[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-15184
Non-Argument Calendar

D.C. Docket No. 1:16-cv-00135-WLS-TQL

DOROTHY STEWART,

Plaintiff-Appellant,

versus

COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(August 16, 2018)

Before MARCUS, JORDAN and HULL, Circuit Judges.

PER CURIAM:

Dorothy Michelle Stewart appeals the district court's order affirming the Commissioner of the Social Security Administration's ("Commissioner") decision to deny her application for supplemental security income ("SSI") benefits, under

42 U.S.C. § 1383(c)(3). On appeal, Stewart argues that the administrative law judge ("ALJ") erred: (1) by failing to assess her non-severe post-traumatic stress disorder ("PTSD") and irritable bowel syndrome ("IBS") when deciding whether she was disabled; and (2) in assessing the medical opinion of her treating physician. After thorough review, we affirm in part and vacate and remand in part.

We review the ALJ's decision as the Commissioner's final decision when the ALJ denies benefits and the Appeals Council denies review of the ALJ's decision. Doughty v. Apfel, 245 F.3d 1274, 1278 (11th Cir. 2001). We review the ALJ's decision to determine whether it is supported by substantial evidence and whether it applies the proper legal standards. Lewis v. Callahan, 125 F.3d 1436, 1439 (11th Cir. 1997). Substantial evidence is more than a scintilla and must include the relevant evidence that a reasonable person would accept as adequate to support the conclusion. Id. at 1440. We apply the harmless error standard to social security appeals. See Diorio v. Heckler, 721 F.2d 726, 728 (11th Cir. 1983). An incorrect application of regulations results in harmless error when the correct application would not contradict the ALJ's ultimate findings and his decision would stand. Id. A party's brief must "specifically and clearly" identify a claim; otherwise, the claim is "deemed abandoned and its merits will not be addressed." Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1330 (11th Cir. 2004).

First, we are unpersuaded by Stewart's claim that the ALJ improperly assessed her PTSD and IBS conditions when deciding whether she was disabled. Among other things, eligibility for SSI requires that the claimant be under a disability. 42 U.S.C. § 1382(a)(1)–(2). A claimant is under a disability if she is unable to engage in substantial gainful activity by reason of a medically determinable impairment that can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of at least 12 months. Id. § 1382c(a)(3)(A). The Social Security regulations outline a five-step process for the ALJ to use to determine whether a claimant is disabled. See Phillips v. Barnhart, 357 F.3d 1232, 1237–40 (11th Cir. 2004); 20 C.F.R. § 404.1520.

At step one, the ALJ must determine whether the claimant is engaged in substantial gainful activity, and if she is, she is not disabled. 20 C.F.R. § 404.1520(a)(4)(i). At step two, the ALJ must determine whether the claimant has a medically determinable impairment, or combination of impairments, that is "severe." Id. § 404.1520(a)(4)(ii). If not, she is not disabled. Id. However, if the claimant is determined to have an impairment, or combination of impairments, that is severe, the analysis continues to step three. Id. At step three, the ALJ must determine whether the claimant has an impairment that meets or equals the severity of the specified impairments in the Listing of Impairments and meets the duration requirement. Id. § 404.1520(a)(4)(iii). If so, the claimant is disabled. Id. But if

the claimant's impairment does not meet the criteria of any of the Listings, the ALJ continues the evaluation. Id.

At step four, the ALJ must determine whether the claimant has the residual functional capacity ("RFC") to perform the requirements of her past relevant work. Id. § 404.1520(a)(4)(iv). In making the RFC finding at step four, the ALJ must consider all of the claimant's impairments, including those that are not severe, by considering all relevant medical and other evidence. Phillips, 357 F.3d at 1238–39; 20 C.F.R. §§ 404.1520(e), 404.1545, 416.920(e), 416.945; SSR 96-8p. If the claimant has the RFC to do her past relevant work, the claimant is not disabled. 20 C.F.R. § 404.1520(a)(4)(iv). If a claimant is unable to do her past relevant work, the ALJ proceeds to the fifth and final step to determine whether, in light of the claimant's RFC, age, education, and work experience, she can perform other work that exists in significant numbers in the national economy. Jones v. Apfel, 190 F.3d 1224, 1228 (11th Cir. 1999); 20 C.F.R. § 404.1560(c)(2). If the claimant is able to do other work, she is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(v).

For starters, the ALJ did not legally err in assessing Stewart's PTSD because the ALJ considered her PTSD, individually and in combination with her other impairments, at each step of the sequential evaluation in determining whether she was disabled. Although the ALJ did not explicitly say that Stewart suffered from PTSD as a result of her childhood trauma, the ALJ referenced her childhood

trauma and resulting psychiatric hospitalization throughout his decision. Indeed, Stewart concedes that the ALJ did not err in failing to conclude that her PTSD was severe because the ALJ found other severe impairments at step two. Additionally, the record reveals that the ALJ properly assessed the criteria for determining whether Stewart met or equaled a listing for a mental impairment at step three, specifically discussing Stewart's hospitalization for suicidal ideation. 20 C.F.R. pt. 404, subpt. P, app. 1, 12.04(B)–(C). And in determining Stewart's RFC at step four, the ALJ discussed Stewart's medical records concerning her mental impairments, again noting her hospitalization for suicidal ideation after encountering her childhood abuser in the street. 20 C.F.R. § 404.1520(e)–(f).[1] Then, based on Stewart's combined mental impairments, both severe and non-severe, the ALJ determined that she could perform light work, but was limited in that she could (1) perform simple, routine tasks, excluding production rate pace jobs; and (2) have casual social interaction with the public and co-workers. On this record, we cannot say the ALJ legally erred by failing to assess Stewart's PTSD in combination with her other impairments. Lewis, 125 F.3d at 1439.

As for Stewart's IBS, the record suggests that the ALJ failed to consider it in combination with her other impairments when determining whether she was

[1] Not only did the medical record fail to suggest that Stewart's PTSD resulted in additional limitations not already included in her RFC, but she abandoned that argument anyway, as well as the argument that her PTSD met or equaled a listing. Access Now, Inc., 385 F.3d at 1330.

disabled because the ALJ made no mention of her IBS anywhere in his written decision. Nevertheless, the ALJ's error was harmless. Stewart does not argue that her IBS was a severe impairment or that it met or equaled a listing; instead, she argues that her IBS resulted in only one additional limitation not included in her RFC -- frequent absences from a work station in order to defecate. But Stewart's claimed limitation from her IBS is not supported by the medical record. She was frequently found not to have any symptoms associated with IBS after exams by her various doctors, and she regularly denied having these symptoms. Although the record showed that Stewart had IBS-related symptoms more frequently from late 2014 through 2015, she still denied having diarrhea or other IBS-related symptoms and was found not to have IBS-related symptoms throughout that time. Because the medical records did not show that her IBS resulted in additional limitations not already included in her RFC, the ALJ's failure to consider it was harmless.

However, we are persuaded by Stewart's claim that the ALJ erred in assessing the medical opinion of her treating physician, Dr. Anozie Ukaonu. It is well settled that when assessing RFC, an ALJ must give the opinion of a treating physician substantial or considerable weight unless good cause is shown to not give it substantial weight. Phillips, 357 F.3d at 1240; Sharfarz v. Bowen, 825 F.2d 278, 279-80 (11th Cir.1987). Good cause exists where (1) the treating physician's opinion is not bolstered by the evidence; (2) evidence supports a contrary finding;

or (3) the treating physician's opinion is conclusory or inconsistent with the physician's own medical records. Phillips, 357 F.3d at 1240–41.

An ALJ "has a basic obligation to develop a full and fair record." Graham v. Apfel, 129 F.3d 1420, 1422 (11th Cir. 1997). The regulations provide that:

> in some instances, additional development required by a case -- for example, to obtain more evidence or to clarify reported clinical signs or laboratory findings -- may provide the requisite support for a treating source's medical opinion that at first appeared to be lacking or may reconcile what at first appeared to be an inconsistency between a treating source's medical opinion and the other substantial evidence in the case record.

61 Fed. Reg. 34490, 34491 (July 2, 1996), rescinded by SSR 17-2p, 82 Fed. Reg. 15263–65 (Mar. 27, 2017) (inapplicable at the time of the ALJ's decision because it lacks retroactive effect).

