

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

FLORENCE MCCLUN

PLAINTIFF

v.

CIVIL NO. 16-6090

NANCY A. BERRYHILL,<sup>1</sup> Commissioner  
Social Security Administration

DEFENDANT

**MEMORANDUM OPINION**

Plaintiff, Florence McClun, 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) under the provisions of Title II 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 application for DIB on September 23, 2013, alleging an inability to work since August 6, 2016,<sup>2</sup> due to bipolar disorder, mixed and depression. (Tr. 9, 64, 198). An administrative video hearing was held on March 18, 2015, at which Plaintiff appeared with counsel and testified. (Tr. 24-62).

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<sup>1</sup> Nancy A. Berryhill, 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.

<sup>2</sup> The ALJ indicated that Plaintiff's onset dated is July 26, 2013. (Tr. 9, 34).

By written decision dated July 28, 2015, the ALJ found that during the relevant time period, Plaintiff had an impairment or combination of impairments that were severe. (Tr. 11). Specifically, the ALJ found Plaintiff had the following severe impairments: polysubstance abuse, an anxiety disorder, and a mood disorder. 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. 12). The ALJ found Plaintiff retained the residual functional capacity (RFC) to:

perform a full range of physical activity at all exertional levels but with the following nonexertional limitations: the claimant retains the mental ability to understand, remember, and carryout simple jobs; instructions; make judgments in simple work-related situations; respond appropriately to co-workers and supervisors; respond appropriately to minor changes in usual work routines; and, have no direct or indirect contact (sic) with the general public during work.

(Tr. 13-14). With the help of a vocational expert, the ALJ determined Plaintiff could perform work as a dishwasher and a poultry line worker. (Tr. 18).

Plaintiff then requested a review of the hearing decision by the Appeals Council, which denied that request on August 22, 2016. (Tr. 1-7). 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. 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). 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). 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. 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), abrogated on other grounds by Higgins v. Apfel, 222 F.3d 504, 505 (8th Cir. 2000); 20 C.F.R. § 404.1520.

### **III. Discussion:**

Plaintiff argues the following issues on appeal: 1) the ALJ erred in finding Plaintiff does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.

#### **A. Listing of Impairments:**

Plaintiff argues that the ALJ erred by failing to determine that Plaintiff's impairments met or equaled Listings 1.02B, 12.04, 12.06, and 12.08 of the Listing of Impairments pursuant to 20 CFR Part 404, Subpart P, Appendix 1.

The burden of proof is on the Plaintiff to establish that her impairments meet or equal a listing. See Sullivan v. Zebley, 493 U.S. 521, 530-31, 110 S.Ct. 885, 107 L.Ed.2d 967 (1990). To meet a listing, an impairment must meet all of the listing's specified criteria. Id. at 530, 110 S.Ct. 885 (“An impairment that manifests only some of these criteria, no matter how severely, does not qualify.”); Johnson v. Barnhart, 390 F.3d 1067, 1070 (8th Cir. 2004). “Medical equivalence must be based on medical findings.” 20 C.F.R. § 416.926(b) (2003); Sullivan, 493 U.S. at 531 (“a claimant ... must present medical findings equal in severity to *all* the criteria for the one most similar listed impairment”). In this case, the ALJ explicitly found Plaintiff's

impairments considered singly and in combination, did not meet or medically equal the criteria described in any of the impairments contained in the Listing of Impairments.

The Court notes that the ALJ did not explicitly address Listing 1.02B in the administrative decision. However, with the exception of Plaintiff's testimony that she occasionally had to use crutches due to swollen lower extremities, there is no medical evidence revealing that Plaintiff experienced any musculoskeletal limitations. The most recent medical record dated January 28, 2015, indicated that Plaintiff denied arthralgias and exhibited a normal gait. (Tr. 518-519). After reviewing the entire evidence of record, the Court finds there is sufficient evidence to support the ALJ's determination that Plaintiff's impairments did not medically equal a Listing.

**B. Subjective Complaints and Symptom Evaluation:**

We now address the ALJ's assessment of Plaintiff's subjective complaints. 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 (8th 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 United States Court of Appeals for the Eighth Circuit observed, "Our touchstone is that [a claimant's] credibility is primarily a matter for the ALJ to decide." Edwards v. Barnhart, 314 F.3d 964, 966 (8th Cir. 2003).

After reviewing the administrative record, it is clear that the ALJ properly considered and evaluated Plaintiff's subjective complaints, including the Polaski factors. A review of the record revealed that Plaintiff could take care of her personal needs, to prepare simple meals, to do light household chores, to drive and to use a computer for social networking. Plaintiff also spent time with her boyfriend daily and with her son every other weekend. The record revealed that in October of 2013, she was able to travel to Nevada with her boyfriend.

With respect to Plaintiff's physical impairments, a review of the record revealed Plaintiff sought very little treatment prior to her diagnosis of breast cancer in early 2014. Subsequent to her cancer diagnosis, Plaintiff underwent a lumpectomy, as well as, rounds of chemotherapy and radiation. Plaintiff reported mild fatigue during treatment but throughout treatment, her physical examinations were within normal limits. As for Plaintiff's mental impairments, the record revealed that Plaintiff responded well to medication. Plaintiff also experienced a decrease in her symptoms when she refrained from the use of illegal drugs. The ALJ discussed Plaintiff's substance abuse and found it was not a contributing factor to her disability. However, the ALJ also pointed out that despite the recommendation to stop the substance abuse by her medical providers, Plaintiff continued to use marijuana and meth during the relevant time period. After reviewing the record as a whole, the Court finds substantial evidence supports the ALJ's determination that Plaintiff had mild restrictions of activities of daily living; moderate difficulties in social functioning; moderate difficulties with concentration, persistence and pace; and no episodes of decompensation for an extended duration. While Plaintiff argues that she has concentration issues, a review of the medical record revealed Plaintiff had normal memory, attention and concentration on November 5, 2013, January 6, 2014, April 12, 2014, and July 2, 2014. (Tr. 305, 312, 483, 490).

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.

**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 h[er] RFC." Id.

In finding Plaintiff able to perform work at all exertional levels with some limitations, the ALJ considered Plaintiff's subjective complaints, the medical records, and the evaluations of the non-examining medical examiners. The Court notes that in determining Plaintiff's RFC, the ALJ discussed the medical opinions of examining and non-examining medical professionals, and set forth the reasons for the weight given to the opinions. Renstrom v. Astrue, 680 F.3d 1057, 1065 (8th Cir. 2012) ("It is the ALJ's function to resolve conflicts

among the opinions of various treating and examining physicians”)(citations omitted); Prosch v. Apfel, 201 F.3d 1010 at 1012 (the ALJ may reject the conclusions of any medical expert, whether hired by the claimant or the government, if they are inconsistent with the record as a whole). The ALJ also considered Plaintiff’s obesity when determining her RFC. Heino v. Astrue, 578 F.3d 873, 881-882 (8th Cir. 2009) (when an ALJ references the claimant's obesity during the claim evaluation process, such review may be sufficient to avoid reversal). After reviewing the entire transcript, the Court finds substantial evidence supporting the ALJ’s RFC determination for the time period in question.

**D. 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 (8th 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 dishwasher and a poultry line worker. 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 12th day of September 2017.

/s/ Erin L. Wiedemann

HON. ERIN L. WIEDEMANN  
UNITED STATES MAGISTRATE JUDGE