

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-2779

Marlyce K. Kemnitz,	*	
	*	
Plaintiff - Appellant,	*	Appeal from the United States
	*	District Court for the
v.	*	District of North Dakota.
	*	
Michael J. Astrue, Commissioner of	*	[UNPUBLISHED]
Social Security,	*	
	*	
Defendant - Appellee.	*	

Submitted: May 13, 2010
Filed: July 30, 2010

Before RILEY, Chief Judge, LOKEN and MURPHY, Circuit Judges.

PER CURIAM.

Marlyce K. Kemnitz applied for Social Security disability benefits, alleging an onset date of December 15, 1998. Her last insured date was June 30, 2004. After an evidentiary hearing, the Commissioner's administrative law judge (ALJ) found that Kemnitz suffered from chronic fatigue and early stage multiple sclerosis (MS) but retained the residual functional capacity (RFC) to perform a full range of sedentary work and therefore was not disabled. On appeal, the district court concluded that substantial evidence on the administrative record as a whole did not support the ALJ's RFC analysis and remanded to the agency for further development of the record. Kemnitz v. Barnhart, No. 1:05-cv-125 (D.N.D. Oct. 30, 2006).

On remand, a second ALJ, after receiving additional medical records and conducting a second evidentiary hearing, again denied disability benefits. The ALJ found (i) that Kemnitz’s medical impairments as of June 30, 2004 -- mild to moderate lower back degenerative changes, morbid obesity, and early stage and mild MS -- constituted either not severe impairments or severe impairments that did not reduce her RFC below the medium exertional level; (ii) that testimony by Kemnitz and her husband claiming extreme limitations on her ability to perform daily activities was not credible and not supported by medical evidence; and (iii) that medical records after June 30, 2004, including a third MRI brain scan in July 2006, showed her MS to be “clinically stable.” The ALJ found that Kemnitz retained the RFC to perform the full range of medium level work activity through June 30, 2004, and therefore was not disabled as of her last day of eligibility for disability insurance benefits. See 20 C.F.R. § 404.1520(g).

Kemnitz petitioned for judicial review of this final agency action. The district court¹ affirmed, rejecting Kemnitz’s contentions that substantial evidence does not support the Commissioner’s adverse disability determination; that the ALJ improperly discounted a February 2005 opinion of one treating physician that Kemnitz was not able to work; and that the ALJ “changed the posture of the case” on remand by finding that she never engaged in substantial gainful activity. Kemnitz v. Astrue, 2009 WL 1886652, at *1-2 (D.N.D. June 26, 2009). Kemnitz appeals, again raising the same contentions. After careful review of the administrative record, we affirm for the reasons stated in the thorough opinions of the magistrate judge and the district judge. See 8th Cir. Rule 47B.

¹The HONORABLE DANIEL L. HOVLAND, Chief Judge of the United States District Court for the District of North Dakota, adopting the Report and Recommendation of the HONORABLE CHARLES S. MILLER, Jr., United States Magistrate Judge for the District of North Dakota.