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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESSICA L. SEAICH,

Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant-Appellee.

No. 17-35803

D.C. No. 9:16-cv-00127-JCL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Jeremiah C. Lynch, Magistrate Judge, Presiding

Resubmitted December 6, 2022\*\*  
Seattle, Washington

Before: IKUTA and CHRISTEN, Circuit Judges, and FREUDENTHAL,\*\*  
District Judge.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Nancy D. Freudenthal, United States District Judge for the District of Wyoming, sitting by designation.

Jessica Seach appeals from the district court’s order affirming the administrative law judge’s (ALJ’s) denial of her application for disability-insurance benefits for the period from June 13, 2012 to September 30, 2014. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm. We review de novo the district court’s order, and we will disturb the ALJ’s decision only if it “contains legal error or is not supported by substantial evidence.” *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020) (quoting *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)).

1. Seach suggests the ALJ improperly based his decision on an April 2012 medical record—pre-dating the disability period by two months—that indicated Seach’s bladder and bowel incontinence had “resolved” at that point in time. We are not persuaded. An ALJ considers “all evidence in [the] case record” when determining whether an applicant is disabled, which may include evidence from outside the period of disability. *See* 20 C.F.R. § 404.1520(a)(3). Though evidence outside the disability period is often “of limited relevance,” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008), it can provide additional context when, as here, a claimant alleges they suffer from conditions that are chronic or progressive in nature. The ALJ did not base his decision solely on the April 2012 medical record; rather, he considered that record to assess the trajectory

of Seach's incontinence problems in conjunction with other records from the applicable period that noted new complaints of incontinence and records post-dating the period that showed Seach may have been diagnosed with Crohn's disease by late 2014 or early 2015. The ALJ therefore did not err when he considered the April 2012 medical record.

2. Seach further contends the ALJ failed to provide "specific, clear and convincing reasons" for finding that her testimony regarding the intensity, persistence, and limiting effects of her symptoms was "not entirely credible." When an ALJ determines that a claimant "has presented objective medical evidence of an underlying impairment that could reasonably be expected to produce the pain or other symptoms alleged," and "there is no evidence of malingering, 'the ALJ can reject the claimant's testimony about the severity of her symptoms only by offering specific, clear, and convincing reasons for doing so.'" *Ahearn v. Saul*, 988 F.3d 1111, 1116 (9th Cir. 2021) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). We conclude the ALJ's adverse credibility determination is adequately supported by his discussion of numerous conflicts between Seach's testimony and the record evidence, as well as Seach's failure to follow treatment advice.

Seaich claimed in her Function Report that she could only sit or stand for a few minutes, but the ALJ noted the record contained: a July 2013 treatment note from Dr. Mack, a neurosurgeon, who observed that Seaich had ambulated normally and “[did] not appear to be anything other than healthy” during his examination; a March 2013 treatment note from Seaich’s rheumatologist stating that Seaich reported walking and swimming for exercise; and a September 2014 treatment note from Seaich’s rheumatologist stating that Seaich reported walking an hour with no muscle weakness or pain after her car broke down. The ALJ also noted that Seaich claimed to experience severe bladder and bowel incontinence throughout the disability period, but medical records showed that Seaich denied bowel incontinence in November 2012 and October 2013 and that a urodynamic study in January 2013 demonstrated that she had “overwhelmingly normal . . . bladder capacity” and “a good healthy bladder.” In addition to these contradictions, the ALJ properly considered Seaich’s unexplained failure to comply with treatment advice. *See Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012). The ALJ noted evidence that Seaich repeatedly ignored her providers’ advice to decrease her habit of drinking significant amounts of caffeinated beverages per day and delayed going to physical therapy for several months. Substantial evidence therefore supports the ALJ’s credibility determination. *See Carmickle*, 533 F.3d at 1162.

3. Last, Seaich argues the ALJ erred by failing to give “appropriate weight” to the opinions of Dr. Nelsen,<sup>1</sup> her treating rheumatologist. For claims filed before March 27, 2017, to discount a treating physician’s opinion, an ALJ must provide “specific, legitimate reasons for doing so that are based on substantial evidence in the record.” *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.1995)); *see also Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022) (holding that the 2017 revisions to the Social Security regulations eliminated this requirement).

The ALJ gave only “some weight” to the opinions expressed in Dr. Nelsen’s August 17, 2012 Rheumatoid Arthritis Residual Functional Capacity Questionnaire. In the questionnaire, Dr. Nelsen opined that Seaich suffered from rheumatoid arthritis and diabetes and as a result could not stand or walk more than four hours in an eight-hour work day, could only lift 10 pounds occasionally, and could not perform fine manipulations with her fingers. The ALJ explained that he discounted some portions of the assessment regarding “postural activities as well as fine manipulation” because “Dr. Nels[e]n’s assessment was provided in August 2012, just after the relevant period begins, and subsequent evidence supports

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<sup>1</sup> The ALJ’s decision and the parties’ briefs refer to Seaich’s treating rheumatologist as both Dr. Nelson and Dr. Nelsen. We use the latter based on the spelling in Seaich’s medical records.

greater functioning on the part of the claimant associated with more appropriate treatment.” Substantial evidence supports this reason to partially discount Dr. Nelsen’s early assessment. Subsequent records from Dr. Nelsen and other providers show improvement in Seaich’s joint pain and range of motion and reflect that Seaich was capable of activities inconsistent with her reported symptoms. Seaich appears to argue the ALJ improperly disregarded some of Dr. Nelsen’s later records reflecting more severe limitations, but as the ALJ identified, many of the limitations noted in those records were premised on Seaich’s self-reports.

The ALJ also gave only “some weight” to a February 2015 record in which Dr. Nelsen noted her understanding that another physician diagnosed Seaich with Crohn’s disease in August 2014 and a February 2015 letter in which Dr. Nelsen opined that Seaich was unable to maintain gainful full-time employment due to her joint pain and fatigue. The ALJ explained that several of Dr. Nelsen’s February 2015 notes were based on Seaich’s reports post-dating the disability period and that Dr. Nelsen’s opinion regarding Seaich’s grip strength and dexterity was “not consistently supported by any objective examination findings shown in the record.” The ALJ also correctly noted that there was no record evidence of the August 2014 Crohn’s diagnosis, but nevertheless “duly recognize[d] the condition of [Crohn’s disease] for the purposes of [his] decision.” We therefore conclude that to the

extent the ALJ discounted Dr. Nelsen's opinions, he provided the necessary "specific, legitimate reasons" for doing so.

4. We also reject Seaich's argument that the ALJ's hypothetical question to the vocational consultant was inadequate. The question incorporated all of Seaich's medically determinable impairments as determined by the ALJ, and that determination was supported by substantial evidence. *See Burch v. Barnhart*, 400 F.3d 676, 684 (9th Cir. 2005).

**AFFIRMED.**