

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

SHEILA HUGHES

PLAINTIFF

vs.

Civil No. 6:15-cv-06103

CAROLYN W. COLVIN

DEFENDANT

Commissioner, Social Security Administration

MEMORANDUM OPINION

Sheila Hughes (“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 application for Disability Insurance Benefits (“DIB”) and a period of disability under Title II 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. 5.¹ 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 on November 30, 2012. (Tr. 11, 125-131). Plaintiff alleged she was disabled due to diabetes and headaches. (Tr. 164). Plaintiff alleged an onset date of April 15, 2012. (Tr. 11, 164). This application was denied initially and again upon reconsideration. (Tr. 11). Thereafter, Plaintiff requested an administrative hearing on her

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.”

application and this hearing request was granted. (Tr. 78).

Plaintiff's administrative hearing was held on May 21, 2014. (Tr. 23-49). Plaintiff was present and was represented by counsel, Sherry Burnett, at this hearing. *Id.* Plaintiff and Vocational Expert ("VE") William Elmore, testified at this hearing. *Id.* On the date of this hearing, Plaintiff was fifty-two (52) years old and had a high school education. (Tr. 28-29).

On August 13, 2014, the ALJ entered an unfavorable decision denying Plaintiff's application for DIB. (Tr. 11-18). In this decision, the ALJ determined Plaintiff met the insured status requirements of the Act through December 31, 2016. (Tr. 13, Finding 1). The ALJ also determined Plaintiff had not engaged in Substantial Gainful Activity ("SGA") since April 15, 2012. (Tr. 13, Finding 2).

The ALJ determined Plaintiff had the severe impairments of type II diabetes and migraine headaches. (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 her RFC. (Tr. 14-17). First, the ALJ indicated he evaluated Plaintiff's subjective complaints and found her claimed limitations were not entirely credible. *Id.* Second, the ALJ determined Plaintiff retained the RFC for the full range of medium work. (Tr. 14, Finding 5).

The ALJ then evaluated Plaintiff's Past Relevant Work ("PRW"). (Tr. 17, Finding 6). The ALJ found Plaintiff capable of performing his PRW as a drilling-machine operator and as a solderer. *Id.* Based upon this finding, the ALJ determined Plaintiff had not been under a disability as defined by the Act from April 15, 2012, through the date of the decision. (Tr. 18, Finding 7).

Thereafter, Plaintiff requested the Appeals Council review the ALJ's unfavorable decision. (Tr. 7). *See* 20 C.F.R. § 404.968. The Appeals Council declined to review this unfavorable decision. (Tr. 1-6). On September 23, 2015, Plaintiff filed the present appeal. ECF No. 1. The Parties consented to the jurisdiction of this Court on September 23, 2015. ECF No. 5. Both Parties have filed appeal briefs. ECF Nos. 12, 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 her appeal brief, Plaintiff claims the ALJ’s disability determination is not supported by substantial evidence in the record. ECF No. 12, Pg. 4-13. Specifically, Plaintiff claims the ALJ erred in failing to fully develop the record based on the ALJ’s failure to obtain records. *Id.* In response, the Defendant argues the ALJ did not err in any of his findings. ECF No. 14.

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)).

To begin with, the administrative hearing is not an adversarial proceeding. *Battles v. Shalala*, 36 F.3d 43, 44 (8th Cir. 1994). In this matter, it appears the medical record is incomplete. Some requests were not sent to the correct provider or involve providers who relocated to new employers and possibly missed records. Plaintiff also showed that some of the requests for medical records missed records due to the requested date being limited.

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 **19th day of July 2016.**

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