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

DANIELLE LANGDON,

Plaintiff,

v.

MARTIN J. O'MALLEY,[1]

Defendant.

OPINION AND ORDER

21-cv-778-wmc

Plaintiff Danielle Langdon seeks judicial review of the Social Security Commissioner's final determination that she was not disabled within the meaning of the Social Security Act ("SSA"). Langdon initially applied for benefits in 2011, after which her application was denied and remanded three times on appeal, initially by the District Court for the Eastern District of Wisconsin and twice more by the SSA Appeals Council. Ultimately, Administrative Law Judge ("ALJ") Ahavaha Pyrtel issued a final decision in September 2021, finding Langdon *not* disabled from her alleged onset date of October 2006 through her date last insured in December 2011. On appeal, Langdon principally argues that ALJ Pyrtel erred by omitting a limitation on repetitive head and neck movement that had been adopted in the two, earlier ALJs' decisions, and recommended by both Langdon's treating physician and a state agency medical consultant. Finding no merit in this challenge, the court will affirm the Commissioner's denial of benefits.

[1] The court has amended the caption to reflect Martin J. O'Malley's appointment as Commissioner of Social Security on December 20, 2023.

BACKGROUND[2]

Langdon initially applied for disability benefits on October 11, 2011, when she was 36 years old, alleging that she became unable to work on October 1, 2006, based on various conditions, including neck pain resulting from an injury she sustained in a motor vehicle accident in September 2005.[3] (AR 146, 184, 635, 642.) Langdon's claim for benefits was denied by the local disability agency initially and on reconsideration, then by ALJ Brent Bedwell in October 2013 (AR 854-64) and June 2016 (AR 930-42), and again by ALJ William Shenkenberg in May 2018 (AR 959-69). The Appeals Council vacated ALJ Bedwell's 2013 decision in part because his residual functional capacity assessment ("RFC") did not contain any neck limitation, despite the fact that Langdon had a severe neck impairment and the ALJ had given significant weight to (1) the February 2008 opinion of Dr. Jerome Lerner, Langdon's treating pain-management specialist, and (2) the May 2012 opinion of state agency consultant Dr. George Walcott, both of which limited Langdon to sedentary jobs requiring *no* repetitive rotation, flexion, or extension of the neck. (AR 912 (citing AR 76-77, 277).) While ALJ Bedwell issued an unfavorable decision in 2016, and ALJ Shenkenberg did the same in 2018, both ALJs adopted this same neck movement restriction assessed by Drs. Lerner and Walcott. (AR 935, 963.)

[2] The following facts are drawn from the administrative record ("AR") found at dkt. #9.

[3] Because Langdon's challenge is limited to the ALJ's failure to adequately account for neck impairment in assessing her residual functional capacity ("RFC"), the court limits its discussion of the record to background facts relevant to that challenge. The court will provide additional facts and citations to the record in its discussion of the ALJ's specific reasoning in the opinion below.

Following ALJ Shenkenberg's 2018 decision, the Appeals Council granted Langdon's request for review and remanded the case in September 2020, instructing the ALJ to: rule on Langdon's objections to use of state agency consultant opinions; obtain supplemental evidence from a vocational expert to clarify the effect of the assessed limitations on Langdon's occupational base, if necessary; take any further action needed to complete the administrative record; and issue a new decision through the date last insured. (AR 981-83.) On remand, ALJ Pyrtel held an administrative hearing on February 2, 2021, at which Langdon was represented by counsel and testified, along with a vocational expert. (AR 663-701.)

