

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

DENISE KARAHALIAS	:	CIVIL ACTION
	:	
v.	:	NO. 03-5149
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 22nd day of February, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 8 and 10), the court makes the following findings and conclusions:

1. On May 13, 2002, Denise Karahalias (“Karahalias”) filed for disability insurance benefits (“DIB”), under Title II of the Social Security Act, 42 U.S.C. §§ 401-433, alleging an onset date of November 2, 1998. (Tr. 71). Throughout the administrative process, including an administrative hearing held on April 1, 2003, before an administrative law judge (“ALJ”), Karahalias’ claims were denied. (Tr. 5, 11, 14-21, 22-43, 49). Pursuant to 42 U.S.C. § 405(g), Karahalias filed her complaint on September 12, 2003.

2. In his decision, the ALJ concluded that Karahalias has severe impairments consisting of a cognitive/memory impairment, seizure disorder, and hypertension. (Tr. 17 ¶ 1). The ALJ further found that Karahalias’ impairments did not meet or medically equal any listed impairments, that she could not perform her past work as a senior secretary, but that she retained the residual functional capacity (“RFC”) to engage in a limited range of light work. (Tr. 17 ¶ 1, 18 ¶¶ 2, 4, 20 Findings 4, 7, 8, 12).

3. The Court has plenary review of legal issues, but reviews the ALJ’s factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm’r of Soc. Sec., 181 F.3d 429, 431 (3d Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. at 401 (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). It is more than a mere scintilla but may be less than a preponderance. See Brown v. Bowen, 854 F.2d 1211, 1213 (3d Cir. 1988). If the conclusion of the ALJ is supported by substantial evidence, this court may not set aside the Commissioner’s decision even if it would have decided the factual inquiry differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

4. Karahalias raises several arguments in which she alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally

erroneous. These arguments are addressed below. However, upon due consideration of all of the arguments and evidence, I find that the ALJ's decision is legally sufficient and supported by substantial evidence.

A. First, Karahalias asserts that her mental impairment equals the mental retardation listing 12.05(C). 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.05. The ALJ determined that it was improper to compare Karahalias' mental impairment to listing 12.05 because the impairment did not initially manifest itself prior to age 22. (Tr. 17 ¶ 1); See 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.05. Instead, the ALJ compared Karahalias' mental impairment to listing 12.02 which is applicable to organic mental disorders. (Id.); 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.02. Karahalias concedes that her mental impairment manifested itself after she turned 22 but argues that, in equaling listing 12.05, the time at which the impairment manifested itself should be immaterial. (Doc. 8, p. 11). Karahalias is incorrect. Under the law of this circuit, to meet or equal listing 12.05, her mental impairment must have initially manifested itself prior to her turning 22. Williams v. Sullivan, 970 F.2d 1178, 1185-1186 (3d Cir. 1992); see also Burns v. Barnhart, 312 F.3d 113, 126 n.7 (3d Cir. 2002); Colavito v. Apfel, 75 F. Supp. 2d 385, 404 (E.D. Pa. 1999). Because this requirement was not met, Karahalias' argument must fail.

B. Next, Karahalias argues that the ALJ improperly rejected the opinions of her psychologists Bruce Albert, Ph. D. ("Dr. Albert") and Andrea R. Carter, Psy. D. ("Dr. Carter") that her mental deterioration renders her disabled. First, the ALJ did not reject Karahalias' psychologists' opinions and, in fact, found that the "[t]wo examining psychologist concluded that the claimant is not capable of performing her past work as a secretary but did not indicate limitations that would preclude all work (Exhibits 10F, 11F). These opinions are generally supported by the record as a whole and were therefore given significant weight." (Tr. 18 ¶ 1, 286, 295-296, 298). Moreover, Dr. Carter specifically stated that Karahalias may be able to return to some type of employment and both Dr. Carter and Dr. Albert recommended that Karahalias approach the Office of Vocational Rehabilitation for retraining or other vocational services. (Tr. 286, 295-296, 298). It is clear from the record that the ALJ did not reject the opinions of Karahalias' psychologists but instead agreed with them that she could not perform her past work and gave them great weight. Karahalias similarly contends that the ALJ erred by rejecting Dr. Carter's conclusion that "she is now viewed as disabled." (Tr. 286). This argument fails for two reasons. First, Dr. Carter is obviously not using the technical definition of disabled because she acknowledges in the next sentence that Karahalias may be able to perform other work. (Id.); 20 C.F.R. § 404.1527(a)(1). Second, the ultimate disability determination is reserved exclusively to the Commissioner and the ALJ is not required to give any special weight to a treating physician's determination thereof. 20 C.F.R. § 404.1527(e)(1); S.S.R. 96-5p. Therefore, the ALJ did not err by rejecting this conclusion.

Karahalias also complains that, while evaluating her mental impairment under listing 12.02, the ALJ stated that "I have not relied heavily on the Performance IQ score" of 64. (Tr. 17 ¶ 1). Karahalias' IQ score factors into the ALJ's evaluation of the "A" criteria for listing 12.02. The ALJ continued by stating that "[n]onetheless,

some memory impairment was indicated in two separate evaluations, which I find is sufficient to meet the ‘A’ criteria for this listing.” (*Id.*). As a result, whether the ALJ relied on the IQ score is irrelevant since he found Karahalias met the “A” criteria for this listing.¹ The record shows that the ALJ did not reject the opinions of Drs. Albert and Carter, properly found that Karahalias did not meet or equal listing 12.02, and was within his authority in finding that she was not disabled. As a result, Karahalias’ arguments to the contrary must fail.

C. Last, Karahalias contends that the ALJ erred by failing to find certain of her other physical impairments severe. Although a finding of non-severity is closely scrutinized by the court, it is still scrutinized under the substantial evidence standard. McCrea v. Comm’r of Soc. Sec. 370 F.3d 357, 360-361 (3d Cir. 2004). Specifically, Karahalias contends that because she was diagnosed with antiphospholipid antibody syndrome, renal failure, mitral regurgitation, and osteoporosis, and because she reported balance and coordination problems that these impairments and symptoms should have been found severe. I note that Karahalias bears the burden of establishing that her impairments significantly limit her physical or mental ability to do basic work activities and are, therefore, severe. 20 C.F.R. § 404.1520(c); Bowen v. Yuckert, 482 U.S. 137, 146 (1987). Likewise, simply being diagnosed with an impairment does not mean that the impairment is severe. Orbin v. Barnhart, No. 01-4182, 2002 WL 1398568, at *1 (3d Cir. June 28, 2002). First, the ALJ relied on substantial medical evidence establishing that Karahalias’ antiphospholipid antibody syndrome and renal insufficiency were stable when he determined that these impairments were not severe.² (Tr. 16 ¶ 2, 307). Moreover, Charles Wagner, Jr., D.O. (“Dr. Wagner”) reported several normal cardiac exams and opined that Karahalias’ mitral regurgitation was minor and much improved. (Tr. 132, 133-137, 141, 143, 146, 155, 315-317). Also, while Dr. Wagner’s records indicate that Karahalias had osteoporosis secondary to steroid usage, they also indicate that he prescribed Fosamax to alleviate this condition and that in less than a year, Karahalias’ bone scan was normal. (Tr. 132, 135-136). Last, regarding Karahalias’ alleged balance and coordination problems, Dr. Walker ascribed her dizziness to sinus problems due to changes in the weather and to muscle weakness. (Tr. 134, 155). While Karahalias attempts to link her balance and coordination problems with the use of a walker, it is clear from the records that Dr. Wagner’s comment that Karahalias could only ambulate with the help of a walker was made after she had a lupus type flair up. (Tr. 140). The record also does not indicate that the use of any ambulation aid was anything more than temporary. Even if Karahalias did have a severe impairment which caused her to occasionally fall or drop things, the vocational expert testified that she could still perform the identified jobs.

¹ The remainder of Karahalias’ argument concerns the fact that there is medical evidence in the form of exam results and diagnoses showing that she has suffered serious organic brain damage. The ALJ agreed with this and found that Karahalias had a severe mental impairment. (Tr. 17 ¶ 1). Nonetheless, relying on substantial evidence, the ALJ determined after proper analysis that Karahalias’ impairments were not so severe that she met or equaled a listed impairment or that she could not adjust to other employment. (Tr. 17 ¶ 1, 18 ¶¶ 2, 4, 20 Findings 4, 7, 8, 12; see 122, 125, 260, 339 (showing improvement)).

² Karahalias’ argument that somehow the clinical use of the word “catastrophic” in reference to her antiphospholipid antibody syndrome automatically makes this impairment severe is unavailing.

(Tr. 41-42). There is simply no evidence that even if these symptoms of dizziness were indicative of an impairment, that the impairment would inhibit Karahalias' ability to work. Similarly, and in conclusion, Karahalias has not sufficiently established that any of these impairments significantly limit her ability to do basic work activities. Instead, she focuses on how many times various doctors diagnosed these impairments. As stated, this is insufficient to establish that an impairment is severe. Orbin, 2002 WL 1398568 at *1. The ALJ relied on substantial evidence in determining that these physical impairments were not severe. As a result, Karahalias' argument to the contrary fails.

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ's findings of fact and conclusions of law. Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Denise Karahalias is **DENIED**;
6. The motion for summary judgment filed by the Commissioner is **GRANTED** and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST DENISE KARAHALIAS**; and
7. The Clerk of Court is hereby directed to mark this case as **CLOSED**.

LOWELL A. REED, JR., S.J.