

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

MAUREEN MITCHELL : CIVIL ACTION
: :
: : NO. 04-1481
v. :
: :
: :
JO ANNE B. BARNHART, :
COMMISSIONER OF SOCIAL :
SECURITY ADMINISTRATION :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

March 7, 2005

Maureen Mitchell seeks judicial review of the Social Security Administration’s denial of disability insurance benefits.¹ Mitchell argues the decision of the Administrative Law Judge (ALJ) was not supported by substantial evidence and should be reversed. This Court has jurisdiction over Mitchell’s appeal pursuant to 42 U.S.C. § 405(g). For the reasons that follow, this Court denies Mitchell’s objections, adopts the Report and Recommendations of Magistrate Judge Thomas Rueter and grants the Administration’s motion for summary judgment.

FACTS

Plaintiff Maureen Mitchell is 52 years old and has a high school education. (R. 17). Her work experience includes cafeteria attendant, caterer helper, and service worker. (R. 17). She alleges she became disabled on March 10, 1999 due to residual chronic left shoulder pain, back pain, hypertension, and non-insulin-dependent diabetes mellitus. (R. 17). In her testimony, Mitchell claimed she cannot work due to constant and unrelenting pain in her left shoulder/arm and back. (R. 19).

¹ Under Title II of the Social Security Act.

Mitchell sought treatment from multiple physicians for her physical symptoms. (R. 19-20).² Although Mitchell suffers from a left shoulder condition requiring significant accommodation, medical assessments of claimant's limitations support some level of employability. (R. 19).³ Other than the opinion of Leonard Harman, M.D., Mitchell's current treating physician, there is no evidence of a limitation beyond light lifting. (R. 21).

On February 7, 2001, Mitchell filed an application for disability insurance benefits. (R. 16). After a hearing, the ALJ concluded Mitchell was not disabled within the meaning of the Social Security Act, and therefore was not entitled to federal disability benefits. (R. 24). The Appeals Council upheld the ALJ's decision and denied Mitchell's request for review. Mitchell filed this action in U.S. District Court seeking judicial review of the administrative decision.

DISCUSSION

When reviewing the denial of Social Security disability benefits, this Court must uphold the ALJ's factual determinations if they are supported by "substantial evidence." 42 U.S.C. § 405(g). Substantial evidence is "relevant evidence which a reasonable mind might accept as adequate to support a conclusion." *Williams v. Apfel*, 98 F.Supp.2d 625, 630 (E.D. Pa. 2000); *see Cotter v. Harris*, 642 F.2d 700, 704 (3d. Cir. 1981). Substantial evidence consists of "more than a mere scintilla," but is "somewhat less than a preponderance of the evidence";⁴ in effect, substantial evidence is not a "large or significant amount of evidence." *Richardson v. Perales*,

² Physicians include Leonard Harman, M.D., orthopedist Joseph P. Iannotti, M.D., Ph.D., orthopedist Richard J. Mandel, M.D., treating orthopedist Mark D. Avart, D.O., orthopedist Mark Lazarus, M.D., orthopedist Ernest J. Gentchos, M.D., orthopedist Ira C. Sachs, D.O., psychiatrists K. P. Badu V. Vanada, M.D., Harvey Azarva, M.D., obstetrician/gynecologist Avery Rosen, D.O., cardiologist Robert J. Bulgarelli, D.O.

³ Dr. Iannotti considered claimant only "unemployable in any job that would require repetitive use of her upper extremities." Dr. Mandel cleared claimant for work requiring use of her left upper extremity up to table height, with avoidance of pushing/pulling. Dr. Avart only restricted Mitchell against repetitive use of the left upper extremity. Further, a DDS medical consultant saw no bar to competitive employment, rating claimant able to perform light work with only occasional climbing. (R. 19-20).

⁴ *See Ginsburg v. Richardson*, 436 F.2d 1146, 1148 (3d. Cir. 1971)

402 U.S. 389, 401 (1971). Where an agency’s factfinding is supported by substantial evidence, “reviewing courts lack power to reverse either those findings or the reasonable regulatory interpretations that an agency manifests in the course of making such findings of fact.” *Monsour Medical Center v. Heckler*, 806 F.2d 1185, 1191 (3d. Cir. 1986).

The Court’s review of an ALJ’s findings defers to agency inferences from facts “even [where] this court acting de novo might have reached a different conclusion.” *Monsour Medical Center*, 806 F.2d at 1191. The Court’s role “is not to impose its own interpretation of the . . . regulation, but instead to defer to [an agency’s] position so long as it is reasonable.” *Id.* at 1191.

