IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ROSE M. DUBAY,

OPINION AND ORDER

Plaintiff,

11-cv-42-bbc

V.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

- -

This is an action for judicial review of an adverse decision of the commissioner of Social Security brought under 42 U.S.C. § 405(g). Plaintiff Rose DuBay is a 64-year-old woman who suffers from fibromyalgia, mild arthritis in the hands and back, mild spurring in the right knee, hypertension, glucose intolerance and obesity. She applied for benefits, alleging that she was disabled as of March 20, 2007. Following a hearing, the administrative law judge found her disabled as of April 22, 2009.

Plaintiff contends that the administrative law judge erred in determining her onset date of disability, in failing to give Dr. Kirkhorn's opinion controlling weight as the opinion of a treating physician, in failing to explain how he arrived at one of his residual functional capacity limitations and in concluding in his step four determination that plaintiff was still

capable of performing her past work as a companion. Plaintiff asks this court to award benefits from March 20, 2007 or remand for further consideration.

Plaintiff fails to cite sufficient evidence in the record to support her assertions or to explain convincingly why the administrative law judge erred. The administrative law judge presented substantial evidence in support of his decisions. Accordingly, I am denying plaintiff's motion for summary judgment and am affirming the administrative law judge's decision.

FA CTS

A. Background and Procedural History

Plaintiff was born on September 1, 1947. AR 23, 31. She finished high school and completed one year of college course work. AR 23, 31. She has past relevant work as a house cleaner, companion, sales clerk and food worker. AR 22.

On March 20, 2007, when plaintiff was 60, she applied for disability insurance benefits and supplemental security income with a protective filing date of February 9, 2007. She alleged disability as of January 1, 2005 as a result of chronic pain from fibromyalgia, acute arthritis, degenerative bone disease, high blood pressure, knee problems and borderline diabetes. AR 135, 139, 205. After the commissioner denied her claims both initially and upon reconsideration, she asked for a hearing, AR 65-68, 72-75, 81-82, which was held on

May 6, 2009 before administrative law judge Kevin M. McCormick. AR 28-60. At the hearing, plaintiff amended her alleged onset day of disability to March 20, 2006. AR 32. Afterwards, she amended this date to March 20, 2007, the date she applied for disability. AR 133.

At the hearing, the administrative law judge heard testimony from plaintiff, from an impartial medical expert and from an impartial vocational expert. AR 28-60. On September 22, 2009, the administrative law judge issued his decision, finding plaintiff not disabled prior to April 22, 2009, but disabled as of that date, with her disability continuing through the date of the decision. AR 5-16. The decision became the final decision of the commissioner on November 29, 2010, when the Appeals Council denied plaintiff's request for review. AR 1-5.

B. Medical Evidence

In 1999, plaintiff was given a diagnosis of fibromyalgia by Dr. Swanson, a rheumatologist at the Marshfield Clinic/Saint Joseph's Hospital. AR 283, 386. Dr. Lisa Herbert, a family practitioner at the same establishment, began following plaintiff's fibromyalgia in November 2002. AR 283. (The clinic was unable to provide plaintiff's medical records from January 2005. AR 259-60.)

On May 10, 2005, Dr. Herbert reported that plaintiff had elevated blood pressure

with numerous past blood pressure readings in the hypertensive range. AR 261. By August 15, 2005, plaintiff's blood pressure remained slightly elevated, but was markedly improved. AR 266. Plaintiff had lost 20 pounds and weighed 161 pounds. AR 266.

On March 14, 2006, plaintiff again had elevated blood pressure, indicating stage I hypertension. AR 272. The increase in blood pressure corresponded to an almost 20-pound weight gain. AR 272. Dr. Herbert believed that if plaintiff lost weight, her blood pressure might decline to normal. AR 272.

On September 11, 2006, plaintiff's blood pressure was still elevated but she refused to treat it. AR 280. Her weight had increased to 203 pounds. AR 280. Plaintiff stated that she knew she was gaining weight but continued to eat inappropriately. AR 280. She was experiencing chronic pain from her fibromyalgia made activities and daily living problematic. AR 280. Dr. Herbert believed that plaintiff's flare up of fibromyalgia pain was attributable to her weight gain. AR 280. She prescribed medication for the pain. AR 281.

On January 25, 2007, plaintiff's blood pressure was higher, possibly from another substantial weight gain. AR 288. Plaintiff began medication for her hypertension. AR 289. She was still experiencing pain from her fibromyalgia and reported pain in her right lower extremity. AR 288. Dr. Herbert performed an examination of that extremity and found that plaintiff was experiencing pain in her foot and sacroiliac joint and had fluid in her knee. AR 289.

Also on January 25, 2007, plaintiff's right knee, right foot and right sided sacroiliac joint were x-rayed, AR 289, 291, for examination by Dr. Eric Callaghan, Department of Radiology, who found "questionable spurring versus loose bodies" at the knee. AR 291, 306. He found that plaintiff had areas of mild degenerative changes in her foot and mild degenerative changes at the sacroiliac joints with significant degenerative changes in the right sacroiliac joints at L5-S1. AR 291, 307-08.

On March 7, 2007, Dr. Herbert conducted a complete physical examination of plaintiff. AR 294. Plaintiff's elevated blood pressure had improved following a change in medication, but Herbert suspected emerging diabetes. AR 294, 295. Additionally, plaintiff was still experiencing back, knee and foot pain. AR 294. Herbert believed that plaintiff might have severe disseminated degenerative joint disease and some component of fibromyalgia with diffuse myalgias. AR 294. She referred plaintiff to the Department of Rheumatology for a consultation. AR 297, 300.

Dr. Swanson performed the rheumatology consultation on March 27, 2007 for plaintiff's back, hip and generalized pain. AR 300. Plaintiff reported that she suffered from "severe stiffness and pain in the first 30 minutes of the day and did not feel her best until noon." AR 300. She had difficulty sleeping. AR 300. Swanson concluded that plaintiff suffered from a history of fibromyalgia, mild degenerative disc disease, osteoarthritis

(degenerative joint disease) of the hands, depression and obesity. AR 301, 304. He put her on new medications and encouraged her to engage in physical therapy to increase her aerobic and strength fitness. AR 302, 304.

On that same date, Dr. Kristin Lieberman, Department of Radiology, examined the x-rays of plaintiff's back. AR 309. She concluded that plaintiff had degenerative disc disease in the thoracic spine and in the lumbar spine, primarily at the L4-5 and L5-S1 disc space levels. AR 309.

