

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

CARMEN BABILONIA, PLAINTIFF,	:	CIVIL ACTION
	:	
v.	:	NO. 04-0845
	:	
JO ANNE B. BARNHART, Commissioner of Social Security Administration, DEFENDANT.	:	

MEMORANDUM AND ORDER

NEWCOMER, S.J.

February 1, 2005

I. INTRODUCTION

Carmen Babilonia seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the final decision of the Commissioner of the Social Security Administration denying her claim for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act ("Act"). Presently before this Court are the Parties' Cross-Motions for Summary Judgment. For the following reasons, the Defendant's Motion is granted and the Plaintiff's Motion is denied.

II. PROCEDURAL HISTORY

On November 14, 2000, Babilonia filed an application for Supplemental Security Income payments alleging a disability beginning on or about June 30, 1999. The application was denied and she filed a timely request for a hearing. On February 19, 2002, an Administrative Law Judge ("ALJ") conducted a hearing in

which Plaintiff was represented by counsel. (Tr. 444-81.) The ALJ denied Babilonia's claim for benefits in a decision dated July 23, 2002. (Tr. 20-26). Subsequently, the Appeals Council denied Babilonia's request for review. Having exhausted her administrative remedies, Babilonia filed a complaint with this Court seeking review of the Commissioner's final decision denying her claim for benefits. On December 14, 2004, United States Magistrate Judge Charles B. Smith recommended denial of Plaintiff's Motion for Summary Judgement. On December 22, 2004, Plaintiff filed an Objection to the Report and Recommendation.

III. FACTUAL HISTORY

At the time of the administrative hearing, Plaintiff was a forty-five year old illiterate community classroom aide and school cafeteria worker.¹ (Tr. 21, 24.) Plaintiff alleges that her disability began after June 30, 1999, because of headaches, bilateral carpal tunnel syndrome, blurred vision, arthritis, a thyroid condition and emotional problems. (Tr. 22.) She also complained of breathing problems, an irregular heartbeat, hearing loss and depression. She claimed these conditions resulted in decreased ability to breathe, hear, sit, stand, walk, lift, carry and use her hands. She was able to take care of her personal needs, but relied on others for help in housework, laundry and

¹ Under 20 C.F.R. § 416.963(c), Babilonia is classified as a "younger person," whose age is not considered to affect seriously her ability to adapt to a new work situation.

shopping. (T. 24.)

IV. DISCUSSION

A. *Standard of Judicial Review*

This Court must determine whether the ALJ's decision is supported by substantial evidence. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1990); Stunkard v. Sec'y of Health and Human Serv., 841 F.2d 57, 59 (3d Cir. 1988). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," Richardson v. Pearles, 402 U.S. 389, 402 (1971), and is more than a mere scintilla, though it may be less than a preponderance. See Stunkard, 841 F.2d at 59. The ALJ must reconcile factual differences in evidence, determine witness credibility, and weigh the evidence presented. Richardson, 402 U.S. at 401.

B. *Burden of Proof*

To be found "disabled" under the Social Security Act, Plaintiff must demonstrate that she is unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment . . . which has lasted or can be expected to last for a continuous period of not less than twelve months." 20 C.F.R. § 404.1505(a). Plaintiff may prove this with evidence that the impairment claimed is enough that she cannot engage in any "substantial gainful work which exists in the national economy." Heckler v. Cambell, 461 U.S.

458, 460 (1983); Brown v. Bowen, 845 F.2d 1211, 1214 (3d Cir. 1988). If the Plaintiff meets this burden, the burden then shifts to the Government to show that work exists in the national economy for which the Plaintiff is suited. See Mason v. Shalala, 994 F.2d 1058, 1064 (3d Cir. 1993); 20 C.F.R. § 404.1520(f). The ALJ found that Plaintiff has not met her burden of proof.

C. *Review of the Administrative Law Judge's Decision*

The ALJ's decision is supported by substantial evidence. After weighing the testimony of Plaintiff and two experts along with Plaintiff's medical records, the ALJ found Plaintiff ineligible for Social Security Income payments. Although the ALJ determined that Plaintiff suffered from several impairments, these impairments did not amount to a significant work-related limitation. (Tr. 22.) As discussed below in the Review of Plaintiff's Objections to the Report and Recommendation, substantial evidence supports the ALJ's finding that the medical records did not support Plaintiff's claim for Social Security Income.

D. *Review of Plaintiff's Objections to the Report and Recommendation*

1. *Response to Plaintiff's First Objection*

Plaintiff first objects to the finding that her carpal tunnel syndrome is not adequately documented in the medical record. The ALJ accepted Dr. Lewis' expert opinion that

Plaintiff, from a medical standpoint, did not suffer any disabling conditions based on the available record. (Tr. 474). During the February 19, 2002 hearing, the ALJ agreed to leave the record open for Plaintiff to enter additional medical evidence pertaining to her claim of carpal tunnel syndrome. (Tr. 473, 480). Following the hearing Plaintiff submitted Exhibits 18F, 19F and 20F. (Tr. 24.) Nothing in these records indicates, however, that the Plaintiff submitted additional medical records to verify the extent of the carpal tunnel syndrome. Although Plaintiff's medical record reveals some evidence of carpal tunnel syndrome (Tr. 161-62.), the ALJ merely placed more weight on Dr. Lewis' expert testimony than on the limited reference to carpal tunnel syndrome found within the record.

2. Response to Plaintiff's Second Objection

Plaintiff also claims that the ALJ failed to include all of Plaintiff's impairments in the hypothetical presented to Jeannine Salek, the vocational expert. The ALJ posed a hypothetical to the vocational expert inquiring whether a person with Plaintiff's characteristics could still perform the job functions of a teacher's assistance, cafeteria aide or other unskilled, light-level work. (Tr. 478.)² The vocational expert

² The characteristics included in this hypothetical were of a 45 year-old person, with a seventh-grade education, and the above mentioned work experience; capable of lifting 50 pounds occasionally and 25 pounds frequently; can sit, stand, or walk about six hours in an eight-hour day and has unlimited ability to push and pull within the weight limitations discussed above; who must refrain from even moderate exposure to fumes, odors, dust, gases, or poor ventilation; who suffers from an anxiety related disorder which produced only mild restrictions of activities of daily living, mild difficulties in maintaining social functioning, and mild difficulties in maintaining concentration, persistence, or pace. (Tr. 478-79.)

testified that such a hypothetical person *could* return to their past work based on these characteristics. (Tr. 479.)

Plaintiff further contends that the ALJ erred by failing to include Plaintiff's alleged mental impairments in the hypothetical, specifically focusing on Plaintiff's Global Assessment Functioning ("GAF") score of 60. The GAF scale considers a person's psychological, social and occupational functioning on a hypothetical continuum of mental health to mental illness. GAF scores between 51 and 60 indicate "Moderate" symptoms. See AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 32 (4th ed. 1994) ("DSM-IV"). The ALJ, however, again acted within its discretion by hearing the testimony of Dr. Lewis who testified that the medical record reveals that treatment appears to have alleviated many of Plaintiff's symptoms. (Tr. 473-74.) Though Dr. Lewis was unfamiliar with the GAF scale, he noted that the Northeast Community Mental Health Center ("Northeast") report concluded that Plaintiff's "life is pretty good." (Tr. 329-39.) Furthermore, Plaintiff's score of 60 is at the upper threshold of the moderate symptoms level and borders on the mild symptoms level. Dr. Lewis also testified that the Northeast medical records revealed Plaintiff's treatment for depression and anxiety was effective in alleviating her symptoms. (Tr. 473.) This Court finds this to be substantial evidence supporting the ALJ's decision to exclude these symptoms from the hypothetical.

3. Response to Plaintiff's Third Objection

Plaintiff's third objection, concerning Plaintiff's alleged mental disorder and the negative effect this disorder has on her vocational ability, is also unpersuasive. As discussed above, the ALJ based his decision regarding the extent of Plaintiff's impairment on substantial evidence presented by Dr. Lewis. The ALJ's decision that the mental impairment was not disabling was thus correctly left out of the hypothetical presented to Ms. Salek, the vocational expert. Therefore, Ms. Salek's expert vocational opinion that an individual having Plaintiff's characteristics and impairments could return to work as a cafeteria worker or teacher's aide is substantial evidence that supports the ALJ's decision.

V. CONCLUSION

For the foregoing reasons, this Court adopts and approves Magistrate Judge Smith's Report and Recommendation, and finds that the evidence substantially supports the ALJ's decision. Accordingly, the Court will grant summary judgment in favor of Defendant and against Plaintiff. An appropriate Order follows.

S/ Clarence C. Newcomer
United States District Judge

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PLAINTIFF,	:	
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v.	:	NO. 04-0845
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JO ANNE B. BARNHART,	:	
Commissioner of Social	:	
Security Administration,	:	
DEFENDANT.	:	

O R D E R

AND NOW, on this 1st day of February, 2005, upon consideration of the Parties Cross-Motions for Summary Judgment (Docs. 15, 16), United States Magistrate Judge Charles B. Smith's Report and Recommendation (Doc. 18), and Plaintiff's Objections thereto, it is hereby ORDERED that Plaintiff's Motion is DENIED and Defendant's Motion is GRANTED. Judgment is hereby ENTERED in favor of Defendant and against Plaintiff. The Clerk of the Court shall CLOSE this case for statistical purposes.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge