UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

LILLIAN RIVERA	:	
	:	
v.	:	C.A. No. 16-0492-JJM
	:	
NANCY A. BERRYHILL, Acting Commissioner of the Social Security Administration	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter is before the Court for judicial review of a final decision of the Commissioner of the Social Security Administration ("Commissioner") denying Supplemental Security Income ("SSI") and Disability Insurance Benefits ("DIB") under the Social Security Act (the "Act"), 42 U.S.C. § 405(g). Plaintiff filed her Complaint on September 2, 2016 seeking to reverse the Decision of the Commissioner. On October 30, 2017, Plaintiff filed a Motion to Reverse the Decision of the Commissioner. (ECF Doc. No. 21). On January 16, 2018, the Commissioner filed a Motion for an Order Affirming the Decision of the Commissioner. (ECF Doc. No. 23).

This matter has been referred to me for preliminary review, findings and recommended disposition. 28 U.S.C. § 636(b)(1)(B); LR Cv 72. Based upon my review of the record, the parties' submissions and independent research, I find that there is substantial evidence in this record to support the Commissioner's decision and findings that Plaintiff is not disabled within the meaning of the Act. Consequently, I recommend that Plaintiff's Motion to Reverse (ECF Doc. No. 21) be DENIED and that the Commissioner's Motion to Affirm (ECF Doc. No. 23) be GRANTED.

I. PROCEDURAL HISTORY

Plaintiff filed applications for DIB (Tr. 256-260) and SSI (Tr. 263-271) on July 29, 2013 alleging disability with an amended onset date of August 2, 2013. (Tr. 12). The applications were denied initially

on October 16, 2013. (Tr. 99-110, 111-122) and on reconsideration on February 27, 2014. (Tr. 125-135, 136-146). Plaintiff requested an Administrative Hearing. On April 29, 2015, a hearing was held before Administrative Law Judge Donald P. Cole (the "ALJ") at which time Plaintiff, represented by counsel, and a Vocational Expert ("VE") appeared and testified. (Tr. 34-70). The ALJ issued an unfavorable decision to Plaintiff on June 12, 2015. (Tr. 9-33). The Appeals Council denied Plaintiff's request for review on June 29, 2016. (Tr. 1-3). Therefore, the ALJ's decision became final. A timely appeal was then filed with this Court.

II. THE PARTIES' POSITIONS

Plaintiff argues that the ALJ erred by failing to give appropriate weight to the opinions of treating sources, and by adopting the functional assessment of the non-examining DDS psychologist.

The Commissioner disputes Plaintiff's claims and contends that the ALJ properly weighed the medical evidence and rendered an RFC Assessment supported by substantial evidence.

III. THE STANDARD OF REVIEW

The Commissioner's findings of fact are conclusive if supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence is more than a scintilla – i.e., the evidence must do more than merely create a suspicion of the existence of a fact, and must include such relevant evidence as a reasonable person would accept as adequate to support the conclusion. Ortiz v. Sec'y of Health and Human Servs., 955 F.2d 765, 769 (1st Cir. 1991) (per curiam); Rodriguez v. Sec'y of Health and Human Servs., 647 F.2d 218, 222 (1st Cir. 1981).

Where the Commissioner's decision is supported by substantial evidence, the court must affirm, even if the court would have reached a contrary result as finder of fact. Rodriguez Pagan v. Sec'y of Health and Human Servs., 819 F.2d 1, 3 (1st Cir. 1987); Barnes v. Sullivan, 932 F.2d 1356, 1358 (11th Cir. 1991). The court must view the evidence as a whole, taking into account evidence favorable as well as unfavorable to the decision. Frustaglia v. Sec'y of Health and Human Servs., 829 F.2d 192, 195 (1st Cir.

1987); Parker v. Bowen, 793 F.2d 1177 (11th Cir. 1986) (court also must consider evidence detracting from evidence on which Commissioner relied).

The court must reverse the ALJ's decision on plenary review, however, if the ALJ applies incorrect law, or if the ALJ fails to provide the court with sufficient reasoning to determine that he or she properly applied the law. Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999) (per curiam); accord Cornelius v. Sullivan, 936 F.2d 1143, 1145 (11th Cir. 1991). Remand is unnecessary where all of the essential evidence was before the Appeals Council when it denied review, and the evidence establishes without any doubt that the claimant was disabled. Seavey v. Barnhart, 276 F.3d 1, 11 (1st Cir. 2001) citing, Mowery v. Heckler, 771 F.2d 966, 973 (6th Cir. 1985).

The court may remand a case to the Commissioner for a rehearing under sentence four of 42 U.S.C. § 405(g); under sentence six of 42 U.S.C. § 405(g); or under both sentences. Seavey, 276 F.3d at 8. To remand under sentence four, the court must either find that the Commissioner's decision is not supported by substantial evidence, or that the Commissioner incorrectly applied the law relevant to the disability claim. Id.; accord Brenem v. Harris, 621 F.2d 688, 690 (5th Cir. 1980) (remand appropriate where record was insufficient to affirm, but also was insufficient for district court to find claimant disabled).

Where the court cannot discern the basis for the Commissioner's decision, a sentence-four remand may be appropriate to allow her to explain the basis for her decision. Freeman v. Barnhart, 274 F.3d 606, 609-610 (1st Cir. 2001). On remand under sentence four, the ALJ should review the case on a complete record, including any new material evidence. Diorio v. Heckler, 721 F.2d 726, 729 (11th Cir. 1983) (necessary for ALJ on remand to consider psychiatric report tendered to Appeals Council). After a sentence four remand, the court enters a final and appealable judgment immediately, and thus loses jurisdiction. Freeman, 274 F.3d at 610.

In contrast, sentence six of 42 U.S.C. § 405(g) provides:

> The court...may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;

42 U.S.C. § 405(g). To remand under sentence six, the claimant must establish: (1) that there is new, non-cumulative evidence; (2) that the evidence is material, relevant and probative so that there is a reasonable possibility that it would change the administrative result; and (3) there is good cause for failure to submit the evidence at the administrative level. See Jackson v. Chater, 99 F.3d 1086, 1090-1092 (11th Cir. 1996).

A sentence six remand may be warranted, even in the absence of an error by the Commissioner, if new, material evidence becomes available to the claimant. Id. With a sentence six remand, the parties must return to the court after remand to file modified findings of fact. Id. The court retains jurisdiction pending remand, and does not enter a final judgment until after the completion of remand proceedings. Id.

IV. THE LAW

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §§ 416(i), 423(d)(1); 20 C.F.R. § 404.1505. The impairment must be severe, making the claimant unable to do her previous work, or any other substantial gainful activity which exists in the national economy. 42 U.S.C. § 423(d)(2); 20 C.F.R. §§ 404.1505-404.1511.

A. Treating Physicians

Substantial weight should be given to the opinion, diagnosis and medical evidence of a treating physician unless there is good cause to do otherwise. See Rohrberg v. Apfel, 26 F. Supp. 2d 303, 311 (D. Mass. 1998); 20 C.F.R. § 404.1527(d). If a treating physician's opinion on the nature and severity of a claimant's impairments, is well-supported by medically acceptable clinical and laboratory diagnostic

techniques and is not inconsistent with the other substantial evidence in the record, the ALJ must give it controlling weight. 20 C.F.R. § 404.1527(d)(2). The ALJ may discount a treating physician's opinion or report regarding an inability to work if it is unsupported by objective medical evidence or is wholly conclusory. See Keating v. Sec'y of Health and Human Servs., 848 F.2d 271, 275-276 (1st Cir. 1988).

Where a treating physician has merely made conclusory statements, the ALJ may afford them such weight as is supported by clinical or laboratory findings and other consistent evidence of a claimant's impairments. See Wheeler v. Heckler, 784 F.2d 1073, 1075 (11th Cir. 1986). When a treating physician's opinion does not warrant controlling weight, the ALJ must nevertheless weigh the medical opinion based on the (1) length of the treatment relationship and the frequency of examination; (2) the nature and extent of the treatment relationship; (3) the medical evidence supporting the opinion; (4) consistency with the record as a whole; (5) specialization in the medical conditions at issue; and (6) other factors which tend to support or contradict the opinion. 20 C.F.R § 404.1527©. However, a treating physician's opinion is generally entitled to more weight than a consulting physician's opinion. See 20 C.F.R. § 404.1527(c)(2).

The ALJ is required to review all of the medical findings and other evidence that support a medical source's statement that a claimant is disabled. However, the ALJ is responsible for making the ultimate determination about whether a claimant meets the statutory definition of disability. 20 C.F.R. § 404.1527(e). The ALJ is not required to give any special significance to the status of a physician as treating or non-treating in weighing an opinion on whether the claimant meets a listed impairment, a claimant's residual functional capacity (see 20 C.F.R. §§ 404.1545 and 404.1546), or the application of vocational factors because that ultimate determination is the province of the Commissioner. 20 C.F.R. § 404.1527(e). See also Dudley v. Sec'y of Health and Human Servs., 816 F.2d 792, 794 (1st Cir. 1987).

B. Developing the Record

The ALJ has a duty to fully and fairly develop the record. Heggarty v. Sullivan, 947 F.2d 990, 997 (1st Cir. 1991). The Commissioner also has a duty to notify a claimant of the statutory right to

retained counsel at the social security hearing, and to solicit a knowing and voluntary waiver of that right if counsel is not retained. See 42 U.S.C. § 406; Evangelista v. Sec'y of Health and Human Servs., 826 F.2d 136, 142 (1st Cir. 1987). The obligation to fully and fairly develop the record exists if a claimant has waived the right to retained counsel, and even if the claimant is represented by counsel. Id. However, where an unrepresented claimant has not waived the right to retained counsel, the ALJ's obligation to develop a full and fair record rises to a special duty. See Heggarty, 947 F.2d at 997, citing Currier v. Sec'y of Health Educ. and Welfare, 612 F.2d 594, 598 (1st Cir. 1980).

C. Medical Tests and Examinations

The ALJ is required to order additional medical tests and exams only when a claimant's medical sources do not give sufficient medical evidence about an impairment to determine whether the claimant is disabled. 20 C.F.R. § 416.917; see also Conley v. Bowen, 781 F.2d 143, 146 (8th Cir. 1986). In fulfilling his duty to conduct a full and fair inquiry, the ALJ is not required to order a consultative examination unless the record establishes that such an examination is necessary to enable the ALJ to render an informed decision. Carrillo Marin v. Sec'y of Health and Human Servs., 758 F.2d 14, 17 (1st Cir. 1985).

D. The Five-step Evaluation

The ALJ must follow five steps in evaluating a claim of disability. See 20 C.F.R. §§ 404.1520, 416.920. First, if a claimant is working at a substantial gainful activity, she is not disabled. 20 C.F.R. § 404.1520(b). Second, if a claimant does not have any impairment or combination of impairments which significantly limit her physical or mental ability to do basic work activities, then she does not have a severe impairment and is not disabled. 20 C.F.R. § 404.1520(c). Third, if a claimant's impairments meet or equal an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1, she is disabled. 20 C.F.R. § 404.1520(d). Fourth, if a claimant's impairments do not prevent her from doing past relevant work, she is not disabled. 20 C.F.R. § 404.1520(e). Fifth, if a claimant's impairments (considering her residual functional capacity, age, education, and past work) prevent her from doing other work that exists in the national economy, then she is disabled. 20 C.F.R. § 404.1520(f). Significantly, the claimant bears the

burden of proof at steps one through four, but the Commissioner bears the burden at step five. Wells v. Barnhart, 267 F. Supp. 2d 138, 144 (D. Mass. 2003) (five-step process applies to both SSDI and SSI claims).

In determining whether a claimant's physical and mental impairments are sufficiently severe, the ALJ must consider the combined effect of all of the claimant's impairments, and must consider any medically severe combination of impairments throughout the disability determination process. 42 U.S.C. § 423(d)(2)(B). Accordingly, the ALJ must make specific and well-articulated findings as to the effect of a combination of impairments when determining whether an individual is disabled. Davis v. Shalala, 985 F.2d 528, 534 (11th Cir. 1993).

The claimant bears the ultimate burden of proving the existence of a disability as defined by the Social Security Act. Seavey, 276 F.3d at 5. The claimant must prove disability on or before the last day of her insured status for the purposes of disability benefits. Deblois v. Sec'y of Health and Human Servs., 686 F.2d 76 (1st Cir. 1982), 42 U.S.C. §§ 416(i)(3), 423(a), (c). If a claimant becomes disabled after she has lost insured status, her claim for disability benefits must be denied despite her disability. Id.

E. Other Work

Once the ALJ finds that a claimant cannot return to her prior work, the burden of proof shifts to the Commissioner to establish that the claimant could perform other work that exists in the national economy. Seavey, 276 F.3d at 5. In determining whether the Commissioner has met this burden, the ALJ must develop a full record regarding the vocational opportunities available to a claimant. Allen v. Sullivan, 880 F.2d 1200, 1201 (11th Cir. 1989). This burden may sometimes be met through exclusive reliance on the Medical-Vocational Guidelines (the "grids"). Seavey, 276 F.3d at 5. Exclusive reliance on the "grids" is appropriate where the claimant suffers primarily from an exertional impairment, without significant non-exertional factors. Id.; see also Heckler v. Campbell, 461 U.S. 458, 103 S. Ct. 1952, 76 L.Ed.2d 66 (1983) (exclusive reliance on the grids is appropriate in cases involving only exertional

impairments, impairments which place limits on an individual's ability to meet job strength requirements).

Exclusive reliance is not appropriate when a claimant is unable to perform a full range of work at a given residual functional level or when a claimant has a non-exertional impairment that significantly limits basic work skills. Nguyen, 172 F.3d at 36. In almost all of such cases, the Commissioner's burden can be met only through the use of a vocational expert. Heggarty, 947 F.2d at 996. It is only when the claimant can clearly do unlimited types of work at a given residual functional level that it is unnecessary to call a vocational expert to establish whether the claimant can perform work which exists in the national economy. See Ferguson v. Schweiker, 641 F.2d 243, 248 (5th Cir. 1981). In any event, the ALJ must make a specific finding as to whether the non-exertional limitations are severe enough to preclude a wide range of employment at the given work capacity level indicated by the exertional limitations.

1. Pain

"Pain can constitute a significant non-exertional impairment." Nguyen, 172 F.3d at 36. Congress has determined that a claimant will not be considered disabled unless he furnishes medical and other evidence (e.g., medical signs and laboratory findings) showing the existence of a medical impairment which could reasonably be expected to produce the pain or symptoms alleged. 42 U.S.C. § 423(d)(5)(A). The ALJ must consider all of a claimant's statements about his symptoms, including pain, and determine the extent to which the symptoms can reasonably be accepted as consistent with the objective medical evidence. 20 C.F.R. § 404.1528. In determining whether the medical signs and laboratory findings show medical impairments which reasonably could be expected to produce the pain alleged, the ALJ must apply the First Circuit's six-part pain analysis and consider the following factors:

> (1) The nature, location, onset, duration, frequency, radiation, and intensity of any pain;
>
> (2) Precipitating and aggravating factors (e.g., movement, activity, environmental conditions);

(3) Type, dosage, effectiveness, and adverse side-effects of any pain medication;

(4) Treatment, other than medication, for relief of pain;

(5) Functional restrictions; and

(6) The claimant's daily activities.

Avery v. Sec'y of Health and Human Servs., 797 F.2d 19, 29 (1st Cir. 1986). An individual's statement as to pain is not, by itself, conclusive of disability. 42 U.S.C. § 423(d)(5)(A).

2. Credibility

Where an ALJ decides not to credit a claimant's testimony about pain, the ALJ must articulate specific and adequate reasons for doing so, or the record must be obvious as to the credibility finding. Rohrberg, 26 F. Supp. 2d at 309. A reviewing court will not disturb a clearly articulated credibility finding with substantial supporting evidence in the record. See Frustaglia, 829 F.2d at 195. The failure to articulate the reasons for discrediting subjective pain testimony requires that the testimony be accepted as true. See DaRosa v. Sec'y of Health and Human Servs., 803 F.2d 24 (1st Cir. 1986).

A lack of a sufficiently explicit credibility finding becomes a ground for remand when credibility is critical to the outcome of the case. See Smallwood v. Schweiker, 681 F.2d 1349, 1352 (11th Cir. 1982). If proof of disability is based on subjective evidence and a credibility determination is, therefore, critical to the decision, "the ALJ must either explicitly discredit such testimony or the implication must be so clear as to amount to a specific credibility finding." Foote v. Chater, 67 F.3d 1553, 1562 (11th Cir. 1995) (quoting Tieniber v. Heckler, 720 F.2d 1251, 1255 (11th Cir. 1983)).

V. APPLICATION AND ANALYSIS

A. The ALJ's Decision

The ALJ decided this case adverse to Plaintiff at Step 5. At Steps 2 and 3, the ALJ found that Plaintiff's personality disorder, affective disorder and anxiety disorder were severe impairments, but that they did not meet or medically equal the requirements of any Listing. (Tr. 14-17). The ALJ then

determined that she retained the RFC to perform a full range of exertional work, but was limited to understanding, remembering and carrying out simple, routine, repetitive tasks, and breaks every two hours; to no interaction with the general public; and to occasional work-related, non-personal, non-social interaction with co-workers and supervisors, involving no more than a brief exchange of information or hand-off of work product. (Tr. 17). At Step 4, the ALJ found that Plaintiff could not perform her past relevant work as a social worker. (Tr. 24). At Step 5, the ALJ found that she was capable of performing jobs that exist in significant numbers in the national economy, including such unskilled, medium work as a hand packager and unskilled, light work as an assembler. (Tr. 24-25). The ALJ concluded that she was not disabled from August 2, 2013 through the date of his decision. (Tr. 25). Finally, the ALJ noted that Plaintiff's history of polysubstance and alcohol abuse/dependence, in full, sustained remission, was "not a contributing factor to material to a finding of not disabled." Id.

B. Plaintiff Has Shown No Error in the ALJ's RFC Assessment

Initially, I will address the scope of this review. Plaintiff focuses her argument on the ALJ's treatment of her mental impairments and seeks remand "for further development of her non-exertional impediments to employment." (ECF Doc. No. 21-1 at p. 14). Further, Defendant argues in her brief that Plaintiff's appeal is focused on mental health evidence and that Plaintiff has waived any challenge to the ALJ's physical RFC findings. (ECF Doc. No. 23-1 at p. 2, n.3 and p. 18, n.8). Since Plaintiff chose not to file a reply brief, Defendant's waiver argument is unopposed. Accordingly, I will limit my review to the ALJ's evaluation of the mental health evidence of record and his non-exertional RFC findings.

It is undisputed that the ALJ's RFC finding is based on the opinions of the non-examining state agency psychologists. In particular, the October 16, 2013 opinion of Dr. Warren (Exh. 6A) and the November 6, 2013 opinion of Dr. Gordon. (Exh. 9A). The ALJ discusses Dr. Gordon's opinion in his decision and explains why he believes it is worthy of "considerable weight." (Tr. 23-24). In rendering his opinion, Dr. Gordon reviewed Plaintiff's treatment records through October 2013 including a report from an October 8, 2013 consultative psychological evaluation conducted by Dr. Pittenger. (Tr. 127-128,

Exh. 11F). Although Dr. Pittenger assessed a GAF score of 48 reflecting serious symptoms, the ALJ accurately observed that Dr. Pittenger noted that Plaintiff's "presentation was highly suggestive of sedation." (Tr. 18-19, 491). The ALJ also appropriately considered Dr. Pittenger's report that Plaintiff's "performance on mental status exam activity should be interpreted with some caution given significant variability in her performance and behavior suggesting superficial effort." (Tr. 19, 495).

Plaintiff makes two primary arguments for reversal. First, she contends that the ALJ's rejection of the treating source opinions was result-oriented and based on "selectively picked" evidence. (ECF Doc. No. 21-1 at p. 12). Second, she argues that the ALJ erred by relying on the opinions of the consulting psychologist because they were based on a "substantially incomplete medical record." Id. at p. 13. Neither argument is well supported.

It is well established that an ALJ is not automatically required to give greater weight to the opinions of treating physicians than to those of non-examining consultants, such as the state agency psychologists.[1] See Arroyo v. Sec'y of HHS, 932 F.2d 82, 89 (1st Cir. 1991). Rather, the ALJ has the discretion to resolve conflicts between opinions of treating and non-examining sources, even where the treating sources describe much more severe conditions than do the reviewing consultants. See Rivera-Torres v. Sec'y of HHS, 837 F.2d 4, 5 (1st Cir. 1988). The ALJ's only obligation is to "give good reasons in our notice of determination or decision for the weight we give your treating source's medical opinion." 20 C.F.R. § 404.1527(c)(2). If the ALJ gives such "good reasons" for giving less than controlling weight to the treating source opinions, as he did here, it is within his province to accord greater weight to the report or testimony of a medical expert commissioned by the Commissioner. Keating v. Sec'y of HHS,

[1] Plaintiff cites three 4th Circuit cases decided prior to 1985 for the proposition that an opinion of a non-examining, non-treating physician is not substantial evidence when it is contradicted by other evidence in the record. (ECF Doc. No. 21-1 at p. 12). That is simply not the law in this Circuit. "[An ALJ] may reject a treating physician's opinion as controlling if it is inconsistent with other substantial evidence in the record, even if that evidence consists of reports from non-treating doctors." Castro v. Barnhart, 198 F. Supp. 2d 47, 54 (D. Mass. 2002) (citing Shaw v. Sec'y of HHS, 25 F.3d 1037 (1st Cir. 1994)). More to the point, it is apparently no longer good law in the 4th Circuit and thus should not have been cited in Plaintiff's Brief. See, e.g., Mecimore v. Astrue, 2010 WL 7281096, *3, n.5, Civil No. 5:10CV64-RLV-DSC (W.D.N.C. Dec. 10, 2010).

848 F.2d 271, 275, n.1 (1st Cir. 1988); Lizotte v. Sec'y of HHS, 654 F.2d 127, 130 (1st Cir. 1981). Based on the facts of this case, the non-examining psychologists' opinions constitute substantial evidence in support of the ALJ's decision. See Berrios-Lopez v. Sec'y of HHS, 951 F.2d 427, 431 (1st Cir. 1991); Brown v. Apfel, 71 F. Supp. 2d 28, 39 (D.R.I. 1999).

Here, Plaintiff does not even cite the "good reasons" requirement of the regulation applicable to the review of treating source opinions, or specifically argue that the ALJ has failed to give "good reasons" in this case. Rather, Plaintiff focuses on only a couple of the reasons given by the ALJ and faults the ALJ for allegedly relying upon "selectively picked" evidence. However, Plaintiff fails to acknowledge or address the numerous other reasons given by the ALJ in support of his decision to favor the opinions of the consulting psychologists over the treating source opinions. Her argument is neither well-developed nor well-supported.

As to the ALJ's reliance on Dr. Gordon's opinion, it is true that the record contains subsequent treatment records not considered by Dr. Gordon. However, Plaintiff does not argue that her condition materially deteriorated after Dr. Gordon reviewed the records or provide any developed reasoning as to why those subsequent records preclude the ALJ from relying upon Dr. Gordon's opinions. (ECF Doc. No. 21-1 at p. 13). Plaintiff's argument is once again neither well-developed nor well-supported. In addition, Plaintiff's counsel chose not to file a reply brief to address any of the shortcomings accurately pointed out in the Commissioner's Brief. "An ALJ may rely on [a state agency opinion] where the evidence post-dating the reviewer's assessment does not establish any greater limitations." Fleetwood v. Colvin, 103 F. Supp. 3d 199, 204 (D.R.I. 2015). See also Alcantara v. Astrue, No. 07-1056, 2007 WL 4328148 (1st Cir. Dec. 12, 2007) (per curiam) (holding that ALJ erred by considering the opinion of a non-examining psychologist when the record reflected a subsequent material deterioration of claimant's mental health). Since Plaintiff has pointed to no evidence that her condition worsened after Dr. Gordon rendered his opinion, she has shown no error in the ALJ's reliance upon that opinion.

Ultimately, Plaintiff's challenge to the ALJ's evaluation of the medical opinion evidence inappropriately asks this Court to re-weigh the record evidence in a manner more favorable to her. See, e.g., Seavey v. Barnhart, 276 F.3d 1, 10 (1st Cir. 2001) (the ALJ is responsible for weighing the evidence and resolving conflicts in the evidence). The ALJ weighed conflicting evidence in this record, and Plaintiff has shown no error in his ultimate decision to favor the opinions of the reviewing psychologists. Castro v. Barnhart, 198 F. Supp. 2d 47, 54 (D. Mass. 2002) (The ALJ "may reject a treating physician's opinion as controlling if it is inconsistent with other substantial evidence in the record, even if that evidence consists of reports from non-treating doctors."). "The ALJ's resolution of evidentiary conflicts must be upheld if supported by substantial evidence, even if contrary results might have been tenable also." Benetti v. Barnhart, 193 Fed. Appx. 6, 2006 WL 2555972 (1st Cir. Sept. 6, 2006) (per curiam) (citing Rodriguez Pagan v. Sec'y of HHS, 819 F.2d 1 (1st Cir. 1987)). In other words, the issue presented is not whether this Court would have found Plaintiff's impairments to be disabling but whether the record contains sufficient support for the ALJ's non-disability finding. Since Plaintiff has shown no error in the ALJ's evaluation of the medical opinions and other evidence of record, there is no basis for reversal and remand of this disability benefits denial.

VI. CONCLUSION

For the reasons discussed herein, I recommend that Plaintiff's Motion to Reverse (ECF Doc. No. 21) be DENIED and that Defendant's Motion to Affirm (ECF Doc. No. 23) be GRANTED. I further recommend that Final Judgment enter in favor of Defendant.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
March 5, 2018