IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 16-cv-00768-RBJ

CAROLINE MARGARET ROY,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

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ORDER

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This matter is before the Court on review of the Social Security Administration ("SSA") Commissioner's decision denying claimant Caroline Margaret Roy's applications for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act and for Supplemental Security Income ("SSI") under Title XVI. Jurisdiction is proper under 42 U.S.C. § 405(g). For the reasons below, the Court REVERSES and REMANDS the Commissioner's decision.

## I. STANDARD OF REVIEW

This appeal is based upon the administrative record and the parties' briefs. In reviewing a final decision by the Commissioner, the District Court examines the record and determines whether it contains substantial evidence to support the Commissioner's decision and whether the Commissioner applied the correct legal standards. *Winfrey v. Chater*, 92 F.3d 1017, 1019 (10th Cir. 1996). A decision is not based on substantial evidence if it is "overwhelmed by other evidence in the record." *Bernal v. Bowen*, 851 F.2d 297, 299 (10th Cir. 1988). Substantial evidence requires "more than a scintilla, but less than a preponderance." *Wall v. Astrue*, 561

F.3d 1048, 1052 (10th Cir. 2009). Evidence is not substantial if it "constitutes mere conclusion." *Musgrave v. Sullivan*, 966 F.2d 1371, 1374 (10th Cir. 1992). In addition, reversal may be appropriate if the Commissioner applies an incorrect legal standard or fails to demonstrate that the correct legal standards have been followed. *Winfrey*, 92 F.3d at 1019.

## II. BACKGROUND

Ms. Roy was born on January 26, 1992. R. 121. She has a college education and speaks English. *Id.*; R. 493. In the past, Ms. Roy worked as a website designer. R. 121. However, since her alleged disability onset date of July 2, 2014, Ms. Roy has not held substantial gainful employment. *See id*.

Mr. Roy suffers from numerous medical conditions, including Postural Orthostatic Tachycardia Syndrome ("POTS"), Ehlers-Danlos Syndrome ("EDS"), chronic pain, fibromyalgia, depression, intracranial hypotension, nonsevere sleep apnea, and restless leg syndrome. *See, e.g.*, R. 109, 428–32, 479, 620–23, 717–18, 919. She has an extensive history of medical treatment for her chronic pain and psychological impairments. Her symptoms from some of these conditions allegedly worsened following a car accident in March of 2014. R. 730.

### A. Procedural History

On November 4, 2014, Ms. Roy filed applications for DIB and SSI, alleging disability beginning on July 2, 2014. *See* R. 249. Her claims were initially denied on April 7, 2015. R. 158–59. Ms. Roy subsequently requested a hearing, which was held before Administrative Law Judge ("ALJ") Kathryn D. Burgchardt on September 15, 2015. R. 128–57. The ALJ denied Ms. Roy's application on October 27, 2015. R. 107–23.

Ms. Roy then filed a request for review with the Appeals Council, see R. 25–26, providing that body with additional evidence in the form of: (1) medical evidence from Ellen

Roy Elias, MD, see R. 9–10, 27–56; (2) medical evidence from Stuart M. Kassan, MD, see R. 57–73; (3) medical evidence from Anthony Casey, MD, see R. 11–24; and (4) medical evidence from the University of Colorado Hospital, see R. 74–103. Finding that this evidence concerned a time period after the ALJ's date of decision and would not therefore "provide a basis for changing the [ALJ's] decision[,]" the Appeals Council rejected Ms. Roy appeal on March 24, 2016. R. 1–7. Ms. Roy then filed her case in this Court on April 4, 2016. ECF No. 1.

**B. The ALJ's Decision**

The ALJ issued an unfavorable decision after evaluating the evidence according to the SSA's standard five-step process. R. 107–23. First, the ALJ found that Ms. Roy had not engaged in substantial gainful activity since her alleged onset date of July 2, 2014. R. 109. At step two, the ALJ found that Ms. Roy had the severe impairments of fibromyalgia, depression, and intracranial hypotension. *Id*. At step three, the ALJ concluded that Ms. Roy did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. R. 110.

The ALJ then found that Ms. Roy retained the residual functional capacity ("RFC") to perform "sedentary work" as defined in 20 C.F.R. § 404.1567(b) and § 416.967(b) with the following limitations:

> [T]he claimant ha[s] no restrictions on sitting, but the individual [c]ould stand and/or walk for up to three hours with normal breaks during an eight hour workday. The claimant could perform pushing and pulling within the sedentary weight restrictions. She should avoid unprotected heights and moving machinery. The claimant could occasionally climb ramps and stairs, balance, stoop, crouch kneel, and crawl but could not climb ladders, ropes, or scaffolds. She must also avoid extreme cold.

R. 114.

At step four, the ALJ concluded that Ms. Roy was not capable of performing any of her past relevant work. R. 119. Nevertheless, at step five, the ALJ determined that there were other

jobs in the national economy that Ms. Roy could perform, such as document preparer, polisher, and surveillance system monitor. R. 122. Accordingly, the ALJ found that Ms. Roy was not disabled. R. 123.

## III. ANALYSIS

Ms. Roy has two overarching arguments in this appeal. First, she argues that by failing to consider several of plaintiff's diagnosed medical conditions, including EDS, POTS, and chronic pain, the ALJ committed several errors at steps two, three, and five. ECF No. 16 at 8–25. Second, Ms. Roy argues that the additional medical evidence she supplied to the Appeals Council casts doubt on whether substantial evidence supports the ALJ's findings. *See id.* Finding that the ALJ improperly assessed the medical opinions in the record and that the record, which now includes the additional evidence plaintiff provided to the Appeals Council, does not provide substantial evidence to support the ALJ's conclusions, I agree with plaintiff that a remand is warranted.[1]

### A. The ALJ did not Properly Assess the Medical Opinions in the Record.

First, I find that a remand is warranted because the ALJ did not adequately evaluate the medical opinions in the record. As the Tenth Circuit has explained, in reviewing medical opinions in the record and assigning those opinions "weight" under the factors and framework set out in 20 C.F.R. § 404.1527(c), an ALJ "must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the . . . opinion and the reasons for that weight." *See Watkins v. Barnhart*, 350 F.3d 1297, 1300 (10th Cir. 2003) (finding that "the ALJ offered no explanation for the weight, if any, he gave to . . . [the plaintiff's] treating physician"

[1] Plaintiff also asks this Court to hold oral arguments or, alternatively, that this Court directly award her benefits. *See* ECF No. 16 at 25. Finding that oral arguments would not aid the Court and that this case does not present one where a direct award of benefits is warranted, see, e.g., *Morgan v. Colvin*, 68 F. Supp. 3d 1351, 1358–59 (D. Colo. 2014), the Court instead reverses and remands the ALJ's decision.

and that a remand was therefore warranted); *see also Oldham v. Astrue*, 509 F.3d 1254, 1258 (10th Cir. 2007) (finding no error with an ALJ's assessment of medical opinions where "[t]he ALJ provided good reasons in his decisions for the weight he gave"); 20 C.F.R. §404.1527(c) (listing factors the ALJ must consult to determine what weight to assign).

Here, the ALJ failed to follow those instructions. For starters, the ALJ only ever briefly mentions what weight she assigned to the medical opinions in the record, stating only once towards the beginning of her decision that she assigned the "multiple opinions regarding the claimant's physical limitations" in the record "great weight."[2] R. 110 (citing Exhibits 1A, 2F, 3F, 4F, 5F, 6F, 10F, 11F). If that cursory treatment of *all* of the medical opinions in the record does not already raise a red flag, what the ALJ did next definitely should—in making that blanket statement, the ALJ cites to portions of the record that *do not even contain medical opinions*. *See, e.g.*, R. 158 ("Exhibit 1A," which consists of a "disability determination and transmittal" record); R. 365–68 "Exhibit 2F," which consists of a letter explaining that simple explains that "no medical records were found").

To her credit, the ALJ goes on to briefly discuss select portions of plaintiff's various medical records. *See* R. 114–18. However, aside from highlighting certain findings by physicians that generally support her ultimate conclusions, the ALJ does not engage in any specific or substantive discussion of what the physician opinions in the record were or why she believed those findings were deserving of "great weight." *See id.* Instead, the bulk of the ALJ's discussion of the medical evidence appears to be an attempt to justify the ALJ's finding that plaintiff's complaints about her symptoms are not entirely credible. *See, e.g.*, R. 115–17 (concluding that "claimant's statements concerning the intensity, persistence and limiting effects

[2] The only "opinion evidence" the ALJ ever references by name in her decision is the State agency's findings. *See* R. 118. That evidence, however, is not one of the "exhibits" the ALJ cites when she writes that she gives the "multiple" opinions in the record "great weight." *See* R. 110, 118.

of . . . [her] symptoms are not entirely credible" before addressing findings by numerous doctors that the ALJ believes undermine plaintiff's self-described physical symptoms). By choosing that focus, the ALJ almost completely ignored her responsibility to highlight, discuss, and evaluate the medical opinions in the record. *See Watkins*, 350 F.3d at 1300.

At bottom, the ALJ did not provide this reviewing Court with a decision that clearly and specifically explained the opinions in the record, what weight the ALJ gave to them, and what "good reasons" the ALJ had for doing so. *See id.*; *Oldham*, 509 F.3d at 1258. Instead, the ALJ merely stated in conclusory fashion that she "considered opinion evidence" in the record, that she gave the "numerous" opinions in the record "great weight" in reaching her decision, and that she evaluated the "opinion evidence in accordance with the requirements of" 20 C.F.R. § 404.1527 and other regulations. R. 110, 114. I don't buy it.

**B. Additional Evidence in the Record Also Undermines the ALJ's Findings.**

Aside from finding that the ALJ did not properly assess the opinion evidence in the record, the Court also finds that a remand is warranted because the evidence that plaintiff provided to the Appeals Council casts serious doubt on whether the ALJ's decision is supported by substantial evidence. *See Vallejo v. Berryhill*, 849 F.3d 951, 956 (10th Cir. 2017) (explaining that where, as here, a claimant submits additional evidence to the Appeals Council which the Council considers but finds does not "provide a basis for changing the [ALJ's] decision[,]" that the reviewing district court should assess whether the ALJ's decision is supported by substantial evidence by examining the record *including* that additional evidence).

As mentioned above, in this case plaintiff submitted numerous additional medical records, including physician opinions, after the ALJ rendered her decision. *See* R. 9–14, 27–103. Although defendant asserts that many of these records are duplicative of evidence already in the

record, that they concern a time period after the ALJ's date of decision, and that, to the extent they are "new," they do not undermine the ALJ's ultimate conclusions, I find instead that much of this evidence calls the ALJ's findings into question.

Take two examples. As part of the additional evidence she provided, plaintiff submitted a medical opinion by Dr. Lisa Schofield, which states, among other things, that plaintiff has "[s]everely disabling [POTS]" and that she was diagnosed with EDS as well. *See* R. 1022. As Ms. Roy points out, the ALJ failed to discuss plaintiff's POTS or EDS at all in her decision, much less the "disabling" effects of these conditions. That the ALJ evidently failed to consider these conditions, which plaintiff has apparently suffered from for years and which one of her physicians considers "disabling," greatly undermines her findings. Perhaps the ALJ did not understand the extent of these conditions or merely overlooked them. Either way, the record now includes a clearer explanation of them and their severity. Given that evidence, the ALJ's decision cannot stand.

Furthermore, plaintiff submitted an opinion by Dr. Lisa Corbin, another one of plaintiff's treating physicians, which states that, given her conditions, plaintiff has quite severe sitting and standing limitations. *See* R. 932–36. Dr. Corbin opines that plaintiff can "rarely" lift and carry less than ten pounds at work, can "never" stoop, and that she can only "rarely" crouch or climb stairs. *Id*. Like the evidence from Dr. Schofield, this "new" opinion by Dr. Corbin similarly undermines the basis for the ALJ's decision as it casts doubt on how the ALJ interpreted the medical evidence in the record. *See* R. 114 (finding, among other things, that plaintiff had no sitting restrictions at all, could "stand and/or walk for up to three hours with normal breaks[,]" and that she could "occasionally climb . . . stairs . . . [and] stoop . . . .").

Importantly, I find that this evidence undercuts the ALJ's findings because, unlike the Appeals Council in this case, I find that much of the additional evidence plaintiff submitted concerns a time period before the ALJ's date of decision (i.e., October 27, 2015).[3] *See* R. 2. Again, take the two examples I describe above. Dr. Corbin's opinion states that not only are plaintiff's limitations and restrictions "current" as of the date of that letter (December 21, 2015), but that they are also "ongoing." R. 936. Because plaintiff appears to have been seen by Dr. Corbin at least as early as September 2014, R. 821, what Dr. Corbin has to say about plaintiff's "ongoing" condition in December of 2015 certainly could affect the relevant time period, which only ended two months earlier. *See id.* Similarly, Dr. Schofield's records appear to have been filed at least as early as September 4, 2015, which is over a week before plaintiff's hearing date and roughly two months before the end of the relevant time period. *See* R. 1022. Thus, I find that this additional evidence is relevant, undermines the ALJ's findings, and must be considered by the ALJ when she reassesses the plaintiff's condition on remand.

**ORDER**

For the reasons described above, the Court REVERSES and REMANDS the Commissioner's decision denying Ms. Roy's application for Disability Insurance Benefits and Supplemental Security Income. Frankly, from its review of the record, it seems to this Court that this young woman is disabled. Rather than reverse at this time with a direction to grant the benefits, however, the Court elects to give the ALJ an opportunity to review the record again, as supplemented with materials presented to the Appeals Council but not available to the ALJ the first time around, and to issue another determination based on that review.

DATED this 4th day of April, 2017.

[3] The ALJ cannot be faulted for failing to evaluate evidence she did not have. However, that is largely beside the point where, as here, the ALJ's decision no longer stands up in the face of an expanded record.

BY THE COURT:

R. Brooke Jackson
United States District Judge