

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60836
Summary Calendar

CAROLYN MURRAY,

Plaintiff-Appellant,

versus

DONNA SHALALA, Secretary,
United States Department of
Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(93-CV-772)

(July 26, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Carolyn Murray appeals the denial of her application for Social Security disability benefits. We **AFFIRM**.

I.

Murray applied for disability insurance benefits in May 1991, claiming that she was disabled because of high blood pressure, back problems, allergies, and "disorderly nerves". Her application was denied initially, and on reconsideration. Following a hearing, an

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

administrative law judge (ALJ) found that Murray was not disabled. The Appeals Council affirmed the ALJ's determination. Murray sought judicial review in the district court, which affirmed the Secretary's decision.

II.

Murray contends that the Secretary's decision is not supported by substantial evidence, and that the district court should have remanded her case to the Secretary for the consideration of additional medical evidence.

A.

Of course, our review of the Secretary's decision is limited to determining "whether the Secretary applied the correct legal standard and whether the Secretary's decision is supported by substantial evidence on the record as a whole". ***Orphey v. Secretary of Health & Human Servs.***, 962 F.2d 384, 386 (5th Cir. 1992). "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." ***Muse v. Sullivan***, 925 F.2d 785, 789 (5th Cir. 1991).

The Social Security 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 to last for a continuous period of not less than 12 months". 42 U.S.C. § 423(d)(1)(A) (1991). The Secretary concluded that Murray was not disabled, because she had not sustained her burden of

proving that she could not perform her past relevant work as a sewing machine operator.² That finding is supported by substantial evidence.

At the hearing before the ALJ, Murray testified that she was dizzy and nauseous, had weak legs and loose bowels, could not stand or sit for eight hours, and had high blood pressure; that she had back pain, which the doctor had diagnosed as "poor muscles"; that she had suffered a nervous breakdown many years earlier and continued to have nightmares and visual hallucinations; that in 1987, she had surgery on her wrist, but returned to light-duty work at a shirt-manufacturing plant; that she left her job as a sewing machine operator in May 1990, because she injured her back and was having severe headaches; that she took care of her 19-year-old handicapped son, but relied on her daughter to do household chores and driving; and that she took numerous medications for a heart murmur, her blood pressure, back pain, and nerves.

Murray notes that the ALJ's determination that she could perform her past relevant work was based, in part, on his conclusion that "[n]o limitations have been placed on her by a treating physician or consul[]tative physician which would preclude her performance of this past work". She contends that, contrary to the ALJ's finding, Dr. Pieklik, an internist who examined her twice, found that she had a neuropsychiatric disorder and hypertension, as well as other restrictions, which made it

² See *Wren v. Sullivan*, 925 F.2d 123, 125 (5th Cir. 1991) (describing well known five-step sequential analysis used by Secretary to evaluate whether a claimant is disabled).

impossible for her to perform her past relevant work or any sedentary work that might be available.

The ALJ found that Dr. Pieklik's clinical findings did not support his conclusion that Murray could not perform a full range of light work. Other physicians, who treated Murray on a more regular basis than Dr. Pieklik, reported no impairments which would prevent Murray from performing her past relevant work. Murray was examined on a consultative basis by a psychiatrist, who opined that she had no psychiatric disorder. The ALJ properly accorded greater weight to the psychiatrist's opinion than to Dr. Pieklik's diagnosis of neuropsychiatric disorder. See **Moore v. Sullivan**, 919 F.2d 901, 905 (5th Cir. 1990) (specialist's opinion generally is "accorded greater weight than a non-specialist's opinion"). When the evidence consists of conflicting testimony and reports that must be evaluated on the basis of credibility, it is the Secretary's, rather than the court's, duty to resolve such conflicts. See **Chaparro v. Bowen**, 815 F.2d 1008, 1011 (5th Cir. 1987).

Murray contends further that the evidence established that she was not able to perform household chores, grocery shopping, or driving, and that performing any activity would result in severe pain. The ALJ, however, noted that Murray was able to take care of her disabled son and that, in 1992, she had reported to a physician that she did laundry, cleaning, cooking, grocery shopping, and occasional driving. Needless to say, the ALJ is entitled to determine the credibility of witnesses. See **Moore**, 919 F.2d at

904. Moreover, the ALJ is entitled to reject subjective complaints of pain that are not corroborated by medical evidence. See **Anthony v. Sullivan**, 954 F.2d 289, 295-96 (5th Cir. 1992).

B.

Murray maintains that the district court erred by refusing to remand her case to the Secretary for consideration of additional medical evidence. That evidence consists of hospital records from a 1979 tubal ligation, hospital records regarding a test performed on her wrist, and records of her participation in an outpatient psychiatric program.

Such a remand is appropriate "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". 42 U.S.C. § 405(g) (Supp. 1995); **Latham v. Shalala**, 36 F.3d 482, 483 (5th Cir. 1994). New evidence is not material unless there is a "reasonable possibility that it would have changed the outcome of the Secretary's determination". **Id.** at 483 (internal quotation marks and citation omitted). Moreover, the evidence must relate to the period for which benefits were denied. **Id.** Remand cannot be based on "evidence of a subsequent deterioration of what was correctly held to be a non-disabling condition". **Johnson v. Heckler**, 767 F.2d 180, 183 (5th Cir. 1985).

The evidence in issue is not material. The hospital records from the 1979 tubal ligation would not have changed the outcome of the Secretary's decision. The records of participation in an outpatient psychiatric program and regarding Murray's wrist relate

to treatment which occurred after the ALJ's rejection of her claim. See 20 C.F.R. § 404.976(b)(1) (evidence which does not relate to the period on or before the date of the ALJ's hearing decision is not considered by the Appeals Council). Accordingly, the district court did not err by refusing to remand the case to the Secretary.

III.

For the foregoing reasons, the judgment is

AFFIRMED.