

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LINDA L. CALLAHAN,)	
)	
Plaintiff,)	
)	Civil Action No. 00-388-RRM
V.)	
)	
LARRY G. MASSANARI, ACTING)	
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	

MEMORANDUM OPINION

Timothy A. Reisinger, Esquire, Timothy A. Reisinger, P.A., Dover, Delaware; counsel for plaintiff.

James A. Winn, Regional Chief Counsel, and Taryn F. Goldstein, Assistant Regional Council, Social Security Administration, Philadelphia, Pennsylvania; and Richard G. Andrews, United States Attorney, and Judith M. Kinney, Assistant United States Attorney, Wilmington, Delaware; counsel for defendant.

Wilmington, Delaware
August 1, 2001

McKELVIE, District Judge.

This is a social security case. Plaintiff Linda L. Callahan is a resident of Delaware. Defendant Larry Massanari is the Commissioner of Social Security. On April 11, 2000, Callahan filed a complaint pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Commissioner's decision to deny her claim for a period of disability and disability insurance benefits. On August 3, 2000, the Commissioner answered the complaint, asserting that Callahan is not entitled to a period of disability or disability insurance benefits because the Administrative Law Judge's decision was supported by substantial evidence.

On March 23, 2001, Callahan moved for summary judgment. In response, the Commissioner answered Callahan's motion and moved for cross-summary judgment on May 23, 2001. On July 3, 2001, Callahan filed a brief in reply to her March 23, 2001 motion. This is the court's decision on those motions.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Application for Disability Insurance Benefits and Supplemental Security Income

Callahan's eligibility to receive disability insurance benefits ended on December 31, 1993. On March 25, 1996, Callahan filed an application for a period of disability and disability insurance benefits. The State Agency denied this application through initial consideration. On April 23, 1997, Callahan filed a second application for a period of disability and disability insurance benefits. In that application, Callahan asserted that she became disabled on March 1, 1988 due to agoraphobia, panic disorder, depression, and spousal abuse. She also stated that this condition forced her to forego her employment as a medical secretary on April 30, 1988. Therefore, the period in which Callahan would be eligible to

receive disability insurance benefits begins on March 1, 1988, the alleged onset date of the disability, and ends December 31, 1993, the date Callahan was last insured for disability benefits. On August 6, 1997, Larry Massanari, former Regional Commissioner for the Social Security Administration, denied Callahan's claim stating that her condition was not disabling at any time through December 31, 1993. On September 29, 1997, Callahan submitted a Request for Reconsideration. Massanari denied that request on October 14, 1997, for the same reasons. On October 21, 1997, Callahan requested a hearing before an Administrative Law Judge.

B. Administrative Hearing

On May 6, 1998, Administrative Law Judge David Harty conducted a hearing to determine whether Callahan qualified for a period of disability or disability insurance benefits under §§ 216(i) and 223 of the Social Security Act. Judge Harty considered the testimonies of Callahan, Carolyn Spiezio, who is a friend and former co-worker of Callahan's, and Gladys Moore, who is Callahan's mother. Judge Harty also reviewed the medical records of Callahan's treating and consulting psychologists and psychiatrists. In an opinion dated June 18, 1998, Judge Harty concluded that Callahan was not entitled to a period of disability or disability insurance benefits under §§ 216(i) and 223 of the Social Security Act. On January 28, 2000, the appeals council denied Callahan's request for review of Judge Harty's decision. As a result, Callahan filed her complaint in this court pursuant to 42 U.S.C. 405(g).

C. Callahan's Medical History

The following facts are taken from this court's independent review of the transcript of the administrative hearing and the supporting documents that are contained in the record.

1. Documented Medical History

a. Treating Physician

Callahan made an initial visit to James P. Kurtz, Ph.D., her treating psychologist, on June 15, 1994 on a referral from her attorney. Following that visit, Callahan returned to Dr. Kurtz on two occasions, but discontinued these visits after February, 20 1995. In a report dated August 31, 1994, Dr. Kurtz stated that Callahan's symptoms, which included low mood, insomnia, low self-esteem, irritability, worry, weight loss, lack of interest, and episodes of panic, were indicative of panic disorder and depression. On May 5, 1997, Kurtz completed an updated evaluation for the Delaware Disability Determination Service. In that report, Kurtz reaffirmed his prior diagnosis of panic disorder and depression. Kurtz asserted that Callahan's symptoms began in 1987 and opined that Callahan had not received appropriate medical or psychological treatment for her condition since that time. Kurtz further stated that due to Callahan's symptoms, which included distractibility, irritability, and difficulty making decisions, it would be difficult for her to engage in continuous employment.

b. Consulting Physicians

On June 25, 1996, Azucena Ausejo, M.D., conducted a consultive psychiatric examination of Callahan for the Delaware Disability Determination Service. Callahan informed Dr. Ausejo that she was not under the care of a psychiatrist or a counselor and was not taking any medication for her condition. She told Dr. Ausejo that she stopped working in 1988 and had not left her house since 1988 or 1989. Dr. Ausejo diagnosed Callahan with panic disorder with agoraphobia and alcohol abuse. She also reported that Callahan was faced with moderate level psychological stressors including a recent divorce from her husband and a son who was addicted to crack cocaine.

In a report dated June 28, 1996, a State Agency consultant diagnosed Callahan with panic

disorder with agoraphobia and depression. Following a re-evaluation on July 9, 1997, that consultant opined that Callahan did not meet the listings for a mental disability and that Callahan was able to perform simple, non-stressful activities.

David Sibley, M.D., conducted a consultive psychiatric evaluation of Callahan on July 7, 1997. Dr. Sibley diagnosed Callahan with panic disorder with agoraphobia and recurrent major depression. He indicated that Callahan was faced with extreme stressors. In his report, Dr. Sibley stated that Callahan was severely impaired by agoraphobia to the point that she was housebound for nearly ten years. In addition, Sibley opined that Callahan could not be considered for employment until her condition was eliminated.

On August 5, 1997, Margaret Harriet, M.D., another State Agency physician, reported that the current severity of Callahan's condition did meet the listing for panic disorder with agoraphobia and major depression at that time. Dr. Harriet further stated, however, that third party evidence was insufficient to establish the onset of this disability at any time prior to December, 31, 1993 without further medical evidence.

2. Testimony at the Hearing

On May 6, 1998, Judge Harty conducted a hearing to determine whether Callahan was disabled within the meaning of the Act. Mr. Timothy Reisinger represented Callahan. Callahan, Spiezio, and Moor testified at the hearing.

a. Spiezio's Testimony

Spiezio testified that she worked with Callahan in a medical office from September of 1979 through May of 1988 and has remained a friend of Callahan's since that time. Spiezio testified that

Callahan acted abnormally on three separate occasions while the two worked together. First, in December of 1984, Spiezio received a call from her stepson that her daughter had been shot. Upon hearing the news, Callahan jumped out of her chair and began swinging her arms and repeating “Oh my God, Oh my God.” The second episode took place in November of 1987. After receiving a call from her son that her mother-in-law had collapsed, Callahan went into a panic and began to pace the floor and waive her arms and chant, “I can’t go, I can’t go.” Finally, Spiezio testified that in May of 1998, after returning from a two week vacation, Callahan commented that she could not do her job anymore and left the office and never returned. Spiezio also recounted these episodes in a letter dated February 9, 1997.

b. Callahan’s Testimony

Callahan testified that she has been living with her mother and son since 1992. She stated that she did not possess any medical records prior to the date last insured because she was terrified at that time to go to the mental health unit at the hospital for treatment. She stated that her divorce attorney made her finally seek help in 1994. Callahan also testified that she did not know what was wrong with her after she left her job until 1993 or 1994 when she saw a talk show about people with panic attacks.

Callahan testified that before she left her job, she couldn’t write or think and she couldn’t go out on to the floor to see patients or walk through the corridors when other people were around. She stated that around the time of her divorce, she only left her house to travel to a local store. In addition, Callahan testified that when she does leave her house, she needs someone with her whom she trusts. Callahan recounted one occasion when she attempted to drive by herself, but had to pull off the road and call someone to assist her.

c. Moor's Testimony

Moor testified that around the late 1980's, Callahan did not go out much. She also testified that Callahan did not visit a doctor because Callahan feared that the doctor would commit her.

D. Judge Harty's Decision

Judge Harty concluded that Callahan was not under a "disability," as defined in the Social Security Act, at any time from April 30, 1988 through December 31, 1993, because she did not suffer from a "severe impairment" that significantly limited her ability to do basic work related activities. See 20 C.F.R. §§ 404.120(c). Moreover, Judge Harty concluded that Callahan's allegations of a mental disorder and the severity of the symptoms arising therefrom were not credible and did not result in significant limitations on her ability to do work prior to December 31, 1993.

Judge Harty found that the earliest objective medical evidence that Callahan received treatment for her condition was from June of 1994, six months after the date last insured. Judge Harty concluded that Callahan's, Spiezio's and Moor's anecdotal testimonies that Callahan's panic attacks began in 1987 and 1988 were not sufficient to establish an onset date prior to December 31, 1993 in light of the lack of supportive medical evidence in a "near proximity" to that period. As a result, Judge Harty concluded that Callahan did not have significant limitations in her ability to do basic work-related activities between April 30, 1988 and December 31, 1993 and therefore did not suffer from a severe impairment during that time.

Judge Harty considered Callahan's subjective assertions of a disabling mental disorder and her ensuing inability to perform basic work activities, in accordance with 20 C.F.R. § 404.1529, which provides the procedure for evaluating a claimant's allegations of symptoms, and Social Security Ruling

96-7p, which explains the factors to be considered in assessing the credibility of a claimant's statements about symptoms. Judge Harty found that the evidence was insufficient to support Callahan's assertions that she suffered from a medically determinable impairment between April 30, 1998 and December 3, 1993. Furthermore, no treating or consulting psychologists or psychiatrists stated that Callahan's alleged mental impairment prevented her from engaging in gainful activity during that period. Because Callahan's allegations were not in accordance with the objective medical evidence, Judge Harty concluded that Callahan's statements were not fully credible.

II. DISCUSSION

A. Standard of Review

A court may not disturb the Administrative Law Judge's decision if it is grounded in substantial evidence. See 42 U.S.C. §§ 405(g) and 1383(c)(3). Substantial evidence has been defined as "more than a mere scintilla" and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See Richardson v. Perales, 402 U.S. 389, 401 (1971); Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). To demonstrate that his opinion is based on substantial evidence, the Administrative Law Judge must make specific findings of fact to support his or her ultimate findings. See Stewart v. Secretary of HEW, 714 F.2d 287, 290 (3d Cir. 1983).

B. Social Security Law

"Disability" is defined as an "inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment.." 20 C.F.R. § 404.1505(a). To be considered disabled, an individual must have a "severe impairment," such that he or she is unable to perform previous work or any other "substantial gainful activity which exists in the national economy." Id. The

claimant carries the initial burden of proving the existence of a disability. See 42 U.S.C. § 423(d)(5); Plummer, 186 F.3d at 428.

An Administrative Law Judge determines whether a claimant is disabled through a sequential five-step inquiry pursuant to 20 C.F.R. § 404.1520. First, the claimant must not be currently engaged in substantial gainful activity. Second, an ALJ must determine whether the medical evidence indicates that the claimant suffers from a severe impairment that significantly limits the claimant's physical or mental ability to do basic work activities. Judge Harty ended his analysis at this step by concluding that Callahan did not suffer from a severe impairment. However, if the ALJ does determine that the claimant suffers from a severe impairment, he or she will then determine whether the impairment meets or equals a listed impairment in Appendix I of sub-part P of Regulation No. 4 of the Code of Regulations. If so, that individual will be considered "disabled" under the Act. If the claimant does not meet a listing, the ALJ must determine if the individual is capable of performing his or her past relevant work, or whether the claimant is capable of performing other work in the national economy.

C. Callahan's Contentions of Error

Callahan asserts that Judge Harty's decision is not supported by substantial evidence. First, Callahan contends that Judge Harty failed to apply, or improperly applied, SSR 83-20. Second, Callahan contends that Judge Harty did not properly evaluate Callahan's subjective assertions. Third, Callahan contends that remand is appropriate based on a failure to preserve a complete and accurate record of the hearing.

1. Did Judge Harty Fail to Apply, or Improperly Apply, SSR 83-20?

Callahan first asserts that Judge Harty failed to apply SSR 83-20 because (1) Judge Harty did

not properly engage in the analysis set forth in the Social Security Ruling to determine the onset date of the disability, and (2) Judge Harty did not solicit the aid of a medical advisor in determining that onset date.

a. Did Judge Harty Properly Determine an Onset Date in Light of SSR 83-20?

Callahan contends that Judge Harty did not properly apply SSR 83-20, which provides the procedure for establishing the onset date of a disability of nontraumatic origin. To determine the onset date of such a disability, an ALJ should consider the claimant's allegations, the claimant's work history, and medical and other evidence. See SSR 83-20. However, the claimant's allegations of an onset date and of the date of work stoppage are only significant if they are consistent with the severity of his or her condition as shown by the medical evidence. See Id. According to SSR 83-20, medical reports containing descriptions of examinations or treatment of the individual are the primary element in the determination of the onset date of a disability. Moreover, the Judge has the discretion to determine how much weight to give the relevant evidence. See Id.

Judge Harty concluded that Callahan did not have a severe impairment that significantly limited her ability to perform work-related activities between the dates of April 30, 1988 and December 31, 1993. Callahan did not seek help for her condition until 1994 and therefore, there is no documented objective medical evidence from the relevant time period supporting Callahan's alleged onset date of March 1, 1988. The physicians that have diagnosed Callahan with panic disorder and depression did not treat her until six or seven years after that time and months after the date Callahan last qualified for disability benefits. In addition, the reports from those physicians that refer to Callahan's panic attacks

in 1987 and 1988 are based on Callahan's own self-reports.

Callahan contends that SSR 83-20 provides that if a reasonable inference about the progression of an impairment can not be made on the available medical evidence, other sources of documentation should be considered. In his determination, Judge Harty did consider the testimonies of Spiezio and Moor. However, in the absence of determinative medical evidence supporting an onset date prior to December 31, 1993, this additional evidence alone is not sufficient to establish that date.

Therefore, this court finds that it was within the Administrative Law Judge's discretion to weigh the relevant testimony in determining an appropriate onset date. Furthermore, Judge Harty's decision that Callahan did not suffer from a severe impairment from April 30, 1988 through December 31, 1993 is supported by substantial evidence.

b. Did Judge Harty Err by Not Soliciting the Aid of a Medical Advisor to Infer the Onset Date of the Alleged Disability?

Callahan contends that if Judge Harty believed the evidence was not clear, he was required to call on the services of a medical advisor to infer the onset date of the alleged disability. SSR 83-20 states that in some instances, it may be possible to infer from the medical evidence that the onset of a disabling condition occurred some time prior to the date of the first recorded medical examination. This inference, however, must have a legitimate medical basis. See SSR 83-20. If necessary, an ALJ may call on the services of a medical advisor to assist in this determination.

As Judge Harty stated, there are no documented medical records from the six years prior to 1994 during which Callahan suffered from the alleged condition. This is because she simply did not seek treatment. Callahan finally visited a doctor in 1994 on the recommendation of her attorney and

even then, did not follow through with the medication that Dr. Kurtz prescribed to her. In the absence of any objective medical evidence prior to 1994 and only anecdotal testimony from Callahan and the other witnesses, an onset date prior to December 31, 1993 can not be inferred from the relevant evidence. Therefore, this court finds that it was within Judge Harty's discretion not to call on the services of a medical advisor to make this determination.

2. Did Judge Harty Properly Evaluate Callahan's Subjective Assertions?

Judge Harty found that Callahan's allegations of a mental disorder and other subjective symptoms, and the severity of the limitations caused by this condition were not credible. According to 20 C.F.R. § 404.1529, an ALJ must evaluate a claimant's allegations of symptoms to the extent to which the symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence. To be considered "disabled," under 20 C.F.R. § 404.1529, (1) medical evidence must show the existence of a medically determinable impairment that could reasonably be expected to produce the alleged symptoms, and (2) the intensity and persistence of the symptoms must be such as to limit the claimant's work capacity. According to SSR 96-7p, a claimant's allegations of symptoms can not be the basis for a finding of disability unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable impairment.

Judge Harty's conclusion that the relevant evidence does not support the claimant's allegations of the existence of a medically determinable impairment between the dates of April 30, 1988 and December 31, 1993 is supported by substantial evidence. Furthermore, the treating and consulting physicians do not state in their records that the alleged impairment prevented Callahan from engaging in gainful employment between April of 1988 and December of 1993. In fact, in a 1996 report, Dr.

Ausejo reported that Callahan was only mildly limited in her ability to perform work at that time where contact with others is minimal. In the absence of supportive objective medical evidence from the relevant time period, the claimant's allegations of panic attacks, and Spiezio's and Moor's supporting testimonies, are insufficient to determine the existence of a medically determinable impairment that significantly limited Callahan's work capacity prior to December 31, 1993. Therefore, Judge Harty's decision that Callahan's allegations to the contrary were not credible is supported by substantial evidence.

3. Is Remand Appropriate Based on a Failure to Preserve a Complete and Adequate Record of the Hearing?

Callahan contends that this case should be remanded because the Commissioner failed to adequately preserve a complete and accurate record of the testimony. Although various portions of the testimony are marked "inaudible," the majority of the testimony is clear. The portions of the hearing that were inaudible were not substantial and did not affect the whole of the testimonies. Therefore, remand is not appropriate based on a failure to preserve a complete and adequate record.

III. CONCLUSION

The court has considered Callahan's arguments that the Administrative Law Judge erred in refusing her disability insurance benefits. In conclusion, the court finds that there is substantial evidence to support (1) the Administrative Law Judge's decision that Callahan did not have an impairment which significantly limited her ability to perform basic-work related activities from April 30, 1988 through December 31, 1993 and therefore did not have a "severe impairment" during that period; and (2) the Administrative Law Judge's decision that Callahan's allegations of a mental disorder and other

subjective symptoms, and the severity of the limitations arising therefore were not credible and did not result in significant limitations on her ability to perform basic work-related activities from April 30, 1988 through December 31, 1993. Furthermore, the Administrative Law Judge was not required to call on the services of a medical advisor to determine an onset date of the disability. Thus, the court will grant the Commissioner's motion for Summary Judgment.

The court will enter an order consistent with this opinion.