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

CHRISTOPHER PASCUA,

Plaintiff,

vs. **Civil Action 2:14-cv-364**
Magistrate Judge King

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

OPINION AND ORDER

I. Background

This is an action instituted under the provisions of 42 U.S.C. § 405(g) for review of a final decision of the Commissioner of Social Security denying plaintiff's applications for a period of disability, disability insurance benefits, and supplemental security income. This matter is before the Court, with the consent of the parties pursuant to 28 U.S.C. § 636(c), for consideration of *Plaintiff's Statement of Specific Errors* ("*Statement of Errors*"), Doc. No. 16, and *Defendant's Memorandum in Opposition*, Doc. No. 21. Plaintiff has not filed a reply.

Plaintiff Christopher Pascua filed his applications for benefits on June 6, 2011, alleging that he has been disabled since June 16, 2009. *PAGEID* 52, 195-205. The claims were denied initially and upon reconsideration, and plaintiff requested a *de novo* hearing before an administrative law judge.

An administrative hearing was held on February 5, 2013, at which

plaintiff, represented by counsel, appeared and testified, as did Steven Rosenthal, who testified as a vocational expert. *PAGEID 69*. In a decision dated February 15, 2013, the administrative law judge concluded that plaintiff was not disabled from June 16, 2009, through the date of the administrative decision. *PAGEID* 61-62. That decision became the final decision of the Commissioner of Social Security when the Appeals Council declined review on February 26, 2014. *PAGEID* 36-38.

Plaintiff was 30 years of age on the date of the administrative decision. *See PAGEID* 62, 1999. Plaintiff is insured for disability insurance purposes through December 31, 2014. *PAGEID* 54. Plaintiff has past relevant work as an office clerk, technical support representative, driver – sales route, and insurance clerk. *PAGEID* 61. He has not engaged in substantial gainful activity since his alleged date of onset of disability. *PAGEID* 54.

II. Medical Evidence

X-rays of plaintiff's knees in May 2008 revealed questionable mild medial compartment joint space narrowing on the left and mild medial compartment joint space narrowing on the right. *PAGEID* 319-20.

Plaintiff underwent a mental health evaluation by Robyn Aumou, LISW, at Netcare Corporation on July 24, 2009, upon referral by a court "to evaluate his substance abuse, mental health and socioeconomic status." *PAGEID* 322-33. Plaintiff was assigned a

global assessment of functioning score ("GAF") of 55[1] and diagnosed with mood disorder, NOS, by history; cocaine abuse; alcohol dependence in sustained partial remission; cannabis dependence in sustained full remission; and attention deficit/hyperactivity disorder, hyper-impulsive type. ***PAGEID*** 328-39.

David D. Brill, M.D., has been plaintiff's primary care physician since at least 2008 and has treated plaintiff for, among other things, depression and knee pain. ***PAGEID*** 334-60. On December 16, 2011, Dr. Brill noted continued complaints of knee pain, greater on the left than on the right. ***PAGEID*** 400. Dr. Brill also commented that plaintiff "can't work" and "is disabled." ***Id.*** On June 13, 2012, plaintiff's weight was recorded at almost 400 pounds; he complainted of knee pain with walking and physical activity. ***PAGEID*** 402. Dr. Brill suggested right knee surgery. ***Id.*** On September 11, 2012, Dr. Brill noted that plaintiff moved slowly, walked with a limp, and had decreased range of motion, crepitus, and swelling in the left knee. ***PAGEID*** 424. Plaintiff requested a knee injection which, Dr. Brill noted, allows plaintiff to function "in terms of [activities of daily living]." ***PAGEID*** 425. On December 6, 2012, Dr. Brill again noted that plaintiff walked slowly and with a limp; plaintiff also had a flat affect, bilateral edema, and "TTP jointspace" bilaterally. ***PAGEID***

[1] "The GAF scale is a method of considering psychological, social, and occupational function on a hypothetical continuum of mental health. The GAF scale ranges from 0 to 100, with serious impairment in functioning at a score of 50 or below. Scores between 51 and 60 represent moderate symptoms or a moderate difficulty in social, occupational, or school functioning . . . ."

Norris v. Comm'r of Soc. Sec., 461 F. App'x 433, 436 n.1 (6th Cir. 2012).

422. According to Dr. Brill, injections had helped reduce plaintiff's knee pain. *Id.*

Plaintiff began counseling sessions with Chris Fraser, LISW, at Positive Path Counseling in February 2012. On February 29, 2012, Mr. Fraser assigned a GAF of 50 and diagnosed bipolar II disorder and ADHD. *PAGEID* 405-06. Plaintiff attended counseling sessions with Mr. Fraser approximately once or twice per month through January 2013. *PAGEID* 405-12, 432-37.

On December 6, 2012, Dr. Brill and Mr. Fraser jointly completed a medical source statement. *PAGEID* 414-15. They opined that plaintiff's ability to function was "poor" (which was defined as a "significantly limited" ability to function) in all areas related to making occupational adjustments, intellectual functioning, and making personal and social adjustments. *Id.* According to Dr. Brill and Mr. Fraser, severe anxiety attacks have caused agoraphobia and plaintiff's depression has created "such low energy and isolation that [plaintiff] struggles to take care of daily living skills." *Id.*

Plaintiff was evaluated by Sudhir Dubey, Psy.D., on October 20, 2011. *PAGEID* 384-90. On examination, plaintiff was measured as 6' 2" with a weight of 370 pounds. *PAGEID* 387. His hygiene, grooming, posture, motor activity and interactions were appropriate. *Id.* His gait was within normal limits, and his affect was appropriate, but he manifested tense emotional reactions. *Id.* No problems with concentration or memory were noted. *Id.* Plaintiff's reported general activities included showering, changing clothes, driving, shopping for

his personal needs, paying bills, and caring for pets. *Id.* He also reported regular activities with friends and regular interactions with family. *Id.* Dr. Dubey noted that plaintiff was performing most of his activities of daily living and managing his money properly. *PAGEID* 387-88. According to Dr. Dubey, plaintiff's symptoms were stable and unlikely to change. *PAGEID* 388.

Dr. Dubey assessed a GAF of 65. He diagnosed alcohol abuse in partial remission, polysubstance dependence in remission, and depression, NOS. *PAGEID* 389. According to Dr. Dubey, plaintiff would be able to understand, remember, and carry out simple and multi-step instructions in a work setting. *Id.* Plaintiff could maintain attention, concentration, persistence, and pace sufficient to perform simple and multi-step tasks. *PAGEID* 389-90. Plaintiff could manage his own benefits. *PAGEID* 388.

Plaintiff was consultatively evaluated by Robert D. Whitehead, M.D., on October 21, 2011. *PAGEID* 391-98. Plaintiff's chief complaint was bilateral knee pain stemming from a 2003 motor vehicle accident. *PAGEID* 391. Plaintiff had undergone right knee arthroscopic surgeries in 2004 and 2009. *PAGEID* 392. On examination, plaintiff was found to be morbidly obese with a normal, stable gait. *Id.* Plaintiff's knees showed "painful range of motion, mild crepitus with passive range of motion," peripatellar tenderness, and medial joint line tenderness. *PAGEID* 393. There was also mild effusion in the right knee. *Id.* Dr. Whitehead assessed bilateral knee pain consistent with chondromalacia, possible meniscus tear; psychiatric

illness; and morbid obesity. *Id*. According to Dr. Whitehead, plaintiff

> would be best suited for modified light duties where he did not do repetitive or frequent kneeling or squatting. He would need the ability to sit and stand as needed for comfort. He would not do well if he had to stand for more than 2-3 hours at a time. He certainly would be best suited for a more sedentary job.

Id.

Jennifer Swain, Psy.D., reviewed the record and, on October 27, 2011, opined that plaintiff has only mild limitations in activities of daily living and is otherwise unimpaired psychologically. *PAGEID* 102-03. Tonnie Hoyle, Psy.D., reviewed the record and, on January 30, 2012, affirmed Dr. Swain's opinion. *PAGEID* 135-36.

Kourosh Golestany, M.D., reviewed the record and completed a residual functional capacity evaluation on November 2, 2011. *PAGEID* 104-05. According to Dr. Golestany, plaintiff could lift and/or carry 50 pounds occasionally and 25 pounds frequently. *PAGEID* 104. Plaintiff could stand and/or walk for about six hours in an eight-hour workday and sit for about six hours in an eight-hour workday. *PAGEID* 104-05. Plaintiff could frequently climb ramps/stairs and could occasionally kneel, crouch, crawl, and climb ladders/ropes/scaffolds. *PAGEID* 105.

Nick Albert, M.D., reviewed the record and completed a physical functional capacity evaluation on January 31, 2012. *PAGEID* 137-39. Dr. Albert affirmed Dr. Golestany's assessment with regard to plaintiff's lifting, standing, and sitting limitations. *Id*. Dr. Golestany also opined that plaintiff could frequently climb

ramps/stairs, occasionally crouch, and never crawl or climb ladders/ropes/scaffolds. *PAGEID* 137-38. Plaintiff would also have to avoid moderate exposure to hazards and concentrated exposure to extreme cold, wetness, and humidity. *PAGEID* 138.

III. Administrative Hearing

Plaintiff testified at the administrative hearing that he is unable to work because of depression, problems with his memory and concentration, fluctuating mood, discomfort in going out in public, anxiety, and inability to maintain his bank account. *PAGEID* 76. He is unable to get out of bed two or three days per week because of his depression. *PAGEID* 76, 83. He underwent electro-convulsive therapy in 2008 for depression and attributes his memory loss to this procedure. *PAGEID* 86-87.

Plaintiff testified that he takes Percocet and ibuprofen for knee pain and receives injections every three to six months. *PAGEID* 76-77. The injections help control the pain. *PAGEID* 77. His surgeon, who is not covered by Medicaid, recommended surgery but a referral surgeon did not agree with that recommendation. *Id.*

Plaintiff also testified that he struggled to remove a 20 to 25 pound case of water from the trunk of his mother's car. *Id.* He can stand for ten minutes, *id.*, and can sit for up to an hour before needing to change positions and lie down, *PAGEID* 78. He must lie down 12 to 14 hours a day. *Id.*

Plaintiff is able to bathe, dress himself, and shave, but performs these function infrequently. *PAGEID* 80. He can do laundry,

heat simple meals, wash dishes, vacuum, and clean his bathroom. *PAGEID* 80-81. He occasionally goes grocery shopping, but he experiences a lot of pain after 10 or 15 minutes. *Id*. On a typical day, plaintiff completes paperwork for Social Security and Medicaid, goes to doctor appointments; he also plays video games but he loses interest "real quick." *PAGEID* 81-82. Plaintiff testified that he "hang[s] out" with friends once every couple of weeks. *PAGEID* 85-86.

The vocational expert was asked to assume a claimant with plaintiff's vocational profile and the residual functional capacity ("RFC") eventually found by the administrative law judge. *PAGEID* 79-82. According to the vocational expert, such an individual could perform plaintiff's past relevant work as an office clerk and could perform such other jobs as mail clerk, folder, and order teller. *PAGEID* 91-93.

IV. Administrative Decision

The administrative law judge found that plaintiff's severe impairments consist of depression, anxiety, arthritis, and obesity. *PAGEID* 54. The administrative law judge also found that plaintiff's impairments neither meet nor equal a listed impairment and leave plaintiff with the RFC to

> lift/carry and push/and pull up to twenty pounds occasionally and up to ten pounds frequently, stand/walk for six hours within an eight-hour workday, and sit for six hours within an eight-hour workday. He can occasionally balance, stoop, kneel, crouch, crawl, and climb ramps/stairs, but can never climb ladders, ropes, or scaffolds. The claimant must avoid temperature extremes, humidity, unprotected heights, hazardous machinery, and vibration. The claimant can understand, remember and carry out simple and some detailed (up to four steps) tasks and

> job instructions. He can sustain attention, concentration, and persistence for minimum two-hour periods. He is limited to occasional interaction with supervisors, coworkers and the general public. He can respond appropriately to basic changes in the workplace.

PAGEID 55-56. Relying on the testimony of the vocational expert, the administrative law judge found that this RFC does not preclude the performance of plaintiff's past relevant work as an office clerk. *PAGEID* 61. Accordingly, the administrative law judge concluded that plaintiff was not disabled within the meaning of the Social Security Act from June 16, 2009, through the date of the administrative decision. *PAGEID* 61-62.

IV. Discussion

Pursuant to 42 U.S.C. § 405(g), judicial review of the Commissioner's decision is limited to determining whether the findings of the administrative law judge are supported by substantial evidence and employed the proper legal standards. *Richardson v. Perales*, 402 U.S. 389 (1971); *Longworth v. Comm'r of Soc. Sec.*, 402 F.3d 591, 595 (6th Cir. 2005). Substantial evidence is 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. *See Buxton v. Haler*, 246 F.3d 762, 772 (6th Cir. 2001); *Kirk v. Sec'y of Health & Human Servs.*, 667 F.2d 524, 535 (6th Cir. 1981). This Court does not try the case *de novo*, nor does it resolve conflicts in the evidence or questions of credibility. *See Brainard v. Sec'y of Health & Human Servs.*, 889 F.2d 679, 681 (6th Cir. 1989); *Garner v. Heckler*, 745 F.2d 383, 387 (6th Cir. 1984).

In determining the existence of substantial evidence, this Court must examine the administrative record as a whole. ***Kirk***, 667 F.2d at 536. If the Commissioner's decision is supported by substantial evidence, it must be affirmed even if this Court would decide the matter differently, ***see Kinsella v. Schweiker***, 708 F.2d 1058, 1059 (6th Cir. 1983), and even if substantial evidence also supports the opposite conclusion. ***Longworth,*** 402 F.3d at 595.

Plaintiff argues that the administrative law judge erred in evaluating the medical opinions of record. Plaintiff argues, first, that the administrative law judge erred in failing to grant controlling weight to Dr. Brill's December 16, 2011 and December 6, 2012 opinions and in failing to provide good reasons for discounting those opinions. ***Statement of Errors***, pp. 9-13.

The opinion of a treating provider must be given controlling weight if that opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques" and is "not inconsistent with the other substantial evidence in [the] case record." 20 C.F.R. §§ 404.1527(c)(2); 416.927(c)(2). Even if the opinion of a treating provider is not entitled to controlling weight, an administrative law judge is nevertheless required to evaluate the opinion by considering such factors as the length, nature and extent of the treatment relationship, the frequency of examination, the medical specialty of the treating physician, the extent to which the opinion is supported by the evidence, and the consistency of the opinion with the record as a whole. 20 C.F.R. §§ 404.1527(c)(2)-(6),

416.927(c)(2)-(6); *Blakley v. Comm'r of Soc. Sec.*, 581 F.3d 399, 406 (6th Cir. 2009); *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541, 544 (6th Cir. 2004). Moreover, an administrative law judge must provide "good reasons" for discounting the opinion of a treating provider, *i.e.*, reasons that are "'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.'" *Rogers v. Comm'r of Soc. Sec.*, 486 F.3d 234, 242 (6th Cir. 2007) (quoting SSR 96-2p, 1996 WL 374188, at *5 (July 2, 1996)). This special treatment afforded the opinions of treating providers recognizes that

> "these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [the claimant's] medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations."

Wilson, 378 F.3d at 544 (quoting 20 C.F.R. § 404.1527(d)(2)).

As noted *supra*, plaintiff has treated with Dr. Brill since at least 2008. *PAGEID* 334-60. On December 16, 2011, Dr. Brill noted that plaintiff "can't work" and "is disabled." *PAGEID* 400. On June 13, 2012, Dr. Brill noted that plaintiff weighed almost 400 pounds and complained of knee pain with walking and physical activity. *PAGEID* 402. On December 6, 2012, Dr. Brill, acting jointly with Mr. Fraser, opined that plaintiff's mental ability to function was "poor" or "significantly limited" in all areas related to making occupational adjustments, intellectual functioning, and making personal and social adjustments. *PAGEID* 414-15. According to Dr. Brill and Mr. Fraser,

severe anxiety attacks have caused agoraphobia and plaintiff's depression has resulted in "such low energy and isolation that [plaintiff] struggles to take care of daily living skills." *Id*.

Plaintiff challenges the administrative law judge's evaluation of Dr. Brill's December 6, 2012 medical source statement and December 16, 2011 opinion of disability. ***Statement of Errors***, pp. 9-11. The administrative law judge categorized Dr. Brill as a treating physician and evaluated his opinions as follows:

> The undersigned gives little weight to the mental functional capacity assessment of Dr. Brill (10F). An [sic] medical opinion is entitled to controlling weight when the person giving the opinion is a "treating source", the opinion is well supported by medically acceptable clinical findings and laboratory diagnostic techniques, and the opinion is not inconsistent with other substantial evidence in the case record (20 CFR 404.1537, 416.927). Although a treating source, Dr. Brill's opinion does not meet the criteria. The undersigned finds the claimant is not capable of unrestricted work; however, the entirety of the record does not substantiate the restrictive mental capacity assessment provided by Dr. Brill. Additionally, along with the fact that Dr. Brill is not a mental health specialist, his treatment notes show the claimant's mental health is generally stable with medication (13F/1). His opinion is also inconsistent with the opinion/findings of psychologist Sudhir Dubey. Dr. Dubey completed an extensive evaluation which provided ***detailed*** explanations regarding ***inter alias*** the claimant's mental content; GAF score, sensorium and cognitive functioning; appearance and behavior; flow of conversation and thought; along with affect and mood. Dr. Dubey is a mental health specialist and his evaluation is consistent with his opinion, which further supports affording Dr. Dubey's opinion considerable weight (20 CFR 404.1527(d)(5) and 416.927(d)(2)).
>
> Dr. Brill's opinion that the claimant's physical impairments rendered him "disabled" is similarly considered (6F). This opinion is inconsistent with the totality of evidence and the claimant's own testimony, which revealed he is much more functional than alleged. It is also conclusory in that it does not give a function-by-function analysis of the claimant's purported limitations nor does

> it provide a time-period. The record does not support a finding the claimant can never work again. Based on the above the undersigned affords very little weight to Dr. Brill's physical assessment.

PAGEID 60 (emphasis in original).

The administrative law judge did not violate the treating physician rule in evaluating Dr. Brill's December 6, 2012 medical source statement regarding plaintiff's mental impairments. The administrative law judge's analysis is sufficiently specific as to the weight given to the opinion and the reasons for assigning that weight. The administrative law judge categorized Dr. Brill as a treating physician, but discounted the medical source statement because it was inconsistent with Dr. Brill's treatment notes and other substantial evidence in the record, including the "opinion/findings" of consultative psychological examiner Dr. Dubey. The administrative law judge also noted that, unlike Dr. Dubey, Dr. Brill is not a mental health specialist. These findings enjoy substantial support in the record. Notably, Dr. Brill characterized plaintiff's ability to function as "poor" or "significantly limited," ***PAGEID*** 414, but his treatment notes from the same day indicate that plaintiff is stable on medication. ***PAGEID*** 429. ***See also PAGEID*** 401 (September 2011: "Doing OK"); 399 (March 2012: "ADD controlled;" "No adverse affects;" "No concerning behaviors;" "ADD Rx allows him to be more productive @ home, thinks more cleanly, makes better life choices"); 431 (September 2012: "GAD stable;" on Klonopin a long time;" "no SE;" "ADD stable").

The administrative law judge also did not err in evaluating Dr. Brill's December 16, 2011 opinion regarding plaintiff's physical

impairments. The administrative law judge found that Dr. Brill's opinion that plaintiff's physical impairments rendered him "disabled" is inconsistent with the evidence, including plaintiff's own testimony, and is impermissibly conclusory because it does not give a function-by-function analysis of plaintiff's limitations nor does it indicate a time period for the purported disability. These findings are, again, supported by substantial evidence. Dr. Brill's December 16, 2011 opinion is contained in his treatment notes, which provide in pertinent part as follows:

> Here for follow-up
>
> Cont'd knee pain L>R
>
> Can't work
>
> MDD is terrible
>
> He is disabled 2° this
>
> Requests inject knee today
>
> He and I have discussed risks of opiates. . . .
>
> . . .
>
> Signed agreement today
>
> He takes opiates for chronic knee pain. Helps control enough to walk, work (when available). Otherwise he can't handle work at all. Needs to see ortho. But no insurance

PAGEID 400. It is true that Dr. Brill's treatment notes indicate that plaintiff "Can't work" and is disabled. ***Id.*** However, an opinion that a claimant is unable to work "is tantamount to a disability opinion, a matter reserved to the Commissioner for determination." ***See Sims v. Comm'r of Soc. Sec.***, 406 F. App'x 977, 980 n.1 (6th Cir. 2011). ***See***

also Payne v. Comm'r of Soc. Sec., 402 F. App'x 109, 112 (6th Cir. 2010) ("The applicable regulations provide that a statement by a medical source that the claimant is 'unable to work' is not a 'medical opinion[;] rather, it is an opinion on an 'issue[] reserved to the Commissioner because [it is an] administrative finding[] that [is] dispositive of a case, ***i.e.***, that would direct the determination or decision of disability.'") (quoting 20 C.F.R. § 404.1527(e)(1)). Accordingly, Dr. Brill's opinion that plaintiff "Can't work" is, "as a matter of law, 'not given[n] any special significance.'" *See Payne*, 402 F. App'x at 112. Moreover, Dr. Brill indicated in the same treatment notes that plaintiff's pain medications permit him to work. *See PAGEID* 400 ("He takes opiates for chronic knee pain. Helps control enough to walk, work (when available).").

Plaintiff also argues that the administrative law judge erred in evaluating Dr. Brill's December 16, 2011 opinion by failing to recognize Dr. Brill's June 13, 2012 note that plaintiff's "knee pain increased with walking and any physical activity and that his weight had increased to almost 400 pounds." *Statement of Errors*, p. 11. However, Dr. Brill's notes actually indicate that these were plaintiff's complaints rather than Dr. Brill's findings. *See PAGEID* 402. This distinction is significant because the administrative law judge found that plaintiff's subjective complaints of pain were not credible to the extent that they are inconsistent with the RFC determination, *PAGEID* 57-59, and plaintiff has not challenged the administrative law judge's credibility determination. Moreover, the

Court notes that Dr. Brill's June 13, 2012 treatment notes do not constitute medical opinions, *see* 20 C.F.R. §§ 404.1527(a)(2), 416.927(a)(2) ("Medical opinions are statements from physicians and psychologists or other acceptable medical sources 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."), and the administrative law judge is not required to cite every piece of medical evidence. *Boseley v. Comm'r of Soc. Sec. Admin.*, 397 F. App'x 195, 199 (6th Cir. 2010) ("Neither the ALJ nor the Council is required to discuss each piece of data in its opinion, so long as they consider the evidence as a whole and reach a reasoned conclusion.") (citing *Kornecky v. Comm'r of Soc. Sec.*, 167 F. App'x 496, 507–08 (6th Cir. 2006)).

Because the administrative law judge correctly applied the standards of the treating physician rule to her evaluation of Dr. Brill's opinions, and because substantial evidence supports her findings in that regard, the Court finds no error with the Commissioner's decision to that extent.

Plaintiff next argues that the administrative law judge erred by failing to evaluate Mr. Fraser's treatment notes and by failing to "acknowledge that Mr. Fraser was a cosignatory on the mental functional capacity assessment attributed solely to Dr. Brill." *Statement of Errors*, pp. 15-16.

As a licensed social worker, Mr. Fraser is categorized as an "other source," rather than an "acceptable medical source." 20 C.F.R. §§ 404.1513(d)(3); 416.913(d)(3). Administrative law judges have the "discretion to determine the proper weight to accord opinions from 'other sources.'" *Cruse v. Comm'r of Soc. Sec.*, 502 F.3d 532, 541 (6th Cir. 2007) (citing *Walters v. Comm'r of Soc. Sec.*, 127 F.3d 525, 530 (6th Cir. 1997)). Evidence from other sources may be considered "to show the severity of [the claimant's] impairment(s) and how it affects [the claimant's] ability to work." 20 C.F.R. §§ 404.1513(d)(1); 416.913(d)(1). Among the factors to be considered in evaluating the opinions of these "other sources" are the length of time and frequency of treatment, consistency with other evidence, the degree to which the source presents relevant evidence to support the opinion, how well the opinion is explained, whether the source has a special expertise, and any other factor supporting or refuting the opinion. SSR 06-03p, 2006 WL 2329939, at *4-5 (Aug. 9, 2006). An administrative law judge need not weigh all these factors in every case; the evaluation depends on the particular facts in each case. *See id.* at *5. However, the administrative law judge "generally should explain the weight given to opinions from these 'other sources,' or otherwise ensure that the discussion of the evidence in the determination or decision allows a claimant or subsequent reviewer to follow the adjudicator's reasoning." *Id.* at *6.

The administrative law judge acknowledged that plaintiff "consults with a counselor" and expressly referred to Mr. Fraser's

treatment notes, but found that plaintiff's "mental health treatment is primarily managed by Dr. Brill." ***PAGEID*** 58. The administrative law judge also considered the medical source statement completed by Dr. Brill and Mr. Fraser and assigned it "little weight." ***PAGEID*** 60. As discussed ***supra***, the administrative law judge provided good reasons for discounting the medical source statement and she was sufficiently specific as to the reasons for assigning the opinion little weight. The administrative law judge's evaluation is supported by substantial evidence and it is clear that she considered Mr. Fraser's treatment notes; the administrative law judge's failure to expressly acknowledge that Dr. Brill's medical source statement was cosigned by Mr. Fraser, an "other source," is not reversible error.

Plaintiff next argues that the administrative law judge erred in evaluating Dr. Whitehead's opinion. ***Statement of Errors***, pp. 16-18. Plaintiff specifically argues that the administrative law judge erred in adopting portions of Dr. Whitehead's opinion without explaining why other portions were rejected.

As a one-time consultative examiner, Dr. Whitehead is properly classified as a nontreating source. ***See*** 20 C.F.R. §§ 404.1502, 416.902 ("Nontreating source means a physician, psychologist, or other acceptable medical source who has examined [the claimant] but does not have, or did not have, an ongoing treatment relationship with [the claimant]."). With regard to nontreating sources, the agency will ordinarily "give more weight to the opinion of a source who has examined [the claimant] than to the opinion of a source who has not

examined" the claimant. *Id.* (quoting 20 C.F.R. § 404.1527(d)(1)). In determining the weight to be given the opinion of a nontreating source, an administrative law judge should consider such factors as "the evidence that the physician offered in support of h[is] opinion, how consistent the opinion is with the record as a whole, and whether the physician was practicing in h[is] specialty." *Ealy v. Commissioner of Social Sec.*, 594 F.3d 504, 514 (6th Cir. 2010) (citing 20 C.F.R. § 404.1527(d)).

Plaintiff was consultatively examined and evaluated by Dr. Whitehead on October 21, 2011. *PAGEID* 391-98. Plaintiff was found to be morbidly obese with a normal, stable gait. *Id.* Plaintiff's right knee showed "some mild effusion with painful range of motion, mild crepitus with passive range of motion," peripatellar tenderness, and medial joint line tenderness. *PAGEID* 393. Dr. Whitehead made similar findings in the left knee except that no effusion was noted. *Id.* Dr. Whitehead assessed bilateral knee pain consistent with chondromalacia, possible meniscus tear; psychiatric illness; and morbid obesity. *Id.* Dr. Whitehead opined that plaintiff

> would be best suited for modified light duties where he did not do repetitive or frequent kneeling or squatting. He would need the ability to sit and stand as needed for comfort. He would not do well if he had to stand for more than 2-3 hours at a time. He certainly would be best suited for a more sedentary job.

Id.

The administrative law judge evaluated Dr. Whitehead's opinion as follows:

> Consultative examiner Dr. Whitehead is an acceptable medical source who performed an evaluation and rendered an opinion regarding the nature and severity of the claimant's condition. Dr. Whitehead's opinion is partially, but not fully, consistent with the objective record as a whole (5F). Dr. Whitehead found some tenderness and pain with range of motion in the lower extremities, which is consistent with other medical findings. However, the claimant was able to walk with a normal and stable gait without the use of assistive devices. His motor strength was normal throughout without deficits. His heel to toe walking was normal, and there was no ligamentous instability. As such, Dr. Whitehead's opinion is given partial weight in so much that it is consistent with the determination made herein (20 CFR 404.1527(d)(1)(3)(4), 416.927(d)(1)(3)(4)).

PAGEID 60.

The administrative law judge relied on Dr. Whitehead's opinion in forming her RFC assessment and was sufficiently specific as to her reasons for doing so. It is also apparent that the administrative law judge considered the appropriate factors in evaluating Dr. Whitehead's opinion. Plaintiff argues that the administrative law judge failed "to include the identified need to sit and stand as needed for comfort and to stand for no more than two to three hours at a time in her finding regarding Plaintiff's residual functional capacity." ***Statement of Errors***, pp. 17-18. However, the administrative law judge assigned weight to Dr. Whitehead's opinion only to the extent that it was consistent with the RFC determination. ***PAGEID*** 60. The administrative law judge also discussed evidence that was inconsistent with the portions of Dr. Whitehead's opinion that she did not adopt. Plaintiff disagrees with the administrative law judge's evaluation of the evidence, but this Court is not permitted to reweigh that evidence

where, as here, the administrative law judge followed the proper procedures and her analysis is supported by substantial evidence.

In short, and having carefully considered the entire record in this action, the Court concludes that the decision of the Commissioner is supported by substantial evidence. Accordingly, the decision of the Commissioner is **AFFIRMED**.

This action is hereby **DISMISSED**. The Clerk shall enter **FINAL JUDGMENT** pursuant to Sentence 4 of 42 U.S.C. § 405(g).

December 15, 2014

s/Norah McCann King
Norah McCann King
United States Magistrate Judge