

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

AMBER MARIE CHRISTESEN,

Plaintiff,

v.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

18-cv-0792-wmc

Plaintiff Amber Marie Christesen brings this civil action under 42 U.S.C. 405(g) for judicial review of an adverse decision of the Commissioner of Social Security. Generally, plaintiff claims disability based on a number of impairments that require her to take frequent breaks throughout the work day, and render her unable to attend any job on a regular basis. However, an administrative law judge disagreed, denying her applications for disability insurance benefits and supplemental security income in a written decision issued November 24, 2017. Christesen petitioned this court for judicial review to challenge that decision, contending that the administrative law judge committed the following array of errors: (1) failed to consider evidence in the record showing her back impairment is severe enough to meet or equal the criteria of a listed impairment; (2) failed to consider adequately the impact of her obesity on other impairments; (3) erred in finding that her headaches were not a severe impairment; (4) did not properly evaluate the combination of her mental impairments; and (5) failed to reasonably evaluate her subjective complaints.

The court heard oral argument on the petition on February 13, 2020, at which both parties appeared telephonically through counsel. Having fully considered Christesen's

challenges to the ALJ's decision in light of the record as a whole, as well as the parties' briefing and arguments, the court finds that the ALJ's decision was reasonably explained and substantially supported by the record. The court must, therefore, reject plaintiff's arguments given the absence of: (1) a medical opinion that plaintiff could not perform the limited work as contemplated by the ALJ's formulation of her residual function capacity; or (2) a definitive social security listing or ruling, or controlling law determining that plaintiff's limitations, when combined with morbid obesity, compels a finding of disability. Accordingly, the court will affirm the decision of the Commissioner.

FACTS

A. Procedural History

In July 2014, plaintiff Christesen filed applications for disability insurance benefits (DIB) and supplemental security income (SSI), alleging disability beginning in June 2013. (AR 196-205). The state agency denied her claims initially and upon reconsideration. Christesen appealed those decisions and requested a hearing before an ALJ. She then obtained counsel, who submitted a pre-hearing brief that argued plaintiff was disabled because of absenteeism and the need to lie down and take breaks during the workday. (AR 255-57.) Christesen appeared at the hearing in September 2017 with counsel and testified, as did a vocational expert. Under the advice of counsel, plaintiff also amended her alleged onset date to January 9, 2014. The ALJ issued a written decision on November 24, 2017, finding that plaintiff was not disabled from her alleged onset date through the date of the

decision. In July 2018, the Appeals Council denied review, making the ALJ's decision the final decision of the Commissioner.

B. Medical Records

Christesen has a longstanding history of back pain, which reportedly dates back to her youth, but was formally diagnosed as a mild degenerative lumbar disc disease in 2012. In addition, she is considered morbidly obese, with a BMI of 50. (AR 625.) She has also been diagnosed with Attention Deficit Hyperactivity Disorder and an anxiety disorder, both of which are reportedly well-controlled on medication.

In January 2014, Christesen underwent surgery for a herniated disc at L5-S1, which failed. On March 13, 2014, her surgeon, Dr. Michael Ebersold, repeated the surgery, this time with greater success. By April 9, 2014, Christesen reported that her back pain had "dramatically improved." Indeed, by April 16, Dr. Ebersold had opined that the outcome of Christesen's surgery was "excellent," noting that she had made significant improvement aside from one small area of hypersensitivity.

At the end of May 2014, however, Christesen reported that she was again having back pain after being involved in a car accident. She also reported having a severe headache, for which she went to the emergency room. After a CT scan of her head and a neurological exam were determined to be normal, she was treated with medication and advised to follow up with her treating physician. (AR 283.)

Consistent with that advice, Christesen saw Dr. Kimberly Coyne on May 29, 2014, to follow up on both her headaches and chronic back pain. (AR 281-82.) Dr. Coyne

opined that her headaches were likely “rebound headaches,” which are caused by overuse of Tylenol and ibuprofen. Dr. Coyne also noted that Christesen was taking relatively high doses of oxycodone, and she encouraged her to wean herself off her medications, as well as learn other coping strategies for her chronic pain, noting that Christesen was not functioning well in spite of all the medication she was taking. (AR 282.)

On August 20, 2014, Dr. Ebersold again saw Christesen for her complaints of new weakness in her legs, especially on the right. Remarking on her lumbar MRI scan, Dr. Ebersold observed that Christesen had degenerative changes at L3-L4, L4-5, and L5-S1 that appeared “a bit worse” than on previous evaluations. (AR 587-88.) Still, Dr. Ebersold was not convinced that she had any nerve root compression or objective evidence of a documented progressive radiculopathy;¹ without such evidence, Ebersold noted that he would “not be inclined to recommend any surgery.” (AR 588.)

Christesen was next seen by Jason Waddell, DO, in the neurology clinic on April 20, 2015. (AR 624.) She reported having low back pain since her surgery in March 2014, which now travelled to her legs, mostly on the right. She also complained of burning, numbness, and tingling, especially on the right. An objective evaluation revealed Christesen had difficulty with heel walking on the right, and some weakness on the right side with dorsiflexion 4/5 secondary to pain. Christesen reported having had this weakness in her right foot for quite some time. In addition, her reflexes were diminished, but symmetrical. On a positive note, Dr. Waddell reviewed the MRI and saw no evidence of

¹ “Radiculopathy” is defined as pain and/or neurologic deficit in a *specific* nerve root distribution, including motor loss, sensory changes, and sometimes depression of reflexes. <https://www.google.com/search?client=firefox-b-l-e&q=specific+radiculopathy>

a recurrent herniated disk at the L5-S1 level. Unfortunately, he also confirmed degenerative disk disease, most pronounced at L5-S1 with disk bulging at L4-5 and L3-4. (AR 625.) Christesen asked if lumbar fusion surgery was an option for her, to which Dr. Waddell replied that she was not a candidate for a lumbar fusion given her weight and BMI, suggesting injections instead; however, Christesen was not interested in the latter option. (Id.) A second neurosurgeon, Dr. Jerry Davis, said that although there were surgical options that could address her ongoing right leg pain, those options would require a fusion, and he agreed with Dr. Waddell that fusion surgery was not an option for Christesen until she lost at least 100 pounds. (AR 626.)

At a follow-up visit with Dr. Coyne on May 12, 2015, Christesen reported that her right leg was now numb most of the time, and she sometimes felt tingling in her left leg. (AR 628.) She also said walking made her symptoms dramatically worse, and she had gained weight due to inactivity. Dr. Coyne further noted that Christesen continued to smoke intermittently and was using 8 tramadol a day for pain relief. Dr. Coyne referred Christesen to a dietitian. She also offered a referral to a smoking cessation program, which Christesen declined. Finally, Dr. Coyne provided Christesen with a handicap sticker, “but recommend she limit use as she needs to exercise and remain strong.” (AR 628.)

On December 9, 2015, Christesen had an initial visit with Dr. Michael Leone, a neurologist, for evaluation of multiple symptoms, including musculoskeletal pain, sweating, gait instability, degenerative disk disease, and generalized muscle weakness. (AR 696-97.) Christesen told Dr. Leone that she had hand and arm numbness, as well as tingling and vision changes, that began about six months earlier, and reported frequently

dropping objects and stumbling. She also reported a past history of migraines but said those had been under good control. On examination, Dr. Leone observed that Christesen had decreased range of motion in the lumbar spine and difficulty with plantar flexion in the right lower extremity, but otherwise had normal findings. Dr. Leone next ordered an EMG, which showed no obvious evidence for neuropathy, myopathy or poly radiculopathy. Dr. Leone also questioned whether Christesen had small fiber neuropathy, but found no convincing clinical evidence to support that diagnosis. Finally, an MRI scan of Christesen's head detected a 1.3 centimeter mass, but Dr. Leone thought it neither non-cancerous nor a cause of plaintiff's pain or other symptoms. (AR 713.)

C. Consulting Medical Source Opinions

After a review of Christesen's medical records, Dr. Syd Foster, a consultant for the state disability agency, submitted an opinion on November 4, 2014. Dr. Foster opined that Christesen had the severe impairments of degenerative disk disease and other unspecified arthropathies, but found her headaches were not severe and her back impairment did not meet the criteria of the listing for spine disorders. (AR 82-84.) In Foster's view, Christesen retained the physical residual functional capacity to: lift 20 pounds occasionally and 10 pounds frequently; stand or walk for a total of five hours a day; and sit for a total of 6 hours a day. He further found that she was limited to occasional stooping and should avoid heights, vibrations and hazards. (AR 84-85.) Another agency physician reviewed Christesen's file and medical records in connection with her reconsideration request and agreed with Foster's assessment across the board. (AR 111.)

On November 3, 2014, state agency consultant Esther Lefevre, Ph.D., reviewed Christesen's records and reports and determined that, as a result of her mental impairments, she had a number of moderate limitations in the areas of (1) sustained concentration and persistence, (2) social functioning, (3) her ability to maintain attention and concentration, and (4) adaptation to change. Nevertheless, Lefevre concluded that Christesen would be able to perform simple, rote tasks, but would perform best in a low-stress environment that allowed advance preparation for changes, limited contact with the general public, and limited interactions with co-workers. (AR 87-89.) On September 1, 2015, Dr. Pamela Green issued an opinion concurring with Lefevre's assessment. (AR 111, 117.)

Finally, both Lefevre and Green considered whether Christesen's mental impairments met the listings for Organic Mental Disorders (12.02), Affective Disorders (12.04), or Anxiety Disorders (12.06), and found they did not. In particular, Dr. Green found that Christesen's affective disorder was severe, but her anxiety disorder was not. (AR 111.)

D. Hearing Testimony

At the video hearing before ALJ Joseph Jacobson on September 27, 2017, plaintiff Christesen testified that she was 37 years old, had a high school education, and was not currently working, having last worked at Wal-Mart as an unloader and receiving clerk, (AR 44.) Her other past work also included furniture assembler/furniture packer and waitress/dining room attendant. She lived in a house with her husband and three children, aged 8, 10, and 12. Plaintiff also testified to her pain in the lower back that now traveled

down both legs, numbness in both legs, and pain in her right hip. She further described “small fiber neuropathy in both legs, both hands, both arms,” as well as “severe spasticity in [her] lower back, both shoulders and in my neck.” (AR 57-58.) Acknowledging that her doctors said they would not do further back surgery until she lost weight, plaintiff offered that her back pain had actually *worsened* on those occasions when she had lost weight in the past. (AR 64-65.)

To relieve her pain, plaintiff said that she lies down about 10 hours a day, and alternates positions from sitting, walking, standing, and lying down. She also testified that because of pain, she cannot stay seated in one position, but must rock back and forth to avoid pressure on her lower spine and hip (AR 58-59), and estimated she could stand for about 10-15 minutes before sitting down and could walk for five to 10 minutes. (AR 59-60.) As for lifting, she said even lifting a gallon of milk was difficult. (AR 64.)

Finally, plaintiff testified that starting about 18 months before the hearing, she had periodic episodes of confusion and forgetfulness. For instance, at times, she had forgotten how to spell her name, the dates of her kids’ birthdays, or how to work the radio in the car. (AR 61.)

After plaintiff testified, the ALJ called a neutral vocational expert to testify about the physical and mental requirements of plaintiff’s past work and to respond to a number of hypothetical questions concerning the kinds of jobs available to a person of plaintiff’s age, education and work experience who had various physical and mental limitations.

E. ALJ’s Decision

The ALJ issued a decision on November 24, 2017, finding plaintiff not disabled.

(AR 16-32.) Applying the five-step sequential process for evaluating disability claims, the ALJ found that: (1) plaintiff had not engaged in substantial gainful activity since her alleged onset date; (2) she had the severe impairments of degenerative disk disease, anterior glenoid mass, morbid obesity, and an affective disorder; (3) none of her impairments singly or in combination were severe enough to meet or medically equal the criteria of a listed impairment; (4) plaintiff was unable to perform her past relevant work; and (5) considering her age, education, work experience and residual functional capacity, there were jobs existing in the national economy that she could perform, namely, office helper, assembler, and inspector.

As a basis for his findings at steps four and five, the ALJ assessed plaintiff's "residual functional capacity" ("RFC"), defined as the most a claimant is able to do in spite of her physical and mental limitations. The ALJ then found that plaintiff was still able to perform sedentary work and engage in frequent handling and fingering, *provided* she was also able to sit or stand at will and was not off-task more than 10 percent of the work period.

Further, the ALJ found that plaintiff could not: perform foot control operations; climb ladders, ropes or scaffolds; work at unprotected heights; be exposed to excessive vibration or vibratory tools; or use moving machinery. As for mental limitations, the ALJ found that plaintiff was limited to simple, routine, repetitive tasks in a low stress job, which he defined as "a job requiring only occasional decision-making or the adaption to just occasional changes in the work setting." (AR 24.) Finally, the ALJ found that plaintiff could occasionally interact with the public and coworkers, but should not work in a job

that required her to perform tandem tasks with co-workers, piecework, or fast-moving assembly line-type work. (Id.)

Relying on the vocational expert's testimony in response to a hypothetical question that included all of these limitations, the ALJ found that plaintiff was unable to return to any of her past relevant work, but could perform the jobs of office helper, assembler, and inspector.

OPINION

On judicial review, the court must accept the Commissioner's factual findings as conclusive if supported by substantial evidence. 42 U.S.C. § 405(g); *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000). Thus, a court reviewing the findings of an ALJ will reverse only if the findings are not supported by substantial evidence or if the ALJ has applied an erroneous legal standard. *Briscoe v. Barnhart*, 425 F.3d 345, 351 (7th Cir. 2005). A court reviews the entire administrative record, but it may not reconsider facts, re-weigh the evidence, resolve conflicts in evidence, decide questions of credibility, or substitute its judgment for that of the ALJ. *Boiles v. Barnhart*, 395 F.3d 421, 425 (7th Cir. 2005). Accordingly, 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). At the same time, the court must conduct a "critical review of the evidence," *id.*, and insure the ALJ has provided "a logical bridge" between findings of fact and conclusions of law, *Stephens v. Berryhill*, 888 F.3d 323, 327 (7th Cir. 2018).

Before addressing plaintiff's specific challenges to the ALJ's decision, some clarification is in order. Plaintiff labels her first argument as follows:

The ALJ Failed to Accord Deference and the Greatest Weight to the Opinions of the Claimant's Treating Physicians Per 96-2p and Failed to Properly Evaluate the Limiting Effects of the Impairments.

(Br. in Supp. (Dkt. #9) 7.) However, in both written submissions and oral argument before this court, plaintiff's counsel failed to identify a *single* opinion in the record from any of her treating physicians, to which the ALJ failed to accord appropriate deference, much less one that endorsed more severe limitations than the ALJ found. This is hardly surprising, since the only medical sources who appear to have actually opined on plaintiff's impairments (and any resulting limitations that might inhibit her ability to work) were the consultants for the state disability agency and the consulting psychological examiner, Kurt Weber, Ph.D. Thus, plaintiff has largely mis-framed her argument; rather, what plaintiff appears to be arguing is that the ALJ did not properly evaluate the *objective medical evidence* in the file, as identified in the records from her treating physicians. Of course, this is a much harder argument to make since plaintiff's counsel is in no better position to evaluate that evidence than the ALJ, and certainly not qualified to render any medical opinions with respect to that evidence.

Within that framework, the court will proceed to evaluate plaintiff's objections to the ALJ's decision. So far as the court can discern, those objections are as follows: (1) the ALJ erred at step two in finding that plaintiff's headaches were not a severe impairment; (2) the ALJ failed to evaluate properly whether plaintiff's degenerative disk disease met Listing 1.04; (3) the ALJ did not properly evaluate plaintiff's obesity; (4) the ALJ did not

properly evaluate whether plaintiff's mental impairment met the criteria of Listing 12.04; and (5) the ALJ did not conduct a proper credibility analysis. The court addresses each of these arguments in turn.

I. Headaches

At step two of the sequential evaluation, the ALJ must determine whether the claimant has a medically determinable impairment or combination of impairments that is "severe." 20 C.F.R. § 404.1520(c). An impairment is "severe" if it significantly limits the claimant's ability to do basic work activities, without considering the claimant's age, education, or work experience. 20 C.F.R. § 404.1521(a). Moreover, the Step 2 determination is "a de minimis screening for groundless claims' intended to exclude slight abnormalities that only minimally impact a claimant's basic activities," *O'Connor-Spinner v. Colvin*, 832 F.3d 690, 697 (7th Cir. 2016) (quoting *Thomas v. Colvin*, 826 F.3d 953, 960 (7th Cir. 2016)); *see also Meuser v. Colvin*, 838 F.3d 905, 910 (7th Cir. 2016). The Seventh Circuit has categorized errors in determining an impairment's severity as harmless as long as the ALJ otherwise finds at least one severe impairment, continues through the steps in the evaluation process, *and* "consider[s] all of [the claimant]'s severe and non-severe impairments, the objective medical evidence, [the claimant's] symptoms, and her credibility when determining her RFC immediately after step 3." *Curvin v. Colvin*, 778 F.3d 645, 649 (7th Cir. 2015); *see also Arnett v. Astrue*, 676 F.3d 586, 591 (7th Cir. 2012) ("Deciding whether impairments are severe at Step 2 is a threshold issue only; an ALJ must continue on to the remaining steps of the evaluation process as long as there exists even

one severe impairment. Here the ALJ categorized two impairments as severe, and so any error of omission [at Step 2 regarding the severity of other impairments] was harmless.”) (citations omitted).

Here, the ALJ explained that he found plaintiff’s headaches were not severe based on: (1) a May 2014 CT scan of plaintiff’s head that was normal; and (2) a neurological exam that was “non-focal.” The ALJ also noted that plaintiff’s headaches were thought to be “rebound” headaches resulting from overuse, that the small mass in her brain was an “incidental finding,” and that she had a normal EEG in April 2016. (AR 20.)

Again, plaintiff does not dispute these findings with contrary medical opinions, but argues that they do not provide a reasonable basis for finding her headaches non-severe. (Br. in Supp. (dkt. #9) 12.) Although plaintiff does not develop her argument in much detail, she appears to argue that the ALJ erred by assuming her headaches could be confirmed by objective tests. The court agrees that the ALJ here can be criticized for placing substantial weight on the absence of objective evidence to corroborate plaintiff’s headaches, which in many cases are diagnosed purely on subjective complaints. Moreover, the fact that one physician described plaintiff’s headaches as “rebound headaches” does not make them any less severe or painful. At the same time, however, plaintiff has failed to meet her burden of showing that her headaches caused more than a minimal impact on her ability to engage in work activity.

At most, plaintiff points to only two medical records, one from December 2013, indicating that she had a “history of . . . chronic daily headache,” and another from May 2014, indicating that she had a severe headache for two weeks after getting in a car

accident. (Id.) However, neither of these records state that her headaches persisted or were severe enough to affect her ability to work, and plaintiff does not propose any additional limitations that the ALJ should have included in the RFC to account for her headaches. In fact, in December 2015, plaintiff told Dr. Leone that her headaches were “under good control,” and she did not mention headaches during her hearing testimony. Moreover, both of the state agency consultants who reviewed plaintiff’s medical record found that her headaches were a non-severe impairment.

In light of this evidence, along with plaintiff’s failure to point to any evidence suggesting that her headaches imposed more than a minimal impact on her ability to work, the court finds the ALJ did *not* err in finding plaintiff’s headaches non-severe *or* in failing to include headache-related limitations in the RFC. *Jozefyk v. Berryhill*, 923 F.3d 492, 498 (7th Cir. 2019) (“Because Jozefyk did not testify about restrictions in his capabilities related to concentration, persistence, or pace deficits, and the medical record does not support any, there are no evidence-based restrictions that the ALJ could include in a revised RFC finding on remand.”)

II. Failure to Consider Listing 1.04

If a claimant has an impairment that meets or equals an impairment found in the Listing of Impairments, then that claimant is presumptively eligible for benefits. 20 C.F.R. § 404.1520(d). However, the plaintiff has the burden of showing that her impairments satisfy *all* of the criteria specified in a listing. *Ribaudo v. Barnhart*, 458 F.3d 580, 583 (7th Cir. 2006). A claimant may also satisfy a listing by showing that her impairment is

accompanied by symptoms that are equal in severity to those described in the Listing, 20 C.F.R. § 404.1526, although a finding of medical equivalence must be supported by an expert's opinion. *Barnett v. Barnhart*, 381 F.3d 664, 670 (7th Cir. 2004). "In considering whether a claimant's condition meets or equals a listed impairment, an ALJ must discuss the listing by name and offer more than perfunctory analysis of the listing." *Minnick v. Colvin*, 775 F.3d 929, 935 (7th Cir. 2015) (quoting *Barnett*, 381 F.3d at 668).

Listing 1.04 requires a disorder of the spine resulting in a compromise of a nerve root or the spinal cord with:

Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).

20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.04 (A).

Plaintiff argues that this case must be remanded because the ALJ's decision does not expressly address whether her degenerative disc disease met the criteria of Listing 1.04 regarding spine diseases.² As plaintiff points out, although the ALJ made a finding that plaintiff did "not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments," his listings analysis is limited to mental impairments, nor does he cite a listing number for any physical impairments, much less explain why plaintiff's impairments did not meet those criteria.

²In his responsive brief, the Commissioner also cites Listing 1.02 (Major Dysfunction of a Joint). However, plaintiff makes no argument that she meets the criteria of this listing. Accordingly, the court will not discuss it.

In response, the Commissioner argues that any error by the ALJ in failing to adequately consider Listing 1.04 under step three is harmless because: (1) the ALJ's rationale can be discerned from other parts of his decision, *see Curvin v. Colvin*, 778 F.3d 645, 650 (7th Cir. 2015)(ALJ's decision should not be overturned simply because relevant analysis is set forth at a different step of the process); (2) plaintiff has not met her burden of showing she met the criteria of listing 1.04; and (3) the ALJ's conclusion is supported by the unrefuted opinions of the state agency reviewing physicians.

In support of his first argument, the Commissioner points out that in arriving at plaintiff's RFC, the ALJ not only discussed plaintiff's back surgeries and MRI evidence showing "significant degenerative changes at L3-4, L4-5, and L5-S1," but also noted during an examination on August 20, 2014, that Dr. Ebersold found "no definite objective evidence of specific radiculopathy." (AR 25.) As the Commissioner further points out, the ALJ noted that plaintiff was reported to be "walking easily" after her second surgery and that her doctor had declined to issue her a disabled parking permit. From this, the Commissioner asks the court to find that the ALJ implicitly considered the listings, which the court declines to do.

First, the ALJ's sketchy discussion of the medical evidence related to plaintiff's degenerative disk disease does not suffice as a listings analysis. In particular, the ALJ said *nothing* to indicate that his discussion of the objective findings related back to the requirements of Listing 1.04. *See Minnick*, 775 F.3d at 936 (with no explicit analysis by the ALJ, a court cannot tell whether the ALJ "considered and dismissed" the pertinent evidence or whether the ALJ "completely failed to consider [it]"); *Edmonson v. Colvin*, No.

14 CV 50135, 2016 WL 946973, at *4 (N.D. Ill. Mar. 14, 2016) (rejecting government's argument that ALJ implicitly analyzed listing requirements where nothing in decision suggested that ALJ was aware of specific sub-requirements of listing when she recited medical evidence). Regardless, there is simply no basis in the record from which one could reasonably infer that the ALJ had the listings in mind when he discussed the medical evidence during the RFC portion of his decision.

Second, as the Seventh Circuit has explained, "administrative error may be harmless: we will not remand a case to the ALJ for further specification where we are convinced that the ALJ will reach the same result." *McKinzey v. Astrue*, 641 F.3d 884, 892 (7th Cir. 2011). Moreover, as the Commissioner points out, it is the *claimant's* burden to adduce medical evidence to show that she meets a listing. *Hall v. Berryhill*, 906 F.3d 640, 645 (7th Cir. 2018). Here, although the ALJ *may* have short-circuited the listings analysis, the only medical evidence that plaintiff identifies to show *any* of the Listings' criteria is her history of back surgeries and the post-surgery MRIs, which show degenerative changes at L3-4 and L4-5, including some disk bulging. (Br. in Supp. (dkt. 9) 9.) Indeed, as plaintiff's counsel effectively conceded during oral argument before this court, the records lack the necessary evidence of nerve root compression, which must be corroborated by limitation of motion of the spine, motor loss, *and* a positive straight leg raising test. And, of course, neither of the state agency physicians who reviewed the record – and to whom the ALJ gave significant weight --- found that the listing criteria were met.

Finally, although plaintiff submitted both pre-hearing and post-hearing briefs at the agency level, she did not claim to have satisfied the criteria of Listing 1.04; rather, plaintiff

presented her case to the ALJ as a “sustainability case.” (AR 44.) All of this suggests that the ALJ’s inadequate listings analysis was harmless.

III. Obesity

“[W]hile obesity is no longer a standalone disabling impairment, the ALJ must still consider its impact when evaluating the severity of other impairments.” *Stephens v. Berryhill*, 888 F.3d 323, 328 (7th Cir. 2018) (quoting *Brown v. Colvin*, 845 F.3d 247, 251 (7th Cir. 2016)). Here, the ALJ found at step two that plaintiff’s obesity was a severe impairment, then noted correctly that obesity could, in combination with other impairments, lead to a finding that the requirements of a listing had been met. (AR 20.) The ALJ also noted that obesity could increase the severity of existing impairments and cause functional limitations, and he went on to say that he had considered plaintiff’s obesity “during the sequential evaluation at Steps 3, 4, and 5[.]” (Id.)

As plaintiff points out, the ALJ’s discussion consists mainly of similar boilerplate, but he also offered his basic reasoning with respect to the apparent impact of plaintiff’s obesity, even departing somewhat from the state disability medical consultants’ conclusion that plaintiff could stand or walk 5 hours of an 8-hour workday. Specifically, the ALJ found instead that plaintiff had the RFC for only sedentary work, which “fully considers the claimant’s allegations of having problems standing and walking as well as *fully considers the impact her obesity has on her ability to perform sustained work activity.*” (AR 29) (emphasis added). At the hearing, the ALJ further pointed out that plaintiff denied her obesity made her back pain worse. (AR 20.) Finally, the ALJ purported to account for plaintiff’s obesity by limiting her to sedentary work. While somewhat truncated, this discussion is enough

to meet the ALJ's duty to "articulate at some minimal level his analysis of the evidence." *Brown v. Colvin*, 845 F.3d 247, 252 (7th Cir. 2016) (quoting *Herron v. Shalala*, 19 F.3d 329, 333 (7th Cir. 1994)).

Notably, again, plaintiff has not called to the court's attention *any* medical opinion or records that would permit a finding that her obesity had more impact on her ability to sit, walk, and stand than the ALJ found. Instead, she merely faults the ALJ for not writing a better decision. Absent *some* statement that a more thorough discussion by the ALJ of the evidence of record would have produced a different result, however, the ALJ's limited analysis of plaintiff's obesity does not warrant remand. This is especially true where the agency physicians came to the conclusion that she *can* perform sedentary work, and nothing in the medical records contradicts this conclusion.

Moreover, plaintiff conceded at oral argument that, to date, neither social security listings nor rulings support finding disability of someone morbidly obese with plaintiff's other limitations *absent* some medical support. Similarly, the court is unaware of any legal opinion mandating remand under these circumstances so long as the ALJ obviously considered the medical evidence, and nothing in that evidence supports a different result.

IV. Mental Impairments

The precise outlines of plaintiff's challenge to the ALJ's evaluation of her mental impairments is unclear. Like many of her other arguments, plaintiff does not challenge what the ALJ actually did or said, but criticizes him for what he did *not* say. For example, plaintiff criticizes the ALJ's finding that the evidence "failed to establish the presence of

the ‘paragraph C’ criteria” of the mental health listings as “unexplained boilerplate,”³ but she makes no attempt to identify specific evidence in the record that the ALJ failed to confront that would show that she *does* meet the “C” criteria. Therefore, while the ALJ’s discussion of the paragraph C criteria was somewhat perfunctory, it appears to have been harmless.

Plaintiff similarly argues that the ALJ erred by considering the severity of her mental impairments in isolation but not in combination.⁴ However, the ALJ does state that he had considered the severity of plaintiff’s mental impairments “singly and in combination,”

³ The “paragraph C” criteria of the applicable mental health listings require:

Medically documented history of [a chronic organic disorder; a chronic affective, schizophrenic, paranoid, or other psychotic disorder; or a chronic affective disorder] of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychological support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration;
or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years inability to function outside of a highly supportive living arrangement, with an indication of a continued need for such arrangement.

20 C.F.R. § 404 Subpt. P, App'x 1, §§ 12.02, 12.03, 12.04 (2015).

⁴ The court disagrees with plaintiff’s assertion that she has four mental impairments (ADHD, anxiety, depression, and an affective disorder). Kurt Weber, Ph.D., an examining psychological consultant, noted that plaintiff had diagnoses of attention-deficit hyperactivity disorder (ADHD), depression, and anxiety. (AR 568.) Insofar as the ALJ purported to evaluate plaintiff’s “affective disorder,” it is plain that he was referring to plaintiff’s depression. (AR 21.) “Affective disorders,” also called mood disorders, is a group of psychiatric disorders, of which depression is one. <https://www.healthline.com/health/affective-disorders>.

and found that they did produce limitations severe enough to meet or medically equal the Paragraph B criteria of the listings. (AR 22.) Most tellingly, plaintiff again neither challenges the ALJ's analysis of the Paragraph B criteria nor the weight he gave to the actual medical opinions in the record. Plus, she has failed to point to any significant evidence that the ALJ ignored. Absent *some* record basis from which to conclude that a more thorough analysis by the ALJ might produce a different outcome, the court again declines to remand this case simply to require that the ALJ write a more thorough decision.

V. Credibility Assessment

Plaintiff challenges the ALJ's credibility assessment, first on the ground that the ALJ used language that the Seventh Circuit has criticized as "meaningless boilerplate." However, phrases like "not entirely consistent" only become meaningless when the ALJ substitutes it for a proper, full-bodied explanation of why credibility is lacking. Here, the ALJ identified various reasons for his credibility determination, grounding each in the record. (AR 25-29.) In particular, the ALJ noted that the medical records tended to show a "pattern of exaggeration" on plaintiff's part, citing as support specific examples where plaintiff's physical presentation or reported activities were found by her own physicians to be inconsistent with her reports of disabling pain. He also noted that plaintiff: (1) had only stopped smoking recently, in spite of her medical providers' long-standing advice that it would help her back pain; (2) had stopped physical therapy after two sessions because she claimed it had not helped her in the past; and (3) was "very resistant" to any suggestion by her providers that her pain could be managed without narcotics. Thus, this is *not* a case

where the ALJ merely questioned plaintiff's credibility without supporting evidence in the record.

Indeed, plaintiff undermines her own argument by attacking some of the ALJ's findings. First, she argues that the ALJ cited medical records immediately following both of her back surgeries, which show that she had marked improvements afterwards, but then claims the ALJ "ignored" the fact that her back pain returned and fusion surgery was later recommended if plaintiff addressed her obesity issue. Contrary to these assertions, the ALJ expressly acknowledged that by May 2014 plaintiff's back "was again problematic," and that MRI findings "demonstrated significant degenerative changes at L3-L4, L4-5, and L5-S1." (AR 25.) He also gave significant weight to plaintiff's alleged problems with standing and walking by reducing her RFC to sedentary work. (AR 29.) Thus, the ALJ did not "ignore" post-surgery evidence related to plaintiff's back condition.

The only other specific credibility challenge that the court is able to discern from plaintiff counsel's brief and oral argument is that the ALJ unduly equated certain activities with an ability to work. For example, plaintiff notes that the ALJ appeared to fault plaintiff for: (1) telling her doctors in December 2013 that she had two young girls at home and was "trying to maintain her activities of daily living"; and (2) about a year later, telling her doctor that she was interested in attending a concert. As plaintiff correctly notes, neither sporadic activities such as attending a concert nor vague statements about "trying" to do daily activities are evidence that a claimant can work. *See, e.g., Clifford v. Apfel*, 227 F.3d 863, 872 (7th Cir. 2000), as amended (Dec. 13, 2000) ("minimal daily activities" do not establish that a person is capable of engaging in substantial physical activity). However,

the ALJ did not cite these examples for this purpose, but rather as evidence of exaggeration, contrasting plaintiff's statements with other of her statements made around the same time.

For example, the ALJ noted that a month after expressing interest in attending a concert, plaintiff reported on a disability form that she was confined to her home 90 percent of the time because of limited mobility. He also contrasted: plaintiff's statements that she was trying to maintain her activities of daily living with her reports that she no longer grocery shopped, cared for her children, cooked or cleaned, and needed her husband's help with bathing and dressing. (AR 27.) Citing plaintiff's activities in this way --- as evidence of exaggeration, not as ability to work --- was not improper. *See Alvarado v. Colvin*, 836 F.3d 744, 750 (7th Cir. 2016) (“[I]t is entirely permissible to examine . . . a claimant's daily activities, to assess whether ‘testimony about the effects of his impairments was credible or exaggerated.’”).

The remainder of plaintiff's argument on credibility amounts to an assertion that, *if* the ALJ had found her fully credible, *then* he should have found her disabled. As just explained, however, the ALJ cited various reasons why he did *not* find her wholly credible. Plaintiff fails to address several of those reasons, and the few reasons she purports to object to are unpersuasive. Accordingly, because plaintiff has failed to show that the ALJ's credibility finding is patently wrong, the court will not disturb it. *See Summers v. Berryhill*, 864 F.3d 523, 528 (7th Cir. 2017) (We give the ALJ's credibility finding “special deference” and will overturn it only if it is “patently wrong.”) (quoting *Eichstadt v. Astrue*, 534 F.3d 663, 667–68 (7th Cir. 2008)).

IV. Combination of Impairments and Closed Period of Disability

Finally, during telephonic oral argument, plaintiff's counsel raised two arguments meriting brief comments. *First*, enhancing an argument touched on in plaintiff's briefs, counsel argued that the ALJ appeared to analyze plaintiff's medical impairments singly, without considering their combined effect. As the Court of Appeals for the Seventh Circuit has noted, "[w]e keep telling the Social Security Administration's administrative law judges that they have to consider an applicant's medical problems in combination." *Goins v. Colvin*, 764 F.3d 677, 681 (7th Cir. 2014) (collecting cases). In particular, counsel argued, common sense suggests that a morbidly obese person with bulging discs, whose obesity prevents further remedial surgery, *and* suffering from depression and anxiety disorders, cannot sustain full time employment.

Insofar as counsel's argument amounts to a claim that plaintiff is *de facto* disabled merely by virtue of her impairments, such a claim harkens back to a listings argument. As noted previously, however, to meet or equal a listing, a plaintiff must produce *medical evidence* showing that her combined impairments satisfy the requirements of a listed impairment, and plaintiff has not done so here. Similarly, to establish that she lacks the RFC for sustained employment, a plaintiff must produce supporting *evidence*, not just a list of diagnoses. In this case, the bulk of plaintiff's evidence of disability consisted of her subjective complaints. As just noted, however, the ALJ reasonably found those complaints not to be entirely credible. Although the court is sympathetic to plaintiff's pain and other limitations, she ultimately fails to make a persuasive case that the ALJ did not adequately

account for those limitations in his extremely restrictive RFC assessment or failed to explain the bases for his findings.

Second, plaintiff's counsel argued that, in the event the court was not inclined to reverse the Commissioner's decision and award plaintiff benefits for the entire time period at issue, it should at least consider finding her disabled for the "closed period" from January 24, 2014, when plaintiff underwent her first back surgery, to April 20, 2015, when she saw Dr. Waddell about the possibility of a spinal fusion. Plaintiff waived this argument by failing to raise it until the "conclusion" section of her brief, and even then, only a cursory manner. *See, e.g., Crespo v. Colvin*, 824 F.3d 667, 674 (7th Cir. 2016) ("perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived"). Even absent waiver, however, the court is not persuaded that it has the authority to enter such a limited remand, much less that this closed period of disability is sufficiently supported by the record.

In particular, plaintiff again identifies no evidence or medical opinion to suggest that she was unable to work during that time period. In fact, after the second surgery, plaintiff reported dramatic improvement. Further, plaintiff has offered no explanation for choosing the date of her visit with Dr. Waddell as the end point of that period. Finally, plaintiff did not make her argument for a closed period before the ALJ. For all these reasons, the court also denies plaintiff's request for an award of benefits based on a closed period of disability.

ORDER

IT IS ORDERED that the decision of the Commissioner of Social Security denying plaintiff Amber Christesen's applications for disability insurance benefits and supplemental security income is AFFIRMED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 24th day of February, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge