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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GALINA BOTSYURA,

Plaintiff,

CIV S-07-0640 GGH

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

ORDER

Defendant.

Introduction and Summary

Plaintiff, an SSI applicant, has already been awarded benefits on a separate application, dated September 24, 2002, due to a back condition. She seeks in this action to acquire a ruling finding her disabled prior to that date, beginning with the filing date of the instant application in November 2000.

Plaintiff's main claim centers about the condition of her back which is indisputably disabling at this time. She asserts that the ALJ lacked substantial evidence in picking the February 2002 onset date for her disabling back problems after the Appeals Council had initially sent the matter back to the ALJ for resolution of the correct onset date. Also raised are secondary claims:

- 1 1. Various physical and mental ailments, other than her back condition, should have been
- 2 viewed as “severe impairments;”
- 3 2. Plaintiff’s back condition should have been rated at listing severity;
- 4 3. The ALJs credibility analysis was wanting;
- 5 4. The ALJ’s residual functional capacity findings lacked substantial evidence.

6 For the most part, plaintiff has failed in his recitation of secondary claims to relate
7 them to the fact that plaintiff has already been awarded disability, Supplemental Security Income
8 benefits. For example, the issue of the listing severity of plaintiff’s back condition, or plaintiff’s
9 symptom credibility, or the residual capacity finding prior to the time of disability will be
10 analyzed, if necessary, in terms of ascertaining the appropriate onset date of the disabling back
11 condition. The court will not undertake an abstract discussion of these issues. In other words, to
12 the extent that plaintiff’s condition would equal a listing after February 2002, the point is
13 irrelevant. Further, if plaintiff would be disabled with a sedentary residual functional capacity
14 prior to February 2002, the listing issue is again irrelevant. The benefits awarded do not depend
15 on the severity of the condition past ‘disabled,” i.e., there is no special bonus for being “very
16 disabled.” The only claim that potentially merits separate analysis is the unrelated-to-the-back
17 condition claims of other severe impairments, but again, this asserted error must relate to a time
18 period prior to February 2002.

19 For the reasons set forth herein, the court finds that the ALJ lacked substantial
20 evidence in the record in choosing the February 2002 date, in that the record, especially the
21 treating physician record and objective tests, convincingly demonstrates that the onset of
22 disability occurred no later than February 2001. There is insufficient evidence for any asserted
23 impairment to set the date any earlier.

24 *The ALJ Findings*

25 The ALJ found in his decision on remand (quoted verbatim except for bracketed
26 material):

- 1 1. The claimant has not engaged in substantial gainful activity since November 21, 2000 [her
2 approximate date of entry to the United States].
- 3 2. The medical evidence establishes that the claimant has severe degenerative disc disease of the
4 lumbar spine, but that she does not have an impairment or combination of impairments [which
5 meet a listing criteria].
- 6 3. The claimant's testimony and subjective complaints are not fully credible for the period prior
7 to February 19, 2002, for the reasons set forth in the decision.
- 8 4. Prior to February 19, 2002, the claimant had the residual functional capacity to perform the
9 physical exertion requirements of work except for lifting more than 50 pounds occasionally or 25
10 pounds frequently. As of February 19, 2002, the claimant could perform all requirements for
11 work except for lifting more than 10 pounds and standing or walking more than occasionally....
- 12 5. Prior to February 19, 2002, the claimant was not disabled because she was not precluded from
13 performing her past relevant work as kitchen worker, janitor, or car washer. As of February 19,
14 2002, the claimant was unable to perform any of her past relevant work.
- 15 6. As of February 19, 2002, the claimant had the residual functional capacity to perform no more
16 than sedentary work....
- 17 7. The claimant was 50 years old [as of March 3, 2001], which is defined as approaching
18 advanced age....
- 19 8. The claimant is unable to communicate in English.
- 20 9. The claimant does not have any acquired work skills which are transferable to the skilled or
21 semi-skilled work activities of other work....
- 22 10. [The Grids] direct that, considering the claimant's residual functional capacity, age,
23 education, and work experience, she be found "disabled" commencing February 19, 2002.
- 24 12. [sic] [essentially a repetition of finding 10].

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1 Discussion

2 A. Whether Substantial Evidence Supported the Date of Disability Onset As Chosen By
3 the ALJ

4 While at times a person's onset date is readily evident because of the happening of
5 a major trauma, in most cases, choosing the onset date is an educated guess based on piecing
6 together, and drawing inferences from, various medical records and testimony. The latter is true
7 in this case.

8 The Commissioner's decision must be affirmed by us if supported by substantial
9 evidence, and if the Commissioner applied the correct legal standards. *Id.* Under
10 this standard, the Commissioner's findings are upheld if supported by inferences
11 reasonably drawn from the record, see Gallant v. Heckler, 753 F.2d 1450, 1452-53
(9th Cir.1984), and if evidence exists to support more than one rational
interpretation, we must defer to the Commissioner's decision, see Morgan v.
Commissioner, 169 F.3d 595, 599 (9th Cir.1999).

12 Batson v. Comm. of SSA, 359 F.3d 1190, 1193 (9th Cir. 2004).

13 In analyzing the record for substantial evidence, it is important to observe that few medical
14 records as a whole point unerringly to one result. However, it is not appropriate simply to pick
15 isolated evidence which supports a conclusion while ignoring the qualitative and quantitative
16 evidence to the contrary.

17 Perhaps suspicious that this plaintiff had arrived in America only to
18 inappropriately seek immediate SSI disability benefits (she did apply almost as soon as she did
19 arrive), the ALJ did not rely on the different treating sources which showed a continuous
20 complaining of, and treatment for, back pain with radiculopathy since at least February 2001.
21 The question is did something happen in February 2002 (the ALJ's chosen date) which caused a
22 worsening of a previously manageable back problem, or is the differently dated objective testing
23 in the record prior and subsequent to February 2002 simply indicative of a condition she had
24 prior to the ALJ's adjudicated onset date.

25 First of all, nothing in the record pinpoints February 2002 as a watershed month
26 vis-a-vis the back problem. That is, there was no slip and fall, no car accident, no lifting

1 accident. Rather, as far back as February 2001, plaintiff was seeing treating sources for lumbar
2 area spine pain with radiculopathy into the right leg. Tr. 176. See also Tr.172, 175, 173, 174
3 (from the Harbor Medical Clinic and a Doctor Rafaov wherein lumbar spasms were diagnosed);
4 Tr. 192, 193, 195 (from the Midtown Medical Clinic). Significantly, in February 2001, an
5 abnormal nerve conduction study demonstrated evidence of lumbrosacral radiculopathy. Tr. 177.
6 In September 2001, an X-ray report showed significant scoliosis and lumbar narrowing of
7 intervertebral space. Tr. 230. The record also indicates the prescription of many medications
8 prior to February 2002 used in an attempt to mitigate the back problems. See e.g., Tr. 174 (April
9 2001), Tr. 175 (March 2001), Tr. 176 (Feb. 2001), Tr. 203 (Feb. 2001), Tr. 208, Jan 2001), Tr.
10 248 (April 2001).

11 All of this pre-2002 medical information was very consistent with the assertion of
12 serious back pain problems which would have been disabling under the residual functional
13 capacity analysis performed by the ALJ for February 2002. Thus, it was not novel at all that an
14 examination in February 2002 also revealed what had been diagnosed previously – severe back
15 pain and radiculopathy. Tr. 228-229. Yet there was nothing distinctive about the examination on
16 this date which would lead one to pick February 2002 as the critical date.

17 There is some evidence casting doubt on the disabling nature of the back problem
18 prior to February 2002, but it is relatively much less persuasive than that evidence which points
19 to a disabling back condition. The first month plaintiff arrived in the United States, she evidently
20 reported “no major ills,” assuming a good translation at the time (plaintiff did not speak English).
21 The consultative examination performed in February 2001 concluded that plaintiff was
22 essentially fully functioning, Tr. 145-146 (she could lift up to 50 pounds occasionally and 25
23 pounds frequently); however, this examination was a one shot examination which had access to
24 none of the objective information referenced above. This consultative examination is hardly the
25 type of evidence which would appear substantial in an overall analysis. Moreover, the consistent
26 treating records showing a serious back problem far outweigh in value the one time exam by the

1 Social Security consultant. Lester v. Chater, 81 F.3d 821, 830-831 (9th Cir. 1995) (treating
2 physician records generally the most persuasive). Finally, there was one later nerve study which
3 did not show abnormal electronic conduction, Tr. 238 (March 2002), but this study (even post-
4 dating the ALJs found date) was trumped by the unequivocal, May 2002 MRI scan which
5 pictured the very damaged lumbar area, Tr. 226, and it certainly lent support to the February
6 2001 nerve conduction study which had shown radiculopathy, i.e, plaintiff's condition was more
7 or less stationary since February 2001.

8 In sum, the evidence supporting the ALJ's conclusion as to the onset date was
9 slight when compared to the evidence supporting a much earlier date. Substantial evidence does
10 not support the ALJ's conclusion.

11 The record supports a finding that plaintiff was disabled as of February 2001. As
12 noted above, in this month, plaintiff received her first objective test demonstrating the
13 radiculopathy of back pain into her leg. The evidence subsequent to this date, for the most part,
14 was simply consistent and confirmatory of this fact. Nothing in the record demonstrated an acute
15 worsening of plaintiff's symptoms and treating doctor's diagnoses past February 2001. The
16 logical conclusion is that the problems manifested by February 2001 were the same problems in
17 kind and degree for which plaintiff was later found disabled.

18 On the other hand, medical evidence prior to February 2001 was simply too sparse
19 on which to make a conclusion that plaintiff's back pain was disabling prior to February 2001.

20 Given that the same residual functional capacity analysis performed in February
21 2002, could have been performed in February 2001, and would have lead to a conclusion of
22 disabled, there is no need to determine the remaining subsidiary issues raised by plaintiff. That
23 is, no listing analysis need be performed because plaintiff would be found disabled under a later
24 portion of the sequential analysis. One cannot become "more disabled" for purposes of payment
25 of benefits simply because one might be found disabled earlier in the sequential analysis.
26 Similarly, the myriad of other ills posited by plaintiff as worthy of at least commencing the

1 sequential analysis become irrelevant given that the March 2002 date determined by the court.
2 There is no evidence that any of the ills allegedly suffered by plaintiff were of a severity prior to
3 February 2001 to be considered disabling of themselves.

4 The decision whether to remand a case for additional evidence or simply to award
5 benefits is within the discretion of the court. Pitzer v. Sullivan, 908 F.2d 502, 506 (9th Cir.
6 1990). In general, the court will consider factors such as the completeness of the record, the
7 weight of evidence in plaintiff's favor, and the potential harm to plaintiff due to further delay.
8 In terms of the completeness of the record, the court will determine whether additional
9 administrative proceedings would remedy the defects in the decision, which the court cannot
10 remedy based on the present record. See, Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990);
11 Barbato v. Commissioner of Social Security Admin., 923 F. Supp 1273, 1277-78 (C.D.Cal.
12 1996). Because the record is complete and there is no justification for further delay, the
13 undersigned will remand this case for the purposes of payment of retroactive benefits only, the
14 date of onset being February 2001.

15 Conclusion

16 Plaintiff's summary judgment motion (Docket # 20) shall be granted, and the
17 Commissioner's cross-motion for summary judgment (Docket # 23) shall be denied. This case is
18 remanded to the Commissioner for purposes of calculation of benefits only with an onset date of
19 February 2001. Judgment shall be entered in favor of plaintiff.

20 Dated: 01/15/09

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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