UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
------------------------------------------------------x
[redacted], Docket No.: 0:23-cv-17-ECW

Plaintiff,

- against –

KILOLO KIJAKAZI,
Acting Commissioner
of the Social Security,

Defendant.
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**PLAINTIFF'S BRIEF**

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## INTRODUCTION

Pursuant to 42 U.S.C. § 405(g), 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 42 U.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 Proceedings.**

1. [REDACTED] applied for Title XVI supplemental security income benefits on April 12, 2021, alleging disability commencing on July 1, 1997. Dkt. 8 at p. 20. His claim was denied, and Xxxxxxx filed a written request for a hearing which was subsequently held on January 13, 2022. Dkt. 8 at p. 20. The ALJ denied the claim on February 10, 2022. Dkt. 8 at p. 17. Xxxxxxx filed a request for review with the Appeals Council on February 16, 2022. Dkt. 8 at p. 8. The Appeals Council denied the Request for Review on November 29, 2022. Dkt. 8 at p. 5. Accordingly, the ALJ's decision became the Commissioner's final decision.

**Statement of Relevant Facts.**

**[REDACTED] age, education, and work experience.**

2. [REDACTED] was born on September 19, 1962, and he is 58 years old. Dkt. 8 at p. 37. [REDACTED] has at least a high school education and his past relevant work was that of a hand packager and warehouse worker. Dkt. 8 at p. 27.

**Medical Opinions of Dr. Sullivan and Dr. Boyd**.

3. On July 23, 2021, Dr. Sullivan, a state agency's psychological consultant, evaluated the Plaintiff's medical records. Dkt. 8 at p. 103. On August 30, 2021, Dr. Boyd, a second state agency's psychological consultant, evaluated the Plaintiff's medical records. Dkt. 8 at p. 112. Both doctors issued concurring opinions that the Plaintiff retains the capacity to handle brief, infrequent and superficial contact with the general public, co-workers and supervisors. Dkt. 8 at p. 103 and p. 112. Dr. Sullivan and Dr. Boyd further opined that Plaintiff's ability to handle supervision would be reduced secondary to some conflicted reactions to authority, but in the context of reasonably supportive, non-over-the-shoulder supervision would be adequate to handle ordinary levels of supervision. Dkt. 8 at p. 103 and p. 112.

**Medical Opinions of Ms. Bliss**.

4. On April 26, 2021, Jenny Bliss, Plaintiff's psychotherapist, filled out a medical source statement and opined that Plaintiff had moderate limitations in interacting appropriately with the public but *marked* limitations in interacting appropriately with supervisors and coworkers, as well as responding appropriately to changes in the work setting and dealing with work pressures. Dkt. 8 at p. 378. In support of her opinion, Ms. Bliss stated that Plaintiff "has a history of failed attempts to maintain employment. He was fired from last job due to difficulties completing

tasks. He has severe anxiety along with symptoms of PTSD that limits his ability significantly to perform work related activities." Dkt. 8 at p. 377. Ms. Bliss also supported her opinion pertaining to marked limitations responding appropriately to changes in the work setting and dealing with work pressures by stating that Plaintiff "has serious and persistent symptoms of PTSD, anxiety and mood disorder for over ten years. He has difficulties living in *structured environment*, thus as extreme difficulties adapting in workplace." Dkt. 8 at p. 378.

5. On November 24, 2021, Ms. Bliss, filled out a second medical source statement and opined that Plaintiff had with the public but *marked* limitations in interacting appropriately with supervisors and coworkers and the general public, and extreme limitations in responding appropriately to changes in the work setting and dealing with work pressures. Dkt. 8 at p. 514. In support of her opinion, Ms. Bliss stated that Plaintiff "has a history of difficulties maintaining personal and social relationships. He has quit or been fired from prior jobs. He is divorced and minimal contact with family. Difficulties handling interactions with other peers that live at Sober Living House. Minimal social interactions in general public. Often tends to isolate from others." Dkt. 8 at p. 514.

## ISSUE PRESENTED

### I.

**THE DECISION IS NOT SUPPORTED BY SUSTANTIAL EVIDENCE BECAUSE THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO ADEQUATELY INCORPORATE IN THE RFC LIMITATIONS RELATED TO SOCIAL INTERACTIONS.**

### II.

**THE COMMISSIONER ERRED BY FAILING TO ADEQUATELY EVALUATE THE *SUPPORTABILITY* AND *CONSISTENCY* OF THE OPINION OF MS. JENNY BLISS, IN VIOLATION OF 20 C.F.R. § 404.1520c AND BY IMPROPERLY REJECTING THIS OPINION.**

## 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. See 20 C.F.R. § 404.1520(c). If not, the claim is denied. Id.

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

## I.

## THE DECISION IS NOT SUPPORTED BY SUSTANTIAL EVIDENCE BECAUSE THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO ADEQUATELY INCORPORATE IN THE RFC LIMITATIONS RELATED TO SOCIAL INTERACTIONS.

**Applicable law:**

At step four of the analysis, the ALJ "conducts a residual-functional-capacity assessment of the claimant. A claimant's RFC is "the most a claimant can do despite his limitations." Moore v. Astrue, 572 F.3d 520, 523 (8th Cir. 2009) (*citing* 20 C.F.R. § 404.1545(a)(1)). "The ALJ must assess a claimant's RFC based on all

relevant, credible evidence in the record, 'including the medical records, observations of treating physicians and others, and an individual's own description of his limitations.'" Tucker v. Barnhart, 363 F.3d 781, 783 (8th Cir. 2004)(*quoting* McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir. 2000)).

The Program Operations Manual System ("POMS") provides a list of mental abilities that are critical for performing unskilled level work. POMS DI 25020.010(B)(2)(a). Further, the ability to accept instructions and respond appropriately to criticism from supervisors and ability to get along with peers is "critical" for the performance of unskilled work. Id. 25020.010(B)(3)(k) and (l).

**Argument**:

The decision denying Plaintiff social security disability benefits is not supported by substantial evidence because the ALJ failed to properly evaluate Plaintiff's limitations related to social interactions and failed to accurately reflect these limitations in the RFC. The ALJ also failed to build an accurate and logical bridge between his conclusions related to limitations in social interactions and the evidence. These errors warrant a remand.

In this case, Dr. Sullivan and Dr. Boyd, two state agency's psychological consultants, issued concurring opinions that the Plaintiff required brief, infrequent and superficial contact with the general public, co-workers and supervisors. Dkt. 8 at p. 103 and p. 112. The ALJ found that the opinions of Dr. Sullivan and Dr. Boyd

were partially persuasive because the longitudinal record warranted *slightly greater* limitations. Dkt. 8 at p. 26. Accordingly, in evaluating the persuasiveness of these opinions, the ALJ did not reject any of the social interaction limitations contained in the opinion of Dr. Sullivan and Dr. Boyd and in fact stated that slightly greater limitations were warranted. Dkt. 8 at p. 26

Moreover, the ALJ's own Paragraph B Criteria findings established that the plaintiff had moderate limitations in the domain of interacting with others. Dkt. 8 at p. 23 and the ALJ acknowledged that the Plaintiff:

> "lives in a sobriety house, has a roommate, and lives with about 20 other people in the house; but, testified that he does not get along with people, so he spends a lot of time in his room. He testified that he has bad anxiety when in crowds or interacting with others. He testified he goes to mandatory meetings every weekday morning but has had verbal altercations with other residents of the sobriety house but gets along with his roommate. During treatment, the claimant regularly reported interpersonal conflicts, typically having difficulty with other residents of the sobriety house where he lived." Dkt. 8 at p. 8.

However, despite assessing moderate limitations in the domain of interacting with others and despite finding the opinions of Dr. Sullivan and Dr. Shield partly persuasive, the RFC formulated by the ALJ was *less restrictive* than the opinions of Dr. Sullivan and Dr. Shield. The RFC related to social interactions formulated by the ALJ provided that:

> "the claimant is limited to occasional interaction with co-workers and supervisors; is limited to no transactional

> interaction with the public, i.e. sales, negotiation, customer service, or resolution of disputes; the work itself should deal with things rather than people throughout a typical workday; and there should be no tandem tasks or teamwork required." Dkt. 8 at p. 24.

The ALJ limited Plaintiff to jobs where he would have occasional interactions with supervisors and coworkers but imposed no such limitation on Plaintiff's interaction with the general public. Dkt. 8 at p. 24. The ALJ also utterly failed to include the limitations to *brief and superficial* interactions.

The ALJ erred on two grounds. First, the ALJ erred because the RFC failed to account for limitations contained in the opinions of Dr. Sullivan and Dr. Shield who were found persuasive. Dr. Sullivan and Dr. Boyd opined that the Plaintiff needs brief, infrequent and superficial contact with others. Dkt. 8 at p. 103 and p. 112. In other words, the state agency consulting doctors separately evaluated Plaintiff's limitations with regard to the public, co-workers, and supervisors and found that Plaintiff would have moderate limitations in interaction as to all three (public, co-workers, and supervisors). Dkt. 8 at p. 103 and p. 112. The ALJ found these opinions persuasive, yet the ALJ did not limit Plaintiff's interactions with the public to brief, infrequent or superficial. Limiting Plaintiff "to no transactional interaction with the public, i.e. sales, negotiation, customer service, or resolution of disputes" is *less restrictive* than the medical opinions which required contact to be *brief, infrequent and superficial*. Unfortunately, simply limiting transactional

interactions with the public does not properly account for the Plaintiff's need for brief, infrequent and superficial contact and such a limitation in the RFC does not eliminate contact with the public which can occur in a place of employment outside of "transactional work". For example, one of the jobs provided by the vocational expert in response to the ALJ's hypothetical question was the job of a "hospital cleaner". DOT defines the job of a hospital cleaner as "cleans hospital patient rooms, baths, laboratories, offices, halls, and other areas" See DOT 323.687-014. Hospitals are open 24 hours per day and are often highly crowded with patients, staff and visitors. In a high traffic job site such as a hospital, Plaintiff would be required to clean patient's rooms, hallways and offices where he would constantly come in contact with the general public. This clearly surpasses the social interaction parameters set by Dr. Sullivan and Dr. Boyd in their medical opinions. In a highly populated location such as a hospital, even in the absence of transactional work, Plaintiff would be in constant contact with patients, visitors and medical staff. This is why the ALJ's failure to limit plaintiff's interactions with the public to brief, infrequent and superficial in accordance with the opinions of Dr. Sullivan and Dr. Boyd, created an RFC which is inconsistent with any medical opinion or evidence in the record.

Even if the ALJ had a valid reason to deviate from the medical opinion findings of Dr. Sullivan and Dr. Boyd, the ALJ was required to explain her reasons

for deviating from their opinions and explain her reasons for creating a less restrictive RFC. The ALJ failed to do so here.

In Gann v. Berryhill 864 F.3d 947, 952–53 (8th Cir. 2017), the court held that when an ALJ fails to incorporate or contradict medical opinions that included greater limitations on plaintiff's RFC, a remand is required so that the ALJ may explain why he rejected parts of those opinions, as required by 20 C.F.R. § 404.1520c. Here, the opinions of Dr. Sullivan and Dr. Boyd included greater social interaction limitations than limitations contained in the RFC. Yet the ALJ did not explain what in the record justified a less restrictive RFC.

In Cook v. Kijakazi, 2022 WL 4117028, (W.D. Mo. September 9, 2022), the court held that the "RFC limited [plaintiff] to "occasional work-place changes," but the ALJ failed to include this limitation in the RFC or provide an explanation about why she disregarded it even though she found Dr. Watson's opinion persuasive. This was an error. See Masden v. Saul, 2012 WL 3172934, at *2, (W.D. Mo. July 27, 2021) (*finding* it was error for the ALJ to find a doctor's opinion persuasive but not explain the exclusion of the doctor's opinion that the claimant was limited to "gradual and predictable" workplace changes)."

The ALJ also committed a reversible error by not including the limitation to "superficial" interactions with others in the RFC. Dr. Sullivan and Dr. Boyd both opined that interactions must be superficial. The RFC contains no such limitation.

A limitation to *occasional* interactions, does not adequately account for the need to have contact which is *superficial*. This is because the terms "occasional" and "superficial" are not interchangeable. Eden v. Comm'r of Soc. Sec., 2019 WL 7666532, at *2 (N.D. Ia. June 6, 2019); see also, e.g., Redd v. Comm'r of Soc. Sec., 2021 WL 1960763, at *4 (W.D. Mich. May 17, 2021) ("With regard to social limitations, courts have distinguished limitations that concern 'the quality or nature of interactions' from limitations that concern 'the quantity of time involved with those interactions.' " (*quoting* Kilgore v. Saul, 2021 WL 932019, at *7 (E.D. Tenn. Mar. 11, 2021)); Casey v. Comm'r of Soc. Sec., 2018 WL 6257432, at *4 (S.D. Ohio Nov. 30, 2018) ("The terms 'occasional' and 'superficial' are not interchangeable."); Hurley v. Berryhill, 2018 WL 4214523, at *4 (N.D. Ind. Sept. 5, 2018) ("These limitations are not interchangeable, nor does one imply the other."). Thus, occasional interactions account for the quantity of time while superficial interactions account for the quality or nature of the interactions. Here, the ALJ failed to account for the quality or nature of the interactions which is inconsistent with every medical opinion in the record.

The ALJ in this case failed to build an accurate and logical bridge between her finding that the medical opinions of Dr. Sullivan and Dr. Boyd were partially persuasive because slightly greater limitations were warranted by the record and her RFC assessment which was less restrictive than the medical opinions he found

persuasive. In addition to considering all of the evidence, the ALJ must build "an accurate and logical bridge" between the evidence and her decision". St. Clair v. Colvin, 2013 WL 4400832, at *2 (W.D. MO., Aug. 14, 2013) (*citing* Sarchet v. Chater, 78 F.3d 305, 307 (7th Cir. 1996)). The ALJ failed to do so here.

The ALJ's error to properly consider and incorporate social interaction limitations in the RFC is not harmless. The RFC does not account for Dr. Sullivan and Dr. Boyd opinion that the Plaintiff needs superficial interactions and does not account for brief and infrequent interactions with the general public. The Program Operations Manual System ("POMS") provides a list of mental abilities that are critical for performing unskilled level work. POMS DI 25020.010(B)(2)(a). The ability to accept instructions and respond appropriately to criticism from supervisors is "critical" for the performance of unskilled work. Id. 25020.010(B)(3)(k). In spite of the importance of this requirement, the ALJ's RFC pertaining to social interactions is less restrictive than medical opinions and does not provide for superficial contact with supervisors and coworkers or occasional and superficial contact with the public. Notably, the social interaction limitations are highly probative to the outcome of this case. The vocational expert testified that if an individual was unable to interact with supervisors, coworkers and the public or if an induvial was unable to get along with a supervisor 20 percent of the time, there

would be no available jobs. Dkt. 8 at p. 62-63. Consequently, had the ALJ properly considered the Plaintiff's social interaction limitations and applied restrictions in the RFC which were consistent with medical opinions in the record, then such restrictions were highly likely to result in a finding of disability. See POMS DI 25020.010(B)(2)(a); 25020.010(B)(3)(k) and (l).

**Conclusion:**

For the reasons stated above, the Plaintiff requests that the decision be reversed, and the case be remanded for further consideration.

## II.

## THE COMMISSIONER ERRED BY FAILING TO ADEQUATELY EVALUATE THE SUPPORTABILITY AND CONSISTENCY OF THE OPINION OF MS. JENNY BLISS, IN VIOLATION OF 20 C.F.R. § 404.1520c AND BY IMPROPERLY REJECTING THIS OPINION.

**Applicable law:**

Plaintiff applied for disability benefits after March 27, 2017, and the ALJ was required to evaluate all medical opinions in the summary section of her decision under the revised regulations found in 20 C.F.R. §§ 404.1520c and 416.920c.

Under the new regulation, the Commissioner is required to consider the persuasiveness of each medical sources' opinions using five factors: (1) supportability; (2) consistency; (3) relationship with the claimant (which encompasses the length of treatment relationship, frequency of examinations;

purpose and extent of treatment relationship, and examining relationship); (4) specialization; and (5) other factors tending to support or contradict a medical opinion or prior administrative medical finding. 20 C.F.R. §§ 404.1520c(c), 416.920c(c). The most important factors in evaluating persuasiveness are supportability and consistency. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

The ALJ "will explain how he considered supportability and consistency factors for a medical source's medical opinions ... in [the] ... decision." 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2)(emphasis added). Supportability generally refers to "the objective medical evidence and supporting explanations provided by a medical source." Id. §§ 404.1520c(c)(1), 416.920c(c)(1). Consistency generally refers to the consistency between the opinion and "the evidence from other medical sources and nonmedical sources in the claim." Id. §§ 404.1520c(c)(2), 416.920c(c)(2). "However, when the ALJ has found two or more medical opinions to be equally well supported and consistent with the record, but not exactly the same, the ALJ must articulate how he or she considered [the remaining] factors...." Densberger, 2021 WL 1172982, at *8; see also 20 C.F.R. §§ 404.1520c(b)(3), 416.920c(b)(3).

**Argument**:

In this case, the ALJ erred in evaluating the opinion evidence of the Plaintiff's treating psychotherapist, Ms. Jenny Bliss. First, the ALJ failed to adequately

evaluate and discuss "*supportability*" and "*consistency*" of this medical opinion in accordance with 20 C.F.R. § 404.1520c. Second, the ALJ erred by failing to provide a legally valid reason for rejecting this opinion. Ms. Bliss issued a medical opinion on April 26, 2021, which contained multiple functional mental limitations such as that Plaintiff had moderate limitations in interacting appropriately with the public but *marked* limitations in interacting appropriately with supervisors and coworkers, as well as responding appropriately to changes in the work setting and dealing with work pressures. Dkt. 8 at p. 378. Ms. Bliss issued a second medical opinion on November 24, 2021, that Plaintiff had *marked* limitations in interacting appropriately with supervisors, coworkers and the general public, and extreme limitations in responding appropriately to changes in the work setting and dealing with work pressures. Dkt. 8 at p. 514.

In evaluating the opinions of Ms. Bliss, the ALJ wrote that:

> "These opinions are not persuasive, as they are far more restrictive than Ms. Bliss treatment notes at Kanabec support, with the claimant often having normal mental status exam except for occasionally having anxious mood or worrisome effect. Additionally, the claimant's own self-reporting on depression and anxiety screenings typically only indicates moderate depression and anxiety (Exhibits C1F, C3F, and C6F). Therefore, these opinions are inconsistent with, and unsupported by, the author's own treatment records." Dkt. 8 at page 26.

The ALJ's evaluation does not comply with the requirements of 20 C.F.R. § 404.1520c because it does not adequately to articulate how the ALJ considered the "supportability" or "consistency" factors of this medical opinion and because the ALJ mischaracterized the medical records submitted by Ms. Bliss. This error requires reversal and remand.

*Supportability* generally refers to "the objective medical evidence and supporting explanations provided by a medical source." The consistency factor calls for a comparison between a medical source's opinions and "the evidence from other medical sources and nonmedical sources" in the record. 20 C.F.R. §§ 404.1520c(c)(2), 416.920c(c)(2). Here, in addressing supportability of this opinion, the ALJ stated that her opinions "are far more restrictive than Ms. Bliss' treatment notes at Kanabec support, with the claimant often having normal mental status exam except for occasionally having anxious mood or worrisome effect." Dkt. 8 at page 26. The ALJ is simply wrong. First, it is important to note that during the relevant period at issue, Plaintiff was a resident in a structured inpatient facility called Sober Living House and was being provided ongoing mental health and alcohol treatment. Dkt. 8 at p. 370. Second, the medical records prepared by Ms. Bliss show the severity of Plaintiff's limitations in social interactions and describe the impact his mental health conditions have on his activities of daily living. More specifically, records from April 14, 2021, noted that Plaintiff was still feeling irritability most of

the day and that he often isolates in his room. Dkt. 8 at p. 370. Records from May 26, 2021, showed that Plaintiff was experiencing ongoing mood fluctuation. Dkt. 8 at p. 449-450. Ms. Bliss noted that Plaintiff "became upset last night due to a new guy moving in and was *off the wall*. Patient will tend to stay in his room if living room environment is difficult. Dkt. 8 at p. 449-450. Plaintiff's GAD-7 scores was indicative of moderate anxiety. Dkt. 8 at p. 449-450. On June 23, 2021, medical records from Ms. Bliss indicated that Plaintiff was reporting depression along with irritability and that his GAD-7 score was (15) consistent with *severe* anxiety. Dkt. 8 at p. 458. On October 11, 2021, medical records showed that although his nightmares and sleep improved, the *irritability increased* and was occurring daily. Ms. Bliss noted that his irritability caused him to *threaten others* at times and he was very impulsive. Dkt. 8 at p. 458. On November 8, 2021, medical records documented that Plaintiff was in a *verbal altercation incident* with another resident. Dkt. 8 at p. 458. His GAD-7 score was (21) consistent with *severe* anxiety. Dkt. 8 at p. 510. Therefore, the ALJ assertion that Ms. Bliss' medical records showed "normal mental status exam except for occasionally having anxious mood or worrisome effect" is not supported by substantial evidence. The records prepared by Ms. Bliss also showed that Plaintiff's mental status was often consistent with *severe* anxiety and her records even contained specific examples of Plaintiff's aggressive and anti-social behavior towards others. Ms. Bliss' records described

how despite living in a highly structured supportive environment with ongoing mental health treatment, Plaintiff was still exhibiting significant problems getting along with others. Although ALJ's are not required to discuss every piece of evidence, they are still required to discuss the uncontroverted evidence they choose not to rely upon, as well as significantly probative evidence they reject. See Clifton, 79 F.3d at 1010. Also, an ALJ may not "pick and choose through an uncontradicted medical opinion, taking only the parts that are favorable to a finding of non-disability." Haga v. Astrue, 482 F.3d 1205, 1208 (10th Cir. 2007). Here, the ALJ failed to correctly apply these legal standards. Instead, the ALJ selectively noted that Ms. Bliss found normal mental status with occasionally anxious mood but failed to acknowledge or discuss the portions of her medical records which documented *severe anxiety* and multiple instances of aggressive and socially unacceptable behavior towards others. As such, the ALJ's evaluation leaves the Court unable to determine whether he even considered the significantly probative evidence supporting Ms. Bliss' medical opinion before rejecting this medical opinion.

The ALJ's second reason for rejecting the medical opinion of Ms. Bliss is also unavailing. The ALJ stated that "the claimant's own self-reporting on depression and anxiety screenings typically only indicates moderate depression and anxiety." Dkt. 8 at page 26. However, again, the ALJ selectively ignored the severe anxiety

scores. For example, on June 23, 2021, medical records from Ms. Bliss indicated that Plaintiff's GAD-7 score was (15) consistent with *severe* anxiety. Dkt. 8 at p. 458 and that on November 8, 2021, his GAD-7 score was (21) consistent with *severe* anxiety. Dkt. 8 at p. 510. The ALJ simply made a conclusory statement without considering the waxing and waning of Plaintiff's anxiety symptoms and without considering findings in Ms. Bliss' records which clearly contradict his position.

The ALJ's error is not harmless. The limitations contained in Ms. Bliss' opinion were work preclusive. She opined that Plaintiff had *marked* limitations in two Paragraph B criteria. If her medical opinion was properly evaluated and considered, Plaintiff could have met or equaled Listing 12.04 and/or Listing 12.06. Moreover, based on the testimony of the vocational expert, if the ALJ accepted her opinion as to marked social limitations, all work would have been precluded. Therefore, failure to properly evaluate this medical opinion and failure to provide a valid legal reason for rejecting this opinion prejudiced the Plaintiff.

**<u>Conclusion:</u>**

For the reasons fully explained above, the Plaintiff requests that the ALJ's decision be reversed, and the case be remanded for further consideration.

## CONCLUSION

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

Dated: April 3, 2023

Respectfully submitted,

/s/ Kira Treyvus

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