

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

SUSAN ANN SANDS-WEDEWARD,

Plaintiff,

v.

MICHAEL ASTRUE,
Commissioner of Social Security,¹

Defendant.

OPINION and ORDER

12-cv-491-bbc

This is a civil action brought by plaintiff Susan Ann Sands-Wedeward, acting pro se, against the Commissioner of the Social Security Administration. It is difficult to discern from plaintiff's complaint what claims she intended to assert against the commissioner. In her complaint, plaintiff challenges the December 21, 2011 decision of an administrative law judge awarding her disability insurance benefits from September 18, 2010. Plaintiff contends that the administrative law judge erred by failing to find her disabled from October 29, 2006. Additionally, plaintiff contends that the Social Security Administration has improperly attempted to deduct an overpayment of benefits from her that she never received. She says that the Social Security Administration sent her a letter stating falsely

¹ Plaintiff originally named JoAnne Barnhart, former Commissioner of the Social Security Administration, as defendant. Michael Astrue is the current Commissioner and I have amended the caption accordingly. Both parties have named Astrue as the defendant in their most recent pleadings and briefs.

that the Department of Labor paid her money for workers' compensation. Plaintiff also includes some allegations about improper actions taken by her ex-husband and his girlfriend, but does not explain how those actions could be imputed to the commissioner.

The government construed plaintiff's complaint as a request for judicial review under 42 U.S.C. § 405(g) of the commissioner's decision regarding plaintiff's entitlement to disability insurance benefits, submitted the administrative record and Social Security hearing transcript, dkt. #7, and filed a brief in support of the December 21, 2011 decision awarding plaintiff benefits from September 18, 2010. Dkt. #9. The government explains that the administrative law judge concluded properly that plaintiff was disabled and entitled to benefits after September 18, 2010. However, plaintiff was not entitled to benefits before that date because she had worked full time for the United States Postal Service from January 2007 until September 18, 2010. Additionally, the government contends that to the extent plaintiff is attempting to challenge a letter from the Social Security Administration regarding an overpayment of benefits, plaintiff cannot bring that challenge in federal court without first completing the administrative review process.

Plaintiff filed a brief in opposition, but she does not address the administrative law judge's December 21, 2011 decision regarding her disability insurance benefits. Rather, she raises several largely incoherent allegations and arguments about workers' compensation benefits, falsified Mendota Mental Health records, her divorce and her ex-husband's unlawful actions, the murder of her attorney and her current financial situation. Although plaintiff's allegations suggest that she has had a difficult time in the last few years, nothing

in her brief connects her unfortunate situation to any actions of the commissioner that could be reviewed in federal court.

After reviewing the administrative record, I agree with the government that substantial evidence supports the administrative law judge's decision regarding plaintiff's eligibility for disability insurance benefits. Schoenfeld v. Apfel, 237 F.3d 788, 792 (7th Cir. 2001) (court upholds commissioner's decision if "supported by substantial evidence and no error of law occurred"). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). In this case, the evidence showed that plaintiff was engaged in "substantial gainful activity" between October 2006 and September 2010. A claimant who is performing substantial gainful activity is not disabled under the Social Security regulations, as a matter of law. Jones v. Shalala, 21 F.3d 191, 192-93 (7th Cir. 1994); 20 C.F.R. § 416.920(a)(i); 20 C.F.R. §§ 404.1520(a)(4)(i), 404.1520(b).

As the administrative law judge noted, plaintiff earned an annual income of \$48,534.36 in 2006; \$46,413.88 in 2007; \$47,669.92 in 2008; \$47,533.06 in 2009; and \$35,495.75 in 2010. AR 11-12. Under the regulations, if an employee is earning a certain income for work, the employee is presumed to be engaged in substantial gainful activity and the employee will be presumed not disabled. 42 U.S.C. § 423(d)(4)(A). Plaintiff's earnings were well above the substantial gainful activity levels set in the regulations. 20 C.F.R. § 404.1574(b)(2)(ii). Accordingly, the administrative law judge properly found that plaintiff's employment with the United States Postal Service was substantial gainful activity that

precluded a finding of disability before September 18, 2010.

Additionally, I conclude that plaintiff has not shown that any of her other claims are subject to judicial review in this court at this time. As an initial matter, actions taken by the Department of Labor, the United States Postal Service, her former co-workers or her ex-husband cannot be imputed to the Commissioner of Social Security. With respect to the commissioner's actions, the Supreme Court has explained that 42 U.S.C. § 405(g), "clearly limits judicial review to a particular type of agency action, a 'final decision of the Secretary made after a hearing.'" Califano v. Sanders, 430 U.S. 99, 108 (1977) (citing 42 U.S.C. § 405(g)). The Social Security Act and the commissioner's regulations provide the procedural framework for seeking administrative and judicial review of disability claims, and a claimant must complete the process to obtain a final decision and qualify for judicial review. 20 C.F.R. §§ 404.900(a), 416.1400(a). Specifically, the claim must receive (1) an initial agency determination, (2) reconsideration, (3) a hearing before an administrative law judge and (4) Appeals Council review. Id.; Id. §§ 404.909, 404.968, 416.1404, 416.1409, 416.1433, 416.1468. Plaintiff does not identify any issue or claim other than the commissioner's disability benefits determination for which she has completed this process. Therefore, those claims will be dismissed.

ORDER

IT IS ORDERED that

1. The decision of defendant Michael J. Astrue, Commissioner of Social Security,

granting plaintiff Susan Ann Sands-Wedeward's application for disability insurance benefits beginning September 18, 2010 is AFFIRMED. Plaintiff is not entitled to benefits before September 18, 2010.

2. Plaintiff's remaining claims are DISMISSED WITHOUT PREJUDICE for failure to complete the administrative review process.

3. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 19th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge