

On June 25, 2012, Plaintiff appeared with his attorney and testified at a hearing before the ALJ. (Tr. 11). An independent vocational expert also testified. (Tr. 41-46). On August 20, 2012, the ALJ issued a decision finding that Plaintiff had the severe impairments of lumbar spondylolisthesis and residuals of a lumbar decompression and spinal function, but determined that Plaintiff retained the RFC for sedentary work.¹ (Tr. 14-17).

The Appeals Council denied review, making the ALJ's decision the final determination of the Commissioner. (Tr. 1-3). Plaintiff then commenced this action in federal court for judicial review of the Commissioner's decision pursuant to 42 U.S.C. Sections 405(g) and 1383(c)(3).

Plaintiff is 35 years old and has a limited education.² (Tr. 27, 28, 151, 155, 177). Plaintiff's past relevant work includes: concrete worker, delivery driver, parts salesperson, auto parts sales/driver, and diesel mechanic.³ (Tr. 17).

The ALJ's "Findings," which represent the rationale of her decision, were as follows:

¹ A claimant's residual functional capacity ("RFC") is an assessment of "the most [he] can still do despite [his] limitations." 20 C.F.R. § 416.945(a)(1).

² Plaintiff originally pled a ninth grade education, but he testified to an eleventh grade education. (Tr. 48). Dr. Kelly's treatment records report a high school equivalent degree, although Plaintiff denied this at the hearing. (Tr. 28)

³ Past relevant work experience is defined as work that the claimant has "done within the last 15 years, [that] lasted long enough for [the claimant] to learn to do it, and was substantial gainful activity." 20 C.F.R. § 416.965(a).

1. The claimant met the insured status requirements for disability insurance benefits on his alleged onset date of October 6, 2007, and continued to meet them through December 31, 2011.
2. There is no evidence that the claimant has engaged in any substantial gainful activity since his alleged onset date (20 CFR 404.1571 *et seq.*, and 416.971 *et seq.*).
3. The claimant has the following severe impairments: lumbar spondylolisthesis and residuals of a lumbar decompression and spinal fusion (20 CFR 404.1520(c) and 416.920(c)).
4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).
5. Careful consideration of the entire record shows that the claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a) except he cannot climb ladders, ropes or scaffolds and he can balance, stoop occasionally. He can reach overhead with the right arm occasionally. He should avoid concentrated exposure to extreme cold, humidity, and vibration.
6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).
7. The claimant was born on November 17, 1978, was 28 years old on his alleged onset date, is currently 33, and at all times considered to be a younger individual age 18-44 (20 CFR 404.1563 and 416.963).
8. The claimant has a limited education and is able to communicate in English (20 CFR 404.1564 and 416.964).
9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a findings that the claimant is “not disabled,” whether or not the claimant has transferable job skills (*See* SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1569, 404.1569(a), 416.969, and 416.969(a)).

11. The claimant has not been under a disability, as defined in the Social Security Act, from October 6, 2007, through the date of this decision (20 CFR 404.1520(g) and 416.920(g)).

(Tr. 13-18).

In sum, the ALJ concluded that Plaintiff was not under a disability as defined by the Social Security Regulations, and was therefore not entitled to SSI or DIB. (Tr. 18).

On appeal, Plaintiff argues that the ALJ erred by failing to give proper weight to the opinion of Dr. John Kelly, his treating physician, and accepting as credible the opinions of non-examining physicians who did not review all of the medical evidence.

II.

The Court's inquiry on appeal is to determine whether the ALJ's non-disability finding is supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In performing this review, the Court considers the record as a whole. *Hephner v. Mathews*, 574 F.2d 359, 362 (6th Cir. 1978). If substantial evidence supports the ALJ's denial of benefits, that finding must be affirmed, even if substantial evidence also exists in the record upon which the ALJ could have found plaintiff disabled. As the Sixth Circuit has explained:

“The Commissioner’s findings are not subject to reversal merely because substantial evidence exists in the record to support a different conclusion. The substantial evidence standard presupposes that there is a “zone of choice” within which the Commissioner may proceed without interference from the courts. If the Commissioner’s decision is supported by substantial evidence, a reviewing court must affirm.”

Felisky v. Bowen, 35 F.3d 1027, 1035 (6th Cir. 1994).

The claimant bears the ultimate burden to prove by sufficient evidence that he is entitled to disability benefits. 20 C.F.R. § 404.1512(a). That is, he must present sufficient evidence to show that, during the relevant time period, he suffered an impairment, or combination of impairments, expected to last at least twelve months, that left him unable to perform any job in the national economy. 42 U.S.C. § 423(d)(1)(A).

A.

The record reflects that:

During the relevant period, Plaintiff reported that he cared for his personal needs, cared for a pet dog (fed her, took her outside), prepared his own food (microwaveable meals, sandwiches), performed household chores (laundry, dishes), drove a car, shopped in stores for groceries, and used his computer to chat with friends. (Tr. 209-13). His roommate at the time, Patricia Hamilton, reported similar activities. (Tr. 183-87). In February 2011, Plaintiff reported to a psychologist that he was “able to do all daily hygiene activities on his own” and was “capable of completing all household chores.” (Tr. 283). However, at the June 2012 hearing, Plaintiff testified that although he still

drove, he relied heavily on his roommate for everything else (household chores, meals, shopping). (Tr. 27, 31-32, 37).

Plaintiff sustained a work-related injury while shoveling rocks on October 6, 2007. (Tr. 245). An October 24, 2007 MRI of the lumbar spine revealed spondylolisthesis with bilateral pars defects at L5, S1. (*Id.*)

In November 2008, Plaintiff met neurosurgeon, Michael Rohmiller, M.D., who insisted that he quit smoking. (Tr. 278). In January 2009, Dr. Rohmiller reported that Plaintiff was making progress towards the ultimate goal of spinal fusion for treatment of his low back and lower extremity pain. (Tr. 277). By July 2009, Plaintiff had lost enough weight to be a candidate for surgery. (Tr. 274).

On October 29, 2009, Plaintiff underwent lumbar fusion and decompression back surgery. (Tr. 238). Dr. Rohmiller reported that the operation was successful. (Tr. 242-43).

The following month, Dr. Rohmiller noted that Plaintiff was “doing phenomenally well and [had] no complaints.” (Tr. 272). Physical examination noted normal findings, including a negative straight leg raising test. (*Id.*) In December 2009, Plaintiff’s lower extremities remained unchanged. (Tr. 271). Dr. Rohmiller recommended physical therapy. (*Id.*)

In January 2010, Plaintiff returned to Dr. Rohmiller for a follow-up evaluation. (Tr. 270). Dr. Rohmiller noted that he was “doing quite well,” having no significant

complaints. (*Id.*) A physical examination revealed normal findings, including full strength and no pain with internal or external rotation of his hips. (*Id.*)

By February 2010, Dr. Kelly reported that Plaintiff was improving. (Tr. 262). He noted that Plaintiff weaned himself off his pain medication and that his only complaint was of some focal pain that appears to be coming from the left SI joint – common after fusion surgery. (*Id.*) Dr. Kelly reported that he spoke to Plaintiff about his “long range return to work plans” and they agreed that he should not go back to pouring concrete but Plaintiff was not sure what he wanted to do. (*Id.*) Physical examination noted relatively benign findings. (Tr. 263).

In March 2010, Dr. Kelly noted that Plaintiff was “coming along very nicely from a pain perspective and [was] now off of opioids.” (Tr. 259). Further, Dr. Kelly noted that Plaintiff’s only complaint was of some focal pain, which was common after fusion surgery. (*Id.*) Physical examination revealed benign findings. (Tr. 261).

In early May 2010, Dr. Kelly again noted benign physical examination findings. (Tr. 258). He recommended SI joint injections. (*Id.*) In May and June 2010, Plaintiff underwent SI joint injections. (Tr. 254-55). The procedures were well-tolerated. (*Id.*)

By June, Plaintiff reported to Dr. Rohmiller that the injections provided some relief. (Tr. 271). An EMG performed on July 29, 2010, showed no active denervation and right peroneal motor neuropathy. (Tr. 267).

In August 2010, Plaintiff returned for a follow-up appointment with Dr. Kelly. (Tr. 251). A physical examination revealed minimal tightening near his surgical scar, but

otherwise normal findings. (Tr. 252-53). Dr. Kelly noted improvement after two SI joint injections. (Tr. 253). Plaintiff also met with Dr. Rohmiller and reported that he was “relatively comfortable when seated for leaning forward,” but experienced low back pain when performing “extension-type activities.” (Tr. 267).

In September 2010, Dr. Kelly noted that Plaintiff experienced a pain flair-up after using his golf clubs. (Tr. 248). He also noted that Plaintiff progressed nicely and could lift up to 30 pounds now. (*Id.*) A physical examination revealed “very minimal tightening of paraspinals caphaiad” and localized pain to the right of L3, but otherwise normal findings. (Tr. 250). Dr. Kelly recommended that Plaintiff continue on his medication and return for a follow-up in four weeks. (*Id.*)

In October 2010, Dr. Kelly reported that Plaintiff still experienced positional mid-lumbar pain and occasional cramps in the lower trapezius. (Tr. 245). Dr. Kelly reported that there was “definite improvement since surgery.” (*Id.*) A physical examination revealed benign findings, including normal muscle strength; resolved tenderness at left SI joint; normal gait; and only localized pain. (Tr. 247). Dr. Kelly recommended that Plaintiff continue on his medication and return for a follow-up in four weeks. (*Id.*) In October 2010, Plaintiff also met with Dr. Rohmiller for a follow-up. (Tr. 266). Physical examination revealed unchanged findings. (*Id.*)

In November 2010, Dr. Rohmiller noted no changes from the last visit and stated that Plaintiff was working on other avenues for employment. (Tr. 265).

In January 2011, Dr. Kelly noted that his inexpensive pain medications should enhance his ability to work. (Tr. 290). A physical examination revealed benign findings. (Tr. 291). The following month, Dr. Kelly noted similar findings. (Tr. 288).

A February 2011 consultative psychological evaluation was performed by Suzanne Collins, PsyD, at the request of the Disability Determination Services. Dr. Collins found that Plaintiff exhibited a slightly irritable affect with no overt signs of anxiety. He complained of occasional depression. Dr. Collins found an adjustment disorder with depressed mood and assigned a GAF score of 70.⁴ (Tr. 14).

On May 24, 2011, state agency medical consultant, Timothy Gregg, M.D., reviewed the medical evidence of record and determined that Plaintiff could perform a limited range of light work. (Tr. 76-79).

On May 25, 2012, Dr. Kelly provided a medical source statement regarding Plaintiff's work-related activities. (Tr. 293-95). He opined that Plaintiff could lift up to 15 pounds occasionally, 10 pounds frequently; stand/walk 2 hours; sit 3 hours; never climb, kneel, balance, or crawl; and occasionally crouch and stoop. (Tr. 293-94).

⁴ The Global Assessment of Functioning ("GAF") is a numeric scale (0 through 100) used by mental health clinicians and physicians to rate subjectively the social, occupational, and psychological functioning of adults, *e.g.*, how well or adaptively one is meeting various problems-in-living. A score of 61-70 indicates some mild symptoms (*e.g.*, depressed mood and mild insomnia) or some difficulty in social, occupational, or school functioning (*e.g.*, occasional truancy, or theft within the household), but generally functioning pretty well, has some meaningful interpersonal relationships.

B.

Plaintiff maintains that the ALJ erred by failing to give proper weight to the opinion of Dr. John Kelly, his treating pain physician.

The ALJ declined to give Dr. Kelly's opinion controlling weight because his opinion was not well-supported by medically acceptable clinical and laboratory diagnostic techniques and was also inconsistent with other substantial evidence. Specifically, Dr. Kelly relied on a pre-surgery MRI report to explain his findings. (Tr. 293-9). According to his own treatment notes, Dr. Kelly noted that Plaintiff improved after surgery. (Tr. 245, 253, 262). Dr. Kelly reported that "work conditioning" was successful and Plaintiff could lift up to 30 pounds by September 2010. (Tr. 248). Moreover, physical examinations after the fusion surgery revealed benign findings. (Tr. 247, 250, 252-53, 258, 261, 263, 266, 270, 272, 288, 291). Dr. Kelly's treatment records show Plaintiff successfully underwent physical therapy and was referred for vocational rehabilitation. Such evidence suggests Dr. Kelly did not find Plaintiff to be permanently disabled, rather in need of strengthening and retraining to a less physical job. Therefore, Dr. Kelly's opinion was simply inconsistent with the substantial evidence. 20 C.F.R. § 404.1527(c)(2), (d)(3), (4), 416.927(c)(2), (d)(3), (4) ("An ALJ is also authorized to eschew the opinions of any physicians that are inconsistent with the medical evidence.").⁵

⁵ Additionally, the evidence shows no significant limitations on activities of daily living or social functioning. Specifically, Plaintiff works on the computer, plays games, and watches television. (Tr. 15). He prepares his own meals, mostly in the microwave. (*Id.*) He is a good cook and cooks on a good day. (*Id.*) He can care for his personal needs and handle his personal finances. (*Id.*)

When a treating source opinion is not entitled to controlling weight, the regulations provide that the ALJ must consider several factors when determining what weight to give the opinion. 20 C.F.R. § 404.1527(d)(2), 416.927(d)(2). The factors include: the examining relationship, treating relationship (its length, frequency of examination, and its nature and extent), the supportability by clinical and laboratory signs, consistency, specialization, and other enumerated criteria. 20 C.F.R. § 404.1527(d), 416.927(d). Here, the ALJ accepted portions of Dr. Kelly's opinion that was consistent with the record evidence.

State agency reviewers found Plaintiff capable of performing light work. (Tr. 16). The ALJ may rely on a state agency physician's opinion when the opinion is consistent with the record evidenced. *Hoskins v. Comm'r of Soc. Sec.*, 106 F. App'x 412, 415 (6th Cir. 2004) ("State agency medical consultants are considered experts and their opinions may be entitled to greater weight if their opinions are supported by the evidence."). Based in part on Dr. Kelly's opinion, the ALJ limited Plaintiff to a range of sedentary work. (Tr. 16).

Accordingly, the Court finds that the ALJ properly weighed Dr. Kelly's opinions in assessing disability.

III.

For the foregoing reasons, Plaintiff's assignments of error are unavailing. The ALJ's decision is supported by substantial evidence and is affirmed.

IT IS THEREFORE ORDERED THAT the decision of the Commissioner, that Jeremy Paddock was not entitled to supplemental security income or disability insurance benefits, is found **SUPPORTED BY SUBSTANTIAL EVIDENCE**, and **AFFIRMED**. The Clerk shall enter judgment accordingly, and as no further matters remain pending for the Court's review, this case is **CLOSED**.

Date: 6/17/14

s/ Timothy S. Black
Timothy S. Black
United States District Judge