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

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WILLIAM KANGAS,

OPINION AND ORDER

Plaintiff,

12-cv-91-bbc

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

- -

Plaintiff William Kangas is seeking review of a decision of the Commissioner of Social Security denying his claim for disability insurance benefits. The administrative law judge found that plaintiff was able to perform his prior relevant work before his last insured date. Plaintiff contends the administrative law judge erred in three respects: (1) his residual functional capacity assessment was not supported by medical opinions; (2) he failed to assess the affect of plaintiff's limitations on his ability to perform his past relevant work; and (3) he assessed plaintiff's credibility erroneously.

After reviewing the record, I conclude that the administrative law judge erred in rejecting all of the relevant medical opinions and ignoring relevant medical evidence after plaintiff's last insured date. He also made significant errors when assessing plaintiff's credibility and his ability to perform his past relevant work. Therefore, I must remand the case for further consideration.

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

RECORD FACTS

A. Procedural Background

Plaintiff was born on November 17, 1952. He has two years of college education. AR 230. His past relevant work is as a bartender, in a bar that he owned until April 20, 2007. AR 47, 212, 295. He last met the insured status requirements of the Social Security Act on December 31, 2006, his "date of last insured."

Plaintiff filed an application for disability insurance benefits on January 31, 2008, alleging disability as of July 2, 1998, because of chronic back pain, right shoulder problems, a weak left knee, Dupuytren's contractions of both hands and double vision in the left eye. AR 153, 223. After the agency denied his application initially and upon reconsideration, he requested a hearing, which was held on April 16, 2010 before Administrative Law Judge Larry Meuwissen. The administrative law judge heard testimony from plaintiff and a neutral vocational expert. AR 36-75. He issued his decision on June 11, 2010, finding plaintiff not disabled because he was able to perform his past relevant work as a bartender. AR 13-25. The Appeals Council denied plaintiff's request for review on November 15, 2011, making the administrative law judge's decision the final decision of the commissioner.

B. Relevant Medical Evidence

In July 1999, plaintiff told his treating physician, John C. Oujiri, M.D., that he had

hurt his back when he slipped on a piece of wood while cutting firewood. AR 416. In August 1999, an MRI identified central spinal stenosis (narrowing of open spaces in the spine) with a small to moderately large hernia at L5-S1 and a disc bulge at L1-2. AR 419. During a physical therapy evaluation, plaintiff reported that he was "not able to do any of his activities at the bar that he runs, [was] not able to carry anything and [had] difficulty putting his shoes on and off." In September and October, plaintiff told Oujiri that his pain was gradually improving with physical therapy. AR 472-73.

In November visit to Oujiri, plaintiff reported that he could stand for only one minute until his back began to spasm and he had to sit. Oujiri observed that plaintiff was "still unable to really do any sort of work." AR 474. In a December visit, plaintiff reported that back pain prevented him from standing for more than half hour at a time and "even when he goes grocery shopping, he finds he is ending up bending over the cart." AR 475. Oujiri concluded that plaintiff was "totally disabled from his usual employment as a bartender" because "[h]e obviously [could not] stand any length of time to tend bar" or "do any lifting of pop and alcohol." In January 2000, Oujiri again opined that plaintiff could not work as a bartender because he was in "an awful lot of pain. Even lifting a 12 pack of pop caused him lots of difficulty." AR 476. Oujiri reached similar conclusions after visits in February and March 2000. He observed that plaintiff was unable to stand, AR 479, carry things, roll barrels of beer or lift cases of pop, so working as a bartender was "completely out of the question." AR 480.

In July 2000, plaintiff still had difficulty standing or bending over because of his back

pain. AR 483. On July 26, 2000, he had a microdisectomy to remove herniated disc material from his right L4-5. AR 342-43. In October, plaintiff reported to Oujiri that he was still having lots of back pain that radiated down his leg. AR 485. At Oujiri's instruction, plaintiff saw his neurosurgeon. A CT myelogram showed recurrent herniation. Plaintiff had his second back surgery with lumbar decompression of the right L4-5 on December 21, 2000. AR 344, 347. In March 2001, another MRI identified a disc bulge at L1-2 and moderate stenosis at L4-5 with abnormalities that might be another reherniation. AR 349, 361. On May 21, 2001, plaintiff underwent his third spinal surgery, a L4-S1 pedicle screw fusion. His surgeon noted that plaintiff had been "basically nonfunctional" and that the surgery revealed "extraordinary degenerative disc material at the L4-5 level." AR 362-63.

Plaintiff's next visit to a doctor was in March 2002, when he saw Oujiri for capsulitis of the right shoulder. AR 492. Oujiri gave plaintiff a corticosteroid injection because plaintiff wanted to go on a golfing trip but could barely move his shoulder. In June 2002, plaintiff was seen for a tick bite. Between January 2003 and May 2005, plaintiff saw Oujiri for a lump in his underarm, gout in his left foot, hypertension, arthritis and a foreign body in one eye. AR 493-502. Plaintiff's medical records from March 2002 until May 2005 do not mention back pain.

In May 2005, plaintiff injured his back again. Oujiri wrote that plaintiff "had been doing great, however about one month ago he went out and did a lot of chopping wood, lifting heavy logs and hurt his back." AR 503. (Plaintiff asserts that these notes were written by a nurse, but the document lists Oujiri as its author.) He developed back pain

radiating down his leg that was particularly painful at night. "He took it easy, rested and took some analgesics, and it gradually improved. Now it bothers him only a little bit first thing in the morning." Plaintiff's next appointment with Oujiri was a hypertension followup in January 2006. AR 505. Plaintiff reported that he was "feeling great" and did not have "any problems or difficulties." However, he did report "intermittent back pain," for which he "occasionally uses Vicodin, but not very often."

On October 19, 2006, plaintiff told Oujiri that he was having lots of back pain that bothered him everyday. AR 510. Oujiri noted that plaintiff could "do things for about an hour and then he has to stop and just rest for a while." Although he still owned the bar, "he [could not] work there anymore because he [could not] stand that long behind the bar and serve drinks." As a result, his profit margins suffered because he had to hire bartenders. Oujiri noted that plaintiff's "straight leg raising [was] positive at 90 degrees bilaterally, although the pain tend[ed] to be more in the legs than actually in the back." Plaintiff was able to flex forward. Oujiri gave plaintiff a prescription for a muscle relaxant and referred him to a back institute. (The record does not show whether plaintiff visited the institute and, if so, what his results were.) In November, during an unrelated evaluation, Oujiri again noted that plaintiff's back pain was increasing and he was having "lots of back problems." AR 512.

Plaintiff next returned to Oujiri in July 2007. AR 513. Oujiri noted that plaintiff had chronic back pain and "had been doing relatively well," but the pain had begun increasing in the last two weeks. Plaintiff was unable to sit, so he had to lie down to ride in the car and

stand to eat. Oujiri assessed low back pain and left sciatica, which is pain in the lower back or hip usually caused by a herniated lumbar disc compressing the L5 or S1 nerve root. Stedman's Medical Dictionary 1731 (28th Ed. 2006). An MRI on July 17, 2007 revealed severe central stenosis with bulging at L3-L4 and a disc protrusion at T12-L1 that was compressing the subarachnoid space and the left L1 nerve root. AR 370.

In August 2007, plaintiff received injections with some improvement. AR 559. In October, Oujiri noted that plaintiff sold his bar "because he could not deal with the back pain and work the bar anymore." AR 522. In December, plaintiff reported continued back pain with lower extremity weakness and difficulty moving around. AR 544. On December 28, 2007, he had his fourth back surgery. His preoperative diagnosis was failed back surgery syndrome from L4-S1 with adjacent stenosis, degenerative disc disease at L3-L4 and neurogenic claudication. Id. (Neurogenic claudication refers to limping as a result of neurological compromise. Stedman's Medical Dictionary 389 (28th Ed. 2006)). The surgeon removed the L4 to S1 fusion from the third surgery, fused the L3-4 bilaterally and performed a decompression of the L3 and L5 nerve roots. AR 439.

In January 2008, the L3-4 fusion from plaintiff's fourth surgery migrated and pressed on his nerve root. AR 424, 431. On February 5, 2008, plaintiff had a fifth surgery to remove the second failed device and re-fuse the L3-4 level. AR 431, 551. The bone had been too soft to support the previous device, so it was replaced with bone grafting. AR 531. Subsequently, plaintiff was found to have low vitamin D levels. AR 533. On February 20, 2008, Oujiri noted that plaintiff was still in pain and unable to do much. He could not

perform housework or even wash his hands in the sink because he was unable to bend over and reach out. AR 531. He had jitteriness in his legs through the night that prevented him from sleeping. He was unable to climb a ladder and had difficulty going up and down steps. Oujiri noted that plaintiff had "been essentially unable to work since 1998." Id.

In a June 2008 visit with Oujiri, plaintiff reported experiencing shortness of breath and difficulty getting around. AR 646. He continued to have lots of pain in his back and a fair amount of stiffness. He was able to play golf but had to get on his hands and knees to place the tee in the ground because of difficulty bending over. In August, plaintiff visited Oujiri, again complaining of his failed back syndrome and back pain, as well as other problems. AR 642-43. Oujiri noted that plaintiff was getting shortness of breath from the severity of his muscle spasms and back pain. Plaintiff said he was still unable to bend over to pick anything up. He reported trying to stay active, including operating a saw mill for at most two hours. He hired people to bend over and pick things up, and he ran the saw blade back and forth across the wood to cut it up.

In a letter dated February 17, 2009, Oujiri said that plaintiff had experienced back pain for many years and had been unable to work since 1998. AR 629. He explained plaintiff's condition and his five surgeries. He also stated (incorrectly) that he last saw plaintiff for back pain in February 2008 and recounted his findings from that visit. He observed that, "as far as [he knew], [plaintiff] last had gainful employment in 1998" and "was unable to keep his business of running a bar because of his pain." Oujiri reported receiving a note from plaintiff's neurosurgeon dated December 26, 2008, in which the

surgeon stated that plaintiff had "paresthesias and numbness down his leg, but no significant pain and that he had returned to normal activity." (Paresthesia is an abnormal but usually not painful sensation, such as pricking or burning. Stedman's Medical Dictionary 1425 (28th Ed. 2006).)

C. Consultative Exams

On May 1, 2008, Syd Foster, D.O., completed a physical residual functional capacity assessment. AR 585. He listed plaintiff's primary diagnosis as degenerative disc disease, his secondary diagnosis as status post left knee arthroscopy and his other alleged impairments as status post Dupuytren contracture release. He found that plaintiff had the ability to lift up to 50 pounds occasionally and 25 pounds frequently, stand, walk or sit for about six hours in an eight-hour day and push or pull without limitation. He included no non-exertional limitations. Foster checked a box indicating that there were no treating or examining source statements in the file and offered no narrative explanation of his conclusions.

James Cole, M.D., completed a second residual functional capacity assessment on July 21, 2008. AR 605-09. He listed plaintiff's primary diagnosis as Dupytren's contraction, his secondary diagnosis as three laminectomies and one spinal fusion prior to June 2001, and his other alleged impairments as right shoulder and left knee arthroscopy. Cole concluded that before his date last insured, plaintiff could occasionally lift up to 20 pounds, frequently lift 10 pounds and stand, walk or sit about six hours in an eight-hour day, but he could only

occasionally crouch, stoop, climb ladders or reach overhead on the right side. AR 605, 608. Cole stated that his conclusions were not significantly different from the treating source's opinion. In his narrative comments, Cole noted that plaintiff had back, shoulder and hand surgeries before and after the date last insured. He noted that plaintiff's "[discharge summary] from the last surgery indicates he has full motor power and is fully ambulatory," AR 608, although it is not clear from the context which surgery he meant.

E. Hearing Testimony

Plaintiff testified that he last tended his bar just after his initial injury in 1999, because the injury left him unable to walk more than a block, bend over or stand for more than about a minute. AR 52-53. Plaintiff's attorney asked him to describe what his life was like between the 2001 fusion and his next surgery in 2007. AR 53. Plaintiff said he tried to exercise without bending over and that he was getting better. AR 54. He could sit longer and walk two blocks but was still unable to stand long enough to tend the bart. AR 54.

Plaintiff testified that he returned to the doctor in October 2006 because his back pain was so bad that he was unable to sit down and could not stand for very long. AR 55. Plaintiff testified that after October 2006 the doctors tried pain medication and injections and then moved on to the surgery. AR 54-55. The administrative law judge did not ask any questions about the progression of plaintiff's condition following October 2006.

The administrative law judge's questioning concentrated on plaintiff's activities. Plaintiff said that he tried to stay active by mowing the grass, building birdhouses and

performing other projects. He also said that he ran a small electric sawmill. AR 46. His friends bring the logs and roll them up a skid way, so that he can run the logs through the mill. AR 57-59. Plaintiff testified that he can walk for 30 minutes at a time while running the sawmill, and the group works for two-hour sessions, once a week. The friends then take a share of the wood for their own use.

A neutral vocational expert, Edward Utities, testified that plaintiff had past relevant work as a bartender, which is listed as light, low end semi-skilled work in Dictionary of Occupational Titles. AR 72. The administrative law judge did not ask the vocational expert any hypothetical questions.

F. The Administrative Law Judge's Decision

In reaching his conclusion that plaintiff was not disabled, the administrative law judge performed the required sequential analysis. 20 C.F.R. §§ 404.1520, 416.920. At step one, he found that plaintiff last met the insured status requirements on December 31, 2006 and had continued to provide "significant services" to his bar business after July 2, 1998, his alleged disability onset date. AR 22. Nevertheless, the administrative law judge "determined that the sequential evaluation will be continued." Id.

At step two, he found that plaintiff had the severe impairments of "degenerative disc disease of the lumbar spine status post two microdisectomies and a laminectomy, bilateral Dupuytren's contractures, a history of left knee degenerative joint disease post surgical repair, and right shoulder impingement syndrome status post surgical repair." AR 22. At

step three, he concluded that the impairments alone or in combination did not meet or exceeded any of the listed impairments.

The administrative law judge determined that as of his last insured date, plaintiff had the residual functional capacity to perform light work, which meant he could lift 20 pounds occasionally and 10 pounds frequently, stand and walk up to six hours in an eight hour day and sit for up to six hours in an eight-hour day. AR 23-27. He rejected plaintiff's allegations about his symptoms and limitations as "not fully credible," because plaintiff's low back, shoulder and knee all improved following surgical treatment and plaintiff was able to perform a significant range of activities prior to his last insured date. AR 27. He observed that plaintiff "grooms and bathes himself, cooks, mows the law with a riding lawnmower, drives a car, goes shopping, pays bills and handles finances, watches TV, plays cards, reads, goes to his doctor's appointments and visits with friends." Id. In addition, he said the treatment notes show that plaintiff continued to tend bar and cut and stack wood and he had a dark tan at the hearing from spending time outdoors running his sawmill. Id.

With respect to the medical evidence, the administrative law judge noted Oujiri's conclusions from June 2000, October 2006 and February 2009 that plaintiff was unable to tend bar and had been unable to do so since 1998. He chose not to give these opinions "significant weight" because he found they were inconsistent with the medical record. According to the administrative law judge, the record showed that plaintiff's condition had improved after his surgeries and Oujiri's treatment notes documented plaintiff's "lumberjacking" and bartending, his comments that he was doing great and the absence of

any ongoing neurological losses. AR 26. The administrative law judge's summary of plaintiff's medical history stopped at October 2006 and did not consider any evidence after that date.

In a three-sentence paragraph, the administrative law judge noted that "the state agency physicians" had concluded that plaintiff was capable of light work with only occasional stooping, crouching or use of ladders. AR 25-26. He gave their opinions "some weight because they are generally consistent with the objective evidence in the record, however, the postural limitations are not adopted because the record documents that the claimant's symptoms improved with treatment and that he was able to perform a significant range of activities without limitations." AR 26.

At step four, the administrative law judge concluded that because plaintiff had the ability to perform light work, he could perform his past relevant work as a bartender as it was actually performed and as it is generally performed. AR 27-28. He made no factual findings about the nature of plaintiff's work. He did not make an alternative step five finding.

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). The administrative law judge "need not discuss every piece of evidence," but he "must evaluate the record fairly" and "may not ignore an entire line of evidence that is contrary to the record." Golembiewski v. Barnhart, 322 F.3d 912, 917 (7th Cir. 2003). In addition, the administrative law judge must build a logical and accurate bridge from that evidence to his conclusion. Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001). Appellate review is confined to those rationales offered by the administrative law judge, so a court may not affirm based on post-hoc justifications offered by the commissioner's lawyers. Spiva v. Astrue, 628 F.3d 346, 348 (7th Cir. 2010).

B. Medical Evidence Regarding Disability Onset

Plaintiff first argues that the administrative law judge's determination that he was not disabled before his last insured date of December 31, 2006, is not supported by substantial evidence, because the administrative law judge rejected all the relevant medical opinions and rejected the opinion of plaintiff's treating physician without a sound justification. A social security claimant must establish that he is unable to work "by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §423(d)(1)(A); Barnhart v. Walton, 535 U.S. 212 217-22 (2002). The clamant must prove that his limitations rendered him unable to work on or before the date when his insured status expired and that they lasted for twelve months. 20 C.F.R. § 404.320(2); Briscoe ex rel. Taylor v. Barnhart, 425 F.3d 345 (7th Cir. 2005). However, he

need not establish that the limitations lasted twelve months before his insurance expired. McQuestion v. Astrue, 629 F. Supp. 2d 887, 902 (E.D. Wis. 2009) (collecting cases).

Accordingly, a claimant cannot rely on subsequent deterioration to show disability, Eichstad v. Astrue, 534 F.3d 663, 666 (7th Cir. 2008), but he may rely on medical records after the insured period if they shed light on the existence of the disability during that time. Allord v. Barnhart, 455 F.3d 818, 822 (7th Cir. 2006); Ray v. Bowen, 843 F.2d 998, 1004 (7th Cir. 1988); Start v. Weinberger, 497 F.2d 1092, 1097 (7th Cir. 1974) (diagnosis made several years after the onset may establish existence of impairment during covered period). As the court of appeals has explained, "what is required to establish a retrospective diagnosis is contemporaneous corroboration (contemporaneous with the period of coverage, that is) of the . . . illness, not necessarily contemporaneous medical corroboration." Allord, 455 F.3d at 822 (quotation omitted and alterations incorporated). Moreover, even "contemporaneous corroboration is not *always* required—just usually." Id. (emphasis in original). Retrospective evidence alone may be sufficient establish a claimant's onset date if, for example, his disease or condition has a well-known progression, id., or the medical problem is longstanding. Erlandson v. Shalala, 7 F.3d 238 (7th Cir. 1993).

In this case, the administrative law judge concluded that plaintiff was not disabled on or before his last insured date of December 31, 2006. The commissioner argues that, even if plaintiff was disabled at some point, he improved after his 2001 surgeries and was not disabled again at least until the summer or fall of 2007. AR 513. The problem with the commissioner's argument is that the administrative law judge dismissed Oujiri's findings

from October 2006 and ignored the subsequent medical record. As a result, he lacked a medical basis to determine whether plaintiff's disability began in October 2006.

The administrative law judge noted plaintiff's symptoms and Oujiri's opinion in October 2006 but concluded that plaintiff had no neurological deficits at the time because Oujiri found he had a positive straight leg raising test at 90 degrees bilaterally and was able to flex forward. However, Oujiri did not interpret these tests or give an opinion about the severity of plaintiff's symptoms, and the administrative law judge is not permitted to diagnose plaintiff's symptoms. Rohan v. Chater, 98 F.3d 966, 970 (7th Cir. 1996). More important, the administrative law judge's demand for contemporaneous medical evidence of plaintiff's symptoms was an error in light of plaintiff's longstanding condition and the subsequent evidence. It is possible that plaintiff's symptoms in October 2006 were a result of the failed L4 to S1 fusion that came to a head by July 2007. At the very least, the administrative law judge had to consider whether the subsequent medical evidence supported an onset date before December 31, 2006. Mack v. Shalala, 12 F.3d 1101 (7th Cir. 1993); Lichter v. Bowen, 814 F.2d 430, 436 (7th Cir. 1987). If the onset date was unclear, the administrative law judge could have called a medical expert to estimate how grave plaintiff's condition was on the date last insured. Parker v. Astrue, 597 F.3d 920, 925 (7th Cir. 2010).

Instead, the administrative law judge ignored all of the subsequent medical evidence and rejected all of the relevant medical opinions. First, he rejected the contemporaneous and retrospective opinions of Oujiri. He declined to give "significant weight" to Oujiri's opinions from February 2000 and October 2006 that plaintiff was unable to stand long enough to

tend bar, because he thought that (1) Oujiri's opinions conflicted with the records showing plaintiff's knee and back symptoms improved following treatment; (2) plaintiff remained able to perform a range of activities, including "heavy activities of lumberjacking"; and (3) Oujiri's opinions conflicted with his own notes that plaintiff "continued to work tending bar." He also chose not to give "significant weight" to Oujiri's February 17, 2009 retrospective opinion that plaintiff had experienced significant pain for a number of years and been unable to work since 1998. In support of this choice, the administrative law judge repeated his reasons and added that "the record fails to document that the claimant experienced any ongoing neurological losses or any significant ongoing loss of range of motion in his major joints."

Oujiri was plaintiff's treating physician, which means his opinions about the nature and severity of plaintiff's symptoms are entitled to "controlling weight" if they are "well-supported by medically acceptable clinical and laboratory diagnostic techniques" and "not inconsistent with substantial evidence in [the] case record." 20 C.F.R. § 404.1527(c)(2). See also Schaaf v. Astrue, 602 F.3d 869, 875 (7th Cir. 2010). When an administrative law judge does not give controlling weight to a treating physician's opinion, he must explain what weight he gave it and provide "a sound explanation" for his decision in light of "the length, nature, and extent of the treatment relationship, frequency of examination, the physician's specialty, the types of tests performed, and the consistency and supportability of the physician's opinion." Moss v. Astrue, 555 F.3d 556, 561 (7th Cir. 2009) (citing 20 C.F.R. § 404.1527(c)).

Most of the arguments offered by the administrative law judge to discount Oujiri's opinion are unsound. First, as discussed above, he erred by demanding contemporaneous medical evidence of neurological losses or loss of range of motion and by ignoring all subsequent evidence about the impairment. Second, his arguments exhibit no awareness of the timing of plaintiff's impairments. Oujiri said plaintiff had been doing great before he reinjured his back chopping wood in May 2005, but that statement is not inconsistent with Oujiri's findings that plaintiff was unable to stand in 2000 or 2006. It was illogical to reject Oujiri's opinion from February 2000 because plaintiff's back improved after May 2001, and just as illogical to reject Oujiri's opinion from October 2006 because plaintiff felt great before he reinjured his back in 2005. For similar reasons, the fact that plaintiff injured himself "lumberjacking" in 2005 does not show that he was not limited in 2006.

Third, the administrative law judge ignored Oujiri's contemporaneous findings and mischaracterized the record. Oujiri stated repeatedly in his medical notes that plaintiff was unable to tend bar because he could not stand, bend, roll beer kegs or lift objects. The administrative law judge ignored the latter two limitations. Instead, he cited two places in which Oujiri mentioned that plaintiff was still working in 2000 and 2003. Neither citation shows that plaintif was not disabled at the time, much less that he was not disabled in October 2006. In June 2000, Oujiri noted that plaintiff "works as a bartender there, although, he has been somewhat debilitated because of his back," AR 405, but even this statement was made before plaintiff's first three surgeries. As the administrative law judge also noted, Oujiri said in March 2003 that plaintiff was working in a bar and was a musician.

AR 25. The treatment note does not specify what type of "work" plaintiff was performing in the bar in 2003, but nothing in it suggests bartending. Furthermore, the administrative law judge did not explain what about plaintiff's work in the bar or playing in a band occasionally is inconsistent with plaintiff's alleged physical limitations.

Despite these mistakes, it was reasonable for the administrative law judge to conclude that plaintiff's back improved between May 2001 until May 2005, and this period of improvement may be inconsistent with Oujiri's retrospective opinion (expressed in 2008 and repeated in 2009) that plaintiff had been unable to work since 1998. However, this is not sufficient to render harmless the administrative law judge's decision to reject Oujiri's prior contemporaneous opinions. Moreover, even if it were reasonable for the administrative law judge not to give Oujiri's retrospective opinions from 2008 and 2009 controlling weight, he was still required to explain what weight he gave them in light of the factors in 20 C.F.R. § 404.1527(c)(2). His statement that the "opinion is not given significant weight" does not explain what weight he did give them, and he did not evaluate them under the requisite factors.

The commissioner also argues that it was reasonable to discount Oujiri's 2009 opinion because Oujiri was wrong about when plaintiff sold his business, wrong about whether plaintiff was gainfully employed after 1998 and admitted that his information about plaintiff's condition in 2009 was not up to date. These post hoc arguments were not made by the administrative law judge and I cannot consider them on appeal.

After rejecting Oujiri's medical opinions, the only remaining opinions on which the

administrative law judge could have relied to determine plaintiff's residual functional capacity were the opinions of the state agency physicians. However, the administrative law judge discussed their opinions for only three sentences, in which he misstated Foster's findings and rejected Cole's findings. The administrative law judge wrote that the physicians found plaintiff limited to light work with postural limitations, but Foster found plaintiff capable of medium exertional work with no limitations. The administrative law judge then rejected Cole's conclusion about plaintiff's postural limitations, stating without citation that the record documented that plaintiff's symptoms improved and he was able to perform a range of activities without limitations. Like the argument discussed above, this statement lacks any temporal context.

Having rejected all the medical source opinions, the administrative law judge had no medical basis for his assessment of the severity of plaintiff's medically determinable impairments. An administrative law judge may not substitute his lay judgment for a physician's opinion without relying on medical evidence or authority in the record. Clifford v. Apfel, 227 F.3d 863, 870 (7th Cir. 2000). It appears in this case that the administrative law judge succumbed to the temptation to play doctor, which he is prohibited from doing. Rohan, 98 F.3d at 970. Accordingly, the opinion must be reversed and the case remanded for a new determination of the onset date of plaintiff's alleged disability from his degenerative disc disease.

C. Past Relevant Work

At step four, the administrative law judge argued that plaintiff could perform the full range of light work; bartending work is light work; and therefore plaintiff could perform his past relevant work as a bartender as it was actually and generally performed. That was the full extent of his analysis. Plaintiff contends that the administrative law judge erred by not comparing his limitation to the specific duties of his job or the requirements of the bartender occupation in general.

"To determine whether [a claimant] is physically capable of returning to her former work, the administrative law judge obviously must ascertain the demands of that work in relation to the claimant's present physical capacities." Strittmatter v. Schweiker, 729 F.2d 507 (7th Cir. 1984). The evidence in the record suggests that plaintiff's job required lifting beyond the light exertional level. AR 251. Without making any finding of facts about the nature of plaintiff's specific job, the administrative law judge had no basis on which to conclude that plaintiff could return to his former work. Nolen v. Sullivan, 939 F.2d 516, 519 (7th Cir. 1991) (remanding because administrative law judge failed to identify duties involved in prior job or assess claimant's ability to perform those specific tasks). This was error.

On the other hand, the administrative law judge was not required to recite the duties of bartending as it is generally performed, because he had concluded that plaintiff was capable of light work with no other limitations. Nevertheless, on remand, the administrative law judge must reassess plaintiff's residual functional capacity and ability to work as a

bartender. If he finds that plaintiff has postural or other limitations, he must consider whether those limitations would undermine his ability to meet the specific physical demands of a bartender as that job is generally performed. Smith v. Barnhart, 388 F.3d 251, 252 (7th Cir. 2004) (reversing because administrative law judge concluded claimant was able to return to her previous job simply because it was sedentary, without considering whether claimant's additional limitations affected her ability to perform its specific duties).

D. Credibility

The administrative law judge found that plaintiff's allegations about the severity of his symptoms were not credible because they were inconsistent with his other activities. Plaintiff has challenged the administrative law judge's credibility assessment on various grounds, and the commissioner offered no defense of the credibility assessment on appeal. On remand, the administrative law judge will need to reassess plaintiff's credibility and should take care to avoid several mistakes in the previous credibility assessment.

First, in making his credibility assessment the administrative law judge again disregarded the time of plaintiff's activities and the medical evidence. In particular, he emphasized the fact that plaintiff rode a motorcycle in 2003 and chopped wood in 2005. Because it is likely that the wood chopping in 2005 contributed to plaintiff's reinjury, these activities had little, if any, bearing on whether plaintiff was disabled in December 2006. However, these facts may undercut plaintiff's testimony that he was continuously disabled after 1998.

Second, the administrative law judge argued that plaintiff was able to bathe himself, cook, shop, read, watch television, pay bills and play cards, but it is not clear why these abilities have any bearing on whether plaintiff could perform his past work as a bartender. The Court of Appeals for the Seventh Circuit has repeatedly "cautioned the Social Security Administration against placing undue weight on a claimant's household activities in assessing the claimant's ability to hold a job outside the home." Mendez v. Barnhart, 439 F.3d 360, 362 (7th Cir. 2006).

Third, the administrative law judge accepted plaintiff's statement that he engaged in these activities but ignored his testimony about the accommodations he must make in order to do so. Plaintiff explained that he was able to work on his projects only in short increments and had to lie down to ride in the car. With respect to the sawmill, plaintiff explained that he runs the electric blade while others bring him the wood and the group works in thirty minute increments, for no more than two hours in a week. Plaintiff's hearing testimony was consistent with contemporaneous reports to Oujiri in the medical record. The administrative law judge was entitled to disbelieve plaintiff's testimony about his limitations, but he was also required to explain his reasoning. When reassessing plaintiff's credibility on remand, the administrative law judge should assess more carefully the degree to which plaintiff's activities are inconsistent with his specific alleged limitations.

E. Requested Relief

Plaintiff asks the court to reverse the commissioner's denial of his application. A

reviewing district court may affirm, reverse or modify the administrations' decision, with or without remanding the case for further proceedings. 42 U.S.C. § 405(g). An award of benefits is appropriate "only if all factual issues involved in the entitlement determination have been resolved and the resulting record supports only one conclusion—that the applicant qualifies for disability benefits." Allord v. Astrue, 631 F.3d 411, 415 (7th Cir. 2011) (citation omitted). In this case, reversal with remand is inappropriate. Although plaintiff provided evidence that might support a finding that he was disabled as of his last insured date, that evidence is not conclusive for the reasons discussed above.

ORDER

IT IS ORDERED that the decision of defendant Michael J. Astrue, Commissioner of Social Security, denying plaintiff William Kangas's application for disability insurance benefits is REVERSED and the case is REMANDED to the commissioner under sentence four of 42 U.S.C. § 405(g) for a new determination of plaintiff's residual functional capacity.

Entered this 28th day of February, 2013.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge