

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>CAROLYN J. MORETZ,</b>	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 1:04cv00044</b>
	)	
	)	<b><u>MEMORANDUM OPINION</u></b>
<b>JO ANNE B. BARNHART,</b>	)	
<b>Commissioner of Social Security,</b>	)	<b>By: PAMELA MEADE SARGENT</b>
<b>Defendant</b>	)	<b>United States Magistrate Judge</b>

In this social security case, I affirm the final decision of the Commissioner denying benefits.

*I. Background and Standard of Review*

Plaintiff, Carolyn J. Moretz, filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying plaintiff’s claim for disability insurance benefits, (“DIB”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 423 (West 2003). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g). This case is before the undersigned magistrate judge upon transfer pursuant to the consent of the parties under 28 U.S.C. § 636(c)(1).

The court’s review in this case is limited to determining if the factual findings of the Commissioner are supported by substantial evidence and were reached through application of the correct legal standards. *See Coffman v. Bowen*, 829 F.2d 514, 517 (4<sup>th</sup> Cir. 1987). Substantial evidence has been defined as “evidence which a reasoning

mind would accept as sufficient to support a particular conclusion. It consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.” *Laws v. Celebrezze*, 368 F.2d 640, 642 (4<sup>th</sup> Cir. 1966). ““If there is evidence to justify a refusal to direct a verdict were the case before a jury, then there is “substantial evidence.””” *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4<sup>th</sup> Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Moretz filed her application for DIB on or about May 14, 1999, alleging disability as of June 19, 1997, based on bilateral carpal tunnel syndrome and pain in the elbows and arms, which radiated into the shoulders. (Record, (“R.”), at 97-99, 112.) Her claim was denied both initially and on reconsideration. (R. at 78-80, 81, 83-84.) Moretz then requested a hearing before an administrative law judge, (“ALJ”), (R. at 85), and this hearing was held on November 2, 1999, at which Moretz was represented by counsel. (R. at 30-50.) A supplemental hearing was held on February 29, 2000, at which Moretz also was represented by counsel. (R. at 51-73.)

By decision dated April 17, 2000, the ALJ denied Moretz’s claim. (R. at 14-24.) After the ALJ issued his decision, Moretz pursued her administrative appeals, (R. at 9), and the Appeals Council denied her request for review. (R. at 5-7.) Moretz then filed this action seeking review of the ALJ’s unfavorable decision. By order entered on July 22, 2002, this court remanded this case to the Commissioner for further development with regard to Moretz’s alleged mental impairment and her physical residual functional capacity. (R. at 277-99.) Upon remand, a third hearing was held on January 15, 2003, at which Moretz was represented by counsel. (R. at 372-87.)

By decision dated January 24, 2003, the ALJ issued a partially favorable decision. (R. at 260-70.) The ALJ found that Moretz met the disability insured status requirements of the Act on June 19, 1997, and continued to meet them through December 31, 2002. (R. at 269.) The ALJ found that Moretz had not engaged in substantial gainful activity since June 19, 1997. (R. at 269.) The ALJ also found that the medical evidence established that, as of June 19, 1997, Moretz had severe impairments related to obesity and fibromyalgia. (R. at 269.) He further found that as of September 24, 2002, Moretz had an additional severe impairment related to a personality disorder. (R. at 269.) However, the ALJ found that Moretz did not have an impairment or combination of impairments that met or equaled an impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 269.) The ALJ found that prior to September 24, 2002, Moretz had the residual functional capacity to perform a full range of medium<sup>1</sup> work. (R. at 269.) The ALJ found that as of September 24, 2002, Moretz was seriously limited, but not precluded, in her ability to deal with work stresses, to understand, remember and carry out complex job instructions, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 269.) The ALJ found that from June 19, 1997, through September 23, 2002, Moretz could perform her past relevant work. (R. at 269.) The ALJ further found that as of September 24, 2002, Moretz could not perform her past relevant work. (R. at 269.) Based on Moretz's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that Moretz could not be expected to make a vocational adjustment to other work as of September 24, 2002. (R. at 270.) Therefore, the ALJ found that Moretz was not disabled before September 24, 2002, but was disabled as of this date. (R. at 269, 270.)

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<sup>1</sup>Medium work involves lifting items weighing up to 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, she also can do sedentary and light work. *See* 20 C.F.R. § 404.1567(c) (2004).

After the ALJ issued his decision, Moretz pursued her administrative appeals, (R. at 255-56), and the Appeals Council denied her request for review. (R. at 253-54.) Moretz then filed this action seeking review of the ALJ's unfavorable decision, which now stands as the Commissioner's final decision. *See* 20 C.F.R. § 404.981 (2004). The case is before this court on the plaintiff's motion for summary judgment filed October 4, 2004, and the Commissioner's motion for summary judgment filed on January 3, 2005.

## *II. Facts*

Moretz was born in 1951, (R. at 97), which, at the time of the ALJ's decision, classified her as a person closely approaching advanced age under 20 C.F.R. § 404.1563(d) (2004). Moretz has a high school education with vocational training as a dental assistant. (R. at 118.) She has past work experience as a substitute cafeteria worker, a deli worker, a certified nursing assistant, a sewing machine operator and a receptionist. (R. at 113.)

Moretz testified at her hearing that she suffered from carpal tunnel syndrome, fibromyalgia and anxiety and depression. (R. at 42-48.) She reported decreased motion and strength in her hands, and she stated that she tired easily. (R. at 42.) Moretz stated that she often dropped things and could grip a pen for only a few minutes at a time. (R. at 43-44.) She also stated that, on average, she slept three hours per night. (R. at 45.) Moretz stated that she suffered extreme pain all over her body due to fibromyalgia. (R. at 44-45.) She stated that she experienced crying spells every day. (R. at 48.) Moretz testified at her second hearing that she had lost complete use

of her hands due to weakness. (R. at 375.) She stated that she suffered from pain in her wrist, elbow and shoulder, which radiated into her neck, hips, legs and knees, causing her to fall at times. (R. at 376.) Moretz testified that she was receiving treatment for her emotional problems. (R. at 378.)

Dr. Claude R. Garfield, M.D., a medical expert, testified at Moretz's supplemental hearing. (R. at 54-66.) By review of medical records, Dr. Garfield testified that Moretz was diagnosed with bilateral carpal tunnel syndrome, with good results from the left and right carpal tunnel releases. (R. at 55.) He also diagnosed her with fibromyalgia and obesity. (R. at 55.) He opined that the physical restriction of lifting items weighing no more than 20 pounds was lifted three to six months after the carpal tunnel releases were performed. (R. at 55, 66.) However, Dr. Garfield opined that the physical restriction of no repetitive use of the hands for more than an hour was permanent. (R. at 59.) Although Dr. Garfield indicated no environmental restrictions, he found that Moretz could not perform any heavy lifting. (R. at 62-63.) Dr. Garfield concluded that Moretz could perform medium work. (R. at 66.)

Vocational expert, Donna Bardsley, also was present and testified at Moretz's supplemental hearing. (R. at 67-72.) Bardsley was asked to assume an individual of Moretz's age, education, work experience and residual functional capacity, who should avoid repetitive movement of the hands. (R. at 68.) Bardsley stated that there was a significant number of jobs available that such an individual could perform, such as a hostess or greeter, a parking lot attendant, a ticket seller, an information clerk, a sales clerk, a cashier, an inventory clerk, a receiving clerk and a kitchen helper. (R. at 69.) Bardsley indicated that the same jobs would be available to the same individual, but who was limited as indicated by psychologist Friedman's evaluation. (R. at 70.)

Bardsley, however, indicated that no jobs would be available to an individual who was limited as indicated by psychologist Ramsden's evaluation, as well as by Susan Shipley's mental assessment. (R. at 70-71.) Bardsley also stated that no jobs would be available to an individual who was limited as indicated by the combined assessments of Dr. Gorman and Shipley. (R. at 71-72.)

Bardsley testified at Moretz's second hearing. (R. at 380-85.) Bardsley was asked to assume an individual of Moretz's age, education, work experience and residual functional capacity, who was limited to occasionally lifting and carrying items weighing 50 pounds and 25 pounds frequently and who could not use her hands to perform repetitive work. (R. at 382.) Bardsley stated that there would be no jobs available. (R. at 382.) Bardsley was asked to consider the same individual who could occasionally lift and carry items weighing 50 pounds and 25 pounds frequently. (R. at 383.) She stated that there would be jobs available that such an individual could perform such as a hand packager, a sorter, an assembler, an inspector, a cleaner and food service related occupations. (R. at 383.) She was then asked to assume the same individual who had the nonexertional limitations as set out in the assessment of Sharon J. Hughson, Ph.D. (R. at 342-44, 383.) Bardsley stated that all jobs would be eliminated. (R. at 384.) Bardsley also stated that there would be no jobs available for an individual who had the limitations as set out in the August 22, 2002, assessment of Dr. Bruce Higginbotham, M.D. (R. at 326-30, 385.)

In rendering his decision, the ALJ reviewed records from Watauga Orthopaedics; Dr. Paul Gorman, M.D.; Dr. Mark McQuain, M.D.; Abingdon Therapy Services; Sheila Wallen, an occupational therapist; Mountain Empire Preventive Medicine Clinic; Dr. Karl W. Konrad, M.D.; Dr. Randall Hays, M.D., a state agency

physician; Dr. Donald R. Williams, M.D., a state agency physician; Dr. Bruce Higginbotham, M.D.; Abingdon Psychological Services; Ralph Ramsden, Ph.D., a licensed clinical psychologist; Barry Friedman, Ph.D., a licensed clinical psychologist; Susan Shipley, a licensed clinical social worker; Robert C. Miller, Ed.D., a licensed clinical psychologist; and Sharon J. Hughson, Ph.D., a licensed clinical psychologist.

The record shows that Moretz saw Dr. Paul Gorman, M.D., from November 1, 1996, through August 9, 1999, for her complaints of digital numbness, lack of dexterity and volar wrist pain. (R. at 152-73, 210-11.) Dr. Gorman diagnosed Moretz with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. (R. at 157, 167.) On November 19, 1996, Dr. Mark McQuain, M.D., performed a nerve conduction study, which revealed an abnormal electromyogram, (“EMG”). (R. at 174.) Dr. McQuain concluded that the study was consistent with severe bilateral carpal tunnel syndrome. (R. at 174.) Dr. McQuain also indicated that Moretz’s right hand was worse than the left. (R. at 174.)

On December 30, 1996, a right carpal tunnel release and a left carpal tunnel steroid injection were performed. (R. at 166, 175.) After Moretz’s symptoms worsened on the left hand, a left carpal tunnel release was performed on March 7, 1997. (R. at 161, 183.) On April 3, 1997, Dr. Gorman opined that the overall bilateral carpal tunnel syndrome was improving; however, symptoms of cubital tunnel syndrome were greater. (R. at 159.) On May 21, 1997, Moretz was restricted to performing no repetitive work for more than a hour at a time and lifting items weighing no more than 20 pounds using both hands. (R. at 155, 186.) He further reported that Moretz would reach maximum medical improvement in one month. (R. at 186.) On August 9, 1999, Dr. Gorman diagnosed Moretz with fibromyalgia, and he referred her

to Dr. Higginbotham. (R. at 210.) On March 21, 2002, Dr. Gorman reported that Moretz's primary problem was fibromyalgia. (R. at 335.) Dr. Gorman reported that Moretz was neurovascularly and vascularly intact. (R. at 335.) He reported that she had "absolutely no residuals of her prior carpal tunnel syndrome." (R. at 335.) He diagnosed fibromyalgia. (R. at 335.)

The record shows that Moretz saw Sheila Wallen from January 2, 1997, through April 8, 1997, for occupational therapy after her right and left carpal tunnel releases. (R. at 177-82.) Wallen noted on January 2, 1997, that Moretz needed assistance to lift and open jars and to cut meat. (R. at 180.) Wallen also noted that Moretz was pleased with the right carpal tunnel release and could make a full fist. (R. at 182.) On March 10, 1997, after the left carpal tunnel release, Wallen noted that Moretz had good initial mobility. (R. at 178.)

On June 23, 1999, Dr. Karl W. Konrad, Ph.D, M.D., saw Moretz for a physical exam. (R. at 187-88.) Dr. Konrad noted that Moretz complained of pain in her forearms and elbows. (R. at 187.) Dr. Konrad diagnosed Moretz with obesity and a heart murmur. (R. at 188.) Dr. Konrad reported that Moretz did not have any "impairment-related physical limitations." (R. at 188.)

On July 6, 1999, Dr. Randall Hays, M.D., a state agency physician, completed a residual functional capacity assessment. (R. at 189.) Dr. Hays reported no impairment-related physical limitations. (R. at 189.) Dr. Donald R. Williams, M.D., another state agency physician, affirmed Dr. Hays's findings. (R. at 189.)

On August 12, 1999, Dr. Bruce Higginbotham, M.D., Moretz's family

practitioner, diagnosed her with fibromyalgia and obesity. (R. at 219, 229.) Moretz complained of pain throughout her back, hips, arms and legs. (R. at 219, 229.) On January 17, 2000, Dr. Higginbotham also diagnosed Moretz with major depression. (R. at 218, 227.) On May 3, 2000, Dr. Higginbotham diagnosed fibromyalgia and depression. (R. at 226.) On August 22, 2002, Dr. Higginbotham indicated that Moretz could stand, sit and walk less than two hours a day and that she could carry items weighing less than 10 pounds. (R. at 329.) He indicated that Moretz had significant limitations in her ability to reach, handle and finger. (R. at 329.) He also indicated that Moretz could use her hands, fingers and arms for repetitive use only five percent of a workday. (R. at 329-30.)

On November 3, 1999, Ralph Ramsden, Ph.D., a licensed clinical psychologist, concluded that Moretz's medical symptoms had caused psychological distress, particularly anxiety. (R. at 197-202.) Ramsden administered the Wechsler Adult Intelligence Scale-III, ("WAIS-III"), test, and Moretz achieved a verbal IQ score of 77, a performance IQ score of 80 and a full-scale IQ score of 77. (R. at 200.) These scores placed Moretz in the borderline range of intellectual functioning. (R. at 200.) However, Ramsden also administered the Kaufman Functional Academic Skills Test, ("K-FAST"). (R. at 200-01.) These results, when compared with the WAIS-III, indicated inconsistencies across specific cognitive skills assessed. (R. at 201.) Therefore, Moretz's intellectual functioning was deemed to be in the low average range. (R. at 201.) Finally, Ramsden administered the Minnesota Multiphasic Personality Inventory - 2, ("MMPI-2"), noting that anxiety appeared to be the dominant clinical issue with depression not exceeding clinical norms. (R. at 201.) Ramsden further noted that Moretz's medical complaints were likely unconsciously expressed to produce secondary gain. (R. at 201.) Moretz was diagnosed with an

anxiety disorder, not otherwise specified, carpal tunnel syndrome in both arms, fibromyalgia and a then-current Global Assessment of Functioning, (“GAF”), score of 65.<sup>2</sup> (R. at 202.)

Ramsden also completed a mental assessment indicating that Moretz had a fair ability to use judgment, to function independently, to maintain attention and concentration, to understand, remember and carry out complex job instructions, to behave in an emotionally stable manner and to demonstrate reliability and a poor or no ability to deal with work stresses. (R. at 203-04.) In all other areas of adjustment Moretz’s abilities were deemed either unlimited/very good or good. (R. at 203-04.)

The record shows that Moretz saw Susan Shipley, a licensed clinical social worker, from November 8, 1999, through February 19, 2001, with complaints of anxiety and depression. (R. at 231-52.) On February 24, 2000, Shipley performed a mental assessment of Moretz. (R. at 213-15.) Shipley concluded that Moretz’s ability to follow work rules, to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to understand, remember, and carry out detailed job instructions, to maintain personal appearance, to behave in an emotionally stable manner and to relate predictably in social situations was satisfactory, but limited. (R. at 213-14.) Shipley, however, found that Moretz’s ability to deal with work stress, to function independently, to maintain attention and concentration, to understand,

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<sup>2</sup>The GAF scale ranges from zero to 100 and “[c]onsider[s] psychological, social, and occupational functioning on a hypothetical continuum of mental health–illness.” DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS FOURTH EDITION, (DSM-IV), 32 (American Psychiatric Association 1994). A GAF of 61-70 indicates that the individual has “[s]ome mild symptoms ...or some difficulty in social, occupational, or school functioning...but generally functioning pretty well, has some meaningful interpersonal relationships.” DSM-IV at 32.

remember and carry out complex job instructions and to demonstrate reliability was seriously limited, but not precluded. (R. at 213-14.) The record indicates that Shipley saw Moretz through December 2002. (R. at 312-25, 349-65.)

On December 17, 1999, Moretz saw Barry Friedman, Ph.D., a licensed clinical psychologist, for a psychological evaluation. (R. at 191-95.) Friedman noted that Moretz's affect was normal and she was fully oriented. (R. at 193.) She described her then-current emotional status as "mostly happy." (R. at 193.) Friedman administered the WAIS-III test, and Moretz achieved a verbal IQ score of 78, a performance IQ score of 83 and a full-scale IQ score of 78. (R. at 194.) Friedman also administered the Wide Range Achievement Test - 3, ("WRAT-3"), and Moretz achieved a reading score of 79 and an arithmetic score of 84. (R. at 195.) Finally, Friedman administered the Personality Assessment Inventory, ("PAI"), which revealed somatic concerns but no emotional or cognitive difficulties. (R. at 195.) Friedman concluded that Moretz was functioning in the borderline to low average range of intelligence. (R. at 195.) Friedman diagnosed Moretz with a pain disorder associated with psychological factors. (R. at 195.) Friedman opined that Moretz was able to perform routine, repetitive tasks, to interact appropriately with co-workers, to receive supervision and to maintain attention and concentration. (R. at 195.)

Friedman also completed a mental assessment indicating that Moretz had a fair ability to understand, remember and carry out complex job instructions. (R. at 196.) In all other areas of adjustment, Moretz's abilities were rated as good. (R. at 196.)

On September 24, 2002, Sharon J. Hughson, Ph.D., a licensed clinical psychologist, evaluated Moretz at the request of Disability Determination Services. (R.

at 336-41.) Hughson diagnosed pain disorder associated with both psychological factors and a general medical condition, chronic fibromyalgia, major depressive disorder, recurrent, mild and dependent personality disorder. (R. at 341.) Hughson completed a mental assessment indicating that Moretz had an unlimited ability to follow work rules, to relate to co-workers and to interact with supervisors. (R. at 342-44.) She indicated that Moretz had a more than satisfactory ability to use judgment and to understand, remember and carry out simple job instructions. (R. at 342-43.) Hughson indicated that Moretz had a satisfactory ability to deal with the public, to function independently, to maintain attention and concentration, to understand, remember and carry out detailed job instructions and to maintain personal appearance. (R. at 342-43.) She indicated that Moretz had a seriously limited, but not precluded, ability to deal with work stresses, to understand, remember and carry out complex job instructions, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 342-43.)

On November 6, 2002, Robert C. Miller, Ed.D., a licensed clinical psychologist, evaluated Moretz at the request of Moretz's attorney. (R. at 366-69.) Miller diagnosed major depressive disorder, mild, responding to treatment, generalized anxiety disorder and pain disorder associated with psychological factors. (R. at 369.) Miller indicated that Moretz had a GAF of 60.<sup>3</sup> (R. at 369.) Miller completed a mental assessment indicating that Moretz had a limited but satisfactory ability to follow work rules, to use judgment, to understand, remember and carry out simple job instructions and to maintain personal appearance. (R. at 370-71.) He indicated that Moretz had a seriously limited, but not precluded, ability to relate to co-workers, to deal with the public, to

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<sup>3</sup>A GAF of 60 indicates that the individual has "[m]oderate symptoms ... OR moderate difficulty in social, occupational, or school functioning ...." DSM-IV at 32.

interact with supervisors, to function independently, to maintain attention and concentration, to understand, remember and carry out detailed job instruction, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 370-71.) He also indicated that Moretz had no useful ability to deal with work stresses and to understand, remember and carry out complex job instructions. (R. at 370-71.)

## *II. Analysis*

The Commissioner uses a five-step process in evaluating DIB claims. *See* 20 C.F.R. § 404.1520 (2001). *See also Heckler v. Campbell*, 461 U.S. 458, 460-61 (1983); *Hall v. Harris*, 658 F.2d 260, 264-65 (4<sup>th</sup> Cir. 1981). This process requires the Commissioner to consider, in order, whether a claimant is 1) working; 2) has a severe impairment; 3) has an impairment that meets or equals the requirements of a listed impairment; 4) can return to her past relevant work; and 5) if not, whether she can perform other work. *See* 20 C.F.R. § 404.1520 (2004). If the Commissioner finds conclusively that a claimant is or is not disabled at any point in this process, review does not proceed to the next step. *See* 20 C.F.R. § 404.1520(a) (2004).

Under this analysis, a claimant has the initial burden of showing that she is unable to return to her past relevant work because of her impairments. Once the claimant establishes a *prima facie* case of disability, the burden shifts to the Commissioner. To satisfy this burden, the Commissioner must then establish that the claimant has the residual functional capacity, considering the claimant's age, education, work experience and impairments, to perform alternative jobs that exist in the national economy. *See* 42 U.S.C.A. § 423(d)(2)(A) (West 2003). *See also McLain v.*

*Schweiker*, 715 F.2d 866, 868-69 (4<sup>th</sup> Cir. 1983); *Hall*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4<sup>th</sup> Cir. 1980).

By decision dated January 24, 2003, the ALJ issued a partially favorable decision. (R. at 260-70.) The ALJ found that the medical evidence established that, as of June 19, 1997, Moretz had severe impairments related to obesity and fibromyalgia. (R. at 269.) He further found that as of September 24, 2002, Moretz had an additional severe impairment related to a personality disorder. (R. at 269.) However, the ALJ found that Moretz did not have an impairment or combination of impairments that met or equaled an impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 269.) The ALJ found that prior to September 24, 2002, Moretz had the residual functional capacity to perform a full range of medium work. (R. at 269.) The ALJ found that as of September 24, 2002, Moretz was seriously limited, but not precluded, in her ability to deal with work stresses, to understand, remember and carry out complex job instructions, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 269.) The ALJ found that from June 19, 1997, through September 23, 2002, Moretz could perform her past relevant work. (R. at 269.) The ALJ further found that as of September 24, 2002, Moretz could not perform her past relevant work. (R. at 269.) Based on Moretz's age, education, work experience and residual functional capacity and the testimony of a vocational expert, the ALJ found that Moretz could not be expected to make a vocational adjustment to other work as of September 24, 2002. (R. at 270.) Therefore, the ALJ found that Moretz was not disabled before September 24, 2002, but was disabled as of this date. (R. at 269, 270.)

In her brief, Moretz argues that the ALJ failed to properly consider and grant

controlling weight to the medical evaluation completed by Dr. Gorman. (Brief In Support Of Plaintiff's Motion For Summary Judgment, ("Plaintiff's Brief"), at 10-12.) Moretz also argues that the ALJ erred by failing to find that she suffered from a severe mental impairment prior to September 24, 2002. (Plaintiff's Brief at 12-18.)

As stated above, the court's function in this case is limited to determining whether substantial evidence exists in the record to support the ALJ's findings. This court must not weigh the evidence, as this court lacks authority to substitute its judgment for that of the Commissioner, provided his decision is supported by substantial evidence. *See Hays*, 907 F.2d at 1456. In determining whether substantial evidence supports the Commissioner's decision, the court also must consider whether the ALJ analyzed all of the relevant evidence and whether the ALJ sufficiently explained his findings and his rationale in crediting evidence. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4<sup>th</sup> Cir. 1997).

It is the ALJ's responsibility to weigh the evidence, including the medical evidence, in order to resolve any conflicts which might appear therein. *See Hays*, 907 F.2d at 1456; *Taylor v. Weinberger*, 528 F.2d 1153, 1156 (4<sup>th</sup> Cir. 1975). "Thus it is not within the province of a reviewing court to determine the weight of the evidence, nor is it the court's function to substitute its judgment for that of the [Commissioner] if his decision is supported by substantial evidence." *Hays*, 907 F.2d at 1456. Furthermore, while an ALJ may not reject medical evidence for no reason or for the wrong reason, *see King v. Califano*, 615 F.2d 1018, 1020 (4<sup>th</sup> Cir. 1980), an ALJ may, under the regulations, assign no or little weight to a medical opinion based on the factors set forth at 20 C.F.R. § 404.1527(d), if he sufficiently explains his rationale and if the record supports his findings.

Moretz first argues that the ALJ erred by failing to grant controlling weight to the medical evaluation completed by Dr. Gorman, her treating physician. (Plaintiff's Brief at 10-12.) Under 20 C.F.R. § 404.1527(d), the ALJ must give controlling weight to a treating source's opinion if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence of record. The ALJ stated he was rejecting Dr. Gorman's restriction because it was not consistent with the objective medical findings of record. (R. at 266.) The ALJ also rejected the opinion of Dr. Higginbotham because it was not consistent with his own treatment records or the other objective medical findings. (R. at 266.) The ALJ relied upon the assessments of Dr. Konrad and the state agency physician. (R. at 267.) In June 1999, Dr. Konrad reported that Moretz did not have any impairment-related physical limitations. (R. at 188.) Dr. Hays made this same finding in July 1999. (R. at 189.) Furthermore, in March 2002, Dr. Gorman found that Moretz had no residuals of her prior carpal tunnel syndrome. (R. at 335.) Based on my review of the evidence, I find that substantial evidence supports the ALJ's decision not to give controlling weight to the assessments of Dr. Gorman and Dr. Higginbotham.

Moretz also argues that the ALJ failed to find that she suffered from a severe mental impairment prior to September 24, 2002. (Plaintiff's Brief at 12-18.) While the medical evidence shows that Moretz was treated for an anxiety disorder and depression prior to September 2002, the ALJ rejected the assessments of Ramsden and Shipley because they were not consistent with their own notes and observations. (R. at 267.) The ALJ rejected Ramsden's assessment stating that it was not consistent with Ramsden's own clinical observation that Moretz appeared only mildly depressed. (R. at 267.) The record also indicates that Ramsden assessed a GAF score of 65, indicating only mild symptoms. (R. at 267.) In addition, Friedman evaluated Moretz

six weeks after Ramsden and found no significant functional limitations. (R. at 195-96, 267.) Shipley's records indicate that Moretz's symptoms improved with medication. (R. at 231, 234.) "If a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross v. Heckler*, 785 F.2d 1163, 1166 (4<sup>th</sup> Cir. 1986). Thus, I find that substantial evidence exists to support the ALJ's finding that Moretz had the residual functional capacity to perform medium work prior to September 24, 2002.

#### *IV. Conclusion*

For the foregoing reasons, Moretz's motion for summary judgment will be denied, the Commissioner's motion for summary judgment will be granted, and the Commissioner's decision to deny benefits prior to September 24, 2002, will be affirmed.

An appropriate order will be entered.

DATED: This 28<sup>th</sup> day of February, 2005.

/s/ Pamela Meade Sargent  
UNITED STATES MAGISTRATE JUDGE