

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KIMBERLY A. VANEPS,

Plaintiff,

v.

MEMORANDUM AND ORDER  
06-C-538-S

MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
Defendant.

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Plaintiff Kimberly A. Vaneps brought this action pursuant to 42 U.S.C. § 405(g) for review of the defendant Commissioner's final decision denying her Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI). She asks the Court to reverse the decision.

On June 24, 2003 plaintiff applied for DIB and SSI alleging disability beginning September 15, 2002 due to neck, hip and back pain. Her application was denied initially and upon reconsideration. A hearing was held on November 16, 2005 before Administrative Law Judge (ALJ) Diane Townsend-Anderson. In a March 23, 2006 written decision the ALJ found plaintiff not disabled. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied plaintiff's request for review on August 2, 2006.

## FACTS

Plaintiff was born on May 9, 1978 and she has a history of special education through high school graduation. She had past relevant work experience as an assembler, warehouse worker and brake press operator.

In 1994 when plaintiff was 16 years old results of the Wechsler Intelligence Scale for Children-II showed she had a Verbal IQ of 52, Performance IQ of 57 and Full Scale IQ of 50. Plaintiff was described as intellectually deficient.

In 1999 plaintiff was referred for a neuropsychological evaluation due to complaints of memory loss. Her performance on the Wechsler Adult Intelligence Scale-3rd Edition (WAIS-III) revealed a Verbal IQ of 66 and Full Scale IQ of 67, consistent with mild mental retardation and a Performance IQ of 75, which is in the borderline range. It did not appear that plaintiff had any deterioration in her memory functioning.

In 2005 plaintiff's scores on the WAIS-III were well within the borderline range. Her Verbal IQ was 70; Full Scale IQ was 72 and her Performance IQ was 78. Plaintiff's working memory was in the extremely low range but processing speed was in the low average range.

Plaintiff was diagnosed with an adjustment disorder and a cognitive disorder. She was given a Global Assessment of

Functioning score of 51 which indicates moderate difficulty in social, occupation or school functioning.

After two car accidents in 2003 plaintiff complained of back pain. She received medication and chiropractic adjustments for her back pain in early 2004. Examination notes indicate plaintiff had normal strength and sensation, good range of motion and normal gait.

Diagnostic studies show early degenerative disc disease with a lumbar disc bulge at L4-5. She has been treated with prescription medication but generally takes Tylenol or ibuprofen for pain.

Plaintiff has a history of seizure disorders. In January 2004 plaintiff had a serious seizure and was prescribed Dilantin. An EEG was mildly abnormal but showed no epileptiform activity. In August 2004 plaintiff reported that her seizure disorder was well-controlled on medication. In January 2005 plaintiff was no longer taking Dilantin and was doing well.

In May 2004 a state agency physician reviewed the plaintiff's records. He concluded that she could perform a broad range of work activity as long as she was not exposed to heights or work hazards such as dangerous machinery.

At the November 16, 2005 hearing before the ALJ plaintiff appeared with counsel and testified that she lived alone and could drive, shop and clean but that her parents sometimes helped her

with household chores. Plaintiff amended her alleged disability onset date from September 2002 to August 2003.

Plaintiff's father, Michael Vaneps, testified at the hearing that he assisted plaintiff with her financial matters. Plaintiff's friend Brian G. Harrison testified at the hearing that plaintiff was able to do less physical work than she had been able to do previously.

Sidney Bauer, a vocational expert, testified at the hearing. The ALJ asked the expert whether there were any jobs that could be performed by an individual of plaintiff's age, education and past work experience who was limited to simple, unskilled work, lifting and carrying ten pounds frequently and 20 pounds occasionally, occasional bending, stooping, crouching, crawling or twisting in a low-stress work environment, with minimal reading, writing and math and allowing a change of position at will. The ALJ specifically stated that the individual can do all aspects of functional light work.

The expert testified that such an individual would not be able to perform plaintiff's past work but would be able to perform 13,000 jobs folding and sorting linens, 6,800 counter clerk jobs and 2,100 locker room attendant jobs in the Wisconsin economy.

The ALJ's second and third hypotheticals posed to the expert indicated an individual with the ability to perform sedentary work. The ALJ did not rely on these hypotheticals in her decision because

she found that plaintiff retained the ability to perform a very limited range of light work.

The ALJ found that plaintiff had severe impairments of degenerative disc disease with myofascial back strain, a seizure disorder and a cognitive disorder. She found that these severe impairments either singly or in combination did not meet or medically equal one of the impairments listed in Appendix 1, Subpart P.

The ALJ specifically found that plaintiff's cognitive disorder did not result in the marked or extreme functional limitations necessary to meet or equal Section 12.02 of the listings. The ALJ indicated that as a result of her cognitive disorder plaintiff experiences mild restrictions of the activities of daily living, mild difficulties maintaining social functioning, moderate difficulties maintaining concentration, persistence or pace, no episodes of decompensation and none of the "C" criteria of Section 12.00. The ALJ further found that plaintiff's adjustment disorder was not severe within the meaning of the Act.

The ALJ found that plaintiff retained the residual functional capacity to perform simple unskilled light work involving lifting 20 pounds occasionally and 10 pounds frequently, sitting two hours and standing/walking six hours in an eight-hour workday, with only occasional bending, stooping, crouching and crawling, that does not involve working at heights or on ladders and scaffolds, that allows

for a change of position at will, has minimal standards for production and pace, and requires only minimal reading, writing and math. She further found that she was not disabled because although she could not perform her past relevant work she could perform a significant number of jobs available in the Wisconsin economy.

The ALJ made the following findings:

1. The claimant meets the insured status requirements of the Social Security Act through September 30, 2008.

2. The claimant has not engaged in substantial gainful activity at any time relevant to this decision (20 CFR 404.1520(b), 404.1571 et seq., 416.920(b) and 416.971 et seq.)

3. The claimant has the following severe impairments: degenerative disc disease with myofascial back strain, a seizure disorder and a cognitive disorder (20 CFR 404.1520(c) and 416.920(c)).

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform simple unskilled light work involving lifting 20 pounds occasionally and 10 pounds frequently, sitting two hours and standing/walking six hours in an eight-hour workday, with only occasional bending, stooping crouching and crawling, that does not involve working at heights or on ladders and scaffolds, that allows for a change of position at will, has minimal standard for

production and pace, and requires only minimal reading, writing and math.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

7. The claimant was born on May 9, 1978 and was 24 years old on the alleged disability onset date, which is defined as a younger individual age 18-44 (20 CFR 404.1563 and 416.963)

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. Transferability of job skills is not an issue in this case because the claimant's past relevant work is unskilled. (20 CFR 404.1568 and 416.968).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the plaintiff can perform (20 CFR 404.1560(c), 404.1566, 416.960(c) and 416.966).

11. The claimant has not been under a "disability," as defined in the Social Security Act from September 15, 2002 through the date of this decision (20 CFR 404.1520(f) and 416.920(g)).

#### OPINION

This Court must determine whether the decision of the Commissioner that plaintiff was not disabled is based on substantial evidence pursuant to 42 U.S.C. § 405(g). See Arbogast v. Bowen, 860 F.2d 1400, 1402-1403 (7th Cir. 1988). Substantial evidence is defined as "such relevant evidence as a reasonable mind

might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

Disability determinations are made pursuant to a five-step sequential evaluation procedure. 20 CFR § 404.1520(a)-(f). First, the claimant must not be performing substantial gainful activity. Second, the claimant must have a severe, medically determinable impairment. Third, a claimant will be found disabled if his or her impairment is equal in severity to a listed impairment in 20 C.F.R. Subpart P, Appendix 1. Fourth, if the claimant does not meet the third test, he/she must not be able to perform his/her past work. Fifth, if the claimant cannot perform his/her past work, he or she must not be able to perform any existing jobs available in the national economy given his or her educational background, vocational history and residual functional capacity.

The ALJ found that plaintiff had severe impairments of degenerative disc disease with myofascial back strain, a seizure disorder and a cognitive disorder. She found that these severe impairments either singly or in combination did not meet or medically equal one of the impairments listed in Appendix 1, Subpart P.

The ALJ found that plaintiff retained the residual functional capacity to perform simple unskilled light work involving lifting 20 pounds occasionally and 10 pounds frequently, sitting two hours and standing/walking six hours in an eight-hour workday, with only



occasional bending, stooping, crouching and crawling, that does not involve working at heights or on ladders and scaffolds, that allows for a change of position at will, has minimal standards for production and pace, and requires only minimal reading, writing and math. She further found that plaintiff was not disabled because although she could not perform her past relevant work she could perform a significant number of jobs available in the Wisconsin economy.

Plaintiff argues that the ALJ erred in not considering whether her cognitive disorder together with her physical impairments met or equaled a listed impairment. The ALJ specifically found that the combination of impairments did not meet or equal a listed impairment.

Plaintiff also argues that the ALJ erred in finding that plaintiff could perform work that existed in the regional economy. Plaintiff specifically argues that because she could not sit for longer than two hours she could not perform a full range of sedentary work.

Although the ALJ discussed sedentary work in her decision and her hypotheticals, she found that plaintiff retained the residual functional capacity to perform a very limited range of light work. The ALJ's first question to the vocational expert indicated plaintiff had the residual functional capacity to perform limited light work rather than sedentary work. The ALJ specifically stated

in the hypothetical that the individual can do all aspects of functional light work.

The expert testified that although plaintiff could not perform her past relevant work she could perform jobs existing in significant numbers in the regional economy. The expert testimony supported the ALJ's conclusion that plaintiff was not disabled.

There is substantial evidence to support the Commissioner's finding that plaintiff was not disabled because she could perform jobs existing in the national economy. Accordingly, the Commissioner's decision will be affirmed.

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment or remand is DENIED.

IT IS FURTHER ORDERED that the decision of the defendant Commissioner denying plaintiff Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) is AFFIRMED.

Entered this 26<sup>th</sup> day of February, 2007.

BY THE COURT:

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JOHN C. SHABAZ  
District Judge