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

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| **LYDIA KRAFT,** | **:** | **CIVIL ACTION** |
| **Plaintiff,** | **:** | |
| | **:** | |
| **v.** | **:** | |
| | **:** | **NO. 04-1124** |
| **JOANNE B. BARNHART,** | **:** | |
| **COMMISSIONER OF SOCIAL** | **:** | |
| **SECURITY,** | **:** | |
| **Defendant.** | **:** | |

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**Diamond, J.** **April 22, 2005**

## MEMORANDUM

Plaintiff Lydia Kraft asks me to reverse the Social Security Commissioner's denial of her claim for supplemental security income. 42 U.S.C. §§ 1381-1383f. The Commissioner and Plaintiff have both moved for Summary Judgment. I deny Plaintiff's Motion, and grant Summary Judgment in the Commissioner's favor.

## FACTUAL AND PROCEDURAL HISTORY

Plaintiff is 50 years old and has a general equivalency degree. (Tr. 109, 154). She has no vocationally relevant employment experience: she worked briefly as a shampoo person in a beauty shop and as a cashier, and took care of her elderly mother. (Tr. 41-42, 49, 109).

This is Plaintiff's fourth SSI application. (Tr. 19). The Commissioner denied her first two applications -- filed in July 1991 and March 1993. Plaintiff filed a third application in June 1995, and was granted a closed period of benefits from June 1, 1995 to February 18, 1997. (Tr. 90).

On September 16, 1999, Plaintiff filed her fourth SSI application, alleging that she became

disabled on September 1, 1999 due to back and leg pain, arthritis, depression, anxiety, memory loss, and confusion. (Tr. 42, 108, 109). After her application was denied at both the initial and reconsideration stages, Plaintiff requested a hearing before an ALJ. (Tr. 19). On February 9, 1999, the ALJ heard testimony from vocational expert Donald Millin and from Plaintiff, who was represented by counsel. (Tr. 19-20). On March 21, 2001, the ALJ ruled that Plaintiff was not disabled. (Tr. 108-117).

On February 27, 2002, the Appeals Council vacated the March 21, 2001 decision, remanded, and ordered the ALJ to evaluate further Plaintiff's mental impairment, to consider her maximum residual functional capacity, and, if appropriate, to obtain additional evidence from a vocational expert to clarify the effect of Plaintiff's limitations. (Tr. 123).

On June 12, 2002, the ALJ held a second hearing at which Plaintiff and vocational expert Gary Young testified. (R. 55-82). In her September 16, 2002 decision, the ALJ found that Plaintiff had severe chondromalacia of the left patella, arthritis of the left hip, knee, and ankle, and dysthymic disorder. (Tr. 21, 24, 27). The ALJ nonetheless concluded that Plaintiff could perform a limited range of sedentary employment. (Tr. 27-28). The ALJ found that Plaintiff could work as an inspector, office clerk, or cashier in the national and local economies, and thus was not disabled. (Tr. 25-28). On January 15, 2004, the Appeals Council denied review of the ALJ's decision, which, thus, became final. (Tr. 8-11).

After Plaintiff brought suit in this Court, both sides cross-moved for Summary Judgment. The matter was referred to a Magistrate Judge, who recommended that I deny Plaintiff's Motion, grant the Commissioner's Motion, and affirm the Commissioner's denial of benefits.

## STANDARD OF REVIEW

In reviewing an ALJ's decision, the District Court must determine whether the ALJ's findings of fact are supported by substantial evidence. 42 U.S.C. § 405(g); see also Montes v. Apfel, No. 99-2377, 2000 U.S. Dist. LEXIS 4030, *2 (E.D. Pa. Mar. 27, 2000) (citing Richardson v. Perales, 402 U.S. 389, 401, 28 L. Ed. 2d 842, 91 S. Ct. 1420 (1972)). The definition of "substantial evidence" is "that which would be sufficient to allow a reasonable fact finder to reach the same conclusion; while it must exceed a scintilla, it need not reach a preponderance of the evidence." Montes, 2000 U.S. Dist. LEXIS at *2; see also Jesurum v. Sec'y of U.S. Dept. of Health and Human Services, 48 F.3d 114, 117 (3d Cir. 1995). The ALJ must consider all relevant evidence in the record, and provide some indication of the evidence she rejected, and why she rejected it. See Weir v. Heckler, 734 F.2d 955, 961 (3d Cir. 1984).

The extent of District Court review of a Magistrate's Report and Recommendation is committed to the Court's discretion. See Jozefick v. Shalala, 854 F. Supp. 342, 347 (M.D. Pa. 1994); see also Thomas v. Arn, 474 U.S. 140, 154 (1985); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984); Heiser v. Ryan, 813 F. Supp. 388, 391 (W.D. Pa. 1993), aff'd, 15 F.3d 299 (3d Cir. 1994). The District Court must review *de novo* those portions of the Report to which objection is made. 28 U.S.C. § 636(b)(1)(c); see generally, Goney, 749 F. 2d at 7. The Court may "accept, reject or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F. Supp. 2d 667, 669 (E.D. Pa. 2001).

## DISCUSSION

To receive benefits, Plaintiff must show that she is disabled. To prove disability, a claimant must show that: 1) she is not currently engaged in "substantial gainful activity," as defined by the regulations; 2) that she suffers from a "severe impairment;" 3) that her disability meets or equals an impairment listed in 20 C.F.R. Pt. 404, Subpt. P. App. 1; and 4) that she does not have sufficient residual functioning capacity to perform her past relevant work. 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 404.1520(b)-(e). At the fifth step of the analysis, the Commissioner considers a claimant's "ability to perform work ('residual functional capacity'), age, education, and past work experience to determine whether or not he is capable of performing other work which exists in the national economy." 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 404.1520 (f).

Here, the ALJ found that Plaintiff has the residual functional capacity to perform sedentary work. Accordingly, even though the ALJ found that Plaintiff has serious physical and mental impairments, she also found that those impairments, alone or in combination, do not render Plaintiff disabled. (Tr. 27). Rather, the ALJ credited Vocational Expert Young's opinion that Plaintiff is "able to perform jobs which exist in significant numbers in the national and regional economy." (Tr. 27-28).

The Magistrate concluded that the ALJ's findings were supported by substantial evidence. Plaintiff objects to the Report and Recommendation, arguing that: (1) the ALJ improperly rejected the opinions of Plaintiff's treating doctors; and (2) that ALJ erroneously assessed Plaintiff's credibility.

## I. The ALJ's Refusal Wholly To Credit The Opinions Of Plaintiff's Doctors

Plaintiff argues that the ALJ did not properly defer to the opinions of Plaintiff's treating psychologist Dr. Kenneth Barber and treating physician Dr. Steven Rosen. The Social Security Regulations provide that if "a treating source's opinion on the issue[s] of the nature and severity of [a claimant's] impairment[s] is well supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] record, [the opinion will have] controlling weight." 20 C.F.R. 404.1523. Accordingly, the ALJ will customarily defer to a treating doctor's opinion. See Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988); 20 C.F.R. § 404.1527(d). The ALJ may disregard that opinion, however, if it contradicts itself or is inconsistent with the entire medical record. S.S.R. 96-2p, 111 (Supp. 2003); Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999) (an ALJ "may afford a treating physician's opinion more or less weight depending on the extent to which supporting explanations are provided"); Harris v. Barnhart, No. 03-0213, 2004 U.S. Dist. LEXIS 12927 (E.D. Pa. Jul. 7, 2004); see also Jones v. Sullivan, 954 F.2d 125, 129 (3d Cir. 1991); Adorno v. Shalala, 40 F.3d 43, 48 (3d Cir. 1994).

### *A. Plaintiff's Treating Psychologist*

Throughout 1997 and 1998, Plaintiff attended either bi-weekly or weekly therapy sessions with Dr. Barber. (Tr. 260-262, 278-279). In January 1999, Plaintiff ended the therapy, but returned on May 4, 1999. (Tr. 258-259). Dr. Barber indicated that Plaintiff was no longer attending therapy sessions in November 1999, but in January 2000, Plaintiff told Dr. Barber that she was in crisis. (Tr. 257-258). Plaintiff next met with Dr. Barber in June 2000.

In August 2000, Dr. Barber completed a questionnaire in which he opined that Plaintiff is "potentially capable of learning and doing a job," but noted that "her chronic depressive and self-

doubting thinking creates anxiety and frustration which blocks use of her abilities." (Tr. 292). Dr. Barber also stated that Plaintiff has little or no ability to "maintain regular attendance and be punctual," to "sustain an ordinary routine without special supervision," to "complete a normal workday and workweek without interruptions from psychologically based symptoms," or to "deal with normal work stress." (Tr. 292).

In her March 21, 2001 decision, the ALJ noted that Dr. Barber's August 2000 assessment:

> is completely at odds with the relative mildness of his diagnoses, the contents of his contemporaneous notes, and the observations of the consultative examiner who found the claimant well able to concentrate and communicate. It also clashes with the claimant's presentation at the hearing and is specifically rebutted by the claimant's admission that she is now working on a part-time basis and would be working full-time if the hours were offered to her.

(Tr. 111).

In her September 16, 2002 decision, the ALJ pointed out contradictions in Dr. Barber's assessment. For instance, he found that Plaintiff has both marked difficulties in maintaining social functioning, and "good" abilities to maintain socially appropriate behavior and to get along with co-workers. (Tr. 22-23). The doctor also stated that Plaintiff experiences frequent deficiencies in concentration, persistence, and pace, resulting in failure to complete tasks in a timely manner. (Tr. 22). Yet Dr. Barber's treatment notes do not show any such deficiencies.

Dr. Barber's opinion is also inconsistent with other medical evidence. For instance, on February 16, 2000, Dr. Margaret Stevens conducted a Clinical Psychological Disability Evaluation of Plaintiff. (Tr. 225-227). Although Dr. Stevens diagnosed Plaintiff with major depressive disorder as well as chronic pain from multiple injuries, she concluded that Plaintiff would have a "good" to "fair" ability to make occupational adjustments, make performance adjustments, and make personal-

social adjustments. (Tr. 228-229). At approximately the same time, a state agency physician completed a Psychiatric Review Technique form after reviewing Plaintiff's medical records. (Tr. 245-253). The physician found Plaintiff to have affective disorder, characterized by psychomotor agitation or retardation. (Tr. 248). The physician concluded, however, that Plaintiff suffers only slight restrictions as to daily living activities, social functioning, concentration, persistence, and pace, with no episodes of decompensation. (Tr. 252). The doctor believed Plaintiff has a moderate limitation in carrying out detailed instructions and maintaining attention and concentration for extended periods, and found Plaintiff to be "not significantly limited" in every other category. (Tr. 238-239). The doctor explained that Plaintiff is able to perform serial sevens (a cognitive measurement), can follow detailed instructions, and is able to interact socially with peers and supervisors. (Tr. 240). Another state agency reviewer affirmed this assessment on April 15, 2000. (Tr. 240).

The ALJ concluded that "[t]hese obvious inconsistencies render [Dr. Barber's] opinion essentially unreliable," and gave "little weight" to his evaluation. (Tr. 23). Rather, the ALJ gave greater weight to the other medical evidence, and concluded that Plaintiff is not disabled, and can perform "simple, repetitive low stress work." (Tr. 27). Because substantial evidence supports these determinations, I may not disturb them. See Becker v. Barnhart, 2005 U.S. Dist. LEXIS 5199, *13 (E.D. Pa. 2005) ("When the treating physicians' conclusions are inconsistent with the objective medical evidence in the record, or the limitations on a claimants' ability reported by the treating physicians are not supported by objective medical evidence, the ALJ is permitted to give these conclusions little or no weight.").

### *B. Plaintiff's Treating Physician*

Plaintiff objects "to the Magistrate's conclusion that the ALJ was justified in rejecting the opinion of treating physician Dr. Rosen." (Pl.'s Objection at 6, n.2). Yet, the ALJ did not reject Dr. Rosen's opinion in its entirety; rather she explained that "the medical opinion of Dr. Rosen as reflected in progress notes . . . [is] accepted as [it is] consistent with the record." (Tr. 23). The ALJ rejected only "the medical opinion of Dr. Rosen as reflected by the completed 'clinical assessment of pain' form" because she found it "inconsistent with the record and in particular with Dr. Rosen's own progress notes." (Tr. 24). Accordingly, the ALJ rejected those form entries characterizing Plaintiff's pain level as severe enough to limit her ability to perform daily activities or work. (Tr. 23).

The ALJ noted that only two months before completing the pain form, Dr. Rosen reported that "claimant's pain has decreased dramatically with the use of pain medication." (Tr. 24, 198-211, 297-299). In his progress notes from April 1997 through March 2002, Dr. Rosen repeatedly indicates that Plaintiff has done "very well on medications," "continues to have benefit from . . . Kadian," and that her pain has decreased. (Tr. 199-207, 297-299). In at least twelve of his progress notes, Dr. Rosen observed that medication controlled Plaintiff's pain. (Tr. 199-207, 297-299). Plainly, Dr. Rosen's pain form entries are inconsistent with his progress notes. It was well within the ALJ's province to reject the entries as inconsistent with Dr. Rosen's own observations. S.S.R. 96-2p, 11; Plummer, 186 F.3d 429.

### *C. The ALJ's Obligation to Contact Plaintiff's Treating Physician and Psychologist*

Plaintiff also argues that the ALJ erred by not contacting Drs. Barber and Rosen to clarify their opinions. Social Security Regulations provide that the ALJ is required to develop the record

further only when "the evidence we receive from [a claimant's] treating physician is *inadequate* for us to determine whether [the claimant is] disabled." 20 C.F.R. 404.1512(e)(1) (emphasis added). Here, the ALJ found the record adequate to determine whether or not Plaintiff was disabled. Accordingly, the ALJ needed no clarification from the doctors. See Thomas v. Barnhart, 278 F.3d 947, 958 (3d Cir. 2002) ("The requirement for additional information is triggered only when the evidence from the treating medical source is inadequate to make a determination as to the claimant's disability.").

**II. Substantial Evidence Supports the ALJ's Credibility Findings**

Finally, Plaintiff contends that "[t]he magistrate is in error in finding that it was proper for the ALJ to reject Plaintiff's testimony..." (Plaintiff's Objections at 7). Once again, I agree with the Magistrate that the ALJ acted well within her province.

The ALJ must weigh evidence, resolve evidentiary conflicts, and determine credibility. Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999); Mason v. Shalala, 994 F.2d 1058, 1066 (3d Cir. 1993); Irelan v. Barnhart, 243 F. Supp. 2d 268, 284 (E.D. Pa. 2003) (the "ALJ is empowered to evaluate the credibility of witnesses, and [her] findings on the credibility of claimants 'are to be accorded great weight and deference, particularly since an ALJ is charged with the duty of observing a witness' demeanor and credibility"). I am obligated to accept the ALJ's findings unless they are without basis in the record. Torres v. Harris, 494 F. Supp. 297, 301 (E.D. Pa. 1980). Because the ALJ actually hears live testimony, District Courts are reluctant to overturn the ALJ's credibility determinations. See Washington v. Barnhart, 2005 U.S. Dist. LEXIS 4835, *24-25 (E.D. Pa. 2005); see also Wilson v. Apfel, 1999 U.S. Dist. LEXIS 16712, *9 (E.D. Pa. 1999) ("In Social Security cases in general, the credibility determinations of the ALJ are to be given great deference."). The

ALJ's decision must contain specific reasons for credibility findings, "supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." Schwartz v. Halter, 134 F. Supp. 2d 640, 654 (E.D. Pa. 2001) (quoting Social Security Ruling 96-7p; Schaudeck v. Commissioner of Social Security Administration, 181 F.3d 429, 433 (3d Cir. 1999)). When the ALJ adequately explains her credibility determinations, those determinations should be given great deference. Washington, 2005 U.S. Dist. LEXIS 4835 at *25.

In discrediting some of Plaintiff's testimony, the ALJ offered a careful explanation. The ALJ noted that "at the February 27, 2002 hearing the claimant's story changed mid-hearing." (Tr. 24). Plaintiff abandoned her claim that mental impairments disabled her, and alleged that leg pain and knee problems formed the basis of her disability. (Tr. 24). In rejecting this allegation, the ALJ noted that "the record does not document any mention of care for leg problems following a minor surgery in 1999 to remove fatty lipoma until September 2001." (Tr. 25). With respect to Plaintiff's other pain complaints, the ALJ noted that Plaintiff's "statements clearly allege a level of disabling symptoms which far exceed what the objective evidence and clinical findings could reasonably be expected to produce." (Tr. 25). Thus, the ALJ observed that even though Plaintiff said she has frequent, long-lasting headaches, she had sought treatment for the headaches on only one occasion. (Tr. 25). Further, Dr. Rosen's progress notes indicate that "her headaches have decreased," and that she no longer required headache medication. (Tr. 199).

Significantly, the ALJ did not wholly discredit Plaintiff. Rather, after explaining why she did not fully credit Plaintiff's subjective complaints, the ALJ gave Plaintiff "the benefit of the doubt vis-a-vis her concentration complaints," and modified her residual functional capacity by "restricting

her to low stress, simple repetitive work." (Tr. 25). Thus, the ALJ credited Plaintiff's testimony to the extent that it was supported by other medical evidence. (Tr. 25-26). Once again, this was entirely within the ALJ's province. Plummer, 186 F.3d 429; Wilson, 1999 U.S. Dist. LEXIS 16712 at *9.

## CONCLUSION

In sum, Plaintiff asks me to re-weigh evidence and change credibility determinations. Because I find substantial evidence supports the ALJ's factual determinations, I overrule Plaintiff's Objections.

An appropriate Order follows.

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PAUL S. DIAMOND, J.

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| | : | **NO. 04-1124** |
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| **COMMISSIONER OF SOCIAL** | : | |
| **SECURITY,** | : | |
| **Defendant.** | : | |

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**ORDER**

AND NOW, this 22nd day of April, 2005, upon consideration of Plaintiff's Motion for Summary Judgment, Defendant's Motion for Summary Judgment, Magistrate Judge Charles B. Smith's Report and Recommendation, and Plaintiff's Objections, Magistrate Judge Smith's Report and Recommendation is ADOPTED.

The Motion for Summary Judgment of Defendant, Jo Ann Barnhart, Commissioner of the Social Security Administration, is GRANTED.

The Motion for Summary Judgment of Plaintiff, Lydia Kraft, is DENIED.

The Clerk of Court shall close this matter for statistical purposes.

BY THE COURT

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PAUL S. DIAMOND, J.