IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JABRIL SAMAHDI GEORGE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 15-cv-02585-TMP**
	)	
CAROLYN W. COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
	)	
Defendant.	)	

ORDER AFFIRMING THE DECISION OF THE COMMISSIONER

Before the court is plaintiff Jabril Samahdi George's appeal from a final decision of the Commissioner of Social Security ("Commissioner") denying his application for supplemental security income under Title XVI of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq.* The parties have consented to the jurisdiction of the United States magistrate judge pursuant to 28 U.S.C. § 636(c). For the reasons set forth below, the decision of the Commissioner is affirmed.

I. FINDINGS OF FACT

On October 29, 2012, George applied for supplemental security income under Title XVI of the Act. (R. 15.) George alleged disability beginning on June 1, 1992, based on his autism and learning disabilities. (R. 140.) George's application was denied

initially and upon reconsideration by the Social Security Administration ("SSA"). (R. 15.) At George's request, a hearing was held before an Administrative Law Judge ("ALJ") on April 17, 2014. (Id.) On June 12, 2014, the ALJ issued a decision denying George's request for benefits after finding that George was not under a disability because he retained the residual functional capacity ("RFC") to perform a full range of work at all exertional levels with the following nonexertional limitations: "he is limited [to] performing simple, routine, repetitive tasks and he is limited to work involving objects versus people." (R. 19.) On July 10, 2015, the SSA's Appeals Council denied George's request for review. Therefore, the ALJ's decision became the final decision of the Commissioner. (R. 1.) Subsequently, on September 8, 2015, George filed the instant action. George argues that: (1) the ALJ committed legal error in weighing the opinions of two Tennessee Disability Determination Services ("DDS") nonexamining consultants; (2) the ALJ erred in assessing George's RFC because he omitted critical nonexertional limitations supported by the evidence in the record; and (3) the ALJ failed to obtain necessary vocational expert ("VE") testimony. George argues that given these legal errors, the Commissioner failed to carry her burden at step five of the sequential evaluation process. (ECF No. 13.)

II. CONCLUSIONS OF LAW

A. Standard of Review

Under 42 U.S.C. § 405(g), a claimant may obtain judicial review of any final decision made by the Commissioner after a hearing to which he or she was a party. "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Judicial review of the Commissioner's decision is limited to whether there is substantial evidence to support the decision and whether the Commissioner used the proper legal criteria in making the decision. Id.; Winn v. Comm'r of Soc. Sec., 615 F. App'x 315, 320 (6th Cir. 2015); Cole v. Astrue, 661 F.3d 931, 937 (6th Cir. 2011); Rogers v. Comm'r of Soc. Sec., 486 F.3d 234, 241 (6th Cir. 2007). Substantial evidence is more than a scintilla of evidence but less than a preponderance, and is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kirk v. Sec'y of Health & Human Servs., 667 F.2d 524, 535 (6th Cir. 1981) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

In determining whether substantial evidence exists, the reviewing court must examine the evidence in the record as a whole and "must 'take into account whatever in the record fairly detracts from its weight.'" Abbott v. Sullivan, 905 F.2d 918, 923 (6th Cir. 1990) (quoting Garner v. Heckler, 745 F.2d 383, 388 (6th Cir. 1984)). If substantial evidence is found to support the

Commissioner's decision, however, the court must affirm that decision and "may not even inquire whether the record could support a decision the other way." Barker v. Shalala, 40 F.3d 789, 794 (6th Cir. 1994) (quoting Smith v. Sec'y of Health & Human Servs., 893 F.2d 106, 108 (6th Cir. 1989)). Similarly, the court may not try the case *de novo*, resolve conflicts in the evidence, or decide questions of credibility. Ulman v. Comm'r of Soc. Sec., 693 F.3d 709, 713 (6th Cir. 2012) (citing Bass v. McMahon, 499 F.3d 506, 509 (6th Cir. 2007)). Rather, the Commissioner, not the court, is charged with the duty to weigh the evidence, to make credibility determinations, and to resolve material conflicts in the testimony. Walters v. Comm'r of Soc. Sec., 127 F.3d 525, 528 (6th Cir. 1997); Crum v. Sullivan, 921 F.2d 642, 644 (6th Cir. 1990); Kiner v. Colvin, No. 12-2254-JDT, 2015 WL 1295675, at *1 (W.D. Tenn. Mar. 23, 2015).

B. The Five-Step Analysis

The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any 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 not less than 12 months." 42 U.S.C. § 423(d)(1). Additionally, section 423(d)(2) of the Act states that:

> An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only

> unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Under the Act, the claimant bears the ultimate burden of establishing an entitlement to benefits. Oliver v. Comm'r of Soc. Sec., 415 F. App'x 681, 682 (6th Cir. 2011). The initial burden is on the claimant to prove she has a disability as defined by the Act. Siebert v. Comm'r of Soc. Sec., 105 F. App'x 744, 746 (6th Cir. 2004) (citing Walters, 127 F.3d at 529); see also Born v. Sec'y of Health & Human Servs., 923 F.2d 1168, 1173 (6th Cir. 1990). If the claimant is able to do so, the burden then shifts to the Commissioner to demonstrate the existence of available employment compatible with the claimant's disability and background. Born, 923 F.2d at 1173; see also Griffith v. Comm'r of Soc. Sec., 582 F. App'x 555, 559 (6th Cir. 2014).

Entitlement to social security benefits is determined by a five-step sequential analysis set forth in the Social Security Regulations. See 20 C.F.R. §§ 404.1520 & 416.920. First, the claimant must not be engaged in substantial gainful activity. See 20 C.F.R. §§ 404.1520(b) & 416.920(b). Second, a finding must be

made that the claimant suffers from a severe impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii) & 416.920(a)(5)(ii). In the third step, the ALJ determines whether the impairment meets or equals the severity criteria set forth in the Listing of Impairments contained in the Social Security Regulations. See 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526. If the impairment satisfies the criteria for a listed impairment, the claimant is considered to be disabled. On the other hand, if the claimant's impairment does not meet or equal a listed impairment, the ALJ must undertake the fourth step in the analysis and determine whether the claimant has the RFC to return to any past relevant work. See 20 C.F.R. §§ 404.1520(a)(4)(iv) & 404.1520(e). If the ALJ determines that the claimant can return to past relevant work, then a finding of not disabled must be entered. Id. But if the ALJ finds the claimant unable to perform past relevant work, then at the fifth step the ALJ must determine whether the claimant can perform other work existing in significant numbers in the national economy. See 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g)(1), 416.960(c)(1)-(2). Further review is not necessary if it is determined that an individual is not disabled at any point in this sequential analysis. 20 C.F.R. § 404.1520(a)(4).

C. Whether the ALJ Erred in Weighing the Opinions of Two Nonexamining DDS Consultants

George first argues that the ALJ committed legal error by

improperly weighing the opinions of two nonexamining DDS psychological consultants, Dr. Theren Womack and Dr. Brad Williams, and by not providing an adequate explanation of the weight assigned to these opinions. Such error, George argues, requires that the case be remanded for further proceedings.

The SSA regulations outline "a presumptive sliding scale of deference to be given to various types of opinions." Norris v. Comm'r of Soc. Sec., 461 F. App'x 433, 439 (6th Cir. 2012). On this sliding scale,

> An opinion from a treating physician is "accorded the most deference by the SSA" because of the "ongoing treatment relationship" between the patient and the opining physician. A nontreating source, who physically examines the patient "but does not have, or did not have an ongoing treatment relationship with" the patient, falls next along the continuum. A nonexamining source, who provides an opinion based solely on review of the patient's existing medical records, is afforded the least deference.

Id. (quoting Smith v. Comm'r of Soc. Sec., 482 F.3d 873, 875 (6th Cir. 2007)) (internal citations omitted). Although nonexamining sources are not assigned controlling weight, ALJs "may not ignore these opinions and must explain the weight given to the opinions in their decisions." SSR 96-6p, 1996 WL 374180, at *2 (July 2, 1996); see also 20 C.F.R. § 404.1527(e)(2)(ii) ("Unless a treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or

other program physician, psychologist, or other medical specialist.").

In this case, the ALJ concluded that George has the RFC to "perform a full range of work at all exertional levels, but with the following nonexertional limitations: he is limited [to] performing simple, routine, repetitive tasks and he is limited to work involving objects versus people." (R. 19.) The ALJ explained the weight he assigned to the two nonexamining consultants in reaching this RFC determination as follows:

> In making this determination, the undersigned relies heavily upon the opinion of the state agency psychological consultants, including Theren Womack, Ph.D., who opined that his limitations would be consistent with those found by the undersigned above on March 21, 2012. . . . This opinion is consistent with the evidence as discussed herein, and is accorded great weight. The identical opinion offered on April 18, 2012 by Brad Williams, M.D., another state agency mental health consultant, is accorded great weight for the same reasons.

(R. 20.) (internal citations omitted). George does not seem to dispute the consistency of Dr. Womack and Dr. Williams's opinions with the evidence in the record. Rather, George argues that the ALJ's reasoning as to why he afforded the opinions "great weight" is insufficient.

According to SSA regulations, an ALJ must always give "good reasons" in his or her decision for the weight afforded to a treating source opinion. 20 C.F.R. § 404.1527(c)(2); Gayheart v. Comm'r of Soc. Sec., 710 F.3d 365, 376 (6th Cir. 2013). This

"procedural requirement exists, in part, for claimants to understand why the administrative bureaucracy deems them not disabled when physicians are telling them that they are." Smith, 482 F.3d at 876 (citing Wilson v. Comm'r of Soc. Sec., 378 F.3d 541, 544 (6th Cir. 2004)). However, as the Sixth Circuit has noted, "the SSA requires ALJs to give reasons for only treating sources." Id. (emphasis in original); see also Norris, 461 F. App'x at 439 (stating that "a claimant is entitled under the SSA only to reasons explaining the weight assigned to his treating sources"). Therefore, while the ALJ was not allowed to ignore the nonexamining opinions in the record and was required to explain the weight afforded to them, he was not required to give reasons for the weight assigned because they were not treating sources.

Here, although not required to do so, the ALJ nevertheless explained his rationale for granting moderate weight to the nontreating opinions of DDS consultants Dr. David Goldstein and Dr. Paula Miller. See Norris, 461 F. App'x at 439 ("Here, although the ALJ did not find the one-time consultative sources to be treating sources, the ALJ nevertheless explained its rationale for granting minimal weight to their opinions."). He found both of these opinions to be consistent with his own findings, but accorded the opinions moderate weight because they did not "set forth the specific limitations the claimant might have in his ability to perform and [sic] particular basic work activity." (R. 20.)

Additionally, the ALJ explained his reasoning for assigning little weight to the nontreating opinion of Dr. Samuel Holcombe. He noted that Dr. Holcombe only examined George once and explained that his opinion was contradicted by specific objective evidence, as well as all of the other medical source opinions in the record. (R. 21.) As mentioned previously, the ALJ gave "great weight" to the nonexamining opinions of Dr. Womack and Dr. Williams, because their opinions were consistent with the evidence in the record and the limitations found by the ALJ. (R. 20.) While perhaps the ALJ could have provided greater detail as to why he assigned "great weight" to these nonexamining opinions, "the ALJ was under no special obligation to do so insofar as he was weighing the respective opinions of nontreating versus nonexamining sources." Norris, 461 F. App'x at 440 (citing Smith, 482 F.3d at 876). Accordingly, the court finds that the ALJ did not err in weighing the opinions of Dr. Womack and Dr. Williams.[1]

[1]In his brief and reply brief, George relies heavily on Gayheart v. Comm'r of Soc. Sec., 710 F.3d 365, 379 (6th Cir. 2013). As George emphasized in his reply brief, in Gayheart the Sixth Circuit stated that the SSA "regulations do not allow the application of greater scrutiny to a treating-source opinion as a means to justify giving such an opinion little weight." Id. at 380. The court explained that "[a] more rigorous scrutiny of the treating-source opinion than the nontreating and nonexamining opinions is precisely the inverse of the analysis that the regulation requires," and held that the ALJ erred in applying greater scrutiny to the opinion of the claimant's treating source physician than to the opinion of the nontreating and nonexamining sources. Id. at 379-80. Here, as explained above, the ALJ weighed the opinions of nontreating and nonexamining sources, not treating source opinions. Therefore,

D. Whether the ALJ Erred in Assessing George's RFC

Next, George contends that the ALJ erred in omitting critical nonexertional limitations from his RFC finding. Specifically, George argues that although the ALJ claimed to assign the opinions of Dr. Womack and Dr. Williams "great weight," his RFC finding is inconsistent with the limitations suggested by their opinions. George asserts that as a result, the ALJ's RFC finding is not supported by substantial evidence and that remand is appropriate.

In formulating an RFC finding, "the ALJ evaluates all relevant medical and other evidence and considers what weight to assign to treating, consultative, and examining physicians' opinions." Eslinger v. Comm'r of Soc. Sec., 476 F. App'x 618, 621 (6th Cir. 2012) (citing 20 C.F.R. § 404.1545(a)(3)); see also Ealy v. Comm'r of Soc. Sec., 594 F.3d 504, 514 (6th Cir. 2010). However, the SSA instructs that "the ALJ – not a physician – ultimately determines a claimant's RFC." Coldiron v. Comm'r of Soc. Sec., 391 F. App'x 435, 439 (6th Cir. 2010); see also Rudd v. Comm'r of Soc. Sec., 531 F. App'x 719, 728 (6th Cir. 2013) (stating that "the Commissioner has final responsibility for deciding an individual's RFC"); Nejat v. Comm'r of Soc. Sec., 359 F. App'x 574, 578 (6th Cir. 2009) ("Although physicians opine on a claimant's residual functional capacity to work, ultimate responsibility for capacity-to-work determinations belongs to the Commissioner."); Webb v. Comm'r of

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Gayheart, while instructive, is distinguishable from this case.

Soc. Sec., 368 F.3d 629, 633 (6th Cir. 2004) (stating that under the SSA regulations, "the ALJ is charged with the responsibility of evaluating the medical evidence and the claimant's testimony to form an 'assessment of [her] residual functional capacity.'") (quoting 20 C.F.R. § 416.920(a)(4)(iv)).

As explained above, the ALJ discussed all of the medical source opinions in the record in reaching his RFC finding. He assigned "great weight" to the opinions of Dr. Womack and Dr. Williams. With respect to George's RFC, Dr. Womack opined as follows:

> A. Can understand and remember for simple tasks. Does not include executive level tasks.
>
> B. Can sustain [concentration and persistence] for 2 hours at a time, throughout an 8 hr workday, for above tasks.
>
> C. Cannot sustain interactions with the public. Can sustain limited interactions with co-workers and supervisors. Will work better with things than with people. Needs gentle supervision.
>
> D. Can set limited goals. Can adapt to infrequent, gradual changes.

(R. 272.) Dr. Williams "affirmed as written" the opinion of Dr. Womack. (R. 274.) As already mentioned, the ALJ ultimately concluded that George has the RFC to "perform a full range of work at all exertional levels, but with the following nonexertional limitations: he is limited [to] performing simple, routine, repetitive tasks and he is limited to work involving objects versus

people." (R. 19.) While the ALJ did not adopt Dr. Womack's RFC assessment in its entirety, the ALJ's RFC finding is not inconsistent with Dr. Womack's opinion. Like Dr. Womack's opinion, the ALJ's RFC finding limits George to simple tasks and to working with objects rather than people. While the ALJ's RFC determination does not include Dr. Womack's suggested breaks, the Sixth Circuit has noted that "breaks every two hours are normal and assumed in most jobs." Rudd, 531 F. App'x at 730. In any event, ALJs "are not bound by any findings made by State agency medical or psychological consultants"; instead, they are "charged with evaluating these experts' findings and reaching a reasoned determination as to the applicant's disability status." Justice v. Comm'r Soc. Sec. Admin., 515 F. App'x 583, 588 (6th Cir. 2013). Here, the ALJ thoroughly discussed not only all of the medical source opinions in the record, but also diagnostic test results, George's medical records, and the ALJ's own observations of George as he testified at the hearing. Therefore, the court finds that the ALJ did not err in determining George's RFC, and the ALJ's RFC finding is supported by substantial evidence.

E. Whether the ALJ Erred by Failing to Obtain VE Testimony

Lastly, George argues that the ALJ erred by failing to obtain VE testimony. George contends that VE testimony was necessary because his impairments are "complex" and solely nonexertional in nature. In support of his argument, George cites Social Security

Ruling 85-15, which provides:

> Given no medically determinable impairment which limits exertion, the first issue is how much the person's occupational base - the entire exertional span from sedentary work through heavy (or very heavy) work - is reduced by the effects of the nonexertional impairment(s). This may range from very little to very much, depending on the nature and extent of the impairment(s). In many cases, a decisionmaker will need to consult a vocational resource. The publications listed in sections 404.1566 and 416.966 of the regulations will be sufficient vocational resources for relatively simple issues. In more complex cases, a person or persons with specialized knowledge would be helpful.

SSR 85-15, 1985 WL 56857, at *3 (Jan. 1, 1985). While the ruling cited by George states that VE testimony may be helpful in "more complex cases," the Sixth Circuit has held that an ALJ is "not required to solicit testimony from a VE in reaching his conclusion." Wright-Hines v. Comm'r of Soc. Sec., 597 F.3d 392, 395 (6th Cir. 2010); see also 20 C.F.R. § 404.1560(b)(2) ("We may use the services of vocational experts . . . to help us determine whether you can do your past relevant work[.]"); Griffeth v. Comm'r of Soc. Sec., 217 F. App'x 425, 429 (6th Cir. 2007) ("The regulations permit an ALJ to use the services of a vocational expert at step four to determine whether a claimant can do his past relevant work, given his RFC.").

Additionally, George cites Jordan v. Commissioner of Social Security, 548 F.3d 417, 424 (6th Cir. 2008), which held that "where a claimant suffers from nonexertional limitations that

significantly restrict the range of available work," an ALJ cannot rely solely on the Medical-Vocational Guidelines. However, George's reliance on Jordan is misplaced. The ALJ in this case found that although George has some nonexertional limitations, "these limitations have little or no effect on the occupational base of unskilled work at all exertional levels." (R. 22.) Therefore, unlike the claimant in Jordan, George's nonexertional limitations do not "significantly restrict" his range of available work. As discussed previously, the ALJ's RFC finding is supported by substantial evidence. Because the ALJ was not required to obtain VE testimony, he did not err by choosing not to do so in this case.

III. CONCLUSION

For the foregoing reasons, the Commissioner's decision is affirmed.

IT IS SO ORDERED.

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

April 20, 2015
Date