UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4059
Summary Calendar

LEASTER T. LAVERGNE, 435-68-6252,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA, U.S. SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(6:91-CV-2241)

(November 30, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Leaster Lavergne appeals the district court's grant of summary judgment to the Secretary affirming denial of Lavergne's application for social security disability benefits. She alleges two errors: First, that the vocational expert's answers to the ALJ's flawed hypothetical questions do not support the ALJ's conclusion that Lavergne could perform work that exists in significant numbers in the national economy. Second, that the district court erred in concluding that the ALJ's decision could be

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

affirmed on an alternate basis. We affirm.

The ALJ rejected Appellant's claim at the fifth step of the well known sequential process (the impairment prevents the claimant from doing any other substantial gainful work which exists in the national economy). 42 U.S.C. § 432(d)(2)(A); Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990). He found that Lavergne had not engaged in substantial gainful activity since July 22, 1988; had a severe residual injury that was not listed in, or equivalent to an impairment listed in the Social Security Administration's guidelines; had the residual functional capacity to perform sedentary work; was forty years old; had a sixth grade education; and possessed some transferable skills. The ALJ noted that the vocational expert testified in response to the ALJ's hypothetical questions that a person capable of sedentary work, and having Lavergne's other characteristics, could perform "approximately fifty percent of the bench work type jobs existing in the national economy." To the ALJ, this answer indicated that Lavergne could perform a substantial number of jobs.

The Secretary may use the services of a vocational expert to determine the claimant's vocational abilities. When, however, the claimant suffers only from exertional impairments or, when his non-exertional impairments do not significantly affect his residual functional capacity, the ALJ may rely exclusively on the medical-vocational guidelines in determining whether there is other work available that the claimant can perform. Selders, 914 F.2d at 618.

The ALJ found that Lavergne may have mild to moderate pain as

a result of her condition, but that the examining physicians believed that Lavergne could perform sedentary work. He agreed with the physicians. He found Lavergne's complaints credible to the extent she is limited to doing sedentary work; that Lavergne has residual functional capacity to perform the physical exertion requirements of work except for doing unrelieved walking or standing or lifting of weight over ten pounds frequently; and that Lavergne has the residual functional capacity to perform the full range of sedentary work. His decision indicates that the ALJ considered Lavergne's pain, the only non-exertional restriction he found, when finding that she could perform sedentary work, and that he determined that her pain did not significantly affect her residual functional capacity. It is clear, therefore, that the ALJ could have relied on the medical-vocational guidelines without recourse to the vocational expert's testimony. Indeed, his decision shows that the ALJ looked to the guidelines to determine that Lavergne was not disabled. After making several specific findings he looked to the guidelines which direct that a claimant with Lavergne's relevant characteristics is not disabled. Because the ALJ could have based his determinations solely on the guidelines, we need not consider whether the hypothetical put to the expert was defective.

AFFIRMED.