

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Argued April 6, 2023

Decided March 7, 2024

Before

JOEL M. FLAUM, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2484

JESSE STREIKUS,
Plaintiff-Appellant,

v.

MARTIN J. O'MALLEY,
Commissioner of Social Security,
Defendant-Appellee.

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

No. 1:20-CV-366

Michael G. Gotsch, Sr.,
Magistrate Judge.

ORDER

Jesse Streikus, who was in a car accident, unsuccessfully applied for disability benefits. Because the Administrative Law Judge (“ALJ”) properly accounted for Streikus’s limitations in concentration, persistence, and pace in determining the residual functional capacity (“RFC”) and in the hypothetical posed to the vocational expert, we affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A.

On September 23, 2017, Streikus was involved in a car accident in which he sustained a minor head injury and possible concussion. Following the accident, Streikus reported severe headaches that lasted several hours and prevented him from getting things done. Streikus also complained of worsening memory and slowing in mental processes. While MRIs of Streikus's brain were unremarkable, doctors diagnosed trigeminal neuralgia (a chronic pain disorder) and post-concussion syndrome. Over the next couple of months, Streikus was treated with various prescription medications as well as nerve blocks. His treating neurologist, Seth Cahn, M.D., also referred Streikus to a neuropsychologist based on concerns that his post-concussion symptoms were aggravated by his preexisting depression, anxiety, and panic attacks.

In December 2017, Streikus was evaluated by a neuropsychologist, Wendell Rohrer, Ph.D., who could not quantify any significant cognitive struggles for Streikus. Dr. Rohrer noted that test results indicated Streikus was either not putting forth enough effort or was purposefully magnifying his difficulties. Dr. Rohrer also opined that Streikus had a "very strong overall recovery capability," but Streikus's extreme decline in his activities of daily living post-accident "present[ed] a very complicated recovery course."

The following month, January 2018, assailants attacked Streikus with baseball bats. Although he was left with a golf ball-sized hematoma on the back of his head, medical imaging showed no abnormalities. In February 2018, Dr. Cahn spoke with Streikus about the January assault and the results of the neuropsychological assessment. They discussed the fact that Streikus's poor effort on the neuropsychological assessment could be due to Streikus's "honest belief" that he was cognitively worse-functioning than he actually was, or that he had become "hypersensitized to his symptoms, resulting in exaggerated debility." Dr. Cahn advised Streikus that pharmacologic treatment alone was not likely to have much of a benefit for him as compared to combination therapy, including counseling and stress management techniques.

Dr. Cahn referred Streikus to the Bowen Center for psychiatric evaluation. There, Streikus reported that following the January assault, he had trouble understanding. On examination, however, Streikus exhibited fair judgment and insight, and good intellect and concentration.

The following month, Streikus was again assaulted, sustaining multiple punches and kicks to the head, back, and abdomen. While Streikus had a small scalp hematoma and was not sure if he lost consciousness, imaging of his head again showed no abnormalities. On examination, Streikus was alert and displayed normal speech and coordination; he was ultimately discharged.

Streikus returned to Dr. Cahn in June 2018, complaining of daily headaches that worsened throughout the day. Dr. Cahn advised Streikus do something out of the house, including either a low-pain part-time job or volunteer work. Dr. Cahn also referred Streikus to the Diamond Headache Clinic in Chicago.

Three months later, in September 2018, Streikus attended his initial evaluation with the clinic. Streikus was administered intravenous pain medication, advised to keep a headache calendar and take prescription medications, and to follow certain sleep, exercise, and diet recommendations.

Throughout 2018, Streikus visited the emergency department numerous times for issues related to his headaches. Streikus also continued his treatment at the Bowen Center through August 2019. During this time, Streikus's depression and anxiety were largely improved or under control. He reported not experiencing any pain during his visits in 2019 and he exhibited fair insight and judgment and good attention and concentration throughout his exams.

In November 2019, Streikus visited his primary care provider, Nurse Practitioner Andrew Vorhis, concerning his headaches. Nurse Practitioner Vorhis started Streikus on prescription pain medicine and asked him to follow-up in the coming months.

B.

On November 8, 2017, Streikus applied for disability insurance benefits, alleging disability beginning September 23, 2017. Streikus's application for disability insurance benefits was reviewed by state agency physicians at the initial level and on reconsideration, and each time, Streikus was determined to not be disabled.

Following a hearing, an ALJ issued a decision likewise affirming the denial of benefits on February 3, 2020. Applying the familiar five-step analysis, *see* 20 C.F.R. § 404.1520(a), the ALJ determined at Step One that Streikus had not engaged in substantial gainful activity during the relevant period. At Step Two, the ALJ found severe impairments, including degenerative disc disease of the cervical and lumbar spine, status post concussion, headaches, major depressive disorder, anxiety, and post-

traumatic stress disorder, but concluded at Step Three that these impairments did not meet or medically equal the severity of one of the impairments in the Listings. Next, the ALJ found that Streikus had the RFC to perform light work as defined in 20 C.F.R. § 404.1567(b), with—as relevant here—the following mental limitations:

work that can be learned in 30 days or less, with simple routine tasks; routine workplace changes; simple work-related decisions; is able to remain on task in two-hour increments; with occasional interaction with coworkers, supervisors, and no interactions with the general public.

At Step Four, the ALJ also concluded that Streikus was unable to perform his past relevant work. Nonetheless, at Step Five, relying on testimony from a vocational expert, the ALJ determined that other jobs existed in significant numbers in the national economy that Streikus could perform. The ALJ thus concluded that Streikus was not disabled.

The Appeals Council denied Streikus's request for review, making the ALJ's decision the final decision of the Commissioner. 20 C.F.R. § 404.981. Streikus then sought judicial review. A magistrate judge, presiding with the parties' consent under 28 U.S.C. § 636(c), upheld the decision.

II. ANALYSIS

We review *de novo* a district court's judgment affirming the denial of disability benefits but apply the deferential "substantial evidence" standard when reviewing the ALJ's decision. *Sevec v. Kijakazi*, 59 F.4th 293, 297 (7th Cir. 2023); *Butler v. Kijakazi*, 4 F.4th 498, 501 (7th Cir. 2021). Evidence is substantial when it is sufficient for a reasonable person to conclude that it supports the decision. *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019); *Simila v. Astrue*, 573 F.3d 503, 513 (7th Cir. 2009). The standard demands more than a scintilla of evidentiary support but is less demanding than the preponderance of the evidence standard. *Wood v. Thompson*, 246 F.3d 1026, 1029 (7th Cir. 2001). While a reviewing court looks at the whole record, it must "not reweigh the evidence, resolve debatable evidentiary conflicts, determine credibility, or substitute [its] judgment for the ALJ's determination so long as substantial evidence supports it." *Gedatus v. Saul*, 994 F.3d 893, 900 (7th Cir. 2021).

On appeal, Streikus argues that the ALJ failed to properly account for his moderate limitations in concentration, persistence, and pace in the RFC and in the hypothetical to the vocational expert. Streikus believes that the ALJ erred in three

respects: (1) the ALJ did not incorporate leave and off-task restrictions into the RFC and hypothetical as needed to accommodate Streikus's headaches; (2) the ALJ improperly limited him to simple, routine tasks, which Streikus contends is insufficient under *Yurt v. Colvin*; and (3) the ALJ relied on Streikus assisting with the care of his children in formulating the RFC in violation of the *Beardsley* doctrine.

A.

Streikus first contends that the ALJ failed to adequately discuss the impact of his headaches on his ability to concentrate, persist, and maintain pace. Streikus argues that this was an error because his headaches "clearly relate to 'on task' and 'absence' limitations." As the Commissioner points out, however, Streikus did not raise this argument before the district court, and thus has waived it. *See, e.g., Jeske v. Saul*, 955 F.3d 583, 597 (7th Cir. 2020) (noting that de novo review does not prevent the court from finding an argument not raised before the district court waived).

Even if we subsume this contention within Streikus's general argument that leave and off-task considerations should have been factored into the RFC, the record does not reflect that such limitations are necessary. To support his argument, Streikus directs us to a variety of medical records referencing his headaches, including records from his visits to Dr. Cahn, Nurse Practitioner Vorhis, the emergency room, and Diamond Headache Clinic. While these records note Streikus's complaints of headaches and migraines and the treatment he received for them, they do not describe limitations. Streikus bears the burden of not just establishing the existence of his condition but the specific limitations affecting his capacity to work. *See, e.g., Durham v. Kijakazi*, 53 F.4th 1089, 1096 (7th Cir. 2022) (noting that the claimant bore the burden of establishing that her tachycardia would impede her ability to work or required limitations beyond those set forth by the ALJ); *Gentle v. Barnhart*, 430 F.3d 865, 868 (7th Cir. 2005) (claimant bears the burden of showing that she has impairments that affect her ability to work and pointing to various diagnoses and complaints is insufficient to establish the existence of a functional limitation); 20 C.F.R. § 404.1512(a). The medical evidence Streikus points to fails to carry this burden.

In addition, the ALJ extensively discussed Streikus's testimony concerning his headaches. The ALJ found Streikus's reported limitations were inconsistent with the medical record. In particular, the ALJ noted that Streikus denied experiencing headaches at times and exhibited poor effort on certain cognitive testing. For support, the ALJ pointed to Dr. Cahn's statement that Streikus was possibly underperforming because of Streikus's belief that he was cognitively worse off or because he had allowed

himself to become hypersensitized to his symptoms. The ALJ also acknowledged Dr. Cahn's recommendation that Streikus get a part-time job or do volunteer work. The ALJ noted this recommendation suggested that Streikus maintained a functional capacity that exceeded his subjective reports. The ALJ also explained that Streikus's clinical reports failed to document any considerable functional deficits beyond those included in the RFC.

Despite Streikus's medical records and testimony about his headaches, substantial evidence did not support off-task and absence limitations. Accordingly, the ALJ did not err by failing to include such limitations in the RFC or hypothetical to the vocational expert.

B.

Next, Streikus relies on this court's holdings in *Yurt v. Colvin*, *Varga v. Colvin*, and *Crump v. Saul* to argue that the ALJ's RFC determination and hypothetical to the vocational expert did not encompass his issues with concentration, persistence, and pace. Specifically, Streikus maintains that the RFC limitation to "simple routine tasks" is insufficient under *Yurt v. Colvin*, 758 F.3d 850 (7th Cir. 2014), to encompass those issues. He also argues that the ALJ failed to take into account leave and off-task considerations in contravention of *Crump v. Saul*, 932 F.3d 567, 570 (7th Cir. 2019). Accordingly, Streikus contends that, contrary to *Varga v. Colvin*, 794 F.3d 809, 813 (7th Cir. 2015), the ALJ's RFC and hypothetical to the vocational expert fail to incorporate all of his limitations.

The RFC refers to "the claimant's ability to do physical and mental work activities on a regular and continuing basis despite limitations from [his] impairment." *Moore v. Colvin*, 743 F.3d 1118, 1121 (7th Cir. 2014). When determining the RFC, an ALJ must incorporate all of a claimant's functional limitations supported by the medical record. *See Varga*, 794 F.3d at 813; *Denton v. Astrue*, 596 F.3d 419, 423 (7th Cir. 2010); *Crump*, 932 F.3d at 570; 20 C.F.R. § 404.1545(a); SSR 96-8p. Furthermore, if an ALJ relies on testimony from a vocational expert, the hypothetical question the ALJ poses to the vocational expert must incorporate all of the claimant's limitations supported by the medical evidence in the record. *Varga*, 794 F.3d at 813.

We have repeatedly explained that there is "no magic words requirement" in crafting the RFC and hypothetical, as long as they adequately account for the claimant's demonstrated limitations found in the record. *Crump*, 932 F.3d at 570; *Moreno v. Berryhill*, 882 F.3d 722, 730 (7th Cir. 2018), *as amended on reh'g* (Apr. 13, 2018). In the cases Streikus points to—*Yurt*, *Crump*, and *Varga*—that was not the case. In *Yurt*, we held that

the ALJ's failure to include the limitations outlined in the state agency psychologist's assessment in the hypothetical constituted error. 758 F.3d at 859. Then in *Varga*, we found reversible error where the ALJ's hypothetical did not incorporate all of the limitations supported by the medical record—particularly those found by the consulting psychologists. 794 F.3d at 814. Similarly, in *Crump* we determined that an RFC limiting the claimant to “simple, routine, repetitive tasks with few workplace changes” did not adequately account for the claimant's limitations in concentration, persistence, or pace, in part because the ALJ had given “short shrift” to the claimant's treating psychiatrist's opinion that the claimant was unable to perform reliably in the workplace. 932 F.3d at 568–71.

Here, however, the ALJ adequately accounted for the limitations found by the state agency psychologists. Dr. Hill, who reviewed Streikus's diagnoses, symptom allegations, and medical records at the initial level of review, opined that Streikus was moderately limited in understanding, remembering, and carrying out detailed instructions, but was not otherwise significantly limited in understanding, memory, concentration, persistence, or pace. Dr. Unversaw reviewed the evidence at the reconsideration level and affirmed Dr. Hill's findings.

In crafting the RFC, the ALJ accounted for Streikus's limitations with detailed instructions by restricting Streikus to unskilled work with simple routine tasks, simple work-related decisions, and only routine workplace changes.¹ The ALJ further limited Streikus to jobs requiring that he remain on task for two-hour increments to account for his capabilities with focusing. Streikus maintains that “‘remain on task in two hour increments’ is actually a non-limitation” in relation to concentration, persistence, and pace because it is “the minimum requirement of unskilled work that is not reflective of someone with impaired concentration.” But Streikus has not identified any authority stating that a concentration limitation cannot be the same as the minimum expectation for unskilled work, nor are we aware of any. In his briefing, Streikus does not point to any evidence demonstrating that he requires greater limitations than those identified in the RFC; nor, for that matter, does Streikus articulate what additional limitations are needed. *Jozefyk v. Berryhill*, 923 F.3d 492, 498 (7th Cir. 2019) (noting that it is unclear what kinds of work restrictions might address the claimant's limitations because he hypothesizes none). Even when asked at oral argument, Streikus's counsel could not

¹ “Unskilled work” refers to work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time, usually within 30 days. 20 C.F.R. § 404.1568(a).

identify what specific limitations the ALJ should have included or the evidence supporting them.

While it is true that both the RFC and hypothetical to the vocational expert must incorporate all of a claimant's limitations supported by the record, *Yurt*, *Varga*, and *Crump* assist Streikus only if the RFC and hypothetical failed to account for all of his limitations. That simply is not the case here. The ALJ reasonably relied on the state agency psychological consultants who translated their findings into an RFC. None of Streikus's treating providers opined that he had limitations related to concentration, persistence, and pace. Additionally, Streikus is unable to identify what additional limitations should have been included in the RFC.

C.

Lastly, Streikus asserts that the ALJ's reliance on his helping care for his children violates the *Beardsley* doctrine. In *Beardsley v. Colvin*, we noted that an ALJ may consider a claimant's daily activities in judging disability but must not equate those activities with the challenges of daily employment in a competitive environment. 758 F.3d 834, 838–39 (7th Cir. 2014). There, we held that the ALJ's determination that the claimant could perform more demanding work was not supported by substantial evidence where the ALJ's main reason for discounting the claimant's physical limitations was the care she provided her mother. *Id.* Here, however, the ALJ referenced Streikus's ability to care for his children in reference to the ALJ's assessment of Streikus's ability to concentrate, persist, or maintain pace in the paragraph B analysis at Step Three. As the ALJ pointed out, the limitations identified in the paragraph B analysis "are not a residual functional capacity assessment but are used to rate the severity of mental impairments" at Steps Two and Three, while the mental residual functional capacity assessment used at Steps Four and Five "require[] a more detailed assessment of the areas of mental functioning." Because the ALJ did not consider Streikus's ability to care for his children as part of the RFC assessment, nor did the ALJ equate Streikus caring for his children with being able to perform in a competitive work environment, we see no violation of the *Beardsley* doctrine.

AFFIRMED.