**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 25th day of October, two thousand eleven.

PRESENT:

JOSÉ A. CABRANES,
DEBRA ANN LIVINGSTON,
DENNY CHIN,
Circuit Judges.

- -x

LINDA LEFEVER,

Plaintiff-Appellant,

-v.- No. 10-4796-cv

MICHAEL J. ASTRUE,

Defendant-Appellee.

- -x

FOR APPELLANT: JAYA A. SHURTLIFF, Olinsky & Shurtliff, Syracuse, N.Y.

FOR APPELLEE: SATHYA OUM, Special Assistant United States Attorney (Stephen P. Conte, Regional Chief Counsel, Social Security Administration, *on the brief*; Richard S. Hartunian, United States Attorney for the Northern District of New York, *of counsel*), Office of the United States Attorney for the Northern District of New York, Syracuse, NY.

Appeal from a judgment of the United States District Court for the Northern District of New York (Norman A. Mordue, *Chief Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be **AFFIRMED.**

Plaintiff-appellant Linda Lefever appeals from a judgment of the District Court affirming a decision of the Commissioner of Social Security Michael J. Astrue ("Commissioner"), and dismissing Lefever's appeal therefrom. *See Lefever v. Astrue*, No. 5:07-CV-622, 2010 WL 3909487 (N.D.N.Y. Sept. 30, 2010). We assume the parties' familiarity with the underlying facts and the procedural history of the case.

This appeal arises out of an adverse decision of the Commissioner in which Lefever was found to have not been under a disability prior to January 1, 2002,[1] and was thereby denied Disability Insurance Benefits and Supplemental Security Income under the Social Security Act, 42 U.S.C. § 301 *et seq.*, for the period of time between November 6, 1998, her alleged date of onset, and December 31, 2001. Lefever appealed the decision of the Commissioner by bringing a civil action in the District Court for the Northern District of New York.

In the District Court, Lefever alleged that the Commissioner erred by failing to comply with an order of remand issued by the Appeals Council of the Social Security Administration with regard to the evaluation of Lefever's mental impairment; by improperly disregarding the opinions of several of Lefever's treating physicians in violation of the Treating Physician Rule; by failing to develop the record and thereby making an erroneous Residual Functional Capacity finding that was not supported by substantial evidence; and by overlooking Lefever's significant non-exertional limitations at step five of the Social Security Administration's five-step test for disability[2] by relying on the Medical-Vocational Rules rather than introducing the testimony of a vocational expert.

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[1] In the same decision of the Commissioner, Lefever was found to have been under a disability since January 1, 2002. The favorable portion of the Commissioner's determination is not before us on appeal.

[2] The Social Security regulations direct a five-step analysis for evaluating disability claims, the fifth step of which requires the Commissioner to "'determine[] whether there is other work which the claimant could perform.'" *DeChirico v. Callahan*, 134 F.3d 1177, 1180 (2d Cir. 1998) (quoting *Berry v. Schweiker*, 675 F.2d 464, 476) (2d Cir. 1982)); *see also* 20 C.F.R. § 404.1520.

The District Court rejected each assignment of error, except for Lefever's allegation that the Commissioner should not have given controlling weight to the observations of Dr. Ganesh, a State Agency Review Physician, with which the court agreed. The court determined, however, that a correct assessment of Dr. Ganesh's evidence would not change the outcome of Lefever's appeal, and therefore denied relief on that ground as well.

This appeal followed. On appeal, Lefever again raises each of the issues she raised before the District Court.

Having conducted an independent review of the decision of the Commissioner, as well as of the administrative record, we find no error in the District Court's affirmance of the Commissioner's determination that Lefever was not disabled prior to January 1, 2002. Therefore, we AFFIRM the judgment on appeal for substantially the same reasons stated by the District Court in its thorough and well-reasoned Memorandum and Order of September 30, 2010.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk of Court