ADA E. CONNER, Plaintiff/Appellant, v. LINDA RUDOLPH, Commissioner, Tennessee Department of Human Services, Defendant/Appellee.	)	Appeal No. 01-A-01-9601-CH-00046 Davidson Chancery No. 92-2353-I

FILED

October 11, 1996

Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR DAVIDSON COUNTY

AT NASHVILLE, TENNESSEE

THE HONORABLE IRVIN H. KILCREASE, JR., CHANCELLOR

DAVID KOZLOWSKI
Legal Services of South
Central Tennessee, Inc.
104 West 7th Street
P. O. Box 1256
Columbia, Tennessee 38402-1256
ATTORNEY FOR PLAINTIFF/APPELLANT

CHARLES W. BURSON
Attorney General and Reporter

WILLIAM ASHBY SMITH, JR.
Assistant Attorney General
404 James Robertson Parkway
Nashville, Tennessee 37243-0499
ATTORNEYS FOR DEFENDANT/APPELLEE

REVERSED AND REMANDED

SAMUEL L. LEWIS, JUDGE

O P I N I O N

Plaintiff, Ada E. Conner, appeals the chancellor's judgment affirming the decision of the Tennessee Department of Human Services (“DHS”) which denied plaintiff Medicaid benefits for July 1991 through December 1992.

I. Medical History

In August 1991, doctors admitted plaintiff to Baptist Hospital for treatment of ventricular tachycardia. Two days after her admission, she underwent a treadmill test without angina. Upon her discharge, doctors noted that "she remained pain free without shortness of breath, light headedness, or any other symptoms."

She was transferred to Vanderbilt Medical Center on 2 September 1991. On 25 September 1992, Dr. James Stewart performed a surgical procedure to place an automatic internal cardioverter defibrillator, also known as a pacemaker or "PCD," in appellant's chest. The operation was a success and Dr. Stewart discharged plaintiff on 3 October 1991. In a report written on 24 October 1991, Dr. Deborah S. Echt and Dr. S. Scott Wiggins of the Vanderbilt Medical Center Cardiac Arrhythmia Section stated as follows:

> Since discharge from the hospital, she has done quite well and has had normal post-operative convalescence. However, she has had multiple episodes of palpitations and tachyarrhythmias. Some of these episodes have been asymptomatic, while others have been associated with mild transient shortness of breath and lightheadedness. She has had no chest pain or syncope with these episodes.
>
> . . . She had no ventricular fibrillation since discharge from the hospital. This would indicate that her PCD device is working extremely well. However, it is unfortunate that she is having such frequent tachyarrhythmia events . . . .

> In the meantime, we have advised her not to drive and to continue on her current medications.

In November 1991, plaintiff returned to Vanderbilt for inpatient therapy. After four days, doctors discharged plaintiff without any restrictions. They characterized her condition as good. On 2 April 1992, plaintiff's primary physician, Dr. Echt, wrote a clinic note that appellant was "quite stable from a cardiac standpoint." She also noted that plaintiff "denies any angina, congestive heart failure, or symptoms of arrhythmias." Nevertheless, Dr. Echt wrote in a 22 April 1992 letter to plaintiff's counsel that plaintiff was "permanently disabled," that plaintiff's "symptoms exceed her structural heart disease," and that any mild side effects from her medication "should not be physically limiting." Dr. Echt relied on angina as the basis for her finding. Plaintiff visited Dr. Echt in August 1992. Thereafter, Dr. Echt stated that from "an arrhythmia standpoint [plaintiff] is quite stable." She expressed a similar opinion in December 1992.

In March 1993, Dr. John T. Lee indicated that "[o]ver the last year, [plaintiff] has been doing well." Plaintiff's condition became worse in March 1993, after she failed to take her Fusix and potassium. She was hospitalized on 8 March 1993.

II. Procedural History

On 17 October 1991, plaintiff filed an application for medically needy Medicaid health insurance benefits. She claimed that she was disabled because of a heart problem and high blood pressure. The medical evaluation unit denied plaintiff's application on 20 January 1992 because she did not meet the disability requirements. Thereafter, a DHS hearing officer

conducted a fair hearing. On 6 May 1992, the hearing officer remanded the case to the medical evaluation unit for reevaluation. Once again, the medical evaluation unit denied the claim finding that plaintiff was capable of sedentary work. On 26 June 1992, the hearing officer entered an initial order which affirmed the unit's decision and which found that plaintiff had the capacity to engage in a full range of sedentary work. Thereafter, plaintiff appealed and the hearing officer entered a final order denying the appeal.

On 3 August 1992, plaintiff filed a complaint in the Chancery Court for Davidson County. She claimed that DHS used improper standards in evaluating her claim. On 29 October 1993, the court entered an agreed order remanding the case to DHS for reevaluation. After reviewing the case, a different hearing officer entered a Supplemental Initial Order denying plaintiff Medicaid based on the finding that plaintiff was capable of performing sedentary work prior to January 1993. On 7 August 1995, the court entered a final order affirming DHS's decision and dismissing the complaint. Thereafter, plaintiff filed a motion to alter or amend the judgment which the court denied on 1 November 1995. Plaintiff filed her notice of appeal on 29 November 1995.

In the meantime, plaintiff filed a second application for Medicaid on 14 April 1993. The basis of the application was the worsening of her heart condition. Plaintiff sought Medicaid benefits retroactive to January 1993. On 11 May 1993, the medical evaluation unit approved her application.

III. Issue and Analysis

The sole issue presented is whether there is substantial and material evidence in the record to support the Department of Human Services' decision that appellant was not disabled before January

1993?

Medicaid is a health insurance program. The federal government and the State of Tennessee fund the program, and DHS administers it. The program helps the needy and disabled meet their medical costs. 42 U.S.C. § 1396 (1988); ***see also Shupe v. Rudolph***, No. 01-A-01-9505-CH-00188, 1995 WL 560905, at *6 (Tenn. App. 22 September 1995). Although a State is not required to participate in the Medicaid program, once it chooses to do so, the State must comply with the applicable laws and regulations for determining eligibility. ***See Erie County Geriatric Ctr. v. Sullivan***, 952 F.2d 71, 73 (3rd Cir. 1991). When evaluating Medicaid claims, DHS uses the same criteria as the Social Security Administration uses when it considers applications for supplemental security income disability benefits.[1]

> As defined by the Social Security Act:
>
> An individual shall be considered to be disabled . . . if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months . . . .

42 U.S.C. § 1382c(a)(3)(A)(1988). The act also provides that the Social Security Administration shall consider a person disabled "if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . . ." 42 U.S.C. § 1382c(a)(3)(B)(1988). "'[W]ork which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country." ***Id.***

[1]42 C.F.R. § 435.540(a)(1995). There are two exceptions to this regulation, but neither apply to this case.

The Social Security Administration has developed a five step sequential process to evaluate disability claims. ***See*** 20 C.F.R. § 416.920(b)-(f)(1995). DHS uses this same process. The first step in the process is to determine whether the claimant is currently working. If the claimant is not working, the hearing officer must determine whether the asserted impairment is severe. An impairment is severe if it significantly limits [an individual's] physical or mental ability to do basic work activities . . . ." ***Id.*** §416.920(c). If the impairment is severe, the hearing officer compares the condition to the listing of impairments which describes conditions presumed to be significant enough to mandate a finding of disability. ***Wyatt v. Secretary of Health and Human Servs.,*** 974 F.2d 680, 683 (6th Cir. 1992); ***Johnson v. Secretary of Health and Human Servs.***, 794 F.2d 1106, 1113-14 (6th Cir. 1986). If the impairment does not meet or equal the listings, the hearing officer then determines whether the claimant can return to past relevant work or whether the claimant can do any other work that exists in the national economy. ***Preslar v. Secretary of Health and Human Servs.***, 14 F.3d 1107, 1110 (6th Cir. 1994).

In the instant case, both hearing officers found that plaintiff was not working and that she had a severe impairment. They agreed that plaintiff could not return to past relevant work, but found that plaintiff could perform a full range of sedentary work. As a result, the hearing officers decided that plaintiff could engage in work that existed in the national economy. Therefore, they concluded that plaintiff was not disabled. This conclusion is the focus of plaintiff's appeal.

Judicial review is limited to a determination of whether the finding of DHS is "[u]nsupported by evidence which is both substantial and material in the light of the entire record." Tenn.

Code Ann. § 4-5-322(h)(5)(1991). Substantial and material evidence is "'such relevant evidence as a reasonable mind might accept [as adequate] to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration.'" ***Southern Ry. Co. v. State Bd. of Equalization***, 682 S.W.2d 196, 199 (Tenn. 1984)(quoting ***Pace v. Garbage Disposal Dist.***, 54 Tenn. App. 263, 267, 390 S.W.2d 461, 463 (1965)). On appeal, we must thoroughly review the record and subject DHS's conclusions to close scrutiny. ***Mobilecomm of Tenn., Inc. v. Public Serv. Comm'n***, 876 S.W.2d 101, 104 (Tenn. App. 1993). Previously, we noted that a court "'should not blindly follow'" a decision of DHS when reviewing disability determinations. ***Shupe***, 1995 WL 560905, at *7 (quoting ***Willbanks v. Secretary of Health & Human Servs.***, 847 F.2d 301, 303 (6th Cir. 1988)). We can not affirm a decision denying benefits on a silent record. "[T]he absence of evidence on a key issue is [not] the equivalent of 'substantial evidence' supporting the . . . ultimate decision." ***Riviera v. Sullivan***, 771 F. Supp. 1339, 1354 (S.D.N.Y. 1991).

In this case, plaintiff argued that the records submitted to DHS did not contain any evidence, much less substantial and material evidence, to support the finding that plaintiff was able to perform a full range of sedentary work. We agree. The only competent medical proof was to the contrary. Therefore, we must reverse the decision of DHS denying Medicaid health insurance benefits for the period prior to January 1993.

After the hearing officer determined that plaintiff could not return to past relevant work, the evaluation process moved to the fifth step, the determination of whether plaintiff could do other work that exists in the national economy. Once the evaluation reaches the fifth step, the claimant has established "a

prima facie case of disability." ***Wyatt,*** 974 F.2d at 684. That is, "the burden shifts to the government to go forward with proof that the claimant has the residual capacity for substantial gainful employment." ***Richardson v. Secretary of Health and Human Servs.***, 735 F.2d 962, 964 (6th Cir. 1984).

For the purpose of evaluating disability, the regulations characterize various types of work by their physical exertion requirements. 20 C.F.R. § 416.967 (1995). Jobs are classified as sedentary, light, medium, heavy or very heavy based primarily on the lifting involved and the amount of time an individual has to sit, stand, or walk during a given day. ***Id.*** Regulations promulgated by the Social Security Administration define sedentary work, the least demanding level, as involving

> lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Id. § 416.967(a). Sedentary work "contemplates substantial sitting as well as some standing and walking." ***Wages v. Secretary of Health and Human Servs***., 755 F.2d 495, 498 (6th Cir. 1985). Generally, it involves sitting for at least six hours out of an eight hour work day. ***Id.*** Sedentary jobs also involve manual dexterity and the ability to move quickly. ***Faison v. Secretary of Health and Human Servs.***, 679 F.2d 598, 599 (6th Cir. 1982).

After the first administrative hearing in 1992, the hearing officer concluded that plaintiff "retain[ed] the residual functional capacity to engage in a full range of sedentary work." Following remand, the second hearing officer found that plaintiff "retained the residual functional capacity for sedentary work"

prior to March of 1993. Both hearing officers then determined that plaintiff was not disabled. We find nothing in this record to support the finding that plaintiff can do a full range of sedentary work. Nothing in the medical evidence supports such a finding.

Here, the medical proof is lengthy; however, it is not particularly complex or difficult to comprehend. There appears to be no divergence of medical opinion regarding plaintiff's ability to work. There are the fairly voluminous notes concerning plaintiff's stay at Vanderbilt Hospital in September and October 1991, along with the radiology reports, echo cardiographic reports, and intracardiac electrophysiology studies. There are also letters describing plaintiff's progress after her initial release from Vanderbilt Hospital.

After treating plaintiff for months and reviewing the various laboratory and other clinical reports, Dr. Deborah Echt, the treating physician, was of the opinion that plaintiff was "permanently disabled." Dr. Echt provided a medical assessment in which she stated that plaintiff could occasionally lift less than ten pounds, frequently could lift nothing, could stand to walk for less than two hours in an eight hour work day, and could sit for less than six hours in the same eight hour work day. This assessment would not allow plaintiff to perform a full range of sedentary work. We find no other medical assessments in the record.

"The medical opinion of the treating physician is to be given substantial deference--and, if that opinion is not contradicted, complete deference must be given." ***Walker v. Secretary of Health and Human Servs.,*** 980 F.2d 1066, 1070 (6th Cir. 1992); ***See Shupe***, 1995 WL at 560905, *9. "The reason for such a

rule is clear. The treating physician has had a greater opportunity to examine and observe the patient. Further, as a result of his duty to cure the patient, the treating physician is generally more familiar with the patient's condition than are other physicians." ***Id.***

In the instant case, Dr. Echt had the opportunity to observe and treat plaintiff on a regular basis since the first day plaintiff entered Vanderbilt in September of 1991. The medical records show that Dr. Echt saw plaintiff every day during her first stay at Vanderbilt. Many of the radiological reports, echo cardia reports, and electrophysiology studies were prepared at Dr. Echt's request for Dr. Echt. Dr. Echt continued to see and treat plaintiff following her discharge from Vanderbilt and was still treating her when she was readmitted to the hospital in November 1991. Dr. Echt followed plaintiff for fifteen months after plaintiff's second discharge, and she treated plaintiff when plaintiff returned to Vanderbilt in March of 1993.

Her opinion that plaintiff was disabled and unable to return to work has remained constant. Although the treating physician's opinion does not dictate the ultimate conclusion in this case, it is entitled to deference. If there is a contrary medical opinion in the record, the hearing officer may compare the assessments and accept the opinion that the evidence supports. In this case, however, there is no contrary medical proof.

In their rush to deny plaintiff medical benefits, both hearing officers attempted to interpret the medical records. They lifted statements out of context in order to discredit Dr. Echt's opinion. In the first initial order, the hearing officer commented that "Dr. Echt's own medical records/statement and other medical records are in conflict with the April 2, 1992 assessment." The

hearing officer did not set forth with any specificity the nature of the conflict. The second hearing officer, in order to justify the rejection of Dr. Echt's opinion, stated "there is evidence in this record that clearly and absolutely contradicts Dr. Echt's assessment that [plaintiff] was capable of only less than sedentary work as of April 2, 1982." After reaching these conclusions, both hearing officers acted as medical experts and found, contrary to Dr. Echt's opinion, that plaintiff could do a full range of sedentary work.

A hearing officer "is not a doctor and is not qualified to evaluate medical data or express a medical opinion." ***Shupe***, 1995 WL at 560905, *9. Hearing officers can not reject medical opinions and evaluate medical evidence on their own. ***Id.***

> [While a hearing officer has the authority to] make credibility findings after observing the plaintiff and witnesses, evaluate potentially conflicting medical reports, and ultimately, make findings of fact and conclusions of law based upon the evidence[,] [t]he hearing officer does not have the authority or expertise to make an independent medical judgment which conflicts with the testimony of the professional proof.

Shupe, 1995 WL at 560905, *5. Here, the efforts of both hearing officers, finding that plaintiff could do a full range of sedentary work has no basis on which to stand.

Additionally, the officers did not properly evaluate plaintiff's own testimony. The hearing officers have an obligation to listen to the plaintiff and to consider her testimony along with the evidence presented at the hearing. The claimant "may rely in part on her own testimony *in combination with* objective medical evidence" to establish disability. ***Cohen v. Secretary of Dep't of Health and Human Servs.***, 964 F.2d 524, 529 (6th Cir. 1992). Here, the hearing officers did not specifically discredit plaintiff's testimony, but their conclusion conflicted with it. Plaintiff

testified that she has to sit or lay down most of the day and that she does little housework. She also stated that her condition had gotten worse by 1994, but that it was not significantly different than it had been in September of 1991. Plaintiff's testimony was consistent with the evaluation of the treating physician. We are of the opinion that the record, considered as a whole, does not contradict plaintiff's testimony.

We are of the opinion that the chancellor erred in affirming DHS's decision. Therefore, it results that the judgment of the chancellor is reversed, and the cause is remanded to the chancery court with directions to enter a judgment granting plaintiff Medicaid benefits for July 1991 through December 1992. Costs are taxed to the defendant/appellee.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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HENRY F. TODD, P.J., M.S.

WILLIAM C. KOCH, JR., J.
NOT PARTICIPATING