

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

MARY L. GREGORY

PLAINTIFF

v.

CIVIL NO. 20-3059

ANDREW M. SAUL, Commissioner
Social Security Administration

DEFENDANT

MEMORANDUM OPINION

Plaintiff, Mary L. Gregory, brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of a decision of the Commissioner of the Social Security Administration (Commissioner) denying her claims for a period of disability and disability insurance benefits (DIB) under the provisions of Title II of the Social Security Act (Act). In this judicial review, the Court must determine whether there is substantial evidence in the administrative record to support the Commissioner's decision. *See* 42 U.S.C. § 405(g).

I. Procedural Background:

Plaintiff protectively filed her application for DIB on February 13, 2018, alleging an inability to work since December 9, 2016, due to fibromyalgia; concentration and memory problems; thyroid problems; and headaches. (Tr. 116, 243). Administrative hearings were held on May 14, 2019, and January 29, 2020, at which Plaintiff appeared with counsel and testified. (Tr. 52-90, 92-112).

By written decision dated February 26, 2020, the ALJ found that during the relevant time period, Plaintiff had an impairment or combination of impairments that were severe. (Tr. 32).

Specifically, the ALJ found Plaintiff had the following severe impairments: degenerative disc disease of the lumbar spine with a bulging disc at L5/S1; fibromyalgia; obesity; anxiety; depression; and posttraumatic stress disorder. However, after reviewing all of the evidence presented, the ALJ determined that Plaintiff's impairments did not meet or equal the level of severity of any impairment listed in the Listing of Impairments found in Appendix I, Subpart P, Regulation No. 4. (Tr. 33). The ALJ found Plaintiff retained the residual functional capacity (RFC) to:

perform light work as defined in 20 CFR 404.1567(b) except limited to simple tasks, simple instructions, with no more than incidental contact with the public.

(Tr. 34). With the help of a vocational expert, the ALJ determined Plaintiff could perform work as a merchandise marker, a cleaner/housekeeper, and a plastics molding machine tender. (Tr. 43-44).

Plaintiff then requested a review of the hearing decision by the Appeals Council, which after reviewing additional evidence submitted by Plaintiff denied that request on July 15, 2020. (Tr. 1-7). Subsequently, Plaintiff filed this action. (ECF No. 2). This case is before the undersigned pursuant to the consent of the parties. (ECF No. 5). Both parties have filed appeal briefs, and the case is now ready for decision. (ECF Nos. 15, 16).

The Court has reviewed the entire transcript. The complete set of facts and arguments are presented in the parties' briefs, and are repeated here only to the extent necessary.

II. Applicable Law:

The Court reviews "the ALJ's decision to deny disability insurance benefits *de novo* to ensure that there was no legal error that the findings of fact are supported by substantial evidence on the record as a whole." *Brown v. Colvin*, 825 F. 3d 936, 939 (8th Cir. 2016). Substantial

evidence is less than a preponderance but it is enough that a reasonable mind would find it adequate to support the Commissioner's decision. *Biestek v. Berryhill*, 139 S.Ct. 1148, 1154 (2019). We must affirm the ALJ's decision if the record contains substantial evidence to support it. *Lawson v. Colvin*, 807 F.3d 962, 964 (8th Cir. 2015). As long as there is substantial evidence in the record that supports the Commissioner's decision, the court may not reverse it simply because substantial evidence exists in the record that would have supported a contrary outcome, or because the court would have decided the case differently. *Miller v. Colvin*, 784 F.3d 472, 477 (8th Cir. 2015). In other words, if after reviewing the record it is possible to draw two inconsistent positions from the evidence and one of those positions represents the findings of the ALJ, we must affirm the ALJ's decision. *Id.*

It is well established that a claimant for Social Security disability benefits has the burden of proving her disability by establishing a physical or mental disability that has lasted at least one year and that prevents her from engaging in any substantial gainful activity. *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir.2001); *see also* 42 U.S.C. § 423(d)(1)(A). The Act defines "physical or mental impairment" as "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). A Plaintiff must show that her disability, not simply her impairment, has lasted for at least twelve consecutive months.

The Commissioner's regulations require him to apply a five-step sequential evaluation process to each claim for disability benefits: (1) whether the claimant has engaged in substantial gainful activity since filing her claim; (2) whether the claimant has a severe physical and/or mental impairment or combination of impairments; (3) whether the impairment(s) meet or equal an impairment in the listings; (4) whether the impairment(s) prevent the claimant from doing past

relevant work; and, (5) whether the claimant is able to perform other work in the national economy given her age, education, and experience. *See* 20 C.F.R. § 404.1520. Only if the final stage is reached does the fact finder consider the Plaintiff's age, education, and work experience in light of her residual functional capacity. *See McCoy v. Schweiker*, 683 F.2d 1138, 1141-42 (8th Cir. 1982), *abrogated on other grounds by Higgins v. Apfel*, 222 F.3d 504, 505 (8th Cir. 2000); 20 C.F.R. § 404.1520.

III. Discussion:

Plaintiff argues the ALJ's RFC determination is unsupported by substantial evidence as it is inconsistent with the record, and overstates the most Plaintiff can do in a competitive work setting on a sustained basis. (ECF 15, p. 2). Defendant argues that substantial evidence supports the ALJ's RFC determination. (ECF. 16, p.2).

A RFC is the most a person can do despite that person's limitations. 20 C.F.R. § 404.1545(a)(1). A disability claimant has the burden of establishing her RFC. *See Masterson v. Barnhart*, 363 F.3d 731, 737 (8th Cir. 2004). "The ALJ should determine a claimant's RFC based on all the relevant evidence, including the medical records, observations of treating physicians and others, and an individual's own description of h[er] limitations." *Davidson v. Astrue*, 578 F.3d 838, 844 (8th Cir. 2009); *see also Jones v. Astrue*, 619 F.3d 963, 971 (8th Cir. 2010). Limitations resulting from symptoms such as pain are also factored into the assessment. 20 C.F.R. § 404.1545(a)(3). The United States Court of Appeals for the Eighth Circuit has held that a "claimant's residual functional capacity is a medical question." *Lauer v. Apfel*, 245 F.3d 700, 704 (8th Cir. 2001). Therefore, an ALJ's determination concerning a claimant's RFC must be supported by medical evidence that addresses the claimant's ability to function in the workplace.

Lewis v. Barnhart, 353 F.3d 642, 646 (8th Cir. 2003). “[T]he ALJ is [also] required to set forth specifically a claimant’s limitations and to determine how those limitations affect h[er] RFC.” *Id.*

In the present case, the ALJ determined Plaintiff had the RFC to perform light work that was limited to simple tasks, simple instructions, with no more than incidental contact with the public. After reviewing the record, the undersigned is troubled by the fact that no examining or non-examining medical professional opined as to Plaintiff’s capabilities to perform in the workplace.

The record revealed that two non-examining medical professionals opined Plaintiff’s alleged mental impairments were non-severe in May of 2018, and June of 2018, respectively; however, the ALJ found these assessments to be unpersuasive based on medical evidence submitted at the hearing level. (Tr. 42). In determining Plaintiff’s mental RFC, the ALJ referenced a letter dated January 21, 2020, from Winston Allen Morrison, Jr., LPC-S; wherein, Mr. Morrison, who had been counseling Plaintiff for eleven months, discussed Plaintiff’s diagnoses and stated that while Plaintiff was unable to perform even the simplest work-related tasks with time and continued therapy it may be possible for Plaintiff to return to work in some capacity. (Tr. 743-746). The ALJ found Mr. Morrison’s statement was unpersuasive as the assessment failed to include any specificity or certainty. While the ALJ is accurate in stating that Mr. Morrison’s letter lacked specificity or certainty, the record is void of any mental health professional’s opinion regarding Plaintiff’s mental capabilities in the workplace for the time period in question. After reviewing the entire evidence of record, the undersigned does not find substantial evidence to support the ALJ’s RFC determination and believes remand is necessary so that the ALJ can more fully and fairly develop the record regarding Plaintiff’s mental impairments.

On remand, the ALJ is directed to address interrogatories to a medical professional requesting that said physician review Plaintiff's medical records; complete a mental RFC assessment regarding Plaintiff's capabilities during the time period in question; and give the objective basis for the opinion so that an informed decision can be made regarding Plaintiff's ability to perform basic work activities on a sustained basis. With this evidence, the ALJ should then re-evaluate Plaintiff's RFC and specifically list in a hypothetical to a vocational expert any limitations that are indicated in the RFC assessment and supported by the evidence.

IV. Conclusion:

Accordingly, the Court concludes that the ALJ's decision is not supported by substantial evidence, and therefore, the denial of benefits to the Plaintiff should be reversed and this matter should be remanded to the Commissioner for further consideration pursuant to sentence four of 42 U.S.C. § 405(g).

DATED this 29th day of June 2021.

/s/ Christy Comstock
HON. CHRISTY COMSTOCK
UNITED STATES MAGISTRATE JUDGE