UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEREMIAH TAYLOR, Plaintiff, v. NANCY A. BERRYHILL, *Acting Commissioner of Social Security*, Defendant.	)	Civil Action No. 18-cv-0316 (KBJ)

MEMORANDUM OPINION ADOPTING
REPORT & RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff Jeremiah Taylor, through his mother, applied to the Commissioner of Social Security ("Commissioner" or "Defendant") for supplemental social security income benefits in 2013, claiming that he was disabled due to his diagnosis of attention-deficit/hyperactivity disorder ("ADHD"), oppositional/defiant disorder ("ODD"), major depressive disorder ("MDD"), mood disorder, and learning disorder. (AR, ECF No. 4-3, at 5–6, 14–15; ECF 4-8 at 57–58.)[1] In January of 2017, an Administrative Law Judge ("ALJ") held a hearing on Taylor's application, and ultimately determined that Taylor is not disabled under the Social Security Act. Taylor then filed the instant lawsuit, requesting that this Court reverse the ALJ's denial decision and grant him benefits. (*See generally* Compl., ECF No. 1.)

On February 13, 2018, this Court referred this matter to a Magistrate Judge for full case management. (*See* Min. Order of Feb. 13, 2018.) On June 13, 2018, Taylor

[1] Page numbers herein refer to those that the Court's electronic case filing system automatically assigns.

filed a motion asking the Court to either reverse the Commissioner's decision or remand this matter back to the agency for a new hearing, arguing that the ALJ's decision is not supported by substantial evidence and that decision is erroneous as a matter of law. (*See* Pl.'s Mot. for J. of Reversal, ECF No. 7, at 1.) Thereafter, on October 1, 2018, Defendant filed a motion for affirmance of the ALJ's decision, arguing that Taylor failed to meet his burden of establishing that he was entitled to supplemental security income, and that "substantial evidence supports the ALJ's finding that his impairments . . . were not severe enough to functionally equal the clinical requirements of any Listed Impairment." (Def.'s Mem. in Supp. of Her Mot. for J. of Affirmance & in Opp'n to Pl.'s Mot. for J. of Reversal, ECF No. 12, at 1).

Before this Court at present is the Report and Recommendation that the assigned Magistrate Judge, G. Michael Harvey, has filed regarding Taylor's motion for reversal and Defendant's motion for affirmance. (*See* R. & R., ECF No. 17.)[2] The Report and Recommendation reflects Magistrate Judge Harvey's opinion that Taylor's motion for reversal or remand should be denied, and that Defendant's motion for affirmance should be granted. (*See id.* at 1–2.) Specifically, Magistrate Judge Harvey finds that substantial evidence supports the ALJ's conclusion that Taylor did not have marked impairments in either of the domains of functioning that he challenges on appeal. (*See id.* at 14.) Magistrate Judge Harvey further finds that the ALJ "properly explained that he did not credit Plaintiff's subjective claims as to the severity of his symptoms because they were contradicted both by other aspects of testimony of Plaintiff and of his mother and by other objective evidence in the record." (*Id.* at 15.)

[2] The Report and Recommendation, which is 24 pages long, is attached hereto as Appendix A.

In addition to articulating these conclusions, Magistrate Judge Harvey's Report and Recommendation also advises the parties that either party may file written objections to the Report and Recommendation, which must include the portions of the findings and recommendations to which each objection is made and the basis for each such objection. (*Id.* at 24.) The Report and Recommendation further advises the parties that failure to file timely objections may result in waiver of further review of the matters addressed in the Report and Recommendation. (*Id.*) Under this Court's local rules, any party who objects to a Report and Recommendation must file a written objection with the Clerk of the Court within 14 days of the party's receipt of the Report and Recommendation. LCvR 72.3(b). The due date for objections has passed, and none have been filed.

This Court has reviewed Magistrate Judge Harvey's report and agrees with his thorough analysis and conclusions. Thus, the Court will **ADOPT** the Report and Recommendation in its entirety. Accordingly, Plaintiff's Motion for Reversal will be **DENIED**, and Defendant's Motion for Affirmance will be **GRANTED**.

A separate Order accompanies this Memorandum Opinion.

DATE: October 25, 2019

Ketanji Brown Jackson

KETANJI BROWN JACKSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JEREMIAH TAYLOR **Plaintiff,** **v.** **NANCY A. BERRYHILL,** **in her official capacity as** **Acting Commissioner of Social Security** **Defendant.**	)	**Case No. 18-cv-00316 (KBJ/GMH)**

REPORT AND RECOMMENDATION

This matter was referred to the undersigned for full case management. Plaintiff Jeremiah Taylor ("Plaintiff"), an adolescent residing in the District of Columbia during the period relevant to this litigation, brought this action seeking to reverse the final decision of the Commissioner of Social Security, Defendant Nancy A. Berryhill ("Defendant" or "the Commissioner"), denying Plaintiff's application for supplemental security income under the Social Security Act, 42 U.S.C. § 405(g). *See* ECF No. 1 at 1.

Presently ripe for resolution are two motions: Plaintiff's motion for reversal and Defendant's motion for affirmance of the Commissioner's decision. Plaintiff alleges that the Administrative Law Judge ("ALJ") erred in his determination of Plaintiff's disabilities by failing to evaluate pertinent evidence. Specifically, he alleges that the ALJ failed to (1) mention and assess evidence supporting Plaintiff's claim in evaluating his listed impairments, and (2) perform a proper assessment of Plaintiff's subjective complaints.

Based on the parties' arguments and review of the entire record,[1] the undersigned recommends denying Plaintiff's motion and granting Defendant's motion.

I. BACKGROUND

A. Disability Determinations Under the Social Security Act

For a child to be eligible for supplemental security income under the Social Security Act, the Social Security Administration ("SSA") must find a child to be "disabled." 42 U.S.C. § 423(a). The SSA will consider a child disabled if he or she has a "medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations." 20 C.F.R. § 416.906. To make that determination, an ALJ gathers evidence, holds a hearing, takes testimony, and performs the following three-step, sequential inquiry into the disability claim:

> Step one: whether the claimant is presently engaged in "substantial gainful activity";
>
> Step two: whether the claimant has a "medically severe impairment"; and
>
> Step three: whether the claimant's impairment is equivalent to one of the disabling impairments listed in the appendix of the relevant regulation.

See 20 C.F.R. § 416.924. In evaluating a child's functional impairments, the ALJ analyzes the "whole child," looking first at the child's activities and his or her limitations in those activities as compared to other children of the same age. 20 C.F.R. §§ 416.926a(b)–(c). In this evaluation, the ALJ must consider all the evidence in the child's case file, including medical evidence, test scores, educational records, and opinions from medical and non-medical sources. 20 C.F.R. § 416.924(a);

[1] The relevant docket entries for purposes of this Report and Recommendation are (1) Plaintiff's Motion for Judgment of Reversal (ECF No. 7); (2) Defendant's Motion for Judgment of Affirmance (ECF No. 12); (3) Plaintiff's Memorandum in Opposition to Motion for Judgment of Affirmance (ECF No. 14); and (4) the Administrative Record (ECF No. 4).

see also 20 C.F.R. § 416.929.

Once an underlying physical or mental impairment has been shown that would reasonably be expected to produce claimant's pain or other symptoms, the ALJ must evaluate the intensity, persistence, and limiting effects of the child's symptoms to determine the extent to which they limit the child's functional capacity. *See* 20 C.F.R. §§ 416.929(c)(1). In determining whether a child's impairments functionally equal a listed impairment at step three, the SSA considers the following six "domains" of functioning: (1) acquiring and using information; (2) attending and completing tasks; (3) interacting and relating with others; (4) moving about and manipulating objects; (5) caring for yourself; and (6) health and physical wellbeing. 20 C.F.R. § 416.926a(b)(1)(i)–(vi). A claimant's impairment functionally equals a listed impairment if it results in either an "extreme" limitation in one domain of functioning or "marked" limitations in two domains. 20 C.F.R. § 416.926a(d). The SSA has defined a "marked" limitation as "more than moderate" but "less than extreme." 20 C.F.R. § 416.926a(e)(2)(i). It should be found where a claimant's impairments "interfere[] seriously with his . . . ability to independently initiate, sustain, or complete activities." *Id.*

The SSA regulations list examples of impairments that functionally equal the listings in order to demonstrate the standard of listing-level severity. With regard to children aged twelve to eighteen, examples of impairments that functionally equal the listings include: a child requiring a major organ transplant; an impairment requiring a series of life-saving surgeries within a twelve-month period; ambulation that is possible only with bilateral upper limb assistance; a complete inability to function independently outside the area of one's house within age-appropriate norms; or requiring 24-hour-a-day supervision for medical (including psychological) reasons. 20 C.F.R. § 416.926a(m)(1)–(5).

B. The ALJ's Decision

The ALJ issued his decision on March 22, 2017, finding Plaintiff not disabled under the Social Security Act and thus not entitled to supplemental security. ECF No. 4-2 at 30. The ALJ found at step one that Plaintiff did not engage in substantial gainful activity since August 15, 2013, the application date. *Id.* at 19. At step two, the ALJ found that Plaintiff's attention deficit hyperactivity disorder ("ADHD"), oppositional defiant disorder ("ODD"), mood disorder, major depressive disorder ("MDD"), and learning disorder were medically severe impairments in accordance with 20 C.F.R. § 416.924(c), which recognizes an impairment as "severe" if it "significantly limits an individual's ability to perform basic work activities." 20 C.F.R. § 416.924(c); ECF No. 4-2 at 19.

At step three, however, the ALJ found that Plaintiff's severe impairments did not meet, medically equal or functionally equal the severity of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1, to constitute a disability. *Id.* at 19-20. The ALJ gave little weight to Plaintiff's subjective statements, explaining that they were "not entirely consistent with the medical evidence and other evidence in the record" and that "[i]n general, the objective evidence does not demonstrate the severity of [Plaintiff's] subjective statements." *Id.* at 21. The ALJ gave significant weight to the opinion of the State Agency consultants, who assessed Plaintiff with "less than marked limitations except for marked limitation in interacting and relating with others." *Id.* The ALJ also assessed teacher questionnaires ("TQs"), which were forms completed by Plaintiff's teachers evaluating his impairment in each of the six domains of functioning. *Id.* at 22. Overall, he found that Plaintiff's TQs supported the absence of marked limitations and gave them substantial weight since they arose from professional relationships with Plaintiff. *Id.* The ALJ also gave some weight to the reports of Plaintiff's mother, who testified that Plaintiff's symptoms improve

with medication management and that he was on track to graduate in 2018 and play college football the following year. *Id.*

In sum, the ALJ concluded that Plaintiff:

> is performing at grade level in school. He has very close to a C average; 1.91 GPA, and is performing better in school than about 30% of his peers with a class rank of 61/86. He has average communication skills. He is performing at the average range in Math and Writing and Low Average in Reading. He has serious behavior problems but is calmer and cooperative with medications. He is able to control his behavior adequately to progress in school and maintain his membership on the high school football team. His teachers have indicated that the claimant only has moderate mental functioning limitations. He is capable of taking his medications if he so desires. The [Plaintiff's] gang involvement and the negative social behaviors flowing therefrom appear to be the result of the socialization he has experienced in his particular environment, rather than the product of or symptom of a discreet mental disorder. If removed from this environment, it is anticipated that these negative social behaviors would not continue . . . Thus, aside from moving about and manipulation [of] objects wherein the [Plaintiff] has no limitations as indicated by his ability to play high school football, he has less than marked limitations in the other domains of functioning.

Id. at 29 (citations to the record omitted).

The ALJ's analysis of the two domains of functioning specifically disputed by Plaintiff are discussed in further detail below.

1. Acquiring and Using Information

The ALJ found that Plaintiff had a less than marked limitation in acquiring and using information. *Id.* at 23. The ALJ noted testimony from Plaintiff's mother that Plaintiff "struggles with understanding, carrying out, and remembering simple instructions." *Id.* However, Plaintiff's own testimony showed him obtaining a C average, on track to graduate that year, and intending to go to college. *Id.* The ALJ described that "[Plaintiff] has obtained low average reading scores but average math and writing scores." *Id*. The ALJ later repeated: Plaintiff "is performing at the average range in Math and Writing and Low Average in Reading." *Id.* at 29. He determined that

Plaintiff's TQs revealed "no worse than an obvious problem in this domain of functioning" (as opposed to a "serious" problem or "very serious" problem) and that Plaintiff was "successful in the general education curriculum with some accommodations and modifications." *Id.* at 23. He referenced a recent Individualized Education Plan ("IEP") identifying Plaintiff as disabled but "participating in school and completing work with non-special education peers." *Id*. The ALJ also considered Plaintiff's medical examinations, adding: "[t]reatment notes reveal no significant disturbance in sensorial or intellectual functioning . . . he has had many unremarkable mental status examinations, showing normal memory, fund of knowledge, judgment and insight." *Id.* at 24. Overall, the ALJ concluded that "although [Plaintiff's] reading skills have remained below average, he has stayed on grade level and progressed overall in the regular education program." *Id.*

2. Interacting and Relating with Others

The ALJ also found that Plaintiff had a less than marked limitation in interacting and relating with others. *Id.* at 26. The ALJ noted that Plaintiff's mother "described him as angry and irritable," but that his symptoms improved with medication management. *Id.* Plaintiff's ninth-grade TQ noted: "he often does not acknowledge responsibility when he gets into trouble for being disruptive." *Id.* The ALJ also acknowledged the conclusion of the State Agency consultants, who determined that Plaintiff had a marked limitation in interacting and relating with others. *Id.* at 21. However, the ALJ found that "there has been new written evidence and testimony added to the record" which would change the determination that Plaintiff has a marked limitation in this domain. *Id.* Notably, the ALJ found that Plaintiff's testimony showed that he is able "to control his behavior to progress in school and maintain membership on his high school football team." *Id.* The ALJ also reviewed TQs revealing "no worse than an obvious problem" in interacting and relating with others. *Id.* at 21–22. Plaintiff's TQs added that he was "calmer and more cooperative

when he takes his medications," and that Plaintiff's behaviors were "close to average." *Id*. at 26. The ALJ considered Plaintiff's numerous disciplinary actions, including an expulsion, an arrest, and participation in gang intimidation, but determined that these negative social behaviors "appear to flow from his environment, rather than as a symptom of his mental condition." *Id.* He explained that Plaintiff had reported having a good social network, "could get along with others and play team sports," and was able to "control his behavior enough to progress in school and participate in football." *Id.* The ALJ additionally noted: "[t]reatment notes . . . show the absence of significant symptomology," and that "[t]here is no evidence of ideations or psychomotor agitation." *Id.* Overall, the ALJ concluded that "despite the claimant's disciplinary record, he has achieved mood stabilization with noninvasive treatment measures." *Id.*

C. Factual Background

1. Plaintiff Jeremiah Taylor

At the time of his hearing before the ALJ, Plaintiff was 17 years old, in the twelfth grade, and residing in Washington, D.C. *See* ECF No. 7-1 at 2; *see also* ECF No. 4-2 at 19. He had never performed substantial gainful activity.[2] ECF No. 4-2 at 19. Plaintiff's claim of disability was based on his diagnosis of ADHD, ODD, mood disorder, MDD, and learning disorder. ECF No. 4-3 at 5–6, 14–15; ECF No. 4-8 at 55–56.

2. The Administrative Record

The ALJ evaluated Plaintiff's impairments based on evidence in the administrative record, including State Agency consultants, medical records, TQs and IEPs completed by Plaintiff's special education teachers, and testimony offered by Plaintiff and his mother. Plaintiff now challenges the ALJ's assessment that his impairments did not meet, medically equal, or functionally equal

[2] "Substantial gainful activity" involves engaging in significant physical or mental activities for pay or profit, regardless of whether a profit is realized. 20 C.F.R. § 416.972(a)–(b).

any of the requirements of the listed impairments. Plaintiff specifically argues that the ALJ erroneously determined he had a less than marked limitation in two domains of functioning: (1) acquiring and using information; and (2) interacting and relating with others. Portions of the administrative record relevant to these issues are summarized below.

a. Plaintiff's Testimony at the Administrative Hearing

In order to evaluate Plaintiff's impairments, the ALJ conducted separate hearings with Plaintiff and his mother on January 17, 2017. In Plaintiff's hearing, he described longstanding issues controlling his anger and difficulty getting along with others. ECF No. 4-2 at 56–58. Plaintiff frequently punched walls in his home. *Id.* at 59. He had been involved in two major fights (*id.* at 48–49), and had been suspended five time since joining Anacostia High School a year prior to the hearing. *Id.* at 56. Previously, Plaintiff was expelled from Thurgood Marshall Academy for fighting in the ninth grade and was withdrawn from the National Collegiate Charter School following a suspension in the eleventh grade. *Id.* at 52–55. Since moving to Anacostia High School, Plaintiff had undergone administrative conferences and counselling reprimands for his behavior. *Id.* at 57–58. In 2016, nine months prior to the administrative hearing, the principal of Anacostia High School began an immediate involuntary transfer to remove Plaintiff from Anacostia High School for behavioral issues. *Id.* at 46. The involuntary transfer was ultimately dropped. *Id*.

Plaintiff described having difficulty with reading at school but being on track to graduate with a GPA of 1.91. *Id.* at 45, 48. He had performed better than 30% of his class, with a class rank of 61/86. *Id.* at 44. Plaintiff intended to go to college following his graduation from high school and was being scouted by Howard University, South Carolina State University, and Langston University to play college football. *Id.* at 42–43. Plaintiff confirmed he had been accepted

to Langston University and would receive a full scholarship if he could raise his overall GPA to 2.0. *Id.* at 45–46.

Plaintiff's testimony showed that taking Risperdal medication made him calmer. *Id.* at 47, 60. When asked about his suspensions, Plaintiff explained that he did not always have his medication as it would run out. *Id.* at 61.

b. Plaintiff's Mother's Testimony at the Administrative Hearing

The ALJ similarly conducted a hearing with Plaintiff's mother. Throughout the hearing, Plaintiff's mother described Plaintiff as angry and irritable. *Id.* at 62–75. She confirmed his history of punching walls in his home, although the incidence of such behavior had decreased since 2015. *Id.* at 73–74. Plaintiff's mother also testified that he was prohibited from riding the bus to school and had been involved in major disciplinary issues in Anacostia High School and in his previous schools. *Id.* at 63–64. Plaintiff had also been arrested on more than one occasion. *Id.* at 67–68.

Plaintiff's mother testified that Plaintiff has friends his age. *Id.* at 71. He generally got along with her and his siblings, and was able to care for and interact well with his four-year-old niece and his infant daughter. *Id.* at 68-71. Additionally, Plaintiff went to "D.C. House" after school to complete homework and perform community service for his school. *Id.* at 65–66. According to his mother, football is Plaintiff's anger relief. *Id.* at 64.

Plaintiff's mother testified that Plaintiff's anger was "up and down" without the medication, but that he was not as angry or fussy when he was on medication. *Id.* at 72.

c. Teacher Questionnaires and Individualized Educational Program

Plaintiff's teachers in ninth and twelfth grade filled out TQs to assess his impairments against several metrics for each of the domains of functioning. The metrics used do not explicitly

correspond with either of the SSA's "marked" or "extreme" impairments. Rather, the TQs require the teacher to assess whether the child had (from lowest to highest) (1) "no problem," (2) a "slight problem," (3) an "obvious problem," (4) a "serious problem," or (5) a "very serious problem" in a given domain of functioning. *See, e.g.*, ECF No. 4-6 at 15.

In 2013, Plaintiff's ninth-grade special education teacher reported that Plaintiff had at most an "obvious problem" in acquiring and using information, with major concerns in reading and writing. *Id.* In her TQ, Plaintiff's special education teacher explained that he was calmer and more compliant on medication, but that he "refuse[d] to take [it]." *Id.* at 17, 19–20. This TQ also assessed that Plaintiff had at most a "serious problem" in interacting and relating with others and that he did not acknowledge responsibility when he got into trouble for being disruptive. *Id.* at 17.

Three years later, one of Plaintiff's twelfth-grade special education teachers reported in a TQ that Plaintiff had a problem (mostly a "slight problem") in acquiring and using information, but that he was functioning close to average when compared to his peers and concluded that "with accommodations and modifications [Plaintiff] can be successful in the general education curriculum." ECF No. 4-8 at 71–72. This TQ reported that Plaintiff had, in general, a "slight problem" in the domain of interacting and relating with others, and noted that he refused to comply with his Behavior Intervention Program, displayed defiant behavior, and had difficulty getting along with people and managing anger. *Id.* at 74.

Another twelfth grade special education teacher reported that Plaintiff had "no problem" in acquiring and using information. *Id.* at 81. This TQ marked Plaintiff as having at most a "slight problem" interacting and relating with others, although the special education teacher noted that she had not personally observed any behavioral issues from Plaintiff. *Id.* at 83.

d. Plaintiff's Standardized Test Scores

Plaintiff underwent Woodcock-Johnson testing (WJ-III and WJ-IV)[3] while in the seventh grade. ECF No. 4-6 at 101. Plaintiff's WJ-III reading scores were classified as "Low Average" and he was thereafter placed in the special education curriculum. *Id*. Plaintiff's scores in writing was classified as "average" for his grade level. *Id*. at 102. Plaintiff's WJ-IV testing in the eleventh grade showed reading scores between "Low Average" and "Very Low," the lowest classification. *Id.* at 122. Nevertheless, Plaintiff's math and writing scores remained within the "average" classification compared to his grade level. *Id.* at 122–23.

e. Plaintiff's Individualized Education Program

Plaintiff's 2013 IEP described Plaintiff's reading ability as below the level expected for him but that he nonetheless "ha[d] the strength of expressing thoughts with one on one coaching prompt[s]." *Id.* at 83. His 2013 special education teacher suggested that Plaintiff should have academic support in the classroom to assist in him accessing the curriculum at his grade level. *Id.* Three years later, Plaintiff's 2016 IEP identified him as learning disabled but noted that he was still able to participate in school and complete work with his eleventh grade non-special-education peers. *Id.* at 58.

f. State Agency Consultants

Pursuant to Plaintiff's application for disability benefits, the ALJ had State Agency consultants Dr. Nancy Heiser and Dr. Patricia Cott examine Plaintiff's medical record in order to

[3] The Woodcock-Johnson test is a multiple-choice standardized intelligence test that can be administered by schools to assess a child's performance relative to the average performance of other children at their grade level. *See Woodcock-Johnson Test*, www.achievement-test.com/testing-options/woodcock-johnson-iii-tests (last visited August 2, 2019). WJ-III refers to the third edition and WJ-IV refers to the fourth edition of the Woodcock-Johnson test.

assess his limitations. Both Dr. Heiser's and Dr. Cott's reports were substantially identical. *See* ECF No. 4-3 at 2–19.

Dr. Heiser's and Dr. Cott's reports opined that Plaintiff had problems in the domain of acquiring and using information but did not meet or equal listing level. *Id.* at 6, 15. Dr. Heiser and Dr. Cott further opined that Plaintiff had marked problems in the domain of interacting and relating with others, and noted that Plaintiff was verbally aggressive and had gotten into physical altercations. *Id.* at 6, 15. Dr. Heiser and Dr. Cott found that Plaintiff had either no limitations or less than marked limitations in the remaining domains of functioning. *Id.* at 6–7, 15–16.

g. Psychiatric Evaluations

Since 2012, Plaintiff has received a number of psychiatric evaluations at the Hillcrest Children's Center. Plaintiff's psychiatric evaluation in 2012 by Dr. Marjorie Warren reported that his speech was clear and his sensorial and intellectual functions were alert with no significant disturbance. ECF No. 4-7 at 2–3. Plaintiff's 2015 and 2016 psychiatric evaluations by Dr. Walter Faggett reported him as irritable and compulsive and noted that he did not want to take his medications. ECF No. 4-7 at 82; ECF No. 4-8 at 49.

D. Procedural History

Plaintiff's mother applied for Plaintiff to receive supplemental security income from the SSA on August 15, 2013, alleging impairment from ADHD. ECF No. 4-3 at 2. His application was denied initially in February 2014. ECF No. 4-4 at 2. It was again denied on reconsideration in May 2014. *Id.* at 10.

Thereafter, Plaintiff requested a hearing before an ALJ, which was held in January 2017. ECF No. 4-2 at 35. The ALJ issued his decision denying Plaintiff's application for benefits in

March 2017, finding that Plaintiff was not disabled because he did not have an impairment or combination of impairments that functionally equaled the severity of the listings. *Id.* at 30.

Having exhausted his administrative remedies, Plaintiff commenced this action under 42 U.S.C. § 405(g), seeking review of the Commissioner's denial of his supplemental security income claim. ECF No. 7. Plaintiff requests this Court reverse the Commissioner's decision and remand the case solely for the calculation of benefits, or, in the alternative, issue an order remanding the case to the Commissioner for a new administrative hearing. *Id.*

II. LEGAL STANDARD

A federal district court has jurisdiction over a civil case challenging a final decision of the Commissioner. 42 U.S.C. § 405(g). A reviewing court must affirm the Commissioner's decision if it is based on substantial evidence in the record and the correct application of the relevant legal standards. *Id.*; *Butler v. Barnhart*, 353 F.3d 992, 999 (D.D.C. 2004). The plaintiff bears the burden of proving that the Commissioner's decision is not supported by substantial evidence. *Butler*, 353 F.3d at 999; *see also Brown v. Barnhart*, 408 F. Supp. 2d 28, 31 (D.D.C. 2006).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (*quoting Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). It requires "more than a mere scintilla of evidence, but can be satisfied by something less than a preponderance of the evidence." *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 365–66 (D.C. Cir. 2003). "The substantial evidence standard requires considerable deference to the decision rendered by the ALJ." *Crosson v. Shalala*, 907 F. Supp. 1, 2 (D.D.C. 1995). The reviewing court may neither reweigh the evidence presented to it nor replace the Commissioner's judgment "concerning the credibility of the evidence with its own." *Id.* at 3; *see also Butler*, 353 F.3d at 999 (finding that the district court's role is not to

reweigh the evidence but only to determine whether the ALJ's findings are "based on substantial evidence and a correct interpretation of the law"). The court's job "is to review the determinations actually made by the ALJ" rather than to make those determinations for itself, *Ward v. Berryhill*, 246 F. Supp. 3d 202, 209 (D.D.C. 2017), or credit "post-hoc rationalization[s]" advanced by the parties, *Cooper v. Berryhill*, No. 16-cv-1671 DAR, 2017 WL 4326388, at *5 (D.D.C. Sept. 28, 2017). However, "this standard of review requires the Court to carefully scrutinize the entire record to ensure that the Commissioner, through the ALJ, has both analyzed all of the evidence available and has sufficiently explained his/her reasoning and the weights given to the facts." *Pinkney v. Astrue*, 675 F. Supp. 2d 9, 14 (D.D.C. 2009); *see also Lane-Rauth v. Barnhart*, 437 F. Supp. 2d 63, 65 (D.D.C. 2006) ("[T]his standard of review 'calls for careful scrutiny of the entire record,' to determine whether the Commissioner, acting through the ALJ, 'has analyzed all evidence and has sufficiently explained the weight he has given to obviously probative exhibits[.]'" (second alteration in original) (quoting *Butler*, 353 F.3d at 999)).

III. DISCUSSION

Plaintiff contends that the ALJ's determination that he is not disabled was erroneous because the ALJ failed to consider all the evidence, including Plaintiff's WJ-III test scores and his disciplinary record, and failed to properly weigh the opinion of the State Agency consultants. He also argues that the ALJ failed to perform a proper assessment of Plaintiff's credibility.

As explained below, neither argument is persuasive. Substantial evidence supports the ALJ's conclusion that Plaintiff did not have marked impairments in either of the domains of functioning that Plaintiff challenges on appeal, specifically those of (1) acquiring and using information, and (2) of interacting and relating with others. In making his step three determination, the ALJ analyzed a wide range of medical and non-medical evidence and properly considered the

evidence that Plaintiff contends supports his disability claim. Additionally, the ALJ properly explained that he did not credit Plaintiff's subjective claims as to the severity of his symptoms because they were contradicted both by other aspects of testimony of Plaintiff and of his mother and by other objective evidence in the record.

A. The ALJ's Evaluation of Plaintiff's Impairments at Step Three

1. Acquiring and Using Information Domain

The domain of acquiring and using information concerns how well a child acquires or learns information, and how well the child uses the information learned. 20 C.F.R. § 416.926a(g). It involves how well the child perceives, thinks about, remembers, and uses information in all settings, including daily activities at home, at school, and in the community. *Id.*; *see also* Social Security Ruling ("SSR") 09-03p, 2009 WL 396025 (Feb. 17, 2009). Social Security regulations provide that children between twelve and eighteen years of age without an impairment should continue to demonstrate what they have learned in academic assignments; should be able to use what they have learned in daily living situations without assistance; should be able to comprehend and express both simple and complex ideas, using increasingly complex language in learning and daily living situations; and should learn to apply these skills in practical ways that will help them enter the workplace after finishing school. 20 C.F.R. § 416.926a(g)(2)(v). By way of illustration, the Social Security regulations provide examples of limited functioning in acquiring and using information that children of different ages might have: the child has difficulty recalling important things learned in school yesterday; the child does not use language appropriate for age; the child is not developing "readiness skills" the same as peers (learning to count, reciting ABCs); the child has difficulty comprehending written or oral directions; the child struggles with following simple

instructions; the child has difficulty solving mathematics questions or computing arithmetic answers; or the child only talks in short, simple sentences, and has difficulty explaining what they mean. 20 C.F.R. § 416.926a(g)(3); *see also* SSR 09-03p, 2009 WL 396025, at *6. The regulations emphasize that the examples are merely illustrative and "do not necessarily describe a "marked" or "extreme" limitation" in this domain. 20 C.F.R. § 416.926a(g)(3). Rather, whether and to what extent that an example applies in each case "depends on [the child's] age and developmental stage." *Id.* For example, an inability to recite the alphabet would be interpreted differently in a pre-school-aged child from in an adolescent. *See id.* ("[A]n example below may describe a limitation in an older child, but not a limitation in a younger one.").

Here, the ALJ concluded that "the record evidences less than marked limitation in acquiring and using information because although [Plaintiff's] reading skills have remained below average, he has stayed on grade level and progressed overall in the regular education program." ECF No. 4-2 at 24. This conclusion should be upheld as it is supported by substantial evidence, which the ALJ identified in the record. Specifically, he reviewed Plaintiff's testimony showing that he had obtained close to a C average (GPA 1.91), was graduating that year, and intended to go to college. *Id.* at 23. The ALJ noted that Plaintiff had performed better as a twelfth grader than 30% of his peers in his high school class and had a class rank of 61/86. *Id.* Despite Plaintiff's low average reading scores, the ALJ observed that Plaintiff was performing at the average range of his class in math and writing. *Id*. The ALJ further noted that Plaintiff's TQs revealed "no worse than an obvious problem in this domain of functioning" (as opposed to a "serious" or "very serious" problem), and that Plaintiff was "successful in the general education curriculum with some accommodations and modifications." *Id.* at 23. The ALJ further noted that although a recent IEP identified Plaintiff as learning disabled, it nonetheless reported that "he [was] participating in school

and completing work with peers non-special education peers." *Id.* Overall, the ALJ found that Plaintiff's "academic performance has been good." *Id.* Moreover, the ALJ observed that the Plaintiff's mental health treatment notes revealed "no significant disturbance in sensorial or intellectual functioning." *Id.* at 24. Together, this explanation is more than sufficient to "build an accurate and logical bridge" that "clearly explain[s] which pieces of evidence led [the ALJ] to his conclusion" that Plaintiff has less than a marked limitation in acquiring and using information. *Lane-Rauth*, 437 F. Supp. 2d at 67 (quoting *Scott v. Barnhart*, 297 F.3d 589, 595 (7th Cir. 2002); *see also Butler*, 353 F.3d at 999; 42 U.S.C. § 405(g).

The ALJ's analysis also contradicts Plaintiff's assertion that he failed to consider Plaintiff's WJ-III reading scores that were "Low Average" in the seventh grade, and between "Low Average" and "Very Low" in the eleventh grade. ECF No. 7-1 at 6. In fact, the ALJ specifically references Plaintiff's "intelligence testing" in his analysis, stating Plaintiff "has obtained low average reading scores but average math and writing scores." ECF No. 4-2 at 23. Similarly, the decision's conclusion directly cites Plaintiff's WJ-III test scores from the record and reiterates that "[Plaintiff] is performing at the average range in Math and Writing and Low Average in Reading." *Id.* at 29. Although the WJ-III tests are not referred to by name, the ALJ plainly considered Plaintiff's reading scores from those tests.

Having considered those scores, the ALJ nevertheless determined that other facts offset Plaintiff's reading challenges and supported the conclusion that Plaintiff has less than a marked limitation in acquiring and using information. *Id.* at 23–24. The ALJ highlighted that Plaintiff was able to perform at grade level in math and writing and had progressed academically, which shows that Plaintiff's reading skills had not stunted his ability to acquire and use information necessary to perform well in other academic areas and to graduate. *Id.* at 23–24, 29. The undersigned

finds no error in that analysis. *Cf. Lane-Rauth*, 437 F. Supp. 2d at 67 ("[An ALJ] must at least minimally discuss a claimant's evidence that contradicts the Commissioner['s] position.") (*quoting Godbey v. Apfel*, 238 F.3d 803, 808 (7th Cir. 2000)). Plaintiff's claim with respect to the domain of acquiring and using information should be denied.

2. Interacting and Relating with Others

The domain of interacting and relating to others considers how well a child is able to initiate and sustain emotional connections, develop and use the language of the community, cooperate with others, comply with rules, respond to criticism, and respect and take care of the possessions of others. *See* 20 C.F.R. § 416.926a(i). To interact and relate effectively in any activity, a child must be able to recognize, understand, and respond appropriately to emotional and behavioral cues from other people. SSR 09-5p, 2009 WL 396026, at *2 (Feb. 17, 2009). Social Security regulations provide that adolescents without an impairment should be able to initiate and develop friendships with children who are their age and relate appropriately to other children and adults, both individually and in groups; should be able to solve conflicts between themselves and peers or family members of adults outside their family; should recognize that there are different social rules for them and their friends and for acquaintances and adults; should be able to intelligibly express feelings, ask for assistant in getting their needs met, seek information, describe events, and tell stories, in all kinds of environments and with all types of people. 20 C.F.R. § 416.926a(i)(2)(v). By way of illustration, the Social Security regulations provide examples of limited functioning in this domain that children of different ages might have: the child has no close friends, or all friends are older or younger than the child; the child avoids or withdraws from people they know, or is overly fearful or anxious of meeting new people or trying new experiences; the child has difficulty playing games or sports with rules; the child has difficulty communicating with others; or the child

has difficulty speaking intelligibly or with adequate fluency. 20 C.F.R. § 416.926a(i)(3); *see also* SSR 09-5p, 2009 WL 396026 at *3. Again, these examples do not necessarily describe "marked" or "extreme" limitations in the domain of interacting and relating with others, and will apply differently based on the child's stage of development. *See* 20 C.F.R. § 416.926a(i)(3).

Here, the ALJ concluded that "the record shows less than a marked limitation in interacting and relating with others because despite the [Plaintiff's] disciplinary record, he has achieved mood stabilization with noninvasive treatment measures." ECF. No. 4-2 at 26. This conclusion should be upheld as it is supported by substantial evidence which the ALJ identified in the record. Specifically, the ALJ referenced testimony that "[Plaintiff] could get along with others and play team sports," and his twelfth-grade TQ which reported "no worse than an obvious problem in this domain of functioning" and that "most of [Plaintiff's] behaviors are close to average now." *Id.* The ALJ further explained that, although Plaintiff had "serious behavior problems," he was "calmer and cooperative with medications." *Id.* at 29. With the help of that medication, the ALJ found that Plaintiff had "stabilized" and "been able to control his behavior enough to progress in school and participate in football." *Id.* at 26. Together, this evidence is sufficient to support the ALJ's opinion that Plaintiff has less than marked limitation in the domain of interacting and relating to others.

Plaintiff argues that the ALJ's decision was nevertheless erroneous because it "sidestepped" the opinion of the State Agency consultants, who concluded that Plaintiff had a marked limitation in interacting and relating with others. ECF No. 7-1 at 7. Not so. The ALJ expressly referenced the opinions of the State Agency consultants in his decision, but found that they were undercut by evidence in the record which the consultants had not considered. ECF No. 4-2 at 21. That evidence included Plaintiff's testimony at the hearing that he was able "to control his behavior

to progress in school and maintain membership on his high school football team," and recent TQs revealing "no worse than an obvious problem" in interacting and relating with others. *Id.* at 21–22. The ALJ thus did not "sidestep" the State Agency consultants' opinions, but weighed them against new evidence that supported the conclusion that Plaintiff had a less-than-marked limitation with respect to interacting and relating with others. The undersigned sees no basis to overturn that evaluation. It is the ALJ who determines what weight to give the State Agency consultants' opinions, not the reviewing court. *See Goodman v. Colvin*, 233 F. Supp. 3d 88, 109 (D.D.C. 2017) **("**Plaintiff must do more than point to a different conclusion that the ALJ could have reached to demonstrate that the ALJ's credibility determination was patently wrong."); *see also Crosson*, 907 F. Supp. at 3 ("[T]he reviewing court may not reweigh the evidence presented to it, nor may it replace the [ALJ's] judgement concerning the credibility of the evidence with its own.").

Plaintiff also faults the ALJ for "fail[ing] to mention the vast majority" of his reprimands, suspensions, expulsions, arrests, fights, and gang activity. ECF No. 7-1 at 7–8. Plaintiff's argument is overstated and should be rejected. The ALJ did address Plaintiff's disciplinary record. When assessing Plaintiff's limitation in interacting and relating with others, the ALJ noted that "there are several disciplinary actions documented in the record, including one expulsion and arrest" and that "recent education records also show [Plaintiff] engaging in crew/gang intimidation." ECF No. 4-2 at 26. The ALJ further acknowledged in his conclusion that Plaintiff "has serious behavioral problems." *Id.* at 29. Plaintiff's assertion that the ALJ erred by not mentioning every part of that record—every suspension, every expulsion, every arrest—finds no support in the case law. S*ee Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("Although required to develop the record fully and fairly, an ALJ is not required to discuss every piece of evidence submitted."); *Herron v. Shalala*, 19 F.3d 329, 333 (7th Cir. 1994) ("[A] written evaluation of each piece of

evidence or testimony is not required."). The standard in this district requires an ALJ to "at least minimally discuss a claimant's evidence that contradicts the Commissioner['s] position." *Lane-Rauth*, 437 F. Supp. 2d at 67. The ALJ exceeded that standard here.

The ALJ then provided the necessary "logical bridge" from the evidence of Plaintiff's disciplinary record to his conclusion that it was insufficient in light of the entire record to demonstrate that Plaintiff had a marked limited in interacting and relating with others:

> [T]he [Plaintiff's] gang involvement and other negative social behaviors appear to flow from his environment, rather than as a symptom of his mental condition. In fact, he has been able to control his behavior enough to progress in school and participate in football. Treatment notes similarly show the absence of significant symptomology. At times he has expressed concerns of mood and behavioral disturbance. However, he has also reported having a good social network and a participating in afterschool activities. Upon examination, he has shown irritability and aggressiveness on some occasions but remained cooperative with good eye contacts on many others. There is no evidence of ideations or psychomotor agitation. Overall, his behavior has stabilized with the aid of Risperdal.
>
> Based on the above, the record shows less than a marked limitation in interacting and relating with others because despite [Plaintiff's] disciplinary record, he has achieved mood stabilization with noninvasive treatment measures.

ECF. No. 4-2 at 26 (citations to the record omitted). The ALJ's conclusion flows logically from his assessment of the evidence, including his consideration of Plaintiff's disciplinary record.[4] It should be upheld.

B. Plaintiff's Subjective Statements

The undersigned also recommends rejecting Plaintiff's argument that the ALJ "failed to perform a proper assessment of Plaintiff's credibility." ECF No. 7-1 at 3. The SSA's regulations

[4] The ALJ also properly considered Plaintiff's positive response to medication and failure to comply with his drug regimen. *See Goodman*, 233 F. Supp. 3d at 107 ("An ALJ may also situate a claimant's limitations within the context of a claimant's subsequent success with medication and the extent to which the disabling pain is controlled with treatment."); *see also Lee v. Barnhart*, 214 F. App'x 660, 661 (9th Cir. 2006) ("[The plaintiff] was not disabled . . . because he suffered from an impairment that improved with conservative treatment"); *see also* 20 C.F.R. § 416.930(b)-(c) (failure to follow a prescribed treatment plan without a good reason (e.g., religious grounds; or the magnitude, unusual nature, or risk involved in the treatment) is a basis for denying a claimant benefits).

require the ALJ to assess and discuss the credibility of the plaintiff's statements regarding the intensity and persistence of his symptoms. SSR 96-7p, 1996 WL 374186, at *4 ("The finding on the credibility of the individual's statements cannot be based on an intangible or intuitive notion about an individual's credibility. The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision."). This credibility determination is "solely within the realm of the ALJ." *Grant v. Astrue*, 857 F. Supp. 2d 146, 156 (D.D.C. 2012). "A reviewing court will only intercede where an ALJ fails to articulate a rational explanation for his or her finding." *Id.* Therefore, "deference should be given to the ALJ in the determination of whether a [plaintiff's] alleged pain is credible, allowing the ALJ to weigh some opinions more heavily than others." *Thomas v. Astrue*, 677 F. Supp. 2d 300, 308 (D.D.C. 2010). However, the ALJ's determination must make clear "the weight [given] to the individual's statements and the reasons for that weight." SSR 96-7P, 1996 WL 374186, at *2; *see also Brown v. Bowen*, 794 F.2d 703, 708 (D.C. Cir. 1986) (the ALJ must "not only state their findings but explicate the reasons for their decision").

In the present case, the ALJ explained the weight given to Plaintiff's testimony as follows:

> After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce [some of the] alleged symptoms; however, the statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.

ECF No. 4-2 at 21. Citing that paragraph, Plaintiff argues that the ALJ "failed to identify a single subjective complaint to which he was referring" and provided "no explanation or analysis regarding any lack of consistency [between Plaintiff's complaints and] the evidence of record." ECF No. 7-1 at 3–4.

Plaintiff is incorrect. In the paragraph immediately preceding the one quoted above, the ALJ identified Plaintiff's subjective complaints:

> [Plaintiff] complained of anger management problems. He said that his school expelled him in the ninth grade for fighting. He testified that he is working on this self-destructiveness. He added that he has trouble concentrating, learning, and keeping still. . . . He indicated that he has to get up and walk around during class.

ECF No. 4-2 at 21. And in the rest of his decision, the ALJ identified the evidence that was inconsistent with Plaintiff's complaints and which lead him to the conclusion that they would not be given controlling weight. Considering Plaintiff's testimony about his anger management problems, disciplinary record, self-destructiveness, and inattention, the ALJ found that Plaintiff's and his mother's testimony showed his symptoms improved with non-invasive Risperdal and ADHD medication, and that Plaintiff was able to control his behavior and work positively with his teachers in order to graduate. *Id.* at 21–22, 26. The ALJ also analyzed Plaintiff's limitation in reading, but highlighted his C grade, average performance in math and writing, and that he was performing better than 30% of his peers, all of which show less-than-marked limitations. *Id.* at 23, 29. In addition, the ALJ relied on TQs from Plaintiff's twelfth-grade teachers to show that Plaintiff's behavior and academic ability were "close to average," and noted that Plaintiff's education records likewise reflect his adequate performance despite his impairments. *Id.* at 22. The ALJ also cited the opinions of the State Agency consultants who opined that his impairments did not medically or functionally equal the listings necessary for a disability claim. *Id.* at 21.

Thus, the ALJ did not reject Plaintiff's subjective statements without properly evaluating their credibility in light of other evidence in the record. The Court therefore should find no error in the ALJ's assessment of those Plaintiff's statements. *See Claymore v. Astrue*, 519 F. App'x. 36, 38 (2nd Cir. 2013) ("Where the ALJ clearly considered the plaintiff's complaints but sufficiently explained his credibility determination, supported by the record, we find no error.").

IV. CONCLUSION

For the reasons stated above, the undersigned recommends that Plaintiff's motion for judgment of reversal (ECF No. 7) be **DENIED** and Defendant's motion for judgment of affirmance (ECF No. 12) be **GRANTED**.

* * * * *

The parties are hereby advised that under the provisions of Local Rule 72.3(b) of the United States District Court for the District of Columbia, any party who objects to the Report and Recommendation must file a written objection thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the report and/or recommendation to which objection is made, and the basis for such objections. The parties are further advised that failure to timely file objections to the findings and recommendations set forth in this report may waive the right of appeal from an order of the District Court adopting such findings and recommendations. *See Thomas v. Arn*, 474 U.S. 140 (1985).

Date: August 2, 2019

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G. MICHAEL HARVEY
UNITED STATES MAGISTRATE JUDGE