

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

KATHLEEN A. GRACE,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

No. C07-0021

RULING ON JUDICIAL REVIEW

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I. INTRODUCTION

This matter comes before the Court on the Complaint (docket number 3) filed by Plaintiff Kathleen A. Grace on February 28, 2007, requesting judicial review of the Social Security Commissioner's decision to deny her application for Title II disability insurance benefits and Title XVI supplemental security income ("SSI") benefits. Grace asks the Court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide her disability insurance benefits and SSI benefits. In the alternative, Grace requests the Court to remand this matter for further proceedings.

II. PRIOR PROCEEDINGS

Grace applied for disability insurance benefits and SSI benefits on May 4, 2005. In her application, Grace alleged an inability to work since April 26, 2005 due to sarcoidosis, diabetes mellitus, diabetic retinopathy with peripheral vision loss, sleep apnea, asthma, gastroesophageal reflux disease ("GERD"), bronchiectasis, hypertension, hyperlipidemia, obesity, and depression. Grace's applications were denied on July 25, 2005. On September 23, 2005, her applications for disability insurance benefits and SSI benefits were denied on reconsideration. On November 22, 2005, Grace requested an administrative hearing before an Administrative Law Judge ("ALJ"). On June 21, 2006, Grace appeared with counsel before ALJ John P. Johnson for an evidentiary hearing. Grace, her husband, James Grace, and vocational expert Carma Mitchell testified at the hearing. In a decision dated June 30, 2006, the ALJ denied Grace's claim. The ALJ determined that Grace was not disabled and was not entitled to disability insurance benefits or SSI benefits because she was functionally capable of performing work that exists in significant numbers in the national economy. Grace appealed the ALJ's decision. On January 12, 2007, the Appeals Council denied Grace's request for review. Consequently, the ALJ's June 21, 2006 decision was adopted as the Commissioner's final decision.

On February 28, 2007, Grace filed this action for judicial review. The Commissioner filed an answer on May 17, 2007. On August 8, 2007, Grace filed a brief arguing there is not substantial evidence in the record to support the ALJ's finding that she

is not disabled and that there is other work she can perform. On October 3, 2007, the Commissioner filed a responsive brief arguing the ALJ's decision was correct and asking the Court to affirm the ALJ's decision. Grace filed a reply brief on October 15, 2007. On April 19, 2007, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

III. PRINCIPLES OF REVIEW

Title 42, United States Code, Section 405(g) provides that the Commissioner's final determination following an administrative hearing not to award disability insurance benefits is subject to judicial review. 42 U.S.C. § 405(g). Pursuant to 42 U.S.C. § 1383(c)(3), the Commissioner's final determination after an administrative hearing not to award SSI benefits is subject to judicial review to the same extent as provided in 42 U.S.C. § 405(g). 42 U.S.C. § 1383(c)(3). 42 U.S.C. § 405(g) provides the Court with the power to: "[E]nter . . . a judgment affirming, modifying, or reversing the decision of the Commissioner . . . with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). "The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive . . ." *Id.*

The Court must consider "whether the ALJ's decision is supported by substantial evidence on the record as a whole." *Vester v. Barnhart*, 416 F.3d 886, 889 (8th Cir. 2005) (citing *Harris v. Barnhart*, 356 F.3d 926, 928 (8th Cir. 2004)). Evidence is "substantial evidence" if a reasonable person would find it adequate to support the ALJ's determination. *Id.* (citing *Sultan v. Barnhart*, 368 F.3d 857, 862 (8th Cir. 2004)). Furthermore, "[s]ubstantial evidence is 'something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions does not prevent an administrative agency's findings from being supported by substantial evidence.'" *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (quoting *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989), in turn quoting *Consolo v. Fed. Mar. Comm'n*, 282 U.S. 607, 620 (1966)).

In determining whether the ALJ's decision meets this standard, the Court considers "all of the evidence that was before the ALJ, but it [does] not re-weigh the evidence." *Vester*, 416 F.3d at 889 (citing *Guilliams v. Barnhart*, 393 F.3d 798, 801 (8th Cir. 2005)). The Court not only considers the evidence which supports the ALJ's decision, but also the evidence that detracts from his or her decision. *Guilliams*, 393 F.3d at 801. "[E]ven if inconsistent conclusions may be drawn from the evidence, the agency's decision will be upheld if it is supported by substantial evidence on the record as a whole." *Id.* (citing *Chamberlain v. Shalala*, 47 F.3d 1489, 1493 (8th Cir. 1995)).

IV. FACTS

A. Grace's Education and Employment Background

Grace was born in 1960. She graduated from high school and attended one year of college. She worked for Prudential Insurance Company of America from 1985 to 1988. In 1989 and 1990, she worked as an office manager for a nursing home. Grace has no record of earnings for 1991. From 1992 to 1994, she worked for Principal Life Insurance Company. Grace had sporadic employment at several places between 1995 and 1997. In 1998 and 1999, she worked for the United States Department of Commerce in the census bureau. Grace worked as a telephone retirement advisor for Life Investors Insurance Company of America from 2000 through 2005. Grace has not worked since her alleged disability onset date of April 26, 2005.

B. Administrative Hearing Testimony

1. Grace's Testimony

At the June 21, 2006 administrative hearing, Grace testified that she stopped working because she was missing too much time at work due to health issues with sarcoidosis. She testified that she took Methotrexate once each week for one and one-half years as treatment for sarcoidosis. She testified, however, that the Methotrexate made her ill for three to four days after taking it, and her frequent illness from the Methotrexate caused her to regularly miss work.

Grace also testified that sarcoidosis and the effects of sarcoidosis cause her pain throughout her body, especially in her joints and muscles. She testified that she takes Relafen, Lortab, and Tylenol to manage her pain. She testified, however, that she experiences pain every day at a level of eight on a scale of one to ten.

Grace testified that the pain also makes sleeping difficult and causes fatigue. She testified that she goes to bed around 10:00 p.m. and wakes up around 4:00 a.m. experiencing significant pain. She generally remains awake for about one hour and then returns to sleep around 5:00 a.m. until 8:00 a.m. Grace testified that she stays awake for about one hour and then returns to sleep at 9:00 a.m. and sleeps until noon. According to her testimony, Grace normally takes a two hour nap in the afternoon and then remains awake from 4:00 p.m. until 10:00 p.m. Grace believes that this sleeping pattern is the result of pain and fatigue.

Grace also testified that she has poor vision as a result of having diabetes. Specifically, she has lost all of her peripheral vision due to repeated laser eye treatments. She further testified that she cannot have anymore laser eye treatments or she will lose her sight entirely.

