

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

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MACK W. ALLEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 15-cv-01159-SHL-tmp
	)	
CAROLYN W. COLVIN,	)	
ACTING COMMISSIONER OF SOCIAL	)	
SECURITY,	)	
	)	
Defendant.	)	
	)	

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REPORT AND RECOMMENDATION

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Before the court is *pro se* plaintiff Mack W. Allen's appeal from a final decision of the Commissioner of Social Security ("Commissioner") denying his application for disability insurance benefits and supplemental security income under Title II and Title XVI of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq.* Pursuant to Administrative Order No. 2013-05, and the Order Reassigning Pending Social Security Cases entered on April 5, 2016 (ECF No. 20), this case has been referred to the undersigned United States magistrate judge for management and for all pretrial matters for determination and/or report and recommendation as appropriate. For the reasons set forth below, it is recommended that the decision of the Commissioner be affirmed.

I. PROPOSED FINDINGS OF FACT

On May 16, 2011, Allen applied for disability insurance benefits and supplemental security income under Title II and Title XVI of the Act. (R. 15.) In both applications, Allen alleged disability beginning on July 31, 2002, due to high blood pressure, high cholesterol, and inability to read and write. (R. 182.) Allen's application was denied initially and upon reconsideration by the Social Security Administration ("SSA"). (R. 15.) At Allen's request, a hearing was held before an Administrative Law Judge ("ALJ") on August 1, 2013. (Id.) On September 17, 2013, the ALJ issued a decision finding that Allen was not under a disability from his alleged onset date through October 26, 2009 (Allen's fifty-fifth birthday), the date that Allen's age category "changed to an individual of advanced age" according to governing Social Security regulations. (R. 23.) However, the ALJ also found that Allen was under a disability from October 26, 2009, through the date of his decision. (R. 23-25.) On May 9, 2015, the SSA's Appeals Council denied Allen's request for review of the ALJ's determination that he was not disabled before October 2009. (R. 1.) Therefore, the ALJ's decision became the final decision of the Commissioner. (Id.) Subsequently, on July 1, 2015, Allen filed the instant action. (ECF No. 1.) Allen argues that the ALJ's determination that he was not disabled prior to October 26, 2009, is not based on substantial evidence and that the ALJ committed

errors of law in reaching his decision. (ECF No. 6.)

## II. PROPOSED 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 residual functional capacity ("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. The ALJ's Decision**

Allen argues that the ALJ's determination that he was not disabled prior to October 26, 2009, is not based on substantial evidence and that the ALJ committed errors of law in reaching his decision, although he does not identify any specific errors allegedly made by the ALJ. The ALJ found that prior to October 29, 2009, Allen retained the RFC to perform light work, except that he was limited to work involving "simple, routine, repetitive tasks with one to two step instructions."<sup>1</sup> (R. 19.) In reaching this decision, the ALJ discussed Allen's testimony regarding his symptoms, daily activities, abilities, and limitations. (R. 19-20.) The ALJ found that Allen suffered from the following severe impairments: anemia, hypertension, hypothyroidism, kidney stones,

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<sup>1</sup>The regulations define "light work" as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities.

chronic kidney disease, and borderline intellectual functioning. (R. 18.) However, based on the medical evidence available in the record, the ALJ concluded that Allen's "statements concerning the intensity, persistence and limiting effects" of his symptoms were not entirely credible. (R. 20.) The ALJ pointed out that although Allen alleged disability beginning in 2002, the record did not contain any medical records dated before 2005. (Id.)

Next, the ALJ engaged in a thorough discussion of the medical evidence in the record and explained the weight he assigned to the various medical opinions contained therein. For example, the ALJ gave "great weight" to the opinion of Dr. John Woods, who opined that Allen's exertional abilities were limited due to his history of back pain associated with kidney disease. (R. 22.) Additionally, the ALJ gave only "partial weight" to the opinion of Disability Determination Services ("DDS") examiner Dr. Robert de la Torre, who opined that Allen's borderline intellectual functioning was not a severe impairment. The ALJ disagreed and concluded that Allen's borderline intellectual functioning did place moderate limitations on his ability to work, as reflected in the ALJ's ultimate RFC finding limiting Allen to simple tasks. (Id.) The ALJ discounted the weight given to another DDS examiner, Dr. Kennon, for similar reasons. (Id.) The ALJ also relied on

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20 C.F.R. § 404.1567(b); 20 C.F.R. § 416.967.



testimony from a vocational expert in reaching his determination that Allen was not disabled prior to October 26, 2009. (R. 24.)

With respect to the ALJ's credibility determination, the Sixth Circuit has explained that "an ALJ is not required to accept a claimant's subjective complaints and may properly consider the credibility of a claimant when making a determination of disability." Jones v. Comm'r of Soc. Sec., 336 F.3d 469, 476 (6th Cir. 2003). "An ALJ may discount a claimant's credibility when the ALJ 'finds contradictions among the medical reports, claimant's testimony, and other evidence.'" Steagall v. Comm'r of Soc. Sec., 596 F. App'x 377, 381 (6th Cir. 2015) (quoting Warner v. Comm'r of Soc. Sec., 375 F.3d 387, 392 (6th Cir. 2004)). An ALJ's finding as to a claimant's credibility is entitled to deference from the court "because of the ALJ's unique opportunity to observe the claimant and judge her subjective complaints." Buxton v. Halter, 246 F.3d 762, 773 (6th Cir. 2001); see also Downs v. Comm'r of Soc. Sec., 634 F. App'x 551, 556 (6th Cir. 2016); Morr v. Comm'r of Soc. Sec., 616 F. App'x 210, 212 (6th Cir. 2015). In fact, the court may not disturb an ALJ's credibility determination "absent compelling reason" to do so. Smith v. Halter, 307 F.3d 377, 379 (6th Cir. 2001); see also Hernandez v. Comm'r of Soc. Sec., No. 15-1875, 2016 WL 1055828, at \*6 (6th Cir. Mar. 17, 2016) ("When a credibility determination regarding a claimant's subjective complaint is at

issue, we affirm if the ALJ's determination is reasonable and supported by substantial evidence." ). The court finds that the ALJ's credibility determination is reasonable and supported by substantial evidence. The ALJ explained that he discounted Allen's credibility based on the lack of treatment records for a span of several years during which Allen alleged disability, as well as inconsistencies between Allen's allegations of impairment and the medical evidence in the record. Upon review of the entire record, the court finds that the ALJ did not err in this regard.

Moreover, the court also finds that the ALJ's decision is supported by substantial evidence. The Sixth Circuit "has consistently affirmed that the claimant bears the burden of producing sufficient evidence to show the existence of a disability." Watters v. Comm'r of Soc. Sec. Admin., 530 F. App'x 419, 425 (6th Cir. 2013). An ALJ's decision is "not subject to reversal merely because substantial evidence exists in the record to support a different conclusion.'" Kepke v. Comm'r of Soc. Sec., 636 F. App'x 625, 627 (6th Cir. 2016) (quoting Lindsley v. Comm'r of Soc. Sec., 560 F.3d 601, 604 (6th Cir. 2009)). Rather, as explained earlier, the court must affirm the ALJ's decision unless the ALJ "failed to apply the correct legal standard or made findings of fact that are unsupported by substantial evidence.'" Payne v. Comm'r of Soc. Sec., 402 F. App'x 109, 111 (6th Cir. 2010)

(quoting McClanahan v. Comm'r of Soc. Sec., 474 F.3d 830, 833 (6th Cir. 2006)). As discussed above, the ALJ thoroughly and extensively discussed the medical evidence in the record and the weight he gave to various medical opinions. He also reasonably relied on testimony from Allen himself, as well as testimony from a vocational expert. Therefore, the court finds that the ALJ's decision is supported by substantial evidence.

### III. RECOMMENDATION

Because the ALJ did not commit legal error and because his decision is supported by substantial evidence, the court recommends that the Commissioner's decision be affirmed.

Respectfully submitted,

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

August 12, 2016  
\_\_\_\_\_  
Date

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