

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

DAMARIS MARTINEZ, FOR JOSE	:	CIVIL ACTION
FIGUEROA	:	
	:	
Plaintiff	:	
	:	NO. 96-2601
v.	:	
	:	
KENNETH APFEL	:	
Commissioner	:	
of Social Security	:	
Defendant.	:	

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**ORDER AND EXPLANATION**

Plaintiff Demaris Martinez on behalf of Jose Figueroa (Figueroa) seeks review under 42 U.S.C. §405(g) of the final decision of the Commissioner of the Social Security Administration ("The Commissioner") denying Figueroa's claim for supplemental security income under the Social Security Act. The parties' cross-motions for summary judgment were referred to United States Magistrate Judge Carol Sandra Moore Wells ("Judge Wells") for a Report and Recommendation. Judge Wells recommended that plaintiff's motion for summary judgment be denied and the Commissioner's motion be granted. The plaintiff has filed objections to the Report and Recommendation. After a de novo review of the portions of Report and Recommendation objected to by plaintiff, and an independent review of the parties cross-motions and the record, I approve and adopt Judge Wells's Report and Recommendation. The Commissioner's motion for summary judgment will be granted and the plaintiff's motion will be denied.

The thrust of plaintiff's objection to the Judge Wells's Report and Recommendation is that she erred in accepting the finding of the Administrative Law Judge (ALJ) concerning the onset date of Figueroa's disability. The ALJ concluded that the date of onset for Plaintiff's disability was May 1, 1992. Plaintiff contends that when confronted with a lack of available medical records the ALJ did not apply the proper presumption concerning the onset date of Figueroa's disability.<sup>1</sup> Plaintiff submits the date

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<sup>1</sup> As a claimant who was denied childhood benefits prior to the Supreme Court's decision in Sullivan v. Zebley, 493 U.S. 521 (1990), and pursuant to the court approved class action settlement of the lawsuit, Zebley v. Sullivan, 1991 WL 65530 (E.D. Pa.), Figueroa is entitled to favorable presumptions concerning the onset date of his disability where there is a lack of available evidence concerning his medical history. The parties dispute which of two possible presumptions contained in the Zebley settlement apply to Figueroa. Plaintiff cites the following section of the Zebley settlement:

For purposes of determining disability factors of eligibility for SSI payments, the Social Security Administration will instruct its adjudicators to infer that, in the absence of contrary evidence (such as traumatic onset of disability or a new impairment) or contrary medical judgment, a class member is disabled from the date of the first application for children's SSI disability payments which is included within the class period, if he had subsequently been found disabled under any disability program...

Settlement at VII(H)(1). The Commissioner urges that the following section of the Zebley Stipulation is applicable:

...where the class member has not been found disabled on a subsequent disability claim and where evidence of the past condition is not readily available, the adjudicator will determine, based on the nature of the impairment, whether it is reasonable to presume that the class members past condition and impairments were as severe as they are currently.

Id.

of onset should be January 17, 1983. Plaintiff also argues that the ALJ's assessment of the date of onset of the disability was contrary to the medical evidence.

I will amplify the conclusions of Judge Wells. I agree that the ALJ's determination of the date of onset of Figueroa's disability was properly calculated and was supported by substantial evidence. I also concur with Judge Wells's analysis that the ALJ applied the appropriate Zebley presumption concerning the onset date of Figueroa's disability. See Report and Recommendation at 12-13. Even applying the more favorable Zebley presumption urged by plaintiff, there was substantial evidence for the Commissioner's determination that the onset date was in 1992 rather than an earlier date.<sup>2</sup> In short, there was medical and non-medical evidence demonstrating that Figueroa's mental condition did not rise to the level of a disability until 1992. This "contrary evidence" defeated any presumption that Figueroa was disabled from the date of his first application for SSI disability payments in 1983.

The strongest evidence that Figueroa was not disabled until 1992 consisted of non-medical evidence. The ALJ appropriately considered this non-medical evidence, to the extent that it was not inconsistent with medical evidence in the record. See Social

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<sup>2</sup> The ALJ apparently analyzed the evidence of this case under both presumptions and concluded that both result in an onset date of 1992. (See Tr.15,25,27, Findings of Fact 7,9, and Report and Recommendation at 14)(analyzing the evidence and making conclusions based on the more favorable Zebley presumption).

Security Ruling 83-20 (providing that where available medical evidence does not allow reasonable inferences about progression, non-medical sources should be explored so long as it is not contrary to the medical evidence in the record). Prior to 1992 Figueroa had few functional limitations and performed a variety of age appropriate activities. For example, he attended school, participated in school activities such as plays, and was on a track team for 2-3 years. He was able to manage money and take public transportation without assistance. See e.g. Tr. 97-98, 100-101.

The non-medical evidence considered by the ALJ was not inconsistent with the medical evidence in the case. While there was substantial medical evidence that Figueroa did have a long history of mental illness, it was clear that his symptoms only became of marked severity in 1992. See e.g. Tr. 151 (noting recent "very marked changes in his behavior"); 186-7 (noting recent exacerbation); 189 (noting that "lately his depressive symptoms have worsened"); 224 ("one of the precipitants [of Figueroa's depression] seems to be the fact that his daughter was just born 4 months ago [in 1992]."<sup>3</sup> It was reasonable for the ALJ to conclude from this evidence that Figueroa's mental illness only became so severe in 1992 as to constitute a disability.

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<sup>3</sup> Plaintiff disagrees with the ALJ's interpretation of the testimony of the medical expert Dr. Hayes which the ALJ interpreted as only being consistent with Figueroa's disability commencing in 1992. Although Dr. Hayes did state that Figueroa's mental problems were "all part of the same process" beginning prior to 1983, she also agreed that his problems had become "elevated" and "exacerbated" in 1992. See Tr. 386-387. The ALJ's interpretation of this testimony was reasonable.

**AND NOW,** this \_\_\_\_ day of \_\_\_\_\_, 1998, it is **ORDERED**  
that:

1. The Report and Recommendation of United States Magistrate  
Judge Carol Sandra Moore Wells is **APPROVED** and **ADOPTED**;

2. The Commissioner's Motion for Summary Judgment is  
**GRANTED**;

3. The Plaintiff's Motion for Summary Judgment is **DENIED**.

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ANITA B. BRODY, J.

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