Pl.'s Objs. at 4.) Collazo's challenge is misguided. Dr. Saul had before him Collazo's medical records and rendered his conclusions based on those records. Further, the Magistrate Judge's Report and Recommendation did not conclude that there was substantial evidence that stress was likely to exacerbate Collazo's conditions. Instead, the Magistrate Judge's Report and Recommendation merely cited to the opinion of a physician from the Maria De Los Santos Health Center from March 2001, who opined that stress was likely to exacerbate Collazo's conditions. Even if this lone opinion is sufficient to constitute substantial evidence, there is nothing inconsistent about Dr. Saul's opinion

that Collazo's depression is reactive and would benefit from removal from her environment.

Collazo further challenges the conclusions of Dr. Saul as inconsistent with the conclusion of Dr. Rosenfield, who opined that Collazo's prognosis would be "favorable with continued mental health contact and family support." (Pl.'s Objs. at 4.) Insofar as Dr. Saul's conclusion that Collazo would benefit from removal from her environment is at all inconsistent with Dr. Rosenfield's opinion, this can be explained by the fact that Dr. Rosenfield had not documented any complaints of abuse by Collazo's husband in his March 31, 2001 evaluation. On the other hand when Dr. Saul testified as to Collazo's home environment at the hearing before the ALJ on October 16, 2002, he was aware of the prior testimony of Collazo of spousal abuse. (R. 48-49, 62.) Therefore, it was not improper for the ALJ to rely on Dr. Saul's conclusion that Collazo's impairments were environment-related.

Because the findings of Dr. Bales, the plaintiff's treating psychiatrist, are internally inconsistent and further, are also inconsistent with the findings of Drs. Rosenfield, Fink, and Saul, the Court finds that the ALJ's decision to afford the opinion of Dr. Bales less than controlling weight was proper.

As her second objection, and in a roundabout way, Collazo appears to assert that the ALJ failed to properly consider the combined effect of Collazo's impairments. She

argues that the consulting psychologist, Dr. Rosenfield, offered the opinion that Collazo would have difficulty completing assignments or sustaining work-related activities after relying on the combined effect of Collazo's mental and physical impairments, which the medical expert had not relied upon. (Pl.'s Objs. at 5.) Collazo asserts that it was error to discount the portion of Dr. Rosenfield's opinion in which the combined effect of Collazo's impairments was considered while at the same time adopting the medical expert's opinion in which the combined effect was not considered. (Pl.'s Objs. at 5.)

First, as stated above, Collazo's characterization of Dr. Rosenfield's opinion is inaccurate. Dr. Rosenfield did not opine that the plaintiff would have difficulty completing assignments or sustaining work-related activities. Instead, Dr. Rosenfield opined that Collazo's "ability to complete assignments and/or sustain work or work-related activities would appear to be primarily a medical determination at this time." (R. 217.)

Second, although an ALJ is required to "consider the combined effect of all [of a claimant's] impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity," 20 C.F.R. § 404.1523; 20 C.F.R. § 416.923 (both stating that "the combined impact of the impairments will be considered throughout the disability determination process"); see also Burnham v. Schweiker, 682 F.2d

456, 458 (3d Cir. 1982) ("The [ALJ] . . . should have considered whether work existed for a person with the combination of impairments [that the claimant] possessed."), as the Magistrate Judge noted in this case, the ALJ adequately considered the combined effect of Collazo's impairments. Specifically, the ALJ considered Collazo's anxiety disorder and asthma impairments, which are considered severe. (R. 24, 28.) He considered Collazo's ganglion cyst, which he found did not limit her ability to perform basic work functions. (R. 24.) He considered the fact that Collazo has tinnitus with induced vertigo, which he found has improved and does not limit Collazo's ability to perform basic work functions. (R. 24.) He considered the fact that Collazo has migraine headaches, but found that they were controlled with medication. (R. 24.) He considered the fact that Collazo has sinusitis, which he found did not interfere with her ability to perform basic work functions. (R. 24.) The ALJ further considered all of the medical opinions in the record regarding the severity of Collazo's impairments. (R. 28.)

Moreover, as revealed in the ALJ's questioning of the vocational expert in this case, the ALJ intended to take into account evidence of the combined effect of Collazo's impairments on her residual functioning capacity. The hypothetical posed to the vocational expert set forth Collazo's moderate limitation with regard to activities of daily living, moderate limitation

with regard to social interaction, and moderate limitation with regard to concentration, persistence, or pace with one or two episodes of decompensation. (R. 69-70.) Therefore, the Court concludes that the Magistrate Judge did not err in concluding that the ALJ addressed the combined effect of Collazo's impairments, as required by the regulations.

For the foregoing reasons, the Court finds that there is substantial evidence to support the ALJ's decision that the plaintiff is not disabled.

An appropriate order follows.

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ORDER

AND NOW, this **3rd** day of **November, 2004**, upon consideration of the cross-motions for summary judgment, and after review of the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter (doc. no. 14) and the plaintiff's Objections thereto (doc. no. 15), it is hereby **ORDERED** for the reasons provided in the accompanying memorandum that:

1. The Report and Recommendation (doc. no. 14) is **APPROVED** and **ADOPTED**.
2. Plaintiff's Objections to the Report and Recommendation (doc. no. 15) are **OVERRULED**.
3. Defendant's motion for summary judgment (doc. no. 11) is **GRANTED**.
4. Plaintiff's motion for summary judgment (doc. no. 10) is **DENIED**.

5. The final decision of the Commissioner of Social Security is **AFFIRMED** and **JUDGMENT** is entered in favor of defendant and against plaintiff.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.