If the ALJ does not grant controlling weight to the treating physician's report, the ALJ must analyze the weight to give that opinion based on, inter alia: (1) the length of the treatment relationship and frequency of examination; (2) the nature and extent of the treatment relationship; (3) how much relevant evidence supports the opinion; (4) how consistent the opinion is with the record; and (5) whether the physician is a specialist making opinions about an area within his specialty. 20 C.F.R. § 404.1527(c)(2)–(6). If the ALJ disregards or accords less weight to the opinion of a treating physician, the ALJ must state his reasons for doing so with particularity, and the failure to do so is reversible error. Lewis, 125

F.3d at 1440; Sharfarz, 825 F.2d at 279. Without a statement to this effect, a reviewing court cannot determine if the ultimate decision on the merits of the claim is rational and supported by substantial evidence. Cowart v. Schweiker, 662 F.2d 731, 735 (11th Cir. 1981). Further, we will not affirm the ALJ's determination of which medical opinions to credit "simply because some rationale might have supported the ALJ's conclusion." Winschel, 631 F.3d at 1179 (quotation omitted).

Under the statute, we may enter "a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g); see also id. § 1383(c)(3) (providing that the Commissioner's final determination concerning an application for SSI benefits is subject to judicial review as provided in § 405(g)). Generally, a reversal with remand to the Commissioner is warranted under § 405(g) if the court finds either that the ALJ's decision is not supported by substantial evidence, or that the ALJ failed to apply the correct legal standards. Jackson v. Chater, 99 F.3d 1086, 1092 (11th Cir. 1996). A court may reverse the Commissioner and award benefits only if the Commissioner "has already considered the essential evidence and it is clear that the cumulative effect of the evidence establishes disability without any doubt." Davis v. Shalala, 985 F.2d 528, 534 (11th Cir. 1993).

Here, the ALJ's decision not to grant controlling weight to Dr. Ukaonu's opinion was not supported by substantial evidence. As the record reveals, the ALJ

mentioned Dr. Ukaonu's opinion only twice in his decision. Once, the ALJ noted that parts of the record, including the results of a stress test, a successful hernia repair, a cardiac study, and earache treatments, "weigh[] persuasively against [Dr. Ukaonu's] medical source statement." Later, the ALJ mentioned Dr. Ukaonu's opinions that Stewart "was not exaggerating her symptoms," "would miss three or more days a month of work due to her symptoms and treatment," had a "diagnosis of fibromyalgia [that] was consistent with the established criteria by the American College of Rheumatology," and had combined impairments that "preclude sustained work activity." The ALJ then said: "I have considered his opinion and I give it less weight as his own treatment notes are not consistent with an inability to perform all work related activities, though the claimant is limited to light work with simple/routine tasks in an safe environment."

Notably, in concluding that Dr. Ukaonu's opinion was not due controlling weight, the ALJ did not discuss what parts of Dr. Ukaonu's treatment notes contradicted his August 2014 opinion that Stewart had severe impairments that caused more than minimal limitations, rendering her unable to sustain continuous and regular work activities. Lewis, 125 F.3d at 1440; Sharfarz, 825 F.2d at 279. Instead, the record shows that Dr. Ukaonu consistently found that Stewart had severe, chronic, and worsening medical issues, for which he regularly prescribed medication and ordered diagnostic testing. Additionally, when conducting physical

examinations of Stewart during her numerous appointments, Dr. Ukaonu regularly found that she had abnormalities, such as tachycardia and epigastric tenderness and guarding. Thus, Dr. Ukaonu's findings, as stated in his treatment notes, appear to support his opinion that Stewart had more than minimal limitations as a result of her numerous severe medical issues. Because substantial evidence does not support the ALJ's determination that Dr. Ukaonu's opinion was not due controlling weight because it was contradicted by his own treatment notes, the ALJ should have re-contacted Dr. Ukaonu to either obtain additional medical records for Stewart, or to attempt to reconcile Dr. Ukaonu's treatment notes with his August 2014 opinion. Graham, 129 F.3d at 1422-23; 61 Fed. Reg. at 34491.

It is true that the ALJ mentioned elsewhere that certain parts of the record "weigh[] persuasively against [Dr. Ukaonu's] medical source statement." However, when making this comment, the ALJ only mentioned the statement by exhibit number; he did not name Dr. Ukaonu, nor did he acknowledge that he was a treating physician, nor did he specify how Dr. Ukaonu's opinion was undercut. Indeed, in the only place the ALJ recognized Dr. Ukaonu as the treating physician, the ALJ gave one stated reason for his decision that Dr. Ukaonu's opinion was due "less weight" -- "his own treatment notes." Consequently, the Commissioner's claim that "other record evidence" supported the ALJ's rejection of Dr. Ukaonu's opinion cannot serve as a basis for affirming the ALJ's decision. As we've said, an

ALJ may disregard a treating physician's opinion with good cause, but he "must clearly articulate [the] reasons" for doing so. Winschel, 631 F.3d at 1179 (quotation omitted). The ALJ's decision did not clearly articulate reason(s) for disregarding Dr. Ukaonu's opinion that are supported by substantial evidence.

"Moreover, the ALJ must state with particularity the weight given to different medical opinions." Id.; Cowart, 662 F.2d at 735. The ALJ stated only that he gave Dr. Ukaonu's opinion "less weight," without specifying the weight it gave to this opinion and others. He also failed to apply proper legal standards in assessing what non-controlling weight to give Dr. Ukaonu's opinion, using the six-factor analysis set forth in 20 C.F.R. § 404.1527(c)(2)–(6). As we've detailed, this analysis asks, inter alia: (1) the length of the treatment relationship and frequency of examination; (2) the nature and extent of the treatment relationship; (3) how much relevant evidence supports the opinion; (4) how consistent the opinion is with the record; and (5) whether the physician is a specialist making opinions about an area within his specialty. The ALJ did not at all address prongs (1), (2), (3), or (5), and hardly mentioned prong (4).

While there is no rigid requirement that the ALJ specifically refer to every piece of evidence in his decision, "[w]ithout clearly articulated grounds for such a rejection, we cannot determine whether the ALJ's conclusions were rational and supported by substantial evidence." Winschel, 631 F.3d at 1179; see also SSR 96–

8P, 1996 WL 374184, at *7 (July 2, 1996) (stating that the ALJ's RFC assessment must consider and address all medical source opinions, and if the RFC assessment conflicts with a medical source opinion, the ALJ "must explain why the opinion was not adopted"). The Commissioner argues that the six-factor analysis showed that Dr. Ukaonu's opinion was not due significant weight, but the ALJ's treatment of Dr. Ukaonu's opinion was so cursory that we cannot determine whether the ALJ actually reviewed Dr. Ukaonu's opinion in accordance with § 404.1527(c). Winschel, 631 F.3d at 1179. Without the ALJ performing this review or otherwise articulating how much non-controlling weight he gave Dr. Ukaonu's opinion, his failure to assess Dr. Ukaonu's opinion under § 404.1527(c) was not harmless error. Winschel, 631 F.3d at 1179; Cowart, 662 F.2d at 735; Diorio, 721 F.2d at 728.

As for Stewart's request that this Court directly grant her benefits without remanding to the SSA, Stewart has abandoned this argument by raising it only in her request for relief, rather than setting forth her request as a separate issue in her brief and providing more than conclusory arguments that she must be entitled to benefits. Access Now, Inc., 385 F.3d at 1330. In any event, Stewart has not shown that she is entitled to a reversal without remand because she has only shown that the ALJ failed to properly assess Dr. Ukaonu's medical opinion, and she has not shown that the record establishes that she was disabled without any doubt. Jackson, 99 F.3d at 1092; Davis, 985 F.2d at 534.

Accordingly, rather than broadly accept the doctor's opinion as true, we vacate the district court's order and remand this case with directions that the district court remand the case to the agency so that the ALJ can explicitly consider in the first instance, and can explain the weight accorded to, Dr. Ukaonu's opinion. See, e.g., Wiggins v. Schweiker, 679 F.2d 1387, 1390 (11th Cir. 1982); Winschel, 631 F.3d at 1179. Moreover, the ALJ's errors may have affected his determination of the RFC, and, thus, the ALJ will need to reconsider his assessment of Stewart's RFC in light of Dr. Ukaonu's opinion, as well as his conclusions at steps four and five in the sequential analysis, to determine whether there is work that Stewart can perform. We express no opinion regarding Stewart's eligibility for benefits on remand.

VACATED AND REMANDED.