Appendix E

[DO NOT PUBLISH]

In the United States Court of Appeals For the Eleventh Circuit

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No. 22-13807

Non-Argument Calendar

ELISHA L. GRESHAM,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-00601-MRM

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

Elisha Gresham, proceeding *pro se*, appeals a magistrate judge's order affirming the Social Security Administration ("SSA") Commissioner's decision denying her application for disability insurance benefits ("DIB") under 42 U.S.C. § 405(g).[1] She raises several issues on appeal, but only one of these issues is preserved for review—whether the administrative law judge ("ALJ") properly weighed the medical opinion evidence.[2] After careful review, we affirm.

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[1] Gresham consented to the magistrate judge conducting all proceedings in the district court and issuing the final order.

[2] Gresham raises a number of issues for the first time on appeal. Specifically, she asserts that (1) she cannot do the jobs the ALJ found existed for someone with her limitations in the national economy; (2) the ALJ ignored that she was terminated from her last job because she was never medically cleared to return to work and she routinely missed work for doctor's appointments; (3) the ALJ omitted and failed to consider the vocational expert's written report; (4) the ALJ created a conflict of interest by asking Dr. Meltzer to review her file; and (5) the magistrate judge who issued the order was not the same one who presided over an earlier case conference in the underlying proceedings, which calls into question the validity of the underlying order. We decline to consider these issues as she raises them for the first time on appeal. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004) ("This Court has repeatedly held that an issue not raised in the district court and raised for the first time in an appeal will not be considered by this court." (quotation omitted)); *Jones v. Apfel*, 190 F.3d 1224, 1228 (11th Cir. 1999) (declining to consider an issue raised before the district court and presented for the first time on appeal in a social security case); *Kelley v. Apfel*, 185 F.3d 1211, 1215 (11th Cir.

I. Background

In August 2015, at age 47, Gresham applied for DIB, asserting that she was unable to work due to disabling conditions, that started on May 20, 2015, including "spinal bifida, sciatica, [a] stroke [in the] last year, high blood pressure, depression, work and medical related stress, obesity, and right knee problems." An agency consultant for the state reviewed the medical records Gresham submitted[3] and opined that she was not disabled. She sought reconsideration, and a second agency consultant conducted an independent review and similarly concluded that Gresham was not disabled. Accordingly, the agency denied her application at the reconsideration level.

Thereafter, Gresham requested and received a hearing before an ALJ. Initially, the ALJ denied her application. Thereafter, the Appeals Council granted Gresham's request for review and remanded the case to the ALJ for further development of the record on certain issues. On remand, the agency's Office of

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1999) (declining to reach appellant's argument that the ALJ should not have relied on the vocational expert's testimony because the appellant failed to raise the argument "before the administrative agency or the district court").

[3] Gresham submitted records from her primary care physician, Dr. David Krasner, along with records from several other medical entities where she received treatment for various conditions. These records are discussed in detail later in the opinion.

Hearing Operations ordered a second hearing, at which Gresham proceeded *pro se*.[4]

A. The Relevant Medical Evidence

The relevant medical evidence before the ALJ at the time of the second hearing was as follows.[5] Gresham's medical records from her primary care physician, Dr. David Krasner, revealed that she had a history of high blood pressure, obesity, transient ischemic attacks ("TIA"), and anxiety, and that she was prediabetic.

In December 2014, Gresham experienced pain in her right knee for several weeks. Imaging of the knee identified no abnormalities and that the knee was "normal." On January 19, 2015, Gresham visited "First State Orthopaedics," complaining of continued right knee pain. She described the pain, which was aggravated by physical activity, as "aching, piercing and sharp." She also reported a history of left-side sciatica. Dr. Michael Axe aspirated her knee, gave her an injection to help with the knee pain, and ordered physical therapy for both her knee pain and sciatica. Dr. Axe also completed an "ADA Medical Questionnaire" stating Gresham had leg pain and required a desk job with the accommodation of being allowed to get up, stretch, and walk "every hour or two" to relieve the pain. Dr. Axe identified

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[4] A different ALJ presided over this second hearing.

[5] In addition to the medical records, Gresham submitted three letters from her family, all dated in September 2019, in which they talked about the pain she experienced and the difficulty she had completing tasks.

Gresham's limitations as temporary and he expected the duration to be six months or less.

On February 5, 2015, at a general medical exam with her primary care physician, Dr. Krasner, Gresham reported that she felt "well with minor complaints" and had a "good energy level." She denied being in any pain. Dr. Krasner's exam indicated that her musculoskeletal system had normal strength and tone.

That same day, Gresham began physical therapy, and she continued therapy throughout the month of February for a total of nine sessions. Initially, she reported lower back pain that radiated down her left side and right knee pain. She also reported difficulty lifting objects, sitting or standing for more than one hour, and walking. She indicated that she could perform most of her job duties and home activities, but pain prevented her from doing the more physically demanding tasks. At her second, third, and fourth physical therapy sessions, Gresham reported her back was fine with no pain and significant improvement in her right knee. At her fifth and sixth visit, however, she indicated some lower back pain from sitting. On her seventh visit, she reported her back was feeling better, but she indicated that she continued to have right knee pain. At her eighth visit, she reported feeling better and that she believed she was "ready to go to a gym and continue this on [her] own." At her ninth and final visit on March 4, 2015, the progress notes indicated that "Gresham ha[d] gained range of motion and strength in both of her knees and her complaints of back pain [were] infrequent." The progress notes further indicated that she still

experienced pain with weightbearing activities. Because her back pain worsened with increased sitting, the therapist recommended that Gresham rise hourly and do extension exercises, as well as continue her strengthening work on her own.

Meanwhile, on February 27, 2015, Dr. Axe (from First State Orthopaedics) completed a Family Medical Leave Act ("FMLA") form for Gresham, in which he indicated that she would need to work on a reduced schedule because of her medical condition.[6] However, he left blank the section for estimating the treatment schedule and did not specify any reduced set of hours Gresham should work. He also indicated that if Gresham had a flare-up, it would prevent her from performing her job functions.

On May 4, 2015, Gresham returned to First State Orthopaedics for a follow-up concerning her right knee. Dr. Axe found that Gresham's "knee [had] resolved nicely with therapy," and that she had good reflexes and no gross instability. He concluded that her current problem was her back—an issue for which she would see a different doctor—and that he no longer needed to see her for the knee issue.

That same day, Gresham saw Dr. Krasner for radiating "back pain [that] has been occurring in an intermittent pattern for

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[6] In March 2015, Gresham requested Dr. Krasner's assistance with FMLA forms "due to stress at work." At that time, she reported feeling well, sleeping well, and having good energy levels, but that she also had back and joint pain.

years." She also reported fatigue, neck pain and stiffness, back and joint pain, and paresthesia (tingling/numbness) in her legs. She indicated that the back pain was "aggravated by bending, twisting, lifting, sitting, standing and walking," and was relieved by bed rest, elevating her legs, taking Tylenol, applying heat or ice, and physical therapy. Upon a physical examination, Dr. Krasner noted no leg weakness but observed tenderness, spasms, and decreased range of motion in "L/S areas" of the spine and tenderness in Gresham's left hip. He diagnosed her with sciatica and prescribed her physical therapy. He also noted that Gresham "decline[d] injections due to [a history of] spina bifida." He instructed her to avoid pushing, pulling, and lifting anything over 10 pounds for the next six months. Dr. Krasner gave Gresham a sick note, indicating that she could return to work on May 6, 2015.

Three days later, on May 7, 2015, Dr. Krasner completed an FMLA form for Gresham, stating that she had "sciatica [and] difficulty walking," which had existed from September 1998 to present, and that these conditions would require absences from work during flare-ups, limited activity, and bedrest. He noted that Gresham could not "lift, push or pull objects over 10 [pounds]" and "may not be able to perform [her] job comfortably during flare-ups." He wrote that Gresham's condition would worsen with "fast pace or quick [and] sudden physical movement" and that she should avoid those type of movements during a flare-up. He also stated that Gresham should not "over exert" herself and should rest as much as possible during flare-ups, including lying "flat [with] leg[s] [and] back elevated." In terms of leave needed from her job,

Dr. Krasner indicated that she would require intermittent leave as needed.

On May 20, 2015, Gresham returned to Dr. Krasner for a "recheck" of her back pain. Gresham reported that the pain in her lower back had increased in frequency and intensity "due to stress at work." She maintained that the pain was "aggravated by bending, twisting, lifting, sitting, standing and walking" and relieved by bed rest, changing positions, medication, the application of heat and ice, and both massage and physical therapy. Dr. Krasner's examination revealed tenderness, spasm, and decreased range of motion in the lumbar sacral area. Dr. Krasner again diagnosed Gresham with sciatica and ordered physical therapy. He further noted that Gresham indicated that the stress at work caused her back pain and that she wanted to take "a leave of absence" until July 8, 2015. Dr. Krasner indicated that she should "see [him] prior to then."[7]

Gresham returned to physical therapy on May 27, 2015, reporting back, left leg, and buttock pain. Gresham attended eight therapy sessions between May 27, 2015 and July 22, 2015, during which she indicated she made some progress, although still

[7] The next day, Dr. Krasner filled out FMLA paperwork stating that Gresham would need leave from work until July 18, 2015, due to sciatica and "stress" and would need "good ergonomics and the freedom to move around during the work day" once she returned. A few weeks later, Dr. Krasner also completed short term disability paperwork indicating that Gresham was temporarily unable to work due to sciatica and stress at work with an expected return to work date of July 8, 2015.

experienced some occasional pain, particularly after doing housework, standing for an extended period of time, and going to the beach. On her final visit on July 22, 2015, however, Gresham reported feeling better with no back pain and that her doctor felt that she was ready to be discharged.

Meanwhile, Gresham saw Dr. Krasner on July 1, 2015, for "a recheck of [s]tress" stemming from her job. At that time, she did not report any back pain and denied any joint pain or muscle cramps. Dr. Krasner's physical examination revealed "mild tenderness" in the lumbar region.[8] Dr. Krasner saw Gresham again on July 21, 2015, for another "recheck of [s]tress." At that time, his progress notes indicated that Gresham "stated that 'she fe[lt] 'physically' better, but [she was] still anxious about returning to work on an emotional level'" and she wanted additional leave until September 21, 2015.

As noted previously, Gresham applied for DIB benefits on August 18, 2015. That same day, she saw Dr. Krasner complaining of back pain. At that time, Gresham self-reported that she had spina bifida and that she was diagnosed with spina bifida in 1988–1989 when she was 21 years old. Dr. Krasner's notes indicated that the medical files related to that diagnosis had been requested in

[8] The next day, Dr. Krasner completed additional FMLA paperwork indicating that Gresham was temporarily unable to work due to sciatica, stress at work, and a "sprain/strain" in the lumbar region of her back. He indicated that she would be incapacitated until August 2, 2015, and that she would require "good ergonomics" and "the freedom to move around during the work day once she return[ed]" to work.

order to confirm the diagnosis. Dr. Krasner also ordered x-rays of Gresham's spine. An x-ray showed Gresham's spine was of normal height and alignment. No "vertebral anomal[ies]" were present. Mild degenerative changes were noted in the lumbar region, as well as a "questionable small linear lucency at the midline S1 [vertebrae] possibly from artifact or from spina bifida occulta, which is typically of no clinical significance."[9]

Gresham returned to Dr. Krasner's office on September 15, 2015, reporting back, joint, hip, and muscle pain, as well as "all over body pain." Dr. Krasner diagnosed her with "stress at work," and his progress notes indicated that Gresham expressed a desire not to return to work.[10] In November and December 2015, Gresham returned to Dr. Krasner for assistance in completing disability forms and to further discuss her back pain, hip pain, and leg

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[9] Shortly thereafter, Dr. Krasner completed updated short-term disability paperwork stating that Gresham's restrictions "[were] psychological not physical."

[10] That same day, Dr. Krasner wrote a letter certifying that Gresham had "been under [his] care for work-related stress, and it [was his] opinion that she could not return to work . . . until further notice." He stated that "[h]er condition [was] permanent." Thereafter, in October 2015, Dr. Krasner completed more short-term disability paperwork stating that Gresham had ongoing sciatica, that was aggravated by work stressors; that she had been diagnosed with spina bifida and therefore surgery was not suggested; and that she could not do extended sitting, walking, or standing. Although Dr. Krasner saw Gresham in October 2015 for other medical related issues, she did not report any back pain, other types of pain, or stress at her October visit.

weakness.[11] While Dr. Krasner's treatment notes measured her vitals, they did not discuss an examination or make any objective findings.[12]

Gresham's employer, the State of Delaware, terminated her employment in January 2016. The State also denied her unemployment benefits, as she did not certify that she was ready and able to work.

In February 2016, Dr. Krasner opined that Gresham could return to work part-time with limitations. Specifically, Dr. Krasner stated that Gresham could work for no more than 25-hours per week with no lifting, no bending, no squatting, no pulling/pushing heavy items, no steps, no extended sitting, no extended standing, no extended driving or traveling, and "flexibility to accommodate [her] condition as needed."

That same month, Gresham saw Dr. David Sowa, at First State Orthopaedics for a mass on her left wrist causing wrist pain, as well as radiating neck pain. An x-ray of her cervical spine showed a small bone spur at one vertebra, but "no significant

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[11] At her December visit, Gresham also complained of headaches and neck pain.

[12] At that time, Dr. Krasner completed updated short-term disability forms for Gresham. Notably, Dr. Krasner opined that Gresham's "sciatica [was] not preventing her from returning to work. It's the stress." Gresham also obtained a note from psychologist, Dr. Mary Kennedy, who had seen Gresham four times between April and November 2015. She opined that due to Gresham's psychological distress and self-reported "continuing medical problems," Gresham should not return to work.

abnormalities." She received a referral for physical therapy for the neck pain. At a follow-up visit in April 2016, following additional testing, Dr. Sowa noted that Gresham had "persistent deQuervain's tenosynovitis of her left wrist" and scheduled out-patient surgery for the wrist.[13] He referred her to a spine center for her neck issues.

In March 2016, in connection with her DIB application, Gresham was examined by SSA's consultative examiner, Dr. Irwin Lifrak. At that time, Gresham's chief complaints were back pain radiating to both of her hips and legs, hypertension, neck pain radiating to both of her shoulders and arms, and depression. Dr. Lifrak found that Gresham was adequately developed and nourished, was in no acute distress, and walked without an assistive device "with a minimal degree of limp favoring the left [side]." Her extremities, including her legs, had full muscle strength and tone, and intact reflexes and sensation, but she had paravertebral spasms and reduced range of motion in her lumbar spine and hips. Dr. Lifrak's diagnostic impression was that Gresham had "[d]egenerative joint disease" with possible disc damage, hypertension that was under control at the time of the examination, and depression. He determined that within an eight-hour day with customary breaks and without any assistive device Gresham could perform activities requiring her to walk, either

[13] Following the wrist surgery, Gresham had limited range of motion in her left wrist and sensitivity at the scar site. Dr. Sowa recommended hand therapy.

indoors or outdoors; climb stairs; sit for a total of six hours out of an eight-hour day; stand for a total period of six hours out of an eight-hour day; and lift weights of up to ten pounds with each hand on a regular basis.

In September 2016, Gresham returned to Dr. Krasner, complaining of back pain. His notes indicated that Gresham stated that she was unable to perform her job duties due to the pain and she requested that Dr. Krasner give her a letter for her work. Dr. Krasner wrote a formal medical letter, stating that Gresham was under his care for sciatica, that she should "avoid excessive bending, squatting, sitting, and standing," and that she should not lift, push, or pull more than 20 pounds. Dr. Krasner's notes were similar when Gresham returned in February 2017, complaining of worsening back pain, pain in her neck, left hip, and left wrist, and requesting Dr. Krasner "certify that she [was] unable to work." Dr. Krasner ordered an MRI of Gresham's lumbar spine, an x-ray of her cervical spine, and physical therapy. He also completed paperwork stating that Gresham was expected to be unable to work for 6 to 9 months due to her sciatica, cervical pain, and lumbar pain. The x-ray of Gresham's cervical spine revealed some straightening, which was "nonspecific" and "often associated with muscle spasms." No other abnormalities were observed. The MRI of the spine revealed that the alignment was normal, but there was mild joint arthropathy in the lumbar region.

In March 2017, Gresham resumed physical therapy, reporting her back pain level as a 7 out of 10, and a 10 out of 10 on

bad days. Although she continued to report some back pain throughout the course of her six-week treatment, she self-reported some improvements in her back pain and demonstrated improved functionality.

On April 26, 2017, Gresham returned to Dr. Krasner for a recheck of her back pain and stress. In terms of her back pain, Gresham indicated that physical therapy helped the pain (which she rated as a 3 out of 10) and that she was interested in getting a transcutaneous electrical nerve stimulation ("TENS") unit, which is a medical device that sends low-voltage electric currents to nerves and helps with pain. She reported that her stress, however, had been increasing. Dr. Krasner again diagnosed her with sciatica and prescribed additional physical therapy.[14]

Gresham returned to physical therapy a few months later in July 2017, reporting a resting back pain level of 3 out of 10, and a 10 out of 10 with physical activity. During the course of her treatment between July 27 and October 9, 2017, Gresham gradually

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[14] Approximately a week later, Gresham went to the emergency room for left hip and groin pain, but imaging of her pelvis and left hip revealed "no evidence of acute fracture or dislocation," and "no evidence of any arthritic changes." The emergency room physician noted that Gresham's pain was "suggestive of suspect musculoskeletal etiology," such as a "muscle strain, tendinitis, or injury" and "less consistent with sciatica or [a] lumbar source." A few days after her emergency room visit, Gresham returned to Dr. Krasner for the left hip pain, rating it as a 5 out of 10. Dr. Krasner's notes indicated that, at that time, Gresham indicated that she "want[e]d to hold off on [physical therapy." Dr. Krasner referred her to an orthopedic surgeon for the hip pain and prescribed some medication.

reported improvement in her symptoms. Although at times Gresham indicated she felt worse, particularly after weekend activities such as "walking in Ocean City" or doing "a lot of" shopping, cooking, and cleaning. The physical therapist's assessments indicated that Gresham showed an improvement in her range of motion and functional limitations.

On September 6, 2017, Gresham visited Dr. Anne Mack, M.D., based on a referral from Dr. Krasner for lower back pain and hip pain, which she rated as an 8 out of 10.[15] On examination, Dr. Mack noted that Gresham had a reduced range of motion in the cervical and lumbosacral areas of the spine, and a normal range of motion in the thoracic area of the spine. Gresham also had full range of motion and strength in her extremities. Dr. Mack recommended that Gresham continue with physical therapy.

On September 18, Dr. Krasner completed a document entitled "Treating Source Statement—Physical Conditions" related to Gresham's disability claim in which he opined that Gresham likely would be off task for more than 25% of a typical workday and miss more than four days of work per month as a result of her ailments, which included "sciatica, severe stress, left hip pain, spinal dysplasia, [and] TIA." Dr. Krasner further opined that Gresham could continuously lift or carry items lighter than 10 pounds; could frequently lift or carry items that were 10 pounds; could never lift or carry items 20 pounds or heavier; could sit, stand, and walk for

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[15] Notably, on this same day, Gresham had a physical therapy visit at which she reported "feeling better" and that he was "starting to feel better overall."

only 1 hour in an 8-hour workday; required the option to sit/stand at will; and occasionally required the use of a cane or other assistive device. He indicated that Gresham could occasionally reach overhead and push/pull; frequently reach in all other directions; continuously perform handling, fingering, and feeling; continuously use foot controls; never balance, crawl, or climb ladders; rarely climb stairs and ramps, stoop, kneel, or crouch; and could frequently rotate her head and neck. Turning to environmental limitations, Dr. Krasner stated that Gresham could never be around unprotected heights, moving mechanical parts, dust/odors/fumes/pulmonary irritants, and extreme cold; occasionally be around humidity, wetness, extreme heat, and vibrations; and could frequently operate a vehicle.

On October 6, 2017, Gresham returned to Dr. Mack, reporting lower back and hip pain with radiating pain down her legs. She described the pain as "moderate" and "constant," rating it as a 6 out of 10. Upon examination, Gresham again had decreased range of motion in her cervical and lumbosacral areas of the spine and a full range of motion in her extremities. She also exhibited pain in her left ankle with certain movements. Dr. Mack ordered an x-ray of the ankle, which did not reveal any abnormal findings. She recommended that Gresham return for a recheck in approximately 6 weeks.

Three days later, on October 9, 2017, Gresham completed her last physical therapy visit. During this visit, Gresham reported that she felt "about 40% better," and she rated her back pain a 2 out

of 10 at rest, and a 7 out of 10 during activity. The physical therapist reported that Gresham had "shown objective improvement with lumbar [range of motion] and subjectively report[ed] improvement with functional activities and independent management of symptoms. She [also] present[ed] with improvement in gait mechanics with no noted deficits pre and post session."

Two days later, Gresham saw Dr. Krasner for a pre-op evaluation related to a scheduled hysterectomy.[16] Dr. Krasner noted that Gresham reported "feel[ing] well with minor complaints" and that she was not currently in pain. As part of the physical examination, he noted that her gait and posture were normal and that she was not in any acute distress.

In March 2018, Dr. Mack ordered an MRI of Gresham's lumbar spine. The MRI indicated that Gresham had "[l]ower lumbar degenerative disc disease and facet arthritis" with "moderate to severe bilateral foraminal stenosis" and a disc bulge abutting a nerve root in the lower lumbosacral region of the spine.

In April 2018, shortly before her hysterectomy, Gresham returned to Dr. Krasner's office seeking help with completing disability related forms. At that time, she reported "feel[ing] well

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[16] Gresham needed a hysterectomy to resolve issues related to numerous fibroids, which doctors also thought could possibly be contributing to her back pain. The surgery, however, was delayed, and Gresham had a second pre-op evaluation performed in March 2018, that included nearly identical findings. The medical records indicate that the hysterectomy was performed successfully in mid-April 2018.

with no complaints," "sleeping well," and "ha[ving] [a] good energy level." She denied currently being in pain. Gresham indicated to the nurse practitioner in Dr. Krasner's office that she "needed [a] permanent disability form for her back" and that Dr. Mack told her that the MRI revealed arthritis in her neck. The nurse practitioner's physical examination indicated that Gresham had full range of motion in her neck with some discomfort. She instructed Gresham to consult with Dr. Mack about the disability forms.

In October 2018, Gresham again visited Dr. Mack for pain in her lower back, hip, and left knee. She reported the back pain as an 8 out of 10. On examination, Dr. Mack noted a reduced range of motion in Gresham's cervical and lumbar spine, an antalgic gait, evidence of swelling in the knee, and a full range of motion in the ankle (but accompanied by pain), but otherwise no abnormalities, noting full strength in all muscles.[17] She ordered a CT scan of Gresham's lumbar spine, x-rays of her left knee and right foot, and a straight cane due to knee pain. The CT scan confirmed "[d]egenerative changes" of Gresham's lumbar spine at two levels.

In June 2019, Gresham had an operation to treat a hernia. In August 2019, Dr. Wynn, the surgeon who treated Gresham for the hernia, opined that Gresham could not return to work until September 23, 2019, and when she returned she could not push,

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[17] Subsequent examinations performed by Dr. Mack in November 2018, August 2019, September 2019, and October 2019 contained substantially similar results to that of the October 2018 examination.

pull, or lift anything over 10 pounds. Dr. Wynn lifted these restrictions in late September 2019, stating that Gresham was allowed "to perform normal duties up to her capacity."

In October 2019, an unnamed individual at Thrive Physical Therapy completed a one-time "Functional Assessment Report" for Gresham's disability application. The report indicated that Gresham experienced right knee and lower back pain with all of the physical function tests, but that it was difficult to fully assess her abilities and strengths or barriers to her ability to work due to restrictions that she was under from hernia surgery. In terms of Gresham's ability to work, the report indicated that the "[o]nly option that would work per discussion with client is part time light duty with a flexible schedule that [could] allow for frequent call outs for doctors visits or if having a bad day with pain or limitations." The therapist recommended that Gresham could perform "[p]art time light duty" work. The report further opined that Gresham could occasionally stand or walk; could constantly sit; rarely lift any weight less than 10 pounds; never lift any weight more than 10 pounds; frequently use her arms and hands; would never need to recline or elevate feet; could never crouch or climb a ladder; could rarely bend, walk, kneel or crouch; and occasionally stand, sit, or work while standing.

Finally, records indicated that in November 2019, Gresham applied for a handicap parking placard, and Lindsay Kelly, a family nurse practitioner, completed the necessary forms, certifying that Gresham could not walk more than 200 feet without stopping for

rest and required a cane as an assistive device, and that Gresham had no prognosis for improvement.

B. Testimony Before the ALJ

At the second hearing on her disability application, Gresham provided testimony concerning her prior occupations and her physical ailments and associated pain. Regarding her prior occupations, she previously worked as a behavioral therapist for mentally and physically disabled residents in a group home. Next, she worked as a preschool teacher, which involved writing up various lesson plans and reports. Then she worked as a customer service representative in the collections department of a financial company for a year, which involved mainly "sit down" work. Finally, she worked as an administrator (and later as the purchasing services coordinator) in the procurement unit of a state agency in Delaware, where she was responsible for a wide variety of administrative tasks and frequently traveled between offices. In this role, she was responsible for handling phones, transporting large boxes of documents weighing over 20 pounds, and writing and editing contracts.

Turning to her impairments, Gresham testified that, in May 2015, she became disabled after she experienced "a stress breakdown and the pain became intolerant to where [she] could . . . barely move [her] left leg." She also suffered "memory setbacks" around this time. Gresham explained that she had been using a cane prescribed by Dr. Mack as a mobility assistive device for the last year. She stated that she lived with her husband and

her two daughters, ages 26 and 17, and that they helped her cook and do things around the house like cleaning and laundry. She explained that sometimes she gets "the tinglys" in her legs and that pain medications, her TENS unit, physical therapy, massages and a heating pad helps. She confirmed that she had never had any surgery on her back and that she was still recovering from the hernia repair.

When asked to describe the problems that have prevented her from working since 2015, Gresham stated it was: her constant back, right knee, and ankle pain; hip pain for which she went to the emergency room in 2017; her hysterectomy, during which cancerous cells were discovered and removed successfully; neck issues that developed in 2018; shoulder pain; and her hernia. She explained that, in 2016, she felt capable of at least doing part-time work, and she completed 200 job applications, but was unable to find work. She stated that she also suffers from TIA strokes, high blood pressure, and diabetes.

A vocational expert ("VE") then testified in response to three hypotheticals from the ALJ. The ALJ's first hypothetical involved an individual of Gresham's age and skills who could occasionally lift 20 pounds; frequently lift 10 pounds; stand or walk for six hours out of an eight-hour workday; sit for six hours out of an eight-hour workday; frequently climb ramps and stairs; occasionally climb ladders, ropes, and scaffolds; frequently balance; occasionally stoop, kneel, crouch, and crawl; and tolerate occasional exposure to vibration and hazards. The VE testified that a person with these

limitations could perform three of Gresham's prior jobs, namely, her work as a purchasing agent, secretary, and collection clerk. Additionally, the VE testified that the hypothetical individual could work as a file clerk, as a general clerk, or in a wide range of sedentary positions available in the national economy.

The ALJ next reduced the lift limit to 10 pounds and the time standing or walking to two hours out of an eight-hour day, keeping the remainder of the limitations the same. The VE testified that such an individual could perform two of Gresham's prior jobs, namely, that of a collection clerk and secretary. The VE further testified that such limitations would limit an individual to sedentary work, identifying a data entry clerk, an information clerk, and a data clerk as additional positions such a person could fill.

For the third and final hypothetical, the ALJ added to the limitations that the individual would require a cane to balance and would be off-task 25 percent of the workday. The VE testified that such an individual could not perform any of Gresham's prior positions or any other position in the workforce. The ALJ then removed the limitation of being off-task for 25 percent of the workday, but still required the use of a cane. The VE testified that such an individual would be able to perform the same positions identified in the second hypothetical.

Finally, at the request of Gresham, the VE next considered an individual with the same limitations who needed to miss work on average four days a month due to an ailment or to see a doctor.

The VE testified that such a limitation would be work preclusive, even if further limited to only missing part of the day once a month for a doctor's appointment.

Gresham then explained that "it's not that [she] can't do work," she just needs flexibility. The ALJ explained that because Gresham had various ailments, he was going to have an independent doctor review Gresham's complete file, look at everything collectively, and then write up a report. The ALJ would then review that report along with all the other evidence in the record and make a determination.

C. Post-Hearing Evidence

In February 2020, at the request of the ALJ, Dr. Seth Meltzer reviewed Gresham's file. Dr. Meltzer identified Gresham as suffering from the following impairments: sciatica, DeQuervian's tenosynovitis, stroke, and hypertension. He then explained that none of these impairments met or equaled any impairment in the agency's Listing of Impairments.[18]

He next opined that, with her ailments, Gresham could continuously lift or carry up to 10 pounds; frequently lift or carry up to 20 pounds; occasionally carry, but never lift between 20 and 50 pounds; sit two hours at a time and up to four hours per

[18] In particular, he explained that Gresham's back issues did not meet the listing of impairments for disorders of the spine because although the MRI showed evidence of facet arthritis, degenerative disc disease, and stenosis in the lumbar region, "there [was] no evidence of neuroanatomic motor loss, motor weakness, loss of reflex, or positive SLR."

workday; stand and walk for 30 minutes at a time and up to two hours per workday. Dr. Meltzer further opined that Gresham could frequently reach, handle, finger, feel, push, and pull; continuously use foot controls; occasionally climb stairs, ramps, ladders, and scaffolds; frequently balance; never stoop, kneel, crouch, or crawl; occasionally be exposed to heights and moving mechanical parts; and be exposed to very loud noises. Meltzer cited to specific documents in the record in support of his findings.[19]

Following the second hearing, Gresham submitted additional medical evidence, which included a cardiologist report from January 2020 that stated that Gresham reported feeling great with no back or joint pain. Upon examining Gresham, the cardiologist reported that her extremities, motor strength, and reflexes were normal. And a February 2020 "medical statement of ability to do work-related activities" from a nurse practitioner in Dr. Krasner's office, indicated that, due to a history of "spinal dysplasia, TIA[,] [and] arthritis," Gresham had the following physical limitations: she could frequently lift or carry up to 10

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[19] After Dr. Meltzer completed his report, the ALJ requested that the VE complete an updated interrogatory on Gresham's ability to work. The interrogatory asked the VE to consider whether a hypothetical person of Gresham's age, education, and skill, could perform any of her prior positions or other positions in the workplace if they had limitations identical to those found by Dr. Meltzer. The VE certified that such an individual could perform two of the Gresham's prior positions, namely, a purchasing agent and an administrative assistant. The VE also certified that such an individual could perform as a general clerk, administrative clerk, purchasing clerk, receptionist, payroll clerk, router, fingerprint clerk, or microfilm mounter.

pounds; occasionally lift or carry up to 20 pounds; sit for one hour at a time and up to eight hours a day; stand for less than 5 minutes at a time and up to 1 hour in a day; walk for less than 30 minutes and up to 1 hour in a day; required a cane to ambulate; could occasionally reach with her hands; could continuously handle, finger, feel, and push/pull with each hand; could continuously operate foot controls; could never climb stairs, ramps, ladders, or scaffolds; could never balance, stoop, kneel, crouch, or crawl; could never be exposed to unprotected heights, moving mechanical parts, humidity/wetness, dust, odors, fumes, pulmonary gases, extreme cold, extreme heat, or vibrations; could occasionally operate a motor vehicle; and could be exposed to moderate noise levels. The nurse practitioner further opined that Gresham's impairments met or equaled an impairment on the agency's Listing of Impairments, though she did not specify which one or ones were met and did not specify any evidence that supported this finding.

D. The ALJ's Decision

Employing the SSA's five-step sequential evaluation process for determining whether a claimant is disabled, the ALJ denied Gresham's application.[20] The ALJ found that Gresham had not

[20] The evaluation process involves the following five determination steps: (1) whether the claimant is engaged in substantial gainful activity; (2) if not, whether she "has a severe impairment or combination of impairments"; (3) if so, whether that impairment, or combination of impairments, meets or equals the medical listings in the regulations; (4) if not, whether the claimant can perform her past relevant work in light of her RFC; and (5) if not, whether, based on her age, education, and work experience, she can perform other

engaged in substantial gainful activity since May 20, 2015, and was severely impaired from "obesity, degenerative disc disease of the lumbar spine, and left DeQuervain's tenosynovitis." At step three, the ALJ determined that Gresham's impairments did not meet or medically equal any listed impairment under the relevant Social Security regulations.[21] At step four, the ALJ then determined that Gresham had:

> the residual functional capacity to perform light work as defined in 20 CFR [§] 404.1567(b) except she can lift and carry 20 pounds frequently and 50 pounds occasionally, sit for 2 hours at a time for a total of 4 hours out of an 8-hour workday, stand 30 minutes at a time for a total of 2 hours out of an 8-hour workday, and walk 30 minutes at a time for a total of 2 hours in an 8-hour workday. The claimant can frequently reach in all directions bilaterally with the upper extremities. She can occasionally climb stairs and ramps, occasionally climb ladders or scaffolds, frequently balance, and never stoop, kneel, crouch, or crawl. The claimant can tolerate occasional exposure to unprotected heights and moving mechanical parts. She can tolerate very loud noise.

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work found in the national economy. *Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011).

[21] A claimant bears the burden of showing her impairments meet or equal a listing. *Barron v. Sullivan*, 924 F.2d 227, 229 (11th Cir. 1991).

In reaching this conclusion, the ALJ found that Gresham's medically determinable impairments could reasonably be expected to cause the alleged symptoms, but that Gresham's "statements concerning the intensity, persistence and limiting effects of [her] symptoms [were] not entirely consistent with the medical evidence and other evidence in the record." For instance, the ALJ noted that the objective evidence in the record indicated that Gresham's back issues improved with physical therapy and she frequently reported feeling better, such that Gresham's "allegations of disabling symptoms and limitations are inconsistent with and unsupported by the evidence."

As for the medical opinion evidence, the ALJ gave little to no weight to the opinions provided by Dr. Krasner, Dr. Wynn, Dr. Lifrak, and the Thrive Physical Therapy Functional Assessment Report. The ALJ explained that Dr. Krasner's opinions as to Gresham's limitations and her inability to work were not supported by the objective medical evidence or constituted findings on an issue reserved to the Commissioner. Similarly, "the evidence as a whole, including the physical examination findings, [did] not support such restrictive limitations" as those indicated in Dr. Wynn's medical opinion. The ALJ explained that he gave little weight to the agency examiner Dr. Lifrak's 2016 consultative examination because "the weight of the evidence, including the mostly normal strength findings, do not support limiting lifting and carrying to 10 pounds bilaterally." The ALJ also explained that it gave little weight to the Functional Assessment Report completed by Thrive "because the examiner was unable to fully assess

[Gresham's] ability" due to restrictions that Gresham was still under after her hernia surgery. On the other hand, the ALJ gave great weight to Dr. Meltzer's opinion, because he had the opportunity to review Gresham's entire file and the RFC he provided (which the ALJ adopted) was supported by the record.

In light of Gresham's RFC, the ALJ determined that Gresham could perform past relevant work as a purchasing agent and an administrative assistant. Alternatively, the ALJ proceeded to step five and determined that Gresham could perform other jobs in the national economy such as a router, fingerprint clerk, and microfilm mounter. Consequently, the ALJ found that Gresham was not disabled.

Gresham requested discretionary review of the ALJ's decision by the SSA Appeals Council, and her request was denied. Gresham then obtained counsel and filed a complaint in the district court, raising two issues: (1) whether the ALJ failed to properly evaluate and weigh the medical opinion evidence—in particular the opinions of Dr. Krasner, Dr. Wynn, and Dr. Lifrak, and the Thrive Physical Therapy Functional Assessment—as required under "SSA policy and Eleventh Circuit precedent"; and (2) whether the ALJ and Appeals Council judges were properly appointed, and, if not, whether remand was necessary. A magistrate judge, acting on behalf of the district court, affirmed the ALJ's decision and rejected Gresham's appointments challenge. Gresham, proceeding *pro se*, appealed the decision.

II. Standard of Review

"When, as in this case, the ALJ denies benefits and the [Appeals Council] denies review, we review the ALJ's decision as the Commissioner's final decision." *Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001). "[W]e review *de novo* the legal principles upon which the Commissioner's decision is based," and "we review the resulting decision only to determine whether it is supported by substantial evidence." *Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005); *see also Simon v. Comm'r, Soc. Sec. Admin.*, 7 F.4th 1094, 1103 (11th Cir. 2021) ("Substantial evidence is less than a preponderance, and thus we must affirm an ALJ's decision even in cases where a greater portion of the record seems to weigh against it." (quotation omitted)). "We may not decide the facts anew, reweigh the evidence, or substitute our judgment for that of the [Commissioner]." *Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011) (alteration in original) (quotation omitted). "Even if the evidence preponderates against the Commissioner's findings, we must affirm if the decision reached is supported by substantial evidence." *Crawford v. Comm'r of Soc. Sec.*, 363 F.3d 1155, 1158–59 (11th Cir. 2004) (quotation omitted).

III. Discussion

Gresham challenges the ALJ's weighing of medical opinions, asserting that the ALJ erred in giving more weight to Dr. Meltzer's

opinion than the "independent medical professional experts who actually worked with [her]."[22]

To obtain social security disability benefits, the applicant must prove she is disabled. *See Barnhart v. Thomas*, 540 U.S. 20, 21 (2003). "Disability" is defined 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." 42 U.S.C. § 423(d)(1)(A). The impairment must be "of such severity that [the person] is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." *Id.* § 423(d)(2)(A).

When making the disability assessment, the ALJ must give special attention to the medical opinions, particularly those of the treating physician. SSA regulations in force at the time Gresham filed her application required an ALJ to give "controlling weight" to a treating physician's opinion if it was "well-supported by medically acceptable clinical and laboratory diagnostic techniques" and "not inconsistent with the other substantial evidence in [the]

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[22] Gresham does not state to which of the treating "independent medical professional experts" she is referring. Nevertheless, we assume for purposes of this opinion that she is referring to the same treating physician opinions that she took issue with in the district court, namely, those of Dr. Krasner, Dr. Wynn, and Dr. Lifrak, and the Thrive Physical Therapy Functional Assessment. Therefore, we focus on those opinions.

case record." 20 C.F.R. § 404.1527(c)(2).[23] Good cause to discount a treating physician's opinion exists "when the: (1) treating physician's opinion was not bolstered by the evidence; (2) evidence supported a contrary finding; or (3) treating physician's opinion was conclusory or inconsistent with the doctor's own medical records." *Winschel*, 631 F.3d at 1179 (quotation omitted).

"[T]he ALJ must state with particularity the weight given to different medical opinions and the reasons therefor." *Id.* There are no magic words to state with particularity the weight given to the medical opinions. Rather, the ALJ must "state with at least some measure of clarity the grounds for his decision." *Id.* (quotation omitted). "We will not second guess the ALJ about the weight the treating physician's opinion deserves so long as [the ALJ] articulates a specific justification for it." *Hunter v. Soc. Sec. Admin., Comm'r*, 808 F.3d 818, 823 (11th Cir. 2015).

State agency medical consultants, like Dr. Lifrak and Dr. Meltzer, are considered experts in social security disability evaluations, and the ALJ must consider and assign weight to their opinions in the same manner as other medical sources. *See* 20 C.F.R. §§ 404.1527(e), 404.1513a(b). The weight to be given to a non-examining physician's opinion depends on, among other considerations, the extent to which it is consistent with other

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[23] In 2017, the SSA amended its regulations and removed the "controlling weight" requirement for all applications filed after March 27, 2017. *See* 20 C.F.R. §§ 404.1527, 404.1520c. Because Gresham filed her DIB application in 2015, the former regulations apply.

evidence. *See id.* § 404.1527(c)(4). When reviewing the report of a consultative examiner, the ALJ considers whether the report "provides evidence [that] serves as an adequate basis for decision-making," "is internally consistent," and "is consistent with the other information available." *Id.* § 404.1519p(a)(1)-(3).

In this case, the ALJ provided good cause for not giving controlling weight to the opinions of Dr. Krasner, Dr. Wynn, Dr. Lifrak, and the functional assessment prepared by Thrive Physical Therapy. For instance, the ALJ explained that he gave little to no weight to Dr. Krasner's numerous opinions between 2015 and 2020 because Dr. Krasner's opinions as to Gresham's limitations and her inability to work were not supported by the objective medical evidence. The ALJ's conclusion is reinforced by the record. Dr. Krasner's opinions were not supported by many of the objective medical findings, including the physical therapy progress reports. Furthermore, although Dr. Krasner opined in 2020 that Gresham had impairments that met the agency's Listing of Impairments and was therefore disabled, a medical source's opinion that a claimant is "disabled" or "unable to work" is not dispositive of a disability claim because that determination is reserved to the agency. 20 C.F.R. § 404.1527(d)(1); *Walker v. Soc. Sec. Admin., Comm'r*, 987 F.3d 1333, 1339 (11th Cir. 2021).

Turning to the opinions of Dr. Wynn, the surgeon who treated Gresham for her hernia, the ALJ explained that he gave limited weight to Dr. Wynn's opinion—namely, that Gresham was unable to work between August and September 2019 and that

Gresham should be restricted from pushing, pulling, prolonged sitting, standing, or walking, and lifting more than 10 pounds—because the evidence as a whole did not support these restrictive limitations. Similarly, the ALJ explained that he gave no weight to Dr. Wynn's opinion that, as of September 23, 2019, Gresham could perform her normal duties "up to her capacity" because the opinion provided no specific functional limitations. Where, as here, the ALJ provides a specific justification for affording lesser weight or otherwise discounting a treating physician's opinion, we will not second guess the ALJ's decision. *See Hunter*, 808 F.3d at 823.

Next, the ALJ provided good cause for giving only limited weight to the opinion of the consulting doctor, Dr. Lifrak, who opined in 2016 that Gresham could lift or carry weights of up to 10 pounds and could perform activities requiring her to walk, either indoors or outdoors; climb stairs; sit for a total of six hours out of an eight-hour day; stand for a total period of six hours out of an eight-hour day.[24] Specifically, the ALJ found that the lift and carry capacity proposed by Lifrak was unsupported by the mostly normal strength findings in the medical records. The ALJ's statement is supported by the collective medical evidence and

[24] Notably, aside from the lift/carry restriction, Dr. Lifrak's restrictions were less restrictive than those found by the ALJ. Thus, even if the ALJ had given Dr. Lifrak's opinion controlling weight, it would not have changed the outcome.

provides good cause for giving only limited weight to Dr. Lifrak's opinion.

Likewise, the ALJ explained that he gave limited weight to the Thrive Physical Therapy Functional Assessment Report which limited Gresham to part-time light duty work with a flexible schedule because the unidentified examiner indicated that he or she was unable to fully assess Gresham's abilities and limitations due to restrictions that Gresham was still under from her hernia surgery. The ALJ's statement provides good cause for giving the assessment limited weight, and is consistent with the examiner's statement in the report. *See Winschel*, 631 F.3d at 1179. Furthermore, the assessment was prepared for purposes of Gresham's disability application, and, therefore, it was not a "treating source" and not entitled to controlling weight. *See* 20 C.F.R. § 404.1527(a)(2) ("We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability.").

Finally, the ALJ explained that he gave great weight to Dr. Meltzer's opinion because Dr. Meltzer "had the opportunity to review [Gresham's] entire file" and he provided an RFC supported by the objective medical evidence in the record. The ALJ's statement is supported by substantial evidence in the record.

Accordingly, the ALJ provided specific justifications for giving less than controlling weight to Gresham's the challenged

opinions and for giving greater weight to Dr. Meltzer's opinion. Thus, the ALJ satisfied the good cause standard, and we will not second guess the ALJ's decision. *See Hunter*, 808 F.3d at 823; *see also Crawford*, 363 F.3d at 1158–59 ("Even if the evidence preponderates against the Commissioner's findings, we must affirm if the decision reached is supported by substantial evidence." (quotation omitted)). Consequently, we affirm.

AFFIRMED.

Appendix F

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13807

ELISHA L. GRESHAM,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-00601-MRM

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

The "Motion for Rehearing," construed as a Petition for Panel Rehearing, filed by the Appellant is DENIED.

Appendix G

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13807

ELISHA L. GRESHAM,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cv-00601-MRM

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: November 7, 2023

For the Court: DAVID J. SMITH, Clerk of Court

Appendix D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ELISHA L. GRESHAM,

Plaintiff,

v. Case No.: 8:21-cv-601-MRM

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
_____/

OPINION AND ORDER

Plaintiff Elisha L. Gresham filed a Complaint on March 16, 2021. (Doc. 1). Plaintiff seeks judicial review of the final decision of the Commissioner of the Social Security Administration ("SSA") denying her claim for a period of disability and disability insurance benefits. The Commissioner filed the transcript of the administrative proceedings (hereinafter referred to as "Tr." followed by the appropriate page number), and the parties filed a joint memorandum detailing their respective positions. (Doc. 22). For the reasons set forth herein, the decision of the Commissioner is **AFFIRMED** pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

I. Social Security Act Eligibility

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a

continuous period of not less than twelve months. 42 U.S.C. §§ 416(i), 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505, 416.905. The impairment must be severe, making the claimant unable to do her previous work or any other substantial gainful activity that exists in the national economy. 42 U.S.C. §§ 423(d)(2), 1382c(a)(3); 20 C.F.R. §§ 404.1505 - 404.1511, 416.905 - 416.911. Plaintiff bears the burden of persuasion through step four, while the burden shifts to the Commissioner at step five. *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987).

II. Procedural History

Plaintiff filed an application for a period of disability and disability insurance benefits on July 22, 2015, alleging a disability onset date of May 20, 2015. (Tr. at 13).[1] Plaintiff's claim was denied initially on November 4, 2015, and upon reconsideration on March 21, 2016. (*Id.*). Thereafter, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), and ALJ Steven L. Butler held that hearing on October 12, 2017. (*Id.* at 94-146). ALJ Butler issued an unfavorable decision on January 4, 2018. (*Id.* at 172-91). The Appeals Council granted Plaintiff's request for review on April 15, 2019, and remanded the decision to the ALJ to (1) obtain more evidence concerning Plaintiff's impairments to complete the administrative record; (2) either obtain an Appointment of Representative form from

[1] The SSA revised the rules regarding the evaluation of medical evidence and symptoms for claims filed on or after March 27, 2017. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844-01, 5844 (Jan. 18, 2017). The new regulations, however, do not apply in Plaintiff's case because Plaintiff filed her claim before March 27, 2017.

each of Plaintiff's representatives or, if Plaintiff was proceeding *pro se*, give her information on her right to representation; (3) further consider evidence submitted less than five business days before the scheduled hearing; and (4) if warranted, give more consideration of Plaintiff's residual functional capacity ("RFC") during the relevant time period and provide a rationale with specific references to the evidence of record in support of the RFC. (*Id.* at 192-94; *see also* Doc. 13-14).

On remand, ALJ Anthony Reeves held a second hearing on December 17, 2019, at which Plaintiff appeared without representation. (*Id.* at 36-93). ALJ Reeves issued an unfavorable decision on March 30, 2020. (*Id.* at 10-35). On January 26, 2021, the Appeals Council denied Plaintiff's request for review. (*Id.* at 1-6). Plaintiff then filed her Complaint with this Court on March 16, 2021, (Doc. 1), and the parties consented to proceed before a United States Magistrate Judge for all purposes, (Docs. 13, 16). The matter is, therefore, ripe for the Court's review.

III. Summary of the Administrative Law Judge's Decision

An ALJ must follow a five-step sequential evaluation process to determine if a claimant has proven that she is disabled. *Packer v. Comm'r of Soc. Sec.*, 542 F. App'x 890, 891 (11th Cir. 2013) (citing *Jones v. Apfel*, 190 F.3d 1224, 1228 (11th Cir. 1999)). An ALJ must determine whether the claimant: (1) is performing substantial gainful activity; (2) has a severe impairment; (3) has a severe impairment that meets or equals an impairment specifically listed in 20 C.F.R. Part 404, Subpart P, Appendix 1; (4) can perform her past relevant work; and (5) can perform other work of the sort

found in the national economy. *Phillips v. Barnhart*, 357 F.3d 1232, 1237-40 (11th Cir. 2004). The claimant has the burden of proof through step four and then the burden shifts to the Commissioner at step five. *Hines-Sharp v. Comm'r of Soc. Sec.*, 511 F. App'x 913, 915 n.2 (11th Cir. 2013).

The ALJ determined that Plaintiff met the insured status requirements of the Social Security Act through December 31, 2020. (Tr. at 16). At step one of the sequential evaluation, the ALJ found that Plaintiff had not engaged in substantial gainful activity since May 20, 2015, the alleged onset date. (*Id.*). At step two, the ALJ determined that Plaintiff has the following severe impairments: "obesity, degenerative disc disease of the lumbar spine, and left DeQuervain's tenosynovitis (20 [C.F.R. §] 404.1520(c))." (*Id.*). At step three, the ALJ determined that Plaintiff did "not have an impairment or combination of impairments that me[t] or medically equal[ed] the severity of one of the listed impairments in 20 [C.F.R.] Part 404, Subpart P, Appendix 1 (20 [C.F.R. §§] 404.1520(d), 404.1525, and 404.1526)." (*Id.*).

At step four, the ALJ found that Plaintiff has the RFC:

> to perform light work as defined in 20 [C.F.R. §] 404.1567(b) except she can lift and carry 20 pounds frequently and 50 pounds occasionally, sit for 2 hours at a time for a total of 4 hours out of an 8-hour workday, stand 30 minutes at a time for a total of 2 hours out of an 8-hour workday, and walk 30 minutes at a time for a total of 2 hours in an 8-hour workday. The claimant can frequently reach in all directions bilaterally with the upper extremities. She can occasionally climb stairs and ramps, occasionally climb ladders or scaffolds, frequently balance, and never stoop, kneel, crouch, or crawl. The claimant can tolerate occasional exposure to unprotected heights and moving mechanical parts. She can tolerate very loud noise.

(*Id.* at 17). The ALJ also determined that Plaintiff "is capable of performing past relevant work as a Purchasing Agent and Administrative Assistant" because "[t]his work does not require the performance of work-related activities precluded by the claimant's [RFC] (20 [C.F.R. §] 404.1565)." (*Id.* at 23).

Despite finding that Plaintiff could perform her past relevant work, the ALJ made alternative findings at step five. (*Id.* at 24). More specifically, considering Plaintiff's age, education, work experience, and RFC, and in reliance on Vocational Expert ("VE") testimony, the ALJ determined that "there are other jobs that exist in significant numbers in the national economy that the claimant also can perform (20 [C.F.R. §§] 404.1569, 404.1569(a) and 404.1568(d))"—*i.e.*, router (Dictionary of Occupational Titles ("DOT")# 222.587-038); fingerprint clerk (DOT# 209.367-026); and microfilm mounter (DOT# 208.685-022). (*Id.* at 24).

For these reasons, the ALJ held that Plaintiff "has not been under a disability, as defined in the Social Security Act, from May 20, 2015, through the date of this decision (20 [C.F.R. §] 404.1520(f))." (*Id.* at 25).

IV. Standard of Review

The scope of this Court's review is limited to determining whether the ALJ applied the correct legal standard, *McRoberts v. Bowen*, 841 F.2d 1077, 1080 (11th Cir. 1988), and whether the findings are supported by substantial evidence, *Richardson v. Perales*, 402 U.S. 389, 390 (1971). The Commissioner's findings of fact are conclusive if supported by substantial evidence. 42 U.S.C. § 405(g). Substantial

evidence is more than a scintilla—*i.e.*, the evidence must do more than merely create a suspicion of the existence of a fact, and must include such relevant evidence as a reasonable person would accept as adequate to support the conclusion. *Foote v. Chater*, 67 F.3d 1553, 1560 (11th Cir. 1995) (citing *Walden v. Schweiker*, 672 F.2d 835, 838 (11th Cir. 1982); *Richardson*, 402 U.S. at 401).

Where the Commissioner's decision is supported by substantial evidence, the district court will affirm, even if the reviewer would have reached a contrary result as finder of fact, and even if the reviewer finds that "the evidence preponderates against" the Commissioner's decision. *Edwards v. Sullivan*, 937 F.2d 580, 584 n.3 (11th Cir. 1991); *Barnes v. Sullivan*, 932 F.2d 1356, 1358 (11th Cir. 1991). The district court must view the evidence as a whole, taking into account evidence favorable as well as unfavorable to the decision. *Foote*, 67 F.3d at 1560; *accord Lowery v. Sullivan*, 979 F.2d 835, 837 (11th Cir. 1992) (a court must scrutinize the entire record to determine reasonableness of factual findings).

V. Analysis

On appeal, Plaintiff raises two issues. As stated by the parties, the issues are:

1. Whether the ALJ properly evaluated the medical opinion evidence in accordance with SSA policy and Eleventh Circuit precedent; and

2. Whether the ALJ and [Appeals Council] judges were properly appointed and, if not, whether this fact requires remand.

(Doc. 22 at 15, 33). The Court finds it appropriate to address the issues in a more logical order. Accordingly, the Court first addresses the parties' second issue—

whether the decision here is constitutionally defective, requiring remand. Next, the Court considers the parties' first issue—whether the ALJ properly evaluated the medical evidence of record.

A. Whether 42 U.S.C. § 902(a)(3) Necessitates a Rehearing.

Removal of the Commissioner of Social Security is governed by 42 U.S.C. § 902(a)(3), (the "removal provision"). Under § 902(a)(3), the SSA's Commissioner is appointed to a six-year term and may not be removed from office by the President without a showing of cause. *See* 42 U.S.C. § 902(a)(3).

Plaintiff essentially argues that the § 902(a)(3) removal provision provides unconstitutional tenure protection to the Commissioner of the SSA, violates the separation of powers, and, therefore, the SSA's structure is constitutionally invalid. (*See* Doc. 22 at 33-35 (citing 42 U.S.C. § 902(a)(3); *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020))). To that end, Plaintiff impliedly asserts that Commissioner Andrew Saul was subject to the removal provision's allegedly unconstitutional tenure protection and, thus, any actions taken by him or pursuant to his authority were unconstitutional. (*See id.*). For example, Plaintiff argues that, because Commissioner Saul delegated his authority to the ALJ who issued a decision in Plaintiff's case and to the Appeals Council Judges, Plaintiff's claim was adjudicated by individuals who "had no lawful authority to do so." (*See id.* at 34-35 (citations omitted)). Plaintiff also asserts that her claim was decided under "a presumptively inaccurate legal standard" because Commissioner Saul issued regulations under which Plaintiff's application was decided. (*Id.*).

The Commissioner "*agree[s]* that 42 U.S.C. § 902(a)(3) violates the separation of powers to the extent it is construed as limiting the President's authority to remove the Commissioner without cause," (*id.* at 35 (emphasis added) (citing Constitutionality of the Commissioner of Social Security's Tenure Protection, 45 Op. O.L.C. ----, 2021 WL 2981542 (July 8, 2021))), but disagrees that the removal provision necessitates a remand of Plaintiff's case, (*id.* at 35-36 (citation omitted)). Specifically, the Commissioner contends that Plaintiff cannot show a nexus between 42 U.S.C. § 902(a)(3)'s removal provision and any alleged harm suffered by Plaintiff. (*See id.* at 36-44 (citing *Collins v. Yellen*, 141 S. Ct. 1761 (2021); *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018); *Decker Coal Co. v. Pehringer*, 8 F.4th 1123 (9th Cir. 2021))).

The Commissioner raises two arguments in support of this contention. First, the Commissioner argues that because ALJ Reeves served under a ratification of his appointment by former Acting Commissioner Nancy Berryhill, there was no connection between ALJ Reeves's decision and the removal provision. (*See id.* at 38-39 (citations omitted)). Because Acting Commissioner Berryhill was not subject to any tenure protection under 42 U.S.C. § 902(a)(3), the Commissioner asserts that any potential nexus between the removal provision and the decision in Plaintiff's case was severed. (*See id.*). Second, even if Plaintiff's case were decided under the authority of a Commissioner subject to the removal provision, the Commissioner argues that Plaintiff "cannot show that the removal restriction 'inflict[ed] compensable harm' on her." (*Id.* at 40-44 (alteration in original) (citing *Collins*, 141 S. Ct. at 1789)).

The Commissioner next argues that Plaintiff's rehearing request should be denied under the harmless error doctrine, (*id.* at 44-45 (citations omitted)), the *de facto* officer doctrine, (*id.* at 45-46 (citations omitted)), the rule of necessity (*id.* at 46-47 (citations omitted)), and broad prudential considerations, (*id.* at 47-48 (citations omitted)).

By way of reply, Plaintiff addresses several arguments posited by Defendant. (*See id.* at 48-56). First, Plaintiff argues that under *Collins v. Yellen*, 141 S. Ct. 1761, 1778-89 (2021), unconstitutional removal restrictions implicate separations of powers. (*Id.* at 48-49 (citations omitted)). Second, Plaintiff maintains that she was harmed by the provision because but for the delegation of authority, (1) the Appeals Council could not have issued adverse determinations and (2) she would not have faced a constitutionally illicit adjudication process at the Appeals Council level. (*Id.* at 27-28). In advancing this argument, Plaintiff summarizes the President's actions and statements immediately following the Office of the Legal Counsel of U.S. Department of Justice's issuance of the memorandum on the Constitutionality of the Commissioner of Social Security's Tenure Protection, to show that the President would have removed Former Commissioner Saul had the President thought he had the authority to do so. (*See id.* at 49-53). Third, Plaintiff contends that the alleged unconstitutional provision cannot be deemed harmless under law or fact and that remand would remedy some harms Plaintiff has suffered. (*Id.* at 53 (citation omitted)). Fourth, Plaintiff argues that the *de facto* officer doctrine does not apply to basic constitutional protections. (*Id.* at 54 (citations omitted)). Fifth, Plaintiff asserts

that the rule of necessity should not apply because "the government cannot claim necessity arising from its own sustained, brazen unconstitutional actions and inactions over more than a quarter century." (*Id.* at 54). Finally, Plaintiff argues that the "SSA's invitation to make up law in the guise of 'prudential considerations'" lacks merit because remand given the tenure provision would apply to only a few claimants. (*Id.* at 54-55). Plaintiff further maintains that what the SSA actually seeks in relying on the so-called prudential considerations "is a ruling that it 'lawfully' violated the Constitution in the past and can continue to do so in the future." (*Id.* at 55).

On June 29, 2020, in *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020), the United States Supreme Court held that a "for-cause" removal restriction on the President's executive power to remove the Consumer Financial Protection Bureau's ("CFPB") director violated constitutional separation of powers, but that the removal provision was severable such that the other provisions relating to the CFPB's structure and duties "remained fully operative without the offending tenure restriction." *Seila L. LLC*, 140 S. Ct. at 2209 (citing *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 509 (2010)).

Thereafter, on June 23, 2021, in *Collins v. Yellen*, 141 S. Ct. 1761 (2021), the United States Supreme Court held that the Federal Housing Finance Agency ("FHFA") director's statutory for-cause removal protection was similarly unconstitutional. *Collins*, 141 S. Ct. at 1783. The Court also distinguished the

unconstitutional removal provision in *Collins* from similar appointment provisions, *see, e.g.*, *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018), noting that:

> All the officers who headed the FHFA during the time in question were properly *appointed*. Although the statute unconstitutionally limited the President's authority to *remove* the confirmed Directors, there was no constitutional defect in the statutorily prescribed method of appointment to that office. As a result, there is no reason to regard any of the actions taken by the FHFA [challenged on appeal] as void.

Id. at 1787 (emphasis in original). The Court did not, however, rule out the potential that an unconstitutional removal provision could "inflict compensable harm." *Id.* at 1788-89. To that point, the *Collins* Court listed examples of how compensable harms might be identified, stating:

> Suppose, for example, that the President had attempted to remove a Director but was prevented from doing so by a lower court decision holding that he did not have "cause" for removal. Or suppose that the President had made a public statement expressing displeasure with actions taken by a Director and had asserted that he would remove the Director if the statute did not stand in the way. In those situations, the statutory provision would clearly cause harm.

Id.

In this matter, the Commissioner agrees with Plaintiff that 42 U.S.C. § 902(a)(3) is unconstitutional because it violates the separation of powers. (Doc. 22 at 35 (citing Constitutionality of the Commissioner of Social Security's Tenure Protection, 45 Op. O.L.C. ----, 2021 WL 2981542 (July 8, 2021))). However, despite the parties' agreement, the Court need not determine the constitutionality of 42

U.S.C. § 902(a)(3)'s removal provision. In short, even assuming *arguendo* that the removal provision is unconstitutional, it would not necessitate a rehearing of Plaintiff's claim because the provision is severable and there is no evidence to suggest a nexus between the removal provision and a compensable harm to Plaintiff. Accordingly, the Court assesses whether the removal provision necessitates a rehearing of Plaintiff's claim, assuming *arguendo* that the provision is unconstitutional.

Plaintiff essentially contends that the allegedly unconstitutional nature of section 902(a)(3) automatically voids the ALJ's decision in this case. (*See* Doc. 22 at 33-35). On the other hand, the Commissioner raises a host of arguments as to why Plaintiff's rehearing request should be denied. (*See id.* at 35-48).

Here, the Court agrees with the Commissioner's arguments and finds a rehearing is not required based solely on the allegedly unconstitutional removal provision for two reasons: (1) the removal provision is severable from the remainder of the Social Security Act; and (2) Plaintiff has failed to show how the allegedly unconstitutional removal provision harmed her.

The Court in *Seila Law* noted that "one section of a statute may be repugnant to the Constitution without rendering the whole act void." *See Seila L. LLC*, 140 S. Ct. at 2208. Based on this principle, the Court is not persuaded by Plaintiff's broad argument that 42 U.S.C. § 902(a)(3)'s removal provision divests the Commissioner of all authority under the Social Security Act or renders *all* of the Commissioner's actions "presumptively inaccurate." (*See* Doc. 22 at 33-35). Rather, like the

offending provision in *Seila Law*, the Court finds that 42 U.S.C. § 902(a)(3) can be severed from the remainder of the Act because the SSA can continue to fully function without the presence of the allegedly unconstitutional provision. *See Seila L. LLC*, 140 S. Ct. at 2209; *see also Tibbetts v. Comm'r of Soc. Sec.*, No. 2:20-cv-872-SPC-MRM, 2021 WL 6297530, at *5 (M.D. Fla. Dec. 21, 2021), *report and recommendation adopted,* 2022 WL 61217 (M.D. Fla. Jan. 6, 2022) (citations omitted) (finding that remand based on the allegedly unconstitutional nature of 42 U.S.C. § 902(a)(3) is unwarranted based, in part, on its severability from the remainder of the Act). Thus, the Court finds that remand for a rehearing on this issue is not warranted.

Moreover, while the *Collins* Court recognized the potential that an unconstitutional removal provision could "inflict compensable harm," *see Collins*, 141 S. Ct. at 1788-89, the Court has found no evidence suggesting that there is a connection between the removal provision and any possible harm to Plaintiff. For example, Plaintiff has not shown that the President could not remove Mr. Saul as a result of the alleged unconstitutional tenure, undermining the existence of a nexus between the provision and the unfavorable decision. To the extent Plaintiff attempts to show that the President's actions and statements following the issuance the memorandum on the Constitutionality of the Commissioner of Social Security's Tenure Protection, 45 Op. O.L.C. ----, 2021 WL 2981542 (July 8, 2021) demonstrate that the President was dissatisfied with the Former Commissioner or would have removed the Former Commissioner if the President believed he had the authority to do so, (*see* Doc. 22 at 49-53), the argument is wholly speculative. Additionally,

Plaintiff fails to show that absent the alleged unconstitutional provision, Plaintiff's claim would have been decided differently at either the ALJ or the Appeals Council level. Indeed, Plaintiff has pointed to no portion of either the ALJ's decision or the decision of the Appeals Council that she contends would have been decided differently but for the alleged unconstitutional provision. Finally, Plaintiff's claim was adjudicated by an ALJ whose tenure was ratified by former Acting Commissioner Berryhill. Because former Acting Commissioner Berryhill was not subject to 42 U.S.C. § 902(a)(3)'s tenure protection, any argument that a nexus exists between § 902(a)(3) and a compensable harm to Plaintiff is further strained.

Furthermore, while the United States Supreme Court has not addressed this issue directly, Justice Kagan forecasted its outcome in *Collins*:

> [T]he majority's approach should help protect agency decisions that would never have risen to the President's notice. Consider the hundreds of thousands of decisions that the [SSA] makes each year. The SSA has a single head with for-cause removal protection; so a betting person might wager that the agency's removal provision is next on the chopping block . . . [b]ut given the majority's remedial analysis, I doubt the mass of SSA decisions—which would not concern the President at all—would need to be undone. That makes sense. . . . When an agency decision would not capture a President's attention, his removal authority could not make a difference—and so no injunction should issue.

See id. at 1802 (Kagan, J., concurring). Justice Kagan's reasoning supports the Court's conclusion that there is no evidence in the instant case to suggest that a nexus exists between § 902(a)(3) and any compensable harm to Plaintiff.

For these reasons, even assuming *arguendo* that 42 U.S.C. § 902(a)(3)'s removal provision is unconstitutional, the Court finds that the removal provision does not necessitate remand or a rehearing of Plaintiff's claim. *See Seila L. LLC*, 140 S. Ct. 2183; *Collins*, 141 S. Ct. 1761; *see also Tibbetts*, 2021 WL 6297530, at *5, *report and recommendation adopted,* 2022 WL 61217 (holding that remand based on the allegedly unconstitutional nature of 42 U.S.C. § 902(a)(3) is unwarranted); *Perez-Kocher v. Comm'r of Soc. Sec.*, No. 6:20-cv-2357-GKS-EJK, 2021 WL 6334838, at *4 (M.D. Fla. Nov. 23, 2021) (finding that a plaintiff had failed to state a claim upon which relief could be granted because the plaintiff could not establish that the Acting Commissioner's unconstitutional tenure protection caused compensable harm).

B. Whether the ALJ Properly Evaluated the Medical Evidence of Record.

Plaintiff also asserts that the ALJ did not provide good reasons for rejecting opinion evidence that contradicted his RFC finding. (Doc. 22 at 17). Specifically, Plaintiff challenges the weight that the ALJ afforded to (1) Dr. Krasner's opinions, (2) Dr. Lifrak's opinion, (3) Dr. Wynn's opinions, and (4) the Functional Assessment Report completed by Plaintiff's physical therapy center. (*See id.* at 17-33).

As to Dr. Krasner's opinions, Plaintiff argues that the ALJ "never obviously considered" Dr. Krasner's status as a treating source when assessing his opinions at step four because the ALJ only identified Dr. Krasner as a treating source at step three. (*Id.* at 17-18).

As to the opinions of Dr. Krasner, Dr. Lifrak, and Dr. Wynn and the Functional Assessment Report, Plaintiff maintains that the ALJ erred in assessing the opinions "in isolation from each other without recognizing that they support and are consistent with each other." (*Id.* at 18 (emphasis omitted)). More particularly, Plaintiff contends that because the opinions of Dr. Krasner, Dr. Lifrak, and Dr. Wynn are consistent with other evidence of record and with each other, the ALJ erred in giving the opinions less than controlling weight. (*See id.* at 20-21). In presenting this argument, Plaintiff challenges the records cited by the ALJ, arguing that the specific records in fact support Plaintiff's position. (*See id.* at 21-22 (citations omitted)). Ultimately, Plaintiff maintains that while some records show normal examinations and improvement, the limited examples cannot "devalue the weight of treating and examining medical opinions and an independent functional evaluation" and that "the ALJ's failure to acknowledge and address evidence contradicting his findings demonstrates [his] unjustified reliance on a highly selective portion of the evidence." (*Id.* at 22-23).

As to the Functional Assessment Report, Plaintiff argues that the ALJ's reason for affording the report limited weight—that the examiner was not able to fully assess Plaintiff's abilities due to Plaintiff's recent surgery—lacks merit because the purpose of the Functional Assessment Report is to evaluate Plaintiff's ability to perform work related activities. (*Id.* at 19-20). In essence, Plaintiff contends that the limitations imposed by the Functional Assessment Report speak directly to Plaintiff's RFC. (*See id.*). Plaintiff also argues that the opined restrictions have been in place

since at least November 2015, as shown by Dr. Krasner's opinions. (*Id.* at 19 (citing Tr. at 860, 870, 929, 1146, 1529)).

Finally, Plaintiff argues that if the ALJ had questions regarding Plaintiff's functional limitations, he had several options to resolve the questions, including re-contacting Plaintiff's physicians, returning the expanded case record to the State Agency for an updated review, or obtaining testimony from a medical expert. (*Id.* at 23 (citations omitted)). Plaintiff essentially contends that setting aside the treating physicians' opinions, however, was not an appropriate action under these facts and remand is, therefore, warranted. (*See id.* at 23-24).

In response, Defendant argues that substantial evidence supports the ALJ's RFC finding, including his consideration of the medical evidence. (*Id.* at 24-26). Accordingly, Defendant argues that substantial evidence supports the RFC finding. (*Id.* at 26).

Turning to Plaintiff's specific contentions, Defendant first argues that the ALJ properly considered the opinions of Dr. Krasner but ultimately found that certain opinions contradicted others, some opinions were on issues reserved to the Commissioner, and the remaining opinions were not consistent with other evidence of record. (*Id.* at 27-29). Thus, Defendant maintains that the ALJ provided good cause for assigning less than controlling weight to Dr. Krasner's opinions. (*Id.* at 29). Second, Defendant argues that the ALJ provided good cause for rejecting Dr. Wynn's opinions because the opinions were not consistent with the evidence of record or otherwise did not constitute medical opinions. (*Id.* at 29-30). Third,

Defendant contends that the ALJ did not err in assessing Dr. Lifrak's opinion because Dr. Lifrak was not a treating source, the ALJ found the lifting restriction to be inconsistent with evidence of record, and the RFC otherwise provided greater limitations than opined. (*Id.* at 30-31). Fourth, as to the Functional Assessment Report, Defendant asserts that the report does not constitute a medical opinion because it is unsigned. (*Id.* at 31). Defendant nevertheless maintains that even if it were construed as an opinion, the ALJ properly found it to be entitled to limited weight for the reasons proffered. (*Id.*). Finally, Defendant argues that although the opinions may be consistent with each other, the ALJ did not err in finding each to be unsupported by the record. (*See id.* at 31-32).

Defendant further contends that the ALJ did not err in deciding not to re-contact a medical source because such a determination is in the ALJ's discretion and limited as to its application. (*Id.* at 32). Defendant maintains that an ALJ's decision to discount opinions – even from treating sources – does not trigger a duty to re-contact the physicians. (*Id.*). Defendant nevertheless notes that the ALJ solicited the opinion of a medical expert and assigned great weight to the opinion. (*Id.* at 33).

In sum, Defendant argues that "the ALJ applied the correct legal standards, and substantial evidence supports the ALJ's finding that Plaintiff is not disabled" and that the Court should not reweigh the evidence to reach the opposite conclusion. (*Id.*).

The relevant Social Security regulations define medical opinions as statements from physicians, psychologists, or other acceptable medical sources that reflect

judgments about the nature and severity of impairments, including symptoms, diagnoses, and prognoses, what a claimant can still do despite impairments, and physical or mental restrictions. 20 C.F.R. § 404.1527(a)(2). When evaluating a medical opinion, the ALJ considers various factors, including: (1) whether the doctor has examined the claimant; (2) the length, nature, and extent of a treating doctor's relationship with the claimant; (3) the medical evidence and explanation supporting the doctor's opinion; (4) how consistent the doctor's opinion is with the record as a whole; and (5) the doctor's specialization. *Denomme v. Comm'r, Soc. Sec. Admin.*, 518 F. App'x 875, 877 (11th Cir. 2013) (citing 20 C.F.R. §§ 404.1527(c), 416.927(c)).

An ALJ is required to consider every medical opinion. *Bennett v. Astrue*, No. 308-cv-646-J-JRK, 2009 WL 2868924, at *2 (M.D. Fla. Sept. 2, 2009) (citing 20 C.F.R. §§ 404.1527(d), 416.927(d)). Additionally, the Eleventh Circuit has stated that an ALJ must state with particularity the weight given to different medical opinions and the reasons therefor. *Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1179 (11th Cir. 2011). Otherwise, the Court has no way to determine whether substantial evidence supports the ALJ's decision, and the Court will not affirm simply because some rationale might have supported the ALJ's conclusion. *See id.* Nonetheless, an incorrect application of the regulations will result in harmless error if a correct application of the regulations would not contradict the ALJ's ultimate findings. *Denomme*, 518 F. App'x at 877-78 (citing *Diorio v. Heckler*, 721 F.2d 726, 728 (11th Cir. 1983)).

The Eleventh Circuit has further held that the opinion of a treating physician must be given substantial or considerable weight unless "good cause" is shown to the contrary. *Phillips*, 357 F.3d at 1240-41 (citing *Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir. 1997)). Good cause exists when: (1) the treating physician's opinion was not bolstered by the evidence; (2) the evidence supported a contrary finding; or (3) the treating physician's opinion was conclusory or inconsistent with the doctor's own medical records. *Id.* Moreover, an "ALJ may reject any medical opinion if the evidence supports a contrary finding." *Lacina v. Comm'r, Soc. Sec. Admin.*, 606 F. App'x 520, 526 (11th Cir. 2015) (quoting *Sharfarz v. Bowen*, 825 F.2d 278, 280 (11th Cir. 1987)).

Because Plaintiff limits her arguments to the assessment of the Functional Assessment Report and the opinions of Dr. Krasner, Dr. Wynn, and Dr. Lifrak, the Court considers only those opinions.

As to the ALJ's assessment of the Functional Assessment Report, the Court finds it to be supported by substantial evidence. As noted above, an ALJ is required to state with particularity the weight given to each *medical opinion* and the reasons therefor. *Winschel*, 631 F.3d at 1179. Under the pertinent regulations, "[m]edical opinions are statements from acceptable medical sources that reflect judgments about the nature and severity of [a claimant's] impairment(s), including [a claimant's] symptoms, diagnosis and prognosis, what [a claimant] can still do despite impairment(s), and [a claimant's] physical or mental restrictions." 20 C.F.R. § 404.1527(a)(2). Here, the unsigned document does not provide sufficient

information to show that the report was that of an acceptable medical source. *See Matos v. Colvin*, No. 6:14-cv-1396-Orl-DAB, 2015 WL 5474486, at *4 (M.D. Fla. Sept. 17, 2015) (noting that an unsigned document did not show whether it was an opinion of an acceptable medical source). Moreover, physical therapists – the source most likely to have drafted this report – do not constitute "acceptable medical source[s]" under the pertinent regulations. *See Sears v. Comm'r of Soc. Sec.*, No. 8:14-cv-2635-T-17JSS, 2016 WL 11581678, at *4 (M.D. Fla. Jan. 20, 2016); *see also* SSR 06-03p, 2006 WL 2329939, at *2 (describing "[m]edical sources who are not 'acceptable medical sources,' such as nurse practitioners, physician assistants, licensed clinical social workers, naturopaths, chiropractors, audiologists, and therapists"). Thus, the Court finds that neither Plaintiff nor the report itself has shown that the report constitutes a medical opinion. As a result, the report is not entitled to controlling weight. *See Freeman v. Barnhart*, 220 F. App'x 957, 961 (11th Cir. 2007) (noting the opinion of the physical therapist "is entitled to less weight than the opinions of the medical doctors because he is a physical therapist").

Nevertheless, the ALJ did not impermissibly reject the opinion outright. (*See* Tr. at 22). Instead, the ALJ considered the opinion and found it to be entitled to "limited weight . . . because the examiner was unable to fully assess the claimant's ability because she was on restrictions from a recent surgery." (*Id.*). Upon review, the Court finds the reason to be supported by substantial evidence. Indeed, the author of the report explicitly noted that he or she was "[u]nable to fully determine all barriers that will *remain* as [Plaintiff] is on *temporary* restrictions from recent

surgery." (*Id.* at 1541 (emphasis added)). Because the law requires that a disability either be expected to result in death or have lasted or be expected to last for a continuous period of at least twelve months, 42 U.S.C. §§ 416(i), 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505, 416.905, the Court finds the ALJ's reliance on the temporariness of Plaintiff's additional restrictions to be appropriate, (*see* Tr. at 22). Thus, the Court finds that substantial evidence supports the ALJ's finding. The Court, therefore, finds no error in the ALJ's assessment of the Functional Assessment Report.

As to Dr. Wynn's opinion that Plaintiff was released to perform her normal duties up to her capacity, the ALJ found the opinion to be entitled to no weight because it did not provide specific functional limitations. (*Id.* (citing Tr. at 1701)). The Court finds this determination to be supported by substantial evidence. In that regard, the opinion states only that Plaintiff may "perform normal duties up to her capacity." (*Id.* at 1701). Such a statement does not adequately provide the ALJ with an ability to assess what Plaintiff can still do despite her impairments. (*See id.*); *see also* 20 C.F.R. § 404.1527(a)(2). Put simply, nothing in the statement clarifies what Plaintiff's "capacity" was at the time. (*See* Tr. at 1701). Thus, the statement cannot constitute a medical opinion under the regulations, and the ALJ was, therefore, under no obligation to grant it a specific weight. *See Moon v. Comm'r of Soc. Sec.*, No. 8:12-cv-02911-T, 2014 WL 548110, at *2 (M.D. Fla. Feb. 11, 2014) (finding that the ALJ need not give a particular weight to a statement that does not constitute a medical opinion). Moreover, even if the statement were considered a medical

opinion, the Court finds the lack of specificity supports affording it no weight, despite that it was written by a treating source.

The ALJ also afforded limited weight to the opinions of Dr. Wynn and Dr. Krasner, both of whom are treating sources and opined that Plaintiff was restricted to "no pushing, pulling, and lifting more than 10 pounds with no prolonged sitting, standing, or walking." (Tr. at 22). More specifically, the ALJ found the opinions to be unsupported by "the evidence as a whole, including the physical examination findings," citing a specific record as an example. (*Id.* (citing Tr. at 1667-68)). Upon review, the Court finds the ALJ's determination as to these opinions to be supported by substantial evidence. As Plaintiff acknowledges, (*see* Doc. 22 at 21-22), the record cited by the ALJ shows normal findings on examination, (*see* Tr. at 1667-68). Specifically, the examination revealed, *inter alia*, that Plaintiff had full range of motion in her upper and lower extremities, full strength in all upper extremity tests, normal station, and no weakness in her lower extremities. (*See id.*). Additionally, the ALJ cited to this record as an example, as evinced by his use of the preface "i.e." (*See id.* at 22). Other evidence in the record shows similar findings to those cited by the ALJ here. (*See, e.g.*, Tr. at 561, 1112-13, 1269-70, 1672-73). These normal objective findings are facially inconsistent with the extreme limitations opined by Dr. Wynn and Dr. Krasner. Such inconsistencies constitute good cause for giving the opinions less than controlling weight. *See Phillips*, 357 F.3d at 1240-41 (citation omitted).

Although Plaintiff asserts that other evidence—both in the specific record cited by the ALJ and elsewhere in the record—undermines the ALJ's decision to afford limited weight to these opinions, it is not for the Court to reweigh the evidence or decide the facts anew. *Winschel*, 631 F.3d at 1178. Instead, the Court must determine if the relevant evidence adequately supports the ALJ's conclusion. *Id.* Thus, even if the evidence preponderates against the Commissioner's findings, a court must affirm the decision if it is supported by substantial evidence. *Crawford v. Comm'r of Soc. Sec.*, 363 F.3d 1155, 1158 (11th Cir. 2004). As noted above, the ALJ here cited specific evidence to support his finding that the opined limitations are unsupported by the evidence of record. Accordingly, the Court finds the assessment of Dr. Wynn's and Dr. Krasner's opinions to be supported by substantial evidence.

As to Dr. Krasner's remaining opinions, the ALJ considered each individually and afforded them either limited or no weight. (Tr. at 20-22). In assessing whether these findings are supported by substantial evidence, the Court begins by considering those afforded limited weight.

First, the ALJ gave limited weight to Dr. Krasner's opinion that Plaintiff "would be out of work from May 20, 2015, through August 2, 2015, is unable to work due to pain when having a flare, and would require good ergonomics and the freedom to move around during the workday once she returns to work," (*id.* at 20-21 (citation omitted)), because the weight of the evidence, including improvement with physical therapy, did not support the opinion, (*id.* (citing, as an example, Tr. at 1155)).

Second, the ALJ gave limited weight to Dr. Krasner's opinion that Plaintiff should "work part-time, no more than 25 hours per week with no lifting, bending, squatting, pulling/pushing, lifting heavy items, stairs, extended sitting or standing, no extended driving or traveling, and needs the flexibility to accommodate her condition as needed," (*id.* at 21 (citing Tr. at 860)), because "the August 2015 x-ray that showed mild degenerative changes and the March 2016 consultative examination findings support finding [Plaintiff wa]s not as limited as Dr. Krasner opined," (*id.* (citing Tr. at 826, 911-12)).

Third, the ALJ gave limited weight to Dr. Krasner's opinion that Plaintiff can sit for "1 hour at a time and 4 hours total, stand[for] 30 minutes at a time and 2 hours total, and walk[] for 30 minutes at a time and 2 hours total," can lift and carry 10 pounds bilaterally, and cannot bend, kneel or crouch, (*id.* (citing Tr. at 869-70)), because "the findings of normal extremity strength do not support the lifting/carrying and postural limitations," (*id.* (citing Tr. at 912, 1113, 1205, 1541, 1667-68)).

Fourth, the ALJ gave limited weight to Dr. Krasner's opinions that Plaintiff: (1) must "avoid excessive bending, squatting, sitting, and standing, should avoid lifting, pushing, or pulling anything over 20 pounds, and should be allowed to sit in an adult-sized chair whenever needed," (*id.* (citing Tr. at 929)); (2) is limited to one hour of sitting, standing, and walking, (*id.* (citing Tr. at 1159-62)); (3) is "unable to work for 6 to 9 months and cannot sit or stand up to 4 hours," (*id.* (citing Tr. at 1288-89); and (4) is not able to "walk more than 200 feet due to pain and uses a cane," (*id.*

(citing Tr. at 1545)), because "the evidence, including the claimant's improvement with physical therapy (i.e. [Tr. at 1155]) and surgery ([Tr. at 958, 1113]) and the physical examination findings (i.e. [Tr. at 1540-41, 1550, 1667-68]) do not support Dr. Krasner's restrictive limitations," (*id.* at 21-22).

Finally, the ALJ gave limited weight to Dr. Krasner's opinions that Plaintiff can "lift and carry 20 pounds occasionally and 10 pounds frequently, sit for 8 hours with breaks in between, stand for 1 hour, and walk for 1 hour, . . . cannot ambulate without a cane, can occasionally reach overhead and in all other directions bilaterally, [can] never climb stairs, ramps, ladders or scaffolds, balance, stoop, kneel, crouch, or crawl," and "could have no exposure to unprotected heights, moving mechanical parts, humidity, wetness, dust, odors, fumes, pulmonary irritants, extreme cold, extreme heat, vibrations, and occasionally operator a motor vehicle," (*id.* at 22 (citing Tr. at 1832-37)),[2] because "the evidence, including the improvement with physical therapy and release surgery, as well as the examination findings, do not support such restrictive limitations," (*id.* at 22 (citing, as examples, Tr. at 958, 1113, 1155, 1540-41, 1550, 1667-68)).

Upon review, the Court finds the ALJ's findings to be supported by substantial evidence. Indeed, the ALJ cited specific records in support of his findings. Each record cited shows that Plaintiff improved with physical therapy and surgery, (*id.* at

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[2] The ALJ erroneously cited to exhibit 63F as opposed to 64F. (*See* Tr. at 22). The Court finds this to be a harmless error, *see Denomme v. Comm'r, Soc. Sec. Admin.*, 518 F. App'x 875, 877 (11th Cir. 2013) (citing *Diorio v. Heckler*, 721 F.2d 726, 728 (11th Cir. 1983)), and cites to the proper record.

958, 1155), had only mild showings on her x-rays, (*id.* at 826), and exhibits full or near full range of motion and strength in upper and lower extremities, (*id.* at 911-12, 1113, 1205, 1541, 1667-68). Additionally, many of those records were cited as examples, and a review of the record as a whole demonstrates that additional records reflect similar findings. (*See, e.g.*, *id.* at 561, 1269-70, 1672-73). Thus, by determining that the opinions were not supported by the evidence, the ALJ articulated good cause for giving the opinions less than controlling weight. *See Phillips*, 357 F.3d at 1240-41 (citation omitted).

Turning to the opinions that the ALJ found to be entitled to no weight, the Court likewise finds the determinations to be supported by substantial evidence. First, the ALJ found Dr. Krasner's opinion that Plaintiff should not return to work for the State of Delaware to be entitled to no weight because "it appear[ed] to be based on [Plaintiff's] self-report[ing] ([Tr. at 849]), does not provide any functional limitations, and makes a finding on an issue reserved to the Commissioner." (*Id.* at 21). Second, the ALJ found Dr. Krasner's opinion that Plaintiff's "restrictions are psychological, not physical, and she is not able to return to work ([Tr. at 875])" to be entitled to no weight because the opinion contradicted opinions by Dr. Krasner and is an opinion on an issue reserved to the Commissioner. (*Id.*).

Upon review, the Court finds the ALJ's determinations to be supported by substantial evidence. First, as noted by the ALJ, whether a claimant is disabled is an issue reserved for the Commissioner. 20 C.F.R. § 404.1527(d)(1). As a result, to the extent the statements opine as to Plaintiff's ability to return to work, neither

constitutes a medical opinion, and the ALJ is, therefore, under no obligation to weigh the opinions or afford them a particular weight. *See Moon*, 2014 WL 548110, at *2 (finding that the ALJ need not give a particular weight to a statement that does not constitute a medical opinion). Nor did the ALJ reject the statements outright or otherwise ignore them. (*See* Tr. at 21). Rather, the ALJ properly considered the statements and provided specific reasons for finding that they were entitled to no weight—*i.e.*, that one statement was based on Plaintiff's self-reporting and that the other contradicted other opinions by the same doctor. Both reasons are supported by substantial evidence and speak to one of the factors specified in 20 C.F.R. § 404.1527(c)—*i.e.*, the supportability of the opinions. Accordingly, the Court finds that the ALJ did not err in determining that these statements are entitled to no weight.

Although Plaintiff asserts that other evidence—both in the records cited by the ALJ and elsewhere in the record—undermines the ALJ's decision to afford limited or no weight to these opinions, it is not for the Court to reweigh the evidence or decide the facts anew. *Winschel*, 631 F.3d at 1178. Thus, even if the evidence preponderates against the Commissioner's findings, a court must affirm the decision if it is supported by substantial evidence. *Crawford*, 363 F.3d at 1158. Upon review of the records cited by the ALJ and the record as a whole, the Court finds the assessment of Dr. Krasner's opinions to be supported by substantial evidence.

To the extent Plaintiff asserts that the ALJ did not properly assess Dr. Krasner's opinions as those of a treating source, (*see* Doc. 22 at 17-18), the Court is

not persuaded. Rather, when assessing whether Plaintiff met a listing at step three, the ALJ specifically noted that Dr. Krasner was Plaintiff's family medicine physician. (Tr. at 16). The ALJ also identified one of Dr. Krasner's opinions as being part of "a Treating Source Statement." (*Id.* at 21). Accordingly, the Court finds that the ALJ was aware of Dr. Krasner's status as a treating source, but nonetheless determined that good cause existed to afford his opinions less than controlling weight. (*See id.* at 16, 20-22).

Finally, the ALJ determined that Dr. Lifrak's opinion—that Plaintiff "is able to walk indoors and outdoors, sit for a total period of up to 6 hours out of an 8-hour day, stand for a total period of up to 6 hours out of an 8-hour day, and lift weights up to 10 pounds with either hand on a regular basis"—was entitled to limited weight. (*Id.* at 22 (citing Tr. at 913)). In support, the ALJ determined that "the weight of the evidence, including the mostly normal strength findings, do[es] not support limiting lifting and carrying to 10 pounds bilaterally," (*id.* (citing, as examples, Tr. at 1386, 1667), but the ALJ nonetheless noted that the RFC contained greater limitations on sitting, standing, and walking, (*id.* (citation omitted)).

Upon review, the Court finds that the ALJ's determination is supported by substantial evidence. As to the opined limitation in Plaintiff's ability to lift, the Court likewise finds no error.[3] First, Dr. Lifrak is not a treating source, and,

[3] To the extent Plaintiff attempts to challenge the ALJ's assessment as it relates to the portion of the opinion related to Plaintiff's ability to sit, stand, and walk, any error would not require remand because the RFC found that Plaintiff had greater limitations than opined. (*Compare* Tr. at 913, *with* Tr. at 17). Thus, any error related

therefore, any opinion by Dr. Lifrak is not entitled to a specific weight. *See Stollenwerk v. Astrue*, No. 2:11-cv-504-FtM-JES, 2012 WL 2116118, at *5 (M.D. Fla. May 17, 2012), *report and recommendation adopted*, 2012 WL 2116141 (M.D. Fla. June 11, 2012) (citing, *inter alia*, 20 C.F.R. §§ 404.1502, 404.1527(d)(1), (2) to support the proposition that an opinion by a non-treating physician was not entitled to any specific deference). Moreover, the records cited by the ALJ support his finding. Specifically, the records show normal strength and tone in both upper extremities. (*See* Tr. at 1386, 1667). Additionally, the ALJ cited to this record as an example. (*See id.* at 22). Other evidence in the record shows similar findings to those cited by the ALJ here. (*See, e.g.*, *id.* at 561, 1112-13, 1269-70, 1672-73). These normal objective findings are facially inconsistent with the extreme limitations opined by Dr. Lifrak. Given that the opinion is not supported by the objective evidence of record, the ALJ did not err in affording the opinion limited weight.

Although Plaintiff asserts that other evidence—both in the specific record cited by the ALJ and elsewhere in the record—undermines the ALJ's decision to afford limited weight to these opinions, it is not for the Court to reweigh the evidence or decide the facts anew. *Winschel*, 631 F.3d at 1178. Thus, even if the evidence preponderates against the Commissioner's findings, a court must affirm the decision if it is supported by substantial evidence. *Crawford*, 363 F.3d at 1158. As noted

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to the ALJ's assessment of that portion of the opinion would be harmless. *See Denomme*, 518 F. App'x at 877 (citing *Diorio*, 721 F.2d at 728).

above, the ALJ here provided specific records to support his finding. Thus, the Court finds the assessment of Dr. Lifrak's opinions to be supported by substantial evidence.

In sum, the Court finds no error in the ALJ's assessment of the opinion evidence of record. As a result, the Court finds that the ALJ's decision is supported by substantial evidence and, therefore, due to be affirmed.

VI. Conclusion

Upon consideration of the parties' submissions and the administrative record, the Court finds that the ALJ's decision is supported by substantial evidence. Accordingly, the Court **ORDERS** that:

1. The decision of the Commissioner is **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).
2. The Clerk of Court is directed to enter judgment accordingly, to terminate any pending motions and deadlines, and to close the case.

DONE AND ORDERED in Tampa, Florida on September 6, 2022.

Mac R. McCoy
United States Magistrate Judge

Copies furnished to:

Counsel of Record

Unrepresented Parties

Appendix A

State of Delaware
Department of Labor
Division of Unemployment Insurance

DEPARTMENT OF LABOR

Notice of Determination
UC-409

Claimant ELISHA GRESHAM
Address 130 HALCYON DRIVE
NEW CASTLE DE 19720

SS Number: ***-**-0600
Local Office: 1
Fund Code: 10
Claim Date: 01/17/2016
Date of AC:
Case Number: 11018966

Delivered by Mail
Redet: No
Count: Yes

Findings of Fact:
The claimant filed for benefits effective 01/17/2016. The claimant provided medical documentation indicating she is totally disabled The medical documentation indicates the claimant has limitation.

Based on the information obtained the claimant is ineligible for benefits until she provided medical documentation indicating she is able and available for work with no limitations and reopens her claim.

Title 19 of Delaware Code 3315(3)
An unemployed individual is eligible to receive benefits only if the individual is able to work and is available for work and is actively seeking work, provided, however that an employee, not otherwise disqualified or ineligible for benefits under the chapter who is temporarily laid off for a period of not more than 45 calendar days following the last day the employee worked, except that the period for those employees of employers who close down for annual model changes or retooling shall be 63 calendar days, shall, during said period, be deemed to be available for work, except that said employee shall be available to return to work upon 3 days notice of the employee s employer, and actively seeking work if the employee's employer notified the Department in writing or the Department otherwise determines that such layoff is temporary and that work is reasonably expected to be available for said employee within said period or within a lesser period estimated by the employer, and the Department may, by regulation, waive or alter the requirements that such individual be able to work, available for work and actively seeking work as to such types of cases or situations with respect to

Continued on Page 2

INELIGIBLE

Determination:
You are ineligible for receipt of benefits, effective with or for week ending 01/23/2016.

Senior Deputy Signature:

Date: 02/12/2016

If you disagree with this determination, you should ask the Claims Deputy for an explanation. If you are not satisfied with the explanation, you may file an appeal.

¡IMPORTANTE! Hay información adicional en la parte posterior de este documento.

Claimant and Employer Appeal Rights

This determination becomes final on 02/22/2016 unless a written appeal is filed. Your appeal must be received or postmarked on or before the date indicated. If the last date to file an appeal falls on a Saturday, Sunday or Legal Holiday, the appeal will be acceptable the next business day.
If you file an appeal and are still unemployed, you must continue to file weekly claim pay authorization forms with the local office,as instructed, until you receive a final decision.

Employer Name and Address

Claimant Copy

DELAWARE DEPARTMENT OF LABOR

Delaware Division of Unemployment Insurance

Case No: 11018966

I, Terry Coombs, hereby certify that today, 02/12/2016, I mailed a true and correct copy of the Claims Deputy/Agency Representative decision in the above-referenced matter by first class mail:

ELISHA GRESHAM
130 HALCYON DRIVE
NEW CASTLE DE 19720

Claims Deputy/Agency Representative

Appendix B

SOCIAL SECURITY ADMINISTRATION

Refer To:
Elisha L. Gresham

Office of Hearings Operations
SSA OHO HEARING OFC
2ND FLOOR SUITE 200
500 W LOOCKERMAN ST
DOVER, DE 19904-3296
Tel: 877-405-3671
Fax: 302-674-7024

April 23, 2019

Elisha L. Gresham
130 Halcyon Drive
New Castle, DE 19720

Dear Elisha L. Gresham:

The Appeals Council returned your case to us for further action. This letter explains the hearing process and things that you should do now to get ready for your hearing. We will send you a notice after we schedule your hearing. We will notify you at least 75 days before the date of your hearing. The notice will provide you with the time and place of your hearing. We generally process requests for hearing by date order, with the oldest receiving priority. However, we expedite cases returned from the Appeals Council. We will schedule your hearing as soon as we can, which may take several months.

Use of Video Teleconferencing (VTC) At Your Hearing

In certain situations, we hold your hearing by VTC rather than in person. We will let you know ahead of time if we schedule your hearing by VTC.

If we schedule your appearance by VTC, you and the ALJ will be at different locations during the hearing. A large, color monitor will enable you and the ALJ to see, hear, and speak to each other. The ALJ will also be able to see, hear, and speak to anyone who comes with you to the hearing. This may include your representative (if you have one), a friend, or a family member. We will provide someone at your location to run the equipment and provide any other help you may need.

You must let us know within 30 days after the date you receive this notice if you do not want to appear at your hearing by VTC. (We may extend the 30-day period if you show you had good cause for missing the deadline.) **Please let us know by completing and returning the attached form in the envelope we sent you.** We will arrange for you to appear in person.

If you move before we hold your hearing, we retain the right to decide how you will appear at your hearing, even if you objected to appearing by VTC. For us to consider your change of residence when we schedule your hearing, you must submit evidence proving your new residence.

The Hearing

See Next Page

If You Have Any Questions or Your Address Changes

If you have any questions, please call or write us. You must tell us if you change your address. For your convenience, we gave you our telephone number and address on the first page of this letter.

Sincerely yours,

Karen Patterson
Hearing Office Director

Enclosures:
HA-55 (Objection to Appearing by Video Teleconferencing)
HA-L4 (What Happens Next)
SSA Publication No. 70-067 (Why You Should Have Your Hearing By Video)
HA-827 (Medical Release Notice)
SSA-827 (Authorization to Disclose Information to SSA)
HA-L1 (Important Notice Regarding Representation)
SSA Publication No. 05-10075 (Your Right To Representation)

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Appendix C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ELISHA L. GRESHAM,

Plaintiff,

v. Case No. 8:21-cv-601-KKM-AEP

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.
_____/

ORDER

This cause comes before the Court upon Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 2). Upon review, it is hereby ORDERED:

1. Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs (Doc. 2) is GRANTED.

2. To the extent not already done so, Plaintiff is directed to complete and return the "Summons in a Civil Action" forms and the "USM-285" forms to the Clerk within twenty-one (21) days,[1] whereupon the United States Marshal is directed to serve the summonses upon the appropriate parties.

[1] These forms are on this Court's website at http://www.flmd.uscourts.gov. The Summons form, listed as "Summons in a Civil Action," or Form AO 440, can be found at the "Filing a Case" section, "Forms" subsection, of the website. The USM-285 form, listed as "Process Receipt and Return," can be found at the "Filing a Case" section, "Form" subsection, and then selecting "Marshal Forms" from the drop-down menu entitled

DONE AND ORDERED in Tampa, Florida, on this 16th day of March, 2021.

ANTHONY E. PORCELLI
United States Magistrate Judge

cc: Counsel of Record

"Choose Form Type." If Plaintiff does not have access to the internet to download these forms, Plaintiff may obtain the forms by contacting the Clerk's Office at (813) 301-5400.