

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

CHARLOTTE G. JOHNSON,)
)
 Plaintiff,)
)
 v.)
)
 JOANNE B. BARNHART,)
 Commissioner of Social Security,)
)
 Defendant.)

NO. 2:05-CV-124 PS

OPINION AND ORDER

This matter is before the Court on Plaintiff Charlotte G. Johnson’s Motion for Summary Judgment or Remand regarding Defendant Commissioner of Social Security Administration’s (“SSA”) final decision, finding that Plaintiff was not eligible for Disability Insurance Benefits or Supplemental Security Income. Upon a close review of the record, this case is remanded.

I. BACKGROUND

A. Procedural History

Plaintiff Charlotte Johnson filed applications for a period of disability, disability insurance and supplemental security income on June 4, 2002. (R. 70-72.) The Social Security Administration denied these claims initially on July 11, 2002, and again upon reconsideration on January 8, 2003. (R. 204-208, 211-212.) Plaintiff then filed a timely request for a hearing on March 6, 2003. (R. 37-38.) Administrative Law Judge Daniel Dadabo held the hearing, where Plaintiff was represented by counsel, on September 3, 2003. (R. 58, 66-69.) At the hearing, the ALJ heard testimony from Plaintiff and vocational expert Randall Strahl. (R. 227-267.) Based

on the testimony at the hearing and Plaintiff's submitted medical evidence, the ALJ on December 4, 2003, issued an opinion, finding that, while Plaintiff had several medically determinable, severe impairments, she was not disabled and was able to perform her past work. (R. 18-22.) The Appeals Council denied Plaintiff's request for review on January 7, 2005, rendering the ALJ's decision the final decision of the Commissioner. (R. 4-6); 20 C.F.R. § 404.981.¹ Plaintiff has now timely appealed the ALJ's decision to this Court.

B. Plaintiff's Physical Impairments

Plaintiff was 44 years old at the time of the hearing. (R. 231.) She has a twelfth grade education. (*Id.*) At the time of the hearing, Plaintiff weighed about 130 pounds and was 5'1" tall. (R. 236.) She also was married and lived with her husband and sixteen-year-old daughter in a third-floor apartment. (*Id.*) Their apartment building did not have an elevator. (*Id.*) Prior to the onset of her illness in early 2002, Plaintiff's work experience included employment as a central registration associate (CRA), a suspense analyst, and a patient representative for a medical clinic. (R. 231, 234.)

In her application for disability submitted on June 4, 2002, Plaintiff complained of pain, weakness and swelling in her legs and arms. (R. 84.) She also stated that she couldn't stand for a long period of time, but when sitting, her legs became numb. (*Id.*) Regarding her work, she noted that as a CRA, she walked, stood, and wrote or typed for eight hours, and sat for one hour. (R. 85.) She also stated that she used machines, tools or equipment and used technical

¹ The Court will only cite to the Disability Insurance Benefits (DIB) regulations, found at 20 C.F.R. § 404.1501 *et seq.* as they are nearly identical to the Social Security Insurance regulations. The parallel SSI regulations, found at 20 C.F.R. § 416.901 *et seq.*, correspond to the last two digits of the DIB cites. For example, 20 C.F.R. § 404.1520(e) corresponds with 20 C.F.R. § 416.920(e).

knowledge or skills. (*Id.*) In her Request for Reconsideration form, Plaintiff complained that her symptoms were worsening and that she had lower back pain, fatigue and swelling in both hands. (R. 93.) She also stated that she could not perform daily chores and did not go out as much due to her pain and fatigue. (R. 95.) Finally, in her Request for Hearing form, Plaintiff complained that she suffered with constant pain in both legs and arms. (R. 99.) She continued to deal with leg numbness and weakness. (*Id.*) She also stated that her arms were weak and that it was difficult to hold or grip anything heavy. (*Id.*) She had stopped most household chores, grocery shopping and laundry. (*Id.*) Moreover, she mentioned that she does not leave home by herself and stays close to home. (*Id.*)

1. Treating Physician Evidence

Plaintiff's records indicated that she was exposed to tuberculosis (TB) in December 2001 while working at Hammond Clinic. (R. 123.) In January 2002, Plaintiff started a course of Isoniazid (INH) for the TB exposure. (*Id.*) On February 4, 2002, Plaintiff complained that her hands and feet felt numb. (R. 129.) On February 25, 2002, Plaintiff was placed on Vicodin to help control the pain, and also on other medications.² (R. 130.)

Plaintiff was seen by Dr. Bozanich on March 6, 2002 at the Hammond Clinic with symptoms of dizziness and leg pain. (R. 126.) Dr. Bozanich instructed Plaintiff to stop taking INH and ordered her off work. (*Id.*) On March 7, 2002, Plaintiff again complained of dizziness and aching legs with slightly blurred vision. (*Id.*) Dr. Bozanich referred Plaintiff to the neurology department for evaluation regarding Plaintiff's dizziness, on March 20, 2002. (R. 123.) Plaintiff also complained of numbness, weakness, and pain. (*Id.*)

² Several of the doctors' notes are illegible.

On March 27, 2002, Plaintiff complained of worsening bilateral leg swelling and pain, and was prescribed ibuprofen. (R. 122.) On April 1, 2002 Plaintiffs' physician noted that Plaintiff's symptoms were a possible adverse reaction to the INH that she had taken for the TB. (R. 120.) The appointment notes also indicate complaints of swollen legs and thighs, pain in Plaintiff's knees and calves, and Plaintiff's continued prescription for ibuprofen. (*Id.*) The doctor advised Plaintiff to take off work for one week because of a possible drug reaction. (R. 167.)

On April 9, 2002, Plaintiff was seen by Dr. Li and again complained of worsening leg pain and difficulty in walking. (R. 121.) Dr. Li noted that her problems may be "related to INH" – the drug she had taken for her TB exposure. (*Id.*) Dr. Li noted that Plaintiff had tenderness on her calves, around the knees, thighs and right shoulder area, and that there was some myopathy and/or neurology with unclear etiology. (*Id.*) Dr. Li prescribed Celebrex for the pain and told Plaintiff to take one month off of work to allow for further study into her condition and for rest. (R. 121, 168.) Dr. Li ordered that an EMG be done to further research Plaintiff's complaint of bilateral leg weakness and pain. (R. 121.) On April 11, 2002, Dr. Hanlon reviewed the EMG ordered by Dr. Li. (R. 165-66.) According to Dr. Hanlon's report, everything checked out as being normal and unremarkable. (*Id.*)

On April 19, 2002, Plaintiff's doctor notes noted further complaints of constant pain, which increased when walking, and fatigue. (R. 119.) She was prescribed Neurontin and an increased dosage of Celebrex. (*Id.*) On May 7, 2002, Plaintiff again told her doctor that her leg pain and weakness were getting worse, particularly when walking. (R. 116.) Dr. Li noted decreased leg strength, described Plaintiff's symptoms as neuropathy unknown, and ordered

Plaintiff to remain on home rest until further study. (R. 116, 169.)

Dr. Hanlon examined Plaintiff's CT scan on May 15, 2002, which revealed spina bifida occulta at L1, L2, and S1, with a slight generalized bulge of the disk at L2-3. (R. 160.) The report further stated: "But no localized protrusions or herniations are demonstrated. Scanning of the lumbar spine is otherwise unremarkable." (*Id.*)

On May 24, 2002, Dr. DeCastro from the neurology department at the Hammond Clinic noted that Plaintiff complained of sore muscle pains (thighs to feet and shoulders to elbows), numbness, and blurred vision. (R. 115.) He also noted that she had started INH in January, completed it in March, but continued to have symptoms, and that Celebrex was not improving her symptoms. (*Id.*) Dr. DeCastro increased Plaintiff's Celebrex prescription and noted that, if subsequent testing was negative, he would consider referring Plaintiff to a rheumatologist. (*Id.*) He also continued the order for Plaintiff to remain off work until further testing and evaluation. (R. 170.) On May 29, 2002, Dr. DeCastro told Plaintiff that she should have further evaluation to determine the source of her pain if "all neurologic tests were normal[.]" (R. 113.) On June 7, 2002, Dr. DeCastro determined that "there is no significant evidence for a neurologic disorder as a cause for the patient's symptoms." (*Id.*) On that same day, Plaintiff was discharged from the neurology clinic on her volition after demanding a referral for another neurologist. (*Id.*)

In August 2002, Dr. Mahendra Patel at Margaret Mercy Healthcare Centers diagnosed Plaintiff as being anemic and noted that Plaintiff continued to have complaints of chest pains and arthritic symptoms. (R. 191.) He prescribed Naprosyn. (*Id.*) Dr. Patel also performed a battery of other tests on the Plaintiff's heart, lungs, spine, hands, and pulmonary system, all of which turned out negative. (R. 173-176, 186.) Dr. Patel also provided results of Plaintiff's thyroid,

blood work and urinalysis. (R. 172, 177-181, 183, 188-90.)

Plaintiff visited Dr. Patel's office twice in September 2002 and continued to complain of multiple aches and pain (R. 193), and visited him in November 2002 and complained of chest and neck pain, headaches, and dizziness. (R. 192.) In November, it appears that Dr. Patel prescribed two other medications to Plaintiff. (*Id.*)

Plaintiff visited a new physician, Dr. Upadhyay, on September 24, 2003 – after her ALJ hearing. (R. 197.) On October 23, 2003, Plaintiff's counsel provided medical records from Plaintiff's visit, to the ALJ. (R. 194.) The records indicate that Plaintiff possibly had an adverse reaction to the INH medication that she had taken for the TB exposure. (R. 197.) The records reflect that the INH caused Plaintiff's pain and swelling in her legs and arms. (*Id.*) The records go on to note that Plaintiff could not tolerate the INH, but doubted whether she actually had TB. (*Id.*)

2. State Physician Review

In January of 2003, Dr. J. Gaddy, responding to the SSA's request for medical advice, reviewed Plaintiff's medical records. (R. 209-210.) From his review, Dr. Gaddy determined that the medical evidence showed Plaintiff had joint pain and back pain, but that her "overall medical condition [did] not limit [her] ability to work." (R. 210.)

C. Hearing Testimony

1. Plaintiff's Testimony

Plaintiff testified at the hearing regarding her work duties, her illness, limitations due to her illness, and her day-to-day activities. She worked at the Hammond Clinic as a full-time CRA at the front desk. (R. 233, 234.) Her responsibilities in that position included registering

patients, taking payments, making appointments, reviewing insurance information and contacting insurance companies. (R. 233.) Plaintiff stated that the CRA position required walking and standing at least half the time, but no lifting. (R. 234.) Prior to working as a CRA, Plaintiff also worked at the clinic first as a patient representative and then as a suspense analyst. (*Id.*; R. 236.) As a patient representative, she worked with patients to resolve their accounts. (R. 235.) There was little physical activity on the job. (*Id.*) Her work as a suspense analyst primarily consisted of oral and written communications with insurance companies; there was little physical activity and no patient contact. (R. 234-35.) This position was eventually phased out at the clinic. (R. 235.)

Plaintiff testified that her problems began in December 2001 when she was exposed to TB while working at the clinic. (R. 232-33, 239.) She started taking INH as a treatment of her exposure. (R. 239.) After she began INH, she experienced extreme swelling and pain in her feet in February 2002. (R. 249-250.) The doctor initially told Plaintiff to continue the medication and watch the side effects to determine if any further symptoms developed. (R. 249.) After the swelling spread to her legs, her treating doctor discontinued the INH medication. (R. 239, 249.) But her symptoms did not improve. (R. 249.) Although a subsequent chest X-ray was clear for TB and her doctor told her she did not have TB, Plaintiff continued to have pain in her chest, arms, and legs. (R. 239-41.) Plaintiff testified that she left her job because of the swelling in her legs, which caused her pain and prevented her from moving quickly enough for the job. (R. 238, 250.) Her last day of work was on April 1, 2002. (R. 232, 253.)

During the hearing, the ALJ emphasized to Plaintiff's counsel that it was "very important" for counsel to inform the ALJ whether Plaintiff had TB. (R. 240.) This is odd since

Plaintiff was not contending she had TB. Rather, she was complaining of a possible adverse reaction to the drugs she took for the exposure to the TB. Indeed, consistent with what many of her treating physicians had hypothesized, Plaintiff stated that she believed that an adverse reaction to the INH medication is what caused her symptoms. (R. 254.) Certainly, the timing of her symptoms coincided with the taking of the INH. In any event, she continues to have swelling, weakness and pain. For example, she stated that sometimes her feet become numb, and they often feel tired. (R. 248.) She also doubted whether she could sit at a desk for work because, even as she sat for the hearing, she could feel the pain and swelling and knew that it would be difficult to maneuver. (R. 259.)

Plaintiff described her pain as “constant” where her “muscles hurt real bad . . . [she] can’t hardly move or [] bend. [She] can’t hardly walk [] and it’s real weak too.” (R. 241-42.) Plaintiff rated the pain as an eight on a scale of one to ten, and stated that her pain was at this level all the time. (R. 242.) Plaintiff testified that she currently takes 800 mg of Motrin to control the pain, which she started in August 2002, and that she also took Voltaren, which did not alleviate her pain. (R. 242-43.) She stated that she has also taken other medications for her pain. (R. 244.)

Moreover, Plaintiff discussed her limitations in her day-to-day activities. She described a typical day at home as: “Me sitting at home doing nothing because I have to.” (R. 244.) Plaintiff testified that she does not use a cane, but believes she could not walk a full block without having to sit down. (R. 237.) The ALJ expressed some surprise that Plaintiff was able to climb three flights of stairs but not be able to walk a block. (R. 244.) Plaintiff explained that, because the stairs up to her third floor home were so painful to climb, she required rest in

between each stair and tried not to climb the stairs more than once a day. (R. 244-45, 247.) This process takes twice as long as it did before she developed her symptoms. (R. 247-48.) Plaintiff testified that the farthest she travels is to her father's home, where she goes often. (R. 245.) But she only visits her father by car; "[she doesn't] even try to walk." (*Id.*) Further, she is able to stand less than five minutes before she has to sit, and can sit no more than an hour before she has to stand. (R. 237, 238.) She also lays down for most of the day with her legs elevated. (R. 260.) While Plaintiff can lift her purse, she stated that it weighs very little and that she does not carry it, but instead holds it under her arm. (R. 237-38.) Otherwise, she cannot pick up anything. (R. 237.) Plaintiff testified that she cannot perform any of her past work because she is no longer able to move quickly (as required by her position) due to the pain and swelling. (R. 238, 259.) Plaintiff no longer drives, and her husband and daughter have taken over many of the household tasks, including grocery shopping, laundry, and cleaning up. (R. 245-46.)

2. Vocational Expert Testimony

Randall Strahl, a vocational expert (VE), testified regarding Plaintiff's ability to work. (R. 261.) The VE testified that Plaintiff's past work as a patient registrar was a sedentary, semi-skilled position that she performed at the light level and that her work as a claims clerk and as patient representative were also sedentary, semi-skilled work.³ (R. 261.) The VE stated that the registrar position consists of transferable skills to a receptionist position, which is a semi-skilled and sedentary position. (R. 262.)

The ALJ posed four hypothetical questions to the VE. First, the ALJ asked the VE

³ The Court assumes that the VE interpreted the title of suspense analyst as a claims clerk and a central registration associate as a registrar position.

whether an individual with Plaintiff's education and work experience and able to perform a full range of sedentary work, could go back to her prior employment if she could not work "in an environment where they would be exposed to a high likelihood of communicable disease." (*Id.*) The VE answered that the individual could not go back to the same work in a medical facility, but could perform similar work in office clerk positions in a nonmedical facility. (R. 263.) The VE testified that there were about 1,100 office clerk positions in a four-county area at the semiskilled, sedentary level. (R. 263.) He testified that there was also sedentary, unskilled work: approximately 400 ticket seller or cashier jobs, 1800 telephone marketing clerk positions, and 600 inspector sorter jobs. (*Id.*)

In a second hypothetical, the ALJ asked the VE what types of jobs are available if the individual had to elevate her legs during significant portions of the day to foot stool height or above. (*Id.*) The VE responded that foot stool height (couple of inches of elevation under a desk) would have no effect on the types of sedentary jobs. (R. 264-65.) If, on the other hand, the person was required to elevate their legs to chair height or above (legs extended in front of individual at either chair or footstool height), there would be no available work. (R. 264.)

The ALJ posed a third hypothetical in which he asked if any positions are available if the person had a contagious communicable disease. (R. 265). The VE answered that no positions would be available for this individual. (*Id.*)

In his final question, the ALJ asked the VE how many positions are available if a person could sit for only one hour, not be able to carry anything, stand less than five minutes, and walk only with extraordinary difficulty, causing them to be slow and deliberate. (*Id.*) The VE responded that none of the previously discussed jobs would be available because a person has to

be able to lift and carry, even if it is just a telephone, piece of paper, or small objects. (*Id.*; R. 266.) The VE also stated that difficulty in walking would adversely affect the number of jobs available. (R. 266.)

D. Other Evidence

The ALJ permitted Plaintiff and counsel to submit additional evidence during the thirty days after the hearing. (R. 266-67.) Plaintiff's counsel provided a redacted entry from the Physicians' Desk Reference (PDR) describing the side effects of INH. Importantly, one of those adverse reactions is neuropathy which is a disease of the nervous system – the very thing of which Plaintiff complains. The provision of the PDR that was included in the record before the ALJ reads as follows:

ADVERSE REACTIONS

The most frequent reactions are those affecting the nervous system and the liver.

Nervous System: Peripheral neuropathy is the most common toxic effect

Miscellaneous: Pneumatic syndrome and systemic [sic] lupus erythematosus like syndrome

(R. 108 (citing PDR at 521 (52nd ed.)).)

E. ALJ Findings

Upon considering the hearing testimony and evidence in the record, the ALJ issued a 5-page decision concluding that Plaintiff was not disabled. (R. 18-22.) The ALJ arrived at that conclusion after applying the five-step analysis required for determining if an applicant is disabled. (R. 19.) The ALJ also made the following findings:

1. The claimant continues to meet the disability insured status

requirements Act through December 31, 2006.

3. The claimant has not engaged in disqualifying substantial gainful activity since the date of alleged disability onset, April 2, 2002.⁴
4. The medical evidence of record establishes that the claimant has the following medically determinable, severe impairments:

Myopathy, neuropathy by history, history of polyarthritic symptoms and anemia, history of exposure to tuberculosis with alleged medication reaction [], hypertension and diabetes mellitus.
5. These medically determinable impairments do not meet or [are not] medically equal [to] one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
6. The undersigned finds the claimant's allegations regarding her limitations are not totally credible for the reasons set forth in the body of the decision.
7. The undersigned has carefully considered all of the medical opinions in the record regarding the severity of the of the claimant's impairments
8. The documentary evidence supports a finding that the claimant retains the residual functional capacity for performing the full range of sedentary work.
9. None of the claimant's past relevant work as performed by the claimant required the performance of work-related activities precluded by her residual functional capacity
10. The claimant's medically determinable, severe impairments do not prevent the claimant from performing any of her past relevant work.
11. The claimant was not under a "disability" as defined in the Social Security Act, at any time through the date of the

⁴ The ALJ skipped number 2 when listing his findings.

decision

(R. 21-22.)

Based on these findings, the ALJ decided that Plaintiff was not entitled to a period of disability or disability insurance benefits and was not eligible for supplemental security income. The ALJ based his denial of Plaintiff's claim on the conclusion that Plaintiff was capable of performing past work. (R. 18.)

The ALJ also made specific observations that shaped his findings. He noted that Plaintiff's counsel failed to obtain an opinion from Plaintiff's treating doctor stating that Plaintiff's medication for TB accounts for her "neuropathy-like symptoms" despite the ALJ having kept the record open for this express purpose. (R. 20.) He then stated: "Quite the opposite, it would appear that Dr. Upadhyay as recently as September 24, 2003 concluded that the claimant never had tuberculosis, despite an apparently positive skin test in 2001." (*Id.*) The ALJ noted that the doctor recorded that Plaintiff did not tolerate INH, but also observed that the medical evidence showed that Plaintiff "took this medication only two months, ending in March 2002." (*Id.*) He then said:

Since then all diagnostic testing and laboratory work has been negative, including chest x-rays, liver enzymes and thyroid, rheumatoid and inflammatory testing. The most recent neurological exam was negative, as was an April 2002 EMG.

(*Id.* (citations omitted).)

The ALJ did not believe that the record supported Plaintiff's assertions that "she can walk less than a block, stand fewer than five minutes, lift and carry nothing, sit only an hour and necessarily elevate her legs periodically throughout the day to chair height level or above[,]" or that Plaintiff "had a communicable disease that has at any time required that she receive INH for

twelve continuous months.” (R. 21.) Thus, he determined that “claimant’s impairments reasonably would not be expected to produce symptoms of the intensity or limitation that the claimant asserts” (*Id.*)

II. DISCUSSION

An applicant for social security benefits must establish an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. §416(i)(1); 42 U.S.C. §423(d)(1)(A). There is a five step test to determine whether a claimant is disabled. The United States Court of Appeals for the Seventh Circuit has summarized that test as follows:

The following steps are addressed in order: (1) Is the claimant presently unemployed? (2) Is the claimant's impairment "severe"? (3) Does the impairment meet or exceed one of the list of specific impairments? (4) Is the claimant unable to perform his or her former occupation? (5) Is the claimant unable to perform any other work within the economy? An affirmative answer leads either to the next step or, on steps 3 and 5, to a finding that the claimant is disabled. A negative answer at any point, other than step 3, stops the inquiry and leads to a determination that the claimant is not disabled.

Nelson v. Bowen, 855 F.2d 503, 504 n.2 (7th Cir. 1988) (citing *Bauzo v. Bowen*, 803 F.2d 917, 920 n.1 (7th Cir. 1986) and 20 C.F.R. § 404.1520). A claimant has the joint burdens of production and persuasion through step four, where the individual’s residual functional capacity (RFC) is determined. *See Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987). At step five, the burden shifts to the Commissioner. *See Young v. Barnhart*, 362 F.3d 995, 1000 (7th Cir. 2004).

The analysis at step four involves a determination of the claimant’s RFC. An RFC is an administrative assessment of what an individual can still do despite his or her limitations that

affect the ability to perform work-related tasks on a regular and continuing basis (in other words, eight hours a day for five days a week). 20 C.F.R. § 404.1545(a)(1); SSR 96-8p, at *2. This evaluation is based on an individual's ability to meet the physical, mental, sensory and other requirements of work. § 404.1545(a)(4). "The RFC assessment is a function-by-function assessment based upon all the relevant evidence" SSR 96-8p, at *3. This decision is not a medical decision; it is a legal one. *See* § 404.1527(e). "[T]he RFC determination forms the crux of most of the ALJ's decisions regarding a claimant's ability to perform past relevant work." *Prince v. Sullivan*, 933 F.2d 598, 602-603 (7th Cir. 1991).

Section 205(g) of the Social Security Act limits the scope of judicial review of the Commissioner's final decision by providing that "any fact, if supported by substantial evidence, shall be conclusive," and thus, this Court's power to modify, affirm, or reverse the decision of the Commission is restricted. 42 U.S.C. § 405(g). Accordingly, we review the Commissioner's decision to deny benefits by determining whether it was supported by substantial evidence or was the result of an error of law. *Rice v. Barnhart*, 384 F.3d 363, 368-69 (7th Cir. 2004); *Lopez ex rel. Lopez v. Barnhart*, 336 F.3d 535, 539 (7th Cir. 2003). Evidence is substantial when it is sufficient for a reasonable person to conclude that the evidence supports the decision. *See Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000).

Because the review of the ALJ's findings is deferential, we will not "reweigh evidence, resolve conflicts, decide questions of credibility, or substitute our own judgment for that of the Commissioner." *Lopez ex rel. Lopez*, 336 F.3d at 539 (citation omitted). However, the SSA's decision "cannot stand if it lacks evidentiary support or an adequate discussion of the issues." *Id.* The ALJ must also build "an accurate and logical bridge" from evidence to conclusion. *Dixon v.*

Massanari, 270 F.3d 1171, 1176 (7th Cir. 2001).

Plaintiff argues that the ALJ inadequately defined her RFC at step four. (Pl.'s Mem. at 9.) She asserts that the ALJ made three mistakes. First, the ALJ improperly ignored evidence of Plaintiff's symptoms and other evidence favorable to Plaintiff. She claims that her severe symptoms are recognized side effects of INH, the medication prescribed to Plaintiff. (*Id.*) The ALJ, however, did not believe that a two-month dosage of INH would result in long-lasting and weakening symptoms, and instead he emphasized that the results of the various tests performed by Plaintiff's doctors were mainly negative. (R. 20.) Plaintiff therefore argues that the ALJ, when evaluating Plaintiff's RFC, should not have substituted his lay impressions in place of medical evidence to doubt the severity of Plaintiff's symptoms and should have conferred with a medical expert regarding his hypotheses. (Pl.'s Mem. at 10-11.) Second, Plaintiff contends that the ALJ did not adequately ensure that Plaintiff's limitations permitted her to return to her previous work. (*Id.* at 13-14.) Third, Plaintiff claims that the ALJ improperly evaluated her credibility. (*Id.* at 14.) We consider each in turn.

A. The ALJ's Consideration of Plaintiff's Symptoms

Once the ALJ determines that a claimant has a medically determinable impairment that could reasonably be expected to produce the alleged symptoms, the ALJ is required to evaluate the intensity and persistence of the claimant's symptoms, including pain, by considering "all of the available evidence, including [claimant's] medical history, the medical signs and laboratory findings and statements about how [claimant's] symptoms affect [claimant]." 20 C.F.R. § 404.1529(a); *Herron v. Shalala*, 19 F.3d 329, 334 (7th Cir. 1994). These statements may come from the claimant, his or her treating or non-treating doctors, or other people. § 404.1529(c).

Importantly, in evaluating the intensity and persistence of a claimant's symptoms, the ALJ is suppose to expressly consider the "side effects of any medication." § 404.1529(c)(3)(iv).

One of Plaintiff's chief arguments is that her symptoms were possibly caused by an adverse reaction to INH – the medication she was taking for her exposure to TB. (Pl.'s Mem. at 9.) Indeed, her symptoms were consistent with what the PDR describes as a "toxic" side effect to the medication. Yet the ALJ brushed this aside by concluding – without medical support – that Plaintiff's symptoms could not have lasted for twelve months because Plaintiff only took a two-month dosage of INH. (R. 20.) The ALJ did not cite any medical evidence for this finding. Furthermore, the ALJ simply ignored several instances in the record showing that Plaintiff's treating physicians made notes regarding the correlation between INH and Plaintiff's symptoms. (*See e.g.*, R. 120, 121, 197.) It may be true that it is unlikely that a two-month dosage of INH could lead to a continuous and ongoing disability. However, the opposite may also be true. Whatever the case may be, the answer to this question must come from medical evidence, not from judicial intuition.

The ALJ relied on the fact that Plaintiff did not take INH for twelve continuous months. (R. 20.) But the five-step test does not require that Plaintiff take the medication for twelve months; rather, the test requires that Plaintiff have a severe impairment that has lasted or is expected to last for twelve months. A cause of an impairment is much different than the impairment itself. *See Gentle v. Barnhart*, 430 F.3d 865, 868 (7th Cir. 2005) (distinguishing a cause of an impairment (such as obesity) from the impairment, and stating that once a "causal efficacy is determined, it drops out of the picture").

The ALJ also noted that, when given the opportunity to bolster the record with an opinion

from Plaintiff's physician regarding whether INH could cause Plaintiff's symptoms, she failed to obtain such an opinion. (R. 20.) Yet the medical records were already replete with such references. Indeed, as mentioned above, both Dr. Li and Dr. Upadhyay noted that Plaintiff may be suffering from an adverse reaction to the INH. (R. 121, 197.) Then, after the hearing, Plaintiff's counsel submitted redacted information about INH from the PDR that actually supported Plaintiff's position that INH could cause the alleged symptoms.⁵

Moreover, the transcript and the ALJ's opinion indicate that the ALJ incorrectly placed emphasis on whether Plaintiff had active TB (which it appears from the record, she did not) rather than her symptoms of pain, weakness, swelling and numbness – the reasons for her alleged disability (which may have resulted from taking INH). Simply because Plaintiff did not have TB does not automatically signify that she is not disabled. To support a denial of claims, the ALJ should have discussed Plaintiff's symptoms and why they did not disable Plaintiff. Because the ALJ incorrectly focused on whether Plaintiff had TB instead of on the symptoms she was actually complaining about, remand is proper to provide the ALJ with an opportunity to articulate more sound findings regarding Plaintiff's symptoms. *See Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) (stating that ALJs “must be careful not to succumb to the temptation to play doctor,” and noting that “[c]ommon sense can mislead [and that] lay intuitions about medical phenomena are often wrong”).

