**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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**DINORAH M.L.E.,**

**Plaintiff,**

**- against -**

**COMMISSIONER OF SOCIAL SECURITY,**

**Defendant.**

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**20-cv-8420 (JGK)**

**MEMORANDUM OPINION AND ORDER**

**JOHN G. KOELTL, District Judge:**

The plaintiff, Dinorah M.L.E., brought this action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. 405(g) (the "Act"), seeking judicial review of a decision of the Commissioner of Social Security ("Commissioner") denying the plaintiff's claim for Disability Insurance Benefits ("DIB"). The Commissioner's decision became final when the Appeals Council denied the plaintiff's request for review of the September 13, 2019 decision of the Administrative Law Judge ("ALJ").

The parties cross-moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) and this Court referred the motions to Magistrate Judge Sarah Cave. The matter was reassigned to Magistrate Judge Gary R. Jones for a Report and Recommendation (the "R&R," ECF No. 30). Magistrate Judge Jones recommended that the Commissioner's motion be granted and that the plaintiff's motion be denied. The plaintiff filed

timely objections to the R&R and the Commissioner filed a response.

The facts of the case and the procedural background are set forth in the thorough R&R, and familiarity with those facts is assumed. For the reasons explained below, the Court **adopts** the R&R and **overrules** the plaintiff's objections. Accordingly, the Commissioner's motion for judgment on the pleadings is **granted** and the plaintiff's motion for judgment on the pleadings is **denied**.

**I.**

Pursuant to 28 U.S.C. § 636(b)(1)(C), any portion of a Magistrate Judge's report and recommendation to which an objection is made is subject to de novo review. The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1)(C).

A court may set aside a determination by the Commissioner only if it is based on legal error or is not supported by substantial evidence in the record. See 42 U.S.C. § 405(g); Berry v. Schweiker, 675 F.2d 464, 467 (2d Cir. 1982).[1] Substantial evidence is "more than a mere scintilla." Richardson

[1] Unless otherwise noted, this Memorandum Opinion and Order omits all alterations, citations, footnotes, and internal quotation marks in quoted text.

v. Perales, 402 U.S. 389, 401 (1971). The "threshold for such evidentiary sufficiency is not high," because substantial evidence "means — and means only — such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Biestek v. Berryhill, 139 S. Ct. 1148, 1154, (2019); see also Brault v. Comm'r of Soc. Sec., 683 F.3d 443, 448 (2d Cir. 2012) ("The substantial evidence standard means once an ALJ finds facts, [a court] can reject those facts only if a reasonable factfinder would have to conclude otherwise."). Courts are instructed to "defer to the Commissioner's resolution of conflicting evidence." Cage v. Comm'r of Soc. Sec., 692 F.3d 118, 122 (2d Cir. 2012); see also Clark v. Comm'r of Soc. Sec., 143 F.3d 115, 118 (2d Cir. 1998) ("[I]t is up to the agency, and not this court, to weigh the conflicting evidence in the record.").

**II.**

Under the Act, a claimant must show that the claimant is "under a disability" in order to qualify for DIB. 42 U.S.C. §§ 423(a)(1)(E), (d)(1).[2] The Commissioner's regulations provide

[2] The definition of disability in Supplemental Security Income ("SSI") and DIB cases is virtually identical, as is the standard for judicial review. Consequently, cases under 42 U.S.C. § 423 (DIB) are cited interchangeably with cases under 42 U.S.C. § 1382c(a)(3)(A) (SSI). See Hankerson v. Harris, 636 F.2d 893, 895 n.2 (2d Cir. 1980); see also Villanueva v. Barnhart, No. 03-cv-9021, 2005 WL 22846, at *5 n.5 (S.D.N.Y. Jan. 3, 2005).

a five-step inquiry to determine if a claimant is disabled. See 20 C.F.R. § 404.1520(a). In essence:

> if the Commissioner determines (1) that the claimant is not working, (2) that [the claimant] has a severe impairment, (3) that the impairment is not one [listed in Appendix 1 of the regulations] that conclusively requires a determination of disability, and (4) that the claimant is not capable of continuing in [the claimant's] prior type of work, the Commissioner must find [the claimant] disabled if (5) there is not another type of work the claimant can do.

Swainbank v. Astrue, 356 F. App'x 545, 547 (2d Cir. 2009). The claimant bears the burden of proof through the first four steps; the burden shifts to the Commissioner at the fifth step. See Shaw v. Chater, 221 F.3d 126, 132 (2d Cir. 2000). However, the burden shift at step five "is only a limited burden shift, in that the Commissioner need only show that there is work in the national economy that the claimant can do." Petrie v. Astrue, 412 F. App'x 401, 404 (2d Cir. 2011).

**III.**

The ALJ concluded that the plaintiff was not disabled. R&R at 2-3. At step three of the five-step analysis, the ALJ found that the plaintiff experienced severe impairments but that the plaintiff did not have an impairment or combination of impairments that met or medically equaled the impairments listed in Appendix 1. Id. at 3. At steps four and five, the ALJ found that the plaintiff retained residual functional capacity to perform light work and that the plaintiff could perform work as

a lens fabricator machine tender, which is a position that the plaintiff had previously held. Id. at 3. The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied the plaintiff's request for review.

The plaintiff argued before the Magistrate Judge that the ALJ's conclusions were not supported by substantial evidence. The Magistrate Judge rejected the plaintiff's challenges to the ALJ's decision, finding that the ALJ's decision was supported by substantial evidence and consistent with applicable law.

In her objections to the R&R, the plaintiff now argues that the ALJ (1) improperly disregarded the opinion of Dr. Glickman, one of the plaintiff's physicians; and (2) improperly weighed the record evidence regarding the plaintiff's daily activities and subjective reports of pain.

**A.**

In considering whether the plaintiff was disabled, the ALJ reviewed evidence from several physicians that treated or evaluated the plaintiff. Dr. Philip Glickman performed a psychological evaluation of the plaintiff in May 2017 and prepared a report that was co-signed by another doctor. R&R at 9. Among other things, Dr. Glickman observed clinically significant scores for depression, anxiety, and somatization. Id. In May 2018, Dr. Glickman opined that the plaintiff had marked limitations in numerous domains of work-related

functioning, including her ability to sustain attention and concentrate on work-related tasks; maintain attendance and completing a normal workday or workweek; and interact with others, make decisions, and respond to changes. Id. at 10.

Dr. Norman Weiss performed an independent psychiatric evaluation of the plaintiff in November 2017. Id. Dr. Weiss diagnosed the plaintiff with depression relating to a physical injury that the plaintiff suffered in April 2016 but opined that he did not consider the plaintiff's depression to be a psychiatric disability and that he did not see any psychiatric reason why the plaintiff could not return to work. Id. at 10-11.

Dr. Michael Kushner performed a consultative psychiatric evaluation of the plaintiff in January 2018. Id. at 11. In relevant part, Dr. Kushner concluded that the results of his evaluation did not "appear to be consistent with any psychiatric problems that would significantly interfere with [the plaintiff's] ability to function on a daily basis." Id. at 11-12.

The ALJ concluded that the plaintiff was not disabled within the meaning of the Act and explained that Dr. Glickman's assessment that the plaintiff suffered from extensive and marked limitations was "totally unpersuasive." Id. at 10. The plaintiff argues that the ALJ's assessment of the medical evidence and specifically of Dr. Glickman's opinion was unfounded and that

the R&R erroneously concluded that the ALJ's assessment was supported by substantial evidence.

The relevant regulations direct ALJs to consider all medical opinions and to evaluate their persuasiveness based on supportability, consistency, the relationship with the claimant, specialization, and other factors. See 20 C.F.R. § 404.1520c. The ALJ is required to articulate "how persuasive" the ALJ finds each opinion, with a specific explanation provided as to the consistency and supportability factors. See id. §§ 404.1520c(b) and (b)(2). Consistency is "the extent to which an opinion or finding is consistent with evidence from other medical sources and non-medical sources." Tami Ann A. v. Comm'r of Soc. Sec., No. 20-cv-8079, 2022 WL 938167, at *3 (S.D.N.Y. Feb. 3, 2022), report and recommendation adopted sub nom. Albanese v. Comm'r of Soc. Sec., No. 20-cv-8079, 2022 WL 929837 (S.D.N.Y. Mar. 29, 2022). The "more consistent a medical opinion" is with "evidence from other medical sources and nonmedical sources," the "more persuasive the medical opinion" will be. See 20 C.F.R. § 404.1520c(c)(2). Supportability is "the extent to which an opinion or finding is supported by relevant objective medical evidence and the medical source's supporting explanations." Tami Ann A., 2022 WL 938167, at *3. "The more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or

prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be." 20 C.F.R. § 404.1520c(c)(1).

In this case, the ALJ evaluated the persuasiveness of the medical evidence in accordance with applicable law and reasonably concluded that Dr. Glickman's opinion was an outlier and inconsistent with the other medical evidence, such as the opinions of Dr. Weiss and Dr. Kushner. The ALJ also reasonably concluded that Dr. Glickman's assessment was not well-supported by the plaintiff's treatment record. And because there is substantial evidence in the record to support the ALJ's determination that Dr. Glickman's opinion was not persuasive, the ALJ was entitled to afford Dr. Glickman's opinion little weight. See, e.g., Veino v. Barnhart, 312 F.3d 578, 588 (2d Cir. 2002) ("Genuine conflicts in the medical evidence are for the Commissioner to resolve."). Accordingly, the plaintiff's first objection to the R&R is **overruled**.

**B.**

Next, the plaintiff objects to the R&R's finding that substantial evidence supported the ALJ's conclusion that the plaintiff's report of her daily activities was inconsistent with the plaintiff's subjective complaints of pain. The plaintiff contends that her statements about her daily activities contained certain qualifications that evidenced greater

functional limitations and that the ALJ ignored these qualifications and limitations.

The plaintiff's arguments are without merit. A federal court must afford great deference to an ALJ's credibility findings because "the ALJ had the opportunity to observe [the claimant's] demeanor while [the claimant was] testifying." Kessler v. Colvin, 48 F. Supp. 3d 578, 595 (S.D.N.Y. 2014). Accordingly, so long as an ALJ's credibility determination is supported by substantial evidence, a reviewing court may not disrupt the ALJ's findings. Id.

In this case, the ALJ found that the plaintiff's claim that she suffered from disabling symptoms was not "entirely consistent with the medical evidence and other evidence in the record." ECF No. 14 at 28. This conclusion was reasonable and supported by substantial evidence, including the opinions of Dr. Weiss and Dr. Kushner. Moreover, the ALJ was well-positioned to assess the credibility of the plaintiff's complaints of pain and to compare and weigh those complaints against the plaintiff's report of her daily activities. See Cage, 692 F.3d at 122 (courts should "defer to the Commissioner's resolution of conflicting evidence."). Because the R&R properly declined to disturb the ALJ's conclusions, the plaintiff's second objection to the R&R is **overruled.**

## CONCLUSION

The Court has considered all of the arguments raised by the parties. To the extent not specifically addressed, the arguments are either moot or without merit. For the reasons explained above, the Magistrate Judge's thorough R&R is **adopted** in its entirety, the plaintiff's objections are **overruled**, the Commissioner's motion for judgment on the pleadings is **granted**, and the plaintiff's motion is **denied**.

The Clerk is directed to enter judgment accordingly. The Clerk is also directed to close all pending motions and to close this case.

**SO ORDERED.**

**Dated:** **New York, New York**
**July 13, 2022**

**John G. Koeltl**
**United States District Judge**