

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

ANGELA M. PUGH,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of
Social Security Administration,

Defendant.

Case No. 3:14-cv-01769-JVB-JEM

OPINION AND ORDER

Plaintiff Angela Pugh asks the Court to review the decision of the Commissioner of Social Security Administration denying her disability insurance and Social Security Income benefits. She asks this Court to reverse the agency's decision or, alternatively, to remand the case to the agency for reconsideration. Administrative Law Judge Edward P. Studzinski denied Plaintiff's application for benefits. While the ALJ agrees that Plaintiff's scoliosis, left hip degeneration, and hypothyroidism constitute severe impairments, he found that they do not meet or equal any listing found in the federal regulations. Moreover, the ALJ found that Plaintiff is able to perform a significant number of jobs that exist in the national economy. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied Plaintiff's request to review it.

For the reasons discussed below, the Commissioner's decision is **AFFIRMED**.

A. Overview of the Case

Plaintiff claims she became disabled in August 2010, at the age of 45, because of

depression, anxiety, back and hip injury, scoliosis, and hypothyroidism. Plaintiff's medical treatment dates back to 2001, when she was diagnosed with scoliosis, degenerative disc disease, and foraminal stenosis. Despite these diagnoses, she continued to work until July 2011.

From September 2011 to July 2012, Plaintiff underwent a series of X-rays, MRI, and examinations from several physicians. Although most of the physicians concluded she had scoliosis of her lumbar and thoracic spine, the assessments produced conflicting results as to the extent the impairments limit her ability to perform a full-range of sedentary work. These conflicting results are at the heart of the Plaintiff's case. The Court addresses the other relevant facts in its analysis below.

B. Standard of Review

This Court has the authority to review Social Security Act claim decisions under 42 U.S.C. § 405(g). The Court will uphold an ALJ's decision if it is reached under the correct legal standard and supported by substantial evidence. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005). Substantial evidence consists of "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). This Court will not reconsider facts, re-weigh the evidence, resolve conflicts in the evidence, decide questions of credibility, or substitute its judgment for that of the ALJ. *Boiles v. Barnhart*, 395 F.3d 421, 425 (7th Cir. 2005). This Court will, however, ensure that the ALJ built an "accurate and logical bridge from the evidence to his conclusion so that, as a reviewing court, we may assess the validity of the agency's ultimate findings and afford a claimant meaningful judicial review." *Scott v. Barnhart*, 297 F.3d 589, 595 (7th Cir. 2002).

C. Disability Standard

To qualify for disability benefits, the claimant must establish that she suffers from a disability. A disability is an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). The SSA established a five-step inquiry to evaluate whether a claimant qualifies for disability benefits. A successful claimant must show:

(1) he is not presently employed; (2) his impairment is severe; (3) his impairment is listed or equal to a listing in 20 C.F.R. § 404, Subpart P, Appendix 1; (4) he is not able to perform his past relevant work; and (5) he is unable to perform any other work within the national and local economy.

Scheck v. Barnhart, 357 F.3d 697, 699–700 (7th Cir. 2004).

An affirmative answer leads either to the next step or, on steps three and five, to a finding that the claimant is disabled. *Zurawski v. Halter*, 245 F.3d 881, 886 (7th Cir. 2001). A negative answer at any point other than step three stops the inquiry and leads to a finding that the claimant is not disabled. *Id.* The burden of proof lies with the claimant at every step except the fifth, where it shifts to the Commissioner. *Clifford v. Apfel*, 227 F.3d 863, 868 (7th Cir. 2000).

D. Analysis

On appeal, Plaintiff argues that the ALJ committed three errors. First, Plaintiff contends the ALJ improperly weighed and failed to adequately consider the opinions of the Plaintiff’s treating physician. Second, the ALJ improperly evaluated the report from the Plaintiff’s supervisor. Third, the ALJ’s credibility determination was patently wrong because he rejected Plaintiff’s account of disabling back pain without a reasonable basis.

(1) *The ALJ properly evaluated the treating physician's opinion*

Plaintiff argues the ALJ failed to analyze the treating source's opinion. She contends that the ALJ only briefly touched on Dr. Hoffman's statements regarding her medical condition and wrongly discredited portions of Dr. Hoffman's opinion.

Generally, controlling weight is given to the treating physician's opinion only if it is well-supported by medically acceptable objective evidence and not inconsistent with the other substantial evidence of record. 20 C.F.R. § 404.1527(d)(2). If a treating physician's opinion is not given controlling weight, then the ALJ evaluates the: (1) examining relationship; (2) length of the treatment relationship and frequency of examination; (3) nature and extent of the treatment relationship; (4) supportability of the opinion by relevant evidence; (5) consistency of the opinion with the record as a whole; and, (6) physicians specialization, if applicable. *Id.* at 20 C.F.R. § 404.1527(c)(1)–(6). The ALJ will always give “good reasons” for the weight afforded to a treating source's opinion. *Id.* at § 404.1527(c)(2).

It is true that the ALJ attributed minimal weight to Dr. Hoffman's opinion without immediately explaining why he was not giving his opinion controlling weight. However, there is nothing to suggest that, even if Dr. Hoffman's opinion were given controlling weight, his findings would undermine the ALJ's ultimate conclusion that Plaintiff is not disabled. Dr. Hoffman's report consisted largely of Plaintiff's subjective complaints which are contradicted by objective medical evidence.

Dr. Hoffman's report acknowledged that Plaintiff suffered from arthritis and scoliosis. (R. at 26). He concluded that Plaintiff was limited in her ability to bend and twist, should not lift anything heavier than 30 pounds, and should never squat. (R. at 25--26). However, none of these

recommendations preclude her from performing a full-range of sedentary work, nor do they contradict the ALJ's ultimate conclusion. As a result, the ALJ did not err in weighing Dr. Hoffman's opinion.

Plaintiff also argues the ALJ failed to adequately consider the fact that Dr. Hoffman recommended her for spinal surgery and predicted her limitations might be more stringent and restricted afterwards. However, the ALJ is constrained by the factual evidence in the record, and the objective medical evidence then available. At the time of the ALJ's decision, Plaintiff had not had surgery. As a result, Plaintiff's residual functional capacity determination must be based on Dr. Hoffman's actual assessment, rather than a prediction of what limitations she may suffer if she elected to have surgery in the future. Therefore, the ALJ didn't err in discrediting Dr. Hoffman's guess of how limited she might be after surgery.

(2) The ALJ properly evaluated the report from Plaintiff's supervisor

For purposes of social security disability determinations, a supervisor is not an "acceptable medical source" and cannot offer "medical opinions." 20 C.F.R. § 404.1513(a); S.S.R. 06-3p. Information from "other sources" cannot establish the existence of a medically determinable impairment. S.S.R. 06-3p. However, information from non-medical sources "may be based on special knowledge of the individual, and may provide insight into the severity of the impairment(s) and how it affects the individual's ability to function." *Id.*

In this case, Plaintiff worked as a janitor about 25 hours a week until July 2011 when she found another job (R. at 26). Plaintiff's supervisor, Tracy O'Connor, reported that Plaintiff attended work regularly, completed her assigned tasks, followed instructions, responded to changes in the work setting, and worked in close proximity to others without being distracted.

(R. at 21). However, Ms. O'Connor accommodated Plaintiff's complaints of back pain by giving her breaks and an easier workload. (R. at 24). Although Ms. O'Connor admitted she would not re-hire Plaintiff, she reported that Plaintiff did not cause safety risks, did not require additional supervision, and did not risk being fired because of inadequate job performance. *Id.*

In this case, the ALJ did not fail to consider Ms. O'Connor's opinion solely because she was not a medical source. In fact, the ALJ agreed with Ms. O'Connor's report that Plaintiff could not handle a physically demanding job and found that Plaintiff is unable to perform her past relevant work as a janitor. The ALJ reasoned that Plaintiff performed her past work at a higher exertional level which was precluded by her residual functional capacity. The ALJ credited Ms. O'Connor's opinion regarding Plaintiff's attendance, physical capabilities, and overall job performance in light of the objective medical evidence.

(3) The ALJ's credibility determination is not patently wrong

Plaintiff contends that the ALJ's credibility determination was patently wrong in four aspects: (1) ALJ improperly discounted Plaintiff's account of disabling back pain; (2) ALJ overlooked objective medical evidence; (3) ALJ improperly relied on Plaintiff's limited daily activities to conclude she was not disabled; and (4) ALJ improperly implied she was attempting to obtain pain medication for reasons other than controlling her back pain.

ALJ credibility determinations are entitled to deference because the ALJ is "in a special position to hear, see, and assess witnesses." *Murphy v. Colvin*, 759 F.3d 811, 815 (7th Cir. 2014). Courts only overturn a credibility determination if it lacks any explanation or support. *Id.* at 816. A credibility determination will be upheld as long as it is explained in a way that allows the court to determine that the ALJ logically based it on specific findings and the evidence. *Id.*

Next, Plaintiff claims that the ALJ erred by categorizing her treatment as “routine and conservative in nature.” She believes that the ALJ should have assigned more weight to Dr. Hoffman’s recommendation that she undergo spinal fusion. True, “the adjudicator must not draw any inferences about an individual’s symptoms and their functional effects from a failure to seek or pursue regular medical treatment without first considering any explanations that the individual may provide, or other information in the case record . . . ” SSR 96-7p. Rather, in making credibility determinations, adjudicators must consider the entire case record. *Id.* Here, however, the ALJ did just that.

First, the ALJ did not overlook the fact that Plaintiff had been recommended and approved for spinal fusion surgery. Instead he discussed it in depth when summarizing Dr. Hoffman’s reports. (R. at 25--26). However, Plaintiff’s treatment only consisted of taking pain medication, physical therapy, and steroid injections. (R. at 25). At the time the ALJ issued the decision, epidural steroid injections were the most invasive treatment Plaintiff had received, and this type of treatment is generally categorized as “conservative.” *See Simila v. Astrue*, 573 F.3d 503 (7th Cir. 2009) (finding the claimant’s “various pain medications, several injections, and one physical therapy session—to be ‘relatively conservative’”); *Singh v. Apfel*, 222 F.3d 448, 450 (8th Cir. 2000) (explaining how the claimant had undergone all modes of conservative modalities including chiropractic treatments, exercise programs and injections). The ALJ acknowledged that Plaintiff took pain medication “for a number years without relief,” and tried different methods of treatment to alleviate pain. (R. at 25). The ALJ also considered multiple factors including her history of noncompliance with prescribed treatment, failure to show up for blood draws, and failure to wear a back brace as recommended by her physician. (R. at 25--27). By labeling the treatment as conservative the ALJ was not discrediting the severity of Plaintiff’s

impairments; rather he was simply reciting the facts on the record available at that time.

Next, Plaintiff argues the ALJ overlooked objective medical evidence supporting her allegations of disabling back pain. “An ALJ may not disregard an applicant’s subjective complaints of pain simply because they are not fully supported by objective medical evidence.” *Sienkiewicz v. Barnhart*, 409 F.3d 798, 804 (7th Cir. 2005). However, the ALJ adequately explained the credibility finding.

In his decision, the ALJ summarized physician findings. He discussed how Dr. McCain’s report concluded her “spinal range of motion was relatively normal,” she was able to sit up to 45 minutes, lift up to 10 pounds, and ambulate. (R. at 25). The ALJ’s summary of Dr. Walter’s findings focused mainly on Plaintiff’s subjective complaints of pain, reiterating how the pain is exacerbated by sitting, standing, or climbing stairs. (R. at 25). Finally, the ALJ discussed Dr. Hoffman’s report in greater detail than of the other physicians. Dr. Hoffman reported Plaintiff was limited in her ability to bend and twist her lower back, she could not lift more than 30 pounds, and she could not squat. (R. at 26). After considering Dr. Hoffman’s assessment of Plaintiff’s physical limitations, the ALJ concluded that “due to the severity of her back problems and her prescription of a cane, the evidence supports additional restriction to sedentary exertional work with a sit/stand option.” (R. at 26). As a result, the ALJ acknowledged the severity of Plaintiff’s back problems, and assigned more physical limitations than even suggested by Dr. Hoffman, her treating physician. Likewise, he concluded that “she is more limited than the consultants found her to be.” (R. at 26). This determination is not inconsistent with the objective medical evidence; therefore, it is not patently wrong.

Additionally, Plaintiff contends the ALJ improperly relied on her ability to perform daily activities in determining she is not disabled. Although an individual’s participation in minimal

daily activities should not conclusively establish disability status, “ALJs may properly evaluate the severity of an alleged limitation in light of a claimant's daily activities. *Lott v. Colvin*, 541 Fed. App’x. 702, 706 (7th Cir. 2013).

In this case, the ALJ did not rely solely on Plaintiff’s ability to cook, clean, shop, do laundry, vacuum, mop, drive, or wash dishes to determine the extent of her disability. The ALJ explicitly stated that, although Plaintiff is able to perform a considerable number of daily activities, this evidence is not “conclusive proof that she is able to sustain full-time work.” (R. at 26). Thus, the ALJ acknowledged that this evidence alone could not be outcome determinative, and he considered Plaintiff’s daily activities in addition to her work history, treatment plan, and the objective medical evidence in concluding she could perform a full range of sedentary work.

Finally, Plaintiff argues the ALJ improperly suggested that Plaintiff was Dr. shopping for painkillers (R. at 27). That comment was gratuitous. But while regrettable, it does not constitute an error requiring a remand.

For these reasons the Court AFFIMRS the Commissioner’s findings.

SO ORDERED on September 30, 2015.

S/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE