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

JAMES WHITE,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of Social Security,

Defendant.

REPORT AND RECOMMENDATION

03-C-522-C

REPORT

Plaintiff James White seeks judicial review of the Commissioner of Social Security's decision denying his applications for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 416(i), 423(d) and 1382(c). The administrative law judge who denied plaintiff's claims at the administrative level concluded that although plaintiff suffered from several impairments and had functional limitations that prevented him from returning to his past relevant work as a mechanical repairman and maintenance person, he was not disabled under the Act because he retained the physical ability to perform a significant number of jobs in the regional economy. Because I find that the ALJ properly considered and weighed all of the evidence concerning plaintiff's impairments and limitations and explained adequately the bases for his conclusions, I am recommending that this court affirm the decision of the Commissioner. In particular, I conclude that the ALJ did not err in concluding that the record failed to establish that plaintiff has a somatoform disorder.

The following facts are drawn from the administrative record.

FACTS

I. Background

Plaintiff James White was born December 5, 1960. In 1982, plaintiff sustained a broken tibia, femur and tailbone in a motorcycle accident. Pins were placed in his leg surgically to repair the fractures. Sometime thereafter, plaintiff was found to be disabled; he collected benefits until they were terminated in 1989. Thereafter, he worked various seasonal or part-time jobs, including working one day a week for a weekly newspaper and full time from October through December for a seasonal holiday decor company.

In November 1998, plaintiff developed neck and right arm pain. Plaintiff attributed the cause of his pain to his seasonal job which required him to throw bundles of pine and make wreaths. Plaintiff was treated conservatively with physical therapy. However, his pain persisted, eventually spreading to the left arm down to the fingers and into his left leg.

Plaintiff was seen by various doctors for his pain. Physical examinations and neurologic examinations failed to detect any significant abnormalities apart from some limited range of motion and tenderness in the neck. Plaintiff underwent a magnetic resonance imaging scan and nerve conduction studies, neither of which revealed any evidence of an upper extremity radiculopathy. Although the MRI showed a slightly bulged disc at C5-C6, plaintiff's doctors did not think this was the cause of plaintiff's pain and did

not recommend that he undergo any surgery. Plaintiff was also diagnosed with right shoulder impingement syndrome, but again this was not felt to explain plaintiff's reports of diffuse pain. Attempts to treat plaintiff's pain with medications and epidural steroid injections proved to have no significant long-term benefit.

On June 17, 1999, plaintiff underwent a functional capacity assessment. Test results indicated that plaintiff was limited to work at the sedentary level. However, the results were not considered to be a valid representation of plaintiff's abilities because plaintiff gave poor effort during the evaluation.

On July 7, 1999, one of plaintiff's treating physicians, Dr. Gregory Powell, indicated that plaintiff had reached a healing plateau and had exhausted his treatment options. Dr. Powell opined that plaintiff's symptoms were "likely related predominantly to chronic discogenic pain with some functional overlay." Dr. Powell gave plaintiff a permanent sedentary work restriction based on the functional capacities evaluation, although he acknowledged that the restriction might not accurately represent plaintiff's abilities. He assigned plaintiff a three percent permanent partial disability.

On July 20, 2001, plaintiff saw his family physician, Dr. L.A. Woldum. Plaintiff reported diffuse muscle stiffness primarily in the neck, shoulders, back and right hip and groin and down into his leg. Plaintiff said he constantly felt stiff and swollen all over and he was chronically tired because his pain interfered with his sleep. Plaintiff reported that he was unable to work because any time he tried to do even minimal physical activity, he was

completely wiped out for days afterwards. Dr. Woldum noted that plaintiff had limited range of motion and pain with almost any type of motion. Reflexes were weak but symmetrical and there was no sign of muscle atrophy or wasting. Dr. Woldum diagnosed chronic musculoskeletal pain. He prescribed amitriptyline as a sleep aid and referred plaintiff for an evaluation with Dr. Zondag, an occupational medicine specialist.

Dr. Zondag evaluated plaintiff on August 2, 2001. After a thorough evaluation that included a 55-minute interview with plaintiff and a physical examination, Dr. Zondag concluded that plaintiff had 1) cervical disk changes which had been treated and were nonprogressive with radiculopathy by examination; 2) status post trauma to the right hip with right hip and femur injuries with persisting residuals; and 3) "chronic pain disorder with somatoform pain disorder present."[1] Dr. Zondag noted that plaintiff reported pain with most activities, including before, during and after exercise; sitting too long; coughing and sneezing; walking; lifting; moving his arms; and moving his legs. Plaintiff reported having to change positions frequently, using a cane to ambulate and difficulty sleeping. In addition to his pain, plaintiff reported problems in various other body systems, including headaches, double vision, ringing in his ears, dizziness, chronic nasal congestion, sore gums and trouble

[1] In general, a somatoform disorder is a mental impairment characterized by the presence of physical symptoms that suggest a general medical condition and are not fully explained by a general medical condition, the direct effects of a substance or another mental disease. *Diagnostic and Statistical Manual of Mental Disorders* (4th Ed. 2000) (Text Revision) at 485. To be diagnosed with a somatoform disorder, a person must have symptoms that cause clinically significant distress or impairment in social, occupational or other areas of functioning. *Id.*

with swallowing, shortness of breath, heat intolerance, excessive sweating, difficulty with urination, constipation, nightmares, flashbacks and decreased sexual performance.

Dr. Zondag noted that plaintiff looked thin and older than his stated age and had pain behavior that was "quite prominent." Plaintiff got up and walked around during the interview and used a cane to work. Plaintiff was unable to heel or toe walk and walked with a limp on the right. Physical examination detected no joint abnormalities or reflex loss, although plaintiff had some limited range of motion and pain on palpation. Dr. Zondag noted that plaintiff had a score of four out of a possible five on the Waddell's test.[2] Plaintiff reported numbness from the neck all the way down to his feet with no response to pinprick. Dr. Zondag noted that plaintiff presented in a "very debilitated state" which precluded him from documenting plaintiff's ability to return to any competitive type of work. He noted that he had "no further recommendations as far as additional treatment other than what has been done." Dr. Zondag stated that he was not certain that plaintiff could perform even sedentary work because of his concern with his pain and his claimed inability to use his arms and legs effectively.

In October 2001, plaintiff was tested for Lyme's disease after he had been bitten by a deer tick. Plaintiff reported that although he had some achiness in the hip near the tick

[2] The Waddell's test is a set of five maneuvers performed during a routine physical examination to identify patients in whom nonorganic issues play an important role in the persistence of symptoms. *See* Waddell G, McCulloch JA, Kummel E, Venner RM, *Nonorganic physical signs in low-back pain*, Spine 1980; 5: 117-25.

bite, it was not much different from his usual joint pain. A Lyme Western Blot test came back positive, indicating that plaintiff had been exposed to the bacteria that causes Lyme disease. Plaintiff was prescribed a course of antibiotics.

Plaintiff saw Dr. Woldum on January 8, 2002. He reported no overall change in his symptoms. Dr. Woldum observed that plaintiff moved slowly as if he was in pain and had diffuse tenderness to palpation along the entire spinal column. Dr. Woldum diagnosed chronic musculoskeletal pain and arthralgia and fibromyalgia. Dr. Woldum prescribed Vicodin and informed plaintiff to return as needed. He wrote a letter indicating that plaintiff was unable to perform any type of substantial gainful activity.

On June 5, 2000, plaintiff filed applications for disability insurance benefits and supplemental security income, alleging that he was disabled as a result of pain in his back, neck, upper torso, pelvis and feet. The local disability agency denied plaintiff's applications initially and on reconsideration. At plaintiff's request, an administrative hearing was held on February 5, 2002. Plaintiff was represented by counsel at the hearing.

Plaintiff testified that he is bothered by arm, shoulder, back, neck and hip pain. According to plaintiff, the pain caused him to feel tired and nauseous on a weekly basis and made it difficult for him to sleep through the night or sit any length of time. Plaintiff testified that he could walk about three blocks before his feet started to cramp and his ankles swelled. Also, he testified that he had difficulty grasping objects because of numbness in his

hands. Plaintiff's live-in girlfriend of 14 years testified that plaintiff's activities were very limited because of pain.

Dr. Gregory Steiner testified as a medical expert. Before testifying, Dr. Steiner stated that he had reviewed all of the medical evidence in the record. According to Dr. Steiner, plaintiff's impairments consisted of multiple arthralgias; past history of fractures in the right femur and tibia; mild degenerative disc disease in the cervical spine; and a right shoulder impingement. He also noted that plaintiff had been treated for Lyme's disease and had also been diagnosed by one doctor as having chronic pain syndrome. In Dr. Steiner's view, plaintiff's "chief condition" was a "somatoform situation," based upon the positive Waddell's signs noted by Dr. Zondag and the absence of objective findings that are typically found in patients with severe, chronic pain like that alleged by plaintiff. Dr. Steiner testified that none of plaintiff's physical conditions would meet or equal any listed impairment. The ALJ asked Dr. Steiner to describe plaintiff's functional limitations only with respect to his physical impairments. Dr. Steiner opined that plaintiff retained the ability to perform work at the "light" exertional level, *see* 20 C.F.R. § 404.1567(b), with only occasional overhead lifting on the right.

Richard Armstrong testified as a vocational expert. In response to a hypothetical question posed by the ALJ, Armstrong testified that a person of plaintiff's age (41), education (high school) and past work history who could lift 20 pounds occasionally and 20 pounds frequently, was limited to no more than occasional overhead tasks on the right and

required a sit/stand option could not perform any of plaintiff's past relevant work. However, he testified that such an individual could perform the jobs of assembly worker, of which there were 7,000 jobs in the state of Wisconsin; security guard (1,000 jobs); cashier (5,000 jobs) and visual inspector (1,000 jobs).

II. Legal Framework and the ALJ's Decision

Under the Social Security Act, a disability is the "inability to engage in any substantial gainful activity 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 twelve months." 42 U.S.C. § 1382c(a)(3)(A). A physical or mental impairment is "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 1382c(a)(3)(C).

The Commissioner's regulations establish a five-step sequential inquiry to determine whether a claimant is disabled:

(1) Is the claimant currently employed?

(2) Does the claimant have a severe impairment?

(3) Does the claimant's impairment meet or equal one of the impairments listed by the SSA?

(4) Can the claimant perform his or her past work? and

(5) Is the claimant is capable of performing work in the national economy?

See 20 C.F.R. § 416.920.

In seeking benefits the initial burden is on the claimant to prove that a severe impairment prevents him from performing past relevant work. If he can show this, the burden shifts to the Commissioner to show that plaintiff was able to perform other work in the national economy despite the severe impairment. *See Stevenson v. Chater*, 105 F.3d 1151, 1154 (7th Cir. 1997); *Brewer v. Chater*, 103 F.3d 1384, 1391 (7th Cir. 1997). Although the Commissioner must carefully consider opinions from medical sources when conducting the five-step sequential inquiry, final responsibility for deciding whether a claimant is disabled is reserved for the Commissioner. 20 C.F.R. § 404.1527(e).

In a decision issued May 1, 2002, the ALJ applied the Commissioner's five-step sequential process for evaluating disability claims. At step one, he found that plaintiff had not engaged in any substantial gainful activity after November 9, 1998, his alleged onset date of disability. At step two, the ALJ adopted Dr. Steiner's testimony and found that the medical evidence showed that plaintiff had the following severe impairments: Lyme disease; chronic pain syndrome; status post internal fixation of the right tibia, right femur, and broken tailbone in 1978; right shoulder impingement syndrome; degenerative disc disease of the cervical spine and multiple arthralgias.

The ALJ found no documentation to show that plaintiff had a medically determinable somatoform disorder. Although the ALJ noted that both Dr. Steiner and Dr. Zondag had

diagnosed plaintiff with that impairment, he rejected their opinions on that subject because "neither doctor specializes in mental impairments." Furthermore, noted the ALJ, Dr. Zondag's opinion was suspect because it was "based on the claimant's subjective complaints" and because Dr. Zondag "might not ha[ve] been familiar with Mr. White's medical history." Finally, the ALJ thought it significant that plaintiff had never been treated for a mental illness, taken any psychotropic medications or alleged that he had a mental impairment; Dr. Woldum had described plaintiff's mood as "bright" during an office visit on January 8, 2002; and plaintiff's girlfriend had testified that plaintiff was not depressed.

At step three, the ALJ found that none of plaintiff's impairments were severe enough to meet the criteria of a listed impairment. Therefore, the ALJ proceeded to evaluate plaintiff's residual functional capacity in order to determine whether plaintiff could perform his past relevant work or any other work in the national economy. The ALJ reviewed all of the medical reports and opinions in detail, including the opinions of Dr. Steiner, Dr. Woldum, Dr. Zondag, and Dr. Powell concerning plaintiff's ability to work. The ALJ found that the objective medical evidence, which showed no evidence of any cervical radiculopathy or significant structural abnormalities in the knee, elbow, shoulder or cervical spine, failed to support the degree of pain alleged by plaintiff. In addition, he noted that plaintiff's subjective complaints were undermined by other inconsistencies in the record, including discrepancies between plaintiff's testimony and reports he had submitted in support of his

claim regarding his daily activities; plaintiff's failure to follow through with physical therapy or rely on prescribed medications; and his sporadic work history.

The ALJ rejected Dr. Woldum's and Dr. Zondag's conclusion that plaintiff was unable to perform any competitive work. He reasoned that Dr. Woldum's opinion was not entitled to substantial weight because Dr. Woldum was a general practitioner and his opinion was based upon plaintiff's subjective complaints. Further, the ALJ found that Dr. Woldum's conclusion that plaintiff had radiculopathy of the upper extremities was not supported by any objective findings. As for Dr. Zondag, the ALJ found that his opinion was based upon a one-time examination and upon plaintiff's subjective complaints.

The ALJ also rejected Dr. Powell's opinion that plaintiff could perform only sedentary work. The ALJ observed that Dr. Powell's opinion was based on the functional capacity evaluation that was reported to be of questionable validity because of plaintiff's poor effort.

The ALJ found that plaintiff had the residual functional capacity to lift and carry twenty pounds occasionally and ten pounds frequently; walk and stand six hours out of an eight hour day with a sit/stand option; and perform only occasional overhead tasks with the right shoulder. The ALJ noted that this residual functional capacity was consistent with the testimony of Dr. Steiner, whose opinion was entitled to significant weight because he had reviewed all the evidence and heard plaintiff testify and because he specialized in Physical Medicine and Rehabilitation.

Relying on the testimony of the vocational expert, the ALJ found at step four that plaintiff lacked the residual functional capacity to return to his past work, which had been performed at the medium exertional level. However, he found at step five that the Commissioner had satisfied her burden of showing that there were other jobs in the national economy that plaintiff could perform given his age, education, work history and residual functional capacity. Again relying on the vocational expert's testimony, the ALJ found that plaintiff could perform the jobs of assembly worker, security guard, cashier and visual inspector and that these jobs existed in significant numbers in the state of Wisconsin. Accordingly, the ALJ found that plaintiff was not entitled to Disability Insurance Benefits or eligible for Supplemental Security Income under the Social Security Act.

The ALJ's decision became the final decision of the Commissioner when the Appeals Council denied review.

ANALYSIS

I. Standard of Review

In a social security appeal brought under 42 U.S.C. § 405(g), this court does not conduct a new evaluation of the case but instead reviews the final decision of the Commissioner. In this case, the ALJ's decision constitutes the decision that this court must review. The court's review is limited. Under § 405(g), the Commissioner's findings are conclusive if they are supported by "substantial evidence." "Substantial evidence is more

than a mere scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Stevenson v. Chater*, 105 F.3d 1151, 1153 (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938), as quoted in *Richardson v. Perales*, 402 U.S. 389, 401 (1971)) (other citations omitted). When reviewing the Commissioner's findings under § 405(g), this court cannot reconsider facts, reweigh the evidence, decide questions of credibility, or otherwise substitute its own judgment for that of the ALJ regarding what the outcome should be. *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000). 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). In addition, the court reviews the ALJ's decision to ensure that no errors of law occurred. *Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001).

Although the ALJ's reasonable resolution of evidentiary inconsistencies is not subject to review and the ALJ's written opinion need not evaluate every piece of testimony and evidence submitted, the ALJ "must at least minimally discuss a claimant's evidence that contradicts the Commissioner's position." *Godbey v. Apfel*, 238 F.3d 803, 808 (7th Cir. 2001). The ALJ's opinion must adequately articulate how the evidence was weighed so that this court may trace the path of his or her reasoning. *Id*. For example, ignoring an entire line of evidence would fail this standard. *Diaz v. Chater*, 55 F.3d 300, 307 (7th Cir. 1995). However, as with any fact finder, the ALJ is entitled to choose between competing opinions. *Luna v. Shalala*, 22 F.3d 687, 690 (7th Cir. 1994).

II. Somatoform Disorder

Plaintiff contends that the ALJ erred at step two in rejecting the opinions of Dr. Steiner and Dr. Zondag, who both concluded that plaintiff suffers from a somatoform disorder. In concluding that the record failed to establish that plaintiff has a somatoform disorder, the ALJ wrote:

> The record reflects a diagnosis for a somatoform pain disorder. On August 2, 2001, Tuenis D. Zondag., M.D. diagnosed the claimant with somatoform pain disorder. The medical expert, Andrew M. Steiner, Board Certified in Physical Medicine and Rehabilitation, also thought the claimant had a somatoform disorder due to the lack of objective physical findings in regard to the claimant's pain. However, the opinions of Dr. Steiner and Dr. Zondag are not given significant weight for mental impairments because neither doctor specializes in mental impairments. Furthermore, Dr. Zontag's [sic] opinion was based on the claimant's subjective complaints. In addition, he had examined the claimant only once and might not had [sic] been familiar with Mr. White's medical history. The claimant has never been treated for a mental illness, taken any psychotropic medication, or alleged any mental impairment. L.A. Woldum, M.D., reported on January 8, 2002, that the claimant's mood was bright. The claimant's girlfriend testified that he is not depressed and has not sought any counseling. Therefore, there is no documentation of medically determinable . . . somatoform disorder.

AR 18.

Plaintiff argues first that the ALJ lacked adequate reasons for rejecting the opinions of Dr. Steiner and Dr. Zondag that plaintiff has a somatoform disorder. Second, he argues that because the evidence in the record indicates that he meets the criteria of the listing for somatoform disorders, 20 C.F.R. Appendix 1, Subpart P, Part 404, 12.07, the ALJ should have found him disabled at step three of the sequential evaluation process.

Plaintiff's second argument can be disposed with quickly. The ALJ never considered the listings for a somatoform disorder, having decided at step two that there was insufficient evidence in the record to support a finding that plaintiff has that impairment.[3] Therefore, this court's review is limited to deciding whether the ALJ's decision to stop the sequential analysis at step two–that is, his finding that plaintiff did not have a medically determinable somatoform disorder–was supported by substantial evidence. *See* 42 U.S.C. § 405(g). If it was, then this court must affirm his decision on this point. If it was not, then this court must remand the case to the Commissioner for further evaluation of the mental impairment because this court cannot make findings of fact in the first instance.

Furthermore, even if this court could make such findings, the existing record does not contain enough evidence from which this court could conclude that plaintiff has a mental impairment severe enough to meet the listings or even that he has a mental impairment that affects his ability to work. The only evidence related to any mental impairment are the opinions of Dr. Zondag and Dr. Steiner, who opined merely that plaintiff has a somatoform disorder. Neither Dr. Zondag nor Dr. Steiner offered any opinion regarding the severity of the impairment or its affect on plaintiff's ability to work. Plaintiff has not cited and I have

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[3] The Commissioner contends that Dr. Steiner testified that plaintiff did not meet the listing for any disorder, and that therefore the ALJ could properly find at step three that plaintiff did not meet the listing for a somatoform disorder. The Commissioner is wrong. Dr. Steiner testified that plaintiff did not have any *physical* condition that met or equaled a listed impairment. He did not offer any opinion whether plaintiff would meet the listing for a somatoform disorder. Furthermore, the ALJ found no evidence that plaintiff had a medically determinable somatoform disorder, a finding that made it unnecessary for him to consider whether plaintiff met the listing for that impairment.

not found any other evidence that would support plaintiff's conclusory assertion that the record establishes that he meets the listing for a somatoform disorder. Thus, the question is not whether the ALJ improperly rejected evidence showing that plaintiff was disabled by a mental impairment, for there is no such evidence in the record. Rather, the question is whether the opinions of Dr. Steiner and Dr. Zondag were enough to have prompted the ALJ to investigate further.

The Commissioner has a regulation that sets out a special procedure that must be followed when there is evidence of a possible mental impairment. Pursuant to the regulation, the Commissioner must: 1) evaluate the "pertinent symptoms, signs, and laboratory findings" to determine whether the claimant has a medically determinable mental impairment; 2) specify the symptoms, signs and findings that substantiate the presence of the impairment; 3) rate the degree of functional limitation resulting from the impairments in four broad areas considered essential to work; and 4) determine the severity of the impairment based upon the ratings. 20 C.F.R. § 404.1520a(b)-(d). One of the reasons for this procedure is to "[i]dentify the need for additional evidence to determine impairment severity." § 404.1520a(a)(1).

Although the regulation does not specify what quantum of evidence must exist before the procedure comes into play, the threshold is low. Contrary to the ALJ's implicit finding, a claimant need not establish the existence of a "medically determinable" mental impairment before the procedure comes into play, as one of the scheme's purposes is to determine

"whether [the claimant has] a medically determinable mental impairment(s)." 20 C.F.R. § 404.1520a(b)(1). A "medically determinable" impairment is one that is established by "medical evidence consisting of signs, symptoms, and laboratory findings." 20 C.F.R. § 404.1508. If evidence of a mental impairment comes to light for the first time at an administrative hearing but is insufficient to establish the nature and severity of the impairment, then the ALJ must seek additional evidence from appropriate sources. 65 FR 50746, 50759 (Aug. 21, 2000) ("Presented with insufficient evidence to determine the nature and severity of an individual's mental impairment(s), an administrative law judge must follow our existing rules and seek additional evidence from appropriate sources, regardless of whether we were aware of the mental impairment(s) at the time the initial and reconsideration determinations were issued") (discussing revisions to § 404.1520a). The Court of Appeals for the Seventh Circuit has held that remand for additional development of the record concerning a psychological impairment is necessary only when the record contains objective medical evidence of such an impairment; a claimant's subjective testimony is not enough. *Howell v. Sullivan*, 950 F.2d 343, 349 (7th Cir. 1991).

In this case, there was no subjective testimony or allegations of any mental impairment. The ALJ had only the diagnoses of two doctors, neither of whom was a psychiatrist or psychologist and one of whom never examined plaintiff, who opined that plaintiff had a somatoform disorder. Was this enough to get plaintiff over the threshold and require further investigation by the ALJ?

The ALJ implicitly said no, concluding that neither doctor's diagnosis was entitled to any weight because neither doctor was qualified to diagnose a mental impairment. Although I can think of various reasons why the ALJ might nonetheless have credited the opinions of Dr. Zondag and Dr. Steiner and found that there was at least some evidence that plaintiff has a somatoform disorder,[4] how much weight to afford medical opinions is a decision reserved to the ALJ, not this court. The Commissioner's regulations make clear that it is proper for the ALJ to consider a medical source's specialty in determining the weight to give the source's opinion; another factor is the extent to which the source's opinion is consistent with the rest of the record. *See* 20 C.F.R. § 404.1527(d)(4) and (5).

Accordingly, I cannot say that it was irrational or unreasonable for the ALJ in this case to have decided to discount a psychological diagnosis offered by non-treating doctors who specialize in diagnosing physical impairments, particularly where it was inconsistent with the record insofar as plaintiff never alleged any mental limitations or sought treatment for any mental impairment.[5] Notably, although Dr. Zondag diagnosed plaintiff with a somatoform pain disorder, he did not recommend that plaintiff receive a mental health evaluation or treatment for a mental impairment. None of the various other doctors who examined plaintiff made such a recommendation, either. *Cf. Shields v. Sullivan*, 801 F. Supp. 151, 157-

[4] Those reasons include the thoroughness of Dr. Zondag's evaluation, his positive Waddell's findings, plaintiff's obvious pain behaviors during the examination and the disparity between the objective evidence and plaintiff's reports of severe and widespread pain.

[5] Although plaintiff was taking amitriptyline, the record indicates that Dr. Woldum prescribed it as a sleep aid as opposed to treatment for a mental impairment. AR 338.

58 (N.D. Ill. 1992) (remanding for further consideration of mental impairment where plaintiff's treating physician submitted report opining that plaintiff's inability to work was caused by "depression state" and recommending that plaintiff undergo psychiatric evaluation and consider taking antidepressant medication). Finally, it bears noting that plaintiff, who has been represented by counsel since before the administrative hearing, never requested a consultative psychological examination, never submitted any additional evidence to support his present claim that he suffers from a disabling mental impairment, and never alleged that the ALJ did not develop the record fully. The totality of these circumstances establishes that the ALJ properly exercised his judgment in declining further to develop the record concerning a possible somatoform disorder. *See Luna*, 22 F.3d at 692 (how much evidence to gather is "a subject on which we generally respect the Secretary's reasoned judgment"); *Glenn v. Secretary of Health and Human Services*, 814 F.2d 387, 391 (7th Cir. 1987) (when applicant for Social Security benefits is represented by counsel, Commissioner is "entitled to assume that the applicant is making his strongest case for benefits").

The only arguments plaintiff makes in support of his claim that the ALJ erred are based upon a misunderstanding of the relevant law and facts. First, plaintiff argues that Dr. Zondag was a treating physician whose opinion was entitled to controlling weight under 20 C.F.R. § 404.1527(d)(2). However, Dr. Zondag examined plaintiff on only one occasion, making him an "examining source" rather than a "treating source" under the Commissioner's definitions. 20 C.F.R. § 404.1502 (defining treating source as involving "ongoing treatment

relationship"). Therefore, the rules governing the weight to be given to treating source opinions did not apply.

Second, plaintiff contends that the ALJ rejected Dr. Steiner's opinion because Dr. Steiner was not familiar with plaintiff's entire medical history, a finding that plaintiff asserts is wrong because Dr. Steiner reviewed plaintiff's entire file before testifying. Again, however, plaintiff is incorrect. The ALJ found that *Dr. Zondag*, not Dr. Steiner, might not have been familiar with plaintiff's entire past medical history, a finding that plaintiff has not challenged.

In sum, because the ALJ cited reasons that are adequately supported by the record for his decision to reject the opinions of Dr. Steiner and Dr. Zondag concerning a possible somatoform disorder, I recommend that this court affirm the Commissioner's finding that plaintiff failed to meet his burden to show that he has a medically determinable somatoform disorder.

III. Residual Functional Capacity

Next, plaintiff contends that the ALJ erred in assessing his residual functional capacity. Plaintiff argues that the ALJ erred in affording more weight on this subject to the opinion of the non-examining physician, Dr. Steiner, than to the opinion of his treating physician, Dr. Woldum, who opined that plaintiff had limitations that prevented him from performing any substantial gainful activity.

I disagree. As the ALJ noted, Dr. Woldum's opinion was based mainly on plaintiff's subjective complaints and upon his conclusion that plaintiff had radiculopathy of the upper extremities, a conclusion that was not supported by any objective evidence in the record. Furthermore, it was inconsistent with the opinions of the agency consulting physicians and Dr. Steiner, who concluded that plaintiff retained the residual functional capacity for at least a light exertional level of work. Accordingly, because Dr. Woldum's opinion was not well-supported by medically-acceptable diagnostic techniques and was inconsistent with other substantial evidence in the record, the ALJ properly concluded that it was not entitled to controlling or even substantial weight. *See* 20 C.F.R. § 404.1527(d) (explaining procedure for weighing medical opinions).

Plaintiff argues incorrectly that it was improper for the ALJ to credit Dr. Steiner's opinion regarding plaintiff's physical residual functional capacity while at the same time rejecting his opinion that plaintiff has a somatoform disorder. The Commissioner's regulations make clear that a medical source may offer opinions on more than one issue, in which case the ALJ need not assign the same weight to each opinion. Soc. Sec. Ruling 96-2p. Given that Dr. Steiner is a physical medicine specialist, there was nothing improper about the ALJ assigning more weight to Dr. Steiner's opinion about plaintiff's physical residual functional capacity than to his opinion regarding a mental impairment.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B), I respectfully recommend that the decision of the Commissioner denying plaintiff James White's applications for disability insurance benefits and supplemental security income under the Social Security Act be AFFIRMED.

Entered this 23rd day of February, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge