

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

RONNIE MINOR,)	
)	
Plaintiff,)	
)	
v.)	No. 14-cv-1193-TMP
)	
CAROLYN W. COLVIN,)	
ACTING COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	

ORDER AFFIRMING THE COMMISSIONER'S DECISION

Before the court is Ronnie Minor's appeal from a final decision of the Commissioner of Social Security¹ ("Commissioner") denying his 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. 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. 27.) For the reasons set forth below, the decision of the Commissioner is AFFIRMED.

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.

I. FINDINGS OF FACT

Minor has alleged disability with an onset date of July 1, 2010. (R. 19.) Minor's claims were denied initially and upon reconsideration by the Social Security Administration ("SSA"). (Id.) At Minor's request, a hearing was held before an Administrative Law Judge ("ALJ") on November 21, 2012. (Id.) On March 15, 2013, the ALJ issued a decision finding that Minor was not under a disability because he retained the residual functional capacity ("RFC") to perform past relevant work or, in the alternative, adjust to other work that exists in significant numbers in the national economy. (R. 23-30.) On June 16, 2014, the SSA's Appeals Council denied Minor's request for review. Therefore, the ALJ's decision became the final decision of the Commissioner. (R. 1.) Subsequently, on August 13, 2014, Minor filed the instant action. Minor argues that the ALJ's RFC finding is not supported by substantial evidence. (ECF No. 19 at 10-14.)

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., No. 14-3499, 2015 WL 3702032, at *4 (6th Cir. June 15, 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. Walter 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 v. Comm'r of Soc. Sec., 127 F.3d 525, 529 (6th Cir. 1997)); 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's RFC Finding is Supported by Substantial Evidence

Minor's sole argument before the court is that the ALJ's RFC finding is not supported by substantial evidence. "The Social Security Act instructs that the ALJ – not a physician – ultimately determines a claimant's RFC." Coldiron v. Comm'r of Soc. Sec., 391 F. App'x 435, 439 (6th Cir. 2010) (citing 42 U.S.C. § 423(d)(5)(B)); see also 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.'" (alteration in original) (quoting 20 C.F.R. § 416.920(a)(4)(iv))). In this case, the ALJ found:

that the claimant has the residual functional capacity to perform less than the full range of medium work as defined in 20 CFR 404.1567(c) and 416.967(c). The claimant can lift and/or carry 50 pounds occasionally and 25 pounds frequently; can stand and/or walk 6 hours in an 8-hour workday; can sit for 6 hours in an 8-hour workday; can occasionally climb ramps and stairs, but can never climb ladders, ropes, or scaffolds; and can occasionally balance, stoop, kneel, crouch, and crawl.

(R. 23.) For the following reasons, pursuant to the standards for substantial evidence as discussed above, the court finds that this RFC determination is supported by substantial evidence.

In her opinion, the ALJ thoroughly evaluated the medical evidence in the record. (R. 23-28.) She provided ample

evidence in support of her RFC determination, including, as examples, multiple instances of a normal or steady gait (R. 24, 25, 26), multiple instances of normal ambulation without assistance (R. 24, 25), and a treating physician's recommendation of conservative treatment measures (R. 26).² She also discussed the evidence in the record that might suggest a more limited RFC, and in most instances, she explained why she found such evidence to be less persuasive or carry less weight. (See, e.g., R. 24 (ALJ citing consultative examination report at R. 280-82 describing reported difficulty lifting ten pounds while seated due to complaints of shoulder pain, but ALJ finding no medical evidence of any shoulder impairment in the record).) The ALJ "demonstrated meaningful engagement with the facts presented in the record," and she arrived at a reasonable conclusion. Norris v. Comm'r of Soc. Sec., 461 F. App'x 433, 441 (6th Cir. 2012).

²In its brief in support of the Commissioner's decision, the United States cites a medical report that indicated Minor was "[n]ot uncomfortable standing" as an additional item of evidence in support of the ALJ's RFC finding. (ECF No. 20 at 9 (emphasis added) (purportedly citing R. 451).) However, the cited medical report actually states the opposite: that Minor was "[n]ot comfortable standing." (R. 451.) The ALJ referred to and analyzed this evidence correctly in her opinion. (R. 26.) The government's error does not change the court's analysis or the result.

On these facts, the ALJ's decision is supported by substantial evidence, and it is not deficient on the grounds that the record contains no physician's opinion finding similar specific physical limitations (e.g., the ability to sit for 6 hours in an 8-hour workday). See Rudd v. Comm'r of Soc. Sec., 531 F. App'x 719, 728 (6th Cir. 2013). The only medical evidence in the record before the ALJ that could be considered a physician's functional capacity opinion is a Medical Assessment to do Work-Related Activities (Physical), which appears to have been completed by Stanley King, P.A., and certified by Dr. Terry Colatta, M.D. (R. 438-44.) Minor does not argue that Dr. Colatta is a treating physician, and the record would not appear to support such an argument. Thus, the ALJ was not required to assign Dr. Colatta's opinion controlling weight, nor was she required to give good reasons for rejecting the opinion, because "the SSA requires ALJs to give reasons for only *treating* sources." Smith v. Comm'r of Soc. Sec., 482 F.3d 873, 876 (6th Cir. 2007) (emphasis in original); see also Norris, 461 F. App'x at 439 (stating that "a claimant is entitled under the SSA only to reasons explaining the weight assigned to his treating sources"). Nevertheless, the ALJ provided a detailed explanation for her decision to give Dr. Colatta's opinion "little" weight. (R. 27-28.) The ALJ's assignment of little weight to Dr. Colatta's opinion was not improper, and the ALJ

was free to weigh his opinion based on the particular facts and circumstances of Minor's case.

III. CONCLUSION

For the foregoing reasons, the court finds that substantial evidence supports the ALJ's RFC determination. The Commissioner's decision is affirmed.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

April 4, 2017

Date