

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

<b>WILMA DIANE TAYLOR,</b>	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 1:05cv00078
	)	<b><u>REPORT AND</u></b>
	)	<b><u>RECOMMENDATION</u></b>
<b>JO ANNE B. BARNHART,</b>	)	
<b>Commissioner of Social Security,</b>	)	By: PAMELA MEADE SARGENT
Defendant	)	United States Magistrate Judge

*I. Background and Standard of Review*

Plaintiff, Wilma Diane Taylor, 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 & Supp. 2005). Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g). This case is before the undersigned magistrate judge by referral pursuant to 28 U.S.C. § 636(b)(1)(B). As directed by the order of referral, the undersigned now submits the following report and recommended disposition.

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 Taylor protectively filed her application for DIB on or about October 22, 2003, alleging disability as of August 1, 2002, based on nerve problems, depression and heart problems. (Record, (“R.”), at 63-66, 70.) The claim was denied initially and upon reconsideration. (R. at 31-33, 36, 38-40.) Taylor then requested a hearing before an administrative law judge, (“ALJ”). (R. at 41.) The ALJ held a hearing on May 2, 2005,<sup>1</sup> at which Taylor was represented.<sup>2</sup> (R. at 223-32.)

By decision dated June 16, 2005, the ALJ denied Taylor’s claim. (R. at 13-19.) The ALJ found that Taylor met the disability insured status requirements of the Act for disability purposes through December 31, 2002.<sup>3</sup> (R. at 18.) The ALJ found that Taylor had not engaged in substantial gainful activity since the alleged onset of disability. (R. at 18.) The ALJ also found that the medical evidence established that Taylor suffered from a severe impairment, namely borderline intellectual functioning, but he found that Taylor did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 18.) The ALJ found that Taylor’s allegations were not totally credible. (R.

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<sup>1</sup>A hearing was held on January 10, 2005, but was postponed to obtain additional information. (R. at 211-22.)

<sup>2</sup>Taylor was represented by Eric Reese, a paralegal with the law firm of Browning, Lamie & Gifford, P.C. (R. at 223.)

<sup>3</sup>Thus, in order to be eligible for DIB benefits, Taylor must prove that she was disabled at some point on or prior to December 31, 2002.

at 18.) The ALJ found that, as of her date last insured, Taylor retained the residual functional capacity to perform simple and unskilled work at any exertional level. (R. at 18.) The ALJ found that Taylor could perform her past relevant work as a salad bar attendant, a fast food worker and a cleaner. (R. at 18.) Thus, the ALJ found that Taylor was not disabled under the Act and was not eligible for DIB benefits. (R. at 18-19.) *See* 20 C.F.R. § 404.1520(f) (2005).

After the ALJ issued his decision, Taylor pursued her administrative appeals, (R. at 9), but the Appeals Council denied her request for review. (R. at 6-8.) Taylor 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 (2005). The case is before this court on the Commissioner's motion for summary judgment filed January 25, 2006.

## *II. Facts*

Taylor was born in 1962, (R. at 63), which classifies her as a "younger person" under 20 C.F.R. § 404.1563(c). Taylor obtained her general equivalency development, ("GED"), diploma, and has past relevant work experience as a cook, a cashier, a sewing machine operator, a janitor and a salad bar attendant. (R. at 71, 76.)

Thomas Schacht, Ph.D., a psychological expert, testified at Taylor's hearing. (R. at 226-28, 230-31.) Schacht stated that Taylor's high school records indicated that she was a poor student and her achievement testing was consistently at the bottom of the low average range. (R. at 226.) Taylor's achievement tests from sixth grade through eighth grade were statistically comparable to an IQ score of 85. (R. at 226-

27.) Schacht explained that there was a single Lorge-Thorndike IQ test administered during the fourth grade and Taylor's nonverbal IQ score of 58 was an anomalous finding that was not explained or supported by anything else in the record. (R. at 227.) He also testified that Taylor's IQ score on the Wechsler Adult Intelligence Scale-III, ("WAIS-III"), test was not supported by the school records, was inconsistent with Taylor's past work as a restaurant manager and was inconsistent with Taylor's ability to obtain a GED. (R. at 228.) He believed that the assessment completed by psychologist Brian Warren was not accurate to the extent that it was based on mental retardation. (R. at 228.) Schacht testified that Taylor's alleged depression had not prevented her from working in the past and there was no reference to psychological issues in the medical records from November 2002 through November 2003. (R. at 227.) He opined that Warren's assessment was not accurate to the extent that it was based on Taylor's alleged depression and anxiety because Taylor was "virtually untreated" for these impairments. (R. at 228.)

Norman Hankins, a vocational expert, testified that Taylor's work as a salad bar attendant and fast food worker would be classified as unskilled light work.<sup>4</sup> (R. at 216.) He stated that her work as a sewing machine operator would be semiskilled light work. (R. at 216.) Hankins stated that Taylor's work as a cleaner and janitor would be classified as unskilled medium work.<sup>5</sup> (R. at 216.)

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<sup>4</sup>Light work involves lifting items weighing up to 20 pounds at a time with frequent lifting or carrying of items weighing up to 10 pounds. If an individual can do light work, she also can do sedentary work. *See* 20 C.F.R. § 404.1567(b) (2005).

<sup>5</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 an individual can do medium work, she also can do sedentary and light work. *See* 20 C.F.R. § 404.1567(c) (2005).

Donna Bardsley, a vocational expert, testified that an individual who could perform unskilled work, who had low average intelligence, who could handle only limited interaction with people and who had no physical impairments could perform many jobs. (R. at 229.)

In rendering his decision, the ALJ reviewed records from Southwest Virginia Community College; Tri-County Health Clinic; Richlands OBGYN Associates; R. J. Milan Jr., Ph.D., a state agency psychologist; Brian E. Warren, Ph.D., a licensed clinical psychologist; Sterling Elementary School; Dumfries Elementary School; and Russell County School Board.

School records indicate that in 1971 the Lorge-Thorndike Intelligence Test was administered, and Taylor obtained a verbal IQ score of 87, a nonverbal IQ score of 58 and a composite IQ score of 73. (R. at 199.) In May 1988, Taylor attended Southwest Virginia Community College and was a student in good standing. (R. at 202.)

Taylor was seen at Tri-County Health Clinic from May 1999 through June 2004 for complaints of menstrual irregularity, fatigue, weakness, swollen ankles, visual problems, excess snoring, restless sleep and depression. (R. at 117-28, 133-35.) In November 2002, Taylor reported that she had been depressed since 1987, when her mother died. (R. at 124.) In November 2003, Zoloft was prescribed, but it does not appear that this medication was prescribed again after this date. (R. at 203.) In June 2004, Taylor complained of neck and back pain. (R. at 119.) An MRI of Taylor's lumbar spine showed mild to moderate degenerative changes within her lower lumbar spine. (R. at 129-30.) There was no evidence of a high grade neural foraminal

narrowing, no evidence of a central spinal stenosis and no evidence of disc herniation. (R. at 129-30.) An MRI of Taylor's cervical spine showed a small disc protrusion at the C6-7 level and posterior spur formation without neural impingement. (R. at 132.) X-rays of Taylor's lumbar spine showed no acute abnormality. (R. at 131.) X-rays of Taylor's cervical spine showed degenerative disc disease at the C6-7 level. (R. at 132.) In July 2004, Taylor was prescribed Prozac, but it appears that this was the only time that she was prescribed this medication. (R. at 203.)

In September 2002, Taylor presented to the emergency room at the Russell County Medical Center, ("RCMC"), complaining of neck pain due to a motor vehicle accident. (R. at 147-49.) X-rays of Taylor's thoracic spine were normal. (R. at 150.) Taylor received chiropractic care from September 2002 through April 2003. (R. at 151-58.)

On March 5, 2004, R. J. Milan Jr., Ph.D., a state agency psychologist, indicated that Taylor suffered from a nonsevere affective disorder. (R. at 170-83.) He indicated that there was insufficient evidence to determine the degree of limitation on Taylor's activities of daily living and in maintaining social functioning. (R. at 180.) He reported that Taylor had no limitation in her ability to maintain concentration, persistence or pace and that she had experienced no episodes of decompensation. (R. at 180.) In May 2004, Julie Jennings, Ph.D., another state agency psychologist, affirmed this assessment. (R. at 170.)

In December 2004, Brian E. Warren, Ph.D., a licensed clinical psychologist, evaluated Taylor at the request of Taylor's attorney. (R. at 188-92.) Taylor reported

an emotionally abusive childhood. (R. at 188.) Taylor reported a history of depression and anxiety dating back to her late childhood and early adolescence. (R. at 188.) Warren reported that Taylor appeared immediately as an extremely anxious and depressed individual. (R. at 189.) The WAIS-III test was administered, and Taylor obtained a verbal IQ score of 73, a performance IQ score of 69 and a full-scale IQ score of 69. (R. at 190.) The Working Memory Index indicated that Taylor would experience marked difficulty in holding information to perform a specific task. (R. at 190.) The Personality Assessment Inventory showed significant signs of marked clinical depression and marked anxiety. (R. at 191.) Warren diagnosed generalized anxiety disorder, severe, major depressive disorder, single episode, severe and mental retardation. (R. at 192.)

Warren completed an assessment indicating that Taylor had a limited but satisfactory ability to follow work rules, to understand, remember and carry out simple instructions and to maintain personal appearance. (R. at 193.) He indicated that Taylor had a seriously limited, but not precluded, ability to relate to co-workers, to deal with the public, to use judgment, to interact with supervisors, to function independently, to maintain attention/concentration, to understand, remember and carry out detailed instructions, to behave in an emotionally stable manner, to relate predictably in social situations and to demonstrate reliability. (R. at 193.) He reported that Taylor had no useful ability to deal with work stresses and to understand, remember and carry out complex instructions. (R. at 193.)

### *III. Analysis*

The Commissioner uses a five-step process in evaluating DIB claims. *See* 20 C.F.R. § 404.1520 (2005); *see also Heckler v. Campbell*, 461 U.S. 458, 460-62 (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 1) is 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 (2005). 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) (2005).

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) (West 2003 & Supp. 2005); *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 June 16, 2005, the ALJ denied Taylor's claim. (R. at 13-19.) The ALJ found that the medical evidence established that Taylor suffered from a severe impairment, namely borderline intellectual functioning, but he found that

Taylor did not have an impairment or combination of impairments listed at or medically equal to one listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. (R. at 18.) The ALJ found that, as of her date last insured, Taylor retained the residual functional capacity to perform simple and unskilled work at any exertional level. (R. at 18.) The ALJ found that Taylor could perform her past relevant work as a salad bar attendant, a fast food worker and a cleaner. (R. at 18.) Thus, the ALJ found that Taylor was not disabled under the Act and was not eligible for DIB benefits. (R. at 18-19.) *See* 20 C.F.R. § 404.1520(f) (2005).

As stated above, the court's function in the case is limited to determining whether substantial evidence exists in the record to support the ALJ's findings. The court must not weigh the evidence, as this court lacks authority to substitute its judgment for that of the Commissioner, provided her 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).

Thus, 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). 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, even one from a treating

source, 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.

Taylor argues that the ALJ erred in finding that she did not suffer from a severe mental impairment. (Brief In Support Of Plaintiff's Motion For Summary Judgment,<sup>6</sup> ("Plaintiff's Brief"), at 6-9.) In particular, Taylor argues that the ALJ erred in finding that her condition did not meet or equal the listed impairment for mental retardation found at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.05(C). (Plaintiff's Brief at 6-9.) Taylor also argues that the ALJ erred by giving greater weight to the testimony of Schacht in determining that she was not disabled. (Plaintiff's Brief at 9-10.) Taylor does not challenge the ALJ's finding that she can perform work at all exertional levels. As stated above, to be eligible for DIB benefits, Taylor must prove that she was disabled prior to December 31, 2002.

Taylor contends that her mental impairment meets or equals the criteria for § 12.05(C), the listing for mental retardation. To meet the impairment requirements of § 12.05(C), a claimant's mental functioning must be limited to the extent that she scores between 60 and 70 on a valid IQ test, and she must suffer from another impairment that imposes a significant work-related limitation. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.05(C) (2005). Additionally, the mental deficits must have manifested during the claimant's developmental stage, i.e., prior to age 22. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.05. The ALJ in this case found that Taylor had borderline intellectual functioning. (R. at 18.) He found that Taylor had the residual

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<sup>6</sup>Taylor did not file a motion for summary judgment in this matter.

functional capacity to perform simple and unskilled work at any exertional level. (R. at 18.) The ALJ relied on Taylor's prior relevant work, her ability to obtain a GED, her school history and Schacht's testimony to make this finding. (R. at 15-16.) While Warren reported that Taylor obtained a verbal IQ score of 73, a performance IQ score of 69 and a full-scale IQ score of 69, (R. at 190), Schacht testified that Taylor's achievement tests from sixth grade through eighth grade were statistically comparable to an IQ score of 85. (R. at 226-27.) He also stated that Taylor's IQ score on the WAIS-III was not supported by the school records, was inconsistent with her past work and was inconsistent with her ability to obtain a GED. (R. at 228.) Schacht testified that Taylor's alleged depression had not prevented her from working in the past, and the record gives no reference to psychological issues from November 2002 through November 2003. (R. at 227.) The record shows that Taylor was prescribed Zoloft on only one occasion in November 2003 and Prozac in July 2004. (R. at 203.) Taylor's treating physician placed no limitations on Taylor's work-related abilities. The record shows that Taylor completed multiple pages of disability forms without any assistance, (R. at 69-78, 82-98), has raised a child, (R. at 188), drives a car, (R. at 90), reads the Bible on a daily basis, (R. at 92), and engages in a variety of household maintenance functions and social and recreational activities. (R. at 90-94.) Furthermore, Taylor's work experience indicates that she has performed semiskilled work, attended college as a student in good standing and obtained a GED, all of which are inconsistent with someone who is mentally retarded. (R. at 76, 202.) Based on my review of the record, I find that substantial evidence exists to support this finding. I also find that substantial evidence exists to support the ALJ's finding that Taylor did not meet or equal § 12.05(C).

Taylor also contends that the ALJ erred by failing to give controlling weight to the opinion of psychologist Warren. The ALJ gave little weight to the assessment of Warren because it was inconsistent with the record as a whole. (R. at 15.) Furthermore, Warren evaluated Taylor in December 2004, two years after her DIB status expired. (R. at 188-92.) Warren's opinion does not address whether Taylor's condition existed during or prior to December 2002. (R. at 188-92.) The ALJ relied on the testimony of the medical expert, Schacht, to determine Taylor's residual functional capacity. Based on my review of the evidence, I find that substantial evidence exists to support the ALJ's decision not to give controlling weight to Warren's assessment. I also find that the opinion of Schacht and the state agency physicians support the ALJ's finding as to Taylor's residual functional capacity.

For these reasons, I find that substantial evidence exists to support the ALJ's finding that Taylor had the residual functional capacity to perform simple and unskilled work at any exertional level.

### **PROPOSED FINDINGS OF FACT**

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Substantial evidence exists to support the ALJ's finding that Taylor did not meet or equal § 12.05(C);
2. Substantial evidence supports the ALJ's finding with regard to Taylor's residual functional capacity; and

3. Substantial evidence exists to support the ALJ's finding that Taylor was not disabled under the Act.

### **RECOMMENDED DISPOSITION**

The undersigned recommends that the court grant the Commissioner's motion for summary judgment and affirm the Commissioner's decision denying benefits.

#### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(c) (West 1993 & Supp. 2005):

Within ten days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the Honorable James P. Jones, Chief United States District Judge.

The Clerk is directed to send certified copies of this Report and Recommendation to all counsel of record at this time.

DATED: This 28<sup>th</sup> day of February 2006.

*/s/ Pamela Meade Sargent*  
UNITED STATES MAGISTRATE JUDGE