

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30218  
Summary Calendar

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EARL HAMILTON,

Plaintiff-Appellant,

versus

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

Defendant-Appellee.

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Appeal from the United States District Court for  
the Eastern District of Louisiana  
(93 CV 472 L(I)(4))

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(October 17, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

REAVLEY, Circuit Judge:\*

Earl Hamilton ("Hamilton") appeals the district court's grant of summary judgment in favor of the Secretary of Health and Human Services (the "Secretary"), affirming the denial of his application for disability insurance and supplemental security income ("SSI") benefits.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

## BACKGROUND

Hamilton applied for disability insurance and SSI benefits in 1990, claiming that he suffered from high blood pressure, visual problems and mental impairments. Hamilton's application was denied by the Social Security Administration and on reconsideration, after a hearing, an Administrative Law Judge ("ALJ") also denied benefits on grounds that he was not disabled. The Appeals Council reviewed and affirmed the ALJ's decision and it became the final decision of the Secretary. Hamilton sought review of the Secretary's decision in federal court pursuant to 42 U.S.C. §405(g)(1991). The district court granted the Secretary's motion for summary judgment. We affirm.

## DISCUSSION

Hamilton alleges that his Wechsler Adult Intelligence Scale-Revised ("WAIS") I.Q. scores were not given proper consideration by the ALJ and subsequently the Secretary. These scores can be used to determine whether a claimant should be classified as mentally retarded pursuant to 20 C.F.R. Part 404, subpart P, Appendix 1, §12.05(c) ("Listing 12.05")(1991). Listing 12.05 provides that a person is classified as mentally retarded and qualifies for benefits if that person has "a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant work-related limitation of function." Id. Hamilton scored a performance I.Q. of 78, a Full Scale I.Q. of 69, and a Verbal I.Q. of 64.

The Secretary found that these scores were not valid. See, Muse v. Sullivan, 925 F.2d 785, 790 (5th Cir. 1991)(holding that an ALJ may make factual determinations on the validity of I.Q. tests). Dr. Fontenelle, the doctor administering the exam, indicated that the verbal score was a "low estimate" and that Hamilton "did not put forth good responses on these test items. He simply answered quickly and without concern for accuracy." This assessment of Hamilton was supported by the assessment given by Dr. Cohen. After conducting a psychiatric examination, Dr. Cohen stated that Hamilton communicated in a markedly vague and contradictory manner and that many of plaintiff's statements lacked credibility.

Dr. Fontenelle administered two other tests, the Leiter International Performance Index test and the Peabody Picture Vocabulary test, both of which indicated borderline range of intellectual ability rather than mild mental retardation. Dr. Fontenelle concluded in his diagnosis that Hamilton was of borderline intelligence. The Secretary accepted this assessment of Hamilton's intelligence level and concluded that his impairment did not qualify as one in the list of serious impairments under listing 12.05(c). We hold that this finding was based on substantial evidence.

Since the Secretary found that Hamilton did not have a **valid** verbal, performance, or full scale IQ of 60 through 70, the Secretary did not have to assess whether Hamilton's impairments were imposing a significant work-related limitation. Instead,

the Secretary correctly determined whether Hamilton's other impairments were "severe" under the third step of the sequential steps used to determine whether someone is disabled. See, 20 C.F.R. Part 404.1520(c) and 416.920(c)(1991). The Secretary's finding that Hamilton's impairments were not severe was based on substantial evidence. Hamilton's hypertension was controlled and his vision was not impaired. The only evidence of headaches was Hamilton's own statements and there was substantial evidence in the record to support the Secretary's finding that Hamilton's statements were not credible.

At the fourth step of the sequential analysis, the Secretary found that Hamilton was not disabled because he was capable of performing his past work. See, 20 C.F.R. §§ 404.1520(d) and 416.920(d)(1991). In his testimony, Hamilton did not claim that he could not perform his former job as a pipe cleaner. The medical evidence supported the finding that Hamilton's limited intellectual abilities would not prevent him from working as a pipe cleaner. Hamilton claimed that headaches, and not hypertension or obesity, prevented him from successfully keeping a job. As discussed above, the Secretary found that Hamilton's claims regarding his headaches lacked credibility.

Considering the medical evidence, the testimony at the administrative hearing, and the entire administrative record, the Secretary's finding that plaintiff is not disabled is supported by substantial evidence.

AFFIRMED.