ALJ Pyrtel issued her written opinion on September 3, 2021, finding that Langdon had severe impairments arising out of degenerative disc disease of the cervical spine status-post cervical fusion at C5-C6, degenerative disc disease of the lumbar spine, pain disorder, depression, and anxiety. Nonetheless, ALJ Pyrtel found Langdon not disabled because she had the RFC to perform a limited range of sedentary work in the representative occupations of addressor, circuit board assembler, touch-up screener, and document preparer, which exist in significant numbers in the national economy.[4] (AR 628-46.) In doing so, the ALJ gave partial weight to the opinions of Drs. Lerner and Walcott that plaintiff could perform limited sedentary work, but diverged from the findings of the previous ALJs by declining to adopt those doctors' recommendations that plaintiff avoid repetitive and sustained head movement. Specifically, the ALJ concluded that "while the record does reflect some

[4] The ALJ ascribed several exertional and postural limitations (*see* AR 634), which the court will not discuss because they are not relevant to Langdon's appeal.

reduction in neck range of motion for a limited time period, the overall record does not support a finding that the claimant's range of motion was significantly limited for 12 months or more," nor does it support "the need to limit the claimant's neck movements throughout the period at issue." (AR 636-37.)

OPINION

I. Res Judicata Effect of Prior ALJ Decisions

Initially, plaintiff argues that ALJ Pyrtel's failure to adopt the same neck movement limitation as the two, previous ALJs violates res judicata, which "protects the finality of [a prior] judgment and prevents parties from undermining it by attempting to relitigate the claim." *Palka v. City of Chicago*, 662 F.3d 428, 437 (7th Cir. 2011); *see also Groves v. Apfel*, 148 F.3d 809, 810 (7th Cir. 1998) (noting that res judicata applies to SSA disability proceedings). However, the doctrine of res judicata, as well as SSA regulations discussing the applicability of that doctrine, only recognize a previous judgment's preclusive effect if it is *final*.[5] *Palka*, 662 F.3d at 437; 20 C.F.R. § 404.957(c)(1). Relevant here, an ALJ's earlier decision is *not* "final" until the Appeals Council denies review or upholds it on review, and there is no reverse or appeal to a federal court. *See* 20 C.F.R. § 404.955; 20 C.F.R. § 404.981 ("The Appeals Council's decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court, or the decision is revised."). Here, the 2016 and 2018 ALJ

[5] Although the parties do not discuss it, the related doctrine of issue preclusion (or "collateral estoppel") also requires that an issue sought to be precluded was actually litigated and essential to the *final* judgment in the earlier action. *Oneida Nation v. Vill. of Hobart*, 968 F.3d 664, 686 (7th Cir. 2020).

opinions had no preclusive effect because plaintiff requested review of both decisions by the Appeals Council, which remanded each time for further proceedings. Indeed, the case plaintiff cites in support of her res judicata argument involved a final decision of the Commissioner. *See Schwabe v. Barnhart*, 338 F. Supp. 2d 941, 961 (E.D. Wis. 2004) (holding earlier decision by different ALJ that was never appealed had res judicata effect).

II. Substantial Evidence Review

Next, plaintiff argues that even if the court holds the earlier findings of ALJ Bedwell and ALJ Shenkenberg were not binding on ALJ Pyrtel, their findings at least constitute an "'important and probative fact' that effectively bars [her] from supporting a contrary finding with[out] substantial evidence." (Dkt. #18 at 21.) Specifically citing *Albright v. Comm'r of Soc. Sec. Admin.*, 174 F.3d 473, 477 (4th Cir. 1999), and *Lively v. Sec'y of Health & Human Servs.*, 820 F.2d 1391 (4th Cir. 1987), plaintiff argues that the "legalistic questions of administrative res judicata and collateral estoppel" are grounded in this "substantial-evidence standard," which suggests "decisions produced by deviations from prior findings are likely to violate that standard in the absence of new evidence." (Dkt. #18 at 19.) Not only are *Albright* and *Lively* nonprecedential decisions in this court, but the Fourth Circuit and the Social Security Administration have since made clear that "nothing in [the applicable Social Security] rule, or in our circuit precedent, indicates that findings in prior non-final decisions are entitled to any weight." *Monroe v. Colvin*, 826 F.3d 176, 187 (4th Cir. 2016) (citing Acquiescence Ruling 00-1(4), 65 Fed. Reg. 1936-01 (Jan. 12, 2000)). Indeed, "[t]wo contrary conclusions may each be supported by substantial evidence." *Hall v. Saul*, No. 19-cv-1780, 2020 WL 7074474, at *5 (E.D. Wis. Dec. 3,

2020); *see also Pate v. Kijakazi*, No. 20-cv-942-bbc, 2022 WL 795472, at *5 (W.D. Wis. Mar. 16, 2022) (fact that different factfinder could have weighed evidence differently is not a basis for remand).

Nonetheless, plaintiff is correct that the relevant question remains whether the ALJ's decision is supported by substantial evidence, which means "sufficient evidence to support the agency's factual determinations" or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). In applying this standard, reviewing courts may not "reweigh the evidence, resolve debatable evidentiary conflicts, determine credibility, or substitute [their] judgment for the ALJ's determination." *Reynolds v. Kijakazi*, 25 F.4th 470, 473 (7th Cir. 2022) (quotation marks omitted). However, the ALJ must also explain her "analysis of the evidence with enough detail and clarity to permit meaningful appellate review." *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005). In other words, the ALJ must identify the relevant evidence and build an "accurate and logical bridge" between that evidence and the ultimate determination, *Beardsley v. Colvin*, 758 F.3d 834, 837 (7th Cir. 2014), and adopt "limitations that she found supported by the evidence," *Alvarado v. Colvin*, 836 F.3d 744, 751 (7th Cir. 2016).

Moreover, for claims like plaintiff's filed before March 27, 2017, a treating physician's opinion like Dr. Lerner's is entitled to controlling weight if it is both supported by sound medical evidence and consistent with the record. *Ray v. Saul*, 861 F. App'x 102, 105 (7th Cir. 2021) (citing 20 C.F.R. § 404.1527(c)(2)). "Once contrary evidence is introduced, however, a treating physician's opinion becomes just one piece of evidence for

the ALJ to evaluate." *Id*. (citing *Bates v. Colvin*, 736 F.3d 1093, 1099-100 (7th Cir. 2013)). Even then, however, "[a]n ALJ who does not give controlling weight to the opinion of the claimant's treating physician must offer 'good reasons' for declining to do so." 20 CFR § 404.1527(d)(2); *Larson v. Astrue*, 615 F.3d 744 (7th Cir. 2010).[6]

Here, ALJ Pyrtel gave the following four reasons for rejecting Dr. Lerner's neck movement limitation: (1) he did not adequately explain the limitation; (2) the limitation was inconsistent with his treatment notes, which routinely documented unremarkable findings; (3) the limitation was inconsistent with plaintiff's daily activities of riding a motorcycle, preparing meals, grocery shopping, completing household chores, and driving her children to school; and (4) he examined plaintiff on only one occasion. (AR 636-37 (citing AR 277).) With respect to Dr. Walcott's assessment of the same limitation without doing a physical exam, the ALJ explained his "findings are not consistent with the great weight of evidence, including mild-to-moderate imaging findings and largely normal examination findings, as well as the lack of any significant treatment for the claimant's spine following her cervical fusion surgery." (AR 639.) Since plaintiff challenges each of ALJ Pyrtel's four reasons for rejecting Drs. Lerner's and Walcott's neck movement limitation, the court reviews whether substantial evidence supports her reasoning.

[6] Plaintiff also relies on *Beardsley*, 758 F.3d at 839, for the proposition that "rejecting or discounting the opinion of the agency's own examining physician that the claimant is disabled . . . can be expected to cause a reviewing court to take notice and await a good explanation for this unusual step," but that reliance is misplaced because Dr. Walcott only reviewed the record at the reconsideration level and never examined plaintiff. (*See* AR 77.)

A. Daily Activities

Plaintiff criticizes the ALJ for relying too heavily on her daily activities and not explaining how they were inconsistent with the opinions of Dr. Lerner and Dr. Walcott. In particular, plaintiff argues that none of the activities cited by ALJ Pyrtel involved repetitive head movements, but she could reasonably find that plaintiff's ability to take short trips by motorcycle, do housework, drive her children to school, cook, and grocery shop were inconsistent with a significantly reduced range of motion of the neck. (AR 636-37.) For example, plaintiff contends that all of these activities were sporadic and require some assistance from others, emphasizing that her motorcycle involved riding only 20-25 miles a year, is "a typical recreational bike, ridden upright," and places "no demands on a rider's neck." (Dkt. #18 at 23 n. 3 and 24.) However, the ALJ explicitly recognized that plaintiff "reported that it took her longer to complete" her daily tasks, but found "the record still indicates that the claimant remained largely independent prior to the date last insured" and her "ability to perform these activities further supports the conclusion that [she] was not as limited during the period at issue as she has alleged to SSA." (AR 636.) Specifically, the ALJ further reasonably found that "[r]iding a motorcycle presumably requires considerable range of motion of the neck/head, with frequent rotation of the neck in order to safely operate the motorcycle, monitor traffic conditions, and maneuver through traffic." (AR 637.)

Although ALJs should not equate the ability to perform daily activities with a capacity for full-time work, *Loveless v. Colvin*, 810 F.3d 502, 508 (7th Cir. 2016), the ALJ did not do so here, finding instead that plaintiff's self-reported activities, combined with

her ability to do part-time office work in 2007-2008 *and* remain largely independent through 2011, all undermined her need for a neck movement limitation. *See Prill v. Kijakazi*, 23 F.4th 738, 748 (7th Cir. 2022) ("Prill reported being unable to garden continuously without pain, but she nevertheless engaged in a voluntary activity that would have aggravated the conditions she alleges were disabling."); *Sebranek v. Kijakazi*, 2022 WL 520786, at *4 (7th Cir. Feb. 22, 2022) (holding that ALJ reasonably found claimant's ability to "drive, shop, attend church, and visit friends out-of-state" supported ability to perform light work despite claimant's reports of chronic neck and back pain); *Delgado v. Astrue*, No. 10-cv-3963, 2011 WL 2489741, at *12 (N.D. Ill. June 21, 2021) (upholding ALJ decision that noted claimant "drives and is able to turn her head around to see traffic, suggesting that the neck problems are not as severe as alleged").

While plaintiff's frustration with ALJ Pyrtel's coming to a different conclusion on the need for a neck limitation is certainly understandable given the long history of her claim of disability, as is her disagreement with the ALJ's ultimate conclusions, plaintiff's ability to engage in the cited activities, even sporadically, supports an inference that she could adequately move her neck, contrary to the physicians' earlier opinions. Regardless, the ALJ's inference "may not be the only reasonable inference to draw from the evidence, or even the most reasonable inference, but that's not the standard." *Whitcher v. Saul*, No. 20-cv-445, 2021 WL 805570, at *2-3 (W.D. Wis. Mar. 3, 2021). Because the inferences that the ALJ drew in plaintiff's case were reasonable, this court must defer to them on review. *Id*.

B. Dr. Lerner's Limited Examination of Plaintiff, Lack of Explanation, and Inconsistency with Unremarkable Treatment Notes

Next, plaintiff contends that the ALJ erroneously discounted Dr. Lerner's neck movement restriction as unexplained, unsupported by more than one physical examination, and inconsistent with otherwise generally unremarkable treatment notes. *First*, plaintiff criticizes the ALJ for characterizing Dr. Lerner's restriction as "unexplained," pointing out that he wrote a three-page report of her condition in 2008, detailing her treatment history with other physicians and his own, albeit single examination of her cervical range of motion. However, the ALJ did not state that the neck restriction was "unexplained," but rather that it was "not adequately explained," nor well-supported. The ALJ also found it relevant that only one month before Dr. Lerner's report, an occupational therapist completed a physical work performance evaluation, which found plaintiff capable of tolerating an eight-hour workday at the sedentary level of exertion, with individual test scores indicating she had the standing and walking ability sufficient for light work. (AR 637 (citing AR 264-66).) As the ALJ further noted, the occupational therapist wrote that plaintiff self-limited on 24% of the 17 tasks tested, suggesting that psychosocial and/or motivational factors were affecting the test results for plaintiff's actual, minimal functional ability. (AR 264.) In combination, this evidentiary record is sufficient to support the ALJ's questioning Dr. Lerner's reasoning in and basis for recommending a neck limitation.

Second, plaintiff argues that the ALJ unreasonably noted that Dr. Lerner based his opinion solely on *one* physical examination of plaintiff, when the ALJ relied in parton the opinion of state agency consultant, Dr. Syd Foster, who reviewed the record at the initial

level of review in 2011, but *never* examined plaintiff.[7] While the record does not indicate the ALJ considered Dr. Foster's non-examining relationship with plaintiff in giving partial weight to his opinion, she plainly analyzed Dr. Lerner's opinion within the appropriate, multifactor regulatory framework and articulated why she believed his conclusion that plaintiff needed a restrictive neck movement limitation was substantially undermined by the objective evidence, plaintiff's treatment history, *and* Dr. Lerner's limited treatment relationship with plaintiff. *See Ray*, 861 F. App'x at 105-06 ("[W]e will not vacate or reverse an ALJ's decision based solely on a failure to expressly list every checklist factor . . . and will affirm the ALJ's decision if we are confident that the ALJ's reasoning sufficiently accounted for the substance of the prescribed factors.").

Moreover, plaintiff fails to explain how Dr. Foster's non-examining relationship compelled the ALJ to discount his opinion, while Dr. Lerner's one-time examination compelled the ALJ to credit his opinion. Regardless, contrary to plaintiff's suggestion, an 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); *see also Brian C. v. Kijakazi*, No. 22-cv-1447, 2023 WL 4564564, at *6 (N.D. Ill. July 17, 2023) (citing *Schmidt*). Instead, the ALJ must consider the entire record and base her decision on substantial evidence, which is what the ALJ certainly appears to have done in this case. *Id.*; *Grotts v. Kijakazi*, 27 F.4th 1273, 1278 (7th Cir. 2022) ("[W]e do not review medical opinions independently but rather review the ALJ's weighing of

[7] Plaintiff incorrectly states in her initial brief that the ALJ gave "great weight" to Dr. Foster's opinion (dkt. #18 at 25), while in fact, the ALJ gave only *partial* weight to Foster's opinion and Dr. Walcott's subsequent opinion at the reconsideration level of review. (*See* AR 638.)

those opinions for substantial evidence, and we only overturn that weighing if no reasonable mind could accept the ALJ's conclusion.").

Third, and finally, plaintiff contends the ALJ failed to identify the specific "unremarkable findings" that she believed to be inconsistent with Dr. Lerner's opinion, ignoring her detailed consideration of the medical evidence earlier in her decision, along with her explanation that while plaintiff's physical examinations revealed reduced neck range of motion at times, they also showed full strength, a normal gait, intact sensation, normal reflexes, full range of motion in both arms, and no pain behaviors. (AR 635-36, 638.) An ALJ is *not* required to repeat this analysis in the section of her opinion specifically discussing Dr. Lerner's opinion. *See Gedatus v. Saul*, 994 F.3d 893, 903 (7th Cir. 2021) ("An ALJ need not rehash every detail each time [she] states conclusions on various subjects.").

Accordingly, plaintiff has not shown that the ALJ unreasonably relied on any of her three, specific reasons as part of her overall basis for discounting Dr. Lerner's opinion regarding plaintiff's need for a neck movement limitation.

C. Plaintiff's Neck MRIs

Plaintiff also contends that the ALJ erred in considering her neck MRIs. While the ALJ acknowledged that plaintiff's initial neck MRI revealed significant abnormalities following a 2005 motor vehicle accident that caused her to undergo cervical fusion surgery, she noted that her post-surgery, October 2006 neck MRI was unremarkable, reflecting an intact fusion and no sign of recurrent disc disease. (AR 635 (citing AR 222-25, 233-54).) The ALJ also pointed out that a September 2010 neck MRI showed only a "small disc

protrusion at C6-C7 with mild central canal narrowing," and a neck x-ray revealed "no evidence of instability with flex[ion] nor extension." (*Id*. (citing AR 1814, 1816)). As such, the ALJ concluded that "[t]hese imaging reports of the claimant's cervical spine following her fusion surgery showed largely mild findings and are consistent with the conclusion that the claimant could tolerate sedentary work." (*Id*.)

Plaintiff nevertheless criticizes the ALJ for reaching this conclusion without the assistance of a qualified expert, pointing out that Dr. Lerner and Dr. Walcott reviewed the mild and unremarkable findings from 2006, and deemed them consistent with sedentary work with restrictions on neck movement. However, Dr. Lerner's 2008 opinion did not state that he had reviewed the unremarkable October 2006 MRI, and the opinion pre-dated the September 2010 MRI showing mild findings. Although the record reviewed by Dr. Walcott included the 2006 and 2010 MRIs, Dr. Foster reviewed the same record but did not ascribe any neck movement limitation.

Plaintiff further contends that Dr. Foster did not ascribe a neck movement limitation because the checkbox form he completed -- unlike the computerized narrative system used by Dr. Walcott -- never asked him to state an opinion on plaintiff's neck movements. *See* dkt. #18 at 27 (citing AR 1819-26). However, this appears to be mere speculation on plaintiff's part. As the commissioner points out, state agency consultants issue their opinions using a template form, but they also can write in additional comments and restrictions. (AR 1819 (instructing reviewer to discuss assessment of limitations in explanation section).) Without regard to which form he used, Dr. Foster added lengthy comments about plaintiff's medical history, daily activities, and subjective complaints,

strongly suggesting that he *chose* not to add any specific or additional restrictions regarding plaintiff's neck movement, or at least that any such restriction was not material enough to mention. (AR 1826.) As a result, a reasonable reading of Dr. Foster's RFC assessment is that he did not believe a specific neck movement restriction was necessary.

In addition, Dr. Foster's opinion is consistent with that of another state agency consultant, Dr. Mina Khordishi, who reviewed the record in August 2010, after the unremarkable October 2006 MRI was completed, and opined that plaintiff could perform sedentary work without any neck movement restriction. (AR 1791-98.) Therefore, contrary to plaintiff's contention, the ALJ did not "play doctor" by interpreting imaging studies in ways that no medical expert endorsed.

D. Conservative Treatment

Finally, plaintiff argues that the ALJ erroneously characterized her treatment for neck pain as "conservative" after discounting Dr. Walcott's opined neck restriction, despite her having to undergo an earlier cervical fusion surgery only after exhausting all conservative treatment options and no one identified any other alternative. (*See* AR 639 (stating that Dr. Walcott's neck limitation was inconsistent with "the lack of any significant treatment" of plaintiff's spine following cervical fusion").) However, even if the ALJ erred by suggesting that plaintiff should have undergone *more* aggressive treatment, the error was harmless. As discussed above, the ALJ provided several other well-supported reasons to support her rejection of a limit on plaintiff's neck movement. *See Pavlicek v. Saul*, 994 F.3d 777, 783 (7th Cir. 2021) (finding that ALJ's provision of two improper reasons to discount treating psychiatrist's opinion did not warrant reversal because the ALJ

provided a third reason supported by substantial evidence); *Karr v. Saul*, 989 F.3d 508, 513 (7th Cir. 2021) ("[I]f the error leaves us convinced that the ALJ would reach the same result on remand, then the error is harmless and a remand is not required.").

Because the ALJ has linked her assessment of plaintiff's neck impairment to substantial supporting evidence and provided at least four, good reasons for rejecting the neck movement limitation suggested by Drs. Lerner and Walcott, the court will not remand this case.

ORDER

IT IS ORDERED that the decision of Martin J. O'Malley, Commissioner of Social Security, is AFFIRMED, and plaintiff Danielle Langdon's motion for summary judgment (dkt. #17) is DENIED. The clerk of court is directed to enter judgment and close this case.

Entered this 3rd day of April, 2024.

BY THE COURT:

/s/

_____

WILLIAM M. CONLEY
District Judge