IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Alycia D. Jones,	:	
Plaintiff	:	Civil Action 2:13-cv-0414
v.	:	
Corolyn W. Colvin, Acting Commissioner of Social Security,	:	Magistrate Judge Abel
	:	
Defendant	:	

DECISION

Plaintiff Alycia D. Jones brings this action under 42 U.S.C. §§405(g) for review of a final decision of the Commissioner of Social Security denying her applications for social security disability insurance and supplemental security income benefits. This matter is before the Court on the administrative record, plaintiff's merits brief, defendant's memorandum in opposition, and plaintiff's reply brief.

Summary of Issues. In April 2012, plaintiff Alycia D. Jones applied for social security disability insurance and supplemental security income benefits alleging she became disabled in November 2010, at age 39, by cancer surgery, diabetes, depression, high blood pressure, high cholesterol, vision problems, neuropathy, migraines and leukemia. The administrative law judge found that she was not disabled because she had the residual functional capacity to perform a reduced range of work having light exertional demands with the further restrictions that she could not perform production rate pace or quotas, engage with the general public, have frequent workplace changes,

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or sustain concentration, attention, and persistence for periods of more than two hours at a time.

Plaintiff argues that the decision of the Commissioner denying benefits should be reversed because the administrative law judge:

- rejected the opinions of treating and examining sources and relied on out of date, internally inconsistent opinions of non-examining sources in finding Jones's mental residual functional capacity;
- failed to properly evaluate her hip condition when making his physical residual functional capacity findings;
- erred in his assessment of her subjective complaints and credibility; and
- failed to include all of her limitations in the hypothetical question to the vocational expert.

Procedural History. Plaintiff Alycia D. Jones filed her applications for social security disability insurance and supplemental security income benefits on April 30, 2012, alleging that she became disabled on November 24, 2010, at age 39, by cancer surgery, diabetes, depression, high blood pressure, high cholesterol, vision problems, neuropathy, migraines and leukemia. The application was denied initially and upon reconsideration. Plaintiff sought a *de novo* hearing before an administrative law judge. On February 4, 2013, an administrative law judge held a hearing at which plaintiff, represented by counsel, appeared and testified. A vocational expert also testified. On February 20, 2013, the administrative law judge issued a decision finding that she was

not disabled within the meaning of the Act. On April 18, 2013, the Appeals Council denied plaintiff's request for review and adopted the administrative law judge's decision as the final decision of the Commissioner of Social Security.

Age, Education, and Work Experience. Alycia D. Jones was born April 5, 1971. She completed the eleventh grade, and was in special education classes for some subjects. She does not have a GED. (Tr. 39.) She can read and write. (Tr. 39-40.) Jones has worked as a cook. In her job, she was a lead cook who planned meals and was also a dietary aid. (Tr. 40.) She last worked in November 2010. (Tr. 363.)

Plaintiff's Testimony.

Plaintiff Alycia D. Jones gave the following testimony. She stopped working in November 2010 when she was let go due to her diabetes and tremors. (Tr. 41 and 43.) Her diabetes is sill not stable. She estimated that her most recent blood sugar reading was 250. (Tr. 44.) She also suffers from neuropathy, which causes hand tremors, affects her ability to write, makes her feet to go numb, and affects her legs. (Tr. 39, 43, 46, and 52.)

In 1997, Jones was injured in a fall at a hotel. (Tr. 42.) Ever since, she has experienced worsening problems with her hip. (Tr. 46) The left hip may require surgery as a result of a problem with where her "spine connected to my hip due to the bone marrows and spinal taps I used to receive" during childhood treatment for leukemia. (Tr. 42.)

Lack of insurance hindered diagnosis and treatment, but when she obtained

insurance about seven months before the hearing, she began seeing a regular doctor. (Tr. 4 7.) Jones testified her vision becomes blurry despite glasses, words run together, and she gets migraine headaches. (Tr. 44 .) The migraines occur daily and can also be brought on by her efforts to cook or watch television. (Tr. 45.) Jones has been prescribed medicine for the headaches, which takes effect after about half an hour. (*Id.*)

Jones testified that at times she has had difficulty getting along with other people. (Tr. 56.) Her attention span is short, and she gets "angry at the littlest thing." (Tr. 65.) She becomes profane, loud and throws things. (Tr. 65.) She has anger outbursts every day. (Tr. 64.) She described herself as being "full of rage and anger" that she is "trying to learn to control. . . ." (Tr. 65.)

Jones has had trouble getting along with people at work. (Tr. 65.) In 2000 and again in 2008, she was involved in altercations with another employee. (Tr. 65-66.) In the 2008 incident, she and another cook threw objects at each other that could have harmed other employees. (Tr. 66.)

At the time of the hearing, Jones was taking Ultram, Oxycodone, Lisinopril, Patanase, Nasonex, and Melatonin, among other medications. (Tr. 4 7.) She experiences side effects of dizziness, tiredness, and sleepiness. (Tr. 48 and 59.) The Melatonin upsets her stomach. (*Id.*) To help with her pain and other symptoms, Jones also lies down, elevates her legs, and uses hot packs and baths twice each day. (Tr. 61.) Cold or wet weather makes her pain worse. (Tr. 63.) She uses a cane for balance. (Tr. 43.)

Jones further testified that every few days she requires help from her family with

bathing and dressing. (Tr. 57-58.) Her family comes to her residence to "keep me company, to make sure I have everything that I need, take me places. And to keep me from depression they'll come and pick me up and get out of the house." (Tr. 58.) She does very little housework, as she does not "do anything so it's not hard." (*Id.*) The chores are done at her own pace, and only when she feels up to it. (Tr. 62.) She does not go out as often as she once did, sometimes even missing outings with her family so as not to burden them with her inability to keep up. (Tr. 59.) She watches television, and can pay attention for up to half an hour of programming. (Tr. 55.) She does not have a driver's license. (Tr. 39.) She does exercises in an attempt to alleviate her conditions, consisting of something similar to a stomach crunch, stretching, and walking, with the assistance of a cane to the comer of the block and back once each morning. (Tr. 50-51.)

Jones estimated that she would be capable of lifting up to ten pounds, standing for up to half an hour at a time for a total of four hours during a workday, walking slowly for twenty minutes, and sitting for half an hour for a total of four hours during a workday. (Tr. 48-50.) About half of the day, she would need to spend lying down or sitting with her legs elevated. (Tr. 50.) Climbing a flight of stairs might pose a problem. (Tr. 52.) She would be able to pick up small items with her hands for perhaps a total of an hour and fifteen minutes during a workday. (Tr. 53.) She can sense the texture of objects until, with use, her hands numb or swell up, at which time she cannot do anything with them until the problems recede. (Tr. 61-62.)

Vocational Expert’s Testimony.

The vocational expert testified that Jones's past work was as a cook, DOT #313. 361-014. The administrative law judge asked the vocational expert about a hypothetical individual with plaintiff's background whose abilities matched those in his residual functional capacity finding. (Tr. 20 and 69-70.) The vocational expert testified that such an individual would be unable to perform Jones's past work but could perform the work of a hand packer, DOT #920.687-082; cleaner, DOT #323.687-014; and production inspector, DOT #652.687-034. (Tr. 70-71.)

A second hypothetical reduced the occasional weight handled to ten pounds, with standing/walking two hours, in regard to which the vocational expert identified sedentary work despite some deviation from the DOT classification. (Tr. 71-72.) Adding a restriction to frequent manipulation did not affect the vocational expert's responses. (Tr. 72.) For a fourth hypothetical, the administrative law judge specified occasional manipulative functioning, and the vocational expert testified this would preclude all work. (*Id*.)

When questioned by plaintiff’s counsel, the vocational expert testified that an individual who is absent two to four days per month could not keep any job. (Tr. 73.) Further, if the need to elevate her legs at waist level were added to either the administrative law judge' s first or second hypothetical, all work would be precluded. (*Id*.) The vocational expert was next asked about an individual with the limitations described in Exhibit 17F (Tr. 633), which identifies a number of marked mental limitations. (Tr.

74-75.) The expert testified no job could be performed with these limitations. (Tr. 75.) Alternatively, if an individual had the moderate limitations set forth in Exhibit lOF (Tr. 566), there would still be no works she could perform. (Tr. 75-76.)

Medical Evidence of Record. The administrative law judge's decision fairly sets out the relevant medical evidence of record. Nonetheless, this Decision will summarize that evidence in some detail.

Physical Impairments.

Primary care. Dr. Jeremy Bruse treated Jones from January 30 to March 13, 2012 for daily headaches. He prescribed oxycodone. (Tr. 590.)

Hip pain. A September 2012 report of x-rays of both hips indicated that there were clinical findings consistent with degenerative joint disease. X-rays showed no obvious bony abnormalities. There was "overcoverage of the femeral head consistent with pincer type femoral acetabular impingement." (Tr. 627.) There was also "diminished cutback of the femoral head/neck junction bilaterally consistent with cam morphology." (*Id*.) The impression was "mixed pincer and cam femoral acetabular impingement bilateral hips." (*Id*.)

The November 27, 2012 office notes of Dr. Jay Lee, plaintiff's treating psychiatrist, contain these remarks: "hip/spine[.] Walks with a cane–might need surgery . . . has care source." (Tr. 639.) Dr. Lee's office notes do not include an x-ray report or report from a treating source regarding plaintiff's degenerative joint disease.

In December2012, Jones had a hip consultation with Dr. Michael J. Morris. Jones

told Dr. Morris that she had had bilateral hip pain for three years. The pain progress-ively worsened. Over the preceding two years, the pain had been severe. She was walk-ing with a cane. She took ibuprofen and oxycodone. She was receiving treatment with a non-steroidal and oxycodone. (Tr. 642.) Jones reported that she held a bannister for assistance when going up or down stairs. She could sit for one hour comfortably. She had difficulty putting on socks and tying shoes. Most of the time she needed a cane to walk. She was able to walk only indoors. Dr. Morris observed a moderate limp. (Tr. 643.) X-rays of the right and left hips showed "mild, joint space narrowing and osteo-phyte formation." (*Id.*)

On examination, Jones was 62 inches tall and weighed 197 pounds. Range of motion in both hips was reported to be: Flexion 80°-95°; abducton 0°-29°; internal rotation 0°-29°; and external rotation 0°-29°.(*Id.*) These findings compare with normal ranges of motion of: Flexion 0°-125°; abduction 0°-45°; internal rotation 0°-45°; and external rotation 0°-45°. (*Merck Manual*, http://www.merckmanuals.com/professional/special_subjects/rehabilitation/physical_therapy_pt.html?qt=range%20of%20motion%20hips&alt=sh#v1128278)(Last accessed February 17, 2014). There was no fixed deformity in the either hip. Dr. Morris's diag-nostic impression was osteoarthritis of both hips. (*Id.*) He recommended conservative treatment with an "[a]rthritis program for now." (Tr. 644.)

David R. Phillips, D.C. On February 27, 2013, Jones sought treatment from Phil-lips. She was 5'2" tall and weighed 194 pounds. She complained of pain in the low back,

both hips, both legs, and the groin. The pain was aggravated by sitting, lying down, and walking. (Tr. 650.) Deep tendon reflexes were intact. Range of motion in the lumbar spine showed marked restriction in lumbar flexion, mild restriction in lumbar extension, but was otherwise normal. Although ranges of motion were reported for the cervical and lumbar spines, they were not for the hips. (Tr. 651.) The diagnosis was subluxation of the lumbar spine. Phillips gave Jones moist heat, electrical muscle stimulation, mass-age therapy, and chiropractic adjustments. (Tr. 652.)

Psychological Impairments.

Treatment at Centerpoint Health. Beginning in March 2012, Jones received psychological treatment at Centerpoint Health in Cincinnati. A March 14, 2012 Diagnostic Assessment Form indicated that Jones had recent treatment for skin cancer. As a child, she was treated for leukemia from age 4 to age 14. (Tr. 578 and 581.) Jones had a long history of conflict with her mother. When plaintiff was hospitalized to be treated for the skin cancer, her mother took possession of her belongings and told her she was going to move in with her and take care of care. But her mother later threw plaintiff out. Both her son and her daughter had recently been in jail. Both suffered from bipolar dis-order and ADHD. Jones had trouble sleeping. She was depressed, angry, and stressed. She reported no previous psychiatric treatment. (Tr. 578.)

Jessica Baublitz, a therapist, saw Jones from March 14 through April 17, 2012. On June 5, 1012, Baublitz reported that Jones's appearance was "appropriate for age and circumstance." She had a normal range and flow of conversation and speech. Jones

reported stress, anxiety, poor concentration, and irritability. No thinking disorder was noted. She was well-oriented. Jones appeared to be of average intelligence with cognitive functioning within the normal range. (Tr. 568.)

Jones attended three therapy sessions, then moved out of the city. (Tr. 569 and 576.) She was homeless. Jones said her mother interfered, but she had good relations with the rest of her family. (Tr. 527.) Baublitz said that Jones's ability to prepare food, do household chores, care for personal hygiene, shop, drive, and pay bills were all adequate. She did not report receiving any assistance to perform these tasks. (Tr. 572.)

Therapy notes from June 11 to October 2, 2012. Plaintiff was referred to the therapist by Netcare. Jones wanted mental health treatment. (Tr. 625.) On June 11, Jones was sad. She reported sleep disturbances, low energy, restlessness, difficulty concentrating, racing thoughts, and anger outbursts. She had struggled with depression since childhood. She was struggling with chronic health issues such as diabetes and hypertension. Her son and daughter suffered from ADHD. Her son was also mentally retarded, and her daughter was bipolar. (Tr. 623.) The therapist who interviewed Jones that day to complete the intake assessment reported that plaintiff's mood/affect was slightly depressed. She was logical and cooperative.

The therapist's notes from June 20 state that Jones sought treatment to decrease her symptoms of anxiety and depression. (Tr. 620.) Her symptoms remained as reported earlier. Jones said she had completed a diagnostic assessment at Centerpoint in Cincinnati, but then returned to Columbus. She was staying with an aunt in Circleville

until she was admitted to a shelter. (Tr. 621.)

On June 26, Jones was living in a women's shelter, where she was experiencing problems with the staff. (Tr. 61.) On July 16, she continued to struggle with symptoms of anxiety and depression. (Tr. 615.)

On October 2, 2012, Jones, reported that her current psychiatric medications had been effective with reducing the level of her irritability, but she could feel when the medications wore off and her active symptoms returned. Jones's rated her progress, on a scale of 1 ("No Progress") to 3 ("Good Progress"), as 2 ("Some Progress"). She continued to struggle with diabetes, arthritis, carpal tunnel, anemia, and her recovery from skin cancer. She was frustrated because Jobs and Family Services had terminated her health insurance for the second time. (Tr. 629.)

Dr. Jay Lee. Dr. Lee, a psychiatrist, first saw Jones on August 7, 2012. She reported being sexually abused as a child and raped at age 18. He diagnosed a mood disorder, not otherwise specified. (Tr. 605.) On September 4, 2012, Jones told Dr. Lee that Celexia made her more angry and irritable. Dr. Lee stopped Celexia and started her on Abilify. The diagnosis was bipolar disorder. (Tr. 628.) On October 30, 2012, plaintiff reported difficulty sleeping and said she angered easily. (Tr. 640.)

On November 27, 2012, Dr. Lee completed a Mental Functional Capacity Assessment for Jobs and Family Services. He diagnosed bipolar disorder, hypomanic type. Dr. Lee said that the "symptoms associated with this disorder include poor concentration, racing thoughts and short term memory loss, which interfere with Ms. Jones being able

to retain detailed information. Additional symptoms include episodes of anxiety . . . which interfere with her ability to maintain emotional stability and results in pro-long[ed] psychological distress, disorientation, and confusion. Ms. Jones's anxiety episodes interfere with her being able to effectively interact with co-workers. Ms. Jones's mental health syptoms are chronic and require long term treatment." (Tr. 634.) Plaintiff was "not able to work on an indefinite basis." (*Id*.)

In response to questions on the form, Dr. Lee stated the opinion that Jones was moderately limited in several areas of functioning, but also markedly limited concerning her ability to: (1) remember locations and work-like procedures; (2) understand and remember detailed instructions; (3) carry out detailed instructions; (4) maintain attention and concentration for extended periods; (5) perform activities within a schedule and maintain regular attendance and be punctual within customary tolerances; (6) sustain an ordinary routine without special supervision; (7) work in coordination with or proximity to others without being unduly distracted by them; (8) complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; (9) accept instructions and respond appropriately to criticism from supervisors; and (10) get along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes. (Tr. 633 .) These limitations were expected to last for twelve months or more. (*Id*.)

Dr. Lee's treatment notes for November 27 indicate that Jones "angers easily."

She was worried about getting housing.

Dr. John L. Tilley. On June 5, 2012, Dr. Tilley, a psychologist, performed a disability examination of Jones for Jobs and Family Services. On examination, plaintiff's "[a]ppearance and behavior were unremarkable." (Tr. 567.) Jones said she was anxious and depressed. "Her affect seemed stable and was appropriate." (*Id.*) She was oriented in all spheres. Her "[t]hought processes were clear and coherent." (*Id.*) There was no indication of delusional beliefs or hallucinations. Her insight was adequate, and her judgment was not markedly impaired. Her reasoning abilities were intact. Her attention and concentration "did not seem overly compromised." (*Id.*) MMPI-2 test scores raised validity concerns because of "over-reporting complaints, and emotional, thought, and interpersonal difficulties." (*Id.*) Dr. Tilley's provisional diagnosis was an adjustment disorder with mixed anxiety and depressed mood. Her stressors were unemployment and economic difficulties. He said her GAF was 55. Dr. Tilley checked a box labeled "Unemplolyable". He further checked a box indicating that Jones's physical and/or mental functional limitations could be expected to last between 30 days and 9 months. Other choices were less than 30 days, between 9 and 11 months, and 12 months or more. (*Id.*) Dr. Tilley completed a check list about functional capacity indicating that plaintiff had a moderate limitation in maintaining concentration and attention for extended periods, working in coordination with others, completing a normal workday and workweek, responding appropriately to supervision, and avoiding workplace hazards. (Tr. 566.)

Administrative Law Judge's Findings.

1. The claimant meets the insured status requirements of the Social Security Act through December 31, 2015.

2. The claimant has not engaged in substantial gainful activity since November 24,2010, the alleged onset date (20 C.F.R. 404.1571 et seq., and 416.971 et seq.).

. . .

3. The claimant has the following severe impairments: obesity; diabetes mellitus; hypertension; an affective/mood disorder; and an anxiety disorder (20 C.F.R. 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 seve1ity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

. . .

5. After careful consideration of the entire record, I find that the claimant has the residual functional capacity to lift and/or carry twenty pounds occasionally and ten pounds frequently, with pushing and/or pulling within lifting limitations; stand and/or walk six hours per eight hour workday; sit six hours per eight hour workday; occasionally climb ladders, ropes, and scaffolds; occasionally stoop, crouch, and crawl; understand, remember, and carry out simple to complex tasks and instructions in setting where a fast pace and/or production demands are not high; never engage in work requiring production rate pace or quotas, but can perform goal-oriented work; sustain concentration, attention, and persistence for two hour periods; interact adequately with supervisors and coworkers, but should avoid contact with the general public; and respond appropriately to workplace changes if infrequent and explained. In formulating the above conclusions, I relied upon the State agency consultants' fmdings at Exhibits lA, 2A, 5A, & 6A, which are consistent with the above limitations.

. . .

6. The claimant is unable to perform any past relevant work (20 C.F.R. 404.1565 and 416.965).

> 7. The claimant was born on April 5, 1971, and was 39 years old, which is defined as a younger individual age 18-49, on the alleged disability onset date (20 C.F.R. 404.1563 and 416.963).
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> 8. The claimant has a limited education and is able to communicate in English (20 C.F.R. § 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 finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 C.F.R. 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 C.F.R. 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 November 24, 2010, through the date of this decision (20 C.F.R. 404.1520(g) and 416.920(g)).
>
> (Tr. 15, 17, 20, 24 and 26.)

Standard of Review. Under the provisions of 42 U.S.C. §405(g), "[t]he findings of the Commissioner as to any fact, if supported by substantial evidence, shall be conclusive. . . ." 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)(quoting *Consolidated Edison Company v. NLRB*, 305 U.S. 197, 229 (1938)). It is "'more than a mere scintilla.'" *Id*. *LeMaster v. Weinberger*, 533 F.2d 337, 339 (6th Cir. 1976). The Commissioner's findings of fact must be based upon the record as a whole. *Harris v. Heckler*, 756 F.2d 431, 435 (6th Cir. 1985); *Houston v. Secretary*, 736 F.2d 365, 366

(6th Cir. 1984); *Fraley v. Secretary*, 733 F.2d 437, 439-440 (6th Cir. 1984). In determining whether the Commissioner's decision is supported by substantial evidence, the Court must "'take into account whatever in the record fairly detracts from its weight.'" *Beavers v. Secretary of Health, Education and Welfare*, 577 F.2d 383, 387 (6th Cir. 1978)(quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1950)); *Wages v. Secretary of Health and Human Services*, 755 F.2d 495, 497 (6th Cir. 1985).

Plaintiff's Arguments. Plaintiff argues that the decision of the Commissioner denying benefits should be reversed because the administrative law judge:

- rejected the opinions of treating and examining sources and relied on out of date, internally inconsistent opinions of non-examining sources in finding Jones's mental residual functional capacity;
- failed to properly evaluate her hip condition when making his physical residual functional capacity findings;
- erred in his assessment of her subjective complaints and credibility; and
- failed to include all of her limitations in the hypothetical question to the vocational expert.

Analysis.

Treating and examining sources opinions on the issue of disability.

The administrative law judge asserted Dr. Lee's opinion was not entitled to controlling weight because it "is not well supported[,]" explaining:

I have given little weight to the limitations imposed by examining phys-

> ician, Dr. Tilley (Exhibit 10F). His report indicated that his opinion was based on an examination of the claimant and prior treatment records. While the claimant has been assessed for a psychological impairment, no treatment had actually takenplace (Exhibit 11F). Furthermore, Dr. Tilley noted the claimant was inclined to over-exaggerate her conditions. While the claimant may have appeared to have the opined impairment levels during the examination, the remaining record fails to support this level of limitation and the claimant's reports of symptomology would appear suspect given Dr. Tilley's own analysis of the claimant. Finally, Dr. Tilley's opinion that the claimant is unemployable is a matter reserved specifically for the Commissioner (pursuant to SSR 96-5p) and in addition is not supported by the evidence of record.
>
> . . . A review of the claimant's treatment notes from Dr. Lee's practice fail to support the level of symptom severity opined. Just two months prior, the claimant had reported improvement of symptoms while on her prescribed medications (Exhibit 15F/2). Furthermore, many of the limitations listed in the narrative portion of the opinion appear to be based on the claimant's subjective complaints. As noted above, Dr. Tilley's examination casts doubt on the reliability of the claimant's reports, and the claimant's allegations and hearing testimony are likewise unsupported by the evidence as a whole. Finally, Dr. Lee's opinion that the claimant is unemployable is a matter specifically reserved for the Commissioner . . . and in addition is not supported by the evidence of record.

(Tr. 24-25.)

In summary, the administrative law judge found that treatment notes, test results, and clinical findings did not support Dr. Tilley's opinion that Jones was "unemployable" or Dr. Lee's opinions regarding the limitations imposed by her psychological impairment. The MMPI-2 validity scales suggested plaintiff exaggerates symptoms; and Dr. Tilley's assessment of a GAF of 55 is consistent with only moderate symptoms. Further, many limitations Tilley and Lee found appeared to be based on Jones's subjective complaints.

Plaintiff argues that treatment notes demonstrate that Jones was consistently anxious, stressed and depressed. That she rated herself as making some progress does not demonstrate an ability to perform sustained, substantial gainful work. *See, e.g., Scott v. Astrue*, 647 F.3d 734, 739 (7th Cir. 2011) ("There can be a great distance between a patient who responds to treatment and one who is able to enter the workforce . . . . "); *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989) (holding administrative law judge's conclusion that claimant was responding to treatment did not justify disregarding doctor's opinion; noting physicians had not opined improvement would allow return to work); *Seals v. Barnhart*, 308 F. Supp. 2d 1241, 1252 (N.D. Ala. 2004). Plaintiff further argues that it was unreasonable for the administrative law judge to discount Tilley's and Lee's opinions because they were based on Jones's reports of her symptoms caused by anxiety. That analysis fails to appreciate the nature of the psychiatric impairment, which "is not as readily amenable to substantiation by objective laboratory testing as a medical impairment." *Blankenship v. Bowen*, 874 F.2d 1116, 1121 (6th Cir. 1989). Additionally, plaintiff maintains, the regulations permit a physician to consider subjective symptoms when rendering an opinion since medical findings are defined as "symptoms, signs, and laboratory findings." 20 C.F .R. § 414.928(b).

Plaintiff further argues that the administrative law judge's rejection of Dr. Tilley's opinion that Jones is employable but reliance on the MMPI-2 validity scales score and GAF finding are the type of selective use of a doctor's report that is improper. *See, Langleyv. Barnhart*, 373 F.3d 1116, 1121 (l0th Cir. 2004). Finally, while recognizing

that the decision whether a claimant is disabled is ultimately one to be resolved by the Commissioner, plaintiff argues that it was error for the administrative law judge to reject Dr. Lee's medical opinion and functional limitations.

Analysis. The administrative law judge was confronted with conflicting evidence. He weighed that evidence and reached a result adverse to plaintiff's application. Nonetheless, his findings were based on a close reading of the medical record. While another fact-finder could have reached a different result, there was no evidence that required the administrative law judge to find plaintiff disabled. The MMPI-2 validity scale score could be read to suggest plaintiff had a tendency to exaggerate symptoms. Dr. Tilley's GAF assessment of 55, while an approximation that arguably is not entitled to great weight, is evidence supporting the administrative law judge's residual functional capacity findings.

Jones has a relatively short psychiatric treatment history; and the therapists' notes indicate that much of her anxiety, stress, and depression is situational– cancer treatment, homelessness, children's incarceration, mother's hostility–and may not be expected to last 12 or more months. Previously, Jones had sustained periods of employment. Although many of plaintiff's symptoms persisted over the relatively short course of her treatment, the therapists' notes reflect some alleviation of symptoms and just a slightly depressed mood. She was always logical and cooperative. During the course of therapy, plaintiff was working to resolve her homelessness, address her children's problems, secure medical and psychological treatment, and find sources of support in her

time of crisis. Dr. Tilley's report is consistent with Jones suffering from a short-term situational disability, since he did not check a box on the Jobs and Family Services disability evaluation form that her functional limitations would last 12 or more months, but found her unemployable for only 30 days to 9 months.

The Court recognizes that patients experiencing anxiety have many subjective symptoms that limit their ability to negotiate the world. Even so, courts have regularly found that the opinion of a mental health source must be well-supported by clinical and laboratory findings. *See Temples v. Comm 'r of Soc. Sec.*, 515 F.App'x 460,462 (6th Cir. 2013)("Dr. Bunch's treatment notes did not demonstrate a basis for concluding that Temples had marked to extreme limitations in numerous areas of work-related mental functioning"); *Price v. Comm 'r of Soc. Sec.*, 342 F. App'x 172, 176 (6th Cir. 2009) ("the record amply supports the ALJ's determination that Dr. Ashbaugh's opinion was not supported by objective medical evidence"); *Hamilton v. Comm 'r of Soc. Sec.*, No. 2:12-CV-02, 2013 WL 1282527, at *2-3 (S.D. Ohio Mar. 27, 2013) (treating psychiatrist's opinion unsupported by "treatment notes, which primarily consist of narrative recitations or Plaintiff's reported symptoms"); *Pierson v. Comm 'r of Soc. Sec.*, No. 1:12-CV-126, 2013 WL 428751, at *5 (S.D. Ohio Feb. 1, 2013), *adopted by* 2013 WL 791875 (S.D. Ohio Mar. 4, 2013) ("The ALJ reasonably determined that Dr. Weech's opinion lacked reference to or support from the objective evidence of record and was not supported by the progress notes"). Here there are no test results and few clinical findings supporting plaintiff's subjective complaints. Consequently, the administrative law judge did not err

in rejecting the opinions of Dr. Tilley and Dr. Lee on the ultimate issue of disability.

<u>Failure to properly evaluate plaintiff's hip impairment</u>. Plaintiff argues that there is not substantial evidence supporting the administrative law judge's decision that Jones's hip impairment was not a "severe impairment." Plaintiff argues that the Sept-ember 2012 x-rays showed significant "degenerative" hip problems, including "mixed pincer and cam femoral acetabular impingement in both hips." Dr. Lee's November 2012 treatment notes indicated the potential need for future surgery. (Tr. 627 and 639.) In December2012, Jones told Dr. Michael J. Morris that she had experienced progress-ively worsening bilateral hip pain for three years and that for the last two years the pain had been severe.

The administrative law judge found:

> The claimant also has some degenerative joint disease concerns in her hips. While the claimant testified to experiencing hip concerns since 1997, the record shows she only began seeking treatment for this condition in the second half of 2012. In September 2012, she underwent an x-ray exam-ination of both hips, which showed mixed pincer and cam femoral acetab-ular impingement in both hips (Exhibit 14F/2). Treatment notes from November of2012 note that future surgery may be required for hip con-cerns and that she walks with a cane, but it does not note if the cane is prescribed (Exhibit 19F/3). The claimant testified she uses the cane to balance and that it is prescribed, but the evidence of record reveals no citation of actual prescription of said cane.
>
> In December 2012, the claimant attended a hip consultation (Exhibit 20F/ 2). It was noted that the claimant reported having experienced hip pain for three years, a much shorter period of time compared to that to which she testified at the recent hearing. The claimant reported pain when sitting, but that she could sit in any chair for one hour without discomfort. Im-aging performed during the examination showed "mild" joint space nar-rowing and osteophyte formation in both hips and a moderate limp was

> observed. Overall, the claimant was diagnosed with osteoarthritis. While the evidence of this condition is present and it may have more than a minimal effect on the claimant's ability to do basic physical work activities, due to the relatively recent diagnosis of this condition, this impairment fails to meet the one year durational requirement necessary for finding an impairment severe.

(R. 16.)

When is an impairment severe? The Act provides that the Commissioner will determine a claimant "to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his 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)(1)(A). The Commissioner's regulations provide:

> If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment, and are, therefore, not disabled. We will not consider your age, education, and work experience.

20 C.F.R. §404.1520(c).

Repeating the language of the statute, the regulations provide that an impairment is severe when it "significantly limits [the claimant's] physical or mental ability to do basic work activities. . . . " 20 C.F.R. §404.1520(c). Basic work activities include:

- "Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, and handling."
- "Capacities for seeing, hearing, and speaking."
- "Understanding, carrying out, and remembering simple instructions."
- "Use of judgment."

- “Responding appropriately to supervision, co-workers, and usual work situations.”
- “Dealing with changes in a routine work setting.”

20 C.F.R. §404.1521(b). An impairment is not severe "only if it is a slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education, or work experience." *Brady v. Heckler*, 724 F.2d 914, 920 (11th Cir. 1984); *Higgs v. Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Murphy v. Heckler*, 801 F.2d 182, 185 (6th Cir. 1986); *Farris v. Secretary of Health and Human Services*, 773 F.2d 85, 89-90 (6th Cir. 1985). This construction of §404.1520(c) is intended to insure that the Commissioner does not "deny meritorious disability claims without proper vocational analysis." *Higgs*, 880 F.2d at 862 (citation omitted). The function of the severity requirement is to screen out claims that, based on the medical record, are totally groundless. *Higgs*, 880 F.3d at 863; *Farris*, 773 F.2d at 90 n.1.

Analysis. Plaintiff’s argument does not address the administrative law judge’s finding that evidence of the impairment is very recent and that there is no indication in the record that it will last 12 or more months. As pointed out by the administrative law judge, despite Jones telling Dr. Morris she has been experiencing hip pain for three years, there is no evidence of treatment until September 2012. Even then, the treatment appears to be minimal. Jones did see Dr. Morris, and he diagnosed osteoarthritis of the hips and recommended conservative care. Jones went to a chiropractor in February 2013. Although she mentioned hip pain, the treatment she sought was for lumbar spine

pain. The prospect of future surgery is not in Dr. Morris's notes, but is instead something Jones told Dr. Lee, her psychiatrist. No treator indicated that plaintiff's hip pain would prevent her from performing light work the administrative law judge found she could perform. Indeed, no doctor has indicated any work limitations resulting from the osteoarthritis in Jones's hips. Finally, the administrative law judge did consider plaintiff's hip pain and acknowledge that it might "have more than a minimal effect on [her] ability to do basic physical work activities . . . ." Given the paucity of evidence about the limitations, if any, the hip osteoarthritis would have on plaintiff's ability to perform light work, the administrative law judge did not err in concluding that the condition did not meet the definition of a severe impairment because it had not lasted for a period of a year.

Administrative law judge's assessment of plaintiff's subjective complaints. The administrative law judge found that Jones's "medically determinable impairments could
reasonably be expected to cause some of the alleged symptoms," but that her "statements, and those of her aunt, concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible for the reasons explained in this decision." (Tr. 21.) The administrative law judge also asserted that Jones's doing sit-ups and crunches demonstrated that she can engage in sustained light work activities. The only other activity the administrative law judge mentioned was her stretching. (Tr. 23.)

Plaintiff maintains that the administrative law judge's findings are not supported

by substantial evidence. Jones testified that she moves very slowly, and does her minimal chores at her own pace and only when she feels up to it. (Tr. 49 and 62.) Plaintiff argues that Jones's testimony does not support the administrative law judge's suggestion that her exercise routine's taking a total of 45 minutes to an hour shows a "level of physical activity" inconsistent with disabling limitations. (Tr. 23.) *Cf., e.g., Howard v. Comm'r of Soc. Sec.*, 276F.3d235, 240 (6th Cir. 2002) (noting the Administrative law judge impermissibly referenced only those portions of a report that "cast the claimant in a capable light and excluded those portions which showed Howard in a less-than-capable light").

Defendant responds that the administrative law judge found that several of Jones's claimed impairments (and attendant symptoms) were entirely unsupported by medical evidence (Tr. 16-17), and plaintiff does not contest those findings here. For example, Jones testified that she had regular vision problems, daily headaches that lasted for hours, and daily neuropathy symptoms in her hands, feet, and legs. (Tr. 44-46.) But, in this court, she does not contest the administrative law judge's findings that (1) the record support for her vision problems was so sparse that it did not constitute a medically determinable impairment; (2) there was no record evidence of treatment for headaches of the severity and frequency alleged by Plaintiff; and (3) the record contained no diagnosis of or treatment for neuropathy and thus it was not a medically determinable impairment (Tr. 16-17.) When a plaintiff does not contest making several unfounded complaints, that bolsters the administrative law judge's credibility finding.

Lehman v. Astrue, No. 2:11-cv-488, 2012 WL 3564179, at *15 (S.D. Ohio Aug. 17, 2012), *adopted by* 2012 WL 4050164 (S.D. Ohio Sept. 13, 2012) ("The undersigned declines disturb the ALJ's credibility determination. In the instant case, the record is replete with contradictions in Plaintiff's testimony and examples of her exaggerating her symptoms."); *see generally Adams v. Comm 'r of Soc. Sec.*, No. 1:10-CV-503, 2011 WL 2650688, at *1 (W.D. Mich. July 6, 2011) ("[T]he ALJ is not prohibited from applying ordinary techniques of credibility evaluation, which would include consideration of a lack of candor.").

As the administrative law judge explained, the evidence indicated that her conditions were "relatively well managed" and there was no recent evidence of deterioration. (Tr. 23.) A claimant's history of treatment and its effectiveness is a valid consideration under the regulations. See SSR 96-7p ("Important information about symptoms ... may include ... [a] longitudinal record of any treatment and its success or failure"). The Administrative law judge was required to credit her hearing testimony over other evidence in the record. He considered the inconsistencies between plaintiff's hearing testimony and her statements to medical providers, and found those inconsistencies further undermined her credibility. (Tr. 23.) For example, the administrative law judge relied on the treatment notes of Dr. Morris, who evaluated Jones's complaints of hip pain and wrote in December 2012 that "her level of activity can be categorized as light labor" and that she could sit with comfort in any chair for 1 hour at a time. (Tr. 23 and 642.) Two months later, without any objective evidence that her condition had worsened, Jones

testified that her pain was so great that she could not sit for more than thirty minutes and that she laid down or elevated her legs for at least half of the day. (Tr. 23 and 49-50.) Defendant argues that the administrative law judge could consider this inconsistency in assessing plaintiff's credibility. See SSR 96-7p ("One strong indication of the credibility of an individual's statements is their consistency, both internally and with other" record evidence).

Analysis. Here the administrative law judge primarily relied on the absence of medical evidence supporting plaintiff's subjective complaints and several examples of exaggerated testimony. As discussed above in connection with plaintiff's treating doctor and hip impairment arguments, there is substantial evidence supporting the administrative law judge' findings. *Ulman v. Comm 'r of Soc. Sec.*, 693 F.3d 709, 714 (6th Cir. 2012).

Here the administrative law judge found that plaintiff's daily activities, which included an hour of exercise a day, regularly going out with her daughter, and shopping twice a week for up to 45 minutes (Tr. 24, 332), were greater than would be expected given her claims of disabling limitations. *See Warner v. Comm 'r of Soc. Sec.*, 375 F.3d 387, 392 (6th Cir. 2004). The Court cannot say that the administrative law judge erred in making those findings.

Hypothetical question given to the vocational expert not supported by substantial evidence. Plaintiff argues that the administrative law judge's hypothetical residual functional capacity finding posed as a question to the vocational expert was not

supported by substantial evidence of record. However, there is nothing objectionable about an administrative law judge giving a vocational expert a residual functional capacity assessment. The issue is whether that residual functional capacity assessment is supported by substantial evidence. For the reasons set out above, the Court concludes that it was.

From a review of the record as a whole, the Court concludes that there is substantial evidence supporting the administrative law judge's decision denying benefits. Accordingly, the decision of the Commissioner of Social Security be **AFFIRMED.** The Clerk of Court is DIRECTED to enter for defendant.

s/Mark R. Abel
United States Magistrate Judge