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

APRIL GAUTHIER,

Plaintiff, OPINION AND ORDER

v. 06-C-498-C

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Plaintiff April Gauthier brings this action for judicial review of a final decision of defendant Commissioner of Social Security. An administrative law judge determined after a hearing that plaintiff is not disabled and therefore not eligible for Supplemental Security Income under the Social Security Act, 42 U.S.C. §§ 1381a, 1382c. The Appeals Council declined to review that decision, making the decision of the administrative law judge the final decision of the commissioner. Plaintiff contends that this court must reverse this decision and remand the case for further proceedings because the administrative law judge: 1) failed to obtain a valid waiver from plaintiff of her right to legal representation at the hearing and failed to develop the record fully; 2) ignored a report from plaintiff's treating physician indicating that plaintiff would likely have limited mobility in her ankle as a result of an ankle injury and subsequent surgery; 3) ignored various reports indicating that plaintiff had a low score on the Global Assessment of Functioning scale; and 4) failed to account for

a consultant's opinion that plaintiff likely would have some difficulties tolerating the stress and pressure of full time employment. As explained below, I reject all of these arguments and affirm the decision of the commissioner.

From the administrative record (AR), I find the following facts.

FACTS

A. Background

Plaintiff was 38 years old at the time she applied for Supplemental Security Income in January 2003. She earned her General Equivalency Diploma and took some college courses. She has little past work experience, although she worked briefly as a foreman assistant at food processing plant. Plaintiff has a long history of alcohol abuse and mental illness, including hospitalizations in 1993 and 1995.

B. Medical Evidence

1. Dr. Johnson

In February 2004, Dr. Franklin Johnson examined plaintiff at the request of the state disability agency. Dr. Johnson noted that although he was meeting with plaintiff to assess her orthopedic situation, most of plaintiff's problems were related to alcoholism and mental health issues. He noted that plaintiff had given birth to seven children, all of whom had been removed from her custody because of custody battles and plaintiff's "psychosocial

misbehavior and alcoholic excess." AR 161. In contrast to these reports, Dr. Johnson observed, plaintiff presented herself very well during the examination. Dr. Johnson reported:

> She was well groomed, articulate, does not appear to be distressed, certainly is very knowledgeable about medication and her situation and without the history that has been described, she could easily pass herself off as being very totally intact.

AR 161. Dr. Johnson noted that plaintiff had a number of nonspecific orthopedic complaints, but he found nothing in his examination to suggest any orthopedic limitations.

2. Dr. Desmonde

Also in February 2004, licensed psychologist Marcus P. Desmonde reviewed the medical evidence of record and examined plaintiff at the request of the state agency. AR 164-67. Plaintiff told Dr. Desmonde that she was working three days a week as a waitress and cleaning rooms at a local motel. She reported a long history of alcohol abuse and said that her longest period of sobriety had been six months. She had been married and divorced twice. Plaintiff reported that she had been living in an apartment since October of 2003, but before that, had been homeless for a couple of years. Plaintiff was able to do her own housekeeping, laundry and meal preparation. She met with her friends occasionally.

Plaintiff's hygiene was good and she made good eye contact. She denied hallucinations, delusions, obsessive thoughts or paranoid ideation. She indicated that she had problems with excessive sleeping, concentration, short term memory, appetite, weight loss, hopelessness and social withdrawal. Plaintiff denied symptoms of anxiety or panic, but

stated that she had depression related to neck pain. She reported that the medications her psychiatrist was currently prescribing were helping her. She also self-medicated with alcohol. Plaintiff demonstrated low average concentration, but was able to compute serial seven addition and subtraction from 100 slowly and accurately. Dr. Desmonde estimated plaintiff's IQ to be in the low 80's.

Dr. Desmonde diagnosed alcohol dependence; episodic poly-substance abuse; mood disorder secondary to alcohol dependence with depressive features; depressive disorder, not otherwise specified; and personality disorder, not otherwise specified. Dr. Desmonde assigned a Global Assessment of Functioning (GAF) score of 55-60, indicating moderate symptoms.[1] He also stated that plaintiff was capable of understanding simple instructions and carrying out tasks on three shifts a week with reasonable persistence and pace. Dr. Desmonde noted that plaintiff was able to interact appropriately with co-workers, supervisors and the general public, although he noted that "[s]he may have some difficulties tolerating the stress and pressure of full time competitive employment." AR 167. Dr. Desmonde remarked that if plaintiff was able to remain sober, her chances of obtaining employment "would be greatly enhanced." Id.

3. Dr. Culbertson

[1]The Global Assessment of Functioning scale measures a "clinician's judgment of the individual's overall level of functioning." Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision, 32 (2000).

In March 2004, state agency psychologist Frances M. Culbertson, Ph.D., reviewed the medical evidence of record, including Dr. Desmonde's report, and concluded that plaintiff's mental impairments did not result in more than mild restrictions in activities of daily living or difficulties maintaining social functioning; moderate difficulties maintaining concentration, persistence or pace; or any episodes of decompensation of extended duration. AR 168-85. Dr. Culbertson rated plaintiff's ability to perform twenty work-related areas of mental functioning and found that she was not significantly limited in sixteen areas and only moderately limited in the remaining four areas. Dr. Culbertson remarked that although claimant had "significant difficulties tolerating stress [and] pressure, [she] should still be able to perform simple [routine, low stress work]." AR 184.

4. Memorial Medical Center

Plaintiff was admitted to the Memorial Medical Center in Ashland from May 13 to 14, 2004, for confusion and auditory hallucinations. Intake evaluation was conducted by Dr. James Lean, a psychiatrist who had evaluated plaintiff on at least one occasion in the past. Dr. Lean diagnosed depressive disorder, disassociative identity disorder, probable posttraumatic stress disorder, alcohol dependence and mixed personality disorder. (Records of this hospitalization are not in the record but are referred to in other records.)

Plaintiff participated in an outpatient day treatment program from July 27 to October 8, 2004. AR 278-308. From their initial evaluation, program staff determined that

plaintiff's GAF score was 35, indicating "some impairment in reality testing or communication." DSM-IV-TR at 34. In August 2004, plaintiff was referred to Memorial's Behavioral Health facility for diagnostic clarification. AR 283-87. Plaintiff was evaluated by Sara Marsh, a psychotherapist. Marsh noted that plaintiff did not maintain regular attendance at the day treatment program. Plaintiff had neat grooming and hygiene and sat calmly through the interview. Her affect was blunted and somewhat flat and her mood appeared to be dysphoric and sometimes angry. Her speech was slowed and she appeared to be mildly lethargic. She was cooperative. Marsh noted that plaintiff demonstrated adequate orientation, registration, attention and calculation skills. Plaintiff reported hearing voices and stated that she believed some were messages from God. Plaintiff said she was working with intelligence agencies and that the voices she heard told her she looked like actress Jennifer Grey. Marsh diagnosed alcohol dependence, a history of cannabis abuse, psychotic disorder, not otherwise specified, and a history of mixed personality traits. Several other mental diagnoses were not ruled out. Marsh assigned a GAF score of 45, indicating serious symptoms. DSM-IV-TR at 34. Daniel Gardner, Ph. D., a supervising psychologist, signed Marsh's report.

When plaintiff was discharged from day treatment in October 2004, she carried the following diagnoses: post-traumatic stress disorder, dissociative identity disorder, alcohol abuse, dysthymia with major depressive episodes and borderline personality disorder. AR 278. She was again assigned a GAF score of 35. According to the discharge summary,

plaintiff had a long psychiatric history with ongoing noncompliance. She attended only 11 of 19 days of day treatment. She was noted to be "evasive, guarded, [and] paranoid" and had difficulty establishing rapport with peers, although she became more comfortable with other group members as time progressed. She was not compliant with assignments unless the assignments were to be completed during treatment sessions. Plaintiff missed various appointments and tended to blame others and "the system" for her various legal problems. A Minnesota Multiphasic Personality Inventory was administered, but the results were invalid. Although plaintiff reported that her medications had been working, day treatment staff questioned plaintiff's medication compliance. Plaintiff had missed her last four medication management appointments with Dr. Lean, although staff noted that the doctor's office had called the pharmacy and prescribed a two-month supply of Risperdal. The discharge summary reported that because of plaintiff's noncompliance with treatment recommendations, most treatment efforts had been unsuccessful. Plaintiff was referred to Bayfield County's Community Support Program.

Plaintiff saw Dr. Lean on January 4, 2005. AR 217. Plaintiff reported that she had been doing better the past several months after taking her Risperdal, Prozac and Amitriptyline daily. Plaintiff reported that her major problem had been disassociative episodes in which she adopted the identity of Jennifer Biel. During such episodes, plaintiff reported, she actually believed she was Biel; however, Dr. Lean noted that during the office visit, plaintiff recognized that she was not and that the episodes were fallacious. Dr. Lean

noted that plaintiff had a history of stopping her medications, prompting a return of psychotic symptoms, although at the time plaintiff seemed motivated to continue taking medications. Dr. Lean observed that plaintiff seemed to be holding on "desperately" to sobriety and sanity, although she looked "more together" and was more coherent than she had been in the past.

On July 15, 2005, plaintiff was admitted to the hospital for detoxification after being brought to the emergency room with a blood alcohol level of .308 and delusional symptoms. The attending physician assigned plaintiff a GAF score of 30, indicating that plaintiff's behavior was "considerably influenced by delusions or hallucinations" or that she was unable to function in almost all areas. DSM-IV-TR at 34. Dr. Lean examined plaintiff in consultation with hospital staff. He noted that plaintiff had a history of decompensating if she was drinking and not taking her Risperdal. Plaintiff was discharged on July 17, 2005.

5. Dr. Warren

On October 30, 2004, plaintiff fell while intoxicated, fracturing her left ankle. Dr. Scott Warren performed surgery, inserting hardware to help repair the break. After surgery, the fracture healed slowly, prompting Dr. Warren's office to prescribe a bone stimulator in March 2005. X-rays in June and July 2005 showed progressive healing of the tibia fracture. Examination by Dr. Warren in July 2005 showed good range of motion in the left ankle, with a little tenderness over the implants. Plaintiff said she still had some discomfort if she

was on her feet a lot, reporting that she had been busy with community service and attending Alcoholics Anonymous meetings. On August 25, 2005, Dr. Warren reported that plaintiff was making "very good progress," noting that she had very little swelling and good range of motion, although she still had tenderness over the implants. Dr. Warren noted that she should follow up in two months and have her implants removed "at some point," but not until at least a year after the initial surgery. AR 275.

On October 10, 2005, Dr. Warren wrote a letter stating that plaintiff had limited range of motion in her left ankle as a result of her fracture. He stated that she would "probably continue to have limited mobility, may develop post-traumatic arthritis further limiting her mobility in the future." AR 277.

C. Hearing Testimony

1. Plaintiff

An administrative hearing on plaintiff's application was convened on October 14, 2005. Plaintiff appeared without a lawyer. In response to a question by the administrative law judge, plaintiff indicated that she had received a letter advising her of her right to a lawyer and that the letter had included a list of organizations or legal services that might be willing to represent her. The administrative law judge explained that a lawyer could help plaintiff by obtaining medical records that might not be in the file and by questioning witnesses. She told plaintiff that attorneys could charge a fee that could be as much as

$5,300 or 25 percent of any past due benefits that plaintiff was awarded, although the fees would have to be approved by the administrative law judge. In addition, the judge explained, other legal services organizations existed that were willing to represent people who met their income criteria. Plaintiff stated that she wanted to go forward without a lawyer.

After asking plaintiff questions about her educational and work history, the administrative law judge asked plaintiff about her leg problems. Plaintiff said she could stand thirty minutes or sit two to three hours without problems. Plaintiff said if she did not elevate her leg while sitting, it would swell. She said she had problems lifting and carrying things and that she could not lift items while seated because of neck problems.

Plaintiff also said she had concentration problems and delusions. She said she had problems distinguishing who and where she was. She said that Risperdal helped her concentrate, but she still had a hard time distinguishing between reality and fantasy. Plaintiff said that she had trouble getting up and performing a daily schedule. Plaintiff told the administrative law judge that, because of insurance problems, she had not received the proper therapy to help resolve her mental health issues. Plaintiff admitted that she had sporadic episodes of binge drinking, the most recent of which had occurred about one week before the hearing. Plaintiff said her doctors had told her she attempted to self-medicate with alcohol, although she acknowledged that her delusions were stronger when she was drinking.

Plaintiff received public assistance, but stated that it would continue only as long as her SSI application was pending. She also received food stamps. She did her own cooking and laundry. She was able to walk to the grocery store and carry her groceries home, although such activity caused swelling and pain in her leg. Sometimes her friends and family helped her clean her apartment; sometimes she did it on her own. Plaintiff told the administrative law judge that she had problems getting along with coworkers and had few friends, although she admitted that she periodically visited friends in Illinois. She made her own rent payments.

2. Susan Lewis

Susan Lewis, plaintiff's case manager at the community support program, appeared and testified. Plaintiff had been in the program since January 2005. Lewis said that she was still in the process of developing a relationship with plaintiff and had been visiting plaintiff "as she's allowed." AR 338. Lewis said she made sure plaintiff was able to get groceries, medications and access to psychiatric care "when she chooses to take advantage of it." Id. Lewis stated that her agency's program offered group and individual therapy, but plaintiff had not yet participated. In response to questioning by plaintiff, Lewis told the administrative law judge that the psychiatrist in charge of her program had determined that alcohol dependence was not plaintiff's primary mental diagnosis.

3. Vocational expert

The administrative law judge called a vocational expert to testify. The administrative law judge asked the expert to consider a hypothetical individual of plaintiff's age, educational history and work history, who was limited to light work with six hours standing or walking and two hours sitting in an eight-hour work day; could perform only routine, repetitive, unskilled work; could have no public contact and no more than brief, superficial and intermittent contacts with co-workers and supervisors; and who required low production standards. The administrative law judge defined low production standards as work that did not involve a moving assembly line or a setting in which the pace of the work would affect the work of others. The expert testified that such an individual would be able to perform jobs classified as reproduction services, such as inserting machine operator and collator operator, and that 2,100 such jobs existed in Wisconsin. The individual could also perform 4,800 bench assembly occupations, such as mechanical pencil assembler, desk pen set assembler, small products assembler, card and announcement assembler.

D. Administrative Law Judge's Decision

On March 18, 2006, the administrative law judge issued a decision applying the familiar five-step process for evaluating disability claims. 20 C.F.R. § 416.920. At step one,

she found that plaintiff had not engaged in substantial gainful activity after she filed her application. At step two, she found that plaintiff suffered from severe impairments, namely, a history of a left tibia and fibula fracture, status post open reduction and internal fixation; degenerative changes in the cervical spine; and various mental impairments, including an affective disorder, psychosis, delusional disorder, dissociative identity disorder, post traumatic stress disorder, borderline personality disorder and alcohol and polysubstance dependence.

At step three, the administrative law judge reviewed the entire record and concluded that plaintiff did not have an impairment or combination or impairments that met or equaled any impairment presumed to be disabling (otherwise known as a "listed" impairment). With respect to the limitations posed by plaintiff's mental impairments, the administrative law judge determined that plaintiff had moderate restrictions in the categories of activities of daily living, moderate limitations in concentration, persistence and pace and two episodes of decompensation. Under the commissioner's procedure for evaluating mental impairments, these findings indicated that plaintiff's impairments were not of listing-level severity. See generally 20 C.F.R., Pt. 404, Subpt. P, App. 1, 12.00 (indicating that in general, a claimant must have "marked" functional loss in two or more categories in order to meet the criteria for a listed impairment).

As part of her consideration whether plaintiff could return to her past work or other jobs at steps four and five, the administrative law judge found that plaintiff had the same

limitations included in the hypothetical presented to the vocational expert at the hearing. At step four, she found that plaintiff would be unable to perform her past relevant work as a foreman assistant. At step five, the administrative law judge relied on the testimony of the vocational expert and found that in spite of plaintiff's limitations, she would be able to perform jobs that exist in significant numbers in the regional economy. Accordingly, she concluded that plaintiff was not disabled as defined in the Social Security Act.

The administrative law judge's decision will be addressed in more detail in the opinion below.

OPINION

A. Waiver of Counsel/Development of Record

An applicant for social security benefits has a statutory right to be represented by a lawyer at a disability hearing. 42 U.S.C. § 406. That right may be waived. Thompson v. Sullivan, 933 F.2d 581, 584 (7th Cir. 1991). To ensure a valid waiver of that right, an administrative law judge must explain three things to the claimant: 1) the manner in which an attorney can assist in the proceedings; 2) the possibility of free counsel or a contingency arrangement; and 3) if the arrangement was a contingency fee, that fees would be limited to 25 percent of the past-due benefits awarded. Id. at 585; Binion v. Shalala, 13 F.3d 242, 245 (7th Cir. 1994). If the claimant did not validly waive the right to representation, then the case must be remanded for a new hearing unless the commissioner can establish that the

administrative law judge fully and fairly developed the record. Id. at 245-246. If the commissioner makes this showing, the plaintiff may rebut it by demonstrating prejudice or an evidentiary gap in the record. Id. at 245. To show prejudice, a plaintiff represented by a lawyer in court proceedings must point to specific facts that were not brought out at the hearing or provide new evidence that the administrative law judge would have discovered upon further inquiry. Id. at 246.

As noted previously, the administrative law judge discussed with plaintiff her right to representation at the beginning of the hearing. AR 313-14. In addition, the social security administration advised plaintiff in writing of her right to counsel; copies of these letters are in the record. At the hearing, plaintiff acknowledged having received a letter advising her of her right to counsel and including a list of organizations that could assist her in obtaining legal representation. Having reviewed the hearing transcript and read the letters, I am persuaded that the combination of the oral and written advisories was adequate to convey the information required by Thompson. Nevertheless, it is unnecessary to decide this issue because even if plaintiff did not validly waive her right to representation, the commissioner has met his burden to show that the administrative law judge fully and fairly developed the record.

In Thompson, 933 F.2d at 586-88, the court found that the commissioner had not satisfied this burden where the administrative law judge had conducted only a cursory examination of the plaintiff, failed to order any physical or psychiatric examination, failed

to ask plaintiff about his alcoholism or mental impairments and ignored reports favorable to plaintiff. In contrast, in Binion, 13 F.3d at 245, the court found that the commissioner's burden had been met where the administrative law judge obtained all the relevant medical records, elicited detailed testimony from the claimant, allowed a friend of the claimant to testify and obtained additional medical evidence after the hearing.

The facts of this case align more closely with those in Binion than in Thompson. The record before the administrative law judge included the results of physical and psychiatric examinations of plaintiff. The hearing lasted one hour, during which the administrative law judge questioned plaintiff thoroughly about her physical and mental symptoms, activities and medications. She also asked questions of Lewis and allowed plaintiff to elicit information from her. As a result of her questioning, the administrative law judge discovered that she did not have records of plaintiff's participation in day treatment; she obtained those records after the hearing. The administrative law judge also called a vocational expert to testify. In addition, the judge allowed plaintiff the opportunity to make a closing statement and to submit an additional written statement after the hearing. I am satisfied that the administrative law judge fulfilled her duty to fully and fairly develop the record.

Plaintiff argues that remand is required because of prejudicial gaps in the record. I address these arguments in the context of deciding plaintiff's challenges to the sufficiency of the evidence.

1. Dr. Warren

Under 42 U.S.C. § 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). In reviewing the commissioner's decision, the court conducts "a critical review of the evidence," considering both the evidence that supports, as well as the evidence that detracts from, the commissioner's decision. Clifford, 227 F.3d at 869. The decision cannot stand if it lacks "an adequate discussion of the issues." Steele v. Barnhart, 290 F.3d 936, 940 (7th Cir. 2002).

Plaintiff contends that the administrative law judge's decision is not supported by substantial evidence because the judge failed to give adequate consideration to Dr. Warren's October 2005 report. I disagree. The administrative law judge expressly referred to Dr. Warren's report, noting that although Dr. Warren had predicted that plaintiff would probably continue to have limited mobility and might develop arthritis, he had not described any physical restrictions flowing from plaintiff's limited range of motion and had not reported evidence of arthritis. In addition, the administrative law judge noted that Dr. Warren's medical reports documented minimal swelling and good range of motion in the ankle, findings that were inconsistent with plaintiff's allegation of disabling physical symptoms. As further support for her conclusion that plaintiff was capable of performing

light work in spite of her ankle injury, the administrative law judge noted that plaintiff was able to walk to the store to do grocery shopping, use public transportation, clean and perform community service work. This evidence provides substantial support for the administrative law judge's determination that Dr. Warren's conclusory letter did not support any further reduction in plaintiff's physical residual functional capacity.

Plaintiff suggests that the administrative law judge should have found from Dr. Warren's report that plaintiff was limited in her ability to balance. The ruling that plaintiff cites, SSR 96-9p, has little application to this case because it addresses the potential effect of certain limitations on an individual's ability to perform the full range of sedentary work, not light work. Even more problematic is plaintiff's failure to cite any evidence to suggest that she has trouble balancing. Dr. Warren did not endorse such a limitation, either in his medical records or his October 2005 letter, and plaintiff said nothing of balance problems at the hearing.

Plaintiff's contention that she cannot ambulate effectively, as that term is defined in the listings, is equally unsupported. Plaintiff testified that she is able to walk to the grocery store, shop and use public transportation. There is no evidence that she uses crutches or a cane, much less two of them, as required by the relevant listing.[2]

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[2]Listing 1.02(A) states that a dysfunction of lower joints constitutes a disability if it involves "one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively" without the use of a hand-held assistive device(s)---such as canes, crutches, or walkers---that limits the functioning of both arms. 20 C.F.R. Pt. 404, Subpt. P., App. 1.02(A), 1.00(B)(3)(b).

Circling back to her allegation that the administrative law judge did not fully develop the record, plaintiff contends that the administrative law judge should have contacted Dr. Warren to find out why plaintiff did not have any orthopedic treatment after August 2005 and "to further develop the record" concerning the other statements Dr. Warren made in his October 2005 letter. This argument is unpersuasive. The administrative law judge appears to have noted plaintiff's lack of treatment after August 2005 merely to show that Dr. Warren had not yet removed the implants in plaintiff's ankle. More important, plaintiff fails to specify what new information Dr. Warren would have provided had the administrative law judge contacted him.

Plaintiff has submitted additional records from Dr. Warren, Aff. of Dana Duncan, dkt. #10, but they contain no information having the potential to change the outcome of plaintiff's application. Some of the records duplicate those already in the record. Others post-date the administrative law judge's decision, making them immaterial to the adequacy of the record. The two reports that remain, dated October and November 2005, do not differ significantly from the reports already in the record. Like the reports reviewed by the administrative law judge, the additional records from Dr. Warren show that plaintiff had good healing of the fracture and good range of motion, although she continued to complain of tenderness. Neither report documents medical findings showing that plaintiff meets the listings or describes any limitation that would preclude plaintiff from performing light work.

In sum, there is no support in the record for plaintiff's claim that the administrative law judge failed to consider Dr. Warren's October 2005 report. Further, plaintiff has failed to establish that she was prejudiced by the administrative law judge's failure to seek additional information from Dr. Warren.

2. GAF scores

Plaintiff argues that the administrative law judge's decision is not supported by substantial evidence because the judge failed to consider GAF scores in the record that suggest severe mental limitations inconsistent with an ability to maintain competitive employment. Plaintiff argues that the administrative law judge mentioned only the 55-60 GAF score assigned by Dr. Desmonde, but ignored a score of 45 assigned by a psychotherapist on August 31, 2004; notes from day treatment indicating that plaintiff's GAF score was 35 at admission in July 2004 and on discharge in October 2004; and a GAF score of 30 assigned by a physician who evaluated plaintiff when she was admitted to the hospital for detoxification in July 2005.

As noted previously, the GAF scale is used by clinicians to reflect a judgment about the individual's overall level of functioning. A GAF score of 31-40 applies to an individual with "[s]ome impairment in reality testing or communication . . . OR major impairment in several areas;" a score of 41-50 indicates "serious symptoms . . . OR any serious impairment in social, occupational, or school functioning . . .". DSM-IV-TR at 34 (emphasis in original).

However, the GAF scale is intended to be used to make treatment decisions, id. at 32, not disability decisions. Plaintiff does not explain how the administrative law judge ought to have translated these GAF scores into specific findings or factored them into her decision.

Plaintiff's sketchy argument aside, I am satisfied that the administrative law judge did consider and account for plaintiff's low GAF scores in her decision. She specifically mentioned the score of 45 assigned by the psychotherapist who evaluated plaintiff while she was participating in day treatment. Although she did not mention the other scores, the administrative law judge's decision makes clear that she reviewed the entire medical record, including the records from plaintiff's day treatment and July 2005 admission to Memorial Medical Center. The administrative law judge found that plaintiff's participation in day treatment and her July 2005 hospital admission, when the low GAF scores were recorded, counted as "episodes of decompensation" for the purposes of evaluating whether plaintiff's condition met a listed mental impairment. In other words, the administrative law judge viewed plaintiff's low GAF scores as downward deviations from plaintiff's baseline functioning.

The administrative law judge noted that "[t]he record contains observations regarding some significant psychotic symptomatology, but primarily in the context of questionable medication compliance, and abuse of alcohol." AR 22. This statement provides further proof that the administrative law judge did not "ignore" the GAF scores. To the contrary, the administrative law judge recognized the existence of evidence indicating that plaintiff

had at times demonstrated more severe symptoms, but she rejected this evidence because of plaintiff's failure at those times to comply with her medication regime and to abstain from alcohol.

In spite of this and several other findings by the administrative law judge relating to plaintiff's failure to comply with mental health treatment, plaintiff makes no attempt in her initial brief to challenge these findings. In her reply brief, however, plaintiff argues that it was improper for the administrative law judge to rely on plaintiff's noncompliance as a basis for rejecting her application without first asking plaintiff why she was noncompliant. Plaintiff argues that her failure to comply with treatment was a result of her mental impairments.

Plaintiff waived this issue by failing to raise it until her reply brief. See, e.g., United States v. Adamson, 441 F.3d 513, 521 n.2 (7th Cir. 2006) (arguments raised for first time in reply brief are waived). However, even if plaintiff had properly raised the issue, her argument would fail. Plaintiff has not pointed to any evidence in the record or presented any new evidence from any mental health professional to support her claim about the relationship between her mental impairments and her failure to comply with treatment recommendations. Cf. Brashears v. Apfel, 73 F. Supp. 2d 648, 651-52 (W.D. La. 1999) (remanding under sentence six of § 405(g) for consideration of report from plaintiff's mental health professionals stating that plaintiff's failure to take medication as prescribed was consistent with her mental illness). Furthermore, the administrative law judge did not rely

solely on plaintiff's noncompliance as the basis for denying her application. She also noted that in spite of plaintiff's failure to comply with recommended treatment, she had not had any prolonged inpatient treatment for mental stabilization or any formal commitment for treatment. The administrative law judge noted that except for periods when plaintiff was drinking or not taking her medications, the only basis for reported psychotic symptoms was plaintiff's own statements, which varied in their presentation. In addition, plaintiff was able to live independently, maintain contact with family members, friends and neighbors, use public transportation and shop for her own groceries, attend AA meetings and manage her finances. The administrative law judge also pointed out that plaintiff had a poor work history and had not followed through with vocational services. Finally, the administrative law judge relied heavily on Dr. Desmonde's evaluation and opinions concerning plaintiff's degree of impairment. Thus, although plaintiff's noncompliance contributed significantly to the administrative law judge's denial of her claim, it was only one of a constellation of factors. With the exception of Dr. Desmonde's report, plaintiff has not challenged any of these other findings. It follows that plaintiff suffered little prejudice as a result of the administrative law judge's failure to explore whether plaintiff's mental impairments were the reason for the noncompliance.

Plaintiff also complains that the administrative law judge ought to have called a medical expert or attempted to contact "any treating psychologist or psychiatrist to expatiate on [plaintiff's] mental health condition." Plt.'s Br. in Supp. of Mot. for Summ. Judg., dkt.

#9, at 33. Plaintiff has neither named any treating psychologist or psychiatrist who is likely to have additional information about plaintiff's condition that is not already in the record nor explained what it is about her condition that requires further development. As the administrative law judge noted, the only doctor who appears to have treated plaintiff for her mental conditions with any regularity is Dr. Lean, and plaintiff has seen Dr. Lean only infrequently. Plaintiff has not produced any records from Dr. Lean that were not included in the record or suggested that he or any other mental health professional has additional information to provide about plaintiff's condition or her failure to comply with treatment recommendations. "Mere conjecture or speculation that additional evidence might have been obtained in the case is insufficient to warrant a remand." Binion, 13 F. 3d at 246 (citations omitted).

The administrative law judge did not need to consult a medical expert unless she concluded that the evidence before her was insufficient to make a disability determination. 20 C.F.R. § 416.919a(b) (ALJ may order consultative examination "when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on [the] claim"); 20 C.F.R. § 416.927(f)(2) (iii) (ALJ may ask for opinion from medical expert on nature and severity of impairment and on whether impairment equals listed impairment). The record included the reports of plaintiff's treating physicians, two consultative examiners and a state agency physician, as well as records from plaintiff's participation in day treatment and inpatient hospitalizations. Plaintiff has not explained what pieces of evidence were

lacking or what information a medical expert could have provided that was not brought out in the administrative record. Even when a claimant proceeds *pro se*, the court "generally respects the ALJ's reasoned judgment" regarding how much evidence is needed to make a finding about disability. Luna v. Shalala, 22 F.3d 687, 692 (7th Cir.1994). Because plaintiff has failed to show that she was prejudiced by the administrative law judge's failure to consult a medical expert, remand is not required.

B. Dr. Desmonde's Opinion

Finally, I reject plaintiff's contention that in asserting plaintiff's residual functional capacity and formulating the corresponding hypothetical the administrative law judge failed to account adequately for Dr. Desmonde's opinion that plaintiff "may have some difficulties tolerating the stress and pressure of full time employment." As plaintiff recognizes, the administrative law judge expressly noted this statement and explained that she had accounted for plaintiff's susceptibility to stress by limiting her to jobs with low production standards. In addition, she limited plaintiff to jobs that required no public contact and little interaction with coworkers or supervisors. As the administrative law judge pointed out, Dr. Desmonde did not indicate that plaintiff was precluded from all employment. Plaintiff has not pointed to any evidence indicating that she is susceptible to particular stressors that were not eliminated by the administrative law judge's restrictive residual functional capacity assessment or argued that she has any specific mental limitations that would preclude her

from performing the jobs identified by the vocational expert. Accordingly, there is no basis for remanding this case for further consideration of Dr. Desmonde's report.

ORDER

IT IS ORDERED that the decision of defendant Michael J. Astrue denying plaintiff April Gauthier's application for Supplemental Security Income is AFFIRMED. Plaintiff's motion for summary judgment is DENIED.

The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 14th day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge