

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MIKHAEL BEGELFER,

97 CV 3046

Plaintiff,

MEMORANDUM

-against-

AND
ORDER

JOHN J. CALLAHAN, COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION,

Defendant.
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MIKHAEL BEGELFER
438 Ocean Parkway #6H
Brooklyn, NY 11218
plaintiff pro se.

ZACHARY W. CARTER, United States Attorney
Eastern District of New York
(Leslie Brodsky, of counsel)
One Pierrepont Plaza
Brooklyn, New York 11201
for defendant.

NICKERSON, District Judge:

Mikhael Begelfer, plaintiff pro se, brought this action pursuant to 42 U.S.C. § 405(g) to review a final decision of the defendant Commissioner of Social Security that he is not entitled to disability insurance benefits under the Social Security Act.

ANN

I

Plaintiff filed the application for disability insurance benefits and supplemental security income on November 10, 1993. The Commissioner denied this application initially and on reconsideration.

Plaintiff then requested a hearing, which was held on June 8, 1995. A Russian language interpreter was also present. In a decision dated December 9, 1995 the Administrative Law Judge determined that claimant was not disabled within the meaning of the Social Security Act. The Appeals Council denied plaintiff's request for review on April 4, 1997, and this action followed.

II

The Administrative Law Judge made the following formal findings.

Plaintiff was 46 years old at the time of the hearing, and has an eighth grade education. He worked in Russia as a truck driver for 13 years and as a barber for 8 years. He required the services of a Russian-language interpreter at his administrative

hearing. Plaintiff alleges that he is disabled due to depression, ulcer, and a hearing loss. He has not engaged in substantial gainful activity since November 10, 1993.

Plaintiff testified that he spends his days taking care of his two children, washing dishes, cleaning cloths, and food shopping.

The Administrative Law Judge determined that plaintiff's conditions do not meet or equal the clinical criteria of any impairment listed in Appendix 1, Subpart P, Regulations No. 4. The Administrative Law Judge also found that plaintiff retains the physical functional capacity to perform a full range of light work. He found that plaintiff was not disabled for purposes of entitlement to disability benefits.

III

The medical evidence in the record shows that plaintiff began psychiatric treatment with Dr. Mila Samus on October 6, 1993. He complained of obsessive thoughts about his deceased wife, and of hearing her

voice. He reported that he had been hospitalized for six weeks following his wife's death in Russia in 1987. At the time of the examination, plaintiff was suffering from nightmares and a low mood. In her December 1, 1993 report, Dr. Samus related that plaintiff exhibited anhedonia, or the total loss of pleasure in acts that normally give pleasure. Plaintiff's affect was blunted and his speech was monotonous. He was phobic and had difficulty socializing with people. He complained of a fear of driving as a result of being involved in three car accidents. Plaintiff felt anxious, tense, and very lonely.

Dr. Samus reported that plaintiff's behavior and attitude were appropriate, and that he appeared sad and nervous. His speech was coherent. He had no apparent thought disorder. He suffered from feelings of worthlessness, helplessness, and an inability to relax. She also reported that plaintiff was "able to take care of his personal needs," including shopping and caring for his children. His ability to perform calculations and his insight and judgment were fair. He reported no

interests or hobbies. Dr. Samus diagnosed plaintiff with dysthymia, or depression for at least two years. Plaintiff was prescribed Terfenidine, Diphenhydramine, and Paxil.

Dr. Samus also recommended supportive psychotherapy for plaintiff. Plaintiff testified at his hearing that he meets with a psychiatrist, presumably Dr. Samus, once every month or two.

Plaintiff was treated by Dr. Michael Klein for complaints of epigastric pain, nausea, indigestion, heartburn, abdominal pain, cramps, bloating, and anorexia. Dr. Klein related on November 24, 1993 that plaintiff had a history of peptic ulcer. Examination revealed moderate epigastric tenderness and no masses. An esphagogastroduodenoscopy revealed a hiatal hernia with reflux esophagitis, moderate gastritis and an acute, active ulcer in the duodenal bulb. Dr. Klein prescribed Zantac, Levsin, and Mylanta for four to six months, placed plaintiff on a bland, low-fat diet, and instructed him to stop smoking and drinking alcohol. Plaintiff testified at the administrative hearing that

he received medical care from Dr. Klein once every six to seven months.

Plaintiff underwent a consultative examination with Dr. Iza Lev on December 20, 1993. Dr. Lev noted that plaintiff took a bus by himself to the examination and was hard of hearing. Plaintiff complained of feeling chronically depressed since his wife's death in 1987, and reported being hospitalized as a result. He denied any history of psychiatric problems in his family. Plaintiff related to Dr. Lev that he could not remarry because his deceased wife was "persecuting him."

Plaintiff was dressed appropriately, and his grooming was fair. His speech was coherent, relevant and goal directed. His mood was mildly depressed, and affect was appropriate. Plaintiff was not suicidal, homicidal, delusional or hallucinatory. He was oriented to time, place and person. His memory, attention and concentration were intact. He was able to count backwards from one hundred by seven numbers. Dr. Lev noted that plaintiff was trying hard to learn

English. He also noted that plaintiff was unable to find a job as a driver because he had been involved in three car accidents. Dr. Lev opined that plaintiff suffered from depressive disorder, and recommended follow-up including medication and psychotherapy.

On December 20, 1993 Dr. Frank Iaquinta performed a consultative examination of plaintiff. Dr. Iaquinta noted that plaintiff speaks "virtually no English" and that his daughter translated for him. Plaintiff reported that he had a peptic ulcer since the age of 17 and was taking Zantac, Maalox, and Levin. He also said he did not always adhere to his prescribed diet.

Plaintiff reported that his hearing was diminished by sixty percent in his left ear and ten percent in his right. Plaintiff stated that he had hearing aids, but did not use them. On physical examination plaintiff's hearing was not qualitatively checked, but he could not hear the normal spoken voice. He could hear when words were spoken loudly.

Dr. Iaquinta also reported that plaintiff complained of depression, but "is unclear in what this

entails, and no further history could be obtained at this time." Dr. Iaquina opined that "it is not clear whether this depression is indeed present and whether it can be alleviated or cured." He determined that plaintiff's prognosis generally is rather good, and will improve if plaintiff stops smoking. He determined that plaintiff has no limitation lifting, carrying, standing, walking, sitting, pushing, or pulling.

IV

The Commissioner's findings of fact are conclusive if supported by substantial evidence. See Rutherford v. Schweiker, 685 F.2d 60, 62 (2d Cir. 1982). The court must also determine whether the claimant has had a "full hearing" as required by the regulations. Cruz v. Sullivan, 912 F.2d 8, 11 (2d Cir. 1990).

For purposes of Supplemental Security Income benefits, an individual shall be considered disabled if she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to

last for a continuous period of not less than 12 months. 42 U.S.C. § 423(d)(1)(A). The physical or mental impairment must be so severe that the individual "is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. § 423(d)(2)(A).

Plaintiff testified that he has been depressed since the death of his wife in 1987. Despite this, the medical evidence shows that plaintiff was able to lead a fairly normal life, and that his depression was not debilitating. His psychiatrist, Dr. Samus, noted that plaintiff was coherent and alert, and that plaintiff responded to medication. Dr. Samus also noted that plaintiff took care of his household, children, and personal needs, and was able to get along well with people. Similarly, plaintiff's treating physician for his ulcer, Dr. Klein, did not note any functional limitations cause by the ulcer. The Administrative Law Judge's determination concerning plaintiff's depression

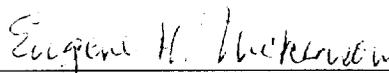
and his ulcer is consistent with the opinions of plaintiff's two treating physicians.

Finally, although all physicians reported a noticeable hearing loss, they also noted that plaintiff has hearing aids that he does not use, and that he can hear if spoken to loudly. Plaintiff has not demonstrated that his hearing loss is disabling.

The court has studied the record and finds that the plaintiff was afforded a full and complete hearing, and that the Administrative Law Judge's evaluation of the evidence is fair and objective. There is substantial evidence to support the Commissioner's decision that plaintiff is not disabled. The decision is affirmed and the complaint is dismissed.

So ordered.

Dated: Brooklyn, New York
April 30, 1998



Eugene H. Nickerson, U.S.D.J.