NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued February 28, 2023
Decided March 15, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-2024

LORA LYNN CIESZYNSKI,
Plaintiff-Appellant,

v.

KILOLO KIJAKAZI, Acting Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 21-cv-10-slc

Stephen L. Crocker,
Magistrate Judge.

O R D E R

Lora Cieszynski applied for a period of disability insurance benefits based on a constellation of serious physical and mental problems. The administrative law judge determined, however, that she was not disabled, and the district court affirmed. On appeal, Cieszynski argues that the ALJ improperly discounted the opinions of her treating doctor and one of the agency's examining physicians, and as a result, the decision is not supported by substantial evidence. We agree with her that the ALJ did not adhere to the regulations governing the evaluation of physicians' opinions and thus that the record does not support his determination. We vacate the decision and remand.

I

Cieszynski has been seeking medical help for degenerative disc disease of the cervical and lumbar spine, depression, anxiety, and attention deficit hyperactivity disorder since 2012. She resigned from her job as a clerk at a law firm later that year and applied at the age of 48 for disability insurance benefits in 2013. Over the years, she tried many treatments, including steroid injections, various medications, chiropractic treatments, physical therapy, and activity modifications. She could not tolerate physical therapy because of the pain. Some of the other treatments provided temporary benefits, but she continued to experience severe pain and other symptoms.

Several doctors under contract with the state-agency administrators of Social Security provided opinions about Cieszynski's condition. Dr. Eric Linford, an orthopedist, examined her in January 2014, reviewed her x-rays, and determined that she "would not tolerate prolonged sitting, standing, [or] lifting heavy loads repetitively." Two non-examining consultants (both internists) also provided opinions about Cieszynski's physical capabilities, but they based their evaluations solely on medical records dating from 2013 to February 2014. Both said she was not disabled.

In October 2014 Cieszynski underwent a lumbar MRI and a cervical MRI. The lumbar MRI revealed moderate degenerative changes, a shallow central disc protrusion, moderate ventral osteophytes (bone spurs), and some mild bilateral foraminal narrowing. The cervical MRI results (which the ALJ would later call "more serious") showed moderate to severe degenerative changes, several disk bulges, severe neural foraminal narrowing, disc osteophyte complex (that is, bone spurs on multiple vertebrae, compressing disks and exerting pressure on the nerve roots or spinal cord), mild narrowing of the spinal canal, and more.

Cieszynski's treating physician was Dr. Bruce Boyd, who completed a certificate of medical condition for Cieszynski in 2016. Notably, he is the only medical professional to provide an opinion who reviewed the 2014 MRI results. Based on those results, his examinations, and Cieszynski's treatment history, he opined that Cieszynski "would likely be limited to part-time employment where she had flexibility with regard to how long she would be required to sit, stand, or walk at one time." He also concluded that she should limit her activities as follows: avoid repetitive bending and twisting at the waist and flexing, extending, and rotating of the neck; reach and grasp things only occasionally; avoid static positioning of her neck and head; and lift no more than ten pounds, and do so only occasionally.

After a hearing, an ALJ determined that Cieszynski was not disabled. Cieszynski appealed to the district court. The court found that the ALJ erred in several respects: he

cherry-picked evidence; he improperly rejected Dr. Boyd's opinion based on a faulty assessment of the problems detected by the 2014 MRIs; he gave too much weight to the non-examining consultants' opinions and failed to assign a weight to Dr. Linford's opinion; and he did not explain his conclusion about Cieszynski's capacity for work. For all those reasons, it ordered a remand to the agency.

On remand, a different ALJ held a new hearing in 2019. Cieszynski testified that she experienced numbness in her arm, she had severe headaches three to four times a month, her leg sometimes gave out when she was walking, and she was unable to stand or sit for more than 30 minutes because of neck, lower back, and leg pain and stiffness. She acknowledged that her psychiatric medications reduced her symptoms somewhat but reported that she still felt fatigued, cried often, experienced anxiety and crying spells when leaving the house, and struggled to complete basic daily tasks such as getting out of bed, cooking, and doing household chores. A vocational expert testified that a hypothetical claimant with Cieszynski's education, experience, and various physical and mental limitations as described by the ALJ (none of which were consistent with the restrictions Dr. Boyd imposed), could not perform Cieszynski's prior job as a law-firm clerk but could perform many other jobs that exist in significant numbers in the national economy.

The ALJ determined that Cieszynski was not disabled. Using the five-step process for determining disability, 20 C.F.R. § 404.1520, he found that Cieszynski had not engaged in substantial gainful activity since the onset date of her disability; she had the severe impairments of degenerative disc disease of the cervical and lumbar spine, depression, anxiety, and ADHD; those impairments did not meet or equal the severity of a listed impairment; she could not perform her past work; yet jobs that she could perform existed in significant numbers in the national economy.

In making these determinations, the ALJ stated with little explanation that he discredited Dr. Boyd's and Dr. Linford's opinions, which both supported Cieszynski's disability claim. Here is what he said, in its entirety, about Dr. Boyd's opinion:

> While normally, the opinions of a treating physician are given controlling weight, the opinion of Dr. Boyd is given little weight. Dr. Boyd's opinion is inconsistent with the course of treatment in this case. The treatment records show the claimant received some benefit from the treatment, which included steroid injunctions, chiropractic treatments, and medication. The records also show the claimant has received little or no ongoing treatment for back pain since terminating pain management treatment in June 2016.

There are a number of problems with the assertions in this paragraph; we highlight them below. In the aggregate, the ALJ's conclusion about Dr. Boyd's opinion cannot be reconciled with the treating physician rule, which applies to Cieszynski's case.

The ALJ, for example, pointed to appointment notes reporting that Cieszynski felt that her medications and three chiropractic visits had helped. But he did not attempt to reconcile this evidence with Cieszynski's testimony at the hearing, which unequivocally denied any *lasting* benefit from the chiropractic sessions. (There was no discussion of the chiropractic visits at the second hearing; they were mentioned only at the first hearing.) The ALJ also thought that Dr. Boyd's opinion was inconsistent with the fact that Cieszynski "received little or no ongoing treatment for back pain since terminating pain management treatment in June 2016." He implied that she had abandoned those treatments not for inefficacy but because she "might have had a dependence on painkillers and engaged in drug seeking behaviors, which might have fueled her complaints." In support, the ALJ cited a pain management provider's notes from an appointment in June 2016. Those notes state that Cieszynski tested positive for opioids not prescribed by that clinic and tested negative for her prescribed medications. The provider suspected that this indicated diversion of the prescribed medication and acquisition of opioids from other sources. When the provider refused to refill Cieszynski's opioid prescription, Cieszynski said that she came only for opioids and left. The ALJ found it significant that, after that appointment, Cieszynski largely stopped seeking treatment for back pain.

The ALJ also gave Dr. Linford's opinion "limited weight." He explained that he did so because the opinion was not specific enough and inadequately supported. In addition, the ALJ found that Dr. Linford's opinion had the same flaws as Dr. Boyd's.

Bearing in mind the deferential standard of review that applies in these cases, the district court ruled that the ALJ did not err in weighing Dr. Boyd's or Dr. Linford's opinion and affirmed the ALJ's decision.

II

Cieszynski's arguments on appeal primarily address the way in which the ALJ decided which doctors' opinions to embrace or reject. We review the ALJ's decision directly and accept his findings if they are supported by substantial evidence, defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." See 42 U.S.C. § 405(g); *Biestek v. Berryhill*, 139 S. Ct. 1148, 1152 (2019).

Cieszynski's first point rests on the ALJ's failure to follow the treating physician rule, which, though prospectively abrogated, applies to cases such as hers that were

filed before March 27, 2017. See 20 C.F.R. § 404.1520c ("For claims filed … on or after March 27, 2017, the rules in this section apply. For claims filed before March 27, 2017, the rules in § 404.1527 apply."). Paragraph (c)(2) of section 404.1527 specifies the agency's approach to a treating source:

> Generally, we give more weight to medical opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations. If we find that a treating source's medical opinion on the issue(s) of the nature and severity of your impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in your case record, we will give it *controlling weight.* When we do not give the treating source's medical opinion controlling weight, we apply the factors listed in paragraphs (c)(2)(i) and (c)(2)(ii) of this section, as well as the factors in paragraphs (c)(3) through (c)(6) of this section in determining the weight to give the medical opinion. We will always give *good reasons* in our notice of determination or decision for the weight we give your treating source's medical opinion.

Id. § 404.1527(c)(2) (emphasis added). Two things are notable: first, the commitment to give the treating source's opinion *controlling* weight if it is well-supported by acceptable examinations and tests; and second, the commitment to give *good reasons* for whatever weight is given to the treating source.

Cieszynski contends that the ALJ cited the right standard but did not follow it when he found that Dr. Boyd's opinion was inconsistent with the record. We agree with that assessment. First, neither rationale the ALJ gave for rejecting Dr. Boyd's opinion qualifies as a "good reason." One point was the alleged inconsistency between Dr. Boyd's opinion and the evidence that Cieszynski received "some benefit" from injections, chiropractic treatments, and medications. But the ALJ did not grapple with the fact that the record shows that the benefits were temporary, even though he partially acknowledged the temporary nature of the relief elsewhere in his decision, where he discussed medical records reporting that Cieszynski experienced significant pain and limitations even after treatment. More importantly, it is possible for a person to get "some benefit" from treatment yet not enough to be capable of more than part-

time work. See *Clifford v. Apfel*, 227 F.3d 863, 871 (7th Cir. 2000) (remanding for an ALJ to reevaluate a medical opinion when the ALJ did not adequately explain supposed inconsistencies). Dr. Boyd's letter reflected this nuance; it acknowledged that the steroid injections and medications provided "some moderation" of symptoms, but even so, he believed that the MRIs, examination, and medical history demonstrated that Cieszynski could do only part-time work, and even that much with many restrictions.

Second, the ALJ said that Dr. Boyd's opinion was inconsistent with Cieszynski's receiving "little or no" treatment for back pain after terminating pain management treatment when she could no longer obtain opioids. But this is an inconsistency only if the record could support a finding that Cieszynski had other options for effective pain relief. No such evidence exists. Cieszynski's belief that only prescription opioids sufficed (whether because of their effectiveness or a dependency) is not inconsistent with her having pain and other symptoms that made full-time work impossible, just as Dr. Boyd opined. Further, the ALJ did not explain what kind of treatment he expected her to undergo. As Cieszynski points out, she tried many methods of treatment. The ALJ asked Cieszynski during a hearing whether she ever lacked health insurance coverage, but he did not follow up by tying this to gaps in treatment after 2016. Although he was not *required* to ask about the lack of treatment, citing it as a reason to reject Dr. Boyd's opinion without finding out why she mostly stopped is problematic. See *Roddy v. Astrue*, 705 F.3d 631, 638 (7th Cir. 2013); SSR 16-3P, 2016 WL 1119029 (Mar. 16, 2016) (requiring ALJs to consider possible reasons claimants may not seek treatment before finding symptoms inconsistent with the record). Without support for the ALJ's inferences from the cessation of pain management appointments, the finding that Dr. Boyd's opinion was contradicted by the record in this respect is not backed by substantial evidence. See *Clifford*, 227 F.3d at 871.

Improperly assessing a treater's opinion is enough to require reversal. See *Minnick v. Colvin*, 775 F.3d 929, 938 (7th Cir. 2015). But the Acting Commissioner defends the ALJ's refusal to give Dr. Boyd's opinion controlling weight on two other grounds. First, she asserts that Dr. Boyd's opinion is inconsistent with his own treatment records. But the ALJ said nothing to that effect, and we must look to what the ALJ did, not what he might have done. *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 93–94 (1943). Second, she asserts that, by not making the point in the district court that the record lacked evidence of other treatment options for her pain or that the ALJ failed to explore why she stopped treatment, Cieszynski waived her right to advance those arguments on appeal. But we find no such waiver. Cieszynski preserved these points when she contended in the district court that the ALJ did not provide a "good reason" for not giving Dr. Boyd's opinion controlling weight. See *Milhem v. Kijakazi*,

52 F.4th 688, 693 (7th Cir. 2022) (specific arguments about determination that jobs claimant could perform existed in significant numbers preserved with general challenge in district court); *Plessinger v. Berryhill*, 900 F.3d 909, 916–17 (7th Cir. 2018) (noting that this court has treated "more specific arguments" of the same nature as those raised in the district court as preserved).

Even if the ALJ's refusal to give controlling weight to Dr. Boyd's opinion were defensible, there is a second problem with his ruling. The regulation specifically requires the ALJ to give good reasons for whatever weight he thinks a treating physician's opinion is due. *Larson v. Astrue*, 615 F.3d 744, 751 (7th Cir. 2010). The ALJ did not do so here. He was obliged to consider factors such as the length, frequency, nature, and extent of the treatment relationship, Dr. Boyd's explanation for his opinion, the extent to which the opinion is consistent with the record as a whole and is supported by relevant evidence, and Dr. Boyd's specialty. 20 C.F.R. § 404.1527(c)(2)–(6). Had the ALJ done so, Cieszynski contends, he would have given Dr. Boyd's opinion more than "little" weight.

The ALJ did not justify his failure to examine these factors. He did announce that he was discounting Dr. Boyd's opinion, but as we have noted, his reasons do not stand up under scrutiny. Dr. Boyd treated Cieszynski from 2014 to 2018 and provided a thorough explanation for his opinion based on the 2014 MRIs, his own examination, and Cieszynski's treatment records. Indeed, as Cieszynski points out, *only* Dr. Boyd incorporated into his opinion the results of the two MRIs in 2014. The ALJ recognized that the MRIs showed "moderate to severe degenerative changes" yet did not accept Dr. Boyd's conclusion that these deficits would limit Cieszynski's physical capacity for work. We acknowledge that an ALJ's failure to consider the regulatory factors can be harmless error, *Karr v. Saul*, 989 F.3d 508, 512 (7th Cir. 2021), and the Acting Commissioner contends that it was here. But because Dr. Boyd was the only doctor to interpret the 2014 MRIs (some of the most objective evidence in the record), we cannot be certain that the outcome would have been the same with proper assessment of both of his opinion. *Lambert v. Berryhill*, 896 F.3d 768, 776 (7th Cir. 2018).

The ALJ similarly brushed aside the related opinion of Dr. Linford, an orthopedic specialist, to the effect that Cieszynski could not tolerate prolonged sitting or standing. This issue presents a closer call, but combined with the errors concerning Dr. Boyd's opinion, it reinforces our sense of an overall inattention to the requirements for considering medical opinions.

The first problem is that the ALJ did not fulfill his regulatory duty to recontact Dr. Linford—the agency's consulting examiner—upon finding the doctor's report

inadequate. See 20 C.F.R. § 404.1519p(b) (requiring an ALJ to obtain more information or a new report if a consultant's report is "incomplete or inadequate"). If the ALJ was concerned that Dr. Linford "did not provide any specific limitations or explain the rationale for his conclusions," he should have followed up with the doctor. *Barnett v. Barnhart*, 381 F.3d 664, 669 (7th Cir. 2004). Cieszynski had the burden of proving disability, of course, but the ALJ had a duty to develop a fair and full record if he did not receive an adequate report from an examining consultant. See *Smith v. Apfel*, 231 F.3d 433, 437 (7th Cir. 2000).

Second, the ALJ did not provide a "good explanation" for why he took the unusual step of giving little weight to the opinion of an agency examining physician such as Dr. Linford. *Beardsley v. Colvin*, 758 F.3d 834, 839 (7th Cir. 2014). The opinions of examining physicians are generally entitled to more weight than those of non-examining medical professionals. 20 C.F.R. § 404.1527(c)(1). When an ALJ disregards that hierarchy, he should give a good explanation supported by substantial evidence. *Beardsley*, 758 F.3d at 839. The ALJ's conclusory comment that the report was inadequate or incomplete does not suffice. And, as with Dr. Boyd's opinion, the ALJ cited inconsistencies with the medical record but did not explain them. As we noted earlier, it is possible for Cieszynski to have gotten "some" temporary benefits and to have rarely sought treatment after 2016 but still have the work-preclusive physical limitations Dr. Linford observed.

Last, Cieszynski argues that the ALJ erred by relying on the opinions of the two state-agency internists who did not examine Cieszynski, because those doctors did not review the 2014 cervical and lumbar MRIs. Cieszynski waived this argument by failing to argue in the district court that the ALJ made this mistake. See *Jeske v. Saul*, 955 F.3d 583, 597 (7th Cir. 2020). Cieszynski responds that she argued that the ALJ did not provide a good reason for rejecting Dr. Boyd's opinion, and "[o]ne of the alleged 'good reasons' provided by the ALJ was the reliance on state agency physicians." But the ALJ did not point to conflict with the state agency physicians' opinions as a reason for rejecting Dr. Boyd's opinion. Nonetheless, the ALJ's willingness to accept the opinions of non-examining physicians who never saw the most recent MRIs underscores the significance of his rejection of the opinions of the two examining doctors, one of whom based his opinion on the MRI results.

Because the ALJ's decision to discredit the opinions of Dr. Boyd and Dr. Linford is not supported by substantial evidence, we VACATE the judgment and REMAND this case to the Social Security Administration for further proceedings.