

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

ANTOINETTE MORGAN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 01-244-MPT
	:	
SECRETARY OF HEALTH AND HUMAN	:	
SERVICES,	:	
	:	
Defendant.	:	

**OPINION**

---

Stephen A. Hampton, Esquire, Grady & Hampton, P.A., 6 North Bradford Street, Dover, Delaware 19904, attorney for plaintiff

Colm F. Connolly, Esquire, United States Attorney, Virginia Gibson-Mason, Esquire, Assistant United States Attorney, United States Attorney's Office, Chase Manhattan Centre, 1201 Market Street, Suite 1100, Wilmington, Delaware 19899-2046, attorney for defendant

---

Dated: February 13, 2002

Wilmington, Delaware

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

### **I. Introduction**

The plaintiff, Antoinette Morgan, brought this claim against the Government pursuant to 42 U.S.C. § § 405, 416 and 1381. Having exhausted her administrative remedies, she seeks review of the administrative law judge's denial of disability benefits, period of disability, and supplemental security income. Presently before the court are the parties' cross-motions for summary judgment. For the reasons stated below, the plaintiff's motion is DENIED and the defendant's motion is GRANTED.

### **II. Background**

#### **a. Social Security System**

Under the Social Security Act, 42 U.S.C. § 423<sup>1</sup>, 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 to receive the benefits, a 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

---

<sup>1</sup>The plaintiff filed for disability benefits ("DIB") under § 423, a period of disability under § 416, and social security benefits ("SSI") under §1381. Since these statutes are similar, and define disability in the same manner, the court will refer to the statutory sections governing disability benefits only. See *Matthews v. Apfel*, 239 F.3d 589, 590 (3d Cir. 2001); *Borrero v. Callahan*, 2 F.Supp.2d 235, 241 (D.Conn. 1998).

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. *Id.* If a claimant is unable to participate in substantial gainful activity, the Commissioner should determine if a severe impairment is the basis. *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. *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. *Id.* However, should the claimant not suffer from a listed impairment, the process continues. *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. *Id.*

The burden of proof in each of the previous steps remains with the claimant. *Id.* (citing 20 C.F.R. § 404.1520(f)). However, the burden shifts to the Commissioner in the final step of the process. *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. *42 U.S.C. § 405(g)*. Additionally, a claimant may request an administrative hearing in front of an ALJ. *Id.* If the request is granted, and the ALJ renders an unfavorable opinion, a claimant may appeal to the Social Security Appeals Counsel. *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. *Id.*

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

The plaintiff in this matter injured her right wrist in late 1991 while working. *D.I. 10 at 196*. She experienced continuous pain in her right wrist and was treated by a number of physicians in 1992. *D.I. 15 at 2*. In September of that year, she underwent a carpal tunnel release, which provided a temporary relief in the discomfort. *Id. at 3*. However, the discomfort in her wrist returned in late November 1992. *Id.* In an attempt to relieve the pain, plaintiff underwent another procedure, a "right lunotriquetral arthrodesis with iliac crest bone graft on [her] wrist." *Id.* The procedure involved a bone graft from plaintiff's hip, which according to plaintiff has caused chronic pain in her hip. *Id. at 16, 27*.

Morgan's pain in her wrist and hip became chronic. She underwent physical therapy, and at times wore a brace to relieve the pain. *Id. at 4*. Then, in a 1994 automobile accident Morgan sustained injuries to her head, neck and back. *Id. at 9*. According to plaintiff, these injuries caused additional chronic ailments including constant headaches, muscle spasms, and neck pain. *Id.*

Finally, Morgan was raped by an acquaintance in 1997, which caused mental problems including anxiety and post traumatic stress. *Id. at 16,17*. She claims that these conditions have caused her to cry extensively, become easily agitated, and avoid going out in public. *Id. at 17*.

Morgan asserts that her physical injuries have caused constant pain in her joints, and left her unable to walk more than a block, sit for more than fifteen minutes, and stand for any extended period of time.

### **c. Procedural History**

Plaintiff first filed for disability benefits on December 7, 1994, alleging physical and mental disabilities. *See D.I. 10 at 11*. After the Commissioner initially denied her claim and on reconsideration, Morgan requested a hearing before an ALJ which was held on October 15, 1996. *Id.* The ALJ denied Morgan's application for benefits, finding that she was capable of performing her past relevant work. *Id.* Morgan appealed the decision to the Appeals Counsel, which vacated the decision and remanded the case because the record was incomplete.<sup>2</sup> On March 11, 1998, a new ALJ held a second hearing.<sup>3</sup> *Id.* As a result of the hearing, the ALJ denied Morgan's requests for period of disability, disability benefits, and supplemental security income. *Id.* Morgan appealed the decision to the Appeals Counsel, who declined to review the case. Her action with this court was initiated on April 12, 2001. *Id.*

---

<sup>2</sup> The record was incomplete because the recording device at the hearing malfunctioned. Thus there was no full record of the testimony at that hearing.

<sup>3</sup> *Id. at 12*. A supplemental hearing in which the ALJ heard additional vocational testimony was held on July 21, 1998. For the purposes of this decision, the hearing and the supplemental hearing are the same.

#### **d. The ALJ's Decision**

In his decision, the ALJ explained the prior history of plaintiff's application for benefits, and incorporated the ALJ's findings from the first hearing. *D.I. at 11,12.*

The ALJ held that Morgan had a severe impairment, but that "the evidence [did] not demonstrate that the claimant's impairments, considered either singly or in combination, are of a severity to meet or equal any of the impairments listed on the Listing of Impairments." *Id. at 13.* The ALJ also found that Morgan's testimony as to the severity of pain was not credible and not supported by any medical records. *Id. at 17.* In support of this finding, the ALJ discussed Morgan's extensive daily activities, which included washing dishes, doing laundry, shopping, cleaning, cooking, getting the children ready for school, caring for an infant, reading, and watching television. *Id. at 18.* Further, the ALJ noted that Morgan's testimony was inconsistent at times. *Id.* For example, Morgan stated that she sat with her grandmother in order to keep her company, but also claimed that she was unable to sit for more than fifteen minutes.<sup>4</sup> The ALJ also noted that a number of medical records indicated that Morgan had full range of movement. *Id. at 13,14.* For example, in a 1996 medical examination, Dr. Fred Kahn concluded that Morgan's right wrist "impairment was permanent but stable." *Id. at 14.* Dr. Kahn also found that plaintiff had "no other disabling conditions or limitations." *Id.* Also, in 1998, Dr. Donald Morgan<sup>5</sup> examined plaintiff's hip concluding

---

<sup>4</sup>The ALJ also noted that Morgan's contentions regarding her inability to do any housework were contradicted by the testimony of one of her house-mates, who stated that she had witnessed Morgan perform light housework. *Id.*

<sup>5</sup>Dr. Morgan (no relation) examined the plaintiff at the request of the Social Security Administration.

that “she had full ROM, with pain on full waist flexion and extreme right-side bending...good right-hand strength and full motor strength in all other extremities.” *Id.* Further, the ALJ noted that the “[m]edical records failed to reflect the presence of any atrophy typical in cases of inactivity due to pain.”

With regard to her mental limitations, the ALJ found that despite her claims to the contrary, Morgan is able to get along with others, and socialize with her friends. *Id. at 18.* In reaching this conclusion, the ALJ relied on the opinion of Dr. Reynolds, a psychiatrist who examined the plaintiff.<sup>6</sup> Dr. Reynolds found that “[Morgan] has a good ability to follow work rules and function independently...a fair ability to interact with supervisors and co-workers; use judgment; understand, remember, and carry out simple and detailed job instructions...[and]...her ability to deal with the public, and behave in an emotionally stable manner...is poor.” *Id. at 15.*

Moreover, the ALJ stressed Morgan’s failure to seek medical assistance, or counseling for the mental and medical problems she alleged. *Id. at 18.*

For the above reasons, the ALJ held: “[w]hen considered in combination, all of these factors... [indicate]...that the claimant does not suffer pain of a disabling intensity.” *Id.*

After finding that Morgan’s medical conditions did not equal the listed impairments, the ALJ addressed plaintiff’s ability to work. *Id.* Based on the vocational testimony at the hearing, the ALJ found that Morgan could “perform 25 percent of the sedentary occupational base.” *Id. at 19.* Because there were opportunities in the

---

<sup>6</sup> The Social Security Administration requested this examination.

national economy at that time, the ALJ found that Morgan was not disabled. *Id.*

## 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>7</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 (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

---

<sup>7</sup> “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson et. al. v. Liberty Lobby, Inc., et. al.*, 477 U.S. 242, 248; 91 L. Ed. 2d 202; 106 S. Ct. 2505 (1986).



is no genuine issue of material fact. *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. *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. *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. *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. *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>8</sup> Substantial evidence is less than a preponderance, but more than a scintilla. *Jesurum*, 48 F.3d at 117.

## **III. Discussion**

### **a. ALJ's Denial of Benefits**

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.

---

<sup>8</sup>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). *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)).

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

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. *Murry v. Apfel*, 1999 U.S. App. Lexis 28911 (9<sup>th</sup> Cir. 1999); *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 witnesses' 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.

"A finding that a witness is not credible must be set forth with sufficient specificity to permit the court to engage in an intelligible review of the record." *Hanratty v. Chater*, 1997 U.S. Dist. LEXIS 15488 (W.D.N.Y. 1997).

The ALJ's denial of benefits was based on substantial evidence. In his decision, the ALJ noted that Morgan testified to severe pain. The ALJ found that some of Morgan's complaints of pain were credible. However, in light of Morgan's daily activities which included cooking, cleaning, doing laundry, reading, watching television, caring for and transporting her children to and from school, and caring for an infant, the ALJ found

that Morgan's testimony concerning the extent of her pain was not fully credible. Additionally, the ALJ relied on medical records which indicated that she had full range of movement, and considered the inconsistencies in Morgan's testimony concerning her ability to perform housework, and to sit for extended periods of time. This court must give deference to the ALJ's assessment of Morgan's credibility. Furthermore, there is objective evidence which suggests that plaintiff has exaggerated pain. A medical report from Morgan's physical therapist stated: "[on] the pain questionnaire the patient scored very high indicating symptom exaggeration or fear of movement." *D.I. 10 at 235*. Thus, there is substantial evidence in the record to support the ALJ's decision.

**b. Listed Impairments**

In step three of the administrative process previously discussed herein, an ALJ must compare the claimant's injuries with those listed in 20 C.F.R. Pt. 404, Subpt. P, App. 1.

Morgan argues that the ALJ erred in finding that her impairments did not equal the listed impairments. Specifically, she argues that her physical impairments fall under 1.09 (A) and 1.09 (C); and that her mental impairments fall under 12.04 A (1), 12.04 (B), and 12.06.

In order to equal a listed impairment under 1.09 (A) or (C) a claimant must show that her impairment affects both hands, or one hand and one foot. Morgan claims that she has problems with her left hand, resulting from overuse. She also asserts that her hip pain prevents her from walking and standing. Plaintiff argues that when taking these impairments as a whole, she is disabled.

The ALJ held that when taking all the evidence into account, Morgan's injuries

did not meet the listed impairments. He based his finding on the credibility he assigned to Morgan's subjective complaints of pain and the medical records. As previously discussed, the ALJ did not find Morgan's testimony concerning the extent of her pain credible because her own testimony and that of her house-mate contradicted her contentions regarding the inability to do housework and sit for long periods of time. Since the ALJ attached less significance to plaintiff's complaints, he found that her impairments did not rise to the level of a listed impairment. There is nothing in the record to suggest that the injuries to plaintiff's hip and left arm are of such severity that the combination of those injuries with the right wrist injury satisfies 1.09. As previously discussed, medical records from 1996 and 1998 show that Morgan had decreased right wrist function, but that she had full range of movement in her other extremities. Thus, the ALJ's finding that Morgan's injuries did not equal a listed impairment was supported by substantial evidence.

At the time of the ALJ's decision, in order to equal a listed impairment under 12.04 or 12.06, a claimant had to show two of the following: "(1) [m]arked restriction of activities of daily living; or (2) [m]arked difficulties in maintaining social functioning; or (3) [d]eficiencies of concentration, persistence, or pace resulting in a frequent failure to complete tasks in a timely manner; or (4) [r]epeated episodes of deterioration...in work-like settings which cause the individual to withdraw from that situation."

In his decision, the ALJ noted that Morgan was able to do light housework, care for her children, meet with her friends, and watch television for long periods of time. He based these findings on the plaintiff's testimony which he found only partially credible, and Dr. Reynolds' psychological assessment. Dr. Reynolds found that Morgan suffered

from post-traumatic stress syndrome, which limited her ability to handle certain mental stressors. However, he also found that Morgan was able to “follow work rules...function independently...interact with supervisors...use judgment; understand, remember...carry out simple and detailed job instructions; and maintain personal appearance.” *D.I. 10 at 15*. Again, the ALJ’s credibility determinations are entitled to deference from this court. Additionally, plaintiff presented no other evidence regarding her mental impairments.<sup>9</sup> Thus, the ALJ’s finding that plaintiff’s mental impairments did not rise to the level of the listed impairments was based on substantial evidence.

Finally, Morgan argues that the ALJ failed to consider the disabling effect of her combined injuries. However, as mentioned above, the ALJ found that plaintiff’s impairments failed to equal the listed impairments whether they were evaluated individually or as a group. The ALJ stated: “Claimant’s complaints of pain are exaggerated...the medical evidence fails to establish that she has sought any additional treatment for her impairments...[she] does not require an ambulatory device...[and she] takes no significant pain medication.” *Id. at 17*. Further, the ALJ gave ample support for these conclusions in his opinion where he discussed both Morgan’s physical and mental impairments.

#### **b. Vocational Evidence**

Morgan argues that even if the court finds that her impairments do not equal the listed impairments, she is still disabled because there are insufficient employment opportunities for a person with her mental and physical limitations. To support her

---

<sup>9</sup>Dr. Reynolds’ report generally described plaintiff’s daily routine, and mental state, but did not evaluate whether Morgan’s mental impairments equaled those listed in 12.04 and 12.06.

argument, Morgan relies on two Social Security Rulings, SSR 96-9p and SSR 83-14.

Under 96-9p, when a claimant does not have the ability to do the full range of sedentary work, the ALJ's assessment of disability should follow certain guidelines. The ALJ should "show the presence and degree of any specific limitations and restrictions...[provide]...an explanation of how the evidence in the file was considered...[and state]...[t]he individual's maximum remaining capacities to perform sustained work on a regular and continuing basis." *Id.*

At the hearing, the ALJ heard testimony from a vocational expert. *D.I. 10. at 106.* The expert concluded that a person with Morgan's limitations could perform less than the full range of sedentary work. *Id. at 107.* At the hearing, the ALJ posed a hypothetical containing many of Morgan's impairments and limitations to the vocational expert, asking if a person with such impairments would be able to find employment. *Id. at 18, 19.* The expert stated that such a person would be able to find employment, and provided the number and examples of jobs available to a person with those limitations.<sup>10</sup> Then the ALJ asked the expert whether Morgan would be able to work, if he were to credit all of her testimony. *Id. at 110.* The expert stated that a person with such impairments would be incapable of finding employment. *Id.*

In his opinion, the ALJ discussed both Morgan's physical and mental conditions and the limitations caused by those conditions. *Id. at 13-16.* The ALJ also explained that he did not fully credit Morgan's testimony. *Id. at 19.* Further, he stated "[b]ased

---

<sup>10</sup>See *id. at 19.* The expert opined that "such an individual could perform 25 percent of the sedentary occupational base...[and]...identified several unskilled, sedentary occupations such as a security worker (65,000 jobs nationally, 2,800 locally); quality control worker (39,000 nationally, 1,100 locally); and receptionist (41,000 nationally, 1,200 locally)." *Id.*

upon all of the evidence of record, including oral testimony from the vocational expert, claimant and witness, the Administrative Law Judge...finds that there are other jobs in the national economy which the claimant could perform and that those numbers are significant.” *Id.* Thus, the ALJ followed the guidelines set forth in 96-9p in reaching his decision which was supported by substantial evidence.

Additionally, plaintiff relies on Social Security Ruling 83-14 to argue that someone with decreased bilateral manual dexterity is unable to perform sedentary work. Plaintiff argues that she is disabled because her lack of bilateral manual dexterity significantly erodes the employment base. *D.I. 15 at 31.* However, the ruling only states that such limitations *can* affect the capacity to perform work. *SSR 83-14.* The question of whether the limitations actually limit a claimant’s ability, should be left to the ALJ. In this case, the ALJ held that Morgan’s testimony regarding pain was not entirely credible, thus finding that she could perform activities with less pain than she claimed to endure while performing those activities. Based on the evidence in the record, that finding was supported by substantial evidence.

### **c. Commissioner’s Subsequent Grant of SSI Benefits**

Finally, plaintiff argues that the Commissioner’s subsequent grant of supplemental security income, effective in May of 2000, is new evidence showing that Morgan was disabled as of August 1993. Thus, the ALJ erred in denying plaintiff’s application for disability benefits, period of disability, and supplemental security income for the period prior to May 2000.

42 U.S.C. § 405(g) sets forth requirements for courts deciding whether to remand a case in light of new evidence. The section states : “[t]he court may...order additional



evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is a good cause for the failure to incorporate such evidence into the record in a prior proceeding.”

In *Matthews v. Apfel*, 239 F.3d 589, 592-93 (3d Cir. 2001), the Third Circuit applied the § 405(g) requirements, and addressed the issue raised by Morgan’s arguments. In that case, the court explained that when the Appeals Counsel declines to review an ALJ’s decision, and a “claimant seeks to rely on evidence that was not before the ALJ, the district court may remand to the Commissioner *but only* if the evidence is new and material *and* if there was good cause why it was not previously presented to the ALJ.” *Id.* at 593 (emphasis added).

This circuit defined “material evidence” in *Szubak v. Sec’y of Health and Human Services*, 745 F.2d 831, 833 (3d Cir. 1984). The court noted that material evidence must be both relative and probative. *Id.* It stated: “[t]he materiality standard requires that there be a reasonable possibility that the new evidence would have changed the outcome of the Secretary’s determination.” *Id.* Most importantly, the court held that “[a]n implicit materiality requirement is that the new evidence relate to the time period for which benefits were denied, and that it not concern evidence of a later-acquired disability or of the subsequent deterioration of the previously non-disabling condition.” *Id.*

Assuming *arguendo* that there is new evidence in this case, this court cannot consider it in deciding whether the ALJ’s decision was based on substantial evidence because the evidence was not presented to the ALJ. *Matthews*, 239 F.3d 589, 593. However, the court may remand the case to the Commissioner if the evidence is (1)

new, (2) material, and (3) plaintiff has good cause for failing to present the evidence to the ALJ. *Id.*

Morgan attached a copy of a letter notifying her that she was entitled to SSI benefits from May 2000. However, beyond the assertions in her brief, she presented nothing to this court indicating that what was in evidence in her first and second applications was the same. Therefore, this court is unable to evaluate whether the second application contains new or different medical assessments. A mere finding of entitlement in 2000 does not confirm the same or similar disability existing in 1993, seven years earlier.

However, Morgan argues that the grant of benefits, alone, is new evidence of her previous entitlement to such benefits. Applying a similar set of facts, the Eleventh Circuit found that a subsequent grant of supplemental security benefits was not relevant when evaluating whether a prior denial of benefits was based on substantial evidence. *Wilson v. Apfel*, 179 F.3d 1276, 1279 (11<sup>th</sup> Cir. 1999). In that case, the claimant appealed the ALJ's decision that Wilson did not suffer from a severe impairment. *Id.* The claimant attempted to introduce new evidence regarding disability before the Court of Appeals. *Id.* The court held that the new evidence was irrelevant to the ALJ's prior denial of benefits. *See id.*

This court adopts the rationale present in the *Wilson* case as consistent with the approach the Third Circuit has taken regarding new evidence. Thus, Morgan's entitlement to supplemental security benefits in 2000, is not new evidence for purposes of reviewing the ALJ's denial of benefits approximately two years prior.

In light of this court's finding regarding the new evidence element, evaluation of

the remaining factors is not necessary, since all of the factors must be present in order to remand a case to the Commissioner. However, the Court will evaluate the other factors discussed in *Matthews*.

Under the standard set forth in *Szubak*, in order to be material, the new evidence must concern the same relevant time period as in the ALJ's decision denying benefits. *Szubak*, 745 F.2d 831, 833. As stated above, there is nothing in the record to indicate that plaintiff was eligible for benefits in 1993. Her eligibility for benefits in 2000, the only evidence before the court, is not material evidence showing that she was also entitled to benefits in 1993. Even if the genesis of the disability is the same, Morgan's condition may have subsequently deteriorated over the years, thereby increasing the severity of the disability and entitling her to benefits. As a result, the grant of benefits in 2000 alone, is not material evidence relating to Morgan's eligibility for benefits in 1993. Thus, plaintiff has failed to satisfy the second *Matthews* factor.

Plaintiff has similarly failed to meet the requirements of the third factor, good cause. In *Szubak*, the Third Circuit discussed this requirement noting: "claimants should generally be afforded only one fair opportunity to demonstrate eligibility for benefits under any one set of circumstances." *Szubak*, 745 F.2d 831, 834. Morgan presented no evidence which would explain the discrepancy between her eligibility in 2000 and her ineligibility in 1993. Again, she simply asserts that even in the absence of any new medical records in 2000, her eligibility proves that the ALJ erred in denying benefits for 1993. As previously stated herein such arguments are not supported, and cannot serve as the basis for good cause. Moreover, Morgan was given a fair opportunity to present her case to the ALJ, and seek the appropriate appeals.

Remanding the case because of the Commissioner's 2000 eligibility determination would provide plaintiff with additional opportunity to present her case, thus giving her greater rights than the statute intended to grant.<sup>11</sup> Therefore, plaintiff has failed to show good cause.

#### **IV. Conclusion**

For the reasons discussed, this court finds that substantial evidence supported the ALJ's decision to deny disability benefits, period of disability, and supplemental security 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. An order consistent with this opinion will follow.

---

<sup>11</sup> *Szubak*, 754 F.2d 831, 834. Plaintiff's "another bite at the apple" argument is inconsistent with 42 U.S.C. §§ 423, 405.