

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued July 12, 2023

Decided August 16, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-2904

SANDRA DIAZ,
Plaintiff-Appellant,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Wisconsin.

No. 21-CV-810

William E. Duffin,
Magistrate Judge.

ORDER

Sandra Diaz, who suffers from several physical and mental impairments (including bipolar disorder) that limit her ability to work, appeals the district court's decision affirming the Social Security Administration's denial of her application for supplemental security income. This case has had an extremely protracted history. Diaz filed her application in 2006 and has had six hearings with various administrative law judges. She was found to be disabled as of June 1, 2016. At issue here is the ten-year period between her alleged onset date of October 10, 2006, and May 31, 2016. A magistrate judge, who previously remanded the action because the ALJ did not

adequately justify discounting the opinion of the agency's consultative examiner, upheld the ALJ's decision. This is a close case, but we affirm.

Background

We assume familiarity with the extensive procedural history in this case, so we confine our summary of the background to the evidence of Diaz's mental impairments from 2006 to 2016.

In 2006, Diaz was being treated for bipolar disorder by Dr. Michael Eis, a psychiatrist. Dr. Eis noted that Diaz was often tearful or depressed during their visits. He prescribed several medications, including an antidepressant and antipsychotic, as well as psychotherapy. Later that year, Diaz reported auditory hallucinations, although these improved and "essentially disappeared" in later months. Dr. Eis noted that Diaz had "some borderline personality traits," which may have been related to the hallucinations.

At the end of 2006, a state agency psychological consultant reviewed Diaz's records and determined that she had mild difficulties with social functioning and moderate difficulties in concentration, persistence, and pace. A second state agency physician affirmed that determination.

The severity of Diaz's symptoms generally waned over the next few years and her bipolar disorder was deemed less severe, though she had a few periods of decline. For example, in early 2007, she reported feeling "down" after missing several psychotherapy appointments. But a few months later, Dr. Eis described Diaz as "doing much better" with a "bright, cheerful, pleasant" affect. But in mid-2009, he noted that she was not doing as well and had a "down" mood.

In connection with Diaz's application for SSI, Dr. Eis twice wrote to Diaz's attorney about Diaz's limited ability to work. In 2009, he wrote that her "ability to handle competitive workplace stress" was "extremely limited and would lead to a significant relapse of symptoms." In 2010, he reiterated that Diaz's ability to engage in competitive employment was "extremely limited."

In late 2010, the agency asked Dr. Roland Manos, a psychologist (since deceased), to perform a consultative examination of Diaz. Dr. Manos, who examined Diaz and reviewed her prior medical records, described her as "tearful" and in "mild-to-moderate distress." Diaz described herself, in turn, as highly irritable. She told Dr. Manos that she "hear[s] voices" and was "a wreck" but said that medication helped. She said that her daughter performed many household tasks for her. Dr. Manos wrote that Diaz's reported symptoms were consistent with her bipolar disorder diagnosis as

well as borderline personality disorder. As relevant to this appeal, Dr. Manos concluded that Diaz was markedly restricted in her ability to interact appropriately with supervisors and coworkers. Additionally, he concluded that she seemed “to be intolerant of routine stress” but “capable of adapting to changes.”

In late 2011, Diaz gave birth, after which she developed postpartum depression. Her primary care physician noted that she had a depressed mood and thoughts of self-harm. Diaz was encouraged to attend a day-treatment program but declined because, she said, she lacked childcare. Over the next two years, Diaz saw two psychiatrists, who characterized her symptoms as severe or observed a low mood and tearful affect.

Diaz apparently did not receive further mental-health treatment until late 2016, when she seems to have experienced worsening symptoms and restarted treatment. (Diaz says she did not seek further care during that period because she lacked medical insurance, but it is not clear when and for how long she was uninsured.) Diaz continued treatment into 2018.

Between 2006 and 2016, Diaz had many other medical visits that did not involve her mental impairments (i.e., diabetes or a sinus infection), and practitioners consistently noted that she appeared “oriented,” “pleasant,” or “cooperative.” Diaz at times reported to her non-mental health providers that her bipolar disorder symptoms were well-controlled and denied depression or anxiety, even when she was not receiving mental-health treatment.

We pick up the story with the ALJ’s partially favorable decision in 2018. The ALJ concluded – without explanation – that Dr. Manos’s sober assessment of Diaz’s stress tolerance conflicted with “her improvement with medication, her generally good mental status examinations, and the absence of more intensive and highly structured mental health care.” In addition, the ALJ ascribed little weight to Dr. Manos’s opinion of Diaz’s ability to interact with coworkers, stating that it relied on Diaz’s subjective reports and was inconsistent with the record.

Diaz appealed, and a magistrate judge reversed the Commissioner’s determination that Diaz was not disabled before June 1, 2016. The magistrate judge concluded that the ALJ “failed to provide good reasons for discounting the opinions of the consultative examiner regarding Diaz’s limitations with respect to work-related stress and interactions with coworkers and supervisors.”

On remand, a new ALJ held a sixth administrative hearing and again concluded that between 2006 and 2016, Diaz was not disabled. Applying the five-step disability analysis, *see* 20 C.F.R. § 416.920(a)(4), the ALJ determined that (step 1) Diaz had not

engaged in substantial gainful activity during the relevant period; (step 2) her bipolar disorder, asthma, obesity, postpartum depression, diabetes mellitus, and diabetic neuropathy were severe impairments; but (step 3) none of these equaled a listed impairment; (step 4) she could perform medium work until July 2015 and light work until May 2016 (subject to the restrictions described to the vocational expert); and (step 5) there were a significant number of jobs in the national economy that Diaz could perform.

The ALJ gave Dr. Manos's opinion partial weight but did not adopt his assessment of Diaz's stress intolerance. Like the prior ALJ, she found this assessment inconsistent with Diaz's improved symptoms while taking medication, generally good mental status examinations, and relatively conservative treatment (she had not needed to be hospitalized). The ALJ also gave little weight to Dr. Manos's opinion about Diaz's social interactions, an opinion she found unsupported:

Moreover, Dr. Manos's conclusions are not consistent with the overall evidence of record, as there is little in the objective treatment records (other than the claimant's subjective complaints) to support prominent or significant social limitations. As noted consistently throughout the previous Administrative Law Judge's decision, the record consistently establishes that the claimant regularly interacts appropriately with treating and examining providers and demonstrates *some* ability to engage in activities requiring her to go out into the community and interact well with others.

Diaz sought review in the district court, arguing primarily that the ALJ failed to adequately support her decision to disregard Dr. Manos's opinions. This time, the magistrate judge upheld the ALJ's determination. He concluded that although the ALJ cited many of the same reasons identified as insufficient in the remand order, the ALJ offered "a more detailed explanation" and "additional evidence" that satisfied the agency's burden. For example, the magistrate judge stated that the ALJ went beyond noting merely that Diaz's symptoms had improved; the ALJ pointed to evidence that undermined Dr. Manos's opinion that Diaz was intolerant of stress. And the magistrate judge explained that the ALJ rightly afforded little weight to Dr. Manos's view that Diaz had marked impairments in her social functioning; the ALJ pointed out that Dr. Manos failed to identify the factors supporting his assessment despite being asked to do so. And the ALJ, according to the magistrate judge, supported her conclusion that Diaz could interact with others "with a lengthy discussion of specific evidence."

Analysis

On appeal, Diaz challenges only the ALJ's treatment of Dr. Manos's opinions about her ability to handle routine stress and workplace interactions. Our review is deferential. We will uphold the ALJ's determination if it is supported by substantial evidence. *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). Substantial evidence is merely "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"; it is not a high bar. *Id.* at 1154. There is an additional wrinkle here because Dr. Manos not only was an examining physician, meaning that his opinions generally receive greater weight than non-examining physicians, *see* 20 C.F.R. § 416.927(c)(1) (2017), but he was the *agency's* physician. We will expect a "good explanation" for the agency's "unusual step" of discounting the opinion of its own doctor. *Beardsley v. Colvin*, 758 F.3d 834, 839 (7th Cir. 2014).

Diaz generally argues that the ALJ did not provide sufficient reasons for discounting Dr. Manos's opinion about her stress tolerance. She raises many fact-specific challenges to the ALJ's decision: For instance, she argues that the ALJ did not afford Dr. Manos appropriate deference as an examining physician, relied on "rote" observations by non-mental health providers, and "played doctor" by relying on findings unrelated to Diaz's stress tolerance (such as Diaz's consistently appropriate judgment and appearance).

Although the question is close, we conclude that substantial evidence supports the ALJ's determination that Diaz was not as intolerant of stress as Dr. Manos stated. The ALJ permissibly weighed the medical evidence, including that from non-mental health providers, and concluded that it conflicted with Dr. Manos's assessment. As the magistrate judge appropriately noted, "[t]he gist of the ALJ's conclusion was that, if Diaz really was as sensitive to stress as Manos believed, there would be more evidence of her symptoms being exacerbated by stress."

Although the ALJ might have made her reasoning more explicit, substantial evidence supports her determination that Dr. Manos's opinion of Diaz's stress tolerance was inconsistent with the record. For example, the ALJ emphasized that even when Diaz was "under extreme stress," she reported to Dr. Eis that she experienced comparatively minimal symptoms—faint auditory hallucinations that were not bothersome. Additionally, the ALJ observed that Diaz's non-mental health providers consistently noted no psychological issues or abnormalities in Diaz's appearance. The ALJ also permissibly noted that Diaz did not require more intensive care, *see* SSR 16-3p, 2017 WL 5180304 (Oct. 25, 2017), and that her symptoms improved with medication. *See Schmidt v. Barnhart*, 395 F.3d 737, 745 (7th Cir. 2005).

The ALJ also supported her conclusion that Dr. Manos overstated Diaz's stress limitations by pointing to evidence that Diaz's statements, which informed the doctor's opinion, were inconsistent with her own reports to other doctors. *See Bates v. Colvin*, 736 F.3d 1093, 1100 (7th Cir. 2013). For instance, in October 2010, Diaz told Dr. Manos that she had stopped treatment and run out of medications the previous April because she lost health insurance; she reported that her psychiatric symptoms had returned and she was depressed and had mood swings. But in September and November 2010, she told her primary care physician that her bipolar disorder was well-controlled; that physician's records indicate no abnormalities in her appearance or affect.

Diaz raises several similar objections to the ALJ's treatment of Dr. Manos's assessment of her workplace social interactions. She asserts that the ALJ erred by incorrectly stating that Dr. Manos did not support his findings, cherry picking records that suggested Diaz was cooperative while ignoring the rest of the record, and giving too much weight to Diaz's ability to cooperate with providers and perform some daily activities.

But the ALJ's determination that Diaz was not more than moderately limited in her social abilities was supported by substantial evidence. The ALJ was entitled to give Dr. Manos's opinion little weight after concluding that it was inconsistent with the record. *See* 20 C.F.R. § 416.927(c)(3)–(4). The ALJ permissibly noted that Diaz regularly interacted appropriately with her treating physicians, who often described her as cooperative or pleasant—indeed, Diaz was described as cooperative even when she otherwise had severe mental-health symptoms. She also rightly observed that Diaz declined anger management therapy and she was able to work out those issues on her own. And the ALJ again relied on Diaz's symptom improvement when she was on medication. To the extent Diaz argues that the ALJ failed to consider that cooperating with a doctor is different than cooperating at work, the ALJ accounted for that difference by limiting Diaz to jobs with only “occasional” workplace interactions.

Diaz also challenges the ALJ's assertion that Dr. Manos did not adequately support his assessment that she had marked limitations in her ability to interact with coworkers and supervisors. She points to Dr. Manos's statement that her symptoms were consistent with borderline personality disorder. But even if we accept that Diaz has borderline personality disorder, she still had the burden to show that the disorder limited her ability to work. *See Schmidt*, 395 F.3d at 745–46.

Notwithstanding our conclusion that substantial evidence supports the ALJ's decision, we agree with Diaz that some of the evidence the ALJ relied on is weak or unrelated to the functional areas at issue. For instance, the ALJ did not explain how

Diaz's weight loss was "inconsistent with" her inability to handle routine stress. And the evidence the ALJ relied on (such as Diaz's appearance, intact judgment, and linear thinking) did not *directly* contradict Dr. Manos's opinions about stress and sociability: Rather, it suggested that Diaz was generally functioning well. *See Bates*, 736 F.3d at 1101 (if ALJ thought medical evidence insufficient, it was "her responsibility to recognize the need for additional evaluations"). Further, Dr. Manos saw from his review of Diaz's records that her symptoms improved; despite this, he concluded that Diaz was intolerant of routine stress and markedly impaired in her social functioning. Finally, the ALJ at times seems overly concerned that Dr. Manos's opinion relied on Diaz's "subjective reports," but this court has repeatedly said that an ALJ may not discount a medical opinion merely because it depends on the claimant's subjective statements. *See Adaire v. Colvin*, 778 F.3d 685, 688 (7th Cir. 2015).

But ultimately, it was Diaz's burden to prove her disability, *Karr v. Saul*, 989 F.3d 508, 513 (7th Cir. 2021), and she did not do so here. As the Commissioner argues, Diaz points to little evidence supporting that she was more than moderately limited in her stress tolerance and social interactions. Thus, even though "reasonable minds" might have reached a different outcome, the ALJ's opinion was supported by substantial evidence. *See id.*

AFFIRMED