

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

DANIEL SANDERS,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant

No. C07-0107

**ORDER ON JUDICIAL
REVIEW**

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I. INTRODUCTION

This matter comes before the Court on the Complaint (docket number 1) filed by Plaintiff Daniel Sanders on November 21, 2007, requesting judicial review of the Social Security Commissioner's decision to deny his applications for Title II disability insurance benefits and Title XVI supplemental security income ("SSI") benefits. Sanders asks the Court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide him disability insurance benefits and SSI benefits. In the alternative, Sanders requests the Court to remand this matter for further proceedings.

II. PRIOR PROCEEDINGS

Sanders applied for SSI benefits on April 7, 2004, and disability insurance benefits on April 8, 2004. In his application for disability insurance benefits, Sanders alleged an inability to work since November 30, 2002. In his application for SSI benefits, he alleged an inability to work since November 1, 2002.¹ Sanders claimed that he was unable to work due to back pain and leg pain. Sanders' disability insurance application was denied on July 16, 2004, and his SSI application was denied on July 19, 2004. On January 12, 2005, his disability insurance application was denied on reconsideration. On January 13, 2005, his SSI application was also denied on reconsideration. On February 22, 2005, Sanders requested an administrative hearing before an Administrative Law Judge ("ALJ"). On September 30, 2005, Sanders appeared with counsel, via video conference, before ALJ Thomas M. Donahue. Sanders, his friend, Monte C. Kraft, and vocational expert Julie A. Svec testified at the hearing. In a decision dated April 28, 2006, the ALJ denied Sanders' claim. The ALJ determined that Sanders was not disabled and not entitled to disability insurance benefits or SSI benefits because he was functionally capable of performing work that exists in significant numbers in the national economy. Sanders appealed the ALJ's decision. On August 20, 2007, the Appeals Council denied Sanders'

¹ At the administrative hearing held on September 30, 2005, Sanders amended his SSI disability onset date to November 30, 2002.

request for review. Consequently, the ALJ's April 28, 2006 decision was adopted as the Commissioner's final decision.

On November 21, 2007, Sanders filed this action for judicial review. The Commissioner filed an answer on March 21, 2008. On May 3, 2008, Sanders filed a brief arguing there is not substantial evidence in the record to support the ALJ's finding that he is not disabled and is functionally capable of performing work that exists in significant numbers in the national economy. On July 29, 2008, the Commissioner filed a responsive brief arguing the ALJ's decision was correct and asking the Court to affirm the ALJ's decision. Sanders filed a reply brief on August 10, 2008. On February 27, 2008, 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. Sanders' Education and Employment Background

Sanders was born in 1954. In school, he finished the eighth grade. He later earned a GED. According to the record, he was employed primarily as a roofer. The detailed earnings report shows that he had fairly consistent yearly earnings until 2003.² In 2003, Sanders earned a total of \$407.10. He had no earnings in 2004 or 2005.

B. Administrative Hearing Testimony

1. Sanders' Testimony

At the administrative hearing, Sanders' attorney first asked Sanders what prevents him from working. Sanders answered that he was unable to work because of problems with his back, knees, and hips. When asked to describe his back problems, Sanders explained that he could not bend or lift anything. According to Sanders, he has pain in middle and lower parts of his back. He testified that he takes ibuprofen or Aleve and

² See Administrative Record at 75-81.

regularly switches positions to control his back pain. Specifically, Sanders testified that “I can’t be in one position for very long. I sit for awhile, like on the computer, and then I got to get up and pace. After that I’ll sit in the recliner for awhile. Sometimes I’ll go in and lay across my bed.”³

Next, Sanders’ attorney asked Sanders to describe his knee problems. According to Sanders, he has had knee problems for a long time. Specifically, he testified that his knees “swell up all the time” and he is unable to squat. He explained that he feels pain in his knees when he stands up or walks somewhere.

Sanders’ attorney also asked Sanders about his hip problems. Sanders testified that his hips started bothering him in 2001 or 2002. He was told that he had arthritis and a bone spur. According to Sanders, when he walks his hips tighten up and cause him sharp pain.

Sanders’ attorney further questioned Sanders about his functional capabilities. When asked how long he can be on his feet until he has to sit down, Sanders replied that he can walk four blocks before he has to sit down. Sanders also indicated that he has difficulty lifting anything because it hurts his knees to bend. For example, he indicated that he could lift his laundry, but it caused him pain. Sanders also testified that he had difficulty stooping, squatting, and kneeling. Sanders described his ability to wash dishes in the following manner:

A: Well, I do dishes. I run the water and put ‘em in the soap. Then I go sit down. Then I go back in. I do part of ‘em and I put more in the soap. Then I go sit down.

Q: How long can you stand at the sink at a time?

A: Ten minutes. Maybe 15.

Q: What happens when you stand there for that long?

A: My lower back just gives me fits.

(Administrative Record at 362.)

³ See Administrative Record at 356.

2. *Monte Kraft's Testimony*

Monte Kraft ("Kraft") and Sanders have been friends for about thirty-five years. Kraft rents a house and allows Sanders to live with him. Kraft testified that Sanders has difficulty performing menial chores. For example, Kraft stated that Sanders can only do dishes for about 15 minutes before needing to take a break. Kraft also testified that Sanders has difficulty bending and standing and lacks endurance. Kraft noted that Sanders "likes to mess with the computer and he sits down there for about an hour or so. Still, then he has a heck of a time when he gets up too."⁴

3. *Vocational Expert's Testimony*

At the hearing, the ALJ provided vocational expert Julie Svec with a hypothetical for an individual who would be able to: (1) occasionally lift 20 pounds, (2) frequently lift 10 pounds, (3) stand for up to two hours at a time for six hours in an eight-hour workday, (4) sit for up to two hours at a time for six hours in an eight-hour workday, and (5) walk up to three blocks. The vocational expert testified that under such limitations, Sanders could not return to any of his past work. The vocational expert testified, however, that Sanders had transferable skills and could perform work as an electronics assembler (2,000 positions in Iowa and 119,000 positions in the nation), circuit board repairer (2,000 positions in Iowa and 119,000 positions in the nation), and an automobile brake bonder (500 positions in Iowa and 32,000 positions in the nation). The vocational expert also testified that Sanders could perform unskilled work as a ticket taker (600 positions in Iowa and 15,000 positions in the nation), parking lot attendant (650 positions in Iowa and 18,000 positions in the nation), and tagger or pricer (1,000 positions in Iowa and 50,000 positions in the nation).

Sanders' attorney also questioned the vocational expert. Sanders' attorney provided the vocational expert with a hypothetical for an individual who: (1) is able to repetitively lift 10 pounds, (2) is able to lift 25 pounds four times per hour, (3) should avoid flexion

⁴ See Administrative Record at 364.

extension and lateral flexion extension of the lumbar spine, and (4) is unable to kneel, squat, bend, or climb. The vocational expert testified that under such limitations, Sanders would be able to perform all the jobs described under the ALJ's hypothetical.

Sanders' attorney provided a second hypothetical which was identical to the first hypothetical, except that the individual: (1) would also be limited to only standing for 15 minutes at one time before needing to sit or lie down, (2) would need to take unscheduled breaks at unpredictable times for greater than normal breaks allowed by an employer, (3) would miss two to three days of work each month due to his or her impairments, and (4) would need to work at a slow pace for up to a third of the workday. The vocational expert testified that under such limitations, Sanders could not perform the jobs described under the ALJ's hypothetical.

C. Sanders' Medical History

On February 28, 2001, Sanders met with Dr. L. Michael Lawrence, M.D., complaining of low back pain and left hip pain. Sanders informed Dr. Lawrence that his hip pain was worse with movement and changing positions. Upon examination, Dr. Lawrence found Sanders' knee and ankle jerks to be normal, sensation normal, and straight leg raising and hips to be negative. Dr. Lawrence also noted that Sanders was not tender over his spine. X-rays showed mild degenerative spurring in the upper lumbar spine with osteoarthritic facet degenerative changes. X-rays also showed mild osteoarthritic changes in the hips bilaterally. Dr. Lawrence concluded that Sanders suffered from mild osteoarthritic changes in the spine and hips. However, Dr. Lawrence found no evidence of radiculopathy. Dr. Lawrence prescribed Darvocet as treatment.

On May 20, 2002, Sanders visited Dr. Tracy L. Niemeyer, M.D., complaining of low back pain. Specifically, Sanders complained of discomfort in the muscles surrounding his spine. Dr. Niemeyer noted that "[o]ccasionally [the pain] goes into his left hip. He has not had any numbness or tingling in his leg. He has not had any radiation of the pain

into the leg and there has been no weakness.”⁵ In addition, Sanders indicated to Dr. Niemeyer that he had difficulty lifting anything at work. Upon examination, Dr. Niemeyer found no tenderness over his spine, a “fair amount” of paraspinal tenderness on the left side around the L3 to L5 area, and normal lower extremity muscle strength and patella and achilles tendon reflexes. Dr. Niemeyer diagnosed Sanders with low back pain. Dr. Niemeyer prescribed Vioxx and Flexoril as treatment.

On June 4, 2002, Sanders had a follow-up appointment with Dr. Niemeyer. According to Sanders, the medication did not completely relieve his pain. He informed Dr. Niemeyer that he continued to have “some” pain in his back and more pain in his left hip with pain also moving into his left leg causing “some” numbness and tingling. He indicated that he could not move his leg without discomfort. Upon examination, Dr. Niemeyer found:

a little bit of paraspinal muscle tenderness [in the low back].
Palpation throughout the hip does not reveal any pain, however, with [range of motion] he does have some discomfort. Straight leg raising test on the left is slightly positive. Right is negative. Patellar and achilles reflexes are within normal limits.

(Administrative Record at 238.) Dr. Niemeyer diagnosed Sanders with back pain and hip pain. Dr. Niemeyer ordered an MRI, suggested physical therapy, and prescribed Lortab and Flexoril as treatment.

On June 14, 2002, Sanders had MRIs of his lumbar spine and left hip. The MRI of his lumbar spine revealed mild diffuse annular bulging and mild endplate spurring throughout the lumbar spine. The MRI further revealed:

mild central stenosis at L3-4 due to diffuse annular bulging, along with mild bilateral facet and ligamentum flavum prominence, including asymmetric facet spurring on the right, moderately indenting the right posterolateral of the thecal sac. This causes mild right lateral recess stenosis.

⁵ See Administrative Record at 241.

There is severe right lateral recess stenosis at L4-5 due to asymmetric facet spurring and ligamentum flavum prominence on the right as compared to the left. There is moderate bilateral facet arthropathy at L4-5 and to a mild degree at L5-S1 and L3-4, and to a moderate degree bilaterally at L1-2 and L2-3. There is mild central stenosis at L2-3. There is moderately severe foraminal stenosis bilaterally from L2-3 through L4-5 and on the left at L1-2, with moderate foraminal stenosis on the right at L1-2 and bilaterally at L5-S1.

(Administrative Record at 182.) Dr. Glenn M. Hammer, M.D., reviewed the MRI and diagnosed Sanders with lumbar spinal stenosis secondary to spondylosis. The MRI of Sanders' left hip revealed mild degenerative changes at the SI joints and at the hip joints and spine.

On June 14, 2002, Sanders also met with physical therapists Kim Hansen ("Hansen") and David Rubsam ("Rubsam"). Sanders informed Hansen and Rubsam that he felt better when standing than when sitting and was also comfortable laying down on his back. Sanders also informed them that on some days, he was unable to lift his left leg at all. On a scale of 0 to 10, Sanders rated his pain at 2. He also rated his pain at 11 when the pain was at its worst. Upon examination, Hansen and Rubsam found that Sanders: (1) walked with an antalgic gait, (2) had trunk rotation at 75% of full range on the right and 50% of full range on the left, (3) had hamstring flexibility that was within normal limits, (4) had tight internal rotators and tight hip flexors, (5) had 5/5 lower extremity muscle strength, (6) had tenderness over the L3-L4, and (7) had positive Fabere's test for left hip pain. Hansen and Rubsam concluded that Sanders was "generally tight through the hip flexors and lumbar region."⁶ Hansen and Rubsam developed a physical therapy exercise program consisting of stretching, strengthening, and general conditioning with progression to a home exercise program as treatment. Hansen and Rubsam opined that Sanders was a good candidate to improve his back and hip pain.

⁶ See Administrative Record at 150.

On July 24, 2002, Sanders was evaluated by Dr. Chad D. Abernathey, M.D., for low back pain and hip pain. Dr. Abernathey reviewed Sanders' MRIs and concluded "the LS spine demonstrates modest degenerative changes consistent with age without significant neural compromise. There is only minimal stenosis present on his studies."⁷ Dr. Abernathey noted that his neural elements were well decompressed and his neurologic function was intact. Dr. Abernathey did not recommend "an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings."⁸ Instead, Dr. Abernathey recommended an epidural steroid injection as treatment. Sanders underwent an epidural steroid injection on July 25, 2002.

On December 10, 2003, Sanders underwent an independent medical examination by Dr. Kenneth McMains, M.D. At the examination, Sanders informed Dr. McMains that every morning when he wakes up, he experiences stiffness and pain. According to Sanders, he has continued discomfort throughout the day and it is worse if he sits too long. Sanders rated his low back pain as 4 on a 10-point scale. Upon examination, Dr. McMains found:

Extremities show full range of motion upper and lower extremities. There was pain on heel walking; toe waking was normal. [Sanders] was unable to squat due to pain in both knees. Flexion and extension were restricted due to pain; pain was increased on extension compared to flexion. Deep tendon reflexes were +2/4 at the knee and ankle bilateral. Strength was 5+/5 bilateral lower extremities. Straight leg raising was negative bilateral. No evidence of muscle atrophy of the lower extremities.

(Administrative Record at 263.) Dr. McMains diagnosed Sanders with significant diffuse degenerative joint disease of the lumbar spine with facet arthropathy bilateral at multiple levels, moderate left hip degenerative joint disease, and chronic joint disease of bilateral

⁷ *Id.* at 195.

⁸ *See* Administrative Record at 199.

knees. Dr. McMains concluded that Sanders should seek work outside the roofing industry because of his “underlying, long-standing arthritic condition.”⁹

On March 22, 2004, Sanders was evaluated by Dr. R.F. Neiman, M.D. Dr. Neiman noted that Sanders suffered from back discomfort. Specifically, Dr. Neiman noted that: (1) he has ongoing back pain on the left side with no weakness; (2) his pain increases when he rides in a car for over thirty minutes; (3) he is unable to walk more than four blocks without an increase in discomfort; and (4) he is unable to twist or bend without pain. In reviewing his MRIs, Dr. Neiman found “very significant” stenosis in the neural foramen at the L4-5 levels. Dr. Neiman noted that the “nerves are literally crushed.” Dr. Neiman also noted degenerative changes involving the lumbar spine. Dr. Neiman concluded that:

I strongly disagree with the previous reviewer, Dr. McMains that [Sanders] has zero level of impairment. This is certainly not the case. . . . I believe he has the following level of impairment . . . 7%. His range of motion is remarkably restricted. He has flexion forward at 40 degrees which would give him 2.5% level of impairment. Extension backwards at 5 degrees would give him 6% level of impairment. . . . [H]e is known to have unilateral nerve root impairment, therefore the level of impairment would be 13.5% impairment of the whole person. As far as functional restrictions, I think he is best capable of sedentary activity, lifting repetitively in the range of 10 pounds, maximum of 25 pounds, no more than 4 times an hour. Need to avoid flexion, extension, lateral flexion of the lumbar spine. Kneeling, [squ]atting, bending and climbing are next to impossible. Certainly he cannot return to work as a roofer. In view of his degenerative arthritis in both hips, one can demonstrate also arthritis in both knees and arthritis in his neck, I believe [Sanders] should apply for Social Security disability. . . . The degree of foraminal stenosis is considerable. Even with surgical correction, I don't think that [Sanders] will be able to return to any of the activities previously noted as far as being a roofer or in heavy construction.

⁹ *Id.* at 263.

(Administrative Record at 267.)

On June 15, 2004, Sanders was examined and evaluated by Dr. Salaish K. Sarin, M.D., for back, hip, knee, and ankle pain. Sanders informed Dr. Sarin that if he walks or sits for a significant amount of time, he gets pain in the left side of his back. He also indicated that he has arthritis in both hips and knees. After examining him, Dr. Sarin concluded that Sanders:

suffers from decreased range of motion of the neck, perhaps due to arthritis. He should not be involved in work that requires him to have sudden movements of the neck. He should not drive[.] . . . His range of motion is extremely limited. He should not climb ladders. At this point, he should not carry anything over 15 pounds. No crawling, stooping, bending or climbing. . . . At the present time, he can do a sit-down job and will require vocational rehab[ilitation] for such.

(Administrative Record at 270.)

On July 16, 2004, Dr. J.D. Wilson, M.D., reviewed Sanders' medical records and provided Disability Determination Services ("DDS") with a physical residual functional capacity ("RFC") assessment. Dr. Wilson determined that Sanders could: (1) occasionally lift and/or carry 20 pounds, (2) frequently lift and/or carry 10 pounds, (3) stand and/or walk with normal breaks for a total of about six hours in an eight-hour workday, (4) sit with normal breaks for a total of about six hours in an eight-hour workday, and (5) push and/or pull without limitations. Dr. Wilson found no postural, manipulative, visual, communicative, or environmental limitations. Dr. Wilson noted that Sanders' "RFC has been reduced due to his pain and the evidence of spinal stenosis and [degenerative joint disease] of the hips. He should be capable of the RFC as indicated."¹⁰

On November 30, 2004, Sanders had a second examination and evaluation performed by Dr. Sarin. Dr. Sarin noted that the pain in Sanders' neck and shoulders had worsened since his previous evaluation in June 2004. Sanders informed Dr. Sarin that he

¹⁰ See Administrative Record at 278.

was unable to sit, stand, or walk for long periods of time. Specifically, Sanders indicated that he could stand for up to 45 minutes, sit for up to one hour, and walk about six blocks before having a significant amount of pain. Dr. Sarin opined that Sanders' inability to sit for long periods of time was significant. Dr. Sarin noted that he "tries to sit at the computer but has to get up approximately every hour."¹¹ Dr. Sarin concluded that:

[Sanders] should not be involved in work that requires sudden movements of the neck or anything overhead. He should not drive as he has decreased range of motion of the neck. No climbing ladders. No lifting anything over 15 lbs. No crawling, stooping, bending, or climbing. He should not be in a job that requires him to sit for more than 30 to 45 minutes at a time as this precipitates excruciating pain.

(Administrative Record at 280.)

On December 19, 2004, Dr. John A. May reviewed Sanders' medical records and provided DDS with an RFC assessment. Dr. May determined that Sanders could: (1) occasionally lift and/or carry 20 pounds, (2) frequently lift and/or carry 10 pounds, (3) stand and/or walk with normal breaks for a total of about six hours in an eight-hour workday, (4) sit with normal breaks for a total of about six hours in an eight-hour workday, and (5) push and/or pull without limitations. Dr. May further determined that Sander could occasionally climb (ramps/stairs), balance, stoop, kneel, crouch, and crawl, and could never climb ladders, ropes, or scaffolds. Dr. May also found that Sanders was limited in his ability to reach in all directions, but was unlimited in his ability to handle, finger, and feel. Dr. May further found no visual, communicative, or environmental limitations. Dr. May concluded:

[Sanders] states his pain has gotten worse. He still takes no pain medication. He has not sought further care in the interval. He has been limited by [Consultative Examiner] in sitting no more than 1 hour before he has to change positions. It is felt this could be accomplished at the work site. He also limits stooping but [Sanders] has fairly good range of motion

¹¹ *Id.* at 280.

of the lumbar spine however he could not squat. Pain and restriction of motion of the shoulder continue since the last examination. His allegations are for the most part consistent with the record. However, he has not sought care on a frequent or sustained basis for his reported pain which does at least partially erode the credibility of [his] allegations. He is currently felt capable of the RFC as outlined.

(Administrative Record at 291.)

V. CONCLUSIONS OF LAW

A. ALJ's Disability Determination

The ALJ determined that Sanders 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, 140-42 (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 Sanders had not engaged in substantial gainful activity since his alleged disability onset date, November 30, 2002. At the second step, the ALJ concluded that Sanders had the following severe impairments: "degenerative joint disease of the lumbar spine and left hip; history of degenerative joint disease of the knees; and obesity." At the third step, the ALJ found that Sanders did not have an impairment or combination of impairments that "meets or medically equals one of the listed impairments in 20 C.F.R. [§] 404, [Appendix 1, Subpart P, Regulations No. 4 (the Listing of Impairments)]." At the fourth step, the ALJ determined Sanders' RFC as follows:

[Sanders] has the residual functional capacity to lift 20 pounds occasionally and 10 pounds frequently, sit and stand up to two hours at a time for 6 hours out of an 8 hour work day, and walk up to three blocks.

The ALJ determined that Sanders was unable to perform any past relevant work. At the fifth step, the ALJ determined that based on Sanders' "age, education, work experience, and residual functional capacity [Sanders] has acquired work skills from past relevant work that are transferable to other occupations with jobs existing in significant numbers in the national economy." Therefore, the ALJ concluded Sanders was "not disabled."

B. Whether the ALJ Fully and Fairly Developed the Record

Sanders contends that the ALJ erred in two respects. First, Sanders argues that the ALJ failed to properly evaluate the opinions of two examining physicians, Drs. Neiman

and Sarin. Second, Sanders argues that the ALJ failed to properly perform the *Polaski* analysis before discounting his testimony and allegations of disabling pain.

1. The Opinions of Drs. Neiman and Sarin

Sanders argues that the ALJ failed to properly consider the opinions of Drs. Neiman and Sarin when determining his RFC. Specifically, Sanders points out three material differences between the limitations imposed by Drs. Neiman and Sarin and the limitations imposed by the ALJ in his RFC. The three material differences are: (1) the ALJ failed to impose any significant limitations on Sanders' ability to stand; (2) the ALJ failed to impose any non-exertional limitations, such as Sanders' difficulty with reaching, using his neck, bending, stooping, and kneeling; and (3) the ALJ failed to impose any significant limitations on Sanders' ability to sit. Sanders concludes that Drs. Neiman and Sarin "imposed significant limitations on [his] ability to work that were rejected without good cause by the ALJ. This matter should be remanded for further development of the record, including . . . a proper evaluation of the medical evidence in this case."¹²

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)). In considering a physician's RFC assessment, an ALJ is not required to give controlling weight to the physician's assessment if it is inconsistent with other substantial evidence in the record. *Strongson*, 361 F.3d at 1070; *see also Travis v. Astrue*, 477 F.3d 1037, 1041 (8th Cir.

¹² See Plaintiff's Brief at 15-16.

2007) (“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.*”). The resolution of conflicts of opinion among various treating and examining physicians is the proper function of an ALJ. *Cabrnoch v. Bowen*, 881 F.2d 561, 564 (8th Cir. 1989). “If the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted.” Social Security Ruling, 96-8p (July 2, 1996).

The ALJ also 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)).

Dr. Neiman found that Sanders: (1) was best capable of sedentary activity; (2) could lift repetitively in the range of 10 pounds, maximum of 25 pounds, no more than 4 times an hour; (3) needed to avoid flexion, extension, lateral flexion of the lumbar spine; and (4) was unable to kneel, squat, bend, and climb.¹³ Dr. Sarin examined Sanders twice and found that he: (1) should not do any work that required sudden movement of his neck; (2) had “extremely” limited range of motion; (3) should not crawl, stoop, bend, or climb; (4) should not lift or carry anything over 15 pounds; and (5) could only sit for 30 to 45 minutes at one time.¹⁴

In his decision, the ALJ determined that Sanders’ RFC allowed him “to lift 20 pounds occasionally and 10 pounds frequently, sit and stand up to two hours at a time for

¹³ See Administrative Record at 267.

¹⁴ *Id.* at 270, 280.

6 hours out of an 8 hour work day, and walk up to three blocks.”¹⁵ The ALJ reviewed the findings of Drs. Neiman and Sarin, but failed to address or explain his reasons for discounting the limitations found in their opinions. For example, the ALJ offers no discussion of Drs. Neiman’s and Sarin’s opinions that Sanders is limited in his ability to kneel, squat, stoop, crawl, bend, or climb. The ALJ also fails to address Dr. Sarin’s opinion that Sanders can only sit for 30 to 45 minutes at one time. Thus, the Court finds that the ALJ failed to fully and fairly develop the record, *Cox*, 495 F.3d at 618, and explain his reasons for not adopting the opinions of Drs. Neiman and Sarin when determining Sanders’ RFC. *See Social Security Ruling*, 96-8p (“If the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted.”); *see also McCadney v. Astrue*, 519 F.3d 764, 767 (8th Cir. 2008) (“The problem with the ALJ’s opinion is that it is unclear whether the ALJ did discount [the doctor’s] opinion, and, if [the ALJ] did so, why.”). Therefore, the Court finds that this matter should be remanded so that the ALJ may fully and fairly develop the record with regard to Drs. Neiman’s and Sarin’s opinions. On remand, the ALJ shall provide clear reasons for accepting or rejecting Drs. Neiman’s and Sarin’s opinions and support his reasons with evidence from the record, particularly with regard to Sanders’ RFC.

2. *Credibility Determination*

Sanders claims that the ALJ failed to properly evaluate his subjective complaints of pain and disability. Sanders maintains that the ALJ failed to perform a proper *Polaski* analysis before discounting his testimony. Specifically, Sanders argues that the ALJ’s reasons for discounting his testimony were not supported in the record as a whole.

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

¹⁵ *Id.* at 20.

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 Williams*, 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 his decision, the ALJ properly set forth the law for making a credibility determination under *Polaski* and the Social Security Regulations. In applying the law, the ALJ determined that Sanders' "medically determinable impairments could reasonably be expected to produce the alleged symptoms; however, his statements concerning the intensity, duration and limiting effects of these symptoms are not entirely credible."¹⁶ Specifically, the ALJ determined that:

¹⁶ See Administrative Record at 23.

Although [Sanders] described fairly limited daily activities in testimony and in his questionnaires, he also expressed an ability to play computer games, care for personal needs, prepare simple meals, wash dishes, and watch television. The record reflects significant gaps in [his] history of treatment. Although he received some treatment for his allegedly disabling impairments, the treatment was essentially routine and conservative in nature. Despite complaints of allegedly disabling symptoms, there have been significant periods of time since the alleged onset date during which [Sanders] did not take any medication for symptoms. [Sanders] admitted certain abilities which provided support for part of the residual functional capacity conclusion in this decision. For these reasons, the undersigned finds [Sanders] no entirely credible regarding his allegation that he is totally disabled.

(Administrative Record at 23.) It is clear from the ALJ's decision that he considered and discussed Sanders' daily activities, treatment history, use of medication, and functional restrictions in making his credibility determination. Thus, having reviewed the entire record, the Court finds that the ALJ adequately considered and addressed the *Polaski* factors in determining that Sanders' allegations of disabling pain were not credible. *See Johnson*, 240 F.3d at 1148; *see also Goff*, 421 F.3d at 791 (an ALJ is not required to explicitly discuss each *Polaski* factor, it is sufficient if the ALJ acknowledges and considers those factors before discounting a claimant's subjective complaints); *Tucker v. Barnhart*, 363 F.3d 781, 783 (8th Cir. 2004) ("The ALJ is not required to discuss each *Polaski* factor as long as the analytical framework is recognized and considered. *Brown v. Chater*, 87 F.3d 963, 966 (8th Cir. 1996)."). Accordingly, because the ALJ seriously considered, but for good reasons explicitly discredited Sanders' subjective complaints, the Court will not disturb the ALJ's credibility determination. *See Johnson*, 240 F.3d at 1148.

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 opinions of Drs. Neiman and Sarin. Accordingly, the Court finds that remand is appropriate.

VI. CONCLUSION

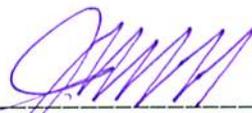
The Court concludes that this matter should be remanded to the Commissioner for further proceedings. On remand, the ALJ should develop the record fully and fairly with regard to the opinions of Drs. Neiman and Sarin as they pertain to Sanders’ RFC. In considering Drs. Neiman’s and Sarin’s opinions, the ALJ shall provide clear reasons for accepting or rejecting their opinions, and support his reasons with evidence from the record.

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 8th day of October, 2008.



JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA