

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

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ERIK VANOVERMEIREN,

Plaintiff,

v.

OPINION AND ORDER

22-cv-233-wmc

MARTIN J. O'MALLEY,  
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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Plaintiff Erik VanOvermeiren seeks judicial review of a final decision of the Commissioner of the Social Security Administration, finding him not disabled within the meaning of the Social Security Act (“SSA”). Specifically, VanOvermeiren contends that the administrative law judge (“ALJ”) improperly concluded that his back problems did not meet the criteria of Listing 1.15 (disorders of the skeletal spine resulting in compromise of nerve roots) and the finding of Charcot-Marie-Tooth disease<sup>1</sup> did not meet the criteria of Listing 11.14 (peripheral neuropathy). For the reasons explained below, the court will affirm the Commissioner’s decision.

## BACKGROUND<sup>2</sup>

### A. Application and Medical History

VanOvermeiren originally applied for disability benefits and supplemental security income in April 2019, alleging that he suffered from back injuries, Charcot-Marie-Tooth

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<sup>1</sup> Charcot-Marie-Tooth disease is a group of inherited disorders that cause nerve damage in the arms and legs and result in smaller, weaker muscles. *Charcot-Marie-Tooth Disease*, Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/charcot-marie-tooth-disease/symptoms-causes/syc-20350517>.

<sup>2</sup> Citations are to the administrative record (“AR”) at dkt. ## 7, 7-1.

disease, chronic constipation, diverticulitis, foot drop, depression and high blood pressure.<sup>3</sup> (AR 270-80, 309.) He also alleged a disability onset date of October 1, 2018, when he was 38 years old. (AR 273.)

As background, VanOvermeiren's back problems started in 2005 when he was injured while working at a lumber yard. (AR 442-43.) Beginning in 2017, VanOvermeiren: (1) had a series of MRIs (AR 679, 1464, 1606-08, 1628-29, 2412-13) and back surgeries (AR 1443, 1445, 1448, 1450, 1452); (2) used a walker, cane and ankle foot orthosis at various times (AR 579-80, 1685, 1731); (3) experienced a "profoundly weak" left foot and mildly deficient strength in his right leg as of June 2020 (AR 1933-34); and (4) had atrophied muscles in his left hand, although that hand had otherwise "unremarkable" muscle tone, equal speed and dexterity to his right hand, as well as no dysmetria (inability to perform accurate, smooth movements). (AR 1508.)

After VanOvermeiren's claim for benefits was denied by the local disability agency initially and on reconsideration (AR 158-72), ALJ Erin Schmidt held an evidentiary, online video hearing on his claims on June 7, 2021. At the hearing, VanOvermeiren testified that: his legs would "cut out"; he could not walk long distances or stand in one place for a long time; and he had balance issues, adding that he could not pick things up from the floor and had fallen twice in the past six months. (AR 44-46.)

After this hearing, the ALJ issued a decision finding that he had the following severe impairments: degenerative disc disease of the lumbar spine, Charcot-Marie-Tooth disease/hereditary neuropathy, hip degenerative joint disease, carpal tunnel syndrome and

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<sup>3</sup> A "foot drop" means difficulty lifting the front part of the foot. *Foot drop*, Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/foot-drop/symptoms-causes/syc-20372628>.

adjustment disorder with anxiety and depression. (AR 16.) However, the ALJ also concluded that none of VanOvermeiren’s medical conditions met the severity of one of the listed impairments under 20 C.F.R. § 404, and he had the residual functional capacity to perform sedentary work. (AR 17-19.)

VanOvermeiren appealed, but the Appeals Council denied his request for review. (AR 1-3.)

### OPINION

As framed by plaintiff, the issue before this court is whether the ALJ’s finding that VanOvermeiren’s medical conditions did not meet one of the listed impairments under § 404 is supported by substantial evidence, which means “sufficient evidence to support the agency’s factual determinations.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (alteration adopted and quotation marks omitted). This standard requires “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (quotation marks omitted). Accordingly, the ALJ must identify the relevant evidence and build a “logical bridge” between that evidence and her ultimate factual determination. *Moon v. Colvin*, 763 F.3d 718, 721 (7th Cir. 2014). On review, this court may not “reweigh the evidence, resolve debatable evidentiary conflicts, determine credibility, or substitute [its] judgment for the ALJ’s determination so long as substantial evidence supports it.” *Gedatus v. Saul*, 994 F.3d 893, 900 (7th Cir. 2021).

Here, plaintiff specifically contends that the ALJ’s step-three decision was not supported by substantial evidence because she improperly concluded that (1) his back condition did not meet the Listing 1.15 criteria, and (2) his Charcot-Marie-Tooth disease

did not meet the Listing 11.14 criteria. At step three, an ALJ is to consider whether the claimant's impairments are "equivalent to one of a number of listed impairments that the Secretary acknowledges are so severe as to preclude substantial gainful activity." *Bowen v. Yuckert*, 482 U.S. 137, 141 (1987) (citing 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 CFR pt. 404, Subpt. P, App. 1)). Nevertheless, a claimant bears the burden to show that his impairments satisfy all criteria of a specific listing. *Ribaudo v. Barnhart*, 458 F.3d 580, 583 (7th Cir. 2006). "If the impairment meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled." *Bowen*, 482 U.S. at 141. Still, an impairment "must meet *all* of the specified criteria" to meet a listing. *Sullivan v. Zebley*, 493 U.S. 521 (1990) (emphasis in original).

Plaintiff argues that the ALJ's opinion was insufficient because she did not adequately support her conclusion that he did not meet the listing criteria. While the ALJ's step three discussion was brief, it preceded a thorough discussion of plaintiff's medical conditions at the residual functional capacity step, which adequately "draws the bridge" showing the evidence of record did not meet the criteria for either Listing 1.15 or Listing 11.14 as discussed below. *See Zellweger v. Saul*, 984 F.3d 1251, 1254 (7th Cir. 2021) (explaining that a reviewing court may review an ALJ's step three determination "in light of elaboration and analysis appearing elsewhere in the decision").

#### **I. Plaintiff's Back Condition and Listing 1.15**

Among other specified criteria, Listing 1.15 requires: (1) "[f]indings on imaging . . . consistent with compromise of a nerve root(s) in the cervical or lumbosacral spine"; *and* (2) "[a] documented medical need (see 1.00C6a) for a walker, bilateral canes, or bilateral

crutches” or “[a]n inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements (see 1.00E4), and a documented medical need (see 1.00C6a) for a one-handed, hand-held assistive device (see 1.00C6d) that requires the use of the other upper extremity.” 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.15C, D. Moreover, a “documented medical need” means “evidence from a medical source that supports your medical need for an assistive device . . . *for a continuous period of at least 12 months.*” *Id.* § 1.00C6a (quotation marks omitted and emphasis added).

The ALJ concluded that plaintiff’s lumbar degenerative disease did not meet or equal the requirements of Listing 1.15, finding,

[a]lthough he has left foot drop, there are no findings on imaging, persisting for a 12[-]month period consistent with compromise of a nerve root and a documented medical need for an assistive device requiring use of both hands or an inability to use one upper extremity and a documented medical need for a one handed, hand held assistive device, or an inability to use both upper extremities.

