

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

ELBA LOPEZ,	)	CIVIL ACTION
	)	NO. 96-7741
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN J. CALLAHAN, Acting	)	
Commissioner of Social Security	)	
	)	
	)	
Defendant.	)	

**TROUTMAN, S.J.**

**M E M O R A N D U M**

This case before us is an appeal brought by the Plaintiff, Elba Lopez, seeking judicial review of the final decision of the Commissioner of Social Security denying her claim for supplemental security income (SSI) under Title XVI of the Social Security Act. Presently before the Court are cross-motions for Summary Judgment. For the reasons set forth below, the plaintiff's motion will be denied and the Commissioner's motion will be granted.

**BACKGROUND**

The following factual history was derived from the record of the proceeding in front of the Administrative Law Judge (ALJ).

The Plaintiff was born in Puerto Rico on June 19, 1939.(R. 52) She was 55 years old at the time of her amended

onset of disability.<sup>1</sup> (R. 29). The Plaintiff's educational background is sparse and she purports to understand very little English. She has no relevant work history, although she did attempt to work for two weeks cleaning offices. (R. 32-35). She and her husband live on income from his part-time job. (R. 44).

The Plaintiff applied protectively for SSI on September 28, 1993. Plaintiff claims that she has been disabled since June 19, 1994<sup>2</sup>, because of arthritis, breathing problems, and diabetes mellitus. The Commissioner denied her application both initially and upon reconsideration. The Plaintiff then filed a request for a hearing before an ALJ. Plaintiff's request was granted and the hearing was held September 8, 1995. Represented by counsel, the Plaintiff appeared and testified on her own behalf through an interpreter. Plaintiff testified that her list of maladies from which she suffers include: chest pain; shortness of breath; dizziness; diabetes;<sup>3</sup> arthritis and pain and swelling in the leg. (R. 87-92, 94, 101-105, 108-77). Plaintiff testified that these impairments prevent her from lifting more than 10 pounds, standing for more than 10 minutes, and sitting for an

---

1. Age 55 is considered an "advanced age" under 20 CFR § 416.963.

2. Plaintiff originally claimed that the onset of her disability was January 2, 1989. However, at the time of the hearing, Plaintiff amended her onset of disability to June 19, 1994.

3. A progress note dated 3/23/92 indicated that the Plaintiff was taking insulin for her diabetes, and was directed to maintain a specific diet and maintain good personal hygiene for her diabetes.

extended period of time. (R. 37-41). Notwithstanding all this, she testified that she was capable of mopping, dusting, cooking, and doing the laundry. (R. 37-38).

Upon review of the record, the ALJ concluded that the Plaintiff did not suffer from a severe impairment and she, therefore, was not disabled as defined by the statute. The ALJ based his determination primarily on the documentary evidence in the record. This documentary evidence consisted of the Plaintiff's medical records. These records, which described the Plaintiff's physical condition, were prepared by her primary physician, Dr. Barry Penschansky. The ALJ assigned greater weight to the medical records than to the Plaintiff's own testimony, finding the records to be a more objective and accurate assessment of Plaintiff's condition. Plaintiff's testimony, the ALJ concluded, was not wholly credible. Accordingly, the ALJ determined that Plaintiff not was disabled within the meaning of the Act. Thereafter, the plaintiff requested review by the Appeals Council which was denied. The Plaintiff subsequently commenced the present action for judicial review of the Commissioner's final decision pursuant to 42 U.S.C.A. § 405(g). Jurisdiction is properly based upon §§ 205(g) and 1631(c)(3) of the Social Security Act. 42 U.S.C. § 405(g), 1383(c)(3).

I.

When reviewing a decision of the Commissioner in social security cases, the district court's role is limited to determining whether the Commissioner applied the appropriate legal standards, see Podedworny v. Harris, 745 F.2d 210, 221, n. 8 (3rd Cir. 1984) (Court stated that, "Our scope of review on matters of law is plenary"), and whether substantial evidence exists to support the Commissioner's findings of fact. Allen v. Brown, 881 F.2d 37, 39 (3rd Cir. 1989); Stunkard v. Secretary of Health and Human Services, 841 F.2d 57, 59 (3rd Cir. 1988). 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, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L.Ed. 126 (1938)). The substantial evidence standard has otherwise been described as requiring "more than a mere scintilla of evidence but ... less than a preponderance." Brown v. Bowen, 845 F.2d 1211, 1215 (3rd Cir. 1988). The District Court, in reviewing the decision, may not undertake de novo review of the Commissioner's decision; the court does not reweigh the evidence of record. Monsour Medical Ctr. v. Heckler, 806 F.2d 1185, 1190 (3rd Cir. 1986). Accordingly, in reviewing the decision the District Court is not permitted to substitute its opinion for that of the ALJ, even if the court might have reached a different result on the basis of the evidence. Monsour, 806 F.2d at 1190-91.

## II.

"The Social Security Act defines disability in terms of the effect a physical or mental impairment has on a person's ability to function in the workplace." Heckler v. Campbell, 461 U.S. 458, 459-60, 103 S.Ct. 1952, 1953, 76 L.Ed.2d 66 (1983); 42 U.S.C.A. § 423(c) (West 1991). Disability benefits are provided for individuals unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. . § 423(d)(1)(A) (West 1991); Campbell, 461 U.S. at 460, 103 S.Ct. at 1953. A person is determined to be disabled when "his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. § § 423(d)(2)(A), 1382c(a)(3)(B).

In accordance with the authority granted under 42 U.S.C. § 405(a), as incorporated by reference in 42 U.S.C. § 1383(d)(1), the Commissioner has promulgated regulations to give effect to and further define the provisions of the Act. See 20 C.F.R. § § 404.1520, 416.920. The regulations provide for a

five step sequential evaluation for disability insurance benefits and supplemental security income benefits. See, 20 C.F.R. § 404.1520 <sup>4</sup>; Williams v. Sullivan, 970 F.2d 1178, 1182 (3rd Cir. 1992), cert. denied, 507 U.S. 924, 113 S.Ct. 1294, 122 L.Ed.2d 685 (1993).

Step 1 of the analysis 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). If a claimant is found to be engaged in substantial gainful activity,<sup>5</sup> the claim of disability will be denied, regardless of medical condition. Bowen v. Yuckert, 482 U.S. 137, 140, 107 S.Ct. 2287, 2290-91, 96 L.Ed.2d 119 (1987). If the claimant is not engaged in substantial gainful activity, the analysis of the claim proceeds to step two.

Step two, known as the "severity regulation," focuses on evaluating whether the claimant is suffering from a severe impairment. 20 C.F.R. § 404.1520(c).<sup>6</sup> An impairment is

---

4. If a decision can be made at any step in the process, review does not proceed to the next step. 20 C.F.R. § 416.920 (1996).

5. Substantial gainful activity is work that is both substantial and gainful ... Substantial work activity is work activity that involves doing significant physical or mental activities. [An applicant's] work may be substantial even if it is done on a part-time basis or it [the applicant] does less, gets paid less, or has less responsibility than when [the applicant] worked before ... Gainful work activity is work activity that [the applicant] does for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

20 C.F.R. § 404.1572

6. Notably, in Bowen v. Yuckert, 482 U.S. 137, 107 S. Ct. 2287, 96 L.Ed.2d 119 (1987), the Supreme Court upheld the severity  
(continued...)

considered severe if it is "of magnitude sufficient to limit significantly the individual's 'physical or mental ability to do basic work activities.'" Santise v. Schweiker, 676 F.2d 925, 927 (3rd Cir. 1982) (quoting 20 C.F.R. § 404.1520(c)), cert. dismissed, 461 U.S. 911, 103 S.Ct. 1889, 77 L.Ed.2d 280 (1983). The regulations define "basic work activities" as "walking, standing, sitting, lifting, pulling, reaching, carrying, or handling...seeing, hearing, and speaking,...[u]nderstanding, carrying out, and remembering simple instructions ... [u]se of judgment ... [r]esponding appropriately to supervision, co-workers and usual work situations ... [d]ealing with changes in a routine work setting." 20 C.F.R. § 404-1521 (b) (1)-(6). Moreover, the Court determined, that the burden to show a medically determinable impairment, is on the claimant. See, Bowen v. Yuckert, 482 U.S. 137. Notably, an ALJ need only consider medical evidence in step two, without regard to vocational factors such as the claimant's age, education or work experience. Id., (citing 20 C.F.R. § § 404.1520(c), 416.920(c)). In step two of the inquiry, the claimant must make a threshold showing that his or her impairments are sufficiently severe to satisfy this

---

6. (...continued)  
regulation (Step Two of the five step analysis) as valid on its face. The Court explained that if the impairments are not severe enough to limit significantly the claimant's ability to perform most jobs, by definition the impairment does not prevent the claimant from engaging in any substantial gainful activity. 107 S. Ct. at 2293.

standard. See, Yuckert, 482 U.S. at 146 n. 5. If a claimant fails to meet this showing, he or she is denied SSI. Id. If the claimant has met the requirements of the first two steps the analysis proceeds to step three.

Step three requires determining whether the claimant has an impairment or impairments which meets or equals a listed impairment in Appendix 1. 20 C.F.R. 404.1520(d). Next, Step 4 states that if an individual is capable of performing past relevant work, she will not be found to be disabled. 20 C.F.R. § 404.1520(e). Lastly, 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).

In the present case, the ALJ's decision to deny benefits turned on the second step of the inquiry, i.e., whether or not the claimant suffers from a severe impairment.<sup>7</sup> The ALJ determined at Step Two that the Plaintiff did not suffer from a severe impairment or combination of impairments that would significantly limit her ability to perform basic work activities. In making his determination, the ALJ, while thoroughly considering the nature of Plaintiff's complaints,<sup>8</sup> found that the

---

7. At step one of the five-step sequential analysis, the ALJ observed that the Plaintiff had no relevant work history and that she, therefore, was not participating in substantial gainful employment.

8. In accordance with the guidelines specified in Social Security Ruling 95-5p and 20 CFR § 416.929(c) (3), the ALJ  
(continued...)

evidence in the medical records failed to demonstrate that the Plaintiff's various conditions resulted in a significant impairment. The ALJ examined Dr. PENCHANSKY's progress notes which, while confirming the existence of Plaintiff's conditions, also supported the proposition that the Plaintiff's conditions were all well controlled by medication and that she suffers no adverse effects from the medication. The ALJ also observed that the Plaintiff herself testified that she was capable of doing housework on a regular basis. In light of the above, the ALJ concluded that the Plaintiff was not severely impaired.

Notably, the ALJ in making his assessment, did not consider other factors such as the Plaintiff's age, work history and experience in reaching his conclusion. This is because, as mentioned earlier, under 20 C.F.R. § 416.920(c) if it is determined that the claimant does not have a severe impairment at Step two (as the ALJ did in the present case), then the Commissioner will not consider claimant's age, education, or work experience.<sup>9</sup> Thus, in the present case, since the ALJ

---

8. (...continued)  
carefully considered the nature, location, onset, duration, frequency, radiation, and intensity of the Plaintiff's allegations of pain and limitations of function; the precipitating and aggravating factors in conjunction with the type, dosage, effectiveness, and adverse side-effects of the Plaintiff's medications; and the Plaintiff's treatments, functional restrictions, and activities of daily living. (See, Record at 14).

9. As mentioned previously, the Supreme Court in Bowen v. Yuckert, 482 U.S. 137, upheld the step two severity regulation as valid on its face.

determined that the Plaintiff did not suffer from a severe impairment, he did not consider her age, or lack of education and work experience.

On appeal the Plaintiff argues that the evidence of her impairments satisfy the severity standard set forth under the step two severity standard. Plaintiff argues that the severity standard should be used only to screen de minimis claims. The Plaintiff refers to the Court of Appeals for the Third Circuit in Baily v. Sullivan, 885 F.2d 52, 56-57 (3rd Cir. 1989),<sup>10</sup> to support the proposition that the use of the Step Two severity regulation can only be valid if applied solely to screen out de minimis claims. She also argues that the effect of her impairments must be considered in combination as well as singularly. See, Bailey v. Sullivan, 885 F.2d at 60. ("... [I]t would be illogical to read the Act as precluding the Secretary from considering the combined functional effect of nonsevere impairments). Plaintiff points out that she has been diagnosed and treated for diabetes, arthritis and asthma.<sup>11</sup> As further

---

10. In a class action of Pennsylvania and Delaware claimants who had been denied SSA or SSI benefits at step two, the Third Circuit decided that portions of the Secretary's regulations and rulings, as applied, were inconsistent with the Social Security Act and were, therefore, invalid. Baily v. Sullivan, 885 F.2d 52, 61 (3rd Cir. 1989)

11. According to the treatment notes of Plaintiff's treating physician, Dr. Barry Penchansky, the Plaintiff has been treated with medication, Maxair, and an inhaler for her asthma. The Plaintiff testified that she uses Maxair three times daily every other day. To control her diabetes, the Plaintiff uses insulin. With respect to her arthritis, the Plaintiff has been treated  
(continued...)

indicia that she is "disabled" the Plaintiff relies on testimony elicited from the Vocational Expert, Jan Howard. Howard testified that an individual of the Plaintiff's age who suffers from mild arthritis and degenerative joint disease and asthma for which medication is prescribed would be incapable of performing "heavy" work.<sup>12</sup> Plaintiff contends that this testimony constitutes prima facie evidence that her impairments satisfy the de minimis severity standard.

At the hearing, as evidence of her disability, the Plaintiff testified that she had trouble standing for a time period greater than 10 minutes. (R. 37). She stated that she experiences pain in her joints, shortness of breath, dizziness, and chest pain. (R. 105, 41, 43). She also testified, however, that she was capable of performing household activities including the laundry and cooking. (R.37-38, 41).

It is true, as Plaintiff argues, that the Step Two severity standard is not intended to screen out significant disabilities and that Plaintiff's various impairments must be taken into consideration collectively. See, Bailey v. Sullivan, 885 F.2d 52. Nevertheless, having taken plaintiff's arguments into account in reviewing the evidence, we find that the record sufficiently supports the ALJ's decision, and, therefore, we

---

11. (...continued)  
with anti-inflammatory medication.

12. Heavy work requires an individual to lift up to 100 pounds at a time with frequent lifting and carrying of objects weighing up to 50 pounds. 20 C.F.R. § 416.967(d) (1996).

conclude that the ALJ's decision was based on substantial evidence.

First, the ALJ did consider Plaintiff's ailments in combination and found that the Plaintiff did not have any impairments, either singularly or in combination, of such severity as to significantly limit her physical or mental ability to do basic work activity. As the progress notes indicate, the Plaintiff's conditions were well controlled and there was nothing to suggest that such conditions prevented her from participating in basic work activity.<sup>13</sup> Reviewing the progress notes relied on by the ALJ, we observe that nothing in these progress notes indicates that the Plaintiff is significantly impaired. According to her records, Plaintiff's lungs were consistently clear and she had no significant problems with her diabetes. (R. 87, 101, 103, 105, 110, 111) Plaintiff's blood sugar levels have remained stable. (R. 109). Plaintiff's arthritis is mild and she has no loss in range of motion. (R. 94). Indeed, these records directly contradict the proposition that the Plaintiff is significantly impaired.

Moreover, the evidence establishes, by means of Plaintiff's own testimony, that she participates in a significant amount of housework. Plaintiff indicated in her disability

---

13. On a visit to Dr. Penchansky on 1/21/93, the record indicates, " Denies any problems". (R. 109). A progress note dated 3/23/93 indicates that Plaintiff's lungs were clear with no wheezing and that she was feeling well with no problems with daily activities. (R. 111).

report that she did all the cooking and cleaning, and attended church and baseball games. (R. 74). Moreover, a progress note dated July 25, 1994 indicated that the Plaintiff had been performing a lot of housework at the time. Such testimony belies the argument that Plaintiff cannot participate in basic work activities and is inconsistent with the allegation that she is incapable of engaging in substantial gainful activity.

Thus, other than Plaintiff's subjective testimony concerning the effects of her medical conditions, there is very little to support a finding of disability. Plaintiff has produced no evidence from her physicians to suggest she is severely impaired.

In addition, the ALJ's assessment that her testimony was not wholly credible is supported by substantial evidence. The ALJ was reasonable in crediting Plaintiff's testimony only to the extent that it corresponded with the medical records. Notably, an ALJ can discredit a claimant's complaints of pain where they are contradicted by medical evidence in the record, so long as he explains his basis for doing so. Serody v. Chater, 901 F. Supp. 925 (E.D. Pa. 1995) quoting Mason v. Shalala, 994 F.2d 1058, 1067 (3rd Cir. 1993); Van Horn v. Schweiker, 717 F.2d 871, 873 (3rd Cir. 1983) (An ALJ is empowered to evaluate the credibility of a witness and disregard the testimony where he provides his reasons for doing so). We find that the ALJ's rejection of Plaintiff's allegations of subjective pain was supported by the progress notes recorded by Dr. Barry Penschansky

which indicated that the Plaintiff's conditions responded to medication.

It is not necessary to further review the decision of the ALJ. After thorough review of the evidentiary record, the factual findings of the ALJ, and the application of the appropriate standards, we are satisfied that the Commissioner's final decision is supported by substantial evidence.

Since there are no disputed issues of material fact and the Commissioner is entitled to judgment as a matter of law, we conclude that the Commissioner's motion for summary judgment must be granted, while the Plaintiff's motion is denied. Accordingly, we will enter an Order reflecting this decision.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

ELBA LOPEZ,	)	CIVIL ACTION
	)	NO. 96-7741
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN J. CALLAHAN, Acting	)	
Commissioner of Social Security	)	
	)	
	)	
Defendant.	)	

TROUTMAN, S.J.

O R D E R

AND NOW, this            day of September, 1997, upon consideration of the parties' motions for summary judgment and the administrative record in support thereof, **IT IS HEREBY ORDERED:**

1. Plaintiff's motion for summary judgment, (Doc. # 7) is **DENIED;**
2. Defendant's motion for summary judgment, (Doc. # 8) is **GRANTED;**
3. Judgment is entered in favor of the defendant, John J. Callahan, Commissioner of Social Security, and against the Plaintiff.

---

S.J.