

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Southern Division**

**JOHN B.,**

**Plaintiff,**

**v.**

**KILOLO KIJAKAZI,  
Acting Commissioner of Social Security,**

**Defendant.<sup>1</sup>**

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**Civil No. TMD 20-2363**

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**MEMORANDUM OPINION GRANTING PLAINTIFF’S  
ALTERNATIVE MOTION FOR REMAND**

Plaintiff John B. seeks judicial review under 42 U.S.C. §§ 405(g) and 1383(c)(3) of a final decision of the Acting Commissioner of Social Security (“Defendant” or the “Commissioner”) denying his applications for disability insurance benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. Before the Court are Plaintiff’s Motion for Summary Judgment and alternative motion for remand (ECF No. 14) and Defendant’s Motion for Summary Judgment (ECF No. 15).<sup>2</sup> Plaintiff contends that the administrative record does not contain substantial evidence to support the

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<sup>1</sup> On July 9, 2021, Kilolo Kijakazi became the Acting Commissioner of Social Security. She is, therefore, substituted as Defendant in this matter. *See* 42 U.S.C. § 405(g); Fed. R. Civ. P. 25(d).

<sup>2</sup> The Fourth Circuit has noted that, “in social security cases, we often use summary judgment as a procedural means to place the district court in position to fulfill its appellate function, not as a device to avoid nontriable issues under usual Federal Rule of Civil Procedure 56 standards.” *Walls v. Barnhart*, 296 F.3d 287, 289 n.2 (4th Cir. 2002). For example, “the denial of summary judgment accompanied by a remand to the Commissioner results in a judgment under sentence four of 42 U.S.C. § 405(g), which is immediately appealable.” *Id.*

Commissioner's decision that he is not disabled. No hearing is necessary. L.R. 105.6. For the reasons that follow, Plaintiff's alternative motion for remand (ECF No. 14) is **GRANTED**.

## I

### Background

Plaintiff protectively filed an application for DIB on April 7, 2017, and an application for SSI on October 11, 2018, alleging disability beginning on December 15, 2015. R. at 13. After the Commissioner denied Plaintiff's claims initially and on reconsideration, he requested a hearing. R. at 13. On August 29, 2019, Administrative Law Judge ("ALJ") Beverly Susler Parkhurst held a hearing where Plaintiff, a medical expert, and a vocational expert ("VE") testified. R. at 66-106. The ALJ thereafter found on September 30, 2019, that Plaintiff was not disabled from December 15, 2015, through the date of the ALJ's decision. R. at 10-25. In so finding, the ALJ found that Plaintiff had not engaged in substantial, gainful activity since December 15, 2015, and that his bipolar disorder and alcohol abuse were severe impairments. R. at 15-16. He did not, however, have an impairment or combination of impairments that met or medically equaled the severity of one of the impairments listed in 20 C.F.R. pt. 404, subpt. P, app. 1. R. at 16-17.

The ALJ then found that Plaintiff had the residual functional capacity ("RFC") "to perform a full range of work at all exertional levels but with the following nonexertional limitations: [Plaintiff] should have no infrequent changes in his work environment, no fast-paced work, no commercial driving, no in-tandem tasks, and no more than occasional interactions with coworkers, supervisors, or the public." R. at 17. In light of this RFC and the VE's testimony, the ALJ found that, although Plaintiff could not perform his past relevant work as a construction laborer, painter, and glazier, he could perform other work in the national economy, such as a

cafeteria attendant, routing clerk, or industrial cleaner. R. at 19-20. The ALJ thus found that Plaintiff was not disabled from December 15, 2015, through September 30, 2019. R. at 20-21.

After the Appeals Council denied Plaintiff's request for review, Plaintiff filed on August 16, 2020, a complaint in this Court seeking review of the Commissioner's decision. Upon the parties' consent, this case was transferred to a United States Magistrate Judge for final disposition and entry of judgment. The case then was reassigned to the undersigned. The parties have briefed the issues, and the matter is now fully submitted.

## II

### **Disability Determinations and Burden of Proof**

The Social Security Act defines a disability as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505, 416.905. A claimant has a disability when the claimant is "not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country." 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

To determine whether a claimant has a disability within the meaning of the Social Security Act, the Commissioner follows a five-step sequential evaluation process outlined in the regulations. 20 C.F.R. §§ 404.1520, 416.920; *see Barnhart v. Thomas*, 540 U.S. 20, 24-25, 124 S. Ct. 376, 379-80 (2003). "If at any step a finding of disability or nondisability can be made, the [Commissioner] will not review the claim further." *Thomas*, 540 U.S. at 24, 124 S. Ct. at

379; *see* 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). The claimant has the burden of production and proof at steps one through four. *See Bowen v. Yuckert*, 482 U.S. 137, 146 n.5, 107 S. Ct. 2287, 2294 n.5 (1987); *Radford v. Colvin*, 734 F.3d 288, 291 (4th Cir. 2013).

First, the Commissioner will consider a claimant’s work activity. If the claimant is engaged in substantial gainful activity, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

Second, if the claimant is not engaged in substantial gainful activity, the Commissioner looks to see whether the claimant has a “severe” impairment, i.e., an impairment or combination of impairments that significantly limits the claimant’s physical or mental ability to do basic work activities. *Pass v. Chater*, 65 F.3d 1200, 1203 (4th Cir. 1995); *see* 20 C.F.R. §§ 404.1520(c), 404.1522(a), 416.920(c), 416.922(a).<sup>3</sup>

Third, if the claimant has a severe impairment, then the Commissioner will consider the medical severity of the impairment. If the impairment meets or equals one of the presumptively disabling impairments listed in the regulations, then the claimant is considered disabled, regardless of age, education, and work experience. 20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii), 416.920(d); *see Radford*, 734 F.3d at 293.

Fourth, if the claimant’s impairment is severe, but it does not meet or equal one of the presumptively disabling impairments, then the Commissioner will assess the claimant’s RFC to determine the claimant’s “ability to meet the physical, mental, sensory, and other requirements”

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<sup>3</sup> The ability to do basic work activities is defined as “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§ 404.1522(b), 416.922(b). These abilities and aptitudes include (1) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers, and usual work situations; and (6) dealing with changes in a routine work setting. *Id.* §§ 404.1522(b)(1)-(6), 416.922(b)(1)-(6); *see Yuckert*, 482 U.S. at 141, 107 S. Ct. at 2291.

of the claimant's past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1545(a)(4), 416.920(a)(4)(iv), 416.945(a)(4). RFC is a measurement of the most a claimant can do despite his or her limitations. *Hines v. Barnhart*, 453 F.3d 559, 562 (4th Cir. 2006); see 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The claimant is responsible for providing evidence the Commissioner will use to make a finding as to the claimant's RFC, but the Commissioner is responsible for developing the claimant's "complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help [the claimant] get medical reports from [the claimant's] own medical sources." 20 C.F.R. §§ 404.1545(a)(3), 416.945(a)(3). The Commissioner also will consider certain non-medical evidence and other evidence listed in the regulations. See *id.* If a claimant retains the RFC to perform past relevant work, then the claimant is not disabled. *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

Fifth, if the claimant's RFC as determined in step four will not allow the claimant to perform past relevant work, then the burden shifts to the Commissioner to prove that there is other work that the claimant can do, given the claimant's RFC as determined at step four, age, education, and work experience. See *Hancock v. Astrue*, 667 F.3d 470, 472-73 (4th Cir. 2012). The Commissioner must prove not only that the claimant's RFC will allow the claimant to make an adjustment to other work, but also that the other work exists in significant numbers in the national economy. See *Walls*, 296 F.3d at 290; 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant can make an adjustment to other work that exists in significant numbers in the national economy, then the Commissioner will find that the claimant is not disabled. If the claimant cannot make an adjustment to other work, then the Commissioner will find that the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### III

#### **Substantial Evidence Standard**

The Court reviews an ALJ's decision to determine whether the ALJ applied the correct legal standards and whether the factual findings are supported by substantial evidence. *See Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). In other words, the issue before the Court "is not whether [Plaintiff] is disabled, but whether the ALJ's finding that [Plaintiff] is not disabled is supported by substantial evidence and was reached based upon a correct application of the relevant law." *Id.* The Court's review is deferential, as "[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). Under this standard, substantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion. *See Hancock*, 667 F.3d at 472; *see also Biestek v. Berryhill*, 587 U.S. \_\_\_, 139 S. Ct. 1148, 1154 (2019).

In evaluating the evidence in an appeal of a denial of benefits, the court does "not conduct a *de novo* review of the evidence," *Smith v. Schweiker*, 795 F.2d 343, 345 (4th Cir. 1986), or undertake to reweigh conflicting evidence, make credibility determinations, or substitute its judgment for that of the Commissioner. *Hancock*, 667 F.3d at 472. Rather, "[t]he duty to resolve conflicts in the evidence rests with the ALJ, not with a reviewing court." *Smith v. Chater*, 99 F.3d 635, 638 (4th Cir. 1996). When conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the ALJ. *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (*per curiam*).

## IV

### Discussion

Plaintiff contends that the ALJ failed to follow the special technique for evaluating mental impairments under 20 C.F.R. §§ 404.1520a and 416.920a. Pl.'s Mem. Supp. Mot. Summ. J. 3-7, ECF No. 14-1. He also argues that, in failing to define the term “fast-paced work” used in the RFC assessment and in the hypothetical questions to the VE, the ALJ erroneously evaluated his RFC. *Id.* at 8-13. For the reasons discussed below, the Court remands this case for further proceedings.

“The Social Security Administration has promulgated regulations containing ‘listings of physical and mental impairments which, if met, are conclusive on the issue of disability.’ A claimant is entitled to a conclusive presumption that he is impaired if he can show that his condition ‘meets or equals the listed impairments.’” *Radford*, 734 F.3d at 291 (citation omitted); *see* 20 C.F.R. pt. 404, subpt. P, app. 1. In addition to the five-step analysis discussed above in Part II and outlined in 20 C.F.R. §§ 404.1520 and 416.920, the Commissioner has promulgated additional regulations governing evaluations of the severity of mental impairments. 20 C.F.R. §§ 404.1520a, 416.920a. These regulations require application of a psychiatric review technique at the second and third steps of the five-step framework, *Schmidt v. Astrue*, 496 F.3d 833, 844 n.4 (7th Cir. 2007), and at each level of administrative review. 20 C.F.R. §§ 404.1520a(a), 416.920a(a). This technique requires the reviewing authority to determine first whether the claimant has a “medically determinable mental impairment.” *Id.* §§ 404.1520a(b)(1), 416.920a(b)(1). If the claimant is found to have such an impairment, then the reviewing authority must “rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c),” *id.* §§ 404.1520a(b)(2), 416.920a(b)(2), which specifies four

broad functional areas: (1) “understand, remember, or apply information”; (2) “interact with others”; (3) “concentrate, persist, or maintain pace”; and (4) “adapt or manage oneself” (the “paragraph B criteria” of the listings for mental disorders as explained in 20 C.F.R. pt. 404, subpt. P, app. 1 § 12.00(A)(2)(b)). *Id.* §§ 404.1520a(c)(3), 416.920a(c)(3). “To satisfy the paragraph B criteria, [a claimant’s] mental disorder must result in ‘extreme’ limitation of one, or ‘marked’ limitation of two, of the four areas of mental functioning.” 20 C.F.R. pt. 404, subpt. P, app. 1 § 12.00(A)(2)(b). According to the regulations, if the degree of limitation in each of the four areas is rated “none” or “mild,” then the reviewing authority generally will conclude that the claimant’s mental impairment is not “severe,” “unless the evidence otherwise indicates that there is more than a minimal limitation in [the claimant’s] ability to do basic work activities.” 20 C.F.R. §§ 404.1520a(d)(1), 416.920a(d)(1). If the claimant’s mental impairment is severe, then the reviewing authority will first compare the relevant medical findings and the functional limitation ratings to the criteria of listed mental disorders in order to determine whether the impairment meets or is equivalent in severity to any listed mental disorder. *Id.* §§ 404.1520a(d)(2), 416.920a(d)(2). If so, then the claimant will be found to be disabled. If not, the reviewing authority will then assess the claimant’s RFC. *Id.* §§ 404.1520a(d)(3), 416.920a(d)(3). “The ALJ’s decision must show the significant history and medical findings considered and must include a specific finding as to the degree of limitation in each of the four functional areas.” *Felton-Miller v. Astrue*, 459 F. App’x 226, 231 (4th Cir. 2011) (per curiam) (citing 20 C.F.R. §§ 404.1520a(e)(4), 416.920a(e)(4)); see *Patterson v. Comm’r of Soc. Sec. Admin.*, 846 F.3d 656, 662, 659 (4th Cir. 2017). The “failure to properly document application of the special technique will rarely, if ever, be harmless because such a failure prevents, or at least substantially hinders, judicial review.” *Patterson*, 846 F.3d at 662.



Here, the ALJ found:

In understanding, remembering, or applying information, and in adapting or managing oneself, [Plaintiff] has a mild limitation. In interacting with others and with regard to concentrating, persisting, or maintaining pace [Plaintiff] has a moderate limitation. [Plaintiff's] treating mental health providers have noted [Plaintiff] to be guarded and irritable with mood lability present. While his thinking is tangential, there are no hallucinations, delusions, or paranoia and thought process and thought content are normal. Cognitive functioning is also normal. Memory is intact. Shortened attention span was noted.

R. at 17.

The Court is “unable to determine what medical evidence [the ALJ] relied on to make her determination for **each** of the functional areas.” *Wendy S. v. Saul*, No. 8:18-CV-03441-GLS, 2020 WL 1443028, at \*3 (D. Md. Mar. 23, 2020). Although Defendant argues that the ALJ considered Plaintiff’s mental impairments in the narrative discussion supporting her RFC analysis, the Court is “unable to discern how the ALJ ultimately made her determination. The Court agrees that the ALJ summarized the medical evidence during her step 4 analysis.” *Id.* “However, although the ALJ in this case assigned weight to each medical source opinion, the ALJ failed to narratively explain the reasons for each finding related to Plaintiff’s functional limitation and cite to the relevant medical evidence.” *Id.* “The ALJ’s explanation of her findings is inadequate to permit meaningful review. At this juncture, [the Court is] unable to conclude that substantial evidence exists to support the ALJ’s decision.” *Id.* (citing *Patterson*, 846 F.3d at 659; *Chandler v. Comm’r, Soc. Sec. Admin.*, Civil No. SAG-15-1408, 2016 WL 750549, at \*2 (D. Md. Feb. 24, 2016)). Remand is thus warranted. *See id.*

The ALJ also failed to define the term “fast-paced work” used in the RFC assessment and in the hypothetical questions to the VE (Pl.’s Mem. Supp. Mot. Summ. J. 8-13, ECF No. 14-1). *See Perry v. Berryhill*, 765 F. App’x 869, 871-73 (4th Cir. 2019); *Thomas v. Berryhill*, 916 F.3d 307, 312 (4th Cir. 2019); *Susan M. v. Kijakazi*, Civil No. DLB-20-1494, 2021 WL 4267325, at

\*3 (D. Md. Sept. 20, 2021) (Boardman, J.) (remanding because ALJ’s use of term “no fast pace, no production rate requirements” required court to guess how ALJ arrived at his conclusions and created uncertainty as to what he intended (citing *Perry*, 765 F. App’x at 873)). “The error is not a failure to discuss the evidence of record. The error is the ALJ’s failure to adequately explain [her] conclusions about plaintiff’s limitations in light of the evidence of record.” *Susan M.*, 2021 WL 4267325, at \*3 (citing *Thomas*, 916 F.3d at 311). Remand is thus also required for this reason. *See id.*

In short, the ALJ “must *both* identify evidence that supports [her] conclusion *and* ‘build an accurate and logical bridge from [that] evidence to [her] conclusion.’” *Woods v. Berryhill*, 888 F.3d 686, 694 (4th Cir. 2018) (second alteration in original) (quoting *Monroe v. Colvin*, 826 F.3d 176, 189 (4th Cir. 2016)). An ALJ’s failure to do so constitutes reversible error. *Lewis v. Berryhill*, 858 F.3d 858, 868 (4th Cir. 2017). The Court thus remands this case for further proceedings.

## V

### Conclusion

For the reasons stated above, Defendant’s Motion for Summary Judgment (ECF No. 15) is **DENIED**. Plaintiff’s Motion for Summary Judgment (ECF No. 14) is **DENIED**. Plaintiff’s alternative motion for remand (ECF No. 14) is **GRANTED**. Defendant’s final decision is **REVERSED** under the fourth sentence of 42 U.S.C. § 405(g). This matter is **REMANDED** for further proceedings consistent with this opinion. A separate order will issue.

Date: October 12, 2021

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/s/  
Thomas M. DiGirolamo  
United States Magistrate Judge