

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

JERROLD EDUARDO STEVENS,

Plaintiff,

v.

OPINION AND ORDER

21-cv-483-wmc

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,

Defendant.

Pro se plaintiff Jerrold Edwardo Stevens seeks judicial review of a final decision denying his claim for disability benefits under the Social Security Act. 42 U.S.C. § 405(g). Specifically, plaintiff claims that remand is warranted because he was improperly denied benefits for taking a trip to Disney World with his family. (Dkt. #15.) For the reasons discussed below, the court finds plaintiff has distorted the importance of this trip to the ALJ's findings and will affirm the denial of benefits.

BACKGROUND¹

A. ALJ Hearing

In applying for disability insurance benefits and supplemental security income in the Spring of 2019, Stevens contended that he has been disabled since April of 2018, at the age of 42, because of numerous impairments, including anxiety, panic attacks, an eating disorder, and post-traumatic stress disorder. When his claim was denied initially and on

¹ The following facts are drawn from the administrative record ("AR"), which is available at dkt. #10.

reconsideration, Stevens then requested a hearing before an administrative law judge (“ALJ”).

On October 5, 2020, Stevens and a vocational expert testified before ALJ Robert Tjapkes. At the hearing, Stevens was represented by counsel and testified that he had previously worked as a sales associate and cashier, before starting to work two days a week operating his own computer repair business. However, Stevens testified that he still experienced anxiety. (AR 45.) After explaining that his mental health treatment consisted of therapy and medication, Stevens further testified that his depression remained serious, and he still suffered several panic attacks every day, requiring him to “shut down” and rest. (AR 47.)

Stevens also testified about his 2019 trip to Disney World with his family through the Make-A-Wish foundation. Despite his anxiety and depression, Stevens felt that he “had to be with [his] family,” especially since the trip was only for “a short period of time.” (AR 48.) During the trip, however, he experienced panic attacks and once had to spend half a day in the hotel room. (AR 49.) After returning from Florida, Stevens also testified that he had to “shut down for over two weeks,” ultimately quitting his full-time job. (AR 48.)

Next, a vocational expert testified in response to a hypothetical question that assuming Stevens had a residual functional capacity (“RFC”) as formulated by the ALJ, he could perform certain jobs including car detailer or porter, packer, and cleaner. However, the expert acknowledged that it would be inconsistent with competitive employment for Stevens: to miss four or more days per month on an ongoing basis; to take two to three,

unscheduled breaks per week lasting up to an hour; to be unfocused for a quarter of the workday due to psychological-based symptoms; or to be irritable towards coworkers and supervisors on a weekly basis.

B. The ALJ's Decision

On March 3, 2021, the ALJ issued a written decision finding that Stevens was not disabled from April 1, 2018, through the date of his decision. (AR 24.) The ALJ also found that Stevens was insured through March 31, 2024, and had not engaged in substantial gainful activity since the alleged onset date. (AR 16.) Next, the ALJ found that Stevens had several severe impairments, including asthma, allergies, obstructive sleep apnea, generalized anxiety disorder, depression, and post-traumatic stress disorder, but that none individually or in combination met or medically equaled the severity of a listed impairment. (AR 17.)

In considering the impact of Stevens' mental impairments in particular, the ALJ found that they produced moderate limitations. For example, although Stevens alleged difficulty with memory, a psychological consultative examination did not show any limitations with thought content, memory, or abstract thinking. (AR 18.) As for alleged difficulties completing tasks and concentrating, the ALJ noted that the consultive examination revealed no limitations, and that Stevens could shop for computer parts for his business, had no difficulty handling finances, and was able to concentrate long enough to work on a computer. (AR 18.) While Stevens alleged difficulty getting along with others, the ALJ noted Stevens' own reported ability to communicate with others, to go on a family trip to Disney World, and while appearing as dysphoric at times, was also able to

be pleasant at other times. (AR 18.) Finally, Stevens reported difficulty completing household chores and having to isolate in his room for two weeks at a time, but acknowledged helping raise his two children, preparing simple meals, and having no difficulties in performing other activities of daily living. (AR 18.)

The ALJ further concluded that Stevens' statements concerning the intensity, persistence and limiting effects of his mental impairments were not entirely consistent with the medical and other record evidence, leaving him with the residual functional capacity to perform medium work with some limitations. (AR 20.) To begin, the ALJ noted that Stevens' June 2018 anxiety screening revealed severe anxiety and his depression screening revealed moderately severe depression, but that a November 2018 psychiatric examination was normal. (AR 20.) And by March of 2019, Stevens also reported working two jobs, which the ALJ found inconsistent with his claim of disability. (AR 20.) Although Stevens continued to suffer bouts of depression and anxiety during 2019, the ALJ again found Stevens' "social functioning" was "not significantly limited" because he was able to go on vacation to Disney World in May of 2019, which Stevens said he enjoyed. (AR 20.) Moreover, Stevens had reported by that time being self-employed and able to communicate with others; plus, his psychological evaluation showed no limitations with thought content memory, fund of knowledge, concentration, or abstract thinking. (AR 20.) Thus, as of July 2020, the ALJ found Stevens displayed normal memory, appropriate mood and affect, and normal insight and judgment. (AR 20.)

Finally, the ALJ found that the medical opinion evidence did not support a finding of disabling mental limitations. In particular, the ALJ credited the opinion of state agency

reviewing psychologist Jason Kocina, Psy.D., as most consistent with the preponderance of evidence, particularly with respect to the findings of Stevens' psychological consultative examination. (AR 21.) Specifically, the ALJ adopted Kocina's opinion that Stevens would have difficulty completing complex tasks of more than two or three steps, as well as being around others, but should be able to get along with supervisors and coworkers with only occasional minor problems. (AR 21.) In turn, because it was inconsistent with the results of the psychological consultation examination, the ALJ did not give weight to the opinion of consulting psychologist Peggy Dennison, Ph.D., who opined that Stevens: (1) would be mildly impaired in his ability to understand, remember and carry out simple instructions; (2) was moderately to markedly impaired in his ability to respond appropriately to supervisors and coworkers and in maintaining concentration, attention, and work pace; and (3) was severely impaired with respect to withstanding routine workplace stressors and adapting to changes in routine. (AR 22.) Similarly, the ALJ did not give weight to the opinion of treating physician assistant Christine Jensen, PA-C, because it appeared to be based solely on Stevens' complaints and not the medical evidence. (AR 22.)

Based on this review of the mental health evidence, the ALJ concluded that Stevens could perform simple work with limited interactions with others, a limited amount of change in the workplace environment, and no fast-paced or production-rate work. The ALJ also accounted for Stevens' physical impairments by limiting him to performing medium exertional work and precluding him from working around atmospheric conditions that could worsen his respiratory impairments. Thus, although finding that Stevens would be unable to perform his past relevant work, the ALJ credited vocational expert Sandra

Steele's opinion that Stevens could make a successful adjustment to other jobs that exist in significant numbers in the national economy, including car detailer/porter, packer, and cleaner. (AR 23-24.) While Stevens sought review of the ALJ's decision, the Appeals Council denied review in June of 2021 and this appeal followed.

OPINION

A federal court's standard of review with respect to a final decision by the Commissioner of Social Security is well-settled. Findings of fact are "conclusive," so long as they are supported by "substantial evidence." 42 U.S.C. § 405(g). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). When reviewing the Commissioner's findings under § 405(g), the court cannot reconsider facts, re-weigh the evidence, decide questions of credibility, or otherwise substitute its own judgment for that of the ALJ. *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000). Where conflicting evidence allows reasonable minds to reach different conclusions about a claimant's disability, the responsibility for the decision also falls on the Commissioner. *Edwards v. Sullivan*, 985 F.2d 334, 336 (7th Cir. 1993). At the same time, the court must conduct a "critical review of the evidence," *id.*, insuring that the ALJ has provided "a logical bridge" between his findings of fact and conclusions of law. *Stephens v. Berryhill*, 888 F.3d 323, 327 (7th Cir. 2018).

In his one-page brief, plaintiff asserts that the severity of his "condition" was not "understood" or "properly viewed" given that he was "judged" for taking a trip to Disney World with his family. (Dkt. #15.) This challenge to the denial of benefits is unfounded

because that trip was not a driver of the ALJ's 11-page decision.² Indeed, the ALJ only references the trip twice in the decision: (1) as other evidence corroborating the results of plaintiff's consultative examination and of his self-reported ability to communicate with others; and (2) in support of his finding that plaintiff's alleged difficulty in getting along with others was a moderate but not disabling limitation on his social functioning. (AR 18, 20.) Moreover, with respect to the latter, although the ALJ found a moderate limitation, he nonetheless credited plaintiff's statements about his difficulty interacting with others by restricting him to only occasionally interacting with coworkers and supervisors.

Nevertheless, plaintiff appears to argue that even though he was able to make the Disney World trip, living with his mental health impairments is still challenging. The court does not minimize that challenge, nor did the ALJ. However, the social security benefits program is concerned with the residual "ability to engage in full-time gainful employment" despite those challenges. *Gentle v. Barnhart*, 430 F.3d 865, 868 (7th Cir. 2005). Plaintiff does not contend with any of the other evidence that the ALJ considered in determining his impairments did not prevent him from performing *all* reasonably available full-time work.

As discussed above, the ALJ considered plaintiff's physical and mental health conditions, in combination with his obesity and medical examination of his respiratory and mental limitations. The ALJ also considered plaintiff's work history, including plaintiff's report in March of 2019 that he was working two jobs and plaintiff's activities of daily life.

² Defendant argues that plaintiff's challenge is so underdeveloped that he has waived it. (Dkt. #17 at 2-3.) However, plaintiff's argument with respect to the importance of that trip is sufficient to address its merits.

For example, the ALJ noted that plaintiff had some difficulty completing household chores, but was able to handle his finances, shop for computer parts online for his business, work on computers, help raise his two children, and prepare simple meals. The ALJ also reviewed medical opinion evidence, explaining why he found each opinion persuasive or not. Finally, the ALJ accounted for plaintiff's mental and physical challenges by placing limitations on the kinds of work he could still perform.

In sum, plaintiff was not "judged" solely or even primarily based on his participating in a family trip to Disney World; that was just one piece of record evidence reviewed by the ALJ. (Dkt. #15.) Plaintiff may disagree with how the ALJ weighed all the evidence, but he has not shown that his decision was unsupported by substantial evidence or identified any reversible error in the ALJ's decision or handling of plaintiff's claim. Accordingly, the court will affirm the Commissioner's decision.

ORDER

IT IS ORDERED that:

- 1) The decision of defendant Kilolo Kijakazi, Acting Commissioner of Social Security, denying plaintiff Jerrold Edwardo Stevens' application for disability insurance benefits is AFFIRMED.
- 2) The clerk's office is directed to enter judgment in defendant's favor and close this case.

Entered this 20th day of September, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge