

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

MARJORIE H. HOFSLIEN,

Plaintiff,

v.

MEMORANDUM AND ORDER

JO ANNE BARNHARDT,
Commissioner of Social Security,

04-C-822-S

Defendant.

Plaintiff Marjorie Hofslieen brings this action pursuant to 42 U.S.C. § 405(g) for review of the defendant Commissioner's final decision denying her Disability Insurance Benefits (DIB). She asks the Court to reverse the decision or to remand it for further proceedings.

Plaintiff filed an application for DIB on March 15, 2002 alleging disability since April 25, 2001 due to depression, high blood pressure and right hip and shoulder injuries. Her application was denied initially and upon reconsideration. A hearing was held on August 5, 2003 before Administrative Law Judge (ALJ) Mary M. Kunz. In a written decision dated December 16, 2003 the ALJ found plaintiff not disabled. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied plaintiff's request for review on September 10, 2004.

FACTS

Plaintiff Marjorie H. Hofslieen was 52 years old at the time of the hearing. Plaintiff has a college education and previously worked as an elementary school teacher.

Plaintiff was seen by Dr. Robert Peck, a psychiatrist, on July 16 and 17, 2001. She complained of feeling tired with low energy. In August Dr. Peck increased plaintiff's Zoloft noting plaintiff was under a high amount of stress and was depressed and anxious. Dr. Peck diagnosed plaintiff with chronic depression.

In October 2001 Dr. Peck discontinued plaintiff's Zoloft and prescribed Celexa. In December 2001 Dr. Peck discontinued Celexa and prescribed Prozac.

Dr. Peck referred plaintiff to Dr. Tuenis Zontag for a work evaluation. Dr. Zontag examined plaintiff on September 11, 2001 and diagnosed her with adult adjustment reaction secondary to family crisis with major depression. He concluded that she was temporarily totally disabled.

Dr. Zontag saw plaintiff again on November 13, 2001 and concluded she had slight improvement with major affective disorder. When Dr. Zontag saw plaintiff in December 2001 he concluded she was not ready to return to work.

Dr. Peck referred plaintiff to Dr. Dale Thomas in January 2002 noting continued problems in the areas of concentration and focus. Dr. Thomas concluded after neuropsychological testing on plaintiff

that she was within normal limits without any significant impairments.

Dr. Peck met monthly with plaintiff in 2002. In March 2002 he prescribed Wellbutrin for her. In July 2002 Dr. Peck noted that she was showing some improvement. In August 2002 he noted her medications were working and diagnosed her with recurrent depression with some improvement.

By April 22, 2003 Dr. Peck felt plaintiff's symptoms of depression were in partial remission. In July 2003 Dr. Peck concluded plaintiff's depression rendered her permanently disabled. He assessed plaintiff's functional abilities as poor with the exception for use of judgment, ability to function independently, ability to understand, carry out and remember simple job instructions as fair. He concluded that she became easily overwhelmed, stressed and depressed which results in concentration and memory problems.

In 2001 plaintiff commenced counseling sessions with Scott Phillips, M.S. He noted that plaintiff suffered depression which improved with medication and treatment.

In May 2002 Dr. Rattan, a state agency psychologist, reviewed the record evidence and concluded plaintiff could perform unskilled work. He concluded that she had moderate difficulties in maintaining concentration, persistence or pace.

On July 12, 2002 plaintiff was seen by Dr. William Weggel for a second opinion on her disability claim with the school district. He diagnosed her with recurrent depressive disorder, probably chronic with stressors of disorganized thinking and severe interpersonal and occupational stressors. He completed a Mental Residual Functional Capacities Form indicating her functioning in all areas was poor except that her ability to maintain her personal appearance was fair. Dr. Weggel concluded plaintiff was disabled from her work as a teacher. Dr. Weggel reported that plaintiff had a Global Assessment of Functioning scale score of 54 which indicates moderate symptoms.

In October 2002 Dr. Keith E. Bauer, a state agency psychologist, reviewed the record evidence. He concluded that plaintiff was able to perform unskilled work.

Plaintiff is able to drive as needed. She is able to take care of herself and perform household chores.

At the August 5, 2003 hearing before the ALJ plaintiff appeared with her representative, Patricia Bushaw, and testified that she had trouble being organized and focused. She testified that she was overwhelmed by the simplest things, had sleep difficulties, could not complete tasks and had almost daily panic attacks. She described the side effects of her medications as lack of coordination, tremors, digestive problems, decreased appetite and forgetfulness.

Dr. Paul Caillier, a medical expert, testified at the hearing that plaintiff had major depressive disorder, anxiety which he believed was a component of the depressive process and a cognitive disorder. He testified that in a work setting plaintiff should have minimal contact with the public and supervisors, not more than normal production demands and that she could perform simple, repetitive work with not more than two-step directions.

Mitchell Norman, a vocational expert, was present at the hearing and had reviewed the record. The ALJ asked the expert whether an individual with the claimant's age, education, work experience and residual functional capacity could perform any jobs in the regional economy. The ALJ noted that plaintiff had the residual functional capacity to perform simple, repetitive work, with minimal contact with public, supervisors and coworkers and normal production demands. The expert testified that plaintiff could perform work as a housekeeper, hospital cleaner or kitchen helper which numbered approximately 57,000 in the regional economy. When asked to respond to limitations of at least one absence a week or an inability to complete tasks, the expert testified there would be no competitive work that such an individual could perform.

In her December 16, 2003 written decision the ALJ concluded that plaintiff had severe impairments of depressive disorder, an obsessive compulsive disorder and a cognitive disorder with small vessel ischemic changes in the brain. She found that plaintiff had

moderate limitations in the activities of daily living, social functioning and concentration, persistence and pace with no episodes of decompensation. She concluded plaintiff retained the residual functional capacity to perform simple repetitive work involving no more than two step instructions, no more than minimal contact with the public, supervisors, coworkers and no more than normal production standards. The ALJ found plaintiff's testimony of her limitations not wholly credible. She also found that Dr. Peck or Dr. Weggel's conclusions that plaintiff had a more than moderate level of difficulty in maintaining concentration, persistence or pace were not supported by Dr. Peck's treatment notes or any objective testing by Dr. Weggel.

Based on the vocational expert's testimony the ALJ found plaintiff to be not disabled because although she could not perform her past relevant work she could perform work as a housekeeper, hospital cleaner and kitchen helper available in significant numbers in the national economy.

The ALJ made the following findings:

1. The claimant has earned sufficient quarters of coverage to meet the disability insured status requirements of the Act at all time from her alleged onset date of April 25, 2001, through the date of this decision. (20 CFR 404.130).
2. The claimant has not engaged in substantial gainful activity since April 25, 2001. (20 CFR 404.1520(b)).

3. The claimant is severely impaired, as defined in the regulations, by a major depressive disorder, an obsessive-compulsive anxiety disorder, and a cognitive disorder with small vessel ischemic changes in the brain. (20CFR 404.1520(c)).

4. The claimant does not have an impairment or combination of impairments that meets or is medically equal to an impairment found in the Listing of Impairments at 20 C.F.R. Subpart P Appendix 1 of Regulations No. 4. (20 CFR 404.1520(d)).

5. The claimant has the residual functional capacity for simple, repetitive work involving no more than two step directions, no more than minimal contact with the public, supervisors or coworkers and no more than normal production standards, that is should not involve assembly line work or work production pressures. (20 CFR 404.1545) (sic).

6. The claimant's testimony regarding her inability to work is not wholly credible due to significant inconsistencies in the record as a whole. (20 CFR 404.1529(c), SSR 96-7p).

7. The claimant has past relevant work as an elementary school teacher. (20 CFR 404.1565).

8. The claimant is unable to perform her past relevant work, either as she actually performed it or as it is customarily performed in the national economy, as it is beyond her residual functional capacity. (20 CFR 404.1520(e)).

9. The claimant is 53 years old and considered to be closely approaching advanced age under the regulations at all times relevant to this decision. (20 CFR 404.1563).

10. The claimant has more than a high school education. (20 CFR 404.1564).

11. As her residual functional capacity effectively limits her to unskilled work,

there is no issue of transferable skills in this case. (20 CFR 404.1568).

12. Considering the claimant's residual functional capacity, age, education and relevant work history, she is able to perform work which exists in significant numbers in the national economy, including housekeeper, hospital cleaner and kitchen helper. (20 CFR 404.1566).

13. The claimant was not under a disability as defined in the Social Security Act at any time on or before the date of this decision. (20 CFR 404.1520(f)).

OPINION

This Court must determine whether the decision of the Commissioner that plaintiff was not disabled is based on substantial evidence pursuant to 42 U.S.C. § 405(g). See Arbogast v. Bowen, 860 F.2d 1400, 1402-1403 (7th Cir. 1988). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

Disability determinations are made pursuant to a five-step sequential evaluation procedure. 20 CFR § 404.1520(a)-(f). First, the claimant must not be performing substantial gainful activity. Second, the claimant must have a severe, medically determinable impairment. Third, a claimant will be found disabled if his or her impairment is equal in severity to a listed impairment in 20 C.F.R. Subpart P, Appendix 1. Fourth, if the claimant does not meet the third test, he/she must not be able to perform his/her past work.

Fifth, if the claimant cannot perform his/her past work, he or she must not be able to perform any existing jobs available in the national economy given his or her educational background, vocational history and residual functional capacity.

The ALJ found that plaintiff had severe impairments of depressive disorder, an obsessive compulsive disorder and a cognitive disorder with small vessel ischemic changes in the brain. She found that plaintiff retained the residual functional capacity to perform simple repetitive work involving no more than two step instructions, no more than minimal contact with the public, supervisors, coworkers and no more than normal production standards. Based on the vocational expert's testimony the ALJ found plaintiff to be not disabled because although she could not perform her past relevant work she could perform work as a housekeeper, hospital cleaner and kitchen helper available in significant numbers in the national economy.

Plaintiff claims that defendant erred in her consideration of Dr. Peck's opinion. In order to be entitled to controlling weight, a medical opinion must be rendered by a treating source, be well supported by medically acceptable clinical and laboratory diagnostic techniques and not inconsistent with other substantial evidence in the record. See 20 C.F.R. §404.1527(d)(2), Social Security Ruling 96-2p. The opinion that an individual is disabled

is not entitled to any significant weight because that decision is expressly reserved for the Commissioner. 20 C.F.R. 404.1527(e)(1).

The ALJ discussed Dr. Peck's assessment that plaintiff had more than a moderate difficulty maintaining concentration, persistence and pace and found it was not entitled to significant weight because it was not supported by his own treatment notes or consistent with the other substantial evidence in the record. Such evidence includes neuropsychological testing performed by Dr. Thomas which was normal, two assessments that plaintiff could perform unskilled work and the medical expert's testimony. The ALJ correctly disregarded Dr. Peck's opinion that plaintiff had extreme functional limitations and was unable to work because it was not supported by his own treatment notes and was inconsistent with other substantial evidence in the record.

Plaintiff contends that the ALJ erred in determining plaintiff's residual functional capacity because she did not properly assess her mental functional limitations pursuant to 20 C.F.R. § 404.1520a. The ALJ addressed the "B" criteria including activities of daily living, maintaining social functioning, difficulties in maintaining concentration, persistence or pace and periods of decompensation and found only moderate limitations. Based on these moderate limitations the ALJ correctly determined that plaintiff had the ability to perform simple repetitive work involving no more than two step instructions, no more than minimal

contact with the public, supervisors, coworkers and no more than normal production standards.

Plaintiff claims that the ALJ erred in her assessment of plaintiff's credibility. The ALJ's credibility decision must be upheld unless it is "patently wrong." Powers v. Apfel, 207 F.3d 421, 435 (7th Cir. 2000). In her decision the ALJ specifically addressed plaintiff's subjective complaints under Social Security Ruling 96-7p and 20 C.F.R. 404.1529(c). The ALJ concluded that plaintiff's subjective complaints were not fully credible because of significant inconsistencies in the record as a whole. The evidence does not support limitation beyond the extent of the residual functional capacity found by the ALJ. This finding is consistent with the law. Donohue v. Barnhardt, 279 F.3d 441 (7th Cir. 2002). An examination of the record supports the ALJ's conclusion that plaintiff's testimony was not credible.

There is substantial evidence to support the Commissioner's finding that plaintiff was not disabled because she can perform jobs existing in the national economy. Accordingly, the Commissioner's decision will be affirmed.

ORDER

IT IS ORDERED that plaintiff's motion to reverse the decision of the Commissioner is DENIED.

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IT IS FURTHER ORDERED that the decision of the defendant Commissioner denying plaintiff disability insurance benefits and supplemental security income is AFFIRMED.

Entered this 13th day of April, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge