

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

ISSAC RELPH, Plaintiff,)	
)	
)	
v.)	CIVIL ACTION NO. 2:19-01000-N
)	
ANDREW M. SAUL, <i>Commissioner of Social Security,</i> Defendant.)	
)	

MEMORANDUM OPINION AND ORDER

Plaintiff Issac Relph brought this action under 42 U.S.C. § 1383(c)(3) seeking judicial review of a final decision of the Defendant Commissioner of Social Security (“the Commissioner”) denying his application for supplemental security income (“SSI”) under Title XVI of the Social Security Act, 42 U.S.C. § 1381, *et seq.*¹ Upon due consideration of the parties’ briefs (Docs. 16, 18) and those portions of the transcript of the administrative record (Doc. 13) relevant to the issues raised, and with the benefit of oral argument, the Court finds that the Commissioner’s final decision is due to be **AFFIRMED**.²

¹ “Title XVI of the Act provides for the payment of disability benefits to indigent persons under the Supplemental Security Income (SSI) program.” *Bowen v. Yuckert*, 482 U.S. 137, 140, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987) (citing 42 U.S.C. § 1382(a)).

² With the consent of the parties, the Court has designated the undersigned Magistrate Judge to conduct all proceedings, order the entry of judgment, and conduct all post-judgment proceedings in this civil action, in accordance with 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and S.D. Ala. GenLR 73. (*See* Docs. 20, 21).

I. *Procedural Background*

Relph filed the subject SSI application with the Social Security Administration (“SSA”) on December 16, 2016. After it was initially denied, Relph requested, and on August 6, 2018, received, a hearing before an Administrative Law Judge (“ALJ”) with the SSA’s Office of Disability Adjudication and Review. On December 5, 2018, the ALJ issued an unfavorable decision on Relph’s application, finding him not disabled under the Social Security Act and therefore not entitled to benefits. (*See* Doc. 13, PageID.88-103).

The Commissioner’s decision on Relph’s application became final when the Appeals Council for the Office of Disability Adjudication and Review denied his request for review of the ALJ’s unfavorable decision on September 19, 2019. (*See id.*, PageID.73-77). Relph subsequently brought this action under § 1383(c)(3) for judicial review of the Commissioner’s final decision. *See* 42 U.S.C. § 1383(c)(3) (“The final determination of the Commissioner of Social Security after a hearing [for SSI benefits] shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner’s final determinations under section 405 of this title.”); 42 U.S.C. § 405(g) (“Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow.”); *Ingram v. Comm’r of Soc. Sec. Admin.*, 496 F.3d 1253, 1262 (11th Cir.

2007) (“The settled law of this Circuit is that a court may review, under sentence four of section 405(g), a denial of review by the Appeals Council.”).

II. *Standards of Review*

“In Social Security appeals, [the Court] must determine whether the Commissioner’s decision is supported by substantial evidence and based on proper legal standards.” *Winschel v. Comm’r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011) (quotation omitted).

The phrase “substantial evidence” is a “term of art” used throughout administrative law to describe how courts are to review agency factfinding. *T-Mobile South, LLC v. Roswell*, 574 U.S. —, —, 135 S. Ct. 808, 815, 190 L. Ed. 2d 679 (2015). Under the substantial-evidence standard, a court looks to an existing administrative record and asks whether it contains “sufficien[t] evidence” to support the agency’s factual determinations. *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229, 59 S. Ct. 206, 83 L. Ed. 126 (1938) (emphasis deleted). And whatever the meaning of “substantial” in other contexts, the threshold for such evidentiary sufficiency is not high. Substantial evidence ... is “more than a mere scintilla.” *Ibid.*; see, e.g., [*Richardson v. Perales*, 402 U.S. [389,] 401, 91 S. Ct. 1420[, 28 L. Ed. 2d 842 (1971)] (internal quotation marks omitted). It means—and means only—“such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison*, 305 U.S. at 229, 59 S. Ct. 206. See *Dickinson v. Zurko*, 527 U.S. 150, 153, 119 S. Ct. 1816, 144 L. Ed. 2d 143 (1999) (comparing the substantial-evidence standard to the deferential clearly-erroneous standard).

Biestek v. Berryhill, -- U.S. --, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d 504 (2019).

In reviewing the Commissioner’s factual findings, a court “ ‘may not decide the facts anew, reweigh the evidence, or substitute our judgment for that of the [Commissioner].’ ” *Winschel*, 631 F.3d at 1178 (quoting *Phillips v. Barnhart*, 357 F.3d 1232, 1240 n.8 (11th Cir. 2004) (alteration in original) (quoting *Bloodsworth v.*

Heckler, 703 F.2d 1233, 1239 (11th Cir. 1983))). “ ‘Even if the evidence preponderates against the [Commissioner]’s factual findings, [the Court] must affirm if the decision reached is supported by substantial evidence.’ ” *Ingram*, 496 F.3d at 1260 (quoting *Martin v. Sullivan*, 894 F.2d 1520, 1529 (11th Cir. 1990)). See also *Hunter v. Soc. Sec. Admin., Comm’r*, 808 F.3d 818, 822 (11th Cir. 2015) (“A preponderance of the evidence is not required. In determining whether substantial evidence supports a decision, we give great deference to the ALJ’s factfindings.” (citation omitted)).

Put another way, “[u]nder the substantial evidence standard, we cannot look at the evidence presented to [an administrative agency] to determine if interpretations of the evidence other than that made by the [agency] are possible. Rather, we review the evidence that was presented to determine if the findings made by the [agency] were unreasonable. To that end, [judicial] inquiry is highly deferential and we consider only whether there is substantial evidence for the findings made by the [agency], *not* whether there is substantial evidence for some *other* finding that could have been, but was not, made. That is, even if the evidence could support multiple conclusions, we must affirm the agency’s decision unless there is no reasonable basis for that decision.” *Adefemi v. Ashcroft*, 386 F.3d 1022, 1029 (11th Cir. 2004) (en banc) (citations and quotation omitted).³

³ See also *Barnes v. Sullivan*, 932 F.2d 1356, 1358 (11th Cir. 1991) (per curiam) (“The court need not determine whether it would have reached a different result based upon the record” because “[e]ven if we find that the evidence preponderates against the [Commissioner]’s decision, we must affirm if the decision is supported by substantial evidence.”); *Edwards v. Sullivan*, 937 F.2d 580, 584 n.3 (11th Cir.

“Yet, within this narrowly circumscribed role, [courts] do not act as automatons. [A court] must scrutinize the record as a whole to determine if the decision reached is reasonable and supported by substantial evidence[.]” *Bloodsworth*, 703 F.2d at 1239 (citations and quotation omitted). *See also Owens v. Heckler*, 748 F.2d 1511, 1516 (11th Cir. 1984) (per curiam) (“We are neither to conduct a de novo proceeding, nor to rubber stamp the administrative decisions that come before us. Rather, our function is to ensure that the decision was based on a reasonable and consistently applied standard, and was carefully considered in light of all the relevant facts.”).⁴

1991) (under the substantial evidence standard, “we do not reverse the [Commissioner] even if this court, sitting as a finder of fact, would have reached a contrary result...”); *Hunter*, 808 F.3d at 822 (“In light of our deferential review, there is no inconsistency in finding that two successive ALJ decisions are supported by substantial evidence even when those decisions reach opposing conclusions. Faced with the same record, different ALJs could disagree with one another based on their respective credibility determinations and how each weighs the evidence. Both decisions could nonetheless be supported by evidence that reasonable minds would accept as adequate.”); *Barron v. Sullivan*, 924 F.2d 227, 230 (11th Cir. 1991) (“Substantial evidence may even exist contrary to the findings of the ALJ, and we may have taken a different view of it as a factfinder. Yet, if there is substantially supportive evidence, the findings cannot be overturned.”); *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), *as amended on reh'g* (Aug. 9, 2001) (“If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner.”).

⁴ However, “district court judges are not required to ferret out delectable facts buried in a massive record,” *Chavez v. Sec’y Fla. Dep’t of Corr.*, 647 F.3d 1057, 1061 (11th Cir. 2011) (28 U.S.C. § 2254 habeas proceedings), and “‘[t]here is no burden upon the district court to distill every potential argument that could be made based on the materials before it...’” *Solutia, Inc. v. McWane, Inc.*, 672 F.3d 1230, 1239 (11th Cir. 2012) (per curiam) (Fed. R. Civ. P. 56 motion for summary judgment) (quoting *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) (en banc)) (ellipsis added). The Eleventh Circuit Court of Appeals, whose review of Social Security appeals “is the same as that of the district court[.]” *Miles v. Chater*,

The “substantial evidence” “standard of review applies only to findings of fact. No similar presumption of validity attaches to the [Commissioner]’s conclusions of law, including determination of the proper standards to be applied in

84 F.3d 1397, 1400 (11th Cir. 1996) (per curiam), generally deems waived claims of error not fairly raised in the district court. *See Stewart v. Dep’t of Health & Human Servs.*, 26 F.3d 115, 115-16 (11th Cir. 1994) (“As a general principle, [the court of appeals] will not address an argument that has not been raised in the district court...Because Stewart did not present any of his assertions in the district court, we decline to consider them on appeal.” (applying rule in appeal of judicial review under 42 U.S.C. §§ 405(g), 1383(c)(3)); *Crawford v. Comm’r Of Soc. Sec.*, 363 F.3d 1155, 1161 (11th Cir. 2004) (per curiam) (same); *Hunter v. Comm’r of Soc. Sec.*, 651 F. App’x 958, 962 (11th Cir. 2016) (per curiam) (unpublished) (same); *Cooley v. Comm’r of Soc. Sec.*, 671 F. App’x 767, 769 (11th Cir. 2016) (per curiam) (unpublished) (“As a general rule, we do not consider arguments that have not been fairly presented to a respective agency or to the district court. *See Kelley v. Apfel*, 185 F.3d 1211, 1215 (11th Cir. 1999) (treating as waived a challenge to the administrative law judge’s reliance on the testimony of a vocational expert that was ‘not raise[d] . . . before the administrative agency or the district court’.”); *In re Pan Am. World Airways, Inc., Maternity Leave Practices & Flight Attendant Weight Program Litig.*, 905 F.2d 1457, 1462 (11th Cir. 1990) (“[I]f a party hopes to preserve a claim, argument, theory, or defense for appeal, she must first clearly present it to the district court, that is, in such a way as to afford the district court an opportunity to recognize and rule on it.”); *Jones v. Apfel*, 190 F.3d 1224, 1228 (11th Cir. 1999) (applying *In re Pan American World Airways* in Social Security appeal); *Sorter v. Soc. Sec. Admin., Comm’r*, 773 F. App’x 1070, 1073 (11th Cir. 2019) (per curiam) (unpublished) (“Sorter has abandoned on appeal the issue of whether the ALJ adequately considered her testimony regarding the side effects of her pain medication because her initial brief simply mentions the issue without providing any supporting argument. *See Singh v. U.S. Att’y Gen.*, 561 F.3d 1275, 1278–79 (11th Cir. 2009) (explaining that ‘simply stating that an issue exists, without further argument or discussion, constitutes abandonment of that issue’.”); *Figuera v. Comm’r of Soc. Sec.*, 819 F. App’x 870, 871 n.1 (11th Cir. 2020) (per curiam) (unpublished) (“Figuera also argues the ALJ failed to properly assess her credibility ... However, Figuera did not adequately raise this issue in her brief before the district court. She raised the issue only summarily, without any citations to the record or authority. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (noting that a party ‘abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority’). As a result, we do not address the sufficiency of the ALJ’s credibility finding.”).

reviewing claims.” *MacGregor v. Bowen*, 786 F.2d 1050, 1053 (11th Cir. 1986) (quotation omitted). *Accord, e.g., Wiggins v. Schweiker*, 679 F.2d 1387, 1389 (11th Cir. 1982) (“Our standard of review for appeals from the administrative denials of Social Security benefits dictates that ‘(t)he findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive’ 42 U.S.C.A. s 405(g) ... As is plain from the statutory language, this deferential standard of review is applicable only to findings of fact made by the Secretary, and it is well established that no similar presumption of validity attaches to the Secretary’s conclusions of law, including determination of the proper standards to be applied in reviewing claims.” (some quotation marks omitted)). This Court “conduct[s] ‘an exacting examination’ of these factors.” *Miles v. Chater*, 84 F.3d 1397, 1400 (11th Cir. 1996) (per curiam) (quoting *Martin v. Sullivan*, 894 F.2d 1520, 1529 (11th Cir. 1990)). “‘The [Commissioner]’s failure to apply the correct law or to provide the reviewing court with sufficient reasoning for determining that the proper legal analysis has been conducted mandates reversal.’ ” *Ingram*, 496 F.3d at 1260 (quoting *Cornelius v. Sullivan*, 936 F.2d 1143, 1145-46 (11th Cir. 1991)). *Accord Keeton v. Dep’t of Health & Human Servs.*, 21 F.3d 1064, 1066 (11th Cir. 1994).

In sum, courts “review the Commissioner’s factual findings with deference and the Commissioner’s legal conclusions with close scrutiny.” *Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001). *See also Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005) (per curiam) (“In Social Security appeals, we review *de novo* the legal principles upon which the Commissioner's decision is based. *Chester v. Bowen*,

792 F.2d 129, 131 (11th Cir. 1986). However, we review the resulting decision only to determine whether it is supported by substantial evidence. *Crawford v. Comm’r of Soc. Sec.*, 363 F.3d 1155, 1158–59 (11th Cir. 2004).”). Moreover, an ALJ’s decision must “state with at least some measure of clarity the grounds for [the] decision.” *Owens*, 748 F.2d at 1516; *Winschel*, 631 F.3d at 1179. A court cannot “affirm simply because some rationale might have supported the [Commissioner]’ conclusion[,]” as “[s]uch an approach would not advance the ends of reasoned decision making.” *Owens*, 748 F.2d at 1516. Rather, “an agency’s order must be upheld, if at all, on the same basis articulated in the order by the agency itself.” *Fed. Power Comm’n v. Texaco Inc.*, 417 U.S. 380, 397, 94 S. Ct. 2315, 41 L. Ed. 2d 141 (1974) (quotation omitted). *See also Newton v. Apfel*, 209 F.3d 448, 455 (5th Cir. 2000) (“The ALJ’s decision must stand or fall with the reasons set forth in the ALJ’s decision, as adopted by the Appeals Council.”); *Nance v. Soc. Sec. Admin., Comm’r*, 781 F. App’x 912, 921 (11th Cir. 2019) (per curiam) (unpublished)⁵ (“Agency actions ... must be upheld on the same bases articulated in the agency’s order.” (citing *Texaco Inc.*, 417 U.S. at 397, and *Newton*, 209 F.3d at 455)).

Eligibility for SSI requires that a claimant be disabled, 42 U.S.C. § 1382(a)(1)-(2), meaning that the claimant is unable “to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment ... which has lasted or can be expected to last for a continuous period of

⁵ In this circuit, “[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. R. 36-2. *See also Henry v. Comm’r of Soc. Sec.*, 802 F.3d 1264, 1267 n.1 (11th Cir. 2015) (per curiam) (“Cases printed in the Federal Appendix are cited as persuasive authority.”).

not less than 12 months.” *Id.* § 1382c(a)(3)(A).

The Social Security Regulations outline a five-step, sequential evaluation process used to determine whether a claimant is disabled: (1) whether the claimant is currently engaged in substantial gainful activity; (2) whether the claimant has a severe impairment or combination of impairments; (3) whether the impairment meets or equals the severity of the specified impairments in the Listing of Impairments; (4) based on a residual functional capacity (“RFC”) assessment, whether the claimant can perform any of his or her past relevant work despite the impairment; and (5) whether there are significant numbers of jobs in the national economy that the claimant can perform given the claimant's RFC, age, education, and work experience.

Winschel, 631 F.3d at 1178 (citing 20 C.F.R. §§ 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v); *Phillips*, 357 F.3d at 1237-39).⁶

“These regulations place a very heavy burden on the claimant to demonstrate both a qualifying disability and an inability to perform past relevant work.” *Moore*, 405 F.3d at 1211 (citing *Spencer v. Heckler*, 765 F.2d 1090, 1093 (11th Cir. 1985)). “In determining whether the claimant has satisfied this initial burden, the examiner must consider four factors: (1) objective medical facts or clinical findings; (2) the diagnoses of examining physicians; (3) evidence of pain; and (4) the claimant’s age, education, and work history.” *Jones v. Bowen*, 810 F.2d 1001, 1005 (11th Cir. 1986) (per curiam) (citing *Tieniber v. Heckler*, 720 F.2d 1251, 1253 (11th Cir. 1983) (per curiam)). “These factors must be considered both singly and in combination. Presence or absence of a single factor is not, in itself, conclusive.” *Bloodsworth*, 703 F.2d at 1240 (citations omitted).

⁶ The Court will hereinafter use “Step One,” “Step Two,” etc. when referencing individual steps of this five-step sequential evaluation.

If, in Steps One through Four of the five-step evaluation, a claimant proves that he or she has a qualifying disability and cannot do his or her past relevant work, it then becomes the Commissioner's burden, at Step Five, to prove that the claimant is capable—given his or her age, education, and work history—of engaging in another kind of substantial gainful employment that exists in the national economy. *Jones v. Apfel*, 190 F.3d 1224, 1228 (11th Cir. 1999); *Sryock v. Heckler*, 764 F.2d 834, 836 (11th Cir. 1985). Moreover, even if a claimant is found disabled, he or she is not eligible for benefits if alcoholism or drug addiction is a contributing factor material to the determination of disability. *See Doughty*, 245 F.3d at 1278–79.

Although the “claimant bears the burden of demonstrating the inability to return to [his or] her past relevant work, the Commissioner of Social Security has an obligation to develop a full and fair record.” *Shnorr v. Bowen*, 816 F.2d 578, 581 (11th Cir. 1987). *See also Ellison v. Barnhart*, 355 F.3d 1272, 1276 (11th Cir. 2003) (per curiam) (“It is well-established that the ALJ has a basic duty to develop a full and fair record. Nevertheless, the claimant bears the burden of proving that he is disabled, and, consequently, he is responsible for producing evidence in support of his claim.” (citations omitted)). “This is an onerous task, as the ALJ must scrupulously and conscientiously probe into, inquire of, and explore for all relevant facts. In determining whether a claimant is disabled, the ALJ must consider the evidence as a whole.” *Henry v. Comm’r of Soc. Sec.*, 802 F.3d 1264, 1267 (11th Cir. 2015) (per curiam) (citation and quotation omitted).

If a court determines that the Commissioner reached his decision “by

focusing upon one aspect of the evidence and ignoring other parts of the record[, i]n such circumstances [the court] cannot properly find that the administrative decision is supported by substantial evidence. It is not enough to discover a piece of evidence which supports that decision, but to disregard other contrary evidence.” *McCruter v. Bowen*, 791 F.2d 1544, 1548 (11th Cir. 1986). Nevertheless, “ ‘there is no rigid requirement that the ALJ specifically refer to every piece of evidence in his decision, so long as the ALJ’s decision ... is not a broad rejection which is not enough to enable [a reviewing court] to conclude that the ALJ considered [the claimant’s] medical condition as a whole.’ ” *Mitchell v. Comm’r, Soc. Sec. Admin.*, 771 F.3d 780, 782 (11th Cir. 2014) (quoting *Dyer v. Barnhart*, 395 F.3d 1206, 1211 (11th Cir. 2005) (per curiam) (quotation and brackets omitted)).

When, as here, the ALJ denies benefits and the Appeals Council denies review of that decision, the Court “review[s] the ALJ’s decision as the Commissioner’s final decision.” *Doughty*, 245 F.3d at 1278. But “when a claimant properly presents new evidence to the Appeals Council, a reviewing court must consider whether that new evidence renders the denial of benefits erroneous.” *Ingram*, 496 F.3d at 1262. Nevertheless, “when the [Appeals Council] has denied review, [the Court] will look only to the evidence actually presented to the ALJ in determining whether the ALJ’s decision is supported by substantial evidence.” *Falge v. Apfel*, 150 F.3d 1320, 1323 (11th Cir. 1998).

III. Summary of the ALJ’s Decision

At Step One, the ALJ determined that Relph had not engaged in substantial

gainful activity since the application date of December 16, 2016.⁷ (Doc. 13, PageID.93). At Step Two,⁸ the ALJ determined that Relph had the following severe impairments: seizure disorder, major depressive disorder with reported psychotic features, mild intellectual disability vs. borderline intellectual functioning, and anemia. (Doc. 13, PageID.93-94). At Step Three,⁹ the ALJ found that Relph did not have an impairment or combination of impairments that met or equaled the severity of a specified impairment in Appendix 1 of the Listing of Impairments, 20 C.F.R. § 404, Subpt. P, App. 1. (Doc. 13, PageID.94-96).

At Step Four,¹⁰ the ALJ determined that Relph had the residual functional

⁷ “For SSI claims, a claimant becomes eligible in the first month where she is both disabled and has an SSI application on file.” *Moore*, 405 F.3d at 1211. Relph initially alleged disability beginning May 7, 2013, but later amended the onset date to the application date. (Doc. 13, PageID.91).

⁸ “The severity regulation increases the efficiency and reliability of the evaluation process by identifying at an early stage those claimants whose medical impairments are so slight that it is unlikely they would be found to be disabled even if their age, education, and experience were taken into account.” *Yuckert*, 482 U.S. at 153. *See also Schink v. Comm’r of Soc. Sec.*, 935 F.3d 1245, 1265 (11th Cir. 2019) (per curiam) (Step Two “is a ‘threshold inquiry’ and ‘allows only claims based on the most trivial impairments to be rejected.’” (quoting *McDaniel v. Bowen*, 800 F.2d 1026, 1031 (11th Cir. 1986)). “[A]n ‘impairment is not severe only if the abnormality is so slight and its effect so minimal that it would clearly not be expected to interfere with the individual’s ability to work, irrespective of age, education or work experience.’ A claimant’s burden to establish a severe impairment at step two is only ‘mild.’” *Schink*, 935 F.3d at 1265 (citation omitted) (quoting *McDaniel*, 800 F.2d at 1031).

⁹ Conversely to Step Two, Step Three “identif[ies] those claimants whose medical impairments are so severe that it is likely they would be found disabled regardless of their vocational background.” *Yuckert*, 482 U.S. at 153.

¹⁰ At Step Four,

capacity (RFC) “to perform ‘medium work,’ as that term is otherwise defined in 20 CFR 404.1567(c)[,]”¹¹ finding that Relph “can lift and carry up to 50 pounds

the ALJ must assess: (1) the claimant's residual functional capacity (“RFC”); and (2) the claimant's ability to return to her past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). As for the claimant's RFC, the regulations define RFC as that which an individual is still able to do despite the limitations caused by his or her impairments. 20 C.F.R. § 404.1545(a). Moreover, the ALJ will “assess and make a finding about [the claimant's] residual functional capacity based on all the relevant medical and other evidence” in the case. 20 C.F.R. § 404.1520(e). Furthermore, the RFC determination is used both to determine whether the claimant: (1) can return to her past relevant work under the fourth step; and (2) can adjust to other work under the fifth step...20 C.F.R. § 404.1520(e).

If the claimant can return to her past relevant work, the ALJ will conclude that the claimant is not disabled. 20 C.F.R. § 404.1520(a)(4)(iv) & (f). If the claimant cannot return to her past relevant work, the ALJ moves on to step five.

In determining whether [a claimant] can return to her past relevant work, the ALJ must determine the claimant's RFC using all relevant medical and other evidence in the case. 20 C.F.R. § 404.1520(e). That is, the ALJ must determine if the claimant is limited to a particular work level. *See* 20 C.F.R. § 404.1567. Once the ALJ assesses the claimant's RFC and determines that the claimant cannot return to her prior relevant work, the ALJ moves on to the fifth, and final, step.

Phillips, 357 F.3d at 1238-39 (footnote omitted).

¹¹ “To determine the physical exertion requirements of different types of employment in the national economy, the Commissioner classifies jobs as sedentary, light, medium, heavy, and very heavy. These terms are all defined in the regulations ... Each classification ... has its own set of criteria.” *Phillips*, 357 F.3d at 1239 n.4. The criteria for “medium” work are as follows:

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

occasionally and up to 25 pounds frequently[;] can push and pull within those same exertional limits[;] can stand or walk for about 6 hours altogether and ... can sit for at least 6 hours out of an 8-hour workday[;] can perform tasks not involving the climbing of ladders, ropes, or scaffolding[;] can perform tasks not involving operation of vibrating tools or equipment or operation of heavy machinery[;] can perform tasks not involving operation of motorized vehicles or involving exposure to workplace hazards such as unprotected heights or dangerous moving machinery[;] can perform tasks in an environment with no greater than a moderate level of ambient noise[;] can understand and carry out short, simple instructions consistent with the performance of simple, unskilled work of a routine, repetitive nature[;] can make simple, work-related decisions, but cannot carry out any complex instructions and cannot engage in any long-term planning, negotiation, or independent goal-setting[;] can tolerate occasional interaction with supervisors and co-workers, but no more than superficial interaction with members of the general public[; and] can tolerate minor, infrequent changes within the workplace.” (Doc. 13, PageID.96-101). Based on the RFC, the ALJ determined that Relph was unable to perform any past relevant work. (*Id.*, PageID.101).

At Step Five, after considering testimony from a vocational expert,¹² the ALJ

20 C.F.R. § 416.967(c).

¹² “[T]he ALJ may determine whether the claimant has the ability to adjust to other work in the national economy ... by the use of a vocational expert. A vocational expert is an expert on the kinds of jobs an individual can perform based on his or her capacity and impairments. When the ALJ uses a vocational expert, the ALJ will pose hypothetical question(s) to the vocational expert to establish whether someone

found that there existed a significant number of jobs in the national economy that Relph could perform given his RFC, age, education, and work experience. (Doc. 13, PageID.101-102). Thus, the ALJ found that Relph was not disabled under the Social Security Act during the adjudicatory period relevant to his application. (*Id.*, PageID.102).

IV. *Analysis*

a. RFC

Relph broadly argues that the RFC the ALJ reached is not supported by substantial evidence. No reversible error has been shown. Rather, Relph largely provides his own recounting of the record evidence and asks the Court to accept it over the ALJ's findings. As the Commissioner correctly notes, Relph essentially "attempts to have this Court reweigh evidence based on his layperson interpretation of evidence and extra-record sources." (Doc. 18 n.4, PageID.597). However, it is axiomatic that a court may not decide the facts anew, reweigh the evidence, or substitute its judgment for that of the ALJ. *Winschel*, 631 F.3d at 1178. The ALJ, "and not the court, is charged with the duty to weigh the evidence, to resolve material conflicts in the testimony, and to determine the case accordingly." *Wheeler v. Heckler*, 784 F.2d 1073, 1075 (11th Cir. 1986) (per curiam). *See also McCullars v. Comm'r, Soc. Sec. Admin.*, 825 F. App'x 685, 691 n.1 (11th Cir. 2020) (per curiam) (unpublished) ("ALJs are permitted, and in fact required, to use judgment in

with the limitations that the ALJ has previously determined that the claimant has will be able to secure employment in the national economy." *Phillips*, 357 F.3d at 1240.

weighing competing evidence and reaching a final determination as to whether an applicant is disabled.”). Moreover, it is not enough to show that substantial evidence also supports a finding of disability, or even that the greater weight of the evidence favors such a finding. Even if the record evidence preponderates against it, an ALJ’s decision need only be supported by substantial evidence to be upheld. *Ingram*, 496 F.3d at 1260. As the United States Supreme Court has recently observed, “the threshold for such evidentiary sufficiency is not high.” *Biestek*, 139 S. Ct. at 1154. That threshold is satisfied here.

In determining Relph’s RFC at Step Four, the ALJ considered both the objective medical evidence of record and Relph’s subjective statements about his impairments and their symptoms—contrary to Relph’s claim that the ALJ “never addressed the actual evidence (Doc.16, PageID.568). The ALJ also considered, and gave “substantial weight” to, medical opinions from five different physicians—three who conducted consultative examinations of Relph, and two non-examining state agency advisors who reviewed the available evidence and denied Relph’s application at the initial level. (See Doc. 13, PageID.99).¹³ Relph claims that the ALJ failed to

¹³ “ ‘Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of [the claimant’s] impairment(s), including [the claimant’s] symptoms, diagnosis and prognosis, what [the claimant] can still do despite impairment(s), and [the claimant’s] physical or mental restrictions.’ ” *Winschel*, 631 F.3d at 1178-79 (quoting 20 C.F.R. §§ 404.1527(a)(2), 416.927(a)(2)). “There are three tiers of medical opinion sources: (1) treating physicians; (2) nontreating, examining physicians; and (3) nontreating, nonexamining physicians.” *Himes v. Comm’r of Soc. Sec.*, 585 F. App’x 758, 762 (11th Cir. 2014) (per curiam) (unpublished) (citing 20 C.F.R. §§ 404.1527(c)(1)-(2), 416.927(c)(1)-(2)). “In assessing medical opinions, the ALJ must consider a number of factors in determining how much weight to give to each

sufficiently show that he considered the relevant regulatory factors in weighing these opinions. *See* 20 C.F.R. § 416.927(c). However, “the ALJ is not required to explicitly address each of those factors[.]” *Lawton v. Comm’r of Soc. Sec.*, 431 F. App’x 830, 833 (11th Cir. 2011) (per curiam) (unpublished); *accord Brock v. Comm’r, Soc. Sec. Admin.*, 758 F. App’x 745, 751 (11th Cir. 2018) (per curiam) (unpublished), and his decision otherwise indicates those factors were considered.

The ALJ’s decision accurately recognized that three of the medical opinions were from physicians who had conducted one-time consultative examinations of Relph, while the other two were from non-examining reviewing physicians. *See* 20 C.F.R. § 416.927(c)(1) (“Generally, we give more weight to the medical opinion of a source who has examined you than to the medical opinion of a medical source who has not examined you.”). There were no medical opinions from treating sources in the record, and Relph does not argue otherwise. *See id.* § 416.927(c)(2). The ALJ

medical opinion, including (1) whether the physician has examined the claimant; (2) the length, nature, and extent of a treating physician’s relationship with the claimant; (3) the medical evidence and explanation supporting the physician’s opinion; (4) how consistent the physician’s opinion is with the record as a whole; and (5) the physician’s specialization. These factors apply to both examining and non-examining physicians.” *Eyre v. Comm’r, Soc. Sec. Admin.*, 586 F. App’x 521, 523 (11th Cir. 2014) (per curiam) (unpublished) (internal citations and quotation marks omitted) (citing 20 C.F.R. §§ 404.1527(c) & (e), 416.927(c) & (e)). “[T]he ALJ must state with particularity the weight given to different medical opinions and the reasons therefor.” *Winschel*, 631 F.3d at 1179.

On January 18, 2017, the SSA substantially revised the regulations governing how the Commissioner considers medical evidence, including medical opinions. *See* 82 Fed. Reg. 5844 (Jan. 18, 2017); 82 Fed. Reg. 15,132 (Mar. 27, 2017). However, those revisions apply only to claims filed on or after March 27, 2017, and are therefore inapplicable to the subject application. *Compare* 20 C.F.R. § 416.920c (applicable to claims filed on or after on or after March 27, 2017) *with* 20 C.F.R. § 416.927 (applicable to claims filed before March 27, 2017).

also stated that he found the medical opinions to be generally “consistent with the evidence as a whole[,]” and his decision included specific discussion of the examining physicians’ reports. *See id.* §§ 416.927(c)(3) (“The more a medical source presents relevant evidence to support a medical opinion, particularly medical signs and laboratory findings, the more weight we will give that medical opinion. The better an explanation a source provides for a medical opinion, the more weight we will give that medical opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their medical opinions will depend on the degree to which they provide supporting explanations for their medical opinions. We will evaluate the degree to which these medical opinions consider all of the pertinent evidence in your claim, including medical opinions of treating and other examining sources.”), 416.927(c)(3) (“Generally, the more consistent a medical opinion is with the record as a whole, the more weight we will give to that medical opinion.”). Indeed, the ALJ explained that he gave the opinion of one of the consultative examiners, Dr. Robertson, only “substantial” rather than “full” weight because objective evidence did not support Dr. Robertson’s opinion that Relph would have “no exertional limitations whatsoever.” (Doc. 13, PageID.99). And Relph does not claim that consideration of any other relevant factors were omitted or overlooked. *See* 20 C.F.R. §§ 416.927(c)(5) (“We generally give more weight to the medical opinion of a specialist about medical issues related to his or her area of specialty than to the medical opinion of a source who is not a specialist.”), 416.927(c)(6) (“When we consider how much weight to give to a medical

opinion, we will also consider any factors you or others bring to our attention, or of which we are aware, which tend to support or contradict the medical opinion.”).

Even in cases involving the medical opinions of treating physicians, a court “will not second guess the ALJ about the weight [an] opinion deserves so long as he articulates a specific justification for it.” *Hunter v. Soc. Sec. Admin., Comm’r*, 808 F.3d 818, 823 (11th Cir. 2015) (citing *Moore*, 405 F.3d at 1212). Here, the ALJ, as he was required to do, “state[d] with particularity the weight given to different medical opinions and the reasons therefor.” *Winschel*, 631 F.3d at 1179. “To a large extent, [Relph] questions the ALJ’s RFC determination[,]” and the opinions of the medical professionals, “based solely on the fact that [h]e has [various impairments]. However, the mere existence of these impairments does not reveal the extent to which they limit h[is] ability to work or undermine the ALJ’s determination in that regard.” *Moore*, 405 F.3d at 1213 n.6 (citing *McCruter*, 791 F.2d at 1547 (“ ‘severity’ of a medically ascertained disability must be measured in terms of its effect upon ability to work”)).¹⁴

Eleventh Circuit precedent does not require exacting detail or precision in an ALJ’s decision, only that the ALJ “state with at least some measure of clarity the grounds for [the] decision.” *Owens*, 748 F.2d at 1516; *Winschel*, 631 F.3d at 1179.¹⁵

¹⁴ Relph also claims that the findings of the mental health professionals “support additional mental work-related limitations.” (Doc. 16, PageID.572). At most, however, this is simply another invitation to have the Court impermissibly reweigh the evidence and substitute its judgment for the ALJ’s.

¹⁵ See also *Garcia v. Comm’r of Soc. Sec.*, 833 F. App’x 303, 305–06 (11th Cir. 2020) (per curiam) (unpublished) (“We will reverse only if the ALJ ‘fails to state with at

Here, the undersigned finds that the ALJ's decision adequately indicates that he considered the record as a whole in formulating the RFC. That Relph can point to some evidence in the record cutting against the ALJ's decision does not require reversal, and consideration of that evidence does not convince the undersigned that the RFC is not supported by at least substantial evidence.

b. Credibility Determination

Relph also challenges the ALJ's credibility determination regarding his subjective testimony as to the limiting effects of his symptoms. The undersigned is not persuaded.

A claimant may "attempt[] to establish disability through his or her own testimony of pain or other subjective symptoms." *Holt v. Sullivan*, 921 F.2d 1221, 1223 (11th Cir. 1991) (per curiam). "If a claimant testifies as to his subjective complaints of disabling pain and other symptoms, ... the ALJ must clearly articulate explicit and adequate reasons for discrediting the claimant's allegations

least some measure of clarity the grounds for his decision.' *Winschel*, 631 F.3d at 1179 (internal quotation mark omitted). []Here, the ALJ did not commit reversible error in his articulation of the weight accorded to Dr. Tauler's treatment notes. Although the ALJ did not refer to each of Dr. Tauler's treatment notes, his decision illustrates that he considered the content of the notes and explained 'with at least some measure of clarity' the grounds for discounting Dr. Tauler's medical opinions. *Id.* Thus, we find no reversible error in this regard."); *Brito v. Comm'r, Soc. Sec. Admin.*, 687 F. App'x 801, 804 (11th Cir. 2017) (per curiam) (unpublished) ("Here, substantial evidence supported the ALJ's finding that Brito's testimony regarding her symptoms was not entirely credible. Although Brito points to other evidence in the record that was consistent with her hearing testimony and to which the ALJ did not specifically refer in making her credibility determination, the ALJ was not required to examine or reference every piece of evidence, so long as it is evident, as it is here, that the ALJ considered Brito's medical condition as a whole." (citing *Mitchell*, 771 F.3d at 782)).

of completely disabling symptoms. Although this circuit does not require an explicit finding as to credibility, the implication must be obvious to the reviewing court. The credibility determination does not need to cite particular phrases or formulations but it cannot merely be a broad rejection which is not enough to enable the district court ... to conclude that the ALJ considered her medical condition as a whole.” *Dyer*, 395 F.3d at 1210-11 (citations and quotations omitted).

If the record shows that the claimant has a medically-determinable impairment that could reasonably be expected to produce her symptoms, the ALJ must evaluate the intensity and persistence of the symptoms in determining how they limit the claimant's capacity for work. 20 C.F.R. § 404.1529(c)(1). In doing so, the ALJ considers all of the record, including the objective medical evidence, the claimant's history, and statements of the claimant and her doctors. *Id.* § 404.1529(c)(1)-(2). The ALJ may consider other factors, such as: (1) the claimant's daily activities; (2) the location, duration, frequency, and intensity of the claimant's pain or other symptoms; (3) any precipitating and aggravating factors; (4) the type, dosage, effectiveness, and side effects of the claimant's medication; (5) any treatment other than medication; (6) any measures the claimant used to relieve her pain or symptoms; and (7) other factors concerning the claimant's functional limitations and restrictions due to her pain or symptoms. *Id.* § 404.1529(c)(3). The ALJ then will examine the claimant's statements regarding her symptoms in relation to all other evidence, and consider whether there are any inconsistencies or conflicts between those statements and the record. *Id.* § 404.1529(c)(4).

Strickland v. Comm'r of Soc. Sec., 516 F. App'x 829, 831–32 (11th Cir. 2013) (per curiam) (unpublished). “[C]redibility determinations are the province of the ALJ, and [a court] will not disturb a clearly articulated credibility finding supported by substantial evidence...” *Mitchell*, 771 F.3d at 782 (citation omitted).

Here, the ALJ discussed Relph's subjective complaints and found that, while

the record supported some limitations in Relph's ability to work, it did not support Relph's claims of disabling symptoms. (*See* Doc. 13, PageID.100-101). As with the RFC, Relph largely challenges the ALJ's credibility finding by asking the Court to find that the mere fact Relph has certain impairments necessarily suggests he has disabling symptoms, which amounts to an invitation for the Court to impermissibly substitute its own judgment for the ALJ's. And while Relph does cite some record evidence that he claims cuts against the ALJ's credibility finding, it is not wholly inconsistent with the ALJ's determination that, "despite [Relph's] impairments [he] is still able to work, even if he is not in perfect health." (*Id.*, PageID.101).¹⁶

Relph complains that "[t]he sparsity of the record and lack of specialized treatment likely made it easy for the ALJ to dismiss [his] statements about the nature and limiting effects of his impairments." (Doc. 16, PageID.577). He attributes this sparsity to the fact that he was uninsured and received all of his care

¹⁶ Relph claims the ALJ "mischaracterize[d]" Relph's medical history by finding that Relph had only experienced one other seizure 18 months after the one documented in June 2016. (Doc. 16, PageID.576). Relph claims that records show he also had seizures in January and April 2017. (*See id.*). However, one of the three pages of medical records Relph cites in support of this claim does not support that assertion, as it was completed in June 2017. (Doc. 13, PageID.518). The other two pages are handwritten records that are difficult to read; at most, the word "seizure" is discernable to the undersigned on both, though the context cannot otherwise be determined. (*Id.*, PageID.530, 540). Even if Relph is correct that those records show he experienced seizures at two other times, that does not substantially detract from the ALJ's ultimate finding that his seizures were sporadic in nature. *See Jacobus v. Comm'r of Soc. Sec.*, 664 F. App'x 774, 776 (11th Cir. 2016) (per curiam) (unpublished) ("Where an ALJ makes a factual error, the error will be considered harmless if it is clear that the error did not affect the ALJ's ultimate determination. *See Diorio v. Heckler*, 721 F.2d 726, 728 (11th Cir. 1983). The ALJ's factual errors are harmless, as substantial evidence supports the ALJ's determination that Jacobus was not entirely credible.").

from a free clinic that was not equipped to provide specialized testing or lab work. (See *id.*, PageID.577-78). Be that as it may, “the claimant bears the burden of proving that he is disabled, and, consequently, he is responsible for producing evidence in support of his claim.” *Ellison v. Barnhart*, 355 F.3d 1272, 1276 (11th Cir. 2003) (per curiam). Moreover, there is no indication that the ALJ impermissibly drew any adverse inference from a lack of treatment.¹⁷

In sum, Relph has shown no error in the ALJ’s credibility determination. And because he has failed to show the ALJ’s decision to limit him to a reduced range of medium work was error, his argument that he should have been found disabled under the Medical Vocational Guideline 202.06, which is applicable only where a claimant is limited to a full range of light work, is without merit.¹⁸

¹⁷ See *Brown v. Comm’r of Soc. Sec.*, 425 F. App’x 813, 817 (11th Cir. 2011) (per curiam) (unpublished) (“[T]he ALJ may not draw an adverse inference from a claimant’s lack of medical treatment without first considering the claimant’s explanation for his failure to seek treatment. [Social Security Regulation (S.S.R.) 96–7p at 7]. [W]e have held that a claimant’s poverty can excuse his noncompliance with medical treatment. *Dawkins v. Bowen*, 848 F.2d 1211, 1213 (11th Cir.1988). Therefore, before denying an application based on a claimant’s failure to comply with prescribed medical care, the ALJ must consider whether the claimant is able to afford the medical care. *Ellison v. Barnhart*, 355 F.3d 1272, 1275 (11th Cir. 2003). Nevertheless, if the claimant’s failure to follow medical treatment is not one of the principal factors in the ALJ’s decision, then the ALJ’s failure to consider the claimant’s ability to pay will not constitute reversible error. See *id.* (holding that ALJ’s failure to consider claimant’s ability to pay was not reversible error because the ALJ’s decision primarily was based on factors other than the claimant’s failure to obtain medical treatment).”).

¹⁸ At oral argument, Relph argued, for the first time, that he was unable to perform any of the other jobs the ALJ found he could perform at Step Five. The Government objected to consideration of that issue, as it had not previously been raised in Relph’s brief. Relph acknowledged that he had not briefed the issue, and gave no good reason for not doing so. Rather, Relph’s counsel admitted that she was raising

No reversible error having been shown, the Court finds that the Commissioner's final decision denying Relph's application for benefits is therefore due to be **AFFIRMED**.

V. Conclusion

In accordance with the foregoing analysis, it is **ORDERED** that the Commissioner's final decision denying Relph's December 16, 2016 application for SSI is **AFFIRMED** under sentence four of 42 U.S.C. § 405(g).

Final judgment shall issue separately in accordance with this order and Federal Rule of Civil Procedure 58.

DONE and **ORDERED** this the 29th day of March 2021.

/s/ Katherine P. Nelson

KATHERINE P. NELSON

UNITED STATES MAGISTRATE JUDGE

it for the first time because she disagreed with her "brief writer's" decision to omit it, a decision that they had discussed prior to the brief's filing. Accordingly, Relph has waived consideration of that issue by the Court. *See* (Social Security Scheduling Order, Doc. 8, PageID.56 (requiring that the plaintiff's brief "list[] the specific errors upon which plaintiff seeks reversal of the Commissioner's decision")); *APA Excelsior III L.P. v. Premiere Techs., Inc.*, 476 F.3d 1261, 1269 (11th Cir. 2007) (court of appeals does "not consider claims not raised in a party's initial brief and made for the first time at oral argument").