Swenson v. O'Malley

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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

LORIE J. S.,

Plaintiff, v. Commissioner of Social Security Administration,

Defendant.

Case No. 22-CV-2658 (JFD)

ORDER

Plaintiff Lorie J. S. seeks judicial review of the Commissioner of Social Security denial of her application for disability insurance benefits (DIB). (Compl. ¶ 1, Dkt. No.

1.) disabled. decision a final agency action for purposes of judicial review under 42 U.S.C. § 405(g).

The administrative record includes primary care physician, Michael Gilchrist, M.D. In those medical source statements, Dr.

Gilchrist gives his opinions about limitations and their severity. The ALJ found opinions persuasive. Plaintiff claims that the ALJ reached this conclusion by not properly considering th of he ALJ did not properly consider the

matters to the outcome of this case because the reason the ALJ decided Plaintiff is not disabled is that he found she could opinions persuasive, then the limitations Dr. Gilchrist said Plaintiff needed would have

ruled out working as a pharmacy technician.

The case is now before the Court on motions for summary judgment 1

filed by Plaintiff (Dkt. No. 16) and Defendant (Dkt. No. 20). Plaintiff seeks reversal of the final

benefits decision.

The Court finds that the residual functional capacity is supported by substantial evidence in the record. This is specifically true of the ALJ that are unpersuasive because they are neither consistent with other medical evidence in the administrative record nor supported by Dr. . The Court further finds that the ALJ properly evaluated the effect arthritic knees. The Court therefore DENIES Plaintiff for summary judgment and GRANTS .

I. BACKGROUND

Plaintiff, who was born in August of 1969, worked as a certified pharmacy technician from September 2013 until April 2019, when the pharmacy for which she

1 On December 1, 2022, the District of Minnesota amended Local Rule 7.2, which governs procedures in social security cases, to conform to the Supplemental Rules for Social o 2022 amendment. The Supplemental Rules apply to actions filed on or after December 1, 2022. Id. Because Plaintiff filed this case on October 21, 2022 before December 1, 2022 the procedures established by the previous version of Local Rule 7.2 apply, including a provision that the Court resolve the case on cross-motions for summary judgment. See D. Minn. LR 7.2(c) (2015). worked was purchased and the new owner did not hire Plaintiff. (Soc. Sec. Admin. R. 48.) 2

On July 9, 2020, Plaintiff filed a claim for a period of disability and DIB. (R. 209.) Plaintiff asserts she is disabled because of osteoarthritis in both knees, depression, and hypertension. Mem. at 1, Dkt. No. 17.) Plaintiff claimed her disability began on April 12, 2019, the same month in which she lost her pharmacy technician job. (R. 48, 209.) Notwithstanding her claim that she was disabled from April of 2019 onwards, Plaintiff worked in a daycare center from September 4, 2019 until January 31, 2020, but has not worked since February 1, 2020. (R. 272.)

application was denied at both the initial and reconsideration levels, after which Plaintiff asked for a hearing before an ALJ. That hearing was held on July 8, 2021, by telephone because of the COVID-19 pandemic. (R. 18.) In a September 1, 2021 order, the ALJ found Plaintiff was not disabled within the meaning of the Social Security Act. (R. 33.) December 31, 2024, meaning she must show she is disabled on or before that date. (R. 18.)

A. Relevant Medical History Plaintiff sought medical attention for her knee pain on January 30, 2020. Family left knee because of reconstruction of her anterior cruciate ligament in 1986. (R. 722.)

2 consecutively paginated, and the Court finds it more user-friendly to cite the blue ECF page system of exhibit number followed by page number within that exhibit. Id.) After examining Plaintiff, Dr. Grimm thought she most likely had osteoarthritis. (R. 723.) Dr. Grimm sent Plaintiff to a radiologist, who saw Plaintiff the same day. Images of both knees showed . therapy. Plaintiff was reluctant to

have a steroid injection into her knee because in the past such injections had no

The next day, January 31, 2020, Plaintiff saw a physical therapist, as recommended by Dr. Grimm. (R. 707.) She left with recommendations for exercises, as well as trials of knee sleeves and perhaps a cane. (R. 709.) Plaintiff and her physical therapist agreed on a series of objectives they would try and reach over 5 to 15 visits. (R. 710.) Plaintiff does not appear to have followed through, as the administrative record shows only one later physical therapy appointment, on February 20, 2020. (R. 698.)

After seeing Dr. Grimm, the next physicians Plaintiff saw were orthopedic surgeons, Dr. Paul Sousa and Dr. Daniel Saris, 3

on February 12, 2020, to discuss treatment options. (R. 703.) Plaintiff told the orthopedic surgeons that her knee pain had been bothersome for multiple years. Id.) On good days, she rated the severity of her pain as a four out of ten, and on bad days an eight out of ten. Dr. Sousa independently evaluated the X-rays of ordered by Dr. Grimm on January 30 and concurred with the radiologist that those images showed severe osteoarthritis severe end- . However, Dr. Sousa noted

3 Dr. Sousa was an orthopedic surgery resident working under the supervision of Dr. Saris. (R. 703.) Id.) Dr. Sousa but the Id.) Plaintiff said she had tried without success to lose Id.) Plaintiff was challenged in losing weight because her ability to

exercise was limited because of her knee pain but simultaneously could not get the knee replacement surgery that would relieve her exercise-limiting knee pain because she could not lose enough weight to make the surgery acceptably safe. As Dr. Sousa observed, Id.) Dr. Sousa did not make any finding cern

Dr. Michael Gilchrist, whose opinion evidence is at issue in this case, first began treating Plaintiff in June 2018. (R. 531.) Dr. Gilchrist is board certified in family medicine, was one to three months. (R. 548.) loss of her daycare job 4

are in the administrative record: February 27, 2020 (R. 694); April 30, 2020 (R. 677); June 15, 2020 (R. 659); August 25, 2020 (R. 633); September 17, 2020 (R. 628); September 28, 2020 (R. 620); November 9, 2020 (R. 594): January 11, 2021 (R. 586); February 3, 2021 (R. 581); February 26, 2021 (R. 576); March 16, 2021 (R. 573); and April 16, 2021

4 As noted earlier, Plaintiff claimed a disability onset date of April 12, 2019. However, because she then returned to work in a daycare center, the ALJ only considered evidence of whether Plaintiff was disabled after losing her daycare job. (R. 565). Because the visits of September 28, 2020; January 11, 2021; February 3, 2021; and February 26, 2021 were telemedicine visits, they could not include a physical examination. All other visits were in-person.

On May 27, Plaintiff had a 40-mg corticosteroid injection into her left knee by Russ Gervais, D.O., a family medicine r right knee. (R. 659 knee pain has markedly improved after her intraarticular injection performed by Dr.

anxiety that unless her knees improved she would not be able to find employment. (Id.)

During the 14 months Plaintiff was seeing Dr. Gilchrist, she also had three comprehensive orthopedic surgery workups: on February 12, 2020 with Drs. Sousa and Saris (R. 703); with Dr. Suzanne Tanner on September 30, 2020 (R. 612 19); and another visit with Dr. Tanner on November 13, 2020 (R. 612). 5

During the September visit, Dr. Tanner found that Plaintiff had moderate, rather than severe, osteoarthritis in both knees, but agreed with Drs. Saris and Sousa that

orthopedic surgery colleagues that Plaintiff needed to lose significant weight before knee replacement surgery would be safe. (Id.) Dr. Tanner was more guarded than Dr. Sousa in

5 Dr. Tanner also referred to a May visit with Dr. Saris (R. 612), but the undersigned found nothing in the administrative record showing Plaintiff saw Dr. Saris during that month. As noted above, Plaintiff had a steroid injection in her left knee in May, but this was done by a family medicine doctor, not an orthopedic surgeon. her expectations of benefit from total knee replacement surgery and advised Plaintiff that

because her osteoarthritis was moderate, not severe. (Id.) At the November visit, Dr. . (R. 591.)

About a month after her first appointment with Dr. Tanner, on October 16, 2020, Plaintiff had lubricating supplements injected into both knees. (R. 606 10.) These injections were ordered by Dr. Tanner. (Id.)

Plaintiff was also seen for other issues not relevant to this review, including seeing a psychologist for depression and seeing an obstetrician/gynecologist for other symptoms.

B. Dr. Gilchrist provided opinion evidence in three treating medical source statements for Plaintiff, one written on February 5, 2021 (R. 538 41); another on April 27, 2021 (R. 548 51); and the third on June 3, 2021 (R. 726 29). All three appear to be word-for-word the same except for the non-material difference that Dr. Gilchrist included a limitation on crawling in his February 5, 2021 statement that does not appear in the other two statements.

but the restrictions Plaintiff places at issue in this case are the same across all three of Dr. only three hours in an eight-hour workday, could sit for a total of five hours in an eight-hour workday, and required the option to sit or stand at will. (Mem. at 9.) As support for these limitations, -ray findings,

s/p [status post] extensive physical therapy, landmark and US [ultrasound] guided intraarticular injections, with continued disruptive pain and limitations to mobility, activities of daily life and independent activities Other restrictions found by Dr. Gilchrist are not at issue in this case.

In her motion for summary judgment, Plaintiff complains that the ALJ committed reversible error by finding unsupported and inconsistent, because, says Plaintiff, those opinions are in fact supported by own findings and consistent with the other medical evidence. Defendant, in his motion for summary judgment, argues s, opposes , and asks the Court to affirm the final agency decision.

C. Procedural History -step process established by the Social Security Administration and described at 20 C.F.R. § 404.1520.

At step one, the ALJ determined that Plaintiff had engaged in substantial gainful activity 6

after her alleged disability onset date of April 12, 2020. (R. 20.) Plaintiff worked in a daycare from September 4, 2019 to January 31, 2020, and by doing so engaged in substantial gainful activity during the five-month waiting period after the date on which

6 The Social Security Administration working for compensation. See 20 C.F.R. § 404.1572. If a claimant can engage in y are not disabled for SSA purposes. 20 C.F.R. § 404.1520(a)(4)(i). There are exceptions to that rule, one of which applies in this case. When a claimant works after their alleged disability onset date, then stops working again the date of cessation of the post-initial filing job, not from the alleged disability onset date in the DIB though she had claimed disability began when she lost her day care job, January 31, 2020. she alleged her disability began. See 42 U.S.C. § 423(c)(2)(A). Because this period of substantial gainful activity had been followed by a 12-month period in which Plaintiff had January 31, 2020, rather than the date claimed as application. Plaintiff met the insured status requirements of the Social Security Act through

December 31, 2024. (R. 20, 231.)

At step two, the ALJ found that Plaintiff had the severe impairments of bilateral knee and hip degenerative disease and obesity. (R. 21.) The ALJ noted lingering fatigue following a bout of COVID-19, hypertension, back pain, mild hearing loss, and after-effects from removal of a cyst, but found all of these conditions to be not severe, 7 because ability to perform work-related tasks. (Id.) The ALJ also found that Plaintiff suffered from

major depressive disorder. (R. 22.) medication, the ALJ classified it as a non-severe impairment. (R. 22.)

At step three, the ALJ was called upon to determine 20 C.F.R. Part

404, Subpart P, Appendix 1. See 20 C.F.R. § 404.1520(d). These listed impairments are

7 a speaking, remembering, using judgment, and responding appropriately to the work environment. 20 C.F.R. §§ 404.1520(c), 404.1522. In contrast, a severe impairment must a minimum of 12 months. 20 C.F.R. §§ 404.1509, 404.1522. ing any gainful activity, regardless of his disabled at step three because she meets element of a listing. Sullivan v. Zebley An impairment that

To by showing that [an] unlisted impairment, or combination of impairments, is equivalent to a listed impairment, [s]he must present medical findings equal in severity to all the criteria for the one most similar listed impairmen Id. at 531. period of 12 months or to result in death. 20 C.F.R. § 404.1509. The ALJ found that neither

of , along or in combination, met or medically equaled the severity of a listed impairment. (R. 25.)

As the last task before leaving step three for step four, the ALJ crafted an RFC for Plaintiff. 8

The ALJ found that Plaintiff could perform light work as defined in 20 C.F.R. 404.1567(b) except occasional climbing, balancing, stooping, kneeling, crouching, and (R. 21.) those opinions would have imposed restrictions on Plaintiff, particularly a limit of three hours of standing in an eight-hour workday, that would have limited Plaintiff, according to the hearing testimony of the vocational expert, to sedentary, rather than light, work. (R. 60.)

8 RFC is the most a person can do despite any functional limitations and restrictions resulting from a medically determinable impairment or combination of impairments. SSR 96-8p, 61 Fed. Reg. 34474 (Jul. 2, 1996). It is the most a person can do despite their limitations. Since the work of a pharmacy technician is classified as light work, acceptance of Dr. intiff could not have been found capable of performing her past relevant work as a pharmacy technician.

Because the ALJ found an RFC that allowed, with some modifications, light work, the ALJ, at step four, found that Plaintiff could perform her past relevant work as a pharmacy technician. The ALJ therefore terminated the five-step process at step four and concluded that Plaintiff was not disabled under the standards of the Social Security Act. (R. 33.) II. STANDARD OF REVIEW

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907 F.3d 1086, 1089 (8th Cir. 2018) (citing 42 U.S.C. § less than a preponderance but is enough that a reasonable mind would find it adequate to

Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing Prosch v. Apfel, 201 F.3d 1010, 1012 (8th Cir. 2000)). The Court Id. (citing Craig v. Apfel, 212 F.3d 433, 436 (8th Cir. 2000)).

support a different outcome or the Court would have decided the case differently. Id. (citing Woolf v. Shalala, 3 F.3d 1210, 1213 (8th Cir. 1993)). In other words, if it is possible to reach two inconsistent positions from the evidence and one of those positions is that of the Commissioner, the Court must affirm the decision. Robinson v. Sullivan, 956 F.2d 836, 838 (8th Cir. 1992). A claimant has the burden of proving disability. See Roth v. Shalala, 45 F.3d 279, 282 (8th Cir. 1995). To meet the definition of disability for DIB, the claimant must establish that s 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 423(d)(1)(A). The disability, not just the impairment, must have lasted or be expected to last for at least twelve months. Titus v. Sullivan, 4 F.3d 590, 594 (8th Cir. 1993). III. ANALYSIS

A. Were Not Consistent with His Own Clinical Findings, Nor Were They Supported by Other Medical Evidence in the Record. The social security regulations identify supportability and consistency as the two most important factors an ALJ should consider when evaluating the persuasiveness of a upportability . . . and consistency . . . are the most important factors we consider when we determine how persuasive we find a medical 20 C.F.R. § 404.1520c(b)(2)(c). Supportabilit the objective medical evidence and supporting explanations presented by a medical source

are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive th 20 C.F.R. § 404.1520c(c)(1). C opinion(s) or prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical 404.1520c(c)(2). While supportability looks to how well the medical source justifies their own opinion,

medical sources.

Plaintiff asserts that the ALJ did not adequately address the supportability and consistency requirements of 20 C.F.R. § 404.1520c when evaluating Dr opinions. (Mem. at 13.) The Court disagrees. The ALJ pointed to a lack of support for

lso -reports of her activities.

Plaintiff claimed disability beginning on April 12, 2019, when she lost her job as a pharmacy technician, but she then went back to work, from September of 2019 through January of 2020, in a job that required her to be on her feet for several hours a day, to crawl, to pick up toddlers to put them on the changing table or comfort them, and to sit down at their little tables at mealtimes. (R. 45 46.) evidence of the claimant seeking out medical attention for her bilateral knees prior to January 30, may be an overstatement, but if so it is harmless. The ALJ cites medical as support for the statement, but work after her alleged disability onset date means the ALJ evaluated disability from the

date Plaintiff lost her daycare job (January 31, 2020) not from her alleged disability onset date (April 12, 2019). This, in turn, means medical records between April 12, 2019 and January 30, 2020 were omitted from the administrative record. In addition, there are references within the medical records that are in the record to Plaintiff having knee issues going back to 1985, when Plaintiff tore her left anterior cruciate ligament, and to 2015, when Plaintiff had arthroscopic knee surgery. potential overstatement, however, the ALJ did not err in finding t , as of April of 2019, she was disabled due to osteoarthritis of the knees was not consistent with

knees as the daycare job was. As the ALJ correctly capable of standing and/or walking for more than 3 hours per 8- The ALJ also legitimately wondered why, if Plaintiff had been capable of functioning in her daycare job up until the end of January 2020, she claimed to be disabled due to arthritis in her knees on January 30, 2020 when she saw Dr. Grimm. (Id.) As the ALJ observed, there is nothing in the administrative record that explains such a rapid decline. (Id.)

Plaintiff correctly observes that the A evidence is brief. In and of itself, that does not mean the discussion is inadequate. In the

his analysis of the persuasiveness of s the ALJ points out the disjunct between daycare work, a job she performed after her alleged disability onset date, plus observing that nowhere in the record can one find an explanation for the alleged sudden decline in the condition of Plaint

With respect to the consistency factor of 20 C.F.R. § 404.1520c, an ALJ may consider evidence in the record that reflects inconsistencies with a medical source statement. Tracey L.W. v. Kijakazi, No. 21-CV-2441 (TNL), 2023 WL 2600217 *8 (D. Minn. 2023). The Court has considered such evidence only to the extent it maps onto Dr. . The record evidence relevant to the consistency includes Dr. only moderate osteoarthritis in both knees (R. 29, 591, 617) and the improvement Plaintiff experienced following steroid injections (R. 28, 659).

As to supportability, ed by his treatment notes (E.g., R. 594 (noting an improvement in knee pain, due to injections); R. 633 34 (on physical examination, noting no visible effusion in the knees, no pain to palpation, and temporary pain relief from injections); R. 659 60 (noting marked improvement in left knee pain; intact range of motion in the right knee, with no pain). Furthermore, al therapy is

impossible to reconcile with the fact that Plaintiff went to physical therapy only twice in 14 months, once on the last day of January 2020 and once more in February 2020, even though she and the physical therapist had planned on 5 to 15 visits.

that Dr. Gilchrist based the three-hour standing and walking limitation on subjective complaints. (R. 28.) An ALJ may reduce the persuasive value of an opinion that

Austin v. Kijakazi, 52 F.4th 723, 729 (8th Cir. 2022); see Kirby v. Astrue, 500 F.3d 705, 709 (8th Cir.

2007) (under former ive complaints).

subjective statements about her condition and the medical evidence, her daily activities and routine, and her work history to find that her symptoms were not as intense, persistent, or limiting as she claimed.

B. the RFC. Plaintiff claims that the ALJ did not adequately consider the compounding effect of is. Social Security Ruling 19-2p

effects of obesity combined with other impairments can be greater than the effects of each

This is simply not correct. In the RFC, the ALJ devoted a full . The ALJ then recited the medical steps that had been taken dietary recommendations from dietitians and two different medications

It is a aggravated her arthritis. The orthopedic surgeons classified Plaintiff as an unacceptably

risky surgical candidate due to her obesity, ry care physician, acted upon the reservations the surgeons expressed by working with Plaintiff on weight loss. The goal, though, was always expressed as making knee replacement surgery safe for Plaintiff, not esity had on her osteoarthritis. SSR 19- will obesity made her arthritis worse, and the ALJ

assessing her RFC.

Accordingly, based on the foregoing, and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. 6) is DENIED; and 2. De 20) is GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: March 25, 2024 s/ John F. Docherty JOHN F. DOCHERTY United States Magistrate Judge