

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 92-3967

(Summary Calendar)

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JOHN H. MARSHALL,

Plaintiff-Appellant,

VERSUS

DEPARTMENT OF HEALTH & HUMAN SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Eastern District of Louisiana  
(91 CV 2526 "L" (2))

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( October 22, 1993 )

Before SMITH, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Plaintiff, John H. Marshall's applications for disability insurance benefits and supplemental security income benefits were denied by the Department of Health & Human Services ("the Department"). That denial was upheld on reconsideration and by an Administrative Law Judge ("ALJ"), and the appeals council at the Department declined Marshall's request for review, because it found that the ALJ's decision was supported by substantial evidence.

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\* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Marshall then sought judicial review in the district court, pursuant to 42 U.S.C. § 405(g) (1988). The district court granted summary judgment for the Department, dismissing Marshall's claim with prejudice. Marshall appeals.

Marshall contends that the ALJ's decision is not supported by substantial evidence because it was based on a vocational expert's response to a hypothetical question which inaccurately portrayed Marshall's physical condition. Marshall points out that he has been diagnosed as having a herniated disk in his lumbar spine. According to Marshall, the hypothetical question posed to the vocational expert did not take this condition into account, and therefore the vocational expert's testimony))that Marshall can perform work available in the national economy))does not amount to substantial evidence that Marshall is not entitled to the benefits which he seeks.

Marshall's argument fails because he has not shown that he was prejudiced by the vocational expert's failure to consider his herniated disk. "Procedural perfection in administrative proceedings is not required. This [C]ourt will not vacate a judgment unless the substantial rights of a party have been affected." *Anderson v. Sullivan*, 887 F.2d 630, 634 (5th Cir. 1989) (per curiam) (quoting *Mays v. Bowen*, 837 F.2d 1362, 1364 (5th Cir. 1988)). Assuming *arguendo* that the hypothetical question posed to the expert should have incorporated a description of Marshall's disk problem, Marshall nevertheless is not entitled to relief, because he has not shown that the outcome of the administrative

proceeding would have been different if the vocational expert had considered that ailment. In his brief Marshall does not argue that he suffers any disabling symptoms as a result of the herniated disk. Neither does he argue that that condition prevents him from doing the types of work which the ALJ found him capable of doing. Consequently, Marshall has not even argued, much less persuaded this Court, that his substantial rights were prejudiced by the administrative proceeding. We therefore **AFFIRM**.