STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **SUPERIOR COURT**

(Filed: March 8, 2012)

MARY BETH DEERY	:	
	:	
v.	:	**C.A. No. PC 10-4173**
	:	
R.I. DEPARTMENTOF HUMAN SERVICES	:	

DECISION

STERN, J. Before this Court is an appeal by Mary Beth Deery ("Appellant") from a June 30, 2010 decision ("Decision") by the Rhode Island Department of Human Services ("DHS"), denying her Medical Assistance ("MA") benefits on the grounds of disability under chapter 8, title 40 of Rhode Island General Laws. Appellant filed her timely appeal on July 16, 2010, seeking a reversal of the DHS Decision. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I
Facts and Travel

In November 2009, Appellant applied for MA benefits. Appellant claimed disability due mainly to her Multiple Sclerosis ("MS") and various other health impairments which include anxiety, asthma, urinary frequency, scoliosis, dyslexia, left lower extremity tenderness, left side numbness, which have not been established as severe. (Decision at 5.)

Mrs. Deery was born in 1961, and at the time the Decision was rendered, she was a forty-nine year old woman. Despite Mrs. Deery's history of dyslexia, she was able to obtain a two-year college degree and work as a resident assistant in a group home and as a certified nurse's assistant ("CNA") for thirteen years. (Decision at 3, 5; Ex. 12.) Her last employment as a full-time resident assistant required her to assist the residents with their every day needs: check on the residents, make their beds, do their laundry and put it away, assist the residents with bathing,

and help out with meal serving. (Tr. at 15-16; Decision at 4.) In 2009, Appellant was dismissed from her job due to inability to perform as expected; specifically, Appellant was told she was not "proactive." (Decision at 4; Tr. at 15.)

As part of her application for MA benefits, Appellant submitted an AP-70 form "Information for Determination of Disability." (Ex. 6.) In this form, Appellant acknowledged that she is able to do housework, including cooking and laundry, and that she only needs help with the housework "sometimes" because it is becoming more difficult for her to do the household activities. (AP-70, Ex. 7 at 3.) Appellant further provided that she does not need help getting around, although she uses a cane for comfort. Id.

Appellant also submitted a MA-63 form, "Physician's Examination Report," prepared by Dr. James D. Gloor ("Dr. Gloor"), a primary care physician, who treated Appellant for several years. The MA-63 form, completed on October 12, 2009, diagnosed Appellant with asthma, urinary frequency, and MS. (MA-63, October 12, 2009, Ex. 6 at 1.) Dr. Gloor noted that the asthma and the urinary frequency are controlled by medication. Id. Furthermore, Dr. Gloor indicated that Appellant could walk and stand for two out of eight hours; sit for six out of eight hours; and is able to reach and bend frequently. Id. at 3. Dr. Gloor also found that Appellant's mental activities were not limited. Id. Finally, Dr. Gloor noted that "routine follow-up" is required. Id. at 1.

Dr. Gloor's notes were also submitted with Appellant's MA benefits application, including notes from Appellant's visits from September 5, 2008 through December 14, 2009. (Med. R., Ex. 8.) During these visits, Dr. Gloor's notes report that Appellant had problems with asthma, bumps on her left shoulder, work-related right knee injury, sinus congestion, tightness in

chest, difficulty breathing, plantar wart removal from her right foot, chest congestion, wheezing, back pain, anxiety. (Med. R., Ex. 8.)

On January 26, 2010, after evaluating the evidence—including the MA-63 form, an AP-70 form, and records from Dr. Gloor, Dr. Minor, and Dr. Guarnaccia—the Medical Assistance Review Team ("MART")[1] determined that Appellant did not qualify as disabled and denied Appellant's application for MA benefits. (Tr. at 4, 2.) Appellant timely requested and received an administrative hearing to challenge the MART's determination that she was not disabled and was ineligible for MA benefits. Id. at 1-2.

A hearing on this matter was held on May 4, 2010. Id. At the hearing, both a representative of DHS and Appellant testified. According to the DHS representative, the DHS Policy Manual requires MART to establish an applicant's eligibility for MA benefits. Accordingly, in order for an applicant to qualify for MA, he or she must be over the age of sixty-five, blind, or disabled. The MART, finding that Appellant was neither blind nor over the age of sixty-five, used a five-step sequential evaluation to determine if Appellant was disabled. According to the DHS representative, in order for an illness or an injury to qualify as a disability, "[i]t must have lasted or can be expected to last for a continuous period of not less than twelve months and must be severe enough to render [Appellant] incapable of any type of work not necessarily [Appellant's] past work." Id. at 3.

The DHS representative testified that the MART reviewed the medical records, consisting of "an MA-63," "an AP-70," and records from Dr. Gloor, Dr. Minor, and Dr. Guarnaccia. Id. at 4. The medical records and MA-63 revealed that Appellant suffers from

[1] The MART's duties include "analyz[ing] the complete medical data, social findings, and other evidence of disability submitted by or on behalf of the applicant" and "issu[ing] a decision on whether the applicant meets the criteria for disability based on the evidence submitted." Rhode Island Department of Human Services Manual § 0352.15.20.

"Multiple sclerosis asthma, urinary frequency and anxiety disorder." (Tr. at 4.) However, the records indicate Appellant's asthma and urinary frequency are well controlled with medication. (MA-63, October 12, 2009, Ex. 6 at 1; Tr. at 4.) The DHS representative further testified that in June 2009, Appellant sustained a work-related right knee injury. (Tr. at 4.) Although there was some evidence of degenerative changes and contusion, which required some time out of work, a Magnetic Resonance Imaging ("MRI") did not reveal a meniscus tear. Id. The DHS representative further explained that in September 2009, Appellant had "a job crisis following a performance consult she received at work." Id. Due to the stress, Appellant required some time out of work and applied for Temporary Disability Insurance ("TDI"). Id. Appellant was able to return to work with reduced hours due to the stress and anxiety. Id.

Although the DHS representative explained that "MS is a relapsing, remitting disease and during episodes of relapses can be expected to cause difficulties in the ability to function effectively," id. at 5, Dr. Guarnaccia noted that Appellant is stable and had "minimal progression of any symptoms of her MS." Id. at 4. Since 2007, Appellant received regular injections of Rebel to reduce symptoms and episodes of relapse. Id. According to Dr. Guarnaccia, despite a mild relapse in January of 2010, Appellant "was able to ambulate without assistance; she had good strength in all her extremities and had symmetrical reflexes." Id. Furthermore, the most recent MRI indicated some additional brain lesions, and treatment options were discussed in February 2010. Id.

As a result of reviewing the medical records, the MART concluded that "[t]he medical records provided sufficient evidence of a severe impairment regarding both her asthma and her MS . . . ." Id. at 5. The MART determined that although Appellant may not be able to return to her past relevant work as a CNA, "which is considered to be medium to heavy in nature," she

was still capable of performing light work, considering her age of forty-nine, her college education, and her past relevant work. (Tr. at 5; Decision at 3.) Therefore, the MART concluded that Appellant was not disabled under step five of the disability analysis.

Appellant also testified at the hearing. Specifically, Appellant testified to her last employment as a residents' assistant, being terminated in September of 2009, and to currently being unemployed. (Tr. at 3.) Appellant explained that although her CNA license is still valid until June of 2010, her doctor does not believe that she can continue performing the same kind of job. Id.

