

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

LANA SCHAEFFER	:	
	:	Civil Action
	:	
vs.	:	
	:	No. 98cv5596
KENNETH APFEL, Commissioner of Social Security	:	
	:	

MEMORANDUM

Broderick, J. September , 1999

Plaintiff Lana Schaeffer brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the final decision of the Commissioner of Social Security, Defendant Kenneth Apfel ("Commissioner"), denying Plaintiff's claim for Supplemental Security income ("SSI") under Title XVI of the Social Security Act. The parties filed cross motions for summary judgment. Pursuant to Local Rule 72.1(d)(1)(C), the Court referred the case to Magistrate Judge M. Faith Angell for a Report and Recommendation ("Report"). Magistrate Judge Angell recommended that the Court grant Plaintiff's Motion for Summary Judgment, and remand this action to the Commissioner for the calculation and award of benefits. The Commissioner filed timely objections. After a de novo review of the record to determine if the Commissioner's decision is supported by substantial evidence, the Report will not be adopted, Plaintiff's motion for Summary Judgment will be denied, and Defendant's motion for Summary Judgment will be granted.

Factual and Procedural Background

Plaintiff Lana Schaeffer protectively filed for SSI on June 29, 1994, and alleged that she

was disabled because of thyroid cancer, spastic colitis, a herniated disc, headaches, and anxiety. Her application was denied initially and upon reconsideration. A hearing was held before Administrative Law Judge ("ALJ") Richard R. Pietrowicz on June 10, 1996. At that hearing, Schaeffer was represented by counsel and testified before the ALJ, as did a vocational expert ("VE").

In a decision dated October 5, 1996, the ALJ denied Plaintiff benefits because, although Schaeffer was unable to return to her previous employment, she could still perform a significant number of light and sedentary jobs that were routine and involved a low level of stress and was therefore not disabled within the meaning of the Social Security Act. On August 19, 1998, the Appeals Council denied Schaeffer's request for review. Therefore, the ALJ's decision stands as the final decision of the Commissioner.

Plaintiff sought judicial review of the final decision of the Commissioner. Schaeffer's complaint was referred to United States Magistrate Judge M. Faith Angell for a Report and Recommendation. By Report and Recommendation dated August 13, 1999, Magistrate Judge Angell concluded that the ALJ's determination regarding Plaintiff's ability to perform light work was not supported by substantial evidence in the record, and that Plaintiff was disabled because her mental conditions and headaches preclude sustained employment.

Born on August 27, 1945 Plaintiff Schaeffer was fifty-one years old on the date of the ALJ's decision. She has one son, whom she raised and who has since graduated from college. Ms. Schaeffer has a high school education. She has worked in the past as a receptionist, but has not performed substantial gainful activity since December 1990.

Ms. Schaeffer's medical history includes a mild disk bulge in 1990, and a left thyroid lobectomy, from which a cancerous lesion was removed in 1994. In March 1994, Plaintiff reported daily headaches for the last twenty years. Since 1984, Schaeffer has been treated with several psychotropic drugs for her tension headaches and her anxiety. She has never been hospitalized for any psychological trauma. In November 1995, Plaintiff began weekly therapy sessions for anxiety and depression.

The Court conducts a de novo review of the portions of a magistrate judge's report and recommendation to which specific objections have been filed. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). This Court's review of the Commissioner's final decision is "limited to determining whether that decision is supported by substantial evidence." Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999). See also 42 U.S.C. § 405(g). Substantial evidence "does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hartranft, 181 F.3d at 360 (quoting Pierce v. Underwood, 487 U.S. 552 (1988)) (internal quotations omitted). This Court "will not set the Commissioner's decision aside if it is supported by substantial evidence, even if we would have decided the factual inquiry differently." Hartranft, 181 F.3d at 360. The Court "cannot conduct a de novo review of the Commissioner's decision or re-weigh the evidence of record." Palmer v. Apfel, 995 F. Supp. 549, 552 (E.D.Pa. 1998) (citing Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1990 (3d Cir. 1986), cert. denied, 482 U.S. 905 (1987)). The Court "is bound by the ALJ's findings of fact if they are supported by substantial evidence in the record." Plummer v. Apfel, No. 98-1825, 1999 WL 571062 at *3 (3d Cir. Aug. 5, 1999).

To be eligible for benefits under the Act a claimant must demonstrate that she is under a “disability,” which the Act defines in relevant part as an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.” 42 U.S.C. § 423(d)(1)(A). The Social Security Administration's regulations (“the administrative regulations”) provide a five step sequential evaluation process for determining whether a claimant suffers from a “disability.” See 20 C.F.R. § 404.1520. The United States Supreme Court has summarized the process as follows:

The first two steps involve threshold determinations that the claimant is not presently working and has an impairment which is of the required duration and which significantly limits his ability to work. In the third step, the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work. If the claimant's impairment matches or is "equal" to one of the listed impairments, he qualifies for benefits without further inquiry. If the claimant cannot qualify under the listings, the analysis proceeds to the fourth and fifth steps. At these steps, the inquiry is whether the claimant can do his past work or any other work that exists in the national economy, in view of his age, education, and work experience. If the claimant cannot do his past work or other work, he qualifies for benefits.

Sullivan v. Zebley, 493 U.S. 521, 525 (1990). The claimant bears the burden of proof as to the first four steps but, if the claimant is unable to resume her former occupation, the "burden of production shifts to the Commissioner, who must demonstrate the claimant is capable of performing other available work in order to deny a claim of disability." Plummer, 1999 WL 571062 at *4. "The ALJ must show that there are other jobs existing in significant numbers in the national economy which the claimant can perform, consistent with [his] medical impairments, age, education, past work experience, and residual functional capacity." Id.

Applying the sequential analysis described above, the ALJ made the following findings:

1. The claimant has not engaged in substantial gainful activity since June 29, 1994.

2. The medical evidence establishes that the claimant has several impairments involving her thyroid, neck, as well as her mental impairment, but that she does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.
3. The claimant's statements with regard to the nature and degree of severity of her impairments and symptoms are not reasonably supported by the medical evidence, and are found not to be totally credible.
4. The claimant has the residual functional capacity to perform the physical exertion and nonexertional requirements of light work with low stress and where constant speech is not required.
5. The claimant is unable to perform her past relevant work as a receptionist.
6. The claimant's residual function capacity for the full range of light work is reduced by a need for low stress and limited speech.
7. The claimant was 49 years old at the time of application, which is defined as a younger individual and is currently 51 years old which is closely approaching advanced age.
8. The claimant has a high school education.
9. The issue of transferability of skills is not material to this decision.
10. Based on an exertional capacity for light work, and the claimant's age, education, and work experience, section 416.969 of Regulation No. 16 and Rules 202.14, 202.15, 202.21 and 202.22, Table No. 2, Appendix 2, Subpart P, Regulation No. 4 would direct a conclusion of "not disabled."
11. Although the claimant's additional nonexertional limitation do not allow her to perform the full range of light work, using the above-cited rules as a framework for decisionmaking, there are a significant number of jobs in the national economy which she could perform. Examples of such jobs are: cashier at self service station where 8,000 jobs exist locally and 600,000 jobs exist in the national economy; or assembly type jobs where 7,000 exist in the local economy and 500,000 exist nationally. While these specific jobs were classified as sedentary by the vocational expert, claimant is found to have the capacity to perform light work with low stress not requiring constant speech and is considered capable of performing the cited sedentary jobs as well.
12. The Administrative Law Judge finds as credible the vocational expert's testimony

that an even larger number of jobs that testified to a the sedentary level exists at the light exertional level. These additional jobs include stock positions and heavier assembly packaging jobs.

13. The claimant was not under a disability, as defined in the Social Security Act, at any time through the date of this decision.

Record ("R.") at 38-40 . Schaeffer challenged the ALJ's conclusion that her testimony as to the nature and degree of her impairment was not sufficiently credible. Schaeffer also challenged the ALJ's decision to not give the opinion of her treating physician controlling weight. Finally, Schaeffer challenged the ALJ's determination, in reliance on the testimony of the VE, that she could, despite her limitations, perform jobs that were present in the national economy.

By Report and Recommendation issued August 13, 1999, Magistrate Judge Angell concluded that the ALJ's decision was not supported by substantial evidence. Magistrate Judge Angell found that the ALJ erred in failing to give Plaintiff's treating physician's opinion controlling weight and in giving greater weight to another consulting psychologist. In addition, Magistrate Judge Angell found that the ALJ failed to accurately rate the Plaintiff's functional degree of limitations. Based on the forgoing, the Magistrate Judge found that the ALJ's conclusion lacked substantial evidence and recommended the matter remanded to the Commissioner for the calculation of benefits.

Because the Commissioner has objected to the majority of the Report and Recommendation, the Court has made a de novo review of the entire record in order to determine whether or not the ALJ's decision was supported by substantial evidence. As both the Report and Defendant's objections indicate, the severity of Plaintiff's mental impairment is primarily at issue.

Plaintiff contends the ALJ erred in discounting Plaintiff's credibility with regard to the nature and degree of her impairments and symptoms. It is the responsibility of the ALJ to

determine the credibility of witnesses and weigh the evidence presented. Richardson v. Perales, 402 U.S. 389, 401 (1971). ALJ determined that Schaeffer's testimony as to her pains and limitations was not credible. The ALJ noted that Schaeffer had not worked from 1979 through 1989, but could not remember why, or whether she sought any therapy. R. at 36. At the time she applied for benefits, she claimed that physical problems and anxiety kept her from working, while at the hearing she stated that her mental impairment prohibits her from working. Id. The ALJ noted that an examining physician found "a marked discrepancy between [Schaeffer's] alleged severity of headaches and her self presentation. Dr. Matthews felt that this could be interpreted as stoicism in the face of chronic constant pain, but could also be interpreted as symptom exaggeration." Id. At the hearing, the ALJ drew an inference that Schaeffer appeared to exaggerate her testimony. Id. Social Security Ruling 96-7p, 20 CFR 416.929.

Although the ALJ found that Schaeffer suffered from impairments and accepted that such impairments would cause pain and limitations, the ALJ found Schaeffer's testimony concerning the severity of her impairments was not credible in light of other evidence in the record. R. at 36. An ALJ may discredit a claimant's complaints of pain where there is contradictory evidence in the record and the ALJ explains his basis for doing so. Mason v. Shalala, 994 F.2d 1058, 1067 (3d Cir. 1993). In assessing complaints of pain, an ALJ considers such factors as the daily activities of the claimant, the frequency and duration of the pain, and the type of treatment, including medication, the claimant receives to alleviate the pain. Soc. Sec. Ruling 96-7p, 20 CFR § 404.1529. An ALJ is entitled to draw an inference adverse to the claimant from the fact that the claimant has not sought medical assistance to relieve the professed pain. See Mason v. Shalala, 994 F.2d 1058, 1068 (3d Cir. 1993).

The ALJ is empowered to evaluate the credibility of witnesses. See Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983). The ALJ explicitly noted that Schaeffer cares for her personal needs, does her own cooking, reads magazines, and can use public transportation. R. at 36. Looking at all the evidence in the record, in light of the standard of review employed by this Court, the Court finds that the ALJ's determination that Schaeffer's subjective complaints of pain were not entirely credible is supported by substantial evidence. The Court finds that the ALJ has adequately explained his decision to regard the severity of Plaintiff's symptoms as not entirely credible. Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981).

The Court further finds that the ALJ's decision to not give controlling weight to treating physician Dr. Mandel's unsupported opinion in August 1995 that Schaeffer was "incapacitated" is supported by substantial evidence in the record. Although the treating physician's opinions should be accorded great weight, the Commissioner and the ALJ are not bound by the physician's conclusion of disability and may reject it if insufficient clinical data supports it. See Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1985). "[A]n ALJ may afford a treating physician's opinion more or less weight depending on the extent to which supporting explanations are provided." Plummer v. Apfel, No. 98-1825, 1999 WL 571062 at *5 (3d Cir. Aug. 5, 1999) (citing Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1984)). The ALJ acknowledged that "while ordinarily a treating source's opinion would be given controlling weight, Dr. Mandel's opinion regarding claimant's limitations is not supported by medically acceptable clinical and laboratory diagnostic techniques." R. at 34. Dr. Mandel's opinion was supplemented by cursory treatment notes which included findings such as Schaeffer's weight and blood pressure, and the anti-anxiety medications he has prescribed but he had apparently never referred her for any other

mental health treatment or psychological testing. R. at 232, 250-57. In light of the standard of review employed by this Court, the Court finds the ALJ's finding of Dr. Mandel's opinion to be unpersuasive is supported by substantial evidence.

Similarly, the Court finds that the ALJ's decision to give weight to consulting physician Dr. Kear, Ph.D. is supported by substantial evidence. Dr. Kear evaluated Schaeffer, developed clinical impressions, and administered the Wechsler Adult Intelligence Scale. R. 239-244. Dr. Kear opined that Schaeffer can understand, retain and follow simple and complex instructions, perform work requiring frequent contact with others, and perform simple repetitive tasks. While the ALJ acknowledged that this opinion was from a "one-time examining consultant," the ALJ's decision to give appropriate weight to Dr. Kear's opinion is supported by substantial evidence.

Finally, the Court finds that the ALJ's determination, based on the testimony of the VE, that there were jobs which Schaeffer could perform, despite her exertional and functional limitations, is supported by substantial evidence. Upon questioning of the ALJ, the VE testified that if he were to credit all of the testimony given by Schaeffer, Schaeffer would not be able to perform any work in the national economy. R. at 90. However, this Court has already found that the ALJ's determination that Schaeffer's testimony was not entirely credible is supported by substantial evidence. In response to hypotheticals, the VE also testified that an individual with the background, work experience, age and education of Plaintiff Schaeffer, with limitations of sedentary and low stress work, where constant speech was not necessary, could perform significant numbers of jobs in the national economy. R. at 91-92. Even though Schaeffer was restricted to less than the full range of sedentary work, the VE testified that jobs existed in the national economy which Schaeffer could do. Id. The VE provided numbers which existed in the

national and local economies for several of these jobs R. at 92. In addition, the ALJ offered Schaeffer's attorney the opportunity to question the VE Schaeffer's attorney declined to do so. R. at 93.

Having made a de novo review of the record, the Court has determined that the ALJ's findings are supported by substantial evidence. The Court will, therefore, deny Plaintiff's motion for summary judgment, grant Defendant's motion for summary judgment, and enter judgment against Plaintiff and in favor of Defendant. The Report shall not be approved and shall not be adopted.

An appropriate Order follows.

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

LANA SCHAEFFER	:	
	:	Civil Action
	:	
vs.	:	
	:	No. 98cv5596
KENNETH APFEL, Commissioner of Social Security	:	
	:	

ORDER

AND NOW, this day of September, 1999; upon consideration of the parties' cross motions for summary judgment; after review of the Magistrate's August 13, 1999 Report and Recommendation, Defendant's objections thereto and Plaintiff's response;

IT IS ORDERED that the August 13, 1999 Report and Recommendation of M. Faith Angell, United States Magistrate Judge, is **DISAPPROVED**;

IT IS FURTHER ORDERED that the Commissioner's Motion for Summary Judgment (Doc. No. 10) is **GRANTED**;

IT IS FURTHER ORDERED that Plaintiff Lana Schaeffer's Motion for Summary Judgment (Doc. No. 9) is **DENIED**.

RAYMOND J. BRODERICK, J.