

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

BRENDA WOOD,

Plaintiff,

OPINION AND ORDER

v.

14-cv-713-wmc

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,

Defendant.

Plaintiff Brenda Wood seeks judicial review under 42 U.S.C. § 405(g) of a final decision of defendant Carolyn W. Colvin, the Acting Commissioner of Social Security, denying her application for Social Security Disability Insurance Benefits. On May 27, 2016, the court heard oral argument regarding plaintiff's primary contention that the administrative law judge ("ALJ") failed to consider whether Wood's obesity medically equaled the requirements in Listing 1.02A (major dysfunction of a joint), as obligated by Social Security Ruling ("SSR") 02-1P, *Evaluation of Obesity*. Although the ALJ could have provided a more detailed step three analysis, the court finds that he nevertheless met his obligation under SSR 02-1P by adequately considering Wood's obesity in deciding whether her impairments were equivalent in severity to the criteria in Listing 1.02A.

BACKGROUND

Wood claims a disability onset date of January 1, 2011, because of pain in both of her knees. She was 49 years old at that time and 50 years old when she applied for benefits. Wood is a high school graduate with 20 years of past work experience as a "picker" for Lands' End, a retail clothing company.¹ She has not worked since 2009.

¹ According to Wood, a "picker" removed merchandise from shelves in the warehouse, puts the items on a cart and unloads them on a conveyor belt to be sent to packing.

Wood first experienced knee pain after twisting her left knee while getting out of bed in early 2011. At that time, she was diagnosed with bursitis, for which she received Naproxen. Later, she was prescribed Doloboid. (AR 241, 268-69.) X-rays taken on March 9, 2011 showed “mild to moderate degenerative changes with medial compartment joint space narrowing” in her left knee. (AR 243.)

On June 14, 2011, Wood reported to a provider at a free clinic that she has the most pain with weight bearing activity. (AR 301.) However, by August 11, 2011, progress notes from the clinic indicates that Wood was “substantially improving.” (AR 254.) X-rays taken on September 12, 2011, showed “very small effusion and osteophytosis and mild varus angulation with moderate medial compartment joint space narrowing.” (AR 331.)

On November 16, 2011, Wood’s physician, Dr. Self, completed a questionnaire that limited Wood to lifting and carrying 20 pounds occasionally and 10 pounds frequently; standing and walking 4hrs a day; walking around for 5 minutes every hour; changing positions every hour while sitting and every 30 minutes while standing; and occasional stair climbing. (AR 272-74.) The medical record also contains an RFC form completed on December 13, 2011 by state agency physician Pat Chan, M.D., who also limited Wood to lifting and carrying 20 pounds occasionally and 10 pounds frequently; standing and walking four hours a day; and frequent stair climbing and kneeling. Based on his review of the medical record, Chan concluded that Wood capable of light work with normal breaks to change positions. (AR 276-82.)

On February 16, 2012, Wood visited a free clinic for continued knee pain, for which she reported taking Celebrex and Tylenol. (AR 296.) On March 8, 2012, she

reported to Dr. David Zeman that she had been having pain in both knees for about a year with no relief from cortisone injections, ibuprofen, or Naprosyn. Wood also reported that Celebrex and Tylenol helped only a little bit. Dr. Zeman's physical examination of Wood reflects that she walked with a normal gait. He also notes that knee replacement surgery is not a good option for Wood given her weight and young age, and given that cortisone may put cartilage at greater risk with multiple injections. (AR 308.)

Wood visited the free clinic again on April 17, 2012, reporting that her pain had improved. (AR 323.) She also visited the free clinic on five other occasions in 2012 for other health concerns, but the progress notes from those visits did not mention her knee pain. (AR 321-22.)

On March 12, 2013, Wood saw Dr. Aaron Dunn at the free clinic. Dr. Dunn noted that Wood could not squat, stand for more than 15 minutes without a break, walk more than 50 feet or sit more than four hours. Wood also reported to him that she had stiffness in the morning and used a walker when her pain flared. At this March 12 visit, Wood weighed 253 pounds. (AR 333.) That same day, Dr. Dunn completed a questionnaire, which limited Wood to lifting and carrying 10 pounds occasionally; standing and walking 15 minutes at a time and a total of two hours a day; sitting up to four hours before changing positions; avoiding moderate exposure to extreme cold; and no crouching or climbing stairs or ladders. Dunn noted that Wood "may need cane/walker during painful work days." (AR 337-40.)

