

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

FLORENTINE MASON : CIVIL ACTION
 :
 V. :
 : 04-0242
 JO ANNE B. BARNHART, :
 COMMISSIONER OF SOCIAL :
 SECURITY ADMINISTRATION :

MEMORANDUM AND ORDER

Baylson, J.

December 28, 2004

Plaintiff Florentine Mason has brought this action under 42 U.S.C. § 1383(c)(3), which incorporates 42 U.S.C. §405(g), seeking judicial review of the Commissioner of Social Security’s decision denying her claims for disability insurance benefits and supplemental security income under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f. The parties have filed cross-motions for summary judgment.

Plaintiff filed the initial applications for benefits on August 3, 2001, which were denied on November 1, 2001. Plaintiff requested a hearing, and on June 27, 2002, a hearing was held before Administrative Law Judge William F. Curtin (the “ALJ”). The ALJ issued a decision denying Plaintiff’s applications on January 16, 2003.

While finding that Plaintiff suffers from the medically determinable impairment of Chronic Fatigue Syndrome (“CFS”), the ALJ’s decision concludes that Plaintiff is not disabled pursuant to the Social Security Act because her impairment is not a severe impairment that significantly limits her ability to perform basic work-related activities. The ALJ found Plaintiff’s testimony regarding her symptoms of CFS “credible, but not to the extent alleged.”

(Administrative Record (“AR”), p. 18).

Plaintiff argues for reversal or remand on several grounds: (1) the ALJ failed in his duty to aid Plaintiff in presenting her claims pro se; (2) the ALJ’s finding that Plaintiff’s CFS was non-severe relies upon a mischaracterization of the evidence and contravenes Social Security Regulation 99-2p (“SSR 99-2p”), which sets forth how an adjudicator should evaluate a disability claim involving CFS; (3) the ALJ’s disregard of the opinion of Plaintiff’s treating physician, Dr. Singer, violates Social Security regulations and policy; and (4) the ALJ improperly discounted Plaintiff’s credibility and erroneously ignored the testimony of Plaintiff’s mother.

The Commissioner contends that: (1) the ALJ’s decision was supported by substantial evidence, and (2) the ALJ’s credibility determination was appropriate because the medical evidence provided no objective support for the degree of limitations alleged by Plaintiff. The Commissioner points out that Dr. Singer’s treatment notes indicate that all of Plaintiff’s physical examinations were normal and challenges Plaintiff’s contention that Dr. Singer’s opinion was entitled to controlling weight, asserting that medical opinions based on the Plaintiff’s subjective complaints are not entitled to such deference.

The Court must review the record to determine whether the ALJ’s findings are supported by substantial evidence. Reefer v. Barnhart, 326 F.3d 376, 379 (3d Cir. 2003). “Substantial evidence has been defined as more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. (quotations and citations omitted). Here, the ALJ denied Plaintiff’s applications on the grounds that her impairment is not ‘severe,’ a determination which constitutes the second step of the evaluation process for impairments under the Social Security Act. The Third Circuit has stated that, although the

substantial evidence standard applies at this step as at all others, “[t]he burden placed on an applicant at step two is not an exacting one. Although the regulatory language speaks in terms of ‘severity,’ the Commissioner has clarified that an applicant need only demonstrate something beyond a slight abnormality or a combination of abnormalities which would have no more than a minimal effect on an individual’s ability to work.” McCrea v. Commissioner of Social Security, 370 F.3d 357, 360 (3d Cir. May 27, 2004). In sum, “[a]ny doubt as to whether this showing has been made is to be resolved in favor of the applicant.” Id.

The “Medical Source Statement of Ability To Do Work-Related Activities (Physical)” prepared by Dr. Singer, Plaintiff’s treating physician, reports that Plaintiff can stand and/or walk for less than two hours, and sit for less than six hours, during an eight-hour workday. (AR, p. 259-260). The ALJ’s decision notes Dr. Singer’s indication that Plaintiff “can perform less than sedentary work,” but disregards Dr. Singer’s opinion on the following basis:

However, Dr. Singer’s treatment notes indicate all normal examinations with only the claimant’s subjective complaints noted. His treatment notes also indicate that the claimant was treated for gastroesophageal disorder and renal colic. There is no objective medical evidence that supports the finding that the claimant is temporarily disabled or that she is limited to less than sedentary work.

(AR, p. 17). The ALJ notes that Plaintiff was treated for urinary retention, abdominal pain, urinary tract infection, pharyngitis, and had a tonsillectomy, but concludes that “these conditions are not disabling” and “[t]here is no evidence that these conditions present limitations on the claimant’s ability to perform work activity.” (AR, p. 17).

The Third Circuit has indicated that remand is required when “the ALJ disregarded [one physician’s] contrary report without explaining why he did so.” Reefer, 326 F.3d at 382. As a general rule, “[w]here there is conflicting probative evidence in the record, we recognize a

particularly acute need for an explanation of the reasoning behind the ALJ's conclusions, and will vacate and remand a case where such an explanation is not provided." Fagnoli v. Massanari, 247 F.3d 34, 42 (3d Cir. 2001). Here, the ALJ provided an explanation for his disregard of Dr. Singer's report – that all Plaintiff's physical examinations were normal and that the other physical illnesses for which she had been treated were not disabling – but, in the context of CFS, the reasoning behind the ALJ's conclusion does not comport with the Social Security Administration's policy as set forth in SSR 99-2p.

SSR 99-2p specifies that when, as here, the ALJ has found that the individual with CFS has a medically determinable impairment, if the individual "alleges fatigue, pain, symptoms of neurocognitive problems, or other symptoms consistent with CFS, these systems must be considered in deciding whether the individual's impairment is 'severe' at step 2 of the sequential evaluation process." SSR 99-2p, 1999 SSR LEXIS 3, *11. Moreover, "if fatigue, pain, neurocognitive symptoms, or other symptoms are found to cause a limitation or restriction having more than minimal effect on an individual's ability to perform basic work activities, the adjudicator must find that the individual has a 'severe' impairment." Id. at *12.¹ In the context of CFS, therefore, the ALJ's decision to disregard Dr. Singer's conclusions because they were based on Plaintiff's subjective complaints of fatigue, and because her other physical ailments were not themselves disabling, is not based on "such relevant evidence as a reasonable mind might accept

¹The Third Circuit has noted, in a non-precedential opinion addressing a similar case in which an ALJ denied benefits to a sufferer of CFS without referencing SSR 99-2p, that it is "not aware of any duty which requires ALJ's to specifically mention relevant Social Security Rulings," finding it important instead that "the ALJ's analysis by and large comported with the approach set forth in Social Security Ruling 99-2p." Holiday v. Barnhart, 76 Fed. Appx. 479, 482 (3d Cir. 2003). Here, however, the ALJ neither cited to SSR 99-2p nor analyzed the evidence in accordance with the ruling's approach.

as adequate to support a conclusion.” Reefer, 326 F.3d at 379.

The ALJ relied instead on the report of the agency’s consultative examiner, who found no disabling condition and indicated that Plaintiff’s physical examinations were within normal limits. The ALJ also noted that the psychologist who evaluated Plaintiff, Roslyn Wolberg, “did not impose any significant work restrictions on the claimant’s ability to engage in work related activity.” (AR, p. 18). In cases involving CFS, however, “conflicting evidence in the medical record is not unusual” and “[c]larification of any such conflicts in the medical evidence should be sought first from the individual’s treating or other medical sources.” SSR 99-2p, 1999 SSR LEXIS 3, *19. Additionally, if the “treating source’s medical opinion on the issue(s) of the nature and severity of an individual’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, the adjudicator will give it controlling weight.” Id. Here, the ALJ did not suggest that Dr. Singer’s report was not well-supported by clinical laboratory diagnostic techniques or that it was inconsistent with any evidence in the record, but instead, as noted above, disregarded Dr. Singer’s conclusions on the grounds that Plaintiff’s physical examinations were normal and that the other physical illnesses for which she had been treated were not disabling, reasoning inappropriate in the context of CFS.

Also, the ALJ’s reliance on the fact that Wolberg’s report “did not impose any significant work restrictions on the claimant’s ability to engage in work related activity” is misplaced. Wolberg’s report simply describes Plaintiff’s mental and social abilities and concludes that Plaintiff “impresses as a most reliable informant.” Wolberg diagnosed Plaintiff with “transient situational disturbance with depression to reflect her reaction to this chronic illness and the

frustration it has created in her life.” Wolberg did not address whether Plaintiff was restricted in her physical ability to engage in work-related activity and thus the fact that she “did not impose any significant work restrictions” on Plaintiff cannot reasonably serve as medical evidence conflicting with Dr. Singer’s report of the severity of Plaintiff’s impairment.

Finally, in determining that Plaintiff’s testimony was “credible, but not to the extent alleged,” the ALJ relied on the following evidence:

The claimant’s subjective complaints of fatigue and sleepiness are not supported by the medical evidence. She has not followed through on referal [sic] to a psychiatrist, psychologist or neurologist. All physical examinations reveal no abnormalities. She has been treated for sore throat, tonsillitis, GERD and appendicitis. These conditions are not disabling. She claims to be depressed and anxious and that she has panic attacks. However, she does not see a psychiatrist or psychologist, has never had counseling and has never been hospitalized for a mental disorder. For these reasons, the undersigned finds the claimant’s subjective testimony not fully credible.

(AR, p. 18). SSR 99-2p states that in assessing credibility, “the adjudicator must consider all of the evidence in the case record, including any statements by the individual and other persons concerning the individual’s symptoms.” 1999 SSR LEXIS 3, *20. Here, the ALJ discredited Plaintiff’s testimony because she had not received psychological treatment, because her physical examinations were normal, and because the physical ailments for which she had been treated were not disabling in themselves. SSR 99-2p specifically notes, however, that under the Center for Disease Control and Prevention’s definition of CFS, “the hallmark of CFS is the presence of clinically evaluated, persistent or relapsing chronic fatigue that . . . cannot be explained by another physical or mental disorder.” SSR 99-2p, 1999 SSR LEXIS 3, *2. Thus the diagnosis of CFS involves a “ruling out” of other physical causes, and normal physical examinations and non-disabling ailments cannot reasonably be used as evidence undermining the credibility of

Plaintiff's testimony as to the severity of her CFS.²

After review of the parties' briefs and the administrative record, the Court believes that it is appropriate to remand this case to the ALJ for further consideration of the medical record and other evidence in accordance with Social Security Regulation 99-2p in regards to Plaintiff's claim of being disabled as a result of suffering Chronic Fatigue Syndrome.

MICHAEL M. BAYLSON, J.

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²Plaintiff also complains that the ALJ's decision erroneously ignored her mother's corroborating description of Plaintiff's symptoms at the hearing. The Court notes that on remand the ALJ should address the testimony of any witnesses presented to bolster Plaintiff's credibility. Burnett v. Commissioner of Social Security Administration, 220 F.3d 112, 122 (3d Cir. 2000)(where ALJ determined that claimant's testimony regarding her symptoms was not supported by the objective medical evidence, Third Circuit found that on remand "the ALJ must address the testimony" of any additional witnesses presented to bolster Plaintiff's credibility); see also SSR 99-2p, 1999 SSR LEXIS 3, *21-22 ("The adjudicator should carefully considered [third-party information, including from neighbors, friends, relatives, or clergy] when making findings about the credibility of the individual's allegations.").

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ORDER

AND NOW, this 28th day of December, 2004, upon consideration of plaintiff's alternative Motion to Remand, it is hereby ORDERED that the motion is GRANTED and this matter is REMANDED to the Commissioner for an evidentiary hearing in accordance with the foregoing Memorandum. This remand is ORDERED pursuant to the fourth sentence of 42 U.S.C. § 405(g). The Clerk shall mark this case CLOSED.

BY THE COURT:

s/Michael M. Baylson
MICHAEL M. BAYLSON, J.