

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

MICHAEL LAYNE DANIELS

PLAINTIFF

vs.

Civil No. 4:15-cv-04080

NANCY BERRYHILL

DEFENDANT

Acting Commissioner, Social Security Administration

MEMORANDUM OPINION

Michael Layne Daniels (“Plaintiff”) brings this action pursuant to § 205(g) of Title II of the Social Security Act (“The Act”), 42 U.S.C. § 405(g) (2010), seeking judicial review of a final decision of the Commissioner of the Social Security Administration (“SSA”) denying his application for Disability Insurance Benefits (“DIB”), Supplemental Security Income, (“SSI”), and a period of disability under Titles II and XVI of the Act. The parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. ECF No. 8.¹ Pursuant to this authority, the Court issues this memorandum opinion and orders the entry of a final judgment in this matter.

1. Background:

Plaintiff protectively filed an application for DIB and SSI on March 20, 2012. (Tr. 11, 98-105). Plaintiff alleged he was disabled due to high blood pressure and quintuple bypass. (Tr. 124). Plaintiff alleged an onset date of February 28, 2012. (Tr. 11, 98, 100). These applications were denied initially and again upon reconsideration. (Tr. 11). Thereafter, Plaintiff requested an

¹ The docket numbers for this case are referenced by the designation “ECF No. ____” The transcript pages for this case are referenced by the designation “Tr.”

administrative hearing on his applications and this hearing request was granted. (Tr. 72-74).

Plaintiff's administrative hearing was held on December 10, 2013. (Tr. 27-45). Plaintiff was present at the hearing, but was not represented by counsel. *Id.* Plaintiff and his witness, Louise Young, testified at this hearing. *Id.* On the date of this hearing, Plaintiff was forty-nine (49) years old and had an eleventh grade education. (Tr. 34).

On August 13, 2014, the ALJ entered an unfavorable decision denying Plaintiff's application for DIB and SSI. (Tr. 11-21). In this decision, the ALJ determined Plaintiff met the insured status requirements of the Act through September 30, 2012. (Tr. 13, Finding 1). The ALJ also determined Plaintiff had not engaged in Substantial Gainful Activity ("SGA") since February 28, 2012. (Tr. 13, Finding 2).

The ALJ determined Plaintiff had the severe impairments of coronary artery disease. (Tr. 13, Finding 3). The ALJ then determined Plaintiff's impairments did not meet or medically equal the requirements of any of the Listing of Impairments in Appendix 1 to Subpart P of Regulations No. 4 ("Listings"). (Tr. 14, Finding 4).

In this decision, the ALJ evaluated Plaintiff's subjective complaints and determined his RFC. (Tr. 15-19). First, the ALJ indicated he evaluated Plaintiff's subjective complaints and found his claimed limitations were not entirely credible. *Id.* Second, the ALJ determined Plaintiff retained the RFC for the full range of light work. (Tr. 15, Finding 5).

The ALJ evaluated Plaintiff's Past Relevant Work ("PRW") and found Plaintiff was unable to perform his PRW. (Tr. 19, Finding 6). The ALJ, however, also determined there was other work existing in significant numbers in the national economy Plaintiff could perform. (Tr. 20, Finding 10). The ALJ then used Medical-Vocational Guidelines Rule 202.17 and 202.18 to reach a conclusion of "not disabled," based on Plaintiff's age, education, vocational background, and residual functional

capacity. *See* 20 C.F.R. pt. 404, subpt. P, app. 2, § 201.28. (Tr. 21). The ALJ then determined Plaintiff had not been under a “disability,” as defined by the Act, from February 28, 2012, through the date of his decision. (Tr. 21, Finding 11).

Thereafter, Plaintiff requested the Appeals Council review the ALJ’s unfavorable decision. (Tr. 4-5). *See* 20 C.F.R. § 404.968. The Appeals Council declined to review this unfavorable decision. (Tr. 1-3). On August 31, 2015, Plaintiff filed the present appeal. ECF No. 1. The Parties consented to the jurisdiction of this Court on October 14, 2015. ECF No. 8. Both Parties have filed appeal briefs. ECF Nos. 13, 14. This case is now ready for decision.

2. Applicable Law:

In reviewing this case, this Court is required to determine whether the Commissioner’s findings are supported by substantial evidence on the record as a whole. *See* 42 U.S.C. § 405(g) (2006); *Ramirez v. Barnhart*, 292 F.3d 576, 583 (8th Cir. 2002). Substantial evidence is less than a preponderance of the evidence, but it is enough that a reasonable mind would find it adequate to support the Commissioner’s decision. *See Johnson v. Apfel*, 240 F.3d 1145, 1147 (8th Cir. 2001). 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. *See Haley v. Massanari*, 258 F.3d 742, 747 (8th Cir. 2001). 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, the decision of the ALJ must be affirmed. *See Young v. Apfel*, 221 F.3d 1065, 1068 (8th Cir. 2000).

It is well established that a claimant for Social Security disability benefits has the burden of proving his or her disability by establishing a physical or mental disability that lasted at least one year

and that prevents him or her from engaging in any substantial gainful activity. *See Cox v. Apfel*, 160 F.3d 1203, 1206 (8th Cir. 1998); 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act defines a “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), 1382(3)(c). A plaintiff must show that his or her disability, not simply his or her impairment, has lasted for at least twelve consecutive months. *See* 42 U.S.C. § 423(d)(1)(A).

To determine whether the adult claimant suffers from a disability, the Commissioner uses the familiar five-step sequential evaluation. He determines: (1) whether the claimant is presently engaged in a “substantial gainful activity”; (2) whether the claimant has a severe impairment that significantly limits the claimant’s physical or mental ability to perform basic work activities; (3) whether the claimant has an impairment that meets or equals a presumptively disabling impairment listed in the regulations (if so, the claimant is disabled without regard to age, education, and work experience); (4) whether the claimant has the Residual Functional Capacity (RFC) to perform his or her past relevant work; and (5) if the claimant cannot perform the past work, the burden shifts to the Commissioner to prove that there are other jobs in the national economy that the claimant can perform. *See Cox*, 160 F.3d at 1206; 20 C.F.R. §§ 404.1520(a)-(f). The fact finder only considers the plaintiff’s age, education, and work experience in light of his or her RFC if the final stage of this analysis is reached. *See* 20 C.F.R. §§ 404.1520, 416.920 (2003).

3. Discussion:

In his appeal brief, Plaintiff claims the ALJ’s disability determination is not supported by substantial evidence in the record. ECF No. 13, Pgs. 5-9. Specifically, Plaintiff claims the ALJ erred: (1) in failing to fully and fairly develop the record, (2) in the RFC determination, and (3) in

failing to find Plaintiff met a Listing. *Id.* In response, the Defendant argues the ALJ did not err in any of his findings. ECF No. 14. Because this Court finds the ALJ erred in failing to fully and fairly develop the record, this Court will only address this issue.

The ALJ has the duty to fully and fairly develop the record, even where the Plaintiff is represented by counsel. If a physician's report of a claimant's limitations are stated only generally, the ALJ should ask the physician to clarify and explain the stated limitations. *See Vaughn v. Heckler*, 741 F. 2d 177,179 (8th Cir. 1984). Furthermore, the ALJ is required to order medical examinations and tests if the medical records presented do not provide sufficient medical evidence to determine the nature and extent of a claimant's limitations and impairments. *See Barrett v. Shalala*, 38 F. 3d 1019, 1023 (8th Cir. 1994). The ALJ must develop the record until the evidence is sufficiently clear to make a fair determination as to whether the claimant is disabled. *See Landess v. Weinberger*, 490 F. 2d 1187, 1189 (8th Cir. 1974).

In addition, a claimant must show not only that the ALJ failed to fully and fairly develop the record, but he must also show he was prejudiced or treated unfairly by the ALJ's failure. *See Onstad v. Shalala*, 999 F.2d 1232, 1234 (8th Cir. 1993). Further, “[i]t is reversible error for an ALJ not to order a consultative examination when such an evaluation is necessary for him to make an informed decision.” *Dozier v. Heckler*, 754 F.2d 274, 276 (8th Cir. 1985) (*quoting Reeves v. Heckler*, 734 F.2d 519, 522 n.1 (11th Cir. 1984)).

Plaintiff argues the ALJ failed to fulfill his duty to develop the record regarding evidence Plaintiff suffered from depression. It should be noted Plaintiff was not represented by counsel at the administrative hearing. Plaintiff alleges the record contains evidence showing he suffers from depression. Plaintiff relies on treatment records from the Medical Center of South Arkansas which indicated he was depressed and preferred not to be bothered. (Tr. 338). Also, in an admission report

dated September 24, 2012, Dr. Prashant Khetpal noted Plaintiff had a history of depression which was being treated by the medication Doxepin. (Tr. 396). Additionally, the medical records show Plaintiff had been taking the antidepressant Doxepin for some time. (Tr. 345, 347, 396, 398, 448, 512, 555, 561).

There was no discussion of Plaintiff's treatment for depression. Further development of this may result in a different RFC conclusion. Accordingly, remand is necessary to allow the ALJ to develop the record with regard to Plaintiff's depression and its impact on his capacity to cope with the typical mental and cognitive demands of work, ability to complete work tasks in a timely manner, ability to work in proximity to co-workers and supervisors, ability to accept instructions and respond appropriately to criticism for co-workers and supervisors, and ability to make work-related decisions.

As a result of these findings, this Court finds the ALJ failed to properly develop the record. On remand, further development of these issues is needed.

4. Conclusion:

Based on the foregoing, the undersigned finds that the decision of the ALJ, denying benefits to Plaintiff, is not supported by substantial evidence and should be reversed and remanded. A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

ENTERED this 17th day of February 2017.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE