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

RHONDALEE EDWARDS,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

OPINION & ORDER

13-cv-607-jdp

Plaintiff Rhondalee Edwards seeks judicial review of a final decision of the Acting Commissioner of Social Security finding her not disabled within the meaning of the Social Security Act. Plaintiff contends, principally, that remand is warranted because the Administrative Law Judge (ALJ): (1) did not properly evaluate the medical opinion evidence in this case; and (2) omitted limitations in concentration, persistence, and pace in the hypothetical questions posed to the vocational expert. The court agrees and will remand the case to the Commissioner for further proceedings.

BACKGROUND

A. Procedural Background

Plaintiff, now 54 years old, earned a GED and worked as a bank teller, retail cashier, insurance agent, and waitress. Plaintiff filed for supplemental security income on July 13, 2010, alleging a disability beginning on January 1, 1999. In her application, plaintiff identified several medical conditions that prevent her from working: neck and back injuries; posttraumatic stress

disorder (PTSD); arthritis; spinal cord and nerve damage; problems with her left knee; and panic attacks. R. 176.[1]

Plaintiff's application for benefits was denied initially and again on reconsideration. After a hearing, ALJ Lisa Groeneveld-Meijer issued a written opinion denying plaintiff's claim in full. The Appeals Council denied plaintiff's request for review, making the ALJ's decision the final determination of the Commissioner. On August 30, 2013, plaintiff filed a timely complaint seeking judicial review of the ALJ's decision pursuant to 42 U.S.C. § 405(g).

B. Relevant Medical Evidence

The ALJ determined that plaintiff had the following severe impairments: depression; PTSD; hip pain; and degenerative disk disease of the cervical spine. R. 21. Although plaintiff included other medical conditions in her application for benefits, the ALJ reviewed each proposed ailment and determined that there was no objective medical evidence to indicate that any of them had a sustained impact on plaintiff's ability to perform work-related activities. R. 21-22. The ALJ discussed evidence of plaintiff's physical and mental conditions separately, and the court will do so as well.

1. Plaintiff's physical health conditions

Plaintiff first sought medical treatment for chronic neck pain in 1999. R. 25, 509. At the time, an MRI showed non-severe findings and doctors diagnosed plaintiff with myofascial pain with no evidence of myelopathy or radiculopathy. *Id.* Plaintiff reported that a car accident and abusive relationships aggravated her condition and the pain began spreading to her back. By 2005, plaintiff was treating with John C. Oujiri, MD. R. 334. While under Dr. Oujiri's care,

[1] The record citations are to the Administrative Record, Dkt. 10.

plaintiff had regular appointments about every two months. R. 261-334. Dr. Oujiri's notes routinely described plaintiff as presenting with stiffness and pain in her neck, arms, and back. Dr. Oujiri diagnosed plaintiff with chronic pain, but was unable to identify any specific cause. Imaging studies from August 2005 showed mild to moderate degenerative arthritic changes in plaintiff's mid to lower cervical spine and mild narrowing of the disc spaces on C4-C7. R. 245.

Until September 2005, Dr. Oujiri treated plaintiff's pain with OxyContin and oxycodone, both of which are narcotics. When plaintiff failed two urine tests in a row, however, Dr. Oujiri informed plaintiff that he could no longer prescribe narcotics for her pain. R. 309. Plaintiff failed the first test because it was negative for oxycodone and morphine, leading Dr. Oujiri to believe that plaintiff was not taking her medication as prescribed. *Id.* Plaintiff failed the second test because it was positive for amphetamines, suggesting illegal drug use. *Id.* When plaintiff denied using drugs or misusing her prescriptions, Dr. Oujiri followed-up with the testing facility, which confirmed that plaintiff's second test was positive for a cocaine metabolite. R. 300. Throughout the next two years, Dr. Oujiri's notes describe plaintiff as repeatedly requesting to go back on narcotics and him repeatedly refusing to provide such prescriptions.

Sometime in 2009, plaintiff left Dr. Oujiri's care and began treating with Andrew T. Matheus, MD. R. 412. Plaintiff complained to Dr. Matheus of neck and back pain, and was referred to physical therapy. After attending two sessions, "it became very apparent that [plaintiff] was not a good candidate for therapy" because her general weakness and the degenerative changes in her spine made it unlikely that she would make good progress. R. 488. In treating with Dr. Matheus, plaintiff routinely presented with stiffness and pain in her neck and back. After referring plaintiff to specialists, Dr. Matheus concluded that she suffered from severe cervical disk disease with nerve impingement. During the course of his treating

relationship with plaintiff, Dr. Matheus wrote several notes indicating that plaintiff would be unable to work. R. 518, 526, 538. Dr. Matheus treated plaintiff's pain with OxyContin, which appeared to successfully manage her condition. In May 2012, however, plaintiff had another incident with a urine test. She called Dr. Matheus's clinic and claimed that she lost her medication. R. 589. The clinic asked for a urine test before prescribing a refill, but plaintiff initially refused. *Id.* She eventually left the clinic and came back with a sample, but it was cold and tested positive for multiple illegal substances. *Id.* Dr. Matheus confronted plaintiff and she eventually admitted that a friend had given her the sample. *Id.* Citing a loss of trust, Dr. Matheus informed plaintiff that he would no longer treat her and he notified the police department of the incident. *Id.*

As part of her application for social security benefits, two state agency physicians reviewed plaintiff's medical records. The first, Pat Chan, MD, summarized plaintiff's medical history and her reports of having difficulty raising her arms above her head, doing housework, and sleeping. R. 432. He indicated that plaintiff's MRI results showed mild abnormalities, but concluded that plaintiff's "reports of activities are not internally consistent and the degree of severity is not supported by the objective findings." *Id.* Dr. Chan limited plaintiff to: (1) lifting 20 pounds occasionally; (2) lifting 10 pounds frequently; (3) standing and walking for a total of 6 hours in an 8-hour workday; (4) sitting for a total of about 6 hours in an 8-hour workday; and (5) unlimited pushing or pulling except as limited by plaintiff's lifting restrictions. R. 426. Ultimately, Dr. Chan concluded that plaintiff had the residual functional capacity to perform light work, provided that she avoid heights and other hazards because of the sedating and slowing side effects of her then-prescribed narcotics. R. 432.

The second consulting physician, Syd Foster, DO, offered a similar assessment. He noted that plaintiff's MRI revealed mild degenerative changes in her back, but that her physical exams

had normal neurological findings, normal gait, some muscle tenderness, and sometimes-limited/sometimes-normal range of motion. R. 469. Dr. Foster emphasized that "the evidence from multiple sources establish[es] that [plaintiff] seems excessively focused on obtaining narcotic medication." *Id.* He determined that the degree of limitation plaintiff described was inconsistent with the total evidence and found plaintiff's allegations to be only partially credible. *Id.* Dr. Foster imposed the same limits as Dr. Chan, R. 463, and concluded that plaintiff had the residual functional capacity to perform a full range of light work, R. 469.

2. Plaintiff's mental health conditions

Plaintiff also suffers from a long history of mental health issues, including depression and PTSD. Treatment notes from 2005 confirm that Dr. Oujiri prescribed Xanax to help with plaintiff's anxiety and stress. R. 327. While under Dr. Oujiri's care, plaintiff reported a number of personal problems to him, including difficulty finding employment, trouble coping with family issues, and tumultuous romantic relationships. On October 14, 2005, Dr. Oujiri referred plaintiff for counseling because he suspected that she suffered from depression and anxiety. R. 306. After a referral consultation, Uzma Yunus, MD, diagnosed plaintiff with a panic disorder and recommended psychological counselling. R. 289-90. Shortly thereafter, Dr. Oujiri diagnosed plaintiff with PTSD, citing as the triggering event an incident from several years ago where plaintiff's ex-husband raped her and held her down with a pillow over her face. R. 278. In August 2007, plaintiff began attending therapy sessions, although it appears that these sessions were for family counseling after Ashland County Human Services removed plaintiff's son from her care. R. 257. Although plaintiff's attendance at these sessions was about 30%, R. 254, Bruce E. Kjellander, LCSW, was able to evaluate her for and diagnose her with PTSD. R. 253. When

plaintiff left Dr. Oujiri's care and began treating with Dr. Matheus, she continued to receive prescriptions for Xanax to help control her anxiety.

In November 2010, Marcus P. Desmonde, PsyD, saw plaintiff for a referral examination. Dr. Desmonde completed a "social security disability evaluation," R. 422-24, in which he summarized plaintiff's history and evaluated her overall functioning. He noted that plaintiff was "in contact with reality," but "exhibited very little eye contact and had very slow speech and very slow movements" during the interview. R. 423. Dr. Desmonde diagnosed plaintiff with narcotic dependence (based on her history of pursuing pain medication), mood disorder, PTSD by history, chronic neck pain, and moderate psychological stressors due to unemployment. R. 424. He assigned plaintiff a global assessment of functioning (GAF) score of 40-45 and concluded that plaintiff may have difficulty carrying out tasks with reasonable persistence and pace, could interact briefly with co-workers, supervisors, and the general public, and may have difficulty tolerating the stress of competitive employment. *Id.*

Two state agency consultants reviewed plaintiff's medical records and completed mental residual functional capacity assessments. The first, Roger Rattan, PhD, summarized plaintiff's mental health history and emphasized that her GAF score was 40-45. R. 435. Dr. Rattan noted that plaintiff lived alone, but was able to attend to her personal needs, including housework, laundry, and meal preparation, and that plaintiff went outside daily. *Id.* He commented that plaintiff was fearful about her medications and pain issues. *Id.* Dr. Rattan indicated that plaintiff was able to follow simple instructions if she was not in pain and that plaintiff had an easier time recalling longer instructions if they were written. *Id.* Dr. Rattan gave "great weight" to Dr. Desmonde's opinion, finding it consistent with the objective evidence. In terms of limitations, Dr. Rattan concluded that plaintiff would have marked limitations in her ability to understand and remember detailed instructions and to carry out detailed instructions. R. 433. He also

opined that plaintiff would have moderate limitations in her ability to maintain attention and concentration for extended periods, perform activities within a schedule, maintain regular attendance, work in coordination with others, interact with the general public, accept instructions from supervisors, and respond appropriately to changes in the workplace. R. 433-34. Ultimately, Dr. Rattan concluded that plaintiff retained the residual functional capacity to perform "the basic mental demands of unskilled work." R. 436.

The second consultant, Jack Spear, PhD, came to similar conclusions. Dr. Spear noted that plaintiff was not receiving mental health treatment, but found that "the mental limitations she does allege are credible, given the total evidence." R. 472. Dr. Spear opined that plaintiff would have moderate limitations in her ability to understand, remember, and carry out detailed instructions, maintain attention and concentration for extended periods, interact with the general public, and travel in unfamiliar places or use public transportation. R. 470-71. Dr. Spear determined that plaintiff had the residual functional capacity to perform unskilled work. R. 472.

C. The Administrative Hearing and Decision

The ALJ held a hearing on May 31, 2012. Plaintiff appeared through videoconferencing, and her attorney was present in person. Mary A. Harris, an impartial vocational expert (VE), was present as well. Plaintiff's medical records were accepted into evidence without objection and the ALJ heard testimony from plaintiff and the VE. R. 40.

During her testimony, plaintiff recounted her employment history and the limitations her physical conditions placed on her daily life. She also described traumatic events from her marriage and explained that it was the source of her PTSD. Plaintiff told the ALJ that she was not receiving counselling or therapy for her mental conditions, but that she was taking Xanax. When the ALJ confronted plaintiff about her history of narcotic-seeking behavior and the

problems she had with urine tests in the past, plaintiff stated that she was "confused about what happened," and did not understand the events that caused her doctors to be suspicious of her. R. 54-56. The VE testified that plaintiff would not be able to perform her past relevant work, but that there were jobs available at the unskilled, light exertional level to a person with plaintiff's limitations. R. 62-63.

The ALJ issued a written decision on June 28, 2012, concluding that plaintiff was not disabled within the meaning of the Social Security Act. The ALJ summarized the medical evidence and assigned weight to the medical opinions in the record, and then reviewed plaintiff's credibility. The ALJ found plaintiff to be less than credible, citing plaintiff's history of drug-seeking behavior and highlighting the fact that plaintiff was able to work in 2010 and 2011—though not at substantially gainful levels—as evidence which undercut her assertion that she was unable to work. R. 30. The ALJ also discussed how plaintiff has disregarded her treatment plans and "has not taken an active role in her own health," finding that plaintiff's "continued disregard for prescribed medical treatment decreases [her] credibility . . . significantly." *Id.* The ALJ ultimately determined that plaintiff had the residual functional capacity to perform light work provided that she did not have to climb ladders, ropes or scaffolds, could perform only occasional overhead work, and had limited exposure to potential hazards such as moving machinery and unprotected heights. R. 24. The ALJ further limited plaintiff to simple, unskilled work with routine tasks, no interaction with the general public, and only brief and superficial contact with others. *Id.*

OPINION

When a federal court reviews a final decision by the Commissioner of Social Security, 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, re-weigh the evidence, decide questions of credibility or otherwise substitute its own judgment for that of the ALJ. *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000).

Even so, a district court may not simply "rubber-stamp" the Commissioner's decision. *See Ehrhart v. Sec'y of Health & Human Servs.*, 969 F.2d 534, 538 (7th Cir. 1992). Rather, "the court must conduct a critical review of the evidence before affirming the [C]ommissioner's decision, and the decision cannot stand if it lacks evidentiary support or is so poorly articulated as to prevent meaningful review." *Hemminger v. Astrue*, 590 F. Supp. 2d 1073, 1079 (W.D. Wis. 2008) (internal citations omitted). To provide the necessary support for a decision to deny benefits, the ALJ must "build an accurate and logical bridge from the evidence to [her] conclusion." *Zurawski v. Halter*, 245 F.3d 881, 887 (7th Cir. 2001).

In this case, plaintiff contends that the ALJ: (1) did not properly evaluate the medical opinions in the record, particularly Dr. Matheus's; and (2) omitted limitations in concentration, persistence, and pace in the hypothetical questions posed to the VE. After reviewing the record, the court concludes that the ALJ's analysis of the medical opinions is deficient and, therefore, remand is required. The court will also offer some guidance on plaintiff's challenge to the ALJ's hypothetical questions for the VE.

A. The ALJ did not properly evaluate the medical opinions in this case.

The medical evidence in this case includes opinions from six providers, one of whom treated plaintiff, one of whom examined plaintiff, and four of whom merely reviewed plaintiff's

medical records. Plaintiff's principal argument is that the ALJ erred in not assigning much weight to her treating physician, Dr. Matheus, and in over-relying on the opinions of psychologists and doctors who never examined her. Plaintiff contends that the ALJ did not provide enough explanation for her decision to assign weight in this manner and that remand is therefore warranted. The court agrees that the ALJ's analysis is deficient.

As a preliminary matter, plaintiff devotes much of her brief to explaining why Dr. Matheus's opinion should have received "controlling weight" under 20 C.F.R. § 416.927(c)(2).[2] "A treating physician's opinion regarding the nature and severity of a medical condition is entitled to controlling weight if it is well supported by medical findings and not inconsistent with other substantial evidence in the record." *Clifford*, 227 F.3d at 870. SSR 96-2p further explains that the phrase "not inconsistent" means that "there is no other substantial evidence in the case record that contradicts or conflicts with the opinion," and cites as an example of inconsistency "when two medical sources provide inconsistent medical opinions about the same issue." As the court's brief summary of the medical evidence demonstrates, there were obviously conflicting opinions on plaintiff's limitations and ability to work. The ALJ explicitly recognized these inconsistencies, writing that "evidence from recent consultive examinations indicated that the claimant was not as limited by her back and neck issues as Dr. Matheus indicated." R. 31. Plaintiff correctly observes that this discussion is not lengthy, but the court can hardly fault the ALJ for choosing not to state the obvious. *See Bauer v. Astrue*, 532 F.3d 606, 608 (7th Cir. 2008) (the treating source rule does not apply when "[t]here was evidence—the report of the nonexamining consultant—that contradicted the reports of the treating physicians."); *White v. Barnhart*, 415 F.3d 654, 659 (7th Cir. 2005) ("Dr. Woldum's opinion was also inconsistent

[2] Throughout her brief, plaintiff cites to the regulations governing disability insurance benefits, 20 C.F.R. pt. 404. She applied for supplemental security income, however, which is governed by 20 C.F.R. pt. 416. The oversight is immaterial as the relevant text of the regulations is identical.

with the opinions of Dr. Steiner and the State Agency Medical Consultants, and at least partially inconsistent with the conclusions of several other physicians. Accordingly, we reject White's 'treating physician rule' argument."). Of course, because the court will remand for other reasons, the ALJ may revisit the issue of controlling weight and choose to provide more explanation of how Dr. Matheus's opinion is contradicted by the other opinions in the record. As the decision stands, however, the ALJ's refusal to assign controlling weight was not error.

Issues of controlling weight aside, plaintiff's real disagreement with the ALJ's decision is that it fails to adequately support the weight assigned to each of the medical opinions in this case. Social Security regulations assure claimants that "[i]n determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive." 20 C.F.R. § 416.927(b). The regulations identify several factors and ALJs must use all of them to evaluate medical opinions. *Id.* § 416.927(c); *see also Roddy v. Astrue*, 705 F.3d 631, 636 (7th Cir. 2013). In reviewing ALJ determinations, this court has consistently remanded cases where the written decision does not identify and apply these factors. *See, e.g.*, *Evans v. Colvin*, No. 12-cv-888, 2014 WL 2615413, at *5 (W.D. Wis. June 12, 2014) ("The failure to explicitly discuss the [§ 927(c)] factors is itself a deficiency that warrants remand."); *Matton v. Colvin*, No. 12-cv-406, 2014 WL 1794573, at *5 (W.D. Wis. May 5, 2014) ("[T]he ALJ fails to discuss the [§ 927(c)] factors and ignores relevant evidence that might weigh in [the claimant's] favor. Standing alone, this deficiency warrants remand."). In this case, the ALJ's decision begins with a boilerplate statement that she "considered opinion evidence in accordance with the requirements of 20 CFR 416.927 and SSRs 96-2p, 96-5p, 96-6p and 06-3p," R. 24, but there are noticeable deficiencies in the ALJ's reasoning which leave the court unconvinced. Remand is therefore necessary to ensure that the ALJ uses the required framework to adequately explain the weight she assigns to each medical opinion.

Turning to the first deficiency in the ALJ's analysis, the decision devotes one paragraph to each opinion in the record and, with the exception of Dr. Matheus's and Dr. Desmonde's, the structure of these paragraphs is nearly identical. Each identifies the doctor or psychologist, each offers a one or two-sentence summary of the limitations that the opinion proposes, and each concludes by stating that the opinion "is consistent with and supported by the record when considered in its entirety." R. 30-32. The final sentence in each of these paragraphs then indicates the overall weight that the ALJ afforded the opinion. On its face, the ALJ's approach suggests a failure to fully engage with and apply the § 927(c) factors because the ALJ used the exact same concluding language to assign different weight to each opinion. For example, the ALJ assigned "great weight" to the opinions of Dr. Chan and Dr. Foster, concluding that both opinions were "consistent with and supported by the record," but the ALJ also used that phrase to assign "substantial weight" to Dr. Rattan's opinion and to Dr. Spear's opinion. Without at least a little more discussion of the medical records that supported these opinions, the ALJ has left the court without a "logical bridge" from the evidence to her conclusion that some of these opinions deserve more weight than others and that all deserve more weight than Dr. Matheus's.

More specific to Dr. Matheus's opinion, the ALJ's analysis is deficient because it fails to account for the § 927(c) factors that would require assigning more weight. For example, Dr. Matheus was the only treating physician in this case. Indeed, apart from Dr. Desmonde, who examined plaintiff one time, none of the other doctors ever met plaintiff. Dr. Matheus may not have been entitled to controlling weight, but the § 927(c) factors and the principles in SSR 96-2p direct ALJs to generally give more weight to opinions from treating providers. In fact, "[i]n many cases, a treating source's medical opinion will be entitled to the greatest weight and should be adopted, even if it does not meet the test for controlling weight." SSR 96-2p; *see also Gudgel v. Barnhart*, 345 F.3d 467, 470 (7th Cir. 2003) ("More weight is given to the opinion of treating

physicians because of their greater familiarity with the claimant's conditions and circumstances."). In this case, the ALJ referred to Dr. Matheus as plaintiff's treating doctor, and even confirmed that he had "stated on numerous occasions that [plaintiff would be] unable to return to work due to her ongoing chronic pain and medication dependence." R. 31. But the ALJ never acknowledged that these factors would ordinarily entitle Dr. Matheus's opinion to greater deference and did not explain why the opinions of non-examining state consultants should receive more weight instead. This was error. *See Gudgel*, 345 F.3d at 470 ("An ALJ can reject an examining physician's opinion only for reasons supported by substantial evidence in the record; a contradictory opinion of a non-examining physician does not, by itself, suffice.").

Finally, the ALJ's reasons for discrediting Dr. Matheus only cursorily rely on some of the factors and do not offer a sufficient explanation for refusing to give his opinion weight. The Social Security regulations require "[a]n ALJ who chooses to reject a treating physician's opinion [to] provide a sound explanation for the rejection [and] provide an account of what value the treating physician's opinion merits." *Jelinek v. Astrue*, 662 F.3d 805, 811 (7th Cir. 2011). Here, the ALJ identified three reasons for rejecting the opinion: (1) it is unclear what kind of training Dr. Matheus has and whether he has experience with claims for social security benefits; (2) there are no treatment records from Dr. Matheus which impose the limits he identified in his functional assessment; and (3) Dr. Matheus's own treatment notes and Dr. Desmonde's consultive examination both contradict his opinion. R. 31. With regard to the first of the ALJ's reasons, § 927(c)(6) allows ALJs to consider "other factors" such as a doctor's "amount of understanding of our disability programs and their evidentiary requirements." The ALJ was thus free to investigate Dr. Matheus's level of understanding and, if low, use this as a reason for assigning less weight to his opinion. But the ALJ did not investigate; she simply wrote that "there was no evidence that Dr. Matheus has received any such training." *Id.* If the ALJ intended

to rely on Dr. Matheus's lack of qualifications to discredit his opinion, then she had "a duty to develop a full and fair record." *Nelms v. Astrue*, 553 F.3d 1093, 1098 (7th Cir. 2009); *see also* 20 C.F.R. § 416.912(d). Moreover, Dr. Matheus was certainly qualified to evaluate and describe the nature and effects of plaintiff's medical conditions. *See Garcia v. Colvin*, 741 F.3d 758, 760 (7th Cir. 2013) ("The applicant's physical and mental ability to work full time . . . is something to which medical testimony is relevant and if presented can't be ignored."). Without more discussion, the ALJ's broad statement about Dr. Matheus's expertise was not a valid reason for discrediting his opinion.

The ALJ's second and third reasons are also insufficient because they amount to conclusory statements without supporting explanation. For example, the ALJ cited to an entire 43-page exhibit containing Dr. Matheus's treatment notes, but did not identify *which* of these notes contradicted the doctor's opinion that plaintiff was limited by her back pain. R. 31. Nor did the ALJ address the multiple letters Dr. Matheus wrote stating that plaintiff was disabled and unable to work. Lastly, the ALJ cited to Dr. Desmonde's report as evidence that plaintiff "was not as limited by her back and neck issues as Dr. Matheus indicated," but did not explain why the opinion of a licensed psychologist deserved more weight than that of a medical doctor on an issue of physical conditions and limitations. *Id.* Such an explanation appears particularly necessary in this case because Dr. Desmonde concluded his report by stating that he "would defer to the medical examiners in terms of [plaintiff's] overall status." R. 424. The absence of extended discussion on any of these points leaves the ALJ's decision to assign little weight to Dr. Matheus's opinion without substantial support and the court cannot conclude that the ALJ properly applied the § 927(c) factors in reaching her conclusions.

The deficiencies in evaluating Dr. Matheus's opinion are even more apparent when compared to the ALJ's treatment of Dr. Desmonde's opinion. In the paragraph explaining why

the ALJ gave Dr. Desmonde's report "significant weight," the ALJ offered a much more comprehensive discussion. For example, the ALJ emphasized that Dr. Desmonde has familiarity with Social Security regulations and practices, provided direct citations to specific remarks and findings about plaintiff's limitations, and confronted the factors that counseled against giving the opinion weight (*i.e.*, the fact that Dr. Desmonde only had an examining relationship with plaintiff). R. 32. The court notes that this analysis complies with the applicable Social Security regulations and provides the necessary "logical bridge" from the evidence to the ALJ's conclusions. Had the ALJ duplicated this level of analysis with regard to Dr. Matheus's opinion, the court would likely have found it much less susceptible to plaintiff's challenge.

There may be valid reasons to assign lower weight to Dr. Matheus's opinion or to reject his specific conclusions about plaintiff's ability to work. On remand, the ALJ must clarify which portions of the doctor's opinion, if any, she rejects and ground her decision in the relevant § 927(c) factors. The court does not express an opinion as to how these factors ultimately balance out in this case, but emphasizes that the ALJ should confront the factors that favor giving Dr. Matheus's opinion more weight and support her overall conclusions with specific citations to the record.

B. On remand, the ALJ should include limitations in concentration, persistence, and pace in the hypothetical questions posed to the vocational expert.

Plaintiff's second challenge to the ALJ's decision is that despite giving weight to the opinions of Dr. Desmonde and Dr. Rattan, the ALJ failed to include their proposed limitations in the hypothetical questions she posed to the VE. Having already found legitimate grounds for remand, the court need not address this issue in great detail. *See Scott v. Astrue*, 647 F.3d 734,

741 (7th Cir. 2011). Because hypothetical questions play such an important role in the ALJ's decision-making process, however, the court will offer some guidance.

The ALJ assigned "significant weight" to Dr. Desmonde's opinion and "substantial weight" to Dr. Rattan's opinion. These doctors concluded that plaintiff "appears capable of understanding simple instructions, but may have difficulty carrying out tasks with reasonable persistence and pace. She is able to interact briefly with co-workers, supervisors and the general public. She may have difficulty tolerating the stress and pressure of competitive employment at this time." R. 424.[3] When the ALJ posed her hypothetical questions to the VE, she asked about a person limited to "simple, unskilled work, routine tasks day-to-day. The individual would have no interaction with the general public. And frequent, casual, superficial interaction with others on the job." R. 52. Matching the doctors' proposed limitations against the components of the hypothetical question, it appears that the ALJ used "simple, unskilled work, routine tasks day-to-day" to account for plaintiff's difficulties maintaining persistence and pace.

Plaintiff contends that this was error because the Seventh Circuit has held that "employing terms like 'simple, repetitive tasks' on their own will not necessarily exclude from the VE's consideration those positions that present significant problems of concentration, persistence and pace." *O'Connor-Spinner v. Astrue*, 627 F.3d 614, 620 (7th Cir. 2010); *see also Stewart v. Astrue*, 561 F.3d 679, 684 (7th Cir. 2009) ("[T]he question[s] must account for documented limitations of 'concentration, persistence or pace.'"). The *O'Connor-Spinner* court recommended that ALJs "refer expressly to limitations on concentration, persistence and pace in the hypothetical in order to focus the VE's attention on these limitations and assure reviewing courts that the VE's testimony constitutes substantial evidence of the jobs a claimant can do."

[3] This was Dr. Desmonde's conclusion. Dr. Rattan gave the assessment "great weight," although he noted that plaintiff's functioning "may be slighly [sic] better than indicated" in Dr. Desmonde's report. R. 436.

627 F.3d at 620-21. Here, the Commissioner points out that there is no "per se requirement that . . . specific terminology ('concentration, persistence and pace') be used in the hypothetical in all cases," *Id.* at 619, and urges this court to affirm the ALJ because she relied on Dr. Desmonde and Dr. Rattan to "translate" their opinions about plaintiff's mental capacity into work-related, functional limitations. Dkt. 24, at 12-13.

Based on a review of the medical record and the hypothetical questions that the VE answered, the court suggests that the ALJ revisit plaintiff's limitations in concentration, persistence, and pace. The questions that the ALJ asked of the VE considered plaintiff's difficulty interacting with others, but omitted concrete descriptions of plaintiff's inability to understand complex instructions and to perform tasks with appropriate persistence and pace. Under *O'Connor-Spinner*, these omissions make it impossible for the ALJ to have substantial evidence to support her determination that plaintiff can perform work in the national economy. On remand, the ALJ can remedy the deficiency by directing the VE to consider plaintiff's specific mental limitations.

ORDER

IT IS ORDERED that the decision of defendant Carolyn W. Colvin, Acting Commissioner of Social Security, denying plaintiff Rhondalee Edwards's application for disability benefits is REVERSED AND REMANDED under sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this opinion. The clerk of court is directed to enter

judgment for plaintiff and close this case.

Entered this 10th day of September, 2014.

BY THE COURT:

/s/
JAMES D. PETERSON
District Judge