

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

ELIZABETH THERESE ROLLERT)
)
 Plaintiff,)
)
 -vs-)
)
 NANCY A. BERRYHILL,¹)
 COMMISSIONER OF SOCIAL SECURITY,)
)
 Defendant.)

Civil Action No. 16-657

AMBROSE, Senior District Judge

OPINION

Pending before the Court are cross Motions for Summary Judgment. (ECF Nos. 9 and 11). Both parties have filed Briefs in Support of their Motions. (ECF Nos. 10 and 12). After careful consideration of the submissions of the parties, and based on my Opinion set forth below, I am granting Plaintiff’s Motion for Summary Judgment (ECF No. 9) and denying Defendant’s Motion for Summary Judgment. (ECF No. 11).

I. BACKGROUND

Plaintiff brought this action for review of the final decision of the Commissioner of Social Security (“Commissioner”) denying her applications for disability insurance benefits and supplemental security income pursuant to the Social Security Act (“Act”). Plaintiff filed her applications alleging she had been disabled since December 4, 2008. (ECF Nos. 5-7, pp. 2, 4). Administrative Law Judge (“ALJ”), Michael S. Kaczmarek, held a hearing on January 31, 2014. (ECF No. 5-3). On July 18, 2014, the ALJ found that Plaintiff was not disabled under the Act. (ECF No. 5-2, pp. 24-36). After exhausting all administrative remedies, Plaintiff filed this action.

1 Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.

The parties have filed Cross-Motions for Summary Judgment. (ECF Nos. 9 and 11). The issues are now ripe for review.

II. LEGAL ANALYSIS

A. Standard of Review

The standard of review in social security cases is whether substantial evidence exists in the record to support the Commissioner's decision. *Allen v. Bowen*, 881 F.2d 37, 39 (3d Cir. 1989). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Additionally, the Commissioner's findings of fact, if supported by substantial evidence, are conclusive. 42 U.S.C. §405(g); *Dobrowolsky v. Califano*, 606 F.2d 403, 406 (3d Cir. 1979). A district court cannot conduct a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. *Palmer v. Apfel*, 995 F.Supp. 549, 552 (E.D. Pa. 1998). Where the ALJ's findings of fact are supported by substantial evidence, a court is bound by those findings, even if the court would have decided the factual inquiry differently. *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999). To determine whether a finding is supported by substantial evidence, however, the district court must review the record as a whole. See, 5 U.S.C. §706.

To be eligible for social security benefits, the plaintiff must demonstrate that he cannot engage in substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A); *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986).

The Commissioner has provided the ALJ with a five-step sequential analysis to use when evaluating the disabled status of each claimant. 20 C.F.R. §404.1520(a). The ALJ must determine: (1) whether the claimant is currently engaged in substantial gainful activity; (2) if not,

whether the claimant has a severe impairment; (3) if the claimant has a severe impairment, whether it meets or equals the criteria listed in 20 C.F.R., pt. 404, subpt. P., appx. 1; (4) if the impairment does not satisfy one of the impairment listings, whether the claimant's impairments prevent him from performing his past relevant work; and (5) if the claimant is incapable of performing his past relevant work, whether he can perform any other work which exists in the national economy, in light of his age, education, work experience and residual functional capacity. 20 C.F.R. §404.1520. The claimant carries the initial burden of demonstrating by medical evidence that he is unable to return to his previous employment (steps 1-4). *Dobrowolsky*, 606 F.2d at 406. Once the claimant meets this burden, the burden of proof shifts to the Commissioner to show that the claimant can engage in alternative substantial gainful activity (step 5). *Id.*

A district court, after reviewing the entire record may affirm, modify, or reverse the decision with or without remand to the Commissioner for rehearing. *Podedworny v. Harris*, 745 F.2d 210, 221 (3d Cir. 1984).

B. Duty to develop the record

Plaintiff first argues that the ALJ failed to meet his duty to properly develop the record. (ECF No. 10, pp. 12-15). Specifically, Plaintiff asserts that the ALJ failed to develop the record with regard to Plaintiff's records from Jefferson Regional Counseling Center and Dr. Wayne. *Id.* Plaintiff submits that the ALJ closed the record without even attempting to obtain the records of Dr. Wayne, despite rejecting Dr. Wayne's treating source statement on the basis that treatment records were missing. *Id.* at p. 12. Thus, Plaintiff argues that the ALJ opinion is not based on substantial evidence such that remand is warranted. *Id.*

The regulations make clear that it is the plaintiff's burden to prove that he/she is disabled, which means the plaintiff has the duty to provide medical and other evidence showing that he/she has an impairment(s) and how severe it is. 20 C.F.R. §§404.1512(a-c), 416.912(a-c). This

burden does not shift to the ALJ. Nonetheless, an ALJ has the duty to develop the record sufficiently to make a determination of disability. *Ventura v. Shalala*, 55 F.3d 900 (3d Cir. 1995); 20 C.F.R. §§404.1512(d), 416.912(d). Usually, the issue of whether an ALJ had developed the record fully arises in situations involving a *pro se* claimant where the duty is heightened. *Early v. Heckler*, 743 F.2d 1002 (3d Cir. 1984). Such is not the case here.

“When an applicant for social security benefits is represented by counsel the administrative law judge is entitled to assume that the applicant is making his strongest case for benefits.” *Yoder v. Colvin*, No. 13-107, 2001 WL 2770045, *3 (W.D. Pa. June 18, 2014), citing *Lofland v. Astrue*, No. 12-624, 2013 WL 3927695, *17 (D. Del. July 24, 2013). Plaintiff has been represented by counsel at all times. Counsel requested that the record remain open for 30 days so that **he** could obtain and submit additional records. (ECF No. 5-3, pp. 5-6, 49-50, 54-55) (emphasis added). In fact, counsel did submit additional records from Jefferson Regional Medical Center after the hearing. (ECF No. 5-24, pp. 19-37). Nevertheless, the ALJ did not render an opinion for over five months past the hearing date, during which time Plaintiff’s counsel could have submitted additional records, asked for more time, and/or informed the ALJ if he was having difficulty obtaining more records. Plaintiff’s counsel took none of these actions. In fact, Plaintiff’s counsel fails to offer any explanation as to why he did not do the same. See, ECF No. 10.

With regard to Dr. Wayne, the ALJ specifically noted in his opinion:

Apparently, the claimant started receiving therapy and medication management with psychiatrist Dr. Wayne at Jefferson Regional Medical Center as of March 2013 for bipolar disorder, anxiety disorder, and attention deficit-hyperactivity disorder (ADHD). However, the evidence from this treating source includes no actual psychiatric evaluation or therapy notes (see Exhibit 24F discussed below in Opinion evidence), even though the record was held open post-hearing. Medical records from Jefferson Regional Medical Center submitted after the hearing included only general lab results and do not relate to any mental health treatment (Exhibit 25F).

(ECF No. 5-2, pp. 31-32). In the opinion evidence section of the ALJ’s decision he found

Dr. Wayne's opinion to be inconsistent with other evidence of record, internally inconsistent and unsupported. (ECF No. 5-2, p. 34).

The undersigned has also fully considered the subsequent mental residual functional capacity questionnaire compiled by the claimant's current treating psychiatrist Dr. Wayne; however, this opinion is also found to be unsupported by the overall evidence of record. Moreover, Dr. Wayne included no supporting records or other mental status exams to consider, even though the claimant was apparently seen on a regular basis for therapy and medication checks since March 2013. Thus, there is no basis or documentation to compare with the multiple symptoms checked or for the clinical findings in regards to her mental diagnoses. Further, the psychiatrist's Global Assessment of Functions (GAF) scores assessed from 50-55, which according to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) denotes only a moderate impairment in social and occupational functioning, and is inconsistent with the marked and extreme restrictions noted above (Exhibit 24F, pg 3). As such, the undersigned finds that Dr. Wayne's assessments of "seriously limited" to "no useful ability to function" in the areas of performing even unskilled work is not fully supported by the medical records (Exhibit 24F, pg 5).

(ECF No. 5-2, p. 34).

Based on my review of the record, I find there was sufficient evidence of record for the ALJ to make a determination of disability. Therefore, I find the ALJ did not have a duty to develop the record further. The reasons given by the ALJ for discounting Dr. Wayne's opinions are valid and acceptable reasons for discounting opinion evidence. See, 20 C.F.R. §§404.1527; 416.927 (Evaluating Opinion Evidence). Furthermore, I find there is substantial evidence to support the ALJ's. Therefore, remand is not warranted in this case.

C. Credibility

Plaintiff submits that the ALJ also erred in assessing her credibility. (ECF No. 10, pp. 15-20). To be clear, an ALJ is charged with the responsibility of determining credibility. *Smith v. Califano*, 637 F.2d 968, 972 (3d Cir. 1981); *Baerga v. Richardson*, 500 F.2d 309, 312 (3d Cir. 1974), *cert. denied*, 420 U.S. 931 (1975). The ALJ must consider "the entire case record" in determining the credibility of an individual's statement. SSR 96-7p. An ALJ's decision "must contain 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 reason for that weight." *Id.*

The ALJ infers that Plaintiff does not have marked difficulties with concentration and discredits Plaintiff because, *inter alia*, she purchased a home in 2012 "without any noted difficulties." (ECF No. 5-2, p. 29). At the hearing, however, Plaintiff testified that her sponsor at the time was a real estate agent and she helped her find a home. (ECF No. 5-3, p. 16). Plaintiff tried to make the process as short of a process as she could. *Id.* When the ALJ asked her if she had any problems with the process, she answered that she was indecisive and second-guessing and that she had help from her son's father and his mother. *Id.* When the ALJ asked Plaintiff how she felt when purchasing the home, Plaintiff indicated that she was "scared and doubtful." (ECF No. 5-3, p. 26). Furthermore, I disagree that a one-time home purchase contradicts Plaintiff's allegations of symptoms. Based on the same, I find this to be a mischaracterization and misuse of the evidence by the ALJ.

The ALJ also discredits Plaintiff's testimony that she is unable to care for her son for more than 24 hours without help. (ECF No. 5-2, pp. 32-33). In support of the same, the ALJ suggests that because there was no evidence of family services or CYS involvement, Plaintiff's testimony must not be credible. *Id.* at p. 32. I find it disingenuous, at best, to suggest that family services or CYS involvement is necessary to find Plaintiff credible on this point.

The ALJ also states that Plaintiff "is able to care for her young son." *Id.* at p. 33. This is also a mischaracterization of the evidence. At the hearing, when the ALJ first asked Plaintiff about her ability to take care of her son, Plaintiff apparently got so upset that the ALJ had to begin a different line of questioning before he could return to that line of questioning. (ECF No. 5-3, p. 17). When he again asked her if she had any problems with caring for her son, she stated "I need help caring for my son." *Id.* at p. 38. She testified that she gets help from her son's father

and his mother and father and from her sister. *Id.* They help her almost every day she has her son. *Id.* Thus, for the ALJ to say that she is able to care for her son without mentioning her need for help is misleading and improper.

Finally, the ALJ improperly discredits Plaintiff for being non-compliant with her prescription medication, while at the same time discrediting her for attending therapy meetings. (ECF No. 5-2, pp. 29, 31-33). He cannot have it both ways. Plaintiff was attending therapy sessions and speaks to her therapists as a means for treating her addiction, her mental stability and her relationships. Yet, the ALJ cites that very same evidence as showing that she cannot possibly be as anxious as she testified as she is able to attend on a somewhat regular basis which demonstrates “some level of social interaction.” *Id.* If Plaintiff did not attend her sessions or talk to her therapists, then the ALJ could discredit her for non-compliance, but when she does attend he discredits her for presence. I am baffled by this.

Taken together, I find these mischaracterizations to be unfair and highly prejudicial to Plaintiff. As a result, I find the ALJ’s credibility assessment is not supported by substantial evidence and cannot stand. Therefore, remand of this case is warranted.

An appropriate order shall follow.

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ELIZABETH THERESE ROLLERT)

Plaintiff,)

-vs-)

NANCY A. BERRYHILL,²)
COMMISSIONER OF SOCIAL SECURITY,)

Defendant.)

Civil Action No. 16-657

AMBROSE, Senior District Judge

ORDER OF COURT

THEREFORE, this 20th day of July, 2017, it is ordered that Plaintiff's Motion for Summary Judgment (ECF No. 9) is granted and Defendant's Motion for Summary Judgment (ECF No. 11) is denied.

It is further ordered that the decision of the Commissioner of Social Security is hereby vacated and the case is remanded for further proceedings consistent with the foregoing opinion.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge

² Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.