

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

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LISA DOROW,

Plaintiff,

OPINION AND ORDER

v.

20-cv-604-wmc

KILOLO KIJAKAZI, Acting Commissioner  
for Social Security,

Defendant.

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Pursuant to 42 U.S.C. § 405(g), plaintiff Lisa Dorow seeks judicial review of the Social Security Commissioner's final determination upholding a finding that she was not disabled. Plaintiff maintains that Administrative Law Judge ("ALJ") Deborah M. Giesen, erred in three respects: (1) assessing the opinion of Dorow's treating physician Dr. Erin Hammer, (2) building build a logical bridge between the evidence and her findings regarding obesity and back and hip pain, and (3) assessing Dorow's credibility. For the reasons that follow, the court agrees that the ALJ erred in her treatment of Dr. Hammer's opinion and, therefore, will reverse the denial of benefits and remand for further proceedings consistent with this opinion.

## BACKGROUND<sup>1</sup>

### A. Overview

On September 3, 2015, plaintiff filed applications for social security disability benefits and supplemental security income, originally alleging disability beginning on

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<sup>1</sup> The following facts are drawn from the administrative record, which can be found at dkt. #18.

January 1, 2014, but later amending her disability onset date to February 22, 2016. Dorow claimed disability based on the following conditions: heart impairment -- damage to auditory nerve; back injury; spinal stenosis; degenerative disc disease; arthritis; heart attack; hypertension; hypothyroid; osteoporosis; and hearing difficulties. (AR 482.) Dorow has past work experience as a sorter/pricer. Dorow has not engaged in substantial gainful activity since February 22, 2016, her alleged onset disability date, although there is evidence that she worked on a part time basis as a housekeeper from about April 29, 2016, to September 16, 2016.

#### **B. ALJ Decision**

ALJ Giesen held a video hearing on April 2, 2019, at which Dorow appeared personally and through her counsel, the same counsel representing her on appeal. On July 11, 2019, the ALJ issued an opinion finding that Dorow had not been under a disability within the meaning of the Social Security Act from her alleged disability onset date through the date of her opinion.

First, the ALJ determined that Dorow had the following severe impairments: “coronary artery disease, status-post angioplasty with stenting; diverticulitis; bilateral hearing loss; degenerative disc disease (DDD) of the lumbar spine; status-post hip total arthroplasty; and obesity.” (AR 270.) In considering her severe impairments, the ALJ conclude that Dorow did not have a medically determinable mental impairment, a finding that plaintiff does not challenge in this appeal.

Next, the ALJ considered whether Dorow’s impairments or combination of impairments met or medically equaled various Listings, concluding that they did not. (AR

271.) Material to one of her challenges, the ALJ noted that under SSR 19-2, she is required to consider “obesity in determining whether a claimant has medically determinable impairments that are severe, whether those impairments meet or equal any listing, and finally in determining the residual functional capacity. Obesity may have an adverse impact upon co-existing impairments.” (AR 271.) The ALJ, however, did not conduct that analysis in this part of the opinion, although she reviewed it later as described below. In addition to setting forth the standard for evaluating obesity, the ALJ also considered listings for major dysfunction of a joint, disorders of the back, hearing loss and coronary artery disease. Plaintiff does not challenge the ALJ’s rejection of these listings.

At step four, the ALJ further found that even with his impairments, Dorow had the residual functional capacity (“RFC”) to perform light work, with the following additional exertional restrictions: “no work around unprotected heights, open flames, or unprotected dangerous machinery; no climbing of ladders, ropes, or scaffolds; frequent stooping; no kneeling, crouching or crawling; and work in an environment with no more than moderate noise levels.” (AR 271-72.)

