

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

CHARLENE S.,

Plaintiff,

vs.

**COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,¹**

Defendant.

Civil Action No. ADC-19-2185

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MEMORANDUM OPINION

On July 25, 2019, Charlene S. (“Plaintiff”) petitioned this Court to review the Social Security Administration’s (“SSA”) final decision to deny her claim for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). See ECF No. 1 (“the Complaint”). After consideration of the Complaint and the parties’ cross-motions for summary judgment (ECF Nos. 14, 15), the Court finds that no hearing is necessary. See Loc.R. 105.6 (D.Md. 2018). For the reasons that follow, Plaintiff’s Motion for Summary Judgment (ECF No. 14) and Defendant’s Motion for Summary Judgment (ECF No. 15) are DENIED, the decision of the SSA is REVERSED IN PART, and the case is REMANDED to the SSA for further analysis in accordance with this opinion.

PROCEDURAL HISTORY

On March 11, 2016, Plaintiff filed a Title II application for DIB, alleging disability beginning on July 1, 2015. Also on March 11, 2016, Plaintiff filed a Title XVI application for SSI,

¹ Currently, Andrew Saul serves as the Commission of the Social Security Administration.

alleging disability beginning on July 1, 2015. Her claims were denied initially and upon reconsideration on June 22, 2016, and July 15, 2016, respectively. On August 23, 2016, Plaintiff filed a written request for a hearing and, on July 30, 2018, an Administrative Law Judge (“ALJ”) presided over a hearing. On September 10, 2018, the ALJ rendered a decision ruling that Plaintiff “ha[d] not been under a disability within the meaning of the Social Security Act [(the “Act”)] from July 1, 2015, through the date of this decision.” ECF No. 11 at 15. Thereafter, Plaintiff filed an appeal, and on May 29, 2019, the Appeals Council affirmed the decision of the ALJ, which became the final decision of the SSA. See 20 C.F.R. § 416.1481 (2018); see also *Sims v. Apfel*, 530 U.S. 103, 106–07 (2000).

On July 25, 2019, Plaintiff filed the Complaint in this Court seeking judicial review of the SSA’s denial of her disability application. On February 26, 2020, Plaintiff filed a Motion for Summary Judgment, and the SSA filed a Motion for Summary Judgment on May 6, 2020, 2020. Plaintiff filed a response on May 27, 2020.² This matter is now fully briefed, and the Court has reviewed both parties’ motions.

STANDARD OF REVIEW

“This Court is authorized to review the [SSA]’s denial of benefits under 42 U.S.C. § 405(g).” *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (per curiam) (citation omitted). The Court, however, does not conduct a de novo review of the evidence. Instead, the Court’s review of an SSA decision is deferential, as “[t]he findings of the [SSA] as to any fact, if supported by substantial evidence, shall be conclusive” 42 U.S.C. § 405(g); see *Smith v. Chater*, 99 F.3d 635, 638 (4th Cir. 1996) (“The duty to resolve conflicts in the evidence rests with the ALJ, not

² On June 5, 2020, in accordance with 28 U.S.C. § 636 and Local Rules 301 and 302 of the United States District Court for the District of Maryland and upon consent of the parties, this case was transferred to United States Magistrate Judge A. David Copperthite for all proceedings.

with a reviewing court.”); *Smith v. Schweiker*, 795 F.2d 343, 345 (4th Cir. 1986) (“We do not conduct a de novo review of the evidence, and the [SSA]’s finding of non-disability is to be upheld, even if the court disagrees, so long as it is supported by substantial evidence.” (citations omitted)). Therefore, the issue before the reviewing court is not whether the plaintiff is disabled, but whether the ALJ’s finding that the plaintiff of not disabled is supported by substantial evidence and was reached based upon a correct application of the relevant law. *Brown v. Comm’r Soc. Sec. Admin.*, 873 F.3d 251, 267 (4th Cir. 2017) (“[A] reviewing court must uphold the [disability] determination when an ALJ has applied correct legal standards and the ALJ’s factual findings are supported by substantial evidence.” (citation and internal quotation marks omitted)).

“Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *Pearson v. Colvin*, 810 F.3d 204, 207 (4th Cir. 2015) (internal citations and quotation marks omitted). “In reviewing for substantial evidence, we do not undertake to reweigh conflicting evidence, make credibility determinations, or substitute our judgment for that of the ALJ. Where conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the ALJ.” *Hancock v. Astrue*, 667 F.3d 470, 472 (4th Cir. 2012) (internal citations and quotation marks omitted). Therefore, in conducting the “substantial evidence” inquiry, the court shall determine whether the ALJ has considered all relevant evidence and sufficiently explained the weight accorded to that evidence. *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439–40 (4th Cir. 1997).

DISABILITY DETERMINATIONS AND BURDEN OF PROOF

In order to be eligible for DIB and/or SSI, a claimant must establish that she is under disability within the meaning of the Act. The term “disability,” for purposes of the Act, is defined

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), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a). A claimant shall be determined to be under disability where “h[er] physical or mental impairment or impairments are of such severity that [s]he is not only unable to do his previous work but cannot, considering h[er] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy[.]” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

In determining whether a claimant has a disability within the meaning of the Act, the ALJ, acting on behalf of the SSA, follows the five-step evaluation process outlined in the Code of Federal Regulations. 20 C.F.R. §§ 404.1520, 416.920; see *Mascio v. Colvin*, 780 F.3d 632, 634–35 (4th Cir. 2015). The evaluation process is sequential, meaning that “[i]f at any step a finding of disability or nondisability can be made, the SSA will not review the claim further.” *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003); see 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).

At step one, the ALJ considers the claimant’s work activity to determine if the claimant is engaged in “substantial gainful activity.” 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(i), 404.1520(b), 416.920(a)(4)(i), 416.920(b).

At step two, the ALJ considers whether the claimant has a “severe medically determinable physical or mental impairment [or combination of impairments] that meets the duration requirement[.]” 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant does not have a severe impairment or combination of impairments meeting the durational requirement of twelve

months, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(ii), 404.1520(c), 416.909, 416.920(a)(4)(ii), 416.920(c).

At step three, the ALJ considers whether the claimant's impairments, either individually or in combination, meet or medically equal one of the presumptively disabling impairments listed in the Code of Federal Regulations. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment meets or equals one of the listed impairments, then the claimant is considered disabled, regardless of the claimant's 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 v. Colvin*, 734 F.3d 288, 291 (4th Cir. 2013).

Prior to advancing to step four of the sequential evaluation, the ALJ must assess the claimant's residual functional capacity ("RFC"), which is then used at the fourth and fifth steps of the analysis. 20 C.F.R. §§ 404.1520(e), 416.920(e). RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. SSR 96-8p, 1996 WL 374184, at *1 (July 2, 1996). The ALJ must consider even those impairments that are not "severe." 20 C.F.R. § 404.1545(a)(2).

In determining RFC, the ALJ evaluates the claimant's subjective symptoms (e.g., allegations of pain) using a two-part test. *Craig v. Chater*, 76 F.3d 585, 594 (4th Cir. 1996); 20 C.F.R. § 404.1529. First, the ALJ must determine whether objective evidence shows the existence of a medical impairment that could reasonably be expected to produce the actual alleged symptoms. 20 C.F.R. § 404.1529(b). Once the claimant makes that threshold showing, the ALJ must evaluate the extent to which the symptoms limit the claimant's capacity to work. 20 C.F.R. § 404.1529(c)(1). At this second stage, the ALJ must consider all the available evidence, including medical history, objective medical evidence, and statements by the claimant. 20 C.F.R. §

404.1529(c). The ALJ must assess the credibility of the claimant's statements, as symptoms can sometimes manifest at a greater level of severity of impairment than is shown by solely objective medical evidence. SSR 16-3p, 2017 WL 5180304, at *2–13 (Oct. 25, 2017). To assess credibility, the ALJ should consider factors such as the claimant's daily activities, treatments he has received for his symptoms, medications, and any factors contributing to functional limitations. *Id.* at *6–8.

At step four, the ALJ considers whether the claimant is able to perform past relevant work based on the determined RFC. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the claimant can still perform past relevant work, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1520(f), 416.920(a)(4)(iv), 416.920(f).

Where the claimant is unable to resume past relevant work, the ALJ proceeds to the fifth and final step of the sequential analysis. During steps one through four of the evaluation, the claimant has the burden of proof. 20 C.F.R. §§ 404.1520, 416.920; see *Bowen v. Yuckert*, 482 U.S. 137, 146 (1987); *Radford*, 734 F.3d at 291. At step five, however, the burden of proof shifts to the ALJ to prove: (1) that there is other work that the claimant can do, given the claimant's age, education, work experience, and RFC (as determined at step four), and; (2) that such alternative work exists in significant numbers in the national economy. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); see *Hancock*, 667 F.3d at 472–73; *Walls v. Barnhart*, 296 F.3d 287, 290 (4th Cir. 2002). If the claimant can perform other work that exists in significant numbers in the national economy, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g)(1), 404.1560(c), 416.920(a)(4)(v). If the claimant cannot perform other work, then the claimant is disabled. *Id.*

ALJ DETERMINATION

In the instant matter, the ALJ preliminarily found that Plaintiff met the insured status requirements of Title II of the Act through June 30, 2017. ECF No. 11 at 17. The ALJ then performed the sequential evaluation and found at step one that Plaintiff “ha[d] not engaged in substantial gainful activity since July 1, 2015, the alleged onset date.” Id. At step two, the ALJ found that Plaintiff had severe impairment of “hypertensive retinopathy.” Id. At step three, the ALJ determined that Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 C.F.R. pt. 404, subpt. P, app’x 1. Id. at 18. The ALJ then determined that Plaintiff had the RFC “to perform a full range of work at all exertional levels but with the following nonexertional limitations: she can occasionally balance and can do no work requiring reading fine print.” Id. at 19. The ALJ then determined at step four that Plaintiff had past relevant work as a housekeeper/industrial cleaner, and she was still capable of performing such work. Id. at 22. Thus, the ALJ concluded that Plaintiff “ha[d] not been under a disability, as defined in [the Act], from July 1, 2015, through the date of this decision.” Id. at 23.

DISCUSSION

Plaintiff raises one allegation of error on appeal: the ALJ failed to follow the “special technique” for evaluating mental impairments by neglecting to discuss Plaintiff’s alleged mental limitations due to “depression, anxiety, insomnia, memory problems, and limited concentration.” ECF No. 14-1 at 9. The SSA argues that the ALJ was not required to perform the special technique evaluation because Plaintiff’s alleged mental impairments are not medically determinable. ECF No. 15-1 at 5–6. The Court agrees the ALJ erred, and remand is warranted.

When a claimant alleges a mental impairment, the ALJ must first determine whether the impairment is medically determinable. 20 C.F.R. § 404.1520a(b)(1). If the claimant has a medically determinable mental impairment, the ALJ then must determine whether the claimant's impairments meet or equal one or more of the impairments listed in 20 C.F.R. pt. 404, subpt. P, app'x 1. Listings 12.00 et seq. pertain to mental impairments. 20 C.F.R. pt. 404, subpt. P, app'x 1, 12.00. "Each [L]isting therein, consists of: (1) a brief statement describing its subject disorder; (2) 'paragraph A criteria,' which consists of a set of medical findings; and (3) 'paragraph B criteria,' which consists of a set of impairment-related functional limitations." *Rayman v. Comm'r, Soc. Sec. Admin.*, No. SAG-14-3102, 2015 WL 6870053, at *2 (D.Md. Nov. 6, 2015) (citing 20 C.F.R. pt. 404, subpt. P, app'x 1, 12.00(A)). If the paragraph A and paragraph B criteria are satisfied, the ALJ will find that the claimant meets the listed impairment. *Id.*

Even if the claimant does not meet both the paragraph A and paragraph B criteria, the ALJ must still account for the claimant's mental impairments in the RFC analysis. In determining RFC, an ALJ must consider the entire record, opinion evidence, impairments that are not severe, and any limitations the ALJ finds. 20 C.F.R. §§ 404.1545(a), 416.945(a) (ordering the ALJ to consider the entire record); SSR 96-8p, 1996 WL 374184, at *2 (defining the RFC as an assessment of an individual's ability to perform vocational-related physical and mental activities). Furthermore, it is the duty of the ALJ to make findings of fact and resolve conflicts in the evidence. *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990) (quoting *King v. Califano*, 599 F.2d 597, 599 (4th Cir. 1979)).

Here, the ALJ made no mention of Plaintiff's alleged mental impairments at any point during his analysis. At step two of the evaluation, the ALJ found Plaintiff had a severe impairment of hypertensive retinopathy and nonsevere impairments of status-post cerebrovascular accident,

cataracts, and obesity. ECF No. 11 at 17. Though Plaintiff's medical records list diagnoses of "[m]ajor depressive disorder, single episode, unspecified" several times, see *id.* at 528, 533, 536, 574, 579, and Plaintiff brought up being depressed at her hearing, see *id.* at 71–72, the ALJ omitted mention of Plaintiff's alleged depression entirely from his opinion.

Under the regulations governing use of the special technique, an ALJ "must first evaluate [the claimant's] symptoms, signs, and laboratory findings to determine whether [the claimant] ha[s] a medically determinable mental impairment(s)." 20 C.F.R. § 404.1520a(b)(1). The ALJ failed to perform this first step. While the SSA argues that the ALJ did not need to perform the special technique because Plaintiff's mental impairment was not medically determinable, ECF No. 15-1 at 6, this argument overlooks the fact that discussing whether an impairment is medically determinable is itself part of the special technique. Because Plaintiff alleged she suffered from at least one mental impairment, and because her medical records support that she was diagnosed with the mental impairment of major depressive disorder, the ALJ erred in failing to discuss whether Plaintiff's depression was a medically determinable impairment. The ALJ, therefore, did fail to comply with the special technique used to evaluate mental impairments. Accordingly, because the ALJ's declined to mention Plaintiff's alleged mental impairments in his analysis, his decision was not supported by substantial evidence, and remand is warranted.

CONCLUSION

In summation, the Court finds that the ALJ improperly found that Plaintiff was "not disabled" within the meaning of the Act from July 1, 2015, through the date of the ALJ's decision. Pursuant to sentence four of 42 U.S.C. § 405(g), the SSA's judgment is REVERSED due to inadequate analysis. Therefore, based on the foregoing, Plaintiff's Motion for Summary Judgment (ECF No. 14) is DENIED, Defendant's Motion for Summary Judgment (ECF No. 15) is DENIED,

