



On August 17, 2001, the Appellate Council denied Sherrod's request for review, making the ALJ's decision the final decision of the Commissioner. Sherrod timely filed this action for review of the Commissioner's decision.

Before us are the parties' cross-motions for summary judgment. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1, we referred the cross motions to Chief Magistrate Judge Melinson for a Report and Recommendation. By Report and Recommendation filed July 31, 2002, Chief Judge Melinson recommended that we affirm the decision of the ALJ and enter summary judgment for the Commissioner. Sherrod has filed timely objections contending that (1) the ALJ accorded insufficient weight to the medical opinion of Sherrod's treating physician; and (2) the ALJ failed to consider the work limitations posed by all of Sherrod's physical and mental impairments. We consider the objected to portions of the magistrate's Report and Recommendation de novo. 28 U.S.C. § 636(b).

### Analysis

We review the factual findings of the Commissioner under a substantial evidence standard. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate." Fargnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001). If supported by substantial evidence, factual findings of the Commissioner are conclusive. 42 U.S.C. § 405(g); Fargnoli, 247 F.3d at 38.

In exercising review, the Court must assess whether the ALJ considered, weighed, and evaluated the evidence thoroughly and in accordance with the applicable regulations and case law. "This Court has long been concerned with ALJ opinions that fail properly to consider, discuss and weigh relevant medical evidence." Fargnoli, 247 F.3d at 42. "This Court has repeatedly emphasized that the special nature of proceedings for disability benefits dictates care on the part of the agency in developing an administrative record and in explicitly weighing all evidence." Dombrowsky v. Califano, 606 F.2d 403, 406-07 (3d Cir. 1979).

The medical opinion of a treating physician is entitled to substantial, and even at times, controlling weight. Fargnoli, 247 F.3d at 43. Enhanced weight is warranted because the applicant's treating doctor is "likely to be the medical professional[] most able to provide a detailed, longitudinal picture of [her] medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations." 20 C.F.R. § 404.1527(d)(2); Fargnoli, 247 F.3d at 43. Where the opinion is diagnostically well-supported and not inconsistent with other substantial evidence of record, the opinion is conclusive. 20 C.F.R. § 404.1527(d)(2); Fargnoli. At other times, the Commissioner may reject the opinion but must provide an adequate explanation; the Commissioner may disbelieve or discount the weight of the

physician's opinion "for no reason or for the wrong reason." Morales v. Apfel, 225 F.3d 310, 317-18 (3d Cir. 2000); Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999).

To establish that she has a "disability" under the Social Security Act, Sherrod "must demonstrate that there is some medically determinable basis for an impairment that prevents [her] from engaging in any substantial gainful activity for a statutory twelve-month period." Fagnoli, 247 F.3d at 38-39 (quotations omitted); see 42 U.S.C. § 423(d). The Commissioner determines whether an individual has a disability using a five-step process:

The sequence is essentially as follows: (1) if the claimant is currently engaged in substantial gainful employment, she will be found not disabled; (2) if the claimant does not suffer from a "severe impairment," she will be found not disabled; (3) if a severe impairment meets or equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1 and has lasted or is expected to last continually for at least twelve months, then the claimant will be found disabled; (4) if the severe impairment does not meet prong (3), the Commissioner considers the claimant's residual functional capacity ("RFC") to determine whether she can perform work she has done in the past despite the severe impairment - if she can, she will be found not disabled<sup>1</sup>; and (5) if the claimant cannot perform her past work, the Commissioner will consider the claimant's RFC, age, education, and past work experience

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<sup>1</sup> In Thomas v. Comm'r of Social Security, 294 F.3d 569 (3d Cir. 2002), our Court of Appeals modified step four, so that a plaintiff meets her burden at step four if she "show[s] either that she cannot perform her past relevant work or that the previous work is not substantial gainful work that exists in the national economy." Id. at 572.

to determine whether she can perform other work which exists in the national economy. See id. § 404.1520(b)-(f).

Shaudeck v. Commissioner, 181 F.3d 429, 431-32 (3d Cir. 1999).

The ALJ determined at step four that Sherrod was able, despite her physical and mental impairments, to return to her former work. In her objections, Sherrod maintains that the ALJ failed properly to weigh the evidence and develop the administrative record, and that, as a consequence, the determination of the ALJ at step four is not supported by substantial evidence. We now turn to Sherrod's objections.

1. Did the ALJ accord insufficient weight to the opinion of Sherrod's treating physician?

Sherrod claims that the ALJ improperly rejected the opinion of her treating physician, Dr. Casselli. Dr. Casselli wrote a letter stating that Sherrod "is in need of disability" for four reasons -- severe back and leg pain, phlebitis, asthma, and chest pain. Tr. at 306. Dr. Casselli stated in response to questions on a "Medical Assessment of Ability to Do Work-Related Activities (Physical)" form (hereinafter Medical Assessment Form) that Sherrod's physical impairments affected functions such as sitting, walking, standing, pushing, pulling, and carrying. Tr. at 307-09. In contrast, Dr. Rosenfeld, a physician the agency designated to examine the claimant, found that Sherrod had no limitations in standing, walking, pushing, pulling, and carrying,

and also found that her lungs were clear and that while morbidly obese and exhibiting trace bilateral pitting edema, she otherwise was normal. Tr. at 247-53.

Since Dr. Casselli's medical opinion was in conflict with Dr. Rubenfeld's, and, as we shall see, was not well-supported by diagnostic medical evidence, the ALJ may decide not to credit Dr. Casselli's opinion -- entitled though it is to enhanced weight -- if she provides an adequate explanation. Morales, 225 F.3d at 317; 20 C.F.R. § 404.1527(d)(2).

The ALJ assigned the medical assessments of Dr. Casselli "little probative weight". Tr. at 27. Plaintiff claims that the ALJ rejected the opinion of her treating physician for an invalid reason. We agree, and in this respect disagree with the Report of Chief Judge Melinson. Nevertheless, because the ALJ provided other reasons to reject Dr. Casselli's medical opinion, and these reasons are those that "a reasonable mind might accept as adequate", the ALJ's factual finding that the opinion of the treating physician is entitled to little probative weight is supported by substantial evidence. Therefore, it is conclusive.

The ALJ explained that because Dr. Casselli allegedly opined in the Medical Assessment Form that Sherrod could only sit, stand, and walk for one hour a day, but Sherrod admitted that she can do these activities for one hour at a time, and that she cooks, cleans, bathes, and takes the bus, the treating

doctor's assessment of Sherrod's physical capabilities was incredible. Tr. at 26; see also Tr. at 21, 25. According to the ALJ, the doctor's opinion on the critical issue of Sherrod's physical limitations flew in the face of established facts -- including Sherrod's testimony about what activities she was able to perform. Tr. at 26.

While the ALJ's analysis is logical, the ALJ unreasonably discredited Dr. Casselli's medical opinion because the Medical Assessment Form of Dr. Casselli does not make clear that she believed that the patient could only sit, stand, and walk for one hour a day. The Medical Assessment Form, attached as an appendix to this opinion, is unclear as to whether Dr. Casselli opined that the patient could sit, stand, or walk for one hour a day or one hour at a time.<sup>2</sup> If it is the latter, the

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<sup>2</sup> The questions about the duration the patient could stand/walk (question 2.c) and the duration the patient could sit, (question 3.c) actually consist of two questions. See Appendix. The doctor is told to answer the amount of time the patient can sit/walk/stand consecutively and the total amount of time that the patient can perform these functions over an eight-hour day. In answer to both questions, although they are twofold, Dr. Casselli provided one answer, "less than 1 hour." The ALJ assumed that because the answer was scrawled close to the word "Total?" it was in answer to that question. That reading is unconvincing. It does not explain why the doctor only answered one question, and answered the harder question at that (the question that requires adding the intervals that the patient can sit/stand/walk over eight hours), or why the doctor completed every question on the form except for these two-part questions and a residual question. It is likely that Dr. Casselli misread questions 2.c and 3.c. To us, it is sheer speculation what Dr. Casselli thought the questions meant, and consequently what the response of "less than 1 hour" signified. Furthermore, the response is not written so close to "Total?" to associate it with that question. In question 3.c, the response hovers in between

(continued...)

medical assessment of the treating physician as to how long the patient could sit, walk, and stand is not at all inconsistent with the other evidence on record, and not a basis for disbelieving the treating physician.

The ALJ had a duty to develop the record. Dumbrowsky v. Califano, 606 F.2d 403, 406-07 (3d Cir. 1979). Where a physician makes a statement critical to the disability determination that is unclear, the ALJ must attempt to clarify it. See 20 C.F.R. 40.1512(e)(1) ("We will seek additional evidence or clarification from your medical source when the report from your medical source contains a conflict or ambiguity that must be resolved...."). Here, the ALJ did not contact Dr. Casselli to clarify whether her response on the Medical Assessment Form of "less than 1 hour" meant one hour in a day or one hour at a time. Absent such clarification, it was an error for the ALJ to suppose the treating doctor meant one hour a day, and based upon that, infer that her response was inconsistent with the weight of the evidence, and that the doctor was not worthy of belief. The decision of the ALJ to disbelieve Dr. Casselli because of the content of her responses on the Medical Assessment Form, when those responses were ambiguous, is not supported by substantial evidence.

The error is nevertheless not reversible error. The ALJ gave other reasons. These reasons constitute an adequate

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<sup>2</sup>(...continued)  
"Total?" and "Without interruption?"

basis for according Dr. Casselli's medical opinion lessened weight. For instance, Dr. Casselli provided in her letter that the patient "gets short of breath easily" and has been to the emergency room "on several occasions" because of asthma. Tr. at 306. In fact, the ALJ found, and the record establishes, that Sherrod's lungs are clear, her asthma is under control, and she has not been to the emergency room in two years because of asthma. Tr. at 24, 26, 51-52, 248, 314, 324. Furthermore, Dr. Casselli claimed that Sherrod is "in need of disability" because of severe back and leg pain, phlebitis in the left leg, asthma, and chest pain; the letter stated next to the indication of chest pain that Sherrod "sees Dr. Weisman her cardiologist." Tr. at 306. The ALJ found, however, that two of the purported reasons for disability were minor impairments that did not significantly affect Sherrod's physical functioning. The chest pains were non-cardiac and, as stated, the asthma was controlled by an inhaler. Tr. at 21, 23, 26. Additionally, Dr. Casselli stated that Sherrod had arthritis in the back and arms preventing her from lifting objects weighing more than two or three pounds, Tr. at 307, but there is no diagnostic confirmation of such impairments. Tr. at 24.

Viewing the record as a whole, there is adequate evidence to support the ALJ's determination that Sherrod's treating physician's opinion was entitled to little probative weight. Therefore, the factual finding is supported by substantial evidence and is conclusive.

2. Did the ALJ fail to consider all of Sherrod's impairments when determining that she could resume work as a ticket seller?

This objection is the reassertion of an argument that Chief Magistrate Judge Melinson rejected. Since we agree with Chief Judge Melinson's reasoning, we discuss it only briefly.

After finding at step two that an applicant has severe impairments, an ALJ must at step four consider the combination of all impairments -- severe and non-severe -- on the applicant's ability to perform past relevant work. 20 C.F.R. § 404.1520; 20 C.F.R. § 416.923 ("[W]e 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."); 20 C.F.R. § 416.945(e) ("When you have a severe impairment(s)...we will consider the limiting effects of all your impairment(s), even those that are not severe, in determining your residual functional capacity").

Although the ALJ did not find Sherrod to suffer from a severe social disorder, she did conclude that Sherrod had "moderate difficulties in maintaining social functioning," stating:

[S]he has moderate difficulties in maintaining social functioning as she visits with family when they come to transport her and visits with friends who come to see her at times and she attends church once a month and she communicates clearly, but, she told

Dr. Seifer<sup>3</sup> (Exhibit 3F) that does not initiate social contacts and has problems getting along with people." [sic]

Tr. at 23.

The ALJ posed a hypothetical question to the vocational expert at the hearing to determine whether one of Sherrod's age and experience, with her physical and mental impairments, could perform work as a cashier or ticket seller. The ALJ specified the following physical and mental limitations:

[L]ight exertional work which requires no more than occasional climbing of stairs and ramps but no climbing ladders, ropes or scaffolds...and no more than occasional balancing and stooping and no kneeling, crouching and crawling. Also the job of -- must involve simple, routine repetitive work due to her recent and concentration problems [sic]...[and] an option to sit or stand as needed.

Tr. at 79-81. Based upon the vocational expert's assessment that a person with such limitations could indeed work as a ticket seller, the ALJ denied Sherrod's application for disability at step four. Sherrod maintains that the ALJ erred in failing to take into account the effect of Sherrod's determined "moderate difficulties in maintaining social functioning" on her ability to do past work.

The ALJ was reasonable in concluding that Sherrod's "moderate difficulties in maintaining social functioning" were

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<sup>3</sup> The psychologist the agency designated to examine Sherrod.

not germane to whether she could work as a ticket seller. The record reveals that Sherrod interacts socially with family and friends when they come to visit her, goes to church, takes public transportation, and conducted herself in a socially appropriate manner with the agency psychologist, Dr. Seifer. Tr. at 23, 27. Sherrod has never received psychological treatment. Tr. at 23. Sherrod was not dismissed as ticket seller because of problems interacting with coworkers or customers. Tr. at 50-51. Sherrod has presented no evidence that the job of ticket seller/agent even entails any meaningful social contacts.

The ALJ's determination that Sherrod could perform work as a ticket agent even with her "moderate difficulties in maintaining social functioning" is thus supported by substantial evidence.

## APPENDIX

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

ROSETTA J. SHERROD : CIVIL ACTION  
:  
v. :  
:  
JO ANNE B. BARNHART : NO. 01-4731

ORDER

AND NOW, this 29th day of October, 2002, upon consideration of the parties' cross motions for summary judgment, and after careful and independent consideration of the Report and Recommendation of Chief United States Magistrate Judge James R. Melinson and plaintiff's Objections thereto, in accordance with the foregoing Memorandum, it is hereby ORDERED that:

1. Plaintiff's objections are OVERRULED;
2. The Recommendation is ADOPTED;
3. Defendant's motion for summary judgment is GRANTED; and
4. Plaintiff's motion for summary judgment is DENIED.

BY THE COURT:

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Stewart Dalzell, J.

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

ROSETTA J. SHERROD : CIVIL ACTION  
:  
v. :  
:  
JO ANNE B. BARNHART : NO. 01-4731

JUDGMENT

AND NOW, this 29th day of October, 2002, the Court having this day (1) adopted the Recommendation of Chief Magistrate Judge Melinson, (2) granted defendant's motion for summary judgment, and (3) denied plaintiff's motion for summary judgment, in accordance with Shalala v. Schaefer, 509 U.S. 292, 113 S. Ct. 2625 (1993) and Kadelski v. Sullivan, 30 F.3d 399 (3d Cir. 1994), it is hereby ORDERED that:

1. JUDGMENT IS ENTERED in favor of defendant Jo Anne B. Barnhart and against plaintiff Rosetta J. Sherrod; and
2. The Clerk shall CLOSE this case statistically.

BY THE COURT:

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Stewart Dalzell, J.