

United States District Court, E.D. Pennsylvania.
MARILYN L. PLESS

v.

MARTHA McSTEEN, Acting Secretary of Health and Human Services.
Civil Action No. 86-2555
Not Reported in F.Supp., 1987 WL 10425

May 1, 1987.

F. Michael Friedman, ARNEY, PAGANO & FRIEDMAN, Media, PA., for plaintiff.
Richard J. Stout, Assistant United States Attorney, for defendant.

MEMORANDUM ORDER

CLIFFORD SCOTT GREEN, District Judge.

Pending before the court are cross-motions for summary judgment on plaintiff's appeal to this court for review of the Secretary's decisions denying to her Widow's benefits and Supplemental Security Income benefits sought pursuant to Titles II and XVI, respectively, of the Social Security Act (the 'Act'). This matter is properly before the court for review, claimant having exhausted all of her administrative remedies. The sole issue before the court is whether substantial evidence supports the findings of the Administrative Law Judge that plaintiff is not disabled within the meaning of the Act and is therefore capable of performing a full range of light work including her former occupation as teacher's aide. Upon review of the entire record, and consideration of the memoranda submitted by counsel, it is clear that the decisions of the Administrative Law Judge are not supported by substantial evidence and that plaintiff is entitled as a matter of law to recover Widow's benefits and Supplemental Security Income benefits.

To recover benefits as a widow plaintiff must establish, based solely upon medical considerations, that she is incapable of performing any gainful employment. 42 U.S.C. § 423(d)(2)(B). Moreover, her impairment must be one of those set forth in the Listing of Impairments in subpart P, Appendix 1, 20 C.F.R. § 404.1578, or it must be the medical equivalent of a listed impairment. To recover Supplemental Security Income benefits, plaintiff need only establish that her impairment prevents her from performing any substantial gainful activity, which can be established based upon such non-medical factors as age, education and work experience. *Smith v. Schweiker*, 671 F.2d 789 (3d Cir. 1982).

Claimant's subjective complaints of pain are supported by evidence offered by her treating physician.

He has stated that his evaluation of objective medical information supports his opinion that claimant cannot perform heavy, moderate, light or sedentary work. In his opinion, she can perform only 'less than a full range of sedentary work.' There is no evidence that contradicts the physician's opinion; nor is there any evidence to support the finding of the Administrative Law Judge that 'claimant is able to perform her past relevant work as a teacher's aide or a wide range of other light work in the national or regional economies.' Finding No. 12.

Review of the entire administrative record discloses, and the Administrative Law Judge found that '[t]he medical findings shown in the medical evidence of record establishes the existence of severe musculoskeletal condition affecting C5-C6, L5/S1, and trochanteric bursitis of the right hip as well as diabetes mellitus.'^{FN1} His conclusion that the aforesaid conditions do not either individually or in combination establish impairments severe enough to be disabling is not based upon medical evidence of record. His conclusions are based entirely upon his own medical opinions which obviously are in conflict with those of the treating physician. It is true that the Administrative Law Judge is required to determine the credibility of evidence; however, he may not reject otherwise credible evidence because it is inconsistent with his own medical opinions. Ferguson v. Schweiker, 765 F.2d 31 (3d Cir. 1985).

The record discloses that claimant presented sufficient evidence to the Administrative Law Judge to make out a prima facie case of disability. Since there is no substantial contrary evidence to undermine plaintiff's prima facie case, Ferguson requires that summary judgment be entered in favor of plaintiff and against defendant. Id. at 37-38.

JUDGMENT

AND NOW, this 30th day of April, 1987, IT IS ORDERED that summary judgment is entered in favor of plaintiff, Marilyn L. Pless, and against defendant, Martha McSteen, Acting Secretary of Health and Human Services. IT IS FURTHER ORDERED that this action is REMANDED to the Secretary solely for the purpose of calculating the benefits due plaintiff.

FN1 Finding No. 4.-There is evidence to support the Administrative Law Judge's additional finding that the diabetes mellitus is well controlled with medication and diet and not disabling.