

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

Marilyn Acevedo	:	
	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 05-cv-1854
	:	
	:	
Jo Anne B. Barnhart, Commissioner of Social Security	:	
	:	
	:	
Defendant.	:	

MEMORANDUM

Presently pending are the parties' cross motions for summary judgment and the responses thereto. After consideration of the oral argument held on December 20, 2005, the testimony of record, and the aforementioned motions, the Court will deny Plaintiff's motion for summary judgment and will grant summary judgment in favor of Defendant.

STANDARD OF REVIEW:

This case reviews the Administrative Law Judge's ("ALJ") decision to deny Plaintiff social security disability benefits. The District Court is bound by the ALJ's findings of fact provided that they are supported by substantial evidence in the record. See 42 U.S.C. § 405(g). The Supreme Court has defined "substantial evidence" as "more than a mere scintilla". ."
Richardson v. Perales, 402 U.S. 389, 401 (1972.) It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id.

HISTORY:

Plaintiff applied for disability benefits on June 18, 2003 alleging that she suffered from anxiety, was bipolar and had a spinal disorder which resulted in back pain. Claimant had an eleventh grade education, minimal vocational experience, and was twenty-two years of age at the onset of her alleged disability and at the time of her application.

The Administrative Law Judge (ALJ) presided over a hearing on the matter on March 22, 2004. Claimant appeared, testified and was represented by counsel. After considering the opinions of treating physicians and testifying experts the ALJ denied claimant's application. Plaintiff appealed the ALJ's decision to the Appeals Council. The Appeals Council denied Plaintiff's Request for Review. Pursuant to 20 C.F.R. § 416.1481 (2004), the ALJ's decision became the Commissioner's final decision on March 11, 2005.

APPLICABLE LAW:

The Social Security Administration has established a sequential evaluation process to determine disability. The sequential evaluation process is a series of five "steps" that the Social Security Administration follows to determine eligibility for benefits.^a The ALJ may determine

^a The steps are:

1. At the first step, the ALJ considers claimant's work activity, if any. If the claimant is doing substantial, gainful activity, the ALJ will find that there is no disability for the purposes of benefits to be awarded by the Social Security Administration.
2. At the second step, the medical severity of claimant's impairment(s) are considered. If claimant does not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, the ALJ will determine that claimant is not disabled.
3. At the third step, the ALJ must also consider the medical severity of the claimant's impairment(s). If claimant has an impairment(s) that meets or equals one of the listings of impairments and meets the duration requirement, the ALJ will find that the claimant is disabled.
4. At the fourth step, the ALJ considers the assessment of claimant's Residual Functional Capacity (RFC) and the claimant's past relevant work. If the claimant can perform any past relevant work, the ALJ will find that the claimant is not disabled.
5. At the fifth and last step, the ALJ considers claimant's RFC and the claimant's age, education, and work experience to see if claimant can make an adjustment to other work. If the claimant can make an adjustment to other work, the ALJ will find that claimant is not disabled. If claimant cannot make an

that the claimant is not disabled at any step, and need not proceed to the next step.^b

DISCUSSION:

The ALJ determined that claimant satisfied both steps one (1) and step two (2) towards qualifying for disability benefits.

Medical Severity of Claimant's Impairments compared to the Listings of Impairments:

Step three of the analysis requires that the ALJ compare the claimant's impairments to the Listings of Impairments.^c SSA Evaluation of Disability, 20 CFR 404.1520 (2005). The listings define impairments that would prevent an adult, regardless of his age, education, or work experience, from performing any gainful activity, not just "substantial gainful activity." Sullivan v. Zebley 493 U.S. 521, 532 (1990), 110 S. Ct. 885, 981 (1990). As recommended by claimant's counsel, the ALJ considered the Listings of Impairments, in the context of all the relevant documentary evidence and testimony; specifically paying attention to Listing 1.04, Listing 12.04 and 12.06. The ALJ determined that the claimant does not meet the requirements of the Listing of Impairments.

Plaintiff claims that she suffers from Listing 1.04. Listing 1.04 contains the disorders of the spine. (20 C.F.R. §404, Sub Part P, Appendix 1). There is no medical evidence on the record that supports claimant's assertion that she suffers from nerve root compression, evidence of spinal arachnoiditis or evidence of lumbar spinal stenosis resulting in pseudoclaudication. The ALJ determined that there was absence of medical evidence to show that claimant suffered from Listing 1.04. (*Admin. R.* at 19.)

adjustment to other work, the ALJ will find that claimant is disabled. See 20 CFR 404.1520.

^b Before going from step three to step four, the ALJ must assess the claimant's residual functional capacity (RFC). This RFC assessment is used in evaluating the claims in both step four and step five

^c 20 CFR, Part 404, Subpart P, Appendix 1

Listings 12.04 and 12.06 relate to Affective Disorders and Anxiety Related Disorders respectively. (20 C.F.R. §404, Sub Part P, Appendix 1). The ALJ considered the opinions of various experts before rejecting Ms. Acevedo's claim for social security disability for Listings 12.04 and 12.06.

Dr. Kowalski, a physician, determined that despite "not currently taking medication due to pregnancy...[Ms. Acevedo] is capable of performing adequate [activities of daily living.]" (*Admin. R.* at 102.) Dr. Raclar, the testifying medical expert, considered all the evidence of record, and compared Ms. Acevedo's complaints to the Listings. (*Admin. R.* at 178.) Dr. Raclar determined that the Listings were neither met nor equaled. *Id.* The ALJ considered the opinions of both Dr. Raclar and Dr. Kowalski in denying Ms. Acevedo social security disability benefits. The ALJ thus had substantial evidence to determine that there was inadequate evidence to justify granting disability to claimant based on any Listings, including those emphasized by claimant's counsel.

Claimant's Residual Functional Capacity (RFC):

"If the claimant's impairment is not on the list, [as required under step 3 of the analysis,] the inquiry proceeds to step four and the SSA assesses whether the claimant has the "residual functional capacity" (RFC) to perform [her] previous work." Ramirez v. Barnhart, 372 F.3d 546, 551 (3d Cir. 2004.) The regulations define RFC as "what you can still do despite your limitations." 20 C.F.R. § 404.1545(a). Determination of RFC is an assessment "based on all of the relevant evidence ." *Id.* The RFC is used along with the claimant's vocational background in making the disability decision. See Id.

The ALJ considered the entire record and determined that Ms. Acevedo was able to compensate for the impairments she experienced with the help of medication. Ms. Acevedo

complained that she was having problems sleeping at night. (*Admin. R.* at 169.) However, she reported that she could sleep “[a]ll night, until 8:00 in the morning” if she used her medication. (*Admin. R.* at 169.) Plaintiff’s counsel referenced Ms. Acevedo’s assigned GAF of 40, on her Psychiatric Evaluation dated November 15, 2003.^d The ALJ recognized the aforementioned GAF but considered that Ms. Acevedo showed continual improvement starting January 14, 2004 when she was described as “appearing to becoming [sic] much better. patient [sic] is less depressed and less anxious..” (*Admin. R.* at 134.) On January 28, 2004 Ms. Acevedo was described as being “stable and relaxed.” (*Admin. R.* at 133.) On February 14, 2004 the Neuva Vida Behavioral Health Center Progress Notes states that Ms. Acevedo appeared “less depressed and less tense” and that she “asserted that [her] medication is working well.” (*Admin. R.* at 131.)

Ms. Acevedo also alleged severe limitations resulting from back pain and migraine headaches. However, the ALJ considered that the record does not show most clinical signs typically associated with chronic, disabling back pain. (*Admin. R.* at 23.) Furthermore, the ALJ noted that there is no evidence in the record that Plaintiff was being treated for either her back pain or headache.

The absence of evidence of chronic back pain and the consistent improvement in Ms. Acevedo’s mental health provided the ALJ substantial evidence in determining Ms. Acevedo’s appropriate RFC.

Claimant’s ability to do past relevant work:

At the fourth step, the ALJ considers the assessment of claimant’s RFC and the claimant’s past relevant work. See 20 CFR 404.1520. If the claimant can still do any past relevant work, the ALJ will find that the claimant is not disabled. Id.

^d A GAF of 40 indicates some impairment in reality testing or communication, or major impairment in several areas, such as work, school, family relations, judgment thinking, or mood.

In response to a one page hypothetical, posed by the ALJ, the testifying Vocational Expert, Nancy Harter, opined that Ms. Acevedo could only perform “aspects of her past job.” (*Admin. R.* at 181-182.) Ms. Acevedo’s inability to perform all aspects of her past job precludes her from performing her past job.

Once a claimant shows that she cannot perform past relevant work, the Secretary must then demonstrate that the claimant, given her age, education and work experience, has the ability to perform specific jobs that exist in the national economy. Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979.) The Vocational Expert (VE) responded to the ALJ’s hypothetical and addressed Ms. Acevedo’s ability to perform other jobs that existed in the national economy. The VE testified that Ms. Acevedo could work other “simple, kind of one or two-step jobs.” (*Admin. R.* at 183.) The VE testified that Ms. Acevedo could perform upto 2600 and 5800 local jobs. Id. After considering the VE’s opinion, and Ms. Acevedo’s age, education, and work experience, the ALJ determined that Ms. Acevedo was capable of performing jobs that existed in significant numbers in the national economy. The ALJ hence denied Ms. Acevedo’s claim to social security benefits.

Inadequate limitations posed in hypothetical:

The Court recognizes claimant’s allegation that the hypotheticals posed to the VE did not contain all of the limitations Ms. Acevedo’s counsel claims Ms. Acevedo suffers from. However, if “an ALJ properly determines that an impairment is not supported by medical evidence ... [he] is not required to include such impairments in a hypothetical posed to a vocational expert.” Handelong v. Barnhart, 100 Soc. Sec. Rep. Service 795 (2004.) In the claimant’s case, the ALJ had “reservations ... as to whether the claimant’s assertions can be considered fully credible concerning the degree of the claimant’s disorders.” (*Admin. R.* at 24.)

The ALJ determined that there are “inconsistencies in the record which do not reflect well on the totality of the claimants allegations” and that “there is no support in the record for severely reduced activities of daily living, or the severe functional limitations alleged.” Id. The ALJ’s hypothetical is consistent with Ms. Acevedo’s limitations that the ALJ found were credibly established on the record.

Since there is substantial evidence of record to support the ALJ’s decision, this Court grants Defendant’s Motion for Summary Judgment and denies Plaintiff’s Motion for Summary Judgment. An appropriate order follows.

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

Marilyn Acevedo	:	
	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 05-CV- 1854
	:	
Jo Anne B. Barnhart, etc	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 16th day of February 2006, upon consideration of the parties' cross-motions for summary judgment, Plaintiff's Objections to some of the ALJ's Findings, and arguments presented at the hearing, **IT IS HEREBY ORDERED** that:

- A. Plaintiff's Objections are **OVERRULED**.
- B. Defendant's Motion for Summary Judgment is **GRANTED**;
- C. Plaintiff's Motion for Summary Judgment is **DENIED**.
- D. The Clerk of the Court shall mark this case closed.

BY THE COURT:

S/ CLIFFORD SCOTT GREEN
CLIFFORD SCOTT GREEN, S.J.

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	:	
Jo Anne B. Barnhart, etc	:	
	:	
Defendant.	:	

FINAL JUDGMENT

AND NOW, on this the 16th day of February, 2006, judgment is entered in favor of the Defendant, and against the Plaintiff.

BY THE COURT:

S/ CLIFFORD SCOTT GREEN
CLIFFORD SCOTT GREEN, S.J.