

United States Court of Appeals
For the First Circuit

No. 85-1369

WILLIE MAE POLK,
Plaintiff, Appellant,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Walter Jay Skinner, U.S. District Judge]

Before

Bownes, Aldrich and Breyer,
Circuit Judges.

Herman J. Smith, Jr. for appellant.
Robert J. Triba, Assistant Regional Attorney, Department of
Health and Human Services, with whom William F. Weld, United
States Attorney, and Richard E. Welch III, Assistant United States
Attorney, were on brief for appellee.

March 13, 1986

BREYER, Circuit Judge. The Secretary of Health and Human Services denied Willie Mae Polk's request for Supplementary Security Income, for its Administrative Law Judge found that her back injuries were not serious enough to prevent her from working. 42 U.S.C. § 1382(c)(a)(3)(A). The district court, while noting that what the ALJ wrote in respect to pain was "error," nonetheless found that the record contained "substantial evidence" supporting the ALJ's decision and affirmed it. Willie Mae Polk now appeals.

The record in this case shows that the doctors disagreed with each other. Mrs. Polk's own doctor speaks of her injuries as completely disabling; a different examining physician (Dr. Greene) writes as if they are less serious; and Health and Human Services' non-examining doctor agrees with Greene. If this case turned only on evaluation of the physical symptoms, the testimony of these latter two doctors might be sufficient to sustain the result.

In fact, however, the case turns not only upon physical symptoms, but, rather, upon whether those symptoms, together with alleged severe pain, are sufficiently disabling. And, the objective physical signs of injury are not determinative. On the one hand, Mrs. Polk possesses considerable mobility in her limbs; on the other hand, she has had various operations and a long history of medical procedures

that suggest a significant organic problem. Under these circumstances, the extent to which the ALJ believed Mrs. Polk's subjective complaints about pain is critical; and, from a legal perspective what he said about the matter is important.

In our view, the ALJ's finding in respect to pain is inadequate. The ALJ's opinion is based on a relevant Health and Human Services' standard that allows a finding of disability only when there is an "objective basis" in the medical evidence for such a finding. Subjective symptoms alone will not do. The ALJ quoted the following language from the Secretary's policy statement which explains the consideration that should be given to symptoms, particularly that of pain, in the evaluation of disability.

Symptoms [such as pain] will not have a significant effect on a disability determination or decision unless medical signs or findings show that a medical condition is present that could reasonably be expected to produce the symptoms which are alleged or reported. However, once such a medical condition (e.g., disc disease) is objectively established, the symptoms are still not controlling for purposes of evaluating disability There must be an objective basis to support the overall evaluation of impairment severity. It is not sufficient to merely establish a diagnosis or a source for the symptom.

[1982-1983 Transfer Binder] Unempl. Ins. Rep. (CCH) ¶ 14,358, at 2499-48 to -49 (SSR-82-58); see also 42 U.S.C. § 423(d)(5)(A); 20 C.F.R. §§ 416.908, .928-.929; Foster v.

Heckler, 780 F.2d 1125, 1128-29 (4th Cir. 1986); Polaski v. Heckler, 751 F.2d 943, 948-50 (8th Cir. 1984). The ALJ then stated the following (and only the following) in respect to the existence of pain:

There are no clinical findings in the medical evidence to support the claimant's allegation of intractable pain. At the hearing, Mrs. Polk stated that she performs activities around the house, including sweeping and vacuuming. She also stated that she lies down one hour per day.

The first of these sentences is mistaken. The government has conceded, given the operations, x-rays, tests, examinations, and so forth, that, had the ALJ believed Mrs. Polk's account of her subjective symptoms, the objective medical evidence was sufficient to support a finding of disability. The second sentence also seems inaccurate, or at least to require further explanation. Our reading of the record on this point suggests that Mrs. Polk was not saying she ordinarily performed household chores such as sweeping or vacuuming. Rather, she was trying to say the opposite, that ordinarily it hurt too much to vacuum. The following is a typical example:

Q I thought you told me that you got the pain when you swept and vacuumed?

A No Sir, it hurts me all the time. It's there all the time like when I sleep.

Q Well what were you saying about sweeping and vacuuming and getting the pain?

A It hurts me when I sweep.

Q Well I know do you do any thing else besides sweep? Do you vacuum?

A I tries to.

Q Alright now when you vacuum the floor do you get a pain in your right shoulder?

A Yes.

Q Did you vacuum the floor yesterday?

A No Sir.

Q The day before yesterday?

A No Sir.

Q When was the last time you vacuumed the floor?

A I haven't vacuumed since I went to the doctors.

In addition, Dr. Greene wrote that Mrs. Polk "sweeps with difficulty. She doesn't vacuum or make the bed."

Given our uncertainties about the basis underlying the ALJ's findings as to pain, the importance of the issue in the case, and the closeness of the other evidence, we believe it proper to remand this case for further proceedings in respect to pain.

The judgment of the district court is vacated and

this case is remanded with instructions to remand to the
Secretary for further proceedings consistent with this opinion.