White v. Commissioner of Social Security Doc. 19

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Teresa A. White,

Plaintiff

Case No. 3:18-cv-544

v.

MEMORANDUM OPINION
AND ORDER

Commissioner of Social Security,

Defendant

I. INTRODUCTION

Before me is the Report and Recommendation ("R & R") of Magistrate Judge Kathleen B. Burke. (Doc. No. 17). Judge Burke recommends I affirm the final decision of Defendant Commissioner of Social Security denying Plaintiff Teresa A. White's applications for Disability Insurance Benefits and Supplemental Security Income. (*Id.*). White filed objections to the R & R. (Doc. No. 18).

II. BACKGROUND

After reviewing the R & R, I hereby incorporate and adopt, in full, the "Procedural History" and "Evidence" sections set forth in the R & R, as there were no objections to these sections by White. (Doc. No. 17 at 1-17).

III. STANDARD

A district court must conduct a *de novo* review of "any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject or modify the recommended disposition, receive further evidence, or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

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The district judge "must affirm the Commissioner's conclusions absent a determination that the Commissioner has failed to apply the correct legal standards or has made findings of fact unsupported by substantial evidence in the record." *Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 528 (6th Cir. 1997); *see also* 42 U.S.C. § 405(g). "Substantial evidence is defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Colvin v. Barnhart*, 475 F.3d 727, 730 (6th Cir. 2007) (quoting *Heston v. Comm'r of Soc. Sec.*, 245 F.3d 528, 534 (6th Cir. 2001)). If the Commissioner's findings of fact are supported by substantial evidence, those findings are conclusive. *McClanahan v. Comm'r of Soc. Sec.*, 474 F.3d 830, 833 (6th Cir. 2006).

IV. DISCUSSION

In this case, White asserts Judge Burke erred in finding the ALJ had "thoroughly discussed the evidence of record" related to White's use of a cane and properly weighed such evidence. (Doc. No. 18 at 2-3 (quoting Doc. No. 17 at 21)). White also disputes Judge Burke's statement that "White has not identified a prescription for a cane in the record; rather, some of White's doctors merely noted she presented using a cane." (Doc. No. 18 at 3 (quoting Doc. No. 17 at 24)).

First, Judge Burke's statement that White was not prescribed a cane is not false. Although one treating source opinion stated White "must" use a cane, this is not a prescription. Further, White does not contest the ALK's decision to give this same opinion "little weight" as it was not supported by the records of the opining medical source. (Doc. No. 11 at 169). Therefore, this objection is not well-taken.

Rejecting this specific objection, I will now turn to the over-arching objection regarding the ALJ's consideration of the cane-related evidence. After review of the ALJ's decision, I agree with Judge Burke's finding that the ALJ thoroughly discussed not only the evidence of times White presented with a cane, but also those times in which she did not. Although there is certainly evidence in the record indicating White's use of a cane, I agree with Judge Burke that there was

"substantial evidence" to support the ALJ's conclusion that the cane was not required. As such, the ALJ's decision must be affirmed. *See Key v. Callahan*, 109 F.3d 270, 273 (6th Cir. 1997) ("The decision of an ALJ is not subject to reversal, even if there is substantial evidence in the record that would have supported an opposite conclusion, so long as substantial evidence supports the conclusion reached by the ALJ.").

V. CONCLUSION

For the foregoing reasons, White's objections are overruled, and Judge Burke's R & R is adopted, in full.

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge