UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA Deborah Ann Keller,

Plaintiff, vs. Andrew Saul, Commissioner of Social Security,

Defendant.

Civil Action No. 5:19-3233-MBS-KDW

REPORT AND RECOMMENDATION

OF MAGISTRATE JUDGE

This appeal from a denial of social security benefits is before the court for a Report and Recommendation ("Report") pursuant to Local Civil Rule 73.02(B)(2)(a) (D.S.C.). Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) to obtain judicial review of the final decision of the Commissioner of Social Security ("Commissioner") denying her claim for Supplemental Security Income ("SSI") pursuant to the Social Security Act ("the Act"). For the reasons that follow, the undersigned recommends that the Commissioner's decision be affirmed. I. Relevant Background A. Procedural History

On December 13, 2016, 1

Plaintiff protectively filed for SSI pursuant to Title XVI of the Act, alleging she became disabled on July 27, 2016. Tr. 275-81. After being denied initially, Tr. 207-10, and upon reconsideration, Tr. 214-17, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), Tr. 218-20. The ALJ conducted a hearing on June 28, 2018. Tr. 86-138. The ALJ denied Plaintiff's claim in a decision dated October 9, 2018. Tr. 39-52. The Appeals Council denied her request for review on September 13, 2019, Tr. 1-4, making the ALJ's October 2018 decision the Commissioner's final decision for purposes of judici al review. Plaintiff brought this action seeking

1 Although the Application Summary is dated January 4, 2017, as reflected in the Disability Determination and Transmittal, Plaintiff's protected filing date was December 13, 2016. See Tr. 182.

2 judicial review of the Commissioner's decision in a Complaint filed November 15, 2019. ECF No. 1.

B. Plaintiff's Background Plaintiff was born in March of 1969, and was 47 years old as of her alleged onset date of July 27, 2016. Tr. 294. In her form Disability Report-Adult, Plaintiff indicated that she completed high school and had no other specialized job training, trade, or vocational schooling. Tr. 298. She listed her past relevant work ("PRW") as goods processor and sales representative. Id. Plaintiff indicated she stopped working on January 1, 2011, due to her medical conditions. Tr. 297. She listed the following medical conditions as contributing to her inability to work: joint pain, knee replacement needed, vision problems, bone pain, and all over body pain. Id. C. Administrative Proceedings

On June 28, 2018, Plaintiff appeared with her attorney representative for an administrative hearing in Augusta, Georgia. Tr. 86-138. Vocational Expert ("VE") William Eugene Villa also appeared and testified. Id.

1. Plaintiff's Testimony On the date of the hearing, Plaintiff was 49 years old. Tr. 106. In response to questions from the ALJ Plaintiff testified that she lives in a one-story family home in Aiken, South Carolina with her husband. Tr. 92; 96. Plaintiff testified that her weight goes up and down, but on the date of the hearing she weighed 254 pounds. Tr. 93. She testified certain dietary restrictions have been prescribed, and medical providers have recommended that she ride an adult tricycle. Tr. 94. Plaintiff estimated that she rides the tricycle about twice a month in the cul-de-sac where she lives. Id. Plaintiff testified she can ride for only a brief time because she will break out like she has "measles from the lupus" from being in the sun, and her body starts deteriorating. Tr. 95. She

3 explained that her muscles start aching badly, and she will shut down and not be able to walk. Id. Further, she testified that once she gets off the tricycle, her "knees are not the same." Id. Plaintiff explained that she will participate in water aerobics, and feel fine, but that once she exits the water, she experiences aches and pains again. Id. Plaintiff testified that though she has a driver's license, she did not drive to the hearing. Tr. 95. She estimated that she drives four times in a month. Id. Plaintiff testified that she has been issued a permanent handicapped parking pass from a doctor in Harrisburg. Tr. 96. Plaintiff testified she has no sources of income, including any government benefits, military benefits, short or long- term disability. Id. Plaintiff testified that her husband works full time outside the home. Tr. 96-97. Plaintiff graduated from high school. Tr. 97. From 2003-2006, Plaintiff worked as a sales representative and then assistant manager at the Salvation Army. Id. She testified that as an assistant manager she had to perform all types of tasks, including lifting the donations that came in. Id. As a sales associate, Plaintiff took in donations, tagged inventory, and helped move furniture. Tr. 98. While working at the Salvation Army, Plaintiff was on her feet all day; she rang up customers; and worked the cash register. Tr. 98-99. Plaintiff left the Salvation Army in 2006, to start working at Hallmark where she worked until 2011. Tr. 100. Plaintiff

testified she worked part time there until she became a territory manager and had to travel between 17 different stores. Id. Plaintiff testified she would not be able to work as a full-time employee there because of the lifting that was required and the concrete floor. Tr. 101. Plaintiff testified that she has not worked since 2011. Id. Further, she testified that she has not looked for work since then because she cannot work. Id. Concerning her health issues, Plaintiff agreed that she has problems with osteoarthritis, joint pain, degenerative joint disease in her knees and hips, aseptic necrosis in her hips, and problems

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4 with her back. Tr. 102. Plaintiff testified that she gets shots every three months for her knees, and "they draw fluid." Id. Specifically, she testified: "I get six needles in my knee." Tr. 103. Plaintiff explained that her knee swells, and she has no cartilage in it. Id. Further, she testified that the swelling is big and runs down her legs all the way down to her ankles. Id. Plaintiff testified that after the procedure and after the fluid is "pulled o ff," her knee feels better, but she did not think her ability to do activities had improved. Id. Plaintiff testified that she got a cane after she was diagnosed with arthritis problems. Tr. 104. Plaintiff testified that she has a cane to help her with walking but uses a scooter once she gets into a store. Tr. 103-04. She explained that she has a limp when she walks. Tr. 103. Plaintiff testified that she has the cane with her at all times but did not use it to walk into the hearing. Tr. 104. Plaintiff agreed that she has never had surgery on her back, hips, or knees, and no surgery is planned. Tr. 105. Plaintiff testified that she will continue her treatment regimen until she gets to the point where she "just can't take it" and then she will undergo surgery. Id. Because of her age, Plaintiff is postponing the surgeries for as long as possible. Tr. 106. Concerning her mental health, Plaintiff testified that she suffers from depression and is taking pills at night to sleep. Tr. 106. Further, she explained that the pills stop visions and voices she hears so that she can get a good night's slee p. Tr. 106-07. Plaintiff testified that she is not getting other treatment for her mental health, like counseling. Tr. 107. Plaintiff testified that she feels like she has a good memory and good focus. Id. Plaintiff explained that she sleeps all day and does not get out much. Id. Specifically, she testified that she spends the majority of her time on the couch. Tr. 108. Plaintiff testified she also experiences anxiety attacks and cannot stay in rooms with closed doors for too long. Tr. 108-09. Further, Plaintiff stated the attacks have been occurring

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5 for two weeks, and she has not had a chance to discuss them with her primary care physician. Tr. 109-10. Plaintiff testified that she was not wearing contact lenses on the date of the hearing, but she had reading glasses. Tr. 110. She could read a sign at the back of the courtroom. Id. Plaintiff recalled having ovarian cancer in 2002, but she testified she has not had any issues related to it. Tr. 111. Concerning her current medications, Plaintiff agreed that the court exhibit regarding them was accurate, 2

and she was not taking anything else. Tr. 112. She did not believe that the medications were causing her any side effects. Id. Regarding her ability to lift and carry, Plaintiff testified that she can carry a pot to the stove, and "that's about it." Tr. 113. She testified sh e is unable to sweep, mop, dust, or clean the bathroom. Id. She testified that she is unable to assist with unloading the groceries—that her husband does that. Id. Plaintiff testified she can walk only a short distance before she needs to sit down. Id. Plaintiff testified that she is able to sit in a chair for a short period of time because of the pain she experiences. Tr. 114. Specifically, she testified that she could sit for another fifteen minutes during the hearing. Id. When asked whether she could attend to her personal-care needs, Plaintiff testified that she struggles to comb her hair and will avoid taking showers because of shortness of breath and aching in her joints. Tr. 114-15. She testified she can do the laundry while sitting in a kitchen chair. Tr. 115. However, she testified she is not doing any outside chores like gardening. Tr. 115-16. Plaintiff testified that she and her husband will go to a restaurant together for fun at times. Tr. 116. She testified that during the day she will get on a tablet and participate in an

2 Plaintiff's medications at the time of the hearing included: nasal spray and Claritin D for allergies; Gabapentin and Ibuprophen for arthritis; Ranitidine for digestion; Leflunomide for fluid; Hydrochlorathiazide for high blood pressure; Hydrochloroquine for Lupus; Gitalopram and Clonidine for depression. Tr. 337.

6 internet rock club. Id. She explained that she will go out and find a rock that is hidden around Aiken, and then she will paint one of her own and put it somewhere else. Tr. 116-17. In response to questions from her attorney Plaintiff testified that when she goes out to look for rocks she cannot walk for a long time. Tr. 118. She testified that she can go for 10-15 minutes at a time before she needs to sit down. Tr. 118-19. She testified that it has been three months since she has gone to search for the rocks. Tr. 119. Plaintiff testified that she is allowed to take 800 milligrams of Ibuprofen three times a day, and sometimes it helps with her pain. Tr. 120-21. Additionally, she testified she will rub an ointment on her joints when the medicine does not work. Tr. 121. She testified that she has problems with both knees, but the right knee is worse. Id. She sees her rheumatologist every three months, and she takes Gabapentin for her arthritis which helps. Tr. 122. Plaintiff takes Hydroxychloroquine for her Lupus. Id. Plaintiff agreed that on a "bet ter day" she tries to do things, like load the dishwasher. Tr. 122-23. She testified that she can load the dishwasher while sitting down. Tr. 123. She also agreed that her day is just changing positions and getting up and down as needed. Id. Plaintiff testified that she must wear Depends because some days she cannot get up to use the bathroom. Tr. 124. Plaintiff guessed that she started wearing Depends two years before the hearing. Tr. 124-25. Plaintiff testified that if she gets to another stage with her arthritis that her rheumatologist will change or add to her medication regimen; however, the treatment of shots and fluid drainage from her knee was working. Tr. 127. She testified that she receives shots in both knees, and both are drained. Tr. 127- 28. Further, she agreed that both hips hurt, but her right is worse. Tr. 128. She testified that though she is 49 years old, she has the body of a 60 year old. Tr. 129. Plaintiff

testified that she has pain in her arms through her elbows. Id. She testified that if she does too much on her good days that she will be "out" for days afterwards, and she must pace herself. Tr. 130.

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2. VE's Testimony The VE identified Plaintiff's past work as a salesclerk with the Salvation Army as, medium, Specific Vocational Preparation ("SVP") of 3, semi -skilled, and Dictionary of Occupational Titles ("DOT") number 279.357-054. Tr. 132. The ALJ asked the VE to assume an individual of the same age, education, and work experience as a salesclerk who is limited to sedentary work with the following limitations: "no more than occasional use of the bilateral lower extremities for foot controls; no more than occasional stooping, kneeling, crouching, crawling, balancing, climbing ramps and stairs." Tr. 133. Further, the ALJ asked that the work be limited to these other limitations: "No climbing ladders, ropes or scaffolds, no exposure to hazards such as unprotected heights and dangerous machinery, and no more than occasional exposure to extremes of heat. . . ." Id. The VE testified that given all the limitations posed, the hypothetical individual could not perform work as a salesclerk, and that a salesclerk's work is " light" as opposed to sedent ary. However, the VE identified the following available positions: semiconductor bonder, DOT 726.685-066, with 23,000 nationally; sedentary unskilled printed circuit board assembler, DOT 726.684-110, with 36,000 nationally; and a sedentary unskilled optical accessory polisher, DOT 713.684-038, with just under 22,000 nationally. Id. The ALJ asked the VE to change the hypothetical to an individual performing simple routine tasks, but is able to maintain concentration, persistence and pace for periods of two hours; perform activities within a schedule; maintain regular attendance and complete a normal workday and workweek; and no jobs that require more than occasional interaction with the general public. Tr. 134. The VE testified that the three positions he mentioned would still be available under the hypothetical with substantially the same numbers. Id.

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8 The ALJ posed a third hypothetical to an individual who was off task in a working environment as a given percentage of the workday for reasons that include concentration, persistence, and pace for periods of two hours, or for any other reason it takes him out of the working environment such as have to sit down, lay down, elevate their feet, take unscheduled breaks for any reason. Tr. 134. Specifically, he asked the VE to consider "this hypothetical individual regardless of any other limitations here she may have, if any, but they're going to be off task 20 percent of the workday or more, and that's in addition to the normal breaks provided, and will continue on recurring basis." Tr. 134. The VE testified there would be no work for the individual in the third hypothetical. Id. In a fourth hypothetical, the ALJ asked that the VE consider an individual with a varying amount of absences in a given month. Tr. 135. Specifically, The ALJ posed that the individual would be absent three times in a given month, and those absences would continue monthly. Id. The VE testified no

work would be available to such an individual. Id. Plaintiff's attorney asked the VE to consid er an individual "adding up their time standing and/or walking and/or sitting during a workday is going to in any combination whatsoever come up to no more than approximately seven hours a day." Tr. 136. The VE testified that the hypothetical would affect the ability to do the jobs he had named and that such an individual would be considered "sub-sedentary." Id. The VE agreed that anything less than an eight-hour workday would be considered "sub-sedentary." Id. II. Discussion

A. The ALJ's Findings In his October 9, 2018 decision, the ALJ made the following findings of fact and conclusions of law:

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1. The claimant has not engaged in substantial gainful activity since December 13, 2016, the application date (20 CFR 416.971 et seq.). 2. The claimant has the following severe impairments: bilateral knee degenerative joint disease, aseptic necrosis of the bilateral hips, Raynaud's syndrome, obesity, depre ssion, anxiety and personality disorder (20 CFR 416.920(c)). 3. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). 4. After careful consideration of the entire record, I find that the claimant had the residual functional capacity to perform sedentary work as defined in 20 CFR 416.967(b) except she can occasionally operate foot controls with her bilateral feet and occasionally balance, stoop, kneel, crouch, and crawl. She can occasionally climb ramps and stairs, but never climb ladders, ropes, or scaffolds. She should never be exposure to hazards such as unprotected heights and dangerous machinery, but can have occasional exposure to extremes of heat and cold. The claimant is further limited to simple, routine tasks, but is able to maintain concentration, persistence, and pace for periods of two hours, perform activities with a schedule, maintain regular attendance, and complete a normal workday and work week. She can occasionally interact with the general public. 5. The claimant is unable to perform any past relevant work (20 CFR 416.965). 6. The claimant was born on March 21, 1969 and was 47 years old, which is defined as a younger individual age 45-47, on the date the application was filed (20 CFR 416.963). 7. The claimant has at least a high school education and is able to communicate in English (20 CFR 416.964). 8. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2). 9. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant
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numbers in the national economy that the claimant can perform (20 CFR 416.969 and 416.969a). 10. The claimant was not been under a disability, as defined in the Social Security Act, since December 13, 2016, the date the application was filed (20 CFR 416.920(g)). Tr. 42-52.

B. Legal Framework 1. The Commissioner's Determination-of-Disability Process The Act provides that disability benefits shall be available to those persons insured for benefits, who are not of retirement age, who properly apply, and who are "under a disability," defined as:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 1382c(a)(3)(A). To facilitate a uniform and efficient processing of disability claims, regulations promulgated under the Act have reduced the statutory definition of disability to a series of five sequential questions. See, e.g., Heckler v. Campbell, 461 U.S. 458, 460 (1983) (discussing considerations and noting "need for efficiency" in considering disabil ity claims). An examiner must consider the following: (1) whether the claimant is working; (2) whether the claimant has a severe impairment; (3) whether that impairment meets or equals an impairment included in the Listings; 3

(4) whether

3 The Commissioner's regulations include an exte nsive list of impairments ("the Listings" or "Listed impairments") the Agency considers disabli ng without the need to assess whether there are any jobs a claimant could do. The Agency considers the Listed impairments, found at 20 C.F.R. part 404, subpart P, Appendix 1, severe enough to prevent all gainful activity. 20 C.F.R. § 416.925. If the medical evidence shows a claimant meets or equals all criteria of any of the Listed impairments for at least one year, he will be found disabled without further assessment. 20 C.F.R. § 416.920(a)(4)(iii). To meet or equal one of these Listings, the claimant must establish that his

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11 such impairment prevents claimant from performing PRW; and (5) whether the impairment prevents the claimant from performing specific jobs that exist in significant numbers in the national economy. See 20 C.F.R. § 416.920. These considerations are sometimes referred to as the "five steps" of the Commissioner's disability analysis. If a decision regarding disability may be made at any step, no further inquiry is necessary. 20 C.F.R. § 416.920(a)(4) (providing that if Commissioner can find claimant disabled or not disabled at a step, Commissioner makes determination and does not go on to the next step). A claimant is not disabled within the meaning of the Act if she can return to PRW as it is customarily performed in the economy or as the claimant actually performed the work. See 20 C.F.R. Subpart P, § 416.920(a), (b); Social Security Ruling ("SSR") 82- 62 (1982). The claimant bears the burden of establishing her inability to work within the meaning of the Act. 42 U.S.C. § 423(d)(5). Once an individual has made a prima facie showing of disability by establishing the inability to return to

PRW, the burden shifts to the Commissioner to come forward with evidence that claimant can perform alternative work and that such work exists in the regional economy. To satisfy that burden, the Commissioner may obtain testimony from a VE demonstrating the existence of jobs available in the national economy that claimant can perform despite the existence of impairments that prevent the return to PRW. Walls v. Barnhart, 296 F.3d 287, 290 (4th Cir. 2002). If the Commissioner satisfies that burden, the claimant must then establish that he is unable to perform other work. Hall v. Harris, 658 F.2d 260, 264-65 (4th Cir. 1981); see generally Bowen, 482 U.S. at 146, n.5 (regarding burdens of proof).

impairments match several specific criteria or be "at least equal in severity and duration to [those] criteria." 20 C.F.R. § 416.926; Sullivan v. Zebley, 493 U.S. 521, 530 (1990); see Bowen v. Yuckert, 482 U.S. 137, 146 (1987) (noting the burden is on claimant to establish his impairment is disabling

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12 2. The Court's Standard of Review The Act permits a claimant to obtain judicial review of "any fi nal decision of the Commissioner made after a hearing to which he was a party." 42 U.S.C. § 405(g). The scope of that federal court review is narrowly tailored to determine whether the findings of the Commissioner are supported by substantial evidence and whether the Commissioner applied the proper legal standard in evaluating the claimant's case. See id., Richardson v. Perales, 402 U.S. 389, 390 (1971); Walls v. Barnhart, 296 F.3d 287, 290 (4th Cir. 2002) (citing Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990)). The court's function is not to "try these cas es de novo or resolve mere conflicts in the evidence." Vitek v. Finch, 428 F.2d 1157, 1157–58 (4th Cir. 1971); see Pyles v. Bowen, 849 F.2d 846, 848 (4th Cir. 1988) (citing Smith v. Schweiker, 795 F.2d 343, 345 (4th Cir. 1986)). Rather, the court must uphold the Commissioner's decision if it is supported by substantial evidence. "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at 390, 401; Johnson v. Barnhart, 434 F.3d 650, 653 (4th Cir. 2005). Thus, the court must carefully scrutinize the entire record to assure there is a sound foundation for the Commissioner's findings, an d that his conclusion is rational. See Vitek, 428 F.2d at 1157–58; see also Thomas v. Celebrezze, 331 F.2d 541, 543 (4th Cir. 1964). If there is substantial evidence to support the decision of the Commissioner, that decision must be affirmed "even should the court disagree with such decision." Blalock v. Richardson, 483 F.2d 773, 775 (4th Cir. 1972).

at Step 3).

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C. Analysis

1. Weight given to treating physician opinions. Plaintiff alleges that the ALJ failed to properly assess medical source opinion evidence. Pl.'s Br. 15-26, ECF No. 13. Plaintiff maintains that a treating physician's opinion must be given controlling weight if it is well supported and not inconsistent with other substantial evidence of record. Id. at 15. Further, with regards to treating physicians Field and Bruckner, Plaintiff argues that the ALJ failed to consider the factors laid out in 20 C.F.R. §404.1527(d). Id. at 18. Specifically, Plaintiff argues that the "ALJ gave great weight to two non-treating, non-examining state agency physicians simply because they were consistent with his conclusions about [her] abilities." Id. at 19. Furthermore, Plaintiff submits that the "ALJ [did] not properly explain the partial weight assigned to the opinions and how that weight is evidenced in the RFC." Id. at 20.

The Commissioner argued that substantial evidence supports the ALJ's decision, and it should be affirmed. ECF No. 15. Moreover, the Commissioner maintains that substantial evidence supports the weight the ALJ afforded to the opinion evidence in the records, and the ALJ is not required to uncritically accept the medical opinion of a treating physician. Id. at 11-12. Rather, the Commissioner contends that ALJ is bound to evaluate the treating physician opinions under 20 C.F.R. § 416.927. Id. Moreover, the Commissioner argues that the ALJ did not fully discount the opinions of Drs. Bruckner and Field but assigned the opinions partial weight, and, in the physical realm assigned the Plaintiff to sedentary work, the lowest level of exertional work available. Id. at 14. Social Security regulations require that medical opinions in a case be considered together with the rest of the relevant evidence. 20 C.F.R. § 416.927(b). "Medical opinions are statements from acceptable medical sources that reflect judgments about the nature and severity of [a

14 claimant's] impairment(s), includi ng [the claimant's] sy mptoms, diagnosis and prognosis, what [the claimant] can still do despite impairment(s), and [the claimant's] physical or me ntal restrictions." 20 C.F.R. § 416.927(a)(1). Generally, the opinions of treating physicians are entitled to greater weight than other evidence and the regulations have enumerated particular factors for ALJs to consider when evaluating those opinions. See 20 C.F.R. § 416.927(c). If a treating source's medical opinion is "well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight[.]" SSR 96–2p; see also 20 C.F.R. § 416.927(c)(2) (providing treating source's opinion will be given controlling weight if well-supported by medically acceptable clinical and laboratory diagnostic techniques and not inconsistent with other substantial evidence in the record). However, "the rule doe s not require that the testimony be given controlling weight." Hunter v. Sullivan, 993 F.2d 31, 35 (4th Cir. 1992) (per curium); see also Craig v. Chater, 76 F.3d 585, 590 (4th Cir. 1996) (finding a physician's opinion should be accorded "significantly less weight" if it is not supported by the clinical evidence or if it is inconsistent with other substantial evidence). The ALJ has the discretion to give less weight to the opinion of a treating physician when there is "persuasive contrary evidence." Mastro v. Apfel, 270 F.3d 171, 176 (4th Cir. 2001). Here, Plaintiff maintains that the opinions of Drs. Bruckner and Field should have been afforded more weight, specifically their

opinions from 2018. The undersigned has reviewed the medical evidence contained in the administrative record including records prior to Plaintiff's alleged onset date of July 27, 2016. Medical records indicate Plaintiff saw Dr. Bruckner, her primary care physician ("PCP"), on January 6, 2016, where she complained of aches and pain related to Lupus. Tr. 358. Plaintiff's medical history indicated positive ANA, hypertension, GERD, anxiety, and depression. Id. Upon examination, the following was noted: non-labored respirations,

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15 normal heart rate, normal range of motion, no swelling, and a normal gait. Tr. 360. Her neurological examination indicated Plaintiff was alert, oriented, normal sensory, normal motor function, and normal deep tendon reflexes. Id. Plaintiff presented at University Hospital Emergency Room on April 20, 2016, where she complained of shortness of breath that was worse with exertion. Tr. 496. Plaintiff reported generalized fatigue and intermittent swelling of legs. Id. Her medical history of depression, allergy, arthritis, and lupus was noted. Id. This medical record indicates Plaintiff had muscle and joint pain but no gait problem, and her examination indicates she was well oriented, not in distress, unlabored respirations, and a normal range of motion. Tr. 497. Plaintiff was referred to rheumatology. Tr. 501. Plaintiff returned to Dr. Bruckner on April 26, 2016, and reported her visit to the Emergency Room, and Plaintiff relayed that she was seen there for a "flare up which included chest pain, shortness of breath, swelling, and pain." Tr. 354. She reported that she continued to have some issues with some other aches and pains that were related to lupus, but no other complaints were reported. Id. Plaintiff had a normal examination. Tr. 356. Plaintiff again presented at University Hospital Emergency Room on May 12, 2016, complaining of right flank pain which she reported as "sharp" and rated the pain as a 7/10. Tr. 416. She denied shortness of breath, chest pain, or cough. Id. A CT scan of her abdomen showed mild avascular necrosis of the bilateral femoral heads and a small hiatal hernia. Tr. 428. Plaintiff's final diagnosis was right flank pain, and she was instructed to follow up with her PCP. Tr. 421. Plaintiff presented to Dr. Bruckner on July 15, 2016, for her continued aches and pains related to Lupus. Tr. 350. Plaintiff had a regular examination, but bilateral crepitus was noted in her knees and ankles. Tr. 351-52. Plaintiff was diagnosed with positive ANA, hypertension, and body aches. Tr. 352. Plaintiff presented with Dr. Field, a rheumatologist, on August 22, 2016. Tr. 386.

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16 Plaintiff complained of knee pain, low back pain, Raynaud's syndrome, and indicated that she had been diagnosed with Lupus. Id. Dr. Field ordered labs and x-rays and instructed that Plaintiff follow up in four weeks. Id. Plaintiff returned to the ER on September 25, 2016, complaining of bilateral ankle pain, bilateral knee pain, right hip pain, and low back pain. Tr. 454. She reported chronic joint pain and indicating the condition was worsening despite her use of Tramadol for pain. Id. Notes indicate Plaintiff has hypertrophic joints in the right and left knees, and an x-ray of her hip indicated bilateral femur head avascular necrosis. Tr. 457. Plaintiff was discharged in an improved condition,

and with a diagnosis of joint pain, right hip pain, and avascular necrosis of bone. Id. Plaintiff returned to see Dr. Field on October 6, 2016, where he noted Plaintiff had presented at the ER for joint pain. Tr. 382. Dr. Field indicated that Plaintiff's lab work "came back surprisingly normal." Id. He noted that she had good joint range of motion without swelling or heat; he suspected she had fibromyalgia; and he questioned her Lupus diagnosis. Id. He found Plaintiff was tender in the paraspinal muscles, trapesi, and lateral hips. Id. Dr. Field prescribed Plaintiff Gabapentin and recommended some other medication changes. Tr. 384. Plaintiff was next seen by Dr. Herzwurm with the Orthopedic Associates of Augusta on October 11, 2016, upon referral by Dr. Field. Tr. 369. Plaintiff reported right groin pain and bilateral knee pain which was getting worse. Id. She reported the pain being worse in her right knee and to taking steroids twice for a week to ten days at a time. Id. Plaintiff's past medical history of hypertension was listed. Id. In her physical examination it was noted that her right hip could do straight leg raises with minimal pain, and she can flex up to 100 degrees. Id. The internal rotation was 10 degrees, external rotation was 30 degrees without any discomfort, and abduction was 35-40 degrees without any discomfort. Id. It was noted that there was crepitus in her right knee, and her

17 range of motion was 3-4 degrees to 120 degrees with medial joint line tenderness. Id. Further, it was noted that Plaintiff had no instability on exam, and her left knee range of motion was 2-3 degrees to 120 degrees with no instability. Id. In reviewing the x-rays, it was noted that there was no bony abnormalities and no evidence of avascular necrosis. Id. Knee x-rays indicated tricompartmental arthrosis in both knees, worse on the right and osteophytes off the medial femoral condyle and patellofemoral joint. Id. She was diagnosed with bilateral knee arthrosis and possible avascular necrosis of the right hip. Id. She received a Lidocaine and Dexamethasone injection. Id. Three days later, Plaintiff returned to Dr. Bruckner on October 14, 2016, complaining again of "aches and pains related to lupus." Tr. 346. She also reported having some skin changes. Id. Plaintiff returned to the ER on November 3, 2016, complaining of knee pain that was noted as mild and constant. Tr. 462. The record indicates she has no back pain, no decreased range of motion, no fatigue, no fever, no itching, no muscle weakness, no neck pain, no numbness, no stiffness, no swelling, and no tingling. Id. Plaintiff exhibited normal range of motion without edema upon examination. Tr. 464. An x-ray of her right knee demonstrated no evidence of acute bony abnormality. Id. She was diagnosed with right knee pain, unspecific chronicity, and a history of lupus was noted. Tr. 465. Plaintiff returned to Dr. Herzwurm on December 2, 2016, for bilateral knee arthritis, and she reported that the injections she received during the last visit had worn off after about two weeks. Tr. 368. She relayed that the Emergency Room had told her she had a tibial plateau fracture, but she reported no trauma. Id. However, an x-ray review indicated no evidence of a fracture, but it was noted that Plaintiff had severe tricompartmental arthrosis. Id. Her physical examination revealed that the range of motion in her knees was 0 to 95-100 degrees, and she had crepitus anteriorly along the joint line. Id. There was a discussion indicating that Plaintiff may need a total knee arthroplasty

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18 in the long term. Id. Plaintiff followed up with Dr. Herzwurm on December 29, 2016, for her continued right knee pain. Tr. 367. She indicated that "she has failed cons ervative management." Id. She was given an injection of Euflexxa and was scheduled to receive two additional injections. Id. Plaintiff underwent two additional Euflexxa injections in January of 2017. Tr. 365-66. Those records indicate Plaintiff tolerated the injections well. Id. Plaintiff began physical therapy ("PT") in January of 2017. Tr. 371-75. She reported having difficulty walking long distances; pain being 5/10, especially with prolonged walking. Tr. 511. Her PT records indicated progress for several weeks, ending in April of 2017. Tr. 511-45. Plaintiff returned to Dr. Field in January of 2017, complaining of pain in both knees. Tr. 377. A January 24, 2017 record indicates that Plaintiff was going to water therapy twice a week and had received injections. Id. An examination indicated minimal swelling and minimal crepitance in her knees. Tr. 377-78. In the diagnosis, Dr. Field found Raynaud's syndrom e without gangrene and bilateral primary osteoarthritis of the knee. Tr. 379. There was no clinical evidence of inflammation. Id. In February of 2017, Dr. Bruckner completed a form indicating that Plaintiff had no mental diagnoses, and psychiatric care was not recommended. Tr. 508. He indicated she was oriented to time, person, place, and situation; her thought process was intact; had appropriate thought content; normal mood; good attention/concentration; and good memory. Id. He marked "good" when asked about Plaintiff's ability to relate to others, ability to complete simple/routine tasks; and ability to complete complex tasks. Id. He marked "adequate" for her ability to complete basic activities of daily living. Id. Plaintiff returned to Dr. Bruckner in April of 2017, for a 6-month follow up. Tr. 524. She indicated to him that the injections she had received were not effective. Id. Her continued knee issues were noted, including pain and stiffness. Id.

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19 In August of 2017, Plaintiff returned to Dr. Field, reporting she had recently been to the Aiken ER for back pain and inquiring about pain management. Tr. 547. Her knee pain was noted. Id. An examination indicated mild crepitation with passive range of motion on her right knee, and similar results on her left knee. Tr. 549. She was diagnosed with bilateral primary osteoarthritis of the knee; Raynaud's syndrome without gangrene; and low back pain. Id. She received injections in both knees, but no fluid aspirated. Id. Plaintiff returned to Dr. Bruckner in October of 2017, for a six-month follow-up. Tr. 580. Plaintiff reported undergoing the injections that were not effective, and Raynaud's and possib le Lupus were noted. Id. She was referred for an MRI and further pain management. Id. Plaintiff's 2018 pelvis MRI in dicated sclerosis of right greater than the left SI joints without significant loss of joint space, and "[n]o fra nk erosive changes." Tr. 561. The impression note indicated that the findings were suggestive of mild sacroiliitis. Tr. 562. Osteonecrosis of both femoral heads without subchondral collapse was also noted. Id. Plaintiff returned to Dr. Field on March 1, 2018, with pain and swelling in her knees. Tr. 553. A reading of her radiology tests indicated sacroiliitis, aseptic necrosis in both hips, and bone on bone in both knees. Id. An examination indicated an antalgic gait, moderate effusion in both knees, mild pain and limited range of motion in

the cervical spine and lumbar spine. Tr. 555. Plaintiff was diagnosed with bilateral primary osteoarthritis of the knee; sacroiliitis, and idiopathis aseptic necrosis of the right and left femurs. Id. Dr. Field administered 80 mg of depomedrol in each knee. Id. Dr. Field completed an RFC form on March 5, 2018, where he gave Plaintiff a "fair" prognosis. Tr. 567. He indicated that Plaintiff had pain, stiffness, and swelling in her knees. Tr. 568. He opined that Plaintiff's pain was severe enough to " frequently" interfere with her attention and concentration. Tr. 569. Additionally, he opined that Plaintiff could: lift/carry a maximum of 10 pounds; stand and/or walk (with normal breaks) for a total of less than 2 hours in an 8 hour day; sit

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20 (with normal breaks) for a total of less than about 6 hours in an 8-hour day; and alternate sitting and standing (to relieve pain or discomfort) for a combined total of at least 2 hours in an 8 hour day. Tr. 570-71. Further, he opined that Plaintiff would need to take unscheduled breaks during an 8-hour working day between 2-3 times in a day for 5-10 minutes at a time. Tr. 571. He opined that Plaintiff could "never" stoop, crouch, or climb ladders; could "rarely" climb stairs; and could "occasionally" twist. Id. Additionally, he opined that Plaintiff would have significant limitations doing repetitive reaching, handling, or fingering. Id. He estimated that Plaintiff was likely to be absent from work two days in a month. Tr. 572. Plaintiff returned to Dr. Bruckner in April of 2018, and it was noted that Plaintiff saw Dr. Field who filled out the disability paperwork. Tr. 574. She had a lot of swelling, and the ineffectiveness of the injections was noted. Id. On April 10, 2018, Dr. Bruckner filled out a Medical Source Statement, indicating he was Plaintiff's PCP since October 27, 2015. Tr. 587. Further, he indicated Plaintiff has been diagnosed with multiple joint complaints, arthritis of knees, ANA positive, anxiety/depression, and HTN. Id. In the clinical findings section, Dr. Bruckner noted Plaintiff has crepitus in her knees, limited range of motion in her cervical and lumbar spines, and moderate knee effusion; he also noted Plaintiff's symptoms include sw elling, joint pain, and fatigue. Id. He opined that Plaintiff's pain would "often" in terfere with her attention and concentration. Tr. 588. Additionally, he opined that Plaintiff could walk one-to-two blocks; sit 15-to-30 minutes at a time for less than 2 hours per day; stand 15 to 30 minutes, for less than two hours per day; lift less than 10 pounds; never crouch or climb ladders or stairs; and rarely stoop or twist. Tr. 588-89. Dr. Bruckner further opined that Plaintiff would have significant problems with repetitive reaching, handling and fingering and would require more than four absences per month. Tr. 589.

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21 In his decision, the ALJ gave great weight to decisions from ALJ Steven Cravens 4

and to the State Agency Consultant decisions. A July 2016 ALJ decision also found Plaintiff had an RFC to perform sedentary work. Tr. 142-153. There, the ALJ also reasoned that the medical evidence is not consistent with the severity of the symptoms alleged. Tr. 151. On May 3, 2017, state agency physician, Maliha Khan, reviewed the record and found that Plaintiff could stand/walk for 2 hours

and sit for 6 hours in an 8-hour workday. Tr. 175. Further, she found that Plaintiff had no manipulative, visual, communicative, or environmental limitations, but should avoid exposure to extreme cold. Tr. 176. Additionally, Dr. Khan opined that Plaintiff could lift and/or carry up to 10 pounds occasionally/frequently; and occasionally engage in postural maneuvers except for climbing ladders/ropes and scaffolds, but Plaintiff could never kneel. Tr. 175-76. On August 18, 2017, Lindsey Crumlin, another state agency physician, came to the same conclusions as Dr. Khan. Tr. 193-95. On March 21, 2017, Jeanne Wright, a state agency psychologist, opined that Plaintiff had mild limitations in her ability to adapt or manage oneself and moderate limitations in her ability to understand, remember or apply information; interact with others; and concentrate, persist, or maintain pace. Tr. 173. She further opined that Plaintiff could understand and remember simple instructions; carry out simple tasks for two hours at a time; would not have an unacceptable number of absences due to psychiatric symptoms; could use appropriate judgment to make work related decisions; was able to respond appropriately to co-workers and supervisors and usual work situations but would be best suited for a work setting with limited public contact; could adapt to workplace changes; and could recognize and avoid normal hazards. Tr. 179. State agency

4 In 2013, Plaintiff filed claims for disability insurance benefits ("DIB") and SSI. ALJ Cravens issued an unfavorable decision on July 26, 2016, finding that Plaintiff was not disabled. Tr. 142-53.

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22 psychologist, Timothy Laskis, Ph.D., reviewed the record on August 18, 2017 and reached the same conclusions as Dr. Wright. Tr. 191-92, 196-97. The ALJ did not give full weight to Dr. Bruckner's 2018 opinion (as outlined above), reasoning that his findings are generally supportive of the RFC found, "but the diagnostic and objective findings of record do not support greater restrictions, especially not the need for absences or an off task allowance, as noted by Dr. Bruckner." Tr. 49-50. Similarly, the ALJ gave partial weight to Dr. Field's opinion, stating that some of his more restrictive findings are not supported by the diagnostic and objective findings in the record, especially not the need for alternating sit/stand positions or need for unscheduled breaks. Tr. 50. The regulations provide that if a treating source's opinion is not accorded controlling weight, the ALJ should consider "all of the following factors" in orde r to determine the weight to be accorded to the medical opinion: examining relationship; treatment relationship, including length of treatment relationship, frequency of examination, and nature and extent of treatment relationship; supportability; consistency with the record as a whole; specialization of the medical source; and other factors. 20 C.F.R. § 416.927(c); see also Johnson v. Barnhart, 434 F.3d 650, 654 (4th Cir. 2005). The Fourth Circuit has held that it is not necessary for an ALJ to recite each factor concerning weight, as long as the "order indicate s consideration of the all pertinent factors." Burch v. Apfel, 9 F. App'x 255, 259 (4th Cir. 2001). Here, the ALJ's decision indicates consideration of the pertinent factors in 20 C.F.R. § 416.927(c) as he noted specifically that Dr. Bruckner was Plaintiff's PCP, and he discussed Plaintiff treatment with him. Tr. 48. Further, the ALJ noted that Dr. Field was Plaintiff's treating rheumatologist and prior to discounting their opinions, discussed some pertinent treatment

records of both doctors in the decision. Id.

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23 "'[T]he opinions of a treating physician are not entitled to great weight where they are contradicted by the physician's own treatment notes, or by other evidence.' Nor will an ALJ 'give any special significance to the source of an opinion on issues reserved to the Commissioner,' including the residual functional capacity." Bryant v. Colvin, No. 8:14-CV-02087-TLW, 2015 WL 5783813, at *2 (D.S.C. Sept. 28, 2015). However, opinions reserved to the Commissioner must still be evaluated and accorded appropriate weight. SSR 96-5p, 1996 WL 374183, at *3. "When, as here, an ALJ denies a claimant's application, the ALJ must state 'specific reasons for the weight given to the treating source's medical opinion,' to enable reviewing bodies to identify clearly the reasons for the ALJ's decision." Sharp v. Colvin, 660 F. App'x 251, 257 (4th Cir. 2016). In Sharp, the Fourth Circuit determined that the "ALJ did not summarily conclude that [the doctor's] opinion merited little weight" because the ALJ explained why he discredited the opinion, remarking that the claimant's limitations were not supp orted by the doctor's office notes. Id. Here, as required by SSR 96-2p, the ALJ's decision contained specific reasons for the weight given to Dr. Bruckner and Dr. Field's opinions. Tr. 49-50. The court is not to weigh evidence or substitute its judgment for that of the Commissioner but is to determine whether the ALJ's weighing of the evidence is supported by substantial evidence in the record. See generally Hays v. Sullivan, 907 F.2d at 1456 (noting judicial review limited to determining whether findings supported by substantial evidence and whether correct law was applied). An ALJ's determination as to the weight to be assigned to a medical opinion generally will not be disturbed absent some indication that the ALJ has dredged up "specious inconsistencies," Scivally v. Sullivan, 966 F.2d 1070, 1077 (7th Cir. 1992), or has failed to give a sufficient reason for the weight afforded a particular opinion, see 20 C.F.R. § 416.927(c). The ALJ's reasons for the

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24 weight given to Dr. Bruckner and Dr. Field's opinions are s upported by substantial evidence. Therefore, the undersigned recommends the ALJ's decision be affirmed.

2. Consideration of Plaintiff's Symptomology Plaintiff argues that the ALJ improperly considered her symptomology. ECF No. 13 at 21- 26. Further, she argues that the ALJ improperly considered her past work history in his analysis. Id. at 22. She also argues that the ALJ erred his consideration of her statement that she needs a total knee replacement and in evaluation of a possible fibromyalgia diagnosis. Id. at 22-24. The Commissioner maintains subjective evidence supports the ALJ's evaluation of Plaintiff's subjective co mplaint allegations. ECF No. 15 at 16. Further, the Commissioner argues that Plaintiff has never received a fibromyalgia diagnosis and does not meet the criteria set out in SSR 12-2p. Id. The undersigned agrees. SSR 16-3p provides a two-step process for evaluating an individual's symptoms. First, the ALJ must determine whether the individual has a

medically determinable impairment "that could reasonably be expected to produce the individual's alleged symptoms." SSR 16-3p, 2017 WL 5180304, at *3. In the second step the ALJ must " evaluate the intensity and persistence of an individual's symptoms such as pain and determine the extent to which an individual's symptoms limit his or her ability to perform work-related activities . . . ." Id. at *4. " In considering the intensity, persistence, and limiting effects of an individual's symptoms, we examine the entire case record, including the objective medical evidence; an individual's statements about the intensity, persistence, and limiting effects of symptoms; statements and other information provided by medical sources and other persons; and any other relevant evidence in the individual's case record." Id.

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The ALJ considered Plaintiff's subjective statements by using the two-step process outlined above. After discussing Plaintiff's allegations in her Disability Report, Function Report, and hearing testimony the ALJ determined that:

After careful consideration of the evidence, I find that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statemen ts 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. As for the claimant's statements about the intensity, persistence, and limiting effects of her symptoms, they are inconsistent with the overall medical record. The claimant testified to spending all day on the couch because her body aches and to wearing depends on days her arthritis is so bad because she urinated on herself and to hearing voices and seeing visions due to her mental health conditions, yet she failed to report any such physical or mental symptoms to her medical providers. The failure to report such significant deficits in functioning to medical providers does not support the persuasiveness of the claimant's testim ony. Moreover, she reported needing total knee replacements, yet there is no notation of his recommendation in the file. Further, examinations do not note use of a cane or any assistive device by the claimant despite her testimony of a need for a cane to ambulate. The undersigned, therefore, finds the claimant's testimony unpe rsuasive when compared to the clinical findings in the record. Tr. 49. In pages prior and in the remainder of the opinion, the ALJ considered the objective medical evidence (and also noted the lack of certain evidence) including diagnostic testing and treatment records and the assessments of various physicians. In reviewing Plaintiff's medical chronology, the undersigned notes that Plaintiff has not had a formal fibromyalgia diagnosis. Further, though a knee replacement appears to have been discussed as a long-term care option for Plaintiff, it does not appear that there is surgery scheduled or an immediate need for one. Plaintiff confirmed that knee- replacement surgery is not scheduled in her hearing testimony. Tr. 105-06. Rather, it appears to be a last option due to Plaintiff's age. See id.

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26 Plaintiff argues that her work history is not a relevant factor in assessing her symptoms. However, the regulations specifically state that the ALJ should "consider all of the evidence presented, including information about your work record, your statements about your symptoms, evidence submitted by your treating or nontreating source, and observations by our employees and other persons. 20 C.F.R. § 416.929(c)(3). Though the ALJ noted Plaintiff's "work history" as a factor in his decision, it appears to the undersigned that he also considered all the relevant evidence required, including a discussion and weighing of the opinion evidence. Despite Plaintiff's allegations to the contrary, the ALJ provided specific reasoning for finding that Plaintiff's statements regarding her symptoms and pain were not entirely consistent with evidence in the record. After discussing the evidence, the ALJ concluded that based on the "overall evidence" Plaintiff could perform sedentary RFC with several accommodations based on her limitations, including postural limitations. See Tr. 50. Based on the undersigned's review of the reco rd and applicable law, the undersigned finds that the ALJ's decision reflects that he followed the two-step process in evaluating Plaintiff's symptoms. The ALJ also pointed to evidence in the record to support his conclusion. The undersigned recommends a finding that the ALJ properly applied SSR 16-3p and his determination regarding Plaintiff's subjective statemen ts is supported by substantial evidence.

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27 III. Conclusion and Recommendation The court's function is not to substitute its own judgment for that of the ALJ, but to determine whether the ALJ's decisi on is supported as a matter of fact and law. Based on the foregoing, the undersigned recommends that the Commissioner's decision be affirmed.

IT IS SO RECOMMENDED.

October 9, 2020 Kaymani D. West Florence, South Carolina United States Magistrate Judge

The parties are directed to note the important information in the attached

"Notice of Right to File Objectio ns to Report and Recommendation." 5:19-cv-03233-JD Date Filed 10/09/20 Entry Number 18 Page 27 of 27