IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHEILA SANCHEZ
for CHILA SANCHEZ,

OPINION AND ORDER

Plaintiff,

03-C-537-C

v.

JO ANNE B. BARNHART, Commissioner
of Social Security,

Defendant.

Chila Sanchez, by her mother Sheila Sanchez, brings this action for judicial review of an adverse decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g). Plaintiff challenges the commissioner's denial of her application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. § 1382c, alleging that the commissioner's decision is not supported by substantial evidence because the administrative law judge who decided her claim was biased against her, failed to properly evaluate medical evidence tending to show that her asthma is presumptively disabling and improperly weighed the medical opinion evidence. Plaintiff seeks an award of benefits, or alternatively, a remand to the commissioner for new proceedings. Alternatively, plaintiff asks this court to remand the case to the commissioner under sentence six of § 405(g) so that she may consider new evidence that was not before the administrative law judge.

Having carefully reviewed the record and the parties' submissions, I am persuaded that substantial evidence supports the commissioner's determination that plaintiff is not disabled. With the exception of one error that I find to be harmless, the administrative law judge followed the commissioner's regulations, carefully considered and weighed the evidence of record and explained the bases for his conclusions. Plaintiff's allegations of bias on the part of the administrative law judge are too speculative to show bias or warrant a remand for new proceedings. Her request for a sentence six remand will be denied because the new evidence that she has submitted is not material.

Before setting out the facts, it is helpful to review the commissioner's procedure for determining childhood disability. A child is disabled and eligible for Supplemental Security Income benefits if he has a "medically determinable physical or mental impairment, which results in marked and severe functional limitations, and 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)(C)(I). The commissioner employs a three-step process for determining disability, considering whether: 1) the child is presently engaging in substantial gainful activity; 2) the child has an impairment or combination of impairments that is severe; and 3) the child has a medically determinable impairment or combination of impairments that meets or equals in severity an impairment listed in Appendix 1, Subpart P, of Regulations No.4, or is functionally equal in severity to a listed impairment. 20 C.F.R. § 416.924.

To be considered disabled, a child must not be presently working and must have a severe impairment. If the child meets these criteria and has an impairment listed in Appendix 1, he automatically is considered disabled. Id. A child whose impairment does not precisely match a listed impairment may nonetheless be found disabled if his impairment is "medically equivalent" to a listed impairment. 20 C.F.R. § 416.926(a). There are two situations in which medical equivalence may be found. First, a child who has an impairment described in the listings but who satisfies neither the required medical findings nor the required severity level of a listed impairment may be found disabled nonetheless if there are other medical findings related to the impairment that are at least of equal significance. 20 C.F.R. § 416.926(a)(1)(i). Second, a child who has an impairment that is not described in the listings or who has a combination of impairments, no one of which meets or is medically equivalent to a listing, may be found disabled if the medical findings related to the impairments are at least of equal medical significance to those of a closely analogous listed impairment. 20 C.F.R. § 416.926(a)(2). When considering medical equivalence, the commissioner looks at the medical evidence only. 20 C.F.R. § 416.926(b).

A child whose impairment neither meets nor is medically equal to a listed impairment may still be found disabled if his impairments are "functionally equal" to a listed impairment. 20 C.F.R. § 416.926a. At the functional equivalence stage of the analysis, the commissioner considers all the evidence in the case record to assess the child's functional limitations, including medical and non-medical evidence. 20 C.F.R. § 416.926a(b)(3). The

functional equivalence analysis assesses the child's functioning in six "domains": 1) acquiring and using information; 2) attending and completing tasks; 3) interacting and relating with others; 4) moving about and manipulating objects; 5) caring for yourself; and 6) health and physical well-being. 20 C.F.R. § 416.926a(b). To establish functional equivalence, the child must have "marked" limitations in at least two domains of functioning or an "extreme" limitation in one domain. 20 C.F.R. § 416.926a(a).

One final preliminary matter deserves mention. Plaintiff has submitted evidence with her reply brief that is neither part of the administrative record nor the subject of her request for a sentence six remand. Second Decl. of Sheila Sanchez, dkt. #39, Exhs. 1-4. Plaintiff asserts that this evidence is important to rebut negative inferences drawn by the administrative law judge about her mother's credibility. However, as explained below, this court is not free to draw its own conclusions about plaintiff's mother's credibility but can consider only whether the administrative law judge's decision was articulated adequately enough to permit review and is supported by substantial evidence in the record. That review is limited necessarily to evidence that the administrative law judge had the opportunity to consider. Accordingly, I have not considered the evidence attached to the second declaration of Sheila Sanchez.

The following facts are drawn from the administrative record.

FACTS

I. PROCEDURAL HISTORY

Sheila Sanchez filed an application for SSI on plaintiff's behalf effective April 20, 1999, alleging that plaintiff was disabled as of April 1, 1998, as a result of a mental or emotional impairment. The local disability agency denied the child's claim initially and on reconsideration. On November 21, 2000, plaintiff and her mother, represented by a paralegal from Legal Action of Wisconsin, Inc., appeared and testified at a hearing before Administrative Law Judge John H. Pleuss.

After the administrative law judge issued a decision denying plaintiff's application, plaintiff filed a request for review with the Appeals Council. On April 11, 2001, the Appeals Council granted the request for review, vacated the administrative law judge's decision and remanded the case to the administrative law judge for further proceedings. The Appeals Council found that the administrative law judge had not properly evaluated plaintiff's asthma or the medical opinions in the record regarding her mental limitations.

On October 31, 2002, the administrative law judge held a second hearing at which plaintiff and her mother appeared and testified. Larry L. Larrabee, Ph.D., a clinical psychologist, testified as a medical expert. On December 17, 2002, the administrative law judge issued a decision denying plaintiff's application again. In June 2003, the Appeals Council denied plaintiff's request for review, making the administrative law judge's decision the final decision of the commissioner. 20 C.F.R. § 416.1481.

II. RECORD EVIDENCE

A. Dr. Peter Williamson

On September 7, 1999, when plaintiff was in the third grade, Peter Williamson, Ph.D., conducted a neuropsychological evaluation because of concerns about her attention and processing ability, socialization and self-control. AR 311-317. Dr. Williamson diagnosed plaintiff with attention deficit disorder, probable oppositional disorder with overanxious features and sensory defensiveness. He indicated that plaintiff showed many symptoms of broad-based sensory defensiveness, including reactivity to noise and tactile stimulation. According to Dr. Williamson, this meant that from an emotional standpoint, plaintiff "feels things sooner, feels them more intensely, and then cannot settle down." Dr. Williamson found that plaintiff had no neurocognitive dysfunction and had average cognitive abilities. He recommended that plaintiff receive occupational therapy to learn measures to reduce her sensory defensiveness. He also indicated that a trial of low doses of stimulant medication might help to improve plaintiff's attention and concentration. Plaintiff's treating physician, Dr. Ranum, subsequently prescribed Celexa and Trazadone.

Apart from a brief follow-up visit in August 2001, Dr. Williamson did not see or treat plaintiff until August 13, 2002. At that time, he conducted a second neurospychological evaluation of plaintiff because plaintiff's mother had continuing concerns about plaintiff's possible attention deficit disorder and general adjustment problems. As part of the testing, plaintiff's mother was asked to rate plaintiff's behaviors; nearly all of her responses indicated

that plaintiff had problems in the "clinically significant range." Dr. Williamson noted that the profile completed by plaintiff's mother "should be interpreted very cautiously because of the extreme responses noted throughout the survey." AR 430.

Testing of plaintiff showed that plaintiff's ability to concentrate was within the average range but was impaired when there was a significant presence of other stimuli in the environment. Dr. Williamson concluded from his evaluation that plaintiff was still an "extremely sensitive and reactive girl" who no doubt had problems with self control and social behavior at school. He diagnosed an adjustment disorder with mixed emotional features, including a history of post traumatic stress disorder, anxiety disorder and sensory defensiveness. AR 428-431.

On October 7, 2002, Dr. Williamson completed a Childhood Disability Questionnaire regarding plaintiff. AR 423-27. He stated the opinion that, as a result of her anxiety and sensory defensiveness, plaintiff had marked limitations in the areas of attending and completing tasks and interacting and relating with others. He indicated that plaintiff had no limitations in acquiring and using information and no marked limitations in any of the other three domains.

B. Dr. William Ranum

Dr. William Ranum has been plaintiff's primary care physician since 1993. He has treated her for asthma and has prescribed medication to improve her attentiveness and to

help her sleep at night. Dr. Ranum completed Childhood Disability Questionnaires on January 16, 2002 and October 15, 2002. On the January 2002 form, Dr. Ranum indicated that plaintiff had marked limitations in acquiring and using information and attending and completing tasks. With respect to acquiring and using information, Dr. Ranum noted that plaintiff had "difficulty using language that allows communicating new processes" and found "written material more difficult than oral." With respect to attending and completing tasks, Dr. Ranum noted that plaintiff's difficulty in this area was "related to ADD issue" and that she had "compliance problems at times." AR 420. In contrast to Dr. Williamson, Dr. Ranum concluded that plaintiff had no limitation interacting and relating with others, indicating that she was social and communicative in the office setting. With respect to plaintiff's health and physical well-being, Dr. Ranum stated that plaintiff had less than a marked limitation. He noted that plaintiff had been treated for asthma and that it was possible that Dr. Bukstein, plaintiff's allergist, had "seen exacerbations not seen here." AR 422.

On the October 2002 form, Dr. Ranum stated again that plaintiff had marked limitation in the areas of acquiring and using information and attending and completing tasks. However, in contrast to his responses on the previous two questionnaires, he also indicated that plaintiff would have a marked limitation in the area of interacting and relating with others. In this regard, he noted that plaintiff had "variable responses to some stimuli [that] may make [it] difficult to interact." AR 444. Dr. Ranum indicated that plaintiff had

a less than marked limitation in health and physical well-being, and he noted that her asthma was fairly stable. AR 445.

C. Dr. Don Bukstein

Dr. Don Bukstein, an allergist, has treated plaintiff for asthma. Sometime in late 2000 or early 2001, he prescribed a Proventil inhaler and a Pulmicort inhaler. AR 378-79. On January 10, 2001, Dr. Bukstein noted that plaintiff was doing "extraordinarily well." AR 377.

On January 18, 2001, Dr. Bukstein completed a Childhood Disability Questionnaire on which he indicated that plaintiff's asthma was in good control provided she took her medication and was compliant with environmental control. AR 413-417. Dr. Bukstein indicated that plaintiff had a marked limitation in caring for herself insofar as she had not complied with her medication regime. He indicated that plaintiff had a less than marked limitation in the domain of health and physical well-being so long as she took her medication daily as prescribed. He indicated that plaintiff had a less than marked limitation in acquiring and using information. He offered no opinion regarding plaintiff's degree of limitation in the other three domains.

On April 4, 2001, plaintiff saw Dr. Bukstein for increased asthma symptoms. Dr. Bukstein noted that there were molds growing in plaintiff's home. He opined that most of plaintiff's asthma was caused by mold exposure. AR 374. On October 1, 2001, Dr.

Bukstein noted that plaintiff had been doing very well but was having "tremendous problems" with medication compliance. AR 440. On March 6, 2002, plaintiff saw Dr. Bukstein with complaints of headache, stomach ache, tiredness and fatigue. Dr. Bukstein noted that plaintiff had an upper respiratory infection that was resolving and that her asthma was under good control. He noted that recent allergy testing was negative. He advised plaintiff to continue her medications and to follow up on an as needed basis. AR 435. On September 3, 2002, Dr. Bukstein noted that plaintiff overall was doing well. He indicated that she had some "mild exercise-induced asthma." AR 433.

D. Dr. Lori Kron-Naughton

From January 18, 2001 to February 18, 2002, plaintiff received therapy from Dr. Lori Kron-Naughton. Plaintiff's mother told Dr. Kron-Naughton that plaintiff had been sexually abused by her father at the age of two. She reported that plaintiff had a long history of anxiety with symptoms, including heart palpitations, shortness of breath, nausea, chest tightness and occasional feelings of doom. She said that plaintiff frequently dug at sores on her scalp until they were raw and bleeding. Plaintiff's mother reported that plaintiff was often defiant and argumentative and had three to four temper tantrums each week. Plaintiff herself indicated that she got overwhelmed and worried easily. Dr. Kron-Naughton gave preliminary and tentative diagnoses of post traumatic stress disorder, chronic, rule-out; panic

disorder without agoraphobia, rule-out; and obsessive-compulsive disorder, rule-out. AR 478-80.

At a therapy session on June 22, 2001, Dr. Kron-Naughton noted that plaintiff's mood was euthymic and her affect bright. AR 467. Plaintiff reported no symptoms of nervousness or anxiety and she was no longer picking at the sores on her head, although she was biting her nails. On September 21, 2001, plaintiff reported that she was enjoying school and looking forward to going every day. Her nervous habits of picking at the sores on her head and biting her nails were continuing to improve. AR 464. On October 11, 2001, Dr. Kron-Naughton noted that plaintiff's symptoms of anxiety were "not very pronounced." AR 462.

E. Dr. Terrie Mailhot

On October 30, 2001, plaintiff was evaluated by Dr. Terrie Mailhot, a psychiatrist, for medication management. Dr. Mailhot diagnosed traumatic stress disorder (prolonged in nature) and anxiety disorder. She also noted that plaintiff had some obsessive-compulsive traits. She recommended that plaintiff continue to take Celexa and Trazodone. AR 459-461.

F. Dr. Meg Little

Dr. Meg Little, a psychiatrist, evaluated plaintiff on August 27, 2002. AR 446-49. She observed that plaintiff was articulate and mostly calm, but appeared a little nervous. Plaintiff was mostly in a good mood and looked happy. Her thoughts were organized and goal directed. Plaintiff indicated that she was in a better mood when she was by herself than with others. Dr. Little indicated that plaintiff had "many strengths and also some liabilities in terms of genetic vulnerabilities for mental illness." She indicated that plaintiff's mood had benefitted from the Celexa but her anxiety was only partially addressed. Plaintiff still avoided groups and engaged in obsessive-compulsive behaviors such as biting her nails and picking at her scalp. Dr. Little recommended that plaintiff switch medications from Celexa to Zoloft.

G. School Records

Plaintiff's school district conducted an individualized education program evaluation of plaintiff in January 2001. AR 385-386. Plaintiff's report cards from kindergarten through third grade indicated that she was making acceptable progress in all areas. In second grade, plaintiff was noted to be a bright and pleasant student with a positive attitude who interacted well with teachers and adults. At the time of the evaluation, plaintiff's fourth grade teacher reported that plaintiff was at or above grade level in reading and writing but was having some problems in math. He reported that plaintiff was quiet in class and

completed her work in a timely manner. She had some conflicts in class with peers, but nothing that was "out of the norm."

Plaintiff's fifth grade report card showed that she was progressing or proficient in all areas. AR 267-71. However, plaintiff's teacher noted that her progress was impeded by frequent absences, a tendency to become distracted and a failure to complete her homework consistently. She noted that although plaintiff was often a kind, enthusiastic student, she tended to provoke or harass other students when the possibility for conflict or negative interaction arose.

III. HEARING TESTIMONY

Plaintiff testified that she was 12 years old and in the sixth grade. She had just begun to attend a new school. Plaintiff testified that she was in regular classes and was doing okay. She said that she had some problems concentrating and sometimes just "spaced off" and went into her own world; however, she testified that this did not occur when she was interested in the class subject. She said that her asthma caused some difficulties in gym class but she was able to complete a three-minute warm-up run and was taking a weekly dance class. Plaintiff reported that she did not enjoy being in large groups but had two close friends at school.

Plaintiff's mother testified that plaintiff had been physically and sexually abused by her father until she was about two years old, although plaintiff did not appear to have any

memory of the abuse. She testified that plaintiff's symptoms of sensory defensiveness included not liking to be touched or bumped by others, which caused a lot of problems when plaintiff rode the bus to school. She said that plaintiff often overreacted and responded by hitting or kicking other children. She testified that plaintiff did well in quiet situations but became hyper in uncontrolled, noisy situations. Plaintiff's mother testified that the last two school years were very difficult, with plaintiff having problems turning homework in on time, fighting with other children, refusing to go to school and receiving a one-day suspension for insubordination. She also testified that plaintiff exhibited obsessive compulsive symptoms like picking at her scalp, biting her nails and pulling skin off her lips with tape. She testified that although plaintiff used daily asthma medication, she still wheezed about two to three times a week.

Larry Larrabee, Ph. D., a clinical psychologist, testified as a medical expert at the administrative hearing. Dr. Larrabee concluded from his review of the record and from hearing the testimony that plaintiff had a mental impairment that met the criteria of an anxiety disorder. Dr. Larrabee explained that although the record indicated that plaintiff also been diagnosed with post traumatic stress disorder, attention deficit disorder and sensory defensive disorder, when the record was viewed as a whole, it pointed to an anxiety disorder.

Dr. Larrabee concluded that plaintiff did not meet or equal the criteria of the listing for an anxiety disorder. With regard to the six domains relevant to functional equivalence,

Dr. Larrabee gave his opinion that plaintiff had no limitation in the area of acquiring and using information; less than a marked limitation in the area of attending to and completing tasks; less than a marked limitation with regard to interacting with and relating to others; no limitations from any psychological impairment in the area of moving about and manipulating objects; no limitation in the area of caring for herself; and a less than marked limitation in the area of health and physical well-being.

IV. ADMINISTRATIVE LAW JUDGE'S DECISION

On December 17, 2002, the administrative law judge issued a decision in which he found that plaintiff was not disabled. In reaching that conclusion, he concluded that although plaintiff suffered from severe impairments, namely, asthma, post traumatic stress disorder with elements of hyperactivity and sensory defensive disorder, plaintiff's impairments were not so severe as to meet, medically equal or functionally equal the requirements of any listed impairment. With respect to plaintiff's asthma, the administrative law judge found that the records suggested that plaintiff's asthma might be "little more significant than a mold allergy," noting that spirometric testing in January 2001 showed only a very mild obstruction and plaintiff could participate in gym class, never had to go to the school nurse to request use of her inhaler and had not required frequent emergency room visits or any life-sustaining device. The administrative law judge concluded

from this evidence that plaintiff's asthma did not meet or medically equal the listings and imposed only less than marked functional limitations.

As for plaintiff's mental impairments, the administrative law judge noted that plaintiff had had various evaluations and had been diagnosed with various impairments, including attention deficit disorder, sensory defensiveness and post traumatic stress disorder. After discussing the reports from Dr. Williamson, Dr. Little, Dr. Kron-Naughton and Dr. Mailhot, the administrative law judge concluded that plaintiff had a sensory defensive disorder with elements of hyperactivity and a post traumatic stress disorder. However, relying on the testimony of Dr. Larrabee, the administrative law judge concluded that these impairments did not meet or medically equal the criteria of a listed impairment.

The administrative law judge then proceeded to consider the six domains of development to determine whether plaintiff's impairments functionally equaled the requirements of a listed impairment. Adopting the testimony of Dr. Larrabee, the administrative law judge concluded that plaintiff's mental impairments imposed no limitations in the domains of acquiring and using information, moving and manipulating objects or self-care, and only less than marked limitations in the domains of attending to and competing tasks, relating to and interacting with others and general health and physical well-being. The administrative law judge noted that Dr. Williamson and Dr. Ranum had found that plaintiff had marked limitations in attending to and completing tasks and interacting and relating to others. However, he explained that he was rejecting Dr. Williamson's

opinion because Dr. Williamson did not have a close treating relationship with plaintiff and had made his assessment on the basis of plaintiff's mother's responses, which he had described as "extreme." Conversely, the administrative law judge noted that although Dr. Ranum did have a close treating relationship with plaintiff, he was a general medicine physician. The administrative law judge indicated that he was adopting Dr. Larrabee's testimony because Dr. Larrabee was a specialist in psychology and had had an opportunity to review the entire record. In addition, the administrative law judge indicated that Dr. Larrabee's opinion was most consistent with plaintiff's school records, which indicated that she was in regular classes, making acceptable progress, interacting well with teachers and adults and able to initiate, sustain and complete tasks.

OPINION

I. STANDARD OF REVIEW

In a social security appeal brought under 42 U.S.C. § 405(g), this court does not conduct a new evaluation of the case but instead reviews the final decision of the commissioner. This review is deferential: under § 405(g), the commissioner's findings are conclusive if they are supported by "substantial evidence." Clifford v. Apfel, 227 F.3d 863, 869 (7th Cir. 2000). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). When reviewing the commissioner's findings under § 405(g), this court

cannot reconsider facts, reweigh the evidence, decide questions of credibility, or otherwise substitute its own judgment for that of the ALJ regarding what the outcome should be. Clifford, 227 F.3d at 869. Nevertheless, the court must conduct a "critical review of the evidence" before affirming the commissioner's decision, id., and the decision cannot stand if it lacks evidentiary support or "is so poorly articulated as to prevent meaningful review." Steele v. Barnhart, 290 F.3d 936, 940 (7th Cir. 2002). When the ALJ denies benefits, he must build a logical and accurate bridge from the evidence to his conclusion. Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001).

II. ASTHMA LISTING

Plaintiff contends that the administrative law judge erred as a matter of law when he failed to find that her asthma satisfies the requirements of the listing for that impairment, found at section 103.03C2 of Appendix 1, Subpart P, App. 1 of the regulations. According to that listing, for asthma to be presumptively disabling the medical evidence must show

> Persistent low-grade wheezing between acute attacks or absence of extended symptom-free periods requiring daytime and nocturnal use of sympathomimetic bronchodilators with one of the following:
>
> . . . . .
>
> 2. Short courses of corticosteroids that average more than 5 days per month for at least 3 months during a 12-month period.

Plaintiff argues that the administrative law judge's decision shows that he considered only the criteria for section 103.03B[1] and failed to consider her medication use as required by 103.03C2. According to plaintiff, she meets the criteria of this section because she uses Proventil, a bronchiodilator, on a "regular basis," and a Pulmicort inhaler, a corticosteroid, two times a day.

It is true that the administrative law judge's decision contains no discussion of plaintiff's medication regimen or Listing 103.03C2. This omission is inexcusable. The Appeals Council remanded the case in part so that the administrative law judge could consider this section of this listing. Nonetheless, it is not necessary to remand this case to the commissioner because the evidence shows that plaintiff does not meet this listing. See Keys v. Barnhart, 347 F.3d 990, 994 (applying harmless error review to ALJ's determination).

I am persuaded by the commissioner's opinion that plaintiff's daily use of an inhaled corticosteroid is not the type of steroid use contemplated in Listing 103.03C2. As the commissioner points out, inhaled corticosteroids are long-term control medications used to prevent exacerbations by reducing inflammation in the airways. See "Medications and

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[1] Section 103.03B provides:

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each inpatient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks[.]

immunotherapy for asthma," Mayo Clinic Staff, August 13, 2004, http://www.mayoclinic.com/invoke.cfm?id=AP00008,. Low dose formulations of such inhaled corticosteroids, like that prescribed for plaintiff, are indicated for the treatment of mild persistent asthma. See NAEPP Expert Panel Report: Guidelines for the Diagnosis and Management of Asthma–Update on Selected Topics 2002, NIH Publication No. 02-505 (June 2002). In contrast, oral and intravenous corticosteroids, such as prednisone and methylprednisolone, are used to treat acute asthma attacks or severe persistent asthma. Id. In general, because of the serious side effects associated with the use of such steroids, they generally are not prescribed for long term use. "Medications and immunotherapy for asthma," http://www.mayoclinic.com/invoke.cfm?id=AP00008. It is clear that the commissioner's use of the term "short courses of corticosteroids" in Listing 103.03C2 refers to this latter form of steroids and not to long-term, daily use of a steroid inhaler. To conclude otherwise would lead to the absurd result that thousands of children with only mild asthma could be found disabled under the Social Security Act.

From my review of the record, I can find only two instances when plaintiff was prescribed courses of oral corticosteroids: 1) November 15, 2000, when she was instructed to take one methylprednisone tablet daily for five days, AR 364; and 2) February 12, 2002, when she was instructed to take one prednisone tablet daily for four days. AR 438. Because the evidence fails to show that plaintiff used oral corticosteroids on an average of more than 5 days per month for at least 3 months during a 12-month period, plaintiff does not meet

Listing 103.03C2. Accordingly, the administrative law judge's failure to consider this section of the listing was harmless.

III. ADMINISTRATIVE LAW JUDGE BIAS

Next, plaintiff contends that the administrative law judge was biased against her. Sheila Sanchez has submitted an affidavit in which she avers that the second administrative hearing was delayed for a "significant amount of time" to allow the medical expert, Dr. Larrabee, an opportunity to review the medical record. According to Sanchez, Dr. Larrabee conducted this review in the administrative law judge's office while the judge was present. Sanchez avers that she "could hear Dr. Larabee and Judge Pleuss engaging in a lengthy conversation that involved laughter."

Administrative adjudicators are presumed to be unbiased. Schweiker v. McClure, 456 U.S. 188, 195 (1982). A plaintiff asserting that her due process rights were violated as a result of adjudicator bias has the burden of overcoming this presumption by showing that the adjudicator had a conflict of interest or that there is some other specific reason for disqualification. Id. at 195. Alternatively, a plaintiff may show bias by pointing to remarks or conduct by the adjudicator that "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." Liteky v. United States, 510 U.S. 540, 555 (1994).

In her brief, plaintiff argues that the administrative law judge was predisposed to rule against her because the Appeals Council found errors in the judge's first decision. She also

proposes the theory that, during his conversation with Dr. Larrabee, the administrative law judge convinced him to provide testimony unfavorable to plaintiff.

Plaintiff's allegations fall far short of the showing necessary to overcome the presumption that the administrative law judge was not biased. Neither his failure to find in plaintiff's favor after the first hearing nor the reversal of his decision by the Appeals Council is sufficient to support an inference of bias. McLaughlin v. Union Oil Co. of California, 869 F.2d 1039, 1047 (7th Cir. 1989) ("Bias cannot be inferred from a mere pattern of rulings by a judicial officer, but requires evidence that the officer had it 'in' for the party for reasons unrelated to the officer's view of the law"). As for the alleged *ex parte* communication, there is nothing to support plaintiff's theory that the administrative law judge sought to influence Dr. Larrabee's testimony during that conversation. This is not to suggest that it is appropriate or wise for administrative law judges to speak privately in chambers with medical experts who will be testifying before them. It is not. However, plaintiff's unsupported speculations do not show that the administrative law judge was predisposed to rule against her.

IV. WEIGHING OF MEDICAL OPINIONS

Plaintiff argues that the administrative law judge erred in affording more weight to the opinion of Dr. Larrabee, the medical expert who never examined plaintiff, than to the opinion of her family physician, Dr. Ranum, and to that of Dr. Williamson. With respect

to Dr. Ranum, plaintiff argues that the administrative law judge should have credited his opinion that plaintiff had marked functional limitations in at least two of the domains necessary to establish functional equivalence. Plaintiff points out that Dr. Ranum has an extensive treatment history with her and has had the opportunity to observe her on numerous occasions.

Plaintiff's arguments are unavailing. It is well-settled that although an administrative law judge must consider the opinions of treating physicians, the opinion of a treating physician concerning a patient's condition is "entitled to controlling weight if it is well supported by medical findings and not inconsistent with other substantial evidence in the record." Clifford v. Apfel, 227 F.3d 863, 870 (7th Cir. 2000); 20 C.F.R. § 416.927(d)(2). Thus, an administrative law judge may discount a treating physician's medical opinion if it is inconsistent with the opinion of a consulting physician or if it is internally inconsistent, so long as he minimally articulates his reasons for crediting or rejecting the treating physician's opinion and those reasons are supported by substantial evidence in the record. Skarbek v. Barnhart, 390 F.3d 500, 530 (7th Cir. 2004); Gudgel v. Barnhart, 345 F.3d 467, 470 (7th Cir. 2003).

In this case the administrative law judge gave three reasons for giving more weight to Dr. Larrabee's opinion than to Dr. Ranum's: 1) Dr. Larrabee was a specialist in mental disorders, whereas Dr. Ranum was a general medicine physician; 2) Dr. Larrabee had the opportunity to review the record as a whole; and 3) Dr. Ranum's opinion regarding the

severity of plaintiff's mental limitations was inconsistent with her school records. The administrative law judge's first two reasons are unassailable. With respect to the third reason, plaintiff argues that the administrative law judge presented an incomplete picture of her school records, pointing out that her most recent report card indicated that she had problems with aggression, impulsiveness, group activities and distractibility. Notwithstanding the existence of evidence in the record supporting plaintiff's complaints of distractibility and problems interacting with others, other school reports support the administrative law judge's conclusion that plaintiff functioned quite well at school. As the administrative law judge found, various reports indicated that plaintiff was in regular classes, where she was making acceptable progress. Although the reports indicated that plaintiff had a tendency to get distracted on occasion, she was described as a good observer, was not in any special programs and did not appear to have significant limitations in her ability to initiate, sustain or complete tasks. As for plaintiff's ability to interact with others, the administrative law judge noted that plaintiff interacted well with adults and teachers and had close friends. Where, as here. the evidence conflicts, this court must defer to the administrative law judge's weighing of the evidence. Clifford, 227 F.3d at 869 (court cannot "reweigh evidence, resolve conflicts, decide questions of credibility, or substitute [its] own judgment for that of the Commissioner"). Overall, the reasons provided by the administrative law judge for discounting Dr. Ranum's opinion are supported by the record and are adequate to support his decision.

Plaintiff argues that it was improper for the administrative law judge to reject the opinion of Dr. Williamson. Like Dr. Ranum, Dr. Williamson found that plaintiff suffers marked limitations in her ability to attend and complete tasks and to interact and relate with others. Plaintiff points out that Dr. Williamson was a specialist like Dr. Larrabee. Moreover, she argues, the record does not support the administrative law judge's conclusion that Dr. Williamson's opinion was based upon the reportedly "extreme" responses of plaintiff's mother. Rather, argues plaintiff, Dr. Williamson's opinion is supported by the various tests that he administered to plaintiff which showed that she had difficulties with alertness in stressful and demanding situations.

I agree that the administrative law judge might have overemphasized the degree to which Dr. Williamson's opinion regarding plaintiff's limitations depended upon her mother's assessment of plaintiff's behavior. Nonetheless, it was proper for the administrative law judge to discount Dr. Williamson's opinion regarding the severity of plaintiff's limitations for the same reason he discounted Dr. Ranum's opinion, namely, because it conflicted with the school reports that showed lesser limitations. Moreover, Dr. Williamson had before him only plaintiff's test results and her mother's report of her behavior, whereas Dr. Larrabee formed his opinion on the basis of the entire record, including the school reports and the testimony at the hearing. The administrative law judge was justified in concluding that Dr. Larrabee's ability to review the entire record strengthened the weight of his conclusions. Flener ex rel. Flener v. Barnhart, 361 F.3d 442, 448 (7th Cir. 2004).

Finally, plaintiff argues that Dr. Larrabee's opinion does not provide substantial evidentiary support for the administrative law judge's conclusion that plaintiff is not disabled because Dr. Larrabee could not say with certainty whether the traumatic events that plaintiff suffered as a young child would lead to post traumatic stress disorder. In a similar vein, plaintiff criticizes the administrative law judge for questioning the reliability of the diagnosis of post traumatic stress disorder made by Drs. Kron-Naughton and Terrie Mailhot. Plaintiff insists that the traumatic events reported by her mother actually happened and that the administrative law judge should therefore have accepted the post traumatic stress disorder diagnosis.

Plaintiff's arguments do nothing to advance her position. First, although the administrative law judge was clearly skeptical of the post traumatic stress disorder diagnosis, he found that she has that disorder. Second, a diagnosis alone does not establish entitlement to disability benefits. A diagnosis might establish that a claimant has a "medically determinable physical or mental impairment," but to be found disabled, a claimant must also demonstrate that that impairment "causes marked and severe functional limitations." 20 C.F.R. § 416.906. Thus, even a claimant who has been diagnosed with 20 different impairments cannot be found disabled unless those impairments pose marked and severe limitations on the claimant's ability to function. In this case, no matter what Dr. Larrabee or the administrative law judge might have thought about the accuracy of the post traumatic stress disorder diagnosis, substantial evidence in the record supports the administrative law

judge's determination that plaintiff was not severely limited by any impairment, by any name. Overall, reasonable minds reviewing this record could agree with the administrative law judge's conclusion that although plaintiff "appears to have experienced considerable trauma as a young child, she has largely overcome the harmful effects of this experience." AR 25. Accordingly, this court must affirm his determination that plaintiff was not entitled to Supplemental Security Income.

V. NEW EVIDENCE

Finally, plaintiff asks this court to remand her case to the commissioner for consideration of additional evidence pursuant to sentence six of § 405(g). To obtain a remand under that sentence, a plaintiff must show that "there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." "For sentence six purposes . . . 'materiality' means that there is a 'reasonable probability' that the Commissioner would have reached a different conclusion had the evidence been considered, and 'new' means evidence 'not in existence or available to the claimant at the time of the administrative proceeding.'" Perkins v. Chater, 107 F.3d 1290, 1296 (7th Cir. 1997) (citing Sample v. Shalala, 999 F.2d 1138, 1144 (7th Cir. 1993) (in turn quoting Sullivan v. Finkelstein, 496 U.S. 617, 626 (1990)).

Plaintiff has submitted medical reports that show evaluation and treatment for various skin problems, including sores on her scalp. One of the reports suggests that plaintiff might

have a skin condition in the pemphigus family, a group of chronic, blistering skin diseases. See Dorland's Illustrated Medical Dictionary, at 1344 (29th ed. 2000). The new reports submitted by plaintiff are dated November 24, 2003, February 16, 2004 and October 5, 2004. Although the earliest report is dated nearly a year after the administrative law judge's decision, plaintiff contends that the reports relate back to the time period under consideration by the administrative law judge because they concern sores on plaintiff's head that were present before the administrative hearing.

As an initial matter, I note that it appears that the last of the medical reports relates to plaintiff's mother, not plaintiff. As for the other two reports, even assuming they address plaintiff's pre-hearing condition, they are not material because they would not be reasonably likely to change the administrative law judge's decision. Although plaintiff contends the reports show that she satisfies the listing for skin lesions, Listing 8.00, the reports do not show that plaintiff has skin lesions involving "extensive body areas" or "critical body areas such as the hands and feet" as required under that listing. 20 C.F.R., Pt. 404, Subpt. P., App. 1 at 8.00. Moreover, there is no evidence that the lesions posed any persistent limitations on plaintiff's ability to function during the relevant time period or that they do so even now. Plaintiff's unsupported assertion that her skin condition will "require additional medications and will have an effect on [her] ability to function within society" is too speculative to establish a reasonable probability that the outcome would have been different had the

administrative law judge considered the new medical reports. Plaintiff's motion for a remand pursuant to sentence six of § 405(g) will be denied.

ORDER

IT IS ORDERED that plaintiff's motions for summary judgment and for remand pursuant to sentence six of 42 U.S.C. § 405(g) are DENIED. The decision of the Commissioner of Social Security denying Chila Sanchez's application for Supplemental Security Income is AFFIRMED.

Entered this 30th day of March, 2005.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge