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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARITZA SANCHEZ-ORTIZ,

Plaintiff

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant

CIVIL 12-1655 (JA)

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OPINION AND ORDER

On August 10, 2012, plaintiff filed this petition for judicial review of a final decision of the Commissioner of Social Security which denied her application for a period of disability and Social Security disability insurance benefits. The answer to the complaint was filed on January 15, 2013 (Docket No. 7). Plaintiff filed a memorandum against the final decision of the Commissioner on May 20, 2013 (Docket No. 21) and the defendant filed a memorandum in support of the final decision on July 23, 2013 (Docket No. 24).

The only issue for the court to determine is whether the final decision that plaintiff is not under a disability is supported by substantial evidence in the record when looking at such record as a whole. In order to be entitled to such benefits, plaintiff must establish that she was disabled under the Social Security Act from September 17, 2003, the alleged onset date of disability, to December 31, 2007, the date plaintiff last met the earnings requirements for disability benefits under the Act. See Evangelista v. Sec'y of Health & Human Servs., 826 F.2d 136, 140 n.3 (1st Cir. 1987).

Plaintiff filed her first application for disability benefits on September 30, 2002 claiming disability beginning on December 21, 2001. (Tr. at 210), but

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3 moved to withdraw the request fifteen months later as premature. (Tr. at 149).
4 The motion was granted and that application was dismissed on June 24, 2004.
5 (Tr. at 83). Plaintiff filed a second application for a period of disability and
6 disability insurance benefits on February 11, 2004. The application was denied
7 initially and on reconsideration. A hearing was requested but the request was
8 then withdrawn and a decision was made without a hearing. (Tr. at 101, 106).

9 After evaluating the evidence of record, Administrative Law Judge John D.
10 McNamee-Aleman entered the following findings on September 11, 2007:

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12 1. The claimant meets the insured status requirements of the
13 Social Security Act through December 31, 2009.
14 2. The claimant has not engaged in substantial gainful activity
15 since February 7, 2002, the alleged onset date (20 CFR §
16 404.1571 et seq.).
17 3. The claimant has the following severe combination of
18 impairments: moderate carpal tunnel syndrome, cervical and
19 lumbar sprains and affective disorder. (20 CFR §
20 404.1520(c)).
21 4. The claimant does not have an impairment or combination of
22 impairments that meets or medically equals one of the listed
23 impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20
24 CFR § 404.1525 and 404.1526).
25 5. After careful consideration of the entire record, the
26 undersigned finds that the claimant has the residual functional
27 capacity to perform light work except that she should be
afforded the opportunity to alternate positions, refrain from
repeated twisting, crouching, kneeling, balancing, or heavier
exertions. Climbing could be contraindicated during
exacerbations of pain. Her depression limits ability to perform
complex tasks or deal with the public, but does not
significantly interfere with memory, attention or
concentration.
6. The claimant is capable of performing past relevant work as
assembler. This work does not require the performance of
work-related activities precluded by the claimant's residual
functional capacity (20 CFR 404.1565).
7. The claimant has not been under a disability, as defined in the
Social Security Act, from February 7, 2002 through the date
of this decision (20 CFR § 404.1520(f)).

Tr. at 74-81.

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4 The finding of the Commissioner reflects an application of step four of the
5 sequential evaluation process. See 20 C.F.R. § 404.1520(e). At step four the
6 initial burden is on the claimant to show that she can no longer perform her
7 former work because of her impairment(s). Manso-Pizarro v. Sec’y of Health &
8 Human Servs., 76 F.3d 15, 17 (1st Cir. 1996); see Santiago v. Sec’y of Health &
9 Human Servs., 944 F.2d 1, 5 (1st Cir. 1991). Thence, the Commissioner must
10 compare the physical and mental demands of the past work with the current
11 functional capability. See 20 C.F.R. § 404.1560(b). At this stage, the
12 administrative law judge is entitled to credit a claimant’s own description of her
13 former job duties and functional limitations but has some burden independently
14 to develop the record. See Manso-Pizarro v. Sec’y of Health & Human Servs., 76
15 F.3d at 17; Santiago v. Sec’y of Heath & Human Servs., 944 F.2d at 5-6.

16 Petitioner sought a Request for Review of Hearing Decision on October 31,
17 2007. (Tr. at 66). By Order of the Appeals Council dated November 13, 2009, the
18 Appeals Council granted the request for review under the error of law provision
19 of 20 C.F.R. § 404.970, vacated the hearing decision and remanded the case to
20 the administrative law judge for further proceedings. (Tr. at 63-64). It noted
21 that a form by a treating physician, Dr. Jose Crespo Rafols, who indicated extreme
22 physical limitations on the part of plaintiff, was not addressed in the decision, thus
23 requiring further evaluation. (Tr. at 63). The Appeals Council also noted
24 petitioner’s carpal tunnel syndrome as a severe impairment, but no manipulation
25 restrictions were identified from said impairment. A State Agency physician had
26 indicated that petitioner’s ability to finger, feel and handle were limited and that
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3 her past work as assembler required frequent fingering, feeling and handling, thus
4 warranting further evaluation.

5 The administrative law judge was directed to give consideration to the
6 treating source opinion of Dr. Crespo Rafols, and explain the weight given to such
7 opinion. The administrative law judge was also directed to give consideration to
8 plaintiff's maximum residual functional capacity and provide appropriate rationale
9 in support of the assessed limitations, including the carpal tunnel syndrome. (Tr.
10 at 64). The administrative law judge was also directed, if warranted, to obtain
11 evidence from a vocational expert to clarify the effect of the assessed limitations
12 on plaintiff's ability to perform her past relevant work, and as applicable to her
13 remaining occupational base.

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15 Upon remand, after evaluating the evidence of record, Administrative Law
16 Judge Hortensia Haaversen entered the following findings on May 4, 2010:

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18 1. The claimant meets the insured status requirements of the
19 Social Security Act through December 31, 2007.
20 2. The claimant did not engaged in substantial gainful activity
21 during the period from her alleged onset date of September
22 17, 2003 through her date last insured of December 31, 2007.
23 (20 CFR § 404.1571 et seq.).
24 3. Through the date last insured, the claimant has the following
25 severe impairments: major depression, a schizo affective
26 disorder, and a borderline personality disorder. (20 CFR §
27 404.1520(c)).
28 4. Through the date last insured, the claimant did not have an
29 impairment or combination of impairments that meets or
30 medically equals one of the listed impairments in 20 CFR Part
31 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525
32 and 404.1526).
33 5. After careful consideration of the entire record, the
34 undersigned finds, through the date last insured, the claimant
35 has the residual functional capacity to perform a full range of
36 work at all exertional levels but with the following non-
37 exertional limitations: ability to understand, execute and

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3 remember only simple instructions and work-like procedures,
4 sustain attention and maintain persistence and pace for two-
5 hour intervals, and interact with others in a low contact
6 setting.

- 7 6. Through the date last insured, the claimant was unable to
8 perform her past relevant work (20 CFR 404.1565)
9 7. The claimant was born on December 27, 1971 and was 36
10 years old, which is defined as a younger individual age 18-49,
11 on the date last insured (20 CFR 404.1563).
12 8. The claimant has at least a high school education and is able
13 to communicate in English (20 CFR 1564).
14 9. Transferability of job skills is not material to the determination
15 of disability because using the Medical-Vocational Rules as a
16 framework supports a finding that the claimant is "not
17 disabled", whether or not the claimant has transferable job
18 skills (See SSR 82-41 and 20 CFR Part 404, Subpart P,
19 Appendix 2).
20 10. Through the date last insured, considering the claimant's age,
21 education, work experience and residual functional capacity,
22 there were jobs that existed in significant numbers in the
23 national economy that the claimant could have performed (20
24 CFR 404.1569 and 404.156(a)).
25 11. The claimant was not under a disability, as defined in the
26 Social Security Act, at any time from September 17, 2003, the
27 alleged onset date, through December 31, 2007, the date last
insured. (20 CFR § 404.1520(g)).

Tr. at 19-30.

18 The administrative law judge ended the sequential inquiry at step five. At
19 this level, it has already been determined that the claimant cannot perform any
20 work she has performed in the past due to a severe impairment or combination of
21 impairments. The inquiry requires a consideration of the claimant's residual
22 functional capacity as well as the claimant's age, education, and past work
23 experience to see if the claimant can do other work. If the claimant cannot do
24 other work, a finding of disability will follow. See 20 C.F.R. § 404.1520(f). At step
25 five, the Commissioner bears the burden of determining that significant jobs exist
26 in the national economy given the above factors. See Nguyen v. Chater, 172 F.3d
27 31 (1st Cir. 1999); Lancellotta v. Sec'y of Health & Human Servs., 806 F.2d 284,

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3 284 (1st Cir. 1986); Vázquez v. Sec’y of Health & Human Servs., 683 F.2d 1, 2 (1st
4 Cir. 1982); Rodriguez-Gonzalez v. Astrue, 854 F. Supp. 2d 176, 180 (D.P.R.
5 2012); Hatcher v. Commissioner of Social Security, 770 F. Supp. 2d 452, 457
6 (D.P.R. 2011).

7 Plaintiff has the burden of proving that she has become disabled within the
8 meaning of the Social Security Act. See Bowen v. Yuckert, 482 U.S. 137, 107 S.
9 Ct. 2287 (1987). A finding of disability requires that plaintiff be unable to perform
10 any substantial gainful activity or work because of a medical condition which has
11 lasted or which can be expected to last for a continuous period of at least twelve
12 months. See 42 U.S.C. § 416(i)(1). In general terms, evidence of a physical or
13 mental impairment or a combination of both is insufficient for the Commissioner
14 to award benefits. There must be a causal relationship between such impairment
15 or impairments and plaintiff’s inability to perform substantial gainful activity. See
16 McDonald v. Sec’y of Health & Human Servs., 795 F.2d 1118, 1120 (1st Cir. 1986).
17 Partial disability does not qualify a claimant for benefits. See Rodríguez v.
18 Celebrezze, 349 F.2d 494, 496 (1st Cir. 1965); Mercado v. Commissioner of Social
19 Security, 767 F. Supp. 2d 278, 281 (D.P.R. 2010).

20 Plaintiff argues in her memorandum of law that she has very significant non-
21 exertional limitations and that, considering the burden-shifting of step five of the
22 sequential analysis, a vocational expert was needed in order to determine the
23 extent of erosion on her occupational base. (Docket No. 21 at 2,14). See
24 Goodermote v. Sec’y of Health & Human Svcs., 690 F.2d 5, 7 (1st Cir. 1982).

25 Plaintiff also argues that the administrative law judge did not adequately explain
26 the reduced weight given to consultant reports of a State Agency non-examining
27 psychiatrist as well as the testimony of an examining psychiatric consultant. See

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3 20 C.F.R. § 404.1527(c)(2)(ii). (Docket No. 21 at 3-4). Plaintiff stresses as part
4 of her argument that the administrative law judge applied the incorrect legal
5 standard, that the Medical Vocational Guidelines, 20 § C.F.R. Part 404, Subpart
6 P, Appendix 2 , Tables 1-3 (GRID) was incorrectly used because of the extent of
7 the very significant, severe non-exertional impairments, which would require the
8 use of a vocational expert. See e.g. Burgos Lopez v. Secretary of Health and
9 Human Services, 747 F.2d 37, 42 (1st Cir. 1984). Plaintiff argues that if there are
10 moderate limitations based upon a mental impairment, a vocational expert is
11 required and the GRID is inapplicable even if used as a framework. (Docket No.
12 21 at 17-18). Making reference to the administrative law judge's conclusions in
13 relation to plaintiff's non-exertional limitations, plaintiff argues that the mental
14 residual functional assessments of Dr. Vecchini and the reports and testimony of
15 Dr. Rodriguez suggest at least moderate limitations, and thus require the
16 testimony of a vocational expert at step five of the sequential inquiry. Plaintiff
17 requests that the final decision of the Commissioner be reversed, or in the
18 alternative that the case be remanded to the Commissioner for necessary further
19 proceedings.

20 The Commissioner responds that the Medical Vocational Guidelines were
21 correctly used as a framework for decision-making and that no vocational expert
22 was needed at the administrative hearing since plaintiff's non-exertional limitations
23 are not as significant as painted by her. The Commissioner argues generally that
24 the final decision complies with the substantial evidence rule, and that substantial
25 evidence supports the administrative law judge's determination as to plaintiff's
26 residual functional capacity, particularly when compared to plaintiff's vocational
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3 profile, and considering that she possessed no exertional limitations through the
4 date last insured. (Docket No. 24 at 18).

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6 A. MEDICAL HISTORY

7 The administrative law judge found that plaintiff has no significant exertional
8 limitations from a physical standpoint and the bilateral carpal tunnel syndrome that
9 she does have is considered non-severe and stable as of the date of the final
10 decision, this notwithstanding her having been treated for cervico-dorsal myositis,
11 and strain of both shoulders at the State Insurance Fund from March 26, 2001
12 through August 5, 2003. (Tr. at 23,24, 25).

13 Plaintiff's mental impairment apparently began in November 2002. She was
14 depressed and had panic attacks which lead to physical symptoms. She was
15 prescribed Paxil, Ambien, Vistaril and Wellbutrin. On July 24, 2004, she resumed
16 treatment for a mental condition and was prescribed Xanax and Paxil and remained
17 relatively stable from 2005 to 2008 with her condition not suffering changes.
18 Xanax was later exchanged for Thorazine and Flouxetine. A diagnosis of
19 generalized anxiety disorder and recurrent severe major depression without
20 psychotic features remained unchanged. Plaintiff did receive treatment at the State
21 Insurance Fund from February to November 2002 for cervico-dorsal myositis. (Tr.
22 at 439).

23 A psychiatric evaluation by Dr. Luis F. Iturrino Echeandia, M.D. dated
24 January 17, 2003 resulted in a diagnosis of Axis I: depressive disorder NOS, and
25 Axis III: history of radiculopathy. (Tr. at 400-04). The prognosis was guarded.

26 A physical residual functional capacity assessment dated February 19, 2003
27 by internist Lorena Diaz Trancon, M.D. reflected some exertional limitations in
lifting and/or carrying and operating bilateral leg controls. (Tr. at 406-13). There

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3 were some postural and manipulative limitations. The physical residual functional
4 capacity assessment was affirmed by internist Jose R. Pesquera-Garcia, M.D.

5 A psychiatric review technique form dated February 28, 2003 by Dr. Carlos
6 Vazquez reveals affective disorder not satisfying any noted diagnostic criteria. (Tr.
7 at 415-28). Plaintiff was dramatic and evasive, with depressive mood. There were
8 moderate limitations in activities of daily living and difficulties in maintaining social
9 functioning. There were mild limitations in maintaining concentration, persistence
10 and pace. A mental residual functional capacity assessment by Dr. Vazquez
11 reflected no limitations in understanding and memory, and moderate limitations
12 in the ability to perform activities within a schedule, maintain regular attendance,
13 be punctual within customary tolerances, and in the ability to sustain an ordinary
14 routine without special supervision. (Tr. at 429-32). There were also moderate
15 limitations in social interaction, and the ability to respond appropriately to changes
16 in the work setting. Dr. Vazquez noted that plaintiff could learn, understand,
17 remember and carry out simple, detailed instructions, make simple decisions,
18 relate to others, and complete a work day. This assessment was affirmed on
19 October 23, 2003 by clinical psychologist Orlando Reboredo, Ph.D. (Tr. at 430).

20 Plaintiff began treatment with Dr. Jose Crespo-Rafols on August 29, 2003,
21 complaining of pain in the neck and back. She visited the doctor in January,
22 March, May, June and November 2004 and complained of depression and panic
23 attacks. Among the medications she was taking at the time were Flexeril, Relafen
24 and Prednisone. (Tr. at 659-65; 801-04).

25 On September 15, 2003, Dr. Samuel Mendez, a neurological examining
26 consultant for Social Security, diagnosed chronic lumbalgia and cervicalgia,
27 bilateral carpal tunnel syndrome, and lumbosacral syndrome. Tinnel was positive

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3 for the hand. Sustained activity for the hands was deemed limited to 15 minutes.
4 (Tr. at 525).

5 A consultative evaluation by psychiatrist Dr. Armando Caro on September
6 17, 2003 (the alleged onset date for disability) resulted in a diagnosis of pain
7 disorder associated with a general medical condition and severe major depressive
8 disorder and a poor prognosis. (Tr. at 531-35). Plaintiff's GAF was 55. The doctor
9 noted that plaintiff had the capacity to handle her own funds, and that her capacity
10 for social interacting was impaired based upon her interaction with him as
11 interviewer. The prognosis was poor. (Tr. at 531-32).

12 Plaintiff visited the hospital emergency room on October 24, 2003 with chest
13 pains and depression.

14 Neurologist Dr. Alfredo Perez evaluated plaintiff on June 8, 2004 and during
15 the interview plaintiff complained of cervical pain radiating to her shoulders and
16 arms, worsening with movements and some positions. She also stated having
17 numbness as well as cramps in the hands. He diagnosed bilateral carpal tunnel
18 syndrome, low back pain and cervical myositis. (Tr. at 616-23).

19 A physical residual functional capacity assessment by Dr. Gilberto Fragoso
20 Ledesma dated July 6, 2004 reflected some exertional limitations due to carpal
21 tunnel syndrome but is otherwise unremarkable. (Tr. at 625-32). This assessment
22 was affirmed by Dr. Pesquera Garcia on March 7, 2005.

23 On October 14, 2004, Dr. Roque Stella prepared a psychiatric review
24 technique form and found affective disorder containing depressive syndrome
25 characterized by anhedonia or pervasive loss of interest in almost all activities,
26 sleep disturbance, decreased energy, feelings of guilt or worthlessness and
27 difficulty concentrating or thinking. (Tr. at 641-54). He found moderate functional

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3 limitations under Listing 12.04. The psychiatric review technique form was
4 reviewed by psychiatrist Dr. Luis R. Vecchini and affirmed as written on March 8,
5 2009. (Tr. at 653). A mental residual functional capacity assessment was also
6 performed and some moderate limitations were noted in ability to understand and
7 remember detailed instructions, to maintain attention and concentration for
8 extended periods, and in the ability to perform activities within a schedule,
9 maintain regular attendance, be punctual within customary tolerances. Dr. Roque
10 Stella noted that the 31-year old claimant alleged a mental condition since
11 February 4, 2002. He stated that the evidence reveals a claimant with depressed
12 mood, somatic complaints. The preponderance of the evidence reflects a
13 significant condition. Plaintiff could understand, execute and remember only simple
14 instructions and work-like procedures. She could sustain attention for up to two
15 hour intervals and maintain persistence and pace. She could interact with others
16 on a low contact setting. (Tr. at 657).

17 At the February 1, 2010 administrative hearing, plaintiff waived her right to
18 be present and consequently did not testify. She was represented by attorney
19 Alberto Diaz, Esq., an experience practitioner. A vocational expert was apparently
20 available through telephone. After a lengthy exchange between the administrative
21 law judge and counsel, Dr. Alberto Rodriguez-Robles, internist, was called to testify
22 as plaintiff's treating physician.¹ He stated that he had seen plaintiff on February
23 28, May 20, and September 17, 2002. He then saw her for the Disability
24 Determination Service on July 15, 2004, and last saw her on January 26, 2010.

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27 ¹Dr. Hector A. Puig, a vocational expert, was available by telephone during the hearing but it was determined that his testimony was not necessary. (Tr. at 19, 807).

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3 (Tr. at 820-21). He testified that plaintiff, following the criteria of the DSM-IV-
4 TR, in axis I, had a major depressive disorder, described in the record as a single
5 episode. (Tr. at 822). "That is the only one and it has been continuous over time."

6 On July 15, 2004, he felt that plaintiff's condition had worsened. (Tr. at 634-39).
7 He determined that her mental condition affected her work because she was
8 restless, nervous and frightened and could not concentrate, forgetting things
9 easily. The prognosis was poor.

10 Dr. Rodriguez-Robles testified further that plaintiff met the Listings 12.04A
11 and 12.04B, manifested be anhedonia or pervasive loss of interest in almost all
12 activities, sleep disturbance, psychomotor retardation, decreased energy, feelings
13 of worthlessness, and difficulty concentrating. (Tr. at 820-833), This
14 symptomatology had resulted in marked restrictions of daily activities, marked
15 difficulties in maintaining social functioning, concentration, persistence, and pace,
16 and two or more episodes of decompensation, each of extended duration.

17 B. ANALYSIS

18 1. RESIDUAL FUNCTIONAL CAPACITY: GRID

19 After considering the consulting psychiatrist's testimony, the administrative
20 law judge noted that plaintiff's psychiatric treatment had been variable and
21 sporadic, and that even with such consistency, the record reflected that she
22 responded well to treatment. It also reflected that the gaps in treatment were
23 unexplained. (Tr. at 27, 28). In relation to plaintiff's residual functional capacity,
24 when a nonexertional limitation is found to impose no significant restriction on the
25 range of work a claimant is exertionally able to perform, reliance on medical-
26 vocational guidelines, known as the Grid, is appropriate. See Ortiz v. Secretary
27 of Health and Human Services, 890 F. 2d 520, 524 (1st Cir. 1989); Rodriguez-

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3 Gonzalez v. Astrue, 854 F. Supp. 2d at 185; Even where a nonexertional
4 impairment is significant, the Grid may still be used as "a framework for
5 consideration of how much the individual's work capability is further diminished."
6 20 C.F.R. pt. 404, subpt. P, app. 2, § 200.00(e)(2) (1997); Ortiz v. Sec'y of Health
7 & Human Servs., 890 F.2d at 524.

8 If the applicant's limitations are exclusively exertional, then the
9 Commissioner can meet [the] burden through the use of a chart
10 contained in the Social Security regulations. 20 C.F.R. §
11 416.969; Medical-Vocational Guidelines, 20 C.F.R. pt. 404,
12 subpt. P, App. 2, tables 1-3 (2001), cited in 20 C.F.R. §
13 416.969; Heckler v. Campbell, 461 U.S. 458, 103 S. Ct. 1952,
14 76 L. Ed. 66 (1983). "The Grid," as it is known, consists of a
15 matrix of the applicant's exertional capacity, age, education,
16 and work experience. If the facts of the applicant's situation fit
17 within the Grid's categories, the Grid "directs a conclusion as to
18 whether the individual is or is not disabled." 20 C.F.R. pt. 404,
19 subpt. P, App. 2, § 200.00(a), cited in 20 C.F.R. § 416.969.
20 However, if the applicant has nonexertional limitations (such as
21 mental, sensory, or skin impairments, or environmental
22 restrictions such as an inability to tolerate dust, id. § 200(e))[,]
23 that restrict [her] ability to perform jobs [she] would otherwise
24 be capable of performing, then the Grid is only a "framework to
25 guide [the] decision." 20 C.F.R. § 416.969a(d) (2001).

18 Seavey v. Barnhart, 276 F.3d 1, 5 (1st Cir. 2001); Rodriguez-Gonzalez v. Astrue,
19 854 F. Supp. 2d at 185. In the case before the court, the administrative law judge
20 correctly used Medical-Vocational Rule 204.00, codified in 20 C.F.R., Part 404,
21 Subpart P, Appendix 2, as a framework for decision-making, since the matrix
22 cannot otherwise be used under the circumstances. Specifically, the administrative
23 law judge noted that while plaintiff's ability to perform work at all exertional levels
24 was compromised by non-exertional limitations, those limitations had little or no
25 effect on the occupational base of unskilled work at all exertional levels. (Tr. at
26 29). The administrative law judge noted that the Social Security Administration
27 has taken notice of the existence of approximately 1,600 separate unskilled

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3 occupations in eight broad occupational categories, each occupation representing
4 numerous jobs in the national economy. (Tr. at 29). Plaintiff was found to be able
5 to adjust to the requirements of such jobs considering her residual functional
6 capacity.

7 2. OPINION OF DR. JOSE CRESPO-RAFOLS, TREATING PHYSICIAN

8 The administrative law judge on remand was directed by the Appeals Council
9 to give consideration to the treating source opinion of Dr. Crespo-Rafols, and to
10 explain the weight given to such opinion. The administrative law judge did just
11 that. Of course, such consideration complies with one of the directives of the
12 Appeals Council but does not necessarily comply with the requirements of the
13 substantial evidence rule. Nevertheless, when considering the record as a whole,
14 the consideration becomes one of the components of such compliance, as is further
15 explained below.

16 The administrative law judge attempted to further develop the record by
17 seeking further information from Dr. Crespo-Rafols, with no success. Unanswered
18 was the inquiry into possible malingering, the use of plaintiff's father's prescription
19 medication for pain, as well as the request for Albuterol when plaintiff's lungs were
20 clear. (Tr. at 25)². The administrative law judge noted that Dr. Crespo-Rafols had
21 made notations in the medical records that plaintiff had been pain-free and the
22 prescribed medication had helped her improve her condition.

23 3. CARPAL TUNNEL SYNDROME

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26 ²Dr. Rodriguez-Robles testified that plaintiff could have suffered from
27 panic attacks which would have been a trigger to seek Albuterol. As to the
malingering, the doctor noted that plaintiff does present real symptoms as
reflected by the treatment she has received. (Tr. at 825).

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3 The Appeals Council directed the administrative law judge to give
4 consideration to plaintiff's maximum residual functional capacity and provide
5 appropriate rationale in support of the assessed limitations, including the carpal
6 tunnel syndrome (a nonexertional impairment). (Tr. at 64). However
7 administrative law judge Haaversen determined that there were no corresponding
8 manipulative restrictions identified on the ability to function. (Tr. at 20). She
9 found the carpal tunnel syndrome to be non-severe since the condition was rated
10 as mild on November 21, 2002. On February 29, 2008, an electromyogram and
11 nerve conduction study by Dr. Arturo J. Lopez-Rivera showed mild sensorial
12 median neuropathy without evidence of carpal tunnel syndrome. (Tr. at 801-04).
13 The administrative law judge's reasoning for a non-severe finding in that there was
14 not even evidence of the use of wrist braces (a conservative form of treatment)
15 in the medical record, and no recommendation for surgery. (Tr. at 23). Cf. Jones
16 v. Astrue, 623 F.3d 1155, 1158 (7th Cir. 2010). However, a hand surgeon
17 apparently prescribed bilateral hand splints, therapies, B6 and neurontin. (Tr. at
18 393). Plaintiff denied improvement with the therapy.

19 4. OPINION OF TREATING PHYSICIAN

20 The administrative law judge considered plaintiff's exertional limitations as
21 non-severe in her rationale, governed in part by 20 C.F.R. § 404.1529, SSR 96-4p,
22 SSR 96-7p. See Avery v. Sec'y of Health & Human Servs., 797 F.2d 19 (1st Cir.
23 1986). The factors to be weighed under the correct standard are the following:

- 24 (I) Your daily activities;
- 25 (ii) The location, duration, frequency, and intensity of your
26 pain or other symptoms;
- 27 (iii) Precipitating and aggravating factors;

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- 3 (iv) The type, dosage, effectiveness, and side effects of any
4 medication you take or have taken to alleviate your pain
or other symptoms;
- 5 (v) Treatment, other than medication, you receive or
6 have received for relief of your pain or other
symptoms;
- 7 (vi) Any measures you use or have used to relieve your pain
or other symptoms (e.g., lying flat on your back, standing
8 for 15 to 20 minutes every hour, sleeping on a board,
etc.); and
- 9 (vii) Other factors concerning your functional limitations and
restrictions due to pain or other symptoms.

10 20 C.F.R. § 404.1529(c)(3); see also SSR 96-7p. (Tr. at 24).

11 The administrative law judge did not give controlling weight to the reports
12 of three treating physicians because they were not well supported nor were they
13 consistent with the preponderance of the medical evidence of record. The
14 administrative law judge also noted that there were not sufficient satisfactory
15 explanations for the bases of the conclusions of the treating physicians.
16 Specifically, although the treating psychiatrist testified that plaintiff's condition met
17 the listings, the administrative law judge concluded that the listings requirements
18 were not satisfied, and reasonably explained that conclusion. (Tr. at 23-24). The
19 administrative law judge relied more on the evaluations of the state agency
20 qualified medical personnel in reaching her findings as to the extent of plaintiff's
21 limitations in terms of severity. (Tr. at 26.) While plaintiff has argued that
22 greater weight should be given to the medical evidence from her treating
23 physicians, it is well settled that even the opinions of treating physicians are not
24 necessarily entitled to greater weight merely because they are those of treating
25 physicians. Rodríguez Pagán v. Secretary of Health & Human Servs., 819 F.2d 1,
26 3 (1st Cir. 1987); Sitar v. Schweiker, 671 F.2d 19, 22 (1st Cir. 1982); Pérez v.
27 Secretary of Health, Educ. & Welfare, 622 F.2d 1, 2 (1st Cir. 1980); Camacho v.

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3 Astrue, ___ F. Supp. 2d ___, 2013 WL 5636687 at *4 (D.P.R.2013); Rosado-
4 Lebrón v. Comm’r of Soc. Sec., 193 F. Supp. 2d 415, 417 (D.P.R. 2002). The
5 administrative law judge is not always required to give such opinions controlling
6 weight. See 20 C.F.R. § 404.1527(d); Barrientos v. Sec’y of Health & Human
7 Servs., 820 F.2d 1, 2-3 (1st Cir. 1987); cf. Sánchez v. Comm’r of Soc. Sec., 270
8 F. Supp. 2d 218, 221 (D.P.R. 2003). The administrative law judge found that the
9 preponderance of the medical evidence is not consistent with plaintiff’s allegations,
10 and also did not give full credibility to the allegations because they were not
11 compatible with the information contained in the reports of the non-treating state
12 agency physicians, as well as the medical history. See 20 C.F.R. § 404.1527(f);
13 SSR 96-6p.³

14 D. CONCLUSION

15 I conclude that the final decision reflects a reasonable balancing and
16 weighing of evidence and the making of credibility determinations by the
17 administrative law judge. See Gray v. Heckler, 760 F.2d 369, 374 (1st Cir. 1985);
18 Tremblay v. Sec’y of Health & Human Servs., 676 F.2d 11, 12 (1st Cir. 1982);
19 Rodríguez v. Sec’y of Health & Human Servs., 647 F.2d 218, 222 (1st Cir. 1981).
20 The court’s function is to ascertain whether there is evidence in the record to
21 sustain the administrative law judge’s reasoning. “Substantial evidence” is more
22 than a “mere scintilla,” see Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct.

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25 ³Plaintiff has submitted a thoughtful memorandum of law accompanied by
26 specific case law, such as Figueroa-Rodriguez v. Secretary of Health & Human
27 Services, 845 F.2d 370 (1st Cir. 1988) and Polanco-Quinones v. Astrue, 477
Fed. Appx. 745 (1st Cir. 2012). I have read these decisions and understand
why they are submitted, but I do not find them controlling or persuasive
although vaguely analogous.

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3 1420 (1971), in other words, it is "such relevant evidence as a reasonable mind
4 might accept as adequate to support a conclusion." See id.; see also Currier v.
5 Sec'y of Health & Human Servs., 612 F.2d 594, 597 (1st Cir. 1980). Along that
6 line, the power to resolve conflicts in the evidence lies with the Commissioner, not
7 the courts. Id.; see Barrientos v. Sec'y of Health & Human Servs., 820 F.2d 1, 2-3
8 (1st Cir. 1987). In the resolution of such conflicts, I cannot say that the
9 substantial evidence rule has been violated. This is not a one-sided administrative
10 record but rather a record replete with conflicting medical evidence, assessments
11 and conclusions welcoming the careful consideration of an administrative law
12 judge, the type of consideration received in this case, regardless of whether there
13 is universal agreement as to the conclusion. The administrative law judge must
14 adequately explain his treatment or consideration of the opinions of treating
15 physicians so that a court on review may determine if the substantial evidence rule
16 has been complied with. See e.g. Taylor v. Astrue, 899 F. Supp. 2d 83, 88-89 (D.
17 Mass. 2012). The administrative law judge must supply good reasons in the
18 weighing process. There are strong opinions of disabling impairments on the part
19 of Dr. Alberto Rodriguez-Robles, psychiatrist, Dr. Ronald Malave, psychiatrist, of
20 Centro de Salud Conductual del Oeste, and Dr. Jose Crespo-Rafols, internist, while
21 there are conclusions of a milder nature by, Dr. Roque Stella, psychiatrist, Dr.
22 Carlos Vazquez, psychologist, Dr. Luis F. Iturrino Echeandia, psychiatrist, Dr.
23 Alfredo Perez Canabal, neurologist, Iris A. Acevedo-Marty, neurologist, Dr. Elvin
24 Lugo Paredes, neurologist, Dr. Armando Caro, psychiatrist and Dr. Samuel Mendez,
25 neurologist. Dr. Gilberto Fragoso Ledesma submitted a physical residual
26 functional capacity assessment which reflected some limitations but the
27 administrative law judge rejected the assessment as unsupported by the record.

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3 These opinions also reflect differences between treating and non-treating
4 physicians and mental health professionals, differences which were carefully
5 weighed by the administrative law judge as reflected in her findings. For example,
6 Dr. Rodriguez-Robles, the treating psychiatrist who testified at the hearing had
7 seen plaintiff one time during the covered period, on July 15, 2004, and had seen
8 plaintiff a total of five times in eight years, hardly the frequency required of a
9 treating source. An accurate longitudinal picture is thus missing. The
10 administrative law judge noted that Dr. Malave's reports conflicted with the
11 treatment records of Centro de Salud Conductual del Oeste upon which he based
12 his opinions. Such a balancing invokes the axiom that if there is a substantial
13 basis in the record for an administrative law judge's decision, the court must affirm
14 the decision, whether or not another conclusion is possible. See Ortiz v. Sec'y of
15 Health & Human Svcs., 955 F.2d 765, 769 (1st Cir. 1991); Evangelista v. Sec'y of
16 Health & Human Servs., 826 F.2d at 144. While there are areas of disagreement,
17 the final decision is not unreasonable, even at step five of the sequential process
18 where the burden of proof has shifted away from plaintiff.

19 In view of the above, I find that the administrative law judge has complied
20 with the requirements of the substantial evidence rule. See Richardson v. Perales,
21 402 U.S. at 401, 91 S.Ct. 1420 (1971). I therefore affirm the final decision and
22 dismiss this action. The Clerk will enter judgment accordingly.

23 At San Juan, Puerto Rico, this 7th day of February, 2014.
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25 S/ JUSTO ARENAS
26 United States Magistrate Judge
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1 CIVIL 12-1655 (ADC

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