

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
NEW YORK**

Joseph M. R. v. Commissioner of Social Security

Joseph M. R. · No. 5:24-CV-1065 (FJS/ML) · Decided March 25, 2026

OPINION

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

JOSEPH M. R., Plaintiff, v. 5:24-CV-1065
(FJS/ML) COMMISSIONER OF SOCIAL SECURITY, Defendant.

APPEARANCES OF COUNSEL HILLER
COMERFORD INJURY JUSTIN M. GOLDSTEIN, ESQ. & DISABILITY LAW IDA
COMERFORD, ESQ. 6000 North Bailey Avenue – Suite 1a Amherst, New York 14226 Attorneys
for Plaintiff SOCIAL SECURITY ADMINISTRATION JASON P. PECK, ESQ.

OFFICE OF GENERAL COUNSEL VERNON NORWOOD, ESQ. 6401 Security Boulevard
Baltimore, Maryland 21235 Attorneys for Defendant SCULLIN, Senior Judge MEMORANDUM-
DECISION AND ORDER I. INTRODUCTION Pending before the Court are Magistrate Judge
Lovric's Report-Recommendation, see Dkt. No. 17, Plaintiff's objections thereto, see Dkt. No. 18,
and Defendant's response to Plaintiff's objections, see Dkt.

No. 20. II. BACKGROUND Plaintiff brought this action under pursuant to 42 U.S.C. 42 U.S.C. §
405(g). He sought judicial review of Defendant's final decision denying his application for
Disability Insurance Benefits ("DIB"). This Court referred the matter to Magistrate Judge Lovric
for a Report- Recommendation. Both parties filed briefs, see Dkt. Nos. 12, 15, 16.

After a thorough review of the parties' arguments, the Administrative Record ("AR"), and the
ALJ's decision denying Plaintiff's application, Magistrate Judge Lovric issued a Report-
Recommendation in which he recommended that the Court deny Plaintiff's motion for judgment
on the pleadings, grant Defendant's motion for judgment on the pleadings, and affirm the
Commissioner's decision.

See generally Dkt. No. 17. Plaintiff timely filed objections to those recommendations, see Dkt.
No. 18; and Defendant filed a memorandum of law in opposition to Plaintiff's objections, see Dkt.
No. 20. III. DISCUSSION A. Initial arguments before Magistrate Judge Lovric In his brief,
Plaintiff raised several challenges to the ALJ's disability determination. He argued that the ALJ
failed to evaluate his subjective allegations and testimony properly.

See Dkt. No. 12 at 23-25. He also argued that the ALJ did not properly evaluate the available
medical opinion evidence which resulted in an RFC determination that was not supported by

substantial evidence. See *id.* at 10-23.

Finally, Plaintiff argued that the ALJ did not properly investigate conflicts between the Vocational Expert ("VE")'s testimony and the Dictionary of Occupational Titles ("DOT"), resulting in a step-five determination that was not supported by substantial evidence. See *id.* at 6-10.

To the contrary, Defendant argued that the ALJ properly evaluated all of the record evidence, resulting in an RFC and disability determination that were supported by substantial evidence. See Dkt. No. 15 at 5-19. B. Plaintiff's objections to Magistrate Judge Lovric's Report-Recommendation In his objections to Magistrate Judge Lovric's Report-Recommendation, Plaintiff admits that he is renewing the arguments he made in his brief and his reply brief and is relying on the procedural status and statement of facts that he provided in his brief.

See Dkt. No. 18 at 1. C. Defendant's response to Plaintiff's objections Defendant responds to Plaintiff's objections by noting that these objections "merely rehash challenges which Judge Lovric considered and rejected." See Dkt. No. 20 at 1. Furthermore, Defendant asserts that "[P]laintiff does not identify any material errors in the R&R nor the ALJ's evaluation... [and], therefore, [t]he Court... should dismiss Plaintiff's objections and adopt Judge Lovric's thorough and well-reasoned R&R in its entirety because Plaintiff has not shown any material error either in the R&R [or the ALJ's decision]."

See *id.* D. Standard of review The Court reviews *de novo* those portions of a magistrate judge's report and recommendations that have been properly preserved with a specific objection. See *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228 (N.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C)). "To be 'specific,' the objection must, with particularity, 'identify [1] the portions of the proposed findings, recommendations, or report to which it has an objection and [2] the basis for the objection.'" *Id.* (quoting N.D.N.Y.

Local Rule 72.1(c)) (footnote omitted). If the parties do not file any specific objections, this Court reviews a magistrate judge's report- recommendation for clear error. See *id.* at 229 (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition). Likewise, if an objection simply rehashes "the same arguments made by the objecting party in its original papers submitted to the magistrate judge, the Court subjects that portion of the report-recommendation challenged by those arguments to only a clear error review."

Id. at 228-29 & n.6 (collecting cases). "When performing such a 'clear error' review, 'the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Dezarea W. v. Comm'r of Soc. Sec.*, No. 6:21-CV-01138 (MAD/TWD), 2023 WL 2552452, *1 (N.D.N.Y. Mar. 17, 2023) (quoting *Canady v. Comm'r of Soc.*

Sec., No. 1:17-CV-0367, 2017 WL 5484663, *1 n.1 (N.D.N.Y. Nov. 14, 2017) (citing Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition; *Batista v. Walker*, No. 94-CV-2826, 1995

WL 453299, *1 (S.D.N.Y. July 31, 1995))).

After appropriate review, "the court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). E. Analysis As Plaintiff concedes, his objections to Magistrate Judge Lovric's recommendations are, in sum and substance, the same arguments that he raised in his initial brief.

Thus, the Court need only satisfy itself that there is no clear error on the face of the record. After establishing the correct legal standard for analyzing a plaintiff's subjective complaints of pain, Magistrate Judge Lovric found that substantial evidence supported the ALJ's analysis of Plaintiff's subjective complaints.

First, he found that Plaintiff's argument that the ALJ had ignored his description of his symptoms and the resulting functional limitations in favor of a less restrictive RFC determination was based on a selective reading of the medical record and a misrepresentation of his activities of daily living was "contradicted by the ALJ's decision, which include[d] an extensive discussion of relevant treatment notes, including Plaintiff's subjective assessments of his own condition and the evaluation of multiple medical professionals."

See Dkt. No. 17 at 10 (citing T. 13-15). Magistrate Judge Lovric pointed to several parts of the Administrative Record that supported the ALJ's decision in this regard. See *id.* (citing T. 13-15; T. 15, 403, 980; T. 14, 377, 412, 420, 504, 544, 643, 645, 733, 766-767, 794, 1006-1007). Magistrate Judge Lovric also noted that, [i]n addition to the longitudinal medical record, the ALJ also considered Plaintiff's statements regarding his daily activities including childcare and taking care of his home, along with treatment notes from December 2020, March 2021, October 2021, December 2021, and January 2022 wherein Plaintiff described an increased ability to sit, stand, walk, and engage in ordinary physical activities such as grocery shopping as he progressed in treatment.

See *id.* at 11-12 (citing T. 363, 378, 389, 451, 538, and 544) (footnote omitted). Magistrate Judge Lovric found that "[t]his coincided with medical professionals who found an increased ability to perform work tasks, including lifting up to forty pounds to shoulder level, and up to twenty pounds overhead, and Plaintiff's participation in vocational training to return to the workforce."

See *id.* at 12 (citing T. 1004-1005, 1014). Based on this record evidence, Magistrate Judge Lovric concluded that "the ALJ's decision and the hearing transcript demonstrate[d] an appropriate evaluation of Plaintiff's subjective complaints, by comparing them to Plaintiff's daily activities, his medical treatments and follow-up care, pain medication, imaging reports, and the medical opinion evidence."

See *id.* (citing *Judelsohn v. Astrue*, No. 11-CV-388S, 2012 WL 2401587, at *6 (W.D.N.Y. June 25, 2012) ("Failure to expressly consider every factor set forth in the regulations is not grounds for

remand where the reasons for the ALJ's determination of credibility are sufficiently clear and specific to conclude that he considered the entire evidentiary record.")).

Finally, Magistrate Judge Lovric stated that "[t]he ALJ recognized that Plaintiff still experienced neck and arm pain at varying degrees but accepted the consensus of multiple medical professionals that this pain did not preclude Plaintiff from performing a reduced level of light work." See *id.* (citing *Dumas v. Schweiker*, 712 F.2d 1545, 1552 (2d Cir. 1983) ("... disability requires more than mere inability to work without pain.

To be disabling, pain must be so severe, by itself or in conjunction with other impairments, as to preclude any substantial gainful employment.")). In sum, Magistrate Judge Lovric concluded that, "because the ALJ's findings are supported by substantial evidence, [the ALJ's] decision to discount Plaintiff's subjective testimony is entitled to substantial deference."

See *id.* (citing *Wendy L. B. v. Kijakazi*, No. 5:22-CV-0708 (DNH/DEP), 2023 WL 3728557 at *7 (N.D.N.Y. May 5, 2023), *rep't and rec. adopted*, 2023 WL 3722011 (N.D.N.Y. May 30, 2023)). Next, Magistrate Judge Lovric reviewed the ALJ's evaluation of the medical opinion evidence. He began by summarizing the relevant medical opinions in the record and the ALJ's evaluation of each of those opinions.

See *id.* at 13. In doing so, he summarized the medical opinions of Consultative Examiner Dr. Elke Lorensen, State Agency Medical Consultant Dr. T. Schmidt-Deyoung, State Agency Medical Consultant Dr. M. Kirsch, and Independent Medical Examiner Dr. Daniel Carr. See *id.* at 13-17. Next, he discussed the ALJ's evaluation of the relevant medical opinions.

In that regard, he noted that "the ALJ summarized treatment notes from 2021, 2022, and 2023 that documented an improvement in Plaintiff's functional limitations as he responded to a treatment regimen that included physical therapy, chiropractic treatment, epidural injections, and pain medication." See Dkt. No. 17 at 22 (citing T. 13-14). Magistrate Judge Lovric explained that, in the ALJ's "evaluation of the medical opinions..., the ALJ explained that the opinions of Dr. Lorensen, Dr. Schmidt-Deyoung, and Dr. Kirsch were 'consistent with other substantial evidence, including the evidence... regarding the claimant's positive response to non-surgical treatments, as well as the functional capacity suggested by the claimant's activities of daily living.'" See *id.* at 22 (citing T. 15).

After doing so, he found that, "[i]n light of the ALJ's thorough evaluation of the treatment records that clearly informed his evaluation of the medical opinion evidence, this Court can readily glean how the ALJ weighed the consistency and supportability factors of the medical opinions addressing Plaintiff's physical limitations." See *id.* Thus, he concluded that, "even if this Court were to agree with Plaintiff that the ALJ committed a procedural error, such error would be harmless."

See *id.* (citing *John L.M. v. Kijakazi*, No. 5:21-CV-368 (BKS/TWD), 2022 WL 3500187, *3 (N.D.N.Y. Aug. 18, 2022) ("... reading the ALJ's decision as a whole, the Court can glean the ALJ's consideration of the consistency of [the medical] opinion from his analysis of the medical evidence showing benign physical examinations....

The Court therefore concludes that the substance of the regulation was not traversed and the ALJ's procedural error in addressing the consistency factor does not require remand.")). Accordingly, Magistrate Judge Lovric concluded that "the record before this Court establishes that the ALJ resolved conflicts between the objective medical record, medical opinion evidence, and hearing testimony by placing the greatest reliance on that evidence that he deemed most consistent with Plaintiff's overall treatment record and activities.

In doing so, the ALJ appropriately evaluated the conflicting medical evidence and plaintiff's testimony and made an RFC finding that was consistent with the overall record." See *id.* at 22-23 (citing *Matta v. Astrue*, 508 F. App'x 53, 56 (2d Cir. 2013) (although ALJ's conclusion did not perfectly correspond with any of the opinions of medical sources, ALJ was entitled to weigh all of the evidence available to make an RFC finding that was consistent with the record as a whole)).

Therefore, Magistrate Judge Lovric concluded that, "[i]n light of the ALJ's thorough analysis,... [the ALJ's] RFC determination that Plaintiff could perform less than the full range of light work was supported by substantial evidence[.]" See *id.* at 24.

Finally, Magistrate Judge Lovric addressed Plaintiff's argument that the ALJ did not adequately resolve the conflict between the Vocational Expert ("VE")'s testimony and the Dictionary of Occupational Titles ("DOT") with regard to "two of the three light work jobs identified by the VE, and that the estimated 9,000 racker jobs existing in the national economy do not, on their own, constitute a significant number of jobs that an individual with Plaintiff's RFC can perform."

See *id.* at 25-28. At the hearing before the ALJ, "the VE testified that an individual with Plaintiff's RFC, including the restriction to occasional overhead reaching, could perform the representative tasks of racker, sealing machine operator, and electronics worker." See *id.* at 25 (citing T. 21, 43-45) (footnotes omitted). Magistrate Judge Lovric noted that, "[a]ccording to the DOT, the position of racker only requires 'occasional' reaching, but the positions of sealing machine operator and electronics worker require 'frequent' reaching."

See *id.* at 25-26 (citing Dictionary of Occupational Titles 735.687-026 Racker, 1991 WL 679983; *id.* 690.685-154, 1991 WL 678535.; *id.* 726.687-010, 1991 WL 679633). Plaintiff argued that the ALJ's reliance on the VE's testimony fell short of the Lockwood standard. See *id.* at 26 (citing Dkt. No. 12 at 6-10). Magistrate Judge Lovric disagreed, finding that Plaintiff's argument was "contradicted by the VE testimony."

See *id.* Magistrate Judge Lovric explained that, "before responding to the ALJ's RFC determination, the VE testified, Under the hypothetical, there would be, and of course as you pointed out, Your Honor, the ten pounds lifting does not meet the full definition of light work, so my answer on the jobs that I'm going to be giving you, is based on my knowledge of how these jobs are performed...

See *id.* (quoting T.43 (emphasis supplied)). Furthermore, Magistrate Judge Lovric noted that, "[a]fter the VE identified three representative jobs, the ALJ followed up on apparent conflicts, by asking the VE whether his testimony was "'consistent with the information in the DOT other than those deviations that you've already pointed out?'" See *id.* (quoting T.44).

In response, the VE testified that the "limitation with regard to reaching overhead occasionally, that's not addressed within the Selected Characteristics of Occupations; it's reaching in all planes, so again, my answer would be based on my experience in the labor market and knowledge of how the jobs are performed." See *id.* (quoting T.44 (emphasis supplied)).

Based on his review of the record in light of Plaintiff's objections, Magistrate Judge Lovric concluded that the ALJ's development of the record satisfied the Lockwood requirements. See *id.* at 27. In this regard, he noted that the problem in Lockwood was that the ALJ left the conflict unresolved, unlike in this case, in which "the VE[s] testimony squarely addressed the issue of overhead reaching with reference to his practical knowledge of the specific job requirements."

See *id.* Thus, Magistrate Judge Lovric found that "the ALJ's inquiry provides sufficient detail to satisfy Lockwood, consistent with Matthew M." See *id.* (citing *Thomas K. v. Comm'r of Soc. Sec.*, No. 1:22-CV-00673 (TPK), 2025 WL 484178, at *5 (W.D.N.Y. Feb. 13, 2025) (finding "vocational testimony to be sufficient when the expert indicated knowledge of how the jobs in question were performed and said, based on experience, that someone who had a particular physical limitation could do either all or some percentage of them.")).

For these reasons, Magistrate Judge Lovric found that "the ALJ fulfilled his obligation to resolve the conflict between the VE's expert testimony and the DOT at step five, consistent with Lockwood[; and] [t]he VE's testimony provides a reasonable explanation for the conflict which, in turn, provides a basis for the ALJ's reliance on it." See *id.* at 28.

Having reviewed Magistrate Judge Lovric's analysis of the entire record and his explanation and resolution of Plaintiff's arguments, the Court is satisfied that there is no clear error on the face of the record. Therefore, the Court accepts Magistrate Judge Lovric's recommendations. IV. CONCLUSION Accordingly, for the above-stated reasons, the Court hereby ORDERS that Magistrate Judge Lovric's Report-Recommendation, see Dkt.

No. 17, is ADOPTED AND ACCEPTED in its entirety; and the Court further ORDERS that Plaintiff's motion for judgment on the pleadings, see Dkt. No. 12, is DENIED; and the Court

further ORDERS that Defendant's motion for judgment on the pleadings, see Dkt. No. 15, is GRANTED; and the Court further ORDERS that the Clerk of the Court shall enter judgment in favor of Defendant and close this case.

IT IS SO ORDERED. Dated: March 25, 2026 Frederik J. ite Jr. Syracuse, New York Senior United States District Judge -11-