This Court retains plenary review over the ALJ’s application of legal principles. *Segal v. Barnhart*, 342 F.Supp.2d 338, 340 (E.D. Pa. 2004) (citing *Kryzstoforski v. Chater*, 55 F.3d 857, 858 (3d. Cir. 1995)). Therefore, even if an ALJ’s decision is supported by substantial evidence, this Court may overturn that decision if it finds that it was based on incorrect legal standards. *Id.* at 340-41 (citing *Friedberg v. Schweiker*, 721 F.2d 445, 447 (3d. Cir. 1983)).

Title II of the Social Security Act provides for the “payment of insurance benefits to persons who have contributed to the program and who suffer from a physical or mental disability.” 42 U.S.C. § 423 (a)(1)(D)(2002). To establish a disability, a claimant must prove a medically determinable inability to engage in any “substantial gainful activity” for a statutory 12-month period. 42 U.S.C. § 423(d)(1)(A)(2002). Under the Third Circuit’s analysis in *Plummer v. Apfel*, 186 F.3d 422 (3d. Cir. 1999), a claimant is considered unable to engage in any substantial activity “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Id.*

The Commissioner has promulgated a five-step sequential evaluation process to determine disability. *See* 20 C.F.R. § 404.1520 (a)-(f)(1995). The Commissioner must determine whether (1) the claimant is working⁵; (2) the claimant is suffering from a severe impairment, which limits the claimant's ability to work⁶; (3) the claimant has an impairment or combination of impairments which meet or equal a listed impairment, presumed severe enough to preclude any gainful work⁷; (4) the claimant retains the residual functional capacity to perform past relevant work⁸; or (5) the claimant is capable of performing other work in the national economy⁹. *Id.* In the present case, the ALJ concluded (1) Mitchell has not engaged in substantial gainful activity since the alleged onset of disability; (2) Mitchell has an impairment or a combination of impairments considered "severe"; (3) Mitchell's medically determinable impairment does not meet or medically equal a listed impairment; (4) Mitchell lacked the residual functional capacity to perform past relevant work; and, (5) Mitchell is capable of performing work in the national economy and is therefore, not disabled within the meaning of the Social Security Act. (R. 23-24).

Mitchell challenges the ALJ's determination in the fifth step, that Mitchell is capable of performing other work in the economy, considering her age, education, and residual functional capacity. (R. 22). Mitchell argues the ALJ failed to give sufficient weight to her treating physician's testimony. Despite Mitchell's objections, this Court finds substantial evidence to support the ALJ's decision.

⁵ *See* 20 C.F.R. §404.1520(b). Regardless of medical findings, a claimant will not be found to be disabled if working.

⁶ *See* 20 C.F.R. §404.1520(c). A claimant must have an impairment, which meets the required duration and limits the claimant's ability to work.

⁷ *See* 20 C.F.R. §404.1520(d). Where a claimant's impairments qualifies as a listed impairment, the claimant is considered disabled and therefore, entitled to benefits without considering the last two steps in the sequential evaluation process.

⁸ *See* 20 C.F.R. §404.1520(e). If an individual can perform past relevant work, the individual will not be considered disabled.

⁹ *See* 20 C.F.R. §404.1520(f). If an individual has the capacity to perform other work in the national economy, the individual will not be considered disabled.

The Third Circuit acknowledges “opinions of a claimant’s treating physician are entitled to substantial and at times even controlling weight.” *Fagnoli v. Massanari*, 247 F.3d 34, 43 (3d. Cir. 2001)(citing 20 C.F.R. §404.1528(d)(2)). The regulations provide the ALJ should weigh a claimant’s treating physician’s medical opinion on the nature and severity of a claimant’s impairments as controlling if it 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). A treating physician’s assertion that a claimant is “disabled” or “unable to work,” however, is not dispositive of the issue. *Adorno v. Shalala*, 40 F.3d 43, 47-48 (3d. Cir. 1994). Where physicians offer medical opinions of total disability, 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.* at 48.

The ALJ’s decision to accord the testimony of Mitchell’s treating physician, Dr. Harman, reduced weight was supported by substantial evidence. As required, the ALJ provided “not only an expression of the evidence [she] considered which supports the result, but also some indication of the evidence which was rejected.” *Williams*, 98 F.Supp.2d at 631. The ALJ set forth at length her reasoning for discounting Dr. Harman’s conclusions in compliance with the regulations. (R. 19-21).¹⁰ The Court finds the ALJ ‘s evaluation of Dr. Harman’s report was supported by substantial evidence.

Mitchell’s second objection is that the ALJ failed to sufficiently consider the weight of her testimony. The Third Circuit requires “[w]here medical evidence does support a claimant’s complaints of pain, the complaints should then be given ‘great weight’ and may not be

¹⁰ The ALJ notes “[o]nly Leonard Harman, M.D. opines that claimant’s limitations include 1) a ten-fifteen minute break per hour worked during an eight-hour workday and 2) two-three absences per month (Exh. 32F5), limitations which would eliminate claimant from competitive employment.” Further, the ALJ finds Dr. Harmon’s opinions to be neither well supported nor consistent with the record as a whole. (R. 19). *See* note 2.

disregarded unless there exists contrary medical evidence.” *Williams*, 98 F.Supp.2d at 633 (citing *Mason v. Shalala*, 994 F.2d 1058, 1067-68 (3d. Cir. 1993)). The ALJ must consider “the entire case record, including the objective medical evidence, the individual’s own statements . . . , other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record.” *Mason*, 994 F.2d at 1067.¹¹

The claimant bears the burden of proving the alleged pain is real and of disabling severity. *Bittel v. Richardson*, 441 F.2d 1193, 1195 (3d Cir. 1971). Here, Mitchell does not sustain her burden. At the hearing, Mitchell testified she cannot work due to constant and unrelenting pain in her left shoulder/arm and back. (R. 19). The ALJ found Mitchell’s subjective complaints of debilitating pain to be uncorroborated by the record as a whole and inconsistent with the medical evidence. (R. 20-21).

The ALJ did not disregard Mitchell’s testimony as to her pain; the ALJ weighed her testimony and credited it in part, and concluded Mitchell suffers from a moderate degree of pain. (Report 20). Credibility determinations regarding a claimant’s subjective complaints are reserved for the ALJ. *Van Horn v. Schweiker*, 717 F.2d 871, 873 (3d. Cir. 1983). The court defers to an agency’s position so long as it is reasonable. *Monsour Medical Center*, 806 F.2d at 1191. This Court finds the ALJ seriously considered Mitchell’s subjective complaints, as required under the regulations and case law. Deferring to the ALJ’s credibility findings, this Court concludes there is substantial evidence to support the ALJ’s assessments of Mitchell’s subjective complaints of pain.

¹¹ “An individual’s statements about the intensity and persistence of pain or other symptoms have on his ... ability to work may not be disregarded solely because they are not substantiated by objective medical evidence.” *Id.*

In her third objection, Mitchell argues the ALJ's residual functional capacity findings were not supported by substantial evidence. The term "residual functional capacity" is defined in the regulations as the most an individual can still do after considering the effects of physical and/or mental limitations that affect the ability to perform work-related tasks. 20 C.F.R. § 404.1545. The ALJ determined Mitchell had the residual functional capacity of performing a significant range of light work as defined in 20 C.F.R. §404.1567. (R. 24). The ALJ weighed clinical and diagnostic data¹² and relied on medical assessments by Mitchell's own treating physicians, who cleared Mitchell for light work with restrictions. (R. 19-20).¹³ The Court finds there is substantial evidence to support the ALJ's residual functional capacity findings.

Finally, Mitchell claims the ALJ's vocational hypothetical question did not accurately reflect her limitations. The Third Circuit acknowledged "while the ALJ may proffer a variety of assumptions to the expert, the vocational expert's testimony concerning a claimant's ability to perform alternative employment may only be considered for purposes of determining disability if the question accurately portrays the claimant's individual physical and mental impairments." *Burns v. Barnhart*, 312 F.3d 113, 123 (3d. Cir. 2002). At the hearing, the ALJ asked the vocational expert whether jobs exist in the national economy for an individual of the claimant's age, education, past relevant work experience and residual functional capacity. (R. 22). Considering Mitchell's work restrictions, the vocational expert found the claimant is capable successfully adjusting to work that exists in the national economy. (R. 22). The Court finds substantial evidence to support that the ALJ's questions accurately reflected Mitchell's documented impairments and limitations.

¹² For example, the ALJ acknowledged a cervical spine MRI, which included consistent findings of an absence of atrophy and significant residual strength. (R. 19). ALJ also notes Claimant's diabetes, hypertension, and cardiomyopathy are similarly adequately accommodated by her limitation to light exertion. As a result, neither medical opinion nor objective finding limits claimant beyond the light level of exertion.

¹³ See note 2.

For the foregoing reasons, the Court adopts and approves the Report and Recommendation of Magistrate Judge Thomas J. Rueter. Summary Judgment is granted in favor of defendant, the Commissioner of Social Security, and against plaintiff Maureen Mitchell. Accordingly, we enter the following:

ORDER

AND NOW, this 7th day of March, 2005, after consideration of the pleadings and the record, and after review of the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter, and Plaintiff's objections, it is hereby ORDERED that

1. The Report and Recommendation is APPROVED and ADOPTED
2. The Plaintiff's motion for summary judgment and appeal is DENIED.
3. The Defendant's motion for summary judgment is GRANTED.

BY THE COURT:

\s\ Juan R.Sánchez
Juan R. Sánchez, J.