

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CHRISTINE ROSARIO, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 00-653-SLR  
 )  
 LARRY G. MASSANARI, )  
 Acting Commissioner of )  
 Social Security,<sup>1</sup> )  
 )  
 Defendant. )

---

Gary C. Linarducci, Esquire, New Castle, Delaware. Counsel for Plaintiff.

Colm F. Connolly, United States Attorney and Virginia Gibson-Mason, Assistant United States Attorney, United States Attorney's Office, Wilmington, Delaware. Counsel for Defendant. Of Counsel: James A. Winn, Regional Chief Counsel and Heather Benderson, Assistant Regional Counsel, Social Security Administration, Philadelphia Pennsylvania.

---

**MEMORANDUM OPINION**

Dated: September 26, 2001  
Wilmington, Delaware

---

<sup>1</sup>Larry G. Massanari became the Acting Commissioner of Social Security, effective March 29, 2001, to succeed Kenneth S. Apfel. Pursuant to Fed. R. Civ. P. 25(d)(1) and 42 U.S.C. § 405(g), Larry G. Massanari is automatically substituted as the defendant in this action.

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

Plaintiff Christine L. Rosario filed this action against defendant Larry G. Massanari, the Acting Commissioner of Social Security ("Commissioner"), on July 17, 2000. (D.I. 1) Plaintiff seeks judicial review pursuant to 42 U.S.C. § 405(g) of a decision by the Commissioner denying her claim for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Currently before the court are the parties' cross-motions for summary judgment (D.I. 9, 12), and plaintiff's motion to remand. (D.I. 14) For the following reasons, the court shall grant defendant's motion for summary judgment, and deny plaintiff's motion for summary judgment and plaintiff's motion to remand.

**II. BACKGROUND**

**A. Procedural History**

On April 23, 1998, plaintiff filed an application for disability benefits alleging that, as a result of a fall on November 1, 1997, she suffers from chronic myofascial pain and is unable to work. (D.I. 5 at 67-69) Plaintiff's claim was denied both initially and upon reconsideration. (Id. at 42-52) Plaintiff requested and subsequently received a hearing before an administrative law judge ("ALJ"), held on May 25, 1999. (Id. at 58) On June 25, 1999, the ALJ issued a decision denying

plaintiff's claim. In considering the entire record, the ALJ found the following:

1. The claimant met the disability insured status requirements of the Act on November 1, 1997, the date the claimant stated she became unable to work, and has acquired sufficient quarters of coverage to remain insured through at least September 30, 2001.

2. The claimant has not engaged in substantial gainful activity since November 1, 1997.

3. The medical evidence establishes that the claimant has chronic myofascial pain, an impairment which is severe but which does not meet or equal the criteria of any of the impairments listed in Appendix 1, Subpart P, Regulations No. 4.

4. The claimant's statements concerning her impairment and its impact on her ability to work are not entirely credible.

5. The claimant lacks the residual functional capacity to stand/walk more than two hours in an eight hour workday, sit more than six hours and lift more than 10 pounds.

6. In her past work as secretary, as generally performed in the national economy, the claimant was required to sit for prolonged periods and lift less than ten pounds.

7. The claimant's past relevant work as secretary did not require the performance of work functions precluded by her medically determinable impairment.

8. The claimant's impairment does not prevent her from performing her past relevant work.

9. The claimant has not been under a disability, as defined in the Social Security

Act, at any time through the date of this decision.

(Id. at 9-21)

On June 23, 2000, the Appeals Council denied plaintiff's request for review, stating that "the ALJ's decision stands as the final decision of the Commissioner." (Id. at 4-6) In reaching its decision, the Appeals Council made the following findings: (1) there was no abuse of discretion; (2) there was no error at law; (3) the ALJ's decision was supported by substantial evidence; (4) there were no policy or procedural issues affecting the general public interest; and (5) there was no new evidence submitted that might have required a re-evaluation of plaintiff's application. (Id.) Plaintiff now seeks review of this decision before this court pursuant to 42 U.S.C. § 405(g).<sup>2</sup>

**B. Facts Evinced at the Administrative Law Hearing**

Plaintiff was born on June 27, 1952. (Id. at 26) She is married with one child. (Id. at 27) She has completed six months of college and has been periodically employed as an administrative assistant, secretary, executive secretary, receptionist, and substitute teacher during the past fifteen years. (Id. at 27-28)

---

<sup>2</sup>On January 4, 2000, plaintiff filed a second application for disability benefits with an onset date of June 25, 1999. On February 27, 2001, the ALJ granted plaintiff's claim. (D.I. 15, Ex. 22)

Plaintiff testified that she fell on November 1, 1997, causing a severe sprain to her right upper thigh. (Id. at 29) She alleges that as a result of her fall, she suffers from continuous chronic fatigue, chronic pain, severe contractions, and weakness in her right leg, all of which cause her difficulty with walking and coordination. (Id.) Plaintiff also alleges that she has pain in the back of both legs, the tops of her shoulders, and in her right arm "from the elbow to her shoulder." (Id. at 32)

Plaintiff testified that she cannot do any lifting, her ability to walk or stand is limited to "approximately 20 to 30 minutes," and she uses a cane. (Id. at 30, 33) Plaintiff does no cooking, no housework, no yardwork, and has no social life other than occasionally visiting relatives. (Id. at 31) She watches television, reads, and occasionally goes shopping. (Id. at 32) Plaintiff is able to dress and bathe herself "with difficulty." (Id.)

Plaintiff testified that she sees her primary physician, Dr. Chris Sternberg, every four to six weeks. (Id. at 30) Plaintiff testified that she takes pain medication every four hours, and that the only noticeable side effect from the medication was some initial constipation. (Id.)

Plaintiff testified that she suffers from depression and had sought treatment by a therapist, Dr. Peggy Hollinger.<sup>3</sup> (Id. at 32) Plaintiff testified that she has feelings of worthlessness and has difficulty concentrating, although she has had no suicidal thoughts. (Id. at 32-34) Plaintiff also stated that she does not sleep between 1 a.m. and 6 a.m., and her energy is "very poor." (Id.)

### **C. Vocational Evidence**

During the hearing, the ALJ called William T. Slaven as a vocational expert. (Id. at 34) Mr. Slaven opined as to the exertional and skill requirements of plaintiff's prior jobs, and concluded that plaintiff's skills were demonstrated at the sedentary level.<sup>4</sup> Mr. Slaven testified:

Secretary, the industry is clerical. The [specific vocational preparation level ("SVP")] is 6, that's skilled work. The physical demand in the [Dictionary of Occupational Titles ("DOT")] is sedentary. Executive secretary, the industry is professional. The SVP is 8, that's skilled work. The physical demand in the DOT is sedentary. Receptionist, industry is clerical. The SVP is 4, semi-skilled. The physical demand in the DOT is sedentary and teacher's aid, roman numerical number II, the industry is education and

---

<sup>3</sup>The court understands from plaintiff's subsequent testimony and medical records that Dr. Hollinger treated plaintiff for depression approximately three years prior to plaintiff's November 1, 1997 injury.

<sup>4</sup>Plaintiff's attorney disagreed, noting the residual functional capacity questionnaire completed by Dr. Sternberg, which allegedly proves that there was no job in the national economy that plaintiff was capable of performing because of her chronic condition. (D.I. 5 at 35-36, 264-267)

instruction. The SVP is 3, semi-skilled. The physical demand in the DOT is light and frequently that work in special ed is performed as medium work.

(Id. at 34-35)

#### **D. Medical Evidence**

On November 20, 1997, approximately three weeks after her fall, plaintiff was evaluated by Dr. Sternberg, who noted that plaintiff complained of pain in her upper right thigh and right leg weakness. (Id. at 156) Dr. Sternberg prescribed Skelaxin and a course of physical therapy. (Id. at 157) X-rays taken on December 4, 1997 of plaintiff's right hip, pelvis, and femur, as well as an electromyography and nerve conduction study conducted on December 11, 1997, were normal. (Id. at 153-154) During a January 8, 1998 appointment with Dr. Sternberg, plaintiff complained of pain in her right elbow and shoulder. (Id. at 151-152) Dr. Sternberg diagnosed a right thigh contusion with rectus femoral strain, a right lateral epicondylitis with pain radiating to the shoulder, and myofascial symptoms. (Id.) He prescribed Skelaxin and suspended plaintiff's physical therapy. (Id.) The results of an MRI of plaintiff's right thigh, performed on January 22, 1998, were normal. (Id. at 150)

On January 28, 1998, orthopedist Dr. Evan H. Crain examined plaintiff, noticed no evidence of rotator cuff atrophy, and indicated that plaintiff's neurological examination was normal. (Id. at 169-170) However, Dr. Crain noted "evidence of symptom

amplification" and indicated that he was "really concerned about whether reflex sympathetic dystrophy is present." (Id.) To "narrow down any possible abnormality," Dr. Crain ordered that a bone scan be performed on plaintiff. (Id.) On February 2, 1998, the bone scan was performed and the results were normal. (Id. at 167) On February 19, 1998, an MRI of plaintiff's lumbar spine was performed to test for a herniated disc; those results were also normal. (Id. at 163) On February 25, 1998, Dr. Crain reported that plaintiff's arm was doing better, and recommended continued physical therapy and a general maintenance and fitness program. (Id. at 160)

In a "Daily Activities Questionnaire" dated June 1, 1998, plaintiff reported that on a typical day she woke up between 5:00 a.m. and 10:30 a.m., took a shower, made breakfast, and made the beds. (Id. at 98) In the afternoon, she made dinner, cleaned up, and then rested. (Id.) She watched television, and did some cleaning and wash. (Id.) In the evening, she made coffee, read catalogs and books, wrote in her journal, and watched television. (Id.) She reported going to bed anywhere from 10:00 p.m. to 4:00 a.m. (Id.) She was unable to do household chores, including laundry and dusting. (Id. at 99) She assisted her son with his homework. (Id. at 102) Her activities outside the home included going out to dinner and the movies with friends and relatives. (Id. at 99, 101) She was able to go shopping at the supermarket,

K-Mart, Value City and the mall. (Id. at 99-100) She attended church once a month. (Id. at 102)

On June 4, 1998, after a series of chiropractic treatments and acupuncture, plaintiff reported continued pain in her right elbow, arm and thigh. Dr. Sternberg noted that "[t]here are no obvious neurological deficits that are limited by pain." (Id. at 141)

On August 16, 1998, plaintiff underwent a consultative examination with psychiatrist Dr. Marsha Speller for treatment of depression. (Id. at 171-175) Dr. Speller's report indicated that plaintiff alleged to have racing thoughts and sleep disturbances. (Id.) Dr. Speller found no evidence of hallucinations or delusions, and there were no allegations of suicidal or homicidal ideation. (Id.) Dr. Speller noted that plaintiff had sought treatment for depression three years earlier.<sup>5</sup> (Id.) Dr. Speller also noted that plaintiff was able to cook, clean, and shop. (Id.) Dr. Speller's diagnosis was major depression, recurrent, moderate with a global assessment of functioning ("GAF") of 60.<sup>6</sup> (Id.) A psychiatric review technique form dated August 18, 1998 indicated that plaintiff's

---

<sup>5</sup>Plaintiff told Dr. Speller that she was not currently in counseling but she had treatment three years ago for depression, presumably by Dr. Hollinger. (D.I. 5 at 32, 172)

<sup>6</sup>According to the Diagnosis and Statistical Manual for Mental Disorders, Fourth Edition, a GAF of 60 indicates moderate symptoms. (D.I. 5 at 15)

daily activities were not seriously compromised and that her depression did not appear to be of a disabling severity. (Id. at 177)

Residual functional capacity assessments dated August 20, 1998 and October 6, 1998 indicated that plaintiff could lift and carry twenty pounds occasionally and ten pounds frequently. (Id. at 194, 202) She could stand and walk for about six hours, and sit for about six hours in an eight-hour work day. (Id.) Due to her pain, plaintiff could only occasionally climb, balance, stoop, kneel, crouch and crawl. (Id. at 195, 203)

A psychiatric review technique form dated October 7, 1998 indicated that plaintiff's understanding, memory and adaptation were not significantly limited, that she was moderately limited in her ability to maintain attention and concentration for extended periods and complete a normal work day and work week without interruption, and that she was "mentally capable of performing routine tasks." (Id. at 218-220)

On October 15, 1998, Dr. Sternberg ordered an ultrasound after plaintiff complained of increased pain in her left thigh. (Id. at 255) Plaintiff underwent an ultrasound of the right knee and thigh on October 16, 1998, with normal results. (Id. at 256)

On January 8, 1999, rheumatologist Dr. Peter V. Rocca indicated that "[t]here is no atrophy of muscle tissue appreciated and no swelling, edema or synovitis." (Id. at 232-

233) Dr. Rocca diagnosed "presumptive chronic myofascial pain syndrome with no alternative explanation for plaintiff's reported pain." (Id.)

On May 3, 1999, Dr. Sternberg completed a residual functional capacity assessment of plaintiff. (Id. at 264-267) Dr. Sternberg determined that plaintiff could sit for about four hours and stand/walk for less than two hours in an eight-hour workday, and that plaintiff could lift only items less than ten pounds. Dr. Sternberg also found that plaintiff was capable of low stress jobs, although plaintiff's constant pain would interfere with her attention and concentration. Plaintiff would need to take frequent unscheduled breaks during the workday, and should keep her legs elevated during prolonged periods of sitting. As a result of her impairments, Dr. Sternberg expected plaintiff to be absent from work more than four times per month. (Id.)

### **III. STANDARD OF REVIEW**

"The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, [are] conclusive," and the court will set aside the Commissioner's denial of plaintiff's claim only if it is "unsupported by substantial evidence." 42 U.S.C. § 405(g); 5 U.S.C. § 706(2)(E) (1999); see Menswear Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). As the Supreme Court has held,

"substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Accordingly, it "must do more than create a suspicion of the existence of the fact to be established. . . . It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951) (quoting NLRB v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300 (1939)).

The Supreme Court also has embraced this standard as the appropriate standard for determining the availability of summary judgment pursuant to Fed. R. Civ. P. 56:

The inquiry performed is the threshold inquiry of determining whether there is the need for a trial – whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.

Petitioners suggest, and we agree, that this standard mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986)

(internal citations omitted). Thus, in the context of judicial review under § 405(g),

"[a] single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores, or fails to resolve, a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence – particularly certain types of evidence (e.g., that offered by treating physicians) – or if it really constitutes not evidence but mere conclusion."

Brewster v. Heckler, 786 F.2d 581, 584 (3d Cir. 1986) (quoting Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983)). Where, for example, the countervailing evidence consists primarily of the claimant's subjective complaints of disabling pain, the Commissioner "must consider the subjective pain and specify his reasons for rejecting these claims and support his conclusion with medical evidence in the record." Mattel v. Bowen, 926 F.2d 240, 245 (3d Cir. 1990).

#### **IV. DISCUSSION**

##### **A. Plaintiff's Motion to Remand**

Plaintiff requests that, pursuant to 42 U.S.C. § 405(g), the court remand this case to the ALJ for consideration of new medical evidence that was not available at the ALJ hearing on May 25, 1999.<sup>7</sup> Specifically, plaintiff argues that new medical

---

<sup>7</sup>42 U.S.C. § 405(g) provides, in pertinent part:  
The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is

records and plaintiff's thoracic outlet surgery performed on February 14, 2001 require a remand.

The Third Circuit has set forth the following standard for remand:

[T]he evidence must first be "new" and not merely cumulative of what is already in the record. Second, the evidence must be "material;" it must be relevant and probative. Beyond that, the materiality standard requires that there be a reasonable probability that the new evidence would have changed the outcome of the Secretary's determination. **An implicit materiality requirement is that the new evidence relate to the time period for which benefits were denied, and that it not concern evidence of a later-acquired disability or of the subsequent deterioration of the previously non-disabling condition.** Finally the claimant must demonstrate good cause for not having incorporated the new evidence into the administrative record.

Szubak v. Sec'y of Health and Human Servs., 745 F.2d 831, 833 (3d Cir. 1984) (internal citations omitted) (emphasis added).

In this case, the relevant time period began on November 1, 1997, the alleged onset of disability, and ended on June 25,

---

material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based.

1999, the date of the ALJ's decision. In her subsequent application for disability insurance benefits, plaintiff's alleged onset of disability was June 25, 1999. All of the "new" evidence submitted by plaintiff occurred **after** June 25, 1999. The evidence is not relevant to the time period for which benefits were denied and, therefore, is not material to the claim at bar. Plaintiff's motion to remand for further proceedings in light of additional evidence is denied, and the court shall consider only the evidence available to the ALJ in reviewing the ALJ's June 25, 1999 determination.

**B. Cross-Motions for Summary Judgment**

**1. Standards for Determining Disability**

Congress enacted the Supplemental Security Income Program in 1972 "to assist 'individuals who have attained age 65 or are blind or disabled' by setting a guaranteed minimum income level for such persons." Sullivan v. Zebley, 493 U.S. 521, 524 (1990) (quoting 42 U.S.C. § 1381). Disability is defined in § 1382c(a)(3) as follows:

(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this subchapter if he is unable 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.

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

. . .

(D) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

42 U.S.C. § 1382c(a)(3). Governing regulations set forth a five-step test for determining whether a claimant falls within this definition:

The first two steps involve threshold determinations that the claimant is not presently working and has an impairment which is of the required duration and which significantly limits his ability to work. See 20 C.F.R. §§ 416.920(a)-(c) (1989). In the third step, the medical evidence of the claimant's impairment is compared to a list of impairments presumed severe enough to preclude any gainful work. See 20 C.F.R. pt. 404, subst. P, App. 1 (pt. A) (1989). If the claimant's impairment matches or is "equal" to one of the listed impairments, he qualifies for benefits without further inquiry. [20 C.F.R.] § 416.920(d). If the claimant cannot qualify under the listings, the analysis proceeds to the fourth and fifth steps. At these steps, the inquiry is whether the claimant can do his own past work or any other work that exists in the national economy, in view of his age, education, and work experience. If the claimant cannot do

his past work or other work, he qualifies for benefits. [20 C.F.R.] §§ 416.920(e) and (f).

Sullivan, 493 U.S. at 525.

The determination whether a claimant can perform other work may be based on the administrative rulemaking tables provided in the Department of Health and Human Services Regulations ("the grids"). See Jesurum v. Sec'y of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995) (citing Heckler v. Campbell, 461 U.S. 458, 468-70 (1983)). The grids require the ALJ to take into consideration the claimant's age, educational level, previous work experience, and residual functional capacity. See 20 C.F.R. §404, subst. P, app. 2 (1999). If the claimant suffers from significant non-exertional limitations, such as pain or psychological difficulties,<sup>8</sup> the ALJ must determine, based on the

---

<sup>8</sup>The regulations list the following examples of non-exertional limitations:

- (i) You have difficulty functioning because you are nervous, anxious, or depressed;
- (ii) You have difficulty maintaining attention or concentrating;
- (iii) You have difficulty understanding or remembering detailed instructions;
- (iv) You have difficulty in seeing or hearing;
- (v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or
- (vi) You have difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

20 C.F.R. § 404.1569a(c).

evidence in the record, whether these non-exertional limitations further limit the claimant's ability to work. See 20 C.F.R. § 404.1569a(c)-(d). If they do not, the grids may still be used. If, however, the claimant's non-exertional limitations are substantial, the ALJ must use the grids as a "framework" only. See 20 C.F.R. § 404, subst. P, app. 2, § 200(d)-(e). In such a case, or if a claimant's condition does not match the definition provided in the grids, determination of whether the claimant can work is ordinarily made with the assistance of a vocational specialist. See Santise v. Schweiker, 676 F.2d 925, 935 (3d Cir. 1982).

## **2. Application of the Five-Step Test**

In the present case, the first three steps of the five-part test to determine whether a person is disabled are not at issue: (1) plaintiff is not working; (2) plaintiff's impairment has lasted more than twelve months; and (3) plaintiff does not have an impairment equal to or meeting one listed in the regulations. The issue in this case concerns the fourth and fifth steps: whether plaintiff can perform her past relevant work, and whether plaintiff can perform other work existing in the national economy. See Mason v. Shalala, 994 F.2d 1058, 1064 (3d Cir. 1993).

In the context of this five-step test, plaintiff had the burden of demonstrating that she was unable to engage in her past

relevant work. See 42 U.S.C. §§ 416(I), 423(d)(1)(A); Mason, 994 F.2d at 1064. After considering plaintiff's testimony, medical records, and vocational expert testimony, the ALJ found that plaintiff failed to meet this burden. The ALJ determined that plaintiff retained the residual functional capacity to perform the exertional demands of sedentary work, which is generally performed while sitting and never requires lifting in excess of ten pounds. See 20 C.F.R. § 404.1567. Because plaintiff's former job as a secretary required only sedentary exertion, the ALJ found that plaintiff was able to perform her past relevant work. Consequently, the ALJ was not required to reach step five of the test, and concluded that plaintiff was not entitled to disability benefits.

**3. The ALJ Gave Appropriate Weight to the Opinion of Plaintiff's Treating Physician**

Plaintiff argues that the ALJ erred because he did not give deference to the opinion of Dr. Sternberg, plaintiff's treating physician. Treating physicians' reports should be accorded great weight, especially "when their opinions reflect expert judgment based on a continuing observation of the patient's condition over a prolonged period of time." Morales v. Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (quoting Rocco v. Heckler, 826 F.2d 1348, 1350 (3d Cir. 1987)); 20 C.F.R. § 404.1527(d)(2) (providing for controlling weight where treating physician opinion is well-supported by medical evidence and not inconsistent with other

substantial evidence in the record). An ALJ may reject a treating physician's opinion outright only on the basis of contradictory medical evidence, but may afford a treating physician's opinion more or less weight depending upon the extent to which supporting explanations are provided. See Newhouse v. Heckler, 753 F.2d 283, 286 (3d Cir. 1985). Where the opinion of a treating physician conflicts with that of a non-treating, non-examining physician, the ALJ may choose whom to credit but "cannot reject evidence for no reason or for the wrong reason." Morales, 225 F.3d at 317 (quoting Mason, 994 F.2d at 1066). In choosing to reject the treating physician's assessment, an ALJ may not make "speculative inferences from medical reports" and may reject "a treating physician's opinion outright only on the basis of contradictory medical evidence" and not due to his or her own credibility judgments, speculation or lay opinion. Id. (quoting Plummer, 186 F.3d at 429).

The court finds that the ALJ properly found Dr. Sternberg's opinion unpersuasive in light of objective medical testing and the opinions of other physicians. Numerous medical tests performed on plaintiff throughout her alleged period of disability consistently yielded normal results. Non-treating physicians agreed on more than one occasion that plaintiff could carry as much as twenty pounds and sit or walk for as much as six hours in an eight-hour workday. Furthermore, plaintiff's report

of her daily activities on June 1, 1998 indicated that she led an active lifestyle, which included shopping, cooking, housework, and leisure activities. This report, along with objective medical evidence, reasonably led the ALJ to doubt the credibility of plaintiff's testimony at the hearing. In short, the ALJ's assessment of plaintiff's residual functional capacity to perform sedentary work was supported by substantial evidence.

**4. The ALJ Adequately Considered the Cumulative Effect of Plaintiff's Multiple Impairments**

Plaintiff also alleges that the ALJ erred by not considering the cumulative effect of plaintiff's multiple impairments, namely, chronic myofascial pain, irritable bowel syndrome, fatigue and depression. First, plaintiff failed to satisfy her burden of proof that her gastrointestinal ailments had any effect on her functional capacity. Second, objective medical evidence and plaintiff's daily activities demonstrated that her depression and fatigue imposed no significant limitations on her ability to perform basic sedentary work activities. Thus, plaintiff's chronic myofascial pain was her only "severe" impairment and, considering all of plaintiff's functional limitations, the ALJ correctly concluded that this impairment does not meet or equal the criteria of any of the impairments listed in 20 C.F.R., Pt. 404, Subpt. P, App. 2. The court finds that the ALJ did not err by failing to consider the cumulative effect of plaintiff's multiple impairments.

**5. The ALJ Gave Adequate Consideration to Plaintiff's Subjective Complaints of Pain**

Allegations of pain and other subjective symptoms must be consistent with objective medical evidence, such as medical signs and laboratory findings. See 20 C.F.R. § 404.1529. Once an ALJ concludes that a medical impairment that could reasonably cause the alleged symptoms exists, he must evaluate the intensity and persistence of the pain or symptom, and the extent to which it affects the individual's ability to work. This obviously requires the ALJ to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it. See id.

In Ferguson v. Schweiker, 765 F.2d 31, 37 (3d Cir. 1985), the Third Circuit reiterated its standard regarding subjective complaints of pain: (1) subjective complaints of pain should be seriously considered, even where not fully confirmed by objective medical evidence, see Smith v. Califano, 637 F.2d 968, 972 (3d Cir. 1981); Bittel v. Richardson, 441 F.2d 1193, 1195 (3d Cir. 1971); (2) subjective pain "may support a claim for disability benefits," Bittel, 441 F.2d at 1195, and "may be disabling," Smith, 637 F.2d at 972; (3) when such complaints are supported by medical evidence, they should be given great weight, see Taybron v. Harris, 667 F.2d 412, 415 n.6 (3d Cir. 1981); Simmonds v. Heckler, 807 F.2d 54, 58 (3d Cir. 1986); Dobrowolsky v. Califano, 606 F.2d at 409; and (4) where a claimant's testimony as to pain

is reasonably supported by medical evidence, the ALJ may not discount claimant's pain without contrary medical evidence. See Green v. Schweiker, 749 F.2d 1066, 1070 (3d Cir. 1984); Smith, 637 F.2d at 972.

In the case at bar, the ALJ found that plaintiff suffered from chronic myofascial pain. However, based on the objective medical evidence and plaintiff's reported daily activities, the ALJ found that plaintiff's statements regarding the severity of her pain and other subjective symptoms and their effect on her ability to do sedentary work were not entirely credible. Because plaintiff's testimony concerning her subjective complaints was inconsistent with both the objective medical evidence and plaintiff's previously reported daily activities, the ALJ correctly found that these complaints were not entirely credible. The court, therefore, concludes that the ALJ afforded plaintiff's subjective complaints of pain due consideration in his determination that plaintiff was capable of performing sedentary work.

#### **V. CONCLUSION**

For the reasons stated, the court shall grant defendant's motion for summary judgment and deny plaintiff's motion for summary judgment and plaintiff's motion to remand. An appropriate order shall issue.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CHRISTINE ROSARIO, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 00-653-SLR  
 )  
 LARRY G. MASSANARI, )  
 Acting Commissioner of )  
 Social Security, )  
 )  
 Defendant. )

O R D E R

At Wilmington, this 26th day of September, 2001, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant's motion for summary judgment (D.I. 12) is granted.
2. Plaintiff's motion for summary judgment (D.I. 9) and plaintiff's motion to remand (D.I. 14) are denied.
3. The Clerk of Court is directed to enter judgment in favor of defendant and against plaintiff.

---

United States District Judge