

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nunez v. Commissioner of Social Security

No. 23-831-cv (2d Cir. Nov. 25, 2025) · No. 23-831-cv · Decided November 25, 2025

SUMMARY

The United States Court of Appeals for the Second Circuit held that the Administrative Law Judge failed to support Giovanni R. Nunez’s residual functional capacity determination with substantial evidence. The court found that the determination did not adequately account for limitations affecting Nunez’s ability to remain on task and maintain regular work attendance, despite vocational-expert testimony concerning allowable absences and off-task time. The court vacated the district court’s judgment and remanded to the Commissioner of Social Security for further development and reconsideration; Judge Sullivan dissented.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Eunice C. Lee; Carmen J. Carney; Richard J. Sullivan
JURISDICTION	United States Court of Appeals for the Second Circuit
DECIDED	November 25, 2025
DOCKET	23-831-cv
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Southern District of New York granting the Commissioner of Social Security judgment on the pleadings and affirming the denial of disability benefits.
STANDARD OF REVIEW	The court conducts plenary review of the administrative record, determining whether the Commissioner's decision is supported by substantial evidence and whether the correct legal standards were applied. The court reviews the administrative ruling rather than the district court's opinion and requires the ALJ to explain the crucial factors underlying factual findings with sufficient specificity.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Appeals for the Second Circuit
PARTIES	Giovanni R. Nunez v. Commissioner of Social Security

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the ALJ supported Nunez's residual functional capacity determination with substantial evidence when the RFC omitted limitations concerning regular attendance and staying on task.
2. Whether the ALJ adequately evaluated the supportability and consistency of the medical opinions under 20 C.F.R. § 404.1520c.
3. Whether the ALJ properly evaluated Nunez's testimony and subjective reports concerning his mental-health limitations.
4. Whether the Commissioner established at step five that suitable jobs existed in significant numbers in the national economy.

HOLDINGS

1. The ALJ's RFC determination was not supported by substantial evidence because it failed to account for Nunez's limitations in staying on task and maintaining regular work attendance, despite the ALJ's finding of a moderate limitation in concentrating, persisting, or maintaining pace and medical evidence supporting such limitations.
2. The ALJ's rejection of most of the medical opinions was not supported by substantial evidence because the opinions were largely consistent with one another, consistent with treatment records and Nunez's testimony, and not properly rejected as unsupported or inconsistent.
3. The ALJ did not adequately support the rejection of Nunez's testimony because the cited evidence was selectively read and did not contradict his reported limitations.
4. Because the RFC failed to account for attendance and off-task limitations, the record was insufficient to establish that significant numbers of suitable jobs existed in the national economy.

KEY QUOTATIONS

"Nevertheless, even under this deferential standard, the ALJ must still set forth the "crucial factors" underlying their factual findings and determinations with "sufficient specificity" so that the reviewing court can "decide whether the determination is supported by substantial evidence."" (17)

"Thus, there is no substantial evidence in the record to support the ALJ's implicit conclusions that Nunez (1) will miss, at most, one day of work per month and (2) will remain on task during 90% of a given workday, such that a suitable job in the national economy exists." (23)

“The judgment of the United States District Court for the Southern District of New York is VACATED and the case is REMANDED to the Commissioner for further proceedings consistent with this opinion.” (32)

FACTUAL BACKGROUND

Nunez previously worked full time as a security guard but developed panic attacks, anxiety, agoraphobia, and medication-related drowsiness that interfered with his work. His employer terminated him after repeated panic attacks at work, and he applied for disability benefits. The administrative record contained multiple medical opinions identifying limitations in concentration, sustaining an ordinary work routine, maintaining regular attendance, and remaining on task, while a vocational expert testified that an unskilled worker could not maintain employment if off task more than 10 percent of the workday or absent more than one day per month.

PROCEDURAL HISTORY

The Social Security Administration denied Nunez's applications for Supplemental Security Income and Social Security Disability Insurance. An administrative law judge found that Nunez was not disabled, and the Appeals Council denied review. The district court affirmed the SSA's denial, after which Nunez appealed to the Second Circuit. The Second Circuit vacated the district court's judgment and remanded to the Commissioner for further record development and reconsideration.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand to the Commissioner and ALJ for further development of the record and reconsideration of Nunez's application, including determination of whether Nunez can remain on task for at least 90 percent of the workday, miss no more than one day of work per month, and perform jobs existing in significant numbers in the national economy.

CASES CITED

- Estrella v. Berryhill, 925 F.3d 90 (2d Cir. 2019)
- McIntyre v. Colvin, 758 F.3d 146 (2d Cir. 2014)
- Schillo v. Kijakazi, 31 F.4th 64 (2d Cir. 2022)
- Selian v. Astrue, 708 F.3d 409 (2d Cir. 2013)
- Mongeur v. Heckler, 722 F.2d 1033 (2d Cir. 1983) (per curiam)
- Brault v. Social Security Administration, Commissioner, 683 F.3d 443 (2d Cir. 2012)
- Lesterhuis v. Colvin, 805 F.3d 83 (2d Cir. 2015) (per curiam)
- Rubin v. O'Malley, 116 F.4th 145 (2d Cir. 2024)
- Rucker v. Kijakazi, 48 F.4th 86 (2d Cir. 2022)
- Green-Younger v. Barnhart, 335 F.3d 99 (2d Cir. 2003)
- Genier v. Astrue, 606 F.3d 46 (2d Cir. 2010)

- *Balsamo v. Chater*, 142 F.3d 75 (2d Cir. 1998)
- *Colgan v. Kijakazi*, 22 F.4th 353 (2d Cir. 2022)
- *Cichocki v. Astrue*, 729 F.3d 172 (2d Cir. 2013)
- *Sacerdote v. New York University*, 9 F.4th 95 (2d Cir. 2021)
- *Biestek v. Berryhill*, 587 U.S. 97 (2019)
- *Veino v. Barnhart*, 312 F.3d 578 (2d Cir. 2002)

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