

Circuit Court for Montgomery County  
Case No. 484857V

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 2113

September Term, 2021

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IN THE MATTER OF  
MICHANN WILLIAMS

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Leahy,  
Friedman,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: June 15, 2023

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. R. 1-104.

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant Michann Williams challenges an order by the Circuit Court for Montgomery County, which upheld an administrative law judge’s (“ALJ”) determination that Williams was not entitled to ordinary disability retirement benefits because she did not suffer from a permanently disabling medical condition that would prevent her from performing the normal duties of her job.<sup>1</sup> For the reasons that follow, we find no error in the ALJ’s decision and therefore affirm the order of the circuit court.

### **FACTS AND PROCEEDINGS**

Williams worked for Prince George’s County Public Schools as a School Secretary I, where she did “general office work” and “moderately complex clerical tasks.” The physical demands of the job included talking, standing, walking, sitting, and using the fingers, along with occasional stooping, kneeling, crouching, or crawling, and pushing or lifting up to 25 pounds. After receiving a diagnosis of sciatica, Williams sometimes used a cane to assist with walking but was able to fulfill her duties as a secretary with no restrictions.

As her pain worsened, Williams stopped working on December 22, 2017. Shortly after, Williams obtained an MRI of her lumbar spine. The lumbar spine MRI revealed mild to moderate levoscoliosis, mild anterolisthesis, and multi-level degenerative disc disease. Williams began treatment with Dr. Thomas Heckman for left thigh and left leg pain several months later. Dr. Heckman diagnosed Williams with left hip pain, lumbar degenerative

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<sup>1</sup> Williams requested, and received permission from this Court, to file an informal brief, in accordance with Maryland Rule 8-502(a)(9).

disc disease, lumbar radiculitis, lumbar spinal stenosis, and lumbar spondylosis. He noted, “[a]t this point I don’t think she can do the job that she is describing, but over time she may be able to. I believe she would with modified duty. No [stooping], crouching. Limit forward bending. No lifting, pushing, pulling over 10 lbs.” Because her employer could not find a job to accommodate her restrictions, Williams left her job on years-of-service retirement in February 2019 upon exhausting her sick leave.

Williams applied for ordinary disability retirement benefits. Williams asserted that her nerve root impingement, adult hydrocephalus requiring a cerebral shunt, and enlarged heart caused her to experience extreme pain and rendered her unable to lift, stand, bend, or reach, as required by her job description. Williams’ primary care doctor helped complete the application, listed her prognosis as “guarded pending results of spine/pain specialist evaluation,” and opined that Williams was permanently and totally disabled.

The Medical Board of the Maryland State Retirement and Pension System (“MSRPS”) recommended denial of Williams’s claim for disability retirement benefits on the ground that she was not totally and permanently disabled or unable to perform her job duties. Upon Williams’s notice of appeal, MSRPS referred her to an independent medical exam with Dr. John Barry. At the independent medical exam, Dr. Barry evaluated Williams for “atraumatic onset of lower back pain.” He performed orthopedic tests including a straight leg raise test, a bowstring test, and a deep tendon reflexes test. Dr. Barry opined that Williams “is able to return to her regular duties at work, as outlined in her job description.”

Following Williams’s independent medical exam, the Medical Board upheld its original decision denying her ordinary disability retirement benefits. MSRPS then renewed Williams’s appeal and transmitted it to the Office of Administrative Hearings for a hearing before an ALJ.

The ALJ heard Williams’s appeal on October 28, 2020. Williams was the only witness to testify on her behalf. She explained her symptoms and limitations and said she did not intend to return to work as a school secretary because she had great difficulty walking and experienced excruciating pain every day. For MSRPS, Dr. Barry testified as an expert in orthopedic surgery. He explained that objective findings are required for him to determine whether the patient is permanently disabled. His review of Williams’s medical records and his orthopedic tests informed his conclusions to a reasonable degree of medical certainty. He concluded that Williams’s shoulder impingement and age-related spinal degeneration were not severe enough to be disabling but warranted restrictions on the weight she should lift. In Dr. Barry’s view, Williams’s MRIs and orthopedic tests were inconsistent with the amount of pain she described. He disagreed with Dr. Heckman’s opinion and concluded that Williams was physically able to perform the duties of her job.

Following the hearing, the ALJ issued a decision explaining that Williams did not prove her claim for ordinary disability by a preponderance of the evidence. According to the ALJ, Williams’s testimony centered on subjective pain, while Dr. Barry’s testimony described his objective findings upon examination. Therefore, the ALJ gave more weight to Dr. Barry’s testimony than Williams’s testimony. The ALJ discounted Dr. Heckman’s reports, stating that the basis of his reports “remains a mystery” because he did not testify

at the hearing. Moreover, the ALJ noted that Dr. Heckman’s conclusion—that Williams might be able to return to her duties in the future—was inconsistent with a finding of permanent disability.<sup>2</sup>

Williams petitioned for judicial review of the ALJ’s decision in the Circuit Court for Montgomery County. The circuit court affirmed, finding that whether Williams was permanently disabled was “fairly debatable,” and it was reasonable for the ALJ to accept Dr. Barry’s testimony over Williams’s testimony and Dr. Heckman’s reports. Williams then filed a timely notice of appeal.

### DISCUSSION

When we consider an appeal from judicial review of an agency action, we review the [ALJ’s] decision directly, not the decision of the circuit court. *Reger v. Washington Cnty. Bd. of Educ.*, 455 Md. 68, 95 (2017). Our review is narrow, which means we presume the ALJ’s decision is valid and we defer to the ALJ’s fact-finding and drawing of inferences so long as they are supported by substantial evidence in the record. *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999).

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<sup>2</sup> The ALJ also was not persuaded by Williams’s argument that Dr. Barry’s independent medical exam report supported her claim for disability because it advised she not lift weight greater than 20 pounds, when her job description required the occasional lifting of 25 pounds. The ALJ noted that Dr. Barry was questioned during the hearing about that inconsistency and confidently explained that there is no qualitative difference between lifting 20 and 25 pounds, and lifting even 30 pounds would not pose a risk to Williams.

We hold that the ALJ’s decision, that Williams had not sufficiently proved that she was permanently physically disabled, was supported by substantial evidence in the record.<sup>3</sup> Dr. Barry testified to the ALJ that he reviewed Williams’s medical records and examined her. To Dr. Barry, the evidence indicated that the degeneration of Williams’s spine and hip did not support Williams’s claims of disabling pain. Moreover, Dr. Barry did not agree that Williams would not be able to perform the sedentary duties of a school secretary, especially if she limited her lifting to weight under 20 pounds.

Other than Williams’s own testimony describing her pain, the only evidence she presented at the hearing before the ALJ was Dr. Heckman’s reports. Williams did not call Dr. Heckman to testify at the hearing, however, and the doctor’s own evaluation noted that Williams might be able to return to work in the future.

Making factual determinations, that is, resolving conflicts in the evidence and weighing the credibility of the witnesses, is properly reserved for the fact finder. *Longshore v. State*, 399 Md. 486, 499 (2007). “In performing this role, the fact finder has the discretion to decide which evidence to credit and which to reject.” *Id.* Here, the ALJ, as the fact finder, deemed Dr. Barry credible because he justified his conclusion that Williams was not permanently disabled. We hold that there is sufficient evidence in the record to support the ALJ’s conclusion, despite Williams’s appellate argument of factual errors and

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<sup>3</sup> To be eligible for ordinary disability benefits, a member of the MSRPS must have “at least 5 years of eligibility service” and a certification from the Medical Board that they are permanently “mentally or physically incapacitated” from performing their job duties and “should be retired.” MD. CODE, STATE PERS. & PENSIONS § 29-105(a). The burden of proof to show eligibility for benefits is on the member. COMAR 22.06.06.02(E)(1).

inconsistencies in the hearing before the ALJ.<sup>4</sup> We, therefore, affirm the judgment of the circuit court.<sup>5</sup>

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY IS  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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<sup>4</sup> Williams argues, in her brief, that: (1) Dr. Barry’s IME was “not truthful” because he said she had no cane, but he actually handed her her cane at the end of the examination; (2) the IME was not useful because it lasted only 20 minutes and she was wearing “thick jeans” during the examination, which precluded Dr. Barry from assessing accurately her pain; (3) the Assistant Attorney General “made light” of her job description in the memo opposing judicial review, by omitting the fact that she had to perform duties such as standing, talking, etc., “frequently”; (4) Dr. Barry’s recommendation that she lift no more than 20 pounds, when her job might require her to lift 25 pounds, proved she could not perform her job duties; and (5) many of her medical problems are ongoing and worsening. All of these assertions and alleged inconsistencies were, or should have been, raised before the ALJ and do not support Williams’s claim of reversible error.

<sup>5</sup> Williams attached to her appellate briefs documents she obtained from the internet and medical records created after the ALJ hearing took place in an effort to persuade us that she is entitled to ordinary disability retirement benefits, in part because her medical issues will only continue to worsen as she ages. Because these documents and records were not before the ALJ in rendering his decision, and because Williams did not seek to have them considered by the circuit court in its judicial review of the ALJ’s decision, we do not consider them here. *See Zakwieia v. Baltimore Cnty, Bd. of Educ.*, 231 Md. App. 644, 649-50 (2017) (“Our preservation requirement is equally applicable to administrative appeals . . . . Because this issue was not raised before the administrative agency or the circuit court, we shall not address it on appeal.”). But even if we did consider such documents, it would not change the outcome here. Changes to Williams’s health that had not yet occurred could not have been considered by the Medical Board or the ALJ in determining her eligibility for disability retirement and we cannot consider them in our determination of the appeal.