

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

TERRIE A. ADAMS : CIVIL ACTION  
 : NO. 04-2051  
 Plaintiff, :  
 :  
 v. :  
 :  
 JO ANNE B. BARNHART, :  
 :  
 Defendant. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

May 31, 2005

Plaintiff Terrie A. Adams brought this action under 42 U.S.C. § 405(g), seeking judicial review of the Commissioner of Social Security's final decision denying her application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f. After the Commissioner initially denied Plaintiff's application, Plaintiff appealed and was afforded a hearing before an Administrative Law Judge ("ALJ"). Ultimately, the ALJ concluded that Plaintiff is not entitled to benefits. The Appeals Council denied Plaintiff's request for review. As a result, the ALJ's findings became the final decision of the Commissioner.

Thereafter, Plaintiff initiated the instant action. The parties filed cross-motions for summary judgment. This Court referred the case to United States Magistrate Judge Linda K.

Caracappa for a Report and Recommendation. Judge Caracappa recommended that summary judgment be granted in favor of the Commissioner. Plaintiff filed seven objections to Judge Caracappa's Report and Recommendation, which are presently before the Court.

After carefully considering the administrative record, the parties' motions, Judge Caracappa's Report and Recommendation, and Plaintiff's objections thereto, the Court will overrule Plaintiff's objections and adopt the Report and Recommendation. Accordingly, the Court grants the Commissioner's motion for summary judgment and denies Plaintiff's motion for summary judgment.

## I. BACKGROUND

Magistrate Judge Caracappa comprehensively recounted the facts and procedural history of this case in her Report and Recommendation (doc. no. 17). Therefore, this Court will not engage in a repetitive rendering of the case background.

## II. GENERAL PRINCIPLES

This Court undertakes a de novo review of the portions of the Report and Recommendation to which Plaintiff has objected. 28 U.S.C. § 636(b)(1); Cont'l Cas. Co. v. Dominick D'Andrea, Inc., 150 F.3d 245, 250 (3d Cir. 1998). The Court "may accept,

reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

Decisions of an ALJ are upheld if supported by "substantial evidence." Burns v. Barnhart, 312 F.3d 113, 118 (3d Cir. 2002). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 565 (1988) (internal quotations and citation omitted). "It is less than a preponderance of the evidence but more than a mere scintilla." Jesurum v. Sec'y of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). If the ALJ's decision is supported by substantial evidence, the Court may not set it aside even if the Court would have decided the factual inquiry differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999) (citations omitted); see also Rutherford v. Barnhart, 399 F.3d 546, 552 (3d Cir. 2005) ("In the process of reviewing the record for substantial evidence, we may not 'weigh the evidence or substitute [our own] conclusions for those of the fact-finder.'") (quoting Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992)).

Because Magistrate Judge Caracappa outlined the standards for establishing a disability under the Social Security Act and summarized the five-step sequential process for

evaluating disability claims, the Court will not duplicate these efforts here. Rep. and Recommendation at 3-5; see also Santiago v. Barnhart, No.Civ.A. 03-6460, 2005 WL 851076, at \*1 (E.D. Pa. Apr. 12, 2005) (Robreno, J.) (outlining the standards and five-step sequential process for evaluating disability claims).

### III. DISCUSSION

Plaintiff objects to the Report and Recommendation, arguing that the Magistrate Judge committed reversible error by: (1) finding that the ALJ did not err by failing to consider the impact of Plaintiff's weight to her impairments; (2) ruling that the ALJ did not fail to classify Plaintiff's obesity, lumbar spondylolisthesis, and asthma as severe impairments; (3) finding that the ALJ did not fail to conduct a thorough inquiry into the types and levels of job stresses relating to the jobs identified by the vocational expert; (4) adopting the ALJ's finding that Plaintiff has the residual functional capacity to perform medium work; (5) failing to address the ALJ's determination that Plaintiff's statements concerning her impairment were not supported by credible evidence; (6) adopting the Commissioner's finding that Plaintiff is not disabled; and (7) recommending that

Plaintiff's motion for summary judgment should be denied and the Commissioner's motion for summary judgment should be granted.<sup>1</sup>

A. Objection 1: The ALJ Failed to Consider the Impact of Plaintiff's Obesity to Her Impairments

Plaintiff contends that the ALJ failed to consider her obesity, specifically in the second, third, and fifth steps of the disability evaluation process, pursuant to Social Security Rule ("SSR") 02-01p, and that the Magistrate Judge committed reversible error by not recognizing the ALJ's failure.

In a recent social security benefits case, the Third Circuit addressed whether an ALJ's failure to mention a claimant's obesity warranted a remand. Rutherford, 399 F.3d at 552-53. Adopting the analysis established by the Seventh Circuit in Skarbek v. Barnhart, 390 F.3d 500 (7th Cir. 2004) (per curiam), the Third Circuit recognized:

An ALJ is required to consider impairments a claimant says he has, or about which the ALJ receives evidence. Although [plaintiff] did not specifically claim obesity as an impairment (either in his disability application or at his hearing), the references to his

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<sup>1</sup> Essentially in her sixth and seventh objections, Plaintiff is disputing the Magistrate Judge's ultimate decision, i.e., the adopting of the ALJ's findings and the granting of the Commissioner's summary judgment motion. Because these two objections are "cumulative," so to speak, the Court will not separately address them. The Court's final decision, however, encompasses these objections.

weight in his medical records were likely sufficient to alert the ALJ to the impairment. Despite this, any remand for explicit consideration of [plaintiff's] obesity would not affect the outcome of this case. Notably, [plaintiff] does not specify how his obesity further impaired his ability to work, but speculates merely that his weight makes it more difficult to stand and walk. Additionally, the ALJ adopted the limitations suggested by the specialists and reviewing doctors, who were aware of [plaintiff's] obesity. Thus, although the ALJ did not explicitly consider [plaintiff's] obesity, it was factored indirectly into the ALJ's decision as part of the doctors' opinions.

Rutherford, 399 F.3d at 552-53 (quoting Skarbek, 390 F.3d at 504).

Moreover, a claimant's generalized assertions that his or her weight makes certain actions more difficult "is not enough to require a remand, particularly when the administrative record indicates clearly that the ALJ relied on the voluminous medical evidence as a basis for his findings regarding [the claimant's] limitations and impairments." Id. at 553; see also Meredith v. Barnhart, No.Civ.A. 03-6422, 2004 WL 2367816, at \*3 (E.D. Pa. Oct. 19, 2004) (noting that the claimant "did not raise the issue of his obesity or discuss symptoms related to obesity at the hearing, nor do his medical records mention obesity or the need for weight loss. Nothing in the medical records suggests that

obesity is a factor in Plaintiff's medical condition or his functional level. [As such,] the ALJ had no obligation to consider Plaintiff's weight, no obligation to assess functional or medical equivalence, and no obligation to seek an updated medical opinion pursuant to SSR 96-6p."); Santiago, 2005 WL 851076, at \*4 ("The record is devoid, however, of any evidence (medical or otherwise) that plaintiff's relatively slight obesity exacerbated his impairments, nor did plaintiff allege obesity as a disability (either in his disability application or at his hearing). Accordingly, the ALJ's failure to mention plaintiff's obesity is not a basis to reverse or remand in this case.") (citing Rutherford, 399 F.3d at 552-53) (footnote omitted).

Following the analysis adopted by the Third Circuit in Rutherford, this Court deems that remand for the explicit consideration of Plaintiff's obesity would not affect the outcome of the case. The record lacks any objective evidence to show that Plaintiff's weight exacerbated her impairments. The only mention of Plaintiff's obesity is found in Plaintiff's Case Memorandum, where she speculates that her obesity "should be considered as a complicating factor that combines with other impairments to meet or equal a listing." (R. at 11.) In that document, Plaintiff summarily states: (1) her weight was between 189 pounds and 213 pounds from June 27, 2002 to July 1, 2003; (2) she is five feet, four inches (5'4") tall, and (3) at a weight of

189 pounds, she has a Body Mass Index ("BMI") of 31, and, at a weight of 203 pounds, she has a BMI of 33<sup>2</sup> (R. at 11). These assertions, however, were partially contradicted by Plaintiff at the hearing, where she testified that she is five feet, one inch tall (5'1") tall and that she is uncertain of her weight, although it is less than 204 pounds.<sup>3</sup> (R. at 47.) Also at the hearing, Plaintiff did not testify that her weight exacerbated her impairments or created any functional limitations. The only other evidence of Plaintiff's weight is in medical charts, where medical professionals recorded Plaintiff's weight, but did not appear to comment on whether Plaintiff is obese or whether Plaintiff's weight affected any of her medical conditions.

Neither Plaintiff nor any other witness testified that Plaintiff was obese or that her weight further impaired her ability to work. Nor were any medical records provided to indicate such. In addition, Plaintiff did not mention her alleged obesity in her disability application. Instead, Plaintiff identified seizures, hypertension, and depression as the conditions that limit her ability to work. (R. at 108.)

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<sup>2</sup> According to the BMI Table that Plaintiff attached to her Objections Memorandum, Plaintiff's BMI would be between 32 and 33 at a weight of 189, and her BMI would be between 34 and 35 at a weight of 203. See Pl.s' Objs. at Ex. A. These numbers under the BMI Table would categorize Plaintiff as "obese."

<sup>3</sup> If these assertions were true, then Plaintiff's BMI, see supra note 2, would be between 38 and 39. These numbers would still categorize Plaintiff as "obese."

Moreover, any contention that the ALJ should have obtained an updated medical opinion is untenable because (1) Plaintiff did not raise the issue of her obesity at the hearing, (2) her medical records do not mention obesity or her need for weight loss, and (3) her medical records do not suggest that obesity is a factor in Plaintiff's medical condition or functional level. Meredith, 2004 WL 2367816, at \*3 (finding that the ALJ was under "no obligations to seek an updated medical opinion" because plaintiff "did not raise the issue of his obesity or discuss symptoms related to obesity at the hearing, nor do his medical records mention obesity or the need for weight loss. Nothing in the medical records suggests that obesity is a factor in [p]laintiff's medical condition or his functional level.").

After reviewing the administrative record, the Court is satisfied that the ALJ relied on "voluminous medical evidence as a basis for his findings regarding [Plaintiff's] limitations and impairments." Rutherford, 399 F.3d at 553; see also Cesario v. Barnhart, No.Civ.A. 04-4194, 2005 WL 994623, at \*3 (E.D. Pa. Apr. 27, 2005) ("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."). As such, the ALJ's failure to directly address Plaintiff's weight is not reason for remand or reversal.

B. Objection 2: The ALJ Failed to Classify Plaintiff's Obesity, Lumbar Spondylolisthesis, and Asthma as Severe Impairments

Plaintiff argues that the ALJ failed to classify her obesity, lumbar spondylolisthesis, and asthma as severe impairments, and that the Magistrate Judge committed reversible error by not recognizing the ALJ's failure. As is evident from the administrative record, the ALJ carefully considered whether Plaintiff's spondylolisthesis and asthma (in addition to hypertension), either alone or in combination, amounted to a "severe impairment" under step two of the disability evaluation process. Because of the "minimal medical evidence in the record to corroborate or support any finding of significant vocational impact related to these conditions," the ALJ determined that Plaintiff failed to prove any severe impairments, other than a seizure disorder, depression, and drug and alcohol abuse.<sup>4</sup> (R. at

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<sup>4</sup> More specifically, the ALJ found that:

Although the claimant has alleged having asthma, hypertension, and a back impairment, there is minimal clinical evidence in the record to corroborate or support any finding of significant vocational impact related to these conditions. The claimant's asthmatic condition is controlled by medications and has never caused her to [sic] any vocational problems. The claimant takes blood pressure medication that effectively controls her hypertension. And though spondylothesis [sic] has been shown

20.) Moreover, as this Court previously discussed, Plaintiff has not provided any objective evidence to support claims that her obesity augmented her impairments or caused a functional limitation. Accordingly, the Court overrules Plaintiff's second objection.

C. Objection 3: The ALJ Failed to Conduct a Thorough Inquiry into the Types and Levels of Stress Associated with Jobs Identified by the Vocational Expert

Plaintiff contends that the ALJ failed to conduct a thorough inquiry into the types and levels of stress associated with jobs identified by the vocational expert ("VE"), and that the Magistrate Judge committed a reversible error by not recognizing the ALJ's failure. As authority for this objection, Plaintiff relies on SSR 85-15, which requires that consideration

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(Exhibit 12F) there has been no aggressive treatment including surgery, steroid or epidural injections documented, and, in fact, the claimant testified that she had been taking an exercise class. She controls her back problem largely with over the counter pain killers and salves. Therefore, despite allegations to the contrary, no vocational limits have been demonstrated by the limited medical evidence pertaining to these complaints, and it is found that these are not severe impairments as defined by the Social Security Act.

(R. at 20.)

be given in the residual functional capacity assessment to the impact of limitations created by stress. SSR 85-15, 1985 WL 56857, at \*1. The residual functional capacity, or "RFC[,] is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis." SSR 96-8p, 1996 WL 374184; see also 20 C.F.R. §§ 404.1545, 416.945.

SSR 85-15 provides in pertinent part:

Since mental illness is defined and characterized by maladaptive behavior, it is not unusual that the mentally impaired have difficulty accommodating the demands of work and work-like settings. Determining whether these individuals will be able to adapt to the demands of "stress" of the workplace is often extremely difficult. This section is not intended to set out any presumptive limitations for disorders, but to emphasize the importance of thoroughness in evaluation on an individualized basis.

. . .

The reaction to the demands of work (stress) is highly individualized, and mental illness is characterized by adverse responses to seemingly trivial circumstances. . . . Thus, the mentally impaired may have difficulty meeting the requirements of even so-called "low-stress" jobs.

Because response to the demands of work is highly individualized, the skill level of a position is not

necessarily related to the difficulty an individual will have in meeting the demands of the job. A claimant's condition may make performance of an unskilled job as difficult as an objectively more demanding job. [Therefore, any] impairment-related limitations created by an individual's response to demands of work . . . must be reflected in the [residual functional capacity] assessment.

SSR 85-15, 1985 WL 56857 at \*5-6 (emphasis added). The purpose of SSR 85-15 is to emphasize:

(1) that the potential job base for mentally ill claimants without adverse vocational factors is not necessarily large even for individuals who have no other impairments, unless their remaining mental capacities are sufficient to meet the intellectual and emotional demands of at least unskilled, competitive, remunerative work on a sustained basis; and (2) that a finding of disability can be appropriate for an individual who has a severe mental impairment which does not meet or equal the Listing of Impairments, even where he or she does not have adversities in age, education, or work experience.

Id. at \*1. "In view of the purpose and mandate of SSR 85-15, the ALJ was required to give due consideration to Plaintiff's ability to deal with stress in assessing Plaintiff's residual functional capacity to perform work." Diehl v. Barnhart, 357 F. Supp. 2d 804, 825 (E.D. Pa. 2005) (Robreno, J.).

The ALJ found that Plaintiff suffers from three severe impairments: a seizure disorder, depression, and drug and alcohol abuse. (R. at 20, 32.) In making this determination, the ALJ carefully considered, inter alia, the medical assessments of Dr. Jonathan Rightmyer, the State Agency psychological consultant; Dr. Margaret A. Friel, an impartial medical expert who testified at the hearing; and Dr. Andrew Soloway, Plaintiff's former psychiatrist. (R. at 24-30.) While acknowledging Dr. Soloway's opinion that Plaintiff suffered from chronic depression which caused her to decompensate,<sup>5</sup> the ALJ instead adopted the opinions of Dr. Rightmyer and Dr. Friel, both of whom "opined that the records show that when the claimant is clean and sober she has had no episodes of decompensation." (R. at 24.) Moreover, the ALJ noted that "[t]he documentation shows that the claimant's hospitalizations . . . were caused by her alcohol abuse and while drinking, she would not take her prescribed medications." (R. at 25.) Although the ALJ recognized that Plaintiff had only one or two episodes of decompensation when she was abusing alcohol (R. at 23), he also observed that Plaintiff

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<sup>5</sup> The ALJ noted that Dr. Soloway "felt that [Plaintiff] has a documented history of over 2 years duration of chronic depression which has caused her to decompensate often as evidenced by her increased use of Celexa, and that the claimants requires a highly structured and supportive setting within own her [sic] home." (R. at 25.)

had never exhibited episodes of decompensation when "clean and sober" (R. at 25).

Moreover, the ALJ did not err in posing a hypothetical to the VE that did not address how stress might affect Plaintiff's ability to function in the workplace. "A hypothetical question posed to a vocational expert 'must reflect all of a claimant's impairments.'" Burns, 312 F.3d at 123 (quoting Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987) (emphasis added)). "Where there exists in the record medically undisputed evidence of specific impairments not included in a hypothetical question to a vocational expert, the expert's response is not considered substantial evidence." Id. (citing Podedworny v. Harris, 745 F.2d 210, 218 (3d Cir. 1984)).

In the instant case, the medical record does not provide undisputed evidence of impairment-related limitations created by stress. See Diehl, 357 F. Supp. 2d at 825. Although Dr. Soloway assessed that Plaintiff's "functional stressors" included "depression, hypertension, asthma, and a seizure disorder caus[ing] the claimant to have an overwhelming amount of 'marked' or 'extreme' difficulties in most daily living activities, most social functioning activities, and most activities requiring concentration[,] persistence or pace," (R. at 28), the ALJ gave more weight and credence to other evidence in the record indicating that Plaintiff did not suffer from

occupational limits attributable to stress, as outlined above.<sup>6</sup>  
(R. at 27-30.) As such, the ALJ conducted a proper inquiry relating to the impact of stress, and did not err by excluding the impact of stress in the hypothetical posed to the VE.

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<sup>6</sup> As the record reflects,

[w]hile the Administrative Law Judge has considered Dr. Soloway's assessment of the claimant's residual functional capacity, it is noted that: 1) there is a lack of objective clinical or laboratory findings to support the degree of limitation alleged; 2) the record reveals no significant evidence of neurologic compromise which would affect the claimant's ability to stand, walk or sit to the degree as indicated; 3) he does not relate his opinion to any specific findings; 4) his opinion is not supported by reports which indicate only routine outpatient care, with little or no continuing treatment or use of prescribed medication; and 5) his assessment is inconsistent with the claimant's self-reported activities of daily living. Consequently, the Administrative Law Judge gives little weight to Dr. Soloway's assessment of the claimant's physical capacity.

(R. at 28-29.)

D. Objection 4: The ALJ Determined that Plaintiff Has the Residual Functional Capacity ("RFC") to Perform Medium Work, Which Is Not Supported by Substantial Evidence

Plaintiff contends that the ALJ incorrectly determined that she had an RFC to perform medium work, and that the Magistrate Judge committed reversible error by failing to recognize that the ALJ's determination was not supported by substantial evidence. As previously stated, an "RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis." SSR 96-8p, 1996 WL 374184; see also 20 C.F.R. §§ 404.1545, 416.945. "The RFC assessment considers only functional limitations and restrictions that result from an individual's medically determinable impairment or combination of impairments, including the impact of any related symptoms." SSR 96-8p, 1996 WL 374184. "The RFC assessment must first identify the individual's functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions in paragraphs (b), (c), and (d) of 20 CFR 404.1545 and 416.945. Only after that may RFC be expressed in terms of the exertional levels of work, sedentary, light, medium, heavy, and very heavy." Id.

In performing the RFC assessment, the ALJ "must have evaluated all relevant evidence, and explained his reasons for rejecting any such evidence. [The ALJ] also must have given [the

claimant's] subjective complaints serious consideration, and made specific findings of fact, including credibility, as to [the claimant's] residual functional capacity." Burns, 312 F.3d at 129 (internal quotations and citations omitted). In the instant case, the ALJ complied these mandates.

As previously noted, the ALJ found Plaintiff to suffer from three severe impairments: a seizure disorder, depression, and drug and alcohol abuse. (R. at 20, 32.) The ALJ specifically stated that the RFC assessment was based "on the totality of the record," including Plaintiff's statements about her ability to perform daily living activities; the medical opinions of Plaintiff's treating sources, to the extent that these opinions were supported by the medical records and not inconsistent with the record as a whole; and the assessments by Dr. Friel, the medical expert who testified at the hearing, and Margaret A. Preno, the VE who testified at the hearing. (R. at 26.) Although Plaintiff testified about the severity of her back pain, her frequent seizures, her depressive symptoms, her daily living activities, and her social functioning, the ALJ found her testimony to be inconsistent with the medical record. (R. at 27.) "Allegations of pain and other subjective symptoms must be supported by objective medical evidence." Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999). As discussed in Part III.E below, the ALJ found Plaintiff to be an unreliable and "poor

witness," with little objective medical evidence supporting her alleged symptoms. As such, the ALJ afforded Plaintiff's testimony little weight.

Moreover, the ALJ explained why he gave "significant weight" to the opinion of Dr. Friel, and "little weight" to the opinion of Dr. Soloway, Plaintiff's former treating psychiatrist.

(R. at 28-29.) As the ALJ concluded,

based upon a consideration of the subjective allegations weighted against objective medical evidence and other relevant information bearing on the issue of credibility, the Administrative Law Judge finds that the claimant's assertions concerning the severity of her impairments, and their impact on her ability to work, are only credible to the extent that they support a finding of being able to perform work at the medium level with the cited preclusions (20 CFR 404.1529 & 416.929 and Social Security Ruling 96-7p).

(R. at 30.)

The Court finds that the ALJ took the appropriate steps in assessing Plaintiff's RFC. Moreover, the Magistrate Judge properly found that the ALJ's RFC decision was supported by substantial evidence.

E. Objection 5: The ALJ Improperly Discounted Plaintiff's Statements Concerning Her Impairments, Finding Her Not Credible

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Plaintiff objects to the ALJ's determination that Plaintiff's statements concerning her impairments were not totally credible, and argues that the Magistrate Judge did not explicitly address this argument in her Report and Recommendation.

It is well-established that the ALJ is responsible for resolving evidentiary matters, determining a witness's credibility, and weighing all evidence. Washington v. Barnhart, No.Civ.A. 04-1137, 2005 WL 701208, at \*8 (E.D. Pa. Mar. 25, 2005). As this Court recognized in Ireelan v. Barnhart, 243 F. Supp. 2d 268 (E.D. Pa 2003), "[t]he ALJ is empowered to evaluate the credibility of witnesses, and his 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's demeanor and credibility." Id. at 284 (internal quotations and citations omitted). More specifically, when a claimant reports subjective complaints of pain, the ALJ must determine the extent to which a claimant is accurately stating the degree of pain and the extent to which he or she is disabled by it. Id. (citing Hartranft v. Apfel, 181 F.3d 358, 362 (3d Cir. 1999)). "[T]he ALJ may 'reject the claimant's claim of disabling pain if he affirmatively addresses the claim in his

decision, specifies the reason for rejecting it, and has support for his conclusion in the record.'" Id. (citing Hirschfeld v. Apfel, 159 F. Supp. 2d 802, 811 (E.D. Pa. 2001)).

In the instant case, the ALJ provided sufficient support for his determination that Plaintiff's claims of disabling pain were not credible. Although Plaintiff testified about her activities of daily living and her social functioning, the ALJ found these descriptions to be "directly at odds with the listing-level severity opined by her former psychiatrist . . . ." (R. at 27.) Moreover, Plaintiff testified to the severity of her back pain, her frequent seizures, and her depressive symptoms. Id. The ALJ, however, determined that "[d]espite the claimant's assertions to the contrary, the medical record does not support that the claimant's impairment/s are/is [sic] as severe as she contends. Various medical experts have made statements illustrating that the impairments, while severe, are not as debilitating as suggested by the claimant." (R. at 27.)

Not only did Plaintiff admit that her memory is "poor," but the ALJ found Plaintiff to be a "poor witness." (R. at 27, 29.) As the ALJ explained,

[t]he level of deterioration [Plaintiff] alleges is excessive, at odds with her current activities of daily living as stated, prior medical observations, and the medical evidence of record. The Administrative Law Judge is of the opinion that the claimant has a

tendency to exaggerate the extent of her symptoms. The totality of the evidence of record, particularly the findings of treating physicians as cited, rebuts the claimant's contention that she is disabled to the degree alleged. While the Administrative Law Judge believes that the claimants does have some symptoms and limitation of function, it is not to the extent that the claimant alleges. Therefore, based upon a consideration of the subjective allegations weighed against objective medical evidence and other relevant information bearing on the issue of credibility, the Administrative Law Judge finds that the claimant's assertions concerning the severity of her impairments, and their impact on her ability to work, are only credible to the extent that they support a finding of being able to perform work at the medium level with the cited preclusions (20 CFR 404.1529 & 416.929 and Social Security Ruling 96-7p).

(R. at 30.)

The Magistrate Judge appears to have addressed the ALJ's finding that Plaintiff's description of her disabling pain was not credible. Specifically, the Magistrate Judge wrote, "[s]ince the ALJ addressed the issue of pain in his decision and his conclusion is supported by the record, he had the discretion to reject a claim of disabling pain." Rep. & Recommendation at 17. Therefore, Plaintiff's assertion to the contrary is without merit.

The Court recognizes that the ALJ had the opportunity to evaluate, firsthand, Plaintiff's testimony. See Irelan, 243 F. Supp. 2d at 284. Moreover, the ALJ provided a sufficient explanation, with just reasoning, to afford little weight to Plaintiff's testimony. Thus, the Court will not disturb the ALJ's credibility determination. Plaintiff' fifth objection is overruled.

#### IV. CONCLUSION

For the foregoing reasons, the Court finds that the ALJ's determination is supported by substantial evidence in the administrative record. Accordingly, Plaintiff's objections will be overruled and the Report and Recommendation will be approved and adopted. An appropriate order follows.



5. The final decision of the Commissioner of Social Security is **AFFIRMED** and **JUDGMENT** is entered in favor of Defendant and against Plaintiff.

**AND IT IS SO ORDERED.**

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**EDUARDO C. ROBRENO, J.**