

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

STACEY MICHELE FAZZINO,
Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

No. 3:20-cv-01910 (VAB)

**RULING AND ORDER ON MOTIONS REGARDING THE COMMISSIONER'S
DECISION**

Stacey Michele Fazzino (“Plaintiff”) has filed this administrative appeal under 42 U.S.C. § 405(g) against Kilolo Kijakazi,¹ the Acting Commissioner of Social Security (“Defendant” or “the Commissioner”), seeking to reverse the decision of the Social Security Administration denying her claim for Title II disability insurance benefits under the Social Security Act and her claim for Title XVI supplemental security income benefits under the Social Security Act. Compl. ¶ 1, ECF No. 1 (Dec. 22, 2020) (“Compl.”).

Ms. Fazzino has moved for an order reversing the decision of the Commissioner or, in the alternative, an order remanding the case for a *de novo* hearing. *See* Pl.’s Mot. to Reverse the Decision of the Commissioner, ECF No. 18 (June 22, 2021); Mem. of Law in Supp. of Pl.’s Mot. to Reverse the Decision of the Commissioner, ECF No. 18-2 (June 22, 2021) (“Pl.’s Mem.”).

¹ When a party in an official capacity resigns or otherwise ceases to hold office while the action is pending, the officer’s successor is automatically substituted as a party, regardless of the party’s failure to so move or to amend the caption; the Court may also order such substitution at any time. *See* Fed. R. Civ. P. 25(d); *see also Williams v. Annucci*, 895 F.3d 180, 187 (2d Cir. 2018); *Tanvir v. Tanzin*, 894 F.3d 449, 459 n.7 (2d Cir. 2018). The Clerk of Court therefore will be ordered to change the defendant of the case from Andrew Saul to Kilolo Kijakazi. *See* Soc. Sec. Admin., *Dr. Kilolo Kijakazi: Acting Commissioner*, <https://www.ssa.gov/agency/commissioner.html> (last visited March 17, 2022).

The Commissioner has moved for an order affirming the agency’s decision. *See* Def.’s Mot. for an Order Affirming the Decision of the Commissioner, ECF No. 22 (Sept. 20, 2021) (“Def.’s Mot.”).

For the following reasons, Ms. Fazzino’s motion is **DENIED**.

The Commissioner’s motion is **GRANTED** and, accordingly, the decision of the Commissioner is **AFFIRMED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background²

Born in 1990, Ms. Fazzino reached the age of twenty-four at the time of the alleged onset of her disability. *See* Tr. of Administrative Proceedings at 284, ECF No. 16 (Apr. 26, 2021) (“Tr.”).³ Ms. Fazzino completed her studies in the eleventh grade and does not have a GED. *Id.* at 47.

Before the alleged onset of her disability, Ms. Fazzino worked “on and off” as a cashier for approximately seven years, as a kitchen helper in a nursing facility for approximately one year, and as a telemarketer for a siding/windows business for less than one year. *Id.* at 344. Ms.

² As explained below, Ms. Fazzino filed a Statement of Material Facts pursuant to the Court’s Standing Scheduling Order. *See* District of Connecticut Standing Scheduling Order—Social Security Cases 3 (Nov. 15, 2018), [http://www.ctd.uscourts.gov/sites/default/files/general-ordes/18-26_Standing% 20Scheduling% 20Order-% 20Social% 20Security% 20Cases_0.pdf](http://www.ctd.uscourts.gov/sites/default/files/general-ordes/18-26_Standing%20Scheduling%20Order-%20Social%20Security%20Cases_0.pdf) (“Revised Standing Scheduling Order”) (“Plaintiff shall file, as a separate document, a Statement of Material Facts consisting of numbered paragraphs and supported by specific page citations to the Certified Administrative Record. The statement must reference facts in the [] Record as opposed to conclusions of law.”). The Commissioner subsequently filed a response to Plaintiff’s Statement of Facts. *See id.* (“Within 60 days after Plaintiff files the Statement of Material Facts, the Defendant shall file a responsive statement of facts that corresponds to Plaintiff’s Statement of Material Facts and indicate if the Defendant adopts the contents of each paragraph as presented. . . .”). Thus, this section consists of facts upon which the parties appear to agree, based on both parties’ filings and the record, except where judicial notice is taken. *See* Fed. R. Evid. 201(b) (“The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”).

³ Pagination refers to pagination provided by the Court’s Electronic Filing System.

Fazzino has not engaged in substantial gainful activity since her alleged onset date. *Id.* at 20; Pl.’s Statement of Material Facts ¶ 47, ECF. No. 18-1 (June 22, 2021) (“Pl.’s SOMF”).

The Administrative Law Judge (“ALJ”) found Ms. Fazzino to have the following severe impairments: “seizure disorder, migraine headaches, carpal tunnel syndrome, obesity, type 1 diabetes mellitus, depression, and posttraumatic stress disorder.” Tr. at 20. The ALJ concluded that Ms. Fazzino’s hypothyroidism “is a nonsevere impairment” because “the purpose of her treatment was merely to monitor for the development of thyroid related symptoms.” *Id.*

1. Medical History

On a December 4, 2013 visit, Dr. Donald S. Levine noted that Ms. Fazzino has had Type 1 diabetes since the age of three. *Id.* at 465–67. The notes also state that Ms. Fazzino was using an insulin pump and that her hemoglobin A₁C level was 9% in July 2013, down from 12.2% in January 2013. *Id.* Dr. Levine additionally noted that Ms. Fazzino has had a history of diabetic ketoacidosis (“DKA”) since April 2013, a multinodular goiter discovered in a March 2013 thyroid ultrasound, and hypothyroidism, for which she was taking levothyroxine. *Id.* The notes also state that Ms. Fazzino has mild dyslipidemia, exogenous obesity, a history of cellulitis of the abdominal wall, a history of postpartum depression (for which she was taking Zoloft), low vitamin D, reactive airway disease, fatigue, and a seizure disorder. *Id.*

On December 16, 2013, Ms. Fazzino presented for a visit with Rena Jacobs, a Physician’s Assistant (“PA-C”), concerning “upper respiratory infection symptoms” and “bilateral abdominal and back pain.” *Id.* at 480. Ms. Fazzino told PA-C Jacobs that the back pain, which started in her lower back and radiated upward, started five days before the visit, and that she was also experiencing some increased urine frequency. *Id.* PA-C Jacobs noted that Ms. Fazzino likely had

an upper respiratory infection that may have also caused back strain due to coughing. *Id.* at 481. PA-C Jacobs ordered a urine test in light of blood found in Ms. Fazzino’s urine. *Id.*

On February 20, 2014, Ms. Fazzino saw Lauryn Buller, an Advanced Practice Registered Nurse (“APRN”), for a follow-up visit and to refill some of her medications. *Id.* at 483–85; Pl.’s SOMF ¶ 6. Ms. Fazzino reported to APRN Buller that her mood and anxiety were “well controlled with Zoloft 150 mg daily” and that she was not having panic attacks or suicidal ideation. Tr. at 483. Ms. Fazzino also reported headaches and increased stress, which were “[p]artially responsive to [A]dvil” and light sensitivity. *Id.* APRN Buller recorded Ms. Fazzino’s weight at 220 pounds and her Body Mass Index (“BMI”) at 40.56, which fell into the category of “extreme obesity.” *Id.*; Pl.’s SOMF ¶ 6. APRN Buller refilled Ms. Fazzino’s Zoloft prescription for her depressed mood, and also her Keppra prescription for seizures. Tr. at 484. APRN Buller also noted that Ms. Fazzino “need[ed] to [follow up] with neurology” about her seizures. *Id.* APRN Buller recommended that Ms. Fazzino see a dentist for a night guard, to help with her headaches. *Id.*

On April 8, 2014, Ms. Fazzino saw Dr. May Habboosh for a sore throat. *Id.* at 486–87. Her weight was recorded at 222 pounds and her BMI at 40.93. *Id.* at 486. Dr. Habboosh prescribed a Zithromax Z-Pak Tablet for bronchitis. *Id.* Dr. Habboosh noted that Ms. Fazzino presented “normal hygiene and grooming . . . [and] eye contact appropriate.” *Id.*

On May 28, 2014, Ms. Fazzino visited APRN Buller for a sore throat that had lasted for about three weeks and bilateral ear pain, which APRN Buller diagnosed as acute pharyngitis. *Id.* at 488–90.

On May 29, 2014, Ms. Fazzino visited APRN Buller for a follow-up appointment. *Id.* at 491–93. According to APRN Buller’s notes, Ms. Fazzino “[r]eport[ed] mood and anxiety well

controlled with Zoloft 150 mg daily – no panic attacks, no suicidal ideation, sleeping well. Increased stress regarding home situation however coping well.” *Id.* at 491. APRN Buller noted that Ms. Fazzino was “[d]ue for [a] neurology [follow-up] for seizure disorder,” which Ms. Fazzino had not scheduled yet. *Id.* APRN Buller also observed that Ms. Fazzino had a fractured left foot and that her foot and ankle were in a cast. *Id.*

On July 9, 2014, Ms. Fazzino visited Dr. Levine complaining of “significant brittle glucose results ranging between 30 and 500.” *Id.* at 461–64. Dr. Levine noted that Ms. Fazzino’s “sensor [was] not operating properly” and as a result she “tries to check her sugar every 2 hours throughout the day but her place of work does not allow that.” *Id.* at 461. Dr. Levine indicated that he wrote a note to Ms. Fazzino’s place of work, Dunkin Donuts, saying that “she must check her sugars every 2 hours for her brittle diabetes.” *Id.* at 461, 463. He wrote that Ms. Fazzino’s A₁C of 11.5% was “terrible” and that she would not be able to do elective surgery for her broken left foot until her A₁C level went below 8.5%. *Id.* at 461. Dr. Levine also indicated that Ms. Fazzino complained of “increased anxiety” and that she would contact her primary care provider about “starting an anxiolytic agent.” *Id.* at 463.

On September 18, 2014, Ms. Fazzino visited APRN Lauryn Slomkowski⁴ complaining of “nasal congestion, headache, dizziness, nausea, productive cough, wheezing, chills and [a] sore throat[.]” *Id.* at 494. APRN Slomkowski diagnosed Ms. Fazzino with acute nasopharyngitis, “a viral illness.” *Id.* at 494–95.

On October 2, 2014, Ms. Fazzino again saw APRN Slomkowski. At this visit, Ms. Fazzino reported that she had been hospitalized from September 22, 2014 to September 25, 2014, at Middlesex Hospital, for “headache, dizziness, [and] visual hallucinations.” *Id.* at 496–

⁴ Ms. Fazzino stated in her Statement of Facts that “it appears APRN [Lauryn] Slomkowski and APRN [Lauryn] Buller are the same person.” Pl.’s SOMF 4 n.5.

98. APRN Slomkowski also noted that Ms. Fazzino saw a neurologist on September 29, 2014 and that the neurologist advised Ms. Fazzino that she was “having seizures [that were] possibly causing [her] chronic headaches.”⁵ *Id.* at 496. The neurologist increased Ms. Fazzino’s Topamax prescription to 100 mg and started her on Valium, and also recommended a follow-up MRI due to “new paresthesia to [the] face and hand.” *Id.* During the visit, Ms. Fazzino reported still having “headache[s] with flashing lights in all visual fields.” *Id.* APRN Slomkowski also wrote that Ms. Fazzino reported “dysuria, urinary frequency, and mild intermittent bilateral flank pain x 2 days.” *Id.* A urinalysis showed Ms. Fazzino’s glucose sample at 1000. *Id.* at 497. APRN Slomkowski diagnosed Ms. Fazzino with a lower urinary tract infection and prescribed Cipro. *Id.*

On October 13, 2014, Ms. Fazzino visited Dr. N. Esra Hatiboglu for a sore throat. *Id.* at 499. Dr. Hatiboglu diagnosed Ms. Fazzino with pharyngitis and prescribed azithromycin tablets. *Id.* at 500.

On November 20, 2014, Ms. Fazzino saw APRN Slomkowski and reported “increased depression over the past two weeks.” *Id.* at 503. According to APRN Slomkowski’s notes, Ms. Fazzino reports that she “thought about” but did not act on “cutting.” *Id.* She allegedly did not have “suicidal or homicidal thoughts.” *Id.* APRN Slomkowski recommended that Ms. Fazzino increase her dosage of Zoloft and referred Ms. Fazzino to Middlesex Hospital Behavioral Health to see a therapist. *Id.* at 505. The notes also reported that Ms. Fazzino was “following with neurology for seizure disorder.” *Id.* at 503.

On November 24, 2014, Ms. Fazzino attended a follow-up appointment with Dr. Levine. Tr. at 452–55 (Donald Levine, M.D., Middlesex Hospital Multispecialty Group, Progress Notes (Nov. 24, 2014)). Dr. Levine noted that Ms. Fazzino’s A₁C level was at 9.6% on August 12,

⁵ Neither records from the September 22–25 hospital stay nor records from the September 29 neurologist appointment are in the record. *See* Pl.’s SOMF at 4 n.6.

2014, and that Ms. Fazzino did not get her A₁C reading before her November 24 appointment because “she had a number of other issues with . . . newly diagnosed seizures.” *Id.* at 452.

On December 16, 2014, Ms. Fazzino saw neurologist Dr. Nabi Chowdhury for seizures and chronic headaches. *Id.* at 555–59. Dr. Chowdhury noted that Ms. Fazzino “has not had any convulsions from her seizures” since 2010. *Id.* at 555–56. Dr. Chowdhury also noted that Ms. Fazzino had “continued visual hallucinations, where she sees people and animals,” and that her daily headaches were associated with other symptoms: “photophobia, phonophobia, nausea, intermittent vertigo lasting 5-10 minutes, seeing double, flashes of light,” and “vision go[ing] black for about [one] minute.” *Id.* at 555. Dr. Chowdhury also noted that the chronic daily headaches “may at least be partially due to underlying psychiatric comorbidities” and that they “may be chronic basilar migraines.” *Id.* at 557.

Dr. Chowdhury also stated that she did not “think that the hallucinations are due to seizures” and that Ms. Fazzino may have “depression with psychotic features.” *Id.* Dr. Chowdhury noted that Ms. Fazzino “ha[d] remained seizure-free since 2010” and that she had “a longstanding history of poorly controlled diabetes.” *Id.* In addition, Dr. Chowdhury noted that Ms. Fazzino “may have both large and small fiber neuropathies” but that “her sensory exam did have a component of psychological overlay.” *Id.* Finally, Dr. Chowdhury assessed that Ms. Fazzino’s headaches may have been caused or worsened in part by “underlying sleep apnea.” *Id.*

Dr. Chowdhury ordered that Ms. Fazzino stop using Topamax and switch to Divalproex. *Id.* Dr. Chowdhury also referred Ms. Fazzino for a polysomnogram; a sleep study to check for sleep apnea; a psychiatry consultation for depression, panic attacks, and hallucinations; and an EMG exam to “look for neuropathy versus radiculopathy.” *Id.* at 557–58. Dr. Chowdhury also noted that Ms. Fazzino’s standard gait was “normal” and that her strength was “5/5 proximally

and distally, except for the left abductor pollicis brevis muscles which was 4+.” *Id.* at 556; Def.’s Resp. to Pl.’s Statement of Facts ¶ 11, ECF. No. 22-2 (Aug. 20, 2021) (“Def.’s SOMF”).

On December 19, 2014, Ms. Fazzino saw APRN Slomkowski and reported “significant improvement in moods” and that her depression was “resolved.” Tr. at 511–517. APRN Slomkowski also noted that Ms. Fazzino reported “increased anxiety over the past week” with “no identifiable trigger.” *Id.* at 511. APRN Slomkowski prescribed buspirone (Buspar) and referred her to the Behavioral Health service. *Id.* at 511, 517.

On January 22, 2015, Dr. Chowdhury performed an EMG examination and diagnosed Ms. Fazzino with “bilateral median neuropathies at or distal to the wrist, consistent with carpal tunnel syndrome.” *Id.* at 594–95. The results noted that the carpal tunnel syndrome was “mild to moderate . . . on the right and very mild on the left.” *Id.* at 594; Def.’s SOMF ¶ 13.

On January 23, 2015, Ms. Fazzino saw APRN Slomkowski and reported that she had felt dizzy for the past 48 hours, which she described as “vertigo” that was “[t]riggered by movement.” Tr. at 520. APRN Slomkowski diagnosed Ms. Fazzino with vertigo and prescribed Zofran. *Id.* at 520–21.

On February 13, 2015, Ms. Fazzino again saw Dr. Chowdhury as a follow-up for her seizures and chronic headaches. *Id.* at 560–563. Dr. Chowdhury reported that Ms. Fazzino’s headaches had decreased in severity after he started her on Topamax, but they were “still constant.” *Id.* at 560. Ms. Fazzino also reported that the parathesias in her hands was “worse.” *Id.* Dr. Chowdhury recommended that Ms. Fazzino “slowly increase” her Topomax dosage to address the headaches and that she purchase wrist splints for her carpal tunnel syndrome. *Id.* at 562.

On February 23, 2015, Ms. Fazzino saw APRN Slomkowski as a follow-up to her emergency room visit on February 20, 2015 due to sharp chest pain radiating down her left arm. *Id.* at 523–24. The tests conducted on Ms. Fazzino, including a chest X-ray, were negative, according to APRN Slomkowski’s notes. *Id.* at 523. APRN Slomkowski also noted that Ms. Fazzino’s chest pain was constant at 9.5/10 and had remained unchanged since its onset. *Id.* APRN Slomkowski notes state that, “considering [the] persistent [chest pain] now associated with tachycardia and low-grade fever,” Ms. Fazzino “likely needs inpatient workup including ECHO.” *Id.* at 524. The notes state that Ms. Fazzino agreed to go immediately to the emergency room. *Id.*

On February 24, 2015, Ms. Fazzino saw APRN-BC Kathryn Tierney for a follow-up appointment regarding her diabetes. *Id.* at 564–66. APRN-BC Tierney’s notes indicate that Ms. Fazzino was told at her recent emergency room visit that she had “inflammation around [her] heart” and that the pain “ha[d] gotten worse.” *Id.* at 564. She also noted that Ms. Fazzino was supposed to see a cardiologist on that day. *Id.* The notes also state that Ms. Fazzino’s glucose levels were “very well-controlled” at times, but at others they were “in the 400s.” *Id.* APRN-BC Tierney also noted that Ms. Fazzino was “not eating consistently” “because of her acute pain,” and that she was “very afraid of DKA [diabetic ketoacidosis].” *Id.* at 564–65.

On March 18, 2015, Ms. Fazzino saw APRN Slomkowski regarding continued chest pain and diarrhea. *Id.* at 525–27. Her glucose level was recorded at 474. *Id.* at 526.

On July 9, 2015, Ms. Fazzino saw PA-C Jacobs regarding “severe neck pain” on the right side of her neck, which was preventing her from turning her head in either direction. *Id.* at 535–36. PA-C Jacobs noted that Ms. Fazzino went to the emergency room for her neck pain on July 7 and had benign imaging. *Id.* at 535. PA-C Jacobs prescribed Flexeril. *Id.*

On October 26, 2015, Ms. Fazzino again saw PA-C Jacobs for pain in both ears and a sore throat. *Id.* at 537–38. Ms. Fazzino’s BMI was measured at 41.11. *Id.* at 537. PA-C Jacobs recommended a trial of Flonase. *Id.*

On October 30, 2015, Ms. Fazzino saw Dr. Elena Bortan, a neurologist. *Id.* at 570–73. Dr. Bortan noted that Ms. Fazzino reported having a history of childhood seizures and that she had “20 grand mal[] seizure about 4 years ago,” and that she had started taking Keppra two years prior to seeing Dr. Bortan. *Id.* at 570. Dr. Bortan also noted the following:

[Ms. Fazzino] reported having flashing lights, aura (flashing lights, different colors), lasting [a] couple of minutes, followed by lightheadedness and extreme headache. The intensity of [the] headache is usually 10/10. Headache is located on the forehead covers entire head. . . . Frequency: 2-3 times / week. Headache lasting [a] few hours after aura. Advil is not helping. She reported that she did not notice a decrease in frequency of headache since taking Topamax.

Id.

Dr. Bortan noted that a 72-hour EEG monitoring conducted in June 2015 indicated a “normal EEG, without significant changes during periods of flashing lights” and that this result “exclude[d] [the] possibility of seizures during her visual disturbances.” *Id.* at 570, 572. Dr. Bortan further noted that Ms. Fazzino’s seizures were “well controlled” and that the last one was in 2010. *Id.* at 572. Dr. Bortan ordered a continuation of Keppra and upward titration of Topamax. *Id.* Dr. Bortan also noted that Ms. Fazzino had a “normal” gait, “5/5” strength, “intact” coordination, and “intact” sensation for light touch, with “decreased pin prick bel[ow] knees and bel[ow] elbows.” *Id.* at 571; Def.’s SOMF ¶ 19.

On November 5, 2015, Ms. Fazzino received an evaluation for mental health services from Santia Berberena, M.A. Tr. at 603–607. Ms. Berberena found that Ms. Fazzino had a significant history of trauma and suffered from depression and anxiety, as well as a history of

self-injury. *Id.* at 603, 606. Ms. Berberena also noted that Ms. Fazzino was dating someone who was a “good support” and that she was oriented with a dysphoric mood, appropriate affect, organized thought process, intact memory, unimpaired attention, average intelligence (although she had been tested for learning disabilities as a child and was told that she learned “at a slower pace than her peers), and fair insight and judgment. *Id.* at 605–06. After reviewing Ms. Fazzino’s mental health history and current state at length, Ms. Berberena recommended individual psychotherapy and medication management. *Id.* at 606.

Ms. Fazzino saw Ms. Berberena again for therapy sessions on November 16, 2015, *id.* at 608–09; November 25, 2015, *id.* at 610–11; and January 7, 2016, *id.* at 612–13. During the mental health examination on November 16, Ms. Fazzino “indicate[d] moderate depression.” *Id.* at 608. Ms. Berberena’s discharge summary from March 16, 2016 “assumed that [Ms. Fazzino’s] prognosis would be fair, given the fact that she did not resume . . . treatment.” *Id.* at 616.

On March 31, 2016, Ms. Fazzino saw Dr. N. Esra Hatiboglu for abdominal pain that was radiating to her back and right shoulder and for concerns that she was having “another episode” of kidney infection. *Id.* at 539–41. Dr. Hatiboglu ordered an ultrasound of Ms. Fazzino’s abdomen. *Id.* at 540. Ms. Fazzino’s A₁C level was reported as 9.7% and lab results showed a blood glucose level of 311. *Id.* at 540–41.

On April 28, 2016, Ms. Fazzino saw APRN-BC Tierney about her diabetes. *Id.* at 577–79. A download of Ms. Fazzino’s insulin pump showed blood glucose levels “in the 50-100 range or above 300, not much in between.” *Id.* at 577. Ms. Fazzino complained of ongoing fatigue, and her BMI was recorded at 42.38. *Id.* at 577–78. The notes from this visit also indicate that Ms. Fazzino was “having [an] intermittent feeling of fullness on the right side of her neck,” and that a review of her record revealed that a 2013 ultrasound “showed multiple nodules with at

least two that were over 1cm.” *Id.* at 578. Ms. Fazzino was instructed to schedule a follow-up ultrasound. *Id.* at 579.

On May 10, 2016, Ms. Fazzino again saw APRN-BC Tierney for a follow-up regarding issues with her insulin pump. *Id.* at 838–41. APRN-BC Tierney noted that Ms. Fazzino was having “intermittent hypoglycemia with numbers in the 60s” and that her blood glucose was “relatively frequent[ly] above 400.” *Id.* at 838. APRN-BC Tierney also noted that Ms. Fazzino was on daily levothyroxine for her hypothyroidism, that her TSH was markedly elevated, that her fatigue was ongoing, and that she denied any new overt symptoms of hyper- or hypothyroidism. *Id.* Ms. Fazzino’s thyroid nodule in the left lobe was measured at 2.5 centimeters, and a biopsy was scheduled. *Id.* at 838, 840.

On July 16, 2016, Ms. Fazzino received an evaluation from Lorelei Muresan, Psy.D., based on a referral for depression and anxiety. *Id.* at 769–73. Dr. Muresan noted that Ms. Fazzino’s primary care provider was unwilling to prescribe “psychotropic medications.” *Id.* at 769. She further noted that Ms. Fazzino was on Buspar and Zoloft but had no refills and was experiencing “high anxiety.” *Id.* at 771. Dr. Muresan’s “diagnostic impression” included recurrent and moderate major depressive disorder; panic disorder; provisional post-traumatic stress disorder; provisional bipolar disorder; medical issues from overweight, a history of seizure disorder, and diabetes which is insulin dependent; and interpersonal issues. *Id.* at 772. She also noted that Ms. Fazzino was alert and oriented with an “alright” or anxious mood, congruent affect, organized thought process, intact memory and attention, average intelligence, fair insight and judgment, and a history of a learning disability. *Id.*; Def.’s SOMF ¶ 23. Ms. Fazzino was assigned to a therapist and a psychiatrist. *Id.* at 773.

On July 21, 2016, Ms. Fazzino saw APRN-BC Tierney, who recorded her A₁C at 11.2 (compared to the 4-6% normal range). Tr. at 584–87. Ms. Fazzino’s Glomerular Filtration Rate (GFR) was labeled “low,” at 55, and her glucose level was labeled high, at 499. *Id.* at 585. APRN-BC Tierney increased Ms. Fazzino’s daily levothyroxine dose to address the hypothyroidism. *Id.* at 586.

On July 26, 2016, Ms. Fazzino began a course of mental health therapy with LCSW Amanda McJunkins for depression and anxiety. *Id.* at 774–75. At the first session, Ms. Fazzino reported that she was “sexually abused by a relative [f]rom age 4 to age 13.” *Id.* at 774.

On July 29, 2016, Ms. Fazzino saw Dr. Joyce Tinsley for psychiatric evaluation and medical management. *Id.* at 776–78. Ms. Fazzino indicated that her nightmares had become “more intense” over the past year, that she had flashbacks to being abused, and that she avoids confrontation and isolates herself. *Id.* at 776. Dr. Tinsley recommended increased doses of sertraline (Zoloft) and Buspar, and noted that another increase in sertraline “w[ould] likely be made.” *Id.* at 778.

On August 12, 2016, at an appointment with LCSW McJunkins, Ms. Fazzino complained of not sleeping much at night, lacking motivation, and spending most of her time at home on the couch. *Id.* at 780. LCSW McJunkins also reported that Ms. Fazzino had “dark circles around her eyes,” “appeared exhausted,” and received a PHQ-9 score “indicating severe depression.” *Id.* At sessions on August 12 and August 22, 2016, LCSW McJunkins found Ms. Fazzino to have “severe depression.” *Id.* at 780–81.

On August 25, 2016, Ms. Fazzino saw Dr. Tinsley for medication management. *Id.* at 782–83. Ms. Fazzino indicated that she “continues to be depressed,” that she “does not see that the [Zoloft and Buspar] has been helpful to her,” and that she “continues to feel panic, anxiety,

and nightmares.” *Id.* at 782. Dr. Tinsley noted that Ms. Fazzino’s “affect appears to be somewhat depressed” and recommended increasing her Zoloft dose and adding doxepin and alprazolam, in order to address the three panic attacks she was having per week. *Id.*

On August 30, 2016, Ms. Fazzino reported to LCSW McJunkins that she was having at least one panic attack per day and continued to feel unmotivated. *Id.* at 784–85. LCSW McJunkins noted that Ms. Fazzino’s PHQ-9 “indicat[ed] severe depression.” *Id.* at 784.

In a medical source statement completed on September 7, 2016, LCSW McJunkins and Dr. Sergio Mejia listed Ms. Fazzino’s diagnoses as Post-Traumatic Stress Disorder (“PTSD”), Depressive Disorder – Unspecified, and Anxiety – Unspecified. *Id.* at 638–40. LCSW McJunkins and Dr. Mejia opined that Ms. Fazzino’s inability to work was expected to last for six months or more, that they did not know when she would be able to return to work, and that she is not able to work on a part-time basis. *Id.* at 638–39. The statement also notes that Ms. Fazzino suffered from “panic attacks, severe anxiety, depression, difficulty concentrating, difficulty sleeping [at] night, [and] flashbacks of past trauma,” as well as “lack of motivation, [feeling] tired, crying spells, feelings of worthlessness, depression, [and] flashbacks of past abuse.” *Id.* at 639. Ms. Fazzino’s prognosis, according to the medical source statement, was “moderate given [that Ms. Fazzino] engage[d] in w[ee]kly therapy and medication management.” *Id.*

On September 9, 2016, Ms. Fazzino called LCSW McJunkins to report that her mother was in a coma following a heart attack and was not expected to survive. *Id.* at 787. Ms. Fazzino called to request Xanax. *Id.*

On September 14, 2016, Ms. Fazzino saw Dr. Tinsley for a medical visit. *Id.* at 788. Ms. Fazzino reported that her mother had passed away and that she “experiences some guilt about what she might have done differently . . . to save her mother’s life.” *Id.* Dr. Tinsley noted that

Ms. Fazzino was “tearful and somewhat stunned by her mother’s death” and that she was “overwhelmed [and] anxious, although she had the capacity for humor.” *Id.* Dr. Tinsley kept Ms. Fazzino on sertraline, Buspar, doxepin, and alprazolam; she also prescribed clonazepam (Klonopin) on a short-term basis. *Id.* at 788–89.

On October 25, 2016, Ms. Fazzino saw APRN-BC Tierney for a diabetes follow-up appointment. *Id.* at 657–59. APRN-BC Tierney noted that Ms. Fazzino’s mother had passed away in September and it had “been very difficult for [Ms. Fazzino] given that her mom was a huge source of support for [Ms. Fazzino]’s son.” *Id.* at 657. APRN-BC Tierney also noted that Ms. Fazzino “had a lot of anxiety” and a “respiratory illness that she is still recovering from.” *Id.* According to APRN-BC Tierney’s notes, Ms. Fazzino was “still not blousing [the insulin pump] consistently” because she “gets distracted and forgets,” but she was “more diligent about correcting for [blood glucose levels] over 400.” *Id.* Ms. Fazzino’s blood glucose levels were “almost all in the 300-600 range.” *Id.* APRN-BC Tierney also noted that Ms. Fazzino was “not eating consistently because of increased anxiety.” *Id.* Ms. Fazzino’s BMI was recorded at 42.01. *Id.* at 658. According to the notes, Ms. Fazzino missed her thyroid nodules biopsy because of her mother’s death. *Id.* at 657–58.

On November 11, 2016, Ms. Fazzino saw neurologist Dr. Elena Bortan complaining of a worsening headache. *Id.* at 660–63. Dr. Bortan noted that Ms. Fazzino “has had headaches almost every day since September” and that she described them as “pressure pain behind the eyes.” *Id.* at 660. Dr. Bortan also noted that Ms. Fazzino had been under stress due to her mother’s death. *Id.* Dr. Bortan’s notes state that

[Ms. Fazzino] describe[d] an average 4 to 5 headaches a week. The headache is not decreased by Motrin. Sometime[s] the headache could be decreased by sleeping. The headache can be associated by photosensitivity and phonosensitivity. The headache[s] interfere

with the daily living activities, when she has a headache she cannot talk[,] she cannot walk around[, and] she prefers to go in bed in [a] dark space. She feels like headache is decreased when lying down with eyes closed. She described aura: [bright] lights, zigzag lines[.] Numbness on her hands, noticed randomly with or without headaches. . . . She denied seizure in the last year. She gained about 30 pounds in the last year.

Id. Dr. Bortan also noted that Ms. Fazzino “was seen in consultation by Ophthalmology Physician at ‘Durham Family Eye Center’ in October 2016” regarding “increased intracranial pressure in the settings of worsening headache and gaining weight.” *Id.* Ms. Fazzino’s BMI was recorded at 42.94. *Id.* at 661. Dr. Bortan stated that Ms. Fazzino’s headaches “have more characteristics of intractable migraines,” and noted that a previous lumbar puncture test “was noted to be normal.” *Id.* at 662. Dr. Bortan ordered an increase in Ms. Fazzino’s dosage of Topamax and continued her prescription for Keppra. *Id.*

On December 8, 2016, on a referral from Dr. Tinsley, Ms. Fazzino saw Dr. Raymond Morris for PTSD, anxiety, and depression. *Id.* at 816–18. Dr. Morris took over Ms. Fazzino’s medication management as of this appointment. Pl.’s SOMF at 12 n.25. Dr. Morris noted that Ms. Fazzino had not had seizures since she began taking Keppra five years prior. Tr. at 816. Ms. Fazzino also reported feeling “panic all the time” and that she had a panic attack the night before. *Id.* at 817. Dr. Morris planned to have Ms. Fazzino taper off Zoloft, start Paxil, and try Prazosin. *Id.* Dr. Morris also noted that Ms. Fazzino was calm and cooperative, alert, oriented, and had a “sad” mood, linear and logical thought processes, intact cognition, fair insight, and good judgment. *Id.*; Def.’s SOMF ¶ 30.

On January 27, 2017, Ms. Fazzino saw Dr. Morris again and reported that she was increasingly “stressed out” due to caring for her five-year-old son and her sister, who had multiple sclerosis and had recently been attacked and left requiring physical therapy. Tr. at 805–

07. Ms. Fazzino reported that her sleep was better but that she was still having nightmares and flashbacks. *Id.* at 805. Ms. Fazzino’s BMI was recorded at 43.10. *Id.* at 806. Dr. Morris recommended an increased dosage of Prazosin and noted that Paxil seemed to be helping with Ms. Fazzino’s mood. *Id.*

On February 1, 2017, Ms. Fazzino saw Dr. Hatiboglu for pain in her “side/stomach region” that had become worse over the past few days. *Id.* at 731–34. Ms. Fazzino’s blood glucose level was 500. *Id.* at 732. Dr. Hatiboglu ordered an abdominal CT scan, which was conducted the same day. *Id.* at 903. The radiologist’s impression was “[s]plenomegaly, of indeterminate etiology, exclude lymphoproliferative disorder.” *Id.*

The record indicates that Ms. Fazzino continued to see LCSW McJunkins through March 23, 2017. *Id.* at 803–04. On March 23, 2017, LCSW McJunkins found Ms. Fazzino to have “[m]oderately [s]evere [d]epression” and noted that Ms. Fazzino was focused “on grief surrounding the loss of [her] mother [six] months ago.” *Id.* at 804.

On April 21, 2017, Ms. Fazzino saw Dr. Morris and reported that her nightmares and flashbacks “are still quite distressing.” *Id.* at 800–02. Ms. Fazzino reported that she continued to “relive” her mother’s death and had nightmares involving her mother. *Id.* Ms. Fazzino also reported that she continued to sleep only five or six hours per night, and that she was “tired a lot.” *Id.* Dr. Morris ordered an increase in Ms. Fazzino’s Prazosin dose. *Id.* at 801. Dr. Morris also noted that Ms. Fazzino was friendly and engaging with normal speech, an “okay” mood, full affect, linear and logical thought processes, intact cognition, fair insight, and good judgment. *Id.*; Def.’s SOMF ¶ 32.

On June 6, 2017, Ms. Fazzino underwent a consultative psychological-mental status examination by Patrick Russolillo, Ph.D., at the request of the Bureau of Rehabilitation Services-

Disability Determination Services. Tr. at 753–55. Dr. Russolillo noted that Ms. Fazzino reported having a panic attack “every day where she cannot breathe, her chest hurts and her heart races.” *Id.* at 753. Dr. Russolillo also reported that Ms. Fazzino “stated that she has always received special education support for a learning disability” and that she was called a “slow learner” at school. *Id.* at 753–54. On a Montreal Cognitive Assessment, which tests for “mild cognitive dysfunction,” Ms. Fazzino scored an 18, “which was below [the] average” score of 26/30. *Id.* at 754. Dr. Russolillo reported that Ms. Fazzino had difficulty with “a measure of executive functioning, attention, delayed recall and fluency,” which “would suggest . . . moderate information processing deficits.” *Id.* at 755. Dr. Russolillo also noted that “[a] brief assessment of her decision making would suggest that she has basic decision making skills.” *Id.*

According to Dr. Russolillo, Ms. Fazzino “seems to be a very sensitive individual who has limited coping skills and is easily overwhelmed,” she has a “history of learning difficulties,” and “there is evidence of information processing deficits.” *Id.* Dr. Russolillo’s diagnoses were as follows: PTSD, Panic Disorder, Developmental Disorder of Scholastic Skills – Unspecified (by history), and Other Specified Depressive Disorder (by history). *Id.* His prognosis was that Ms. Fazzino is “[g]ood with behavioral health treatment.” *Id.*

On July 10, 2017, Ms. Fazzino saw PA-C Jacobs, complaining of right foot pain. *Id.* at 878–79. PA-C Jacobs ordered an X-ray. *Id.* at 879.

On July 28, 2017, Ms. Fazzino saw Dr. Morris, who reported that she had a broken metatarsal, was wearing a boot on her right foot ankle, and would be having surgery the following week “for a screw to be placed in her foot.” *Id.* at 797–99. Dr. Morris’s notes state that Ms. Fazzino had run out of her medications and “had been ‘all over the place,’” at times going from “happy and hyper” to “hysterically crying.” *Id.* at 797. Dr. Morris prescribed Prozac on an

upward titrating dose and ordered refills of Xanax and Prazosin. *Id.* at 798. Dr. Morris also noted that Ms. Fazzino was calm and cooperative, alert and oriented, and had a “stressed” mood, linear and logical thought processes, intact cognition, fair insight, and good judgment. *Id.* at 797; Def.’s SOMF ¶ 34.

On July 28, 2017, Ms. Fazzino also saw Dr. Hatiboglu for pre-surgical clearance for her foot. Tr. at 874–77. Dr. Hatiboglu noted the following “[s]ignificant risks for surgery: seizure disorder, diabetic management – uncontrolled type 1 DM, [and] morbid obesity.” *Id.* at 874. Ms. Fazzino stated that her foot was painful, and Dr. Hatiboglu cleared her for surgery. *Id.* at 874–75.

On October 24, 2017, Ms. Fazzino saw Dr. Morris for medication management. *Id.* 794–96. Ms. Fazzino reported that she had surgery on her right foot, that she was back to walking on it, and that it was “healing well.” *Id.* at 794. Dr. Morris also noted that Ms. Fazzino reported that her nightmares and flashbacks were continuing, that her crying was increasing, and that she had stopped taking Prazosin “because she felt it wasn’t helpful.” *Id.* Dr. Morris ordered refills of Prozac and Xanax. *Id.* at 795. In addition, Dr. Morris noted that Ms. Fazzino was alert and oriented, mildly dysphoric and labile, and had a linear and logical thought processes, intact cognition, fair insight, and good judgment. *Id.* at 794–95; Def.’s SOMF ¶ 36.

On October 25, 2017, Ms. Fazzino saw Karin Sidman-Crogham, M.A., to begin a course of psychotherapy treatment. Tr. at 864–66. The therapy was centered around “unresolved grief” related to Ms. Fazzino’s mother’s sudden death the year prior. *Id.* at 865. Ms. Sidman-Crogham reported that Ms. Fazzino was calm and cooperative with an euthymic mood and appropriate affect, intact thought process, intact memory, good attention, intact judgment, and intact insight. *Id.*

The record indicates that Ms. Fazzino saw Ms. Sidman-Crogham ten more times between November 2017 and March 2018. Pl.’s SOMF at 15 n.27. At a November 15, 2017 session, Ms. Fazzino discussed her “dysfunctional family dynamics” at length. Tr. at 859–61; Pl.’s SOMF ¶¶ 37. At each of those sessions, Ms. Sidman-Crogham reported that Ms. Fazzino was calm and cooperative and had an anxious, depressed, or euthymic mood; appropriate affect; intact thought processes; intact memory; good attention; intact judgment; and either intact or, in one case, minimally impaired insight. Def.’s SOMF ¶¶ 53, 57. At almost all of those sessions, Ms. Fazzino completed a Patient Health Questionnaire-9 to determine her level of depression, and each time her depression was rated as “severe” to “moderately severe.” Pl.’s SOMF at 15 n.28.

On December 18, 2017, Ms. Fazzino saw Dr. Hatiboglu with ear pain and an upper respiratory infection. Tr. at 913–14. Ms. Fazzino’s BMI was recorded at 42.40. *Id.* at 913. Dr. Hatiboglu prescribed azithromycin to treat the infection and noted that Ms. Fazzino was prone to infection and complications because of her diabetes. *Id.* at 914.

In a medical source statement dated April 24, 2018, Dr. Morris stated Ms. Fazzino’s diagnoses as “Major Depressive Disorder recurrent with anxious distress versus Bipolar II Disorder,” Panic Disorder, and PTSD. *Id.* at 951–54. Dr. Morris noted that Ms. Fazzino had been prescribed Lamictal for mood and Xanax “as needed for panic attack[s] that can’t be managed with coping skills.” *Id.* at 951. Dr. Morris identified seven significant signs and symptoms and opined that Ms. Fazzino had “moderate” limitations in all nine areas of limitations in work settings. *Id.* at 953–54. He further noted that Ms. Fazzino had a “serious and persistent” condition due to her PTSD, which required ongoing therapy, and that she had a minimal capacity go adapt to changes in her environment. *Id.* at 954.

He also opined that Ms. Fazzino would be absent from work “about four days per month.” *Id.* Dr. Morris agreed that Ms. Fazzino’s “impairment lasted or can . . . be expected to last at least twelve months.” *Id.* Dr. Morris also rated Ms. Fazzino’s mental abilities for unskilled, semi-skilled, and skilled work, as well as abilities for particular types of jobs, as “unlimited or very good.” *Id.* at 955–56. Ms. Fazzino notes that “[n]o explanation was provided, and none appears to have been sought” for the apparent “contradiction” in Dr. Morris’s medical source statement. Pl.’s SOMF at 18 n.39.

On June 13, 2018, Ms. Fazzino saw Dr. Jessica Reichbind for upper respiratory symptoms. Tr. at 981–82. Dr. Reichbind refilled Ms. Fazzino’s inhaler and prescribed medicine. *Id.* at 986-87. Ms. Fazzino’s BMI was recorded at 44.78. *Id.* at 986.

On July 20, 2018, Ms. Fazzino again saw Dr. Reichbind about cellulitis, redness, and tenderness around her insulin pump insertion. *Id.* at 984–85. She complained of pain when transitioning from standing to sitting. *Id.* at 984. Dr. Reichbind ordered an abdominal ultrasound, which was performed the same day and showed cellulitis and “[n]o drainable fluid collection. *Id.* at 984, 988.

On July 27, 2018, Ms. Fazzino saw Dr. Hatiboglu, who noted that Ms. Fazzino had visited the emergency room the previous weekend due to “increased swelling and pain” associated with the infection around her insulin pump. *Id.* at 982–83. Dr. Hatiboglu indicated that “incision and drainage was done in the emergency department.” *Id.* at 982. Dr. Hatiboglu referred Ms. Fazzino to the University of Connecticut Health Neurology Department to “[rule out] seizure” due to reports that she was “seeing black dots [a] couple of times a week for a month.” *Id.* at 982–83. Ms. Fazzino’s BMI was recorded at 45.72. *Id.* Dr. Hatiboglu also noted

that Ms. Fazzino had “normal muscle tone, normal motor function, [and] sensation grossly intact.” *Id.*; Def.’s SOMF ¶ 39.

Ms. Fazzino had follow-up appointments with Dr. Reichbind on August 1 and August 6, 2018 regarding her cellulitis and insulin pump wound. Tr. at 978–79, 980–81. Dr. Reichbind reported Ms. Fazzino’s incision to be improving on both visits. *Id.*

On August 16, 2018, Ms. Fazzino saw PA-C Jacobs for follow-up concerning the same abdomen wound. *Id.* at 976–77. PA-C Jacobs referred her to an infectious disease physician “given [the] history and reoccurrence of . . . infections” like the one that required the incision and drainage. *Id.* at 976.

On November 8, 2018, Ms. Fazzino saw Dr. Hatiboglu regarding a respiratory infection. *Id.* at 974–75. Dr. Hatiboglu noted that “[t]his is a complex patient having significant respiratory illness.” *Id.* at 974. Dr. Hatiboglu prescribed antibiotics, a nebulizer treatment, and, for asthma, Flovent. *Id.*

On February 1, 2019, Ms. Fazzino saw PA-C Jacobs with concerns about a sore throat. *Id.* at 972–73.⁶ PA-C Jacobs noted that Ms. Fazzino had a history of “diabetes, MRSA, depression, and asthma” and that Ms. Fazzino reported that “her asthma is slightly worsened.” *Id.* at 972. PA-C Jacobs referred to this as “[m]ild intermittent asthma with acute exacerbation,” and recommended an increase in Ventolin/Pro Air from twice a day to four times a day. *Id.* Ms. Fazzino’s BMI was recorded at 44.40. *Id.*

On February 18, 2019, Ms. Fazzino visited Dr. Reichband for numbness in her left hand and forearm. *Id.* at 969–71. Dr. Reichband found the “[n]euro exam unremarkable with [the]

⁶ Ms. Fazzino states in her Statement of Material Facts that this appointment occurred on September 27, 2017, and the Commissioner adopts that statement. Pl.’s SOMF ¶ 35; Def.’s SOMF ¶ 35. However, the record indicates that this appointment occurred on February 1, 2019.

exception of affected area decreased sensation,” and placed a neurology referral “if there is no clear cause based on labs.” *Id.* at 970.

Ms. Fazzino had urinalyses and other tests taken on April 24, 2018; February 18, 2019; March 25, 2019; April 25, 2019; April 30, 2019; May 21, 2019; November 1, 2019; and November 4, 2019. *Id.* at 989–92. Results showed blood glucose levels ranging from 217 through 301 in the period from April 24, 2018 to November 4, 2019. *Id.* at 989. A₁C levels ranged from 9.2 to 12.1 during the same period. *Id.* at 990.

On May 21, 2019, Ms. Fazzino saw Dr. Reichbind for a urinary tract infection, which Dr. Reichband reported would be her “third UTI so far this year.” *Id.* at 967–68.

On June 6, 2019, Ms. Fazzino saw Dr. Marc Roy, a primary care physician, about a sore throat, which Dr. Roy assessed as a viral infection. *Id.* at 965–66.

On November 1, 2019, Ms. Fazzino began seeing Dr. Christy Jackson, M.D., for treatment of depression and PTSD. *Id.* at 998–99. Ms. Fazzino saw Dr. Jackson nineteen times between November 1, 2019, and June 10, 2020. *Id.* at 998–1006. Dr. Jackson reported that Ms. Fazzino’s sister died on December 6, 2019. *Id.* at 1000. On February 12, 2020, Ms. Fazzino reported to Dr. Jackson that “that her antidepressant medication [had been] increased.” *Id.* at 1002. On May 29, 2020, Ms. Fazzino told Dr. Jackson that “her diabetes has been out of control in the past week” and that “she had two seizures on Monday due to low blood sugar.” *Id.* at 1005.

On November 4, 2019, Ms. Fazzino saw Dr. Reichbind about “worsening” depression and stress. *Id.* at 960–62. Dr. Reichbind’s physical examination showed that Ms. Fazzino had normal range of motion, muscle strength, muscle tone, motor function, and sensation. *Id.* at 960. Her BMI was 45.34. *Id.* at 960.

2. Disability Application

Ms. Fazzino filed a Title II application for a period of disability and disability insurance on June 17, 2016, alleging disability beginning October 20, 2014. *Id.* at 28, 97–98.

On November 28, 2016, a disability specialist adjudicator denied Ms. Fazzino’s application, finding that her impairments (obesity, carpal tunnel syndrome, epilepsy, affective disorders, and anxiety disorders) were not severe enough to prevent her from adjusting to “other work” besides her past relevant work. *Id.* at 96–108.

On January 19, 2017, Ms. Fazzino completed a request for a rehearing. *Id.* at 167.

On June 13, 2017, another adjudicator reaffirmed the denial of Ms. Fazzino’s application. *Id.* at 110–21. The medical consultant, Hedy Augenbraun, Ph.D., found that Ms. Fazzino’s condition was not severe enough to keep her from working. *Id.* at 126.

On July 25, 2017, Ms. Fazzino completed a request for a hearing. *Id.* at 168.

An initial hearing was held on May 22, 2018. *Id.* at 130. On June 4, 2018, ALJ Eskunder Boyd issued a decision denying Ms. Fazzino’s application for benefits. *Id.* at 127–42. Impartial vocational expert Susan Howard testified at the hearing. *Id.* at 130, 142.

On July 30, 2018, Ms. Fazzino filed, through her attorney, a written request with the Appeals Council for review of the ALJ’s decision. *Id.* at 216–19.

On December 27, 2019, the Appeals Council vacated the hearing decision and remanded the case for a new hearing based on a challenge under the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2, to the manner in which the ALJ was appointed. *Id.* at 148–50.

On May 18, 2020, a second hearing was held. *Id.* at 39–64. Ms. Fazzino testified about her medical history, including her history of seizures and recent seizures, issues with her blood

sugar levels, migraine headaches, carpal tunnel syndrome, depression, and PTSD. *Id.* at 49–58. Ms. Fazzino had counsel, and Linda Vause testified as a vocational expert. *Id.* at 40, 58.

On June 29, 2020, ALJ John T. Molleur issued a decision denying Ms. Fazzino’s application for benefits. *Id.* at 14–28. On July 30, 2020, Ms. Fazzino filed a written request with the Appeals Council for review of the ALJ’s decision. *Id.* at 280–83.

On November 3, 2020, the Appeals Council denied the request for review and affirmed the ALJ’s decision. *Id.* at 6–8.

3. ALJ Decision

On June 29, 2020, ALJ Molleur issued his decision denying Ms. Fazzino disability insurance benefits. *Id.* at 14–28.

At Step One of the sequential evaluation, ALJ Molleur found that Ms. Fazzino had not engaged in substantial gainful activity since her alleged onset date of October 20, 2014. *Id.* at 20. At Step Two, ALJ Molleur found that Ms. Fazzino had the following severe medically determinable impairments: “Seizure Disorder, Migraine Headaches, Carpal Tunnel Syndrome, Obesity, Type 1 Diabetes Mellitus, Depression, and Posttraumatic Stress Disorder[.]” *Id.* At Step Three, ALJ Molleur found that Ms. Fazzino did not have an impairment or combination of impairments that meets or medically equals the severity of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1. *Id.* at 20–21.

At Step Four, ALJ Molleur found that Ms. Fazzino had the residual functional capacity (“RFC”) to perform light work with the following additional limitations:

she is unable to climb ladders, ropes or scaffolds, but she can perform other postural activities no more than occasionally. She can engage in frequent handling and fingering with the bilateral hands. She must avoid work at unprotected heights and also avoid close proximity to mobile machinery or exposed moving machinery parts. Additionally, she is limited to simple, routine, repetitive tasks;

requiring no more than brief and incidental contact with the general public. She must avoid fast paced production work such as work requiring quotas but can adhere to a productivity standard.

Id. at 22.

At Step Five, ALJ Molleur determined that, given Ms. Fazzino’s age, education, work experience, and RFC, she could perform work that exists in significant numbers in the national economy. *Id.* at 27. The ALJ relied upon the testimony of impartial vocational expert Linda Vause that someone with Ms. Fazzino’s residual functional capacity could perform the following occupations: cleaner, photocopy machine operator, and marker. *Id.* at 28.

B. Procedural History

On December 22, 2020, Ms. Fazzino filed this appeal. Compl., ECF No. 1 (Dec. 22, 2020).

On June 22, 2021, Ms. Fazzino moved to reverse the decision of the Commissioner. Pl.’s Mot. to Reverse the Decision of the Commissioner, ECF No. 18 (June 22, 2021) (“Pl.’s Mot.”). Ms. Fazzino also filed a Statement of Material Facts. Pl.’s SOMF.

On September 20, 2021, the Commissioner moved to affirm the decision. Def.’s Mot. for an Order Affirming the Decision of the Commissioner, ECF No 22 (Sept. 20, 2021) (“Def.’s Mot.”). The Commissioner also filed a response to Ms. Fazzino’s statement of facts. Def.’s SOMF.

II. STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court reviewing a disability determination “must determine whether the Commissioner’s conclusions ‘are supported by substantial evidence in the record as a whole or are based on an erroneous legal standard.’” *Schaal v. Apfel*, 134 F.3d 496, 501 (2d Cir. 1998) (quoting *Beauvoir v. Chater*, 104 F.3d 1432, 1433 (2d Cir. 1997)); *see also*

Moreau v. Berryhill, No. 17-CV-396 (JCH), 2018 WL 1316197, at *3 (D. Conn. Mar. 14, 2018) (“[T]he court may only set aside the ALJ’s determination as to social security disability if the decision ‘is based upon legal error or is not supported by substantial evidence.’” (quoting *Balsamo v. Chater*, 142 F.3d 75, 79 (2d Cir. 1998))).

“Substantial evidence is ‘more than a mere scintilla.’” *Brault v. Soc. Sec. Admin., Comm’r*, 683 F.3d 443, 447 (2d Cir. 2012) (*per curiam*) (quoting *Moran v. Astrue*, 569 F.3d 108, 112 (2d Cir. 2009)). “‘It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Moran*, 569 F.3d at 112 (quoting *Burgess v. Astrue*, 537 F.3d 117, 127 (2d Cir. 2008)); *Halloran v. Barnhart*, 362 F.3d 28, 31 (2d Cir. 2004) (“Substantial evidence is ‘more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971))). It is a “very deferential standard of review—even more so than the ‘clearly erroneous’ standard.” *Brault*, 683 F.3d at 448 (citing *Dickson v. Zurko*, 527 U.S. 150, 153 (1999)).

III. DISCUSSION

The Social Security Act defines disability as the “inability to engage in 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 12 months” 42 U.S.C. § 423(d)(1)(A). To determine whether a claimant is disabled under the Social Security Act, an ALJ must perform a five-step evaluation.

As the agency explains:

- (i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled

20 C.F.R. § 404.1520(a)(4).

A. Development of the Record

“An ALJ in a social security benefits hearing has an affirmative obligation to develop the record adequately.” *Herminia Torres v. Berryhill*, No. 3:17-CV-605 (DFM), 2019 WL 1416989, at *3 (D. Conn. Mar. 29, 2019) (internal citation omitted). “An ALJ’s failure to request RFC assessments may be harmless, and thus no remand warranted, in cases where ‘the record contains sufficient evidence from which an ALJ can assess the petitioner’s residual functional capacity.’” *Kurlan v. Berryhill*, 3:18-CV-00062 (MPS), 2019 WL 978817, at *2 (quoting *Tankisi v. Comm’r Soc. Sec.*, 521 F. App’x 29, 34 (2d Cir. 2013) (summary order)).

For example, “remand may be unnecessary where the ALJ rejects the medical opinion evidence in the record but the RFC formulation is supported by substantial evidence in ‘contemporaneous treatment notes.’” *Id.* (quoting *Monroe v. Comm’r of Soc. Sec.*, 676 F. App’x 5, 8–9 (2d Cir. 2017) (summary order)). Courts, however, “have upheld an ALJ’s RFC finding

only where the record is clear and, typically, where there is *some* useful assessment of the claimant’s limitations from a medical source.” *Staggers v. Colvin*, No. 3:14-CV-717 (JCH), 2015 WL 4751123, at *3 (D. Conn. Aug. 11, 2015) (internal citation omitted).

Ms. Fazzino argues that the ALJ failed to develop the record in a manner that constituted “prejudicial error” and requires remand. Mem. of Law in Supp. of Pl.’s Mot. to Reverse the Decision of the Commissioner at 10, ECF No. 18-2 (June 22, 2021) (“Pl.’s Mem.”). Specifically, she alleges that there are “significant, obvious gaps in the [r]ecord” because certain medical records were not included, such as function-by-function assessments from seven clinicians who treated Ms. Fazzino: Dr. Hatiboglu, Dr. Reichbind, APRN Buller Slomkowski, PA-C Jacobs, APRN-BC Tierney, Dr. Bortan, and Dr. Jackson. *Id.* at 1–2.

Ms. Fazzino additionally argues that ALJ Molleur failed to develop a complete medical record by making “no efforts” to “request[] a medical source statement from any of the [aforementioned] seven clinicians[.]” *Id.* at 3. According to Ms. Fazzino, this failure runs counter to the ALJ’s “regulatory obligations to develop a complete medical record before making a disability determination, 20 C.F.R. § 404.1515(d)–(f).” *Id.* at 3–4.

Ms. Fazzino further argues that “[i]t is entirely unclear what the ALJ relied upon [as to Ms. Fazzino’s functional limitations], in that he found the opinions of the State Agency document-reviewing pediatricians to be entitled to ‘[s]ome weight[,]’ . . . gave the opinions of LCSW McJunkins and Dr. Mejia ‘little weight,’ gave ‘some weight’ to the consultative examination report of Dr. Russolillo, and [gave] ‘little weight’ to Dr. Morris’s opinions Without so much as a nod to his duty to develop the Record, the ALJ was content to play doctor.” *Id.* at 9 (internal citation and quotation marks omitted).

The Commissioner responds that “it is the claimant’s duty to prove she is disabled” and the agency’s duty to make “every reasonable effort” to assist her in obtaining evidence. Def.’s Mem. in Supp. of her Mot. for an Order Affirming the Commissioner’s Decision at 4–5, ECF No. 22-1 (Sept. 20, 2021) (“Def.’s Mem.”). According to the Commissioner, the agency made “every reasonable effort,” which means that it “ma[d]e an initial request and one follow-up request 10 to 20 days later.” *Id.* at 5 (citing 20 C.F.R. §§ 404.1512(b)(1)(i), 416.912(b)(1)(i)). The Commissioner further argues that Ms. Fazzino has not asserted “that these records actually exist or that she identified them to the agency or ALJ at any point during the development of the record.” *Id.* (citing 20 C.F.R. § 404.935 (“Each party must make every effort to ensure that the administrative law judge received all of the evidence and must inform us about or submit any written evidence . . . no later than 5 business days before the date of the scheduled hearing.”)).

As to the alleged failure to request function-by-function assessments, the Commissioner argues that “the record . . . was adequately developed to support the conclusion, and more was not required of the ALJ.” *Id.* at 6 (citing *Janes v. Berryhill*, 710 F. App’x 33, 34 (2d Cir. 2018) (summary order)). The ALJ allegedly “found the evidence was sufficient to support an RFC finding for a reduced range of light work” by evaluating “Plaintiff’s treatment notes, her statements about her symptoms, and the various medical opinions[.]” *Id.* at 7. According to the Commissioner, the ALJ was therefore “not required to request an opinion from a treating physician.” *Id.* (citing *Turcotte v. Commissioner of Soc. Sec.*, No. 3:17-CV-1981 (JAM), 2018 WL 6075672, at *5 (D. Conn. Nov. 21, 2018)).

The Commissioner argues that the Second Circuit’s decision in *Guillen v. Berryhill*, 697 F. App’x 107 (2d Cir. 2017) (summary order), which found the record incomplete where the ALJ failed to request a treating source statement, is distinguishable because there the Second Circuit

found that the medical records “obtained by the ALJ did not shed any light on the claimant’s RFC.” *Id.* (internal citation and quotation marks omitted). In this case, the Commissioner argues, “the ALJ . . . considered no fewer than four medical opinions, Plaintiff’s treatment records, and other evidence regarding Plaintiff’s functioning, including her reported activities[.]” *Id.* at 7–8.

Finally, the Commissioner notes that “[t]here is no indication in the record that Plaintiff’s counsel advised the Appeals Council that she believed the record was not appropriately developed, nor is there evidence that Plaintiff’s counsel attempted to submit any treating source opinions or additional medical evidence before the Appeals Council denied Plaintiff’s request for review.” *Id.* at 9. Accordingly, the Commissioner argues, Ms. Fazzino’s request to remand for further development should be rejected. *Id.*

The Court agrees.

The record in this case “contains sufficient evidence from which an ALJ can assess the petitioner’s residual functional capacity,” *Tankisi*, 521 F. App’x at 34, and so ALJ Molleur did not err by not requesting a medical source statement from the seven treating physicians. In addition to the consultative examiner’s report, the record contains an assessment from two of Ms. Fazzino’s treating clinicians, LCSW McJunkins and Dr. Mejia, and nearly seven years’ worth of contemporaneous treatment notes, including from the seven physicians that Ms. Fazzino lists in her memorandum in support of the motion to reverse. *See* Pl.’s Mem. at 2; *see also Janes*, 710 F. App’x at 34 (concluding that the ALJ properly gathered and analyzed the evidence where the ALJ did not obtain medical records for the ten months prior to the decision, but the record contained “over 450 pages of plaintiff’s medical history for the 8 years prior to the filing” of the claim and two consultative examination reports and opinions); *cf. D’Agostino v. Berryhill*, No.

3:19-CV-00610 (RAR), 2020 WL 4218213, at *4 (D. Conn. July 3, 2020) (“Unlike *Crespo*, the record here was not supported by either a consultative examiner’s opinion or the treating physician’s notes. The ALJ only cited raw medical data and failed to incorporate evidence demonstrating that plaintiff’s allegations of pain and asserted limitations were inconsistent with the record.” (citing *Crespo v. Comm’r of Soc. Sec.*, No. 3:18-CV-00435 (JAM), 2019 WL 4686763 (D. Conn. Sept. 25, 2019))).

The contemporaneous treatment notes, moreover, discuss her “ability to undertake her activities of everyday life.” *See, e.g.*, Tr. at 483, 486, 491, 511–17, 556, 571, 805–07, 982–83, 960 (noting the positive effect medications were having on Ms. Fazzino’s conditions, her general ability to care for herself and her family, and her overall strength and ability to move); *cf. Guillen*, 697 F. App’x at 109 (remanding a case where the ALJ failed to obtain a medical source statement and, notably, “[t]he medical records discuss [the claimant’s] illnesses and suggest treatment for them, but offer no insight into how [the claimant’s] impairments affect or do not affect [the claimant’s] ability to work, or [the claimant’s] ability to undertake her activities of everyday life”). The record also “does not indicate that plaintiff requested that [s]he be evaluated by h[er] treating physicians, or that [s]he timely objected to being evaluated by other doctors.” *Janes*, 710 F. A’ppx at 34.

Accordingly, ALJ Molleur did not fail to develop the record.

B. The Treating Physician Rule

The treating physician rule gives “deference to the views of the physician who has engaged in the primary treatment of the claimant.” *Green-Younger v. Barnhart*, 335 F.3d 99, 106 (2d Cir. 2003). Under this rule, “the opinion of a claimant's treating physician as to the nature and severity of the impairment is given ‘controlling weight’ so long as it ‘is well-supported by

medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record.” *Burgess*, 537 F.3d at 128 (quoting 20 C.F.R. § 404.1527(d)(2)); *see also* *Greek v. Colvin*, 802 F.3d 370, 375 (2d Cir. 2015) (same) (internal citations omitted).

Although, in general, courts “defer to the Commissioner’s resolution of conflicting evidence,” *Cage v. Comm’r of Soc. Sec.*, 692 F.3d 118, 122 (2d Cir. 2012), an ALJ must articulate “good reasons” for the weight given to treating source opinions, *Camille v. Colvin*, 652 F. App’x 25, 27 (2d Cir. 2016) (summary order) (internal citation omitted); *see also* *Medina v. Comm’r of Soc. Sec.*, 831 F. App’x 35, 36 (2d Cir. 2020) (summary order) (“An ALJ must ‘give good reasons in its notice of determination or decision for the weight it gives the treating source’s medical opinion.’” (quoting *Halloran*, 362 F.3d at 32 (internal citations omitted))). Failure to provide “‘good reasons’ for not crediting the opinion of a claimant’s treating physician” can be a basis for remand. *Burgess*, 537 F.3d at 129–30 (quoting *Snell v. Apfel*, 177 F.3d 128, 133 (2d Cir. 1999)); *see also* *Estrella v. Berryhill*, 925 F.3d 90, 96 (2d Cir. 2019) (“If ‘the Commissioner has not [otherwise] provided good reasons [for its weight assignment],’ we are unable to conclude that the error was harmless and consequently remand for the ALJ to ‘comprehensively set forth [its] reasons.’” (citing *Halloran*, 362 F.3d at 33) (internal citation and quotation marks omitted))).

Ms. Fazzino argues that ALJ Molleur failed to apply the treating physician rule, because “‘the SSA gives deference to the views of the physician who has engaged in the primary treatment of a claimant’” and, where controlling weight is not given to the physician, the ALJ must “‘specifically explain the weight that is actually given to the opinion.’” Pl.’s Mem. at 11 (quoting *Shrack v. Astrue*, 608 F. Supp. 2d 297, 300–01 (D. Conn. 2009)). Specifically, she notes

that “the ALJ gave ‘little weight’ to the statement provided by LCSW McJunkins and Dr. Mejia” and that

[i]nstead of requesting . . . a function-by-function evaluation [from LCSW McJunkins and Dr. Mejia]—as he was required to do—the ALJ brushed it aside by stating “the mental status examinations of record are largely intact. The claimant has not required mental health hospitalization or inpatient care during the relevant period, and she has retained considerable abilities with respect to daily activities.

Id. at 12–14 (quoting Tr. at 26). In addition to assigning “little weight” to LCSW McJunkins and Dr. Mejia’s statement, ALJ Molleur assigned “some weight” to the State Agency document reviewers “who never laid eyes on [Ms.] Fazzino.” *Id.* at 15. In so doing, according to Ms. Fazzino, ALJ Molleur “‘arbitrarily substitute[d] his own judgment for competent medical opinion.’” *Id.* (quoting *McBrayer v. Sec’y of Health & Hum. Servs.*, 712 F.2d 795, 799 (2d Cir. 1983)).

The Commissioner argues that “to the extent that the ALJ did not explicitly consider each *Burgess* factor, the ALJ provided good reasons for affording little weight to the April 2018 opinion evidence from Dr. Morris” Def.’s Mem. at 10; see *Burgess v. Astrue*, 537 F.3d 117, 129 (2d Cir. 2008) (listing the factors that ALJs must consider when deciding how much weight an opinion deserves). The Commissioner notes that the ALJ “acknowledged that Dr. Morris was a treating provider, but found that the contradictory nature of his opinion gave it little evidentiary value.” Def.’s Mem. at 10–11 (citing Tr. at 26). Specifically, as the ALJ noted in his decision, Dr. Morris “first indicated that Plaintiff had only moderate limitations in all areas of mental functioning”; then “inexplicitly assessed that Plaintiff met the listing for PTSD, suggesting that she was disabled based on this one impairment”; and then stated that “Plaintiff had ‘unlimited or

very good' ability to perform all mental abilities and aptitudes needed to do unskilled work." *Id.* at 11.

The Commissioner argues that "[c]ontradictory assessments are proper grounds for limiting the weight of medical source statements." *Id.* at 11 (citing *Tricarico v. Colvin*, 681 F. App'x 98, 100–01 (2d Cir. 2017) (summary order) ("Although a treating physician's assessment is typically given more weight than other examiners' assessments, internal inconsistencies, and the conflicting opinions of other examining physicians, where supported by evidence in the record, can constitute substantial evidence to support not according the treating physician's opinion controlling weight, as well as good reasons to attribute only limited weight to that opinion.")).

The Commissioner further argues that the ALJ is not required to recontact a physician to resolve a conflict or ambiguity in the evidence provided. *Id.* at 12 (citing 77 Fed. Reg. 10651-01, 2011 WL 7404303 (Feb. 23, 2012)). The Commissioner argues that "[c]urrent SSA regulations provide that even where the evidence is inconsistent, recontacting a medical source is just one of several available options to develop the record." *Id.* (citing 20 CFR § 404.1520b(b)). Finally, as to Dr. Morris, the Commissioner notes that the inconsistency "was only one factor the ALJ considered in assigning little weight" and that the ALJ "also found Dr. Morris's own treatment notes were inconsistent with any finding of more severe restrictions," which is a valid reason for assigning little weight under 20 C.F.R. §§ 404.1527, 416.927. *Id.* (citing Tr. at 26).

As to LCSW McJunkins and Dr. Mejia's statement, the Commissioner argues that the ALJ "gave good reasons for not crediting their statement": the disability question "is an issue reserved to the Commissioner and not due any special significant weight"; the ALJ found their statement "inconsistent with the record, noting that Plaintiff's mental status examinations were

largely intact”; and “the ALJ concluded that their finding was inconsistent with Plaintiff’s conservative treatment—not requiring any hospitalizations or inpatient care during the relevant period” *Id.* at 12–13. Likewise, the ALJ assigned some weight to the State Agency consultants “because they were generally consistent with the record.” *Id.* at 13 (citing Tr. at 25–26, 119–26).

The Court agrees.

ALJ Molleur provided good reasons for attributing little weight to the opinions of LCSW McJunkins, Dr. Mejia, and Dr. Morris. As noted in ALJ Molleur’s decision, LCSW McJunkins and Dr. Mejia’s statement mainly “indicates that the claimant is expected to be unable to work for a period of 6 months,” Tr. at 26. This is a “[a] statement by a medical source that [the claimant is] ‘unable to work,’” which is not a “medical opinion.” 20 C.F.R. § 404.1527(d) (“Opinions on some issues, such as the examples that follow, are not medical opinions . . . but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case, i.e., that would direct the determination or decision of disability.”); *id.* § 404.1527(d)(1) (“Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) . . . your residential functional capacity . . . or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.”).

As ALJ Molleur noted, LCSW McJunkins and Dr. Mejia’s finding was “also inconsistent with the record,” which did not reveal that Ms. Fazzino’s issues made tasks difficult or impossible. Tr. at 26; *cf. Davenport v. Saul*, No. 3:18-CV-1641 (VAB), 2020 WL 1532334, at *31 (remanding where the treating clinicians’ opinions were assigned little weight and “[t]he record indeed contain[ed] evidence that either [the claimant’s] psychological symptoms or his

back and shoulder issues could have resulted in a finding of a more reduced residual functional capacity”). Notably, as late as November 4, 2019, Ms. Fazzino’s medical records revealed that she had normal range of motion, muscle strength, muscle tone, motor function, and sensation. Tr. at 960.

ALJ Molleur appropriately noted that Dr. Morris’s opinion was “contradictory,” as it indicated both that Ms. Fazzino had moderate limitation in the assessed areas of mental functioning and that she had “unlimited or very good” capabilities in all areas of mental functioning. *Id.* at 26, 953, 955. ALJ Molleur also noted that a “more restrictive limitation” read into Dr. Morris’s opinion “is inconsistent with this provider’s treatment records.” *Id.* at 26.

Indeed, Ms. Fazzino’s treatment records do not indicate any serious mental limitations and though they “show a variable mood,” they also consistently demonstrate “a calm and cooperative demeanor, good eye contact, linear and logical thought process, intact cognition, good judgment, and fair or partial insight[.]” *Id.* at 26. For example, in December 2014, Ms. Fazzino reported “significant improvement in moods” and stated that her depression was “resolved.” *Id.* at 511–17. Ms. Fazzino continued receiving therapy and medication to tend to her mental health, and in January 2017 was well enough to look after both her five-year old son and her sister, who had multiple sclerosis and required physical therapy. *Id.* at 805–07.

To be sure, Ms. Fazzino has suffered from a history of impairments, which ALJ Molleur acknowledged. *Id.* at 20. But ALJ Molleur considered the medical record, acknowledged Ms. Fazzino’s mental health history and treatment records, *id.* at 23–25, and then “limited [Ms. Fazzino’s] to a range of light work” given “the combined impact of [her] physical impairments.” *Id.* at 25.

Accordingly, ALJ Moeller provided “good reasons” for not crediting the treating physicians’ opinions, and no remand on that basis is required. *See Burgess*, 537 F.3d at 129 (“Failure to provide such ‘good reasons’ for not crediting the opinion of a claimant’s treating physician is a ground for remand.”).

C. Step Five

In *McIntyre v. Colvin*, the Second Circuit held that “a vocational expert is not required to identify with specificity the figures or sources supporting his conclusion, at least where he identified the sources generally.” 758 F.3d 146, 152 (2d Cir. 2014). In that case, the vocational expert “was not required to articulate a more specific basis for his opinion” where “the ALJ reasonably credited this testimony, which was given on the basis of the expert’s professional experience and clinical judgment, and which was not undermined by any evidence in the record.” *Id.*

Ms. Fazzino claims that ALJ Molleur’s Step Five findings are “[u]nsupported.” Pl.’s Mem. at 16. Ms. Fazzino argues that ALJ Molleur “based his Step Five findings exclusively on the testimony of vocational witness Linda Vause,” whose “methodology [was] defective” because she did not identify the sources “used to arrive at her national job incidence testimony[.]” *Id.* at 16–17, 21. Ms. Vause only noted that her testimony was consistent with the Dictionary of Occupational Titles (“DOT”), which “merely defines jobs [and] does not report the number of jobs available in the national economy.” *Id.* at 17 (citing *Hernandez v. Berryhill*, No. 3:17-CV-00368 (SRU), 2018 WL 1532609 (D. Conn. Mar. 29, 2018)).

According to Ms. Fazzino, ALJ Molleur’s hypothetical question to Ms. Vause was also defective because the RFC failed to contain headache and carpal-tunnel related limitations. *Id.* at

22. She also argues that the question was defective because the frequency of Ms. Fazzino’s medical treatment would not allow her to “secure and maintain employment.” *Id.* at 23.

The Commissioner argues that “[t]he ALJ . . . reasonably concluded at step five that there are jobs that exist . . . that Plaintiff could perform[.]” Def.’s Mem. at 15. First, the Commissioner argues that Ms. Fazzino’s argument concerning the vocational expert’s methodology fails for three reasons: the vocational expert’s testimony, based on her experience, was sufficient, *id.* at 16–19 (citing *Biestek v. Berryhill*, 139 S.Ct. 1148 (2019); *McIntyre*, 758 F.3d at 152); vocational experts are “not require[d] . . . to identify [their] sources in order for the ALJ to rely on the job incidence testimony,” *id.* at 17–18 (citing *Stonick v. Saul*, No. 3:19-CV-01334 (TOF), 2020 WL 6129339 (D. Conn. Oct. 19, 2020)); and Ms. Fazzino’s counsel had an opportunity to question the expert at the hearing regarding her methodology, but did not ask, *id.* at 15–16 (citing *Crespo*, 2019 WL 4686763, at *8).

As to Ms. Fazzino’s argument that ALJ Molleur’s hypothetical question was defective, the Commissioner argues that “the ALJ properly considered the record as a whole in evaluating Plaintiff’s RFC” and that the hypothetical question was “consistent with the ALJ’s eventual RFC finding.” *Id.* at 19–20 (citing *Priel v. Astrue*, 453 F. App’x 84, 87–88 (2d Cir. 2011) (summary order)). ALJ Molleur’s hypothetical, the Commissioner notes, included restrictions pertaining to both Ms. Fazzino’s headaches and carpal tunnel syndrome, and included limitations to the extent “supported by the record.” *Id.* at 19. According to the Commissioner, the ALJ therefore “properly relied on the vocational expert’s testimony, and the ALJ’s step five finding is supported by substantial evidence.” *Id.* at 20–21.

The Court agrees.

Since *Hernandez*, where the court remanded the case because the Dictionary of Occupational Titles is not “a sufficient basis for the vocational expert’s opinion . . . regarding the number [of jobs],” *Hernandez*, 2018 WL 1532609, at *15, the Supreme Court decided *Biestek v. Berryhill*, and rejected a categorical rule precluding vocational expert testimony from being considered substantial evidence where the expert refuses, upon request, to provide the sources used to reach their conclusion. *Biestek*, 139 S.Ct. at 1149. And since *Biestek*, courts in *Crespo*, 2019 WL 4686763, at *9, and *Stonick v. Saul*, No. No. 3:19-CV-01334 (TOF), 2020 WL 6129339, at *17–18 (D. Conn. Oct. 19, 2020), have interpreted that Supreme Court decision as supporting the conclusion that a vocational expert’s failure to identify their sources does not preclude the existence of substantial evidence for an ALJ’s conclusion. Here, consistent with the Second Circuit’s *McIntyre* opinion, “the ALJ reasonably credited [Ms. Vause’s] testimony, which was given on the basis of the expert's professional experience and clinical judgment, and which was not undermined by any evidence in the record.” 758 F.3d at 152; *see* Tr. at 58–61. Moreover, Ms. Fazzino has not questioned Ms. Vause’s experience and judgment.

As to Ms. Fazzino’s claim that that ALJ Molleur’s hypothetical question was defective, the Court has already concluded, *supra*, that the ALJ properly considered the record as a whole in evaluating Ms. Fazzino’s residual functioning capacity. ALJ Molleur “properly declined to include in his hypothetical question symptoms and limitations that he had reasonably rejected.” *Priel*, 453 F. App’x at 87–88.

Accordingly, ALJ Molleur did not err in his Step Five analysis.

IV. CONCLUSION

For the foregoing reasons, Ms. Fazzino’s motion is **DENIED**.

The Commissioner's motion is **GRANTED** and, accordingly, the decision of the Commissioner is **AFFIRMED**.

The Clerk of Court respectfully is directed to close the case.

SO ORDERED at Bridgeport, Connecticut, this 30th day of March, 2022.

/s/ Victor A. Bolden
Victor A. Bolden
United States District Judge