

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GAIL WELLMAN,

Plaintiff,

v.

COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

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Hon. Ellen S. Carmody

Case No. 1:18-cv-678

**OPINION**

This is an action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), to review a final decision of the Commissioner of Social Security denying Plaintiff's claim for Disability Insurance Benefits (DIB) under Title II of the Social Security Act. The parties have agreed to proceed in this Court for all further proceedings, including an order of final judgment. Section 405(g) limits the Court to a review of the administrative record and provides that if the Commissioner's decision is supported by substantial evidence it shall be conclusive. The Commissioner has found that Plaintiff is not disabled within the meaning of the Act. For the reasons stated below, the Court concludes that the Commissioner's decision is not supported by substantial evidence. Accordingly, the Commissioner's decision is **vacated and the matter remanded for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g)**.

**STANDARD OF REVIEW**

The Court's jurisdiction is confined to a review of the Commissioner's decision and of the record made in the administrative hearing process. See *Willbanks v. Sec'y of Health and Human Services*, 847 F.2d 301, 303 (6th Cir. 1988). The scope of judicial review in a social

security case is limited to determining whether the Commissioner applied the proper legal standards in making her decision and whether there exists in the record substantial evidence supporting that decision. See *Brainard v. Sec'y of Health and Human Services*, 889 F.2d 679, 681 (6th Cir. 1989). The Court may not conduct a de novo review of the case, resolve evidentiary conflicts, or decide questions of credibility. See *Garner v. Heckler*, 745 F.2d 383, 387 (6th Cir. 1984). It is the Commissioner who is charged with finding the facts relevant to an application for disability benefits, and her findings are conclusive provided they are supported by substantial evidence. See 42 U.S.C. § 405(g).

Substantial evidence is more than a scintilla, but less than a preponderance. See *Cohen v. Sec'y of Dep't of Health and Human Services*, 964 F.2d 524, 528 (6th Cir. 1992) (citations omitted). It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Bogle v. Sullivan*, 998 F.2d 342, 347 (6th Cir. 1993). In determining the substantiality of the evidence, the Court must consider the evidence on the record as a whole and take into account whatever in the record fairly detracts from its weight. See *Richardson v. Sec'y of Health and Human Services*, 735 F.2d 962, 963 (6th Cir. 1984). As has been widely recognized, the substantial evidence standard presupposes the existence of a zone within which the decision maker can properly rule either way, without judicial interference. See *Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986) (citation omitted). This standard affords to the administrative decision maker considerable latitude, and indicates that a decision supported by substantial evidence will not be reversed simply because the evidence would have supported a contrary decision. See *Bogle*, 998 F.2d at 347; *Mullen*, 800 F.2d at 545.

## **PROCEDURAL POSTURE**

Plaintiff was 40 years of age on her alleged disability onset date. (PageID.46). She successfully completed high school and worked previously as an assembler. (PageID.46-47). Plaintiff applied for benefits on August 11, 2015, alleging that she had been disabled since May 19, 2015, due to narcolepsy, anxiety, and depression. (PageID.38, 161-62, 236). Plaintiff's application was denied, after which time she requested a hearing before an Administrative Law Judge (ALJ). (PageID.76-159).

On June 28, 2017, ALJ Colleen Mamelka conducted a hearing with testimony being offered by Plaintiff and a vocational expert. (PageID.53-74). In a written decision dated October 3, 2017, the ALJ determined that Plaintiff was not disabled. (PageID.38-48). The Appeals Council declined to review the ALJ's determination, rendering it the Commissioner's final decision in the matter. (PageID.28-32). Plaintiff subsequently initiated this appeal pursuant to 42 U.S.C. § 405(g), seeking judicial review of the ALJ's decision.

## **ANALYSIS OF THE ALJ'S DECISION**

The social security regulations articulate a five-step sequential process for evaluating disability. See 20 C.F.R. §§ 404.1520(a-f), 416.920(a-f).<sup>1</sup> If the Commissioner can

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1. An individual who is working and engaging in substantial gainful activity will not be found to be "disabled" regardless of medical findings (20 C.F.R. §§ 404.1520(b), 416.920(b));
  2. An individual who does not have a "severe impairment" will not be found "disabled" (20 C.F.R. §§ 404.1520(c), 416.920(c));
  3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and which "meets or equals" a listed impairment in Appendix 1 of Subpart P of Regulations No. 4, a finding of "disabled" will be made without consideration of vocational factors. (20 C.F.R. §§ 404.1520(d), 416.920(d));
  4. If an individual is capable of performing her past relevant work, a finding of "not disabled" must be made (20 C.F.R. §§ 404.1520(e), 416.920(e));

make a dispositive finding at any point in the review, no further finding is required. See 20 C.F.R. §§ 404.1520(a), 416.920(a). The regulations also provide that if a claimant suffers from a nonexertional impairment as well as an exertional impairment, both are considered in determining her residual functional capacity. See 20 C.F.R. §§ 404.1545, 416.945.

The burden of establishing the right to benefits rests squarely on Plaintiff's shoulders, and she can satisfy her burden by demonstrating that her impairments are so severe that she is unable to perform her previous work, and cannot, considering her age, education, and work experience, perform any other substantial gainful employment existing in significant numbers in the national economy. See 42 U.S.C. § 423(d)(2)(A); Cohen, 964 F.2d at 528. While the burden of proof shifts to the Commissioner at step five, Plaintiff bears the burden of proof through step four of the procedure, the point at which her residual functioning capacity (RFC) is determined. See *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987); *Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 528 (6th Cir. 1997) (ALJ determines RFC at step four, at which point claimant bears the burden of proof).

The ALJ determined that Plaintiff suffered from: (1) narcolepsy without cataplexy; (2) anxiety; (3) depression; and (4) carpal tunnel syndrome status post release surgery, severe impairments that whether considered alone or in combination with other impairments, failed to satisfy the requirements of any impairment identified in the Listing of Impairments detailed in 20 C.F.R., Part 404, Subpart P, Appendix 1. (PageID.40-43). With respect to Plaintiff's residual functional capacity, the ALJ determined that Plaintiff retained the capacity to perform light work

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5. If an individual's impairment is so severe as to preclude the performance of past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if other work can be performed (20 C.F.R. §§ 404.1520(f), 416.920(f)).

subject to the following limitations: (1) she can frequently perform fingering and feeling activities; (2) she cannot climb ladders, ropes, or scaffolds; (3) she cannot work around unprotected heights or moving machinery; (4) she can have occasional interaction with the general public; and (5) she is limited to simple, routine, and repetitive tasks. (PageID.43-44).

The ALJ found that Plaintiff was unable to perform her past relevant work at which point the burden of proof shifted to the Commissioner to establish by substantial evidence that a significant number of jobs exist in the national economy which Plaintiff could perform, her limitations notwithstanding. See Richardson, 735 F.2d at 964. While the ALJ is not required to question a vocational expert on this issue, “a finding supported by substantial evidence that a claimant has the vocational qualifications to perform specific jobs” is needed to meet the burden. O’Banner v. Sec’y of Health and Human Services, 587 F.2d 321, 323 (6th Cir. 1978) (emphasis added). This standard requires more than mere intuition or conjecture by the ALJ that the claimant can perform specific jobs in the national economy. See Richardson, 735 F.2d at 964. Accordingly, ALJs routinely question vocational experts in an attempt to determine whether there exist a significant number of jobs which a particular claimant can perform, his limitations notwithstanding. Such was the case here, as the ALJ questioned a vocational expert.

The vocational expert testified that there existed approximately 720,000 jobs in the national economy which an individual with Plaintiff’s RFC could perform, such limitations notwithstanding. (PageID.70-73). This represents a significant number of jobs. See, e.g., Taskila v. Commissioner of Social Security, 819 F.3d 902, 905 (6th Cir. 2016) (“[s]ix thousand jobs in the United States fits comfortably within what this court and others have deemed

‘significant’”). Accordingly, the ALJ concluded that Plaintiff was not entitled to disability benefits.

**I. The ALJ’s RFC Assessment is Not Supported by Substantial Evidence**

A claimant’s RFC represents the “most [a claimant] can still do despite [her] limitations.” *Sullivan v. Commissioner of Social Security*, 595 Fed. Appx. 502, 505 (6th Cir., Dec. 12, 2014); see also, *Social Security Ruling 96-8P*, 1996 WL 374184 at \*1 (Social Security Administration, July 2, 1996) (a claimant’s RFC represents her ability to perform “work-related physical and mental activities in a work setting on a regular and continuing basis,” defined as “8 hours a day, for 5 days a week, or an equivalent work schedule”). As noted above, the ALJ concluded that Plaintiff can perform a limited range of light work. Plaintiff argues that she is entitled to relief because the ALJ’s RFC assessment, premised upon an inaccurate assessment of her narcolepsy, is not supported by substantial evidence. The Court agrees.

The medical record clearly establishes that Plaintiff suffers from narcolepsy. (PageID.315-26, 348-95, 400-596, 641, 766-819). The Social Security Administration’s Program Operations Manual System (POMS) defines narcolepsy as “a chronic neurological disorder characterized by recurrent periods of an irresistible urge to sleep accompanied by three accessory events: cataplexy, hypnagogic hallucinations, and sleep paralysis.” *Keach v. Berryhill*, 2018 WL 1440316 at \*2 n.2 (D. Mass., Mar. 22, 2018) (citation omitted). As further recognized in the Social Security Administration’s POMS, evaluating the severity of a claimant’s narcolepsy can be difficult and often may be limited to “obtain[ing] from an ongoing treatment source a description of the medications used and the response to the medication, as well as an adequate description of the claimant’s alleged narcoleptic attacks and any other secondary events such as cataplexy,

hypnagogic hallucinations or sleep paralysis.” *Salisbury v. Berryhill*, 2017 WL 4322391 at \*1 (D. Maine, Sept. 28, 2017) (citation omitted).

Accordingly, in the estimation of the Social Security Administration, the presence (or lack thereof) of hypnagogic hallucinations and sleep paralysis is quite relevant when assessing the severity of a claimant’s narcolepsy. With respect to the severity of Plaintiff’s narcolepsy, the ALJ stated, “there is no evidence of hypnagogic hallucinations or sleep paralysis.” (PageID.42). As Plaintiff correctly notes, however, this statement is simply incorrect. In fact, Plaintiff’s care providers have repeatedly indicated that Plaintiff experiences hypnagogic hallucinations and sleep paralysis. (PageID.405, 430, 456, 523).

The ALJ, therefore, assessed Plaintiff’s RFC based upon the mistaken belief that Plaintiff did not exhibit two of the accessory events the presence of which are relevant to determining the severity of Plaintiff’s narcolepsy. This error fatally undermines the ALJ’s RFC assessment. The Court recognizes that the ALJ is afforded significant latitude to act without judicial interference. However, such latitude presupposes that the ALJ is not acting based upon factually inaccurate conclusions regarding material matters, as was the case here. Accordingly, the undersigned finds that the ALJ’s RFC assessment is not supported by substantial evidence. Because the vocational expert’s testimony was premised upon a faulty RFC determination, the ALJ’s reliance thereon does not constitute substantial evidence. *See Cline v. Comm’r of Soc. Sec.*, 96 F.3d 146, 150 (6th Cir. 1996) (while the ALJ may rely upon responses to hypothetical questions posed to a vocational expert, such questions must accurately portray the claimant’s impairments).

## **II. Remand is Appropriate**

While the Court finds that the ALJ's decision fails to comply with the relevant legal standards, Plaintiff can be awarded benefits only if "all essential factual issues have been resolved" and "the record adequately establishes [her] entitlement to benefits." *Faucher v. Secretary of Health and Human Services*, 17 F.3d 171, 176 (6th Cir. 1994); see also, *Brooks v. Commissioner of Social Security*, 531 Fed. Appx. 636, 644 (6th Cir., Aug. 6, 2013). This latter requirement is satisfied "where the proof of disability is overwhelming or where proof of disability is strong and evidence to the contrary is lacking." *Faucher*, 17 F.3d at 176; see also, *Brooks*, 531 Fed. Appx. at 644. Evaluation of Plaintiff's claim requires the resolution of factual disputes which this Court is neither competent nor authorized to undertake in the first instance. Moreover, there does not exist compelling evidence that Plaintiff is disabled. Accordingly, this matter must be remanded for further administrative action.

### **CONCLUSION**

For the reasons articulated herein, the Court concludes that the ALJ's decision is not supported by substantial evidence. Accordingly, the Commissioner's decision is **vacated and the matter remanded for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g)**. A judgment consistent with this opinion will enter.

Dated: February 15, 2019

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
U.S. Magistrate Judge