On July 1, 2013, the ALJ held an administrative hearing at which Wood testified that she cannot stand or walk for more than 15-30 minutes at one time and has had to walk

with a walker or cane since 2011. The ALJ issued a written decision on July 18, 2013, finding Wood not disabled. While the ALJ found that Wood was severely impaired by obesity and degenerative joint disease of both knees, he determined that her impairments, alone or in combination, did not meet or equal the criteria in Listing 1.02A for major dysfunction of a joint due to any cause.

The ALJ further determined that Wood had the Residual Functional Capacity (“RFC”) to perform light work if (1) limited to occasional climbing of ramps or stairs and (2) involved no stooping, crouching, kneeling, crawling, or climbing ladders, ropes, or scaffolds. (AR 14.) In reaching this conclusion, the ALJ expressly discounted Wood’s statements concerning her other symptoms and limitations because: (1) Wood stopped working due to a business-related layoff and not any medical issues; (2) there is no evidence that her medical condition deteriorated significantly since the layoff; (3) Wood testified that she has been unable to find work versus unable to perform work; (4) objective testing has shown that Wood has only mild to very mild varus ambulation and medial compartment joint space narrowing; (5) in 2011, Wood complained of left knee pain that lasted 1.5 months, but then improved substantially by August 2011 with physical therapy; (6) despite having insurance, Wood has not had any ongoing specialist treatment or been prescribed narcotic pain medication; and (7) although Wood testified that she was told to use a walker since January 1, 2011, the only reference in the record about a walker was Dr. Dunn’s March 2013 statement that Wood “may” need one during “painful work days,” along with Dunn’s treatment notes from that date stating that Wood was able to walk with a nonantalgic gait. (AR 14-15.)

In his treatment of the medical opinions, the ALJ placed great weight on the state agency physician’s opinion, but little weight on Dr. Dunn’s opinion, finding it inconsistent

with his own treatment notes *and* failed to reference any objective medical findings or observations. (AR 16.)

At oral argument, Wood's attorney informed the court and the Commissioner that the local Social Security office had approved Wood's second application for disability benefits, finding Wood disabled as of July 19, 2013, one day after the date of the ALJ's decision on the application at issue in this case. However, the parties agreed that the subsequent decision on the second application was not informative or relevant to the decision currently under review by the court.

OPINION

As noted above, Wood raises only one challenge to the Commissioner's finding of non-disability, asserting that the ALJ failed to consider whether her obesity may substitute for the major dysfunction of a joint in Listing 1.02A, as required by SSR 02-1P. The ALJ's decision, however, demonstrates that he both cited to the pertinent ruling and considered Wood's obesity in making his step three finding.

Listing 1.02A states that a claimant must demonstrate: (1) a gross anatomical joint deformity; (2) chronic joint pain and stiffness or other limitation in motion; (3) medical imaging documenting the abnormality; and (4) an "inability to ambulate effectively." 20 C.F.R. pt. 404P, § 1.02A. *Coleman v. Astrue*, 269 Fed. App'x 596, 602 (7th Cir. 2008) (quoting same). However, obesity "may substitute for the major dysfunction of a joint(s) due to any cause" in Listing 1.02A if it "is of such a level that it results in an inability to ambulate effectively, as defined in sections 1.00B2b or

101.00B2b of the listings.” *Evaluation of Obesity*, Soc. Sec. R. 02-1P, 2002 WL 34686281, at *5 (S.S.A. Sept. 12, 2002).

The listings define “inability to ambulate effectively” as an extreme limitation of the ability to walk that interferes very seriously with an individual's ability to initiate, sustain, or complete activities. 20 C.F.R., pt. 404P, § 1.00B2b(1). That definition goes on to explain that ineffective ambulation requires a limitation so serious that it does not permit walking without the use of a hand-held assistance device, which limits the use of *both* upper extremities. *Id.* Examples include a walker, two crutches, two canes, or an inability to walk a block at a reasonable pace on rough or uneven surfaces. *Id.* at § 1.00B2b(2).

Consistent with the record before him, the ALJ found no objective evidence that Wood’s impairments met any of the criteria in Listing 1.02A. He also specifically addressed the effects of Wood’s obesity as required under SSR 02-1P, noting that no treating or examining physician made any findings equivalent in severity to the listing.

Nevertheless, Wood now argues that the ALJ’s analysis was insufficient because he provided only a conclusory statement that he considered her obesity and failed to address “any dispute” regarding her inability to ambulate. In support of her argument, Wood cites *Levins v. Astrue*, No. 09-C-1067, 2010 WL 1881452 (E.D. Wis. May 10, 2010), which reversed the ALJ’s finding of “not disabled” without “specifically address[ing] whether Levins’ obesity resulted in an inability to ambulate effectively,” as well as the ALJ’s “subsequent cursory statement that he considered whether Levins’ obesity was equivalent in severity to [Listing 1.02A].” *Id.* at *4. The *Levin* court found these errors failed “to sustain an argument that the ALJ properly applied the listing.” *Id.*

The court agrees that the ALJ did not discuss the effects of Wood's obesity in detail, but he correctly noted that none of her physicians made any findings about the severity of plaintiff's obesity *or* about its possible equivalent to the criteria of Listing 1.02A. Without such evidence, the ALJ had no reason to consider further whether Wood's obesity equaled the criteria in Listing 1.02A, let alone conclude that it does. *See Hovi v. Colvin*, No. 12-C-169, 2013 WL 3989232, at *16 (W.D. Wis. Aug. 2, 2013) (noting SSR 02-1P prohibits ALJ from making assumptions about severity or functional effects of obesity combined with other impairments.)

Again citing *Levins*, Wood further argues that the ALJ should have considered the following as evidence of her inability to ambulate: (1) plaintiff's testimony that she has to use a cane and a walker to stand and walk (AR 28-33); and (2) Dr. Dunn's statement that she may need a walker during painful work days (AR 338). However, both pieces of evidence were expressly addressed and reasonably rejected by the ALJ. First, as the commissioner points out, the ALJ specifically addressed Wood's testimony about her ability to ambulate in his discussion of her RFC. There was no need to do so again in the context of considering the possible impact of Wood's obesity on her eligibility under Listing 1.02A. *See Rice v. Barnhart*, 384 F.3d 363, 370 n.5 (7th Cir. 2004) ("[I]t is proper to read the ALJ's decision as a whole, and . . . it would be a needless formality to have the ALJ repeat substantially similar factual analyses" at multiple points in the sequential evaluation process.).

Second, the record supports the ALJ's finding that Wood's testimony about needing a walker was not credible given that the only reference in the record to a walker was Dr. Dunn's March 2013 statement that Wood "may" need one during "painful work

days." Moreover, the ALJ pointed out that Dunn's March 2013 treatment notes state that Wood was able to walk with a non-antalgic gait (or walk without adjusting for pain). (AR 14-15.) The ALJ further lists several other reasons for not finding Wood's subjective complaints credible. Wood does not challenge any of these findings, which are well-founded and supported by substantial evidence in the record.

Finally, as the commissioner also points out, even if the ALJ erred by not expressly addressing Wood's obesity in accordance with SSR 02-1P, that error is harmless because plaintiff still cites *no* medical opinion indicating that Wood's obesity is equivalent in severity to the criteria of Listing 1.02A. *Skarbek v. Barnhart*, 390 F.3d 500, 504 (7th Cir. 2004) (error is harmless when it "would not affect the outcome of [the] case."). Indeed, plaintiff has adduced no objective medical evidence showing that she must use an assistance device to walk. *See Coleman*, 269 F. App'x at 603 (claimant failed to prove that his impairment satisfied all requirements of Listing 1.02A because he cited only his own blanket assertion that he required more than one cane or could not walk a block at a reasonable pace).

Although the ALJ's step three analysis could have been more detailed, he met his obligation under SSR 02-1P by considering Wood's obesity and determining whether this alone or in combination with her knee problems met or equaled the criteria of a listed impairment. Wood's only argument is that her obesity combined with her inability to ambulate without a walker is equivalent to the criteria in Listing 1.02A. However, Wood has failed to challenge the ALJ's reasonable conclusion that her testimony that she could not walk without using a cane or walker is not supported by the medical record. Accordingly, the court will affirm the ALJ's decision.

ORDER

Accordingly, IT IS ORDERED that the decision of defendant Carolyn W. Colvin, Commissioner of Social Security, denying plaintiff Brenda Wood's application for disability benefits and supplemental security income is AFFIRMED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 1st day of July, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge