

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

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PATRICIA JEAN HURDIS,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting Commissioner  
for Social Security,

Defendant.

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OPINION AND ORDER

19-cv-734-wmc

Pursuant to 42 U.S.C. § 405(g), plaintiff Patricia Jean Hurdis seeks judicial review of a final determination that she was not disabled within the meaning of the Social Security Act. This is Hurdis's *third* appeal. In the first appeal, the court remanded based on several errors in the administrative law judge's decision. *Hurdis v. Colvin*, No. 12-cv-601 (W.D. Wis. Dec. 10, 2014) (dkt. #15). On the second appeal, the parties stipulated to remand. *Hurdis v. Colvin*, No. 16-cv-074 (W.D. Wis. Aug. 2, 2016) (dkt. ##11, 12). In the most recent decision, the administrative law judge ("ALJ") Brent Bedwell found that Hurdis was not disabled for purposes of obtaining social security disability insurance benefits for the period April 1, 2006, the alleged disability onset date, through September 30, 2007, her date last insured. As further context, the Commissioner had previously determined that she was disabled as of April 20, 2009, for purposes of obtaining social security supplemental insurance benefits. In this appeal, Hurdis raises several of the same challenges raised successfully in her first appeal. The court, however, rejects Hurdis's challenges, finding that the ALJ adequately addressed the areas of concern raised in Hurdis's brief. As such, the court will affirm the Commissioner's denial of benefits.

## BACKGROUND<sup>1</sup>

In the court's prior opinion and order on Hurdis's first appeal, the court described in great detail the medical evidence relevant to her claim of SSDI, including medical records pre-dating and post-dating the April 2006 to September 2007 period. Because that record evidence obviously did not change, the court incorporates that portion of its prior opinion, rather than repeat it at length in this opinion.

For purposes of this appeal, the court will simply summarize the ALJ's opinion, that is the basis of this appeal.<sup>2</sup> On October 17, 2018, the ALJ held a hearing in Milwaukee, Wisconsin, with Hurdis appearing personally and by counsel. In addition, a vocational expert also provided testimony. The ALJ concluded that Hurdis's date last insured was September 30, 2007, and that she claimed an alleged disability onset date of April 1, 2006. The ALJ also concluded that she had not engaged in any substantial gainful activity during this period.

Next, the ALJ determined that she suffered from the following severe impairments: bursitis, piriformis syndrome<sup>3</sup> with myofascial pain, and depression/affective disorder. (AR

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<sup>1</sup> The following facts are drawn from the administrative record, which can be found at dkt. #6.

<sup>2</sup> The court notes that there were *two* ALJ opinions after the second remand. ALJ Brent Bedwell held a hearing on January 18, 2017, and issued an opinion dated February 21, 2017, finding Hurdis not disabled. (AR 1040-55.) On June 29, 2018, however, the Appeals Council reversed the denial and directed ALJ Beldwell to hold another hearing. The ALJ held a second hearing on October 17, 2018, and issued his second decision denying benefits on December 20, 2018.

<sup>3</sup> "Piriformis syndrome is a condition in which the piriformis muscle, located in the buttock region, spasms and causes buttock pain. The piriformis muscle can also irritate the nearby sciatic nerve and cause pain, numbness and tingling along the back of the leg and into the foot (similar to sciatic pain)." "What is Piriformis Syndrome?," Spine-health, <https://www.spine-health.com/conditions/sciatica/what-piriformis->

943.) The ALJ acknowledged other conditions noted in the record, but concluded that these conditions were not severe. Relevant to this appeal, the ALJ determined that headaches were not a severe condition because, while the record reflected treatment for headaches pre-dating the onset date and a history of missed work because of this condition, plaintiff's migraine medications were adjusted in May 2005, and the record reflects that the new medications addressed her headache pattern. (AR 943 (citing Ex. 13F at pp.4-5).) The ALJ also noted that she sought treatment for other pain conditions, but that she did not make any significant complaints about headaches for the relevant period, inferring that the Topamax medication continued to be effective. (*Id.* (citing Exs. 5F, 14F, 18F).) Finally, the ALJ also relied on Hurdis's own statements: (1) not listing headaches as a disabling condition in a February 2009 Disability Report; and (2) listing migraines as a "new" condition in a January 2010 report, indicating that this condition developed in March 2009, which *postdates* the relevant period. (*Id.* (citing Ex. 2E at p.2, Ex. 6E at p.2).)

As required by the Appeals Council, the ALJ next considered whether her fibromyalgia constituted a severe impairment, relying on Social Security Rule 12-2p for guidance. The ALJ acknowledged that Hurdis was diagnosed with fibromyalgia in 2009, but concluded that plaintiff failed to meet her burden of establishing that she suffered from fibromyalgia before her date last insured in 2007. In making this determination, the ALJ considered the 1990 and 2010 ACR Criteria. Both sets of criteria require "evidence that other disorders which could cause the symptoms or signs were excluded." (AR 944.) In

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syndrome#:~:text=Piriformis%20syndrome%20is%20a%20condition,(similar%20to%20sciatic%20pain).

reviewing the record, the ALJ determined that in 2006 and 2007, other conditions were *not* excluded; to the contrary, other conditions, including myofascial pain, piriformis syndrome, and trochanteric bursitis, were diagnosed and treated during this period of time. (AR 944-45 (citing Exs. 5F, 14F, 18F).)

Next, the ALJ considered whether Hurdis's medical impairments met or medically equaled any of the listing. *See* 20 C.F.R. Part 404, Subpart P, Appendix 1. The ALJ considered Listing 1.02 (major dysfunction of a joint), but concluded that this listing was not met because the evidence does not show an inability to ambulate. The ALJ also considered whether she met the criteria of Listing 12.04 (depressive, bipolar, and related disorders). In making this determination, the ALJ considered the "paragraph B" criteria concluding that she suffered moderate limitations in understanding remembering or applying information; concentrating, persisting or maintaining pace; and adapting or managing oneself. (AR 945-46.) The ALJ also concluded that she had only mild limitations in interacting with others. (AR 946.) In making these determinations, the ALJ primarily relied on the fact that Hurdis "took psychotropic medication" during the relevant period "but otherwise did not seek or receive any inpatient or outpatient mental health treatment," and that a consultative evaluation in September 2009, some two years after the date last insured, but the closest evaluation for purposes of considering her mental health limitations in 2006 and 2007, found "some difficulty with concentration and recall, but she exhibited fair recent memory and intact remote memory." (AR 946.)

As for her residual functional capacity (“RFC”), the ALJ concluded that plaintiff could perform sedentary work with additional exertional limitations and also included the following nonexertional restrictions:

- she is limited to unskilled, simple, and routine work; and
- she is limited to jobs involving only occasional decision-making and changes in the work setting.

(AR 947.)

In setting this RFC, the ALJ discounted Hurdis’s statements about the intensity, persistence and limiting effects of her symptoms, finding that they are “not entirely consistent” with the medical evidence and other evidence in the record. (AR 947.) The ALJ summarized Hurdis’s account of her conditions prior to the date last insured as “generalized body pain”; “some headaches”; and “mental symptom affecting her memory and ability to maintain work pace.” (AR 947.)<sup>4</sup> The ALJ then turned the record, identifying, with respect to her physical complaints: (1) a November 2006 MRI of the lumbar spine, which “showed no significant abnormalities,” a January 2007 of the left hip, which was “unremarkable and showed satisfactory alignment of both hip joints with no degenerative changes,” and a January 2007 nerve conduction study of the lower extremities, which was also normal; (2) treatment record notes during the relevant period, noting at least at times only mild symptoms upon examination, negative or normal results

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<sup>4</sup> The ALJ noted that this account was provided at the October 2018 hearing, but plaintiff correctly points out that plaintiff did not make these statements during the October 2018 hearing. Instead, plaintiff provided this account during her first hearing in 2011. The Commissioner chalks it up as a typographical error, which seems reasonable, but, regardless, Hurdis does not contend that she did not make these statements during her first hearing in 2011 or that this account of her symptoms in 2006 and 2007 is not accurate.

for various physical examination tests and normal gait; (3) records indicating activities inconsistent with the limiting condition she claimed, e.g., a January 2008 note -- just a few months after her date last insured -- complaining of increased pelvic pain after “pushing a car out of a ditch”; and (4) medical treatment records indicating that her acute symptoms, specifically concerning fibromyalgia, had not developed until after her date last insured, including statements from the claimant that her “pain did not worsen until January 2009.”<sup>5</sup> (AR 948-49.)

As for her mental health symptoms, the ALJ provided that he “has given the claimant the benefit of the doubt by finding that her mental impairments were ‘severe’ and caused moderate impairment in the areas identified above prior to the date last insured.” (AR 949.) In support, the ALJ points to Hurdis’s hospitalizations in May 1999 and June 1999, but noted that her next mental health treatment was almost ten years later in April 2009, after the date last insured. Nonetheless, the ALJ acknowledged that Hurdis was on some psychotropic medication during this time, and that her primary care physician adjusted her medications in June 2007, when she complained of depression, although in a January 2007 note, plaintiff denied feeling depressed or anxious. (AR 949.) Based on this, the ALJ concluded that “[t]hese medication were apparently relatively effective until well after the date last insured, as the record shows no significant mental status abnormalities or complaints after that time.” (AR 950.)

Based on this review, the ALJ explained that

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<sup>5</sup> The ALJ specifically noted a November 2007 record, which showed only 6 of the 18 fibromyalgia tender points were present. (AR 949 (citing Ex. 4F at 3).)

The limitations in the above-described residual functional capacity finding for unskilled, simple and routine work and jobs involving only occasional decision-making and occasional workplace changes more than adequately account for these mental conditions and associated symptoms, as well as the relatively normal findings documents prior to the date last insured. Specifically, the restriction to unskilled work accounts for the claimant's moderate limitations in understanding, remembering or applying information. The reduction to simple and routine work with no more than occasional decision-making addresses the claimant's moderate limitations in maintaining concentration, persistence, or pace. Additionally, the reduction to no more than occasional workplace changes addresses the claimant's moderate limitations in managing oneself or adapting to change.

(AR 950.) The ALJ noted that these limitations also account for the findings of consultative psychologist Dr. Goldstein, who evaluated Hurdis in September 2009. His testing showed poor insight and judgment, but also only mild concentration difficulties, fair recent and immediate memory, preserved remote memory and an appropriate fund of knowledge. (A 950 (citing Ex. 6F pp. 2-4).)

The ALJ then reviewed the opinion testimony, including the opinions of state agency reviewing physicians Pat Chan, M.D., and Syd Foster, D.O., placing weight of their opinions limiting Hurdis to sedentary work, but discounting their opinions to the extent they failed to include the additional exertional limitations provided in the ALJ's RFC. (AR 951.) The ALJ also considered Dean Martinelli, M.D.'s April 2005 form, completed for Hurdis's prior employer, noting that she "may need an occasional day off" for her migraine-type headaches, but discounted his opinion because "subsequent records, including records dated after Dr. Martinelli's assessment, demonstrate that claimant's treatment was effective." (AR 951.) The ALJ also considered the consultative physician Abdul Hafeez,

M.D.'s November 2009 opinion that plaintiff experienced "significant symptoms" from fibromyalgia, and Dr. Goldstein's September 2009 opinion that Hurdis "may not respond appropriately" to coworkers, would "find it hard" to maintain concentration, attention and work pace, and that work stress would likely increase irritability and impact pain, but discounted both because "they do not relate to the time period at issue in this case" and are "generally speculative as to the claimant's condition in 2006." (AR 951-52.) The ALJ also discounted Dr. Goldstein's opinion because his conclusions were inconsistent with his documented examination findings. The ALJ concluded that he "does not dispute that the claimant's condition worsened sometime after the date last insured, but as discussed above, her condition was not of disabling severity through the date last insured, and at least for several months afterwards." (AR 952.)

The ALJ next concluded that plaintiff could not perform her past relevant work as a collections clerk, since this was skilled work, but, relying on the testimony of the VE, the ALJ concluded that there were jobs in sufficient numbers in the national economy that Hurdis could perform, namely assembler (DOT # 739.687-086), inspector (DOT # 669.687-014), and hand packager (DOT # 559.687-014). (AR 954.) As such, the ALJ concluded that Hurdis was not disabled during the period April 1, 2006, through September 30, 2007. This third appeal followed.

## OPINION

The standard by which a federal court reviews a final decision by the Commissioner of Social Security is well-settled. 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, re-weigh the evidence, decide questions of credibility, or otherwise substitute its own judgment for that of the ALJ. *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000). 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).

Plaintiff raises a number of concerns, a number of which were previously raised in her appeals. While the court is not reluctant to remand a case for a second (or third) time if an error remains, the challenges plaintiff raises in this appeal fail to confront the ALJ’s reasoning in *this* opinion.

## **I. Evaluation of Mental Impairments**

Hurdis faults ALJ Bedwell for repeating the same errors in evaluating limitations in daily living, social functioning and concentration, persistence or pace, as the previous ALJ. First, plaintiff complains that the ALJ improperly relied on Hurdis’s account in Dr. Goldstein’s September 2019 report that she “perform[ed] household chores including cooking, light cleaning, driving and helper her daughter with homework,” and that she was “able to keep herself clean and change clothes.” (AR 946.) Plaintiff argues that the ALJ

cannot both discount Goldstein's opinion because it fell outside of the relevant period, but then rely on Hurdis's account of her daily activities also in that report. The ALJ, however, did not solely discount Goldstein's ultimate opinion that Hurdis "may not respond appropriately" to coworkers, would "find it hard" to maintain concentration, attention and work pace, and that work stress would likely increase irritability and impact pain, because of the passage of time between his opinion and the date last insured. The ALJ also rejected Goldstein's conclusions because they were inconsistent with his other findings, namely that she was cooperative, and exhibits only "mild concentration difficulties," only "mild problems with recall" and was "ultimately capable of understanding and remembering simple instructions." (AR 950, 952.) Critically, the ALJ relies on the test results in crafting the nonexertional elements of Hurdis's RFC. Finally, the record reflects that Hurdis's mental impairments increased in severity post 2007, and therefore, her account of her daily activities in 2009 would suggest that she was also capable of those same activities -- and maybe more -- in 2006 to 2007.

Hurdis also contends that ALJ Bedwell impermissibly relied on the lack of treatment for mental health concerns during the period of time. Not so. The ALJ noted that Hurdis was on medication (something the prior ALJ failed to do), examined her medical records to find limited mentions of depression during the relevant period, except for one notation in June 2007, which prompted a change in medication, and reasonably inferred that her depression was well-controlled by medication during the period of time. The ALJ juxtaposed this period against her earlier hospitalizations in 1999 and her brief hospital

stay with follow-up outpatient treatment in 2009. The court sees no fault in the ALJ's evaluation of Hurdis's mental impairments during the relevant period of time.

## **II. Treatment of Moderate Limitations in RFC**

Hurdis also contends that the ALJ erred in failing to translate her moderate limitations in understanding remembering or applying information, concentrating, persisting or maintaining pace, and adapting or managing oneself into appropriate nonexertional limitations in the RFC. As detailed above, the ALJ limited Hurdis to "unskilled, simple, and routine work," and "jobs involving only occasional decision-marking and changes in the work setting." (AR 947.)

In a convoluted argument, Hurdis contends that the ALJ failed to explain on which opinions he relied in formulating the RFC, and instead pulled it "out of thin air." (Pl.'s Opening Br. (dkt. #12) 17-18.) As described in detail above, the ALJ explained how each of the nonexertional restrictions addressed Hurdis's moderate limitations. (AR 950.) Moreover, the ALJ noted that these accommodations were consistent with Goldstein's conclusion that she is "able to understand and remember simple instructions" and that her concentration difficulties, which Goldstein describes as only mild, arise when attempting to complete unfamiliar tasks. (*Id.*; *see also* AR 423.) Finally, limiting Hurdis to "only occasional decision-marking and changes in the work setting" also addressed Goldstein's view that "[r]outine work stresses and changes are likely to increase irritability and may impact pain." (AR 424.)

The court finds that the ALJ adequately grounded his RFC formulation in Goldstein's account of Hurdis's mental health status in 2009, which appears to be, if

anything, a more diminished status than her condition in 2006 and 2007. Regardless, plaintiff fails to direct the court to any evidence in the record supporting additional or increased nonexertional limitations or otherwise explain what additional limitations would be warranted to address her mental health impairments.<sup>6</sup>

### III. Assessing Hurdis's Statements

Next, plaintiff takes issue with the ALJ's assessment of her statements about her symptoms and limitations. First, Hurdis argues that the ALJ applied the wrong standard by finding that Hurdis's account of her symptoms was "entirely consistent" with the record; instead, Hurdis contends that the ALJ should have considered whether her account was "reasonably consistent" with the record. (Pl.'s Opening Br. (dkt. #12) 20 (citing 20 C.F.R. § 416.929(a); SSR 16-3p.) While the court agrees that this language is somewhat problematic, the opinion goes on to describe inconsistencies between the record and Hurdis's account of her limitations, which is entirely appropriate and does not support a finding that the ALJ subjected Hurdis to an improperly stringent standard. *See Schomas v. Colvin*, 732 F.3d 702, 708 (7th Cir. 2013) ("The use of boilerplate is innocuous when, as here, the language is followed by an explanation rejecting the claimant's testimony.").

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<sup>6</sup> In the middle of her argument about the ALJ's failure to account for her mental limitations in crafting an RFC, plaintiff also faults the ALJ for failing to "inform the vocational witness of the need for a crutch during the relevant period." (Pl.'s Opening Br. (dkt. #12) 18.) While the record reflects that plaintiff was using a crutch in November 2019 to help with gait and pain relief, the record does not support a finding that the crutch was required to walk during the relevant period of time. (AR 431.) Indeed, the record that mentions the use of a crutch in January 2007 -- a form completed by Dr. Chan, the state agency medical consultant -- also indicated that plaintiff could stand and/or walk at least 2 hours in an 8-hour workday and that she was "[a]ble to walk 500-600 ft. No use of assistive devices." (AR 431, 435.)

As described above, the ALJ provided several reasons for discounting Hurdis's statements about the extent she was limited in 2006 and 2007. The ALJ relied on objective tests, namely MRIs and nerve conduction studies, all of which were "normal," "unremarkable," or showed "no significant abnormalities." (AR 948.) He considered these test results in conjunction with treatment record notes during the same period, noting at least at times only mild symptoms upon examination, negative or normal results for various physical examination tests and normal gait, as well as records describing activities that well beyond plaintiff's account and her own statements post-dating the relevant period that her pain did not worsen until January 2009. (AR 948-49.) This is *not* a case where the ALJ simply looked to normal MRI results and failed to consider other evidence in the record, including the claimant's statements about intensity, persistence and limiting effects of pain.

Plaintiff also challenges the ALJ's failure to explain which of Hurdis's statements were given weight, which were not, and why. Specifically, Hurdis points to the ALJ's purported reliance on Hurdis's testimony during the 2018 hearing, that in 2006 and 2007, Hurdis's disabling conditions consisted of: "generalized body pain"; "some headaches"; and "mental symptom affecting her memory and ability to maintain work pace." (AR 947.) The Commissioner in his opposition acknowledges that there is no such testimony, but reasonably points out that Hurdis offered the testimony the ALJ describes in the 2011 hearing. Perhaps the ALJ should have explored more fully in the 2018 hearing Hurdis's assessment of her limitations in 2006 and 2007, but, if anything, it is fair to assume that her testimony during the 2011 hearing would offer a clearer, or at least, more recent,

assessment. Regardless, Hurdis stops short of disputing that plaintiff claimed disability in 2006 and 2007 based on “generalized body pain,” “some headaches” and “mental symptoms affecting her memory and ability to maintain work pace.” (AR 947.)

Next, Hurdis contends that the ALJ impermissibly played doctor by presuming that MRI and nerve condition studies would be relevant to evaluating Hurdis’s pain conditions which included piriformis syndrome and myofascial pain. Fair enough. But the ALJ considered these studies in the context of evaluating her claims about bursitis and radicular pain, noting that these tests did not show degenerative changes to support a finding that these medical conditions caused pain to the extent that Hurdis claimed. As for the other conditions, as described above, the ALJ *also* noted medical treatment notes reflecting negative or normal results for various physical examination tests and normal gait. Hurdis also criticizes the ALJ for describing medical evidence and neurological findings of Drs. Zoeller and Donipathi without explaining why they do not support the degree of pain and limitation alleged by Hurdis. Here, too, however, Hurdis fails to confront the ALJ’s actual analysis. As he explained in the opinion, those treatment notes reflect normal or negative tests results, showed mild pain symptoms, indicated that she walked normally, had normal strength, and normal range of motion. The court sees not error in the ALJ’s analysis. At minimum, this case is not like *Faust v. Colvin*, No. 13-CV-323-BBC, 2014 WL 348181, at \*2 (W.D. Wis. Jan. 31, 2014), the case plaintiff cites, where the ALJ’s reasoning is “so poorly articulated as to prevent meaningful review.” (Pl.’s Opening Br. (dkt. #12) 24.)

#### IV. Evaluation of Migraine Headaches

Hurdis also contends that ALJ Bedwell succumbed to the same error as the prior ALJ in failing to properly consider Hurdis's history of migraine headaches. Unlike the prior ALJ, however, here, ALJ Bedwell *did* consider Hurdis's history of migraine headaches, and specifically considered her history of being absent from work due to these headaches before her alleged onset disability date, but also noted that she began taking medication in 2006 for these headaches, and reasonably inferred that the headaches were controlled by medication. (AR 943.) Nothing more needs to be said about this challenge.

#### V. Consideration of Listings

Next, Hurdis contends that the ALJ should have reviewed additional listings than the ones described in his opinion and that the ALJ's analysis with respect to Listing 14.09 (inflammatory arthritis) was flawed. This argument exemplifies the scattershot nature of this appeal. Plaintiff does *nothing* to explain how she could meet these other listings, other than to direct the court to a pre-hearing briefs filed in the administrative record, indicating that at points during this long administrative history she raised the possibility that these other listings would apply.

With respect to Listing 14.09, Hurdis was not diagnosed with fibromyalgia until 2009, or, at minimum, plaintiff fails to direct the court to any record supporting a finding that she was diagnosed during the relevant period from April 2006 to September 2007. Plaintiff's best evidence is a note from Dr. Hafeez in November 2009 that plaintiff reported that her symptoms have been "pretty bad" for about the past two years (AR 426), but the Commissioner correctly argues that this falls short of establishing a diagnosis. The ALJ

correctly noted that during the 2006 and 2007 period, plaintiff's physicians were treating her for other conditions, and, therefore, she fails to satisfy the criteria under Listing 14.09, which expressly requires a showing that "other disorders which could cause the symptoms or signs were excluded." (AR 944.) The court notes, as the ALJ did as well, that a November 2007 record showed only 6 of the 18 fibromyalgia tender points were present. (AR 949 (citing Ex. 4F at 3).)

Finally, with respect to this challenge, plaintiff appears to argue that the April 2009 date for determining plaintiff was disabled for purposes of supplemental benefits was arbitrary. Specifically, plaintiff takes issue with Dr. Chan's opinion that she was disabled as of April 2009 based on Dr. Schlomer's opinion that she was able to perform sedentary work until that day, because she represents that the record contains no such statement from Dr. Schlomer. (Pl.'s Opening Br. (dkt. #12) 27 (citing AR 429, 431).) Regardless of whether Dr. Schlomer provided such an opinion, there is no challenge to the Commissioner's *award* of supplemental benefits as of April 2009. As such, the court declines to address this argument, other than to find that plaintiff has failed to put forth evidence supporting a finding that 14.09 was satisfied during the relevant period for purposes of this appeal. *See Maggard v. Apfel*, 167 F.3d 376, 380 (7th Cir. 1999) ("The claimant bears the burden of proving his condition meets or equals a listed impairment.").

## **VI. DOT Numbers**

Finally, Hurdis contends that the ALJ erred in relying on the vocational expert's testimony as to the number of jobs in the national economy for the three positions the VE identified as appropriate for Hurdis in light of her RFC. Specifically, Hurdis argues that



“no reasonable person would believe” that there are 23,600 people working full-time assembling eye droppers, 9,100 workers inspecting dowels, or 19,500 individuals hand sealing ampules in the pharmaceutical industry. (Pl.’s Opening Br. (dkt. #12) 29.) While the Commissioner recognizes that the Seventh Circuit has criticized some aspects of the DOT, the regulations specifically permit adjudicators to rely on the DOT as a source of reliable job information. *See* 20 C.F.R. § 404.1566(d) (describing the DOT as “reliable job information available from various governmental and other publications”); *see also Liskowitz v. Astrue*, 559 F.3d 736, 745-46 (7th Cir. 2009) (“Where, as here, the VE identifies a significant number of jobs the claimant is capable of performing and her testimony is uncontradicted (and is otherwise proper), it is not error for the ALJ to rely on the VE’s testimony.”). At minimum, plaintiff has failed to cite any support that the proper test is for the court to determine whether a “reasonable person would believe” the job numbers cited by the VE. As such, the court rejects this basis for remand as well.

While the court will not hesitate to remand a case a second or even third time if the errors noted in an earlier appeal remain unaddressed, *see Bolssen v. Saul*, No. 19-CV-116-WMC, 2020 WL 1129970, at \*1 (W.D. Wis. Mar. 9, 2020), here, the shortcomings identified in the ALJ’s prior decision were adequately addressed in the most recent ALJ decision, which is the subject of this appeal.

ORDER

IT IS ORDERED that:

- 1) The decision of defendant Kilolo Kijakazi, Acting Commissioner of Social Security, denying plaintiff Patricia Hurdis's application for disability and disability insurance benefits is AFFIRMED.
- 2) The clerk's office is directed to enter judgment in defendant's favor.

Entered this 29th day of September, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge