

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

KELLYANN SINGLETON,

Plaintiff,

v.

Civil Action No.
5:15-CV-1527 (DEP)

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

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FOR DEFENDANT

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DAVID E. PEEBLES
CHIEF U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on October 18, 2016, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

GRANTED.

2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: October 18, 2016
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
KELLYANN SINGLETON,

Plaintiff,

vs.

5:15-CV-1527

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,

Defendant.
-----x

Transcript of a **Decision** held on October 18,
2016, at the James Hanley Federal Building,
100 South Clinton Street, Syracuse, New York, the
HONORABLE DAVID E. PEEBLES, United States Magistrate
Judge, Presiding.

A P P E A R A N C E S

(By Telephone)

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1 (In Chambers, Counsel present by telephone.)

2 THE COURT: All right. I have before me a request
3 for judicial review of an adverse determination by the Acting
4 Commissioner pursuant to 42 United States Code Sections
5 405(g) and 1383(c)(3).

6 The background is as follows: Plaintiff was born
7 in December of 1977, is currently 39 years old, was 34 at the
8 onset of her alleged disability and 36 at the time of the
9 hearing in this matter. She is right-handed, she stands
10 5-foot 7 inches tall, and weighs 287 pounds and has been
11 diagnosed as being obese. She has a ninth grade education.
12 While in school she was in special education classes, she has
13 not achieved a GED. She began a course I believe in
14 hairdressing but did not conclude it. She has difficulty in
15 writing and spelling and some difficulties in counting. She
16 drives, although she is limited by, mainly by ankle pain as
17 well as pain in her shoulder, neck, and back.

18 She lives with her husband although her husband
19 works at a remote location and is gone for substantial
20 periods of time. She has a 16-year-old daughter at the time
21 of the hearing, nine-year-old son, and a five-year-old son,
22 and also lives with a friend. One of the children is
23 disabled.

24 She was engaged in a motor vehicle accident in
25 March of 1980 -- 2012, she had a slip and fall in January of

1 2012 and injured her right hand. It was diagnosed as a
2 sprain or strain. She fell on the stairs in January of 2013
3 and injured her ankle. She suffers from right shoulder pain,
4 lumbar pain, and has undergone treatment at SOS and New York
5 Spine & Wellness Center, among others. She uses a TENS unit,
6 has undergone injections, physical therapy, and medication.
7 She also has treated at Upstate Bone & Joint Center for her
8 ankle.

9 She last worked in April of 2008. She worked off
10 and on from 2 -- from 1996 to 2004 as a cashier at various
11 convenience stores. She left her telemarketing job due to
12 pregnancy in 2008. Daily activities including, she is able
13 to do certain functions including bathing, dressing, and
14 housework, some cooking with the assistance of her friend.
15 She shops utilizing a motorized cart.

16 The procedural history of this matter is that
17 plaintiff applied for SSI benefits on August 13, 2012
18 alleging an onset date for disability of March 18, 2012. A
19 hearing was conducted by Administrative Law Judge Elizabeth
20 Koennecke, K-o-e-n-n-e-c-k-e, on February 19, 2014. ALJ
21 Koennecke issued a decision on May 24, 2014 that -- I'm
22 sorry, held a supplemental hearing, the hearing was initially
23 adjourned from February to May 24, 2014. A decision was
24 rendered on July 25, 2014, that became a final determination
25 of the agency on October 19, 2015 when the Social Security

1 Administration Appeals Council denied plaintiff's request for
2 review.

3 In her decision, ALJ Koennecke applied the
4 progressive five-step test for determining disability.

5 At step one, found that plaintiff had not engaged
6 in substantial gainful activity since her alleged onset date.

7 At step two, concluded that the plaintiff suffers
8 from severe impairments that meet the regulation requirements
9 for step two, including degenerative disk disease of the
10 lumbar spine and a right shoulder impingement with a partial
11 tendon tear.

12 In arriving at that conclusion, the ALJ rejected
13 several other alleged conditions as not sufficiently
14 limiting, including obesity, the wrist condition, an ankle
15 condition, the gastroesophageal reflux disease, or GERD, neck
16 pain and headaches, knee pain, and significantly, mental
17 limitations.

18 When he reviewed -- when she reviewed the mental
19 limitations, ALJ Koennecke surveyed the available evidence
20 including consultative examinations, reports, from
21 Dr. Christina Caldwell and Dr. Jeanne, J-e-a-n-n-e, Shapiro,
22 as well as the state agency psychological consultant who
23 reviewed available records, went through the so-called B
24 criteria of the listings and concluded that plaintiff had
25 only a mild limitation in the activities of daily living,

1 mild limitation in social functioning, mild limitation in
2 concentration, persistence, or pace and no episodes of
3 decompensation that would meet the requirements of the
4 listings.

5 After surveying the records, the ALJ concluded the
6 plaintiff did not meet or medically equal any of the listed
7 presumptively disabling conditions including specifically
8 1.02, 1.04, 12.04, 12.05, and 12.06.

9 ALJ Koennecke next concluded that plaintiff retains
10 the residual functional capacity to perform a full range of
11 light work as defined in the regulations, and subject to in
12 an eight-hour workday with normal breaks can stand and walk
13 in combination for six hours and sit for six hours.

14 She then concluded at step four that plaintiff did
15 not have any significant past relevant work, and at step
16 five, utilizing the medical vocational guidelines or the
17 grids set forth in the regulations and specifically grid rule
18 202.17, found that the plaintiff was not disabled at the
19 relevant times.

20 As you know, my function is limited, the scope of
21 review is fairly deferential. I must determine whether the
22 Commissioner's determination is supported by substantial
23 evidence and correct legal principles were applied.

24 First turning to listing 12.05, that listing was
25 previously entitled mental retardation, it is now retitled as

1 intellectual disability. Clearly the 58 full scale IQ score
2 qualifies under paragraph B of that listing; however, the
3 listing also requires a showing that the plaintiff has
4 deficits in adaptive functioning initially manifested during
5 the developmental period, that is, the evidence demonstrates
6 or supports onset of the impairment before age 22.

7 Let's discuss first the argument that the -- the
8 school records should have been obtained to determine whether
9 the deficits manifested themselves before age 22. There's
10 normally a presumption under *Talavera*, absent any trauma or
11 something that would explain a sudden onset of deficits in
12 adaptive functioning, that they did in fact occur before age
13 22. In any event, any failure to obtain those records is
14 harmless in this case because substantial evidence supports
15 the finding that the plaintiff does not suffer from deficits
16 in adaptive functioning. The definition of adaptive
17 functioning is set forth in *Talavera*. Among other things,
18 adaptive functioning refers to an individual's ability to
19 cope with the challenges of ordinary everyday life.

20 In reviewing those deficits, and analyzing them,
21 courts have held that if one is able to satisfactorily
22 navigate activities such as living on one's own, taking care
23 of children without help sufficiently well that they have not
24 been adjudged neglected, paying bills, and avoiding eviction,
25 one does not suffer from deficits in adaptive functioning.

1 In this case, it's clear, plaintiff, although she
2 does have some help, she is able to take care of three
3 children primarily while her husband is gone. The opinion of
4 Dr. Shapiro at page 397 outlines her current functioning,
5 she's able to dress, bathe, and groom, but may need help
6 putting on her shirt at times, may need help getting out of
7 the tub. She can put something in the microwave and prepare
8 quick food, do limited general cleaning, needs help with
9 laundry because she cannot bend, needs help shopping because
10 she cannot do the walking, can manage money, can drive when
11 she is not in too much pain. Socially she gets along well
12 with family and friends, she spends her days doing light
13 housework.

14 So substantial evidence supports the finding that
15 the plaintiff does not have deficits in adaptive functioning.
16 Most of her limitations are related to her physical condition
17 rather than her mental or cognitive. This case is very
18 similar to *Edwards v. Astrue*, case relied on by the
19 Commissioner. In that case it's noted that a plaintiff who
20 can dress, bathe, manage money, communicate effectively, do
21 simple math and take care of personal needs does not suffer
22 from adaptive deficits.

23 So I find that the conclusion she does not meet or
24 medically equal listing 12.05 is supported by substantial
25 evidence.

1 In terms of duty to develop the record, we've
2 already talked about the medical records. In terms of
3 physical records, I find no gaps. I agree that the
4 regulations and case law supports the finding that the lack
5 of a medical source statement from a treating source alone
6 does not indicate a fatal gap in the record. The New York
7 Spine & Wellness Center treatment records are complete from
8 July 17, 2012 to April 15, 2014 without any gaps. There is
9 significant treatment records from various other sources and
10 a consultative examination report from Dr. Ganesh, and so I
11 do not find any gaps in the record that should have required
12 recontacting.

13 In terms of the residual functional capacity or RFC
14 determination, I find that the physical components are
15 supported by substantial evidence, including Dr. Ganesh's
16 report. I would prefer to have seen a more precise medical
17 source statement that fleshed out what was meant by gross
18 limitations and mild to moderate limitations but the case law
19 does support that mild to moderate limitation is not
20 incompatible with light work and, as counsel for the
21 Commissioner argued and indicated, the results of the
22 physical examination, including the musculoskeletal
23 examination, are not inconsistent with the RFC. And in terms
24 of mental, Dr. Shapiro's report supports the finding that
25 there are no mental limitations that would affect the ability

1 to perform unskilled work on which the grids are predicated.

2 There was also an argument regarding credibility.
3 Obviously that's a matter for the Commissioner. In this case
4 there was a fairly detailed, more detailed than I'm used to
5 seeing, quite honestly, discussion of credibility at pages 31
6 through 33 of the administrative transcript. It was quite
7 thorough and is supported by substantial evidence, in terms
8 of the rejection of plaintiff's claims of disabling
9 symptomology. It -- the discussion permitted judicial,
10 meaningful judicial review and is supported by substantial
11 evidence. I note that, as I indicated before, plaintiff left
12 her prior job due to pregnancy, and on page 547 listed her
13 occupation as a stay-at-home mother. The credibility
14 determination is also supported by treatment records and
15 clinical findings.

16 You know, I do agree that there, the sit-and-squirm
17 jurisprudence argument perhaps contains merit but I find that
18 it, any reliance on that is harmless in light of the
19 overwhelming other evidence relied upon by, and cited by ALJ
20 Koennecke.

21 So I will grant judgment on the pleadings to the
22 defendant and order dismissal of plaintiff's complaint. I
23 enjoyed working with both of you and I appreciate excellent
24 oral arguments and this was an interesting case.

25 MS. CALLAHAN: Thank you, your Honor.

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MR. RILEY: Thank you, Judge.

THE COURT: Thank you.

(Proceedings Adjourned, 10:42 a.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of October, 2016.

/S/ JODI L. HIBBARD
JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter