

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-60607  
Summary Calendar

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MARTIN ALAN HOLMES,

Plaintiff-Appellant,

versus

SHIRLEY S. CHATER, COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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Appeal from the United States District Court for the  
Southern District of Mississippi  
(4:94-CV-97-LN)

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July 26, 1996

Before GARWOOD, WIENER and PARKER, Circuit Judges.\*

PER CURIAM:

Martin Alan Holmes appeals the district court's affirmance of the Secretary's denial of supplemental security income benefits. Holmes contends that the Administrative Law Judge (ALJ) erred in propounding interrogatories to the vocational expert, that his mental condition was disabling under the listing of impairments, and that the ALJ did not properly consider his subjective

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\*Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

complaints of pain. There is substantial evidence in the record supporting the ALJ's determination regarding Holmes's subjective complaints of pain. See *Selders v. Sullivan*, 914 F.2d 614, 617-19 (5th Cir. 1990). Because the existence of pain was implicit, the ALJ reasonably omitted a reference to Holmes's pain in the hypothetical posed to the vocational expert. See *Bowling v. Shalala*, 36 F.3d 431, 436 (5th Cir. 1994). Holmes's remaining issues were not presented to the Appeals Council; because these issues were not exhausted, they are not properly before us. See *Paul v. Shalala*, 29 F.3d 208, 210 (5th Cir. 1994). We further note that at least two of Holmes's claims of error, those relating to alleged inability to cross-examine the vocational expert and failure to find his borderline intelligence a severe impairment, were also not raised in the district court. Holmes was represented by counsel before the ALJ, the Appeals Council, and the district court, as well as in this Court, and his counsel's hypothetical question to the vocational expert, on the expert's answer to which the ALJ also relied, contains the same alleged deficiencies as those of which Holmes complains in respect to the ALJ's hypothetical (and counsel made no request for cross-examination of the expert or any objection to the ALJ's hypothetical and was unrestricted in the hypotheticals he could submit).

The district court's judgment is

AFFIRMED.