UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

PATRICIA B.	:	
	:	
v.	:	C.A. No. 20-00424-WES
	:	
KILOLO KIJAKAZI, Commissioner 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 Benefits ("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 25, 2020, seeking to reverse the Decision of the Commissioner. On April 30, 2021, Plaintiff filed a Motion to Reverse the Decision of the Commissioner. (ECF No. 12). On June 15, 2021, Defendant filed a Motion for an Order Affirming the Decision of the Commissioner. (ECF No. 14). On June 29, 2021, Plaintiff filed a Reply. (ECF No. 15).

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 No. 12) be DENIED and that the Commissioner's Motion to Affirm (ECF No. 14) be GRANTED.

I. PROCEDURAL HISTORY

Plaintiff filed an application for DIB on May 23, 2018 (Tr. 172-175) alleging disability since October 1, 2015. The application was denied initially on June 26, 2018 (Tr. 76-88) and on reconsideration on November 28, 2018. (Tr. 90-109). Plaintiff requested an Administrative Hearing. On August 23,

2019, a hearing was held before Administrative Law Judge Paul V. McGinn (the "ALJ") at which time Plaintiff, represented by counsel, and a Vocational Expert ("VE") and Medical Expert ("ME") appeared and testified. (Tr. 38-55). The ALJ issued an unfavorable decision to Plaintiff on September 18, 2019. (Tr. 17-31). The Appeals Council denied Plaintiff's request for review on July 16, 2020. (Tr. 6-8). 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 in not including asthma limitations in the RFC, in obtaining incomplete testimony from the medical and vocational experts, in affording little weight to Plaintiff's subjective complaints and in not considering Plaintiff's mental health impairments severe.

The Commissioner counters that the ALJ properly accounted for Plaintiff's asthma in the RFC, that the testimony of the medical and vocational experts was complete, that the ALJ properly evaluated plaintiff's subjective complaints and found that Plaintiff's mental impairments were not severe.

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 HHS, 955 F.2d 765, 769 (1st Cir. 1991) (per curiam); Rodriguez v. Sec'y of HHS, 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 HHS, 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 HHS, 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.

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 HHS, 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(c). 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 HHS, 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 HHS, 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 HHS, 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 HHS, 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 (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 HHS, 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 4. At Step 2, the ALJ determined that Plaintiff had severe impairments of chronic pain syndrome, asthma with allergic complications and obesity. (Tr. 22). The ALJ found Plaintiff's mental health impairments were not severe. (Tr. 22-24). At Step 3, the ALJ concluded that Plaintiff did not have an impairment or combination of impairments that met or medically equaled a Listing. (Tr. 25). As to RFC, the ALJ found that Plaintiff could perform

the full range of sedentary work. (Tr. 26). At Step 4, the ALJ determined that Plaintiff could perform her past relevant work as an office manager as generally performed and was not disabled from October 1, 2015 through September 18, 2019. (Tr. 30-31).

B. The ALJ's RFC Assessment is Supported by Substantial Evidence

Plaintiff first claims that the ALJ erred by not including specific asthma limitations in her RFC, despite noting it as a severe impairment. (Tr. 22). Plaintiff asserts that although her RFC is limited to sedentary work, the RFC "does not include asthma considerations as is supported by the objective evidence." (ECF No. 12 at p. 8). Plaintiff then sets forth several arguments as to why the RFC's failure to include asthma limitations is problematic. First, Plaintiff notes that she had several hospital visits due to her asthma and that her symptoms of shortness of breath, dyspnea and pleuritis had "more than a minimal effect on her daily activities." Id. Next, Plaintiff contends that the Medical Expert was not given the opportunity to conclude his testimony regarding whether Plaintiff would require limitations attributable to her asthma. Additionally, Plaintiff faults the ALJ for not citing the state agency examiners' opinion that Plaintiff would be required to observe asthma precautions "such as avoidance of even moderate exposure to heat/cold, and concentrated humidity, fumes and hazards." Id.

A review of the Decision and the record as a whole reveals that the ALJ properly considered the points raised by Plaintiff, but ultimately concluded that the sedentary limitation in the RFC was adequate to address Plaintiff's functional limitations. Since he cited adequate support in the record for his conclusion, Plaintiff's challenge fails. The ALJ's Decision, for example, noted the "multiple emergency room and hospitalizations between November 2017 and January 2018" attributed to her asthma. (Tr. 27). The ALJ stated that "[d]espite shortness of breath, the claimant had a normal lung analysis." (Tr. 28). The ALJ also noted that in May 2018, "respiratory symptoms were managed with a dose of Prednisone." Id. The Medical Expert, Dr. Stephen Kaplan, testified, inter alia, that Plaintiff has "active, well, mildly persistent asthma" and then concluded that "[a]ll of these would limit her, certainly, to a recommendation

of a sedentary work situation." (Tr. 51). He also noted earlier that "[f]or a number of reasons this is a lady who would be limited to a sedentary work situation…beginning as early as 2015." Id. There is no indication in the Transcript that the ME failed to consider Plaintiff's asthma when offering his opinion. In fact, the Transcript reveals that the ME was fully cognizant of the asthma when he opined that Plaintiff could perform sedentary work. The ALJ was entitled to credit and rely on this unequivocal expert testimony to support his RFC assessment.

Ultimately, Plaintiff's challenge to the ALJ's exclusion of specific asthma limitations from her sedentary RFC 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'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)). Since the ALJ's RFC assessment is directly supported by Dr. Kaplan's expert opinion, it is supported by substantial evidence and Plaintiff's challenge fails.

C. Plaintiff Has Shown No Error in the ALJ's Examination of Either the Medical or Vocational Expert

Next, Plaintiff assigns two errors to the ALJ, both related to the ALJ's alleged failure to elicit complete testimony from the Medical and Vocational Experts. Plaintiff contends that the ALJ erred by not eliciting "complete testimony" from Dr. Kaplan, the ME, and also claims he "only partially testified." (ECF No. 12 at p. 8-9). Plaintiff makes an unsupported claim that the ALJ interrupted the ME's RFC assessment with a question and he "did not go back to the medical expert to conclude and ask what limitations would be appropriate." Id. at p. 9. Plaintiff also takes issue with several aspects of the VE's testimony. Plaintiff contends the ALJ should have elicited further testimony regarding the demands of Plaintiff's past work and how her current limitations would apply to her past work. (ECF No. 12 at p.

10). Further, Plaintiff contends that no DOT codes were given by the VE, and it was not specified if she could complete her past work as actually or generally performed. Finally, Plaintiff faults the ALJ's hypothetical for not including all of Plaintiff's impairments.

The Court has thoroughly reviewed the Transcript of the ALJ Hearing. At the Hearing, Plaintiff was represented by the same attorney who has brought the present appeal. Plaintiff's attorney was presented with an opportunity to examine both the ME and the VE after they were questioned by the ALJ. He indicated that he had no questions for the VE despite these claimed record deficiencies, and he conducted a very short examination of the ME which did not deal at all with the issue of limitations related to asthma. (Tr. 52-54). Accordingly, I find that the holding in Stepinski v. Astrue, No. CA 11-183 ML, 2012 WL 3866678, at *10 (D.R.I. Aug. 6, 2012), report and recommendation adopted, No. CA 11-183 ML, 2012 WL 3863812 (D.R.I. Sept. 5, 2012), applies and bars the present challenge. In Stepinski, this Court noted that it "views unfavorably the silence of Plaintiff's counsel at the hearing regarding the omission about which he now complains." Id. In that case, Plaintiff claimed the ALJ erred by failing to cite an accurate hypothetical to the VE. The Court noted that Plaintiff's attorney had an opportunity to question the VE and concluded his query without raising that issue. The Court reasoned that "[r]eversal and remand because of the omission about which Plaintiff now complains would encourage other counsel to remain silent in similar circumstances. This Court is disinclined to provide such an incentive. Accordingly, the Court finds that Plaintiff waived this issue by failing to raise it before the ALJ." Id. citing Mills v. Apfel, 244 F.3d 1, 8 (1st Cir.2001) (affirming district court's finding that plaintiff waived claim by making no mention of it to ALJ); Sims v. Apfel, 530 U.S. 103, 112 (2000) (O'Connor, J., concurring in part) ("In most cases, an issue not presented to an administrative decision maker cannot be argued for the first time in federal court."). For the reasons articulated in Stepinski, I find that Plaintiff's challenge to the testimony of the ME and VE has been waived. Alternatively, even if not waived, neither argument has substantive merit. The Transcript is clear that the ME unequivocally and fully articulated his sedentary work opinion after considering all of the medical evidence of record including Plaintiff's

asthma. As to the VE's testimony, while it could have been more detailed, it was more than sufficient to support the ALJ's Step 4 finding. The VE identified Plaintiff's prior office manager job as sedentary and skilled (Tr. 54) and thus plainly not precluded by the ALJ's RFC assessment for a full range of sedentary work without any additional non-exertional limitations.

D. The ALJ Properly Evaluated Plaintiff's Subjective Complaints

Plaintiff next contends that the ALJ failed to thoroughly consider and address her subjective complaints. (ECF No. 12 at pp. 10-11). A reasonable review of the ALJ's decision, however, reveals that he thoroughly considered Plaintiff's subjective complaints in compliance with the applicable legal standards. (Tr. 26-27). The ALJ found, for example, that Plaintiff's conditions could reasonably be expected to cause the symptoms she alleged but also noted that her self-reported statements concerning the "intensity, persistence and limiting effects" of the disabling mental limitations were not entirely consistent with the evidence contained in the record. (Tr. 30). The ALJ analyzed Plaintiff's medical history in detail and acknowledged her history of chronic pain and asthma. (Tr. 26). Additionally, the ALJ considered the limitations arising from Plaintiff's health impairments. However, he reasonably found a disconnect between Plaintiff's complaints, the medical evidence of record and Plaintiff's reported daily activities. For instance, the ALJ noted that Plaintiff's primary care physician "routinely documented good eye contact and appropriate mood and affect" (Tr. 30), and that she was "not using a cane the day of the [consultative examination]…[h]er posture was fine and motor skills within normal limits." (Tr. 28). Further, he also reasonably noted that "treatment has kept the claimant functional" and "physical examination findings have been unremarkable with few instances of respiratory distress." (Tr. 28-29). This medical evidence all undercuts Plaintiff's self-reported limitations and supports the ALJ's conclusions.

Plaintiff claims that her "subjective pain limitations were not considered" and contends that there was "overwhelming objective evidence of consistent and debilitating pain." (ECF No. 12 at p. 11).

However, contrary to Plaintiff's contentions, the ALJ thoroughly reviewed the evidence and made several relevant observations. For example, the ALJ stated "[c]ertainly, the Undersigned acknowledges that the claimant is experiencing some degree of pain." (Tr. 27). The ALJ further noted that the ME limited Plaintiff to sedentary exertion. (Tr. 29). The ALJ also accurately noted that Plaintiff's primary care physician and respiratory specialist did not recommend imposition of any exertional restrictions. Id.

In short, the ALJ was presented with conflicting medical and other evidence. While reasonable minds could differ as to the interpretation of this evidence, the issue is not whether this Court would have reached the same conclusion as did the ALJ regarding Plaintiff's credibility. Rather, the narrow issue presented is whether the ALJ's finding has adequate support in the record. The ALJ thoroughly weighed the evidence in the context of the record as a whole and in accordance with SSR 16-3p. The ALJ also adequately explained his reasoning. Since the ALJ's interpretation of Plaintiff's work history, daily activities and the limitations evidenced by her treatment records is supported by the record, such interpretation is entitled to deference and supports the ALJ's credibility determination. Plaintiff has shown no reversible error in this finding.

E. The ALJ Properly Evaluated Plaintiff's Mental Health Impairments

Finally, Plaintiff contends that the ALJ erred by failing to conclude that her mental impairments are severe under 20 C.F.R. § 404.1520a; and to incorporate mental limitations in her RFC. In support of this argument, Plaintiff notes that she was diagnosed with depression, PTSD and ADHD. She claims that her PTSD and ADHD were not noted in the decision despite "diagnoses given through ongoing mental health treatment." (ECF No. 12 at p. 12).

In the Decision, the ALJ discussed the record of Plaintiff's mental health treatment and found "[m]entally, the evidence suggests the claimant was able to complete tasks and sustain the mental demands associated with carrying out tasks over the course of routine workday/workweek." (Tr. 29). The ALJ found that Plaintiff's degree of limitation was "mild" in each of the four broad functional areas: (1) understand, remember or apply information; (2) interact with others; (3) concentrate, persist or maintain

pace; and (4) adapt or manage oneself. (Tr. 23-24). Despite this, Plaintiff specifically points out that Dr. Tracy O'Leary Tevyaw, consultative examiner, found (Ex. 13F, Tr. 522) that Plaintiff sometimes appeared "somnolent" and noted her slow responses and soft speech. Id. at pp. 522-524. Plaintiff also points to the assessment of state agency examiner Dr. Jacobson, which found moderate limitations in the areas of concentration and adaptation. (Tr. 101-102).

Despite these arguments, the overall record reveals that the ALJ properly considered the severity of Plaintiff's mental impairments under 20 C.F.R. § 404.1520a. First, the ALJ accurately noted that Plaintiff's "mental status examination revealed unremarkable thought process, intact thought content, and normal concentration and attention." (Tr. 24). Further, the ALJ considered Plaintiff's normal Mini-Mental Status Examination result. Id. Importantly, the ALJ reasonably found that "the evidence suggests that the claimant was able to complete tasks and sustain the mental demands associated with carrying out tasks over the course of [a] routine workday/workweek." (Tr. 29). Again, 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). In other words, the issue presented is not whether this Court would have found Plaintiff's mental impairments of PTSD and ADHD to be medically determinable and severe at Step 2 but whether the record contains sufficient support for the ALJ's 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.

CONCLUSION

For the reasons discussed herein, I recommend that Plaintiff's Motion to Reverse (ECF No. 12) be DENIED and that the Commissioner's Motion to Affirm (ECF No. 14) 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, In. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 19, 2021