

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

MARY SUSAN TAAFFE

PLAINTIFF

vs.

Civil No. 4:15-cv-04108

CAROLYN W. COLVIN  
Commissioner, Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

Mary Susan Taaffe (“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 her applications for a period of disability, Disability Insurance Benefits (“DIB”), and Supplemental Security Income (“SSI”) 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. 5.<sup>1</sup> 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 her disability applications on August 31, 2012. (Tr. 23, 192). In her applications, Plaintiff alleges being disabled due to lupus, kidney disease, degenerative disc disease, bipolar disorder, depression, and anxiety. (Tr. 217). Plaintiff alleges an onset date of December 8, 2006. (Tr. 23). These applications were denied initially and again upon

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<sup>1</sup> 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.”

reconsideration. (Tr. 79-111).

Thereafter, Plaintiff requested an administrative hearing on her denied applications. (Tr. 138). The ALJ granted that request and held an administrative hearing on March 10, 2014 in Texarkana, Arkansas. (Tr. 40-78, 150). At this hearing, Plaintiff was present and was represented by Kevin O'Connor. *Id.* Plaintiff, two Medical Experts (“ME”), and a Vocational Expert (“VE”) testified at this hearing. *Id.* At this hearing, Plaintiff testified she was forty-five (45), which is defined as a “younger person” under 20 C.F.R. § 416.963(c) (SSI) and 20 C.F.R. § 404.1563(c) (DIB). (Tr. 43). As for her level of education, Plaintiff testified she had graduated from high school. *Id.*

After this hearing, on May 24, 2014, the ALJ entered an unfavorable decision denying Plaintiff’s applications for DIB and SSI. (Tr. 20-35). In this decision, the ALJ found Plaintiff met the insured status requirements of the Act through December 31, 2011. (Tr. 25, Finding 1). The ALJ found Plaintiff had not engaged in Substantial Gainful Activity (“SGA”) since September 5, 2009, her amended alleged onset date. (Tr. 25, Finding 2). The ALJ determined Plaintiff had the following severe impairments: chronic lumbar pain, lupus, rheumatoid osteoarthritis, bipolar disorder, and generalized anxiety disorder. (Tr. 25-26, Finding 3). Despite being severe, the ALJ determined these impairments did not meet or medically equal the requirements of any of the Listings of Impairments in Appendix 1 to Subpart P of Regulations No. 4 (“Listings”). (Tr. 26-28, Finding 4).

The ALJ then considered Plaintiff’s Residual Functional Capacity (“RFC”). (Tr. 28-33, Finding 5). First, the ALJ evaluated Plaintiff’s subjective complaints and found her claimed limitations were not entirely credible. *Id.* Second, the ALJ determined Plaintiff retained the RFC

to perform the following:

After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform less than the wide range of sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a). The ability to lift and carry 10 pounds occasionally, less than 10 pounds frequently, stand and walk 2 hours of an 8-hour workday, and sit up to 6 hours of an 8-hour workday. The claimant would require an option to alternate position for comfort for one to two minutes, no climbing ladders, ropes or scaffolds, other postural functions, such as climbing ramps and stairs, balance, stoop, squat, could be performed occasionally, and frequent handling. The claimant should avoid extreme heat and cold temperatures, avoid concentrated exposure to pulmonary irritants such as dusts, gases, fumes, odors, and poor ventilation, and from a mental standpoint, simple non-complex tasks and occasional contact with the public.

(Tr. 28, Finding 5).

The ALJ then evaluated Plaintiff's Past Relevant Work ("PRW"). (Tr. 33-34, Finding 6). Considering her RFC, the ALJ determined Plaintiff could not perform any of her PRW. *Id.* The ALJ also considered whether Plaintiff retained the capacity to perform other work existing in significant numbers in the national economy. (Tr. 34-35, Finding 10). The VE testified at the administrative hearing regarding this issue. *Id.* Based upon that testimony, the ALJ determined Plaintiff retained the capacity to perform the following: (1) lens inspector (unskilled, sedentary) with 1,600 such jobs in the region and 16,000 such jobs in the nation; (2) film inspector (unskilled, sedentary) with 2,200 such jobs in the region and 22,000 such jobs in the nation; and (3) dowel inspector (unskilled, sedentary) with 1,350 such jobs in the region and 13,500 such jobs in the nation. *Id.* Because Plaintiff retained the capacity to perform this work, the ALJ also determined Plaintiff had not been under a disability, as defined by the Act, from December 8, 2006 through the date of his decision or through April 24, 2014. (Tr. 35, Finding 11).

Thereafter, Plaintiff requested a review by the Appeals Council. On October 28, 2015, the

Appeals Council denied this request. (Tr. 5-8). On November 24, 2015, Plaintiff filed the present appeal with this Court. ECF No. 1. The Parties consented to the jurisdiction of this Court on November 24, 2015. ECF No. 5. This case is now ripe for determination.

**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 her appeal brief, Plaintiff raises two arguments for reversal: (1) the ALJ erred in discrediting her impairments and the side effects of her medication; and (2) the ALJ erred by failing to consider the combined impact of her impairments. ECF No. 11 at 1-18. Upon review of these claims, the Court agrees with Plaintiff’s first argument and finds the ALJ improperly evaluated her

subjective complaints. Accordingly, the Court will only address this argument for reversal.

In assessing the credibility of a claimant, the ALJ is required to examine and to apply the five factors from *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984) or from 20 C.F.R. § 404.1529 and 20 C.F.R. § 416.929.<sup>2</sup> See *Shultz v. Astrue*, 479 F.3d 979, 983 (2007). The factors to consider are as follows: (1) the claimant’s daily activities; (2) the duration, frequency, and intensity of the pain; (3) the precipitating and aggravating factors; (4) the dosage, effectiveness, and side effects of medication; and (5) the functional restrictions. See *Polaski*, 739 at 1322.

The factors must be analyzed and considered in light of the claimant’s subjective complaints of pain. See *id.* The ALJ is not required to methodically discuss each factor as long as the ALJ acknowledges and examines these factors prior to discounting the claimant’s subjective complaints. See *Lowe v. Apfel*, 226 F.3d 969, 971-72 (8th Cir. 2000). As long as the ALJ properly applies these five factors and gives several valid reasons for finding that the Plaintiff’s subjective complaints are not entirely credible, the ALJ’s credibility determination is entitled to deference. See *id.*; *Cox v. Barnhart*, 471 F.3d 902, 907 (8th Cir. 2006). The ALJ, however, cannot discount Plaintiff’s subjective complaints “solely because the objective medical evidence does not fully support them [the subjective complaints].” *Polaski*, 739 F.2d at 1322.

When discounting a claimant’s complaint of pain, the ALJ must make a specific credibility

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<sup>2</sup> Social Security Regulations 20 C.F.R. § 404.1529 and 20 C.F.R. § 416.929 require the analysis of two additional factors: (1) “treatment, other than medication, you receive or have received for relief of your pain or other symptoms” and (2) “any measures you use or have used to relieve your pain or symptoms (e.g., lying flat on your back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.).” However, under *Polaski* and its progeny, the Eighth Circuit has not yet required the analysis of these additional factors. See *Shultz v. Astrue*, 479 F.3d 979, 983 (2007). Thus, this Court will not require the analysis of these additional factors in this case.

determination, articulating the reasons for discrediting the testimony, addressing any inconsistencies, and discussing the *Polaski* factors. *See Baker v. Apfel*, 159 F.3d 1140, 1144 (8th Cir. 1998). The inability to work without some pain or discomfort is not a sufficient reason to find a Plaintiff disabled within the strict definition of the Act. The issue is not the existence of pain, but whether the pain a Plaintiff experiences precludes the performance of substantial gainful activity. *See Thomas v. Sullivan*, 928 F.2d 255, 259 (8th Cir. 1991).

In the present action, the ALJ did not comply with the requirements of *Polaski*. Instead of complying with *Polaski* and considering the *Polaski* factors, the ALJ only focused on Plaintiff's medical records. (Tr. 28-33). Notably, he supported his RFC determination based upon the following:

After careful consideration of the medical opinions of record, I find that the claimant's medically determinable impairments cannot reasonably be expected to produce the symptoms to the degree alleged by the claimant. The claimant's statements concerning the intensity, persistence and limiting effects of these symptoms have been determined to diminish the capacity for basic work activities only to the extent *to which they can reasonably be accepted as consistent with the objective medical and other evidence*. 20 CFR 1529(c)(4).

A finding that pain and fatigue are not disabling may be supported by evidence that there is no muscle atrophy, no significant joint degeneration, or adverse neurological test results; that the treating physician did not prescribe prolonged bed rest or assistive devices; and *that there is no support in objective medical findings for the complained of level of symptoms*. *See Donner v. Barnhart*, 285 F. Supp. 2d 800, 813-814 (S.D. Tex. 2002) and *Sanguinetti v. Astrue*, 2010 U.S. Dist. LEXIS 67387 (S.D. Tex. 2010)

(Tr. 33) (emphasis added).

The Court finds the ALJ's decision to discount Plaintiff's subjective complaints without a sufficient basis was improper under *Polaski*. *See Polaski*, 739 F.2d at 1322 (holding a claimant's

subjective complaints cannot be discounted “solely because the objective medical evidence does not fully support them [the subjective complaints]”). Accordingly, because the ALJ provided no valid reasons for discounting Plaintiff’s subjective complaints, this case must be reversed and remanded.

**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.<sup>3</sup> A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

**ENTERED this 5th day of January 2017.**

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

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<sup>3</sup> This remand is ordered solely for the purpose of permitting the ALJ the opportunity to comply with the requirements of *Polaski*. No part of this remand should be interpreted as an instruction that disability benefits be awarded. Upon remand, the ALJ should further evaluate the evidence and make a disability determination, subject to this Court’s later review.