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

PAULA K. PIPPIN (SALZMAN),

Petitioner,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Respondent.

REPORT AND
RECOMMENDATION

06-C-279-C

REPORT

This is an action for judicial review of a decision of the Commissioner of Social Security denying plaintiff Paula Pippin's applications for disability benefits under the Social Security Act. Because I conclude that the administrative law judge who denied plaintiff's claim at the administrative level failed to articulate adequately his rationale for rejecting the opinions of plaintiff's treating physician and for his determination that plaintiff's subjective complaints were not credible, I am recommending that this case be reversed and remanded to the social security administration for further proceedings.

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

FACTS

I. Procedural History

Plaintiff applied for Disability Insurance Benefits and Supplemental Security Income on April 27, 2001, alleging that she was disabled since May 2000 due to bipolar disorder,

chronic fatigue, bulging discs at C5-C6, Scheuermann's disease (necrosis of adjacent vertebral bodies in the thoracic spine) and chronic myofascial pain syndrome. The local disability determination agency denied her applications initially and on reconsideration. Plaintiff requested and received a hearing, which was held on February 25, 2003. Plaintiff represented by an attorney, appeared and testified. The administrative law judge also heard testimony from plaintiff's fiancé and a vocational expert.

On April 22, 2003, the ALJ issued a decision finding plaintiff not disabled. This determination became the final decision of the commissioner on February 16, 2006, when the Appeals Council denied plaintiff's request for review.

II. Background and Medical Evidence

Plaintiff was 41 years old at the time she applied for disability benefits and 43 on the date of the ALJ's decision. She has a high school education and certification as a nursing assistant. She has past work experience as a production assembler, stock clerk, home attendant, general office worker, nurse's assistant and automatic sewing machine operator. Plaintiff's last employment was in May 2000, performing assembly and data entry.

In November 1998, plaintiff began complaining of severe neck and left arm pain after she lifted something heavy at work. The records relating to the immediate treatment of that injury are not in the record; other records indicate that plaintiff was treated with physical and occupational therapy including work hardening, electrical stimulation, soft tissue

massage and traction. Plaintiff also underwent three epidural steroid blocks with no relief. Plaintiff was diagnosed with chronic neck pain with a bulging disc at C6-7. A functional capacities evaluation completed December 7, 1999 reported that plaintiff had no restrictions on sitting, standing or walking; could carry up to 12 pounds occasionally; could rarely work at or above shoulder level on the left; and could rarely use her head and neck. AR 192-93. Plaintiff apparently returned to work but her employer was unable to find work for her within her restrictions. Plaintiff was referred to the Division of Vocational Rehabilitation.

In April 2000, based upon an MRI scan of plaintiff's cervical and thoracic spine, Dr. James Warren diagnosed plaintiff with status post upper thoracic Scheuerman's disease with C6-C7 bulging disc. AR 191, 272-73. Dr. Warren referred plaintiff to Dr. Kimball Fuiks, a neurosurgeon. Dr. Fuiks ordered various diagnostic studies, including an EMG and nerve conduction study and myelogram. On June 22, 2000, Dr. Fuiks noted that although the studies revealed bulging at C5-6 and C6-7, there were no definitive signs of disk herniation or nerve compression. AR 189. Based on the studies and plaintiff's report that her arm pain had resolved, Dr. Fuiks indicated that he had nothing to offer her from a surgical standpoint.

On August 28, 2000, Dr. Allan Kagen performed an independent medical evaluation on plaintiff. Dr. Kagen concluded that plaintiff suffered from chronic cervical myofascitis secondary to an acute cervical strain suffered at work in November 1998 and that she had reached the end of healing for that injury. Dr. Kagen concluded that based upon plaintiff's cervical symptoms, she had a permanent partial disability of three percent as compared to

the body as a whole. He indicated that plaintiff was permanently restricted to sedentary work with no repetitive neck motions and no more than minimal work at or above shoulder level. AR 185-86.

From April 24, 2001 to January 2002, plaintiff saw Dr. James Giovino for pain management. On April 24, she reported that she was taking Darvocet and Motrin several times daily for her pain. She reported that when the medication was working, her pain was at best a 5-6 on a 10-point scale; when the medication was not working, her pain was a 9+. Plaintiff reported that when her pain was under control she could sit for more than 10 minutes, walk, converse, do the dishes, cook and occasionally do handicrafts. Dr. Giovino noted that plaintiff moved stiffly, especially her neck and upper trunk, but otherwise was in no apparent distress. He detected paraspinal muscle tenderness in the thoracic region of plaintiff's back and generalized tenderness to a lesser degree throughout the rest of her back. Plaintiff had essentially normal range of motion in her neck although it was limited by pain. Strength was normal in the upper and lower extremities. Dr. Giovino concluded that plaintiff had a "chronic pain syndrome with multifactorial etiology some of which seems ill defined. The patient has some combination of myofascial disorder, chronic headaches, question fibromyalgia." AR 229. Dr. Giovino opined that plaintiff's pain syndrome was worse due to plaintiff's lack of treatment for her bipolar disorder.

Dr. Giovino referred plaintiff to Dr. Christopher Gilman. After a May 29, 2001 visit, Dr. Gilman questioned whether plaintiff actually had a bipolar disorder. He prescribed

Neurontin, which he hoped would reduce plaintiff's pain and stabilize her mood. AR 226. However, on June 19, 2001, plaintiff told Dr. Giovino that her pain had been worse since starting the Neurontin, that her sleep had been poor and that she was irritable. Dr. Giovino adjusted plaintiff's medication and referred her to Dr. Howard Gartland, a psychologist, for a functional assessment and help with chronic symptom management. Dr. Gartland concluded that plaintiff's symptoms of depression and anxiety were neither sufficient to meet the criteria for bipolar disorder nor to warrant pharmacological intervention. He diagnosed a pain disorder associated with both psychological factors and a general medication condition and possibly a somatization disorder. AR 311.

On August 31, 2001, plaintiff saw Dr. Arthur Altbuch, a sports medicine specialist, for her continued complaints of worsening pain. Plaintiff told Dr. Altbuch that she had pain in her neck, upper back, left shoulder, left mid back, both hips and a constant headache. She reported that prior to her work accident in 1998, she had been very active and had engaged in hiking, biking, roller skating, gardening and social activities in addition to working, taking care of home, her children and grandchildren. After her injury, however, plaintiff reported a drastic decline in her activities, stating that now she needed help with grocery shopping, made only one meal a day, participated in no sports and interacted with others infrequently because of her chronic pain. Dr. Altbuch noted that when plaintiff turned to look at him when he entered the examination room, she did not rotate her neck but turned her entire trunk. Plaintiff had limited range of motion in the cervical spine and pain on movement.

Dr. Altbuch detected "areas of triggering" at numerous locations in plaintiff's spine, arms and legs. Sensory and motor examination was within normal limits. Dr. Altbuch found that plaintiff's symptomatology "most likely represents a myofascial syndrome which, given the number of trigger points present, is certainly consistent with the description of fibromyalgia." AR 221. Dr. Altbuch performed an occipital nerve block. AR 220.

On September 20, 2001, Dr. M.J. Baumblatt, a consulting physician for the local disability determination service, completed a residual functional capacity assessment of plaintiff based upon his review of her medical records. Dr. Baumblatt concluded that plaintiff suffered primarily from degenerative disc disease and secondarily from a chronic myofascial pain syndrome. He determined that she retained the residual functional capacity for work at the light exertional level (requiring the ability to lift 20 pounds occasionally, 10 pounds frequently and to do a good deal of walking or standing, 20 C.F.R. § 404.1567(b)) with limited reaching overhead on the left. AR 331-338.

On January 22, 2002, plaintiff was seen by Dr. Muhammad Shamim, a rheumatologist. Dr. Shamim diagnosed plaintiff with fibromyalgia and Raynaud's Disease[1]. Plaintiff saw Dr. Shamim regularly until July 31, 2002. Although he prescribed various medications, none were successful in eliminating plaintiff's symptoms. AR 367-381.

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[1]A disorder of the blood vessels that supply blood to the skin that causes an exaggerated response to cold temperatures in certain parts of the body, particularly the fingers, toes, tip of the nose and ears. *See* http://www.mayoclinic.com/health/raynauds-disease/DS00433.

On March 25, 2002, a second state agency consulting physician reviewed the record and completed a residual functional capacity assessment of plaintiff. This physician determined that plaintiff was capable of performing sedentary work. AR 344-351.

Plaintiff transferred her primary care to Dr. Altbuch after Dr. Giovino left the medical practice. On April 15, 2002, plaintiff told Dr. Altbuch that she was doing much better on the medication regimen prescribed by Dr. Shamim. She reported that her pain was about the same but her mood was much better. Plaintiff reported that she still fatigued easily, especially when walking around Wal-Mart. Musculoskeletal examination revealed marked tenderness with trigger points along the paravertebral musculature in the upper and lower thoracic spine. Dr. Altbuch noted that plaintiff's fibromyalgia was under reasonable control, although she had marked fatigue. AR 410.

On November 5, 2002, plaintiff told Dr. Altbuch that she was still in a lot of pain in her neck, shoulder and back. Dr. Altbuch noted diffuse triggering up and down plaintiff's spine, shoulder girdle and lower extremities. AR 402. On November 21, 2002, he noted that plaintiff continued to have "marked" symptoms of fibromyalgia. AR 401.

On January 3, 2003, Dr. Altbuch wrote a letter opining that plaintiff was disabled from chronic pain due to fibromyalgia that was complicated by depression. Dr. Altbuch indicated that although plaintiff had been "extremely compliant" with suggested therapies, her condition was difficult to treat and was unlikely to improve significantly. AR 360.

On February 11, 2003, Dr. Altbuch completed a fibromyalgia residual functional capacity questionnaire for plaintiff. AR 354-59. Dr. Altbuch indicated that plaintiff met the American Rheumatological criteria for fibromyalgia and also suffered from depression. He noted that plaintiff had multiple trigger points, depressive symptoms, chronic muscle soreness in nearly all areas of the body and chronic fatigue. He opined that plaintiff was not a malingerer but that emotional problems contributed to the severity of her symptoms and limitations. He reported that plaintiff could: frequently lift less than 10 pounds, occasionally lift10 pounds and could never lift 20 pounds; walk one block; sit for 10-15 minutes at a time; stand for 10 minutes at a time; and sit and stand or walk for a total of less than two hours each per day. Dr. Altbuch reported that plaintiff needed to walk around for a period of three minutes every 10 minutes; required the ability to change position at will from sitting to standing; sometimes would need to take unscheduled breaks; could rarely use her arms for reaching or her hands for grasping; could rarely bend or twist; and likely would miss work more than three times a month.

III. Hearing Testimony

Plaintiff testified that she is unable to work due to fibromyalgia, chronic myofascial pain syndrome, chronic fatigue, chronic headaches, degenerative disk disease, restless leg syndrome and left rotator cuff damage. Plaintiff listed her symptoms from fibromyalgia as widespread pain, trigger point pain and headaches, with most of the pain concentrated in

her back and upper neck. Plaintiff reported that her pain varied from burning and a few spasms to a stabbing, pulling feeling with numerous spasms. Plaintiff testified that she was on numerous medications for pain relief, including methocarbonal, Darvocet, ibuprofen and Neurontin. She said that about two to three days a week, she had a severe headache sometimes accompanied by nausea, vomiting and shakiness. To relieve such headaches, plaintiff took medication and laid down in a dark room. Plaintiff testified that she had a left shoulder injury that prevented lifting even five pounds or performing work above shoulder level. She said she averaged about four hours of sleep a night because of frequent waking. Plaintiff stated that she felt tired most of the day and attributed some of this fatigue to her medications. She reported problems concentrating that were helped some by Pemoline, one of the drugs prescribed by her physicians.

Plaintiff testified that her primary activity during the day was watching television. She tried to do some chores such as dishes, dusting and laundry and did some stitching for a few minutes depending on how she felt. She said that her live-in fiancé carried the groceries and laundry baskets and did the vacuuming.

Plaintiff's fiancé testified that he had known plaintiff for nine years. He recalled that prior to plaintiff's work injury, she had been very active and social. He characterized plaintiff's decline in health as "very bad," explaining that she was unable to perform menial house tasks; sometimes needed help getting in and out of the tub; was unable to carry items such as groceries or laundry baskets; and no longer enjoyed interacting with others. He

described plaintiff as being mostly in a "depressed state" because of her pain, explaining that plaintiff sometimes cried from pain and had become withdrawn and argumentative.

Victoria Rei testified as a vocational expert. Rei categorized plaintiff's past jobs by exertional level and skills required. Rei indicated that plaintiff had acquired skills from some of her semi-skilled jobs that were transferable to other work at the light or sedentary level. The ALJ asked Rei two hypothetical questions: first, he asked Rei to assume an individual of plaintiff's age, education, and past work experience; who was limited to light work allowing the ability to change position from sitting to standing every 30 minutes and which required no overhead reaching with the left hand; and who had a limited but satisfactory ability to interact with supervisors, deal with work stress, maintain attention and concentration and behave in an emotionally stable manner; and to state whether such an individual could perform any of plaintiff's past work. Rei responded that such an individual could perform plaintiff's past work as a production assembler, general officer worker, line worker or automatic sewing machine operator.

In his second question, the ALJ asked Rei to assume everything from the first hypothetical except that the individual was limited to work at the sedentary level of exertion. Rei testified that although such a person would be unable to perform plaintiff's past jobs, she could perform other occupations such as bench hand assembler, order clerk and sorter.

IV. The ALJ's Decision

In his written decision, the ALJ applied the familiar sequential procedure for evaluating disability claims. AR 17-25. The ALJ found that plaintiff had not engaged in substantial gainful activity since her alleged onset date of May 5, 2000 (Step 1); she suffered from severe impairments, namely, left rotator cuff tendonitis, fibromyalgia, a history of cervical spondylosis, Raynaud's syndrome, and bipolar disorder (Step 2); whether considered individually or in combination, plaintiff's impairments did not meet or medically equal one listed in Appendix 1, Subpart P, Regulations No. 4 (known as the SSA "listings") (Step 3); and she was capable of performing her past work (Step 4).

In reaching his conclusion at step 4, the ALJ determined that plaintiff retained the residual functional capacity for light work so long as she did not have to perform reaching overhead with her left arm and was not required either to sit or stand continuously for more than 30 minutes. He also found that plaintiff had a limited but satisfactory ability to interact with supervisors, deal with work stress, maintain attention and concentration, and behave in an emotionally stable manner. The ALJ accorded substantial weight to Dr. Baumblatt's residual functional capacity assessment, finding that it was "consistent with, and supported by, the objective medical evidence."

With respect to Dr. Altbuch's much more restrictive RFC assessment, the ALJ noted:

> On 2-11-03, Dr. Arthur Altbuch stated that the claimant was capable of performing sedentary work. He noted that the claimant would have to exercise a sit/stand option. Dr. Altbuch also stated that the claimant would have manipulative

> restrictions in both arms. I do not accord controlling weight to Dr. Altbuch's assessment. The evidence of record does not support a finding that the claimant is only capable of sedentary work. Furthermore, the evidence does not support bilateral manipulative restrictions. At the hearing, plaintiff testified that she had problems with her left arm/shoulder. I do find that the claimant would need a sit/stand option.

AR 23. The ALJ also found that

> [plaintiff's] subjective complaints and allegations about her limitations and impairments are not fully credible and, when considered in light of all the objective evidence and clinical findings as well as the record as a whole, do not reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful work activity.

AR 24. Relying on the vocational expert's testimony, the ALJ concluded that plaintiff was able to perform her past work as a production assembler, general office worker, line worker or automatic sewing machine operator.

ANALYSIS

In a social security appeal brought under 42 U.S.C. § 405(g), this court does not re-evaluate 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" and if no error of law occurred. *Sims v. Barnhart*, 309 F.3d 424, 428 (7th Cir. 2002). 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 v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000). Thus, where conflicting evidence allows reasonable minds to differ as to whether a claimant is disabled, the responsibility for that decision falls on the commissioner. *Edwards v. Sullivan*, 985 F.2d 334, 336 (7th Cir. 1993).

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 an 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).

This case must be remanded to the commissioner because the ALJ in this case failed to build that bridge. To reach his conclusion that plaintiff was not disabled, the ALJ had to reject the opinion of Dr. Altbuch, plaintiff's treating physician for approximately a year prior to the administrative hearing. According to the social security regulations, the opinion of a treating physician is entitled to special consideration, and is entitled to controlling weight if it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence" in the record. 20 C.F.R. § 404.1527(d)(2). An ALJ must give "good reasons" for the weight he gives a treating source opinion. *Id.*

The ALJ did not do this. First, the ALJ did not appear to recognize that Dr. Altbuch endorsed limitations that, if credited, would have precluded plaintiff from gainful employment. In describing Dr. Altbuch's RFC assessment, the ALJ stated that Dr. Altbuch had stated that plaintiff was "capable of performing sedentary work." This statement is true only insofar as Dr. Altbuch indicated that plaintiff could occasionally lift 10 pounds and frequently lift lighter objects. However, in assessing a claimant's residual functional capacity, an ALJ must consider the claimant's ability to "perform sustained work activities in an ordinary work setting on a regular and continuing basis," meaning eight hours a day, for 5 days a week, or an equivalent schedule. Social Security Ruling 96-8p. Nothing in Dr. Altbuch's RFC assessment indicates that plaintiff could perform sedentary work on a regular, sustained basis. To the contrary, Dr. Altbuch indicated that plaintiff could work for a total of less than four hours a day and likely would be absent three or more times a month.

The ALJ did not discuss these findings in his decision and nothing in his decision offers any clue as to why he rejected them. The ALJ merely stated that "[t]he evidence of record does not support a finding that the claimant is only capable of sedentary work." However, the ALJ never explained what evidence he was relying on for this conclusion; moreover, his explanation fails to address the issue of plaintiff's ability to work on a regular, full time basis.

The only evidence upon which it is clear that the ALJ relied for his conclusion is the RFC assessment completed by Dr. Baumblatt, one of the state agency physicians, who

concluded that plaintiff could perform light work with limited overhead reaching with the left arm. As with his discussion of Dr. Altbuch's opinion, the ALJ's discussion of Dr. Baumblatt's opinion is inadequate. The ALJ found only that Dr. Baumblatt's opinion was "consistent with, and supported by, the objective medical evidence." AR 23. But nothing in the ALJ's discussion of the objective medical evidence provides a clear explanation for his conclusion that this evidence, at most, supported a limitation to light work, as found by Dr. Baumblatt.

The ALJ might have been relying on the fact that plaintiff's neck impairment was not very severe and that she typically had normal strength and range of motion when examined. However, while it might have been reasonable for the ALJ to rely on the lack of objective medical findings as a basis to reject plaintiff's claim that she has a disabling *neck* condition, it was *not* reasonable for the ALJ to rely on the absence of such findings to reject plaintiff's alleged limitations stemming from her fibromyalgia.

"[Fibromyalgia's] cause or causes are unknown, there is no cure, and, of greatest importance to disability law, its symptoms are entirely subjective." *Sarchet v. Chater*, 78 F.3d 305, 306 (7th Cir. 1996). As the court pointed out in *Sarchet*, 78 F.3d at 306, there are no laboratory tests to determine either the presence or severity of fibromyalgia; therefore, adjudicators may not rely on the absence of such evidence as a basis to discount either the presence or the severity of the disorder. The only "test" for the illness is tenderness at the 18 hallmark trigger points. In the instant case, the rheumatologist and other doctors who

examined plaintiff thought that she had pain in enough of the points to warrant a diagnosis of fibromyalgia. Although Dr. Baumblatt noted that plaintiff suffered from chronic myofascial disease, which is akin to fibromyalgia, he rendered his opinion regarding plaintiff's residual functional capacity without having any of the medical reports from Dr. Shamim and Dr. Altbuch, the two physicians who clearly diagnosed plaintiff with fibromyalgia.

The only evidence the ALJ mentioned with respect to plaintiff's fibromyalgia was records from Dr. Shamim and Dr. Altbuch in which they remarked that plaintiff's fibromyalgia was under "adequate," "reasonable," or "partial" control with medication. But the ALJ simply mentioned the evidence summarily without analyzing it. He did not explain if he thought this evidence suggested that plaintiff's symptoms from her fibromyalgia were under control, nor did he explain what bearing this evidence had on the his conclusion that plaintiff could perform light work;.

As a result, I am unable to conclude that the ALJ rejected plaintiff's complaints of disabling symptoms from her fibromyalgia on the ground that they were controlled by medication. Moreover, even if this court were to infer that the ALJ attached significance to the remarks by plaintiff's doctors that her fibromyalgia was under some degree of control, those remarks simply do not constitute substantial evidence that plaintiff's fibromyalgia is not disabling. For example, despite noting that plaintiff's symptoms from her fibromyalgia were under "reasonable" control in April 2002, Dr. Altbuch remarked in September 2002

that plaintiff's fibromyalgia "continues to be symptomatic and produces chronic pain state," AR 406, and by January 2, 2003 he had concluded that plaintiff was disabled from the disease, AR 360. In July 2002, Dr. Shamim noted that despite being on medication, plaintiff continued to experience back, neck and left shoulder pain. AR 367. Therefore, plaintiff's doctors' occasional use of adjectives such as "adequate", "reasonable", or "partial" are simply too vague and too relative to support a finding of no disability.

The bottom line is that the ALJ failed to build a logical, accurate bridge between the evidence and his conclusion that Dr. Baumblatt's opinion was deserving of more weight than Dr. Altbuch's. The ALJ merely cited the evidence in summary fashion and then perfunctorily stated that Dr. Baumblatt's conclusion was most consistent with it. This falls short of fulfilling the ALJ's duty clearly to articularly his reasoning and to provide "good reasons" for rejecting the opinion of plaintiff's treating physician.[2] *See Gudgel v. Barnhart*, 345 F.3d 467, 470 (7th Cir. 2003) ("An ALJ can reject an examining physician's opinion only for reasons supported by substantial evidence in the record; a contradictory opinion of a non-examining physician does not, by itself, suffice.").

That said, I agree with the commissioner that the ALJ had good reason to discount Dr. Altbuch's opinion that plaintiff had bilateral manipulative limitations. As the ALJ

[2] Plaintiff also complains that the ALJ failed to give good reasons for rejecting the opinion of Dr. Kagen and the second state agency physician, both of whom concluded that plaintiff was capable of only sedentary work. However, even if the ALJ had credited both of these reports and assigned plaintiff a residual functional capacity for sedentary work, it appears that he still would have found plaintiff not disabled based upon the vocational expert's testimony. Accordingly, I have not addressed the merits of plaintiff's arguments with respect to these opinions because even if the ALJ erred by rejecting them, this error was harmless.

pointed out, plaintiff stated at the hearing that she had problems only with her left arm and shoulder; further she testified that she only had problems with her hands when they were really cold. Although the lack of support for Dr. Altbuch's opinion regarding manipulative limitations could have provided the ALJ with a toehold from which to question the entirety of Dr. Altbuch's opinion, nothing in the ALJ's decision indicates that he rejected Dr. Altbuch's opinion on this basis. To the contrary, it appears that the ALJ rejected Dr. Altbuch's opinion regarding some limitations (sedentary work and manipulative limitations) but adopted others (sit/stand option).

Nothing prohibited the ALJ from picking and choosing between Dr. Altbuch's findings, but taking this approach obliged him to explain why he was accepting the findings favorable to the commissioner while rejecting the findings favorable to plaintiff, including Dr. Altbuch's conclusion that plaintiff was incapable of employment on a full time basis. *See Bauzo v. Bowen*, 803 F.2d 917, 925 (7th Cir. 1986) (Appeals Council erred by failing to articulate basis for adopting favorable part of doctor's assessment of plaintiff's condition and rejecting unfavorable part).

The ALJ also failed sufficiently to articulate his reasons for finding plaintiff's subjective complaints not entirely credible. In his decision, the ALJ merely listed various reports provided by plaintiff and her fiancé with respect to her daily activities. He noted that in September 2000, plaintiff told Dr. Giovino that she was walking for 20 minutes at a time, three to four times a week; in April 2001, plaintiff said that when she was taking her medication she could sit for more than 10 minutes, walk, talk, wash dishes, cook and

occasionally do handicrafts; and in June 2001, plaintiff's fiancé completed a questionnaire on which he indicated that plaintiff drove a car for short distances, cooked, cleaned, shopped, watched children and played games and that her hobbies included arts and crafts and sewing; in June 2001, plaintiff stated on a questionnaire that she cooked, washed dishes, shopped, needed help carrying laundry baskets, had pain with vacuuming, drove for short distances and watched a lot of television.

Although the commissioner asserts that "the ALJ noted that Plaintiff's level of activity undermined her allegations of a disabling condition," that statement does not appear anywhere in the ALJ's decision. Even assuming such reasoning can be inferred, none of plaintiff's activities were so out of line with her complaints as to permit the ALJ simply to list the activities without explaining why those activities were inconsistent with her complaints of disabling pain and fatigue. *Zurawski*, 245 F.3d at 887. As in *Zurawski*, where the plaintiff's daily activities consisted of washing dishes, helping children prepare for school, doing laundry and preparing dinner, here plaintiff's activities are similarly restricted and not of a sort that necessarily undermine her complaints of disabling pain or that show that she is capable of performing light work.

Besides plaintiff's daily activities and Dr. Altbuch's notation that plaintiff's fibromyalgia was under "reasonable control," the only other piece of evidence mentioned by the ALJ in the section of his decision on credibility was Dr. Kagen's conclusion that plaintiff had only a three percent disability of the body as a whole. There's no disputing that this

evidence contradicts plaintiff's allegation of total disability, but Dr. Kagen made his determination in August 2000 and did not consider plaintiff's diagnosis of fibromyalgia. Moreover, Dr. Kagen also concluded that plaintiff retained the residual functional capacity for only sedentary work, a conclusion that the ALJ rejected. Given the other flaws in the ALJ's decision, the ALJ's mention of Dr. Kagen's 3% disability rating is not enough to stave off remand.

In sum, the ALJ's decision fails to reconcile plaintiff's complaints of marked pain and fatigue with the ALJ's conclusion that plaintiff was able to work 8 hours a day, five days a week. The only specific complaint that the ALJ addressed in his decision was plaintiff's report of left arm and shoulder problems; nowhere in his decision does he address plaintiff's complaints of headaches, mood swings and depression, fatigue or chronic pain. While an ALJ is not required to address every piece of evidence or testimony in the record or to write a "perfect" opinion, "the ALJ's analysis must provide some glimpse into the reasoning behind [his] decision to deny benefits." *Zurawski*, 245 F.3d at 889.

In this case, the ALJ focused on the medical evidence favoring the denial of benefits and failed to explain why the large body of evidence favoring plaintiff (including the testimony of plaintiff and her fiancé, plaintiff's longitudinal treatment record, her various medications and other attempts to obtain pain relief, and Dr. Altbuch's opinion that plaintiff was incapable of full time employment) was overcome by the evidence on which he relied.

Although it might be true, as the commissioner argues, that the record "as a whole" supports the ALJ's decision, the ALJ failed to articulate his rationale with enough clarity to permit informed review. This court is keenly aware of its obligation not to sacrifice on the altar of perfection the claims of those still waiting in line, but where the commissioner's decision just as easily could have gone the other way and where this court must jump through flaming hoops in order to reconcile the ALJ's decision with the Seventh Circuit's template for review, then a remand to clarify the commissioner's thought process appears to be in order. Accordingly, I recommend that this case be remanded so the ALJ can more clearly and accurately articulate his rationale for concluding that plaintiff is not disabled.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B), I recommend that the decision of the commissioner denying plaintiff's applications for disability benefits be REVERSED and REMANDED for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

Entered this 5th day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

December 5, 2006

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Re: Pippin v. Barnhart
Case No. 06-C-279-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 December 29, 2006, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by December 29, 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