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

YVETTE KING,

Plaintiff,

Civil Action 2:13-cv-551
Magistrate Judge Elizabeth P. Deavers

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER

Plaintiff, Yvette King, brings this action under 42 U.S.C. §§ 405(g) and 1383(c)(3) for review of a final decision of the Commissioner of Social Security ("Commissioner") denying her applications for Social Security Disability Insurance Benefits and Supplemental Security Income. This matter is before the Court for consideration of Plaintiff's Statement of Errors (ECF No. 14), the Commissioner's Memorandum in Opposition (ECF No. 21), and the Administrative Record (ECF No. 9). For the reasons that follow, the Court **OVERRULES** Plaintiff's Statement of Errors and **AFFIRMS** the Commissioner's decision.

I. BACKGROUND

Plaintiff filed her applications for benefits on August 14, 2008, alleging that she has been disabled since August 5, 2008, at age 38. (R. at 106-08, 109-10.) Plaintiff alleges disability as a result of a herniated disc. (R. at 156.) Plaintiff's applications were denied initially and upon reconsideration. Plaintiff sought a *de novo* hearing before an administrative law judge.

Administrative Law Judge Rita S. Eppler ("ALJ") held a hearing on April 5, 2011, at which Plaintiff, represented by counsel, appeared and testified. (R. at 53-73, 80.) Carl W.

Hartung, a vocational expert, also appeared and testified. (R. at 73-79.) On May 24, 2011, the ALJ issued a decision finding that Plaintiff was not disabled within the meaning of the Social Security Act. (R. at 10-24.) On April 9, 2013, the Appeals Council denied Plaintiff's request for review and adopted the ALJ's decision as the Commissioner's final decision. (R. at 1-5.) Plaintiff then timely commenced the instant action.

II. HEARING TESTIMONY

A. Plaintiff's Testimony

At the April 5, 2011 hearing, Plaintiff testified that she lives alone in a single-story house. (R. at 54.) She stated that her home has a basement, and that she uses the stairs once or twice a week. (*Id.*) Plaintiff asserted that she has a driver's license with no restrictions, but has not taken any trips out of Franklin County since 2008. (R. at 56.)

Plaintiff testified that she injured her back while lifting a car battery in August 2008. (R. at 61.) She testified that she underwent surgery, but that it did not improve the condition of her back or relieve her pain. (R. at 61-62.) Plaintiff testified that in order to alleviate her pain, she used a heating pad, took hot showers, slept on the couch, and used over-the-counter medications. (R. at 62.) She also stated that she was unable to attend physical therapy or fill prescription medications because she did not have insurance. (R. at 62-63.) She added that she received medications through Ohio's Hospital Care Assistance Program (HCAP) until October 2010. (R. at 63-64.)

Plaintiff estimated that she can sit, stand, or walk for fifteen minutes at a time and lift one gallon of milk.[1] (R. at 64-66.) Plaintiff testified that she stopped completing household chores when she had surgery, but stated that she can cook in the microwave and wash dishes in the sink. (R. at 68-69.) She added that her daughter assists with grocery shopping and laundry. (*Id*.) Plaintiff stated that she no longer attends church because the seats are too uncomfortable. (R. at 69.) She indicated that she spends her days lying down on the couch, watching television, or sleeping. (R. at 70.) She further indicated that she no longer grooms her hair, but that she can stand in the shower, dress herself, and feed herself. (*Id.*)

Upon cross-examination, Plaintiff testified that she sometimes has trouble putting her shirt over her head and no longer can tie her shoes. (R. at 70-71.) She described her pain as constant "sharp . . . needles, sticking and stabbing" from her toes all the way up to her back. (R. at 71-72.) Plaintiff testified that she uses a cane approximately three times a week. (R. at 72-73.) She added that she is not prescribed a cane, did not have a cane at the hearing, and does not use a cane every day. (*Id*.) Plaintiff stated that she was wearing a back brace at the hearing. (*Id.*) Finally, Plaintiff testified that she cannot bend, lift things, or clean like she was able to do before her injury. (*Id*.)

B. Vocational Expert Testimony

Carl Hartung testified as the vocational expert ("VE"). (R. at 73-79.) He testified that Plaintiff's past relevant work included a home health aide, otherwise called a "home attendant" in the *Dictionary of Occupational Titles*. (R. at 75.) The VE indicated that Plaintiff performed

[1]One gallon of milk weighs approximately 8.5 pounds. *See* Russ Rowlett, *How Many? A Dictionary of Units of Measurement*, Univ. of N.C. (Sept. 19, 2014), http://www.unc.edu/~rowlett/units/dictG.html.

this position at the medium exertional, unskilled level. (R. at 75.) The VE testified that Plaintiff's other work experience included a child monitor, which she performed at an unskilled, with medium exertional level. (*Id*.)

The ALJ asked the VE a series of questions about a hypothetical individual with Plaintiff's age, educational background, and work experience and the following capabilities and limitations: capable of lifting ten pounds frequently and twenty pounds occasionally; capable of standing and walking about six hours in an eight-hour workday; capable of siting about six hours in an eight-hour workday; unlimited ability to push or pull; and can occasionally climb stairs, stoop, kneel, crouch, and crawl. (*Id*.) The VE testified that the hypothetical individual could not perform Plaintiff's past relevant work. (*Id.*) The VE further testified that the hypothetical individual would be able to perform a significant number of jobs at the light exertional level. (*Id.*) The VE identified the following representative jobs: housekeeper/cleaner (3,724 jobs in the regional economy); dishwasher (404 jobs in the regional economy); food preparation worker (3,119 jobs in the regional economy); and hand packager (1,813 jobs in the regional economy). (R. at 76-77.)

The VE also testified that competitive employment would be precluded based on Dr. McGregor's assessment, Plaintiff's own testimony, or if Plaintiff needed to be off task for 20% of the average work week. (R. at 77-79.)

III. MEDICAL RECORDS

A. Riverside Methodist Hospital

Plaintiff presented to the emergency room on August 5, 2008, complaining of back pain from lifting a battery from the trunk of her car. (R. at 251.) X-rays taken of Plaintiff's lumbar

spine were negative. (*Id*.) She was discharged with an acute lumbar strain. (R. at 251-53.) Plaintiff returned to the emergency room on August 7, 2008, complaining of worsening low back pain. (R. at 254.) Plaintiff reported that she had pain in her lower back radiating to her upper back and in her buttocks going down her leg. (*Id*.) Physical examination showed positive left straight leg raise while seated and palpatory tenderness in the left lumbosacral junction. (R. at 254-55.) Plaintiff was diagnosed with acute sciatica on her left. (*Id*.)

B. OSU Medical Center

On August 8, 2008, Plaintiff presented to the emergency room with complaints of low-back pain, with radiation into her left hip and leg and numbness. (R. at 283.) Examination notes reflect that Plaintiff was able to walk less than ten steps and that she had pain on palpation of her sciatic notch. (R. at 284.) She was diagnosed with sciatica and prescribed steroids, along with the muscle relaxers and pain medication previously prescribed. (R. at 271-72, 283-84.)

On August 11, 2008, Plaintiff returned to the emergency room with continued pain in her left hip and back. (R. at 288-89.) Examination revealed sensory loss in the radicular distribution of Plaintiff's left leg, from her medial thigh to her lateral foot. (R. at 289.) An MRI of Plaintiff's lumbar spine showed a disk protrusion at L5-S1 and foraminal narrowing. (R. at 315.) Plaintiff was diagnosed with a herniated disk and advised to see a neurosurgeon. (R. at 290, 292.)

C. John McGregor, M.D.

On August 21, 2008, Plaintiff again presented to the emergency room at OSU Medical Center complaining of severe low-back pain. (R. at 295.) She was unable to walk. (*Id*.) She

was admitted and seen by neurosurgeon Dr. McGregor, who performed a L5-S1 discectomy on August 22, 2008. (R. at 312-13.)

On September 2, 2008, Plaintiff called Dr. McGregor's office complaining of worsening leg and back pain, describing "sharp needle pains" in her tailbone. (R. at 301.) She also complained of "migraine like" headaches. (*Id*.) Dr. McGregor renewed her prescription for Percocet. (*Id*.)

On October 8, 2008, six weeks after surgery, Plaintiff reported persistent left leg pain and numbness. (R. at 319.) Dr. McGregor noted that "postoperatively [Plaintiff had] improved." (*Id*.) He further noted that Plaintiff's incision was "well healed without sign of inflammation, or infection," and that she had intact motor function. (*Id*.) Plaintiff had decreased sensation along her S1 nerve root distribution and positive straight leg raise while seated. (*Id*.) Dr. McGregor recommended an MRI and that she consider physical therapy. (*Id*.)

When seen for follow-up on December 3, 2008, Plaintiff reported that she continued to have difficulties with neuropathic S1 pain. (R. at 328.) Plaintiff complained that actions such as putting a shoe on and touching the lateral aspect of her foot were uncomfortable for her and "send shock-like discomfort." (*Id*.) Dr. McGregor noted that she had decreased calf circumference on her left compared with her right, but that her strength was otherwise intact. (*Id*.) Plaintiff reported experiencing bilateral low-back pain as well as left-sided leg pain. (*Id*.) Dr. McGregor stated in Plaintiff's treatment notes as follows:

> [A]ppears to have persistence of S1 radiculopathy despite disk decompressive surgery. She has some persistent midline disk but no persistence of the lateral fragment. I suggested that she would most benefit from a course of neurolytic medications. Neurontin was too expensive and she did not get that filled. We talked about maybe using Tegretol. She will get back to be with regards to that. I

> also discussed physical therapy. She would like to try and do that but is still working on the finances. She has on several occasions thought to apply for a medical card but has yet to do that. I encouraged her to call the resources here at OSU for that.

(R. at 328.) A December 3, 2008 MRI of Plaintiff's lumbar spine showed post-surgical scarring encasing the S1 nerve root on the left and disk protrusion at L5-S1 with resultant thecal sac narrowing. (R. at 368.) Comparison with Plaintiff's previous MRI reflected persistence of central disk bulge to the L5-S1. (R. at 328, 368-69.)

On December 3, 2008, Dr. McGregor completed a Basic Medical Form for the Ohio Department of Job and Family Services ("ODJFS"). (R. at 324, 331.) He opined that Plaintiff's health status was "Poor But Stable" and that "additional MRIs and possible physical therapy will be needed to regain functional movement." (R. at 331.) Dr. McGregor further opined that Plaintiff could lift and carry up to five pounds frequently and occasionally; stand and/or walk about 1 hour in an eight hour workday, for thirty minutes at a time; and sit about two hours in an eight hour workday, for sixty minutes at a time. (R. at 324.) Dr. McGregor also opined that pushing, pulling, and bending were moderately limited, but that she had no significant limitations with reaching, handling, or repetitive foot movements. (*Id*.) Dr. McGregor based his opinions upon his examination and observation of Plaintiff and his review of her chart. (*Id*.) Dr. McGregor concluded that Plaintiff's functional limitations would last twelve months or more. (*Id*.)

D. Columbus Neighborhood Health Center

Plaintiff was seen again on April 13, 2009, for follow-up from her surgery. (R. at 383.) Because of Plaintiff's reported history of substance abuse, the doctor performed a drug test, which was positive for oxycodone. (R. at 390-400.)

On May 11, 2009, Plaintiff was noted to be tearful and walking with a cane. (R. at 387.) She reported a burning sensation in her low back. (*Id*.) Examination revealed back tenderness and positive straight leg raise. (*Id*.) The doctor increased the dosage on her prescription of Ultram and Neurontin and added prescriptions for Flexeril and Amitriptyline. (*Id*.)

E. OSU Comprehensive Spine Center/Mini Goddard, M.D.

On April 23, 2010, Plaintiff presented with reports of increased low-back pain. (R. at 428.) Plaintiff arrived ambulatory with steady gait. (*Id.*) Dr. Goddard's notes state that Plaintiff appeared comfortable, alert, well-groomed, and to be in no acute distress. (*Id.*) Plaintiff reported increased pain over the previous two weeks, with limitations in daily activities such as getting out of bed and walking up stairs. (*Id.*) She reported pain radiating into her left leg and foot, and sharp chest pains radiating into her right arm. (R. at 428.) Plaintiff indicated that she was unable to afford Neurontin. (R. at 398.) Plaintiff also reported that she had "been taking Percocet and hydrocodone from family members . . . and sometimes a muscle relaxer." (R. at 400.) Examination revealed that her extremities were "neurovascularly intact," and that she had "no obvious atrophy." (R. at 401, 429.) Plaintiff had tenderness to palpation on her lumbar spine at L4-L5. (R. at 401.) She had positive straight leg raise on her left side and increased muscle spasm in her lumbar spine. (*Id*.) X-ray evidence showed degenerative disc disease at L5-S1.

(R. at 405.) Upon discharge, the hospital helped Plaintiff arrange for pharmacy assistance so that she could afford her medications. (R. at 398, 433.)

On July 26, 2010, Plaintiff presented to Dr. Goddard with complaints of urinary incontinence, worsening low-back pain, and a swollen left knee. (R. at 443.) Examination revealed a slow and antalgic gait, poor balance, tenderness of the lumbar spine, decreased pinprick sensation to the left lower extremity, and positive left straight leg raise. (*Id*.) Plaintiff was able to toe-walk and heel-walk normally, she could squat with some difficulty, and she had some decreased range of motion in her lumbar spine. (R. at 443-44.) Dr. Goddard diagnosed Plaintiff with degenerative disc disease, left-sided sciatica, and post-laminectomy syndrome. Dr. Goddard also ordered another MRI and an EMG. (R. at 443-46.)

On August 8, 2010, an MRI of Plaintiff's lumbar spine showed left L5-S1 laminectomy and discectomy, with a small amount of scar tissue at the L5-S1 level and no evidence of recurrent residual disk herniation. (R. at 447.) The results showed no spinal stenosis and no foraminal compromise. (*Id*.)

On October 14, 2010, Plaintiff underwent nerve conduction studies, which showed normal responses to testing of bilateral sensory nerves and to left peroneal motor nerve. (R. at 538-39.) A needle EMG study could not be performed on Plaintiff's left lower extremity/lumbosacral paraspinal area because of Plaintiff's poor pain tolerance, which caused her to refuse this part of the study once it was initiated. (*Id*.) Dr. Goddard noted that she was unable to determine whether Plaintiff had a left lumbosacral radiculopathy because she would not let Dr. Goddard proceed with the needle EMG study. (*Id*.) Dr. Goddard concluded that "It

does not appear that she has mononeuropathy or peripheral neuropathy at this time." (R. at 538-39.)

A CT taken on October 26, 2010, showed that Plaintiff had degenerative disc disease at L5-S1 with no critical central canal narrowing. (R. at 561-62.)

F. State-Agency Evaluations

On January 30, 2009, state-agency physician Edmond Gardner, M.D., reviewed the record and assessed Plaintiff's physical functioning capacity. (R. at 371-78.) Dr. Gardner noted that although Plaintiff stated that she was using a walker when she had applied for benefits in August 2008, she was no longer using an assistive device in October 2008. (*Id*.) Dr. Gardner opined that Plaintiff could lift, carry, push, and/or pull twenty pounds occasionally and ten pounds frequently; stand and/or walk about six hours in a workday; and sit for about six hours in a workday. (R. at 372.) He further opined that Plaintiff is limited to occasional stooping, kneeling, crouching, crawling, and climbing ramps and stairs. (R. at 373.)

On March 31, 2009, state-agency physician Gary Hinzman, M.D., reviewed the record and found that Plaintiff's microdiscectomy was successful and that she had a normal neurological examination and normal gait during her office visit following the surgery. (R. at 380.) Dr. Hinzman noted that a post-operative MRI showed resection of the portion of the disk causing problems, only mild canal stenosis, and no compression of the nerve roots. (*Id*.) Dr. Hinzman noted that no new surgery was recommended. (*Id*.) He concluded that Plaintiff's allegations of symptoms were not supported by the objective evidence and affirmed Dr. Gardner's assessment. (*Id*.)

IV. THE ADMINISTRATIVE DECISION

The ALJ issued her decision on May 24, 2011. (R. at 10-24.) At step one of the sequential evaluation process,[2] the ALJ found that Plaintiff had not engaged in substantially gainful activity since August 5, 2008. (R. at 15.) The ALJ found that Plaintiff had the severe impairments best described as degenerative disc disease of the lumbar spine status post L5-Sl laminectomy, discectomy, and microdisectomy. (*Id.*) The ALJ also found that Plaintiff's alleged depression, about which she testified at her hearing, was not a severe impairment because it did not cause more than minimal limitation in Plaintiff's ability to perform basic work activities. (R. at 17.) The ALJ noted that Plaintiff did not complain of or receive treatment for depression with any consistency during the time period under consideration in this matter. (*Id.*)

With regards to step three, the ALJ found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1. (*Id.*) At step four of the sequential

[2] Social Security Regulations require ALJs to resolve a disability claim through a five-step sequential evaluation of the evidence. *See* 20 C.F.R. § 416.920(a)(4). Although a dispositive finding at any step terminates the ALJ's review, *see Colvin v. Barnhart*, 475 F.3d 727, 730 (6th Cir. 2007), if fully considered, the sequential review considers and answers five questions:

1. Is the claimant engaged in substantial gainful activity?
2. Does the claimant suffer from one or more severe impairments?
3. Do the claimant's severe impairments, alone or in combination, meet or equal the criteria of an impairment set forth in the Commissioner's Listing of Impairments, 20 C.F.R. Subpart P, Appendix 1?
4. Considering the claimant's residual functional capacity, can the claimant perform his or her past relevant work?
5. Considering the claimant's age, education, past work experience, and residual functional capacity, can the claimant perform other work available in the national economy?

See 20 C.F.R. § 416.920(a)(4); *see also Henley v. Astrue*, 573 F.3d 263, 264 (6th Cir. 2009); *Foster v. Halter*, 279 F.3d 348, 354 (6th Cir. 2001).

process, the ALJ evaluated Plaintiff's residual functional capacity ("RFC"). The ALJ set forth the following RFC:

> After careful consideration of the entire record, it is found that the claimant has the residual functional capacity to perform a limited range of "light" work as defined in 20 CFR §§404.1567(b) and 416.967(b). Specifically, the claimant is able to lift and carry 10 pounds frequently and 20 pounds occasionally. She is able to sit, and stand and walk combined for up to six hours each in an eight-hour workday. She can occasionally stoop, kneel, crouch, crawl, and climb ramps or stairs.

(R. at 18.) In reaching this determination, the ALJ adopted the assessments of the state-agency reviewing physicians, Drs. Gardner and Hinzman, concluding that their assessments were "consistent with and well supported by the evidence of the record as a whole." (R. at 19.)

The ALJ acknowledged that Dr. McGregor appears to be a treating source within the meaning of 20 C.F.R. § 416.927, but found that his opinion was not entitled to any significant weight. (R. 19.) The ALJ first reasoned that Dr. McGregor did "not provide sufficient clinical and laboratory data to support his conclusion." (*Id.*) The ALJ further explained that Dr. McGregor examined Plaintiff and rendered his opinion "only four months after [Plaintiff's] back surgery, before full healing had taken place, and anticipated that [Plaintiff] would not improve." (*Id.*) The ALJ added that Dr. McGregor's assessment was "inconsistent with the medical evidence of record." (*Id.*) Finally, the ALJ noted that Dr. McGregor's disability finding addresses an area that is specifically reserved to the Commissioner. (*Id*.) Citing these reasons, the ALJ rejected Dr. McGregor's report. (*Id*.)

The ALJ next noted that Plaintiff's medically determinable impairments could reasonably be expected to cause some symptomatology. (*Id*.) She concluded, however, that the record does not document sufficient objective medical evidence to substantiate the severity of the

pain and degree of functional limitations Plaintiff alleged. (R. at 19-20.) The ALJ found that the "objective evidence fails to document the presence of any impairment or combination of impairments that could reasonably be expected to result in pain or other symptoms of such a severity or frequency as to preclude the range of work described [in the residual functional capacity assessment]." (R. at 20.) The ALJ further found that the objective evidence failed to support Plaintiff's subjective complaints. (R. at 21.)

The ALJ also identified factors that she found to weigh against Plaintiff's overall credibility. (*Id*.) The ALJ found that Plaintiff does not have a good work record to support the idea that she would be employed if it were not for her impairments. (*Id*.) The ALJ further found that Plaintiff has only five years of substantial gainful activity and wages since 1986 and a number of years with no wages at all. (*Id*.) The ALJ also found that Plaintiff made inconsistent statements about her level of education and her ability to drive a vehicle. (*Id.*) The ALJ also noted Plaintiff's continued use of cigarettes after her physician recommended she quit, especially in light of the fact that Plaintiff claimed she could not afford prescribed medications. (*Id.*)

After weighing the evidence, the ALJ found that Plaintiff can perform a "limited range of 'light' work as defined in 20 CFR §§ 404.1567(b) and 416.967(b)." (R. at 18.) Finally, relying on the VE's testimony, the ALJ determined that even though Plaintiff is unable to perform her past relevant work, other jobs exist in the national economy that she can perform. (R. at 21-23.) She therefore concluded that Plaintiff was not disabled under the Social Security Act. (R. at 24-23.)

V. STANDARD OF REVIEW

When reviewing a case under the Social Security Act, the Court "must affirm the Commissioner's decision if it 'is supported by substantial evidence and was made pursuant to proper legal standards.'" *Rabbers v. Comm'r of Soc. Sec.*, 582 F.3d 647, 651 (6th Cir. 2009) (quoting *Rogers v. Comm'r of Soc. Sec.*, 486 F.3d 234, 241 (6th Cir. 2007)); *see also* 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive . . . ."). Under this standard, "substantial evidence is defined as 'more than a scintilla of evidence but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Rogers*, 486 F.3d at 241 (quoting *Cutlip v. Sec'y of Health & Human Servs.*, 25 F.3d 284, 286 (6th Cir. 1994)).

Although the substantial evidence standard is deferential, it is not trivial. The Court must "'take into account whatever in the record fairly detracts from [the] weight'" of the Commissioner's decision. *TNS, Inc. v. NLRB*, 296 F.3d 384, 395 (6th Cir. 2002) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487 (1951)). Nevertheless, "if substantial evidence supports the ALJ's decision, this Court defers to that finding 'even if there is substantial evidence in the record that would have supported an opposite conclusion.'" *Blakley v. Comm'r of Soc. Sec.*, 581 F.3d 399, 406 (6th Cir. 2009) (quoting *Key v. Callahan*, 109 F.3d 270, 273 (6th Cir. 1997)). Finally, even if the ALJ's decision meets the substantial evidence standard, "'a decision of the Commissioner will not be upheld where the SSA fails to follow its own regulations and where that error prejudices a claimant on the merits or deprives the claimant

of a substantial right.'" *Rabbers*, 582 F.3d at 651 (quoting *Bowen v. Comm'r of Soc. Sec.*, 478 F.3d 742, 746 (6th Cir. 2007)).

Finally, even if the ALJ's decision meets the substantial evidence standard, "'a decision of the Commissioner will not be upheld where the SSA fails to follow its own regulations and where that error prejudices a claimant on the merits or deprives the claimant of a substantial right.'" *Rabbers*, 582 F.3d at 651 (quoting *Bowen*, 478 F.3d at 746).

VI. ANALYSIS

In her Statement of Errors, Plaintiff asserts that the ALJ erred in failing to accord appropriate weight to the opinions of treating neurosurgeon Dr. McGregor. Plaintiff further posits that substantial evidence does not support the ALJ's residual functional capacity determination in light of the ALJ's flawed credibility assessment. (ECF No. 14.) The Court will consider each of these contentions in turn.

A. Weighing of Opinion Evidence and the Treating Physician Rule

Plaintiff asserts that the ALJ "erred in failing to grant appropriate weight to the opinions of the neurosurgeon, Dr. McGregor." (ECF No. 14.) For the reasons stated below, the Court finds that substantial evidence supports the ALJ's decision to afford little weight to Dr. McGregor's opinion.

The ALJ must consider all medical opinions that he or she receives in evaluating a claimant's case. 20 C.F.R. § 416.927(d). The applicable regulations define medical opinions as "statements from physicians . . . that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions." 20 C.F.R. § 416.927(a)(2).

The ALJ generally gives deference to the opinions of a treating source "since these are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [a patient's] medical impairment(s) and may bring a unique prospective to the medical evidence that cannot be obtained from the objective medical filings alone . . . ." 20 C.F.R. § 416.927(d)(2); *Blakley*, 581 F.3d at 408. If the treating physician's opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in [the claimant's] case record, [the ALJ] will give it controlling weight." 20 C.F.R. § 404.1527(d)(2).

If the ALJ does not afford controlling weight to a treating physician's opinion, the ALJ must meet certain procedural requirements. *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 544 (6th Cir. 2004). Specifically, if an ALJ does not give a treating source's opinion controlling weight:

> [A]n ALJ must apply certain factors—namely, the length of the treatment relationship and the frequency of examination, the nature and extent of the treatment relationship, supportability of the opinion, consistency of the opinion with the record as a whole, and the specialization of the treating source—in determining what weight to give the opinion.

Id. Furthermore, an ALJ must "always give good reasons in [the ALJ's] notice determination or decision for the weight [the ALJ] give[s] your treating source's opinion." 20 C.F.R. § 416.927(d)(2). Accordingly, the ALJ's reasoning "must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight." *Friend v. Comm'r of Soc. Sec.*, No. 09-3889, 2010 WL 1725066, at *7 (6th Cir. Apr. 28, 2010) (internal quotation omitted). The United States Court of Appeals for the Sixth Circuit has stressed the importance of the good-reason requirement:

> "The requirement of reason-giving exists, in part, to let claimants understand the disposition of their cases," particularly in situations where a claimant knows that his physician has deemed him disabled and therefore "might be especially bewildered when told by an administrative bureaucracy that she is not, unless some reason for the agency's decision is supplied." *Snell v. Apfel*, 177 F.3d 128, 134 (2d Cir.1999). The requirement also ensures that the ALJ applies the treating physician rule and permits meaningful review of the ALJ's application of the rule. *See Halloran v. Barnhart*, 362 F.3d 28, 32–33 (2d Cir. 2004).

Wilson, 378 F.3d at 544–45. Thus, the reason-giving requirement is "particularly important when the treating physician has diagnosed the claimant as disabled." *Germany-Johnson v. Comm'r of Soc. Sec.*, 312 F. A'ppx 771, 777 (6th Cir. 2008) (citing *Rogers*, 486 F.3d at 242).

There is no requirement, however, that the ALJ "expressly" consider each of the *Wilson* factors within the written decision. *See Tilley v. Comm'r of Soc. Sec.*, No. 09-6081, 2010 WL 3521928, at *6 (6th Cir. Aug. 31, 2010) (indicating that, under *Blakley* and the good reason rule, an ALJ is not required to explicitly address all of the six factors within 20 C.F.R. § 404.1527(d)(2) for weighing medical opinion evidence within the written decision).

Here, the ALJ acknowledged that Dr. McGregor, Plaintiff's neurosurgeon, is a treating physician. (R. at 19.) The ALJ considered but rejected Dr. McGregor's opinion, explaining as follows:

> [Dr. McGregor's] assessment is not entitled to [controlling weight] for multiple reasons. First, the doctor does not provide sufficient clinical and laboratory data to support his conclusion. He examined the claimant only four months after her back surgery, before full healing had taken place, and anticipated that she would not improve. His opinion is inconsistent with the medical evidence as noted above. Last, his conclusion of disability addresses an area that is specifically reserved to the Commissioner under Social Security Ruling 96-5p.

(R. at 19.)

The Court finds that the ALJ provided legally sufficient reasons for rejecting Dr. McGregor's opinion as controlling, satisfying the good-reason requirement. Specifically, the ALJ found that Dr. McGregor does not provide sufficient clinical and laboratory data to support his conclusions. (R. at 19.) *See* 20 C.F.R. § 404.1527(d)(3) (identifying "supportability" as a relevant consideration). The ALJ also found Dr. McGregor's opinion to be unsupported by the medical evidence in the record. (R. at 19.) These are rational grounds to discount a treating physician's opinion. *See Helm v. Comm'r of Soc. Sec.*, 405 F. App'x 997, 1001 (6th Cir. 2011) (concluding that the ALJ met the "good reasons" requirement for a variety of reasons, including by noting that the treating physician's findings were "unsupported by objective medical findings and inconsistent with the record as a whole."); *see also* 20 C.F.R. § 404.1527(d)(3) (identifying "consistency" with the record as a whole as a relevant consideration). Finally, the ALJ correctly pointed out that Dr. McGregor's "conclusion of disability addresses an area that is that is specifically reserved to the Commissioner." *Bass v. McMahon*, 499 F.3d 506, 511 (6th Cir. 2007) (holding that the ALJ properly rejected a treating physician's opinion that the claimant was disabled because such a determination was reserved to the Commissioner).

The Court further finds that substantial evidence supports the ALJ's stated reasons. First, although Dr. McGregor noted that his opinion was based on "review of chart, exam of patient, and observation," he failed to identify any specific clinical data or to otherwise explain why his examinations led him to opine that Plaintiff has a sedentary RFC and is unemployable for twelve or more months. (R. at 324.) *See Buxton v. Halter*, 246 F.3d 762, 773 (6th Cir. 2001) ("[T]he ALJ "is not bound by conclusory statements of doctors, particularly where they are unsupported by detailed objective criteria and documentation.")

Second, as the ALJ noted, Dr. McGregor's extreme opinion is unsupported by and inconsistent with the medical evidence in the record. (R. at 19.) The ALJ explained as follows:

> [C]laimant's most recent MRI shows degenerative disk disease at a single level with no central canal stenosis or foraminal impingement will. The claimant's own treating physician notes that she has full motor strength, no atrophy, and normal deep tendon reflexes. While she has subjective tenderness and decreased sensation on examination, there was no objective muscle spasms. In spite of claimant's complaints of pain no physician has suggested further surgery. Lastly, in spite of claimant's complaints of pain, she has been noted to be in no acute distress.

(R. at 20-21) (internal citations omitted). Further, Dr. McGregor's opinion is inconsistent with the opinions of state-agency physicians Drs. Gardner and Hinzman. Drs. Gardner and Hinzman opined that Plaintiff could lift, carry, push, and/or pull twenty pounds occasionally and ten pounds frequently; stand and/or walk about six hours in a workday; and sit for about six hours in a workday. (R. at 372, 380.) They further found that Plaintiff is limited to occasional stooping, kneeling, crouching, crawling, and climbing ramps and stairs. (R. at 373, 380.) Dr. Gardner pointed out that Plaintiff was no longer using an assistive device during her follow up appointment in October 2008. (*Id*.) Dr. Hinzman also noted that no treating physician had recommended additional surgery. (*Id*.) Dr. Hinzman concluded that Plaintiff's allegations of symptoms were not supported by the objective evidence. (*Id*.)

Finally, Plaintiff's argument that the ALJ failed to consider the relevant factors set forth in *Wilson* is unavailing. Plaintiff correctly notes that the ALJ must consider the *Wilson* factors in determining what weight to accord Dr. Mcgregor's opinion. *See Wilson*, 378 F.3d at 544; 20 C.F.R. § 404.1527(d)(2). The ALJ need not, however, "expressly" consider each of the factors within the written decision. *See Tilley*, 2010 WL 3521928, at *6.

In sum, the Court concludes that the ALJ provided good reasons for rejecting Dr. McGregor's opinion and that substantial evidence supports the ALJ's stated reasons. Plaintiff's first Statement of Error is therefore overruled.

B. Credibility Assessment

Plaintiff next challenges the ALJ's credibility assessment, asserting that a proper assessment would have resulted in a more restrictive RFC. (ECF No. 14.) Within this contention of error, Plaintiff submits that "the ALJ does not give good reason[s] for failing to find [Plaintiff's] testimony credible." (Pl.'s Statement of Errors 11, ECF No.14.) She further states that the ALJ "never clearly states her reasons for not finding [Plaintiff's] testimony credible" and that she failed to "mention the objective evidence." (*Id*. at 12.) Finally, Plaintiff maintains that the ALJ's credibility assessment is incomplete because she failed to explicitly discuss each of the six factors outlined in Social Security Ruling 96-7(a).

The Sixth Circuit has provided the following guidance in considering an ALJ's credibility assessment:

> Where the symptoms and not the underlying condition form the basis of the disability claim, a two-part analysis is used in evaluating complaints of disabling pain. 20 C.F.R. § 416.929(a); *Buxton v. Halter*, 246 F.3d 762, 773 (6th Cir. 2001); *Felisky v. Bowen*, 35 F.3d 1027, 1038-39 (6th Cir. 1994). First, the ALJ will ask whether the there is an underlying medically determinable physical impairment that could reasonably be expected to produce the claimant's symptoms. 20 C.F.R. § 416.929(a). Second, if the ALJ finds that such an impairment exists, then he [or she] must evaluate the intensity, persistence, and limiting effects of the symptoms on the individual's ability to do basic work activities. *Id.*

Rogers, 486 F.3d at 247.

"The ALJ's assessment of credibility is entitled to great weight and deference, since he [or she] had the opportunity to observe the witness's demeanor." *Infantado v. Astrue*, 263 F.

App'x 469, 475 (6th Cir. 2008) (citing *Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 531 (6th Cir. 1997)); *Sullenger v. Comm'r of Soc. Sec.*, 255 F. App'x 988, 995 (6th Cir. 2007) (declining to disturb the ALJ's credibility determination, stating that: "[w]e will not try the case anew, resolve conflicts in the evidence, or decide questions of credibility" (citation omitted)). This deference extends to an ALJ's credibility determinations "'with respect to [a claimant's] subjective complaints of pain.'" *Allen v. Comm'r of Soc. Sec.*, 561 F.3d 646, 652 (6th Cir. 2009) (quoting *Siterlet v. Sec'y of Health & Hum. Servs.*, 823 F.2d 918, 920 (6th Cir. 1987)). Despite this deference, "an ALJ's assessment of a claimant's credibility must be supported by substantial evidence." *Walters*, 127 F.3d at 531. Furthermore, the ALJ's decision on credibility must be "based on a consideration of the entire record." *Rogers*, 486 F.3d at 247 (internal quotation omitted). An ALJ's explanation of his or her credibility decision "must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." *Id.* at 248.

"Discounting credibility to a certain degree is appropriate where an ALJ finds contradictions among the medical reports, claimant's testimony, and other evidence." *Walters*, 127 F.3d at 531. In addition, the Regulations list a variety of factors an ALJ must consider in evaluating the severity of symptoms, including a claimant's daily activities; the effectiveness of medication; and treatment other than medication. 20 C.F.R. § 404.1529(c)(3); SSR 96–7p, 1996 WL 374186 (July 2, 1996); *but see Storey v. Comm'r of Soc. Sec.*, No. 98-1628, 1999 WL 282700, at *3 (6th Cir. Apr. 27, 1999) ("[T]he fact that [the ALJ] did not include a factor-by-factor discussion [in his credibility assessment] does not render his analysis invalid.").

In the instant case, contrary to Plaintiff's assertions, the ALJ thoroughly discussed Plaintiff's testimony. (*See* R. at 19-21.) The ALJ also offered a thorough explanation for her credibility assessment, stating as follows:

> [Plaintiff] does have an underlying medically determinable impairment that could reasonably cause some symptomatology. However, the pivotal question is not whether such symptoms exist, but whether those symptoms occur with such frequency, duration or severity as to reduce the [Plaintiff's] residual functional capacity as set forth above or to preclude all work activity on a continuing and regular basis. In this case, a careful review of the record does not document sufficient objective medical evidence to substantiate the severity of the pain and degree of functional limitations alleged by the [Plaintiff]. The objective evidence fails to document the presence of any impairment or combination of impairments that could reasonably be expected to result in pain or other symptoms of such a severity or frequency as to preclude the range of work described above. Rather, the factors set forth in 20 CFR §§ 404.1529(c) and 416.929(c) support the residual functional capacity that has been found.
>
> * * *
>
> Despite the [Plaintiff's] testimony regarding her limitations the findings on physical examination are sparse and not of the type expected with a disabling impairment. The [Plaintiff's] most recent MRI shows degenerative disc disease at a single level with no central canal stenosis or foraminal impingement will. The [Plaintiff's] own treating physician notes that she has full motor strength, no atrophy, and normal deep tendon reflexes. While she has subjective tenderness and decreased sensation on examination, there was no objective muscle spasms. In spite of the [Plaintiff's] complaints of pain no physician has suggested further surgery. Lastly, in spite of the [Plaintiff's] complaints of pain, she has been noted to be in no acute distress.
>
> The [Plaintiff] has been prescribed and has taken appropriate medications for her alleged impairments, which weighs in the [Plaintiff's] favor, but the medical records do not suggest that the medications were ineffective in controlling the [Plaintiff's] symptoms. The [Plaintiff] testified that she had taken no medications for the last several months because of financial problems. However, the [Plaintiff] has been able to afford to smoke cigarettes throughout most of the period under consideration, despite recommendations by her physician that she stop doing so. This also suggests that the [Plaintiff] has not always been compliant with her physician's treatment recommendations. For patients who smoke, doctors recommend quitting smoking to improve blood

> circulation and healing. Chronic tobacco use is closely linked to chronic low back pain.
>
> In addition to the general lack of evidence to support her subjective complaints, there are other considerations that weigh against the [Plaintiff's] overall credibility.
>
> The [Plaintiff] does not have a good work record to enhance the credibility of her allegations. Her motivation to work seems to have been less than optimal, with only five years of substantial gainful activity wages since 1986 and a number of years with no wages at all. Such a work and earnings history certainly does not support the proposition that, but for the [Plaintiff's] alleged impairments, she would be working and engaging in substantial gainful activity.
>
> The [Plaintiff] has made inconsistent statements. For example, in addition to those already noted above, the [Plaintiff] has inconsistently stated that the highest grade she completed in school was the 5th grade, the 6th grade, the 8th grade, the 9th grade, and the 10th grade. She stated in her Disability Appeal that she was no longer able to drive a car, although she testified and elsewhere indicated that she is able to drive and does so. Although the inconsistent information provided by the [Plaintiff] may not be the result of a conscious intention to mislead, nevertheless the inconsistencies suggest that the information provided by the [Plaintiff] generally may not be entirely reliable.
>
> In summary, considering the criteria enumerated in the Regulations, Rulings and case law for evaluating the [Plaintiff's] subjective complaints, the [Plaintiff's] testimony was not persuasive to establish an inability to perform the range of work assessed herein. The location, duration, frequency, and intensity of the [Plaintiff's] alleged symptoms, as well as precipitating and aggravating factors, are adequately addressed and accommodated in the above residual functional capacity. The lack of support for the [Plaintiff's] subjective complaints and functional limitations is not due to any unexplained mental impairment but to the [Plaintiff's] exaggeration of complaints.

(R. at 19-21) (internal citations omitted). The ALJ also considered Plaintiff's daily activities; the severity, intensity, and quality of her pain; and the medication and other actions she has taken to alleviate the pain. (R. at 20.)

The Court declines to disturb the ALJ's credibility determination. Contrary to Plaintiff's assertion, the ALJ offered a variety of valid reasons for discounting her credibility. For example,

the ALJ properly considered and analyzed the objective evidence, including the MRI findings and Plaintiff's treating physicians' notes. *See* 20 C.F.R. § 404.1529(c)(2) (objective medical findings are useful in assessing the intensity and persistence of a claimant's symptoms). She also properly considered Plaintiff's medications and the impact of those medications and instances in which she was not compliant with her physician's recommendation. *See* 20 C.F.R. § 416.929(c)(3)(iv)-(v) (in evaluating credibility of allegations of pain, the Commissioner may consider the level of treatment a claimant has received as well as "[t]he type, dosage, effectiveness, and side effects of any medication you take or have taken to alleviate your pain or other symptoms"). The ALJ also properly discounted Plaintiff's credibility based upon the inconsistencies in her testimony. *See Walters*, 127 F.3d at 531 (discounting credibility appropriate where ALJ finds contradictions between claimant's testimony and the record).

Plaintiff's conclusory assertion that the ALJ's credibility assessment is incomplete because she failed to explicitly discuss every factor set forth in 20 C.F.R. § 404.1529(c)(3) is unavailing for two reasons. First, it appears that the ALJ *did* discuss each of the factors identified in § 404.1529(c)(3). Second, an ALJ's failure to discuss each and every factor does not, alone, constitute reversible error. *Storey*, 1999 WL 282700 at *3 ("[T]he fact that [the ALJ] did not include a factor-by-factor discussion [in his credibility assessment] does not render his analysis invalid."). Finally, to the extent the ALJ improperly considered a particular factor or failed to consider another, the central inquiry remains whether substantial evidence supports the ALJ's credibility assessment. *Ulman v. Comm'r of Soc. Sec.*, 693 F.3d 709, 714 (6th Cir. 2012) (holding that when an ALJ relies on invalid reasons for discounting credibility, it amounts to harmless error so long as substantial evidence exists supporting the ALJ's conclusions on

credibility). Here, the Court finds that the substantial evidence supports the ALJ's credibility assessment. Plaintiff's second Statement of Error is therefore overruled.

VII. DISPOSITION

From a review of the record as a whole, the Court concludes that substantial evidence supports the ALJ's decision denying benefits. Accordingly, Plaintiff's Statement of Errors is **OVERRULED**, and the Commissioner of Social Security's decision is **AFFIRMED**.

IT IS SO ORDERED.

Date: September 26, 2014

/s/ *Elizabeth A. Preston Deavers*
Elizabeth A. Preston Deavers
United States Magistrate Judge