

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|------------------------|---|-----------------------------|
| ROBERTA L. DURHAM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 03-140-JJF |
| | : | |
| JO ANNE B. BARNHART, | : | |
| Commissioner of Social | : | |
| Security, | : | |
| | : | |
| Defendant. | : | |

John S. Grady, Esquire of GRADY & HAMPTON, P.A., Dover, Delaware.
Attorney for Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, and Leonard P.
Stark, Esquire, Assistant United States Attorney, of the OFFICE
OF THE UNITED STATES ATTORNEY, Wilmington, Delaware.
Of Counsel: James A. Winn, Esquire, Regional Chief Counsel,
Region III, and David F. Chermol, Esquire, Assistant Regional
Counsel of the SOCIAL SECURITY ADMINISTRATION, Philadelphia,
Pennsylvania.
Attorneys for Defendant.

O P I N I O N

March 26, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g) and § 1383(c), filed by Plaintiff, Roberta L. Durham, seeking review of the final decision of the Commissioner of the Social Security Administration denying Plaintiff's application for disability insurance benefits ("DIB") under Title II of the Social Security Act (the "Act"), 42 U.S.C. §§ 401-433, and supplemental security income ("SSI") under Title XVI of the Act, 42 U.S.C. § 1381-1383f. Plaintiff has filed a Motion For Summary Judgment (D.I. 14) requesting the Court to enter judgment in Plaintiff's favor, or in the alternative, to remand this matter to the A.L.J. In response to Plaintiff's Motion, Defendant has filed a Cross-Motion For Summary Judgment (D.I. 18) 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 July 30, 2002, will be affirmed.

BACKGROUND

I. Procedural Background

Plaintiff protectively filed an application for DIB and SSI on June 27, 2001 alleging disability since June 22, 2001 due to carpal tunnel syndrome, asthma, arthritis, sinusitis and headaches. (Tr. 68, 81, 130). Plaintiff's application was

denied initially and upon reconsideration. (Tr. 30-33, 38-42, 133-136, 140-144). Plaintiff filed a timely request for a hearing, and the A.L.J. held a hearing on June 26, 2002. (Tr. 33-80). Plaintiff was represented by counsel at the hearing, and a vocational expert testified. Following the hearing, the A.L.J. issued a decision on July 30, 2002, denying Plaintiff's claim. (Tr. 13-22). Plaintiff filed an appeal, and the Appeal's Council denied review. (Tr. 5-6, 8, 344-346). Accordingly, 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) and 1383(c), seeking review of the A.L.J.'s decision denying her claim for DIB and SSI. In response to the Complaint, Defendant filed an Answer (D.I. 8) and the Transcript (D.I. 9) of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment and Opening Brief (D.I. 15) in support of the Motion. In response, Defendant filed a Cross-Motion For Summary Judgment and a combined Opening and Answering Brief (D.I. 19) requesting the Court to affirm the A.L.J.'s decision. Thereafter, Plaintiff filed a Reply Brief (D.I. 21) 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 the A.L.J. issued his decision, Plaintiff was forty-five years old. Although Plaintiff alleged disability as of June 22, 2001, Plaintiff has admitted that she worked until some time in August of 2001.

With respect to the medical evidence of record, Plaintiff has had a history of carpal tunnel syndrome problems. Plaintiff was treated by Michael Mattern, M.D., among others for these problems. In June 1998, Plaintiff underwent successful carpal tunnel release surgery. Following surgery, Dr. Mattern opined that Plaintiff was doing well and could return to clerical and computer work. (Tr. 146). As a result, Plaintiff was discharged from Dr. Mattern's care.

Plaintiff was also treated for carpal tunnel syndrome by Richard P. DuShuttle, M.D. (Tr. 249-253). On August 6, 2001, Dr. DuShuttle opined that Plaintiff remained capable of performing light work that did not involve the repetitive use of her right hand. (Tr. 250). On September 13, 2001, Plaintiff underwent an additional carpal tunnel release surgery. (Tr. 262-264, 302). At her post-surgical visit on September 27, 2001, Plaintiff told Dr. DuShuttle that she was doing much better and had no complaints. (Tr. 301). Dr. DuShuttle noted that there was no evidence of sensory, neurological or range of motion

deficits. As a result, Dr. DuShuttle opined that Plaintiff could return to her normal work duty, and he released Plaintiff from his care. (Tr. 301).

In 2000 and 2001, Plaintiff treated with Eric T. Schwartz, M.D. for knee problems and back pain. Plaintiff underwent arthroscopy for her left knee and received symptomatic treatment for her back. In March 2001, after her surgery, Dr. Schwartz released Plaintiff back to her regular work. (Tr. 154). In May 2001, Dr. Schwartz formally discharged Plaintiff from further follow-up care after noting that Plaintiff was continuing to progress well. (Tr. 153).

Plaintiff's family physician is Blanca Ocampo-Lim, M.D. The treatment notes from Dr. Ocampo-Lim in the record are dated prior to August 2001 and deal primarily with primary care issues. However, on December 13, 2001, Dr. Ocampo-Lim signed a document entitled "Physician's Statement" in which she indicated that Plaintiff suffers from degenerative arthritis in her neck, lower back, both hands, both knees, ankles and feet and has been diagnosed with COPD. Dr. Ocampo-Lim also noted that Plaintiff suffered from cluster migraines in the past and had multiple surgeries in the past. Dr. Ocampo-Lim also opined that Plaintiff would not be able to work any kind of job on a regular basis and that she had severe limitations sitting, standing and engaging in minimal exercise. (Tr. 273).

Treatment notes are also in the record from Jay I. Fried, M.D. These notes primarily relate to Plaintiff's knee treatment, and only one note relates to the period of August 2001 and following. Specifically, on August 14, 2001, Dr. Fried noted that Plaintiff reported that she "was doing quite well" over the past few months and "tries to stay active." (Tr. 210). Plaintiff also asked to restart medication for a flare-up in her knee pain. (Tr. 210).

Plaintiff was also referred by Dr. Ocampo-Lim to Juan C. Zambrano, M.D. and Srinivas Kaza, M.D. for treatment of her asthma and chronic obstructive pulmonary disease ("COPD"). (Tr. 226-248). At an April 3, 2001, visit with Dr. Zambrano, Plaintiff reported a history of chronic rhinitis and frequent sinus infections with "headaches and pressure in the frontal maxillary areas." Plaintiff also reported that she was diagnosed with cluster migraines, but admitted that these episodes were very occasional. (Tr. 246). In August 2001, Dr. Kaza certified that Plaintiff was able to return to work. (Tr. 231). However, on February 21, 2002, Dr. Zambrano signed a document similar to the document signed by Dr. Ocampo-Lim entitled "Physician's Statement." Dr. Zambrano stated that Plaintiff suffers from COPD, asthma, and allergies and opined that she could not work. He also commented that if Plaintiff's respiratory problems are not regularly treated, they could lead to irreversible tissue

damage and other problems. (Tr. 303).

Two state agency physicians reviewed Plaintiff's medical records and opined that Plaintiff could perform light work activity. (Tr. 265-272, 281-288). A third state agency physician, Dr. Balu, examined Plaintiff and opined that Plaintiff suffered from chronic musculoskeletal pain, secondary to multiple surgeries and Degenerative Joint Disease. He further noted that Plaintiff did present with function deficits. (Tr. 276).

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

On June 26, 2002, the A.L.J. conducted a hearing on Plaintiff's application for benefits. At the hearing, Plaintiff was represented by counsel, and Plaintiff testified along with her husband and son. Plaintiff testified that she stopped working in August 2001 and babysits her two grandchildren, ages 15 months and ten years, twice a week for five hours at a time. (Tr. 359). Plaintiff also testified that she smokes a pack of cigarettes a day. (Tr. 350). Plaintiff testified that she has had 29 surgeries over the past fifteen years, but not all of these surgeries were related to the conditions for which she sought benefits. (Tr. 351, 353). Plaintiff testified that she experiences a great deal of pain and can lift no more than 10 to 15 pounds, sit for 15 minutes at a time and stand for 15 to 20 minutes. (Tr. 357-358). Plaintiff's husband and son also testified that Plaintiff experiences daily pain and that they

assist her with household chores. (Tr. 369-377).

In addition to this testimony, the A.L.J. heard the testimony of a vocational expert. The A.L.J. asked the vocational expert to consider a hypothetical individual with the same age and education as Plaintiff. The A.L.J. stated that this individual could only occasionally climb, balance, stoop, kneel, crouch or crawl, should never use ladders ropes or scaffold, should avoid repetitive motion with the right dominant hand, and should avoid extreme heat and cold. The vocational expert testified that such an individual could not perform the same past relevant work as Plaintiff, but could perform the jobs of information clerk with 37,000 jobs nationally and 300 in the region, telephone operator with 95,000 jobs nationally and 520 in the region, and unskilled inspector work with 38,000 jobs nationally and about 100 in the region.

In his decision dated July 30, 2002, the A.L.J. evaluated each of Plaintiff's alleged impairments in light of the listing for those impairments and concluded that Plaintiff has severe impairments, but that they do not meet or equal a listed impairment. The A.L.J. also found that Plaintiff's allegations of pain were not entirely credible given the medical evidence in the record, the opinions of her treating physicians and her daily activities, which include grocery shopping and babysitting her 15 month old and ten year old grandchildren two days a week. The

A.L.J. further reviewed the medical evidence in the record and concluded that the opinions of Dr. Ocampo-Lim and Dr. Zambrano were not supported by their contemporaneous medical notes and were contradicted by the opinions of other treating doctors. Based on the testimony of the vocational expert, the A.L.J. concluded that Plaintiff could not perform her past relevant work as a secretary, but could perform the jobs of information clerk, telephone operator and inspector. The A.L.J. also concluded that significant numbers of these jobs exist in the economy, and therefore, the A.L.J. concluded that Plaintiff was not disabled within the meaning of the Act.

STANDARD OF REVIEW

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 that "[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), 1382(c)(a)(3). 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, 416.905. 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. 20 C.F.R. §§ 404.1512(a), 416.912(a); Podeworthy v. Harris, 745 F.2d 210, 217 (3d Cir. 1984).

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, 416.920. 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. erred in (1) assessing her subjective complaints of pain; (2) analyzing her residual functional capacity; (3) discounting the opinions of Dr. Ocampo-Lim and Dr. Zambrano and (4) relying on a "flawed" opinion by the vocational expert. In addition, Plaintiff has presented the Court with additional medical records and requests the Court to remand this matter to the A.L.J. for consideration of these records. The Court will consider each of Plaintiff's arguments in turn.

A. Whether The A.L.J. Erred In Rejecting The Opinions Of Plaintiff's Treating Physicians

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) (citations omitted); 20 C.F.R. §§ 404.1527(d)(2), 416.927(d). However, the A.L.J. may reject such an opinion, if he or she adequately explains the reasons for doing so on the record. Russum, 2002 WL 775240 at *5 (citations omitted).

After reviewing the A.L.J.'s decision in light of the medical evidence in the record, the Court concludes that the A.L.J. did not err in his assessment of the opinions of Plaintiff's treating physicians. The A.L.J. rejected the "Physician's Statements" provided by Dr. Ocampo-Lim and Dr. Zambrano in which both physicians opined that Plaintiff was disabled. In rejecting these opinions, the A.L.J. explained that they were not only inconsistent with the medical evidence in the record, but also with the opinions of Plaintiff's other treating physicians, including Dr. Kaza, Dr. Schwartz and Dr. DuShuttle. For example, in March 2001, Dr. Schwartz opined that Plaintiff was capable of returning to her regular work (Tr. 154), and he released Plaintiff from his care in May 2001 noting that she had made good progress. Similarly, in August 2001, Dr. DuShuttle opined that Plaintiff could perform light work activity, provided that she avoid repetitive use of her right hand. (Tr. 250). Plaintiff then underwent another carpal tunnel surgery, and by September 27, 2001, Dr. DuShuttle opined that Plaintiff could again return to her normal work duty. (Tr. 301). Further, Dr. Zambrano's partner, Dr. Kaza also opined in August 2001 that Plaintiff could return to work.

Plaintiff contends that the opinions of these physicians are not relevant because they were given during the time that Plaintiff was actually working. However, Dr. DuShuttle gave his

opinions that Plaintiff could work in August 2001, and again in September 2001, after Plaintiff alleges that she stopped working. Similarly, Dr. Kaza opined in August 2001 that Plaintiff could return to work. Further, the Court is not persuaded that these opinions should be entirely discredited, because Plaintiff was working at the time they were rendered. These opinions are part of the medical record advanced in this case and are indicative of Plaintiff's condition and progress shortly before she filed her application for benefits. As such, these opinions shed light on the severity of Plaintiff's condition at approximately the time she sought benefits.

While the opinions of Dr. Ocampo-Lim and Dr. Zambrano were given during the time frame in which Plaintiff was out of work, the opinions of both doctors are conclusory in nature, and as the A.L.J. noted, are not supported by the contemporaneous medical notes of those physicians. Indeed, the Court has been unable to locate any treatment notes from Dr. Ocampo-Lim subsequent to August 2001 which would support Dr. Ocampo-Lim's December 2001 opinion. As for the opinion of Dr. Zambrano, the A.L.J. correctly noted that it is at odds with pulmonary tests performed on Plaintiff which indicate that Plaintiff suffered from a mild restrictive ventilatory defect. (Tr. 227, 229, 234, 237).¹

¹ Plaintiff suggests that the A.L.J. should not have relied on these tests because of the disclaimer on the tests that the "interpretation is valid only upon physician review and

Further, as the A.L.J. noted, Dr. Zambrano's opinion is also undermined by Plaintiff's continued ability to smoke a pack of cigarettes a day.

It is well-established that a physician's conclusory statements that a claimant is "disabled" or "unable to work" are not binding on the Commissioner, and the Commissioner is not required to give special significance to the source of such an opinion. 20 C.F.R. §§ 404.1527(e)(1), (3), 416.927(e)(1), (3). In this case, the A.L.J. thoroughly analyzed the opinions of Plaintiff's treating physicians, in light of the medical evidence in the record, including the statements of her other treating physicians, the opinions of the state agency reviewing physicians and Plaintiff's daily activities which include watching her grandchildren two days a week, grocery shopping, performing some household chores and smoking a pack of cigarettes per day. The A.L.J. adequately explained his reasons for rejecting the opinions of Dr. Ocampo-Lim and Dr. Zambrano, and the Court concludes that the A.L.J.'s decision is supported by substantial evidence in the record. Accordingly, the Court concludes that the A.L.J. did not err in his assessment of the opinions of Plaintiff's treating physicians.

signature." Although one of the four pulmonary tests is clearly not signed by Dr. Zambrano, two of the tests do bear his signature. As for the third test, it appears that there is a signature mark, but it may have been cut off or covered by another page during photocopying.

B. Whether The A.L.J. Erred In Analyzing Plaintiff's Subjective Complaints Of Pain And Assessing Her Credibility

A plaintiff's subjective complaints of pain must be consistent with the objective medical evidence concerning the plaintiff's impairment. 20 C.F.R. §§ 404.1529, 416.929. Once an A.L.J. concludes that a medical impairment could reasonably cause the alleged symptoms, the A.L.J. is required to evaluate the intensity and persistence of the pain, and the extent to which it affects the claimant's ability to work. Id. This determination necessarily requires the A.L.J. to gauge the credibility of the claimant. Id.; Morrow v. Apfel, 2001 WL 641038, *9 (D. Del. Mar. 16, 2001); Wilson, 1999 WL 993723 at *3.

An A.L.J.'s credibility determinations are generally entitled to great weight and deference. Fagnoli v. Massanari, 247 F.3d 34, 43 (3d Cir. 2001). The A.L.J. may discredit a claimant's complaints of disabling pain if "he affirmatively addresses the claim in his decision, specifies the reasons for rejecting it and has support for his conclusion in the record." Hirschfeld v. Apfel, 159 F. Supp. 2d 802, 811 (E.D. Pa. 2001); see also Mason v. Shalala, 994 F.2d 1058, 1067 (3d Cir. 1993).

In this case, the A.L.J. expressly addressed Plaintiff's complaints of pain and her credibility in his decision and adequately explained his reasons for rejecting her complaints. As the A.L.J. noted, Plaintiff's complaints of disabling pain

were contradicted by her daily activities, which among other things include bathing, feeding and putting to bed her two grandchildren and shopping for groceries. Further, the medical evidence in the record supports the A.L.J.'s conclusion that Plaintiff's complaints of disabling pain were not entirely credible. As the Court noted in its recitation of the medical evidence, there is little medical evidence in the record pertaining to the time frame of August 2001 up to the date of the A.L.J.'s decision, aside from the conclusory statements of disability made by Dr. Ocampo-Lim in December 2001 and Dr. Zambrano in February 2002. In August 2001, treatment notes from Dr. Fried noted that Plaintiff was doing quite well, and Plaintiff reported that she tries to stay active. (Tr. 210). Similarly, Dr. Kaza certified that Plaintiff was able to return to work on August 13, 2001 (Tr. 231), and Dr. DuShuttle indicated in a late September 2001 visit that Plaintiff was doing much better, had no complaints and could return to normal work duty. In sum, Plaintiff's subjective complaints of pain are not supported by the medical evidence in the record for the relevant time frame and are contradicted by Plaintiff's testimony concerning her need for pain medication and her daily activities. The A.L.J. noted these contradictions and adequately explained his reasons for concluding that Plaintiff's allegations of pain were not entirely credible. Accordingly, the Court concludes

that the A.L.J. did not err in assessing Plaintiff's credibility and her complaints of disabling pain.

Further, the Court concludes that the A.L.J. did not err in relying upon the testimony of the vocational expert. Because the A.L.J. did not entirely credit Plaintiff's subjective complaints of pain, he was also not required to include those complaints in his hypothetical to the vocational expert, and the A.L.J.'s hypothetical included those restrictions which were supported by the record including limits on Plaintiff's ability to lift, stoop, crouch, use her right hand repetitively and work in extreme temperatures. Plummer v. Apfel, 186 F.3d 422 (3d Cir. 1999); Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987). Because the A.L.J.'s conclusion that Plaintiff was not disabled is supported by the testimony of the vocational expert and the medical evidence in the record, the Court concludes that the A.L.J.'s decision is supported by substantial evidence.

C. Whether A Remand Is Appropriate In Light Of Additional Evidence Relating To Medical Examinations Of Plaintiff Following The A.L.J.'s Decision

By letter dated December 15, 2003 (D.I. 22), Plaintiff requests the Court to consider additional medical evidence of Plaintiff's disability in considering the issues raised on appeal, or in the alternative, to remand this matter to the A.L.J. for consideration of this evidence. The Commissioner has filed a response letter dated January 22, 2004 (D.I. 23), and

Plaintiff has also filed a reply letter dated February 4, 2004 (D.I. 24).

The standard governing evidence submitted to this Court for the first time on appeal is similar to the standard governing evidence submitted to the Appeals Council for the first time. See e.g. Bosmond v. Apfel, 1998 WL 851508, *11 (S.D.N.Y. Dec. 8, 1998) (citing Tirado v. Bowen, 842 F.2d 595, 597 (2d Cir. 1988)). A remand based on such newly submitted evidence is appropriate if (1) the new evidence is new, rather than cumulative; (2) the evidence is material, meaning it is relevant to the time period for which benefits were denied, probative, and reasonably likely to have altered the administrative decision if it were known at the time; and (3) good cause exists for the failure to present the evidence earlier. Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001); Szubak v. Secretary of HHS, 745 F.2d 831, 833 (3d Cir. 1984).

Reviewing the evidence submitted by Plaintiff in light of these factors, the Court concludes that a remand is not appropriate. The evidence submitted by Plaintiff does not relate to the time period for which disability benefits were denied. Rather, the evidence consists of entirely new medical records extending from February 2003 until September 2003, documenting Plaintiff's complaints and treatment during that time frame. As the Third Circuit has noted, "[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." Szubak, 745 F.2d at 833. Because the records presented by Plaintiff do not shed light on her condition during the relevant time period, but pertain to subsequent developments in her previously non-disabling condition, they are not material to the Court's review of the A.L.J.'s July 30, 2002 decision. Accordingly, the Court concludes that a remand is not appropriate in these circumstances.

CONCLUSION

For the reasons discussed, 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 July 30, 2002 will be affirmed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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| Plaintiff, | : | |
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| JO ANNE B. BARNHART, | : | |
| Commissioner of Social | : | |
| Security, | : | |
| | : | |
| Defendant. | : | |

O R D E R

At Wilmington, this 26th day of March 2004, for the reasons discussed in the Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendant's Cross-Motion For Summary Judgment (D.I. 18) is GRANTED.
2. Plaintiff's Motion For Summary Judgment (D.I. 14) is DENIED.
3. The final decision of the Commissioner dated July 30, 2002 is AFFIRMED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
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| Commissioner of Social | : | |
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| Defendant. | : | |

JUDGMENT IN A CIVIL CASE

For the reasons set forth in the Court's Opinion and Order dated March 26, 2004;

IT IS ORDER AND ADJUDGED that judgment be and is hereby entered in favor of Defendant, Jo Anne B. Barnhart, and against Plaintiff, Roberta L. Durham.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: March 26, 2004

ANITA F. BOLTON
(By) Deputy Clerk