

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-60214  
Summary Calendar

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ANNIE DAVIS,

Plaintiff-Appellant,

VERSUS

DONNA E. SHALALA, Secretary,  
UNITED STATES DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Southern District of Mississippi

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(93-CV-10)

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March 27, 1995

Before WISDOM, GARWOOD and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The plaintiff-appellant, Annie Davis, seeks review of the denial of her application for disability benefits by the Secretary of Health and Human Services. We affirm the judgment of the

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court. There is substantial evidence to support the Secretary's decision that the plaintiff is not disabled nor entitled to receive disability benefits.

I

On September 9, 1991, the plaintiff filed applications for disability benefits and for supplemental social security income under the Social Security Act. The applications were denied, and the plaintiff requested a hearing before an administrative law judge ("ALJ"). At the time of the administrative law hearing in August 1992, the plaintiff was forty-five years old. She has a sixth grade education and worked in the past as a laborer in a nursery and at a furniture manufacturing plant. She has not been employed gainfully since July 1988, the onset date of her alleged disability. The plaintiff contends that she can no longer work due to heart problems, high blood pressure, a foot injury, obesity, and disabling pain.

After hearing testimony and reviewing the medical evidence, the ALJ found that although the plaintiff is no longer capable of performing her past work, she retains the functional capacity to perform a full range of light work. The ALJ found that she is not disabled under the Social Security Act, and issued a decision denying the plaintiff's applications for benefits. The Appeals Council denied the plaintiff's request for review. Having exhausted her administrative remedies, the plaintiff filed a complaint in the United States District Court for the Southern District of Mississippi, seeking review of the administrative

decision that she is not disabled. The plaintiff filed a motion for summary judgment, arguing that substantial evidence did not support the administrative law judge's decision. A magistrate judge issued a report stating that substantial evidence supported the administrative law judge's decision, and the plaintiff objected. The district court adopted the magistrate's findings and affirmed the Secretary's denial of the plaintiff's application. From the judgment of the district court, the plaintiff appeals.

## II

In reviewing the Secretary's denial of disability benefits, this Court neither reweighs the evidence nor substitutes its own judgment for the Secretary's.<sup>1</sup> Appellate review is limited to two questions: (1) whether the Secretary applied the proper legal standards, and (2) whether the Secretary's decision is supported by substantial evidence.<sup>2</sup>

### A

The Social Security Act permits the payment of benefits to applicants who have contributed to the program and suffer from a disability.<sup>3</sup> 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 can be expected to result in death or which has lasted or can be expected

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<sup>1</sup> Hollis v. Bowen, 837 F.2d 1378, 1383 (5th Cir. 1988).

<sup>2</sup> Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992).

<sup>3</sup> 42 U.S.C. § 423(a)(1)(D) (1991).

to last for a continuous period of not less than 12 months".<sup>4</sup> A physical or mental disability is defined as "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques".<sup>5</sup> The claimant has the burden of proving that he or she is disabled within the meaning of the Act.<sup>6</sup> To be entitled to benefits, the claimant must demonstrate not only that she suffers from some impairment, but also that she is "incapable of engaging in any substantial gainful activity".<sup>7</sup>

In accordance with an express authorization of Congress, the Secretary promulgated a five-step evaluation process to determine whether a claimant is disabled within the meaning of the Social Security Act:

(1) If the claimant is presently working, a finding of "not disabled" must be made; (2) if the claimant does not have a "severe impairment" or combination of impairments, she will not be found disabled; (3) if the claimant has an impairment that meets or equals an impairment listed in Appendix 1 of the Regulations, disability is presumed and benefits are awarded; (4) if the claimant is capable of performing past relevant work, a finding of "not disabled" must be made; and (5) if the claimant's impairment prevents her from doing any other substantial gainful activity, taking into consideration her age,

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<sup>4</sup> 42 U.S.C. § 423(d)(1)(A) (1991).

<sup>5</sup> 42 U.S.C. § 423(d)(3) (1991).

<sup>6</sup> Anthony, 945 F.2d at 293.

<sup>7</sup> Anthony, 954 F.2d at 293 (quoting Milam v. Bowen, 782 F.2d 1284, 1286 (5th Cir. 1986)).

education, past work experience and residual functional capacity, she will be found disabled.<sup>8</sup>

A finding that an applicant is disabled or is not disabled at any point in the five-step analysis is conclusive and terminates the Secretary's analysis.<sup>9</sup> The ALJ engaged in the sequential evaluation process, and found at the fifth step in the analysis that the plaintiff is capable of engaging in a full range of light work and is not, therefore, disabled.

The plaintiff's first argument on appeal contends that the Secretary applied the incorrect legal standard in determining whether the plaintiff's pain was disabling within the meaning of the Act. The plaintiff maintains that the district court failed to recognize that pain alone can be disabling if the pain is linked to a medically determinable impairment.

The plaintiff's position misconstrues the magistrate judge's opinion. There is no evidence that the ALJ or the district court applied an incorrect legal standard in its consideration of the plaintiff's subjective evidence of pain. Pain alone can be disabling if the pain is linked to a medically determinable impairment.<sup>10</sup> For pain to be disabling under the Social Security Act, "objective medical evidence must demonstrate the existence of

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<sup>8</sup> Anthony, 954 F.2d at 293 (citing 20 C.F.R. §§ 404.1520, 416.920).

<sup>9</sup> Anthony, 954 F.2d at 293 (citing Lovelace v. Brown, 813 F.2d 55, 58 n.15 (5th Cir. 1987)).

<sup>10</sup> See, e.g., Anthony, 954 F.2d at 295; Hollis v. Bowen, 837 F.2d 1378, 1384 (5th Cir. 1988).

a condition that could reasonably be expected to produce the level of pain or other symptoms alleged".<sup>11</sup>

The ALJ found that the plaintiff's complaints of disabling pain were inconsistent with the medical evidence and could not link the plaintiff's subjective evidence of pain to any condition that could reasonably be expected to produce the level of pain she alleges. This is a correct legal analysis of the plaintiff's subjective evidence of pain.

We conclude that the ALJ applied the correct legal standard in making its determination that the plaintiff's pain was not disabling. Having determined that the Secretary applied the correct legal standard, we turn now to the question whether the Secretary's finding that the plaintiff was not disabled is supported by substantial evidence.

B

"Substantial evidence" is more than a scintilla and less than a preponderance. It is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion".<sup>12</sup>

The magistrate judge and the district court found that substantial evidence supported the Secretary's conclusion that the plaintiff is not disabled and is capable of performing a full range

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<sup>11</sup> Anthony, 945 F.2d at 296.

<sup>12</sup> James v. Heckler, 707 F.2d 162, 164 (5th Cir. 1983).

of light-level work activity on a sustained basis.<sup>13</sup> The plaintiff challenges this finding on appeal, arguing that the decision is not supported by substantial evidence and that the district court erred by relying too heavily on the administrative law judge's observance of her demeanor.

After reviewing the record, including the medical reports, the transcript, the ALJ's recommendation, and the magistrate's opinion, we conclude that substantial evidence supports the decision to deny the plaintiff's application for disability benefits. In making its decision, the ALJ took into consideration the plaintiff's medical evidence, her age and education, her subjective evidence of pain, and her daily work activities. All of these factors lead to the conclusion that the plaintiff retains the capacity to perform light level work.

The medical evidence indicates that the plaintiff is capable of performing light level work. The report from the plaintiff's consultative examination in December 1991 states that the plaintiff's entire physical examination was unremarkable except for some obesity. She has an irregular heart beat that is controlled by medication, but has no other heart problems. Her electrocardiogram and chest x-ray were normal. She has mild hypertension and some mild musculoskeletal chest pains that are not of clinical significance. She has no psychological abnormalities.

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<sup>13</sup> "Light work" is defined in 20 C.F.R. §§ 404.1567(b) as follows: "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds".

The examining physician's prognosis for the plaintiff was "excellent". In addition, the plaintiff is a younger individual,<sup>14</sup> and she is literate.<sup>15</sup>

The plaintiff's subjective evidence of pain does not lead to the conclusion that her pain is disabling. Pain can be disabling "even if its existence is unsupported by objective medical evidence if it is linked to a medically determinable impairment".<sup>16</sup> The district court concluded, and we agree, that the medical evidence does not support the plaintiff's contention that her medical impairments could reasonably be expected to produce the level of pain she alleges.

In addition, the plaintiff's daily activities indicate that the plaintiff is not disabled. The plaintiff cares for five children, one of whom is retarded, and for two grandchildren. The ALJ concluded that despite her complaints of pain, the plaintiff is capable of performing at least light level work on a sustained basis.

Finally, the ALJ found that the plaintiff's subjective evidence of pain was not credible. While the ALJ must consider subjective evidence of pain, it is within his or her discretion to determine its debilitating nature.<sup>17</sup> Further, this Court has never

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<sup>14</sup> 20 C.F.R. §§ 404.1567, 416.967 (1993) define 45 years old as younger.

<sup>15</sup> 20 C.F.R. §§ 404.1564(b)(2), 416.964(b)(2) (1993).

<sup>16</sup> Scharlow v. Schweiker, 655 F.2d 645, 648 (5th Cir. 1981).

<sup>17</sup> Jones v. Bowen, 829 F.2d 524, 527 (5th Cir. 1987).



taken the position that subjective evidence must take precedence over conflicting medical evidence.<sup>18</sup>

We agree with the district court that substantial evidence supports the conclusion that the plaintiff's pain is not disabling within the meaning of the Social Security Act.

The plaintiff's final argument on appeal contends that in finding that the plaintiff's subjective evidence of pain was not credible, the district court erred in relying too heavily on the ALJ's observance of the plaintiff's demeanor. We do not agree. The evaluation of an applicant's subjective symptoms is a task particularly within the province of the ALJ who had the opportunity to observe the applicant.<sup>19</sup> Although exclusive reliance upon demeanor is inappropriate,<sup>20</sup> an applicant's demeanor may be one of the factors used in evaluating an applicant's credibility.<sup>21</sup> A review of the record in this case reveals that neither the ALJ nor the magistrate improperly relied on the plaintiff's demeanor in evaluating her credibility. Indeed, neither the ALJ nor the magistrate listed the plaintiff's demeanor as one of the factors influencing his decision. The factfinder's evaluation of the

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<sup>18</sup> Jones v. Heckler, 702 F.2d 616, 621 n.4 (5th Cir. 1983) (citing Gaultney v. Weinberger, 505 F.2d 943, 945 (5th Cir. 1974); Laffoon v. Califono, 558 F.2d 253, 255 (5th Cir. 1977)).

<sup>19</sup> Harrell v. Bowen, 862 F.2d 471, 480 (5th Cir. 1988); Elzy v. Railroad Retirement Bd., 782 F.2d 1223, 1225 (5th Cir. 1986).

<sup>20</sup> Lovelace v. Bowen, 813 F.2d 55, 59-60 (5th Cir. 1987).

<sup>21</sup> Villa v. Sullivan, 895 F.2d 1019, 1024 (5th Cir. 1990).

credibility of subjective complaints is entitled to judicial deference if supported by substantial record evidence,<sup>22</sup> and we find that substantial evidence supports the district court's conclusion.

We hold that there is substantial evidence in the record supporting the denial of the plaintiff's application for disability benefits. The judgment is AFFIRMED.

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<sup>22</sup> Id. at 1024 (citing Hollis v. Bowen, 837 F.2d 1378, 1385 (5th Cir. 1988)).