

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

THOMAS R. FAHNEL,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner
Social Security Administration,

Defendant.

REPORT AND
RECOMMENDATION

04-C-606-C

REPORT

This is an action for judicial review of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). Plaintiff Thomas Fahnel, who suffers from back and neck problems and ichthyosis, a congenital skin condition that causes scaling of the skin, challenges the commissioner's determination that he is not disabled and therefore not entitled to either disability insurance benefits or supplemental security income under sections 216(I) and 223 and 1614(a)(3)(A) of the Social Security Act, codified at 42 U.S.C. §§ 416(I), 423(d) and 1382c (3)(A). Fahnel contends that the administrative law judge who decided his claim at the administrative level failed properly to account for all of his limitations when he determined plaintiff's residual functional capacity, and made a faulty credibility determination. Having carefully reviewed the administrative record and the parties' submissions, I am recommending that this court reject plaintiff's arguments and affirm the commissioner's decision.

Legal and Statutory Framework

To be entitled to either disability insurance benefits or supplemental security income payments under the Social Security Act, a claimant must establish that he is under a disability. The Act defines “disability” as 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 has promulgated regulations setting forth the following 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. § 404.1520. The inquiry at steps four and five requires an assessment of the claimant’s “residual functional capacity,” which the commissioner has defined as “an

assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis." Social Security Ruling 96-8p. "A 'regular and continuing basis' means 8 hours a day, for 5 days a week, or an equivalent work schedule." *Id.*

In seeking benefits the initial burden is on the claimant to prove that a severe impairment prevents her from performing past relevant work. If she can show this, the burden shifts to the commissioner to show that the claimant 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).

The following facts are drawn from the administrative record:

Facts

I. Medical Evidence

On December 9, 1997, plaintiff saw a neurologist for complaints of numbness and tingling in both legs and in the right hand that had been present for about one to three weeks. Diagnostic studies revealed that plaintiff had spinal cord compression as a result of a large C6-C7 disc herniation as well as a smaller herniation at C3-C4. On January 20, 1998, an anterior discectomy and fusion were performed at C6-C7. After surgery, most of plaintiff's symptoms resolved, although he still had some decreased sensation in the first and second fingers of the right hand, some tingling and numbness in the toes and left leg

weakness. Plaintiff was released to return to light work that required no climbing, repetitive neck motion or heavy equipment driving.

On June 19, 1998, plaintiff reported that he was working full time without problems. His neck pain had completely resolved. Plaintiff continued to have some decreased strength in the right upper extremity, reporting that it was difficult to manipulate small nuts and bolts. He also reported occasional numbness in the toes. Plaintiff's doctor found that plaintiff had some continuing strength and dexterity deficits on the right upper extremity, as well as increased tone in the lower extremities which "limits him somewhat in some activities, particularly when he is fatigued." AR 160. Plaintiff was released with no work restrictions apart from climbing ladders and advised to continue his home exercise program. Plaintiff's doctor opined that plaintiff had sustained an 18 percent permanent partial disability of the body as a whole.

On March 23, 1999, plaintiff saw Dr. Theresa Cheng for a second opinion for worker's compensation purposes. Plaintiff reported that he still had numbness and tingling in his lower extremities, decreased strength, coordination and dexterity in his right hand, decreased balance and coordination when walking and a stiff and aching neck and back. Dr. Cheng found that although plaintiff had done quite well after his surgery, he still had some residual symptoms of myelopathy secondary to spasticity and decreased coordination in his right hand as well as decreased sensation. She also noted that plaintiff had some stenosis

at C3-C4, but she deferred to plaintiff's surgeon regarding future treatment of that condition.

On August 22, 2001, plaintiff was seen by neurologist Dr. David Nye for complaints of back pain that resulted from an injury that occurred three weeks earlier while plaintiff was working as a machine operator for a concrete company. Plaintiff reported severe low back pain without numbness, tingling or weakness in the lower extremities. A lumbosacral CT scan showed a disk extrusion to the midline and left at L4-L5. Dr. Nye noted that plaintiff's medial history was significant for cervical disk problems in the past for which plaintiff had had surgery. Plaintiff reported that he still had a "little bit" of neck pain, but that generally things were "going pretty well" with his neck. Dr. Nye also noted that plaintiff had ichthyosis¹ for which he was taking Accutane. Range of motion of the back was limited with pain felt in the lumbar area with movement in all directions. Dr. Nye referred plaintiff to Dr. Michael Ebersold.

On September 5, 2001, Dr. Ebersold evaluated plaintiff and concluded that he was likely to need back surgery. Dr. Ebersold noted that plaintiff had positive straight-leg raising with sciatic nerve tenderness on the left and was hyperreflexic in his extremities. An MRI showed a huge extruded disk at L4-L5 that appeared to have migrated down to L5-S1. The MRI of the cervical spine showed a new central disk protrusion at C7-T1 resulting in

¹ According to Dorland's Illustrated Medical Dictionary, ichthyosis refers to "any in a group of cutaneous disorders characterized by increased or aberrant keratinization, resulting in noninflammatory scaling of the skin." *Dorland's Illustrated Medical Dictionary* (29th ed.) at 873.

moderate central canal stenosis. It also showed the previously-existing disk bulge at C3-C4 producing moderate canal stenosis, but to a lesser degree than shown on the December 1997 MRI.

On September 18, 2001, Dr. Ebersold performed a lumbar laminectomy, left L4 partial hemilaminectomy and disk removal. At a follow-up visit on October 5, 2001, plaintiff reported to Dr. Donald Bodeau that he still had some stiffness in his back, but he was not taking any pain medication and overall was doing quite well. He reported that he had considerable improvement in the numbness and tingling of the legs. On October 26, 2001, Dr. Bodeau indicated that plaintiff could return to work at the sedentary level, four hours per day, with lifting limited to no more than 10 pounds. Plaintiff could drive pickup trucks and small vehicles but no larger trucks and was to avoid repetitive activities such as sweeping, mopping, raking and shoveling. Dr. Bodeau referred plaintiff for six sessions of physical therapy. On November 7, 2001, plaintiff reported that he was going to physical therapy and was working from 10 a.m. to 2 p.m.

On November 16, 2001, plaintiff returned to Dr. Bodeau with complaints of increased back pain, including spasms with walking, coughing and sneezing. He stated that he did not want to use anything for pain control. Plaintiff was attending physical therapy and performing back stabilization exercises. He reported that he had been to the bar a number of times with his friends where he might drink six to eight drinks per session, although he denied using alcohol for pain control. Dr. Bodeau instructed plaintiff that he

should not work for two weeks, but should continue with his stabilization exercises, attempt to walk one to two miles daily and abstain from using alcohol for pain control.

Two weeks later, plaintiff reported little improvement. He rated his pain as a 5 on a 10-point scale. He was using no pain medication but did not desire any. Plaintiff had good range of motion, minimal tenderness, negative straight leg raising and intact reflexes. Dr. Bodeau indicated that plaintiff could return to work two hours per day at the sedentary level.

On December 14, 2001, plaintiff saw Dr. Bodeau in follow up. He reported that his low back pain was decreasing in frequency and severity, rating his pain as a 3-4 on a 10-point scale. Dr. Bodeau indicated that plaintiff could return to work lifting 30 pounds occasionally and 15 pounds frequently.

On January 21, 2002, plaintiff returned to Dr. Bodeau with increased complaints of left leg pain and increased muscular tension and a locking sensation in the left lumbar area that worsened with prolonged sitting. Plaintiff reporting using no pain medications other than aspirin on occasion. Physical examination revealed mild left lumbar tenderness with minimal spasm and limited lumbar flexion. Dr. Bodeau ordered an MRI to rule out recurrent disc herniation, but indicated that plaintiff could work within his current restrictions.

The MRI revealed no new disc herniation, although the reviewing physician recommended blood tests to rule out potential infection. On January 25, 2002, Dr. Bodeau

indicated that plaintiff could return to work at the medium physical demand level with a 50-pound limit. Three days later, after blood tests showed no evidence of infection, Dr. Bodeau indicated that plaintiff had reached a healing plateau. He opined that plaintiff had a 5 percent disability based upon the L4-L5 laminectomy and that he had no permanent work restrictions.

On February 5, 2002, plaintiff saw a physician's assistant, reporting that his low back pain had worsened significantly after he had seen Dr. Bodeau on January 25. Plaintiff demonstrated severe pain, with very limited lumbar extension or flexion. Plaintiff was offered Tylenol with codeine for pain relief, but he declined, stating that it did not work for him. He was referred to Dr. Joseph Hebl for a second opinion to determine whether further studies or referral to a neurologist were appropriate. After examining plaintiff, Dr. Hebl found nothing to suggest that further evaluation was necessary. He referred plaintiff to Dr. Thomas Rieser.

Dr. Rieser evaluated plaintiff on March 6, 2002. He diagnosed plaintiff with significant degenerative disc disease at L5-S1 status post diskectomy and mechanical lower back pain. Dr. Rieser agreed that plaintiff had reached a healing plateau. He completed a work capability report on which he indicated that plaintiff could sit, stand and walk up to six hours each; lift 25-30 pounds; and occasionally bend, twist, kneel, climb ladders or climb stairs. He also stated that plaintiff should change position every two hours. Dr. Rieser indicated that plaintiff might require a fusion at L4-L5 in the future.

Medical records from plaintiff's family physician indicate that he prescribed pain medication for plaintiff on November 2, 2001, May 24, 2002, November 6, 2002 and March 4, 2003. The latest prescription was a renewal of a prescription for Darvocet.

On January 3, 2003, state agency physician Robert Callear, M.D., reviewed the record evidence and concluded that plaintiff could lift 20 pounds occasionally and 10 pounds frequently, stand or walk for six hours in an eight-hour day, sit for six hours in an eight-hour day and engage in no more than occasional stooping or crouching. The physician also opined that plaintiff should avoid even moderate exposure to extreme heat. Dr. Michael Baumblatt, another state agency physician, reviewed the record on March 25, 2003 and concurred with this opinion.

II. Hearing Testimony

Plaintiff applied for disability insurance benefits and supplemental security income payments on November 18, 2002. After the local disability agency denied his claim initially and on reconsideration, plaintiff requested a hearing before an administrative law judge. A hearing was held on January 6, 2004, at which plaintiff was represented by a non-attorney representative.

At the hearing, the ALJ questioned why plaintiff's earnings were so low in the late 1980s and early 1990s. Plaintiff stated that he worked at various indoor foundry type jobs during that time period, but he did not hold any job for very long because the conditions

indoors were too hot to tolerate because he suffers from a skin condition called ichthyosis. Plaintiff testified that his skin condition prevents him from sweating or cooling himself down naturally when he gets hot, which leads him to overheat and faint. Because of that, plaintiff testified that he sought jobs that could be performed outside so that he could spray himself down with a water hose to cool off if necessary. He testified that some of the jobs he performed were construction jobs for cash. He testified that the ichthyosis also caused his skin to become very dry at the joints, so much so that sometimes bending his fingers caused his skin to split open to the knuckles.

Plaintiff testified that his primary problems were related to the new herniated disk in his neck at C7-T1. He said he had numbness in his hands and fingers, migraine headaches two to four times a week that caused pain down into his shoulders, numbness and tingling in his legs from his knees down and difficulty balancing. He said the numbness caused difficulty working with small items such as nuts and bolts and working overhead. He said he often did not get out of bed when he had a migraine headache.

Plaintiff testified that he was taking propoxyphene (Darvocet) for pain. He said the medication helped to “take the edge off” but did not mask his pain.

Richard Willette, a vocational expert, testified at the hearing. In his first hypothetical, the ALJ asked Willette to assume an individual of plaintiff’s age (37), educational background (high school equivalent) and work history who could lift 20 pounds occasionally, 10 pounds frequently, stand and sit for six hours, stoop or crouch only

occasionally and could not tolerate even moderate exposure to extreme heat. Willette testified that such an individual could not perform any of plaintiff's past work, as all of it was performed at the heavy exertion level. However, he testified that such an individual could perform light packaging and light assembly jobs, of which there were 2,500 and 13,000 jobs, respectively, in the relevant economy.

In his second hypothetical, the ALJ asked Willette to change the work-related limitations to those identified by Dr. Rieser, namely, a lifting restriction of 25-30 pounds and no repetitive bending, twisting or lifting, and to add a restriction on exposure to chemicals. Willette testified that the number of relevant jobs he identified would remain the same.

Plaintiff's representative asked Willette to assume an individual of plaintiff's age, education and work experience who had the following restrictions: could not use his upper extremities for more than 10-15 minutes at a time, after which time he would need a 20-30 minute break; required a sit-stand option; required the opportunity to cool himself off whenever necessary; and could lift only 10-15 pounds. Willette testified that there were no jobs in the national economy that such an individual could perform.

III. The ALJ's Decision

The ALJ in this case conducted a five-step evaluation. At step one, he found that plaintiff had not engaged in substantial gainful activity since the alleged onset of his

disability. At step two, he found that plaintiff has the following impairments that are “severe” as that term is defined in the regulations: degenerative disc disease with related mechanical back pain; a history of disc herniation; and a history of surgical procedures including hemilaminectomy, fusion and discectomy. At step three, the ALJ perfunctorily concluded that plaintiff’s impairments were not severe enough either alone or in combination to meet or medically equal any impairment that the commissioner presumes to be disabling.

At step four, the ALJ concluded that plaintiff could not return to his past work as a heavy equipment operator. In reaching this conclusion, he determined that plaintiff retained the residual functional capacity to lift 20 pounds occasionally and 10 pounds frequently; stand up to six hours in an eight-hour day; sit up to six hours in an eight-hour day; occasionally stoop or crawl; and must avoid extreme heat. In rejecting plaintiff’s contention that he had more severe restrictions, the ALJ noted that both plaintiff’s treating physician, Dr. Bodeau, and the consulting physician, Dr. Rieser, had concluded that plaintiff had a greater residual functional capacity than that found by the ALJ. The ALJ pointed out that Dr. Bodeau had found that plaintiff had no work limitations as a result of his L4-L5 laminectomy and that Dr. Rieser had found plaintiff capable of lifting 25-30 pounds. The ALJ indicated that he had placed “great weight” on these opinions. Nonetheless, he gave plaintiff “some benefit of doubt” and reduced his lifting capacity to 10-20 pounds, consistent with the opinions of the state agency physicians.

In addition to the medical opinions, the ALJ noted other pieces of evidence that he found contradicted plaintiff's allegations of total disability. In particular, the ALJ pointed to various reports in the record that indicated that plaintiff was fairly active. He noted that a September 2002 vocational report by Richard Armstrong stated that plaintiff had been fixing cars for neighbors, helped with grass cutting at the village cemetery, occasionally used a riding law mower to cut grass at his home, performed domestic chores such as dishes, laundry and light snow shoveling, fished occasionally, and hunted deer from a stand with a black powder rifle. The ALJ also noted a daily activities report on which plaintiff indicated that he drives, cooks, and fixes things daily and cleans house, shops and goes out to eat or to a movie weekly.

The ALJ also considered plaintiff's pain and use of medication. The ALJ noted that plaintiff reported in January 2002 that his pain was a 3 or 4 on a 10-point scale. He pointed out that plaintiff told his doctors on various occasions that he was not taking any pain medication and that he had declined Tylenol with codeine when it was offered to him. The ALJ found this evidence tended to counter plaintiff's allegations of disabling pain. The ALJ recognized that plaintiff had pain, but noted that the fact that working might cause pain or discomfort did not mandate a finding of disability.

Finally, the ALJ found that plaintiff's work history suggested that he was not motivated to work. The ALJ observed that plaintiff had no posted earnings in 1984, 1986 and 1988 and that he had earnings below \$1,000 in 1987, 1989 and 1990. In addition, he

noted that plaintiff had testified that he was living off a worker's compensation settlement, which provided him with a disincentive to work.

The ALJ then proceeded to consider whether there were other jobs in the national economy that plaintiff could perform in light of his age, education, past work experience, impairments and residual functional capacity. Relying on the vocational expert's testimony, the ALJ found that plaintiff could perform the jobs of packaging and assembly and that these jobs existed in significant numbers (2,500 and 13,000, respectively) in the relevant region. Accordingly, the ALJ found that plaintiff was not under a disability at any time through the date of the decision and therefore was not entitled to Disability Insurance Benefits or Supplemental Security Income payments.

Analysis

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. This review is deferential: under § 405(g), the commissioner's findings are conclusive if they are supported by "substantial evidence." *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000). 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), 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*, 227 F.3d at 869. Nevertheless, the court must conduct a "critical review of the evidence" before affirming the commissioner's decision, *id.*, and the decision cannot stand if it lacks evidentiary support or "is so poorly articulated as to prevent meaningful review." *Steele v. Barnhart*, 290 F.3d 936, 940 (7th Cir. 2002). When the ALJ denies benefits, he must build a logical and accurate bridge from the evidence to his conclusion. *Zurawski v. Halter*, 245 F.3d 881, 887 (7th Cir. 2001).

