

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

ROBERT CHARLES STUBBS,)	
Plaintiff,)	
)	Civil Action No. 5:14-cv-71
v.)	
)	<u>REPORT AND RECOMMENDATION</u>
CAROLYN W. COLVIN,)	
Acting Commissioner,)	By: Joel C. Hoppe
Social Security Administration,)	United States Magistrate Judge
Defendant.)	

Plaintiff Robert Charles Stubbs asks this Court to review the Commissioner of Social Security’s (“Commissioner”) final decision denying his applications for disability insurance benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 401–34. The case is before me by referral under 28 U.S.C. § 636(b)(1)(B). ECF No. 6. Having considered the administrative record, the parties’ briefs, and the applicable law, I find that substantial evidence does not support the Commissioner’s decision that Stubbs is not disabled.

I. Standard of Review

The Social Security Act authorizes this Court to review the Commissioner’s final decision that a person is not entitled to disability benefits. *See* 42 U.S.C. § 405(g); *Hines v. Barnhart*, 453 F.3d 559, 561 (4th Cir. 2006). The Court’s role, however, is limited—it may not “reweigh conflicting evidence, make credibility determinations, or substitute [its] judgment” for that of agency officials. *Hancock v. Astrue*, 667 F.3d 470, 472 (4th Cir. 2012). Instead, the Court asks only whether the Administrative Law Judge (“ALJ”) applied the correct legal standards and whether substantial evidence supports the ALJ’s factual findings. *Meyer v. Astrue*, 662 F.3d 700, 704 (4th Cir. 2011).

“Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is “more than a mere scintilla” of evidence, *id.*, but not necessarily “a large or considerable amount of evidence,” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Substantial evidence review takes into account the entire record, and not just the evidence cited by the ALJ. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487–89 (1951); *Gordon v. Schweiker*, 725 F.2d 231, 236 (4th Cir. 1984). Ultimately, this Court must affirm the ALJ’s factual findings if “conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled.” *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (per curiam) (quoting *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996)). However, “[a] factual finding by the ALJ is not binding if it was reached by means of an improper standard or misapplication of the law.” *Coffman v. Bowen*, 829 F.2d 514, 517 (4th Cir. 1987).

A person is “disabled” if he or she is unable 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); 20 C.F.R. § 404.1505(a). Social Security ALJs follow a five-step process to determine whether an applicant is disabled. The ALJ asks, in sequence, whether the applicant (1) is working; (2) has a severe impairment; (3) has an impairment that meets or equals an impairment listed in the Act’s regulations; (4) can return to his or her past relevant work based on his or her residual functional capacity; and, if not (5) whether he or she can perform other work *See* 20 C.F.R. § 404.1520(a)(4); *Heckler v. Campbell*, 461 U.S. 458, 460–62 (1983). The applicant bears the burden of proof at steps one through four.

Hancock, 667 F.3d at 472. At step five, the burden shifts to the agency to prove that the applicant is not disabled. *See id.*

II. Procedural History

Stubbs filed for DIB on July 2, 2011. Administrative Record (“R.”) 159–60, ECF No. 11. He was 33 years old at the time, R. 58, and had previously worked as a fast-food clerk, material handler, information operator, construction worker, and convenience-store clerk. R. 51, 205. Stubbs alleged disability beginning March 11, 2011, because of paranoid schizophrenia, bi-polar disorder, and generalized anxiety disorder. R. 58. A state agency denied his claim initially and on reconsideration. R. 58–65, 67–76. Stubbs appeared with an attorney at an administrative hearing on April 30, 2013. R. 30–57. He testified to his mental impairments and the limitations those impairments caused in his daily activities. R. 37–50. A vocational expert (“VE”) also testified about Stubbs’s work experience and his ability to return to his past work. R. 50–55.

The ALJ denied Stubbs’s application in a written decision dated August 22, 2013. R. 15–24. He found that Stubbs had severe impairments of anxiety, personality disorder, and major depression with psychotic features. R. 17. He determined that these impairments, alone or in combination, did not meet or equal a listing. R. 17–18. The ALJ next determined that Stubbs had the residual functional capacity (“RFC”)¹ to perform the full range of work at all exertional levels with some behavioral limitations. R. 18–23. Relying on the VE’s testimony, the ALJ concluded that Stubbs could return to his previous work as a material handler or construction worker. R. 23. He therefore determined that Stubbs was not disabled under the Act. *Id.* The Appeals Council declined to review that decision, R. 1–3, and this appeal followed.

III. Relevant Evidence

¹ A claimant’s RFC is the most he or she can do on a regular and continuing basis despite his or her impairments. 20 C.F.R. § 416.945(a); SSR 96-8p, 1996 WL 374184, at *1 (July 2, 1996).

A. *Treatment Records*

On May 26, 2010, Stubbs began treatment at Blue Ridge Counseling Center with Brenda Johnston, PMHNP-BC. R. 570–75. In his initial evaluation, he reported that he had earned a Graduate Equivalent Degree and was currently working at Burger King. R. 573. Johnston diagnosed Stubbs with unspecified depression and anxiety and a personality disorder with antisocial and narcissistic traits. R. 574. She assessed a Global Assessment of Functioning (“GAF”) score of 55 to 60.² *Id.* She prescribed medications and referred him to therapy. *Id.* Stubbs returned to Blue Ridge on June 9, 2010, to see Johnston and to begin therapy with Jim Shaughnessy, LCSW. R. 576–77, 695. Shaughnessy wrote that Stubbs was somewhat angry and did not take responsibility for any of his problems. R. 695. Stubbs continued to see Johnston and Shaughnessy through the date of his DIB hearing.

Stubbs alleges onset of disability on March 11, 2011, when he was fired from his job at Burger King. R. 37–39, 58. He reported to Johnston on March 21, 2011, that he felt he was being sexually harassed at his job, his marriage was not going well, and his wife was stealing his

² GAF scores represent a “clinician’s judgment of the individual’s overall level of functioning.” Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 32 (4th ed. 2000) (*DSM-IV*). The GAF scale is divided into ten 10-point ranges reflecting different levels of symptoms or functioning, with 1–10 being the most symptomatic or least functional, and 91–100 being the least symptomatic or most functional. *See id.* The ranges do not distinguish between symptoms and functional impairments. *See id.* Thus, when “the individual’s symptom severity and level of functioning are discordant, the final GAF [score] always reflects the worse of the two.” *Id.* at 32–33. A GAF score of 51–60 indicates “[m]oderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).” *Id.* at 34.

The American Psychiatric Association now cautions that GAF scores do not adequately convey the information needed to assess an individual’s mental state, functional capacities, or treatment needs over time, and it recommends that clinicians cease using them for assessment. *See* Am. Psychiatric Ass’n, *Frequently Asked Questions About DSM-5 Implementation—For Clinicians*, Aug. 1, 2013, <http://www.dsm5.org/Documents/FAQ%20for%20Clinicians%208-1-13.pdf>. Though GAF scores may be questionable diagnostic tools, changes in assessed scores may reflect a clinician’s observation of improvement or deterioration in their patient.

Ambien. R. 583. His thought process was circumstantial and difficult to follow, his insight and judgment were poor, and Johnston assessed a GAF of 55. *Id.* A month later, Stubbs appeared “rather bizarre” to Shaughnessy and said he had been very depressed. R. 688. He was not willing to take any responsibility for the events leading to his firing, and Shaughnessy noted that this made him difficult to treat. *Id.* On June 1, Stubbs “continue[d] to not do well” and told Shaughnessy that he did not want to leave his home much, though his relationship with his children was going well. R. 687.

On July 1, 2011, Johnston changed Stubbs’s diagnosis to major depressive disorder with psychotic features and a personality disorder with antisocial and narcissistic traits. R. 584. He reported depression, poor sleep and appetite, trouble organizing himself, and feeling paranoid, isolated, and withdrawn. *Id.* Stubbs’s thought process was circumstantial and difficult to follow, his insight and judgment were poor, and he demonstrated increased paranoia. *Id.* He stated that he was taking his medications and they were helpful, but his Social Services caseworker³ who joined him for the appointment was not convinced he was taking his medications regularly. *Id.* Johnston prescribed Zyprexa to address his paranoia and continued his other medications unchanged. *Id.* Stubbs reported some improvement with Zyprexa. R. 598.

Over the next two months, Stubbs continued to do poorly. In July, Shaughnessy thought his level of functioning was deteriorating; he appeared depressed, confused, and disorientated and said he was afraid of leaving his house. R. 686, 685. Johnston assessed a GAF of 45⁴ on July 20. R. 586. In early August, Stubbs’s mood was unimproved, and he expressed anger related to

³ Stubbs was convicted of child neglect in March 2010, R. 570, and throughout the relevant period, he and his family were followed by Child Protective Services workers from the Virginia Department of Social Services, *see* R. 275–504.

⁴ A GAF score of 41–50 indicates “[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” *DSM–IV, supra* note 2, at 34.

family issues. R. 684. At the end of August a lawsuit with his brother resolved, and Stubbs appeared better, with an improved mood, better presentation, and less stress. R. 683.

Stubbs's conditions remained largely the same through December. Johnston noted that he was paranoid and distrustful of his wife with a circumstantial thought process and poor to fair insight and judgment. R. 600–03. In September he failed to increase his medications as prescribed, but said that he would do so. R. 601. That same month, Stubbs went on a vacation with his family to Myrtle Beach, R. 600, which Shaughnessy thought he handled well, R. 682. Shaughnessy reported that he continued to struggle with anger, to varying success, and to have conflict with his wife, but was doing well with his children. R. 679–82. In November, Stubbs felt he was doing better with his anger and mood, and Shaughnessy thought his anger management was fair, R. 679–80, though he also noted that Stubbs remained difficult to treat and still had anxiety about going outside. R. 678, 680.

In December, Johnston found that Stubbs's mood was better, he was less paranoid, and he was getting along with his wife. R. 604. His thought process remained circumstantial, and his insight and judgment were fair. *Id.* Shaughnessy noted that he lacked goals and “was not working too hard towards anything.” R. 678. In January 2012, Stubbs was doing better, with a fairly good mood, a linear thought process, and fair insight and judgment, though he remained “rather guarded and suspicious.” R. 606. He expressed anxiety with having to do things on his own and had anger issues, but remained stable and interacted very well with his children. R. 675–76. In February, Stubbs reported a good relationship with his children and frustration with his wife. R. 607, 674. He had a “pretty good” mood and a linear thought process with intact insight and judgment. R. 607. He continued to experience some paranoia, especially when out in crowds. *Id.*

Stubbs remained largely the same over the following four months. He expressed some anxiety about finances and got upset after his son was bullied at school, but stated that he did not feel comfortable going to the school himself. R. 613, 672. He had increased depression in April, but felt better after Johnston adjusted his medication. R. 608, 612. Johnston consistently found that Stubbs had a linear thought process and fair insight and judgment. R. 608, 612, 613. Shaughnessy thought that Stubbs remained stable and successfully managed his anger, though he still lacked goals. R. 669–73.

In July, Stubbs complained of tiredness and continued depression. R. 614. He reported daily cardio and weight training and said that his mood improved a little after exercising. *Id.* His thought process was circumstantial and his insight and judgment were fair. *Id.* Johnston noted that Stubbs’s fatigue was a side effect of his medications and adjusted them accordingly. *Id.* Stubbs reported to Shaughnessy that he got angry at times, but was “reasonably content” with his life. R. 668. In August, Johnston found that his mood was good, with organized speech, a linear thought process, and fair insight and judgment. R. 615. She assessed him a GAF of 55 and adjusted his medication. *Id.* Shaughnessy recorded that Stubbs had some anger, but was doing fair and performing better in therapy. R. 667. In September, Stubbs reported his mood was “a little down.” R. 616. His speech was clear, his thought process was circumstantial, and his insight and judgment were fair. *Id.* Johnston assessed a GAF of 55 and left his medications unchanged. *Id.* Shaughnessy found him to be stable, keeping his anger under control and focusing on his home life, but without any new plans or goals. R. 666.

Over the following two months, Stubbs was stable. He did not go out much because of anxiety, but got along better with his wife, maintained control of his anger, and was content with not doing much. R. 664–65. In December, he reported an increase in depression. R. 617. He

remained “a bit paranoid,” but his thought process was linear, and his insight and judgment were fair. *Id.* Johnston encouraged him to exercise more and left his medications unchanged. *Id.* Stubbs informed Shaughnessy that he was not having aggressive thoughts or feelings and had made it through the holidays without any major conflict with his wife’s family. R. 663. Overall he was doing well and not having much anger. *Id.*

Stubbs told Shaughnessy in January and February 2013 that he still had anxiety when going out. R. 661–62. He did not go out often and felt better when he had his family with him. *Id.* Overall he was doing “okay” and seemed content. R. 661. Stubbs indicated that he was waiting to hear the outcome of his disability case and had no new goals. R. 661–62. On February 14, 2013, he told Johnston that his anxiety was low, but he was sleeping poorly and was tired during the day. R. 618. His mood was improved—“good, just tired”—his speech was clear and spontaneous, his thought process was logical and linear, and his insight and judgment were intact. *Id.* Johnston ordered a sleep study and assessed a GAF of 55 to 60. *Id.* She also noted that his therapy should focus on addressing denial of his illness, which had been “a barrier to treatment.” *Id.*

In March, Stubbs told Shaughnessy that he was overall doing fair, with a down mood and continuing depression. R. 660. A month later, he was doing “okay” and endorsed day-to-day anxiety. R. 659. He had recently returned from a family trip to North Carolina that went well. Stubbs told Johnston that he felt tired, with a “down and anxious” mood. R. 655. His speech was clear and spontaneous, his thought process was logical and linear, and his insight and judgment were “intact as evidenced by good decision making.” *Id.* He reported getting along with his wife and mentioned his upcoming disability hearing. *Id.*

Stubbs saw Johnston again at the end of April. R. 656. He stated that his mood was a little better, but he was still depressed and anxious. *Id.* His thought process was linear, he answered questions appropriately, and his insight and judgment were intact. *Id.* Johnston noted that he continued to have problems with anxiety “related most likely to some situational stressors,” and that he was “quite nervous” about his upcoming disability hearing. *Id.*

B. Reported Activities

Stubbs completed a Function Report on August 4, 2011. R. 214–21. He wrote that he cares for his two children, cooks simple meals, cares for a dog, and handles his own personal care. R. 214–16. Around the house he mows, weeds, washes dishes, and does laundry. R. 216. He can get sidetracked and frustrated, so his wife and grandfather provide encouragement and reminders. R. 216. His anxiety causes him to take his wife or children with him when he leaves the house, such as when grocery shopping. R. 217. His wife manages their money and pays bills. R. 217–18. He knits, watches television, and spends time with his children and dog. R. 218. He socializes only with his wife’s family and then only when his wife and children accompany him, and he has difficulty reaching out to others. R. 218–19. He noted difficulties with talking, concentration, and understanding, and he does not handle stress or changes in routine well. R. 219–20.

Stubbs’s wife completed a third-party Function Report on August 13, 2011. R. 223–33. She wrote that Stubbs spends most of his day watching television and playing games, either alone or with his children. R. 224. He helps to take care of the children and a dog, but often needs reminders or help from herself or her father. *Id.* He cannot go out without his wife or children accompanying him and has difficulty holding rational or coherent conversations. R. 225.

Stubbs prepares simple meals that do not require heating because he has left the oven or burner on repeatedly in the past. R. 226. Stubbs is capable of mowing, weeding, doing dishes, and washing laundry, but rarely actually does so because he lacks motivation. R. 226–27. She stopped letting Stubbs handle finances because he would spend money on toys, video games, and take-out food rather than bills or necessities. R. 228. He socializes with only his family. R. 228–29. He has difficulty concentrating, following instructions, or responding to authority figures, and has anxiety about going outside alone. R. 230–31.

The record also contains case contact notes from the Virginia Department of Social Services. R. 275–504. Those notes reflect that Stubbs improved once he began treatment at Blue Ridge Counseling Center and that he was calmer and more lucid when on his medications. R. 278–79. Stubbs went on family vacations, R. 327, 366, stayed up late watching TV and playing videogames with his children, R. 348, and carved and lacquered wooden swords for himself and his children to play with, R. 388. In March 2012, Stubbs was doing well on his medication and was “simply waiting to be approved” for disability benefits. R. 355. A review of his case in August 2012 indicated that Stubbs sometimes exhibited paranoia and controlling personality traits, but was stable with the mental health services he was receiving from Blue Ridge. R. 393.

C. Opinion Evidence

Sandra Francis, Psy.D., evaluated Stubbs’s record as part of the state agency’s review. R. 61–64. She found that he had moderate difficulties in social functioning and in maintaining concentration, persistence, or pace, R. 61, and a moderately impaired ability to carry out detailed instructions or maintain attention and concentration for extended periods, R. 63. He had a moderately limited ability to interact appropriately with the general public, accept instructions and respond appropriately to criticism from supervisors, and get along with coworkers or peers

without distracting them or exhibiting behavioral extremes. *Id.* She found no limitation in Stubbs's ability to perform activities within a schedule, complete a normal workday and workweek without interruptions, or perform at a consistent pace without unreasonable breaks. *Id.* Dr. Francis concluded that Stubbs "should be able to sustain simple and routine tasks without additional complication or need for supervision," but would "function best in a work environment that did not require frequent interaction with the public or coworkers." R. 63–64.

Eric Oritt, Ph.D., reviewed Stubbs's record as part of the state agency's reconsideration evaluation. R. 71–74. Dr. Oritt made the same findings as Dr. Francis, except he also found that Stubbs was moderately restricted in his activities of daily living and moderately limited in his ability to complete a normal workday and workweek without interruptions and to perform at a consistent pace without unreasonable breaks. *Id.* Nonetheless, Dr. Oritt concurred with Dr. Francis's conclusion that Stubbs could sustain simple tasks in a low-interaction work environment. R. 73–74.

At the administrative hearing, the ALJ ordered a consultative psychological examination, R. 34–35, which Paul Hill, Psy.D., performed on June 19, 2013, R. 697–99. Dr. Hill found that Stubbs had no limitations in his ability to understand, remember, and carry out simple instructions; mild limitations in his ability to make judgments on simple work-related decisions; moderate limitations in his ability to understand, remember, and carry out complex instructions; and marked limitations in his ability to make judgments on complex work-related decisions. R. 697. In support of these findings, he noted that Stubbs's psychotic symptoms cause poor concentration, some disorganized thought, below average tolerance for frustration, generally poor judgment, and a disregard for responsibilities. *Id.* Dr. Hill also found that Stubbs had mild limitation in his ability to respond appropriately to usual work situations and to changes in a

routine work setting and a moderate limitation in his ability to interact appropriately with the public, coworkers, and supervisors. R. 698. He noted that Stubbs's history indicated he was prone to narcissism, disrespect, and a lack of awareness of how he presents to others. In an attached report, Dr. Hill additionally noted that Stubbs had an intact ability to perform simple and/or repetitive tasks; a mildly impaired ability to attend work regularly; a mildly-to-moderately impaired ability to manage routine stressors; a moderately impaired ability to perform complex tasks or interact with supervisors, co-workers, and the public; and a moderately-to-severely impaired ability to perform consistently or without interruptions from symptoms. R. 702. He assigned Stubbs a GAF of 55 to 60. *Id.*

IV. Discussion

On appeal, Stubbs argues that the ALJ incorrectly determined his RFC by failing to account for limitations he had found earlier in his decision and incompletely adopting the opinion of the consulting physician. Pl. Br. 3–7, ECF No. 16. Stubbs concludes that this flawed RFC invalidates the ALJ's finding that he could perform his past relevant work. *Id.* at 8–9.

A claimant's RFC is the most he can do on a regular and continuing basis despite his impairments. 20 C.F.R. § 404.1545(a); SSR 96-8p, 1996 WL 374184, at *1 (July 2, 1996). It is a factual finding “made by the Commissioner based on all the relevant evidence in the [claimant's] record,” *Felton-Miller v. Astrue*, 459 F. App'x 226, 230–31 (4th Cir. 2011) (per curiam), and it must reflect the combined limiting effects of impairments that are supported by the medical evidence or the claimant's credible complaints, *see Mascio v. Colvin*, 780 F.3d 632, 638–40 (4th Cir. 2015). The ALJ's RFC assessment “must include a narrative discussion describing” how specific medical facts and nonmedical evidence “support[] each conclusion” in his RFC finding, *id.* at 636, and explaining why he discounted any “obviously probative” conflicting evidence,

Arnold v. Sec’y of Health, Educ. & Welfare, 567 F.2d 258, 259 (4th Cir. 1977); *see also Reid v. Comm’r of Soc. Sec.*, 769 F.3d 861, 865 (4th Cir. 2014). In making this assessment, “the ALJ ‘must first identify the individual’s functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions’ listed in the regulations.” *Mascio*, 780 F.3d at 636 (quoting SSR 96-8p).

The ALJ’s determination of Stubbs’s RFC is as follows:

the claimant has the residual functional capacity to perform a full range of work at all exertional levels but with the following nonexertional limitations: he is able to use commonsense understanding to perform detail[ed] but uninvolved written or oral instructions consistent with a range of unskilled work, at or below reasoning level 2, as those terms are defined in the Dictionary of Occupational Titles. The claimant is able to work with the general public occasionally and superficially.

R. 18–19. Having thoroughly discussed the evidence of record, the ALJ found that the RFC was “supported by the medical evidence of record, course of treatment, and relatively stable objective findings, GAF scores, and the DDS assessments and the opinion of Dr. Hill.” R. 23.

As Stubbs notes, the ALJ did not include in the RFC the portion of Dr. Hill’s opinion assessing a moderate to severe limitation in the ability to perform consistently and without interruptions from symptoms. R. 702. The ALJ reviewed Dr. Hill’s opinion, identified each limitation, including the one at issue, and gave the opinion “significant weight.” R. 22. The ALJ, however, did not explain why he adopted some of the limitations identified in Dr. Hill’s opinion, but apparently rejected others. Indeed, the ALJ also gave the state agency physicians’ opinions “great weight” without explaining why he adopted certain limitations that they identified, other than to note their opinions were “consistent with the longitudinal record.” R. 22–23. Moreover, the state agency physicians reached different conclusions than Hill, with one finding that Stubbs would not be significantly limited in his ability to complete a normal workday and workweek without interruptions from psychologically-based symptoms, R. 63, and the other finding that

Stubbs would be moderately limited in this ability. R. 73. The ALJ did not address this discrepancy. In assessing a claimant's relevant functional abilities, including those identified in the medical opinions, the ALJ must address and resolve such contradictory evidence. *See Monroe v. Colvin*, -- F.3d --, No. 15-1098, 2016 WL 3349355, at *10 (4th Cir. June 16, 2016) (citing *Mascio*, 780 F.3d at 636).

Furthermore, the ALJ's discussion of the weight he assigned to the medical opinions⁵ was flawed. The ALJ must explain the weight given to all medical opinions, *Radford v. Colvin*, 734 F.3d 288, 295–96 (4th Cir.2013), and his “decision ‘must be sufficiently specific to make clear to any subsequent reviewers the weight [he] gave’ to the opinion and ‘the reasons for that weight.’” *Harder v. Comm’r of Soc. Sec.*, No. 6:12cv69, 2014 WL 534020, at *4 (W.D. Va. Feb. 10, 2014) (citing SSR 96–8p, at *5). Assigning “significant weight” to Dr. Hill’s opinion sheds no light on the reasons for the ALJ’s selection of certain limitations. Without a more detailed discussion of the weight the ALJ assigned to specific relevant functions identified in the medical opinions and the reasons therefor, the Court cannot “undertake meaningful substantial-evidence review.” *Monroe*, 2016 WL 3349355, at * 11.

The Commissioner argues that this error was harmless because the ALJ presented a hypothetical to the VE that addressed the relevant limitations and the VE testified that a person with such limitations could perform Stubbs’s past work. Def.’s Br. 16. I must disagree. The ALJ presented the following hypothetical to the VE:

Please consider a hypothetical individual [of] the same age, educational background, and work experience as Mr. Stubbs . . . who has no exertional limitations; who’s able to use common sense, understand, and perform detailed, but uninvolved written, oral instructions (inaudible) a range of unskilled work consistent with reasoning level two. This individual is able to work with the

⁵ “Medical opinions” are statements from “acceptable medical sources,” such as physicians, that reflect judgments about the nature and severity of the claimant’s impairment, including her symptoms, diagnosis and prognosis, functional limitations, and remaining abilities. 20 C.F.R. § 404.1527(a)(2).

general public occasionally and superficially, likewise with coworkers, and occasionally work with supervisors.

....

Please consider the following additional limitations[:] this individual can perform low stress jobs, and my definition of low stress would be jobs that are not performed at an assembly line pace that would have few work place changes, and little independent decision making and no responsibility for the safety of others.

R. 51–52.⁶ The VE responded that an individual with these limitations could perform Stubbs’s past work as a material handler. R. 52.

Additionally, the ALJ questioned the VE about what jobs would be available to a hypothetical person who was off task 10% more than customarily allowed at work. R. 52. The VE responded that such a person could not perform Stubbs’s past work, but someone who was off task 5% more than normally allowed could. R. 52–53. In his written RFC determination, the ALJ did not explain whether he found that Stubbs fell into this acceptable off-task range. Moreover, no part of the hypothetical addressed moderate to severe limitation in performing consistently or without interruptions from symptoms. Thus, I cannot find that the hypothetical posed to the VE addressed all of the relevant limitations that were omitted from the RFC.

Stubbs also argues that the ALJ’s reliance on a limitation to unskilled work is legally insufficient to account for his mental impairments. In step three of his analysis, the ALJ found that “[w]ith regard to concentration, persistence or pace, [Stubbs] has moderate difficulties.” R. 18. The RFC, however, did not include such limitations.

Stubbs is correct that a restriction to simple, unskilled work does not necessarily account for a claimant's limitations in concentration, persistence, and pace. *See Mascio*, 780 F.3d at 638 (citing *Winschel v. Comm’r of Soc. Sec.*, 631 F.3d 1176, 1180 (11th Cir. 2011)); *Sexton v. Colvin*,

⁶ Stubbs argues that the ALJ’s RFC also improperly omitted limitations in interacting with coworkers and supervisors. Pl. Br. 7. This hypothetical explicitly requires occasional and superficial contact with coworkers and supervisors. Thus, the omission of such limitations in the RFC, while error, was harmless. *See Mascio*, 780 F.3d at 638.

21 F. Supp. 3d 639, 642–43 (W.D. Va. 2014) (reversing and remanding where the ALJ’s hypothetical question did not acknowledge the moderate difficulty in maintaining concentration, persistence, or pace found in the claimant’s RFC). Unskilled work “is a term of art, defined by regulation as ‘work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time.’” *Fisher v. Barnhart*, 181 F. App’x 359, 364 n. 3 (4th Cir. 2006)) (quoting 20 C.F.R. § 404.1568(a)). It requires the “abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, coworkers, and usual work situations; and to deal with changes in a routine work setting.” SSR 85-15, 1985 WL 56857, at *4 (1985). Fundamentally, “the ability to perform simple tasks differs from the ability to stay on task” and “[o]nly the latter limitation would account for a claimant’s limitation in concentration, persistence, or pace.” *Mascio*, 780 F.3d at 638.

The ALJ did not explicitly explain why he omitted limitations regarding concentration, persistence, or pace from Stubbs’s RFC. *See Mascio*, 780 F.3d at 638 (“Perhaps the ALJ can explain why Mascio’s moderate limitation in concentration, persistence, or pace at step three does not translate into a limitation in Mascio’s residual functional capacity.”). Nonetheless, after reviewing Stubbs’s activities of daily living, the ALJ questioned Stubbs’s claimed attention problems. R. 22. Moreover, the state agency physicians found that despite Stubbs’s moderate limitation in concentration, he could sustain simple routine tasks as long as he adhered to treatment. R. 63, 73. Similarly, Dr. Hill found that despite Stubbs’s poor concentration, he had no limitation in understanding, remembering, and carrying out simple instructions, R. 697, and his ability to perform simple and repetitive tasks was intact, R. 702.

This medical opinion evidence and the ALJ's credibility assessment may provide a basis for excluding from the RFC a moderate limitation in concentration, persistence, and pace notwithstanding the ALJ's finding at step three. In such instances,

Mascio does not broadly dictate that a claimant's moderate impairment in concentration, persistence, or pace always translates into a limitation in the [RFC]. Rather *Mascio* underscores the ALJ's duty to adequately review the evidence and explain the decision, especially where, as the ALJ held in *Mascio*, a claimant's concentration, persistence or pace limitation does not affect the ability to perform simple, unskilled work. The ALJ has the responsibility to address the evidence of record that supports that conclusion.

St Clair v. Colvin, No. 7:13cv571, 2015 U.S. Dist. LEXIS 121970, at *20–21 (W.D. Va. Aug. 11, 2015) (Ballou, M.J.), *aff'd*, 2015 U.S. Dist. LEXIS 121036 (W.D. Va. Sept. 11, 2015) (Urbanski, D.J.) (quoting the passage and finding it “aptly reasoned”). On remand, the ALJ will be required to explain the basis for his RFC conclusions, including the differing treatment of this limitation at step three and in the RFC determination.

V. Conclusion

For the foregoing reasons, I find that the Commissioner's decision is not supported by substantial evidence. Accordingly, I recommend that the Court **GRANT** Stubbs's motion for summary judgment, ECF No. 15, **DENY** the Commissioner's motion for summary judgment, ECF No. 18, **REMAND** the case for further administrative proceedings, and **DISMISS** this case from the docket.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation,] any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings

or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14 day period, the Clerk is directed to transmit the record in this matter to the Honorable Elizabeth K. Dillon, United States District Judge.

The Clerk shall send certified copies of this Report and Recommendation to all counsel of record.

ENTER: July 15, 2016

A handwritten signature in black ink that reads "Joel C. Hoppe". The signature is written in a cursive, slightly slanted style.

Joel C. Hoppe
United States Magistrate Judge