

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

ROSANNA ANDREWS, )  
v. )  
Plaintiff, )  
NANCY A. BERRYHILL, )  
Acting Commissioner of the Social )  
Security Administration,<sup>1</sup> )  
Defendant. )

Case No. CIV-16-01-SPS

## OPINION AND ORDER

The claimant Rosanna Andrews requests judicial review pursuant to 42 U.S.C. § 405(g) of the decision of the Commissioner of the Social Security Administration denying her application for benefits under the Social Security Act. She appeals the decision of the Commissioner and asserts that the Administrative Law Judge (“ALJ”) erred in determining she was not disabled. For the reasons set forth below, the decision of the Commissioner is hereby **AFFIRMED**.

## Social Security Law and Standard of Review

Disability under the Social Security Act is defined as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment[.]” 42 U.S.C. § 423(d)(1)(A). A claimant is disabled under the Social Security Act “only if h[er] physical or mental impairment or impairments are of such severity that [s]he is not only unable to do h[er] previous work but cannot,

<sup>1</sup> On January 20, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. In accordance with Fed. R. Civ. P. 25(d), Ms. Berryhill is substituted for Carolyn Colvin as the Defendant in this action.

considering h[er] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy[.]” 42 U.S.C. § 423 (d)(2)(A). Social security regulations implement a five-step sequential process to evaluate a disability claim. *See 20 C.F.R. §§ 404.1520, 416.920.*<sup>2</sup>

Judicial review of the Commissioner’s determination is limited in scope by 42 U.S.C. § 405(g). This Court’s review is limited to two inquiries: 1) whether the decision was supported by substantial evidence, and 2) whether the correct legal standards were applied. *See Hawkins v. Chater*, 113 F.3d 1162, 1164 (10th Cir. 1997) [citation omitted]. The term “substantial evidence” requires ““more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”” *Richardson v. Perales*, 402 U.S. 389, 401 (1971), quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). However, the Court may not reweigh the evidence nor substitute its discretion for that of the agency. *See Casias v. Secretary of Health & Human Services*, 933 F.2d 799, 800 (10th Cir. 1991). Nevertheless, the Court

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<sup>2</sup> Step one requires the claimant to establish that she is not engaged in substantial gainful activity, as defined by 20 C.F.R. §§ 404.1510, 416.910. Step two requires the claimant to establish that she has a medically severe impairment (or combination of impairments) that significantly limits her ability to do basic work activities. *Id.* §§ 404.1521, 416.921. If the claimant is engaged in substantial gainful activity, or if her impairment is not medically severe, disability benefits are denied. At step three, the claimant’s impairment is compared with certain impairments listed in 20 C.F.R. pt. 404, subpt. P, app. 1. If the claimant suffers from a listed impairment (or impairments “medically equivalent” to one), she is determined to be disabled without further inquiry. Otherwise, the evaluation proceeds to step four, where the claimant must establish that she lacks the residual functional capacity (RFC) to return to her past relevant work. The burden then shifts to the Commissioner to establish at step five that there is work existing in significant numbers in the national economy that the claimant can perform, taking into account her age, education, work experience and RFC. Disability benefits are denied if the Commissioner shows that the claimant’s impairment does not preclude alternative work. *See generally Williams v. Bowen*, 844 F.2d 748, 750-51 (10th Cir. 1988).

must review the record as a whole, and “[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight.” *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *see also Casias*, 933 F.2d at 800-01.

### **Claimant’s Background**

The claimant was born on October 31, 1963, and was fifty-one years old at the time of the administrative hearing (Tr. 299). She completed the eleventh grade and earned a GED, and has no past relevant work (Tr. 19, 109, 299). The claimant alleges she has been unable to work since June 1, 2007, due to type II diabetes and hip/lower back problems (Tr. 108).

### **Procedural History**

On December 10, 2012, the claimant applied for supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-85. Her application was denied. ALJ Lantz McClain held an administrative hearing and determined the claimant was not disabled in a written decision dated June 19, 2015 (Tr. 13-20). The Appeals Council denied review, so the ALJ’s written decision represents the final decision of the Commissioner for purposes of this appeal. *See* 20 C.F.R. § 416.1481.

### **Decision of the Administrative Law Judge**

The ALJ made his decision at step five of the sequential evaluation. He found that the claimant retained the residual functional capacity (RFC) to perform the full range of medium work as defined in 20 C.F.R. § 416.967(c), *i. e.*, that she can lift/carry fifty pounds occasionally and twenty-five pounds frequently, and stand/walk and sit at least

six hours in an eight-hour workday (Tr. 16). The ALJ concluded that although the claimant had no past relevant work to return to, she was nevertheless not disabled because there was work she could perform, *i. e.*, dishwasher and fast food worker (Tr. 19-20).

### **Review**

The claimant's sole contention of error is that the ALJ failed to consider her obesity in assessing her claim for disability. The Court finds this contention unpersuasive for the following reasons.

The ALJ determined that the claimant had the severe impairment of insulin-dependent diabetes mellitus, and the nonsevere impairment of low back and hip pain (Tr. 15). The relevant medical evidence reveals that the claimant was mostly treated at Wilma Mankiller Indian Health Center. Her weight in the medical evidence ranged from 190-205 pounds (Tr. 191, 227, 235, 254, 261, 276, 287).

On October 1, 2013, consultative examiner Wojciech L. Dulowski noted the claimant was "morbid obese" (Tr. 184). He noted that she walked without any assistive device and that she had slight tenderness of the left side (Tr. 184-185). He assessed her with a history of insulin-dependent diabetes and a history of chronic back pain, but noted there was an absence of x-rays or documentation on the back pain (Tr. 185).

At the administrative hearing, the claimant testified, *inter alia*, that she had not gained weight since starting insulin (Tr. 303). In his written opinion, the ALJ noted the claimant's testimony that she was on a special diet and had not gained weight since

starting insulin, and further noted her weight (199.2 pounds, 198.6 pounds, and 199 pounds) at various places in the treating record (Tr. 18-19).

The claimant contends that the ALJ erred in failing to consider her obesity because she had a BMI over 35.0 all but one time her weight was recorded. Social Security Ruling 02-1p states that the effects of obesity must be considered throughout the sequential evaluation process. *See* 2002 WL 34686281, at \*1 (Sept. 12, 2002). The Listing of Impairments with regard to the respiratory system references obesity and explains that “[t]he combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately”; therefore, the ALJ “must consider any additional and cumulative effects of obesity” when assessing an individual’s RFC. 20 C.F.R. Pt. 404, Subpt. P, App. 1, Pt. A, 3.00 Respiratory System. However, “[o]besity in combination with another impairment may or may not increase the severity or functional limitations of the other impairment.” Soc. Sec. Rul. 02-1p, 2002 WL 34686281, at \*6. Therefore, “[a]ssumptions about the severity or functional effects of obesity combined with other impairments [will not be made],” and “[w]e will evaluate each case based on the information in the case record.” *Id.*, 2002 WL 34686281, at \*6. Here, the record reflects that the claimant’s weight ranged from 190-205 and she is five feet, two inches tall (Tr. 191, 227, 235, 254, 261, 276, 287). The claimant argues that the ALJ failed to properly account for her obesity, but the ALJ thoroughly discussed the claimant’s physical and mental impairments and the reasons for his RFC determination, there was no additional evidence or opinion in the case record, and he was not required to speculate about whether the claimant’s obesity exacerbated the claimant’s

other impairments. *See Fagan v. Astrue*, 231 Fed. Appx. 835, 837-838 (10th Cir. 2007) (“The ALJ discussed the evidence and why he found Ms. Fagan not disabled at step three, and, the claimant—upon whom the burden rests at step three—has failed to do more than suggest that the ALJ should have speculated about the impact her obesity may have on her other impairments.”).

The ALJ specifically noted every medical record available in this case, *and still concluded* that she could work. *See Hill v. Astrue*, 289 Fed. Appx. 289, 293 (10th Cir. 2008) (“The ALJ provided an extensive discussion of the medical record and the testimony in support of his RFC finding. We do not require an ALJ to point to ‘specific, affirmative, medical evidence on the record as to each requirement of an exertional work level before [he] can determine RFC within that category.’”), quoting *Howard*, 379 F.3d at 949. The claimant’s contentions are therefore without merit.

### **Conclusion**

In summary, the Court finds that correct legal standards were applied by the ALJ, and the decision of the Commissioner is therefore supported by substantial evidence. The decision of the Commissioner of the Social Security Administration is accordingly hereby AFFIRMED.

**DATED** this 2nd day of March, 2017.



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**STEVEN P. SHREDER**  
**UNITED STATES MAGISTRATE JUDGE**