

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TINA VAUGHN,	:	Case No. 3:13-cv-122
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
COMMISSIONER OF	:	
SOCIAL SECURITY,	:	
	:	
Defendant.	:	

ORDER THAT: (1) THE ALJ’S NON-DISABILITY FINDING IS FOUND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND IS REVERSED; (2) JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFF AWARDING BENEFITS; AND (3) THIS CASE IS CLOSED

This is a Social Security disability benefits appeal. At issue is whether the administrative law judge (“ALJ”) erred in finding the Plaintiff “not disabled” and therefore unentitled to supplemental security income (“SSI”) and disability insurance benefits (“DIB”).¹ (*See* Administrative Transcript (“PageID”) (PageID 45-55) (ALJ’s decision)).

I.

On May 22, 2009, Plaintiff applied to the Social Security Administration for DIB and SSI benefits, asserting that she could no longer work beginning on March 15, 2006, because she was under a disability within the meaning of the Social Security Act.

¹ Plaintiff’s Title II application was for Medicare coverage as a Medicare-qualified government employee. (PageID 45). The Plaintiff’s earnings record shows that she acquired sufficient quarters of coverage to remain insured through March 31, 2014. (*Id.*) Therefore, Plaintiff must establish disability on or before that date in order to be entitled to Medicare coverage as a Medicare-Qualified government employee. (*Id.*)

(PageID 178-89). Specifically, Plaintiff claimed that she was disabled due to subcutaneous nodules,² anxiety, PTSD, and borderline intellectual functioning. (PageID 49). Plaintiff's applications were denied initially and upon reconsideration. (PageID 109-11, 122-1). Plaintiff timely filed a request for hearing. (PageID 136-37).

On July 7, 2011, a hearing was held in Dayton, Ohio before an ALJ. (PageID 66). Plaintiff was represented at the hearing by attorney Robert Walter. (*Id.*) A vocational expert also appeared and testified at the hearing. (*Id.*) On September 14, 2011, the ALJ denied Plaintiff's claim for benefits. (PageID 42-61). Following a timely filed request for review of the hearing decision, the Appeals Council declined review, making that decision the final administrative disposition of Plaintiff's claim. (PageID 34-41, 261-64).

At the time of Plaintiff's hearing before the ALJ, she was over 50 years old and was considered to be a "person closely approaching advanced age." 20 C.F.R. §§ 404.1563(d); 416.963(d). (PageID 53). Plaintiff is a high school graduate who attended special education classes. (PageID 69, 72). Plaintiff's past relevant work experience was working as a janitor, a cashier/checker, a drive-thru sales clerk, and a machine feeder.³ (PageID 23).

² Subcutaneous nodules are any sort of lump or bump that occurs beneath the skin.

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

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

1. The claimant meets the insured status requirements of the Social Security Act through March 31, 2014.
2. The claimant has not engaged in substantial gainful activity since March 15, 2006, the alleged onset date (20 CFR 404.1572, *et seq.*, and 416.971, *et seq.*).
3. The claimant has the following severe impairments: multiple subcutaneous nodules on both legs, anxiety disorder diagnosed as post-traumatic stress disorder (PTSD), and borderline intellectual functioning (20 CFR 404.1520(c) and 416.920(c)).
4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).
5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform medium work as defined in 20 CFR 404.1567(c) and 416.967(c) except that she is limited to performing simple tasks featuring a minimal degree of personal contact in the workplace and no production quotas.
6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).
7. The claimant was born on August 12, 1958 and was 47 years old, which defined her as a younger individual, age 18-49, on the alleged disability onset date (20 CFR 404.1563 and 416.963).
8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).
9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills. (*See* SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

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

11. The claimant has not been under a disability, as defined in the Social Security Act, from March 15, 2006, through the date of this decision (20 CFR 404.1520(g) and 416.920(g)).

(PageID 47-55).

In sum, the ALJ concluded that Plaintiff was not under a disability as defined by the Social Security Regulations, and was therefore not entitled to SSI or DIB. (PageID 55).

On appeal, Plaintiff argues that: (1) the ALJ erred in failing to consider whether or not Plaintiff's intellectual deficits meet or equaled Listing 12.05(c); (2) the ALJ erred in finding that Plaintiff experienced only "moderate" limitations in social functioning; and (3) the ALJ erred in omitting several well evidenced mental health limitations from Plaintiff's RFC without explanation or support. The Court will address each error in turn.

II.

The Court's inquiry on appeal is to determine whether the ALJ's non-disability finding is supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In performing this review, the Court considers the record as a whole. *Hephner v. Mathews*, 574 F.2d 359, 362 (6th Cir. 1978). If substantial evidence supports the ALJ's denial of benefits, that

finding must be affirmed, even if substantial evidence also exists in the record upon which the ALJ could have found plaintiff disabled. As the Sixth Circuit has explained:

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

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

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

A.

The record reflects that:

1. Plaintiff’s testimony

Plaintiff testified that her last job involved working as a school janitor. (PageID 69). She left the job because she did not get along with her boss and had “gotten into it” with her.⁴ (PageID 70). Plaintiff had also been written up for “getting into it” with a night crew employee. (PageID 73). During the day, she had words with a couple of the teachers at the school where she worked. (*Id.*) Even though Plaintiff was a janitor at the

⁴ Plaintiff testified that “[s]ome things were said and she wanted to fire me.” (PageID 70).

school, she would yell at teachers who spilled things and refused to clean the spill up themselves.⁵ (PageID 73-74). Plaintiff had also been written up for this behavior. (PageID 74). Sometimes while on the clock, Plaintiff would sleep in an office at the school alongside her “supervisor.” (PageID 74-75). Both Plaintiff and her supervisor were let go at the same time. (*Id.*) When asked about the biggest problem affecting her ability to work, Plaintiff explained: “Getting along with people. I’m going through a lot of mood swings. I don’t know. It’s people who act like they don’t know how to talk to you. I ain’t going to hold my tongue...” (PageID 70).

Plaintiff explained that she had problems getting along with others even when she was little, fighting with other kids and her principals. (PageID 79). Plaintiff also shared that she is a victim of considerable childhood abuse and continues to think about it all the time as an adult.⁶ (PageID 76). She has crying spells at least every other day. (PageID 76-77). She also has problems with comprehension and does not exhibit a level of independence typical for a woman of her age. She explained that she often relies on her son to read her mail and when she tries to take care of bills she has “messed up” and had utilities cut off. (PageID 77). She cannot spell well enough to write a letter. (PageID

⁵ “I tell them to get it up. They spilled it. They grown. Get it up. I’m not going to clean up after no grown person.” (PageID 73).

⁶ Plaintiff’s father mentally and physically abused her. (PageID 412). Plaintiff’s father was an alcoholic and had drug problems. (PageID 413). Plaintiff maintains that she and her sister killed their father in a shootout in the 1980s. (*Id.*) Plaintiff was arrested, but never charged in his death. (*Id.*) Plaintiff claims that she began drinking alcohol at age 10 and began using drugs at age 14. (PageID 414).

77-78). Plaintiff also testified that she had shown up four hours early for her hearing because she was confused about the time. (PageID 78).

Plaintiff also testified about her typical daily activities. (PageID 71). She does not cook, grocery shop, or associate with any friends. (*Id.*) She generally sleeps during the day and stays up watching television at night. (*Id.*) As often as twice per day, Plaintiff does not make it to the bathroom on time and messes herself. (PageID 75-76).

2. *Medical evidence of record*

On April 1, 2008, Plaintiff was written a prescription refill for her anti-depressant medication while at the Miami Valley Hospital emergency room for an acute illness. (PageID 295, 301).

Plaintiff's primary care has been through the Corwin Nixon Health Center. On January 15, 2009, Plaintiff was noted to be tearful at her appointment with a history of severe depression and suicidal thoughts. (PageID 332). The next month, records reflect that Plaintiff was experiencing suicidal ideation approximately once per week. (PageID 335-37). A treatment note dated April 16, 2009 describes Plaintiff as "tearful, very stressed, depressed, feels like she is falling apart." (PageID 327). In May 2009, Plaintiff was similarly noted to be "very depressed." (PageID 326). She was tearful with a very flat affect, reported insomnia, and curled up into a ball during the appointment stating "I don't know, I just don't know." (*Id.*) Most of Plaintiff's treatment at Corwin Nixon revolved around her physical health; however, on May 9, 2011, she was noted to be depressed. (PageID 543).

In January 2010, Plaintiff began receiving mental health services through Eastway Behavioral. (PageID 481). In March 2010, Plaintiff endorsed having “a really bad week” marked by thoughts of her history of abuse. (PageID 480). On May 10, 2010, Plaintiff explained to her counselor that she had been “staying in” to avoid other people and resulting temper flares. (PageID 478). Plaintiff was discharged from Eastway on June 29, 2010 because she stopped attending appointments. (PageID 466).

3. Opinion evidence of record

On March 28, 2007, Plaintiff was evaluated by state agency consultant Giovanni M. Bonds, Ph.D. (PageID 267-75). Plaintiff told Dr. Bonds about the problems she had getting along with others during her work as a school janitor. (PageID 268). Plaintiff got up and left during her evaluation and had to return the next day for it to be completed. (PageID 269). Dr. Bonds noted that Plaintiff seemed moderately depressed and that she reported thoughts of suicide and mood swings where she becomes angry, argumentative, or violent. (*Id.*) Dr. Bonds also performed IQ testing which placed Plaintiff’s Full Scale IQ score at **66**.⁷ (PageID 271). Testing also revealed that that Plaintiff is “far below average” in a number of significant mental functional areas including: verbal comprehension, expression, reasoning, factual knowledge and information, social judgment, word knowledge and conceptualization, alertness to details, and her ability to use logical and conceptual thinking. (*Id.*)

⁷ A Full Scale IQ score between 90-109 are considered average. Below 69 is considered intellectually deficient.

Ultimately, Dr. Bonds diagnosed Plaintiff with posttraumatic stress disorder, alcohol dependence, drug abuse, and borderline intellectual functioning. (PageID 273). He assigned her a GAF score of **50**.⁸ (*Id.*) In terms of work related mental abilities, Dr. Bonds opined that Plaintiff is mildly limited in her ability to understand, remember, and follow instructions, as well as in her ability to maintain attention, concentration, persistence, and pace to perform simple repetitive tasks. (PageID 273-74). When considering Plaintiff's social deficits and her ability to tolerate workplace stress, Dr. Bonds stated:

Tina's mental ability to relate to peers, supervisors or the public is severely limited. Tina has very poor judgment, reasoning, and problem solving skills. She is very angry and easily becomes provoked, argumentative, and aggressive. She has had difficulty on past jobs getting along with authority figures and coworkers. She reports that she often gets into conflicts with people in the community and with people in her family if she is around them.

(PageID 273).

Tina's mental ability to withstand the stress and pressure associated with day to day work activities is moderately limited. Because of Tina's problems with her temper she would have severe difficulties getting along with others and handling interpersonal stress and conflicts on the job. Her poor judgment and reasoning abilities also limits her ability to handle demands for speed, accuracy and productivity, and for dealing with changes in the workplace.

(PageID 274).

⁸ The Global Assessment of Functioning ("GAF") is a numeric scale (0 through 100) used by mental health clinicians and physicians to rate subjectively the social, occupational, and psychological functioning of adults. A GAF score of 41-50 indicates serious symptoms (*e.g.*, suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (*e.g.*, no friends, unable to keep a job, cannot work).

On May 1, 2009, Barbara Wise, a CNP who treated Plaintiff at Corwin Nixon, completed a form for the Ohio Department of Job and Family Services in which she opined that Plaintiff is unemployable as a result of her mental health symptoms. (PageID 445-46). Nurse Wise explained that Plaintiff has a history of severe depression with suicidality and that she has been consistently tearful with a flat affect. (PageID 445).

Dr. Bonds evaluated Plaintiff for a second time on August 20, 2009. (PageID 412-20). Plaintiff presented as “depressed and irritated” during the evaluation. (PageID 414). She endorsed frequent thoughts of suicide and the same problems with emotional self-control described during her 2007 evaluation. (PageID 414). Dr. Bonds tested Plaintiff’s IQ again resulting in a Full Scale score of **63**. (PageID 416). Dr. Bonds removed drug abuse as one of Plaintiff’s diagnoses and left her GAF score at **50**. (PageID 418). Dr. Bonds appraisal of Plaintiff’s functioning remained largely unchanged from his 2007 evaluation with ongoing severe deficits in relating to others and moderate impairment in her ability to withstand day-to-day work related stress and pressure. (PageID 418-19).

On September 23, 2009, state agency consulting reviewer Paul Tangeman, Ph.D. reviewed the evidence of record and offered his opinions regarding Plaintiff’s diagnoses and limitations. (PageID 424-41). Dr. Tangeman largely adopted Dr. Bonds’ diagnoses; however, he found that Plaintiff has only “moderate” limitations in social functioning. (PageID 428-38). In support of his disagreement with Dr. Bonds, Dr. Tangeman cited Plaintiff’s “ability to behave in a cooperative, pleasant manner” during Dr. Bonds’ own examination. (PageID 426). Nevertheless, Dr. Tangeman did opine that Plaintiff has a

number of specific moderate work related limitations, including her ability to maintain attention and concentration for extended periods, to complete a normal workday and workweek without interruption, and to accept instructions and respond appropriately to criticism from supervisors. (PageID 424-25). Another reviewer affirmed Dr. Tangeman's assessment on February 16, 2010 without much substantive comment. (PageID 443).

4. The vocational expert's testimony

Vocational expert Suman Srinivasan appeared and testified at Plaintiff's hearing. (PageID 79). Ms. Srinivasan identified Plaintiff's past work as that of a janitor, a cashier/checker, a drive-thru sales clerk, and a machine feeder. (*Id.*) She classified these jobs as being unskilled to semi-skilled and involving light to heavy level exertion. (*Id.*) When asked a hypothetical question reflecting the limitations in the assigned residual functional capacity, Ms. Srinivasan was able to identify a substantial numbers of jobs which could be performed. (PageID 80).

Upon questioning from Plaintiff's counsel, Ms. Srinivasan explained that she could not identify any jobs in the national economy where an employee would not have to at least relate to a supervisor. (PageID 81-82). She further testified as follows:

REPRESENTATIVE: If an employee were consistently argumentative or aggressive with their supervisor, could that affect their ability to maintain these positions long term?

MS. SRINIVASAN: Yes, it would.

REPRESENTATIVE: Would it be likely that such an employee would be terminated?

MS. SRINIVASAN: It is likely, yes.

(PageID 82).

Ms. Srinivasan also discussed the productivity expectations at the jobs she identified, explaining that all work comes with an expectation that an employee work consistently. (PageID 82-83).

REPRESENTATIVE: If an employee were unable to work consistently, even performing simple repetitive tasks, would they be able to maintain any positions that you've identified long term?

MS. SRINIVASAN: If they are not able to complete what's been given to them and it happens again and again, they would not be able to retain competitive employment.

REPRESENTATIVE: In terms of accuracy, if an employee is careless in their work on any sort of routine basis, not meeting basic accuracy demands, would they be able to maintain these positions long term?

MS. SRINIVASAN: No, sir.

(PageID 82-83).

5. *The ALJ's decision*

The ALJ found that Plaintiff did not engage in substantial gainful activity during the period of disability alleged. (PageID 48). He further determined that Plaintiff suffered from the severe impairments of multiple subcutaneous nodules on both legs, an anxiety disorder diagnosed as post-traumatic stress disorder, and borderline intellectual functioning. (*Id.*)

The ALJ's residual functional capacity ("RFC")⁹ finding reads:

After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform medium work¹⁰ as defined in 20 CFR 404.1567(c) and 416.967(c) except that she is limited to performing simple tasks featuring a minimal degree of personal contact in the workplace and no production quotas.

(PageID 53).

The ALJ ultimately concluded that Plaintiff is incapable of returning to her past work, but that there are significant numbers of other jobs in the national economy which she can perform. (PageID 53-54). As a result, he finds Plaintiff was not disabled under the Social Security Act from March 15, 2006 through the date of his decision. (PageID 56-57).

B.

First, Plaintiff alleges that the ALJ erred in failing to consider whether or not she meets or equals Listing 12.05(C).

For a claimant to show that her impairment matches an impairment in the Listings, she must meet all of the specified medical criteria. *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990). Additionally, the claimant must prove that the disability lasted for a continuous period of not less than 12 months to meet the Listing. 42 U.S.C. § 423(d)(1)(A). "[I]t is

⁹ A claimant's residual functional capacity ("RFC") is an assessment of "the most [she] can still do despite [her] limitations." 20 C.F.R. § 416.945(a)(1).

¹⁰ Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighting up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 C.F.R. § 416.967(c).

the claimant's burden to show that he meets or medically equals an impairment in the Listings." *Todd v. Astrue*, No. 1:11cv1099, 2012 U.S. Dist. LEXIS 91992, at *9 (N.D. Ohio May 15, 2012). "In order to be found disabled based upon a listed impairment, the claimant must exhibit all the elements of the listing. It is insufficient that a claimant comes close to meeting the requirements of a listed impairment." *Elam ex rel. Golay v. Comm'r of Soc. Sec.*, 348 F.3d 124, 125 (6th Cir. 2003).

Listing 12.05 requires a finding of disability based on the claimant's intellectual disability:

Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period, i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when...(C) [the claimant has demonstrated] a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

20 C.F.R. Pt. 404, Subpt. P, App. 1, Section 12.05(C). A claimant must establish three elements in order to satisfy Listing 12.05(C): (1) that she experiences "significantly subaverage general intellectual functioning with deficits in adaptive functioning"¹¹ [that] initially manifested during the developmental period" (i.e., the diagnostic description);

¹¹ Loss of adaptive functioning is "manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace." 20 C.F.R., Pt. 404, Subpt. P, App. 1 at Section 12.00(C)(4). See also *West v. Comm'r of Soc. Sec.*, 240 F. App'x 692, 698 (6th Cir. 2007) ("Adaptive functioning includes a claimant's effectiveness in areas such as social skills, communication, and daily living skills.").

(2) that she has a “valid verbal, performance, or full scale IQ of 60 through 70;”¹² and (3) that she suffers from “a physical or other mental impairment imposing an additional and significant work-related limitation of function.” *Id.*

First, Plaintiff maintains that deficits in adaptive functioning initially manifested during her developmental period as evidenced by the fact that she was in special education classes as a child. (PageID 72, 268, 413). The evidence also indicates that Plaintiff had difficulty interacting with others while in school. (PageID 78-79, 268, 413). Second, valid testing performed by Dr. Bonds established the requisite IQ scores on two separate occasions nearly two years apart. (PageID 271, 416). Finally, Plaintiff suffers from significant mental and social impairments imposing additional work-related limitations. (PageID 48-51).

There is no evidence in the record that the ALJ even considered Listing 12.05. Defendant’s argument as to why Plaintiff failed to meet the Listing is entirely speculative. “Courts are not at liberty to speculate on the basis of an administrative agency’s order...The court is not free to accept appellate counsel’s *post hoc* rationalization for agency action in lieu of reasons and findings enunciated by the Board.” *Hyatt Corp. v. N.L.R.B.*, 929 F.2d 361, 367 (6th Cir. 1991). As explained in Section II.C, *infra*, the Court finds that there is significant evidence to support a finding that Plaintiff meets or equals Listing 12.05(C).

¹² IQ scores do not alone establish that the claimant suffered sub-average intellectual functioning or deficits in adaptive functioning during the developmental period. *Turner v. Comm’r of Soc. Sec.*, 381 F. App’x 488, 491-92 (6th Cir. 2010) (“A claimant must produce evidence beyond his present IQ scores to show that he exhibited deficits during his developmental period.”).

C.

Next, Plaintiff maintains that the ALJ erred in finding that she experiences only “moderate” limitations in social and adaptive functioning.

Dr. Bonds indicated that Plaintiff was “significantly impaired in her ability to relate to others.” (PageID 19). However, the ALJ concluded that this opinion was “not entitled to significant weight because the record demonstrate[d] that [Plaintiff’s] ability to relate to others is no more than moderately impaired.” (PageID 20). Specifically, the ALJ cited treatment and examination records that reported Plaintiff to be “pleasant and cooperative.” (PageID 19). Rather than adopt Dr. Bonds’ opinion, the ALJ gave great weight to state agency reviewing medical source, Dr. Tangeman.

The record evidence shows that Plaintiff “lost a job in 2007 because of a dispute with her boss.” (PageID 49). In Plaintiff’s sworn testimony she described having significant conflicts with others at her place of work, arguing with her boss, other employees, and even teachers at the school where she worked. (PageID 70, 73-74). This mirrors her reports to consulting examiner Dr. Bonds. (PageID 268, 413). The ALJ’s characterization of Plaintiff’s past work as “successful” or otherwise inconsistent with severe problems in social functioning is unsupported by the record.

Additionally, the ALJ’s reliance upon Dr. Bonds’ reports as evidence of only moderate social deficits is flawed because the evidence contradicts a finding that Plaintiff

was wholly “pleasant and cooperative” throughout her evaluations.¹³ (PageID 50). Plaintiff actually left during the middle of her 2007 evaluation, requiring it to be completed the next day. (PageID 269). At the evaluation Plaintiff failed to initiate conversation, was described as “very animated,” and appeared to have difficulty concentrating on Dr. Bonds’ testing. (PageID 271-72). In the 2009 report, Dr. Bonds described Plaintiff’s mood as “depressed and irritated.” (PageID 414). Even if, however, Plaintiff happened to be “pleasant” during her meetings with Dr. Bonds, the relevant inquiry is Plaintiff’s ability to maintain social functioning on a sustained basis, not during singular examinations. *Gayheart v. Comm’r*, 710 F.3d 365, 378 (6th Cir. 2013).

The Commissioner also found that Plaintiff does not suffer from the “deficits in adaptive functioning” because she engages in activities like grocery shopping, fishing, laundry, and cooking.¹⁴ However, in *Brown v. Sec’y of Health & Human Servs.*, 948 F.2d 268 (6th Cir. 1991), the Sixth Circuit found that a claimant who was able to grocery shop, raise children, do his own laundry, use an atlas, read a newspaper, and perform work as an over-the-road truck driver did not demonstrate abilities inconsistent with

¹³ The Commissioner’s characterization of and reliance on Plaintiff’s “pleasant” demeanor at Dr. Bonds’ evaluations as evidence undermining that physician’s own conclusions is entirely unreasonable, unsupported, and contrary to the regulatory directives regarding the assessment of mental impairments and limitations. Moreover, the substantive evidence regarding Plaintiff’s past work experience reveals the presence of severe social deficits consistent with Dr. Bonds’ assessments.

¹⁴ It is important to note, however, that the evidence indicates that Plaintiff receives help with grocery shopping, does limited cooking, and does laundry [only] once a month. (PageID 75-78).

adaptive deficits under Listing 12.05(C).¹⁵ The Commissioner does not point the Court to any activities performed by Plaintiff which demonstrate any level of independence beyond that present in *Brown*. In fact, the evidence supports a finding that Plaintiff has significant deficits in maintaining the level of independence and socialization reasonably expected of a person her age. For example, Plaintiff exhibits difficulty maintaining stable relationships with others, she relies upon her son to read her mail, her attempts at managing her own bills have resulted in utility shutoffs, she does limited cooking and gets assistance with her grocery shopping, her past attempts at employment were met by significant difficulties interacting with others and meeting job demands, and she wets her pants more than once each day. (PageID 75-78).

Accordingly, a finding that Plaintiff does not suffer from deficits in adaptive and social functioning is not support by the record. Rather, there is substantial evidence which supports a finding that Plaintiff meets Listing 12.05(c).¹⁶

¹⁵ *Id.* at 270 (“[b]y their late teens...[people with mild mental retardation] can acquire academic skills up to approximately sixth-grade level; during their adult years, they usually achieve social and vocational skills adequate for minimum self-support, but may need guidance and assistance when under unusual social or economic stress. At the present time, virtually all people with Mild Mental Retardation can live successfully in the community, independently or in supervised apartments or group homes...”).

¹⁶ While the Court finds significant evidence of deficits in social and adaptive functioning, such evidence does not date back to Plaintiff’s alleged disability onset date of March 15, 2006. Rather, the Court finds sufficient evidence in the record as of March 28, 2007, the date of Dr. Bonds first evaluation. (PageID 267-75).

D.

Finally, Plaintiff alleges that the ALJ erred in omitting several well evidenced mental health limitations from her RFC without explanation or support.

The ALJ maintains that Plaintiff's sporadic mental health treatment is evidence of less severe social functional limitations. (PageID 50). However, the failure to seek or follow through with treatment can be a symptom of severe mental illness. *White v. Comm'r*, 572 F.3d 272, 283 (6th Cir. 2009).¹⁷ In Plaintiff's case, her treatment notes reflect her having difficulty controlling her emotions during medical appointments. (PageID 326-327). She is also described as "staying in" or "shutting out" other people, providing a reasonable explanation for her reluctance to attend treatment appointments. (PageID 478-81).

Dr. Tangeman provides no reason for discrediting Dr. Bonds' assessment of "severe" social restrictions. (PageID 426). Dr. Tangeman is certainly not in a better position to appraise Plaintiff's demeanor at Dr. Bonds' evaluation than Dr. Bonds himself. (*Id.*) Dr. Bonds is a two time examiner who evaluated the claimant over the course of three separate days and performed objective psychological testing. (PageID 267-75, 412-420). Moreover, Dr. Bonds prepared two comprehensive narrative reports outlining in detail his observations, Plaintiff's reports, his conclusions, and the reasons therefor. (*Id.*) Finally, Dr. Bonds' 2007 and 2009 opinions are consistent with one

¹⁷ See also *Pate-Fires v. Astrue*, 564 F.3d 935, 945 (8th Cir. 2009) (listing cases recognizing that a mentally ill person's noncompliance with treatment "can be...the result of the mental impairment itself and, therefore, neither willful nor without a justifiable excuse.").

another, with Plaintiff's testimony, with the opinion of Plaintiff's counselor, and with the observations in Plaintiff's treatment notes which reflect significant deficits in mood regulation and emotional control. (PageID 70-77, 267-75, 326-7, 335-37, 412-20, 445-46, 478-81).

Dr. Tangeman identified a number of mental functional deficits, including that Plaintiff had at least moderate limitations in her ability to maintain attention and concentration for extended periods, to complete a normal workday and workweek without interruption, and to perform at a consistent pace without an unreasonable number and length of rest periods. (PageID 424-25). Dr. Bonds noted that Plaintiff was limited in her ability to "handle demands for speed, accuracy and productivity, and for dealing with changes in the workplace." (PageID 274). The ALJ only limits Plaintiff to simple tasks and no production quotas.¹⁸ (PageID 51). However, these limitations do not address all of the limitations identified. Specifically, the ALJ failed to accommodate Plaintiff's difficulties with concentration, task persistence, accuracy, workplace changes, and general reliability.

Moreover, the Court must consider the fact that Dr. Bonds was actually an examining source, unlike Dr. Tangeman, who was only an agency reviewer. *See* 20 C.F.R. § 404.1527(c)(1) ("Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you."). The regulations also strongly favor medical opinions which provide better and more

¹⁸ The ALJ failed to articulate what is meant by "no production quotas" or how this limitation is meant to accommodate Plaintiff's symptoms.

comprehensive explanations for their conclusions under the factor of Supportability. 20 C.F.R. § 404.1527(c)(3). Unlike Dr. Bonds', Dr. Tangeman's opinion consists almost entirely of checkboxes with only a single paragraph of explanatory text. Dr. Bonds' psychological evaluation consists of sixteen pages. (Tr. 267-74, 412-19, 424-41). Dr. Bonds' opinions are also wholly consistent with Plaintiff's longitudinal allegations of disability including her sworn testimony, whereas Dr. Tangeman's conclusions depart dramatically from the primary pieces of evidence upon which they are based – specifically, Dr. Bonds' reports.

Dr. Tangeman's opinion, alone, does not substantiate the ALJ's rejection of Dr. Bonds' appraisal of Plaintiffs' social limitations. Accordingly, the ALJ's reliance on Dr. Tangeman and the resulting non-disability finding are not supported by substantial evidence.

III.

When, as here, the non-disability determination is not supported by substantial evidence, the Court must decide whether to reverse and remand the matter for rehearing or to reverse and order benefits granted. The Court has authority to affirm, modify or reverse the Commissioner's decision "with or without remanding the cause for rehearing." 42 U.S.C. § 405(g); *Melkonyan v. Sullivan*, 501 U.S. 89, 100 (1991).

Generally, benefits may be awarded immediately "only if all essential factual issues have been resolved and the record adequately establishes a plaintiff's entitlement to benefits." *Faucher v. Sec'y of Health & Human Servs.*, 17 F.3d 171, 176 (6th Cir.

1994); *see also* *Abbott v. Sullivan*, 905 F.2d 918, 927 (6th Cir. 1990); *Varley v. Sec’y of Health & Human Servs.*, 820 F.2d 777, 782 (6th Cir. 1987).

The Court may award benefits where the proof of disability is strong and opposing evidence is lacking in substance, so that remand would merely involve the presentation of cumulative evidence, or where the proof of disability is overwhelming. *Faucher*, 17 F.3d at 176; *see also* *Felisky*, 35 F.3d at 1041; *Mowery v. Heckler*, 772 F.2d 966, 973 (6th Cir. 1985). Such is the case here.

Here proof of disability is overwhelming and remand will serve no purpose other than delay. As fully recited here, in view of the medical record evidencing disability, and the credible and controlling findings and opinions of Dr. Bonds, the ALJ failed to meet its burden of finding substantial evidence that Plaintiff is able to engage in substantial gainful activity. Instead, proof of disability is overwhelming.

IT IS THEREFORE ORDERED THAT:

The decision of the Commissioner, that Tina Vaughn was not entitled to disability insurance benefits and supplemental security income beginning March 28, 2007, is **NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**, and it is **REVERSED**; and this matter is **REMANDED** to the Commissioner for an immediate award of benefits. The Clerk shall enter judgment accordingly, and this case shall be **CLOSED**.

Date: 2/21/14

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