

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

JOHNNY BECVAR,

Plaintiff,

OPINION AND ORDER

v.

07-C-0136-C

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

This is an action for judicial review of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). Plaintiff Johnny Becvar seeks reversal of the commissioner's decision that he is not disabled and therefore is ineligible for either Disability Insurance Benefits or Supplemental Security Income under Titles II and XVI of the Social Security Act, codified at 42 U.S.C. §§ 416(I), 423(d) and 1382c(a). Plaintiff contends that the decision of the administrative law judge who denied his claim is not supported by substantial evidence because the judge did not adequately consider whether his impairments met or equaled Listing 1.04(A) (Disorders of the Spine) in 20 C.F.R. Part 404, Subpart P, Appendix 1, ignored three lay witness statements, improperly rejected the opinions of his treating physicians, made a flawed credibility determination, and made an incorrect residual functional capacity finding.

Although the administrative law judge failed to identify the specific listings he was considering when he evaluated whether plaintiff's impairments met or equaled an impairment listed by the Social Security Administration, failed to discuss the statements of plaintiff's lay witnesses, failed to discuss the credibility factors set out in Social Security Ruling 96-7p and failed to state explicitly the basis for his conclusion that plaintiff could perform a range of sedentary work activity, he managed to build a minimally sufficient bridge from the evidence to his conclusion. His decision is no model but it suffices. Remanding the case would exalt form over substance when it is obvious from the record that the administrative law judge reached the correct decision. Therefore, I will deny plaintiff's motion for summary judgment and affirm the administrative law judge's decision.

The following facts are drawn from the administrative record (AR):

RECORD FACTS

A. Procedural History

Plaintiff filed applications for Social Security Disability Insurance Benefits and Supplemental Security Income on August 18, 2003, alleging that he suffered from back pain. AR 50, 66, 272. After the local disability agency denied his applications initially and upon reconsideration, plaintiff requested a hearing, which was held on September 7, 2005 before Administrative Law Judge Arthur Schneider in Madison, Wisconsin. Plaintiff was represented by counsel. The administrative law judge heard testimony from plaintiff and

neutral vocational expert Paul Maulucci. AR 16. On January 24, 2006, the administrative law judge issued his decision, finding plaintiff not disabled. AR 13-20. This decision became the final decision of the commissioner on January 11, 2007, when the Appeals Council denied plaintiff's request for review. AR 5-8.

B. Background

Plaintiff was 33 years old on the date of the hearing, making him a "younger person" for the purposes of his applications for disability benefits. AR 50; 20 C.F.R. §§ 404.1563(c) and 416.963(c). Plaintiff has a eighth grade education and past work experience as a mattress builder, roofer, machine operator, forklift operator and material handler.

C. Medical Evidence

On July 21, 2003, plaintiff saw his family physician, Dr. Paul Mannino, for lower back pain radiating into his left leg. Mannino referred plaintiff to neurosurgery and physical therapy. AR 168. On August 25, 2003, plaintiff saw Dr. Sivakumar Jaikumar, a neurosurgeon, who noted that plaintiff had degenerative disc disease at L4-L5 and L5-S1 and a left paracentral disc protrusion at L4-L5 that had migrated up the vertebral body and was lying along the pedicle of L4. Because plaintiff had weakness in his left leg, Jaikumar recommended the more aggressive treatment of a lumbar decompression with discectomy

at L4-L5 on the left side. For plaintiff's mechanical low back pain, he recommended first trying the conservative measures of epidural injections and physical therapy. AR 215-16.

On September 4, 2003, Jaikumar performed a discectomy and removed a large, extruded disc fragment at L4-L5 on plaintiff's left side. AR 120. However, plaintiff began having drainage at the surgical site and sought treatment. On September 29, 2003, plaintiff was admitted to the hospital to receive intravenous antibiotics for an infection that had developed. Jaikumar noted that because of insurance problems, plaintiff had been unable to receive home health care for his wound. Plaintiff was released from the hospital on October 3 but remained on intravenous antibiotics for a total of four weeks. AR 130-34, 191-95, 210, 214.

On October 8 and November 24, 2003, state agency consulting physicians assessed plaintiff's residual functional capacity and noted that he had the following limitations: lift and carry 50 pounds occasionally and 25 pounds frequently; sit, stand and walk six hours out of an eight-hour workday; and occasional stooping, crouching and crawling as a result of his recent surgery. AR 143-50.

On October 21, 2003, Jaikumar wrote that plaintiff had been disabled from July 12, 2003 and would remain disabled for approximately six months. AR 211. On October 27, plaintiff reported some low back pain localized in his right hip, but Jaikumar observed no weakness in plaintiff's legs and full strength in his lower extremities. AR 210. In November

2003, plaintiff reported doing quite well but stated that he had some persistent low back and right leg pain. Jaikumar noted that his incision had healed and he had full strength in both legs. Jaikumar told plaintiff that his pain was related to muscle spasms around the right paraspinous area, recommended nonsteroidal medication and applying heat and advised him to try to strengthen his back so that he could return to work. AR 209. Plaintiff continued to have paraspinous tenderness and saw Jaikumar on January 21, 2004. Jaikumar noted that the pain was musculoskeletal in origin and that plaintiff also had degenerative disc disease at L4-L5 and L5-S1. Noting that plaintiff had problems maintaining his insurance, Jaikumar recommended epidural injections as soon as he had insurance. AR 208.

On January 23, 2004, Jaikumar completed a physical residual functional capacity questionnaire for plaintiff and noted that plaintiff had constant low back pain as a result of any activity and that he took narcotic medication for the pain, which caused drowsiness. He wrote that plaintiff's pain would interfere constantly with his attention and concentration and assessed plaintiff as having the following limitations: walk only 20 to 50 feet without rest; sit for 45 minutes and stand for five minutes at a time; sit, stand and walk at will for less than two hours total out of an eight-hour workday; walk around for one minute every 30 minutes; take an unknown number of unscheduled breaks; never lift 10 pounds or more and rarely lift less than 10 pounds; rarely twist, stoop, crouch, squat or climb ladders and stairs; and absences of more than four days a month. AR 244-48.

Magnetic resonance imaging performed on February 14, 2004 showed significant changes in plaintiff's L4-L5 disc space and probable diskitis and vertebral osteomyelitis. Plaintiff also had a central disc protrusion at L5-S1, a posterior annular tear and moderate narrowing of the neural foramina bilaterally. X-rays from the same day showed spondylodiskitis at L4-L5. Plaintiff was admitted to the hospital and further tests showed that he had L4-L-5 diskitis caused by a staphylococcal aureus infection. He was again given intravenous antibiotics. AR 151-57, 161-63, 185. By March 24, 2004, plaintiff's infection had healed and he reported that his back pain was completely gone. AR 183-86.

Jaikumar repeated magnetic resonance imaging on plaintiff's lumbar spine and noted on April 12, 2004 that plaintiff's diskitis was gone and there was diminished enhancement in the vertebral body. AR 182, 205. On April 19, 2004, plaintiff saw a dermatologist for an unrelated condition and she noted that plaintiff was planning to start work the following week in a less physically demanding job. She also noted that plaintiff "wanted to work his strength back up" to return to work at the mattress factory. AR 231. Plaintiff reported to his infectious disease doctor on May 21, 2004 that he was doing well and was back at work. AR 180. On June 9, 2004, plaintiff told Jaikumar that he was doing well at work, increasing his activity and riding his bicycle three to four hours at a time over the past several weekends with minimal back symptoms. AR 204.

However, on September 8, 2004, plaintiff reported that he had gained 10 pounds and his back pain worsened at the end of a long workday. He was not taking any pain medication. Jaikumar recommended that he wear a lumbar corset and take nonsteroidal pain medication at work, do back strengthening exercises and watch his weight because weight gain would not help his pain. AR 203. On December 20, 2004, plaintiff told Jaikumar that he was having disabling back pain. Upon examination, plaintiff had five out of five strength in his legs, five out of five plantar and dorsiflexion and a negative straight leg raise bilaterally. AR 202. Magnetic resonance imaging studies taken on January 3, 2005 showed that the abnormality in the L4-5 disc space had improved significantly but had not resolved completely. On January 10, 2005, Jaikumar noted that although plaintiff's quality of life had improved significantly after surgery, he still had back pain. Plaintiff reported that he had gained an additional 15 to 20 pounds. Jaikumar noted that plaintiff could continue with conservative measures and recommended continued back strengthening exercises. AR 201.

On April 11, 2005, plaintiff saw Jaikumar and reported that although his pain had been only a two or three out of 10, it had been increasing over the last three weeks. Plaintiff also complained of paresthesia in his legs. Jaikumar wrote that "Johnny has also been trying to get some assistance as far as with [sic] social security over the last couple of months to try and see whether this will help alleviate some of his symptoms, as well." AR 240. Jaikumar

noted on April 27, 2005 that magnetic resonance imaging taken on April 14 showed that plaintiff's L4-L5 disc space had collapsed, there was some fusion mass extending across the interspace at L4-L5, no epidural scarring and no new disc protrusion compressing any of the nerves. AR 239. Specifically, the radiologist noted that there was no evidence that plaintiff's herniated disc at L4-5 had recurred, no significant epidural fibrosis and no obvious arachnoiditis. However, the radiologist noted that plaintiff had moderately severe degenerative changes of both facet joints in which there was moderate compromise of the neural foramina bilaterally and a persistent disc herniation located at L5-S1, causing slight narrowing of the spinal canal. AR 241-43. Jaikumar noted that the imaging did not show any significant pathology to explain plaintiff's symptoms, which included paresthesia, bowel and bladder symptoms and impotence. He wrote that the paresthesia in plaintiff's legs "is somewhat inconsistent based on the fact that he states that this happens when he lies down or sits for a prolonged period of time." AR 239. Jaikumar recommended physical conditioning because plaintiff had gained another 30 pounds. He also noted that plaintiff was a pleasant gentleman who wished to return to work but who reported that he was unable to do so because "his back pain is quite exacerbating." Id.

Plaintiff next saw Mannino on June 22, 2005 and reported having continued chronic back and left leg pain. He said that Jaikumar had left and "could not do anything for him." AR 257. Plaintiff also complained of pain between his shoulder blades and behind his left

knee and stated that he had not done anything unusual. Mannino observed slight decreased sensation in plaintiff's anterior thigh and a diminished deep tendon reflex (plus one) at his left knee but no other decrease in sensation or motor strength. Plaintiff did not have paraspinous muscle tenderness or muscle spasms in his back. Because plaintiff did not have insurance, Mannino did not treat him or prescribe a long-acting narcotic. Instead, Mannino refilled plaintiff's Vicodin prescription. Id.

In a letter dated September 6, 2005 to plaintiff's attorney, Mannino wrote that he concurred with Jaikumar's assessment of plaintiff's limitations from January 2004. AR 249; see AR 244-48. On September 26, 2005, Mannino wrote again to plaintiff's attorney and summarized plaintiff's medical history, noting that he last saw plaintiff on June 22, 2005. Mannino wrote: "I do not have any further recommendations at this point. . . . I really cannot comment on whether Mr. Becvar's pain interferes with his attention and concentration. I also cannot comment specifically on his ability to sit and stand for short periods." AR 270-71.

After the hearing, plaintiff submitted letters dated September 2005 from his aunt, Sheila Vogel; a friend and co-worker, Kevin Paris; and a former neighbor, Cynthia Rodriguez. Vogel wrote that she had found plaintiff a job when he was able to work again after the surgery, but despite the fact that the job allowed plaintiff the option to sit and stand throughout the workday, he had to quit because he was in too much pain by the end

of the day. Paris wrote that plaintiff seemed to be in constant pain, which caused him to become very inactive and sometimes withdrawn. Rodriguez wrote that she had been helping to support plaintiff financially and listed things that he could no longer do, including such things as tying his shoes, taking out the garbage, walking or standing for too long, sitting straight or back, twisting his torso, driving (although he did drive when in pain out of necessity), lying down comfortably, lifting anything weighing more than 10 pounds or working. AR 101-05.

D. Hearing Testimony

After questioning plaintiff briefly about his work history, the administrative law judge noted that the only medical evidence from 2005 about plaintiff's condition was an April 2005 record indicating that plaintiff was getting a lot better and a one-sentence letter dated September 6, 2005 from Mannino. The administrative law judge explained that it would be helpful to have more information from Mannino about plaintiff's current status, pain and prognosis. He also gave plaintiff the opportunity to request a closed period, meaning that plaintiff could be given benefits for a limited time in the past, but plaintiff declined. AR 291-96.

Plaintiff testified that although his September 2003 back surgery alleviated some symptoms, he still has the same pain that he did before the surgery. He stated that he has

shooting pain from his lower back into his knees, has swelling around the surgery site and feels a lot of pressure in his lower back when he sits down. Plaintiff said that if he sits for too long, he experiences pain in his lower back and legs. He can sit or stand for only 15 to 30 minutes at a time. Plaintiff testified that on a good day, his pain is a four or five and he can do some dishes and cooking before he has to sit or lie down on the couch. On a bad day (which occurs 10 to 15 times a month), he does not get out of bed because of the pain. Plaintiff testified that his bad days are usually caused by doing too much. AR 297-300.

To alleviate his pain, plaintiff takes pain medications, walks around the house or lies down on his side. He stated that he has to lie down a couple of hours a day and cannot lift anything. He can walk up to one block and can stand only 15 to 30 minutes at a time. Plaintiff lives with his sister and uncle and helps with the cooking, laundry (he does not lift the clothes basket) and dishes only on good days. He tried to mow the lawn but had to stop after a half hour because of the pain. Plaintiff testified that he drives to doctor's appointments on good days. He can no longer work on cars, hunt, fish, ride a bicycle or attend car races as he did before his back problems began. Plaintiff did go fishing three times in the previous year, but he had to sit in a chair and cast. He testified that he could not do a simple, sit-down job because he has to get up and down all day. AR 301-07.

The vocational expert, Maulucci, testified that plaintiff did not have any transferrable skills. The administrative law judge then asked Maulucci to consider a person of plaintiff's

age, education and work experience who can lift 10 pounds occasionally and five pounds frequently but needs a sit and stand option every 30 minutes. Maulucci responded that such a person would not be able to perform any of plaintiff's past work but could perform work in sub-assembly, hand packaging and video surveillance. AR 313.

E. The Administrative Law Judge's Decision

In reaching his conclusion that plaintiff was not disabled, the administrative law judge performed the required five-step sequential analysis. See 20 C.F.R. §§ 404.1520, 416.920. The administrative law judge found at step one that although plaintiff had some earnings reported for 2004, there was insufficient evidence to show that plaintiff performed substantial gainful activity since July 12, 2003, his alleged onset date. At step two, he found that plaintiff has severe residuals of back surgery. At step three, he found that plaintiff did not have an impairment or combination of impairments that met or medically equaled any impairment listed in 20 C.F.R. 404, Subpart P, Appendix 1. AR 19-20.

At step four, the administrative law judge assessed plaintiff's residual functional capacity, taking into account plaintiff's subjective complaints regarding his symptoms and limitations, as well as the various medical opinions in the record. He determined that plaintiff had the residual functional capacity to lift five to ten pounds frequently and perform sedentary work with the limitation of alternating between sitting and standing every

thirty minutes. In reaching his conclusion, the administrative law judge noted that there was little evidence from plaintiff's treating physicians regarding his permanent limitations. He wrote that although Jaikumar assessed plaintiff with extreme limitations in January 2004, that was only four months after surgery and Jaikumar had noted that he expected plaintiff to be disabled only a total of nine months. The administrative law judge also noted that on June 22, 2005, Mannino refused to comment on plaintiff's pain or functional capacity. The administrative law judge noted that the opinions of the state agency consulting physicians were consistent with plaintiff's reported return to work and ability to ride a bicycle for four hours within nine months of surgery. AR 17-19.

The administrative law judge found that plaintiff's subjective complaints of pain and total disability lacked a reasonable medical basis and were not supported by the record. In support of his conclusion, the administrative law judge noted the following:

- Jaikumar noted that plaintiff's reported symptoms were inconsistent and magnetic resonance imaging did not show significant pathology to explain them.
- Mannino refused to comment on plaintiff's pain or functional limitations.
- Plaintiff had an extensive gap in treatment with no intervening injury to explain his worsening symptoms.
- Progress notes from 2004 reported that plaintiff had returned to work, was bicycling for hours at a time and was doing very well.

- Although plaintiff reported that his pain increased over three weeks in April 2005, his physicians did not recommend specific limitations or a need to stop working.
- Jaikumar's notes suggested that plaintiff was motivated to see him and report alleged problems in order to receive social security benefits.

AR 18.

Relying on the testimony of the vocational expert, the administrative law judge found that plaintiff could not perform his past relevant work because it exceeded the exertional limitations of his residual functional capacity assessment. AR 18. However, he found that the vocational expert's testimony was sufficient to satisfy the commissioner's burden at step five to show that other jobs existed in significant numbers in the national economy that plaintiff could perform, namely assembly, hand packaging and video surveillance. AR 19.

OPINION

A. Standard of Review

The standard by which a federal court reviews a final decision by the commissioner is well settled: the commissioner's findings of fact are "conclusive" so long as they are supported by "substantial evidence." 42 U.S.C. § 405(g). 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), the court cannot reconsider facts, reweigh the evidence, decide questions of credibility or otherwise substitute its own judgment for that of the administrative law judge regarding what the outcome should be. Clifford v. Apfel, 227 F.3d 863, 869 (7th Cir. 2000). Thus, where conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the commissioner. Edwards v. Sullivan, 985 F.2d 334, 336 (7th Cir. 1993). 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 administrative law judge 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).

B. Listing 1.04(A)

Plaintiff asserts that the administrative law judge failed to analyze the medical record sufficiently when concluding that plaintiff’s condition did not meet or equal the criteria of a listed impairment. At step three of the familiar five-step process for evaluating disability claims, the administrative law judge must determine whether plaintiff’s impairment meets or equals one of the impairments listed by the Social Security Administration. 20 C.F.R. §§

404.1520(a)(4)(iii), 416.920(a)(4)(iii). As plaintiff argues, the administrative law judge should mention the specific listings he is considering and perform more than a perfunctory analysis of whether plaintiff's impairment meets or medically equals a listing. Ribaudo v. Barnhart, 458 F.3d 580, 583 (7th Cir. 2006); Barnett v. Barnhart, 381 F.3d 664, 668 (7th Cir. 2004); Brindisi v. Barnhart, 315 F.3d 783, 786 (7th Cir. 2003). A failure of the administrative law judge to do so may require a remand Id. However, plaintiff has the burden of showing that his impairments meet or medically equal a listing. Sullivan v. Zebley, 493 U.S. 521, 530-31 (1990); Scheck v. Barnhart, 357 F.3d 697, 700 (7th Cir. 2004); Clifford, 227 F.3d at 868.

The administrative law judge did not mention the listings he considered, stating only that plaintiff "does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4." AR 19. Plaintiff argues that his claim should have been analyzed under Listing 1.04(A), which presumes that a claimant is disabled if he can show a disorder of the spine, including herniated nucleus pulposus, facet arthritis or degenerative disc disease, resulting in the compromise of a nerve root or the spinal cord with "evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by

sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).” 20 C.F.R. § 404, Subpart P, App. 1, 1.04(A).

In support of his argument, plaintiff cites the results of his January and April 2005 magnetic resonance imaging studies, which showed unresolved signal abnormalities of his L4-5 disc space, moderately severe degenerative changes of both facet joints at L4-5 with moderate compromise of his bilateral neural foramina and persistent central disc herniation at L5-S1 causing narrowing of his spinal canal. Plaintiff also cites the paresthesia noted by Jaikumar in April 2005 and the slight decreased sensation in his anterior thigh and a diminished deep tendon reflex (plus one) at his left knee noted by Mannino in June 2005. The administrative law judge did not discuss the specific results of the magnetic resonance imaging or Mannino’s findings. However, to establish an impairment or combination of impairments that match or are equivalent to a listed impairment, plaintiff must present medical findings that meet or are equal in severity to all of the criteria in the listing. Zebley, 493 U.S. at 530-31 (citing SSR 83-19 and 20 C.F.R. § 416.926(a)). Plaintiff has not made this showing.

Although the imaging results show some abnormality, they do not establish clearly that plaintiff’s nerve root or spinal cord are compromised. As the administrative law judge noted, Jaikumar believed that the studies did not show any significant pathology to explain plaintiff’s symptoms of paresthesias, bowel and bladder problems and impotence. The

administrative law judge also noted that Jaikumar had written in April 2005 that plaintiff's reported symptoms were inconsistent with lying down or sitting for a prolonged period of time. Mannino's findings that plaintiff had some decreased sensation and diminished reflexes are favorable to plaintiff, but Mannino also stated in June 2005 that plaintiff had no other decrease in sensation or motor strength, no paraspinous muscle tenderness and no muscle spasms. As respondent notes, there is no evidence that plaintiff had limited motion of the spine or a positive straight-leg raising test following the worsening of his condition in 2004. In fact, in December 2004, his straight-leg raising test was negative. Without more, plaintiff cannot meet his burden at step three of the sequential evaluation process.

Recognizing that there was little medical evidence from 2005, the administrative law judge left the record open for plaintiff to submit further evidence. However, plaintiff submitted only the lay witness statements and a letter from Mannino stating that he could not comment on plaintiff's functional limitations.

Although the administrative law judge did not mention a specific listing or discuss all of the evidence cited by plaintiff, plaintiff has not come forth with substantial evidence that the administrative law judge failed to consider that shows that plaintiff meets or medically equals a listing. See Rice v. Barnhart, 384 F.3d 363, 369 (7th Cir. 2004) (administrative law judge's failure to explicitly refer to listing alone does not necessitate remand); cf. Ribaldo, 458 F.3d at 583-84 (administrative law judge failed to mention specific listing or

evaluate several pieces of evidence favorable to claimant in meeting listing criteria); Barnett, 381 F.3d at 670 (administrative law judge misunderstood record and failed to seek expert opinion to clarify evidence); Brindisi, 315 F.3d at 786 (administrative law judge made no mention of three applicable listings or strong evidence supporting claimant). Accordingly, remanding this case for a more thorough step three analysis (if one even is required) would be a pointless exercise. Accord Scheck, 357 F.3d at 700-01 (remand for more detailed examination of medical evidence not required where plaintiff did not present substantial evidence to contract agency's position on issue of medical equivalency).

C. Lay Witness Statements

Plaintiff argues that the administrative law judge committed reversible error by failing to consider the statements of Vogel, Paris and Rodriguez concerning his pain and limitations. In support, plaintiff cites 20 C.F.R. §§ 404.1513(d)(4), 416.913(d)(4) and Social Security Ruling 96-7p, which provide that the administrative law judge must consider all of the evidence in the case record, including statements by other persons concerning the individual's symptoms. As with medical opinion evidence, the administrative law judge must sufficiently articulate his assessment of the record to assure the court that he considered the important evidence. Carlson v. Shalala, 999 F.2d 180, 181 (7th Cir. 1993) (citations

omitted). “If an ALJ were to ignore an entire line of evidence, that would fall below the minimal level of articulation required.” Id.

The administrative law judge did not discuss the statements submitted by plaintiff’s friends and family. However, at the hearing, he agreed to keep the record open to allow plaintiff to submit further evidence, indicating that he would review any evidence that was timely submitted. The administrative law judge also apparently relied on Rodriguez’s letter in concluding that plaintiff retained the residual functional capacity to lift 10 pounds.

Accordingly, the administrative law judge did not err by failing to discuss the statements specifically. In any event, given plaintiff’s lengthy testimony about his pain and limited activities, the statements from his family and friends do not constitute a separate line of evidence but rather serve to reiterate and thereby corroborate plaintiff’s testimony. Books v. Chater, 91 F.3d 972, 980 (7th Cir. 1996); see also Briscoe ex rel Taylor v. Barnhart, 425 F.3d 345, 354 (7th Cir. 2005); Carlson, 999 F.2d at 181. Therefore, even if the administrative law judge committed any error, it would be harmless.

D. Treating Physicians’ Opinions

Plaintiff contends generally that the administrative law judge erred in rejecting the limitations assessed by his treating physicians, Jaikumar and Mannino, failing to give them appropriate weight under 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2) and Social Security

Ruling 96-2p. “[T]he weight properly to be given to testimony or other evidence of a treating physician depends on circumstances.” Hofslien v. Barnhart, 439 F.3d 375, 377 (7th Cir. 2006). When a treating physician’s opinion is well supported and no evidence exists to contradict it, the administrative law judge has no basis on which to refuse to accept the opinion. Id.; 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). When, however, the record contains well-supported contradictory evidence, the treating physician’s opinion “is just one more piece of evidence for the administrative law judge to weigh,” taking into consideration the various factors listed in the regulation. Id. These factors include how often the treating physician has examined the claimant, whether the physician is a specialist in the condition claimed to be disabling, how consistent the physician’s opinion is with the evidence as a whole, and other factors. 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). An administrative law judge must provide “good reasons” for the weight he gives a treating source opinion. Id. He also must base his decision on substantial evidence and not mere speculation. White v. Apfel, 167 F.3d 369, 375 (7th Cir. 1999).

The administrative law judge provided good reasons for not adopting the restrictions assessed by plaintiff’s physicians. In his decision, he noted that there was little evidence from any treating source about plaintiff’s permanent limitations. The administrative law judge noted that Jaikumar had indicated that plaintiff would be disabled only a total of nine months and had completed a physical residual functional capacity questionnaire assessing

severe limitations on January 23, 2004, only four months after plaintiff's surgery. The administrative law judge also noted that Mannino "refused to commit himself regarding any of the claimant's alleged pain or limitations."

Given that Jaikumar had written on October 21, 2003 that plaintiff would remain disabled for approximately six months, it was reasonable for the administrative law judge to conclude that the residual functional capacity assessment was limited to that time period. Other evidence in the record also supports this conclusion. In May 2004, a little more than nine months after surgery, plaintiff had greatly improved and reported returning to work. In June 2004, plaintiff reported riding his bicycle for hours at a time. Although plaintiff's condition worsened in late 2004 and 2005, there were no further limitations assessed by plaintiff's physicians.

Plaintiff finds fault with the administrative law judge's statement that Mannino refused to state an opinion on plaintiff's pain or limitations. In support, plaintiff cites Mannino's two-sentence letter dated September 6, 2005, in which Mannino stated only that he "concur[s] with Dr. Jaikumar's limitations." AR 249. However, when asked for further detail, Mannino subsequently explained in a letter dated September 26, 2005 that he had seen plaintiff only once since 2003 (in June 2005) and could not comment on his pain or ability to sit and stand for short periods. AR 270-71.

In sum, the administrative law judge appropriately considered and weighed the limitations assessed by plaintiff's treating physicians and rejected them for good reasons that are supported by substantial evidence in the record.

E. Credibility Determination

Plaintiff asserts generally that the administrative law judge failed to follow the requirements of Social Security Ruling 96-7p by not discussing the factors listed in the regulation, relying on one progress note about plaintiff bicycling for more than four hours in 2004 and not considering his extensive hearing testimony. Under Social Security Ruling 96-7p, an administrative law judge must follow a two-step process in evaluating an individual's own description of his or her impairments: 1) determine whether an "underlying medically determinable physical or mental impairment" could reasonably be expected to produce the individual's pain or other symptoms; and 2) if such a determination is made, evaluate the "intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities." Social Security Ruling 96-7p, 1996 WL 374186, *1 (1996); see also Scheck, 357 F.3d at 702. When conducting this evaluation, the administrative law judge may not reject the claimant's statements regarding his symptoms solely on the ground that the statements are not substantiated by objective medical evidence. Instead, the

administrative law judge must consider the entire case record to determine whether the individual's statements are credible. Relevant factors the administrative law judge must evaluate are the individual's daily activities; the location, duration, frequency and intensity of the individual's pain or other symptoms; factors that precipitate and aggravate the symptoms; the type, dosage, effectiveness and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms; other treatment or measures taken for relief of pain; and any other factors concerning the individual's functional limitations and restrictions. Social Security Ruling 96-7p; 20 C.F.R. § 404.1529(c). See also Scheck, 357 F.3d at 703; Zurawski, 245 F.3d at 887.

An administrative law judge's credibility determination is given special deference because the administrative law judge is in the best position to see and hear the witness and to determine credibility. Shramek v. Apfel, 226 F.3d 809, 812 (7th Cir. 2000). In general, an administrative law judge's credibility determination will be upheld unless it is "patently wrong." Prochaska v. Barnhart, 454 F.3d 731, 738 (7th Cir. 2006); Sims v. Barnhart, 442 F.3d 536, 538 (7th Cir. 2006) ("Credibility determinations can rarely be disturbed by a reviewing court, lacking as it does the opportunity to observe the claimant testifying."). However, the administrative law judge still must build an accurate and logical bridge between the evidence and the result. Shramek, 226 F.3d at 811.

The administrative law judge did not discuss plaintiff's testimony specifically, determining that plaintiff's subjective complaints of pain and disability lacked a reasonable medical basis and were not controlling or persuasive. Contrary to plaintiff's assertions, in addition to citing plaintiff's 2004 reports of returning to work and bicycling for hours, the administrative law judge noted several bases for his conclusion:

- Plaintiff had an extensive gap in treatment with no intervening injury to explain his worsening symptoms in 2005.
- Although plaintiff reported that his pain increased over three weeks in April 2005, his physicians did not recommend specific limitations or a need to stop working.
- Jaikumar noted in April 2005 that plaintiff's reported symptoms were inconsistent and magnetic resonance imaging did not show significant pathology to explain them.
- Jaikumar's April 2005 notes also suggested that plaintiff was motivated to see him and report alleged problems in order to receive social security benefits.
- Mannino refused to comment on plaintiff's pain or functional limitations.

AR 17-18.

The administrative law judge's findings are supported by substantial evidence. After apparently fully recovering from surgery about May 2004, plaintiff began reporting pain in September 2004. However, as noted by the administrative law judge, plaintiff was not taking pain medication at that time. In December 2004, plaintiff reported disabling back

pain, but upon examination, Jaikumar noted that plaintiff had full strength in his legs, full plantar and dorsiflexion and a negative straight leg raise bilaterally. After magnetic resonance imaging studies in January 2005, Jaikumar recommended only that plaintiff continue with conservative measures and back strengthening exercises. Plaintiff did not seek treatment again until April 2005, when he reported that his pain had been increasing from a two or three out of 10 over the last three weeks. However, further imaging studies revealed no pathology to explain plaintiff's symptoms.

Plaintiff takes issue with the fact that the administrative law judge stated that Mannino "refused" to comment on plaintiff's pain or functional capacity, arguing that Mannino submitted a letter on September 6, 2005 that agreed with Jaikumar's limitations. However, as discussed above, those limitations were assessed in January 2004, before plaintiff fully recovered from surgery. Mannino's subsequent letter from September 26, 2005 makes clear that he had seen plaintiff only once since 2003 and could not assess the severity or effects of plaintiff's pain.

The administrative law judge considered not only the objective medical evidence but other relevant SSR 96-7p factors, including plaintiff's daily activities, other treatment and measures taken to relieve his symptoms and functional limitations and restrictions. Even if the administrative law judge technically erred by failing to address all of the SSR 96-7p factors, this error was harmless.

Plaintiff has not demonstrated that this is one of those rare occasions on which the court should disturb the administrative law judge's credibility finding. The administrative law judge was not patently wrong. He built an accurate and logical bridge between the evidence and his conclusion that plaintiff's allegations of disabling symptoms were not persuasive. It is possible that a different fact finder might have reached a different conclusion, but this possibility is not a basis for setting aside the administrative law judge's credibility determination.

F. Residual Functional Capacity Finding

Plaintiff argues that the administrative law judge failed to explain how the evidence supported his residual functional capacity finding as required under Social Security Ruling 96-8p. Specifically, plaintiff contends that there is no medical basis in the record to support the findings that plaintiff can sustain work on a regular and continuous basis, lift five to ten pounds frequently and alternate between sitting and standing for thirty minutes at a time.

The residual functional capacity assessment must be based on all of the relevant evidence in the case record, including medical history, medical signs and laboratory findings, the effects of treatment, reports of daily activities, lay evidence, medical source statements, effects of symptoms (including pain) that are reasonably attributed to a medically

determinable impairment and evidence of work attempts. Social Security Ruling 96-8p, 1996 WL 374184, *5 (1996).

With respect to plaintiff's residual functional capacity, the administrative law judge found that plaintiff was capable of a range of sedentary work activity within a year of his alleged onset of disability. Although he did not explicitly state the basis for this conclusion, the administrative law judge did emphasize in his decision that plaintiff was able to return to work and ride a bicycle by June 2004. He also noted that the state agency consulting physicians had determined in 2003 that plaintiff was capable of medium work activity. However, plaintiff alleged that his condition worsened in late 2004, requiring him to stop work and remain in bed between 10 and 15 days a month. As discussed above, the administrative law judge did not find plaintiff's subjective reports credible. However, he did accept plaintiff's assertion that he needs to alternate between standing and sitting every 30 minutes. See AR 306 (plaintiff's testimony to this effect). The administrative law judge stated that more stringent limitations were not justified by the clinical evidence. Again, he does not explain his reasoning, but earlier in his opinion, he referred to the lack of permanent limitations from plaintiff's treating physicians, Jaikumar's opinion that the April 2005 medical resonance imaging did not show any significant pathology to explain plaintiff's symptoms and Jaikumar's opinion that the paresthesia in plaintiff's legs should not have occurred when plaintiff lay down or sat for a prolonged period. The administrative law judge

also did not explicitly state the basis for determining that plaintiff can lift up to 10 pounds frequently. However, Rodriguez stated in her letter that plaintiff could not lift more than 10 pounds. Although I agree that the administrative law judge's residual functional capacity finding is lacking in detail, there is a logical and accurate bridge from the evidence to his conclusion. Accordingly, I find that the residual functional capacity determination is supported by substantial evidence.

ORDER

IT IS ORDERED that the decision of defendant Michael Astrue, Commissioner of Social Security, is AFFIRMED and plaintiff Johnny Becvar's appeal is DISMISSED.

The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 17th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge