

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

NILSA QUINONES, : CIVIL ACTION
 : NO. 98-2291
 Plaintiff, :
 :
 v. :
 :
 KENNETH S. APFEL, :
 COMMISSIONER OF SOCIAL :
 SECURITY, :
 :
 Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

APRIL 14, 1999

. INTRODUCTION

This is an appeal from a final decision of the Commissioner of Social Security denying plaintiff's claim for Supplemental Security Income. Before the Court are plaintiff's and defendant's cross-motions for summary judgment, accompanied by a Report and Recommendation of the Magistrate Judge recommending that plaintiff's motion be granted in part and denied in part, that defendant's motion be denied, and that the case be remanded to the Commissioner for further proceedings. Defendant has objected to the Report and Recommendation, however, plaintiff has not filed a response to defendant's objections. For the reasons that follow, the Court will sustain defendant's objections, disapprove the Report and Recommendation of the Magistrate Judge, grant defendant's motion for summary judgment, and deny plaintiff's motion for summary judgment.

. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Nilsa Quinones ("claimant") brings this action pursuant to 42 U.S.C. § 405(g) to review the decision of the defendant Commissioner of Social Security ("Commissioner") denying claimant's request for supplemental security income ("SSI") under Title XVI of the Social Security Act ("Act"), 42 U.S.C. §§ 1381-1383f.

On September 2, 1993, claimant filed her application for disability benefits, with a protective filing date of July 20, 1993. Claimant asserted that she had become disabled beginning on July 1, 1993. At the time claimant filed her benefits application, she was 24 years old and was classified as a "younger person" in accordance with the regulations promulgated under the Act. See 20 C.F.R. § 416.963(b) ("Younger person. If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation."). Claimant avers that she suffers from multiple physical impairments, including chronic low back pain, thyromegaly, migraine headaches, chronic dizziness, allergic rhinitis, gastritis, and varicose veins, as well as anxiety and depression. The Commissioner denied claimant's application for disability benefits at both the initial and reconsideration stages. Claimant requested and was granted an administrative hearing before an Administrative Law Judge ("ALJ"). The hearing was held on October 13, 1995, at which only claimant testified.

On July 19, 1996, the ALJ concluded that claimant retained the residual functional capacity to perform light work that does not involve working around potential hazards, such as heights or dangerous machinery. The ALJ found that claimant could return to her past relevant work as a manicurist and child care worker, and, thus, was not disabled under the Act. Subsequently, claimant asked the Appeals Council to review the ALJ's decision, and submitted updated medical records to the Appeals Council as evidence.¹ On February 23, 1998, after consideration of claimant's additional medical evidence, the Appeals Council denied claimant's request, thereby rendering the ALJ's ruling the final decision of the Commissioner in this case. See Jesurum v. Secretary of U.S. Dep't Health & Human Servs., 48 F.3d 114, 116 (3d Cir. 1995).

Claimant sought review of the Commissioner's final decision in this Court pursuant to 42 U.S.C. § 405(g). In accordance with the general practice followed in this district, the parties filed cross-motions for summary judgment. The Court then referred the matter to Magistrate Judge Hart for a Report and Recommendation. See Local R. Civ. P. 72.1(I)(d)(1)(J); see also 28 U.S.C. § 636(b)(1)(B). On February 26, 1999, the Magistrate Judge issued a Report and Recommendation recommending

¹ Claimant provided the medical documents to the Appeals Council on February 10, 1997. The additional documents covered claimant's medical treatments from December 18, 1995 to January 29, 1997, a period of time after the hearing before the ALJ. Thus, these records were not considered by the ALJ in making its determination to deny disability benefits to plaintiff.

that (1) claimant's motion for summary judgment be granted in part and denied in part; (2) the Commissioner's motion for summary judgment be denied; and (3) the case be remanded to the Commissioner for further proceedings. The Commissioner raised objections to the Magistrate Judge's Report and Recommendation, and it is these objections that are currently before the Court.

. LEGAL STANDARD

. This Court's Standard Of Review Is That Of Substantial Evidence On The Record.

When reviewing a decision of the Commissioner to deny disability benefits, the Court's role is limited to determining whether (1) the ALJ applied the proper legal standard, see Podedworny v. Harris, 745 F.2d 210, 221 n.8 (3d Cir. 1984) ("Our scope of review on matters of law is plenary."), and (2) whether the Commissioner's findings of facts are supported by "substantial evidence." Jesurum v. Secretary of U.S. Dep't of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995) (citing Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988)); see 42 U.S.C. § 405(g). Substantial evidence is defined as "'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Jesurum, 48 F.3d at 117 (quoting Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420 (1971)).

"It is less than a preponderance of the evidence, but more than a mere scintilla." Id. (citing Richardson, 402 U.S. at 401).

The search for substantial evidence "is not merely a quantitative exercise." Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983). Rather the "administrative decision should be accompanied by a clear and satisfactory explication of the basis on which it rests." Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981), reh'g denied, 650 F.2d 481 (3d Cir. 1981). "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores, or fails to resolve, a conflict created by countervailing evidence." Kent, 710 F.2d at 114.

The Court's review of the Magistrate Judge's ruling is de novo. See 28 U.S.C. § 636(b). Therefore, the Court "may accept, reject or modify, in whole or in part," the Magistrate Judge's findings and recommendations. Id. In considering claimant's objection to the Magistrate Judge's ruling, the Court has independently reviewed the entire record, including the Report and Recommendation, the ALJ's written decision, the transcript of the hearing, the hearing exhibits, and relevant correspondence.

. What Is A "Disability" Under The Act?

To receive disability benefits, a claimant must show that he suffers from a disability as defined by the Act. See Jesurum, 48 F.3d at 117. Under the Act, disability is defined as:

[an] inability to engage in any substantial gainful activity by reason of any medically

determinable physical or mental impairment 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 months [The impairment must be so severe that the claimant] 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

42 U.S.C. §§ 423(d)(1)(A), (d)(2)(A).

The Commissioner has established a five-step inquiry for determining if a claimant is eligible for disability benefits under the Act. To prevail, the claimant must establish (1) that he is not engaged in substantial gainful activity and (2) that he suffers from a severe medical impairment. See Jesurum, 48 F.3d at 117 (citing Bowen v. Yuckert, 482 U.S. 137, 140-41, 107 S. Ct. 2287 (1987)). If the claimant establishes elements (1) and (2), the Commissioner must then determine (3) whether the impairment is equivalent to an impairment listed by the Commissioner as creating a presumption of disability. See id. If it is not, the claimant bears the burden to show (4) that the impairment prevents the claimant from performing the work that he has performed in the past. See id. (citing Bowen, 482 U.S. at 141). If the claimant satisfies this burden, unless the Commissioner can demonstrate (5) that there are jobs in the national economy that the claimant can perform, the Commissioner must grant the claimant benefits. See id. (citing Ferguson v. Schweiker, 765 F.2d 31, 37 (3d Cir. 1985)).

. ANALYSIS

In this case, the Magistrate Judge found that the ALJ incorrectly applied the requisite five-step evaluation. The ALJ's decision to deny benefits to claimant turned on the fourth step of the inquiry. The ALJ found that claimant possessed the ability to perform light exertional, nonhazardous work, including her past relevant work as a manicurist and child care worker. In its Report and Recommendation, the Magistrate Judge disputed some of the ALJ's findings, and concluded that: (1) the ALJ's finding that claimant's past employment as a manicurist was an unsuccessful work attempt is inherently inconsistent with the ALJ's final conclusion that claimant retained the residual functional capacity to perform her past relevant work as a manicurist; and (2) the ALJ improperly considered claimant's prior employment as a child care worker to be past relevant work because the record contains insufficient evidence as to the specific type of work claimant performed in such employment. The Magistrate Judge affirmed the ALJ's finding that there is no substantial evidence to suggest that claimant's mental impairments, i.e., anxiety and depression, prevent claimant from engaging in substantial gainful activity. The Commissioner presents two objections to the Magistrate Judge's Report and Recommendation.² The Court will sustain the objections.

² The Court notes that, in addition to the two objections addressed by the Court, the Commissioner raised two other objections to the Report and Recommendation: (1) the Magistrate Judge erred in granting claimant's motion for summary judgment because claimant's arguments concerning her past relevant work were never raised at the administrative level, and should be deemed waived; and (2) because claimant failed to follow the

The Magistrate Judge's Report And Recommendation Was Based On A Mistake Of Fact.

The Commissioner objects to the Magistrate Judge's finding that because the ALJ determined that claimant's prior work as a manicurist was an unsuccessful work attempt, it was improper for the ALJ to conclude that claimant could return to her past relevant work as a manicurist. The Commissioner contends that the Magistrate Judge's finding was based on a mistake of fact, and asserts that the ALJ never determined that claimant's past work as a manicurist was an unsuccessful work attempt.

In its decision, the ALJ concluded that "the claimant has been employed subsequent to the date she filed her application for benefits. However, the activity constituted an unsuccessful work attempt and was not indicative of substantial gainful activity." Tr. at 18. The ALJ relied upon medical records from claimant's primary physician, Dr. Loretta Keil, dated February 2, 1994, a date subsequent to the date claimant filed her application for disability benefits. The medical records indicate that claimant missed her appointments because she was working and found it hard to come in. Tr. at 145. Claimant contends that she was not employed in 1994, and avers that her last employment was in 1988. Tr. at 36-38.

physical and mental health treatment recommended by her physicians, and did not provide a legally sufficient reason for doing so, under the regulations, claimant is ineligible to receive disability benefits. Given that the Court is granting the Commissioner's motion for summary judgment on other grounds, the Court needs not address these two issues.

Accepting claimant's testimony as true, claimant was last employed in 1988 as a manicurist. Tr. at 36. Claimant attended cosmetology school for approximately one year, and then began working as a manicurist. Tr. at 36-39. Claimant retained her position as manicurist for "[a] couple of months," but quit because the job "was just too much." Tr. at 36. The ALJ concluded that claimant's employment in 1994 was an unsuccessful work attempt and was not indicative of substantial gainful activity. However, nowhere in the record does the ALJ conclude that claimant's employment in 1988 as a manicurist was an unsuccessful work attempt. To the contrary, the ALJ determined that claimant could return to her past relevant work as a manicurist.³ Thus, the Magistrate Judge mistakenly concluded that the ALJ described claimant's manicurist job in 1988 as an unsuccessful work attempt, when, in fact, the ALJ referred only to claimant's employment in 1994 as an unsuccessful work attempt.

³ In her motion for summary judgment, claimant states that her prior work as a manicurist should not be deemed past relevant work because it was so limited in duration. Pl.'s Mot. for Summ. J., at 13. Past relevant work is work that: (1) occurred within the past fifteen years; (2) was of sufficient duration to enable the worker to learn how to do the job; and (3) was substantial gainful activity. 20 C.F.R. § 416.965(a); Feliciano v. Sullivan, No. 87-4380, 1990 WL 118053, at *4 (E.D. Pa. Aug. 10, 1990). Although this issue was not addressed in the Magistrate Judge's Report and Recommendation, the Court finds that substantial evidence exists to conclude that claimant's prior employment as a manicurist is past relevant work. Here, claimant received cosmetology training for one year, where she acquired her skills, and then employed those skills as a manicurist for a few months. Thus, claimant's training and limited work experience sufficiently establish substantial evidence that claimant learned how to complete her job as a manicurist, and that such work is past relevant employment.

Because the Court concludes that the Report and Recommendation was based on a mistake of fact, the Court will sustain the Commissioner's objection, and will reject the recommendation of the Magistrate Judge that plaintiff's motion be granted in part and denied in part, that defendant's motion be denied, and that the case be remanded for further proceedings.

. The ALJ Appropriately Described Claimant's Prior Employment As A Child Care Worker As Past Relevant Work.

In its decision, the ALJ concluded that claimant was not disabled, and that she possesses the residual functional capacity to perform light work that does not involve working around potential hazards, such as heights or dangerous machinery. The ALJ further found that claimant could return to her past relevant work as a manicurist and child care worker. The Magistrate Judge disagreed, and found that the ALJ was unable to make a determination that claimant's prior employment as a child care worker was past relevant work because the record contains no evidence specifically describing the type of work claimant performed. In response, the Commissioner contends that no further information is needed to establish that claimant's prior employment as a child care worker is past relevant work to which claimant can return.

With regard to claimant's prior employment as a child care worker, the record reveals only that claimant worked as a child care worker from 1984 to 1986, five days a week. Tr. at 86. The record is devoid of any further information or testimony

specifically describing claimant's child care employment as she actually performed it. Nevertheless, the ALJ concluded that claimant possessed the residual functional capacity to perform light exertional, non-hazardous jobs,⁴ including claimant's past relevant work as a child care worker and manicurist. While it is true that there is a lack of evidence in the record specifically describing claimant's prior child care employment as she actually performed it, the Court finds that such evidence is not necessary to the ALJ's determination that claimant's prior employment was past relevant work that fits squarely into the category of light exertional, non-hazardous employment. Instead, to assess whether a claimant retains the residual functional capacity to perform her past relevant work, the ALJ must consider whether the claimant can return to her specific prior job as she used to perform it or as the job is ordinarily performed in the national economy. See Phillips v. Chater, No. 95-1361, 1996 WL 457183, at *7 (D.N.J. June 27, 1996) (citing Smith v. Heckler, 782 F.2d 1176, 1182 (4th Cir. 1986)). Because the ALJ concluded that claimant could perform light work that did not require working around potential hazards, and that claimant's past relevant work as a child care worker fits within the definition of light work,

⁴ "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full range of light work, you must have the ability to do substantially all of these activities." 20 C.F.R. § 404.1567(b).

see Dictionary of Occupational Titles § 359.677-018 (4th ed. 1991), the Court finds that no specific description of claimant's job as she actually performed it is needed to support the ALJ's finding that claimant could return to her past relevant work as a child care worker. Therefore, the Court will sustain the Commissioner's objection and will reject the recommendation of the Magistrate Judge.

. There Is Substantial Evidence To Support The ALJ's Finding That Claimant Can Perform Light Work That Does Not Involve Potential Hazards.

In reaching its conclusion that claimant retains the residual functional capacity to perform light work that does not involve potential hazards, the record reveals that the ALJ considered the medical records of claimant's primary physician, Dr. Keil, examining physicians, Dr. Jonathon Quevedo and Dr. Douglas Nathanson, as well as a consultative psychological evaluation by Dr. Richard Weiss. Tr. at 18, 20. Further, the ALJ also considered claimant's subjective complaints of pain. Tr. at 20.

Based on the psychological evaluation by Dr. Weiss, the ALJ concluded that while claimant may suffer from anxiety and depression, claimant does not have a severe mental impairment. Tr. at 18. Dr. Weiss' evaluation indicated that "[claimant's] overall mood can be best described as stable with the exception of her personality constriction and underlying anxiety. There was no evidence of any kind of major depression. . . . Her productivity of thought was spontaneous and her continuity of thought was relevant and goal directed. Her language was clear

and comprehensible." Tr. at 122. Dr. Weiss also evaluated claimant's capabilities:

"Therefore, unless medically contraindicated, the examiner feels that this applicant could handle simple and routine kinds of work. She can understand and follow simple instructions. She can sustain attention to perform simple repetitive tasks, unless medically contraindicated. Also, unless medically contraindicated, she could handle the stress and pressures associated with simple activities and be able to relate to others including fellow workers and supervisors."

Tr. at 124. Additionally, the ALJ noted that despite receiving numerous recommendations from Dr. Weiss and Dr. Keil, claimant refuses to seek help from a mental health professional. Tr. at 18. Given that there is no evidence in the record to the contrary, the Court finds that there is substantial evidence to support the ALJ's finding that claimant lacks a severe mental impairment that would prevent claimant from engaging in substantial gainful employment.

The ALJ also concluded that the combination of claimant's physical impairments can be deemed severe. Tr. at 18. Notwithstanding that, the ALJ found that claimant's severe physical impairments were not disabling, and that claimant could perform light exertional, non-hazardous work, including her past relevant work as a manicurist and child care worker. Although the ALJ considered claimant's subjective complaints of pain, the ALJ deemed her complaints incredible, in light of the contrary medical evidence. Tr. at 20. Specifically, the ALJ noted that

diagnostic testing only reveals mild to moderate abnormalities,⁵ and physical examinations have generally been unremarkable, disclosing mild to moderate deficits, but also a normal gait, alertness, good motion, strength, and no neurological deficits. Tr. at 20. Further, none of claimant's primary or examining physicians has indicated that claimant is disabled or unable to work. Based on the record, the Court concludes that substantial evidence exists to support the ALJ's finding that claimant retains the residual functional capacity to perform light work that does not involve working around potential hazards, and therefore, that claimant could return to her past relevant work as a manicurist and child care worker.

. CONCLUSION

The Court concludes that there is substantial evidence in the record to support the ALJ's denial of supplemental security income to claimant. The ALJ considered claimant's subjective complaints of physical and mental impairments, and gave appropriate weight to the medical records of claimant's treating and examining physicians. For the reasons stated above, the Court will sustain the Commissioner's objections and will

⁵ The ALJ made specific reference to: a radiologic study of the lumbar spine, which was normal, and an MRI that revealed minimal bulging with no evidence of disc herniation or spinal stenosis; a thyroid uptake and scan, which documented slight enlargement of the thyroid with minimally heterogeneous activity, but no palpable nodes; and a computerized tomography of the paranasal sinuses, numerous laboratory reports, a Holter Monitor Report, and an MRI of the brain, all of which were unremarkable or within normal limits. Tr. at 20.

reject the Report and Recommendation of the Magistrate Judge.
Plaintiff's motion for summary judgment is denied. The
Commissioner's motion for summary judgment is granted.

An appropriate Order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NILSA QUINONES,	:	CIVIL ACTION
	:	NO. 98-2291
Plaintiff,	:	
	:	
v.	:	
	:	
KENNETH S. APFEL,	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this **14th** day of **April, 1999**, upon consideration of plaintiff's motion for summary judgment (doc. no. 13), defendant's motion for summary judgment (doc. no. 14), the Report and Recommendation of the Magistrate Judge (doc. no. 16), and defendant's objections thereto (doc. no. 17), it is hereby **ORDERED** that defendant's objections are **SUSTAINED** and the Report and Recommendation of the Magistrate Judge is **DISAPPROVED**.

It is further **ORDERED** that defendant's motion for summary judgment (doc. no. 14) is **GRANTED**, and plaintiff's motion for summary judgment (doc. no. 13) is **DENIED**.

It is further **ORDERED** that **JUDGMENT** shall be entered in favor of defendant and against plaintiff, and the Clerk shall mark this case **CLOSED**.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.