



## I.

Jones was born on September 30, 1960, and she graduated from high school and completed a Certified Nursing Assistant program. (Administrative Record [hereinafter R.] at 57, 84, 362) Jones' previous work includes that of an assembler on a production line and housekeeper. (R. 87, 362-63) Jones filed an application for DIB on or about March 31, 2003, alleging that she became disabled on September 1, 2000, due to diabetes, headaches, cardiac problems, hypertension, sleep disorder, panic attacks, depression, and obesity. (R. 15, 78, 372-98) Jones' claims were denied at both the initial and reconsideration levels of administrative review, (R. 14), and a hearing was held before an administrative law judge ("ALJ") on August 9, 2005. (R. 14, 356-409) On December 22, 2005, the ALJ issued a decision denying Jones' claims for DIB, finding that Jones retained the residual functional capacity ("RFC") to perform a limited range of light exertional work, including her past work as an assembler, and that the VE identified several additional jobs in the national economy which Jones can perform. (R. 23-25)

The ALJ's decision became final for the purposes of judicial review under 42 U.S.C. § 405(g) on March 17, 2006, when the Appeals Council denied Jones' request for review. (R. 6-8) Jones then filed this action challenging the Commissioner's decision.

## II.

Jones argues that the ALJ erred in failing to give controlling weight to the opinion of her treating physician and in finding that Jones' testimony was not wholly credible and, thus, that she retained the RFC for a limited range of light exertional work. (Pl. Summ. J. at 2-5) Accordingly, she requests that the decision of the Commissioner be reversed or, in the alternative, remanded for reconsideration. (Pl. Summ. J. at 5)

Judicial review of a final decision regarding disability benefits under the Act is limited to determining whether the ALJ's findings "are supported by substantial evidence and whether the correct law was applied." Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990) (citing 42 U.S.C. § 405(g)). Accordingly, the reviewing court may not substitute its judgment for that of the ALJ, but instead must defer to the ALJ's determinations if they are supported by substantial evidence. Id. Substantial evidence is such relevant evidence which, when considering the record as a whole, might be deemed adequate to support a conclusion by a reasonable mind. Richardson v. Perales, 402 U.S. 389, 401 (1971). If such substantial evidence exists, the final decision of the Commissioner must be affirmed. Hays, 907 F.2d at 1456; Laws v. Celebrezze, 368 F.2d 640, 642 (4th Cir. 1966).

### III.

First, Jones argues that the ALJ failed to give proper weight to her treating physician's opinion. Absent persuasive contradictory evidence, the "treating physician rule" generally "requires that the fact-finder give greater deference to the expert judgment of a physician who has observed the patient's medical condition over a prolonged period of time." Elliott v. Sara Lee Corp., 190 F.3d 601, 607 (4th Cir. 1999). However, a treating physician's opinion may be assigned little or no weight if it is conclusory and/or is not supported by objective testing or the record as a whole. Craig v. Chater, 76 F.3d 585, 590 (4th Cir. 1996).

Jones argues that the treating physician rule mandates a finding that Jones' condition is so severe that she is unable to perform any substantial gainful employment. In support of her position, Jones argues that her treating physician, Dr. Capaldo, is the most qualified to assess her ability to do work and his finding that she is essentially unable to do any work should be given

controlling weight. Jones further argues that Dr. Capaldo's assessment is supported by the state agency physician's determination that Jones would be unable to work outside her home. (Pl. Summ. J. at 3)

On July 18, 2005, Dr. Capaldo completed an assessment of Jones' ability to do work which states that Jones can only lift ten pounds of weight frequently and only ten pounds of weight occasionally; can only stand, walk, and/or sit six hours in an eight hour workday; she has limitations in her ability to push and/or pull with her upper and lower extremities; she has postural limitations which limit her to only occasional climbing, balancing, kneeling, crouching, crawling, stooping, handling, fingering, and feeling; and finally that she should limit her exposure to excessive wetness, hazards, and fumes. (R. 326-29) Dr. Capaldo based his assessment on Jones' overall muscle weakness and the fact that she suffered from mild anemia, hypertension, and diabetes. (R. 327) However, none of Dr. Capaldo's treatment notes, nor those of any other treating physician, include any notations that Jones complained of or her physicians found she suffered from generalized weakness precluding her from light exertional physical activity or work nor do her medical records contain any suggestion that she should limit her physical exertion to the assessed limitations. Moreover, Dr. Capaldo's assessment, even with the noted limitations, does not preclude Jones from doing all forms of substantial gainful employment.<sup>1</sup>

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<sup>1</sup>Certainly, based on this assessment Jones is able to sedentary work. Sedentary work is defined as work which may require exerting up to ten pounds of force occasionally and/or a negligible amount of force frequently, to lift carry, push, pull, or otherwise move objects. Sedentary work involves sitting most of the time, but may require some standing or walking for brief periods. However, jobs are sedentary if walking and standing are only required sometimes and the other sedentary job requirements are met.  
<http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>

On July 25, 2003, after examining Jones, the state agency physician, Dr. Athar, found that Jones had “some limitations” due to general weakness and joint and knee pain and that she “will have difficulty in doing working outside her home.” (R. 202-03) However, his notes reveal that Jones had no problems with her right knee or leg, only slightly reduced range of motion and strength in her left knee and leg, and only slightly reduced strength in her hands. (R. 201) Moreover, x-rays of Jones’ knees taken the same day showed she had only mild degenerative joint disease in the left knee and no abnormalities in her right knee. (R. 204) Similarly, in September and October 2003, although Jones complained of left knee pain, Dr. Liebrecht, Jones’ orthopedist, found that Jones had a full range of motion in her left knee, minimal pain, and no noteworthy degenerative changes. (R. 305-06) By November 2003, Jones reported to Dr. Liebrecht that she no longer had any pain in her knees. (R. 305) Likewise, in May 2004 and May 2005, Jones advised Dr. Balajii that she was not experiencing any pain or discomfort. (R. 322-23, 351-52) There are no treatment records or notes indicating that Jones has advised any of her treating physicians that she suffers from persistent pain or general weakness.

Furthermore, none of Jones’ physicians have indicated that Jones should limit her physical activity and/or stop working due to any of her ailments. In fact, quite the opposite is true. Dr. Capaldo’s treatment notes indicate that as early July 1999, he advised Jones to maintain a diet of no more than 1800 calories per day and to begin a regular exercise program to control her weight and the symptoms associated with diabetes. (R. 163-64) The diet recommendation and direction for Jones’ to increase her daily activity level has not varied through the present, though Jones has repeatedly advised Dr. Capaldo that she is not following either instruction. (R. 159, 161, 179-80, 190-91, 331-332, 334, 339-40, 345, 347-48) Similarly,

several of her other treating physicians recommended that she begin an exercise program to lose weight and to alleviate the symptoms associated with her other infirmities. (R. 172, 301-04, 307-09)

Jones' regular activities also indicate that her alleged pain and weakness are not totally disabling. Jones testified that in 2002 she cleaned mobile homes, including light dusting and sweeping, and that in 2003 she worked as a substitute teacher at an elementary school for five full days and five half days. (R. 363-65) In her daily activities questionnaire, Jones reported that every day she does light cleaning around the house, including sweeping, dusting, laundry, and washing dishes. (R. 96) Also, Jones stated that she goes shopping at least once a week, goes tanning once or twice a week, takes her daughter to sports practice two or three times per week, goes to church, and visits with family at least once a month. (R. 98-101) Finally, Jones has gone on at least two vacations since the date she alleges to have become totally disabled which involved significant time in the car and other physical exertion. The first, taken in May 2004, was a weekend organized bus trip from Danville, Virginia to Ohio which included touring the Longaberger factory. (R. 365-66) The second trip, taken in July, 2005, was a seven day vacation at Myrtle Beach, South Carolina. (R. 367) Following that trip, Jones advised Dr. Capaldo that during her beach vacation she did "quite a bit of walking" even though the weather "was hot and humid." (R. 330)

Dr. Athar's July 2003 assessment and Dr. Capaldo's July 2005 assessment stand in marked contrast to the remainder of Jones' medical record, her reported daily activities, and her testimony. Dr. Athar's findings were based solely on Jones' self-reported symptoms and are inconsistent with x-rays taken after his report was made and are opposite to the findings of

Jones' treating orthopedist. Similarly, Dr. Capaldo's assessment of Jones' functional limitations is inconsistent with the medical record which establishes that all of Jones' physicians advised her to increase her physical activity and Jones' own reports of regular physical exertion and travel. Accordingly, the court finds that the ALJ did not misapply the treating physician rule in giving little weight to Dr. Athar's and Dr. Capaldo's assessments as the evaluations were not supported by the record.

#### IV.

Second, Jones argues that the ALJ erred in finding her complaints of disabling pain were not totally credible and that she retained the capacity to do some light exertional work, including her past work as an assembler. Jones testified that because of pain in her knees, hips, left shoulder, and elbow she is only able to stand for about an hour to an hour and a half before needing an opportunity to sit with her feet elevated, she is unable to go up stairs, and has difficulty walking on inclines. (R. 376-384) Additionally, she testified that because she has no "willpower" in regulating her diet she suffers from symptoms attributable to uncontrolled diabetes including a racing heart, fatigue, and sleep problems. (R. 384-91) However, she also testified that she does household chores, drives regularly, takes vacations, and her doctors have advised her that her diabetes symptoms would be minimized if she controlled her diet and did more physical activity. (R. 366-69, 37-76, 383-84, 387-92, 394-95) The ALJ considered Jones' conflicting testimony as well as the record as a whole in determining that Jones' statements of disabling pain were not wholly credible and that she retained the capacity to do some light work. (R. 21-22)

In light of conflicting evidence contained in the record, it is the duty of the ALJ to fact-find and to resolve any inconsistencies between a claimant's alleged symptoms and her ability to work. See Smith v. Chater, 99 F.3d 635, 638 (4th Cir. 1996). Accordingly, the ALJ is not required to accept Jones' subjective allegation that she is disabled by pain, but rather must determine, through an examination of the objective medical record, whether she has proven an underlying impairment that could reasonably be expected to produce the symptoms alleged. Craig v. Chater, 76 F.3d 585, 592-93 (4th Cir. 1996) (stating the objective medical evidence must corroborate "not just pain, or some pain, or pain of some kind or severity, but the pain the claimant alleges she suffers."). Then, the ALJ must determine whether Jones' statements about her symptoms are credible in light of the entire record. Credibility determinations are in the province of the ALJ, and courts normally ought not interfere with those determinations. See Hatcher v. Sec'y of Health & Human Servs., 898 F.2d 21, 23 (4th Cir. 1989).

The ALJ determined that the objective medical evidence establishes that Jones suffers from some impairments which can be reasonably be expected to produce some pain. (R. 20) However, the ALJ concluded that Jones' complaints of pain are out of proportion to the objective medical evidence and clinical findings in the record. (R. 20)

Jones' medical records indicate that despite seeing her doctors frequently, she did not complain of persistent pain, discomfort, fatigue, and/or weakness. In fact, despite injuring her left knee in May 2003 and left shoulder in July 2004, Jones informed her orthopedist that within months of the injuries she had minimal pain, and in both May 2004 and May 2005, Jones informed Dr. Balajii that she had no pain at all. (R. 305-07, 350) Moreover, none of Jones' physicians have advised her to limit her physical activity, placed any exertional restrictions on

her physical activity, and/or suggested that she needs to rest and elevate her feet throughout the day. In his recent treatment notes, Dr. Capaldo stated that Jones' medical condition was stable and he once again advised her to do more exercise. (R. 334)

Further, the record supports the ALJ's conclusion that the intensity and persistency of Jones' pain does not significantly impact her ability to work. See Craig, 76 F.3d at 595. As noted above, Jones is fairly active in that she does some household chores, prepares meals, drives several times each week, regularly spends time outside the home shopping, visiting with family, going to church, taking her daughter to sporting events, and tanning, and has taken at least two vacations requiring physical exertion. (R. 98-101, 330, 363-67)

Jones' inconsistent testimony, her disability applications, and her medical records certainly raise an issue as to the veracity of her testimony that her pain has resulted in total disability. See Mickles v. Shalala, 29 F.3d 918, 921 (4th Cir. 1994) (holding that a claimant's daily activities can suggest he is not disabled). As the ALJ's credibility determinations are entitled to great deference, the undersigned finds no reason to disturb his determination. See Shively v. Heckler, 739 F.2d 987, 989-90 (4th Cir. 1984) (finding that because the ALJ had the opportunity to observe the demeanor and to determine the credibility of the claimant, the ALJ's observations concerning these questions are to be given great weight).

Further, there is substantial evidence to support the ALJ's determination that Jones retains the physical capacity for a limited range of light exertional work, including her past work as an assembler. See Johnson v. Barnhart, 434 F.3d 650, 658 (4th Cir. 2005) (upholding finding of no disability where plaintiff testified that she suffers from severe pain and hand problems where plaintiff was able to attend Church twice a week, read books, watch television, clean the

house, wash clothes, visit relatives, feed pets, manage household finances, and perform exercises recommended by her chiropractor); Gross v. Heckler, 785 F.2d 1163, 1166 (4th Cir. 1986) (upholding a finding of no disability where plaintiff was able to cook, shop, wash dishes, and walk to town every day).

## V.

Based on the foregoing, it is the recommendation of the undersigned that plaintiff's motion for summary judgment be denied and defendant's motion for summary judgment be granted.

In making this recommendation, the undersigned does not suggest that plaintiff is totally free of all pain and subjective discomfort. The objective medical record simply fails to document the existence of any condition which would reasonably be expected to result in total disability for all forms of substantial gainful employment. It appears that the ALJ properly considered all of the objective and subjective evidence in adjudicating plaintiff's claim for benefits. It follows that all facets of the Commissioner's decision in this case are supported by substantial evidence. It is recommended, therefore, that defendant's motion for summary judgment be granted.

The Clerk is directed immediately to transmit the record in this case to the Hon. James C. Turk, Senior United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual

recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk of the Court hereby is directed to send a certified copy of this Report and Recommendation to all counsel of record.

**ENTER:** This 8<sup>th</sup> day of January, 2007.

/s/ Michael F. Urbanski  
United States Magistrate Judge