



## **Thynge, U.S. Magistrate Judge**

### **I. Introduction**

The plaintiff, Diane Steward, brought this claim against the Government pursuant to *42 U.S.C. § 405*. Having exhausted her administrative remedies, she seeks review of the administrative law judge's denial of social security benefits. Presently before the court are the parties' cross-motions to dismiss. For the reasons stated below, the plaintiff's motion is DENIED and the defendant's motion is GRANTED.

### **II. Background**

#### **a. Disability Benefits System**

Under the Social Security Act, *42 U.S.C. § 423*, eligible persons may apply to the Social Security Commissioner ("Commissioner") to receive disability benefits. Eligible persons are those who are "insured for disability insurance benefits...[have] not attained retirement age...[have] filed an application for disability insurance benefits, and [are] under a disability." *42 U.S.C. § 423(a)(1)*. In order receive the benefits, claimant must show that she is disabled under *§ 423 (d)(1)*. That section defines disability 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)*.

The Social Security regulations require that the Commissioner or an administrative law judge ("ALJ") follow a five-step process when a person requests Social Security benefits. See *20 C.F.R. § 404.1520*. In *Plummer v. Apfel*, 186 F.3d 422, 428-29 (3d Cir. 1999), the Third Circuit explained the process mandated by the regulations. First, the Commissioner must evaluate whether a claimant is participating in "substantial gainful activity." *Plummer at*

428. If so, the Commissioner should deny disability benefits. *See id.* If a claimant is unable to participate in substantial gainful activity, the Commissioner should determine if a severe impairment is the basis. *See id.* If a claimant suffers from a severe impairment, a comparison of the claimant's medical evidence "to a list of impairments presumed severe enough to preclude any gainful work," is then required. *See id.* (citing 20 C.F.R. § 404.1520(d)). If a claimant suffers from one of the listed impairments, or its equivalent, the Commissioner should grant disability benefits. *See id.* However, should the claimant not suffer from a listed impairment, the process continues. *See id.*

In step four, an ALJ must determine "whether the claimant retains the residual functional capacity to perform her past relevant work." *Id.* (citing 20 C.F.R. § 404.1520(d)). If the ability to return to prior employment exists, the Commissioner should deny disability benefits. *See id.*

The burden of proof in each of the previous steps remains with the claimant. *See id.* (citing 20 C.F.R. § 404.1520(f)). However, the burden shifts to the Commissioner in the final step of the process. *See id.* (citing 20 C.F.R. § 404.1520(f)). In this step, the Commissioner must show that a claimant is capable of performing other work, and upon such a showing, an ALJ should uphold the decision to deny disability benefits. *Id.*

A claimant who disagrees with any decision of the Commissioner may request reconsideration of that decision. *See 42 U.S.C. § 405(g).* Additionally, a claimant may request an administrative hearing in front of an ALJ. *See id.* If the request is granted, and the ALJ renders an unfavorable opinion, a claimant may appeal to the Social Security Appeals Counsel. *See id.* If a claimant is dissatisfied with the decision of the Appeals counsel, an appeal to the District Court in the jurisdiction where the claimant resides or is primarily employed is available. *See id.*

## **b. Plaintiff's Background**

The plaintiff in this matter was injured in an automobile accident on May 10, 1979,<sup>1</sup> when she was 22 years old. She received fairly serious injuries, including a fractured leg, collarbone, and ribs, a ruptured spleen and a small bilateral pneumothorax. She underwent surgery to remove her spleen, and had a plate inserted in her left leg for stabilization of the bone and healing. More than one year after the accident, the plaintiff filed for disability claiming that the injuries she sustained in the accident left her disabled.

Plaintiff alleges that she has had constant pain in her knees since the accident. Also, she claims to have pain in her legs, left foot, and wrist. According to Steward's testimony and that of her husband, she is unable to perform substantial housework. She cannot wash dishes, vacuum, and has difficulty cooking. Further, because she is unable to lift more than five pounds, plaintiff could not carry her children. Moreover, she has difficulty walking, standing, and sitting for extended periods of time and frequently takes pain medication.<sup>2</sup> Also, plaintiff claims that she has not slept more than a couple of hours at a time since the accident. However during the period of her alleged disability, Steward obtained a college degree, cared for seven children, and took at least one vacation to Disney World.

Since the accident, plaintiff has been seen and treated by approximately seventeen doctors for various ailments. *See R. 84-95.* Over the course of the years, she underwent surgery for both knees and her wrist.<sup>3</sup> She was also diagnosed with an epigastric hernia. *See id. at 157-158.*

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<sup>1</sup> Plaintiff was in another automobile accident in 1992.

<sup>2</sup> There are conflicting statements in the record and plaintiff's brief regarding the frequency with which she took pain medications. At the hearing she testified that since the 1979 accident there has never been a day that she did not take pain medication. *See R. at 27.* However, in her brief, the plaintiff states that she has taken medicine on and off since the accident. *See R. at 7.*

<sup>3</sup> *See id. at 160-187.* The plaintiff underwent a procedure to relieve the pain caused by carpal tunnel syndrome.

Accompanying her application for disability benefits, Steward submitted several medical reports. The initial reports concern her medical treatment for the 1979 accident and the leg and spleen surgeries. *See id. at 144-56.* Medical records from July 1979 show that the plaintiff's leg was healing satisfactorily. *See id. at 145.* Additionally, Steward submitted records from 1980 of her chiropractor where she complained of back, foot, and leg aches. *See id. at 130-43.* The next records are dated 1982 and 1983 and relate to the plaintiff's hernia.<sup>4</sup> There are a number of medical records from 1990 through 1992 discussing Steward's complaints of pain, and her knee surgery. *See id. at 160-87.* The medical records show that various physicians evaluated her hands, wrists, knees, and shoulders. *See id.* Some of the records recommend a return to light housework; some indicate that she had full range of movement, and at least one concludes that her physical evaluation was within normal limits. *See id. at 170, 184, 164, 176, 179.* Steward included a few records from 1994 which address her carpal tunnel syndrome. *See id. at 191-92.* Additionally, she included medical records from 1995 and 1996 concerning a possible Lupus diagnosis.<sup>5</sup> Finally, plaintiff included a record from a 1998 medical visit in which she complained of fatigue and pain in her wrists and knees. *See id. at 189-90.*

### **c. Procedural History**

Plaintiff first filed for disability benefits on October 22, 1980. *See R. 12.* After the Commissioner denied her claim, Steward filed for reconsideration within the appropriate time period. *See id.* The Commissioner denied the motion on May 28, 1981, and plaintiff did not further pursue her application. *See id.* On October 5, 1998 Steward filed a second disability claim under the Social Security Act alleging that she had been disabled since May 10, 1978. *See Pl.'s Br. at 1.*

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<sup>4</sup> *See id. at 159.* The plaintiff submitted a handwritten record from 1980, but it is illegible.

<sup>5</sup> *See id. at 193-196.* Apparently, the patient has received conflicting diagnoses on whether she suffers from Lupus.

The Commissioner denied both the initial claim and her motion for reconsideration. *See id.* She requested a hearing before an ALJ which was granted. *See id.* As a result of the hearing in early November 1999, the ALJ denied her request for disability benefits in early January 2000. *See id.* Steward then appealed the ALJ's decision to the Appeals Counsel, who declined to review the case. Her action with this court was initiated on March 19, 2001. *See id.*

**d. The ALJ's Decision**

The ALJ divided Steward's claim into two time periods: (1) from May 10, 1979 through May 28, 1981; and (2) from May 29, 1981 through December 31, 1981. *See R. 12-13.* Because December 31, 1981 was the date that she was last insured, and thus eligible for disability benefits, the ALJ found that any claims for disability after December 31, 1981 were not valid. *See id.* It also held that May 10, 1979 through May 28, 1981 represented the period of time beginning with her alleged disability, and ending on the date when her claim was finally denied. *See id.*

The ALJ held that res judicata applied to any disabilities alleged before May 28, 1981, noting that Steward failed to present any new evidence regarding her alleged disability during the relevant time period. *See R. 12.* Further, the ALJ specifically did not credit Steward's contention that she did not understand her right to appeal the denial of her first claim, relying on her filing of a motion for reconsideration after the initial denial in January 1981. *See id.*

The court continued its analysis by addressing Steward's alleged disability from May 28, 1981 through December 31, 1981. *See id. at 13-14.* The ALJ employed the five-step process discussed above, and found that Steward "did not have any impairment or combination of impairments which significantly limited her ability to perform basic work related functions," and she did not have a severe impairment. *See id. at 18.* Although Steward asserted problems with

sitting, standing and walking, the ALJ found significant that the plaintiff was able to receive a college degree and care for seven children throughout the period of her alleged disability. *See id. at 14-15*. The ALJ noted that most of the medical records Steward submitted related to the 1979 accident, and thus upheld the Commissioner's 1981 decision of no disability during the relevant period, and found that no new medical evidence had been provided supporting a disability arising thereafter. *See id. at 17*.

After a review of all the evidence, the ALJ concluded that “[c]laimant’s statements concerning her impairment and its impact on her ability to work...are not entirely credible in light of her own description of her activities and life style, the low level of medical treatment she received, and the reports of the treating and examining practitioners.” *Id. at 16*.

## **II. Legal Standards**

### **a. Summary Judgment Standard**

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). Summary judgment should not be granted if the dispute involves a material fact.<sup>6</sup> “By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson, 477 U.S. at 247-48*. There is a genuine issue of fact when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id. at 248*

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<sup>6</sup> *See Anderson et. al. v. Liberty Lobby, Inc., et. al., 477 U.S. 242, 248; 91 L. Ed. 2d 202; 106 S. Ct. 2505 (1986)*. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.*

(citations omitted). Additionally, summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an [essential element]...on which that party will bear the burden of proof at trial...since a complete failure of proof concerning an essential element of [that]...party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23; 91 L. Ed. 2d 265; 106 S. Ct. 2548 (1986).

The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact. See *id.* at 323. A moving party can meet its burden if the party “point[s] out to the district court that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 325. On the other hand, “a party opposing a properly supported motion for summary judgment ‘may not rest upon the mere allegations or denials of his pleadings, but...must set forth specific facts showing that there is a genuine issue for trial.’” *Id.* at 321 (citing *Catrett v. Johns-Manville Sales Corp.*, 756 F.2d 181, 184 (1985)).

When reviewing a motion for summary judgment, a court must evaluate the facts in a light most favorable to the nonmoving party drawing all reasonable inferences in that party’s favor. See *Anderson*, 477 U.S. at 255. The court should grant the motion “unless the evidence be of such a character that it would warrant the jury in finding a verdict in favor of that party.” *Id.* at 251. In deciding a motion the court should apply the evidentiary standard of the underlying cause of action. See *id.* at 251-52.

In every case, before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed...The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.

*Id.* at 251.

## **b. Jurisdiction**



District Court review of an ALJ's decision regarding disability benefits is limited in scope. 42 U.S.C. § 405(g) provides "[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party...may obtain review of such decision by a civil action." A decision of the Commissioner becomes final when the Appeals Counsel affirms an ALJ decision, denies review of an ALJ decision, or when a claimant fails to pursue the available administrative remedies. See *Aversa v. Secretary of Health & Human Services*, 672 F.Supp. 775, 777 (D. N.J. 1987); see also 20 C.F.R. § 404.905. This court has jurisdiction to review the case under § 405(g) because the Commissioner's decision became final when the Appeals Counsel declined to review the ALJ's denial of benefits.

### **c. Standard Applicable to ALJ's Decision**

A district court's review of an ALJ's decision is limited to whether the decision was supported by substantial evidence. See *Jesurum v. Sec'y of the United States Department of Health & Human Servs.*, 48 F.3d 114, 117 (3d Cir. 1995) (citing *Brown v. Bowen*, 845 F.2d 1211 (3d Cir. 1988)). If the decision is so supported, the court is bound by those factual findings. Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>7</sup> Substantial evidence is less than a preponderance, but more than a scintilla. See *Jesurum*, 48 F.3d at 117.

## **III. Discussion**

### **a. Applicability of Res Judicata**

The Social Security regulations provide that an ALJ may deny a request for an administrative hearing if res judicata is applicable. The regulation states:

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<sup>7</sup> *Richardson v. Perales*, 402 U.S. 389, 401; 28 L. Ed. 842; 91 S. Ct. 1420 (1971) (citing *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court applied this standard by analogy from decisions addressing the meaning of substantial evidence in the context of the *National Labor Relations Act* § 10(e). See *id.*

“The doctrine of res judicata applies in that we have made a previous determination or decision...about [the claimant’s] rights on the same facts and on the same issue or issues, and this previous determination or decision has become final by either administrative or judicial action.” 20 C.F.R. § 404.95. As previously noted herein, the decision of the Commissioner becomes final when the Appeals Counsel affirms an ALJ decision, denies review of an ALJ decision, or when a claimant fails to pursue the available administrative remedies. Typically, “Res judicata effect is only to be accorded to a decision of the Secretary which is adjudicative in nature, i.e. where the decision is rendered after a full and fair hearing, similar to that which would result from a court proceeding.” *Aversa*, 672 F. Supp. at 777. However, when a plaintiff fails to pursue her administrative remedies, the decision of the Commissioner becomes final and the court may apply res judicata. See *id.* Finally, “[w]here the doctrine of res judicata is properly invoked by the Secretary, that decision constitutes a final order...and may be reviewed by the district court.” *Id.*

In *Purter v. Heckler*, 771 F.2d 682, 690 (3d Cir. 1985), the Third Circuit addressed the requirements of res judicata. Res judicata is properly invoked when “(1) there has been a final judgment on the merits in a prior suit; (2) the prior suit involves the same parties or their privies and (3) the subsequent suit is based on the same causes of action.” *Id.* The *Purter* court noted that there are four relevant factors to consider when determining whether the suit is based on the same causes of action. See *id.* Those factors are:

- (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions...);
- (2) whether the theory of recovery is the same;
- (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first)...and
- (4) whether the material facts alleged are the same.”

*Id.* (citations omitted).

In her brief, Steward argues that the ALJ's application of res judicata was inappropriate because the Commissioner's denial notice did not inform her of her right to appeal. In support, plaintiff argues that the typical denial notices of that time were similarly defective. However, Steward has neither produced the allegedly defective notice nor any other evidence relating to that notice. Additionally, plaintiff contends that the ALJ should not have applied res judicata because: "the cause[s] of action *may* have been different," arguing that because the record from the 1981 decision was missing, the ALJ could not purport to know the basis of the first decision. *Pl. Br. 21* (emphasis added). Since the basis for that decision is unknown, plaintiff contends, the ALJ's finding that the causes of action were the same has no support.

The ALJ's application of res judicata in this case was appropriate under the regulations and applicable precedent. The first element of res judicata, finality, has been satisfied. Because Steward failed to appeal the first denial of benefits, the Commissioner's decision became final. Although plaintiff claims that she was not aware of her right to appeal, the ALJ determined such contention was not credible. Under the regulations, this court must defer to the ALJ's credibility determinations. Additionally, the ALJ's decision is supported by substantial evidence in the record, namely, Steward's knowledge of her right to reconsideration. However, even if this court assumes that Steward was unaware of her rights, it must still uphold the ALJ's decision because she has not presented any evidence in support of her argument. Therefore, plaintiff cannot meet her burden to show that the notice was defective, and that she was unaware of her appeal rights.

The second element of res judicata, the identity of the parties, has been met.

Finally, after applying the *Purter* factors, the third element of res judicata has been satisfied. First, in her second disability application, Steward requested benefits for the same injuries she alleged in her first application. Second, her theory of recovery, 42 U.S.C §§ 401-433, is the same in both actions. Next, because she claimed that she suffered from a disability since 1979 in the 1998 application, the same records from the first action would have been required in the 1998 action. Finally, the material facts, including the extent of her injuries from 1979 through 1981, are the same in both actions. As a result, the first and second claims involve the same causes of action.

Steward argues that because the Commissioner was unable to locate a transcript of the first action, it is impossible to know whether the causes of actions were the same, and therefore, res judicata is not appropriate. However, given the high number of disability applications, it is unreasonable to expect the Social Security Administration to retain records which are more than twenty years old. See *Heckler v. Campbell*, 461 U.S. 458, 461 n.2; 76 L. Ed. 2d 66; 103 S. Ct. 1952 (1983) (“The Social Security hearing system is ‘probably the largest adjudicative agency in the western world’...Approximately 2.3 million claims for disability benefits were filed in fiscal year 1981.” (citations omitted)); see also *Perales*, 402 U.S. at 399 (“The system’s administrative structure and procedures, with essential determinations numbering into the millions, are of a size and extent difficult to comprehend.”). Further, Steward pursued the second application on the advice of a physician who informed her that the laws had changed. There is nothing to indicate that she pursued the second application because of a change in her condition between 1979 and 1981. For the reasons stated above, the court finds that the ALJ’s application of res judicata was supported by substantial evidence.

**b. Reopening a Prior Request for Disability Benefits**

The Social Security regulations also provide rules regarding the reopening of a prior claim for disability benefits. 20 C.F.R. § 404.988 provides that “A determination...may be reopened (a) Within 12 months of the date of the notice of the initial determination, for any reason; (b) within four years of the date of the notice of the initial determination if we find good cause.” Additionally, the regulations permit the ALJ to reopen a prior decision at any time if it falls under the established exceptions. See 20 C.F.R. § 404.988 (c). The exceptions include inter alia, “correct[ing] a clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made.” 20 C.F.R. § 404.988 (c)(8).

The Seventh Circuit has held that “a clear error on the face of the evidence,” occurs:

where, on the basis of all the evidence in the file on which the determination of decision was based and any evidence of record anywhere in SSA at the time such determination or decision was made, it is clear that the determination or decision was incorrect. “Clear means obvious, unmistakable, certain, positive.”  
*Coates v. Bowen*, 875 F.2d 97, 102 (7<sup>th</sup> Cir. 1989) (quoting the Social Security Administration, Program Operations Manual System, § 04010.080 (February, 1982)).

The court continued,

A determination or decision which was reasonable on the basis of the evidence in the file and the statute, regulations, instructions, precedents, etc., existing at the time the determination or decision was made, will not be reopened merely because there is a shift in the weight of the evidence, a different inference is now drawn from the evidence...In such cases, there is no clear error on the face of the evidence on which the determination or decision was based (i.e., the “record”) which would permit reopening.  
*Id.* (omission in original).

In *Califano v. Sanders*, 430 U.S. 99, 108; 51 L. Ed. 2d 192; 97 S. Ct. 980 (1977), the Supreme Court held that an ALJ’s decision to refrain from reopening a prior final decision of the Commissioner is not a final decision for purposes of 42 U.S.C. § 405(g). Thus, a district court does not have jurisdiction to review

such a decision because it was not a “final decision...made after a hearing...” as required under § 405(g). *Id.* However, the Court noted an exception to this rule when a claimant challenges the ALJ’s decision on constitutional grounds. *Id.* at 109.

In her brief, Stewart alleges that her constitutional rights were violated because the Commissioner’s notice did not effectively notify her of the right to appeal an adverse decision. Although not explicitly stated, plaintiff is arguing a violation of her Fifth Amendment right to due process. Assuming she can support such an argument, her claim would fall under the exception set forth in *Sanders*.

At the end of the hearing before the ALJ, counsel for the plaintiff briefly discussed the reopening issue in his final statement.

ALJ: Closing, Mr. Hampton?

ATTY: Your Honor...I would request that if Your Honor finds that we’ve established disability back to 1980, that this case be reopened back through the original application...I haven’t done...legal research on this issue because...Mrs. Steward wasn’t 100% sure when[sic]...and what happened with the original application....But my recollection is that back in 1979 and ’80 the notices were not as good as they are today, and the Court’s have ruled that anybody who got those older notices would be entitled to reopen.

*R. at 52-53.*

As is evident from this quotation, plaintiff’s counsel did not present any evidence regarding the notice she received. Instead, counsel argued that because the notices of that time were typically defective, the plaintiff’s notice was similarly defective.

Moreover, plaintiff did not cite any cases in her brief supporting her arguments for reopening. Instead, plaintiff cited a number of cases finding particular notices misleading, and thus unconstitutional. In the cases cited by plaintiff, the notices received by the claimants were in the evidentiary record.<sup>8</sup>

<sup>8</sup> *Aponte v. Sullivan* 823 F. Supp. 277, 282 (E.D.Pa. 1993), one of the cases cited by Stewart, is an exception. In that case, the court, which was deciding whether it had subject matter jurisdiction, discussed the notice only as it pertained to the question of jurisdiction. As a result,

Here the notice is not in the record, and according to plaintiff's assertions, the notice could not be produced if the hearing were reopened. With such an absence of evidence, this court cannot find that these facts fall within the *Sanders* exception.

An ALJ should not reopen a denial of disability benefits which is more than four years old if none of the exceptional circumstances provided in the regulations are applicable. The only circumstance possibly applicable to this situation is under clear error. However, the facts of this case fall short of the standard for clear error as defined in *Shirley*. Here, there is no clear error on the face of the evidence relating to the plaintiff's disability. The Commissioner's denial notice, whether or not defective, does not impact upon plaintiff's evidence of disability. Because no exceptional circumstances are applicable in this case, the ALJ lacked the power to reopen the initial case. Therefore, the ALJ's decision to refrain from reopening the prior case was supported by substantial evidence.

**c. Review of ALJ's Denial of Benefits from May 10, 1981 through December 31, 1981**

When deciding whether a claimant is entitled to disability benefits, an ALJ should consider both subjective complaints of pain, and the claimant's medical records. See *Wimbley v. Massanari*, 2001 WL 761210 (D. Del. 2001). The ALJ must give the plaintiff's complaints of pain serious consideration, even if those complaints are not supported by the medical evidence. See *id.* However, "when a claimant's subjective complaints of pain indicate a greater severity of impairment than the objective medical evidence supports, the ALJ can give weight to factors such as physicians' reports and claimant's daily activities.

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whether the notice was part of the evidentiary record was not an issue in the case.

Additionally, the ALJ may properly look at the claimant's stated daily activities to assess credibility." *Id.*

The regulations provide that the ALJ may also consider: "the location, duration, frequency, and intensity of [the claimant's] pain or other symptoms; precipitating and aggravating factors; the type, dosage, effectiveness, and side effects of any medication...taken to alleviate...pain; treatment...received for the relief of ...pain or other symptoms, and any measures...used to relieve...pain." *20 C.F.R. 404.1529(c)(3)*.

When reviewing a decision, the district court must defer to the ALJ's determinations on the credibility of the witnesses and on whether the claimant has satisfied the burden of proof. *See Murry v. Apfel, 1999 U.S. App. Lexis 28911 (9<sup>th</sup> Cir. 1999); see also Davis v. Califano, 439 F. Supp. 94, 98 (E.D.Pa. 1977)*. "Great deference is given [to the ALJ's] judgment as fact-finder, since he actually heard the witness' testimony and observed their demeanor. 'Most particularly, the administrative law judge to whom the Secretary delegated fact finding responsibilities, must decide issues of credibility and appropriate weight to be given the exhibits.'" *Davis, 439 F. Supp at 98*.

The ALJ's denial of benefits was based on substantial evidence. In his decision, the ALJ noted that Steward testified to severe pain associated with many activities. However, the ALJ found that in light of Steward's testimony regarding her activities, and the medical records she provided, her contention that she could not engage in gainful activity was not credible. As previously stated, this court must give deference to this determination.

In her briefs, Steward discusses at length what she perceives to be deficiencies in the ALJ's decision. Plaintiff notes, inter alia, that in his decision, the ALJ did not mention that she had to stop the car many times on her trip to Florida, struggled to finish college, was unable to complete student teaching, is



unable to take her son to school four times a month, and is forced to nap everyday because of her fatigue. As stated above, the ALJ made clear that in light of Steward's entire testimony, he did not find her contentions regarding disability credible. His failure to list the examples of alleged disability, and the instances contradicting those examples, does not indicate that his decision was not based on the record before him. An ALJ deciding such a case must put forth the basis for his decision, but is not required to address each of the plaintiff's factual contentions individually. In this case, the ALJ provided ample basis for his decision.

Finally, Steward argues that the ALJ improperly disregarded some of the medical reports included in the record.<sup>9</sup> While it is true that an ALJ may not disregard uncontradicted medical reports, when there is no evidence to otherwise support the ALJ's own assessment of the records, the ALJ is free to assign weight when there are contradictory medical reports. Further, the regulations provide that "administrative law judges must consider findings of...physicians...as opinion evidence, except for the ultimate determination about whether [the claimant is] disabled." *20 C.F.R. § 404.1572(f)(2)(i)*. Therefore, although an ALJ must consider medical records, the ultimate determination of whether the plaintiff suffers from a disability, is left to the ALJ.

Although Steward's medical records revealed serious medical ailments, many of those records directly contradicted her contentions regarding disability. For example, as previously discussed, some of the medical records recommended that Steward return to light housework, and indicated that she had full range of movement. In light of these contradictions, and the other evidence

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<sup>9</sup> In her brief, plaintiff alleges that the ALJ could not have reviewed the medical records because he stated that most of the records submitted addressed injuries resulting from the plaintiff's 1979 accident, when in reality the majority of records came from a different time period. This court finds that most of the records which fall within the relevant time period (1979 through 1981) address the plaintiff's accident injuries.

before him, the ALJ found that the plaintiff was not disabled under *42 U.S.C. §423*.

Further, there is a great deal of evidence in the record to support the ALJ's finding. For instance, Steward cared for seven children and dealt with the physical and mental stress associated with that responsibility, was able to sit in the car for sixty minutes while she drove her son to school, and was able to attend and sit through classes, study and concentrate on academic work and meet other requirements to obtain a college degree while suffering from the alleged disability. Moreover, there is an absence of medical records from the alleged disability period beginning in 1979 and ending in 1981. For the most part, the only records provided from that time concerned her immediate treatment and recovery from the car accident. Steward did not present any medical records which would indicate that she was under a continuing disability in 1980 and 1981.<sup>10</sup> In light of these and other facts, it is clear that the ALJ's decision was based on substantial evidence.

#### **IV. Conclusion**

For the reasons discussed, this court finds that the ALJ properly applied the doctrine of res judicata for the May 1979 through May 1981 time period, and correctly declined to reopen the plaintiff's prior disability application. Additionally, substantial evidence supported the ALJ's decision to deny disability benefits. Viewing all the relevant facts in a light most favorable to the plaintiff, no reasonable jury applying the 'substantial evidence' standard could find for the plaintiff. Consequently, the defendant's motion for summary judgment is GRANTED, and the plaintiff's motion for summary judgment is therefore DENIED.

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<sup>10</sup> The chiropractor reports fall in that time period, but do not indicate that the plaintiff was suffering from a disability.