UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CAROLYN HINTON, o/b/o J.C.,	:	Case No. 1:14-cv-29
Plaintiff,	:	Judge Timothy S. Black
vs.	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

ORDER THAT: (1) THE ALJ'S NON-DISABILITY FINDING IS FOUND SUPPORTED BY SUBSTANTIAL EVIDENCE, AND AFFIRMED; AND (2) THIS CASE IS CLOSED

This is a Social Security disability benefits appeal. At issue is whether the administrative law judge ("ALJ") erred in finding the minor child, J.C., "not disabled" and therefore not entitled to supplemental security income ("SSI"). (*See* Administrative Transcript ("Tr.") (Tr. 33-48) (ALJ's decision)).

I.

On November 8, 2010, Plaintiff Carolyn Hinton, on behalf of her minor child J.C., applied for SSI, alleging disability as of June 1, 2008. (Tr. 33, 81). Plaintiff alleged that J.C. was disabled due to a combination of impairments, including a learning disability, a reading disability, eye issues, oppositional defiant disorder, headaches, and ADHD. The state agency denied the application initially and upon reconsideration, and Plaintiff timely requested a hearing. (Tr. 33, 100-102, 108-110). On July 17, 2012, Plaintiff appeared and testified in the presence of counsel at a hearing before an ALJ. (Tr. 33, 57-80). In an

August 2012 decision, the ALJ determined that Plaintiff was not disabled or entitled to SSI benefits. (Tr. 33-48). In September 2013, the Appeals Council denied Plaintiff's request for review and the ALJ's decision became the Commissioner's final decision. (Tr. 1-4). 20 C.F.R. § 416.1481. Plaintiff now seeks judicial review of the ALJ's decision pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3).[1]

At the time of the hearing, J.C. was an 11 year old male with a sixth grade education. (Tr. 36). J.C. does not have any past work experience.[2]

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

1. The child was born on November 8, 2000. Therefore, he was a school-age child on November 8, 2010, the date the application was filed, and is currently a school-age child. (20 CFR 416.926a(g)(2)).

2. The child has not engaged in substantial gainful activity since November 8, 2010, the application date (20 CFR 416.924(b) and 416.971 *et seq*.).

3. The child has the following severe impairments: right eye anisometropic amblyopia, oppositional defiant disorder with disruptive behavior, and borderline intellectual functioning (20 CFR 416.924(c)).

4. The child 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 416.924, 416.925, and 416.926).

---

[1] The Agency defines RFC to mean "the most you can still do despite your limitations." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

[2] 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).

5. The child does not have an impairment or combination of impairments that functionally equals the severity of the listings (20 CFR 416.924(d) and 416.926a).

6. The child has not been disabled, as defined in the Social Security Act, since November 8, 2010, the date the application was filed (20 CFR 416.924(a)).

(Tr. 36-48).

In sum, the ALJ concluded that J.C. was not under a disability as defined by the Social Security Regulations, and was therefore not entitled to SSI. (Tr. 48).

On appeal, Plaintiff argues that the ALJ erred in: (1) addressing Ms. Bernard's opinion as "another medical source"; (2) finding that J.C. had only a "marked" limitation in social functioning; (3) not finding J.C.'s learning disability and headaches to be severe impairments; and (4) finding J.C. was less than markedly limited in acquiring and using information. The Court will address each error in turn.

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:

1. Medical Evidence

Plaintiff J.C. read at a second grade level when he was in the fifth grade. (Tr. 326). J.C. has a full scale IQ of 75, an adaptive composite score of 64, a score of 67 in the communication domain, a score of 62 in the daily living domain, and a score of 64 in the socialization domain. (Tr. 351, 355). These scores fall in the low average range for children his age. (*Id.*)

On October 5, 2009, Dr. Deblasio performed a wellness examination. He found that J.C. exhibited good growth and development. Dr. Deblasio told J.C. that he needed

to wear his prescription eyeglasses. Without his glasses, J.C. demonstrated visual acuity of 20/20 in his left eye and 20/80 in his right eye. (Tr. 36).

On June 10, 2010, Dr. Saltarelli examined J.C. because of complaints of blurry distance vision and intermittent headaches. Although J.C. had a history of prescription glasses, he had not used them for several years. After a comprehensive eye examination, Dr. Saltarelli diagnosed J.C. as having anisometopia amblyopia in his right eye and hyperopia which was more severe in his right eye than his left eye. J.C.'s right eye vision had permanently declined. Dr. Saltarelli recommended that J.C. wear shatter resistant glasses for the safety/protection of his sound left eye. (Tr. 36).

On March 16, 2011, Dr. Nancy Schmidtgoessling performed a consultative examination and noted that J.C. had a borderline IQ. (Tr. 298). Dr. Schmidtgoessling noted that J.C. presented himself like a child of 12 years old. (Tr. 36). She found that J.C. did not exhibit any unusual behaviors, and was not overactive or hyperactive. (*Id.*) Dr. Schmitgoessling noted that part of J.C.'s problem was a deliberate refusal to complete tasks and that there were times J.C. expresses anger inappropriately, does not take turns, and is not patient. (Tr. 299). Dr. Schmidtgoessling diagnosed J.C. as having a disruptive behavior disorder. (Tr. 37). At the consultative exam, J.C.'s mother was "indecisive" and "appeared to lack information" which affected the quality of the evaluation. (Tr. 38). Although records revealed that J.C. had been suspended from school on a couple of occasions, J.C.'s mother was unable to tell Dr. Schmidtgoessling whether her son had

ongoing behavioral problems at school. In fact, she told Dr. Schmidtgoessling that she was applying for disability benefits "because the school told her to do so." (*Id*.)

On July 9, 2011, Dr. Dane Warner performed a wellness evaluation. (Tr. 37). He recorded that J.C. did not have any school or behavioral problems. (*Id*.)

J.C.'s school records note that he does not complete assignments, make-up work after absences, or follow rules. (Tr. 319). There are seventeen different occasions where J.C. was disciplined at school between December 2011 and February 2012. (Tr. 320). In fact, J.C. had multiple disciplinary actions including but not limited to suspensions and detentions because he was interrupting class, not listening, being argumentative and disruptive, refusing to follow directions, and back talking. (Tr. 318-359). J.C. even brought a BB gun to school and threatened to shoot another student after school. (*Id.*) The school reported that J.C. has chronic defiance, because he refuses to comply with school rules and is oppositional. (*Id.*) He tried to give another student a caffeine supplement pill, he bothers other students, destroys school property, and is insubordinate with the staff. (*Id*.) Additionally, J.C. steals from his teacher's closet, tells staff members to shut up, punches other students, refuses to stay in his seat, rips up his assignments, tells teachers to shut up, threatens to jump students after school, and tells other students to shut the f--- up. (*Id.*) He inappropriately touched other students in the buttocks and told them he was going to rape them. (*Id.*) He also grabbed a female student and tried to kiss her. (*Id.*)

J.C's Professional Counselor, Diane Bernard, assigned J.C. a GAF score of 45.[3] (Tr. 412-413). Ms. Bernard determined that Plaintiff has the following symptoms: anhedonia or pervasive loss of interest in almost all activities; impairment in impulse control; generalized persistent anxiety; mood disturbance; difficulty thinking and concentrating; emotional withdrawal or isolation; intense and unstable interpersonal relationships and impulsive and damaging behavior; emotional liability; deeply ingrained, maladaptive patterns of behavior; easy distractibility; and memory impairment. (Tr. 406, 413). Ms. Bernard also noted that J.C. has marked difficulties maintaining attention, concentration and pace, and extreme difficulties maintaining social functioning and performing activities of daily living at school. (Tr. 407).

2. Hearing Testimony

Plaintiff testified that J.C. is in special education classes for reading, math, and social studies. (Tr. 62). She testified that J.C. gets in fights at school every other day and is disrespectful. (Tr. 63). Plaintiff alleged that J.C. has been in trouble more than ten times. (*Id*.) She alleged that J.C. also gets in fights with his sisters at home. (Tr. 65). Plaintiff testified that J.C. is different from other peers his age because of his attitude and behavior and that J.C has to be reminded more than five times to do a simple one step task. (Tr. 71, 74). Further, J.C. has daily angry outbursts, is hyper, and acts impulsively. (Tr. 75, 76). She also noted that J.C. does not take criticism very well. (*Id.*)

[3] The Global Assessment of Functioning ("GAF") is a numeric scale (1 through 100) used by mental health clinicians and physicians to rate subjectively the social, occupational, and psychological functioning of adults. A score of 41-50 indicates serious symptoms or any serious impairment in social, occupational, or school functioning.

3. ALJ Decision

To receive SSI benefits as a child, Plaintiff must establish that J.C. has a medically determinable physical or mental impairment, which resulted in "marked and severe functional limitations," and which was expected to result in death or which had lasted or was expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 1382c(a)(3)(C)(i); 20 C.F.R. § 416.906. "Marked and severe functional limitations" means a level of severity that meets, medically equals, or functionally equals the Listings. To establish functional equivalence, J.C. must have a medically determinable impairment or combination of impairments that results in "marked" limitations in two functional domains or an "extreme" limitation in one domain. 20 C.F.R. § 416.926a(a). The domains are: (1) acquiring and using information; (2) attending and completing tasks; (3) interacting and relating with others; (4) moving about and manipulating objections; (5) caring for oneself; and (6) health and physical well-being. 20 C.F.R. § 416. 926a(b)(1)(i)-(vi).

The ALJ found that J.C. had the following "severe" impairments: right eye anisometropic amblyopia, oppositional defiance disorder with disruptive behavior, and borderline intellectual functioning. (Tr. 36). The ALJ then concluded that J.C.'s impairments did not meet or equal a listing of impairments nor functionally equal a listing of impairments, since he has "less than marked" limitations in the domain of "acquiring and using information"; "less than marked" limitations in attending and completing tasks; "marked" limitations in interacting and relating with others; "less than

marked" limitations in moving about and manipulating objects; "less than marked" limitation in caring for self; and less than marked limitations in health and physical well-being. (Tr. 39-48). Therefore, the ALJ concluded that J.C. was not disabled. (Tr. 48).

B.

First, Plaintiff maintains that the ALJ failed to properly weigh the opinion of Ms. Bernard.

As a Professional Counselor (and not a psychologist or psychiatrist), Ms. Bernard is not an "acceptable medical source" as defined in 20 C.F.R. § 416.913(a), and consequently, her opinions are not "medical opinions" pursuant to 20 C.F.R. § 416. 927(a)(2). Regardless, the ALJ evaluated Ms. Bernard's opinion. *See* SSR 06-03p (explaining that the factors found at 20 C.F.R. § 416.927(d), including the degree to which the opinion is supported or consistent with the other evidence, are the basic principles that apply to consideration of all opinions). An ALJ is not required to afford the same level of deference to opinions of "other sources" as he must afford to the opinions of "acceptable medical sources." *See* 20 C.F.R. §416.913(a) (noting that information from "other sources" cannot establish the existence of an impairment, and that there must be evidence from an "acceptable medical source" for this purpose). Still an ALJ must "consider all relevant evidence in the case record," which includes evidence from "other sources." SSR 06-03p.

Here, the ALJ's decision includes a reasoned explanation, supported by the record, for not fully crediting Ms. Bernard's opinions. The ALJ properly considered the requisite

factors under 20 C.F.R. § 404.1527(d), and noted the lack of substantiating objective evidence and the inconsistency in her treatment notes with the record as a whole. The ALJ found that the weight of the evidence did not support Ms. Bernard's conclusion that J.C. was "markedly and/or extremely limited in almost all of these six functional domains." (Tr. 38). While the ALJ could have been more explicit in his analysis, "it is well settled that an ALJ can consider all the evidence without directly addressing in his written decision every piece of evidence submitted by a party." *Loral Defense Systems-Akron v. N.L.R.B.*, 200 F.3d 436, 453 (6th Cir. 1999).

Accordingly, the ALJ's decision to give more weight to acceptable medical opinions is supported by the record.

C.

Next, Plaintiff argues that the ALJ improperly found that J.C. had a "marked" limitation in social functioning, when he had an "extreme" limitation in social functioning.

A "marked" limitation is one which seriously interferes with functioning. 20 C.F.R. § 416.926a(e)(2)(i). "Marked" limitation also means "more than moderate" but "less than extreme." 20 C.F.R. § 416.926a(e)(2)(i). It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean. 20 C.F.R. § 416.926a(e)(2)(i). An "extreme" limitation is one that "interferes very seriously with [a child's] ability to independently initiate, sustain, or complete activities." 20 C.F.R. § 416.926a(e)(3)(i).

An "extreme" limitation also means "more than marked." 20 C.F.R. § 416.926a(e)(3)(i). An extreme limitation does not necessarily mean a total lack or loss of ability to function. It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least three standard deviations below the mean. 20 C.F.R. § 416. 926a(e)(3)(i).

Plaintiff alleges that J.C. meets Listings 112.02(A)(6) (impairment in impulse control) and 112.08 (A)(4 or 6) (mood disturbance).

Personality Disorders (112.08). Manifested by pervasive, inflexible, and maladaptive personality traits, which are typical of the child's long-term functioning and not limited to discrete episodes or illness. The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior, associated with one of the following:

    1. Seclusiveness or autistic thinking; or

    2. Pathologically inappropriate suspiciousness or hostility; or

    3. Oddities of thought, perception, speech, and behavior; or

    4. Persistent disturbances of mood or affect; or

    5. Pathological dependence, passivity, or aggressiveness; or

    6. Intense and unstable interpersonal relationships and impulsive and exploitative behavior; or

    7. Pathological perfectionism and inflexibility;

    AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph (B)(1) of 112.02; or

for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph (B)(2) of 112.02.

Organic Mental Disorders (112.02)

B. Select the appropriate age group to evaluate the severity of the impairment:

2. For children (age 3 to attainment of age 18), resulting in at least two of the following:

a. Marked impairment in age-appropriate cognitive/ communicative function, documented by medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized psychological tests, or for children under age 6, by appropriate tests of language and communication; or

b. Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized tests; or

c. Marked impairment in age-appropriate personal functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, appropriate standardized tests; or

d. Marked difficulties in maintaining concentration, persistence, or pace. Listing 112.02(B)(2).

The "interacting and relating with others" domain (social functioning) provides that school age children like J.C. should be developing more lasting friendships with children who are of the same age and should begin to understand how to work in groups to create projects and solve problems. 20 C.F.R. § 416.926a(i). They should also have

an increased ability to understand another's point of view and tolerate differences and should attach to adults other than parents. *Id.* They should also be able to talk to people of all ages, share ideas, tell stories, and speak in a manner that both familiar and unfamiliar listeners readily understand. *Id.* Some examples of difficulties that children could have interacting and relating with others include: (i) has no close friends, or all friends are older or younger than the child; (ii) avoids or withdraws from people he knows, or is overly anxious or fearful of meeting new people or trying new experiences; (iii) has difficulty playing games or sports with rules: (iv) has difficulty communicating with others (e.g., in using verbal and nonverbal skills to express himself, in carrying on a conversation, or in asking others for assistance); or (v) has difficulty speaking intelligibly or with adequate fluency. (Tr. 43).

The ALJ considered that, in November 2010, Plaintiff stated that J.C. had trouble making friends his own age and plying team sports. (Tr. 43). However, Plaintiff noted that J.C. could make new friends, generally got along with her, got along with other adults, and generally got along with his teachers. (Tr. 44). Plaintiff stated that adults in her neighborhood complimented her on her son and that he behaved more appropriately in public places alone than when he was accompanied by one of his older friends. (*Id*.) In 2010, the multi-disciplinary team noted that J.C. displayed anti-social behavior in class. Specifically, J.C. talked in tones to aggravate his fellow classmates and engaged in name-calling. (Tr. 43). Additionally, the ALJ referenced that, in early 2011, an intervention specialist stated that J.C. seemed to exhibit "very sexualized behavior for a

4th grade student" and used foul language disturbing to both adults and students. (*Id*.) J.C. was noted to have "serious problems" making and keeping friends and "very serious problems" playing cooperatively with other children. (*Id*.) Furthermore, school records show that J.C. was disciplined for using inappropriate language, verbally attacking other children, disrespecting teachers, and threating another student. (Tr. 44).

However, the ALJ afforded great weight to the opinions of the state agency reviewing sources, including psychologist Dr. Hoyle, who opined that J.C. had less than marked limitations in interacting and dealing with others. (Tr. 27, 86-87). Still, the ALJ afforded J.C. the benefit of the doubt and, in consideration of the record as a whole, found that J.C. had marked limitations in this functional domain. (Tr. 43).

"Discretion is vested in the ALJ to weigh all the evidence," and he did not abuse that discretion in this instance. *Collins v. Comm'r of Soc. Sec.*, 357 F. App'x 663, 668 (6th Cir. 2009). Accordingly, the ALJ considered the medical opinions in conjunction with the evidence of record and reasonably determined that J.C. had marked, not extreme, limitations in interacting and relating with others and did not meeting Listing 112.02 or 112.08. (Tr. 43).

D.

Plaintiff also claims that the ALJ erred because he did not consider J.C's learning disability (reading and math) with frequent headaches to be severe impairments.

The objective of the step-two inquiry is to "screen out" claims that are medically baseless. *Bowen v. Yuckert*, 482 U.S. 127, 153 (1987) (the purpose of the step two

requirement is to "identify at an early stage those claimants whose medical impairments are so slight that it is unlikely that they would be found to be disabled."). Notably, the ALJ did not "screen out" J.C.'s claim by denying it at step two; instead, he found that J.C. had three severe impairments and proceeded onward with the three-step evaluation. (Tr. 36-48). Since the ALJ continued with his analysis beyond step two, his alleged failure to find additional impairments severe, standing alone, is not reversible error. *Anthony v. Astrue*, 266 F. App'x 451, 457 (6th Cir. 2008) ("The ALJ specifically found that Anthony's….qualified as severe impairments…The fact that some of Anthony's impairments were not deemed to be severe at step two is therefore legally irrelevant.").

Plaintiff contends that the ALJ committed error because a learning disability (reading and math) with frequent headaches and a cognitive disability were outlined in the teacher questionnaire of intervention specialist Mr. Good and teacher Mrs. Sears. However, a diagnosis by itself is not conclusive evidence of disability, because it does not reflect the limitations, if any, that it may impose upon an individual. *Higgs v. Bowen*, 880 F.2d 860, 863 (6th Cir. 1988) ("The mere diagnosis…of course, says nothing about the severity of the condition."). Accordingly, Plaintiff fails to establish an error at step two.

Moreover, on January 12, 2011, J.C.'s intervention specialist at Midway Elementary School stated that J.C. had "a great deal of potential as a student" and described him as "a very intelligent capable student." (Tr. 40). He stated that J.C. would likely be working at grade level if he exhibited appropriate behaviors and had more

assistance with the choices he made. (*Id*.) He noted that J.C. had large gaps in his classroom knowledge because he missed so much instruction when he was pulled out for misbehavior. (*Id.*) He stated that J.C. did not seem to have any problem comprehending oral instructions, understanding school and content vocabulary, reading/comprehending written material, comprehending/doing math problems, understanding/participating in class discussions, providing organized oral explanations with adequate descriptions, expressing ideas in written form, learning new material, recalling and applying previously learned material, and applying problem solving skills in class discussions. (Tr. 40). Moreover, J.C.'s scores only placed him in the low-average range.

Dr. Schmidtgoessling noted that J.C. did not exhibit any problems with his vision at the March 2011 consultative examination. At the hearing, J.C.'s mother stated that although he had glasses, he would not wear them because he thought he looked funny. (Tr. 48). The fact that J.C. has headaches because he refuses to wear his glasses does not render the headaches a severe impairment.

Accordingly, the record supports a finding that J.C.'s "learning disabilities" and headaches are not severe impairments.

E.

Finally, Plaintiff maintains that the ALJ erred in not having a medical expert at the hearing to testify as to the severity of J.C.'s alleged impairment in acquiring and using information.

There is no requirement that the ALJ must obtain testimony by a medical expert. 20 C.F.R. § 416.927(f)(2) (the ALJ may request and consider opinions by medical experts if the ALJ deems such opinions necessary). This is further supported by the fact that the regulatory language regarding the use of medical experts in administrative hearings is permissive, not mandatory. 20 C.F.R. § 404.1527(f)(2) ("The language of the regulations applicable to an ALJ's use of medical advisors is permissive, not mandatory: '[ALJ]s may ask for and consider the opinions of medical advisors on the nature and severity of your impairment(s) and whether your impairment(s) equals the requirements of any listed impairment…'"). Moreover, the ALJ has the discretion to determine what evidence is necessary to make his decision. *Davis v. Chater*, No. 95-2235, 1996 U.S. App. LEXIS 33614, at *6 (6th Cir. Dec. 19, 1996) (stating that it is the ALJ's discretion whether to call a specialist as a medical expert) (citing 20 C.F.R. § 404.1527(f)(2)).

Accordingly, the ALJ did not err in choosing not to have a medical expert testify at the hearing.

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 J.C. was not entitled to supplemental security income, is found **SUPPORTED BY SUBSTANTIAL EVIDENCE**, and **AFFIRMED.**

The Clerk shall enter judgment accordingly, whereupon, as no further matters remain pending for the Court's review, this case is **CLOSED** in this Court.

Date: 9/23/14

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