

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

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LEE ANN SCHMIDT,

Plaintiff,

v.

MEMORANDUM AND ORDER

JO ANNE B. BARNHART,  
Commissioner of Social Security,

05-C-741-S

Defendant.

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Plaintiff Lee Ann Schmidt 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 or to remand for further proceedings.

In 2000 plaintiff had been found to be disabled from November 1996 to February 1999 due to a back injury and subsequent surgeries. Plaintiff applied for DIB and SSI effective March 19, 2002 alleging disability beginning January 24, 2002 due to a lumbar back fusion with nerve damage and easy dislocation of both knees. Her application was denied initially and upon reconsideration. A hearing was held on December 15, 2003 before Administrative Law Judge (ALJ) Robert Thomas. In an April 3, 2004 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 October 21, 2005.

#### FACTS

Plaintiff was born on October 1, 1958. She had a high school education and earned a two year associate degree in recordkeeping in 1999. She had past relevant work experience as bookkeeper, home health worker and medical assistant.

In November 1996 plaintiff sustained a work related injury to her back. After several surgeries she was able to return to work.

In February 2002 plaintiff was treated by Dr. Nathaniel Jalil for knee pain. He provided her samples of Vioxx for muscular knee pain. She was referred for an orthopedic evaluation with Dr. Scott Cameron. Dr. Cameron noted that plaintiff had bilateral hypermobile patellae with positive apprehension signs. A February 18, 2002 x-ray of plaintiff's knees showed patellar tracking abnormalities on her right patella.

Plaintiff met with Dr. Somsak Tanawattanacharoen, an internist/nephrologist, in March 2002 for back pain. The doctor noted that plaintiff has no point of tenderness or parvertebral muscle spasms. He saw no evidence that plaintiff had lumbar disc syndrome.

In July 2002 plaintiff returned to see Dr. Jalil for back pain with radiation of pain into the legs. Dr. Jalil noted some tenderness on palpitation of the low part of the lumbrosacral spine

but no focal neurological deficit. Her muscle strength was normal in the extremities.

In July 2002 plaintiff attended a consultative examination with Marcus Desmonde, Psy.D., L.P.. Dr. Desmonde diagnosed plaintiff with adjustment disorder with a depressed mood. He noted that she appeared capable of understanding simple to moderately complex instructions, carrying out instructions, interacting appropriately with others but possibly having difficulty tolerating the stress and pressure of full-time, competitive employment at this time.

In January 2003 plaintiff had an individual therapy session with Mary Sirek, M.S.W. Ms Sirek noted plaintiff was depressed, but had full and appropriate affect with no evidence of thought disorder. Ms. Sirek diagnosed plaintiff with major depressive disorder, single episode and panic disorder with agoraphobia, in remission. She recommended bi-weekly sessions. In June 2003 plaintiff withdrew from the session after attending three times.

In February 2003 plaintiff saw rheumatologist Dr. Marlon Navarro. The examination was normal. He referred claimant to the pain clinic for joint injections. On a follow-up visit in February she did not appear to be in as much pain as in the past.

Plaintiff was referred for a neurosurgical consultation with Dr. Sharat Ahluwalia. An April 2003 MRI scan of the lumbar spine showed satisfactory postoperative changes in L5-S1, no definite

recurrent/residual disc protrusion and only mild facet degenerative change and a perineural cyst in the right neural foramen at L2-3. A MRI scan of the cervical spine showed a small broad-based right paracentral disc protrusion at C5-6 with very mild right lateral recess stenosis. She was prescribed a trial of Neurontin.

Plaintiff was referred to physical therapy and attended two sessions. She failed to return for further sessions. In June she was discharged from therapy due to noncompliance with appointments.

A June 2003 EMG/NCVS of plaintiff's left leg was normal showing no electro physiologic evidence for a lumbrosacral radiculopathy or peroneal neuropathy on either side. In June Dr. Jalil prescribed Bextra for plaintiff's back pain.

In October 2003, plaintiff returned to Dr. Desmonde who noted on a mental status examination that plaintiff had appropriate grooming and hygiene, orientation times three, average concentration and memory and no evidence of personality disorder. He diagnosed plaintiff with nicotine dependence, adjustment disorder with depressed mood, major depressive disorder, single episode by history and anxiety disorder NOS with panic features and agoraphobia, by history. He noted that the claimant appeared capable of understanding simple to complex instructions, carrying out tasks with reasonable persistence and pace for 2-3 hours, interacting appropriately with others and tolerating the stress and pressure of part-time employment. He indicated the possibility

that plaintiff would have difficulty tolerating the stress and pressure of full-time, competitive employment.

In December 2003 Dr. Jalil reported plaintiff suffered arthritis of the lumbar spine, status post fusion and arthritis of the cervical spine as well as depression. He concluded that because of plaintiff's chronic pain plaintiff would be incapable of even sedentary employment on a competitive basis.

In January 2002, Dr. Roger Rattan, a state agency psychologist, concluded that plaintiff had an affective disorder with only mild restrictions of the activities of daily living. This determination was affirmed by a state agency consultant Frances M. Culbertsen on January 10, 2003.

At the December 15, 2003 hearing before the ALJ plaintiff appeared with counsel and testified that she has ongoing back and neck pain and stiffness. She also described numbness in her feet and sciatic pain in her left leg. She further testified that she had 6 knee dislocations per year but estimated that she could walk one-half mile. Plaintiff testified that her depression and anxiety is well controlled with Zoloft.

Richard Armstrong, a vocational expert, testified at the hearing that an individual of plaintiff's age, education and past work experience with her residual functional capacity could perform any work existing in significant numbers in the national economy.

The expert testified that plaintiff could perform 11,000 cashier jobs and 6,000 assembly jobs in the regional economy of Wisconsin.

The ALJ found that plaintiff had severe impairments of degenerative arthritis of the lumbar spine, status post laminectomy and fusion in the late 1990's with sciatica; degenerative arthritis of the cervical spine; joint pain affecting the knees, hands, wrists and hips; hypermobile knees; adjustment disorder with depressed mood; major depressive disorder, single episode, by history and anxiety disorder NOS with panic and agoraphobia, by history. He found that these severe impairments either singly or in combination did not meet or medically equal to one of the impairments listed in Appendix 1, Subpart P.

The ALJ specifically found that plaintiff's mental impairment mildly limited her daily and social functioning. He also found plaintiff was moderately limited in concentration, persistence or pace and no episodes of decompensation of extended duration. The ALJ found that plaintiff retained the residual functional capacity to lift and carry 10 pounds occasionally, stand/walk 2 hours of an 8 hour day; sit 6 hours of an 8 hour day; sit/stand option; to occasionally bend, twist, stoop, kneel, crawl and climb but not to power grip, to perform unskilled work and to carry out simple to moderately complex instructions with no high production goals.

The ALJ did not give controlling weight to the opinion of Dr. Jalil that plaintiff could not work because it was not supported by

the medical evidence. The ALJ did not give controlling weight to the opinion of Dr. Desmonde because his findings did not support the level of work restrictions precluding full-time employment.

Pursuant to 20 CFR §§ 404.1529 and 416.929 and Social Security Ruling 96-7, the ALJ found that plaintiff's allegations of pain and incapacitating limitations are not consistent with the objective medical evidence or her daily activities. Based on the testimony of the vocational expert the ALJ found that plaintiff was not disabled because there were jobs available that she could perform in significant numbers in the national economy.

The ALJ made the following findings:

1. The claimant meets the nondisability requirements for a period of disability and Disability Insurance Benefits set forth in Section 216(I) of the Social Security Act and is insured for benefits through the date of this decision.
2. The claimant has not engaged in substantial gainful activity since the alleged onset of disability.
3. The claimant's degenerative arthritis of the lumbar spine, status post laminectomy and fusion in the late 1990's, with sciatica, degenerative arthritis of the cervical spine; joint pain affecting the knees, hands, wrists and hips; hypermobile knees; adjustment disorder with depressed mood; major depressive disorder, single episode, by history; and anxiety disorder NOS with panic and agrophobia, by history are considered "severe" based in the requirements in the Regulations 20 CFR §§ 404.1520(c) and 416.920(b).
4. These medically determinable impairments do not meet or medically equal one of the

listed impairments in Appendix 1, Subpart P, Regulation No. 4.

5. The undersigned finds the claimant's allegations regarding her limitations are not fully credible for the reasons set forth in the body of the decision.

6. The claimant has the following residual functional capacity: lifting and carrying 10 pounds occasionally; standing and/or walking 2 hours of an 8 hour day; sitting six hours of an 8 hour day; sit/stand option ; occasional bending, twisting, stooping, kneeling, crawling, and climbing; no power gripping; unskilled work, simple to moderately complex instruction and no high production goals to reduce stress.

7. The claimant is unable to perform any of her past relevant work. 20 CFR §§ 404.1565 and 416.965.

8. The claimant is a younger individual with an education beyond high school and a semi-skilled past relevant work history.

9. On the basis of the testimony of the vocational expert, which the undersigned found to be credible and persuasive, and considering the claimant's age, education, and work experience in conjunction with her residual functional capacity, the claimant retains the residual functional capacity to perform a significant number of other jobs existing in the national economy.

10. The claimant is not disabled at any time since January 24, 2002. 20 CFR 404.1529(f) and 416.920(f).

#### 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 arthritis of the lumbar spine, status post laminectomy and fusion in the late 1990's with sciatica; degenerative arthritis of the cervical spine; joint pain affecting the knees, hands, wrists and hips; hypermobile knees; adjustment disorder with depressed mood; major depressive disorder, single episode, by history and anxiety disorder NOS with panic and agoraphobia, by

history. He 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 lift and carry 10 pounds occasionally, stand/walk 2 hours of an 8 hour day; sit 6 hours of an 8 hour day; sit/stand option; to occasional bend, twist, stoop, kneel, crawl and climb but not to power grip, to perform unskilled work and to carry out simple to moderately complex instructions with no high production goals. Based on the testimony of the vocational expert the ALJ found that plaintiff was not disabled because there were jobs available that she could perform in significant numbers in the national economy.

Plaintiff claims that the ALJ improperly ignored the opinion of plaintiff's treating physicians, Dr. Jalil and Dr. Desmonde. In order to be entitled to controlling weight, a medical opinion must be rendered by a treating source, be well supported by medically acceptable clinical and laboratory diagnostic techniques and not inconsistent with other substantial evidence in the record. See 20 C.F.R. §404.1527(d)(2), Social Security Ruling 96-2p.

In his decision the ALJ gave specific reasons why he was not giving controlling weight to the opinion of Dr. Jalil that plaintiff could not work because it was not supported by the medical evidence. Specifically, the ALJ stated at p. 8 of his decision,

The undersigned did not place controlling weight on this opinion as the claimant has been evaluated regularly by Dr. Jalil, her treating internist, and in consultation with neurosurgery and rheumatology with no significant findings to account for the numbness and tingling asserted by the claimant. In addition, the objective findings do not support the level of chronic pain asserted by the claimant.

The ALJ also found that Dr. Desmonde's opinion that plaintiff could not work full time was not supported by the objective medical findings. The ALJ properly discounted the opinion of Dr. Jalil and Dr. Desmonde that plaintiff could not work full-time.

Plaintiff contends that the ALJ did not properly assess his mental limitations. At page 8 of the ALJ's decision the ALJ discussed in detail plaintiff's mental limitations finding they mildly limited her daily and social functioning. He also found plaintiff was moderately limited in concentration, persistence or pace and no episodes of decompensation of extended duration. Based on this assessment of plaintiff's mental limitations he found plaintiff was capable of sustaining concentration, persistence and pace for unskilled work, simple to moderately complex instruction and no high production goals. The ALJ's assessment of plaintiff's mental limitations was proper. Johnson v. Barnhart, 314 F.3d 283, 288 (7<sup>th</sup> Cir. 2002).

Plaintiff claims that the ALJ did not include all her limitations in his residual functional capacity assessment. The record indicates that the ALJ's residual functional capacity

assessment includes all the credible evidence of plaintiff's physical and mental limitations. Further, the ALJ's hypothetical to the vocational expert included the plaintiff's residual functional capacity which was properly determined by the ALJ.

Plaintiff also claims that the ALJ did not properly assess her credibility. The ALJ's credibility decision must be upheld unless it is "patently wrong." Powers v. Apfel, 207 F.3d 421, 435 (7<sup>th</sup> Cir. 2000). Pursuant to 20 CFR §§ 404.1529 and 416.929 and Social Security Ruling 96-7, the ALJ found that plaintiff's allegations of pain and incapacitating limitations are not consistent with the objective medical evidence or her daily activities. He concluded that her subjective complaints were not fully credible.

An examination of the record supports the ALJ's conclusion that plaintiff's testimony was not wholly credible because it was inconsistent with the overall record. The ALJ's finding that plaintiff was not fully credible is consistent with the law. Donohue v. Barnhardt, 279 F.3d 441 (7<sup>th</sup> Cir. 2002).

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.

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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 28<sup>th</sup> day of June 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge