

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANDREA MCNEILL,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-61-L
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social)	
Security Administration,)	
)	
Defendant.)	

ORDER

On March 16, 2016, Magistrate Judge Bernard M. Jones entered a Report and Recommendation in this action brought by plaintiff Andrea McNeill seeking judicial review of the defendant Acting Commissioner of the Social Security Administration’s (Commissioner’s) final decision denying plaintiff’s application for disability insurance benefits and supplemental security income benefits under the Social Security Act. The Magistrate Judge recommended that the Commissioner’s decision be affirmed.

The court file reflects that plaintiff timely filed her Objection to Magistrate’s Report and Recommendation, which the court has carefully considered. The Commissioner filed a Response to Plaintiff’s Objections, which have also been considered by the court. Upon review, the court finds that plaintiff’s objections are insufficient to justify overturning the conclusions of the Magistrate Judge in this matter.

Tracking plaintiff's objections, the court first concludes that the Magistrate Judge correctly found that no error occurred with regard to the ALJ's considerations of the opinions of nurse practitioner Sue Rollins. To the extent the ALJ did err in failing to address the GAF scores, the error was properly found to be harmless because, as stated by the Magistrate Judge, "[t]he ALJ properly relied on the entire medical record in determining Plaintiff is not disabled." Report and Recommendation, Doc. No. 23, p. 9.

Second, the court rejects plaintiff's argument that the Magistrate engaged in improper post-hoc justification or rationalization of the ALJ's findings at step three. The Magistrate Judge correctly found that the ALJ did not err at step three of the sequential evaluation, specifically finding that "the ALJ considered Plaintiff's physical and mental impairments, both singly and in combination, to determine whether the severity of Plaintiff's impairments met or medically equaled a listed impairment." *Id.*, p. 10.

Third, the Magistrate Judge correctly determined that the Appeals Council did not err in failing to consider evidence (opinions from Dr. Horn) which post-dated the ALJ's decision. The Magistrate Judge appropriately found that no error occurred with respect to the Appeals Council's consideration of additional evidence because the new evidence plaintiff submitted would not have changed the ALJ's decision. As noted in the Commissioner's response brief, the Magistrate Judge found: "(1) the reasons provided by the ALJ for rejecting Nurse Rollins' opinion would apply with

equal weight to Dr. Horn's opinions; (2) other medical source opinions contradicted Dr. Horn's opinion, including the opinion from examining physician Dr. Poyner; and (3) no statute or regulation requires the Appeals Council to provide an extensive analysis where new evidence is submitted and the Appeals Council denies review; instead, it is sufficient for the Appeals Council to state that it had considered the evidence as the Appeals Council did here." Doc. No. 25, p. 4, citing Report and Recommendation, Doc. No. 23 at pp. 4-7.

Upon review of plaintiff's objections and the Commissioner's response brief, the court finds that plaintiff's arguments are ultimately insufficient to justify overturning the conclusions of the Magistrate Judge in this matter. Thus, upon *de novo* review, the court finds that the the Report and Recommendation should be and is hereby adopted in its entirety. Accordingly, the decision of the Commissioner to deny plaintiff's applications for disability insurance benefits and supplemental security income benefits is **AFFIRMED**.

It is so ordered this 24th day of March, 2016.



TIM LEONARD
United States District Judge