

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

CATHY CESARIO	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
JO ANNE B. BARNHART, Commissioner of the Social Security Administration	:	NO. 04-4194
	:	

MEMORANDUM

Baylson, J.

April 27, 2005

I. Introduction

Plaintiff, Cathy Cesario, commenced this action pursuant to 42 U.S.C. § 405 (g), for review of the decision of the Social Security Administration (“SSA”), denying Plaintiff’s claim for disability insurance benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401-433.¹ Presently before this Court are the parties’ cross motions for summary judgment. Plaintiff has also filed a Motion for Remand, in the alternative. 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 or Remand.

¹Under the Act, “disability” is defined as:

[the] inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment 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 USC § 423 (d)(1)(A).

II. Background and Procedural History

Plaintiff was born on September 4, 1953 and resides in Downingtown, Pennsylvania. (Administrative Record, “R” at 73-74). She has a college education and a master’s degree. (R. at 90, 297). On October 18, 2001, Plaintiff filed for Social Security Disability benefits, alleging disability since March 5, 1997, claiming she was “in pain” and “constantly exhausted.” (R. at 69, 73, 84, 122). She listed fibromyalgia as the condition that limited her ability to work.² Id. at 122. On April 8, 2002, the Social Security Administration denied Plaintiff’s initial claim for disability benefits. Id. at 33-36. Plaintiff requested a hearing, which was held in Elkins Park, Pennsylvania, before Administrative Law Judge Gerald J. Spitz (“ALJ”) on November 25, 2003. Id. at 37, 275-307. Plaintiff was represented by counsel and testified. Id. at 277-304. Maureen Brickly, a vocational expert, also appeared and testified as an impartial expert witness. (R. at 17, 303-06). On January 16, 2004, the ALJ issued a decision denying Plaintiff’s application finding that Plaintiff was not entitled to receive benefits.³ Id. at 14-23. Plaintiff requested review of the ALJ’s decision. Id. at 11-12, 271-73. The SSA’s Appeals Council denied Plaintiff’s request for review on July 1, 2004, Id. at 5-8, rendering the ALJ’s unfavorable decision the final decision of the Commissioner. Plaintiff commenced the present action alleging that 1) the Commissioner’s decision was based on the application of incorrect legal standards; and 2) the decision of the ALJ

²Plaintiff states in her Motion that she is disabled due to fibromyalgia, obesity, chronic pain and anxiety. Pl’s Motion at 15-16, 20-21. Plaintiff also states that she is restricted in her ability to lift, carry, reach or engage in prolonged standing, walking and sitting. Id. at 20.

³The ALJ found that Plaintiff was not disabled because the evidence failed to document that she had any significant physical or mental limitations that would preclude her ability to return to her past relevant light, skilled work as an interior designer, movement therapist, or construction supervisor. (R. at 17-23).

and the Appeals Council are not supported by substantial evidence.⁴ (Pl’s Motion for Summary Judgment at 2).

III. Social Security Disability Law

A. Disability Determinations

The Social Security Act authorizes several classes of disability benefits, including DIB, see 42 U.S.C. § 1382. This entitlement requires that the applicant be “disabled,” which is met if the individual “is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment 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 twelve months.” 42 U.S.C. § 1382c(a)(3)(A). The Act further states:

an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), “work which exists in the national economy” means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

42 U.S.C. § 1382c(a)(3)(B).

Congress has authorized the Commissioner “to make findings of fact, and decisions as to the rights” of any individual applying for disability benefits. 42 U.S.C. § 405(b)(1). The

⁴Plaintiff states that the “Administrative Law Judge, in total and complete disregard of the medical evidence, ruled that Plaintiff was capable of performing light work, and thus was not considered disabled under the terms of the Social Security Act.” Compl. at ¶ 10.

Commissioner is also required to resolve any discrepancies between the medical evidence and a claimant's subjective complaints. 42 U.S.C. § 416.929.

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). The ALJ's findings of law, however, are subject to plenary review. See *Wright v. Sullivan*, 900 F.2d at 678; *Podedworny v. Harris*, 745 F.2d 210, 221 n.8 (3d Cir. 1984). 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: A) the Commissioner applied improper legal standards; and B) the denial of benefits was not supported

by substantial evidence.

A. Legal Standards

Plaintiff argues that the ALJ applied improper legal standards in making his decision. Plaintiff argues that the ALJ erred as a matter of law by 1) failing to consider the cumulative and interactive effects of her impairments; 2) failing to assess the effects and functional impact of Plaintiff's obesity pursuant to Social Security Ruling 02-01p;⁵ and 3) failing to impose mental limitations in assessing Plaintiff's residual functional capacity. (Pl's Brief at 8-14, 15-17).

1. Cumulative and Interactive Effects of Impairments

Plaintiff correctly states that the ALJ must analyze the cumulative effect of all the Plaintiff's impairments in determining whether she is capable of performing work and is not disabled. Plummer v. Apfel, 186 F.3d 422, 428 (3d Cir. 1999) (reversing district court's grant of summary judgment to Commissioner); 20 C.F.R. § 404.1523. A review of the record reveals that the ALJ considered all of Plaintiff's impairments of record as well as the cumulative and interactive effect they might have on Plaintiff.

For example, the ALJ noted that the Plaintiff alleged "that she became disabled on March 5, 1997 due to fibromyalgia, gall bladder surgery, and obesity." (R. at 18). The ALJ articulated the required five-step evaluation to determine whether a claimant is disabled and proceeded to summarize the Plaintiff's complaints concluding that her "statements are contradictory" and "by her own admission, that she is capable of light work activity." (R. at 19). Importantly, in addition to summarizing the effects of her physical ailments, the ALJ also noted the effects of Plaintiff's anxiety, treatment, medications, and allergies. Id. Ultimately, the ALJ concluded that

⁵ Social Security Ruling (SSR) 02-01p discusses how the Commissioner is to assess obesity.

the fibromyalgia, gallbladder surgery, anxiety, and obesity resulted in “impairments that are severe within the meaning of the Regulations but not severe enough to meet or medically equal one of the impairments listed in Appendix 1, Subpart P, Regulations No. 4.” Id. at 20. Thus, the Plaintiff’s argument that the ALJ failed to apply the proper legal standard and failed to consider the cumulative and interactive effects of her impairments is without merit.⁶

2. Effects and Functional Impact of Obesity

Likewise, Plaintiff’s argument that the ALJ failed to consider the effects and functional impact of her obesity is without merit. A review of the record reveals that the only evidence of any problems or functional limitations associated with Plaintiff’s weight was her testimony at the administrative hearing that her weight affected her ability to come down stairs because “that weight on each of my hips going down sort of gives me a sharp pain in my hips.” (R. at 289). Plaintiff did not indicate any other functional limitations caused by her weight, including work-related limitations. The ALJ considered this limitation in assessing Plaintiff’s residual functional capacity. Specifically, the ALJ gave substantial weight to the medical opinion of Oliver Flinch, M.D., who stated that Plaintiff “should avoid climbing ladders, ropes, scaffolds, and stairs.” Id.

⁶ To the extent that the Plaintiff argues that the ALJ committed reversible error by failing to conduct a thorough inquiry, required by SSR 85-15, 1985 WL 56857, into the types and levels of job stresses involved in the jobs identified by the vocational expert, this court disagrees.

The Plaintiff incorrectly states that the “ALJ found that Plaintiff’s anxiety constituted a severe impairment” requiring “at least some subjective, individualized inquiry into what job attributes are likely to produce disabling stress in the claimant.” (Pl’s Brief at 18). Rather, the ALJ agreed with Dr. Lanuniziata that Plaintiff’s impairment due to anxiety alone was not severe and that her anxiety was secondary to her medical condition. (R. at 21). The ALJ further concluded that the fibromyalgia, gallbladder surgery, anxiety, and obesity, in concert, resulted in “impairments that are severe within the meaning of the Regulations but not severe enough to meet or medically equal one of the impairments listed in Appendix 1, Subpart P, Regulations No. 4.” Id. at 20. Thus, the Plaintiff’s argument that the ALJ committed reversible error by failing to conduct a thorough inquiry into the types and levels of job stresses involved in the jobs identified by the vocational expert is without merit.

at 21. The ALJ concluded that the Plaintiff “should avoid climbing ladders, ropes, and scaffolds.” (R. at 21). This is consistent with Plaintiff’s own description of her limitations related to her obesity. It would have been improper for the ALJ to speculate as to any further work-related limitations. Because the record did not reveal any additional obesity-related functional limitations, the ALJ’s assessment was not in error. After considering all of the medical opinions in the record, the Plaintiff’s complaints and symptoms, and the cumulative and interactive effects of the fibromyalgia, obesity, surgery, anxiety and even allergies, the ALJ concluded that “the claimant retains the residual functional capacity for light work activity.”⁷ Id. at 21-23.

3. Residual Functional Capacity Assessment

The ALJ then proceeded to determine whether Plaintiff retains the residual functional capacity to perform the requirements of her past relevant work. The ALJ cited and applied the correct legal standard. The ALJ acknowledged that he “must consider all symptoms, including pain, and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. . . .” (R. at 20) (Emphasis added). In addition, the ALJ stated that he “must also consider any medical opinions, which are statements from medical sources, which reflect judgments about the nature and severity of the impairments and resulting limitations.” Id. The ALJ summarized the Plaintiff’s symptoms, the medical evidence,

⁷ Specifically, the ALJ concluded that the Plaintiff is capable of lifting and carrying approximately twenty pounds on an occasional basis and about ten pounds on a frequent basis. In addition, the ALJ determined that the Plaintiff is capable of engaging in prolonged standing, walking, or sitting and may have to avoid exposure to extreme cold and/or extreme humidity as well as climbing ladders, ropes, and scaffolds. (R. at 21).

and the weight he accorded each expert's opinion.⁸ (R. at 20-21). The ALJ also concluded that the Plaintiff's "allegations regarding her limitations are not totally credible" because they were inconsistent with the objective medical evidence Id. Thus, the Plaintiff's argument that the ALJ applied incorrect legal standards in assessing her residual functional capacity is without merit.

Further, Plaintiff's argument that the ALJ failed to consider her anxiety or impose mental limitations in assessing Plaintiff's residual functional capacity are also without merit. A review of the record reveals that the ALJ specifically considered Plaintiff's anxiety before making his decision. For example, the ALJ noted that the Plaintiff "alleged that she suffers with anxiety;" however it was "secondary to her medical condition" and resulted in only "slight limitations." Id.

⁸ This included the medical opinions of Dr. Celeste Mruk (some weight), Pail Lanuniziata, Ph.D. (substantial weight), and Oliver Finch, M.D. (substantial weight).

Plaintiff's arguments that 1) the ALJ had a duty to recontact Dr. Mruk; 2) Dr. Mruk's evaluation was entitled to greater weight than Dr. Finch's assessment; and 3) the ALJ had a duty to contact Hattie Kalish are without merit. (R. at 11-14, 16-17).

An ALJ will recontact a treating physician "when the evidence we receive from your treating physician or psychologist or other medical source is inadequate for us to determine whether you are disabled." 20 CFR 404.1512(e). There is no indication in the Record that Dr. Mruk provided inadequate information regarding Plaintiff's condition. Also, the Plaintiff told the ALJ that her symptoms have remained the same since the time of her diagnosis. (R. at 295-96). Thus, the ALJ was not obligated to recontact Dr. Mruk.

Further, a treating source's opinion is given controlling weight only "if we find that . . . [it] is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record." 20 CFR 404.1527 (d)(2); see also Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir., 1999) (noting that an ALJ "may afford a treating physician's opinion more or less weight depending upon the extent to which supporting explanations are provided."). Thus, the ALJ did not have to give Dr. Mruk's opinion controlling weight.

Finally, the ALJ was not obligated to track down "Hattie Kalish" in order to make his determination. Only "if the ALJ believed [the] evidence was inconclusive or unclear, [was] it incumbent upon [the ALJ] to secure whatever evidence he believed was needed to make a sound determination." Ferguson v. Schweiker, 765 F.2d 31, 36 (3d Cir. 1985) (reversing district court's grant of summary judgment in favor of Secretary of Health and Human Services). With regard to Plaintiff's anxiety, the ALJ gave substantial weight to the medical opinion of Dr. Paul Lanuniziata, who completed a comprehensive psychological evaluation of the Plaintiff. (R. at 191-99). The ALJ found that Dr. Lanuniziata's assessment was consistent with the preponderance of the medical evidence and was thus, not obligated to investigate further.

at 21. Moreover, the ALJ recognized Plaintiff's anxiety when he gave substantial weight to the assessment of Dr. Paul Lanunziata, who discussed Plaintiff's mental status in depth. Id. Importantly, the ALJ specifically noted the effects of Plaintiff's anxiety, treatment, medications, and allergies. (R. at 19). The ALJ concluded that Plaintiff's anxiety coupled with her physical ailments resulted in impairments that are severe within the meaning of the Regulations but not severe enough to meet or medically equal one of the impairments listed in Appendix 1, Subpart P, Regulations No. 4. Id. at 20. Thus, Plaintiff's argument that the ALJ failed to consider her anxiety is without merit.

The ALJ then analyzed whether Plaintiff can perform any of her past relevant work based upon her residual functional capacity. Id. at 22. After stating the correct definition and legal standard,⁹ the ALJ summarized Plaintiff's past relevant work as an interior designer, construction supervisor, and movement therapist. Id. at 22. Maureen Brickly, the vocational expert, testified that these positions are all light and skilled type work activity. Id. at 22, 303-05. Further, Brickly concluded that Plaintiff could return to her past relevant work in any of these capacities. Id. Based largely on Brickly's testimony, the ALJ concluded that the Plaintiff could return to her past relevant work. Accordingly, the ALJ concluded that Plaintiff "was not under a disability as defined in the Social Security Act, at any time through the date of [his] decision." Id. at 22.

The record does not support Plaintiff's claim that her fibromyalgia, weight, anxiety, or a combination thereof prevented her from performing her past light, skilled work activity. The

⁹ The ALJ stated that he "must determine whether the claimant can perform any of her past relevant work. The phrase 'past relevant work' is defined in the Regulations at 20 CFR § 404.1565. The work usually must have been performed within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and meet the definition of substantial gainful activity." (R. at 22).

ALJ carefully applied the correct legal standard, weighed the evidence and carefully compared Plaintiff's complaints with the objective evidence in the record. (R. at 19-20). The ALJ specifically stated that he would "review the totality of the record, the testimony, the documents, your commentary. . .[and] apply all to the statutory law and regulations." (R. at 307). Based on the record, this court finds that the ALJ properly evaluated all of Plaintiff's impairments of record, properly assessed Plaintiff's limitations, and applied the proper legal standard. Therefore, the Plaintiff's Motion for Summary Judgment on the grounds that the ALJ applied incorrect legal standards must be denied and the Defendant's Motion for Summary Judgment must be granted.

B. Substantial Evidence

Plaintiff argues that the denial of benefits was not supported by substantial evidence. Specifically, the Plaintiff argues that the ALJ's findings that 1) she has the residual functional capacity to perform light work and return to her past relevant work; 2) Plaintiff was not totally credible; and 3) Plaintiff is not under a disability, are not supported by substantial evidence. (R. at 14-15, 19-22). This court disagrees.

The evidence supporting the ALJ's determination that Plaintiff has the residual functional capacity to perform light work¹⁰ and return to her past relevant work include the following:

- Dr. Paul Lanuniziata evaluated Plaintiff's records and concluded that the Plaintiff has "slight" limitations due to her anxiety. He indicated that the Plaintiff seldom suffers deficiencies of concentration, persistence and pace resulting in failure to complete tasks in a timely manner in work settings or elsewhere. Dr. Lanuniziata

¹⁰ 20 C.F.R. § 404.1567 (b) states, in relevant part:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.

also stated that the Plaintiff was “partially credible, but symptoms do not significantly limit functioning.” (R. at 21, 191-99).

- Dr. Oliver Finch assessed the Plaintiff as being capable of performing light work activity. He indicated that Plaintiff was capable of lifting and carrying twenty pounds on an occasional basis and ten pounds on a frequent basis. Dr. Finch found that Plaintiff could sit, stand, or walk for at least six hours in an eight-hour period and could engage in push/pull type activity with her upper or lower extremities. Dr. Finch also indicated that the Plaintiff was only “partially credible.” (R. at 12, 240-47).
- Maureen Brickly, the vocational expert, testified that Plaintiff’s past work of construction supervisor, interior designer, and movement therapist are all light and skilled type work activity and that based on Plaintiff’s residual functional capacity, Plaintiff could return to her past relevant work. (R. at 22, 303-05).

Case law indicates that the claimant bears the burden of demonstrating an inability to return to her past relevant work. Plummer v. Apfel, 186 F.3d 422, 428 (3d Cir. 1999) (reversing district court’s grant of summary judgment to Commissioner and citing Adorno v. Shalala, 40 F.3d 43, 46 (3d Cir. 1994)). The above-listed evidence constitutes relevant evidence that a reasonable mind might accept as adequate to support the ALJ’s conclusion that Plaintiff has the residual functional capacity to perform light work and return to her past relevant work. Thus, the ALJ’s findings are justified and supported by substantial evidence.

The evidence supporting the ALJ’s conclusion that the Plaintiff was not totally credible include the following:

- After summarizing the Plaintiff’s testimony, the ALJ noted that “[h]er statements are contradictory, but in the very least, they demonstrate, by her own admission, that she is capable of light work activity.” (R. at 19).
- Dr. Mruk’s treatment notes for the period beginning December 10, 1999 through March 27, 2002 indicate that the Plaintiff saw Dr. Mruk, or another doctor at Bala Cynwyd Medical Associates, only five times in that two and one-half year period. She telephoned the doctor’s office on fifteen occasions during that same period

for the renewal of prescriptions and other reasons. (R. at 21, referring to Exhibit 11-F, R. at 203-39). The ALJ commented that these facts reflected adversely on the Plaintiff's credibility. (R. at 21).

- Dr. Paul Lanunziata evaluated Plaintiff's records and concluded that the Plaintiff was "partially credible, but symptoms do not significantly limit functioning." (R. at 21, 191-99).
- Dr. Oliver Finch assessed the Plaintiff as being capable of performing light work activity and indicated that Plaintiff was only "partially credible." (R. at 12,240-47).

Despite this evidence, the Plaintiff argues that a claimant's subjective complaints of pain are entitled to substantial weight and may not be disregarded unless there exists contrary medical evidence. (Pl's Brief at 21). Here, the above-listed medical evaluations and evidence contradict Plaintiff's subjective complaints. 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). A reasonable mind might accept this evidence as adequate to support the ALJ's conclusion that Plaintiff was not totally credible. (R. at 22, Finding 5). Thus, the ALJ's finding was justified and supported by substantial evidence.

Furthermore, a reasonable mind might also accept all of the above-listed evidence as adequate to support the ALJ's final conclusion that the Plaintiff was not under a disability, as defined in the Social Security Act,¹¹ at any time through the date of the ALJ's decision. (R. at 23, Finding 10). Thus, the ALJ's finding was justified and supported by substantial evidence.

Based on the record, the court finds that the ALJ carefully considered and weighed all of the testimony and exhibits before applying the proper legal standards and making any decision.

¹¹ See supra, note 1 (defining "disability").

The record also reveals that all of the ALJ's conclusions are supported by substantial evidence. Plaintiff's arguments to the contrary are without merit. Thus, the Plaintiff's Motion for Summary Judgment on the grounds that the ALJ's decisions were not supported by substantial evidence must be denied and the Defendant's Motion for Summary Judgment must be granted.

V. Conclusion

For the foregoing reasons, this Court concludes that the ALJ and Commissioner applied the proper legal standards and 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**

CATHY CESARIO	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART, Commissioner of the	:	NO. 04-4194
Social Security Administration	:	

ORDER

AND NOW, this 27th day of April, 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.