Plaintiff argues that the ALJ's decision is not supported by substantial evidence because the ALJ failed to take all of plaintiff's limitations into account in his residual functional capacity assessment and corresponding hypothetical to the vocational expert. Plaintiff contends that the ALJ failed to consider: 1) postural limitations found by Dr. Bodeau, namely, that plaintiff should only occasionally bend, twist, turn, kneel, squat, climb stairs or ladders and maintain static positions; 2) limitations related to plaintiff's ichthyosis; and 3) limitations from plaintiff's cervical disk herniation.

Plaintiff's first argument is a nonstarter. First, I infer that plaintiff is referring to postural limitations found by Dr. Rieser, not Dr. Bodeau, since there are no such limitations from Dr. Bodeau in the record. Second, the vocational expert testified that his opinion regarding the number of jobs that plaintiff could perform would not change if plaintiff could not perform work requiring repetitive bending, lifting or twisting. Although this limitation does not capture all of the limitations identified by Dr. Rieser, it does address those most

likely to have an impact on the light packaging and assembly jobs identified by the vocational expert. Indeed, plaintiff has presented no evidence to suggest that the jobs identified by the vocational expert require more than occasional kneeling, squatting, climbing stairs or ladders or maintaining static positions. Absent evidence to suggest that the ALJ's failure to incorporate each and every postural limitation identified by Dr. Rieser had an effect on the outcome of the case, I find that the omission was harmless. *See Skarbek v. Barnhart*, 390 F.3d 500, 504 (7th Cir. 2004) (remand not warranted on basis of ALJ's failure to mention plaintiff's obesity where plaintiff failed to explain how obesity would have affected ALJ's five-step analysis); *Keys v. Barnhart*, 347 F.3d 900, 994-95 (7th Cir. 2003) (applying harmless error review to ALJ's determination).

Next, plaintiff contends that the ALJ failed to adequately address his ichthyosis. Plaintiff points out that medical notes in the record support his contention that he suffers from this condition. Plaintiff argues that the ALJ should have found that the ichthyosis was a severe impairment, or at least should have considered its resulting limitations as part of his residual functional capacity assessment. Plaintiff argues that insofar as the ALJ thought the record was not developed sufficiently to allow him to assess the impact of plaintiff's ichthyosis, then he was obligated to develop the record further by inquiring if additional medical records existed or by contacting plaintiff's treating sources.

Plaintiff's arguments are not persuasive. Although the ALJ neglected to include ichthyosis among plaintiff's "severe" impairments, he accounted for it in his residual

functional capacity assessment. Contrary to plaintiff's suggestion, the ALJ did not err in failing to seek more evidence concerning plaintiff's ichthyosis. The ALJ noted, correctly, that plaintiff's allegation that he had difficulty working in heat was not well-documented in the records. However, he did not reject plaintiff's allegation on the ground that there was insufficient evidence in the record to support it. To the contrary, he accepted plaintiff's allegation and accounted for it in his residual functional capacity assessment by restricting plaintiff from jobs requiring even moderate exposure to extreme heat. In light of the ALJ's acceptance of plaintiff's testimony concerning his ichthyosis-related limitations, it makes no sense for plaintiff to complain about the ALJ's failure to develop the record further.

Plaintiff argues that the ALJ's residual functional capacity assessment should have included a limitation on jobs requiring more than limited exposure to chemicals and those "in a closed environment where there is any chance of heat build up, and that he would need an opportunity in the workplace to cool himself off whenever necessary." The ALJ did account for plaintiff's assertion that his skin was irritated by chemicals in his second hypothetical to the vocational expert. The vocational expert responded that the number of jobs he had identified would not change if the hypothetical included a restriction on exposure to chemicals. As for plaintiff's contention that he should have been limited from working in any closed environment where there is "any chance" of heat build-up, the record does not support that limitation. Plaintiff testified that the indoor jobs that he could not tolerate because of the heat conditions were industrial, foundry type jobs in factories that

“got extremely warm.” AR 229. This is consistent with the ALJ’s conclusion that plaintiff should avoid exposure to extreme heat. The ALJ’s finding was further supported by the opinions of the state agency physicians, who considered plaintiff’s ichthyosis and determined that plaintiff should avoid even moderate exposure to extreme heat. There is no evidence in the record to suggest that plaintiff cannot tolerate less extreme warmth. The ALJ adequately accounted for plaintiff’s skin condition.

Next, plaintiff contends the ALJ failed to account for plaintiff’s limitations resulting from his most recent neck herniation. Plaintiff points out that the medical records document that he has a central disk protrusion at C7-T1 causing moderate canal stenosis and cord deformity. In light of these medical findings, plaintiff argues, the ALJ should have accepted plaintiff’s testimony that his hands are constantly numb and that he suffers from frequent migraine headaches. Plaintiff also asserts in his reply brief that “medical information indicates that claimant had difficulty working at or above shoulder level, had difficulty with pushing and pulling and had difficulty with work requiring extended bending of the neck.”

What medical information? The mere fact that plaintiff suffers from a condition that *could* be consistent with his alleged numbness and headaches does not amount to “medical evidence” showing that he suffers from such symptoms. None of the physicians, either examining or non-examining, who rendered an opinion about plaintiff’s ability to work endorsed limitations on the use of plaintiff’s neck or upper extremities. Nor did plaintiff

report such limitations to his physicians. Indeed, the last detailed medical evaluation in the file was plaintiff's evaluation by Dr. Rieser, to whom plaintiff complained of low back pain, left hip/groin pain and left anterior leg pain. At that time, plaintiff did not report any problems with headaches, his neck or upper extremities. Furthermore, Dr. Rieser found from his physical examination that plaintiff's strength, sensation and reflexes in his upper extremities were all normal and he had full range of motion of the cervical spine. The state agency physicians who reviewed all of the medical evidence in the file concluded that plaintiff's cervical and lumbar degenerative disk disease was not so severe as to prevent him from performing a limited range of light jobs, with no restriction on the use of his upper extremities.

Thus, the only evidence to support plaintiff's complaints of disabling headaches and upper extremity problems were his own statements. This leads to the question whether the ALJ properly determined that plaintiff's testimony was not entirely credible.

In evaluating the credibility of statements supporting a Social Security application, an ALJ must comply with the requirements of Social Security Ruling 96-7p. *Brindisi v. Barnhart*, 315 F.3d 783, 787 (7th Cir. 2003). According to that ruling, whenever a claimant's statements about his limitations are not substantiated by objective medical evidence, an ALJ must making a finding on the credibility of the individual's statements by considering the entire record, including evidence concerning the individual's daily activities; the location, duration and frequency of pain or other symptoms; factors that precipitate or

aggravate the symptoms; medication and its side effects; and treatment or pain relief measures. In addition, SSR 96-7p requires ALJs to articulate the reasons behind credibility evaluations:

The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision. It is not sufficient to make a conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." . . . The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight.

1996 WL 374186, at *4 (S.S.A. July 2, 1996).

In general, courts must defer to an ALJ's credibility determination and may not overturn it unless it is "patently wrong." *Skarbek*, 390 F.3d at 504. "This court will affirm a credibility determination as long as the ALJ gives specific reasons that are supported by the record for his finding." *Id.* at 505.

The ALJ did that here. First, he considered the objective medical evidence, noting that Dr. Bodeau, plaintiff's treating physician, had released plaintiff to work with no restrictions and that Dr. Rieser, an evaluating physician, had indicated that plaintiff could return to work with a lifting limit of 25-30 pounds. The ALJ also noted that the state agency reviewing physicians were of the opinion after reviewing the medical evidence that plaintiff could perform light work that required only occasionally stooping or crouching. Plaintiff

argues that these opinions should carry no weight in the credibility equation because they did not account for a January 25, 2002 MRI which showed minimal bulging at L5-S1 and L4-L5 with some signal changes seen at L4-L5.

Plaintiff is mistaken. Dr. Bodeau and Dr. Rieser both were aware of the results of the January 2002 MRI when they gave their respective opinions regarding plaintiff's work restrictions. AR 139, 140 & 174. Presumably, the state agency physicians also were aware of the MRI results when they reviewed the record in January and March of 2003. The ALJ properly considered all of these opinions when evaluating the credibility of plaintiff's allegations of total disability.

In addition to the various medical opinions that were inconsistent with plaintiff's testimony concerning his limitations, the ALJ stated that plaintiff's activities as reported on forms to the social security administration and to a vocational evaluator showed that plaintiff led a fairly active lifestyle that was inconsistent with his allegation of disability. The ALJ cited evidence in the record that showed that plaintiff not only regularly performed his own domestic chores such as dishes, laundry, light snow shoveling, and cooking, but that he also fixed cars for neighbors, assisted with grass cutting at the local cemetery, dined out, went to movies and occasionally fished and hunted. Although plaintiff argues that the ALJ placed too much weight on some of these factors and ignored some specks of countervailing evidence, his arguments are unconvincing. Overall, the record supports the ALJ's determination that plaintiff's range of activities undermined the credibility of his claims of total disability.

The ALJ also considered plaintiff's sporadic work history and lack of incentive to return to work as factors undermining his credibility. Plaintiff suggests that it was inappropriate for the ALJ to consider plaintiff's work history because SSR 96-7p does not list work history as one of the relevant credibility factors. However, the factors listed in SSR 96-7p do not purport to be exclusive but rather are identified as "the kinds of evidence" that the ALJ must consider in assessing the credibility of the claimant's statements. 1996 WL 374186, *3. The commissioner's regulations make clear that the credibility determination is to be made on the basis of "all the evidence presented," including "information about your prior work record." 20 C.F.R. §§ 404.1529(c)(3); 416.929(c)(3).

Continuing his challenge to the ALJ's reliance on his work history, plaintiff contends that it was inappropriate for the ALJ to consider that factor without considering the relationship between his absence from the work force and his medical conditions, namely, his history of back conditions and his ichthyosis. I agree that an ALJ who considers a claimant's poor work record also should consider other factors apart from motivation that could have contributed to a poor work history, such as the alleged disabling condition itself, a lack of education, a lack of job opportunities or transportation or child care obstacles. *See Sarchet v. Chater*, 78 F.3d 305, 308 (7th Cir. 1996) (ALJ erred in discounting claimant's credibility based on work history where ALJ failed to consider claimant's minimal education, long list of medical ailments, and numerous medications); *Schaal v. Apfel*, 134 F.3d 496, 502 (2d Cir. 1998) ("An ALJ should explore a claimant's prior work history to determine whether

her absence from the workplace cannot be explained adequately (making appropriate a negative inference), or whether her absence is consistent with her claim of disability.").

Plaintiff suggests that he was limited in his ability to work by his back conditions, but there is no evidence in the record to suggest that plaintiff had any back injuries before the cervical disk herniation in November 1997. He also suggests that his ability to work was limited by his ichthyosis, which caused him to change jobs frequently when he realized that he could not tolerate the heat conditions. But plaintiff's work history still is sparse even if this testimony is believed. Moreover, plaintiff's explanation is contradicted by his statement to Armstrong, the vocational evaluator, where plaintiff explained his sporadic work history by stating that he was not able to find a job he liked. In light of this conflicting evidence, the ALJ reasonably could rely on plaintiff's poor work record as a basis to discount his claimed disability.

Finally, the ALJ considered plaintiff's use of pain medication, noting that plaintiff had told his doctors repeatedly that he was not taking any pain medication. Plaintiff asserts that the ALJ overlooked later medical notes from plaintiff's family physician that show that plaintiff in fact was taking narcotic prescription medication for pain relief. According to plaintiff, this is consistent with his testimony that his condition was worsening and supports his claim of disability. Although it is true the ALJ did not mention the later medical records showing that plaintiff was taking pain medication, an ALJ is not required to discuss every piece of evidence in his decision. *Rice v. Barnhart*, 384 F.3d 363, 371 (7th Cir. 2004). The

ALJ could reasonably rely on plaintiff's refusal to take medication during a substantial portion of the time period under consideration as evidence that plaintiff's allegation of total disability was not entirely credible. Moreover, even if this court disregards the ALJ's finding on this point, his other findings are adequate to support his credibility determination.

In sum, the ALJ explained his reasons for finding plaintiff not entirely credible and those reasons are supported by the record. The ALJ's residual functional capacity assessment and corresponding hypothetical were proper because they accounted for all of plaintiff's limitations that had credible support in the record. His decision to deny disability benefits was based on substantial evidence.

RECOMMENDATION

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

Entered this 7th day of February, 2005.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge