

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

ELIZABETH WRIGHT	:	CIVIL ACTION
	:	
v.	:	NO. 05-0673
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

**MEMORANDUM AND ORDER**

AND NOW, this 28th day of December, 2005, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 8 and 9), the court makes the following findings and conclusions:

1. On April 16, 2003, Elizabeth Wright (“Wright”) filed for disability insurance benefits (“DIB”) and supplemental security income (“SSI”) under Titles II and XVI, respectively, of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f, alleging an onset date of September 1, 2002. (Tr. 36-38, 197). Throughout the administrative process, including an administrative hearing held on May 18, 2004, before an administrative law judge (“ALJ”), Wright’s claims were denied. (Tr. 3-5, 11-21, 29-32, 195-223). Pursuant to 42 U.S.C. § 405(g), Wright filed her complaint in this court on February 16, 2005.

2. In his decision, the ALJ concluded that Wright had severe impairments consisting of rheumatoid arthritis, a low back disorder, and a neck disorder. (Tr. 15 ¶ 3, 20 Finding 3).<sup>1</sup> The ALJ also found that, *inter alia*, Wright’s anxiety and depression were not a severe impairment. (Tr. 15 ¶ 5). Ultimately, the ALJ concluded that Wright’s impairments did not meet or equal a listing, that she could perform light work in jobs requiring no more than occasional climbing, and that she was able to return to her previous work as a daycare operator, cashier/checker, janitorial services supervisor, and human resources manager (Tr. 16 ¶ 1, 19 ¶ 4, 20 ¶¶ 1-2, 20 Findings 3, 5-7).

3. The Court has plenary review of legal issues, but reviews the ALJ’s factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm’r of Soc. Sec., 181 F.3d 429, 431 (3d Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). It is more than a mere scintilla but may be less than a preponderance. See Brown v. Bowen, 854 F.2d 1211, 1213 (3d Cir. 1988). If the conclusion of the ALJ is supported by substantial evidence, this court may not set aside the Commissioner’s decision even if it would have decided the factual inquiry

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<sup>1</sup> All numbered paragraph references to the ALJ’s decision begin with the first full paragraph on each page.

differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

4. Wright raises five arguments in which she alleges that the determinations by the ALJ were either not supported by substantial evidence or were legally erroneous. These arguments are addressed below. However, upon due consideration of all of the arguments and evidence, I find that the ALJ's decision is legally sufficient and supported by substantial evidence.

A. First, Wright contends that the ALJ erroneously failed to conclude that her depression was a severe impairment. In support of her argument, Wright points out that in notes from the Philadelphia Department of Public Health, dated May 6, 2003, and June 3, 2003, she was diagnosed with depression and prescribed Trazodone and Zoloft; that Nancy Dembo, M.D. ("Dr. Dembo"), as part of a "bio-psychological formulation", ascribed a 45 GAF score to Wright and diagnosed her with depression; and that her treating psychiatrist, Mitchell David, M.D. ("Dr. David") imposed significant mental restrictions on her ability to work, based in part on the bio-psychological formulation. (Tr. 108, 156, 158-159). I acknowledge that whether an impairment is severe is subject to a low threshold. Newell v. Comm'r, 347 F.3d 541, 546-47 (3d Cir. 2003). Nonetheless, a plaintiff must still provide evidence sufficient to show that her impairment has a minimal effect on her ability to work. Id.

Here, the ALJ's decision that Wright did not meet her burden of establishing that her depression was severe was supported by substantial evidence. For example, the ALJ properly discounted the value of the records proffered by Wright in support of her argument. The records from the Philadelphia Department of Public Health simply note a diagnosis of depression and a prescription for medication. (Tr. 108). These records do not include any mental status exams or other supporting information showing that Wright's ability to work was impaired. (Id.). Although Dr. David stated that Wright was markedly limited in several areas, there were no treatment notes from this source to support this assessment. (Tr. 158-159). Furthermore, the only document of record relied upon by Dr. David was Dr. Dembo's bio-psychological formulation which simply memorializes Wright's subjective complaints. (Tr. 153-157, 158-159); see Morris v. Barnhart, 78 Fed. Appx. 820, 824-825 (3d Cir. 2003) (finding that "[a]n ALJ may discredit a physician's opinion on disability that was premised largely on the claimant's own accounts of her symptoms and limitations when the claimant's complaints are properly discounted"). The ALJ also noted that Wright had not experienced any significant work-related mental functional limitations and that she did not seek mental health treatment prior to January 2004.<sup>2</sup> (Tr. 15 ¶ 5). The ALJ further noted that in August 2003 Wright's emotional state was indicated to be normal and a state agency psychologist determined in a psychiatric review technique form ("PRTF") that her depression resulted in only mild restrictions. (Tr. 18 ¶ 1, 134-147, 184). Contrary to Wright's argument, the ALJ did not simply rely on the state agency's PRTF and although the state agency did not consider the reports of Drs. David and Denbo, ALJ did consider them and properly discounted them. (Tr. 18 ¶¶ 1-2, 19 ¶ 2). In light of the above, the determination by the ALJ was supported by substantial evidence.

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<sup>2</sup> I note that Wright was diagnosed with depression as early as May 6, 2003, however. (Tr. 108).

B. Second, Wright argues that the ALJ was under a duty to re-contact Dr. David to clarify the basis for his assessment concerning her mental limitations. Wright contends that since the ALJ found that Dr. David's assessment was not based upon acceptable clinical and lab diagnostic techniques, but simply upon subjective mental health complaints, the ALJ should have re-contacted him for clarification. 20 C.F.R. §§ 404.1512(e)(1), 416.912(e)(1). Here, as discussed above, the ALJ found adequate evidence in the record to make a disability determination without relying heavily on Dr. David's assessment. Therefore, it was unnecessary for the ALJ to re-contact Dr. David. Rodriguez v. Barnhart, 2005 WL 2250797, \*8 (E.D. Pa. 2005) (citing Thomas v. Barnhart, 278 F.3d 947, 958 (9th Cir. 2002)).

C. Third, Wright alleges that the ALJ failed to include any mental limitations or a sit-stand option in his residual functional capacity ("RFC") assessment and in the hypothetical to the vocational expert ("VE"). Regarding Wright's mental limitations, the ALJ did note that in the PRTF, the state agency psychologist found mild restrictions in activities of daily living, social functioning, and concentration, persistence or pace, and that this record was consistent with the other evidence and was reliable. (Tr. 15 ¶ 5). Nonetheless, the ALJ did not base his assessment merely on the PRTF but upon all the record evidence including the lack of reliable evidence showing that Wright's depression resulted in any significant functional limitations. (Tr. 18 ¶¶ 1-3, 19 ¶ 2). It is evident that the ALJ concluded that, if there were mild deficiencies, they were negligible and, thus, should not have been incorporated into the RFC and hypothetical. Ramirez v. Barnhart, 372 F.3d 546, 555 (3d Cir. 2004). Wright also concludes that the ALJ should have provided a sit-stand option because Jarrad Teller, D.C., a chiropractor, stated that Wright needed to periodically alternate between sitting and standing. (Tr. 149). The ALJ was not required to rely on Dr. Teller's assessment as a chiropractor is not an acceptable medical source. 20 C.F.R. §§ 404.1513(a) & (d), 416.913 (a) & (d). Furthermore, no other medical source suggested such an option, including the state agency physician whose assessment the ALJ gave great weight because it was consistent with much of the medical evidence. (Tr. 19 ¶ 3, 127). It was reasonable for the ALJ not to rely on Dr. Teller's assessment due to its inconsistency with other evidence in the record. After considering the evidence, it is apparent that the ALJ's RFC assessment was supported by substantial evidence.

D. Fourth, Wright claims that the conclusion by the ALJ that she could perform light work was not supported by substantial evidence. Wright claims that the ALJ should have concurred with Drs. Sfedu and Teller who recorded limitations which were inconsistent with light work. (Tr. 119-120, 148-150). Instead, the ALJ relied on, *inter alia*, the RFC assessment submitted by the state agency physician in making his RFC determination. (Tr. 19 ¶ 4, 126-133). The ALJ explained that Dr. Sfedu's assessment was entitled to little weight because it was based primarily on Wright's self-reported limitations. (Tr. 19 ¶ 5). The ALJ also noted that Dr. Sfedu's assessment was not consistent with his own findings. (Tr. 16 ¶ 5). Furthermore, it was not improper for the ALJ to rely more heavily on the state agency's RFC determination, made by a highly qualified expert in Social Security disability evaluation, than upon the statement of Dr. Teller, a chiropractor and a non-acceptable medical source. 20 C.F.R. §§ 404.1513(a) & (d), 416.913 (a) & (d); 20 C.F.R. §§ 404.1527(f)(2)(i), 416.927(f)(2)(i). Moreover, the ultimate RFC determination is reserved exclusively to the Commissioner and the ALJ is not required to give any special weight to a treating

physician's determination thereof. 20 C.F.R. §§ 404.1527(e)(2), 416.927(e)(2). The ALJ's conclusion that Wright could perform certain light work was supported by substantial evidence.

E. Fifth, Wright asserts that the ALJ failed to give proper weight to her subjective complaints of pain in violation of S.S.R. 96-7p. "Credibility determinations are the province of the ALJ and only should be disturbed on review if not supported by substantial evidence." Pysher v. Apfel, No. 00-1309, 2001 WL 793305, at \*3 (E.D. Pa. July 11, 2001)(citing Van Horn v. Schweiker, 717 F.2d 871, 973 (3d Cir. 1983)). Moreover, such determinations are entitled to deference. S.H. v. State-Operated Sch. Dist. of the City of Newark, 336 F.3d 260, 271 (3d Cir. 2003). Likewise, the ALJ is required to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it. Hartranft, 181 F.3d at 362 (citing 20 C.F.R. § 404.1529(c)). In this case, the ALJ reasonably discounted Wright's credibility and complaints of pain because she was prescribed only conservative treatment, there was a lack of medical evidence showing that she experienced more than moderate levels of pain or other daily symptoms, and Wright's orthopedist only told her to "avoid heavy lifting, car rides, etc." (Tr. 17 ¶ 6, 19 ¶ 1, 182). The ALJ did not violate S.S.R. 96-7p because he did not reject Wright's complaints of pain based solely on the lack of supporting medical evidence. The ALJ's credibility determinations are supported by substantial evidence and, thus, shall stand.

Upon careful and independent consideration, the record reveals that the Commissioner applied the correct legal standards and that the record as a whole contains substantial evidence to support the ALJ's findings of fact and conclusions of law. Therefore, it is hereby

**ORDERED** that:

5. The motion for summary judgment filed by Elizabeth Wright is **DENIED**;

6. The motion for summary judgment filed by the Commissioner is **GRANTED**

and **JUDGMENT IS ENTERED IN FAVOR OF THE COMMISSIONER AND AGAINST**

**ELIZABETH WRIGHT**; and

7. The Clerk of Courts is hereby directed to mark this case as **CLOSED**.

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LOWELL A. REED, JR., S.J.