

IP 01-1113-C T/F Schafer v. Barnhart
Judge John D. Tinder

Signed on 6/25/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

SCHAFFER, CECILIA,)	
)	
Plaintiff,)	
vs.)	
)	
BARNHART, JO ANNE B,)	CAUSE NO. IP01-1113-C-T/F
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CECILIA SCHAFER,)
)
 Plaintiff,) IP 01-1113-C-T/F
)
 vs.)
)
 JO ANNE B. BARNHART,)
 Commissioner of Social Security,)
)
 Defendant.)

ENTRY REVIEWING COMMISSIONER'S DECISION¹

Plaintiff requests judicial review of the final decision of the Commissioner of Social Security ("Commissioner") denying her application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under the Social Security Act (the "Act"). The court rules as follows.

I. BACKGROUND

Plaintiff, Cecilia Schafer, applied for DIB and SSI on August 14, 1996, alleging that she had been disabled since May 31, 1994. The Agency denied Plaintiff's application

¹This Entry is a matter of public record and is being made available to the public on the court's website, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion in this Entry to be sufficiently novel or instructive to justify commercial publication or the subsequent citation of it in other proceedings.

initially and again on reconsideration. The Administrative Law Judge (“ALJ”) held a hearing and, on November 18, 1998, issued a decision denying benefits. The ALJ found that, despite Plaintiff’s impairments, she retained the ability to perform a limited range of light work. The Appeals Council denied Plaintiff’s request for review and the ALJ’s decision became the final decision of the Commissioner.

A. Plaintiff’s Statements and Testimony

Plaintiff was born on September 11, 1946. She was fifty-two years old on the date the ALJ issued his decision. (R. at 22, 39.) She has a high school education (R. at 39), and has been employed as a cake decorator, bakery supervisor, scratch baker, and waitress. (R. at 40, 42-44.)

Plaintiff testified that she had been treated for depression since 1994 with antidepressant medication. (R. at 57.) This medication causes her to become sleepy. (R. at 74.) She also reported having a stroke in July 1996 although there are no medical records to support this claim. Plaintiff also claims to suffer from migraine headaches and hypothyroidism. (R. at 54.) Plaintiff has problems in her left ear, including frequent infections. She also complains of balance difficulty and blurred vision in her left eye. (R. at 49.) Additionally, Plaintiff contends that she has problems breathing, which include shortness of breath when walking or climbing stairs. However, she continues to smoke one-half pack of cigarettes a day. (R. at 55.) In April 1998, Plaintiff consulted her physician, Dr. Mark Freije, for pain in her left arm and shoulder and leg complaints. (R. at

50.)

When questioned about her abilities and daily activities, Plaintiff stated that she could sit thirty to forty-five minutes, stand for fifteen minutes, and lift five pounds at a time. (R. at 60.) Plaintiff lives alone and is able to complete light household chores such as vacuuming, sweeping, and dusting, but does not cook anymore. (R. at 61-63.) Plaintiff's daughter lives two houses away and helps her mother with such things as grocery shopping, outside work, laundry, and cleaning the bathroom. (R. at 64-65.) Plaintiff also walks to her daughter's house to visit almost every day and drives about once a week when she visits the doctor. (R. at 64-65, 68.)

B. Medical Evidence

On June 8, 1994, Plaintiff began experiencing shortness of breath. (R. at 400.) On June 9, 1994, Plaintiff underwent pulmonary function testing that showed she had mild obstructive disease, but she responded very well when put on bronchodilators. (R. at 402-03.)

On August 10, 1995, Plaintiff underwent a series of tests that included an esophagogastroduodenoscopy, esophageal dilation, and colonoscopy with polypectomy. (R. at 392) These tests revealed mild antral gastritis and peptic esophagitis without stricture. (R. at 393.) Plaintiff also had a small rectosigmoid colon polyp removed at that time. (R. at 393.)

Dr. Robert Alonso observed in a discharge summary on July 26, 1996, that Plaintiff had been admitted to the hospital for evaluation and treatment of transient left-sided weakness and tingling and numbness of her face, leg, and arm. (R. at 358-59.) She underwent a magnetic resonance imagery (MRI) and an electroencephalogram (EEG). Neither test revealed any abnormalities, and Plaintiff was discharged in satisfactory condition from the hospital two days after being admitted. (R. at 358-59.)

Because Plaintiff was experiencing chest pain, she underwent a left heart catheterization on September 9, 1996. The results of that test were normal. (R. at 372-75.)

Dr. Malik Bandedaly observed on October 15, 1996, that Plaintiff had been experiencing breathing difficulty since May 1994 when she was diagnosed with chronic obstructive pulmonary disease (COPD). (R. at 407-08.) Dr. Bandedaly further observed that Plaintiff went to the hospital in July 1996, with a three to four day history of tingling on the left side of her face, neck, arm, and leg. (R. at 407-08.) An EEG and an MRI of the brain were negative. (R. at 407-08.) Dr. Bandedaly noted that Plaintiff could hop, squat, and walk on her heels and toes, but that she could not tandem walk. (R. at 408.) Dr. Bandedaly's examination of Plaintiff's joints did not reveal any anatomic deformity and examination of her spine did not reveal any tenderness. (R. at 408.) Plaintiff had 5/5 muscle strength in her right upper and lower extremities as compared to 4/5 muscle strength in her left upper and lower extremities. (R. at 408.) Additionally, she had somewhat decreased grip strength on her left side, but her fine finger manipulative abilities

were normal. (R. at 408.)

On October 31, 1996, Dr. A. Landwehr reviewed the medical evidence and stated that Plaintiff could perform light work activities, which involved no more than occasional climbing of ramps or stairs, no climbing of ladders, ropes, or scaffolding, and no concentrated exposure to extreme heat or cold, fumes, odors, gases, or other hazards. (R. at 234-40.) Dr. J. Gaddy also reviewed the medical evidence on January 9, 1997, and agreed with Dr. Landwehr's assessment of Plaintiff's abilities. (R. at 240.)

Dr. K. Neville, Ph.D., reviewed the medical evidence on December 16, 1996 and opined that Plaintiff had an adjustment disorder with depressed mood but that it was not "severe" within the meaning of regulations 20 C.F.R. §§ 404.1521(a), 416.921(a); (R. at 224, 227.)

On March 25, 1997, Dr. Mark Freije stated that Plaintiff was unable to work due to multiple medical problems, including unilateral paresthesias² and weakness on her left side, hypothyroidism, low back pain, depression, and migraine headaches. (R. at 116.) In addition, Dr. Freije completed a Physical Residual Functional Capacity Assessment on July 9, 1997, and opined that Plaintiff could stand or walk one hour each during an eight-hour work day, or sit eight hours. (R. at 103, 423.) Dr. Freije also stated that Plaintiff could lift ten pounds frequently and twenty-five pounds occasionally. (R. at 103, 423.) He found

²An abnormal sensation, such as or burning, pricking, tickling, or tingling. Stedman's Medical Dictionary 1300 (26th ed. 1995).

that Plaintiff could not use her left foot for repetitive pushing and pulling (R. at 104, 424), and that she was moderately limited in terms of driving automotive equipment and in terms of exposure to marked temperature and humidity changes, dust, fumes, and gases. (R. at 105, 425.)

Pulmonary function testing on December 12, 1997, indicated moderately severe COPD with a partially reversible component, given that Plaintiff's pulmonary performance improved with inhaled bronchodilators. (R. at 119.) The test results indicated some deterioration since the last test in June 1994. (R. at 119.) A chest x-ray on the same day was within normal limits. (R. at 121.)

On March 18, 1998, neurologist Gust Spenos reported on Plaintiff's history of worsening left-sided "heaviness," headaches, blurred vision, and dizziness. (R. at 130.) An MRI of Plaintiff's brain was unremarkable, and the doctor also observed that she had full neck motion, good strength in all four limbs, intact sensation to pinprick, unremarkable gait and station, and symmetric reflexes. (*Id.*) Dr. Spenos diagnosed the Plaintiff with a migraine with likely benign accompanying lateralized features. He prescribed the antidepressant Limbitrol, and recommended an electromyogram (EMG) of the left upper arm. (R. at 131.)

Plaintiff underwent the EMG on March 27, 1998, to evaluate her left-sided weakness and numbness complaints. (R. at 118.) The findings were normal. (*Id.*) Also, on April 29, 1998, Venus Doppler studies did not reveal any convincing evidence of deep

vein thrombosis.³ (R. at 132.)

On May 29, 1998, Dr. Eliot Wallack opined that Plaintiff was neurologically stable, despite complaints of left-sided heaviness. (R. at 133.) He observed that an April 1997 MRI was negative and Plaintiff exhibited normal gait and station, and normal upper extremity strength. (*Id.*) Dr. Wallack recommended that she be watched conservatively, noting that he was “unsure of the exact etiology” for her symptoms and that the possibility of functional illness⁴ could not be ignored. (R. at 133-34.)

Dr. Ramon Dunkin at Pulmonary Associates evaluated Plaintiff on July 29, 1998, and stated that she had mild chronic obstructive lung disease with mild emphysema and chronic bronchitis. (R. at 434-45.) On that same day he completed a Physical Capacities Evaluation where he indicated that Plaintiff could sit two hours, stand two hours, and walk one hour at a time, and sit eight hours, stand four hours, and walk two hours total during an eight-hour work day. (R. at 440.) Dr. Dunkin also stated that Plaintiff could lift twenty pounds frequently, fifty pounds occasionally, frequently bend and reach, and occasionally squat, crawl, and climb. (R. at 440.) He also suggested that she was moderately limited in terms of exposure to marked temperature and humidity changes, dust, fumes, and gases, and mildly limited in terms of unprotected heights or moving machinery. (R. at 441.)

³Clotting within a blood vessel which may cause infarction of tissues supplied by the vessel. Stedman’s Medical Dictionary 1809 (26th ed. 1995).

⁴Not organic in origin; denoting a disorder with no known or detectable organic basis to explain the symptoms. Stedman’s Medical Dictionary 693 (26th ed. 1995).

Finally, Dr. David Alvis completed an ophthalmology examination and Visual Capacities Evaluation on July 30, 1998. (R. at 427-28.) He found no evidence of visual limitations. (R. at 431-32.)

C. Testimony and Evidence from Medical Expert Dr. Emily Giesel

In April 1998, board-certified rheumatologist Dr. Emily Giesel testified at the administrative hearing that Plaintiff had been recently diagnosed with a syndrome of left-sided weakness by Dr. Spenos, who felt it was a migraine-equivalent problem. (R. at 78, 154.) Plaintiff also had a history of blood clots in her legs and chronic obstructive pulmonary disease with some reduction in diffusion capacity on testing. (R. at 79-80.) Dr. Giesel opined that Plaintiff's carpal tunnel syndrome might cause some restrictions in terms of repetitive hand use (R. at 81), and testified that Plaintiff's impairments did not meet or medically equal any Listing. (R. at 82-83.)

Dr. Giesel completed a Residual Functional Capacity ("RFC") Assessment on September 7, 1998, in which she suggested that during the period from July 25, 1996, to the present, Plaintiff could lift twenty pounds occasionally, ten pounds frequently, stand and/or walk one hour at a time, up to four hours total, and sit six hours during an eight-hour workday. (R. at 442-43.) Dr. Giesel also opined that Plaintiff could occasionally climb ramps and stairs, balance, stoop, kneel, crouch, and crawl, but Plaintiff should not climb ladders, ropes, or scaffolding. (R. at 444.) Dr. Giesel also observed that Plaintiff's left hand fingering and feeling were limited, in that she had some slowing of her fine motor

ability and feeling, but the activities previously mentioned would not be precluded and the slowing was slight. (R. at 445.) She recommended that Plaintiff avoid moderate exposure to odors, dust, gases, fumes, poor ventilation, and concentrated exposure to hazards. (R. at 446.) Finally, Dr. Giesel stated that from May 31, 1994, to July 25, 1996, the RFC was the same except that there were no manipulative limitations during that period. (R. at 449.)

D. Testimony and Evidence from Vocational Expert Hershel Northern

At the administrative hearing in April 1998, Vocational Expert (“VE”) Hershel Northern testified that Plaintiff’s past work experiences as a waitress and deli worker/cake decorator were exertionally light and low end semi-skilled jobs. (R. at 88.) Her past work as a baker would usually be classified as exertionally heavy and skilled. (R. at 88.) The ALJ forwarded interrogatories to the VE in September 1998 asking the VE to assume an individual of Plaintiff’s age, education, and work experience. (R. at 274.) In addition, the VE was asked to consider that this person had the ability to perform sustained work activities as noted by Dr. Giesel in Exhibit 13F. (R. at 274, discussing R. at 442-48.) The VE stated that Dr. Giesel’s limitations of lifting ten pounds frequently, twenty pounds occasionally, sitting six hours per day, and standing a total of four hours, along with climbing ramps and stairs occasionally, and restrictions on climbing ladders, ropes, and scaffolding, and being around dust, fumes, gases, hazards, and poor ventilation would allow this person to perform light work with a sit/stand option as an auto rental clerk (3,580 jobs), file clerk (3,410 jobs), and assembler (6,695 jobs) in Indiana. (R. at 276, 442-46.)

The VE further opined that, following July 25, 1996, Plaintiff could do the above light work with a sit/stand option. (R. at 277.)

II. ARGUMENT

A. Standard of Review

The Social Security Act requires the reviewing court to accept the ALJ's findings of fact as conclusive, "so long as substantial evidence supports them and no error of law has occurred." *Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001). Substantial evidence in this instance refers to such relevant evidence that a reasonable mind could accept as adequate to support a conclusion. *Zurawski v. Halter*, 245 F.3d 881, 887 (7th Cir. 2001). Also, although the ALJ is not required to address every piece of evidence, he must clearly express a legitimate and logical reason for his decision. The ALJ must "build an accurate and logical bridge from the evidence to his conclusion." *Clifford v. Apfel*, 227 F.3d 863, 872 (7th Cir. 2000).

In addition, the court grants special deference to the credibility determinations made by the ALJ because he is in the best position to assess the credibility of witnesses. *Nelson v. Apfel*, 131 F.3d 1228, 1237 (7th Cir. 1997). Therefore, the court will reverse these determinations only if the claimant can show that they were "patently wrong." *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000). Finally, although the reviewing court is at liberty to review the record in its entirety, it does not re-weigh evidence, substitute its

judgment for that of the ALJ, or decide the facts anew. *Butera v. Apfel*, 173 F.3d 1049, 1055 (7th Cir. 1999).

B. Analysis

A claimant must prove that she suffers from a “disability,”⁵ as it is defined by the Act, in order to qualify for disability benefits. The ALJ performs a five-step inquiry in order to determine whether a claimant is disabled. This inquiry includes determining: (1) whether a claimant is engaged in work activity which is both substantial and gainful within the past twelve months; (2) whether a claimant’s impairment significantly limits his/her physical or mental ability to do basic work activities, thus constituting a severe impairment; (3) whether a claimant has an impairment which meets or equals those listed in the Listing of Impairments; (4) whether a claimant is unable to perform past relevant work; and (5) whether a claimant is able to engage in other work existing in significant numbers in the economy. 20 C.F.R. § 404.1520(b)(c)(d)(e)(f).

The ALJ determined that Plaintiff had an RFC to perform light work. (R. at at 24.) Light work involves frequently lifting or carrying objects up to ten pounds maximum weight with occasional lifting of twenty pounds. 20 C.F.R. § 404.1567(b).

Plaintiff appeals this decision on several grounds, contending that: (1) the ALJ

⁵Disability is defined as, “the inability 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 twelve months.” 42 U.S.C. § 423(d)(1)(A).

failed to fully develop the record; (2) the ALJ discounted Plaintiff's subjective complaints regarding her functional capacity; (3) the ALJ disregarded the testimony of the treating physician; (4) the ALJ addressed Plaintiff's illnesses individually but failed to address them in the aggregate; and (5) the ALJ disregarded the testimony of the VE. The court will now address each of these issues.

1. The ALJ Failed to Fully Develop the Record

Plaintiff's first contention is that the ALJ failed to fully develop the record. She argues that the ALJ ignored her mental illness and cites *Richardson v. Perales*, 402 U.S. 389 (1971), to support her contention that the ALJ has a duty to "investigate the facts and develop the arguments both for and against granting benefits." (Pl.'s Br. at 2.) The ALJ does have a duty to fully develop the record. *Luna v. Shalala*, 22 F.3d 687, 692 (7th Cir. 1994). However, although the ALJ may not be one-sided or disregard evidence from either party, an ALJ can exercise discretion when deciding whether or not to obtain consultive evidence. 20 C.F.R. §§ 404.1517, 416.917. "How much evidence to gather is a subject on which district courts must respect the Secretary's reasoned judgment." *Kendrick v. Shalala*, 998 F.2d 455, 458 (7th Cir. 1993).

In this case, the ALJ had evidence from Plaintiff's treating and examining physicians regarding her medical conditions and findings. The ALJ also considered medical source opinion, including opinion evidence from the medical expert, Dr. Giesel, regarding the functional impact of Plaintiff's impairments. It is logical and reasonable for

the ALJ to conclude that additional consultive evidence was unnecessary in this case.

Plaintiff further contends that the failure to order a consultive psychological exam led the ALJ to incorrectly conclude that Plaintiff's mental illness was not severe. When considering the Plaintiff's depression and the impact it had on her functional capacity, the ALJ correctly found that her adjustment disorder and depressed mood did not greatly limit her mental ability to perform basic work activities. (R. at 23.) The ALJ found that there was no evidence of counseling or hospitalization for Plaintiff's mental impairments, and noted that her only treatment was with antidepressant medication. The ALJ also discussed Plaintiff's social interactions and daily activities when determining the severity of Plaintiff's mental condition. (R. at 23.) Finally, in December 1996, Dr. Neville reviewed the medical evidence and opined that Plaintiff's adjustment disorder with depressed mood was not "severe" (R. at 224, 227), within the meaning of 20 C.F.R. §§ 404.1521(a), 416.921(a). Thus, since the Act only takes into account severe medical impairments, the ALJ was correct in disregarding Plaintiff's claim of adjustment disorder with depressed mood. 20 C.F.R § 416.920(c).

2. The ALJ Discounted Plaintiff's Subjective Complaints

Next, Plaintiff argues that the ALJ discounted her subjective complaints and gave weight only to the objective evidence in the record when considering her functional capacity. She cites *Lester v. Charter*, 81 F.3d 821, 832-33 (9th Cir. 1996), for the proposition that "the Commissioner is required to give weight not only to the treating

physician's clinical finding, but also his subjective judgments." (Pl.'s Br. at 2.) However, although an ALJ is required to weigh all the credible evidence and make unbiased factual findings, he is not required to accept wholly a claimant's account of perceived disability, especially if it contradicts objective medical findings. *Cass v. Shalala*, 8 F.3d 552, 555 (7th Cir. 1993).

In addition, although an ALJ may not disregard a claimant's subjective testimony regarding pain, he may weigh the subjective statements against the medically observable facts and opinions of the examining physicians, keeping in mind the interests and credibility of the witnesses. *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000) ("While a hearing officer may not reject a claimant's subjective complaints of pain solely because they are not fully supported by medical testimony, the officer may consider that as probative of claimant's credibility"). Plaintiff's occasional use of mild inhalers to control her breathing problems, her continued smoking against the advice of her doctor, her unremarkable test results, and the medical evidence in the record contradicted Plaintiff's testimony that she was fully disabled and allowed the ALJ to logically conclude that she was capable of performing a limited range of light work.

As stated previously, it is true that the ALJ does have a duty to consider a claimant's subjective complaints but he does not have to accept them as true. *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000); *Glen v. Apfel*, 102 F. Supp. 2d 1252, 1258 (D. Kan. 2000). In the hearing decision, the ALJ specifically states that he considered Plaintiff's subjective complaints in making his decision. He determined, however, that her

allegations were not “reasonably consistent with the objective medical evidence and other evidence of record.” (R. at 25.) The district court’s task in reviewing the ALJ’s decision is not to re-evaluate the evidence presented or substitute its judgment for that of the Commissioner when deciding a whether a claimant is disabled. *Butera v. Apfel*, 173 F.3d 1049, 1055 (7th Cir. 1999). In this case, the ALJ noted Plaintiff’s subjective complaints, but weighed them against the objective medical evidence to correctly determine Plaintiff’s RFC.

3. The ALJ disregarded the Treating Physician’s Reports

Third, Plaintiff contends that the ALJ disregarded the reports of the treating physician, Dr. Freije. “The ALJ must give substantial weight to the medical evidence and opinions submitted, unless specific, legitimate reasons constituting good cause are shown for rejecting it.” *Knight v. Chater*, 55 F.3d 309, 313 (7th Cir. 1995). “A treating physician’s opinion is entitled to controlling weight if it is well supported by medical findings and not inconsistent with other substantial evidence in the record.” *Dixon v. Massanari*, 270 F.3d 1171, 1177 (7th Cir. 2001). Before an ALJ can disregard a treating physician’s testimony, he must set forth specific, legitimate reasons.

In the case before us, the ALJ did not disregard the treating physician’s testimony. In March 1997, Dr. Freije stated that Plaintiff was unable to work due to multiple medical problems. (R. at 116.) However, a few months later in July 1997, Dr. Freije completed an RFC Assessment in which he stated that Plaintiff could sit eight hours, and walk or stand

one hour each during an eight-hour work day. (R. at 103, 423.) He further stated that she could lift ten pounds frequently and twenty-five pounds occasionally (R. at 103, 423), but could not use her left foot for repetitive pushing or pulling nor her left hand for repetitive activities. (R. at 104, 424.)

The Plaintiff contends that the ALJ assumed that Dr. Freije changed his mind and also that the ALJ erred in failing to clarify the discrepancies in Dr. Freije's reports. The July 1997 report was consistent with the reports from the VE and examining physician, and with the medical evidence in the record. It is proper for the ALJ to weigh the evidence presented and to decide which evidence is the most persuasive. *Farrel v. Sullivan*, 878 F.2d 985, 989 (7th Cir. 1989). The ALJ properly compared Dr. Freije's reports with the other medical evidence and considered the consistency that Dr. Freije's July 1997 report had with the other evidence when deciding the weight to give his reports. "Although it is true that the ALJ must give substantial weight to the medical opinions submitted, an opinion may be discounted if it is internally inconsistent or inconsistent with other evidence." *Caviness v. Apfel*, 4 F. Supp. 2d 813, 824 (S.D. Ind.1998). As noted in the ALJ's opinion, "Dr. Freije relies heavily on the claimant's subjective complaints even when they are not supported by any objective clinical findings." (R. at 26.) Because Dr. Freije supplied inconsistent reports, one of which was supported by other medical evidence and one which was not, the ALJ did not err in not relying on the inconsistent report.

4. The ALJ Failed to Address Plaintiff's Illnesses in the Aggregate

The Plaintiff further contends that, although the ALJ addressed each of her illnesses individually, he failed to address her breathing problems, left-sided heaviness, and other medical problems in the aggregate. The Plaintiff cites *Cunningham v. Apfel*, 222 F.3d 496, 501 (8th Cir. 2000), for the proposition that the Commissioner has a duty to consider the combined effects of the impairments regardless of whether an individual impairment is severe enough to qualify as a disability. However, in this case, the ALJ mentioned Plaintiff's medical problems several times in his report and considered them when determining Plaintiff's RFC. (R. at 18-33.) In the hypothetical posed to the VE, the ALJ considered all of Plaintiff's limitations and included all the relevant information that was required for the VE to determine the job availability for someone with Plaintiff's limitations, impairments, and characteristics. (R. at 274-75.) See *St. Clair v. Chater*, 963 F. Supp. 984, 988 (D. Kan. 1997) (mentioning Plaintiff's multiple medical conditions along with a hypothetical that takes into account Plaintiff's limitations is sufficient consideration of Plaintiff's medical problems in the aggregate).

5. The ALJ Disregarded the Testimony of the VE

Finally, Plaintiff contends that the ALJ erred in disregarding the testimony of the VE. Plaintiff's mental and visual problems did not constitute a severe impairment, as defined in the Act. (R. at 23, 26.) The impairments that Plaintiff has that do qualify as severe are classified as exertional impairments.⁶ However, the examining physician and Plaintiff's

⁶Exertional impairments are classified as impairments resulting in strength or physical type limitations. Non-exertional impairments are certain mental, sensory, or skin

treating physician did place restrictions on Plaintiff regarding contact with dust, fumes, gases, odors, poor ventilation, and hazards. These are classified as non-exertional impairments. (R. at 24-26.) If a claimant has only exertional impairments, then the rules set out in the Medical-Vocational Guidelines (the “Grids”) are controlling and a VE is not necessary. 20 C.F.R. Part 404, Subpt. P, App. 2, § 204.00(a); *Banks v. Massanari*, 258 F.3d 820, 826-27 (8th Cir. 2001). In this case, the ALJ was correct in using the Grids as a guideline and also seeking out the opinion of a VE. If non-exertional impairments are found which limit the claimant’s ability to perform the full range of work in a particular category, then the ALJ must use a VE to determine the claimant’s work capabilities. *Frankl v. Shalala*, 47 F.3d 935, 937 (8th Cir. 1995).

As stated before, the ALJ’s hypothetical to the VE included all of Plaintiff’s limitations and impairments.⁷ The Plaintiff contends that the ALJ disregarded the VE’s testimony concerning the availability of jobs in the economy for someone with Plaintiff’s limitations. (Pl.’s Br. at 4.) However, the VE testified that, given the limitations and medical conditions described, the Plaintiff could no longer perform her past relevant work, but was able to perform work at an RFC that is lower than the RFC of her past relevant work. (R. at 24-25.) The VE testified that there were no jobs in the economy for someone

impairments. *Mac v. Sullivan*, 811 F. Supp. 194, 198 (E.D. Pa. 1993); 20 C.F.R. Part 404, Subpt. P, App. 2, § 200(e).

⁷Plaintiff also challenges the RFC determination. As discussed above, the ALJ arrived at the determination by examining all limitations, and all relevant objective and subjective evidence.

with Plaintiff's impairments and limitations at her previous RFC. (R. at 90-91.) However, when given the hypothetical that included all of Plaintiff's current impairments (including no climbing ladders, ropes, or scaffolding; occasional climbing of ramps and stairs, balancing, stooping, kneeling, crouching, and crawling; less than moderate exposure to fumes, odors, dusts, gases, and poor ventilation; and no concentrated exposure to hazards), the VE testified that there were approximately 5,350 jobs in the Indiana economy at the sedentary low level as a non-emergency dispatcher and approximately 4,165 jobs in the Indiana economy at the sedentary lowest end semi-skilled level as a security monitor. (R. at 91.) The ALJ properly considered this testimony of the VE when rendering his decision.

Plaintiff's argument that the ALJ disregarded the testimony of the VE misinterprets his testimony. The Plaintiff cites the section of the hearing in which the ALJ asks the VE, "Would there be jobs that such an individual could perform that exist in significant numbers in the state economy?" (R. at 91.) The VE responds, "Not at the light level with this." (*Id.*) However, as stated in the previous paragraph, the ALJ was determining whether the Plaintiff was able to perform her past relevant work, or if she could transfer the skills from those jobs to a different type of work. Because of the limitations that Plaintiff's medical impairments impose upon her, the VE correctly stated that there were no jobs in the economy at the work level of her previous jobs. (R. at 90-91.) Her skills from her previous employment as a cake decorator, bakery supervisor, scratch baker, and waitress were not transferable because in order for Plaintiff to utilize those skills, she would have to work at a

higher work level than her medical conditions allow. The VE then goes on to list several other types of employment for which the Plaintiff would be eligible. Rather than ignoring the testimony of the VE, the ALJ took that testimony into account when he decided that the Plaintiff could no longer obtain a job at her previous work level, but was able to complete light work, and therefore there were a significant number of jobs available to her in the Indiana economy.

III. CONCLUSION

The decision of the ALJ in this case is supported by a logical, well developed record and substantial evidence. Consequently, this court will not disturb the findings and conclusions of the ALJ. Therefore, the decision of the Commissioner in this case is **AFFIRMED.**

ALL OF WHICH IS ORDERED this 25th day of June 2002.

John Daniel Tinder, Judge
United States District Court

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