UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

----------x

[redacted], Dkt#: [redacted]

Plaintiff,

- against -

COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,

Defendant.

----------x

PLAINTIFF'S BRIEF

KIRA TREYVUS, ESQ
Attorney(s) for the Plaintiff
KONOSKI & PARTNERS, P.C.
305 Broadway, 7th Floor
New York, NY 10007
(212) 897-5832

TABLE OF CONTENTS

INTRODUCTION

Pursuant to 42 U.S.C.§ 405(g), the Plaintiff seeks judicial review of the final administrative decision of the Commissioner of Social Security ("Commissioner"). The Plaintiff asserts that the Commissioner's decision is not based on substantial evidence as required by 42U.S.C.§405(g). The Plaintiff also specifically contends that the Commissioner erred as a matter of law in denying his claim for Social Security Disability benefits for the reasons set forth below.

STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS

Elements.

This Court's review of the Commissioner's decision is limited to determining whether the Commissioner's decision, as a whole, is supported by substantial evidence and whether the Commissioner has employed the correct legal standards. 42 U.S.C. § 405(g). Substantial evidence is "more than a mere scintilla;" it is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427,28 L.Ed.2d 842 (1971),*quoting* Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct.206, 217, 83 L.Ed. 126 (1938). This court must determine whether the Commissioner's conclusions "are supported by substantial evidence in the record as a whole or are based on an erroneous legal standard." Beauvoir v. Chater, 104 F.3d 1432, 1433 (2d Cir. 1997) (internal quotation marks and citation omitted). The Court can set aside the ALJ's decision where it is based on legal error or is not supported by substantial evidence." Balsamo v. Chater, 142 F.3d 75, 79 (2d Cir. 1998).

Undisputed Material Facts.

Summary and Course of the Administrative Proceeedings.

1. In a determination dated June 26, 2018, the claimant was found disabled beginning on January13, 2018. On August 16, 2019, it was determined that the claimant was no longer disabled since August 14, 2019. This determination was upheld upon reconsideration after a disability hearing by a State agency Disability Hearing Officer. Thereafter, the claimant filed a written request fora hearing before an Administrative Law Judge. On April 15, 2021, the undersigned held a telephone hearing due to the extraordinary circumstance presented by the Coronavirus Disease 2019 (COVID-19) Pandemic. A continuance of hearing was held also by telephone on August 26, 2021. (Tr. 10). On November 22, 2021, the ALJ issued an unfavorable decision. (Tr. 7).

2. The Plaintiff filed a request for review with the Appeals Council and the Appeals Council denied that Request for Review on September 2, 2022. (Tr. 1). Accordingly, the ALJ's decision became the Commissioner's final decision.

Statement of Facts.

Plaintiff's age, education and work experience.

3. Plaintiff was born December 9, 1966. (Tr. 122)

4. The Plaintiff's past relevant work was as an attorney, which is highly skilled SVP level 8 work. (Tr. 21).

5. At the time of the hearing, the Plaintiff was performing some work as an attorney. The ALJ noted that the Plaintiff is only working Part-Time. (Tr. 13). The ALJ specifically found that "she is not earning SGA . . .." (Tr.13).

6. The Plaintiff testified that she practices family law and had only 5-6 active cases pending in New Jersey courts. (Tr. 20, 53).

7. The Plaintiff testified that she practices family law and had only 5-6 active cases pending in New Jersey courts (Tr. 20, 53) and she often outsourced her work to contract counsel because she could not do the work (Tr. 93). Moreover, she testified that does not have the type of practice where she could charge an hourly rate. Instead, she would often charge a flat fee for work and such fees were as little as $1,500. (Tr. 57). Additionally, a lot of times her husband helped her with her cases; he was also an attorney. (Tr. 58).

8. The Plaintiff testified that in the summer of 2020 she taught a course at Pace University over Zoom and got paid $1,000. (Tr. 20, 54).

Severe Conditions.

9. The ALJ found Plaintiff to have the following severe impairments: status-post liver re-transplantation with tacrolimus (TAC)-induced neuropathy, secondary to Budd-Chiari syndrome. (Tr. 13).

Plaintiff's Mental Limitations.

10. In this case, the ALJ found that the Plaintiff had the following mental limitations (See Tr. 14):

- No limitation in understanding, remembering, or applying information.

- **Mild limitation** in interacting with others.
- **Mild limitation** in concentrating, persisting, or maintaining pace.
- **Mild limitation** in adapting or managing herself.

Residual Functional Capacity.

11. The RFC did not provide for any mental limitations. (Tr. 18).

Vocational Expert Testimony.

12. The ALJ failed to ask the VE directly whether incorporating mental limitations into the Hypothetical would eliminate the Plaintiff's past relevant work as an attorney (the ALJ only asked the question as to whether there were other jobs available in the national economy). However, the Plaintiff's attorney asked the question. Upon cross-examination of the VE by Plaintiff's attorney at the hearing, the following colloquy occurred:

> Q: I guess, I'll just ask you the question outright. Using Hypothetical 3, I don't think it was mentioned, but assuming she can't do her prior work as an attorney under those limitations, is that correct?
>
> A: As performed by the claimant, but not per DOT –
>
> ALJ: No, no, no no.
>
> VE: I'm sorry, yeah, no.
>
> ALJ: Okay.

ISSUE PRESENTED

WHETHER THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO ADEQUATELY CONSIDER THE IMPACT OF THE PLAINTIFF'S MILD MENTAL LIMTIATIONS ON HER ABILITY TO WORK FULL-TIME IN HER PAST EMPLOYMENT AS AN ATTORNEY, WHICH WAS HIGHLY SKILLED SVP LEVEL 8 WORK ?

Brief Answer: *Yes*, the ALJ erred.

This is an appeal from a determination following a continuing disability review. The Plaintiff was originally found disabled and was awarded social security disability benefits. The original award was granted because the Plaintiff had two (2) liver transplants, which rendered her disabled and unable to work.

In this recent decision related to the continuing disability review, and which is the subject of this appeal, the ALJ found that there was medical improvement. However, the ALJ failed to properly consider the impact of the Plaintiff's mild mental limitations on her ability to perform Full-Time work in her past employment, which was highly skilled SVP level 8 work as an attorney.

Subsequent to her liver transplants, and during the relevant time period to the issues in this case, the Plaintiff attempted to earn some money performing some Part-Time work as an attorney. However, she had meager gross revenue during that period. She was handling, at most, 5-6 family court matters per year in the State of New Jersey. She also taught one (1) Zoom class for Pace University. The ALJ expressly determined that she worked under the SGA limits.

As part of the analysis of the Plaintiff's Paragraph B mental limitations, the ALJ found that the Plaintiff has mild mental limitations in three categories: (1) concentration, persistence, and pace; (2) interacting with others; and (3) adapting and managing herself. The law in the 3rd Circuit holds that even mild mental limitations are critical to the performance of skilled level work. See Standowski v. Colvin, No. 13-5663, 2015 WL 404659, at *17 (D.N.J. Jan. 29, 2015). Despite finding that the Plaintiff had mild mental limitations in 3 out of 4 Paragraph B categories, the ALJ did not provide for any mental limitations in the RFC. Moreover, the ALJ did not expressly explain anywhere in the decision, including in the Step 4 findings, why no such limitations should be included. Here, the Plaintiff's mild mental limitations are especially critical to her ability to work in a Full-Time capacity as an attorney, which is highly skilled SVP level 8 work. See id. The ALJ's failure to adequately evaluate the Plaintiff's mild mental limitations, especially here, where the Plaintiff's past relevant work was highly skilled SVP level 8 work as an attorney, is reversible error.

Finally, such error is not harmless. The Plaintiff turned 55 years of age before her date of last insured. As such, if she was found unable to perform her past relevant work, she may have been automatically eligible for disability benefits under the GRID rules.

STATUTORY AND REGULATORY FRAMEWORK

The Social Security Act, 42 U.S.C. §423(d)(1)(A), defines disability as the:

> . . . inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; . . . (A)n individual . . . shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . .

Section 423(d)(3) of the Act defines a "physical or mental impairment" as:

> . . . an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical or laboratory diagnostic techniques.

The Social Security regulations set forth a sequential method of evaluating disability claims. See 20 C.F.R. § 404.1520(b). The first step is to determine whether the claimant is engaging in substantial gainful activity. If so, the claim is denied. If not, the second step is to determine whether the claimant has a severe impairment, i.e., an impairment which significantly limits ability to do basic work activities. If not, the claim is denied. See 20 C.F.R. § 404.1520(c). If a severe impairment is present, the third step is to determine whether it meets or equals one of the impairments listed in 20 C.F.R. Part 404, Subpart P, App. 1. See 20 C.F.R. §404.1520(d). If it does, a finding of disability is directed. Id. If not, the fourth step is to determine whether the claimant has an impairment which precludes the performance of past relevant work.

20 C.F.R. § 404.1520(e). If not, the claim is denied. Id. If so, the fifth step is to determine whether the claimant's impairments prevent the performance of any other work, considering residual functional capacity, age, education and work experience. See 20 C.F.R. § 404.1520(f).

ARGUMENT

THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO ADEQUATELY CONSIDER THE IMPACT OF THE PLAINTIFF'S MILD MENTAL LIMTIATIONS ON HER ABILITY TO WORK FULL-TIME IN HER PAST EMPLOYMENT AS AN ATTORNEY, WHICH WAS HIGHLY SKILLED SVP LEVEL 8 WORK.

A. The ALJ erred by failing to account for the Plaintiff's mild mental limitations in the RFC and also by failing to provide an adequate explanation as to why no limitations were deemed necessary.

The regulations require an ALJ to consider non-severe, but medically determinable, impairments in combination with severe impairments in the RFC determination. Fitzpatrick v. Comm'r of Soc. Sec., 2020 WL 1872978 (D.NJ., Apr. 15, 2020). That is because a Plaintiff's medically determinable impairments, even though not "severe", presumably have some degree of impact on the Plaintiff's RFC. Id.

"The impact of Plaintiff's [non-severe] impairments may only require minor modifications to the RFC, with the end result being that Plaintiff is still capable of performing work. . .[.] The Court and Plaintiff, however, are left to guess if that would truly be the result. The Court cannot weigh the evidence or substitute its conclusions for those of the ALJ, or independently determine the impact of Plaintiff's [non-severe]

impairments in combination with her [severe] impairments on the RFC. Without the ALJ performing that analysis, this Court cannot determine whether the ALJ's decision is supported by substantial evidence. Consequently, the matter must be remanded for further proceedings." See Fitzpatrick, 2020 WL 1872978 at *6. See also Curry v. Comm'r of Soc. Sec., 2017 WL 825196, at *6 (D.N.J. 2017) (reversing and remanding ALJ decision because the ALJ did not consider the plaintiff's mental impairments in combination with her other impairments when performing the RFC assessment, even when those mental impairments were not "severe").

In Standowski v. Colvin, No. 13-5663, 2015 WL 404659, at *17 (D.N.J. Jan. 29, 2015), the Court held that the ALJ's failure to account for Plaintiff's mild limitations in concentration, persistence, or pace is especially critical where the Plaintiff was found by the ALJ to be able to perform her past relevant work, which was a skilled position. It very well could be that even a mild limitation in concentration, persistence, or pace could have an impact on a person's ability to perform skilled work. Alesia v. Astrue, 789 F.Supp.2d 921, 933–34 (ND Illinois, 2011)("Because the ALJ did not include any mental functioning restrictions in his RFC finding, Claimant's mental functioning limitations could not be taken into account in the step-four finding. As a result, the ALJ never considered whether Claimant's mental impairments affected her ability to perform her past relevant work, which was skilled in nature."). See Simon-Leveque v. Colvin, 229 F.Supp.3d 778 (ND Illinois, Jan. 17, 2017).

In this case, the ALJ found that the Plaintiff had the following mental limitations (See Tr. 14):

- No limitation in understanding, remembering, or applying information.
- **Mild limitation** in interacting with others.
- **Mild limitation** in concentrating, persisting, or maintaining pace.
- **Mild limitation** in adapting or managing herself.

Despite finding that the Plaintiff had mild mental limitations in numerous categories of mental functioning, the ALJ did not incorporate any mental limitations in the RFC. However, the VE testified that with mental limitations the Plaintiff could not perform her past relevant work as an attorney.

The ALJ failed to ask the VE directly whether incorporating mental limitations into the Hypothetical would eliminate the Plaintiff's past relevant work as an attorney (the ALJ only asked the question as to whether there were other jobs available in the national economy – the impact of this question will be addressed more thoroughly below under Section B). However, the Plaintiff's attorney asked the question. Upon cross-examination of the VE by Plaintiff's attorney at the hearing, the following colloquy occurred:

> Q: I guess, I'll just ask you the question outright. Using Hypothetical 3, I don't think it was mentioned, but assuming she can't do her prior work as an attorney under those limitations, is that correct?
>
> A: As performed by the claimant, but not per DOT –
>
> ALJ: No, no, no no.
>
> VE: I'm sorry, yeah, no.

ALJ: Okay.

Based on this line of questioning, the Plaintiff's attorney at the hearing asked if, using Hypothetical 3, the Plaintiff would be unable to perform her past relevant work as an attorney. The final answer provided by the VE was, "I'm sorry, yeah, no" to the direct question of whether the Plaintiff can perform her prior work as an attorney with the limitations in Hypothetical 3. The final answer that stood was "no" – meaning that with the mental limitations included in Hypothetical 3, the Plaintiff could not work Full-Time as an attorney.

Hypothetical 3 was the only question that incorporated mental limitations. The mental limitations incorporated in the question limited the hypothetical claimant to being "limited to [being] able to apply common sense and understanding to carryout detailed, but uninvolved instructions in the performance of simple, routine, and repetitive tasks." (Tr. 117). It is possible that these functional restrictions could be caused by the Plaintiff's mild mental limitations. Consequently, based on the questions by the Plaintiff's attorney, and answers provided by the VE, if the Plaintiff was found to have these mental limitations, then she would be unable to perform her past relevant work as an attorney in a Full-Time capacity.

The ALJ did not incorporate any mental limitations into the RFC. However, as per the VE's testimony, the inclusion of mental limitations in the RFC may have precluded the Plaintiff from performing her past relevant work as an attorney. This is exactly why the inclusion of mental limitations are especially critical when considering whether a claimant can perform past skilled work – or, as here, very

skilled work (SVP 8). See Standowski v. Colvin and Fitzpatrick v. Comm'r of Soc. Sec., *supra*.

To complicate matters, the ALJ did not address or explain anywhere in the decision, including in the Step 4 analysis, why the RFC contains absolutely no mental limitations at all, despite finding that 3 out of 4 of the Paragraph B criteria had mild mental limitations.

The Defense may attempt to argue that the ALJ considered the fact that the Plaintiff was currently working as an attorney and, according to the ALJ, "the claimant has been receiving significant gross receipts and retainers from clients and has been performing legal work for clients." (Tr. 18). Such an argument would be unavailing for the following four reasons.

First, the ALJ noted that the Plaintiff is only working Part-Time handling, at most, 5-6 family law cases, and the ALJ was required to reach a determination as to whether the Plaintiff could work in her past relevant work in a Full-Time capacity when considering the combined impact of all of her severe and non-severe conditions. (Tr. 13). Second, the ALJ expressly found that that "she is not earning SGA . . .." (Tr.13). Third, the ALJ never expressly found anywhere in the decision, including in the Step 4 analysis, that no mental limitations were necessary in this case despite finding that the Plaintiff experienced mild mental limitations in 3 of the 4 Paragraph B criteria categories. As addressed above, this is error because even mild mental limitations are especially critical for the performance of highly skilled SVP level 8 work on a Full-Time basis. See Standowski v. Colvin and Fitzpatrick v. Comm'r of

Soc. Sec., *supra*. Fourth, the representations by the ALJ that the Plaintiff has "significant gross receipts and retainers" is illogical and defies common sense. Such a statement demonstrates the ALJ's complete lack of understanding about how real-life law practices operate and how much money and work they need to remain functional. If anything, the Plaintiff's gross receipts were paltry. In fact, her gross receipts were so substantially low that it is quite clear she was operating in a rather impoverished condition.

In 2019, the Plaintiff only had $57,538 in gross receipts; in 2020 she had only $32,000 in gross receipts; and in 2021 she only had $3,500 in gross receipts and refunded $7,000 in client funds from escrow. (Tr. 12-13). It's hard to fathom any scenario where these are "significant gross receipts and retainers" for a law practice. Every law practice has overhead, costs, and expenses. These sums are not salary payments; these payments are gross revenue. In fact, these gross sums are nominal and clearly demonstrate that the Plaintiff had nothing more than a barely functional Part-Time law practice that operated on a shoestring budget and was barely enough for her to pay any bills. In fact, the Plaintiff testified that she practices family law and had only 5-6 active cases pending in New Jersey courts (Tr. 20, 53) and she often outsourced her work to contract counsel because she could not do the work (Tr. 93). Moreover, she testified that does not have the type of practice where she could charge an hourly rate. Instead, she would often charge a flat fee for work and such fees were as little as $1,500. (Tr. 57). Additionally, a lot of times her husband helped her with her cases; he was also an attorney. (Tr. 58).

Quite frankly, handling 5-6 cases is not even a viable case load unless the attorney is managing extremely high net worth clients with highly complicated cases. Certainly, the Plaintiff was not managing a case load of high-end clients with complicated cases as demonstrated by her extremely meager revenue. Moreover, she testified that does not have the type of practice where she could charge an hourly rate. Instead, she would often charge a flat fee for work and such fees were as little as $1,500. (Tr. 57)

If the defense argues that the Plaintiff worked in a capacity teaching, this is equally unavailing. The Plaintiff testified that in the summer of 2020 she taught a single course at Pace University over Zoom (during Covid) and got paid $1,000. (Tr. 20, 54). Such a position, which earned nominal money, cannot possibly have been very mentally taxing – and also had no direct in person contact with students since it was a virtual class. Moreover, the $1,000 fee was well under SGA.

While it is true that the Plaintiff performs some nominal work on a very Part-Time basis representing at most 5-6 simple low-paying family law matters per year, and while it is true that the Plaintiff also taught one course for Pace University over Zoom in the summer of 2020 (during the COVID pandemic) earning a meager $1,000 fee, none of this conclusively establishes that the Plaintiff can work Full-Time as an attorney, which is highly skilled and very mentally taxing SVP level 8 work. These facts only serve to demonstrate that the Plaintiff has been trying to use her degree to barely stay afloat and make ends meet financially. At best, the Plaintiff has been in "survival mode" and has been making valiant efforts to stay afloat, pay for rent, and

pay for food so she can eat and not starve and become homeless after suffering through her serious medical condition, including not one – but two – liver transplants. These efforts at earning small sums of money on a very Part-Time basis in order to avoid homelessness does not demonstrate that she has an ability to work as a Full-Time attorney.

To put this in perspective: is it reasonable to think that a law firm would be inclined to hire someone who had two major liver transplant surgeries and has any amount of documented residual mental deficits that cause difficulties with concentration and interacting with others? What about a Court? Would a Judge be inclined to hire a legal assistant to help analyze cases and write decisions who had documented difficulties with concentrating and who could maybe only manage 5-6 cases at a time on a good day (and even then requires outside help)? Common sense tells us the answer here – and the answer is a resounding "*no*". Common sense alone tells us that the reason why the answer is no is because managing legal matters on a Full-Time basis is very mentally challenging and taxing work and any amount of mental deficits can be problematic. This is exactly why mild mental limitations are considered critical in the performance of skilled and semi-skilled work. Here, the ALJ failed to properly consider whether the Plaintiff's mild mental limitations prevented her from working in a Full-Time capacity as an attorney. The proper result in this case is a remand.

Even assuming, *arguendo*, that the ALJ was legally permitted to reach a conclusion that the Plaintiff's performance of PT work as an attorney handling only

5-6 family law cases a year with a rather meager gross revenue, and as a teacher in one basic Zoom class that earned a paltry fee of $1,000, demonstrates that the Plaintiff has the mental capacity to perform Full-Time work as an attorney, the ALJ has not reached any such rational conclusion in this case. Moreover, the ALJ provided absolutely no rationale or analysis whatsoever to provide any logic bridge to a conclusion as to *how* or *why* the Part-Time work in these capacities conclusively establishes that the Plaintiff has the mental capacity to perform Full-Time work. As stated above, the fact of the matter is that the ALJ did not provide any analysis in the decision, including in the Step 4 analysis, that provides any meaningful explanation as to *why* absolutely *no mental limitations whatsoever* were included in the RFC in this case. As such, the ALJ erred. Moreover, it is especially the case that the ALJ erred here because the Plaintiff's past relevant work was highly skilled SVP level 8 work as an attorney. Remand is necessary.

The ultimate question that must be answered is whether the Plaintiff, when considering all of her severe and non-severe conditions, including her non-severe mild mental conditions, can work in a Full-Time capacity as an attorney. Here, the answer to that question is "no", which is supported by the testimony provided by the VE and which is addressed above. The answer is also "no" following the holding in See Standowski v. Colvin and Fitzpatrick v. Comm'r of Soc. Sec., *supra*. As such, the ALJ erred by (1) failing to provide for the Plaintiff's mild mental limitations in the RFC; and (2) failing to explain anywhere in the decision, including in the Step 4 analysis, why no such limitations were deemed necessary.

For these reasons, the ALJ erred and the case must be remanded for further consideration.

B. The ALJ did not find that the Plaintiff could perform other work in the national economy.

As noted above, the ALJ posed Hypothetical 3 to the VE in the context of asking the VE whether other jobs exist in the national economy, which the Plaintiff could perform. Because this question was asked in the context of determining if other work is available to the Plaintiff, I will address this line of questioning to explain why it is not relevant to the outcome of this case.

In response to the Hypothetical 3 question, the VE responded and provided 3 sedentary SVP level 2 jobs, which the VE believed the Plaintiff could perform. (Tr. 118). However, despite the VE providing testimony that there are some available unskilled jobs the Plaintiff can perform, this does not bring the issue into the purview of harmless error, nor is the question and answer relevant to the outcome of this appeal.

The first reason the question and answer relating to other work is not relevant is because, in the ALJ's decision, the ALJ did not address these additional jobs. The ALJ did not reach any findings as to whether the Plaintiff could, or could not, perform these additional unskilled jobs. The ALJ did not explicitly credit or rely upon this testimony. In fact, the ALJ does not mention these jobs at all in the decision. As such, if the Court finds that the ALJ erred in the analysis related to the past relevant work as an attorney, which is addressed above under Section A, then there are no other jobs to look at and determine that the Plaintiff could perform other work. As

such, the VE's testimony regarding other work is not relied upon in any way by the ALJ, and is, therefore, not relevant to this appeal. Moreover, because the ALJ did not expressly find the Plaintiff can perform these other jobs the Defense cannot assert protection by the harmless error doctrine.

The second reason the question and answer relating to other work is not relevant is because of the impact of the Plaintiff's age as of the Date of Last Insured (DLI). In this case, the DLI is December 31, 2021. At that time, the Plaintiff was 55 years of age. The additional jobs provided by the VE were all sedentary level unskilled jobs. If the Plaintiff was found to be unable to perform her past relevant work as an attorney, then it is possible that as of the DLI the Plaintiff would have been eligible for disability under the GRID rules. This is because she would have been of advanced age. Therefore, even if the ALJ did make an express finding that the Plaintiff could perform these jobs (which he did not), the Plaintiff may have still been automatically found disabled under the GRID rules if she could not perform her past work on a Full-Time basis as an attorney.

In the decision, the ALJ did not address whether the Plaintiff had transferrable skills to other work or could perform other work. Consequently, the only issue to resolve is whether the ALJ properly evaluated if the Plaintiff's mild mental limitations impact her ability to work in a Full-Time capacity as an attorney, which is highly skilled SVP level 8 work. In this regard, as addressed above under Section A, the ALJ failed to properly evaluate the Plaintiff's mild mental limitations

and failed to provide for any limitations related to these limitations in the RFC. As a result, the ALJ erred and remand is necessary in this case.

CONCLUSION

For the reasons stated above, the Plaintiff asks that the denial of benefits be vacated and that the claim be remanded for further proceedings.

Dated: December 30, 2022

Respectfully Submitted:

s/ Kira Treyvus
KIRA TREYVUS, ESQ
Attorney(s) for the Plaintiff
KONOSKI & PARTNERS, P.C.
305 Broadway, 7th Floor
New York, NY 10007
(212) 897-5832

DECLARATION OF SERVICE

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age, and practice law with offices located in New York, NY. On the 5th day of January, 2023, I served the within **PLAINTIFF'S BRIEF,** by: electronically filing said documents with the Clerk of the Court through the ECF system, which was then electronically served upon the Defendant through Defendant's Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
January 5, 2023

Respectfully Submitted:

/s/ Kira Treyvus

KIRA TREYVUS, ESQ
Attorney(s) for the Plaintiff
KONOSKI & PARTNERS, P.C.
305 Broadway, 7th Floor
New York, NY 10007
(212) 897-5832