

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

GRANT M. FURMAN,)	
)	
<i>Plaintiff</i>)	
)	
v.)	No. 1:15-cv-271-JHR
)	
CAROLYN W. COLVIN,)	
<i>Acting Commissioner of Social Security,</i>)	
)	
<i>Defendant</i>)	

MEMORANDUM DECISION¹

The plaintiff in this Social Security Disability (“SSD”) appeal contends that the administrative law judge impermissibly interpreted raw medical data and misinterpreted his testimony. I affirm the commissioner’s decision.

In accordance with the commissioner’s sequential evaluation process, 20 C.F.R. § 404.1520; *Goodermote v. Secretary of Health & Human Servs.*, 690 F.2d 5, 6 (1st Cir. 1982), the administrative law judge found, in relevant part, that the plaintiff met the insured status requirements of the Social Security Act through December 31, 2015, Finding 1, Record at 22; that he suffered from a post-traumatic stress disorder and a panic disorder, impairments that were severe but which, considered separately or in combination, did not meet or medically equal the criteria of any impairment listed in Appendix 1 to 20 C.F.R. Part 404, Subpart P (the “Listings”),

¹ This action is properly brought under 42 U.S.C. § 405(g). The commissioner has admitted that the plaintiff has exhausted his administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2), which requires the plaintiff to file an itemized statement of the specific errors upon which he seeks reversal of the commissioner’s decision and to complete and file a fact sheet available at the Clerk’s Office, and the commissioner to file a written opposition to the itemized statement. Oral argument was held before me on March 16, 2016, pursuant to Local Rule 16.3(a)(2)(D), requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations, case authority, and page references to the administrative record. The parties have consented to have me preside over this action, including the entry of judgment. ECF No. 17.

Findings 3-4, *id.* at 22-23; that he had the residual functional capacity (“RFC”) to perform work at all exertional levels, except that he was able to carry out simple, routine, repetitive tasks, required a low-stress job that required only occasional decision-making, and could not interact with the public, Finding 5, *id.* at 24; that he was unable to return to any past relevant work, Finding 6, *id.* at 27; that, considering his age (35 years old on his alleged disability onset date, October 31, 2011, education (at least high school), work experience, and RFC, and using the Medical Vocational Rules found in Appendix 2 to 20 C.F.R. Part 404, Subpart P (the “Grid”) as a framework for decision, there were jobs existing in significant numbers in the national economy that he could perform, Findings 7-10, *id.* at 28; and that he, therefore, had not been disabled from October 31, 2011, through the date of the decision, January 9, 2014, Finding 11, *id.* at 29. The Appeals Council declined to review the decision, *id.* at 1-3, making the decision the final determination of the commissioner, 20 C.F.R. § 404.981; *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); *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 5 of the sequential evaluation process, at which stage the burden of proof shifts to the commissioner to show that a claimant can perform work other than his past relevant work. 20 C.F.R. § 404.1520(g); *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987); *Goodermote*, 690 F.2d at 7. The record must contain substantial evidence in support

of the commissioner's findings regarding the plaintiff's RFC to perform such other work. *Rosado v. Secretary of Health & Human Servs.*, 807 F.2d 292, 294 (1st Cir. 1986).

I. Discussion

A. Substantial Evidence

The plaintiff begins with a review of medical evidence in the record that he contends “undercuts the State agency opinions” upon which the administrative law judge relied. Statement of Specific Errors (“Itemized Statement”) (ECF No. 11) at 2-7. It is well settled, however, that the standard to be applied by this court on this appeal is not whether there is evidence in the record that would support an outcome different from that reached by the administrative law judge, but rather whether there is substantial evidence in the record to support the administrative law judge's conclusions. *Enman v. Colvin*, Civil No. 2:13-cv-307-DBH, 2014 WL 5394577, at *3 (D. Me. Oct. 21, 2014).

