UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JENNIFER F.,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 19-547MSM
	:	
ANDREW M. SAUL,	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

On April 17, 2017, Plaintiff Jennifer F. applied for Disability Insurance Benefits ("DIB") under 42 U.S.C. § 405(g) of the Social Security Act (the "Act"), and Supplemental Security Income ("SSI") under § 1631(c)(3). Alleging onset on June 30, 2011, later amended to August 29, 2015, after her[1] prior applications were denied, Plaintiff alleged disability due to a spinal disorder arising from transverse myelitis, as well as the mental health impairments of depression, anxiety, post-traumatic stress disorder ("PTSD"), and attention deficit disorder ("ADD"). She now challenges the findings of the Administrative Law Judge ("ALJ") pertaining to her mental impairments.[2] She contends that the ALJ erred in basing the residual functional capacity

[1] The record reflects that Plaintiff at times asked for male pronouns and some providers shifted to respect her wishes. However, most of the record uses female pronouns, as does Plaintiff's attorney. Intending no disrespect, I adopt the approach taken by her attorney and use female pronouns.

[2] Plaintiff does not contest the ALJ's findings regarding her physical functioning.

("RFC")[3] finding on the prior administrative medical findings[4] of the state agency ("SA") expert[5] psychologists, which were formed before Plaintiff began treatment with a psychiatrist and counseling with a social worker, as well as before a neurologist noted, "I think there is some functional overlay to her symptoms." Tr. 1148. Relatedly, she argues that the ALJ acted without the support of substantial evidence in finding: that "[t]here is no evidence of psychosis, hallucinations, delusions or other significant abnormalities of thinking or perception"; that "[w]ith regard to concentrating, persisting or maintaining pace, the claimant has a moderate limitation"; and that Plaintiff is "functionally independent and able to do her own ADLs and household chores." Tr. 23. Last, Plaintiff asserts that the ALJ erred in failing to consider the impact of pain on her ability to concentrate. Plaintiff asks the Court to reverse the ALJ's decision and to remand the case for further proceedings. Defendant Andrew M. Saul ("Defendant") has moved 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 entirety of this massive record (a total of 1265 pages), I find that the ALJ's findings are consistent with applicable law and sufficiently supported by substantial evidence. Accordingly, I recommend that Plaintiff's Motion to Reverse the Decision of the Commissioner (ECF No. 11) be DENIED and

[3] "RFC" or "residual functional capacity" is "the most you can still do despite your limitations," taking into account "[y]our impairment(s), and any related symptoms, such as pain, [that] may cause physical and mental limitations that affect what you can do in a work setting." 20 C.F.R. § 404.1545(a)(1).

[4] Under newly promulgated regulations, the correct term for the opinions of the SA non-examining experts is "prior administrative medical findings." See 20 C.F.R. §§ 404.1513(a)(2) & (a)(5), 416.913(a)(2) & (a)(5).

[5] State agency physicians are "highly qualified and experts in Social Security disability evaluation." 20 C.F.R. § 404.1513a(b)(1); see Kandzerski v. Colvin, C.A. No. 15-401ML, 2016 WL 7632863, at *6 (D.R.I. Dec. 9, 2016), adopted, 2017 WL 25461 (Jan. 3, 2017).

Defendant's Motion for an Order Affirming the Decision of the Commissioner (ECF No. 15) be GRANTED.

I. Background

Plaintiff was born in 1979 and was thirty-six on the amended onset date. Tr. 294. She has a high school education with some college. Until she stopped in 2011 (when she was thirty-two), Plaintiff had worked in various positions, including as a customer service representative for the Narraganset Bay Commission and as a photographer/videographer for the Rhode Island State House. Tr. 333. These are her third set of disability applications.

A. Pre-File Review Record

As revealed by the portion of the medical record reviewed by the SA expert psychologists, Plaintiff's mental health impairments are complex and impose significant functional limitations, which both SA experts found and the ALJ accepted. One provider noted, "this patient has much more in depth psych issues than she knows." Tr. 476.

Several patterns emerge from the pre-file review portion of the record. First, for much of the period, Plaintiff was intermittent and inconsistent in accepting mental health treatment. E.g., Tr. 1062 (discharged by RIH Partial Hospitalization Program due to non-attendance); Tr. 1135 (discharged by Fatima Partial Hospitalization program due to "inconsistent attendance"). Second, beginning during the period when she was still working (in 2010) and continuing throughout, medical providers periodically described Plaintiff as having grandiose and/or bizarre thoughts. E.g., Tr. 468 ("patient has been correlating events in her life with the moon phases . . . grandiose thoughts"); Tr. 699 ("Thought Content: Pt has bizarre ideas – states that she controls her anxiety by meditating on past life spiritual ideas."); Tr. 842 (grandiosity and religiosity, including thought that "we are 'living in the end times'"). Third, Plaintiff repeatedly went to the

emergency room of various hospitals, sometimes as frequently as several times a month, though these visits rarely led to admissions. E.g., Tr. 484-661, 730-819, 1016-46. Fourth, providers repeatedly expressed concern about the sedating impact of Plaintiff's prescribed drugs and Plaintiff's drug seeking, particularly for Adderall, which she claimed to need for ADD symptoms. E.g., Tr. 460 ("we will not accept anymore [sic] excuses for losing narcotic medications"); Tr. 648 ("no further controlled prescription will be prescribed for this from the emergency dept."); Tr. 775 (episode of unconsciousness results in diagnoses of overdose and polysubstance abuse); Tr. 843 ("becomes more restless and fidgety after I explain to her that I will not be able to fill her script for Adderall"); Tr. 924 ("Asking for Adderall"); Tr. 1021 ("On review of the record, she has multiple scripts for various controlled substances . . . I declined to refill her meds."); Tr. 1049 (physician notes repeated requests for Adderall and that record reflects prior requests for "benzos . . ., as well as opiates"). Fifth, Plaintiff repeatedly engaged in behavior that caused her to get hurt, notably riding her bike and falling. Tr. 597 (March 2014 fall from bike causes rib fractures); Tr. 628 (September 2014 fall from bike causes injury to arm). Sixth, Plaintiff complained repeatedly of physical symptoms that could not be objectively verified. E.g., Tr. 814 (emergency room complaint of seizures results in diagnosis of pseudoseizures; seizure movements stopped when nurse told her to stop); Tr. 1016 (Plaintiff reports ten seizures in one day to emergency room physician; no diagnosis of epilepsy).

The pre-file review portion of the medical record includes a 2012 diagnostic mental health interview resulting in diagnoses of depression "in partial remission" and anxiety, Tr. 431-32, and a 2016 psychological evaluation by a psychologist (Dr. Deanna Voisine), which diagnosed anxiety, ADHD, panic disorder and PTSD, Tr. 722-25. Yet, except for mood/affect fluctuations, Plaintiff's mental status examinations ("MSEs") reflect largely normal

observations, including almost always normal attention, but often only fair insight and poor judgment. E.g., Tr. 923. Hallucinations, delusions, disorientation and psychosis are consistently noted as not present. Id. Except for the observations of thoughts of "grandiosity" and "religiosity," Plaintiff's thinking is generally recorded as normal or not impaired. Id. ("no delusions; no disorientation; well organized and goal-directed; . . . no dissociative fugue; no paranoid ideations . . . ; no hallucinations"); Tr. 951 ("Thought Content: Revealed no impairment."); Tr. 1055 ("Thought Content: Normal"); but see Tr. 842-44 (despite "grandiosity," "no evidence of mania/hypomania, or psychosis"; "thought process and content: somatic"; "perception and hallucinations: denies perceptual abnormalities"; "oriented to person, place, and time"); Tr. 874 ("Thought Process and Content: inadequacy/worthlessness, Hopelessness, Ruminations"). A 2016 provider observed that Plaintiff "is functionally independent and able to do her own ADL and household chores." Tr. 662. In 2017, providers noted that "dysregulated mood affects ability to work and engage in self care," but that Plaintiff has "[c]apacity for self-regulation, [a]ble to maintain relationships/support." Tr. 850. Plaintiff's function report reflected her ability to "cook a bunch when I feel up to it" and to pursue photography, although "I do less." Tr. 344-46.

These medically complex (to the lay reader, impossible-to-untangle) records were reviewed by two SA expert psychologists. Considering claims of anxiety, PTSD, depression, ADD, OCD, chronic pain and stress-related seizures and headaches, their examination focused, *inter alia*, on Dr. Voisine's evaluation; the Butler Hospital records (which reflect thoughts of grandiosity and religiosity); the Angell Street Psychiatry records (which reflect depression and anxiety, as well as requests for Adderall); and Plaintiff's function reports. Tr. 169. For their Psychiatric Review Technique, they found Plaintiff to have severe mental impairments,

including moderate limitations on her ability to interact with others, to concentrate, persist, or maintain pace and to adapt or manage herself. Tr. 136, 167. For their RFC findings, they found that Plaintiff suffers from sustained concentration and persistence limitations, while retaining the ability to sustain attention and pace for simple task completion for a full standard workweek; that she lacks the ability to deal with the public; and that she is moderately limited in her ability to respond appropriately to work place changes. Tr. 139-41, 171-73.

B. Post-File Review Record

After the SA file review was completed in September 2017, Plaintiff had seven treating appointments with a therapist, Travis Martin, LICSW, during February to June 2018.[6] Tr. 1169-75, 1225. Mr. Martin's notes reflect similar thought content (e.g., "end of times") as repeatedly appeared in the earlier portion of the record. Consistent with earlier MSEs, Mr. Martin's MSE observations include mood/affect fluctuations (sometimes depressed, sometimes anxious and dysphoric), normal thoughts, and no issues with attention, but with judgment and insight sometimes good and sometimes only fair. E.g., Tr 1171-74.

Also after the SA file review, Plaintiff initiated treatment for medical management with a psychiatrist, Dr. Lisa Shea, who she saw monthly from December 2017 through September 2018. Tr. 1130-43; Tr. 1229-54. Dr. Shea's notes advert to Plaintiff's "religious preoccupation," and Dr. Shea's "concern regarding the number of potentially sedating medications [Plaintiff] is taking," but also that she was "traveling a bit." Tr. 1139, 1239. Dr. Shea's initial MSE is essentially normal, except for thought content ("intrusive recollections") and impaired attention. Tr. 1130. After that, MSEs improved, becoming largely normal, with some mood fluctuation,

[6] There is an initial appointment with Mr. Martin in June 2017, but then an eight-month hiatus until Plaintiff returned in February 2018, followed by another gap until April 2018. Plaintiff saw Mr. Martin every two weeks during April and May, ending on June 10, 2018.

including normal thought processes and content, normal perception and intact attention, except that after two of Plaintiff's friends died, Dr. Shea recorded her mood as "[s]ad; affect depressed, sad" and her thought content as "themes related to grief." Tr. 1136, 1139, 1140, 1235. By January 2018, Dr. Shea noted that Plaintiff was "functioning well," with "[s]ymptoms better when she has structure." Tr. 1135. Then, still dealing with grief, at three appointments (in June, July and August 2018), Dr. Shea noted "religious preoccupation" and/or "doom befalling earth" as Plaintiff's thought content. Tr. 1239, 1243, 1247. Dr. Shea's last appointment of record reflects an increase in anxiety, but "mood is better"; Dr. Shea notes that she is "minimally improved." Tr. 1250-53. Dr. Shea's last MSE is entirely normal except for "affect constricted." Tr. 1251.

Also during the post-file review period, Dr. Jonathan Cahill, a neurologist, who was following up on transverse myelitis (Plaintiff's physical impairment), noted that she had no signs of any recent occurrence, yet she was falling and complaining of "unspecified abnormalities of gait and mobility." Tr. 1144, 1148. As bearing on Plaintiff's mental impairments, Dr. Cahill observed, "I think there is some functional overlay to her symptoms, particularly on exam today. I think PT could be helpful." Tr. 1148. At the ALJ hearing, the testifying medical expert (Dr. John Pella) who opined regarding Plaintiff's physical impairments (not her mental impairments), echoed this observation. Tr. 57. When pressed on the point, Dr. Pella defined a "functional overlay" as an emotional reaction to a perceived physical problem that may affect the ability to do certain activities. Tr. 76. In terms of Plaintiff specifically, he pointed to her overuse of sedating medications and other substances, which he noted may be responsible for some of the falls, as well as to her bike riding despite the pattern of falling. Tr. 58; see Tr. 78.

C. ALJ's Analysis and Decision

Importantly, as the ALJ observed, no source has opined that Plaintiff has functional limitations greater than those reflected in the ALJ's opinion. See Tr. 30. Indeed, as far as this record reflects, no treating provider has recorded mentally based limitations that would preclude Plaintiff from working. That left the ALJ with the SA expert psychologists' administrative medical findings. Concluding that they are persuasive, the ALJ relied on them to find that Plaintiff had several severe mental impairments at Step Two (anxiety disorder, depressive disorder, trauma disorder and ADD) and in assessing that Plaintiff's mental residual functional capacity was affected by significant limitations (including limitations of concentration, persistence or pace; the ability to understand, remember and carry out only simple object oriented tasks; the ability to have only occasional work-related interactions with co-workers, supervisors and the general public; and the inability to perform tasks requiring teamwork). Tr. 21, 24. Based on these findings, the ALJ concluded that Plaintiff was not disabled at any relevant time. Tr. 31-32.

II. 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 – 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. 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)).

If the Court finds either that the Commissioner's decision is not supported by substantial evidence, or that the Commissioner incorrectly applied the law relevant to the disability claim, the Court may remand a case to the Commissioner for a rehearing under Sentence Four of 42 U.S.C. § 405(g). Allen v. Colvin, No. CA 13-781L, 2015 WL 906000, at *8 (D.R.I. Mar. 3, 2015) (citing Jackson v. Chater, 99 F.3d 1086, 1097-98 (11th Cir.1996)). If the Court finds that a judicial award of benefits would be proper because the proof is overwhelming, or the proof is very strong and there is no contrary evidence, the Court can remand for an award of benefits. Seavey v. Barnhart, 276 F.3d 1, 11 (1st Cir. 2001).

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

twelve months. 42 U.S.C. § 416(I); 20 C.F.R. § 404.1505.[7] 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. The Five-Step Evaluation

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. § 404.1520(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).

B. Opinion Evidence

For applications like this one, filed on or after March 27, 2017, the SSA has fundamentally changed how adjudicators assess opinion evidence. The familiar and

[7] 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, I cite to one set of regulations only.

longstanding requirements – that adjudicators must assign "controlling weight" to a well-supported treating source's medical opinion that is consistent with other evidence, and, if controlling weight is not given, must state the specific weight that is assigned – are gone. 20 C.F.R. § 404.1520c(a). Instead, adjudicators "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including those from your medical sources." Id. Rather, an ALJ must consider the persuasiveness of all medical opinions in a claimant's case record. See 20 C.F.R. § 404.1520c. The most important factors to be considered when the Commissioner evaluates persuasiveness are supportability and consistency; these are usually the only factors the ALJ is required to articulate. 20 C.F.R. § 404.1520c(b)(2); Jones v. Berryhill, 392 F. Supp. 3d 381, 839 (M.D. Tenn. 2019); Gorham v. Saul, Case No. 18-cv-853-SM, 2019 WL 3562689, at *5 (D.N.H. Aug. 6, 2019). Supportability "includes an assessment of the supporting objective medical evidence and other medical evidence, and how consistent the medical opinion or . . . medical finding is with other evidence in the claim." Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844, 5859 (Jan. 18, 2017). Other factors that are weighed in light of all of the evidence in the record includes the medical source's relationship with the claimant and specialization, as well as "other factors" that tend to support or contradict the medical opinion or finding. See 20 C.F.R. § 404.1520c(c)(1)-(5); Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. at 5859. In other words, "[a] medical opinion without supporting evidence, or one that is inconsistent with evidence from other sources, [is] not . . . persuasive regardless of who made the medical opinion." Id. at 5854.

IV. Analysis

Plaintiff's principal attack on the ALJ's work relies on the post-file review records (reflecting treatment with Dr. Shea and Mr. Martin), which she claims undermine the SA expert psychologists' opinions because they were formed without access to the Shea/Martin records.

It is well settled that an ALJ cannot rely on a file-review opinion if post-review developments reflect a significant worsening of the claimant's condition because such an opinion does not amount to substantial evidence. Stacey S. v. Berryhill, C.A. No. 18-00284-JJM, 2019 WL 2511490, at *7 (D.R.I. June 18, 2019) (opinion is not stale unless there is a "sustained (and material) worsening" of the claimant's impairments); Virgen C. v. Berryhill, C.A. No. 16-480 WES, 2018 WL 4693954, at *3 (D.R.I. Sept. 30, 2018) ("[I]f a state-agency physician reviews only a partial record, her 'opinion cannot provide substantial evidence to support [an] ALJ's residual functional capacity assessment if later evidence supports the claimant's limitations.'") (second alteration in original) (citation omitted). The problem here is that the critical element of "significant worsening" is entirely missing. Virgen C., 2018 WL 4693954, at *3. To the contrary, as the ALJ correctly found, Dr. Shea noted improvement while Mr. Martin found Plaintiff to be "consistently engaged and attentive with fair to good insight and judgment with no evidence of abnormal psychomotor activity." Tr. 26-27. The mental health issues identified and the MSE findings in the Shea/Martin treating records mirror the very same issues and findings that recur throughout the record on which the SA psychologists relied to form their opinions.

When, as happened here, an ALJ carefully reviews the post-file review evidence and makes the common-sense observation that the pre- and post-review records are similar, that ALJ may rely on the opinions developed through the file review process. Michele S. v. Saul, C.A. No. 19-65WES, 2019 WL 6242655, at *8 (D.R.I. Nov. 22, 2019); Sanford v. Astrue, No. CA 07-183 M, 2009 WL 866845, at *8 (D.R.I. Mar. 30, 2009). To hold otherwise would render such

opinions irrelevant because of the practical impossibility that such experts can be privy to updated medical records; it is well settled that this approach "would defy logic and be a formula for paralysis." Sanford, 2009 WL 866845, at *8 (citing Kendrick v. Shalala, 998 F.2d 455, 456-57 (7th Cir. 1993)). The Court should reject Plaintiff's argument because it amounts to a request that the Court adopt a *per se* rule that the opinion of a non-examining source who reviews less than the full record must always be discounted and afforded less weight. See Michele S., 2019 WL 6242655, at *7-8. I find no error in the ALJ's reliance on the SA expert psychologists' interpretation of this difficult and complex medical record.[8]

Plaintiff's challenge to the ALJ's attention/concentration finding is equally unavailing. While conceding that the record is replete with MSEs reflecting intact attention and concentration, as well as some evidence reflecting impaired concentration (most notably the 2016 evaluation written by Dr. Voisine), Plaintiff contends that the ALJ did not properly weigh this evidence when she found only moderate limitations. This argument fails because the law permits the ALJ to resolve such discrepancies in the evidence, which the ALJ appropriately did by relying on the SA expert psychologists. Brown, 71 F. Supp. 2d at 31 ("[T]he resolution of conflicts in the evidence is for the Commissioner, not the courts."). Plaintiff's related argument that the ALJ did not adequately consider the impact of Plaintiff's perception of pain on her ability to concentrate rests on an inaccurate premise. While the ALJ's opinion does not include an analysis of the impact of Plaintiff's perception of pain in assessing of the severity of Plaintiff's struggles with attention and concentration, her findings are drawn from the opinions of

[8] Relatedly, Plaintiff asks the Court to remand because, post-file review, the neurologist, Dr. Cahill noted, "I think there is some functional overlay to her symptoms," Tr. 1148, and Dr. Pella, also post-file review, concurred. Plaintiff argues that this introduces something new, requiring remand to consider it. However, Dr. Cahill's remark was focused on the physical symptoms he was evaluating "particularly on exam today," id., while Dr. Pella explained that he was referencing Plaintiff's complex symptoms involving drug use and bike riding, both of which were amply developed in the file that was analyzed by the SA expert psychologists.

the SA expert psychologists, who worked with a record loaded with Plaintiff's descriptions of her perceived pain and with clinical observations by a wide array of medical professionals of Plaintiff's ability to attend despite her perceived pain. Cinching the matter, the psychological consultant review by the SA expert psychologist at the initial phase expressly lists Plaintiff's references to pain in the function report as part of the overall psychological picture. See Tr. 131.

Plaintiff's remaining arguments may be given short shrift. Her attack[9] on the ALJ's finding that there was no evidence of "significant abnormalities of thinking or perception," Tr. 23 (emphasis added), falls short because, while the record certainly reflects findings that Plaintiff's thinking is "somatic" (though with no evidence of mania/hypomania or psychosis), Tr. 843-44, or focused on "doom befalling earth," Tr. 1239, 1243, 1247, it is also replete with findings that Plaintiff's thinking is normal, including by providers who specifically noted Plaintiff's bizarre and grandiose thoughts. E.g., Tr. 1055 (RIH psychiatrist finds "Thought Content: Normal"); Tr.1223 (Mr. Martin notes Plaintiff's interest in "apocalyptic scenarios," but on MSE, he finds: "thought processes within normal limits"); Tr. 1235 (Dr. Shea's MSE observation of Plaintiff's thought content: "no delusions, themes related to grief"). This evidence is more than sufficient to support the ALJ's conclusion that Plaintiff's thinking/perception abnormalities were not "significant." And last, Plaintiff critiques the ALJ's citation to Plaintiff's statement to one provider that she was "functionally independent and able to do her own ADLs and household chores," because it contrasts with Plaintiff's testimony.[10] Tr.

[9] Plaintiff's brief also attacks the ALJ's finding that there is no evidence of "psychosis, hallucination [or] delusions." ECF No. 11 at 15 (citing Tr. 23). She does not present a scintilla of evidence contrary to this finding. Having reviewed the entire record, I am confident that there is no such evidence.

[10] This argument also fails because Plaintiff has not attacked the ALJ's well-supported finding that Plaintiff's subjective statements are not entirely consistent with the medical evidence. Tr. 25-27.

23. This is not an error, but an accurate recital of evidence that is corroborated elsewhere in the record. See Tr. 1135 (Dr. Shea notes Plaintiff is "functioning well").

In the end, this Court is not empowered to consider Plaintiff's application *de novo*, nor may it undertake an independent assessment of whether she is disabled. Rather, the Court is "limited to determining whether the ALJ deployed the proper legal standards and found facts upon the proper quantum of evidence." Gorham, 2019 WL 3562689, at **4, 8 (citing Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1991)). When the ALJ's findings are properly supported by substantial evidence – as they are in this case – the Court must sustain those findings even when there may also be substantial evidence supporting the contrary position. See, e.g., Tsarelka v. Sec'y of Health & Human Servs., 842 F.2d 529, 535 (1st Cir. 1988) ("[W]e must uphold the [Commissioner's] conclusion, even if the record arguably could justify a different conclusion, so long as it is supported by substantial evidence."); Rodriguez, 647 F.2d at 222 ("We must uphold the [Commissioner's] findings in this case if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support his conclusion.").

V. Conclusion

Based on the foregoing analysis, I recommend that Plaintiff's Motion to Reverse the Decision of the Commissioner (ECF No. 11) 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 of its receipt. 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
September 16, 2020