

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-2132

GLADYS GARY,

Appellant

v.

JOANNE B. BARNHART,*
Commissioner of the Social Security Administration

*(Pursuant to F.R.A.P. 43(c))

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civ. No. 01-01675)
Honorable Eduardo C. Robreno, District Judge

Submitted under Third Circuit LAR 34.1(a)
December 17, 2002

BEFORE: SLOVITER, RENDELL, and GREENBERG, Circuit Judges

(Filed: December 18, 2002)

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OPINION OF THE COURT

GREENBERG, Circuit Judge.

This matter comes on before this court on appeal by Gladys Gary from an order of the district court entered on February 25, 2002, in this Supplemental Security Income social security disability case. The district court in its order approved and adopted the report and recommendation of a magistrate judge dated October 29, 2001, and then granted the Commissioner summary judgment. On this appeal we exercise plenary review of the district court order but will accept the Commissioner's findings of fact if they are supported by substantial evidence. See 42 U.S.C. § 405(g); Knepp v. Apfel, 204 F.3d 78, 83 (3d Cir. 2000).

In this case the Administrative Law Judge reached the fifth step in the five-step sequential evaluation process used in evaluating disability claims set forth in 20 C.F.R. § 416.920. See Burns v. Barnhart, No. 02-1091, __ F.3d __, 2002 WL 31716291, at *3 (3d Cir. Dec. 4, 2002). The case reached the fifth step because Gary did not have past relevant work to which she could return, the inquiry made in the fourth step. At the fifth step the Commissioner determined that Gary could perform work in the economy given her residual functional capacity, age, education and work experience. While we have considered Gary's objections to these findings we find evidence to support them and thus we must uphold the determination.

For the foregoing reasons we will affirm the order of February 25, 2002.

TO THE CLERK:

Please file the foregoing not precedential opinion.

/s/ Morton I. Greenberg
Circuit Judge

DATED: December 18, 2002