

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

INES MORALES : CIVIL ACTION  
: :  
v. : :  
: :  
KENNETH S. APFEL, : :  
Commissioner of the : :  
Social Security Administration : NO. 98-5719

MEMORANDUM AND ORDER

BECHTLE, J. SEPTEMBER , 1999

Presently before the court are plaintiff Ines Morales' ("Morales") Objections to the Magistrate Judge's Report and Recommendation. For the reasons set forth below, the court will approve and adopt the Report and Recommendation.

**I. BACKGROUND**

This is a judicial review of a final decision of the Commissioner of Social Security ("Commissioner") denying Morales' claim for supplemental security income ("SSI") under Title XVI of the Social Security Act.

Morales was born on April 2, 1947 and was forty-nine years old at the time of the hearing before the Magistrate Judge on December 6, 1996.<sup>1</sup> (R. 26.) Morales' education terminated in the middle of the sixth grade in her native Puerto Rico. (R. 75 & 185.) Morales moved to the United States from Puerto Rico in

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<sup>1</sup>Under 20 C.F.R. § 416.963(b), a person under age 50 is classified as a "younger person," which recognizes that such person's age will generally not seriously affect her ability to adapt to a new work situation.

1991.<sup>2</sup> (R. 76.) Morales cannot read or speak English.<sup>3</sup> (R. 74-76.) Morales stated that she worked in Puerto Rico as a waitress, but has not looked for work in the United States because of her ill health. (R. 76.)

Morales testified that she suffers from asthma, migraines which cause nausea and problems with the veins in her legs. In August 1993, Morales' began receiving treatment for venous insufficiency. (R. 245.) Treatment includes biweekly injections of a venosclerosing agent. Id. Morales' treating physician, Dr. Jose Castillo, M.D., recommended that she elevate her legs while in a seated position and avoid standing, walking and/or sitting continuously for periods greater than four hours. Id. Since 1993, Morales has also sought help for nerves and depression at a mental health clinic. (R. 83.) She has sessions with both a therapist and psychiatrist. Id. Morales states that the therapy has helped her. (R. 85.)

Morales cares for two sons. (R. 180 & 186.) At the time of the hearing, Morales received welfare benefits from the Department of Public Assistance. (R. 76.) She is able to cook, pay bills, go shopping, and she relies on a friend for transportation. (R. 87 & 186.)

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<sup>2</sup> The medical evidence suggests that Morales moved to this area when she was twenty years old, and has since divided her time between here and Puerto Rico. (R. 178 & 185.)

<sup>3</sup> Because Morales is unable to communicate in English, the ALJ elicited the services of an interpreter during the hearing.

On December 22, 1994, Morales applied for SSI, alleging a disability that began on November 1, 1994. This claim was denied initially and again upon reconsideration. On December 6, 1996, Morales testified at a hearing before Administrative Law Judge Owen B. Katzman (the "ALJ"). A vocational Expert ("VE") also testified at Morales' hearing. On December 26, 1996, the ALJ found that Morales had not been under a disability as defined by the Social Security Act at any time through the date of the decision. In his decision denying Morales benefits, the ALJ made the following Findings of Fact and Conclusions of Law:

1. There is no proof that claimant engaged in substantial gainful activity since November 1, 1994.
2. Claimant has a combination of impairments, including asthma, anxiety disorder, and varicose veins of the legs, which is more than "non-severe" under the regulations at 20 C.F.R. § 416.921(a).
3. Claimant's impairments, considered singly or in combination, do not meet or equal the criteria of any impairment in the Listing of Impairments in Appendix 1, Subpart P, Regulations No. 4.
4. Claimant's assertions as to constant headache pain, need to keep her legs elevated, and inability to work because of her "nerves" are not substantiated by record evidence and are not credible.
5. Claimant has the exertional residual functional capacity to do heavy work, as defined in the regulations, subject to the need to elevate her legs after standing or walking continuously for four hours and the inability to work at a stressful job requiring complex tasks.
6. Claimant is currently 49 years old, and has been a "younger individual" at all relevant times.
7. Claimant has a sixth grade education in Puerto Rico, and is illiterate in English.

8. Claimant does not have any past relevant work experience.
9. While claimant's non-exertional limitations erode the occupational base of jobs at all exertional levels, it is not to such a degree that there are not a substantial number of jobs available at all exertional levels.
10. Claimant has not been under a "disability," as defined in the Social Security Act, at any time through the date of this decision.

(R. 33-34.) On June 30, 1999, Chief Magistrate Judge Melinson ("Magistrate Judge") issued a Report and Recommendation finding that substantial evidence existed to support the ALJ's findings. On July 19, 1999, Morales filed Objections to the Magistrate Judge's Report and Recommendation.

## **II. LEGAL STANDARD**

Judicial review of administrative decisions is limited. The court may not re-weigh the evidence. The court determines only whether the Commissioner's decision is supported by substantial evidence. Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1190-91 (3d Cir. 1986) (citations omitted). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kangas v. Bowen, 823 F.2d 775, 777 (3d Cir. 1987). Findings of fact made by an ALJ must be accepted as conclusive, provided that they are supported by substantial evidence. 42 U.S.C. § 405(g). In reviewing a decision of the ALJ, the court "need[s] from the ALJ not only an expression of the evidence s/he considered which supports the

result, but also some indication of the evidence which was rejected." Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981) (remanding case back to Secretary of Health and Human Services where ALJ failed to explain implicit rejection of expert medical testimony which was probative and supportive of disability claimant's position). The Third Circuit has recognized that "there is a particularly acute need for some explanation by the ALJ when s/he has rejected relevant evidence or when there is conflicting probative evidence in the record." Id. at 706. The court reviews de novo the portions of the Magistrate Judge's Report and Recommendation to which objections are filed. 28 U.S.C. § 636(b)(1)(C).

### **III. DISCUSSION**

To receive disability insurance benefits, a claimant must show that he or she is 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. . . . [The impairment must be so severe that the claimant] 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)(1)(A) & (d)(2)(A).

An ALJ considering a claim for disability insurance benefits undertakes the five-step sequential evaluation of disability claims set forth in 20 C.F.R. § 404.1520. Under Step One, if the claimant is working and the work constitutes substantial gainful

activity, the ALJ must find that the claimant is not disabled regardless of medical condition, age, education or work experience. 20 C.F.R. § 404.1520(b). Under Step Two, the ALJ determines whether the claimant has a severe impairment which significantly limits his or her physical or mental ability to do basic work activity. 20 C.F.R. § 404.1520(c). Under Step Three, the ALJ must determine whether the claimant's impairment meets or equals the criteria for a listed impairment as set forth in 20 C.F.R. pt. 404, subpt. 4, Appendix 1. 20 C.F.R. § 404.1520(d). Under Step Four, if the ALJ finds that the claimant retains the residual functional capacity to perform past relevant work, the claimant will not be found to be disabled. 20 C.F.R. § 404.1520(e). Under Step Five, other factors, including the claimant's residual functional capacity, age, education and past work experience must be considered to determine if the claimant can perform other work in the national economy. 20 C.F.R. § 404.1520(f).

Morales asserts four grounds on which the Magistrate Judge's and the ALJ's findings are not supported by substantial evidence. First, Morales contends that the ALJ committed error by not properly addressing and considering Dr. Lindner's psychiatric assessment of Morales. Second, Morales argues that the ALJ did not properly evaluate the VE's testimony regarding the evidence of substantial gainful work that Morales could perform. Third, Morales asserts that the ALJ did not properly assess the evidence pertaining to Morales' IQ score, and that at minimum, the case

should be remanded to the Commissioner for reconsideration of Morales' IQ. Finally, Morales claims that there is no substantial evidence to support the conclusion that she retains the residual functional capacity to perform heavy work. The court will review each argument separately.

**A. Dr. Lindner's Evaluation**

Dr. Marged Lindner, Ph.D., evaluated Morales regarding her allegation of severe mental impairment and concluded that Morales has a mild to moderate anxiety disorder. (R. 28 & 188.) Morales argues that although the ALJ discussed Dr. Lindner's consultative examination report in his decision, the ALJ failed to adequately consider the Psychiatric Activities Assessment Dr. Lindner completed. Morales asserts that had the medical opinions in Dr. Lindner's psychiatric activities assessment been credited, a finding of disability should have been made.

The Commissioner has promulgated regulations dealing specifically with the evaluation of mental impairments. 20 C.F.R. § 416.920a; See Woody v. Secretary of Health and Human Servs., 859 F.2d 1156, 1159 (3d Cir. 1988) (discussing regulations). In assessing mental disorders to determine disability, the Commissioner is required to consider medical evidence including certain defined clinical signs, symptoms and/or laboratory or psychological test results. 20 C.F.R. § 416.920a(b). The Commissioner must also determine the severity of the impairment by assessing the functional limitations

resulting from it. Id. § 416.920a(b)(3).<sup>4</sup>

Dr. Lindner completed a psychiatric activities assessment of Morales on April 7, 1995, prior to dictating a disability determination on April 9, 1995. (R. 185-92). The psychiatric activities assessment states that Morales is able to clean, cook, shop and pay bills. (R. 189.) Dr. Lindner adds that Morales easily feels fatigued, is easily upset and easily agitated under pressure. (R. 191-92.) Dr. Lindner opines that although Morales needs more instruction than average to carry out instructions, she seems able to accomplish familiar tasks. (R. 191.) Dr. Lindner determined that Morales is able to make decisions and to get along with others. (R. 191.)

The disability determination completed by Dr. Lindner concludes that Morales:

has evidence of Anxiety Disorder of which current symptoms include feeling keyed up or on edge, some occasional difficulty in concentration, some irritability and muscle tension. The extent of her impairment is mild to moderate, and she is able to take care of the activities of daily living including raising a family, paying her bills, and running her household.

She has the ability to learn new tasks, although her level of intelligence is borderline and her speed in learning is slow. She would be able to learn and perform simple repetitive tasks. She would probably be made anxious and function poorly in a noisy environment, and be more easily upset by pressure than the average employee but if necessary she could handle this.

(R. 188.) The psychiatric activities assessment Dr. Lindner

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<sup>4</sup>For example, the rating of limitations of the activities of daily living and social functioning is based on a five point scale: none, slight, moderate, marked and extreme. Id.

completed on April 7, 1995 is not inconsistent with his disability determination of Morales on April 9, 1995.

After evaluating the evidence, the ALJ concluded that:

Dr. Lindner's diagnostic impression was that [Morales] had anxiety disorder, with some occasional difficulty concentrating, irritability, and muscle tension. [Dr. Lindner] opined that claimant's impairment was mild to moderate, and noted that claimant was able to care for her family and attend to everyday activities. She thought that claimant would be able to learn and perform simple repetitive tasks, and would probably be made anxious in a noisy environment.

(R. 28.) The ALJ determined that Morales' anxiety disorder:

imposes a "slight" restriction on her ability to perform daily activities, "moderate" difficulty in maintaining social functioning, "seldom" causes deficiencies of concentration, and "never" has resulted in episodes of deterioration or decompensation in work-like settings.

(R. 30.) The ALJ found that although Morales suffers from anxiety disorder, the evidence did not reveal a mental impairment so severe as to preclude performing substantial gainful activity. Id.

The ALJ's conclusion is substantially supported by and consistent with reports submitted by Drs. Lindner, Brantz, and Farias-Kruzel. Dr. Richard Brantz, D.O., examined Morales on March 27, 1995 at the request of the Commissioner. (R. 27, 182-83.) Dr. Brantz reported that Morales complained of "bad nerves" and headaches "usually associated with an episode of extreme anxiety and being upset." (R. 182.) Dr. Brantz stated that Morales answered all of his questions in a "clear and calm manner" except that when he asked about her nervous condition, she cried. (R. 182-83.) Dr. Brantz's impression was that of

"hypertension by history, anxiety neurosis by history, and varicosities that [were] essentially resolved." (R. 27 & 183.) Dr. Roy Farias-Kruzel, D.O., treated Morales from November 1994 through September 1996 for various ailments including anxiety disorder. (R. 198-218.) At the request of the Commissioner, Dr. Farias-Kruzel completed a consultative disability determination of Morales on March 2, 1995. (R. 28, 178-80.) Dr. Farias-Kruzel reported that Morales had a history of major depression with mixed anxiety. (R. 178.) He assessed Morales' behavior, speech and affect to be normal. (R. 28 & 179.) He found no evidence of depersonalization and assessed her stream of thought to be logical and adequate. (R. 28 & 179.) He opined that the prognosis for Morales is "fair to good with continued support and probable long-term psychotropic medication." (R. 28 & 180.)

The ALJ's conclusion is also substantially supported by Morales' ability to maintain a household and care for her children. (R. 29 & 188.) After careful review of the record, the court finds that substantial evidence exists to support the ALJ's findings.

**B. Evidence of Substantial Gainful Work**

Morales next objects that the ALJ did not properly evaluate the VE testimony and erroneously concluded that she was capable of performing and sustaining substantial gainful activity on a regular and continuing basis. Testimony of a VE constitutes substantial evidence for purposes of judicial review where a hypothetical question considers all of a claimant's impairments

which are supported by the medical record. See Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987) (stating that "[a] hypothetical question must reflect all of a claimant's impairments that are supported by the record; otherwise the question is deficient and the expert's answer to it cannot be considered substantial evidence.") Hypothetical questions need only include factors that are supported by objective medical evidence contained in the record. Id. at 1271. It is not necessary for the ALJ to include facts that are supported by a claimant's subjective testimony only. Id.

In this case, the ALJ asked the VE if there were any jobs that could be performed by a similarly situated claimant, specifically: one with the same education; lack of communication skills in English; the ability to stand, walk and sit for four hours a day; the need to keep legs elevated; the ability to occasionally lift twenty pounds and no ability to handle unusually stressful situations.<sup>5</sup> (R. 91.) The VE identified work that such an individual could do, listing several sedentary manufacturing jobs, with a total of approximately 200,000 jobs in the national economy and 4,000 in the regional economy and several light work jobs, with a total of approximately 500,000 in the national economy and 13,000 in the regional economy. (R. 91-92.) The VE noted that she would reduce these numbers by 20-

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<sup>5</sup> The ALJ ultimately found that Morales could occasionally lift one hundred pounds. In his decision, the ALJ notes that the hypothetical presented to the VE described a person significantly more limited than he found Morales to be. (R. 32.)

25% because of the hypothetical question's requirement that the individual be able to work with legs elevated when sitting. (R. 92.) Based on the evidence, the ALJ concluded that there were a substantial number of jobs that Morales could perform at all exertional levels. (R. 33.)

Morales argues that the hypothetical presented to the VE was erroneously limited to "unusually" stressful situations. Morales asserts that because of her sensitivity to stress, she cannot perform sustained work activities in an ordinary work setting on a regular and continuing basis. The ALJ determined that Morales' assertions as to an inability to work because of her "nerves" were not substantiated by record evidence and were not credible. (R. 33.) The ALJ found that although Morales suffers from anxiety disorder and is not able to work "at a stressful job requiring complex tasks," her reaction to stress is not work preclusive. (R. 33.)

In his consultative evaluation, Dr. Lindner reported that Morales' symptoms of "feeling keyed up or on edge, some occasional difficulty in concentration, some irritability and muscle tension" indicate an anxiety disorder. (R. 188.) However, Dr. Lindner opined that the extent of Morales' impairment is mild to moderate. Id. Dr. Lindner reported that Morales is able to take care of the activities of daily living including raising a family, paying her bills and running her household. Id. On a psychiatric activities assessment form, Dr. Lindner opined that Morales has no problems with social

functioning. (R. 190.) He reported that Morales is easily upset and agitated with pressure and often focuses on physical complaints. (R. 192.) He concluded that although Morales needs more instruction than average to carry out tasks, she seems able to accomplish familiar tasks. (R. 191-92).

The record also shows that Bureau of Disability Determination psychologist Paul Perch, Ed.D., conducted a Mental Residual Functional Capacity Assessment of Morales on April 19, 1995. (R. 135-37.) Dr. Perch concluded that Morales was not significantly limited in her ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and that she was able to perform at a consistent pace without an unreasonable number of rest periods. (R. 136.) Dr. Perch indicated that Morales was not significantly limited in social interaction, except for the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, where she was moderately limited. Id. On a Psychiatric Review Technique form, Dr. Perch concluded that although Morales suffered from major depression with anxiety, the degree of functional limitations did not satisfy the requirements for a per se disability. (R. 142 & 146.)

The evidence does not reveal that Morales exhibits a reaction to stress that is so severe that it would preclude performing substantial gainful activity. Morales' mental condition continued to improve with medication and therapy. (R.

226-34, 243-44, 256-64.)<sup>6</sup> Her own testimony confirms that treatment was beneficial. (R. 85.) After a careful review of the record, the court finds that there is substantial evidence to support the ALJ's conclusion that Morales' reaction to stress is not work preclusive.

**C. Consideration of Morales' IQ**

Morales contends that the combination of her IQ score and her other physical and mental impairments satisfy the requirements for disability under 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.05(C).<sup>7</sup> This section provides that a claimant is disabled if she has a valid verbal, performance or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant work-related limitation of function. Id.

Dr. Lindner conducted an intellectual evaluation of Morales on April 10, 1995. (R. 185-88.) Morales scored sixty-one on the

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<sup>6</sup> The record contains the outpatient records from APM Mental Health Clinic covering January 1995 through October 1996. (R. 226-34, 243-44, 256-64)(detailing medication monitoring and psychotherapy sessions.) On June 6 and August 15, 1996, Morales reported feeling better and sleeping better with no side effects from the medication. (Id. at 243.)

<sup>7</sup> Under the regulations, mental retardation refers to "a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifesting during the developmental period." 20 C.F.R. Part 404, Subpt. P, App.1, § 12.05. The required level of severity may be met by a valid verbal, performance, or full scale IQ of 59 or less. Id. at § 12.05(B). The required level of severity may also be met with "a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant work-related limitation of function." Id. at § 12.05(C).

full-scale IQ test. (R. 187.) However, Dr. Lindner observed that the interpreter, the daughter of a friend of Morales, had difficulty speaking Spanish. (R. 185.) Given Morales unfamiliarity with the terms of the test, her lack of education and the fact that the test was conducted in Spanish, Dr. Lindner opined that Morales' true level of functioning was in the middle of the borderline range.<sup>8</sup> (R. 187-88.)

In addition, Morales' treating physician, Dr. Farias-Kruzel, opined that Morales' intelligence was normal. (R. 179.) Generally, enhanced weight should be given to the findings and opinions of treating physicians. 20 C.F.R. § 416.927(d)(2) (stating that "[g]enerally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations."); See Mason v. Shalala, 994 F.2d 1058, 1067 (3d Cir. 1993) (stating that under treating physician doctrine, "a court considering a claim for disability benefits must give greater weight to the findings of a treating physician than to the findings of a physician who has examined the claimant only once or not at all.") Dr. Farias-Kruzel had

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<sup>8</sup> The borderline range is between 71 and 84. (Pl.'s Resp. to D.'s Brief in Support of Mot. for Summ. J. at 3.)

the opportunity to continually observe Morales after years of providing treatment. Nothing in his evaluation or treatment notes reveals any impression of Morales' intelligence being less than normal.

Because the opinions of an examining psychologist and a treating physician suggest that Morales' intelligence is not within the 60-70 range, the court rejects Morales' request for a remand for reconsideration of her IQ.

**D. Residual Functional Capacity**

Finally, Morales objects that there was not substantial evidence to support the conclusion that she can perform heavy work. The ALJ determined that Morales has the exertional residual functional capacity to do heavy work, subject to the need to elevate her legs after standing or walking continuously for four hours and the inability to work at a stressful job requiring complex tasks.<sup>9</sup> (R. 33.)

The record shows that in August 1993, Morales began medical treatment with Dr. Jose Castillo, M.D., for problems resulting from chronic venous insufficiency in the superficial veins of her legs. (R. 223.) In a letter to Morales' attorney, Dr. Castillo described the treatment of injections with a venous sclerosing agent that he administered to Morales. Morales showed

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<sup>9</sup> "Residual functional capacity" is defined as what a claimant can do despite her limitations. 20 C.F.R. § 416.945. "Heavy work" involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, it is determined that she can do medium, light, and sedentary work. Id. § 416.967(d).

improvement by October 1993, and began using elastic stockings that permitted her to walk without the problem of fluid buildup in her legs. (R. 223-24, 245.) Dr. Castillo noted that this treatment had been "so far quite satisfactory." (R. 223.) Dr. Castillo advised Morales to avoid standing, walking and/or sitting continuously for periods of over four hours during the daytime when she should elevate her legs to aid her physiological venous return, and to control dietary habits to avoid exogenous obesity and/or metabolic disorders. (R. 245.) Dr. Castillo indicated in June 1996, that Morales no longer reported episodes of inflamed vessels and that she was free of problems including swelling. (R. 224.)

The medical record reveals no evidence of lifting restrictions imposed on Morales. Dr. E. W. McGrath, M.D., a reviewing physician for the Bureau of Disability Determination, opined that Morales could occasionally lift one hundred pounds or more, frequently lift fifty pounds or more and stand and/or walk six hours (with normal breaks) for a total of about six hours in an eight hour day, with an unlimited ability to push and/or pull. (R. 128.) Morales' contention that she could not lift a bucket without pain and cramping has no support in the record and thus was properly rejected by the ALJ. (R. 33, 77.) See 20 C.F.R. § 416.929(a) & (b)(requiring objective medical evidence to establish disability); Green v. Schweiker, 749 F.2d 1066, 1071 (3d Cir. 1984)(same). The court finds that substantial evidence

exists to support the ALJ's determination that Morales retains the ability to perform heavy work with the stated limitations.

**III. CONCLUSION**

For the foregoing reasons, the court will adopt the Magistrate Judge's Report and Recommendation.

An appropriate Order follows.

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

INES MORALES : CIVIL ACTION  
 :  
v. :  
 :  
KENNETH S. APFEL, :  
Commissioner of the :  
Social Security Administration : NO. 98-5719

ORDER

AND NOW, TO WIT, this            day of September, 1999, upon consideration of plaintiff Ines Morales' and defendant Kenneth S. Apfel, Commissioner of the Social Security Administration's cross-motions for summary judgment, and after careful review of the Report and Recommendation of Chief United States Magistrate Judge James R. Melinson and the Objections thereto, IT IS ORDERED that:

1. the Report and Recommendation is APPROVED and ADOPTED;
2. plaintiff Ines Morales' motion for summary judgment is DENIED; and
3. defendant Kenneth S. Apfel, Commissioner of the Social Security Administration's motion for summary judgment is GRANTED. Judgment is entered in favor of defendant Kenneth S. Apfel, Commissioner of the Social Security Administration and against plaintiff Ines Morales.

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LOUIS C. BECHTLE, J.