

NOSSCR Forum November 2024 Cases of Interest

1. *De Camacho v. O'Malley*, 717 F.Supp.3d 354 (S.D.N.Y. 2024) (No. 22-CV-7779 (RWL)).

Juliana Hernandez De Camacho (De Camacho) appealed the Commissioner of Social Security's denial of her application for disability insurance benefits and supplemental social security income. The District Court found that the Administrative Law Judge (ALJ) erred in failing to develop the medical record regarding De Camacho's use of a cane. The ALJ rejected medical opinions stating De Camacho needed an assistive device, despite her testimony that a doctor prescribed her a cane and walker. The court found inconsistencies in the record regarding De Camacho's need for a cane, which were material because the vocational expert testified that someone with De Camacho's limitations who used an assistive device for all ambulation would be unable to work. The court remanded the case for further development of the record regarding De Camacho's use of a cane and the frequency of her knee buckling and loss of balance.

The District Court also found that substantial evidence supported the ALJ's finding that De Camacho's depression was a non-severe impairment. The ALJ considered the broad functional areas of mental functioning and found no more than mild limitations in any of them. The ALJ cited De Camacho's statements, consultative examination records, and treating doctor's opinions, but found inconsistencies that did not support moderate limitations. The court also found that any error in the ALJ's finding regarding De Camacho's depression was harmless, as the ALJ considered her mental impairments when formulating her residual functional capacity.

2. *Sharon J. v. Commissioner of Social Security*, 716 F.Supp.3d 59 (W.D.N.Y. 2024) (No. 6:22-CV-06546 EAW).

Sharon J. appealed the Commissioner of Social Security's denial of her application for disability insurance benefits. The District Court found that the ALJ failed to include Sharon J.'s mental limitations in the residual functional capacity (RFC) assessment, which warranted remand. Although the ALJ found Sharon J.'s mental impairments of depressive disorder and anxiety to be non-severe at step two, with only mild limitations in mental functioning, the ALJ did not discuss these limitations when assessing the RFC. The court noted that the "special technique" used at step two is not an RFC assessment and is distinct from the RFC finding. The ALJ's failure to discuss the mental limitations was prejudicial because the ALJ found Sharon J. capable of performing her past relevant work, which was skilled or semi-skilled.

3. *Duran v. O'Malley*, — F.Supp.3d — (D. Mass. 2024) (CIVIL ACTION No. 24-10263-WGY).

Miguelina Duran (Duran) challenged the Appeals Council's denial of her request for review of an ALJ's decision denying her disability benefits. Duran argued that the Appeals Council failed to review new and material evidence, specifically a vocational

report (Starr Report) rebutting the vocational expert’s testimony at the hearing. The District Court found that the Appeals Council did not deny review based on a lack of “good cause” for Duran’s failure to submit the Starr Report earlier. The court also found that the Starr Report undermined the ALJ’s decision, and the Council’s failure to consider it was egregious error. The ALJ relied on the vocational expert’s testimony regarding available jobs, but the Starr Report argued that the job numbers were overstated and some jobs were obsolete. The court reversed the Commissioner’s decision and remanded the case for further proceedings.

4. *Harriott v. Commissioner of Social Security*, — F.Supp.3d — (S.D.N.Y. 2024) (No. 1:23-cv-10658 (SDA)).

Lesa M. Harriott (Harriott) challenged the Commissioner of Social Security’s dismissal of her appeal for review as untimely. Harriott asserted she mailed her request immediately after receiving the ALJ’s decision, but the Appeals Council found no record of it. The District Court found that substantial evidence did not support the Appeals Council’s finding that Harriott did not submit her appeal timely. The court noted Harriott’s statement that she mailed the paperwork and the lack of any contrary evidence besides the absence of a record. The court also found that the Appeals Council failed to develop the administrative record with appropriate findings to determine the timeliness of Harriott’s appeal. The court vacated the dismissal and remanded the case for a determination of timeliness based on an expanded record.

5. *Minarsky v. Kijakazi*, — F.Supp.3d — (M.D. Pa. 2024) (No. 1:23-CV-1000).

Sheri Minarsky (Minarsky) appealed an ALJ’s decision denying her application for disability insurance benefits. The District Court found that the ALJ erred in failing to properly consider the supportability and consistency of medical opinions. While the ALJ’s consistency analysis regarding the licensed clinical social worker’s opinion was supported by substantial evidence, the ALJ failed to consider the supportability of that opinion. The ALJ also erred in failing to evaluate the supportability of the nurse practitioner’s opinion and in providing insufficient evidence for his consistency analysis of that opinion. Finally, the ALJ erred in failing to address the supportability of the consultative examiner’s opinion and in failing to consider evidence from other medical sources for his consistency analysis. The court found these errors were not harmless, as the opinions concluded Minarsky was significantly impaired in her ability to respond to changes in a routine work setting, and the ALJ would likely have found her unable to work if he fully adopted any of the opinions. The court reversed and remanded the case for a new hearing.

6. *Wheeler v. Commissioner of Social Security*, — Fed.Appx. — 2024 WL 4603298 (11th Cir. Oct. 29, 2024) (No. 22-14251).

Christopher Wheeler appealed the district court’s judgment affirming the denial of his supplemental security income benefits. The ALJ gave great weight to the consulting psychologist’s (Austin) opinions regarding Wheeler’s mental impairments, but adopted

an RFC assessment that conflicted with those opinions. Austin opined that Wheeler had moderate limitations in interacting with supervisors and coworkers, but the ALJ did not incorporate these limitations into the RFC assessment. The court found that the ALJ failed to explain why she did not adopt Austin’s opinions, which violated a Social Security Ruling requiring explanation when an RFC assessment conflicts with a medical opinion. The court reversed the district court’s judgment and remanded the case with instructions to remand to the Commissioner.

7. *Jackson v. O’Malley*, — F.Supp.3d — (D.S.C. 2024) (CIVIL ACTION NO. 5:23-4475-MGL).

Shakima Jackson (Jackson) sought judicial review of the Commissioner of Social Security’s denial of her claim for continuing supplemental security income. The District Court found that the ALJ erred by evaluating Jackson’s mental impairments under the subsequently revised mental impairment listings rather than the listing criteria in effect at the time of the prior decision granting benefits. The court held that the ALJ should have evaluated Jackson’s mental impairments under the listing criteria as it existed in 2004 when she was initially found disabled. The ALJ’s finding that Jackson’s impairments did not meet the current listing criteria did not provide a sufficient basis to determine whether she met the earlier listing criteria for bipolar disorder. The court reversed the Commissioner’s decision and remanded the case for further proceedings.

8. *Wilt v. O’Malley*, 720 F.Supp.3d 94 (D.N.H. 2024) (No. 15-cv-439-LM).

Following a successful challenge of a denial of disability benefits and an award of \$69,217.18 in past-due benefits, Kathy Wilt’s counsel moved for attorney fees. The District Court found the requested fee of \$17,300 reasonable. Counsel achieved a reversal of the denial of benefits and requested payment for 39.2 hours of work. The requested amount was less than twice the lodestar figure and consistent with the contingent-fee agreement.

9. *Charles E. v. Commissioner of Social Security*, — F.Supp.3d — (W.D.N.Y. 2024) (No. 1:23-CV-00760 EAW).

Charles E. appealed the Commissioner of Social Security’s denial of his applications for disability insurance benefits and supplemental security income. The District Court found that while the ALJ acknowledged the Appeals Council’s remand order, it was unclear how the ALJ’s RFC assessment, providing “reasonable access” to a bathroom, was consistent with the consultative examiner’s (Dr. Dave) opinion that Charles E. required “frequent” bathroom breaks. The ALJ found Dr. Dave’s opinion persuasive but did not explain the meaning of “reasonable access” or whether it accounted for “frequent” breaks. The court remanded the case for further explanation of the bathroom break limitations in the RFC, including how it complied with Dr. Dave’s opinion.

10. *Nerio Mejia v. O'Malley*, — F.4th — (9th Cir. Nov. 4, 2024) (No. 23-3162).

Consuelo Griselda Nerio Mejia appealed a district court's order awarding her a reduced amount of attorney fees under the EAJA. The district court reduced the fees because it excluded time spent on alternative arguments that the court did not reach in its decision. The Court of Appeals reversed, holding that fees incurred for work on alternative arguments are compensable under the EAJA, even if the court did not address them. The court found that the district court's categorical rule against compensating for work on undecided issues was contrary to Supreme Court precedent. The court remanded the case with instructions to award the full amount of fees requested.

11. *Jeremy H. v. O'Malley*, 722 F.Supp.3d 1161 (E.D. Wash. 2024) (No. 2:23-cv-00298-EFS).

Jeremy H. sued the Commissioner of Social Security, seeking review of an ALJ's denial of his disability insurance benefits application. The Commissioner moved to dismiss due to untimely filing. The District Court denied the motion, finding that Jeremy H. exhausted administrative remedies and established grounds for equitable tolling. The court found that electronic docket entries showed the Appeals Council reviewed the case, constituting final agency action. The 65-day period for appeal began running from the date the Appeals Council closed its review. Jeremy H. pursued his rights diligently by having counsel review the case status and reasonably relying on the docketing system's indication of Appeals Council review. An extraordinary circumstance hindered timely filing because the docketing system misled counsel into believing review was pending.

12. *Comack v. Commissioner, Social Security Administration*, — Fed.Appx. — 2024 WL 4719238 (11th Cir. Nov. 8, 2024) (No. 23-11115).

Patrick Comack appealed the district court's dismissal of his complaint related to his pending social security proceedings. The Court of Appeals affirmed the dismissal for failure to serve the Commissioner and failure to exhaust administrative remedies. Comack did not timely serve the U.S. Attorney or Attorney General, as required. His social security proceedings were still ongoing, so he had not received a final decision from the Commissioner. Waiver of exhaustion was inapplicable because Comack's allegations stemmed directly from his claim for benefits and exhaustion was not futile.