The plaintiff specifically takes issue, Itemized Statement at 2, with the administrative law judge's statement that “nothing has been admitted into the record to indicate that the claimant's condition has worsened since [the state agency] physicians conducted their reviews to indicate that the claimant has additional limitations during the period at issue.” Record at 27. He points to the report of Naomi Brown, PMH-NP, and the evaluation by Melanie Mace, Psy.D., as well as a visit to a hospital emergency room on May 22, 2013. Itemized Statement at 2-5. The plaintiff also contends that the administrative law judge's interpretation of these records “without benefit of expert opinion” constitutes an impermissible interpretation of raw medical data. *Id.* at 6-7.

In response, the commissioner points out that Brown is not an acceptable medical source, 20 C.F.R. § 404.1527(a)(2), and asserts that her opinions were “not express[ed]. . . in functional terms that might have assisted the ALJ in evaluating Plaintiff's RFC.” Defendant's Opposition to Plaintiff's Statement of Errors (“Opposition”) (ECF No. 15) at 3. To the extent that the plaintiff

contends that Brown's diagnoses should have been expressly addressed by the administrative law judge, the fact that they were not expressed in functional terms makes that argument unavailing. *King v. Astrue*, Civil No. 09-337-P-H, 2010 WL 4457447, at *3 (D. Me. Oct. 31, 2010). Similarly, Brown's statement that the plaintiff "is clearly not able to work at this time[.]" Record at 569, is an opinion on an issue that is reserved to the commissioner, and, accordingly, any failure by the administrative law judge to mention it can only be harmless error at most. *Johnson v. Colvin*, Civil No. 1:13-cv-406-DBH, 2014 WL 5394954, at *4 (D. Me. Oct. 21, 2014). Further, the plaintiff was referred to Brown for an evaluation; she was not a treating professional. Record at 565. An administrative law judge is not required to provide "good reasons" for rejecting the opinion of such a source. *Bowie v. Colvin*, No. 2:12-cv-205-DBH, 2013 WL 1912913, at *7 (D. Me. Mar. 31, 2013).

In any event, the administrative law judge did not ignore Brown's report. He cited her report for the proposition that the plaintiff reported that his symptoms were stabilized with medication. Record at 27.² Given the administrative law judge's discussion of evidence supporting his conclusions, it is reasonable to conclude that, to the extent that those conclusions differ from those of Brown, the administrative law judge would have rejected them. *Waddell v. Colvin*, No. 2:14-cv-105-JHR, 2015 WL 1723682, at *5 (D. Me. Apr. 14, 2015).

The defendant also points out correctly that administrative law judges are qualified to determine whether evidence submitted after a particular medical professional has submitted a report would have changed that professional's RFC assessment. Opposition at 3; *Anderson v. Astrue*, No. 1:11-cv-476-DBH, 2012 WL 5256294, at *4 (D. Me. Sept. 27, 2012). If cases were subject to remand merely because no medical expert examined all of the evidence submitted after

² Brown's report is cited as Exhibit 10F, which is the designation that it was given for purposes of the administrative hearing. Record at 565-69.

the state-agency physicians submitted their reports, medical expert testimony would be required in many cases, perhaps even a majority. Under Social Security law, however, the decision to invoke the testimony of a medical expert remains a matter within the discretion of the administrative law judge in the great majority of cases. *E.g., Webber v. Colvin*, No. 2:13-cv-00236-NT, 2014 WL 3530705, at *2 (D. Me. July 15, 2014).

In support of his contention that the administrative law judge must have interpreted raw medical evidence that was submitted after the state-agency reviews were complete in order to reach the RFC that he assigned to the plaintiff, the plaintiff asserts that “this case is very similar to” *Healey v. Social Sec. Admin. Comm’r*, Civil No. 1:13-CV-101-DBH, 2014 WL 1767099 (D. Me. Apr. 29, 2014).³ Itemized Statement at 6-7. The defendant distinguishes *Healey*, Opposition at 6, by pointing out that, in this case, there was no significant medical event after the state-agency physicians’ assessments were made, while in *Healey* the plaintiff experienced a cerebrovascular accident followed by a supplemental neuropsychological evaluation. 2014 WL 1767099 at *6. In *Healey*, the administrative law judge performed the psychiatric review technique on his own, finding, *inter alia*, that the claimant exhibited only mild impairment in the “third category B area of mental functioning[.]” without any expert support. *Id.* Here, the plaintiff has not pointed to any significant medical change in the period between the state-agency physicians’ reports and the hearing. I agree that *Healey* is distinguishable.

With respect to Dr. Mace’s report, the plaintiff asserts that “[i]t is clear that the ALJ has lumped the cognitive impairments and mood disorder together in determining that the Plaintiff’s panic disorder is accommodated by a limitation to low stress work with only occasional decision making.” Itemized Statement at 5. He contends that this limitation addressed only the cognitive

³ Both parties give a date of August 15, 2014 for this decision. The docket reveals that the *Healey* case was closed well before August 2014. The April 29, 2014, decision is the only one to which the parties could be referring.

impairment, *id.*, but does not identify any limitation that is caused by the mood disorder that is additional to the limitation to low stress work imposed by the administrative law judge, much less any limitation that would necessarily change his RFC and thereby change to outcome of his application for benefits.

The defendant responds that Dr. Mace did not translate any of the symptoms that she recorded observing in the plaintiff during her consultative examination into functional limitations that would impose mental limitations in addition to those included in the RFC, and that Dr. Mace herself “lumped together” the plaintiff’s diagnosed cognitive impairments and mood disorder.⁴ Opposition at 8. This characterization of Dr. Mace’s report, Record at 572-81, is correct, and, coupled with the plaintiff’s failure to specify the limitations flowing from Dr. Mace’s findings concerning his mood disorder that he contends that the administrative law judge should have adopted, means that this alleged error does not entitle him to remand.

The plaintiff’s final alleged error under this heading concerns his visit to a hospital emergency room on May 22, 2013, for which no records of the hospital are in the record. Citing notes in the record from Community Health and Counseling Services, Itemized Statement at 5, where he apparently reported directly after his hospital visit, he states that he was “requesting help for suicidal ideation, homicidal ideation, increased depression, and unmanageable anxiety.” Record at 681. He states that he was “released the following day due to the fact that there were no beds available in the surrounding area for inpatient medical treatment[.]” to an “emergency appointment” with his therapist. Itemized Statement at 5. He presents this event as evidence “contrary to the ALJ’s determination that ‘nothing has been admitted to the record to indicate the claimant’s condition has worsened.’” *Id.* at 6.

⁴ I note also that Dr. Mace’s evaluation of the plaintiff’s mood disorder is based primarily on his own subjective reports of symptoms. Record at 579.

However, a single episode of decompensation, during which the plaintiff refused placement for psychiatric hospitalization at Northern Maine Medical Center, agreeing to inpatient treatment only in the immediate area of his residence, where no beds were available, Record at 674, 677, and during which he did not exhibit symptoms that would meet the criteria for involuntary hospitalization, *id.* at 677, does not necessarily demonstrate a worsening of the plaintiff's mental condition over time.⁵ As the defendant points out, the record shows that, after this incident, his symptoms were rated as "mild" in September 2013, *id.* at 672, and that he was "doing much better" as of October 2013, *id.* at 583. There is no evidence to support a conclusion that this was other than an isolated incident of decompensation that would not support any particular mental limitations in an RFC, even if the plaintiff had identified any.

B. Plaintiff's Testimony

Under the heading "The ALJ's reliance on the Plaintiff's testimony is not supported by substantial evidence[.]" Itemized Statement at 7, the plaintiff argues that the administrative law judge "misstated" his testimony when he said that the plaintiff testified that he could interact appropriately with coworkers and supervisors. Record at 27. He asserts that his testimony was only that he got along with supervisors and coworkers in the past, but not as of the time when he testified at the hearing. Itemized Statement at 7-8. He cites his own reports to his therapist as "medical records" supporting this modification. *Id.* at 8.⁶

The plaintiff also argues that the administrative law judge's statement that the plaintiff found that working as a welding instructor "exacerbated his anxiety because he was confronted by

⁵ The plaintiff also faults the administrative law judge for stating this episode was "caused by financial stress causing him to lose his housing[.]" Record at 27, pointing out that other risk factors were present, including "his chronic anxiety, past suicide attempt, a family history of suicide, and access to firearms." Itemized Statement at 6. Again, he does not indicate the difference that would have been made in the administrative law judge's analysis had he listed all of these factors, nor any way in which such a listing would require a different outcome to his application for benefits.

⁶ Drs. Burkhart and Lichtman, state-agency reviewers, opined that the plaintiff could interact with coworkers and supervisors without limitation. Record at 82, 95.

the general public on a routine basis[,]” Record at 26, is without evidentiary support. Itemized Statement at 9. He asserts that “[c]learly, the Plaintiff is not able to work with the general public[,]” but states that “this is not his sole problem with social functioning and his inability to function in the work place is not alleviated by eliminating work with the general public.” *Id.* He provides no citation to the record to support this statement.⁷ Even if this is the case, the plaintiff does not suggest what other particular limitations in social functioning are presented in the record and would have altered his RFC.⁸

The administrative law judge pointed out at hearing that the plaintiff was not working at the time when he testified that he could no longer get along with supervisors and coworkers, so that there was no way for him to know whether this was the case. Record at 71. He was entitled to reject the testimony for that reason.

Contrary to the plaintiff’s suggestion, Itemized Statement at 8, the administrative law judge’s following finding is fully compatible with the plaintiff’s testimony.

[T]he claimant attempted to return to work after his alleged onset date of disability. He testified that he was able to perform the functions of his job that did not expose him to the general public. However, he could not continue in this employment because he was required to interact with the public.

Record at 25. The plaintiff testified:

At first it went well. I was just able to weld small parts and not interact with any customers or responsibilities, but very quickly I had to—he wanted me to interact with customers that came to his shop, and basically kind of manage things, make

⁷ The plaintiff cites Social Security Ruling 96-9p, without a pinpoint citation, for the proposition that “the substantial loss of the Plaintiff’s ability to respond appropriately to supervision and coworkers [] would justify a finding of disability.” Itemized Statement at 9. The Ruling does include a similar statement, Social Security Ruling 96-9p, reprinted in *West’s Social Securing Reporting Service Rulings* (Supp. 2015) at 160, but the supporting evidence that the plaintiff cites, an opinion by Brown, an unacceptable source, on the ultimate issue that is reserved to the commissioner and Dr. Mace’s opinion that, *inter alia*, the plaintiff would require extensive mental health treatment, were supportably rejected by the administrative law judge, as discussed above.

⁸ In an apparent attempt to bolster his argument on this point, the plaintiff points to his attempt to go on tour with his band in July 2011, “but he was unable to function.” Itemized Statement at 8. This inability predates his alleged onset date, October 31, 2011, Record at 20, and accordingly is of limited value in connection with the plaintiff’s claim for benefits.

phone calls, do emails, get on the computer, design, fabricate, and I was unable to do that. I would just freeze up.

Id. at 58-59.

Finally, the jobs identified by the vocational expert and adopted by the administrative law judge as being available to the plaintiff with the RFC assigned to him in the decision, kitchen helper, cook helper, and hospital cleaner, *id.* at 28, do not require more than superficial contact with coworkers and supervisors, according to the Dictionary of Occupational Titles. *See Connor v. Colvin*, No. 1:13-cv-00219-JAW, 2014 WL 3533466, at *2-*4 (D. Me. July 16, 2014) (kitchen helper) and *Dictionary of Occupational Titles* (U.S. Dep't of Labor) (4th Ed. rev. 1991) §§ 317.687-010 (cook helper), 323.687-010 (hospital cleaner).

The plaintiff is not entitled to remand on this basis.

II. Conclusion

For the foregoing reasons, the commissioner's decision is **AFFIRMED**.

Dated this 29th day of April, 2016.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge