

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 11-12375
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DECEMBER 19, 2011 JOHN LEY CLERK
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D.C. Docket No. 1:09-cv-00251-MP-GRJ

DEBRA BAKER,

Plaintiff - Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Florida

(December 19, 2011)

Before PRYOR, MARTIN and KRAVITCH, Circuit Judges.

PER CURIAM:

Debra D. Baker appeals the district court's order affirming the decision of the Commissioner of the Social Security Administration to discontinue Baker's disability benefits.

On July 26, 2002, Administrative Law Judge Haack determined that Baker was disabled because of Baker's severe and persistent fatigue following "therapeutic interventions" for colon cancer, a presumptive diagnosis of multiple sclerosis, and an onset of depression. ALJ Haack found that Baker could not "perform even sedentary work activity on a sustained basis." On October 1, 2006, the Commissioner revisited Baker's case, determining that she was no longer disabled and, therefore, not entitled to disability benefits. Baker filed a request for rehearing, and on February 26, 2008, Administrative Law Judge Stacy affirmed the Commissioner's decision to discontinue Baker's benefits. The district court affirmed this decision, and Baker filed this appeal.

Baker argues before us that the Commissioner failed to properly apply the medical improvement standard of 20 C.F.R. § 404.1594(b)(1).¹ In particular Baker claims that ALJ Stacy should have compared Baker's current impairments

¹ "Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s)" 20 C.F.R. § 404.1594(b)(1).

to the impairments that ALJ Haack found in the 2002 disability hearing. Baker also argues that ALJ Haack's 2002 determination as to the credibility of Baker's subjective symptoms was res judicata, thus barring ALJ Stacy's 2008 determination rejecting the credibility of Baker's symptoms. We consider each argument in turn.

This Court reviews the Commissioner's findings to determine whether they are supported by substantial evidence in the record as a whole. McRoberts v. Bowen, 841 F.2d 1077, 1079 (11th Cir. 1988); Lamb v. Bowen, 847 F.2d 698, 701 (11th Cir. 1988). "Substantial evidence is such relevant evidence as a reasonable person would accept as adequate to support a conclusion. It is more than a scintilla, but less than a preponderance." Cannon v. Bowen, 858 F.2d 1541, 1544 (11th Cir. 1988) (quotation marks omitted).

In determining whether a medical condition has improved, the "key question" that the Commissioner must ask "is not whether the claimant still suffer[s] from the same medical problem [she] had when benefits were awarded, but whether the severity of the problem ha[s] decreased sufficiently to enable [her] to engage in gainful activity." Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (11th Cir. 2006). Baker contends that substantial evidence did not support the 2008 determination that her condition had improved because she

continued to suffer from the same impairments in 2008 that she had in 2002.

However, even taken as true, Baker's assertion does not preclude a finding that her impairments have sufficiently improved to warrant termination of her disability benefits. See 20 C.F.R. § 404.1594(b)(1); see also Warre 439 F.3d at 1006. ALJ Stacy's finding that there was a decrease in the severity of Baker's impairments was based on a number of medical examinations, Baker's own statements regarding the efficacy of medications in controlling her symptoms, the non-recurrence of colon cancer, and Baker's stated ability to perform "activities of daily living." Therefore, we agree with the district court that substantial evidence supported the Commissioner's finding that Baker's physical condition had improved.

Next, Baker correctly notes that under 20 C.F.R. § 404.1594(b)(1) a decrease in the severity of an impairment, without an accompanying increase in the claimant's functional capacity to perform basic work activities, precludes cancellation of disability benefits. See Warre, 439 F.3d at 1006. She argues that her subjective symptoms had not sufficiently improved since 2002 to warrant termination of her benefits, and that res judicata barred ALJ Stacy from questioning the credibility of those symptoms. We cannot agree. Res judicata applies only if an ALJ makes a prior decision on the "same facts and on the same

issue or issues.” 20 C.F.R. § 404.957(c)(1); accord Cash v. Barnhart, 327 F.3d 1252, 1255 (11th Cir. 2003). As the district court noted, ALJ Stacy based his 2008 decision on a different set of facts than those ALJ Haack considered in 2002, insofar as ALJ Stacy examined the six years of medical evidence compiled since the 2002 determination. Therefore, res judicata does not govern ALJ Stacy’s finding regarding Baker’s subjective symptoms. With regard to ALJ Stacy’s credibility determination, we have recognized that when an impairment lacks objective evidence, a judge may rely upon inconsistencies between a claimant’s description of her daily activities and her claimed infirmities to determine credibility. See Moore v. Barnhart, 405 F.3d 1208, 1212 (11th Cir. 2005). Here, ALJ Stacy found that Baker’s “physical impairments have not significantly interfered with her activities of daily living and she is capable of performing work activities on a sustained basis with minimal interruptions.” The ALJ thus applied the correct standard to find that, despite Baker’s subjective symptoms, her condition allowed her the “residual functional capacity to perform the full range of light and sedentary work.”

AFFIRMED.