

(“Act”), 42 U.S.C.A. §§ 401-434, 1381-1383d (West 2003 and Supp. 2010). Jurisdiction of this court exists pursuant to 42 U.S.C.A. §§ 405(g) and 1383(c)(3).

Murphy filed this claim for benefits on July 13, 2006, alleging that his disability began on August 1, 2004. His claim was denied initially and upon review. On June 18, 2008, an administrative law judge (“ALJ”) held a hearing at Murphy’s request in which Murphy, represented by counsel, a medical expert, and a vocational expert testified. The ALJ rejected Murphy’s claim. The Commissioner’s decision became final when the Social Security Administration’s Appeals Council denied Murphy’s request for review on March 9, 2010. Thereafter, Murphy filed his Complaint with this court, objecting to the Commissioner’s final decision. The issues have been briefed, and the case is ripe for decision.

II

Murphy was 26 years old at the time of the hearing, making him a younger person under the regulations. *See* 20 C.F.R. §§ 404.1563(c), 416.963(c) (2010). Murphy completed the 11th grade. He previously worked as a sandwich maker, a janitor, a cart pusher, stockperson, and a customer service representative. Murphy claims that he is no longer able to work because of mental impairments. However, at the time of the administrative hearing, Murphy had been working at Wendy’s.

From 2004 to 2008, Murphy was admitted to Southwestern Virginia Mental Health Institute on five occasions. During that period he was also admitted to Bristol Regional Medical Center and received treatment from Frontier Health for his alleged mental impairments. Murphy sought treatment for depressive symptoms and reported suicidal ideation. At times he also reported that he had auditory hallucinations, poor sleep, increased irritability, hostility, low self-esteem, and hopeless feelings. In the past, Murphy was prescribed Zoloft, an anti-depressant. More recently, Murphy was prescribed Lamictal and Abilify. Murphy has been diagnosed with major depressive disorder.

The ALJ found that the plaintiff suffered from the severe impairment of major depression. The ALJ found that the plaintiff's impairment did not meet or medically equal any of the agency's listed impairments. According to the ALJ, Murphy remained capable of some simple, unskilled work. The ALJ recognized that the plaintiff could only do work that does not require more than minimal interaction with the public. Therefore, the ALJ concluded that Murphy was not disabled.

Murphy argues that the ALJ's decision is not supported by substantial evidence. For the reasons detailed below, I disagree.

III

The plaintiff bears the burden of proving that he is under a disability. *Blalock v. Richardson*, 483 F.2d 773, 775 (4th Cir. 1972). The standard for disability is strict. The plaintiff must show that his “physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy” 42 U.S.C.A. § 423(d)(2)(A).

In assessing claims, the Commissioner applies a five-step sequential evaluation process. The Commissioner considers whether the claimant: (1) has worked during the alleged period of disability; (2) has a severe impairment; (3) has a condition that meets or equals the severity of a listed impairment; (4) could return to his past relevant work; and (5) if not, whether he could perform other work present in the national economy. *See* 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4) (2009). If it is determined at any point in the five-step analysis that the claimant is not disabled, the inquiry immediately ceases. *Id.*; *Bennett v. Sullivan*, 917 F.2d 157, 159 (4th Cir. 1990). The fourth and fifth steps of the inquiry require an assessment of the claimant’s residual functional capacity, which is then compared with the physical and

mental demands of the claimant's past relevant work and of other work present in the national economy. *See Reichenbach v. Heckler*, 808 F.2d 309, 311 (4th Cir. 1985).

In accordance with the Act, I must uphold the ALJ's findings if substantial evidence supports them and they were reached through application of the correct legal standard. *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). 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) (internal quotation marks and citation omitted). This standard "consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). It is the role of the ALJ to resolve evidentiary conflicts, including inconsistencies in the evidence. *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). It is not the role of this court to substitute its judgment for that of the Commissioner. *See id.*

Murphy argues that the ALJ erred in his evaluation of the severity of Murphy's mental impairments and inability to work. He asserts that his mental impairments are more numerous and more limiting than the ALJ found, based on his extensive history of hospitalization and treatment for depression and suicidal ideation. While it does appear that Murphy suffers from some serious mental impairments, the residual

functional capacity and work limitations outlined by the ALJ are supported by substantial evidence, and more stringent limitations are not warranted.

First, the ALJ found evidence of malingering that undermines Murphy's claims. The ALJ found that Murphy may have been malingering, sometimes to avoid jail and court appearances on bad check charges or because he was homeless. The medical evidence supports that finding. For instance, a discharge summary from the Southwestern Virginia Mental Health Institute reports that Murphy lied about being suicidal because he wanted to stay at the hospital for a few days while homeless and unemployed. (R. at 426.) Multiple records report that there was no evidence of mental illness, and he was discharged with a diagnosis of malingering. (R. at 426, 435, 444.) Test results were consistent with malingering when a psychologist administered the Miller Forensic Assessment of Symptoms Test. (R. at 444.) Records also indicate that Murphy's malingering may have been linked to his desire to have charges against him dismissed. (R. at 326.)

The ALJ also noted that Murphy is not taking any psychiatric medications. One factor used to evaluate a claimant's symptoms is the type, dosage, effectiveness, and side effects of medication used. 20 C.F.R. §§ 404.1529(c)(3)(iv), 416.929(c)(3)(vi) (2009). If a claimant does not follow the prescribed treatment, the symptoms will be found to be non-disabling. 20 C.F.R. §§ 404.1530, 416.930 (2009).

Murphy was prescribed Zoloft but did not continue taking it. In 2006, Murphy began taking Lamictal and Abilify, which were helpful. Murphy admitted that there was “a world of difference” in his symptoms while taking his medications regularly. (R. at 228.) He reported that he was not suffering from side effects from his medications. (R. at 344.) However, at the administrative hearing, held in 2008, Murphy testified that he had not taken any anti-depressants in the past four or five months. (R. at 44.)

Other evidence in the record, such as Global Assessment of Functioning scores, shows that Murphy improved after receiving treatment and hospitalization, suffering mild psychological symptoms at most. The ALJ properly used this evidence when making his determination, and it supports his conclusions.

The ALJ also properly considered Murphy’s activities of daily living, *see* 20 C.F.R. §§ 404.1529(c)(3)(i), 416.929(c)(3)(i), particularly the fact that the claimant performed work while allegedly disabled. Although the work has not been established as substantial gainful employment, it undermines Murphy’s claim that he is unable to work.

Notably, Murphy has not provided any documentation from a mental health professional stating that he is unable to work due to his mental impairments. The medical professionals who did opine about Murphy’s ability to work did not examine

him, but the ALJ properly considered those opinions. 20 C.F.R. §§ 404.1513(c), 416.913(c) (2009). In August 2006, a state agency psychologist evaluated Murphy's functional capacity and concluded that Murphy was moderately limited in his ability to understand, remember, and carry out detailed instructions but had only mild limitations in his activities of daily living and mild difficulties in maintaining social functioning. (R. at 342.) The conclusions of the residual functional capacity assessment were affirmed in May 2007. (R. at 349.)

At the administrative hearing, Gary T. Bennett, Ph.D., a licensed clinical psychologist and medical expert, testified. After reviewing the medical evidence and hearing Murphy's testimony, Dr. Bennett concluded that Murphy's depression did not meet or medically equal a listed impairment. He concluded that Murphy should be able to perform unskilled work with minimal public contact.

Based on this evidence, the ALJ's conclusions about the severity of Murphy's mental impairments and functional capacity were substantially supported.

IV

For the foregoing reasons, the Commissioner's Motion for Summary Judgment will be granted. An appropriate final judgment will be entered affirming the Commissioner's final decision denying benefits.

DATED: January 6, 2011

/s/ JAMES P. JONES
United States District Judge