

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELAINE BASSILL	:	CIVIL ACTION
	:	
v.	:	NO. 04-2341
	:	
JO ANNE BARNHART,	:	
Commissioner of Social Security	:	
Administration	:	

Diamond, J.

February 15, 2005

MEMORANDUM

Plaintiff Elaine Bassill challenges the denial of her claim for Disability Insurance Benefits under Title II of the Social Security Act. I adopt the Magistrate Judge’s Report and Recommendation and Remand the matter to the ALJ for further consideration.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Elaine Bassill is 43 years old, holds a masters degree in Liberal Studies, and previously has worked as a computer-assisted architectural designer and drawer. (R. 487, 503-04.) She last worked in June 2001 as a kitchen designer for Home Depot. (R. 66, 503-04.) She is married and lives at home with her husband and five children. (R. 487.)

On March 4, 2003, Plaintiff filed a DIB application, alleging that she has been disabled since June 26, 2001, due to fibromyalgia, congenital cervical spinal stenosis, degenerative disc disease, abdominal pain, and depression. (R. 12-14.) On June 30, 2003, the Social Security Administration denied her application. (R. 56-59.) On July 15, 2003, Plaintiff filed a timely

request for a hearing before an Administrative Law Judge. (R. 60.)

On March 1, 2004, the ALJ held a hearing at which Vocational Expert Bruce Martin and Plaintiff testified. (R. 12, 483-513.) On March 18, 2004, the ALJ denied the application, finding that Plaintiff retained the residual functional capacity to perform a significant range of sedentary work, and that Plaintiff could perform a significant number of jobs that existed in the regional and national economies. (R. 19.) The ALJ thus concluded that Ms. Bassill was not disabled. (R. 19.) The Appeals Council determined that there was no basis for granting review of the ALJ's decision, which, thus, became final pursuant to 42 U.S.C. § 405(g). (R. 3-5.)

After Plaintiff brought suit in this Court, both she and the Commissioner filed cross motions for summary judgment. The matter was referred to a Magistrate Judge who, on December 21, 2004, recommended that I grant Plaintiff's Motion in part, deny the Commissioner's Motion, and remand the matter to the ALJ for further consideration. On January 6, 2005, the Commissioner filed her Objections to the Report and Recommendation. On January 19, 2004, Plaintiff filed her Response to the Commissioner's Objections.

STANDARD OF REVIEW

In reviewing the ALJ's decision, a District Court must determine whether the ALJ's findings of fact are supported by substantial evidence. See Montes v. Apfel, No. 99-2377, 2000 U.S. Dist. LEXIS 4030, *2 (E.D. Pa. Mar. 27, 2000) (citing Richardson v. Perales, 402 U.S. 389, 401, 28 L. Ed. 2d 842, 91 S. Ct. 1420 (1972)). The definition of "substantial evidence" is extremely well-established: "that which would be sufficient to allow a reasonable fact finder to reach the same conclusion; while it must exceed a scintilla, it need not reach a preponderance of

the evidence." Id. at *2; see also Jesurum v. Sec'y of U.S. Dept. Of Health and Human Services, 48 F.3d 114, 117 (3d Cir. 1995). The ALJ must consider all the relevant evidence in the record and provide some indication of the evidence she rejected, and why she rejected it in arriving at her decision. See Weir v. Heckler, 734 F.2d 955, 933 (3d Cir. 1984).

The extent of District Court review of a Magistrate Judge's Report is committed to the Court's discretion. See Jozefick v. Shalala, 854 F. Supp. 342, 347 (M.D. Pa., 1994); see also Thomas v. Arn, 474 U.S. 140, 154 (1985); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984); Heiser v. Ryan, 813 F. Supp. 388, 391 (W.D. Pa. 1993), aff'd, 15 F.3d 299 (3d Cir. 1994). The District Court must review *de novo* those portions of the Report to which objection is made. 28 U.S.C. § 636 (b)(1)(c) (2004); see generally Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984). The Court may "accept, reject or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F. Supp. 2d 667, 669 (E.D. Pa. 2001).

DISCUSSION

The Commissioner argues that the Magistrate erred in: (1) concluding that substantial evidence does not support the ALJ's finding that Plaintiff's depression was not severe; (2) reweighing the evidence presented to the ALJ; and (3) failing to consider whether the ALJ's residual functional capacity assessment included limitations due to Plaintiff's pain.

In the Magistrate's view, the ALJ's finding that Plaintiff had "no severe mental impairments," was not supported by substantial evidence. (R. 13.) The Commissioner points to considerable evidence of record that apparently supports the ALJ's finding. The Commissioner misses the point. What troubled the Magistrate -- and what troubles me -- is the evidence the

ALJ disregarded without explanation.

In disability proceedings, the ALJ is not only required to provide some explanation “of the evidence she considered which supports the result, but also some indication of the evidence which was rejected.” Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981) “In the absence of such an indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored.” Id. Unless the ALJ has “analyzed all evidence and has sufficiently explained the weight [she] has given to obviously probative exhibits, to say that [her] decision is supported by substantial evidence approaches an abdication of the court's ‘duty to scrutinize the record as a whole to determine whether the conclusions reached are rational.’” See Dobrowolsky v. Califano, 606 F.2d 403, 407 (3d Cir. 1979) (internal citations omitted).

The ALJ found that Plaintiff suffered “no severe mental impairments” because: (1) the independent psychological examination conducted by Dr. McHugh was “essentially within normal limits”; (2) “there was no documentation that [Plaintiff’s] depression is [as] debilitating as she alleges”; and (3) “[t]he treatment records on file indicate that she goes to family therapy when needed, usually every several months.” (R.13) Later in the opinion, the ALJ also refers to the state agency medical consultant, who “opined that the claimant had no severe impairments.” (R. 15, 16.)

The ALJ failed, however, to address adequately the evidence that Plaintiff presented from her treating physicians: (1) Dr. Arnold Sadwin’s neurological and psychological assessment that Plaintiff suffered from phobias, clinical depression, and post-traumatic stress disorder resulting from a serious car accident in 1986 (R. 279-82); (2) the opinion of Patricia G. Dice (Plaintiff’s psychotherapist since 1997), who concluded that Plaintiff suffers from severe depression that

recently has been getting worse (R. 260, 267); (3) Dr. Anthony Bazzan's opinion that Plaintiff suffers from depression and physical ailments (R. 125); (4) the assessment of her treating physician, Dr. Frank C. Passero, who prescribed Zoloft for Plaintiff's depression (R. 364); and (5) Dr. Nathan M. Smukler's assessment that Plaintiff is severely depressed, and that at least part of her depression is expressed as pain (R. 374-75). There is no indication in the ALJ's opinion that she ever considered this evidence, or any of Plaintiff's medical records that apparently indicate a longstanding history of depression. (R&R at 12.) The ALJ's failure to provide "some indication of the evidence which was rejected," and why she rejected it, compels me to remand. See Cotter, 642 F.2d at 705.

The Commissioner next contends that the Magistrate "impermissibly interjected his medical judgment into the record and re-weighed the medical evidence." (Def. Obj. to R&R at 2.) The Commissioner has misread the Report and Recommendation. The Magistrate deemed the ALJ's decision "inadequate" because the ALJ did not address evidence that contradicted the ALJ's finding respecting Plaintiff's mental condition. (R&R at 2.) Accordingly, the Magistrate could not determine whether the ALJ considered and dismissed Plaintiff's evidence, or "simply ignored it." See Cotter, 642 F.2d at 705. In these circumstances, the Magistrate acted properly.

Lastly, the Commissioner argues that Plaintiff would "still be found not disabled because her depression, even if found severe, would have resulted in no additional functional limitations." (Objections to R&R at 11.) This is because "the [Plaintiff's Residual Functional Capacity] may have already included such resulting limitations due to her pain." (Id.) The denial of a claim for disability benefits is a very serious matter, and must turn on actual evidence, not the Commissioner's speculation. Given the ALJ's failure to address all the relevant evidence, it is

more than possible that after she does so her decision may change. Dr. McHugh and Dr. Smukler suggest as much when they state that Plaintiff's condition will likely worsen and that her depression is expressed as pain. (R. 238-41, 375.)

Accordingly, I grant Plaintiff's Motion in part, deny the Commissioner's Motion, and remand the matter to the ALJ to consider all the relevant evidence and explain her decision more thoroughly. An appropriate Order follows.

BY THE COURT.

Paul S. Diamond, J.

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ORDER

AND NOW this 15th day of February, 2005, upon consideration of the Parties' Cross-Motions for Summary Judgment, the Magistrate Judge's Report and Recommendation, the Parties' Objections to the Report and Recommendation, and any related submissions, it is

ORDERED that:

1. The Report and Recommendation dated December 21, 2004, is **APPROVED and ADOPTED**;
2. the Plaintiff's Motion for Summary Judgment is **GRANTED in part**;
3. the Defendant's Motion for Summary Judgment is **DENIED**; and
4. the matter is **REMANDED** for further proceedings consistent with this Opinion.

The Clerk of Court shall close this matter for statistical purposes.

BY THE COURT

Paul S. Diamond, J.

