

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

PALMA L. LAWSON,)	
Plaintiff)	
)	
v.)	Civil Action No. 2:03cv00129
)	<u>REPORT AND</u>
)	<u>RECOMMENDATION</u>
)	
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

I. Background and Standard of Review

Plaintiff, Palma L. Lawson, 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

(4th 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 (4th 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 (4th Cir. 1990) (quoting *Laws*, 368 F.2d at 642).

The record shows that Lawson filed initial applications for DIB and supplemental security income, (“SSI”), on September 11, 1991, which were denied initially on October 29, 1991, and which she pursued no further. (Record, (“R.”), at 32.) She then filed another DIB application on February 27, 1995, which was denied initially on March 2, 1995, and on reconsideration on April 11, 1995. (R. at 64-66, 116-19.) Lawson did not request further review of this determination. (R. at 32.) Lawson filed her current DIB application on May 28, 1997, alleging disability as of August 23, 1992, based on a back condition, an injury to her left hand, infections and resulting damage to her left ear and a nervous condition. (R. at 121-23,125, 138.) Lawson’s claim was denied initially and on reconsideration. (R. at 31.) Lawson then requested a hearing before an administrative law judge, (“ALJ”), which was denied by order dated December 23, 1998. (R. at 31-32.) This denial was vacated on March 3, 1999. (R. at 32.) Lawson’s claim was assigned to another ALJ and on April 12, 1999, he issued a res judicata dismissal of her hearing request. (R. at 50-51.) Specifically, in the dismissal order, the ALJ noted that the medical evidence submitted, which was dated 1998 and 1999, did not relate back to the time period prior to September 1992. (R. at 50.) The ALJ also determined that there was no basis

under the regulations for reopening the prior application. (R. at 51.) The basis of the ALJ's hearing request dismissal was that the claim was res judicata because Lawson had a previous determination on the same facts and issues and that the previous determination had become final. (R. at 51.) Lawson requested Appeals Council review of the ALJ's dismissal of the hearing request, but the Appeals Council found that there was no basis for changing the ALJ's decision to dismiss. (R. at 77.) Lawson then sought relief in the district court, claiming that the court had jurisdiction despite there being no final reviewable decision on the basis of invocation of a colorable constitutional claim. (R. at 95-97, 105-06.) This court agreed that this exception had been implicated because Lawson was unrepresented at the time her 1995 application was denied and further found that there was an issue as to her mental capacity to understand her appeal rights. (R. at 82-92.) Thus, the district court remanded Lawson's claim back to the Commissioner for further proceedings. (R. at 80-81.) On January 11, 2002, the Appeals Council issued an order remanding the case back to the ALJ and vacating the prior final decision. (R. at 78-79.) An ALJ held a hearing on June 6, 2002, at which Lawson was represented by counsel. (R. at 548-94.)

By decision dated June 18, 2002, the ALJ denied Lawson's claim. (R. at 31-35.) The ALJ found that Lawson met the disability insured status requirements of the Act through September 30, 1992, but not thereafter.¹ (R. at 35.) The ALJ found that Lawson had not engaged in substantial gainful activity since August 23, 1992. (R. at 35.) The ALJ also found that the medical evidence established that Lawson did not

¹Thus, in order to be eligible for DIB benefits, Lawson must prove that she was disabled at some point on or prior to September 30, 1992.

have a medically determinable physical or mental impairment or combination thereof prior to September 30, 1992. (R. at 35.) Thus, the ALJ further found that Lawson did not have a severe impairment at any time pertinent to the decision. (R. at 35.) The ALJ found that Lawson's allegations of disabling pain and other symptoms were neither credible nor supported by the documentary evidence. (R. at 35.) Therefore, the ALJ concluded that Lawson was not under a disability as defined by the Act and was not eligible for DIB benefits. (R. at 35.) *See* 20 C.F.R. § 404.1520(c) (2005).

After the ALJ issued his opinion, Lawson pursued her administrative appeals, (R. at 26), but the Appeals Council denied her request for review. (R. at 5-6.) Lawson 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 Lawson's motion for summary judgment filed April 6, 2004.

II. Facts²

Lawson was born in 1958, (R. at 121, 552), which, at the time of the ALJ's decision, classified her as a "younger person" under 20 C.F.R. § 404.1563(c) (2005). She has a high school education³ and some training in computer programming through the military. (R. at 129, 552-53.) Lawson has past relevant work experience as a

²Because Lawson must establish disability on or before September 30, 1992, for disability purposes, I have addressed only those facts relevant to this time period in this Report and Recommendation.

³At her hearing, Lawson testified that she quit school in the twelfth grade, but subsequently received her general equivalency development, ("GED"), diploma. (R. at 552.)

personnel specialist/receptionist, a waitress and a cuff setter at a sewing factory. (R. at 129, 134, 553-55.)

At her 2002 hearing, Lawson testified that she had injured her back while in the military doing exercises on asphalt. (R. at 556.) Specifically, she stated that the right side of her lower back hurt, but that she had not undergone back surgery. (R. at 557, 558.) She stated that she sometimes had to walk stooped over with her hands on her knees. (R. at 559.) Lawson testified that she would lie down and use a heating pad for relief, noting that she sometimes had to lie down all day. (R. at 560, 562.) She stated that she had difficulty standing due to pain in her back and feet. (R. at 560.) Lawson, who is right-handed, testified that she also suffered from carpal tunnel syndrome back in 1992, for which she underwent surgery on the left hand. (R. at 573, 576.) However, she testified that she still experienced numbness in that hand. (R. at 573-74.) She stated that in 1992 her hands stayed numb and swollen. (R. at 574.) Lawson also testified that she had undergone elbow surgery approximately three months prior to the hearing. (R. at 574.) She stated that her elbow was still tender. (R. at 575.) Lawson testified that she had decreased strength in both hands. (R. at 575.)

Lawson further testified that she had arthritis in both knees, which had worsened over the years. (R. at 577-78.) She stated that she took pain medication for relief. (R. at 578.) Lawson testified that she experienced aching in her feet, which doctors had opined was related to her back condition. (R. at 578-79.) She stated that she began experiencing this problem in 1980. (R. at 579.) Lawson testified that she experienced numbness from her knees down both of her legs and that her left foot

went numb nearly every day. (R. at 579.) She testified that she did not receive any treatment for her legs or knees during or before 1992 because she could not afford it. (R. at 579.) She stated that she did not learn until approximately 1995 that she could obtain treatment from the Veterans' Administration Medical Center. (R. at 579-80.)

Lawson also testified that she had suffered from depression since she was a child, noting that she had been sexually abused by her brother and that her mother had tried to kill her. (R. at 563.) She stated that, when she got depressed, she might stay in her house for a week. (R. at 562.) Lawson testified that she had received mental health counseling, but had never been hospitalized for her nerves. (R. at 567-69.) She stated that she had been given medication for panic attacks, but that nothing helped. (R. at 569.) Lawson testified that she began experiencing panic attacks in 1990. (R. at 569-70.) She stated that she had continued to experience these attacks, but that they were not as severe. (R. at 570.) Lawson testified that she experienced panic attacks approximately two or three times per week, noting that she mostly experienced them when she was around her husband. (R. at 571.)

Lawson testified that she had a driver's license, but that her husband drove most of the time. (R. at 582.) She stated that she occasionally drove, however. (R. at 582-83.) Lawson testified that she did not perform housework because it caused her pain. (R. at 583.) She stated that she had not attended church services in a long time because it made her nervous to be around "confusion and fussing." (R. at 583.)

Brenda Hill, a friend of Lawson's, also was present and testified at Lawson's hearing. (R. at 585-90.) Hill testified that she met Lawson in 1989. (R. at 585.) She

stated that she knew that Lawson had problems the first time she met her, noting that Lawson had always been nervous and very “tender-hearted,” noting that Lawson would break down and cry easily. (R. at 587.) Hill further testified that Lawson could be happy one minute and crying the next. (R. at 588.) Hill stated that she noticed this about Lawson within the first few weeks of meeting her. (R. at 588.) She stated that Lawson’s condition worsened over the following few years until it got to the point in 1990 or 1991 that Hill feared that Lawson needed to seek professional help. (R. at 588-89.) Hill testified that Lawson often experienced crying spells, noting that Lawson sometimes called her two to three times a day beginning as early as 1990, stating that no one loved her. (R. at 589-90.)

Robert Spangler, a vocational expert, also was present and testified at Lawson’s hearing. (R. at 590-93.) Spangler classified Lawson’s past work as a personnel specialist and a receptionist in the military as sedentary⁴ and skilled, as a clerk typist as sedentary and unskilled, as a records clerk as sedentary and semiskilled and as a cuff setter as light⁵ and semiskilled. (R. at 591.) Spangler was asked to assume a hypothetical individual of Lawson’s age, education and past work experience who was restricted to light work and who could perform only low-stress jobs that did not require regular interaction with the general public. (R. at 591.) Spangler testified that such an individual could perform jobs existing in significant numbers in the national

⁴Sedentary work involves lifting items weighing up to 10 pounds at a time and occasionally lifting or carrying items like docket files, ledgers and small tools. *See* 20 C.F.R. § 404.1567(a) (2005).

⁵Light 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 someone can perform light work, she also can perform sedentary work. *See* 20 C.F.R. § 404.1567(b) (2005).

economy, including those of an information clerk, a library clerk, a record clerk, a factory messenger and an inventory clerk. (R. at 591.) Spangler was asked to consider the same individual, but who also had the restrictions imposed by Anne Jacob, a licensed clinical social worker, on December 3, 1998. (R. at 220-22, 592.) Spangler testified that such an individual could perform no jobs. (R. at 592.)

In rendering his decision, the ALJ reviewed records from Dr. Fleenor, M.D.;⁶ Johnson City Medical Center; Anne Jacob, a licensed clinical social worker; Veterans' Administration Medical Center at Mountain Home; Dr. B. Sheshadri, M.D.; and Wise County Behavioral Health Services. Lawson's counsel submitted additional medical records from Wise County Behavioral Health Services to the Appeals Council.⁷

The only evidence contained in the record on appeal relevant to the time period on or before the expiration of Lawson's disability insured status on September 30, 1992, is from Wise County Behavioral Health Services. Specifically, on July 16, 1992, Lawson saw Michael B. Ford Jr., B.A. (R. at 362-63.) At that time, it was noted that Lawson had impaired impulse control and anxiety.⁸ (R. at 362.) Lawson noted an absence of a history of psychiatric problems and suicidal behavior. (R. at 363.) Ford concluded that Lawson did not meet the criteria for hospitalization and/or commitment and encouraged her to participate in community-based services due to

⁶I cannot locate Dr. Fleenor's first name in the record.

⁷Since the Appeals Council considered this evidence in reaching its decision not to grant review, (R. at 5-6), this court also should consider this evidence in determining whether substantial evidence supports the ALJ's findings. *See Wilkins v. Sec'y of Dep't of Health & Human Servs.*, 953 F.2d 93, 96 (4th Cir. 1991).

⁸It is unclear whether it was Lawson or Ford who noted the presence of these symptoms.

her feelings of jealousy, losing her temper easily and frustration. (R. at 363.) Ford did not make any mental health diagnosis at that time. (R. at 363.)

The remainder of the evidence contained in the record on appeal is dated after September 30, 1992, and none of the treatment notes, pertaining either to Lawson's alleged physical or mental impairments, relate back to the relevant time period for a determination of disability.

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 (4th 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 (4th Cir. 1983); *Hall*, 658 F.2d at 264-65; *Wilson v. Califano*, 617 F.2d 1050, 1053 (4th Cir. 1980).

By decision dated June 18, 2002, the ALJ denied Lawson's claim. (R. at 31-35.) The ALJ found that Lawson met the disability insured status requirements of the Act through September 30, 1992, but not thereafter. (R. at 35.) The ALJ found that Lawson had not engaged in substantial gainful activity since August 23, 1992. (R. at 35.) The ALJ also found that the medical evidence established that Lawson did not have a medically determinable physical or mental impairment or combination thereof prior to September 30, 1992. (R. at 35.) Thus, the ALJ further found that Lawson did not have a severe impairment at any time pertinent to the decision. (R. at 35.) The ALJ found that Lawson's allegations of disabling pain and other symptoms were neither credible nor supported by the documentary evidence. (R. at 35.) Therefore, the ALJ concluded that Lawson was not under a disability as defined by the Act and was not eligible for DIB benefits. (R. at 35.) *See* 20 C.F.R. § 404.1520(c) (2005).

In her brief, Lawson argues that the ALJ erred by failing to retrieve Lawson's 1991 application and make it part of the record since there could have been evidence contained therein pertinent to her current claim and since she was not represented by counsel at that time. (Motion For Summary Judgment And Memorandum Of Law On Behalf Of The Plaintiff, ("Plaintiff's Brief"), at 5.) Lawson further argues that the ALJ erred by failing to address whether the 1991 application could be reopened in deciding the 1995 application. (Plaintiff's Brief at 5.) Lawson next argues that the

ALJ erred by failing to discuss the reason for the August 24, 2000, remand in the most recent hearing decision dated June 18, 2002. (Plaintiff's Brief at 6.) Finally, Lawson argues that the ALJ erred by failing to address the testimony of Brenda Hill. (Plaintiff's Brief at 6-7.)

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 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 (4th 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 (4th Cir. 1975). 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 (4th 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.

I first note that the only evidence contained in the record pertinent to the

relevant time period, supports the ALJ's finding that Lawson did not suffer from a severe impairment on or before September 30, 1992. As previously noted, the only such evidence was from Wise County Behavioral Health Services, dated July 16, 1992. This evidence simply fails to establish the presence of any mental impairment at that time. Moreover, the record is completely void of any medical records relating to Lawson's alleged physical impairments on or prior to September 30, 1992. However, Lawson argues that the ALJ erred by failing to obtain her 1991 and 1995 applications and any evidence relating thereto in deciding her current claim. For the following reasons, I find that this argument is without merit.

As the Commissioner notes in her brief, Lawson's argument incorrectly assumes that an ALJ is obligated to reopen a claimant's prior applications and to indefinitely retain evidence relating to prior claims. Moreover, as the Commissioner further notes in her brief, it is the claimant who carries the burden to produce medical evidence showing disability, not the ALJ. Pursuant to 20 C.F.R. § 404.704, "[w]hen evidence is needed to prove [a claimant's] eligibility or ... right to continue to receive benefit payments, [claimant] will be responsible for obtaining and giving the evidence to us. We will be glad to advise [claimant] what is needed and how to get it and we will consider any evidence [claimant] give[s] us." Furthermore, pursuant to 20 C.F.R. § 404.1512(a), "[claimant] must bring to our attention everything that shows that [claimant is] blind or disabled. This means that [claimant] must furnish medical and other evidence that we can use to reach conclusions about [claimant's] medical impairment(s). ..." Likewise, 20 C.F.R. § 404.1512(c) states that a claimant "must provide medical evidence showing ... an impairment(s) and how severe it is during the time [claimant] say[s] that [claimant is] disabled." In *Bowen v. Yuckert*, 482 U.S. 137,

146 n.5 (1987), the United States Supreme Court held that the burden is on the disability claimant because she is “in a better position to provide information about [her] own medical condition.” Likewise, in *Preston v. Heckler*, 769 F.2d 988, 991 n.1 (4th Cir. 1985) (citing *Mongeur v. Heckler*, 722 F.2d 1033, 1037 (2d Cir. 1983)), the Fourth Circuit held that the ultimate burden of proving disability lies with the claimant.

Furthermore, according to 20 C.F.R. § 404.1740(b), a claimant’s representative has an affirmative duty to act with reasonable promptness to obtain the information and evidence that the claimant wants to submit in support of his or her claim and to forward such information and evidence to the agency for consideration, including assisting the claimant in bringing to the agency’s attention everything that shows that the claimant is disabled and to assist the claimant in furnishing medical evidence. Moreover, it has been held that the Commissioner is not required to act as a claimant’s counsel. *See Clark v. Shalala*, 28 F.3d 828, 830-31 (8th Cir. 1994); *see also Varney v. Barnhart*, 325 F. Supp. 2d 709, 713 (S.D. W.Va., Jun. 23, 2003). The Fourth Circuit has held that it is the claimant who bears the risk of nonpersuasion. *See Seacrist v. Weinberger*, 538 F.2d 1054, 1057 (4th Cir. 1976). Furthermore, the First Circuit has held that the ALJ has no duty to go to inordinate lengths to develop a claimant’s case. *See Thomas v. Califano*, 556 F.2d 616, 618 (1st Cir. 1977). In this case, I note that there is no evidence that Lawson’s counsel has attempted to obtain medical records regarding Lawson’s treatment on and prior to September 30, 1992, nor has any explanation been tendered as to why he has failed to do so or has been unable to do so. That being the case, I find that it is Lawson, not the ALJ, who simply has failed to meet her burden of production in proving disability on or prior to

September 30, 1992.

In addition to Lawson carrying the burden of production, the Commissioner has noted in her brief that medical evidence submitted in connection with Lawson's 1991 application would have been kept for a period of five years pursuant to the agency's internal logistical rules. Specifically, the Commissioner states that pursuant to "SM 00421.010, Assignment of Holding Periods for Inactive Folders," Lawson's 1991 application and accompanying evidence would have been kept only through 1996. Nonetheless, the Commissioner further states in her brief that, through counsel, she went a further step and requested a check for the application and evidence at issue, but was informed that they no longer existed.

Lawson next argues that the ALJ erred by failing to reopen the 1991 application. (Plaintiff's Brief at 5.) Again, I find that the ALJ did not err in failing to do so. According to 20 C.F.R. § 404.987(a), if a claimant is dissatisfied with a determination or decision made in the administrative review process, but did not request further review within the stated time period, she loses her right to further review and that determination or decision becomes final. However, a determination or a decision made by the agency which is otherwise final and binding may be reopened and revised under certain circumstances, either on the agency's own initiative or at the claimant's request. Pursuant to 20 C.F.R. § 404.988, a decision may be reopened under the following limited circumstances: 1) for any reason within 12 months of the date of the notice of the initial determination; 2) for good cause, as defined in 20 C.F.R. § 404.989, within four years of the date of the notice of the initial determination; and 3) at any time with respect to cases of fraud or similar fault, or

other exceptional circumstances.

Here, as the Commissioner notes in her brief, it appears that Lawson's counsel is relying upon the four-year good cause time frame in light of the fact that the subsequent application was filed four years after the 1991 application in 1995. However, Lawson does not specifically contend what the requisite good cause is other than to state that she was not represented by counsel at the time of the 1991 application and also had alleged a mental impairment. Under 20 C.F.R. § 404.989, the agency may find that good cause exists to reopen a determination or decision only under the following limited circumstances: 1) if new and material evidence is furnished; 2) if a clerical error in the computation or recomputation of benefits was made; or 3) if the evidence that was considered in making the determination or decision clearly shows on its face that an error was made. Thus, I find that the reason proffered by Lawson for reopening her case, namely that she was unrepresented at the time of the 1991 application and had alleged the presence of a mental impairment, does not satisfy the regulations. As the Commissioner notes in her brief, it is not uncommon for claimants to be unrepresented early in the administrative proceedings. Moreover, while Lawson alleges a mental impairment that impeded her ability to understand her rights, the evidence fails to show that she suffered from a severe mental or physical impairment during the time period at issue. There is clearly no indication that she was severely mentally incapacitated such that she was unaware of what she was doing. Thus, I find that the ALJ did not err since there simply exists no basis for reopening the 1991 application.

Next, Lawson argues that the ALJ, in the most recent decision, erred by failing

to discuss the reasons for the 2002 remand. I find that this simply is not true. In his decision, the ALJ specifically addressed the district court's remand of the case, noting that the purpose therefor was to determine Lawson's mental status in April 1995 and her ability to understand her appeal rights. (R. at 34.) Moreover, the ALJ discussed the evidence during this time period and concluded that Lawson was under no mental restrictions at the time of the reconsideration denial in April 1995, which would have interfered with her ability to appeal the reconsidered decision. (R. at 34.)

Finally, Lawson argues that the ALJ erred by failing to discuss the testimony of Brenda Hill. (Plaintiff's Brief at 6-7.) Again, I find that the ALJ did not err. Hill testified that she met Lawson in 1989, three years before the expiration of Lawson's disability insured status. (R. at 585.) Hill further testified that Lawson had always been a very nervous person. (R. at 587.) Apparently, Lawson attempted to establish through Hill's testimony that she suffered from a disabling mental impairment on or prior to September 30, 1992. However, it is well-settled that medical evidence is required to establish the existence of an impairment. *See* 20 C.F.R. § 404.1508 (2005) (stating that an impairment must be "medically determinable"); *see also Lackey v. Celebrezze*, 349 F.2d 76, 78 (4th Cir. 1965) (holding that in order to be eligible for benefits, the *claimant* must show she suffers from a medically determinable impairment). As previously discussed, the medical evidence relating to the relevant time period establishes that Lawson had no mental health diagnosis prior to the expiration of her disability insured status, nor is there any evidence contained in the record on appeal relating to her alleged physical impairments during this time period. Thus, the lay witness's testimony that Lawson was a very nervous person simply does not establish the existence of a medically determinable mental impairment.

Finally, I note that, despite the lack of evidence contained in the record to support the existence of a severe physical or mental impairment on or before September 30, 1992, the ALJ, nonetheless, gave Lawson the benefit of the doubt by proffering a hypothetical question to the vocational expert that included a restriction to the performance of light work and to the performance of low-stress jobs that did not require regular interaction with the general public. (R. at 591.) Given these restrictions, the vocational expert found that Lawson could perform jobs existing in significant numbers in the national economy. (R. at 591.)

For all of these reasons, I find that substantial evidence supports the ALJ's finding that Lawson did not suffer from a disabling physical or mental impairment on or before September 30, 1992, and, therefore, was not under a disability as defined by the Act during that time period. I further find that the ALJ did not err by failing to incorporate Lawson's 1991 application and accompanying evidence into the current record, nor did he err by failing to reopen the 1995 claim or by failing to discuss the testimony of Hill in his decision. Finally, I find that Lawson simply is mistaken in her contention that the ALJ failed to discuss the reasons for the 2002 remand in his most recent decision.

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 supports the ALJ's finding that Lawson did not suffer from a severe physical or mental impairment on or before

September 30, 1992; and

2. Substantial evidence supports the ALJ's finding that Lawson was not disabled under the Act and was not entitled to benefits.

RECOMMENDED DISPOSITION

The undersigned recommends that the court deny Lawson'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 15th day of November 2005.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE