

NOSSCR Forum October 2024 Cases of Interest

1. *Kenneth T. v. O'Malley*, 2024 WL 4367248, No. 1:23-cv-437 (M.D. N.Car., Sept. 30, 2024). Kenneth T. appealed the Commissioner of Social Security's denial of his Supplemental Security Income benefits. He had previously received benefits as a child, but upon redetermination at age 18, the agency found him no longer disabled. Although informed of his right to counsel, Kenneth T. proceeded through the entire appeals process pro se. The ALJ found that Kenneth T. suffered from severe impairments of depression, anxiety, and ADHD, but that these impairments did not meet or equal a listed disability. The ALJ determined his residual functional capacity (RFC) allowed him to perform a full range of work at all exertional levels, with some non-exertional limitations. Based on this RFC, along with testimony from a vocational expert, the ALJ concluded that Kenneth T. could perform other jobs available in the national economy and was therefore not disabled.

The District Court reversed and remanded the ALJ's decision. The Court found that the ALJ improperly discounted Kenneth T.'s subjective complaints about the impact of his mental impairments, particularly his autism spectrum disorder, because they were not sufficiently supported by objective medical evidence. The ALJ discounted the opinion of the psychological consultative examiner, who diagnosed Kenneth T. with autism spectrum disorder and found he had limited intellectual capacity, because it was based on Kenneth T.'s and his mother's subjective complaints. The ALJ also discounted the opinion of Kenneth T.'s treating psychiatrist, who opined that he could not work due to mood instability, anger, anxiety, and social skills issues.

The ALJ relied primarily on the opinions of State agency psychological consultants, finding them consistent with Kenneth T.'s IEP and the consultative examiner's notes. However, the Court noted several problems with this reliance. First, the State agency consultants' opinions were more restrictive than the ALJ characterized them. Second, the ALJ misrepresented the consultative examiner's opinion. Third, and most importantly, the State agency consultants' opinions predated the consultative examination by eight and sixteen months, respectively, and therefore did not consider the examiner's findings. The Court concluded that the ALJ improperly "cherry-picked" the record by discounting evidence that supported Kenneth T.'s subjective complaints and reverting to earlier, less comprehensive evidence. This rendered the ALJ's decision unsupported by substantial evidence, requiring remand.

2. ***Yasmin V. v. O'Malley*, --- F.Supp. 3d --- (D.R.I., May 24, 2024).**

Yasmin V. appealed the Social Security Commissioner's decision denying her Disability Insurance Benefits (DIB). The District Court had previously remanded the case for further proceedings after granting the Commissioner's request. Following a partially favorable decision on remand, where the Administrative Law Judge (ALJ) granted benefits only from the day after the prior unfavorable decision, the claimant again sought judicial review.

The District Court held that the delays in Yasmin V.'s case had become unconscionable, warranting the exercise of its equitable power to order DIB. The court noted that Yasmin V. had pursued her claim for four years through two erroneous ALJ decisions. After the initial remand, the Commissioner took six months to schedule a new hearing, and the ALJ took another four months to issue a decision. The court emphasized the strong evidence of disability and the absence of contrary evidence.

The court found the ALJ's partially favorable decision, which granted benefits only after the date of the prior remanded decision, to be an attempt to evade the prior court order. The court cited *Seavey v. Barnhart* and *Sacilowski v. Saul* to support its authority to order benefits in cases of unconscionable delay, particularly where evidence of disability is strong. The court granted remanded the case with an order to award benefits from the alleged onset date of January 15, 2019, to the established onset date of July 1, 2021.

3. ***Harriott v. Commissioner*, 2024 WL 4448812 (S.D. N.Y., Oct. 9, 2024).**

Harriott appealed the Commissioner of Social Security's denial of her Supplemental Security Income (SSI) benefits. The Commissioner moved for judgment on the pleadings to affirm the dismissal of Harriott's request for Appeals Council review of the Administrative Law Judge's (ALJ) decision, which was dismissed as untimely. Harriott moved for judgment on the pleadings to vacate the dismissal and remand for a determination of her appeal before the Appeals Council. The District Court denied the Commissioner's motion and granted Harriott's motion in part.