⁵ Plaintiff's case would have been better served if her counsel had submitted the full entry for INH from the PDR. The entire PDR entry provides more support that INH could cause Plaintiff's symptoms than the limited excerpt provided to the ALJ. In her brief to this Court Plaintiff cites the complete PDR entry for INH. (*See* Pl.'s Mem. at 3 n.2.) But this entry was not in front of the ALJ. *See Diaz v. Chater*, 55 F.3d 300, 308-09 (7th Cir. 1995) (finding that evidence not before the ALJ cannot be used “to determine the correctness of the ALJ's action”).

Moreover, the ALJ cannot disregard a claimant's statements regarding the intensity or persistence of his or her symptoms, including pain, simply because of inconsistent objective medical evidence, such as clinical or laboratory findings. *See* § 404.1529(c)(2); *Carradine v. Barnhart*, 360 F.3d 751, 753 (7th Cir. 2004) ("Medical science confirms that pain can be severe and disabling even in the absence of 'objective' medical findings" and "in certain situations, pain alone can be disabling, even when its existence is unsupported by objective evidence."). In such cases – when pain is not supported by the medical evidence – the Seventh Circuit has instructed:

If the allegation of pain is not supported by the objective medical evidence in the file and the claimant indicates that pain is a significant factor of his or her alleged inability to work, then the ALJ must obtain detailed descriptions of claimant's daily activities by directing specific inquiries about the pain and its effects to the claimant. She must investigate all avenues presented that relate to pain, including claimant's prior work record information and observations by treating physicians, examining physicians, and third parties.

Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001).

In this case, the ALJ dismissed Plaintiff's symptoms outright and without discussion. He did not review Plaintiff's symptoms that included debilitating pain, and weakness and swelling in her legs and arms. Surprisingly, the ALJ never even referred to the state agency physician's opinion that supported his finding. He simply asserted that "the record does not support such restrictions of this severity [claimed by Plaintiff]" and that "the claimant's impairments reasonably would not be expected to produce symptoms of the intensity or limitations that the claimant asserts" (R. 21.) Such conclusory statements are not sufficient for this Court to determine whether substantial evidence supported the ALJ's evaluation of Plaintiff's symptoms when reaching a RFC. *See Smith v. Apfel*, 231 F.3d 433, 438 (7th Cir. 2000) ("The ALJ's failure

to consider the evidence of dizziness alone precludes us from evaluating whether substantial evidence existed to support the ALJ's finding.”) (citation and internal quotations and alterations omitted); *Young*, 362 F.3d at 1002-1003 (reversing where ALJ, in his RFC determination, failed to take into account evidence in the record regarding claimant's impairments).

The ALJ also failed to discuss several facts favorable to Plaintiff's allegations of debilitating symptoms. Her treating doctors prescribed several pain medications, ordered her off work, and ordered extensive testing to determine the cause of her pain and other symptoms. It is unlikely that the physicians would have done so had they believed that Plaintiff was lying. *See Carradine*, 360 F.3d at 755 (“What is significant is the . . . improbability that this host of medical workers would prescribe drugs and other treatment for her if they thought she was faking her symptoms.”). Plaintiff also testified to her inability to do household chores and her restrictions in her daily activities. In light of the evidence supporting Plaintiff's complaints of pain, the ALJ may not rely solely on objective medical evidence (the mostly negative test results) when rejecting the severity or persistence of Plaintiff's pain level. *See Clifford*, 227 F.3d at 872 (finding error where ALJ held that plaintiff's limitations were unsupported by the medical evidence, in spite of the record which was “replete with instances where [plaintiff] sought medical treatment for pain symptoms related to her physical impairments . . .”).

The ALJ therefore should have provided reasons other than the negative test results regarding why Plaintiff's symptoms, including her level of pain, did not meet the threshold for a finding of a disability – particularly as he found that Plaintiff suffered from certain severe impairments. *See Indoranto v. Barnhart*, 374 F.3d 470, 474 (7th Cir. 2004) (remanding “so that the ALJ can give full consideration to all of [plaintiff's] documented impairments in evaluating

her claim” because even though “the ALJ need not discuss every piece of evidence in the record, he must confront the evidence that does not support his conclusion and explain why it was rejected.”); *Young*, 362 F.3d at 1002-1003 (remanding because [t]he ALJ has not sufficiently connected the dots between [plaintiff’s] impairments, supported by substantial evidence in the record, and the RFC finding”). Without such comments, the Court cannot assume that the ALJ properly considered the relevant evidence, as required by 20 C.F.R. § 404.1529(c)(3). *See also* SSR 96-8p, at *7 (“The adjudicator must also explain how any material inconsistencies or ambiguities in the evidence in the case record were considered and resolved.”); SSR 86-8, at *8 (The rationale in the disability decision must “describe the weight attributed to the pertinent medical, nonmedical and vocational factors in the case; and reconcile any significant inconsistencies.”). *Compare Zurawski*, 245 F.3d at 888 (reviewing court “unable to discern whether [ALJ] considered record as a whole” where ALJ only mentions evidence favorable to a denial of disability benefits) *with Scheck v. Barnhart*, 357 F.3d 697, 703 (7th Cir. 2004) (affirming ALJ’s denial of benefits where she discussed “much of the evidence that supported [plaintiff’s] claim of disability, . . .”).

Finally, Plaintiff argues that it was improper for the ALJ to base his findings on his lay interpretation of the negative results of the medical tests. (Pl.’s Reply at 2-3.) Plaintiff thus alleges that the ALJ was “playing doctor” and instead should have sought the expertise of a medical expert. (*Id.*)

An ALJ is not permitted to substitute his own judgment for that of a medical professional, or make medical conclusions about a claimant’s illness, without relying on medical evidence. *See Clifford*, 227 F.3d at 870; *Green v. Apfel*, 204 F.3d 780, 781-82 (7th Cir. 2000).

Furthermore, an ALJ “should avoid commenting on the meaning of a test or clinical x-ray when there has been no supporting expert testimony.” *Whitney v. Schweiker*, 695 F.2d 784, 788 (7th Cir. 1982). *See also Manso-Pizarro v. Sec’y of Health & Human Servs.*, 76 F.3d 15, 17 (1st Cir. 1996) (stating that “an ALJ, as a lay person, is not qualified to interpret raw data in a medical record”).

The ALJ has discretion to decide whether he needs a medical expert opinion. *See HALLEX I-2-5-32*. An ALJ may decide to seek the help of a medical expert for a number of reasons, including to explain clinical or laboratory findings or to determine the severity of a claimant’s physical impairment.⁶ *See HALLEX I-2-5-34*.

In the present case, the ALJ relied in part on Plaintiff’s hematology results. (R. 20, 179.) But the ALJ’s interpretation of raw data from the hematology report is inappropriate. The hematology report provides several numbers and ranges without any accompanying explanation of what the results signify about Plaintiff’s symptoms. The ALJ nonetheless extrapolated those results to a finding that Plaintiff’s symptoms were not as severe as she claimed – without any supporting expert testimony.⁷ This is error. *See Strong v. Barnhart*, 01 C 6499, 2002 WL 31415714, at *8 (N.D. Ill. Oct. 23, 2002) (remanding because the Appeals Council evaluated raw

⁶ There are certain situations where an ALJ must obtain a medical expert opinion. *HALLEX I-2-5-34*. None of those situations applies here.

⁷ Defendant will point to the state agency physician as a proper concurrence. But this Court is not convinced that the ALJ actually relied on that opinion, which he never once referred to as support for any of his findings. *See Patterson v. Barnhart*, 428 F. Supp. 2d 869, 883-84 (E.D. Wis. 2006) (rejecting SSA’s argument that consulting opinion provided support for ALJ’s finding of no disability where ALJ did not discuss consulting opinion as grounds for her opinion) (citing *Golembiewski v. Barnhart*, 322 F.3d 912, 916 (7th Cir. 2003)). Instead, the ALJ directly cited the laboratory tests in his decision. (R. 20.)

MRI results without expert testimony, and thus “had no way of knowing their possible relevance”); *Rodriguez v. Barnhart*, 00 C 2005, 2002 WL 31155056, at *7 (N.D. Ill. Sept. 27, 2002) (finding error where ALJ did not rely on any medical authority when finding that certain test results contradicted plaintiff’s complaints of pain); *Worzalla v. Barnhart*, 311 F. Supp. 2d 782, 796 (E.D. Wis. 2004) (“[C]ourts have regularly warned ALJs not to attempt to interpret test results or other raw medical data.”).

The ALJ thus failed to establish links between the panoply of negative tests and Plaintiff’s symptoms. *See Zurawski*, 245 F.3d at 887 (finding that ALJ must explain supposed “inconsistencies” between daily activities, pain complaints and medical evidence”). The ALJ therefore did not build a bridge between the medical evidence and his conclusion that Plaintiff was not disabled. *See Groves v. Apfel*, 148 F.3d 809, 811 (7th Cir. 1998) (“[B]ecause [the ALJ’s] opinion fails to build a bridge from the evidence to the conclusion and is thus analytically inadequate – in a word, unreasoned – we cannot uphold his decision.”).

B. Plaintiff’s Ability to Perform Past Work

When determining whether a claimant has the RFC to return to her past work, the ALJ must consider “the interaction of the limiting effects of the person’s impairment(s) and the physical and mental demands of his or her [past relevant work]” SSR 82-62, at *2. The ALJ must fully develop and explain any decision finding the claimant capable of past work. *See* SSR 82-62, at *3.

It is unclear from his opinion whether the ALJ properly considered all the relevant evidence when determining that Plaintiff’s symptoms – many of which he viewed as severe impairments – did not preclude her from sedentary work. The ALJ did not reconcile Plaintiff’s

inability to perform daily activities, such as driving, grocery shopping, laundry and cleaning, her testimony and medical records describing her symptoms, her doctors' orders not to work, and her prescriptions to various pain medications, to his finding that Plaintiff could perform sedentary work. *See Cunningham v. Massanari*, 00 C 5137, 2002 WL 5658, at *3 (N.D. Ill. Jan. 2, 2002) (remanding where ALJ "did not, with specifics and considering particulars of the job, compare the demands of Plaintiff's past work with his existing physical capacities, as required at Step 4.") (internal quotations and alterations omitted).

Also, the ALJ did not question the VE about Plaintiff's specific, severe impairments (which he believed Plaintiff suffered) and how they may or may not affect Plaintiff's ability to perform her previous work. *See Jens v. Barnhart*, 347 F.3d 209, 212, 213 (7th Cir. 2003) (at step 4 analysis, noting that "the ALJ must question the [VE] regarding every impairment set forth in the claimant's record to the extent that the impairment is supported by the medical evidence"). The ALJ asked the VE about (1) positions available if a person must extend legs and (2) positions available if a person could sit only for an hour, not carry anything, stand less than five minutes and walk with difficulty. The ALJ, however, ultimately did not find these limitations applicable to Plaintiff. But the ALJ did find that Plaintiff suffered other impairments (such as myopathy, hypertension) that may or may not have impacted her ability to work her previous job. The ALJ did not ask the VE about these potential work limitations. Again, without these specifics, the Court cannot find that substantial evidence supported the ALJ's conclusion that Plaintiff could perform the full range of sedentary work. *See Rodriguez*, 2002 WL 31155056, at *11 (instructing Commissioner upon remand to consider any restrictions supported by medical evidence when questioning VE about whether plaintiff is able to perform prior work or work in

national economy). Thus, the ALJ failed to consider how the physical demands of work at a sedentary level would bear on Plaintiff's medically established limitations, as required by SSR 82-62.

Defendant argues that, to the extent Plaintiff's symptoms were substantiated by the evidence in the record, the ALJ restricted Plaintiff to the minimal demands of sedentary work. (Def.'s Resp. at 13.) But that statement suggests that any individual with any one of Plaintiff's severe impairments could perform any sedentary work. Such a broad proposition has no support in the record or in any evidence provided by the ALJ or Defendant. Rather, the ALJ is obligated to provide a more reasoned decision applicable specifically to Plaintiff when denying disability benefits and social security income. Thus, a remand is in order.

C. The ALJ's Credibility Assessment

The extent of the ALJ's credibility analysis is as follows:

The claimant asserts that she can walk less than a block, stand fewer than five minutes, lift and carry nothing, sit only an hour and necessarily elevate her legs periodically throughout the day to chair height level or above. However, the record does not support such restrictions of this severity. The record also does not document that the claimant has a communicable disease that has at any time required that she receive INH for twelve continuous months. . . . The undersigned, therefore, finds that the claimant's impairments reasonably would not be expected to produce symptoms of the intensity or limitation that the claimant asserts,

(R. 21.) This brief statement fails to fulfill the procedural guidelines applicable to determinations of credibility. *See Zurawski*, 245 F.3d at 887 (citing SSR 96-7p).

Courts must sustain the ALJ's credibility determination unless it is "patently wrong" and not supported by the record. *Jens*, 347 F.3d at 213 (citation omitted). Furthermore, the ALJ's "unique position to observe a witness" entitles his opinion to deference. *Nelson v. Apfel*, 131 F.3d 1228, 1237 (7th Cir. 1997). However, if the "determination rests on objective factors or

fundamental implausibilities rather than subjective considerations such as a claimant's demeanor, appellate courts have greater freedom to review the ALJ's decision." *Indoranto*, 374 F.3d at 474 (internal quotations and alterations omitted).

Furthermore, the ALJ must make more than a single, conclusory statement. "The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight." SSR 96-7p, at *2. While a claimant's complaints of disability cannot be based on symptoms totally unfounded in medical findings, the ALJ may not make a credibility determination solely on the basis of objective medical evidence. *See* SSR 96-7p, at *1; *see also Carradine*, 360 F.3d at 753 ("Once the claimant produces medical evidence of an underlying impairment, the Commissioner may not discredit the claimant's testimony as to subjective symptoms merely because they are unsupported by objective evidence ") (citation omitted). Thus, the ALJ is precluded "from merely ignoring the testimony or relying solely on a conflict between the objective medical evidence and the claimant's testimony as a basis for a negative credibility finding." *Schmidt v. Barnhart*, 395 F.3d 737, 746-47 (7th Cir. 2005) (citations and internal quotations omitted).

The ALJ's vague and conclusory comments do not comport with the process for determining credibility as outlined in SSR 96-7p. Plaintiff testified that her pain was an eight out of ten, provided detailed descriptions of how her pain, swelling and weakness impacted her daily activities, and submitted medical evidence reflecting pain as a constant complaint in her medical history, for which she received prescriptions and for which her doctors excused her from

work. *See* SSR 96-7p, at *7 (“a longitudinal medical record demonstrating an individual’s attempts to seek medical treatment for pain or other symptoms and to follow that treatment once it is prescribed lends support to an individual’s allegations of intense and persistent pain or other symptoms for the purposes of judging [] credibility . . .”). But the ALJ did not mention, let alone discuss, any of the above evidence favoring Plaintiff. *See Zurawski*, 245 F.3d at 888 (finding a lack of adequate basis to sustain ALJ’s credibility determination where it was unclear whether ALJ examined evidence favoring claimant).

From reviewing his opinion, the ALJ appeared to discount Plaintiff’s statements regarding her symptoms because Plaintiff did not actually have TB and because several medical tests returned negative. The former reason is a non-issue. As stated before, Plaintiff has not listed TB as her disability; rather she has pointed to the possible side effects from taking INH – weakness, swelling and pain – as her disability. The fact that Plaintiff did not actually have TB does not mean that Plaintiff did not suffer from her alleged symptoms. The latter reason also is not sufficient to disbelieve Plaintiff. The ALJ may not make a credibility determination only on the basis of objective medical evidence – which is exactly what the medical tests are. *See* SSR 96-7p, at *1; *see also Carradine*, 360 F.3d at 755 (remanding ALJ decision where plaintiff’s pain was not substantiated by objective medical evidence, but was supported by plaintiff’s medical history, including prescriptions to pain medication and frequent complaints of pain to doctors)

The ALJ therefore must provide a better rationale as to why Plaintiff’s testimony is not credible in light of the evidence in the record. The ALJ’s summary comments make it impossible to determine what evidence he relied on in finding that Plaintiff’s testimony was

exaggerated. *Compare Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000) (affirming ALJ where he explicitly discussed why Plaintiff's daily activities were inconsistent with medical evidence) *with Zurawski*, 245 F.3d at 887 (remanding case where ALJ's determination of credibility was explained in a "single, conclusory statement" that failed to explain inconsistencies between complaints of pain, and medical evidence and daily activities).

Similar to the Courts's other observations regarding the ALJ's opinion, the Court does not see the "logical bridge" that links the evidence in the record to a finding that Plaintiff's symptoms were exaggerated. Plaintiff may be able to perform sedentary work, as the ALJ found. But the ALJ must adequately specify the reasons for his finding with proper evidence in the record. Because he has failed to do so, the case must be remanded.⁸

III. CONCLUSION

The ALJ's opinion does not include essential findings and support from the record, which have been highlighted by this Court's Order. The Court therefore holds that this case must be **REMANDED** to the administrative agency for further proceedings consistent with this Order. Plaintiff's Motion for Summary Judgment or Remand is **GRANTED**.

SO ORDERED.

ENTERED: September 28, 2006

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT

⁸ Plaintiff argues that even at step 5, Plaintiff should be found disabled. (Pl.'s Mem. at 17.) The Court declines to make any finding regarding Step 5 at this juncture.