

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

**ROBERT L. B.,**

**Plaintiff,**

**v.**

**ANDREW M. SAUL,  
Commissioner of Social Security,**

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

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**Civil No. TMD 18-3049**

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

Plaintiff Robert L. B. seeks judicial review under 42 U.S.C. § 405(g) of a final decision of the Commissioner of Social Security (“Defendant” or the “Commissioner”) denying his application for disability insurance benefits under Title II of the Social Security Act. Before the Court are Plaintiff’s Motion for Summary Judgment and alternative motion for remand (ECF No. 11), Defendant’s Motion for Summary Judgment (ECF No. 16), and Plaintiff’s “Reply to Defendant’s Motion for Summary Judgment” (ECF No. 17).<sup>2</sup> Plaintiff contends that the administrative record does not contain substantial evidence to support the Commissioner’s

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<sup>1</sup> On June 17, 2019, Andrew M. Saul became the Commissioner of Social Security. He 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.*

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. 11) is **GRANTED**.

## I

### Background

On February 13, 2018, Administrative Law Judge ("ALJ") Michael Krasnow held a hearing in Washington, D.C., where Plaintiff and a vocational expert ("VE") testified. R. at 44-74. The ALJ thereafter found on May 16, 2018, that Plaintiff was not disabled from his alleged onset date of disability of April 1, 2015, through the date of the ALJ's decision. R. at 25-43. In so finding, the ALJ found that Plaintiff had not engaged in substantial, gainful activity since April 1, 2015, and that he had the severe impairments of HIV/AIDS and diabetes. R. at 30-33. 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 33-34.

The ALJ then found that Plaintiff had the residual functional capacity ("RFC")

to perform medium work as defined in 20 CFR 404.1567(c) except [Plaintiff] can frequently climb ramps and stairs, balance, stoop, kneel, crouch, or crawl, but can never climb ladders, ropes, or scaffolds. [Plaintiff] requires regular access to the restroom, defined as it being on the same floor as the workspace.

R. at 34.<sup>3</sup> In light of this RFC and the VE's testimony, the ALJ found that Plaintiff could perform his past relevant work as a guidance counselor and middle-school teacher. R. at 38. The ALJ also found that Plaintiff could perform other work in the national economy, such as a janitor, machine operator, or kitchen helper. R. at 39. The ALJ thus found that Plaintiff was not disabled from April 1, 2015, through May 16, 2018. R. at 40.

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<sup>3</sup> "Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds." 20 C.F.R. § 404.1567(c).

After the Appeals Council denied Plaintiff's request for review, Plaintiff filed on October 3, 2018, 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>4</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" of the claimant's past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1545(a)(4),

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<sup>4</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.

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 Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 1427 (1971).

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 asserts that the ALJ erred by not finding him disabled according to grid rule 201.06 (20 C.F.R. pt. 404, subpt. P, app. 2 § 201.06). Pl.'s Mem. Supp. Mot. Summ. J. 10-11, ECF No. 11-1. Plaintiff argues that, had the ALJ correctly considered all his limitations, the ALJ would have determined that he was, at most, capable of performing sedentary work.<sup>5</sup> “Thus, the ALJ should have determined that [Plaintiff] was disabled pursuant to Grid Rule 201.06, which requires a finding of disability for people who, like [Plaintiff], are: limited to sedentary work; of advanced age; high school graduates or more; and had skilled previous work.” *Id.* at 11.

Defendant maintains that substantial evidence supports the ALJ's conclusion that Plaintiff could perform medium work. Def.'s Mem. Supp. Mot. Summ. J. 9, ECF No. 16-1.

In addition to considering the medical records and Plaintiff's own reports of activities of daily living (taking care of his elderly mother, driving three or four times per week, driving to New Jersey and North Carolina, volunteering with his college fraternity every six months, attending church, working for Uber), the ALJ gave some weight to the opinions of the state agency medical consultants, who opined that Plaintiff could perform medium work[.]

*Id.* at 9-10 (citing R. at 85-90, 98-100); *see* R. at 37 (finding that consultants' “opinions receive some weight, but accounting for subjective symptoms, such as fatigue, frequent postural limitations are appropriate”).

The ALJ, however, “must *both* identify evidence that supports his conclusion *and* ‘build an accurate and logical bridge from [that] evidence to his conclusion.’” *Woods v. Berryhill*, 888 F.3d 686, 694 (4th Cir. 2018) (alteration in original) (quoting *Monroe v. Colvin*, 826 F.3d 176,

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<sup>5</sup> “Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools.” 20 C.F.R. § 404.1567(a). “Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.” *Id.*

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). Here, the ALJ

concluded that [Plaintiff] could perform “medium work” and summarized evidence that he found credible, useful, and consistent. But the ALJ never explained how he concluded—*based on this evidence*—that [Plaintiff] could actually perform the tasks required by “medium work,” such as lifting up to 50 pounds at a time, frequently lifting or carrying up to 25 pounds, or standing or walking for six hours.

*Woods*, 888 F.3d at 694 (citing Social Security Ruling 83-10, 1983 WL 31251, at \*6 (Jan. 1, 1983)). An ALJ may

credit the opinion of a non-treating, non-examining source where that opinion has sufficient indicia of “supportability in the form of a high-quality explanation for the opinion and a significant amount of substantiating evidence, particularly medical signs and laboratory findings; consistency between the opinion and the record as a whole; and specialization in the subject matter of the opinion.”

*Id.* at 695 (quoting *Brown v. Comm’r Soc. Sec. Admin.*, 873 F.3d 251, 268 (4th Cir. 2017)). In this case, the state agency consultants concluded that Plaintiff could lift up to 50 pounds (R. at 85, 99), but they failed to explain how they arrived at that specific number. *See id.* “The same is true of [their conclusions] that [Plaintiff] can sit or stand for six hours in an eight-hour workday.” *Id.* “The ALJ therefore failed to build an ‘accurate and logical bridge’ from the evidence he recounted to his conclusion” about Plaintiff’s RFC. *Id.* at 694. The Court thus remands this case for the ALJ to do so.

Because the Court remands on other grounds, it does not reach Plaintiff’s arguments regarding the ALJ’s weighing of the opinions of Dr. McNeil, his treating physician, or the ALJ’s consideration of his incontinence. Pl.’s Mem. Supp. Mot. Summ. J. 5-10, ECF No. 11-1. In any event, the ALJ also should address these other deficiencies identified by Plaintiff. *See Tanner v. Comm’r of Soc. Sec.*, 602 F. App’x 95, 98 n.\* (4th Cir. 2015) (per curiam) (“The Social Security Administration’s Hearings, Appeals, and Litigation Law Manual ‘HALLEX’ notes that the



Appeals Council will vacate the entire prior decision of an administrative law judge upon a court remand, and that the ALJ must consider de novo all pertinent issues.”); *Travis X. C. v. Saul*, No. GJH-18-1210, 2019 WL 4597897, at \*5 n.5 (D. Md. Sept. 20, 2019) (“In the interest of a comprehensive review on remand, however, the Court will note that the ALJ does need to explain which evidence he chooses to credit and which evidence he chooses to discredit and why.” (citing *Monroe*, 826 F.3d at 189)).

V

**Conclusion**

For the reasons stated above, Defendant’s Motion for Summary Judgment (ECF No. 16) is **DENIED**. Plaintiff’s Motion for Summary Judgment (ECF No. 11) is **DENIED**. Plaintiff’s alternative motion for remand (ECF No. 11) 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: March 30, 2020

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/s/  
Thomas M. DiGirolamo  
United States Magistrate Judge