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

WANDA MARIE FLOYD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 15-cv-02551-TMP**
	)	
CAROLYN W. COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

ORDER REMANDING CASE PURSUANT TO 42 U.S.C. § 405(g)

Before the court is plaintiff Wanda Marie Floyd's appeal from a final decision of the Commissioner of Social Security ("Commissioner") denying her 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*. 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 court finds that remand is warranted under 42 U.S.C. § 405(g).

I. FINDINGS OF FACT

On May 2, 2012, Floyd applied for supplemental security income under Title XVI of the Act. On May 9, 2012, Floyd also filed an application for disability insurance benefits under Title II of the

Act. (R. 15.) Floyd alleged disability beginning on March 20, 2011, based on osteoarthritis, tendonitis, asthma, carpal tunnel, high blood pressure, fibromyalgia, and chronic gastritis. (R. 182.) Floyd's application was denied initially and upon reconsideration by the Social Security Administration ("SSA"). (R. 15.) At Floyd's request, a hearing was held before an Administrative Law Judge ("ALJ") on May 2, 2014. (Id.) On June 12, 2014, the ALJ issued a decision denying Floyd's request for benefits after finding that Floyd was not under a disability because she retained the residual functional capacity ("RFC") to perform jobs that exist in significant numbers in the national economy. (R. 15-27.) On July 10, 2015, the SSA's Appeals Council denied Floyd's request for review. Therefore, the ALJ's decision became the final decision of the Commissioner. (R. 1.) Subsequently, on August 20, 2015, Floyd filed the instant action. Floyd argues that: (1) the ALJ erred by not correctly identifying her severe impairments; (2) the ALJ erred in weighing the opinions of various medical professionals; (3) the ALJ improperly evaluated her mental impairments; and (4) the ALJ's RFC finding was flawed. (ECF No. 16-1.)

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 Determining Floyd's Severe Impairments

First, Floyd argues that the ALJ erred by not correctly identifying her severe impairments at step two of the sequential evaluation process. Specifically, Floyd contends that the ALJ

should have classified Floyd's following impairments as severe: "hypertension, depression, anxiety/Anxiety Disorder NOS, gastroparesis, colitis, irritable bowel syndrome, suspected glaucoma, fibromyalgia, gout, chronic obstructive pulmonary disease (COPD), tachycardia, diverticulosis, gastroesophageal reflux disease (GERD), anemia, lymphadenopathy, chronic nonalcoholic liver disease, fatty infiltration of the liver, acromioclavicular (AC) joint osteoarthritis, headaches/migraines, hip arthritis, degenerative changes of the cervical and lumbar spine, cervical radiculitis, cervical spondylosis, disc bulging at C5-C6 and C6-C7, scoliosis, osteopenia, osteoarthritis of the spine, rheumatoid arthritis versus lupus, and chronic pain." (ECF No. 16-1.)

According to governing SSA regulations, a severe impairment is "any impairment or combination of impairments which significantly limits [a claimant's] physical or mental ability to do basic work activities." 20 C.F.R. § 404.1520(c); 20 C.F.R. § 416.920(c). As the Sixth Circuit has explained, "the severity determination is a de minimis hurdle in the disability determination process" meant only to "screen out totally groundless claims." Anthony v. Astrue, 266 F. App'x 451, 457 (6th Cir. 2008) (quoting Higgs v. Bowen, 880 F.2d 860, 862 (6th Cir. 1988) & Farris v. Sec'y of Health & Human Servs., 773 F.2d 85, 89 (6th Cir. 1985)) (internal quotation marks omitted). "'[A]n impairment can be considered not severe only if it is a slight abnormality that minimally affects work ability

regardless of age, education and experience.'" Id. (quoting Higgs, 880 F.2d at 862). When assessing RFC, an ALJ "must consider limitations and restrictions imposed by all of an individual's impairments, even those that are not 'severe.'" SSR 96-8p, 1996 WL 374184, at *5 (July 2, 1996); see also 20 C.F.R. § 404.1545(a)(2) ("We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not 'severe,' . . . when we assess your residual functional capacity.").

Here, the ALJ found that Floyd has the following severe impairments: diabetes, obesity, bilateral knee arthritis, bilateral carpal tunnel, status post right clavicle removal, gastritis, and asthma.[1] (R. 17.) As such, Floyd cleared step two of the analysis. Because the ALJ was required to consider all of Floyd's impairments in the remaining steps of the sequential analysis, "[t]he fact that some of [Floyd's] impairments were not deemed to be severe at step two is therefore legally irrelevant." Anthony, 266 F. App'x at 457; see also Kirkland v. Comm'r of Soc. Sec., 528 F. App'x 425, 427 (6th Cir. 2013) (stating that "so long as the ALJ considers all of the individual's impairments, the 'failure to find additional severe impairments . . . does not constitute reversible

[1]As stated previously, Floyd's application for disability benefits only listed osteoarthritis, tendonitis, asthma, carpal tunnel, high blood pressure, fibromyalgia, and chronic gastritis as impairments that limited her ability to work. (R. 182.)

error.'") (quoting Fisk v. Astrue, 253 F. App'x 580, 583 (6th Cir. 2007)); Maziarz v. Sec'y of Health & Human Servs., 837 F.2d 240, 244 (6th Cir. 1987) (holding that the ALJ's failure to classify an impairment as severe was harmless error because other impairments were deemed severe). Accordingly, the court finds that the ALJ did not commit reversible error in determining Floyd's severe impairments.

D. Whether the ALJ Erred in Weighing the Medical Opinions in the Record

Next, Floyd argues that the ALJ erred in several ways in weighing the various medical source opinions in the record. Specifically, Floyd alleges that: (1) the ALJ erred in giving more weight to the opinion of a nonexamining Disability Determination Services ("DDS") consultant than to the opinions of two nontreating DDS consultants; (2) the ALJ erred by ignoring the opinion of DDS consultant Dr. Keith Langford; and (3) the ALJ erred by ignoring the opinions of two of Floyd's treating physicians. Floyd contends that these errors require 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). A treating source is defined as a medical professional who has not only examined the claimant, but who also has an "ongoing treatment relationship" with him or her consistent with "accepted medical practice." 20 C.F.R. § 404.1502; Smith, 482 F.3d at 875. The SSA requires the ALJ to assign a treating source opinion controlling weight if it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant's] case record." 20 C.F.R. § 404.1527(b)(2); Wilson v. Comm'r of Soc. Sec., 378 F.3d 541, 544 (6th Cir. 2004). If the ALJ discounts the weight normally given to a treating source opinion, he must provide "good reasons" for doing so. 20 C.F.R. § 404.1527(c)(2); Gayheart v. Comm'r of Soc. Sec., 710 F.3d 365, 376 (6th Cir. 2013). Additionally, the ALJ is required to take certain factors into consideration when determining how much weight to give a treating source opinion, including: "'the length of the treatment relationship and the frequency of examination, the nature and extent of the treatment

relationship, supportability of the opinion, consistency of the opinion with the record as a whole, and the specialization of the treating source . . . .'" Winn, 615 F. App'x at 321 (quoting Wilson, 378 F.3d at 544); see also 20 C.F.R. § 404.1527(c); 20 C.F.R. § 416.927(c). If the ALJ denies benefits, his decision "must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight." SSR 96-2p, 1996 WL 374188, at *5 (July 2, 1996); Mitchell v. Comm'r of Soc. Sec., 330 F. App'x 563, 569 (6th Cir. 2009).

Although nontreating and 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."). Generally, a nontreating source opinion is given more weight than a nonexamining source opinion. Norris, 461 F. App'x at 439. However, any medical opinion "may be rejected by the ALJ when the source's opinion is

not well supported by medical diagnostics or if it is inconsistent with the record." Id. Moreover, an ALJ is not required to give reasons for rejecting a nontreating or nonexamining source, because "the SSA requires ALJs to give reasons for only treating sources." Smith, 482 F.3d at 876 (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").

1. Whether the ALJ Erred in Weighing the Opinions of Various DDS Consultants

In reaching his ultimate decision, the ALJ in this case gave "partial weight" to the opinions of two DDS nontreating consultants, Dr. Randall Wisdom and Dr. Linda Yates. (R. 22-23.) The ALJ assigned "great weight" to the opinion of DDS nonexamining consultant Dr. Gary Turner. (R. 25.) Floyd argues that "[t]he ALJ should have relied on the opinions of Dr. Wisdom and Dr. Yates over the opinion of Dr. Turner, because Dr. Wisdom and Dr. Yates physically examined [Floyd] in person, and did not just review her allegations in records." (ECF No. 16-1.)

Floyd is correct that the opinions of nontreating sources are generally accorded more weight than nonexamining sources. However, it is not a *per se* error of law for an ALJ to credit a nonexamining source over a nontreating source. See Norris, 461 F. App'x at 439 ("Although Norris is correct that the opinions of nontreating

sources are generally accorded more weight than nonexamining sources, it is not a *per se* error of law, as Norris suggests, for the ALJ to credit a nonexamining source over a nontreating source."). Here, although not required to do so, the ALJ nevertheless explained his rationale for granting partial weight to the nontreating opinions of DDS consultants Dr. Wisdom and Dr. Yates. See id. ("Here, although the ALJ did not find the one-time consultative sources to be treating sources, the ALJ nevertheless explained [his] rationale for granting minimal weight to their opinions."). After noting Dr. Wisdom's findings, the ALJ stated that he gave Dr. Wisdom's opinion "partial weight." He explained that "Dr. Turner considered Dr. Wisdom's opinion, and Dr. Turner's opinion is given more deference because of his program knowledge and the large amount of evidence he reviewed. His opinion is more consistent with the record as a whole."[2] Additionally, after listing Dr. Yates's findings, the ALJ explained that he gave her opinion partial weight because her "limitations seem excessive given her description of claimant's capabilities during the exam." The ALJ further elaborated that "[m]ore weight is given to Dr. Turner's opinion because of his program knowledge and because he reviewed Dr. Yates'[s] opinion with other substantial evidence and

[2]Although not mentioned by the ALJ in his opinion, Dr. Wisdom specifically noted in his examination report that Floyd "was seen without the benefit of prior medical records." (R. 427.)

concluded claimant was not as limited as Dr. Yates determined." Lastly, the ALJ afforded Dr. Turner's opinion great weight, explaining that it was "consistent with the record and Dr. Turner's knowledge and experience." The ALJ also noted that Dr. Turner "gave good reasons for his opinion."

While perhaps the ALJ could have provided greater detail as to why he assigned greater weight to the opinion of Dr. Turner than to the opinions of Dr. Wisdom and Dr. Yates, "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 this regard.

2. Whether the ALJ Erred by Ignoring the Opinion of DDS Consultant Dr. Langford

Floyd argues that the ALJ erred by not addressing the opinion of DDS consultant Dr. Langford in his opinion.[3] On December 28, 2012, Dr. Langford completed a DDS "case analysis" regarding the medical portion of Floyd's disability determination. In that analysis, Dr. Langford noted that Floyd "alleged a degree of incapacity in walking that would make her sedentary." He

[3]The Commissioner does not address this specific argument in the memorandum in support of her decision. However, she does acknowledge that "[t]he regulations specifically state that the ALJ should consider the non-examining doctors' opinions in making his disability determination." (ECF No. 19.)

additionally opined as follows:

> [Floyd's] allegation of being only able to lift 10 lbs is not fully credible especially since she has now had remedial surgery to her shoulder with good resolution of her pain so far. Her COPD is moderately severe and her morbid obesity is a major limiting factor physically . . . . The weakness of her right arm should resolve after the clavicle excision . . . . The right [carpal tunnel syndrome] is curable. However, the pain management [medical evidence of record] is very important in making a final determination. Please once again seek this since the reason for chronic narcotics should be explained.

(R. 521.) Floyd contends that her case should be remanded because the ALJ did not mention Dr. Langford's opinion in his disability determination.

It is well-settled that an "ALJ need not discuss every piece of evidence in the record for his decision to stand." Thacker v. Comm'r of Soc. Sec., 99 F. App'x 661, 665 (6th Cir. 2004). However, according to governing SSA rulings, ALJs may not ignore the opinions of state agency nonexamining sources and "must explain the weight given to these opinions in their decisions." SSR 96-6p, 1996 WL 374180, at *2; 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."). The ALJ did not assign any treating source opinions controlling weight; as such, he was required to explain the weight given to the opinions of the various

DDS consultants involved in the case. Therefore, the ALJ committed legal error by not explaining the weight afforded to Dr. Langford's opinion.

The Commissioner does not argue that the ALJ's error should be deemed harmless in this case; nevertheless, the court finds that the error was not harmless. The Sixth Circuit has stated that "an error is harmless only if remanding the matter to the agency 'would be an idle and useless formality' because 'there is [no] reason to believe that [it] might lead to a different result.'" Stacey v. Comm'r of Soc. Sec., 451 F. App'x 517, 520 (6th Cir. 2011) (quoting Kobetic v. Comm'r of Soc. Sec., 114 F. App'x 171, 173 (6th Cir. 2004)). The court cannot tell whether the ALJ rejected Dr. Langford's opinion for legitimate or illegitimate reasons or whether he considered it at all in assessing Floyd's RFC. While the ALJ's failure to discuss the weight he assigned to Dr. Langford's opinion "might not have been error if the opinion concerned a peripheral issue or was merely cumulative of other evidence in the record, that is not the case here." Id. at 519. Rather, Dr. Langford's opinion contains information that could possibly change the ALJ's ultimate RFC finding. "Even when substantial evidence otherwise supports the [ALJ's] decision," the court must remand if "the agency failed to follow its own procedural regulation." Sawdy v. Comm'r of Soc. Sec., 436 F. App'x 551, 553 (6th Cir. 2011) (quoting Wilson, 378 F.3d at 544)

(internal quotation marks omitted). Accordingly, because the ALJ did not explain the weight given to Dr. Langford's opinion, as required by the SSA regulations, Floyd is entitled to remand on this point. See Stacey, 451 F. App'x at 520 (finding that ALJ's failure to explain why he rejected nontreating physician's opinion was not harmless error); Kolasa v. Comm'r of Soc. Sec., No. 13-cv-14311, 2015 WL 1119953, at *10 (E.D. Mich. Mar. 11, 2015) ("Accordingly, because the ALJ disregarded the applicable regulations in considering the State agency consultant's opinion, plaintiff is entitled to remand on this point."); Hovater v. Colvin, 2013 WL 4523502, at *10-11 (N.D. Ohio Aug. 26, 2013) (remanding because the ALJ failed to explain why opinions of state consultants were not adopted); Sommer v. Astrue, No. 3:10-CV-99, 2010 WL 5883653, at *5-6 (E.D. Tenn. Dec. 17, 2010) (remanding because the ALJ failed to explain in his decision the weight given to nonexamining source opinions); Johnson v. Astrue, No. 1:09 CV 2959, 2010 WL 5559542, at *5 (N.D. Ohio Dec. 3, 2010), report and recommendation adopted, No. 1:09CV2959, 2010 WL 5478604 (N.D. Ohio Dec. 30, 2010) (holding that ALJ's failure to mention findings of two nonexamining physicians was not harmless error).

3. Whether the ALJ Erred by Ignoring the Opinions of Floyd's Treating Physicians

Floyd argues that the ALJ improperly ignored the opinions of two of her treating physicians, Dr. Ashley Lewis Park and Dr.

Thomas Throckmorton. The medical records indicate that Floyd saw both doctors at Campbell Clinic in Germantown, Tennessee, from 2011 to 2012, for right shoulder pain. Floyd is correct that an ALJ must generally give greater deference to the medical opinions of treating physicians. The SSA regulations define medical opinions as "statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of [a claimant's] impairment(s), including [his or her] symptoms, diagnosis and prognosis, what [he or she] can still do despite impairment(s), and [his or her] physical or mental restrictions." 20 C.F.R. § 404.1527(a)(2). Contrary to Floyd's assertion, however, there are no medical opinions from either Dr. Park or Dr. Throckmorton in the record. Rather, the record contains only treatment notes and recommendations made to Floyd during Dr. Park and Dr. Throckmorton's appointments with her.

Floyd cites two examples of medical opinions that the ALJ allegedly ignored. First, Floyd states that Dr. Park opined on July 5, 2011, that Floyd "should avoid lifting, pulling, pushing, and reaching as well as activities sustained at or above chest height." (R. 493.) Dr. Park did, in fact, make this treatment recommendation to Floyd during their July 5 visit to address her shoulder pain. However, this recommendation was made before Floyd ultimately had surgery on her shoulder to address the issue. The records indicate that Floyd did not visit Dr. Park again after her

shoulder surgery, which she underwent on October 31, 2012. (R. 1370.) Second, Floyd states that Dr. Throckmorton opined on November 14, 2012, that she "should use her arm gently for activities in front of the body." However, a closer reading of the record indicates that Dr. Throckmorton made this recommendation to Floyd during a follow-up visit after her shoulder surgery. In context, Dr. Throckmorton's treatment notes from that visit state as follows:

> Ms. Floyd returns today weeks out from her right distal clavicle excision for acromioclavicular joint arthropathy. Her pain is getting better. On physical examination, wound is clean, dry and intact and healing well . . . We will get her into physical therapy as I am concerned that she might be getting a little bit stiff. Otherwise, we talked about using the arm gently for activities in front of the body. Follow up in one month.

(R. 1334.) Interestingly, Floyd did not cite her next (and final) visit with Dr. Throckmorton on December 21, 2012. Dr. Throckmorton's treatment notes from that visit state:

> [Floyd] has not been able to do any physical therapy because she had come down with pneumonia. I have recommended that she start this and otherwise use the arm as tolerated and, at this point, we agreed that it is okay to turn her loose, and she will give our office a call if she should need to have another evaluation.

(R. 1333.) In his decision, although he did not mention Dr. Park or Dr. Throckmorton by name, the ALJ discussed the treatment Floyd received for her shoulder pain from both doctors and noted that "there are no substantial treatment records" regarding her shoulder condition after her surgery. Additionally, the ALJ accurately

explained that "there is no evidence a treating source physician has advised the claimant to . . . restrict her activities of daily living in any manner." (R. 24.) He additionally stated that there was no evidence that Floyd had "been advised to refrain from performing all gainful work activity by any treating source." (Id.)

Based on the entire record, the court finds that Dr. Park and Dr. Throckmorton's treatment notes do not contain enough information to be considered "medical opinions" that are entitled to controlling weight. Even assuming, *arguendo*, that the treatment notes cited by Floyd could be considered medical opinions at all, they are only opinions about the existence of physical symptoms and not opinions about the severity of Floyd's condition or the degree that she is limited by her condition. See Jones v. Astrue, No. 3:10-CV-375, 2011 WL 3511018, at *4 (E.D. Tenn. July 20, 2011), report and recommendation adopted, No. 3:10-CV-375, 2011 WL 3511056 (E.D. Tenn. Aug. 10, 2011); Caldwell v. Astrue, No. 3:08-CV-513, 2010 WL 1957369, at *4 (E.D. Tenn. Jan. 27, 2010), report and recommendation adopted, No. 3:08-CV-513, 2010 WL 1957366 (E.D. Tenn. May 14, 2010). The ALJ did not ignore these treatment notes in his decision, as he thoroughly discussed Floyd's prior treatment for her shoulder condition. Therefore, the court finds that the ALJ did not err in weighing the opinions of Floyd's treating physicians.

E. Whether the ALJ Improperly Evaluated Floyd's Mental

Impairments

Floyd argues that the ALJ failed to comply with governing regulations in evaluating her depression and anxiety. As explained previously, the claimant bears the burden of establishing an entitlement to benefits by proving his or her "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)(A); see also Oliver, 415 F. App'x at 682; Haun v. Astrue, No. 3:07-CV-462, 2008 WL 2857027, at *3 (E.D. Tenn. July 21, 2008) ("The burden of proof of a mental disorder is on the plaintiff, who must not only establish the existence of a medically diagnosed mental impairment, but must also prove its severity and functional impact."). The record before the court contains no objective evidence of Floyd's alleged mental impairments. Rather, the only evidence in the record supporting Floyd's claim that she suffers disabling depression and anxiety is her self-reported medical history to various doctors and her testimony at the hearing.[4]

[4]In support of her argument, Floyd cites several examples in the record where she reported medical history of depression and anxiety to physicians during visits unrelated to these alleged impairments. For example, she reported a history of depression and/or anxiety during visits at Gastrointestinal Specialists, PC (R. 544), Stern Cardiovascular Center (R. 583), West Tennessee Eye (R. 649), and Campbell Clinic Orthopedics. (R. 834). However, she does not cite numerous other medical records where she did not report a medical

Floyd testified that she was receiving mental treatment from her primary care physician at Community Medical Clinic, Nancy Hurt, who prescribed her Elavil to treat her depression. (R. 55, 57, 71.) The record does reflect that Floyd frequently sought treatment at Community Medical Clinic; however, there are no medical records (from Community Medical Clinic or elsewhere) demonstrating that Floyd ever complained of or sought treatment for depression or anxiety. Additionally, Floyd did not list depression or anxiety as impairments in her application for disability benefits. (R. 182.) Based on this, coupled with the lack of objective evidence in the record supporting Floyd's allegations of disabling mental impairments, the court finds that the ALJ did not err by not discussing Floyd's depression and anxiety in reaching his decision. See Stankoski v. Astrue, 532 F. App'x 614, 619 (6th Cir. 2013) (holding that ALJ was not required to accept claimant's subjective complaints of mental impairments because "there is no objective medical evidence to support these complaints"); Nejat v. Comm'r of Soc. Sec., 359 F. App'x 574, 577 (6th Cir. 2009) (holding that the ALJ properly evaluated claimant's alleged condition given claimant's failure to list the condition in his application and the scant evidence of the condition in the record); Jones v. Comm'r of

---

history of depression or anxiety. For example, during a visit to Saint Francis Hospital on October 19, 2014, Floyd was specifically asked, "Have you been feeling depressed in the last couple of weeks?" Floyd responded, "No." (R. 1502).

Soc. Sec., 336 F.3d 469, 475 (6th Cir. 2003) ("There is no question that subjective complaints of a claimant can support a claim for disability, if there is also objective medical evidence of an underlying medical condition in the record.").

F. Whether the ALJ's RFC Finding was Flawed

Lastly, Floyd argues that the ALJ erred in reaching his RFC finding. Specifically, Floyd argues that the ALJ did not correctly consider the effects of her obesity on her ability to work, and that the ALJ erred by finding that she has the RFC to perform light work.

1. Whether the ALJ Erred in Considering Floyd's Obesity

Floyd alleges that the ALJ erred by not explaining "how he reached his conclusions on whether [Floyd's] obesity caused any physical or mental limitations." Social Security Ruling 02-1p explains the SSA's policy regarding the evaluation of obesity. SSR 02-1p states:

> An assessment should also be made of the effect obesity has upon the individual's ability to perform routine movement and necessary physical activity within the work environment. Individuals with obesity may have problems with the ability to sustain a function over time . . . [O]ur RFC assessments must consider an individuals' maximum remaining ability to do sustained work activities in an ordinary work setting on[ ]a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.

SSR 02-1P, 2002 WL 34686281, at *6 (Sept. 12, 2002). The Sixth Circuit has made clear that SSR 02-1p does not mandate "'any

particular procedural mode of analysis for obese disability claimants.'" Coldiron v. Comm'r of Soc. Sec., 391 F. App'x 435, 443 (6th Cir. 2010) (quoting Bledsoe v. Barnhart, 165 F. App'x 408, 412 (6th Cir. 2006)); see also Nejat, 359 F. App'x at 577. Rather, the regulation "only states that obesity, in combination with other impairments, 'may' increase the severity of the other limitations." Bledsoe, 165 F. App'x at 412. As such, this regulation "merely directs an ALJ to consider the claimant's obesity, in combination with other impairments, at all stages of the sequential evaluation." Nejat, 359 F. App'x at 577.

In her application for benefits, Floyd did not list obesity as an impairment that limits her ability to work. (R. 182.) Nevertheless, the ALJ found, based on the medical records, that Floyd's obesity was a severe impairment that has more than a *de minimis* effect on her ability to perform basic work activities. (R. 17-18, 20.) The ALJ discussed at length the requirements of SSR 02-1p and generally described the possible adverse effects that obesity could have on other co-existing impairments. (R. 23-24.) He noted that Floyd is 5'5" and weighs approximately 324 pounds, resulting in a body mass index of 53.9. He stated that he considered the effects of Floyd's obesity when determining her RFC, but explained that her subjective complaints of work-related limitations were only partially credible based on the medical records. For example, the ALJ explained that Floyd's condition had

not required surgeries, prolonged physical therapy, or extended care and management. Additionally, the ALJ noted that Floyd's "treatment has been conservative in nature," and that she "has not been advised to refrain from performing all gainful work activity by any treating source." (R. 24.) In support of her argument, Floyd cites to medical records that indicate her weight and that she is obese. However, it appears that the ALJ took these records into account in determining Floyd's RFC, as he specifically mentioned Floyd's weight in his decision and acknowledged obesity as one of her severe impairments, even though Floyd herself did not cite it as an impairment in her disability application. The ALJ ultimately concluded that Floyd has the RFC to perform light work with the following limitations:[5]

> Claimant can occasionally lift and or carry 20 pounds, frequently lift or carry 10 pounds, stand/walk for at least 2 hours in an 8-hour workday, and sit for 6 hours in an 8-hour workday. Claimant can occasionally climb ramps and stairs, but never climb ladders, ropes, and scaffolds. Claimant can occasionally balance, stoop, kneel, crouch, and crawl. Claimant must avoid concentrated exposure to extreme cold and vibration, and

[5]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.

> avoid all exposure to hazards such as machinery and heights.

(R. 18.) Upon review of the record, the court finds that the ALJ adequately considered Floyd's obesity in reaching his ultimate RFC finding. See Coldiron, 391 F. App'x at 443; Bledsoe, 165 F. App'x at 412. Nonetheless, as discussed in Part II, Section (D)(2) above, the ALJ on remand should specifically consider Dr. Langford's opinion that Floyd's "morbid obesity is a major limiting factor physically" in reconsidering her RFC.

2. Whether the ALJ Erred by Finding that Floyd has the RFC to Perform Light Work

Finally, Floyd contends that the ALJ erred by concluding that Floyd could perform light work with several limitations, as described above. Floyd alleges that based on the ALJ's limitations, the ALJ should have concluded that Floyd was only capable of sedentary work with additional limitations, and that his RFC finding "on its face proves that [Floyd] cannot perform a full range of sedentary work."

RFC "is an 'assessment of [the claimant's] remaining capacity for work,' once her limitations have been considered." Stankoski, 532 F. App'x at 619 (quoting 20 C.F.R. § 416.945(a)). An ALJ's RFC finding "is meant to describe the claimant's residual abilities or what a claimant can do, not what maladies a claimant suffers from - though the maladies will certainly inform the ALJ's conclusion about the claimant's abilities." Howard v. Comm'r of Soc. Sec.,

276 F.3d 235, 240 (6th Cir. 2002). In determining a claimant's RFC, the ALJ considers all relevant medical and other evidence. Eslinger v. Comm'r of Soc. Sec., 476 F. App'x 618, 621 (6th Cir. 2012). While it is true that an ALJ must consider all of claimant's limitations when formulating a claimant's RFC, the ALJ "'is required to incorporate only those limitations [he] accept[s] as credible.'" Myatt v. Comm'r of Soc. Sec., 251 F. App'x 332, 336 (6th Cir. 2007) (quoting Casey v. Sec'y of Health & Human Servs., 987 F.2d 1230, 1235 (6th Cir. 1993)). Here, the ALJ carefully considered the medical evidence in the record, along with testimony from a vocational expert, and reached the previously described RFC finding. He incorporated several limitations based on the evidence before him. His decision listed four jobs that exist in significant numbers in the national economy that Floyd could perform in light of his RFC determination, including cashier, telemarketer, telephone quotation clerk, and call operator. (R. 27.)

Floyd claims that the ALJ incorrectly determined that she could perform light work because his RFC finding included a limitation that Floyd could "stand/walk for at least 2 hours in an 8-hour workday." She correctly asserts that the SSA regulations state that "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." SSR 83-10, 1983 WL 31251, at *5 (Jan. 1, 1983).

She also correctly asserts that the regulations state that for sedentary work, "periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday." Id. However, contrary to Floyd's assertion, the ALJ did not refuse to follow SSR 83-10 by finding that Floyd could perform light work. Instead, the ALJ explicitly acknowledged that Floyd could not perform the full range of light work, which is reflected in the hypothetical questions posed to the vocational expert by the ALJ during the hearing, as well as in his decision. He provided examples of jobs that Floyd could perform, which are all classified as sedentary exertion level jobs. Rather than ignoring the regulations in reaching his RFC finding, the ALJ specifically tailored the general work classification provided in the regulations to accommodate all of Floyd's functional limitations for which he found support in the record. Based on the entire record, the court finds that the ALJ's RFC finding is supported by substantial evidence. Again, as discussed in Part II, Section (D)(2) above, the ALJ on remand should specifically consider Dr. Langford's opinion in reconsidering Floyd's RFC.

III. CONCLUSION

For the foregoing reasons, this case is remanded pursuant to 42 U.S.C. § 405(g) for proceedings consistent with this opinion.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

May 2, 2016
Date