

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FELIX J.,

Plaintiff,

DECISION AND ORDER

1:23-cv-08404-GRJ

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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GARY R. JONES, United States Magistrate Judge:

In May of 2021, Plaintiff Felix J.<sup>1</sup> applied for Disability Insurance Benefits and Supplemental Security Income Benefits under the Social Security Act. The Commissioner of Social Security denied the applications. Plaintiff, represented by Ny Disability, LLC, Daniel Berger, Esq., of counsel, commenced this action seeking judicial review of the Commissioner's denial of benefits under 42 U.S.C. §§ 405 (g) and 1383 (c)(3). The parties consented to the jurisdiction of a United States Magistrate Judge. (Docket No. 9).

This case was referred to the undersigned on June 13, 2024.

Presently pending is Plaintiff's Motion for Judgment on the Pleadings under

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<sup>1</sup> Plaintiff's name has been partially redacted in compliance with Federal Rule of Civil Procedure 5.2 (c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

Rule 12 (c) of the Federal Rules of Civil Procedure. (Docket No. 13). For the following reasons, Plaintiff's motion is due to be denied and this case is dismissed.

## **I. BACKGROUND**

### *A. Administrative Proceedings*

Plaintiff applied for benefits on May 25, 2021, alleging disability beginning May 13, 2020. (T at 10).<sup>2</sup> Plaintiff's applications were denied initially and on reconsideration. He requested a hearing before an Administrative Law Judge ("ALJ").

A hearing was held on June 9, 2022, before ALJ Ifeoma N. Iwuamadi. (T at 32-51). Plaintiff appeared with an attorney and testified with the assistance of an interpreter. (T at 38-46). The ALJ also received testimony from Mary Vasishth, a vocational expert. (T at 46-50).

### *B. ALJ's Decision*

On June 29, 2022, the ALJ issued a decision denying the applications for benefits. (T at 9-31). The ALJ found that Plaintiff had not engaged in substantial gainful activity after May 13, 2020 (the alleged onset date) and meets the insured status requirements of the Social Security Act through December 31, 2025 (the date last insured). (T at 19).

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<sup>2</sup> Citations to "T" refer to the administrative record transcript at Docket No. 10.

The ALJ concluded that Plaintiff's hypertension, generalized anxiety disorder, major depressive disorder, and panic disorder were severe impairments as defined under the Act. (T at 19).

However, the ALJ found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments in 20 CFR Part 403, Subpart P, Appendix 1. (T at 19).

At step four of the sequential analysis the ALJ determined that Plaintiff retained the residual functional capacity ("RFC") to perform medium work, as defined in 20 CFR 404.1567 (c), with the following limitations: he can make simple work-related decisions, is limited to no more than occasional contact with supervisors, co-workers, and the public, and can tolerate no more than occasional changes in a routine work setting. (T at 20).

The ALJ concluded that Plaintiff could perform his past relevant work as a housekeeping cleaner. (T at 26).

As such, the ALJ found that Plaintiff had not been under a disability, as defined under the Social Security Act, and was not entitled to benefits for the period between May 13, 2020 (the alleged onset date) and June 29, 2022 (the date of the ALJ's decision). (T at 26-27). On July 26, 2023, the

Appeals Council denied Plaintiff's request for review, making the ALJ's decision the Commissioner's final decision. (T at 1-8).

### *C. Procedural History*

Plaintiff commenced this action, by and through his counsel, by filing a Complaint on September 22, 2023. (Docket No. 1). On February 26, 2024, Plaintiff filed a motion for judgment on the pleadings, supported by a memorandum of law. (Docket Nos. 13, 14). The Commissioner interposed a brief in opposition to the motion and in support of the denial of benefits on April 26, 2024. (Docket No. 18). On May 28, 2024, Plaintiff submitted a reply memorandum of law in further support of his motion. (Docket No. 19).

## **II. APPLICABLE LAW**

### *A. Standard of Review*

"It is not the function of a reviewing court to decide de novo whether a claimant was disabled." *Melville v. Apfel*, 198 F.3d 45, 52 (2d Cir. 1999).

The court's review is limited to "determin[ing] whether there is substantial evidence supporting the Commissioner's decision and whether the

Commissioner applied the correct legal standard." *Poupore v. Astrue*, 566 F.3d 303, 305 (2d Cir. 2009) (per curiam).

The reviewing court defers to the Commissioner's factual findings, which are considered conclusive if supported by substantial evidence. See

42 U.S.C. § 405(g). “Substantial evidence” is “more than a mere scintilla” and “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Lamay v. Commissioner of Soc. Sec.*, 562 F.3d 503, 507 (2d Cir. 2009) (internal quotations omitted) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

“In determining whether the agency's findings are supported by substantial evidence, the reviewing court is required to examine the entire record, including contradictory evidence and evidence from which conflicting inferences can be drawn.” *Talavera v. Astrue*, 697 F.3d 145, 151 (2d Cir. 2012) (internal quotations omitted).

“When there are gaps in the administrative record or the ALJ has applied an improper legal standard,” or when the ALJ’s rationale is unclear, remand “for further development of the evidence” or for an explanation of the ALJ’s reasoning is warranted. *Pratts v. Chater*, 94 F.3d 34, 39 (2d Cir. 1996).

#### *B. Five-Step Sequential Evaluation Process*

Under the Social Security Act, a claimant is disabled if he or she lacks the ability “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).

A claimant’s eligibility for disability benefits is evaluated pursuant to a five-step sequential analysis:

1. The Commissioner considers whether the claimant is currently engaged in substantial gainful activity.
2. If not, the Commissioner considers whether the claimant has a “severe impairment” which limits his or her mental or physical ability to do basic work activities.
3. If the claimant has a “severe impairment,” the Commissioner must ask whether, based solely on medical evidence, claimant has an impairment listed in Appendix 1 of the regulations. If the claimant has one of these enumerated impairments, the Commissioner will automatically consider him disabled, without considering vocational factors such as age, education, and work experience.
4. If the impairment is not “listed” in the regulations, the Commissioner then asks whether, despite the claimant's severe impairment, he or she has residual functional capacity to perform his or her past work.
5. If the claimant is unable to perform his or her past work, the Commissioner then determines whether there is other work which the claimant could perform.

*See Rolon v. Commissioner of Soc. Sec.*, 994 F. Supp. 2d 496, 503 (S.D.N.Y. 2014); *see also* 20 C.F.R. §§ 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v).

The claimant bears the burden of proof as to the first four steps; the burden shifts to the Commissioner at step five. *See Green-Younger v. Barnhart*, 335 F.3d 99, 106 (2d Cir. 2003). At step five, the Commissioner determines whether claimant can perform work that exists in significant numbers in the national economy. *See Butts v. Barnhart*, 416 F.3d 101, 103 (2d Cir. 2005); 20 C.F.R. § 404.1560(c)(2).

### **III. DISCUSSION**

Plaintiff raises two main arguments in support of his request for reversal of the ALJ's decision. First, he challenges the ALJ's assessment of his mental functioning. Second, Plaintiff argues that the ALJ failed to properly assess his physical limitations. This Court will address both arguments in turn.

#### *A. Mental Functioning*

As noted above, the ALJ concluded that Plaintiff's hypertension, generalized anxiety disorder, major depressive disorder, and panic disorder were severe impairments as defined under the Social Security Act. (T at 19).

However, the ALJ determined that Plaintiff retained the RFC to make simple work-related decisions; have occasional contact with supervisors,

co-workers, and the public; and tolerate occasional changes in a routine work setting. (T at 20).

Plaintiff challenges the ALJ's assessment, arguing that it fails to account for the work absences and time off-task he would experience due to his impairments and treatment.

While the psychiatric treatment record documents persistent anxiety, particularly in the morning, the treatment notes also consistently describe Plaintiff as having full range affect; goal-directed thought processes; and normal attention, concentration, memory, insight, judgment, and thought content. (T at 335, 337-78, 412-13, 417-18, 425-26, 454-55, 458-59, 464-65, 477-78, 483-84, 491-92, 499-500, 503-04, 516-17, 520-21, 525-26, 529-30, 537-38, 541-42, 547, 550-51, 558-59, 562-63, 567-68). The ALJ reasonably read the record as documenting reported improvement with medication and treatment. (T at 491, 499, 503, 516, 520, 529, 537, 541, 547, 550, 558, 562, 567).

Although ALJs must be careful not to overestimate the significance of a claimant's ability to be cooperative and appropriate during brief visits with supportive medical providers, such evidence can support a decision to discount disabling limitations. *See, e.g., Knief v. Comm'r of Soc. Sec.*, No. 20 Civ. 6242 (PED), 2021 WL 5449728, at \*1–2, 8–9 (S.D.N.Y. Nov. 22,



2021) (affirming ALJ decision based on treatment records and mental status examinations that claimant had “meaningful, but not profound, mental restrictions” with chronic anxiety and mood disturbances, adequately treated with regular psychiatric appointments and psychiatric medications); *Burchette v. Comm’r of Soc. Sec.*, No. 19 CIV. 5402 (PED), 2020 WL 5658878, at \*10 (S.D.N.Y. Sept. 23, 2020)(“In sum, Dr. Phillips’ opinion, combined with largely unremarkable mental status examination findings in the treatment record and plaintiff’s ADLs, provide substantial evidence for the ALJ’s RFC determination.”).

In addition, the ALJ’s assessment is supported by the opinion of Dr. Seth Sebold, who performed a consultative psychiatric evaluation in August of 2021. Dr. Sebold described Plaintiff as cooperative, with fair social skills, demonstrating appropriate affect and orientation, with mild impairment as to attention, concentration, and memory, along with good insight and judgment. (T at 401).

Dr. Sebold opined that Plaintiff had no limitation in his ability to understand, remember, or apply simple directions and instructions; moderate impairment as to complex directions and instructions; no limitation with respect to using reason and judgment to make work-related decision; mild impairment in social interaction; mild to moderate limitation in

sustaining concentration and performing a task at a consistent pace; no limitation in sustaining an ordinary routine and regular attendance; and moderate impairment in regulating emotions, controlling behavior, and maintaining well-being. (T at 402).

The ALJ reasonably relied on Dr. Sebold's opinion in formulating the RFC, finding the consultative examiner's assessment generally consistent with the medical evidence, including the treatment record referenced above. (T at 25-26). See *Grega v. Saul*, 816 F. App'x 580, 582–83 (2d Cir. 2020)(“A consultative examiner's opinion may constitute substantial evidence if otherwise supported by the record.”)(citing *Mongeur v. Heckler*, 722 F.2d 1033, 1039 (2d Cir. 1983)).

Plaintiff says that the ALJ only deemed Dr. Sebold's opinion “partially” persuasive. (T at 25). The ALJ, however, actually found Plaintiff somewhat more limited than Dr. Sebold did, restricting him to no more than occasional social interaction and finding him capable of making only simple work-related decisions and tolerating no more than occasional changes in a routine work setting. (T at 25-26). This is not a basis for remand. See *Baker o/b/o Baker v. Berryhill*, No. 1:15-CV-00943-MAT, 2018 WL 1173782, at \*2 (W.D.N.Y. Mar. 6, 2018)(“Where an ALJ makes an RFC assessment that is *more* restrictive than the medical opinions of record, it is

generally not a basis for remand.”)(emphasis in original)(collecting cases); see also *Rosa v. Callahan*, 168 F.3d 72, 29 (2d Cir. 1999)(noting that “the ALJ's RFC finding need not track any one medical opinion”).

Plaintiff also contends that the ALJ's RFC determination conflicts with her conclusion at step three of the sequential evaluation that Plaintiff had moderate impairment in his ability to concentrate, persist, or maintain pace and moderate limitation with respect to adapting or managing himself. (T at 20).

Plaintiff's argument misinterprets step three findings with the evaluation of a claimant's RFC. “The determination of the step three factors of impairment are distinct from the determination of RFC at step four.” *Richard B. v. Comm'r of Soc. Sec.*, No. 1:20-CV-00585-MJR, 2021 WL 4316908, at \*6 (W.D.N.Y. Sept. 23, 2021)(citing *Whipple v. Astrue*, 479 Fed. Appx. 367, 369 (2d Cir. 2012) (summary order)(“The regulations make clear that [the step three] factors are only to be applied in determining the severity of a mental impairment ... not a claimant's RFC, which is relevant to the guidelines' fourth and fifth steps”).

“As a result, a finding at steps two or three does not automatically translate to an identical finding at step four.” *Chappell v. Comm'r of Soc. Sec.*, 2020 U.S. Dist. LEXIS 69640, at \*18, 2020 WL 1921222 (W.D.N.Y.

Apr. 21, 2020); *see also McIntyre v. Colvin*, 758 F.3d 146, 150 (2d Cir. 2014)(“Contrary to McIntyre’s assertion, an ALJ’s decision is not necessarily internally inconsistent when an impairment found to be severe is ultimately found not disabling: the standard for a finding of severity under Step Two of the sequential analysis is de minimis and is intended only to screen out the very weakest cases.”).

Moreover, an ALJ can appropriately account for moderate mental impairments, including moderate (or even marked) impairment in the claimant’s attention and concentration and ability to adapt and manage, through an RFC containing non-exertional limitations like those incorporated by the ALJ here. *See Platt v. Comm’r of Soc. Sec.*, No. 20 CIV. 8382 (GWG), 2022 WL 621974, at \*7 (S.D.N.Y. Mar. 3, 2022); *Patricia K. v. Comm’r of Soc. Sec.*, No. 5:20-CV-37 (ATB), 2020 WL 7490323, at \*15 (N.D.N.Y. Dec. 21, 2020); *Hill v. Comm’r of Soc. Sec.*, No. 18-CV-1161L, 2020 WL 836386, at \*4 (W.D.N.Y. Feb. 20, 2020).

Lastly, Plaintiff argues that the ALJ should have re-contacted Dr. Sebold to clarify an ambiguity in his report regarding Plaintiff’s memory testing and/or further developed the record by seeking an opinion from a medical expert. The Court disagrees.

The ALJ's "obligation to assemble the claimant's medical records, although robust, 'is not unlimited.'" *Clarke v. Comm'r of Soc. Sec.*, No. 19-CV-7213 (BCM), 2021 WL 2481909, at \*13 (S.D.N.Y. June 16, 2021)(quoting *Myers ex rel. C.N. v. Astrue*, 993 F. Supp. 2d 156, 163 (N.D.N.Y. 2012)).

Indeed, "an ALJ is not required to attempt to obtain additional evidence to fill *any* gap in the medical evidence; rather an ALJ is required to do so only where the facts of the particular case suggest that further development is necessary to evaluate the claimant's condition fairly." *Francisco v. Comm'r of Soc. Sec.*, No. 13CV1486 TPG DF, 2015 WL 5316353, at \*11 (S.D.N.Y. Sept. 11, 2015)(emphasis in original); *see also Sampson v. Saul*, No. 19CIV6270PAESN, 2020 WL 6130568, at \*6 (S.D.N.Y. Oct. 16, 2020).

Here, the record includes detailed treatment notes from Plaintiff's treating psychiatrist and therapists, numerous documented findings from mental status examinations and reports of Plaintiff's activities of daily living, along with the examination findings and opinion provided by Dr. Sebold.

This was more than sufficient to satisfy the ALJ's duty and sustain the ALJ's decision under the deferential standard of review applicable here. *See Pichardo v. Comm'r of Soc. Sec.*, No. 21-CV-06873 (SDA), 2023 WL

2596970, at \*19 (S.D.N.Y. Mar. 22, 2023)(affirming ALJ’s decision because while claimant cited evidence of “greater restriction [in his ability to stay on task and sustain regular attendance at work], other evidence ... support[ed] the ALJ’s determination ...”); *Martinez v. Comm’r of Soc. Sec.*, No. 21 CIV. 11054 (SLC), 2023 WL 2707319, at \*17 (S.D.N.Y. Mar. 30, 2023)(“As discussed above, the ALJ considered the conflicting evidence in the Record regarding Mr. Martinez’s ability to stay on task and whether he had any limitations in regular attendance at work. Although Mr. Martinez points to evidence to support a greater restriction than ALJ Banks found, other Record evidence supports the ALJ’s determination.”).

*B. Physical Limitations*

As noted above, the ALJ determined that Plaintiff retained the residual functional capacity (“RFC”) to perform medium work, as defined in 20 CFR 404.1567(c).

Plaintiff argues that the ALJ erred by failing to perform a function-by-function assessment of his ability to meet the physical demands of medium work and by failing to address limitations regarding his left arm/shoulder.

Under the Commissioner’s regulations, before determining a claimant’s RFC based on exertional levels (sedentary, light, medium, heavy, or very heavy), the ALJ “must first identify the individual’s functional

limitations or restrictions and assess his or her work-related abilities on a *function-by-function basis*.” *Cichocki v. Astrue*, 729 F.3d 172, 176 (2d Cir. 2013) (emphasis added) (internal quotation marks omitted); see also 20 C.F.R. §§ 404.1545, 416.945.

The work-related functions include physical abilities (standing, sitting, walking, lifting, carrying, pushing, pulling), mental abilities (understanding, remembering, carrying out instructions, and responding to supervision), and other abilities that may be impacted by impairments (seeing, hearing, ability to tolerate environmental factors). See SSR 96-8P; see also 20 C.F.R. § 404.1545(b)-(d); id. § 416.945; *Cichocki*, 729 F.3d at 176.

Notably, the Second Circuit has not applied a *per se* rule requiring remand where ALJ did not provide an “explicit” function-by-function analysis. See *Cichocki*, 729 F.3d at 176; compare *Burrows v. Barnhart*, No. 3:03CV342, 2007 WL 708627, at \*13 (D. Conn. Feb. 20, 2007) (“[a]lthough a function-by-function analysis is desirable, SSR 96-8p does not require ALJs to produce [ ] a detailed statement in writing”), with *McMullen v. Astrue*, No. 5:05-cv-1484, 2008 WL 3884359, at \*6 (N.D.N.Y. Aug. 18, 2008) (remanding because “the ALJ erred in determining that Plaintiff could do light work before fully assessing his work-related abilities on a function-by-function basis”).

“[R]emand may be appropriate ... where an ALJ fails to assess a claimant’s capacity to perform relevant functions, despite contradictory evidence in the record, or where other inadequacies in the ALJ's analysis frustrate meaningful review.” *Cichocki*, 729 F.3d at 177.

On the other hand, remand is not required if the ALJ performed a thorough review and reached a decision supported by substantial evidence. See *O’Connell v. Kijakazi*, No. 18-CV-10546 (AEK), 2021 WL 4480464, at \*9 (S.D.N.Y. Sept. 30, 2021)(citing *Cichocki v. Astrue*, 729 F.3d 172, 176-77 (2d Cir. 2013)).

For the following reasons, the Court finds that a remand is not required in this particular case.

First, although Plaintiff did not allege or identify an arm/shoulder impairment or, indeed, any physical impairment other than high blood pressure and high cholesterol (T at 36, 42, 270), the ALJ nevertheless carefully considered the treatment record, obtained a consultative examination, recognized Plaintiff’s hypertension as a severe impairment, and limited Plaintiff to medium work. (T at 19, 22-25).

Second, the ALJ’s determination is supported by the assessment of Dr. Manuel Paz, who performed a consultative examination in August of 2021. (T at 24-25). On examination, Dr. Paz noted normal gait and squat,



intact sensation, and full range of motion in all muscle groups, other than the left shoulder, which had some limitation. (T at 395-96).

Dr. Paz assessed mild limitations with respect to Plaintiff's ability to engage in lifting, carrying, pushing, pulling, and reaching overhead with the left arm. (T at 396).

Plaintiff argues that Dr. Paz's assessment contradicts the ALJ's conclusion that he retained the RFC to perform medium work.

Mild limitation in a claimant's ability to lift, carry, push, pull, and reach, however, is not necessarily inconsistent with the ability to perform medium work. *See, e.g., Kevin Thomas C. v. Comm'r of Soc. Sec.*, No. 5:20-CV-1037 (CFH), 2022 WL 539392, at \*5 (N.D.N.Y. Feb. 23, 2022).

In addition, the denial of benefits is based on the ALJ's conclusion that Plaintiff retained the RFC to perform his past relevant work as a housekeeping cleaner, which requires only light exertion. (T at 26); *see also* DOT Job No. 323.687-014.

"[A] number of courts have found that 'moderate' limitations for standing, walking, sitting, and lifting are consistent with the ability to do light work." *Jordan v. Comm'r of Soc. Sec.*, No. 16-CV-9634 (KHP), 2018 WL 1388527, at \*10 (S.D.N.Y. Mar. 19, 2018)(collecting cases); *see also Guzman v. Comm'r of Soc. Sec.*, No. 21-CV-6538 (KHP), 2022 WL

3013108, at \*6 (S.D.N.Y. July 29, 2022); *Katherine R. v. Comm'r of Soc. Sec.*, No. 1:20-CV-01055-MJR, 2021 WL 5596416, at \*5 (W.D.N.Y. Nov. 30, 2021)(“[C]ourts within this Circuit have consistently held that mild and moderate limitations, such as those assessed by Dr. Liu, are consistent with an RFC for light work.”).

Lastly, the ALJ’s assessment of Plaintiff’s physical limitations is supported by opinions from two non-examining State Agency review physicians.

Dr. V. Cincore opined that Plaintiff could occasionally lift/carry up to 50 pounds and frequently lift/carry up to 25 pounds; stand and/or walk for about six hours in an eight-hour workday and sit for about six hours; frequently climb, balance, stoop, kneel, crouch, and crawl; with some limitation in reaching laterally and overhead with the left arm. (T at 62-63, 73-74). Dr. S. Powell assessed essentially the same limitations. (T at 88, 99, 101).

“[S]tate agency physicians are qualified as experts in the evaluation of medical issues in disability claims,’ and as such, ‘their opinions may constitute substantial evidence if they are consistent with the record as a whole.’” *Distefano v. Berryhill*, 363 F. Supp. 3d 453, 474 (S.D.N.Y. 2019)(quoting *Leach ex rel. Murray v. Barnhart*, 02 Civ. 3561, 2004 U.S.

Dist. LEXIS 668, at \*26 (S.D.N.Y. Jan. 22, 2004)); *see also Ortiz v. Comm'r of Soc. Sec.*, 309 F. Supp. 3d 189, 205 (S.D.N.Y. 2018) (“Moreover, the opinion of a non-examining medical expert ... may be considered substantial evidence if consistent with the record as a whole.”).

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff’s Motion for Judgment on the Pleadings (Docket No. 13) is DENIED, and this case is DISMISSED. The Clerk is directed to enter final judgment in favor of the Commissioner and then close the file.

Dated: July 25, 2024

*s/ Gary R. Jones*  
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GARY R. JONES  
United States Magistrate Judge