

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

KEVIN S. BRYAN,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 04-191
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

**MEMORANDUM**

BUCKWALTER, S.J.

February 2, 2005

Presently before the Court is Plaintiff Kevin S. Bryan’s (“Bryan” or “Plaintiff”) Objections to the Report and Recommendation of Magistrate Judge Arnold C. Rapoport. For the reasons set forth below, Plaintiff’s objections are overruled and the Magistrate Judge’s Report and Recommendation is approved and adopted.

**I. DISCUSSION**

After analyzing the reproduced record, the Administrative Law Judge’s (“ALJ”) opinion, the Magistrate Judge’s Report and Recommendation, and Plaintiff’s Objections, the Court finds that summary judgment is appropriately entered on behalf of Defendant.

Even though the Court agrees with the Magistrate Judge’s Report and Recommendation, the Court will briefly address Plaintiff’s objections that Magistrate Judge Arnold C. Rapoport incorrectly concluded that: (1) ALJ Landesberg, in her sequential disability

analysis pursuant to 20 C.F.R. sections 404.1523 and 416.923, properly assessed the combined effects of Plaintiff's impairments; (2) ALJ Landesberg considered the effects of Plaintiff's depression, hypertension, obesity and other medical problems in rendering her decision; and (3) ALJ Landesberg made an appropriate credibility determination.

Bryan first argues that the Magistrate Judge wrongly concluded that ALJ Landesberg assessed the effects of the combination of the Plaintiff's impairments. (Pl.'s Objections at 2.) He contends that if ALJ Landesberg had considered the Plaintiff's other impairments—migraines and a sleep disorder—in addition to his back pain syndrome, the combination of impairments would have rendered the Plaintiff disabled. (Pl.'s Objections at 2.)

Plaintiff specifically argues that the ALJ's opinion did not follow SSR 85-28, which states that “[u]nder 20 CFR, sections 404.1523 and 416.923, when assessing the severity of whatever impairments an individual may have, the adjudicator must assess the impact of the combination of those impairments on the person's ability to function, rather than assess separately the contribution of each impairment to the restriction of his or her activity as if each impairment existed alone.” Social Security Ruling (“SSR”) 85-28. While the ALJ's opinion does not have a specific section dedicated to the assessment of the impact of the combination of his lumbar disc disease, migraines, and sleep breathing disorder, the Court finds that the ALJ did consider the effect of the combination of Plaintiff's impairments, that ALJ Landesberg incorporated her findings into her opinion, and her findings are supported by substantial evidence.

ALJ Landesberg properly considered the combined effects of Plaintiff's impairments in her opinion. (R. 12-20.) At the onset of her analysis, the ALJ indicated her

intent to consider the combined effect of all medical impairments. For instance, the ALJ first acknowledged that, pursuant to 20 C.F.R. sections 404.1523 and 416.923, “if a severe impairment exists, all medically determinable impairments must be considered.” (R. 13.) ALJ Landesberg further stated that a severe impairment is a “medically determinable impairment, or combination of impairments, which significantly limits an individual’s physical or mental ability” to perform basic work activities. 20 C.F.R. § 404.1521, 416.921.

ALJ Landesberg examined several evaluations, reports, and notes submitted by treating physicians, and she attached the documents to her opinion as Exhibits 1F, 2F, and 4F-11F. ALJ Landesberg specifically reviewed Plaintiff’s sleep disorder, migraines, and lumbar disc disease. After ALJ Landesberg reviewed the medical evidence, she concluded that the medical evidence indicated that Plaintiff has back pain syndrome, a severe impairment. (R. 15.) She also concluded that Plaintiff’s other impairments, migraines and sleep disorder, were not severe. By analyzing and discussing the severity of each of the Plaintiff’s impairments, pursuant to 20 C.F.R. sections 404.1521 and 416.921, ALJ Landesberg evidenced that she was reviewing the impact of the combination of Plaintiff’s impairments. (R. 12-17.) After careful examination of the medical evidence, there is no indication that the combination of Plaintiff’s impairments would have rendered him disabled. This Court finds that ALJ Landesberg considered the effect of the combination of the Plaintiff’s impairments, and her findings are supported by substantial evidence.

Bryan also argues that the Magistrate Judge erred in concluding that ALJ Landesberg considered the effects of Plaintiff’s depression, hypertension, obesity, and other medical problems in rendering her decision. (Pl.’s Objections at 2.) Bryan contends that ALJ

Landesberg, in her report, acknowledged that the Plaintiff took Zoloft for depression, but failed to evaluate the effects of the Plaintiff's depressed mood. Id. Bryan, however, does not cite any evidence to support his argument and does not discuss the effect of Plaintiff's depressed mood.

In making a disability determination, the Social Security Commissioner, is “entitled to rely not only on what the record says, but also on what it does not say.” Dumas v. Schweiker, 712 F.2d 1545, 1553 (2d Cir. 1983); Berry v. Schweiker, 675 F.2d 464, 467 (2d Cir. 1982). See also 42 U.S.C. § 423(d)(5) (hypothesizing that “an individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof”). An examination of the record and medical examinations have failed to indicate that there are any functional limitations due to Plaintiff's depression. There is no evidence of a significant history of mental health treatment. Plaintiff testified at the administrative hearing that he is depressed sometimes, but does not feel he needs mental health treatment. (Tr. at 11.) Plaintiff's counsel also stated that the basis of Plaintiff's application was limited to lumbar disc disease, migraines, and a sleep breathing disorder. Since the medical records do not elicit evidence of any functional limitations due to Plaintiff's depression and Bryan testified that he felt he did not need mental health treatment, substantial evidence supports the ALJ's findings regarding depression.

Bryan alleges that the ALJ did not consider the effects of Plaintiff's hypertension. (Pl.'s Objections at 2.) However, nothing in the record suggests that Plaintiff's hypertension impacts his ability to work. Plaintiff did not include hypertension as a basis of disability in his

application, or at the administrative hearing.<sup>1</sup> The Court thus finds that the ALJ's decision is supported by substantial evidence regarding the effects of hypertension.

Bryan also alleges that the ALJ erred by failing to discuss Plaintiff's obesity in her decision. (Pl.'s Objections at 2.) However, Plaintiff does not mention how obesity limits his ability to perform the jobs identified by the Vocational Examiner. (R. 12-20.) An examination of the record reveals that the ALJ properly addressed Bryan's obesity. For instance, the ALJ noted that Dr. Nguyen recommended weight loss. (R. 15.) The ALJ also noted that in a consultative examination, Dr. Nguyen indicated Plaintiff's musculoskeletal exam was normal, except for low back tenderness and limited lumbar flexion.

The record also shows that the ALJ considered Plaintiff's obesity in her residual functional capacity assessment. (R. 15-19.) Specifically, the ALJ found that Bryan has the ability to: (1) lift and/or carry less than 10 pounds frequently; (2) stand and/or walk for 2 hours; and (3) sit for 6 hours in nonproduction rate jobs that allow a sit/stand option. (R. 19.) The ALJ thus accounted for Plaintiff's obesity by finding that the Plaintiff has the residual functional capacity to perform a limited range of sedentary work.

Moreover, the Plaintiff's obesity does not meet or equal a listed impairment, alone or in combination with Plaintiff's other impairments. SSR 02-01p. Additionally, the medical evidence indicates that there are no functional limitations due to the obesity of the Plaintiff. Since the ALJ properly accounted for the effects of Plaintiff's obesity in her residual functional capacity assessment, the Court finds that substantial evidence supports the determination of the

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1. Plaintiff limited the basis of his application to the following ailments: migraines, lumbar pain syndrome, and a sleep breathing disorder. (R. 14.) (Tr. at 11.)

ALJ with regard to Plaintiff's obesity. Therefore, Plaintiff's argument that ALJ Landesberg erred by failing to consider the effects of Bryan's depression, hypertension, and obesity in her determination, is without merit.

Lastly, Bryan contends that the Magistrate Judge erred in concluding that ALJ Landesberg properly discounted Bryan's credibility. (Pl.'s Objections at 3.) The authority to evaluate the credibility of witnesses concerning pain and other subjective complaints is reserved for the ALJ. Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983). Assertions of pain and other subjective symptoms must be supported by objective medical evidence. See 20 C.F.R. § 404.1529(a) (stating that a claimant's statements about his subjective symptoms will not alone establish disability).

Under the medical-vocational regulations promulgated by the Commissioner, a two-step sequential evaluation is used to evaluate whether a claimant is disabled by subjective symptoms. First, the client must show that there are medical signs and laboratory findings that demonstrate the existence of a medical impairment which could reasonably be expected to produce the alleged symptoms. 20 C.F.R. § 404.1529(b). Second, if the medical signs or laboratory findings show the claimant has a medically determinable impairment that could reasonably be expected to produce the alleged symptoms, the ALJ must then evaluate the intensity and persistence of the claimant's symptoms to determine whether the symptoms limit claimant's work capacity. 20 C.F.R. § 404.1529(c). To determine the credibility of a claimant's subjective complaints, the ALJ must consider the available record evidence. The record evidence includes the medical evidence, physician statements, the claimant's symptoms, the impact of claimant's symptoms, and other relevant evidence. 20 C.F.R. § 404.1529(c)(2)-(3).

Since ALJ Landesberg determined that Bryan's impairments could reasonably be expected to produce the symptoms he alleged, she proceeded to evaluate the intensity and persistence of the symptoms. (R. 14.) ALJ Landesberg found Bryan was not entirely credible concerning the intensity, frequency, duration, and limiting effects of the symptoms. *Id.* In doing so, the ALJ evaluated each of Bryan's impairments and discussed the degree to which the medical evidence supported Bryan's allegations. (R. 14-17.) After reviewing the medical evidence, ALJ Landesberg correctly concluded that Bryan's migraines and sleep disordered breathing were not severe impairments, and would not cause the limitations alleged by Bryan. (R. 14.) The ALJ also found that the medical evidence indicated that Bryan has lumbar pain syndrome, a severe impairment. (R. 14-15.) However, the ALJ concluded that the evidence failed to show significant or persistent complaints, findings or treatment to support the extent of pain alleged. (R. 14-17.) For instance: Plaintiff was not taking routine pain medication until November 2002; Dr. Strangarity's 2003 treatment notes do not document frequent or persistent back pain complaints; consultative examinations showed that Plaintiff had normal muscle bulk, tone, and bilateral strength; and medical reports showed that Plaintiff had negative to mild pathology on diagnostic studies, and no significant physical examination findings. (R. 15.) Thus, the ALJ correctly determined that Plaintiff was not credible because Plaintiff's level of care did not support his allegation of disabling pain.

Bryan further contends that the Magistrate Judge wrongly concluded that ALJ Landesberg properly discounted the Plaintiff's credibility on the basis of the Plaintiff's level of care and his daily activities. (Pl.'s Objections at 3.) Bryan argues that "ALJ Landesberg apparently discounted the Plaintiff's pain allegations because of the Plaintiff activities of daily

living, specifically taking care of his personal needs, performing some household cooking and cleaning, grocery shopping and lifting two bags at a time and driving 10 miles at a time.” (R. 15.) In support of his contention, Plaintiff cites Smith v. Califano, 637 F.2d 968, 971 (3d Cir. 1981), “where the Third Circuit found that the ALJ relied heavily in his denial of benefits on the fact that the claimant had full use of his hands, arms and legs, went shopping and went hunting twice since the onset of his alleged disability.” (Pl.’s Objections at 3-4.)

Smith, however, is distinguishable from the case at hand. In Smith, the plaintiff’s allegation of disabling pain was supported by the medical evidence in the record, through a letter and report from Smith’s physician. Id. at 970-71. Because the Secretary had presented no contradictory evidence, the Plaintiff’s assertion as to the severity, frequency, and persistence of his pain, continued unrebutted. Id. at 970-71. The court thus found that because the Secretary failed to properly consider the unrebutted medical evidence that the Plaintiff’s condition rendered him disabled and failed to consider Plaintiff’s testimony of severe pain, the ALJ’s determination of Plaintiff’s non-disability was not supported by substantial evidence. Id. at 970-71.

In this case, unlike in Smith, the ALJ weighed the relevance of Plaintiff’s daily activities only after carefully reviewing the medical records and testimony, which corroborates the finding of non-disability. See Lozada v. Barnhart, 331 F. Supp. 2d 325, 2004 U.S. Dist. LEXIS 15418, Civ. A. No. 02-3666, at \*10-\*11 (E.D. Pa. July 27, 2004) (distinguishing Smith v. Califano on the basis of the ALJ’s review of the claimant’s medical record). Accordingly, Plaintiff’s objection that the ALJ erred in discounting the Plaintiff’s credibility is without merit.

## **II. CONCLUSION**

For the reasons stated above, the Court approves and adopts the Magistrate Judge's Report and Recommendation. An appropriate order follows.

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

KEVIN S. BRYAN,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 04-191
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

**ORDER**

AND NOW, this 2<sup>nd</sup> day of February, 2005, upon consideration of Plaintiff's Motion for Summary Judgment (Docket No. 8), Defendant's Cross-Motion for Summary Judgment (Docket No. 9), the Report and Recommendation of United States Magistrate Judge Arnold C. Rapoport, and Plaintiff's Objections thereto (Docket No. 13), it is hereby **ORDERED** that the Report and Recommendation is **APPROVED** and **ADOPTED**. Judgment is entered on behalf of Defendant and against Plaintiff. This case is now **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, S.J.