UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN BRECHEISEN JR.,

Plaintiff,

v.

Hon. Sally J. Berens

COMMISSIONER OF SOCIAL SECURITY,

Case No. 1:23-cv-9

Defendant.
_____/

OPINION

This is an action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), to review a final decision of the Commissioner of Social Security denying Plaintiff's claim for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. The parties have agreed to proceed in this Court for all further proceedings, including an order of final judgment.

Section 405(g) limits the Court to a review of the administrative record and provides that if the Commissioner's decision is supported by substantial evidence and in accordance with the law it shall be conclusive. The Commissioner has found that Plaintiff is not disabled within the meaning of the Act. Plaintiff seeks judicial review of this decision.

For the following reasons, the Court will **affirm** the Commissioner's decision.

Standard of Review

The Court's jurisdiction is confined to a review of the Commissioner's decision and of the record made in the administrative hearing process. *See Willbanks v. Sec'y of Health and Human Servs.*, 847 F.2d 301, 303 (6th Cir. 1988). The scope of judicial review in a social security case is limited to determining whether the Commissioner applied the proper legal standards and whether

there exists in the record substantial evidence supporting the decision. *See Brainard v. Sec'y of Health and Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989). The Court may not conduct a de novo review of the case, resolve evidentiary conflicts, or decide questions of credibility. *See Garner v. Heckler*, 745 F.2d 383, 387 (6th Cir. 1984). Fact finding is the Commissioner's province, and those findings are conclusive provided substantial evidence supports them. *See* 42 U.S.C. § 405(g).

Substantial evidence is more than a scintilla but less than a preponderance. *See Cohen v. Sec'y of Dept. of Health & Human Servs.*, 964 F.2d 524, 528 (6th Cir. 1992). It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Bogle v. Sullivan*, 998 F.2d 342, 347 (6th Cir. 1993). In applying this standard, a court must consider the evidence as a whole, while accounting for any evidence that fairly detracts from its weight. *See Richardson v. Sec'y of Health and Human Servs.*, 735 F.2d 962, 963 (6th Cir. 1984). The substantial evidence standard contemplates a zone within which the decision maker can properly rule either way without judicial interference. *See Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986). This standard affords the administrative decision maker considerable latitude and precludes reversal simply because the evidence would have supported a contrary decision. *See Bogle*, 998 F.2d at 347; *Mullen*, 800 F.2d at 545.

Procedural Posture

Plaintiff filed an application for SSI on January 5, 2018, alleging that he became disabled on October 19, 2017, due to epilepsy, depression, learning problems, memory loss, and trochanteric bursitis. (PageID.166, 271–76.) Plaintiff was 43 years old at the time of his alleged onset date and at the time he filed his application. (PageID.165.) He had completed high school and had attended special education classes. (PageID.294.) Plaintiff had past work as a roofer and

a carpenter. (PageID.294, 836.) After Plaintiff's applications were denied, he requested a hearing before an Administrative Law Judge (ALJ).

ALJ Robert J. Tjapkes conducted a hearing on June 12, 2019, and issued a written decision on July 29, 2019, finding that Plaintiff had not been disabled since the date he filed his application. (PageID.35–45.) After the Appeals Council denied Plaintiff's request for review, he filed a complaint for judicial review in this Court. *Brecheisen v. Comm'r of Soc. Sec.*, 1:20-cv-750 (W.D. Mich.). On January 5, 2022, Judge Neff adopted Magistrate Judge Green's report and recommendation that the matter be remanded for further administrative action pursuant to sentence four of 42 U.S.C. § 405(g). (PageID.913–14.) In particular, the matter was remanded for a new hearing in accordance with the Sixth Circuit's decision in *Earley v. Comm'r of Soc. Sec.*, 893 F.3d 929 (6th Cir. 2018). (PageID.891–903.)

On October 26, 2022, following a remand from the Appeals Council (PageID.919), ALJ Tjapkes held another hearing, at which Plaintiff and Deena Olah, an impartial vocational expert (VE), testified. (PageID.848–889.) On November 3, 2022, the ALJ issued a written decision finding that Plaintiff had not been disabled since the date he filed his application. (PageID.825–38.) Plaintiff opted to bypass the Appeals Council, *see* 20 C.F.R. § 416.1484(d), making ALJ Tjapkes's November 3, 2022 decision the Commissioner's final decision.

Plaintiff initiated this action for judicial review on January 3, 2023.

Analysis of the ALJ's Opinion

The social security regulations articulate a five-step sequential process for evaluating disability. *See* 20 C.F.R. §§ 404.1520(a-f), 416.920(a-f).[1] If the Commissioner can make a

[1] 1. An individual who is working and engaging in substantial gainful activity will not be found to be "disabled" regardless of medical findings (20 C.F.R. §§ 404.1520(b), 416.920(b));

dispositive finding at any point in the review, no further finding is required. *See* 20 C.F.R. §§ 404.1520(a), 416.920(a). The regulations also provide that if a claimant suffers from a nonexertional impairment as well as an exertional impairment, both are considered in determining his residual functional capacity. *See* 20 C.F.R. §§ 404.1545, 416.945.

The burden of establishing the right to benefits rests squarely on Plaintiff's shoulders, and he can satisfy his burden by demonstrating that his impairments are so severe that he is unable to perform his previous work, and cannot, considering his age, education, and work experience, perform any other substantial gainful employment existing in significant numbers in the national economy. *See* 42 U.S.C. § 423(d)(2)(A); *Cohen*, 964 F.2d at 528. While the burden of proof shifts to the Commissioner at step five, Plaintiff bears the burden of proof through step four of the procedure, the point at which his residual functional capacity (RFC) is determined. *See Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987); *Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 528 (6th Cir. 1997).

At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful activity since the date he filed his application. (PageID.827.) At step two, the ALJ found that

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2. An individual who does not have a "severe impairment" will not be found "disabled" (20 C.F.R. §§ 404.1520(c), 416.920(c));

3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and which "meets or equals" a listed impairment in Appendix 1 of Subpart P of Regulations No. 4, a finding of "disabled" will be made without consideration of vocational factors (20 C.F.R. §§ 404.1520(d), 416.920(d));

4. If an individual is capable of performing her past relevant work, a finding of "not disabled" must be made (20 C.F.R. §§ 404.1520(e), 416.920(e));

5. If an individual's impairment is so severe as to preclude the performance of past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if other work can be performed (20 C.F.R. §§ 404.1520(f), 416.920(f)).

Plaintiff suffered from the following severe impairments: (1) seizure disorder; (2) low-grade glioma; (3) tachycardia; (4) mild parkinsonism; (5) depression and anxiety; (6) neurocognitive disorder; (7) history of learning disorder; and (8) borderline intellectual functioning. (*Id.*) The ALJ found Plaintiff's mild lumbar and cervical degenerative disc disease to be non-severe impairments and his migraines to be non-medically determinable. (PageID.828.) At step three, the ALJ considered Listings 4.05, 11.02, 11.18, 12.02, 12.04, 12.06, and 12.11 from the Listing of Impairments detailed in 20 C.F.R., Part 404, Subpart P, Appendix 1, but determined that Plaintiff did not have an impairment or combination of impairments that met or medically equaled any impairment identified in Listings. (PageID.828–30.)

The ALJ determined that Plaintiff retained the capacity to perform light work as defined in 20 C.F.R. § 416.967(b), subject to the following limitations:

> [H]e can never climb ladders, ropes, or scaffolds. There can be no work around hazards such as unprotected heights or unguarded moving machinery. There can be no commercial driving. The claimant can occasionally climb ramps and stairs. He can occasionally balance. He can tolerate exposure to moderate levels of noise as defined in the Selected Characteristics of Occupations. The claimant is able to understand, remember, and carry out simple instructions and tasks. The work duties must be learned through demonstration or oral instruction. He can have occasional interaction with coworkers and supervisors but none with the public. There can be no production rate work, such as on an assembly line. He can tolerate occasional changes in the workplace setting.

(PageID.830.)

At step four, the ALJ determined that Plaintiff was unable to perform any of his past relevant work. (PageID.836.) At step five, based on testimony from the VE, the ALJ found that Plaintiff could perform the occupations of collator operator (DOT 208.685-010), routing clerk (DOT 222.687-022), and cleaner-polisher (DOT 709.687-010), 126,000 of which existed in the national economy that an individual of Plaintiff's age, education, work experience, and RFC could perform. (PageID.836–37.) This represents a significant number of jobs. *See, e.g., Taskila v.*

Comm'r of Soc. Sec., 819 F.3d 902, 905 (6th Cir. 2016) ("[s]ix thousand jobs in the United States fits comfortably within what this court and others have deemed 'significant'").

Discussion

Plaintiff raises four issues in his appeal: (1) the ALJ committed reversible error by not properly conducting a "fresh review" of the evidence; (2) the ALJ committed reversible error by not finding that Plaintiff met Medical listing 11.02; (3) the ALJ committed reversible error by failing to assign proper weight to the treating and consultative medical/psychologic sources in this case; and (4) the ALJ committed reversible error by basing his assessment of Plaintiff upon impermissible boilerplate language.[2] (ECF No. 14 at PageID.11571.)

I. Whether the ALJ Conducted a "Fresh Review" of the Evidence

In *Earley v. Commissioner of Social Security*, 893 F.3d 929 (6th Cir. 2018), the Sixth Circuit clarified its prior decision in *Drummond v. Commissioner of Social Security*, 126 F.3d 837 (6th Cir. 1997). *Earley* establishes that when a claimant seeks disability benefits for a period of time that has not been adjudicated in a prior application, the doctrine of res judicata does not apply. *Earley*, 893 F.3d at 933 ("When an individual seeks disability benefits for a distinct period of time, each application is entitled to review. There is nothing in the relevant statutes to the contrary. And res judicata only 'foreclose[s] successive litigation of the very same claim.'") (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)). Instead, an application covering a new period warrants "fresh review" by an ALJ, but not necessarily "blind review." *Id.* at 934. That is, an ALJ must consider the application anew, but still is permitted to "consider what an earlier judge did if for no other reason than to strive for consistent decision making." *Id.* In Plaintiff's previous appeal,

[2] Elsewhere in his brief, Plaintiff complains about the ALJ's finding that his migraines were not a medically-determinable impairment. (ECF No. 14 at PageID.1573.) Plaintiff did not raise this as an issue in his statement of errors. Regardless, he points to no medical evidence suggesting that the ALJ should have found his migraines to be a medically-determinable impairment.

the matter was remanded because ALJ Tjapkes expressly stated that, absent changed circumstances, he was "bound by" the prior ALJ's RFC determination. (PageID.901.) That is, rather than taking the required "fresh look" at Plaintiff's condition, ALJ Tjapkes considered the RFC from the prior period "a mandatory starting point." (*Id.*)

Plaintiff contends that, once again, the ALJ denied him the "fresh review" that *Earley* mandates. Plaintiff points to several circumstances he claims support this conclusion. First, he points to the five-day period between the hearing on remand and the ALJ's issuance of his "26-page Decision" as being too brief to allow the ALJ to conduct his "fresh review" without relying on his prior decision. (ECF No. 14 at PageID.1572.) In particular, he notes that two days during this period included the weekend, leaving the ALJ only three business days to produce a decision based on a "fresh review."[3] Plaintiff also contends that there is "no discernable difference" between the instant RFC and the prior RFC, except for one cosmetic change omitting a limitation to working indoors with access to a bathroom. (ECF No. 14 at PageID.1572–73.)

Plaintiff's argument lacks merit. The Court begins by correcting Plaintiff's inaccurate statements: (1) by the Court's count, the decision was 13 full pages, not 26 pages (PageID.825–838); and (2) the ALJ issued his decision eight days (October 27–November 3), not five days, after the hearing, giving the ALJ three additional business days to issue his decision. In any event, Plaintiff cites no authority suggesting that the ALJ must mull over the evidence for a certain period of time for the review to be deemed "fresh." In addition, as Magistrate Judge Green noted in his report and recommendation in the prior appeal, "the relevant question . . . is not whether ALJ Tjapkes' RFC assessment was more or less restrictive than [the RFC from the prior period,] . . .

[3] This assertion implies that federal employees produce no work on weekends. That assumption is unwarranted.

[but] whether ALJ Tjapkes gave Plaintiff's application a 'fresh look' or instead considered [the prior] RFC finding a mandatory starting point." (PageID.901.) Similarly, the issue here is not whether ALJ Tjapkes' RFC on remand was materially different than his initial RFC finding, but whether his decision indicates that he engaged in a "fresh review" of the evidence in adjudicating Plaintiff's application.

All of the pertinent circumstances indicate that ALJ Tjapkes complied with the remand instruction and *Earley*. To begin, at the hearing on remand, ALJ Tjapkes expressly confirmed that he was "going to be . . . looking at [the matter] with fresh eyes." (PageID.853.) Similarly, in his decision, the ALJ confirmed that he reviewed the matter "without reference to the prior ALJ decision prior to determining the [RFC] noted below." (PageID.825.) Finally, nothing in the decision suggests that ALJ Tjapkes found the RFC from the prior application a mandatory starting point. The decision reveals that he considered the evidence and rendered his decision based only on that evidence. Plaintiff fails to demonstrate otherwise.

II. Whether Plaintiff met Listing 11.02

Plaintiff next contends that the ALJ erred in concluding that he did not meet Listing 11.02 (epilepsy). To meet Listing 11.02, a claimant must show that his seizures are "documented by a detailed description of a typical seizure and characterized by:"

> A. Generalized tonic-clonic seizures, occurring at least once a month for at least 3 consecutive months despite adherence to prescribed treatment; or
>
> B. Dyscognitive seizures, occurring at least once a week for at least 3 consecutive months despite adherence to prescribed treatment; or
>
> C. Generalized tonic-clonic seizures, occurring at least once every two months for at least 4 consecutive months, despite adherence to prescribed treatment; and a marked limitation in one of the following:
>
> 1. Physical functioning; or
>
> 2. Understanding, remembering, or applying information; or

3. Interacting with others; or

4. Concentrating, persisting, or maintaining pace; or

5. Adapting or managing oneself; or

D. Dyscognitive seizures, occurring at least once every 2 weeks for at least 3 consecutive months despite adherence to prescribed treatment; and a marked limitation in one of the following:

1. Physical functioning; or

2. Understanding, remembering, or applying information; or

3. Interacting with others; or

4. Concentrating, persisting, or maintaining pace; or

5. Adapting or managing oneself.

20 C.F.R. Pt. 404, Subpt. P, App. 1, § 11.02. In discussing this listing, the ALJ acknowledged that the record contained evidence of Plaintiff's seizure activity, but he found that the frequency requirement had not been met. (PageID.829.)

The claimant bears the burden of demonstrating that he meets or equals a listed impairment. *Peterson v. Comm'r of Soc. Sec.*, 552 F. App'x 533, 539 (6th Cir. 2014). To satisfy this burden, the claimant must show he meets all of the criteria for that listing. *Hale v. Sec'y of Health & Human Servs.*, 816 F.2d 1078, 1083 (6th Cir. 1987). An impairment that meets only some of the requirements of a listing does not qualify despite its severity. *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990).

Plaintiff contends that he met Listing 11.02 because "[r]eferences to his issues with anger and with working with other persons abound throughout the Record and were confirmed in his testimony." (ECF No. 14 at PageID.1574.) However, Plaintiff fails to address the ALJ's rationale: the frequency requirement of Listing 11.02 was not met. *See Cline v. Berryhill*, No. 3:16-CV-503, 2018 WL 701277, at *5 (E.D. Tenn. Feb. 1, 2018) (listing requirements were not satisfied because,

"[a]lthough Dr. Hussain's treatment notes certainly document seizure activity, they do not consistently document the type or frequency of seizure occurrences in order to satisfy [the] listing"). Because Plaintiff has not shown that he met all the criteria for the listing, he fails to demonstrate error.

