

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

JAMES RONNIE MILLS,)	
)	
Plaintiff,)	
)	
v.)	No. 14-cv-2429-TMP
)	
CAROLYN W. COLVIN,)	
COMMISSIONER, SOCIAL SECURITY)	
ADMINISTRATION,)	
)	
Defendant.)	

ORDER REMANDING CASE PURSUANT TO SENTENCE FOUR OF 42 U.S.C. §
405 (g)

Before the court is plaintiff James Ronnie Mills's appeal from a final decision of the Commissioner of Social Security¹ ("Commissioner") regarding his application for disability insurance benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. §§ 401 *et seq.* On December 6, 2016, the parties consented to the jurisdiction of the United States magistrate judge pursuant to 28 U.S.C. § 636(c). (ECF No. 12.) For the reasons set forth below, the court finds that remand is warranted pursuant to sentence four of 42 U.S.C. § 405(g).

I. PROCEDURAL HISTORY

¹Carolyn W. Colvin was the Acting Commissioner of Social Security at the time this case was filed. Therefore, she is named in the complaint and in the caption to this case. As of the date of this order, the Acting Commissioner of Social Security is Nancy A. Berryhill.

On October 12, 2011, Mills filed an application for disability insurance benefits under Title II of the Act. Mills's application was denied initially and upon reconsideration by the Social Security Administration ("SSA"). (R. 32-33.) At Mills's request, a hearing was held before an Administrative Law Judge ("ALJ") on November 29, 2012. (R. 7-31.) On April 8, 2013, the ALJ issued a favorable decision finding that Mills has been under a disability as defined by the Act since the alleged onset date of May 30, 1993. (R. 34-42.) However, the ALJ did not address Mills's contention that he should be found to have a deemed filing date of September 18, 1997, based on receiving misinformation from the SSA that led to his not applying for benefits at that time. Mills appealed to the SSA's Appeals Council on these grounds. (R. 6.) On April 4, 2014, the Appeals Council denied Mills's request for review. (R. 1-3.) Therefore, the ALJ's decision became the final decision of the Commissioner. Subsequently, on June 6, 2014, Mills filed the instant action. (ECF No. 1.) Mills argues that the Commissioner's decision regarding his alleged deemed application date was not supported by substantial evidence and that the Commissioner committed legal error by failing to adequately address that issue. (ECF No. 9-1.) The Commissioner filed a brief in response. (ECF No. 10.) On December 6, 2016, the parties consented to the jurisdiction of the United States magistrate judge pursuant to 28 U.S.C. § 636(c). (ECF No. 12.)

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. 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. Deemed Application Date

The sole issue before the court is whether the Commissioner properly evaluated Mills's claim that he is entitled, pursuant to 20 C.F.R. § 404.633, to a deemed application date of September 18, 1997, due to misinformation given to him by the SSA.² It is clear

²Because the Commissioner determined Mills is disabled for purposes of the Act, and that finding is not challenged here, it is not

from the record that Mills's argument as to this issue was before the ALJ prior to the issuance of his decision. (See R. 164-73 (brief of counsel addressing the issue dated November 9, 2012).) In short, Mills alleges that he was misinformed by the SSA on or about September 18, 1997, when he was told over the phone that he could not apply for benefits because he was already receiving workers' compensation.³ (R. 164.) For this reason, Mills alleges that he did not apply for benefits at that time, even though he likely would have been eligible. Therefore, Mills asserts that his filing date should be "deemed" to be September 18, 1997, entitling him to additional benefits.

At the hearing before the ALJ, Mills testified as to the circumstances of his receiving the alleged misinformation. (R. 18-19.) His wife, Connie Mills, also testified, indicating that she was a party to the alleged calls with the SSA wherein her husband received the misinformation. (R. 24-25.) In his decision, the ALJ did not address Mills's argument regarding his alleged deemed application date or the testimony set forth in support. Mills filed a request for review with the Appeals Council on the specific

necessary for the court to discuss the SSA's five-step analysis for determining disability or to evaluate the medical evidence in the record.

³It does not appear that the Commissioner disputes that the content of the alleged communication would be considered misinformation on these facts. To the extent the Commissioner does contest this, the issue may be addressed on remand.

basis of this supposed omission, but the Appeals Council denied the request, finding "no evidence to support your request for a deemed protective filing date of September 18, 1997." (R. 2.)

The applicable regulation provides that the SSA will establish a deemed application date under certain conditions when a claimant refrained from applying for benefits due to misinformation received from the SSA. See 20 C.F.R. § 404.633. The misinformation must have been communicated, orally or in writing, by an SSA employee acting in an official capacity in response to a specific request for information. § 404.633(c). To make this determination, in the absence of "preferred evidence" such as an official record (which is not alleged to be available in this case), the SSA will consider "other evidence." § 404.633(d). Such other evidence may include the claimant's own statements, but a finding of misinformation cannot be based "solely" on the claimant's own statements. § 404.633(d)(2). Additionally, other evidence could include "[s]tatements from others who were present when you were given the alleged misinformation, e.g., a neighbor who accompanied you to our office." § 404.633(d)(2)(ii). When a claimant makes a written claim for a deemed application date based on misinformation, including the relevant details regarding the alleged misinformation, the SSA "will make a determination on such a claim for benefits" if other conditions (not in dispute here) are met. § 404.633(f).

Mills, through his attorney, set forth his claim for a deemed application date in writing, including the details of the alleged communication with the SSA. (R. 164.) Therefore, Mills appears to be entitled to a decision as to this claim. The ALJ did not make a finding, nor did he address the claim or the evidence in any way. "An ALJ need not discuss every piece of evidence in the record for his decision to stand," because an ALJ's failure to discuss evidence does not necessarily mean that the evidence was not considered. Thacker v. Comm'r of Soc. Sec., 99 F. App'x 661, 665 (6th Cir. 2004); see also Dykes ex rel. Brymer v. Barnhart, 112 F. App'x 463, 467 (6th Cir. 2004) ("Although required to develop the record fully and fairly, an ALJ is not required to discuss all the evidence submitted, and an ALJ's failure to cite specific evidence does not indicate that it was not considered.") (quoting Craig v. Apfel, 212 F.3d 433, 436 (8th Cir. 2000)). However, an ALJ must discuss enough evidence to enable the court to determine whether substantial evidence supports the ALJ's decision. See Karger v. Comm'r of Soc. Sec., 414 F. App'x 739, 753 (6th Cir. 2011); see also Gentry v. Comm'r of Soc. Sec., 741 F.3d 708, 724 (6th Cir. 2014) (reversing because ALJ failed to adequately discuss the evidence in the record). The ALJ did not address Mills's evidence regarding misinformation at all, so even if the court were to construe the lack of a finding regarding the deemed application date as an implicit rejection of that argument, the court has no

basis to conclude that such a finding was supported by substantial evidence. See Johnson v. Comm'r of Soc. Sec., No. 3:08-cv-274, 2009 WL 3853187, at *6 (S.D. Ohio Nov. 17, 2009) (finding that the Commissioner's decision rejecting a misinformation claim was not supported by substantial evidence where the Appeals Council relied on a review of the record but did not provide "an explicit and reasoned rejection" of the evidence).

The claimant has set forth his own testimony regarding alleged misinformation, and there is additional evidence in the form of the testimony of his wife who participated when Mills called the SSA, which is akin to the SSA's example of a neighbor accompanying a potential claimant to the SSA office. It is incumbent upon the ALJ to evaluate the sufficiency of this evidence pursuant to 20 C.F.R. § 404.633, including the credibility of the witnesses.⁴ There is no indication that the ALJ has done so here. Therefore, this case is remanded for that limited purpose.

III. CONCLUSION

For the foregoing reasons, the decision of the Commissioner is reversed only as to Mills's application date, and this case is remanded pursuant to sentence four of 42 U.S.C. § 405(g) for the limited purpose of considering the arguments and evidence in the

⁴The ALJ, not the reviewing court, is "tasked with evaluating the credibility of witnesses, including that of the claimant." Kalmbach v. Comm'r of Soc. Sec., 409 F. App'x 852, 863 (6th Cir. 2011).

record regarding Mills's claim for an earlier deemed application date based on misinformation.

IT IS SO ORDERED.

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

June 16, 2017
Date