

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHIRLEY SUTTON-SAFER, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-1297-JJF
 :
 JO ANNE B. BARNHART, :
 Commissioner of Social :
 Security, :
 :
 Defendant. :
 :
 :

Gary C. Linarducci, Esquire of GARY C. LINARDUCCI, New Castle, Delaware.
Attorney for Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, and Douglas McCann, Esquire, Assistant United States Attorney, of the OFFICE OF THE UNITED STATES ATTORNEY, Wilmington, Delaware.
Of Counsel: James A. Winn, Esquire, Regional Chief Counsel, and Taryn F. Goldstein, Esquire, Assistant Regional Counsel of the SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pennsylvania.
Attorneys for Defendant.

MEMORANDUM OPINION

September 30, 2003

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g), filed by Plaintiff, Shirley Sutton-Safer, seeking review of the final administrative decision of the Commissioner of the Social Security Administration denying her application for disability insurance benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Plaintiff has filed a Motion For Summary Judgment (D.I. 15) requesting the Court to enter judgment in her favor or in the alternative to remand the case to the Administrative Law Judge. In response to Plaintiff's Motion, Defendant has filed a Cross-Motion For Summary Judgment (D.I. 12) requesting the Court to affirm the Commissioner's decision. For the reasons set forth below, Defendant's Motion For Summary Judgment will be granted and Plaintiff's Motion For Summary Judgment will be denied. The decision of the Commissioner dated March 5, 2001 will be affirmed.

BACKGROUND

I. Procedural Background

Plaintiff filed an application for DIB on December 19, 1999, alleging a disability onset date of September 18, 1999, due to shoulder surgery, knee surgery and pain. (Tr. 99-101, 112). The application was denied initially and upon reconsideration. Thereafter, Plaintiff requested a hearing before an

administrative law judge (the "A.L.J."). On January 4, 2001, the A.L.J. issued a decision denying Plaintiff's application for DIB. (Tr. 13-23). Following the unfavorable decision, Plaintiff filed a timely Request For Review Of Hearing Decision. (Tr. 11-12). On May 25, 2001, the Appeals Council denied Plaintiff's request for review (Tr. 3-4), and the A.L.J.'s decision became the final decision of the Commissioner. Sims v. Apfel, 530 U.S. 103, 107 (2000).

After completing the process of administrative review, Plaintiff filed the instant civil action pursuant to 42 U.S.C. § 405(g), seeking review of the A.L.J.'s decision denying her claim for DIB. In response to the Complaint, Defendant filed an Answer (D.I. 4) and the Transcript (D.I. 5) of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment and Opening Brief in support of the Motion. In response, Defendant filed a Cross-Motion For Summary Judgment and a combined opening brief in support of her Cross-Motion and opposition to Plaintiff's Motion requesting the Court to affirm the A.L.J.'s decision. Plaintiff then filed a Response In Opposition To Defendant's Cross-Motion For Summary Judgment. Accordingly, this matter is fully briefed and ripe for the Court's review.

II. Factual Background

A. Plaintiff's Medical History, Condition and Treatment

At the time of the A.L.J.'s decision on Plaintiff's application, Plaintiff was thirty-nine years old. Plaintiff has a high school education and one year of college, and she has past relevant work as a collections person, accounting clerk and credit security person. (Tr. 113, 118).

In April 1997, Plaintiff was involved in a motor vehicle accident. (Tr. 166). Plaintiff was driving the vehicle with her seat belt on, and she was hit on the passenger side of her car. As a result of the accident, Plaintiff complained of shoulder, knee and hip pain. (Tr. 166).

In May 1998, an orthopedist, Leo Rasis, M.D., performed an arthroscopic acromioplasty and a distal clavicle excision on Plaintiff's left shoulder (Tr. 192-193). By August, Plaintiff showed good resection of the distal clavicle and good recontouring of the acromion. (Tr. 177).

In September 1999, Plaintiff reported severe left shoulder pain and right knee pain. Dr. Rasis recommended that Plaintiff take off from work for three weeks. (Tr. 170). In November 1999, Plaintiff reported that she had felt much better after being out of work for three weeks. (Tr. 168). Dr. Rasis recommended conservative treatment and released Plaintiff to "light duty work status with restrictions." (Tr. 168).

In January 2000, Dr. Rasis recommended that Plaintiff

receive a second opinion from Dr. Newcomb regarding her left shoulder pain. In February 2000, Plaintiff reported to William A. Newcomb, M.D. for a second opinion. Dr. Newcomb opined that Plaintiff had fibromyalgia and recommended physical therapy. (Tr. 167).

In February 2000, Dr. Rasis opined that Plaintiff was a candidate for left shoulder open distal clavicle excision and right knee arthroscopy. Plaintiff indicated that she wished to proceed as soon as operative time was available. (Tr. 165).

In March 2000, Plaintiff treated with Sandra J. Jones, LSW, a social worker, for depression. (Tr. 202). On examination, Plaintiff's speech was normal, but her mood and affect were depressed. Plaintiff had suicidal thoughts, but no current plan for suicide. Her memory was impaired and she had above average intellectual ability with no symptomatic interpersonal qualities. (Tr. 204). Plaintiff was rated with a global assessment of functioning (GAF) score of 45 in the current year and 50 in the past year. (Tr. 205).

In June 2000, Plaintiff reported for a follow up examination after her surgeries. (Tr. 164). Dr. Rasis recommended a continued exercise and stretching program, and gave Plaintiff a Theraband to work aggressively on stretching the right quadriceps. Dr. Rasis offered Plaintiff a referral for physical therapy, but she deferred. (Tr. 164).

In July 2000, Plaintiff reported some pain in her left shoulder, but that her right knee was feeling better. An examination of Plaintiff revealed a forward flexion of the left shoulder to 140 degrees and that Plaintiff had limited ability to reach behind her head and behind her waist. However, a neurological examination of Plaintiff's upper left extremity was normal, and an examination of Plaintiff's right knee revealed full extension and full flexion. (Tr. 239).

In August 2000, Plaintiff's primary care physician, Margaret A. Conte, M.D. wrote a letter to Plaintiff's attorney. (Tr. 225). Dr. Conte noted that Plaintiff's medical problems include irritable bowel syndrome, fibromyalgia and depression. Dr. Conte noted that she diagnosed Plaintiff with fibromyalgia and depression in June 2000 and that she was totally disabled from work at that time. (Tr. 225). However, in May 2000, Dr. Conte issued a note that Plaintiff would be out of work for five days, from May 1, 2000 to May 5, 2000, due to back pain and muscle spasm, but issued a return to work certificate for May 8, 2000 indicating that Plaintiff could return to work with no restrictions. (Tr. 253). Plaintiff also treated with Dr. Conte for "large external hemorrhoids," (Tr. 274), irritable bowel syndrome causing persistent diarrhea (Tr. 265), and chronic sinus infection. (Tr. 260).

In October 2000, Plaintiff returned to Dr. Rasis for

clicking and popping in the left shoulder and concern about bone regrowth. (Tr. 236). X-rays of Plaintiff revealed no evidence of heterotopic ossification or bone regrowth at the distal clavicle and good recontouring. Plaintiff indicated that she had pain with forward flexion past 150 degree, abduction past 135, and reaching behind her head and waist. (Tr. 236). A neurological examination of Plaintiff was normal. (Tr. 236).

B. Assessments of Plaintiff's Condition

In February 2000, a residual functional capacity assessment was completed for Plaintiff. The RFC indicated that Plaintiff could lift twenty pounds frequently and ten pounds occasionally. The RFC further indicated that Plaintiff could stand and/or walk for six hours in an eight hour work day and sit for six hours in an eight hour work day. Plaintiff's pushing and pulling ability was unlimited and she had occasional postural limitations.

In May 2000, a second RFC assessment was completed for Plaintiff. This RFC indicated that Plaintiff could lift twenty pounds frequently and ten pounds occasionally; could stand and/or walk for at least two hours in an eight hour day and sit for six hours in an eight hour day. Plaintiff was also limited in pushing and pulling with her lower extremities and had occasional postural limitations. Specifically, Plaintiff could not climb ladders, ropes and scaffolds and was limited in reaching. Plaintiff also needed to avoid concentrated exposure to extreme

cold and hazards. (Tr. 208-212).

In June 2000, a psychiatric review technique form ("PRTF") was completed for Plaintiff. The PRTF indicated that Plaintiff did not suffer from a severe psychiatric impairment.

C. The A.L.J.'s Decision

At the hearing, Plaintiff was not represented by counsel, although she was advised of her right to counsel. Plaintiff testified that she worked four to twelve hours a week earning \$7.00 an hour as a member services representative at the YMCA. (Tr. 37). Plaintiff testified that she lived in a two-story house and that her bedroom was upstairs. (Tr. 40). Plaintiff testified that she could care for her personal needs, pay her bills, shop and drive. (Tr. 43-44). Plaintiff also testified that she was in pain that rated a 25 on a scale of 1 to 10. (Tr. 54). In A Daily Activities Questionnaire completed by Plaintiff in connection with her disability application, Plaintiff indicated that she was able to take care of her grooming and hygiene, clean her four bedroom house, feed her pets, cook two to three meals a day, five days a week, vacuum, dust, sweep, do laundry, do light lawn care, light repairs, take care of her children and help them with their homework. (Tr. 129-134).

The A.L.J. also heard testimony from Ms. Jones, the social worker that Plaintiff was seeing for depression. Ms. Jones reported a diagnosis of dysthymia, which is indicative of

symptoms of major depression for at least two years. (Tr. 58). Ms. Jones stated that Plaintiff's physical problems were the primary reason she could not work. However, Ms. Jones indicated that it was hard to separate her physical and emotional impairments, because the "stressors in her life contribute to the physical symptoms she has." (Tr. 61). According to Ms. Jones, Plaintiff's depression was "total disabling" and was related to her pain, as well as a number of family stressors including her husband's conviction as a felon, her daughter's asthma, and her son's cleft palate. (Tr. 60). Ms. Jones testified that Plaintiff had crying spells at work, but that she enjoys working with the public and would try to work more if her pain subsided. Ms. Jones also testified that Plaintiff has never seen a psychiatrist, but that she was on an antidepressant through her primary care physician. (Tr. 61).

The A.L.J. then consulted a vocational expert. (Tr. 68-70). The vocational expert testified that Plaintiff's past work as member sales representative was classified as light exertional and semi-skilled. (Tr. 68-69). Her work as a collections person was sedentary and semi-skilled, her work as a credit security person was sedentary and semi-skilled, and her work as an accounting clerk was sedentary and skilled. (Tr. 69). The A.L.J. then asked the vocational expert to consider an individual with the limitations set forth in the May 2000 RFC. Based on

those limitations, the vocational expert testified that such an individual could perform her past work. (Tr. 70). The A.L.J. then asked the vocational expert if he credited all of Plaintiff's testimony regarding her pain, difficulties concentrating and dealing with others, if she would still be able to sustain employment, and the vocational expert answered that Plaintiff would not be able to work in such circumstances.

In his decision dated March 5, 2001, the A.L.J. concluded that although Plaintiff continued to work, her work was not at the substantial gainful level. The A.L.J. found that Plaintiff had "status post surgery times two of her shoulder, status-post knee surgery, a hip impairment, inclusive of right trochanteric bursitis and fibromyalgia" which were severe impairments, but that they did not meet or equal, alone or in combination, a listed impairment. (Tr. 22). The A.L.J. also concluded that Plaintiff's testimony regarding her limitations was not fully credible based on the medical evidence in the record. The A.L.J. then found that Plaintiff had the residual functional capacity to perform a limited range of light work without overhead reaching with her left upper extremity and avoiding repetitive use of her right lower extremity. The A.L.J. also found that Plaintiff could not climb ladders, ropes or scaffolds, could occasionally climb ramps and stairs, balance, stoop, kneel, crouch or crawl. The A.L.J. also found that Plaintiff had to avoid concentrated

exposure to extreme cold, vibration of the left upper extremity and right lower extremity and any hazards involving moving machinery and heights. The A.L.J. also found that Plaintiff's past relevant work was not precluded by her RFC, and therefore, Plaintiff was not under a disability within the meaning of the Act.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), findings of fact made by the Commissioner of Social Security are conclusive, if they are supported by substantial evidence. Accordingly, judicial review of the Commissioner's decision is limited to determining whether "substantial evidence" supports the decision. Monsour Medical Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). In making this determination, a reviewing court may not undertake a de novo review of the Commissioner's decision and may not re-weigh the evidence of record. Id. In other words, even if the reviewing court would have decided the case differently, the Commissioner's decision must be affirmed if it is supported by substantial evidence. Id. at 1190-91.

The term "substantial evidence" is defined as less than a preponderance of the evidence, but more than a mere scintilla of evidence. As the United States Supreme Court has noted substantial evidence "does not mean a large or significant amount of evidence, but rather such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 555 (1988).

With regard to the Supreme Court's definition of "substantial evidence," the Court of Appeals for the Third Circuit has further instructed, "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores or fails to resolve a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence . . . or if it really constitutes not evidence but mere conclusion." Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983). Thus, the substantial evidence standard embraces a qualitative review of the evidence, and not merely a quantitative approach. Id.; Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981).

DISCUSSION

I. Evaluation Of Disability Claims

Within the meaning of social security law, a "disability" is defined as the inability to do 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). To be found disabled, an individual must have a "severe impairment" which precludes the individual from performing previous work or any

other "substantial gainful activity which exists in the national economy." 20 C.F.R. § 404.1505. In order to qualify for disability insurance benefits, the claimant must establish that he or she was disabled prior to the date he or she was last insured. 20 C.F.R. §§ 404.131, Matullo v. Bowen, 926 F.2d 240, 244 (3d Cir. 1990). The claimant bears the initial burden of proving disability. 42 U.S.C. § 423(d)(5).

In determining whether a person is disabled, the Regulations require the A.L.J. to perform a sequential five-step analysis. 20 C.F.R. § 404.1520. In step one, the A.L.J. must determine whether the claimant is currently engaged in substantial gainful activity. In step two, the A.L.J. must determine whether the claimant is suffering from a severe impairment. If the claimant fails to show that his or her impairment is severe, he or she is ineligible for benefits. Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999).

If the claimant's impairment is severe, the A.L.J. proceeds to step three. In step three, the A.L.J. must compare the medical evidence of the claimant's impairment with a list of impairments presumed severe enough to preclude any substantial gainful work. Id. at 428. If the claimant's impairment meets or equals a listed impairment, the claimant is considered disabled. If the claimant's impairment does not meet or equal a listed impairment, the A.L.J.'s analysis proceeds to steps four and

five. Id.

In step four, the A.L.J. is required to consider whether the claimant retains the residual functional capacity to perform his or her past relevant work. Id. The claimant bears the burden of establishing that he or she cannot return to his or her past relevant work. Id.

In step five, the A.L.J. must consider whether the claimant is capable of performing any other available work in the national economy. At this stage the burden of production shifts to the Commissioner, who must show that the claimant is capable of performing other work if the claimant's disability claim is to be denied. Id. Specifically, the A.L.J. must find that there are other jobs existing in significant numbers in the national economy, which the claimant can perform consistent with the claimant's medical impairments, age, education, past work experience and residual functional capacity. Id. In making this determination, the A.L.J. must analyze the cumulative effect of all of the claimant's impairments. At this step, the A.L.J. often seeks the assistance of a vocational expert. Id. at 428.

II. Whether The A.L.J.'s Decision Is Supported By Substantial Evidence

By her Motion, Plaintiff contends that the A.L.J.'s decision is not supported by substantial evidence. Specifically, Plaintiff contends that the A.L.J. (1) improperly rejected the opinion of Plaintiff's treating mental therapist, Ms. Jones; (2)

improperly rejected the opinion of Plaintiff's treating physician, Dr. Conte; (3) failed to analyze her impairments in combination, and (4) erred in concluding that she could perform her past relevant work. The Court will analyze each of Plaintiff's arguments in turn.

Plaintiff contends that the A.L.J. failed to properly evaluate the opinions of her mental therapist, Ms. Jones. Plaintiff contends that although Ms. Jones was not a psychiatrist, she was a licensed social worker who is qualified to diagnose Plaintiff, and the A.L.J. improperly substituted his opinions for those of Ms. Jones.

After reviewing the decision of the A.L.J. in light of the record evidence and applicable law, the Court concludes that the A.L.J. did not err in rejecting the opinion of Ms. Jones and the A.L.J.'s determination in this regard was supported by substantial evidence. As a social worker, Ms. Jones is not considered an acceptable medical source under the regulations, and the A.L.J. was not required to accept her opinion, particularly where, as here, it was fully not supported by the record and the A.L.J. explained his reasons for discounting the evidence. 20 C.F.R. § 404.1513; see e.g. Alexander v. Shalala, 927 F. Supp. 2d 785, 794 (D.N.J. 1995) (recognizing that A.L.J. has discretion to determine appropriate weight to be given to opinion of a chiropractor, who is not an acceptable medical

source under regulations). As the A.L.J. noted Ms. Jones testified that Plaintiff's physical problems had more of an affect on her ability to work than her psychological problems, and that Plaintiff continued to work part-time despite her emotional difficulties which sometimes manifested themselves at work. Ms. Jones also testified that overall, Plaintiff was able to work well with others and that she had few conflicts with others. The evidence and testimony also demonstrated that Plaintiff was able to function in her home and take care of her household. Further, as the A.L.J. noted, neither Ms. Jones nor Dr. Conte ever recommended that Plaintiff see a psychiatrist, which further supports the A.L.J.'s conclusion that Plaintiff's depression was not so severe as to preclude her from working.

As for the A.L.J.'s treatment of Plaintiff's treating physician's opinion, the Court likewise concludes that the A.L.J.'s decision was supported by substantial evidence. The opinion of a treating physician is entitled to controlling weight when it is supported by medically acceptable clinical and laboratory diagnostic techniques and is consistent with the other evidence in the record. Russum v. Massanari, 2002 WL 775240, *5 (D. Del. April 12, 2002). However, the A.L.J. may reject such an opinion, if he or she adequately explains the reasons for doing so on the record. Id. In this case, the A.L.J. afforded the opinion of Dr. Conte limited weight, because it was inconsistent

with the evidence of record. As the A.L.J. noted, Dr. Conte opined that Plaintiff was totally disabled, yet the record evidence, including Plaintiff's testimony and response to the Daily Activities Questionnaire indicate that she had the ability to maintain a household, do all the household chores, care for her children and work a part-time job. Although Dr. Conte diagnosed Plaintiff with a disabling condition in June 2000, the record indicates that Dr. Conte gave Plaintiff a note for five days off from work in May 2000, and certified that Plaintiff could return to work with no restrictions as of May 8, 2000. As such, Dr. Conte's treatment notes are not consistent with her opinion that Plaintiff was totally disabled. Further, as the A.L.J. noted, Dr. Conte is a family practitioner and not an orthopedist or neurologist, and Dr. Conte's opinion was not consistent with the opinions of the specialist who saw Plaintiff. 20 C.F.R. § 404.1527(d)(5) (stating that opinions of specialists will be given more weight). Dr. Rasis treated Plaintiff for her shoulder and knee conditions for a substantial period of time. Although Dr. Rasis told Plaintiff to take three weeks off from work, he later released Plaintiff to light duty work with some restrictions. The opinions of Dr. Rasis are consistent with the assessments provided by the state agency physicians. See Rivera v. Barnhart, 239 F. Supp. 2d 413, 420 (D. Del. 2002) (recognizing that A.L.J. could rely on state agency physician opinions where

they were consistent with other evidence in the record, including assessments of specialist who treated plaintiff); Alexander, 927 F. Supp. 785, 795 (D.N.J. 1995) (recognizing that opinions of non-examining physicians can override the opinion of a treating source if those opinions are supported by evidence in the record). Further, treatment notes from Dr. Rasis also show that Plaintiff's condition improved after her surgery. As such, the notes of Dr. Rasis do not support the assertion of Plaintiff's primary care physician that Plaintiff was disabled within the meaning of the regulations. Accordingly, the Court cannot conclude that the A.L.J. erred in giving limited weight to Dr. Conte's opinion.

Plaintiff next contends that the A.L.J. failed to consider her impairments in combination and that he erroneously evaluated her impairments in isolation. Plaintiff also contends that the A.L.J. failed to take into account Plaintiff's diagnoses of disabling depression and fibromyalgia.

The diagnoses of disabling depression and fibromyalgia were made by Plaintiff's primary care physician Dr. Conte. As the Court previously concluded, the A.L.J. did not err in his treatment of Dr. Conte's opinion, and therefore, the A.L.J. was not required to accept Dr. Conte's diagnoses for purposes of his analysis of Plaintiff's impairments. While the A.L.J. discussed each of Plaintiff's alleged impairments separately, it is

evident, taking the decision as a whole, that the A.L.J. considered the combination of Plaintiff's impairments in rendering his decision. (Tr. 20). Contrary to Plaintiff's assertion, the A.L.J. found that Plaintiff's fibromyalgia was a "severe" impairment under the regulations. As for Plaintiff's depression, the A.L.J. did not find Plaintiff's depression to be severe or to have a substantial impact on her ability to function in the workplace. Given the evidence of record, the Court cannot conclude that the A.L.J. erred in his assessment. The A.L.J.'s determination that Plaintiff's depression was not severe was consistent with the medical evidence in the record, including the PRTF assessment which indicated that Plaintiff's mental impairment was less than severe and that her limits were due more to pain than a mental disorder¹ (Tr. 217), the statement of Ms. Jones that Plaintiff's physical impairments were the primary factors affecting her ability to work, and the record evidence that Plaintiff could still run her household and function in the workplace with the public. Accordingly, the Court cannot conclude that the A.L.J. erred in his analysis of Plaintiff's impairments.

Plaintiff also contends that the A.L.J. erred in concluding that she could return to her past relevant work. Specifically,

¹ In this regard, the PRTF is consistent with the opinion of Ms. Jones that Plaintiff's physical symptoms are the primary factors affecting her ability to function in the workplace.

Plaintiff contends that the A.L.J. erred by including Plaintiff's part-time work at the YMCA in his question to the vocational expert about Plaintiff's ability to return to her past relevant work, because Plaintiff was not performing this work at the substantial gainful level. The Court has reviewed the hearing transcript as it applies to this issue, as well as the decision of the A.L.J., and concludes that the A.L.J. did not err in his analysis of Plaintiff's ability to return to her past relevant work. It is evident from the A.L.J.'s decision that he did not consider her work at the YMCA to be substantial gainful employment. Rather, the A.L.J. viewed Plaintiff's part-time job as evidence that she could function in the workplace. With regard to his questioning of the vocational expert, the A.L.J. did not limit his question to Plaintiff's work at the YMCA. Rather, the A.L.J. also asked the vocational expert to classify Plaintiff's past work as a collections person, accounting person and credit security person. Plaintiff's jobs of credit security person and collections person were both classified as semi-skilled, sedentary jobs. The A.L.J. concluded that Plaintiff retained the residual functional capacity to perform a limited range of light work. The A.L.J.'s determination in this regard was supported by the record evidence, including the opinions of Dr. Rasis and the treatment notes of Dr. Conte which released Plaintiff to work without restriction, the assessments of the

state agency physicians, and the testimony and evidence related to Plaintiff's daily activities. Because Plaintiff's past relevant work was at the sedentary level and Plaintiff retained the residual functional capacity to perform limited light work, Plaintiff's past relevant work was not precluded by her RFC. Thus, the Court cannot conclude that the A.L.J. erred in concluding that Plaintiff did not meet her burden of proving, at step four, that she could not return to her past relevant work.

While the Court may have evaluated the evidence in this case differently, the Court is not free to reweigh the evidence. Rather, the Court must only determine if the A.L.J.'s decision was supported by substantial evidence. In this case, the medical evidence provided by Plaintiff's treating physician, Dr. Rasis, Plaintiff's responses to her Daily Activities Questionnaire, and the assessments of the state agency physicians are consistent with the A.L.J.'s conclusion that Plaintiff performed the ability to perform a limited range of light work. Because Plaintiff's past relevant work was at the sedentary level, it falls within the range of work that Plaintiff was capable of performing despite her impairments. Accordingly, the Court concludes that substantial evidence supports the A.L.J.'s decision, and therefore, the Court will affirm the decision of the Commissioner denying Plaintiff's application for DIB.

CONCLUSION

For the reasons discussed, the Court will grant Defendant's Motion For Summary Judgment and deny Plaintiff's Motion For Summary Judgment. The decision of the Commissioner dated March 5, 2001 will be affirmed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SHIRLEY SUTTON-SAFER, :
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 Plaintiff, :
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 v. : Civil Action No. 02-1297-JJF
 :
 JO ANNE B. BARNHART, :
 Commissioner of Social :
 Security, :
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 Defendant. :
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O R D E R

At Wilmington, this 30th day of September 2003, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant's Cross-Motion For Summary Judgment (D.I. 12) is GRANTED.
2. Plaintiff's Motion For Summary Judgment (D.I. 15) is DENIED.
3. The final decision of the Commissioner dated March 5, 2001 is AFFIRMED.
4. The Clerk is directed to enter judgment against Plaintiff and in favor of Defendant.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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JUDGMENT IN A CIVIL CASE

For the reasons set forth in the Court's Memorandum Opinion and Order dated September 30, 2003;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of Defendant Jo Anne B. Barnhart and against Plaintiff Shirley Sutton-Safer.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: September 30, 2003

ANITA BOLTON
(By) Deputy Clerk