

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-21126  
Summary Calendar

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JOYCE LYNN BANOWSKY FOGO,

Plaintiff-Appellant,

versus

KENNETH S. APFEL,  
Commissioner of Social  
Security,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 95-CV-1337  
- - - - -

October 31, 1997

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

Joyce Lynn Banowsky Fogo is appealing from the district court's judgment granting the defendant Commissioner's motion for summary judgment and affirming the Commissioner's denial of old age insurance benefits to Fogo.

Fogo argues that the Commissioner erred in applying the regulations governing Fogo's right to obtain old age benefits based on her status as a divorced wife of an insured wage earner. Fogo

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

argues that the Commissioner erred in determining that she had not received one-half of her support from her former husband during the relevant period in light of her expenses incurred during that time. Fogo also argues that the manner in which the regulations are applied by the Commissioner discriminates against divorced wives living in states governed by a community property system.

We have reviewed the record, including the administrative record, and the briefs of the parties and find that the Commissioner's application of the regulations was not plainly erroneous and that the decision was supported by substantial evidence in the record. See Thomas Jefferson University v. Shalala, 512 U.S. 504, 512 (1994); Greenspan v. Shalala, 38 F.3d 232, 236 (5th Cir. 1994).

Fogo has no standing to assert the discrimination claim because she has not shown that she was denied benefits based on the alleged discriminatory application of the regulations. See Nevares v. San Marcos Consol. Indep. Sch. Dist., 111 F.3d 25, 26 (5th Cir. 1997).

Therefore, the district court did not err in granting the Commissioner's motion for summary judgment and dismissing Fogo's complaint.

AFFIRMED.