

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

KAREN C. LIGHTFORD,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	No. 06-256
JO ANNE BARNHART,	:	
COMMISSIONER, SOCIAL SECURITY	:	
ADMINISTRATION,	:	
	:	
Defendant	:	

MEMORANDUM

Baylson, J.

December 27, 2006

Plaintiff, Karen Lightford (“Lightford”) seeks judicial review of the decision of the Commissioner of the Social Security Administration (“Respondent”) denying her claim for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“the Act”), 42 U.S.C. §§ 1381-1383. Jurisdiction is established under § 405(g) of the Act. Id. Presently before this Court are parties’ Cross-Motions for Summary Judgment. For the reasons that follow, the Court will grant Lightford’s motion, and remand for further proceedings in accordance with this opinion.

I. Background

A. Procedural History

Lightford was 43 years old at the time of her hearing before the Administrative Law Judge (“ALJ”).¹ She has a high school education, and her varied work experience encompassing

¹ Lightford thus qualified as a “younger person” under the regulations. 20 C.F.R. § 404.1563. The Court must “cautiously scrutinize the employment prospects of so young an individual before placing him on the disability rolls.” McLamore v. Weinberger, 530 F.2d, 572, 574 (4th Cir. 1976).

the 15 years prior to her application for SSI benefits includes employment as a paratransit van driver, food service worker, municipal parking authority ticket writer and clerk, and car salesperson. (R. at 14.)

Lightford's initial application for SSI benefits, filed July 15, 2003, was denied on September 12, 2003. She appealed, and a hearing was held before Javier Arrastia, an ALJ on June 21, 2004. Id. The ALJ heard testimony from Lightford, an independent medical expert ("ME") and an independent vocational expert ("VE"). Lightford was represented by counsel at the hearing. Id.

The ALJ issued an unfavorable decision October 14, 2004, applying the five-step evaluation required by 20 C.F.R. § 416.920. (R. at 15-20.) At the third step, he found that Lightford's impairments did not meet, or medically equal, an impairment listed in Appendix 1, Subpart P, Section 404. He found at the fifth step that Lightford "has the residual functional capacity to perform the full range of sedentary work" as defined in 20 C.F.R. § 416.967. (R. at 21.) Thus the ALJ held, "based on an exertional capacity for sedentary work, and the claimant's age, education and work experience, a finding of 'not disabled' is directed by Medical-Vocational Rules 201.28 and/or 201.29, regardless of the transferability of [Lightford's] work skills." Id.

The Appeals Council denied without comment Lightford's Request for Review on November 21, 2005 (R. at 4-6), making the ALJ's decision the final decision of the Commissioner. See 20 C.F.R. §§ 404.955, 404.981; Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001). Lightford thereafter sought judicial review of the Commissioner's decision in this Court. She filed a Motion for Summary Judgment on June 26, 2006 (Doc. No. 10), and

Respondent filed a Cross-Motion for Summary Judgment on July 31, 2006 (Doc. No. 11).

B. History of Injury and Treatment

Lightford asserts that she has been unable to work since March 26, 2002, when, while driving a paratransit van, she was involved in a motor vehicle accident. (R. at 71, 108, 182.) She complains of pain in her lower back and legs, especially the left leg, and intermittent headaches. (R. at 109, 132.) The medical evidence indicates that Lightford sought treatment for pain in her neck, lower back and legs, and headaches as early as June 26, 2002. (R. at 132.) In a report, Dr. Michael Martin Cohen, a neurologist, reports that Lightford underwent ear surgery in 1997, and back surgery in 1998, but that she had not reported any back or leg pain until the motor vehicle accident. (R. at 133.) Dr. Cohen observed hypesthesia over the left L5 and S1 dermatomes, as well as “exquisite tenderness over the occipital notches,” “moderate tenderness and spasm over the lumbosacral PVM from L4 to S1 on the left,” and positive straight leg raising at 60 degrees. (R. at 133-134.) Dr. Cohen’s initial impression was that Lightford suffered from:

- 1) Left lumbosacral radiculopathy.
- 2) Lumbosacral strain with fibromyositis.
- 3) Cervical strain with trapezial fibromyositis.
- 4) Post traumatic headache syndrome with occipital neuralgia (greater and lesser).

(R. at 134.) Noting that Lightford was already taking Tylenol with codeine, Celebrex and Skelaxin, Dr. Cohen recommended 10-20 milligrams of Amitriptyline as well. (R. at 133-134.) Dr. Cohen recommended that Lightford return for a follow-up four weeks later. (R. at 134.)

Lightford continued seeing Dr. Cohen through June 22, 2004. At the hearing, Lightford testified that Dr. Gerald Dworkin, a pain management specialist, had provided her with two injections. (R. at 194.) She was scheduled for a third injection the day after the hearing. Id. The

record includes two memoranda from Dr. Dworkin indicating he administered a caudal epidural injection on the two occasions prior to the hearing, December 19, 2003 and June 29, 2004. (See R. at 170, 171.)

Dr. Cohen's June 22, 2004 report states, "The patient's low back pain remains unchanged with radiation into the lower extremities, left greater than right" (R. at 168.) The report also indicates that Lightford still complained of intermittent headaches. Id. Dr. Cohen noted that Lightford fell the week before the visit, resulting in the fracture and dislocation of toes in her right foot. Id. Lightford also complained of muscle spasms which interrupt her sleep. Id. Dr. Cohen's impressions of Lightford's conditions remained largely unchanged, except that the both "cervical strain with trapezial fibromyositis," and "post traumatic headaches with occipital neuralgia" were both marked "improved." Id. By this time, Lightford's medication prescriptions had increased, so that she was prescribed Amitriptyline at 300 milligrams, Celebrex at 200 milligrams, Klonopin, and both Tylenol #3 and Percocet for "moderate and severe breakthrough pain respectively." (R. at 168.) In addition, Dr. Cohen recommended that Lightford "continue with Dr. Dworkin for interventional pain management."

II. Parties' Contentions

A. Lightford's Contentions

In her Motion for Summary Judgment, Lightford attacks the ALJ's decision on three grounds. First, she claims the ALJ improperly disregarded the testimony of plaintiff's treating physician in favor of that of the non-treating medical examiner. Plaintiff points to the ME's appeal for more information in the transcript, claiming that the proper procedure would have been to allow for a consultation in order to provide that info. That is, the ALJ should have

allowed for a complete neurological work-up which could have shown the atrophy the ME expected (and apparently needed to find a severe disability). Moreover, plaintiff claims that even if the ALJ were correct to credit the ME over the treating physician, the ALJ mischaracterized the ME's testimony as contradicting plaintiff's disability claims, rather than merely appealing for more information. Second, the ALJ improperly ignored plaintiff's testimony as to pain and the side effects of her medication. According to Lightford, the ALJ should have accorded her pain testimony more weight, given her long work history. Because the medical evidence of her pain, and the lack of contradictory evidence, required the ALJ to accord her testimony great weight. Finally, the Lightford claims the ALJ improperly applied the Grids in that non-exertional limitations such as pain, headaches & medication side-effects existed in this case. Plaintiff contends this is constitutes error at steps 3 and 5 of the Sequential Evaluation.

Respondent counters that substantial evidence supports the ALJ's decision that Lightford can perform work in the local and national economy. Respondent argues (1) the ALJ properly assessed, and rejected, the opinion of Lightford's treating physician as to Lightford's disability; (2) the ALJ did not improperly ignore Lightford's testimony as to pain and medication side effects, but rather properly found that the record did not provide any objective medical evidence to support Lightford's claims; and (3) the ALJ properly applied the Grids to find that Lightford can perform work in the local and national economy.

III. Legal Standard

The standard of review of an ALJ's decision is plenary for all legal issues. See *Schaudeck v. Comm'r of Soc. Sec. Admin.*, 181 F.3d 429, 431 (3d Cir. 1999). The scope of the review of determinations of fact, however, is limited to determining whether or not substantial evidence

exists in the record to support the Commissioner's decision. See Rutherford v. Barnhart, 399 F.3d 546, 552 (3d Cir. 2005). As such, “[t]he Court is bound by the ALJ's finding of fact if they are supported by substantial evidence in the record.” Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999); see also Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1191 (3d Cir. 1986) (holding that if “an agency's fact finding is supported by substantial evidence, reviewing courts lack power to reverse . . . those findings”). The Court must not “weigh the evidence or substitute [its own] conclusions for those of the fact-finder.” Rutherford, 399 F.3d at 552 (quoting Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992)). “Substantial evidence does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999) (internal quotation omitted).

IV. Discussion

In order 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. 42 U.S.C. § 423(d)(2)(A); Stunkard v. Sec’y of HHS, 841 F.2d 57, 59 (3d Cir. 1988). To determine whether an individual is disabled, the regulations prescribe a five-step analysis. 20 C.F.R. § 404.1520; Ramirez v. Barnhart, 372 F.3d 546, 550-51 (3d Cir. 2004). The fact-finder must determine: (1) if the claimant currently is engaged in substantial gainful employment; (2) if not, whether the claimant suffers from a “severe impairment;” (3) if the claimant has a “severe impairment,” whether that impairment meets or equals those listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, and thus is presumed to be severe enough to preclude gainful work; (4) whether

the claimant can still perform work he or she has done in the past (“past relevant work”) despite the severe impairment; and (5) if not, whether the claimant is capable of performing other jobs existing in significant numbers in the national economy in view of the claimant’s age, education, work experience and residual functional capacity (“RFC”). Id. If there is an affirmative finding at any of steps one, two, four or five, the claimant will be found “not disabled.” 20 C.F.R. § 404.1520(b)-(f). See also Brown v. Yuckert, 482, U.S. 137, 140-42 (1987). The Plaintiff carries the initial burden of demonstrating by medical evidence that he or she is unable to return to his or her former occupation. Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). Once the Plaintiff has done so, the burden shifts to the Commissioner to show the existence of substantial gainful employment the claimant could perform. Id.

In the present case, the ALJ made findings as to each step in the Sequential Evaluation. He determined (1) at the time of the hearing, Lightford had not engaged in substantial gainful employment since the protective filing date; (2) Lightford’s impairment is “severe” for purposes of the regulations; but (3) her impairments do not meet, and do not medically equal, an impairment listed in Appendix 1, Subpart P, of Section 404; (4) Lightford’s RFC indicates she cannot perform any of her past relevant work; but (5) because Lightford’s RFC indicates she is capable of performing “sedentary work” as defined in 20 C.F.R. § 416.967(a),² she is not disabled. (R. at 15-20.) At issue in this case is whether the ALJ properly made his determination at steps 3 and 5:

² Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 C.F.R. 967(a).

1. The ALJ's finding that Lightford's impairment does not meet the criteria for an impairment in Appendix 1

The Third Circuit has repeatedly noted that “a cardinal principle guiding disability eligibility determinations is that the ALJ accord treating physicians’ reports great weight, especially when their opinions reflect expert judgment based on a continuing observation of the patient’s condition over a prolonged period of time.” Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000). See also Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999) (citing Rocco v. Heckler, 826 F.2d 1348, 1350 (3d Cir. 1987)); 20 C.F.R. § 404.1527(d)(2) (providing for controlling weight where treating physician opinion is well-supported by medical evidence and not inconsistent with other substantial evidence in the record). In fact, treating physician’s opinions are afforded controlling weight if well-supported by diagnostic evidence and not inconsistent with other medical evidence in the record, and it is an error of law to reject the treating physician’s opinion without adequate explanation. 20 C.F.R. §404.1527; Fagnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001). As such, an ALJ may not make speculative inferences from medical reports, see, e.g., Smith v. Califano, 637 F.2d 968, 972 (3d Cir. 1981), and is not free to employ her own expertise against that of a physician who presents competent medical evidence. Ferguson, 765 F.2d at 37 (1985). Stated most succinctly, an ALJ may reject a treating physician's opinion outright only on the basis of contradictory medical evidence. Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1984).

The ALJ, in determining step 3 of the Sequential Evaluation, found the ME’s testimony, supported by the medical evidence in the record, established “the claimant has no spinal

impairment that meets/equals the criteria for Listing 1.04A in Appendix 1.”³ (R. at 16.) The ALJ noted Dr. Cohen’s and Dr. Dworkin’s reports indicated “lumbar tenderness and spasm with persistent hypoesthesia in the left L5-S1 dermatome,” and “reduced range of spinal motion with much tenderness of the bilateral L5-S1 dermatome.” (Id.) However, the ALJ relied on the ME’s testimony to rule that the same evaluations’ findings of “borderline” straight leg test results, and the lack of any treating physician noting motor weakness or reflex loss in the record, supported the ME’s testimony that Lightford has no impairment meeting the criteria for Listing 104A in Appendix 1.

Looking to the Record, the ME’s testimony offers no clear opinion as to whether Lightford’s impairments meet the criteria for Listing 104A. In fact, the Record indicates the ME could not make any such determination. When more information is needed to make a determination, the regulations provide for an additional consultative examination. 20 C.F.R. §§ 1519-1519f. Certain situations “will normally require a consultative examination.” 20 C.F.R. § 1519a(b). One such situation arises when “[t]he additional evidence needed is not contained in the records of your medical sources.” 20 C.F.R. § 1519(b)(1). At Lightford’s hearing, the ME consistently noted the absence of tests in Lightford’s medical records establishing the motor weakness and reflex loss necessary for a determination as to the relevant impairment. He states,

³ Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).
20 C.F.R. § 404, App. 1.

“if she had loss of touch over L-5 and S-1, at this point, the motor changes should involve shrinkage of the muscles, particularly the calf muscle.” (R. at 200.) The ME explains:

In other words, we have some sensory findings which is predominant finding by her doctor in every examination, it has not changed, but we don't have any motor findings as far as her strength, presence or absence of atrophy, and the reflexes are nowhere in the chart, the knee jerk and ankle jerk which is somewhat disappointing to me because I need those to see whether or not she would qualify under 104A.

(Id.)

The ALJ took testimony from the independent medical examiner which explicitly noted a specific insufficiency in the record. However, the ME did not find that the *results* of any tests indicated a lack of muscle atrophy or reflex loss. Instead, the ME testified as to the *lack of any results at all*. For this reason, the ALJ's ruling cannot be said to be supported by substantial evidence. Accordingly, the matter must be remanded for further administrative proceedings to provide a consultative examination.

2. The ALJ's assessment of Lightford's credibility, and application of the Grid Rules

An ALJ must consider a claimant's subjective symptoms, including pain, which may not be discounted if reasonably consistent with a showing of objective medical evidence of a condition that could reasonably produce the symptoms reported. Chrupcala v. Heckler, 829 F.2d 1269, 1275-76 (3d Cir. 1987); 20 C.F.R. § 404.1529. Where medical evidence exists to support a claimant's subjective complaints, these complaints should be given “great weight.” Mason v. Shalala, 99 F.2d 1058, 1067-68 (3d Cir. 1993); Ferguson v. Schweiker, 765 F.2d 31, 37 (3d Cir. 1985). Therefore, once the claimant has submitted evidence to support subjective claims of disability, an ALJ may not dismiss the evidence simply as “not credible.” Rather, the ALJ must

point to contrary medical evidence. Mason, 99 F.2d at 1067-68; Williams v. Sullivan, 970 F.2d 1178, 1184-85 (3d Cir. 1992).

The ALJ noted that if Lightford's subjective claims, or her treating physician's statements in the medical record, were accepted as fully credible, Lightford would be found unable to perform even sedentary exertional work. (R. at 18.) Unlike the step 3 evaluation, supra, here the lack of objective medical evidence supporting Lightford's subjective claims would support the ALJ's findings. However, the record clearly indicates that Lightford's treating physician attributed her limitations to symptoms supported by an EMG/NCS⁴ study, clinical examinations and the degenerative disc disease at L4-L5 and L5-S1 indicated in her MRI scan. (R. at 163.) Indeed, the ALJ notes Dr. Cohen's entry of the information into Lightford's physical capacities questionnaire of May 27, 2004. (R. at 17.)

The ALJ rejected these claims, relying partly on the ME's testimony, and partly on Lightford's own description of her daily activities. However, the ME's testimony does not point to contradictory medical evidence. Rather, as before, the ME notes the lack of certain medical observations by Lightford's treating physicians as frustrating his ability to form an opinion. When asked if he could form an opinion as to any limitations in lifting, standing and walking Lightford might suffer, based on the evidence before him, the ME explained that the evidence available did not strongly support finding Dr. Cohen's finding, but was not inconsistent with such a limitation:

But there are objective things, that should be objective measurement of the muscles. There should be checking of the flexing and extension of the foot, particularly of the great toe, which is the L-5 root and there should be the ankle

⁴ Electromyogram and Nerve Conduction Study

jerk and the knee jerk recorded in the findings. So, you see, Your Honor, I'm sitting here with only a fragment of the information that I need to answer your question.

(R. at 203-204.) Thus, rather than relying on substantial evidence, the ALJ again relied on the absence of evidence.

Furthermore, while the ALJ rejected Lightford's subjective claims partly based on her testimony as to her daily activities, such a finding of credibility is beside the point. Evaluation of a claimant's subjective complaints is a two-part inquiry, and only the second part involves a credibility determination. Before the ALJ decides whether the claimant's subjective claims are credible, the ALJ must first determine whether there is an underlying medical condition that can reasonably be expected to produce the symptoms alleged. 20 C.F.R. § 404.1529(c)(1). Here, the ALJ has fallen short in this threshold analysis. Lightford's treating physician supports Lightford's subjective claims with reference to objective medical evidence in the form of an EMG/NCS and MRI scan. By discounting this fact with reference to purportedly specific substantial evidence to the contrary, the ALJ has conflated the threshold analysis with the secondary credibility determination.

In any case, as discussed, supra, the ALJ did not make reference to specific, substantial medical evidence to contradict either Dr. Cohen's opinion or the medical evidence of record. Rather, the ALJ took the ME's inability to form an opinion based on the record before him as evidence in itself. That conclusion extends to the ALJ's findings regarding Lightford's RFC. See Burnet v. Apfel, 220 F.3d 112 (3d Cir. 2000) (where the ALJ fails to assess all of the medical evidence, the ALJ's finding regarding the claimant's RFC is unsupported by substantial evidence). As Such, upon remand, the ALJ must point to positive, contradictory medical

evidence, rather than a supposed lack thereof, to disregard Lightford's subjective claims.

Finally, Lightford argues that the ALJ erred by improperly using the Medical-Vocational Guidelines (the "Grids") without rebutting evidence of those non-exertional impairments. Respondent responds by reiterating the position that the ALJ properly discounted Lightford's subjective claims. If a claimant adduces evidence of non-exertional impairments, the Commissioner must rebut the claimant's evidence by using a vocational expert ("VE") or other evidence. Gilliland v. Heckler, 786 F.2d 178 (3d Cir. 1986). If the Commissioner does not rebut evidence of non-exertional impairments in this manner, the ALJ may not use the Medical-Vocational Guidelines to determine that the claimant is not disabled. Green v. Schweiker, 749 F.2d 1066, 1072 (3d Cir. 1984) (noting that the Medical-Vocational Guidelines are to be used only for purely exertional impairments).

Here, the VE testified that, if credence is given to Dr. Cohen's reports, Lightford has non-exertional limitations which preclude any kind of gainful employment. (R. at 207-208.) Since the "other evidence" relied upon by the ALJ to disregard Lightford's subjective claims has been found inadequate, supra, the Court finds it was also error to apply the Grids in this case.

V. Conclusion

For the foregoing reasons, this Court concludes that the ALJ's decision is not supported by substantial evidence. Accordingly, the Commissioner's Motion for Summary Judgment will be denied and Lightford's Motion for Summary Judgment will be granted in part. The decision of the ALJ will be reversed and the Court will remand this case for further administrative proceedings in accordance with this opinion.

An appropriate Order follows.

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

KAREN C. LIGHTFORD,	:	
	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	No. 06-256
JO ANNE BARNHART,	:	
COMMISSIONER, SOCIAL SECURITY	:	
ADMINISTRATION,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 28th day of December, 2006, after careful and independent consideration of the parties' Cross-Motions for Summary Judgment, and review of the record, it is hereby ORDERED that:

1. Plaintiff's Motion for Summary Judgment (Doc. No. 10) is GRANTED;
2. The Commissioner's Motion for Summary Judgment (Doc. No. 11) is DENIED;
3. The case is remanded for further administrative proceedings not inconsistent with this opinion pursuant to the fourth sentence of 42 U.S.C. § 405(g).
4. The Clerk shall mark this case CLOSED for statistical purposes.

BY THE COURT:

MICHAEL M. BAYLSON, U.S.D.J.