

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWIN L.	:	
	:	
v.	:	C.A. No. 21-00359-MSM
	:	
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 his Complaint on September 8, 2021, seeking to reverse the Decision of the Commissioner. On November 16, 2021, Plaintiff filed a Motion for Reversal or Reversal and Remand. (ECF No. 9). On February 8, 2022, Defendant filed a Motion to Affirm the Commissioner’s Decision. (ECF No. 11). On February 16, 2022, Plaintiff filed a Reply. (ECF No. 12).

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 for Reversal (ECF No. 9) be DENIED and that the Commissioner’s Motion to Affirm (ECF No. 11) be GRANTED.

I. PROCEDURAL HISTORY

Plaintiff filed applications for DIB and SSI on March 12, 2018 (Tr. 297-300, 301-308) alleging disability since February 1, 2014. The applications were denied initially on August 22, 2018 (Tr. 120-135, 136-151) and on reconsideration on February 22, 2019. (Tr. 154-175, 176-197). On February 25, 2019, Plaintiff requested an Administrative Hearing. (Tr. 221). On December 19, 2019, a hearing was held before Administrative Law Judge Martha Bower (the “ALJ”) at which time Plaintiff, represented by counsel, and a Vocational Expert (“VE”) and Medical Expert (“ME”) appeared and testified. (Tr. 74-95). The ALJ issued an unfavorable decision to Plaintiff on January 15, 2020. (Tr. 51-66). The Appeals Council denied Plaintiff’s request for review on September 14, 2020. (Tr. 34-36). 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’s decision is not supported by substantial evidence and specifically asserts that it was an error of law for the ALJ to rely on the DDS opinions, that the ALJ’s pain and symptom assessment was not conducted in accordance with the law, that the ALJ erred as a matter of law by interpreting raw medical data and that the ALJ’s treatment of subjective reports at Step 3 was an error of law.

The Commissioner counters that substantial evidence supports the ALJ’s step two, step three, and RFC findings as well as the evaluation of Plaintiff’s subjective statements.

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." Foot

v. Chater, 67 F.3d 1553, 1562 (11th Cir. 1995) (quoting Tieniber v. Heckler, 720 F.2d 1251, 1255 (11th Cir. 1983)).

V. APPLICATION AND ANALYSIS

A. The ALJ's Decision

The ALJ decided this case adverse to Plaintiff at Step 5. At Step 2, the ALJ found that Plaintiff suffered from the following severe impairments: lumbar degenerative disc disease, bilateral knee degenerative joint disease, obesity, major depressive disorder, and unspecified anxiety disorder. (Tr. 56). The ALJ concluded at Step 3 that these impairments did not meet or medically equal any of the Listings. (Tr. 57). As to RFC, the ALJ concluded that Plaintiff could perform a limited range of light work, with a limitation in concentration, persistence, or pace with the ability to understand, remember and carry out simple tasks at a non-pressured work pace and limited to object oriented tasks, with only occasional work-related interactions with co-workers, supervisors, and the general public. (Tr. 59). Based on this RFC, the ALJ concluded at Step 4 that Plaintiff was unable to perform any of his past relevant work. (Tr. 64). However, the ALJ found at Step 5 that Plaintiff could perform light and sedentary jobs that exist in significant numbers in the national economy and thus was not disabled. (Tr. 64-65).

B. Substantial Evidence Supports the ALJ's Step Two Findings

This case has a voluminous administrative record. The ALJ thoroughly lays out the relevant evidence of record and clearly articulates her conclusions and supporting rationale. In the end, the ALJ sorted through and evaluated the medical opinions and other evidence in compliance with the law. Plaintiff has shown no error in that exercise. Throughout his brief, Plaintiff repeatedly makes the boilerplate argument that the ALJ “cherrypicked” information, opinions, and arguments (ECF No. 9-1 at pp. 24, 25, 28, 29) to reach her conclusions and improperly acted as

her own medical expert. Id. at pp. 2, 15, 18, 19, 22, 23, 28. Plaintiff has not, however, adequately supported these conclusory arguments. Rather, it is clear from Plaintiff's brief that his argument boils down to a claim that the ALJ erred in favoring certain medical opinions over others and in failing to discuss every single piece of evidence that favored Plaintiff, as more fully explained below. However, the ALJ has the discretion to do just that so long as her conclusions are adequately supported by the record. Since they are in this case, the Court cannot second-guess those conclusions.

At Step 2, Plaintiff contends that the ALJ erred by omitting the "full range of spinal impairments identified by non-treating physician Dr. Green in her February 16, 2019 medical evaluation..." (ECF No. 9-1 at p. 26). Dr. Green noted back pain after MRI with spondylosis, degenerative disc disease, and some evidence of lower left extremity radiculopathy. (Tr. 166, 188). Additionally, Plaintiff claims that the ALJ "ignored" the "additional diagnoses" made by treating physician Dr. Cicerchia in February 2019. Plaintiff also argues that the ALJ "failed to note that Plaintiff's [major depressive] disorder included psychotic features." (ECF No. 9-1 at p. 26). Plaintiff contends that by failing to "include them in her Step 2 findings, she did not adequately analyze them in Steps 3 and 5, leading to further errors and unsupportable findings..." Id.

The Commissioner persuasively argues that this alleged error fails to get out of the gate due to this Court's holding in White v. Colvin, No. CA 14-171 S, 2015 WL 5012614, at *8 (D.R.I. Aug. 21, 2015) that "a claimant cannot demonstrate harmful error at Step Two unless the failure to make severity findings ends the analysis." In White, the Court cited several other cases for the proposition that "[c]ourts consistently label such omissions as harmless as long as the ALJ finds some severe impairment so that the analysis continues." In the present case, the ALJ found that

Plaintiff had severe mental and physical impairments, thus the ALJ continued the sequential analysis considering the combined effect of his impairments.¹ Following the reasoning set forth in White v. Colvin, therefore, there can be no prejudicial error at Step 2 because the ALJ continued the analysis and considered the combined effect of all of Plaintiff's medically determinable impairments.

C. Substantial Evidence Supports the ALJ's Step Three and RFC Findings

At Step 3, the ALJ found that Plaintiff's physical and mental impairments were not severe enough to "meet or medically equal" any of the Listings. (Tr. 57). Plaintiff challenges this finding and contends the ALJ did not discuss whether Plaintiff's condition "might medically equal the severity of a listing." (ECF No. 9-1 at p. 21). Plaintiff also faults the ALJ for failing to provide a detailed explanation of the basis for her Step 3 finding. Plaintiff does not, however, cite any legal authority for the proposition that a detailed explanation is required. See Social Security Ruling ("SSR") 17-2p. ("Generally, a statement that the individual's impairments does not medically equal a listed impairment constitutes sufficient articulation for this finding.").

The record reflects that the ALJ considered whether Plaintiff's physical impairments met or equaled Listing 1.02 (major dysfunction of a joint) and 1.04 (disorders of the spine). The ALJ also considered whether his mental impairments met or equaled Listing 12.04 or 12.06. Although Plaintiff concedes that the ALJ cited evidence that Plaintiff did not "meet" Listing 1.02, he argues that the ALJ did not discuss whether Plaintiff's condition might have medically equaled the Listing. With respect to Listing 1.02, the ALJ noted that medical evidence "does not establish involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in

¹ This Court's holding in Costa v. Astrue, No. 08-395S, 2009 WL 3366961 (D.R.I. Oct. 15, 2009) does not alter the analysis here. In Costa the Court found the ALJ erred by failing to mention a hip impairment at all in his Step 2 analysis. The present case is inapposite, as the ALJ thoroughly considered the impairments at issue.

inability to ambulate effectively.” (Tr. 57). With respect to Listing 1.04, Plaintiff contends that the ALJ provided only her “unsubstantiated medical conclusion” in support of the assertion that Plaintiff did not meet this Listing.

Plaintiff’s various swipes at the ALJ’s Step 3 analysis fail. While it is true that the ALJ did not engage in a lengthy analysis at Step 3, the ALJ thoroughly discussed the evidence at later portions of the Decision that support the Listing findings. Further, the Commissioner argues that Plaintiff’s focus on the purported lack of affirmative evidence cited in support of the ALJ’s Listing analysis misplaces the burden of proof. The Court agrees. “A claimant bears the burden of proving that she meets or equals a listing.” See 20 C.F.R. § 416.912. “An ALJ does not err by finding that a claimant does not meet or equal a listing where no medical opinion substantiates that the claimant’s condition meets or equals a listing.” Canales ex rel. Pagan v. Astrue, No. CIV.A.07-474ML, 2009 WL 2059716, at *6 (D.R.I. July 13, 2009). In the present case, the ALJ noted the lack of medical evidence supporting the Listings for physical impairments, (Tr. 61 noting “generally unremarkable” physical examination findings) as well as the fact that no medical source opined that Plaintiff met or medically equaled a physical or mental impairment listing. (Tr. 129, 145, 169, 191). This analysis was sufficient.

Further, Plaintiff contends that the ALJ’s categorization of Mental Status Exams and treatment of “subjective” reports in evaluating mental impairments at Step 3 required her to act as her own medical adviser. (ECF No. 9-1 at p. 21). In support of this contention, Plaintiff argues that the ALJ considered Listings 12.04 and 12.06 and concluded that the mental status exams were “unremarkable” and “generally benign.” Id. at p. 22. As to the mental status examinations, Plaintiff again fails to demonstrate error because the ALJ’s use of the term “unremarkable” in describing the mental status examinations is “commonplace and appropriate.” Morey v. Colvin,

No. 14-433M, 2015 WL 9855873, *13 (D.R.I. Oct. 5, 2015). Accordingly, Plaintiff has not shown that the ALJ committed any error in her Listing analysis.

Turning to the RFC, Plaintiff argues that the ALJ erred in crafting the physical portion of the RFC because it was based “heavily” upon a July 2018 opinion of non-treating physician Dr. Quinn that was rendered prior to what Plaintiff characterizes as a significant worsening of his symptoms. (ECF No. 9-1 at p. 14). Two factors overcome the argument Plaintiff advances, first, the ALJ expressly considered the entire record and found that Dr. Quinn’s Opinion was “consistent with the medical evidence” (Tr. 62), and second, Plaintiff has not sustained his burden of demonstrating a “sustained (and material) worsening” in his condition as required by the relevant caselaw. Pelletier v. Colvin, No. 13-651-MML, 2015 WL 247711, *14-15 (D.R.I. Jan. 20, 2015).

In assessing the RFC, the ALJ considered Plaintiff’s right shoulder injury, back pain, left wrist problem, bilateral knee arthritis treated with injection therapy, and depression. (Tr. 60). The ALJ noted that mental status examinations are “generally within normal limits but for depressed mood and ruminating thought process, with episodic notations of passive suicidal ideation.” Id. The ALJ further noted that between October 2018 and November 2019, Plaintiff treated with Chanta Pou, ARPN, was assessed a GAF of 50 and reported “doing okay” which was consistent with a “largely unremarkable” mental status examination. (Tr. 61). The ALJ accurately noted his treatment overall “has been conservative.” Id. The ALJ went on to note the diagnosis of lumbar disc herniation with spondylosis and radiculopathy as well as bilateral knee osteoarthritis and degenerative joint disease. (Tr. 61). Nevertheless, the ALJ noted that Plaintiff’s physical examinations were “generally unremarkable but for notation of tenderness to palpitation of the lumbar paraspinal and patellofemoral joint, and episodically reduced range of motion in the lumbar spine.” Id. The ALJ noted treatment with physical therapy, MRI imaging and injection

therapy and accurately observed that no medical provider has “suggested other than conservative treatment.” (Tr. 62). The ALJ ultimately found persuasive the opinions of Dr. Quinn and Dr. Peretta. Id. However, she concluded that the “subsequent treatment records establish additional severe impairments and warrant a slightly more restricted physical [RFC].” Id. Plaintiff has shown no error in the ALJ’s RFC assessment warranting remand. Since the RFC assessment is supported by substantial evidence of record, it is entitled to deference.

D. Substantial Evidence Supports the ALJ’s Evaluation of Plaintiff’s Subjective Statements

Next, Plaintiff argues that the ALJ engaged in only a “brief recitation” of the pain and symptom assessment that was not conducted in accordance with 20 C.F.R. §§ 416.929(c)(3) and 404.1529(c)(3). The Court disagrees. A reasonable review of the ALJ’s decision reveals that she fully and fairly considered Plaintiff’s subjective complaints in compliance with the applicable legal standards. With respect to Plaintiff’s subjective complaints, the ALJ recognized Plaintiff’s right shoulder injury, back pain with radiculopathy, left wrist problem and bilateral knee arthritis. (Tr. 60). The ALJ also noted that Plaintiff indicated he had difficulty bathing, dressing and “that it is hard for him to do physical jobs without pain.” Id. She also indicated that he experienced “intense knee and back pain” at a previous job. Id. Nevertheless, after considering all the evidence, the ALJ found that the claimant’s statements about the intensity, persistence and limiting effects of his symptoms were not entirely consistent with the medical evidence. Id. She reasonably found a disconnect between Plaintiff’s complaints, and the medical evidence of record. The ALJ noted that Plaintiff’s treatment overall was conservative and that his physical examinations were generally unremarkable. (Tr. 61). The ALJ expressly noted that no treatment “other than conservative treatment” was suggested by any medical provider. (Tr. 62).

Plaintiff further takes issue with certain omissions from the record: for example, that the ALJ did not address or cite to the Pain Questionnaire and Function Report completed in June 2018 nor the fact that mental impairments were impacting his pain. (ECF No. 9-1 at p. 18). Plaintiff also contends that the ALJ's rejection of Mr. Simon's RFC as "inconsistent with the longitudinal record, the generally unremarkable mental status evaluations, and the strictly conservative treatment..." was error. None of the arguments advanced by Plaintiff are sufficient to sustain his burden. 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 her reasoning. Since the ALJ's interpretation of Plaintiff's work history, daily activities and the limitations evidenced by his 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.

CONCLUSION

For the reasons discussed herein, I recommend that Plaintiff's Motion for Reversal (ECF No. 9) be DENIED and that the Commissioner's Motion to Affirm (ECF No. 11) be GRANTED. I further recommend that Final Judgment enter in favor of the Commissioner.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v.

Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
April 25, 2022