

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOANN E. SUCHARSKI,

Plaintiff,

v.

Case No. 05-CV-1185

JO ANNE B. BARNHART,
Commissioner for Social Security Administration,

Defendant.

ORDER

Plaintiff Joann E. Sucharski ("Sucharski") filed an action for judicial review pursuant to 42 U.S.C. § 405(g) of the denial of her application for disability insurance benefits ("DIB") by the Commissioner of Social Security ("Commissioner"). Sucharski filed an application for DIB on August 24, 2001, alleging disability beginning September 15, 1999, due primarily to multiple sclerosis ("MS") and back impairments. Sucharski was insured for DIB purposes through December 31, 2004. Therefore, Sucharski had to demonstrate that, as of December 31, 2004, she was disabled within the meaning of the Social Security Act. See 42 U.S.C. §§ 416(l), 423. Sucharski's claim proceeded to an evidentiary hearing before an administrative law judge ("ALJ") on March 3, 2004. After the evidentiary hearing, the ALJ concluded that, as of December 31, 2002, Sucharski did not qualify as disabled because she was performing substantial gainful activity, and for the period prior to December 31, 2002, Sucharski did not qualify as

disabled because she could perform work in the national economy. (Tr. 28.) On September 28, 2005, the Appeals Council declined review, rendering the ALJ's decision the final decision of the Commissioner. Sucharski asserts that the ALJ's decision contained errors of law and was not supported by substantial evidence, and as a result, her case should be reversed or remanded pursuant to sentence four of 42 U.S.C. § 405(g).

BACKGROUND

The issue for the ALJ ruling on Sucharski's DIB application was whether Sucharski was disabled within the meaning of 20 C.F.R. § 404.1520 prior to the date she was last insured for DIB. Sucharski was employed as a registered nurse from June 1985 to April 1999, when she stopped working because she injured her back while lifting a patient. (Tr. 40, 171, 446.) In April 1999, Sucharski underwent surgery to repair herniated cervical discs. (Tr. 431.) Sucharski also has a history of MS, dating to 1998. (Tr. 55-56.)

Neurological consultative examiner Dr. Marc J. Novom examined Sucharski and reviewed her medical records on three occasions to determine whether Sucharski's back injury was work related. (Tr. 446-56, 540-41, 393-95, 819-25.) On October 26, 1998, Dr. Novom examined Sucharski and opined that she would be able to gradually return to most of her job duties as related to the resolution of her back injury. (Tr. 455.) He also added, "[u]nfortunately Ms. Sucharski is unable to return to work in the immediate foreseeable future owing to flare-up of demyelinating disease and the

concomitant expression of depression Ms. Sucharski is presently temporarily totally disabled by a flare-up of multiple sclerosis . . . there is good reason to be concerned that Ms. Sucharski may not return to normal baseline neurologic function.” (Tr. 455-56.)

In a medical report dated April 27, 1999, Dr. Novom noted that Sucharski “remains temporarily totally disabled for work related purposes” due to her recovery from her cervical fusion, and that she would not reach a healing plateau for at least 8 to 10 weeks or possibly longer. (Tr. 395.) He also noted that Sucharski “may require even greater imposition of restrictions at work depending on the status of underlying multiple sclerosis.” (*Id.*)

In a third medical report, dated June 6, 2001, Dr. Novom noted that Sucharski’s neurological examination and gait were abnormal and that her prognosis “is overall fair to poor.” (Tr. 822.) He noted that this prognosis was consistent with demyelinating disease, and that due to the combination of her impairments, Sucharski would likely experience greater flare-ups of painful limitations involving her neck and back than one would normally expect with naturally advancing multilevel degenerative spine disease. (*Id.*) Dr. Novom also noted that Sucharski’s complaints of fatigue, diplopia, urinary urgency, spasticity of gait, and impaired memory are all directly related to her MS, and her complaints of neck pain and low back pain are directly related to her underlying multilevel degenerative spine disease. (Tr. 823.) Dr. Novom opined that Sucharski could return to work “not exceeding four hours per day” in a sedentary capacity with

additional permanent restrictions, and that Sucharski's functional capacity would decline over time. (Tr. 823-24.)

On August 28, 1998, Sucharski underwent a magnetic resonance study ("MRI"), of the cervical spine to assess for demyelinating disease or disc herniation. The MRI identified a new large herniated disc causing impingement of the right neural foramen and effacement of the spinal cord. (Tr. 326.) On April 8, 1999, Sucharski underwent an anterior cervical decompression and fusion of C5-C7, performed by Dr. Wade Mueller. (Tr. 697-700.)

On April 30, 1999, Dr. Diane W. Braza evaluated Sucharski's medical treatment and noted Sucharski's "complicated history" including the anterior cervical decompression and fusion of C5-C7, followed by an exacerbation of her MS. (Tr. 362.) At the time of the evaluation, Sucharski's symptoms included pain and paresthesias in the entire right upper extremity with activity, and constant numbness in her right calf. (Tr. 362-63.) Dr. Braza noted that the neurological examination revealed various abnormalities. (*Id.*) Due to continuing muscle spasms, pain, and numbness, on July 20, 1999, Sucharski underwent an MRI of the lumbar spine which indicated mild early degenerative changes. (Tr. 498, 521.)

Dr. L. Cass Terry treated Sucharski for her MS and pain. On October 20, 1998, Dr. Terry noted "it is clear now that the diagnosis is multiple sclerosis . . . [h]er primary complaint is that of depression and fatigue." (Tr. 616.) He opined that due to the combination of severe fatigue from the MS and the neck pain, Sucharski was unable

to work full time or even 3-4 hours in one day. (*Id.*) On November 4, 1998, Sucharski returned to the MS clinic complaining of worsening symptoms. (Tr. 613.) Dr. Terry found that Sucharski “appears to be in an exacerbation of her remitting/relapsing multiple sclerosis” and arranged for the administration of intravenous steroids. (*Id.*) Sucharski returned to Dr. Terry on November 10, 1998, and Dr. Terry opined that Sucharski was doing much better and that her diplopia, depression, and fatigue had significantly improved. (Tr. 612.)

On January 20, 1999, an electroneuromyography was abnormal, identifying evidence of mild, early chronic right C6 radiculopathy, and upper motor neuron weakness secondary to MS. (Tr. 645-47.) On November 30, 1999, Sucharski visited Dr. Terry and complained of various symptoms including twitching spasms which were painful and waking her up in the morning. (Tr. 588.) These episodes were uncontrolled by medication and resulted in three headaches a week. (*Id.*) Sucharski also complained of balance problems, lightheadedness, left foot weakness, and decreasing vision and tracking ability in her right eye. (*Id.*) Dr. Terry noted, “[o]n examination she has clear cut evidence of upper motoneuron weakness in the left lower extremity.” (*Id.*)

On February 1, 2000, Sucharski complained to Dr. Terry of increased fatigue and was prescribed intravenous steroids. (Tr. 584-85.) On June 1, 2000, Dr. Terry noted Sucharski’s continuing problems with fatigue, palpitations and mild shortness of breath, and also with problems urinating and voiding. (Tr. 582.) On October 24, 2001,

Sucharski visited Dr. Terry and complained of increasing fatigue after only mild exertion and significant short-term memory problems. (Tr. 574.) Dr. Terry ordered an MRI to assess these issues. (*Id.*) The MRI identified possible demyelinating lesions, neural foraminal narrowing, a small amount of high signal in the lower thoracic cord, and multiple small foci of increased signal within the periventricular white matter; two of the lesions were new and one of the lesions was enhanced, consistent with MS. (Tr. 635-38.)

At the February 19, 2002 visit, Dr. Terry noted that although Sucharski remained relatively stable, she continued to have spasticity which often kept her awake at night. (Tr. 791.) On June 10, 2002, Sucharski reported lower extremity pain, back pain, increasing fatigue, increasing weakness in her upper extremities, pain in her arms, and difficulty in lifting things, and in brushing and washing her hair. (Tr. 789.) In light of these complaints, Dr. Terry increased Sucharski's medication. (*Id.*)

On February 19, 2003, Dr. Terry noted that Sucharski "still has her multiple sclerosis and the transient and neurologic symptoms that go along with it," however, he noted that she was doing "quite well" and was experiencing very little fatigue. (Tr. 840.) Sucharski was working part-time at a hospital, and was noted to be quite happy. (*Id.*) On May 20, 2003, Dr. Terry noted that he was releasing Sucharski to work up to two days in a row, but no more than a total of two and one-half days per week. (Tr. 836.) He noted that Sucharski reported having fatigue after working two full days in a row. (*Id.*)

In a letter dated April 4, 2004, Dr. Terry outlined his care of Sucharski since August 25, 1998. (Tr. 872-74.) Dr. Terry summarized Sucharski's past and current condition over the five years of his treatment, and explained, "[e]ver since the MS exacerbation in 1998, Ms. Sucharski has had moderate to severe fatigue with episodes of mild to moderate fatigue. To my knowledge she has never been free of fatigue from this disease She was never able to tolerate a full 40 hour per week position at any form of employment" (Tr. 873.) Dr. Terry noted that Sucharski's MS "manifested a continuous downhill course with increasing symptoms, fatigue and cognitive problems that prevent her from working for any degree of time." (*Id.*)

On October 31, 2003, Sucharski visited Dr. Adrianna Kori-Graf who reviewed Sucharski's medical history, and performed a neurological examination. At the time of her appointment with Dr. Kori-Graf, Sucharski reported feeling fatigued with weakness in all her extremities, especially after working a whole day, and dysphagia, and continued urinary problems. (Tr. 832.) Dr. Kori-Graf noted several neurological abnormalities upon examination "consistent with a relapsing-remitting multiple sclerosis." (Tr. 833.) Although she was noted to be relatively stable on her medications, a repeat MRI was recommended and Sucharski's medication regimen was altered. (*Id.*) Sucharski underwent another MRI on December 17, 2003, and the findings were noted to be consistent with a demyelinating disease or secondary to a demyelinating disease. (Tr. 827-28.)

After her assessment of Sucharski, Dr. Kori-Graf completed a residual functional

capacity (“RFC”) assessment form on November 6, 2003. (Tr. 815-18.) Dr. Kori-Graf noted that Sucharski’s symptoms included fatigue, balance problems, weakness, increased muscle tension (spasticity), numbness/tingling/sensory disturbance, and bladder problems. (Tr. 815.) Dr. Kori-Graf opined that Sucharski could walk two blocks without rest, could sit between five minutes to one hour, and could stand for ten minutes at a time. (Tr. 816.) Dr. Kori-Graf opined that Sucharski could stand/walk for a total of two hours in an eight hour day and sit for a total of four hours in an eight hour day, but would need a job that permits shifting positions at will between sitting, standing, and walking. (*Id.*) In addition, Dr. Kori-Graf noted that Sucharski would need one unscheduled break of 60 minutes during the day to either lie or sit down. (*Id.*) Dr. Kori-Graf also noted that Sucharski experienced a fatigue best characterized as “lassitude” which was typical of MS patients. (Tr. 817.) Finally, Dr. Kori-Graf noted that Sucharski’s impairments would likely produce good days and bad days, and she would be likely absent from work more than four days a month. (Tr. 818.)

On February 27, 2004, Sucharski was evaluated by Dr. Alexandru Barboi, another neurologist associated with the MS clinic. (Tr. 895-97.) Dr. Barboi opined, “[i]t is remarkable that [Sucharski] combines so many neurological problems her autonomic neuropathy likely explains her gastrointestinal problems and some of the pain in her feet.” (Tr. 896.)

On March 2, 1999, at the request of Dr. Terry, Sucharski underwent a neuropsychological evaluation administered by Dr. Sarah J. Swanson to assess

Sucharski's cognitive problems. Sucharski reported that her language difficulties included problems with reading comprehension, writing, word finding, and articulation, to the point that she must avoid or excuse herself from conversations. (Tr. 407.) Sucharski also reported memory problems with recent events and problems with sustaining attention or being able to concentrate for more than 15 minutes, in addition to slowed mental processing speed. (Tr. 407-08.) After the evaluation, Dr. Swanson concluded that Sucharski was functioning well cognitively, and recommended Sucharski receive ongoing psychotherapy and pharmacotherapy for depression with monitoring of suicidality. (Tr. 410.)

Dr. Swanson administered a second neuropsychological examination on December 7, 2001. The testing showed little change from the previous examination, except for a mild worsening from superior to average on a span memory measure of attention and a decline of manual dexterity to low average, which was deemed to possibly reflect a progression of MS. (Tr. 722.) Dr. Swanson recommended that Sucharski explore her desire to return to work, but on a part-time basis in low-stress work if her "levels of daily stress, fatigue, pain, and MS symptoms would allow it." (*Id.*) On May 1, 2002, Dr. Swanson indicated that she had discussed the results of the neuropsychological examination with Sucharski and "[w]e both agreed that her pain and fatigue may be disabling irrespective of the results of cognitive testing. The degree to which she is disabled due to physical problems, fatigue, and pain would need to be documented by her neurologist, [Dr. Terry]." (Tr. 736.)

Sucharski testified at the March 3, 2004 evidentiary hearing before the ALJ. Sucharski stated that she experienced joint pain and stiffness “all of the time” and that the pain and stiffness was more pronounced with prolonged sitting and in the morning. (Tr. 45.) However, she stated that she thought she could work if she “just had the pain.” (Tr. 57.) She indicated that her physical and mental fatigue was her most disabling symptom, with visual disturbance, dizziness, nausea, poor balance, and short-term memory problems being the other principal disabling symptoms. (Tr. 57-58.) She stated that “there are many days when I feel so tired . . . all of [a] sudden I can’t stay awake. I haven’t really done anything that’s physical exertion, but cognitively I feel an intense desire to sleep and I’ll lay down and take a nap.” (Tr. 49.) She stated that this occurred four to five days a week, and that she occasionally took more than one nap a day, but on the days she worked she took medication which helped her stay awake. (*Id.*)

Sucharski stated that her daily activities included cooking, cleaning, caring for her dogs, helping her son get ready for school, paying bills, paperwork, washing some dishes, doing a load of laundry, working in her garden, and watching television. (Tr. 48-49, 51.) She stated that she usually went grocery shopping once a month. (Tr. 50.) She also stated that she performed her own self-care tasks, however, on some days she was too fatigued to stand in the shower or to get in and out of the bathtub. (Tr. 50-51.) She also stated that she was “unable to complete any task from beginning to end.” (Tr. 51.)

A vocational expert (“VE”), Timothy Riley, also testified at the March 3, 2004 evidentiary hearing. The VE testified that there would be 7,000 light and 6,000 sedentary jobs available in the Milwaukee, Wisconsin area for an individual with Sucharski’s RFC, as determined by the ALJ. (Tr. 67-69.) However, the VE also stated that there would be no jobs available for an individual with the November 6, 2003 RFC assessment completed by Dr. Kori-Graf. (Tr. 70.)

ANALYSIS

The Social Security Act provides that “the findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). Accordingly, the court will uphold an ALJ’s decision if it is supported by substantial evidence. *Barnett v. Barnhart*, 381 F.3d 664, 668 (7th Cir. 2004). An ALJ’s decision is supported by substantial evidence if the ALJ identifies supporting evidence in the record and adequately discusses the issues. *Golembiewski v. Barnhart*, 322 F.3d 912, 915 (7th Cir. 2003). Evidence is substantial if it is sufficient for a reasonable person to accept as adequate to support the decision. *Jens v. Barnhart*, 347 F.3d 209, 212 (7th Cir. 2003). To determine if substantial evidence supports the ALJ’s decision, the court reviews the record as a whole but is not allowed to substitute its judgment for the ALJ’s by reconsidering facts, reweighing evidence, resolving conflicts in evidence, or deciding questions of credibility. *Id.* Where, as here, the ALJ denies benefits, the ALJ must “build an accurate and logical bridge from the evidence to his conclusion.” *Clifford v. Apfel*, 227 F.3d 863, 872 (7th Cir. 2000).

Sucharski's status as an insured expired on December 31, 2004. In order for Sucharski to be eligible for DIB, she must establish that she was disabled within the meaning of the Social Security Act as of that date. See *Stevenson v. Chater*, 105 F.3d 1151, 1154 (7th Cir. 1997). In deciding whether Sucharski had met her burden of establishing disability, the ALJ applied the standard five-step inquiry under 20 C.F.R. § 404.1520 which required the ALJ to evaluate, in sequence:

- (1) whether the claimant is currently [un]employed;
- (2) whether the claimant has a severe impairment;
- (3) whether the claimant's impairment meets or equals one of the impairments listed by the [Commissioner], see 20 C.F.R. § 404, Subpt. P, App. 1;
- (4) whether the claimant can perform her past relevant work; and
- (5) whether the claimant is capable of performing work in the national economy.

Clifford, 227 F.3d at 868 (quoting *Knight v. Chater*, 55 F.3d 309, 313 (7th Cir. 1995)).

In the instant case, the ALJ concluded that Sucharski was not disabled at the fifth step, because, as of December 31, 2002, Sucharski was performing substantial gainful activity, and for the period prior to December 31, 2002, Sucharski could perform work in the national economy. (Tr. 28.)

Sucharski sets forth several claims asserting that the ALJ's decision was not based on substantial evidence and contained legal errors. Specifically, Sucharski claims: (1) the ALJ's decision improperly considered the weight of the opinions of her physicians in violation of 20 C.F.R. § 404.1527, and the ALJ's evaluation of those opinions was based on factual errors; (2) the ALJ's credibility determination did not comply with Social Security Ruling ("SSR") 96-7p and relevant case law; (3) the ALJ's

hypothetical question to the VE at the evidentiary hearing did not include all of Sucharski's limitations; and (4) the ALJ's step five and RFC findings were not consistent and did not comply with SSR 96-8p. The court will address each of Sucharski's claims in turn.

First, Sucharski asserts that the ALJ's evaluation of the opinions of her physicians failed to follow 20 C.F.R. § 404.1527 and was based on factual errors. Specifically, Sucharski asserts that pursuant to 20 C.F.R. § 404.1527(d)(2), Dr. Kori-Graf's opinion, as the opinion of one of Sucharski's treating physicians, should have been given controlling weight by the ALJ, unless there were "good reasons" for according less weight to the opinion. Under 20 C.F.R. § 404.1527(d)(2), the Commissioner will "give more weight to opinions from your treating sources" and "will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion." *Id.* In the instant case, the ALJ accorded "little evidentiary weight" to the opinions of Dr. Kori-Graf and Dr. Novom. (Tr. 27.)

To explain why she discounted the opinion of Dr. Kori-Graf, the ALJ noted in her decision that Dr. Kori-Graf's functional capacity assessment of Sucharski was completed after only one exam of Sucharski. (Tr. 27.) The ALJ also noted that Dr. Kori-Graf did "not have a treating or longitudinal history with the claimant and does not state upon which objective evidence she used as a basis for her opinion." (*Id.*) The ALJ also indicated that she accorded little weight to Dr. Novom's June 6, 2001 report because Dr. Novom was "hired by the claimant's former employer" and "based his

findings upon only one examination.” (*Id.*) The ALJ also determined that Dr. Novom’s findings were “not consistent with the findings made [by] the claimant’s treating neurologist just one month earlier, during which the claimant’s neurological results were normal.” (*Id.*) The ALJ also concluded that the opinions of Drs. Kori-Graf and Novom were “in conflict with [Sucharski’s] activities during the time period at issue.” (*Id.*)

Sucharski asserts that under 20 C.F.R. § 404.1527(d), the reasons provided by the ALJ were insufficient to justify the ALJ’s decision to discount these medical opinions. Sucharski maintains that Dr. Kori-Graf conducted a prolonged interview with Sucharski on the day of the evaluation, and Dr. Kori-Graf completed extensive medical reports on the same day she completed the functional capacity assessment. Sucharski also notes that although Dr. Kori-Graf did not state specific reasons for each limitation on the RFC form, there was a contemporaneous and complete physical and neurological examination supporting each limitation. Sucharski notes that Dr. Kori-Graf documented Sucharski’s complaints of fatigue and weakness in all extremities, dysphagia, and urinary problems. (Tr. 832.) This evidence, Sucharski asserts, is contemporaneous to Dr. Kori-Graf’s RFC evaluation and supports the limitations found by Dr. Kori-Graf, however, the ALJ did not discuss this additional evidence in her decision. (Tr. 27.)

Sucharski also asserts that the opinions of Dr. Kori-Graf and Dr. Novom should have been given more weight because they were consistent with several other medical records and the opinions of Sucharski’s other doctors, including that of Dr. Terry. See

20 C.F.R. § 404.1527(d)(4) (“Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.”). Additionally, Dr. Novom specialized in neurology, the appropriate specialty for the evaluation of MS, and Dr. Kori-Graf was also part of the Neurology Clinic, and is associated with the MS clinic. (Tr. 832.) Thus, because Drs. Kori-Graf and Novom were specialists in Sucharski’s impairment, the ALJ should have given their opinions more weight. See 20 C.F.R. § 404.1527(d)(5) (“We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.”).

Sucharski also asserts that the reasons provided by the ALJ for discounting the opinion of Dr. Novom were based on factual errors. The ALJ accorded little weight to Dr. Novom’s June 6, 2001 report because Dr. Novom was “hired by the claimant’s former employer” and “based his findings upon only one examination.” (Tr. 27.) However, Sucharski maintains that Dr. Novom was hired by Sucharski’s former employer’s insurance company through their corporate counsel, not directly by her former employer. Sucharski also contends that the ALJ improperly implied that Dr. Novom would not be objective if he was hired by her former employer, because under SSR 86-8, “[r]easonable inferences may be drawn, but presumptions, speculations and suppositions should not be substituted for evidence.” *Id.*

Additionally, Sucharski notes that the ALJ’s statement that Dr. Novom based his findings on only one examination is incorrect. (Tr. 27.) A review of the record reveals

that Dr. Novom examined Sucharski on three occasions and prepared written reports dated October 26, 1998, (Tr. 446-56), April 27, 1999, (Tr. 393-95), and June 6, 2001, (Tr. 819-25.) After the examinations dated October 26, 1998, and April 27, 1999, Dr. Novom reached the conclusion that Sucharski was “temporarily totally disabled.” (Tr. 395, 455.) After Dr. Novom’s third examination, dated June 6, 2001, he opined that Sucharski could return to temporary part time work with specific restrictions. (Tr. 823-24.) However, Dr. Novom noted that he remained “skeptical Ms. Sucharski will be able to return to any variety of gainful employ without frequent interruption due to exacerbation or worsening of demyelinating disease.” (Tr. 823-24.) In light of this evidence, it appears the second reason provided by the ALJ to discount Dr. Novom’s opinion, that he “based his findings upon only one examination,” was inaccurate.

Furthermore, it appears that the ALJ’s third reason for giving little weight to Dr. Novom’s opinion was also inaccurate. Specifically, the ALJ noted that Dr. Novom’s examination findings were “not consistent with the findings made [by] the claimant’s treating neurologist just one month earlier, during which the claimant’s neurological results were normal.” (Tr. 27.) However, Dr. Novom’s examination was performed on June 6, 2001 (Tr. 819), and in Dr. Terry’s May 15, 2001 treatment note, he wrote that Sucharski’s “neurological examination actually shows no change in physical findings.” (Tr. 575.) “[N]o change” is not equivalent to “normal,” and prior neurological examinations conducted by Dr. Terry also stated “unchanged” back to the date of February 1, 2000. (Tr. 579, 581, 583, 584.) The February 1, 2000 neurological

examination revealed abnormalities including upper motor neuron signs in both lower and upper extremities, questionable plantar response on the left, mild hyperreflexia throughout, and clonus in one ankle. (Tr. 584.) Therefore, the ALJ was mistaken when she concluded that the results of Dr. Terry's May 2001 examination were "normal" and inconsistent with the results of Dr. Novom's June 2001 examination. In light of this evidence, it appears the third reason provided by the ALJ to discount Dr. Novom's opinion was inaccurate.

Sucharski also asserts that the ALJ failed to address Dr. Terry's May 20, 2003 opinion that Sucharski could return to part time work with the restrictions of only working, at most, two days in a row, and not working more than a total of three days per week. (Tr. 836-37.) Sucharski asserts the ALJ's failure to address this restriction provided by her treating physician is legal error meriting reversal, especially when the ALJ relied upon Dr. Terry's opinion to discount the opinion of Dr. Novom. See 20 C.F.R. § 404.1527; SSR 96-2p.

The Commissioner contends that the ALJ considered the opinions of Drs. Kori-Graf and Novom, however, the ALJ found them entitled to limited weight because the record contained ample contradictory evidence, including Dr. Braza's September 1999 opinion, as well as Sucharski's demonstrated level of functioning. (Tr. 362-64.) The Commissioner notes that a medical source opinion is entitled to significant weight only if it is well-supported and not inconsistent with other record evidence. See 20 C.F.R. § 404.1527(d)(2). The Commissioner asserts that the record

supports the ALJ's determination that the opinions of Drs. Kori-Graf and Novom "conflicted with [Sucharski's] activities during the time period at issue." (Tr. 27.) Additionally, the ALJ considered the opinions of the state agency medical consultants, who found that Sucharski could perform a range of light work, despite her impairments and limitations. (Tr. 28, 792-99.) Furthermore, the ALJ is not to give any special significance to statements that a claimant is disabled or unable to work, as these issues are reserved to the Commissioner. See 20 C.F.R. § 404.1527(e); *Dixon v. Massanari*, 270 F.3d 1171, 1177 (7th Cir. 2001) ("The Commissioner, not a doctor selected by a patient to treat her, decides whether a claimant is disabled.").

In reply, Sucharski asserts that the Commissioner's argument that the opinions of Drs. Kori-Graf and Novom were contradicted by Dr. Braza's September 1999 opinion is impermissible post hoc rationale. Sucharski notes that the ALJ did not mention the opinion of Dr. Braza as evidence supporting her decision to discount the opinions of Drs. Kori-Graf and Novom. (Tr. 27.) The Seventh Circuit held in *Golembiewski* that general principles of administrative law preclude the Commissioner's attorneys from advancing grounds in support of the agency's decision that were not given by the ALJ. 322 F.3d at 916. Thus, Sucharski asserts, the Commissioner's argument that Dr. Braza's September 1999 opinion contradicts the opinions of Drs. Kori-Graf and Novom is precluded. Furthermore, Sucharski asserts, Dr. Braza's 1999 opinion was outdated, and the ALJ cannot ignore all subsequent evidence demonstrating additional restrictions.

Although an ALJ may choose between competing opinions, she may not ignore an entire line of evidence. See *Golembiewski*, 322 F.3d at 917 (holding that although the ALJ need not discuss every piece of evidence in the record, the ALJ may not ignore an entire line of evidence that is contrary to the ruling). The ALJ must address uncontradicted evidence supporting disability and not choose only the evidence which favors her ultimate conclusion. See *Diaz v. Chater*, 55 F.3d 300, 307 (7th Cir. 1995) (“An ALJ may not select and discuss only that evidence that favors his ultimate conclusion, but must articulate, at some minimum level, his analysis of the evidence to allow the appellate court to trace the path of his reasoning.”). Additionally, as noted above, when the ALJ denies benefits, the ALJ must “build an accurate and logical bridge from the evidence to his conclusion.” *Clifford*, 227 F.3d at 872.

Here, the ALJ provided reasons for assigning less weight to the opinions of Drs. Kori Graf and Novom. (Tr. 27.) However, the ALJ’s “bridge from the evidence to [her] conclusion” was inaccurate. Specifically, the ALJ’s reasons for discounting the opinion of Dr. Novom were inaccurate: Dr. Novom’s June 6, 2001 examination was his third examination of Sucharski, not his first and only examination of her, and contrary to the ALJ’s conclusion, a review of the record reveals that Dr. Novom’s June 6, 2001 opinion was consistent with Dr. Terry’s May 15, 2001 opinion that Sucharski’s neurological results were unchanged. (Tr. 575.) Furthermore, Dr. Terry noted on October 24, 2001 that Sucharski complained of increasing fatigue after only mild exertion and significant short-term memory problems. (Tr. 574.) Given that the

reasons provided by the ALJ for discounting the opinion of Dr. Novom are inconsistent with the evidence of record, the court concludes that the ALJ has not built an accurate and logical bridge from the evidence to her conclusion. See *Clifford*, 227 F.3d at 872.

Sucharski asserts as her second argument that the ALJ's credibility determination did not comply with SSR 96-7p and relevant case law. Social Security Ruling 96-7p requires an ALJ's decision to point to specific reasons for the ALJ's credibility determination. The ruling states in relevant part:

It is not sufficient for the adjudicator to make a single, conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. 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.

Social Security Ruling 96-7p.

Because the ALJ is in the best position to see and hear the witnesses and assess their forthrightness, the court will afford the ALJ's credibility determinations special deference. *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000). The court will reverse an ALJ's credibility determination only if the claimant can show it was "patently wrong." *Id.* (citing *Herr v. Sullivan*, 912 F.2d 178, 181 (7th Cir. 1990)).

Here, the ALJ concluded that Sucharski's testimony at the evidentiary hearing

was “not fully credible.” (Tr. 29.) The ALJ determined that Sucharski’s reports of pain were not credible because she uses narcotic pain medication only three to five times per month, and other than the physical therapy that she attended right after her spinal fusion surgery in 1999, she was referred to physical therapy for pain on only one other occasion (in 2002) and she attended only two sessions. (Tr. 25.) The ALJ also noted in her decision that Dr. Swanson opined that the results of her tests “showed evidence of individuals with ‘a tendency to over report symptoms or have a large number of somatic complaints.’” (*Id.*) The ALJ noted that Sucharski complained to Dr. Swanson of reduced memory, slowed mental processing speed, and problems with sustained attention. (*Id.*) However, Dr. Swanson noted that Sucharski was fluent, articulate, free of word finding problems and paraphasic errors, with high to average measures of intelligence, language, and memory. (Tr. 23, 25.) The ALJ also noted that despite her reported cognitive problems, stress, and fatigue, Sucharski applied to graduate school, played bingo, attended theater productions, managed her finances, and did crafts. (Tr. 25, 26.) Additionally, the ALJ noted that Sucharski was able to attend classes three and one-half hours per week and work part time at a hospital. (Tr. 27.) Finally, the ALJ concluded that Sucharski’s fatigue was caused, in part, by stress at home involving her foster child. (*Id.*)

Sucharski maintains that these reasons for discounting her reports of pain and fatigue are inconsistent with the record. Sucharski asserts that there is no indication that use of narcotic medication is appropriate treatment of MS, and notes that her

doctors prescribed a wide variety of medications to treat her pain and other symptoms. Because an ALJ may not substitute her opinion for that of a physician regarding the proper treatment for a claimant's conditions, Sucharski asserts that the ALJ's conclusion regarding Sucharski's medication for her pain was improperly based upon the ALJ's own lay conclusions. See *Green v. Apfel*, 204 F.3d 780, 781 (7th Cir. 2000); see also *Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) (noting that common sense can mislead; lay intuitions about medical phenomena are often wrong).

Sucharski also asserts that the ALJ's credibility determination failed to comply with SSR 96-7p because the ALJ did not consider the side-effects of Sucharski's medication, most notably, her fatigue. The ALJ noted that even though Sucharski reported to Dr. Terry that Baclofen caused weakness and nausea, Dr. Terry increased her dosage of Baclofen. (Tr. 26.) The ALJ determined that the "side-effects could not have been as debilitating as has been reported by the claimant or her treating physician would have reasonably changed her medication." (*Id.*) However, Sucharski asserts, there is no indication in the record that any other medication could be substituted for Baclofen.

Although the ALJ cited to Dr. Novom's June 6, 2001 medical report to support her determination that Sucharski's fatigue was caused, in part, by her home environment, Sucharski contends that Dr. Novom's report, as well as a significant amount of other evidence in the record, supports a conclusion that her fatigue was a result of her MS and medication, not her home environment. Dr. Novom reported that

Sucharski took time off from school due to stress at home, and that Sucharski had a foster child removed from her home. (Tr. 819.) However, his report also noted that the “most debilitating complaint listed by Ms. Sucharski is great fatiguability finding difficulty maintaining a level of alertness and wakefulness during daytime hours. Such disturbance is a hallmark feature of multiple sclerosis.” (Tr. 823.) Dr. Novom opined that “there is without doubt genuine organic basis for such complaint owing to central nervous system demyelinating disease which is exceedingly difficult to treat but as of late appears in some measure responsive to medication in the form of Provigil.” (*Id.*) Dr. Novom opined that Sucharski could return to work “not exceeding four hours per day” in a sedentary capacity with additional permanent restrictions, and that Sucharski’s functional capacity would decline over time. (Tr. 823-24.) Thus, Sucharski contends, the ALJ’s conclusion that her fatigue was caused by her situation at home, and not by her MS, lacks support in the record, especially when viewed in light of Dr. Novom’s June 6, 2001 medical report.

The Commissioner contends that the ALJ considered the appropriate factors in making her credibility determination. These factors included the lack of sufficient objective medical evidence, medical opinion evidence of record, Sucharski’s treatment history and activities, and inconsistencies in Sucharski’s testimony regarding the degree of pain and limitations alleged. See 20 C.F.R. § 404.1529(c)(3). The Commissioner asserts that the ALJ reasonably weighed these factors and, as such, her decision should not be disturbed upon judicial review. Furthermore, the Commissioner

asserts, in making her credibility determination, the ALJ was not required to evaluate each piece of evidence or testimony. See *Sims v. Barnhart*, 309 F.3d 424, 429 (7th Cir. 2002) (“The ALJ’s failure to address these specific findings, however, does not render his decision unsupported by substantial evidence because an ALJ need not address every piece of evidence in his decision.”).

Under SSR 96-7p, the ALJ must consider the entire case record in determining the credibility of the individual’s statements. *Id.* Here, although the ALJ attributed Sucharski’s fatigue, in part, to her home environment in 2001, it appears the ALJ did not consider the substantial evidence in the record suggesting that Sucharski’s fatigue was caused by either her underlying impairment, MS, or her medication. Sucharski reported fatigue throughout her treatment for MS, not only in 2001, and she continually reported that her physical and mental fatigue was one of her most disabling symptoms. (Tr. 47, 49, 57-58, 390, 581, 584, 616, 823.) Other than mentioning Sucharski’s reports of fatigue to her doctors, and attributing part of her fatigue and stress to Sucharski’s home environment in 2001, the ALJ’s decision did not discuss the evidence in the record suggesting that Sucharski’s MS and medication caused her significant fatigue. In light of the foregoing, it appears the ALJ’s credibility determination failed to comply with SSR 96-7p, requiring that an ALJ’s credibility determination be “based on a consideration of all of the evidence in the case record” including the medical opinions of Sucharski’s physicians.

Sucharski asserts as her third claim that the ALJ’s hypothetical question posed

to the VE at the evidentiary hearing did not include all of Sucharski's limitations. The ALJ found that Sucharski retained the capabilities:

to perform work activity at the unskilled sedentary exertional level with limitations of sitting for up to six hours in an eight hour workday, standing or walking for up to two hours in an eight hour workday with changes of position, lifting and carrying ten pounds frequently and occasionally, no climbing, balancing, overhead reaching and working around heights and hazards and performing occasional stooping and twisting of the neck.

(Tr. 27, 29.) With this RFC, and considering Sucharski's age, education, and vocational experience, and the testimony of the vocational expert, the ALJ determined that Sucharski could perform work available in the national economy. (Tr. 30.)

Sucharski asserts that the ALJ's conclusion was legally erroneous because despite finding that the "medical records do confirm that the claimant suffers from remitting/relapsing multiple sclerosis," (Tr. 26) the ALJ did not include limitations related to Sucharski's fatigue in her RFC determination or hypothetical question to the VE. Indeed, as noted above, the ALJ never discussed the direct association of fatigue with MS, or Sucharski's inability to sustain activity due to her fatigue. (Tr. 26, 29.)

The Commissioner contends that ALJ did not include limitations related to fatigue because the ALJ determined that these limitations were not credible. The Commissioner asserts that Sucharski's demonstrated abilities as reflected in her August 1999 physical therapy discharge evaluation, as well as her abilities to perform household activities, attend graduate school, and work part time as a nurse in December 2002, were inconsistent with her claim that she had debilitating fatigue.

(Tr. 50-55, 371.) Additionally, the Commissioner asserts that the ALJ's assessment of Sucharski's RFC was supported by the opinion of Dr. Braza, a spine care specialist who treated Sucharski following her neck surgery in April 1999. Dr. Braza opined in September 1999 that Sucharski could return to light duty work that provided a sit/stand option and did not require frequent lifting of more than ten pounds or occasional lifting of more than twenty pounds. (Tr. 390.) Thus, the Commissioner asserts, substantial evidence supports the ALJ's decision to not include limitations related to fatigue in Sucharski's RFC.

As noted above, Sucharski reported fatigue throughout her treatment for MS and she continually reported that her physical and mental fatigue was one of her most disabling symptoms. (Tr. 47, 49, 57-58, 390, 581, 584, 616, 823.) Additionally, all of Sucharski's principal physicians noted that fatigue was her most significant problem. Specifically, Dr. Terry opined that Sucharski was disabled by her fatigue, and encouraged her to reduce her academic load due to her fatigue. (Tr. 581, 616-17.) Indeed, her fatigue was so significant she was prescribed a medication specifically to maintain wakefulness which was later increased in dosage. (Tr. 581, 790.) Dr. Terry explained in his summary of Sucharski's progression of MS:

Ever since the MS exacerbation in 1998, Ms. Sucharski has had moderate to severe fatigue with episodes of mild to moderate fatigue. To my knowledge she has never been free of fatigue from this disease. I have tried to ease her back into a part-time working condition where she would be sitting most of the time. She was never able to tolerate a full 40 hour per week position at any form of employment . . . [Sucharski] manifested a continuous downhill course with increasing symptoms, fatigue and

cognitive problems that prevent her from working for any degree of time.

(Tr. 873.)

Evidence of Sucharski's fatigue appears throughout the record, including the November 6, 2003 RFC assessment completed by Dr. Kori-Graf, noting that Sucharski experienced a fatigue best characterized as "lassitude" which was typical of MS patients. (Tr. 815, 817.) In addition, Dr. Braza noted that Sucharski "does appear to fatigue after approximately 5 hours of being on her feet." (Tr. 390.) Additionally, the neuropsychological assessment performed by Dr. Swanson noted that although Sucharski's should explore a part-time return to work due to her exceptional cognitive abilities, her ability to do so would be limited by her MS symptoms, including fatigue. (Tr. 721-22.) Dr. Swanson further explained, "[w]e both agreed that her pain and fatigue may be disabling irrespective of the results of cognitive testing. The degree to which she is disabled due to physical problems, fatigue, and pain would need to be documented by her neurologist, [Dr. Terry]." (Tr. 736.) Furthermore, Dr. Novom's June 6, 2001 report also noted that fatigue was one of the principal problems for Sucharski and directly related the fatigue to MS. (Tr. 823.)

In making her RFC determination, the ALJ must consider whether there is an underlying "determinable physical or mental impairment that could reasonably be expected to produce the symptoms." *Scheck v. Barnhart*, 357 F.3d 697, 702 (7th Cir. 2004) (quoting SSR 96-7p). In failing to address the effect of Sucharski's MS and resulting fatigue, the ALJ failed to address a critical line of evidence. In light of the

significant amount of uncontradicted evidence in the record regarding Sucharski's MS and fatigue, the ALJ should have discussed this evidence suggesting that her fatigue was linked to her MS. See *Golembiewski*, 322 F.3d at 917; *Diaz*, 55 F.3d at 307 ("An ALJ's failure to consider an entire line of evidence falls below the minimal level of articulation required."). At the very least, the ALJ should have explained why she chose to not include limitations regarding Sucharski's fatigue in her RFC finding or her hypothetical question to the VE. See *Steele v. Barnhart*, 290 F.3d 936, 942 (7th Cir. 2002) ("Hypothetical questions posed to vocational experts ordinarily must include *all* limitations supported by medical evidence in the record.") (emphasis in original).

Sucharski also asserts that the ALJ's step five and RFC findings were not consistent and did not comply with SSR 96-8p. The ALJ found that, according to the VE's testimony, Sucharski could perform the jobs of cashier, assembler, and hand packer either sitting or standing. (Tr. 29-30; 69.) The ALJ also found that Sucharski was limited to only "occasional stooping", however, the ALJ did not specify how often Sucharski would have to alternate sitting and standing in an eight hour day. (Tr. 29.) Additionally, the ALJ did not explain why she did not include other limitations consistent with evidence in the record suggesting that Sucharski not only needed to change position, but also to walk, recline, and take rest breaks. (Tr. 49, 52, 816.) Such lack of specificity, Sucharski asserts, violates SSR 96-8p, because the frequency of the sit-stand requirement is a crucial component in assessing a claimant's ability to work. See SSR 96-8p.

Finally, Sucharski asserts that a mental RFC was required because the ALJ recognized that Sucharski had a mental impairment, finding her depression to be severe. (Tr. 29.) The ALJ also found “mild” mental limitations due to depression and anxiety in the areas of self-care, concentration persistence, pace, and communication with others. (Tr. 24.)

The Commissioner contends that the ALJ was not required to include limitations that she did not find credible, and the record did not document that Sucharski had a mental impairment that would preclude her from performing simple, routine, unskilled work. As such, the Commissioner asserts, the ALJ’s conclusion that Sucharski could perform “work activity at the unskilled sedentary exertional level” (Tr. 27, 29) was consistent with the evidence of record.

Pursuant to 20 C.F.R. Part 404, Subpart P, Appendix 1, Listing 12.00 “[t]he determination of mental RFC is crucial to the evaluation of an individual’s capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met or equaled but the impairment is nevertheless severe.” *See also* SSR 85-16 (“detailed assessment of the individual’s capacity to perform and sustain mental activities which are critical to work performance” required for impairments not meeting or equaling a listing). And according to SSR 85-15, “A claimant’s condition may make performance of an unskilled job as difficult as an objectively more demanding job” *Id.* Sucharski also asserts that relevant case law suggests that a complete RFC must include mental limitations that are not rejected by the ALJ. *See*

Kasarsky v. Barnhart, 335 F.3d 539, 543-44 (7th Cir. 2003). In light of the ALJ's conclusion that Sucharski had severe depression (Tr. 29), a mental RFC assessment would have been helpful, if not necessary, to determine the extent of Sucharski's mental limitations.

This circuit has held that an ALJ's decision is supported by substantial evidence if the ALJ adequately discusses the issues and does not ignore an entire line of evidence. See *Golembiewski*, 322 F.3d 915. Additionally, when the ALJ denies benefits, the ALJ must "build an accurate and logical bridge from the evidence to his conclusion." *Clifford*, 227 F.3d at 872. In the instant case, the ALJ went through the proper five-step inquiry. See 20 C.F.R. § 404.1520. However, the ALJ's decision that Sucharski could perform work in the national economy prior to December 31, 2002, was not supported by substantial evidence. Specifically, the ALJ did not adequately discuss the uncontradicted evidence suggesting that Sucharski's fatigue, her most debilitating limitation, was linked to her MS and limited her ability to work full time. See *Golembiewski* 322 F.3d at 915. Instead, the ALJ's decision summarily dismissed Sucharski's fatigue as caused, in part, by her home environment. (Tr. 27.) Additionally, the ALJ did not explain why she chose to not include limitations regarding Sucharski's fatigue in her RFC finding or her hypothetical question posed to the VE at the evidentiary hearing.

Furthermore, as noted above, the ALJ's reasons for discounting the opinion of Dr. Novom were inaccurate and inconsistent with the evidence of record. Specifically,

Dr. Novom's June 6, 2001 examination was his third examination of Sucharski, and his corresponding opinion was consistent with Dr. Terry's May 15, 2001 opinion that Sucharski's neurological results were unchanged from her February 1, 2000 neurological examination which revealed abnormalities. (Tr. 575, 584.) As such, the court concludes that the ALJ has not built an accurate and logical bridge from the evidence to her conclusion. See *Clifford*, 227 F.3d at 872. In light of the foregoing, further proceedings are necessary to resolve this case, and the court is obliged to remand this action to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g).

Accordingly,

IT IS ORDERED that pursuant to sentence four of 42 U.S.C. § 405(g), the decision of the Commissioner denying the plaintiff's claim for disability insurance benefits be and the same is hereby **REVERSED**;

IT IS FURTHER ORDERED that this action be and the same is hereby **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this order; and

IT IS FURTHER ORDERED that the plaintiff's motion for leave to file excess pages (Docket # 13) be and the same are hereby **GRANTED**.

The clerk of the court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin this 10th day of January, 2007.

BY THE COURT:

s/ J. P. Stadtmueller

J. P. Stadtmueller

U.S. District Judge