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

TAMALA ANN GARSKI,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

OPINION AND ORDER

16-cv-110-wmc

Pursuant to 42 U.S.C. § 405(g), plaintiff Tamala Ann Garski seeks judicial review of a final decision of defendant Nancy A. Berryhill, the Acting Commissioner of Social Security, which denied her application for Social Security Disability Insurance Benefits. In her appeal, plaintiff raises one challenge: the ALJ erred in assessing Garski's credibility. For the reasons provided below, the court will affirm the Commissioner's denial of benefits.

BACKGROUND[1]

A. Overview of Claimant

Garski was born on August 29, 1963. She applied for SSDI in 2012, approximately six years after her claimed disability onset date of April 27, 2006. Garski was 43 years-old on the alleged onset date of her disability in 2006, 48-years old at her last-insured date in 2011, 49 years-old when she applied for disability in 2012, and 50 years-old at the time of her hearing in May 2014.

Garski has at least a high school education, is able to communicate in English, and

[1] The administrative record ("AR") is available at dkt. #7.

has past work experience as a mail handler. Garski last worked in 2006. While she claimed disability based on a combination of physical impairments, including migraine headaches, fibromyalgia, plantar fasciitis, carpal tunnel syndrome and psoriatic arthritis, Garski's appeal primarily concerns pain associated with her migraine headaches and fibromyalgia.

B. Medical Record

1. Pre- onset date (April 27, 2006)

The medical records refer to two pre-onset medical events: surgery for plantar fasciitis in 2001 and a fibromyalgia diagnosis by a rheumatologist, Dr. Utrie, in 2005. In a February 3, 2006, Garski visited her primary care physician Dr. Patti Kile for a follow-up appointment after suffering from a viral syndrome with fatigue. Relevant to Garski's disability claim, Dr. Kile's notes include the following: "fibromyalgia, improving," "psoriatic arthropathy, improved," and "migraine headaches, stable on prophylaxis." (AR 352-53.) A few weeks later, however, Garski saw Fran Rademacher, APNP, for headaches, some progressive fatigue and muscle weakness. While her physical exam appeared normal, Rademacher noted: "I think her fibromyalgia is progressively worse over the past few weeks and now she has a more active migraine cycle going with rebound every couple of days." (AR 350.)

On March 16, 2006, Garski saw Dr. Kile again for fibromyalgia and depression, complaining of a flare-up of her headaches, fatigue and excessive aching in neck and shoulder, although she did not have major pain foot pain at that time. (AR 346.) Garski also reported her employer had suggested that she should apply for "disability retirement." Dr. Kile stated, "I don't think she has severe symptoms that would suggest she needs

disability"; instead, Kile noted that Garski may need intermittent leave under the FMLA. (AR 347.) Specifically, Kile explained that she did not think Garski would qualify for SSDI. She also noted that Garski was starting Cymbalta for her fibromyalgia, and she would see Garski again in a month.

In responding to request for medical documentation for disability retirement on April 19, 2006, Dr. Kile noted that Garski suffers from: multiple joint aches, increasing hand aching, but without synovitis or swelling noted; chronic foot problems, including surgery for planta fasciitis in 2001; headaches that began in December and were still persistent in February; and left upper leg pain, though CT scan was unremarkable and physical therapy was started. Kile also noted that she received a note from Garski that she had "quit working since our last visit because of stress and harassment." (AR 344.) Still, Kile concluded, "I think it is likely that she will be unable to continue working at her present fairly physical job on her feet a lot as a ma[il] processor for the post office." (AR 345.)

2. Relevant Time Period (April, 27 2006 through September 30, 2011)

In her July 10, 2007, medical note, Dr. Kile had summarized the results of Garski's annual exam. Kile described Garski's headaches as controlled with Tylenol #3 and beta blockers. (AR 338.) Kile also stated that Garski recently stopped taking her fibromyalgia medication due to side effects, including diarrhea, but had plans to see a specialist, Dr. Grandone, in two months. At the time, Garski also reported that "[s]he hasn't had any worsening of her psoriatic arthritis and fibromyalgia symptoms off the [fibromyalgia medication]." (AR 338.) Kile noted that her carpal tunnel syndrome was stable, and that

her physical exam revealed that "overall doing fairly well." (AR 339.) In fact, Garski's main complaint at that time was sore feet.

