UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIANE LYNN ANDRYSHAK RATYNSKI,

Plaintiff,

- against -

CAROLYN COLVIN, Acting Commissioner:

Defendant.

16 Civ. 0845 (JCF)

MEMORANDUM
AND ORDER

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

The plaintiff, Diane Ratynski, brings this action pursuant to section 205(g) of the Social Security Act (the "Act"), 42 U.S.C. § 405(g), seeking review of a determination of the Commissioner of Social Security (the "Commissioner") finding that she is not entitled to disability insurance benefits ("DIB") or Supplemental Security Income ("SSI") benefits. Both parties have moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. For the reasons that follow, the plaintiff's motion is denied and the Commissioner's motion is granted.[1]

Background

A. Procedural History

Ms. Ratynski applied for SSI and DIB on June 4, 2012, alleging

[1] The parties have consented to my jurisdiction for all purposes pursuant to 28 U.S.C. § 636(c).

disability as of December 30, 2008. (R. at 172-79).[2] After her claims were denied on initial review (R. at 112-14, 121-27), the plaintiff requested a hearing before an administrative law judge ("ALJ") (R. at 130-31). A hearing was initially held on December 17, 2013, before ALJ Katherine Edgell, but was adjourned at Ms. Ratynski's request to allow her to obtain legal representation and supplement the medical record. (R. at 104, 106-08). The hearing resumed by videoconference on March 7, 2014, at which time the plaintiff was represented by counsel. (R. at 39-100). On July 23, 2014, the ALJ issued a determination finding that Ms. Ratynski was not disabled under the Act. (R. at 18-38). The Appeals Council denied review on November 25, 2015, thus rendering the ALJ's decision the final determination of the Commissioner. (R. at 8-12). This action followed.

B. Personal History

Ms. Ratynski was born in 1970 and holds a college degree in computer science. (R. at 44-46, 174). At the time of her hearing in March 2014, she lived with her husband in a house. (R. at 43). The plaintiff last worked full-time in 2002 as a computer programmer and systems developer. (R. at 55). She did not work at all from 2003 to 2008 (R. at 54-55), and from 2008 through 2010,

[2] "R." refers to the administrative record, filed as part of the Commissioner's answer.

she worked a few weeks each year as a bar manager, assisting the bartender and ordering supplies (R. at 46-51, 186).

C. Medical Evidence

1. The Plaintiff's Claimed Disabilities

Ms. Ratynski alleges a variety of disabling conditions, including herniated discs, reflex sympathetic dystrophy ("RSD"),[3] migraine headaches, a knee impairment, and an affective disorder. (R. at 59-60, 69-72, 92-94). At her hearing before the ALJ, she testified that she was in an automobile accident in 1998, resulting in over a dozen surgeries, including a "tibia transplant." (R. at 59, 71). The plaintiff stated that she has radiating pain in both legs as a result of her back condition (R. at 59-60, 94), for which she takes oxycodone four times each day (R. at 61). She said she has had headaches daily for fifteen years and a migraine headache about once a week, for which she takes Fioricet. (R. at 61, 71-72, 92-93). According to Ms. Ratynski, her RSD causes pain and sensitivity, changes in temperature, and discoloration in her right knee and leg, all on a daily basis. (R. at 59, 69-70). She also testified that she received treatment for a respiratory condition.

[3] RSD is characterized by diffuse, persistent pain, often in an extremity, and it is associated with vasomotor disturbances, trophic changes, and limitation or immobility of joints. Stedman's Medical Dictionary 558 (27th ed. 2000) ("Stedman's"). Frequently, RSD follows a local injury. Id.

(R. at 62-63). The plaintiff asserted that she had bilateral hearing loss but did not wear hearing aids because they were uncomfortable. (R. at 73-74).

Ms. Ratynski testified that she does no household tasks, does not cook, and does not visit friends. (R. at 63, 66). Since 2008, she allegedly spends her days propped up in a chair reading or watching television. (R. at 63-64). She owns a car but reported that she only drives once a month. (R. at 45, 95). The plaintiff maintained that she could sit for twenty minutes to one half hour at a time, could walk for five to ten minutes, and could stand for about fifteen minutes. (R. at 68, 93, 96).

2. Medical Evidence Prior to the December 30, 2008 Disability Onset Date

From 2003 through December 12, 2008, Ms. Ratynski visited Dr. Rodolfo Nazario on approximately a monthly basis, complaining of a variety of symptoms, including weight gain, sensitivity in her right leg, headaches, nausea, and neck and back pain. (R. at 503-34). Dr. Nazario's notes do not indicate any objective findings with respect to the plaintiff's extremities, though once in 2006 and twice in 2008, he recorded a positive Lasegue sign.[4] (R. at 501, 504, 512). In addition, in July 2008, the plaintiff

[4] The Lasegue test relies on the patient's subjective reports of pain upon flexion of the leg to assess lumbar root or sciatic nerve irritation. Stedman's at 1638 (27th ed. 2000).

complained of increased sensitivity over the back of her right leg. (R. at 504).

Ms. Ratynski was seen by Dr. Harsha Sharma in January 2004. Dr. Sharma noted that an examination in 2000 had revealed a "painful right knee from localized tissue injury and indication of neuropathic symptoms in the right lower extremity, possibly complex regional pain syndrome." (R. at 412-23). The plaintiff reported that she was taking Neurontin and OxyContin and that symptoms of hyperalgesia and allodynia had improved.[5] (R. at 412). Dr. Sharma did not report any new examination findings but stated that the plaintiff had lumbar nerve block injections in the past and could repeat this treatment annually. (R. at 412-13, 445-72).

In May 2005, Ms. Ratynski underwent a CT scan of her lumbar spine. This revealed a central disc bulge at L4-L5 without stenosis of the spinal canal; mild neural foramina compromise at L5-S1 due to a diffuse bulging disc; and mild neural foramina compromise on the right at L2-L3 and L3-L4. (R. at 414-15). The exiting nerve roots for the disc levels involved were unremarkable. (R. at 414).

[5] Allodynia is pain from a stimulus that would not normally trigger pain. Stedman's at 48 (27th ed. 2000).

3. Medical Evidence After the December 30, 2008 Disability Onset Date

From December 2008 through October 2010, Ms. Ratynski continued to treat with Dr. Nazario approximately once a month. (R. at 493-503). In June 2009, she complained of tenderness in the right lower back, and Dr. Nazario noted a positive Lasegue sign on the right. (R. at 501). Dr. Nazario reported possible Lyme disease in August 2010, but subsequent blood tests were negative. (R. at 495, 546).

Ms. Ratynski underwent magnetic resonance imaging ("MRI") studies of her lumbar spine, thoracic spine, and right knee on October 13, 2010. (R. at 416-17, 419-20). The MRI of the lumbosacral spine revealed a shallow right paracentral disc protrusion with mild right anterior thecal sac impingement but no significant neural foraminal stenosis at L5-S1. (R. at 416). At L4-L5, there was a right paracentral disc protrusion with annular tear and discogenic endplate changes with mild thecal sac impingement but no disc herniation or foraminal stenosis. (R. at 416). The MRI of the thoracic spine showed a small paracentral disc protrusion with minimal right anterior cord impingement at T6-T7 and some disc bulges at T7-T8 and T8-T9. (R. at 417). The MRI of the plaintiff's right knee showed post-surgical changes including surgical hardware in the tibia. (R. at 419). There was

some evidence of a meniscal tear, but the cruciate and collateral ligaments were intact. (R. at 419-20).

In October and November 2010, Ms. Ratynski saw Dr. Nazario for routine examinations. (R. at 493, 692-97). She complained of neck and back pain, but an examination showed normal strength in all muscle groups, normal range of motion in all joints, and no joint swelling. (R. at 693, 697). Her motor strength was 5/5 and equal in all extremities, and her deep tendon reflexes were 2/4 and equal bilaterally. (R. at 693, 697). Dr. Nazario did not observe any focal neurological deficits. (R. at 693, 697). He diagnosed thoracic spinal cord impingement, lumbar disc displacement, a torn lateral meniscus in the right knee, hypertension, and migraines, and he noted the plaintiff was taking Zolpidem, ibuprofen, Percocet, Fioricet, butalbital, and OxyContin. (R. at 690-95).

In November 2010, Ms. Ratynski was examined by Dr. Jin Li at Westchester Medical Center. (R. at 484-85). She complained of right knee and low back pain and appeared to lean to the left while walking. (R. at 484-85). Her strength was 5/5 in all extremities except for her right leg, where it was reduced due to pain. (R. at 485). Her sensation was intact except on the back of her right leg, where it was decreased. (R. at 485). Dr. Li diagnosed the plaintiff with low back and right knee pain and referred her for physical therapy, pain management, and electromyography ("EMG")

testing. (R. at 485).

The plaintiff continued to see Dr. Nazario monthly from December 2010 through August 2011. (R. at 491-92, 668-91). In March 2011, he noted lumbar muscle spasm and a positive Lasegue sign. (R. at 668, 677, 679, 683, 689, 691). On a full examination in April 2011, Dr. Nazario noted normal motor strength, normal range of motion, normal reflexes and other neurological signs, normal respiration, and grossly normal psychiatric findings. (R. at 685). In June 2011, Dr. Nazario noted RSD and referred Ms. Ratynski to a Dr. Weinstein, but there is no indication that she ever followed up. (R. at 677).

Ms. Ratynski was examined by Dr. Michael Cho in June 2011, and he reported that her gait, sensation, and motor strength were all normal, and that her reflexes were 2+ and symmetric. (R. at 421). He assessed the plaintiff as having degeneration of a lumbar disc. (R. at 421).

In July and September 2011, the plaintiff was examined for a salivary gland mass, which was determined not to be malignant. (R. at 322-24, 432, 616-19). Dr. Jagadish Navare, an ear, nose, and throat ("ENT") specialist, examined Ms. Ratynski in July 2011 and, among other things, found that her hearing was grossly intact bilaterally. (R. at 617-18). Dr. Lawrence Gordon, another ENT specialist, saw the plaintiff in October and November 2011 for

complaints of throat pain and fatigue. (R. at 598-603). At both examinations, the plaintiff denied any ear complaints, and examinations showed that her hearing was grossly intact bilaterally. (R. at 598-99, 601-02). Dr. Gordon diagnosed a chronic infection of the lymph nodes and prescribed acyclovir. (R. at 599, 606-15).

In October 2011, Ms. Ratynski was seen at the Orange Regional Medical Center, where she complained of shortness of breath. (R. at 326-28). A pulmonary examination revealed normal breath sounds and no respiratory distress. (R. at 326-27). Medical staff conducted blood tests and took x-rays and CT scans of the chest and found no evidence of active pulmonary disease. (R. at 328-38). A musculoskeletal examination found a normal range of motion, no swelling, and no tenderness. (R. at 327).

From September 2011 through January 2012, Ms. Ratynski continued to see Dr. Nazario regularly. (R. at 650-67). He reported her muscle strength and range of motion for all joints to be normal. (R. at 651, 653, 655). The plaintiff reported right shoulder and knee pain during the November and December examinations, and a positive Lasegue sign was sometimes noted. (R. at 657, 659, 661, 663-64). In January 2012, Dr. Nazario diagnosed opioid dependence in connection with the plaintiff's use of OxyContin, and he prescribed Suboxone. (R. at 651, 653).

Dr. Marc Rosenblatt, an osteopath, examined Ms. Ratynski on

February 7, 2012. (R. at 423-24). The plaintiff stated that OxyContin was the only medication that relieved her pain but that her insurance company had told her that she must discontinue using it and use methadone or morphine instead. (R. at 423). On examination, the plaintiff's sensation was intact, but she had bilateral back spasm with multiple trigger points and a limited range of motion. (R. at 424). Dr. Rosenblatt diagnosed the plaintiff with lumbar L4-L5 disc pathology and serious, chronic low back pain syndrome that might be appropriate for surgery. (R. at 424). He suggested that Ms. Ratynski continue taking OxyContin and consult with a surgeon. (R. at 424).

On February 9, 2012, the plaintiff underwent MRIs in connection with a fall she had the prior November. (R. at 340-43). An MRI of the right knee showed extensive swelling of the bone marrow in the medial femoral condyl consistent with microtrabecular fractures, extensive degenerative change and tear of the anterior horn of the lateral meniscus, and a magnetic artifact consistent with surgical hardware. (R. at 340-43). An MRI of the right shoulder the next day revealed a small amount of fluid in the subcoracoid recess and mild degenerative changes in the acromioclavicular joint without impingement. (R. at 344-45).

From February 2012 through October 2012, Dr. Nazario continued to see Ms. Ratynski periodically. (R. at 640-49, 760-96). On

February 7, 2012, he noted that the plaintiff's opioid dependence was in remission, but he subsequently diagnosed drug dependence and prescribed Suboxone. (R. at 649). Dr. Nazario continued to report normal muscle strength, normal range of motion, no swelling, normal respiration, and occasional positive Lasegue signs. (R. at 641, 643, 645, 647, 649, 761, 764, 766, 768, 772, 776, 778, 780, 782, 784, 788, 790, 792, 794, 796).

In October 2012, Ms. Ratynski returned to Dr. Gordon, complaining of headaches, ear and neck discomfort, and a fever. (R. at 595-97). Dr. Gordon found that the plaintiff's hearing was grossly intact bilaterally and that her pain was most likely related to right temporomandibular joint dysfunction. (R. at 596-97). He referred the plaintiff to "Dr. Phul." (R. at 597).

From November 2012 through August 2013, the plaintiff continued to see Dr. Nazario, whose observations were consistent with his prior examinations: Ms. Ratynski continued to complain of back and knee pain, but, with the exception of positive Lasegue signs, the findings were generally unremarkable; Dr. Nazario noted Ms. Ratinski's continued lumbar disc degeneration and meniscus tear. (R. at 724, 727, 732, 735, 737, 740, 743, 746, 749, 752, 755, 758).

On April 18, 2013, Dr. Nazario provided Ms. Ratynski with an assessment that stated that she could lift ten pounds occasionally but could not carry objects of any weight; could sit, stand, or walk

for fifteen minutes at a time for a total of two hours each in an eight-hour work day; and could continuously reach, handle, push, or pull objects but could never stoop, kneel, or crouch. (R. at 405-08). He stated that the plaintiff was able to hear, understand, and communicate simple information and use the telephone. (R. at 408). He further asserted that she was unable to shop, walk one block at a reasonable pace on a rough surface, or climb a few steps at a reasonable pace due to post traumatic radiculopathy of the left leg and herniated discs. (R. at 410). He did note that the plaintiff could use public transportation, cook simple meals, and care for her personal hygiene. (R. at 410). Dr. Nazario also stated that Ms. Ratynski "doesn't hear." (R. at 410).

Dr. Nazario continued to see the plaintiff on a monthly basis from September 2013 through January 2014, during which time the plaintiff's complaints and Dr. Nazario's observations were consistent with prior examinations, and he noted the following continued problems: hypertension, thoracic spinal cord impingement, lumbar disc displacement, meniscus tear, hearing loss, migraines, insomnia, disc degeneration, tendon repture, ovarian cysts, endometriosis, abdominal pain, pelvic pain, opioid dependence, RSD, and cellulitis. (R. at 699-72).

On December 12, 2013, he wrote a letter including his opinion that, because of various conditions, Ms. Ratynski was "100%

disabled." (R. at 487-88). Further, he stated that the plaintiff's pain was relieved only by high doses of narcotics that left her "drugged" and "mentally disabled." (R. at 488).

On January 28, 2014, Dr. David Ramos administered a treadmill test to the plaintiff. He found evidence of mild pulmonary hypertension, and while he referred the plaintiff for further pulmonary evaluation, he did not recommend additional cardiovascular testing. (R. at 856).

On February 27, 2014, Dr. Nazario provided Ms. Ratynski's attorney with a letter stating that the plaintiff was unable to work because of physical disability. (R. at 858).

4. Consultative Examinations

In connection with her application for benefits, Ms. Ratynski was examined by two consultants on September 4, 2012. The first was Dr. Leslie Helprin, a psychologist. (R. at 348-52). The plaintiff stated that she had worked until 2007. (R. at 348). She reported a history of a tibia transplant, heart surgery, a pulmonary embolism, Epstein-Barr syndrome, hearing loss, ovarian cysts, hypertension, RSD, heart disease, and lymphoma tests. (R. at 348-52). She also stated she had difficulty sleeping, occasional crying spells, and difficulty concentrating, but she denied suicidal thoughts or thought disorders. (R. at 349). The plaintiff reported that she could maintain her personal hygiene but was unable to cook

or clean, and her socializing was limited because of her pain; her time was spent mostly reading and watching television. (R. at 350). Dr. Helprin found that Ms. Ratynski's thought process was coherent and goal-directed; her affect was restricted; her mood was neutral except for one brief episode of crying; her attention, concentration, and memory were very mildly impaired; her cognitive functioning was below average; and her insight and judgment were good. (R. at 349-50). Dr. Helprin diagnosed the plaintiff as having a mild and episodic adjustment disorder with depressed mood. (R. at 351). She concluded that the plaintiff was able to understand and follow simple directions and instructions; perform simple rote tasks and at least some complex tasks independently; maintain sufficient attention and concentration; maintain a regular schedule; make appropriate decisions; relate adequately with others; and generally deal appropriately with stressors. (R. at 350).

Ms. Ratynski was also examined by Dr. Ralph Alvarez. (R. at 354-58). She reported that she had left her job in 2007 due to leg pain. (R. at 354). She stated that she suffered migraines a couple of times each month but that they were somewhat controlled with medication. (R. at 354). She also said she had hearing problems. (R. at 355). The plaintiff stated she could drive and manage her personal hygiene but could not do much cooking, cleaning, or shopping; she sometimes required assistance with toileting. (R. at

355-56). She reported that her activities consisted of reading, watching television, and going to appointments. (R. at 356). Dr. Alvarez observed that Ms. Ratynski's gait was normal; she could stand on her heels and toes without difficulty; she could squat halfway; she could rise from a seated position; and she got on and off the examination table without difficulty. (R. at 356). The plaintiff did need assistance getting up from a supine position. (R. at 356). The plaintiff's skin was normal and her chest was clear. (R. at 356). She had full range of motion of the cervical spine; with respect to the lumbar spine, she had forward flexion of sixty degrees, lateral flexion of twenty degrees, and rotation of twenty degrees. (R. at 357). Ms. Ratynski displayed full range of motion of all extremities, including her knees. (R. at 357). Her strength was 5/5 for all extremities, with no sensory deficits. (R. at 357). Joints were stable, with no redness, tenderness, or swelling. (R. at 357). Dr. Alvarez diagnosed chronic back pain, chronic right leg pain, migraine headaches, depression, insomnia, history of edema, hypertension, a history of aortic valve repair, and "hard of hearing." (R. at 357-58). It was his opinion that, because of her back pain, the plaintiff had mild to moderate restrictions for bending, lifting, carrying, squatting, and rising from a supine position. (R. at 358).

Analytical Framework

A. Determination of Disability

A claimant is disabled under the Social Security Act and therefore entitled to disability benefits if she can demonstrate, through medical evidence, that she is unable 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 [twelve] months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); see also Arzu v. Colvin, No. 14 Civ. 2260, 2015 WL 1475136, at *7 (S.D.N.Y. April 1, 2015). The disability must be of "such severity that [the claimant] is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

To determine whether a claimant is entitled to disability benefits, the Commissioner employs a five-step sequential analysis. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). First, the claimant must demonstrate that she is not currently engaging in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(i), (b), 416.920(a)(4)(i), (b). Second, the claimant must prove that she has a severe impairment that significantly limits her physical or mental

ability to perform basic work activities. 20 C.F.R. §§ 404.1520(a)(4)(ii), (c), 416.920(a)(4)(ii), (c). Third, if the impairment is listed in what are known as "the Listings," see 20 C.F.R. Part 404, Subpt. P, App. 1, or is the substantial equivalent of a listed impairment, the claimant is automatically considered disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii), (d), 416.920(a)(4)(iii), (d). Fourth, if the claimant is unable to make the requisite showing under step three, she must prove that she does not have the residual functional capacity to perform her past work. 20 C.F.R. §§ 404.1520(a)(4)(iv), (e), 416.920(a)(4)(iv), (e). Fifth, if the claimant satisfies her burden of proof on the first four steps, the burden shifts to the Commissioner to demonstrate that there is alternative substantial gainful employment in the national economy that the claimant can perform. 20 C.F.R. §§ 404.1520(a)(4)(v), (g), 416.920(a)(4)(v), (g), 416.960(c); Longbardi v. Astrue, No. 07 Civ. 5952, 2009 WL 50140, at *23 (S.D.N.Y. Jan. 7, 2009) (citing Rosa v. Callahan, 168 F.3d 72, 77 (2d Cir. 1999), and Bapp v. Bowen, 802 F.2d 601, 604 (2d Cir. 1986)). In order to determine whether the claimant can perform other substantial gainful employment, the Commissioner must consider objective medical facts, diagnoses or medical opinions based on these facts, subjective evidence of pain or disability, and the claimant's educational

background, age, and work experience. Brown v. Apfel, 174 F.3d 59, 62 (2d Cir. 1999).

B. Judicial Review

Under Rule 12(c) of the Federal Rules of Civil Procedure, a party is entitled to judgment on the pleadings if she establishes that no material facts are in dispute and that she is entitled to judgment as a matter of law. See Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir. 1999); Morcelo v. Barnhart, No. 01 Civ. 743, 2003 WL 470541, at *4 (S.D.N.Y. Jan. 21, 2003).

The Social Security Act provides that the Commissioner's findings "as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). A court reviewing the Commissioner's decision "may set aside a decision of the Commissioner if it is based on legal error or if it is not supported by substantial evidence." Geertgens v. Colvin, No. 13 Civ. 5133, 2014 WL 4809944, at *1 (S.D.N.Y. Sept. 24, 2014) (quoting Hahn v. Astrue, No. 08 Civ. 4261, 2009 WL 1490775, at *6 (S.D.N.Y. May 27, 2009)); see also Longbardi, 2009 WL 50140, at *21.

Judicial review, therefore, involves two levels of inquiry. First, the court must decide whether the Commissioner applied the correct legal standard. Tejada v. Apfel, 167 F.3d 770, 773 (2d Cir. 1999); Calvello v. Barnhart, No. 05 Civ. 4254, 2008 WL 4452359, at *8 (S.D.N.Y. April 29, 2008). Second, the court must decide whether

the ALJ's decision was supported by substantial evidence. Tejada, 167 F.3d at 773; Calvello, 2008 WL 4452359, at *8. "In determining whether substantial evidence exists, a reviewing court must consider the whole record, examining the evidence from both sides, because an analysis of the substantiality of the evidence must also include that which detracts from its weight." Longbardi, 2009 WL 50140, at *21 (citing Brown, 174 F.3d at 62, and Williams v. Bowen, 859 F.2d 255, 258 (2d Cir. 1988)). Substantial evidence in this context is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hahn, 2009 WL 1490775, at *6 (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

Analysis

A. The ALJ's Decision

ALJ Edgell analyzed the plaintiff's claim pursuant to the five-step sequential evaluation process and concluded that she was not disabled on or after the date she filed for benefits. (R. at 20, 32). She first determined that Ms. Ratynski had not engaged in substantial gainful activity since the date of the alleged onset of disability. (R. at 21).

Next, at step two, she found that the plaintiff had severe impairments -- a tibia transplant, RSD in the right lower extremity, disc bulges and degenerative disc disease in the lumbar spine, disc

herniation in the thoracic spine, post-surgical changes of the right knee with a meniscal tear and degenerative changes, a history of migraine headaches, infections of the lymph nodes, and obesity -- that more than minimally affected her ability to perform basic work activities. (R. at 22). On the other hand, the ALJ determined that Ms. Ratynski's history of aortic valve repair, history of hypertension, hearing problems, and shoulder complaints did not constitute severe impairments. (R. at 22-23). ALJ Edgell further determined that the plaintiff's affective disorder was not a severe mental impairment because it caused no more than mild limitations in the functional areas of daily living; social functioning; and concentration, persistence, and pace, and because the plaintiff had suffered no episodes of decompensation. (R. at 23-24).

At step three, the ALJ found that none of the plaintiff's impairments, either individually or in combination, met or was the equivalent in severity of one of the impairments listed in the regulations. (R. at 24-25).

Next, at the fourth step, ALJ Edgell determined that Ms. Ratynski had the residual functional capacity to perform sedentary work, except that she was limited to squatting and stooping for no more than four hours in an eight-hour workday. (R. at 25-30). In addition, the ALJ found that, because of her pain and the effects of her medication, the plaintiff would be further limited to

performing unskilled work involving one to two-step tasks. (R. at 25-30).

Finally, the ALJ concluded that although Ms. Ratynski was unable to perform her past relevant work, there nevertheless existed significant numbers of jobs in the national economy that she was capable of performing. (R. at 31-32). This was based on the Medical-Vocational Guidelines contained in the regulations (the "Grids"), see 20 C.F.R. Part 404, Subpt. P, App. 2, against which the ALJ compared her findings that the plaintiff, who was thirty-eight years old on the alleged disability onset date, qualified as a "younger individual," had at least a high school diploma, was able to communicate in English, and had the residual functional capacity to perform sedentary work. (R. at 30-31). As a result, ALJ Edgell found Ms. Ratynski not to be disabled. (R. at 32).

Discussion

The plaintiff advances five grounds for overturning the denial of her claim for benefits. First, she asserts that the ALJ improperly reopened proceedings with respect to the DIB claim and then refused to develop evidence from that adjudication. (Plaintiff's Memorandum of Law in Support of Motion for Judgment on the Pleadings Under Rule 12(c) Fed. R. Civ. P. ("Pl. Memo.") at 13-15). Next, she argues that the ALJ failed to give proper weight to the opinions of her treating physicians. (Pl. Memo. at 15-19).

Third, Ms. Ratynski maintains that the ALJ misapplied the law in evaluating her credibility. (Pl. Memo. at 19-20). Fourth, the plaintiff contends that the ALJ did not properly consider the combined impact of her exertional and non-exertional impairments in determining her residual functional capacity. (Pl. Memo. at 20-22). Finally, she asserts that by relying on the Grids to determine whether there were jobs that she could perform, ALJ Edgell failed to account for the full extent of her impairments. (Pl. Memo. at 22-23). I will address each argument in turn.

A. Reopening

The plaintiff's argument with respect to "reopening" her DIB claim is a bit mystifying. There was no prior adjudication of that claim, and ALJ Edgell's determination addresses Ms. Ratynski's claims for both SSI and DIB. (R. at 19). Furthermore, the ALJ accepted evidence from at least five years prior to the date alleged for the onset of disability. There is simply no substance to the plaintiff's claim that she was prejudiced by the manner in which the DIB claim was handled.

B. Medical Opinion Evidence

Regulations promulgated pursuant to the Act establish that "the opinion of a claimant's treating physician as to the nature and severity of the impairment is given 'controlling weight' so long as it 'is well-supported by medically acceptable clinical and

laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record.'" Burgess v. Astrue, 537 F.3d 117, 128 (2d Cir. 2008) (alteration in original) (quoting 20 C.F.R. § 404.1527(c)(2)); accord Greek v. Colvin, 802 F.3d 370, 375 (2d Cir. 2015); Correale-Englehart v. Astrue, 687 F. Supp. 2d 396, 426 (S.D.N.Y. 2010). "This preference is generally justified because treating sources are likely to be 'the medical professionals most able to provide a detailed, longitudinal picture' of a plaintiff's medical impairments and offer a unique perspective that the medical tests and SSA consultants are unable to obtain or communicate." Correale-Engelhart, 687 F. Supp. 2d at 426 (quoting 20 C.F.R. § 416.927(c)(2)); see also Petrie v. Astrue, 412 F. App'x 401, 405 (2d Cir. 2011) (summary order) ("The opinion of a treating physician is accorded extra weight because the continuity of treatment he provides and the doctor/patient relationship he develops place him in a unique position to make a complete and accurate diagnosis of his patient." (quoting Mongeur v. Heckler, 722 F.2d 1033, 1039 n.2 (2d Cir. 1983))).

In considering a treating source's opinion, "the ALJ cannot arbitrarily substitute his own judgment for competent medical opinion." Rosa, 168 F.3d at 79 (quoting McBrayer v. Secretary of Health and Human Services, 712 F.2d 795, 799 (2d Cir. 1983)); see also Wagner v. Secretary of Health and Human Services, 906 F.2d 856,

862 (2d Cir. 1990) (noting that "a circumstantial critique by non-physicians . . . must be overwhelmingly compelling in order to overcome a medical opinion"). However, determination of "dispositive" issues, such as whether the plaintiff "meet[s] the statutory definition of disability" and cannot work, are reserved for the Commissioner. 20 C.F.R. §§ 404.1527(d)(1), 416.927(d)(1); see Greek, 802 F.3d at 376; Snell v. Apfel, 177 F.3d 128, 133 (2d Cir. 1999).

If the ALJ determines that a treating physician's opinion is not controlling, she is nevertheless required to consider the following factors in determining the weight to be given to that opinion: (1) the length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship; (3) the evidence and explanation provided to support the treating physician's opinion; (4) the consistency of the opinion with the record as a whole; (5) whether the opinion is from a specialist; and (6) other factors brought to the Commissioner's attention that tend to support or contradict the opinion. 20 C.F.R. §§ 404.1527(c), 416.927(c); Greek, 802 F.3d at 375; Halloran v. Barnhart, 362 F.3d 28, 32 (2d Cir. 2004). Although the ALJ need not explicitly discuss the factors, the decision must clearly demonstrate that she properly applied the required analysis. Khan

v. Astrue, No. 11 CV 5118, 2013 WL 3938242, at *15 (E.D.N.Y. July 30, 2013) (citing Petrie, 412 F. App'x at 406).

"A corollary to the treating physician rule is the so-called 'good reasons rule,' which is based on the regulations specifying that 'the Commissioner "will always give good reasons"' for the weight given to a treating source opinion." Silva v. Colvin, No. 6:14-cv-6329, 2015 WL 5306005, at *5 (W.D.N.Y. Sept. 10, 2015) (quoting Halloran, 362 F.3d at 32); see also Burgess, 537 F.3d at 129-30 (noting that ALJ must provide "good reasons" for discounting treating physician's opinion). Failure to identify good reasons for discounting a treating physician's opinion "denotes a lack of substantial evidence, even where the conclusion of the ALJ may be justified based upon the record." Silva, 2015 WL 5306005, at *5 (emphasis omitted) (quoting Blakely v. Commissioner of Social Security, 581 F.3d 399, 407 (6th Cir. 2009)).

Ms. Ratynski's treating physician, Dr. Nazario, stated that the plaintiff was "100% disabled" and "unable to work." (R. at 488, 858). The ultimate finding of disability is a matter reserved to the Commissioner, however, and a treating physician's opinion on this issue is therefore entitled to no special weight. See Greek, 802 F.3d at 374; Snell, 177 F.3d at 133; Maldonado v. Berryhill, No. 16 Civ. 165, 2017 WL 946329, at *14 (S.D.N.Y. March 10, 2017).

Dr. Nazario's specific findings as to Ms. Ratynski's functional abilities are entitled to consideration. He found that she could only occasionally lift up to ten pounds; could never carry that amount of weight; could only sit, stand, or walk for 15 minutes without interruption and for a total of no more than two hours each in an eight-hour workday; could never stoop, kneel, crouch, or crawl; could not shop, travel by herself, walk one block on an uneven surface, or climb a few steps at a reasonable pace using a handrail. (R. at 405-10). He further opined that the plaintiff "doesn't hear" (R. at 410), and that her use of painkillers left her "drugged" and "mentally disabled." (R. at 488).

ALJ Edgell gave Dr. Nazario's opinions limited weight on the basis that they were inconsistent with his own treatment records (Tr. at 30), and with other evidence in the record, and this determination is well founded. For example, although Ms. Ratynski occasionally complained of pain, she consistently had normal strength in all muscle groups, normal range of motion in all joints, equal reflexes, and no focal neurological deficits. (R. at 701, 704, 710, 713, 718, 724, 727, 732, 735, 737, 740, 743, 749). Furthermore, Dr. Alvarez, a consulting physician, found that Ms. Ratynski could stand on her heels and toes without difficulty, squat halfway, rise from a seated position, and get on and off the examination table without difficulty. (R. at 356). Similarly, Dr.

Nazario's opinion that the plaintiff's medications rendered her psychologically unable to work is also contradicted by his own treatment notes, since he consistently found her to be alert and oriented, with grossly normal psychiatric findings. (R. at 701, 704, 710, 713, 718, 724, 727, 732, 735, 737, 740, 743, 749). Dr. Nazario's opinion of the plaintiff's mental status is also inconsistent with that of Dr. Helprin, the consulting psychologist, whose findings were unremarkable. (R. at 349-51).[6]

Ms. Ratynski also complains that the ALJ failed to address evidence of Epstein-Barr syndrome and pulmonary hypertension. This argument is meritless. The record contains evidence only that test results indicated that the plaintiff had Epstein-Barr sometime in the past, not that she currently suffered from it. (R. at 351, 608-09). And, contrary to the plaintiff's representation, ALJ Edgell did address the evidence of mild pulmonary hypertension, noting that there had been no follow-up appointments with a pulmonologist, no complications, and no indication that the condition would last twelve months or more. (R. at 22).

[6] The plaintiff contends that the ALJ erred by failing to seek clarification with respect to the inconsistencies in the record. (Pl. Memo. at 19). But the obligation to develop the record arises when there are gaps in the evidence, not when the evidence is less than uniform. See Rosa, 168 F.3d at 79 n.5.

In sum, the ALJ committed no error in her analysis of the medical opinion evidence.

C. Credibility

In determining residual functional capacity, the ALJ must take "the claimant's reports of pain and other limitations into account, but is not required to accept the claimant's subjective complaints without question; [she] may exercise discretion in weighing the credibility of the claimant's testimony in light of the other evidence in the record." Genier v. Astrue, 606 F.3d 46, 49 (2d Cir. 2010) (per curiam) (internal citations omitted).

The regulations prescribe a two-step process for weighing a claimant's allegations of pain and other limitations. Id.; see also 20 C.F.R. § 416.929. At step one, the ALJ must determine "whether the claimant suffers from a medically determinable impairment that could reasonably be expected to produce the symptoms alleged." Genier, 606 F.3d at 49. Step two requires the ALJ to consider "the extent to which [the claimant's] symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence." 20 C.F.R. §§ 404.1529(a), 416.929(a). Because "symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone," where the claimant's testimony concerning the intensity, persistence, or functional limitations associated with her

impairments is not fully supported by clinical evidence, the regulations require the ALJ to consider additional factors to assess the claimant's credibility. 20 C.F.R. §§ 404.1529(c)(2)-(3), 416.929(c)(2)-(3). The regulations do not allow the ALJ to reject a claimant's statements about her symptoms solely because they are not substantiated by objective medical evidence, but the ALJ may consider any conflicts between the claimant's testimony and the rest of the evidence. 20 C.F.R. §§ 404.1529(c)(2), (4), 416.929(c)(2), (4); Puente v. Commissioner of Social Security, 130 F. Supp. 3d 881, 894 (S.D.N.Y. 2015).

If an ALJ "finds that a claimant is not credible[,] [she] must do so 'explicitly and with sufficient specificity to enable the Court to decide whether there are legitimate reasons for the ALJ's disbelief and whether [her] determination is supported by substantial evidence.'" Henningsen v. Commissioner of Social Security Administration, 111 F. Supp. 3d 250, 268 (E.D.N.Y. 2015) (quoting Rivera v. Astrue, No. 10 CV 4324, 2012 WL 3614323, at *14 (E.D.N.Y. Aug. 21, 2012)); see also SSR 96-7p, 61 Fed. Reg. 34483-01, 34485-86 (July 2, 1996) ("The determination . . . must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight."). In determining the claimant's credibility, the ALJ is not required to

"discuss all the factors [] 'as long as the decision includes precise reasoning, is supported by evidence in the case record, and clearly indicates the weight the ALJ gave to the claimant's statements and the reasoning for that weight.'" Simmons v. Commissioner of Social Security, 103 F. Supp. 3d 547, 569 (S.D.N.Y. 2015) (quoting Felix v. Astrue, No. 11 CV 3697, 2012 WL 3043203, at *8 (E.D.N.Y. July 24, 2012)).

ALJ Edgell set out the specific reasons why she found Ms. Ratynski's testimony not to be credible, and her credibility determination is accordingly entitled to deference. Selian v. Astrue, 708 F.3d 409, 420 (2d Cir. 2013). Since the Commissioner has the authority "to resolve evidentiary conflicts and to appraise the credibility of witnesses, including the claimant," the only issue is whether the ALJ's finding that the plaintiff's "assertions concerning her physical limitations were 'not [entirely] credible' is supported by substantial evidence in the record." Simmons, 103 F. Supp. 3d at 570 (quoting Carroll v. Secretary of Health & Human Services, 705 F.2d 638, 642 (2d Cir. 1983)).

Specifically, the ALJ found that the plaintiff's subjective complaints were out of proportion to the objective evidence. (R. at 26-27). Further, she noted that Ms. Ratynski's treatment had always been "entirely conservative." (R. at 27). Next, the ALJ observed that even after the alleged onset of disability, the

plaintiff had engaged in some work activity that had required "standing, walking, and [] mental acuity." (R. at 27). And, although the plaintiff alleged complete inactivity, there was no evidence of muscle atrophy. (R. at 27). Finally, Ms. Ratynski admitted managing her own money, driving, reading every day, and visiting her doctors, activities inconsistent with the level of disability she alleged. (R. at 27).

D. Residual Functional Capacity

Next, Ms. Ratynski contends that the ALJ failed to consider the aggregate effect of her disabilities in arriving at the conclusion that she could perform sedentary work. (Pl. Memo. at 20-22). This is a misreading of the record. ALJ Edgell specifically took into account the plaintiff's claimed non-exertional as well as exertional limitations. When a claimant suffers from a mental impairment, the regulations require the ALJ to employ a specialized assessment at each step of the sequential analysis. Rosado v. Barnhart, 290 F. Supp. 2d 431, 437 (S.D.N.Y. 2003). At step four, the ALJ must assess the claimant's mental residual functional capacity by engaging in a detailed assessment of the claimant's ability to perform a variety of work-related functions. Pabon v. Barnhart, 273 F. Supp. 2d 506, 515-16 (S.D.N.Y. 2003); see also SSR 96-8p, 1996 WL 374184, at *4, 6 (July 2, 1996). Furthermore, the ALJ's residual functional capacity

findings "must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts . . . and nonmedical evidence." SSR 96-8p, 1996 WL 374184, at *7; see also Cichocki v. Astrue, 729 F.3d 172, 177 (2d Cir. 2013) ("Remand may be appropriate [] where . . . inadequacies in the ALJ's residual functional capacity analysis frustrate meaningful review."); Glessing v. Commissioner of Social Security, No. 13 CV 1254, 2014 WL 1599944, at *8-9 (E.D.N.Y. April 21, 2014) ("The problem . . . is that, although the ALJ certainly made findings as to [the] claimant's limitations, the ALJ provided no analysis explaining upon what evidence those findings were based."); Jones v. Commissioner of Social Security, No. 12 Civ. 4815, 2013 WL 3486994, at *12 (S.D.N.Y. July 11, 2013). That is precisely what ALJ Edgell did here. She assessed Ms. Ratynski's claim of an affective disorder by analyzing each of the relevant functional areas and determining that the plaintiff had no more than a mild impairment in any area, with no episodes of decompensation. (R. at 23-24). In doing so, she properly relied on Dr. Helprin's evaluation of the plaintiff's psychological functioning. (R. at 29).

Similarly, the ALJ considered the evidence of migraine headaches, finding that they were largely controlled with medication. (R. at 28).

Ms. Ratynski further complains that the ALJ failed to account for certain functional impairments such as the inability to complete an eight-hour workday. (Pl. Memo. at 21). But ALJ Edgell did consider this evidence; she discounted it as inconsistent with other more persuasive evidence in the record.

E. Reliance on the "Grids"

Finally, the plaintiff argues that "[e]xclusive reliance on the [G]rids is inappropriate where the guidelines fail to describe the full extent of a claimant's physical limitations." (Pl. Memo. at 22). This contention is correct as far as it goes. The Grids "take[] into account the claimant's residual functional capacity in conjunction with the claimant's age, education, and work experience" and direct a conclusion as to whether the claimant is disabled or not disabled and able to work in the national economy. Rosa, 168 F.3d at 78 (alteration in original); see also Pratts v. Chater, 94 F.3d 34, 38-39 (2d Cir. 1996). If a claimant suffers only from exertional impairments, then the ALJ can demonstrate that there is other work that the claimant can perform by resorting exclusively to the Grids. See Zabala v. Astrue, 595 F.3d 402, 410 (2d Cir. 2010); Rosa, 168 F.3d at 78; Pratts, 94 F.3d at 38-39; Bapp, 802 F.2d at 604. However, where a claimant has both exertional and non-exertional impairments, the Grids may be used only as a framework for decision-making. 20 C.F.R. §§

404.1569a(d), 416.969a(d). Nevertheless, if any non-exertional impairments do not significantly limit the range of work of which the claimant is otherwise capable, then reliance on the Grids is appropriate. See Zabala, 595 F.3d at 410-11. That was the case here, where ALJ Edgell found that "the additional limitations have little or no effect on the occupational base of unskilled sedentary work." (R. at 31). Accordingly, her reliance on the Grids was not erroneous.

Conclusion

For the reasons discussed above, the plaintiff's motion for judgment on the pleadings (Docket no. 23) is denied and the defendant's cross-motion (Docket no. 30) is granted. The Clerk of Court is respectfully directed to enter judgment accordingly and close this case.

SO ORDERED.

James C. Francis IV

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
April 6, 2017

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