

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BARBARA RODGERS,)
)
Plaintiff,)
)
vs.) Civil Action No. 13-75-J
)
CAROLYN W. COLVIN, ACTING)
COMMISSIONER OF SOCIAL SECURITY,)
)
Defendant.)

O R D E R

AND NOW, this 24th day of September, 2014, upon consideration of the parties' cross-motions for summary judgment, the Court, upon review of the Commissioner of Social Security's final decision re-determining Plaintiff's eligibility for benefits under 42 U.S.C. § 1382c(a) (3) (H) (iii) and denying her claim for supplemental security income benefits under Subchapter XVI of the Social Security Act, 42 U.S.C. §1381, et seq., finds that the Commissioner's findings are supported by substantial evidence and, accordingly, affirms. See 42 U.S.C. §405(g); Jesurum v. Secretary of U.S. Department of Health & Human Services, 48 F.3d 114, 117 (3d Cir. 1995); Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992), cert. denied sub nom., 507 U.S. 924 (1993); Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988). See also Berry v. Sullivan, 738 F. Supp. 942, 944 (W.D. Pa. 1990) (if

supported by substantial evidence, the Commissioner's decision must be affirmed, as a federal court may neither reweigh the evidence, nor reverse, merely because it would have decided the claim differently) (citing Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981)).¹

¹ The Court finds no merit in Plaintiff's position that the Administrative Law Judge ("ALJ") erred in finding her to be not disabled. Plaintiff first argues that her case should be remanded to the Commissioner to obtain additional information concerning her previous disability determination pursuant to Social Security Ruling ("SSR") 11-2p, 2011 WL 4055665 (S.S.A.) (Sept. 12, 2011). Plaintiff, of course, acknowledges that this ruling had not been issued prior to the ALJ's decision, but apparently believes that this case should be remanded so that the ALJ can re-evaluate the case in light of the ruling. As the Commissioner points out, the courts to have ruled on the issue have found that SSR 11-2p has no application when an ALJ has issued his or her decision prior to the ruling's effective date of September 12, 2011. See Reid v. Colvin, 2013 WL 1729491, at *8 n.4 (D. S.C. Apr. 22, 2013); Lancaster v. Astrue, 2012 WL 6652539, at *3 (E.D. Ken. Dec. 20, 2012). Regardless, nothing in that ruling is inconsistent with the ALJ's analysis. Plaintiff herself acknowledges that the ruling states that the medical improvement review standard is not used for continuing disability reviews in age-18 re-determinations. See 2011 WL 4055665 (S.S.A.) at *3 n.14, *15. The Court notes that Section IV(E) (2) of SSR 11-2p provides merely that, absent medical improvement or new evidence demonstrating a prior error, a young adult who had limitations as a child "will probably" or "likely" have similar limitations as an adult. Id. at *16. In any event, substantial evidence supports the ALJ's decision. Plaintiff was found to be disabled as a child effective December 1, 2004, approximately four and a half years before she received notice that she was no longer disabled as an adult as of June 1, 2009. The ALJ carefully considered and discussed the progress of Plaintiff's conditions going forward. Indeed, contrary to Plaintiff's claims, there was a great deal of record evidence regarding Plaintiff's mental, psychological, and educational condition from the time she was initially awarded benefits as a child, including the determination itself (R. 148-74, 236-75), and there was likewise a significant amount of evidence from the period between 2004 and 2009. The ALJ, in fact, specifically referred to and acknowledged this evidence. (R. 16).

Plaintiff also argues that the ALJ failed to account for certain of her impairments, particularly her anxiety disorder. She argues, for instance, that the ALJ's residual functional capacity ("RFC") findings "do not include **any** limitations resulting from her anxiety disorder." Doc. No. 9 at 9 (emphasis added). However, she apparently ignores the fact that the ALJ's RFC findings limited her to simple, routine, repetitive, low stress work involving no deadlines or a fast-paced production environment and the fact that the findings required her to avoid interaction with the public and teamwork jobs and limited her to occasional interaction with supervisors and co-workers and to object-oriented work. (R. 12). These findings more than adequately addressed Plaintiff's anxiety-related symptoms. To the extent that Plaintiff argues that additional restrictions were warranted, the Court notes that the ALJ did not find Plaintiff's testimony regarding her symptoms to be entirely credible, and substantial evidence supports that decision. Indeed, both consulting professionals, Dr. Kim Foster, Ph.D., and Steven Hand, M.A., indicated that Plaintiff may be a malingerer. (R. 335, 342-343). Moreover, as the ALJ pointed out, Plaintiff's testimony at her hearing was contradicted by other record evidence, including her mother's testimony. (R. 17).

Plaintiff apparently believes that Ramirez v. Barnhart, 372 F.3d 546 (3d Cir. 2004), calls for a different result. However, this belief is based on her mis-reading and/or mis-application of the holding in that case. First, in Ramirez, the ALJ had found that the claimant "often" suffered from deficiencies of concentration, persistence, or pace, resulting in a failure to complete tasks in a timely manner, and the Third Circuit Court of Appeals held that the ALJ's RFC determination that the claimant was limited to simple, repetitive one or two-step tasks did not sufficiently take the claimant's deficiencies into account. Here, the ALJ found that Plaintiff had moderate limitations in concentration, persistence, or pace, as the Social Security regulations pertaining to mental impairments were revised, and the evaluation of concentration, persistence, and pace was changed from a five-point scale based on the frequency of the deficiencies to the current five-point severity scale. See Reynolds v. Commissioner of Soc. Sec., 2011 WL 3273522, at *13 (W.D. Pa. July 29, 2011). Although both "often" and "moderate" occupy the middle position in their respective scales, more recent Third Circuit decisions have distinguished Ramirez based on the difference between "often" suffering from these deficiencies and being "moderately" limited in those areas. See McDonald v. Astrue, 293 Fed. Appx. 941, 946-47 (3d Cir. 2008) (noting that the ALJ properly accounted for his

Therefore, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment (document No. 8) is DENIED and Defendant's Motion for Summary Judgment (document No. 12) is GRANTED.

s/Alan N. Bloch
United States District Judge

ecf: Counsel of record

finding that the claimant had moderate limitations in concentration by limiting him to simple, routine tasks). See also Menkes v. Astrue, 262 Fed. Appx. 410, 412 (3d Cir. 2008) ("Having previously acknowledged that [the claimant] suffered moderate limitations in concentration, persistence and pace, the ALJ [properly] accounted for these mental limitations in the hypothetical question by restricting the type of work to 'simple routine tasks.'"). The continuing validity of Ramirez under the new severity scale, therefore, is questionable.

More importantly, though, in Ramirez, the ALJ had limited the claimant to simple, repetitive one or two-step tasks. Here, as discussed, the mental limitations found by the ALJ in the RFC were far more extensive and specific. Plaintiff was limited not only to simple, routine, repetitive work, but also to work that was low stress, involving no deadlines or a fast-paced production environment, and Plaintiff was also severely restricted as to her ability to work with others and with the public. (R. 12). These limitations go far beyond a limitation to simple, repetitive one or two-step tasks and properly accounted for Plaintiff's deficiencies in concentration, persistence, and pace and her anxiety-related symptoms.

Plaintiff's additional arguments merit little discussion. Suffice it to say that the ALJ adequately considered and discussed the opinion evidence and Plaintiff's global assessment of functioning scores. In regard to the weight accorded to the opinion of Dr. Foster, the Court notes, as discussed above, that both Dr. Foster herself and the other consulting professional, Mr. Hand, indicated that Plaintiff may be a malingerer. (R. 335, 342-343). Accordingly, substantial evidence supports the ALJ's decision.