IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20172
Summary Calendar

ELIZABETH CROWDER,

Plaintiff-Appellant,

versus

DONNA E. SHALALA, Secretary of the
Department of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Texas
(CA-H-93-1091)

(August 31, 1994)

Before JOLLY, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PER CURIAM:*

Elizabeth Crowder appeals the entry of summary judgment affirming the denial of Social Security benefits. We affirm.

I

Crowder filed an application for Supplemental Security Income ("SSI") benefits on May 14, 1990, asserting that she had been

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

disabled since April 24, 1989, as a result of arthritis in both knees and a back injury. That application was denied. Crowder's appeal of that denial was heard by an administrative law judge ("ALJ") on February 11, 1992, who continued the hearing so that Crowder could be examined by another psychiatrist at the government's expense. That psychiatrist's report was included in the record, but the ALJ also denied her application. The denial became the final decision of the Secretary after the appeals council declined review. Crowder then initiated this action in district court, seeking reversal of the Secretary's decision or, alternatively, remand for consideration of additional medical evidence, a report prepared by a psychiatrist whom she saw on September 10, 1993.[1] The district court declined to consider the new evidence and granted summary judgment in favor of the Secretary.

II

On appeal, Crowder challenges the district court's judgment based solely on her rejection of additional medical evidence. She does not argue that the Secretary's decision is not supported by substantial evidence. Therefore, we consider only whether to remand for consideration of the additional evidence. See Ellis v. Bowen, 820 F.2d 682, 684 (5th Cir. 1987).

[1]Crowder also sought to supplement the record with medical records relating to hospitalization in February and March 1993, but she does not address those records in her brief on appeal.

Under 42 U.S.C. § 405(g), we may remand a case to the Secretary "upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." Crowder argues that, applying this standard, the record should be supplemented to include the psychiatrist's report that was rejected by the magistrate judge.

We have held that it is "implicit in the materiality requirement that the new evidence relate to the time period for which benefits were denied, and that it not concern evidence of a later-acquired disability or of the subsequent deterioration of the previously non-disabling condition." Haywood v. Sullivan, 888 F.2d 1463 (5th Cir. 1989)(citations omitted). The psychiatrist's report does not satisfy this test because it contains no reference to Crowder's condition at any time between the date of her application and the date of her hearing. It, therefore, does not relate to "the time period for which benefits were denied."[2]

Because we have determined that Crowder fails to satisfy the "materiality" prong of the section 405(g) test, we need not consider whether she could meet the other parts of that test.

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[2]Crowder argues that this case is directly on point with Dorsey v. Heckler, 702 F.2d 597 (5th Cir. 1983), but we disagree. First, the record before the ALJ in Dorsey, unlike the record here, was incomplete as to Dorsey's claims of mental disability. Further, we have disavowed Dorsey to the extent that it can be "read to permit a remand in the light of evidence that a claimant has become disabled since the date of the ALJ's determination." Johnson v. Heckler, 767 F.2d 180 (5th Cir. 1985).

III

For the foregoing reasons, the judgment is

A F F I R M E D.