

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

PATRICK R. DONNELLY,

Plaintiff,

Case No. 3:17-cv-28

vs.

COMMISSIONER OF SOCIAL SECURITY,

Magistrate Judge Michael J. Newman
(Consent Case)

Defendant.

**DECISION AND ENTRY: (1) AFFIRMING THE ALJ'S NON-DISABILITY FINDING
AS SUPPORTED BY SUBSTANTIAL EVIDENCE; AND (2) TERMINATING THIS
CASE ON THE COURT'S DOCKET**

This Social Security disability benefits appeal is before the undersigned for disposition based upon the parties' consent. Doc. 9. At issue is whether the Administrative Law Judge ("ALJ") erred in finding Plaintiff not "disabled" and therefore unentitled to Supplemental Security Income ("SSI") and Child Disability Benefits ("CDB"). This case is before the Court upon Plaintiff's Statement of Errors (doc. 10), the Commissioner's memorandum in opposition (doc. 11), Plaintiff's reply (doc. 12), the administrative record (doc. 7),¹ and the record as a whole.

I.

A. Procedural History

Plaintiff filed applications for SSI and for CDB² on March 21, 2014 alleging disability as of October 16, 1998, when he was four years old. PageID 341-47, 348-56. Plaintiff

¹ Hereafter, citations to the electronically-filed administrative record will refer only to the PageID number.

² As applicable in this case, Plaintiff -- who was unmarried and 23 years old at the time of his application -- would be entitled to CDB if he was "under a disability... which began before he attained the age of 22." 42 U.S.C. § 402(d)(1)(B). As set forth *infra*, the undersigned finds substantial evidence supports the ALJ's conclusion that Plaintiff was not disabled at any time between his 18th birthday on March 11, 2012 and the date of his decision on February 23, 2016.

subsequently amended his alleged onset date to March 11, 2012, *i.e.*, his eighteenth birthday.³ PageID 62, 341-56. Plaintiff alleges disability as a result of a number of alleged impairments including, *inter alia*, attention deficit hyperactivity disorder (“ADHD”), affective disorder and minor motor seizures. PageID 64.

After an initial denial of Plaintiff’s application, Plaintiff received a hearing before ALJ Eric Anschuetz on November 10, 2015. PageID 83-138. The ALJ issued a decision on February 23, 2016 finding Plaintiff not disabled. PageID 62-75. Specifically, the ALJ found at Step Five that, based upon Plaintiff’s residual functional capacity (“RFC”) to perform a full range of work at all exertional levels subject to specific non-exertional limitations, “there are jobs that exist in significant numbers in the national economy that [Plaintiff] can perform[.]” PageID 66-75.

Thereafter, the Appeals Council denied Plaintiff’s request for review, making the ALJ’s non-disability finding the final administrative decision of the Commissioner. PageID 49-51. *See Casey v. Sec’y of Health & Human Servs.*, 987 F.2d 1230, 1233 (6th Cir. 1993). Plaintiff then filed this timely appeal. *Cook v. Comm’r of Soc. Sec.*, 480 F.3d 432, 435 (6th Cir. 2007).

B. Evidence of Record

The evidence of record is adequately summarized in the ALJ’s decision (PageID 62-75), Plaintiff’s Statement of Errors (doc. 10), the Commissioner’s memorandum in opposition (doc. 11), and Plaintiff’s reply (doc. 12). The undersigned incorporates all of the foregoing and sets forth the facts relevant to this appeal herein.

³ The Court notes that Plaintiff previously applied for SSI and DIB on June 27, 2012, and again on June 4, 2013. PageID 323-40. In both applications, Plaintiff alleged disability as of October 16, 1998. PageID 323-40. Both previous applications were denied and Plaintiff never appealed those decisions. PageID 239-50. Thus, based upon application of *res judicata*, it appears that the earliest Plaintiff could be found disabled is October 16, 2013, *i.e.*, the date his most recent previously filed applications for SSI and CDB were denied. PageID 245-50; *see Drummond v. Comm’r of Soc. Sec.*, 126 F.3d 837, 842 (6th Cir. 1997).

II.

A. Standard of Review

The Court's inquiry on a Social Security appeal is to determine (1) whether the ALJ's non-disability finding is supported by substantial evidence, and (2) whether the ALJ employed the correct legal criteria. 42 U.S.C. § 405(g); *Bowen v. Comm'r of Soc. Sec.*, 478 F.3d 742, 745-46 (6th Cir. 2007). In performing this review, the Court must consider the record as a whole. *Hephner v. Mathews*, 574 F.2d 359, 362 (6th Cir. 1978).

