

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHIRLEY G. GRIFFIN,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-356-SLR
)
 JO ANNE B. BARNHART,)
 Commissioner of)
 Social Security,)
)
 Defendant.)

Gary C. Lundarducci, Esquire, New Castle, Delaware. Attorney for Plaintiff.

Colm C. Connolly, United States Attorney, and Douglas E. McCann, Assistant United States Attorney, United States Attorney's Office, Wilmington, Delaware. Counsel for Defendant. Of Counsel: Patricia M. Smith, Acting Regional Chief Counsel and David F. Chermol, Assistant Regional Counsel, Social Security Administration, Philadelphia, Pennsylvania.

MEMORANDUM OPINION

Dated: September 16, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Shirley G. Griffin filed this action against Jo Anne Barnhart, Commissioner of Social Security ("Commissioner"), on December 11, 2002. (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 supplemental security income and disability insurance benefits under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-33, 1381-83f. Currently before the court are the parties' cross-motions for summary judgment. (D.I. 15, 17) For the reasons stated below, the court will grant plaintiff's motion, and deny defendant's motion.

II. BACKGROUND

A. Procedural History

On June 16, 2000, plaintiff filed a claim for supplemental security income and widow's disability insurance benefits due to hypothyroidism, non-insulin dependent diabetes mellitus, high cholesterol, sleep apnea, contact dermatitis, depression, gastro-esophageal reflux disease ("GERD") and hypertension. (D.I. 12 at 17) Plaintiff's claims were denied initially and upon review. (Id. at 3-4) Plaintiff requested and subsequently received a hearing before an administrative law judge ("ALJ"), that hearing was held on January 30, 2002. On February 15, 2002, the ALJ

issued a decision denying plaintiff's claims. In considering the entire record, the ALJ found the following:

1. Claimant was born on January 30, 1947.
2. Claimant is the widow of wage earner, Oram E. Griffin, who died fully insured on May 2, 1998, and claimant is not married.
3. The period during which claimant must establish that she is under a disability extends through May 2005.
4. Claimant has not engaged in substantial gainful activity since the alleged onset of the disability.
5. Claimant has hypertension and obesity, impairments considered 'severe' based on the requirements in 2 CFR §§ 404.1520(b) and 416.920(b). All of her other physical impairments are nonsevere. Her depression is also nonsevere because at most it imposes only a mild degree of functional limitation in her activities of daily living; social functioning; concentration, persistence and pace with only one remote episode of decompensation [sic].
6. These medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
7. Claimant's allegations regarding her limitations are only partially credible for the reasons set forth in the body of the decision.
8. Claimant retains the residual functional capacity for unskilled medium work, but can never climb ladders, ropes or scaffolds, can occasionally climb ramps and stairs. She can frequently balance, stoop, kneel, crouch and crawl. She should avoid all exposure to hazards (machinery, heights, etc.) (20 CFR §§ 404.1567 and 416.967).
9. Claimant is unable to perform her past relevant work (20 CFR §§ 404.1565 and 416.965).
10. Claimant was an 'individual closely approaching advanced age' at her date of onset, and prior to age 55. At age 55, she is of 'advanced age' (20 CFR §§ 404.1563 and 416.963).
11. Claimant has a 'limited education' (20 CFR §§ 404.1564 and 416.964).

12. Claimant has no transferrable skills because her past relevant work was unskilled (20 CFR §§ 404.1568 and 416.968).
13. Claimant's residual functional capacity at finding #6 allows her to perform substantially the full range of medium work, using Medical-Vocational Rules 203.11, 203.18 and 203.00 as a framework for decision-making, there are a significant number of jobs in the national economy that she could perform. Examples of such jobs include work that require [sic] skills or previous experience and which can be performed after a short demonstration or within 30 days.
14. Claimant was not under a 'disability,' as defined in the Social Security Act, at any time through the date of this decision (20 CFR §§ 404.1520(f) and 416.920(f)).

(D.I. 12 at 24-25)

On February 7, 2003, the Appeals Council declined to review the ALJ's decision and his decision became the final decision of the Commissioner. (D.I. 16 at 1) Plaintiff now seeks review before this court pursuant to 42 U.S.C. § 405(g).

B. Facts Evinced at the Administrative Law Hearing

Plaintiff is 55 years old, but was 53 years old at the onset of her disabilities. (D.I. 12 at 24) She has a ninth grade education and was last employed in April 2000 as a chicken packer and a house cleaner. (Id.) Plaintiff weighs 218 pounds and is 5 feet, 4 inches tall. (Id.)

When asked why she could not work, plaintiff stated she had a bad liver, was diabetic, had uncontrollable blood pressure,¹

¹Plaintiff did acknowledge that her blood pressure had once been under control. (D.I. 12 at 225)

and was "withdrawn." (Id. at 225) Plaintiff testified that her doctor had recently discovered that she had a fatty liver when she underwent gallbladder surgery.² (Id.) Plaintiff has kidney problems that are the result of diabetes, and she is currently undergoing treatment that makes her "feel better." (Id. at 226)

Plaintiff's high blood pressure causes her to feel lightheaded, dizzy and short of breath.³ (Id.) Plaintiff has been taking blood pressure medication for two years. (Id. at 227) Upon questioning, plaintiff admitted that at times she did not take her medicine as directed because she could not afford the medication, which ranged from \$60 to \$100 per bottle. (Id.)

In addition to these medical ailments, plaintiff stated that she suffers from fatigue and carpal tunnel syndrome. (Id. at 228) Dr. Grady diagnosed plaintiff with carpal tunnel, but has not performed any testing nor referred plaintiff to a specialist. (Id. at 228)

Plaintiff has recently been treated by a cardiologist. Her cardiologist did not respond to her attorney's request for medical information. The cardiologist has performed a stress test.⁴ Plaintiff's primary physician, Dr. Puri, noted that she

²Plaintiff does not drink alcohol on a regular basis. (Id.)

³Plaintiff smokes a pack of cigarettes a day, but is hoping to quit. (Id. at 225, 228)

⁴The results of that test are not included in the record.

qualifies for a 4.02 listing due to cardiovascular problems.
(Id. at 228-29)

Plaintiff can walk about a half a block without pain, she can stand in place for about five to ten minutes. (Id. at 230) Due to back pain, plaintiff has to sit down, but can only sit about twenty to thirty minutes. (Id.) Plaintiff's back pain spans the length of her back and continues into her neck. (Id. at 231) Plaintiff does not experience back pain every day and she has not told her primary care physician about it. (Id. at 230) Plaintiff cannot climb stairs due to back pain. (Id.)

Plaintiff can go grocery shopping, but cannot lift her groceries or push the grocery cart.⁵ (Id. at 231) Plaintiff fixes herself a cup fo coffee in the morning and takes a bath unassisted. (Id. at 231) Plaintiff does not do housework. (Id. at 230) Plaintiff used to crochet, but does not anymore because of pain in her fingers. (Id. at 231) Plaintiff watches television, sleeps or holds her cats for most of the day. (Id. at 232)

Plaintiff takes Paxil to control her depression. (Id. at 233) It was prescribed to her by Dr. Puri, but he has never referred her to a specialist.⁶ (Id.) At one point plaintiff

⁵Plaintiff's primary care doctor instructed her not to lift anything heavy; she is only able to lift a gallon of milk.

⁶Plaintiff has never independently gone to a specialist. (Id.)

stopped taking Paxil and had a hallucination, so Dr. Puri put her back on the medication. (Id.) Even on the medication, plaintiff is moody, reserved and cries every other day. (Id. at 236-37)

Plaintiff suffers from sleep apnea, which she says causes her to stop breathing at night time. (Id. at 234) Plaintiff has not been formally diagnosed because she does not want to get a sleep evaluation in a hospital. (Id.) On average plaintiff sleeps six to seven hours a day. (Id.)

C. Vocational Evidence

During the administrative hearing, the ALJ called Nancy Harter ("Harter"), a vocational expert, to testify about exertional requirements necessary for medium work. (Id. at 237)

The ALJ asked:

If a person was able to perform essentially a full range of medium work. But could only occasionally bend, stoop, and stand. And should never be on ladders, ropes, or scaffolds. And the person should avoid exposure to hazardous machinery. Is that substantiated material, that in short they could do the work?

(Id. at 237) Harter replied, "No, it [sic] does not have substantial requirements for the application based on medium work." (Id. at 238)

D. Medical Evidence

On February 9, 1999, plaintiff began seeing Dr. Puri, her primary care physician. (Id. at 179) Dr. Puri noted that plaintiff had hypertension with high blood pressure controlled by

medication, and that she suffered from hypothyroidism that was uncontrolled due to her failure to comply with her medication regime. (Id.) By March 26, 1999, Dr. Puri concluded that plaintiff's hypertension was uncontrolled due to noncompliance with her medication regime and that her hypothyroidism was controlled and she was compliant with that medication.⁷ (Id. at 180) Dr. Puri noted that plaintiff suffers from migraines that are treatable with Motrin, but are reoccurring. (Id.) On April 7, 1999, Dr. Puri noted that plaintiff's depression was stable; after that, he rarely mentioned plaintiff's depression and never mentioned it was uncontrolled. (Id. at 181)

On January 24, 2000, plaintiff was admitted to Milford Memorial Hospital because she complained of dizziness and near loss of consciousness. (Id. at 117) Plaintiff was at work at the time of onset. (Id. at 123) Plaintiff's blood work was normal. Plaintiff's chest x-ray revealed no acute cardiopulmonary disease, but did reveal some vascular congestion.⁸ (Id.) The treating physician concluded that

⁷Throughout Dr. Puri's notes he indicates that plaintiff did not take her medication as directed, if at all. (Id. at 179-204) His conclusions oscillate between uncontrolled hypertension and controlled hypothyroidism and controlled hypertension and uncontrolled hypothyroidism depending on what medication plaintiff was taking. (Id. at 179-187)

⁸The radiologist recommended progress studies due to the congestion. (Id.)

plaintiff's symptoms were the result of poorly controlled hypertension. (Id. at 117)

On February 18, 2000, plaintiff returned to the hospital due to dizziness, near loss of consciousness, weakness and shortness of breath. (Id. at 128) Plaintiff's blood tests were normal. (Id.) Plaintiff's vital signs were normal. (Id.) The treating physician concluded that plaintiff was suffering from abnormal blood pressure.⁹ (Id.) On April 6, 2000, Dr. Puri made a note that plaintiff's shortness of breath could be due to a cardiac condition and called for tests to determine whether she suffered from heart disease.¹⁰ (Id. at 187)

Later that year, plaintiff was examined by Dr. Lifrak, the physical consultative expert for the case. (Id. at 136) Dr. Lifrak found that plaintiff suffered from uncontrolled hypertension. (Id. at 139) He acknowledged plaintiff's complaints of dizziness, loss of consciousness and shortness of breath, but stated that they could be side effects of her hypertension or hypertension medication.¹¹ (Id. at 140) More

⁹At the time plaintiff was transported from work to the hospital, her blood pressure was elevated. (Id. at 130)

¹⁰There was no evidence in the record that plaintiff had tests for a cardiac condition.

¹¹In May of 2001, Dr. Lifrak examined plaintiff a second time. His diagnosis remained the same, except he noted there was a possibility that plaintiff's shortness of breath was caused by asthma or persistent bronchitis and she had some abdominal discomfort that was probably attributable to recent gastritis.

specifically, Dr. Lifrak's examination of plaintiff found: (1) she was able to walk without assistance, including on her heels and on her toes; (2) she was able to get on and off the examining table without difficulty; (3) plaintiff had a grip strength of 30-35 pounds;¹² (5) she was breathing without the use of accessory muscles, there was no evidence of rales or wheezes; and (6) she had reduced flexibility in her lumbar spine.¹³ (Id. at 138-142) After the physical examination, Dr. Lifrak completed a residual functional capacity form for plaintiff in which he found she could not climb ladders, ropes or scaffolds, but could occasionally climb ramps and stairs; had to avoid all hazardous machinery; could sit, stand or walk about six hours in an eight hour work day; and could frequently lift twenty-five pounds.¹⁴ (Id. at 144-151).

On March 11, 2001, plaintiff underwent knee x-rays, which revealed no acute disabilities. (Id. at 156-157) On April 23, 2001, plaintiff underwent a nuclear cholangiography that showed

(Id. at 161)

¹²Dr. Lifrak indicated that plaintiff could occasionally lift 50 pounds and could frequently lift 25 pounds. (Id. at 145)

¹³Plaintiff could flex/extend from zero to eighty degrees (out of a possible zero to ninety degrees) and a lateral flexion of ten degrees (out of a possible twenty degrees). (Id. at 142)

¹⁴After Dr. Lifrak's second examination of plaintiff, his conclusions about her residual functional capabilities did not change. (Id. at 162-169)

below average gallbladder production, but no other acute gastrointestinal problem. (Id. at 176) A CT scan and abdominal ultrasound revealed a cyst on plaintiff's left kidney, but no other gastrointestinal disease. (Id. at 177-178)

Upon request, Dr. Puri filled out an evaluation of plaintiff's residual functionality. He indicated that plaintiff qualified for a listing of 4.04 or 4.02 on the Social Security listing of impairments. (Id. at 205-206) He concluded that plaintiff could perform less than sedentary work due to hypersomnolence and sleep apnea.¹⁵ (Id. at 207) Dr. Puri cited cardio-pulmonary disease as the basis for his conclusion that she should restrict her contact with all environmental hazards except heights, noise and vibration. (Id. at 208) Dr. Puri stated that plaintiff could walk or stand for a total of two to three hours with interruption, and that she could sit indefinitely, but she should never crawl, push or pull anything. (Id. at 210)

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) (2002); 5 U.S.C. §

¹⁵There was no evidence in the record that Dr. Puri based this opinion on medical tests for either sleep disorder.

706(2) (E) (1999); see Menswear Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3rd Cir. 1986). As the Supreme Court has held,

"[s]ubstantial 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 (3rd Cir. 1986) (quoting Kent v. Schweiker, 710 F.2d 110, 114 (3rd 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 (3rd Cir. 1990).

IV. DISCUSSION

A. Disability Determination Process

Title II of the Social Security Act, 42 U.S.C. § 423(a)(1)(D), as amended, "provides for the payment of insurance benefits to persons who have contributed to the program and who suffer from a physical or mental disability." Bowen v. Yuckert, 482 U.S. 137, 140 (1987). A 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 12 months[.]” 42 U.S.C. § 423(d)(1)(A) (2002).

In Plummer v. Apfel, 186 F.3d 422 (3rd Cir. 1999), the Third Circuit outlined the applicable statutory and regulatory process for determining whether a disability exists:

In order to establish a disability under the Social Security Act, a claimant must demonstrate there is some “medically determinable basis for an impairment that prevents him from engaging in any ‘substantial gainful activity’ for a statutory twelve-month period.” A claimant is considered unable to engage in any substantial activity “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.”

The Social Security Administration has promulgated regulations incorporating a sequential evaluation process for determining whether a claimant is under a disability. In step one, the Commissioner must determine whether the claimant is currently engaging in substantial gainful activity. If a claimant is found to be engaged in substantial activity, the disability claim will be denied. In step two, the Commissioner must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that her impairments are “severe”, she is ineligible for disability benefits.

In step three, the Commissioner compares the medical evidence of the claimant's impairment to a list of impairments presumed severe enough to preclude any gainful work. If a claimant does not suffer from a listed impairment or its equivalent, the analysis

proceeds to steps four and five. Step four requires the ALJ to consider whether the claimant retains the residual functional capacity to perform her past relevant work. The claimant bears the burden of demonstrating an inability to return to her past relevant work.

If the claimant is unable to resume her former occupation, the evaluation moves to the final step. At this stage, the burden of production shifts to the Commissioner, who must demonstrate the claimant is capable of performing other available work in order to deny a claim of disability. The ALJ must show there are other jobs existing in significant numbers in the national economy which the claimant can perform, consistent with her medical impairments, age, education, past work experience, and residual functional capacity. The ALJ must analyze the cumulative effect of all the claimant's impairments in determining whether she is capable of performing work and is not disabled. The ALJ will often seek the assistance of a vocational expert at this fifth step.

Id. at 427-28 (internal citations omitted). If the Commissioner finds that a claimant is disabled or not disabled at any point in the sequence, review does not proceed to the next step. See 20 C.F.R. § 404.1520(a) (2002).

The determination of whether a claimant can perform other work may be based on the administrative rulemaking tables provided in the Social Security Administration Regulations ("the grids"). Cf. Jesurum v. Sec'y of Health & Human Servs., 48 F.3d 114, 117 (3rd Cir. 1995) (noting use of the grids for determination of eligibility for supplemental social security

income) (citing Heckler v. Campbell, 461 U.S. 458, 468-70 (1983)). In the context of this five-step test, the Commissioner has the burden of demonstrating that the plaintiff is able to perform other available work. See Bowen, 482 U.S. at 146 n.5. In making this determination, the ALJ must determine the individual's residual functional capacity, age, education, and work experience. See 20 C.F.R. pt. 404, subpt. P, app. 2, § 200.00(c) (2002). The ALJ then applies the grids to determine if an individual is disabled or not disabled. See 20 C.F.R. pt. 404, subpt. P, app. 2, § 200.00(d) (2002).

If the claimant suffers from significant non-exertional limitations, such as pain or psychological difficulties, the ALJ must determine, based on the evidence in the record, whether these non-exertional limitations limit the claimant's ability to work beyond the work capacity obtained from reviewing the Social Security regulation "grids." See 20 C.F.R. § 404.1569a(c)-(d). If the claimant's non-exertional limitations are substantial, the ALJ uses the grids as a framework only and ordinarily seeks the assistance of a vocational specialist to determine whether the claimant can work. See Santise v. Schweiker, 676 F.2d 925, 935 (3rd Cir. 1982); 20 C.F.R. pt 404, subpt. P, app. 2, § 200(d)-(e).

B. Application of the Five-Step Test

In the present case, plaintiff contests the ALJ's application of steps two, three and five. Plaintiff contends the following: (1) the ALJ's conclusion that plaintiff's disabilities were not severe is incorrect because the ALJ failed to consider her disabilities in the aggregate; (2) the ALJ improperly disregarded her subjective complaints of pain; (3) the ALJ improperly discredited Dr. Puri's opinions about her functional capacity; and (4) the ALJ committed legal error by failing to consider her exertional limitations.

1. Consideration of the Cumulative Effect of Plaintiff's Disabilities

Plaintiff argues that the ALJ did not consider her disabilities in the aggregate, namely her high cholesterol, GERD, hypothyroidism, sleep apnea and depression. A consideration for an ALJ when making a determination of disability is whether the cumulative effects of plaintiff's medical problems prevent her from working. See Plummer v. Apfel, 186 F.3d 422, 428 (3rd Cir. 1999). Plaintiff did not satisfy her burden of proof that her hypothyroidism, sleep apnea or GERD had any effect on her functional capacity. The ALJ found that plaintiff did not suffer functional limitations as a result of her high cholesterol because her levels could be controlled with medication and her heart rate and rhythm were normal. The plaintiff admitted that

her depression was controllable with Paxil and she has never sought specialized treatment, nor has her doctor recommended any, for her depression. (D.I. 12 at 233) The ALJ reasonably concluded that plaintiff's depression only mildly restricted her functioning. Therefore, the only impairments that were severe were plaintiff's hypertension and obesity.

The ALJ properly considered plaintiff's obesity in connection with her hypertension because he considered her obesity in connection with her cardiovascular, respiratory and musculoskeletal systems. (D.I. 12 at 22) Nothing showed plaintiff had a uncontrollable cardiovascular impairment. Tests revealed no lung, congestive or respiratory problems. Dr. Lifrak's physical examinations and testing did not reveal any muscular limitations. Thus, the ALJ's conclusion that the cumulative effects did not reach a level of disability that precluded employment is supported by the evidence.

2. Standard for Evaluating Claimants Subjective Statements Regarding Pain

Plaintiff contends that the ALJ improperly disregarded her complaints of pain. When evaluating a plaintiff's complaints of pain, the ALJ is to consider whether plaintiff's subjective complaints are consistent with and supported by objective medical evidence. See 20 C.F.R. § 404.1529(a), (c) (3)-(4). Because the ALJ must conclude that a medical impairment is reasonably causing the symptoms and then evaluate the intensity of the symptoms, he

must evaluate the plaintiff's ability to accurately describe her pain. Rosario v. Massanari, No. 00-653, 2001 WL1180279, at *9 (D. Del. Sept. 26, 2001).

In this case, there was no underlying medical disability that explained plaintiff's lower back pain. The record showed that plaintiff had limited flexibility in her lumbar region, but that this limitation was not the result of back spasms. (D.I. 12 at 139) There was no evidence that plaintiff's primary care physician thought plaintiff had a medical disability that caused her back pain. In fact, the plaintiff admitted that she never told her doctor about her back pain. (D.I. 12 at 231) Because there was no evidence that a medical impairment was causing plaintiff's back pain, the ALJ did not have to consider plaintiff's subjective statements regarding back pain.

Plaintiff's primary care physician indicated on March 26, 1999, that plaintiff was suffering from migraines, which while treatable with Motrin were reoccurring. (D.I. 12 at 180) During the hearing, plaintiff did not mention her migraines as a source of pain, or as one of the reason why she is unable to work. Nowhere in the medical records does it indicate that plaintiff sought medical attention due to a migraine and it was not frequently listed as a symptom by her primary care physician. There is no indication by the plaintiff that the pain caused by her migraines is severe, there is only a notation in her doctor's

notes that she suffers from migraines. The medical evidence indicates that plaintiff suffers from migraines and that they are not severe.

On several occasions the plaintiff sought medical attention due to shortness of breath, dizziness, and once for loss of consciousness. Plaintiff also indicated during her hearing that these symptoms were all reasons why she could not work. (D.I. 12 at 226, 228) There is no indication that plaintiff's lungs were not clear, there were no rales or wheezes ever noted by her primary care physician. X-rays of plaintiff's chest showed no indication of disease. (D.I. 12 at 127) No pulmonary function tests were ever performed on plaintiff. Examinations have revealed plaintiff's heart rate and rhythm are normal. (Id. at 117, 130) In light of her doctor's opinion about her inability to describe her symptoms, the ALJ could have discounted her ability to communicate them and subsequently found the medical evidence did not support a physical basis for plaintiff's symptoms. (D.I. 12 at 179, 187)

3. Rejection of Treating Sources

Plaintiff contends that the ALJ improperly rejected Dr. Puri's medical opinions. Treating physician reports can only be disregarded in the face of contrary medical evidence. Rosario v. Massanari, No. 00-653, 2001 WL1180279, at *8 (D. Del. Sept. 26, 2001). Treating physician opinions can, however, be accredited

more or less weight depending on the supporting explanations.

See id. at *8.

Dr. Puri indicated that he thought plaintiff's disability was at listing level 4.04 or 4.02. (D.I. 12 at 205-06) In making this designation Dr. Puri concluded plaintiff could: (1) occasionally lift up to 10 pounds; (2) never crawl or push/pull; (3) stand/walk for a maximum of 2-3 hours a day; (4) occasionally climb, stoop, crouch, kneel; and (5) perform less than sedentary work. (D.I. 16 at 22)

Dr. Puri's conclusion that plaintiff could only lift 10 pounds is contradicted by Dr. Lifrak's test and physical examination. At least two grip strength and muscle tone tests of plaintiff's extremities, performed over the span of a year, showed she could lift more than 10 pounds. (D.I. 12 at 145, 163) There is no indication that Dr. Puri performed strength tests on plaintiff and obtained a contrary result.

There is no evidence that plaintiff cannot crawl because tests of her knees showed no signs of a disability. (D.I. 12 at 156, 157) There was no indication that plaintiff's reduced range of motion in her lumbar spinal area affected her ability to function. (D.I. 12 at 22-23)

The ALJ concluded that plaintiff's shortness of breath did not prevent her from performing more than sedentary work because she was not using "accessory muscles" for respiration and there

was no indication of rales or wheezes. Dr. Puri's own notes do not indicate any conclusions about plaintiff's shortness of breath. His notes repeatedly conclude that plaintiff has uncontrolled hypertension and hypothyroidism due to noncompliance with her medication. A heart condition is only mentioned once by Dr. Puri with respect to further testing. (D.I. 12 at 187) No medical tests show that plaintiff has a heart problem. Dr. Puri's contrary conclusion was partially based on plaintiff's hypersomnolence and sleep apnea, yet there is no medical evidence that either of these limit plaintiff's functional abilities. (D.I. 12 at 207) In this case, the ALJ properly discounted Dr. Puri's classification of plaintiff's ability because the doctor's conclusion was "unsubstantiated by the medical record, including [the doctor's] notes." (D.I. 12 at 23)

4. Plaintiff's Exertional Limitations

Plaintiff argues that the ALJ's determination that she could perform medium work is not supported by the evidence. Federal rules define medium work as "lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds." 20 C.F.R. § 146.967(c). After determining that an individual can perform medium work, the ALJ must consider whether there are a sufficient amount of jobs in the nationally economy for the plaintiff. "[T]he existence of such jobs for individuals whose remaining functional capacity or other factors do not

coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded." 20 C.F.R. pt. 404, subpt. P, app. 2, sec. 200(b) (2004).

There was evidence that plaintiff could meet the requirements for medium work. Plaintiff had been examined by Dr. Lifrak on two occasions, both times he concluded that she could frequently lift 25 pounds and occasionally lift 50 pounds. (D.I. 12 at 145) The ALJ, however, found that based on the evidence plaintiff had exertional limitations. Specifically, she could "never climb ladders, ropes or scaffolds, [and could] occasionally climb ramps and stairs. . . . She should avoid all exposure to hazards." (D.I. 12 at 25) The vocational expert testified that with these limitations, plaintiff **could not** meet the requirements for medium work. Consequently, plaintiff's exertional limitations preclude her from performing jobs classified as medium work that exist within the nationally economy.

The Medical-Vocational Guidelines direct that an individual of advanced age, with limited education and unskilled work experience, who can only perform sedentary or light work is disabled. See 20 C.F.R. pt. 404, subpt. P, app.2, sec. 201.01, 202.01 (2004). Plaintiff is of advanced age because she is 55 years old; therefore, assuming she was able to perform sedentary

or light work, she would be considered disabled. See 20 C.F.R. § 404.1563 (2004). Because plaintiff cannot perform medium work that exists in the national economy and is considered disabled under the guidelines for both sedentary and light work, her motion for summary judgment is granted.

V. CONCLUSION

For the reasons stated, plaintiff's motion for summary judgment is granted, defendant's motion for summary judgment is denied. An order consistent with this memorandum opinion shall issue.