

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

DELPHINE DAVIS	:	CIVIL ACTION
	:	
	:	
v.	:	NO: 05-2320
	:	
COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION	:	

MEMORANDUM AND ORDER

AND NOW, this 16th day of February, 2006, upon consideration of the cross-motions for summary judgment (Doc. Nos. 7 and 8) the Court makes the following findings and conclusions:

A. On September 20, 2002, Delphine Davis (“Davis”) applied for supplemental security income (“SSI”) under Title XVI of the Social Security Act (“Act”), 42 U.S.C. §§ 1381-1383f alleging disability since August 10, 2001. (Tr. 88-90). Throughout the initial administrative process, Davis’ claims were denied. (Tr. 36-41;). On December 18, 2003, Davis appeared before an administrative law judge (“ALJ”) who later found Davis to be disabled as of June 1, 2003. (Tr. 18 ¶ 3; 23 ¶ 31; 24 Finding No. 13; 250-283).¹ The ALJ further found that Davis was not disabled from her alleged onset date of August 10, 2001, to May 31, 2003. (Tr. 18 ¶ 3; 22 ¶ 30; 23 Finding No. 12). After the Appeals Council denied Davis’ request for review of the ALJ’s decision, Davis appealed to this Court pursuant to 42 U.S.C. § 405(g). (Tr. 3-5).

B. The ALJ found Davis’ hepatitis C to be severe (Tr. 20 ¶, 14; 23 Finding No. 2), but found that it was not severe enough to meet or medically equal any of the listed impairments, including Listing 5.05. (Tr. 20 ¶ 14; 23 Finding No. 3); 20 C.F.R. Appendix 1 to Subpart P of Part 404. The ALJ further concluded that Davis has no past relevant work, was not disabled between August 10, 2001 and May 31, 2003, and had the residual functional capacity (“RFC”) to perform substantially all of the range of light work. (Tr. 18 ¶3; 20 ¶11; 21 ¶¶ 19, 21; 22 ¶ 30; 23 Finding Nos. 5, 6, 9, 12; see also 23 Finding No. 10). As of June 1, 2003, the ALJ found that Davis retained the RFC for less than sedentary work, and therefore, has been under a disability since that time. (Tr.18 ¶ 3; 23 ¶ 31; 24 Finding No. 13, 15).

C. The Court has plenary review of legal issues, but reviews the ALJ’s factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm’r of Soc. Sec., 181 F.3d 429, 431 (3d. Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence has been 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) (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406

¹ Paragraphs are numbered chronologically seriatim as they appear throughout the ALJ’s decision.

(3d Cir. 1979). It is more than a mere scintilla but may be less than a preponderance. See Brown v. Bowen, 854 F.2d 1211, 1213 (3d Cir. 1988). If the ALJ's conclusion is supported by substantial evidence, this Court may not set aside the Commissioner's decision even if it would have decided the factual inquiry differently. Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999); see 42 U.S.C. § 405(g).

D. Davis raises several arguments that the ALJ's determination was erroneous. I agree that the ALJ made a legal error warranting remand.

E. Davis contends that the ALJ ignored reports and diagnostic studies concerning her edema and renal insufficiency impairments. Because I find error with the ALJ's assessment of renal insufficiency, I must remand.² An individual is entitled to receive SSI when he or she has a medically determinable impairment that prevents her from engaging in substantial gainful work that exists in the economy for a twelve-month period. Newell v. Comm'r of Soc. Sec., 347 F.3d 541, 545 (3d Cir. 2003). To determine whether an individual satisfies this definition and is therefore entitled to receive disability benefits, there is a five-step evaluation process used by the Commissioner. 20 C.F.R. § 404.1520. Here, before the five-step process could be completed, the ALJ erroneously concluded that this condition was "an acute situation that did not last for more than twelve months." (Tr. 20 ¶ 12). This statement constitutes error because the record reflects a diagnosis of renal insufficiency beginning in April 2002 (Tr. Id.; see also 181; 219), which is noted twelve months later on April 10, 2003 (Tr. 147), and which continues as far as December 12, 2003. (Tr. 226). Because the ALJ erroneously concluded that Davis did not meet the statutory durational requirement with respect to renal insufficiency, the ALJ's step-two severity analysis is also flawed, and so I must remand with instructions to reassess the severity of Davis' renal insufficiency impairment.³

F. I have considered Davis' remaining arguments that: (1) the ALJ substituted his judgment over those of Davis's own medical providers; (2) the ALJ failed to clarify his reasons for rejecting the treating physician, when treating physician's report conflicts with that of a non-treating physician; (3) the ALJ's determination that Davis was credible is not consistent with his partially favorable decision; (4) Davis' exertional impairments, along with her age, education and work experience meet the requirement for disability under the Medical-Vocational Guidelines;

² Davis claims that the ALJ ignored a December 23, 2002, diagnosis of bilateral peripheral edema (Tr. 153), when he concluded that there was no mention of edema in the progress notes from March 1998 to September 2002 from Health Center # 6 or from December 2000 to April 2003 from Eleventh Street Family Health Services. (Tr. 19-20 ¶¶ 8-9). While it is true that the ALJ missed several notations of peripheral edema in the record (Tr. 145; 152; 153), the hearing testimony reflects that the ALJ specifically elicited testimony from Davis and her case manager about edema due to the illegibility of the progress notes and because it was "important." (Tr. 270; 276; 279). Because Davis' edema was properly considered, I did not remand on this basis.

³ This impairment shall be assessed considering the Third Circuit's admonition in Newell, 347 F.3d at 546 that the step-two inquiry is a de minimis screening device to dispose of groundless claims, and with attention to the overwhelming evidence that Davis' renal insufficiency was a chronic problem (Tr. 141; 146- 147; 157-162; 225; 226-229; 231; 234; 236), and was often listed as one Davis' chief complaints. (Tr. 38; 103; 210; 219).

and that (5) Davis' combination of impairments would meet or equal a listing; and I find them to be without merit.

Upon careful and independent consideration, the record reveals as above analyzed in paragraph E and footnote 3 supra that the Commissioner did not apply the correct legal standards and that the record does not contain substantial evidence to support the ALJ's analysis and his findings of fact and conclusions of law as to the alleged disability related to renal insufficiency.

As a result, the action must be remanded to the Commissioner under sentence four of 42 U.S.C. § 405(g).

Therefore, it is hereby **ORDERED** that:

1. The motion for summary judgment by Delphine Davis is **GRANTED**; to the extent that the matter is remanded for further proceedings consistent with this order. Specifically, the ALJ is to determine, subject to the analysis described in footnote 3 supra, when and for how long there is objective evidence of the existence of renal insufficiency, and whether and to what extent the condition was disabling and for what period of time, if at all.
2. The motion for summary judgment by the defendant is **DENIED**.
3. The Clerk of Court is hereby directed to mark this case closed.

LOWELL A. REED, JR., S.J.