



Hill v. Saul

2022 | Cited 0 times | D. Maryland | March 24, 2022

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND CHAMBERS OF TIMOTHY J. SULLIVAN UNITED STATES
MAGISTRATE JUDGE

6500 Cherrywood Lane

Greenbelt, Maryland 20770 Telephone: (301) 344-3593

March 24, 2022 LETTER TO COUNSEL:

RE: Carla H. v. Kilolo Kijakazi, Acting Commissioner of Social Security Civil No. TJS-21-728 Dear Counsel:

On March 22, 2021, Plaintiff Carla H. petitioned this Court to review the Social Security her claim for . ECF No. 1. The parties have filed cross-motions for summary judgment. ECF Nos. 15 & 18. These motions have been § 636 and Local Rule 301. 1

Having considered the submissions of the parties, I find that no hearing is necessary. See Loc. R. 105.6. This Court must uphold the decision of the agency if it is supported by substantial evidence and if the agency employed the proper legal standards. 42 U.S.C. §§ 405(g), 1383(c)(3); Mascio v. Colvin, 780 F.3d 632, 634 (4th Cir. 2015). Following its review, this Court may affirm, modify, or reverse the Commissioner, with or without a remand. See 42 U.S.C. § 405(g); Melkonyan v. Sullivan, 501 U.S. 89 (1991). Under that standard, I will grant the Acting

Carla H. filed her application for DIB on July 1, 2019, alleging a disability onset date of December 31, 2014 (later amended to February 1, 2017). Tr. 14, 35-36. Her application was denied initially and upon reconsideration. Id. Carla H. requested an administrative hearing, and a telephonic hearing was held on October 2, 2020, 28-66. In a written decision dated November 24, 2020, the ALJ found that Carla H. was not disabled under the Social Security Act. Tr. 11-27. The Appeals Council denied Carla H. agency. Tr. 3-8.

The ALJ evaluated Carla H. claim for benefits using the five-step sequential evaluation process set forth in 20 C.F.R. § 404.1520. At step one, the ALJ found that Carla H. had not engaged in substantial gainful activity from the beginning of the relevant period of October 29, 2018, through the date last



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insured of June 30, 2019. Tr. 17. At step two, the ALJ found that, through the date last insured, Carla H. suffered from the following severe impairments: cervical radiculitis and cervical radiculopathy. Id. At step three, the ALJ found that, through the date last insured, Carla H. impairments, separately and in combination, failed to meet or equal in severity any listed impairment as set forth in 20 C.F.R., Chapter III, Pt. 404, Subpart P, App. 1 (Listings). Tr. 17-18.

1 This case was originally assigned to Judge Boardman. On June 30, 2021, it was reassigned to Judge Coulson. On February 17, 2022, it was reassigned to Judge Hurson. On February 28, 2022, it was reassigned to me.

The ALJ determined that, through the date last insured, Carla H. retained the residual functional RFC

to perform light work as defined in 20 CFR 404.1567(b) except limited to standing and/or walking for only 4 hours out of the 8 hour work day; could lift no more than 15 pounds with the right dominant upper extremity; occasional climbing and ramps and stairs but never ladders, ropes or scaffolds; occasional balancing, stooping, crouching, kneeling and crawling; only occasionally reach overhead with the right dominant upper extremity and frequently reach in other directions with the right; and frequently handling, fingering and feeling with the right dominant upper extremity. Tr. 18. At step four, the ALJ determined that, through the date last insured, Carla H. was unable to perform past relevant work. Tr. 21. At step five, relying on testimony provided by a vocational determined that, through the date last insured, there were jobs that existed in significant numbers in the national economy that Carla H. could have performed, including routing clerk, ticket seller, and marker. Tr. 21-22. Accordingly, the ALJ found that Carla H. was not disabled under the Social Security Act from October 29, 2018, through June 30, 2019. Tr. 22.

Carla H. argues that this case must be remanded for further proceedings because (1) the ALJ did not consider the proper period at issue; (2) the ALJ did not evaluate properly pertinent evidence; and (3) the ALJ did not properly evaluate her subjective complaints. ECF No. 15-1 at 4-16. For the reasons discussed below, however, these arguments are unavailing.

First, Carla H. argues that remand is warranted because the ALJ failed to consider the proper period at issue, which she maintains is the amended alleged onset date of disability of February 1, 2017, to the date last insured of June 30, 2019. ECF No. 15-1 at 4-7. The ALJ found that C the same issues that were decided in the determination of October 28, 2018. Accordingly, that determination is entitled to administrative finality as to [Carla H (citing 20 C.F.R. § 404.957(c)(1)). 20 CFR 404.989 or SSR 91-5p. Any discussion of evidence prior to that date is for historical/contextual purposes only and doe Id. period that is properly before the undersigned is the period from October 29, 2018, the date after Id.

Under 20 C.F.R. § 404.988(a), a determination, revised determination, decision, or revised decision of the Commissioner may be reopened within twelve months of the date of the notice of the initial determination, for any reason. A reopening under § 404.988(a) is thus within the discretion and is not



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mandatory. See *Monger v. Bowen*, 817 F.2d 15, 17-18 (4th Cir. 1987). denial to reopen is not subject to judicial review. See *Califano v. Sanders*, 430 U.S. 99, 107-09 (1977); *McGowen v. Harris*, 666 F.2d 60, 65 (4th Cir. 1981). Case 8:21-cv-00728-TJS Document 19 Filed 03/24/22 Page 2 of 5 merit. Second, Carla H. contends that the ALJ failed to evaluate properly pertinent evidence when assessing her RFC. ECF No. 15-1 at 9-10. She argues that the ALJ failed to evaluate or to account for the deterioration of her condition in the RFC assessment. *Id.* at 10. As the Acting Commissioner points out, the ALJ did so, however. ECF No. 18-1 at 13 (citing Tr. 18-20, 80-83). In any event, the Court does not reweigh such evidence. See *Britt v. Saul* (citing *Shinaberry v. Saul*, 952 F.3d 113, 123 (4th Cir. 2020)). Carla H. also argues that the ALJ failed to evaluate the opinions of Ajit Kurup, M.D., the consultative examiner who observed in October 2018 that she was not able to raise her right arm above shoulder level. ECF No. 15-1 at 10 (citing Tr. 498, 502). According to Carla H., the ALJ failed to recognize this observation, pinions to be persuasive, but found instead that she occasionally could reach overhead with her right arm. *Id.*; see Tr. 18, 20. Carla H. maintains that substantial e RFC assessment. ECF No. 15-1 at 10. The ALJ, however, incorporated in the RFC assessment Dr. Kurup opinion to lift heavier than 15 pounds with the right upper extremity. 499. that the ALJ erred in failing to reconcile this discrepancy RFC assessment is thus unavailing. See *Britt* -61 The information on which [the claimant] seeks to rely such as mere observations and her recorded subjective complaints during office visits contains no medical judgment, which is the essence of medical opinions. Many documents [the claimant] cites merely record the symptoms [the claimant] has reported feeling and state past diagnoses, among other information [the claimant] does not specifically discuss. But these recitations need not be given dispositive weight.

Last, Carla H. argues that the ALJ did not properly evaluate her subjective complaints. ECF No. 15-1 at 11-16. She first contends that the ALJ her] to prove the type and degree of her subjective complaints by objective medical evidence, and determined that *Id.* at 13. In determining a claimant s RFC, the ALJ must evaluate the claimant s subjective symptoms using a two-part test. *Lewis v. Berryhill*, 858 F.3d 858, 866 (4th Cir. 2017); 20 C.F.R. §§ 404.1529(a), 416.929(a). First, the ALJ must determine whether objective evidence shows the existence of a medical impairment that could reasonably be expected to produce the alleged symptoms. 20 C.F.R. §§ 404.1529(b), 416.929(b). Once the claimant makes that threshold showing, the ALJ must evaluate the extent to which the symptoms limit the claimant s capacity to work. *Id.* §§ 404.1529(c), 416.929(c). At this second stage, the ALJ must consider all available evidence, including medical history, objective medical evidence, and statements by the claimant. *Id.* To evaluate a claimant s statements, ALJs evidence in an individual s record when they evaluate the intensity and persistence of symptoms after they find that the individual has a medically determinable impairment(s) that could reasonably be expected to pr -3p, 2016 WL 1119029, at *2 (Mar. 16, 2016 even as just one of multiple factors to discount a claimant s subjective complaints regarding symptoms of fibro *Arakas v. Comm r, Soc. Sec. Admin.*, 983 F.3d 83, 97 (4th Cir. 2020). In other cases, the ALJ may consider that objective evidence, or lack thereof, in conjunction with other evidence. 20 C.F.R. §§ 404.1529(c), 416.929(c). In any case, the ALJ may not rely solely on the lack of objective medical evidence to



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discredit a claimant's subjective statements. *Id.* Claimants are entitled to rely exclusively on subjective evidence to prove the degree to which their symptoms affect their ability to work at the second step of the analysis. *Arakas*, 983 F.3d at 95-97.

The ALJ's written decision presents a detailed statement of Carla H. subjective complaints. The ALJ first found that Carla H. medically determinable impairments could reasonably be expected to cause her alleged symptoms. Tr. 18. The ALJ then proceeded to consider Carla H. allegations in concert with the other evidence in the record, including Carla H. statements about her symptoms over time, her daily activities, her work history, her treatment history, the opinion evidence, and the objective evidence in the record. Tr. 18-21. In considering the totality of the evidence, the ALJ explained her finding that Carla H. statements about the severity of her symptoms could not be completely reconciled with other persuasive evidence. *Id.* Weighing all of the evidence, the ALJ found that Carla H. impairments are not disabling and that she can perform work with the limitations contained in the RFC.

Carla H. Carolyn S. v. Kijakazi, Civil Action No. ADC-20- exclusively on a lack of objective evidence, the analysis would be flawed. Here, however, the ALJ considered the inconsistency of [Carla H. Jai P. v. Saul, Civil No. TJS-19-3371, 2021 WL 424469, at *2 (D. Because the ALJ did not rely exclusively on objective evidence in assessing the severity of [Carla H. *Id.*

Carla H. also argues that the ALJ erroneously relied on her daily living activities in evaluating her subjective complaints. ECF No. 15-1 at 13-16. [Carla H.] subjective complaints merely because of [her] activities of daily living, this case would be subject Jai P., 2021 WL 424469, at *3 (citing *Arakas*, 983 F.3d at ALJ's decision makes clear that the ALJ considered activities of daily living as just one factor relevant to the evaluation of [her] *Id.* this point is unavailing as well.

decision and whether the correct legal standards were applied. See *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). The Court is not permitted to reweigh the evidence, even if the Court believes the ALJ could have reached a different conclusion. See *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th substantial evidence. The Cour

For the reasons set forth above, Carla H. Motion for Summary Judgment (ECF No. 15) will be DENIED, and the Acting Commissioner's Motion for Summary Judgment (ECF No. 18) will be GRANTED. The Clerk is directed to CLOSE this case. Despite the informal nature of this letter, it should be flagged as an opinion. An implementing Order follows.

Sincerely yours, /s/ Timothy J. Sullivan United States Magistrate Judge

