

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2246

ANDREA LAURA JACOBS,

Appellant

v.

SOCIAL SECURITY ADMINISTRATION,
Office of Disability Adjudication and Review

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. No. 15-cv-02457)
District Judge: Honorable Yvette Kane

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 15, 2017

Before: GREENAWAY, JR., VANASKIE and ROTH, Circuit Judges

(Opinion filed: June 20, 2018)

OPINION*

PER CURIAM

Andrea Laura Jacobs appeals from an order of the District Court affirming a final decision of the Commissioner of Social Security denying her disability benefits. For the reasons that follow, we will affirm.

Jacobs was born in May, 1994, and began receiving Supplemental Security Income (“SSI”) as a child for developmental delays, with a disability onset date of June 1, 1996. Her father suffers from schizophrenia. The Social Security Act (“the Act”) provides that individuals who are eligible for SSI as children must have their disability redetermined under the rules for adults when they turn 18 years of age. 42 U.S.C. § 1382c(a)(3)(H). Jacobs turned 18 in May, 2012. Prior to the Commissioner’s age-18 redetermination, Jacobs filed an application for child’s insurance benefits, which may be paid if an individual is 18 or over and has a physical or mental disability that began before age 22. This application and the redetermination were considered together under the regulations applicable to adults. In the main, Jacobs noted that she had received disability payments as a child and contended that she was a disabled adult because she suffers from a bipolar disorder, kidney disease, asthma, a learning disorder, anxiety and depression.¹ She contended that her mental health problems, for which she takes medication, caused her comprehension problems, trouble with focusing, and irritability, and that she thus could not work.

To support her claim of disability extending to adulthood, Jacobs submitted paperwork from herself and her mother, claiming that she was sleeping a lot during the

¹ Inasmuch as we write primarily for the parties who are familiar with the factual and procedural history of this case, we will set forth only those facts necessary to our brief discussion.

day, minimally caring for her personal needs, unmotivated to prepare meals, having difficulty completing household chores, and experiencing social anxiety and a short attention span. With respect to her medical records, treating psychiatrist Karen Medzoyan, M.D., noted that Jacobs suffers from attention deficit hyperactivity disorder, oppositional defiant disorder, obsessive compulsive disorder (by history), mathematics disorder, and reading disorder. Dr. Medzoyan determined that Jacobs' Global Assessment of Functioning (GAF) was 60, at the high end of the moderate range.² Jacobs had outpatient medication visits between October 6, 2011 and July 19, 2012. During that time, however, she denied symptoms of depression or anxiety, had no difficulty with focus or concentration, was motivated to get a job and a driver's permit, and was considering GED classes. After follow-up visits in the winter and spring of 2013, Dr. Medzoyan discharged Jacobs from treatment. In April, 2014, however, Jacobs visited Pennsylvania Counseling Services to resume services.

When the agency conducted its initial age-18 redetermination review in June, 2012, it concluded that Jacobs was not disabled under the standards that apply to adult claims of disability. That determination was supported by the expert opinion of Louis Palomi, Ph.D., a state agency consultant. Dr. Palomi noted Jacobs' impairments, including her attention deficit hyperactivity disorder, learning disability, and anxiety and depression, but concluded that she could meet the basic mental demands of competitive work on a sustained basis despite her limitations. Dr. Palomi noted that Jacobs had

² A GAF rating of 51 to 60 is suggestive of moderate difficulty in social, occupational or school functioning. American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 32 (4th ed. 1994) (DSM-IV).

completed 10 years of formal education and had not had any recent hospitalizations for her mental impairments. On June 14, 2012, the agency also denied Jacobs' child's insurance benefits claim. Jacobs then sought reconsideration. On August 29, 2012, Mark Hite, Ed.D., another state agency consultant, reviewed Jacobs' records and expressed the view that, despite her impairments, she was able to meet the basic demands of competitive work on a sustained basis, so long as the work was simple. Dr. Hite noted that Jacobs had not been hospitalized for her impairments, and that recent outpatient treatment records noted no difficulty with focus or concentration and further noted consistently appropriate attention to dress and hygiene. The agency affirmed its age-18 redetermination on June 6, 2013, and Jacobs requested a hearing. Jacobs was represented by counsel at her disability hearing on April 22, 2014, but she did not appear and did not show good cause for her failure to appear. At that hearing, the Administrative Law Judge took testimony from Terry P. Leslie, a vocational expert, who identified suitable jobs based on Jacobs' abilities.

In a comprehensive decision dated May 15, 2014, the ALJ concluded that Jacobs experienced mental impairments, for example, attention deficit hyperactivity disorder and a learning disorder, that were severe within the meaning of the Social Security regulations, see 20 C.F.R. §§ 404.1520(c), 416.920(c), but that she could perform work (at all exertional levels) so long as it involved only simple, routine, repetitive tasks, and did not require interaction with the public. She thus was not disabled under the adult

disability standards and furthermore her disability ended on June 30, 2012.³ The ALJ's conclusion was based on his review of Jacobs' medical records and the lay statements before him, together with the expert opinion evidence from the state agency psychologists. The ALJ concluded that the independent evidence did not support the degree of symptoms or functional limitations that Jacobs had alleged. Specifically, the ALJ found that Jacobs' statements concerning the intensity, persistence, and limiting effects of her symptoms were not "fully credible." Although she reported difficulty with personal care, her treatment providers generally reported that she was properly dressed and groomed for her counseling sessions. Although her mother reported that Jacobs had difficulty dealing with others, the mental health providers noted that she got along with her peers, her parents, and siblings, and that she maintains friendships. Moreover, the ALJ concluded, there was no evidence that Jacobs suffered from a psychotic or severe affective disorder. In addition, based on testimony from the vocational expert, there were jobs that existed in significant numbers in the national economy that Jacobs could perform. The Appeals Council denied Jacobs' request for review, making the ALJ's decision the final decision of the Commissioner.

On December 22, 2015, Jacobs filed a pro se complaint in the United States District Court for the Middle District of Pennsylvania, seeking review of the

³ Specifically, the ALJ concluded that, based upon a redetermination of Jacobs' eligibility for SSI upon attaining age 18 under § 1614(a)(3)(H) of the Act, 42 U.S.C. § 1382c(a)(3)(H), her disability ended on June 30, 2012 and she had not become disabled again since that date; and that, based on the application for child's insurance benefits filed on May 24, 2012, she was not disabled as defined in § 223(d) of the Act, 42 U.S.C. § 423(d), through the date of the decision, or May 15, 2014.

Commissioner's decision pursuant to 42 U.S.C. § 405(g). The Commissioner filed an answer and the administrative record. Jacobs filed pro se briefs in support of her appeal. The Magistrate Judge, after a thorough review of the record, recommended affirming the Commissioner's decision to deny benefits, concluding that substantial evidence supported the decision that Jacobs was not disabled under the adult disability standards. The Magistrate Judge also noted that Jacobs had submitted evidence which post-dated the ALJ's determination and advised her that the evidence could not be considered because the only proper issue before the Court was whether she was disabled prior to May 15, 2014, the date of the ALJ's decision.⁴ In an order entered on March 20, 2017, the District Court overruled Jacobs' objections and affirmed the Commissioner's decision denying benefits. In an order entered on May 19, 2017, the District Court denied reconsideration, see Fed. R. Civ. P. 59(e).

Jacobs appeals pro se. We have jurisdiction under 28 U.S.C. § 1291. In her Informal Brief, Jacobs contends that she is developmentally delayed, suffers from depression and renal disease, and lacks the capacity to work. Although she does not point to any specific errors in the ALJ's or Magistrate Judge's decisions, we will review whether the ALJ's decision to uphold the Commissioner's denial of benefits is supported by substantial evidence pursuant to 42 U.S.C. § 405(g). Attached to Jacobs' Informal Brief are recent treatment records showing that she has been treated for anxiety and depression and addressing her capacity to work. These records post-date the ALJ's May

⁴ The Magistrate Judge advised Jacobs that she could, however, file a new application for benefits, claiming a disability in 2015 or 2016, and submit her new evidence.

15, 2014 decision and are not material to our review because they relate to a period of time that was not the subject of the agency's adjudication. See Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001). At most, they may provide a basis for a new application. 20 C.F.R. 404.970(c); 20 C.F.R. § 416.1470(c).

We will affirm. Our review is limited to determining whether substantial evidence supports the ALJ's decision and whether the correct law has been applied. 42 U.S.C. § 405(g); Chandler v. Commissioner of Social Security, 667 F.3d 356, 359 (3d Cir. 2011). The ALJ must explain the weight given to expert opinions and the degree to which a claimant's testimony is credited. See 20 C.F.R. § 404.1527(f)(2)(ii); Rutherford v. Barnhart, 399 F.3d 546, 557 (3d Cir. 2005). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. of New York v. National Labor Relations Bd., 305 U.S. 197, 229 (1938)). Substantial evidence is "less than a preponderance" and "more than a mere scintilla." Jesurum v. Sec'y of U.S. Dep't of Health & Human Services, 48 F.3d 114, 117 (3d Cir. 1995) (citing Richardson, 402 U.S. at 401). We are precluded from reweighing the evidence or making our own factual determinations. See Chandler, 667 F.3d at 359 (citing Richardson, 402 U.S. at 401).

The criteria used to determine that Jacobs was a disabled child no longer apply now that she is 18 years of age, 20 C.F.R. §§ 404.1520(a)(2), 416.920(a)(2). To receive benefits, Jacobs now must demonstrate an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which

can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). See also 42 U.S.C. § 1382c(a)(3)(A). If she has a severe impairment, the Commissioner must determine whether her impairment prevents her from doing past relevant work, and then whether her impairment prevents her from doing any other work. 20 C.F.R. § 404.1520(a)(4).⁵ With respect to whether her impairment prevents her from doing any other work, it is the Commissioner’s burden to show that jobs exist in the national economy that a person with the claimant’s abilities, age, education, and work experience can perform. See Mason v. Shalala, 994 F.2d 1058, 1064 (3d Cir. 1993).

We conclude that the ALJ complied with the applicable regulations, that he thoroughly evaluated the medical and other evidence, and that substantial evidence supports the ALJ’s determination that Jacobs is impaired in occupational functioning, but not so impaired that she is incapable of performing simple, unskilled labor. As amply explained by the Magistrate Judge, several experts who reviewed Jacobs’ file expressed the view that, although she could not perform complicated work, she could perform simple work. The ALJ properly relied on these experts in arriving at his decision. Although Jacobs takes issue with the experts’ opinions, the ALJ was not required to give greater weight to her reports of her daily functioning. Drs. Paloni’s and Hite’s opinions generally were consistent with the clinical observations and mental examination findings found in Jacobs’ treatment records, see 20 C.F.R. §§ 404.1527(c)(3)-(4); 416.927(c)(3)-

⁵ With respect to past relevant work, the ALJ determined that Jacobs had not engaged in substantial gainful activity since June 1, 1996, the alleged onset date.

(4). Furthermore, statements made by a claimant in support of her application for benefits may support her claim, but the regulations do not require the ALJ to accept those statements if they are contradicted by medical evidence, see 20 C.F.R. § 404.1529(a). In Jacobs' case, that evidence showed only a conservative and routine outpatient treatment approach to her impairments and that she was not so impaired that she was incapable of some kind of work. Jacobs' medical records specifically did not corroborate her assertion that she suffers from a bipolar disorder. Moreover, the vocational expert testified that Jacobs would be able to perform the requirements of certain jobs, for example, kitchen helper, warehouse worker, and office cleaner, and that these jobs were available nationally.

Accordingly, we will uphold the District Court's affirmance of the denial of benefits. Jacobs' request for reconsideration was properly denied by the District Court because she did not argue an intervening change in the law or the need to correct a clear error of law. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

For the foregoing reasons, we will affirm the orders of the District Court affirming the Commissioner's decision denying benefits and denying reconsideration.