A September 10, 2007, note by John T. Grandone, M.D., later confirms that Garski was referred to him by her treating physician, Dr. Kile, for evaluation of generalized musculoskeletal pain. (AR 304.) In reviewing Garski's medical history and then illness, Dr. Grandone stated that her "[p]ain is enhanced by overactivity and has been accompanied by chronic fatigue and disruptive sleep pattern." (*Id.*) He also noted that Garski thought retiring from her prior mail handling position would relieve these symptoms, but that "[p]ain has not significantly improved." (*Id.*) Grandone noted that Garski "[d]oes obtain partial pain relief with [nonsteroidal anti-inflammatory drugs] and rest." (*Id.*) Regarding fibromyalgia in particular, Grandone scheduled various tests and bloodwork, indicating that he intended to reassess in 2-4 weeks. (AR 303.) The results of those follow-up tests, including x-rays requested by Grandone of Garski's feet and hands, were unremarkable (AR 305-06), and her blood test results also appeared to be within normal ranges (AR 307-14). In his follow-up letter dated November 15, 2007, to Dr. Kile, Grandone described the results of his examination, including his treatment recommendations, and stated that Garski should return to Kile for long-term health care management. (AR 315.)

Dr. Kile saw Garski again on July 15, 2008, for her annual exam, reporting "that she is feeling pretty well," which Kile found "significant for her." (AR 332.) Dr. Kile also noted that Garski is on Cymbalta, as prescribed by Dr. Grandone, and that "[s]he is not having nearly as many tension headaches." (*Id.*) Kile attributed "part of that [to] just the

acceptance of the ups and downs of the fibromyalgia knowing that she has to do regular exercise." (*Id.*) Dr. Kile also reported that Garski "feels satisfied where she is at, at present." (*Id.*) As for her headaches, Kile noted that Garski is still using Tylenol #3 occasionally and is also on "beta blockers for migraine prophylaxis." (*Id.*) She further found Garski's restless leg syndrome well-treated with Sinemet, and her carpal tunnel syndrome under control now that she no longer works. Moreover, Garski's psoriasis was controlled with creams and shampoo, and her plantar fasciitis "resolved now that she is not on her feet doing postal work." (*Id.*) In the "review of systems" section, Dr. Kile reiterated that "[o]verall [Garski is] feeling quite well. Occasional aches, but also her activities she enjoys and household activities." (AR 333.)

In a January 25, 2010, annual exam note, after noting that Garski had not been seen for a year and a half, Dr. Kile notes that: "She does occasionally have headaches most often in the week before her menses," but "has not been severe to the point that she has needed to have any intervention." (AR 327.) As for fibromyalgia, Garski continued taking Cymbalta, which "she tolerated with significant benefit." (*Id.*) Still, Garski apparently reported "feel[ing] that she is disabled on an intermittent basis when she has flares which are quite variable for how often they occur, and how long they last." (*Id.*) Kile also noted that Garski's restless leg syndrome was severe, but that she has been using Sinemet with "good benefit." (*Id.*) As for her psoriatic arthropathy diagnosis in 2005, Kile mentioned that Dr. Grandone believed all of Garski's pain is related to fibromyalgia, and that other testing has been negative. Finally, Kile noted that Garski still has some problems with carpal tunnel syndrome, but "not nearly as much trouble with wrists since she is not

working at post office for the last few years." (*Id.*)

Another year-and-a-half later, on July 29, 2011, Garski again saw Dr. Kile for her "annual exam." At that time, the record reflects Garski was still on Cymbalta, and she noted that Garski's worst pain areas are "her neck, upper trapezius regions, and her hips." (*Id.*) Kile also noted that Garski was still experiencing migraines, and described them as lasting up to 3 or 4 days, but that she took Tylenol #3 with benefit. However, Kile further noted that Garski had tried multiple different migraine medications, but reported none were effective. As for her psoriasis, Kile found that it was mainly affecting the head and scalp area, and she indicated that the shampoo Garski used had not been as effective, but that Garski planned to see a dermatologist about this. As for her restless leg syndrome, Garski indicated that the Sinemet medication that she had been on since 2007 was also not working as well. Dr. Kile indicated that she was going to refill that prescription, but that Garski should also do a trial of clonazepam at bedtime. As for her carpal tunnel syndrome, Garski reported "not having symptoms at this time." (AR 321.) Dr. Kile also mentioned a possible psoriatic arthropathy diagnosis, but indicated that she agreed with Dr. Grandone that her aching was likely due to fibromyalgia. Finally, Garski's physical exam appeared unremarkable except for "a little discomfort in SI joints and more discomfort in the interscapular and upper trapezius regions." (AR 322.)

3. Post-Last Insured Date (October 2011 through May 2014)

Medical records that post-date the relevant period of time continue to reflect roughly annual appointments with Dr. Kile, with an uptick in the months preceding her hearing with the ALJ in May 2014. In an August 21, 2012, annual exam note from Dr.

Kile, she notes that Garski went off Cymbalta in March of 2012. By way of explanation, Kile wrote:

> [S]he says her pain of fibromyalgia got somewhat worse initially, but then diminished somewhat. It is still worse than when she was on the Cymbalta, but she has continued to be able to function, but has soreness on her skin and muscles superficially just about everywhere.

(AR 424.) As for her disability application, Dr. Kile further stated:

> [S]he contacted our office about getting a supportive letter for disability, but I did not feel I could support that, hav[ing] not seen her in a year and feeling that she really was not likely to have so much trouble with the fibromyalgia that she could not qualify for some work.

(*Id.*) Finally, Kile noted that Dr. Grandone did not think she would qualify for disability either. (AR 425.)

At that time, Dr. Kile put Garski on Gabapentin for a month-long trial, and told her to be in contact "if she has not had any improvements in symptoms or inadequate improvement." (AR 425.) Garski also complained of foot pain and was referred to a dermatologist for psoriasis.[2] Finally, she complained of some low back discomfort, including left leg pain, but said that the pain is not frequent, and March 2012 x-rays showed no signs of degenerative arthritis. As for her physical exam, Kile found that it was normal except for "mild diffuse discomfort to palpation everywhere but she is a little more sensitive over the sacroiliac joints to palpation." (AR 427.)

[2] A November 6, 2012, report from Dermatology Associates of Wisconsin S.C., indicates that Garski was seen for psoriasis and found her "problem is moderate, unchanged and occurs constantly." (AR 393.) Garski was instructed on solutions to use and told to follow-up in four months.

Garski saw Dr. Kile again on October 4, 2013, for an annual exam. Kile's medical note states that Garski had recently seen Dr. Zhou and is continuing on Savella for her fibromyalgia, recently increased to twice a day. Kile also noted that Garski is taking Tylenol #3 for migraine headaches and Enbrel for psoriatic arthritis, specifically stating that "overall is doing much better and it nearly totally resolved her psoriasis." (AR 415.) Kile further found restless leg syndrome is well-controlled with Sinemet, and while her "migraine headaches have been severe at time," "[s]he had marked improvement on a beta blocker." (*Id.*) Because her migraines typically occurred around menses, Kile also noted that this "may get better once she is menopausal." (AR 416.) As for Garski's fibromyalgia, Kile observed that "she may go a couple of days where she hurts but then she will usually have a number of days that she feels well. This week has been unusual in that she has gone a[] week having increased pain compared to usual." (AR 416-17.)

About six months later, on April, 3, 2014, Garski saw Dr. Kile for an office visit due to headaches. Kile noted that "[s]he looks uncomfortable with slightly squinted eyes and showing some pain behavior." (AR 402.) Garski also complained of pain in the feet and ankle region, specifically describing "pulsatile pain, a throbbing sort of discomfort, that again is worst after she is standing and walking." (*Id*.) "She comments over the last 3 weeks, she has had flares so severely that it has just been hard to move and to walk and that is part of why she is in to discuss the situation." (*Id.*) Kile's exam also revealed that Garski "looks uncomfortable, slightly squinted eyes but the pupils are equal and react to light." (*Id.*) As for her feet, Dr. Kile noted that "she has tenderness as I palpate along the plantar fascia," and that "[t]here is a little swelling that is seen at the ankles," but the ankle

does not look "puffy" as Garski described. (AR 404.) The plan was to have her Garski continue on the Savella.

A few days later, on April 7, 2014, Garski completed a physical work performance evaluation. However, the report begins with the statement: "Please note that significant self-limiting and inconsistent behavior heavily influenced test results." (AR 490.) And while that report limited her to sedentary work, it also stated: "Please note that the client has limited sitting tolerance for the 8-hour day at the Sedentary level. However, also note that pain or pain behaviors were inconsistent with the observed deviations. Therefore, this result represents a minimal sitting ability and not a maximum ability." (AR 490.) The report also noted that "[t]he client self-limited on 60% of the 20 tasks, explaining:

> Self-limiting behavior means that the client stopped the task before a maximum effort was reached. Possible causes of self-limiting behavior include: (1) pain; (2) psychosocial issues such as fear of reinjury, anxiety, or depression; and/or (3) attempts to manipulate results. Although it is difficult to determine the causes of self-limiting behavior, our research indicates that motivated clients self-limit on no more than 20% of test items. If the self-limiting exceeds 20%, then psychosocial and/or motivational factors are affecting test results.

(*Id.*) The tester also observed "clinical inconsistencies." (AR 491.)

4. Subsequent State Agency Doctor Reviews

As part of Garski's disability application, James Byrd, M.D., initially reviewed her medical record on August 9, 2012, limiting Garski to light work, with an RFC consistent with that limitation, e.g., lifting 20 pounds occasionally, 10 pounds frequently; stand and/or walk 6 hours; sit 6 hours. (AR 103-05.) On reconsideration of an initial denial, Kyla King, Psy.D., reviewed her medical record for any mental health impairments in a

report dated May 15, 2013. She found only mild limitations with respect to activities of daily living and difficulty in maintaining social functioning, none for CPP, and no episodes of decompensation. (AR 112.)

Also on reconsideration, Pat Chan, M.D., reviewed her record for physical impairments in a report of the same date, May 15, 2013. Like Dr. Byrd, Dr. Chan limited Garski to light exertion work, with the same restrictions as Byrd. (AR 113-14.) In making this determination, Chan observed that:

> [Claimant's] statements about the level of her pain and dysfunction seem somewhat exaggerated. Her statements on the 3368 and ADL forms are consistent with the objective findings in file. She stated on the ADL form that she quit work because she couldn't physically do it. [Medical record] refers to her quitting due to stress and "being harassed."

(AR 113.)

C. ALJ Opinion

Following an evidentiary video hearing held on May 5, 2014, at which Garski appeared with counsel, the ALJ found that she had the following severe impairments: fibromyalgia, restless leg syndrome, migraines, psoriasis and obesity. (AR 31.)[3] As for her residual functional capacity, the ALJ concluded that she could perform "light work as defined in 20 CFR 404.1567(b) except that the claimant can perform occasional stopping and crouching." (AR 33.) In explaining his reasons for rejecting Garski's claim that she

[3] The ALJ did not find severe impairments for carpal tunnel syndrome or a mental impairment of affective disorder, and the plaintiff does not seek review of either of these findings. The ALJ also considered whether any of Garski's impairments met or medically equaled the severity of one of the listed impairments in 20 CFR Part 303, Subpart P, Appendix 1, finding that they did not. Plaintiff also does not challenge this finding.

could not work, the ALJ reviewed her medical records in detail with respect to each of her severe impairments. As for her fibromyalgia diagnosis, the ALJ principally relied on statements detailed above by her treating physician, Dr. Kile, that (1) Garski's symptoms were not so severe as to qualify as a disability, and (2) her fibromyalgia was well controlled by Cymbalta or other prescription medication. The ALJ also addressed Garski's fibromyalgia flare-up in 2014, but pointed out that this was "two and a half years after the relevant period." (AR 34.) As for Garski's migraine headaches, the ALJ similarly found that the "objective [medical] evidence prior to the date last insured has shown that the claimant's migraine headaches improved with the medication," including Tylenol #3 and other prescription drugs. (AR 35.) In great detail, the ALJ also reviewed the medical records to assess limitations associated with her Restless Leg Syndrome and psoriasis, again finding that both were adequately controlled with medication during the period of time between her alleged disability onset date and her last-insured date.

The ALJ further discounted Garski's complaints of pain and limitations caused by that pain, noting that her complaints were not entirely consistent with her own account of activities (e.g., going to church every week, caring for her pets, washing dishes and going grocery shopping). In addition, the ALJ relied on additional statements in the medical records reflecting successful treatment for pain with medication. The ALJ next noted Garski's "only infrequent, routine treatment" with Dr. Kile, finding that "this type of treatment does not support a finding of greater limitation based on subjective allegation." (AR 36.) Finally, the ALJ again relied on Dr. Kile's own skepticism as her treating physician, as reflected in Garski's application for disability, as well as in her April 2014

physical work performance evaluation describing self-limiting and inconsistent behaviors.

Accordingly, the ALJ concluded that Garski could return to her work as a mail handler, an exertionally light, semiskilled job. Alternatively, the ALJ concluded that there were other jobs in the national economy that she could perform, including usher/ticket taker, production worker helper and stock clerk.

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).

Here, plaintiff contends that the ALJ erred in failing to credit her hearing testimony that she "had a significant exacerbation of fibromyalgia or, as Garski described them, episodes." (Pl.'s Reply (dkt. #11) 1.) In fairness, Garski testified at great length about the

pain she experiences and how that pain impacts her ability to perform household activities, particularly when she has a fibromyalgia flare-up or episode. Critically, in responding to questions from the ALJ, Garski testified in particular that her condition had worsened since the summer or early fall of 2011. (AR 74.) In response to questions from her counsel, Garski contradicted, or at least back-tracked a bit, from this earlier concession, responding "Correct" to her counsel's question "And that's been the case since 2011?" (AR 79.)

Regardless of whether this constituted a contradiction, the medical record reveals that her fibromyalgia and migraine headaches -- the primary source of her pain complaints -- were adequately controlled during the coverage period. After a cluster of appointments preceding Garski's retiring from her job of 18 years as a mail handler and her alleged disability onset date, Garski did not see Dr. Kile or otherwise seek medical treatment for approximately 15 months. As described above, for the five-and-a-half-year period of time pertinent to Garski's SSDI application, she saw Dr. Kile for her annual appointment (which typically occurred every 18 months), and she saw Dr. Grandone as a referral on one occasion for treatment of fibromyalgia.

Arguably, *after* her date last insured, Garski's doctor visits and complaints about pain seem to have increased, at least in the month or so preceding her hearing with the ALJ. However, the ALJ correctly focused on the relevant period of time. *See Eichstadt v. Astrue*, 534 F.3d 663, 666 (7th Cir. 2008) (affirming denial of benefits in part because "the evidence post-dating [claimant's] date last insured. . . failed to support [claimant's] claim. Although this evidence tended to suggest that [claimant] is currently disabled, and perhaps was disabled during the late 1990s, it provided no support for the proposition that she was

disabled at any time prior to December 31, 1987"). On the contrary, the strongest evidence of Garski's medical condition at the time are found in the medical notes of her primary treating physician, Dr. Kile.

To the extent that the ALJ relied on these notes in questioning Garski's credibility, this court is in no position to second guess. *See* 20 CFR § 404.1527(c)(2) (providing that treating physician's opinion is due controlling weight if it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record"). Indeed, credibility determinations are entitled to special deference because the ALJ has the opportunity to observe the claimant testifying, while a reviewing court obviously does not. *See Jones v. Astrue*, 623 F.3d 1155, 1160 (7th Cir. 2010). Thus, courts give an ALJ's credibility determinations a "commonsensical reading," rather than "nitpick the ALJ's opinion for inconsistencies and contradictions," *id.*, and will overturn an ALJ's credibility finding only if "patently wrong." *Carradine v. Barnhart*, 360 F.3d 751, 753 (7th Cir. 2004). Accordingly, the court finds no error in the ALJ's discounting of Garski's claims of pain due to her "only infrequent, routine treatment" from claimant's alleged onset date of April 2006 to the date last insured on September 2011.

Finally, while the court agrees that the ALJ's discussion of Garski's activities of daily living -- namely, her weekly attendance of church, pet care, and occasional grocery shopping, among other activities -- fails to acknowledge fully the fluctuating nature of fibromyalgia, the ALJ provides a number of other sound, independent bases for discounting Garski's self-assessment as to her ability to work. Indeed, when coupled with her treating

physician's contemporaneous notes during that relevant time period indicating that her conditions were adequately controlled with medication, questioning her credibility in the April 2014 physical evaluation assessment and expressing the belief that she was not disabled, the court finds the ALJ's assessment amply supported by this record.

ORDER

IT IS ORDERED that the decision of defendant Nancy A. Berryhill, Acting Commissioner of Social Security, denying claimant Tamala Ann Garski's application for disability and disability insurance benefits is AFFIRMED. The clerk of court is further directed to enter judgment for defendant and close this case.

Entered this 19th day of April, 2019.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge