

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14205
Non-Argument Calendar

RICHARD EDMOND RIGSBEE,

Plaintiff-Appellant,

versus

SOCIAL SECURITY ADMINISTRATION, COMMISSIONER,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 1:24-cv-00644-JHE

Before JILL PRYOR, BRANCH, and WILSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Richard Rigsbee appeals the district court's decision affirming the denial of his claim for disability insurance benefits (DIB). Rigsbee makes three arguments as to why the

Administrative Law Judge (ALJ) erred in denying his DIB claim. After careful review, find no error and affirm.

I.

In April 2021, Rigsbee applied for DIB, alleging an onset date of April 15, 2021, for the following disabilities: severe emphysema with four-millimeter nodule in lung and chronic obstructive pulmonary disease (COPD). Disability examiners denied Rigsbee's application initially and on reconsideration. Rigsbee then requested and received an administrative hearing before an ALJ.

An ALJ must follow five steps when evaluating a claim for disability.¹ 20 C.F.R. § 404.1520(a). First, if a claimant is engaged in "substantial gainful activity," he is not disabled. *Id.* § 404.1520(b). Second, if a claimant does not have an "impairment or combination of impairments" that significantly limits his physical or mental ability to perform basic work activities, he does not have a severe impairment and is not disabled. *Id.* § 404.1520(c). Third, if a claimant's impairments meet or equal an impairment listed in a provided appendix (the "Listings"), he is disabled. *Id.* § 404.1520(d); *see* 20 C.F.R. pt. 404, subpt. P, app. 1. Fourth, if a claimant's impairments do not meet or equal an impairment in the Listings, the ALJ must assess the claimant's Residual Functional Capacity (RFC) and use it to determine whether the claimant can still

¹ If the ALJ determines that the claimant is or is not disabled at any step of the sequential analysis, the analysis ends. 20 C.F.R. § 404.1520(a)(4).

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perform past relevant work.² 20 C.F.R. § 404.1520(e). If the claimant can do this past relevant work, he is not disabled. *Id.* § 404.1520(f). Fifth, using the claimant's RFC, the ALJ will determine whether the claimant can still perform "past relevant work." *Id.* If a claimant's impairments (considering his RFC, age, education, and past work) do not prevent him from performing other work that exists in the national economy, he is not disabled. *Id.* § 404.1520(g).

First, the ALJ found that Rigsbee had not engaged in substantial gainful activity since his alleged onset date. Second, the ALJ found that Rigsbee possesses the following severe impairments: COPD, panic disorder with agoraphobia, and reactive depression. Third, the ALJ found that Rigsbee does not have an impairment or combination of impairments that meets or medically equals the severity of one of the Listings. The ALJ also found that Rigsbee had a non-severe impairment of mild obstructive sleep apnea, which did not cause significant limitations to Rigsbee's ability to work.

Fourth, after considering all record and medical evidence, the ALJ found that Rigsbee had the RFC to perform a limited range of light work, limited by his ability to:

lift or carry twenty pounds occasionally; and, with customary breaks, [] stand or walk six hours in an eight-hour workday, and [] sit six hours in an eight-

² A claimant's RFC is the most physical and mental work he can perform despite his limitations. 20 C.F.R. § 404.1545(a)(1).

hour workday. He occasionally can climb ramps and stairs, balance while walking, kneel, crawl, stoop, and crouch. The claimant should avoid all exposure to polluted environments or respiratory irritants. He can perform work with occasional interaction and cooperation with coworkers and supervisors; and he can maintain concentration, persistence, or pace to complete work in two-hour intervals for an eight hour day.

The ALJ noted that Rigsbee reported several issues, including fatigue, shortness of breath aggravated by commonplace smells such as money or perfume, and anxiety when around more than three other people. She then explained that Rigsbee's "medically determinable impairments could reasonably be expected to cause the alleged symptoms, however, Rigsbee's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record."

Fifth, the ALJ determined that with his RFC, Rigsbee could continue to perform his past work as a mail handler.³ And with the assistance of a vocational expert, the ALJ determined that Rigsbee could also perform jobs existing in significant numbers in the national economy, including a small parts assembler, dowel

³ The ALJ noted that Rigsbee had the RFC to perform the work of a mail handler as described by the Dictionary of Occupational Titles (DOT), but not as Rigsbee had in fact performed the occupation.

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inspector, table worker, and nut sorter. The ALJ ultimately affirmed the denial of DIB.

Rigsbee then requested that the Appeals Council review the ALJ's decision. Rigsbee submitted additional medical opinions from Drs. Mohammed Shubair and Janie Teschner about his COPD. The Appeals Council denied Rigsbee's request, declining to review the ALJ's decision. The Appeals Council noted that the additional evidence that Rigsbee submitted was neither material nor temporally related to the relevant period. This decision became the final decision of the Commissioner of the Social Security Administration (Commissioner).

Rigsbee then appealed to the district court, which affirmed the Appeals Council's refusal to consider new evidence and the ALJ's denial of Rigsbee's DIB. Rigsbee timely appealed.

II.

When an ALJ denies benefits and the Appeals Council denies review, we review the ALJ's decision as the Commissioner's final decision. *Raper v. Comm'r of Soc. Sec.*, 89 F.4th 1261, 1268 (11th Cir. 2024). We review Social Security disability cases to determine whether the Commissioner's decision is supported by substantial evidence. *Id.* at 1313–14. Substantial evidence is relevant evidence, less than a preponderance but greater than a scintilla, that “a reasonable person would accept as adequate to support a conclusion.” *Viverette v. Comm'r of Soc. Sec.*, 13 F.4th 1309, 1314 (11th Cir. 2021) (internal quotation marks omitted). We review de novo the legal principles applied by the Commissioner. *Raper*, 89 F.4th at 1268.

III.

First, Rigsbee argues that the ALJ's failure to give any deference to his treating physician's opinions conflicted with the text, structure, and purpose of SSA and this court should not defer to the SSA regulation, 20 C.F.R. § 404.1520c, that had abrogated the treating physician rule. He also asserts that the ALJ's determination that he was not disabled was not supported by substantial evidence because the ALJ (1) improperly evaluated medical evidence related to his COPD diagnosis and (2) impermissibly found that his treating physician's opinion was unpersuasive. Rigsbee lastly argues that the Appeals Court erred in denying review after receiving new, material, and relevant evidence. We address each argument in turn.

A. Treating Physician's Opinion

Rigsbee argues that the ALJ failed to give the required deference to his treating physician's opinion. He bases this assertion upon the Supreme Court's decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), claiming that it abrogated the Eleventh Circuit's decision in *Harner v. Soc. Sec. Admin.* 38 F.4th 892 (11th Cir. 2022).

Harner held that a new regulation, 20 C.F.R. § 404.1520c (2017), abrogated the "treating-physician rule,"⁴ which required

⁴ In 1991, to make the treating physician rule uniform across the circuits, the Commissioner lawfully promulgated a rule which said that ALJs were required to give the opinion of a treating physician "substantial or considerable weight unless good cause [was] shown to the contrary." *Phillips v. Barnhart*, 357 F.3d 1232, 1240 (11th Cir. 2004). In 2017, the SSA promulgated a new

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ALJs to defer to the medical opinions of treating physicians when determining whether an individual was disabled under the SSA. *Id.* at 894. We determined that the new regulation had been created under the authority of the Commissioner to “adopt reasonable and proper rules and regulations” for adjudicating disability claims, *id.* at 897 (internal quotation marks omitted), and was therefore valid under the standard set by *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). *Harner*, 38 F.4th at 898. Thereafter, an ALJ must “not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s)” to claims filed on or after March 27, 2017. 20 C.F.R. § 404.1520c(a).

In *Loper Bright*, the Supreme Court overruled *Chevron*, ending the practice where courts were “sometimes required . . . to defer to ‘permissible’ agency interpretations of the statutes those agencies administer[ed].” *Loper Bright*, 603 U.S. at 378. Rigsbee argues that this is enough to abrogate the holding in *Harner*. However, the Supreme Court took care to point out that its ruling did “not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful . . . are still subject to statutory stare decisis.” *Id.* at 412. Indeed, under our prior-panel-precedent rule, “a prior panel’s holding is binding on all subsequent panels unless and until it is

regulation that abrogated this rule. Instead, an ALJ would weigh evidence based on its persuasiveness, rather than giving special weight to a treating physician’s opinion. 20 C.F.R. § 404.1520c.

overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc.” *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). Mere reliance on *Chevron* is not justification enough for overruling precedent that relied upon *Chevron* framework. *Loper Bright*, 603 U.S. at 412. Therefore, *Harner* is still binding law in the Eleventh Circuit.

Because the regulation that was declared valid in *Harner* applies to Rigsbee’s claim, and because *Loper Bright* does not abrogate the holding in that case, the ALJ did not err by declining to defer to the medical opinion of Rigsbee’s treating physician.

B. Medical Evidence

Rigsbee next argues that the ALJ erred in her evaluation of Rigsbee’s emphysema and the related medical opinions because reliance on certain evidence was contrary to modern medical standards and her dismissal of certain medical opinions was unreasonable. Rigsbee asserts that the ALJ failed to correctly interpret the available medical evidence by placing undue value on the results of the spirometry tests, ignoring the GOLD standard. The GOLD standard encourages practitioners, when there is a conflict between the reported symptoms and the spirometry readings, to obtain lung diffusion (DLco) tests and computed tomography (CT) scans.

The SSA requires that an ALJ consider any submitted medical opinion or finding using five enumerated factors: (1) supportability, (2) consistency, (3) relationship with claimant,

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(4) specialization, and (5) other factors. 20 C.F.R. § 404.1520c(a), (c).⁵ Specifically, these findings should include the results of spirometry and other relevant laboratory tests when being used to evaluate a respiratory disorder. *Id.* part 404, subpt. P, app. 1, 3.00(D)(1). There is no requirement that an ALJ use the GOLD standards. Instead, an ALJ is told to evaluate available evidence using a variety of factors, focusing on the relevancy and consistency of said evidence.

That is just what the ALJ here did. Substantial evidence supported the ALJ's finding that medical opinions describing severe limitations were not totally consistent with objective medical findings.⁶

As relevant here, Rigsbee has received a variety of treatments for his COPD. He was prescribed a course of steroids in July 2021 for his COPD. He received another steroid injection and was prescribed an antibiotic in September 2021. At a follow-up visit in January 2022 for medication refills, Rigsbee said he was “doing good” with COPD, and was noted to have unlabored lungs with good bilateral air movement and oxygen saturation. These

⁵ The “most important” factors for evaluating the persuasiveness of a medical opinion are supportability and consistency. In their opinion, an ALJ must explain how it considered those two factors. 20 C.F.R. § 404.1520c(b)(2).

⁶ Moreover, Rigsbee failed to raise the issue of the GOLD standards in the district court, thereby waiving the right to raise the issue on appeal. *Crawford v. Comm’r of Soc. Sec.*, 363 F.3d 1155, 1161 (11th Cir. 2004) (per curiam) (declining to address an argument in a social security appeal that the ALJ erred because the issue was not first raised in the district court).

positive examination results were unchanged in March 2022 and June 2022. Overall, exam observations in the record were of generally normal breath sounds, with occasionally decreased breath sounds and diminished air movement, and oxygen saturation was consistently good. Pulmonary function tests were essentially normal, with some mildly decreased diffusion capacity. Rigsbee was not hospitalized for COPD symptoms during the relevant period.

Under the new regulation, ALJs were to focus on the “persuasiveness of the content of the evidence,” *Harner*, 38 F.4th at 897 (internal quotation marks omitted), giving especial weight to the supportability and consistency of the evidence. 20 C.F.R. § 404.1520c(b)(2). A variety of medical personnel also examined Rigsbee and came to a variety of conclusions about his COPD. Some of these opinions were inconsistent with the results of the pulmonary function test, observations of breath sounds, and good oxygen saturation. Dr. Shubair, in June 2022, stated that he thought Rigsbee was “a candidate for long-term disability,” despite the positive spirometry results, and later described Rigsbee’s COPD as “mild”; Nurse Hannah Pollard noted that Rigsbee had normal breath sounds, no shortness of breath, and good oxygen saturation; and Certified Registered Nurse Practitioner (CRNP) Angela Foster, despite stating that Rigsbee had significant limitations due to his emphysema, noted positive physical symptoms. State agency physicians Drs. Andre Fontana and Krishna Reddy, reviewing available records, came to decide that while Rigsbee could not return to his work as a welder, he could perform a range of light work.

While the SSA reviews and updates the Listings to reflect evolving medical practice and standards, this does not mean that there exists a strict connection between medical standards and legal standards. This court reviews the ALJ's decision to ensure that it is supported by substantial evidence. *Raper*, 89 F.4th at 1268–69. The ALJ weighed the evidence available and came to a reasonable conclusion supported by substantial evidence from the record. Therefore, the ALJ did not err in her evaluation of the medical evidence or opinions.

C. Appeals Council Review

Rigsbee lastly argues that the Appeals Council erred in denying review of the ALJ's decision because Dr. Shubair's additional opinions were materially relevant, and Dr. Teschner's opinion was chronologically relevant.

With a few exceptions, a claimant generally may present evidence at every stage of the administrative process. *Hargress v. Soc. Sec. Admin., Comm'r*, 883 F.3d 1302, 1308 (11th Cir. 2018) (per curiam). “If a claimant presents evidence after the ALJ's decision, the Appeals Council must consider it if it is new, material, and chronologically relevant.” *Id.* at 1309. “[W]hether evidence meets the new, material, and chronologically relevant standard is a question of law subject to our *de novo* review.” *Washington v. Soc. Sec. Admin., Comm'r*, 806 F.3d 1317, 1321 (11th Cir. 2015) (per curiam) (internal quotation marks omitted). And “when the Appeals Council erroneously refuses to consider evidence, it commits legal error and remand is appropriate.” *Id.* As part of our *de novo* review, we

may consider factors that the Appeals Council did not when it refused to consider new evidence. *See id.*

Evidence is material if there is a reasonable possibility “that the evidence would change the administrative result.” *Hargress*, 883 F.3d at 1308 (citation modified); 20 C.F.R. § 416.1470(a)(5). Dr. Shubair submitted two physician statements in August 2021 and April 2022, respectively, stating that Rigsbee’s chest CT scan showed severe emphysema and that this caused his shortness of breath and limited his ability to lift more than ten pounds. However, this is less restrictive than the report submitted by Dr. Shubair to the ALJ. Dr. Shubair’s August 2021 and April 2022 opinions are not materially relevant because they conflict with the other available evidence and have no reasonable possibility of changing the administrative result.

Evidence “is chronologically relevant if it relates to the period on or before the date of the ALJ’s hearing decision.” *Hargress* 883 F.3d at 1308 (citation modified). Despite being based on evidence from before or during the relevant period, Dr. Teschner’s opinion is not chronologically relevant because “nothing in the form or any other documents indicated that [she] evaluated [Rigsbee’s] past medical records when forming that opinion.” *Id.* at 1310.

Moreover, Dr. Teschner’s form is inconsistent with medical records created during the relevant time period that were submitted to the ALJ. As discussed previously, those records stated that Rigsbee would be capable of light work, and that his spirometry

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results were normal. There is no reasonable possibility that the form would change the administrative result. *Washington*, 806 F.3d at 1321.

Here, the Appeals Council did not err in concluding that the new medical records from Drs. Shubair and Teschner were either immaterial or chronologically irrelevant. Because the new evidence was not relevant, the Appeals Council was not required to consider it.

AFFIRMED.