

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

ASHLIE B. SHIFFLETT,)	
)	Civil Action No. 5:12-CV-00122
)	
<i>Plaintiff,</i>)	REPORT AND
v.)	RECOMMENDATION
)	
CAROLYN W. COLVIN, ¹)	By: Hon. James G. Welsh
Commissioner of Social Security,)	U. S. Magistrate Judge
)	
<i>Defendant.</i>)	
)	

The plaintiff, Ashlie B. Shifflett, brings this action pursuant to 42 U.S.C. § 405(g) challenging the final decision of the Commissioner of the Social Security Administration (“the agency”) denying her claim for supplemental security income (“SSI”) under Title XVI of the Social Security Act, as amended, 42 U.S.C. §§ 1381–1383f, and her claim for disability insurance benefits (“DIB”) under Title II, 42 U.S.C. §§ 461(i) and 423. This court has jurisdiction pursuant to 42 U.S.C. § 1383(c)(3), which incorporates 42 U.S.C. § 4205(g).

I. Administrative and Procedural History

The plaintiff filed claims for DIB and SSI on November 27, 2009, alleging a period of disability beginning on August 16, 2007. (R. 192, 224). Initially denied, the claims were reconsidered on August 18, 2010, and denied again. (R. 91, 118). Following an administrative hearing on June 28, 2011, an administrative law judge (“ALJ”) confirmed this denial in writing.

¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2012. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn C. Colvin should be substituted for Michael J. Astrue as the defendant in this suit. Under the Act, no further action is necessary to continue the suit. Fed. R. Civ. P. 25(d); 42 U.S.C. § 405(g).

(R. 10-25). The Appeals Council denial of the plaintiff's subsequent review request made the ALJ's unfavorable written decision the Commissioner's final decision. *See* 20 C.F.R. § 404.981.

Along with her Answer (docket #4) to the plaintiff's Complaint (docket #1), the Commission filed a certified copy of the Administrative Record ("R.") (docket #5), which includes the evidentiary basis for the Commissioner's findings. Both parties have filed motions for summary judgment and supporting memorandum (docket # 8, 10, 12, 13). Oral argument on these motions occurred by telephone on September 26, 2013. By standing order this case is before the undersigned magistrate judge for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

II. Issues Presented on Appeal

The ALJ first found that plaintiff met the Act's insured status requirements through June 30, 2013, and had worked sporadically since her alleged onset date. (R. 12). Finding several severe² impairments—obesity, hidradenitis suppurativa with abscess flairs,³ "questionable" depression and anxiety—the ALJ determined none of these impairments, alone or in combination, met or equaled a listed impairment.⁴ (R. 13). Concluding the sequential analysis mandated by the Agency,⁵ the ALJ assessed the functional limitations caused by Ms. Shifflett's

² Severe impairments significantly limit a claimant's physical or mental ability to do basic work activities. *See* 20 C.F.R. § 404.1520(c). A single impairment may suffice, or several in combination might achieve the requisite severity. *Id.*

³ "[A] chronic suppurative disease of the skin . . . tender red abscesses develop, enlarge, and eventually break through the skin, yielding purulent or seropurulent drainage." DORLAND'S ILLUSTRATIVE MEDICAL DICTIONARY 859 (32nd ed. 2012).

⁴ The Listing of impairments is Appendix 1 of Subpart P of Part 404 of 20 C.F.R. pt. 404. The appendix details impairments the agency considers severe enough to prevent gainful activity, regardless of an individual's age, education, or work experience. 20 C.F.R. § 404.1525.

⁵ By regulation the statutory definition of "disability" is reduced to five sequential questions. An examiner must consider: whether the claimant (1) is engaged in substantial gainful activity; (2) has a severe impairment; (3) has an impairment which equals an illness contained in the Social Security Administration's Listings of impairments found

impairments. (R. 15-16). Examining the medical record and the testimony presented, the ALJ concluded that plaintiff's allegations "as they relate to the intensity, persistence and limiting effects of [her] symptoms are not entirely credible in light of the longitudinal record as a whole." (R. 17). And he further found the plaintiff capable of performing "a range of simple, routine medium work." (R. 15-16).

Such work involves six hours of sitting or standing in an eight-hour workday, occasional postural activities, and occasional integration with the general public, and allows no more than one absence a month. (R. 15-16). Representative examples include: labeler, hand-packager, custodian, United States postal worker, toy stuffer, addressing clerk, and assembler. (R. 23-25). Plaintiff's past relevant work was deemed open to her, and the ALJ found a wealth of other work in the national economy and in Virginia, which the plaintiff might successfully perform. (R. 23-25).

The plaintiff on appeal challenges the ALJ's determination that neither her physical impairments nor her mental and physical limitations in combination met the criteria of the relevant listings, and she further asserts that the ALJ erred in determining she could perform either her past relevant work and other work existing in significant numbers in the national and local economy. (docket # 13, pp 1, 10-15).

III. Summary Recommendation

Based on a thorough review of the administrative record, and for the reasons herein set forth, it is **RECOMMENDED** that the plaintiff's motion for summary judgment be **DENIED**,

at 20 C.F.R. part 4, subpt. P, appx. 1; (4) has an impairment which prevents the claimant from performing past relevant work; and (5) has an impairment which prevents the claimant from doing substantial gainful employment. 20 C.F.R. § 404.1520. If an individual is found not disabled at any step, further inquiry is unnecessary. 20 C.F.R. § 404.1503(a); *Hall v. Harris*, 658 F.2d 260 (4th Cir. 1981).

that the Commissioner's motion for summary judgment be **GRANTED**, that final judgment be entered **AFFIRMING** the Commissioner's decision denying benefits, and that this matter be **DISMISSED** from the court's active docket.

This is not intended to discount the plaintiff's mental and physical health issues or suggest that she has not experienced pain and attendant functional difficulties. The ALJ, however, specifically addressed each of these health-related issues and attendant limitations in his decision, and based his analysis on substantial evidence.

IV. Standard of Review

The court's review in this case is limited to determining whether there is substantial evidence to support the Commissioner's conclusion that the plaintiff failed to meet the statutory conditions for entitlement to DIB or SSI. "Under the . . . Act, [a reviewing court] must uphold the factual findings of the [Commissioner], if they are supported by substantial evidence and were reached through application of the correct legal standard." *Mastro v. Apfel*, 270 F.3d 171, 176 (4th Cir. 2001) (quoting *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996)). "It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Mastro*, 270 F.3d at 176 (quoting *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966)). "In reviewing for substantial evidence, [the court should not] undertake to re-weigh conflicting evidence, make credibility determinations, or substitute [its] judgment for that of the [Commissioner]." *Id.* (quoting *Craig v. Chater*, 76 F.3d at 589). This standard of review is more deferential than *de novo*. The Commissioner's conclusions of law are, however, not subject to the same deferential standard and are subject to plenary review. *See Island Creek Coal Company v. Compton*, 211 F.3d 203, 208 (4th Cir. 2000); 42 U.S.C. § 405(g).

V. Facts

A. Age, Educational, and Vocational Profile

In August 2007, when she alleges her disability began, Ms. Shifflett was twenty-two years of age.⁶ (R. 201). Possessing a high school education, Ms. Shifflett had worked as a custodian, a laborer, a mail carrier, and as a shipping clerk. (R. 230-31). As generally performed, this work ranged from exertionally light to heavy, and was either unskilled or semi-skilled. (R. 72-73).

B. Medical Record and Opinions

The earliest of the medical records provided dates from September 21, 2007, when Ms. Shifflett sought help from Dr. R. David Lee for anxiety and depression following the tragic death of her infant daughter. (R. 373). Ms. Shifflett visited Dr. Lee for follow-up care until January 29, 2009. Diagnosing her with a mood disorder, extended grief disorder and potential post-traumatic stress disorder, he placed her on medication and recommended she seek counseling and support (R. 367). He noted he was “glad she [was] on the waiting list with Northwestern [Community Services Board].” (R. 367).

Rockingham Memorial Hospital (“RMH”) emergency room reports indicate that between August 2007 and May 2008 Ms. Shifflett in fact did visit Northwestern for counseling two or three times, but “did not think it was helpful.” (R. 385).

Ms. Shifflett’s depression required a single overnight hospitalization in May 2008, when she presented in the RMH emergency room, with complaints of severe anxiety and suicidal thoughts. (R. 385-86). She was discharged in “satisfactory and improved condition.” (R. 386). At her next visit with Dr. Lee, in June 2008, he notes that the plaintiff was “improving” and that she enjoyed

⁶ At this age the plaintiff is classified as a “younger person,” and pursuant to the agency’s regulations age is generally considered not to affect seriously a younger person’s ability to adjust to other work. 20 C.F.R. §§ 404.1563(c) and 416.920(c).

her work. (R. 386, 363). At that June 2008 appointment Dr. Lee also notes that Ms. Shifflett had joined a mental health support group at RMH. (R. 363).

In January 2009, following the year-end holidays, Ms. Shifflett reported that she had fallen back into depression, and was seeing her minister for counseling. (R. 359). But, at the end of that month (during her last visit with Dr. Lee), she reported improvement with medication and counseling from her minister. (R. 357). Ms. Shifflett also appears to have consulted a physician at RMH sporadically in 2009 and 2010, but these largely illegible records provide limited insight into Ms. Shifflett's condition. (R. 472, 476-78).

During the time Ms. Shifflett's applications were pending before the state agency, she was seen and evaluated by Dr. Audie D. Gaddis, a consulting physician in July 2010. (R. 490). Dr. Gaddis found the plaintiff "fully oriented," but with impaired judgment and insight; she noted that the plaintiff reported an inability to balance a checkbook and that she was incompetent to manage her own funds. (R. 493). Even with these limitations, Dr. Gaddis opined that with "appropriate therapy [the plaintiff] could obtain and maintain employment," and she emphasized that "[o]btaining disability for a treatable mood disorder at [the plaintiff's] age would seem contraindicated to her long-term sense of well-being." (R. 494). Dr. Gaddis diagnosed the plaintiff's mental health issue to be a mood disorder, and found her to be functioning at 60 on the global assessment of functioning scale.⁷ (R. 493).

⁷ The GAF is a numeric scale ranging from zero to one hundred used by mental health clinicians to rate social, occupational and psychological functioning "on a hypothetical continuum of mental health-illness." *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition ("DSM-IV"), 32 (American Psychiatric Association, 1994). A specific GAF score represents a clinician's judgment of an individual's overall level of functioning; for example a GAF of 51-60 indicates "moderate 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.*

Beyond these mental health issues, Ms. Shifflett is obese and has been diagnosed with chronic mild hidradenitis suppurativa. (*See e.g.*, R. 386, 412, 424). In November 2007, Ms. Shifflett was seen at the UVA OB/GYN clinic with complaints of a vulvar abscess. (R. 337). She remained in the hospital for two days, undergoing observation and an antibiotic drip. (R. 329, 332-35). She was subsequently treated on an outpatient basis, when in June, September, and October 2009 and January 2010 additional abscesses were drained (R. 426, 429, 420, 451) and in February 2010 when another abscess came to a head and drained independently (R. 447). She reported no abscesses for several months, but in June 2010 she was evaluated for a potential abscess, although testing revealed no abnormality. (R. 527-28). In December 2010 the plaintiff again reported to the ER for incision and draining, returning in late January 2011 and then again in June 2011 with abscesses that required surgical draining (R. 521, 560, 574).

C. State Agency Evaluations

Two state-agency physicians analyzed Ms. Shifflett's claims prior to her administrative hearing. (R. 81-92, 107-119). Dr. R. S. Kadian opined that plaintiff had some exertional limitations, and should not lift more than twenty-five pounds frequently or fifty pounds occasionally, and should do any one of standing, walking, and sitting, for no more than six hours of an eight-hour workday. (R. 87). Dr. Kadian noted that Ms. Shifflett had moderate limitation on sustained concentration and persistence, and was moderately limited in her interactions with others, suggestion that her "interaction with the general public should be intermittent instead of constant" and "[s]upervisory correction should be non confrontive." (R. 89-90). Dr. Kadian believed these limitations would permit Ms. Shifflett to perform her past relevant work as a custodian. (R. 91).

On the second state agency review, Dr. Luc Vinh disagreed slightly, stating that Ms. Shifflett should lift no more than ten pounds, and asserting that Ms. Shifflett could not perform any of her past relevant work. (R. 113, 117). Despite this, he found her to be “not disabled” because other work would be available. (R. 118).

D. Testimony

At the hearing, Ms. Shifflett testified that she had lost two jobs because of the abscesses. (R. 39-40). She stated that she would be off work for two to three weeks after each abscess. (R.40). Estimating that she had an abscess every one or two months, she described the usual pattern of treatment. She noted that she generally goes to the hospital, receives antibiotics, and has the abscess lanced and drained, though sometimes she is ordered home for bed rest. (R. 41, 47). Regarding her depression and anxiety, Ms. Shifflett claimed to be ill most mornings, lethargic during the day, and sleeping at night only with difficulty. (R. 44-45). She stated she was aware that with help she might overcome her mental health issues, but was unsure that her hidradenitis condition would allow her to work. (R. 61).

Ms. Shifflett’s husband and grandmother also testified, corroborating Ms. Shifflett’s description of her symptoms. (R. 63-65, 68-70). Her husband expressed fear that Ms. Shifflett might someday be wheelchair-bound, “[b]ecause she has been in a wheelchair before for weeks at a time.” (R. 65). Her grandmother noted that Ms. Shifflett is cared for by her family, and would otherwise be unable to take care of herself when sick. (R. 68).

VI. Analysis

Three errors, the plaintiff contends, subject the ALJ’s decision to reversal. She argues first that in combination her impairments achieve listing-level severity, second that her past relevant work is foreclosed to her, and third that no other work is available. The ALJ’s contrary findings,

she argues, were made without properly weighing and considering the evidence presented. *See Walker v. Bowen*, 889 F.2d. 47, 49 (4th Cir. 1989). Brief examination of record demonstrates these contentions to be without merit.

A.

In a further contention raised for the first time during oral argument, the plaintiff also argues that she is in fact disabled by application of the criteria in Listing 8.06. According to her counsel, the record is devoid of any evidence to suggest otherwise.

As a threshold matter, this Listing 8.06 argument is foreclosed. When asked during the hearing whether his client was asserting that her condition “meets or equals any listings,” counsel responded by telling the ALJ, “I think it’s a combination of impairments.” (R. 13, 36). In contrast, during oral argument before this court counsel asserted that his client’s physical limitations alone met the requirements of § 8.06. Having previously disclaimed this argument, it has been waived, and she cannot raise it now. *See, e.g., Williams v. Prof'l Transp. Inc.*, 294 F.3d 607, 614 (4th Cir. 2002) (“Issues raised for the first time on appeal are generally not considered absent exceptional circumstances.”) (citations omitted).

Even assuming *arguendo* that this late-raised claim of error was properly before the court on review, the record pertaining to the presence and severity of Ms. Shifflett’s hidradenitis suppurativa symptoms and its episodic treatment effectively demonstrate, contrary her attorney’s assertion, this impairment does not medically met or equal Listing 8.06.

Listing 8.06 requires "extensive skin lesions involving both armpits (axillae) and both the groin and lateral aspects of the lower abdomen (inguinal areas) or the area between the anus and vulva (perineum) “that persist for at least three months despite continuing treatment as prescribed.” 20 C.F.R., Pt. 404, Subpt. P, Appx.1 § 8.06. In other words, “Listing 8.06 includes

three separate requirements.” *Sielaff v. Comm’r of Soc. Sec.*, 2011 U.S. Dist. LEXIS 153433, *19 (NDOhio. Nov 17, 2011). A claimant must have extensive lesions; these lesions must be located in certain specific body areas, and they must persist for at least three months despite continuing treatment. *Id.*

For purposes of Listing 8.06, the term “extensive skin lesions” is defined by the agency as “those that involve multiple body sites or critical body areas, and result in a very serious limitation.” 20 C.F.R. Pt. 404, Subpt. P, Appx. 1 § 8.00(C)(1). As examples of such extensive and functionally limiting lesions in the requisite body areas, the agency’s regulations identify “lesions that interfere with the motion of [a claimant’s] joints and that very seriously limit [one’s] use of more than one extremity . . . , lesions on the palms of both hands that very seriously limit [one’s] ability to do fine and gross motor movements,” and “lesions on the soles of both feet, the perineum, or both inguinal areas that very seriously limit [one’s] ability to ambulate.” 20 C.F.R., Pt. 404, Subpt. P, Appx. 1 § 8.00(C)(1)(a)-(c). And as to the durational requirement of Listing 8.06, “the longitudinal clinical record” must show that a claimant’s lesions have persisted “at the level of severity specified in the listing” despite continuing treatment. 20 C.F.R., Pt. 404, Subpt. P, Appx.1 § 8.00(G)

At the hearing, Ms. Shifflett testified that she “usually gets abscesses in the breast or in the groin area,” that she has been getting them every month or two since 2007, and that the usual treatment consisted of draining the abscess, either primary closure or packing the lanced site and the use of a prescription antibiotic. (R. 41). Neither the plaintiff in her testimony nor her treating physicians in their treatment records suggests that she experienced lesions in multiple critical areas at the same time. Similarly, neither contains any suggestion that the plaintiff’s lesions were persistently at a listing level severity for the requisite three-month period despite

continuing treatment. In fact, as the ALJ outlined in his written decision, over the four-year period between 2007 and 2011 the plaintiff was treated for this condition less than a dozen times. (R. 18-220).

B.

Equally meritless is the plaintiff's argument that the ALJ similarly erred in his determination that her impairments in combination did not meet or equal the applicable listing criteria. On review, the record more than minimally supports this ALJ finding, and it further demonstrates that the finding was reached by application of the correct legal standards.

The ALJ found two severe impairments—obesity and hidradenitis— and two “questionably” severe impairments —depression and anxiety— which were assumed by the ALJ also to be severe throughout his decisional analysis. (R. 13, 15). He examined each of these impairments and found no impairment, alone or in combination with the others, to be of listing-level severity. (R. 13-15). He examined the medical record relating to plaintiff's hidradenitis condition, and as outlined above he noted among other things that record revealed no lesions that persisted for three months or longer despite medical treatment. (R.14). *See* 20 C.F.R. Pt. 404, Subpt. P, Appx. 1, § 8.06. He cataloged the ten instances of abscesses over a four-year period; he noted that in each instance the condition responded to medical treatment, and he noted the fact that the plaintiff's treating doctors described her hidradenitis as “mild.” (R. 14, 21-21).

Analyzing plaintiff's depression and anxiety, the ALJ examined the medical records, the state agency evaluations, the results of Dr. Gaddis's consultive examination, and the plaintiff's own testimony. On the basis of this record, he concluded that the plaintiff's mental health impairments met neither Listing 12.04 nor Listing 12.06. (R. 14-15). *Inter alia*, he also took

note of the fact that plaintiff had experienced no “marked restrictions” in daily living, in social functioning or in maintaining concentration; he noted the absence of any evidence of episodes of decompensation, and he gave decisional weight to the assessment of the state agency reviewers. (R. 14-25, 22; *see also* R.84-86, 111-16). Moreover, Ms. Shifflett acknowledged that she retained the ability generally to perform personal grooming and basic household tasks, that she gets along with others, and that she can handle finances and follow instructions. (R. 252-60).

Furthermore, even if the ALJ had credited Ms. Shifflett’s full testimony about the severity of her difficulty with daily functioning, her mental impairments would still not have resulted in marked restriction in at least two of the required areas as the listing requires. *See* 20 C.F.R. Pt. 404, Subpt. P, Appx. 1, § 12.04.

As part of his consideration of the severity of the plaintiff’s impairments, the ALJ also evaluated whether Ms. Shifflett’s obesity caused or contributed to the severity of an impairment and her level of functioning, and he concluded that it did not. (R. 14). Beyond the plaintiff’s failure to explain how and in what way the ALJ erred by finding her obesity not to be disability in combination with her other *severe* conditions, there is no medical or testimonial evidence in the record to suggest that Ms. Shifflett’s obesity either created or exacerbated an impairment sufficiently create a disability of f listing-level severity.

C.

Although the plaintiff alleges error by the ALJ in making his determination that she and her witnesses exaggerated the intensity and debilitating impact of her impairments, his written decision fully demonstrates that he followed the required two-step credibility evaluation process. *See Craig v. Chater*, 76 F.3d 858, 594 (4th Cir. 1996) (citing and quoting 20 C.F.R. § 404.

1529(a)-(b) and § 416.929(a)-(b); also citing 42 U.S.C. § 423(d)(5)(A)). Therein, he agreed that the medical evidence of record demonstrated impairments that would create the symptoms about which Ms. Shifflett complained; however, in evaluating their intensity and effect, he concluded that her testimony and that of her witnesses concerning the debilitating extent of these subjective symptoms were at odds with the medical record. (R. 16-17).

Although the plaintiff disputes this credibility assessment, there is no basis in the record to justify this court disturbing it. *See Eldeco v. NLRB*, 132 F.3d 1007, 1011 (4th Cir. 1997). “When factual findings rest upon credibility determinations, they should be accepted by the reviewing court absent exceptional circumstances.” *Id.* (internal quotation marks omitted). And such exceptional circumstances come into play only “where a credibility determination is unreasonable, contradicts other findings of fact, or is based on an inadequate reason or no reason at all.” *Id.* (internal citations omitted).

None of those circumstances exists in the case now before the court. The ALJ compared the plaintiff’s testimony to the medical record; he found that the plaintiff’s treatment “has been generally routine, conservative, and unremarkable,” and he concluded that the record did not support “her and her witnesses’ allegations regarding the severity of her limitations.” (R. 21). Consistent, therefore, with his decision-making obligation to evaluate credibility, the ALJ provided a logical basis for his credibility assessment, and it is consistent with his other findings. *See Hatcher v. Sec’y, Dep’t of Health & Human Servs.*, 898 F.2d 21, 23 (4th Cir. 1989) (noting that credibility determinations “should refer specifically to the evidence informing the ALJ’s conclusion”).

D.

Ms. Shifflett next argues the ALJ erred in finding her able to perform either past relevant or alternative-available work, because his assessment fails to account for absenteeism and the social stigma attached both to her obesity and her skin disorder,⁸ or the fact that the plaintiff requires therapy to work. In part, this argument is a repetition of her claim of error by the ALJ in failing to give full credibility to her testimonial evidence, and in part it is predicated on Dr. Gaddis's consultive-examination assessment wherein he opined that the plaintiff would require "appropriate therapy" in order to work.

In large measure the first part of this argument relies solely on her statement that absenteeism caused her to lose two previous jobs (R. 39-40); there is, however, no additional evidence in the record to support this contention. Moreover, there is no medical evidence or opinion suggesting that the plaintiff's health-related issues would cause more than a one-day absence a month—a level the vocational expert testified was acceptable— would be required. (R. 75-76). In sum, plaintiff repeats the argument that the ALJ failed to find her fully credible and should have found otherwise. However, that is the ALJ's prerogative.

As the second prong of this claim of ALJ error, the plaintiff asserts the ALJ erred in crediting Dr. Gaddis's consultive examination results, while nevertheless finding the plaintiff capable of working. Viewed most sympathetically, this argument is an assertion that Ms. Shifflett is disabled until she obtains the therapy suggested by Dr. Gaddis. Thus, the argument is a logical fallacy.⁹ It is also undermined by the fact, as noted by the ALJ, that the plaintiff was

⁸ The ALJ does not discuss social stigma, but the issue was never raised, and nothing in the record suggests it might be a decisionally relevant problem.

⁹ This argument denies its antecedent. Denial of the Antecedent is a fallacy similar to the classic *pro hoc ergo propter hoc* (after this therefore because of it) in assuming that because two things are somehow related they must be causally related. See *Denial of the Antecedent Basis*, ENCYCLOPEDIA BRITANNICA, (October 10, 2010, 1:12 PM), <http://www.britannica.com/EBchecked/topic/157682/denial-of-the-antecedent> (defining the fallacy).

receiving counseling from her minister, and it is additionally undermined by the remainder of Dr. Gaddis's report —wherein she opines that “obtaining disability for a treatable mood disorder at [plaintiff's] age would seem contraindicated to her long-term sense of well being.” (R. 494).

Therefore, in his decision the ALJ's appropriately relied on vocational testimony to the effect that someone of plaintiff's age, education, experience and limitations could work. The ALJ's hypotheticals were based on the evidence of record and described functional limitations found by the ALJ. The vocational expert's response outlined work availability for an individual with those functional limitations (R. 74-75), and the ALJ's finding is, therefore, supported by substantial evidence.

E.

The decision to be made on court review in this case is “not whether the [plaintiff] was disabled, but whether the ALJ's finding of no disability is supported by substantial evidence.” *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (citing *Craig v. Chater*, 76 F.3d at 589). It is his prerogative to weigh that evidence. *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). Consistent with this standard of review, this court is obligated to conclude that the ALJ appropriately evaluated the evidence of record and that his decision is supported by substantial evidence.

VII. Proposed Findings

As supplemented by the above summary and analysis and on the basis of a careful examination of the full administrative record, the undersigned submits the following formal findings, conclusions and recommendations:

1. The plaintiff was 28 years of age at the time her insured status expired;
2. The plaintiff has a high school education;

3. Her past relevant work includes work as a custodian, mail carrier, labeler, hand packager and lumber stacker;
4. The plaintiff has not engaged in substantial gainful work activity since her alleged onset date (August 16, 2007);
5. The plaintiff has the following severe impairments: obesity, hidradenitis suppurativa with abscess flairs, and questionably severe depression and anxiety;
6. The plaintiff does not have an impairment, or combination of impairments, that meets or medically equals one of the listed impairments in 20 C.F.R. pt. 404, Subpt. P, Appx. 1;
7. The plaintiff does not have an impairment or combination of impairments that functionally equals a listed impairment;
8. The ALJ's credibility assessment is supported by substantial evidence;
9. The ALJ's hypothetical questions to the vocational witness fairly set forth the plaintiff's limitations during the decisionally relevant period;
10. The plaintiff has not been disabled, as defined in the Social Security Act, from her alleged disability onset date (August 16, 2007) through her date last insured (June 30, 2013);
11. Substantial evidence in the record supports the Commissioner's final decision, and it is free of legal error;
12. The plaintiff has not met her burden of proving a disabling condition on or before her date last insured; and
13. The final decision of the Commissioner should be affirmed.

VIII. Transmittal of the Record

The clerk is directed to transmit the record in this case immediately to the presiding United States district judge and to transmit a copy of this Report and Recommendation to all counsel of record.

IX. Notice to the Parties

Both sides are reminded that, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, they are entitled to note objections, if any they may have, to this Report and Recommendation

within fourteen (14) days hereof. **Any adjudication of fact or conclusion of law rendered herein by the undersigned to which an objection is not specifically made within the period prescribed by law may become conclusive upon the parties.** Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1) as to factual recitals or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objections.

DATED: This 23rd day of October 2013.

s/ James G. Welsh
United States Magistrate Judge