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

LEONARD RAY HALL,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of Social Security,

Defendant.

OPINION AND ORDER

20-cv-234-wmc

Pursuant to 42 U.S.C. § 405(g), plaintiff Leonard Ray Hall seeks judicial review of a final determination that he was not disabled within the meaning of the Social Security Act. Hall raises three, core challenges on appeal: (1) the ALJ erred by providing her own interpretation of the medical record after the state agency physician's review in September 2017; (2) the ALJ's credibility findings were patently wrong; and (3) the ALJ erred in her treatment of Hall's mental health limitations in crafting the RFC. For the reasons that follow, the court will affirm the Commissioner's final determination.

BACKGROUND[1]

Plaintiff Leonard Ray Hall has a limited, formal education, but is able to communicate in English and has past relevant work as a farm laborer and utility worker. Hall has not engaged in substantial gainful activity since June 1, 2016, the same date as his alleged onset disability date.

[1] These background facts are drawn from the administrative record, which can be found at dkt. #16.

Hall applied for social security disability benefits on February 16, 2017. His date last insured was December 31, 2019. With a birth date of November 8, 1974, Hall was 41 years-old at his alleged disability onset, which is defined as a "younger individual." 20 C.F.R. § 404.1563. In his application, Hall claimed disability based on arthritis in his back, being overweight, Bell's palsy, an enlarged heart, ringing in the left ear, asthma, gallstones, hip and knee pain, depression and diabetes. (AR 133.)

ALJ Margaret A. Carey held a video hearing on March 18, 2019, at which Hall appeared personally and by counsel. On May 18, 2019, the ALJ issued an opinion finding that Hall had not been under a disability from June 1, 2016, through his last-insured date. The ALJ first credited Hall with the following severe impairments: "obesity; degenerative disc disease; osteoarthritis of the bilateral knees; obstructive sleep apnea; gastritis; Bell's palsy; plantar fasciitis; asthma; depressive disorder; personality disorder; and substantive addiction disorder." (AR 76.) However, the ALJ determined that Hall's diabetes mellitus diagnosis, as well as various other diagnoses mentioned in the medical record, were *not* severe, which plaintiff does not challenge on appeal. (AR 76-77.) The ALJ further found that Hall had no impairment or combination of impairments that met or medically equaled one of the listed impairments. (AR 77-79.) Here, too, plaintiff does not directly challenge the ALJ's conclusions, although he does contend that the ALJ erred by crafting an RFC that inadequately addressed his mental health limitations and instead reviewing those limitations only in the context of determining whether the let or medically equaled Listings 12.04 (depressive, bipolar and related disorders) and 12.08 (personality and impulse-control disorders).

Ultimately, the ALJ determined that Hall had the physical residual functional capacity ("RFC") to perform sedentary work with the following additional exertional restrictions: "never climb ladders, ropes or scaffolds"; "only occasionally climb stairs and ramps, stoop, kneel, crouch, and crawl"; "[o]verhead reaching bilaterally is limited to frequent"; "tolerate only occasional exposure to odors, dust, fumes, gases, and other pulmonary irritants"; and "will need protective eye gear." (AR 79.) The RFC also provided that Hall: (1) "must have a sit/stand option where after sitting for 30 minutes he can stand for 1 minute and sit again"; and (2) "will need a break every 2 hours for 15 minutes, which can be accommodated by routine breaks and lunch." (*Id.*) In formulating the RFC, the ALJ considered Hall's testimony at the hearing as to his physical limitations, namely that he can sit for no more than ½ to 1 hour at a time, for a total of 6-8 hours per day, stand for no more than ½ hour at a time, for a total of 3-4 hours per day, walk for no more than ½ hour at a time, for a total of 1-2 hours per day. Hall also testified to having difficulty climbing stairs, lifting, squatting, bending, reaching, kneeling and hearing.

With respect to his mental health limitations, the RFC provided that he "maintains the capacity to understand, remember, concentrate, persist, and perform simple, routine tasks in a low-stress environment, defined as having simple, work-related decisions and routine changes in the work setting," and that he "can have occasional contact with the public." (*Id.*) The ALJ adopted these limitations based on Hall's reports that he had problems with concentration, memory, understand, getting along with others, and completed tasks. The ALJ also noted that Hall does not handle stress or change in routines well and gets irritated quickly. Moreover, Hall described being easily fatigued, sleeping only two to three hours per night and napping for an hour or two per day. Further, after

reviewing Hall's self-assessment of his physical and mental limitations, the ALJ reviewed Hall's description of his activities and routine, including engagement with his dogs, cooking, performing some home repairs and lawn work, grocery shopping, shooting pool and fishing. (AR 80.)

The ALJ then reviewed the medical record with respect to Hall's complaints of back pain, which date back to June 2016. The ALJ acknowledged Hall's consistent complaints of back pain, including, at times, reports that the pain radiates to other parts of his lower body. Imaging studies reveal mild degenerative arthritis of the knees bilaterally and mild degenerative disc changes in the thoracic and lumbar spine, with probable impingement on the exiting right S1 nerve root laterally within its neural foramen or opening. Upon examination, Hall was regularly tender to palpation throughout his spine and slight deficits in range on motion were noted occasionally, but no deficits were noted with respect to strength or sensation. On one occasion, the medical record noted difficulty in changing positions on an exam table and gait deficits and, on two occasions, his straight-leg-raise test was positive, once in late 2017 and once in early 2018. Finally, Hall tried lumbar epidural steroid injections and lumbar medical branch blocks, but neither provided significant relief. (AR 81.)

The ALJ conducted a similar review of the medical record with respect to Hall's other conditions, namely plantar fasciitis, gastritis, Bell's palsy, asthma and obstructive sleep apnea and obesity, none of which plaintiff specifically challenges on appeal. Having summarized her findings with respect to Hall's physical conditions as a whole, the ALJ recognized that he has a "number of significant physical conditions," specifically noting that his "musculoskeletal conditions and obesity appear to be particularly severe." (AR

82.) Acknowledging Hall's attempts at treatment, the ALJ also found that his "conditions have generally persisted." (*Id.*) And while noting some gaps in treatment/medication compliance, the ALJ further acknowledged that there has been a lack of insurance at times. Based on this review, the ALJ concluded that there was sufficient support to limit him to work at the sedentary exertional level and justified other physical restrictions due to his specific, physical conditions.[2]

As for his mental impairments, the ALJ took note of one report of suicidal ideation, but also that his psychiatric evaluations during physical treatment appointments have been largely normal. The ALJ further noted that while Hall has been prescribed psychiatric medication -- and, at times, his dosage has been increased to address depression and anxiety -- he has declined to engage in counseling. (AR 83.) The ALJ then reviewed the consultative examination report from Peggy Dennison, Ph.D., conducted in June 2017. After reviewing Dennison's report of Hall's own account of his mental history and her observations, the ALJ noted that while Dennison diagnosed Hall with "antisocial personality disorder, adjustment disorder with depressed mood, and alcohol use and cannabis use disorder," she also determined that his prognosis was "good." (AR 83.) Thus, giving Hall "the benefit of the doubt" as to his allegations about concentration and social problems, as well as the one report of suicidal ideation, the ALJ found that he was limited to "simple, routine tasks in a low-stress environment, defined as simple, work-related

[2] In his opening brief, plaintiff also sets forth various medical records dating from March 18, 2016, through April 25, 2018, which cover heel pain, right-sided facial paralysis, ringing in the left ear, ankle pain, chronic back pain, including references to an abnormal straight-leg-raise test in August 2017, as well as depression, though noting that Hall denied suicidal or homicidal ideations. (Pl.'s Opening Br. (dkt. #26) 6-8.) The court will address these specific medical records where relevant in the opinion below.

decisions and routine changes in the work setting," and to only "occasional contact with the public." (AR 83.) To further accommodate his deficits in concentration and need for regular restroom breaks, the ALJ also included the need for a break every 2 hours, up to 15 minutes at a time.

As for opinion evidence, the ALJ placed little weight on the opinions of the state agency medical consultants, who had concluded that Hall could perform light exertional work, because they were "not fully consistent with or supported by the objective medical evidence, specifically pointing to Hall's "extreme, morbid obesity with a BMI upwards of 70." (AR 83-84.) Giving Hall the benefit of the doubt, therefore, the ALJ found that he should be limited to sedentary work after considering all his conditions.

As for the state psychiatric consultants, the ALJ placed "good weight" on the opinion at the reconsideration stage, but only "moderate weight" to an initial opinion. (AR 84.) Specifically, the ALJ noted that the consultant at the reconsideration level opined that Hall "could carry out simple tasks over the course of a routine workday/workweek within acceptable attendance, persistence, and pace tolerances; could relate adequately with supervisors and co-workers, with limited contact with the general public; and could adapt to routine workplace change, remain aware of environmental hazards, form basic plans/goals, and travel independently." (AR 84.) The ALJ also noted Dennison's similar assessment of Hall's limitations, placing "good weight" on that opinion and incorporating both opinions into the RFC. (*Id.*)

As for the opinion of Hall's own treatment provider, Staci Sova, APNP, the ALJ placed little weight on a form that she had completed, acknowledging that "as one of the claimant's primary care providers, even as a nurse practitioner, this medical source likely

possesses a strong understanding of the longitudinal impact of the claimant's impairments on work-related functioning," but finding "the highly restrictive limitations" set forth in that form to be "inconsistent with Ms. Sova's own treatment records," as well as "internally inconsistent." (AR 84.) In support, the ALJ specifically cites: (1) Sova's consistent notes regarding Hall's "normal gait, full range of motion, and full strength in the lower extremities"; (2) her regular reports of Hall "having no more than mild difficulty in getting on or off the examination table"; (3) her lack of reports of "neurological or range of motion deficits in the upper extremities"; and (4) her reports of "normal psychiatric examinations," despite noting his complaints of depression and anxiety. (AR 84.) In addition, the ALJ noted the lack of any explanation as to the bases for setting such restrictive limitations in Sova's form, particularly since these restrictions were inconsistent with those of the other medical providers, some of whom had "noted slightly worse signs and findings," but offered no opinion that Hall was more limited than the RFC assessment adopted by the ALJ. (AR 85.)

Finally, the ALJ determined that while Hall could not perform his past relevant work experience, both of which were medium or heavy exertional level work, but concluded that Hall could perform work as a circuit board assembler, addresser and table worker, all of which had a significant number of jobs in the national economy according to the unchallenged testimony from the vocational expert. Thus, the ALJ concluded that Hall was not under a disability from June 1, 2016, through the date of the decision.

OPINION

The standard by which federal courts review 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). Moreover, 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). Similarly, 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). Still, courts must conduct a "critical review of the evidence," *id.*, and insure the ALJ has provided "a logical bridge" between the findings of fact and conclusions of law, *Stephens v. Berryhill*, 888 F.3d 323, 327 (7th Cir. 2018). As described in the introduction, plaintiff raises three, core challenges in this appeal, which the court will address in turn under the deferential standard.

I. ALJ Improperly Played Doctor

Plaintiff first faults the ALJ for improperly "playing doctor" in determining that Hall could perform sedentary work. More specifically, plaintiff argues that because the ALJ placed little weight on the state agency medical consultants who opined that Hall could perform light work, she necessarily relied on her own interpretation of medical records filed after the state agency review to determine that plaintiff could perform sedentary work, without obtaining an opinion to that effect from a medical expert. However, the Seventh

Circuit has explained, it *is* the ALJ's role to determine the claimant's RFC. *Thomas v. Colvin*, 745 F.3d 802, 808 (7th Cir. 2014) ("[T]he determination of a claimant's RFC is a matter for the ALJ alone – not a treating or examining doctor – to decide."). Certainly, in doing so, the ALJ "must consider the entire record, including all relevant medical and non medical evidence," but she "need not accept only physicians' opinions." *Diaz v. Chater*, 55 F.3d 300, 306 n.2 (7th Cir. 1995). Most critically, the ALJ "is not required to rely entirely on a particular physician's opinion or choose between the opinions of any of the claimant's physicians." *Schmidt v. Astrue*, 496 F.3d 833, 845 (7th Cir. 2007). As such, the court rejects plaintiff's challenge premised solely on the proposition that an ALJ must adopt a specific medical expert opinion in determining the claimant's RFC.

Plaintiff also points to new medical records after the state agency medical consultants' review, which indicate "gait deficits" and an "abnormal" straight-leg-raise test. (Pl.'s Opening Br. (dkt. #26) 15 (citing ALJ Op. (AR 81).) The ALJ also noted lumbar medical branch blocks that plaintiff had received, and his report that those treatments did not provide "significant relief." (*Id.*) Based on these more recent medical records, plaintiff contends that the ALJ was required to "call upon a medical expert instead of relying on her layman's evaluation of the evidence." (Pl.'s Opening Br. (dkt. #26) 14.) However, once again, Seventh Circuit caselaw -- and, indeed, a decision of that court quoted at length by plaintiff -- requires only that an ALJ seek a new medical opinion *if* "later evidence contain[s] new, significant medical diagnoses [that] reasonably could have changed the reviewing physician's opinion." (*Id.* (quoting *Moreno v. Berryhill*, 882 F.3d 722, 728-29 (7th Cir. 2019), *as amended on reh'g* (Apr. 13, 2018)).) Indeed, the Seventh Circuit has rejected plaintiff's very argument, explaining that "[i]f an ALJ were required to update the record

any time a claimant continued to receive treatment, a case might never end." *Keys v. Berryhill*, 679 F. App'x 477, 480-81 (7th Cir. 2017). Here, plaintiff pointed to *nothing* in the most recent medical reports that is markedly new or inconsistent with plaintiff's earlier medical results, much less significant enough to second guess the ALJ's finding that reopening the record was unnecessary.

Plaintiff next faults the ALJ for failing to provide a sufficient explanation for the sit/stand option included in the RFC, specifically arguing that she "cited no evidence, medical record, or medical opinion to support such a limitation." (Pl.'s Opening Br. (dkt. #26) 17.) To the contrary, plaintiff's own treating provider, APNP Soya, described plaintiff's need for a sit/stand option in her report. While the ALJ placed little weight on other aspects of Soya's form limitations because of inconsistencies between those assessments and the relatively normal observations she had made in her own medical records, coupled with the fact that other treatment providers did not assess plaintiff as being so limited, this does not preclude the ALJ from crediting Soya's specific opinion that Hall was in need of a sit/stand option. (AR 844.) Moreover, the ALJ also relied on Hall's *own* assessment that he could sit for up to 30 minutes to an hour at a time without needing to change positions, and the ALJ's observation during the hearing that Hall stood twice for about a minute at a time during the roughly hour-long hearing. (AR 80, 180, 291.) Regardless, plaintiff fails to point to any evidence or develop any argument that he needed a *different* sit/stand option, nor that this restriction would not help address his physical restrictions.

Finally, related to her formulation of Hall's RFC, plaintiff faults the ALJ for placing little weight on APNP Soya's opinions that would have rendered plaintiff unemployable.

In his response, the Commissioner argues that since Soya is a "nurse," she does not meet the definition of an "acceptable medical source" under 20 C.F.R. § 416.902. While the Commissioner's specific label is incorrect -- Soya is an "*advanced practice nurse prescriber*" -- under the specific language of the regulation governing plaintiff's claim, the Commissioner is correct to note that she falls outside the strict definition of an "acceptable medical source."[3] As such, the ALJ may weigh non-acceptable medical sources using factors such as supportability and consistency, although not every factor is necessarily appropriate in each case. 20 C.F.R. § 416.927(f)(1).

Regardless, in rejecting Soya's opinion, the ALJ explained that her restrictions were suspect for far more tangible reasons than her specific medical title, including the inconsistency between the unexplained restriction in her response and her contemporaneous, medical records documenting a normal gait, full range of motion, full strength in the lower extremities, and no more than mild difficulty in getting on and off the exam table. (AR 84.) Moreover, the ALJ noted that other treatment providers, some of whom had noted worse findings, did not opine that plaintiff was more limited than the RFC crafted by the ALJ. (AR 85.) Accordingly, the ALJ provided a more than sufficient explanation to discount Soya's non-acceptable medical opinion.

II. Credibility Findings

In his second challenge, plaintiff contends that the ALJ failed to identify medical evidence that was inconsistent with Hall's statements concerning the intensity, persistence

[3] The court notes that the regulation has since added "Licensed Advanced Practice Registered Nurse, or other licensed advanced practice nurse with another title," as an acceptable medical source, but only as to those "claims filed (see § 416.325) on or after March 27, 2017." 20 C.F.R. § 416.902. Plaintiff filed his claim in February 2017.

and limiting effects of his symptoms. To the contrary, plaintiff argues, the objective evidence in the medical record *support* Hall's description of his limitations, particularly imaging studies of his spine and failed pain injections. However, plaintiff has identified neither the subjective complaints that the ALJ should have credited, nor that would have resulted in additional restrictions. Indeed, the ALJ *did* credit plaintiff's subjective complaints of significant pain *and* limited Hall to sedentary work with additional physical restrictions to address this pain and his morbid obesity, including a sit/stand option. The ALJ also noted, as she was required to do, that the medical record revealed only slight deficits in range of motion, no deficits in spinal strength or sensation, and very limited reports of difficulty in changing position, gait deficits or abnormal test results. (AR 81; *see also* AR 82 (summarizing findings).) Finally, the ALJ justifiably relied on the majority of medical records noting generally normal examinations in rejecting additional restrictions or otherwise concluding that plaintiff was not able to perform even sedentary work.

Plaintiff also contends that the ALJ failed to consider Hall's report of absences from work due to gastritis, injections and other medical treatment. This argument similarly warrants little discussion because plaintiff fails to direct the court to evidence in support. Instead, plaintiff asserts without citation to his actual testimony that he "would have missed at least two days per month," which, if credited, would have rendered him unemployable. (Pl.'s Opening Br. (dkt. #26) 22.) As an initial matter, in the court's review of the transcript from the hearing, plaintiff does *not* testify that he would miss work due to his gastritis, injections or other medical treatment. Indeed, he offers no testimony about missing work for medical care of his physical impairments at all. *See Best v. Berryhill*, 730 F. App's 380, 382 (7th Cir. 2018) (rejecting plaintiff's argument based on absenteeism

because plaintiff fails to "point to anything in the record to suggest that his appointments would require him to miss a full day of work or that he could not schedule appointments outside of working hours"). Moreover, and perhaps more critically, the cited reasons for being absent -- gastritis, injections and other unidentified "medical treatment" -- does not support a finding that Hall would be absent two times a month. Plaintiff's last treatment for gastritis was in August 2016, three months after his alleged disability onset date, and the record reveals that he only received lumbar epidural injections -- which plaintiff described as a failed treatment -- on a couple of occasions.

Finally, plaintiff contends that the ALJ failed to analyze Hall's pain and subjective statements under SSR 16-3p. Specifically, plaintiff faults the ALJ for simply summarizing the medical evidence, without "explaining how the evidence supported her conclusions." (Pl.'s Opening Br. (dkt. #26) 25.) Without citing any specific examples of where the ALJ's treatment of plaintiff's subjective complaints of pain fall short, however, the court cannot assess this general, undeveloped argument. Regardless, in the court's review, the ALJ adequately tied the evidence in the medical record to justify the RFC restrictions.

III. Treatment of Mental Health Limitations in RFC

Plaintiff's last challenge deserves even less discussion because it is premised on a misstatement as to the requirements for an ALJ to formulate mental health limitations based on the opinion of a state agency psychologist. Without legal support, plaintiff argues that the ALJ erred in relying on state agency psychologists' opinions in crafting mental or nonexertional limitations in the RFC because the psychologists' narrative did not address the *individual* effect of each, specific limitation noted in the boxes for the multiple items

under the four subheadings of Section I of the POMS evaluative form. However, as the Commissioner points out in his opposition, there is no such requirement. Instead, quoting the relevant regulations, state agency psychologists are directed to "prepare a **narrative statement** for **each** of the subsections (A through D) in section I." POMS DI 24510.05(A) (emphasis in original). What that regulation does *not* require is for a state agency psychological consultant to provide a separate narrative explanation for each of the twenty areas identified in Section I. Furthermore, as this court has previously explained, ALJs can, and should, rely on the narrative in determining the mental RFC assessment. *See Baumann v. Saul*, No. 20-CV-11-WMC, 2020 WL 7237921, at *5 (W.D. Wis. Dec. 9, 2020).

Here, the state agency psychological consultant John J. Warren, Ed.D., concluded that Hall could "sustain the mental demands associated with carrying out simple tasks over the course of routine workday/workweek within acceptable attention, persistence, pace tolerances," that he could "sustain the basic demands associated with relating adequately with supervisors and co-workers, with limited contact with the general public," and that he could "adapt to routine workplace change, remain aware of environmental hazards, form basic plans/goals, travel independently." (AR 154-55.) This assessment is entirely consistent with the ALJ's nonexertional restrictions in Hall's RFC. (AR 79.) *See also Apke v. Saul*, 817 F. App'x 252, 258 (7th Cir. 2020) (affirming ALJ's reliance on state agency psychological opinion that found moderate limitations in "ability to perform activities within a schedule, maintain regular attendance, and be reasonably punctual" and translated that limitation to ability to perform simple work).

For all of these reasons, the court rejects plaintiff's challenges to the ALJ's decision, and will affirm the denial of benefits.

ORDER

IT IS ORDERED that the decision of defendant Andrew Saul, Commissioner of Social Security, denying plaintiff Leonard Ray Hall's application for disability insurance benefits is AFFIRMED.

Entered this 12th day of April, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge