IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBIN KLAUS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:13CV180
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, Robin Klaus, brought this action pursuant to Sections 205(g) and 1631(c)(3) of the Social Security Act (the "Act"), as amended (42 U.S.C. §§ 405(g) and 1383(c)(3)), to obtain judicial review of a final decision of the Commissioner of Social Security denying her claims for Disability Insurance Benefits and Supplemental Security Income under, respectively, Titles II and XVI of the Act. The parties have filed cross-motions for judgment, and the administrative record has been certified to the Court for review.

I. PROCEDURAL HISTORY

Plaintiff filed her applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income Benefits ("SSI") on May 5, 2009,[1] alleging a disability onset date of June 15, 2004. (Tr. at 151-64.)[2] Her applications were denied initially (Tr. at 83-84, 89-

[1] On May 5, 2009, Plaintiff also filed a claim for child's insurance benefits based on disability. (Tr. at 165-66.) However, she does not pursue that claim in the present action. (Compl. [Doc. #2] at 1.)

[2] Transcript citations refer to the Administrative Transcript of Record filed manually with Defendant's Answer [Doc. #7].

98) and upon reconsideration (Tr. at 86-87, 104-09). Thereafter, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ") (Tr. at 102-03), which she attended on June 7, 2011, along with her attorney (Tr. at 18). An impartial medical expert also appeared and testified at the hearing. (Id.) The ALJ ultimately issued a decision finding that Plaintiff was not disabled under the meaning of the Act (Tr. at 40-41), and on January 2, 2013, the Appeals Council denied Plaintiff's request for review, thereby making the ALJ's conclusion the Commissioner's final decision for purposes of judicial review (Tr. at 1-6).

II. LEGAL STANDARD

Federal law "authorizes judicial review of the Social Security Commissioner's denial of social security benefits." Hines v. Barnhart, 453 F.3d 559, 561 (4th Cir. 2006). However, "the scope of [the] review of [such an administrative] decision . . . is extremely limited." Frady v. Harris, 646 F.2d 143, 144 (4th Cir. 1981). "The courts are not to try the case de novo." Oppenheim v. Finch, 495 F.2d 396, 397 (4th Cir. 1974). Instead, "a reviewing court must uphold the factual findings of the ALJ [underlying the denial of benefits] if they are supported by substantial evidence and were reached through application of the correct legal standard." Hancock v. Astrue, 667 F.3d 470, 472 (4th Cir. 2012) (internal brackets omitted).

"Substantial evidence means 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Hunter v. Sullivan, 993 F.2d 31, 34 (4th Cir. 1993) (quoting Richardson v. Perales, 402 U.S. 389, 390 (1971)). "It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." Mastro v. Apfel, 270 F.3d 171, 176 (4th Cir. 2001) (internal citations and quotation marks omitted). "If there is

evidence to justify a refusal to direct a verdict were the case before a jury, then there is substantial evidence." Hunter, 993 F.2d at 34 (internal quotation marks omitted).

"In reviewing for substantial evidence, the court should not undertake to re-weigh conflicting evidence, make credibility determinations, or substitute its judgment for that of the [ALJ]." Mastro, 270 F.3d at 176 (internal brackets and quotation marks omitted). "Where conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the ALJ." Hancock, 667 F.3d at 472. "The issue before [the reviewing court], therefore, is not whether [the claimant] is disabled, but whether the ALJ's finding that [the claimant] is not disabled is supported by substantial evidence and was reached based upon a correct application of the relevant law." Craig v. Chater, 76 F.3d 585, 589 (4th Cir. 1996).

In undertaking this limited review, the Court notes that in administrative proceedings, "[a] claimant for disability benefits bears the burden of proving a disability." Hall v. Harris, 658 F.2d 260, 264 (4th Cir. 1981). In this context, "disability" means the "'inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'" Id. (quoting 42 U.S.C. § 423(d)(1)(A)).[3]

[3] "The Social Security Act comprises two disability benefits programs. The Social Security Disability Insurance Program . . . provides benefits to disabled persons who have contributed to the program while employed. The Supplemental Security Income Program . . . provides benefits to indigent disabled persons. The statutory definitions and the regulations . . . for determining disability governing these two programs are, in all aspects relevant here, substantively identical." Craig, 76 F.3d at 589 n.1 (internal citations omitted).

"The Commissioner uses a five-step process to evaluate disability claims." Hancock, 667 F.3d at 472 (citing 20 C.F.R. §§ 404.1520(a)(4); 416.920(a)(4)). "Under this process, the Commissioner asks, in sequence, whether the claimant: (1) worked during the alleged period of disability; (2) had a severe impairment; (3) had an impairment that met or equaled the requirements of a listed impairment; (4) could return to her past relevant work; and (5) if not, could perform any other work in the national economy." Id.

A finding adverse to the claimant at any of several points in this five-step sequence forecloses a disability designation and ends the inquiry. For example, "[t]he first step determines whether the claimant is engaged in 'substantial gainful activity.' If the claimant is working, benefits are denied. The second step determines if the claimant is 'severely' disabled. If not, benefits are denied." Bennett v. Sullivan, 917 F.2d 157, 159 (4th Cir. 1990).

On the other hand, if a claimant carries his or her burden at each of the first two steps, and establishes at step three that the impairment "equals or exceeds in severity one or more of the impairments listed in Appendix I of the regulations," then "the claimant is disabled." Mastro, 270 F.3d at 177. Alternatively, if a claimant clears steps one and two, but falters at step three, i.e., "[i]f a claimant's impairment is not sufficiently severe to equal or exceed a listed impairment, the ALJ must assess the claimant's residual function[al] capacity ('RFC')." Id. at 179.[4] Step four then requires the ALJ to assess whether, based on that RFC, the claimant can

[4] "RFC is a measurement of the most a claimant can do despite [the claimant's] limitations." Hines, 453 F.3d at 562 (noting that pursuant to the administrative regulations, the "RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis . . . [which] means 8 hours a day, for 5 days a week, or an equivalent work schedule" (internal emphasis and quotation marks omitted)). The RFC includes both a "physical exertional or strength limitation" that assesses the claimant's "ability to do sedentary, light, medium, heavy, or very heavy work," as well as "nonexertional limitations (mental, sensory, or skin impairments)." Hall, 658 F.2d at 265. "RFC is to be

"perform past relevant work"; if so, the claimant does not qualify as disabled. Id. at 179-80. However, if the claimant establishes an inability to return to prior work, the analysis proceeds to the fifth step, which "requires the Commissioner to prove that a significant number of jobs exist which the claimant could perform, despite [the claimant's] impairments." Hines, 453 F.3d at 563. In making this determination, the ALJ must decide "whether the claimant is able to perform other work considering both [the claimant's RFC] and [the claimant's] vocational capabilities (age, education, and past work experience) to adjust to a new job." Hall, 658 F.2d at 264-65. If, at this step, the Government cannot carry its "evidentiary burden of proving that [the claimant] remains able to work other jobs available in the community," the claimant qualifies as disabled. Hines, 453 F.3d at 567.

III. DISCUSSION

In the present case, the ALJ found that Plaintiff had not engaged in "substantial gainful activity" since her alleged onset date. Plaintiff therefore met her burden at step one of the sequential analysis. At step two, the ALJ further determined that Plaintiff's relapsing and remitting multiple sclerosis, obesity, and depression qualified as severe impairments. However, the ALJ found at step three that none of these impairments met or equaled a disability listing. (Tr. at 21.) Therefore, the ALJ assessed Plaintiff's RFC and determined that she could perform light work with myriad postural and mental restrictions. (Tr. at 23.) Specifically, the ALJ found that:

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determined by the ALJ only after [the ALJ] considers all relevant evidence of a claimant's impairments and any related symptoms (*e.g.*, pain)." Hines, 453 F.3d at 562-63.

> After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) with the ability to: lift and/or carry 20 pounds occasionally and 10 pounds frequently, sit a total of 6 hours and stand a total of 6 hours in an 8-hour workday. She can "occasionally" walk, climb stairs, squat, bend/stoop, kneel, use foot controls and drive an automatic vehicle. She can "frequently" reach above the shoulders, push/pull, turn arms and wrists, open and close fists and use hands and fingers. She can "continuously" balance. She had slightly below normal vision in both eyes. She has normal hearing, grip strength and fine and manual dexterity bilaterally. As to her mental functioning, she is "moderately" limited in dealing with stress and "mildly" limited in concentrating, memory, exercising judgment, remember work procedures, following detailed instructions, performing duties within a schedule, sustaining a routine without supervision, relating with others, interacting with the public, getting along with co-workers and dealing with work production. She was "not significantly" limited in areas of understanding/memory, concentration/persistence, social interaction and adaptation.

(Tr. at 23.) Based on this determination, the ALJ found under step four of the analysis that Plaintiff could return to her past relevant work and was not disabled. (Tr. at 40.)

Plaintiff now argues that the ALJ failed to properly analyze the opinion of Plaintiff's treating neurologist, Dr. John F. Foley, under 20 C.F.R. §§ 404.1527(c) and 416.927(c), better known as the "treating physician rule." The treating physician rule generally requires an ALJ to give controlling weight to the well-supported opinion of a treating source as to the nature and severity of a claimant's impairment, based on the ability of treating sources to

> provide a detailed, longitudinal picture of [the claimant's] medical impairment(s) [which] may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

20 C.F.R. §§ 404.1527(c)(2) and 416.927(c)(2). However, if a treating source's opinion is not "well-supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with other substantial evidence in the case record," it is not entitled to controlling

weight. See Social Security Ruling ("SSR") 96-2p, 1996 WL 374188, at *5; 20 C.F.R. §§ 404.1527(c)(2) and 416.927(c)(2); see also Craig, 76 F.3d at 590; Mastro, 270 F.3d at 178. Instead, the opinion must be evaluated and weighed using all of the factors provided in 20 C.F.R. § 416.927(c)(2)(i)-(c)(6) and § 404.1527(c)(2)(i)-(c)(6), including (1) the length of the treatment relationship, (2) the frequency of examination, (3) the nature and extent of the treatment relationship, (4) the supportability of the opinion, (5) the consistency of the opinion with the record, (6) whether the source is a specialist, and (7) any other factors that may support or contradict the opinion.

Where an ALJ does not give controlling weight to a treating source opinion, she must "give good reasons in [her] . . . decision for the weight" assigned, taking the above factors into account. 20 C.F.R. §§ 404.1527(c)(2) and 416.927(c)(2). "This requires the ALJ to provide sufficient explanation for 'meaningful review' by the courts." Thompson v. Colvin, No. 1:09CV278, 2014 WL 185218, at *5 (M.D.N.C. Jan. 15, 2014) (quotations omitted); see also SSR 96-2p (noting that the decision "must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight").

Here, as summarized by the ALJ, Dr. Foley limited Plaintiff "to sitting in 1-hour increments. She could 'occasionally' lift 1 to 5 pounds and would require bed rest during a normal workday due to stamina and endurance problems requiring that she rest more than customary lunch and a.m. and p.m. breaks afforded to most employees by employers." (Tr. at 39.) Dr. Foley also opined that, due to her relapsing and remitting multiple sclerosis ("MS"),

Plaintiff's "fatigue and pain would not make her reliable as a full time employee," that her "medical conditions would cause lapses in memory and concentration," and that "[s]he would likely miss more than 4 days of work each month due to impairment-related illness." (Id.) The ALJ found Dr. Foley to be an acceptable medical treating source and expressly "adopt[ed] his examination findings from his progress reports." (Id.) However, the ALJ did "not place much weight on the doctor['s] opinion as to the claimant's functional capacity and/or his medical opinion that the claimant's physical and mental deficits would preclude full time work." (Id.) In particular, the ALJ found that Dr. Foley's "medical conclusion is not supported by the totality of the evidence or by the doctor's own progress reports showing good treatment of multiple sclerosis with a reduction of relapse episodes and symptoms complaints." (Id.)

The Commissioner contends that the ALJ gave sufficient reasons for giving little weight to Dr. Foley's opinion, based on the ALJ's conclusion that (1) Dr. Foley's opinion was not supported by Dr. Foley's own progress reports, which show good treatment of Plaintiff's MS with reduction of relapse episodes and symptom complaints; (2) Dr. Foley's opinion was not supported by the totality of the evidence; and (3) Dr. Foley failed to address the duration and severity of Plaintiff's relapse episodes. The Court considers each of these contentions in turn.

First, as noted by the Commissioner, the principal reason given by the ALJ for rejecting Dr. Foley's opinion was that the opinion was "not supported by . . . the doctor's own progress reports showing good treatment of multiple sclerosis . . . ." (Tr. at 39.) In reaching this conclusion, the ALJ emphasized that although Plaintiff "complained to Dr. Foley that she had

experienced a significant increase in MS relapses in the last 4 months while on Avonex . . . Dr. Foley was of the medical opinion that **she was having significantly favorable breakthroughs with Avonex** and as such, continued to prescribe this medication." (Tr. at 33-34 (emphasis added).) After reviewing all of Dr. Foley's progress reports, the ALJ then concluded again that Plaintiff's "treating physician, Dr. Foley actually noted that **he was pleased with the claimant's positive progress on Avonex** despite her subjective complaints." (Tr. at 34 (emphasis added).) In making his ultimate findings, the ALJ then repeated for a third time that "[d]espite the claimant's subjective complaints, **in an April 26, 2010 progress report, Dr. Foley was of the medical opinion that she was having significantly favorable breakthroughs with Avonex** and as such, continued to prescribe this medication." (Tr. at 36 (emphasis added).) However, the ALJ's statements reflect a complete misunderstanding of the actual medical record. In fact, the medical report in question from April 26, 2010, states that Plaintiff's symptoms were *breaking though* her Avonex, indicating that the Avonex was not sufficiently controlling her symptoms. (Tr. at 1112.) The medical report states that "[a]t the present time she is having significant breakthrough through the Avonex. She does wish to crossover to high-dose interferon we will go ahead with a trial of rebif." (Tr. at 1112-13.) Contrary to the multiple statements of the ALJ, the record does not reflect a "favorable breakthrough" with Avonex. Indeed, Dr. Foley specifically noted that Plaintiff "has had significantly more relapses in the last 4 months while on Avonex," and that in "the last several weeks she has had increased weakness and numbness on the right side progressively worsening." (Tr. at 1111; see also Tr. at 1064 ("pains are getting worse and not responding well to current medications"); Tr. at 1114 ("Patient started Avonex a few months

ago. She has not done well since, with a relapse requiring IVMP last couple of weeks.").) Thus, the ALJ's analysis of Dr. Foley's opinion, and even the ALJ's ultimate determination, appear to be based on a fundamental misstatement of the record. See Hines v. Barnhart, 453 F.3d 559, 566 (4th Cir. 2006) ("The deference accorded an ALJ's findings of fact does not mean that we credit even those findings contradicted by undisputed evidence.").

In addition, the Court further notes that in rejecting Dr. Foley's opinion, the ALJ also asserts that Dr. Foley's treatment notes generally show "good treatment of multiple sclerosis with a reduction of relapse episodes and symptoms complaints." However, both Dr. Foley's notes and the ALJ's summary of them actually show increased reports of relapses over time, with three to five reported relapses in 2009 and as many as seven to eight reported in the twelve months preceding March 2011. (Tr. at 33-36.) To support his conclusion to the contrary, the ALJ contends that a number of the relapse episodes Dr. Foley identified by date are not reflected in the record and that, if Plaintiff "did have these relapse events, they were mild events as she did not display the need to seek out medical attention and/or emergency room attention for a significant exacerbation of MS symptoms." (Tr. at 35.) Again, the ALJ's decision misstates the evidence. A review of the record instead reveals that the ALJ overlooked or ignored the medical evidence relating to the relapses identified by Dr. Foley. The record does, in fact, include treatment notes relating to Plaintiff's significantly increased MS symptoms on at least five to eight occasions from March 2010 through early 2011, including during the time periods identified by Dr. Foley. (Tr. at 1169-71 (May/June 2011 and noting six relapses in the last 12 months); Tr. at 1149-51 (April 2011); Tr. at 1128-29 (March 2011); Tr. at 1047-49, 1133-37 (Oct./Nov. 2010); Tr. at 1109-10 (July 2010); Tr. at

1064 (May/June 2010); Tr. at 1111-12, 1066-67 (April/May 2010); 1114-15, 1116-21 (March/early April 2010).)[5]

The Commissioner contends that the ALJ was also justified in rejecting Dr. Foley's opinion because Dr. Foley's opinion was not consistent with the totality of the evidence. However, it appears that the only contrary evidence identified by the ALJ are the opinions of the state agency physicians prior to Plaintiff beginning treatment with Dr. Foley. In a September 16, 2009 opinion, state agency physician Dr. Burkett noted that Plaintiff's "neurological exams have been normal and have been abnormal – on occasion" and that she "could probably handle or manage light-level SGA" because she had not been "less than sed[entary]" for 12 months and her "MS has not progressed at this time." (Tr. at 972-73, 990-97.) A mental summary near the same time concluded that Plaintiff was capable of working "from a psychological perspective" but "may have issues, as noted by the [Consultative] examiner, with fatigue/weakness/stamina – related to her MS." (Tr. at 975.) It is not clear how these determinations are inconsistent with Dr. Foley's opinion nearly a year later, given the evidence in the record that Plaintiff's MS continued to progress, with increasing relapses

[5] The Court notes that Dr. Foley's records also repeatedly reflect issues of dizziness and positive Romberg's tests, indicating problems maintaining balance, completely contrary to the ALJ's conclusion that there was "no mention of significant problems in any treatment notes from 2004 through 2011 as to balance difficulties." (Tr. at 35; see Tr. at 1015 (tandem gain and Romberg exhibit elements of astasia-abasia); Tr. at 1112, 1114 (moderate imbalance; Romberg's test mildly positive); Tr. at 1128 (nervous system was reviewed and revealed impaired balance); Tr. at 1129 (Romberg's sign mildly positive, tandem gait unable, and gait mildly ataxic); Tr. at 1149 (nervous system reviewed and revealed impaired balance); Tr. at 1150 (Romberg's sign is present, tandem gait mildly ataxic).) These balance problems continued to be reflected in the later treatment records accepted and considered by the Appeals Council (Tr. at 1165, 1167-68, 1211-12, 1184.) In those records, it appears that Plaintiff's relapses also continued with the same frequency. (Tr. at 1169, 1167, 1165-66, 1197, 1210-12, 1191-93, 1184.)

and the failure of Plaintiff's medication to prevent her symptoms from breaking through, as noted above.

Finally, the Commissioner contends that the ALJ properly rejected Dr. Foley's opinion because Dr. Foley did not provide the average duration of Plaintiff's relapses. With respect to this issue, the Court notes that the ALJ immediately followed his discussion of Dr. Foley's opinion with the following summary of the hearing testimony of Dr. Kendrick Morrison, an impartial medical expert.

> The medical expert testified that he was not sure how often the claimant would have to have relapses of MS to meet a Listing level[,] but Dr. Foley indicated at Exhibit 29F/1 that the claimant experienced 7 to 8 relapses in a 12-month period. Dr. Morrison indicated that if these 7 to 8 relapses were correct that there would be an equaling of Listing 11.09. There was a notation in April of 2010 that the claimant was having 5 to 6 relapsing episodes in a year. As such, the medical expert noted that he could not testify to an accuracy of equaling a Listing level. If the record supported that her relapsing episodes lasted 4 to 5 weeks, then they would be looking at a meeting of a Listing value. However, the medical expert testified that he did not see any evidence as to the duration of the relapsing episodes but only to the frequency of the relapsing episodes.

(Tr. at 39.)

The ALJ concluded, based on Dr. Morrison's testimony, "that the record was deficient in showing 'average' MS relapses and duration of these relapses." (Id.) However, in rendering his opinion, Dr. Morrison did not have the benefit of the subsequent medical statement submitted by Dr. Foley after the hearing.[6] This statement, entered into Plaintiff's medical records by an individual within Dr. Foley's practice and hand-signed by Dr. Foley himself, provides that "[a] typical relapse for this patient can last 4-5 weeks." (Tr. at 1162.) The ALJ

[6] The ALJ expressly held open the record for 30 days in order for Plaintiff to submit an additional statement from Dr. Foley regarding how long Plaintiff's relapses can be expected to last. (Tr. at 81.)

fails to explicitly cite or address this statement in his decision, although he generally states that Dr. Foley "did not provide enough information as to how long an average relapse episode lasted and failed to address the severity of these episodes." (Tr. at 26.) The Commissioner now argues Dr. Foley's "notation concerning how long a 'typical' relapse 'can' last does not provide enough information as to how long Plaintiff's average relapse did, in fact, last" (Def.'s Br. [Doc. #18] at 8), but neither this semantic reasoning, nor any rationale at all, appears in the decision regarding the ALJ's dismissal of Dr. Foley's statement.[7]

In short, the ALJ's myriad errors regarding Dr. Foley's opinions clearly merit remand. As discussed above, the ALJ's conclusions rely on significant mischaracterizations of the record and are not supported by substantial evidence. As a final, more general matter, the Court notes that cases involving relapsing and remitting MS necessarily involve unique challenges under the treating physician standard. "If Plaintiff's impairment were one subject to linear decline or improvement, such as a broken bone, evidence of improvement might be considered 'inconsistent' with a physician's opinion that a patient is disabled; however, multiple sclerosis is, by its very nature, a disease that waxes and wanes." Vincil v. Comm'r of Soc. Sec., No. 12-12728, 2013 WL 2250580, at *13 (E.D. Mich. May 22, 2013) (unpublished) (citing Wilcox v. Sullivan, 917 F.2d 272, 277 (6th Cir.1990)); see also Parish v. Califano, 642 F.2d 188, 193 (6th Cir. 1981) (describing periods of MS remission as "temporary interruptions" of a "progressively disabling condition"); Crider v. Harris, 624 F.2d 15, 16 (4th Cir. 1980) ("While multiple sclerosis is not constant in its severity, being marked by remissions

[7] Moreover, at the hearing, Plaintiff testified that her relapses last four to five weeks on average (Tr. at 63), and Dr. Foley's statement provides medical evidence in support of that testimony. The ALJ does not provide a basis for rejecting Plaintiff's testimony or Dr. Foley's statement on this point.

as well as exacerbations, an independent consultant to the Social Security Administration observed that the 'major problem with employment at this time appears to be the number of days of sickness which the patient accumulates throughout the year.'"). As a result, periodic reports of stability or improvement in Plaintiff's condition fail to hold the significance the ALJ placed upon them in the present case. Such reports were not inconsistent with Dr. Foley's opinions or sufficient, without more, to discount those opinions.[8]

IT IS THEREFORE RECOMMENDED that the Commissioner's decision finding no disability be REVERSED, and that the matter be REMANDED under sentence four of 42 U.S.C. § 405(g) for further consideration of Dr. Foley's medical statements and opinions, as well as any other relevant evidence. To this extent, Defendant's Motion for Judgment on the Pleadings [Doc. #17] should be DENIED, and Plaintiff's Motion for Judgment Reversing

[8] Along the same lines, the Court notes that the ALJ rejected Plaintiff's complaints of fatigue, concluding that "problems of weakness and sensory changes are *not evident all the time, especially when she has periods of time where she is in remission*. Also, medical findings show only 'occasional' documented findings of weakness and sensory changes of the upper and/or lower extremities." (Tr. at 36 (emphasis added).) This determination, rejecting problems of weakness because they are subject to remission and are "not evident all the time," appears to be at odds with the applicable standards for evaluating multiple sclerosis.

The Court also notes that to the extent the ALJ rejected Plaintiff's own contentions regarding the severity of her impairment, the ALJ employed the following language: "After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairment could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effect of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity assessment." (Tr. at 25.) No other basis is given for discounting Plaintiff's credibility. However, the Fourth Circuit has held that "this boilerplate 'gets things backwards' by implying that ability to work is determined first and is then used to determine the claimant's credibility." Mascio v. Colvin, 780 F.3d 632, 639 (4th Cir. 2015) (internal quotation omitted) (further noting that "[t]he ALJ's error would be harmless if he properly analyzed credibility elsewhere. But here, the ALJ did not.").

Given that remand is required for the reasons stated above related to the treating physician opinion, the Court need not require further briefing on these issues or address these matters further, and the ALJ on remand can address these and any other issues in considering Plaintiff's claim.

the Commissioner [Doc. #9] should be GRANTED. However, to the extent that Plaintiff's motion seeks an immediate award of benefits, it should be DENIED.

This, the 11th day of April, 2016.

/s/ Joi Elizabeth Peake
United States Magistrate Judge