NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued November 15, 2018
Decided November 26, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-1817

BRIDGET ANN IMSE,
Plaintiff-Appellant,

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division.

No. 1:17-cv-00024-TLS-SLC

Theresa L. Springmann,
Chief Judge.

O R D E R

Bridget Imse, a 44-year-old woman who suffers from numerous mental and physical impairments, challenges the denial of her applications for disability insurance benefits and supplemental security income. She contends that the administrative law judge erroneously found that her mental impairment was non-severe and that, despite her severe physical impairments, she could perform work that exists in the national economy. The Appeals Council denied review, and the district court upheld the ALJ's decision. Because substantial evidence supports the ALJ's decision, we affirm the district court's judgment.

I. Background

Bridget Imse applied for disability insurance benefits in November 2013 and supplemental security income in April 2015, based on herniated discs in her back, lumbar degenerative disc disease, lumbar radiculitis, scoliosis, fibromyalgia, Crohn's disease, sleep apnea, carpal tunnel syndrome, migraines, and depression. She primarily challenges the ALJ's assessment of her back pain and depression, so we focus on her medical history regarding those conditions.

A. Back Pain

Imse's back pain troubles began in 2004, when she was 33 years old. An MRI then of her lumbar spine revealed a small disc herniation with minimal, if any, neural impingement. An orthopedist diagnosed her with scoliosis, lumbar radiculitis, and degenerative disc disease. Soon after, a rheumatologist, Dr. Karen Ringwald, diagnosed her with fibromyalgia. Both doctors recommended physical therapy, but Imse declined the treatment, attempting it only three years later. A second MRI in 2007 showed that the disc protrusion in Imse's spine was "somewhat less prominent" than on the first exam.

Imse continued to seek treatment for fibromyalgia. At an appointment in August 2011—two months after the alleged disability onset date of June 15, 2011—she reported that her fibromyalgia and mood were worse because she was off her medication. But by her next visit, six months later, Imse had started taking a different medication that helped with aches and pains, and Dr. Ringwald noted that Imse's depression was "overall stable." Between 2013 and 2015, Dr. Ringwald made notes about increased back pain, but described Imse's fibromyalgia and depression as stable.

In September 2013, Imse's orthopedist again referred her to physical therapy to address lumbar pain, increase strength, and improve functional skills. This time, Imse attended three physical therapy sessions, but was discharged thereafter for failing to return for further treatment or respond to follow-up calls.

A third MRI of Imse's spine, taken in January 2014, revealed "minimal findings": "mild" disc bulging; "mild" degenerative changes; and a "very tiny" disc extrusion that did not compromise any nerve roots. The orthopedist noted that Imse had "failed a recent 6-week course of maximum conservative treatment for back pain," which included pain medications, exercise, physical therapy, and weight loss. Imse then opted

for an epidural steroid injection into her spine. After a third injection, she reported approximately 60% pain reduction and said that she was able to stand longer and that her daily-living functions had improved. But a month later, she reported that these improvements had diminished and that daily activities were challenging. Her back pain persisted, sometimes to the point where it affected her gait, but other times not.

B. Depression

The record reflects that Imse has a long history of depression and anxiety—beginning in or before 2004—though few reports provide much detail about the condition. Over the years, Imse repeatedly sought refills for her antidepressant medication, which, as two doctors noted, "controlled" her depressive symptoms and improved her condition. In 2015, she sought counseling for anxiety and depression related to a series of personal losses in the previous years. That May, her doctor assessed moderate recurrent major depression, and Imse reported that her anxiety was interfering with social activities.

In July 2015, two doctors evaluated Imse's mental condition. Dr. Bryan Ciula, a psychologist, diagnosed Imse with mid-range severe depression, and noted her difficulties with memory loss, distractibility, and anxiety. The agency's examining physician, Dr. Wayne Von Bargen, determined that Imse has "a depressive disorder of some sort." But he concluded that her mental condition does not affect her ability to understand, remember, or carry out instructions; to interact appropriately with supervisors, co-workers, and the public; or to respond to changes in the routine work setting. He noted, however, that Imse's impairment affected "attendance and productivity" capabilities, which "may be poor due to medical issues."

C. Agency Hearing

At a hearing before an ALJ, Imse testified about her symptoms. She said that she lies down for four hours twice a week because of migraines, and that three times a week she takes 90-minute daytime naps due to difficulty sleeping at night. Imse testified that she can walk only 20 feet without stopping, sit for 30 minutes at a time, and stand continuously for between 10 and 15 minutes. Although she cannot do most household chores, she has no difficulties driving a car or managing her personal finances, and she can competently perform basic hygiene tasks. She testified that she has been on medication for depression for the past year, but that it helps only with her anxiety. Imse worked sporadically between 1990 and 2011, mostly in retail, unloading trucks; she quit

because she could no longer lift the heavy boxes. Imse had only minimal earnings in 2013 and 2014 but has not sought work since.

The ALJ asked a vocational expert (VE) to consider whether a hypothetical worker with certain limitations could perform Imse's past work or other work in the national economy. Based on the ALJ's first two hypotheticals—which involved only physical and environmental limitations—the VE reported that the worker could not do any of Imse's past jobs but could work a sedentary job as an address clerk, hand mounter, or document preparer. In the third and final hypothetical, the ALJ added more physical limitations (alternating between sitting and standing every 15 minutes; sitting for 30 minutes after 5 minutes of walking) and some mental restrictions (only simple routine tasks and simple work-related decisions). The VE testified that a person with these additional restrictions could not perform work in the national economy, mostly because of the sit/stand requirements. The VE also noted that a worker needs to be on-task at least 80% of the workday, take breaks only when scheduled, and miss no more than ten days of work a year.

After the hearing, the ALJ applied the standard five-step analysis, *see* 20 C.F.R. §§ 404.1520(a)(4) and 416.920(a)(4), and concluded that Imse was not disabled. The ALJ determined that Imse had not engaged in substantial gainful activity since June 15, 2011 (Step 1); that her lumbar degenerative disc disease, lumbar spinal stenosis, carpal tunnel syndrome, fibromyalgia, gastroesophageal reflux disease, peripheral neuropathy, and migraines were severe impairments, but her depression was non-severe (Step 2); and that no impairment met the criteria in Listing 1.04 or any other listing (Step 3). *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.04. The ALJ concluded that Imse had the residual functional capacity (RFC) to perform sedentary work subject to certain environmental and postural limitations (but no mental restrictions), and that, although she could not perform any of her former jobs (Step 4), she could perform other jobs available in the national economy (Step 5). In determining Imse's RFC, the ALJ gave significant weight to Dr. Von Bargen's opinion that Imse's depression did not affect her ability to understand, remember, or carry out instructions. As to Imse's physical impairments, the ALJ found that "[her] statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible" because they were inconsistent with the objective medical evidence.

The Appeals Council denied Imse's request for review, and the district court upheld the ALJ's decision.

II. Analysis

Imse challenges the ALJ's RFC finding on four primary grounds. She first argues that the ALJ erred by failing to include any persistence-based limitations in the RFC, despite the evidence in the record documenting how her mental impairment affected her functioning. Specifically, Imse contends that the ALJ improperly disregarded Dr. Von Bargen's note that her "attendance and productivity … may be poor due to medical issues." The ALJ seems to have interpreted this comment as referring to Imse's "other" medical issues rather than her depression—a not unreasonable interpretation. But even if Dr. Von Bargen was referring to the effects of Imse's depression, substantial evidence supports the ALJ's conclusion that her mental health condition does not limit what she can do in a work setting. Dr. Von Bargen's report (which the ALJ examined in full) also notes that Imse's mental impairment did not affect any other work-related activities, including her ability to understand, remember, carry out instructions, or interact with others in the workplace. And two of Imse's doctors reported that her depression was adequately controlled by medication, when she took it.

Second, Imse contends that the ALJ failed to "at least consider" whether her impairments, in combination, meet the spine disorders in Listing 1.04. This contention is frivolous; the ALJ expressly cited Listing 1.04 at Step 3 and determined that Imse's impairments did not meet or equal the criteria. The ALJ based his assessment on "the signs, symptoms, and laboratory findings" of her impairments, which he analyzed in detail throughout the opinion. *Cf. Barnett v. Barnhart*, 381 F.3d 664, 668–70 (7th Cir. 2004) (noting that "an ALJ must discuss the listing by name and offer more than a perfunctory analysis").

Third, Imse challenges the ALJ's finding that her allegations regarding the limiting effects of her physical impairments are not entirely credible. She argues that the ALJ minimized the severity of her spinal conditions by referencing her noncompliance with treatment (which she attributes to psychological problems) and then provided "no explanation" for the credibility assessment. This challenge fails on both fronts. The ALJ reasonably considered the impact of Imse's noncompliance when assessing the limiting effects of her spinal impairment; Imse declined two doctors' recommendations for physical therapy, and when she finally did seek treatment, she failed to follow through. *See Craft v. Astrue*, 539 F.3d 668, 679 (7th Cir. 2008) (noting that "failure to follow a treatment plan can support an adverse credibility finding where the claimant does not have a good reason for the failure").

As to the credibility assessment, the ALJ adequately explained how the medical evidence in the record and Imse's daily activities do not support the extreme physical limitations that she alleged. The ALJ noted that the medical evidence was "generally unremarkable"; her treatment had been "relatively conservative in nature"; and radiographic and clinical evaluations "did not reveal debilitating pathology" to the point where she could not perform a reduced range of sedentary work. Moreover, no doctor had ever recommended surgery, and, at the time of the hearing, Imse was not on any prescription pain medication. She still lived independently with her husband and could drive, attend medical appointments, and manage her personal finances without difficulty. Further, as the ALJ noted, "[n]o physician, treating or otherwise, has ever indicated that there was a medical reason why she would need to lay down/nap as frequently as alleged during the day." *See Rice v. Barnhart*, 384 F.3d 363, 370 (7th Cir. 2004) (finding no error when "no doctor's opinion contained in the record … indicated greater limitations than those found by the ALJ"). The ALJ's credibility determination is not "patently wrong," so we will not disturb it. *See Schaaf v. Astrue*, 602 F.3d 869, 875 (7th Cir. 2010).

Imse's final argument—that the RFC is inconsistent because "balancing and stopping are more difficult postural maneuvers than standing and walking"—is undeveloped and unsupported and is thus waived. *See, e.g., United States v. Cisneros*, 846 F.3d 972, 978 (7th Cir. 2017).

AFFIRMED