

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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SARA JANE MASON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:15-CV-02836-TMP
	)	
CAROLYN W. COLVIN,	)	
ACTING COMMISSIONER OF SOCIAL	)	
SECURITY,	)	
	)	
Defendant.	)	
	)	

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ORDER AFFIRMING THE COMMISSIONER'S DECISION

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Before the court is plaintiff Sara Jane Mason's appeal from a final decision of the Commissioner of Social Security ("Commissioner") denying her application for disability insurance benefits and supplemental security income under Title II and Title XVI of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq.* The parties have consented to the jurisdiction of the United States magistrate judge pursuant to 28 U.S.C. § 636(c). (ECF No. 14.) For the reasons set forth below, the decision of the Commissioner is affirmed.

I. FINDINGS OF FACT

On November 3, 2011, Mason applied for disability insurance benefits and supplemental security income under Title II and Title XVI of the Act. (R. 86.) In both applications, Mason alleged

disability beginning on April 1, 2011, due to Crohn's disease and fibroids.<sup>1</sup> (R. 336.) Mason's application was denied initially and upon reconsideration by the Social Security Administration ("SSA"). (R. 86.) At Mason's request, a hearing was held before an Administrative Law Judge ("ALJ") on September 5, 2012. (Id.) On November 30, 2012, the ALJ issued a decision denying Mason's request for benefits after finding that Mason was not under a disability because she retained the residual functional capacity ("RFC") to perform jobs that exist in significant numbers in the national economy. (R. 86-94.) Mason requested that the SSA's Appeals Council review the ALJ's decision, and the Appeals Council agreed to do so. (R. 101.) On April 30, 2014, the Appeals Council issued an order vacating the ALJ's decision and remanding the case to the ALJ for the resolution of issues identified in the order. (R. 101-103.)

As a result of the Appeals Council's order, a second hearing was held before an ALJ on September 3, 2014. (R. 21.) On December 9, 2014, the ALJ issued a decision denying Mason's request for benefits after finding that she retained the RFC to perform past relevant work as a bill collector. (R. 21-30.) On November 25, 2015, the Appeals Council denied Mason's request for review of the ALJ's second decision. (R. 1.) Therefore, that decision became

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<sup>1</sup>On September 30, 2014, Mason amended her application to allege

the final decision of the Commissioner. (Id.) Subsequently, on December 31, 2015, Mason filed the instant action. (ECF No. 1.) Mason argues that: (1) the ALJ erred by failing to provide adequate reasons for discounting the opinion of Mason's treating physician, Dr. James Scott; (2) the ALJ erred by concluding that Mason is not disabled; and (3) the ALJ's conclusion that Mason retains the RFC to perform light work is not supported by substantial evidence. (ECF No. 15.)

## II. CONCLUSIONS OF LAW

### A. Standard of Review

Under 42 U.S.C. § 405(g), a claimant may obtain judicial review of any final decision made by the Commissioner after a hearing to which he or she was a party. "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Judicial review of the Commissioner's decision is limited to whether there is substantial evidence to support the decision and whether the Commissioner used the proper legal criteria in making the decision. Id.; Winn v. Comm'r of Soc. Sec., 615 F. App'x 315, 320 (6th Cir. 2015); Cole v. Astrue, 661 F.3d 931, 937 (6th Cir. 2011); Rogers v.  

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disability beginning on November 3, 2011. (R. 286.)

Comm'r of Soc. Sec., 486 F.3d 234, 241 (6th Cir. 2007). Substantial evidence is more than a scintilla of evidence but less than a preponderance, and is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Kirk v. Sec'y of Health & Human Servs., 667 F.2d 524, 535 (6th Cir. 1981) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

In determining whether substantial evidence exists, the reviewing court must examine the evidence in the record as a whole and "must 'take into account whatever in the record fairly detracts from its weight.'" Abbott v. Sullivan, 905 F.2d 918, 923 (6th Cir. 1990) (quoting Garner v. Heckler, 745 F.2d 383, 388 (6th Cir. 1984)). If substantial evidence is found to support the Commissioner's decision, however, the court must affirm that decision and "may not even inquire whether the record could support a decision the other way." Barker v. Shalala, 40 F.3d 789, 794 (6th Cir. 1994) (quoting Smith v. Sec'y of Health & Human Servs., 893 F.2d 106, 108 (6th Cir. 1989)). Similarly, the court may not try the case *de novo*, resolve conflicts in the evidence, or decide questions of credibility. Ulman v. Comm'r of Soc. Sec., 693 F.3d 709, 713 (6th Cir. 2012) (citing Bass v. McMahon, 499 F.3d 506, 509 (6th Cir. 2007)). Rather, the Commissioner, not the court, is charged with the duty to weigh the evidence, to make credibility determinations, and to resolve material conflicts in the testimony.

Walters v. Comm'r of Soc. Sec., 127 F.3d 525, 528 (6th Cir. 1997); Crum v. Sullivan, 921 F.2d 642, 644 (6th Cir. 1990); Kiner v. Colvin, No. 12-2254-JDT, 2015 WL 1295675, at \*1 (W.D. Tenn. Mar. 23, 2015).

**B. The Five-Step Analysis**

The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1). Additionally, section 423(d)(2) of the Act states that:

An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

Under the Act, the claimant bears the ultimate burden of establishing an entitlement to benefits. Oliver v. Comm'r of Soc. Sec., 415 F. App'x 681, 682 (6th Cir. 2011). The initial burden is on the claimant to prove she has a disability as defined by the

Act. Siebert v. Comm'r of Soc. Sec., 105 F. App'x 744, 746 (6th Cir. 2004) (citing Walters, 127 F.3d at 529); see also Born v. Sec'y of Health & Human Servs., 923 F.2d 1168, 1173 (6th Cir. 1990). If the claimant is able to do so, the burden then shifts to the Commissioner to demonstrate the existence of available employment compatible with the claimant's disability and background. Born, 923 F.2d at 1173; see also Griffith v. Comm'r of Soc. Sec., 582 F. App'x 555, 559 (6th Cir. 2014).

Entitlement to Social Security benefits is determined by a five-step sequential analysis set forth in the Social Security Regulations. See 20 C.F.R. §§ 404.1520 & 416.920. First, the claimant must not be engaged in substantial gainful activity. See 20 C.F.R. §§ 404.1520(b) & 416.920(b). Second, a finding must be made that the claimant suffers from a severe impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii) & 416.920(a)(5)(ii). In the third step, the ALJ determines whether the impairment meets or equals the severity criteria set forth in the Listing of Impairments contained in the Social Security Regulations. See 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526. If the impairment satisfies the criteria for a listed impairment, the claimant is considered to be disabled. On the other hand, if the claimant's impairment does not meet or equal a listed impairment, the ALJ must undertake the fourth step in the analysis and determine whether the claimant has the RFC to return

to any past relevant work. See 20 C.F.R. §§ 404.1520(a)(4)(iv) & 404.1520(e). If the ALJ determines that the claimant can return to past relevant work, then a finding of not disabled must be entered. Id. But if the ALJ finds the claimant unable to perform past relevant work, then at the fifth step the ALJ must determine whether the claimant can perform other work existing in significant numbers in the national economy. See 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g)(1), 416.960(c)(1)-(2). Further review is not necessary if it is determined that an individual is not disabled at any point in this sequential analysis. 20 C.F.R. § 404.1520(a)(4).

**C. Whether the ALJ Properly Evaluated the Opinion of Mason's Treating Physician**

First, Mason argues that the ALJ erred by failing to provide adequate reasons for discounting the opinion of her treating physician, Dr. Scott. The SSA regulations outline "a presumptive sliding scale of deference to be given to various types of opinions." Norris v. Comm'r of Soc. Sec., 461 F. App'x 433, 439 (6th Cir. 2012). On this sliding scale, "[a]n opinion from a treating physician is 'accorded the most deference by the SSA' because of the 'ongoing treatment relationship' between the patient and the opining physician." Id. (quoting Smith v. Comm'r of Soc. Sec., 482 F.3d 873, 875 (6th Cir. 2007)). The SSA requires the ALJ to assign a treating source opinion 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 claimant's] case record." 20 C.F.R. § 404.1527(b)(2); Wilson v. Comm'r of Soc. Sec., 378 F.3d 541, 544 (6th Cir. 2004). If the ALJ discounts the weight normally given to a treating source opinion, he must provide "good reasons" for doing so. 20 C.F.R. § 404.1527(c)(2); Gayheart v. Comm'r of Soc. Sec., 710 F.3d 365, 376 (6th Cir. 2013). Furthermore, if the ALJ ultimately denies benefits, his decision "must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight." SSR 96-2p, 1996 WL 374188, at \*5 (July 2, 1996); Mitchell v. Comm'r of Soc. Sec., 330 F. App'x 563, 569 (6th Cir. 2009).

The court finds that the ALJ provided good reasons for discounting the weight given to Dr. Scott's opinion. The ALJ discussed Dr. Scott's opinion that "Mason is permanently disabled due to her medical conditions" and determined that it was entitled to "little weight."<sup>2</sup> (R. 29, 854.) The ALJ explained at length how

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<sup>2</sup>The letter from Dr. Scott outlining his opinion reads in its entirety as follows:

Dr. Scott's opinion was inconsistent with other medical evidence in the record, including Dr. Scott's own medical findings, and how his opinion was not supported by objective test results. (R. 25-29.) For example, with respect to Mason's alleged disabling asthma, the ALJ noted that Dr. Scott prescribed Mason oxygen for night use in April 2012 and prescribed oxygen for 24/7 use in June 2013, according to a letter contained in the record from Dr. Scott. (R. 922.) However, when Mason was hospitalized in October 2012 for abdominal pain, it was noted upon examination that she had clear lungs, non-labored respirations, and equal breathing sounds. (R. 848-50.) Moreover, on May 17, June 18, and July 18, 2013, Dr. Scott himself noted during routine office visits that Mason had a normal respiratory rate, normal breath sounds, and no signs of respiratory distress. (R. 858, 867, 872.) On June 18, 2013, Dr. Scott noted that Mason only experienced an average of one asthma attack per month. (R. 889.) Additionally, Mason underwent a pulse oximetry test on July 12, 2013, and the results indicated that

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To Whom It May Concern:

I am the Primary Care Provider for Sara Mason. I have been treating Mrs. Mason since November 2010. Mrs. Mason is permanently disabled due to her medical conditions. I currently treat her for Crohn's Disease, Asthma, Hypoxemia, Lumbar HNP, Carpal Tunnel Syndrome, and Hypertension. If you have any questions please feel free to call our office at the above number.

(R. 854.)

Mason did not qualify for nocturnal oxygen under Medicare guidelines. (R. 909.)

The ALJ afforded Mason an additional opportunity to provide objective test results to support Dr. Scott's opinion, but Mason failed to provide any additional objective medical evidence. (R. 28-29.) Moreover, the court notes that a treating physician's opinion is only entitled to deference when it is a *medical* opinion. Curler v. Comm'r of Soc. Sec., 561 F. App'x 464, 471 (6th Cir. 2014) (citing Turner v. Comm'r of Soc. Sec., 381 F. App'x 488, 492-93 (6th Cir. 2010)). If a treating physician submits an opinion on an issue reserved to the Commissioner, such as whether the claimant is disabled, the opinion "is not entitled to any particular weight." Id. (quoting Turner, 381 F. App'x at 493); see also Dunlap v. Comm'r of Soc. Sec., 509 F. App'x 472, 476 (6th Cir. 2012) (stating that SSA regulations specifically prohibit the ALJ from considering treating physician opinions on issues reserved to the Commissioner, such as whether a claimant is disabled). Therefore, the ALJ was not required to give any special weight to Dr. Scott's opinion that Mason is "permanently disabled," as that is a determination reserved to the Commissioner. In light of the foregoing, Mason is not entitled to remand on this issue.<sup>3</sup> See

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<sup>3</sup>Mason also takes issue with statements regarding treating physician opinions made by a different ALJ in a prior decision that was ultimately remanded. However, the prior ALJ's decision is not

Steagall v. Comm'r of Soc. Sec., 596 F. App'x 377, 380 (6th Cir. 2015) (affirming the ALJ's decision to give "no weight" to a treating physician opinion because it was inconsistent with findings of other doctors and was unsupported by the rest of plaintiff's medical records); Hill v. Comm'r of Soc. Sec., 560 F. App'x 547, 549-50 (6th Cir. 2014) (affirming the ALJ's decision to assign "little to no weight" to a treating physician's opinion because it was not supported by the physician's own treatment notes, other medical tests, or the plaintiff's own statements about her daily activities).

**D. Whether the ALJ Erred by Concluding that Mason is not Disabled**

Next, Mason argues that the ALJ erred by concluding that she is not under an impairment or combination of impairments that qualifies her as disabled under the SSA regulations. Specifically, Mason contends that the ALJ improperly evaluated her allegation of Crohn's disease as a disabling impairment. She argues that even if she "does not have a Crohn's diagnosis, the various diagnoses consistent with abdominal pain and gastrointestinal issues . . . are sufficient to show an impairment or a combination of impairments" that would qualify her as disabled. The court finds that the ALJ did not err in analyzing Mason's allegation of disability due to Crohn's disease. The ALJ dedicated more than a

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before the court and has no relevance to the court's analysis.

full page of her ten-page opinion to discussing the evidence in the record relating to Mason's gastrointestinal issues. (R. 24-26.) The ALJ cited to numerous specific portions of the record which demonstrate that the record does not support a definitive diagnosis of Crohn's disease. For example, the ALJ noted that Mason was diagnosed with ulcerative colitis in 2007 and was diagnosed with acute gastritis in 2010 and 2012. (R. 24-25.) Additionally, the ALJ cited colonoscopy findings from December 2011 that did not demonstrate characteristic features of Crohn's disease. (R. 25.) The ALJ acknowledged that Mason has a history of gastrointestinal problems, as evidenced by her step-two finding that Mason's gastrointestinal disorder was a severe impairment, but noted that there were "significant periods of time with minimal to no complaints of nausea, diarrhea, or vomiting." (R. 24-25.) The ALJ also pointed out that Mason confirmed that her condition improved with medication, and noted that the record contained no evidence of weight loss, nutritional compromise, or dehydration resulting from her alleged impairment. (R. 25.)

Mason also argues that the ALJ improperly relied on gaps in her treatment for gastrointestinal issues in reaching her conclusion that Mason's Crohn's disease was not a disabling impairment. She argues that the reason gaps in her treatment exist is because she believes that "there is no cure that her treating

physician could prescribe to cure her." In support of her argument, Mason cites to 20 C.F.R. § Pt. 404, Subpt. P, App. 1, which states: "[i]f you have not received ongoing treatment or have not had an ongoing relationship with the medical community despite the existence of a severe impairment(s), we will evaluate the severity and duration of your digestive impairment on the basis of the current medical and other evidence in your case record." Mason's argument is without merit. While the ALJ noted multiple instances where Mason went several years without treatment for her gastrointestinal issues, she did not rely solely on these treatment gaps in reaching her conclusion that Mason's gastrointestinal impairments were not disabling. To the contrary, as discussed above, the ALJ thoroughly analyzed the evidence in the record and explained the reasoning behind her conclusion. The Sixth Circuit "has consistently affirmed that the claimant bears the burden of producing sufficient evidence to show the existence of a disability." Watters v. Comm'r of Soc. Sec. Admin., 530 F. App'x 419, 425 (6th Cir. 2013). Moreover, an ALJ's decision is "'not subject to reversal merely because substantial evidence exists in the record to support a different conclusion.'" Kepke v. Comm'r of Soc. Sec., 636 F. App'x 625, 627 (6th Cir. 2016) (quoting Lindsley v. Comm'r of Soc. Sec., 560 F.3d 601, 604 (6th Cir. 2009)). Rather, as explained earlier, the court must affirm the ALJ's

decision unless the ALJ “failed to apply the correct legal standard or made findings of fact that are unsupported by substantial evidence.” Payne v. Comm'r of Soc. Sec., 402 F. App'x 109, 111 (6th Cir. 2010) (quoting McClanahan v. Comm'r of Soc. Sec., 474 F.3d 830, 833 (6th Cir. 2006)). Here, the court finds that the ALJ's decision that Mason is not disabled is supported by substantial evidence and that the ALJ did not err as a matter of law in reaching this conclusion. As such, Mason is not entitled to remand on this point.

**D. Whether the ALJ's RFC Finding is Supported by Substantial Evidence**

Lastly, Mason argues that the ALJ's conclusion that she has the RFC to perform light work with some environmental limitations is not supported by substantial evidence. She asserts that “[t]he ALJ's ruling goes against the manifest weight of the evidence found in the record,” and points to her own testimony and Dr. Scott's letter stating that Mason is “permanently disabled” in support of her position. Upon review of the entire record, the court finds that the ALJ did not err in determining Mason's RFC. The ALJ thoroughly discussed the medical evidence in the record and explained why she gave little weight to Dr. Scott's opinion in reaching her RFC finding. Moreover, as stated previously, the ALJ was not required to give any special weight to Dr. Scott's opinion that Mason was “permanently disabled,” as that is an issue reserved

to the Commissioner. The "Social Security Act instructs that the ALJ – not a physician – ultimately determines a claimant's RFC." Coldiron v. Comm'r of Soc. Sec., 291 F. App'x 435, 439 (6th Cir. 2010); see also Rudd v. Comm'r of Soc. Sec., 531 F. App'x 719, 728 (6th Cir. 2013) ("[T]o require the ALJ to base her RFC finding on a physician's opinion, would, in effect, confer upon the treating source the authority to make the determination or decision about whether an individual is under a disability, and thus would be an abdication of the Commissioner's statutory responsibility to determine whether an individual is disabled.") (internal quotation marks and citation omitted); Nejat v. Comm'r of Soc. Sec., 359 F. App'x 574, 578 (6th Cir. 2009) ("Although physicians opine on a claimant's residual functional capacity to work, ultimate responsibility for capacity-to-work determinations belongs to the Commissioner."); Webb v. Comm'r of Soc. Sec., 368 F.3d 629, 633 (6th Cir. 2004) (stating that under the SSA regulations, "the ALJ is charged with the responsibility of evaluating the medical evidence and the claimant's testimony to form an 'assessment of [her] residual functional capacity'" (quoting 20 C.F.R. § 416.920(a)(4)(iv))).

With respect to Mason's own testimony, the ALJ determined that Mason was not fully credible. As the Sixth Circuit has noted, "an ALJ is not required to accept a claimant's subjective complaints

and may properly consider the credibility of a claimant when making a determination of disability." Jones v. Comm'r of Soc. Sec., 336 F.3d 469, 476 (6th Cir. 2003). "An ALJ may discount a claimant's credibility when the ALJ 'finds contradictions among the medical reports, claimant's testimony, and other evidence.'" Steagall v. Comm'r of Soc. Sec., 596 F. App'x 377, 381 (6th Cir. 2015) (quoting Warner v. Comm'r of Soc. Sec., 375 F.3d 387, 392 (6th Cir. 2004)). An ALJ's finding as to a claimant's credibility is entitled to deference from the court "because of the ALJ's unique opportunity to observe the claimant and judge her subjective complaints." Buxton v. Halter, 246 F.3d 762, 773 (6th Cir. 2001). Here, the ALJ discounted Mason's credibility for a number of reasons, including the fact that she received unemployment benefits throughout the first half of 2012, which required her to certify that she was able and willing to work, and the fact that she did not seek treatment for her alleged impairments for extended periods of time, even though she had health insurance. See Workman v. Comm'r of Soc. Sec., 105 F. App'x 794, 801-02 (6th Cir. 2004) (upholding ALJ's credibility determination and stating that "[a]pplications for unemployment and disability benefits are inherently inconsistent. . . . There is no reasonable explanation for how a person can claim disability benefits under the guise of being unable to work, and yet file an application for unemployment benefits claiming that

[he] is ready and willing to work") (internal citations and quotation marks omitted). Additionally, the ALJ found that Mason's allegations of disability were inconsistent with her own reported activities of daily living. (R. 28.) For instance, the ALJ pointed out that although Mason alleged that she becomes nauseated and fatigued after five minutes of walking, she also stated that she is able to walk one mile without having to stop and rest. (R. 28.) The ALJ also noted that routine lab results indicated the presence of marijuana on multiple occasions, despite Mason's allegation that her asthma was disabling. (R. 27.) Lastly, the ALJ found that Mason's allegations of disability were inconsistent with and not supported by the medical evidence in the record, and she cited to specific portions of the record in support of her finding. Based on a review of the entire record, the court finds that the ALJ's RFC finding was supported by substantial evidence and that Mason is not entitled to remand on this issue. See Kepke, 636 F. App'x at 638-39; Winslow v. Comm'r of Soc. Sec., 566 F. App'x 418, 422 (6th Cir. 2014); Torres v. Comm'r of Soc. Sec., 490 F. App'x 748, 754 (6th Cir. 2012).

### III. CONCLUSION

For the foregoing reasons, the Commissioner's decision is affirmed.

IT IS SO ORDERED.

s/ Tu M. Pham  
TU M. PHAM  
United States Magistrate Judge

August 5, 2016  
Date