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

PAULINE FORD,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

17-cv-544-wmc

Plaintiff Pauline Ford seeks judicial review of a final decision denying her application for Social Security Supplemental Insurance Benefits under 42 U.S.C. § 405(g). On appeal, plaintiff raises four challenges: (1) the ALJ erred by not evaluating the side effects of Ford's prescription medications; (2) the ALJ failed to consider the effect of the claimant's dog bite injury, headaches on her ability to work; (3) the ALJ failed to account for Ford's limitations in concentration, persistence and pace in crafting RFC; and (4) the Appeals Council erred in not considering a medical source statement. The court held a telephonic hearing on Ford's appeal on June 3, 2019, at which the parties appeared by counsel. While the court rejects plaintiff's first three challenges, the court will reverse and remand, finding error with the Appeals Council's treatment of Ford's psychologist's medical source statement.

BACKGROUND[1]

A. Overview of Claimant

Ford was born on August 12, 1969. She applied for supplemental security income benefits on May 9, 2015, claiming an alleged onset disability date of June 9, 2008. This made Ford: 38 years-old on the alleged onset date of her disability in 2008; 46 years-old when she applied for disability in 2015; and 48 years-old at the time of her hearing in 2017.

Ford has a tenth grade high school education, is able to communicate in English, and has past work experience as a cleaner. Ford last worked in 2011. In her initial application, Ford claimed disability based on anxiety and PTSD. (AR 87.)

B. Medical Records

1. Pre-Disability

Ford's medical record dates back to 2007 and early 2008, predating her alleged disability onset date. In most of these pre-disability records, Ford seeks prescriptions to treat lower back pain and headache, and the records focus on her medication refill requests, mostly for Tramadol, rather than on her symptoms or the results of any physical examinations or tests. (AR 425-433, 522-529.) Like the medical records that post-date her alleged disability onset date, these records express concern about misuse of prescription medication and illicit drug use, requiring urine drug testing to maintain her prescription medications. In particular, Tramadol is "an opioid analgesic," which "acts on the nervous

[1] The administrative record ("AR") is available at dkt. #8.

system to relieve pain," but when "used for a long time, it may become habit forming, causing mental and physical dependence." *See* "Tramadol," Mayo Clinic, https://www.mayoclinic.org/drugs-supplements/tramadol-oral-route/description/drg-20068050 (last visited June 3, 2019). At least one of Ford's drug tests from September 2007 also indicated that Ford was positive for THC. (AR 522.)

2. 2008-2011

While Ford claims a disability onset date of June 9, 2008, the medical records indicate no *new* medical complaints around that date. A November 6, 2008, note indicates that Ford's prescriptions were refilled, but based on her explicit agreement that she use *only* one pharmacy, emphasizing past concerns about medication misuse. (AR 423.) On December 23, 2008, Ford was prescribed Xanax for anxiety and depression. (AR 421.) That medical note also indicated that she had been assaulted by her boyfriend and kicked out of the house, which is the first of many references in her medical record to periods of homelessness.

On January 15, 2009, in a treatment note from Deborah Dryer, M.D., Ford sought prescription refills, ostensibly because she did not have access to her prescription medications, explaining that her mother had locked them up before going on a two-week business trip and had forgotten to give Ford her medication. Dr. Dryer provided Ford with a two-week prescription for a number of medications including Tramadol. (AR 419.) During a May 20, 2009, appointment, Ford also indicated that she wanted to increase the dosage for her Tramadol and alprazolam prescriptions for stress. (AR 356-57.)

Around this same time, Ford was referred to a pain management clinic for treatment,

although she was a "no show" for her first appointment scheduled in July 2009 and for a rescheduled appointment in October 2009. (AR 324.)[2] In August 2009, Ford's treating physician, Louay O. Danial, M.D., nonetheless, refilled her prescriptions for pain medication to treat migraines, as well as her prescription medications for depression and anxiety. (AR 353-54.)

In October 2009, Ford fractured her left leg. (AR 351.) While the records surrounding this medical event indicate that Ford sought pain medication prescriptions into January 2010, there is no indication that she experienced any lasting injury (or at least not beyond a few months) because of this fracture, nor does her appeal concern this injury. (AR 337, 347-48.)

On November 10, 2009, Dr. Danial saw Ford for a 3-month, follow-up appointment for migraines, anxiety and depression. (AR 346.) During that appointment, Ford denied any headaches, but requested Tramadol until she could see the pain clinic. (*Id.*) On January 4, 2010, Ford again requested a prescription for Tramadol from Dr. Danial. Although Danial provided a prescription, he informed her that it would be her last one and she would need to see the pain management clinic for further Tramadol prescriptions. (AR 341.)

Ford saw Dr. Danial again on January 13, 2010, complaining of knee pain, migraine headaches and insomnia. (AR 339-41.) Her physical examination revealed no swelling of

[2] Ford missed yet another appointment in March 4, 2010, and there is no further indication in the record that she ever received care from the pain management clinic. (AR 324.) Ford blamed transportation issues contributed to her missing these appointments. and there are other references in the medical record indicating difficulties in securing reliable transportation or gas money to cover trips.

either knee, "muscle power of upper extremities and lower extremities 5/5;" and "X-rays of the left knee and left leg did not show any abnormality apart from old fracture of the left tibia which is in the healing process." (AR 341; *see* AR 374 (discussion of x-rays).) Nonetheless, Dr. Danial prescribed 20 tablets of oxycodone for knee pain and a new medication to treat her migraine headaches. (AR 341.) He also prescribed Ambien for insomnia. (*Id.*) He then referred her to an orthopedist for her knee pain, but she also failed to show for that January 19, 2010, appointment. (AR 338.)

On February 3, 2010, Ford saw Michael Larson, PhD, a clinical psychologist, for a behavioral initial assessment / psychoeducation. The appointment was scheduled because of her two prior "no shows" at the pain clinic to assess her "psychological status and compliance issues." (AR 329.) During that appointment, she reported "ongoing head pain," including migraines "three to four times per month," and "pain that develops in her neck and then radiates around the side of her neck." (AR 330.) Ford also indicated that she has "right-side, low back pain," and "left knee pain." (*Id.*) Ford also reported a "dramatic improvement" with her migraine headaches by taking a new medication, Maxalt, which is a triptan drug that has been shown "to relieve pain, and other migraine symptoms." *See* "Maxalt," WebMD, https://www.webmd.com/drugs/2/drug-8440/maxalt-oral/details (last visited June 3, 2019). She also indicated that Tramadol had been beneficial in addressing her neck and back pain. (AR 330.) During the appointment, Ford reported that her "mood tends to be fairly good," and she "denies any specific anxiety," though did acknowledge "stressors" in her life, including finances and transportation. (*Id.*) Larson also noted that he saw "no real evidence of anxiety or depression today," nor

"evidence of pain today," indicating that she "moves well and seems to go through things very easily." (AR 330, 331.) According to the note, Ford also indicated that she was *not* interested in further pain treatment at this time. (*Id*.)

Nevertheless, still in early February 2010, Ford requested a new prescription for Tramadol prescription, but was denied the request because of her failure to show up for appointments at the pain clinic. On February 16, 2010, Dr. Danial noted that she was to follow up with the pain clinic, and that she also failed to show up for an appointment with Orthopedics to address knee pain. (AR 325-28, 333.)

There are no medical records from February 2010 until September 2011, representing an 18-month gap in care. In September 2011, however, Ford injured her left tibia (the same leg that was fractured in October 2009) when she stood up from sitting on a couch. (AR 521.) After Ford underwent surgery, a cast was placed on September 23. (AR 519.) Here, too, the medical record reflects continued efforts to obtain pain medication for this injury, including a December 9, 2011, notation that she was denied pain medication because she was three months post-surgery and directing her to use ibuprofen or Tylenol and ice. (AR 518.) There is no indication that this was a lasting injury and it does not serve as a basis for her appeal.

3. 2012-2014

Skipping ahead another year, on November 5, 2012, Ford saw Michaelene Jansen, RN, CNP, to establish care at a medical clinic in Ashland, Wisconsin. (AR 516.) During this visit, Ford described suffering from anxiety and recently being hospitalized due to concerns about self harm. She also complained of headaches, reporting three or four

migraine headaches per month. At that time she was prescribed Imitrex[3] for her migraines and was also using Gabapentin[4] and Tramadol. During the appointment, Jansen refilled her Tramadol prescription, albeit at a lower dose. (AR 518.)

In late 2012 and throughout 2013, there are multiple medical records concerning her attempts to refill her Tramadol prescription, claiming medications were lost or stolen, and treating physicians expressing concerns about misuse and illicit drug use. (AR 502-10.) In March 2013, Ford suffered a traumatic event with the death by suicide of her partner of several years, who was also the father of some of her children. Following the suicide of her boyfriend, Ford complained of "persistent migraine headaches" during a March 14, 2013, appointment and she sought refills of Gabapentin, Imitrex and Tramadol. (AR 505.) While she was prescribed Gabapentin and Imitrex, the doctor refused to prescribe her Tramadol in light of the results of a urinalysis. (AR 506.)

In early January 2014, Ford not only tested positive for amphetamines and THC, but she tested negative for benzodiazepines, meaning she was not taking her prescribed Xanax. (AR 498, 500-01.) During a January 14, 2014, appointment with Nurse Lori Brownshield, Ford described experiencing "overwhelming anxiety" stemming from her partner's suicide, which prompts Ford to lock herself in her bathroom for long periods of time. (AR 491.) Brownshield's notes indicate "Major Depression," with a GAD-7 score

3 Imitrex is "used to treat migraines. It helps to relieve headache, pain, and other migraine symptoms (including nausea, vomiting, sensitivity to light/sound). "Imitrex," WebMD, https://www.webmd.com/drugs/2/drug-11571/imitrex-oral/details (last visited June 3, 2019).

4 Gabapentin is "an anticonvulsant or antiepileptic drug" generally "used with other medications to prevent and control seizures. It is also used to relieve pain. *See* "Gabapentin," WebMD, https://www.webmd.com/drugs/2/drug-14208-8217/gabapentin-oral/gabapentin-oral/details (last visited June 3, 2019).

of 17.[5] (AR 495.) Around this time, Ford also calls the clinic frequently, reporting that Clonazepam is not working, requesting a prescription for Xanax instead, and claiming that she is suffering from panic attacks. Ultimately, Ford is admitted to the hospital for inpatient monitoring and treatment. (AR 486-89.)

On January 27, 2014, Ford met with Arlyn Koeller, M.D., to discuss medications. (AR 479-82.) Dr. Koeller found Ford "alert and cooperative; normal mood and affect; normal attention span and concentration." (AR 381.) As a result, he diagnosed her with "Minor Depression," indicating that her GAD-7 score at that time was a 12 and "suggests patient's functionality is not impaired." (AR 382.) Even so, appointment records from February and March 2014 indicate continued depression and anxiety caused by one-year anniversary of partner's suicide, along with another inpatient hospitalization in March. (AR 474-76.)

The medical record during this turbulent time also noted Ford's continued failure to maintain appointments. In fact, by May of 2014, Ford's regular clinic blocked her from care for six months for failing to appear at appointments. (AR 465-468.) Even during this time, the medical records document Ford's repeated attempts to secure prescription medications. (AR 568-75.) On July 2, 2014, Ford requested new prescriptions, after having recently been released from jail. In her note, the provider states that she claims "[m]igraines are 3 or 4 times a year only since she started the gabapentin." (AR 572.)

In the fall of 2014, Ford suffered another crisis, with her four minor children being

[5] A GAD-7 score of 17 falls within the range of 15-21 indicating "severe anxiety." "GAD-7 Anxiety," Anxiety and Depression Association of America, https://adaa.org/sites/default/files/GAD-7_Anxiety-updated_0.pdf (last visited June 3, 2019).

removed from her care due to concerns about neglect. Ford then agreed to be admitted to a drug treatment center in order to regain custody of her children. During this time, Ford was also admitted for inpatient hospital care for panic attacks and depression. (AR 559-566.) While medical records appear to indicate that she did eventually regain custody of her children, less clear is whether she was successful with her drug treatment efforts, including a medical note dated November 17, 2014, indicating Ford was denied requests for more pain medications because she needed to submit a clean urinalysis before refills would be provided. (AR 576.)

4. 2015-2017

In medical notes from March 2015, Ford reported that her daughter-in-law had also died, and complained of significant anxiety, supposedly causing her to miss additional appointments. (AR 578.) In April, Ford's psychologist, Duane Majeres, M.S., wrote to Dr. Matheus concerning Ford's medication management. In that letter, Majeres explained that Ford began abusing benzodiazepines after her partner's suicide, and now that she was off of them, she was experiencing increased "social phobia and generalized anxiety," resulting in her being "unable to leave her house except for dire needs and is not sleeping more than a few hours a night." (AR 594.) In a subsequent communication, Majeres recommended that Ford resume taking benzodiazepine, which he agreed to monitor. (AR 589.) In yet another letter, this time to Andrew Matthews, M.D., Majeres indicated that "Trazadone is making [Ford] feel sluggish and 'funny,'" and suggested replacing Trazadone with Ambien. (AR 593.)

Later that month, Ford was seen by Dr. Mathews, reporting that she was "[h]ere for

evaluation of her worsening troubles with sleep and with anxiety," but that she was "[a]ble to get out now with treatment with clonazepam for the chronic daily anxiety." (AR 587.) On May 9, 2015, Ford applied for SSI benefits. Shortly after applying, Ford was scheduled for a psychological examination to assess the severity of her mental health impairments, but she also failed to attend the appointment or reschedule. (AR 100.) Later, a medical note from June 30, 2015, indicated that Ford again sought refills of medications because they were stolen, but indicated that she could not file a police report because she was "wanted."[6] At that time, Ford reported being on "Gabapentin for CTS, clonazepam for anxiety. Verapamil and Imitrex for HA [headaches]. HA occur frequently but improve with the medications. Lexapro for depression[.]" (AR 584.)

On October 19, 2015, Ford was seen in the emergency room for a dog bite, for which the received stitches and antibiotics. (AR 616.) The next day, Ford returned to the emergency room due to pain and some numbness in her hand, and at that time she was prescribed oxycodone. (AR 609.) On October 29, Ford had her sutures removed, and she complained of continued pain and a "burning sensation" in her right arm. (AR 606.) In November and December, Ford continued to complaint of ongoing pain and burning, even though the physical examination revealed normal scabbing with no sign of infection. (AR 602-05.) A note from March 2016 also indicates a "burning sensation at times" due to dog bite. (AR 656.)

In February 2016, Ford reports increased anxiety caused by her son living with her after her was seriously injured in a car accident, including broken arms and legs. (AR 661.)

[6] The records also indicate short periods of incarceration.

In a letter dated March 17, 2016, her psychologist Majeres reported that he has provided mental health therapy for Ford "on an off for the last four years." (AR 624.) He described Ford as suffering from "severe Social Anxiety Disorder, Attention-Deficit/Hyperactivity Disorder, predominantly inattentive type, and Major Depression secondary to her other disorders," and reports that she "leaves her home for only essential duties and appointments." (*Id.*) Majeres also describes Ford as unable to attend her daughters' school, shopping for groceries after midnight, and unable to obtain or maintain employment. (*Id.*)

While Ford again complained about continued anxiety due to her son living with her during an April 11, 2016, medication check appointment, she continued to report that her pain was well controlled with Gabapentin and Tramadol. (AR 654.) In a June 9, 2016, appointment note, Ford asked for a smaller dose of Xanax to take with her while she chaperoned her girls' camping trip. She also asked about transitioning from Gabapentin to Lyrica due to anticipated incarceration. (AR 652.)

On August 10, 2016, Ford was seen by Marcus P. Desmonde, Psy.D., L.P., for a mental status evaluation. Desmonde's notes report that "[s]he suffers from sleep disturbance, difficulty with her concentration and short-term memory, low energy levels, irritability, hopelessness, crying spells and social isolation." (AR 626.) Ford also reported that she has to take a Xanax before going anywhere, but that "her current medication are helpful in reducing the frequency and severity of her symptoms." (AR 626.) Desmonde indicated that she appears to have major depressive disorder, generalized anxiety disorder, benzodiazepine use disorder and opioid use disorder. He specifically described her

limitations as follows:

> Ms. Ford is not capable of managing her own financial affairs if benefits are awarded. She appears capable of understanding simple instructions and would be able to carry out tasks without any limitations set by a treating or evaluating physician. She is able to interact briefly with co-workers, supervisors and the general public. She may have difficulty tolerating the stress and pressure of competitive employment at this time.

(AR 627.)

In late 2016, Ford had two stints in jail. After each, she sought to restart her prescription medications, including increasing her Xanax prescription. (AR 645-59.) During a December 14, 2016, appointment, Ford reported feeling anxiety at night because she recently lost a cousin after he was run over by his mother. (AR 643.) Her doctor refused to fill her Xanax prescription due to concerns about abuse, indicating that Ford was adamant that she only received 30, not 60, pills the last time she filled the prescription. (*Id.*) In January 2017, Ford sought refills for Xanax and Imitrex, and indicated that she continues to use Gabapentin too. The medical notes reveal that Ford "[d]enies side effects of the medication." (AR 640.) The last medical record is from January 23, 2017, in which Ford reports "some increased anxiety as it is the anniversary of her children[']s father[']s suicide." She then specifically requested a sleep aid, indicating that Ambien had worked well in the past.

5. Post-Hearing Medical Record

As described below, the ALJ held a hearing on February 28, 2017. Her treating psychologist Duane Majeres had completed a Medical Source Statement of Ability to Do Work-Related Activities (Mental), dated February 14, 2017. For reasons that are not clear,

this document, however, was not part of the record before the ALJ, although the Appeals Council made it part of the record as Exhibit 21B. (AR 5.) At the same time, the Appeals Council determined Majeres' statement "not material because it is not relevant to [Ford's] claim of disability." (AR 2.) The Council went on to explain, "We find this evidence does not show a reasonable probability that it would change the outcome of the decision. We did not consider and exhibit [*sic*] this evidence." (*Id.*)

In the report, Majeres indicates that Ford has: "moderate" limitations with "carry out simple instruction" and "the ability to make judgments on simple work-related decisions"; "marked" limitations with "understand[ing] and remember[ing] simple instructions"; and "extreme" limitations for "understand[ing] and remember[ing] complex instructions," "carry[ing] out complex instructions," and "the ability to make judgments on complex work-related decisions." (Dkt. #10-4 at 1.) In responding to a request for "factors . . . that support your assessment," Majeres stated, "I have completed a comprehensive ADHD assessment on Pauline, and I have attempted to provide her with outpatient psychotherapy." (*Id.*) Majeres also indicated that she had "marked" limitations in interactions with the public, supervisors and co-workers"; in support, he stated further that "I have observed her extreme social anxiety and her inability to interact with people." (*Id.* at 2.) Majeres further noted that "[h]er social anxiety impairs her ability to leave her house and to function in any social situation," and that he has "observed Paula having panic attacks when she was required to leave her house." (*Id.*) Majeres also viewed her use of illicit drugs as "'self medication' when she is not able to get a prescribed medication to treat her symptoms." (*Id.*) Finally, Majeres checked that she would miss work two or

more days per months. (*Id.* at 3.)

C. ALJ Opinion

Following an evidentiary video hearing held on February 17, 2017, at which Ford appeared with the same counsel representing her in this action, the ALJ found that she had the following severe impairments: major depressive disorder, anxiety disorder, post traumatic stress disorder, polysubstance abuse, migraine headaches, and history of dog bite to right forearm. (AR 20.) In considering Ford's mental impairments, the ALJ considered whether any of the relevant "paragraph B" criteria were satisfied. In other words, the ALJ considered whether she has an "extreme" limitation in any one of the areas of mental functioning in a work setting or "marked" limitations in two categories. (AR 21.) The ALJ also found that Ford had moderate limitations in all four of the categories: "understanding, remembering or applying information," "interacting with others," "concentrating, persisting, or maintaining pace," and "adapting or managing oneself." (AR 21-22.)

For the CPP limitation, the ALJ specifically concluded that Ford's "anxiety affects her ability to initiate and persist at tasks, but most mental status examinations do not show impairment of concentration or attention." (AR 22.) He also found that Ford "is able to manage her household as a single parent, and cared for an adult son and his child for a prolonged period when he was recovering from an accident." (*Id.*)

As for her residual functional capacity, the ALJ concluded that she could perform

> a full range of work at all exertion levels with the following limitations: brief and superficial contact with others, akin to a 8 in the 5th digit of the DOT, limited to routine, repetitive tasks in a low stress setting, defined as no fast pace[d] work such as high speed production line, and cannot work in a

> setting where alcohol is sold or served or where prescription drugs are available.

(AR 23.)

In formulating this RFC, the ALJ considered Ford's testimony that she is limited in walking due to past broken legs, but found that the "record does not corroborate the claimant's allegations," in light of the lack of recent medical care for any leg injury.[7] The ALJ also discounted any work-related limitations caused by the October 2015 dog bite, based on the medical record showing that Ford failed to seek treatment or further testing for the dog bite after March 2016, and her indicating in April 2016 that her pain was well controlled with prescription medication. (AR 24.)

As for her migraine headaches, the ALJ correctly noted that the medical record did not support Ford's testimony that she suffered migraine headaches 10 or 11 times per month, lasting about five hours at a time. To the contrary, in 2014, Ford reported that she has migraines three or four times a year since she started on Gabapentin. (AR 24-25.) The ALJ also discounted the extent of her psychological limitations because "the treatment notes show inconsistent treatment and frequent failure to follow treatment recommendations, complicated by ongoing illicit drug use," recounting in detail much of the information the court summarized above. (AR 25-26.)

The ALJ also considered whether to account for Ford's testimony during the hearing that she suffers from fatigue from Lexapro and Xanax and needs to lie down because she is

[7] The ALJ incorrectly noted that the last time she sought treatment for any leg symptoms was in 2010. (AR 24.) The medical record shows Ford suffered another leg injury, resulting in surgery in September 2011. (AR 521.) Nonetheless, the last mention of leg pain was in December 2011. (AR 518.) Regardless, Ford does not press any complaint about leg pain in her appeal.

tired. The ALJ found: "no support in the record for the claimant's testimony in this regard. The only reported medication side effect noted in the treatment record is in a letter dated April 30, 2015 from Mr. Majeres to Dr. Matheus, in which Mr. Majeres suggests replacing trazodone with Ambien, as trazodone makes the claimant feel sluggish." (AR 27.)

As for the opinions of the various consulting doctors, the ALJ gave the opinions of the state agency psychological consultants little weight because their opinions were based on prior regulations and failed to take into account evidence submitted at the hearing. The ALJ, however, gave the opinion of the consulting psychologist, Dr. Desmonde, significant weight because "it is well supported by the examination findings of low average concentration, decreased remote recall, and intact judgment and insight, a[s] well as the claimant's reported ability to care for her 4 children and manage the household, limited only by physical problems, and her report that she can go out if she takes medication prescribed to treat anxiety before she goes." (AR 27-28.) The ALJ also discounted the opinion of Majeres because of the lack of treatment notes, basing his opinion on "ADHD symptoms," where there is no evidence in the record that Ford has been diagnosed with ADHD or reported any symptoms of ADHD to any other provider. (AR 28.)

Finally, based on the vocational expert's testimony that the job of cleaner is not precluded by her RFC, the ALJ determined that she could perform her past work as a cleaner, which she previously worked on a full time basis, although for less than 2 months from 2010 to 2011.

OPINION

The standard by which a federal court reviews 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). Accordingly, where conflicting evidence allows reasonable minds to reach different conclusions about a claimant's disability, the responsibility for the decision 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.* at 336, and insure the ALJ has provided "a logical bridge," *Stephens v. Berryhill*, 888 F.3d 323, 327 (7th Cir. 2018).

Ford's counsel argues in a cursory fashion that the ALJ erred in three respects: (1) failing to evaluate the side effects of Ford's prescription medications; (2) failing to consider the effect of the claimant's dog bite and headaches on her ability to work; and (3) failing to account for Ford's limitations in concentration, persistence and pace in crafting her RFC.[8] Plaintiff also claims that the Appeals Council erred by not considering a medical source statement, dated February 14, 2017, by Duane Majeres, M.S., Ford's treating

[8] As this court pointed out in two other, recent opinions, plaintiff's opening brief contains unhelpful, multi-page quotations from the ALJ hearing. The court trusts that plaintiff's counsel will not do this going forward.

psychologist, even though not received until after the evidentiary hearing.

I. Consideration of Side Effects

Plaintiff first takes issue with the ALJ's alleged failure to consider her hearing testimony that the drugs she takes require her to lay down for an hour or two every day. (AR 59-60.) As described above, the ALJ *did* consider this testimony, but discounted it in light of the lack of support in the medical records for any side effects. The ALJ correctly noted that the only mention of negative side effects from her medication was Majeres' statement in April 2015 that Trazodone was making feel "sluggish and 'funny.'" (AR 593.) This is also the only mention of Trazodone, and Majeres makes this statement in the context of suggesting Ford's treating physician switch her from Trazodone to Ambien. Later medical records further show that this change was made. (AR 640 (prescribing Ambien in January 2017, one month before ALJ hearing).) Not only is there no mention of Lexapro and Xanax causing fatigue, a January 2017 medical note -- one month before the hearing -- actually indicates that Ford "[d]enies side effects of the medication." (AR 640.) The court finds no error in the ALJ's treatment of any side effects caused by her medication.

II. Accounting for Dog Bite Injury and Headaches in RFC

Next, plaintiff contends that the ALJ violated SSR 96-8p, which requires the ALJ to consider "limitations and restrictions imposed by all of an individual's impairments, even those that are not 'severe'" in crafting an RFC. Specifically, plaintiff argues that the ALJ failed to give adequate consideration to Ford's hearing testimony that she: (1) suffers from

"numb" fingers and has difficulty grasping items as a result of the October 2015 dog bite; and (2) has severe and frequent headaches. As described above, the ALJ considered in detail whether either of these physical impairments created RFC limitations.

As for the dog bite, the record reflects that Ford sought treatment for pain and a burning sensation for no more than six months following the October 2015 event. There is no support in the medical record that she continued to experience burning beyond March 2016, much less that she suffered numbness at any time generally or that it impacted her strength or ability to grasp specifically. As for the headaches, the medical record reflects Ford representing, at least most recently, that she suffers from headaches three to four times *per year* and that they are well-controlled by Gabapentin and Imitrex, thus calling into question her hearing testimony that she suffers headaches ten to eleven times *per month*, lasting five hours at a time. Here, too, the court sees no error in the ALJ's treatment of these two physical impairments.

III. Treatment of CPP Limitation

Plaintiff's CCP argument has more merit, though not enough to justify remand on its own. Plaintiff faults the ALJ for his failure to account for a finding of a moderate limitation of concentration, persistence and pace ("CPP"). The ALJ limited Ford to "routine, repetitive tasks in a low stress setting, defined as no fast pace[d] work such as high speed production line." (AR 23.) As the Seventh Circuit has previously, and repeatedly, explained, limiting a claimant to "simple" or "routine" tasks does not address general CPP deficiencies. *See O'Connor-Spinner v. Astrue*, 627 F.3d 614, 620 (7th Cir. 2010) ("simple" or "repetitive" work does not address general CPP deficiencies); *Stewart v. Astrue*,

561 F.3d 679, 685 (7th Cir. 2009) (simple, routine tasks did not account for limited ability to understand instructions); *Young v. Barnhart*, 362 F.3d 995, 1004 (7th Cir. 2004) ("simple, routine" tasks did not adequately account for "impairment in concentration"); *Craft v. Astrue*, 539 F.3d 668, 677–78 (7th Cir. 2008) ("simple, unskilled work" does not account for difficulty with memory, concentration, or mood swings). Of course, as the Commissioner points out, there is no requirement that the ALJ use the specific CPP terminology in crafting the RFC or in hypotheticals. *O'Connor-Spinner*, 627 F.3d at 619. Nonetheless, the RFC must account for this limitation.

With respect to the CPP limitation here, the ALJ specifically concluded that Ford's anxiety impairs her ability to initiate and persist with tasks, which makes sense given her own testimony about being unable to leave her home or engage in social situations given her anxiety. (AR 22.) In formulating the RFC, the ALJ relied on the opinions of Dr. Michael Lace, a medical expert who provided testimony during the hearing, and Dr. Desmonde, who provided a mental status examination in August 2016, that Ford "could perform unskilled work with brief social contact in a low-stress environment." (Def.'s Opp'n (dkt. #11) (citing AR 69-71, 627).) In other words, these medical experts translate the moderate limitation in CPP into an RFC limitation.

