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

MARGARET JEAN WELLER,

Plaintiff,

v.

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

20-cv-73-wmc

In this case, claimant Margaret Jean Weller appeals a final decision from the Commissioner of Social Security denying her application for a period of disability and disability insurance benefits. On appeal, she argues that the Administrative Law Judge ("ALJ") Gregory Smith erred in considering her mental and manipulative limitations. For the reasons discussed below, the court will affirm the denial of benefits.

FACTS[1]

A. Mental Limitations

The medical record indicates that Weller has a history of depression, for which she was prescribed and took Prozac, although when and by whom this prescription was first given is not clear. (*See* AR at 69, 86-87, 466, 472.) In April of 2017, Weller underwent a general physical exam before surgery on her left wrist, which was conducted by Dr. Pamela

[1] In her application for a period of disability and disability insurance benefits, claimant Margaret Jean Weller alleged disability beginning December 3, 2013, due to a variety of impairments. However, because her appeal with this court centers on the ALJ's treatment of her mental and manipulative limitations, the court focuses its discussion of the facts on medical evidence relevant to those claims. The administrative record ("AR") is available at dkt. #7.

Glennon, M.D., who among other things noted her history of depression. (AR 714.) Specifically, Dr. Glennon noted that Weller denied "difficulty with concentration . . . depression, impaired concentration, anxiety/nervousness, memory loss." (AR 715.) In a post-operative recheck with Dr. Glennon on August 25, 2017, Weller again denied "difficulty with concentration . . . depression, impaired concentration, anxiety/nervousness, memory loss." (AR 663.)

In December of 2017, state agency psychologist Deborah Pape, Ph.D., concluded from her review of the medical record that Weller suffered from depression but was "not receiving treatment nor is she reporting any symptoms or limitations [due to] depression." (AR 69.) Dr. Pape further opined that: (1) Weller had no functional limitations due to her mental impairments; and (2) the objective medical findings did not support a severe mental health impairment. (AR 69.)

On December 11, 2017, Weller also saw Dr. Wendy Hanneman, M.D., "to discuss depression and possible medication." (AR 866.) Dr. Hanneman wrote that Weller reported: feeling depressed "over the last 1+ months"; "days where she just cannot get out of bed and has decreased ambition"; and "not sleeping well." (AR 866.) Weller further reported that it was the anniversary of her mother's death and her brother had recently died from lung cancer. (AR 866.) Dr. Hanneman "strongly encouraged" counseling and increased Weller's existing Prozac prescription. (AR 867.) Despite Dr. Hanneman's counseling recommendation, however, there is no evidence in the record that Weller followed this advice.

In May of 2018, Weller was next referred by the Disability Determination Bureau

to Gregory Cowan, Ph.D., for a "mental status" evaluation. (AR 880.) When asked about her reasons for not working and a statement of how her impairments limit daily functioning, Weller referenced certain physical limitations, but did *not* claim any mental limitations. (AR 880-81.) Even so, Weller noted elsewhere in the evaluation her "depressed mood, poor sleep, poor appetite, low energy, some withdrawal, some crying episodes, and low self-esteem." (AR 883.) Ultimately, Dr. Cowan made a diagnosis of major depressive disorder, explaining in the "statement of work capacity":

> Margaret's ability to understand, remember, and carry out simple instructions is unimpaired by psychological factors. Ability to respond appropriately to supervisors and coworkers is mildly to moderately impaired. Concentration and attention are mildly to moderately impaired. Ability to withstand routine work stresses and adapt to work place changes is moderately impaired.

(AR 884.)

At the reconsideration level, state agency psychologist Joseph Cools, Ph.D., also considered Weller's medical record, including Dr. Cowan's May 2018 evaluation. (AR 86.) In completing his assessment of Weller's mental impairments on June 12, 2018, Dr. Cools noted Weller's history of depression, but found it to be a "non-severe mental impairment," posing "no more than minor limits to overall functional ability." (AR 87.) Specifically, Dr. Cools similarly concluded that Weller had no limitation in her ability to understand, remember or apply information and only mild limitations in her ability to: (1) interact with others; (2) concentrate, persist, or maintain pace; and (3) adapt or manage oneself. (AR 86.)

On June 11, 2018, Weller again saw Dr. Hanneman for a "depression recheck." (AR

1107.)[2] Dr. Hanneman noted that Weller "seemed to be doing well but over the past month she is sleeping more and finding that her mood has diminished." (AR 1107.) In response to these concerns, Dr. Hanneman again increased Weller's daily Prozac prescription from 40 mg to 60 mg. (AR 1008.)

Finally, Weller completed two function reports as a part of her application for benefits. When asked how her "illnesses, injuries, or conditions limit [her] ability to work," however, she did not include in either report any reference to her depression or other mental limitations, focusing instead on her physical limitation claims. (AR 237, 267.) Further, when prompted to "check" functional areas affected by her illnesses, injuries, or conditions, Weller checked "completing tasks" in one of the reports, but did *not* check "memory," "concentration," "understanding," "following instructions," or "getting along with others" in either report. (AR 242, 272.)

B. Manipulative Limitations

On December 4, 2013, Weller was treated by Dr. Alberto Araya, M.D., for an injury that she had sustained the day before. (AR 392.) As summarized in Dr. Araya's notes, Weller reported that:

> she was working with her hands and about 3:30 she felt something like a pull or feeling like something got "stuck" in the thumb area. Since then she had had increasing pain and [it] feels swollen to her. She has not been able to grip, pick up things due to feeling pain and some weakness.

[2] Although this appointment apparently occurred one day before Dr. Cools' assessment, it does not appear to be a part of the record that Dr. Cools considered.

(AR 392.) As treatment, Dr. Araya initially recommended ice and ibuprofen. (AR 392.)

Weller also attended a number of follow-up appointments with various medical providers for her thumb pain, including Dr. Glennon, during which she continued to report bilateral thumb achiness that worsened with overuse, with the left thumb worse than the right. (*See* AR 381-84, 708-09.) Still, she reported slight improvement between December 2013 and March 2014, using splits "with good relief," and not specifically medicating for her thumb pain. (AR 708.) Weller also attended twenty occupational therapy appointments between January and April 2014. (AR 1001.) Discharge notes further state that Weller "made progress in the areas of decreased pain to allow more independent ADL [activities of daily living] and IADL [independent activities of daily living] function; pain does continue . . . with resistive activity." (AR 1001.)

Over two years later, beginning in June of 2016, Weller received treatment for her left hand and wrist after falling and injuring her hand. (AR 368-78, 713-50.) Unlike her thumb problem, Weller reported a "severe," sharp pain after this injury which worsened with movement. (AR 378.) In a September of 2016 appointment with Dr. Glennon, Weller also reported that she had "no grip strength in her left hand and can only lift light things." (AR 742.) By October 2016, Weller reported to Dr. Glennon "some improvement," although she wore a brace "fairly constantly" and took ibuprofen as needed for pain management. (AR 722.)

Another six-month treatment gap followed between October 2016 and April 2017, before Weller returned to Dr. Glennon for a recheck on her left wrist pain. (AR 713.) After examining an x-ray, Dr. Glennon determined that: (1) her wrist had deteriorated

since August 2016; and (2) there was a "moderate thumb CMC [carpometacarpal] degenerative change." (AR 718.) Dr. Glennon further determined that Weller was "appropriate for surgical treatment of total wrist fusion" (AR 718), which Weller underwent a month later, in May of 2017 (AR 456-57).

After this surgery, no further treatment notes appear as to Weller's left hand for yet another five months. Then, in October 2017, Weller reported to Dr. Glennon that she had fallen onto her left hand/wrist, causing pain. (AR 751.) Specifically, Weller noted numbness and tingling, soreness, and difficulty with getting her middle finger to straighten out. (AR 751.) As a result, Weller explained that she had been taking ibuprofen as needed for pain management; she also reported wearing her brace for a short bit after falling but had not been wearing it recently. (AR 751.) Moreover, Weller reported her wrist had been "really good" *before* the fall. (AR 751.) After conducting a physical exam of Weller's wrist, Dr. Glennon found 5 out of 5 muscle strength, as well as a range of motion within normal limits. (AR 755.) By November 6, 2017, Weller reported that her left wrist no longer hurt, although she had "very limited" range of motion. (AR 876.)

At the request of the Disability Determination Service, Dr. A. Neil Johnson, M.D., of Disability Consultants, P.C., next conducted a consultative medical evaluation of Weller on November 16, 2017. (AR 810.) Dr. Johnson noted Weller's history of left wrist and hand problems, and reportedly a "very poor grip in the left hand." (AR 810.) Dr. Johnson further found: (1) Weller's "left hand is very weak"; (2) she "cannot open a jar lid in the left," although she could "button and pick up a coin"; (3) "[t]he pinch and grip in the right

hand are reduced"; and (4) "Tinel's sign was still positive in the left."[3] (AR 811-14.) After considering Dr. Johnson's evaluation and the other relevant evidence in the record, however, state agency doctor Ronald Shaw, M.D., opined on November 28, 2017, that Weller had no manipulative limitations. (AR 71.)

More than another year elapsed until Dr. Glennon again treated Weller for bilateral hand pain. (AR 1118.) During that encounter, Weller reported: "pain in the MP joint of the thumbs and stiffness in the fingers bilaterally"; "locking and pain in the left middle finger"; "numbness and tingling in all fingers bilaterally"; and "weakness in the left hand." (AR 1118.) However, Weller had not tried splints; instead she reported using ibuprofen as needed "with some relief." (AR 1118.) A physical exam of Weller's left hand further revealed some thumb pain and tenderness, limited finger ROM, and some diminished muscle strength. (AR 1122-23.) In contrast, a physical exam of her right hand showed mostly normal findings. (AR 1122-23.)

Another consultative medical examination was also performed about six months later, in June of 2018, by Dr. Krissi Danielsson, M.D. at which time Weller reported: (1) a history of "osteoarthritis," which affected, in part, her thumbs, wrists, and fingers and which affected her ability to grasp, handle, and finger; (2) tendonitis and aching pain in the bilateral thumbs, exacerbated by grasping, handling, and fingering; (3) pain intensity for her left thumb to be 5 out of 10 on most days; and (4) pain intensity for her right

[3] The Tinel's sign is "used commonly as an indication of peripheral nerve fiber compression or regeneration." Tung Ho & Matthew E. Braza, Hoffmann Tinel Sign, Nat'l Ctr. for Biotechnology Information, U.S. Nat'l Library of Medicine (Mar. 15, 2020), https://www.ncbi.nlm.nih.gov/books/NBK555934/.

thumb to be 3 out of 10 on most days, which affects her ability to grasp, handle, and finger. (AR 887-89.) Nevertheless, a physical examination showed 5 of a possible 5 muscle strength in left and right wrist flexion, wrist extension, finger abduction, and hand grip. (AR 890-91.) At the same time, Dr. Danielsson found that Weller lacked range of motion in her left wrist, while concluding that she appeared to have "reasonable use of her hand on [the left] side," and "normal range of motion of the finger." (AR 892.) Ultimately, Dr. Danielsson opined that:

> There are no manipulative limitations on reaching, but there are limitations on handling, feeling, grasping and fingering on the left only and the claimant will be able to perform these frequently due to wrist fusion.

(AR 893.) Finally, reviewing this medical record, state agency doctor Richard Bilinsky, M.D., opined that Weller had no manipulative limitations. (AR at 90.)

C. ALJ Decision

On April 19, 2019, ALJ Smith issued a written opinion in which he considered Weller's application for disability and disability insurance benefits under the five-step sequential evaluation framework set forth in 20 C.F.R. § 404.1520(a). First, he determined that Weller met the insured status requirements of the Social Security Act and had not engaged in substantial gainful activity since her alleged onset date of December 3, 2013. (AR 15.) Second, Smith found that Weller had the following severe impairments:

> Degenerative disc disease of the lumbar and cervical spins; post-status left wrist fusion and osteoarthritis of left wrist/de Quervain's tenosynovitis, osteoarthritis/tendonitis of the bilateral thumbs; osteoarthritis of the right knee; plantar calcaneal spur of the right heel; obstructive sleep apnea (OSA); asthma; and obesity.

(AR 15.)[4]

At this step, Smith also considered whether Weller's depression qualified as a "severe" impairment, considering the four broad areas of functioning set out in the disability regulations for evaluating mental disorders known as the "paragraph B" criteria. (AR 16-17.) After discussing the relevant evidence in the medical record, ALJ Smith concluded that Weller had mild limitations in: (1) understanding, remembering, or applying information; (2) interacting with others; (3) concentrating, persisting, or maintaining pace; and (4) managing oneself. (AR 16-17.) Still, because her depression caused no more than "mild" limitations in each of the functional areas, it was determined to be nonsevere. (AR 17.) While Smith further recognized that the "paragraph B" criteria does not amount to a residual functional capacity assessment, he still explained that his residual functional capacity assessment (at step four) would reflect the degree of limitation found in his "paragraph B" mental function analysis. (AR 17.)

At step three, ALJ Smith found that none of Weller's impairments, singly or in combination, met or medically equaled the severity of a listing level impairment. (AR 18.) Thus, ALJ Smith continued on to step four, where he found that Weller had the following residual functional capacity ("RFC") assessment:

> Perform sedentary work as defined in 20 CFR 404.1567(a) except frequently reach overhead bilaterally; frequently handle items bilaterally; frequently finger items bilaterally; occasionally climb ramps and stairs; never climb ladders, ropes or scaffolds; occasionally balance, stoop kneel, crouch, and crawl; occasionally work at unprotected heights; never around moving mechanical parts; occasionally work in dust, odors, fumes or pulmonary irritants.

[4] "Post-status left wrist fusion" would appear to refer to Weller's left hand/wrist impairment after she underwent wrist fusion surgery in 2017.

(AR 18.)

The ALJ explained generally that while "the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms, [her] statements concerning the intensity, persistence and limiting effect of these symptoms are not entirely consistent with the medical evidence and other evidence." (AR 19.) As to Weller's mental limitations, the ALJ found that "[t]he record shows no more than a mild limitation in all areas of mental functioning." (AR 26.) In particular, the ALJ found the opinion of Dr. Cowan -- the psychological consultative examiner -- to be "minimally persuasive," because "the conclusions do not correlate with the examiner's own findings," and the consultative exam showed only "minimal deficits overall." (AR 26.) The ALJ further found his RFC conclusion supported by: (1) the fact that the record was "devoid of ongoing mental health treatment, other than medication monitored by her primary care doctor"; and (2) Weller's own description of her travel activity every winter without noted deficits. (AR 26-27.)

As to Weller's manipulative limitations, the ALJ included a detailed discussion of the relevant medical records regarding her treatment for impairments of her hand, wrist, and thumb. (AR 19-26.) In particular, the ALJ found "the evidence shows that the claimant suffered fewer deficits than alleged, as the record indicates rather minimal and conservative treatment, with several gaps during which the claimant made few complaints about her alleged disabling impairments." (AR 19.) Even so, the ALJ gave only partial credit to the two state agency doctors' opinions that Weller had *no* manipulative limitations, finding instead that "limitations are appropriate, due to minimal deficits in the claimant's thumbs and left wrist, as medical imaging confirms, and physical exams

support." (AR 26.) Similarly, the ALJ gave only limited weight to the consultative examiner's opinion, which only limited Weller to frequent handling, feeling, grasping, and fingering in her left hand, finding instead that "the overall record supports further limitations," including a manipulative limitation as to *both* of Weller's hands. (AR 26, 19.)

Finally, at step five, ALJ Smith concluded that Weller's RFC *would* permit her to perform past relevant work as an Office Manager. (AR 27.) Thus, the ALJ concluded that Weller had not been under a disability as defined by the Social Security Act. (AR 27.)

OPINION

Judicial review of the Commissioner's final decision is authorized by § 405(g) of the Social Security Act. *See* 42 U.S.C. §405(g). A district court must uphold an ALJ's denial of disability unless the decision is not supported by substantial evidence or is based on a harmful error of law. 42 U.S.C. § 405(g); *Rice v. Barnhart*, 384 F.3d 363, 368-69 (7th Cir. 2004). 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).

"An ALJ has the obligation to consider all relevant medical evidence and cannot simply cherry-pick facts that support a finding of non-disability while ignoring evidence that points to a disability finding." *Denton v. Astrue*, 596 F.3d 419, 425 (7th Cir. 2010) (citing *Myles v. Astrue*, 582 F.3d 672, 678 (7th Cir. 2009)). While an ALJ need not

specifically address every piece of evidence in the record, he must still "connect the evidence to the conclusion" and "may not ignore entire lines of contrary evidence." *Arnett v. Astrue*, 676 F.3d 586, 592 (7th Cir. 2012). In other words, the ALJ must "provide a 'logical bridge' between the evidence and his conclusions. *O'Connor-Spinner v. Astrue*, 627 F.3d 614, 618 (7th Cir. 2010).

Claimant argues that ALJ Smith failed to consider adequately Weller's mental limitations and manipulative limitations in formulating the RFC finding. (Pl.'s Br. (dkt. #12) 14.) According to claimant, a "proper and complete evaluation" of Weller's limitations in these two areas "would have precluded the occupation of Office Manager." (*Id.*) Due to Weller's age, claimant further asserts that these errors merit remand because a finding that she could not perform her past relevant work as an Office Manager would have qualified her for benefits under the Grid Rules of 20 C.F.R. Part 404, Subpart P, Appendix 1. (*Id.*) The court will address claimant's arguments as to the ALJ's treatment of Weller's mental limitations first, and then address her argument as to any additional manipulative limitations.

I. Mental Limitations

Claimant Weller first contends that the ALJ erred by failing to include any mental restrictions in her RFC to accommodate the mild mental limitations the ALJ found at step two. (Pl.'s Br. (dkt. #12) 10.) Specifically, she argues that since the Office Manager job is a skilled position, even mild mental limitations could impact her ability to perform. (Pl.'s Reply (dkt. #15) 2.) According to claimant, "[t]he ALJ also failed to explain how Weller's depression or the resulting mild limitations were addressed by [the] RFC." (Pl.'s Br. (dkt.

#12) 11.)

Under the regulations, an ALJ is to engage in a "special technique" at step two of the functional analysis to consider the severity of a claimant's mental impairments. *Craft v. Astrue*, 539 F.3d 668, 674 (7th Cir. 2008) (citing 20 C.F.R. § 404.1520a). This technique requires the ALJ to evaluate a claimant's symptoms to deciding whether he or she has a medically determinable mental impairment, and if so, to document that finding and rate the degree of functional limitation. *Id.* Moreover, where a claimant's mental limitations are rated as "none" or "mild," an ALJ will generally conclude that his or her impairment or impairments are not severe. *See* 20 C.F.R. § 404.1520a(d)(1).

A "mild" limitation means that the claimant's ability to function "independently, appropriately, effectively, and on a sustained basis is slightly limited." 20 C.F.R. Part 404, Subpt. P, App'x 1, § 12.00F(2)(b). Even where no "severe" mental impairment is found at step two, however, the ALJ must account for any mental impairment in the claimant's RFC that imposes a limitation on his or her ability to work. *See* SSR 96-8p; 20 C.F.R. § 404.1520a(d)(3); *Pepper v. Colvin*, 712 F.3d 351, 366 (7th Cir. 2013) ("After a 'not severe' finding at step two, the special technique requires the ALJ to assess the mental impairment in conjunction with the individual's RFC at step four.") (citing 20 C.F.R. § 404.1520a(d)(3)).

Here, ALJ Smith included a detailed discussion of the evidence related to Weller's mental limitations at both steps two and four. While the ALJ found at step two that Weller had *some*, *mild* mental limitations, this court has previously held that "there is no "*per se* rule that *any* mild limitation found at step two must be incorporated into the claimant's

RFC; rather, each limitation should be considered in the context of the overall opinion." *Stone v. Saul*, No. 19-CV-435-WMC, 2020 WL 3603775, at *2 (W.D. Wis. July 2, 2020) (emphasis in original) (quoting *Buss v. Saul*, No. 18-CV-565-WMC, 2019 WL 5616948, at *5 (W.D. Wis. Oct. 31, 2019)). Relatedly, this court has also previously held that there is no *per se* rule that any mild mental limitation renders a claimant incapable of performing skilled work. *See Ross v. Saul,* No. 19-CV-969-JDP, 2020 WL 4199672, at *2 (W.D. Wis. July 22, 2020) ("The implication of Ross's argument is that any mild limitation in concentration, persistence, or pace automatically renders a claimant incapable of performing skilled work. There is no legal or factual basis for such a sweeping conclusion.").

Considering the context of the overall opinion and medical record, substantial evidence supports the ALJ's decision not to include a mental limitation in Weller's RFC. Other than a diagnosis of depression and medication occasionally monitored by her primary care doctor, there is *no* evidence in the record of consistent mental health treatment or counseling. Equally important, the ALJ's finding is consistent with and supported by the conclusions of Drs. Pape and Cools, the state agency psychologists, who both opined that Weller's depression caused no functional limitations. Although Dr. Cowan's consultative examination could arguably support *some* functional limitation, the ALJ appropriately considered and discussed this record, finding it "minimally persuasive" because "the conclusions do not correlate with the examiner's own findings." (AR 26.) Finally, when specifically asked about her reasons for not working in two separate function reports, as well as during Dr. Cowan's consultative mental status evaluation, ALJ Smith

reasonably put weight on the fact that Weller *herself* did not claim any functional limitations based on mental impairments.

Regardless, ALJ Smith followed the agency regulations by considering and discussing the evidence related to Weller's non-severe depression while drawing a bridge between that evidence and his ultimate conclusion that she had not meaningful mental limitations. Thus, claimant has failed to show an error meriting remand as to this issue.

II. Manipulative Limitations

As noted, claimant also argues that the ALJ erred in finding Weller was limited to *frequent* handling and fingering. (Pl.'s Br. (dkt. #12) 15.) Certainly this finding was material, as the VE testified that a limitation to *occasional* handling and fingering would have precluded claimant from performing her past work as an Office Manager. (AR 58-59.) Indeed, claimant argues, if Weller was found to be unable to perform past work, she would have to be found disabled under the Grid Rules due to her age. (Pl.'s Br. (dkt. #12) 9-10.)

Unfortunately for claimant, however, most of her argument focuses on the ALJ's allegedly flawed assessment of Weller's subjective complaints of hand and wrist pain. (*See id.* at 15-21.) An ALJ's assessment of a claimant's subjective symptoms is entitled to "special deference," although the ALJ is "still required to build an accurate and logical bridge between the evidence and the result.'" *Castile v. Astrue*, 617 F.3d 923, 929 (7th Cir. 2010) (internal quotations and citations omitted). Social Security Ruling 16-3p instructs ALJs to consider a claimant's subjective symptoms by following a two-step process. SSR 16-3p. First, the ALJ must ascertain "whether there is an underlying medically

determinable physical or mental impairment(s) that could reasonably be expected to produce an individual's symptoms, such as pain." *Id*. Second, the ALJ must "evaluate the intensity and persistence of those symptoms to determine the extent to which the symptoms limit an individual's ability to perform work-related activities." *Id.*

Contrary to claimant's assertions, however, ALJ Smith *did* follow the appropriate steps in evaluating Weller's subjective reports of her hand and wrist pain. The ALJ first determined that Weller's "medically determinable impairments could reasonably be expected to cause the alleged symptoms." (AR 19.) As it relates to Weller's hand and wrist limitations, the ALJ found that Weller had "post-status left wrist fusion and osteoarthritis of left wrist/de Quervain's tenosynovitis, osteoarthritis/tendonitis of the bilateral thumbs," and these qualified as medically determinable severe impairments. (AR 15.) Still, the ALJ ultimately provided a sound basis for concluding that Weller's "statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record." (AR 19.)

Specifically, ALJ Smith acknowledged Weller's allegations that: (1) after her wrist surgery, she could no longer type on a computer; (2) she has difficulty gripping items with both of her hands; and (3) medications do not completely resolve her pain. (AR 19.) He further noted instances in the medical record that recorded her reports of hand, wrist, and thumb pain, as well as the objective medical evidence that supported her reports. (AR 19-24.) However, the ALJ's own, reasonable review of the record led him to find the claimant's medical that treatment was "minimal and conservative," with "several gaps during which

the claimant made few complaints about her alleged disabling impairments." (AR 19.) Again citing to record evidence, he further found that a manipulative limitation to frequent handling and fingering was appropriate due to the "minimal deficits noted in the claimant's thumbs and left wrist." (AR at 26.)

Further, the three, medical opinions in the record regarding Weller's manipulative limitations *support* the ALJ's findings. Both Dr. Shaw and Dr. Bilinsky, the state agency doctors, concluded that Weller had *no* manipulative limitations (AR 71, 90), and Dr. Danielsson, the examining consultant, also concluded that Weller had no manipulative limitations in her right hand but found that Weller could only frequently handle, feel, grasp, and finger with her left hand (AR 892-93). Having followed the process outlined in the regulations for assessing a claimant's subjective symptoms, the ALJ neither "cherry-picked" the record, nor ignored evidence that pointed to a disability finding; rather he considered all the relevant evidence and arrived at a conclusion that Weller could frequently handle and finger. This finding is supported by substantial evidence, especially considering that the three opinions by Drs. Shaw, Bilinsky, and Danielsson all proposed *less* restrictive manipulative limitations.

In a single, short paragraph with no citation to relevant law, claimant nevertheless takes issue with the ALJ's finding that Weller's treatment of her hand and wrist was minimal and conservative. (Pl.'s Br. (dkt. #12) 22.) However, this finding, too, is supported by the evidence. While Weller did undergo surgery for her wrist in 2017, the surgery appears to have been mostly successful, and otherwise her treatment appears to have been mostly limited to ibuprofen and splints.

Finally, claimant complains that the ALJ improperly discounted Weller's complaints due to treatment gaps, having failed to investigate fully the reasons for the gaps. In assessing the extent to which an individual's symptoms affect his or her ability to perform work-related activities, Social Security Ruling 16-3p directs an ALJ to "consider an individual's attempts to seek medical treatment." Moreover, "if the frequency or extent of the treatment sought by an individual is not comparable with the degree of the individual's subjective complaints," that an ALJ "may find the alleged intensity and persistence of an individual's symptoms are inconsistent with the overall evidence of record." *Id.* Still, an ALJ must "consider and address reasons for not pursuing treatment that are pertinent to an individual's case." *Id.*

Here, the ALJ does not appear to have specifically inquired into the numerous treatment gaps, but that alone is not a sufficient reason to remand. *See Gilbertson v. Berryhill*, No. 17-CV-631-JDP, 2018 WL 3122060, at *6 (W.D. Wis. June 26, 2018) ("The court agrees that the ALJ could have inquired about her reasons for failing to comply with treatment recommendations. But Gilbertson does not offer any alternative explanation, such as limited financial resources or lack of insurance, to explain any failure to follow recommended treatment. Standing alone, the ALJ's failure to specifically inquire about her failure to follow recommended treatment does not warrant remand."). Courts may only overturn an ALJ's credibility determination where it is "patently wrong." *Simila v. Astrue*, 573 F.3d 503, 517 (7th Cir. 2009) (upholding an ALJ's credibility determination where the "ALJ's credibility determination was not flawless" but still "far from 'patently wrong'"). Since claimant does not even proffer some reasonable explanation for the many, lengthy

gaps in treatment, despite ranging from six to twelve months at a time, the court has no basis to find that the ALJ was wrong to infer Weller's claims of pain and limitations were overblown, much less "patently wrong."

In sum, the court concludes that ALJ Smith did not err in his assessment of Weller's RFC. Instead, the ALJ analyzed her limitations in accordance with the law, and his findings are supported by substantial evidence.

ORDER

Accordingly, IT IS ORDERED that the decision of defendant Andrew Saul, Commissioner of Social Security, denying plaintiff Margaret Jean Weller's application for a period of disability and disability insurance benefits is AFFIRMED.

Entered this 13th day of November, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge