

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SYLVIA D. WATERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-712-KAJ
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION**

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January 20, 2004  
Wilmington, Delaware

**Jordan, District Judge**

**I. Introduction**

Presently before the Court is plaintiff Sylvia D. Waters (“Plaintiff”) Motion for Summary Judgment (Docket Item [“D.I.”] 7) and defendant Commissioner of Social Security’s (“Commissioner”)<sup>1</sup> Cross-Motion for Summary Judgment. (D.I. 9.) Plaintiff brings this action under Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), and §1383(c)(3) for review of the Commissioner’s decision to deny her disability benefits under Title XVI of the Act, 42 U.S.C. §§ 401-433, 1381-1383f. The Court has jurisdiction to review the Commissioner’s decision under 42 U.S.C. § 405(g). For the reasons that follow, Plaintiff’s Motion for Summary Judgment (D.I. 7) will be denied and the Commissioner’s Cross-Motion for Summary Judgment (D.I. 9) will be granted.

**II. Background**

Plaintiff was born on December 15, 1953, and was forty-six years old at the time of the ALJ’s decision. (D.I. 5 at 19.) She is a former maintenance worker and office cleaner with a 9<sup>th</sup> or 10<sup>th</sup> grade education. (*Id.* at 23.)

**A. Procedural History**

On March 31, 1999, Plaintiff filed an application for disability insurance benefits with the Social Security Administration (“SSA”), alleging disability due to rheumatoid

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<sup>1</sup>Plaintiff originally brought suit against Larry G. Massanari on October 23, 2001. (D.I. 1 at 1.) Jo Anne B. Barnhart became the Commissioner of Social Security, effective November 9, 2001, succeeding Mr. Massanari. Under Fed. R. Civ. P. 25(d)(1) and 42 U.S.C. § 405(g), Ms. Barnhart is automatically substituted as the defendant in this action.

arthritis. (*Id.* at 85, 121.)<sup>2</sup> The SSA denied her application initially and upon reconsideration. (*Id.* at 60-63, 65-69.) On June 6, 2000, Plaintiff, who was represented by an attorney, appeared and testified before an Administrative Law Judge (“ALJ”). (*Id.* at 26-47.) The ALJ found, on August 24, 2000, that Plaintiff’s rheumatoid arthritis and borderline intellectual functioning were severe impairments, but also found that Plaintiff did “not have an impairment or combination of impairments listed in, or medically equal to one listed in [the Social Security Regulations for active rheumatoid arthritis].” (*Id.* at 23.) The ALJ also found that Plaintiff’s “allegations of pain, weakness, and limitation of function are not substantiated to the degree alleged, and are thus not fully credible.” (*Id.*) Moreover, after consultation with a vocational expert, the ALJ found that Plaintiff retained the residual functional capacity to perform her past work as a janitor and housekeeper. (*Id.* at 23-24.) Accordingly, the ALJ held that Plaintiff was not disabled under the Social Security Act and therefore not eligible for supplemental security income. (*Id.*)

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<sup>2</sup>Plaintiff filed two prior Title XVI applications, one on April 17, 1995 and one on December 8, 1995, both of which were denied. (D.I. 5 at 53-59, 82-84.) These final determinations were not appealed, and an unappealed denial of benefits at any level of the administrative process is final and binding on the parties. See 20 C.F.R. §§ 416.1405, 416.1421, 416.1455, and 416.1481. The relevant evidence for purposes of this application is the evidence after April 12, 1996, the date of the Commissioner’s prior decision. See Social Security Acquiescence Ruling 00-1(4), Rescission of Social Security Acquiescence Ruling 94-2(4), 65 FR 1936, 1938 (Jan. 12, 2000) (stating that the “SSA does not consider prior findings made in the final determination or decision on the prior claim as evidence in determining disability with respect to the unadjudicated period involved in the subsequent claim”); (D.I. 5 at 53-59) (stating that the Hahnemann Hospital records received December 27, 1995, the Dr. Rodriguez exam report dated January 4, 1996, and the Dr. Hoch records received March 26, 1996 were used to decide Plaintiff’s claim).

After exhausting her administrative remedies, Plaintiff filed this action and sought summary judgment, and the Commissioner filed a Cross-Motion for summary judgment. (*Id.* at 8-9; D.I.10.)

## **B. Medical History**

On or about May 14, 1998, Dr. Ciriaco Bongalos, Plaintiff's treating physician, examined Plaintiff for arthralgia of the left metacarpal phalanges ("MCP") and left ankle and foot, and for swollen joints. (D.I. 5 at 241.) Dr. Bongalos noted that Plaintiff had slight swelling and tenderness in the left MCP joint, ulnar deviation, left ankle tenderness, and a slightly swollen toe. (*Id.*) He diagnosed acute exacerbation of rheumatoid arthritis, prescribed Prednisone and Motrin and issued "off work" notes for 4-6 weeks. (*Id.*) Plaintiff returned to Dr. Bongalos on September 8, 1998. Upon examination, he noted tender hip joints, limping, bilateral hips, and acute exacerbation of rheumatoid arthritis, and prescribed Prednisone and continued use of Motrin. (*Id.*) At the request of Dr. Bongalos, Plaintiff had laboratory work performed on March 31, 1999. (*Id.* at 223.) Plaintiff's lab studies revealed a mildly elevated sedimentation rate of 52, a borderline antinuclear antibody level of 1:80, and a positive rheumatoid factor. (*Id.*) Plaintiff returned to Dr. Bongalos on April 27, 1999 and June 25, 1999, and he reported that Plaintiff's MCP joint was "large, red, and tender," and that she was positive for rheumatoid arthritic changes of the phalanges and the knees. (*Id.* at 238-239.)

At the request of Disability Determination Services, Robert J. Varipapa, M.D., conducted a neurological examination of Plaintiff on June 9, 1999. (*Id.* at 242-244.) Dr. Varipapa reported that Plaintiff had full range of motion of the spine, shoulders, wrists,

elbows, and hips without exhibition of any discomfort. (*Id.*) He found no evidence of muscle atrophy, and that Plaintiff had full strength, normal tone, normal sensation, and normal reflexes. (*Id.*) In his report, Dr. Varipapa opined that, even though Plaintiff had an elevated rheumatoid factor based on her latest laboratory studies, her examination was within normal limits. (*Id.*) He took particular note of Plaintiff's normal range of motion in her hands and wrists, and the absence of subluxation, joint instability, contractures, or ankylosis. (*Id.*) Dr. Varipapa concluded that there were "no objective findings on physical examination to suggest a significant degree of arthritis." (*Id.*)

On June 17, 1999, a state agency physician completed a residual functional capacity (RFC) assessment relative to Plaintiff's physical limitations. (*Id.* at 245-252.) Plaintiff could lift twenty pounds occasionally and ten pounds frequently, stand and/or walk for six hours of an eight-hour workday, sit for six hours of an eight-hour workday, and push or pull without limitation. (*Id.* at 246.) She could perform occasional postural maneuvers and was required to avoid exposure to cold, wetness, and vibration. (*Id.* at 247, 249.) The doctor stated that Plaintiff's rheumatoid arthritis seemed to be in remission and found no sign of joint damage. (*Id.* at 252.)

Plaintiff reported to the Rehabilitation Center at Kent General Hospital on July 12, 1999, complaining of constant pain in her hands, leg pain and cramping, intermittent swelling in her hands, inability to hang up clothes, lift anything heavy, do any fine motor activities. (*Id.* at 234.) Upon physical examination, the physical therapist noted that Plaintiff had limited flexibility in her right hand by 50%, and limited motion of fingers of

the left hand by 50%. (*Id.*) Plaintiff then underwent aquatic therapy until July 21, 1999. (*Id.* at 235.)

On September 2, 1999, a second state agency physician completed an RFC assessment relative to Plaintiff's physical limitations. (*Id.* at 253-260.) This assessment was identical to the RFC assessment completed on June 17, 1999, and the doctor agreed that Plaintiff's arthritis was in continued remission. (*Id.* at 260.)

Plaintiff had a consultative examination with Ganesh Balu, M.D., of the Delaware Disability Determination Service, on January 31, 2000. (*Id.* at 261.) Dr. Balu noted that Plaintiff's strength ranged from 4+/5 to 5/5, and the ankle, hip, and wrist joints were normal. (*Id.* at 263.) Dr. Balu also reported that Plaintiff's hands showed bilateral weakness in grip, ulnar drifting at the MCP joints, and swelling of the proximal and distal interphalangeal joints with some restriction of range of motion. (*Id.*) In addition, Dr. Balu reported that Plaintiff's knees showed slight joint line tenderness, and that her feet revealed swelling of the interphalangeal joints with hallux valgus deformities and clawing of the toes. (*Id.*) Dr. Balu's impression was that Plaintiff was suffering from rheumatoid arthritis leading to slow onset of deformities. (*Id.* at 264.)

Dr. Balu also completed a medical assessment of Plaintiff's ability to do work related activities. In this form, Dr. Balu indicated that Plaintiff's ability to lift or carry was affected by her impairments, that she would be able to lift or carry five to ten pounds occasionally, and that her ability to reach, handle, feel and push or pull was affected by her arthritis. (*Id.* at 273.) He further noted that Plaintiff had no impairment in standing, walking, or sitting. (*Id.* at 272.)

### **III. Standard of Review**

This Court reviews a decision of the Commissioner to determine whether the decision is supported by substantial evidence in the record. 42 U.S.C. § 405(g); 5 U.S.C. § 706(2)(E); *see also Richardson v. Perales*, 402 U.S. 389, 390 (1971); *Monsour Med. Ctr. v. Heckler*, 806 F.2d 1185, 1190 (3d Cir. 1986). The Court is limited in its review to determining whether the Commissioner's decision is supported in the record by substantial evidence and whether the correct legal principles have been applied. 42 U.S.C. §§ 405(g), 1383(c); *Monsour Medical Ctr. v. Heckler*, 806 F.2d 1185, 1190 (3d Cir. 1990). The Supreme Court has defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Perales*, 402 U.S. at 427. It is less than a preponderance of evidence and more than a mere scintilla. *Id.*

The standard of review in this Court when deciding an appeal from the Commissioner is not *de novo*. *See Limerick Ecology Action v. United States Nuclear Regulatory Commission*, 869 F.2d 719, 753 (3d Cir. 1989). The Court is obliged, therefore, to affirm the decision of the Commissioner if the weight of the evidence substantially supports the decision, regardless of whether the Court may have decided the case differently if it were before it on first impression. *Richardson*, 402 U.S. at 401; *Monsour*, 806 F.2d at 1191.

### **IV. Discussion**

Plaintiff argues that the ALJ's finding that Plaintiff was not disabled, and therefore not entitled to Social Security Disability Insurance ("SSDI") benefits, should be set aside

because: (1) she met the listing for Active Rheumatoid Arthritis and is therefore disabled; (2) the ALJ failed to discuss whether Plaintiff's impairments met or equaled a listing; and (3) the ALJ failed to give controlling weight to the Plaintiff's treating physicians. (D.I. 8 at 13.) I will discuss each of these arguments in turn.

**A. The § 1.02 part A listing for active rheumatoid arthritis**

Plaintiff contends that she met the requirements of Listing 1.02 of the Social Security Regulations for active rheumatoid arthritis and other inflammatory arthritis, and is therefore disabled. (D.I. 8 at 13.) See *Flanery v. Chater*, 112 F.3d 346 (8<sup>th</sup> Cir. 1997) ("If a claimant suffers from an impairment that is listed in the Listings or is equal to a listing, the claimant will be determined disabled without considering his or her age, education, or work experience"). Listing 1.02 provides that the claimant must show:

- A. History of persistent joint pain, swelling, and tenderness involving multiple major joints (see 1.00D) and with signs of joint inflammation (swelling and tenderness) on current physical examination despite prescribed therapy for at least 3 months, resulting in significant restriction of function of the affected joints, and clinical activity expected to last at least 12 months; and
- B. Corroboration of diagnosis at some point in time by either:
  - 1. Positive serologic test for rheumatoid factor; or
  - 2. Antinuclear antibodies; or
  - 3. Elevated sedimentation rate; or
  - 4. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule (obtained independent of Social Security disability evaluation).

20 C.F.R. pt. 220, app.1, § 1.02.

The Commissioner argues that "[e]ven assuming that Plaintiff met the requirements of Part B of Listing 1.02, there is no evidence that Plaintiff met Part A."



(D.I. 10 at 11.) In support of this argument, the Commissioner points out that Part A of the Listing requires a “history of persistent joint pain, swelling, and tenderness,” but claims that “Plaintiff [has only] made sporadic complaints of joint swelling and pain to her treating physicians, [and] these complaints were not consistent and were not supported by objective medical evidence.” (*Id.* at 12.) As discussed in the medical history, *supra*, Dr. Bongalos noted on May 14, 1998 that Plaintiff had slight swelling and tenderness in the left MCP joint, ulnar deviation, left ankle tenderness, and a slightly swollen toe. (D.I. 5 at 241.) On April 27, 1999, Dr. Bongalos reported that Plaintiff’s MCP’s were “large, red and tender,” and on June 25, 1999, Dr. Bongalos reported that Plaintiff tested positive for rheumatoid arthritic changes of the phalanges and knees. (*Id.* at 238-239.) However, Dr. Varipapa, in his June 9, 1999 examination, did not find any evidence of pain, swelling, or tenderness. (*Id.* at 242-244.) In fact, he concluded that the objective evidence did not suggest a significant degree of arthritis, a conclusion supported by the RFC assessments made by the state agency physicians on June 17 and September 2, 1999. (*Id.*)

As discussed in the medical history, *supra*, Dr. Balu found pain and swelling in Plaintiff’s major joints. (*Id.* at 263-264). Dr. Balu also stated that Plaintiff’s ability to lift or carry was affected by her impairments, that she would be able to lift or carry five to ten pounds occasionally, and that her ability to reach, handle, feel and push or pull was affected by the arthritis in her hands. (*Id.* at 272.) Concerning these findings, the ALJ stated:

Dr. Balu, a consulting physiatrist, observed normal motor power, reflexes, and sensation except for distal power of

4+/5. Her gait was also normal. There was full range of motion of all joints except for slight limitation of motion of the wrists and a swelling of the PIP and DIP joints. There was minimal lumbosacral spasm, and grip strength was reduced to 50 percent of normal on the right and 40 percent of normal on the left. She had slight knee tenderness and swelling of the IP joint of the feet. ...

I am aware of the opinion of Dr. Balu that claimant could only lift and carry 5 to 10 pounds and has limitations upon reaching, handling, feeling, pushing, and pulling ... . I do not find that these limitations are supported by the objective medical record as a whole ... . Thus, although her diagnosis of rheumatoid arthritis is confirmed, the doctors generally find few functional limitations to result from the condition.

(*Id.* at 21-22.) Furthermore, citing the findings of Dr. Bongalos, Dr. Varipapa, and the state agencies, the Commissioner asserts that “the medical evidence for the time period being adjudicated in this case shows nothing more than general remission of Plaintiff’s arthritis with infrequent and mild exacerbations,” and that “there is little evidence ... of the presence of joint inflammation resulting in significant restrictions of functioning.” (*Id.* at 13.)

As discussed, the standard of review for this Court is whether there is substantial evidence in the record that supports the ALJ’s findings that Plaintiff did not meet the requirements of Listing 1.02 part A. As set forth in the ALJ’s well reasoned interpretation of Dr. Balu’s findings and the findings of the other medical professionals, there is such evidence. Accordingly, the ALJ’s finding on this point is affirmed.

**B. The ALJ’s failure to discuss whether Plaintiff’s impairments met Listing 1.02 part A**

Plaintiff next argues that the ALJ failed to discuss whether the evidence meets Listing 1.02 for active rheumatoid arthritis, and states that this failure warrants a

reversal. (D.I. 8 at 20-22) (citing *Clifton v. Charter*, 79 F.3d 1007, 1009 (10<sup>th</sup> Cir. 1996)). While it is true that the ALJ did not refer specifically to Listing 1.02 in his decision to deny benefits to Plaintiff, or specifically list the criteria that must be met, the ALJ, discussed all of the elements of the Listing in his decision. (*Id.* at 21.) The ALJ specifically discussed the “pain, swelling, and tenderness” of Plaintiff’s joints, as well as Plaintiff’s “functional restrictions” in the findings of Dr. Bongalos (D.I. 5 at 21), the physical therapist at Kent County Hospital (*Id.* at 20), the state agency physicians (*Id.* at 22), and Dr. Balu (*Id.* at 20-22.) The ALJ did not discuss the evidence presented in Plaintiff’s two previous disability applications because “prior findings made in the final determination or decision on ... prior claim[s]” are not considered. Social Security Acquiescence Ruling 00-1(4), Rescission of Social Security Acquiescence Ruling 94-2(4), 65 FR 1936, 1938 (Jan. 12, 2000). Therefore, the ALJ’s decision does not warrant a reversal on those grounds.

**C. The weight given to the opinions of Plaintiff’s treating physicians**

Finally, Plaintiff argues that the opinions of Dr. Hoch, Dr. Rodriguez, and Dr. Balu contradict the ALJ’s conclusion that Plaintiff could return to her past relevant work, and that those opinions should have been given controlling weight. (D.I. 5 at 23-25.) However, as discussed, the opinions of Dr. Hoch and Dr. Rodriguez were considered in prior applications where final decisions were entered, and are therefore not relevant to this application. Thus the relevant medical opinions for consideration by the ALJ in this case are those of Dr. Bongalos, Plaintiff’s treating physician, Dr. Varipapa, Dr. Balu, the physical therapist, and the two state agency reviewing physicians.

Generally, the Commissioner will give enhanced weight to the findings and opinions of treating physicians. See 20 C.F.R. § 416.927(d)(2). However, the Commissioner is not bound by a treating opinion on the issue of the nature and severity of the claimants impairment. See *id.* To be entitled to controlling or great weight, a treating physician's opinion must be "well supported by medically acceptable clinical and laboratory diagnostic techniques," and must not be "inconsistent with the other substantial evidence" in the record. See *id.* at (d)(2) and (3). When there is contradictory evidence, an ALJ may reject the opinion of the treating physician outright, or may afford the opinion more or less weight depending on the extent to which it is supported. See *Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999).

The ALJ had the opinion of Dr. Bongalos, who determined that Plaintiff's symptoms represented only mild exacerbation of her arthritis and did not find any functional limitations related to Plaintiff's arthritis, and offered no opinion as to her ability to perform work related activities. (D.I. 5 at 238-239.) From this, the ALJ properly inferred that Plaintiff could perform work activity because the ALJ is entitled to rely on what the record says and doesn't say. See *Dumas v. Schweiker*, 712 F.2d 1545, 1553 (2d Cir. 1983). Similarly, Dr. Varipapa opined that there were "no objective findings on physical examination to suggest a significant degree of arthritis." (D.I. 5 at 244.) The two state agency officials who reviewed the evidence limited Plaintiff to "light work." (*Id.* at 245-252, 253-260.) Thus, the ALJ could properly reject Dr. Balu's opinion that Plaintiff's arthritis was a significant functional restriction because his opinion contradicted the other substantial evidence in the record. See also *Jones v. Sullivan*,

954 F.2d 125, 128 (3d Cir. 1991) (holding that an ALJ may reject other physician's opinions based on the opinions of state agency officials).

**V. Conclusion**

For the reasons stated, the Court will grant the Commissioner's Cross-Motion for Summary Judgment (D.I. 9) and deny Plaintiff's Motion for Summary Judgment (D.I. 7.)

An appropriate order will follow.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SYLVIA D. WATERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-712-KAJ
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**ORDER**

For the reasons set forth in the Memorandum Opinion issued on this date,

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment (D.I. 7) is DENIED, and the Commissioner's Cross-Motion for Summary Judgment (D.I. 9) is GRANTED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

January 20, 2003  
Wilmington, Delaware