On that same date, Dr. David Bjarnason, Department of Rheumatology, conducted a bone density study and concluded that plaintiff had osteopenia. AR 310.

On April 9, 2007, plaintiff was informed by telephone that her blood sugar remained elevated. AR 341. She was encouraged to follow a low-sugar diet and increase exercise. AR 341.

On January 3, 2008, Dr. Herbert met with plaintiff to discuss and treat her chronic pain. AR 398. Plaintiff had pain in her back, hands, feet, knee and neck. AR 398-99. Her current pain medications were not working well and her pain had become "all consuming," leading to depression, an inability to sleep and an inability to complete activities of daily living and work. AR 398. Her pain prohibited her from exercising as instructed and her weight had increased to 231 pounds. AR 398. Dr. Herbert chastised plaintiff for not seeing

a specialist for the knee pain as she had previously suggested; referred her to orthopedics for the knee pain; and considered prescribing new medications for the pain. AR 398-99. Herbert noted that plaintiff had applied for disability but had been told that she did not qualify. AR 398.

On February 25, 2008, Dr. Herbert completed a report that provided information regarding various diagnostic studies that had been done on plaintiff at the Marshfield Clinic. AR 405. Herbert believed that plaintiff suffered from significant pain related to her lower back, knee and foot, AR 385, but she acknowledged that as a family practitioner, she was not qualified to provide information regarding disability. AR 385.

On May 28, 2008, Dr. Roderick Koehler, Department of General Internal Medicine, conducted a physical examination of plaintiff. AR 365-369. Koehler noted that plaintiff had a history of widespread degenerative joint disease and fibromyalgia. AR 365-366, 368. Plaintiff reported pain in her right knee, back, hip, shoulders, arms and neck. AR 365-66. Koehler renewed plaintiff's medication and encouraged her to see a back specialist for her degenerative disc disease. AR 368. He found that her blood pressure was being adequately controlled with medication, but her blood sugar levels were pre-diabetic. AR 368.

On August 14, 2008, plaintiff met with Dr. Scott Erickson, Department of General Internal Medicine, for a followup appointment. AR 372. Plaintiff's blood pressure remained

steady. AR 372. She reported that she was feeling well, had been getting out more, going down to the park once in awhile and had been enjoying herself. AR 372.

On September 12, 2008, plaintiff was re-approved for the Community Care and Community Health Access Programs pending completion of a questionnaire, AR 374, but declined enrollment. AR 377, 378.

On April 22, 2009, plaintiff saw Dr. Steven Kirkhorn for a disability assessment. AR 414-23. Dr. Kirkhorn evaluated plaintiff for 45 minutes and reviewed her chart for 20 minutes. AR 414. He found that plaintiff suffered from fibromyalgia, osteoarthritis at multiple sites, depression and stable hypertension. AR 423. His examination of plaintiff identified the following symptoms: multiple tender points, chronic fatigue, morning stiffness, muscle weakness, subjective swelling and depression. AR 415. He opined that emotional factors contributed to the severity of plaintiff's symptoms and functional limitations and that plaintiff "often" experienced pain severe enough to interfere with attention and concentration. AR 415-16. It was his belief that if plaintiff were placed in a competitive work situation she could walk only one block without rest or severe pain; sit for 15-20 minutes at one time; stand for only 10-15 minutes at one time; stand or walk for less than two hours total in an eight-hour day; sit for two hours total in an eight-hour day; must be allowed to walk every 15-20 minutes during an eight-hour day for five minutes at a time;

must be allowed to shift positions at will from sitting, standing or walking; would likely be absent from work about four times a month as a result of her impairments; and should rarely climb stairs, never climb ladders and seldom bend or twist. AR 417-18. In Kirkhorn's opinion, plaintiff's condition had persisted for more than 12 months and would slowly progress. AR 423.

C. Consulting Physicians

On May 1, 2007, state agency consulting physician Dr. Michael Baumblatt assessed plaintiff's physical residual functional capacity. AR 312-19. He concluded that plaintiff could lift or carry 10 pounds frequently and 20 pounds occasionally; stand or walk six hours in an eight-hour work day; sit six hours in a eight-hour workday; and perform unlimited push or pull functions. AR 313. He did not establish any postural, manipulative, visual, communicative or environmental limitations. AR 324-26.

On May 5, 2007, state agency psychologist Dr. Keith Bauer reviewed plaintiff's medical records and found that plaintiff did not have any severe mental impairments. AR 320-33. He found that plaintiff's degree of functional limitations included only mild restriction of activities of daily living and no difficulties in maintaining social functioning, no difficulties maintaining concentration, persistence or pace and no episodes of

decompensation. AR 330.

D. Hearing Testimony

1. Plaintiff's testimony

At the hearing before the administrative law judge, plaintiff testified that she stood five feet six inches tall, weighed a little more than 200 pounds and had weighed that much since 2006. AR 37. Plaintiff recounted her employment history since March 20, 2006. AR 32. Plaintiff testified that she was self-employed for the past two years. AR 32. During her self-employment, she cleaned and acted as a companion to the elderly for three to five hours a week. AR 32. She testified that she been self-employed between 1994-2004 as a house cleaner and companion, where the most weight she would lift was a vacuum cleaner, and as a sales clerk and fast food worker, where she lifted no more than 10 pounds. AR 33-34. She testified that she was on her feet most of the time while working part-time as a sales clerk, one hour out of an eight-hour day as a companion and six hours out of an 18-hour work week as a house cleaner. AR 39-41.

Plaintiff testified that she was unable to do any of her past work or any other work in the national economy because she lacked the endurance to work that many hours due to her arthritis, fibromyalgia and degenerative bone disease. AR 36-37. She testified that the fibromyalgia made her hands and shoulders weak and shaky, but that she could grasp large

objects like coffee cups repetitively. AR 41. She testified that she could sit comfortably for only 20 minutes at a time before she had to stand or stretch and that she could stand for no more than 20 minutes at one time. AR 42-43. She testified that her level of pain on a scale of one to ten was a seven or eight at most, but could drop to a five or six with medication. AR 44. She testified that she could lift a gallon of milk, but not repetitively and not for two hours out of an eight-hour day. AR 44. She testified that she can reach overhead and out to the side one time but because of her degenerative bone disease, she often chose to move her whole body rather than reaching or lifting. AR 45.

2. Impartial medical expert

The administrative law judge called Dr. Oral Sparks to testify as an impartial medical expert. AR 45. Sparks summarized plaintiff's medical record, finding that plaintiff had a diagnosis of fibromyalgia in 1998 and that her fibromyalgia symptoms had increased with her weight gain. AR 45. Additionally, she had mild osteoarthritis of the hands and feet, mild facet arthritis, mild degenerative spurring of the right knee that was diagnosed in January 2007, controlled hypertension diagnosed in January 2007, glucose intolerance diagnosed in March 2007 and obesity. AR 46. He concluded on his review that plaintiff did not meet or equal a listing since March 20, 2006. AR 37, 47.

Although he found that plaintiff did not meet a listing, Dr. Sparks concluded that plaintiff had a residual functional capacity to lift 20 pounds occasionally and 10 frequently, stand or walk a total of four hours in an eight-hour day and sit a total of six hours in an eight-hour day as long as she was able to change position every hour for two to three minutes. AR 47. Her postural limitations involved no ropes, ladders or scaffolding, but she could occasionally climb ramps and stairs, crouch, kneel, stoop and crawl. AR 47-48. Gross manipulation could be frequent but plaintiff should not have concentrated exposure to extreme cold, no concentrated exposure to vibrating tools and no unprotected heights or hazardous machinery. AR 47-48.

3. Impartial vocational expert

The administrative law judge called Hadley Biraskin to testify as an impartial vocational expert. AR 52. Biraskin reviewed plaintiff's past work as a house cleaner, companion, sales clerk and fast food worker, all of which had a light exertional nature. AR 52-53.

The administrative law judge asked Biraskin for his analysis of the three different residual functional capacities provided by Drs. Baumblatt, Kirkhorn and Sparks and whether plaintiff could hypothetically perform her past work, as it was usually customarily performed.

AR 53. Biraskin testified that under Baumblatt's assessment, plaintiff could perform all her past work; under Kirkhorn's assessment, she could not perform any past work or any other work in the national economy; and under Sparks's assessment, she could perform only her past work as a companion. AR 53-54.

The administrative law judge asked Biraskin whether under Dr. Sparks's assessment, plaintiff could perform past work as performed, not as it was customarily performed. AR 54. Biraskin concluded that plaintiff could perform her past job as a house cleaner because she had reported that she was on her feet only for six hours a week. AR 54-55.

The administrative law judge then asked whether there were other jobs in the regional or national economy that the plaintiff could perform. AR 56. Biraskin testified that plaintiff could perform a restricted range of cashier II positions, the job of information clerk in motor transportation and the job of ticket seller. AR 56-57. Biraskin testified that job availability for those positions included 10,000 jobs in Wisconsin and 96,100 nationally for cashier II positions within the restricted range; 3,500 jobs in Wisconsin and 53,000 nationally for information clerks in motor transportation; and 5,000 in Wisconsin and 55,000 nationally for ticket sellers. AR 56-57. The administrative law judge asked Biraskin whether his testimony was consistent with the Dictionary of Occupational Titles. AR 57. He responded that it was. AR 57.

E. The Administrative Law Judge's Decision

In reaching his conclusion that plaintiff was not disabled before April 22, 2009, but became disabled as of that date, the administrative law judge performed the required five-step sequential analysis. See 20 C.F.R. §§ 404.1520, 416.920. Under this test, the administrative law judge sequentially considers 1) whether the claimant is currently employed; 2) whether the claimant has a severe impairment; 3) whether the claimant's impairment meets or equals one of the impairments listed in 20 C.F.R. § 404, Subpt. P, App. 1; 4) whether the claimant can perform his past work; and 5) whether the claimant is capable of performing work in the national economy. Knight v. Chater, 55 F.3d 309, 313 (7th Cir. 1995). If a claimant satisfies steps one through three, a disability finding follows automatically. Id. If the claimant meets steps one and two, but not three, then he must satisfy step four. Id. The claimant bears the burden of proof in steps one through four. Id. If the claimant satisfies step four, the burden shifts to the commissioner to prove that the claimant is capable of performing work in the national economy. Id.

At step one, the administrative law judge found that plaintiff had not engaged in gainful activity since January 1, 2005, the alleged onset date. AR 17. At step two, he found that plaintiff had severe impairments of fibromyalgia, mild osteoarthritis in the hands, mild arthritis at L4-5 and L5-S1, mild degenerative spurring in the right knee, hypertension,

glucose intolerance and obesity with a BMI of 37.9. AR 17. At step three, the administrative law judge found that plaintiff did not have an impairment or combination of impairments that met or medically equaled any impairment listed in 20 C.F.R., Pt. 404, Subpart P, Appendix 1. AR 18.

The administrative law judge determined that before April 22, 2009, plaintiff had the residual functional capacity to

> lift or carry 10 pounds frequently and 20 pounds occasionally; stand or walk for 6 hours out of an 8-hour workday; sit for 6 hours out of an 8-hour workday with the opportunity to change positions to standing for 2-3 minutes each hour; avoid climbing ladders, ropes and scaffolds; occasional climbing ramps and stairs, balance, kneel, crouch, crawl and stoop; frequent gross manipulation bilaterally; avoid concentrated exposure to extreme cold, vibratory tools, unprotected heights and hazardous machinery.

AR 19.

In determining this residual functional capacity, the administrative law judge considered the credibility of plaintiff's testimony regarding her symptoms in light of 20 C.F.R. 404.1529 and 416.929 and Social Security Rulings 96-4p and 96-7p. AR 19. Specifically, the administrative law judge considered claimant's testimony concerning the intensity, persistence and limiting effects of her symptoms. AR 19. The administrative law judge concluded that plaintiff's testimony about her symptoms was not credible as it related to the period before April 22, 2009. AR 20.

In reaching this conclusion, the administrative law judge considered plaintiff's ability to do general cleaning work for the elderly four to six hours a week despite her allegations of disability. AR 19. Also, the administrative law judge considered plaintiff's medical evidence and found it did not support plaintiff's testimony. AR 19-20. The judge considered plaintiff's repeat physical examinations that had been mostly normal except for some arthritic changes, that plaintiff was neurologically intact, that she had no documented restriction in the range of motion in her spine or extremities, that she had a normal gait, that she did not require assistive devices to ambulate and did not require any special accommodations to relieve her pain and other symptoms. AR 19. The administrative law judge considered that, despite her allegations of disabling fatigue and weakness, plaintiff did not exhibit any symptoms indicative of severe or disabling pain, such as significant disuse muscle atrophy, loss of strength or difficulty moving. AR 20. Also, there was no evidence of cognitive deficits caused by pain or depression. AR 20. The administrative law judge noted that plaintiff had received a conservative treatment approach for her aliments, which is not the type of medical treatment that one would expect for a totally disabled individual. AR 19. Although the administrative law judge noted that plaintiff had been taking the appropriate medications for the alleged impairments, which weighed in her favor, the objective evidence showed that the medications were relatively effective in controlling her symptoms and she had not alleged any side effects from taking them. AR 20.

In determining this residual functional capacity, the administrative law judge weighed the opinions of the Marshfield Clinic physicians and the medical expert in light of 20 C.F.R. 404.1527 and 416.927 and Social Security Rules 96-2p and 06-3p. AR 19. As to Dr. Herbert's opinion, the administrative law judge noted that Herbert's treatment and involvement with the plaintiff had been limited and intermittent. AR 20. He noted that Herbert's opinion that plaintiff had significant pain was neither supported by her clinical findings and progress notes, which did not show intensive treatment for the claimed fibromyalgia, nor by the results of comprehensive examination conducted by Dr. Koehler on May 28, 2008. AR 20.

As to Dr. Kirkhorn's opinion, the administrative law judge noted that he had numerous reservations about Kirkhorn's assessment of plaintiff's functional limitations contained in the "Fibromyalgia Residual Functional Capacity Questionnaire." AR 20. First, Kirkhorn "was a one-time occupational medical consultant who evaluated the claimant solely for the purpose of a disability assessment rather than treatment." AR 20. Second, Kirkhorn had based his assessment of plaintiff's functional capacities, in part, on plaintiff's depression, but Kirkhorn was not a mental health practitioner and did not conduct "even the most rudimentary medical status exam." AR 20. Third, Kirkhorn based his assessment primarily on plaintiff's self-reporting of history and symptoms. AR 20-21. Fourth, Kirkhorn examined plaintiff for only 45 minutes; the examination was notable only for his finding that plaintiff

had diffuse tenderness throughout the body; and he spent only 20 minutes reviewing her medical records and did not report what records he actually reviewed. AR 21. Taking into consideration these reservations and the fact that the none of the claimant's treating physicians had documented such severe limitations, the administrative law judge was unpersuaded by Kirkhorn's retrospective opinion that plaintiff's condition had persisted for longer than 12 months. AR 21.

As to Dr. Sparks's opinion, the administrative law judge noted that he gave "significant weight to [Sparks] who had the opportunity to review the entire record." AR 21. He observed that when Sparks made his determination of plaintiff's residual functional capacity, he took into consideration the claimant's impairments, including her obesity. AR 21. He noted that Sparks's opinion was corroborated by the opinion of Baumblatt, the state agency medical consultant. AR 21.

The administrative law judge determined that on April 22, 2009, the plaintiff had the residual functional capacity to:

> lift up to 10 pounds; walk one block without rest or severe pain; sit for 15-20 minutes continuously and about 2 hours total out of an 8-hour workday; stand for 10-15 minutes continuously and less than 2 hours total out of an 8-hour workday; must be allowed to walk every 15-20 minutes for 5 minutes at a time; must be allowed to shift positions at will from sitting, standing, or walking; rarely climb stairs; no climbing ladders; seldom bend or twist; and is expected to be likely absent from work about 4 times per month as a result of the impairments or treatment.

AR 21.

In making this determination, the administrative law judge considered the medical opinion of Dr. Kirkhorn. AR 21. He noted that he had the same reservations regarding Kirkhorn's opinion as described above. AR 21-22. In accepting Dr. Kirkhorn's opinion as of April 22, 2009, the administrative law judge explained that he was "giving the claimant the maximum benefit of the doubt raised by [his] reservations . . . ." AR 22. Again, he considered Kirkhorn's retrospective opinion that plaintiff's condition had persisted for more than 12 months but denied it for the same reasons described above. AR 22.

At step four, the administrative law judge found that, before April 22, 2009, plaintiff could perform her past relevant work as a companion as she actually performed it. AR 22. However, he found that beginning on April 22, 2009, plaintiff's residual functional capacity would have prevented her from being able to perform her past relevant work. AR 23. At step five, he found from the vocational expert's testimony, that since April 22, 2009, the plaintiff's age, education, work experience and residual functional capacity had prevented her from performing any jobs in the national economy that existed in significant numbers. AR 23. Thus, the administrative law judge found under the Social Security Act, 20 C.R.R. §§ 404.1520(f-g), 416.920(f-g), that plaintiff was not disabled before April 22, 2009, but became disabled on that date and had continued to be disabled through the date of his

decision. AR 23.

OPINION

A. Standard of Review

The standard by which a federal court reviews a final decision by the commissioner is well settled: the commissioner's findings of fact are "conclusive" so long as they are supported by "substantial evidence." 42 U.S.C. § 405(g). 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), the court cannot reconsider facts, reweigh the evidence, decide questions of credibility or otherwise substitute its own judgment for that of the administrative law judge. Clifford v. Apfel, 227 F.3d 863, 869 (7th Cir. 2000). Thus, where conflicting evidence allows reasonable minds to reach different conclusions about a claimant's disability, the responsibility for the 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, Clifford, 227 F.3d at 869, and the decision cannot stand if it lacks evidentiary support or "is so poorly articulated as to prevent meaningful review." Steele v. Barnhart, 290 F.3d 936, 940 (7th

Cir. 2002). When the administrative law judge 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).

B. Onset Date of Disability

The change in plaintiff's residual functional capacity, combined with plaintiff's age, education and work experience led to the administrative law judge's finding that plaintiff was disabled as of April 22, 2009. In choosing that date as the onset date, the administrative law judge relied on a questionnaire completed by Dr. Kirkhorn on April 22, 2009 describing plaintiff's functional limitations.

Plaintiff contends that although the administrative law judge accepted Dr. Kirkhorn's opinion about plaintiff's limitations, he failed to explain why those limitations would not have existed before April 22, 2009 as required by SSR 83-20. After all, argues plaintiff, an individual's limitations are often in existence long before a doctor completes a form describing those limitations or even before that doctor begins treating the individual. Further, Kirkhorn even noted that plaintiff's "condition [had] persisted for greater than 12 months."

Social Security Ruling 83-20 describes the evidence an administrative law judge

should consider when establishing the onset date of disability. SSR 83-20, available at http://www.ssa.gov/OP_Home/rulings/di/01/SSR83-20-di-01.html (last visited October 3, 2011); Perkins v. Chater, 107 F.3d 1290, 1295 (7th Cir. 1997). Where, as here, the disability at issue did not arise from a traumatic injury but involves slowly progressive impairments, the administrative law judge must consider three pieces of evidence: (1) the claimant's alleged onset date; (2) the claimant's work history; and (3) the claimant's medical and all other relevant evidence. See SSR 83-20. The date that the claimant alleges as an onset date should be the starting point of the analysis and "should be used if it is consistent with all the evidence available." Id.. The day when the impairment caused the individual to stop work is also important. Id. Nevertheless, medical evidence is "the primary element in the onset determination," and the date chosen "can never be inconsistent with the medical evidence of record." Id. The administrative law judge must provide a "convincing rationale" for the date selected. Id.

Plaintiff alleges that the administrative law judge's SSR 83-20 analysis did not take into consideration her alleged onset date, work history and the entire medical record. In particular, plaintiff argues that the administrative law judge's decision lacks any mention of her alleged onset date of disability, which should be the "starting point" of his analysis under SSR 83-20. Also, plaintiff argues that nothing in the decision suggests that the administrative law judge ever examined and considered plaintiff's work history. Finally,

plaintiff argues that the administrative law judge failed in his review of the medical evidence because he summarized Dr. Kirkhorn's finding, without comparing that evidence to the other evidence in the record.

The administrative law judge did not refer to SSR 83-20 specifically in his decision, but this omission by itself is not reversible error. See Pugh v. Bowen, 870 F.2d 1271, 1274 (7th Cir. 1989). Without the explicit reference, I must determine whether the administrative law judge nevertheless properly applied the requisite analysis. My review of the decision leads me to conclude that he did.

First, the administrative law judge considered plaintiff's alleged onset date of disability. In his step one analysis, he acknowledged plaintiff's alleged onset date of disability. Granted, he did not start explicitly with her alleged date of onset and work forwards, but he did consider plaintiff's work history and medical records between January 2005 and April 22, 2009. These facts suggest that he implicitly considered her alleged onset date in his decision.

Second, the administrative law judge considered plaintiff's work history. He explored plaintiffs' work history extensively in the hearing. Also, in his decision at step one, the administrative law judge noted that plaintiff had not engaged in substantial gainful activity since her alleged onset date of disability. In his pre-April 22, 2009 residual functional

capacity finding, he noted that despite plaintiff's alleged disability, she was able to do general cleaning work for the elderly for four to six hours a week. This is substantial evidence that he properly considered plaintiff's work history in determining her onset date of disability.

Third, the administrative law judge considered all of the medical evidence. In his pre-April 22, 2009 residual functional capacity finding, he discussed plaintiff's symptoms, claimed impairments and credibility at length. He found that plaintiff was not credible because her testimony of the intensity of her symptoms and claimed impairments was inconsistent with the medical evidence. Also, he discussed the weight he gave the medical opinions of Dr. Herbert, Dr. Kirkhorn and Dr. Sparks for the time prior to April 22, 2009. In the end, he gave significant weight to the hearing testimony of the medical expert, Dr. Sparks, whose opinion was corroborated by the May 2007 opinion of state agency medical consultant Baumblatt.

The burden to prove disability within the meaning of the Act is with the claimant. Briscoe ex rel. Taylor v. Barnhart, 425 F.3d 345, 356 (7th Cir. 2005). At the hearing, plaintiff's attorney asked plaintiff and the medical expert questions about the limitations plaintiff experienced in the period before the hearing. "When an applicant for social security benefits is represented by counsel the administrative law judge is entitled to assume that the applicant is making his strongest case for benefits." Glenn v. Secretary of Health and

Human Services, 814 F.2d 387, 391 (7th Cir. 1987). Unfortunately for plaintiff, her strongest arguments were not convincing. The alleged onset date of disability should be used only "if it is consistent with all the evidence available." SSR 83-20. In this case, the testimony did not support plaintiff's alleged onset as discussed by the administrative law judge, whose opinion was supported by substantial evidence.

I agree with plaintiff that the administrative law judge's analysis does not strictly conform to the commissioner's rules for establishing the date on which disability began. Also, I agree that the administrative law judge took a restrictive view of Dr. Kirkhorn's opinion when he found that it described plaintiff's limitations only as of April 22, 2009. Adjudicators in social security cases often use residual functional capacity assessments by treating or examining physicians as backward-looking evidence, not merely forward-looking evidence, as done here.

Nevertheless, where the evidence in the record reasonably supports the administrative law judge's selection of an onset date, I decline to remand the case simply so the administrative law judge can write a better decision. Fisher v. Bowen, 869 F.2d 1055, 1057 (7th Cir. 1989) ("No principle of administrative law or common sense requires [this court] to remand a case in quest of a perfect opinion unless there is reason to believe that the remand might lead to a different result."); Shramek v. Apfel, 226 F.3d 809, 811 (7th Cir.

2000) ("[W]e give the [administrative law judge's] opinion a commonsensical reading rather than nitpicking at it.") (internal quotations and citation omitted). Considering the reservations articulated by the administrative law judge regarding Dr. Kirkhorn's opinion and the fact that he gave plaintiff "the maximum benefit of the doubt raised by [those] reservations," it is inconceivable that the administrative law judge would reach a different conclusion upon remand.

C. Treating Physician's Opinion

Plaintiff argues that the administrative law judge erred by not giving controlling weight to Dr. Kirkhorn's opinion that plaintiff's "condition [had] persisted for greater than 12 months," which would place her onset date of disability before April 22, 2009. Plaintiff contends that Dr. Kirkhorn's opinion was entitled to such weight because he was her "treating physician."

The Social Security Regulations distinguish the opinions of three types of physicians: 1) those who treat the claimant ("treating physician"); 2) those who examine but do not treat the claimant ("examining physician"); and 3) those who neither examine nor treat the claimant, but review the claimant's medical records ("non-examining physician"). 20 C.F.R. § 404.1527(d). A treating physician's opinion is entitled to "controlling weight" by the

administrative law judge if it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence . . . ." 20 C.F.R. § 404.1527(d)(2); White v. Barnhart, 415 F.3d 654, 658 (7th Cir. 2005). For a physician to be considered a treating source, he must have had "an ongoing treatment relationship" with the claimant. 20 C.F.R. § 404.1502. This rule takes advantage of the time the physician spent with the claimant beyond simple evaluation of medical records, but controls for any biases favoring the claimant that the treating physician may bring to the disability evaluation. Hernandez v. Astrue, 277 Fed. App'x. 617, 622 (7th Cir. 2008).

A physician is not a treating source if he has "examined [the claimant] but does not have, or did not have, an ongoing treatment relationship with [the claimant]." 20 C.F.R. § 404.1502. Further, as the commissioner points out, a physician is not a treating source if the claimant's "relationship with the source is not based on [the claimant's] medical need for treatment or evaluation, but solely on [the claimant's] need to obtain a report in support of [her] claim for disability." 20 C.F.R. § 404.1502. An administrative law judge is not required to assign a non-treating physician's opinion controlling weight. 20 C.F.R. 404.1527; White, 415 F.3d at 658.

Plaintiff argues that Dr. Kirkhorn is a treating physician because other physicians at the Marshfield Clinic asked Kirkhorn to perform the examination and he had access to her

file. However, this relationship does not rise to the level of a treating physician. First, there is no evidence in the record that suggests anything "ongoing" about plaintiff's treatment relationship with Kirkhorn. Rather, according to the medical records provided, Kirkhorn had no prior clinical experience with the plaintiff except for the April 22, 2009 examination that lasted a total of 45 minutes. White, 415 F.3d at 658 (physician was not considered treating source when he had examined the claimant only once; there was no "ongoing" relationship). The fact that Kirkhorn was affiliated with the same hospital as other treating physicians does not transform him into a treating physician. In making this argument, plaintiff improperly places the focus of the inquiry on her relationship with the hospital rather than on her particular relationship with the physician. 20 C.F.R. 404.1502 (defining treating source as the claimant's "own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you.").

Second, as Dr. Kirkhorn noted in his report, he "was asked to see [the claimant] for a disability assessment for fibromyalgia. Her claim is being assisted by Dana Duncan (plaintiff's attorney) . . . ." This strongly suggests that Kirkhorn's relationship with plaintiff did not arise from her need for treatment, but rather from her need to obtain support for her disability claim. 20 C.F.R. § 404.1502. Thus, Kirkhorn is a non-treating physician. See Simila v. Astrue, 573 F.3d 503, 514 (7th Cir. 2009) (physician's opinion not entitled to

controlling weight when he examined the claimant once at behest of claimant's attorney).

Even if Dr. Kirkhorn were considered a treating physician, the administrative law judge's findings would still be upheld. Although a "treating physician's opinion is important, it is not the final word on a claimant's disability." Books v. Chater, 91 F.3d 972, 979 (7th Cir. 1996). Rather, "the weight properly to be given to testimony or other evidence of a treating physician depends on circumstances." Hofslien v. Barnhart, 439 F.3d 375, 377 (7th Cir. 2006). When a treating physician's opinion is well supported and no evidence exists to contradict it, the administrative law judge has no basis on which to refuse to accept it. Id. at 376. However, when the record contains well supported contradictory evidence, the treating physician's opinion "is just one more piece of evidence for the administrative law judge to weigh," taking into consideration the various factors listed in the regulation. Id. at 377. These factors include the number of times the treating physician has examined the claimant, whether the physician is a specialist in the allegedly disabling condition, how consistent the physician's opinion is with the evidence as a whole and other factors. 20 C.F.R. § 404.1527(d)(2). An administrative law judge must provide "good reasons" for the weight he gives a treating source opinion, id., and must base his decision on substantial evidence and not mere speculation. White v. Apfel, 167 F.3d 369, 375 (7th Cir. 1999).

The administrative law judge provided good reasons for rejecting the opinion of Dr.

Kirkhorn that plaintiff's disability had persisted for more than 12 months. First, Kirkhorn's opinion was largely speculative because he did not have any clinical experience with plaintiff in the four years before the April 22, 2009 examination; he spent only 45 minutes examining plaintiff; and he evaluated her only to provide a disability assessment.

Second, Dr. Kirkhorn's opinion was inconsistent with other substantial evidence. In particular, Dr. Herbert's treatment notes did not show intensive treatment for the claimed fibromyalgia; Dr. Koehler's examination on May 28. 2008 showed only some arthritic changes in plaintiff's finger joints and mild swelling in the right knee; and the medical expert did not find such severe restrictions. Also, Kirkhorn's own examination of plaintiff was notable only for his finding of diffuse tenderness throughout the body.

Third, Dr. Kirkhorn based his assessment in part on plaintiff's alleged depression, although his specialty is occupational medicine, not mental health, and he did not perform any mental status examinations to support his opinion. White, 415 F.3d at 659 (holding that "it was not irrational or unreasonable for the [administrative law judge] to discount a psychiatric diagnosis offered by two nontreating doctors who specialized in physical impairments").

Finally, Dr. Kirkhorn based his opinion largely on plaintiff's self-reporting. It is well settled that an administrative law judge may disregard a medical opinion premised on the

claimant's self-reported symptoms if the administrative law judge has reason to doubt the claimant's credibility. Diaz v. Chater, 55 F.3d 300, 307 (7th Cir. 1995) (administrative law judge could reject portion of physician's report based upon plaintiff's own statements of functional restrictions where administrative law judge found plaintiff's subjective statements not credible). The administrative judge disregarded Kirkhorn's opinion in part because he doubted plaintiff's credibility. The only question that might remain is whether the administrative law judge correctly analyzed plaintiff's credibility under the commissioner's rules, but plaintiff did not raise this issue.

Under Social Security Ruling 96-7p, an administrative law judge must follow a two-step process in evaluating an individual's own description of his or her impairments: 1) determine whether an "underlying medically determinable physical or mental impairment" could reasonably be expected to produce the individual's pain or other symptoms; and 2) if such a determination is made, evaluate the "intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities." SSR 96-7p; see also Scheck v. Barnhart, 357 F.3d 697, 702 (7th Cir. 2004). When conducting this evaluation, the administrative law judge may not reject the claimant's statements regarding her symptoms on the sole ground that the statements are not substantiated by objective medical evidence. SSR 96-7p; see also Scheck, 357 F.3d at 702. Instead, the administrative law judge must consider the entire case record

to determine the credibility of the individual's statements. SSR 96-7p; see also Scheck, 357 F.3d at 702. Relevant factors the administrative law judge must evaluate are the individual's daily activities; the location, duration, frequency and intensity of the individual's pain or other symptoms; factors that precipitate and aggravate the symptoms; the type, dosage, effectiveness and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms; other treatment or measures taken for relief of pain; the individual's prior work record and efforts to work; and any other factors concerning the individual's functional limitations and restrictions. SSR 96-7p; see also Scheck, 357 F.3d at 703.

An administrative law judge's credibility determination is given special deference because the administrative law judge is in the best position to see and hear the witness and to determine credibility. Shramek v. Apfel, 226 F.3d at 811. In general, an administrative law judge's credibility determination will be upheld unless it is "patently wrong." Prochaska v. Barnhart, 454 F.3d 731, 738 (7th Cir. 2006); Sims v. Barnhart, 442 F.3d 536, 538 (7th Cir. 2006) ("Credibility determinations can rarely be disturbed by a reviewing court, lacking as it does the opportunity to observe the claimant testifying."). However, the administrative law judge still must build an accurate and logical bridge between the evidence and the result. Shramek, 226 F.3d at 811. The court will affirm a credibility determination as long as the administrative law judge gives specific reasons that are supported by the record. Skarbeck v. Barnhart, 390 F. 3d 500, 505 (7th Cir. 2004).

In this case, the administrative law judge correctly evaluated plaintiff's credibility. In particular, the administrative law judge properly considered the objective medical evidence and the other relevant factors listed in the regulation in making his credibility determination. As described in detail above, he considered, among other things, her repeat physical examinations, which had been mostly normal; the full range of motion in her spine and extremities; her normal gait; and the conservative treatment that she had received. He considered the amount and side effects of plaintiff's medications, noting that while she was on the appropriate medications, which weighed in her favor, the medications had been relatively effective in controlling her symptoms and she had not complained of any side effects. Finally, the administrative law judge noted that the record showed that plaintiff was able to do general cleaning work for the elderly for four to six hours a week, despite her allegations of disability. Thus, there is an accurate and logical bridge from the evidence to the administrative law judge's conclusion that plaintiff's testimony was not entirely credible.

In sum, there is substantial evidence in the record that supports the administrative law judge's decision to discount Dr. Kirkhorn's retrospective opinion that claimant's disability began 12 months before April 22, 2009, but to accept his opinion on plaintiff's disability from that date forward. Hofslien v. Barnhart, 439 F. 3d at 377 (administrative law judge determines how much weight to give various medical opinions and court will uphold that decision as long as it is supported by substantial evidence). Accordingly, the

administrative law judge did not err in the weight he gave to Kirkhorn's opinion.

D. Residual Functional Capacity

Plaintiff contends that the administrative law judge failed to explain how he arrived at one of his residual functional capacity limitations. (A claimant's residual functional capacity is the "individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis." SSR 96-8p; see also 20 C.F.R. § 404.1545.) A "regular and continuing basis" means "8 hours a day, for 5 days a week, or an equivalent work schedule." SSR 96-8p.)

At the disability hearing stage, the responsibility for determining the claimant's residual functioning capacity lies with the administrative law judge, who must consider all relevant medical and other evidence in the record, including statements from medical sources, the claimant and others. 20 C.F.R. §§ 404.1545, 404.1546. Although medical evidence is certainly important, "[t]he determination of [residual functional capacity] . . . is an issue reserved to the [Social Security Administration]," and an administrative law judge need not consider a medical opinion conclusive. Diaz, 55 F.3d at 306 n.2 (7th Cir. 1995) (citing 20 C.F.R. §§ 404.1527(e)(2) & 416.927(e)(2)). As with his other findings, the administrative law judge must provide a "narrative discussion" describing how the evidence

supports his conclusions. SSR 96-8p. The administrative law judge must build an accurate and logical bridge between the evidence and his finding of plaintiff's residual functional capacity although he does not have to address every single piece of evidence in his decision. McKinnie v. Barnhart, 368 F. 3d 907, 910 (7th Cir. 2004).

Plaintiff objects to the administrative law judge's determination of her pre-April 22, 2009 residual functional capacity because the administrative law judge gave significant weight to the opinion of the medical expert, Dr. Sparks, but did not adopt all of Sparks's limitations. In particular, the administrative law judge's residual functional capacity finding was wholly consistent with Dr. Sparks's opinion, except with regards to the amount of time that plaintiff could stand or walk, which Dr. Sparks believed was only *four* hours out of an eight-hour day. However, the administrative law judge determined that plaintiff was capable of standing or walking for *six* hours out of an eight-hour day. Plaintiff argues that the administrative law judge erred by not providing any discussion for why he chose a different limitation than that provided by Dr. Sparks, as required by Social Security Ruling 96-8p.

Further, plaintiff contends that the administrative law judge's action significantly affected his disability finding because it changed plaintiff's exertional level under the Dictionary of Occupational Titles. She argues that under the Dictionary of Occupational Titles, the administrative law judge's limitation of six hours of standing or walking would

place her in the grid for "light" exertional work. However, if the administrative law judge had adopted Dr. Sparks's limitation of four hours, the Dictionary would have precluded a full-range of "light" exertional work and would have limited plaintiff to only "sedentary" work. Plaintiff claims this is significant because Boroskin, the vocational expert, testified that the plaintiff's past relevant work involved all "light" exertional jobs according to the Dictionary of Occupational Titles. Thus, plaintiff contends, the administrative law judge should have found the plaintiff disabled as of her alleged onset date because under Dr. Sparks's limitations, she would be precluded from doing all "light" exertional jobs.

To support her argument, plaintiff points to Briscoe ex rel. Taylor v. Barnhart. 425 F.3d 345. In that case, the court found that the administrative law judge's residual functional capacity finding violated Social Security Ruling 96-8p because the administrative law judge did not explain how he arrived at his conclusions. Id. at 352. However, that case suggests that the administrative law judge did not provide *any* explanation for his residual functional capacity assessment, not just one limitation out of the entire assessment. Further, the court found that "the record contain[ed] no evidence that would support the [administrative law judge's] description" of his residual functional capacity assessment. Id. at 352-53. These facts are in stark contrast to those in this case.

Although the administrative law judge could have been more thorough, his discussion

of the evidence and explanation of the basis of his residual functional capacity assessment are sufficient to permit an informed review of his decision, unlike in Briscoe, 425 F.3d 345. Plaintiff's argument that the administrative law judge was required to do more under Social Security Ruling 96-8p is not persuasive.

The administrative law judge analyzed the standing or walking limitation indirectly when he gave "significant weight to the opinion of the medical expert who had the opportunity to review the entire record" and whose opinion was corroborated by the opinion of Baumblatt, the state agency medical consultant. Both Dr. Sparks's and Baumblatt's opinions contained similar limitations, but Baumblatt's limitation was for six hours of standing or walking, instead of the four assessed by Sparks. Further, the administrative law judge's explanation of his reasons for rejecting the claimant's testimony and the opinions of Dr. Kirkhorn and Dr. Herbert makes it clear that he considered all of the evidence on record. This is sufficient to meet the requirements under Social Security Ruling 96-8p.

Further, even if the administrative law judge did err in substituting six hours for four hours of standing or walking in an eight-hour day, I agree with the commissioner that this single discrepancy is harmless. First, counter to plaintiff's contentions, adoption of four hours instead of six hours of standing or walking in an eight-hour day would not necessarily limit plaintiff to only "sedentary" work under the Medical-Vocational Guidelines because a

particular exertional level within the grids is not all-or-nothing. Haynes v. Barnhart, 416 F.3d 621, 627 (7th Cir. 2005) (rejecting claimant's argument that because he could not perform full range of light work, he necessarily falls squarely within sedentary classification, for which he could perform full range of work). Rather, the regulations envision cases in which the claimant has a "hybrid" residual functional capacity and do not mandate the use of the grids in such cases. Id. at 628; 20 C.F.R. Pt. 404, Subpt. P, App. 2 § 200.00(d). As the Seventh Circuit has explained:

> The regulations do not mandate the use of the grids in all circumstances in which a claimant happens to be capable of performing a full range of work at a given minimal level. Rather, the regulations broadly specify that the grids are to be employed and a conclusion directed regarding disability when a claimant's vocational factors and [residual functional capacity] coincide with all of the criteria of a particular rule. In such circumstances, an [administrative law judge] need only line up the claimant's [residual functional capacity] and vocational factors in the appropriate grid table, and the grid will direct a finding of disabled or not disabled. But when a claimant does not precisely match the criteria set forth in the grids, the grids are not mandated.

Haynes, 416 F.3d at 627-28 (internal citations and quotations omitted). Thus, when a claimant has a "hybrid" residual functional capacity, the administrative law judge must give consideration to the grids or use them as a framework, but may also need to consult a vocational expert. Id. at 628; SSR 83-10; SSR 83-12.

In this case, the administrative judge did consult a vocational expert and appropriately posed hypothetical questions to him that incorporated plaintiff's limitations, one of which

included Dr. Sparks's limitation of four hours standing or walking. The vocational expert rendered opinions based on the relevant evidence and factors included in the hypothetical questions. Even with the limitation of four hours of standing or walking, the administrative law judge concluded that plaintiff could perform her past relevant work, as discussed in detail below. Increasing plaintiff's standing or walking limitation to six hours would not change that result. Thus, if the administrative law judge was in error, that error was harmless. I will not remand a case to the administrative law judge for further specification or correction when I am convinced that he will reach the same result. Spiva v. Astrue, 628 F.3d 346, 353 (7th Cir. 2010). That would be a waste of time and resources for both the commissioner and the claimant. McKinzey v. Astrue, 641 F.3d 884 (7th Cir. 2011).

E. Step Four Determination

Finally, plaintiff contends that the administrative law judge erred in concluding that plaintiff was still capable of performing her past work as a companion before April 22, 2009. Plaintiff argues that the vocational expert's testimony that plaintiff was still capable of performing that job does not provide substantial evidence for the administrative law judge's conclusion because the vocational expert's testimony conflicts with the description of the job as set forth in the Dictionary of Occupational Titles. Prochaska, 454 F.3d at 735 (Social

Security Ruling 00-4p imposes affirmative responsibility upon administrative law judge to ask vocational expert about any possible conflict between vocational expert's testimony and Dictionary of Occupational Titles and to elicit reasonable explanation for any discrepancy). Plaintiff points out that according to the Dictionary of Occupational Titles, the job of companion is a "light" job, meaning that it requires the ability to stand or walk for up to six hours a day. This description conflicts with the vocational expert's testimony, argues plaintiff, because that testimony was based upon a hypothetical person who was able to stand or walk for only four hours a day, a limitation that corresponds to sedentary work. See 20 C.F.R. §§ 404.1567, 404.967 (describing physical exertion requirements of light and sedentary work).

Plaintiff argues that remand is necessary because the administrative law judge did not comply with his mandatory duty to explore the reasons for the discrepancy. I disagree. Whatever the Dictionary of Occupational Titles might have to say about the job of companion is irrelevant in this case. As commissioner points out, at step four, an administrative law judge may find a claimant not disabled if she can perform her past work either as she actually performed it or as it is generally performed in the national economy. 20 C.F.R. § 404.1560(b)(2); SSR 82-61. The Dictionary of Occupational Titles is a source of information only for this latter, broader category of jobs. SSR 00-4p (explaining that commissioner relies primarily on the Dictionary of Occupational Titles "for information

about the requirements of work in the national economy"). When, as here, the issue is whether the plaintiff retains the ability to perform the demands of her past work as she actually performed it, the claimant is the primary source for vocational documentation. SSR 82-62. Because the vocational expert's testimony regarding plaintiff's ability to perform her past work was derived from information provided by plaintiff regarding how she actually performed that job and not from the Dictionary of Occupational Titles' description of how such jobs are generally performed in the national economy, the vocational expert's testimony provides substantial support for the administrative law judge's step four determination, notwithstanding any conflict with the Dictionary of Occupational Titles. Jens v. Barnhart, 347 F.3d 209, 213 (7th Cir. 2003) ("When a [vocational expert] testifies that a claimant can still perform her past work as it was actually performed, the [Dictionary of Occupational Titles] becomes irrelevant.").

Plaintiff has not raised any valid challenges to the vocational expert's determination that plaintiff's residual functional capacity did not preclude her from returning to her past relevant work as it was actually performed. More important, plaintiff has not pointed to any information that conflicts with the vocational expert's conclusion that, assuming plaintiff has the limitations found by the administrative law judge, she still could meet the demands of her past job as a companion.

ORDER

IT IS ORDERED that the decision of defendant Michael J. Astrue, Commissioner of Social Security, is AFFIRMED. Plaintiff Rose DuBay's motion for summary jugement is DENIED and her appeal is DISMISSED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 18th day of October, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge