

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

JENNIFER MEYERS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

13-cv-258-bbc

Plaintiff Jennifer Meyers is seeking judicial review of a decision denying her application for disability insurance benefits and supplemental security income under the Social Security Act. 42 U.S.C. § 405(g). The administrative law judge who decided the case concluded that plaintiff had severe impairments but that none of them prevented her from continuing to perform the kind of work she had performed in the past, which was simple, routine, repetitive light work in a low-stress environment that did not involve piecework or production-line type work, allowed her to be off task for up to ten percent of the workday in addition to regularly scheduled breaks and had certain physical limitations, such as no crouching and no climbing.

Plaintiff contends that the administrative law judge erred in not giving greater weight to the opinions of the persons who concluded that plaintiff's mental impairments prevented her from working and in assessing plaintiff's credibility. I find that the administrative law

judge gave a persuasive and well supported explanation for his decision. I find also that substantial evidence in the record supported his determination of plaintiff's credibility.

This is not a close case. Plaintiff worked successfully for seven to nine years before she had a baby in 2008. She has impairments in mental functioning, both cognitively and emotionally, but no doctor has identified any worsening of any impairment since 2008; in fact, her treating psychiatrist found that plaintiff had improved since then with medication to treat her obsessive compulsive disorder and her depression. Accordingly, I am affirming the administrative law judge's decision.

The following facts are drawn from the administrative record (AR).

RECORD FACTS

Plaintiff Jennifer Meyers was born on November 2, 1982 and was 25 on August 1, 2008, her alleged onset date. She has serious cognitive deficits but was able to earn a high school equivalency degree. In addition, she has seven to nine years of full time work experience as a customer service representative at The Company Store and also as a fast food worker at Taco Bell where she worked for a number of years before August 2008. According to her own reports, she got along well with her supervisors and coworkers in both jobs and received no complaints about the quality of her work.

Plaintiff became pregnant in 2008 and quit her job at Taco Bell in early August, about two months before her baby was born. At her October 4, 2011 hearing before the administrative law judge, she testified that she quit because her work was becoming too

stressful and her depression was worsening. AR 50-51. However in August 2009, she told the psychologist evaluating her in connection with her application for social security benefits that she and her boyfriend had decided she should stay home to care for the new baby. AR 286.

The record shows that plaintiff first complained to a doctor about her depression in March 2009 and was started on Bupropion. AR 306. She saw Dr. Annell E. Adams on July 27, 2009 for a psychiatric evaluation. She told Adams she had had depression “for years” and described mood problems she had been experiencing since she had been home with her baby, such as crying spells, emotional sensitivity and poor sleep patterns. AR 372. She told Adams about her compulsion to keep her house perfectly clean, her laundry folded in a specific manner and her closets organized by color.

Adams found plaintiff to be pleasant, well groomed, with a bright affect and “circumstantial thought process.” AR 373. (“Circumstantiality refers to a disturbance in the thought process in which one gives an excessive amount of detail (circumstances) that is often tangential, elaborate, and irrelevant, to avoid making a direct statement or answer to a question.” Stedman’s Medical Dictionary, 383 (28th ed.)) She noted that plaintiff denied any suicidal ideation and any thoughts of doing harm to others, that she had some auditory hallucinations, poor insight and judgment and below average cognition. AR 374. Adams recommended additional psychotherapy and counseling for plaintiff and started her on a prescription of Abilify. Id.

Adams saw plaintiff three more times before November 2009 and continued to note

that plaintiff was cooperative, pleasant and friendly, with normal speech, good mood and bright affect. AR 370, 366. In September 2009, Adams reported that plaintiff was tolerating Abilify well. AR 366. The following month, Adams increased plaintiff's dosage of the drug and encouraged her to accept a referral for psychotherapy. AR 461. She also noted that she had turned down plaintiff's request in August for an excuse from her commitment to do the volunteer work required of tenants in subsidized housing, AR 460, because she believed it would be would be an excellent opportunity for plaintiff to get out of the house and socialize. AR 461.

In completing a questionnaire from the Social Security Administration in November 2009, Adams estimated plaintiff's IQ as 74. AR 437. Assessing plaintiff's ability to understand, carry out and remember instructions or respond appropriately to coworkers and supervisors and routine work pressures and changes in a work setting, she found plaintiff's ability to be "poor." Id. In the same month, Adams wrote in a progress note that plaintiff had very mild psychotic symptoms, which had responded well to Abilify, and that she had been cooperative and pleasant "as usual," but she had not taken advantage of Adams's offer to refer her to psychotherapy. AR 439.

Plaintiff did not return to see Adams for about six months. When she did, she reported an increase in her depression, but she told Adams that her boyfriend had left her, her cousin had committed suicide and her grandfather had died. AR 498. She remained pleasant and cooperative; her speech was normal; her eye contact was good; and she reported no visual hallucinations. Id. Plaintiff saw Adams again in June 2010; they discussed

medication and plaintiff agreed to testing in preparation for plaintiff's starting Depakote ER again. AR 500.

Nine months later, on March 1, 2011, plaintiff saw Adams to ask for a letter in support of her disability claim. AR 549. Plaintiff had decided not to resume the Depakote ER, but was continuing to take Abilify, along with clonazepam and citalopram. Her mood fluctuations had improved but she continued to struggle with impulse control. Id. Adams worked with plaintiff on a letter to support her disability claim, stating that she believed that, "intellectually, [plaintiff] is functioning at an eleven to twelve year old range. Because of this, supporting herself economically is not possible." AR 543. Adams also noted that plaintiff had been compliant with her medications and found them helpful for her schizoaffective disorder, obsessive compulsive disorder symptoms and her poor impulse control. Id.

According to plaintiff, Dr. Adams also filled out a questionnaire sometime after March 25, 2011 that had been sent to her by plaintiff's counsel. (It is impossible to tell from the copy of the questionnaire in the record who filled it out, but I will accept plaintiff's assertion.) In answering the questionnaire, Adams checked "yes" in response to questions asking whether plaintiff would have a marked limitation or would be unable to meet competitive standards with regard to (1) understanding, following and carrying out simple instructions; (2) maintaining attention for a minimum of two hours; (3) getting along with supervisors and coworkers; and (4) dealing with work stress and managing her own finances. She answered "no" to questions whether plaintiff would have trouble maintaining regular

attendance and completing a normal workday without interruptions. AR 544-45. She estimated plaintiff's IQ as 74.

Stephen Porter, a psychologist, evaluated plaintiff in 2009, assessing her in the borderline to mild ranges of mental retardation. AR 284-87. He speculated that plaintiff's success in her employment settings was attributable to her having "had some very supportive supervisors." AR 287.

On October 29, 2009, psychologist Rebecca Angle undertook a psychological evaluation of plaintiff for the Social Security Administration. AR 398-401. Plaintiff complained of sleep disturbances and periods of sadness lasting up to two hours. She said she thought she was bipolar and had obsessive compulsive disorder because she was compelled to keep her house clean and her closet arranged in a certain way. She told Angle she had never been hospitalized for any psychological problems or participated in counseling. Id. She said she had worked at Taco Bell "on and off" for nine years and had gotten along with her supervisors and coworkers and had received no complaints about the quality or pace of her work. AR 399. She was friendly and cooperative, made appropriate eye contact with Angle and her speech content and quality seemed normal. Id. Although plaintiff reported her mood on a day to day basis as bad, angry and sad, Angle noted that she displayed a euthymic affect and a sense of humor at the evaluation. Id. Plaintiff told Angle she felt some sadness and had sleep disturbances; she described seeing her sister and friends almost daily and getting along well with them; and she said she could maintain her concentration for up to two hours. AR 400. Angle thought plaintiff met the criteria for anxiety, mood and

psychotic disorders, but her symptoms seemed well controlled with medication. AR 401. As for work capacity, she believed plaintiff would have the ability to understand, remember and carry out simple instructions; she did not appear to have difficulty getting along with other people; and she could maintain her concentration for at least two hours at a time. She noted, however, that plaintiff did not seem particularly motivated to work. Id.

Two agency psychologists performed record reviews of plaintiff's psychiatric condition. Eric Edelman, Ph. D., filed a report in November 2009, in which he concluded that plaintiff had two disturbances of mood (depressive syndrome and manic syndrome), AR 407, as well as borderline intellectual functioning, AR 408, and an anxiety-related disorder (recurrent obsessions or compulsions), AR 409. In his opinion, plaintiff would have moderate restriction of activities of daily living, but only mild difficulties in maintaining social functioning or concentration, persistence and pace and no episodes of decompensation of extended duration. AR 414. He noted that although plaintiff had said she was unable to maintain concentration to carry out tasks, her statement was not supported by her reports of her ability to perform chores for extended periods of time and her lengthy work history, which had required no special accommodations. AR 416. He believed that plaintiff would be able to work, despite her borderline intellectual functioning, so long as she was given simple, concrete instructions. AR 420. Edelman dismissed Dr. Adams's statement that plaintiff would be unable to maintain employment, because it was not supported and because Adams did not respond to a followup inquiry from the Social Security Administration. Id. He noted that Dr. Angle, the examining psychologist, had found that

plaintiff could understand, remember and carry out simple instructions, maintain attention, get along with others and tolerate routine stressors. Id.

On February 15, 2010, state agency psychologist Michael Mandli reviewed Dr. Edelman's November 9, 2009 opinions, AR 404-29, and "affirmed [them] as written." AR 483.

In 2010, plaintiff saw Kristine Brink, a nurse practitioner, for about five sessions. In September 2010, plaintiff told Brink she had had auditory hallucinations and mood instability with obsessive compulsive symptoms for as long as she could remember. AR 495. She reported that her overall mood had been fairly stable; she was sleeping well; and she had no periods of euphoria or irritability, depression or suicidal ideation. Id. She continued to take Abilify and clonazepam. In October, plaintiff reported a lessening of her anxiety after restarting citalopram. AR 501. In December 2010, she told Brink she was doing well and that her mood was stable. AR 537. Brink found plaintiff alert, oriented, cooperative and maintaining good eye contact. Id.

An economic support specialist, Joan Halverson, reported on October 7, 2010 that she had worked with plaintiff in an effort to find employment for her but the effort had been unsuccessful. AR 276. She wrote in her report that she had received a "completed Medical Examination and Capacity Assessment from [plaintiff's] physician that affirms my assessment" that plaintiff was unable to obtain employment or participate in the state program, Wisconsin Works, because of her diagnosis and her "ongoing mental health challenges." Id. (Presumably, this assessment came from Dr. Adams, the only physician

treating plaintiff for her mental health disorders.)

Plaintiff had a hearing before an administrative law judge on October 4, 2011. Following the hearing, the administrative law judge issued a decision, denying plaintiff's application for benefits.

OPINION

In reviewing an adverse ruling by the Commissioner, this court's task is a limited one: to determine whether the administrative law judge's opinion is supported by "substantial evidence" and based on the proper legal criteria. Scheck v. Barnhart, 357 F.3d 697, 699 (7th Cir. 2004). To meet the substantial evidence test, the administrative law judge must address the significant and material evidence and explain how the evidence applies to his decision; in other words, he must "build an accurate and logical bridge from the evidence to his conclusion." Clifford v. Apfel, 227 F.3d 863, 872 (7th Cir. 2000).

Plaintiff argues that the administrative law judge failed to address the evidence properly, starting with his failure to give controlling weight to Dr. Adams, who was plaintiff's treating physician. (I note that plaintiff has never contended that any physical impairment, including her obesity, prevents her from working. Her claim is limited to her allegations of mental impairments, including her borderline intellectual functioning. She has some physical problems but the administrative law judge took them into account in limiting her to light work with special postural limitations.)

1. Treating sources

Under the Social Security regulations, 20 C.F.R. § 404.1527(c)(2), the opinions of treating physicians are to receive controlling weight, but only if their opinions are “well-supported by medically acceptable clinical and laboratory diagnostic techniques” and “not inconsistent with the other substantial evidence in [the] case record.” The administrative law judge provided a thorough and persuasive explanation of his decision to give little weight to the opinions of Dr. Adams in her March 1, 2011 letter to the Social Security Administration. First, plaintiff’s long history of successful employment and her own reports of getting along with supervisors and coworkers contradicted Adams’s opinions that plaintiff’s borderline intellectual functioning would prevent her from supporting herself. Second, Adams’s opinion about plaintiff’s mental impairments was hard to square with plaintiff’s ability to obtain a GED, maintain full time employment for many years and independently care for her child. Third, Adams failed to say anything in her March 1, 2011 letter to the Social Security Administration about her observations of the significant reduction in symptoms associated with plaintiff’s other mental impairments when plaintiff had appropriate medication.

In an effort to show that her inability to work is attributable to problems she had not experienced when she was working, plaintiff argues that Adams’s opinion in her March 1, 2011 letter that plaintiff could not support herself economically can be read as based upon plaintiff’s psychosis, rather than her cognitive limitations, and reveals a worsening of her psychological problems. This argument has no support in the letter itself or in the record.

The administrative law judge pointed this out when he wrote that “the record reflects that treatment has been effective in significantly reducing the symptoms associated with the claimant’s other mental impairments.” AR 23 (citing AR 543, Exh. 8F).

In addition, plaintiff takes issue with the administrative law judge’s use of plaintiff’s past work history as evidence that plaintiff was capable of working. She argues that her work experience predated her alleged onset date of August 2008. This objection would be relevant if plaintiff had shown that she sustained an injury or developed an illness at that time or that her symptoms had worsened since she stopped working, but nothing in the record suggests that anything of this kind occurred. To the contrary, in her sessions with both Dr. Adams and Kristine Brink, plaintiff talked about her long history of depression and never suggested that her obsessive behavior and auditory hallucinations were new phenomena. Moreover, plaintiff told both Adams and Brink that the medication Adams had prescribed had helped ease all of these conditions.

2. Evaluating sources

In the Social Security Administration’s ranking of sources, doctors who examine or evaluate a claimant come in second to doctors who treat a claimant. Plaintiff was evaluated by Dr. Angle and Dr. Porter. The administrative law judge gave weight to Angle’s report because Angle had been able to evaluate plaintiff personally and her mental health diagnoses were generally consistent with the severe impairments the administrative law judge had determined (affective disorder, borderline intellectual functioning, schizoaffective disorder,

impulse control disorder, obsessive compulsive disorder and morbid obesity). He found that the overall medical evidence supported Angle's conclusions that plaintiff had a global assessment of functioning score of 60, which indicated moderate symptoms or moderate difficulty in social or occupational functioning, and that plaintiff would be able to understand, remember and carry out simple instructions and would have no difficulty maintaining attention for two hours and getting along with others. However, he found that plaintiff had additional mental limitations that Angle had not assessed.

The administrative law judge explained why he gave little weight to the opinions of Dr. Porter, a psychologist who evaluated plaintiff in 2009 to provide documentation of her disability status or to help her develop a strategy to allow her to return to the workforce. AR 294, 286. Porter met with plaintiff on only two occasions as part of a neuropsychiatric examination and never provided any additional treatment or assessment. The administrative law judge found that Porter's conclusions were not supported by the record or by plaintiff's own statements. Porter found plaintiff incapable of working because she could not maintain attention for two hours, when plaintiff has reported that she did have the ability to concentrate for two hours, and he failed to take into consideration her actual work history showing she was capable of full time, substantial gainful activity. Plaintiff argues that the administrative law judge should have given consideration to Porter's demonstrated functional illiteracy and her lack of ability to handle many of the demands of independent living, as well as to read, write and calculate, but this argument runs up against plaintiff's demonstrated capacity to work full time in her jobs at Taco Bell and The Company Store.

3. Agency consultants

Plaintiff takes issue with the administrative law judge's decision to give great weight to the opinions of the state agency psychological consultants, arguing that they deserve the least weight because they are non-treating and non-examining sources and that the administrative law judge failed to explain why it was proper to place weight on their opinion. Plaintiff cites a number of decisions in which courts have held that state agency opinions are insufficient in themselves for a determination of residual functional capacity, including Gudgel v. Barnhart, 345 F.3d 467, 470 (7th Cir. 2003), in which the court of appeals held that the contradictory opinion of a non-examining physician was not enough by itself to support the administrative law judge's rejection of the opinion of an examining physician.

Had the consultants' reports been the only evidence on which the administrative law judge had relied, plaintiff might have a point. However, he had considerably more evidence, starting with plaintiff's demonstrated ability to hold a job for a number of years, Adams's reports that plaintiff's mental symptoms improved with medication and Brink's opinion that plaintiff could maintain attention for two hours at a time, understand, remember and carry out simple instructions and care for her baby independently. In addition, the administrative law judge explained that the agency doctors had the opportunity to review a substantial portion of the relevant medical evidence; they had special expertise in assessing mental impairments under Social Security regulations; and their opinions were consistent with the mental health treatment documentation, mental status examination findings and plaintiff's overall functional capabilities that he had noted through out his opinion. This evidence is

more than sufficient to support the administrative law judge's rejection of Dr. Adams's March 1, 2011 letter and her answers to counsel's questionnaire.

Moreover, the administrative law judge found that the agency consultants had overestimated plaintiff's ability in one area: maintaining concentration, persistence and pace. In his opinion, she had moderate limitations in this area, rather than the mild limitations assessed by the agency doctors. This change was to plaintiff's benefit.

4. Non-acceptable sources

The administrative law judge gave some weight to the opinions of Kristine Brink, even though she is categorized as not an "acceptable medical source," because she is a nurse practitioner and not a medical doctor. 20 C.F.R. § 404.1513 (listing acceptable medical sources). Plaintiff does not object to his taking Brink's opinions into consideration, but argues that he should have given weight to Brink's opinions about plaintiff's ability to work, such as that plaintiff would have not useful ability to sustain an ordinary routine without special supervision, work in coordination with others, complete an ordinary work day or accept instructions from supervisors. He gave little weight to her opinion that plaintiff had marked limitations in maintaining social functioning, that she could work only one hour a week or that she could not work without supervision, interact appropriately with supervisors and coworkers, adapt to change, deal with stress or maintain pace because he did not believe that these significant limitations were supported by the medical evidence and by plaintiff's ability to function on a daily basis. He also found them inconsistent with the opinions of

the medical sources to which he had given weight. Plaintiff assails this reasoning, saying that the administrative law judge did nothing more than accept those limitations found by Brink that were favorable to his finding while rejecting those that would have been favorable to plaintiff. This criticism is unfounded. The record contains ample evidence noted by the administrative law judge to support his statements that the limitations were not supported by the medical evidence or by plaintiff's ability to function on a daily basis.

The administrative law judge did give weight to Brink's reports of mental health diagnoses consistent with the severe impairments that the administrative law judge had found and to her global assessment of functioning score of 55, which represents moderate symptoms or moderate difficulties in social or occupational functioning. He also gave weight to Brink's opinions that plaintiff had no limitation in performing daily activities but had moderate limitations in maintaining concentration, persistence and pace, a good ability to interact with the public, maintain attention for two hours and understand, remember and carry out simple instructions.

Plaintiff challenges the administrative law judge's failure to mention Joan Halverson's report of her unsuccessful efforts to help plaintiff find work, but this omission does not undermine his conclusion. He explained why he did not give weight to Dr. Adams, so it was not necessary for him to explain why he doubted Halverson's opinion, which was based on Adams's opinion.

In summary, I conclude that the administrative law judge did not err in finding that plaintiff was unable to perform the kind of substantial gainful activity she had performed in

the past.

ORDER

IT IS ORDERED that plaintiff Jennifer Meyers's motion for summary judgment, dkt. #17, is DENIED. The clerk of court is directed to enter judgment for defendant Carolyn W. Colvin, Acting Commissioner of the Social Security Administration, and close this case.

Entered this 24th day of April, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge