UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CARMEN LOPEZ, :

Plaintiff, :

vs. : No. 3:05cv019(MRK)(WIG)

JO ANNE B. BARNHART, :
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION, :

Defendant. :

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RECOMMENDED RULING ON PENDING MOTIONS

Pending before the Court are Plaintiff's Motion to Reverse the Decision of the Commissioner [Doc. # 5] and Defendant's Motion to Affirm the Decision of the Commissioner [Doc. # 15], which held that Plaintiff was no longer entitled to a continuance of her period of disability and disability insurance benefits under Title II of the Social Security Act, as amended, 42 U.S.C. §§ 416(i) & 423. For the reasons set forth below, the Undersigned recommends that the decision of the Commissioner should be affirmed.

Background

Plaintiff, Carmen Lopez, applied for Social Security Disability Insurance ("SSDI") benefits on February 5, 1996, due to asthma and bilateral carpal tunnel syndrome (Tr. 261-67). Her claim was initially denied, but after reconsideration, her claim for SSDI benefits was granted on May 30, 1996 (Tr. 141-43). On

January 20, 2000, the Social Security Administration determined that her pulmonary condition had improved to the point where as of January 1, 2000, Plaintiff was able to perform a wide range of light work and, therefore, was no longer disabled (Tr. 160-62). Plaintiff requested reconsideration of this decision and, after a hearing before an administrative hearing officer, the decision was upheld (Tr. 175-194). Plaintiff then requested a hearing before an administrative law judge ("ALJ"), which was conducted by ALJ Roy P. Liberman on March 28, 2002 (Tr. 38-68). Plaintiff, represented by counsel, testified at this hearing. On July 15, 2003, the ALJ conducted a supplemental hearing with a medical expert ("ME"), Dr. Morton Solomon (Tr. 69-87), and on February 10, 2004, he conducted a second supplemental hearing with a vocational expert ("VE"), Mr. Ronald Freedman (Tr. 105-37). On June 18, 2004, the ALJ issued his decision (Tr. 18-34), finding that Plaintiff's disability ceased as of January 1, 2000, and that her entitlement to a period of disability and disability insurance benefits ended on March 31, 2000, the end of the second calendar month after the month in which her disability ceased. The Appeals Council denied Plaintiff's request for review, thus rendering the ALJ's decision the final decision of the Commissioner. On January 5, 2005, Plaintiff filed this action pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

Standard of Review

The district court may "enter, upon the pleadings and transcript of the record,[1] a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Judicial review of the Commissioner's final decision denying social security benefits, however, is limited. Yancey v. Apfel, 145 F.3d 106, 111 (2d Cir. 1998). It is not the court's function to determine de novo whether the claimant was disabled. See Schaal v. Apfel, 134 F.3d 496, 501 (2d Cir. 1988). Rather, a district court must review the record to determine first whether the correct legal standard was applied and then whether the record contains "substantial evidence" to support the decision of the Commissioner. 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive...."); see Bubnis v. Apfel, 150 F.3d 177, 181 (2d Cir. 1998); Balsamo v. Chater, 142 F.3d 75, 79 (2d Cir. 1998). To determine whether the Commissioner's decision is supported by substantial evidence, the court must consider the entire record, examining the evidence from both sides. Williams v. Bowen, 859 F.2d 255, 258 (2d Cir. 1988).

[1] Citations to the administrative record are referenced throughout this opinion as "Tr." followed by the page number.

Substantial evidence need not compel the Commissioner's decision; rather substantial evidence need only be that evidence that "a reasonable mind might accept as adequate to support [the] conclusion" being challenged. Veino v. Barnhart, 312 F.3d 578, 586 (2d Cir. 2002) (internal quotation marks and citations omitted). Thus, the role of this court is not to decide the facts anew, nor to reevaluate the facts, nor to substitute its judgment for that of the Commissioner but rather to determine whether substantial evidence of record supports the Commissioner's decision. Under the standard of review set forth above, absent an error of law, this court must uphold the Commissioner's decision if it is supported by substantial evidence even if this court might have ruled differently. See Eastman v. Barnhart, 241 F. Supp. 2d 160, 168 (D. Conn. 2003).

Discussion

Relevant to this case, involving a termination of benefits, is 42 U.S.C. § 423(f)(1), which provides in relevant part:

> A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by –
>
> (1) substantial evidence which demonstrates that –
>
> (A) there has been any medical improvement in the individual's impairment or

> combination of impairments (other than medical improvement which is not related to the individual's ability to work), and
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> (B) the individual is now able to engage in substantial gainful activity.

In implementing this statute, the Regulations set forth an eight-step sequential evaluation process that the ALJ is required to follow in determining whether a claimant's medical condition has improved such that his or her disability has ended. 20 C.F.R. § 404.1594(f).[2] In this case, the ALJ found at step eight in the

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[2] Section 404.1594(f) provides:

To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(1) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (d)(5) of this section).

(2) If you are not, do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of this subpart? If you do, your disability will be found to continue.

(3) If you do not, has there been medical improvement as defined in paragraph (b)(1) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step (4). If there has been no decrease in medical severity, there has been no medical improvement. (See step (5).)

(4) If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)-(4) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to do work, see step (5). If medical improvement is related to your ability to do

sequential evaluation process that the Plaintiff was capable of performing other work that exists in substantial numbers in the national economy (Tr. 33).

In reaching this conclusion, the ALJ employed the eight-step sequential process set forth above. He found that Plaintiff suffered from the following impairment or combination of

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work, see step (6).

(5) If we found at step (3) that there has been no medical improvement or if we found at step (4) that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (d) and (e) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step (6). If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(6) If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see § 404.1521). This determination will consider all your current impairments and the impact of the combination of those impairments on your ability to function. If the residual functional capacity assessment in step (4) above shows significant limitation of your ability to do basic work activities, see step (7). When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(7) If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 404.1560. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(8) If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

impairments that was considered “severe” within the meaning of the Regulations, 20 C.F.R. § 404.1521: recurrent carpal tunnel syndrome, asthma, degenerative arthritis of the left knee, a history of seizures controlled by medication, status post excision of the volar left wrist ganglion and release of left third trigger finger, and status post excision of recurrent left wrist ganglion (Tr. 22, 32). However, he determined that none of these impairments was severe enough to meet or medically equal one of the impairments listed in Appendix 1, Subpart P, Regulation No. 4 (the "Listings"). Additionally, the ALJ found that Plaintiff’s asthma no longer met or equaled the requirements of Listing 3.03 as of January 1, 2000 (Tr. 22). The ALJ noted that Plaintiff had a history of treatment for depression, diabetes mellitus, reflux and irritable bowel syndrome, which he found to be "non-severe" impairments that caused no more than minimal functional limitations (Tr. 23).[3]

The ALJ then assessed whether there had been any medical improvement in Plaintiff’s impairments. He found that, beginning January 1, 2000, when Plaintiff’s pulmonary function tests were close to normal, her asthma condition had medically improved in terms of signs, symptoms, and laboratory findings and that this improvement was also related to her ability to perform work

[3] Her reflux and irritable bowel syndrome were controlled by medication, and her diabetes was controlled by medication and diet, and there was no evidence of neuropathy or any other end-organ damage (Tr. 23).

activity (Tr. 25). After reviewing the medical records, as well as the testimony of Dr. Solomon, the ALJ found that, while Plaintiff had some continued problems with asthma, seizures, and hand, knee and shoulder pain, the record established that her overall functioning had improved (Tr. 29). He concluded that her residual functional capacity ("RFC") had improved to the point that she could perform work at the sedentary level of exertion with certain additional restrictions (Tr. 29 & 30). However, he determined that she did not retain the RFC to perform her past relevant work, 20 C.F.R. § 404.1565, which required a light level of exertion (Tr. 30). Thus, the burden shifted to the Commissioner to show that there were other jobs existing in significant numbers in the national economy which she could perform, consistent with her RFC, age, education, and work experience (Tr. 30). 20 C.F.R. § 404.1560(c)(2).

Plaintiff was born on May 12, 1950. She has a GED and some college credits. She last worked in 1996 (Tr. 42). Her past relevant work experience includes employment as a cashier at a casino (in a non-gambling function), food server, fast food cashier, department store cashier, a swing manager in a fast food restaurant,[4] and a supervisor in a food court at a mall (Tr. 42-45).

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[4] This involved "delegating work to the employees and doing paperwork and stocking, doing most of what the regular employees do" (Tr. 44). It was a little more stressful than working behind the counter and involved more lifting (Tr. 44).

Relying on the testimony of the VE, the ALJ found that certain skills that Plaintiff had obtained from her semi-skilled jobs could be transferred to other cashier and clerk jobs at the sedentary level of exertion (Tr. 31, 33). These skills included managing a food service establishment; coordinating activities of workers; keeping business records; collecting and paying accounts; ordering or purchasing supplies; interviewing, hiring and training personnel; and compiling reports (Tr. 31). Although the ALJ found that Plaintiff was not able to perform a full range of sedentary work due to additional exertional limitations (Tr. 31, 33), based on the testimony of the VE, he found that there were a significant number of jobs in the national economy that she could perform, including ticketing clerk, diet clerk, cashier I, and grading clerk (Tr. 31, 33). Accordingly, he held that her disability ceased on January 1, 2000 (Tr. 33).

On appeal, Plaintiff argues that the ALJ erred in three respects: (1) in not including her mental impairment as a severe impairment at step six in the sequential evaluation process; (2) in relying on the testimony of the VE, which was based on hypothetical questions that did not reference Plaintiff's mental limitations; and (3) in finding that Plaintiff had acquired work skills that were transferable to other occupations. The Commissioner, on the other hand, asserts that the decision should be affirmed because the ALJ's determination that Plaintiff should

have been able to perform a range of sedentary jobs was supported by substantial evidence in the record, including the testimony of Dr. Solomon and the VE.

1. Whether The ALJ Erred In Not Including Plaintiff's Mental Impairment As A Severe Impairment At Step Six

On appeal, Plaintiff does not dispute that her physical condition improved, but she does contest the ALJ's finding that she had no functionally significant mental impairments as of January 1, 2000. Plaintiff cites to the reports of Dr. Christopher Tolsdorf, Ph. D., who evaluated Plaintiff in March 1995 for possible neurocognitive impairments (Tr. 683-87), and Dr. Raymond Irizarry, Ph. D., who performed a consultative evaluation in October 1999 for the Connecticut Disability Determination Services (Tr. 367-71), and a State agency medical consultant's report from May 2000 (Tr. 426-29). She maintains that these records establish that she had a significant impairment with regard to concentration, which would more than minimally restrict her overall functional capacity, and, thus, would constitute a severe impairment.

The severity regulation provides that "[a]n impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities." 20 C.F.R. § 404.1521(a). "Basic work activities" means "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 404.1521(b). Examples include:

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

20 C.F.R. § 404.1521(b)(emphasis added). The Regulations require that if a severe impairment exists, all medically determinable impairments must be considered in the remaining steps of the sequential analysis. 20 C.F.R. § 404.1523. Additionally, a special technique, set forth in 20 C.F.R. § 404.1520a, is used for the evaluation of mental impairments.

The ALJ thoroughly reviewed the reports of Dr. Tolsdorf and Dr. Irizarry (Tr. 23-24). While he recognized that both found that Plaintiff suffered from cognitive weaknesses, he noted that both doctors had observed these deficits had not prevented Plaintiff from functioning in a variety of jobs in the past. Additionally, he noted that Dr. Irizarry suspected that these cognitive problems might be secondary to Plaintiff's medications and questioned how long they would continue (Tr. 371).[5]

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[5] Dr. Irizarry wrote:

> In conclusion, this appears to be a person of rather high intellectual functioning who is deteriorating at

Moreover, as the ALJ noted, even though in 1995 Dr. Tolsdorf found Plaintiff to have certain cognitive problems, he did not consider her unemployable. Dr. Tolsdorf specifically found that Plaintiff's "cognitive, language and concentration deficits should not interfere with her ability to benefit from on-the-job training or practically oriented human service work" and he stated that she seemed "to have the requisite interpersonal social skills to succeed in such a work setting" (Tr. 687). Dr. Tolsdorf described her memory functions as "fairly robust" and attributed her "experience of forgetfulness in her daily life" to "a normal degree of forgetting observed in most individuals" (Tr. 687). Likewise, although Dr. Irizarry observed difficulties in attention and concentration, he was of the opinion that these problems might be due to the multiple psychotropic medications that she was taking, which he strongly recommended that she address with her internist (Tr. 370-71). Additionally, he was of

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> the present time and the one factor, which seems to be relevant is her present medications regime. Therefore, <u>it is not possible to make a conclusion at this time about whether the difficulties in attention and concentration will be continued into the future.</u> Certainly, at the present time, in spite of her intelligence, she probably could not do repetitive type of work in a competitive employment environment. . . . What she states as being her work history, strongly suggests that she would not have any difficulties under normal circumstances in getting along with supervisors and with co-workers. It is highly possible that, if in fact the hypothesis of a problematical relationship with her physician at this time is supported by further data, this could be attributed to, at least in part, her present state of ill health and dependency in the physical area.

(Tr. 371)(emphasis added).

the opinion that she would not have any difficulties getting along with supervisors and co-workers under normal circumstances (Tr. 371).

In rejecting the State agency medical consultant's finding that she had moderate limitations in certain areas of mental functioning,[6] the ALJ relied upon the opinion of Dr. Solomon, who, after reviewing all of Plaintiff's medical records including her psychological examinations, concluded there was nothing to indicate an "ongoing significant depressive" condition (Tr. 78). Additionally, a vocational analysis performed on June 21, 2000, indicated that with respect to her mental residual functional capacity, while she might "on occasion have difficulty with attention, concentration and pace," nevertheless, she was able to follow simple instructions, work without extra supervision, adapt to changes in the work setting and get along with co-workers and the public (Tr. 150).

The Regulations define "basic work activities" as including

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[6] The State agency medical consultant, who reviewed her 1999 records from Dr. Irizarry, found her to be "moderately limited" in her ability to understand and remember detailed instructions, the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods, the ability to compete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, and the ability to accept instructions and respond appropriately to criticism from supervisors (Tr. 425-27). In the fifteen other activities, he found that she was not significantly limited, including her ability to remember and carry out simple instructions, and her ability to make simple work-related decisions (Tr. 427). In the "Functional Capacity Assessment" section, the consultant wrote that the "MER tends to support only partially [claimant's] allegations." He concluded that she may have occasional difficulties remembering complex/detailed instructions, and these may need to be written down, demonstrated, practiced or broken down for her (Tr. 428).

"[u]nderstanding, carrying out, and remembering simple instructions." 20 C.F.R. § 404.1521(b)(3) (emphasis added). While there was evidence in the record that Plaintiff might have difficulty at times with complex instructions, there was nothing to indicate that she would have difficulty with understanding, carrying out, or remembering simple instructions. In fact, even the State agency medical consultant, on which Plaintiff relies, found that she would did not have a significant limitation in the areas of remembering, understanding, and carrying out short and simple instructions (Tr. 426).

Additionally, Plaintiff herself made virtually no mention of any mental impairment in her testimony. She described at length her carpal tunnel problems, her asthma,[7] her allergies, her arthritis, her diabetes, her irritable bowel syndrome, her acid reflux, and her seizure disorder[8] (Tr. 45-52). She also mentioned that she suffered from depression for which she takes Prozac, but Dr. Solomon testified that there was nothing in the medical records that would indicate an ongoing significant depressive condition (Tr. 78). The only time Plaintiff mentioned a difficulty with concentration during the three hearings before

[7] Plaintiff testified that her asthma was controlled by medication and Dr. Solomon confirmed that since January 2000, her pulmonary function tests had been close to normal (Tr. 75-76).

[8] Dr. Solomon testified that based on the medical records it appeared that Plaintiff's seizures were controlled by anti-convulsant medications and he noted that her EEGs had been consistently normal (Tr. 76).

the ALJ was at the last hearing, where she testified that her concentration was "[n]ot very good" (Tr. 96-97).

To the extent that there is conflicting evidence in the record regarding Plaintiff's mental impairments, it was within the province of the ALJ to resolve that evidence. See Veino, 312 F.3d at 588. Based on a review of the entire record, the court finds that there is substantial evidence in the record to support the ALJ's conclusion that Plaintiff's depression and difficulties with concentration were not severe impairments in that they did not impose more than a minimal limitation on her ability to perform basic work activities. See 20 C.F.R. § 404.1520a(d)(1). Therefore, the ALJ did not err in not including her mental limitations in his evaluation at the sixth step of the sequential evaluation process.

2. Whether The ALJ Erred In Relying On The Testimony Of The VE, Based on Hypothetical Questions That Did Not Reference Plaintiff's Mental Limitations

Plaintiff next argues that the ALJ erred in relying on the testimony of the VE because his opinions were expressed in response to hypothetical questions that did not reference Plaintiff's mental limitations. See Andrews v. Shalala, 53 F.3d 1035, 1043-44 (9th Cir. 1995); DeLeon v. Secretary of Health & Human Servs., 734 F.2d 930, 936 (2d Cir. 1984).

In reaching his conclusion that Plaintiff had the ability to perform other work existing in significant numbers in the

national economy, the ALJ appropriately relied on the testimony of Mr. Freedman, a vocational expert. However, in order for a vocational expert's testimony to be reliable, the hypothetical question posed to the expert must include all of the claimant's functional limitations, both physical and mental, which are supported by the record. Horbock v. Barnhart, 210 F. Supp. 2d 125, 134 (D. Conn. 2002); see also Aubeuf v. Schweiker, 649 F.2d 107, 114 (2d Cir. 1981) (holding that a vocational expert's testimony "is only useful if it addresses whether the particular claimant, with his limitations and capabilities, can realistically perform a particular job").

In this case, the VE responded to written interrogatories propounded by the ALJ (Tr. 337-40), which limited Plaintiff to sedentary work, but did not include any mental limitations.[9] At the hearing, Plaintiff's counsel cross-examined the VE and asked him to include in his hypothetical the fact that the individual would "often experience deficiencies of concentration, persistence, or pace, resulting in a failure to complete tasks in a timely manner" (Tr. 135). The VE responded that with those additional limitations this hypothetical individual would not be able to perform the jobs that he had previously identified.

[9] The interrogatories were modified by the ALJ to include the changes proposed by Plaintiff's counsel (Tr. 332). Although Plaintiff's counsel now argues that these hypothetical questions should have included her mental limitations, that was not one of the changes he proposed to the interrogatories.

The ALJ, having already found that Plaintiff's mental impairments were not severe, relied on the VE's prior opinion in response to his hypothetical that did not reference her mental impairments. As discussed above, there was substantial evidence in the record to support the ALJ's determination that Plaintiff's mental impairments were not severe. Thus, the court concludes that the ALJ did not err in relying on the VE's responses to the hypothetical questions that he posed to the ALJ that did not reference Plaintiff's mental impairments. See Dumas v. Schweiker, 712 F.2d 1545, 1554 (2d Cir. 1983).

3. Whether The ALJ Erred In Finding That Plaintiff Had Acquired Work Skills That Were Transferable To Other Occupations

Plaintiff next argues that the administrative record does not support the ALJ's finding that skills Plaintiff had acquired in her prior semi-skilled jobs were transferrable to other occupations, including ticketing clerk, diet clerk, cashier I, and grading clerk. More specifically, she asserts that her previous work as a cashier was as a cashier II, an unskilled job, which did not involve transferrable skills. With respect to the positions of ticketing clerk and diet clerk, she objects to the ALJ's failure to identify which skills he considered to be transferrable to these positions. As to the grading clerk position, she states that the ALJ erroneously relied on the testimony of the VE that Plaintiff's skills acquired as a cashier were transferrable.

The Regulations, 20 C.F.R. § 404.1568(d), describe transferability as follows:

> (1) What we mean by transferable skills. We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

At the second supplemental hearing, Plaintiff testified that for three years she worked as a swing manager at MacDonald's, which required her to assign work to employees, train employees, do some paperwork, count the register, balance the register each shift and for each cashier, stock deliveries, and supervise employees, although she did not have the power to hire or fire them (Tr. 118-19). She also worked with the computer a little, although eventually she was demoted to a cashier position because she was having difficulty learning the job with the computer (Tr. 119-20). She also worked as a food court supervisor at a mall, which involved assigning work to employees, checking tables to make sure they were set up properly and clean, supervising mall conditions, opening the mall, doing paperwork at the end of the shift, helping clean, and hiring employees (Tr. 121-23).

The VE testified that her work as a food court manager and swing manager were semi-skilled jobs with transferable skills, including cashiering experience and customer service experience, training, supervising, and doing reports, and he assumed that

Plaintiff could do "everything below" the fast food manager's position, since she would have to "jump in" wherever she was needed (Tr. 134). The VE acknowledged that he was not talking about "complex skills" but asserted that these skills were relevant to the semi-skilled occupations that he had listed (Tr. 131-34).

The ALJ relied on this testimony in finding Plaintiff had transferable skills from these semi-skilled jobs that she had previously performed. He listed the skills and indicated that they could be transferred to other cashier and clerk jobs at the sedentary level of exertion (Tr. 31). While the ALJ did not specifically identify the particular skills that were transferrable to each of the specific jobs that he found Plaintiff could perform, all of the jobs were cashier or clerk positions.

Plaintiff argues that SSR 82-41, 1982 WL 31389 at *7,[10] required the ALJ to identify the specific skills that were transferrable to each specific job. As Defendant points out, at least one court has held that SSR 82-41 does not require

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[10] SSR 82-41, § 6, provides in relevant part:

> When a finding is made that a claimant has transferable skills, the acquired work skills must be identified, and specific occupations to which the acquired work skills are transferable must be cited in the State agency's determination or the ALJ's decision.

identification of specific transferable skills.[11] Wilson v. Commissioner of Social Security, 378 F.3d 541, 559 (6th Cir. 2004). While that decision is not binding on this court, the court finds the Sixth Circuit's reasoning to be persuasive. Moreover, in this case, the testimony of the VE and his responses to the propounded interrogatories discussed Plaintiff's transferrable skills in detail. The ALJ was entitled to rely on that testimony. Additionally, because all of the jobs listed by the VE were encompassed within the category of "cashier and clerk jobs," the ALJ's failure to specifically list each transferrable skill for each specific position was at most harmless error.

Conclusion

Accordingly, after a review of the record in this case, the court concludes that there was substantial evidence to support the ALJ's determination that Plaintiff was no longer disabled as of January 1, 2000, and, therefore, a termination of her disability benefits was required. The Undersigned recommends that the Plaintiff's Motion to Reverse the Decision of the Commissioner **[Doc. # 5]** be DENIED and recommends that Defendant's Motion to Affirm the Decision of the Commissioner **[Doc. # 15]** be GRANTED. Any objections to this recommended ruling must be filed

[11] In that case, the court deferred to the Commissioner's interpretation that this portion of SSR 82-41 applied only when an ALJ relies solely on the grid, in which cases the ALJ must ascertain whether the claimant has transferable skills in order to apply the grid. Wilson, 378 F.3d at 559-60.

with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; D. Conn. L. Civ. R. 72 for Magistrate Judges; FDIC v. Hillcrest Assocs., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED, this 1st day of March, 2006, at Bridgeport, Connecticut.

/s/ William I. Garfinkel
WILLIAM I. GARFINKEL
United States Magistrate Judge