(AR 17.) Nevertheless, plaintiff argues that the ALJ ignored imaging results showing that he had a compromised nerve root in his lumbar spine for a 12-month period (§ 1.15C) and that he used a walker, cane and ankle foot orthosis to walk (§ 1.15D). However, the ALJ specifically discussed plaintiff’s imaging results in her residual function capacity analysis, acknowledging that imaging showed he had a compressed nerve root in 2019, but noting that imaging showed no nerve root impingement in 2020. (AR 20-22.) She also acknowledged the atrophy of small muscles in his left hand, but noted he had equal speed and dexterity in both hands, and he had no dysmetria in his left hand. (AR 21.) Accordingly, the ALJ concluded that plaintiff had not shown an ongoing need for an

assistive device for a 12-month period, noting that he did not use a cane as of August 2018, and he had a “non-antalgic, non-myelopathic gait”<sup>4</sup> when he used an ankle foot orthosis. (*Id.*) And while he used a walker after surgery in March 2019, plaintiff had progressed to using a cane and an ankle foot orthosis in a couple of months. (*Id.*) Finally, the ALJ found that he briefly used a cane when his back pain recurred in January 2020, and he walked with a cane at an emergency room visit in April 2020. (AR 22.)

Even if the ALJ incorrectly concluded that plaintiff did not satisfy § 1.15C because MRIs showed nerve root impingement between 2017 and 2019 (AR 679, 1464, 1628-29), substantial evidence supports the ALJ’s conclusion that he did not have a documented medical need for an assistive device. *Cf. Sosinski v. Saul*, 811 F. App’x 380, 381 (7th Cir. 2020) (even where ALJ erred in failing to address the applicability of a listing, the error was harmless as plaintiff could not show that the listing was met). First, the ALJ reasonably concluded that plaintiff did not have an ongoing medical need for a walker. Instead, the record evidence shows that plaintiff only used a walker for about 2 months after his March 2019 surgery, which is far short of the 12 months required to demonstrate a documented medical need. (AR 1685, 1731.)

Second, while plaintiff sometimes used a *single* cane to walk (AR 579-80, 1731, 2523), the ALJ reasonably concluded that he did not have a documented medical need for a cane because he again did not use it for a *continuous* 12-month period. Plaintiff walked with no assistive device at his August 2018 doctor’s appointment, but he used a cane at an

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<sup>4</sup> An antalgic gait is a limp caused by pain. *Gait Disorders and Abnormalities*, Cleveland Clinic, <https://my.clevelandclinic.org/health/diseases/21092-gait-disorders>. A myelopathic gait is a limp caused by severe spinal compression. *Myelopathy*, Cleveland Clinic, <https://my.clevelandclinic.org/health/diseases/21966-myelopathy>.

October 2018 physical therapy appointment. (AR 579-80, 1507-08.) However, doctor's notes from January 2019 did not mention him using a cane. (AR 1363.) Rather, plaintiff returned to walking with a cane briefly in March 2019 following his back surgery but reported at a January 2020 appointment that he had not used a cane for "quite some time." (AR 1730, 2456-57.) He also briefly used a cane in January 2020 (AR 2456-57, 2463), and he began using a cane again in April 2020 after a flare up in his back condition (AR 2138-43). He continued to use a cane in July 2020 (AR 2523), but his doctor did not mention him using a cane at his November 2020 or January 2021 appointments (AR 2393, 2396). In fairness to plaintiff, he stated in his function report that he used a cane "all the time" after his March 2019 back surgery (AR 388). As explained above, however, substantial evidence supports the ALJ's determination, and this court may not reweigh the evidence or second guess her credibility determinations as to plaintiff's intermittent use of a cane. *Gedatus*, 994 F.3d at 900.

Finally, even if plaintiff had a sustained need to use a single cane, that alone is insufficient to meet the criteria of § 1.15D, since the ALJ reasonably concluded that he did not show "[a]n inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 1.15D. Certainly, plaintiff reported numbness, tingling and weakness in his hands in his function report, and his doctor noted atrophy in the small muscles of

his left hand, but his doctor also noted that the speed and dexterity of his hands were equal, and he did not exhibit dysmetria in his left hand. (AR 382, 1508.)<sup>5</sup>

## II. Plaintiff's Charcot-Marie-Tooth Disease and Listing 11.14

As for peripheral neuropathy under Listing 11.14, petitioner must show:

A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities.

OR

B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and [in an area of mental or social functioning.]

20 C.F.R. Pt. 404, Subpt. P, App. 1, § 11.14. “Disorganization of motor function” means “interference, due to your neurological disorder, with movement of two extremities.” *Id.* § 11.00D1.

Here, the ALJ concluded that plaintiff's hereditary neuropathy/Charcot-Marie-Tooth disease did not meet the requirements of Listing 11.14 because there was

no clinical evidence of disorganization of motor function in two extremities results in an extreme limitation in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, or a marked limitation in physical functioning and in one of the listed mental areas of functioning (discussed below).

(AR 18.) The ALJ further noted that plaintiff had a “profound” left foot drop as of January 2021, but only mild quadriceps weakness in his right leg, and examinations showed that he had a non-antalgic, non-myelopathic gait when using an ankle foot orthosis. (AR 21,

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<sup>5</sup> Defendant also asserts that plaintiff cannot satisfy 1.15B2 because he did not have a positive straight-leg test, but the record shows that he had a positive straight-leg test in February 2019 (AR 1220) and the ALJ reasonably did not address plaintiff using an ankle foot orthosis, as it was not part of the criteria for Listing 1.15.



23.) The ALJ also found that plaintiff had mild impairments as to his ability to understand, remember or apply information, interact with others, and adapt or manage himself. (AR 18.) Finally, the ALJ found that he had a moderate limitation as to concentrating, persisting or maintaining pace. (*Id.*)

Without citing to any evidence, plaintiff nevertheless asserts that the ALJ incorrectly concluded that he did not satisfy the Listing 11.14 criteria because there was significant evidence in the record of his limited ability to stand up, maintain his balance and use his extremities as well as his impaired mental functioning. However, substantial evidence supports the ALJ's conclusion that he did not meet the criteria of Listing 11.14. For one, the ALJ reasonably concluded that he did not suffer disorganization of motor function in two extremities. Plaintiff likely suffered disorganization of his left foot because he had a profound left foot drop, but he provides no evidence that he had similar difficulties with another extremity. (AR 2393.) While he also had deficient strength in his right leg, there is no evidence of his having difficulty moving that leg, and his doctor described the weakness as mild. (AR 1934, 2393.) As discussed in the previous section, a doctor noted atrophy of the small muscles in his left hand, but then noted that he did *not* have dysmetria in his left hand. (AR 1508.) Further, the ALJ reasonably concluded based on substantial evidence that: plaintiff did not suffer an extreme limitation in walking, standing or getting up because his gait was non-antalgic and non-myelopathic; he walked well with a cane; and he showed significant improvement in strength and balance after physical therapy. (AR 1363, 1731, 2547.) Although there was some contradictory evidence -- plaintiff reported that he had difficulty walking, standing and getting up from the toilet (AR 383, 2523, 2530) -- the court once again may not reweigh the evidence. *Gedatus*, 994 F.3d at 900.

Moreover, substantial evidence supports the ALJ’s conclusion that plaintiff did not suffer from a marked limitation in mental or social functioning when he reported that he could handle money, occasionally socialize, get along with others, and follow verbal and written instructions. (AR 385-87.) Further, a psychologist found that his mental capacity for understanding, remembering and following instructions showed “no general impairment,” and his ability to pay attention, concentrate and carry out work tasks showed only slight impairment. (AR 1823.)

Finally, as defendant fairly points out, plaintiff’s unsupported, one-page-long argument that his Charcot-Marie-Tooth disease met the criteria of Listing 11.14 was insufficient to preserve the argument. *Hall v. Berryhill*, 906 F.3d 640, 644 (7th Cir. 2018) (“perfunctory and undeveloped” argument was waived (quotation marks omitted)).

#### ORDER

IT IS ORDERED that the decision of defendant Martin O’Malley, Commissioner of Social Security, denying claimant Erik VanOvermeiren’s application for disability insurance benefits is AFFIRMED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 4th day of April, 2024.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge