

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term 2011

(Argued: October 24, 2011 Decided: August 17, 2012)

Docket No. 09-4530-cv

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JOSEPHINE L. CAGE,

Plaintiff-Appellant,

-- v. --

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

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B e f o r e : NEWMAN, WALKER and KATZMANN, Circuit Judges.

Appeal from a judgment of the United States District Court
for the Western District of New York (Michael A. Telesca, Judge)
upholding an administrative decision denying claimant's
application for disability benefits under the Social Security
Act. Claimant challenges the finding, upheld by the district
court, that drug addiction or alcoholism was a contributing
factor material to the determination that she was disabled and
that she therefore was ineligible for benefits. We AFFIRM the
judgment of the district court.

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2 Obersheimer, on the brief),
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4 for Plaintiff-Appellant.
5

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16

17
18 JOHN M. WALKER, JR., Circuit Judge:

19 Plaintiff-appellant Josephine L. Cage appeals from a
20 judgment of the United States District Court for the Western
21 District of New York (Michael A. Telesca, Judge) upholding a
22 decision by an Administrative Law Judge ("ALJ") of the Social
23 Security Administration (the "SSA") denying Cage's application
24 for Supplemental Security Income ("SSI") benefits. Although the
25 ALJ determined that Cage met certain requirements for being
26 "disabled" under the Social Security Act (the "Act"), 42 U.S.C.
27 § 301 et seq., he found Cage ineligible for SSI on the ground
28 that drug addiction or alcoholism ("DAA") was a contributing
29 factor material to that determination.

30 On appeal, Cage argues that (1) the ALJ improperly imposed
31 upon her the burden of proving that she would be disabled in the
32 absence of DAA, and (2) the record did not support the ALJ's
33 finding that she would not be disabled absent DAA, in particular

1 because the ALJ lacked a predictive medical or psychological
2 opinion to that effect. She therefore asks that the district
3 court's decision upholding the ALJ's ruling be vacated, and that
4 the case be remanded to the district court with instructions to
5 vacate the ALJ's decision and calculate retroactive SSI benefits.

6 We hold that the ALJ did not err in denying Cage benefits,
7 because SSI applicants bear the burden of proving that they would
8 be disabled in the absence of DAA, and substantial evidence
9 supported the ALJ's finding that Cage would not be disabled
10 absent DAA.

11 **BACKGROUND**

12 **I. Factual Background**

13 Josephine Cage, who was born in 1960, has an extensive
14 medical history. Over the course of these proceedings, she has
15 offered evidence of numerous health conditions, including bipolar
16 disorder, depression, suicidal ideation, dizziness, blackouts,
17 memory loss and chest pain. Cage has received periodic primary
18 and emergency medical care for her health problems since at least
19 2001, and with greater frequency beginning in December 2003, when
20 she was admitted to the hospital for a variety of ailments. She
21 has not worked since November 2003. Her employment history to
22 that point included work as a retail cashier, hotel maid and home
23 healthcare aide.

1 Cage also has a long history of drug and alcohol abuse,
2 including alcohol abuse on the day she was admitted to the
3 hospital in December 2003. Her ongoing medical care has included
4 treatment for both DAA and her other conditions. At least one of
5 Cage's healthcare providers has opined that Cage's substance
6 abuse "made worse" her non-DAA impairments, and Cage has
7 acknowledged that her drinking was "not helpful" to her mental
8 health. There is medical evidence that Cage has attempted
9 suicide only when under the influence -- although she testified
10 that she has felt suicidal even while sober -- and that on the
11 two occasions she reported hearing voices she had used crack
12 cocaine. Cage also once explained to a doctor that she felt
13 depressed because she had spent her money on cocaine.

14 Cage applied for SSI benefits on May 12, 2004, claiming that
15 her various health impairments rendered her unable to work.
16 After her application was initially denied, Cage proceeded in May
17 2007 to an ALJ hearing in Rochester, New York, at which she was
18 represented by counsel.

19 In a decision dated August 7, 2007, the ALJ issued his
20 findings and conclusions. Based on the medical records and
21 Cage's testimony at the hearing, the ALJ found that Cage suffered
22 from the following severe impairments: polysubstance dependence
23 disorder, personality disorder, schizoaffective disorder and
24 syncope. In view of those impairments, he determined that Cage

1 met the regulatory requirements for affective disorder,
2 personality disorder and substance addiction disorder, see 20
3 C.F.R. pt. 404, subpt. P, app. 1, §§ 12.04, 12.08, 12.09 (2007).
4 However, the ALJ further determined that in the absence of her
5 drug and alcohol abuse, Cage would not meet the requirements for
6 those disorders. He also concluded, based on the testimony of a
7 vocational expert, that Cage would be able to work absent DAA.
8 He therefore found her not disabled within the meaning of the
9 Act. The record did not contain any consultive opinion
10 predicting Cage's health and functionality in the absence of DAA;
11 rather, in making his findings, the ALJ relied on the record as a
12 whole.

13 In June 2008, the SSA Appeals Council denied Cage's request
14 for review, making the ALJ's ruling the final decision of the
15 Commissioner of Social Security (the "Commissioner") on Cage's
16 May 2004 application.

17 On August 25, 2008, Cage reapplied for SSI benefits. In
18 December 2009, the same ALJ who had denied her first application
19 found Cage disabled and entitled to benefits as of the date of
20 her reapplication. In particular, the ALJ concluded that DAA was
21 not a contributing factor material to the second determination of
22 disability because there was no evidence of DAA since the August
23 25, 2008 onset date of Cage's reapplication.

1 **II. Procedural Background**

2 Having received benefits upon her second application, Cage
3 in this suit seeks retroactive benefits, for the period between
4 her 2004 and 2008 applications, to which she believes she is
5 entitled by virtue of her first application.

6 In August 2008, around the time she reapplied for benefits,
7 Cage challenged the ALJ's decision on her initial application in
8 the district court. She contended that the ALJ had applied the
9 wrong legal standards and that his decision was not supported by
10 substantial evidence. The district court disagreed and granted
11 the Commissioner's motion for judgment on the pleadings pursuant
12 to 42 U.S.C. § 405(g) and Fed. R. Civ. P. 12(c). See Cage v.
13 Astrue, No. 08-CV-6364T, 2009 WL 3245643 (W.D.N.Y. Oct. 5, 2009).
14 Relevant to this appeal, the district court held that (1)
15 "[t]here is substantial evidence in the record that supports the
16 ALJ's determination that [Cage's] substance abuse was a key
17 factor contributing to her disability"; (2) Cage "has the burden
18 of proving that absent her drug and alcohol abuse, she would
19 still be disabled"; and (3) Cage "failed to satisfy [that]
20 burden." Id., 2009 WL 3245643, at *4.

21 Cage appealed the district court's ruling to this Court. At
22 our request, the parties briefed two issues in particular: (1)
23 whether Cage "had the burden of proof before the [ALJ] with
24 respect to whether her [DAA] was a contributing factor material

1 to the determination of disability"; and (2) whether "the [ALJ]
2 erred by finding that [Cage's DAA] was a contributing factor
3 where there was no medical opinion specifically addressing that
4 issue." See Order Appointing Counsel, Cage v. Comm'r of Soc.
5 Sec., No. 09-4530-cv (2d Cir. Apr. 23, 2010).

6 **DISCUSSION**

7 **I. Standard of Review**

8 When reviewing an appeal from a denial of SSI benefits, "our
9 focus is not so much on the district court's ruling as it is on
10 the administrative ruling." Rivera v. Sullivan, 923 F.2d 964,
11 967 (2d Cir. 1991) (internal quotation marks omitted). But we do
12 not substitute our judgment for the agency's, see Veino v.
13 Barnhart, 312 F.3d 578, 586 (2d Cir. 2002), or "determine de novo
14 whether [the claimant] is disabled," Schaal v. Apfel, 134 F.3d
15 496, 501 (2d Cir. 1998) (internal quotation marks omitted).
16 Instead, "this Court is limited to determining whether the SSA's
17 conclusions were supported by substantial evidence in the record
18 and were based on a correct legal standard." Lamay v. Comm'r of
19 Soc. Sec., 562 F.3d 503, 507 (2d Cir. 2009); see also Moran v.
20 Astrue, 569 F.3d 108, 112 (2d Cir. 2009) ("[W]e conduct a plenary
21 review of the administrative record to determine if there is
22 substantial evidence, considering the record as a whole, to
23 support the Commissioner's decision"). "Substantial
24 evidence is 'more than a mere scintilla. It means such relevant

1 evidence as a reasonable mind might accept as adequate to support
2 a conclusion.'" Halloran v. Barnhart, 362 F.3d 28, 31 (2d Cir.
3 2004) (per curiam) (quoting Richardson v. Perales, 402 U.S. 389,
4 401 (1971)). In our review, we defer to the Commissioner's
5 resolution of conflicting evidence. Clark v. Comm'r of Soc.
6 Sec., 143 F.3d 115, 118 (2d Cir. 1998).

7 **II. The Burden of Proof on DAA Materiality**

8 Cage first argues that the ALJ erred by requiring that she
9 prove that she still would be disabled in the absence of her drug
10 and alcohol abuse. She contends that the burden was on the
11 Commissioner to prove that she would not be disabled absent DAA.

12 An SSI applicant qualifies as "disabled" under the Act if
13 she is unable "to engage in any substantial gainful activity by
14 reason of any medically determinable physical or mental
15 impairment . . . which has lasted or can be expected to last for
16 a continuous period of not less than 12 months." 42 U.S.C.
17 § 423(d)(1)(A). This determination is reached through a five-
18 step process:

19 First, the Commissioner considers whether the claimant
20 is currently engaged in substantial gainful activity.
21 Where the claimant is not, the Commissioner next
22 considers whether the claimant has a "severe
23 impairment" that significantly limits her physical or
24 mental ability to do basic work activities. If the
25 claimant suffers such an impairment, the third inquiry
26 is whether, based solely on medical evidence, the
27 claimant has an impairment that is listed [in the so-
28 called "Listings"] in 20 C.F.R. pt. 404, subpt. P, app.
29 1. If the claimant has a listed impairment, the
30 Commissioner will consider the claimant disabled

1 without considering vocational factors such as age,
2 education, and work experience; the Commissioner
3 presumes that a claimant who is afflicted with a listed
4 impairment is unable to perform substantial gainful
5 activity. Assuming the claimant does not have a listed
6 impairment, the fourth inquiry is whether, despite the
7 claimant's severe impairment, she has the residual
8 functional capacity to perform her past work. Finally,
9 if the claimant is unable to perform her past work, the
10 burden then shifts to the Commissioner to determine
11 whether there is other work which the claimant could
12 perform.

13 Tejada v. Apfel, 167 F.3d 770, 774 (2d Cir. 1999) (footnote
14 omitted). As a general matter, "[t]he claimant bears the burden
15 of proving that she suffers from a disability." Swainbank v.
16 Astrue, 356 F. App'x 545, 547 (2d Cir. 2009) (summary order); see
17 also 42 U.S.C. §§ 423(d)(5)(A), 1382c(a)(3)(H)(i). It is only at
18 step five that the burden shifts to the Commissioner. See Petrie
19 v. Astrue, 412 F. App'x 401, 404 (2d Cir. 2011) (summary order).

20 When there is medical evidence of an applicant's drug or
21 alcohol abuse, the "disability" inquiry does not end with the
22 five-step analysis. See 20 C.F.R. § 416.935(a). In 1996,
23 Congress enacted the Contract with America Advancement Act (the
24 "CAAA"), which amended the Act by providing that "[a]n individual
25 shall not be considered . . . disabled . . . if alcoholism or
26 drug addiction would . . . be a contributing factor material to
27 the Commissioner's determination that the individual is
28 disabled." Pub. L. 104-121, 110 Stat. 847 (codified at 42 U.S.C.
29 § 1382c(a)(3)(J)). The critical question is "whether [the SSA]
30 would still find [the claimant] disabled if [she] stopped using

1 drugs or alcohol." 20 C.F.R. § 416.935(b)(1); see also 20 C.F.R.
2 § 416.935(b)(2)(i) ("If [the Commissioner] determine[s] that [the
3 claimant's] remaining limitations would not be disabling, [he]
4 will find that [the] drug addiction or alcoholism is a
5 contributing factor material to the determination of
6 disability.").

7 The CAAA does not specify who bears the burden of proof on
8 DAA materiality, and this is an issue of first impression in our
9 circuit. But, with one possible exception, all of the other
10 circuit courts that have considered this question have held that
11 the claimant bears the burden of proving that her DAA is not
12 material to the determination that she is disabled. See Parra v.
13 Astrue, 481 F.3d 742, 748 (9th Cir. 2007); Brueggemann v.
14 Barnhart, 348 F.3d 689, 693 (8th Cir. 2003); Doughty v. Apfel,
15 245 F.3d 1274, 1279-80 (11th Cir. 2001); Brown v. Apfel, 192 F.3d
16 492, 497-99 (5th Cir. 1999). Several district courts in this
17 circuit have endorsed that view. See Badgley v. Astrue, No.
18 07-CV-399C, 2009 WL 899432, at *4 (W.D.N.Y. Mar. 27, 2009); White
19 v. Comm'r, 302 F. Supp. 2d 170, 173 (W.D.N.Y. 2004); Eltayyeb v.
20 Barnhart, No. 02 Civ. 925 (MBM), 2003 WL 22888801, at *4 & n.3
21 (S.D.N.Y. Dec. 8, 2003). The lone arguable outlier is the Tenth
22 Circuit, which, in Salazar v. Barnhart, 468 F.3d 615 (10th Cir.
23 2006), did not explicitly state that the Commissioner bears the
24 burden of proving DAA materiality, but which Cage believes

1 implied as much by reversing a ruling of DAA materiality that the
2 court believed was not supported by substantial evidence. See
3 id. at 622-26.

4 For the following reasons, we agree with the weight of the
5 authority that claimants bear the burden of proving DAA
6 immateriality:

7 First, as stated earlier, claimants bear the general burden
8 of proving that they are disabled for purposes of receiving SSI
9 benefits. See Balsamo v. Chater, 142 F.3d 75, 80 (2d Cir. 1998).
10 The Commissioner's burden at step five is a limited exception to
11 this rule. We agree with our sister circuits that any expansion
12 of the Commissioner's burden should find strong or explicit
13 justification in statute, regulation or policy, and that no such
14 justification exists here. See Doughty, 245 F.3d at 1280; Brown,
15 192 F.3d at 498. Thus, because the CAAA amended the definition
16 of "disabled" to exclude conditions materially caused by DAA,
17 proving DAA immateriality is best understood as part of a
18 claimant's general burden of proving that she is disabled. See
19 Doughty, 245 F.3d at 1280.

20 Second, claimants are better positioned than the SSA to
21 offer proof as to the relevance of any DAA to their disability
22 determinations because facts relevant to those determinations
23 ordinarily would be in their possession. See Parra, 481 F.3d at
24 748; Doughty, 245 F.3d at 1280; Brown, 192 F.3d at 498. Fairness

1 and practicality therefore counsel in favor of placing this
2 burden on them. See Bowen v. Yuckert, 482 U.S. 137, 146 n.5
3 (1987) ("It is not unreasonable to require the claimant, who is
4 in a better position to provide information about his own medical
5 condition, to do so.").

6 Third, holding claimants to this burden accords with
7 Congress's purpose in enacting the CAAA. As explained by the
8 Ninth Circuit,

9 Congress sought through the CAAA to discourage alcohol
10 and drug abuse, or at least not to encourage it with a
11 permanent government subsidy. [Placing the burden of
12 proving DAA materiality on the Commissioner] provides
13 the opposite incentive. An alcoholic claimant who
14 presents inconclusive evidence of materiality has no
15 incentive to stop drinking, because abstinence may
16 resolve his disabling limitations and cause his claim
17 to be rejected or his benefits terminated. His claim
18 would be guaranteed only as long as his substance abuse
19 continues -- a scheme that effectively subsidizes
20 substance abuse in contravention of the statute's
21 purpose.

22 Parra, 481 F.3d at 749-50 (internal quotation marks, citations
23 and footnotes omitted).

24 Citing to certain CAAA legislative history, Cage counters
25 that Congress opposed the receipt of benefits by "individuals
26 whose sole severe disabling condition is drug addiction or
27 alcoholism," H.R. Rep. No. 104-379, pt. 2, § 7, at 17 (1995)
28 (emphasis added), whereas she suffers from various mental
29 impairments in addition to DAA. But legislative history does not
30 have the force of law, see Am. Hosp. Ass'n v. NLRB, 499 U.S. 606,

1 616 (1991), and cannot support rewriting the statute, which, as
2 discussed above, amends the definition of "disabled" and
3 therefore places the burden of proving DAA immateriality on the
4 claimant. And in any case, the sources cited by Cage do not
5 resolve the question before us. It is true that the CAAA's
6 legislative history supports the intuitive proposition that
7 "[i]ndividuals with [DAA] who have had another severe disabling
8 condition . . . can qualify for benefits based on that disabling
9 condition." H.R. Rep. No. 104-379, at 16. But this does not
10 answer the question of who bears the burden of proof as to the
11 effects of the other condition(s) in the absence of DAA.

12 Finally and as noted earlier, since 1999, when the Fifth
13 Circuit decided Brown, courts overwhelmingly have held claimants
14 to the burden of proving that they would be disabled in the
15 absence of drug or alcohol abuse. Cage would have us believe
16 that courts have erred in this respect for more than a decade but
17 that neither Congress nor the Commissioner has sought to rectify
18 this error by amending the U.S. Code or the C.F.R., respectively.
19 We are unpersuaded.

20 In arguing that the Commissioner bore the burden of proving
21 DAA materiality in her case, Cage relies principally on an
22 internal SSA document that was never incorporated into the C.F.R.
23 See Questions and Answers Concerning DAA from the 07/02/96
24 Teleconference-Medical Adjudicators, EM-96200 (Aug. 30, 1996)

1 (the "Teletype").¹ The Teletype was issued by the Commissioner
2 shortly after the CAAA's enactment to assist ALJs in implementing
3 the CAAA. It states in relevant part that:

4 There will be cases in which the evidence demonstrates
5 multiple impairments, especially cases involving
6 multiple mental impairments, where the [medical and/or
7 psychological consultant] cannot project what
8 limitations would remain if the individuals stopped
9 using drugs/alcohol. In such cases, the [consultant]
10 should record his/her findings to that effect. Since a
11 finding that DAA is material will be made only when the
12 evidence establishes that the individual would not be
13 disabled if he/she stopped using drugs/alcohol, the
14 [ALJ] will find that DAA is not a contributing factor
15 material to the determination of disability.

16 Id. (emphasis added). The Teletype further advises that "[w]hen
17 it is not possible to separate the mental restrictions and
18 limitations imposed by DAA and the various other mental disorders
19 shown by the evidence, a finding of 'not material' would be
20 appropriate." Id. Although the Teletype does not speak in terms
21 of burdens, it could be read to endorse a presumption in favor of
22 the applicant -- i.e., that "a tie goes to [the claimant],"
23 Brueggemann, 348 F.3d at 693. So construed, it would
24 "effectively shift[] the burden to the Commissioner to prove
25 [DAA] materiality." Parra, 481 F.3d at 749.

26 But Cage concedes that the Teletype, as an unpromulgated
27 internal agency guideline, does not have the force of law and is
28 entitled to deference only insofar as it has the power to

1 ¹ The Teletype is available at [https://secure.ssa.gov/apps10/](https://secure.ssa.gov/apps10/public/reference.nsf/links/04292003041931PM)
2 public/reference.nsf/links/04292003041931PM.

1 persuade. See United States v. Mead Corp., 533 U.S. 218, 227-29
2 (2001); Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944). The
3 same four reasons that support our conclusion that the burden of
4 proving DAA immateriality rests with the claimant render the
5 Teletype, as construed by Cage, unpersuasive: (1) claimants bear
6 the general burden of proving they are “disabled,” the definition
7 of which excludes disabilities materially caused by DAA; (2)
8 claimants are better positioned to offer evidence relevant to DAA
9 materiality; (3) the Teletype’s burden allocation undermines the
10 CAAA’s aims; and (4) neither Congress nor the Commissioner has
11 acted to “correct” the judiciary’s imposition of this burden upon
12 claimants. Therefore, to the extent Cage’s reading of the
13 Teletype is correct, we decline to defer to it.² See Parra, 481
14 F.3d at 749 (the Teletype’s “interpretation is unpersuasive
15 because it contradicts the purpose of the [CAAA]”).

16 **III. The Sufficiency of the Evidence**

17 Cage next argues that, regardless of who bears the burden of
18 proof on DAA materiality, the record did not permit the ALJ’s
19 determination that she would not be disabled absent DAA.

1 ² In addition to the Teletype, Cage’s argument relies on an
2 obsolete instruction by the Commissioner on determining DAA
3 materiality. See Social Security Administration Hearings,
4 Appeals and Litigation Law Manual, I-5-4-14A (“HALLEX”) (Nov. 14,
5 1997), available at http://ssaconnect.com/tfiles/DAA_II.htm.
6 Assuming arguendo that HALLEX supported Cage’s burden argument,
7 and forgetting for the moment that it is no longer effective, we
8 would decline to defer to it for the same reasons we decline to
9 defer to the Teletype as construed by Cage.

1 In briefing this appeal, Cage originally advocated a bright-
2 line rule that “an ALJ cannot find that drug or alcohol use is a
3 contributing factor where there is no medical opinion addressing
4 the issue,” Appellant Br. at 36 -- a position that the Tenth
5 Circuit alone has endorsed based on its reading of the Teletype,
6 see Salazar, 468 F.3d at 624.³ We believe that such a rule,
7 found nowhere in the U.S. Code or C.F.R., is unsound. It would
8 unnecessarily hamper ALJs and impede the efficient disposition of
9 applications in circumstances that demonstrate DAA materiality in
10 the absence of predictive opinions. See McGill v. Comm’r of Soc.
11 Sec., 288 F. App’x 50, 53 (3d Cir. 2008) (rejecting the
12 “argu[ment] that any determination that DAA is material to the
13 finding of disability must be based on expert psychiatric opinion
14 evidence”); Doughty, 245 F.3d at 1280-81.

1 ³ In Salazar, the Tenth Circuit read the Teletype as
2 “instruct[ing]” that a finding of DAA immateriality be made
3 “where the record is devoid of any medical or psychological
4 report, opinion, or projection as to the claimant’s remaining
5 limitations” in the absence of DAA. 468 F.3d at 624. The
6 relevant portion of the Teletype, however, refers not to cases in
7 which the record lacks predictive opinions, but in which the
8 medical or psychological consultants “cannot project what
9 limitations would remain if the individuals stopped using
10 drugs/alcohol” (emphasis added). See Doughty, 245 F.3d at 1280-
11 81 (rejecting the notion that the “Teletype imposes a new
12 requirement upon the ALJ to seek a consultant’s opinion when
13 making a materiality determination”). But even were we to agree
14 with the Tenth Circuit’s reading of the Teletype, we would
15 decline to defer to this instruction because we find its
16 rationale unpersuasive.

1 In her reply brief, Cage disclaimed the above bright-line
2 rule and argued only that a predictive medical opinion is
3 necessary in cases, including hers, in which “‘it is not possible
4 for an ALJ to separate the limitations imposed by substance abuse
5 [and] by other non-DAA impairments,’” Appellant Reply Br. at 21.
6 By arguing that it was “not possible” for the ALJ to find DAA
7 materiality in her case, Cage in substance is advancing a
8 sufficiency-of-the-evidence challenge: Was the ALJ’s finding of
9 DAA materiality supported by substantial evidence,
10 notwithstanding the lack of a consultive opinion predicting her
11 impairments in the absence of drug or alcohol abuse?

12 In proceeding through the five-step sequential analysis, the
13 ALJ made the following pertinent findings: At step three, he
14 determined that Cage was per se disabled under Listings 12.04
15 (affective disorder), 12.08 (personality disorder) and 12.09
16 (substance addiction disorder). See 20 C.F.R. pt. 404, subpt. P,
17 app. 1 (setting forth the Listings). Each of those Listings
18 required findings that Cage suffered from two of the four so-
19 called “Paragraph B” symptoms. The ALJ made such findings,
20 concluding that Cage suffered marked difficulties in social
21 functioning and with regard to concentration, persistence or
22 pace. The ALJ then found that, in the absence of DAA, Cage would
23 only suffer moderate difficulties in those respects. With this
24 improvement, Cage would no longer qualify as per se disabled

1 under the Listings, so the ALJ proceeded to steps four and five.
2 Based on the testimony of a vocational expert, the ALJ found that
3 Cage's impairments in the absence of DAA would allow her to work.

4 Thus, at issue are the ALJ's findings that Cage's
5 difficulties with social functioning, and with concentration,
6 persistence and pace, would improve from "marked" to "moderate"
7 in the absence of DAA. In our plenary review of the
8 administrative record, we conclude that those findings were
9 supported by substantial evidence. Cage concedes that a finding
10 of DAA materiality appropriately could be made based on "medical
11 evidence . . . during periods of sobriety [demonstrating] that
12 the claimant would not otherwise be disabled absent the DAA,"
13 Appellant Br. at 30. While the record does not reveal any
14 extended periods of sobriety during the relevant period following
15 Cage's May 2004 application date, it does include, inter alia,
16 positive evaluations of Cage conducted during inpatient
17 admissions when Cage did not have access to drugs or alcohol.
18 Specifically, the record reflects that (1) mental status
19 evaluations, though not ideal in all respects, demonstrated that
20 she "made good eye contact," was "cooperative," spoke normally,
21 had coherent or linear thought processes, had average
22 intelligence and knowledge, and was alert; (2) Cage reportedly
23 had the ability to "perform rote tasks," "follow simple
24 instructions" and "handle her finances"; and (3) Cage was

1 evaluated as being able to "interact with others adequately."
2 And, as to the effect of Cage's DAA on her other impairments, the
3 record included the following evidence: (1) an addiction
4 therapist's opinion that Cage's DAA "made worse" her medical and
5 emotional issues; (2) Cage's admission that she had attempted
6 suicide only when under the influence; (3) Cage's admission that
7 her DAA was "not helpful" to her mental health; (4) that Cage had
8 used crack cocaine the two times she reported hearing voices; and
9 (5) that Cage told a treating physician that she was depressed
10 because she had spent her money on cocaine.

11 Taken together, this is "relevant evidence [that] a
12 reasonable mind might accept as adequate to support [the]
13 conclusion," Zabala v. Astrue, 595 F.3d 402, 408 (2d Cir. 2010)
14 (internal quotation marks and citation omitted), that Cage's
15 difficulties with social functioning, and with concentration,
16 persistence and pace, would improve from "marked" to "moderate"
17 in the absence of DAA. Faced with this substantial evidence, we
18 must uphold these findings and, consequently, the ALJ's
19 determination that Cage would not be disabled were she to
20 discontinue her drug and alcohol abuse.

21 Finally, Cage argues that the same ALJ's favorable ruling on
22 her reapplication for benefits supports her appeal here. But the
23 favorable ruling in 2009 was based on evidence not in the record
24 on the original application, related in part to different

1 impairments than those at issue in the original application, and
2 expressly stated that the ALJ saw no basis for reopening the
3 original application. The ALJ's 2009 ruling therefore does not
4 bolster Cage's claim that the 2008 ruling was not supported by
5 substantial evidence. Cf. Consolo v. Fed. Maritime Comm'n, 383
6 U.S. 607, 620 (1966) (given the deferential standard of review,
7 two contrary rulings on the same record may be affirmed as
8 supported by substantial evidence).

9 **CONCLUSION**

10 For the foregoing reasons, we AFFIRM the judgment of the
11 district court.