

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-14966
Non-Argument Calendar

D.C. Docket No. 2:15-cv-14272-JEM

ELIZABETH CRUZ,

Plaintiff - Appellant,

VERSUS

COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(February 27, 2018)

Before TJOFLAT, JILL PRYOR and NEWSOM, Circuit Judges.

PER CURIAM:

Elizabeth Cruz, proceeding *pro se*, appeals from the district court's order affirming the Commissioner of Social Security's final decision that she was no longer eligible to receive Supplemental Security Income ("SSI"). On appeal, Cruz argues that the administrative law judge ("ALJ") erred in imputing Miguel Gonzalez's income to her. After careful consideration, we affirm the district court's judgment in favor of the Commissioner.

I. BACKGROUND

Cruz was awarded SSI benefits in 1999. As part of the Social Security Administration's ("SSA") redetermination of Cruz's SSI eligibility in 2005, Cruz submitted information to the SSA regarding her living situation, income, and marital status. She reported that she began living in a home owned by Miguel Gonzalez in 2004 and that he paid the mortgage on the home. She stated that she had never been married, but she and Gonzalez presented themselves to the community as husband and wife. Cruz stated that she had no income other than \$352 in monthly payments from state and local assistance programs. She continued to receive SSI benefits following this redetermination.

In response to an SSA redetermination in 2006, Cruz reported that she resided with Gonzalez, whom she referred to as her spouse. Again she stated that she had never been married, but she and Gonzalez presented themselves as

husband and wife. She stated that she had no income. From 2006 until 2010, Cruz continued to receive her monthly SSI payments.

As part of another SSA redetermination in 2010, Cruz again reported that she had never been married, she and Gonzalez lived at the same address, and they presented themselves to others as husband and wife. She referred to Gonzalez as her spouse. She also reported that she had no income but Gonzalez received \$2,400 per month in Veterans Affairs benefits and \$329 per month in Social Security benefits. The SSA determined, based on Gonzalez's income, that Cruz was no longer eligible for SSI as of July 2010.

Cruz requested reconsideration, arguing that Gonzalez was her boyfriend so his income should not count against her. The SSA denied the request, noting that Cruz and Gonzalez's income exceeded the SSI eligibility limits. Cruz requested a hearing before an ALJ, stating that she rented a room from Gonzalez, but they were not currently dating. An ALJ held a video hearing during which Cruz appeared *pro se*. Following the hearing, the ALJ issued a decision on September 16, 2011, finding that Cruz and Gonzalez had been presenting themselves as married and thus Gonzalez's income should be considered as Cruz's income.

Cruz requested that the Appeals Council review the ALJ's decision. Before the Appeals Council's decision, Gonzalez submitted a letter to the SSA. In the letter, dated September 29, 2011, Gonzalez wrote that he was not in a relationship

with Cruz, who was merely his tenant and friend. Gonzalez also submitted a lease agreement signed by Cruz, which stated that Cruz would pay Gonzalez \$400 per month in rent, effective September 29, 2011, the same date as his letter.

The Appeals Council did not make a determination on the merits of Cruz's appeal. Instead, it vacated the ALJ's decision and remanded the case for a new hearing because the recording of the previous hearing could not be located. During the second hearing, Cruz testified that she had lived in Gonzalez's home since 2004, but she had her own bedroom. She stated that Gonzalez was a "good friend," but she had "nothing to do with him." Hr'g Tr. at 4-5 (Doc. 14-1).¹ Cruz acknowledged after being shown her redetermination paperwork that it stated Gonzalez was her spouse, but she insisted he was not.

The ALJ issued an unfavorable decision, finding that although Cruz and Gonzalez were not legally married, Gonzalez was Cruz's spouse. The ALJ found that they had been presenting themselves as husband and wife for several years, and Cruz's statements to the contrary were not credible. The ALJ concluded that Gonzalez's income must be imputed to Cruz, and therefore Cruz was ineligible for SSI benefits.

Cruz administratively appealed, and the Appeals Council denied Cruz's request for review. Cruz sought review of the Commissioner's decision in federal

¹ Citations to "Doc. #" refer to docket entries in the district court record in this case.

district court. Cruz and the Commissioner each moved for summary judgment. A magistrate judge recommended that the court grant summary judgment to the Commissioner. The district court adopted the magistrate judge's recommendation over Cruz's objections and granted the Commissioner's motion for summary judgment. Cruz appealed.

II. STANDARD OF REVIEW

When, as here, an ALJ denies Social Security benefits and the Appeals Council denies review, we review the ALJ's decision as the Commissioner's final decision. *See Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001). We review the decision to determine whether it is supported by substantial evidence and whether the ALJ applied the proper legal standards. *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). We further review a credibility determination to see if substantial evidence supports it. *Marbury v. Sullivan*, 957 F.2d 837, 839 (11th Cir. 1992). Substantial evidence refers to "such relevant evidence as a reasonable person would accept as adequate to support a conclusion." *Moore*, 405 F.3d at 1211. Our limited review precludes us from "deciding the facts anew, making credibility determinations, or re-weighing the evidence." *Id.*

III. DISCUSSION

On appeal, Cruz challenges the ALJ's finding that she was in a relationship with Gonzalez, arguing that she and Gonzalez are family friends and that she has never represented otherwise to the SSA. We cannot agree.

The Social Security Act extends benefits to disabled persons who satisfy the income and resource requirements. 42 U.S.C. § 1381 *et seq.* To be eligible for SSI under the Act, an individual's income cannot exceed a certain amount. *Id.*

§ 1381a. If an individual lives in the same household as her spouse who is ineligible for SSI, "such individual's income and resources shall be deemed to include any income and resources of such spouse." *Id.* § 1382c(f)(1). The statute further provides that if two individuals "are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered" under the statute. *Id.* § 1382c(d)(2).

Substantial evidence supports the ALJ's determination that Gonzalez was Cruz's spouse. As part of her July 2010 eligibility redetermination, Cruz stated that she and Gonzalez had been living together since 2008; that they presented themselves as husband and wife; and that her spouse, Gonzalez, was purchasing the home where they lived. She also stated that she had no other income. Cruz made similar representations in 2005 and 2006. The ALJ found that because Cruz had no other source of support, it appeared that Gonzalez was supporting Cruz "as

is common in a marital relationship when one party has no income.” ALJ Decision at 3 (Doc. 14). The evidence was consistent with this determination.

Substantial evidence also supports the ALJ’s determination that Cruz’s testimony that Gonzalez was not her spouse was not credible. As the ALJ noted, prior to Cruz’s second hearing, she had repeatedly stated that Gonzalez was her spouse. Furthermore, in her request for reconsideration, Cruz described Gonzalez as her boyfriend, which contradicted her later statements that he was merely her landlord. Additionally, as the ALJ found, it is unlikely that Cruz suddenly began paying Gonzalez rent under the 2011 lease agreement given that she had no source of income and had lived in his home without paying rent for at least three years. As the ALJ also noted, the lease was dated about two weeks after the ALJ’s initial decision, indicating that the agreement was created only to support her request for reconsideration of the denial of her benefits.

Because a “reasonable person would accept” this evidence as supporting the ALJ’s finding that Gonzalez was Cruz’s spouse, *Moore*, 405 F.3d at 121, we will not upset the ALJ’s decision here.

IV. CONCLUSION

For the reasons set forth above, we must affirm the district court’s order and the Commissioner’s decision.

AFFIRMED.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Ft. Pierce Division
Case Number: 15-14272-CIV-MARTINEZ-LYNCH

ELIZABETH CRUZ,
Plaintiff,

vs.

CAROLYN W. COLVIN, Acting Commissioner,
Social Security Administration,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE LYNCH'S REPORT AND
RECOMMENDATION**

THE MATTER was referred to the Honorable Frank J. Lynch, Jr., Chief United States Magistrate Judge, for a Report and Recommendation on Plaintiff's Motion for Summary Judgment [ECF No. 17] and Defendant's Motion for Summary Judgment [ECF No. 18]. Magistrate Judge Lynch filed a Report and Recommendation [ECF No. 22], recommending that (a) the decision of the Commissioner be affirmed, (b) Plaintiff's motion for summary judgment be denied, and (c) Defendant's motion for summary judgment motion be granted. The Court has reviewed the entire file and record and has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present. After careful consideration, the Court affirms and adopts the Report and Recommendation. Accordingly, it is hereby:

ADJUDGED that Chief United States Magistrate Judge Lynch's Report and Recommendation [ECF No. 22] is **AFFIRMED** and **ADOPTED**. Accordingly, it is:

ADJUDGED that

1. The decision of the Commissioner is **AFFIRMED**.

2. Plaintiff's Motion for Summary Judgment [ECF No. 17] is **DENIED**.
3. Defendant's Motion for Summary Judgment [ECF No. 18] is **GRANTED**.
4. A final judgment shall be entered by separate order.
5. This Case is **CLOSED** and all pending motions are **DENIED as MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 29 day of June, 2016.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Lynch
All Counsel of Record
Elizabeth Cruz, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-14272-CIV-MARTINEZ/LYNCH

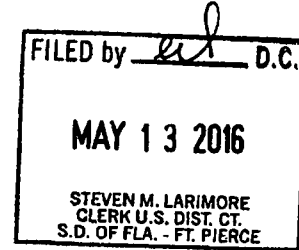
ELIZABETH CRUZ,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting Commissioner,
Social Security Administration,

Defendant.



REPORT AND RECOMMENDATION ON THE PARTIES' MOTIONS FOR SUMMARY
JUDGMENT (DE 17 & 18)

THIS CAUSE comes before this Court upon the above Motions. Having reviewed the Motions, the Defendant's Response, and administrative record, and having held a hearing on May 10, 2016, this Court recommends as follows:

BACKGROUND

1. The Plaintiff began receiving Supplemental Security Income ("SSI") under Title XVI of the Social Security Act in April 1999. She was 38 years old at the time. She claimed disability due to mental health impairment.

2. The record shows Miquel Angel Gonzalez was a long-time friend of the Plaintiff and her family. The Plaintiff admits to dating him in the 1980's, but she now insists that other than that they have been nothing more than friends. In early 2004 the two of them moved to Port St. Lucie, Florida.

3. On February 3, 2004 the Commissioner wrote the Plaintiff to inform her that her move to Florida had caused a reduction in benefits. The reduction was caused by the loss of the supplement that the State of New York pays but which the State of Florida does not.

4. As for the SSI benefits that the Commissioner pays, the letter contained the general advisory that the amount "depends on your living arrangements." "Your living arrangements", the letter explained, consist of "where you live, with whom you live, and how your food and shelter expenses are paid." "Based on the information we have," the Commissioner deemed the Plaintiff's "Federal living arrangement" to be "Category A for March 2004 on". The "Fact Sheet on SSI Federal Living Arrangement Categories" attached to that letter defines "Category A" as living independently and alone in one's own household. That form contrasts a Category A living arrangement with a Category B living arrangement which consists of living in another's household where the cohabitant is "your spouse or an ineligible person whose income is being used to compute the amount of your SSI check." In the Category B situation, where a cohabitant helps pay the SSI claimant's food and housing costs, the Commissioner reduces that SSI claimant's benefit by one-third.

5. The Commissioner conducted two Eligibility Redeterminations, the first in November 2005 and the second in January 2006. In both proceedings the Plaintiff described her household as living with Mr. Gonzalez in a common law-type marriage. While not officially and legally married, she still refers to him as her spouse, and they hold themselves out to the community as married. Mr. Gonzalez pays the \$1,200 monthly mortgage note for the house where they live. These Redeterminations did not result in a change in the Plaintiff's benefits.

6. She continued to receive her SSI disability benefit through July 2010 when a third Eligibility Redetermination was undertaken. As before, she described her relationship with Mr. Gonzalez, with whom she still was living, in terms of a common law-type marriage. This time the redetermination did result in an adverse result. The Commissioner stopped her SSI benefit in full because the household income exceeded the cap for SSI eligibility. The Commissioner now was counting Mr. Gonzalez' income as part of the Plaintiff's household income. Mr. Gonzalez' income comes from both VA and Social Security programs stemming from a disability determination back in July 1993.

7. The Plaintiff began pursuing the administrative appeal remedies in order to restore her benefits. At first her

objection was limited to the Commissioner's consideration of Mr. Gonzalez' income. She still conceded that she was living with him, and she still referred to him as her "boyfriend".

8. An ALJ conducted an administrative hearing in August 2011. Mr. Gonzalez submitted into the record a statement regarding his income and expenses. He reported a monthly income of \$3,025 and about the same (\$2,962) in total monthly household expenses (including \$650 that he pays for food).

9. In September 2011 that ALJ, Mr. Donovan, rendered his decision affirming the cessation of SSI benefits. He based his decision on assertions by both the Plaintiff and Mr. Gonzalez of record of a spousal relationship and Mr. Gonzalez' financial support of the household. ALJ Donovan therefore deemed valid Mr. Gonzalez' income and that income rendered the Plaintiff ineligible for SSI benefits.

10. Shortly after that adverse decision, Mr. Gonzalez wrote a letter describing their relationship as just friends and as landlord/tenant. He said that the Plaintiff "moved here with me as a roommate" because he had "offered her a room to rent". The Plaintiff wanted to leave the city. That letter is dated September 29, 2011. The Plaintiff then submitted a lease contract, also dated September 29, 2011, between herself and Mr. Gonzalez.

11. The Plaintiff appealed the ALJ's adverse decision to the Appeals Council. Because the recording of the hearing could not be found, the Appeals Council remanded the matter for another administrative hearing. Thus the Plaintiff received two evidentiary hearings on the matter.

12. The second administrative hearing was held in September 2013 and before a new ALJ, Mr. Rivera. The Plaintiff described their relationship as nothing more than good friends and landlord/tenant. She pays rent; buys her own food; and leads a separate life. She does rely on Mr. Gonzalez for some help. She uses his phone, and he drives her around. She relies on him more financially now after losing her SSI benefits. This Court notes that in the ALJ's discussions and inquiries about her earlier assertions of a common law-type marriage, the Plaintiff did not seem to expressly deny ever making them. Instead she continued to emphasize that they are not married and are just friends.

13. ALJ Rivera rendered his decision on September 19, 2013. Like ALJ Donovan before him, ALJ Rivera did not find credible the Plaintiff's representation of nothing more than a landlord/tenant relationship between friends. ALJ Rivera detailed the record evidence that he found to show instead a spousal-type relationship between them and a shared household.

ALJ Rivera found a sufficient relationship between them to count Mr. Gonzalez' income as valid income for the Plaintiff, too. Because that income exceeded the SSI benefits cap, ALJ Rivera affirmed the determination of benefits ineligibility.

14. The ALJ emphasized Social Security paperwork where the Plaintiff said that she and Mr. Gonzalez hold themselves out as spouses and that Mr. Gonzalez, as her "spouse", was paying for the home where they both lived. The ALJ noted how for a while thereafter the Plaintiff referred to Mr. Gonzalez as her boyfriend. The ALJ observed how long the Plaintiff had lived with Mr. Gonzalez and without any other income support, not even food stamps. This lends the appearance that Mr. Gonzalez was supporting the Plaintiff. The ALJ found the lease contract that the Plaintiff signed (soon after the first hearing) unpersuasive. The ALJ doubted that Mr. Gonzalez would enter into a bona fide lease contract with a tenant whom he knows no longer has her own income and who already has lived with him for several years without a lease contract.

15. The Plaintiff appealed the adverse determination to the Appeals Council. She continued to deny that Mr. Gonzalez is her boyfriend and repeated that she simply rents a room from him. The Plaintiff also proffered a letter from what appears to be a neighbor. The author describes the relationship between the

Plaintiff and Mr. Gonzalez as one of friends and landlord/tenant. The author describes the Plaintiff is a "homebody", never going out. Lastly the author addresses the Plaintiff's financial difficulty now that she has lost her SSI benefits. The author says that she lets the Plaintiff care for her dogs to earn some pocket money.

16. The Appeals Council denied her Request for Review on February 27, 2015. The Appeals Council found the evidence contrary to the Plaintiff's characterization of her relationship with Mr. Gonzalez as just friends and landlord/tenant.

17. The Commissioner's redetermination of the Plaintiff's SSI benefits eligibility solely concerned her relationship with Mr. Gonzalez and thus whether her household income exceeded the SSI cap. It did not concern any medical basis for her disability. The record contains some medical evidence, evidence that the Plaintiff proffered at both the administrative levels of review and now upon judicial review. Because it has no bearing on the Commissioner's reason for stopping the Plaintiff's SSI benefits, this Court does not review it here. Nevertheless this Court does generally note that the proffered medical records contain nothing that directly supports the Plaintiff's denial of any spousal or other support-based relationship with Mr. Gonzalez. To the contrary, medical records

might reasonably support the Commissioner's finding: medical records from August 2010 show that Mr. Gonzalez lives with her and had accompanied her.

DISCUSSION

18. Judicial review of the Commissioner's decision is limited to a determination of whether it is supported by substantial evidence and whether the proper legal standards were applied. See Lewis v. Callahan, 125 F.3d 1436 (11th Cir. 1997). Supporting evidence need not be preponderant to be substantial so long as it amounts to more than a scintilla; in other words, it is such relevant evidence that a reasonable person might accept as sufficient and adequate to support the conclusion reached. See id. at 1440. If the decision is supported by substantial competent evidence from the record as a whole, a court will not disturb that decision. Neither may a court reweigh the evidence nor substitute its judgment for that of the ALJ. See Wolfe v. Chater, 86 F.3d 1072 (11th Cir. 1996). See also, Wilson v. Barnhart, 284 F.3d 1219, 1221 (11th Cir. 2002). While the Commissioner's factual findings enjoy such deference, a court is free to review the Commissioner's legal analysis and conclusions de novo. See Ingram v. Comm'r, 496 F.3d 1253, 1260 (11th Cir. 2007). See generally, Jordan v. Comm'r, 470 Fed.Appx. 766, 767-68 (11th Cir. 2012).

19. The above standard is one of judicial review of the Commissioner's decision. The issue before this Court is not how this Court on its own would answer the question of whether Mr. Gonzalez' income should be considered as part of the Plaintiff's living arrangement. This Court is not the fact-finder. The ALJ was the fact-finder, and the ALJ answered the dispositive question. The issue before this Court instead is whether the decision that the ALJ reached comports with governing Social Security law and whether the record evidence supports it. This Court finds that it does.

20. This Court has carefully considered the objections that the Plaintiff raises in her pleadings and at the hearing. The Plaintiff re-asserts her denial of any relationship with Mr. Gonzalez other than as friends and as landlord/tenant. She contends that she has consistently represented her relationship with Mr. Gonzalez as such in all of her dealings with the Commissioner. For that reason she doubts how the Commissioner found to the contrary.

21. The problem with the Plaintiff's argument on appeal is that her representations to the Commissioner were not as consistent as she now portrays them. She does not account for or explain her initial assertions of a common law-type spousal relationship. She only says that the second ALJ did not give her

a chance to say anything about that paperwork. Nor does the Plaintiff account for or explain her references to Mr. Gonzalez as her boyfriend in the second round of Social Security paperwork.

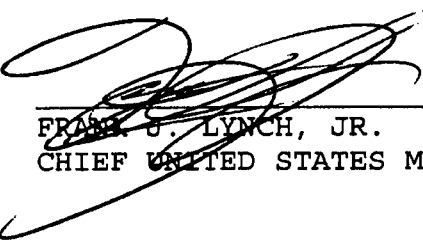
22. The Plaintiff has had the benefit of two evidentiary hearings on the matter. Although she represented herself pro se before the Commissioner (as she does now), the Plaintiff continued to advance her claim that she is just Mr. Gonzalez' friend and tenant, and nothing more. She proffered evidence to support her claim. Ultimately, though, it came down to a credibility determination, and as the fact-finder, it was the ALJ's prerogative to make that credibility determination. In doing so, the ALJ found the circumstances of the Plaintiff's living arrangement with Mr. Gonzalez (both before and after the loss of her SSI benefits) and her initial representations to show the kind of support-based relationship to warrant counting his income as part of the Plaintiff's household income for SSI eligibility purposes. Although the Plaintiff continues to deny any such relationship or shared household, she shows no errors of fact in the ALJ's review of the underlying record.

ACCORDINGLY, this Court recommends to the District Court that the Plaintiff's Motion for Summary Judgment (DE 17) be

DENIED and in affirming the ALJ's decision, that the Defendant's Motion for Summary Judgment (DE 18) be **GRANTED**.

The parties shall have fourteen (14) days from the date of this Report and Recommendation within which to file objections, if any, with the Honorable Jose E. Martinez, the United States District Judge assigned to this case. Failure to file timely objections shall bar the parties from a de novo determination by the District Court of the issues covered in this Report and Recommendation and bar the parties from attacking on appeal the factual findings contained herein. LoConte v. Dugger, 847 F.2d 745, 749-50 (11th Cir. 1988), cert. denied, 488 U.S. 958 (1988).

DONE AND SUBMITTED in Chambers at Fort Pierce, Florida,
this 13th day of May, 2016.



FRANK S. LYNCH, JR.
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: Hon. Jose E. Martinez
Annika M. Miranda, AUSA

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