She also testified regarding her medical ailments. At a recent follow-up visit with her physician, Dr. Guarnaccia, she noted that they discussed a change in her medication because her current one was not working. Id. at 5. Appellant further testified to a problem with her left leg during the checkup. Due to concerns of a blood clot, Dr. Guarnaccia sent Appellant for an ultrasound. Id. The results of the ultrasound were negative. Id. Additionally, Appellant consulted Dr. Gloor for further examination of the left leg and was awaiting results from his examination. Id. at 5-6. The following day, Appellant consulted Dr. Rodger, an orthopedic specialist, for tendonitis in her leg. Id. Dr. Rodger recommended physical therapy. Id. Appellant explained that she can remain standing for approximately twenty minutes and walk for less than twenty minutes. Id. at 7. Although Appellant does not need assistance to get around, she uses a cane for comfort. Id. at 8. However, Appellant testified that she is able to drive. Id. at 13.

As to her other medical ailments, Appellant testified that due to her scoliosis, her back "bothers" her sometimes while sitting; however, she goes to a chiropractor for correction of this issue. Id. Additionally, Appellant goes swimming in an attempt to relieve, prevent, and slow the

development of the MS symptoms. (Tr. at 9.) Moreover, Appellant explained that she is unable to sleep well through the night due to her urinary frequency. Id. Appellant also testified that she is able to do her daily household chores for short periods of time with breaks as needed. Id. She is able to carry less than ten pounds. Id. at 10. Appellant also explained that she manages her personal care independently, although it takes her "a while" to get ready, because of a pain in her shoulder. Id. She indicated that she takes anti-anxiety medication daily and attends counseling. Id. at 11. However, when anxiety symptoms increase, Appellant noted that she "is not motivated to do that much." Id. Recently, Appellant explained that she has been experiencing pain in her right eye, which her eye doctor associates with her MS. Id. at 10. Appellant also testified to poor eye/hand coordination, weak reading comprehension, difficulty concentrating and a recent numbness in her left hand. Id. at 12.

Upon Appellant's request, the record of the hearing was held open through the close of business on June 1, 2010 for submission of additional evidence. (Decision at 5; Tr. at 19.) The closure of the record of the hearing was further extended by Appellant to June 4, 2010. (Decision at 5.) While the record of the hearing was still open, the MART received additional medical records. An Outpatient Neuropsychological Consultation Report indicated the following: Appellant's IQ was 81, at the low end of the average range; her performance was moderately impaired; and she scored in the minimally anxious range. (Ex. 12, Outpatient Neuropsychological Consultation Report at 2-3.) This consult further indicated that Appellant is independent in her personal and instrumental activities of daily living ("ADLs"). Id. at 3. The consult also noted that Appellant has MS with mild to moderate associate deficits in memory and visuospatial abilities. Id. at 4. However, Mrs. Deery and her sister-in-law reported no noticeable changes in cognitive functioning. Id.

The MART also received a chiropractic note from April 20, 2010, essentially explaining that her symptoms are "typically of the muscle/joint pain variant and have limited her functional capacity and ability to participate in ADLs"; however, her "clinical results have been good," and her current treatment plan should yield good results in the near term. (Ex. 12.)

Dr. Guarnaccia submitted an exam note from April 29, 2010, explaining that Appellant's mental status was normal; her cranial nerves-visual fields were full with extraocular movement intact. (Ex. 12, Dr. Guarnaccia's Final Report from April 29, 2010 at 1.) His motor examination revealed her fine finger movements were intact, and Appellant had good strength in both the upper and lower extremities. Id. Dr. Guarnaccia's examination further noted that Appellant's left calf was swollen; therefore, he was concerned about deep vein thrombosis. Id. Appellant's exam also indicated decreased vibration in both feet and decreased sharp sensation in the right upper extremity. Id. Furthermore, Dr. Guarnaccia noted some problems with tandem but found Appellant was able to walk without assistance. Id.

A note by Dr. Gloor was also submitted explaining that Appellant has been seen for post-tibial tendonitis and possible lumber radiculopathy, and she has been given an air/gel ankle splint and narcotic pain medication. (Ex. 12, Dr. Gloor's note from May 12, 2010.) This note further indicated that she had consulted an orthopedic physician assistant who prescribed anti-inflammatory medication and recommended physical therapy. Id.

Furthermore, Dr. Kreiger's note concluded that Appellant's right eye pain is one of the signs related to her MS. (Ex. 12.) Finally, Joseph Eilertsen's summary noted that Appellant experienced depressive and anxiety symptoms related to the loss of her job and being diagnosed with MS. Appellant explained that at the end of the therapy, the symptoms had decreased. (Ex. 12.)

After reviewing Appellant's medical records and hearing the testimony, the DHS Hearing Officer ("Hearing Officer") made the following relevant findings of fact:

> - "The appellant is not engaging in substantial gainful activity.
> - At the time of the decision, the appellant had the following severe impairments: MS, anxiety and cognitive deficits. The appellant also has conditions including asthma, urinary frequency, scoliosis, dyslexia, left lower extremity tenderness, left side numbness that have not been established as severe.
> - At the time of this decision, the appellant did not have an impairment or combination of impairments that met or medically equaled any of the listed impairments in the Social Security listings.
> - The appellant was born on March 18, 1961 and is 49 years old, which is defined as a younger individual. (20 CFR 416.963).
> - The appellant has a two-year college education and communicates in English. (20 CFR 416.964).
> - Transferability of job skills is not an issue in this case. (20 CFR 416.968).
> - Based on the appellant's residual functioning, she retains the ability to perform sedentary exertional level work that is simple, routine, and not highly time pressured.
> - The appellant is not disabled as defined in the Social Security Act.
> - The appellant is not disabled for the purposes of the Medical Assistance Program." (Decision at 5.)

Based on these findings, the Hearing Officer issued a written decision on June 30, 2010, sustaining the MART's determination that Appellant was not disabled and thus ineligible for MA benefits. On July 16, 2010, Appellant timely appealed that decision to this Court. (Plaintiff's Complaint at 1.) Appellant seeks to reverse and remand the DHS decision.

II

Standard of Review

This Court's review of final agency decisions is governed by § 42-35-15(g), which provides, in relevant part:

> "(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The

> court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Sitting as an appellate court with a limited scope of review, the Superior Court justice may not substitute his or her judgment for that of the agency with respect to the credibility of the witnesses or the weight of the evidence as to questions of fact. Interstate Navigation Co. v. Division of Pub. Utils. & Carriers of R.I., 824 A.2d 1282, 1286 (R.I. 2003) (citations omitted). This is true even if the court may have been inclined to arrive at different conclusions and inferences upon review of the evidence and the record. Johnston Ambulatory Surgical Associates, Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000) (quoting Rhode Island Pub. Telecomm. Auth. v. Rhode Island State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)); Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992).

Additionally, the Court must uphold the agency's decision as long as "substantial evidence" exists to support the agency's determination. Center for Behavioral Health v. Barros, 710 A.2d 680, 684 (R.I. 1998) ("In reviewing an administrative agency's decision, the Superior Court is limited to an examination of the certified record to determine whether the agency's decision is supported by substantial evidence."). "Substantial evidence" has been defined by our Supreme Court as "'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.'"

Newport Shipyard v. Rhode Island Comm'n for Human Rights, 484 A.2d 893, 897 (R.I. 1984) (quoting Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981)); see Town of Burrillville v. Rhode Island State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). In essence, this Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Resources Management Council, 434 A.2d 266, 272 (R.I. 1981). Thus, although the Court affords an agency deference to its factual findings, questions of law are reviewed de novo. Iselin v. Retirement Bd. of Employees' Retirement Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008) (citation omitted).

III

The Department of Human Services

The Rhode Island Department of Human Services exists as an agency within the state's Executive Branch of government. See Sec. 42-12-1, et seq. Pursuant to § 42-12-4 of the Rhode Island General Laws, DHS is entrusted with managing federally and state funded public assistance programs, one of which provides MA to persons who qualify for the benefits under § 40-8-3. See Sec. 42-12-4 (providing that "[t]he department of human services shall have supervision and management of . . . [a]ll forms of public assistance under the control of the state"); see also Sec. 40-8-3 (outlining eligibility requirements for medical care benefits); Sec. 40-8-1 (declaration of policy). Because the medical assistance program is a product of the federal Social Security Act and is administered by the federal government, 42 U.S.C. § 1396 et. seq., DHS is obligated to adopt the definitions and guidelines established by the federal government to administer that program.

Mirroring federal provisions, Section 0352.15 of the DHS Manual outlines the policy relating to eligibility based on disability for MA benefits. See Rhode Island Department of Human Services Manual § 0352.15 ("DHS Manual"). This policy provides, in pertinent part:

> "To be eligible for Medical Assistance because of permanent or total disability, a person must have a permanent physical or mental impairment, disease or loss, other than blindness, that substantially precludes engagement in useful occupations or appropriate activities (for children) within his/her competence.
>
> A physical or mental impairment is an impairment which results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable, clinical and laboratory diagnostic techniques."

DHS Manual § 0352.15; see 42 U.S.C. § 1382c (a)(3) (2004). For an Applicant to be eligible for MA and qualify as "disabled," the person must be "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months . . . ." DHS Manual § 0352.15; see 42 U.S.C. § 1382c (a)(3)(A). Additionally, § 0352.15.05 provides that "[w]hether or not an impairment . . . constitutes a disability, as defined in Section 0352.15, is determined from all the facts of that case," with primary consideration given to the severity of the impairment, and further consideration given to the individual's age, education, and work experience. DHS Manual § 0352.15.05.

To determine whether an applicant qualifies as "disabled" for the purposes of MA eligibility, the federal guidelines set forth a five-step sequential evaluation. This procedure is as follows:

1. Is the claimant engaged in substantial activity?
2. If not, is the impairment severe?

3. If severe, does it meet or equal an impairment listed in the Supplemental Security Income ("SSI") regulations?
4. If it does not meet or equal SSI regulations, does the impairment prevent the claimant from doing past relevant work?
5. Considering age, education, work experience and residual functional capacity, does the impairment(s) prevent the claimant from doing other work in the national economy?

See 20 C.F.R. § 416.920; DHS Manual §§ 0352.15, 0352.15.05, 0352.15.15, 0352.15.20; see also Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (outlining five-step process enunciated in 20 C.F.R. § 416.920). Because of the sequential nature of this five-pronged analysis, once the Hearing Officer reaches a negative answer to any of the questions, except step three, the Hearing Officer must reach a determination of not disabled. McDaniel v. Bowen, 800 F.2d 1026, 1030 (11th Cir. 1986); see Seavey v. Barnhart, 276 F.3d 1, 5 (1st Cir. 2001) (observing that "[a]ll five steps are not applied to every applicant, as the determination may be concluded at any step along the process").

Finally, during the inquiry the claimant bears the burden of proof as to steps one through four; however, if step five is reached, the burden transfers to the agency to prove that the claimant could perform work in the national economy. Pope v. Shalala, 998 F.2d 473, 477 (7th Cir. 1993). In determining whether an applicant can perform other work, under step five, the Hearing Officer may rely on either the Medical-Vocational Guidelines (the Grid)[2] or testimony of a vocational expert (VE). See Tackett v. Apfel, 180 F.3d 1094, 1100-01 (9th Cir. 1999) (explaining that "[t]here are two ways for the [Hearing Officer] to meet the burden of showing that there is other work in 'significant numbers' in the national economy that claimant can

[2] The Grid "is a chart which classifies a claimant as disabled or not disabled, based on the claimant's physical capacity, age, education, and work experience" and aims to "simplify the determination of disability and to improve its consistency." Walker v. Bowen, 834 F.2d 635, 640 (7th Cir. 1987).

perform: (a) by the testimony of a vocational expert, or (b) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2.").

In the instant matter, the Hearing Officer, in her decision of June 30, 2010, executed the five-step analysis and denied Appellant benefits at step five. (Decision at 14.) Under the analysis, the Hearing Officer found that while Appellant has not engaged in substantial gainful activity since 2009, Tr. at 3, and suffers from severe impairments—including MS, anxiety and cognitive deficit, Decision at 10—the medical evidence record did not equal any listed impairment. Id. at 11. Furthermore, after determining that Appellant could not return to her past work as a CNA and as a nurse's assistant, id. at 13, the Hearing Officer concluded that Appellant had the residual functional capacity ("RFC") to perform sedentary work. Id.

IV

Analysis

Appellant contends that the DHS's decision denying her benefits has prejudiced Appellant's rights. Essentially, Appellant argues that the Hearing Officer failed to apply and make finding on legal standards and/or applied incorrect standards with respect to medical opinion and pain and symptoms. Furthermore, Appellant contends that the Hearing Officer's finding of RFC is based on error of law and unsupported by substantial evidence, thus arguing that DHS failed to discharge its burden. Finally, Appellant asserts that the Hearing Officer's Decision failed to comply with APA requirements.

In the alternative, the DHS asserts that the full record evidenced that the Hearing Officer set forth the requisite findings of fact and conclusions of law in her decision. The DHS contends that the Hearing Officer clearly considered the evidence, applied appropriate regulatory standards, and rendered a reasonable decision based upon ample relevant evidence.

A

Weight of Physician's Opinion

Appellant first contends that the Hearing Officer did not afford the opinion of Appellant's treating physician, Dr. Gloor, controlling weight as required under the law. Specifically, Appellant asserts that DHS must evaluate "every medical opinion" and that "only treating physician opinion can be given controlling weight." DHS, however, asserts that the Hearing Officer correctly weighed medical evidence from treating physicians and that Appellant "misstated" the standard for when a treating physician is entitled to controlling weight. DHS asserts that under 20 C.F.R. §§ 416.927(d)(2)(ii) and (5), it was "entirely" appropriate for the Hearing Officer to ascribe great weight to Dr. Guarnaccia's and Dr. Malloy's opinions, and that she stated her reasons for doing so.

In determining whether an applicant qualifies for MA based on a disability, a Hearing Officer must give the treating physician's opinion controlling weight, so long as it "is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [applicant's] case record." 20 C.F.R. § 416.927(d)(2). A treating source is defined as an applicant's "own physician, psychologist, or other acceptable medical source who provides [the applicant], or has provided [him or her], with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with [the applicant] . . . ." 20 C.F.R. § 404.1502. Considering the treating physicians' unique position, resulting from the continuity of treatment and developed relationships with patients, their opinions warrant controlling weight. See 20 C.F.R. § 404.1505 (defining a treating physician as having an "ongoing treatment relationship with [the applicant]"). Nonetheless, the treating physician's opinion is not always dispositive. 20 C.F.R. § 404.1527(d)(2). More weight

is to be extended to "the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist." See 20 C.F.R. §§ 404.1527(d)(5) and 416.927(d)(5).

Generally, DHS would evaluate "every medical opinion [it] receive[s]." 20 C.F.R. § 416.927(d). The Hearing Officer, however, may not afford controlling weight to a treating physician's opinion when it is inconsistent with other substantial evidence in the record. 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). When the treating physician's opinion is not afforded controlling weight, the Hearing Officer may provide "good reasons" for the weight afforded and consider various factors in determining how much weight to give the opinion. 20 C.F.R. § 416.927(d). These factors include:

> "(i) the frequency of examination and the length, nature and extent of the treatment relationship; (ii) the evidence in support of the treating physician's opinion; (iii) the consistence of the opinion with the record as a whole; (iv) whether the opinion is from a specialist; and (v) other factors brought to the Social Security Administration's attention that tend to support or contradict the opinion."