Grace and the ALJ had the following colloquy regarding her ability to walk, stand, and sit:

- Q: If you were going to go out on the street and walk down the street, how many, how many blocks could you walk before you'd have to stop?
- A: About half a block.
- Q: And why would that be?
- A: I have difficulty breathing. I, I do[,] do my Albuterol inhaler, but it [is] still difficult to breathe. . . . Also, I, I get -- I'm very stiff, and I get very sore trying to walk. . . .
- Q: What about just standing? How long can you stand at a time?
- A: If I push it, probably ten minutes . . . I can do ten minutes if I can lean on something, or put my hand on something to help to stand. The things that hurt

normally, my knees, my neck, my ankles, my back, get much worse if I try to stand too long. . . .

Q: How long can you sit?

A: In, in one position, for probably 15 minutes if I, if I try. . . . I can usually sit -- if I move positions in a chair, I can usually stay there for about an hour without having to get up and walk.

(Administrative Record at 377-78) Grace further testified that she has stiffness in her hands and can write or use a computer keyboard for about ten minutes at a time. She testified that she had difficulty climbing stairs, stooping, squatting, and using her arms. She only drives short distances because driving causes pain in her arms and shoulders. Grace also testified that she has difficulty remembering things and learning new things.

2. James Grace, Jr.'s Testimony

James Grace, Jr. ("James") is Grace's husband. They have been married for eighteen years. At the hearing, James testified that Grace is not "steady" on her feet when she walks. According to James, Grace holds on to his arm or some other steadying object when she walks. He testified that Grace's fatigue and lack of peripheral vision cause her to have difficulty walking. Specifically, James stated:

A: . . . [W]ith her not having peripheral vision, we kind of watch where she walks because she'll walk into things.

Q: Okay. And has that happened?

A: Yes, cupboards, doors, you know, just through the house. If somebody leaves a pair of shoes out, she'll trip because she can't see.

Q: Okay. She says she drives. Are you comfortable with her driving?

A: Yeah, as long as it's sunny out, yes, sir.

Q: But otherwise?

A: No.

(Administrative Record at 384-85) James further testified that Grace lacks stamina, sleeps a lot during the day, and suffers from depressive episodes based on her inability to do things with her family. He testified that Grace's pain and fatigue problems would make it difficult for her to work on a regular basis.

3. Vocational Expert's Testimony

At the hearing, the ALJ provided vocational expert Carma Mitchell with a hypothetical for an individual with the following limitations:

[The individual could not] lift more than 10 pounds; with walking or standing of two hours out of an eight-hour day; sitting of six hours out of an eight-hour day; with only occasional bending, stooping, squatting, kneeling, crawling, or climbing; only occasional work with the arms overhead. This individual should not be exposed to excessive heat, humidity, or cold or excessive dust, fumes, or smoke. [The individual] should not work at unprotected heights or around hazardous moving machinery. [The individual] should perform no work requiring full peripheral fields. [The individual] is not able . . . to do highly complex or technical work demanding prolonged attention to minute details and [rapid shifts] of alternating attention.

(Administrative Record at 391-92) The vocational expert testified that under such limitations, Grace could not return to any of her past work. The vocational expert testified, however, that under such limitations, Grace could perform work as an information clerk or appointment clerk (1,100 positions in Iowa and 105,100 positions in the nation) and service dispatcher (350 positions in Iowa and 31,000 positions in the nation). The ALJ provided the vocational expert with a second hypothetical for an individual with the following limitations:

[The individual] could not lift more than 10 pounds; with standing of 10 minutes at a time; sitting of 15 minutes at a time; and walking of a half block at a time; with only occasional bending, stooping, or squatting; no climbing; no prolonged operation of hand controls; no continuous use of the hands for gross or fine manipulation; only occasional work with the arms overhead. This individual should not be exposed to excessive humidity, dust, fumes, or smoke, and . . . should not work at unprotected heights or around hazardous moving machinery. [The individual] should perform no work requiring full peripheral vision or night vision. [The individual] is able to do only simple, routine, repetitive work

that does not require constant close attention to detail, and . . .
[requires] occasional supervision.

(Administrative Record at 394) The vocational expert testified that under such limitations, Grace could not return to any of her past work or perform any full-time work in the national economy.

Grace's attorney also questioned the vocational expert. He asked whether an employer would allow an employee to elevate his or her legs to heart level periodically throughout the work day. The vocational expert replied:

A: No [an employer] wouldn't allow for it, but if [the employee] had to raise both legs, for example, to heart level during the actual eight-hour work day while they were performing a task, no, I don't feel it would allow the person to complete tasks as required.

Q: Okay. . . . [Grace would also] need to take a number of unscheduled breaks, at least every hour, and during that time, she'd need to lie down quietly and elevate her legs. Would that be allowed in any competitive workplace?

A: No, it would not, during the actual eight-hour work day.

Q: Okay. . . . [D]ue to the various combination of her symptoms, the fatigue, the pain levels, the diabetes and its kind of ensuing problems, if [Grace] had to miss more than three days of work a month, would that be acceptable?

A: No, not if that's on an ongoing basis. It's my experience that generally employers will tolerate one to two days of unscheduled absences per month. Anything over that, on a regular basis, generally is not tolerated.

(Administrative Record at 396) Lastly, Grace's attorney asked the vocational expert whether being limited to work less than four hours per day would preclude full-time work. The vocational expert responded that it would preclude full-time work. Specifically, the vocational expert stated "[i]f a person would only be able to sustain standing, sitting, or

walking for, like, four hours a day for work, it wouldn't allow for competitive, full-time employment.”¹

C. Grace's Medical History

1. Grace's Physical Health

In late 2003, Grace complained of snoring, SOB/gasping, and morning headaches. On January 22, 2004, Grace underwent an all-night polysomnography test at the University of Iowa Hospitals and Clinics (“UIHC”). Dr. Mark R. Dyken, M.D., interpreted the test results and diagnosed Grace with significant obstructive sleep apnea with elements of hypoventilation. On February 20, 2004, Grace underwent a second polysomnography test with CPAP/BPAP initiation. Dr. Dyken noted that use of the CPAP resolved her snoring and improved her sleep.²

On April 6, 2004, Grace visited Dr. Gary W. Hunninghake, M.D., at the UIHC with complaints of shortness of breath, not feeling well, and a skin rash. In his exam notes, Dr. Hunninghake discussed Grace's past medical history. Dr. Hunninghake's notes provide:

[Grace] has had type I DM [Diabetes Mellitus] since age 8 and is on insulin. She notes it is not always under control. She has retinopathy and cataracts. . . . She has no chest pain. She has significant heartburn. . . . She has known obstructive sleep apnea and she has not worn her CPAP recently. She is also treated for depression.

