

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

IRIS N. RODRIQUEZ	:	CIVIL ACTION
	:	
v.	:	NO. 03-5765
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 15th day of November, 2004, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 11 and 13) and the reply thereto (Doc. No 15), the court makes the following findings and conclusions:

1. On August 21, 2001, Ana Rodriguez filed for supplemental security income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f, on behalf of her minor daughter, Iris N. Rodriquez (“Rodriquez”).¹ (Tr. 90-91). Throughout the administrative process, including an administrative hearing held on April 18, 2002, before an administrative law judge (“ALJ”), Rodriquez’s claims were denied. (Tr. 5-7, 10-17, 73-74, 81-84). Pursuant to 42 U.S.C. § 405(g), Rodriquez filed her complaint on November 21, 2003.

2. In her decision, the ALJ concluded that Rodriquez has medically determinable severe impairments consisting of scoliosis with pain, headaches, and reactive airways disease. (Tr. 14 ¶5, 16 Finding 3). However, the ALJ further concluded that Rodriquez’s impairments did not meet, medically equal or functionally equal the severity of any of the provisions of the childhood listing of impairments. (Tr. 14 ¶6, 16 ¶3, 17 Finding 5).

3. The role of this court on judicial review is to determine whether there is substantial evidence in the record to support the Commissioner’s final decision. Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986); Newhouse v. Heckler, 753 F.2d 283, 285 (3d Cir. 1985). The factual findings of the Commissioner must be accepted as conclusive, provided that they are supported by substantial evidence. Richardson v. Perales, 402 U.S. 389, 390 (1971) (citing 42 U.S.C. § 405(g)). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. at 401 (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). If the conclusion of the ALJ is supported by substantial evidence, this court may not set aside the Commissioner’s decision even if it would have decided the factual inquiry

¹ It is unclear from the record whether Iris’s last name is spelled Rodriquez or Rodriguez. I will spell her name as Rodriquez in this memorandum and order since that is how it is presented in the caption of the case. Rodriquez was born on December 21, 1992. (Tr. 13 ¶5).

differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

4. Rodriquez raises several arguments in which she alleges that the determination by the ALJ was not supported by substantial evidence. These arguments are addressed below. However, upon due consideration of all of the arguments and evidence, I find that the ALJ's decision was supported by substantial evidence.

A. First, Rodriquez argues that the ALJ failed to adequately explain why she found that Rodriquez's impairments did not meet or medically equal a listing. At the third step of the childhood SSI determination, the ALJ must decide whether the child's impairments meet, medically equal, or functionally equal a listed impairment. 20 C.F.R. § 416.924(d). It is true that the ALJ did not mention any specific listings in her decision, and simply stated that the evidence did not show that Rodriquez's impairments met or medically equaled any of the listed impairments. (Tr. 14 ¶6). However, in the remainder of her decision, the ALJ explained why Rodriquez's impairments did not functionally equal a listed impairment. (Tr. 15-17). The ALJ's analysis and discussion of the evidence on this issue also support her determinations that Rodriquez's impairments did not meet or medically equal a listing.

In her analysis, the ALJ discussed how Rodriquez's back brace effected her and noted that Rodriquez only wore her brace continually for a short period of time and now only wears it for a few hours a day. (Tr. 14 ¶1, 15 ¶3, see Tr. 26-27, 33-34, 47). The ALJ also stated that Rodriquez's pain was decreasing and her functionality was increasing due to the back brace. (Tr. 15 ¶4). Likewise, the ALJ reported that Rodriquez's reactionary airway disease was responding to treatment, that she was doing well, and that respiratory flair-ups responded well to medication. (Tr. 15 ¶4-16 ¶1, see Tr. 163, 175, 224, 298, 302). Similarly, the ALJ recognized that in Rodriquez's last documented treatment note, no respiratory difficulties were reported and Rodriquez's mother stated that she was doing much better. (Tr. 16 ¶1, 302). The ALJ further noted that Rodriquez's physical therapy records from September and November 2001 and February 2002 showed no significant limitations or complaints of pain and that Rodriquez was reported to be active and playful. (Tr. 15 ¶3, 16 ¶1, see Tr. 260-263, 282-285, 287). The ALJ also reported that Rodriquez's respiratory condition was stable. (Tr. 16 ¶1, see Tr. 177, 222, 292, 302). Moreover, the records and testimony also show that Rodriquez's headaches were stable and that she was able to treat them with Motrin. (Tr. 29, 292). The ALJ discussed Rodriquez's teacher's first hand accounts of Rodriquez's abilities during school, her lack of difficulties at school, and that Rodriquez was quickly catching up in her class work. (Tr. 15 ¶3, 16 ¶1, see Tr. 97-100). The ALJ also weighed the testimony of Rodriquez and her mother, giving Rodriquez full credibility but discounting her mother's credibility. (Tr. 16 ¶1). Lastly, the ALJ considered and relied upon the state agency assessment, certain reports from the Hershey Medical Center and certain reports from Dr. Judith Hipple because they were supported by the record evidence. (Tr. 16 ¶2, see 145-149, 210-211, 238-259, 280, 297). Other medical records also support that Rodriquez's impairments have improved, that she is doing well with her medication, and that her scoliosis is mild. (Tr. 207, 239, 244, 279).

Therefore, unlike in Burnett v. Commissioner of Social Security, 220 F.3d 112 (3d Cir. 2000), there is sufficient analysis in the decision so that it is capable of

meaningful judicial review. See Burnett, 220 F.3d at 119-120; Jones v. Barnhart, 364 F.3d 501, 504-505 (finding that the function of Burnett is to ensure that there is sufficient development of the record and explanation of findings to permit meaningful review and that, in that case, the ALJ's decision, read as a whole, was sufficient). As a result, Rodriquez's argument must fail.²

B. Second, Rodriquez contends that the ALJ failed by not finding that Rodriquez's impairments functionally equaled the severity of a listed impairment. In determining whether an applicant's impairments are functionally equivalent to a listing, the ALJ must consider six domains of functioning. 20 C.F.R. § 416.926a(b)(1). Rodriquez argues that the ALJ should have found an extreme rather than marked limitation in the sixth domain, health and physical well-being, based, in part, on the amount of school absences she had accumulated. Although the ALJ recognized that Rodriquez had been absent from school a significant number of times, she found that Rodriquez's limitation in health and physical well-being was only marked. (Tr. 15 ¶4). The ALJ further found that Rodriquez had less than marked or no limitations in the remaining five domains. (Tr. 15 ¶¶1-4). As a result, the ALJ concluded that Rodriquez's impairments were not functionally equivalent to a listing. 20 C.F.R. § 416.926a(d). The ALJ made her determination after considering the points listed above in section 4. A of this memorandum and order. These points consist of or are based upon substantial evidence, and, therefore, the ALJ's conclusion that Rodriquez's limitations were merely marked in the domain of health and physical well-being was proper.³

C. Third, Rodriquez argues that the ALJ's finding that Rodriquez was totally credible does not support the ALJ's finding that Rodriquez's impairments did not functionally equal a listing. I do not find merit in this argument. It is not antithetical that the ALJ could believe that Rodriquez's mother was forced to stop working so that she could give Rodriquez her medications, that Rodriquez missed a significant amount of school because she was ill, that she required daily medications, and that she had headaches and back pain, and still find that she had only a marked limitation in the domain of health and physical well-being rather than an extreme limitation. The ALJ recognized that Rodriquez has severe impairments which seriously effect her health and physical well being. (Tr. 14 ¶5, 15 ¶4, 16 Finding 3). Nonetheless, based on substantial evidence, the ALJ reasonably determined that Rodriquez's impairments did not rise to a level that functionally met a listed impairment.

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ's findings of fact and conclusions of law. Therefore, it is

² Rodriquez has also not met her burden of showing that she in fact did meet all of the requirements of a listing. See Brown v. Bowen, 845 F.3d 1211, 1213 (3d Cir. 1988).

³ Contrary to Rodriquez's argument, there was no need for the ALJ to consult a pediatrician on this issue as there were sufficient medical records and reports in the record upon which the ALJ could make her decision.

hereby **ORDERED** that:

5. The motion for summary judgment filed by Iris N. Rodriguez is **DENIED**;

6. The motion for summary judgment filed by the Commissioner is

GRANTED and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST IRIS N. RODRIQUEZ**; and

7. The Clerk of Courts is hereby directed to mark this case as **CLOSED**.

LOWELL A. REED, JR., S.J.