IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSHUA ROBERT HAZLETT,	)	
	)	
Plaintiff,	)	Civil Action No. 2:13-cv-00538
	)	
v.	)	Judge Mark R. Hornak
	)	
CAROLYN W. COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Mark R. Hornak, United States District Judge

I. INTRODUCTION

Plaintiff Joshua Hazlett ("Mr. Hazlett") brought this action pursuant to 42 U.S.C. §§ 405(g) and 1383(c), for judicial review of the final determination of the Commissioner of Social Security ("Commissioner"), who found that he was not eligible for supplemental social security income ("SSI") under Title XVI of the Social Security Act ("Act"), 42 U.S.C. §§ 1381-1383(f).

II. BACKGROUND

A. Facts

Mr. Hazlett was born on September 28, 1991. ECF No. 6-2 at 18. He dropped out of school before completing the 11th grade and has no past relevant work experience. *Id.* at 23, 26. He alleges disability as of December 1, 2009 due to a number of mental impairments, including Asperger's syndrome ("Asperger's"), attention deficit hyperactivity disorder ("ADHD"), obsessive-compulsive disorder ("OCD"), and various manifestations of depression and anxiety.

The record reflects that Plaintiff has not engaged in substantial gainful work activity since alleging disability in December 2009.

B. Procedural History

Plaintiff initially filed an application for childhood SSI through his mother on July 26, 1995, in which he claimed total disability since July 1, 1995. ECF No. 6-3 at 65-69. On August 18, 1995, a state agency disability examiner determined that Mr. Hazlett's ADHD was functionally equal to Listing 12.11 under the rules for determining disability in children and granted him SSI benefits based on that disability. ECF No. 6-2 at 50-52. Mr. Hazlett continued to receive such benefits until December 14, 2009, when the Commissioner determined that as of December 1, 2009 (following Mr. Hazlett's 18th birthday), pursuant to the rules for determining disability in adults, he was no longer disabled. *Id.* at 15. A state agency disability hearing officer upheld that determination, ECF No. 6-3 at 42-47, and Mr. Hazlett filed a written request for a hearing on January 28, 2011. ECF No. 6-2 at 15.

The administrative hearing was held on October 19, 2011 before Administrative Law Judge David Brash ("ALJ"). *Id.* Plaintiff was represented by counsel, and he and his mother testified at the hearing. *Id.* Fred Monaco, an impartial vocational expert ("VE"), also testified at the hearing. *Id.* On November 14, 2011, the ALJ rendered a decision unfavorable to Mr. Hazlett, finding that he retained the ability to perform a full range of work at all exertional levels with a number of nonexertional limitations and therefore was not "disabled" within the meaning of the Act. *Id.* at 15-27.

The ALJ's decision became the final decision of the Commissioner on February 20, 2013, when the Appeals Council denied Plaintiff's request to review the decision of the ALJ. *Id.* at 5-7. On April 15, 2013, Mr. Hazlett filed his Complaint in this Court, seeking judicial review of

the decision of the ALJ. ECF No. 3. The parties have filed cross-Motions for Summary Judgment, ECF Nos. 10 and 12, and briefs in support. ECF Nos. 11 and 13. Mr. Hazlett has also filed a response to the Commissioner's brief. ECF No. 14. He contends that the ALJ erred in four respects – by failing to find that his condition met or equaled one of the Listed Impairments found at 20 C.F.R. § 404, subpt. P, app. 1, by improperly weighing and misinterpreting the medical opinions in the record, by erroneously determining his Residual Functional Capacity ("RFC"), and in disregarding the testimony of the VE and relying on an incomplete hypothetical question. The Commissioner contends that the decision of the ALJ should be affirmed, as it is supported by substantial evidence. The Court agrees with the Commissioner and will therefore grant the Motion for Summary Judgment filed by the Commissioner and deny the Motion for Summary Judgment filed by the Plaintiff.

III. LEGAL ANALYSIS

A. Standard of Review

The Act limits judicial review of disability claims to the Commissioner's final decision. 42 U.S.C. § 1383(c)(3). If the Commissioner's finding is supported by substantial evidence, it is conclusive and must be affirmed by the Court. 42 U.S.C. § 405(g); *Rutherford v. Barnhart*, 399 F.3d 546, 552 (3d Cir. 2005). The United States Supreme Court has defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). It consists of more than a scintilla of evidence, but less than a preponderance. *Thomas v. Comm'r of Soc. Sec.*, 625 F.3d 798, 800 (3d Cir. 2010).

In situations where a claimant files concurrent applications for SSI and DIB, courts have consistently addressed the issue of a claimant's disability in terms of meeting a single disability

standard under the Act. *See Burns v. Barnhart*, 312 F.3d 113, 119 n.1 (3d. Cir. 2002) ("This test [whether a person is disabled for purposes of qualifying for SSI] is the same as that for determining whether a person is disabled for purposes of receiving social security disability benefits [DIB]. Compare 20 C.F.R. § 416.920 with § 404.1520."); *Sullivan v. Zebley*, 493 U.S. 521, 525 n.3 (1990) (holding that regulations implementing the Title II [DBI] standard, and those implementing the Title XVI [SSI] standard are the same in all relevant aspects.); *Morales v. Apfel*, 225 F.3d 310, 315-16 (3d. Cir. 2000) (stating claimants burden of proving disability is the same for both DIB and SSI).

When resolving the issue of whether an adult claimant is or is not disabled, the Commissioner utilizes a five-step sequential evaluation. 20 C.F.R. §§ 404.1520 and 416.920 (1995). This process requires the Commissioner to consider, in sequence, whether a claimant (1) is working, (2) has a severe impairment, (3) has an impairment that meets or equals the requirements of a listed impairment, (4) can return to his or her past relevant work, and (5) if not, whether he or she can perform other work. *See* 42 U.S.C . § 404.1520; *Newell v. Comm'r of Soc. Sec.*, 347 F.3d 541, 545-46 (3d Cir. 2003) (*quoting Burnett v. Comm'r of Soc. Sec.*, 220 F.3d 112, 118-19 (3d Cir. 2000)).

To qualify for disability benefits under the Act, a claimant must demonstrate that there is some "medically determinable basis for an impairment that prevents him or her from engaging in any substantial gainful activity for a statutory twelve-month period." *Fargnoli v. Massanari,* 247 F.3d 34, 38-39 (3d Cir. 2001) (internal citation omitted); 42 U.S.C. § 423 (d)(1) (1982). This may be done in two ways:

(1) by introducing medical evidence that the claimant is disabled *per se* because he or she suffers from one or more of a number of serious impairments delineated in 20 C.F.R. § 404

subpt. P, app. 1. *See Heckler v. Campbell*, 461 U.S. 458 (1983); *Newell,* 347 F.3d at 545-46; *Jones v. Barnhart*, 364 F.3d 501, 503 (3d Cir. 2004); or,

(2) in the event that claimant suffers from a less severe impairment, by demonstrating that he or she is nevertheless unable to engage in "any other kind of substantial gainful work which exists in the national economy . . . ." *Campbell,* 461 U.S. at 461 (citing 42 U.S.C. § 423 (d)(2)(A)).

In order to prove disability under the second method, a claimant must first demonstrate the existence of a medically determinable disability that precludes plaintiff from returning to his or her former job. *Newell,* 347 F.3d at 545-46; *Jones,* 364 F.3d at 503. Once it is shown that claimant is unable to resume his or her previous employment, the burden shifts to the Commissioner to prove that, given claimant's mental or physical limitations, age, education and work experience, he or she is able to perform substantial gainful activity in jobs available in the national economy. *Rutherford*, 399 F.3d at 551; *Newell,* 347 F.3d at 546; *Jones*, 364 F.3d at 503; *Burns*, 312 F.3d at 119.

Where a claimant has multiple impairments which may not individually reach the level of severity necessary to qualify any one impairment for Listed Impairment status, the Commissioner nevertheless must consider all of the impairments in combination to determine whether, collectively, they meet or equal the severity of a Listed Impairment. *Diaz v. Comm'r of Soc. Sec.*, 577 F.3d 500, 502 (3d Cir. 2009); 42 U.S.C. § 423(d)(2)(C) ("in determining an individual's eligibility for benefits, the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity").

In this case, the ALJ determined that Mr. Hazlett was not disabled within the meaning of the Act at the fifth step of the sequential evaluation process. The ALJ concluded that while Mr. Hazlett did have a number of severe impairments – Asperger's, ADHD, learning disorder, major depressive disorder, OCD, and anxiety disorder – he did not have an impairment or combination of impairments that "met or medically equaled" a Listed Impairment during the relevant period. ECF No. 6-2 at 18-21. In his findings, the ALJ explicitly considered Listings 12.02 (organic mental disorders), 12.04 (affective disorders), 12.06 (anxiety-related disorders), and 12.10 (autistic disorder and other pervasive developmental disorders). *Id.* at 19.

The ALJ then found that Mr. Hazlett retained the RFC to perform a full range of work at all exertional levels, with a number of specific nonexertional limitations:

1) He was limited to understanding, remembering, and carrying out simple instructions and performing simple, routine tasks;

2) He could not have work-related contact with co-workers and the public, and could have only occasional supervision, such that his work would be essentially isolated; and

3) He was limited to a "low stress work environment" – in other words, no production rate pace work, but instead goal-oriented work with only occasional and routine changes in the work setting.

Id. at 21. From the testimony of the VE, the ALJ next concluded that although Mr. Hazlett had no past relevant work, jobs existed in significant numbers in the national economy that an individual with his age, education, work experience, and RFC could perform – including bench assembly worker, light hand packer, and building cleaner. *Id.* at 26. On that basis, the ALJ found that Mr. Hazlett was capable of making a successful adjustment to work during the relevant period and therefore was not disabled within the meaning of the Act. *Id.* at 26-27.

B. Discussion

As set forth in the Act and applicable case law, this Court may not undertake a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. *Monsour Med. Ctr. v. Heckler*, 806 F.2d 1185, 1190 (3d Cir. 1986), *cert. denied.*, 482 U.S. 905 (1987). The Court must simply review the findings and conclusions of the ALJ to determine whether they are supported by substantial evidence. 42 U.S.C. § 405(g); *Schaudeck v. Comm'r of Soc. Sec. Admin.*, 181 F.3d 429, 431 (3d Cir. 1999).

Mr. Hazlett advances four principal arguments for granting summary judgment in his favor. First, he argues that the ALJ erred in determining that his condition did not meet or equal in severity Listings 12.04, 12.06, and/or 12.10. Second, he alleges that the ALJ misconstrued the opinion of his treating psychiatrist and erroneously gave little weight to the opinions of his therapist and nurse practitioner and portions of the opinion of his consultative psychological examiner. Third, Mr. Hazlett contends that the ALJ erred in determining his RFC by failing to adequately account for his mental health limitations. Finally, he argues that the ALJ improperly disregarded portions of the VE's testimony and relied on a hypothetical question that did not accurately encompass all of his mental health limitations. The Court will address each issue in turn.

1. The ALJ's Determination that Plaintiff's Impairments did not Meet or Equal a Listed Impairment

At step three, the claimant bears the burden of presenting medical evidence to show that his impairment matches a Listing or is equal in severity to a Listed Impairment. *Burnett v. Comm'r of Soc. Sec. Admin.*, 220 F.3d 112, 120 n.2 (3d Cir. 2000) (citing *Williams v. Sullivan*, 970 F.2d 1178, 1186 (3d Cir. 1992)). The Supreme Court has defined this burden:

> For a claimant to show that his impairment matches a listing, it must meet *all* of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify. For a claimant to qualify for benefits by showing that his unlisted impairment, or combination of impairments, is "equivalent" to a listed impairment, he must present medical findings equal in severity to *all* the criteria for the one most similar listed impairment. A claimant cannot qualify for benefits under the "equivalence" step by showing that the overall functional impact of his unlisted impairment or combination of impairments is as severe as that of a listed impairment.

Sullivan v. Zebley, 493 U.S. 521, 530-32 (1990). The Court concludes that substantial evidence supported the ALJ's determination that Mr. Hazlett's impairments did not, alone or combined, match or equal Listings 12.04 (affective disorders), 12.06 (anxiety-related disorders), and 12.10 (autistic disorder and other pervasive developmental disorders). In his decision, the ALJ explicitly considered whether Mr. Hazlett's mental impairments met those Listings. All three Listings require a level of severity that is satisfied when a set of requirements in paragraphs A and B of those Listings are present, or when the requirements in paragraph C are met. *See* 20 C.F.R. § 404, subpt. P, app. 1.

The ALJ concluded that Mr. Hazlett met the paragraph A requirements of each such Listing. ECF No. 6-2 at 19. However, he determined that Mr. Hazlett's impairments did not meet the paragraph B criteria. *Id.* at 20. The requirements for paragraph B are identical for all three Listings and read as follows:

> B. Resulting in at least two of the following:
> 1. Marked restriction of activities of daily living; or
> 2. Marked difficulties in maintaining social functioning; or
> 3. Marked difficulties in maintaining concentration, persistence, or pace; or
> 4. Repeated episodes of decompensation, each of extended duration

20 C.F.R. § 404, subpt. P, app. 1, Listings 12.04(B), 12.06(B), and 12.10(B).

The ALJ devoted a full paragraph to each paragraph B factor. He found in accordance with the report of Dr. Linda Humphreys ("Dr. Humphreys"), Mr. Hazlett's treating psychiatrist, that Mr. Hazlett was only moderately restricted in activities of daily living and in maintaining social functioning. ECF No. 6-2 at 19-20. Although Dr. Humphreys indicated that Mr. Hazlett had "constant" deficiencies in maintaining concentration, persistence, and pace, the ALJ concluded that he only had moderate limitations in that area. *Id.* at 20. The ALJ supported his conclusion with the report of Dr. Manella Link ("Dr. Link"), a state agency psychiatric examiner who reviewed Mr. Hazlett's records and found that he had moderate limitations in maintaining concentration, persistence, and pace. *Id.* He also included citations from Mr. Hazlett's own testimony, including that he plays video games "for weeks at a time with the purpose of beating them," reads animated books "from cover to cover and watches whole movies and television programs," and has been able to complete a job application.[1] *Id.*

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[1] Mr. Hazlett argues that because Dr. Humphreys found him to have "constant" deficiencies in maintaining concentration, persistence, and pace, and Dr. Julie Uran, his psychiatric consultative examiner, determined that he had marked limitations in that respect, the ALJ erred in accepting the findings of a non-examining physician over those of two examining physicians, one of whom treated him over a significant period of time. "Although treating and examining physician opinions often deserve more weight than the opinions of doctors who review records, *see, e.g.*, 20 C.F.R. § 404.1527(d)(1)-(2), '[t]he law is clear...that the opinion of a treating physician does not bind the ALJ on the issue of functional capacity." *Chandler v. Comm'r of Soc. Sec.*, 667 F.3d 356, 361 (3d Cir. 2011) (quoting *Brown v. Astrue*, 649 F.3d 193, 197 n.2 (3d Cir. 2011)). "State agent opinions merit significant consideration as well." *Id* (citing SSR 96-6p). When a conflict in the medical evidence exists, "the ALJ may choose whom to credit but 'cannot reject evidence for no reason or for the wrong reason.'" *Plummer v. Apfel*, 186 F.3d 422, 429 (3d Cir. 1999) (internal citation omitted). "The ALJ must consider all the evidence and give some reason for discounting the evidence she rejects." *Id.*

Here, the ALJ chose to credit Dr. Link's opinion instead of those of Dr. Humphreys and Dr. Uran on the sole issue of the degree of Mr. Hazlett's limitations in maintaining concentration, persistence, and pace, and supported his choice with specific testimony from Mr. Hazlett indicating that when he desired, he could maintain those mental faculties for sustained periods of time. The Court therefore concludes that the ALJ's decision in that respect was supported by substantial evidence. Further, even if the ALJ did err in failing to find that Mr. Hazlett had marked limitations in this area, because there is no credible medical evidence that he met any of the other paragraph B criteria, such error would not have affected the ALJ's determination as to the Listings and thus would not warrant

As to repeated episodes of decompensation, the ALJ found that Mr. Hazlett had not experienced any. *Id.* Mr. Hazlett points out that Dr. Humphreys reported he has suffered from "repeated" such episodes. ECF No. 6-13 at 37. To satisfy the requirements for "repeated episodes of decompensation, each of extended duration," a claimant must demonstrate:

> Exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

Gibson v. Colvin, 2013 WL 4778794, at *15-16 (citing 20 C.F.R. § 404, subpt. P, app. 1, Listing 12.00(C)(4)). To be "repeated," the claimant must have experienced three such episodes within one year, or on an average of once every four months, with each episode lasting for at least two weeks. 20 C.F.R. § 404, subpt. P, app. 1, Listing 12.00(C)(4). Nowhere in Dr. Humphreys' report, or anywhere else in the record for that matter, is there medical evidence of multiple, two-week-plus episodes requiring increased treatment for Mr. Hazlett or a less stressful situation, significant alterations in his medication, or hospitalizations or other structural living environment changes, all occurring within a year or on a four-month average. In fact, the record generally reflects that Mr. Hazlett did not treat with his therapists and psychiatrist on a consistent basis and often missed appointments, regularly failed to take his medications, and was more or less given

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remand on such grounds. *See* 20 C.F.R. § 404, subpt. P, app. 1, Listings 12.04(B), 12.06(B), and 12.10(B); *Sullivan v. Zebley*, 493 U.S. 521, 530-32 (1990).

freedom at home to go about his business as he pleased.[2] *See* ECF No. 6-2 at 22-23; ECF No. 6-14 at 59-62.

Mr. Hazlett and his mother testified about a history of regular "blackouts," during which he allegedly destroys various items of personal property and later cannot remember doing so. *See* ECF No. 6-14 at 47-49, 62-63. But those would not count as episodes of decompensation, as Mr. Hazlett has not identified any evidence demonstrating that the "blackouts" last any more than a few hours or necessitate any kind of change in his environment, treatment, or medication. Further, Mr. Hazlett cites to no medical evidence of such "blackouts," only to his and his mother's testimony. Accordingly, the Court concludes that the ALJ's finding that the record showed no episodes of decompensation of extended duration is supported by substantial evidence.

The ALJ also explicitly considered the paragraph C criteria for each of Listings 12.04, 12.06, and 12.10, finding that the medical evidence of record failed to demonstrate that Mr. Hazlett met any of those criteria. Mr. Hazlett confines his argument to whether he met the paragraph A and B criteria for such Listings. Therefore, the Court will not further address the paragraph C criteria. *See Warren G. v. Cumberland Cty. Sch. Dist.*, 190 F.3d 80, 84 (3d Cir. 1999) (an issue is waived if not raised in a party's opening brief). Because the Listings are strictly construed against claimants, *Lee v. Astrue*, 2007 WL 1101281, at *4 (E.D. Pa. Apr. 12, 2007), and Mr. Hazlett failed to present medical findings meeting all of the specified criteria of the Listings in question, the ALJ's decision that his impairments did not meet or equal a Listed Impairment was supported by substantial evidence.

[2] The record does show one two-week hospitalization at Clarion Psychiatric Hospital in 2002, after Mr. Hazlett threatened his mother with a knife. *See* ECF No. 6-12 at 41. However, since this Court is reviewing the ALJ's determination of whether Mr. Hazlett was disabled as of December 1, 2009, that episode is not relevant.

2. The ALJ's Weighing of the Relevant Medical Opinions

A "cardinal principle" of disability determinations is that the ALJ must ordinarily give the medical opinion of a treating physician substantial weight. *Morales v. Apfel*, 225 F.3d 310, 317 (3d Cir. 2000). Under the "treating physician doctrine," "a court considering a disability benefits claim must give greater weight to the findings of a treating physician than to the findings of a physician who has examined the claimant once or not at all." *Mason v. Shalala*, 994 F.2d 1058, 1067 (3d Cir. 1993). The ALJ must give a treating physician's opinion controlling weight if it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the claimant's] case record." *Fargnoli v. Massanari*, 247 F.3d 34, 42 (3d Cir. 2001). An ALJ may only reject a treating physician's assessment on the basis of contradictory medical evidence, not on speculation, credibility judgments, or lay opinion. *Id.*

As Mr. Hazlett's treating psychiatrist and a medical doctor, Dr. Humphreys is an "acceptable medical source" whose opinion is normally entitled to substantial or even controlling weight. 20 C.F.R. § 416.913(a)(2). In fact, the ALJ explicitly gave her opinion substantial weight and found it to be supported by and consistent with the rest of the record. ECF No. 6-2 at 23-24. Mr. Hazlett argues, however, that the ALJ misconstrued a crucial part of Dr. Humphreys' opinion.

In her report, Dr. Humphreys answered "yes" when directly asked, "In your opinion is Joshua Hazlett able to obtain and sustain full-time employment?" ECF No. 6-13 at 33. By way of explanation, she added, "Eventually he may be able to in a structured environment with minimal interactions. We find it difficult to identify such a young person as being 'unable' to work. Josh has limitations, but it is still possible to learn the skills necessary to sustain

employment." *Id.* Mr. Hazlett argues those expository comments show that he cannot currently work, but may be able to at some point in the future. His argument overlooks two important facts. First, Dr. Humphreys indisputably indicated that Mr. Hazlett is able to obtain and keep a full-time job by checking "yes" in response to that question. Second, as the ALJ noted in his opinion, Dr. Humphreys and Mr. Hazlett's therapist, Katie Moore, further reported that he "balks at firmly set expectations, which is demonstrated by his dropping out of school. Based upon their records and reports, they apparently reached a frustration level with [his] non-compliance, but their notes do not indicate that the claimant could not comply with treatment, rather, that he chose not to comply." ECF No. 6-2 at 23. On that basis, the Court concludes that the ALJ's decision to accord substantial weight to the opinion of Dr. Humphreys, and the manner in which he construed that opinion, was supported by substantial evidence.

Mr. Hazlett also contends that the ALJ erred in giving little weight to the opinion of Dr. Julie Uran ("Dr. Uran"), his consultative psychological examiner, as to his mental RFC, and to the opinions of Kevin Porneluzi ("Mr. Porneluzi") and Lynn Mainolfi ("Ms. Mainolfi"), his therapist and nurse practitioner at Kids Count Family Psychological Associates. While the ALJ gave substantial weight to Dr. Uran's written report, he noted that her checklist opinion of Mr. Hazlett's mental RFC was internally inconsistent in that she found him to have no difficulty dealing with simple instructions but marked limitations in following detailed instructions, interacting with others, and dealing with work related stress. *Id.* at 24. The Court has already discussed how the ALJ properly gave greater weight to the opinions of Dr. Humphreys and Dr. Link on this issue, *supra* p. 9 and n.1, and the ALJ further supported his decision by citing to Dr. Uran's global assessment functioning ("GAF") score of 55 for Mr. Hazlett, indicating "only

moderate mental health symptoms." *Id.* The ALJ therefore did not err in failing to give Dr. Uran's mental RFC findings more substantial weight.

As for Mr. Porneluzi and Ms. Mainolfi, who completed a questionnaire and psychiatric activities assessment indicating that Mr. Hazlett was disabled for a number of reasons, *see* ECF No. 6-14 at 1-17, the ALJ correctly recognized that therapists and nurse practitioners are not acceptable medical sources that can provide evidence to establish an impairment. ECF No. 6-2 at 24; 20 C.F.R. § 416.913(a). Instead, they are classified as "other sources," whose opinions the ALJ may use to show the severity of an impairment and how it affects a claimant's ability to work. 20 C.F.R. § 416.913(d). While the ALJ may consider such opinions along with all of the other evidence presented by the claimant, disability eligibility cannot solely rest upon them.[3] *Hartranft v. Apfel*, 181 F.3d 358, 361 (3d Cir. 1999) (citing 20 C.F.R. § 416.913(e)(3)). The ALJ explained that the report submitted by Mr. Porneluzi and Ms. Mainolfi contradicted the findings of Dr. Humphreys and was based upon a brief three-month treatment history. ECF No. 6-2 at 24. Therefore, the Court concludes that he did not err in giving their opinions "only some" weight.

3. The ALJ's Residual Functional Capacity Determination and Hypothetical Questions

Mr. Hazlett finally contends that the ALJ's RFC assessment and the hypothetical question he posed to the VE were incomplete because the ALJ did not fully accommodate his mental limitations in either and ignored testimony from the VE indicating that he would not be able to find full-time employment with such limitations. The ALJ concluded that Mr. Hazlett's

[3] The fact that those opinions are considered persuasive at best discredits Mr. Hazlett's argument that the ALJ should not have given great weight to Dr. Link's report because she did not have Mr. Porneluzi and Ms. Mainolfi's report to consider. The Court finds that argument to be unavailing, since their opinions cannot conclusively establish an impairment.

medically determinable impairments could reasonably be expected to cause his alleged symptoms. *Id.* at 22. The ALJ was then required to assess the intensity, persistence, and limiting effects of Mr. Hazlett's symptoms and determine the extent to which they impaired his ability to work. *Hartranft*, 181 F.3d at 362. He found that Mr. Hazlett's statements concerning the intensity, persistence, and limiting effects of his symptoms were not fully credible, giving a thorough and comprehensive explanation of Mr. Hazlett's complaints, the contrary evidence in the record, and the weight he gave to each medical opinion and hearing witness, ultimately concluding that Mr. Hazlett "has not generally received the type of medical treatment one would expect for a totally disabled individual." ECF No. 6-2 at 22-26. He incorporated the mental limitations he did find credible into Mr. Hazlett's RFC, restricting him to jobs with simple instructions, simple, routine tasks, no work-related contact with co-workers or the public, only occasional supervision, and a low stress work environment. *Id.* at 21. Therefore, the Court concludes that the ALJ's RFC determination was supported by substantial evidence.

As to the ALJ's questioning of the VE, Mr. Hazlett accurately points out that his lawyer and the ALJ had a lengthy back-and-forth with the VE about the percentage portion of a work day that an employee with his RFC could be off-task and still maintain employment. After the ALJ posed two hypotheticals encompassing the RFC he eventually determined for Mr. Hazlett, he posed a third question asking the VE to "additionally assume that the individual would be off task no less than 25 percent of each workday" or "would be absent at least one full day per work week." ECF No. 6-14 at 75-76. The VE responded that no occupations would be available in either circumstance, later clarifying that in terms of attendance, an employee could only miss one day per month at a maximum and expect to retain his job. *Id.* at 76-77. In response to a question from Mr. Hazlett's attorney, the VE then testified that if an individual was off task 15 percent of

the time, he would not be employable. *Id.* at 77. The VE also admitted that if an individual were to act in the manner that Mr. Hazlett and his mother testified about regarding his "blackouts," he would not be employable either. *Id.* The VE could not give an exact percentage that an individual could be off task and remain employed, testifying instead that such a number varied from employer to employer but generally reflected a low level of tolerance for such behavior, and was much lower than either 25 or 15 percent. *Id.* at 76-80.

According to Mr. Hazlett, all of this demonstrates that the ALJ knew that he would be off task too often during work days, miss too many days of work, and act out at work too much to be employed, and failed to properly rely on such evidence and VE testimony indicating that he could not achieve substantial gainful employment. However, while ALJs often pose a number of hypothetical questions to the VE, the VE's testimony "may only be considered for purposes of determining disability if the question accurately portrays the claimant's individual physical and mental impairments." *Podedworny v. Harris*, 745 F.2d 210, 218 (3d Cir. 1984). "Simply because a hypothetical was posed does not mean that there was sufficient evidence to support it; the ALJ ultimately relies upon only credible, medically established limitations." *Menuto v. Astrue*, 2012 WL 2594339, at *9 (W.D. Pa. June 13, 2012) (citing *Rutherford v. Barnhart*, 399 F.3d 546, 554 (3d Cir. 2005)). The ALJ's first two hypotheticals were supported by medical evidence in the record. Mr. Hazlett proffers no specific medical evidence to support the inferences that he would be off task for a certain portion of each work day or absent for at least a day per month.

Additionally, the nonexertional limitations the ALJ posed in his first two hypotheticals and ultimately adopted in his RFC are sufficient to account for the mental limitations that are adequately supported by medical evidence in the record. Importantly, because the ALJ

concluded that Mr. Hazlett was moderately limited in maintaining concentration, persistence, and pace, he constrained Mr. Hazlett to jobs with simple instructions, simple, routine tasks, little social interaction, and low stress. ECF No. 6-2 at 23-24. The Third Circuit, and this Court, have held that such limitations in an RFC and VE hypothetical are adequate to accommodate such limitations. *See McDonald v. Astrue*, 293 F. App'x 941, 946-47 (3d Cir. Sept. 26, 2008); *Menkes v. Astrue*, 262 F. App'x 410, 412-13 (3d Cir. Jan. 30, 2008); *Menuto v. Astrue*, 2012 WL 2594339, at *9 (W.D. Pa. June 13, 2012); *Haines v. Astrue*, 2012 WL 1069987, at *1 n.1 (W.D. Pa. Mar. 29, 2012); *Grimm v. Astrue*, 2013 WL 24670, at *1 n.1 (W.D. Pa. Jan. 2, 2013); *Stiteler v. Comm'r of Soc. Sec.*, 2013 WL 1327236, at *1 n.1 (W.D. Pa. Apr. 1, 2013); *but see Demacio v. Comm'r of Soc. Sec.*, 2014 WL 1278086, at *14 (W.D. Pa. Mar. 27, 2014) (finding that limitation to simple, routine tasks was not sufficient to accommodation moderate limitations in concentration, persistence, and pace where VE testified that hypothetical employers would have no tolerance for being off task during the work day).

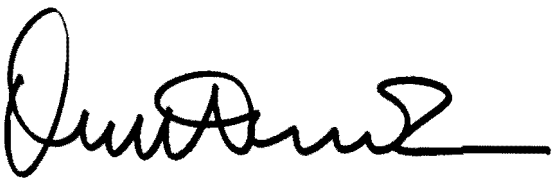
Further, in her mental RFC report, which the ALJ appropriately gave great weight in his opinion, Dr. Link opined that Mr. Hazlett "would be able to make simple decisions. Moreover, he can sustain an ordinary routine without special supervision...[t]he claimaint is able to meet the basic mental demands of competitive work on a sustained basis despite the limitations resulting from his impairments." ECF No. 6-13 at 17. It is therefore plain to the Court that the ALJ's RFC and his first two VE hypotheticals fairly encompassed all of Mr. Hazlett's individual mental impairments and thus were supported by substantial evidence, *see Baldwin v. Colvin*, 2014 WL 241755, at *7 (W.D. Pa. Jan. 22, 2014), and that he properly disregarded the later hypotheticals, which were not supported by credible, medically established evidence.

IV. CONCLUSION

It is undeniable that Mr. Hazlett has a number of impairments, and this Court is sympathetic and aware of the challenges he faces in seeking gainful employment. Under the applicable standards of review and the current state of the record, however, the Court must defer to the reasonable findings of the ALJ and his conclusion that Mr. Hazlett is not disabled within the meaning of the Social Security Act, and that he is able to perform a wide range of work at all exertional levels.

For these reasons, the Court will grant the Motion for Summary Judgment filed by the Commissioner and deny the Motion for Summary Judgment filed by Plaintiff.

An appropriate Order follows.



Mark R. Hornak
United States District Judge

Dated: August 4, 2014
cc: All Counsel of Record