After setting forth the standard under SSR 16-3p, the ALJ considered the consistency between Dorow’s statements about her limitations and the other evidence in the record. She first described plaintiff’s testimony about the reasons she is unable to work, namely “because of back pain that prevents her from bending, twisting and lifting over 15 pounds or even a gallon of milk; recent hip surgery; status-post heart attack in February 2016; and hearing loss.” (AR 272.) Dorow testified to a number of physical restrictions, including that she is able to stand or sit no more than 30 minutes; her doctor

prescribed a cane for her to use for six weeks following her recent hip surgery; she is unable to kneel or crawl; she usually naps during the day for an hour and a half because she is tired from physical therapy; and she does not do any household chores. (AR 272-73.)

The ALJ then provided reasons for discounting Dorow's account, including that she engaged in work activity, namely housecleaning, during an approximate five-month period of time shortly after her alleged disability onset date; and she reported being at the beach and attending ballgames. (AR 273.) The ALJ also noted that Dorow reported having to lift and push items during a move and that she had not been doing her home exercise program.

The ALJ also considered the medical evidence, concluding that it "does not support the severity of the claimant's symptoms to the extent alleged." (AR 273.) Specifically, with respect to her cardiac conditions, the ALJ pointed out that Dorow has not experienced a syncope in about six months; she did not attend cardiac rehabilitation in 2016 because she "did not have time"; inconsistent records about marijuana use; continued use of cigarettes; and various cardiac tests and imaging over the years were normal and symptoms were largely well-controlled by medication. (AR 273-75.) While the ALJ acknowledged some of her cardiac test showed concerns -- namely, an October 8-9, 2018, myocardial perfusion study that showed "very low-level functional capacity" and an October 9, 2018, stress test that showed "markedly reduced functional aerobic capacity" -- the ALJ nonetheless concluded that the evidence "does not support the severity alleged by the claimant in terms of her cardiovascular condition, especially given her continued smoking of cigarettes and marijuana." (AR 275.)

The ALJ also considered the medical records relevant to her degenerative disc disease impairment, but she did not reach any conclusions with respect to the record; rather, she simply recounted it. In particular, she noted that Dorow had multiple emergency room visits for complaints of low back and right knee pain. The ALJ also reviewed a note from a November 22, 2016, appointment with Dr. Erin Hammer, a sports medicine doctor, in which she described Dorow having a “very antalgic gait,” general tenderness along the lumbar spine and groin, significant pain with various tests and movements, and a “slump test was positive,” although Dr. Hammer noted that she was able to get on and off the examination table independently. (AR 277 (discussing Ex. 12F/4-5).) Dr. Hammer also reviewed an MRI of the lumbar spine, which was “essentially unchanged” from a prior MRI, that showed grade 2 spondylolisthesis and severe L5-S1 neural foraminal narrowing bilaterally. A March 9, 2017, appointment with Dr. Hammer again revealed significant tenderness over her buttocks and groin and new complaints of right knee pain, including with reduced range of motion, although Dr. Hammer now noted that she ambulated with “a non-antalgic gait.” (AR 277.) A May 5, 2017, CT scan of her abdomen and pelvis showed a prior spinal fusion, grade 2 spondylolisthesis at the L5 and moderate degenerative disease at the T12-L1 level. Subsequent physical therapy apparently helped, but Dorow reported that her pain symptoms returned when she stopped PT.

The ALJ reviewed Dorow’s recent right hip surgery, noting that Dorow used a walker at the hearing. Dorow presented with right hip pain in October 2016. On November 3, 2016, she received a corticosteroid injection. A December 13, 2016, MRI of her right

hip revealed moderate osteoarthritis, with a tearing labrum, hamstring tendinopathy, gluteus minimis tendinosis and bursitis. On March 9, 2017, Dr. Hammer examined her right hip, noting tenderness and recommended PT and ice. Another doctor, Dr. Hema M. Patel, saw Dorow on July 31, 2017, and similarly recommended PT. In the PT records, the therapist noted significant pain with movement and that various tests were positive. The PT provided Dorow with a cane and noted that it was required due to her condition. On August 24, Dorow returned to Dr. Patel, continuing to complain of pain. Dr. Patel prescribed Tramadol and a four-point cane for additional support. On August 28, Dorow saw Dr. Hammer again for right hip pain. Dr. Hammer noted that Dorow was not a candidate for epidural or transforaminal steroid injections given that she was on Plavix and referred her for a surgical consultation. On September 8, 2017, Dorow saw orthopedic specialist Dr. William Mott, who noted pain upon ambulation and a stiff gait but that she had full range of motion and her gait seemed to improve after taking some steps. Dr. Mott concluded that she was not a candidate for a hip replacement at that time. Records from September and October note continued care and engagement with PT, with differing reports about her level of pain.

On March 9, 2018, Dorow saw Dr. Hammer again, requesting pain medication. Dr. Hammer denied Dorow's request given her history of opioid abuse and encouraged her to return to water physical therapy. January 18, 2019, x-rays however showed moderate degenerative changes in her hip, resulting in Dorow being admitted for right hip surgery on March 4, 2019, about a month before her hearing with the ALJ. The ALJ concluded

that “the record shows that prescribed treatment and medications have improved the claimant’s condition.” (AR 281.)

With respect to her various medical issues, the ALJ then considered how Dorow’s “obesity affects her ability to function and perform work-related activities.” (AR 281.) After reviewing records showing that her BMI is 37 to 38, the ALJ stated that “[i]t is reasonable to conclude that the claimant’s obesity has the effect of aggravating her other medical conditions, specifically, her right hip and back pain. Thus, the effects of the claimant’s obesity further support the residual functional capacity reached in this decision.” (*Id.*)<sup>2</sup>

The ALJ then turned to the opinion evidence, describing the opinion of the state agency medical consultant who reviewed Dorow’s record initially and concluded that she could perform a full range of light work and noted no other postural or manipulative limitations. (AR 281-82 (citing Ex. 1A).)<sup>3</sup> The ALJ assigned only “some weight” to this opinion, concluding that “the overall evidence better supports the residual functional capacity reached in this decision.” (AR 282.)

Material to one of her challenges, the ALJ also considered the opinion of Dr. Hammer in the form of a June 1, 2017, medical source statement, in which she opined that Dorow could lift and/or carry 20 pounds frequently, walk less than one block, unable to

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<sup>2</sup> The ALJ also considered the medical records concerning her diverticulitis and bilateral hearing loss conditions, but these records are not material to any of the challenges she raises on appeal. (AR 275-76.)

<sup>3</sup> As the Commissioner notes in her brief, the ALJ mistakenly noted that the state agency medical consultant also included postural restrictions, an error plaintiff repeated in her submission. (Def.’s Opp’n (dkt. #25) 11 n.7.) This mistake, however, does not appear to be material.

sit, stand or walk for more than 5 minutes at a time due to pain, and needs to take an unscheduled break for 10 minutes every hour, among other restrictions. (AR 282 (citing Ex. 15F).) The ALJ also noted that Dr. Hammer opined that Dorow’s “knee pain, back pain, and hip pain had morphed into a hypersensitive, somatoform pain disorder.” (*Id.*) The ALJ placed “very limited weight” on this opinion because (1) while Dorow had an “antalgic gait on a couple of occasions,” it was mainly noted when she was being seen for hip pain rather than for other medical conditions; (2) “she was able to walk on a treadmill for a cardiac tests,” acknowledging that it was at a slow rate; (3) “[s]he was also active in caring for her grandchildren, as well as spending time at the beach and attending ballgames”; and (4) “the only clinical finding and objective signs Dr. Hammer identifies in the form are pain and tenderness.” (AR 282.)

After reviewing other opinion evidence not material to plaintiff’s appeal, with the assistance of the VE, the ALJ concluded that Dorow could perform her prior work as a sorter/pricer. As such, the ALJ concluded that Dorow was not under a disability, and this appeal followed.

## OPINION

The standard by which federal courts review a final decision by the Commissioner of Social Security is now well-settled: findings of fact are “conclusive,” so long as they are supported by “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Moreover, provided the Commissioner’s findings under § 405(g) are supported by this kind



of “substantial evidence,” this 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). Finally, 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, courts must conduct a “critical review of the evidence,” *id.*, ensuring that the ALJ has provided “a logical bridge” between findings of fact and conclusions of law. *Stephens v. Berryhill*, 888 F.3d 323, 327 (7th Cir. 2018).

Dorow raises three challenges in this appeal, but because the court finds merit with the first challenge, it limits its discussion to it. On remand, the ALJ may provide further consideration of how Dorow’s obesity impacts her back and hip pain and assess her credibility.

In her appeal, plaintiff focuses on the ALJ’s treatment of her treating physician Dr. Hammer, who opined in a June 1, 2017, medical source statement that Dorow’s limitations were so significant that, at most, she would be able to perform sedentary work, which, as plaintiff explains in her opening brief, would have rendered her disabled under Rule 201.14 of the Medical-Vocational Guidelines, 20 C.F.R. Ch. 404, Subpart P, Appendix 1. (Pl.’s Opening Br. (dkt. #23) 15.)

Because Dorow’s application for disability benefits was filed before March 27, 2017, the court considers this challenge under the treating physician rule, codified at 20 C.F.R. § 404.1527(c)(2). Under this requirement, if an ALJ does not give the opinion controlling weight, then she must decide what weight should be given by considering, to the extent

applicable, specific regulatory factors. *See Gerstner v. Berryhill*, 879 F.3d 257, 263 (7th Cir. 2018). These factors include: (1) “the treatment relationship’s length, nature, and extent”; (2) “the opinion’s consistency with other evidence”; (3) “the explanatory support for the opinion”; and (4) “any specialty of the treating physician.” *See id.* (citing 20 C.F.R. § 404.1527(c)).

As set forth above, the ALJ described Dr. Hammer’s notes with respect to her degenerative disc disease condition and hip pain. Dorow saw Hammer on two occasions before she completed the June 1, 2017, form, a point that the Commissioner points out in her opposition brief, but not one offered by the ALJ in opting to place “very limited weight” on Dr. Hammer’s opinion. *See Jeske v. Saul*, 955 F.3d 583, 587 (7th Cir. 2020) (“Our review is limited also to the ALJ’s rationales; we do not uphold an ALJ’s decision by giving it different ground to stand upon.”) (citing *SEC v. Chenery Corp.*, 318 U.S. 80, 93–95 (1943)). As detailed by the ALJ, at the November 22, 2016 appointment, Dr. Hammer noted that Dorow had a “very antalgic gait,” but at the March 9, 2017, appointment she described that she ambulated with a “non-antalgic gait. (AR 1269, 1278.) During the November 22, 2016, appointment, Dr. Hammer conducted a physical examination which revealed tenderness and significant pain with various test and movements; she also noted that a “slump test” was positive. (AR 1269.) In addition to examining Dorow, Dr. Hammer also reviewed a recent MRI of her lumbar spine, which showed, as she described, “grade 2 spondylolisthesis and severe L5-S1 neural foraminal narrowing bilaterally.” (*Id.*) Moreover, a May 5, 2017, CT scan of her abdomen and pelvis showed a prior spinal

fusion, grade 2 spondylolisthesis at the L5 and moderate degenerative disease at the T12-L1 level.

The ALJ offered four reasons for placing very limited weight on this opinion: (1) while Dorow had an “antalgic gait on a couple of occasions,” it was mainly noted when she was being seen for hip pain rather than for other medical conditions; (2) “she was able to walk on a treadmill for a cardiac test,” acknowledging that it was at a slow rate; (3) “[s]he was also active in caring for her grandchildren, as well as spending time at the beach and attending ballgames”; and (4) “the only clinical finding and objective signs Dr. Hammer identifies in the form are pain and tenderness.” (AR 282.)

With respect to the first reason, Hammer herself noted that Dorow had an antalgic gait at one appointment, but noted no antalgic gait at the second appointment. As an initial point, the fact that medical providers made notations about an antalgic gait when addressing Dorow’s complaints of hip pain makes sense. In these appointments, rather than ones dealing with cardiac issues or diverticulitis, for example, the medical provider logically would be more focused on assessing her gait. Regardless, even in the March 9, 2017, appointment when Hammer noted that Dorow walked with a nonantalgic gait, she nonetheless credited Dorow’s complaints of pain, noting that they were “complex and . . . complicated by an underlying pain syndrome.” (AR 1278.) The ALJ offers no reason for questioning Hammer’s ability to assess Dorow’s complaints of pain.

The ALJ’s second and third reasons for discounting Hammer’s opinion fare no better. The fact that she was able to walk on a treadmill for a cardiac test at the initial rate of 1 mile per hour, which the administrator of the test had to reduce to 0.6 miles per hour

to address her limitations in walking with right hip pain” does not undermine Dr. Hammer’s opinions as to the extent of Dorow’s physical limitations. (AR 1623.) If anything, the description of this test supports a more limited RFC. Moreover, the ALJ stops short of explaining how providing some limited childcare for her grandchildren, spending time at a beach or attending ballgames is inconsistent with Hammer’s noted limitations or otherwise supports a finding that she is capable of sustained employment. *See Jelinek v. Astrue*, 662 F.3d 805, 812 (7th Cir.2011) (“An ALJ may consider a claimant’s daily activities when assessing credibility, but ALJs must explain perceived inconsistencies between a claimant’s activities and the medical evidence”); *Carradine v. Barnhart*, 360 F.3d 751, 753 (7th Cir. 2004) (finding error where ALJ “failed to consider the difference between a person’s being able to engage in sporadic physical activities and her being able to work eight hours a day five consecutive days of the week”).

Finally, the ALJ also rejected Hammer’s opinion because “the only clinical finding and objective signs Dr. Hammer identifies in the form are pain and tenderness.” (AR 282.) However, if the ALJ reviewed Hammer’s form in conjunction with the description of the physical examination Hammer completed during the two appointments with Dorow and her review of MRIs, it is not accurate to conclude that Dr. Hammer based her opinion solely on Dorow’s complaints of pain. Even if the ALJ properly discounted Dr. Hammer’s opinion based on the lack of “clinical finding[s] and objective signs” of Dorow’s condition, Dr. Hammer also opined that Dorow’s “knee pain, back pain, and hip pain had morphed into a hypersensitive, somatoform pain disorder.” (Ex. 15F; *see also* 1269 (finding tender points during examination).) While the ALJ noted this remark in her decision (AR 281),

she is no way dealt with the fact that there may be somatoform elements of Dorow's condition, which would belie the ALJ's reliance on the lack of "objective signs" in discounting Hammer's opinions. *See, e.g., Buehler v. Astrue*, No. 08-cv-732-bbc, 2009 WL 2495749, at \*9 (W.D. Wis. Aug. 12, 2009) ("[A]n administrative law judge cannot rely solely on the lack of objective medical findings to determine that plaintiff's myalgia pain was not severe.").

The court agrees with plaintiff that the ALJ failed to provide an adequate basis for discounting the opinion of Dr. Hammer, and, if she had credited it, even partially so, Dorow would have been found to be disabled. As such, the court will reverse the denial and remand for further proceedings consistent with this opinion.

#### ORDER

IT IS ORDERED that:

- 1) The decision of defendant Kilolo Kijakazi, Acting Commissioner of Social Security, denying plaintiff Lisa Dorow's application for social security disability benefits is REVERSED AND REMANDED under sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this opinion.
- 2) The clerk of court is directed to enter judgment in plaintiff's favor and close this case.

Entered this 27th day of June, 2022.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge