

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

MARIA GARCIA o/b/o N.P.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 04-4739
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, S. J.

August 22, 2005

Presently before the Court is Plaintiff N.P.'s ("N.P." 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 Bosch's decision was based on substantial evidence; (2) ALJ Bosch's finding of "no limitation" in the caring for yourself

domain is supported by substantial evidence; and (3) ALJ Bosch's finding of "less than marked" limitation in the domain of health and physical well-being is supported by substantial evidence.

Plaintiff first argues that the Magistrate Judge erred in finding that substantial evidence supports ALJ Bosch's decision. ALJ Bosch, at the onset of his analysis, provided an explanation of the three-step sequential evaluation process. (R. 17-21.) In addition, ALJ Bosch reviewed the six functional domains and factors used when evaluating a child's functioning under the six domains. (R. 19-22.) ALJ Bosch also examined several evaluations, reports, testimony, and notes submitted by Plaintiff's treating physicians and teachers, and he attached the documents to his opinion as Exhibits 1A, 2B, 8F-11F, and 16F-17F. After a careful review and analysis of the evidentiary record, ALJ Bosch incorporated his findings about Plaintiff's functioning into his opinion. (R. 21-23.) This Court thus finds that ALJ Bosch's determinations are supported by substantial evidence.

Plaintiff further contends that the Magistrate Judge erred in finding that substantial evidence supports ALJ Bosch's conclusion concerning Plaintiff's functional limitations in the areas of: (1) caring for self; and (2) health and physical well-being. Plaintiff maintains she has a "marked" level of impairment in both domains.

Under the domain of caring for self, ALJ Bosch properly concluded that there is "no limitation" in Plaintiff's ability to care for herself. For instance, Plaintiff's mother reported that Plaintiff usually controls her bowels and bladder during the day, eats using a fork and spoon by herself, dresses herself with help, washes and bathes with help, brushes her teeth without help, and sometimes puts her toys away. (R. 109, 138.) Plaintiff's mother also reported that the

Plaintiff's only limitation in the caring for yourself domain is her inability to bathe and dress herself without help. (R. 109, 138.)

Furthermore, in a medical/psychological assessment of the Plaintiff's ability to care for herself, the physician's sole observation was that Plaintiff suffers from "hyperactivity at times." (R. 185.) The record also shows that Plaintiff's teachers report Plaintiff adequately expresses her thoughts and feelings and acts appropriately in school and with other children. (R. 135-136, 143-146.) A careful and thorough review of the record shows that Plaintiff can care for herself. Therefore, this Court finds that substantial evidence supports the ALJ's finding of "no limitation" in the Plaintiff's ability to care for herself.

Under the domain of health and physical well-being, ALJ Bosch properly concluded that there is a "less than marked" limitation in the health and physical well-being domain. Plaintiff's treating physicians, Dr. Jill Foster and Dr. Janet Chen, reported on several occasions, that Plaintiff's HIV was asymptomatic and well-controlled. (R. 180-181, 210-211, 219, 223, 263, 268, 270.) In addition, Plaintiff's mother testified at the administrative hearing that Plaintiff has not experienced any side effects from her HIV medications. (R. 52.)

Dr. Chen also noted that since starting Straterra, an ADHD medication, Plaintiff's behavior has slightly improved. (R. 210-211.) Plaintiff's mother also testified that since taking Straterra, Plaintiff "seems to be okay" and her behavior in school has improved. (R. 50-51.) After a complete examination of the evidentiary record, this Court finds that Plaintiff is not markedly limited in this domain. Thus, substantial evidence supports the ALJ's finding that Plaintiff's limitation in the health and physical well-being domain is "less than marked."

II. CONCLUSION

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

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JO ANNE B. BARNHART,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 22nd day of August, 2005, upon consideration of Plaintiff's Motion for Summary Judgment (Docket No. 9), Defendant's Cross-Motion for Summary Judgment (Docket No. 10), 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 against Plaintiff.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.