

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Vickie Nolen v. Kilolo Kijakazi

61 F.4th 575 (8th Cir. 2023) · No. 22-1977 · Decided March 2, 2023

SUMMARY

The Eighth Circuit affirmed the denial of Vickie Nolen’s applications for disability insurance benefits and supplemental security income. The court held that the Administrative Law Judge adequately discounted a treating physician’s checklist opinion because it was unsupported, inconsistent with the treatment record and other evidence, and contradicted by Nolen’s activities and conservative treatment. The court concluded that the Commissioner’s decision was legally sound and supported by substantial evidence.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Eighth Circuit                                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Benton, Circuit Judge; Gruender, Circuit Judge; Shepherd, Circuit Judge                                                                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | March 2, 2023                                                                                                                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | 22-1977                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Nolen appealed the Eastern District of Arkansas's order upholding the Commissioner's denial of disability insurance benefits and supplemental security income.                                                                                                                                                                                                                                                                         |
| STANDARD OF REVIEW    | The Eighth Circuit reviews de novo a district court's decision affirming the denial of Social Security benefits. It affirms if the ALJ made no legal error and the decision is supported by substantial evidence on the record as a whole. Substantial evidence requires consideration of evidence supporting and detracting from the Commissioner's decision and exists when a reasonable mind might accept the evidence as adequate. |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                         |
| PARTIES               | Vickie Nolen v. Kilolo Kijakazi, Acting Commissioner of the Social Security Administration                                                                                                                                                                                                                                                                                                                                             |

## TOPICS

judicial review of agency action

administrative law

agency adjudication

standard of review

appellate procedure

## PRACTICE AREAS

Social Security disability

administrative law

federal appellate procedure

## QUESTIONS PRESENTED

1. Whether the ALJ adequately explained the decision to find Dr. Diamond's treating-physician checkbox opinion unpersuasive.
2. Whether the Commissioner's denial of benefits was supported by substantial evidence on the record as a whole.

## HOLDINGS

1. The ALJ permissibly found Dr. Diamond's checkbox opinion unpersuasive because it was a bare, formulaic assessment lacking supporting objective findings and was inconsistent with the doctor's treatment notes, other medical examinations, Nolen's activity level, and her conservative treatment plan.
2. The Commissioner's decision denying benefits was supported by substantial evidence and contained no legal error.

## KEY QUOTATIONS

*"The checkbox opinion here has both flaws identified in Swarthout."* (61 F.4th at 577)

*"Having considered the supportability and consistency of Dr. Diamond's opinion, the ALJ did not need to discuss other factors."* (61 F.4th at 578)

## FACTUAL BACKGROUND

Nolen sought disability insurance benefits and supplemental security income based on alleged disability beginning April 22, 2017. The ALJ determined that she retained the residual functional capacity to perform light work with limitations and that a significant number of jobs existed in the national economy that she could perform. Nolen challenged only the ALJ's treatment of a checkbox opinion by treating physician Dr. Kevin M. Diamond, who stated that her impairments severely limited her physical activity and would cause multiple work absences. The ALJ found that opinion unpersuasive because it was unsupported and inconsistent with conservative treatment records, Dr. Diamond's own notes, other examinations, and Nolen's activity level.

## PROCEDURAL HISTORY

Nolen applied for benefits alleging disability beginning April 22, 2017. After several administrative hearings, an ALJ found her not disabled, and the Appeals Council affirmed, making the ALJ's decision the Commissioner's final decision. The district court upheld the denial, and Nolen appealed to the Eighth Circuit.

## DISPOSITION

affirmed

## CASES CITED

- Schmitt v. Kijakazi, 27 F.4th 1353, 1358 (8th Cir. 2022)
- Freeman v. Apfel, 208 F.3d 687, 691 (8th Cir. 2000)
- Kraus v. Saul, 988 F.3d 1019, 1023-24 (8th Cir. 2021)
- Austin v. Kijakazi, 52 F.4th 723, 728 (8th Cir. 2022)
- Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019)
- Swarthout v. Kijakazi, 35 F.4th 608, 611-12 (8th Cir. 2022)
- Thomas v. Berryhill, 881 F.3d 672, 675 (8th Cir. 2018)