

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

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DEBORAH ALBERTUS,

Plaintiff,

v.

ANDREW M. SAUL,  
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

18-cv-394-slc

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Plaintiff Deborah Albertus is seeking review of a final decision by defendant Commissioner of Social Security<sup>1</sup> denying her claim for disability insurance benefits under the Social Security Act. 42 U.S.C. § 405(g). Dkt. #10. Albertus contends that the administrative law judge (ALJ) who denied her claim erred by failing to consider adequately whether she met or medically equaled Listing of Impairment 1.02A—major dysfunction of a joint. For the reasons explained below, I am affirming the ALJ's decision.

The following facts are drawn from the Administrative Record (AR), filed with the Commissioner's answer in this case.

## RELEVANT FACTS

### I. Procedural Background

Albertus filed an application for disability insurance benefits on January 20, 2014, contending that she had been disabled since December 19, 2011 because of a variety of physical conditions, including arthritis, high blood pressure, heart problems, and chronic obstructive

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<sup>1</sup>I have amended the caption to reflect that the new Commissioner of Social Security is Andrew M. Saul.

pulmonary disorder (COPD). AR 188. Albertus was born on August 29, 1962, making her 51 years old when she applied for benefits in 2014. AR 185. Albertus earned an associates degree in microcomputer office assistance, AR 189, and has prior work experience as a cashier, sandwich maker, typist, and data entry clerk, AR 21-22. In function reports dated March 9, 2014 and February 17, 2015, Albertus reported that she can walk a block, shop (sometimes leaning on a cart because she runs out of breath), get outside every day, do basic household chores, go fishing, attend picnics, and help watch (or “chase down”) her grandson. AR 195-202, 223-32.

On February 27, 2017, ALJ Jennifer Smiley held a video hearing at which Albertus and a vocational expert (VE) testified. AR 14. Albertus was represented by counsel at the hearing. Albertus testified that she has only held part-time employment and stopped working in 2010 when she had knee surgery on her left knee to help with her arthritis. AR 35, 40. She testified that she has constant dull pain in both knees and can stand for only 10 minutes and walk one block at a time. AR 41. Albertus stated that in 2015, she had some neuropathy in her toes that caused her to trip more often, and in the past year, the neuropathy has spread to her feet. AR 42-43. At the time of the hearing, Albertus had some leg swelling that made it hard for her to walk at times. AR 48. With respect to daily activities, Albertus testified that she is able to do laundry, shower and dress herself, drive, and go shopping (though she uses a cart to help her balance). AR 46.

In a written decision issued on April 7, 2017, the ALJ concluded that Albertus was severely impaired by osteoarthritis, diabetes mellitus, COPD, and obesity. AR 16. The ALJ also determined that through her date last insured (March 31, 2015), none of Albertus’s impairments met or medically equaled a listed impairment, particularly Listings 1.02, 3.02, and 9.00. AR 17.

After reviewing the medical record—which contained very little in terms of treating provider opinions—and the opinions of the state agency physicians, the ALJ determined that Albertus had the residual functional capacity (RFC) to perform sedentary work limited to occasional climbing of stairs, ramps, ladders, and scaffolds; occasional balancing, stooping, kneeling, crouching, and crawling; avoiding concentrated exposure to irritants, heat and cold, and workplace hazards. AR 18. Relying on the testimony of a vocational expert who testified in response to a hypothetical question based on this RFC assessment, the ALJ found that Albertus could perform her past relevant work as a data entry clerk and typist, as those positions generally are performed and as Albertus actually performed them. AR 22.

## **II. Relevant Medical Evidence (prior to March 31, 2015)**

Albertus visited the emergency room on August 21, 2012 for right hand numbness, nausea, blurred vision, and dizziness. She was able to walk without assistance, had a steady and normal gait, full range of motion, normal motor strength, and could move her extremities without difficulty. AR 326-27, 330.

On September 27, 2012, Albertus went to the emergency room following a car accident in which she was a passenger. Albertus was able to walk without assistance and no abnormal findings were noted with respect to her lower extremities. AR 316-17.

X-rays of Albertus's right knee taken on September 22, 2014 revealed mild tricompartmental degenerative changes and osteopenia (weak bones). AR 446. At a routine check up on the same day, her physician noted that she had a "normal, slow, lumbering gait." AR 452. On October 13, 2014, Dr. Gregg Taylor noted that Albertus reported having right knee

pain, swelling, and arthritis for over a year, with intermittent swelling, “giving way” of the knee 1-2 times a week, and rare episodes of “locking.” AR 471-72. He noted that she had an antalgic gait (a limp) favoring the right knee and a range of motion between 0 and 120 degrees. Dr. Taylor wrote that Albertus’s radiographs show some arthritic changes, but not enough to explain her level of mechanical symptoms, so he had ordered an MRI. AR 472. The MRI, which was taken on October 13, showed advanced articular cartilage degenerative changes of the patella with some areas being severe. AR 473-74.

On October 15, 2014, Albertus saw a physical therapist who noted that Albertus was ambulating without an assistive device and had a minimally antalgic gait and stair negotiation. She also noted that Albertus had decreased range of motion, strength, flexibility, and balance in her right lower extremity. AR 476-79. On October 27, 2014, Dr. Taylor noted that Albertus’s MRI showed more chondromalacia and arthritic changes than the x-rays, but her examination remained unchanged from October 13. Dr. Taylor recommended continued physical therapy and home stretching to prevent loss of motion, with a followup in one year. AR 482.

### **III. State Agency Physicians**

On June 28, 2014, Dr. Syed Hasan performed a consultative examination on Albertus,, who reported that her arthritis caused her difficulties with prolonged walking, standing (15 to 20 minutes), and crouching. AR 364-66. Dr. Hasan reported that Albertus had a symmetric, steady gait; did not use an assistive device; and had full range of motion with somewhat reduced flexion in her knees and some limitation due to her obesity. AR 368. He also observed that

Albertus did not have any joint swelling, effusion, tenderness, or deformity; was able to walk on her heels and toes with moderate difficulty; exhibited normal tandem walking; and was able to rise from sitting position without assistance, although she had difficulty getting onto and off of the examination table. *Id.* Dr. Hasan opined that without additional medical care, Albertus would be able stand for two hours at a time for a total of four to six hours a day and would be able to walk for an hour at a time or a total of three to five hours a day. AR 369-70.

At the initial level of review on July 14, 2014, Dr. George Walcott found that Albertus was capable of light level work. He noted that Albertus had a stable, unassisted, and non-antalgic gait and could ambulate long enough to prepare meals, do laundry, vacuum, and shop. AR 63-64. At the reconsideration level of review on February 27, 2015, Dr. Benjamin Cortijo agreed with Dr. Walcott's findings but noted that because Albertus's condition had worsened after July 1, 2014, as evidenced by the physical therapy notes and imaging studies, Albertus was capable of only sedentary work after July 1, 2014. AR 81. In addition, Dr. Elliott Goytia affirmed Dr. Cortijo's findings on April 17, 2015. AR 76-77.

## OPINION

In reviewing an ALJ's decision, I must determine whether the decision is supported by "substantial evidence," meaning "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Moon v. Colvin*, 763 F.3d 718, 721 (7th Cir. 2014) (citations omitted). This deferential standard of review "does not mean that we scour the record for supportive evidence or rack our brains for reasons to uphold the ALJ's decision. Rather, the administrative law judge must identify the relevant evidence and build a 'logical bridge' between

that evidence and the ultimate determination.” *Id.*; see also *Villano v. Astrue*, 556 F.3d 558, 562 (7th Cir. 2009) (administrative law judge need not discuss every piece of evidence but “must build a logical bridge from evidence to conclusion”); *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005) (“[T]he ALJ must . . . explain [her] analysis of the evidence with enough detail and clarity to permit meaningful appellate review.”).

Albertus contends that the ALJ erred at step three of the evaluation process by failing to properly consider whether the severity of her impairments, either singly or in combination, met or medically equaled Listing 1.02 related to major dysfunction of a joint. As the claimant, Albertus has the burden of showing that her impairments satisfy all of the criteria specified in the listing. 20 C.F.R. §§ 404.1512(a), 404.1525, 404.1526; *Sullivan v. Zebley*, 493 U.S. 521, 530-31 (1990); *Rice v. Barnhart*, 384 F.3d 363, 369 (7th Cir. 2004) (“The applicant must satisfy all of the criteria in the Listing in order to receive an award” of benefits at step three). In order to meet or medically equal Listing 1.02, Albertus must show that she had:

Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s).

With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in an inability to ambulate effectively, as defined in 1.00B2b; . . .

20 C.F.R. Pt. 404, Subpt. P, App’x 1 § 1.02.

The regulations define an “inability to ambulate effectively” as

[A]n extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual’s ability to initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (*see* 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

*Id.* at § 1.00B2b(1).

The regulations further provide that examples of ineffective ambulation include “the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.” *Id.* at § 1.00B2b(2).

In this case, the ALJ found that Albertus did not meet or equal Listing 1.02 because there was no evidence that she had an inability to ambulate effectively. The ALJ correctly noted that Albertus had not been prescribed and does not use an assistive device, that her examinations regularly revealed that she had a normal and steady gait and could tandem walk without difficulty, and that she could perform routine daily activities like shopping, getting outside, doing household chores, fishing, and helping watch her grandson without the use of an assistive device. Additionally, none of Albertus’s treating providers, the state agency physicians, or the consultive examiner determined that Albertus had the type of extreme limitations of walking required by the regulation. At most, Albertus’s providers noted that she had a *minimally* antalgic gait and limited strength and range of motion. Further, the state agency physicians specifically

considered whether Albertus's impairments met or medically equaled Listing 1.02 as of her date last insured and found that they did not.<sup>2</sup> Although the ALJ gave the state agency physician opinions little weight because she believed that the latest radiologic evidence and respiratory examinations supported greater limitations (i.e., sedentary work), AR 20, she was entitled to rely on the physicians' separate findings that Albertus's impairments did not meet or medically equal the listings. The degenerative changes in Albertus's right knee and respiratory findings noted by the ALJ do not address or show that Albertus's impairments met or medically equaled a listing.

Albertus contends that even though she did not have a specific need for a cane or a walker, her hearing testimony provided evidence of ineffective ambulation. However, the examples that Albertus identifies in her brief—including not being able to get up and walk half of a block with her sister, walking for only 10 to 15 minutes at a time, and having numbness, burning, and tingling in her feet—do not appear on the pages of the administrative record that she cites or in the hearing transcript at all. At the hearing, Albertus *did* testify that she can stand for only 10 minutes and walk only one block at a time, but she also stated that she is able to do laundry, shower and dress herself, drive, and go shopping.<sup>3</sup> This limited and general testimony is insufficient to demonstrate that Albertus had an extreme walking limitation. *Anderson v. Berryhill*, No. 15-cv-556-wmc, 2017 WL 1968333, at \*6 (W.D. Wis. May 12, 2017) (finding same where claimant testified that she uses a cane to walk in stores and can walk only 15

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<sup>2</sup> Contrary to Albertus's assertion, the last state agency physician reviewed the record after her date last insured, in April 2015, and not on February 27, 2015.

<sup>3</sup> Although Albertus testified about having some other problems with her feet and neuropathy in 2015 or later, there is no evidence that those symptoms occurred during the relevant period in question (i.e., prior to March 31, 2015).



minutes without a break). Moreover, the ALJ found Albertus's testimony concerning her limitations not entirely consistent with the medical and other record evidence, AR 19, and Albertus has not challenged this finding. In sum, Albertus has failed to present sufficient medical or other evidence to prove that she has such extreme walking limitation as to require the use of an assistive device, limit her ability to walk a block at a reasonable pace on rough or uneven surfaces, or limit her ability to carry out routine activities like shopping.

Albertus also contends that the ALJ failed to consider the effect of her obesity on her ability to ambulate, as required by SSR 02-1p. Contrary to Albertus's contention, the ALJ found that Albertus was severely impaired by obesity and discussed its effects expressly at both step three and step four, finding that the combined effects of Albertus's obesity and other impairments supported a reduced, sedentary RFC.<sup>4</sup> Further, any error on the part of the ALJ is harmless because Albertus fails to explain how remand would lead to a different result. In particular, she fails to cite any evidence or even explain how her obesity affects her ability to work other than to suggest generally that it would exacerbate her inability to walk. *See Hisle v. Astrue*, 258 Fed. Appx. 33, 37 (7th Cir. 2007) (ALJ did not erroneously assess obesity where claimant "did not explain how her obesity affects her ability to work other than to suggest that it generally exacerbates her impairments"). In any event, the evidence shows that Albertus had the ability to ambulate during the relevant period despite her obesity, so it would be pointless to remand the case simply to require the ALJ to make that finding expressly. *Delray ex rel. Delray*

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<sup>4</sup> Blending the step-three and RFC analyses is not fatal in itself, so long as the ALJ at some point in his decision builds a logical bridge between the evidence and each conclusion, which the ALJ did in this case. *Catchings v. Astrue*, 769 F. Supp. 2d 1137, 1144 (N.D. Ill. 2011) (citing *Jacobson v. Astrue*, 08-C-50173, 2010 WL 1539871, at \*8-9 (N.D. Ill. Apr. 16, 2010) (upholding ALJ's conclusion that claimant did not meet listed impairment even though ALJ intermingled step 3 and step 4 analysis)).

*v. Colvin*, No. 13-cv-161-bbc, 2013 WL 6527463, at \*1-2 (W.D. Wis. Dec. 12, 2013) (finding same).

Finally, Albertus spends several pages of her brief arguing that the ALJ failed to discuss record evidence showing that: (1) her condition involved both knees, which are weight bearing joints; and (2) she had advanced arthritic changes that evidenced joint space narrowing. However, given that the ALJ found that Albertus could ambulate effectively, she did not need to discuss whether Albertus met the other criteria of the listing. Accordingly, I am affirming the decision of the ALJ and dismissing Albertus's appeal.

#### ORDER

IT IS ORDERED that the decision of defendant Andrew Saul, Commissioner of Social Security, denying plaintiff Deborah Albertus's application for disability benefits, is AFFIRMED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 26<sup>th</sup> day of September, 2019.

BY THE COURT:

/s/

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STEPHEN L. CROCKER  
Magistrate Judge