

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50777
Summary Calendar

WILMA DAHLE,

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 Texas
(A-93-CA-441)

(May 25, 1995)

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

PER CURIAM:*

William Dahle appeals the denial of her application for supplemental security income ("SSI") under 42 U.S.C. § 405(g). Finding no error, we affirm.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Dahle filed an application for SSI on August 30, 1991, alleging that she suffered from a back injury and from an advanced state of osteo-arthritis. Her application was denied initially and on reconsideration, and she requested a hearing before an administrative law judge ("ALJ"). Following a hearing, the ALJ determined that Dahle was not under a disability as defined in the Social Security Act; thus, she was not eligible for SSI. Dahle sought review before the Appeals Council, which denied her request for review, whereupon the decision of the ALJ became the final decision of the Secretary. Upon review, the magistrate judge recommended that the district court affirm the Secretary's decision; the district court adopted the magistrate judge's report and recommendation as correct, affirmed the decision of the Secretary, and dismissed the action with prejudice.

II.

Dahle argues that the decision of the ALJ is not supported by substantial evidence. She contends that since she suffered from non-exertional impairments, it was improper for the ALJ to rely exclusively upon the Medical-Vocational Guidelines in determining that she could perform other work. Dahle also argues that the case should be remanded because the ALJ did not make a specific finding regarding the severity of her impairments, as required by Stone v. Heckler, 752 F.2d 1099 (5th Cir. 1985). Our review is limited to whether the Secretary applied the proper legal standard and whether

the Secretary's decision is supported by substantial evidence on the record as a whole. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992).

III.

A.

The Secretary conducts a five-step sequential analysis in determining whether a claimant is disabled: (1) whether the claimant is presently working; (2) whether he has a severe impairment; (3) whether the impairment is listed, or equivalent to an impairment listed in Appendix 1 of the Regulations; (4) whether the impairment prevents him from performing past relevant work; and (5) whether the impairment prevents him from performing any other substantial gainful activity. 20 C.F.R. § 404.1520; Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991). "A finding that a claimant is disabled or is not disabled at any point in the five-step review is conclusive and terminates the analysis." Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987).

As step one, the ALJ found that Dahle had not engaged in substantial gainful activity since June 11, 1990. At steps two and three, the ALJ found that Dahle suffers from obesity, physical deconditioning, degenerative spinal changes consistent with her age and body habitus, and an adjustment disorder with depressed mood and functional overlay of symptomatology, not severe, but that she does not have an impairment or combination of impairments listed in, or medically equal to, one listed in Appendix 1, Subpart P,

Regulation No. 4. The ALJ found Dahle's allegations of disabling pain credible only to the degree that Dahle would be restricted to sedentary work thereby. The ALJ determined that her allegations of disabling pain were not credible. The ALJ further determined that Dahle had the residual functional capacity to perform the physical exertion requirements of work except for frequent lifting of more than five pounds, occasional lifting of more than ten pounds, or prolonged periods of standing and walking. The ALJ found no severe nonexertional limitations. At step four, the ALJ found that Dahle was unable to perform her past relevant work as a cook, cashier, or nurse's aide.

At step five, the burden shifted to the Secretary to show that there were other jobs in the national economy that Dahle could perform. See Anderson v. Sullivan, 887 F.2d 630, 632 (5th Cir. 1989). The ALJ determined that Dahle had the residual functional capacity to perform the full range of sedentary work. After considering Dahle's residual functional capacity, age, education, and work experience, the ALJ concluded that she was not under a disability as defined in the Act. Thus, the ALJ made a determination of "not disabled" at step five.

The ALJ applied the proper legal standard in evaluating Dahle's disability claim. We now examine the question whether the factual findings are supported by substantial evidence.

B.

If the Secretary's findings are supported by substantial

evidence, they are conclusive and must be affirmed. Anthony, 954 F.2d at 295. "Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion; it must be more than a scintilla, but it need not be a preponderance." Id. "This Court may not reweigh the evidence or try the issues de novo Rather, conflicts in the evidence are for the Secretary to resolve." Id.

As the claimant, Dahle bears the burden of showing that she is disabled within the meaning of the Act. Cook v. Heckler, 750 F.2d 391, 393 (5th Cir. 1985). The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 416(i)(1), 423(d)(1)(A), 1382(a)(3)(A).

To determine whether substantial evidence of disability exists, four elements of proof must be weighed: (1) objective medical facts; (2) diagnoses and opinions of treating and examining physicians; (3) the claimant's subjective evidence of pain and disability; and (4) his age, education, and work history. Wren v. Sullivan, 925 F.2d 123, 126 (5th Cir. 1991). The entire record is reviewed to determine whether such evidence is present. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990).

C.

On June 11, 1990, while employed at a fast food restaurant,

Dahle slipped and fell, injuring her lower back. She was treated by Dr. Gary Seghi, a chiropractor, who noted a potential disc bulge and recommended that Dahle be released to return to work on a restricted basis on August 1, 1990. Seghi's notes indicate that Dahle experienced a spontaneous exacerbation of her condition on August 1, 1990. He recommended that she be restricted from work until August 15, 1990, and referred her to an orthopedic doctor to rule out a suspected disc bulge.

On August 6, 1990, Dahle was examined by Dr. John Obermiller, who diagnosed lumbar disc disease with sciatica and recommended that Dahle remain off work. Dahle was re-examined by Obermiller on September 12, 1990. He suggested cortisone injections to reduce her leg pain and again advised that she remain off work. Dahle received epidural cortisone injections on September 25 and October 30. Dahle saw Obermiller again on December 7, complaining of continuing pain.

On December 28, Dahle was examined by Dr. Lee Berlad, who diagnosed degenerative disc disease with degenerative arthritic changes and bulging discs. He concluded that surgical intervention would not be of significant benefit.

On January 4, 1991, Obermiller recommended that Dahle begin a rehabilitative physical therapy program. On February 1, Dahle informed Obermiller that the physical therapy made her pain worse. On March 8, Dahle stated that she felt "somewhat improved," and Obermiller again recommended that she begin a physical therapy program. On April 5 and May 16, Dahle told Obermiller that she

felt "quite a bit improved," having been through several therapy sessions.

On July 19, 1991, Dahle was examined by Dr. Joe Powell, who doubted Dahle had a "strong motivation for work return." Powell examined Dahle again on August 15, noting that she had begun a pain management program and a physical rehabilitation program. Powell further stated that Dahle's MRI scan "looked good" and that he saw no evidence of disc rupture.

On November 25, 1991, Drs. Michael Haney and William Stern of the pain management program stated that they had been seeing Dahle regularly every other week. Their records indicate that Dahle stated that she planned to return to work once Powell released her to do so. On December 17, Haney and Stern noted that Dahle had informed them that Powell had released her to work without restriction. On March 2, 1992, Haney and Stern saw Dahle as a "final follow-up" appointment. They stated that she appeared to be doing reasonably well and had made some efforts to obtain work.

D.

Dahle testified at the hearing that she experienced "almost constant" and "unbearable" pain in her lower back and down her right leg. She stated that she used a cane all the time because she was afraid of falling, that she needed to take naps, and that it took her four or five hours to do housework. She testified that her pain medication made her drowsy and that she could not drive. She further testified that she had to lie down almost every day

because of pain, that her walking was limited to 15 or 20 minutes, and that she could sit for approximately 30 minutes before having back pain.

E.

At the time of the hearing on October 1, 1992, Dahle was forty-nine years of age and had an eleventh-grade education. She had also obtained her GED and had completed one year of college. Dahle was previously employed as a cook and cashier at a fast food restaurant and, prior to that, as a nurse's aide.

Dahle argues that the ALJ applied an incorrect legal standard. She contends that because she suffered from non-exertional limitations, the ALJ could not use the Medical-Vocational Guidelines upon which to base his finding of not disabled. Thus, she contends, substantial evidence did not exist to support the Secretary's decision that she could perform sedentary work.

In making the determination whether a claimant can perform any other work available in the national economy, the ALJ must consider the claimant's age, education, work experience, and residual functional capacity. Fraga v. Bowen, 810 F.2d 1296, 1304 (5th Cir. 1987). When the characteristics of the claimant correspond to criteria in the Medical-Vocational Guidelines, and the claimant either suffers only from exertional impairments, or his non-exertional impairments do not significantly affect his residual functional capacity, the ALJ may rely exclusively upon the guidelines in determining whether there is other work available

that the claimant can perform.

Dahle contends that since she suffered from non-exertional impairments, it was improper for the ALJ to rely exclusively upon the Guidelines in determining that she could perform other work. The ALJ found, however, that Dahle did not suffer from a severe non-exertional impairment. Substantial evidence in the record supports this finding.

As early as August 15, 1991, Powell stated that Dahle was "getting on somewhat weak grounds" to remain off work any longer "on the basis of [her] fall of a year ago." On September 26, 1991, Powell informed Dahle that they were "becoming increasingly 'on thin ground' by stating that [Dahle] could not return to her pre-injury work status." Powell also noted that Dahle stated that she "really [did] not want to go back to [the fast food location] and that type of work." His records indicate that he doubted that Dahle had a "strong motivation for work return." The ALJ found the record "replete with evidence" that Dahle's pain allegations were exaggerated and noted that "a desire for a secondary gain, whether conscious or unconscious, may be behind many of [Dahle's] complaints." An ALJ's findings "regarding the debilitating effect of the subjective complaints are entitled to considerable judicial deference." Haywood v. Sullivan, 888 F.2d 1463, 1470 (5th Cir. 1989) (internal quotation and citation omitted).

Further, beginning in the spring of 1991, after undertaking a rehabilitative physical therapy program, Dahle told Obermiller that she was quite a bit improved. In August 1991, Powell stated that

Dahle's MRI scan "looked good" and that he saw no evidence of disc rupture. As of December 17, 1991, Powell had released Dahle to work without restriction. On March 2, 1992, Haney and Stern stated that Dahle was doing well, and they encouraged her to continue pursuing employment options.

The medical reports support the ALJ's finding that Dahle did not suffer from a severe non-exertional impairment that restricted her residual functional capacity to perform the full range of sedentary work. See Fraga, 810 F.2d at 1304. Thus, the ALJ properly relied upon the guidelines in determining that other work existed in the national economy that Dahle could perform. See Fraga, id. at 1304-05.

Dahle nevertheless argues that the Secretary was required to produce expert vocational testimony or other similar evidence to establish that jobs existed in the national economy that she could perform. This argument is without merit, however, as the ALJ did not determine that Dahle suffered from a nonexertional impairment that prevented her from performing her past work and the full range of other available work. See Fields v. Bowen, 805 F.2d 1168, 1170 (5th Cir. 1986).

The ALJ determined that Dahle could perform the full range of sedentary work. Thus, the testimony of a vocational expert or other similar evidence was unnecessary, and the ALJ properly relied upon the guidelines exclusively. Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990); 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(a).

Dahle also argues that the case must be remanded because the ALJ did not make a specific finding regarding the severity of her impairments as required by Stone v. Heckler. She contends that the ALJ's findings were ambiguous and conflicting because he found that her combined impairments were severe, but then noted that her impairments were not severe.

The ALJ expressly found that Dahle had a severe impairment as defined in Stone. The ALJ later stated, however, that Dahle suffered from an "adjustment disorder with depressed mood and functional overlay of symptomatology, not severe," and thus concluded that Dahle did not have a severe nonexertional limitation that restricted her residual functional capacity to perform the full range of sedentary work. "[T]his fact does not require a remand when the Secretary has gone beyond the second step, as here, as not all 'severe' impairments are disabling." Harrell v. Bowen, 862 F.2d 471, 481 (5th Cir. 1988).

In summary, the Secretary applied the proper legal analysis, and the decision at the fifth step that Dahle had the residual functional capacity to perform the full range of sedentary work is supported by substantial evidence on the record as a whole. The judgment is AFFIRMED.