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). When 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. *Buxton v. Halter*, 246 F.3d 762, 772 (6th Cir. 2001). Thus, the ALJ has a "'zone of choice' within which he [or she] can act without the fear of court interference." *Id.* at 773.

The second judicial inquiry -- reviewing the correctness of the ALJ's legal analysis -- may result in reversal even if the ALJ's decision is supported by substantial evidence in the record. *Rabbers v. Comm'r of Soc. Sec.*, 582 F.3d 647, 651 (6th Cir. 2009). "[A] decision of the Commissioner will not be upheld where the [Social Security Administration] fails to follow its own regulations and where that error prejudices a claimant on the merits or deprives the claimant of a substantial right." *Bowen*, 478 F.3d at 746.

B. "Disability" Defined

To be eligible for disability benefits, a claimant must be under a "disability" as defined by the Social Security Act. 42 U.S.C. § 423(d)(1)(A). Narrowed to its statutory meaning, a "disability" includes physical and/or mental impairments that are both "medically determinable"

and severe enough to prevent a claimant from (1) performing his or her past job and (2) engaging in “substantial gainful activity” that is available in the regional or national economies. *Id.*

Administrative regulations require a five-step sequential evaluation for disability determinations. 20 C.F.R. § 416.920(a)(4). Although a dispositive finding at any step ends the ALJ’s review, *see Colvin*, 475 F.3d at 730, the complete sequential review poses five questions:

1. Has 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 (the “Listings”), 20 C.F.R. Subpart P, Appendix 1?;
4. Considering the claimant’s RFC, can he or she perform his or her past relevant work?; and
5. Assuming the claimant can no longer perform his or her past relevant work -- and also considering the claimant’s age, education, past work experience, and RFC -- do significant numbers of other jobs exist in the national economy which the claimant can perform?

20 C.F.R. § 416.920(a)(4); *see also Miller v. Comm’r of Soc. Sec.*, 181 F.Supp.2d 816, 818 (S.D. Ohio 2001). A claimant bears the ultimate burden of establishing disability under the Social Security Act. *Key v. Comm’r of Soc. Sec.*, 109 F.3d 270, 274 (6th Cir. 1997).

III.

In his Statement of Errors, Plaintiff alleges the ALJ improperly evaluated his credibility. Doc. 10 at PageID 1854-59.

Having carefully reviewed the administrative record and the parties’ briefs, and also having carefully considered the ALJ’s analysis leading to the non-disability finding here at issue, the Court finds the ALJ carefully and reasonably developed and reviewed the record; appropriately considered the medical evidence at issue; properly weighed opinion evidence based upon reasons supported by substantial evidence; reasonably assessed Plaintiff’s credibility;

posed appropriate hypothetical questions to the VE; accurately determined Plaintiff's RFC; and appropriately concluded, at Step Five, that Plaintiff can perform a significant number of jobs in the national economy.

The ALJ, and not this Court, "evaluate[s] the credibility of witnesses, including that of the claimant." *Rogers v. Comm'r of Soc. Sec.*, 486 F.3d 234, 247 (6th Cir. 2007). A reviewing Court must "accord the ALJ's determinations of credibility great weight and deference particularly since the ALJ has the opportunity, which we do not, of observing a witness's demeanor while testifying." *Jones v. Comm'r of Soc. Sec.*, 336 F.3d 469, 476 (6th Cir. 2003) (citations omitted).

Nevertheless, in setting forth a credibility finding, the ALJ's determination "cannot be based on an intangible or intuitive notion about an individual's credibility[,] and instead, "[t]he reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision." *See* SSR 96-7p, 1996 WL 374186, at *7 (July 2, 1996). In fact, the ALJ must set forth "specific reasons for the finding on credibility, supported by the evidence in the case record, and 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.*

Contrary to Plaintiff's assertion, the ALJ's credibility analysis sets forth a specific explanation as to why he found Plaintiff's statements concerning the intensity, persistence and limiting effects of his symptoms "are not credible to the extent they are inconsistent with the [RFC created]." PageID 68-73. The ALJ cites numerous inconsistencies between the objective evidence in the record and Plaintiff's testimony. *See* PageID 68, 71, 96, 99, 109, 767-68, 774, 780, 782. The ALJ's analysis of Plaintiff's credibility is therefore supported by substantial

evidence and, as a result, the undersigned finds Plaintiff's contention regarding the ALJ's credibility assessment to be without merit.

IV.

The Court thus **AFFIRMS** the ALJ's non-disability finding as supported by substantial evidence, and **TERMINATES** this case on the docket.

IT IS SO ORDERED.

Date: January 29, 2018

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge