

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-8423

(Summary Calendar)

JOSEFINA O. JUAREZ, S.S.N.
454-11-0777,

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
(EP-92-CV-216)

(March 30, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Josefina O. Juarez appeals the district court's dismissal of her action for judicial review of the decision by the Secretary of Health and Human Services ("the Secretary") denying her application seeking supplemental security income benefits. 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

Juarez, a fifty-three year old woman with a sixth grade education, filed an application in December 1989 for Supplemental Security Income ("SSI") benefits under Title XVI of the Social Security Act, 42 U.S.C. § 401 et seq. (1988).¹ Juarez alleged that she was disabled due to high blood pressure, diabetes, and high cholesterol. After the Secretary initially denied her application, Juarez requested a hearing. After the subsequent hearing, an administrative law judge ("ALJ") found that Juarez suffered from diabetes mellitus, hypertension with high cholesterol levels, and degenerative joint disease, and that these constituted severe physical impairments. Based on the record as a whole, however, the ALJ found that Juarez could perform her past relevant work. The Appeals Council declined to review the ALJ's decision, thus making it the final decision of the Secretary, and Juarez sought judicial review of the decision in federal district court. Both Juarez and the Secretary filed motions for summary judgment. The district court granted the Secretary's motion and dismissed Juarez's action. Juarez now appeals.

II

Juarez contends that the Secretary's decision to deny her SSI benefits is not supported by the record. On review, we must

¹ To the extent Juarez alleges that certain of her ailments began prior to December 1989, a previous administrative decision adjudicated her benefits entitlement through June 1989. Because Juarez did not appeal that determination, her claim for benefits for the period prior to April 1989 "is subject to the doctrine of administrative *res judicata*." *Muse v. Sullivan*, 925 F.2d 785, 787 n.1 (5th Cir. 1991).

determines whether substantial evidence exists in the record as a whole to support the ALJ's factual findings and whether the ALJ applied the proper legal standards. *Selders v. Sullivan*, 914 F.2d 614, 617 (5th Cir. 1990); *Villa v. Sullivan*, 895 F.2d 1019, 1021 (5th Cir. 1990). Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971). It is more than a mere scintilla and less than a preponderance. *Id.* "This Court may not reweigh the evidence or try the issues de novo. Conflicts in the evidence are for the Secretary and not the courts to resolve." *Selders*, 914 F.2d at 617. Disability is defined 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 twelve months." 42 U.S.C. § 423(d)(1)(A).

Juarez, as claimant, bears the burden of proving that she is disabled. *Selders*, 914 F.2d at 618. In evaluating a disability claim, the Secretary conducts a five-step sequential analysis, the first four steps of which place the burden on the claimant. First, the claimant must not be presently working. Second, the claimant must have an impairment or combination of impairments that severely limits her physical or mental ability to do basic work activities. Third, to secure a finding of disability without consideration of age, education, or work experience, the claimant must demonstrate

that her impairments are listed in, or equivalent to, an impairment listed in Appendix 1 of the Regulations. Fourth, the impairments must prevent the claimant from doing past relevant work. Finally, the Secretary must establish that the claimant can perform other substantially gainful activity.²

A

The ALJ disposed of Juarez' claim at step four of the analysis, finding that Juarez could perform her past relevant work as a housekeeper.³ In the *Dictionary of Occupational Titles* ("DOT"), the job of housekeeper is considered "medium work" because it requires the unrestricted ability to lift up to twenty-five pounds on a frequent basis. Juarez submits the ALJ's finding that she could perform her past relevant work is erroneous because, as the ALJ also found, her impairments restricted her ability to lift such weight.⁴ However, the ALJ was well within its discretion to disregard the DOT's definition of housekeeper and define Juarez' past relevant work using the actual demands of her past work. See

² In determining whether the claimant can do any other work, the Secretary considers the claimant's residual functional capacity, together with age, education, and work experience, according to the Medical-Vocational Guidelines set forth by the Secretary. *Selders*, 914 F.2d at 618; 20 C.F.R. § 404.1520. Once the Secretary determines that the claimant can perform such work, the claimant must then prove that she cannot perform the work suggested. *Muse*, 925 F.2d at 789.

³ Because we uphold the ALJ's finding as to Juarez' ability to perform her past work, see *infra*, we need not determine whether the ALJ was required to seek testimony from a vocational expert, which would have been relevant only had the ALJ reached step five of the analysis.

⁴ The ALJ found that Juarez could lift a maximum of twenty-five pounds *occasionally*, but not frequently.

Villa, 895 F.2d at 1022-23; *Jones v. Bowen*, 829 F.2d 524, 527 n.2 (5th Cir. 1987). Because the record supports the ALJ's conclusion that her past work did not require extensive lifting,⁵ we reject Juarez' contention that she cannot perform her past work simply because she cannot lift items weighing up to twenty-five pounds on a frequent basis.

B

Juarez next challenges the ALJ's conclusion that she could perform her past relevant work. After examining the record, we conclude that substantial evidence supports the Secretary's determination that Juarez was not disabled. While Juarez points to evidence in the record suggesting that she is disabled, the record also contains substantial evidence indicating that she is not disabled. See *Harrell v. Bowen*, 862 F.2d 471, 481 (5th Cir. 1988) (recognizing that not all severe impairments are disabling). For example, Dr. O.R. Brooker opined that although Juarez suffered from degenerative joint disease, she could lift up to twenty-five pounds on an occasional basis,⁶ could stand, walk, and sit for eight hours in an eight-hour work day, and that many other physical tasks were unaffected by her impairments.⁷ This opinion constitutes "more

⁵ Juarez indicated that her past work as a housekeeper required her to vacuum, mop, cook, wash clothing, and care for an elderly person.

⁶ "Occasional" is defined as "from very little up to one-third of an eight-hour work day."

⁷ Dr. Brooker indicated that Juarez could balance frequently, stoop, crouch, and kneel occasionally, and could not climb or crawl. Brooker further reported that arthritis impaired Juarez' ability to reach, handle, finger, and push/pull, although

than a mere scintilla" of evidence and is the kind of evidence that "a reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 390, 91 S. Ct. at 1427. Moreover, the record suggests that medication effectively controlled Juarez' diabetes, hypertension, and hypercholesterolemia. See *Jones*, 829 F.2d at 527 (noting that diabetes mellitus "is a remediable condition and therefore is not disabling"). Finally, Juarez testified that she baby-sat her daughter's children, a task not substantially dissimilar to Juarez' past work. Because substantial evidence supports the Secretary's determination that Juarez was capable of performing her past relevant work, we will not disturb that finding on appeal.

C

Finally, Juarez contends that the ALJ gave insufficient weight to her complaints of pain. Although the ALJ must consider a claimant's subjective complaints of pain, *Carrier v. Sullivan*, 944 F.2d 243, 247 (5th Cir. 1991), pain constitutes a disabling condition under the Act only when it is "constant, unremitting, and wholly unresponsive to therapeutic treatment." *Harrell*, 862 F.2d at 480. "`How much pain is disabling is a question for the ALJ [because] the ALJ has the primary responsibility for resolving conflicts in the evidence.'" *Carrier*, 944 F.2d at 247 (citation omitted). Here, the ALJ's finding is supported by substantial medical evidence, which demonstrates that there were no objective conditions causing the level of pain allegedly suffered by Juarez.

the extent of the impairment was not indicated.

See *Anthony v. Sullivan*, 954 F.2d 289, 296 (5th Cir. 1992) (noting that the "objective medical evidence must demonstrate the existence of a condition that could reasonably be expected to produce the level of pain or other symptoms alleged"). Moreover, Juarez, who lived by herself, testified before the ALJ that, during an average day, she walked "a little bit," did some yard work such as picking up papers and emptying trash, washed dishes, and baby-sat for her daughter. Juarez also indicated on her disability application that she was able to cook, clean her house daily, and shop for groceries. Furthermore, the ALJ, after observing Juarez' demeanor and actions during the hearing, discredited her complaints of pain.⁸ See *Villa*, 895 F.2d at 1024 (noting that "a factfinder's evaluation of the credibility of subjective complaints is entitled to judicial deference if supported by substantial record

⁸ Juarez contends that the ALJ made no explicit findings as to Juarez's credibility. We disagree. The ALJ specifically stated that

[w]hile Ms. Juarez complains of . . . recurrent severe headaches, these are not documented in the medical records. . . . Further, the record fails to document significant complaints of recurrent headaches. Ms. Juarez told Dr. Booker that she suffered from "occasional headaches"

I have considered Ms. Juarez' complaints of pain, however, I cannot find that she has subjective limitations on her ability to perform a full range of light work and a limited range of medium work with lifting and carrying of up to 25 pounds.

Record on Appeal at 85-86. This suffices as a credibility finding. See *Haywood v. Sullivan*, 888 F.2d 1463, 1469-70 (5th Cir. 1989) (upholding the ALJ's finding that the complainant's "pain would [not] prevent her from performing her past job" because the "ALJ's findings regarding the debilitating effect of the subjective complaints are entitled to considerable judicial deference") (internal quotation omitted).

evidence"). Because more than a mere scintilla of record evidence support's the ALJ's credibility determination, we will defer to it.

III

For the foregoing reasons, we AFFIRM the judgment of the district court.