

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

JOYCE B. SMALLS-MCCLLENOS : CIVIL ACTION
: :
v. : NO. 05-5129
: :
JO ANNE B. BARNHART :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

January 12, 2007

Joyce B. Smalls-McClenos asks this Court to reverse the Commissioner’s denial of her claims for Social Security benefits. The Commissioner argues strenuously remand is unwarranted. Because I agree with Magistrate Judge Carol Sandra Moore Wells the Commissioner failed to consider the potentially cumulative disabling effect of degenerative joint disease, sclerosis, and overactive bladder, I will remand the case for further consideration. Remand may not result in a different outcome but is required to conform to the regulation that disabilities be considered in combination as well as individually.

FACTS

Smalls-McClenos is a 56-year-old woman who applied for disability insurance benefits and supplemental security income benefits under titles II and XVI of the Social Security Act¹ in October 2003, alleging disability since July 2002. An administrative law judge (ALJ) affirmed the denial of

¹42 U.S.C. §§ 401-33, 1381-83f. Because “the regulations implementing the Title II disability standard, 42 U.S.C. § 423(d) . . . and those implementing the identical Title XVI standard, § 1382c(a)(3) . . . are the same in all relevant respects,” the Court will cite only to Title II and to those regulations promulgated thereunder. *Sullivan v. Zebley*, 493 U.S. 521, 526 n.3 (1990) (comparing 20 C.F.R. §§ 404.1520-30 with §§ 416.920-30).

both applications after a hearing on October 21, 2004, where Smalls-McClenos appeared with counsel and testified, as did a medical expert and a vocational expert (VE).

Smalls-McClenos has a high school education and past relevant work as a telemarketer, childcare worker, and an insurance customer service representative. Smalls-McClenos is separated from her third husband and lives with her 14-year-old grandson, who participates in the housework and in her care. Smalls-McClenos has sleep apnea which sleeping with a breathing device improves. She has asthma, uses an inhaler daily and is allergic to mold, mildew, dust, and animals. Smalls-McClenos's high blood pressure medication causes her to urinate frequently, a condition which was aggravated during surgery to remove her ovaries. She urinates hourly and must wear Depends to conceal leakage. Smalls-McClenos also testified she suffers from sciatic nerve pain in the back and leg. She testified she suffers daily anxiety attacks and depression because she is unemployed. Medical records confirm Smalls-McClenos's sleep apnea, overactive bladder, sciatica, and depression.

At the administrative hearing, the ALJ asked the VE to consider a hypothetical individual of Smalls-McClenos's age, education, and past work experience who required a work environment free of pulmonary irritants, was limited to work involving simple decision-making, and limited interaction with the public. The VE testified Small-McClenos could not perform any of her past relevant jobs, but could work as a grader, sorter, or product checker, jobs which are readily available regionally. When the ALJ posed the hypothetical with no limitation on interaction with the public, the available job categories doubled. Smalls-McClenos's attorney added frequent urination, two or more anxiety attacks a day, and the need for daytime naps due to the effects of medications and sleep apnea to the hypothetical. The VE then testified "if someone is unable to go an eight-hour day

without having a nap then that would preclude a full-time job. That alone would.” R. 70.

Pursuant to 20 C.F.R. § 404.1520, the ALJ applied the five-step sequential evaluation process in determining Smalls-McClenos’s ineligibility for disability benefits.² The ALJ reached step five before determining Smalls-McClenos is not disabled.

The ALJ found Smalls-McClenos’s depressive disorder, asthma/allergic rhinitis/sinusitis, and sleep apnea severe impairments under the Regulations, 20 C.F.R. §§ 404.1520(c) and 416.920(b), but not disabling because the impairments do not meet any impairment listed in Appendix 1, Subpart P, Regulation 4. The ALJ found Smalls-McClenos’s testimony less than credible and unsupported by the medical record. At the fourth step, the ALJ found Smalls-McClenos “retains the residual functional capacity to perform the exertional demands of all levels of work,” but must avoid pulmonary irritants and is limited to low stress work. R. 24. The ALJ concluded Small-McClenos was not disabled and could return to her past relevant work as a telemarketer. Small-McClenos

² If a claimant cannot be determined to be disabled or not disabled at any step in the sequential evaluation process, the Commissioner will proceed to the next step, as follows:

- (I) At the first step, a claimant is not disabled if he or she is doing substantial gainful activity.
- (ii) At the second step, a claimant is not disabled if he or she does not have a severe medically determinable physical or mental impairment that meets the duration requirement in 20 C.F.R. § 404.1509, or a combination of impairments that is severe and meets the duration requirement.
- (iii) At the third step, a claimant is disabled if he or she has an impairment(s) that meets or equals one of those listed in Appendix 1 of Subpart P of 20 C.F.R. § 404, and meets the duration requirement.
- (iv) At the fourth step, a claimant is not disabled if he or she can still do past relevant work, based on the Commissioner’s assessment of the claimant’s RFC.
- (v) At the fifth and last step, a claimant is disabled if, based on the Commissioner’s assessment of the claimant’s RFC [residual functional capacity], age, education, and work experience, the claimant cannot make an adjustment to other work.

20 C.F.R. § 404.1520(a)(4).

unsuccessfully appealed to the agency's Appeals Council, and then to this Court. Magistrate Judge Wells, to whom the case was referred, recommends remanding the case for the ALJ to consider the disabling effect of Small-McClenos's impairments in combination as required by 20 C.F.R. §§ 404.1523.³

DISCUSSION

This Court is bound by the ALJ's factual findings supported by substantial evidence in the record. 42 U.S.C. § 405(g); *Doak v. Heckler*, 790 F.2d 26, 28 (3d Cir. 1986) (citing *Richardson v. Perales*, 402 U.S. 389, 401 (1971)). Substantial evidence is "more than a mere scintilla but may be somewhat less than a preponderance of the evidence." *Rutherford v. Barnhart*, 399 F.3d 546, 552 (3d Cir. 2005) (quotations omitted). It represents "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 401 (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); *Reefer v. Barnhart*, 326 F.3d 376, 379 (3d Cir. 2003).

To be considered disabled, Smalls-McClenos must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment

³§ 404.1523 Multiple impairments.

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled (see § 404.1520).

which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 [twelve] months.” 42 U.S.C. § 423(d)(1)(A). Smalls-McClenos would be considered unable to engage in any substantial gainful activity “if h[er] physical or mental impairment or impairments are of such severity that [s]he is not only unable to do h[er] previous work but cannot, considering h[er] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. § 423(d)(2)(A).

The ALJ failed to analyze the cumulative effect of all the claimant's impairments in determining whether she is capable of performing work and is not disabled. 20 C.F.R. § 404.1523; *Fagnoli v. Massanari*, 247 F.3d 34, 39 (3d Cir. 2001), *citing Plummer v. Apfel*, 186 F.3d 422, 428 (3d Cir. 1999). In this case, Smalls-McClenos testified she could no longer work in telemarketing because of her frequent urination. Under the hypothetical Smalls-McClenos’s attorney posed, the VE would have found Smalls-McClenos unable to work. A remand will allow the ALJ to consider the cumulative impact of Smalls-McClenos’s disabilities in conformance with the regulations.

An appropriate order follows.

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

JOYCE B. SMALL-McCLENOS	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
Commissioner of the	:	
Social Security Administration,	:	NO. 05-5129
Defendant	:	

ORDER

AND NOW, this 10th day of January, 2007, it is hereby ORDERED:

- a. The Report and Recommendation of Magistrate Judge Wells is APPROVED and ADOPTED;

- b. The objections of the Commissioner are OVERRULED;

3. The Commissioner's Motion for Summary Judgment is DENIED;
4. The Plaintiff's Motion for Summary Judgment is GRANTED in part and DENIED in part; and
5. The case is REMANDED to the Commissioner of the Social Security Administration for additional proceedings to consider the limitations caused by Plaintiff's degenerative joint disease, sclerosis, and overactive bladder in combination throughout the sequential evaluation process, and reconsider her residual functional capacity and vocational opportunities, if necessary.

BY THE COURT:

\s\ Juan R. Sánchez _____

Juan R. Sánchez

J.