UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DENNICE WALKER-SMITH, on behalf of her minor child, A.D.W.,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 16-10394-FDS**
CAROLYN W. COLVIN, Commissioner of the Social Security Administration,	)	
Defendant.	)	

MEMORANDUM AND ORDER ON PLAINTIFF'S MOTION TO REVERSE OR REMAND AND DEFENDANT'S MOTION TO AFFIRM THE DECISION OF THE COMMISSIONER

SAYLOR, J.

This is an appeal of a final decision of the Commissioner of the Social Security Administration ("SSA") denying the application of plaintiff Dennice Walker-Smith for supplemental security income ("SSI") benefits on behalf of her minor daughter, A.D.W. Plaintiff appeals the denial of her application on the ground that the decision is not supported by substantial evidence as required by 42 U.S.C. § 405(g). Specifically, plaintiff contends that the administrative law judge ("ALJ") failed to adequately develop the record, erroneously found A.D.W.'s learning and intellectual impairments to be non-severe, failed to make a full analysis of all material information, and inappropriately substituted his judgment for that of a medical professional. She further contends that remand is warranted in order to permit the ALJ to consider new and material evidence that supports a finding of disability.

Pending before the Court are plaintiff's motion to reverse or remand the decision of the

Commissioner and defendant's motion to affirm the decision of the Commissioner. For the reasons stated below, the decision will be affirmed, and plaintiff's motion to reverse or remand will be denied.

I. Background

A. Factual Background

Dennice Walker-Smith brings this action on behalf of her minor child, A.D.W. A.D.W., the claimant, was born in August 2001. (A.R. 19). She lives with her mother and brother in Dorchester, Massachusetts. (A.R. 410).

1. Asthma

A.D.W. has persistent asthma. (A.R. 480). Walker-Smith estimates that she started experiencing symptoms in 2008. (A.R. 389). Over the years, she has been prescribed Flovent, Proair, Advair, Aerochamber, and Albuterol to control those symptoms. (A.R. 489).

A.D.W.'s asthma symptoms began to worsen in 2011. (*Id.*). Between February 2011 and October 2011, she visited the emergency room five times, complaining of asthma-related issues. (*Id.*). From October 8 to 11, 2011, she was admitted to the Boston Medical Center Intensive Care Unit with severe respiratory distress, and was diagnosed with status asthmaticus. (A.R. 309). In October 2012, A.D.W. visited the Codman Square Health Center Urgent Care Clinic and was prescribed prednisone. (A.R. 430).

In April 2013, Lucy Stone, A.D.W.'s fifth-grade teacher, completed a "Teacher Questionnaire" provided by the SSA in connection with this application. (A.R. 444, 446). The questionnaire instructed that the form should be completed by the person most familiar with A.D.W.'s overall functioning. (*Id.*). Stone reported that, although the medical information states that A.D.W. has asthma, she had "never observed any symptoms or effects." (A.R. 450).

On August 21, 2013, A.D.W. was examined by Hong-Phuong Vo, M.D., of the Pediatric Pulmonology/Allergy Clinic at Boston Medical Center for the purpose of completing a Childhood Disability Evaluation Form in connection with this application. (A.R. 481). Dr. Vo found that A.D.W. had a marked limitation in the "health and physical well-being" domain, and explained that she "had three asthma exacerbations in the past 2 months requiring urgent care and systemic steroid." (A.R. 483). She found that A.D.W. had less than marked or no limitations in the other domains. (A.R. 482–83). Despite finding that A.D.W. had a marked limitation in only one domain, she checked a box indicating that A.D.W.'s impairment or combination of impairments functionally equals the listing due to "[m]arked limitation in two domains." (A.R. 484).

2. Obesity

A.D.W. has obesity. In January 2010, A.D.W. weighed 141 pounds and had a body mass index ("BMI") of 32.3. (A.R. 325). By May 2014, her weight had increased to 238 pounds and her BMI to 41. (A.R. 486). In July 2014, Walker-Smith testified that A.D.W. weighed 249 pounds. (A.R. 55).

3. Learning Disability and Borderline Intellectual Functioning

A.D.W. has a learning disability and borderline intellectual functioning. (A.R. 455). Tests indicate that A.D.W. has a full-scale IQ, ability to reason non-verbally, and ability to hold information and manipulate it in her head in the borderline range, as well as ability to reason with language in the low-average range. (A.R. 455). In many other areas, she tests below average. (*Id.*). When A.D.W. was six years old, her overall score on the Wechsler Intelligence Scale for Children was in the 9th percentile, placing her in the low average range of intellectual abilities. (A.R. 267).

On January 25, 2012, A.D.W. underwent a Consultative Examination with Emrie Cohen, M.A., a licensed clinical psychologist, in connection with this application. Cohen assessed A.D.W.'S I.Q. at 75, in the 5th percentile, and her reading, spelling, and arithmetic skills at the second- or third-grade level. (A.R. 318). She found that A.D.W. has a mild reading disorder, mild impairment in written expression, definite mathematics disorder, and borderline intellectual functioning. (A.R. 320).

In light of her learning difficulties, in the first grade A.D.W. was placed into a small, substantially separate classroom for children with special needs. (A.R. 263). She also repeated the fifth grade. (A.R. 455). Since her application date, A.D.W. has received special education services and Individualized Education Programs (IEPs) in school. (A.R. 455).

School records indicate that A.D.W. is a diligent student despite learning difficulties. On the April 2013 Teacher Questionnaire, Stone stated that A.D.W. "appears to function at a slightly slower processing pace than her peers," "acts very young for her age," and "has a great deal of difficulty remembering to go to the office to use her inhaler before gym class." (A.R. 445). She also found that A.D.W. "works very methodically and deliberately on tests, using all the time allowed and showing amazing focus and stamina until the last minute." (A.R. 446). She assessed that "on the whole, in Gen[eral] Ed[ucation] classrooms [A.D.W.] is able to apply herself to tasks with appropriate attention." (*Id.*). Her IEP for the 2013–14 school year states that she is a "happy student who is eager to learn." (A.R. 455).

A.D.W.'s school records also reflect persistent problems with attendance. When she was in first grade, a school psychologist reported that A.D.W.'s teacher was "concerned about her poor attendance" which impeded her ability to "make effective academic pro[g]ress." (A.R. 264). Her 2013–14 IEP states that she "has had many absences this year, [which have] hurt her

progress. When she is present in school, she is capable of learning and retaining new information." (*Id.*). Stone reported that "[A.D.W.]'s attendance is abysmal with almost 50 days of absences and 50 days of tardies . . . it is very unclear why she misses school because sometimes it is simply because her mom doesn't make her attend when menstruating and [A.D.W.] has told me no one makes her attend if she doesn't feel like it." (A.R. 449–450).

4. State-Agency Clinical Assessments

In early 2012, Rosario Palmeri, M.D., a state-agency pediatrician, and Ronald Nappi, Ed.D., a state-agency psychologist, conducted a review of A.D.W.'s medical records in connection with her initial application. (A.R. 92–100). They found that A.D.W.'s asthma, borderline intellectual functioning, and learning disorder constituted severe impairments. (A.R. 96). They further found that A.D.W. had a marked limitation in the domain of "health and physical well-being" due to her severe asthma, but that she had less than marked or no limitations in the other domains. (A.R. 97–98). Under the domain of "acquiring and using information," the clinicians explained that A.D.W. scored in the borderline range of intelligence, but that the results of her testing "may have been impacted by her asthmatic condition and by days of missed school due to physical [sic]." (A.R. 97).

In September 2012, Sheela Gurbani, M.D., a state-agency pediatrician, and Menachem Kasdan, Ed.D, a state-agency psychologist, conducted a similar review in connection with Walker-Smith's request for reconsideration. (A.R. 102–11). Those clinicians found the same severe impairments as Palmeri and Nappi, and found that A.D.W.'s obesity also constituted a severe impairment. (A.R. 107). Like Palmeri and Nappi, as well as Dr. Vo, Gurbani and Kasdan found that A.D.W. had a marked limitation in the domain of "health and physical well-being" due to her asthma, but less than marked or no limitations in all other domains. (A.R. 107–08).

Upon reviewing the evidence, the four state-agency clinicians opined that A.D.W.'s impairments did not meet, medically equal, or functionally equal either listing 112.05 concerning intellectual impairment, or listing 103.03 concerning asthma. (A.R. 97, 98, 107, 109). All four ultimately determined that A.D.W. was not disabled. (A.R. 99, 109).

5. Function Reports

Walker-Smith submitted two Function Reports in connection with the application. (A.R. 200, 212). On the first report, she indicated that A.D.W.'s physical abilities as well as ability to communicate, to take care of her personal needs, and pay attention and stick with a task were not limited. (A.R. 201–08). She indicated that A.D.W.'s ability to progress in learning was limited. In the box provided to explain those limitations, Walker-Smith wrote only that "[A.D.W.] need[s] help with everything." (A.R. 204).

On the second report, when asked to explain anything the agency should know about A.D.W.'s ability to communicate, Walker-Smith wrote that "[A.D.W.] has severe asthma which is what I signed her up for." (A.R. 215). Walker-Smith indicated that A.D.W. does not complete her homework or finish things she starts, explaining that "she g[et]s out of breath so easy I have to put her on the machine." (A.R. 219).

6. Hearing Testimony

On June 11, 2013, the SSA conducted an informal pre-hearing conference to determine what records had been submitted and what was still needed. (A.R. 84). The senior attorney adjudicator conducting the conference, Sandra Larkin, informed Walker-Smith that she had the right to legal representation and offered to provide her with a list of legal services agencies. (A.R. 84–85). Walker-Smith responded that she did not need the list. (A.R. 85).

Larkin reviewed A.D.W.'s medical records from Codman Square Health Center and

Boston Medical Center, and her educational records from A.D.W.'s former school, Holmes Elementary School. (A.R. 87). She asked Walker-Smith to request that A.D.W.'s current school, Roxbury Prep, "send in any records, documentation, IEPs or any documentation of her learning disability" concerning the period from 2011 to the date of the conference. (A.R. 88). She also asked for updated medical records and a medical release in order to request supplemental documentation on Walker-Smith's behalf. (A.R. 89).

The SSA conducted two hearings concerning Walker-Smith's application, one on December 18, 2013, and one on July 15, 2014. At both hearings she appeared without representation. (A.R. 51, 67). On both occasions, when asked whether she had "thought [the decision to proceed *pro se*] over carefully" she replied that she had and affirmed that she wished to proceed without counsel. (A.R. 51–52, 67–68).

Walker-Smith testified at both hearings, primarily concerning A.D.W.'s asthma. At the first hearing, when asked whether A.D.W. had "any other problems of any kind," Walker-Smith stated that A.D.W. had allergies, but made no mention of any learning disability. (A.R. 70–71). At the second hearing, after describing A.D.W.'s asthma symptoms, Walker-Smith was asked if there was "anything else [she'd] like to tell [the ALJ]?" (A.R. 55). Walker-Smith stated that A.D.W. had borderline diabetes, but again did not mention any learning disability as a basis for the application. (A.R. 54–55).

During the first hearing, the SSA retained Jay Orson, M.D., a pediatrician, to testify as an impartial medical expert. (A.R. 77). Orson asked Walker-Smith how often A.D.W. had been prescribed prednisone and how often she took her inhaler for asthma. (A.R. 78). Walker-Smith responded that A.D.W. took her inhaler twice per day and had taken prednisone three times in the past year. (*Id.*). Orson determined that, based on that report, A.D.W.'s asthma would meet a

listing. (*Id.*). He requested that Walker-Smith provide records from her pharmacy to verify the frequency of prednisone treatments. (A.R. 79). The ALJ adjourned the hearing in order to allow Walker-Smith to provide the needed documentation. (*Id.*).

During the second hearing, the SSA retained F. Edward Yazbak, M.D., a pediatrician, to testify as an impartial medical expert. (A.R. 56–62). Yazbak stated that A.D.W. had persistent, moderate asthma; a learning disability; obesity; allergies; and borderline intellectual functioning that was "questionable." (A.R. 56). He found that A.D.W. had a marked limitation in the domain of "health and physical well-being," but less than marked or no limitations in the other domains. (A.R. 60). He concluded that she did not meet, medically equal, or functionally equal any listing. (*Id.*).

B. Procedural Background

On October 11, 2011, Walker-Smith filed an application for SSI on behalf of A.D.W. (A.R. 25). The application alleged an onset date of August 1, 2004. (*Id.*). The SSA denied the claim upon initial application on April 10, 2012, and denied a request for reconsideration on September 20, 2012. (*Id.*).

Thereafter, Walker-Smith requested a hearing before an administrative law judge ("ALJ"). The SSA conducted an informal pre-hearing conference on June 11, 2013. (A.R. 84). The ALJ conducted two hearings on December 18, 2013, and July 15, 2014. (A.R. 77, 25).

On September 9, 2014, the ALJ issued an opinion finding that A.D.W. was not disabled under § 1614(a)(3)(C) of the Social Security Act. (A.R. 44). Walker-Smith requested review of the decision with the Appeals Council, and was represented for the first time by counsel on appeal. (A.R. 18). On January 14, 2016, the Appeals Council denied the request for review. (A.R. 1).

On February 24, 2016, Walker-Smith filed this action to review the decision of the Commissioner. On July 25, 2016, she filed the present motion for an order reversing the decision of the Commissioner. On November 1, 2016, the SSA cross-moved for an order affirming the decision of the Commissioner.

II. Analysis

A. Standard of Review

Under § 405(g) of the Social Security Act, this Court may affirm, modify, or reverse the Commissioner's decision, with or without remanding the case for a rehearing. 42 U.S.C. § 405(g). The ALJ's finding on any fact shall be conclusive if it is supported by substantial evidence, and must be upheld "if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support his conclusion," even if the record could justify a different conclusion. *Rodriguez v. Secretary of Health and Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981); *Evangelista v. Secretary of Health and Human Servs.*, 826 F.2d 136, 144 (1st Cir. 1987). Moreover, "the responsibility for weighing conflicting evidence, where reasonable minds could differ as to the outcome, falls on the Commissioner and his designee, the ALJ. It does not fall on the reviewing Court." *Seavey v. Barnhart*, 276 F.3d 1, 10 (1st Cir. 2001) (citation omitted). In applying the "substantial evidence" standard, the Court must bear in mind that it is the province of the ALJ, not the courts, to find facts, decide issues of credibility, draw inferences from the record, and resolve conflicts of evidence. *See Irlanda Ortiz v. Secretary of Health and Human Servs.*, 955 F.2d 765, 769 (1st Cir. 1991). Reversal is warranted only if the ALJ committed a legal or factual error in evaluating plaintiff's claim, or if the finding is not supported by substantial evidence. *See Manso-Pizarro v. Secretary of Health and Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996).

B. Standard of Entitlement to Minor Child SSI Benefits

The Social Security Act provides that a claimant seeking SSI benefits bears the burden of establishing that he or she "is 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 months." 42 U.S.C. § 1382c(a)(3)(A).

In evaluating a minor child's claim of disability, the ALJ is required to follow a three-part analysis. First, the ALJ must determine if the claimant is performing any substantial gainful activity. *See* 20 C.F.R. §§ 416.924(a).

Second, if the claimant is not performing gainful activity, the ALJ must consider if the claimant has an impairment or combination of impairments that is severe. *Id.*

Third, if the claimant has a severe impairment, then the ALJ must determine if any impairment or combination of impairments—including those impairments found to be non-severe—meets, medically equals, or functionally equals a listed impairment. *Id.* §§ 416.924(a), 416.926a(a). A child's impairment will functionally equal a listed impairment if it "result[s] in 'marked' limitations in two domains of functioning or an 'extreme' limitation in one domain." *Id.* § 416.926a(a). The six domains that must be assessed are (1) "[a]cquiring and using information;" (2) "[a]ttending and completing tasks;" (3) "[i]nteracting and relating with others;" (4) "[m]oving about and manipulating objects;" (5) "[c]aring for [one's]self;" and (6) "[h]ealth and physical well-being." *Id.* §§ 416.926a(b)(1)(i–vi). A domain of functioning will be considered to have a "marked" impairment if it "interferes seriously with [one's] ability to independently initiate, sustain, or complete activities." *Id.* § 416.926a(e)(2)(i). A domain of functioning will be considered to have an "extreme" impairment if it "interferes very seriously

with [one's] ability to independently initiate, sustain, or complete activities." *Id.* § 416.926a(e)(3)(i).

C. The ALJ's Findings

At step one, the ALJ found that claimant had not engaged in substantial gainful activity since the application date of October 11, 2011. (A.R. 28).

At step two, the ALJ found that claimant's asthma and obesity are severe impairments under 20 C.F.R. 416.924(c). (A.R. 28). He further found that the record reflects that she suffers from a learning disability, a question of borderline intellectual ability, and allergies, but that those impairments are not severe. (*Id.*).

At step three, the ALJ found that claimant did not have an impairment or combination of impairments that met, medically equaled, or functionally equaled the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. In determining that her impairments did not functionally equal a listed impairment, the ALJ considered evidence concerning her asthma, obesity, learning disability, and intellectual impairment. (A.R. 30–37). Specifically, the ALJ found that she had a marked limitation in "health and physical well-being," no limitation in "interacting and relating with others," and less than a marked limitation in "acquiring and using information," "attending and completing tasks," "moving about and manipulating objects," and "caring for [one's]self." (A.R. 37–43).

D. Plaintiff's Objections

Plaintiff raises six objections to the ALJ's decision. She contends that the ALJ erred in (1) failing to adequately develop the record; (2) misapplying the severity analysis in finding claimant's learning disability and borderline intellectual functioning were non-severe; (3) failing to consider whether claimant's borderline intellectual functioning medically equals listing

112.05; (4) failing to consider the combined effect of all impairments; (5) substituting his judgment for that of a medical professional; and (6) failing to make a full and complete analysis of the acquiring and using information domain.

Plaintiff further contends that the case should be remanded for the ALJ to consider new and material evidence that supports a finding of disability.

1. Objections

i. Development of the Record

Plaintiff contends that the ALJ failed to develop the record adequately in light of the fact that claimant was unrepresented. She contends that the ALJ failed to seek additional information including (1) additional IEPs, as the record contains only IEPs from the 2010–11 and 2013–14 school years; (2) additional evidence concerning alleged inconsistencies between the medical records and Dr. Yazbak's testimony that claimant's borderline intellectual functioning is "questionable;" (3) clarifying information related to Dr. Vo's report that claimant visited the urgent-care clinic three times; and (4) additional testimony from plaintiff concerning claimant's performance in school.

In light of the fact that "social security proceedings 'are not strictly adversarial,'" an ALJ has a duty to ensure "adequate development of the record." *Evangelista*, 826 F.2d at 142 (quoting *Miranda v. Secretary of HEW,* 514 F.2d at 998). That responsibility is heightened when a plaintiff is proceeding *pro se*. *See Heggarty v. Sullivan*, 947 F.2d 990, 997 (1st Cir. 1991). Even where an ALJ fails to develop the record fully, "remand is appropriate only where the court determines that further evidence is necessary to develop the facts of the case fully, that such evidence is not cumulative, and that consideration of it is essential to a fair hearing." *Veiga v. Colvin*, 5 F. Supp. 3d 169, 177 (D. Mass. 2014) (quoting *Evangelista*, 826 F.2d at 139); *see also*

Heggarty, 947 F.2d at 997. Furthermore, a plaintiff must demonstrate good cause for failing to introduce the evidence at the hearing. *See Heggarty*, 947 F.2d at 997.

Here, plaintiff has not made the requisite showing to warrant remand. She has not demonstrated that further evidence is necessary to develop the facts of the case fully. Plaintiff provided hundreds of pages of documents to support her application. She has not pointed to any information in documents or other evidence that the ALJ failed to find that would have likely altered the findings. While the missing IEPs and clarifying information may have provided additional support for the claim, there has been no showing that the information would have been anything more than cumulative.

In addition, she has not supported her claim that the record contains "inconsistencies" that the ALJ should have resolved by further developing the record. With respect to Dr. Vo's report, the ALJ explained that he gave limited weight to that opinion because the record contains "no treatment notes from [Dr.] Vo, no evidence documenting the nature and length of [the] treating relationship with the claimant, or indeed, if they have ever had any treating relationship at all" and did not substantiate the finding concerning the number of urgent care visits. (A.R. 36–37). In addition, Dr. Yazbak's testimony that claimant's borderline intellectual function was "questionable," does not present a factual inconsistency, but instead reflects a somewhat different assessment of the same facts assessed by other clinicians. Therefore, plaintiff has not pointed to any gaps or inconsistencies in the record sufficient to warrant remand.

In any event, plaintiff has not established good cause for her failure to provide the evidence at her hearings. She has not pointed to any procedural hurdles that impeded her from testifying to or submitting evidence concerning any of claimant's issues. On multiple occasions, the SSA provided plaintiff with the opportunity to supplement the record: at the informal

conference, when Ms. Larkin directed her to provide supplemental medical documentation and "all" school reports from the relevant time concerning claimant's learning disability, and at the first hearing, when the ALJ directed her to supplement the medical records with documentation confirming claimant's prescriptions. On both occasions, plaintiff provided additional records. She was also given ample opportunity to explain claimant's impairments more fully. She filled out two function reports and testified at two hearings. At both the first and second hearings, plaintiff failed to make any mention of claimant's learning disability and intellectual impairment, despite being asked whether claimant had any impairments other than asthma. Although claimant's *pro se* status at the hearings warrants some leniency, that alone does not constitute good cause warranting remand. *See Evangelista*, 826 F.2d at 142 (citing *Hess v. Secretary of HEW*, 497 F.2d 837, 840 n.4 (3d Cir. 1974)).

Accordingly, remand is not warranted on the basis that the ALJ failed to develop the record adequately.

ii. Severity Analysis Concerning the Learning and Intellectual Impairments

Plaintiff contends that the ALJ erred in finding that claimant's learning disability and borderline intellectual functioning were not severe impairments. She points to the contrary conclusions of consulting examiner physicians, claimant's low IQ, and the history of the special-needs services that claimant was provided in school as evidence that the ALJ's conclusion was not supported by substantial evidence.

If the ALJ finds at least one severe impairment at step two, he must proceed to step three. 20 C.F.R. 416.924(a). At step three, the ALJ must consider not only the impairments found to be severe at step two, but all of the claimant's impairments, in order to assess whether an impairment or combination of impairments medically or functionally equals the severity of a

listed impairment. 20 C.F.R. § 416.926a(a).

Here, any error in the ALJ's severity analysis—if any were committed—was harmless. At step two, the ALJ found that claimant's asthma and obesity constituted severe impairments. He proceeded to step three, explicitly acknowledging that he must consider all of claimant's impairments, "even those that are not severe." (A.R. 26). In accordance with that rule, the ALJ evaluated claimant's learning and intellectual impairments together with her severe physical impairments at step three. First, in assessing her ability to acquire and use information, he considered Cohen's assessment that she had borderline intellectual functioning and learning disorders; Stone's answers to the April 2013 Teacher Questionnaire reflecting that she "is capable of learning and retaining new information, that she is a hard worker who completes her homework, and it is her frequent absenteeism from school that has hurt her academic progress"; and Dr. Yazbak's testimony that claimant had less than a marked limitation in "acquiring and using information," (A.R. 38–39).

The ALJ concluded that based on that evidence, claimant had less than a marked limitation in acquiring and using information. (*Id.*). Similarly, he considered evidence concerning her learning and intellectual impairments in assessing the domains of "attending and completing tasks," "interacting and relating with others," and "caring for [one's]self." Because the ALJ considered all her impairments at step three, even those he found to be non-severe, any error in failing to find other severe impairments was harmless. *See Jones v. Colvin*, 2014 WL 575457, at *12 (D. Mass. Feb. 10, 2014) (finding in analogous adult-disability application context that error in finding an impairment to be non-severe is "harmless" because the ALJ found other severe impairments and thus was required to consider non-severe impairments at subsequent steps).

Accordingly, reversal or remand is not warranted on the basis that the ALJ erroneously found claimant's learning disability and borderline intellectual function to be non-severe.

iii. Failure to Consider the Intellectual Impairment Listing

Plaintiff makes a cursory argument that the ALJ erred in failing to consider whether claimant's intellectual disability medically equaled the listing in 20 C.F.R., Subpart P, Appendix 1 § 112.05. She does not cite the standard provided by listing 112.05 or point to any evidence in the record supporting a finding that claimant's intellectual impairment satisfied the listing criteria. All of the state-agency clinicians, Dr. Vo, and Dr. Yazbak found that claimant's intellectual impairment was severe, but did not meet or medically equal a listing. Plaintiff has not shown that the ALJ committed any error in failing to consider whether claimant's intellectual impairment met or medically equaled a listing.

iv. Failure to Consider the Combination of All Impairments and Substitution of Judgment for That of a Medical Professional

Plaintiff next contends that the ALJ erred in failing to consider the combined effect of all claimant's impairments and substituting his judgment for that of a medical professional. However, substantial evidence in the record supports the ALJ's decision concerning those claims.

First, the ALJ stated repeatedly that he was considering the combined effect of all impairments in determining whether claimant's impairments functionally equaled any listing. (A.R. 26, 27, 29, 30, 43). In applying that standard, he considered all of her impairments in the contexts in which they were most relevant. He considered her learning and intellectual impairments in the context of the "acquiring and using information," "attending and completing tasks," "interacting and relating to others," "caring for [one's]self" domains. He considered her asthma and obesity impairments in the context of the "moving about and manipulating objects"

and "health and physical well-being" domains. Plaintiff has not pointed the Court to any evidence in the record that the combination of impairments created a more significant problem than was reflected in the ALJ's consideration of the impairments.

Similarly, plaintiff has not shown that the ALJ inappropriately substituted his judgment for that of a medical professional. Plaintiff contends that the ALJ failed to explain why he ignored Dr. Yazbak's testimony that claimant has a learning disability. To the contrary, the ALJ found that she in fact had a learning disability, although he found that it caused "only minimal functional limitations." (A.R. 28–29). His ultimate conclusion that her learning and intellectual impairments, in combination with her physical impairments, did not constitute a disability comported with the findings of Dr. Yazbak and the four state-agency clinicians.

Therefore, the ALJ's findings are supported by substantial evidence.

v. Failure to Make a Full Analysis of the Acquiring and Using Information Domain

Plaintiff further contends that because the ALJ did not fully develop the record concerning her school performance, he was not able to make a full analysis of the "acquiring and using information" domain. In light of the court's finding that the ALJ did not fail to develop the record adequately, remand is likewise not warranted based on that claim.

2. Remand for Consideration of New and Material Evidence

Plaintiff seeks remand for the consideration of new evidence consisting of medical records documenting urgent-care visits that occurred shortly after the ALJ's decision issued, as well as claimant's IEP from the 2015–16 school year.

The Court may order additional evidence to be taken only upon a showing that the new evidence is material and that there is good cause for the failure to incorporate the evidence into the record in a prior proceeding. 42 U.S.C. § 405(g). New evidence is material if the ALJ's

decision "might reasonably have been different" if the evidence had been considered. *Evangelista*, 826 F.2d at 140 (quoting *Falu v. Secretary of Health & Human Srvcs.*, 703 F.2d 24, 27 (1st Cir. 1983)).

First, plaintiff seeks remand for consideration of two records documenting visits to the Codman Square Health Center in November and December 2014. (*See* Docket No. 15-3, 15-4). At both visits, claimant was prescribed prednisone. (*Id.*). Plaintiff contends that those records, documenting visits that occurred two and three months after the issuance of the ALJ opinion, establish that claimant medically equals the asthma listing of 103.03(C). The relevant period of review is from the application date of October 11, 2011, to the date of the decision of September 9, 2014. The Codman Square records relate to a date outside of that relevant period. They are, therefore, not material to the proceeding.[1]

Second, plaintiff seeks remand for consideration of claimant's IEP for the 2015–16 school year. Plaintiff contends that the IEP provides further support for the claim that claimant's academic struggles are attributable to her learning disability, rather than her absences from school. The newly submitted IEP provides additional evidence that she is a hard worker but gets "overwhelmed with processing information." (Docket No. 15-2 at 1). That information and other information contained in the IEP is largely cumulative of the school records already provided and post-dates the relevant period by more than one year. It does not provide new, material information sufficient to justify remand.

Accordingly, remand based on the additional documentation is not warranted.

[1] Plaintiff submitted the new Codman Square Health Center records to the Appeals Council upon requesting review of the ALJ's decision. (A.R. 2; Pl. Mem. at 19). The Appeals Council declined to incorporate the documents into the record because they were "about a later time" and "d[id] not affect the decision about whether [Claimant] w[as] disabled beginning on or before September 9, 2014 [the date of the ALJ decision]." (A.R. 2). Although plaintiff makes only cursory reference to the Appeals Council, the outcome is the same when the claim is analyzed as an attack on the Appeals Council decision, because that decision was clearly not "egregiously mistaken." *Mills v. Apfel*, 244 F.3d 1, 5 (1st Cir. 2001).

III. Conclusion

For the foregoing reasons, plaintiff's motion for an order to reverse the decision of the Commissioner is DENIED, and defendant's motion to affirm the decision of the Commissioner is GRANTED.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: April 17, 2017