Halloran v. Barnhart, 362 F.3d 28, 32 (2d Cir. 2004); see also 20 C.F.R. § 416.927(d) (explaining these factors with detail). Most importantly, the Hearing Officer, when considering these factors, is neither required to mention every item of testimony presented nor to explain his or her reasoning regarding the weight afforded to each piece of evidence leading to his or her decision. The reviewing court, however, affords great deference to the factual findings and conclusions of the hearing officer. Bunch v. Bd. of Review, R.I. Dept. of Emp't & Training, 690 A.2d 335, 337 (R.I. 1997). Unless the findings and conclusions are "totally devoid of competent evidentiary support in the record," this Court will not disturb them. Id.

In the instant case, the Hearing Officer clearly and very thoroughly reviewed all the evidence presented, including all the medical records, notes, and MA-63 presented by Dr. Gloor. The Decision reveals that the Hearing Officer acknowledged Dr. Gloor as Appellant's treating physician; nonetheless, the Hearing Officer did not give his report controlling weight. (Decision at 6.) See Arroyo v. Sec'y of Health and Human Servs., 932 F.2d 82, 89 (1st Cir. 1991) (the First Circuit "does not require [the Hearing Officer] to give greater weight to opinions of treating physicians" in social security disability cases.) (internal quotation omitted). The Hearing Officer reasoned that "[a]lthough Dr. Gloor has treated the appellant for several years, his opinion of restrictions to activity as shown on the MA-63 . . . is not completely supported by the medical evidence records." (Decision at 6.); see Grimes Box Co., Inc. v. Miguel, 509 A.2d 1002, 1004 (R.I. 1986) (testimony of treating physician was not entitled to greater weight and probative value than testimony of other physicians when medical testimony conflicted); see also Lewis v. Callahan, 125 F.3d 1436, 1440 (11th Cir. 1997) (a treating physician's opinion may be properly discounted if it is unsupported by objective medical evidence, is merely conclusory, or is inconsistent with the physician's medical records). Specifically, the Hearing Officer noted an inconsistency between the MA-63 (Ex. 6.) and a note sent by Dr. Gloor to Dr. Brogna (Ex. 8.) just weeks before completion of the form whereon Dr. Gloor indicated that Appellant was "stable, that she was still working full time, and that she had no specific concerns or problems." (Decision at 6.) Moreover, the Hearing Officer pointed out that it was "unclear if [Dr. Gloor] was suggesting that the limitations remain at the indicated levels during periods of remission, and if the restrictions pertain to the conditions that he indicated are well controlled with medication." Id. Thus, this Court finds the Hearing Officer properly evaluated and explained

how she weighed Dr. Gloor's opinion pursuant to 20 C.F.R. § 404.1527, and therefore, the Hearing Officer's decision is supported by substantial evidence.

Under 20 C.F.R. §§ 404.1527(d)(5) and 416.927(d)(5), more weight is to be extended to "the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist." Here, the Hearing Officer clearly explained that the record contains a neuropsychological evaluation by a specialist, and therefore, the opinions, including the one from Dr. Gloor, will be "considered in combination with all other evidence." (Decision at 6.) Thus, the Hearing Officer did not fail to articulate and apply the applicable legal standards, engaged in a comprehensive review of the medical evidence, and drew her conclusions from the total evidence. Id. at 6-14.

Additionally, as part of her argument that the Hearing Officer failed to apply and make finding on legal standards and/or applied incorrect standards, Appellant next alleges that the Hearing Officer "systematically credited evidence supporting a finding of 'no disability,'" ignoring or rejecting evidence supporting Appellant's claim, thus rendering "her findings arbitrary and capricious and unsupported by substantial evidence." Specifically, Appellant argues that the Hearing Officer discussed Dr. Guarnaccia's exams only from February 11, 2010 and April 29, 2010, and cited only the "normal test results, but not abnormal ones." In addition, Appellant contends that the Hearing Officer selectively read Dr. Malloy's report and concluded that Appellant "would benefit from returning to work" but "purposefully excluded the second part of the sentence," where Dr. Malloy further clarified that Appellant could return to work "if her physical condition and stamina permit." (Ex. 12, Dr. Malloy's Neuropsychological Report at 4.) Furthermore, Appellant argues that the Hearing Officer ignored Dr. Guarnaccia's and Dr. Gloor's statements about Appellant's ability to work.

Contrarily, DHS contends that Appellant's assertions are without merit. DHS further asserts that the Decision and the record reflect that the Hearing Officer considered the evidence, applied appropriate regulatory standards and rendered a reasonable decision based on the relevant evidence.

Here, contrary to Appellant's assertion, the Hearing Officer did not ignore evidence favorable to Appellant's claim. Instead, the Hearing Officer engaged in a comprehensive review of the medical evidence. (Decision at 6-13.) This evidences that the Hearing Officer thoroughly evaluated the record in its entirety, summarized Dr. Malloy's report, and indicated that Appellant had a history of dyslexia, learning disability, anxiety, stress, and a low intellectual base line. Id. at 8. See 20 C.F.R. § 404.1520(a)(3) (in determining whether a claimant is disabled, all of the evidence in the record must be considered). Subsequently, the Hearing Officer concluded that her asthma and urinary symptoms are well controlled with medication and "do not result in more than a slight impact on functioning." Id. at 7, 10. Furthermore, the Hearing Officer noted Appellant's history of dyslexia and scoliosis, concluding that she was able to obtain a two-year college education and that the record did not demonstrate that either of these conditions has worsened. Id. at 7. The Hearing Officer also considered Appellant's cognitive deficit and based on Dr. Malloy's examination concluded that "the longstanding cognitive deficits were relatively mild and, 'should not be disabling.'" Id. at 8. As to Appellant's assertion that the Hearing Officer selectively read Dr. Malloy's opinion, the record evidences that the Hearing Officer clearly acknowledged that "while noting that resumption of work activity could be therapeutic, [Dr. Malloy] cautioned that the work would need to be appropriate for her physical condition and level of stamina at the time." Id. Thus, this Court finds that the Hearing Officer's findings are

not arbitrary and capricious, but supported by substantial evidence, in light of all evidence presented.

Finally, Appellant contends that the Hearing Officer ignored Dr. Guarnaccia's and Dr. Gloor's statements about Appellant's ability to work, making her Decision arbitrary and capricious. However, when reviewing a medical source's opinion, the mere statement that a claimant is "disabled" or "unable to work" will not necessarily result in the agency's arrival at that conclusion. See 20 C.F.R. § 416.927(e)(1). Under 20 C.F.R. § 416.927(e)(1), opinions that Appellant is disabled are considered "medical source opinions on issues reserved to the [Hearing Officer]." Thus, the Hearing Officer's Decision is not arbitrary and capricious but based on the applicable standards.

Further, this Court's limited role requires deference to the Hearing Officer's factual findings and conclusions and permits only a determination of whether substantial evidence exists to support the Hearing Officer's decision**.** Barros, 710 A.2d at 684; Mine Safety Appliances Co. v. Berry, 620 A.2d 1255, 1259 (R.I. 1993). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Wilson v. Astrue, 602 F.3d 1136, 1140 (10th Cir. 2010) (quotation omitted). Such evidence does exist in the present case, and because the Hearing Officer's findings were not "totally devoid of competent evidentiary support in the record," the Hearing Officer committed no error in her assessments of and reliance upon the opinions of Appellant's physicians. Baker v. Dept. of Employment and Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1994). Accordingly, the Hearing Officer relied on competent evidence in the record in support of her conclusion and did not exceed her statutory authority. Therefore, this Court will not disturb her findings.

B

Pain and Symptoms

Appellant next contends that the Hearing Officer failed to articulate and apply 20 C.F.R. § 416.929. Specifically, Appellant contends that the Hearing Officer did not address Mrs. Deery's or her doctors' statements regarding symptoms, did not apply the factors, and did not make credibility determinations. Furthermore, Appellant argues that the Hearing Officer did not consider whether MS is "reasonably expected" to cause the pain and suffering and that she made no attempt to address or make findings on the requisite factors or to determine if the severity of symptoms was reasonably consistent with other evidence.

Contrarily, DHS contends that the Hearing Officer properly considered the evidence and that Appellant offers no specific evidence to support the position that the consideration of pain would change any consideration of how the Appellant was prejudiced. DHS further argues that the Decision reflects the Hearing Officer's knowledge of the complaints of pain set forth in the medical evidence. However, DHS maintains there is nothing in the record for the Hearing Officer to find pain to be of such a degree to constitute "a significant non-exertional impairment."

Pursuant to 20 C.F.R. § 416.929(a), the Hearing Officer within her decision must consider all of the Applicant's symptoms, including pain. The Hearing Officer's assessment of these symptoms is limited, however, to "the extent to which [the] symptoms can reasonably be accepted as consistent with the objective medical evidence, and other evidence." 20 C.F.R. § 416.929(a); see also 20 C.F.R. § 416.929(b) ("[A claimant's] symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect [the claimant's] ability to do basic work activities unless medical signs or laboratory findings show that a medically

determinable impairment(s) is present."); Jones v. Commissioner of Social Security, 85 F. App'x 806, 808 (3d Cir. 2003) (stating that a medically determinable impairment is required under 20 C.F.R. § 416.929). Therefore, only after the Hearing Officer determines that "medical signs or laboratory findings show that [the applicant has] a medically determinable impairment(s) that could reasonably be expected to produce [his or her] symptoms, such as pain," does the Hearing Officer "evaluate the intensity and persistence of [his or her] symptoms so that [the Hearing Officer] can determine how [his or her] symptoms limit [his or her] capacity for work . . . ." 20 C.F.R § 416.929(c)(1); see also Craig v. Chater, 76 F.3d 585, 594 (4th Cir. 1996) (the applicant must show a medically determinable impairment which could reasonably be expected to cause not just pain, or some pain, or pain of some kind of severity, but the pain the claimant alleges she suffers).

When evaluating the intensity and the extent to which the pain symptoms limit an individual's capacity for work, a hearing officer considers "all of the available evidence, including [applicant's] history, the signs and laboratory findings, and statements from [applicant], [applicant's] treating or nontreating source, or other persons about how [applicant's] symptoms affect [applicant]." 20 C.F.R. § 416.929(c)(1). Other factors relevant to an analysis of pain symptoms are:

> "(i) Your daily activities;
> (ii) The location, duration, frequency, and intensity of your pain or other symptoms;
> (iii) Precipitating and aggravating factors;
> (iv) The type, dosage, effectiveness, and side effects of any medication you take or have taken to alleviate your pain or other symptoms;
> (v) Treatment, other than medication, you receive or have received for relief of your pain or other symptoms;
> (vi) Any measures you use or have used to relieve your pain or other symptoms (e.g., lying flat on your back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and

> (vii) Other factors concerning your functional limitations and restrictions due to pain or other symptoms." 20 C.F.R. § 416.929(c)(3).

Furthermore, under 20 C.F.R. § 416.929(c)(4), a hearing officer "will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between [applicant's] statements and the rest of the evidence, including [applicant's] history, the signs and laboratory findings, and statements by [applicant's] treating or nontreating source or other persons about how [applicant's] symptoms affect [the applicant]." Credibility determinations as to a claimant's subjective assertions of pain will not be disturbed by a reviewing court unless the determinations are "patently wrong." Luna v. Shalala, 22 F.3d 687, 690 (7th Cir. 1994) ("the [Hearing Officer's] credibility determination will not be disturbed unless it is patently wrong"). Furthermore, "where the reasoning of the [Hearing Officer's] decision is apparent, we do not require the [Hearing Officer] to articulate explicitly his credibility determination." Arbogast v. Bowen, 860 F.2d 1400, 1406 (7th Cir. 1988); see also 3 Soc. Sec. LP § 36:37 (an absence of specific findings regarding the claimant's credibility does not require a remand where the [Hearing Officer's] decision shows sufficient detail to permit informed judicial review that the claimant's complaints of pain have been taken into account.)

Appellant asserts that the Hearing Officer did not consider Appellant's or her doctors' statements of symptoms, and did not make credibility determination or make any determination of whether the severity of the symptoms was reasonably consistent with other evidence. However, here there is no evidence that Appellant based her application for MA primarily on complaints of pain. It is evident that Appellant did have several complaints regarding pain, and the Decision clearly shows that the Hearing Officer did consider pain and symptoms throughout her Decision. Despite the fact that the Hearing Officer did not expressly assess credibility of the

Appellant, the Hearing Officer systematically addressed all Appellant's allegations of pain, made reference to the medical evidence and record, and made indirect credibility determinations. See 3 Soc. Sec. LP § 36:37 (explaining that "it has been held that a credibility determination may be made by implication where the implication is so clear as to amount to a 'specific credibility finding.'").

Specifically, the Hearing Officer addressed Appellant's complaint with regard to her right eye. While the Hearing Officer noted that the pain in Appellant's right eye has been determined by her doctor to be a residual effect of MS, the Hearing Officer—by reference to Appellant's medical record—on two occasions explained that there is "no information regarding an abnormality of the eye leading to change in pressure or discomfort, and no recommendations for treating any eye conditions were made." (Decision at 7.) The Hearing Officer also stated that "the record shows no significant limitations to near acuity, far acuity, depth perception, accommodation, color vision, or field of vision." Id. at 12.

Furthermore, in considering the severity of the pain and symptoms associated with Appellant's diagnosis of scoliosis, the Hearing Officer also considered a chiropractor's note. Appellant's chiropractor, Kevin J. Pelton, indicated that the clinical results have been good and it is expected the treatment plan will produce further good result in the future. (Ex. 12, chiropractor's note.) Moreover, the Hearing Officer explained that scoliosis is reported by history; however, she noted that scoliosis has not been linked to Appellant's current claim of disability.

The Hearing Officer also addressed Appellant's complaint of tenderness in her left calf. In this regard, the Hearing Officer pointed out that during Appellant's most recent follow-up, Dr. Guarnaccia indicated that Appellant was able to walk without assistance, despite the calf

tenderness. (Decision at 8.) Furthermore, Dr. Guarnaccia did not attribute the left leg tenderness to progression of MS.

The medical evidence on record does not contain allegations of severe, disabling pain with regard to Appellant's "medically determinable impairment(s)." Furthermore, although there is some evidence of pain in the medical record and testimony by the Appellant concerning such pain, the Appellant did not satisfy her burden to show that her pain is of such a degree as to constitute a significant non-exertional impairment, thus necessitating reversal of the Hearing Officer's decision.

Moreover, this Court finds that the Hearing Officer took into consideration Appellant's complaints of pain in sufficient detail to permit informed judicial review, thus impliedly determining Appellant's credibility. See 3 Soc. Sec. LP § 36:37; see also Davol, Inc. v. Aguiar, 463 A.2d 170, 174 (R.I. 1983) (when the trier of fact observed conflicting live testimony, he necessarily made a determination of each witness' credibility when he rejected certain testimony and accepted other testimony.) Mindful of the deference afforded to the Hearing Officer's credibility determination, this Court finds that substantial evidence supports the Hearing Officer's decision in this regard. Luna, 22 F.3d at 690.; see also Jones v. Bowen, 829 F.2d 524, 527 (5th Cir. 1987) (it is within the [Hearing Officer's] discretion to determine the debilitating nature of pain and such determination is entitled to considerable deference from this Court.). Accordingly, the Hearing Officer's credibility determination pursuant to 20 C.F.R. § 416.929 was not patently wrong and not in violation of statutory provisions.

After a review of the entire record, this Court finds that Appellant's substantial rights have not been prejudiced. See Morris v. Bowen, 864 F.2d 333, 336 (5th Cir. 1988) (finding that where an error does not render the [Hearing Officer's] determination unsupported by substantial

evidence, it does not prejudice the plaintiff's substantive rights and is only harmless error). Furthermore, the decision of the Hearing Officer is supported by reliable, probative and substantial evidence and is not affected by error of law. Moreover, the Hearing Officer's decision is not arbitrary or capricious and did not constitute an abuse of discretion.

C

Residual Functional Capacity

Appellant next argues that the RFC finding, conducted by the Hearing Officer, is based on error of law and unsupported by substantial evidence. Specifically, Appellant argues that the Hearing Officer's decision on residual function capacity is deficient on its face and lacks the "thorough-going analysis federal law and this court's prior decision require." Additionally, Appellant argues that the analysis is conclusory, fails to identify specific evidence in support, and does not correspond to any medical source's opinion. Furthermore, Appellant contends that the Hearing Officer failed to take into account uncontroverted evidence, such as pain, ambulation problems, dexterity limitations, visuospatial deficits, and problems with hand-eye coordination. Alternatively, DHS contends that Appellant made "broad assertions, but points to no specifics to support her assertions" and that the Hearing Officer applied the appropriate regulations to the evidence available and made the required analysis.

Under step four, the DHS determines the RFC. The RFC is what an applicant can still do despite physical, mental and non-exertional limitations on a regular and continuing basis. 20 C.F.R. § 426.945. The RFC must be based upon all relevant medical and non-medical evidence, such as symptoms, observations of doctors, and daily activities. 20 C.F.R. §§ 416.945(a)-(e). The issue of a claimant's RFC is not a medical issue regarding the nature and severity of an individual's impairment but rather is an administrative finding. SSR 96-5p. The Hearing Officer

must always carefully consider medical opinions in determining a claimant's RFC, although such opinions are "never entitled controlling weight or special significance." SSR 96-5p.; see also Reeves v. Barnhart, 263 F. Supp. 2d 154, 162 (D. Mass. 2003) (citing Arroyo, 932 F.2d at 89 (finding [the Hearing Officer] not required to accept conclusions of claimant's treating physicians on ultimate issue of disability)). Such a rule is necessary because "[g]iving controlling weight to such opinions would, in effect, confer upon the treating source the authority to make the determination or decision about whether an individual is under a disability, and thus would be an abdication of the [hearing officer's] statutory responsibility to determine whether an individual is disabled." SSR 96-5p. As a lay person, however, the adjudicator is not qualified to interpret raw medical data in functional terms without medical opinion supporting the determination. Nguyen v. Chater, 172 F.3d 31, 35 (1st Cir. 1999) (citing Manso-Pizarro v. Sec'y of Health and Human Servs., 76 F.3d 15 (1st Cir. 1996); Perez v. Sec'y of Health and Human Servs., 958 F.2d 445, 446 (1st Cir. 1991) (citations omitted).

In the instant matter, the Hearing Officer under step four conducted a complete, step-by-step analysis of all evidence presented in the record. First, the Hearing Officer explained the legal standard applied at this step. Next, the Hearing Officer considered in detail all the evidence presented in the record, by discussing it under two separate titles: "Physical RFC" and "Mental RFC." (Decision at 11-13). Specifically, under "Physical RFC," the Hearing Officer considered all Appellant's alleged "Exertional," "Postural," "Manipulative," "Visual," "Communicative," and "Environmental" limitations. (Decision at 11-12.) Under "Mental RFC," the Hearing Officer took into consideration all alleged limitations regarding "Understanding and Memory," "Social Interaction," and "Adaptation." Id. at 12-13.

Review of the Decision does not evidence that the Hearing Officer's RFC analysis lacks the "thorough-going" analysis required by law and that the Hearing Officer failed to identify specific evidence in support, and does not correspond to any medical source's opinion. Under "Exertional" limitations, the Hearing Officer took into consideration Appellant's complaints of numbness of her left side and concluded that there was "no evidence that would reduce her capabilities to less than a 10 lb maximum." (Decision at 11.) Earlier in her Decision, the Hearing Officer explained that "[Dr. Gloor's] opinion of restrictions to activity as shown in MA-63 . . . is not completely supported by the medical evidence records." Id. at 6. Although noting Dr. Gloor's opinion that Appellant could lift up to 25 pounds, the Hearing Officer took into consideration "the combined medical evidence, and the appellant's testimony" and concluded that "lifting within a sedentary exertional range is the level which is best supported." Id. at 12. The Decision also reflects Appellant's treating sources' opinions that Appellant is expected to stand or walk for at least 2 hours per day with customary breaks, and that the evidence does not limit the sitting duration. Id. Thus, the Hearing Officer concluded that "the additional exertional restrictions do not erode the sedentiary occupational base." Id.

Furthermore, when considering Appellant's dyslexia and scoliosis, the Hearing Officer noted that "[t]he record does not demonstrate that either of these conditions has worsened to a degree that would impact her functioning at the present time." Id. at 7. The Hearing Officer also considered her lack of balance and explained that it would limit her ability "to climb, or perform tasks regularly requiring control of balance." Id. at 12. As to Appellant's right eye pain complaints, the Hearing Officer explained that it is presumed to be a residual effect of the MS, id.; however, the Hearing Officer noted that "no functional restrictions have been associated with any visual abnormalities, id. at 7., and that "[v]isual fields were full and extraocular nerves

intact." (Decision at 12.) The Hearing Officer also went on to consider Appellant's complaints of a right side hearing deficit. However, she concluded that Appellant has not alleged hearing impairment, or submitted evidence of such condition. The Hearing Officer also cited the environmental restriction on her work conditions, considering her MS and asthma. Id.

Moreover, in the beginning of her Decision, while discussing all of Appellant's ailments, the Hearing Officer considered Appellant's anxiety symptoms and noted that the counseling sessions with a social worker "[have] been successful in somewhat reducing the effects of those stressors [loss of employment and health concerns]." Id. at 7. The Hearing Officer also noted the chiropractor's "good clinical results" in pain management. Id. The Decision further displays that the Hearing Officer did take into consideration Appellant's complaints of numbness in her left hand, together with Dr. Guarnaccia's examination, and determined that "the last examination at the MS clinic found good motor strength, and fine finger movements to be intact." Id. at 12. The Hearing Officer also concluded that "[t]here is no evidence of restriction to ability required for reaching, handling, fingering, or feeling." Id.

In evaluating Appellant's Mental RFC, the Hearing Officer did review the relevant medical evidence and employed it in her findings. The Hearing Officer considered Appellant's recent neurological evaluation, regarding Appellant's IQ, memory retention, and recognition, and concluded that Appellant will be "overwhelmed by complex, detailed instructions," but "[t]he evidence supports the existence of remaining functional ability needed to remember . . . short, simple instructions." Id. Furthermore, the Hearing Officer noted that Appellant's "thoughts were described as 'generally well organized,'" and her "[s]lowed motor and processing speed would not rule out her ability to carry out short, simple instructions, or maintain attention and concentration for two-hour blocks of time throughout a workday with allowance for customary

breaks." (Decision at 12.) The Hearing Officer went on to explain that "[t]he evidence does not rule out her ability to interact appropriately with the public," id., and that "[t]he record has not established significant impairment to her ability to respond appropriately to simple work-related change . . . ." Id. at 13.

The Decision clearly reflects the Hearing Officer's detailed examination of all Appellant's complaints, all medical evidence presented, and how the evidence supported the Hearing Officer's conclusion. Furthermore, the Hearing Officer cited specific medical facts and explained the type of work Appellant could perform based on the evidence available. The only finding that was not discussed in great detail was the conclusion that Appellant is unable to perform past relevant work. However, this conclusion is in favor of Appellant and therefore not prejudicial. Thus, this Court finds that the Hearing Officer's analysis of Appellant's RFC and her findings are well supported by reliable, probable, and substantial evidence in the record.

D

Application of the Grid

Appellant next argues that the Hearing Officer's analysis at step five was erroneous because she relied on the medical-vocational guidelines, rather than using a vocational expert. Contrarily, the DHS contends that the Hearing Officer made reasonable judgments consistent with the SSA policy. Furthermore, DHS asserts that it was not unreasonable for the Hearing Officer to conclude that Appellant's non-exertional limitations, "which apparently existed for the entirety of the appellant's working life," did not constitute "a significant erosion of the occupational base."

In applying the five-step sequential evaluation in this case, the Hearing Officer implicitly found that Appellant satisfied the criteria for disability under the first four steps contained in the

evaluation process under federal law because she concluded that the appellant was "not disabled" at step-five of the sequential evaluation. McDaniel, 800 F.2d at 1030 (if the hearing officer reaches a negative answer to any of the questions—other than step three—the hearing officer must reach a determination of not disabled). Having found Appellant presumptively disabled through step four of the analysis, the burden shifted to DHS at step five to show that the Appellant could perform some other work that exists in "significant numbers" in the national economy, taking into consideration the claimant's residual functional capacity, age, education, and work experience. 20 CFR § 404.1560(b)(3). This inquiry necessitates a determination of the Appellant's RFC because it reveals "the most [one] can still do despite [one's] limitations." 20 C.F.R. §§ 416.945(a)(1), 416.945(a)(5)(ii).

There are two ways for DHS to meet this burden: (1) by the testimony of a vocational expert, or (2) by reference to the Grid. Individuals who meet the criteria of the Grid are presumed disabled unless the presumption of disability is rebutted by a showing that the individual has skills that are directly transferable to sedentary work. See Jeffcoat v. Secretary of Health & Human Serv., 910 F. Supp. 1187, 1193-94 (E.D. Tx. 1995).

"The fact that a claimant suffers from a nonexertional impairment does not, however, immediately preclude utilization of the grid." Nelson v. Secretary of Health & Human Services, 770 F.2d 682, 685 (7th Cir. 1985). "To uphold the [Hearing Officer's] finding that the grids may be used in a given case, we require only 'that there be reliable evidence of some kind that would persuade a reasonable person that the limitations in question do not significantly diminish the employment opportunities otherwise available.'" Walker v. Bowen, 834 F.2d 635, 641 (7th Cir. 1987) (citation omitted). "[T]he disabling extent of the claimant's pain is a question of fact for the [Hearing Officer], and if pain is not found to interfere with the claimant's ability to work,

then the grids may be used." Kapusta v. Sullivan, 900 F.2d 94, 97 (7th Cir. 1989) (citing Walker, 834 F.2d at 640-41.

"The Grid is designed to enable the [Hearing Officer] to satisfy this burden in a 'streamlined' fashion without resorting to 'the live testimony of vocational experts.'" Ortiz v. The Secretary of Health and Human Services, 890 F.2d 520, 524 (1st Cir. 1989) (quotation omitted). The Grid is "basically a matrix, combining different permutations of the four essential factors set out in the statute (age, education, work experience and residual work capacity) and stating, as to each combination, whether a claimant with each of those characteristics is 'disabled' or 'not disabled.'" Vázquez v. Secretary of H.H.S., 683 F.2d 1, 2 (1st Cir. 1982). Claimant, based on his or her RFC, will be classified as able to perform either "sedentary" work, "light" work, "medium" work, "heavy" work, "very heavy" work, or no work at all. However, the claimant must be able to perform the full range of such work, in order to fit into any one of the categories. See SSR 83-10.

Under 20 C.F.R. § 416.967(a), sedentary work is defined as follow:

> "Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met."

"Occasionally" is defined as "occurring from very little up to one-third of the time" and states that "periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday, and sitting should generally total approximately 6 hours of an 8-hour workday." See SSR 83-10. Furthermore, sedentary work is mostly performed in a seated position and involves no "significant stooping." Id. Moreover, "[m]ost unskilled sedentary jobs require good

use of the hands and fingers for repetitive hand-finger actions." SSR 83-10. Essentially, a finding of "Not disabled" would be appropriate where a person cannot perform the full range of sedentary work, due to a restriction, but if the compromise is slight in nature, it leaves the sedentary occupational basis substantially intact. See SSR 83-12(3)(b). For example, "an inability to sit more for [sic] than six hours a day is generally not enough by itself to preclude the performance of sedentary work." 3 Soc. Sec. LP § 43:22 (citing Hollis v. Bowen, 832 F.2d 865 (5th Cir. 1987)). The Grid is meant to reflect the potential occupational base remaining to a claimant in light of his or her strength limitations. Ortiz, 890 F.2d at 524. If a non-strength impairment, even though significant, has the effect only of reducing that occupational base marginally, the Grid remains highly relevant and can be relied on exclusively. Id.

The Court in Ortiz explained that in cases where a non-exertional impairment "'significantly affects claimant's ability to perform the full range of jobs' he [or she] is otherwise exertionally capable of performing, 'the [DHS] must carry [its] burden of proving the availability of jobs in the national economy by other means,' typically through the use of a vocational expert." Id. (internal citation omitted). On the other hand, the Court in Ortiz pointed out that should a non-exertional limitation be found to impose no significant restriction on the range of work a claimant is exertionally able to perform, reliance on the Grid remains appropriate. Id.

Here, no vocational expert testified at the hearing, and the Hearing Officer used vocational rule 201.21 as a guide, together with consideration of non-exertion limitation, to determine Appellant's RFC. (Decision at 13.) The Hearing Officer considered Appellant's age, education and work experience to determine that Appellant could make an adjustment to perform other work in the national economy. See Decision at 13; 20 C.F.R. § 404.1560(b)(3) (explaining that the hearing officer should take into consideration the claimant's residual function capacity,

age, education, and work experience). Specifically, the Hearing Officer considered that Appellant, at the time of the Decision, was forty-nine years old, which is considered a "younger individual" under the federal regulations. The Hearing Officer also considered that Appellant has a post high school education; work history as a CNA and residents' assistant, which is considered medium, semi-skilled, and non-transferable; and the RFC to perform sedentary work with some postural and environmental limitations and simple, routine, not highly time-pressured tasks. (Decision at 13.) See 3 Soc. Sec. LP § 43:22 (the medical requirement that claimant get up and move around from time to time does not preclude his or her ability to perform sedentary work (citing 20 C.F.R §404.1567(b); Poupore v. Astrue, 566 F.3d 303 (2d Cir. 2009)).

This Court agrees with the Hearing Officer, and finds that vocational testimony was not necessary because Appellant's non-exertional limitations did not reach a level that required input from a vocational expert. Specifically, the Hearing Officer explained that "[u]sing vocational rule 201.21 as a guide along with consideration of non-exertion limitations; the factors direct a conclusion of 'not disabled.'" (Decision at 13.) The Hearing Officer determined that according to Appellant's treating physician, Dr. Gloor, Appellant's asthma is well controlled with medication and it has not been considered disabling her in performing her past work. See Hutton v. Apfel, 175 F.3d 651, 655 (8th Cir. 1999) ("Impairments that are controllable or amenable to treatment do not support a finding of total disability."); see also 20 C.F.R. § 416.920(b) (1991) (one already working with an impairment, is not disabled). Furthermore, Appellant's contention that Appellant should avoid jobs exposing her to "cold, heat, wetness, humidity, noise, vibration, fumes, odor, dust, gases, poor ventilation" would not impact substantially the range of jobs at Appellant's RFC level that she could perform. "Where a person has a medical restriction to avoid excessive amounts of noise, dust, etc., the impact on the broad world of work would be

minimal because most job environments do not involve great noise, amounts of dust, etc." SSR 85-15.; see Banks v. Barnhart, 434 F. Supp. 2d 800, 805 (C.D. Cal. 2006) (a non-exertional limitation to work involving "no exposure to heavy concentrations of respiratory contamination or pollution" is not a significant non-exertional limitation precluding the use of the Grids).

The Hearing Officer also considered Appellant's anxiety and concluded that Appellant's therapy has been "successful in somewhat reducing the effects of [her] stressors. (Decision at 7.) Thus, the anxiety would not be considered to affect substantially Appellant's ability to perform the full range of sedentary work. The Grids are not formulated to reflect the availability of jobs in the national economy only for physically impaired claimants with "entirely normal" emotional and psychological makeups. Smith v. Schweiker, 719 F.2d 723, 725 (4th Cir. 1984) (the use of the grids cannot be defeated by low-level personality and emotional disorders that undoubtedly afflict—at least from time to time—vast numbers of the populace.); see Hutton, 175 F.3d at 655. ("Impairments that are controllable or amenable to treatment do not support a finding of total disability."); see also 20 C.F.R. § 416.920(b) (1991) (if one is working with an impairment, she is not disabled).

As to Appellant's assertion that her intermittent left side numbness, lack of balance, occasional numbness in her left hand, slowed motor and processing speed, would also prevent her from performing the full range of sedentary work, the Hearing Officer made reasonable judgments in compliance with the SSA policy. The Hearing Officer acknowledged Appellant's symptoms of intermittent numbness on the left side and instability of balance and subsequently concluded that there is no evidence that would preclude Appellant from lifting less than ten pounds. Moreover, "[r]elatively few jobs in the national economy require ascending or descending ladders and scaffolding." SSR 83-14. Furthermore, "to perform substantially all of

the exertional requirements of the most sedentary and light jobs, a person would not need to crouch and would need to stoop only occasionally." SSR 83-14. In his report from November 24, 2009, Dr. Malloy noted that based on Appellant's sister-in-law, there was no noticeable change of Appellant's cognitive functioning. Thus, it is reasonable for the Hearing Officer to conclude that these non-exertional limitations would not significantly diminish the occupational base.

Accordingly, this Court finds that the substantial rights of Applicant have not been prejudiced because the DHS findings were not clearly erroneous, arbitrary, and in violation of the statutory provisions of the Social Security Act. Therefore, the Hearing Officer did not make an error of law or violate statutory provisions by using the Grid without the assistance of vocational expert.

E

Compliance of the DHS's Decision with the Administrative Procedures Act ("APA") Requirements

Lastly, Appellant argues that the Hearing Officer did not comply with § 42-35-12, but simply recounted medical evidence in detail without making findings on it and without resolving problems. Appellant contends that the Hearing Officer simply reprinted the regulations and legal standards without applying them, and then proceeded immediately from "Discussion" to "Conclusion." DHS responds that the Hearing Officer made findings of fact, reviewed the medical evidence, and made reasonable, rational and logical connections between the evidence and her conclusions.

Pursuant to G.L. 1956 § 42-35-12, the APA requires that final agency decisions include findings of fact and conclusions of law. Furthermore, findings of fact "shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." Sec. 42-35-12.

Our Supreme Court has explained that "the rationality of an agency's decision must encompass its fact findings, its interpretations of the pertinent law, and its application of the law to the facts as found." Sakonnet Rogers, Inc., 536 A.2d at 896 (quoting Arrow Transportation Co. v. United States, 300 F. Supp. 813, 817 (D.R.I. 1969)). "An administrative decision that fails to include findings of fact required by statute cannot be upheld." Sakonnet Rogers, Inc. v. Coastal Resources Mgt. Council, 536 A.2d 893, 896 (R.I. 1988). "The absence of required [factual] findings makes judicial review impossible . . . ." East Greenwich Yacht Club et al. v. Coastal Resources Management Council et al, 118 R.I. 559, 569, 376 A.2d 682, 687 (1977) (remanding a case to the Coastal Resources Management Council because the agency had neglected to include any basic findings in its decision).

Relying mainly upon a Superior Court case, Flynn v. R.I. Dept. of Human Services, No. PC-1993-3077, 1995 WL 941389, *2 (R.I. Super. 1995), Appellant argues that the Hearing Officer's decision violates the APA for lack of logical connection between the Hearing Officer's conclusion and the underlying facts. The Court in Flynn found that the hearing officer's conclusions simply stated that the Officer "review[ed] the available evidence" and "medical evidence," without further description of the specific evidence upon which the Hearing Officer relied, and without advising as to the logical connection between the general recounting of medical record and the recitation of DHS regulations. Id.

In another Superior Court case cited by Appellant, Ferrante v. Department of Human Services, 2002 WL 659294, *3 (R.I. Super. 2002), the Court explained that

> "in the "findings of fact" section the hearing officer preliminarily set forth a series of four facts which served only to summarize the procedural posture of the case. In the last area of the decision, the conclusion, the Hearing Officer merely states, '[I]n this matter the MART reviewed the MA63 and the AP70 and additional medical

> records and determined that the appellant's impairment is not severe.'"

Appellant's reliance on such cases is misplaced. Here, the Hearing Officer made specific findings of fact and outlined the precise manner in which Appellant failed to meet the standards under the five-step disability analysis. In the instant case, the DHS decision letter does include a separate, concise and explicit statement of factual findings. (Decision at 5.) Next, the Hearing Officer recounted the medical evidence in detail under the section entitled "Discussion of the Medical Evidence Record." Id. at 6. Under this section, the Hearing Officer provided the standard to evaluate the medical opinion, specifically, that the "medical opinion evidence is evaluated in accordance with the factors set forth at 20 CFR 416.927." Id. Subsequently, the Hearing Officer continued with a detailed explanation of the facts and data contained in the record and pertaining to each separate complaint by Appellant. Furthermore, under step four, the Hearing Officer once again explained the law to be applied and laid out thoroughly the findings of facts and medical evidence related to each of Appellant's impairments. Id. at 12-13. Subsequently, the Hearing Officer applied the findings to the law and concluded that "[a]fter consideration of all evidence, the factors indicated that the appellant currently has residual functioning adequate to sustain sedentary exertional level activity for simple, routine tasks that are not highly time pressured." Id. at 13.

Accordingly, here the Hearing Officer made specific findings of fact, interpreted the law, and applied the law to the facts as found. Thus, the Hearing Officer complied with the requirements of § 42-35-12, and the DHS Decision is not in violation of statutory provisions or made on unlawful procedure.

V

Conclusion

After a careful review of the entire record, this Court finds the decision of the Rhode Island Department of Human Services, denying the applicant disability benefits, is supported by reliable, probative, and substantial evidence on the record; was not arbitrary or capricious or characterized by an abuse of discretion; and did not constitute an unwarranted exercise of discretion. Thus, the substantial rights of Appellant have not been prejudiced. Accordingly, the decision of DHS is hereby affirmed. Counsel shall prepare an appropriate Judgment for entry.