

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

MARGUERITE HUNTER	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART, et al	:	NO. 04-4004

MEMORANDUM AND ORDER

NORMA L. SHAPIRO, S.J.

MAY 17, 2006

This is an action seeking judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff’s claim for supplemental security income (“SSI”) under Title XVI of the Social Security Act. Before this court are plaintiff’s objections to the Report and Recommendation of Chief Magistrate Judge M. Faith Angell and defendant’s Response thereto. The objections will be considered *de novo*.

Legal Standards

The role of this court on judicial review is to determine whether there is substantial evidence to support the Commissioner’s decision. Fagnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001); Knepp v. Apfel, 204 F.3d 78, 84 (3d Cir. 2000). Substantial evidence is defined as the relevant evidence a reasonable mind might accept as adequate to support a conclusion. Pierce v. Underwood, 487 U.S. 552, 565 (1988); Morales v. Apfel, 225 F.3d 310, 316 (3d Cir. 2000). It consists of more than a mere scintilla but may be somewhat less than a preponderance of the evidence. See Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999).

To establish a disability under the Social Security Act a claimant must demonstrate that there is some “medically determinable basis for an impairment that prevents him from engaging

in any ‘substantial gainful activity’ for a statutory twelve-month period.” Fagnoli v. Massanari, 247 F.3d at 38-39 (3d Cir. 2001); 42 U.S.C. § 423(d)(1)(1982). A claimant can establish such disability in either of two ways: (1) by producing medical evidence of disability per se as a result of meeting or equaling certain listed impairments set forth in 20 C.F.R. pt. 404, subpt. P. app. 1 (2000), or (2) by demonstrating an impairment of such severity that claimant is unable to engage in any kind of substantial gainful work existing in the national economy. Heckler v. Campbell, 461 U.S. 458, 460 (1983); 42 U.S.C. § 423(d)(2)(A).

In this action the sequential evaluation process was used to evaluate disability:

The Commissioner’s regulations provide a five (5) step sequential evaluation process for determining whether or not a Claimant is under a disability. 20 C.F.R. § 404.1520. Step 1 states that an individual who is working will not be found to be disabled regardless of medical findings. 20 C.F.R. § 404.1520(b). Step 2 involves evaluating severe impairments. 20 C.F.R. § 404.1520(c). Step 3 requires determining whether the Claimant has an impairment or combination of impairments which meets or equals a listed impairment in Appendix 1. 20 C.F.R. § 404.1520(d). Step 4 states that if an individual is capable of performing past relevant work, he will not be found to be disabled. 20 C.F.R. § 404.1520(e). Step 5 requires that if an individual cannot perform past relevant work, other factors must be considered to determine if other work in the national economy can be performed. 20 C.F.R. § 404.1520(f).

It is the responsibility of the Administrative Law Judge (“ALJ”) to resolve conflicts in the evidence and to determine credibility and the relative weights to be given to the evidence.

Plummer v. Apfel, 186 F.3d at 429 (3d Cir. 1999); Mason v. Shalala, 994 F.2d 1058, 1066 (3d Cir. 1993). The ALJ’s conclusions must be accepted unless they are without evidentiary basis in the record. Torres v. Harris, 494 F. Supp. 297, 301 (E.D. Pa. 1980), aff’d, 659 F.2d 1071 (3d Cir. 1981).

Upon appeal to this court, the ALJ’s factual determinations, if supported by substantial

evidence, are conclusive both as to findings of fact and to inferences reasonably drawn from that evidence. See Fagnoli, 247 F.3d at 38 (“Where the ALJ’s findings of fact are supported by substantial evidence, we are bound by those findings, even if we would have decided the factual inquiry differently.”).

The Report and Recommendation was to deny claimant’s motion for summary judgment and to grant the Commissioner’s motion for summary judgment because the ALJ’s determination that claimant had a residual functional capacity for light work and was ineligible for disability benefits was consistent with the record.

Analysis

Ms. Hunter identifies her onset date as June 1996. She apparently was diagnosed with AIDS but chose not to seek treatment until February 1998 and subsequently was often noncompliant with her medical appointments. However, Ms. Hunter’s HIV medications have maintained her blood results as stable even during a 5-month period of incarceration in 2000. There are also references to alcohol and/or drug abuse.

Neurological and vision testing was essentially normal despite Ms. Hunter’s complaints of numbness and blurry vision. Treatment notes generally reported “no complaints” with diagnostic notations of “menopause?,” “bronchitis.”

In January 2001, the medical record shows a lapse of medications and heroin abuse for several months as well as a weight loss. By August, her sleep and mood had improved and she returned to medications (reported in November 2001). “She has absolutely no symptomatology in her distal lower extremities or upper extremities.”

Ms. Hunter discontinued all medication from November 2001 until November 2002,

when she used Zoloft to aid her in sleeping.

In reviewing the medical record, but for the hearing transcript, there are essentially no references to extreme fatigue and/or pain. Numbness complaints are reported. Ms. Hunter has been non-compliant with her HIV medications and has suffered from periods of substance abuse but she is asymptomatic for active AIDS; her medical condition is essentially unchanged since 1996.

Ms. Hunter complained of pain, but pain itself does not necessarily preclude working, especially when there is no foundation in the medical record. She was diagnosed with Hepatitis C and carpal tunnel syndrome, but neither is a severe impairment under social security regulations, apart from her AIDS diagnosis for which she received the required treatment.

Regarding her affective disorder, the ALJ noted her improvement when she took Zoloft as prescribed. The ALJ properly noted her activity level in personal care, socialization and care of her children. Her residual functioning capacity (RFC), assessed by an ophthalmologist was without limitations; the annotation of “temporarily” incapacitated gave no reasons.

Plaintiff’s Objections to the Report and Recommendation:

(1) The ALJ and Chief Magistrate Judge evaluated each of plaintiff’s impairments separately and not in combination.

If a claimant has a severe impairment, all medically determinable impairments must be considered in the remaining steps of the sequential analysis. 20 C.F.R. § 416.923. Here, Hunter and the Commissioner of Social Security stipulated that “the objective medical evidence establishes that the Plaintiff has depression and is HIV positive, impairments that are severe.”

Joint Statement of Undisputed Facts ¶ 7.

The ALJ properly considered whether Hunter's impairments met or equalled the relevant listings. See 20 C.F.R., pt. 404, subpt. P. app. 1. In determining her residual functional capacity, he took into account Hunter's physical and psychological impairments in combination. There is substantial evidence to support the ALJ's finding that Hunter's AIDS and depression, combined, leave her capable of "a limited range of light work."

(2) The ALJ improperly evaluated plaintiff's credibility and Chief Magistrate Judge Angell improperly accepted his conclusions.

Hunter argues the ALJ erred: (a) in dismissing Hunter's allegations about the intensity of her symptoms simply because they were not supported by the objective medical record; and (b) in not giving Hunter an opportunity to explain why she had not complied with her treatment and not determining whether the failure to comply was justified, under Social Security Ruling 82-59.

Subjective complaints of pain and other symptoms are analyzed under a two-step process. First, the ALJ must decide whether a medical impairment exists that "could reasonably cause the alleged symptoms"; if it does, the ALJ must evaluate "the intensity and persistence of the pain or symptom, and the extent to which it affects the individual's ability to work. This obviously requires the ALJ 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 358, 358 (3d Cir. 1999); see 20 C.F.R. § 416.429.

The ALJ found the medical evidence showed that Hunter was HIV positive and had depression, which could reasonably produce her symptoms, but her claims as to the "intensity, duration and limiting effects of the symptoms" were not fully credible because they were not documented—and in some cases directly contradicted—by the medical record. He also noted that

Hunter had failed to follow her prescribed HIV treatment during two periods of several months without exhibiting any significant symptoms, and that her depression was responsive to treatment, but Hunter “was not generally compliant with therapy or rehabilitation.”

Hunter’s objection has no merit. Her allegations as to the intensity of her symptoms lacked support not only in the objective medical evidence, but also in her own subjective statements to doctors in the medical record. As to Hunter’s failure to follow prescribed treatment, the ALJ properly took it into account in evaluating her credibility. The Social Security Ruling to which Hunter refers applies only where a finding of disability has been made; no such finding was made here. See SSR 82-59 at 1.

(3) The ALJ and Chief Magistrate Judge failed to give proper weight to Dr. William Woodward, plaintiff’s treating physician.

Hunter argues the ALJ erred by giving insufficient consideration to the “Medical Assessment Form” completed by her treating physician for the Department of Public Welfare in July, 2000. No such form could be located in the record; Hunter cites a letter requesting medical records from the Bureau of Disability Determination to Dr. Woodward, dated October, 2000. Dr. Woodward’s records follow the letter. They diagnose HIV and Hepatitis C (with the comment that Hunter must stop consuming alcohol or risk rapid aggravation) and note suspicion of carpal tunnel syndrome because of a complaint of numbness in the fingertips. Nothing in these records suggests permanent disability.

Conclusion

In all instances, the ALJ’s Discussion is consistent with the medical evidence and the absence of serious manifestations of HIV. The ALJ’s determination that Hunter had an RFC for

limited light work and was ineligible for disability benefits was consistent with the record. The Chief Magistrate Judge's Report and Recommendation was not in error and will be approved and adopted.

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ORDER

AND NOW, this 17th day of May, 2006, upon consideration of Plaintiff's Motion for Summary Judgment and Defendants's Motion for Summary Judgment, United States Chief Magistrate Judge M. Faith Angell's Report and Recommendation, and Plaintiff's Objections to the Report and Recommendation, for the reasons stated in the foregoing Memorandum, it is hereby **ORDERED** that:

1. The Report and Recommendation (Paper No.17) is **APPROVED AND ADOPTED**;
2. Plaintiff's Objections to the Report and Recommendation (Paper No. 18) are **OVERRULED**;
3. Defendant's Motion for Summary Judgment (Paper Number 10) is **GRANTED**;
4. Plaintiff's Motion for Summary Judgment (Paper No. 9) is **DENIED**;
5. The Clerk of the Court shall mark this case **CLOSED**.

/s/ Norma L. Shapiro _____

S.J.