

FILED

January 13, 2006

Charles R. Fulbruge III
Clerk

In the
United States Court of Appeals
for the Fifth Circuit

m 05-10549
Summary Calendar

KATHERINE DAUGHERTY,

Plaintiff-Appellant,

VERSUS

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
m 2:02-CV-83

Before SMITH, GARZA, and PRADO,
Circuit Judges.

PER CURIAM:*

Katherine Daugherty appeals a judgment affirming the decision of the Commissioner of Social Security (“the Commissioner”) to deny her application for supplemental security income benefits. Finding no error, we affirm.

Daugherty applied for benefits in October 1999, claiming impairments including degenerative disc disease and severe depression. A hearing before an administrative law judge

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

(“ALJ”) was held in November 2000. In January 2001, the ALJ returned an unfavorable decision, finding, based on the medical records, that Daugherty had the capacity to return to her past work as a waitress. The ALJ’s decision was the final administrative decision of the Commissioner in this matter.

Daugherty sought judicial review in district court. The magistrate judge issued a report and recommendation evaluating the ALJ’s decision and determining that it was supported by substantial evidence. The district court adopted the report and recommendation and affirmed the Commissioner’s decision to deny benefits. On appeal, Daugherty contends only that the Commissioner’s decision is not supported by substantial evidence.

Our review is limited to determining whether there is substantial evidence in the record supporting the Commissioner’s decision to deny benefits and whether the Commissioner applied proper legal standards in doing so.² We may not re-weigh the record evidence, try the issues *de novo*, or substitute our judgment for that of the Commissioner.³

Conflicts in the evidence are to be resolved by the Commissioner, not the courts. *Laffon v. Califano*, 558 F.2d 253, 254 (5th Cir. 1977). Only a “conspicuous absence of credible choices” or “no contrary medical evidence” will support a finding of no substantial evidence. *Hames v. Heckler*, 707 F.2d 162, 164 (5th Cir. 1983). If, under these criteria, substantial evidence supports the Commissioner’s findings, they are conclusive. *See* 42 U.S.C. §

² *See Greenspan v. Shalala*, 38 F.3d 232, 236 (5th Cir.1994); *Johnson v. Bowen*, 864 F.2d 340, 347 (5th Cir.1998).

³ *See Johnson*, 864 F.2d at 343.

405(g).

Daugherty’s sole contention is that the ALJ’s interpretation of the evidence was misguided. She makes no substantive arguments on appeal that she did not make before the magistrate judge. Based on our independent review of the ALJ’s decision and the administrative record, we find the report and recommendation of the magistrate judge to be a proper disposition of the issues in this case. That report accurately evaluates the record evidence relied on by the ALJ and correctly applies the proper legal principles in finding that substantial evidence supports the Commissioner’s decision.

Essentially for the reasons stated in the report and recommendation, the judgment is **AF-FIRMED**.