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

LUCILLE W. OLSON,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

REPORT AND
RECOMMENDATION

06-C-204-C

REPORT

Plaintiff Lucille Olson brings this civil action for judicial review of an adverse decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g). She contends that the administrative law judge who denied her claim for social security disability insurance benefits at the administrative level failed to give proper consideration to her fibromyalgia and resulting symptoms. I agree. Accordingly, I am recommending that the decision of the commissioner be reversed and the case remanded to the commissioner. Before setting out the facts, it is helpful to review the legal and statutory backdrop.

LEGAL AND STATUTORY FRAMEWORK

To be entitled to disability insurance benefits under the Social Security Act, a claimant must establish that she 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)©).

The commissioner has promulgated regulations setting forth 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 Commissioner?

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

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

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 defines 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, then 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 (AR):

FACTS

I. Background and Medical Evidence

Plaintiff was born on September 25, 1956. She was 48 years old on the date of the ALJ's decision. She has the equivalent of a high school education and past work experience as a shipping clerk. Plaintiff filed an application for a period of disability and disability insurance benefits on October 11, 2002, alleging that she was disabled as of September 2, 2002, primarily due to fibromyalgia.

Medical records gathered in support of plaintiff's application show that in July 2002, plaintiff began seeing Dr. Muhammad Shamim, a rheumatologist.[1] Plaintiff reported diffuse pain, back pain, recurrent headaches, and irritable bowel symptoms. Because of plaintiff's reports of back pain and limited range of motion, Dr. Shamim ordered an MRI, which

[1]Because plaintiff does not contest the ALJ's determination that none of her other alleged impairments were severe, I discuss only those facts related to plaintiff's fibromyalgia and musculoskeletal impairment.

revealed mild degenerative changes at T11-T12. At a follow up visit on August 8, 2002, plaintiff reported that she still had symptoms of "hurting all over," with some morning stiffness for about 10-15 minutes. Other reported symptoms were fatigue, body aches and pains, trouble thinking and remembering, recurrent headaches and feeling depressed. On a fibromyalgia questionnaire, plaintiff reported that it was difficult to walk several blocks or do yard work. She reported that she was able to perform household chores such as shopping, laundry and vacuuming occasionally.

Dr. Shamim found no swelling, tenderness or deformity in plaintiff's joints. Plaintiff had full range of motion in her shoulders and hips and no active synovitis in her knees, ankles or feet. Plaintiff had normal and symmetrical strength in her upper and lower extremities and her reflexes were normal. Dr. Shamim diagnosed chronic low back pain with mild degenerative changes at T11 and T12 and chronic soft tissue pain "such as fibromyalgia." AR 164-165. He prescribed a muscle relaxer, a sleep aid and an anti-depressant.

Plaintiff continued to receive treatment from Dr. Shamim until January 2003. On September 19, 2002, Dr. Shamim reported that plaintiff had multiple "soft tissue tender points." AR 159. After ruling out temporal arteritis as a cause for plaintiff's pain, Dr. Shamim determined that plaintiff's soft tissue pain was the result of fibromyalgia. On September 30, 2002, Dr. Shamim noted that his examination of plaintiff detected "18 out of 18 tender points present" that was consistent with fibromyalgia. Because "a more aggressive approach to manag[ing] [plaintiff's] fibromyalgia" was needed, Dr. Shamim

recommended that plaintiff join a fibromyalgia support group, see a pain specialist to learn relaxation techniques and begin water walking for exercise. AR 157.

At a follow up on November 11, 2002, Dr. Shamim noted that plaintiff reported having significant flaring of her "all over pain" with about one to two bad days a week. Physical examination again was unremarkable except for the presence of tenderness in all 18 of the tender points.

On December 18, 2002, a consulting physician for the state disability agency reviewed the medical record and determined that plaintiff had the medically-determinable impairments of fibromyalgia and degenerative disc disease at T11-T12. AR 199-206. The physician concluded that plaintiff retained the residual functional capacity for light work. A second physician affirmed that finding on May 5, 2003.

In February 2003, plaintiff began seeing a different rheumatologist, Dr. Fanopoulos. (Plaintiff told Dr. Gartland, a pain specialist, that she had changed doctors because Dr. Shamim would not endorse plaintiff's claim for disability.) Dr. Fanopoulos diagnosed "severe fibromyalgia" even though, like Dr. Shamim, he detected few objective abnormalities other than some puffiness in the fingers. On May 20, 2003, Dr. Fanopoulos noted that there were "tender points on palpation for fibromyalgia, severe throughout;" on September 15, 2003, he noted "marked tender points on palpation." AR 250-256.

In approximately January 2004, plaintiff had to find a new rheumatologist due to a change in her insurance coverage. On February 12, 2004, plaintiff saw Dr. Robin Hovis.

Dr. Hovis diagnosed "fibromyalgia–chronic fatigue syndrome," although her report made no mention of whether plaintiff had tenderness in any of the 18 diagnostic trigger points. Dr. Hovis continued plaintiff's medications, suggesting that plaintiff might want to try an anti-depressant in the future. Dr. Hovis told plaintiff that she should be able to perform sedentary work and that, although plaintiff might qualify for disability on the basis of depression, plaintiff ought not file for disability based on the diagnosis of chronic fatigue or fibromyalgia. Dr. Hovis noted that plaintiff "certainly has significant periodic fatigue which makes long-term employment problematic." AR 275.

At a follow up with Dr. Hovis on August 23, 2004, plaintiff reported that her symptoms were about the same. She reported two hours of morning stiffness, emotional lability with some depression, anxiety, fatigue and difficulty working for more than two hours at a time because of decreased energy and concentration. Dr. Hovis noted that plaintiff had had an independent evaluation by her disability insurance carrier, who concluded that plaintiff was capable of performing predominantly sedentary work. Dr. Hovis agreed that plaintiff was capable of sedentary activity and recommended to plaintiff that she find employment she was capable of performing.

On September 13, 2004, Dr. Fanopoulos completed a residual functional capacity questionnaire on plaintiff's behalf. On the report, Dr. Fanopoulos indicated that plaintiff's condition met the American College of Rheumatology's criteria for fibromyalgia, noting as medical findings that plaintiff had tender points, minor elevated rheumatoid factor and mild

swelling in the hand joints. He also indicated that plaintiff had severe pain all over that fluctuated in severity. According to Dr. Fanopoulos, plaintiff could walk one city block, stand or sit continuously for no more than 10-15 minutes at a time and lift less than 10 pounds. He indicated that plaintiff could sit for a total of less than two hours a day and stand or walk for a total of less than two hours per day, and that she would have to take a 15-minute break once an hour. Dr. Fanopoulos estimated that plaintiff was likely to be absent from work more than three times a month as a result of her condition. AR 258-263.

At the administrative hearing in October 2004, plaintiff appeared with counsel and testified that her primary symptoms were pain all over, fatigue and migraine headaches. In addition, she said, she experienced nausea at least three times a week, which sometimes was accompanied by vomiting. Plaintiff estimated that she had a day-long migraine headache once a week; to relieve the headache, plaintiff spent the day in bed. Plaintiff was able to do some cooking, laundry and cleaning with help from her daughter, who was living in plaintiff's home. Plaintiff said she spent at least three hours a day lying down in order to rest and listen to relaxation tapes, which were measures she took to prevent her pain from getting too severe. Plaintiff babysat for her daughter's son on occasion.

Plaintiff's daughter testified, corroborating plaintiff's testimony regarding her headaches, pain and limited activities.

II. ALJ's Decision

On December 21, 2004, the ALJ issued a decision finding plaintiff not disabled. At the outset, the ALJ questioned whether plaintiff had any medically-determinable impairment, stating:

> The medical evidence does not provide a reasonable basis for the claimant's allegations of fatigue, pain, and disability. It is therefore questionable whether an evaluation under the criteria of Social Security Ruling 96-7p[2] is warranted. In the record, there are diagnoses of chronic pain syndrome, chronic fatigue syndrome, and "possible" diverticulitis or irritable bowel syndrome. There is also the suggestion that the claimant's subjective complaints are "consistent with fibromyalgia." However, there is little other than her subjective complaints to support any diagnosis.

AR 15.

The ALJ noted that apart from x-rays showing some mild degenerative changes in the spine, examination of plaintiff's joints and spine was essentially negative. No doctors noted any swelling, tenderness, synovitis or loss of range of motion. The ALJ observed that although plaintiff had a very mildly elevated sedimentation rate, rheumatoid factor (RF)[3] and antinuclear antibody (ANA) tests performed on plaintiff's blood were negative. The ALJ noted, "a report from December 2002 indicates that her fibromyalgia complaints had been associated with hot flashes, which may suggest another rationale for her complaints." *Id*.

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[2] SSR 96-7p is the Commissioner's ruling explaining how ALJ's are to evaluate the credibility of the claimant's statements regarding her pain and other subjective symptoms.

[3] The ALJ erroneously abbreviated this test as "RH" instead of "RF."

The ALJ rejected Dr. Fanopoulos's September 2004 assessment of plaintiff's residual functional capacity. The ALJ concluded that the limitations endorsed by the doctor were"purely subjective" insofar as they were not supported by the doctor's clinical evaluations, which showed "little medical evidence of any very significant physical problem." AR 16, 17. In contrast, noted the ALJ, Dr. Hovis, the independent medical examiner for plaintiff's disability insurance carrier and the state agency consulting physicians had concluded that plaintiff was not disabled. AR 17.

In spite of his skepticism that plaintiff suffered from any medically-determinable impairment, the ALJ found that plaintiff had a severe musculoskeletal impairment because "the Disability Determination Services (DDS) limited the claimant to the full range of light work." AR 16. After noting that there was "little valid evidence regarding specific limitations," the ALJ concluded that plaintiff would be capable of at least simple, routine, repetitive, low stress light work which would not require her to lift more than 20 pounds or 10 pounds with frequency or require her to sit or stand for more than 30 minutes at a time without alternating position. AR 17. Based upon testimony adduced from a vocational expert at the administrative hearing, the ALJ concluded that although this residual functional capacity would preclude plaintiff from returning to her past work, she still could make a vocational adjustment to a significant number of other jobs existing in Wisconsin, including assembly (5,000), food service (15,000) and security guard (1,000). *Id*.

The ALJ made the following specific findings:

1. The claimant met the disability insured status requirements of the Act on September 2, 2002, the date the claimant stated she became unable to work, and continues to meet them through December 31, 2007.

2. The claimant has not engaged in substantial gainful activity since her alleged onset of disability.

3. The medical evidence establishes that the claimant has a "severe" musculoskeletal impairment, but that she does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.

4. The claimant's subjective complaints lack a reasonable medical basis and are not credible.

5. The claimant has the residual functional capacity to perform simple, routine, repetitive, low stress light work which would not require that she lift more than twenty pounds or ten pounds with frequency or require that she sit or stand for more than 30 minutes at a time without alternating position (20 CFR § 404.1545).

6. The claimant is unable to perform any past relevant work.

7. The claimant is 48 years old, which is defined as a younger person (20 CFR § 404.1563).

8. The claimant has a certificate of equivalency to a high school education (20 CFR § 404.1564).

9. The claimant does not have any acquired work skills which are transferable to the skilled or semi skilled work functions of other work (20 CFR § 404.1568).

10. Based on an exertional capacity for light work, and the claimant's age, education, and work experience, section

404.1569 and Rule 202.21, Table No. 2, Appendix 2, Subpart P, Regulations No. 4 would direct a conclusion of "not disabled."

11. Although the claimant's additional limitations do not allow her to perform the full range of light work, using the above-cited rule as a framework for decision-making, there are a significant number of jobs in the Wisconsin economy which she could perform. Examples of such jobs are: 5,000 assembly, 15,000 food service, and 1,000 to 2,000 security guard positions.

12. The claimant was not under a "disability," as defined in the Social Security Act, at any time through the date of this decision (20 CFR § 404.1520(f)).

ANALYSIS

> [Fibromyalgia's] cause or causes are unknown, there is no cure, and, of greatest importance to disability law, its symptoms are entirely subjective. There are no laboratory tests for the presence or severity of fibromyalgia. The principal symptoms are "pain all over," fatigue, disturbed sleep, stiffness, and-the only symptom that discriminates between it and other diseases of a rheumatic character-multiple tender spots, more precisely 18 fixed locations on the body (and the rule of thumb is that the patient must have at least 11 of them to be diagnosed as having fibromyalgia) that when pressed firmly cause the patient to flinch.

Sarchet v. Chater, 78 F.3d 305, 306 (7th Cir. 1996). In *Sarchet*, the court found that the ALJ's reliance on "the lack of any evidence of objectively discernible symptoms, such as swelling of the joints," reflected a "pervasive misunderstanding of the disease," stating: "Since swelling of the joints is not a symptom of fibromyalgia, its absence is no more

indicative that the patient's fibromyalgia is not disabling than the absence of headache is an indication that a patient's prostate cancer is not advanced." *Id*. at 307.

The ten years since *Sarchet* should have been enough time for the commissioner to have trained her adjudicators that fibromyalgia is a disorder that does not reveal itself through any objectively discernible abnormality apart from tenderness in the 18 hallmark trigger points. Yet despite *Sarchet* and a phalanx of court-ordered do-overs in fibromyalgia cases, s*ee*, *e.g., Groskreutz v. Barnhart*, 2004 WL 1943249, *4 (7th Cir. 2004) (unpublished opinion); *Hanson v. Barnhart*, 04-C-913-S, dkt. #11, at 9 (W.D. Wis. May 26, 2005) (unpublished opinion); *Alexander v. Barnhart*, 287 F. Supp. 2d 944, 962-65 (E.D. Wis. 2003); *Kilps v. Barnhart*, 250 F.Supp. 2d 1003, 1012-13 (E.D. Wis. 2003); *Gister v. Massanari*, 189 F. Supp. 2d 930, 934-35 (E.D. Wis. 2001); *Dominguese v. Massanari*, 172 F. Supp. 2d 1087, 1100 (E.D. Wis. 2001); *Cooper v. Apfel*, 00-C-591-S, dkt. #8, at 9-10 (W.D. Wis. Feb. 26, 2001) (unpublished opinion), ALJs in this circuit continue to cite the lack of "hard" evidence as a basis for denying the claims of fibromyalgia sufferers; the Appeals Council continues to decline to review such decisions; and the commissioner continues to defend these misguided decisions in court.

This is yet another of those misguided cases. Although plaintiff was diagnosed with fibromyalgia by three rheumatologists, the ALJ declined to find that plaintiff suffered from the disorder, reasoning that the only evidence supporting such a diagnosis were plaintiff's subjective complaints. Employing the same reasoning the Seventh Circuit excoriated in

Sarchet, the ALJ in this case thought it significant that plaintiff had no tenderness or swelling in her joints and that RF and ANA testing of plaintiff's blood was negative. However, the absence of such evidence is irrelevant, since neither joint tenderness nor joint swelling are symptoms of fibromyalgia, nor can the presence of the disorder be detected by blood testing. *Sarchet*, 78 F.3d at 307.

Compounding this error, the ALJ overlooked clinical evidence that *was* relevant. The clinical indicators of fibromyalgia are all-over body pain lasting at least three months and tenderness in at least 11 of 18 fixed locations throughout the body. *The American College of Rheumatology 1990 Criteria for the Classification of Fibromyalgia: Report of the Multicenter Criteria Committee*, 33 Arthritis & Rheumatism 160 (1990). On at least two occasions, Dr. Shamim reported that plaintiff had tenderness in all 18 of the 18 diagnostic trigger points; Dr. Fanopoulos reported pain in the tender points and indicated that plaintiff met the American College of Rheumatology's diagnostic criteria. Yet the ALJ never discussed these findings even though both Dr. Shamim and Dr. Fanopoulos are rheumatologists (fibromyalgia is classified as a rheumatological disorder).

Contrary to the ALJ's conclusion, the presence of tenderness at the trigger points, combined with plaintiff's reports of all-over pain and fatigue, provided clinically demonstrable evidence that plaintiff suffers from fibromyalgia. *Sarchet*, 78 F.3d at 306; SSR 99-2p: Policy Interpretation Ruling Titles II and XVI: Evaluating Cases Involving Chronic Fatigue Syndrome (CFS), April 30, 1999, at n.3 (indicating that individuals who meet

American College of Rheumatology criteria for Fibromyalgia Syndrome will have a medically-determinable impairment). Indeed, both state agency reviewing physicians concluded that plaintiff's primary diagnosis was fibromyalgia. By ignoring the relevant clinical evidence and the diagnosis of every physician who treated plaintiff or reviewed her records, the ALJ erred at step two of the sequential evaluation by failing to find fibromyalgia as one of plaintiff's medically-determinable impairments. *See Blakes ex rel. Wolfe v. Barnhart*, 331 F.3d 565, 570 (7th Cir. 2003) (ALJ improperly "play[s] doctor" when he makes medical conclusion without expert evidence).

The commissioner does not attempt to defend the ALJ's rejection of the fibromyalgia diagnosis. Instead, she argues that even if plaintiff has fibromyalgia, she is not entitled to benefits unless the condition prevents her from working. On this point, the commissioner argues, the ALJ's position is defensible. The commissioner points out that the only doctor who supported plaintiff's claim of total disability was Dr. Fanopoulos, whereas the state agency physicians, Dr. Hovis, the independent medical examiner and, by inference, Dr. Shamim, all thought plaintiff capable of performing light or sedentary work. According to the commissioner, the ALJ reasonably relied on these latter opinions as a basis for rejecting Dr. Fanopoulos's opinion and finding that plaintiff was able to perform at least a limited range of light work.

The commissioner's argument is unpersuasive. The ALJ's rejection of Dr. Fanopoulos's opinion rests upon the same flawed reasoning as the ALJ's refusal to accept the

fibromyalgia diagnosis: the lack of "objective" medical evidence showing any "significant" physical problem. As just noted, the medical record, including Dr. Fanopoulos's reports, provides evidence of the widespread pain and trigger point tenderness to support the fibromyalgia diagnosis, which in turn provides support for the limitations endorsed by Dr. Fanopoulos. This is not to suggest that the ALJ was *required* to accept those limitations; however, this court cannot sustain his decision when the reason cited by the ALJ for rejecting the limitations is not based upon other medical evidence or authority in the record but rather on the ALJ's own flawed understanding of fibromyalgia. *Clifford v. Apfel*, 227 F.3d 863, 80 (7th Cir. 2000) ("[A]n ALJ must not substitute his own judgment for a physician's opinion without relying on other medical evidence or authority in the record.") (citation omitted).

Contrary to the commissioner's suggestion, the fact that other doctors who examined plaintiff or reviewed the medical record determined that plaintiff was capable of performing some type of work does not salvage the ALJ's decision. Although the ALJ cited these opinions, he never explained why they were entitled to more weight than Dr. Fanopoulos's opinion. Presumably, any limitations cited by Dr. Hovis and the independent medical examiner had to be "purely subjective" as well, for they were based on the same fibromyalgia diagnosis that the ALJ refused to accept as a basis for Dr. Fanopoulos's opinion. Instead of evaluating the evidence of record as an initial matter and explaining *why* the various opinions in the file were consistent or inconsistent with plaintiff's claim of disability, after dismissing

Dr. Fanopolous's opinion, the ALJ simply adopted the *conclusions* reached by the other examiners as if those conclusions were themselves evidence.

In doing so, the ALJ abdicated his responsibility to evaluate and weigh the evidence and to build a logical and accurate bridge from the evidence to his conclusion. *Zurawski v. Halter*, 245 F.3d 881, 887 (7th Cir. 2001). In addition, the ALJ failed to comply with SSR 96-8p, which provides that in assessing a claimant's residual functional capacity, the ALJ

> must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily activities, observations). In assessing RFC, the adjudicator must discuss the individual's ability to perform sustained work activities in an ordinary work setting on a regular and continuing basis (i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule), and describe the maximum amount of each work-related activity the individual can perform based on the evidence available in the case record. The adjudicator must also explain how any material inconsistencies or ambiguities in the evidence in the case record were considered and resolved.

This ruling further provides that in all cases in which symptoms such as pain are alleged, the ALJ's RFC assessment must contain a "thorough discussion and analysis of the objective medical evidence and other evidence, including the individual's complaints of pain and other symptoms and the adjudicator's personal observations, if appropriate" and must "set forth a logical explanation of the effects of the symptoms, including pain, on the individual's ability to work." *See also* 20 C.F.R. § 404.1529(d)(4) (providing that if plaintiff has medically determinable severe impairment that does not meet or equal a listed

impairment, ALJ "will consider the impact of your impairment(s) and any related symptoms, including pain, on your residual functional capacity.").

There should be a discussion in the ALJ's decision as to how he determined plaintiff's residual functional capacity; here, there is nothing. After noting that Dr. Hovis and the independent medical examiner had opined that plaintiff was capable of sedentary work and that the state agency physicians determined that plaintiff was capable of light work, the ALJ stated perfunctorily that plaintiff would be capable of at least simple, routine, repetitive, low stress light work which would not require that she lift more than 20 pounds or10 pounds with frequency or require that she sit or stand for more than 30 minutes at a time without alternating positions. The ALJ did not refer to a single piece of evidence on which he relied to reach this conclusion. Assuming the ALJ relied largely on the determination made by the state agency consulting physicians, he did not reconcile that assessment with plaintiff's testimony suggesting more extreme limitations, including the inability to complete a normal workday without rest breaks, the inability to sit or stand for 30 minutes continuously and the inability to complete a work week due to incapacitating migraine headaches.

In fact, although the ALJ made a specific finding that plaintiff's complaints lacked a reasonable medical basis and were not credible, the ALJ's decision contains no discussion of plaintiff's subjective complaints at all. It appears that the ALJ felt that no pain analysis was necessary because the "objective" medical evidence failed to document the existence of an impairment that reasonably could be expected to cause plaintiff's symptoms. SSR 96-7p (if

no medically determinable impairment exists that could reasonably be expected to produce pain or other symptoms, symptoms cannot be found to affect claimant's ability to work).

As just explained, however, the record contains substantial evidence that plaintiff has fibromyalgia, an impairment that could produce the pain and other symptoms she reported. As a result, the ALJ was required to consider the entire record to determine to what extent plaintiff's symptoms–including total body pain, inability to complete chores without breaks, nausea and migraine headaches–were credible and how they would affect her ability to work. SSR 96-7p at 2. The ALJ did not do this.

In sum, even though there may be enough evidence in the record to support the ALJ's conclusion that plaintiff is not disabled, the ALJ committed significant logical and legal errors in reaching that conclusion. Accordingly, this case must be reversed and remanded to the commissioner. *Sarchet*, 78 F.3d at 307 ("[W]e cannot uphold a decision by an administrative agency . . . if, while there is enough evidence in the record to support the decision, the reasons given by the trier of fact do not build an accurate and logical bridge between the evidence and the result."). On remand, the commissioner should:

1) Conduct a new analysis of plaintiff's claim that properly considers the clinical evidence supporting the diagnosis of fibromyalgia;

2) Re-evaluate Dr. Fanopoulos's opinion in accordance with 20 C.F.R. § 404.1527;

3) Assess plaintiff's residual functional capacity in accordance with SSR 96-8p; and

4) Evaluate the credibility of plaintiff's subjective complaints in accordance with SSR 96-7p.

Finally, I recommend that on remand, this court suggest that the commissioner re-assigned this case to a new ALJ. The brevity and tone of the ALJ's decision, including his suggestion that plaintiff's symptoms might be caused by menopause, suggest that he might have an "unshakable commitment" to the denial of plaintiff's claim. *Accord Sarchet*, 78 F.3d at 309 (recommending remand to different ALJ where tone of ALJ's opinion suggested unshakeable commitment to denial of plaintiff's claim).

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B), I respectfully recommend that the decision of the commissioner denying plaintiff Lucille Olson's application for a period of disability and disability insurance benefits be REVERSED and REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this report.

Entered this 25th day of September, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

September 25, 2006

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Re: Olson v. Barnhart
Case No. 06-C-204-C

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before October 16, 2006, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by October 16, 2006, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, District Judge