

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4593
Summary Calendar

ELIZABETH FARRIS,

Plaintiff-Appellant,

versus

DONNA SHALALA, Secretary
of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Louisiana

CA 91 0997

(April 27, 1993)

Before POLITZ, Chief Judge, HIGGINBOTHAM and WIENER, Circuit
Judges.

POLITZ, Chief Judge:*

Claiming mental illness, Elizabeth Farris seeks continuation

*Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of supplemental social security income. Although she once received such benefits, the Social Security Administration determined that as of April 1989 she no longer was disabled. After a hearing an Administrative Law Judge ordered benefits terminated. Farris sought judicial review of the Secretary's final decision. The district court found substantial evidence supporting the Secretary and affirmed. Farris timely appealed; we affirm.

Background

At the time of her termination, Farris was 52 years old and possessed a ninth grade education. With the exception of occasional bartending and farm labor, she has never been employed. She also has a long history of alcohol abuse. This abuse caused her to suffer from alcoholic dementia, a recognized mental impairment. It was this condition which served as the basis for the initial determination that she was disabled and entitled her to benefits under the Social Security Act. In 1980 Congress amended that Act to require periodic review of the eligibility of each recipient.¹ The Secretary caused such a review of Farris' eligibility in early 1989.

As part of the review process, Farris was examined by Dr. William J. Erwin, a psychiatrist, and Dr. Greg Tubre, a doctor of internal medicine. Farris complained of "head problems" and recounted a history of fainting spells and headaches to Dr. Erwin. She also told him that in the past she had encountered urges to

¹42 U.S.C. § 421(i).

hurt people but that these urges had ceased when she stopped abusing alcohol. She told Dr. Erwin that she spent her days sitting at home drinking coffee, walking, fishing, and attending church and Sunday School.

Dr. Erwin found Farris in full contact with reality, neither anxious nor depressed, and also found no evidence of paranoid, somatic, or grandiose delusions. Her intellectual functioning was within the lower limits of normal. Dr. Erwin concluded that Farris suffered from alcohol abuse in remission and that her symptoms were not significantly incapacitating.

When she was examined by Dr. Tubre, Farris complained of "shooting pains" in her neck and occasional weakness in her right shoulder and neck which she claimed resulted from a motor vehicle accident in 1983. She stated that these pains did not interfere with her daily activities. She claimed a history of drinking two pints of alcohol a day until one year previously.

Dr. Tubre's examination revealed a full range of motion in Farris' neck and motor strength in her right arm equivalent to that of her left. Her extremities showed no muscle atrophy, weakness, or loss of use. Dr. Tubre concluded that Farris suffered from osteoarthritis which did not significantly limit her motion or daily activities. He also found Farris to be suffering from untreated high blood pressure. Dr. Tubre found no signs of end organ damage.

Between August and September 1989, Farris saw doctors on four occasions. Records of those visits revealed that she had suffered

from a shoulder strained while rowing a boat, cellulitis in her left toe, a stomach ache, vaginitis, a headache, a mild overdose of headache medication after a drinking binge, and persistent high blood pressure. Although she was prescribed medication for her high blood pressure, she refused to take it.

At an initial disability cessation hearing Farris claimed that she continued to drink but now avoided whiskey. She stated that her daily activities included walking, visiting with friends, playing cards, listening to music, fishing, and attending church. She also did some household tasks, such as, washing dishes, folding clothes, cooking, and cutting the grass in her yard with a sling blade. She stated that her condition did not impair her ability to do these chores.

At her hearing before the ALJ, Farris claimed to drink substantial beer and whiskey on a regular basis but initially was unable to specify the precise amount. She then supplemented her answer, claiming to imbibe more than a fifth of whiskey and in excess of a case of beer with friends each day. She claimed that she sometimes looked after her two-year-old grandchild, cooked, swept, and made the bed. She also claimed to walk in her neighborhood, to town, and to go fishing or to the barroom. Her son-in-law corroborated her testimony about her heavy drinking.

Based on the medical records and the hearing testimony, the ALJ found that Farris' alcohol-related dementia had shown medical improvement related to her ability to work. He applied the Medical Vocational Guidelines and found her presently suited to a full

range of "medium work activity." The Secretary agreed and the district court declined to disturb the administrative disposition.

Analysis

Our review of the decision to terminate SSI benefits is limited. We may only consider whether the Secretary's decision was supported by substantial evidence² and whether she applied the appropriate legal standard.³ Farris seeks to frame her points as legal questions but they are essentially attacks on the factual determination that her medical condition has improved and that she is now capable of engaging in substantial gainful activity.

The controlling statute, 42 U.S.C. § 423(f), provides in pertinent part:

A recipient of benefits . . . may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased . . . or is not disabling only if such finding is supported by . . . substantial evidence which demonstrates that there has been any medical improvement in the individual's impairment or combination of impairments . . . and the individual is now able to engage in substantial gainful employment.

The implementing regulations clarify the evaluation process. A medical improvement is "any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to

²We have described such evidence as that which a reasonable mind might accept to support a conclusion. **Hanes v. Heckler**, 707 F.2d 162, 164 (5th Cir. 1983).

³42 U.S.C. § 405(g); **Harrell v. Brown**, 862 F.2d 461 (5th Cir. 1988).

be disabled."⁴ A medical improvement must be based on "improvements in the symptoms, signs, and/or laboratory findings" associated with the impairment(s).⁵ Any medical improvement must relate to the beneficiaries's ability to work.⁶

The second part of the evaluation process concerns the individual's ability to (re)engage in substantial gainful activity. While the regulations governing termination of benefits in light of improved ability to work are similar to those governing initial disability determinations, the burden of proof rests with the Secretary rather than the claimant.⁷ In weighing the beneficiaries' ability to engage in substantial gainful activity, the Secretary considers all present impairments, not only the impairments in existence at the time of the most recent favorable determination.⁸

Viewing the record as a whole, we find substantial evidence of medical improvement of the disability caused by drinking. The ALJ reviewed the reports of Drs. Erwin and Tubre both of which described Farris as improved. He also heard testimony from Farris and her son-in-law which he chose to discount. Appellate review of

⁴20 C.F.R. § 404.1594(b)(3).

⁵20 C.F.R. § 404.1594(f).

⁶20 C.F.R. §1594(b)(3).

⁷**Griego v. Sullivan**, 940 F.2d 942 (5th Cir. 1991).

⁸20 C.F.R. § 404.1594(b)(5).

credibility assessments necessarily must be very limited,⁹ and we will disturb them only where "there is uncontrovertible documentary evidence or physical fact which contradicts them."¹⁰

Farris contends that alcoholic dementia is irrefutably irreversible and that the ALJ's rejection of her testimony and that of her son-in-law was improper. We are not persuaded. As Farris notes in her brief, she originally was found disabled due to alcohol-related dementia, not alcoholism. The fact that she continued to drink heavily at the time of the hearing is not dispositive of whether her dementia has improved; the core issue is whether her condition has improved to a point where she may no longer fairly be characterized as disabled, considering her present condition.

The ALJ considered all of the evidence presented, made credibility assessments where the evidence conflicted and applied the correct legal standard. We find no error in the determination that Farris' medical condition has improved. There remains only the question whether there is substantial evidence to support a finding that Farris was capable of engaging in substantial gainful activity in light of her improved condition.

Farris asserts that before finding a claimant capable of engaging in substantial gainful activity the Secretary must identify a job the claimant could realistically be expected to hold

⁹**Miranda v. National Transp. Safety Board**, 866 F.2d 805 (5th Cir. 1989).

¹⁰**Id.** at 807 (quotation omitted).

for a significant period of time. The SSA has promulgated an eight-step sequential analysis for weighing an individual's capacity. One of those steps requires comparison of the individual's impairment(s) to those listed in 20 C.F.R. § 404.1569, Subpart P, Appendix II. In comparing Farris' impairments and characteristics with those listed in the Appendix, the ALJ determined that Farris was capable of performing light work and that such work was available in the national economy.¹¹

We have stated in the past that reliance on the generic administrative definitions of "ability to engage in substantial gainful activity" is appropriate provided it does not result in an erroneous finding.¹² Farris does not suffer from an impairment which is so severe that she is patently unable to work. She can read, write, and do arithmetic and her daily activities are only partially limited by her physical and mental impairments.

The ALJ, considering all the attendant obstacles she faces, found Farris to be impaired but capable of engaging in light physical exertion. He also found her to suffer from no non-exertional impairments. Substantial evidence supports these findings. The conclusion that Farris is capable of engaging in substantial gainful activity therefore comports with the Act and the administrative regulations.

For the foregoing reasons, the judgment of the district court

¹¹ See 42 U.S.C. § 423(d)(2)(A) (describing work availability requirement).

¹² **E.g., Stone v. Heckler**, 752 F. 2d 1099 (5th Cir. 1985).

must be and is AFFIRMED.