

IP 04-0202-C H/H Campbell v Barnhart  
Magistrate William G. Hussmann, Jr.

Signed on 10/09/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

FRANCES K. CAMPBELL,	)	
Social Security No. XXX-XX-8378,	)	
	)	
Plaintiff,	)	
	)	
v.	)	4:04-cv-202-WGH-DFH
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**MEMORANDUM DECISION AND ORDER**

This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, pursuant to the consents of the parties and the Order of Reference dated January 14, 2005. (Docket Nos. 8, 14, 15). Oral argument was held on July 7, 2005.

**I. Introduction**

This is an appeal of an unfavorable Social Security Disability decision. The plaintiff is asserting that the Administrative Law Judge (“ALJ”), Roland D. Mather, did not consider the effects of hepatitis C on her ability to work, did not properly assess her testimony of having to self-catheterize three to four times daily, and did not consider the effects of neck pain and migraine headaches nor the combination of these impairments with her others on her ability to work. The court concludes, however, that the ALJ’s decision should be affirmed.

## **II. Statement of Case**

Plaintiff, Frances K. Campbell, seeks judicial review of a final decision of the agency which found her not disabled and, therefore, not entitled to Disability Insurance Benefits (“DIB”) or Supplemental Security Income Benefits (“SSI”). Plaintiff is a 48 year old female, with a history of hepatitis C, migraine headaches, neck pain, bladder incontinence, breathing problems, problems with pain medications, and allergies. (R. 26, 27). Plaintiff applied for SSI in March 2002 and DIB in May 2002. Both applications were denied, and she subsequently requested a hearing, which occurred on December 1, 2003. The ALJ issued an unfavorable opinion on January 28, 2004. Plaintiff submitted new evidence to the Appeals Council and asked for a review of the decision, which the Appeals Council refused.

## **III. Statement of Facts**

### **A. Vocational Profile**

Plaintiff was 47 at the time of the hearing, had completed the 9th grade, and obtained a GED. (R. 51). She had past work experience as a waitress, pizza deliverer, fast food worker, and production assembler. (R. 52, 54). The vocational expert testified that these jobs would be light work, with the waitress job being semiskilled. (R. 87-88).

### **B. Plaintiff’s Medical History and Testimony**

Plaintiff has a history of hepatitis C, migraine headaches, neck pain, bladder incontinence, breathing problems, problems with pain medications, and

allergies. She is a smoker, smoking a pack of cigarettes daily, and drinks very infrequently. (R. 328). She testified that her two biggest problems are her neck pain and bladder problems. (R. 64). In regards to her bladder problem, plaintiff testified that she self-catheterizes three to four times a day. (R. 67). There is a letter from her doctor that states that he taught her to self-catheterize for when she needed it. (R. 451).<sup>1</sup> Lifting things that are too heavy – she testified anything over ten pounds – can cause a leakage problem. (R. 63). X-rays of her bladder, done in June 2003, show no abnormalities. (R. 81)

There was an MRI done in October 2003 that showed some protrusion of a disc in her neck, but it was not affecting her spinal cord or spinal nerves. (R. 77, 81, 84). She was not currently on any pain medications. (R. 80). She has had at least one doctor refuse to prescribe any more because of possible drug seeking behavior and reports of her selling her medication. (R. 224, 434).

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<sup>1</sup>This letter was faxed to the plaintiff's attorney after the hearing in response to confusion over the handwriting of the prescribing doctor. It was forwarded to the judge almost two months prior to the issuance of his decision. There is also a prescription for a "Female Self Cath" and a report of incomplete emptying dated eight months after the hearing and seven months after the ALJ's decision was issued. (R. 470-71). Thus, it was not before the ALJ. The Appeals Council made the evidence part of the record; however, they denied the request for review. Therefore, the ALJ's decision is final and such evidence shall not be considered, unless it is asserted that the Appeals Council made a mistake as to the law on refusing to review the decision. *Wolfe v. Shalala*, 997 F.2d 321, 322 & n.3 (7th Cir. 1993); *Diaz v. Chater*, 55 F.3d 300, 307 (7th Cir. 1995); *Hodes v. Apfel*, 61 F.Supp.2d 798, 805-806 & n.2 (N.D.Ill. 1999). See also *Eads v. Secretary of Dept. of Health and Human Services*, 983 F.2d 815, 817 (7th Cir. 1993) ("The correctness of [the ALJ's] decision depends on the evidence that was before him."). Plaintiff does not make the argument that the Appeals Council made a mistake of law by not reviewing the decision. See *Eads*, 983 F.2d at 817 ("But if the refusal rests on a mistake of law...that the evidence newly submitted to the Appeals Council was not material to the disability determination, the court can reverse.... Eads does not, however, ask us to review the Appeals Council's refusal to review the [ALJ's] decision....").

The plaintiff's hepatitis C had been diagnosed approximately five years before the administrative hearing. (R. 70). She did enter an interferon treatment program, but had a negative reaction to it, and quit on her own after her doctor failed to change the treatment. (R. 70-71). She testified that the hepatitis leaves her feeling tired and without energy. (R. 71).

Plaintiff testified that her migraine headaches occur approximately seven to ten days apart, last anywhere from a couple of hours to a couple of days, and occur on the whole right side of her head. (R. 73). She also testified that she is unable to take many of the headache medicines she has tried, because of her reactions to them. (R. 72). She testified the migraines are coming on more frequently than they had five to ten years ago. (R. 80).

Her breathing problem is treated with a nebulizer, which she uses two or three times a day for a few minutes each time. (R. 75). The process makes her a little light headed for a few minutes afterwards, but other than that there are no side effects. (R. 75-76). Her allergies are such that she would need to work in a clean air environment. (R. 82).

When asked about her daily routine, plaintiff testified that she drives once or twice a day, going to the store. (R. 59-60). She also reads, writes poetry, watches TV, and colors posters. (R. 60). She cooks, does the dishes, laundry, sweeping, and mopping. (R. 61-62). She likes to cook large meals, and makes breakfast and dinner for as many as ten people every day. (R. 128, 362). She walks out to the mailbox every day, approximately the length of an acre, without

problems. (R. 63). On a hot day, walking through the grocery store tires her out, and she must use her inhaler when she is done. (R. 139).

### **C. Vocational Expert Testimony**

At the administrative hearing, a Vocational Expert (“VE”), Mr. William Irvin, testified regarding plaintiff’s capabilities. (R. 87-91). He classified her waitress experience as semiskilled, but nontransferable. Her experience as a fast food worker and a production assembler were unskilled. He analyzed her past work, finding there were 4,800 assembler jobs in the Louisville area, and 18,000 in Indiana; fast food worker jobs numbered 1,200 in Louisville, and 6,000 in Indiana; and waitress jobs numbered 1,500 in Louisville, and 37,000 in Indiana. He testified that someone whose lifting ability is limited to 10 pounds, with somewhat limited walking distances, standing limited for no more than 10 to 15 minutes, and sitting no more than 15 minutes, would not be able to do production work. If that person also had to take catheter breaks three to four times a day, there would be no work.

### **IV. The ALJ’s Decision**

The ALJ, Roland D. Mather, concluded that plaintiff was not disabled under the Social Security Act because her allegations of her limitations were not entirely credible, she could perform a limited range of light work in a clean air environment, and she could perform her past relevant work. (R. 31-32). He found that she had the following impairments which he classified as severe: hepatitis C, migraine headaches, pain in neck, incontinence, shortness of

breath, and problems with pain medications. (R. 26). He found that none of these were severe enough to meet or medically equal one of the impairments listed in Appendix 1, Subpart P, Regulations No. 4. (R. 26-27). From her records, he found that she did not seem to have so many medical visits or headaches of lasting duration to preclude all work, and that her migraines would not prevent her from working. (R. 28). Her allegations of pain, he found, did not seem accurate in light of the fact she is not receiving a lot of medical care or physical therapy, she is engaging in a wide array of activities on a daily basis, and her impairments seem to be treated with pain medication. (R. 28). In addition, he found there to be evidence that at least some of her medical visits may have been associated with drug-seeking behavior. (R. 28). He did not find evidence on the record that supported her assertion that she has to self-catheterize three to four times a day. (R. 27).

## **V. Standard of Review**

An ALJ's findings are conclusive if they are supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *see also Perkins v. Chater*, 107 F.3d 1290, 1296 (7th Cir. 1997). This standard of review recognizes that it is the Commissioner's duty to weigh the evidence, resolve material conflicts, make independent findings of fact, and decide questions of credibility. *Richardson*, 402 U.S. at 399-400. Accordingly, this court may not re-evaluate

the facts, weigh the evidence anew or substitute its judgment for that of the Commissioner. See *Butera v. Apfel*, 173 F.3d 1049, 1055 (7th Cir. 1999). Thus, even if reasonable minds could disagree about whether or not an individual was “disabled,” the court must still affirm the ALJ’s decision denying benefits. *Schmidt v. Apfel*, 201 F.3d 970, 972 (7th Cir. 2000).

## **VI. The Issues**

Plaintiff has raised three issues to be determined by this court. They are as follows:

1. Whether the ALJ properly analyzed the effect of plaintiff’s hepatitis C on her ability to work.
2. Whether the ALJ properly considered plaintiff’s testimony of having to self-catheterize three to four times a day.
3. Whether the ALJ properly considered plaintiff’s testimony of pain in connection with her neck and migraines.

### **Issue 1: Whether the ALJ properly analyzed the effect of plaintiff’s hepatitis C on her ability to work.**

Plaintiff asserts that the ALJ did not address the limitations her hepatitis C places on her ability to work. “An ALJ may not select and discuss only that evidence that favors his ultimate conclusion, but must articulate, at some minimum level, his analysis of the evidence to allow the appellate court to trace the path of his reasoning.” *Diaz v. Chater*, 55 F.3d 300, 307 (7th Cir. 1995).

Although it is true that the ALJ did only specifically mention the plaintiff’s hepatitis C on two occasions in his decision, he discussed and analyzed her limitations in general language that would encompass the limitations the

hepatitis C places on her. Plaintiff asserts that the hepatitis C makes her tired and run down. (R. 71). The ALJ, in his decision, observed that she was still able to perform daily activities such as cooking (sometimes for as many as ten people), visiting with friends and family, going to the store, doing laundry, and cleaning. (R. 28). It is reasonable to draw an inference that when he found her “functional limitations” were not of such a level to preclude doing these activities, he was referring, in some part, to the limitations the hepatitis C imposes on her, because being tired and run down may affect the activities in which she was found to participate. (R. 28). In addition, there is no evidence that her hepatitis C is any worse now than it was in 2000 and 2001, while she was still working.

Plaintiff asserts that the ALJ also made an error when he found that she was able to return to her work in the food industry, even though she has hepatitis C. There is no evidence in the record that shows someone with hepatitis C should not work in the food industry, and plaintiff’s counsel never asked the medical expert who testified at the hearing if this would, in fact, be a limitation, despite having and using an opportunity to ask the medical expert other questions. Furthermore, it is noted that plaintiff did work as a waitress, pizza delivery driver, and fast food worker after being diagnosed with hepatitis C.<sup>2</sup> Even if a person with hepatitis C cannot work in the food industry, the ALJ

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<sup>2</sup>It is further noted that independent research seems to suggest that only those with hepatitis A and E are precluded from working in the food industry. Hepatitis C sufferers do not seem to have such limitations.

found that there were jobs outside of the food industry that plaintiff could perform, such as production assembler and other light exertional level work, so long as it was in a clean air environment. (R. 31-32).

**Issue 2: Whether the ALJ properly considered plaintiff's testimony of having to self-catheterize three to four times a day.**

Plaintiff contends that the ALJ made an error in finding that there was no evidence that plaintiff uses a catheter on a regular basis, despite her testimony that she self-catheterizes three to four times a day. An ALJ may look to the medical evidence and reject the plaintiff's subjective testimony if it is not substantially supported by the evidence. *See* 20 C.F.R. § 404.1529 (“[S]tatements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the . . . symptoms alleged. . . .”). If the testimony is not supported by substantial medical evidence, the ALJ may find the plaintiff's testimony not credible. *See Lopez ex rel. Lopez v. Barnhart*, 336 F.3d 535, 540 (7th Cir. 2003). An ALJ's findings on credibility are generally entitled to deference and will not be overturned unless “patently wrong.” *See, e.g., Diaz v. Chater*, 55 F.3d 300, 308 (7th Cir. 1995).

There is evidence on the record that plaintiff has had some trouble with incontinence. (R. 423, 42). However, the medical record does not contain any specific language showing that plaintiff needs to self-catheterize three to four times a day. The record indicates that she was shown how to catheterize for

when she needs to. The record also indicates that she had a normal bladder in June 2003, approximately around the time she was shown how to use the catheter. (R. 430). The medical expert at the hearing also testified that an x-ray done four days after the incomplete emptying was found, did not show incomplete emptying. (R. 86, 430). The only source for the three to four times a day assertion is plaintiff's testimony, which the ALJ found "not completely credible." (R. 28). In addition, if it is true that plaintiff does need to use the catheter daily, the prescription for a catheter does not appear until August 6, 2004,<sup>3</sup> and there is no mention of being taught how to use a catheter until June 12, 2003. The onset date for her claim is December 3, 2001, and the records on this impairment do not reach that far back. From these medical records, the ALJ could reasonably have found that the need to self-catheterize began in June 2003 or later, and did not exist to the degree testified to by the plaintiff at the time of the hearing on February 1, 2003.

**Issue 3: Whether the ALJ properly considered plaintiff's testimony of pain in connection with her neck and migraines.**

Plaintiff asserts that the ALJ did not properly consider her testimony of pain in connection with her neck and migraines, or in combination with the other impairments. The same standard articulated above in regards to plaintiff's assertions on symptoms and the ALJ's credibility determinations applies to plaintiff's testimony of pain as well. *See, e.g., Diaz*, 55 F.3d at 308; *Schmidt v.*

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<sup>3</sup>It is noted, again, that this prescription was not before the ALJ, and while the Appeals Council made it a part of the record, they also denied review of the ALJ's decision, making this information unable to be reviewed.

*Barnhart*, 395 F.3d 737, 746-747 (7th Cir. 2005). An ALJ may make reasonable inferences from the evidence in front of him. *Stevenson v. Chater*, 105 F.3d 1151, 1155 (7th Cir. 1997). Finally, an ALJ needs to consider the combined effects of the impairments in determining disability. 20 C.F.R. § 404.1520; see generally *Nelson v. Bowen*, 855 F.2d 503 (7th Cir. 1988).

The ALJ found that plaintiff's complaints of pain from her head and neck problems were not entirely credible. (R. 28). He found that there were not so many medical visits in regards to these impairments, nor reports that they lasted long enough to preclude all work. (R. 28). In addition, he found that some of the visits that are on the record may be associated with drug seeking behavior. (R. 28). This determination seems to be supported by substantial evidence on the record. An EEG done in October 2003 was normal. (R. 81-82, 449). Likewise, a neck x-ray done in September 2002 and a lumbar spine MRI done in October 2003 were normal. (R. 81, 448). Although there was another MRI that showed some protrusion of a disc, there was no impingement on the spinal cord or narrowing of the spinal cord. (R. 81, 447). Furthermore, a doctor who performed a consultative physical examination in September 2002 of her major body systems found the exam "totally unremarkable for any overt limiting cognitive, physical, neurological or orthopedic deficits of any kind," and that "[t]here should be numerous forms of mild to moderately physically strenuous employment that she should be quite capable of performing at present time. . . ." (R. 368).

As for her drug seeking behavior, multiple doctors noted it as a possibility, including one doctor who dismissed himself as her treating physician because there were reports of her selling her pain medications. (R. 224, 226, 277, 279, 434). It was not patently wrong for the ALJ to infer, given the doctors' observations, that at least some of her medical visits were driven by drug seeking behavior.

As for the plaintiff's claim that the ALJ did not consider her neck and migraine impairments in combination with her other impairments, there is evidence that he did. He refers to her impairments several times in the plural, suggesting that he was considering them all together. He notes that "[s]he is not receiving a lot of physical therapy or surgical care for these problems" (R. 28), and finds that she does have some "limitations associated with her impairments" (R. 29). He found that her impairments as a whole did not seem to keep her from engaging in normal, daily activities such as driving, going to the store, cooking, and cleaning. While it would have been preferable for the ALJ to articulate more clearly that he considered all of the conditions in combination, this court can trace the path of his reasoning. We find no error in this analysis.

## **VII. Conclusion**

The ALJ's decision is supported by substantial evidence. He did properly analyze plaintiff's hepatitis C and its effect on her ability to work; he properly considered her testimony of having to self-catheterize three to four times a day which he found not credible, a determination that is not patently wrong; and he

properly considered her complaints of pain resulting from her neck problems and migraine headaches. The ALJ's decision is **AFFIRMED**.

**SO ORDERED.**

**Dated:**

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