

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

CHARLENE STINSON

PLAINTIFF

vs.

CIVIL ACTION NO. 1:10cv102-SAA

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

MEMORANDUM OPINION

This case involves an application under 42 U.S.C. § 405(g) for judicial review of the decision of the Commissioner of Social Security denying plaintiff Charlene Stinson's application for supplemental security income (SSI) payments under Section 1614(a)(3) of the Act. Plaintiff protectively filed her application for SSI¹ on December 14, 2006, alleging disability beginning March 1, 2000. Docket 7, Ex. 1, p. 15.² Plaintiff's claim was denied initially on December 19, 2006 and on reconsideration on May 15, 2007. Ex. 1, p. 15. She filed a written request for hearing on July 16, 2007 and chose to appear and testify without the assistance of counsel at the hearing held on August 25, 2009. *Id.* The Administrative Law Judge (ALJ) issued an unfavorable decision on September 25, 2009 (*Id.* at 15-27), and the Appeals Council denied plaintiff's request for a review. *Id.* at 7-9. Plaintiff timely filed the instant appeal from the decision, and it is now ripe for review. Because both parties have consented to have a magistrate

¹ Because plaintiff's date last insured was December 1989, she was not eligible to apply for disability insurance benefits. Exhibit 1, p. 71.

² The Administrative Record in this case is attached to defendant's Answer at Docket Entry 7. All citations to the Administrative Record are to the Exhibit and Page Number at Docket Entry 7.

judge conduct all the proceedings in this case as provided in 28 U.S.C. § 636(c), the undersigned has the authority to issue this opinion and the accompanying final judgment.

I. FACTS

Plaintiff was born on February 11, 1964, and completed the eleventh grade. Exhibit 1, p. 67. She was 45 years old at the time of the ALJ's decision and has no past relevant work. Ex. 2, p. 313. She was last employed in 1984. *Id.* Plaintiff contends that she became disabled before her application for SSI due to headaches, numbness in her leg and foot, pain and muscle spasms in her back, shoulders, neck and hands, and depression. Ex. 1, p. 90-93. Plaintiff only appeals the ALJ's decision as to her depression and anxiety. Docket 13, p. 1. After a thorough review of all of the evidence, including the plaintiff's medical records, the court concludes that the objective evidence does not support a finding of disability under the Social Security Act (SSA).

The ALJ determined that plaintiff suffered from "severe" impairments, including "status post carpal tunnel surgery, obesity, back disorder, history of asthma, hypertension, and borderline intellectual functioning" (Ex. 1, p. 17), and non-severe impairments that included left ankle injury, hernia, headaches, affective mood disorder, anxiety, somatoform disorder, and personality disorder. Ex. 1, p. 18-19. The ALJ found that these non-severe impairments impose no more than a minimal impact on the claimant's ability to perform work-related activity, lasted less than 12 months, or supported no more than minimal functional limitations. Ex. 1, p. 18-19.

The ALJ performed a thorough analysis of all of plaintiff's alleged impairments, including those that he determined were not severe or were not medically determinable impairments. The ALJ held that because plaintiff's "activities of daily living support no more than minimal functional limitations related to depression [or] anxiety," her depression and

anxiety were non-severe. Ex. 1, p. 19. He pointed out that only plaintiff's general care physicians at the Family Medicine Residency Center have treated plaintiff for depression and that Dr. Davis' "treatment notes reveal the claimant has no anxiety, agitation, or depression." *Id.* She "alleges depression and anxiety all her life, but she receives no mental health treatment." *Id.*

After analyzing each individual impairment alleged, the ALJ found that plaintiff's impairments, singly or on combination, did not meet or equal a listed impairment in 20 C.F.R. Part 404, Subpart P, App. 1 (20 C.F.R. 416.920(d), 416.925 and 416.926). Ex. 1, p. 19. He considered testimony by the vocational expert [VE] at the hearing and, reviewing the record as a whole, determined that plaintiff retains the Residual Functional Capacity (RFC) to "perform sedentary work as defined in 20 CFR 416.967(a) except . . . She is limited to jobs that do not demand attention to detailed or complicated job instructions or tasks." *Id.* at 22. Although he found that plaintiff's impairments could reasonably be expected to cause the alleged symptoms, he nevertheless concluded that plaintiff's "statements concerning the intensity, persistence and limiting effects of [her] symptoms are not credible to the extent they are inconsistent with the . . . residual functional capacity assessment." Ex. 1, p. 22. The ALJ concluded that because there are jobs that exist in significant numbers in the national economy that plaintiff can perform, she is not disabled under the Social Security Act. Ex. 1, p. 26-27. Plaintiff contends that the ALJ erred when he determined that plaintiff's depression and anxiety were "not severe."

II. DISCUSSION

In determining disability, the Commissioner, through the ALJ, works through a five-step sequential evaluation process.³ The burden rests upon plaintiff throughout the first four steps of

³See 20 C.F.R. § 416.920 (2003).

this five-step process to prove disability, and if plaintiff is successful in sustaining her burden at each of the first four levels, then the burden shifts to the Commissioner at step five.⁴ First, plaintiff must prove she is not currently engaged in substantial gainful activity.⁵ Second, plaintiff must prove her impairment is “severe” in that it “significantly limits [her] physical or mental ability to do basic work activities”⁶ At step three the ALJ must conclude plaintiff is disabled if she proves that her impairments meet or are medically equivalent to one of the impairments listed at 20 C.F.R. Part 404, Subpart P, App. 1, §§ 1.00-114.09 (2003).⁷ If plaintiff does not meet this burden, at step four she must prove that she is incapable of meeting the physical and mental demands of her past relevant work.⁸ At step five, the burden shifts to the Commissioner to prove, considering plaintiff’s residual functional capacity, age, education and past work experience, that she is capable of performing other work.⁹ If the Commissioner proves other work exists which plaintiff can perform, plaintiff is given the chance to prove that she cannot, in fact, perform that work.¹⁰

The court considers on appeal whether the Commissioner’s final decision is supported by

⁴*Muse v. Sullivan*, 925 F.2d 785, 789 (5th Cir. 1991).

⁵20 C.F.R. § 416.920(b) (2003).

⁶20 C.F.R. § 416.920 (2003).

⁷20 C.F.R. § 416.920 (2003). If a claimant’s impairment meets certain criteria, that claimant’s impairments are “severe enough to prevent a person from doing any gainful activity.” 20 C.F.R. § 416.925 (2003).

⁸20 C.F.R. § 416.920(e) (2003).

⁹20 C.F.R. § 416.920(f)(1) (2003).

¹⁰*Muse*, 925 F.2d at 789.

substantial evidence and whether the Commissioner used the correct legal standard. *Muse v. Sullivan*, 925 F.2d 785, 789 (5th Cir. 1991); *Villa v. Sullivan*, 895 F.2d 1019, 1021 (5th Cir. 1990). The court has the responsibility to scrutinize the entire record to determine whether the ALJ's decision was supported by substantial evidence and whether the proper legal standards were applied in reviewing the claim. *Ransom v. Heckler*, 715 F.2d 989, 992 (5th Cir. 1983). The court has limited power of review and may not reweigh the evidence or substitute its judgment for that of the Commissioner,¹¹ even if it finds that the evidence leans against the Commissioner's decision.¹² The Fifth Circuit has held that substantial evidence is "more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Crowley v. Apfel*, 197 F.3d 194, 197 (5th Cir. 1999) (citation omitted). Conflicts in the evidence are for the Commissioner to decide, and if there is substantial evidence to support the decision, it must be affirmed even if there is evidence on the other side. *Selders v. Sullivan*, 914 F.2d 614, 617 (5th Cir. 1990). The court's inquiry is whether the record, as a whole, provides sufficient evidence that would allow a reasonable mind to accept the conclusions of the ALJ. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). "If supported by substantial evidence, the decision of the [Commissioner] is conclusive and must be affirmed." *Paul v. Shalala*, 29 F.3d 208, 210 (5th Cir. 1994), citing *Richardson v. Perales*, 402 U.S. 389, 390, 28 L.Ed.2d 842 (1971).

Plaintiff contends the ALJ erred by finding her impairments of depression and anxiety

¹¹*Hollis v. Bowen*, 837 F.2d 1378, 1383 (5th Cir. 1988).

¹²*Bowling v. Shalala*, 36 F.3d 431, 434 (5th Cir. 1994); *Harrell v. Bowen*, 862 F.2d 471, 475 (5th Cir. 1988).

not “severe.” Specifically, plaintiff alleges that the ALJ used an incorrect legal standard in evaluating the severity of plaintiff’s mental impairments. Despite plaintiff’s claim of error, however, the ALJ did properly consider all of her impairments and utilized the proper standard in determining the severity of those impairments. The proper legal standard, as defined by the Fifth Circuit, requires that “an impairment can be considered as not severe only if it is a slight abnormality [having] such minimal effect on the individual that it would not be expected to interfere with the individual’s ability to work, irrespective of age, education or work experience.” *Stone v. Heckler*, 752 F.2d 1099, 1101 (5th Cir. 1985). “An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.” 20 C.F.R. §§ 404.1521, 416.921. “If the claimant is unable to show that [s]he has a medically severe impairment, [s]he is not eligible for disability benefits. In such a case, there is no reason for the Secretary to consider the claimant’s age, education, and work experience.” *Bowen v. Yuckert*, 482 U.S. 137, 148 (1987). The requirement of severity is a threshold requirement that every plaintiff must prove before the claim may proceed to step three. The ALJ performed a thorough analysis of the plaintiff’s depression and anxiety and found both to be non-severe impairments. The ALJ noted that plaintiff alleges to have suffered from depression and anxiety all her life, but has received no mental health treatment. Ex. 1, p. 19. She has been prescribed various anti-depressants and anti-anxiety medications, but treatment notes from her treating physicians demonstrate a normal mental status since late 2005. *Id.* According to the ALJ, “Dr. Davis’ treatment notes reveal the claimant had no anxiety, agitation, or depression.” *Id.* Joe Edward Morris, Ph.D., examined the plaintiff at the request of the ALJ and determined that the plaintiff does not suffer from a major depressive disorder and found

“indications suggesting generalized anxiety” and mild to moderate depression of a dysthymic nature. Ex. 1, p. 144-46. Dr. Morris concluded that plaintiff “is not significantly impaired and on that basis able to perform routine, repetitive work-related tasks.” *Id.* at 146. Although plaintiff notes seven instances where her treating physicians at the Family Medicine Residency Center have prescribed medication for depression or anxiety (Docket 13, p. 2-3), she does not provide any evidence that the depression or anxiety affect her ability to work. Similarly, plaintiff alleges that the mental health problems cause her “significant problems,” but does not identify any evidence in the record to support any such problems. Docket 13, p. 7. The court agrees with the ALJ that the plaintiff’s alleged impairments of depression and anxiety are non-severe impairments and concludes that the ALJ applied the proper legal standard in making this determination.

In passing, plaintiff argues that the ALJ did not afford proper weight to the opinions of the state agency examiner, Joe Edward Morris, Ph.D. However, that does not appear to be the case; the ALJ addressed Dr. Morris’ opinions and did not find that any of them contradicted the medical records upon which the ALJ’s decision was based. Therefore, this argument is without merit.

III. CONCLUSION

After a review of the evidence presented to the ALJ, this court is of the opinion that the ALJ’s opinion was supported by substantial evidence and must be affirmed. The ALJ thoroughly analyzed each of plaintiff’s alleged impairments, including plaintiff’s depression and anxiety. He properly weighed the evidence from plaintiff’s treating physicians and evaluated plaintiff’s impairments under all of the necessary steps. His conclusion that her depression and

anxiety are not severe is clearly supported by substantial evidence, and the decision of the Commissioner should be affirmed. A separate judgment in accordance with this Memorandum Opinion will issue this date.

This, the 14th of January, 2011.

/s/ S. Allan Alexander
UNITED STATES MAGISTRATE JUDGE