UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DONNA A. H.,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 17-435WES
	:	
NANCY A. BERRYHILL, ACTING	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

The matter is before the Court on Plaintiff Donna A. H.'s motion to remand/reverse the Commissioner's decision denying Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") under §§ 205(g) and 1631(c)(3) of the Social Security Act, 42 U.S.C. §§ 405(g), 1383(c)(3) (the "Act"). Plaintiff claims that the Administrative Law Judge ("ALJ") erroneously assessed the opinion evidence, which resulted in the flawed Step Two finding that none of her many medically determinable impairments, alone or in combination, significantly limit her ability to do basic work activities.[1] She also argues that the ALJ's "credibility" assessment is deficient in that the ALJ failed to consider Plaintiff's stellar work history. Defendant Nancy A. Berryhill ("Defendant") has filed a motion for an order affirming the Commissioner's decision.

The matter has been referred to me for preliminary review, findings and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Having reviewed the entire record, I find that the ALJ's findings are sufficiently supported by substantial evidence. Accordingly, I

[1] In a footnote, the ALJ set out an alternative holding based on the ability to work at the medium exertional level. Tr. 32 n.4. Plaintiff correctly argues that this alternative analysis lacks the support of substantial evidence; the Commissioner does not argue otherwise. The alternative analysis will not be discussed further in this report and recommendation.

recommend that Plaintiff's Motion to Remand/Reverse the Commissioner's Decision (ECF No. 14) be DENIED and Defendant's Motion for an Order Affirming the Decision of the Commissioner (ECF No. 15) be GRANTED.

I. BACKGROUND

Plaintiff worked very consistently for many years as a bakery helper until she hurt her knee at work in May 2013. Tr. 56. On May 5, 2013, her alleged onset-of-disability date, she stopped working and collected workers compensation due to the knee injury; in September 2013, she was cleared to return to work but then was laid off. Id. According to her testimony, in June 2014, she started working part time (between two and four hours a day) at a farm. Tr. 42. She testified that she continued in that job until at least October 2014. Id.; see Tr. 456 (December 2014 treating note states that Plaintiff works part time at farm). Apparently, she also worked at the farm in 2015: her primary care physician, Dr. Murray Buttner, noted that she was working "very part time" at a farm on April 7, 2015, while Plaintiff's attorney submitted a pay stub from Fort Hill Farms & Garden LLC for a two-week period in October 2015, which reflected fifty-two hours worked during that period. Tr. 204, 454. The ALJ found that the farm work did not amount to the level of a substantial gainful activity. Tr. 25.

Medically, Plaintiff had suffered from serious alcohol abuse for many years, although by the time of the period in issue, she was drinking less or not at all. While she was still working full time, in addition to the effects of alcohol, she suffered from "tobaccoism," with coughing and wheezing, and a question of anemia, as well as issues with her knee, lower extremities (pain, numbness and sciatica), and chronic back and shoulder pain, for which Dr. Buttner consistently prescribed Percocet and sometimes Oxycodone. Tr. 406-25.

From her alleged date of onset in May 2013 until October 2013, there is no medical treatment in the record. In October 2013, she was hospitalized for two days, the first of four short hospitalizations in 2013 and 2014 for electrolyte imbalance and blood pressure issues;[2] she was discharged much improved with the recommendation to eat better and drink less. Tr. 313. In follow up, Dr. Buttner urged Plaintiff to stop giving blood every six weeks, which she had been doing. Tr. 404. This hospitalization is followed by another gap in treatment until March 2014, when Plaintiff saw Dr. Buttner to pick up prescriptions; Dr. Buttner observed that she had fractured her wrist, for which he sent her for treatment. Tr. 402. Otherwise, she had "done quite well," Tr. 341, until April 2014, when she was hospitalized again with symptoms similar to those in October 2013. Tr. 331-49. With similar treatment (a good diet and intravenous administration of fluids to address electrolyte imbalance), as well as Prednisone to treat possible remitting seronegative symmetrical synovitis with pitting edema ("RS3PE"), at discharge, she was "exceptionally better." Tr. 344-45. It happened a third time in June; again, she responded positively to IV treatment for electrolyte imbalance and steroid treatment for RS3PE. Tr. 367-68. The fourth hospitalization for similar symptoms, as well as for difficulty breathing, was in July 2014. Chronic obstructive pulmonary disease ("COPD") was identified as an ongoing issue, for which Spiriva was prescribed, and Bartter's syndrome was suggested as an explanation for the ongoing electrolyte imbalance. Tr. 369-70, 463-64. After this hospitalization, Dr. Buttner found that "she is doing well. . . [b]reathing is much better," and proposed Gitelman syndrome as a diagnosis to explain the electrolyte issues; treatment for Gitelman syndrome was initiated. Tr. 463.

[2] Her diagnoses included near syncope, anemia, dehydration, orthostatic hypotension, hypokalemia and hyponatremia. Tr. 313-17.

After another treatment gap, imaging done in October 2014 showed that Plaintiff's wrist was well healed and her knee MRI was normal, but that she had osteoarthritis at the base of her thumb. Tr. 439-40. Soon after, on November 6, 2014, Plaintiff returned to the hospital, this time for shortness of breath; she was sent home the same day with an inhaler. Tr. 460. Dr. Buttner urged her to stop smoking. Tr. 459. A month later, Plaintiff saw Dr. Buttner, complaining that she hurt her back pulling out a sofa bed. Tr. 456-57. Dr. Buttner's note reflects that Plaintiff was working at the farm, as well as that Gitelman syndrome and RS3PE were stable and anemia was resolved; he increased the COPD medication and prescribed a narcotic for back pain. Tr. 457. After another treatment gap, Plaintiff saw Dr. Buttner on April 7, 2015; in response to her complaints of neuropathy (tingling and pain in the lower extremities, arms, and shoulders), he noted that she was still working part time at the farm, that "her labs in February looked good," that Gitelman syndrome and RS3PE were stable and that she was eating well and not drinking alcohol. For treatment, he added Neurontin and otherwise continued prescribed medications. Tr. 454-55. A spinal x-ray in the same month showed uncovertebral joint disease with mild foraminal narrowing, while a May 2015 x-ray showed mild-to-moderate arthrosis of the thumb. Tr. 442.

From May 2015 through the date of the ALJ's February 17, 2016, hearing, no further treatment appears in the record.[3] With no records suggesting that he had seen Plaintiff since April 7, 2015, on February 16, 2016, the day before the ALJ hearing, Dr. Buttner signed an opinion in support of Plaintiff's disability application; it reflects a sedentary functional capacity, including that she could rarely lift as much as ten pounds and never more, could walk no more

[3] The ALJ inquired about this extended treatment gap. Tr. 48. In response, neither Plaintiff nor her counsel identified missing treatment records, until the week before the February 17, 2016, hearing, when Plaintiff was seen about her thumb; a brace was suggested in the hope, Plaintiff was told, "it would get better." Tr. 47-48. No other treatment between May 2015 and February 2016 was identified.

than one hour, stand no more than two hours and sit no more than four hours, as well as many other limitations effectively precluding all work. Tr. 497.

During the pendency of the applications, the Social Security Administration arranged for a consultative examination in August 2014, but Plaintiff failed to appear. Tr. 31. She claims because she could not get a ride. Tr. 52. When the examination was reset (with notification to both Plaintiff and her attorney), she again failed to appear. Tr. 52, 493-94. Plaintiff claimed she was not aware of the second appointment. Tr. 52. In an unchallenged finding, the ALJ appropriately considered these failures to appear for a medical examination in connection with his finding that Plaintiff's subjective statements regarding symptom severity were compromised. Tr. 31.

II. STANDARD OF REVIEW

"The First Circuit has stated that courts should ensure 'a just outcome' in Social Security disability claims." Santa v. Astrue, 924 F. Supp. 2d 386, 391 (D.R.I. 2013) (quoting Pelletier v. Sec'y of Health, Educ. & Welfare, 525 F.2d 158, 161 (1st Cir. 1975)). "[T]he Social Security Act is to be construed liberally to effectuate its general purpose of easing the insecurity of life." Mary K v. Berryhill, C.A. No. 17-278-JJM-PAS, 2018 WL 3617310, at *2 (D.R.I. July 30, 2018) (citing Rodriguez v. Celebrezze, 349 F.2d 494, 496 (1st Cir. 1965)). Nevertheless, 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 – that is, 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. Irlanda Ortiz v. Sec'y of Health & Human Servs., 955 F.2d 765, 769 (1st Cir. 1991) (per curiam); Rodriguez v. Sec'y of Health & Human Servs., 647 F.2d 218, 222 (1st Cir. 1981); Brown v. Apfel, 71 F. Supp. 2d 28,

30 (D.R.I. 1999). Once the Court concludes that the decision is supported by substantial evidence, the Commissioner must be affirmed, even if the Court would have reached a contrary result as finder of fact. Rodriguez Pagan v. Sec'y of Health & Human Servs., 819 F.2d 1, 3 (1st Cir. 1987); see also Barnes v. Sullivan, 932 F.2d 1356, 1358 (11th Cir. 1991); Lizotte v. Sec'y of Health & Human Servs., 654 F.2d 127, 128 (1st Cir. 1981).

The determination of substantiality is based upon an evaluation of the record as a whole. Brown, 71 F. Supp. 2d at 30; see also Frustaglia v. Sec'y of Health & Human Servs., 829 F.2d 192, 195 (1st Cir. 1987); Parker v. Bowen, 793 F.2d 1177, 1180 (11th Cir. 1986) (court also must consider evidence detracting from evidence on which Commissioner relied). Thus, the Court's role in reviewing the Commissioner's decision is limited. Brown, 71 F. Supp. 2d at 30. The Court does not reinterpret the evidence or otherwise substitute its own judgment for that of the Commissioner. Id. at 30-31 (citing Colon v. Sec'y of Health & Human Servs., 877 F.2d 148, 153 (1st Cir. 1989)). "[T]he resolution of conflicts in the evidence is for the Commissioner, not the courts." Id. at 31 (citing Richardson v. Perales, 402 U.S. 389, 399 (1971)). A claimant's complaints alone cannot provide a basis for entitlement when they are not supported by medical evidence. See Avery v. Sec'y of Health & Human Servs., 797 F.2d 19, 20-21 (1st Cir. 1986); 20 C.F.R. § 404.1529(a).[4]

III. DISABILITY DETERMINATION

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

[4] The Social Security Administration has promulgated identical sets of regulations governing eligibility for DIB and SSI. See McDonald v. Sec'y of Health & Human Servs., 795 F.2d 1118, 1120 n.1 (1st Cir. 1986). For simplicity, the Court cites to one set only. See id.

twelve months. 42 U.S.C. § 416(I); 20 C.F.R. § 404.1505. The impairment must be severe, making the claimant unable to do 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. §§ 404.1505-1511.

A. Five-Step Analytical Framework

The ALJ must follow five steps in evaluating a claim of disability. See 20 C.F.R. § 404.1520. First, if a claimant is working at a substantial gainful activity, the claimant is not disabled. 20 C.F.R. § 404.1520(b). Second, if a claimant does not have any impairment or combination of impairments that significantly limit physical or mental ability to do basic work activities, then the claimant does not have a severe impairment and is not disabled. 20 C.F.R. § 401.1520(c). Third, if a claimant's impairments meet or equal an impairment listed in 20 C.F.R. Part 404, Appendix 1, the claimant is disabled. 20 C.F.R. § 404.1520(d). Fourth, if a claimant's impairments do not prevent doing past relevant work, the claimant is not disabled. 20 C.F.R. § 404.1520(e)-(f). Fifth, if a claimant's impairments (considering RFC, age, education and past work) prevent doing other work that exists in the local or national economy, a finding of disabled is warranted. 20 C.F.R. § 404.1520(g). 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 DIB and SSI claims). That is, once the ALJ finds that a claimant cannot return to the prior work, the burden of proof shifts to the Commissioner to establish that the claimant could perform other work that exists in the local or national economy. Seavey v. Barnhart, 276 F.3d 1, 5 (1st Cir. 2001). To meet 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).

B. Treating Physicians

Substantial weight should be given to the opinion, diagnosis and medical evidence of a treating physician unless there are good reasons to do otherwise. See Rohrberg v. Apfel, 26 F. Supp. 2d 303, 311 (D. Mass. 1998); 20 C.F.R. § 404.1527(c). 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. Konuch v. Astrue, No. 11-193L, 2012 WL 5032667, at *4-5 (D.R.I. Sept. 13, 2012); 20 C.F.R. § 404.1527(c)(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 & Human Servs., 848 F.2d 271, 275-76 (1st Cir. 1988). The ALJ's decision must articulate the weight given, providing "good reasons" for the determination. See Sargent v. Astrue, No. CA 11-220 ML, 2012 WL 5413132, at *7-8, 11-12 (D.R.I. Sept. 20, 2012) (where ALJ failed to point to evidence to support weight accorded treating source opinion, court will not speculate and try to glean from the record; remand so that ALJ can explicitly set forth findings).

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) nature and extent of the treatment relationship; (3) 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(c). As SSR 96-2p provides:

> The notice of the determination or decision must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight.

SSR 96-2p, 1996 WL 374188 (July 2, 1996). When 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).

C. Step Two Standard

The First Circuit has long held that Step Two is a screening device to eliminate applicants whose impairments are so minimal that, as a matter of common sense, they are clearly not disabled from gainful employment. McDonald v. Sec'y of Health & Human Servs., 795 F.2d 1118, 1123 (1st Cir. 1986); Burge v. Colvin, C.A. No. 15-279S, 2016 WL 8138980, at *7 (D.R.I. Dec. 7, 2016), adopted sub nom., Burge v. Berryhill, C.A. No. 15-279 S, 2017 WL 435753 (D.R.I. Feb. 1, 2017). An impairment is "not severe" at Step Two only when the medical evidence establishes no more than a slight abnormality that would have no more than a minimal effect on an individual's ability to work. SSR 85-28, 1985 WL 56856, at *2 (Jan. 1, 1985). The deferential requirement of substantial evidence – "more than a scintilla" – is deployed at Step Two; a preponderance of evidence is not required. Purdy v. Berryhill, 887 F.3d 7, 13 (1st Cir. 2018) (citing Bath Iron Works Corp. v. U.S. Dep't of Labor, 336 F.3d 51, 56 (1st Cir. 2003)). As at subsequent steps, "[i]ssues of credibility and the drawing of permissible inference from evidentiary facts are the prime responsibility of the [Commissioner], and the resolution of conflicts in the evidence and the determination of the ultimate question of disability is for [her], not for the doctors or for the courts." Id. (internal quotation marks omitted). The claimant bears the burden of showing Step Two severity. Freeman v. Barnhart, 274 F.3d 606, 608 (1st Cir. 2001).

IV. ANALYSIS

A. Opinion Evidence

During the period in issue, the ALJ found that Plaintiff suffered from twenty-five medically determinable impairments.[5] In concluding that none of them (alone or in combination) amounted to a severe impairment, ending the disability analysis at Step Two, the ALJ relied on the assessments of the two SSA expert physicians who reviewed file – Dr. Henry Laurelli, whose opinion was signed on October 27, 2014, and Dr. Henry Scovern, who signed his opinion on February 27, 2015.

Both of these physician-experts marshaled their medical and Social Security expertise and evaluated the functional significance of the laboratory test results, clinical observations and subjective reports reflected in the file. The gravamen of Dr. Laurelli's opinion is focused on the twelve-month durational requirement in that Plaintiff's acute episodes (such as those caused by possible RS3PE, wrist fracture and electrolyte imbalance) resolved quickly, well within the twelve-month period. See Tr. 77, 83. On reconsideration, Dr. Scovern specifically noted the full range of Plaintiff's impairments (including the newer diagnoses of COPD and Gitelman syndrome). Tr. 92, 100. Both reached the same conclusion: that Plaintiff does not have a combination of impairments that is severe as that term is defined at Step Two. Tr. 77-78, 83-84 93, 101. And Plaintiff concedes that this conclusion was not "necessarily unreasonable at the time it was made." ECF No. 14-1 at 16 n.7 (italics omitted). Instead, she argues that the file was supplemented with additional records after the file review was completed. However, because of Plaintiff's ten-month treatment gap in the period leading up to the ALJ's hearing, this argument

[5] They are: chronic obstructive pulmonary disease, lumbago, degenerative joint disease in the right shoulder status post arthroplasty, degenerative disc disease in the cervical spine, remitting seronegative symmetrical synovitis with pitting edema, pulmonary nodules, mild gastritis, colon polyps, hemorrhoids, urinary tract infection, syncope, macrocytic anemia, hypokalemia, dehydration, hyponatremia, history of malnutrition, mild alcoholic hepatitis, distal radius fracture, carpometacarpal joint arthritis, orthostatic hypotension, fatty liver, cholelithiasis, history of pneumonia, and history of alcohol dependence. Tr. 25.

rings hollow. In fact, Dr. Scovern reviewed a file that was very nearly complete.[6] The only potentially material record that Dr. Scovern did not see was Dr. Buttner's opinion, which was not signed until the day before the ALJ's hearing. However, because Plaintiff had not seen Dr. Buttner for ten months at the time he signed the opinion, it was necessarily based on the records from the earlier period, almost all of which Dr. Scovern did review. I find that the Laurelli/Scovern opinions constitute substantial evidence on which the ALJ was entitled to rely in making his Step Two finding.

The remaining issue is whether the ALJ erred in his assessment of the Buttner opinion. I find that he did not. Rather, the decision reflects that the ALJ carefully considered Dr. Buttner's opinion in light of the overall record, the Buttner treating materials, and the Laurelli/Scovern opinions, and appropriately gave several "good reasons" for deciding to afford it no weight. See 20 C.F.R. § 404.1527(c)(2) ("We will always give good reasons in our notice of determination or decision for the weight we give your treating source's medical opinion.").

The ALJ's "good reasons" may be briefly summarized. First, the ALJ found that the opinion's extreme limits are inconsistent with Dr. Buttner's benign or minor findings on examination as reflected in his records. This portion of the ALJ's decision is not just a conclusory statement; rather, the ALJ itemizes the record references that clash with the opinion, concluding that "the primary care exam remained generally unremarkable with minimal objective findings." Tr. 30-32. Second, the ALJ found that the Buttner opinion is inconsistent with the balance of the record as a whole, which "reflect[s] overall improvement in the context

[6] Plaintiff's argument is simply that the SSA file review "obviously" predates "some" unspecified medical evidence. ECF No. 14-1, at 16 n.7. In fact, the treating records missing from the file reviewed by Dr. Scovern are very limited. They consist of Dr. Buttner's treating note from April 7, 2015, and the 2015 imaging of the thumb and cervical spine. Plaintiff does not argue that these records reflect a material worsening of her condition. The ALJ specifically found that they do not. Tr. 32. I find no error in that finding. Diggett v. Berryhill, C.A. No. 16-233-M, 2017 WL 3705072, at *1 (D.R.I. Aug. 28, 2017) (when post-review medical evidence does not indicate worsening conditions, original determination retains validity).

of compliance to the medication regimen and treatment recommendations." Tr. 32. Third, the ALJ noted that the Buttner treating record ended in April 2015, and that Plaintiff did not see Dr. Buttner and had no treatment of any sort for any of the identified impairments during the ten months leading up to the Buttner opinion. Tr. 31. Finally, the ALJ noted that Dr. Buttner's treating records had been analyzed by the SSA non-examining physicians, Drs. Laurelli and Scovern, and that their opinions support the finding that the Buttner notes "are insufficient to support limitations greater than the assessments rendered by the State agency medical consultants." Tr. 32. Based on these reasons, and consistent with the First Circuit's holding in Shaw v. Sec'y of Health & Human Servs., 25 F.3d 1037, 1994 WL 251000 (1st Cir. 1994) (table), the ALJ rejected Dr. Buttner's opinion and based his decision on the opinions of the non-examining experts. Id. at *3-4.

Plaintiff challenges three aspects of the ALJ's approach. First, and, as Plaintiff contends, "most importantly," ECF No 14-1, at 9, she argues that the ALJ failed to consider that Dr. Buttner had been Plaintiff's treating physician for four years, as well as that he is board-certified in family medicine. Second, Plaintiff argues that the ALJ erred in finding inconsistency between Dr. Buttner's treating notes and his opinions, because that conclusion amounted to an improper lay evaluation of the treating record. And third, she asks the Court to reweigh the evidence and conclude that the Buttner opinions are not inconsistent with the record as a whole. In examining these claims of error, the Court remains mindful that Plaintiff bears the burden at Step Two. Freeman, 274 F.3d at 608.

Plaintiff's first argument fails because it is contradicted by the ALJ's decision, which specifically refers to Dr. Buttner as the treating primary care physician throughout the period in issue and specifically discusses years of Dr. Buttner's treatment. Tr. 27-30. The decision

reflects that the ALJ plainly accepted Dr. Buttner as Plaintiff's long-term primary care physician and did not discount his opinion based on the lack of duration of the relationship or on Dr. Buttner's lack of expertise as a primary care physician. In any event, Dr. Buttner's opinion, which the ALJ carefully reviewed and analyzed, itself makes clear that the treating relationship began in January 2011. Tr. 496. Nor is there error in the ALJ's failure expressly to mention that Dr. Buttner is "board certified" in family medicine. The ALJ's decision repeatedly acknowledged Dr. Buttner's status as Plaintiff's primary care provider. Tr. 27, 29, 32.

Also unavailing is Plaintiff's argument that the ALJ is barred by his lack of medical expertise from examining a late-submitted treating source opinion without engaging a new medical expert to advise him. To the contrary, the applicable regulations define how an ALJ is supposed to perform this examination. 20 C.F.R. § 404.1527(c)(3) ("The more a medical source presents relevant evidence to support a medical opinion, particularly medical signs and laboratory findings, the more weight we will give that medical opinion."). The appropriateness of the ALJ's approach is confirmed by the First Circuit's recent decision, Purdy v. Berryhill, 887 F.3d 7 (1st Cir. 2018), which holds that it is not error to accord a treating source opinion little weight in reliance on the ALJ's lay review of the record and his "common-sense judgment." Id. at 14. In any event, the ALJ here did not rely just on his common-sense and lay judgment – rather, he also relied on the opinions of Drs. Laurelli and Scovern, both of whom reviewed Dr. Buttner's treating notes, together with the rest of the record. Tr. 32. They opined that the overall record (including Dr. Buttner's notes) do not support a finding that any impairments were severe, which is dramatically different from the Buttner opinion. Thus, the inconsistency between the Buttner opinion and Dr. Buttner's treating notes (as well as the balance of the record) is

grounded not just in the ALJ's file review and "common-sense judgment," Purdy, 887 F.3d at 14, but also rests on the expert opinions of the SSA physicians.

Plaintiff's third argument amounts to a request that the Court perform its own assessment of the technical findings in Plaintiff's treating record, substituting its analysis for the findings of Drs. Laurelli and Scovern. That the Court may not do; it is well settled that, in reviewing the record, the Court must avoid reinterpreting the evidence or otherwise substituting its own judgment for that of the Commissioner. Mary K, 2018 WL 3617310, at *1.

With substantial evidence to support the ALJ's decision, no error in his reliance on the opinions of Drs. Laurelli and Scovern, and no error in his rejection of the Buttner opinion, I find that his decision should be affirmed. I so recommend.

B. Subjective Testimony Regarding Symptom Severity[7]

When an ALJ decides not to credit a claimant's testimony, the ALJ must articulate specific and adequate reasons for doing so, or the record must be obvious as to the credibility finding. See Da Rosa v. Sec'y of Health & Human Servs., 803 F.2d 24, 26 (1st Cir. 1986); Rohrberg, 26 F. Supp. 2d at 309-10. A reviewing court will not disturb a clearly articulated credibility finding with substantial supporting evidence. See Frustaglia, 829 F.2d at 195. Plaintiff acknowledges that "[i]t is the responsibility of the [Commissioner] to determine issues of credibility and to draw inferences from the record evidence," Irlanda Ortiz, 955 F.2d at 769, as well as that an ALJ's supported credibility determination "is entitled to deference." Frustaglia, 829 F.2d at 195. Nevertheless, marshaling cases from other Circuits decided more than twenty years ago under the predecessor to the credibility guidance applicable to this case, SSR 96-7P,

[7] At the time the ALJ conducted the hearing and issued his decision, SSR 96-7p still controlled the so-called credibility analysis. The newer guidance, SSR 16-3p, is applicable to "determinations or decisions made on or after March 28, 2016." See SSR 16-3p, 2017 WL 4790249, at *1 (Oct. 25, 2017).

Plaintiff argues that the ALJ erred in failing to find that her lengthy work history is a factor that lends to her credibility. See, e.g., Polaski v. Heckler, 739 F.2d 1320, 1322 (8th Cir. 1984) (claimant's prior work record must be considered in evaluating credibility of testimony and complaints); Rivera v. Schweiker, 717 F.2d 719, 725 (2d Cir. 1983) (claimant with good work record is entitled to substantial credibility); Taybron v. Harris, 667 F.2d 412, 415 n.6 (3d Cir. 1981) (when claimant has worked for long period of time, his testimony about his work capabilities should be accorded substantial credibility).

In rebuttal the Commissioner cites a host of recent decisions from this Circuit that hold the contrary. For example, in Campagna v. Berryhill, No. 2:16-cv-00521-JDL, 2017 WL 5037463, at *9 (D. Me. Nov. 3, 2017), the court rejected the precise argument, noting that, "the plaintiff cites no caselaw from this circuit holding that an ALJ must accord greater weight to the allegations of a claimant with a strong work history, and this court has rejected that very proposition." Id. at *9; see also Pelletier v. Astrue, Civil Action No. 09-10098-GAO, 2012 WL 892892, at *6 (D. Mass. Mar. 15, 2012) (rejecting claimant's argument that ALJ erred by not acknowledging claimant's allegedly "solid" work history, and stating "[t]he decision to emphasize certain factors over others was a decision for the ALJ, not the reviewing court, to make"). I adopt the approach used in this Circuit; at bottom, "[h]aving . . . a 'strong work history' says nothing about . . . credibility in and of itself." Chick v. Barnhart, No. 04-171-B-W, 2005 WL 1353365, at *2 n.2 (D. Me. June 7, 2005), adopted, 2005 WL 1532642 (D. Me. June 27, 2005). Accordingly, I find no error in the ALJ's assessment of Plaintiff's subjective statements regarding the intensity of her symptoms.

V. CONCLUSION

Based on the foregoing analysis, I recommend that Plaintiff's Motion to Remand/Reverse the Commissioner's Decision (ECF No. 14) be DENIED and Defendant's Motion for an Order Affirming the Decision of the Commissioner (ECF No. 15) be GRANTED. Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days after its service on the objecting party. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
August 20, 2018