Accordingly, as plaintiff's counsel conceded during the hearing, the ALJ committed no error in relying on these medical opinions. *See Capman v. Colvin*, 617 F. App'x 575, 579 (7th Cir. 2015) (holding that ALJ adequately accommodated CPP limitation where ALJ adopted RFC limitations consistent with state agency doctor's narrative opinion; RFC limitation similarly restricted claimant to "simple, routine tasks and limited interactions

with others" to account for CPP limitation caused by anxiety); Johansen v. Barnhart, 314 F.3d 283, 289 (7th Cir. 2002) (holding that the ALJ reasonably relied upon a medical expert's RFC determination in formulating hypothetical to VE).

IV. Majeres' Medical Source Statement

In her final challenge, plaintiff claims that the Appeals Council erred in its treatment of Majeres' February 14, 2017, medical source statement. During the hearing, the Commissioner conceded that the court should review this challenge *de novo* for legal error in light of the appeal notice in use at the time. *See Farrell v. Astrue*, 692 F.3d 767, 771 (7th Cir. 2012) ("The Social Security Administration regulations require that body to evaluate 'new and material evidence' in determining whether a case qualifies for review," and the court's "review of the question whether the [Appeals] Council made an error of law in applying this regulation is *de novo*." (internal citation and quotation marks omitted)). Moreover, the Appeals Council's statement that this document is "not material because it is not relevant to your claim of disability" makes no sense. (AR 2.) Majeres' statement concerns Ford's ability to work, and it specifically accounts for her mental limitations. As such, it is certainly relevant to Ford's disability claim, even if discounting or discrediting Majeres' statement is warranted. Without explanation, the Council also stated, "We find this evidence does not show a reasonable probability that it would change the outcome of the decision." (*Id.*)

In her opposition brief, the Commissioner attempts to justify the Council's decision by reasoning that Majeres' February 14, 2017, medical source statement suffers from the same flaws identified by the ALJ in his decision to place no weight on Majeres' other

statements in the record. Specifically, the ALJ faulted Majeres for the lack of treatment notes and basing his opinion on "ADHD symptoms," where there is no evidence in the record that Ford has been diagnosed with ADHD or reported any symptoms of ADHD to any other provider. (AR 28.) Of course, in doing so, the Appeals Counsel chose to ignore the February 14, 2017, medical source statement's specific reference to a "comprehensive ADHD assessment."

Finally, Majeres indicates in this report that he has treated her since 2012 and has observed first-hand her "extreme social anxiety and her inability to interact with people," as well as her experiencing panic attacks. (Dkt. #10-4 at 2.) This account also has some support in the medical record, notably Ford's repeated hospitalizations for panic attacks and severe anxiety. Since such a first-hand account by a long-standing, treating medical care provider may well provide support for Ford's own account of the crippling nature of her anxiety, the court concludes that the Appeals Council erred in its determination that this report was not material to Ford's disability claim without remanding for review of the actual medical records. The court, therefore, will reverse the Commissioner's determination that Ford was not disabled, and will remand for further consideration of Majeres' February 14, 2017, statement. As part of the remand, plaintiff should submit Majeres' treatment notes generally and his ADHD assessment in particular to allow the ALJ to consider whether Majeres should be considered a *treating* medical care provider and the weight, if any, to provide to his statement.[9]

[9] The court understands that it is the Appeals Council's typical practice to remand the entire appeal for review by the ALJ, but, here, a limited remand to consider Majeres' secondary source statement and supporting medical documentation would appear sufficient.

ORDER

IT IS ORDERED that the decision of defendant Nancy A. Berryhill, Acting Commissioner of Social Security, denying claimant Pauline Ford's application for disability and disability insurance benefits is REVERSED AND REMANDED under sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this opinion. The clerk of court is directed to enter judgment for plaintiff and close this case.

Entered this 4th day of June, 2019.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge