



at 20; that excluding alcohol abuse, she had no impairment that significantly limited her ability to perform basic work-related functions and hence no severe impairment, Finding 5, *id.* at 21; and that she therefore had not been under a disability at any time through the date of decision, Finding 6, *id.*<sup>2</sup> The Appeals Council declined to review the decision, *id.* at 6-8, making it the final determination of the commissioner, 20 C.F.R. §§ 404.981, 416.1481; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the commissioner's decision is whether the determination made is supported by substantial evidence. 42 U.S.C. §§ 405(g), 1383(c)(3); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusion drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

The administrative law judge reached Step 2 of the sequential evaluation process. Although a claimant bears the burden of proof at this step, it is a *de minimis* burden, designed to do no more than screen out groundless claims. *McDonald v. Secretary of Health & Human Servs.*, 795 F.2d 1118, 1123 (1st Cir. 1986). When a claimant produces evidence of an impairment, the commissioner may make a determination of non-disability at Step 2 only when the medical evidence "establishes only a slight abnormality or combination of slight abnormalities which would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered." *Id.* at 1124 (quoting Social Security Ruling 85-28).

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<sup>2</sup> Inasmuch as the plaintiff had acquired sufficient quarters of coverage to remain insured for purposes of SSD through at  
(continued on next page)

The plaintiff complains that the administrative law judge erred in (i) failing to find her depression severe, (ii) failing to follow the prescribed technique for evaluating mental impairments and (iii) failing to find her carpal tunnel syndrome severe. *See generally* Itemized Statement of Errors Pursuant to Local Rule 16.3 Submitted by Plaintiff (“Statement of Errors”) (Docket No. 5). I find no reversible error.

## **I. Discussion**

### **A. Finding of Non-Severity of Mental Impairment**

As an initial matter, the plaintiff complains that the administrative law judge erred in failing to find her depression severe, minimizing its impact by quoting selectively from records of Counseling Services, Inc. (“CSI”). *See id.* at 1-3. The Record reflects that the plaintiff, who has a longstanding history of depression, was hospitalized for mental-health treatment following suicide attempts in October 2000 and August 2002 (as an inpatient in 2000 and as an outpatient in 2002). *See, e.g.*, Record at 202-03, 248, 261. The August 2002 suicide attempt occurred after she had consumed six to seven alcoholic drinks. *See id.* at 248.

Two Disability Determination Services (“DDS”) non-examining consultants, one of whom had access to records of the August 2002 incident, nonetheless found the plaintiff’s depression non-severe. *See id.* at 166-79 (Psychiatric Review Technique Form (“PRTF”) completed June 10, 2002 by Thomas A. Knox, Ph.D.), 188-201 (PRTF completed October 4, 2002 by David R. Houston, Ph.D.).

Subsequent to the August 2002 incident, the plaintiff began treatment at CSI. *See id.* at 370 (CSI psychiatric evaluation dated October 29, 2002). These records were not reviewed by DDS medical experts, nor was such an expert present to testify at her hearing. *See, e.g., id.* at 22. Assumedly for that reason, the plaintiff focuses on what she contends was the administrative law judge’s misreading of those

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least December 31, 2004, *see* Finding 1, Record at 20, there was no need to undertake a separate SSD analysis.

raw medical records. *See* Statement of Errors at 1-3.<sup>3</sup>

An administrative law judge permissibly may interpret raw medical records to arrive at a Step 2 finding of non-severity only when those records lend themselves to a layperson’s common-sense judgment that the disorders in question impose no more than minimal limitations on ability to work. *See, e.g., Gordils v. Secretary of Health & Human Servs.*, 921 F.2d 327, 329 (1st Cir. 1990) (Although an administrative law judge is not precluded from “rendering common-sense judgments about functional capacity based on medical findings,” he “is not qualified to assess residual functional capacity based on a bare medical record.”); *Stanwood v. Bowen*, 643 F. Supp. 990, 991 (D. Me. 1986) (“Medical factors alone may be used only to screen out applicants whose impairments are so minimal that, as a matter of common sense, they are clearly not disabled from gainful employment. . . . [A]n impairment is to be found not severe only if it has such a minimal effect on the individual’s ability to do basic work activities that it would not be expected to interfere with his ability to do most work.”) (citations and internal quotation marks omitted). In this case, I find that standard to have been satisfied.

In his decision, the administrative law judge stated, in relevant part:

In October, 2002, Ms. Palmer underwent psychiatric evaluation at Counseling Services, Inc. This evaluation was a recommended followup to her hospitalization. She was assessed with depression, alcohol abuse in partial remission, cannabis abuse in remission, and rule out borderline personality disorder. Ms. Palmer next visited CSI in January, 2003,

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<sup>3</sup> At oral argument, counsel for the plaintiff clarified that she also challenges the finding of non-severity of her mental impairment as of the date of the Knox and Houston assessments, given her lengthy psychiatric history. While reasonable laypeople might question or disagree with Drs. Knox’s and Houston’s conclusions, both evidently had access to all relevant medical evidence through the date of their evaluations and are specialists in the field of psychology. Under circumstances such as these, the reports of non-examining consultants can serve as substantial evidence of an administrative law judge’s finding. *See, e.g., Rose v. Shalala*, 34 F.3d 13, 18 (1st Cir. 1994) (“[T]he amount of weight that can properly be given the conclusions of non-testifying, non-examining physicians will vary with the circumstances, including the nature of the illness and the information provided the expert. In some cases, written reports submitted by non-testifying, non-examining physicians cannot alone constitute substantial evidence, although this is not an ironclad rule.”) (citations and internal quotation marks omitted).

and she was noted to be less depressed, with improved energy and a “bright, wide ranging affect.” In March, 2003, she reported that she was “quite pleased” with her antidepressant medication. The evidence therefore indicates that, since her alleged onset date [February 8, 2002], Ms. Palmer has had one episode of significant psychological difficulties, which occurred in the context of severe alcohol abuse, and which soon improved with medication.

Record at 19-20 (citation omitted). The plaintiff complains that:

1. In discussing the January 2003 CSI note, the administrative law judge omitted to mention that the note also recorded that she had “experienc[ed] suicidal ideation three weeks [prior to the visit] after an argument with boyfriend.” *See* Statement of Errors at 2 (quoting CSI progress note).

2. In discussing the March 2003 CSI note, the administrative law judge neglected to mention that the note referred to the plaintiff’s “history of impulsive, potentially self-injurious behaviors.” *See id.* (quoting CSI progress note).

Nonetheless, despite the plaintiff’s history (which is also reflected in records that were available to the DDS consultants, *see, e.g.*, Record at 204) and her report in January 2003 that she had experienced a fresh episode of suicidal ideation, the administrative law judge reasonably construed post-August 2002 progress notes as reflecting a non-severe depression. *See, e.g., id.* at 369 (CSI progress note dated January 21, 2003, recording partial improvement on Celexa and increasing dosage), 393 (February 24, 2003 note of Noel J. Genova, PA-C, of Mercy Primary Care describing plaintiff as “smiling” and appearing “calm and happy”), 403 (CSI progress note dated March 7, 2003 finding “[n]o psychosis, suicidal or homicidal ideation. Affect full range. No lability. Insight and judgment appear good at this time regarding immediate safety in the community.”). Put differently, there is nothing in these post-August 2002 notes to raise a concern that, had the DDS reviewers seen them, they would have changed their impression of the

severity of the plaintiff's mental impairment.<sup>4</sup>

### **B. Failure To Follow Prescribed Technique**

The plaintiff correctly notes that the administrative law judge failed to follow the commissioner's prescribed technique for evaluating mental impairments. *See* Statement of Errors at 3; *see also* Record at 17-21; 20 C.F.R. §§ 404.1520a(e)(2), 416.920a(e)(2) (“[T]he written decision issued by the administrative law judge . . . must incorporate the pertinent findings and conclusions based on the [psychiatric review] technique.”).

Nonetheless, under the circumstances of this case, I find this regrettable error to have been harmless. Although the administrative law judge himself neglected to fill out a PRTF, the Record does contain two PRTF evaluations (those of Drs. Knox and Houston) that support a finding of non-severity. *Compare* Record at 176 (Knox PRTF), 198 (Houston PRTF) *with* 20 C.F.R. §§ 404.1520a(d)(1), 416.920a(d)(1) (circumstances under which PRTF ratings translate to a finding of non-severity of mental impairment(s)). The regulations contemplate that an administrative law judge may rely on a medical expert to assist in this way. *See id.* §§ 404.1520a(e)(3), 416.920a(e)(3).

### **C. Finding of Non-Severity of Carpal Tunnel Syndrome**

The plaintiff finally complains that the administrative law judge erred in finding her carpal tunnel syndrome non-severe. *See* Statement of Errors at 3-4. In this case, as well, the plaintiff relies on evidence that came into existence subsequent to completion of a physical RFC assessment by a DDS consultant. *See*

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<sup>4</sup>As counsel for the commissioner observed at oral argument, the Record indicates that the plaintiff's depression, which significantly predates her alleged onset date of disability, has existed in substantially the same form from the time it first surfaced through the date of the CSI treatments, with a fairly consistent pattern and symptoms. *See, e.g.,* Record at 204, 369-70. As she persuasively argued, this militates in favor of a finding that the CSI records are cumulative of the records that were available to Drs. Houston and Knox.

Record at 180-87 (physical RFC assessment by Lawrence P. Johnson, M.D., dated September 18, 2002), 363 (report of Samuel S. Scott, M.D., dated October 9, 2002, noting that plaintiff came in for “evaluation of a 7-8 month history of bilateral hand numbness and tingling”; noting, “My impression is that [the plaintiff] has bilateral carpal tunnel syndrome, certainly the right is wors[e] than the left. Given the short duration of her symptoms I’m not sure if she warrants any formal treatment at this point and certainly the next step to take would be a nerve conduction and EMG study.”).

With respect to this condition, the administrative law judge stated:

Ms. Palmer was assessed with carpal tunnel syndrome in October, 2002. The examining physician did not feel that any formal treatment was warranted at that time, and later records do not show that the claimant has had any worsening of her symptoms. The evidence does not document that Ms. Palmer has significant, ongoing functional difficulties due to carpal tunnel syndrome.

*Id.* at 19 (citation omitted).

In this case, as well, I find that the administrative law judge made a supportable assessment of the raw medical evidence to arrive at a conclusion of non-severity. Inasmuch as appears, in the wake of the Scott diagnosis there was no further followup or treatment related to this impairment. Nor, apart from the plaintiff’s hearing testimony, *see, e.g., id.* at 33, 35, 45, is there any indication that she had further complaints of pain or functional limitation flowing from that condition, *see, e.g., id.* at 391-96 (Mercy Primary Care records from September 18, 2002 through March 24, 2003).

## **II. Conclusion**

For the foregoing reasons, I recommend that the commissioner’s decision be **AFFIRMED**.

### **NOTICE**

*A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for*

*which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within ten (10) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Dated this 13th day of December, 2004.

/s/ David M. Cohen  
David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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