UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Shannon Hatch, Plaintiff,	)	
v.	)	**CIVIL ACTION** **NO. 12-40163 -DHH**
CAROLYN W. COLVIN,[1] Acting Commissioner, Social Security Administration, Defendant.	)	

ORDER

August 9, 2016

Hennessy, M.J.

The plaintiff, Shannon Hatch ("Hatch"), seeks reversal of the decision by the defendant, the Commissioner of the Social Security Administration ("the Commissioner"), denying her Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"), or, in the alternative, remand to the Administrative Law Judge ("ALJ"). (Docket #28). The Commissioner seeks an order affirming her decision. (Docket #29).

For the reasons that follow, Hatch's Motion to Reverse or Remand (Docket #28) is DENIED and Defendant's Motion for Order Affirming the Decision of the Commissioner (Docket #29) is ALLOWED.

[1] Under Fed. R. Civ. P. 25(d), as of February 14, 2013, Carolyn W. Colvin is substituted for Michael J. Astrue, the former Commissioner of the Social Security Administration.

I. BACKGROUND

A. Procedural History

On June 15, 2009, Hatch, then a Certified Nursing Assistant ("CNA"), filed an application for DIB and SSI. (Tr. 62-63). She alleged onset of disability due to a back injury suffered while transferring a patient on July 27, 2008, and re-aggravated on August 18, 2008. (Tr. 62-63, 163-76). The application was denied both initially and upon reconsideration. (Tr. 62-69, 75-80). On July 26, 2011, Hatch amended her claim, requesting a closed period for DIB and SSI beginning on July 27, 2008, and ending on March 5, 2011. (Tr. 152-53). Following a July 28, 2011, hearing (Tr. 28-61), the ALJ on September 19, 2011 rendered a decision that Hatch had not been disabled from July 27, 2008 through the date of the decision, including the closed period requested by Hatch. (Tr. 7-27).

On October 18, 2011, the Appeals Council denied Hatch's request for administrative review, making the ALJ's decision final and ripe for judicial review. (Tr. 1-6). Having timely pursued and exhausted her administrative remedies before the Commissioner, Hatch filed a complaint with this Court on December 13, 2012, pursuant to 42 U.S.C. § 405(g). (See Docket #1). Hatch then filed a Motion to Reverse or Remand, and the Commissioner filed its cross-motion. See Docket #15-16. Both motions have been re-filed after initially being dismissed without prejudice in the absence of the Administrative Record. (See Docket #25-30).

B. Personal History

Hatch was twenty-eight years old at the time of the alleged disability onset, and thirty-one as of March 6, 2011, the end date of her requested closed period of disability. (Tr. 191). Hatch earned her G.E.D. in 2003 and has completed some post-secondary education in an R.N. program. (Tr. 191). She was unmarried and lived with her significant other and two children. (Tr. 191).

Hatch was certified as a Nurse's Aide and also held a certificate and state license in hairdressing. (Tr. 191).

Hatch's work history is as follows: she worked as a shift supervisor at Dunkin' Donuts locations in Ashburnham, MA and Orange, MA from March of 2005 through March of 2006, and at Farren Care Center in Montague, MA.[2] (Tr. 191). Between December 2006 and the alleged disability onset date of July 27, 2008, Hatch worked as a CNA at Quabbin Valley Health Care, earning approximately $459.90 per week. (Tr. 191). Following her injury, Hatch returned to work on light duty from August 1, 2008, through August 18, 2008, on which date she re-aggravated her injury while assisting a patient to the bathroom. (Tr. 191). Hatch remained out of work from August 18, 2008, until September of 2010 when she began working full-time as a case aide[3] at United Arc in Greenfield, MA.[4] (Tr. 39-40). Hatch eventually moved to part-time relief work at United Arc in January of 2011, and left her position the following month. (Tr. 42-43). On March 6, 2011, the end date of her requested period of disability, Hatch obtained a cashier position with Cumberland Farms. (Tr. 43).

C. Medical History

As noted, Hatch traces her alleged disability to July 27, 2008, when she stated she injured her back. (Tr. 318, 410, 423, 482). On initial examination on July 29, 2008, Elliot Nottleson, Physician's Assistant at Winchendon Health Center, noted that Hatch's back showed tenderness in the lower thoracic and upper lumbar posterior processes, as well as in the paraspinous muscles

[2] The record does not indicate the dates of this employment.

[3] Hatch referred to this position as "aide" or "residential worker" but for ease of language I will refer to this position as "case aide" as it was referred to in the ALJ decision.

[4] A physician's notation indicates that Hatch returned to work temporarily as a medical billing clerk sometime prior to June 1, 2010; however the record provides no additional information regarding this position, which was not considered by the ALJ in any manner adverse to Hatch. (Tr. 57).

on each side of that region. (Tr. 318). Nottleson's impression was that Hatch had muscle spasms and a ligament sprain in the lumbar region; he recommended she refrain from working until the following Monday, August 4, 2008, at which point she returned to work with exertional restrictions. (Tr. 319). On August 11, 2008, Nottleson noted that Hatch's back pain was improving despite some residual tenderness, and that she was able to move more comfortably at home. (Tr. 320). Nottleson modified her work restrictions to the following limitations: lift 26 to 40 pounds, carry 26 to 40 pounds, push/pull 41 to 75 pounds, and avoid extremes of neck movements. (Tr. 320). X-rays of Hatch's back taken on August 12, 2008, were negative for pathology and otherwise normal aside from a mild left lumbar curvature. (Tr. 313).

Hatch reinjured her back at work on or around August 18, 2008, while assisting a patient who had fallen. (Tr. 321). Several days later she returned to Nottleson, complaining of pain radiating down her left side into her left leg. (Tr. 321). Nottleson noted tenderness in the posterior processes, lumbar spine, and left paraspinal muscles, and he suggested Hatch stay out of work "for the time being." (Tr. 321). Nottleson referred Hatch to physical therapy at Athol Memorial Hospital, from which Hatch was discharged on October 24, 2008 for failing to appear for visits. (Tr. 277).

An MRI of Hatch's lumbar spine taken in September of 2008 was normal and showed no evidence of disc bulge, protrusion, or herniation. (Tr. 280). On September 26, 2008, Hatch's treating physician, Dr. David N. Havlin, found diffuse tenderness over Hatch's lower lumbar spine and diagnosed her with low back pain and left medial thigh paresthesias. (Tr. 324). Significantly, Dr. Havlin did not believe the left medial thigh paresthesias was related to Hatch's back injury. (Tr. 324). Dr. Havlin recommend Hatch remain out of work until October 20, 2008, and prescribed Vicodin and Flexeril. (Tr. 324). Beginning on November 8, 2008, Hatch underwent physical

therapy at Heywood Rehabilitation Center, during which she again failed to appear for approximately four appointments. (Tr. 281-87). Upon discharge on December 19, 2008, the physical therapist noted that Hatch was making poor gains in terms of pain and failed to appear for her last appointment prior to discharge. (Tr. 287).

At a follow-up examination on December 3, 2008, Dr. Havlin noted that Hatch had remained out of work and complained of continued pain in her back radiating to her left leg. (Tr. 331). Dr. Havlin recommended she remain out of work until January 12, 2009. (Tr. 332). A subsequent MRI of Hatch's spine taken in December 27, 2008 was also entirely normal, with no evidence of disc degeneration or herniation, and no findings of any other injury or malformation. (Tr. 289).

On January 15, 2009, Hatch saw Dr. Richard Warnock for an independent medical evaluation requested by the ALJ.[5] (Tr. 410-15). Dr. Warnock determined that Hatch's low back pain was causally related to her work injury; however he found her symptoms to be "way out of proportion to the objective findings available" and suspected "some symptom magnification." (Tr. 412). Dr. Warnock did "not have any orthopedic basis to explain [Hatch's] ongoing complaints" and found that Hatch could return to work immediately without restrictions. (Tr. 412).

An MRI taken on March 18, 2009 showed a "very small" left lateral protrusion at L4-5 with "minimal" mass effect on the thecal sac and "very mild" retrodisplacement at the left L5 nerve root. (Tr. 288, 300). Dr. Havlin opined that these findings were related to the July 28, 2008, injury and the re-aggravation on August 18, 2008. (Tr. 292). He cited Hatch's complaints of ongoing left-sided pain since the initial injury and concluded the most recent MRI, which conflicted with the two prior MRI's, represented a progression of Hatch's initial back injury. (Tr.

[5] Dr. Warnock had evaluated Hatch prior, in October of 2008. (Tr. 410).

292). In an April 11, 2009 letter to Hatch's attorney, Dr. Havlin opined that although the conditions revealed in the most recent MRI could affect Hatch later in life, Hatch did not require surgery at that time. (Tr. 293). Dr. Havlin did not believe, however, that Hatch could return to a CNA position at that time, and recommended that she remain out of work. (Tr. 293).

On May 20, 2009, Dr. Hsin Hsieh, an orthopedic surgeon, performed an independent medical examination requested by Hatch's worker's compensation insurer. (Tr. 423-427). Dr. Hsieh observed that Hatch had "some degree of radiculitis" of the L5 nerve on her left side and noted that it was "interesting" that radiculitis was then being noticed for the first time. (Tr. 426). Dr. Hsieh suggested that Hatch be evaluated by a spine surgeon to determine if surgical intervention was necessary. (Tr. 426).

On May 26, 2009, Dr. Jason Eck, an orthopedic spine surgeon, evaluated Hatch, who complained of significant pain in her lower back as well as her left thigh. (Tr. 339). Dr. Eck observed that Hatch was "healthy appearing" and in "no acute distress." (Tr. 339). Hatch walked with a normal gait and although Dr. Eck noticed some diffuse tenderness in the middle of her lower back, her strength was recorded at 5/5 throughout her lower extremities "with the exception of 4/5 strength in her left EHL."[6] (Tr. 339). Dr. Eck stated that the recent MRI findings at the L4-L5 level could explain the back pain and lateral leg pain, but that he was "not convinced of the medial thigh pain." (Tr. 340). Dr. Eck diagnosed degenerative disc disease with a small disk herniation and annular tear at the L4-L5 level. (Tr. 339). He recommended that Hatch undergo a discogram and return for further evaluation. (Tr. 340).

[6] "EHL" is a medical abbreviation for the extensor hallucis longus, which is "a long thin muscle situated on the shin that extends the big toe and dorsiflexes and supinates the foot." http://www.merriam-webster.com/medical/extensor%20hallucis%20longus.

In July of 2009, Hatch filled out a Function Report in connection with her application for benefits. (Tr. 231-240). Hatch reported that she was able to drive, transport her children and run errands, cook while sitting down, and wash dishes and do laundry with breaks. (Tr. 231-235). Additionally, Hatch reported that she was able to care for her children and pets with some assistance, and that she was able to perform self-care, although she noted some difficulty with tasks involving bending. (Tr. 231, 233).

On November 16, 2009, Hatch was evaluated by Dr. Louis Jenis, an orthopedic surgeon. (Tr. 482). She complained of constant and dull low back pain which increased with sitting on the left side, prolonged standing, or walking. (Tr. 482). Dr. Jenis found Hatch's cervical, thoracic, and lumbar alignment to be without any deformity. (Tr. 482). He noted that Hatch had a limited range of back and bilateral hip motion due to the pain, but also that Hatch had full cervical and shoulder range of motion. (Tr. 482-483). Dr. Jenis reviewed the March 18, 2009, MRI and found "very minimal disc bulging at the L4-L5 level without any significant disk dehydration noted" and no evidence of nerve root impingement or spondylolisthesis. (Tr. 483). He diagnosed chronic low back pain secondary to chronic muscle strain and left piriformis syndrome with chronic sciatica. (Tr. 483). Dr. Jenis believed that the pain symptoms were related to a "soft tissue type of injury" and recommended continued non-operative care with a referral to physiatry. (Tr. 483).

At their request, Dr. Havlin reported to the Massachusetts Rehabilitation Commission ("MRC")[7] on January 24, 2010, that Hatch had persistent low back pain with left-sided sciatica. (Tr. 528). Dr. Havlin opined that, over time, Hatch had shown signs of disc degeneration, citing as evidence the March 18, 2009 MRI. (Tr. 529). He described Hatch's pain as constant, dull, and localized to her left lower lumbosacral area, which radiates into her left buttock, posterior thigh,

[7] The record is unclear as to the relationship between the MRC's request and the Social Security Administration's determination.

and lateral calf. (Tr. 529). During her most recent visit on December 18, 2009, Dr. Havlin found Hatch's motor strength and range of motion in her back to be normal, although there was discomfort and some tenderness over the left sacroiliac joint. (Tr. 529-530). Dr. Havlin noted that Hatch showed signs of chronic lumbar strain and left piriformis syndrome, and opined that Hatch was significantly disabled due to her inability to perform any lifting, pushing, squatting, or bending. (Tr. 531). Dr. Havlin again reported to the MRC in May of 2010 and opined that Hatch was disabled due to her injury. (Tr. 563). He explained that Hatch had been approved for physical therapy by Worker's Compensation. (Tr. 563).

Dr. Havlin's notes from June 1, 2010, indicate that Hatch returned to work temporarily as a medical billing clerk[8] and that Hatch's attorney advised her not to earn over $900 per week so as not to jeopardize her disability claim. (Tr. 570). He added that Hatch intended to find other work as Patient Care Assistant if possible. (Tr. 570). Notes dated October 19, 2010, state that Hatch's back pain had not improved; however she was working at a group home in Greenfield, MA[9] at the time and attending a full-time LPN program. (Tr. 566). Dr. Havlin's notes also provide that Hatch had been unable to make her physical therapy appointments due to work and school obligations. (Tr. 566). He diagnosed Hatch with piriformis syndrome and lumbar strain, qualifying that he was unsure if Hatch truly suffered from the former. (Tr. 566).

D. Consultative Psychological Examination

On October 1, 2010, Dr. Kathryn McNally, a consultative psychologist, performed a psychological examination of Hatch. (Tr. 390-393). Hatch reported a history of childhood trauma as well as depressive symptoms related the pain and physical limitations caused by her back injury.

[8] There is no additional information in the record regarding this position.

[9] This is a reference to her employment at United Arc, discussed in the preceding section.

(Tr. 391). Dr. McNally noted that Hatch was taking a significant number of painkillers which may have been masking or exacerbating depression. (Tr. 391). She diagnosed Adjustment Disorder with mixed emotional features. (Tr. 391). Dr. McNally assigned a GAF score of 65 and found that Hatch's psychological symptoms did not interfere with daily functioning.[10] (Tr. 392). Further, Hatch's concentration and attention, understanding and memory, social functioning, and adaptation to work all were normal. (Tr. 392).

E. State Agency Opinions

1. Physical

On September 1, 2009, medical consultant Shankar Narayan reviewed Hatch's records on behalf of the Social Security Administration and provided a physical Residual Function Capacity ("RFC") assessment. (Tr. 378-385). Narayan found that Hatch could lift up to twenty pounds occasionally and ten pounds frequently, could stand for at least two hours per work day, could sit for about six hours per work day, and had no further limitations in her push/pull capacity. (Tr. 379). Narayan also found that Hatch could balance, stoop, and kneel frequently; and crouch, crawl, and climb ramps, stairs, ladders, ropes, and scaffolds occasionally. (Tr. 380). Narayan noted that Hatch had no manipulative, visual, or communicative limitations. (Tr. 381-382). She suggested that Hatch avoid concentrated exposure to extreme cold or hazards such as machinery or heights, but imposed no other environmental limitations. (Tr. 383). Narayan ultimately determined, without exposition, that Hatch's statement of impairment was "partially credible." (Tr. 380).

On March 18, 2010 Dr. Leslie Caraceni, who specializes in Family Medicine, reviewed Hatch's records and provided a second RFC assessment in which she reached largely similar

[10] A GAF score is a number between 1 and 100 that measures "the clinician's judgment of the individual's overall level of functioning." American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed. text revision 2000). A GAF score between 61 and 70 denotes "some mild" symptoms or functional limitations, "but generally functioning pretty well." Id.

findings as Narayan. (Tr. 553-560). Of note: whereas Narayan found that Hatch could lift up to twenty pounds occasionally and ten pounds frequently, Dr. Caraceni found that Hatch could lift up to ten pounds occasionally and under ten pounds frequently. (Tr. 379, 554). Dr. Caraceni also found (unlike Narayan) that Hatch could balance and kneel occasionally rather than frequently, and could not crouch, crawl, stoop, or climb ladders, ropes, and scaffolds. (Tr. 555). She added that Hatch should avoid concentrated exposure to hazards such as machinery or heights, but imposed no limitation regarding exposure to extreme cold. (Tr. 557). All other findings were consistent with the RFC provided by Narayan. (Tr. 378-385, 553-560). Dr. Caraceni opined that the severity of Hatch's symptoms and their limiting effect were credible. (Tr. 558).

2. Mental

On October 14, 2009, Douglas Siegel, Ph. D., a state agency psychological consultant, performed a mental RFC assessment. (Tr. 428-441). He opined that Hatch had affective disorders but that they were not severe. (Tr. 428). Dr. Siegel indicated that Hatch had mild restrictions of daily living activities, mild difficulties in maintaining social functioning, mild difficulties in maintaining concentration, focus, and/or pace, and that she suffered no episodes of decompression. (Tr. 438). He concluded that while Hatch's mental impairment allegations were credible, since any such impairment did not significantly impact her everyday functioning, Hatch did not suffer from a severe mental impairment. (Tr. 440).

F. Hearing Testimony

On July 28, 2011, Hatch (represented by an attorney) and a vocational expert gave testimony at a hearing held before ALJ Penny Loucas. (Tr. 28-61). The ALJ began by asking Hatch if she underwent the discogram recommended by Dr. Eck on May 26, 2009, to which Hatch testified that she had not. (Tr. 33). As Hatch did not undergo a discogram, the subsequent

diagnosis of piriformis syndrome by Dr. Jenis on November 16, 2009, was based solely on his review of the March 18, 2009, MRI. (Tr. 33).

Hatch indicated that she performed physical therapy at Gardner Rehabilitation for approximately six to eight weeks but did not gain any relief from her symptoms.[11] (Tr. 35). She testified that she completed a second course of therapy at Gardner in the spring of 2010, at which time she began searching for employment.[12] (Tr. 39).

Hatch testified about her work as an Aide/Residential Worker[13] with United Arc. (Tr. 40). This work began in early September of 2010, and continued full-time until January of 2011, at which time Hatch moved to part-time relief work. (Tr. 42-43). Hatch's duties included helping the home residents with activities of daily living such as cooking, laundry, and bathing. (Tr. 43). Hatch also frequently walked with the women to help relieve their anxiety. (Tr. 43). In February of 2011, Hatch left her position at United Arc to pursue work that was less physically strenuous. (Tr. 43). Hatch indicated that, during the four months she worked full time for United Arc, her earnings were slightly in excess of $1,000 per month. (Tr. 44).

After a searching for a "couple weeks," Hatch found less strenuous work at Cumberland Farms in a cashier position in March of 2011. (Tr. 44). Hatch's duties included making coffee, operating the cash register, greeting customers, and authorizing gas pumps. (Tr. 44). In early July of 2011, Hatch requested that her hours be reduced from full-time to part-time due to the job's

[11] Gardner Rehabilitation is affiliated with Heywood Hospital, discussed supra.

[12] Although Dr. Havlin noted on February 8, 2010, that Hatch was approved for physical therapy, there is no documentation of this course of physical therapy. (Tr. 534).

[13] See supra n. 4

standing requirements.[14] (Tr. 44-45). At the time of the hearing, Hatch was attending a full-time program to become a Registered Nurse but had no concrete employment plans. (Tr. 46).

Following Hatch's testimony, the ALJ asked a vocational expert, James Parker, for his assessment of the skill and exertional levels for the positions in Hatch's work history. (Tr. 46-48). The vocational expert classified the cashier position at Cumberland Farms and the case aide position at United Arc as light work.[15] (Tr. 47-48). He explained that Hatch's prior CNA position at Quabbin Valley Health Care is classified as medium work,[16] but added that the CNA position is "at least occasionally heavy"[17] work.[18] (Tr. 47-48). The ALJ then asked the vocational expert to consider a hypothetical:

> [A]ssume an individual similar to the claimant in age, education, and work experience who can do sedentary exertion. No ladders, ropes, scaffolds. No bending, crawling, or crouching. Balancing is frequent and stooping is occasional.

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[14] Hatch stated that employees are allowed to sit in the back room when the store is not busy but are not allowed to sit at the front register. (Tr. 45).

[15] "Light" work:

> involves lifting no more than 12 pounds at a time with frequent lifting or carrying of objects weight up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 404.1567(b).

[16] "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." 20 C.F.R. § 404.1567(c).

[17] "Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work." 20 C.F.R. § 404.1567(d).

[18] The vocational expert assessed additional prior employment as well. As those positions are not relevant to Hatch's claim, they will not be discussed here.

> Avoid concentrated exposure to hazardous equipment. As you review that hypothetical, sir, can you tell me or not whether there is any work that's consistent with the claimant's past relevant work that can be performed?

(Tr. 54). The vocational expert responded that none of Hatch's past relevant work could be performed by an individual with the functional limitations described in the hypothetical. (Tr. 54). Rather, the following occupations could be performed with the described limitations: mall information clerk[19]; telephone service operator[20]; and information clerk.[21] (Tr. 54-55).

The ALJ then asked the expert to consider a second hypothetical with the same physical limitations but added that, "due to the side effects of pain on the person's ability to maintain concentration, persistence and pace . . . the person would be off task 15% of the work day." (Tr. 55). The expert responded that a person could not perform the duties of a telephone operator or receptionist in a business environment while being off-task fifteen percent of the work day. (Tr. 55). He added that the employment numbers for mall information clerk would be reduced to approximately 75 regionally and 106,000 nationally given the hypothetical limitation. (Tr. 55-56). Further, being off-task twenty percent of the work day would be totally disabling to a person attempting to hold those positions. (Tr. 56).

The ALJ then posed another hypothetical:

> [L]ight exertion, and maximum standing, walking is four hours per day. Posturals would all be occasional, but no ladders, ropes, and scaffolds. And I would say avoid hazardous machinery. With these limitations…is there any work that's consistent with the claimants past work that could be performed, and if not, is there any other work?

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[19] Mall information clerk has a regional employment of approximately 150 and a national employment of approximately of 215,000. (Tr. 54).

[20] Telephone service operator has a regional employment of approximately 350 and a national employment of approximately 145,000. (Tr. 54-55).

[21] Information clerk has a regional employment of approximately 500 and a national employment of approximately 700,000. (Tr. 55).

(Tr. 56-57). The expert responded that the case aide position could be performed, but not the cashier position. (Tr. 57). The ALJ asked the expert to consider a modification the prior hypothetical, adding an option whereby the essential job functions could be performed either sitting or standing. (Tr. 57). The expert responded the case aide position as performed in the national economy offers a sit/stand option and thus could be performed. (Tr. 57). He added that a person with the hypothetical limitations described could also work as a companion,[22] recreation attendant,[23] and bottle label inspector.[24] (Tr. 57-58).

G. Administrative Decision

In assessing Hatch's request for benefits, the ALJ conducted the familiar five-step sequential evaluation process that determines whether an individual is disabled and thus entitled to benefits. See 20 C.F.R. § 404.1520; Goodermote v. Sec'y of Health & Human Servs., 690 F.2d 5, 6-7 (1st Cir. 1982).

First, the ALJ considers the claimant's work activity and determines whether she is "doing substantial gainful activity." 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is performing substantial gainful activity, the ALJ will find that she is not disabled. Id. Here, although the ALJ found that Hatch had engaged in substantial gainful activity from March 6, 2011 through the date of the decision (September 19, 2011), (Tr. 12), Hatch requested a closed period of disability beginning on July 27, 2008 and ending on March 5, 2011, during which the ALJ found there was

[22] Companion is a light work position with a regional employment of approximately 300 and a national employment of approximately 210,000. (Tr. 57-58).

[23] Recreation attendant has a regional employment of approximately 220 and a national employment of approximately 240,000. (Tr. 58).

[24] When reduced to facilities with a sit/stand option, bottle label inspector has a regional employment of approximately 100 and a national employment of approximately 90,000. (Tr. 58).

a continuous twelve-month period[25] without substantial gainful activity. (Tr. 12). The ALJ's findings addressed that closed period for disability. (Tr. 12).

Where, as here, the ALJ finds a lack of substantial gainful activity, she proceeds to the second step where she must determine whether the claimant has a medically determinable impairment or combination of impairments that is "severe." 20 C.F.R. § 404.1520(a)(4)(ii). The ALJ determined that Hatch had a severe impairment in the form of a piriformis muscle strain.[26] (Tr. 13).

Third, the ALJ then must determine whether the claimant has impairments that meet or are medically equivalent to the specific list of impairments listed in Appendix 1 of Subpart P of the Social Security Regulations. 20 C.F.R. § 404.1520(a)(4)(iii). If so, and the impairment meets the duration requirement of twelve months, then the claimant is disabled. Id. The ALJ found that Hatch did not have an impairment or combination of impairments meeting, or medically equivalent to, an Appendix 1 impairment. (Tr. 30).

Where, as here, there is a determination that the claimant has a significant impairment, but not an "Appendix 1 impairment," the ALJ must consider the claimant's RFC in conjunction with her past relevant work. 20 C.F.R. § 404.1520(e); § 404.1520(a)(4)(iv). An individual's RFC is her ability to perform physical and mental work activities on a sustained basis, despite limitations from her impairments. 20 C.F.R. § 404.1545(a)(1). Testimony of a vocational expert may be used to determine whether a claimant can do his or her past relevant work, given her RFC. 20 C.F.R. § 404.1560(b)(2). A vocational expert also may offer expert opinion testimony in response to a

[25] 20 C.F.R. § 404.1520(a)(4)(iii) requires a twelve-month period of inability to engage in substantial gainful activity in order to be eligible for disability benefits.

[26] The piriformis muscle originates from the part of the spine located in the gluteal region and acts as an external rotator, weak abductor, and weak flexor of the hip, providing postural stability during ambulation and standing. http://jaoa.org/article.aspx?articleid=2093614.

hypothetical question about whether a person with the physical limitations imposed by the claimant's medical impairment can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy. Id. Here, the ALJ found that:

> [Hatch] has the RFC to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except she needed a sit/stand option where the essential job duties could be performed in either a sitting or standing position; she was limited to occasional climbing of ramps and stairs, balancing, kneeling, stooping, crouching, and crawling; she could not climb ladders, ropes, and scaffolds or work around hazardous machinery.

(Tr. 14). The ALJ determined that Hatch was capable of performing her past relevant work as a "case aid,"[27] as this work does not require the performance of work-related activities precluded by her RFC. (Tr. 21).

At the fifth step, the ALJ proceeds to make an alternative or additional finding (here an additional finding) as to whether the claimant's impairments prevent her from performing other work found in the national economy. 20 C.F.R. § 404.1520(a)(4)(v). The ALJ determined that, based upon her RFC and the testimony of the vocational expert, there existed a significant number of jobs in the national economy that Hatch could perform. (Tr. 22). Accordingly, the ALJ found that Hatch was not disabled at any time from July 27, 2008, through March 5, 2011. (Tr. 22).

II. STANDARD OF REVIEW

The District Court may enter "a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). However, the Court may not disturb the Commissioner's findings where they are

[27] This refers to Hatch's prior position at United Arc.

supported by substantial evidence and the Commissioner has applied the correct legal standard. Ward v. Comm'r of Soc. Sec., 211 F.3d 652, 655 (1st Cir. 2000). Substantial evidence exists "if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support his conclusion." Rodriguez v. Sec'y of Health & Human Servs., 647 F.2d 218, 222 (1st Cir. 1981). Although the administrative record might support multiple conclusions, the Court must uphold the Commissioner's findings when they are supported by substantial evidence. Irlanda Ortiz v. Sec'y of Health & Human Servs., 955 F.2d 765, 770 (1st Cir. 1991). The quantum of proof necessary to sustain the Commissioner's decision is less than a preponderance of the evidence. Bath Iron Works Corp. v. United States Dep't of Labor, 336 F.3d 51, 56 (1st Cir. 2003). Therefore, a finding that a claimant's allegations are supported by substantial evidence does not mean that the Commissioner's decision is unsupported by substantial evidence.

It is the plaintiff's burden to prove that she is disabled within the meaning of the Social Security Act. Bowen v. Yuckert, 482 U.S. 137, 146 (1987). The plaintiff bears the burden of production and persuasion at steps one through four of the sequential evaluation process. Id. at 146 n.5; Vazquez v. Sec'y of Health & Human Servs., 683 F.2d 1, 2 (1st Cir. 1982). This includes the burden of establishing his RFC. 20 C.F.R. § 404.1512(c). At step five, the Commissioner has the burden of identifying specific jobs in the national economy that the plaintiff can perform. Seavey v. Barnhart, 276 F.3d 1, 5 (1st Cir. 2001).

III. ANALYSIS

A. Application of Legal Standards

Hatch first argues that she is entitled to reversal or remand because the ALJ applied an incorrect legal standard at steps four and five. (Docket #28 at p. 4). The court disagrees. Plaintiff's argument concerns the ALJ's statement that a claimant must "demonstrate that as a result of their impairment, they are precluded from all manner of work" in order to be found disabled. (Tr. 15).

While this phrasing falls short of precisely describing the applicable standard—*i.e.* that Hatch must be unable to perform her past relevant work at step four, 20 C.F.R. § 404.1520(a)(4)(iv), as well as any other jobs that exist in significant numbers in the national economy at step five, 20 C.F.R. § 404.1520(a)(4)(v)—Hatch ignores the fact that earlier in the decision, the ALJ set forth the correct standard. (Tr. 12). Further, the ALJ applied this correct standard in ultimately evaluating Hatch's claim: at step four, she found Hatch able to perform her past relevant work as a case aide; at step five, she found Hatch able to perform other jobs which exist in significant numbers in the national economy. (Tr. 21-22).

Thus, when viewed in context, Hatch was not prejudiced by any error in the ALJ's isolated description of the applicable legal standards; rather, the ALJ identified and applied the correct standards, reaching conclusions in accordance with those standards.[28] Stated otherwise, any error—and it would be a stretch to see one in the first instance—was harmless, and accordingly, reversal or remand is not appropriate on this basis. See Ward, 211 F.3d at 655 ("[R]emand is not essential if it will amount to empty exercise"); Fisher v. Bowen, 869 F.2d 1055, 1077 (7th Cir. 1989) (remand due to error inappropriate "unless there is reason to believe that the remand might lead to a different result"); see also Shinseki v. Sanders, 556 U.S. 396, 409 (2009) ("[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency's determination").

[28] Hatch unpersuasively cites Cleveland v. Policy Mgmt. Systems Corp., 526 U.S. 795 (1999), in support of her position that the ALJ "concluded that the ability to perform 'any manner of work' for even limited periods of time will qualify [sic] a claimant." (Docket #28 at 5). Although the Court noted that "a person can qualify for Social Security Disability Benefits even though he or she remains capable of performing some work," id., it was referring to instances in which claimants were able to perform work which would *not* be considered substantial gainful activity. Here, the ALJ's analysis of Hatch's ability to work and its bearing on her claim considered only past relevant work and other jobs which exist in significant numbers that *are* considered substantial gainful activity. To read the ALJ's decision as concluding that a claimant is disqualified if she may perform any manner of work for even a limited period relies upon an erroneous reading of Cleveland.

B. Description of Past Relevant Work

Hatch's next argument concerns step four, at which she argues that the ALJ relied on an erroneous description of her past relevant work. (Docket #28 at p. 5). Specifically, she asserts that the ALJ failed to provide an explanation of the source of the information for her past relevant work, failed to explain the physical exertional requirements of the past relevant work, and failed to specify whether the determination of Hatch's capability to perform the past relevant work applied to the amended claim period of July 27, 2008, through March 6, 2011 as opposed to the date of the opinion. (Docket #28 at 5). The Court finds these objections unpersuasive. As to the first, information about Hatch's past relevant work appears throughout the record, and the ALJ made clear that she gave careful consideration to the entire record and all available evidence before reaching her final determination. (Tr. 12, 14). Indeed, a plain reading of the record, including the hearing testimony, shows that it was Hatch's own testimony that provided much of the information regarding her past relevant work. (Tr. 39-46). And, when the ALJ asked if there was any further information that Hatch's counsel wished for the ALJ to elicit, counsel responded, "I don't believe so. I think we've been very thorough." (Tr. 46).

For similar reasons, Hatch's assertion concerning the ALJ's purported failure to explain the physical exertional requirements of the past relevant work also fails. (Tr. 40-41). Hatch's hearing testimony indicated that the work involved significant physical activity, that she learned to perform the work, and that she continued on a full-time basis for four months while earning a sum above the threshold for substantial gainful activity.[29] Hatch explained that her past relevant

[29] Generally, work for which earnings were in excess of $740 per month will be considered substantial gainful activity under 20 C.F.R. §§ 404.1574(b)(2). Richard C. Ruskell, Social Security Disability Claims Handbook §2.8(b). However, forms supplied by the Social Security Administration reference $800 per month as the threshold for substantial gainful activity. (Tr. 79).

work involved assisting with daily activities such as cooking, bathing, and laundry for three women and often walking with them to help relieve their anxiety. (Tr. 40-41). Further, relying on Hatch's testimony, the vocational expert testified that Hatch's past job as a case aide was a light exertional job, and that a person with Hatch's RFC is capable of performing Hatch's past relevant work as a case aide. (Tr. 48, 56-57). Thus, the ALJ, relying on the testimony of both Hatch and the vocational expert, properly considered the physical requirements of Hatch's past relevant work and assessed her then-present ability to perform similar tasks. Given this record, it would be unduly burdensome to require the ALJ to recount every piece of evidence she considered in order to reach a decision, especially when the evidentiary sources of a particular determination are either implicitly referenced, or can be reasonably inferred from the text. See Coggon v. Barnhart, 354 F.Supp.2d 40, 55 (D. Mass. 2005) ("A hearing officer 'can consider all the evidence without directly addressing in his written decision every piece of evidence submitted by a party'") (quoting NLRB v. Beverly Enters.-Massachusetts, Inc., 174 F.3d 13, 26 (1st Cir.1999)).

Finally, Hatch's temporal argument is a non-starter. The ALJ explicitly stated three times in her decision that her findings apply to the closed claim period of July 27, 2008, through March 6, 2011. (Tr. 12, 14, 17). As a result, the Court finds no error in the ALJ's analysis of Hatch's past relevant work.[30]

[30] If any error were to be present at step four, such an error would be harmless as the ALJ alternatively found at step five that there existed other jobs in significant numbers in the national economy that Hatch was capable of performing. (Tr. 22, 56-58). Thus, even if Hatch were unable to perform her past relevant work, the alternative finding at step five would have precluded a finding of disability, rendering any error at step four immaterial to the outcome of the decision. See Ward, 211 F.3d at 655; Fisher, 869 F.2d at 1077; Shinseki, 556 U.S. at 409.

C. Failure to Credit Claimant's Hearing Testimony

Hatch next claims that the ALJ's analysis at step five was flawed because she referenced Hatch's return to work as a medical billing clerk but failed to credit Hatch's testimony that the severity of her symptoms prevented her from performing the duties of that position on a full-time basis. (Docket #28 at p. 6). Again, Hatch's argument falls short. The ALJ's reference to this position did not impact her analysis at step five—or any other step of in the sequential evaluation process—as she merely cited a notation in a doctor's report as part of her recitation of the medical chronology, and so did not rely on this position to reach a finding adverse to Hatch. (Tr. 19, 568-570, 573, 575). Further, Hatch's assertion that she is entitled to a trial work period is to no avail, as she does not and did not at the time qualify for a trial work period. See 20 C.F.R. § 404.1592(d)(1)-(2).[31]

D. Weight of Medical Opinions

Hatch argues that the ALJ failed to give appropriate weight to her treating physician Dr. Havlin, and failed to articulate the reasons for discounting the treating physician's opinion. (Docket #28 at p. 7). This argument is without merit.

It is settled that an ALJ may grant controlling weight to a treating physician's opinion on the severity of a patient's disability where that opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence." Arruda v. Barnhart, 314 F. Supp. 2d 52, 72 (D. Mass. 2004) (quoting 20 C.F.R. § 404.1527(d)(2)). Conversely though, an ALJ may decline to give controlling weight to a treating

[31] 20 C.F.R. § 404.1592(d)(1) states that a claimant is generally entitled to a trial work period if he or she is "entitled to disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability." As Hatch was not and is not entitled to disability insurance benefits, she does not meet the qualifications for a trial work period. Further, Hatch's position as a case aide at United Arc also would not qualify as a trial work period as she demonstrated "the ability to engage in substantial gainful activity" at that position. 20 C.F.R. § 404.1592(d)(2)(ii).

doctor's opinion when such "assessments [a]re not corroborated by clinical studies or findings [or] were refuted by the rest of the record evidence." Morales v. Comm'r of Soc. Sec., 2 F. App'x 34, 36 (1st Cir. 2001); see also Ramos v. Barnhart, 119 F. App'x 295, 296 (1st Cir. 2005) (ALJ justified in according treating physician opinion little weight where the "treating physician's opinion is inconsistent with the bulk of the medical evidence and is not supported by any progress notes or clinical or laboratory findings.") (citing 20 C.F.R. § 404.1527(d)); Arruda, 314 F.Supp.2d at 72 (lesser or no weight may be assigned to treating physician's opinion "where . . . it is internally inconsistent or inconsistent with other evidence in the record including treatment notes and evaluations by examining and nonexamining physicians") (citing 20 C.F.R. §§ 404.1527(d)(2)-(4); § 416.927(d)(3)-(4)). Thus, "[a]lthough opinions from treating and examining physicians may be considered helpful, and in many cases controlling, the hearing officer is only required to make a decision that is supported by substantial evidence." Monroe v. Barnhart, 471 F.Supp.2d 203, 211 (D. Mass 2007) (citing Rodriguez, 647 F.2d at 222–23).

When an ALJ determines that a treating physician's opinion is not entitled to controlling weight, the ALJ must consider the following factors to determine the proper weight to be afforded: (1) length of treatment relationship and the frequency of examination; (2) nature and extent of the treatment relationship; (3) evidence in support of the medical opinion; (4) consistency of the opinion with the record as a whole; (5) specialization of the treating source; and (6) other factors that tend to support or contradict the opinion. 20 C.F.R. § 404.1527(c). The ALJ need not discuss each individual factor. Healey v. Colvin, 2014 WL 1271698 *14 (D. Mass 2007). If the ALJ affords less weight to a treating physician's opinion after considering these factors, the court must uphold the decision so long as the ALJ minimally articulates the reasons for doing so. Berger v. Astrue, 516 F.3d 539, 545 (7th Cir.2008); see also Green v. Astrue, 588 F.Supp.2d 147, 155

(unnecessary for ALJ to address each individual factor so long as the reasoning was "sufficiently clear").

Here, the ALJ's determination to afford lesser weight to Dr. Havlin's opinions is supported by substantial evidence, and the ALJ's reasoning is sufficiently clear. First, the ALJ noted that the majority of Hatch's medical evidence is predicated on her subjective reports of pain symptoms, which the ALJ found not to be credible.[32] (Tr. 16). The ALJ made clear that this lack of credibility contributed to her decision to afford lesser weight to Dr. Havlin's opinions, and to her determination that Dr. Havlin's opinions are inconsistent with other medical evidence in the record. (Tr. 21). There was no error here. To the contrary, an ALJ may reject a treating physician's opinion if the physician's reports rely on the subjective symptoms of a claimant found not to be credible. See Lill v. Astrue, 812 F. Supp. 2d 95, 105 (D. Mass. 2011); see also Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) ("An ALJ may reject a treating physician's opinion if it is based 'to a large extent' on a claimant's self-reports that have been properly discounted").

The ALJ also stated that Dr. Havlin's opinion was inconsistent with objective medical evidence in the record demonstrating the severity of Hatch's injury. (Tr. 20-21). She cited other examiners' determinations that the degree of Hatch's condition was mild, which contrast with Dr. Havlin's opinions, (Tr. 20), and noted that after the initial MRI scans were normal, the March 18, 2009 MRI showed only a "small" left lateral protrusion with "mild" retrodisplacement at the left L5 nerve root. (Tr. 18). The MRI report itself notes these findings as "very small" and "very mild." (Tr. 288, 300). Along these lines, Dr. Eck indicated that not all of Hatch's symptoms could be explained by the objective findings of the March 18, 2009, MRI and that he "was not convinced"

[32] Significantly, Hatch does not contest the ALJ's credibility determination regarding her subjective symptoms.

by Hatch's complaints of medial thigh pain. (Tr. 339). Similarly, Dr. Jenis characterized the findings of the MRI as "very minimal" and did not recommend surgical intervention. (Tr. 483). Finally, Dr. Warnock found Hatch's symptoms to be "way out of proportion to the objective findings available," suspected "some symptom magnification," and did "not have any orthopedic basis to explain [Hatch's] ongoing complaints" and found that Hatch could return to work immediately without restrictions. (Tr. 412).

In light of the above, the court finds the ALJ's decision to afford minimal weight to Dr. Havlin's opinions to be well-founded. The resolution of conflicts in the evidence is for the Commissioner or the ALJ—not the court—to decide, Irlanda, 955 F.2d at 770, and as indicated, the court must affirm the ALJ's decision if it is supported by substantial evidence. Ward, 211 F.3d at 655. Thus, even if a reasonable mind could reach a different conclusion, the ALJ's decision is to be affirmed so long as a reasonable mind could also accept the evidence on record as adequate to support it. See Rodriguez Pagan v. Sec'y of Health & Human Servs., 819 F.2d 1, 3 (1st Cir. 1987); Rodriguez, 647 F.2d 218 at 222. The evidence demonstrates the ALJ to have properly resolved conflicts in the evidence and sufficiently explained the reasoning for her determination to give lesser weight to the opinion of the treating physician. Accordingly, reversal or remand on

this ground is not appropriate.[33]

IV. CONCLUSION

For the foregoing reasons, I hereby DENY Hatch's Motion to Reverse or Remand (Docket #28) and ALLOW Defendant's Motion for Order Affirming the Decision of the Commissioner (Docket #29).

/S/ David H. Hennessy
David H. Hennessy
UNITED STATES MAGISTRATE JUDGE

[33] Hatch's remaining arguments are to no avail. She claims error in the ALJ's failure to use each of the six factors listed under 20 C.F.R. § 404.1527(c) to substantiate her determination to give lesser weight to Dr. Havlin's opinions. (Docket #28 at 9). As stated, the ALJ simply is not required to do so. See Healey, 2014 WL 1271698 *14, Berger, 516 F.3d at 545, Green, 588 F.Supp.2d at 155. Hatch also cites as error the ALJ's failure to mention Dr. Jenis' recommendation that Hatch seek treatment from a spinal rehabilitation specialist. (Docket #28 at 8). The ALJ explicitly referenced Dr. Jenis' recommendation of "continued nonoperative care." (Tr. 19). That the ALJ used different language than Hatch to summarize Dr. Jenis' report does not warrant reversal, remand, or even a finding of harmless error, as the ALJ is not required to mention every individual piece of evidence on record. See Coggon, 354 F. Supp. 2d at 55.