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

SUSAN KATHRYN ANDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**No. 16-cv-02323-TMP**
CAROLYN W. COLVIN, Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	

ORDER AFFIRMING THE COMMISSIONER'S DECISION

Before the court is plaintiff Susan Anderson's appeal from a final decision of the Commissioner of Social Security[1] ("Commissioner") denying her application for disability insurance benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq*. (ECF No. 1.) After the parties consented to the jurisdiction of the United States magistrate judge, pursuant to 28 U.S.C. § 636(c), this case was referred to the undersigned Magistrate Judge. (ECF No. 11.) For the following reasons, the Commissioner's decision is affirmed.

I. FINDINGS OF FACT

Anderson applied for disability benefits under Title II of the

[1]Carolyn W. Colvin was the Acting Commissioner of Social Security at the time this action was filed. Therefore, she is named in the in the caption to this case. As of the date of this order, the Acting Commissioner of Social Security is Nancy A. Berryhill.

Act on August 8, 2012, with an alleged onset date of August 6, 2011. (See R. 11.) The Social Security Administration ("SSA") denied Anderson's application initially and upon reconsideration. (R. 99-101, 103-04.) At Anderson's request, a hearing was held before an Administrative Law Judge ("ALJ") on July 1, 2014. (R. 105-06, 115.) On September 3, 2014, the ALJ issued a decision denying Anderson's request for benefits after finding that she 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. 11–19.)

In his decision, the ALJ concluded that Anderson has the following severe impairments: "lumbar degenerative disc disease and spondylolisthesis, migraine headaches, and depression." (R. 13.) However, the ALJ found that she did not have an impairment or combination of impairments listed in or medically equal to one of the listed impairments contained within 20 C.F.R. Part 404, Subpart P, Appendix 1 (the "listings"). (Id.) The ALJ then concluded that Anderson retains the following RFC:

> [T]he claimant has the residual functional capacity to perform light work as defined in 20 C.F.R. 404.1567(b) except that the claimant cannot climb ladders, ropes, or scaffolds but can occasionally climb ramps or stairs, crouch, stoop, kneel, and crawl. She could not work at jobs with very loud noise intensity levels as defined by the Selected Characteristics of Occupations and would need the option to alternate between sitting and standing after every 30 minutes. The claimant is limited to jobs involving simple and routine tasks and could have frequent interaction with supervisors and coworkers and occasional interaction with the general public.

(R. 14-15.)

In making this RFC finding, the ALJ considered Anderson's back pain allegations and described the treatment she sought because of her back pain. The medical records show that Anderson received treatment for her pain in 2009. (R. 15.) After the 2009 treatment, Anderson did not seek treatment for her back pain until 2011. When Anderson began experiencing back pain in 2011:

> Treating physicians recommended an extension of her previous fusion surgery to L3-4, which was performed in October 2012. By February 2013, treatment notes indicate the claimant was doing "reasonably well" with "good relief" of symptoms. The claimant reported intermittent pain but was able to walk 2.5 miles without any exercise intolerance. Further, she demonstrated normal gait with no limp and was able to heel walk, toe walk, and tandem walk without assistance. Treating physician Dr. Patrick Curlee indicated the claimant's spine had some mild tenderness but she had normal spinal alignment and no induration, ecchymosis, or swelling. Notably, the claimant attended only one follow-up session with Dr. Curlee and is not current[ly] engaged in any ongoing pain management treatment, which suggests her fusion surgery was effective at alleviating her back pain.

(R. 15-16.) Ultimately, the ALJ concluded that Anderson's subjective pain allegations would not "preclude [her] from working a job at the light exertional level." (R. 16.) As for Anderson's credibility, the ALJ stated:

> [S]he did undergo surgery for back pain, which certainly suggests that the symptoms were genuine. While that fact would normally weigh the claimant's favor, it is offset by the fact that the record reflects that the surgery was generally successful in relieving the symptoms. In general, the claimant has described daily activities which are not limited to the extent one would expect, given the complaints of disabling symptoms and limitations. Notably, the claimant testifies she is able to lift 20 pounds, walk two miles twice per week, stand for 30 minutes at a time, sit for 45 minutes at a time, and homeschool her minor children, which is quite demanding, both physically and emotionally.

(R. 16-17.)

Moreover, the ALJ considered several medical opinions when making the RFC determination. (R. 17.) Among other experts, the ALJ considered the opinions of Dr. Reeta Misra and Dr. Deborah Webster-Claire. (Id.) (citing Dr. Misra's and Dr. Webster-Claire's reports). Those doctors concluded that Anderson:

> Could lift and/or carry 20 pounds occasionally and 10 pounds frequently, sit, stand, or walk for about six hours each in an eight-hour day and occasionally climb ramps/stairs, balance, stoop, kneel, crouch, or crawl and never climb ladders, ropes or scaffolds.

(Id.) The ALJ gave those opinions partial weight and found that Anderson's "testimony establish[ed] the need for a sit/stand option." (Id.) Dr. Misra's and Dr. Webster-Claire's reports were given in 2013, which was after Anderson underwent back surgery. (R. 74, 87.) The record also contains the report of Dr. John Harper and his report was completed in 2011 (before Anderson underwent the 2012 back surgery). (R. 325.) In his report, Dr. Harper contends that Anderson can "[s]tand and/or walk (with normal breaks) for total of – at least two hours in an 8-hour workday."[2] (R. 318.) The ALJ did not directly address Dr. Harper's opinion when making the RFC determination.

After a lengthy discussion of the RFC determination, the ALJ proceeded to the fourth step and concluded that Anderson was not able to perform any past relevant work. (R. 18.) As a result, the

[2]Dr. Harper's report is in "Check the Box" format.

ALJ's analysis advanced to step five where he stated that:

> [C]onsidering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform.

(Id.) Accordingly, the ALJ concluded that Anderson was not disabled and was therefore not entitled to disability benefits under Title II of the Act. On March 22, 2016, the Appeals Council denied Anderson's request for review, making the ALJ's decision the final decision of the Commissioner. (R. 1.)

Anderson filed the instant action on May 10, 2016, seeking review of the ALJ's decision. (ECF No. 1.) In her appeal, Anderson raises three arguments. She initially argues that the ALJ erred in weighing several of the medical opinions contained within the record. (ECF No. 14 at 10-12.) She then argues that the ALJ erred by failing to obtain additional medical evidence or order another consultative examination. (Id. at 12-15.) Last, Anderson argues that the ALJ "improperly inferred medical improvement due to lack of ongoing treatment without considering [her] indigence and lack of medical coverage as a basis for less aggressive interventions." (Id. at 15.)

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 Medical Opinions in the Record

Anderson argues that the ALJ did not give proper weight to the medical opinions contained within the record. (ECF No. 14 at 10-12.) Specifically, Anderson claims that the ALJ improperly weighed the opinions of Dr. Harper and Dr. Curlee. (Id.) 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). "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." Norris v. Comm'r of Soc. Sec., 461 F. App'x 433, 439 (6th Cir. 2012) (quoting Smith v. Comm'r of Soc. Sec., 482 F.3d 873, 875 (6th Cir. 2007)) (internal citations omitted).

1. Whether the ALJ Gave Proper Weight to Dr. Harper's Opinion

Anderson argues that the ALJ erred by failing to discuss Dr. Harper's opinion. (ECF No. 14 at 9-10.) According to Anderson, Dr. Harper's opinion included more restrictive walking and standing limitations than the medical opinions that the ALJ relied on when making the RFC determination. (Id.) While the "ALJ must consider all medical opinions in conjunction with any other relevant evidence received in order to determine if a claimant is disabled, . . . he need not specifically address each medical opinion or piece of evidence in order to adequately consider the record in its entirety." Grant v. Colvin, No. 3:14-cv-399, 2015 WL 4713662, at *12 (E.D. Tenn. Aug. 7, 2015); see also Dykes ex rel. Brymer v. Barnhart, 112 F. App'x 463, 467 (6th Cir. 2004) ("Although required

to develop the record fully and fairly, an ALJ is not required to discuss all the evidence submitted, and an ALJ's failure to cite specific evidence does not indicate that it was not considered." (quoting Craig v. Apfel, 212 F.3d 433, 436 (8th Cir. 2000))); Romines v. Colvin, No. 3:11-cv-1205, 2014 WL 4782860, at *22 (M.D. Tenn. Sept. 24, 2014) ("However, because Dr. Davis was a consultative examiner, and not a treating source, the ALJ was only required to consider his opinion in light of the factors in 20 C.F.R. § 416.927(c) and was not required to explain his rationale for implicitly rejecting portions of Dr. Davis' opinion.").

Here, the ALJ did not err by failing to explicitly address Dr. Harper's opinion. Dr. Harper issued his report in 2011, which was about one year before Anderson underwent back surgery. (R. 15) ("Treating physicians recommended an extension of her previous fusion surgery to L3-4, which was performed in October 2012."). Both the treatment notes following that surgery and Anderson's testimony support the conclusion that the surgery was successful. For example, the ALJ recognized that "[b]y February 2013, treatment notes indicate the claimant was doing 'reasonably well' with 'good relief' of symptoms." (R. 15.) In addition, Anderson "reported intermittent pain but was able to walk 2.5 miles without any exercise intolerance." (R. 15-16.) In making the RFC finding, the ALJ discussed the reports of Dr. Misra and Dr. Webster-Claire. Unlike Dr. Harper's reports, those reports were given after Anderson underwent back surgery and those doctors were able to

assess how the surgery improved Anderson's physical condition. (R. 74, 87.) Additionally, as the Commissioner argues, "Dr. Harper's form was in a checkmark format, which did not have the benefit of the detailed narrative discussion provided by the other two non-examining doctors." (ECF No. 17 at 5.) The Sixth Circuit has questioned the value of these "Check the Box" forms and has upheld an ALJ's decision to assign minimal weight to opinions completed on those forms. Ellars v. Comm'r of Soc. Sec., 647 F. App'x 563, 567 (6th Cir. 2016) ("These cases recognize that the administrative law judge properly gave a check-box form little weight where the physician provided no explanation for the restrictions entered on the form and cited no supporting objective medical evidence."). Although the ALJ did not explicitly address Dr. Harper's opinion, the court finds no error in this decision because the record contains substantial evidence supporting the conclusion that the ALJ implicitly rejected Dr. Harper's opinion.[3]

2. Whether the ALJ Gave Proper Weight to Dr. Curlee's Opinion

[3]Even if the court were to find that the ALJ erred by failing to discuss Dr. Harper's opinion, the court finds that this would create harmless error at best. "[T]he Sixth Circuit has held the failure to assign weight to the opinion of a consultative examiner may constitute harmless error if the ALJ's decision is otherwise supported by substantial evidence." King v. Berryhill, No. 3:17-cv-125, 2018 WL 6438969, at *15 (E.D. Tenn. Dec. 7, 2018) (citing Dykes, 112 F. App'x at 468). The ALJ's RFC determination was supported by substantial evidence because it was based on the medical record, which included several medical opinions, Anderson's treatment records, and her testimony. (See R. 14-18.)

Anderson also argues that the ALJ erred by failing to give a portion of Dr. Curlee's opinion controlling weight. (ECF No. 14 at 11-12.) She specifically contends that the ALJ erred by failing to address the post-op instructions Dr. Curlee gave Anderson. (Id.) The ALJ must 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); Turk v. Comm'r of Soc. Sec., No. 15-4076, 2016 WL 2641196, at *2 (6th Cir. May 10, 2016); Wilson v. Comm'r of Soc. Sec., 378 F.3d 541, 544 (6th Cir. 2004). "[A] treating source's opinion may be given little weight if it is unsupported by sufficient clinical findings and is inconsistent with the rest of the evidence." Morr v. Comm'r of Soc. Sec., 616 F. App'x 210, 211 (6th Cir. 2015) (citing Bogle v. Sullivan, 998 F.2d 342, 347–48 (6th Cir. 1993)); see also Keeler v. Comm'r of Soc. Sec., 511 F. App'x 472, 473 (6th Cir. 2013) (holding that the ALJ properly discounted the treating physician's opinion because it relied too heavily on the claimant's subjective complaints and was contradicted by other evidence in the record). 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); Noto v. Comm'r of Soc. Sec., 632 F. App'x 243, 249 (6th Cir. 2015); Gayheart v. Comm'r of Soc. Sec., 710 F.3d 365, 376 (6th Cir. 2013).

"Though SSR 96–2p provides that the ALJ must be sufficiently specific as to the weight he accords a treating source opinion and the reasons for that weight, an ALJ's failure to explicitly state the weight he accords does not always constitute reversible error." Kepke v. Comm'r of Soc. Sec., 636 F. App'x 625, 630 (6th Cir. 2016). In Kepke, the Sixth Circuit affirmed the ALJ's decision even though he "did not articulate a specific weight for [a treating physician's] opinion" because he "made sufficiently clear his reasons for discounting the opinion." Id.; see also Francis v. Comm'r of Soc. Sec., 414 F. App'x 802, 805 (6th Cir. 2011) ("In assigning no weight to [a treating physician's] opinion, the ALJ cited the opinion's inconsistency with the objective medical evidence, [the claimant's] conservative treatment and daily activities, and the assessments of [the claimant's] other physicians. Procedurally, the regulations require no more.").

The issue here is narrower than the issue presented in Kepke and Francis. Anderson is not arguing that the ALJ erred by failing to assign Dr. Curlee's opinion a specific amount of weight, as was the case in both Kepke and Francis. Instead, she argues that the ALJ erred when making the RFC determination because he failed to address the limitations that Dr. Curlee imposed on Anderson following her October 2012 back surgery. After the October 2012 back surgery, Dr. Curlee instructed Anderson that:

> She is to refrain from sneezing or lifting anything heavier than approximately 5 pounds.

> She is to avoid any unnecessary bending, stooping, or twisting.
>
> She is to begin walking with the goal of 2 miles a day by 6 weeks postoperatively.

(R. 425.) At a later visit with Dr. Curlee, Anderson was "encouraged to continue [her] walking and home stabilization exercise program." (R. 490.) Dr. Curlee also informed Anderson that she "should be forever mindful of [her] body mechanics." (Id.) In the present action, Anderson contends "[t]here is no evidence Dr. Curlee ever lifted the recommended restriction to lifting of no greater than five pounds and it is clear he advised Ms. Anderson against bending, stooping and twisting motions on an ongoing basis." (ECF No. 14 at 12.) She argues that the ALJ erred when making the RFC determination because it does not include or address the above "limitations" Dr. Curlee imposed. (Id.)

This is not a case where the ALJ's opinion completely omits a discussion of a treating physician's treatment records and notes. The ALJ offered this analysis of Dr. Curlee's treatment:

> Treating physicians recommended an extension of her previous fusion surgery to L3-4, which was performed in October 2012. By February 2013, treatment notes indicate the claimant was doing "reasonably well" with "good relief" of symptoms. . . . Treating physician Dr. Patrick Curlee indicated the claimant's spine had some mild tenderness but she had normal spinal alignment and no induration, ecchymosis, or swelling. Notably, the claimant attended only one follow-up session with Dr. Curlee and is not current[ly] engaged in any ongoing pain management treatment, which suggests her fusion surgery was effective at alleviating her back pain.

(R. 15-16.) While the ALJ did not explicitly address the post-op instruction that Anderson should not lift more than five pounds,

the medical records (most notably Dr. Curlee's own treatment records) support the conclusion that the surgery was successful. There is no evidence that Dr. Curlee's post-op instructions imposed an indefinite limitation on Anderson's abilities to perform work. The instructions appear to be typical instructions given to a patient after surgery. Therefore, the court concludes that the ALJ did not err by failing to discuss the post-op instructions when making the RFC determination.

D. Whether the ALJ Erred by not Obtaining Additional Medical Evidence or a Consultative Examination

Next, Anderson argues that the ALJ "erred as a matter of law in failing to obtain an updated medical expert opinion and/or consultative examination in light of new and material evidence received prior to the issuance of the decision on this claim which objectively demonstrated her condition was more severe than previously determined by the non-examining experts[.]" (ECF No. 14 at 12.) Anderson contends that her testimony at the hearing and Dr. Curlee's treatment records qualify as "new evidence," which required the ALJ to order an additional consultative examination. According to Anderson, because the ALJ failed to order any additional examination and relied on no specific medical expert, Anderson seemingly argues that the Commissioner's decision is unsupported by substantial evidence.

"It is well-established that an ALJ has a duty to develop the record." Lewis v. Comm'r of Soc. Sec., No. 3:17-cv-370, 2018 WL

4688736, at *5 (W.D. Ky. Sept. 28, 2018) (citing Lashley v. Comm'r of Soc. Sec., 708 F.2d 1048, 1052 (6th Cir. 1983)). However, "an ALJ is not required to order a consultative examination if there is a considerable amount of medical evidence in the record concerning plaintiff's alleged ailments and his resulting functional capability." Al-Saidie v. Comm'r of Soc. Sec., No. 16-10471, 2017 WL 3633126, at *5 (E.D. Mich. Feb 24, 2017). For example, in Robertson v. Comm'r of Soc. Sec., 513 F. App'x 439, 441 (6th Cir. 2013), the Sixth Circuit stated:

> Given the considerable amount of medical evidence in the record concerning Robertson's cardiovascular problems and his resulting functional capability, including test results, physicians' notes, and opinion evidence from multiple physicians, and the lack of any significant inconsistencies in the evidence, the ALJ was not obligated to order a consultative examination with a cardiologist.

Here, in making the RFC finding, the ALJ relied on Anderson's medical records, treatment history, and testimony. (R. 14-18.) The ALJ also relied on the opinions of several medical experts and appropriately weighed the opinions of those experts. Anderson "has not demonstrated that where, as here, the record contains numerous treatment records and medical opinions, the ALJ was required to further develop the record by . . . ordering an additional consultative examination." Roche v. Berryhill, No. 1:17-cv-177, 2017 WL 6512236, at *26 (N.D. Ohio Dec. 12, 2017), adopted by, 2017 WL 6502614 (N.D. Ohio Dec. 19, 2017); see also Foster v. Halter, 279 F.3d 348, 355 (6th Cir. 2001) ("[T]he regulations do not require an ALJ to refer a claimant to a

consultative specialist, but simply grant him the authority to do so if the existing medical sources do not contain sufficient evidence to make a determination." (internal citation and quotation omitted)). Accordingly, the court concludes that the ALJ committed no error by not obtaining further medical evidence.

E. Whether the ALJ Erred by Considering Anderson's Lack of Ongoing Treatment

Finally, Anderson argues that the ALJ erred by "improperly inferr[ing] medical improvement due to lack of ongoing treatment without considering Ms. Anderson's indigence and lack of medical coverage as a basis for less aggressive interventions." (ECF No. 14 at 15.) Anderson supports this argument by claiming that the ALJ erred when he stated:

> Notably, the claimant attended only one follow-up session with Dr. Curlee and is not current[ly] engaged in any ongoing pain management treatment, which suggests her fusion surgery was effective at alleviating her back pain symptoms.

(R. 16.) Anderson only briefly addresses this argument and does not clearly explain how the ALJ's reference to her lack of ongoing treatment creates reversible error. It appears she is arguing that the ALJ improperly discounted her subjective claim of pain because she did not seek consistent treatment from Dr. Curlee.

"Generally, an ALJ may properly discount a claimant's subjective allegations where there is a lack of contemporaneous evidence of the claimant seeking treatment for the impairments he alleges to be disabling." Mackey v. Colvin, No. 3:15-cv-142, 2016

WL 11432141, at *9 (E.D. Tenn. June 7, 2016), adopted by, 2016 WL 6476960 (E.D. Tenn. Nov. 2, 2016), aff'd, 16-6743, 2017 WL 6028679 (6th Cir. Aug. 23, 2017). However, as Anderson argues, Social Security Ruling 96-7p instructs an ALJ to consider why a claimant lacks ongoing treatment and explicitly identifies indigence as a potential ground. See 1996 WL 374186, at *7-8; see also (ECF No. 14 at 15.) The court rejects Anderson's argument as the record lacks any evidence that she "ever sought treatment offered to indigents or was denied medical treatment due to an inability to pay." Moore v. Comm'r of Soc. Sec., No. 14-1123, 2015 WL 1931425, at *3 (W.D. Tenn. Apr. 28, 2015). While Anderson testified that she was unable to see Dr. Curlee for financial reasons, she later testified that she had been seeing another doctor (Dr. Terhune) for her pain. (R. 42-44.)

Moreover, "[i]f an ALJ simply erred in a factual finding, courts are not to second-guess, [a]s long as the ALJ cited substantial, legitimate evidence to support his factual conclusions." Sisco v. Berryhill, No. 2:14-cv-88, 2017 WL 2546332, at *16 (M.D. Tenn. June 13, 2017) (internal citation and quotation omitted). "[H]armless error analysis applies to credibility determinations in the social security disability context." Ulman v. Comm'r of Soc. Sec., 693 F.3d 709, 714 (6th Cir. 2012). While the ALJ mentioned Anderson's lack of consistent treatment with Dr. Curlee, his ultimate credibility findings were not based on

Anderson's treatment history. (R. 16-17.) Specifically, the ALJ stated:

> As for the claimant's credibility, she did undergo surgery for back pain, which certainly suggests that the symptoms were genuine. While that fact would normally weigh the claimant's favor, it is offset by the fact that the record reflects that the surgery was generally successful in relieving the symptoms. In general, the claimant has described daily activities which are not limited to the extent one would expect, given the complaints of disabling symptoms and limitations. Notably, the claimant testifies she is able to lift 20 pounds, walk two miles twice per week, stand for 30 minutes at a time, sit for 45 minutes at a time, and homeschool her minor children, which is quite demanding, both physically and emotionally.

(Id.) In any event, the ALJ's RFC finding and ultimate finding of disability was supported by substantial evidence, which included Anderson's medical records and the opinions of several medical experts. Accordingly, the ALJ did not err by mentioning Anderson's inconsistent treatment with Dr. Curlee.

III. CONCLUSION

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

IT IS SO ORDERED.

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

January 29, 2019
Date