

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ESTHERENE MURPHY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 01-651-KAJ
)	
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
)	
Defendant.)	

MEMORANDUM OPINION

Neilson C. Himelein, Esquire; Susan G. Schmidhauser, Esquire; Community Legal Aid Society, Inc., 100 W. 10th Street, Suite 801, Wilmington, Delaware 19801, counsel for plaintiff.

Colm F. Connolly, United States Attorney, District of Delaware; Paulette K. Nash, Assistant United States Attorney, District of Delaware; Chase Manhattan Centre, 1201 Market Street, Suite 1100, P.O. Box 2046, Wilmington, Delaware 19899-2046, counsel for defendant.

January 22, 2004
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

Before the Court is plaintiff Estherene Murphy's ("Murphy") motion for summary judgment (Docket Item ["D.I."] 13) and defendant Commissioner of Social Security's ("Commissioner") cross motion for summary judgment (D.I. 15).¹ Murphy brings this action under 42 U.S.C. § 405(g), seeking review of the Commissioner's decision denying her disability benefits under Title II of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-434. The court has jurisdiction to review the Commissioner's decision under 42 U.S.C. § 405(g) of the Act.

For the reasons that follow, the court denies Murphy's motion (D.I. 13) and grants the Commissioner's motion (D.I. 15).

II. BACKGROUND

A. Procedural History

On August 9, 1995, Murphy filed for disability insurance benefits with the Social Security Administration ("SSA") alleging an inability to work as of February 1, 1995 due to back and knee injuries, severe back pain, and depression. (D.I. 9 at 244-247.) The SSA denied Murphy's claims initially and upon reconsideration. (D.I. 14 at 1.) On November 6, 1997, upon Murphy's request, a hearing was held before an Administrative Law Judge ("ALJ"). (*Id.*) At the hearing, a vocational expert and Murphy, not represented by counsel,

¹ Plaintiff's action survives any change of the person occupying the office of the Commissioner of Social Security. 42 U.S.C. § 405(g). Accordingly, Jo Anne B. Barnhart, the acting Commissioner of Social Security, is substituted as defendant in this action. (*Id.*)

testified. (D.I. 9 at 425.) Following the hearing, and after additional evidence was submitted for the record, the ALJ determined that Murphy was able to perform sedentary work, subject to a sit/stand option, and thus was not disabled under the Act and its regulations. (*Id.* at 14)

Murphy then filed a request for review with the SSA's Appeals Council. (*Id.* at 432.) The Appeals Council vacated the ALJ's decision and remanded the case to the ALJ for further proceedings. (*Id.* at 434-436.) Specifically, on remand, the ALJ was to clarify how he determined Murphy's limitation to sedentary work, and resolve the discrepancy between the ALJ's assessment of Murphy's residual functional capacity and the State Disability Determination Service's residual functional capacity assessment. (*Id.* at 14.)

On remand, the ALJ held two additional hearings on May 11, 2000 and December 27, 2000. (*Id.* at 53-115.) Murphy, represented by counsel, testified at both hearings, as did a vocational expert. (*Id.*) Additionally, a medical expert testified at the December 27, 2000 hearing. (*Id.* at 83-115.) On February 21, 2001, the ALJ determined that, upon consideration of Murphy's age, education, work experience, and residual functional capacity, there are a number of jobs in the national economy that Murphy could perform and, therefore, found her not disabled under the Act and its regulations. (*Id.* at 21.)

Murphy appealed the ALJ's decision to the Appeals Council. (*Id.* at 8-9.) The Appeals Council found that there was "no basis under the regulations for granting" Murphy's "request for review." (*Id.*) The February 21, 2001 decision of the ALJ, therefore, became the final decision of the Commissioner. See 20 C.F.R. §§ 404.955, 404.981, 422.210; see also *Sims v. Apfel*, 530 U.S. 103, 106-107 (2000); *Matthews v. Apfel*, 239

F.3d 589, 592 (3d Cir. 2001). Murphy now seeks review by this Court under 42 U.S.C. § 405(g). (D.I. 17 at 1.)

B. Facts

Murphy has a high school education and has training as a nursing assistant. (D.I. 9 at 15.) From 1975 through 1990, Murphy worked as a nursing assistant at Presbyterian Hospital in Philadelphia, Pennsylvania. (D.I. 9 at 203; D.I. 14 at 3.) Although unemployed from 1991 through 1993, Murphy attained employment as a nursing assistant at Hillside Nursing Home and The Lorelton, both in Wilmington, Delaware, from July 1994 to February 1995 and December 1998 to April 2000. (D.I. 14 at 3.)

Murphy alleges that she was disabled as of February 1, 1995, due to a lumbar spine injury, knee injury, severe back pain, and depression. (*Id.* at 4.) Murphy alleges her injuries were a combined result of a motor vehicle accident in August 1993, an injury sustained at a restaurant in January 1995, and a motor vehicle accident in August 1995. (*Id.*)

1. Medical Evidence

From February 1995 to March 1996, Murphy sought treatment from Dr. Carl Smith at the Wilmington Pain and Rehabilitation Center. (D.I. 14 at 4; D.I. 16 at 7.) Dr. Smith found Murphy's "paraspinal muscles to be tender and noted evidence of muscle spasm." (*Id.*) Dr. Smith also determined that Murphy's range of motion in her lower back was limited; flexation was reduced by 25% and extension by 50%; and gait was normal. (*Id.*) Murphy also had normal sensation, a negative straight leg-raising examination, normal muscle strength, and normal reflexes. (D.I. 16 at 7.) Dr. Smith concluded that Murphy was

disabled and not able to work, and ordered her to begin physical therapy to increase her range of motion. (D.I. 14 at 5.)

On March 2, 1995, Murphy underwent x-rays of her right knee and back. (D.I. 16 at 7.) Both appeared to be within normal limits. (*Id.*)

On April 7, 1995, Murphy underwent a magnetic resonance imaging (“MRI”) examination of her right knee and back. (*Id.*) The MRI revealed that her right knee did not have significant abnormalities; however, Murphy had degenerative disc disease in her back, as well as a bulging disc at L4-L5 and disc protrusion at L5-S1. (D.I. 14 at 5; D.I. 16 at 8.)

From August 1995 to November 1995, Murphy sought treatment at the Delaware Curative Workshop, Inc. (“Delaware Curative”) (D.I. 16 at 8.) Murphy’s physical therapist there, Nancy Dilworth, reported that Murphy had normal range of motion and strength in her arms, as well as normal range of motion in her back and legs, and concluded that she had a “good prognosis for recovery.” (*Id.*)

On October 12, 1995, a state agency physician² reviewed Murphy’s medical records and determined that she could lift and carry twenty pounds, frequently lift or carry ten pounds, and stand and walk six hours in an eight hour work day. (D.I. 16 at 9.) On December 7, 1995, another state agency physician³ reviewed Murphy’s medical records and reached the same conclusions. (*Id.*)

² The physician’s name is not discernable from the record. (D.I. 9 at 291.)

³ The physician’s name is not discernable from the record. (D.I. 9 at 282.)

On December 15, 1995, Murphy underwent a second MRI. (*Id.*) The MRI revealed a herniated disc, a bulging disc, and “degenerative changes.” (*Id.*) The radiologist noted that these results were similar to the results of the MRI performed on April 7, 1995. (D.I. 14 at 5.)

Murphy underwent a third MRI on March 27, 1996. (D.I. 16 at 10.) The MRI indicated a straightening of the cervical column, and decreased signal intensity in multiple discs. (*Id.*)

On September 11, 1997, Dr. Joel Golden examined Murphy. (D.I. 16 at 10.) Dr. Golden diagnosed Murphy with muscle strain and a possible bulging disc. (*Id.*) Dr. Golden gave Murphy two epidural injections for pain. (*Id.*) However, Murphy reported no long-term relief as a result of the injections. (*Id.*)

On November 12, 1997, Murphy returned to the Wilmington Pain and Rehabilitation Center under the care of Dr. Amir Katz. (*Id.*) Dr. Katz found significant tenderness in Murphy’s back, and found her gait to be slow. (D.I. 14. At 7.)

On August 18, 1999, Murphy underwent a fourth MRI which revealed mild to moderate spinal stenosis, central disc herniation, and a “small central and right sided tear with possible impingement on the nerve root.” (*Id.*)

On March 29, 2000, Murphy underwent a fifth MRI which revealed mild spinal stenosis and a bulging disc. (*Id.*)

On November 1, 2000, Murphy underwent a sixth MRI which revealed bulging discs at L3-L4, L4-L5 and a disc protrusion at L5-S1. (*Id.*)

2. Medical Expert Testimony

Dr. Dean MacEwen testified at the December 27, 2000 hearing. (D.I. 9 at 20.) Dr. MacEwen stated that he found nothing in the examinations or tests performed on Murphy to indicate a major neurological problem. (*Id.*) He further stated that the MRIs, which indicated moderate degenerative changes, did not comport with Murphy's symptoms, and that "such changes would not cause disabling pain but only mild symptoms." (*Id.*) Dr. MacEwen determined that Murphy could sit, stand and walk without limitation, and could lift and carry up to ten pounds. (*Id.*)

3. Vocational Expert Testimony

Dr. Steven Gumerman testified at the May 11, 2000 hearing and the December 27, 2000 hearing. (*Id.* at 53-115.) At the December 27, 2000 hearing, the ALJ asked Dr. Gumerman whether jobs exist for an individual of Murphy's age, education, and vocational background who could sit, stand and walk without limitation and lift ten pounds occasionally. (*Id.* at 112.) Dr. Gumerman testified that a person with that vocational profile could perform numerous jobs in the national economy, such as: (1) security guard (6,700 jobs locally and 800,000 nationally), an information clerk (3,000 jobs locally and 1.2 million nationally), and an inspector/examiner (1,100 jobs locally and 175,000 nationally) (*Id.* at 112-113.)

C. The ALJ's Decision

To determine whether a claimant is entitled to disability benefits, an ALJ applies a "sequential five-step inquiry pursuant to 20 C.F.R. § 404.1520[]" . *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000); see 20 C.F.R. § 404.1520; *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986). Under that inquiry:

[T]he [ALJ] determines first whether an individual is currently engaged in substantial gainful activity. If that individual is engaged in substantial gainful activity, [she] will be found not disabled regardless of the medical findings. If an individual is found not to be engaged in substantial gainful activity, the [ALJ] will determine whether the medical evidence indicates that the claimant suffers from a severe impairment. If the [ALJ] determines that the claimant suffers from a severe impairment, the [ALJ] will next determine whether the impairment meets or equals the list of impairments in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. If the individual meets or equals the list of impairments, the claimant will be found disabled. If [she] does not, the [ALJ] must determine if the individual is capable of performing [her] past relevant work considering [her] severe impairment. If the [ALJ] determines that the individual is not capable of performing [her] past relevant work, then [the ALJ] must determine whether, considering the claimant's age, education, past work experience and residual functional capacity, [she] is capable of performing other work which exists in the national economy.

Brewster, 786 F.2d at 583-584 (internal citations omitted); see *Plummer v. Apfel*, 186 F.3d 422, 428-429 (3d Cir. 1999).

In this case, after applying the five-step evaluation, the ALJ determined that Murphy was not disabled within the meaning of the Act and its regulations. (D.I. 9 at 21.) The ALJ first found that Murphy was not engaged in substantial gainful activity. (*Id.*) Next, the ALJ concluded that Murphy suffered from severe back and neck impairments, and non-severe obesity, hypertension, and right knee impairments. (*Id.* at 16.) However, her impairments were not impairments listed in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. (*Id.*) The ALJ then determined that Murphy had a residual functional capacity to perform between sedentary and light work. (*Id.* at 22.) However, because Murphy's previous work experience as a "nursing assistant was semiskilled and very heavy[,]" the ALJ determined that she was not able

to perform her past relevant work. (*Id.* at 20.) Therefore, the ALJ had to determine, given Murphy's vocational profile (age, education, work experience and residual functional capacity), whether there are a significant number of jobs existing in the national economy that she could perform. (*Id.*); see *Morales*, 225 F.3d at 316. To help make this determination, the ALJ solicited the testimony of a vocational expert. (D.I. 9 at 21.) At the December 27, 2000 hearing, vocational expert Dr. Gumerman testified that, given Murphy's vocational profile, she could work as a light duty security guard, an information clerk, and an inspector/examiner. (*Id.*) The ALJ, in reliance on the vocational expert's testimony, concluded that there are jobs in the national economy that Murphy could perform and, therefore, found Murphy not disabled under the Act and its regulations. (*Id.*)

III. STANDARD OF REVIEW

A court applies plenary review to the Commissioner's application of law. *Markle v. Barnhart*, 324 F.3d 182, 187 (3d Cir. 2003). The Commissioner's findings of fact, however, are reviewed to determine "whether there is substantial evidence to support such findings." *Id.* A Court is required to review the entire record when making those determinations. *Reefer v. Barnhart*, 326 F.3d 376, 379 (3d Cir. 2003.)

Substantial evidence is defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. V. NLRB*, 305 U.S. 197, 229 (1938.)) If the Commissioner's decision is supported by substantial evidence, then a Court is bound by those factual findings. *Plummer*, 186 F.3d at 427.

IV. DISCUSSION

Murphy submits that the ALJ's determination of her residual functional capacity was not supported by substantial evidence. (D.I. 14 at i.) Murphy further contends that the ALJ improperly rejected her subjective complaints of pain, improperly rejected the medical evidence from her treating physician, and that the ALJ's hypothetical question to vocational expert Dr. Gumerman "contained the vocational profile for which the applicable medical-vocational rule directs a finding of disabled." (*Id.* at 24.) Additionally, Murphy argues that the discrepancy between the ALJ's two disability determinations, on April 23, 1998 and February 21, 2001, "defies logic and reason" because "the medical evidence was the same." (*Id.* at 23.)

- A. The ALJ's determination of Murphy's residual functional capacity was supported by substantial evidence.

"'Residual functional capacity' is defined as that which an individual is still able to do despite the limitations caused by his or her impairment(s)" *Hartranft v. Apfel*, 181 F.3d 358, 359 n. 1 (3d Cir. 1999) (citing 20 C.F.R. § 404.1545(a)) An ALJ making a residual functional capacity determination must "consider all evidence before him[.]" *Burnett v. Comm'r of Soc. Sec. Admin.*, 220 F.3d 112, 121 (3d Cir. 2000). "That evidence includes medical records, observations made during formal medical examinations, descriptions of limitations by the claimant and others, and observations of the claimant's limitations by others. *Fargnoli v. Massanari*, 247 F.3d 34, 41 (3d Cir. 2001); see 20 C.F.R. § 404.1545(a). In construing the evidence, the "ALJ may weigh the credibility of the evidence, [however,] he must give some indication of the evidence which he rejects and his reason(s) for discounting such evidence." *Burnett*, 220 F.3d

at 121; see *Cotter v. Harris*, 642 F.2d 700, 704 (3d Cir. 1981) (The ALJ's determination of residual functional capacity must "be accompanied by a clear and satisfactory explication of the basis on which it rests.")

Here, in determining Murphy's residual functional capacity, the ALJ properly considered, weighed and indicated which evidence he rejected and his reasons for rejecting the evidence before him. In Murphy's brief to the court (D.I. 14), she asserts that the following evidence should have been considered by the ALJ in determining her residual functional capacity, and that such evidence supports a finding of less than sedentary work⁴: (1) Murphy's multiple MRIs; (2) Medical reports from Dr. Smith; (3) Physical therapy reports from the Delaware Curative Workshop; (4) Dr. Katz's findings; (5) Murphy's testimony at the May 11, 2000 hearing; and (6) Dr. MacEwen's testimony at the December 27, 2000 hearing. (D.I. 14 at 17-19.) However, the ALJ's opinion clearly indicates that he considered such evidence and that he either accepted or rejected the evidence in determining Murphy's residual functional capacity. (D.I. 9 at 17-20.) Further, the ALJ adequately noted his reasons for rejecting such evidence due to either its lack of credibility, lack of relevance, or other contradicting medical evidence. (*Id.*) As such, the court finds that the ALJ's determination of Murphy's residual functional capacity was supported by substantial evidence.

B. The ALJ properly rejected Murphy's subjective complaints of pain.

⁴ The ALJ determined that Murphy had the residual functional capacity to perform between sedentary and light work. (D.I. 9 at 22.)

“Allegations of pain ... must be supported by objective medical evidence.” *Hartranft*, 181 F.3d at 362; see 20 C.F.R. § 404.1529. If an ALJ determines that a medical impairment “could reasonably cause” the alleged pain, then the ALJ “must evaluate the intensity and persistence of the pain ... and the extent to which it affects the individual’s ability to work.” *Hartranft*, 181 F.3d at 362. “This obviously requires the ALJ to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it.” *Id.*; see 20 C.F.R. § 404.1529(c).

In this case, the ALJ determined that Murphy suffered from severe back and neck impairments that could reasonably cause pain. (D.I. 9 at 16, 19.) However, the ALJ found Murphy’s allegations as to the severity of pain to be “exaggerated and not supported by the objective medical evidence.” (*Id.* at 19.) The ALJ cited to specific evidence in determining that Murphy’s allegations of pain were “exaggerated,” such as: (1) Murphy had been “neurologically normal upon examinations;” (2) Examinations of Murphy’s spine “indicate some degenerative changes but no herniations, bone spurs, or any pathology capable of causing the symptoms alleged;” (3) Murphy has never been hospitalized or gone to the emergency room because of pain; (4) She has never been prescribed a back brace, neck brace, knee brace or ambulatory assistive device; (5) She has not demonstrated any signs of severe pain such as “camptocormia, sensory deficits, motor abnormalities, scoliosis, loss of lordosis, reflex changes, persistent muscle spasm, muscle splinting, muscle weakness, muscle atrophy, pelvic tilt, sciatica, radiculopathy, or persistent gait changes;” and (6) Murphy has not alleged loss of appetite, sleep, weight, concentration, or libido due to pain. (*Id.* at 19.)

Therefore, the ALJ's finding that Murphy's allegations of pain were "exaggerated" is supported by substantial evidence in the record and is properly noted by the ALJ in his opinion. (*Id.*)

- C. The ALJ properly rejected the medical evidence from Murphy's treating physician.

A treating physician's opinions and assessments are generally given more weight than a non-treating physician's. See 20 C.F.R. § 404.1527(d)(2). Particularly when the treating physician's "opinions reflect expert judgement based on a continuing observation of the patient's condition over a prolonged period of time." *Morales*, 225 F.3d at 317 (quoting *Plummer*, 186 F.3d at 429.) An ALJ may "reject 'a treating physician's opinion ... only on the basis of contradictory medical evidence' and not due to his or her own credibility judgements, speculation or lay opinion." *Id.*

Here, the ALJ could properly rejected the assessments given by Dr. Smith, Murphy's treating physician, because of contradictory medical evidence. Murphy asserts that Dr. Smith's findings that she was limited in her range of motion and suffered from muscle spasms and tenderness is further "proof that his [the ALJ's] determination of plaintiff's residual functional capacity can not stand." However, the ALJ could and did reject Dr. Smith's findings based on the contradictory medical evidence provided by the testifying medical expert, Dr. MacEwen, who found "nothing in the examinations or tests to support a major nuerological problem." (D.I. 9 at 20.) Furthermore, the ALJ concluded that Dr. Smith's assessments were conclusory, as evidenced by his "somewhat skimpy notes[,]" and, thus, more weight should not be given to his opinion. See 20 C.F.R. § 404.1527(d)(3) ("The more a medical source

presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion.”) The ALJ was therefore well within the bounds of his authority in his consideration and rejection of the medical evidence from Dr. Smith.

- D. The ALJ’s hypothetical question to the vocational expert did not contain the vocational profile for which the medical-vocational guidelines direct a finding of disabled.

Under Social Security Ruling 83-12, an ALJ may enlist the testimony of a vocational expert when it is determined that a claimant’s residual functional capacity “does not coincide with the exertional criteria of any one of the external ranges, i.e., sedentary, light, and medium, as defined in [20 C.F.R. §] 404.1567 and [20 C.F.R. §] 416.967[.]” *Social Security Ruling 83-12*, 1983 WL 31253, *1-2 (1983). Therefore, if the claimant’s residual functional capacity falls between two medical-vocational guidelines which direct opposite conclusions, “i.e., ‘Not disabled’ at the higher exertional level and ‘Disabled’ at the lower exertional level,” then vocational assistance is advisable since the ALJ can not simply rely on the medical-vocational guidelines to determine disability. *Id.*

Here, the ALJ determined that Murphy had a residual functional capacity between light and sedentary work⁵ and, thus, properly elicited the assistance of a

⁵ “Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.” 20 C.F.R. § 404.1567(a).

“Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category

vocational expert because, under medical-vocational guidelines 20 C.F.R. pt. 404, subpt. P, app. 2, § 201.00, 202.00, a determination of residual capacity to perform light work would direct a finding of “not disabled” and a determination of residual capacity to perform sedentary work would direct a finding of “disabled.” However, while Murphy concedes that in such a situation vocational assistance is needed, Murphy argues that the ALJ’s hypothetical question⁶ to the vocational expert was consistent with the requirements for a residual functional capacity for “sedentary work” and not “sedentary and light work.” (D.I. 14 at 24-25; D.I. 17 at 5-6.) Therefore, Murphy submits that the ALJ was bound by the medical-vocational guidelines which, in this situation, would direct a finding of “disabled” for a residual functional capacity to perform “sedentary work.” I do not agree.

The hypothetical question posed to the vocational expert contained assumptions consistent with both sedentary and light work as defined in 20 C.F.R. § 404.1567(a), (b). A claimant able to “lift up to 10 lbs. occasionally” is characteristic of a person with a residual functional capacity to perform sedentary work. See 20 C.F.R. § 404.1567(a) (“Sedentary work involves lifting no more than 10 pounds at a time[.]”) However, while a claimant able to “sit ... without limitations” is also indicative of a person with a residual functional capacity to perform sedentary work, a claimant able to “[] stand and walk

when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.” 20 C.F.R. § 404.1567(b)

⁶ The ALJ’s hypothetical question to the vocational expert was as follows: “Let’s assume a person of the same age, education, experience as Mrs. Murphy, able to sit, stand and walk without limitations. She can lift up to 10 lbs. occasionally. With those limitations, could she perform her past job?”

without limitations” is a characteristic of a person able to perform light work as defined under 20 C.F.R. § 404.1567(b) (Light work “requires a good deal of walking or standing”). See *Boone v. Barnhart*, No. 02-3256, 2003 WL 22966888, at 5 (3d Cir. Dec. 18, 2003) (citing *Social Security Ruling 83-12*) (“[P]rolonged sitting contemplated in the definition of sedentary work” and “prolonged standing or walking contemplated for most light work.”) Therefore, the hypothetical question posed to the vocational expert was consistent with a residual functional capacity to perform between sedentary and light work. As such, the ALJ was not required to find Murphy “disabled” under the medical-vocational guidelines, and properly elicited the assistance of a vocational expert in determining whether Murphy was disabled.

E. The ALJ’s April 23, 1998 decision is not relevant to this case.

Murphy contends that the discrepancy between the ALJ’s two disability determinations, on April 23, 1998 and February 21, 2001, “defies logic and reason” because “the medical evidence was the same.” (D.I. 14 at 22-23.) However, as previously mentioned, the Appeals Council vacated the ALJ’s April 23, 1998 decision. (D.I. 9 at 434-436.) Therefore, because the April 23, 1998 decision was not a final decision of the Commissioner, the court can not review the ALJ’s decision under 42 U.S.C. § 405(g) (“Any individual, after any final decision of the Commissioner of Social Security ... may obtain a review of such decision[.]”); see 20 C.F.R. §§ 404.955, 404.981, 422.210; see also *Sims*, 530 U.S. at 106-107; *Matthews*, 239 F.3d at 592.

V. CONCLUSION

For the reasons stated, the court grants defendant’s motion (D.I. 15) and denies plaintiff’s motion (D.I. 13). An appropriate order will issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ESTHERENE MURPHY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 01-651-KAJ
)	
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
)	
Defendant.)	

ORDER

For the reasons set forth in the Court's Memorandum Opinion of today's date in this matter,

IT IS ORDERED that Defendant's motion for summary judgment (D.I. 15) is GRANTED, and the Plaintiff's motion for summary judgement (D.I. 13) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

January 22, 2004
Wilmington, Delaware