

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12030
Non-Argument Calendar

D.C. Docket No. 5:18-cv-01230-ACA

KIMBERLY KAY TISDALE,

Plaintiff-Appellant,

versus

SOCIAL SECURITY ADMINISTRATION, COMMISSIONER,
United States Social Security Administration an Independent
Agency of the United States of America,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(March 16, 2020)

Before WILLIAM PRYOR, JILL PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

Kimberly Tisdale appeals the district court's order affirming the Commissioner of Social Security's denial of her application for disability benefits. After a thorough review of the briefing and the administrative record, we affirm.

I.

Social Security regulations outline a five-step process that the ALJ must use to determine whether a claimant is disabled: first, the ALJ considers the claimant's work activity; second, if the claimant is not engaged in substantial gainful activity, the ALJ considers the medical severity of her impairments; third, if the claimant has a severe impairment or combination of impairments of sufficient duration, the ALJ must determine whether that impairment or combination of impairments meets or equals one of the impairments listed in 20 C.F.R. § 404, Subpart P; fourth, if not, the ALJ must determine whether the claimant can perform her past relevant work in light of her residual functional capacity; and fifth, if the claimant cannot perform past relevant work, the ALJ must determine whether she can perform other work found in the national economy commensurate with her age, education, and experience. 20 C.F.R. § 416.920(a)(4)(i)–(v); *see Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011). “The burden is primarily on the claimant to prove that he is disabled, and therefore entitled to receive Social Security disability benefits.” *Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001). If, as the ALJ found here, the claimant does not meet the

requirements for any listed impairment and can perform other work, then she is not disabled. 20 C.F.R. § 416.920(a)(4)(v).

We review the decision of the ALJ as the Commissioner's final decision when the ALJ denies benefits and the Appeals Council denies review of the ALJ's decision. *Doughty*, 245 F.3d at 1278. "We review the Commissioner's factual findings with deference and the Commissioner's legal conclusions with close scrutiny." *Id.* We will affirm if the ALJ applied the correct legal standards and his decision is supported by substantial evidence. *See Wilson v. Barnhart*, 284 F.3d 1219, 1221 (11th Cir. 2002). "Substantial evidence is something 'more than a mere scintilla, but less than a preponderance.'" *Dyer v. Barnhart*, 395 F.3d 1206, 1210 (11th Cir. 2005) (citation omitted). It is "such relevant evidence as a reasonable person would accept as adequate to support a conclusion." *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005). Under this limited standard of review, we will not make factual findings or credibility determinations in the first instance or re-weigh evidence. *Id.*

Tisdale does not dispute the ALJ's findings that she had not engaged in substantial gainful activity since her application date, that she did have one or more severe impairments, and that she had no relevant past work. But she argues that the ALJ erred in finding that her mental impairment did not meet the listing for

“intellectual disorder” under 20 C.F.R. Part 404, Subpart P, Appendix 1 § 12.05(B), and that she could perform jobs existing in the national economy.

II.

A.

Listing 12.05(B) concerns disabilities based on intellectual disorders. 20 C.F.R. Pt. 404, Subpt. P, App’x 1 at § 12.00(A)(1). To meet the criteria for intellectual disorder under Listing 12.05(B), a claimant must show (as relevant here) that she has “[s]ignificantly subaverage general intellectual functioning” evidenced by qualifying IQ scores, *and* “[s]ignificant deficits in adaptive functioning.” *Id.* § 12.05(B)(1)–(2). To show that she has significant deficits in adaptive functioning, a claimant must show that she has “extreme limitation of one, or marked limitation of two” out of the following four areas of mental functioning: (1) understanding, remembering, or applying information; (2) interacting with others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself. *Id.* § 12.05(B)(2); *see id.* § 12.00(E).

In support of her claim that she meets these criteria, Tisdale relies heavily on the report of Dr. Erin Smith, a clinical psychologist who performed a one-time consultative evaluation of Tisdale. Dr. Smith conducted a clinical interview and mental status examination and administered the Wechsler Adult Intelligence Scale test (WAIS-IV). She reported that Tisdale had a full-scale IQ of 53 and performed

in the “extremely low” or “borderline” range in most areas of intelligence testing. She noted that Tisdale had been enrolled in special education classes throughout her schooling and reported difficulty in school with math and reading comprehension, and she stated that Tisdale’s cognition appeared to be in the “extremely low” range, with poor attention and concentration. Dr. Smith concluded that Tisdale’s “overall level of social and adaptive functioning, based upon cognitive or mental health issues, appears to be severely impaired.” She opined that Tisdale would likely require a sheltered work setting.¹

Dr. Smith also noted, however, that Tisdale reported caring for her infant son, helping with household chores, cooking light meals, driving, and using the internet. In presentation, Tisdale was polite and cooperative during Dr. Smith’s interview and testing, with appropriate dress, hygiene, grooming, eye contact, and behavior. Tisdale’s thought content and processes were “within normal limits,” she had “fair” insight and judgment, and she was able to answer questions appropriately with no significant difficulties in articulation or prosody.

After a hearing at which Tisdale and a vocational expert testified, the ALJ found that Tisdale did not meet the criteria for intellectual disorder under § 12.05(B) because—whether or not her IQ score demonstrated “significantly

¹ “Sheltered employment is employment provided for handicapped individuals in a protected environment under an institutional program.” SSR 83-33 (PPS-107), Determining Whether Work is Substantial Gainful Activity - Employees (S.S.A. 1983).

subaverage general intellectual functioning”—she had not made the required showing that she had “significant deficits in adaptive functioning.” 20 C.F.R. Pt. 404, Subpt. P, App’x 1 § 12.05(B)(1), (2). Specifically, the ALJ found that Tisdale had no more than moderate limitations in any of the four areas of adaptive functioning. We address each area in turn.

“Understand, remember, or apply information,” § 12.05(B)(2)(a)

The record as a whole supports the ALJ’s finding that Tisdale’s limitations in her ability to “understand, remember, or apply information” in practical contexts were moderate, rather than “extreme” or “marked.” *See id.* § 12.00(F)(2) (defining “mild,” “moderate,” “marked,” and “extreme” limitations). Although Dr. Smith determined that Tisdale’s intellectual and cognitive functioning was in the “extremely low” range, she indicated that Tisdale’s remote and recent memory appeared to be intact. None of Tisdale’s other providers, including her primary care physician, reported any problems with cognition or memory. And an agency consulting psychologist, Pauline Edwards, Ph.D., reviewed Tisdale’s claim file and concluded that Tisdale had the ability to carry out at least simple instructions and might be able to complete more complex tasks if they were broken down into simpler parts.

Further, Dr. Smith appears to have relied in part on Tisdale’s report that she had been enrolled in special education courses throughout her schooling. While

Tisdale's school records showed that she consistently received special education services and struggled with language, reading, and math, her Individualized Education Program reports for her last year in school (ninth grade, 2009–2010) indicated that poor attendance—not lack of ability—was the main reason for her low grades. Tisdale's school records also included the results of several IQ tests showing scores ranging from 68–73, which apparently were not available for Dr. Smith to use for comparison purposes during her evaluation.

Moreover, Tisdale's own reports are inconsistent with a finding of “extreme” or “marked” limitations in this area. Tisdale and her mother both reported that Tisdale could follow written and spoken instructions well, and Tisdale listed reading as one of her hobbies in her function report. Both Tisdale and her mother also indicated that Tisdale could drive, pay bills, count change, handle a savings account, and use a checkbook.

Interact with others, § 12.05(B)(2)(b)

The record supports the ALJ's finding that Tisdale has no more than moderate limitation in this area. Tisdale reported that she interacts with other people daily on the phone or by computer, attends church regularly, and shops in stores for food and clothes. She lives with her parents and her two young sons, and the fathers of her children are also present sometimes. She stated that she has no problems getting along with family, friends, neighbors, or others, and that she gets

along well with authority figures. Dr. Smith's report also indicated that Tisdale's interaction during the psychological evaluation was appropriate.

Concentrate, persist, or maintain pace, § 12.05(B)(2)(c)

Again, substantial evidence supports the ALJ's finding that Tisdale has moderate limitations in this area. Dr. Smith stated that Tisdale's attention and concentration were poor, but Tisdale herself reported that she can pay attention "for a while," and her mother said that she could pay attention well. Tisdale and her mother both reported that Tisdale is able to care for her infant son, prepare light meals, and do household chores such as laundry and washing dishes. Tisdale also stated that she is able to finish what she starts, including conversations, chores, reading, or watching a movie. And based on her review of Tisdale's claim file, Dr. Edwards concluded that Tisdale could sustain attention to simple tasks for extended periods.

Adapt or manage oneself, § 12.05(B)(2)(d)

The record supports the ALJ's finding that Tisdale has moderate limitations in this area. Although Tisdale and her mother reported that Tisdale does not handle stress well, they both stated that she handles changes in her routine well and that she is able to care for her children and drive and shop independently. Tisdale's medical records contained multiple provider notes observing that Tisdale's mood and affect were normal, and her primary care physician noted that

she had good judgment. Dr. Smith reported that Tisdale was polite and cooperative during the psychological evaluation, and that her grooming, hygiene, and behavior were all appropriate to the circumstances.

Tisdale complains that the ALJ improperly discounted Dr. Smith's opinions in determining that Tisdale had only moderate limitations in adaptive functioning. She argues that Dr. Smith's opinions should have been given greater weight because she was the only provider qualified to administer IQ testing who evaluated Tisdale. But a qualifying IQ score is only part of the analysis, most relevant to the assessment of the claimant's "general intellectual functioning." 20 C.F.R. Pt. 404, Subpt. P, App'x 1 § 12.05(B)(1). Regardless of whether a claimant has a qualifying IQ, she must still prove that she has significant deficits in adaptive functioning. *Id.* § 12.05(B)(2).

"Adaptive functioning" refers to how a claimant learns and uses "conceptual, social, and practical skills in dealing with common life demands"; in other words, it is a measure of the claimant's "typical functioning at home and in the community, alone or among others." *Id.* § 12.00(H). Given that Dr. Smith's knowledge of Tisdale's ability to function at home and in the community was based on one interview with Tisdale and limited intelligence testing, her opinion regarding Tisdale's adaptive functioning was not entitled to great weight. *See Crawford v. Comm'r of Soc. Sec.*, 363 F.3d 1155, 1160 (11th Cir. 2004) (the

opinion of a provider who examines a claimant on only one occasion is not entitled to great weight). The fact that Dr. Smith's opinions were at odds with other relevant evidence, including Tisdale's own statements, also supported the ALJ's decision to give less weight to those opinions. *See Phillips v. Barnhart*, 357 F.3d 1232, 1240–41 (11th Cir. 2004); *see also Schink v. Comm'r of Soc. Sec.*, 935 F.3d 1245, 1259 (11th Cir. 2019) (opinions of consulting or evaluating health professionals are generally entitled to less weight than those of treating physicians).

B.

For the same reasons, the ALJ was entitled to reject Dr. Smith's opinion that Tisdale would "likely require a sheltered work setting." This opinion was inconsistent with other evidence in the record, given that (1) none of Tisdale's other medical providers had noted any mental disability, much less the severe limitations that Dr. Smith described; (2) Tisdale's education records indicated that poor attendance, as opposed to lack of ability, was a primary factor in Tisdale's lack of success in school; and (3) Tisdale's and her mother's descriptions of Tisdale's abilities and daily activities did not support a limitation restricting Tisdale to a sheltered work environment. As we have said before, the ALJ "may reject any medical opinion if the evidence supports a contrary finding." *Sharfarz v. Bowen*, 825 F.2d 278, 280 (11th Cir. 1987).

After discounting Dr. Smith's opinion, the ALJ determined that Tisdale had the residual functional capacity to perform light work, *see* 20 C.F.R. § 416.967(b), except that she (1) should be "limited to simple and routine work with few and simple workplace decisions or changes," (2) "can tolerate occasional interaction with coworkers and supervisors with no consequential interaction with the public," (3) should not be exposed to environmental hazards such as unprotected heights, open bodies of water, or unguarded machinery, and (4) should not be exposed to pulmonary irritants or temperature or humidity extremes. These limitations were consistent with the ALJ's findings of moderate limitations in adaptive functioning.

The ALJ posed a hypothetical question to the vocational expert involving a claimant with a residual functional capacity consistent with Tisdale's who was of Tisdale's age and had the same education and work history. The vocational expert testified that the hypothetical claimant could perform three jobs that existed in the national economy: assembler, product marker, or packager. Because, as discussed above, substantial evidence supported the ALJ's determination regarding Tisdale's residual functional capacity, the vocational expert's testimony based on the limitations proposed by the ALJ constitutes substantial evidence that Tisdale could perform jobs existing in the national economy. *See Winschel*, 631 F3d at 1180 (a vocational expert's testimony may serve as substantial evidence that jobs that

claimant can perform exist in the national economy, provided that the ALJ poses a hypothetical question that comprises all of the claimant's impairments).

Tisdale argues that the vocational expert's testimony should be disregarded because the expert relied on job listings in the Department of Labor's Dictionary of Occupational Titles (DOT), which has not been updated since at least 1998.

Tisdale argues that the vocational expert should have disregarded the DOT job listings in favor of the more recently updated information available on the Department's "O*Net." We disagree.

Social Security regulations provide that, in determining whether work that the claimant can do exists in significant numbers in the national economy, the Commissioner will take administrative notice of reliable information "from various governmental and other publications." 20 C.F.R. § 416.966(d). The regulations specifically state that the agency will take notice of the DOT. *Id.* The regulations do not mention O*Net as a source of reliable data or require the agency to compare data from the DOT to O*Net data. On the other hand, the ALJ *was* required to (and did) consider the DOT in conjunction with the vocational expert's testimony. *See* SSR 00-4p, 65 Fed. Reg. 75760 (2000); *Washington v. Comm'r of Soc. Sec.*, 906 F.3d 1353, 1356 (11th Cir. 2018) (ALJ has affirmative duty to address and resolve any conflicts between vocational expert testimony and DOT).

Furthermore, the vocational expert—whose expertise Tisdale has not challenged—responded to Tisdale’s inquiries about O*Net data by stating that the O*Net is not an acceptable source of data for making disability determinations. The expert explained that “O-Net occupational clusters do not include adequate functional performance data and [are] best suited for Vocational Exploration and Career Development.” The ALJ’s finding that the vocational expert’s testimony was reliable and consistent with the DOT was supported by substantial evidence.

III.

For the foregoing reasons, we affirm the district court’s order affirming the Commissioner’s denial of Tisdale’s application for supplemental security income.

AFFIRMED.