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

MICHELE PAPA	:	CIVIL ACTION
	:	
v.	:	NO. 05-3694
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 20th day of September, 2006, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 7 and 8) and the reply thereto (Doc. No. 10), the court makes the following findings and conclusions:

1. On December 29, 1999, Michele Papa ("Papa") protectively filed for disability insurance benefits ("DIB") under Title II, of the Social Security Act, 42 U.S.C. §§ 401-433, alleging an onset date of April 14, 1999. (Tr. 68-70). Throughout the administrative process, including administrative hearings held on June 18, 2001 before an administrative law judge ("ALJ"), Papa's claims were denied (Tr. 22-34).[1] Pursuant to 42 U.S.C. § 405(g), on June 13, 2003, Papa filed her complaint in this court seeking review of that decision. On April 30, 2004, the Honorable Eduardo C. Robreno filed an order remanding the case to the ALJ for further proceedings to consider Papa's mental limitations pursuant to 42 U.S.C. § 405(g), sentence four. The resultant administrative hearing, upon which my review is based, was held on February 24, 2005 before an ALJ, at which Papa's claims were again denied. (Tr. 303-23). Pursuant to 42 U.S.C. § 405(g), on July 15, 2005, Papa filed her complaint in this court seeking review of that decision.

2. In his decision, the ALJ concluded that Papa had severe impairments consisting of degenerative joint disease of both knees and bilateral tennis elbow. (Tr. 315 ¶ 4; 321 Finding 3).[2] The ALJ further concluded that Papa's impairments did not meet or equal a listing, that she had the residual functional capacity ("RFC") to perform unskilled, sedentary work with no prolonged standing, walking, or sitting, the ability to alternate sitting and standing every thirty to sixty minutes, and noted that Papa is moderately limited in her ability to understand, remember, and carry out detailed instructions. (Tr. 319 ¶ 1; 321-22 Finding 7). The ALJ determined that Papa was not disabled. (Tr. 320 ¶ 5; 322 Finding 13).

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

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[1] On June 2, 2003, Papa filed a subsequent Title II application, alleging a disability commencing on January 12, 2002, the day after the ALJ's previous decision. (Tr. 443-45). She was found disabled for the subsequent time period primarily as a result of her hypertrophic facet syndrome and secondarily as a result of bilateral severe patellofemoral chondromalacia knees. (Tr. 436-38).

[2] All numbered paragraph references to the ALJ's decision begin with the first full paragraph on each page.

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

4. Papa 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. Papa first contends that the determination by the ALJ that she did not meet the requirement of listings 1.02 and 1.03 that she demonstrate an "inability to ambulate effectively" was not adequately explained or supported by substantial evidence. The general definition of "inability to ambulate effectively" is that a person requires hand-held assistive devices in order to independently ambulate. 20 C.F.R., Part 404, Subpart P, Appendix 1, § 1.00B2b1. To be considered to ambulate effectively, a person must be able to carry out the activities of daily living and travel without a companion to and from work or school. 20 C.F.R., Part 404, Subpart P, Appendix 1, § 1.00B2b2. The provided examples of ineffective ambulation are:

> the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

Id.

The ALJ noted that the consulting physician, who examined Papa in April of 2000, found she had a full range of motion except for slight decreased bilateral knee and hip flexion and had no gross deformities in her extremities. (Tr. 316 ¶ 5; 165; 167-68). Papa reported that she could walk five blocks without resting, and the consulting physician noted she transferred on and off of the examination table without any difficulty or assistance, had a normal gait, and she ambulated without any assistive devices. (Tr 316 ¶ 15; 163; 165). The ALJ stated, "With respect to the claimant's ability to use public transportation during the period under review, she testified at the prior hearing that she travels independently in her car." (Tr. 317 ¶ 2; 255). Papa challenges that statement as not providing a relevant explanation, however, a person is considered to ambulate effectively if that person can carry out daily living activities and travel alone to work. Thus, the ALJ clearly noted that since Papa can drive herself, her ability to use public transportation is inapplicable.[3] (Tr. 317 ¶ 2). Papa also argues that her testimony that she could only walk a block on even surfaces, should lead to the inference that she cannot walk at all on uneven surfaces. (Tr. 256). However, substantial evidence does not support this inference, since the ALJ did not find Papa's testimony regarding the distance she can walk to be credible and since Papa told the consulting physician that she could walk five blocks without assistive devices. (Tr. 163-65; 317 ¶ 2). The ALJ also pointed out that Papa testified she climbed the stairs in her house three times a day, during this period, which is not consistent with a finding that she was unable to climb a few steps. Thus, the ALJ's decision that Papa's impairments did not satisfy the requirements of listing 1.02 and 1.03 was

[3] I also note that Papa testified that she occasionally takes SEPTA and the only difficulty she has is that she cannot stand while the bus is moving. (Tr. 275).

supported by substantial evidence.

B. Second, Papa claims that the ALJ erred by failing to give controlling weight to the opinion of her treating physician, Dominic Nappi, M.D. ("Dr. Nappi"), that Papa was disabled. I first note that the ultimate disability determination is reserved for the ALJ and a treating physician's opinion on that topic is not entitled to any special significance. 20 C.F.R. §§ 404.1527(e)(1); S.S.R. 96-5p. Furthermore, a treating physician is only provided controlling weight when his or her opinion is well supported by medically acceptable sources and not inconsistent with other substantial evidence in the record. 20 C.F.R. §§ 404.1527(d)(2). Here, the ALJ found both internal inconsistencies in Dr. Nappi's reports and that Dr. Nappi's conclusions were not consistent with Papa's testimony, the medical evidence in the record, or the opinions of the state agency physicians. (Tr. 318 ¶¶ 1-3). Since the MRI's of her knees, even before surgery, reveal only "mild intrameniscal degenerative changes" in her left knee and "moderate joint effusion with chondromalacia patella" in her right knee" and because the record reveals she had only minor limitations in her range of motion and could walk at a normal gait without an assistive device, substantial evidence supports the ALJ's decision to disregard the portion of Dr. Nappi's reports that were inconsistent with the rest of the medical record. (Tr. 318 ¶¶ 1, 3; 165; 201; 203).

C. Third, Papa alleges that the ALJ failed to properly assess her credibility and erred by not mentioning her father's statement. "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)). The ALJ noted that the pain and issues reported by Papa were not fully consistent with the objective medical evidence and she was capable of independently performing activities of daily living. (Tr. 163-65; 255-56; 265; 316 ¶ 5; 319 ¶ 2). In light of the above, I find that the ALJ sufficiently supported his credibility determination with substantial evidence.

In regards to Papa's argument about her father's statement, the statement was written on July 21, 2003, approximately a year and a half after the relevant time period and included no clear reference to Papa's abilities during the relevant time period, so the statement is not probative to the case at hand. (Tr. 472-78). Thus, there was no need for the ALJ to state his reason for not considering Papa's father's statement.

D. Fourth, according to Papa, the ALJ relied on testimony from the VE that was contrary to agency policy articulated in SSR 83-12. 1983 WL 31253. Papa asserts that the word "unusual" in the directive that the ALJ consult a vocational specialist if a person who can only perform an unskilled job requires a sit/stand option, means that a vocational specialist cannot be consulted every time there is a sit/stand limitation. However, I could not find any support for Papa's argument in the case law. The ALJ's decision is consistent with SSR 83-12 because the ruling directs that when the occupational base is not clear, the ALJ must consult with a VE to assess the impact of that option on the claimant's occupational base. SSR 83-12, 1983 WL 31253, at *4; Henderson v. SSA, 87 Fed. Appx. 248, 252-253 (3d Cir. 2004).[4]

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[4] The "special situations" Listing discussing "Alternate Sitting and Standing" merely suggests that a sit/stand option would drastically erode the occupational base for unskilled jobs. SSR 83-12, 1983 WL 31253, at *4. In the present case, the ALJ's consultation with the VE has effectively eliminated the need to rely on a suggestion in the ruling. See Henderson v. SSA, 87 Fed. Appx. 248, 252-253 (3d Cir. 2004).

E. Finally, Papa alleges that the ALJ did not comply with SSR 83-20 because the ALJ did not consult a medical expert regarding the onset of Papa's alleged disability. 1983 WL 31249. Papa's application for DIB alleges an onset date of April 14, 1999, which was the first day Papa did not work and the date of her first knee operation. (Tr. 68; 124; 242). SSR 83-20 provides that "the starting point in determining the date of onset of disability is the individual's statement as to when disability began" and that "the day the impairment caused the individual to stop work is frequently of great significance in selecting the proper onset date." 1983 WL 31249, at *2. It is only when an onset date must be inferred that an ALJ should question a medical advisor in this regard. Id., at *3. Thus, since no inferences regarding the onset would have been required if the ALJ had determined that Papa was disabled during the relevant time period, there was no reason for the ALJ to consult a medical advisor for this purpose.[5]

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 Michele Papa 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 MICHELE PAPA**; and

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

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

[5]If Papa believes that the onset date in the subsequent award of benefits was incorrect, Papa should have challenged the onset date in those proceedings.