

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

BOBBI ANTONIEYA JONES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 4:16-CV-237-MSH
	:	Social Security Appeal
NANCY A BERRYHILL,	:	
Commissioner of Social Security,	:	
	:	
Defendant.	:	

ORDER

The Social Security Commissioner, by adoption of the Administrative Law Judge’s (ALJ’s) determination, denied Plaintiff’s application for child’s disability insurance benefits and Supplemental Security Income (SSI), finding that she was not disabled within the meaning of the Social Security Act and Regulations. Plaintiff contends that the Commissioner’s decision was in error and seeks review under the relevant provisions of 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c). All administrative remedies have been exhausted. Both parties filed their written consents for all proceedings to be conducted by the United States Magistrate Judge, including the entry of a final judgment directly appealable to the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. § 636(c)(3).

LEGAL STANDARDS

The court’s review of the Commissioner’s decision is limited to a determination of whether it is supported by substantial evidence and whether the correct legal standards

were applied. *Walker v. Bowen*, 826 F.2d 996, 1000 (11th Cir. 1987) (per curiam). “Substantial evidence is something more than a mere scintilla, but less than a preponderance. If the Commissioner's decision is supported by substantial evidence, this court must affirm, even if the proof preponderates against it.” *Dyer v. Barnhart*, 395 F.3d 1206, 1210 (11th Cir. 2005) (internal quotation marks omitted). The court’s role in reviewing claims brought under the Social Security Act is a narrow one. The court may neither decide facts, re-weigh evidence, nor substitute its judgment for that of the Commissioner.¹ *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). It must, however, decide if the Commissioner applied the proper standards in reaching a decision. *Harrell v. Harris*, 610 F.2d 355, 359 (5th Cir. 1980) (per curiam). The court must scrutinize the entire record to determine the reasonableness of the Commissioner’s factual findings. *Bloodsworth v. Heckler*, 703 F.2d 1233, 1239 (11th Cir. 1983). However, even if the evidence preponderates against the Commissioner’s decision, it must be affirmed if substantial evidence supports it. *Id.*

The Plaintiff bears the initial burden of proving that she is unable to perform her previous work. *Jones v. Bowen*, 810 F.2d 1001 (11th Cir. 1986). The Plaintiff’s burden is a heavy one and is so stringent that it has been described as bordering on the unrealistic. *Oldham v. Schweiker*, 660 F.2d 1078, 1083 (5th Cir. 1981).² A Plaintiff

¹ Credibility determinations are left to the Commissioner and not to the courts. *Carnes v. Sullivan*, 936 F.2d 1215, 1219 (11th Cir. 1991). It is also up to the Commissioner and not to the courts to resolve conflicts in the evidence. *Wheeler v. Heckler*, 784 F.2d 1073, 1075 (11th Cir. 1986) (per curiam); see also *Graham v. Bowen*, 790 F.2d 1572, 1575 (11th Cir. 1986).

² In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decision of the former Fifth Circuit rendered prior to October 1, 1981.

seeking Social Security disability benefits must demonstrate that she suffers from an impairment that prevents her from engaging in any substantial gainful activity for a twelve-month period. 42 U.S.C. § 423(d)(1). In addition to meeting the requirements of these statutes, in order to be eligible for disability payments, a Plaintiff must meet the requirements of the Commissioner's regulations promulgated pursuant to the authority given in the Social Security Act. 20 C.F.R. § 404.1 *et seq.*

Under the Regulations, the Commissioner uses a five-step procedure to determine if a Plaintiff is disabled. *Phillips v. Barnhart*, 357 F.3d 1232, 1237 (11th Cir. 2004); 20 C.F.R. § 404.1520(a)(4). First, the Commissioner determines whether the Plaintiff is working. *Id.* If not, the Commissioner determines whether the Plaintiff has an impairment which prevents the performance of basic work activities. *Id.* Second, the Commissioner determines the severity of the Plaintiff's impairment or combination of impairments. *Id.* Third, the Commissioner determines whether the Plaintiff's severe impairment(s) meets or equals an impairment listed in Appendix 1 of Part 404 of the Regulations (the "Listing"). *Id.* Fourth, the Commissioner determines whether the Plaintiff's residual functional capacity can meet the physical and mental demands of past work. *Id.* Fifth and finally, the Commissioner determines whether the Plaintiff's residual functional capacity, age, education, and past work experience prevent the performance of any other work. In arriving at a decision, the Commissioner must consider the combined effects of all of the alleged impairments, without regard to whether each, if considered separately, would be disabling. *Id.* The Commissioner's failure to apply correct legal standards to the evidence is grounds for reversal. *Id.*

ISSUES

- I. Whether the ALJ assigned appropriate weight to Plaintiff's treating physician.
- II. Whether the ALJ properly determined that Counselor Hale is not an acceptable medical source.

Administrative Proceedings

Plaintiff Bobbi Antonieya Jones filed applications for child's disability insurance benefits and supplemental security income on July 10, 2012, alleging disability beginning on the same date. Her applications were denied initially on November 2, 2012 and on reconsideration on March 5, 2013. She filed a written request for an evidentiary hearing before an administrative law judge (ALJ) on March 13, 2013 and the hearing was held on August 11, 2014. Plaintiff appeared at the hearing with her attorney and gave testimony, as did an impartial vocational expert (VE). Tr. 17. The ALJ issued an unfavorable decision denying her claims on November 7, 2014. Tr. 14-32. Plaintiff sought review by the Appeals Council on December 22, 2014, but was denied on May 7, 2016. Tr. 7-13; 1-6. Having exhausted the administrative remedies available to her under the Social Security Act she now seeks judicial review of the Commissioner's final decision to deny her benefits.

Statement of Facts and Evidence

When the ALJ issued his decision, Plaintiff was twenty years of age. She has a high school education and no past relevant work. Tr. 43, 203, 222, 236. In conducting the five-step sequential analysis set out in the Commissioner's regulations for the evaluation of disability claims, the ALJ found at step two that Plaintiff has severe

impairments of anxiety, attention deficit hyperactivity disorder (ADHD), and autism spectrum disorder/Asperger's type. Finding No. 3, Tr. 19. Next, he established at step three that her impairments considered both alone and in combination with one another neither meet nor medically equal one of the listed impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1. Finding No. 4, Tr. 20-21. Between steps three and four, the ALJ formulated a residual functional capacity assessment (RFC) which permits Plaintiff to engage in a full range of work at all exertional levels with restrictions to simple, routine, repetitive tasks, occasional changes in the work setting and with occasional interaction with the general public and coworkers, but no fast-paced or high production demands. Finding No. 5, Tr. 21-27. At step four the ALJ found Plaintiff to have no past relevant work. Finding No. 6, Tr. 27. At step five he posed hypothetical questions to the VE and found Plaintiff to have the RFC to engage in substantial gainful activity as a dining room attendant, kitchen helper, and driver helper, all of which are jobs available to her in significant numbers in the national economy. Finding No. 10, Tr. 27. He therefore found Plaintiff to be not disabled to work. Finding No. 11, Tr. 28.

DISCUSSION

I. Did the ALJ assign appropriate weight to Plaintiff's treating physician?

In her first assertion of error, Plaintiff contends that “[b]ecause the ALJ did not apply the law properly by stating with specificity his reasons for not assigning weight to the opinion of a treating medical source, his decision is not based on substantial evidence and must be remanded.” Pl.’s Br. 17, ECF No. 13. The evidence in question is from

school psychologist Lee A. Wright, who saw Plaintiff only once—on January 3, 2013—for an evaluation at the request of her school IEP team. Ex. 10F, Tr. 413-21.

Ms. Wright noted that the request was for a complete re-evaluation and recommendations for extended time for post-secondary tests such as the Scholastic Aptitude Test (SAT) or the American College Test (ACT). Tr. 414. She further noted that Plaintiff was characterized as a “good student who experienced significant difficulty interacting with peers.” *Id.* At the time of the evaluation, Plaintiff was a high school senior who was eighteen years old and repeating the twelfth grade. Tr. 413, 414. The objective tests administered by Ms. Wright were the Stanford-Binet Intelligence Scale/5th Edition, Bender Visual Motor Gestalt Test, Woodcock-Johnson Tests of Achievement-III, and Behavior Assessment System for Children-2. The tests, results, and interpretations by Ms. Wright were specifically limited to use in assisting the school in making educational decisions. Tr. 413.

In her evaluation, Ms. Wright reviewed Plaintiff’s medical records and confirmed that she has General Anxiety Disorder, ADHD, and Asperger’s. Tr. 414. All three of these disorders were found by the ALJ to be severe impairments in his step-two analysis of Plaintiff’s claim. Finding No. 3, Tr. 19. Ms. Wright also found her to have good reading comprehension skills and good math calculation skills, but noted her need for additional time to complete assigned tasks. Tr. 420, 421. In formulating Plaintiff’s RFC, the ALJ specifically limited her to jobs with no fast-paced or high production demands. Finding No. 5, Tr. 21. Ms. Wright found Plaintiff to engage in evasive conduct to avoid social contact and not adapt readily to changes in her environment. Tr. 419. The ALJ

further restricted her RFC to work requiring only simple, routine, repetitive tasks; only occasional changes in the work setting; and only occasional interaction with the public and co-workers. Finding No. 5, Tr. 21, 22.

The record supports two conclusions. First, the recommendations made by Ms. Wright were well reasoned and apparently followed by school staff since Plaintiff graduated from high school with a regular diploma. She testified that her grades were “A’s and B’s and sometimes a C” and that she intended to pursue a college education. Tr. 48. Second, the record shows that the ALJ expressly considered Ms. Wright’s report and followed all of her primary findings in formulating Plaintiff’s RFC. He did not expressly assign weight to her findings but a comparison of her report with the RFC shows that he clearly considered and followed it.

Despite Plaintiff’s assertion, a school psychologist is not an acceptable medical source under the Commissioner’s regulations except for purposes of establishing mental retardation, learning disabilities, or borderline intellectual functioning. SSR06-3p. The ALJ did not find that Plaintiff has any of these three disorders as a severe impairment and Plaintiff does not argue that the ALJ erred at step two. The record shows that Plaintiff received a regular high school diploma with good grades, strengths in both reading and mathematics, and was characterized as a good student with plans to attend college. No evidence shows that she has an intellectual disability and she does not assert that she does. Neither does the record evidence show that Ms. Wright saw Plaintiff more than once (on January 3, 2013) and Ms. Wright cannot be considered a “treating” source. Plaintiff’s first contention is without merit.

II. Did the ALJ properly determine that Counselor Hale is not an acceptable medical source?

Plaintiff also argues that the ALJ “failed to properly assess and assign proper weight to the opinions of Counselor Hale.” She contends that the ALJ erred in determining that “Ms. Hale is not an acceptable medical source.” Pl.’s Br. 15, 17. A review of the record evidence shows that Donna Darity Hale is a licensed professional counselor who began seeing Plaintiff in September 2011. Her opinions appear in the record in the form of a taped statement she gave to Plaintiff’s counsel on August 7, 2014. Ex. 12F, Tr. 431-37. In that taped statement she was asked by Plaintiff’s counsel if Plaintiff could “handle some of the things that she would need to be able to do in an unskilled work situation” and whether Plaintiff has “the ability to remember work like procedures.” Ms. Hale responded “I think she possibly could. We ought to try to get her into that type of setting where she could do menial tasks.” Tr. 435. Counsel also asked if “there is a possibility that she could understand and remember and carry out very short and simple instructions.” Ms. Hale responded affirmatively, saying “yes, I think she could to begin with. I just don’t know if that could be a sustained situation for her especially if it included social interactions. That may cause her difficulty.” *Id.*

In his RFC assessment, the ALJ restricted Plaintiff to simple, routine, repetitive tasks and added restrictions to only occasional changes in the workplace and occasional interactions with the public and co-workers. Finding No. 5, Tr. 21. This adequately accounts for Ms. Hale’s beliefs that Plaintiff can work under certain circumstances. As a licensed professional counselor, Ms. Hale is not an “acceptable medical source” under the

Commissioner's regulations. 20 C.F.R. §§ 404.1513(d), 416.913(d), SSR06-3p. Nonetheless, the ALJ expressly considered her statements and explained the weight given to her opinions in a manner that allows Plaintiff and the Court to follow his reasoning. No error is found in the manner in which the ALJ addressed record evidence from Ms. Hale.

CONCLUSION

For the reasons stated above, the determination of the Social Security Commissioner is affirmed.

SO ORDERED, this 20th day of July, 2017.

/s/ Stephen Hyles
UNITED STATES MAGISTRATE JUDGE