

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SHIRLEY ANN DULEY,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Civil No. 96-98-B
)	
JOHN J. CALLAHAN,)	
<i>Acting Commissioner of Social Security,¹</i>)	
)	
<i>Defendant</i>)	

REPORT AND RECOMMENDED DECISION²

This Social Security Disability (“SSD”) appeal challenges the Commissioner’s determination that the plaintiff was not qualified to receive disability benefits because she lacked sufficient quarters of coverage to attain insured status from the date of her claimed disability onset forward. The plaintiff contends the determination is not supported by substantial evidence, and that certain of the Social Security Administration’s regulations as applied to her are violative of the Equal Protection clause of the Fourteenth Amendment to the Constitution. I recommend that the court affirm the decision of the Commissioner.

¹ Pursuant to Fed. R. Civ. P. 25(d)(1), Acting Commissioner of Social Security John J. Callahan is substituted as the defendant in this matter.

² This action is properly brought under 42 U.S.C. § 405(g). The Commissioner had admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the Commissioner’s decision and to complete and file a fact sheet available at the Clerk’s Office. Oral argument was held before me on June 23, 1997 pursuant to Local Rule 16.3(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority and page references to the administrative record.

The plaintiff first sought SSD benefits in December 1990, claiming a disability onset date of June 1, 1971. Record pp. 14, 60-62. Following a hearing, an Administrative Law Judge denied this claim on the ground that the plaintiff was not insured for SSD benefits as of her claimed disability onset date. *Id.* at 14, 87. She filed a second application for SSD benefits in June 1993, alleging the same disability onset date. *Id.* at 14, 96-97. A second Administrative Law Judge conducted a hearing on December 13, 1993, thereafter concluding that the previous determination was not *res judicata*, *id.* at 15; that the plaintiff was fully insured in 1971, Finding 2, Record p. 18; but that she was nevertheless not eligible for SSD benefits at any time during her asserted period of disability because she had not attained disability insured status, Finding 5, Record p. 18. The Administrative Law Judge made this determination based on his finding that the plaintiff “did not earn at least 20 quarters of coverage during any twenty-quarter period ending in any quarter after the second quarter of 1971.” Finding 4, Record p. 18. The Appeals Council declined to review the decision, Record p. 2-3, making it the final determination of the Commissioner, 20 C.F.R. § 404.981; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The errors asserted by the plaintiff concern certain requirements in the Social Security Act that define when a “period of disability” begins and thus establishes entitlement to SSD benefits. Specifically, and in relevant part, such a period commences on the day the disability begins if (1) the claimant met the test for “fully insured individual,” as defined in 42 U.S.C. § 414, on the first day of the quarter in which she became disabled and (2) “had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter.” 42 U.S.C. § 416(i)(2)(C)(i) and (i)(3)(A) &

(B).³ In the event a claimant does not meet this test, she qualifies for disability benefits “on the first day of the first quarter thereafter in which [s]he satisfies such requirements.” *Id.* at subsection (i)(2)(C)(ii). Since the Commissioner determined that the plaintiff was a fully insured individual as of the claimed disability onset date, the present controversy concerns the latter of the two requirements, referred to in the Social Security Administration’s implementing regulations as the requirement of “Disability Insured Status,” as distinct from fully insured status. 20 C.F.R. § 404.130. In relevant part, the regulation is a straightforward recitation of the statutory “20/40 requirement.” *Id.* at subsection (b).

The plaintiff first contends that the Commissioner’s finding, that she failed to meet the 20/40 requirement on the date of her claimed disability onset date or thereafter, is not supported by substantial evidence. This is the appropriate standard of review. 42 U.S.C. § 405(g); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). It requires that the determination be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusions drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

The records of the Social Security Administration suggest that the plaintiff came as close as a claimant can to meeting the 20/40 requirement without actually doing so. Specifically, the records show that she had acquired only 19 quarters of coverage during the 40 quarters that ended with the second quarter of 1971, during which she claimed to have become disabled. Record p. 106. She acquired no additional quarters of coverage from 1971 until the time of the Commissioner’s decision

³ Certain other provisions, relating to claimants who will attain the age of 31 during the quarter in question, or who had a prior period of disability that began during a quarter before the one in which the claimant turned 31, 42 U.S.C § 416(i)(3)(B)(ii) and (iii), are not applicable here.

in 1993. *Id.* at 106-107. However, she was covered in the second quarter of 1961, which was the quarter immediately preceding the relevant period. *Id.* at 106. The agency's earnings records for the plaintiff show earnings only in the quarters for which she received credit. *Id.* at 138.

As the Administrative Law Judge noted, the applicable regulations provide that the agency's earnings records are generally conclusive as to the amounts and time period stated, once a period of three years, three months and 15 days have elapsed since the year in question. 20 C.F.R. §§ 404.802 (defining time limit), 404.803(c) (records conclusive after time limit); Record p. 17. However, the Administrative Law Judge invoked one of the exceptions to the conclusiveness principle, governing situations where the records reflect less than the correct amount of wages actually paid. 20 C.F.R. § 404.822(e)(5); Record p. 17. Subsection 822 requires a claimant relying on one of the exceptions enumerated therein to adduce "satisfactory" evidence that the Social Security Administration's records are incorrect. 20 C.F.R. § 822(a).

The only evidence adduced by the plaintiff that would suggest her earnings records are in error is her own testimony at the hearing before the Administrative Law Judge, as well as that of her husband. Both testified that the plaintiff worked in the last two, rather than the first two, quarters of 1961. Record pp. 42, 43-44, 45. They based that assertion on their recollection that the plaintiff generally waited until each of her children was nearly two years old before returning to work, and that her son was born in November 1959. *Id.* at 42-44, 45. The plaintiff also testified that, contrary to the earnings record, she worked at least minimally during the third quarter of 1971. *Id.* at 48. She further testified that her inquiries with the successor companies to her former employers were unavailing because records dating back that far were no longer available. *Id.* at 48-50.

Noting that the plaintiff had submitted no documentary evidence to corroborate her assertion

that her earnings record was in error, the Administrative Law Judge found that the evidence of record — including the testimony of the plaintiff and her husband — do not support a finding that the records should be corrected. *Id.* at 17. The plaintiff contends that such a determination is error because she adduced sufficient evidence to require the Social Security Administration to correct its records. I disagree.

There appears to be no reported case law in this circuit concerning when, if ever, the Commissioner is obliged to correct an earnings record. The relevant provision of the Social Security Act is likewise silent. *See* 42 U.S.C. § 405(c)(5). The Sixth Circuit has suggested in dictum that “satisfactory” evidence in the context of subsection 822 means documentary evidence, such as tax returns, W-2 forms or affidavits from employers, as opposed to oral testimony. *Brainard v. Secretary of Health & Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989). In this circuit, when the issue is the claimant’s subjective testimony concerning pain or other medical symptoms, the Administrative Law Judge is entitled to reject testimony given at hearing as not credible, if the determination is supported by substantial evidence. *Frustaglia v. Secretary of Health & Human Servs.*, 829 F.2d 192, 195 (1st Cir. 1987). One may deduce from these authorities that the earnings records themselves comprise substantial evidence sufficient to support an Administrative Law Judge’s decision to give no weight to testimony challenging the records when the testimony is not buttressed by any additional evidence.

The plaintiff also contends that the decision violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Section 1 of the Fourteenth Amendment enjoins states from causing the deprivation of life, liberty or property without due process of law. U.S. Const., Amend. 14, § 1. By its terms, it does not apply to actions taken by the federal government.

However, the “equal protection component” of the Fifth Amendment’s Due Process Clause imposes on the federal government the same standard required of states by the Equal Protection Clause of the Fourteenth Amendment. *Schweiker v. Wilson*, 450 U.S. 221, 226 & n.6 (1981).

An expectation of Social Security benefits does not confer a contractual right to receive the expected amount, and, by virtue of paying contributions to the Social Security system via payroll taxes, a person does not acquire the kind of right to benefit payments that makes every defeasance of them a violation of the Fifth Amendment. *Richardson v. Belcher*, 404 U.S. 78, 80 (1971) (citations omitted). Rather, the test is whether the classification to which the plaintiff has been subject is “rationally based and free from invidious discrimination.” *Id.* at 81 (citation and internal quotation marks omitted). The two circuits that have examined the issue have both determined that the 20/40 rule meets the requirements of due process. *Harvell v. Chater*, 87 F.3d 371, 373 (9th Cir. 1996); *Tuttle v. Secretary of Health & Human Servs.*, 504 F.2d 61, 63 (10th Cir. 1974).

At oral argument, the plaintiff raised an issue not discussed in *Harvell* or *Tuttle*. She alleged that the 20/40 rule is not sufficiently rational because, had she been a seasonal worker, the rule would have rendered her entitled to benefits. The plaintiff has not cited any provision in the regulations or otherwise demonstrated why this is so, and her argument on this point is therefore not sufficiently developed for the court to consider it. In any event, as the Tenth Circuit observed in *Tuttle*, “[a] classification does not offend the Constitution because in practice it results in some inequality.” *Id.* (citations and internal quotation marks omitted).

Accordingly, I recommend that the decision of the Commissioner be **AFFIRMED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 7th day of July, 1997.

*David M. Cohen
United States Magistrate Judge*