FILED
United States Court of Appeals
Tenth Circuit

April 21, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RANDA K. ALLRED,

Plaintiff - Appellant,

v.

COMMISSIONER, SSA,

Defendant - Appellee.

No. 22-4044
(D.C. No. 2:20-CV-00731-CMR)
(D. Utah)

ORDER AND JUDGMENT*

Before **MORITZ**, **EID**, and **ROSSMAN**, Circuit Judges.

Randa K. Allred suffers from bipolar disorder and anxiety disorder. She sought disability insurance benefits, asserting that stress from working triggers manic episodes that send her life spiraling out of control. But the administrative law judge (ALJ) found that the biggest predictor of her manic episodes was her failure to take prescribed medications. The ALJ ultimately decided that Ms. Allred is not disabled, and the district court affirmed. We reverse because the ALJ should have considered

---

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

possible reasons why Ms. Allred sometimes failed to take her medications. And we remand for the ALJ to consider those reasons.

I. Background

Ms. Allred worked as a receptionist for several years. Then in 2012, when she was roughly thirty years old, she received a bipolar-disorder diagnosis. She reported that during manic episodes she quit jobs; ran away from home; spent thousands of dollars; and engaged in risky, sometimes criminal behavior. Between 2013 and 2017, she had several psychiatric hospitalizations. By the time she ended up in a hospital, she had often stopped taking prescribed medications.

The record contains conflicting evidence about the relationship between her manic episodes and her medication noncompliance. On the one hand, some evidence indicates that her mania made her "suspicious of medication." Aplt. App. vol. 1 at 83. This evidence suggests that the mania came first and caused the medication noncompliance. On the other hand, some evidence indicates that she suffers mania only when she does not "have medication." *Id.* vol. 3 at 194. This evidence suggests that the medication noncompliance came first and caused the mania.

Ms. Allred's hearing before the ALJ occurred in 2019.[1] Although she had not experienced a manic episode since 2017, she nevertheless feared that she could not "maintain with the stress of employment." *Id.* vol. 1 at 40. But the ALJ found that "the biggest predictor for recurrence of her mania is non-compliance with treatment,"

[1] Ms. Allred filed her application in 2018 and ultimately claimed that her disability began in July 2016.

id. at 42, noting that her past hospital admissions occurred when she had stopped taking prescribed medication and that she had controlled her mania since 2017 by taking medication.

Applying the sequential evaluation process, *see generally* 20 C.F.R. § 404.1520, the ALJ found that Ms. Allred had the residual functional capacity to understand, remember, and carry out only simple instructions; to make only simple work-related judgments and decisions; to have only occasional changes in a routine work setting; to have only occasional, superficial contact with the public; and to have only occasional contact with coworkers and supervisors. These limitations, the ALJ found, prevented Ms. Allred from performing her past jobs but allowed her to perform other jobs existing in significant numbers. And so the ALJ found her not disabled.

The Appeals Council denied Ms. Allred's request for review of the ALJ's decision, making the ALJ's decision the Commissioner's final decision. *See Madrid v. Barnhart*, 447 F.3d 788, 789–90 (10th Cir. 2006). Ms. Allred sought judicial review, and the district court affirmed.

II. Discussion

Ms. Allred raises three issues on appeal. First, she argues the ALJ erred in evaluating the evidence. Second, she says the ALJ should have applied Social Security Ruling (SSR) 18-3p, a ruling explaining how the Social Security Administration evaluates a claimant's failure to follow prescribed treatment. Third, she argues that even if the ALJ did not need to apply SSR 18-3p, he still needed to

assess her failures to comply with treatment using the factors set out in *Frey v. Bowen*, 816 F.2d 508, 517 (10th Cir. 1987). Although we reject the first two arguments, we conclude the third warrants a remand.

A. Standard of Review

Our review considers whether the ALJ applied the correct legal standards and whether substantial evidence supports his factual findings. *See Lax v. Astrue*, 489 F.3d 1080, 1084 (10th Cir. 2007). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It requires more than a scintilla, but less than a preponderance." *Id.* (citation and internal quotation marks omitted). Although we will assess whether the ALJ followed the legal rules governing how to weigh certain types of evidence, we may not reweigh the evidence ourselves. *See id.*

B. Evaluating the Evidence

Under revised rules that apply here, an ALJ "will not defer or give any specific evidentiary weight, including controlling weight," to any medical opinion. 20 C.F.R. § 404.1520c(a). The ALJ will instead evaluate the persuasiveness of medical opinions using five factors—supportability, consistency, relationship with the claimant, specialization, and other factors such as "a medical source's familiarity with the other evidence in a claim." § 404.1520c(c). Supportability and consistency are the most important factors, and the ALJ must explain how he or she considered them. § 404.1520c(b)(2).

Nancy Foster, Ph.D., an advanced practice registered nurse, opined that Ms. Allred had marked or extreme limitations in all functional areas and that she could not sustain full-time work. The ALJ found Dr. Foster's opinions unpersuasive because he could not easily decipher which of her explanations were based on her own observations versus Ms. Allred's reports, and because Dr. Foster's statements were inconsistent with other evidence and with the ALJ's observations at the hearing. Ms. Allred points out that Dr. Foster's records reveal that some of her findings were based on her own observations. Even so, the sources underlying many of Dr. Foster's findings are unclear. And although Ms. Allred argues that Dr. Foster's opinions were consistent with some evidence, she does not dispute that they were inconsistent with other evidence.

Julia Kronholz, Ph.D., opined that Ms. Allred "has a psychiatric concern of such severity that it would interfere with her ability to perform tasks, remember and follow directions, or interact effectively with coworkers and supervisors." Aplt. App. vol. 3 at 171. Although the ALJ found these opinions supported and "generally consistent with the other medical evidence," he ultimately found them unpersuasive because Dr. Kronholz "did not indicate the degree" of Ms. Allred's functional limitations. *Id.* vol. 1 at 42. Ms. Allred concedes that Dr. Kronholz did not offer "precise functional limitations." Aplt. Opening Br. at 26. She argues, however, that Dr. Kronholz's opinions were consistent with Dr. Foster's. This argument does not address the reason the ALJ found little value in Dr. Kronholz's opinions—their lack of specificity.

Ms. Allred next argues that the ALJ ignored an evaluation by Megan Bowen, Ph.D. But the ALJ cited the evaluation, so he clearly considered it. And Ms. Allred does not meaningfully dispute the Commissioner's claim that, under the regulations, Dr. Bowen provided objective medical evidence rather than medical opinions. *See* 20 C.F.R §§ 404.1502(f)–(g), 404.1513(a)(1)–(2). The ALJ therefore did not need to explain how he considered Dr. Bowen's evaluation. *See* § 404.1520c(a) (requiring an ALJ to explain how he or she considered medical opinions); *Frantz v. Astrue*, 509 F.3d 1299, 1303 (10th Cir. 2007) (recognizing "that an ALJ does not have to discuss every piece of evidence").

Ms. Allred also disagrees with how the ALJ weighed certain evidence. She argues, for example, that he misinterpreted one of her statements; cherry-picked evidence supporting his decision; and gave insufficient weight to evidence from Dr. Foster, Dr. Kronholz, and Dr. Bowen by considering the evidence from each of them in isolation. These arguments do not show that the ALJ made findings without substantial evidence or applied an incorrect standard. At bottom, then, the arguments urge us to reweigh the evidence and substitute our judgment for the ALJ's. We must decline. *See Lax*, 489 F.3d at 1084.

In sum, the ALJ properly evaluated the medical opinions and other evidence, and his findings are supported by substantial evidence.

C. SSR 18-3p

If a claimant does not follow prescribed treatment expected to restore the ability to work, the Social Security Administration will not find the claimant disabled

unless there is a good reason for the noncompliance. 20 C.F.R. § 404.1530. SSR 18-3p explains how the Social Security Administration decides whether a claimant has failed to follow prescribed treatment. SSR 18-3p, 2018 WL 4945641, at *2 (Oct. 2, 2018). When SSR 18-3p applies, an ALJ will assess (1) whether the prescribed treatment is expected to restore the claimant's ability to work and (2) whether the claimant has good cause for not following the treatment. *See id.* at *4.

Ms. Allred argues that the ALJ should have applied SSR 18-3p because he mentioned her noncompliance with prescribed medication. But by its own terms, SSR 18-3p did not apply in this case. It applies only if the claimant is otherwise entitled to benefits. *Id.* at *2–3. Because the ALJ never found Ms. Allred otherwise entitled to benefits, he did not need to apply SSR 18-3p. *See id.*

Not so, Ms. Allred says. In her view, the ALJ implicitly found her "not disabled due to noncompliance with treatment recommendations," Aplt. Opening Br. at 11, triggering an obligation to apply SSR 18-3p. At its core, this argument rests on the premise that an ALJ may analyze a claimant's noncompliance with prescribed treatment only *after* finding the claimant disabled in the sequential evaluation process. Aplt. Opening Br. at 10. That premise is incorrect. An ALJ may properly consider a claimant's failure to follow prescribed treatment when evaluating the intensity and persistence of symptoms. SSR 16-3p, 2016 WL 1119029, at *8 (Mar. 16, 2016). And the ALJ's decision makes clear that he considered Ms. Allred's noncompliance as part of his evaluation of her symptoms.

D. The *Frey* Factors

In *Frey* we identified four factors for "reviewing the impact of a claimant's failure to undertake treatment" on a disability determination: (1) whether the treatment would restore the ability to work; (2) whether the treatment was prescribed; (3) whether the claimant refused it; and (4) whether the claimant had a justifiable excuse for refusing it. 816 F.2d at 517.

The Commissioner does not dispute that the ALJ did not consider all the *Frey* factors. She instead argues that *Frey* does not apply. There is support for that idea, for we have held that *Frey* applies when an ALJ denies benefits because of a claimant's treatment noncompliance, not when an ALJ considers what efforts a claimant made to relieve pain to evaluate the veracity of a claim that the pain was disabling. *See Qualls v. Apfel*, 206 F.3d 1368, 1372 (10th Cir. 2000). And so *Qualls* suggests the ALJ did not need to consider the *Frey* factors because he considered Ms. Allred's noncompliance only to evaluate her claims of disabling symptoms.

On that point, however, *Qualls* conflicts with *Thompson v. Sullivan*, 987 F.2d 1482, 1490 (10th Cir. 1993). *Thompson* holds that an ALJ must consider the *Frey* factors before discounting the credibility of a claimant's symptom allegations based on a failure to pursue treatment or take medication.[2] *Id.* Under *Thompson*, then, the

[2] The Social Security Administration no longer uses the term *credibility* in its sub-regulatory policy. *See* SSR 16-3p, at *1. But an ALJ will still evaluate a claimant's symptoms. And the Social Security Administration defines a *symptom* as a claimant's "own description or statement of his or her physical or mental impairment(s)." *Id.* at *2.

ALJ should have applied the *Frey* factors. And we will follow *Thompson* because it predates *Qualls*. *See Crowson v. Wash. Cnty.*, 983 F.3d 1166, 1188 (10th Cir. 2020).

Still, the Commissioner implies that *Frey* does not apply because SSR 18-3p superseded it. But *Frey* (at least as interpreted by *Thompson*) and SSR 18-3p cover different scenarios. SSR 18-3p does not govern an ALJ's evaluation of symptoms, so it does not affect how *Frey* applies to such an evaluation.

For these reasons, we conclude the ALJ should have considered the *Frey* factors before discounting Ms. Allred's claim of disabling symptoms based on her periods of treatment noncompliance. And we agree that the ALJ did not sufficiently consider the possible reasons behind Ms. Allred's intermittent noncompliance.[3] Although the Commissioner cites SSR 16-3p rather than *Frey*, even she concedes that, "technically, the ALJ should have considered not just the initial evidence of noncompliance in evaluating Allred's symptoms, but also any pertinent, possible reasons for it." Aplee. Br. at 25.

Yet the Commissioner argues that the ALJ's incomplete analysis does not warrant a remand for two reasons. First, the Commissioner says, the evidence about whether Ms. Allred's mental impairment caused her to stop taking medication "was mixed at best." *Id.* But the mixed evidence on that score is precisely why a remand

[3] Ms. Allred also contends that the ALJ did not adequately consider the first *Frey* factor—whether the prescribed treatment would restore her ability to work. We need not decide if the ALJ properly considered this factor because his failure to properly consider possible reasons for the noncompliance requires remand. On remand, however, the ALJ should consider all the *Frey* factors.

is necessary: The ALJ must resolve the conflicts in the evidence. *See Richardson v. Perales*, 402 U.S. 389, 399 (1971).

Second, the Commissioner underscores that Ms. Allred never stopped taking her medication for twelve or more consecutive months. For that reason, the Commissioner concludes, Ms. Allred's noncompliance cannot satisfy the requirement that an impairment last or be expected to last at least twelve consecutive months. *See* 20 C.F.R. § 404.1509. This argument misses the point. What matters is whether working would trigger a manic episode even if Ms. Allred takes her prescribed medication. And the answer to that question depends at least in part on why she stopped taking medication in the past: Did her mania (triggered by stress) cause her noncompliance or did her noncompliance cause her mania?

III. Conclusion

We reverse the district court's judgment. We remand the case with directions to remand it to the Commissioner for further proceedings consistent with this decision.

Entered for the Court

Allison H. Eid
Circuit Judge