

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

KRISTINE LORRAINE DOHERTY,

Plaintiff,

v.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 4:13-0656-DGK-SSA

ORDER AFFIRMING COMMISSIONER'S DECISION

Plaintiff Kristine Doherty seeks judicial review of the Commissioner of Social Security's denial of her application for disability insurance benefits under Title II of the Social Security Act ("the Act"), 42 U.S.C. §§ 401, *et. seq.* The administrative law judge ("ALJ") found that although Plaintiff suffered from several severe impairments, she retained the residual functional capacity ("RFC") to perform a limited range of sedentary work with non-exertional limitations. Relying on the testimony of a vocational expert ("VE"), the ALJ found Plaintiff could work as a receptionist and was not disabled.

After careful review, the Court holds the ALJ's decision is supported by substantial evidence on the record as a whole, and the Commissioner's decision is AFFIRMED.

Factual and Procedural Background

The medical record is summarized in the parties' briefs and is repeated here only to the extent necessary.

Plaintiff filed her application for disability insurance benefits on June 4, 2010, alleging a disability onset date of May 3, 2010. The Commissioner denied Plaintiff's application at the initial claim level, and Plaintiff appealed the denial to an ALJ. The ALJ held a video hearing at

which the Plaintiff testified, and on June 1, 2012, the ALJ issued his decision holding Plaintiff was not disabled. The Appeals Council denied Plaintiff's request for review on May 21, 2013, leaving the ALJ's decision as the Commissioner's final decision. Plaintiff has exhausted all of her administrative remedies and judicial review is now appropriate under 42 U.S.C. § 405(g).

Standard of Review

A federal court's review of the Commissioner of Social Security's decision to deny disability benefits is limited to determining whether the Commissioner's findings are supported by substantial evidence on the record as a whole. *Buckner v. Astrue*, 646 F.3d 549, 556 (8th Cir. 2011). Substantial evidence is less than a preponderance, but enough evidence that a reasonable mind would find it sufficient to support the Commissioner's decision. *Id.* In making this assessment, the court considers evidence that detracts from the Commissioner's decision, as well as evidence that supports it. *McKinney v. Apfel*, 228 F.3d 860, 863 (8th Cir. 2000). The court must "defer heavily" to the Commissioner's findings and conclusions. *Hurd v. Astrue*, 621 F.3d 734, 738 (8th Cir. 2010). The court may reverse the Commissioner's decision only if it falls outside of the available "zone of choice," and a decision is not outside this zone simply because the court might have decided the case differently were it the initial finder of fact. *Buckner*, 646 F.3d at 556.

Analysis

In determining whether a claimant is disabled, that is, unable to engage in any substantial gainful activity by reason of a medically determinable impairment that has lasted or can be expected to last for a continuous period of not less than twelve months, 42 U.S.C. § 423(d), the Commissioner follows a five-step sequential evaluation process.¹

¹ The five-step process is as follows: First, the Commissioner determines if the applicant is currently engaged in substantial gainful activity. If so, he is not disabled; if not, the inquiry continues. At step two the Commissioner

Plaintiff contends this case should be reversed or remanded because: (1) in weighing the medical evidence, the ALJ failed to give sufficient weight to her treating doctors' opinions; (2) the ALJ failed to provide a sufficient narrative link between his RFC determination and the evidence; and (3) the Commissioner erred in not remanding the case to the ALJ after the Plaintiff submitted new and material evidence to the Appeals Council. The Court finds no merit to these arguments.

A. The ALJ did not err in weighing the opinion of Plaintiff's treating physicians.

First, Plaintiff contends the ALJ erred in determining her RFC by not giving more weight to the opinion of Dr. Steven Simon, M.D., her pain management doctor, and Dr. Coleman Wheeler, M.D., her treating psychiatrist. Plaintiff complains the ALJ's reasons for not giving their opinions greater weight are not supported by the record.

Where, as here, the record contains differing medical opinions, it is the ALJ's responsibility to resolve conflicts among them. *Finch v. Astrue*, 547 F.3d 933, 936 (8th Cir. 2008). The ALJ must assign controlling weight to a treating physician's opinion if that opinion is well-supported and consistent with other evidence in the record. 20 C.F.R. § 404.1527(c)(2). An ALJ cannot, however, give controlling weight to the doctor's opinion if it is not supported by medically acceptable laboratory and diagnostic techniques, or if the opinion is inconsistent with the other substantial evidence of record. *Id.*; *Halverson v. Astrue*, 600 F.3d 922, 929-30 (8th Cir.

determines if the applicant has a "severe medically determinable physical or mental impairment" or a combination of impairments. If so, and they meet the durational requirement of having lasted or being expected to last for a continuous 12-month period, the inquiry continues; if not, the applicant is considered not disabled. At step three the Commissioner considers whether the impairment is one of specific listing of impairments in Appendix 1 of 20 C.F.R. § 404.1520. If so, the applicant is considered disabled; if not, the inquiry continues. At step four the Commissioner considers if the applicant's residual functional capacity ("RFC") allows the applicant to perform past relevant work. If so, the applicant is not disabled; if not, the inquiry continues. At step five the Commissioner considers whether, in light of the applicant's age, education and work experience, the applicant can perform any other kind of work. 20 C.F.R. § 404.1520(a)(4)(i)-(v); *King v. Astrue*, 564 F.3d 978, 979 n.2 (8th Cir. 2009). Through step four of the analysis the claimant bears the burden of showing that he is disabled. After the analysis reaches step five, the burden shifts to the Commissioner to show that there are other jobs in the economy that the claimant can perform. *King*, 564 F.3d at 979 n.2.

2010). “[A]n ALJ may credit other medical evaluations over that of the treating physician when such other assessments are supported by better or more thorough medical evidence.” *Martise v. Astrue*, 641 F.3d 909, 925 (8th Cir. 2011).

If an ALJ discounts a treating physician’s opinion, he must give “good reasons” for doing so. *Dolph v. Barnhart*, 308 F.3d 876, 878-79 (8th Cir. 2002). Once the ALJ has decided how much weight to give a medical opinion, the court’s role is limited to reviewing whether substantial evidence supports this determination, not deciding whether the evidence supports the plaintiff’s view of the evidence. *Brown v. Astrue*, 611 F.3d 941, 951 (8th Cir. 2010).

Here, the ALJ discounted various Medical Source Statement-Physical (“MSSP”) forms completed by Dr. Simon in 2011 and 2012 because the doctor’s conclusion that Plaintiff could not perform sedentary work was not supported by the record. In discounting his opinion the ALJ noted Dr. Simon’s assessments were brief and conclusory; the entries on his forms did not correlate with his objective findings or clinical observations; his opinions were not well-supported by medically acceptable clinical and laboratory diagnostic techniques; and his opinions were inconsistent with the other substantial evidence of record. R. at 23-24. These findings are supported by the record, R. at 529-30, 574-79, 595, 611, 740-41, 777-82, thus the ALJ did not err. *See Wildman v. Astrue*, 596 F.3d 959, 964 (8th Cir. 2009) (upholding ALJ’s discounting a treating physician’s opinion because it was conclusory, consisting of three checklist forms and providing little elaboration); *Strongson v. Barnhart*, 361 F.3d 1066, 1070-71 (8th Cir. 2004) (permitting the ALJ to discount a physician’s opinion that was “without explanation or support from clinical findings” and “not internally consistent with [the doctor’s] own treatment notations.”); *see also Hacker v. Barnhart*, 459 F.3d 934, 937 (8th Cir. 2006) (“For a treating physician’s opinion to have controlling weight, it must be supported by medically

acceptable laboratory and diagnostic techniques and it must not be ‘inconsistent with the other substantial evidence in [the] case record.’”).

Additionally, the ALJ did not err in discounting Dr. Simon’s opinion because it appeared to rely on, at least in part, on Plaintiff’s self-reported symptoms, and the Plaintiff does not dispute the ALJ’s finding that she was not credible. An ALJ may give less weight to a doctor’s opinion that is based on a plaintiff’s self-reported complaints, particularly when the plaintiff is not credible. *See Kirby v. Astrue*, 500 F.3d 705, 709 (8th Cir. 2007).

Similarly, the ALJ did not err in discounting Dr. Wheeler’s Medical Source Statement-Mental (“MSSM”) forms indicating Plaintiff had moderate difficulty performing several work related mental functions because his forms were inconsistent with other record evidence. After hearing testimony from the independent medical expert, Dr. Craig Rath, Ph.D., and reviewing the entire medical record, the ALJ found that Dr. Rath’s opinion was most consistent with Plaintiff’s entire treatment record, which did not include any “significant mental health complaints or observations . . . demonstrating mental abnormalities.” R. at 25. Because “an ALJ may credit other medical evaluations over that of the treating physician when such other assessments are supported by better or more thorough medical evidence,” the ALJ did not err. *Brown*, 611 F.3d at 951. Dr. Wheeler’s opinion also conflicted with the opinion of consulting physician Dr. Martin Isenberg, Ph.D., that Plaintiff was able to perform less mentally demanding work. R. at 548. Even considering the MSSM forms by themselves, apart from the rest of the evidence on the record, the forms can only be given limited weight because portions of them are internally inconsistent. For example, Dr. Wheeler indicated in February 2011 that Plaintiff was moderately limited in her ability to carry out simple instructions, R. at 582, but then eleven months later reported, without explanation, that her ability to carry out simple instructions was

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