

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

PEARL BROWNING

PLAINTIFF

v.

CIVIL NO. 12-5087

CAROLYN W. COLVIN,<sup>1</sup> Commissioner  
Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

Plaintiff, Pearl Browning, brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of a decision of the Commissioner of the Social Security Administration (Commissioner) denying her claims for a period of disability and disability insurance benefits (DIB) and supplemental security income (SSI) benefits under the provisions of Titles II and XVI of the Social Security Act (Act). In this judicial review, the Court must determine whether there is substantial evidence in the administrative record to support the Commissioner's decision. See 42 U.S.C. § 405(g).

**I. Procedural Background:**

Plaintiff protectively filed her current applications for DIB and SSI on November 18, 2008, alleging an inability to work since October 30, 2007, due to diabetes and a Bipolar Disorder. (Tr. 179, 182, 203). An administrative hearing was held on January 26, 2010, at which Plaintiff appeared with counsel and testified. (Tr. 60-109).

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<sup>1</sup>Carolyn W. Colvin, has been appointed to serve as acting Commissioner of Social Security, and is substituted as Defendant, pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

By written decision dated November 3, 2010, the ALJ found that during the relevant time period, Plaintiff had an impairment or combination of impairments that were severe. (Tr. 48). Specifically, the ALJ found Plaintiff had the following severe impairments: diabetes mellitus, hypertension, obesity, osteoarthritis of the hands, and depression. However, after reviewing all of the evidence presented, the ALJ determined that Plaintiff's impairments did not meet or equal the level of severity of any impairment listed in the Listing of Impairments found in Appendix I, Subpart P, Regulation No. 4. (Tr. 48). The ALJ found Plaintiff retained the residual functional capacity (RFC) to:

perform light work as defined in 20 CFR 404.1567(b) and 416.967(b). The claimant is able to lift and carry 20 pounds occasionally and 10 pounds frequently, stand and walk about 6 hours in an 8-hour day, and sit for at least 6 hours in an 8-hour day. The claimant is able to do frequent but not constant handling and fingering bilaterally. Mentally, the claimant is able to perform work where interpersonal contact is incidental to work performed; complexity of tasks is learned and performed by rote, with few variables and use of little judgment; and supervision required is simple, direct and concrete.

(Tr. 50). With the help of a vocational expert, the ALJ determined Plaintiff could perform work as a machine tender, a production worker/assembler, and motel maid. (Tr. 55).

Plaintiff then requested a review of the hearing decision by the Appeals Council, which denied that request on March 14, 2012. (Tr. 1-). Subsequently, Plaintiff filed this action. (Doc. 1). This case is before the undersigned pursuant to the consent of the parties. (Doc. 5). Both parties have filed appeal briefs, and the case is now ready for decision. (Docs. 8,9).

The Court has reviewed the entire transcript. The complete set of facts and arguments are presented in the parties' briefs, and are repeated here only to the extent necessary.

## II. Applicable Law:

This Court's role is to determine whether the Commissioner's findings are supported by substantial evidence on the record as a whole. Ramirez v. Barnhart, 292 F.3d 576, 583 (8th Cir. 2002). Substantial evidence is less than a preponderance but it is enough that a reasonable mind would find it adequate to support the Commissioner's decision. The ALJ's decision must be affirmed if the record contains substantial evidence to support it. Edwards v. Barnhart, 314 F.3d 964, 966 (8th Cir. 2003). 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. Haley v. Massanari, 258 F.3d 742, 747 (8th Cir. 2001). In other words, 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. 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 her disability by establishing a physical or mental disability that has lasted at least one year and that prevents her from engaging in any substantial gainful activity. Pearsall v. Massanari, 274 F.3d 1211, 1217 (8th Cir.2001); see also 42 U.S.C. § § 423(d)(1)(A), 1382c(a)(3)(A). The Act defines “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 her disability, not simply her impairment, has lasted for at least twelve consecutive months.

The Commissioner's regulations require her to apply a five-step sequential evaluation process to each claim for disability benefits: (1) whether the claimant has engaged in substantial gainful activity since filing her claim; (2) whether the claimant has a severe physical and/or mental impairment or combination of impairments; (3) whether the impairment(s) meet or equal an impairment in the listings; (4) whether the impairment(s) prevent the claimant from doing past relevant work; and, (5) whether the claimant is able to perform other work in the national economy given her age, education, and experience. See 20 C.F.R. §§ 404.1520, 416.920. Only if the final stage is reached does the fact finder consider the Plaintiff's age, education, and work experience in light of her residual functional capacity. See McCoy v. Schweiker, 683 F.2d 1138, 1141-42 (8th Cir. 1982); 20 C.F.R. §§ 404.1520, 416.920.

### **III. Discussion:**

Plaintiff argues the following issues on appeal: 1) the ALJ committed reversible error when he mischaracterized the effects of the claimant's mental disorders and disregarded a GAF indicating serious impairment; and 2) the ALJ committed reversible error when he failed to consider the combined effect of Plaintiff's multiple conditions.

#### **A. Subjective Complaints and Credibility Analysis:**

The ALJ was required to consider all the evidence relating to Plaintiff's subjective complaints including evidence presented by third parties that relates to: (1) Plaintiff's daily activities; (2) the duration, frequency, and intensity of her pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness, and side effects of her medication; and (5) functional restrictions. See Polaski v. Heckler, 739 F.2d 1320, 1322 (8<sup>th</sup> Cir. 1984). While an ALJ may not discount a claimant's subjective complaints solely because the medical evidence fails to support

them, an ALJ may discount those complaints where inconsistencies appear in the record as a whole. Id. As the Eighth Circuit has observed, “Our touchstone is that [a claimant’s] credibility is primarily a matter for the ALJ to decide.” Edwards, 314 F.3d at 966.

After reviewing the administrative record, and the Defendant’s well-stated reasons set forth in her brief, it is clear that the ALJ properly considered and evaluated Plaintiff’s subjective complaints, including the Polaski factors. The medical evidence revealed that Plaintiff had some problems associated with her diabetes, hypertension and depressive disorder. However, as pointed out by the ALJ, the record revealed that when Plaintiff was compliant with her medications, diet, exercise, and treatment plan Plaintiff’s impairments responded well to treatment. Brace v. Astrue, 578 F.3d 882, 885 (8<sup>th</sup> Cir. 2009) (“If an impairment can be controlled by treatment or medication, it cannot be considered disabling.”)(citations omitted).

Plaintiff argues that the ALJ improperly ignored the medical evidence revealing that Plaintiff had a Global Assessment of Functioning (GAF) score of 40 in October of 2008. A review of the medical evidence revealed that this score was given to Plaintiff upon her initial evaluation, and the medical evidence makes no further mention of a GAF score. The medical evidence does however reveal that Plaintiff responded well to the treatment when Plaintiff complied with the treatment plan.

The complete evidence of record concerning her daily activities is also inconsistent with her claim of disability. The record revealed that Plaintiff could do household chores; that she was able to take care of her personal needs; and that she attended church on a regular basis. The record further reported that Plaintiff had to move in with her sister and that they were cleaning up her sister’s duplex.

The Court would also note that while Plaintiff alleged an inability to seek treatment due to a lack of finances, the record is void of any indication that Plaintiff had been denied treatment due to the lack of funds. Murphy v. Sullivan, 953 F.3d 383, 386-87 (8th Cir. 1992) (holding that lack of evidence that plaintiff sought low-cost medical treatment from her doctor, clinics, or hospitals does not support plaintiff's contention of financial hardship).

Therefore, although it is clear that Plaintiff suffers with some degree of limitation, she has not established that she is unable to engage in any gainful activity. Accordingly, the Court concludes that substantial evidence supports the ALJ's conclusion that Plaintiff's subjective complaints were not totally credible.

**B. Combination of Impairments:**

Plaintiff argues that the ALJ erred in failing to consider all of the claimant's impairments in combination.

The ALJ stated that in determining Plaintiff's RFC, he considered "all of the claimant's impairments, including impairments that are not severe." (Tr. 47). The ALJ further found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments. (Tr. 48). Such language demonstrates the ALJ considered the combined effect of Plaintiff's impairments. Hajek v. Shalala, 30 F.3d 89, 92 (8th Cir. 1994).

**C. The ALJ's RFC Determination:**

RFC is the most a person can do despite that person's limitations. 20 C.F.R. § 404.1545(a)(1). It is assessed using all relevant evidence in the record. Id. This includes medical records, observations of treating physicians and others, and the claimant's own descriptions of her limitations. Guilliams v. Barnhart, 393 F.3d 798, 801 (8th Cir. 2005); Eichelberger v.

Barnhart, 390 F.3d 584, 591 (8th Cir. 2004). Limitations resulting from symptoms such as pain are also factored into the assessment. 20 C.F.R. § 404.1545(a)(3). The United States Court of Appeals for the Eighth Circuit has held that a “claimant’s residual functional capacity is a medical question.” Lauer v. Apfel, 245 F.3d 700, 704 (8th Cir. 2001). Therefore, an ALJ’s determination concerning a claimant’s RFC must be supported by medical evidence that addresses the claimant’s ability to function in the workplace. Lewis v. Barnhart, 353 F.3d 642, 646 (8th Cir. 2003). “[T]he ALJ is [also] required to set forth specifically a claimant’s limitations and to determine how those limitations affect his RFC.” Id.

In the present case, the ALJ considered the medical assessments of examining agency medical consultants, Plaintiff’s subjective complaints, and her medical records when he determined Plaintiff could perform light work with limitations. Plaintiff’s capacity to perform light work with limitations is supported by the fact that the medical evidence does not indicate that Plaintiff’s examining physicians placed restrictions on her activities that would preclude performing the RFC determined during the relevant time period. Forte v. Barnhart, 377 F.3d 892, 896 (8th Cir. 2004) (“lack of medical restrictions inconsistent with claimant’s complaints of disabling pain”) (citations omitted).

The Court notes that after the ALJ issued his decision, Plaintiff submitted additional medical evidence to the Appeals Council regarding her impairments. The Court considered this evidence, but still finds substantial evidence on the record as a whole supporting the ALJ’s decision for the relevant time period. Accordingly, the Court finds there is substantial evidence of record to support the ALJ’s RFC findings.

**E. Hypothetical Question to the Vocational Expert:**

After thoroughly reviewing the hearing transcript along with the entire evidence of record, the Court finds that the hypothetical the ALJ posed to the vocational expert fully set forth the impairments which the ALJ accepted as true and which were supported by the record as a whole. Goff v. Barnhart, 421 F.3d 785, 794 (8<sup>th</sup> Cir. 2005). Accordingly, the Court finds that the vocational expert's opinion constitutes substantial evidence supporting the ALJ's conclusion that Plaintiff's impairments did not preclude her from performing work as a machine tender, a production worker/assembler, and motel maid during the relevant time period. Pickney v. Chater, 96 F.3d 294, 296 (8th Cir. 1996)(testimony from vocational expert based on properly phrased hypothetical question constitutes substantial evidence).

**IV. Conclusion:**

Accordingly, having carefully reviewed the record, the undersigned finds substantial evidence supporting the ALJ's decision denying the Plaintiff benefits, and thus the decision should be affirmed. The undersigned further finds that the Plaintiff's Complaint should be dismissed with prejudice.

DATED this 3rd day of July, 2013.

/s/ Erin L. Setser

HON. ERIN L. SETSER  
UNITED STATES MAGISTRATE JUDGE