FILED
United States Court of Appeals
Tenth Circuit

September 5, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LYNDA MARIE GUICE,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellee.

No. 18-6177
(D.C. No. 5:17-CV-01119-P)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON**, **PHILLIPS**, and **CARSON**, Circuit Judges.

Lynda Marie Guice appeals the district court's order affirming the Commissioner's denial of Social Security disability insurance benefits and supplemental security income. Guice argues the agency erred in assessing the medical-opinion evidence regarding her mental limitations. Exercising jurisdiction under 28 U.S.C. § 1291 and 42 U.S.C. § 405(g), we agree and therefore reverse and remand this matter for further consideration by the agency.

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

BACKGROUND

In 2013, Guice applied for Social Security disability insurance benefits and supplemental security income, alleging she became disabled on January 1, 2008, resulting from various physical impairments and the mental impairments of major depressive disorder, panic disorder with agoraphobia, attention-deficit hyperactivity disorder, and cognitive disorder/dementia. After the agency denied her applications initially in November 2013 and on reconsideration in January 2014, Guice requested a hearing before an administrative law judge (ALJ) and amended her alleged disability onset date to March 6, 2013. Guice's hearing was not scheduled until April 2016, and then was postponed several more months because the record did not include medical evidence from some of Guice's treating physicians for the 2013-16 period. After this additional evidence was received, the hearing took place on June 29, 2016. Guice and a vocational expert (VE) testified.

On December 14, 2016, the ALJ issued a decision finding Guice was not disabled within the meaning of the Social Security Act from March 6, 2013, the amended alleged onset date, through the date of the decision. Applying the five-step sequential evaluation process used to assess social security disability claims, *see* 20 C.F.R. § 404.1520(a)(4) (describing five-step process),[1] the ALJ found the

[1] In this order and judgment, we cite the relevant regulations in 20 C.F.R. Part 404, which apply to claims for disability-insurance benefits, but do not include citations to the parallel, substantively identical provisions published in 20 C.F.R. Part 416, which apply to claims for supplemental security income. All citations are to the regulations in effect in December 2016, when the ALJ issued her decision.

medical evidence of record demonstrated that Guice was severely impaired by chronic obstructive pulmonary disease (COPD), grade I diastolic dysfunction, sleep apnea, anxiety disorder, depressive disorder, and agoraphobia. After determining these impairments were not presumptively disabling, the ALJ assessed Guice's residual functional capacity (RFC), that is, "the most [she] can still do" in a work setting despite her impairments and related physical and mental limitations, 20 C.F.R. § 404.1545(a)(1). Based on her consideration of the record, the ALJ found Guice had the RFC to perform less than a full range of sedentary work subject to certain physical and mental limitations. As relevant to this appeal, the ALJ found in the RFC that Guice had the mental abilities "to understand, remember, and carry out simple and some complex tasks with routine supervision," "have limited contact with the public," "interact appropriately with supervisors and coworkers on a superficial work basis," and "adapt to work situations." Aplt. App. Vol. 2 at 20.

Based on this RFC, the ALJ found at step four of the evaluation process that Guice could not perform her past relevant work. But at step five, based on the RFC, Guice's age, education, and transferable work skills, and testimony by the VE, the ALJ concluded Guice could still perform various semi-skilled, sedentary jobs existing in significant numbers in the national economy, including clerical sorter, records clerk, and data-entry clerk. From this, the ALJ determined Guice was not disabled under the Act.

The Appeals Council denied review, making the ALJ's decision the Commissioner's decision for purposes of judicial review. *See* 20 C.F.R. § 404.981. Guice appealed to the district court, which affirmed. This appeal followed.

DISCUSSION

"We review the district court's decision de novo and independently determine whether the ALJ's decision is free from legal error and supported by substantial evidence." *Fischer-Ross v. Barnhart*, 431 F.3d 729, 731 (10th Cir. 2005). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Frantz v. Astrue*, 509 F.3d 1299, 1300 (10th Cir. 2007) (internal quotation marks omitted). "In the course of our review, we may neither reweigh the evidence nor substitute our judgment for that of the agency," *id.* (internal quotation marks omitted), but we will "consider whether the ALJ followed the specific rules of law that must be followed in weighing particular types of evidence," *Lax v. Astrue*, 489 F.3d 1080, 1084 (10th Cir. 2007) (internal quotation marks omitted). The agency's "failure to apply the correct legal standard or to provide this court with a sufficient basis to determine that appropriate legal principles have been followed is grounds for reversal" independent of the substantial evidence standard. *Jensen v. Barnhart*, 436 F.3d 1163, 1165 (10th Cir. 2005) (brackets and internal quotation marks omitted); *see Hendron v. Colvin*, 767 F.3d 951, 954 (10th Cir. 2014).

On appeal, Guice contends the ALJ (1) did not follow the correct legal standards in evaluating and weighing the medical-opinion evidence regarding her mental limitations; and (2) failed to sustain the agency's burden at step 5 of the

evaluation process because her dispositive hypothetical question to the VE did not include all of Guice's mental limitations. We address each contention below.

A. Medical Opinion Evidence

The record contains four medical opinions regarding Guice's mental impairments and limitations, two by treating physicians Drs. Jedidiah Perdue and Veronique Sebastian and two by state-agency psychologists Drs. Randy Cochran and Edith King. The ALJ considered each and gave "greatest weight" to the opinions and mental RFC of the state-agency psychologists, who provided their opinions in 2013 based on a review of Guice's then-existing medical records. Aplt. App. Vol. 2 at 22-23. The ALJ reported she gave "limited" weight to the opinions of treating physicians Perdue and Sebastian, which were both provided in 2016, *id.* at 22, but she did not incorporate any part of their opinions in Guice's RFC and thus effectively rejected their opinions, *see Chapo v. Astrue*, 682 F.3d 1285, 1291 (10th Cir. 2012). Guice contends the ALJ did not comply with the relevant legal standards in weighing these decisions. We agree.

1. Treating physician opinions

An ALJ must evaluate each medical opinion in the record in accordance with 20 C.F.R. § 404.1527. Under this regulation, a treating physician's opinion generally receives more weight than other physicians' opinions "since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of [the claimant's] medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone

or from reports of individual examinations." *Id.* § 404.1527(c)(2). To give effect to this consideration, the ALJ must review treating physician opinions using "a sequential two-step inquiry, each step of which is analytically distinct." *Krauser v. Astrue*, 638 F.3d 1324, 1330 (10th Cir. 2011). In the first step, the ALJ determines whether the treating physician's opinion "is conclusive, i.e., is to be accorded controlling weight, on the matter to which it relates." *Id.* (internal quotation marks omitted). "Such an opinion must be given controlling weight if it is well-supported by medically acceptable clinical or laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record." *Id.*

If the treating physician's opinion does not meet this standard and thus is not entitled to controlling weight, it is "still entitled to deference and must be weighed using all of the factors provided in [§] 404.1527." *Id.* (internal quotation marks omitted). The factors to be considered at this second step in the analysis are:

> (1) the length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship, including the treatment provided and the kind of examination or testing performed; (3) the degree to which the physician's opinion is supported by relevant evidence; (4) consistency between the opinion and the record as a whole; (5) whether or not the physician is a specialist in the area upon which an opinion is rendered; and (6) other factors brought to the ALJ's attention which tend to support or contradict the opinion.

Id. at 1331 (internal quotation marks omitted); *see* 20 C.F.R. § 404.1527(c).

Further, in her decision the ALJ "must make clear how much weight the opinion is being given (including whether it is being rejected outright) and give good

reasons, tied to the factors specified in [20 C.F.R. § 404.1527] . . . for the weight assigned." *Krauser*, 638 F.3d at 1330. Though the ALJ need not explicitly discuss all of the relevant factors, her "findings must be sufficiently specific to make clear to any subsequent reviewers the weight [she] gave to the treating source's medical opinion and the reason for that weight." *Id.* at 1331 (internal quotation marks omitted). To meet this standard, the ALJ "is not required to discuss every piece of evidence" in the record, but must discuss the evidence supporting her decision, "uncontroverted evidence [s]he chooses not to rely upon," and "significantly probative evidence [s]he rejects." *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996).

The ALJ committed two legal errors in reviewing Drs. Perdue's and Sebastian's opinions under these standards. First, though she found both doctors were Guice's treating physicians, the ALJ did not assess whether their opinions should be given controlling weight at step one of the required two-step evaluation. As discussed below, this error might be harmless but for the ALJ's second error, which is that she gave only conclusory reasons for rejecting their opinions, without discussing or citing evidence supporting these conclusions or acknowledging inconsistent or contrary evidence in the record she appears to have rejected in reaching her conclusions.

Dr. Perdue

These errors are especially apparent in the ALJ's treatment of Dr. Perdue's opinion. Dr. Perdue is a psychiatrist and one of the medical providers who treated

Guice at the North Rock Medication Clinic where she regularly received mental health services from 2012 through 2016. Dr. Perdue treated Guice four times between May and July 2016, and also intermittently supervised her treatment provided by other medical staff at the clinic between August 2014 and April 2016.[2]

In June 2016, Dr. Perdue provided a medical opinion regarding Guice's ability to perform a number of work-related mental activities. Contrary to the RFC found by the ALJ, he opined that Guice was unable to "[g]et along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes," could not "[w]ork in coordination with or proximity to others without being unduly distracted," and was severely limited in her ability to "[a]ccept instructions and respond appropriately to criticism from supervisors." Aplt. App. Vol. 9 at 1718. As relevant to the ALJ's later finding that Guice was able to perform various semi-skilled occupations, Dr. Perdue opined that Guice was unable to deal with the stress of semi-skilled work and could not maintain attention for two-hour segments, a limitation the VE testified would eliminate the jobs on which the ALJ later relied in finding Guice was not disabled. Among other things, Dr. Perdue also opined that as a result of Guice's impairments, she would be unable to maintain regular attendance; be punctual with customary tolerances; complete a normal workday and workweek without interruptions from psychologically based symptoms; and be present at work

[2] Dr. Perdue is identified as the supervisor for the provider who treated Guice at six of her fourteen appointments at the North Rock clinic during this period. Dr. Perdue also signed Guice's treatment records for these six appointments.

without missing more than four days of work per month as a result of her impairments.[3] In his written narrative, Dr. Perdue explained that his opinions were based on the diagnosis that Guice suffered from Bipolar I disorder and Post-traumatic Stress Disorder (PTSD), which resulted in episodes of mania, during which he reported Guice was "very irritable and impulsive," "interspersed with episodes of depression," which negatively impacted her energy and motivation.[4] *Id.* He stated that Guice's mental symptoms "greatly impact[ed] her function" because they were persistent, difficult to manage, and poorly controlled by medication. *Id.* In a follow-up letter, Dr. Perdue specified that his opinion was based in part on his review of Guice's history and clinic records since 2012 and that the limitations he identified began on or before March 6, 2013, Guice's amended alleged disability onset date.

Though the ALJ noted in her decision that the record contained a treating-physician opinion by Dr. Perdue, she did not describe or discuss it. Instead, she simply reported that she gave Dr. Perdue's opinion "limited weight" because he had treated Guice for only three months and because his opinion regarding Guice's mental limitations was "inconsistent with the other medical evidence of record, [Dr. Perdue's] own treating notes, as well as the claimant's reported daily activities."

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[3] The VE testified that for semi-skilled jobs, an employer would tolerate only two to three days of absences in a month.

[4] Guice's treatment records at Dr. Perdue's clinic indicate she was diagnosed with PTSD on or before June 2015 and with bipolar disorder approximately one year later. The ALJ also reported in her decision that another psychologist provisionally diagnosed Guice with bipolar disorder in 2009 following a consultative examination.

Id. Vol. 2 at 22. But the ALJ did not point to anything in the record supporting her inconsistency findings. Nor are these findings explained by discussion elsewhere in the ALJ's decision. In fact, the ALJ did not even discuss Dr. Perdue's treatment records in her decision, and her discussion of Guice's extensive mental-health records after her amended March 2013 alleged disability-onset date is conclusory, stating only that they indicated Guice's "mental symptomatology is stable and improved with medications and compliance with medications." *Id.* at 22; *see id.* at 19 ("Subsequent treating mental health notes report improvement in mental symptomology with medication compliance."). The ALJ did discuss some of Guice's activities of daily living elsewhere in her decision, but did not compare these activities with the limitations Dr. Perdue had identified in his opinion.

As noted above, the initial problem with the ALJ's consideration of Dr. Perdue's opinion is that she did not follow the required two-step process for analyzing a treating-physician opinion, which required her to first determine whether the opinion was controlling because it "is well-supported by medically acceptable clinical or laboratory diagnostic techniques and is not inconsistent with other substantial evidence in the record." *Krauser*, 638 F.3d at 1330. Only if the ALJ finds the treating physician's opinion is not entitled to controlling weight under this standard may the ALJ consider additional factors, such as length of treatment, to determine what weight to assign it. *See id.* at 1330-31.

Here, the ALJ rejected Dr. Perdue's opinion, apparently at step two in the analysis, based in part based on her finding that his opinion was inconsistent with the

medical evidence. This finding could have made her error harmless in failing to engage in the step-one analysis, if the ALJ had explained this finding and linked it to the evidence of record. But she did not do so. Nor did she explain her other reasons for rejecting Dr. Perdue's opinion.

The one relatively self-explanatory finding relied upon by the ALJ, the short period of time Dr. Perdue treated Guice, is not a sufficient reason, standing alone, to reject his opinion. *See Chapo*, 682 F.3d at 1291 (holding that the ALJ erred in rejecting the examining physician's unopposed findings because he had been in a professional relationship with the claimant for only two months). And the ALJ's reliance on this factor is questionable anyway because the ALJ failed to discuss the evidence indicating Dr. Perdue had a supervisory role in Guice's treatment over a longer period than the ALJ acknowledged. Further, as described below, other uncontroverted evidence in Dr. Perdue's treatment notes and in Guice's mental-health treatment notes from 2013 forward (all from the North Rock clinic), appears to be consistent with Dr. Perdue's opinions, and inconsistent with the ALJ's contrary finding, and hence should have been discussed in the ALJ's decision.[5] *See, e.g.*, *Clifton*, 79 F.3d at 1010.

[5] In addition to the evidence discussed later in this decision, the ALJ did not address the evidence that Guice's mental-health providers, both before and after her alleged disability onset date, consistently assigned her Global Assessment of Functioning (GAF) scores of between 44 and 47. These scores indicate the medical providers assigning them believed Guice had "[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job)." Am. Psychiatric Ass'n, Diagnostic & Statistical Manual of Mental Disorders

We have held that when "the ALJ fail[s] to explain or identify what the claimed inconsistencies were between [the treating physician's] opinion and the other substantial evidence in the record, [her] reasons for rejecting that opinion are not sufficiently specific to enable this court to meaningfully review [her] findings." *Langley v. Barnhart*, 373 F.3d 1116, 1123 (10th Cir. 2004) (internal quotation marks omitted) (reversing and remanding on this basis). The ALJ's failure to provide "specific, legitimate reasons for rejecting" Dr. Perdue's opinion as required, *Chapo*, 682 F.3d at 1291 (internal quotation marks omitted), leaves us only "to speculate what specific evidence led the ALJ" to this conclusion, *Kepler v. Chater*, 68 F.3d 387, 391 (10th Cir. 1995). Under these circumstances, we must reverse and remand the Commissioner's denial of benefits to allow a proper evaluation of Dr. Perdue's treating-physician opinion. *See Clifton*, 79 F.3d at 1009-10 (reversing and remanding denial of benefits because "[i]n the absence of ALJ findings supported by specific weighing of the evidence, we cannot assess whether relevant evidence adequately supports the ALJ's conclusion . . . and whether he applied the correct legal standards to arrive at that conclusion").

("DSM-IV") 34 (Text Revision 4th ed. 2000) (bolding omitted) (stating meaning of GAF score between 41 and 50); *see Langley v. Barnhart*, 373 F.3d 1116, 1122 n.3 (10th Cir. 2004) (same). This court has recognized that such GAF scores, though not determinative of a claimant's ability to work, are relevant to an ALJ's determination of whether a medical opinion is consistent with the medical record. *See Langley*, 373 F.3d at 1122-23 (concluding ALJ failed to identify claimed inconsistencies between the treating physician's opinion and the record as required based in part on GAF scores by other medical sources that appeared consistent with the physician's opinion).

Dr. Sebastian

The ALJ's consideration of Dr. Sebastian's opinion is also problematic. Dr. Sebastian is also a psychiatrist at the North Rock clinic. The record indicates she treated Guice twice, in December 2015 and March 2016. After these sessions, she provided Guice a short letter confirming that Guice was under her care for recurrent, severe major depressive disorder and opining that Guice was "unable to maintain gainful employment at this time." Aplt. App. Vol. 8 at 1607.

The ALJ stated she gave Dr. Sebastian's opinion little weight because her opinion was inconsistent with Guice's mental-health treatment notes and because Dr. Sebastian did not include an explanation or details to substantiate her opinion. For the reasons discussed above, the ALJ erred by not evaluating Dr. Sebastian's opinion under the required two-step process and by failing to explain the evidentiary basis for her finding that Dr. Sebastian's opinion was inconsistent with Guice's treatment notes. But, as the Commissioner notes, at step two in the evaluation process an ALJ can properly consider the extent to which a treating-physician opinion is supported or explained in deciding how to weigh it, *see* 20 C.F.R. § 404.1527(c)(3), and the ALJ may have other reasons to reject Dr. Sebastian's opinion, *see id.* § 404.1527(d)(1) (explaining that a statement by a medical source that the claimant is "'unable to work'" is not a medical opinion but is rather an opinion on an issue reserved to the Commissioner). But the ALJ did not include other possible reasons in her decision or explain her finding that Dr. Sebastian's

opinion was inconsistent with Guice's mental health treatment notes. Accordingly, the ALJ should also address Dr. Sebastian's opinion further on remand.

2. State-agency reviewing psychologists' opinions

Drs. Cochran and King are state-agency psychologists who in 2013 made identical findings regarding Guice's mental limitations and RFC as part of the agency's initial denial of Guice's applications (Dr. Cochran) and denial on reconsideration (Dr. King). Their findings, which were based on their review of the medical evidence then of record, are medical opinions that must be considered and weighed by the ALJ using the factors set out in 20 C.F.R. § 1527(c). *See id.* § 404.1527(e); SSR 96-6p, 1996 WL 374180, at *2, *4 (July 2, 1996). Under these factors, "[t]he opinion of an examining physician is generally entitled to less weight than that of a treating physician, and the opinion of an agency physician who has never seen the claimant is entitled to the least weight of all." *Robinson v. Barnhart*, 366 F.3d 1078, 1084 (10th Cir. 2004) (per curiam); *see Chapo*, 682 F.3d at 1291 (explaining that opinions by treating and examining medical sources, as a general rule, are "presumptively entitled to more weight than a doctor's opinion derived from a review of the medical record"). And while opinions from state-agency reviewing psychologists may be entitled to more weight than those of treating or examining sources in some circumstances, their opinions "can be given weight only insofar as they are supported by evidence in the case record," which includes consideration of "any evidence received at the [ALJ] and Appeals Council levels that was not before the State

agency" and "the consistency of the opinion with the record as a whole, including other medical opinions." SSR 96-6p, 1996 WL 374180, at *2-3.

Based on their review of the record, Drs. Cochran and King opined that Guice had the mental RFC to "perform simple and some complex tasks with routine supervision and limited public contact," "relate to supervisors and coworkers on a superficial work basis," and "adapt to a work situation." Aplt. App. Vol. 2 at 145 (Dr. Cochran), 166 (Dr. King). The ALJ gave these opinions the "greatest weight," *id.* at 22-23, and adopted them almost verbatim in her RFC, *see id.* at 20. Once again, though, the ALJ's explanation for this weighting was conclusory. The ALJ stated only that Drs. Cochran's and King's opinions were entitled to the "greatest weight" because "their mental residual capacity and PRTF [Psychiatric Review Technique Form] analyses are consistent with the medical evidence of record." *Id.* at 22-23. The ALJ did not point to anything in the record, by citation, example, or otherwise, supporting this conclusion.

In addition, the ALJ failed to acknowledge or discuss a key limitation in these doctors' opinions—they were rendered in 2013 and thus did not include consideration of nearly three years of Guice's mental-health records, including Drs. Perdue's and Sebastian's opinions and treatment notes, which covered almost the entire period between Guice's amended alleged onset date and the ALJ's decision. In fact, it appears from the record that the only evidence Drs. Cochran and King considered that post-dated Guice's alleged onset date was a July 2013 consultative examination report by a psychologist, Dr. Jennifer Lancaster, in which

she gave her diagnostic impression that Guice suffered from anxiety, agoraphobia, depression, and other mental disorders, but did not state any conclusions about Guice's mental limitations. Under these circumstances, the ALJ particularly needed to explain, consistent with this court's precedent as described above, how these 2013 opinions were "consistent with the medical evidence of record," *id.* at 23, including the medical evidence that the state-agency psychologists had no opportunity to review.

As noted earlier, the ALJ's only comment on this extensive additional evidence was her conclusory finding earlier in her decision that Guice's mental-health treating notes since the amended March 2013 onset date indicated her "mental symptomatology is stable and improved with medication and compliance with medications." *Id.* at 22; *see id.* at 19. In other words, the ALJ suggested that Guice's mental condition and symptomology had not changed materially from what was reported in the pre-2013 medical records reviewed by the state-agency psychologists. But if the ALJ intended to justify her conclusion that the state-agency psychologists' opinions were consistent with the medical evidence of record on this basis, she needed to discuss Guice's 2013-16 mental-health records and provide some evidentiary basis for her conclusion that Guice's mental symptomology during this period was unchanged and controlled by medication. *See, e.g.*, *Keyes-Zachary v. Astrue*, 695 F.3d 1156, 1172 (10th Cir. 2012) (ALJ must "link [her] findings closely with the evidence and avoid making conclusions in the guise of findings"). Once again, the ALJ did not do so.

Further, Guice's 2013-2016 treatment notes include uncontroverted evidence apparently inconsistent with the ALJ's one-sentence assessment, and thus should have been discussed by the ALJ. *See Clifton*, 79 F.3d at 1010. For example, Guice's mental-health treatment records in 2014-16 document multiple periods during which her medical providers had stated her symptoms were worsening or, in a few instances, improving. The most significant of these changes was March through June 2016, when Guice told her providers she was "'having a breakdown'" and "'a rough time'" and having delusions. Aplt. App. Vol. 9 at 1642, 1706. During this period, Dr. Perdue added bipolar disorder to Guice's diagnosis. In 2015, he and other clinic providers also diagnosed Guice as suffering from PTSD , which is another change from the treatment records reviewed by Drs. Cochran and King in 2013. Thus, there was record evidence, not discussed by the ALJ, that Guice's mental symptoms were unstable and that her mental condition had worsened in the three years since the agency psychologists' opinions.

Guice's treatment notes from September 2013 through the last entry in August 2016 also vary about her mental status, even during periods when her overall mental symptoms were reported as stable. For example, while there are a number of these sessions in which the treating medical provider noted Guice presented with normal range mood/affect, sufficient attention/concentration, and no delusions or psychotic thoughts, providers note in other sessions that Guice's affect was anxious, depressed or constricted, and that she had poor attention and concentration or other abnormal mental symptomology. The Commissioner recognizes this variation in her brief.

See Resp. Br. at 5-6 (acknowledging Guice "exhibited a depressed or anxious mood or affect a little more than half the time" in her mental-status exams from January 2014 through March 2016 and only "usually" showed sufficient attention and concentration); *see also id.* at 13 (describing the evidence regarding Guice's mental-health symptoms as "mixed").

Guice's treating notes from 2013-16 also indicate that her mental-health providers had regularly changed or adjusted her medications, which suggests her mental symptoms were not always controlled by medication. Along this line, the Commissioner describes Guice's treating notes as indicating that "*at least at times*, medications helped alleviate her psychological symptoms." *Id.* at 15 (emphasis added). As noted above, Dr. Perdue also reported in his 2016 opinion that Guice's symptoms were difficult to manage and poorly controlled by medication.

Especially in light of this mixed evidence, the ALJ erred by not explaining her reasons for finding that Drs. Cochran's and King's 2013 opinions were consistent with the medical evidence of record but that Drs. Perdue's and Sebastian's were not. She also erred in not acknowledging and discussing the "uncontroverted evidence [s]he [chose] not to rely upon," and the "significantly probative evidence" she rejected in weighing these different opinions. *Clifton*, 79 F.3d at 1010. Without this explanation, we cannot meaningfully review the ALJ's weighing of these medical opinions to determine if her reasons for rejecting the opinions of Guice's treating psychiatrists and adopting the state-agency psychologists' opinions are supported by

substantial evidence and whether she applied the correct legal standards in arriving at these conclusions. *See id.* at 1009-10.

3. The Commissioner's argument

The Commissioner nonetheless urges us to affirm the ALJ's weighing of the medical-opinion evidence on the ground that it is in fact supported by substantial evidence in the record. In support, the Commissioner points to some of the evidence in Guice's mental-health records from 2013 through 2016, while also acknowledging that the evidence in these records is "mixed." Resp. Br. at 13. But the Commissioner's argument is an impermissible post hoc rationale for affirming the ALJ's decision, because the ALJ did not discuss the cited evidence or otherwise explain her findings regarding the medical-opinion evidence. "Affirming this post hoc effort to salvage the ALJ's decision would require us to overstep our institutional role and usurp essential functions committed in the first instance to the administrative process." *Allen v. Barnhart*, 357 F.3d 1140, 1142 (10th Cir. 2004). "Judicial review is limited to the reasons stated in the ALJ's decision," *Carpenter v. Astrue*, 537 F.3d 1264, 1267 (10th Cir. 2008), and we "may not create or adopt post-hoc rationalizations to support the ALJ's decision that are not apparent from the ALJ's decision itself," *Haga v. Astrue*, 482 F.3d 1205, 1207-08 (10th Cir. 2007).[6]

[6] Though the Commissioner does not make this argument, this court has found ALJ errors of this kind to be harmless when the ALJ made findings elsewhere in the decision that supply the missing analysis, and the court "could confidently say that no reasonable administrative factfinder, following the correct analysis, could have resolved the factual matter in any other way." *Fischer-Ross,* 431 F.3d at 733-34 (internal quotation marks omitted). But the ALJ's errors concerning the medical

B. Step 5 Determination

At the fifth and final step of the disability evaluation process, the agency has the burden of showing "that the claimant retains sufficient RFC . . . to perform work in the national economy, given her age, education, and work experience." *Lax*, 489 F.3d at 1084 (internal quotation marks omitted). Guice argues the ALJ failed to sustain this burden because the RFC she included in the dispositive hypothetical question to the VE did not include any of the mental limitations about which Dr. Perdue had opined. Because we have found that the ALJ committed legal error in failing to explain her weighing of Dr. Perdue's opinion, we remand for the Commissioner to reconsider Guice's RFC and her step 5 determination in light of the agency's consideration of Dr. Perdue's opinion on remand.

CONCLUSION

For the reasons stated above, we reverse the denial of benefits and remand this action to the district court with directions to remand it to the Commissioner for further proceedings consistent with this decision.

Entered for the Court

Gregory A. Phillips
Circuit Judge

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opinions were not harmless under this standard, because (1) the ALJ did not, in fact, supply the missing analysis of Guice's 2013-16 mental-health records elsewhere in her decision and (2) those records are mixed enough that we cannot confidently say that a reasonable factfinder could have weighed the medical opinions only as this ALJ did.