IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TARA J. CASEY,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

07-cv-535-jcs

- -

Because Judge Shabaz will be convalescing from shoulder surgery for an extended period, I have assumed administration of the cases previously assigned to him, including this one.

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 Tara Casey seeks reversal of the commissioner's decision that she is not disabled and therefore ineligible for Disability Insurance Benefits and Supplemental Security Income under Title II and Title XVI of the Social Security Act, codified at 42 U.S.C. §§ 416(i), 423(d) and 1382(c)(3)(A). Plaintiff contends that the decision of the administrative law judge who denied her claim is not supported by substantial evidence because the judge failed to properly evaluate plaintiff's

alcohol abuse, failed to properly evaluate the "C" criteria of Listing 12.04, Affective Disorders, failed to properly assess her mental limitations and failed to provide an accurate hypothetical question to the vocational expert. I am rejecting plaintiff's arguments and affirming the administrative law judge's decision. Although the administrative law judge did not write a model opinion, it is sufficient to show that he followed the commissioner's rules when evaluating whether plaintiff's alcoholism was a contributing factor material to his disability, took all the important evidence into account in arriving at his conclusion that plaintiff was disabled and reached a decision supported by substantial evidence in the record to support the administrative law judge's decision that plaintiff's is not disabled. The following facts are drawn from the administrative record (AR):

FACTS

A. Background and Procedural History

Plaintiff applied for Social Security Disability Insurance Benefits and Supplemental Security Income on August 31, 2004, alleging that she had been unable to work since October 31, 1998 because of depression, panic attacks and an eating disorder. AR 69, 83, 266. Plaintiff was born on April 9, 1976, has a high school diploma and has worked as a dishwasher, janitor and personal care attendant. AR 285. The last date on which plaintiff was insured for disability benefits was September 30, 2000. AR 81.

After the local disability agency denied her application initially and upon reconsideration, plaintiff requested a hearing, which was held on April 24, 2007 before Administrative Law Judge Arthur J. Schneider in Madison, Wisconsin. Plaintiff was 31 years old on the date of the hearing. The administrative law judge heard testimony from plaintiff, who was represented by a lawyer. He also heard testimony from plaintiff's father, a neutral medical expert and a neutral vocational expert. AR 279. On May 9, 2007, the administrative law judge issued his decision, finding plaintiff not disabled. AR 17-27. This decision became the final decision of the commissioner on August 1, 2007, when the Appeals Council denied plaintiff's request for review. AR 4-6.

B. Medical Evidence

Plaintiff was seen by Dr. Atiya Iqbal on December 29, 1999 at the West Side Medical Center in Beloit, Wisconsin for rib pain. AR 161. At her January 10, 2000 appointment with Dr. Atiya, plaintiff reported that she had been diagnosed with anorexia. She also reported that she had been under the care of Dr. Knuppel, who had prescribed medication for her depression and anxiety. AR 162. On January 31, 2000, plaintiff told Dr. Iqbal that she had trouble falling asleep and had some energy loss. Plaintiff denied any homicidal or suicidal thoughts. AR 163.

Om May 23, 2000, plaintiff reported to Maureen Wild, a nurse practitioner at the West Side Medical Center, that she had increased anxiety and trouble sleeping. Wild prescribed BuSpar for plaintiff. AR 159. Plaintiff saw Wild again on August 3, 2000, complaining that she had significant problems with her boyfriend, difficulty sleeping and anxiety. Wild diagnosed plaintiff with depression with insomnia and anxiety components and prescribed Wellbutrin for her. AR 147. On October 12, 2000, plaintiff reported to Wild that she was depressed and having suicidal thoughts without a specific plan. She also reported that she was having insomnia, loss of concentration and anxiety. Plaintiff indicated she had a fear of being in groups and difficulty shopping at the grocery store. AR 149-150.

On February 15, 2001, plaintiff went to the West Side Medical Center complaining of left lower rib pain. Plaintiff told Wild that Friday evening she had been drinking in a bar and someone hit her. She reported that she had been drinking more and went to the bar every day. She stated that she was drinking several drinks and sometimes felt a loss of control. Wild recommended counseling for plaintiff. AR 126, 147.

The next medical report in the administrative record is dated June 23, 2004. Plaintiff was seen by Dr. Iqbal on that date. She complained of anxiety, depression, difficulty falling asleep and crying episodes. Plaintiff told Dr. Iqbal that for awhile she had been drinking brandy every day, but she had not had any alcohol recently. AR 123. Plaintiff denied any

suicidal or homicidal thoughts. Dr. Iqbal diagnosed plaintiff with anxiety, depression and insomnia and prescribed Effexor for her. AR 124.

On November 5, 2004, plaintiff was seen by social worker Jennifer Fruin and psychiatrist Melvin Haggart at Family Services of Southern Wisconsin and Northern Illinois. AR 258. At the intake interview, plaintiff reported depression, anxiety, self-mutilation, an eating disorder, lack of motivation and difficulty concentrating. AR 260. Plaintiff also reported that she had stopped drinking but in the past had drunk one bottle of blackberry brandy every night. AR 261. Fruin and Haggart diagnosed plaintiff with major depression and panic with agoraphobia and assigned her a Global Assessment of Functioning score of 53, indicating moderate symptoms. AR 261.

Plaintiff was treated for anxiety and depression at Family Services from November 2004 through February 2006. Fruin saw plaintiff one to two times a month during this period. In her treatment notes, Fruin discusses plaintiff's anxiety, depression, eating disorder and self harm. AR 219-247. Nothing in Fruin's treatment notes indicates that plaintiff was having any problems with alcohol. During this period, plaintiff was also seen monthly by Dr. Haggart, who prescribed medication for her depression, anxiety and self abuse. At several visits, plaintiff told Dr. Haggart that she hears voices; once, she told him that the voices told her to hurt herself. AR 240-254.

On May 18, 2005, Fruin completed a Mental Residual Functional Capacity Questionnaire for plaintiff. On the first page, she indicated that plaintiff has depression, panic attacks and overwhelming anxiety that limit her ability to be in public places but that she was beginning to make progress after individual psychotherapy and medication management. AR 198. Fruin noted that plaintiff's mental abilities and aptitudes needed for unskilled work were severely restricted. AR 200. She specifically indicated that plaintiff would not be able to meet competitive standards in maintaining attention, maintaining regular attendance, sustaining an ordinary routine without special supervision, working in coordination with or proximity to others without being unduly distracted, performing at a consistent pace, accepting instructions and criticisms from supervisors, responding appropriately to changes in routine work settings and dealing with normal work stress. AR 200. Fruin concluded that "[i]t would be unreasonable to assume [plaintiff] could maintain a regular work schedule at this point in time." AR 202. On February 12, 2007, Fruin wrote plaintiff's attorney a letter stating that plaintiff's symptoms seriously affected her social occupational and school functioning. AR 263.

On October 14, 2006, plaintiff admitted herself to Aurora Hospital because she felt she was drinking too much alcohol. She was discharged on October 16, 2006. AR 205.

C. Consulting Physicians

On October 11, 2004, Dr. Marcy B. Halvorson, Ph.D., performed an examination of plaintiff at the request of the Social Security Disability Determination Bureau. Plaintiff told Dr. Halvorson that she had had problems with depression and anxiety since she was 16. She admitted to self mutilation and to having an untreated eating disorder. Plaintiff said she drank alcohol, about one beer once a month, but she denied any history of alcohol problems. Plaintiff also complained to Dr. Halvorson about poor concentration and racing thoughts. AR 165.

Dr. Halvorson concluded that plaintiff would have difficulty understanding, remembering and carrying out simple instructions, responding appropriately to supervisors and co-workers and maintaining attention and concentration. She also noted that plaintiff would have difficulty withstanding routine work stress and that her work pace would be slow. Dr. Halvorson indicated that plaintiff had a Global Assessment of Functioning score of 40 (indicating serious symptoms), but could manage her finances independently. AR 165-168.

On October 26, 2004, state agency consulting psychologist Jack Spear completed a Psychiatric Review Technique Form for plaintiff. He noted that plaintiff met the "A" criteria for the listings of affective and anxiety related disorders. Assessing the "B" criteria, Dr. Spear found that plaintiff did not meet the listings because, although she had moderate

difficulties in maintaining concentration, persistence and pace, she only had mild restrictions of activities of daily living, mild difficulties in maintaining social functioning and no episodes of decompensation. 20 C.F.R. § 416.920a (describing procedure for evaluating mental impairments). He concluded that there was no evidence that plaintiff satisfied the "C" criteria for either of plaintiff's disorders. AR 183-184. The "C" criteria are the following:

> C. Medically documented history of a chronic organic mental (12.02), schizophrenic, etc. (12.03), or affective (12.04) disorder of at least two years' duration that has caused more than a minimal limitation of ability to do any basic work activity, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
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> 1. Repeated episodes of decompensation, each of extended duration; or
>
> 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
>
> 3. Current history of 1 year or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Dr. Spear also assessed plaintiff's mental residual functional capacity. He found that she was moderately limited in her ability to understand, remember and carry out detailed instructions, maintain attention and concentration for extended periods, perform activities within a schedule and work in coordination with or proximity to others without being distracted by them. He also found that she was moderately limited in her ability to work at

a consistent pace, interact with the public, accept instructions and criticism from supervisors, get along with co-workers, respond to changes in work setting and set realistic goals. AR 169-170. On March 16, 2005, another medical consultant whose name is illegible affirmed Dr. Spear's findings. AR. 171, 173.

D. Hearing Testimony

Plaintiff testified that she had a high school diploma and that she had last worked in 1998. AR 283-284. She identified her medical problems as panic attacks, anxiety, depression, self-mutilation and anorexia. AR 287. Plaintiff described feeling worthless and beating herself with a hammer to eliminate this feeling. AR 290. She also testified that she had previously cut herself and burned herself with boiling grease because of her depression. AR 292.

Plaintiff testified that in 2006 she had an extreme problem with alcohol and was admitted to a rehabilitation unit for alcohol for two and a half days. AR 291, 293. When the administrative law judge questioned plaintiff about her past alcohol use, she responded that she was not an alcoholic and just drank brandy for her sore throat in 2004. AR 294. She also testified that she could not remember abusing alcohol in 2001 or 2004, but she did remember falling in 2004 when she had been drinking. AR 304.

Plaintiff also testified that, because she had voices in her head that talked back and forth to each other, she had difficulty concentrating. AR 296-297. Plaintiff testified that she had planned her suicide in the past. AR 297. In describing her anorexia, plaintiff testified that she exercised two hours a day and ate once a day. AR 301. Plaintiff testified that she was taking Alprazolam four times a day, Abilify two times a day and Ambien at night to help her sleep. AR 295.

At the hearing, plaintiff's father testified that his daughter had a problem with alcohol in 2006. AR 306. He testified that six months before the hearing he had caught plaintiff drinking at home. Plaintiff's father also testified that either he or his wife is usually with his daughter because she has depression and hurts herself. AR 308.

The administrative law judge called Dr. N. Timothy Lynch to testify as a neutral expert. Before testifying, Dr. Lynch asked plaintiff about the frequency of her panic attacks. She responded that she had three a day. He also asked her whether she was still taking narcotics and she said she was not. AR 314. Dr. Lynch then identified three listed impairments that applied to plaintiff: 12.04, affective disorder; 12.06, anxiety disorder; and 12.09 substance abuse. AR 315. Addressing the degree of functional loss resulting from these impairments, Dr. Lynch testified that when plaintiff was using alcohol she would have marked limitations in functioning. AR 316. When she was not using alcohol, he said, she would have only mild limitations in concentration, memory and social functioning. AR 318.

Explaining the basis for his conclusions, Dr. Lynch also testified that plaintiff had not shown any anxiety symptoms or panic attacks at the hearing and that her memory seemed quite good. AR 317. He further testified that the record was inconsistent concerning her capacity to follow work instructions. AR 317. Dr. Lynch also testified that Dr. Halvorson's psychological evaluation was of questionable reliability because it was based on the symptom reports of plaintiff. AR 317. In response to questioning by the administrative law judge, Dr. Lynch testified that it would take a year after a person stopped abusing alcohol to get a clear psychological reading of that person. AR 318.

Plaintiff's attorney asked Dr. Lynch about the significance of Dr. Halvorson's determination that plaintiff had a Global Assessment of Functioning of 40. Dr. Lynch stated that the Global Assessment of Functioning was a subjective scale but that 40 would mean plaintiff was severely impaired. AR 324. Dr. Lynch was not asked and offered no opinion whether plaintiff met the "C" criteria of the listings for mental impairments.

Michelle Albers testified as a neutral vocational expert. The administrative law judge asked Albers hypothetically whether an individual with plaintiff's age, education and work experience who could perform simple, routine, repetitive and low stress work could perform plaintiff's past relevant work. The expert testified that the hypothetical individual could perform plaintiff's past work as a dishwasher and janitor but not as a personal care attendant. AR 318. She also testified that there were jobs in the economy that this

individual could perform, including dishwashing, janitorial and food preparation jobs. AR 329. In answer to the administrative law judge's second hypothetical, the expert testified that an individual who could not work a full day and would be absent two or more times a month could not perform plaintiff's past work or any work in the economy. AR 329.

Plaintiff's attorney then asked Albers to assume an individual with the limitations identified on the mental residual functional capacity form that plaintiff's therapist Fruin had completed. The expert testified that a person with those limitations would be precluded from work. AR 329.

E. Post-Hearing Submissions

Approximately two weeks after the hearing, plaintiff's attorney submitted to the administrative law judge "interrogatories," signed by Fruin, Jane Adams, plaintiff's current therapist, and Haggart. AR 264. The "interrogatories" consisted of a form drafted by plaintiff's attorney, on which plaintiff's treatment team was to identify how long they had been treating plaintiff and her diagnosis and any applicable boxes corresponding to the "C" criteria of the listings.

On the answers to the interrogatories, plaintiff's treatment team indicated that plaintiff had major depression and social phobia. They also included alcohol dependency and post traumatic stress disorder among plaintiff's diagnoses, although they may have

meant to say that any alcohol dependency was merely "probable." The form is unclear as to whether "alcohol dependency" or "post traumatic stress disorder" is the diagnosis to which the "probable" is meant to apply. By checking off boxes on the form, Fruin, Adams and Haggart indicated that plaintiff met the "C" criteria of the listings for mental impairments because (1) she had a residual disease process that had resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be likely to cause her to decompensate; and (2) she had a current history of one or more years' inability to function outside a highly supportive living arrangement with an indication of a continued need for such an arrangement. AR 265.

F. 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. At step one, he found that plaintiff did not engage in substantial gainful activity after October 31, 1998, the alleged onset date. At step two, he found that plaintiff had severe impairments of depression, panic attacks with social phobia and substance abuse. AR 19.

At step three, the administrative law judge found that when plaintiff is drinking she would meet the requirements of Listing 12.09, Substance Disorder. In reaching this conclusion, he gave substantial weight to Dr. Lynch's testimony. The administrative law

judge also considered the post hearing submission signed by Fruin, Adams and Haggart, stating as follows:

> In addition, in the claimant's post-hearing submission, social worker Jennifer Fruin, Social worker Judith Adams, and Dr. Melvin Haggart noted that the claimant would satisfy the "C" requirements of Listing 12.02(Exhibit 11F). The undersigned Administrative Law Judge notes that they list the claimant's diagnoses as recurrent major depression, social phobia, alcohol dependency, and probable post traumatic stress disorder.
>
> Social Worker Fruin, Social worker Adams and Dr. Haggart assert that the claimant's chronic alcoholism has debilitated her such that she satisfies the "C" requirements of Listing 12.02.
>
> Listing 12.02 is a listing for organic mental disorders. The Administrative Law Judge finds that the only reason that the claimant would have a chronic mental disorder would be secondary to her alcoholism. AR 21.

Next, relying on the testimony of Dr. Lynch, the administrative law judge found that without the factor of alcohol abuse, plaintiff's depression and panic attacks would not satisfy the requirements of a listed impairment. The administrative law judge stated that he was "confident that Dr. Lynch considered the plaintiff's functioning as a whole, both with alcohol abuse and absent alcohol abuse, when rendering his opinion." The administrative law judge concluded 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 21.

At step four, the administrative law judge assessed plaintiff's residual functional capacity. He concluded that plaintiff could perform the basic mental demands of unskilled work as demonstrated by her daily activities, which included cleaning, preparing food, washing laundry, taking care of her children and exercising. AR 25. The administrative law judge also noted Fruin's remark on the May 18, 2005 residual functional capacity questionnaire that plaintiff's condition was improving with "medicative" treatment and psychotherapy sessions. AR 24. The administrative law judge found that plaintiff would be limited to work activity that was simple, routine and repetitive. AR 22-25.

The administrative law judge noted that progress notes in the record reflected that plaintiff's alcohol use was much more extensive than she testified. In addressing plaintiff's credibility, the administrative law judge stated:

> There is sufficient cause to question the claimant's credibility. For instance, although the claimant stated that she sought alcohol treatment in October 2006 (confirmed with Exhibit 7F) and did not drink after she was discharged, the claimant's father, who lives with the claimant, testified at the hearing that he caught the claimant drinking alcohol at home 6 months ago.

At step five, the administrative law judge found that plaintiff was able to perform her past work as a dishwasher and a significant number of other jobs in the economy. In reaching this conclusion the judge relied on the testimony of the vocational expert. AR 15. The administrative law judge concluded plaintiff was not disabled from October 31, 1998 through the date of his decision. AR 26.

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. Consideration of Alcohol Abuse

In 1996, Congress enacted Public Law 104-121, which provides in relevant part that an individual cannot be considered disabled if drug addiction or alcoholism would be "a contributing factor material to the Commissioner's determination that the individual is disabled." 42 U.S.C. § 423(d)(2)(C). When there is medical evidence showing that the claimant has drug or alcohol addiction, the Social Security Administration considers whether the claimant would be found to be disabled if his alcohol or drug use stopped. 20 C.F.R. § 416.935. The applicable regulation states:

> (a) General. If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.
>
> (b) Process we will follow when we have medical evidence of your drug addiction or alcoholism.

> (1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.
>
> (2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

20 C.F.R. § 416.935.

Thus, the Social Security Administration first makes a disability determination irrespective of substance abuse; then, it considers what limitations, if any, would remain if the claimant's drug or alcohol addiction was absent. If the claimant's limitations absent substance abuse would not prevent him or her from working, then drug or alcohol addiction is "material" to the disability determination and the claimant cannot receive benefits. 20 C.F.R. § 416.935(b)(2)(i).

Plaintiff argues that the administrative law judge failed to properly follow this regulation because he did not first use the five step inquiry to determine whether plaintiff was disabled when she was using alcohol and then proceed to determine whether plaintiff would still be disabled if plaintiff stopped using alcohol. I disagree. Because the administrative law judge found plaintiff disabled at step 3 when he considered her alcohol

abuse, and then considered whether she would be disable if she were not abusing alcohol, he did not need to proceed to steps 4 or 5.

In addressing step 3, the administrative law judge found plaintiff satisfied the "B" requirements of Listing 12.09, Substance Abuse, when she was using alcohol. In reaching this conclusion he gave substantial weight to the assessment of the medical expert who testified that plaintiff would have marked restrictions in daily activities, difficulties in social functioning and deficiencies in concentration persistence or pace when using alcohol. After finding that plaintiff was disabled when using alcohol, the administrative law judge then considered whether plaintiff would be disabled, absent alcohol abuse. He considered Dr. Lynch's testimony that plaintiff would have "mild to moderate" restrictions in her activities of daily living and "mild" difficulties with social functioning, concentration and memory. AR 22. Relying on this testimony, the administrative law judge concluded that plaintiff's depression and panic attacks with social phobia would not satisfy the requirements of a listed impairment when her alcohol abuse was not considered. AR 22. Because the administrative law judge properly considered whether plaintiff would still be disabled if she were not a substance abuser, Kangail v. Barnhart, 454 F.3d 627, 628 (7th Cir. 2006), remand on the basis of legal error is not warranted.

C. Residual Functional Capacity

Plaintiff asserts that the administrative law judge failed to consider the impact of her mental impairments when he determined her residual functional capacity. The determination of residual functional capacity is an assessment of what work-related activities plaintiff can perform despite her limitations. 20 C.F.R. § 404.1545(a)(1). It must be based on all the relevant evidence in the record. Id.

After determining that plaintiff did not have a listed impairment absent her alcohol abuse, the administrative law judge turned to the consideration of plaintiff's residual functional capacity considered in light of her impairments of depression and panic attacks with social phobia. The administrative law judge relied on Dr. Lynch's testimony, finding it credible, as Dr. Lynch testified, that plaintiff would have only "mild to moderate" restrictions in her activities of daily living and "mild" difficulties with social functioning and concentration and memory. The administrative law judge also considered plaintiff's daily activities, which included cleaning, preparing food, washing laundry, taking care of her children and exercising. He then concluded that plaintiff could perform simple, routine and repetitive work.

As plaintiff points out, there is evidence in the record that contradicts the administrative law judge's finding concerning plaintiff's residual functional capacity. Consulting physician Dr. Halvorson concluded that plaintiff would have difficulty remembering and carrying out simple instructions, responding appropriately to supervisors

and co-workers and maintaining attention and concentration, withstanding routine work stress and that her work pace would be slow. She indicated that plaintiff had a Global Assessment Functioning of 40 but could manage her finances independently. The administrative law judge discussed this evidence in his decision. Specifically, he considered Dr. Lynch's testimony questioning Dr. Halvorson's findings because she had relied heavily on plaintiff's self-reporting. He also noted that Dr. Lynch had stated that Dr. Halvorson's finding that plaintiff had a Global Assessment of Functioning score of 40 conflicted with her finding that plaintiff could manage her finances independently and with Fruin's finding several months later that plaintiff had a Global Assessment of Functioning of 53. These were good reasons for rejecting Halvorson's opinion in favor of Dr. Lynch's.

More significant is the administrative law judge's failure to address Fruin's May 18, 2005 Mental Residual Functional Capacity Questionnaire on which she indicated that plaintiff's mental abilities and aptitudes to do unskilled work were severely restricted. Although Fruin was a social worker and therefore not a "treating source," under the commissioner's regulations, 20 C.F.R.§§ 404.1502, 404.902, the regulations provide that when evaluating symptoms, the administrative law judge is to consider "all of the available evidence," which includes statements from non-medical sources such as counselors. 20 C.F.R. §§ 404.1513(d), 404.1529(c). The administrative law judge did not discuss Fruin's opinion of plaintiff's limitations or the weight he gave it, but it is plain from his reference to Fruin's

remark that plaintiff was improving with therapy and medication that he considered the questionnaire. Further, his reasons for rejecting Fruin's restrictive assessment can be fairly inferred from his decision. Like Dr. Halvorson, Fruin drew her conclusions largely from plaintiff's own reports about her condition, and the administrative law judge explained that he found plaintiff's self-reports not credible, particularly concerning her alcohol use.

It is well-settled that an administrative law judge may disregard a medical opinion premised on the claimant's self-reported symptoms if the administrative law judge has reason to doubt the claimant's credibility. Diaz v. Chater, 55 F.3d 30 0, 307 (7th Cir. 1995) (administrative law judge could reject portion of physician's report based upon plaintiff's own statements of functional restrictions where administrative law judge found plaintiff's subjective statements not credible); Mastro v. Apfel, 270 F.3d 171, 177-78 (4th Cir. 2001) (affirming administrative law judge's disregard of treating physician's opinion because it "was based largely upon the claimant's self-reported symptoms" and was not supported by the objective medical evidence); Morgan v. Commissioner of the Social Security Administration, 169 F.3d 595, 602 (9th Cir. 1999) (physician's opinion of disability premised to large extent on claimant's own accounts of symptoms and limitations may be disregarded where those complaints have been properly discounted). Plaintiff does not challenge the administrative law judge's credibility finding. Accordingly, if the administrative law judge properly

discounted plaintiff's subjective statements, it follows that he could reject any opinions, including Fruin's, that were based on those statements.

As the commissioner suggests, the administrative law judge could have also disregarded Fruin's opinion because Fruin did not consider plaintiff's limitations separately from her alcohol abuse. Plaintiff told Fruin on November 5, 2004 that she had stopped drinking. Dr. Lynch testified that a person's alcohol abuse could affect his or her psychological condition for a year after the drinking stopped. Fruin completed her questionnaire in May 2005, about six months after plaintiff stopped drinking. In addition, although Fruin's treatment notes do not indicate that plaintiff was abusing alcohol from late 2004 to February 2006, Fruin was relying on plaintiff's self-reports that she was not drinking. As the administrative law judge noted, the reports were suspect in light of evidence indicating that plaintiff was not forthright about her alcohol use, such as her father's testimony that he had caught plaintiff drinking six months before the hearing.

In sum, even though the administrative law judge did not clearly articulate his reasons for discounting the opinion of Fruin concerning plaintiff's limitations, I can reasonably infer that he considered the opinion and properly discounted it because it was based on plaintiff's self reports and was made in a period when her alcohol abuse could still have been affecting her mental abilities. Stephens v. Heckler, 766 F.2d 284, 287 (7th Cir. 1985) ("If a sketchy opinion assures us that the administrative law judge considered the important evidence, and

the opinion enables us to trace the path of the administrative law judge's reasoning, the administrative law judge has done enough.") Because the administrative law judge did not give any weight to Fruin's opinion he had no need to include the limitations she found in the hypothetical question. Young v. Barnhart, 362 F.3d 995, 1003 (7th Cir. 2004)(hypotheticals posed to the vocational expert must include all nonexertional limitations supported by substantial evidence).

Overall, the administrative law judge's finding that plaintiff retained the residual functional capacity to perform simple, routine, repetitive work is consistent with Dr. Lynch's testimony and with plaintiff's daily activities. I conclude that the administrative law judge properly considered the impact of plaintiff's mental impairments when determining her residual functional capacity.

D. "C" Criteria

The final issue is whether the administrative law judge failed to properly evaluate the interrogatories signed by plaintiff's treatment team on which they indicated that plaintiff met the "C" criteria applicable to the listing for certain chronic mental impairments, namely organic mental disorders (Listing 12.02), schizophrenic, paranoid and other psychotic disorders (Listing 12.03), and affective disorders (Listing 12.04). The administrative law judge read the interrogatories as indicating that plaintiff had an organic mental disorder, a

conclusion that he rejected because it was not supported by any evidence in the record. Plaintiff argues that the administrative law judge misread the interrogatories. She points out that the form asked her treatment team not only whether plaintiff met the "C" criteria for an organic mental disorder, but whether she met the "C" criteria for any of the listings identified.

I agree. Although the interrogatories were poorly drafted, close examination shows that they do not support the administrative law judge's conclusion that they were submitted to show that plaintiff met the "C" criteria of an organic mental disorder. The diagnoses listed on the interrogatories, recurrent major depression and social phobia, along with the absence of any evidence that plaintiff's symptoms were the result of brain dysfunction, support the conclusion that plaintiff's team found that she had an affective disorder rather than an organic mental disorder.

Nonetheless, although the administrative law judge's reasoning was flawed, proper consideration of the interrogatories would not change the outcome of the disability determination. Keys v. Barnhart, 347 F.3d 990, 994 (7th Cir. 2003)(harmless error doctrine applies to administrative decisions); Sahara Coal Co. v. Office of Workers Compensation Programs, 946 F.2d 554, 558 (7th Cir. 1991)("If the outcome of a remand is foreordained, [the court] need not order one"); Fisher v. Bowen, 869 F.2d 1055, 1057 (7th Cir. 1989)("No principle of administrative law or common sense requires us to remand a case in quest of the perfect opinion unless there is reason to believe that remand might lead to a different

result."). There is substantial evidence in the record that plaintiff did not meet the "C" criteria for affective disorder or anxiety-related disorder. First, Dr. Lynch testified that he had considered whether the plaintiff met the listing for 12.04, so it is likely that he considered and rejected a finding of disability under the "C" criteria for that listing. Second, even if Dr. Lynch's testimony is not dispositive, consulting psychologist Dr. Spear found specifically that plaintiff did not meet the "C" criteria for the listings of affective or anxiety related disorder. Finally, the interrogatories are of little probative value concerning plaintiff's functioning absent alcohol abuse. Not only did plaintiff's treatment team fail to provide any clinical data to support its findings, Dixon v. Massanari, 270 F.3d 1171, 1177 (7th Cir. 2001)(administrative law judge could reasonably reject treating physician's opinion that plaintiff was disabled where treating physician "expressed this opinion by writing 'yes' next to a question that Dixon's attorney had pre-typed [but] did not elaborate on the basis for his opinion"), but its findings are unreliable for the same reasons that undermined Fruin's report. Accordingly, the administrative law judge's flawed analysis of the treatment team's answers to the interrogatories was harmless error.

ORDER

IT IS ORDERED that the decision of defendant Michael J. Astrue, Commissioner of Social Security, is AFFIRMED and plaintiff Tara Casey's appeal is DISMISSED. The clerk

of court is directed to enter judgment in favor of defendant and close this case.

Entered this 7th day of April, 2008.

BY THE COURT:

_____/s/_____
BARBARA B. CRABB
District Judge