

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

NORMA LUGO	:	CIVIL ACTION
o/b/o C.	:	
	:	
v.	:	
	:	
	:	
JO ANNE B. BARNHART, Commissioner of the	:	NO. 04-3914
Social Security Administration	:	

MEMORANDUM

Baylson, J.

January 21, 2005

I. Introduction

Plaintiff-mother, Norma Lugo, commenced this action on behalf of her daughter, C. (“Plaintiff”), a minor who is a resident of Philadelphia, Pennsylvania, pursuant to 42 U.S.C. § 405 (g), for review of the decision of the Social Security Administration (“SSA”), denying Plaintiff’s claim for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”), 42 U.S.C. §§ 1381-1383f. Presently before this Court are the parties’ cross motions for summary judgment. Upon careful and independent consideration of the administrative record and all filings in this Court, the court will grant Defendant’s Motion for Summary Judgment and deny Plaintiff’s Motion for Summary Judgment.

II. Background and Procedural History

Plaintiff was born on July 19, 1995 (R. at 17, 79). On January 30, 2003, Plaintiff-mother applied for Supplemental Security Income on behalf of Plaintiff, alleging that Plaintiff was disabled since September 1, 2000, because of oppositional defiant disorder (“ODD”)

(Administrative Record (“R.”) at 79-82, 85). On May 6, 2003, Plaintiff’s application was denied (R. at 62-65). Plaintiff requested a hearing, which was held in Philadelphia, Pennsylvania, before Administrative Law Judge Christine McCafferty (“ALJ”) on March 1, 2004. (R. at 67, 33-59). Plaintiff and her mother were represented by counsel and both testified. (R. at 33-59). On March 24, 2004, the ALJ issued a decision denying Plaintiff’s application for SSI finding that Plaintiff was not disabled under the Act. (R. at 10-26). Plaintiff-mother requested review of the ALJ’s decision on April 13, 2004. (R. at 9). The SSA’s Appeals Council denied Plaintiff’s request for review on June 14, 2004, (R. at 5-8), rendering the ALJ’s unfavorable decision the final decision of the Commissioner. Plaintiff commenced the present action alleging that substantial evidence did not support the ALJ’s decision.¹

III. Social Security Disability Law

A. Disability Determinations

The Social Security Act authorizes several classes of disability benefits, including SSI, see 42 U.S.C. § 1382. In the case of a claimant under the age of 18, this entitlement requires that the applicant be “disabled,” which is met if the “individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and 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.” 42 U.S.C. § 1382c(a)(3)(C)(I).

Congress has authorized the Commissioner “to make findings of fact, and decisions as to

¹In July 2004, Plaintiff filed a new application for SSI. On October 11, 2004, the state Bureau of Disability Determination found that C’s impairments meet the requirements for Listing 112.02A1 under 20 C.F.R. Part 404, Subpt. P, App. 1, and therefore C became eligible for SSI beginning August 1, 2004. See Pl’s Reply Brief, Exhibit A. Thus, the period under review in the present action applies only to eligibility for benefits from January 30, 2003 through July 31, 2004, inclusive. (Pl’s Brief at 2, n.1).

the rights” of any individual applying for disability benefits. 42 U.S.C. § 405(b)(1).

In making determinations of childhood disability, the Commissioner applies a three-step process. 20 C.F.R. § 416.924. At each step the Commissioner must consider all evidence in the record, including any objective test results from medical sources, any treatment source opinions, and any subjective complaints from the child and his parent. Id. § 416.924(f). If the Commissioner finds that a child claimant is disabled at any step in the process, the process ends. Id. The Commissioner also is required to resolve any discrepancies between the medical evidence and a claimant’s subjective complaints. Id. § 416.929.

At the first step in making a childhood disability determination, the Commissioner must establish whether the claimant is engaged in substantial gainful activity.² If so, the claim is denied. 20 C.F.R. § 416.924(b).

At the second step, the Commissioner must determine whether the claimant has a severe impairment or combination of impairments. Id. § 416.924(c).

The third step requires the Commissioner to determine whether the claimant has an impairment, or combination of impairments, that meets, medically equals, or functionally equals one of the Listing of Impairments contained in Appendix 1 to 20 C.F.R. Part 404, Subpt. P (the “Listings”).³ 20 C.F.R. § 416.924(d). If the claimant has an impairment or combination of

² Substantial gainful activity is defined as an activity that involves significant physical or mental activities, done for pay or profit. Activities like taking care of oneself, household chores, hobbies, therapy, school attendance, club activities, or social programs are generally not considered substantial gainful activity. 20 C.F.R. § 416.972.

³The ALJ concluded that Plaintiff’s diagnosis of oppositional defiant disorder was not an impairment listed in the Regulations. (R. at 18). Thus, the ALJ found that the impairment could not meet the requirements of any impairment in Appendix 1. Id. Further, the ALJ concluded that the evidence failed to establish that the severity of the Plaintiff’s impairment has been equivalent to the severity of any listed impairment, indicating that the ALJ compared the listed impairments with

impairments that causes marked and severe limitations of function which meet, medically equal, or functionally equal a listed impairment, the regulations direct a finding of disabled. Id. In determining whether a child claimant's impairments are of sufficient severity to make her eligible for SSI, the Social Security Act requires the Commissioner to consider the combined effect of all of the claimant's impairments, without regard to whether any single impairment alone would be sufficient to find the claimant disabled. 42 U.S.C. § 1382c(a)(3)(G). Once a claimant's impairments are established by the medical evidence, the Commissioner is required to consider the combined effect of these impairments throughout the disability determination process. Id.; 20 C.F.R. §§ 416.923, 416.924a(b)(4). For children, the regulations also require the Commissioner to consider the cumulative and interactive effect of multiple impairments within and between the domains of functioning. 20 C.F.R. §§ 416.926a(c) ("Any given activity may involve the integrated use of many abilities and skills; therefore, any single limitation may be the result of the interactive and cumulative effects of one or more impairments.").

Where a child claimant has an impairment, or combination of impairments, that fulfills the requirements of one of the Listings, the regulations direct a finding of disabled. 20 C.F.R. § 416.924(d). To medically equal a Listing, a child must have an impairment, or combination of

Plaintiff's impairment. (R. at 18). Finding that the evidence failed to establish that the Plaintiff's impairment meets or medically equals a listed impairment, the ALJ went on to determine whether the Plaintiff has an impairment (or combination of impairments) that is "functionally equal" to the listings and satisfies the 12-month duration requirement. Id.

While the Plaintiff concludes that "the Listing for 'Personality Disorder' is the most closely related category to . . . Oppositional Defiant Disorder" (Pl's Brief at 16), the ALJ obviously did not agree and did not consider any of the listed impairments to be closely related to Plaintiff's impairment. Thus, a comparison of Plaintiff's impairment to the most closely related category was unnecessary.

impairments, that is similar to the requirements described in any Listing. Id.

Under the regulations, to functionally equal listings-level severity, the child's impairments must impose marked limitation in at least two of the following six domains of functioning:

1. Acquiring and using information;
2. Attending and completing tasks;
3. Interacting and relating with others;
4. Moving about and manipulating objects;
5. Caring for yourself; and
6. Physical health and well-being.

Id. § 416.926a(g)-(l).⁴

⁴ 20 C.F.R. § 416.926a states that equivalence can be found in three ways:

(1) If you have an impairment that is described in the Listing of Impairments in appendix 1 of subpart P of part 404, but:

(i) You do not exhibit one or more of the medical findings specified in the particular listing, or

(ii) You exhibit all of the medical findings, but one or more of the findings is not as severe as specified in the listing, we will nevertheless find that your impairment is equivalent to that listing if you have other medical findings related to your impairment that are at least of equal medical significance.

(2) If you have an impairment that is not described in the Listing of Impairments in appendix 1, or you have a combination of impairments, no one of which meets or is equivalent to a listing, we will compare your medical findings with those for closely analogous listed impairments. If the findings associated with your impairment(s) are at least of equal medical significance to those of a listed impairment, we will find that your impairment(s) is equivalent to the analogous listing.

(3) If we cannot find equivalence under either of the foregoing provisions, we will assess the overall functional limitations that result from your impairment(s), i.e., what you cannot do because of your impairment(s). If you have more than one impairment, we will consider the combined effects of all your impairments on your overall

The regulations also require the Commissioner to compare the child’s functioning to same-age, unimpaired children. 20 C.F.R. § 416.924a(b)(3). In addition, the Commissioner must consider all other factors that may affect a child’s functioning, such as how well the child “can initiate, sustain, and complete” activities,” id. § 416.924a(b)(5)(I); how independently the youngster can function without requiring “extra help,” id. § 416.924a(b)(5)(ii); the impact of structured or supportive settings on the child’s ability to sustain adequate functioning, id. § 416.924a(b)(5)(iv); and school attendance and participation, id. § 416.924a(b)(6)(v).

In this case, the ALJ concluded that Plaintiff has oppositional defiant disorder, a severe impairment that did not meet or medically equal any impairment listed in Part B of Appendix 1 to Subpart P (20 C.F.R. §§ 416.924(d)(1), 416.925, 416.926) (R. at 26, findings Nos. 3 and 4). The ALJ also determined that Plaintiff did not have an “extreme” limitation in any domain of functioning or a “marked” limitation in the requisite two domains of functioning and therefore, did not functionally equal the severity of the listings (20 C.F.R. §§ 416.924(d)(2) and 416.926(a)) (R. at 26, finding No. 5). In examining whether Plaintiff’s impairments functionally equaled a listing, the ALJ found that Plaintiff has a “less than marked” limitation in the domains of 1)

functioning. We will compare the functional limitations(s) resulting from your impairment(s) with the functional consequences of any listed impairment which includes the same functional limitations; the listing we choose for comparison need not be medically related to your impairment(s). If the functional limitation(s) resulting from your impairment(s) is the same as the disabling functional consequences of a listed impairment, we will find that your impairment(s) is equivalent to that listed impairment. When we make a determination or decision using this rule, the primary focus will be on the disabling consequences of your impairment(s), as long as there is a direct, medically determinable cause for these consequences.

20 C.F.R. § 416.926a

acquiring and using information, and 2) attending to and completing tasks (R. at 22-23), a “marked” limitation in interacting and relating with others (R. at 23-24), and no limitation in any of the remaining domains (R. at 24-25). Accordingly, the ALJ found that Plaintiff was not disabled (R. at 25-26, Finding No. 7) because her impairment “does not functionally equal the severity of the listings.” (R. at 26, Finding No. 5).

B. Judicial Review of Disability Decisions

The Social Security Act provides for judicial review of any “final decision of the Commissioner of Social Security” in a disability proceeding. 42 U.S.C. § 405(g). The district court may enter a judgment “affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” *Id.* However the Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be conclusive.” *Id.* (emphasis added). Accordingly, this Court’s scope of review is “limited to determining whether the Commissioner applied the correct legal standards and whether the record, as a whole, contains substantial evidence to support the Commissioner’s findings of fact.” *Schwartz v. Halter*, 134 F.Supp.2d 640, 647 (E. D. Pa. 2001).

Substantial evidence has been defined as “more than a mere scintilla” or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971). The substantial evidence standard “is deferential and includes deference to inferences drawn from the facts if they, in turn, are supported by substantial evidence.” *Schaudeck v. Commissioner of S.S.A.*, 181 F.3d 429, 431 (3d Cir. 1999).

IV. Discussion

Plaintiff appeals the ALJ's and Commissioner's decision and argues that it was not supported by substantial evidence. Specifically, Plaintiff contends that the Commissioner 1) did not fairly assess all of Plaintiff's impairments; 2) failed to consider the cumulative and interactive effects of her impairments; 3) discounted all evidence supporting Plaintiff's claim of disability without providing a proper explanation for doing so; and 4) failed to consider how Plaintiff functions in comparison to other children of the same age who do not have impairments, as required by regulation. (Pl's Brief at 4; Reply Brief at 2). Plaintiff argues that when all of her impairments are properly considered, those impairments impose marked limitations in at least two domains of functioning and she is, therefore, disabled under the Social Security Act.⁵ Id.

A. Assessment of Plaintiff's Impairments

Plaintiff argues that the ALJ did not fairly assess all of Plaintiff's impairments. Specifically, Plaintiff argues that, in addition to having a marked limitation in the domain of interacting and relating with others, a fair assessment would have resulted in a finding that her impairments impose marked limitations in at least one additional domain of functioning, rendering her disabled under the Social Security Act. Plaintiff argues that her impairments impose a marked limitation in the domains of 1) acquiring and using information; 2) attending and completing tasks; and/or 3) caring for yourself.

⁵Plaintiff contends that in addition to having marked limitation in the domain of Interacting and Relating with Others, the record confirms that Plaintiff's impairments also impose marked limitation in at least one of the following three domains: 1) Acquiring and Using Information; 2) Attending and Completing Tasks; and/or 3) Caring for yourself. (Pl's Brief at 22-33).

1) Acquiring and Using Information

The ALJ concluded that Plaintiff has a “less than marked” limitation in the domain of acquiring and using information. (R. at 19-22,26). The court finds that the ALJ’s conclusion is supported by substantial evidence.

In the domain of acquiring and using information, the ALJ should consider how well the Plaintiff acquires or learns information, and how well Plaintiff uses the information she has learned. 20 CFR 416.926a (g). Children in Plaintiff’s age group (age 6 to attainment of age 12) should be able to learn to read and write, do math, and discuss history and science; they should be able to produce oral and written projects, solve math problems, and share information and ideas with groups. 20 C.F.R. § 416.926a(g)(2)(iv).

The evidence supporting the ALJ’s determination that Plaintiff’s limitations in this domain were “less than marked” include the following:

- An evaluation on December 14, 2002, by Dr. I. Bolarimwa, Plaintiff’s treating psychiatrist, who assessed Plaintiff as having average intelligence, good eye contact, normal affect, normal speech, and a logical, coherent, and goal directed thought process. (R. at 19, 136-37).⁶
- A Questionnaire completed on March 4, 2003 by Mary Kate Kilpatrick, Plaintiff’s teacher, who indicated that Plaintiff was in regular education classes, with no special education services, mainstreamed in all of her classes, with no speech therapy. The teacher also indicated that Plaintiff did well in remembering, comprehending, and following oral and written instructions. In addition, Plaintiff was often one of the first ones done, finished most of her assignments, but rushed and did not always work to the best of her abilities. Plaintiff had some problems with her work in the past, which resulted in her repeating the 1st grade. The teacher indicated that Plaintiff is aggressive at times and argues with a few of her

⁶The ALJ also noted that during the evaluation, Plaintiff-mother indicated that Plaintiff was not sleeping at night, had nightmares, was defiant and disrespectful, and had always been. Dr. Bolarimwa also indicated Plaintiff was angry and that her insight and judgment were limited. (R. at 19, 136-37).

classmates. But, she also has reciprocal friendships. (R. at 19, 148-51).

- An evaluation, dated April 17, 2003, by Dr. James Cunningham, the consultant at the State Agency, who found that Plaintiff's limitations in Acquiring and Using Information were "less than marked." (R. at 20, 156-61).
- An undated Conduct/Behavior Report by Ms. Erin Casey, Plaintiff's teacher, who reported that Plaintiff frequently interrupted the teacher, behavior was an issue, Plaintiff was not truthful, she was disruptive, got into fights, threatened other students, was verbally abusive, cursed, talked back, hit, did not follow rules, and was not on her reading level. However, Ms. Casey also indicated that Plaintiff completed all of her assignments when working independently, was often on task, admitted to hitting when the teacher spoke with her, admitted that she had lied, could be very helpful, could be a leader, and completed homework. Ms. Casey also indicated that Plaintiff's grades were at the basic level and that Plaintiff had potential. (R. at 20, 166).
- Plaintiff's June 2003 Grade 1 Report Card showing that Plaintiff was promoted and progressing well. Specifically, in math, half of Plaintiff's marks indicated basic achievement, half indicated proficiency. In Science, she was mostly proficient. In general, Plaintiff was rated basic or proficient in math, science, social studies, music, visual arts and physical education. She was rated lowest in Personal and Social Development and in Social Skills. (R. at 20, 167-68).
- Psychiatric Progress and Therapy Notes from Plaintiff's therapy at APM (November 11, 2002 - November 6, 2003) showing that Plaintiff was appropriate, goal-directed, cooperative and communicative, stable, fully oriented, and coherent. (R. at 21, 136-37, 179-94).

The ALJ gave less weight to the testimony of Plaintiff's mother, the report of Dr. Joseph Knight (which was largely based on the history as presented by Plaintiff's mother), and the checkbox form completed by Plaintiff's teacher, Danielle Murray,⁷ because their opinions and

⁷On February 26, 2004, Ms. Murray wrote that Plaintiff was academically at the basic reading level of around the end of 1st grade, but that her behavior was the main concern, and it was starting to affect her academic performance. (R. at 21, 198).

conclusions were largely contradicted by the other evidence relied upon by the ALJ. 20 C.F.R. § 416.927(d)(3), (4) (an ALJ may give less weight to opinion evidence which is unsupported or inconsistent with the record as a whole); 20 C.F.R. § 416.913 (an ALJ will consider the opinions of teachers with the other evidence of record but teachers are not considered acceptable medical sources pursuant to the Commissioner's regulations).

The record indicates that the ALJ carefully considered all the testimony and exhibits before applying the appropriate legal standards and making a decision. Thus, the ALJ's findings that Plaintiff has limitations in this domain that are "less than marked" are supported by the substantial evidence listed above.

2) Attending and Completing Tasks

The ALJ also found that Plaintiff has a "less than marked" limitation in the domain of attending to and completing tasks (R. at 22-23). The court finds that the ALJ's conclusion is supported by substantial evidence.

In the domain of attending and completing tasks, the ALJ should consider how well the Plaintiff is able to focus and maintain attention, and how well Plaintiff begins, carries through, and finishes activities, including the pace at which Plaintiff performs activities and the ease with which Plaintiff changes them. 20 CFR 416.926a (h). Children in Plaintiff's age group should be able to focus their attention, follow directions, organize school materials, and complete classroom assignments. 20 C.F.R. § 416.926a(h)(2)(iv).

The evidence supporting the ALJ's determination that Plaintiff's limitations in this domain were "less than marked" include the following:

- A Questionnaire, completed on March 4, 2003, by Mary Kate Kilpatrick,

Plaintiff's teacher, indicating that Plaintiff could remember, comprehend, and follow oral and written instructions; that she did well in all these areas; that in paying attention, she played with things in her desk a lot; that she was able to keep up and was often one of the first ones done; that she completed her assignments, finishing most of her assignments, but rushing and not always working to the best of her abilities. (R. at 22, 148-51).

- A State Agency evaluation on April 17, 2003 by Dr. Cunningham indicating that the Plaintiff's limitations in attending and completing tasks were "less than marked." (R. at 22, 156-61).
- The Child's Activities Questionnaire completed by Plaintiff-mother on February 7, 2003, indicating that Plaintiff was not learning anything and did not finish anything. (R. at 22, 109-12).
- An undated Conduct/Behavior Report by Ms. Erin Casey, Plaintiff's teacher, who reported that Plaintiff did all of her assignments when working independently; was often on task; had grades at basic level; and completed her homework; but was not on her reading level. (R. at 22, 166).
- Plaintiff's June 2003 Grade 1 Report Card showing that Plaintiff was being promoted, progressing well in the second marking period; performing at the basic level half the time in math and proficiently in half of the areas; being mostly proficient in science; basic in Social Studies; below basic, then proficient, then basic in Visual Arts; basic in Music; and mostly basic in Physical Education. (R. at 22, 167-68).
- A Child Functioning Questionnaire, dated December 18, 2003, completed by Danielle Murray, Plaintiff's teacher, giving her opinion that Plaintiff had marked limitations in taking turns, impulsiveness, distractions, following instructions, daydreaming, bothering others, and working without supervision; and extreme limitations in concentration without adult supervision. She also stated that academically, Plaintiff was at the basic reading level of around the end of 1st grade, and that her behavior is the main concern. (R. at 22-23, 170-76).

While there is some evidence that the Plaintiff has problems focusing and maintaining attention; beginning, carrying through, and finishing activities; and difficulties with changes in activities, based on the evidence as a whole, the ALJ concluded that Plaintiff's impairments

resulted in functioning at the “less than marked,” not “marked” level. Based on the record, the court finds that the ALJ’s conclusions are supported by the substantial evidence listed above.

3) Caring for Yourself

The ALJ concluded that Plaintiff’s impairments imposed no limitation in the domain of caring for yourself. (R. at 24-25). The court finds that this conclusion is supported by substantial evidence.

In the domain of caring for yourself, the ALJ should consider how well the Plaintiff maintains a healthy emotional and physical state, including how well Plaintiff gets her physical and emotional wants and needs met in appropriate ways; how she copes with stress and changes in her environment; and whether she takes care of her own health, possessions, and living area. 20 C.F.R. 416.926a (k). Children in Plaintiff’s age group should begin to develop an understanding of acceptable behavior and should avoid unsafe behaviors. 20 C.F.R. § 416.926a(k)(2)(iv). Examples of limited functioning in this area (not necessarily demonstrating marked or extreme limitations) include placing non-edible objects in your mouth, not dressing appropriately or not bathing, engaging in self-injurious behavior, and disturbances in sleeping or eating habits. 20 C.F.R. § 416.926a(k)(3).

Plaintiff argues that she has a marked limitation in this domain because she experiences disturbances in eating and sleeping patterns; has problems accepting and following rules and limits; and has difficulties recognizing right from wrong or what is acceptable and unacceptable behavior. (Pl’s Brief at 31-32). The ALJ concluded that these problems did not relate to this domain and did not result from Plaintiff’s impairment, i.e., oppositional defiant disorder. Thus, Plaintiff’s impairment imposed no limitation in the domain of caring for yourself. (R. at 24-25).

The ALJ indicated that she considered all the relevant information in the record. The evidence supporting the ALJ's determination included the following:

- Assessment by Dr. Cunningham finding that Plaintiff had no limitation in this domain. (R. at 160).
- Plaintiff's sleeping disturbances were being treated with medication. (R. at 138).
- An evaluation on December 14, 2002, by Dr. I. Bolarimwa, Plaintiff's treating psychiatrist, who noted that Plaintiff's hygiene and appearance were appropriate (R. at 136). He also noted that Plaintiff had no suicidal or homicidal thoughts (R. at 137).
- Therapy notes indicating that Plaintiff's hygiene and appearance were appropriate (R. at 138, 179, 181).
- A Questionnaire, completed on March 4, 2003, by Mary Kate Kilpatrick, Plaintiff's teacher, indicating that Plaintiff required no assistance in moving about the school, changing classrooms, and using the bathroom (R. at 150).
- A Child Functioning Questionnaire, dated December 18, 2003, completed by Danielle Murray, Plaintiff's teacher, commenting that Plaintiff always clean and prepared for school, and never had difficulties with proper hygiene, personal care, maintaining her locker or desk, maintaining her clothes, book bags, or lunch boxes, or following nutritional expectations (R. at 174).

While there is some evidence that the Plaintiff has eating and sleeping disturbances; problems accepting and following rules and limits; and difficulties recognizing acceptable behavior, based on the record as a whole, there is substantial evidence supporting the ALJ's conclusion that Plaintiff's impairment was not the cause of any limitation in this domain. Moreover, the examples given in the regulations, upon which Plaintiff relies heavily, do not necessarily demonstrate a marked or extreme limitation. Thus, based on the record, the court finds that the ALJ's conclusions are supported by substantial evidence.

B. Cumulative and Interactive Effects of Impairments

Plaintiff argues that the ALJ failed to consider the cumulative and interactive effects of her impairments, as required by regulation. The court disagrees.

In explaining her evaluation of the evidence, the ALJ specifically states that she “assessed the interactive and cumulative effects of all medically determinable impairments, including any impairments that are ‘severe’ and/or ‘not severe.’” (R. at 17). Further, the ALJ “considered all of the evidence of record, including the medical records and other evidence, and carefully considered all relevant factors. . . that apply to the child, including . . . the combined effects of multiple impairments on the child’s functioning.” Id.

Thus, the Plaintiff’s argument that the ALJ failed to consider the cumulative and interactive effects of her impairments is without merit.

C. Weighing Evidence

Plaintiff argues that the ALJ discounted all evidence supporting Plaintiff’s claim of disability without providing a proper explanation for doing so. (Pl’s Reply at 2). The court disagrees.

It is well established that an ALJ must explain his reasons for discounting evidence that is contrary to his conclusions. See, e.g., Fagnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001); Cotter v. Harris, 642 F.2d 700, 706 (3d Cir. 1981) (explaining “there is a particularly acute need for some explanation by the ALJ when s/he has rejected relevant evidence or when there is conflicting probative evidence in the record”). The Third Circuit has recognized that it is the ALJ’s obligation “to provide an adequate basis so that the reviewing court can determine whether the administrative decision is based on substantial evidence.” Cotter, 642 F.2d at 706. Without

such an explanation, the court is “handicapped,” as it is “impossible to determine whether the ALJ’s [conclusion] is supported by substantial evidence.” Fagnoli, 247 F.3d at 40.

An ALJ “may properly accept some parts of the medical evidence and reject other parts, but she must consider all the evidence and give some reason for discounting the evidence she rejects.” Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994). In assessing medical evidence, an ALJ may reject any physician’s opinion that is either contrary to other medical evidence of record, see Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988), or insufficiently supported by clinical data. See Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1985).

In the present case, the ALJ gave less weight to the testimony of Plaintiff’s mother, the report of Dr. Joseph Knight, and the form completed by Plaintiff’s teacher, Danielle Murray because their opinions and conclusions were largely contradicted by other evidence. (R. at 19-21).

In general, an ALJ may accord limited weight to a medical opinion that is inconsistent with other medical evidence. See 20 C.F.R. § 404.1527(d)(4). Because the ALJ found that Dr. Knight’s report was largely based on the history as presented by Plaintiff’s mother and suggested functional limitations inconsistent with the remainder of the record, the ALJ justifiably accorded it less weight than other evidence.

The ALJ was also justified in affording little weight to the testimony of Plaintiff’s mother because the information she provided “appears to be exaggerated when compared to the observations of others.” (R. at 20). See 20 C.F.R. § 416.927(d)(3), (4) (an ALJ may give less weight to opinion evidence which is unsupported or inconsistent with the record as a whole).

Further, Ms. Murray’s opinion was not given significant weight because it is not a

medical opinion from an acceptable treating or examining source and was inconsistent with the other substantial evidence in the record. (R. at 21). See 20 C.F.R. § 416.913 (an ALJ will consider the opinions of teachers with the other evidence of record but teachers are not considered acceptable medical sources pursuant to the Commissioner’s regulations).

Thus, the ALJ properly explained why she discounted some evidence supporting Plaintiff’s claim while according other evidence more weight. Overall, the record indicates that the ALJ carefully considered and weighed all the testimony and exhibits before applying the appropriate legal standards and making a decision. Plaintiff’s argument to the contrary is without merit.

D. Same-age Comparison

Plaintiff also argues that the ALJ failed to consider how Plaintiff functions in comparison to other children of the same age who do not have impairments, as required by regulation. (Pl’s Reply at 2). The court finds this argument without merit.

The ALJ specifically stated that she “carefully considered all relevant factors. . . that apply to the child, including, . . . how the child’s functioning compares to that of unimpaired children of the same age.” (R. at 17). In addition, the ALJ indicated that when evaluating the functional limitations from the child’s impairments in six domains, she considered “whether the child’s activities are typical of other children the same age who do not have impairments.” (R. at 18).⁸

Thus, the Plaintiff’s argument that the ALJ failed to consider how Plaintiff functions in

⁸Also, in a Questionnaire completed on March 4, 2003 by Mary Kate Kilpatrick, Plaintiff’s teacher, comparisons are made to “other children of the same age.” (R. at 150).

comparison to other children of the same age who do not have impairments is without merit.

V. Conclusion

For the foregoing reasons, this Court concludes that the decision of the ALJ is properly supported by substantial evidence. Accordingly, the Commissioner's Motion for Summary Judgment is granted and Plaintiff's Motion for Summary Judgment is denied.

An appropriate Order follows.

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

NORMA LUGO	:	CIVIL ACTION
o/b/o C.	:	
	:	
v.	:	
	:	
	:	
JO ANNE B. BARNHART, Commissioner of the	:	NO. 04-3914
Social Security Administration	:	

ORDER

AND NOW, this 21st day of January, 2005, after careful and independent consideration of the parties' cross-motions for summary judgment, and review of the record, it is hereby ORDERED that:

1. The Commissioner's Motion for Summary Judgment (Doc. No. 9) is GRANTED;
2. The Plaintiff's Motion for Summary Judgment (Doc. No. 8) is DENIED; and
3. The decision of the Commissioner is AFFIRMED.
4. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff and mark this case as closed.

IT IS SO ORDERED.

BY THE COURT:

/s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J.