

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

ZINAIDA FEDOROVSKAYA : CIVIL ACTION
 :
 v. :
 :
 :
 KENNETH S. APFEL, :
 Commissioner of Social Security : NO. 98-2131

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

August 17, 1999

Plaintiff Zinaida Fedorovskaya ("Fedorovskaya") seeks review under 42 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security (the "Commissioner") denying her claim for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act (the "Act"). See 42 U.S.C. § 401, et seq. The parties' cross-motions for summary judgment were referred to United States Magistrate Judge Thomas J. Rueter ("Judge Rueter") for a Report and Recommendation. Judge Rueter recommended that Fedorovskaya's motion for summary judgment, or in the alternative motion for remand, be denied and the Commissioner's motion for summary judgment be granted.

Fedorovskaya filed the following objections to Judge Rueter's Report and Recommendation: 1) that Judge Rueter erred in finding the Commissioner's failure to give appropriate weight to Fedorovskaya's treating physicians was supported by substantial evidence; and 2) that Judge Rueter erred in finding the Commissioner's determination that Fedorovskaya retained the residual functional capacity to perform her past relevant work

was supported by substantial evidence.

The court conducts de novo review of the portions of a magistrate judge's Report and Recommendation on a dispositive motion to which specific objections have been filed. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). In reviewing the decision of the Commissioner, this court must uphold the denial of benefits as long as the Commissioner's determination is supported by substantial evidence. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 390 (1971); Doak v. Heckler, 790 F.2d 26, 28 (3d Cir. 1986). "Substantial evidence is defined as the relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Maduro v. Shalala, No. 94-6932, 1995 WL 542451, at *1 (E.D. Pa. Sept. 9, 1995) (Shapiro, J.); see Richardson, 402 U.S. at 401; Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979). Substantial evidence is "more than a scintilla of evidence but may be somewhat less than a preponderance of the evidence." Maduro, 1995 WL 542451, at *1; see Ginsburg v. Richardson, 436 F.2d 1146, 1148 (3d Cir.), cert. denied, 402 U.S. 976 (1971). The court cannot conduct de novo review of the Commissioner's decision or re-weigh the evidence of record. See Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986), cert. denied, 482 U.S. 905 (1987).

Fedorovskaya claims the opinions of her treating physicians should have been given controlling weight in determining the

extent of her disability. Generally, the Commissioner should give more weight to the opinion of a treating physician than a nontreating physician. See 20 C.F.R. § 416.927(d)(2). But the Commissioner, faced with conflicting medical evidence, must choose which evidence to credit. The Commissioner may decide, ultimately, to accord more weight to nontreating physicians if there is substantial reason to do so. In this case, the Commissioner found the opinions of the consulting physicians more credible both because they were more internally consistent and because they were more consistent with other evidence in the record, such as the objective medical findings and Fedorovskaya's testimony. The Commissioner was entitled to weigh the evidence in this manner and the court cannot say his determination was erroneous.

Fedorovskaya also argues Judge Rueter erred in finding that substantial evidence supported the Commissioner's determination that Fedorovskaya retained the residual functional capacity to perform her past relevant work. In support of her argument, Fedorovskaya relies on her testimony at the administrative hearing and her medical records. Judge Rueter correctly reviewed the Commissioner's bases for his finding plaintiff able to perform her past relevant work, in particular the classification of her past relevant work as light work, the conflicting medical evidence, and various inconsistencies in Fedorovskaya's testimony

suggesting she was capable of performing light work.

Upon review of the record, the court cannot say the Commissioner's determination was not supported by substantial evidence. See 42 U.S.C. § 405(g); Richardson, 402 U.S. at 390. A "reasonable mind" might find sufficient evidence in the record to conclude that Fedorovskaya was not disabled because she was capable of performing her past relevant work as a researcher.

An appropriate Order follows.

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ORDER

AND NOW, this 17th day of August, 1999, upon consideration of the parties' cross-motions for summary judgment, de novo review of the Report and Recommendation of United States Magistrate Judge Thomas J. Rueter, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED AND ADOPTED**.
2. Plaintiff's motion for summary judgment, or in the alternative for remand, is **DENIED**.
3. Defendant's motion for summary judgment is **GRANTED**. Judgment is **ENTERED** in favor of defendant.

Norma L. Shapiro, S.J.