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

JOHN MCADAMS, JR.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Civil Action No. 16-1746
	)	
CAROLYN W. COLVIN,	)	
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

AMBROSE, Senior District Judge.

OPINION AND ORDER

Background

Plaintiff John McAdams, Jr. ("McAdams") brings this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3) for review of the ALJ's decision denying of his claims for disability insurance benefits (DIB) and supplemental security income (SSI) under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-34, 1381-1383f. McAdams alleges a disability beginning in September of 2010[1] based upon both physical and mental impairments. His claims were denied initially and upon reconsideration. (R. 14) Following a hearing before an ALJ, during which both McAdams and a vocational expert ("VE") testified, the ALJ again denied his claims. The ALJ concluded that McAdams had the residual functional capacity ("RFC") to perform light work with some restrictions. (R. 19) McAdams appealed. Pending are Cross Motions for Summary Judgment. *See* ECF

[1] McAdams filed a Motion to Amend Alleged Onset Date, requesting to amend the onset date to June 21, 2010. (R 14) The ALJ denied the motion, stating, "[d]espite this Motion, in order to ensure a complete and accurate evaluation, the Administrative Law Judge has evaluated the record in this case from the original alleged onset date of September 16, 2010." (R. 14)

Docket Nos. [12] and [14]. After careful consideration, the case is remanded for further consideration.

Legal Analysis

1. 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). Determining whether substantial evidence exists is "not merely a quantitative exercise." *Gilliland v. Heckler*, 786 F.2d 178, 183 (3d Cir. 1986) (*citing Kent v. Schweiker*, 710 F.2d 110, 114 (3d Cir. 1983)). "A single piece of evidence will not satisfy the substantiality test if the secretary ignores, or fails to resolve, a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence – particularly certain types of evidence (e.g., that offered by treating physicians)." *Id.* 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 claimant 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).

2. Light Work

McAdams faults the ALJ for finding him capable of performing light work. As McAdams explains, "the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday." *See* ECF Docket No. 13, p. 6, citing, SSR 83-10. Here, the ALJ found McAdams only capable of standing and walking for 4 hours in an 8-hour workday. (R. 19) McAdams thus reasons that the RFC is inconsistent with light work.

I disagree. Although McAdams fell short of being able to perform the full range of "light work," he exceeds the requirements for "sedentary work." (R. 19)[2] McAdams' RFC places him between the light and sedentary exertional levels. In such an instance, the ALJ's reliance upon a vocational expert is entirely appropriate. *See Stephens v. Colvin*, Civ. No. 15-2029, 2017 WL 1170899 at * 19 (M.D. Pa. March 13, 2017); *Bryant v. Colvin*, Civ. No. 14-981, 2015 WL 1401001 at * 11 (March 26, 2015); and *Lackey v. Colvin*, Civ. No. 12-516, 2013 WL 1903662 at * 3 (W.D. Pa. May 7, 2014) (stating that where "the ALJ was faced with a situation where the plaintiff's exertional limitations are 'somewhere in the middle' between light and sedentary work … the ALJ properly relied on vocational expert testimony to find that there are jobs existing in significant numbers in the national economy that plaintiff can perform in light of her age, education and residual functional capacity.") An ALJ is not required to rigidly apply exertional categories. Rather, "where additional limitations exist such that a claimant does not fall

[2] A claimant performing sedentary work should be able to "stand or walk no more than 2 hours in an 8-hour workday." See SSR 83-10.

neatly within an exertional category, and ALJ should take those limitations into account when determining a claimant's RFC and appropriately reduce the occupational base to fit the claimant's individual characteristics at step five of the process." *See* 20 C.F.R. §§ 404.1569, 416.969; SSR 83-12, 1983 WL 31253. If the ALJ is unclear as to the remaining occupational base given any additional limitations, then the ALJ must consult a vocational source." *Hensley v. Colvin*, Civ. No. 13-27810, 2015 WL 56626 at * 17 (S.D. W. Va. Feb. 10, 2015). This is precisely what the ALJ did here. Consequently, I find no error with respect to the ALJ's conclusion that McAdams was capable of light work.

3. Obesity

McAdams also takes issue with the ALJ's consideration of his obesity in formulating the RFC. Social Security Ruling 02-1p provides guidance in determining how obesity is to be considered in evaluating such claims. *See Diaz v. Comm'r. of Soc. Sec*., 577 F.3d 500, 503 (3d Cir. 2009). SSR 02-1p provides that "[t]he functions likely to be limited depend on many factors, including where excess weight is carried. An individual may have limitations in any of the exertional functions such as sitting, standing, walking, lifting, carrying, pushing, and pulling. It may also affect ability to do postural functions, such as climbing, balance, stooping, and crouching." SSR 02-1p. Given these parameters, an ALJ "must clearly set forth the reasons for his decision." *Diaz*, 577 F.3d at 503, *citing, Burnett v. Comm'r. of Soc. Sec*., 220 F.3d 112, 119 (3d Cir. 2000). Indeed, the ALJ must "consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential process, including when assessing an individual's residual functional capacity." SSR 02-1p.

Here, McAdams urges that the ALJ's decision is devoid of any discussion of how his obesity affects his impairments. After careful consideration, I agree. The ALJ found obesity to constitute a severe impairment at the second step of the analysis. The ALJ then determined that McAdams' obesity did not meet a Listing at the third step of the analysis. Within that same step, the ALJ stated that pursuant to SSR 02-1p, McAdams' obesity has been "considered in determining the claimant's residual functional capacity." (R. 17) Yet when assessing his RFC, the ALJ offered absolutely no analysis as to the impact the obesity might have on his RFC. There is no discussion, for instance, regarding how McAdams' obesity might impact any of the exertional functions such as sitting, standing, walking, lifting, carrying, pushing, and pulling or of how it might affect his ability to engage in such postural functions, such as climbing, balance, stooping, and crouching. Nor is there any discussion of how McAdams' obesity may exacerbate his other conditions such as his degenerative joint disease, his COPD, his diabetes, his peripheral neuropathy, or his fibromyalgia. The ALJ's reference to treatment notes, medical source statements and RFCs prepared by physicians do not constitute an adequate substitution for such explanation because those records do not speak to the impact of McAdams' obesity on his other impairments. Thus, contrary to the Defendant's suggestions otherwise, the ALJ's references to obesity are insufficient to allow me to conduct a meaningful review. Therefore I cannot say that the ALJ's RFC is based upon substantial analysis. Remand on this issue is necessary.

I do not mean to suggest that the ALJ's ultimate conclusion on the issue of obesity may not be accurate. Rather, I state only that there is not enough information

provided for me to gauge its accuracy.[3] There is no explicit analysis of the cumulative impact of McAdams' obesity on his RFC. A mere acknowledgment of an obligation to assess obesity alone without further analysis is legally insufficient. *Ellis v. Astrue*, 2010 WL 1817246 at *5 (E.D. Pa. April 30, 2010) (stating that, "[r]emand is required where a claimant alleges obesity, the ALJ finds obesity as a severe impairment, and the ALJ fails to evaluate obesity when determining the RFC.") Consequently, remand on this issue is required.

4. Concentration, Persistence, and Pace

The ALJ determined that McAdams had "moderate limitations" in maintaining concentration, persistence, or pace. (R. 18) McAdams does not take issue with this finding. He does not argue that this finding lacks substantial evidentiary support. *See* ECF Docket No. 13, p. 8-9. Rather, McAdams contends that the ALJ's limitation to "simple, routine, repetitive tasks involving no more than simple, short instructions and simple, work-related decision, with few work place changes; cannot perform work at a production-rate or quota-based pace" is insufficient to accommodate a moderate limitation in concentration, persistence, or pace. I disagree. Numerous courts within this Circuit have held that a limitation to simple, routine tasks adequately conveys "moderate" limitations in concentration, persistence, and pace. *See Padilla v. Astrue*, Civ. No. 10-4968, 2011 WL 6303248 at * 10 (D. N.J. Dec. 15, 2011) (citing cases). *See also, Shaffer v. Colvin*, 2014 U.S. Dist. LEXIS 137987 (W.D. Pa. Sept. 30, 2014) and *McDonald v. Astrue*, 293 Fed. Appx. 941, 946 (3d Cir. 2008). Furthermore, and in any event, the ALJ in this case did not merely limit McAdams to simple, routine tasks.

[3] I note than in "referencing his legal duty, the ALJ subjectively may have included obesity in his analysis. Absent an explicit discussion and analysis, however, the ALJ has precluded judicial review." *Ellis v. Astrue*, Civ. No. 9-1212, 2010 WL 1817246 at *5, n. 11 (E.D. Pa. April 30, 2010)

Rather, as set forth above, his hypothetical to the VE and his RFC finding limited McAdams to simple, routine, repetitive tasks with short instructions and simple decisions, and work not to be performed in a fast-paced production environment. (R. 19) These additional limitations go beyond simple, routine tasks and more than adequately address McAdams' moderate limitations in concentration, persistence, and pace. *See, e.g., Haines v. Astrue*, Civ. No. 11-309, 2012 WL 1069987, at * 1 n. 1 (W.D. Pa. March 29, 2012). Consequently, the ALJ's decision is affirmed in this respect.

5. Opinion Evidence

Dr. Zimmerman served as McAdams' treating physician. McAdams urges that the ALJ erred in rejecting Dr. Zimmerman's opinion. The amount of weight accorded to medical opinions is well-established. Consequently, the ALJ will give more weight to opinions from a treating physician "since those sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [a] claimant's medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations." 20 C.F.R. § 416.927(c)(2). If the ALJ finds that "a treating source's opinion on the issue(s) of the nature and severity of [a claimants] impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence [of] record," he must give that opinion controlling weight." *Id*. Also, "the more consistent an opinion is with the record as a whole, the more weight [the ALJ generally] will give to that opinion." *Id*, § 416.927(c).

In the event of conflicting medical evidence, the Court of Appeals for the Third Circuit has explained:

> "A cardinal principle guiding disability determinations is that the ALJ accord treating physicians' reports great weight, especially 'when their opinions reflect expert judgment based on continuing observation of the patient's condition over a prolonged period of time.'" *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000) (*quoting, Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999)). However, "where … the opinion of a treating physician conflicts with that of a non-treating nonexamining physician, the ALJ may choose whom to credit" and may reject the treating physician's assessment if such rejection is based on contradictory medical evidence. *Id*. Similarly, under 20 C.F.R. § 416.927(d)(2), the opinion of a treating physician is to be given controlling weight only when it is well-supported by medical evidence and is consistent with other evidence in the record.

Becker v. Comm'r. of Soc. Sec., Civ. No. 10-2517, 2010 WL 5078238, at * 5 (3d Cir. Dec. 14, 2010). Although the ALJ may choose who to credit when faced with a conflict, he "cannot reject evidence for no reason or for the wrong reason." *Diaz v. Comm'r. of Soc. Sec.*, 577 F.3d 500, 505 (3d Cir. 2009). Additionally, I note that state agency opinions merit significant consideration. *See* SSR 96-6p ("Because state agency medical and psychological consultants … are experts in the social security disability programs, … 20 C.F.R. §§ 404.1527(f) and 416.927(f) require [ALJs] … to consider their findings of fact about the nature and severity of an individual's impairment(s) ….").

In filling out an RFC questionnaire in September of 2013, Dr. Zimmerman opined that McAdams was not capable of working an 8 hour day, 5 days a week employment on a sustained basis. (R. 387-88). He indicated that McAdams could sit for 30 minutes at a time and stand for 30 minutes in an 8 hour workday and stand / walk for 2 to 3 hours in an 8 hour workday. (R. 387) He further stated that McAdams could lift less than 10 pounds frequently and between 10-20 pounds occasionally. (R. 388) Dr. Zimmerman opined that McAdams would only be able to use his arm for reaching 5% of the

workday. (R. 388) He predicted that McAdams would be absent from work because of his impairments / treatments 3-4 times per month. (R. 388)

The ALJ gave Dr. Zimmerman's report "partial weight with regard to the claimant's ability to lift and carry" and "little weight with regard to the remainder of the opinion." (R. 22-23) The ALJ explained that the opinion was "not entirely consistent with the "record as a whole." (R. 22-23) McAdams faults the ALJ's decision in this respect, insisting that the ALJ "failed to identify inconsistent medical evidence" and failed to "properly consider all the factors set forth in 20 C.F.R. § 404.1527(d) for evaluating any medical source opinion." *See* ECF Docket no. 13, p. 11. He insists the ALJ had a duty to recontact Dr. Zimmerman if he was "unsure" of the basis of the opinion.

McAdams' arguments are not persuasive. The ALJ properly followed the dictates of 20 C.F.R. § 404.1527(c)-(d) and SSR 96-2p with respect to evaluating medical opinions. For instance, contrary to McAdams' suggestions, the ALJ explained that the record was devoid of any evidence "to support the opinion that the claimant is unable to use his arms for reaching for only 5% of an 8-hour workday or that the claimant would likely miss three or four days per month due to his impairments." (R. 22) The ALJ further explained that the record indicated that McAdams "attends appointments and counseling sessions frequently; is able to use a computer; exercises 3 to 7 times per week, including walking and stair climbing; is able to vacuum for short periods; and is able to cook simple meals," and that such "activities are inconsistent with the level of impairment opined by Dr. Zimmerman." (R. 22) "Supportability" and "consistency" are factors relevant in the weighing of medical opinions. *See* 20 C.F.R. § 404.1527(c) The ALJ also gave "significant weight" to an opinion offered by Dr. Paul Fox, a non-

examining physician. (R. 23) Dr. Fox found that McAdams was able to lift and carry 20 pounds occasionally and 10 pounds frequently; to stand and walk for approximately 6 hours in an 8-hour workday; and to sit for approximately 6 hours in an 8-hour workday. (R. 23, 94) Dr. Fox explained that the course of treatment for McAdams' diabetes, fibromyalgia and other impairments has been "routine and conservative." An ALJ is entitled to rely upon opinions rendered by a state agency examiner. *See* 20 C.F.R. § 404.1527. Finally, I reject the notion that the ALJ was obligated to re-contact Dr. Zimmerman to "clarify" his opinion. The ALJ did not find Dr. Zimmerman's opinion to be confusing; rather, he found the opinion to lack evidentiary support. *See Ross v. Colvin*, Civ. No. 14-990. 2015 WL 1636132, at * 9 n. 4 (M.D. Pa. April 8, 2015). As such, the ALJ's opinion is affirmed in this regard.

6. Credibility

Finally, McAdams objects to the ALJ's credibility findings. McAdams urges that the ALJ "failed to provide any valid or legitimate reasons" for his credibility findings. *See* ECF Docket no. 13, p. 13-14. As such, McAdams contends that a remand is necessary.

To be clear, an ALJ is charged with the responsibility of determining credibility. *See Smith v. Califano*, 637 F.2d 968, 972 (3d Cir. 1981); *Baerga v. Richardson*, 500 F.3d 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 ALJ's statement. The 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." *Grissinger v. Colvin*, Civ. No. 15-

202, 2016 WL 5919937, at * 2 (W.D. Pa. Oct. 11, 2016) (citing S.S.R. 96-7p). Ordinarily, an ALJ's credibility determination is entitled to great deference. *See Zirnsak v. Colvin*, 777 F.3d 607, 612 (3d Cir. 2014); *Reefer v. Barnhart*, 326 F.3d 376, 380 (3d Cir. 2000).

Here, as the ALJ stated, he must follow a two-step process when assessing pain: first, he must determine whether there is a medical impairment that could reasonably be expected to produce the plaintiff's pain or other symptoms; and second, he must evaluate the intensity, persistence, and limiting effects of the plaintiff's symptoms to determine the extent to which they limit the plaintiff's functioning. (R. 20) Pain alone, however, does not establish a disability. 20 C.F.R. § 404.1529(a); § 416.929(a). Allegations of pain must be consistent with objective medical evidence and the ALJ must explain the reasons for rejecting non-medical testimony. *Burnett v. Comm'r. of Soc. Sec*., 220 F.3d 112, 121 (3d Cir. 2000).

In this instance, the ALJ followed the two step process. (R. 20) He acknowledged McAdams' reports of pains in his muscles and joints, neck, shoulder, and knees, as well as the tingling in his legs and feet and shortness of breath. (R. 20) He noted the medication side effects and the continual but varying degree of symptoms. He also detailed McAdams' claims of difficulty with social interaction, memory, attention and concentration, getting along with others, and handling stress and changes in routine. (R. 20) Nevertheless, the ALJ explained that although "the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible for the reasons

explained in this decision." (R. 20) In support of this conclusion the ALJ pointed to McAdams' activities of daily living which "are inconsistent with an individual experiencing symptoms to the degree alleged." (R. 20) Consideration of activities of daily living is appropriate. *See* 20 C.F.R. § 404.1529(c)(3)(i) and §416.929(c)(3)(i). *See also, Burns v. Barnhart*, 312 F.3d 113, 129-30 (3d Cir. 2002). With respect to the medications and alleged side effects, the ALJ noted that the record did not contain any evidence indicating that the medications had been frequently changed or dosages altered due to side effects or ineffectiveness. (R. 21) As concerns his physical impairments, the ALJ commented that "the record contains little evidence related to the claimant's treatment for his physical impairments." (R. 21) (R. 25, "However, aside from medication, there is no evidence that the claimant has sought or been recommended any other treatment related to any of his physical impairments. Moreover, a review of the claimant's treatment notes reveals that the claimant has consistently reported improvement with his current medication regimen.") It is well-established that an "ALJ may rely on lack of treatment, or the conservative nature of treatment, to make an adverse credibility finding, but only if the ALJ acknowledges and considers possible explanations for the course of treatment. *Wilson v. Colvin*, Civ. No. 13-2401, 2014 WL 4105288, at * 11 (M.D. Pa. Aug. 19, 2014). In fact, the ALJ noted that there has been little treatment other than medication, and that "a review of the claimant's treatment notes reveals that the claimant has consistently reported improvement with his current medication regimen." (R. 21) The ALJ similarly observed that "the record contains little evidence relative to the claimant's treatment for his mental impairments." (R. 21) In short, I find no error with respect to the ALJ's credibility determinations. The ALJ

considered the entire case record, the opinion contains specific reasons for the finding on credibility, and those reasons are supported by substantial evidence in the case record.

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

JOHN MCADAMS, JR. Plaintiff,	)	
-vs-	)	Civil Action No. 16-1746
CAROLYN W. COLVIN, COMMISSIONER OF SOCIAL SECURITY, Defendant.	)	

AMBROSE, Senior District Judge.

ORDER OF COURT

Therefore, this 21st day of July, 2017, it is hereby ORDERED that the decision of the ALJ is reversed. It is further ORDERED that Plaintiff's Motion for Summary Judgment (Docket No. 12) is granted and Defendant's Motion for Summary Judgment (Docket No. 14) is denied. This case is remanded for further proceedings consistent with the Opinion issued in conjunction with this Order.

BY THE COURT:

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