Harriott, a 47-year-old woman with mental and physical impairments, applied for SSI benefits in December 2018. Her application was initially denied, and after a hearing, the ALJ found her not disabled in August 2020. The Appeals Council granted her request for review, vacated the decision, and remanded the case. In September 2022, the ALJ

again found her not disabled. Harriott alleges she immediately mailed a request for review to the Appeals Council but received no response. Almost a year later, she inquired about her appeal and was told there was no record of it. She then submitted a statement requesting review. The Appeals Council dismissed her request as untimely, finding no good cause to extend the filing deadline.

The District Court reviewed the Appeals Council's decision for abuse of discretion and substantial evidence. The Court found that the Appeals Council's factual finding that there was no indication Harriott submitted her appeal before August 16, 2023, was not supported by substantial evidence. Harriott's statement indicated she had mailed her paperwork months earlier. The Court noted that the absence of a record of the appeal could be due to various reasons, including loss or misplacement by the U.S. Postal Service or the Social Security Administration. The Court also expressed skepticism about the Appeals Council's finding that Harriott did not follow up in a timely manner, noting that her prior appeal took 16 months and the average processing time for Appeals Council requests was between 358 and 395 days. The Court vacated the dismissal and remanded the case for a determination of the timeliness of Harriott's request upon an expanded record, allowing the Appeals Council to evaluate Harriott's credibility and the surrounding circumstances.

4. ***Littrell v. O'Malley*, No. 24-1923 (8th Cir. Oct. 4, 2024)** is a rare *per curiam* remand from the Eighth Circuit. The case involved an appeal of a district court order affirming the partial denial of supplemental security income benefits. The Eighth Circuit reversed and remanded. The Court found that the ALJ insufficiently evaluated Littrell's subjective complaints of back and knee pain. The ALJ discounted Littrell's pain complaints without adequate reasoning, citing only the lack of objective medical evidence. The Court held that while the absence of objective medical evidence is a factor to consider, it cannot be the sole basis for discounting a claimant's subjective complaints. The Court cited *Halverson v. Astrue* and *Guilliams v. Barnhart* to support this principle.

Because the ALJ's evaluation of Littrell's pain was insufficient, the Court found the subsequent RFC determination and hypothetical question posed to the vocational expert were also flawed. The Court cited *Swope v. Barnhart* and *Cunningham v. Apfel* to support the requirement that the ALJ's hypothetical question to the vocational expert must accurately reflect the claimant's limitations. The Court remanded the case to the Commissioner for further evaluation of Littrell's pain complaints. Judge Stras dissented

from the majority's decision, stating that he would have affirmed the district court's judgment.

5. *Stephanie T. v. O'Malley*, --- F.Supp.3d ----, 2024 WL 3083460 (D.R.I. June 21, 2024), involved a claimant's appeal of the denial of her application for Supplemental Security Income (SSI). The Administrative Law Judge (ALJ) determined Stephanie T. was not disabled because her fibromyalgia was not a medically determinable impairment (MDI). The District Court reversed and remanded.

The ALJ found Stephanie T. had severe impairments of migraine headaches, generalized anxiety disorder, major depressive disorder, substance addiction, and post-traumatic stress disorder, but not fibromyalgia. The ALJ concluded she could perform other jobs, such as photocopy machine operator, mail clerk, and merchandise marker, and was therefore not disabled. The District Court found the ALJ's determination regarding fibromyalgia was not supported by substantial evidence and misapplied the law. The court noted Social Security Ruling (SSR) 12-2p outlines specific criteria for establishing fibromyalgia as an MDI. These criteria include a history of widespread pain, repeated manifestations of at least six fibromyalgia symptoms, signs, or co-occurring conditions, and evidence that other disorders causing similar symptoms have been ruled out.

The court found ample evidence in the record supporting Stephanie T.'s claim of fibromyalgia as an MDI. Her medical records documented a history of widespread pain, including diagnoses of fibromyalgia, intense body pain, back pain, joint pain, shoulder pain, and pain while performing daily activities. The records also showed repeated manifestations of at least six symptoms, including the ALJ's findings of severe migraine headaches, generalized anxiety disorder, and major depressive disorder, as well as memory impairment, tingling, and insomnia. Finally, the records showed Stephanie T.'s medical providers had tried treatments for various other conditions, demonstrating an attempt to rule out other causes for her symptoms. The ALJ's rejection of her fibromyalgia claim was based on the lack of a rheumatology workup, which is not required by SSR 12-2p. The court found this raised the bar set by the SSR and constituted a misapplication of the law. The court remanded the case for reconsideration of Stephanie T.'s residual functional capacity, including her fibromyalgia, and for a new vocational expert analysis.

6. *Manning v. O'Malley*, 712 F.Supp.3d 894 (S.D. Tex. 2024), involved a claimant's appeal of the denial of her application for Supplemental Security Income (SSI). The District Court granted Manning's motion for summary judgment, granted her petition for review, vacated the Commissioner's final decision, and remanded the case. The ALJ's decision was based on a finding that Manning had the residual functional capacity (RFC) to perform light work, despite her diagnosis of cystic fibrosis and other conditions. The Court adopted the Magistrate Judge's report and recommendation, which found that the ALJ failed to comply with regulations requiring articulation of supportability and consistency when relying on medical opinions in determining Manning's RFC.

Manning, 21 years old at the time of her application, had a high school equivalent education and no past relevant work experience. She alleged disability based on cystic fibrosis, pancreatic insufficiency, a heart murmur, PTSD, and adjustment disorder with mixed anxiety. While acknowledging these diagnoses and Manning's treatment compliance, the ALJ found that the impairments did not rise to the level of severe impairment. The ALJ considered evaluations from several state agency consultants and treating healthcare professionals. These evaluations offered varying opinions on Manning's limitations, with some finding mild limitations and others suggesting she could perform heavy or very heavy work. Manning's treating pulmonologist opined that her daily cystic fibrosis treatment required at least two hours, increasing to four hours on some days. The ALJ misquoted this opinion, stating it as two separate two-hour sessions.

The Magistrate Judge found that the ALJ failed to properly consider the impact of Manning's time-intensive treatment regimen on her ability to work. While the ALJ acknowledged Manning's treatment compliance, they did not adequately address the time required for treatment or its effect on her RFC. The Magistrate Judge noted that if Manning's RFC is based on stable cystic fibrosis, it necessarily depends on her compliance with treatment. Therefore, the ALJ must explain their findings on the necessary treatments and their impact on Manning's ability to work. The Magistrate Judge cited *Sopko v. Saul*, a similar case where the court found the ALJ must explain how a claimant's treatment regimen affects their ability to maintain an RFC that reflects their actual performance capability. The Magistrate Judge also cited *Newton v. Apfel*, which held that if medical treatment significantly interrupts a claimant's ability to work a normal workday, the ALJ must determine whether the treatment precludes gainful activity. The Magistrate Judge found the ALJ's decision lacked sufficient articulation of

the supportive findings and their assigned weight, making it impossible for the Court to apply the substantial evidence standard. The Magistrate Judge recommended granting Manning's motion for summary judgment and remanding the case for further proceedings.

7. *N.S. v. Commissioner of Social Security*, --- F.Supp.3d ----, 2024 WL 3548772 (M.D. Ga. July 23, 2024), involved a social security disability claimant's motion for attorney fees under the Equal Access to Justice Act (EAJA) after a successful appeal and remand of the Commissioner's denial of her benefits application. The District Court granted the motion, awarding fees totaling \$17,105.19 for 68.6 hours of work. The Commissioner objected to the fee request, arguing that the hours spent reviewing the record and preparing the brief were excessive and that the billing entries were too vague.

The Court addressed the Commissioner's objections, finding the requested fees reasonable. Regarding the hours spent reviewing the 2,214-page transcript, the Court found the 13 hours spent reasonable, given the attorney's need to familiarize himself with the record. The Court rejected the Commissioner's comparison to typical EAJA cases, emphasizing that reasonableness depends on the specific facts of each case. The Court also declined to use the length of the claimant's 40-page brief as a measure of the time required to draft it. The Court found the 33.8 hours spent drafting the brief reasonable, given the complexity of the five issues raised and the excellent results achieved.

The Court also addressed the Commissioner's objection to the vagueness of the billing entries. The Court found the entries sufficiently detailed, as they clearly indicated the time spent on specific tasks, such as appeal feasibility review and brief preparation. The Court rejected the Commissioner's argument that certain entries, such as calls and emails with the client and assistance with the IFP motion, reflected non-compensable clerical tasks. The Court found these tasks involved legal expertise and were therefore compensable. Finally, the Court addressed the claimant's attempt to assign her EAJA fee award to her counsel. The Court found the assignment invalid because it did not comply with the Anti-Assignment Act's requirements. The Court noted that the Commissioner could waive these requirements and pay the attorney directly.

8. *Katrina M. v. O'Malley*, --- F.Supp.3d ----, 2024 WL 4298806 (D.D.C. Sept. 26, 2024), involved a claimant's appeal of the denial of her application for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Katrina M., a 51-year-old woman,

sought benefits due to sarcoidosis of the heart, arthritis in both hands, and shortness of breath. The Administrative Law Judge (ALJ) found she was not disabled and could perform her past relevant work as a security guard. The District Court reversed and remanded the case.

The ALJ found Katrina M. had several severe impairments, including degenerative disc disease, osteopenia, cardiac sarcoidosis, status-post implantable cardioverter-defibrillator implantation, hypertension, and emphysema. The ALJ also noted several non-severe impairments, including PTSD and anxiety. The ALJ formulated Katrina M.'s residual functional capacity (RFC) as light work with certain exertional and environmental limitations. The District Court found the ALJ erred in formulating the RFC by failing to assess Katrina M.'s non-severe mental impairments. The Court held that an ALJ must consider all impairments, even non-severe ones, in the RFC assessment, particularly how they impact the claimant's ability to work in light of other severe impairments. The Court cited *Cheryl S. v. Kijakazi*, which held that an ALJ must assess how even mild mental impairments impact a claimant's ability to work, especially when combined with severe physical impairments.

The Court distinguished *Judea L. v. Kijakazi*, where the ALJ explicitly considered the claimant's non-severe anxiety in the RFC. In Katrina M.'s case, the ALJ mentioned the non-severe mental impairments at step two but failed to assess their impact on her ability to work in the RFC formulation. The Court found this prevented effective judicial review and remanded the case for further proceedings to evaluate the impact of Katrina M.'s mental impairments on her RFC.

9. *Rubin v. O'Malley*, --- F.4th ---- (2d Cir. 2024), involved an appeal challenging the denial of Disability Insurance Benefits (DIB) based on major depressive disorder. The District Court denied the claimant's motion for judgment on the pleadings and granted the Commissioner's cross-motion. The Court of Appeals vacated and remanded with instructions.

The claimant, Michelle Rubin, argued that the ALJ erred by denying her application without a supporting medical opinion. The record contained only one physician's opinion, from her treating psychiatrist, who stated she met the listed impairment criteria and lacked capacity for consistent work. Two state agency psychologists opined there was insufficient evidence to adjudicate the claim. The Court clarified that while an ALJ's decision must be supported by substantial evidence, it does not require a directly

supporting medical opinion. However, the absence of a medical opinion contradicting the treating psychiatrist's opinion required careful scrutiny of the remaining evidence.

The Court found the ALJ misinterpreted medical and lay evidence, failing to appreciate the support for the treating psychiatrist's opinion. The ALJ summarily concluded there was no evidence of minimal capacity to adapt, acknowledging only one of the two required criteria and offering no specific support. The ALJ cited Rubin's education, independent living, medication compliance, therapy attendance, ability to handle a business, and household maintenance as reasons to discount the treating psychiatrist's opinion. However, the Court found these citations lacked context. Treatment notes consistently showed Rubin struggling with daily activities, exacerbated by work-related stress and family conflict. The ALJ misconstrued the treating psychiatrist's role and the evidence available to him, overlooking the collaborative nature of Rubin's care at the clinic and the psychiatrist's reliance on the full treatment record. The therapy notes revealed a more complete and troubling picture of Rubin's condition, including difficulty functioning, suicidal ideation, and distress from changes in routine. Non-medical evidence corroborated these difficulties, contradicting the ALJ's portrayal of Rubin's abilities. The Court found the record aligned with the treating psychiatrist's assessment, not the ALJ's. The ALJ also failed to address the other criterion regarding ongoing treatment diminishing symptoms, which the record indicated Rubin satisfied. The Court vacated the judgment and remanded for further proceedings, including a fuller consideration of existing evidence and a consultative examination.

10. *Ebony B. v. O'Malley*, --- F.Supp.3d ---- (D.D.C. 2024), involved Plaintiff Ebony B.'s appeal of the Commissioner of Social Security's denial of her application for Supplemental Security Income (SSI) benefits. The District Court granted Ebony B.'s motion for reversal and denied the Commissioner's motion for affirmance, remanding the case for further administrative proceedings. Ebony B., born in 1983, alleged disability due to endometriosis, sciatica, depression, anxiety, and hypertension, with an amended onset date of January 1, 2020. She had a high school education, some college, and past work experience as an office manager, quality insurance inspector, security guard, and in government services.

The ALJ initially found Ebony B. disabled based on an RFC including limitations to light work with various exertional, environmental, social, and cognitive restrictions, along with being off-task more than 10% of the workday. However, the ALJ then considered whether Ebony B.'s substance use (marijuana, later replaced with CBD oil)

was a contributing factor material to the determination of disability. The ALJ formulated a second RFC, identical to the first except for the exclusion of the off-task limitation. Based on this revised RFC, the ALJ found sufficient jobs existed in the national economy that Ebony B. could perform and concluded she was not disabled due to her substance use disorder (SUD) being a contributing factor.

The District Court identified several errors in the ALJ's RFC formulation and DAA analysis. The Court expressed doubt about the ALJ's SUD determination, noting the lack of objective medical evidence and reliance on Ebony B.'s self-reported substance use, which the ALJ often mischaracterized. The Court found the ALJ failed to explain how Ebony B.'s impairments would improve absent SUD, particularly the complete omission of the off-task limitation in the final RFC. The ALJ's reliance on 2019 and 2020 reports to assert differences in Ebony B.'s mental capacity with and without substance use was found unsupported, as the reports showed identical assessments before and after she stopped using marijuana. The ALJ also misrepresented Ebony B.'s testimony about her marijuana use at work. The Court found the ALJ failed to explain how Ebony B. would have no off-task limitations without SUD and did not adequately link the state agency psychologists' opinions to any such finding.

The Court also found the ALJ failed to explain his determination of Ebony B.'s reasoning level, despite crediting opinions that she had moderate difficulties with detailed instructions. The ALJ's reliance on Ebony B.'s past work as a security guard was deemed irrelevant, as it did not address the contradictory psychological opinions or explain her current reasoning level. The ALJ also failed to address limitations on Ebony B.'s concentration, persistence, or pace, despite finding credible opinions about such limitations. The Court rejected the Commissioner's arguments that the ALJ sufficiently accounted for these limitations, finding them unsupported by evidence. Finally, the Court found the ALJ failed to address limitations on Ebony B.'s ability to sit or squat, despite finding persuasive a medical opinion noting these limitations. The ALJ did not explain how he reconciled this opinion with his RFC, which included no such limitations. The Court concluded that these errors prevented effective judicial review and remanded the case for further proceedings.

- 11. *Rodney Edward G. v. O'Malley*, --- F.Supp.3d ---- (2024), 2024 WL 3654017 (E.D. Pa. Aug. 5, 2024)**, involved a claimant's appeal of the Commissioner of Social Security's denial of his application for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits. The District Court reversed and

remanded. The claimant, Rodney Edward G., alleged disability due to migraines, depression, anxiety, bipolar disorder, and paranoia, amending his alleged onset date to March 3, 2020. He was 50 years old at the amended onset date, had a high school education, and past work experience as a garbage collector, drill press tender, and hardness inspector.

The ALJ found Rodney Edward G. had several severe impairments, including adjustment disorder with mixed anxiety and depressed mood, major depressive disorder, anxiety disorder, cannabis and alcohol use disorders, and migraine headaches. However, the ALJ determined that these impairments did not meet or equal a listed impairment and that he retained the residual functional capacity (RFC) to perform a full range of work at all exertional levels with certain nonexertional limitations. Based on this RFC and vocational expert testimony, the ALJ concluded that jobs existed in significant numbers in the national economy that Rodney Edward G. could perform and therefore he was not disabled. The District Court found the ALJ erred in evaluating the opinion of the claimant's treating psychiatrist and therapist. The ALJ failed to consider the consistency of their opinion with other evidence, such as medical records from the county correctional facility, the opinion of a state agency psychological consultant, the claimant's statements and testimony, and correspondence from his employer. The ALJ also failed to explain how she considered the supportability of their opinion, neglecting to discuss their explanations for the assessed limitations.

Additionally, the District Court found the ALJ's determination that the limitations assessed by the treating psychiatrist and therapist were inconsistent with the objective medical evidence was not supported by substantial evidence. The ALJ cited conservative and routine treatment, inconsistent compliance with treatment, and generally mild to moderate symptoms as reasons to discount the opinion. However, the treatment records documented more severe symptoms, including agitation, paranoia, depressed/anxious mood, auditory hallucinations, problems managing anger and verbal outbursts, persecutory delusions, and interpersonal difficulties leading to job loss. The Court found that, given this evidence, no reasonable mind could find the claimant had "generally mild to moderate symptoms." The Court remanded the case for the ALJ to properly consider the consistency and supportability of the treating psychiatrist and therapist's opinion. The Court declined to address the claimant's remaining arguments regarding the step three listing analysis and the RFC, as these issues might be resolved upon proper consideration of the treating providers' opinion. The Court also noted that the ALJ did not err in failing to acknowledge the treating

psychiatrist's specialization, as the regulations do not require articulation of findings on this factor, and the ALJ did consider the providers' treatment relationship with the claimant.

12. *Shirley H. v. Kijakazi*, 710 F.Supp.3d 458 (D.S.C. Jan. 3, 2024), involved a claimant's appeal of the Commissioner of Social Security's denial of her claim for disability insurance benefits. The District Court reversed and remanded. The claimant, Shirley H., 57 years old on her date last insured, alleged an onset date of October 15, 2017. She had past relevant work as a quality assurance coordinator, nurse assistant, and landscape supervisor.

The ALJ found Shirley H. had several severe impairments, including degenerative disc disease, mild arthritis in hips, carpal tunnel syndrome, arthritis, and asthma. The ALJ determined that Shirley H. could perform past relevant work as a quality assurance coordinator and was therefore not disabled. The District Court adopted the Magistrate Judge's report and recommendation, which found that the ALJ erred by failing to explain why he omitted mental limitations from Shirley H.'s residual functional capacity (RFC). While the ALJ found Shirley H. had mild limitations in understanding, remembering, or applying information due to depression, he did not include any mental limitations in the RFC or explain this omission.

The Magistrate Judge emphasized that Social Security Ruling 96-8p requires ALJs to consider limitations imposed by all impairments, even non-severe ones, and to explain why limitations are not included in the RFC. The Magistrate Judge found this omission particularly concerning because the ALJ determined Shirley H. could perform her past work as a quality assurance coordinator, a skilled job with a reasoning level of 5, which directly relates to the mental limitations the ALJ identified. The Magistrate Judge also noted that Shirley H.'s advanced age, limited education, and lack of transferable skills meant she would be disabled under the Medical-Vocational Guidelines if she could not perform her past relevant work. The Magistrate Judge recommended remanding the case for further consideration of this issue. The District Court adopted the recommendation and remanded the case. The Magistrate Judge declined to address Shirley H.'s argument about the ALJ's consideration of her past relevant work, as it might be moot on remand.

13. *Fink v. Kijakazi*, 710 F.Supp.3d 641 (W.D. Wis. Jan. 8, 2024), involved a claimant's appeal of the Social Security Administration's denial of her application for disability

insurance benefits and supplemental security income. The District Court affirmed the denial in part. The claimant, Tina M. Fink, challenged the vocational expert's (VE) testimony regarding the number of jobs available in the national economy that she could perform.

The ALJ found Fink had several severe impairments, including diabetes, obesity, depression, PTSD, and anxiety. The ALJ determined Fink was not disabled prior to January 21, 2022, because she could perform jobs such as routing clerk, marker, and electric accessories assembler. However, the ALJ found Fink became disabled on January 21, 2022, due to a change in her age category. Fink argued that the VE's job number estimates, derived from a program called Job Browser Pro, were unreliable. The District Court found Fink forfeited this challenge by not raising it before the ALJ. The Court noted that although Fink's attorney questioned the VE about her methodology, he did not object to it during the hearing or in a post-hearing brief. The Court rejected Fink's argument that she preserved the challenge by raising it in her brief to the Appeals Council, emphasizing that the ALJ is best suited to address such objections and develop the record during the hearing.

Despite the forfeiture, the Court also addressed the substantial evidence standard. The Court found the VE's testimony was not facially implausible or incoherent, as she explained that she used Job Browser Pro estimates as a starting point and then applied her own experience to adjust the numbers based on Fink's RFC. The Court acknowledged that the VE's statement about not having an opinion on the reliability of Job Browser Pro's method was ambiguous and could have been clarified by the ALJ. However, the Court noted that the Seventh Circuit has not ruled on the reliability of Job Browser Pro and that the VE's reservations about the equal distribution method were consistent with the Circuit's stance. The Court concluded that the VE's testimony, combined with her explanation of her experience and sources, provided sufficient evidence to satisfy the substantial evidence standard, particularly in the absence of a specific objection from Fink.

14. *Prosa v. Commissioner of Social Security*, --- F.Supp.3d ---- (2024), 2024 WL 4205285 (S.D.N.Y. Sept. 17, 2024), involved a claimant's appeal of the Commissioner of Social Security's denial of her application for disability insurance benefits. The District Court granted the claimant's motion for judgment on the pleadings and remanded the case for further proceedings. The claimant, Nicole Prosa, alleged disability due to a left knee injury, right knee pain, right and left hip pain, and adjustment disorder, with an alleged

onset date of January 1, 2015. The case had been previously remanded by the District Court in 2022 due to an unexplained contradiction between a medical opinion and the ALJ's RFC formulation.

Following the remand, a supplemental hearing was held, and the ALJ again found Prosa not disabled. The ALJ determined that Prosa had severe impairments of left and right knee derangement and obesity, but that her other alleged physical and mental impairments were not medically determinable or did not cause more than minimal limitations. The ALJ formulated an RFC for sedentary work with certain exertional limitations, including a sit/stand option. The ALJ found Prosa capable of performing her past relevant work as a medical secretary and therefore not disabled. The District Court found the ALJ's RFC determination was not supported by substantial evidence, particularly regarding the restriction on kneeling. While the ALJ found several medical opinions persuasive, which supported the sit/stand restriction, those same opinions recommended no kneeling or no kneeling on the left knee. The ALJ failed to explain why the RFC allowed for occasional kneeling, despite these medical opinions and the ALJ's own prior RFC on the first appeal, which included an absolute restriction on kneeling.

The Court rejected the Commissioner's arguments that Prosa failed to show the ALJ was compelled to find a more restrictive RFC and that the ALJ was entitled to formulate an RFC consistent with the record as a whole. The Court emphasized that the ALJ must provide reasoning for departing from persuasive medical opinions, especially when formulating a less restrictive RFC. The Court also rejected Prosa's argument that the ALJ erred in finding her mental impairment non-severe, finding substantial evidence supported the ALJ's conclusion based on Prosa's limited mental health treatment history, lack of psychotropic medications, and testimony about improvement in her mental health. Finally, the Court rejected Prosa's argument that the ALJ failed to develop the record, noting Prosa's testimony did not suggest a need for further development, the record contained a medical opinion on her mental impairments, and Prosa's counsel confirmed the record's completeness. The Court remanded the case for further proceedings due to the error in the RFC formulation.

15. *Phillips v. O'Malley*, 2024 WL 4274859 (E.D. Mo. Sept. 24, 2024), involved Gina Phillips's appeal of the Commissioner of Social Security's denial of her application for disability insurance benefits. Phillips alleged disability beginning January 1, 2018, due to PTSD, depression, anxiety, and panic attacks. The ALJ denied her claim, finding that

while she was disabled, her substance abuse was a contributing factor material to the determination of disability. The District Court reversed and remanded.

Phillips argued the ALJ erred in concluding substance abuse was material to her disability and in evaluating medical opinion evidence. The ALJ found Phillips had severe impairments of major depressive disorder, generalized anxiety disorder, PTSD, methamphetamine-induced mood disorder, and methamphetamine use disorder. The ALJ determined that if Phillips stopped substance use, she would have the RFC to perform a full range of work at all exertional levels with some non-exertional limits. Based on this RFC and vocational expert testimony, the ALJ found Phillips could perform other jobs and was therefore not disabled. The Court found the ALJ's decision was not supported by substantial evidence. The ALJ identified medical records and testimony indicating improvement in Phillips's condition when she stopped substance use. However, Phillips admitted to using methamphetamines almost daily since 2017, undermining the ALJ's reliance on records from periods of alleged abstinence. The Court found the evidence did not adequately separate the effects of Phillips's substance use from her co-occurring mental disorders.

Regarding the medical opinion evidence, the ALJ found Dr. Hayat's assessment of marked limitations persuasive when considering Phillips's substance use, but not persuasive when considering her limitations in the absence of substance use. The Court found this inconsistency unsupported by the record, given Phillips's near-daily methamphetamine use. The Court remanded the case for further proceedings to revisit the sequential drug abuse or alcoholism (DAA) evaluation process, including further development of the record regarding whether DAA is material to Phillips's disability. The Court instructed the ALJ to allow Phillips a reasonable opportunity to supplement the medical evidence. The Court upheld the ALJ's determination that Phillips was disabled when considering all impairments, including substance use.