(Administrative Record at 170) After examining her, Dr. Hunninghake diagnosed Grace with chronic sarcoidosis. Dr. Hunninghake also noted that she suffered from reflux. Dr. Hunninghake encouraged Grace to use the CPAP because it would help her reflux, sleep difficulties, and make her feel better. Dr. Hunninghake also suggested that she avoid

¹ See Administrative Record at 396-97.

² Dr. Dyken's test report provides “[Grace] reported better sleep than usual.” See Administrative Record at 172.

the sun, hormones, Vitamin D, and added calcium. Lastly, Dr. Hunninghake prescribed Methotrexate to treat the sarcoidosis.

On July 13, 2004, Grace saw Dr. Hunninghake for a follow-up appointment. After examining her, Dr. Hunninghake found that the treatment plan he placed her on was working. Grace told Dr. Hunninghake that she was feeling better. Dr. Hunninghake also noted that Grace's skin lesions had "markedly improved." Dr. Hunninghake recommended that Grace continue her treatment plan and include mild daily exercise as part of the plan.

On December 28, 2004, Grace visited Dr. Hunninghake for a second follow-up appointment. After examining her, Dr. Hunninghake determined that Grace continued to have some activity of sarcoidosis, but overall, her condition had improved. Dr. Hunninghake recommended that Grace continue her treatment plan.

On February 22, 2005, Grace met with Drs. Hunninghake and Modupe Kenhinde, M.D., for another follow-up appointment. At the appointment, Grace informed the doctors that she continued to have generalized aches and pains and noticed new skin lesions. Grace also informed the doctors that she had easy fatigability after a normal workday.³ Dr. Kenhinde diagnosed Grace with chronic sarcoidosis with generalized aches and pains and easy fatigability. Dr. Kenhinde also noted that Grace had sleep apnea and reflux issues. Dr. Kenhinde recommended a rheumatological referral in order for Grace to be placed on a rheumatological exercise program and an effective pain relieving regimen. Dr. Hunninghake agreed with Dr. Kenhinde's assessment and recommendations.

On May 11, 2005, Grace had an appointment with Drs. Peter Lenert, M.D., Ph.D., and Thomas Luft, D.O., in the rheumatology department at the UIHC. Dr. Luft discussed Grace's symptoms as follows:

This is a 44-year-old female with sarcoidosis who has been having symptoms for the last seven years. [Grace] originally

³ Grace alleges that she became disabled on April 26, 2005. She has not worked since that date.

had noticed skin lesions and general aches and feeling tired all the time that was very minor. She went to Hawaii in 2003 and after getting back, she had noticed increase in her lumps on her skin, as well as a dramatic increase in her generalized aches and feeling tired. She went to a local dermatologist in Cedar Rapids who had biopsied the lesions and found granulomatous disease consistent with sarcoid. . . . Throughout this time course, she feels that her aches and pains and fatigue has been getting worse over the time frame. She describes stiffness and pain in her joints, especially of her fingers, wrists and in the fingers, the PIP and MCPs as well as her wrist, elbow, shoulders, hips knees and feet. She has symptoms daily after exertion. When it is at its worst, it is an 8 out of 10. When [she] rests and is relaxing, her pain is a 1-2 out of 10. She states that her fatigue has been quite severe. She has missed work because of it and is unable to get around the house as easily as she used to. . . . It is noted that [she] feels that her pulmonary sarcoid is well controlled, and she has few symptoms.

(Administrative Record at 243) After examining Grace, Drs. Lenert and Luft recommended that she take Tylenol to control her sarcoidosis and continue the Methotrexate treatment as prescribed by Dr. Hunninghake. The doctors also ordered several skin tests in order to gain more information regarding Grace's health issues before suggesting any further treatment.

On July 8, 2005, Dr. Chrystalla B. Daly, D.O., provided a Residual Functional Capacity ("RFC") assessment for Grace at the request of the Social Security Administration. Dr. Daly determined that Grace could (1) occasionally lift 10 pounds, (2) frequently lift less than 10 pounds, (3) stand and/or walk with normal breaks for at least two hours in an eight-hour workday, (4) sit with normal breaks for about six hours in an eight-hour workday, (5) push and/or pull without limitation, (6) occasionally climb, stoop, kneel, crouch, and crawl, and (7) frequently balance. Dr. Daly found no manipulative, visual, or communicative limitations. Dr. Daly further determined that Grace should avoid concentrated exposure to (1) extreme cold, (2) extreme heat,

(3) fumes, odors, dusts, gases and poor ventilation, and (4) hazards such as machinery and heights. Dr. Daly concluded that:

Sustained gainful activity is precluded at this time. However, it is reasonable to expect that by 1 year the etiology will become clearer and the treatment more specific. There are some credibility issues associated with compliance but there are significant MDI's that would cause the degree of chronic fatigue.

(Administrative Record at 232) On September 14, 2005, after reviewing the evidence considered by Dr. Daly and updated medical information for Grace provided to Disability Determination Services ("DDS"), Dr. J.D. Wilson, M.D., affirmed Dr. Daly's July 8, 2005 assessment as written.

On October 25, 2005, Grace visited Dr. Hunninghake complaining of muscle aches, pain, and fatigue. Dr. Hunninghake reviewed Grace's medical history and noted that she had complied with his treatment recommendations and "feels better." Dr. Hunninghake further noted that "[Grace's] skin lesions have markedly improved. She now has good days in terms of her aching and often takes less pain medication. She states that her myalgia continues to be a problem for her that limits her activity."⁴ After examining Grace, Dr. Hunninghake concluded that

[Grace's] active sarcoid are under control. . . . She is very limited, however, by her myalgias and fatigue. These are often seen in chronic sarcoidosis and are not a manifestation of active disease. They are very real, however. Unfortunately, there are few medications that help with this. Instead, I outline for her a long term exercise program where she will not hurt herself. Hopefully, this will help.

(Administrative Record at 240)

On November 28, 2005, Dr. James Justice, Grace's primary care physician for over thirty-five years, filled out an RFC questionnaire provided by Grace's attorney. Dr. Justice indicated that Grace suffers from type I Diabetes Mellitus, asthma, high

⁴ See Administrative Record at 239.

cholesterol, GERD (reflux problems), retinopathy, sarcoidosis, and depression. Dr. Justice identified the following symptoms for Grace: Fatigue, difficulty walking, swelling in her feet, general malaise, muscle weakness, retinopathy, kidney problems, psychological problems, difficulty thinking/concentrating, dizziness/loss of balance, headaches, and generalized myalgia and weakness. Dr. Justice opined that Grace's impairments would last at least twelve months. Dr. Justice further opined that frequently during a typical workday, Grace would experience pain or other symptoms which would interfere with her attention and concentration needed to perform simple tasks.⁵ Dr. Justice further noted that Grace was "incapable" of tolerating even low stress jobs. Dr. Justice found the following limitations in which Grace could: (1) walk one block without rest or severe pain; (2) sit for five minutes at one time before needing to get up; (3) stand for five minutes at one time before needing to sit down or walk around; (4) sit and stand for less than two hours in an eight-hour workday; (5) occasionally lift 10 pounds; (6) occasionally lift less than 10 pounds; (7) occasionally twist; and (8) rarely stoop, crouch, squat, and climb stairs. Dr. Justice also determined that Grace would: (1) need a job where she would be allowed to shift positions from standing, sitting, or walking at will; (2) need to take unscheduled breaks every hour during an eight-hour workday; and (3) need to elevate her legs waist high 80% of the time during an eight-hour workday.

On December 13, 2005, Dr. Hunninghake also filled out an RFC questionnaire provided by Grace's attorney. Dr. Hunninghake diagnosed Grace with sarcoidosis. Dr. Hunninghake noted that she suffered from fatigue, weakness, and shortness of breath. Dr. Hunninghake identified severe lung disease as his clinical finding for Grace and based his finding on objective lung CT scans and lung function tests.⁶ Dr. Hunninghake opined

⁵ The questionnaire provided by Grace's attorney to Dr. Justice noted that "frequently" means 34% to 66% of an eight-hour workday.

⁶ See Administrative Record at 260 (The questionnaire asked Dr. Hunninghake to "identify the clinical findings and objective signs" of his diagnosis and Grace's symptoms.).

that Grace's impairments would last at least twelve months. Dr. Hunninghake further opined that occasionally during a typical workday, Grace would experience pain or other symptoms which would interfere with her attention and concentration needed to perform simple tasks.⁷ Dr. Hunninghake also noted that Grace was "incapable" of tolerating even low stress jobs. Dr. Hunninghake found the following limitations in which Grace could: (1) walk less than one block without rest or severe pain; (2) sit for one hour at one time before needing to get up; (3) stand for ten minutes at one time before needing to sit down or walk around; (4) sit for about two hours and stand for less than two hours in an eight-hour workday; (5) rarely lift less than 10 pounds; (6) occasionally twist, stoop, crouch, or squat; and (7) rarely climb stairs. Dr. Hunninghake further determined that Grace would need a job where she could shift positions from sitting, standing, or walking at will. Dr. Hunninghake also determined that Grace would need to take unscheduled breaks every hour during an eight-hour workday which would last for about fifteen minutes. Lastly, Dr. Hunninghake opined that as a result of her impairments, Grace would miss, on the average, more than four days of work per month.

On January 23, 2006, Grace met with Dr. Rebecca S. Tuetken, M.D., a doctor in the UIHC Rheumatology Clinic, to discuss management of her pain. Dr. Tuetken noted that "[Grace's] main complaint is that she has had diffuse musculoskeletal pain for a number of years, which seems to have worsened significantly in the last year. Currently, pain is diffuse, effecting both upper and lower extremities proximally and distally. She has good days and bad days, but does not have days without pain."⁸ After examining Grace, Dr. Tuetken provided the following summary of her findings:

[Grace's] musculoskeletal pain is due to a mixture of deconditioning, chronic sleep disturbance, and may also be partly due to developing vitamin D deficiency, as this has been strongly linked with diffuse musculoskeletal pain. We will

⁷ The questionnaire provided by Grace's attorney to Dr. Hunninghake noted that "occasionally" means 6% to 33% of an eight-hour workday.

⁸ See Administrative Record at 266.

have to be very cautious with approaching the vitamin D deficiency, however, as if she has active granulomatous disease, vitamin D supplementation could rapidly lead to hypercalcemia. At some point, it may be necessary to discontinue her statin for awhile, to remove this confounding factor in evaluating her musculoskeletal pain. I do not think that the sarcoidosis is directly causing her present pain problems.

(Administrative Record at 268) Dr. Tuetken recommended that Grace begin a walking or water exercise program, taking a multi-vitamin, and a monitored reintroduction of dairy products into her diet as treatment.

On May 9, 2006, Grace saw Dr. Hunninghake for a follow-up examination regarding her sarcoidosis. Dr. Hunninghake noted that Grace “self-discontinued” taking Methotrexate in December, 2005, due to side effects of nausea and vomiting for several days after taking her weekly dose of the medication. Dr. Hunninghake found, however, that Grace’s sarcoidosis “seems to be relatively stable off medications. She has not had recurrence of her skin lesions. She feels better off her [medications].”⁹ Dr. Hunninghake also noted that Grace still suffers from myalgias, but found that it was unlikely that the myalgias were due to active sarcoid.

2. Grace’s Mental Health

Between July 21, 2004 and April 19, 2006, Grace met with Dr. Collyer Ekholm, M.D., a staff psychiatrist at the Abbe Center for Community Mental Health in Cedar Rapids, Iowa, on eight separate occasions. Dr. Ekholm consistently diagnosed Grace with moderate depression, recurrent. Dr. Ekholm prescribed Lexapro as treatment.

On July 17, 2005, Dr. Dee E. Wright, Ph.D., reviewed Grace’s medical records and provided DDS with a mental RFC assessment. Dr. Wright determined that Grace suffered from depressive syndrome characterized by sleep disturbance, decreased energy, and difficulty concentrating or thinking. Dr. Wright found that Grace had a mild degree of limitation with regard to restriction of activities of daily living and difficulties in

⁹ See Administrative Record at 298.

maintaining social functioning. Dr. Wright also found that Grace had a moderate degree of limitation with regard to difficulties in maintaining concentration, persistence, or pace. Dr. Wright further determined that Grace was moderately limited in her ability to carry out detailed instructions, maintain attention and concentration for extended periods, and respond appropriately to changes in the work setting. Dr. Wright concluded:

The evidence in [Grace's] file would support some cognitive restrictions of function in [her] case. [Grace] does exhibit variable sustained attention and concentration. [Grace] would have difficulty consistently performing highly complex cognitive activity that would demand prolonged attention to minute details and rapid shifts in alternating attention. Despite these restrictions, [Grace] is able to sustain sufficient concentration and attention to perform a range of simple to moderately complex cognitive activity without serious limitations of function.

(Administrative Record at 194) On September 21, 2005, after reviewing the evidence considered by Dr. Wright and updated information provided to DDS, Dr. Herbert L. Notch, Ph.D., affirmed Dr. Wright's July 17, 2005 assessment as written.

V. CONCLUSIONS OF LAW

A. ALJ's Disability Determination

The ALJ determined that Grace is not disabled. In making this determination, the ALJ was required to complete the five-step sequential test provided in the social security regulations. *See* 20 C.F.R. § 404.1520(a)-(f); *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); *Page v. Astrue*, 484 F.3d 1040, 1042 (8th Cir. 2007); *Anderson v. Barnhart*, 344 F.3d 809, 812 (8th Cir. 2003). The five steps an ALJ must consider are:

(1) whether the claimant is gainfully employed, (2) whether the claimant has a severe impairment, (3) whether the impairment meets the criteria of any Social Security Income listings, (4) whether the impairment prevents the claimant from performing past relevant work, and (5) whether the impairment necessarily prevents the claimant from doing any other work.

Goff v. Barnhart, 421 F.3d 785, 790 (8th Cir. 2005) (citing *Eichelberger v. Barnhart*, 390 F.3d 584, 590 (8th Cir. 2004)); *see also* 20 C.F.R. § 404.1520(a)-(f). “If a claimant fails to meet the criteria at any step in the evaluation of disability, the process ends and the claimant is determined to be not disabled.” *Eichelberger*, 390 F.3d at 590-91 (citing *Ramirez v. Barnhart*, 292 F.3d 576, 580 (8th Cir. 2002)).

“To establish a disability claim, the claimant bears the initial burden of proof to show that he [or she] is unable to perform his [or her] past relevant work.” *Frankl v. Shalala*, 47 F.3d 935, 937 (8th Cir. 1995) (citing *Reed v. Sullivan*, 988 F.2d 812, 815 (8th Cir. 1993)). If the claimant meets this burden, the burden of proof then shifts to the Commissioner to demonstrate that the claimant retains the residual functional capacity to perform a significant number of other jobs in the national economy that are consistent with claimant’s impairments and vocational factors such as age, education, and work experience. *Id.* The RFC is the most an individual can do despite the combined effect of all of his or her credible limitations. 20 C.F.R. § 416.945. “‘It is the ALJ’s responsibility to determine a claimant’s RFC based on all relevant evidence, including medical records, observations of treating physicians and others, and claimant’s own descriptions of his [or her] limitations.’” *Tellez v. Barnhart*, 403 F.3d 953, 957 (8th Cir. 2005) (quoting *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001)).

The ALJ applied the first step of the analysis and determined that Grace had not engaged in substantial gainful activity since her alleged onset date, April 26, 2005. At the second step, the ALJ concluded, from the medical evidence, that West had the following impairments “diabetes mellitus with diabetic retinopathy, sarcoidosis, hypertension, hyperlipidemia, asthma, sleep apnea, gastroesophageal reflux disease (GERD), bronchiectasis, allegations of a medically determinable impairment resulting in complaints of generalized aches and pains, obesity and depressive disorder.” At the third step, the ALJ found that West did not have “an impairment or combination of impairments listed in, or medically equal to one listed in [20 C.F.R. § 404,] Appendix 1, Subpart P,

Regulations No. 4 [(the Listing of Impairments)].” At the fourth step, the ALJ determined Grace’s RFC as follows:

[Grace can] lift ten pounds, stand/walk a total of two hours in an eight hour day, sit a total of six hours in an eight hour day and occasionally bend, stoop, squat, kneel, crawl and climb. [Grace] can occasionally work with her arms overhead. She should not be exposed to excessive heat, humidity, dust, cold, fumes or smoke. She should avoid unprotected heights and moving machinery. She cannot perform work requiring full visual peripheral fields. [Grace] is not able to perform highly complex, technical work demanding prolonged attention to minute details and rapid shifts of alternating attention.

Using this RFC, the ALJ determined that Grace met her burden of proof at the fourth step, because she was unable to perform her past relevant work. However, at the fifth step, the ALJ determined that Grace, based on her age, education, previous work experience, and RFC, could work at jobs that exist in significant numbers in the national economy. Therefore, the ALJ concluded Grace was “not disabled.”

B. Grace’s Residual Functional Capacity

Grace contends that the ALJ erred in four respects. First, Grace argues that the ALJ’s decision is unsupported by the medical evidence. Second, Grace argues that the ALJ failed to properly consider the opinions of her treating physicians, Drs. Justice and Hunninghake. Third, Grace argues that the ALJ erred by failing to seek clarification on the opinions of both her treating and non-treating physicians. Lastly, Grace argues that the ALJ provided inadequate analysis under *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984) in determining the credibility of her subjective allegations of pain, functional limitation, and disability. Grace requests that the Court reverse the Commissioner’s decision and remand it with directions to award benefits. Alternatively, Grace requests this matter be remanded for further proceedings. The Commissioner argues that there is substantial evidence in the record as a whole which supports the ALJ’s decision; and therefore, the decision should be affirmed.

1. Medical Evidence

Grace argues that the ALJ failed to properly consider the medical evidence because the ALJ's decision relies on the opinions of two non-examining consultative physicians, Drs. Daly and Wilson, who shared the opinions of her treating physicians, Drs. Justice and Hunninghake, that she was incapable of working at the time of they reviewed her medical records in July and September, 2005, respectively.¹⁰ Specifically, Grace points out that Dr. Daly opined that “[s]ustained gainful activity [for Grace] is precluded at this time. However, it is reasonable to expect that by 1 year the etiology will become clearer and the treatment more specific.” In other words, Dr. Daly determined that Grace would be capable of returning to work within one year of the onset of her disability (one year from April, 2005). Dr. Wilson reviewed both Grace's medical records and Dr. Daly's findings. Based on his review of these materials, Dr. Wilson affirmed Dr. Daly's findings as written. Grace argues that her medical records do not support Drs. Daly and Wilson's prognostications that she could return to work by April, 2006. Grace maintains that the ALJ erred by failing to address whether the opinions of Dr. Daly and Dr. Wilson regarding her ability to return to work within one year of her disability onset date were true. The Commissioner, however, argues that the ALJ properly considered the medical evidence. Specifically, the Commissioner argues that the ALJ discussed the medical evidence in the record, including medical evidence from Drs. Justice and Hunninghake in April and May, 2006, which indicated that Grace's health had improved and that she was “doing better.”¹¹

¹⁰ Grace asserts that Drs. Daly and Wilson share the opinions of Drs. Justice and Hunninghake on the issue of her ability to work in 2005. Specifically, on November 28, 2005, Dr. Justice opined that Grace was “incapable” of even low stress jobs. Similarly on December 13, 2005, Dr. Hunninghake also opined that Grace was “incapable” of even low stress jobs. Neither Dr. Justice, nor Dr. Hunninghake believed Grace would be able to return to work by April, 2006 (one year after her disability onset date of April, 2005).

¹¹ The ALJ's decision provides:

In April 2006, [Grace] was doing much better when she saw

(continued...)

An ALJ has the responsibility of assessing a claimant's RFC, and his or her assessment must be based on all of the relevant evidence. *Guilliams*, 393 F.3d at 803; *see also Roberts v. Apfel*, 222 F.3d 466, 469 (8th Cir. 2000) (same). Relevant evidence for determining a claimant's RFC includes "'medical records, observations of treating physicians and others, and an individual's own description of his [or her] limitations.'" *Lacroix v. Barnhart*, 465 F.3d 881, 887 (8th Cir. 2006) (quoting *Strongson v. Barnhart*, 361 F.3d 1066, 1070 (8th Cir. 2004)). However, "RFC is a medical question, and an ALJ's finding must be supported by some medical evidence." *Guilliams*, 393 F.3d at 803 (citing *Masterson v. Barnhart*, 363 F.3d 731, 738 (8th Cir. 2004)). Moreover, the ALJ has a duty to develop the record fully and fairly. *Cox v. Astrue*, 495 F.3d 614, 618 (8th Cir. 2007); *Sneed v. Barnhart*, 360 F.3d 834, 838 (8th Cir. 2004); *Wilcutts v. Apfel*, 143 F.3d 1134, 1137 (8th Cir. 1998). Because an administrative hearing is a non-adversarial proceeding, the ALJ must develop the record fully and fairly in order that "'deserving claimants who apply for benefits receive justice.'" *Wilcutts*, 143 F.3d at 1138 (quoting *Battles v. Shalala*, 36 F.3d 43, 44 (8th Cir. 1994)).

¹¹(...continued)

Dr. Justice. Her test results were much improved and she was feeling better. She reported she had not been sick since the last visit. Blood pressure was in good control, as was cholesterol. Dr. Justice noted she had not had any major problems with her asthma.

Dr. Hunninghake saw [Grace] in May 2006. He noted she had self discontinued Methotrexate but seemed to be relatively stable. She had no recurrence of skin lesions and stated she felt better off her medications. Use of CPAP machine had helped her condition of sleep apnea. [Grace] had no chest pain, no wheezing and no problem with reflux. She endorsed some increased dyspnea and complained of fatigue, sweats and musculoskeletal pain. Relafen had been prescribed for complaints of restless leg syndrome and provided some relief.

See Administrative Record at 18-19.

The ALJ's decision does not address Dr. Daly's opinion that as of July, 2005, "sustained gainful activity" for Grace was "precluded." The ALJ's decision also does not address Dr. Wilson's affirmance of Dr. Daly's opinion. Furthermore, the ALJ does not explicitly address Dr. Daly's opinion that Grace should be able to return to work within one year of the onset of her disability. Implicitly, the ALJ suggests that Grace is capable of returning to work and is not disabled because Drs. Justice and Hunninghake indicated in April and May, 2006, that she was "doing better." The Court is not persuaded by the ALJ's implicit reasoning.

In the context of being treated for a mental disorder, the Eighth Circuit Court of Appeals has stated that "the Commissioner erroneously relied too heavily on indications in the medical record that [the claimant] was 'doing well,' because doing well for the purposes of a treatment program has no necessary relation to a claimant's ability to work or to her work-related functional capacity." *Hutsell v. Massanari*, 259 F.3d 707, 712 (8th Cir. 2001); *see also Gude v. Sullivan*, 956 F.2d 791, 794 (8th Cir. 1992) (the medical records for a claimant with SLE may reflect that he or she is doing well, but that does not necessarily contradict a doctor's conclusion that the claimant's symptoms exist and may impede him or her from performing full-time employment); *Fleshman v. Sullivan*, 933 F.2d 674, 676 (8th Cir. 1991) ("A person who has undergone a kidney transplant may indeed 'feel better' than she did when she was undergoing dialysis, but testimony to that effect is not inconsistent with the pain and confusion that [the claimant] continued to experience, and certainly does not compel the conclusion that she was therefore able to work."). Although Grace's symptoms are perhaps not quite as severe as someone being treating for a serious mental disorder, someone suffering from SLE, or someone who has recently undergone a kidney transplant, her medical records consistently show that she suffers from chronic fatigue and chronic musculoskeletal pain. Dr. Justice's April, 2006 report only discusses the fact that Grace had not been sick since her last visit, had not had problems with her asthma, and her blood pressure and cholesterol were under control. Dr. Justice offers no opinion regarding Grace's difficulties with chronic fatigue and

chronic musculoskeletal pain. Dr. Hunninghake, in his May, 2006 report indicated that Grace was “doing better” with regard to her sleep apnea and reflux problems, but also noted that she continued to complain of fatigue and musculoskeletal pain. Furthermore, Grace visited Dr. Tuetken from the UIHC Rheumatology Department in January, 2006, regarding her musculoskeletal pain. Dr. Tuetken opined that Grace’s pain was the result of chronic sleep disturbance, deconditioning, and Vitamin D deficiency. The Court finds that, by itself and in light of the record as a whole, the ALJ’s inference that Grace is capable of returning to work and is not disabled because Drs. Justice and Hunninghake indicated in April and May, 2006, that she was “doing better,” is not a sufficient reason for finding her not disabled.

The Court further finds that the ALJ has not fully and fairly developed the record with regard to the medical evidence in this case. An ALJ’s finding must be supported by some medical evidence. *Guilliams*, 393 F.3d at 803. Here, four physicians, two treating physicians and two consultative physicians, determined that as of July, September, November, and December, 2005, respectively, Grace was incapable of working. The two consultative physicians suggested that Grace would be able to return to work by April, 2006; however, the record has not been fully and fairly developed on this issue. The Court finds that this matter should be remanded. On remand, the ALJ shall develop the record fully and fairly with regard to Drs. Daly and Wilson’s finding that as of July and September, 2005, Grace was unable to work. The ALJ shall also further develop the record regarding whether Grace’s condition improved by April, 2006, as suggested by Drs. Daly and Wilson, and clearly explain his reasons for finding that her condition improved or did not improve.

2. The Opinions of Drs. Justice and Hunninghake

Grace also argues that the ALJ failed to give adequate weight to the opinions of her treating physicians, Drs. Justice and Hunninghake. Specifically, Grace argues:

The opinions of Dr. Justice and Dr. Hunninghake were consistent with the formerly issued opinions of the state agency physicians who had also found [Grace] incapable of working.

Both treating physicians opinions were consistent with the state agency physician opinions that pain and fatigue severely limited [Grace]. Neither of the treating physicians was of the opinion that [Grace's] condition would improve sufficiently to allow a return to work by April, 2006. Dr. Hunninghake commented that [Grace's] prognosis was "poor."

(Grace's Brief at 15) Grace argues that the ALJ simply summarized some of Drs. Justice and Hunninghake's treatment records and concluded that their opinions were inconsistent with the medical evidence. Grace asserts that such generalizations do not constitute "good cause" for discrediting the opinions of Drs. Justice and Hunninghake. The Commissioner argues that the ALJ properly discredited the opinions of Drs. Justice and Hunninghake regarding their findings from November and December, 2005 that Grace was "incapable" of even low stress jobs.¹² The Commissioner concludes that the ALJ properly considered the medical evidence and the medical source opinion evidence and that substantial evidence supports the ALJ's decision.

An ALJ is required to "assess the record as a whole to determine whether treating physicians' opinions are inconsistent with substantial evidence on the record." *Travis v. Astrue*, 477 F.3d 1037, 1041 (8th Cir. 2007) (citing 20 C.F.R. § 404.1527(d)(2)). The opinion of a treating physician:

should not ordinarily be disregarded and is entitled to substantial weight. A treating physician's opinion regarding an applicant's impairment will be granted controlling weight, provided the opinion is well-supported by medically acceptable

¹² The ALJ's decision provides:

In November 2005 and December 2005 Drs. Justice and Hunninghake supplied checklist opinions. However, nothing in the treatment records from either treating medical doctor supports the degree of limitation indicated on the forms. The contents of Dr. Hunninghake's report are internally inconsistent. In absence of supporting medical signs and/or laboratory studies no weight is given to the checklist forms.

See Administrative Record at 18.

clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record.

Singh v. Apfel, 222 F.3d 448, 452 (8th Cir. 2000) (citations omitted). The regulations provide that the longer the treating relationship between a physician and a patient, the more weight should be given to that treating physician's medical opinions. See 20 C.F.R. § 404.1527(d)(2)(I). Furthermore, an ALJ is "encouraged to 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." *Singh*, 222 F.3d at 452. The regulations require an ALJ to give "good reasons" for giving weight to statements provided by a treating physician. See 20 C.F.R. § 404.1527(d)(2). The regulations also require an ALJ to give "good reasons" for rejecting statements provided by a treating physician. *Id.* "Although a treating physician's opinion is entitled to great weight, it does not automatically control or obviate the need to evaluate the record as a whole." *Hogan v. Apfel*, 239 F.3d 958, 961 (8th Cir. 2001) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1013 (8th Cir. 2000)). "The ALJ may discount or disregard such an opinion if other medical assessments are supported by superior medical evidence, or if the treating physician has offered inconsistent opinions." *Id.*; see also *Travis*, 477 F.3d at 1041 ("A physician's statement that is 'not supported by diagnoses based on objective evidence' will not support a finding of disability. *Edwards v. Barnhart*, 314 F.3d 964, 967 (8th Cir. 2003). If the doctor's opinion is 'inconsistent with or contrary to the medical evidence as a whole, the ALJ can accord it less weight.' *Id.*"); *Strongson*, 361 F.3d at 1070 (an ALJ does not need to give controlling weight to a physician's RFC assessment if it is inconsistent with other substantial evidence in the record); *Cabrnoch v. Bowen*, 881 F.2d 561, 564 (8th Cir. 1989) (the resolution of conflicts of opinion among various treating and examining physicians is the proper function of an ALJ).

The ALJ does not address or explain his reasons for finding Drs. Justice and Hunninghake's November and December, 2005 "checklist" opinions to be of no weight. The ALJ simply makes a conclusory observation that "nothing in the treatment records

from either treating medical doctor supports the degree of limitation indicated on the forms. The contents of Dr. Hunninghake's report are internally inconsistent. In absence of supporting medical signs and/or laboratory studies no weight is given to the checklist forms." The ALJ does not address what is "internally inconsistent" about Dr. Hunninghake's checklist. The Court has reviewed both Dr. Hunninghake's and Dr. Justice's "checklist" opinions and finds great consistency between the two opinions. This begs the question why the ALJ did not also find Dr. Justice's "checklist" opinion to also be "internally inconsistent." An ALJ has a duty to develop the record fully and fairly. *Cox*, 495 F.3d at 618. The regulations require an ALJ to give "good reasons" for rejecting statements provided by a treating physician. *See* 20 C.F.R. § 404.1527(d)(2). The Court finds that the ALJ has failed to meet these requirements. The ALJ did not provide any reasons other than conclusory statements, let alone "good reasons," for granting no weight to the opinions of Drs. Justice and Hunninghake. Therefore, the Court finds that this matter should be remanded so that the ALJ may fully and fairly develop the record with regard to the opinions of Drs. Justice and Hunninghake. On remand, the ALJ shall provide clear reasons for accepting or rejecting Drs. Justice and Hunninghake's opinions.

3. Clarification of Physicians' Opinions

Next, Grace argues that the ALJ should have obtained additional information from her treating physicians before making his decision. Specifically, Grace argues that the ALJ should have had her treating physicians clarify her inability to work due to her impairments. Grace also argues that the ALJ should have recontacted the two consultative physicians for further explanation of their findings that she was precluded from working at the time they reviewed her records. The Commissioner argues that the circumstances of this case do not warrant the ALJ recontacting Grace's treating physicians or the consultative physicians.

An ALJ is not required to "seek additional clarifying statements from a treating physician unless a crucial issue is undeveloped." *Stormo v. Barnhart*, 377 F.3d 801, 806

(8th Cir. 2004) (citation omitted). An ALJ should only contact a treating physician “if the doctor’s records are ‘inadequate for us to determine whether the claimant is disabled’ such as ‘when the report does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques.’” *Goff*, 421 F.3d at 791 (citing 20 C.F.R. §§ 404.1512(e) and 416.912(e)). The Court, after reviewing the record, concludes that “a crucial issue is undeveloped.” *See Stormo*, 377 F.3d at 806. The Court finds that the record is inadequate for determining whether Grace’s treating physicians, Drs. Justice and Hunninghake, considered any improvement in Grace’s health after November and December, 2005, to be an indication that they no longer believed she was incapable of full-time employment. On remand, the ALJ should recontact Drs. Justice and Hunninghake to clarify whether improvements in Grace’s health noted by them in Grace’s medical records, constitutes a determination that they no longer consider her to be incapable of full-time employment of any kind.

An ALJ is only required to order medical examinations and tests when the medical records presented to him or her constitute insufficient medical evidence to determine whether the claimant is disabled. *Barrett v. Shalala*, 38 F.3d 1019, 1023 (8th Cir. 1994) (citation omitted); *see also* 20 C.F.R. § 404.1519a(a)(1) (“The decision to purchase a consultative examination . . . will be made after we have given full consideration to whether the additional information needed is readily available from the records of your medical sources.”). Additionally, 20 C.F.R. § 404.1519a(b) provides that “[a] consultative examination may be purchased when the evidence as a whole, both medical and nonmedical, is not sufficient to support a decision on . . . [the] claim.” *Id.* For example, a consultative examination should be purchased when “[t]he additional evidence needed is not contained in the records of your medical sources.” 20 C.F.R. § 404.1519a(b)(1). The Court finds that a consultative examination should be purchased in order to provide a complete record on the issue of whether Grace’s condition improved from being precluded from working in July, 2005, to being able to return to work by April, 2006, as predicted by Drs. Daly and Wilson.

4. Credibility Determination

Finally, Grace argues that the ALJ improperly discredited her testimony regarding her subjective allegations of pain, functional limitations, and total disability. Grace maintains that the ALJ misapplied the *Polaski* factors for determining the credibility of her testimony at the administrative hearing. The Commissioner argues that the ALJ properly considered Grace's subjective complaints.

When evaluating the credibility of a claimant's subjective complaints, the ALJ may not disregard them "solely because the objective medical evidence does not fully support them." *Polaski*, 739 F.2d at 1322. However, the absence of objective medical evidence to support a claimant's subjective complaints is a relevant factor for an ALJ to consider. *Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citation omitted). "The [ALJ] must give full consideration to all the evidence presented relating to subjective complaints, including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as: (1) the claimant's daily activities; (2) the duration, frequency, and intensity of the pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness and side effects of medication; [and] (5) functional restrictions." *Polaski*, 739 F.2d at 1322. Subjective complaints may be discounted if inconsistencies exist in the evidence as a whole. *Pelkey v. Barnhart*, 433 F.3d 575, 578 (8th Cir. 2006) (citing *Polaski*, 739 F.2d at 1322). However, the ALJ must give reasons for discrediting the claimant. *Id.* (citing *Strongson*, 361 F.3d at 1072. Where an ALJ seriously considers, but for good reason explicitly discredits a claimant's subjective complaints, the Court will not disturb the ALJ's credibility determination. *Johnson v. Apfel*, 240 F.3d 1145, 1148 (8th Cir. 2001) (citing *Pena v. Chater*, 76 F.3d 906, 908 (8th Cir. 1996)); *see also* *Guilliams*, 393 F.3d at 801 (explaining that deference to an ALJ's credibility determination is warranted if the determination is supported by good reasons and substantial evidence). "The credibility of a claimant's subjective testimony is primarily for the ALJ to decide, not the courts.'" *Wagner v. Astrue*, 499 F.3d 842, 851 (8th Cir. 2007) (quoting *Pearsall*, 274 F.3d at 1218).

In determining that Grace's subjective allegations of pain, functional limitations, and total disability were not credible, the ALJ found:

[Grace] has alleged significant limitations that are not supported by the medical record. Treatment notes indicated some non compliance with recommendations; [Grace] told her primary care provider on a number of occasions that she did not watch her diet or monitor her blood sugars regularly. She self discontinued medication prescribed by Dr. Hunninghake without consulting with providers. . . .

Recommendations of physical exercise were made for improving strength and stamina by more than one physician. [Grace] asserted she wanted to do more but could not. Although she alleged she was unsteady on her feet, she did not require assistive devices to ambulate.

For the above reasons, the undersigned finds [Grace] is not fully credible.

(Administrative Record at 21) Having reviewed the record, the Court finds that the ALJ failed to properly apply the *Polaski* factors to Grace's subjective complaints of pain, functional limitations, and disability. The ALJ relies only on objective medical evidence and ignores the other *Polaski* factors in making his determination on Grace's credibility. *See Polaski*, 739 F.2d at 1322 (An ALJ may not disregard the subjective complaints of a claimant "solely because the objective medical evidence does not fully support them."). Accordingly, the Court finds that remand is appropriate. On remand, the ALJ shall consider all the *Polaski* factors and provide clear reasons for his credibility determination.

C. Reversal or Remand

The scope of review of the Commissioner's final decision is set forth in 42 U.S.C. § 405(g) which provides in pertinent part:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g). The Eighth Circuit Court of Appeals has stated that:

Where the total record is overwhelmingly in support of a finding of disability and the claimant has demonstrated his [or her] disability by medical evidence on the record as a whole, we find no need to remand.

Gavin v. Heckler, 811 F.2d 1195, 1201 (8th Cir. 1987); *see also Beeler v. Brown*, 833 F.2d 124, 127 (8th Cir. 1987) (finding reversal of denial of benefits was proper where “the total record overwhelmingly supports a finding of disability”); *Stephens v. Sec’y of Health, Educ., & Welfare*, 603 F.2d 36, 42 (8th Cir. 1979) (explaining that reversal of denial of benefits is justified where no substantial evidence exists to support a finding that the claimant is not disabled). In the present case, the Court concludes that the medical records as a whole do not “overwhelmingly support a finding of disability.” *Beeler*, 833 F.2d at 127. Instead, the ALJ simply failed to fully and fairly develop the record with regard to the medical evidence as a whole, particularly the opinions of Drs. Daly and Wilson regarding Grace’s inability to sustain employment at the time they reviewed her medical records. The ALJ also failed to fully and fairly develop the record with regard to the weight of Drs. Justice and Hunninghake’s “checklist” opinions. Lastly, the ALJ failed to properly apply the *Polaski* factors to his determination of Grace’s credibility as to her subjective allegations of pain, functional limitations, and total disability. Accordingly, the Court finds that remand is appropriate.

VI. CONCLUSION

The Court concludes that this matter should be remanded to the Commissioner for further proceedings. On remand, the ALJ should develop the record fully and fairly with regard to the opinions of Drs. Daly and Wilson and their opinions that Grace was precluded from sustaining employment at the time they reviewed her medical records. The ALJ should also address his reasons for giving greater or lesser weight to the “checklist” opinions of Drs. Justice and Hunninghake, and properly apply the *Polaski* factors when determining Grace’s credibility with regard to her subjective complaints of pain, functional limitations, and total disability. Additionally, the ALJ should recontact Grace’s treating physicians, Drs. Justice and Hunninghake, to clarify whether improvements noted by them

in Grace's medical records, indicates that they no longer believe she is incapable of full-time employment. Also, the ALJ should order a consultative examination to provide a complete record on the issue whether Grace's condition improved from an inability to work in July, 2005, to the ability to work by April, 2006, as predicted by Drs. Daly and Wilson.

VII. ORDER

For the foregoing reasons, it is hereby **ORDERED**:

This matter is **REVERSED** and **REMANDED** to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings as discussed herein.

DATED this 18th day of January, 2008.



JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA