


No. 24-1051

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**In the United States Court of Appeals  
For the First Circuit**

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,  
*Plaintiff-Appellant,*

v.

MARTIN J. O'MALLEY,  
Commissioner of the Social Security Administration,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the  
District of Massachusetts, No. 1:23-cv-10170-FDS

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**OPENING BRIEF FOR APPELLANT**

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**TABLE OF CONTENTS**

STATEMENT REGARDING ORAL ARGUMENT ..... 4

STATEMENT OF JURISDICTION ..... 5

STATEMENT OF ISSUES ..... 6

STATEMENT OF THE CASE ..... 7

SUMMARY OF THE ARGUMENT ..... 8

STANDARD OF REVIEW ..... 10

ARGUMENT..... 12

THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO PERFORM A PROPER EVALUATION OF THE CONSISTENCY FACTOR OF THE STATE AGENCY MEDICAL OPINIONS, IN VIOLATION OF 20 C.F.R. §§ 404.1520c, AND BY FAILING TO INCORPORATE FUNCTIONAL LIMITATIONS THAT WERE FOUND PERSUASIVE INTO THE RFC..... 12

    A. The ALJ did not properly evaluate the State Agency medical opinions and failed to properly evaluate the consistency factor set forth in 20 C.F.R. §§ 404.1520c. .... 14

    B. The ALJ’s error is not harmless..... 19

    C. The District Court erred as a matter of law..... 22

        (1)The ALJ’s analysis did not only affect one sentence of the decision..... 22

        (2)The Court incorrectly found that the ALJ’s decision was based on substantial evidence..... 24

CONCLUSION ..... 29

## TABLE OF AUTHORITIES

### Case Law

<u>Consolidated Edison Co. v. NLRB</u> , 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L.Ed. 126 (1938).....	10
<u>Garrison v. Colvin</u> , 759 F.3d 995, 1019 (9th Cir. 2014).....	11
<u>Martinez v. Kijakazi</u> , 2021 WL5054477, (D. Mass. October 29, 2021).....	18, 19
<u>Nguyen v. Chater</u> , 172 F.3d 31, 35 (1st Cir.1999) .....	11
<u>Ortiz v. Sec’y of Health &amp; Human Servs.</u> , 955 F.2d 765, 769 (1st Cir. 1991).....	25
<u>Richardson v. Perales</u> , 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971).....	10
<u>Seavey v. Barnhart</u> , 276 F.3d 1, 9 (1 <sup>st</sup> Cir. 2001)( <i>citing</i> 42 c.f.r. § 405(g)) .....	11
<u>Ward v. Comm'r of Social Security</u> , 211 F.3d 652, 655 (1st Cir. 2000).....	11
<u>Warren I. v. Comm'r of Soc. Sec.</u> , 2021 WL 860506, at *8 (N.D.N.Y. Mar. 8, 2021) ( <i>quoting</i> 82 Fed. Reg. 5844-01, 5858 (Jan. 18, 2017)).....	19

### Statutes

28 U.S.C. § 1291.....	5
42 U.S.C. § 405(g).....	5, 10, 11,
20 C.F.R. §§ 404.1520(c).....	6, 8, 12, 14, 15

20 C.F.R. §§ 404.1520c(b)(2) .....	13, 19
20 C.F.R. §§ 404.1520c(c)(1).....	13
20 C.F.R. §§ 404.1520c(c)(2).....	13
20 C.F.R. §§ 416.920c.....	12
20 C.F.R. §§ 416.920c(a).....	12
20 C.F.R. §§ 416.920c(b)(2).....	13
20 C.F.R. §§ 416.920(c)(1)-(5); 416.920(c)(2).....	13

**Rules**

POMS DI 25020.010(B)(2)(a).....	21, 22
POMS DI 25020.010(B)(3)(e).....	21, 22

**ADDENDUM**

	<b><u>TAB</u></b>	<b><u>PAGE</u></b>
Administrative Law Judge Decision .....	A	AD-1 to AD-25
Notice of Appeals Council Action .....	B	AD-26 to AD-32
District Court Memorandum and Order .....	C	AD-33 to AD-51
Final Order of Dismissal .....	D	AD-52 to AD-53

**STATEMENT REGARDING ORAL ARGUMENT**

Plaintiff-Appellant, Ivonette [REDACTED], does not ask for oral argument in this matter. The Plaintiff-Appellant consents to this Court deciding the case on submission.

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## **STATEMENT OF JURISDICTION**

(A) **The basis for subject matter jurisdiction:** The Plaintiff brings this appeal of the district court's decision affirming the denial of the Plaintiff's social security disability benefits. Subject matter jurisdiction exists pursuant to 42 U.S.C. § 405(g).

(B) **The basis for the court of appeals' jurisdiction:** This Court's appellate jurisdiction to review the district court's final order arises from 28 U.S.C. § 1291.

(C) **The filing dates establishing the timeliness of the appeal:** The Court issued a final judgment on January 3, 2024. The Plaintiff filed a notice of appeal on January 9, 2024. The notice of appeal was timely filed pursuant to the Federal Rules of Appellate Procedure 4(B). The Plaintiff's brief is timely filed within 40 days after the record is filed, pursuant to Federal Rules of Appellate Procedure 31(a).

(D) **The appeal is from a final order or judgment:** The district court issued a final judgment on January 3, 2024, disposing of all issues in the case.

## **STATEMENT OF ISSUES**

THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO PERFORM A PROPER EVALUATION OF THE CONSISTENCY FACTOR OF THE STATE AGENCY MEDICAL OPINIONS, IN VIOLATION OF 20 C.F.R. §§ 404.1520c, AND BY FAILING TO INCORPORATE FUNCTIONAL LIMITATIONS THAT WERE FOUND PERSUASIVE INTO THE RFC.

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## STATEMENT OF THE CASE

Ms. [REDACTED] applied for Social Security (Title II and Tile XVI) benefits on October 8, 2019, alleging disability commencing on October 20, 2018. AD pg. 005. Her claim was initially denied on May 7, 2020, and on reconsideration on February 4, 2021. AD pg. 005. Ms. [REDACTED] filed a written request for a hearing which was subsequently held on September 8, 2021. AD pg. 005. The ALJ denied the claim on October 14, 2021. AD pg. 002. Ms. [REDACTED] filed a request for review with the Appeals Council and Appeals Council denied the Request for Review on October 4, 2022. AD pg. 027. Accordingly, the ALJ's decision became the Commissioner's final decision.

Ms. [REDACTED] appealed to the federal district court asking the court to overturn the Commissioner's decision and remand the case for further consideration. The federal district court issued an order denying the Plaintiff's request for relief and affirming the Commissioner's decision.

Ms. [REDACTED] now appeals to the First Circuit Court of Appeals asking for the prior decision to be reversed, for the decision denying



disability benefits to be vacated, and for the case to be remanded back to the Social Security Administration for further proceedings.

### **SUMMARY OF THE ARGUMENT**

The ALJ erred in the analysis in three ways: First, the ALJ improperly summarized and mischaracterized these opinions, which generally demonstrated the ALJ was inattentive, created a poorly drafted opinion, and did not apply the regulations. Second, the ALJ only performed a perfunctory and boilerplate consistency analysis, which is insufficient as a matter of law and is in violation of 20 C.F.R. §§ 404.1520c. Third, the ALJ failed to incorporate functional limitations into the RFC, which the ALJ found persuasive.

The ALJ found the State Agency consultants' psychiatric opinions to be persuasive. The persuasive medical opinions contained an assessment for moderate limitations in three categories, which were not accounted for in the RFC: (1) moderate limitations in the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; (2) moderate limitations in the ability to concentrate for extended periods of time; and

(3) moderate limitations in the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. APX pg. 008. Each of these limitations relate to absenteeism and time off task, which was not accounted for in the RFC. Moreover, the ALJ did not explain why these limitations were not accounted for in the RFC.

There was also an inconsistency between the opinions. Dr. Montgomery found that there were moderate limitations in the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. Dr. Fischer found that there was no limitations in this category. These limitations relate to absenteeism. The ALJ found both doctors persuasive but failed to reconcile this inconsistency.

Had the ALJ performed more than a perfunctory consistency analysis, the uncontroverted portions of the opinions would likely have been accounted for in the RFC, or there would have been an explanation as to why they were not included. Moreover, if there was more than a perfunctory analysis, the ALJ would have reconciled the inconsistency between the opinions.

In any event, the ALJ failed to account for at least the uncontroverted portions of the opinions, which were found persuasive, into the RFC. Moreover, the ALJ failed to explain why these uncontroverted opinions, which were found persuasive, were not incorporated into the RFC. The ALJ's errors were not harmless since the inclusion of absenteeism and time off task into the RFC would have likely been work preclusive and may have changed the outcome of the decision. If the ALJ performed a proper analysis of the medical opinions the Plaintiff may have been awarded disability benefits.

The argument will be more fully developed below.

### **STANDARD OF REVIEW**

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).

The Circuit Court will “use the same standard to review the correctness of the Commissioner's decision as does the district court: that is, whether the final decision is supported by substantial evidence and whether the correct legal standard was used.” Seavey v. Barnhart, 276 F.3d 1, 9 (1<sup>st</sup> Cir. 2001)(*citing* 42 U.S.C. § 405(g)); see also Ward v. Comm'r of Social Security, 211 F.3d 652, 655 (1st Cir. 2000).

In evaluating the case, the Court shall,

“determin[e] whether the ALJ deployed the proper legal standards and found facts upon the proper quantum of evidence[;] ... [t]he ALJ's findings of fact are conclusive when supported by substantial evidence, 42 U.S.C. § 405(g), but are not conclusive when derived by ignoring evidence, misapplying the law, or judging matters entrusted to experts.”

Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999) (citation omitted).

Under the Social Security Act, courts are empowered “to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C.

§ 405(g); Seavey, 276 F.3d at 8-9; Garrison v. Colvin, 759 F.3d 995, 1019 (9th Cir. 2014).

## ARGUMENT

**THE COMMISSIONER ERRED AS A MATTER OF LAW BY FAILING TO PERFORM A PROPER EVALUATION OF THE CONSISTENCY FACTOR OF THE STATE AGENCY MEDICAL OPINIONS, IN VIOLATION OF 20 C.F.R. §§ 404.1520c, AND BY FAILING TO INCORPORATE FUNCTIONAL LIMITATIONS THAT WERE FOUND PERSUASIVE INTO THE RFC.**

### Applicable law:

The Social Security Administration has promulgated a new rule for assessing medical opinion evidence, which governs all claims filed on or after March 27, 2017. 20 C.F.R. §§ 404.1520c, 416.920c. The new rule provides that the Commissioner “will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including those from [claimant's] medical sources.” 20 C.F.R. § 416.920c(a). Rather, the Commissioner shall “evaluate the persuasiveness” of all medical opinions and prior

administrative medical findings using the factors set forth in the regulations: (1) supportability; (2) consistency; (3) relationship with the claimant, including length of the treatment relationship, frequency of examinations, purpose of the treatment relationship, extent of the treatment relationship, and examining relationship; (4) specialization; and (5) other factors including but not limited to evidence showing a medical source has familiarity with the other evidence in the claim or an understanding of the agency's disability program's policies and evidentiary requirements. 20 C.F.R. § 416.920c(a), (c)(1)-(5).

The ALJ “will explain how [he] considered the 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).

**Argument:**

Set forth below, the Plaintiff will explain, first, how the ALJ erred in this case. The Plaintiff will then explain how the District Court erred. Although the Circuit Court reviews the District Court's judgment *de novo*, the Plaintiff believes that it is important to demonstrate how and why the District Court's decision is also erroneous. Based on the arguments below, the Plaintiff requests that this Court Order that the denial of disability benefits be vacated and the case be remanded for further consideration.

**A. The ALJ did not properly evaluate the State Agency medical opinions and failed to properly evaluate the consistency factor set forth in 20 C.F.R. §§ 404.1520c.**

In this case, four separate State Agency consultants provided medical opinions. Two of the State Agency Consultants, Dr. Truong and Dr. Rozhansky, provided opinions as to the plaintiff's physical limitation. APX pg. 005 and APX pg. 007. The other two State Agency Consultants, Dr. Fischer and Dr. Montgomery, provided medical opinions as to plaintiff's mental health limitation. APX pg. 004 and APX pg. 008. The ALJ grouped all four of the State Agency Consultant opinions into one joint analysis. The ALJ then concluded that all four State Agency Consultant opinions were persuasive. AD pg. 016. However, the ALJ

failed to comply with the requirements of 20 C.F.R. §§ 404.1520c in evaluating the persuasiveness of these medical opinions.

The ALJ erred in the analysis in three ways: First, the ALJ improperly summarized and mischaracterized these opinions, which generally demonstrated the ALJ was inattentive, created a poorly drafted opinion, and did not apply the regulations. Second, the ALJ only performed a perfunctory and boilerplate consistency analysis, which is insufficient as a matter of law and is in violation of 20 C.F.R. §§ 404.1520c. Third, the ALJ failed to incorporate functional limitations into the RFC, which the ALJ found persuasive.

In evaluating the persuasiveness of these opinions, the ALJ wrote:

“I have considered the administrative findings of fact made by the state agency physicians. While I am mindful that these opinions are from non-examining and non-treating expert sources, they are not inconsistent with the medical evidence as a whole and are therefore persuasive overall in determining the extent of the claimant’s limitations. The agency medical and psychological consultants are recognized as highly qualified and are experts in Social Security disability evaluation (20 CFR 404.1527(f)(2)(i); 20 CFR 416.927(f)(2)(i)). **I found the opinions of the nonexamining state agency consultants finding of insufficient evidence to determine a severe impairment to be**



consistent with the longitudinal treatment record through the date of their determination, objective evidence, diagnostic testing, and physical exam findings. Further, they are experienced in the evaluation of disability claims; they have familiarity with Social Security disability program rules and regulations; they supported their opinions with citations to specific evidence of record; and they put their opinions as to the claimant's capabilities in work-related functional terms. **Specifically, their opinions were generally consistent with physical examinations, treatment notes, and the objective medical evidence.** Thus, I find their findings to be persuasive in determining the claimant's limitations prior to the date last insured. (Exhibit 1A, 2A, 5A, 6A)." Dkt. 11 at page 77.

As highlighted above, in the first bold portion above, the first error identified is that the ALJ mischaracterized these opinions. The ALJ stated she concluded that "the non-examining state agency consultants finding of **insufficient evidence to determine a severe impairment** to be consistent with the longitudinal treatment record through the date of their determination" was consistent with the record. AD pg. 016. However, out of the 4 medical consultants that issued an opinion, only Dr. Truong found that there was *insufficient evidence to determine the*

*existence of a severe impairment.*<sup>1</sup> Consequently, the ALJ mischaracterized the medical opinions of three out of the four consultants. This is important because it underscores the fact that the ALJ's decision was generally inadequate and poorly drafted. Moreover, it also underscores the Plaintiff's additional point raised herein, which is that the ALJ's lack of attention to detail also resulted in the ALJ's failure to follow the regulations.

The fact that the ALJ mischaracterized the medical opinions is also important because the ALJ focused her entire "consistency" analysis on the mischaracterized information, stating, "I found the opinions of the nonexamining state agency consultants finding of insufficient evidence to determine a severe impairment to be consistent with the longitudinal treatment record through the date of their determination . . . ." AD pg. 016. The ALJ relied upon a portion of Dr. Truong's opinion and determined that all four opinions found that there was insufficient evidence supporting the existence of a severe impairment, which is inaccurate. This finding is inaccurate because the other three doctors

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<sup>1</sup> Dr. Fischer and Dr. Montgomery found depressive and bipolar disorder to be a severe impairment. APX pg. 009. Moreover, Dr. Rozhansky found the hearing loss condition to be a severe impairment. APX pg. 006. It was only Dr. Truong that found there was insufficient proof of a severe impairment.

found that the Plaintiff did have severe impairments. Moreover, the ALJ also found the existence of severe conditions at Step 2, which is also inconsistent with the ALJ's determination when analyzing the medical opinions that there was insufficient proof of a severe impairment. The fact that the ALJ relied upon one portion of Dr. Truong's opinion finding that there was insufficient evidence to find a severe impairment, which is not what the other three doctors determined, makes it impossible to trace the ALJ's path of reasoning.

The Second way the ALJ erred is by performing a boilerplate and perfunctory consistency analysis, which is legally insufficient. In performing the consistency analysis the ALJ simply stated that the medical opinions "were generally consistent with physical examinations, treatment notes, and the objective medical evidence." AD pg. 016.

The ALJ failed to explain *how* these opinions were consistent with the evidence and the ALJ did not cite to any specific evidence to reach this boilerplate conclusion. In Martinez v. Kijakazi, 2021 WL5054477, (D. Mass. October 29, 2021), the court wrote that the regulations obligate ALJ's to "explain how [she] considered the supportability and consistency factors for a medical source's medical opinions ... in [the] determination

or decision,” while they “may, but are not required to, explain how [they] considered” the remaining factors. 20 C.F.R. § 404.1520(b)(2). Thus, the new regulations “set forth a ‘minimum level of articulation’ to be provided in determinations and decisions, in order to ‘provide sufficient rationale for a reviewing adjudicator or court.’” Warren I. v. Comm'r of Soc. Sec., 2021 WL 860506, at \*8 (N.D.N.Y. Mar. 8, 2021) (*quoting* 82 Fed. Reg. 5844-01, 5858 (Jan. 18, 2017)), Martinez v. Kijakazi, 2021 WL 5054477 (D. Mass, Oct. 29, 2021). The “ALJ's failure to meet these minimum levels of articulation frustrates [the] court's ability to determine whether [the plaintiff's] disability determination was supported by substantial evidence.” Id. Since the ALJ failed to perform an adequate persuasiveness evaluation in violation of the Regulations the ALJ committed reversible error. As explained below, the ALJ’s error was not harmless, which further supports remand in this case.

**B. The ALJ’s error is not harmless.**

The ALJ’s error is not harmless. The ALJ did not properly consider the opinions of the psychological consultants, Drs. Montgomery and Fischer, and the RFC formulated by the ALJ is less restrictive than the mental health opinions in this case.

Dr. Montgomery reviewed Plaintiff's medical records and opined that the plaintiff has moderate limitations in three categories, which were not accounted for in the RFC: (1) moderate limitations in the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; (2) moderate limitations in the ability to concentrate for extended periods of time; and (3) moderate limitations in the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. APX pg. 008.

Dr. Fischer reviewed Plaintiff's medical records and opined that the plaintiff has moderate limitations in two categories, which were not accounted for in the RFC: (1) moderate limitations in the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and (2) moderate limitations in the ability to concentrate for extended periods of time. (APX pgs. 002-003).

Each of these categories of mental functioning addressed by Drs. Montgomery and Fischer address absenteeism and time off task.

The ALJ found Drs. Montgomery and Fischer persuasive as part of the overall group analysis of all four State Agency doctors. Yet, despite finding these opinions to be persuasive, the ALJ did not account for any limitations in the RFC related to time off task or absenteeism. In fact, the ALJ never even mentioned these portions of the state agency's consultants' opinions anywhere in the decision. It is unclear whether the ALJ considered these findings and rejected them for a legitimate reason grounded in the available evidence, or whether she just improperly ignored them. What we do know for sure, however, is that the ALJ found the medical opinions to be persuasive but failed to account for the aforementioned limitations in the RFC.

The ALJ's errors are not harmless. The Program Operations Manual System ("POMS") clearly states that the ability to maintain regular attendance and be punctual within customary tolerances is "critical" for the performance of unskilled work, and as distinct from nearly all other "critical" abilities "[t]hese tolerances are usually strict". POMS DI 25020.010(B)(2)(a); 25020.010(B)(3)(e). In spite of the

importance of this requirement, the ALJ ignored this uncontradicted medical finding and instead formulated an RFC that did not account for this limitation. There is also no explanation in the ALJ's written decision of how Plaintiff could meet the demands of unskilled work despite her inability to maintain regular attendance and be punctual within customary tolerances. This restriction appears, on its face, to be incompatible with the demands of any work. See POMS DI 25020.010(B)(2)(a); 25020.010(B)(3)(e).

Moreover, the vocational expert in this case testified that being off task in excess of 10% and being absent more than one day per month would be work preclusive. APX pg. 001. Therefore, even moderate limitations in the ability to stay punctual and maintain regular attendance could have been work preclusive in this case.

**C. The District Court erred as a matter of law.**

**(1) The ALJ's analysis did not only affect one sentence of the decision.**

The District Court found that the ALJ incorrectly noted that the State Agency consultants did not find a severe impairment. However, the Court also stated that the ALJ did not err and found that "the ALJ's evaluation of the persuasiveness of the state agency consultants does not

support remand, because it would only serve to correct one sentence in the ALJ opinion that (while incorrect) was not dispositive against [the Plaintiff].” (AD pg. 020).

The District Court’s finding is incorrect. The ALJ’s improper evaluation, if performed properly, would not have only corrected one sentence in the ALJ’s opinion that incorrectly stated that the doctors did not find any severe impairments – it may have changed the outcome of the case. The Court’s finding misses the point of the Plaintiff’s primary argument.

The Plaintiff’s primary argument is that the ALJ’s overall decision was poorly written with insufficient attention to detail and inadequate attention to the regulations. The ALJ’s evaluation was inadequate and merely performed a perfunctory consistency analysis. In any event, the ALJ found the opinions to be persuasive, which effectively adopted the limitations set forth in the opinions. The doctors provided opinions as to categories of functioning that related to absenteeism and time off task, which as per the POMS are tasks that are critical to the performance of unskilled work, and which the ALJ adopted by finding the opinions to be persuasive. (See argument, above). Despite finding the opinions to be



persuasive, the ALJ failed to account for the limitations related to absenteeism and time off task in the RFC. Moreover, the ALJ did not explain anywhere in the decision why these limitations were not accounted for in the RFC.

If the ALJ properly evaluated the medical opinions, and properly accounted for all persuasive limitations in the RFC, the outcome of the case may have been different. That is because the inclusion of absenteeism or time off task in the RFC may have resulted in a finding that the Plaintiff is disabled and unable to work.

**(2) The Court incorrectly found that the ALJ's decision was based on substantial evidence.**

The District Court acknowledged that the ALJ did not specifically address issues related to absenteeism. (AD pg. 051). Yet, the Court found that this was not an error because “[t]he ALJ considered evidence from multiple sources, evaluated the record, and rendered a decision that was consistent with the evidence and the RFC assessment by Dr. Fischer. Thus, the ALJ’s determination is supported by substantial evidence and will be affirmed.” (AD pg. 051).

The District Court again misses the point. The problem with the ALJ’s decision is that the ALJ found Drs. Montgomery and Fisher to be

persuasive, but failed to either account for all of the uncontroverted portions of the limitations in the RFC or explain why they were not accounted for. As for the inconsistent portions of the opinions, the ALJ failed to perform a sufficient evaluation and, as such, failed to reconcile the inconsistency.

While the Court finds facts in the record that could conceivably support the ALJ's decision not to follow the limitations that were assessed by the doctors, the problem with the Court's approach is that it was up to the ALJ, and not the Court, to issue such explanations in the decision. See Ortiz v. Sec. of Health and Hum. Servs., 955 F.2d 765 (1<sup>st</sup> Cir. 1991)("it is the responsibility of the Secretary to determine issues of credibility and to draw inferences from the record evidence. Indeed, the resolution of conflicts in the evidence is for the Secretary, not the Courts.").

Even assuming, *arguendo*, that there are some facts that could have supported a decision by the ALJ not to incorporate the limitations related to absenteeism and time off task into the RFC, the ALJ did not state that she decided those facts weigh in favor of not accounting for the limitations the doctors assessed. To the contrary, the ALJ simply found the medical

opinions persuasive and never mentioned the specific limitations anywhere in the decision and also failed to explain why they were not being accounted for. The only adjudicator that issued any rationale for why the limitations were not in the RFC is the District Court, which is an improper *post hoc* rationalization that should not be followed. Here, the case must be remanded for the ALJ to either incorporate the persuasive limitations into the RFC or explain why they are not there.

The Court also stated that the RFC was consistent with the assessment by Dr. Fisher. This is incorrect. The opinions of Drs. Montgomery and Fisher were consistent with each other with respect to two limitations: (1) moderate limitations in the ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and (2) moderate limitations in the ability to concentrate for extended periods of time. These uncontroverted limitations relate to time off task and both doctors found that, at times, the Plaintiff would be off task.

The medical opinions only diverge with respect to the opinion issued by Dr. Montgomery that there were moderate limitations in the

ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. These limitations relate to absenteeism. With respect to these specific limitations, Dr. Fisher opined that the Plaintiff was “not significantly limited”. Nonetheless, and to reiterate, with respect to the other limitations, both doctors reached the same opinion and were completely consistent. Nevertheless, the ALJ did not account for the uncontroverted opinions in the RFC.

Moreover, the ALJ did not reconcile the conflicting portion of the opinions either, which relates to absenteeism. Thus, Dr. Montgomery found that there were limitations related to absenteeism, whereas Dr. Fischer found that there were no limitations related to absenteeism. The ALJ performed an inadequate and perfunctory consistency analysis, as discussed above, and, as such, failed to perform a sufficient analysis that would have presumably reconciled this inconsistency. Instead, the ALJ adopted these conflicting opinions, further demonstrating the ALJ’s error. However, despite adopting the doctors’ medical opinions, the ALJ erred by failing to account for at least the uncontroverted portions of the

opinions into the RFC or by explaining why those portions are not accounted for.

As indicated above, the POMS states that issues pertaining to absenteeism and time off task are critical to the performance of unskilled work. Moreover, the vocational expert in this case testified that being off task in excess of 10% and being absent more than one day per month would be work preclusive. APX pg. 001. Thus, the ALJ's failure to account for the uncontroverted portions of the medical opinions related to time off task in the RFC, or state why there is no time off task limitation in the RFC, is reversible error. According to the VE, there is a point where time off task would render the Plaintiff unemployable. However, the ALJ failed to explain what amount of time off task would be expected in this case and, as such, it is impossible to compare such a finding to the VE testimony and it is also impossible to determine if the Plaintiff would be rendered unemployable based on the VE testimony. The ALJ also erred by failing to reconcile the inconsistencies between the medical opinions, which relates to absenteeism and could also have been work preclusive. As such, the ALJ committed a reversible error.

## CONCLUSION

For the reasons stated above, the Plaintiff, Ivonette [REDACTED], asks that this Court find that the ALJ and district court erred and issue an Order that the denial of benefits be vacated and that the claim be remanded back to the Commissioner of the Social Security Administration for further proceedings.

Dated: March 5, 2024  
New York, NY

Respectfully Submitted:

/s/Bryan Konoski  
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## CERTIFICATE 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 5<sup>th</sup> day of March 2024, I served the within **OPENING BRIEF BY APPELLANT and ADDENDUM**, 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.

Dated: March 5, 2024  
New York, NY

Respectfully Submitted:

/s/Bryan Konoski  
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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of the Federal Rule of Appellate Procedure 32(g)(1) because it contains 4,551 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced type font using Microsoft word in 14 point font size and Century Schoolbook font style.

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