

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

CHRISTINA CLEMENTI : CIVIL ACTION
 :
 v. :
 :
 JOHN J. CALLAHAN* : NO. 96-6085

MEMORANDUM ORDER

Presently before the court is the Report and Recommendation of United States Magistrate Judge Rueter in this Social Security benefits action. Plaintiff is appealing a denial of her claim for disability insurance benefits by the Commissioner. Both parties filed motions for summary judgment. The court has reviewed the Report and Recommendation, the objections thereto, the other submissions of the parties and the record herein.

This matter was earlier remanded by order of Judge McGlynn for the purpose of including evidence of plaintiff's emotional distress in the hypothetical posed by the administrative law judge ("ALJ") to the vocational expert ("VE"). The VE initially had been asked to consider only factors based on evidence of plaintiff's physical hearing impairment. At the rehearing, the ALJ included in his hypothetical evidence from the original record pertinent to emotional distress or mental

* The President appointed John J. Callahan as Acting Commissioner of Social Security, effective March 1, 1997, to succeed Shirley S. Chater. Pursuant to Fed. R. Civ. P. 25(d)(1), John J. Callahan is thus substituted for Shirley S. Chater as the defendant in this action.

impairment. The VE opined and the ALJ again concluded that plaintiff is not disabled in that there are a significant number of jobs in the local and national economy which she could perform. Plaintiff argues that this decision is not supported by substantial evidence and that the ALJ improperly failed to consider new evidence offered by plaintiff at the rehearing.

This evidence consisted of the reports of three professionals. One is a single page report of an audiologist, Patricia Dabrowski, recounting the results of an audiologic evaluation of plaintiff performed two years after the initial decision in this case. The second is a report of a psychiatric evaluation also about two years later by Dr. Jeffrey Sarnoff who concluded that plaintiff suffers from major depression. Plaintiff's symptoms from the evidence accepted by the ALJ showed mild to moderate depression. Dr. Sarnoff also opined that plaintiff has post-traumatic flashbacks from childhood experiences. Dr. Sarnoff found that plaintiff was anxious, had diminished concentration and memory lapses. He also found that plaintiff was oriented to person, time, place and situation, displayed good insight and judgment and that her thought processes were logical, coherent and goal directed. The third piece of "new" evidence is a two-page report of Irene Doniger, a registered nurse and psychologist, who evaluated plaintiff a year before the ALJ's initial decision. Ms. Doniger noted psychological difficulties associated with plaintiff's hearing impairment and recommended psychological therapy, but concluded

"[i]t is difficult for me to give a prognosis because of my limited contact with [plaintiff]."

Contrary to plaintiff's suggestion, it does not appear that the remand contemplated the taking of new evidence. The ALJ clearly did not perceive this to be the purpose of the remand. The ALJ began the rehearing by stating that "the limited purpose of this hearing" was to add "the restrictions imposed upon the claimant by her depression as established by the objective evidence in this file" to the hypothetical which was posed to the vocational expert. The record reveals no objection or exception by plaintiff's counsel to this characterization of the purpose of the rehearing. Moreover, the court had specifically found that the report of Ms. Doniger was not "new" evidence but rather was available to plaintiff before the initial decision was made and that no justification was provided for having failed timely to present it.

The court agrees with defendant and the Magistrate Judge that the ALJ did not err in failing to consider this evidence on remand. Ms. Doniger's evaluation and report well predate the primary proceedings before the ALJ. The more recent professional evaluations may, as defendant acknowledges, support a new application for benefits but are not properly part of the pertinent record in this action.

The hypothetical posed to the VE by the ALJ satisfied the condition of remand. There was substantial evidence, including the reports of plaintiff's treating physicians and her

matriculation in a college doctoral graduate program, to support the conclusion of the ALJ in this action.

ACCORDINGLY, this day of July, 1997, consistent with the foregoing and essentially for the reasons carefully set forth by the Magistrate Judge, **IT IS HEREBY ORDERED** that the Report and Recommendation is **APPROVED and ADOPTED**; the plaintiff's motion for summary judgment is **DENIED**; defendant's motion for summary judgment is **GRANTED**; and thus, **JUDGMENT is ENTERED** in the above action for defendant and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.