

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

AMANDA KAY WHITE

PLAINTIFF

v.

CIVIL NO. 14-5229

CAROLYN W. COLVIN, Commissioner  
Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

Plaintiff, Amanda K. White, 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 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 December 1, 2009, alleging an inability to work since February 1, 2007, due to a borderline personality disorder, a generalized anxiety disorder, and depression. (Tr. 232, 237, 286). For DIB purposes, Plaintiff maintained insured status through December 31, 2011. (Tr. 89, 242). An administrative hearing was held on March 29, 2011, at which Plaintiff appeared with counsel and testified. (Tr. 34-56).

In a written decision dated April 21, 2011, the ALJ found that Plaintiff retained the residual functional capacity (RFC) to perform unskilled work at all exertional levels. (Tr. 89-97). Plaintiff requested review of the unfavorable decision by the Appeals Council. The Appeals Council vacated the ALJ's April 21, 2011, decision, and remanded Plaintiff's case back to the ALJ on November 30, 2012. (Tr. 101-106). Supplemental administrative hearings were held on April 5, 2013, and May 14, 2013. (Tr. 57-73, 74-80).

By written decision dated June 10, 2013, the ALJ found that during the relevant time period, Plaintiff had an impairment or combination of impairments that were severe. (Tr. 17). Specifically, the ALJ found Plaintiff had the following severe impairments: a mood disorder, and a personality disorder. (Tr. 17). 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. 18). The ALJ found Plaintiff maintained the RFC to:

perform a full range of work at all exertional levels but with the following nonexertional limitations: the claimant can understand, remember and carry out simple, routine and repetitive tasks. She can respond to the usual work situations, routine work changes and supervision that is simple, direct and concrete. She can occasionally interact with supervisors, co-workers and the public.

(Tr. 20). With the help of a vocational expert, the ALJ determined Plaintiff could perform a representative of occupations that included a warehouse worker, a hand packager, and a power screwdriver operator. (Tr. 27-28, 355-361).

Plaintiff then requested a review of the hearing decision by the Appeals Council, which denied that request on May 30, 2014. (Tr. 1-5). Subsequently, Plaintiff filed this action. (Doc. 1). This case is before the undersigned pursuant to the consent of the parties. (Doc. 6). Both parties have filed appeal briefs, and the case is now ready for decision. (Docs. 9, 10, 11).

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:**

Of particular concern to the undersigned is 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). A disability claimant has the burden of establishing his or her RFC. See Masterson v. Barnhart, 363 F.3d 731, 737 (8th Cir. 2004). "The ALJ determines a claimant's RFC based on all relevant evidence in the record, including medical records, observations of treating physicians and others, and the claimant's own descriptions of his or her limitations." Eichelberger v. Barnhart, 390 F.3d 584, 591 (8th Cir. 2004); Guilliams v. Barnhart, 393 F.3d 798, 801 (8th Cir. 2005). 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).

In the present case, the ALJ determined Plaintiff maintained the RFC to perform work at all exertional levels. The ALJ further found Plaintiff had certain nonexertional limitations. After reviewing the record, the Court is troubled by the ALJ’s failure to address Plaintiff’s alleged obesity.

Social Security Ruling (“SSR”) 02–1p provides that the Social Security Administration considers “obesity to be a medically determinable impairment and reminds adjudicators to consider the effects when evaluating disability. The provisions also remind adjudicators that the combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately.” SSR 02–1p. The ruling also instructs “adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual’s residual functional capacity.” Id.

A review of the record reveals that despite being instructed to address Plaintiff’s obesity by the Appeal Council, the ALJ failed to discuss Plaintiff’s obesity in the June 10, 2013, administrative decision. The Court recognizes that the failure to address obesity may not be reversible error in each case. However, the facts in this case require the ALJ to address Plaintiff’s obesity. A review of the medical evidence reveals that Plaintiff is five feet six inches tall, and that her weight varied between 243 pounds and 274 pounds during the relevant time period. While Plaintiff did not allege obesity as an impairment when she applied for disability, Plaintiff testified at the April 5, 2013, administrative hearing, that she had a difficult time

standing due to her weight. (Tr. 69). After reviewing the record, the Court believes remand is necessary for the ALJ to more fully and fairly develop the record regarding Plaintiff's obesity.

On remand, the ALJ is directed to address interrogatories to a medical professional requesting that said physician review Plaintiff's medical records; complete a RFC assessment regarding Plaintiff's capabilities during the time period in question; and give the objective basis for the opinion so that an informed decision can be made regarding Plaintiff's ability to perform basic work activities on a sustained basis. The ALJ may also order a consultative examination, in which, the consultative examiner should be asked to review the medical evidence of record, perform examinations and appropriate testing needed to properly diagnosis Plaintiff's condition(s), and complete a medical assessment of Plaintiff's abilities to perform work related activities. See 20 C.F.R. § 416.917.

With this evidence, the ALJ should then re-evaluate Plaintiff's RFC and specifically list in a hypothetical to a vocational expert any limitations that are indicated in the RFC assessments and supported by the evidence.

**IV. Conclusion:**

Accordingly, the Court concludes that the ALJ's decision is not supported by substantial evidence, and therefore, the denial of benefits to the Plaintiff should be reversed and this matter should be remanded to the Commissioner for further consideration pursuant to sentence four of 42 U.S.C. § 405(g).

DATED this 1st day of December, 2015.

*/s/ Erin L. Setser*

HON. ERIN L. SETSER  
UNITED STATES MAGISTRATE JUDGE