

Farnan, District Judge.

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g) and § 1383(c)(3), filed by Plaintiff, Lord Vantine, seeking review of the final decision of the Commissioner of the Social Security Administration denying Plaintiff's applications for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI of the Social Security Act (the "Act"), 42 U.S.C. §§ 401-433, §§ 1381-1383. Plaintiff has filed a Motion For Summary Judgment (D.I. 12) requesting the Court to enter judgment in Plaintiff's favor. In response to Plaintiff's Motion, Defendant has filed a Cross-Motion For Summary Judgment (D.I. 14) 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 May 8, 2003, will be affirmed.

BACKGROUND

I. Procedural Background

Plaintiff filed applications for DIB and SSI on October 4, 2001, alleging disability since June 15, 2001, due to a seizure disorder. (Tr. 94-96, 201). Plaintiff's application was denied initially and upon reconsideration. (Tr. 54-57, 59, 205). Plaintiff filed a timely request for an administrative hearing, and the A.L.J. held a hearing on April 29, 2003. (Tr. 24-51).

Plaintiff was represented by counsel at the hearing, and a vocational expert testified. Following the hearing, the A.L.J. issued a decision dated May 8, 2003, denying Plaintiff's claim. (Tr. 17-23). Plaintiff filed an appeal, and the Appeal's Council denied review. (Tr. 3-5). 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)(3), seeking review of the A.L.J.'s decision denying her claims for DIB and SSI. In response to the Complaint, Defendant filed an Answer (D.I. 7) and the Transcript (D.I. 8) of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment and Opening Brief (D.I. 12, 13) in support of the Motion. In response, Defendant filed a Cross-Motion For Summary Judgment and a combined Opening and Answering Brief (D.I. 14, 15) requesting the Court to affirm the A.L.J.'s decision. Plaintiff waived her right to file a Reply Brief (D.I. 16), and therefore, 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 her decision, Plaintiff was forty-eight years old. (Tr. 201). Plaintiff attended school in

Thailand and attained a fifth grade education. (Tr. 117). Although Plaintiff is able to speak English, she contends that she cannot read or write English. (Tr. 29, 110). However, Plaintiff testified that she can read and write in Thai and that she can read English street signs and certain labels on products in a store. (Tr. 29-30). Plaintiff's past relevant work included employment as a sewing machine operator, hotel cleaner, and chicken processor. (Tr. 32-33, 112, 120). Her last job had been at Dover Air Force Base where she worked as a bagger in the commissary. (Tr. 30).

Plaintiff reported that she suffered from seizures since 1978, and that her ability to work was affected because she was unable to drive and had too many seizures at work. (Tr. 111). Although Plaintiff complained of seizures, she continued to drive until February 2001. Plaintiff's driving record indicates that she had been charged once for driving under an expired license, five times for inattentive driving and that her license had been suspended at least three times since 1991. (Tr. 143). According to Plaintiff's own reports, as a result of her seizures, she was in several car accidents, including four fatal accidents, in the last ten years. (Tr. 133). Plaintiff surrendered her drivers license in March 2001, as the result of another vehicle accident. (Tr. 143).

The majority of Plaintiff's medical records come from her

treating neurologist, John Coll, D.O. and from the emergency room at Kent General Medical Center. On August 7, 1998, Plaintiff saw Dr. Coll and underwent a limited neurological examination. (Tr. 182). Dr. Coll diagnosed Plaintiff with non-convulsive complex partial seizure disorder and continued her on a medication regimen of Mysoline and Tegretol. At that time, Dr. Coll noted that Plaintiff could continue to drive "as long as she is fully compliant with her medication." (Tr. 182).

On November 25, 1998, Plaintiff was seen at Kent General Medical Center by Craig D. Hochstein, M.D., in connection with a vehicle accident. (Tr. 154). Plaintiff told Dr. Hochstein that she thought she had a seizure and lost control of the car. (Tr. 154). Plaintiff suffered no major injuries as a result of the accident and was released from the emergency room. (Tr. 154).

On November 30, 1998, Plaintiff reported to Dr. Coll's office upset about the car accident she had been in the week before. Plaintiff told Dr. Coll that she had a seizure, passed out, and lost control of her car. Dr. Coll advised Plaintiff not to drive and indicated that he might take away her license until it was safe for her to drive again. (Tr. 182).

On December 7, 1998, Plaintiff was seen by Dr. Coll for a follow-up visit. Although Dr. Coll advised Plaintiff not to drive, Plaintiff disregarded his instructions and was involved in another accident in which she reported that she swerved off the

road into a tree. (Tr. 181). Plaintiff told Dr. Coll that she increased the amount of primidone she was taking "[o]n her own," and that she was taking her medications regularly. Dr. Coll advised Plaintiff to stop driving immediately and indicated that he would be writing to the DMV to have her license suspended until further notice. Dr. Coll also urged Plaintiff to be fully compliant with her medications.

Plaintiff was next seen by Dr. Coll on March 1, 1999. At that time, Plaintiff reported that she had no seizures since her accident in November, a period of over three months. (Tr. 180). Dr. Coll indicated that Plaintiff again changed her medications on her own and reported the levels of medications in her blood pursuant to lab tests done on January 6, 1999. However, Dr. Coll indicated that he could not tell what doses of medication she was taking at that time. Dr. Coll asked Plaintiff not to change her medications without calling him first, and told her that she should go at least 6 months without a seizure prior to being permitted to drive again. (Tr. 180).

During her follow-up visit on June 7, 1999, Plaintiff again reported that she had not experienced any seizures. Dr. Coll gave Plaintiff permission to reapply for a driver's license. (Tr. 179).

Plaintiff saw Dr. Coll several times in late 1999 and throughout 2000. Each time, Plaintiff reported that she was

doing well and was not experiencing any seizures. Dr. Coll kept her medications at the same levels and asked Plaintiff to call if any seizures occurred. (Tr. 176-178).

At her March 14, 2001 visit with Dr. Coll, Plaintiff reported that she had a seizure while driving on February 21, 2001. Plaintiff also told Dr. Coll that "for months, if not longer" she was taking her medication at doses which were less than the doses prescribed by Dr. Coll. (Tr. 175). Dr. Coll told Plaintiff to return in a month so that he could effectuate changes in her medication. He also told her that she would need to be seizure free for a year before she would be permitted to drive again. (Tr. 175).

On April 26, 2001, Plaintiff reported to Dr. Coll for her follow-up visit. She reported that she had no seizures since her last visit and that she had not been driving. Dr. Coll adjusted Plaintiff's medications and told her to report again in 6 months. If Plaintiff was doing well at that time, Dr. Coll indicated that he might give her permission to drive again. (Tr. 174).

On July 12, 2001, Plaintiff was seen at the Kent General Medical Center. Plaintiff reported that she fell during a seizure. (Tr. 144-148). No major injuries were reported, and Plaintiff was released from the hospital.

On September 17, 2001, Plaintiff returned to Dr. Coll and reported that she had experienced 3 episodes of complex partial

seizure in the past 2 months. Plaintiff reported that 2 of these episodes were at work, and Dr. Coll noted that Plaintiff had been released from work as a grocery bagger at Dover Air Force Base until she obtained medical clearance. Dr. Coll gave Plaintiff Lamictal and told her that she may return to work. Dr. Coll indicated that he would "speak with her boss in person." (Tr. 173). Dr. Coll told Plaintiff to refrain from driving and that an MRI and EEG would be scheduled.

On January 29, 2002, Dr. Coll completed a Seizures Residual Functional Capacity Questionnaire for Plaintiff. (Tr. 167). Dr. Coll made no note of any exertional limitations, but he reported that Plaintiff had 1-2 seizures per month lasting up to half an hour. (Tr. 167-169). Dr. Coll also noted that high stress could result in a seizure, and that Plaintiff was not capable of working the rest of the day following a seizure. (Tr. 168). Dr. Coll stated that Plaintiff was compliant with her medication and that her blood levels of anticonvulsant medication were at a therapeutic level. (Tr. 168-169).

On February 7, 2002, Plaintiff reported to Dr. Coll that she was having one to two nonconvulsive seizures per month, and that her boss released her permanently from her job bagging groceries. (Tr. 171). An MRI showed increased signal on the left mesial temporal lobe and an enlarged left temporal horn. An EEG showed background slowing and irregularity, but no epileptiform

discharges. (Tr. 171). Dr. Coll diagnosed Plaintiff with complex partial seizure disorder, possible left mesial temporal sclerosis. Dr. Coll advised Plaintiff to attend the Epilepsy Clinic at John Hopkins.

Dr. Coll did not see Plaintiff again for nearly a year. On January 7, 2003, Plaintiff reported to Dr. Coll that she continued to have 2-3 seizures per month which were triggered by feeling tired or getting upset. Plaintiff reported that her seizures typically lasted 10-15 minutes and were characterized by unresponsiveness, without involuntary motor activity or convulsions. Plaintiff further reported that she felt fatigued the entire day after experiencing a seizure. Plaintiff stated that she did not attend the Epilepsy Clinic at John Hopkins as Dr. Coll advised. Dr. Coll also noted that Plaintiff's "[c]ompliance is questionable and has varied quite a bit in the past." (Tr. 195). Dr. Coll stated that Plaintiff was not able to work at this time in any capacity due to the nature of her seizures. (Tr. 196).

On February 14, 2003, Dr. Coll completed a second functional capacity assessment. Dr. Coll did not note any exertional limitations, but reported that Plaintiff was having two to three seizures per month occurring as a result of fatigue and stress. (Tr. 197-198). Dr. Coll noted that Plaintiff was compliant with her medication, but was unable to work, even at less stress jobs.

(Tr. 197-198).

Functional capacity assessments were also completed by state agency physicians in December 2001 and April 2002. Both physicians found no exertional limitations in Plaintiff's ability to perform work and no manipulative, visual or communicative limitations. Both state agency physicians advised that Plaintiff was restricted from climbing ladders, ropes and scaffolds and should avoid moderate exposure to hazards associated with her seizure disorder. (Tr. 163, 191).

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

On April 29, 2003, the A.L.J. conducted a hearing on Plaintiff's application for benefits. At the hearing, Plaintiff was represented by counsel. In addition to Plaintiff, a vocational expert testified. The vocational expert testified that Plaintiff's past work processing chickens and operating a sewing machine was classified as unskilled light work, and her work as a cleaner was in the unskilled, medium range. The A.L.J. asked the vocational expert whether Plaintiff could go back to any of her past work if the A.L.J. found that Plaintiff had no exertional limitations, but because of the nature of her seizure disorder she should not work around heights, hazards, moving machinery, ladders and knives. (Tr. 48). The vocational expert responded that Plaintiff could go back to her job as a cleaner. The A.L.J. also asked with those precautions how much work could

Plaintiff perform at the sedentary level. The vocational expert testified that numerically, Plaintiff would be able to perform 40% of the sedentary, light, unskilled jobs.

On cross-examination, Plaintiff's attorney asked the vocational expert to consider the situation in which Plaintiff would have three seizures a month and be unable to return to work after a seizure. The vocational expert responded that Plaintiff would be unemployable if this were the case, because she would exceed the expectations of unexcused absences by employers. (Tr. 50).

In her decision dated May 8, 2003, the A.L.J. found that Plaintiff suffered from a seizure disorder which is a "severe" impairment, but that the condition did not meet or equal one of the listed impairments in 20 C.F.R. pt. 404, subpt. P. app. 1 (2003). (Tr. 22). The A.L.J. further found that Plaintiff retained the residual functional capacity for work, except for seizure related hazard precautions such as handling knives, driving, being around moving machinery or heights and climbing ladders. The A.L.J. then found that Plaintiff's past relevant work as a hotel cleaner did not require the performance of activities precluded by her residual functional capacity. Because the A.L.J. concluded that Plaintiff could return to her past relevant work, the A.L.J. found that Plaintiff was not disabled within the meaning of the Act. In the alternative, the

A.L.J. found that even if Plaintiff could perform her past relevant work, she was not disabled, because she was not compliant with her medication regimen.

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) finding that Plaintiff retained the residual functional capacity to perform her past relevant work, and (2) finding that Plaintiff was not compliant with her medication regimen. The Court will consider

each of Plaintiff's arguments in turn.

A. Whether The A.L.J. Erred In Finding That Plaintiff Retained The RFC To Perform Her Past Work As A Hotel Cleaner

Plaintiff contends that the A.L.J. erred in finding that Plaintiff retained the RFC to perform her past work as a hotel cleaner. Specifically, Plaintiff contends that the A.L.J. did not consider the physical and mental demands of the hotel cleaner position, did not make any findings regarding Plaintiff's exertional and non-exertional limitations, and did not consider all of Plaintiff's documented non-exertional limitations.

"[R]esidual functional capacity ["RFC"] is defined as that which an individual is still able to do despite the limitations caused by his or her impairment(s)." Fargnoli v. Massanari, 247 F.3d 34, 41 (3d Cir. 2001). When determining an individual's RFC at step four of the sequential evaluation, the A.L.J. must consider all relevant evidence including medical records, observations made during medical examinations, descriptions of limitations by the claimant and others, and observations of the claimant's limitations by others. Id. Before an individual's RFC can be expressed in terms of an exertional level of work, the A.L.J. "must first identify the individual's functional limitations or restrictions and assess his or her work related abilities on a function by function basis." SSR 96-8p. The RFC must also address both the

exertional and non-exertional capacities of the individual. Id. Non-exertional capacity refers to "all work-related limitations and restrictions that do not depend on an individual's physical strength." Id. Examples of work-related non-exertional limitations that are psychological or mental in nature include: difficulty functioning due to nervousness, anxiety and depression; difficulty concentrating and maintaining attention; difficulty understanding, carrying out and/or remembering detailed instructions; difficulty making appropriate judgments in work-related decisions; difficulty responding appropriately to supervision, co-workers and work situations; and difficulty in coping with changes in a routine work setting. Id.; see also 20 C.F.R. § 1469(a)(c).

The A.L.J.'s RFC assessment must "be accompanied by a clear and satisfactory explanation of the basis on which it rests." Fagnoli, 247 F.3d at 41. In weighing the evidence, the A.L.J. must give some indication of the evidence which he or she rejects and his or her reason for discounting the evidence. Burnett v. Comm'r of Soc. Sec. Admin., 220 F.3d 112, 121 (3d Cir. 2000); see also SSR 96-8p. "In the absence of such an indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored." Cotter v. Harris, 642 F.2d 700, 705 (3d Cir. 1981).

Reviewing the A.L.J.'s decision in light of the record as a

whole, the Court concludes that the A.L.J.'s decision that Plaintiff retained the RFC to perform her past relevant work as a hotel cleaner is supported by substantial evidence. In determining Plaintiff's RFC, the A.L.J. did not discuss Plaintiff's exertional limitations, because none were at issue in this case. Neither Plaintiff's treating physicians nor the state agency physicians found any exertional limitations and Plaintiff did not assert any exertional limitations which required consideration. Thus, except for seizure related precautions such as handling knives, driving, and being around moving machinery or heights, Plaintiff was capable of performing work at all exertional levels. In these circumstances, the Court cannot conclude that the A.L.J. erred in presuming that Plaintiff met the exertional demands of her past work as a hotel cleaner.

As for Plaintiff's non-exertional limitations, the Court concludes that the A.L.J. properly considered those non-exertional limitations which were credible, and appropriately discussed her reasons for rejecting other non-exertional limitations identified by Plaintiff and her treating physician. Dr. Coll did opine in his RFC assessments that Plaintiff was unable to perform even low stress jobs as a result of her seizure disorder, but the A.L.J. found this opinion to be inconsistent with the record evidence as a whole. Particularly, the A.L.J. noted that in his progress notes, Dr. Coll stated that

Plaintiff's "compliance [wa]s questionable," had "varied quite a bit in the past," and that she had changed her medication on her own and had not always taken the correct doses. The A.L.J. found the opinions expressed by Dr. Coll in his progress notes were more consistent with the record evidence, including the testimony of Plaintiff and her husband at the hearing. (Tr. 36, 43-44). In this regard, the A.L.J. also adequately explained her reasons for rejecting the opinions set forth by Dr. Coll in the RFC assessments finding those opinions to be inconsistent with the record evidence. Further, the findings of the state agency physicians supported the A.L.J.'s conclusion that Plaintiff was capable of performing work which was limited only by seizure precautions. Accordingly, the Court concludes that the A.L.J.'s decision that Plaintiff retained the RFC to perform her past work as a hotel cleaner was not erroneous and was supported by substantial evidence.

B. Whether The A.L.J. Erred In Finding That Plaintiff Was Not Compliant With Her Medication Regimen

Plaintiff next contends that the A.L.J.'s determination that Plaintiff was not compliant with her medication regimen was also not supported by substantial evidence. Specifically, Plaintiff contends that Dr. Coll's RFC assessments indicated that Plaintiff was compliant with her medication. Plaintiff also contends that the A.L.J. ignored the testimony of both Plaintiff and her husband that Plaintiff was compliant with her medications.

In pertinent part, 20 C.F.R. §§ 404.1530(a) and 416.930(a) provide that “[i]n order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work.” These regulations also provide that “[i]f you do not follow the prescribed treatment without a good reason, we will not find you disabled” 20 C.F.R. §§ 404.1530(b); 416.930(b).

As an alternate basis for its decision, the A.L.J. concluded that even if Plaintiff was able to return to her past relevant work, she would still be found not disabled because she was not compliant with her prescribed medications. Reviewing the record evidence, the Court concludes that the A.L.J.’s decision is supported by substantial evidence. The progress notes of Dr. Coll that were written contemporaneous with Plaintiff’s treatment visits questioned her compliance, indicated that Plaintiff changed her medication on her own on at least three occasions, and noted that the different medication levels in her blood fluctuated. (Tr. 175, 180, 181, 195).

In addition, Dr. Coll’s progress notes were consistent with the testimony of Plaintiff and her husband, which also supports the A.L.J.’s conclusion that Plaintiff was not compliant with her medications. Plaintiff testified that she could not read her prescription and that she took her medication by trying to remember how much the doctor told her to take. She stated that

while her husband would tell her "once in a while" what to take, she kept forgetting his instructions. (Tr. 36). Plaintiff also indicated that no one divided up her medication into the right amounts for her, and that she administered her own medication. When the A.L.J. asked Plaintiff what pills she was currently taking, Plaintiff told the A.L.J. she was taking Keppra three times a day and Carbamazepine twice a day. However, Plaintiff's prescription was for 500 milligrams of Keppra twice a day and 200 milligrams of Carbamazepine three times a day. (Tr. 35). Plaintiff's husband also testified that Plaintiff frequently does not remember whether or not she took her medication, and that he couldn't be sure she always took it. (Tr. 43). Although Plaintiff's husband indicated that he sees her take her medication often in the evening, he admitted that he did not always see her take her medication saying, "That's the only problem, I don't really know. But I have to go by her word."¹ (Tr. 44).

Plaintiff's general non-compliance with the instructions of her treating physician was also demonstrated by her failure to

¹ Plaintiff suggests that the A.L.J. failed to explain why he discredited the statements of Plaintiff's husband. A review of the testimony, however, indicates that the A.L.J. did not reject the testimony of Plaintiff's husband, but accepted his testimony as true. Specifically, Plaintiff's husband testified that while he believed Plaintiff was compliant with her medicines, he could not be sure, because he relies on her word as does not actually see her taking her medicines.

adhere to Dr. Coll's warning about driving. Although Dr. Coll advised Plaintiff not to drive after she had an auto accident resulting from a seizure in November 1998, Plaintiff continued to drive and one month later was involved in a second accident. Dr. Coll also advised Plaintiff to attend the Epilepsy Clinic at John Hopkins to determine if she could undergo surgery for her condition, but Plaintiff did not report to the clinic. Additionally, Plaintiff did not see Dr. Coll for a period of eleven months from February 14, 2002 until January 7, 2003, even though Plaintiff reported to Dr. Coll that she had been experiencing seizures during this time. Given this evidence, the Court cannot conclude that the A.L.J. erred in finding that Plaintiff was not compliant with her medication, and therefore, the Court concludes that the A.L.J.'s alternate holding that Plaintiff was not disabled due to non-compliance with her medication was supported by substantial evidence.

CONCLUSION

For the reasons discussed, Defendant's Cross-Motion For Summary Judgment will be granted, and Plaintiff's Motion For Summary Judgment will be denied. The decision of the Commissioner dated May 8, 2003 will be affirmed.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LORD VANTINE,
Plaintiff,
v.
JO ANNE B. BARNHART,
Commissioner of Social
Security,
Defendant.

:
:
:
:
: Civil Action No. 04-131-JJF
:
:
:
:
:
:
:
:
:
:

ORDER

At Wilmington, this 11th day of January 2005, 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. 14) is GRANTED.
2. Plaintiff's Motion For Summary Judgment (D.I. 12) is DENIED.
3. The final decision of the Commissioner dated May 3, 2003 is AFFIRMED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

