

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Grisham v. Astrue

320 F. App'x 535 (9th Cir. 2009) · Decided March 20, 2009

SUMMARY

The Ninth Circuit affirmed the judgment upholding the denial of Tina Grisham’s application for Social Security disability benefits. The court held that the Administrative Law Judge provided clear and specific reasons for discounting Grisham’s disabling-pain testimony and properly relied on state physicians’ assessments, which were consistent with the treating physician’s opinion and the record.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Ikuta; McKeown; Walter
JURISDICTION	Federal
DECIDED	March 20, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Grisham appealed the district court's order affirming the Administrative Law Judge's denial of Social Security disability benefits.
STANDARD OF REVIEW	The court reviewed de novo the district court's order affirming the ALJ's disability-benefits decision. The ALJ's decision could be reversed only if it was unsupported by substantial evidence or based on legal error.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Tina Grisham v. Astrue

TOPICS

- judicial review of agency action
- administrative law
- standard of review
- appellate procedure

PRACTICE AREAS

- Social Security disability benefits
- administrative law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the ALJ gave legally sufficient reasons for discrediting Grisham's testimony concerning disabling pain.
2. Whether the ALJ properly relied on the opinions of non-treating or non-examining state physicians in determining Grisham's residual functional capacity.
3. Whether the district court properly affirmed the ALJ's decision under the substantial-evidence and legal-error standards.

HOLDINGS

1. When an ALJ disbelieves a disabling-pain allegation based on a demonstrated impairment, the ALJ must make specific findings justifying that decision; the ALJ satisfied that requirement here by identifying clear and specific reasons supported by the record.
2. Opinions of non-treating or non-examining physicians may constitute substantial evidence when consistent with independent clinical findings or other record evidence; the ALJ properly relied on the state physicians' assessments because they were consistent with the treating physician's opinion and the record as a whole.
3. The district court's order affirming the ALJ's decision was properly affirmed because the ALJ's decision was supported by substantial evidence and was not based on legal error.

KEY QUOTATIONS

“The ALJ’s decision “may be reversed only if it is not supported by substantial evidence or if it is based on legal error.”” (536)

“If an ALJ disbelieves a disabling pain allegation that is based on a demonstrated impairment, the “ALJ must make specific findings justifying that decision.”” (536)

“The opinions of non-treating or non-examining physicians may also serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record.” (536)

FACTUAL BACKGROUND

Grisham claimed that pain associated with multiple ventral hernias and related stomach surgeries prevented her from working. The ALJ found her disabling-pain allegations not credible based on inconsistencies between her testimony and her reported daily activities, her use of Tylenol, and medical evidence concerning her condition and prognosis. The ALJ determined that Grisham retained the capacity for light and sedentary work with restrictions and could perform her past work, relying in part on state physicians' assessments that were consistent with the treating physician's findings.

PROCEDURAL HISTORY

The ALJ determined that Grisham was not disabled, found her disabling-pain testimony not credible, and determined that her residual functional capacity permitted her to perform past relevant work as a telemarketer or cashier. The district court affirmed the ALJ's decision. The Ninth Circuit affirmed the district court after reviewing the order de novo.

DISPOSITION

affirmed

CASES CITED

- Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001)
- Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989)
- Fair v. Bowen, 885 F.2d 597, 602 (9th Cir. 1989)
- Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008)
- Moncada v. Chater, 60 F.3d 521, 524 (9th Cir. 1995)
- Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)

OPINION

PER CURIAM.

MEMORANDUM *** Tina Grisham challenges the determination that she is not eligible for disability *536benefits under the Social Security Act. Grisham contends, among other things, that pain due to multiple ventral hernias and accompanying stomach surgeries precludes her from working. She specifically argues that the Administrative Law Judge (ALJ): (1) improperly discredited her disabling pain testimony; and (2) improperly considered the reviewing state physicians' opinions in determining her residual functioning capacity (RFC).

We review de novo a district court's order affirming an ALJ's decision on disability benefits. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.2001). The ALJ's decision "may be reversed only if it is not supported by substantial evidence or if it is based on legal error." *Id.* We find no error in the district court's decision and affirm.

The ALJ has the authority to determine credibility and resolve inconsistencies. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.1989). If an ALJ disbelieves a disabling pain allegation that is based on a demonstrated impairment, the "ALJ must make specific findings justifying that decision." *Fair v. Bowen*, 885 F.2d 597, 602 (9th Cir.1989).

Here, the ALJ found Grisham's disabling pain allegation not credible and determined that her RFC allowed performance of her past relevant work as a telemarketer or cashier. First, the ALJ highlighted inconsistencies within Grisham's own testimony; for example, the ALJ pointed to her alleged reliance on others for help and her ability to care for herself on a daily basis, noting that her reliance on others was "somewhat inconsistent with [Plaintiff's] reports of Activities of Daily [L]iving which indicate that [Plaintiff] had no trouble with personal care, cooking, and some housework and shopping." Additionally, the ALJ noted that plaintiff treated her pain with Tylenol.

Second, the ALJ observed inconsistencies between Grisham's disabling pain allegation and the medical evidence in the record. For example, the ALJ emphasized the fact that Dr. Whitman, a treating physician, reported that upon plaintiff's discharge from the hospital she "did very well and she was breathing well without oxygen. Dr. Whitman noted the [plaintiffs] condition was described as good and improving and her long-term prognosis was excellent." The ALJ properly justified, with clear and specific reasons, his decision to not credit Grisham's disabling pain allegation.

See, e.g., *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175 (9th Cir.2008); *Moncada v. Chater*, 60 F.3d 521, 524 (9th Cir.1995). Grisham also contends that the ALJ improperly relied on the state physicians' medical assessments when determining her RFC.

In the RFC assessment, the examining physician's opinion carries more weight than a non-treating physician's opinion; however, "[t]he opinions of non-treating or non-examining physicians may also serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.2002).

The ALJ properly relied on the state doctors' assessments in concluding that Grisham's RFC allowed her "to perform light and sedentary work with restrictions." It is not surprising that the ALJ credited both the testimony of the treating physician and the state doctors.

In fact, the state doctors' opinions were consistent with the treating physician's finding that Grisham had the ability to do some level of work. Notably, the state doctors ascribed Grisham a lower ability level than that found by her treating doctor.

In light of the treating physician's opinion and the record as a whole, the ALJ properly relied on the views of the state doctors in determining Grisham's RFC. AFFIRMED. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R.App. P. 34(a)(2).