III. Whether the ALJ Properly Considered the Opinion Evidence

The ALJ evaluated the medical opinions pursuant to 20 C.F.R. § 416.920c. Under that regulation, the ALJ "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s)," even an opinion from a treating source. 20 C.F.R. § 416.920c(a). Instead, an ALJ will articulate his or her determination of the persuasiveness of a medical opinion "in a single analysis using the factors listed in paragraphs (c)(1) through (c)(5) of this section, as appropriate." 20 C.F.R. § 416.920c(b)(1). Those factors include: (1) supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; and (5) other factors which tend to support or contradict the opinion. 20 C.F.R. § 416.920c(c)(1)–(5). The ALJ must explain his or her consideration of the supportability and consistency factors, but, in general, is not required to explain how the remaining factors were considered. 20 C.F.R. § 416.920c(b)(2) and (3). The regulations explain "supportability" and "consistency" as follows:

> (1) Supportability. The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.
>
> (2) Consistency. The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be.

20 C.F.R. § 416.920c(c)(1)–(2).

The former rule, well-known as the "treating physician rule," no longer applies. *See Takacs v. Kijakazi*, No. 1:20-cv-02120, 2022 WL 447700, at *8 (N.D. Ohio Jan. 26, 2022), *report and recommendation adopted*, 2022 WL 445767 (N.D. Ohio Feb. 14, 2022). "'Although the new standards are less stringent in their requirements for the treatment of medical opinions, they still require that the ALJ provide a coherent explanation of [his] reasoning.'" *Sadger v. Comm'r of Soc. Sec.*, No. 2:20-cv-11900, 2021 WL 4784271, at *13 (E.D. Mich. Aug. 23, 2021), *report and recommendation adopted*, 2021 WL 4316852 (E.D. Mich. Sept. 23, 2021) (quoting *White v. Comm'r of Soc. Sec.*, No. 1:20-CV-588, 2021 WL 858662, at *21 (N.D. Ohio Mar. 8, 2021)).

Plaintiff contends that the ALJ erred in evaluating the opinions of his treating therapist, Donna Appold, MSW, his treating primary care physician, Dr. Boyd Manges, M.D., and consultative psychological examiners Henrike B. Kroemer, Ph.D., and Mary Cullen-Ott, M.A. To the extent Plaintiff contends that the ALJ failed to assign proper weight to these opinions, his argument fails because ALJs no longer "weigh" opinions under the applicable regulations. *See Gorman v. Comm'r of Soc. Sec.*, No. 5:20-cv-514, 2022 WL 2284818, at *4 (E.D. Ky. June 23, 2022) (noting that ALJs no longer assign weight to medical opinions or prior administrative findings); *Normile v. Kijakazi*, No. 3:20-CV-346, 2022 WL 619536, at *4 (E.D. Tenn. Mar. 2, 2022) ("While Plaintiff argues that the ALJ failed to provide 'good reasons' for the weight he afforded the medical opinions, under the new regulations, the ALJ is no longer required to assign 'weight' to the opinions or to give good reasons for the weight ascribed to a treating-source opinion.").

A. Donna Appold, MSW

On May 5, 2019, Ms. Appold completed a medical opinion form regarding Plaintiff's ability to do mental work-related activities. (PageID.681–82.) The ALJ discussed Ms. Appold's opinion as follows:

> The claimant's counselor, Donna Appold, MSW, provided a mental functional capacity assessment dated May 1, 2019. Ms. Appold opined the claimant had no useful ability to function in completing a normal workday and workweek without psychologically based symptoms. She opined he was unable to meet competitive standards in the following areas: maintain attention and concentration for two-hour segments, work in coordination with or proximity to others without being unduly distracted by them, perform at a consistent pace, accept instructions and respond appropriately to criticism, get along with coworkers without unduly distracting them, deal with normal work stress, understand and remember detailed instructions, carry out detailed instructions, deal with the stress of semiskilled and skilled work, interact appropriately with the general public, maintain socially appropriate behavior, and adhere to basic standards of neatness and cleanliness. Ms. Appold opined the claimant was likely to miss more than four days of work per month. (Ex. D16E). The opinion of Ms. Appold is not persuasive. Ms. Appold gave her opinion on assumptions as to the claimant's ability to perform work after brain surgery that had not yet occurred. She referred to attached documentation, which was not attached. There is nothing in the medical evidence of record to support such extreme conclusions or the "predicted" results.

(PageID.834.)

The ALJ properly applied the supportability and consistency factors in assessing Ms. Appold's opinion. The ALJ found the opinion unpersuasive, first, because it was based, in part, on speculation about Plaintiff's abilities following a surgery that had not yet occurred. This was a valid basis to find the opinion not persuasive. Second, the ALJ accurately noted that Ms. Appold failed to attach the referenced supporting documentation to her opinion. Although Plaintiff asserts that the ALJ could have found the supporting records elsewhere in the record, it is not for the ALJ to supply a medical source's rationale for her opinion. Finally, the ALJ concluded that nothing in the record supported her extreme and predictive limitations. Plaintiff's arguments to the contrary

are simply a request that the Court reweigh the evidence. *See Nasser v. Comm'r of Soc. Sec.*, No. 22-1293, 2022 WL 17348838, at *2 (6th Cir. Dec. 1, 2022).

B. Dr. Kroemer

Dr. Kroemer conducted a psychological evaluation of Plaintiff and issued a report on May 11, 2018. (PageID.471–74.) Dr. Kroemer opined that Plaintiff's mental abilities to understand, attend to, remember, and carry out instructions or work-related behaviors were impaired due to his seizure disorder, in particular that he had unpredictable and unobservable episodes. (PageID.473.) The ALJ found this opinion "not persuasive because it is vague and not stated in functional terms." (PageID.835.) This was a valid reason to find the opinion unpersuasive because it provided no indication of the degree of limitation resulting from Plaintiff's seizures. *See Gaskin v. Comm'r of Soc. Sec.*, 280 F. App'x. 472, 476 (6th Cir. 2008) (finding that an ALJ did not err by rejecting the portion of a medical opinion that he characterized as vague); *Dillard v. Comm'r of Soc. Sec.*, No. 2:17-cv-781, 2018 WL 4691053, at *6 (S.D. Ohio Oct. 1, 2018) (finding that ALJ did not err by discounting a medical opinion in part because it was vague; opinion that plaintiff "might" have difficulties was not specific about the particular difficulties plaintiff would have). Thus, the ALJ did not err in evaluating this opinion.

C. Mary Cullen-Ott, M.A.

Ms. Cullen-Ott conducted a psychological evaluation of Plaintiff and issued a report dated July 9, 2021. (PageID.1322–26.) The ALJ assessed Ms. Cullen-Ott's opinions as follows:

> Following a psychological consultative examination, Mary Cullen-Ott, MA, opined the claimant would be able to understand simple instructions but would have moderate impairment in his ability to understand more complex instructions due to suspected cognitive deficits and his reported memory problems. She stated the claimant's ability to cope with stressors and adapt to changes in the workplace was mildly impaired due to depression and word finding issues. Ms. Cullen-Ott opined the claimant's ability to effectively interact with coworkers, authority figures, and the public was adequate. (Ex. D24F, pg. 6). The opinion of Ms. Cullen-Ott is only partly persuasive, as the limitation to simple instructions is generally consistent

> with the objective medical evidence, but the rest of the opinion is vague and not given in functional terms.

(PageID.835.)

The ALJ complied with 20 C.F.R. § 416.920c in articulating his reasons for finding the opinion partly persuasive. That is, the ALJ explained that the opinion was persuasive as far as limiting Plaintiff to simple instructions because that limitation was generally consistent with the objective medical evidence in the record, but the balance of the opinion was vague and not stated in functional terms. This characterization was accurate. (PageID.1325–26.) The ALJ thus did not err in disregarding the balance of the opinion. *See Quisenberry v. Comm'r of Soc. Sec.*, 757 F. App'x 422, 434 (6th Cir. 2018) (ALJ entitled to reject opinion that is vague and does not describe specific functional limitations); *Foreman v. Comm'r of Soc. Sec.*, No. 2:19-cv-454, 2019 WL 5287913, at *7 (S.D. Ohio Oct. 18, 2019), *report and recommendation adopted*, 2020 WL 1316431 (S.D. Ohio Mar. 20, 2020) (the ALJ properly discounted physician's opinions "because they were unclear and unhelpful in ascertaining Plaintiff's functional limitations").

D. Dr. Manges

On July 11, 2017, Dr. Manges issued an opinion regarding Plaintiff's ability to perform physical work-related activities. The ALJ discussed the opinion as follows:

> In July 2017, Dr. Manges, opined that the claimant could lift and/or carry fifty pounds occasionally and ten pounds frequently. Dr. Manges added that the claimant could sit, stand and/or walk for about four hours in an eight-hour workday. Dr. Manges also opined that the claimant must periodically alternate positions every ten minutes. Specifically, he indicated that the claimant must walk around for five minutes every fifty minutes. Dr. Manges also opined that the claimant could occasionally twist, stoop and crouch and never climb stairs or ladders. He added that the claimant would likely miss only one day of work per month. (Ex. D2F, pgs. 32-33). I find the opinion of Dr. Manges to be not persuasive. First, it was given prior to the alleged onset date. Next, it is not entirely consistent with his own records, such as an earlier note limiting the claimant in different, more general terms. (Ex. D2F, pg. 8). There is also a later note, generally stating the claimant is "doing well." (Ex. D2F, pg. 2). It is also not supported by the subsequently received medical evidence, which shows that the claimant would have different limitations

> due to an increase in his Parkinsonian symptoms. In short, it is a snapshot in time, with limited effect.

(PageID.835.)

The Court finds the ALJ's analysis of Dr. Manges's opinion somewhat flawed. First, the ALJ found the opinion unpersuasive because it pre-dated the alleged onset date by several months. The Sixth Circuit does "not endorse the position that all evidence or medical records predating the alleged date of the onset of disability . . . are necessarily irrelevant." *DeBoard v. Comm'r of Soc. Sec.*, 211 F. App'x 411, 414 (6th Cir. 2006). Instead, it recognizes that such evidence, "when evaluated *in combination with later evidence*, may help establish disability." *Id.* (citing *Groves v. Apfel*, 148 F.3d 809, 810–11 (7th Cir. 1998)) (italics in original). The ALJ did evaluate the opinion in light of later evidence concerning Plaintiff's Parkinsonian symptoms, but his analysis is confusing. The ALJ observed that those symptoms had increased, warranting different (presumably greater) limitations, but he accounted for them by limiting Plaintiff to *occasionally* climbing ramps and stairs and balancing (PageID.832), whereas Dr. Manges limited Plaintiff to *never* climbing stairs. (PageID.430.) In addition, it is questionable whether the records the ALJ cited as being "not entirely consistent" with the opinion were inconsistent at all. For example, the later record reporting that Plaintiff was "doing well" concerned an injury that Plaintiff sustained to his right foot after he stepped on a nail. There is no indication that the comment referred to anything other than the right foot injury. (PageID.399.)

Nonetheless, even if the ALJ erred in failing to properly articulate his reasons for finding the opinion not persuasive, any such error would be harmless because the opinion largely consisted of check-box answers with no supporting explanation or analysis. In other words, the "opinion is so patently deficient that the Commissioner could not possibly credit it." *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 547 (6th Cir. 2004). Even under the former "treating physician" rule requiring

that an ALJ give good reasons for according a treating physician's opinion less than controlling weight, the Sixth Circuit made clear that check-box forms or answers without supporting explanation from a medical provider are of little use in determining a claimant's RFC. *See Hernandez v. Comm'r of Soc. Sec.*, 644 F. App'x 468, 475– 76 (6th Cir. 2016) (concluding that the ALJ's error in weighing the treating physician's opinion was harmless where the form, unaccompanied by any explanation, was "weak evidence at best" that "meets our patently deficient standard"); *accord Shepard v. Comm'r of Soc. Sec.*, 705 F. App. 435, 441 (6th Cir. 2017) (opinions "consist[ing] largely of one word answers, circles, and check-marks . . . have been characterized as 'weak evidence at best' that meets the 'patently deficient standard'" (quoting *Hernandez*, 644 F. App'x at 475)); *Toll v. Comm'r of Soc. Sec.*, No. 1:16-CV-705, 2017 WL 1017821, at *4 (W.D. Mich. Mar. 16, 2017) (the ALJ's failure to provide good reasons for not crediting the physician's opinion was harmless where the check-box opinion contained only a diagnosis and a statement about the plaintiff's reported side effects of his medication without any explanation as to how the diagnosis imposed severe restrictions on his ability to work). Although the ALJ did not list the check-box format of the opined limitations as a basis to reject them, an ALJ's failure to cite a lack of explanation is no bar to a court's application of the harmless error doctrine. *See Gallagher v. Berryhill*, No. 5:16-cv-1831, 2017 WL 2791106, at *9 (N.D. Ohio June 12, 2017), *report and recommendation adopted*, 2017 WL 2779192 (N.D. Ohio June 27, 2017) (noting that the Sixth Circuit found harmless error in *Ellars v. Commissioner of Social Security*, 647 F. App'x 563 (6th Cir. 2016), even though the ALJ had not raised the check-box format of the opinion as a reason for discounting it).[4]

[4] Dr. Manges did cite Plaintiff's epilepsy as a basis for his opined limitations on certain postural activities (PageID.430), but the jobs the VE identified do not involve such activities. *See Dictionary of Occupational Titles*, DOT 208.685-010, 1991 WL 671753 (collator operator); DOT

Therefore, this argument lacks merit.

IV. Evaluation of Subjective Symptoms

Last, Plaintiff contends that the ALJ erred in evaluating his subjective symptoms because he included a standard boilerplate paragraph finding Plaintiff's alleged symptoms not entirely consistent with the medical and other evidence in the record. Plaintiff contends that this language suggests that the ALJ determined his RFC before the hearing without considering Plaintiff's testimony. (ECF No. 14 at PageID.1578.)

The Court disagrees. The ALJ's decision, which is to be read as a whole, *see Hill v. Comm'r of Soc. Sec.*, 560 F. App'x 547, 551 (6th Cir. 2014) (noting that the ALJ's entire decision must be considered); *Norris v. Comm'r of Soc. Sec.*, 461 F. App'x 433, 440 (6th Cir. 2012) ("So long as the ALJ's decision adequately explains and justifies its determination as a whole, it satisfies the necessary requirements to survive this court's review"), shows that the ALJ discussed the pertinent considerations from the applicable regulation throughout his analysis of Plaintiff's subjective symptoms, including Plaintiff's testimony about his symptoms, the medical evidence concerning his treatment, his daily activities, the objective testing, and the opinion evidence. (PageID.831–36 (discussing factors set forth in 20 C.F.R. § 416.929(c)(3) and SSR 16-3p).) Plaintiff's contention that other evidence could have supported a different outcome is immaterial. *See Ulman v. Comm'r of Soc. Sec.*, 693 F.3d 709, 714 (6th Cir. 2012). In short, the ALJ properly articulated his reasons for discounting Plaintiff's subjective complaints and supported those reasons with substantial evidence.

222.687-022, 1991 WL 672133 (routing clerk); DOT 709.687-010, 1991 WL 679134 (cleaner-polisher).

Conclusion

For the reasons stated above, the Court concludes that the ALJ's decision is supported by substantial evidence and free of legal error. Accordingly, the Commissioner's decision will be **affirmed**.

An order consistent with this opinion will enter.

Dated: July 10, 2023

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge