

TO BE PUBLISHED

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

SARA M. SANGEL,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

No. C12-4008-LTS

ORDER

Introduction

The plaintiff, Sara Sangel, seeks judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”) denying her application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”) pursuant to Titles II and XVI of the Social Security Act. 42 U.S.C. §§ 405(g), 1383(c)(3). Sangel contends the administrative record (“AR”) does not contain substantial evidence to support the Commissioner’s decision that she is not disabled.

Background

Sangel was born in 1976 and completed one year of college. She previously worked as a sales clerk in a jewelry store, a cashier, and assisted with food preparation in a deli. AR 229. Sangel protectively filed her application for DIB on February 7, 2008, and filed for SSI on July 27, 2010, alleging disability beginning on March 15, 2001, due to borderline personality disorder, lower back problems, and scar tissue on her spinal cord. AR 139, 145, 185. Her claims were denied initially and on reconsideration. AR 66-69, 70-77, 81-88. Sangel requested a hearing before an

Administrative Law Judge (“ALJ”). AR 91-92. On August 15, 2011, ALJ Donna Lefebvre held a hearing via video conference during which Sangel, Sangel’s husband, and a vocational expert (“VE”) testified. AR 29-61.

On August 31, 2011, the ALJ issued a decision finding Sangel not disabled since December 13, 2007.¹ AR 9-22. Sangel sought review of this decision by the Appeals Council, which denied review on November 16, 2011. AR 1-3. The ALJ’s decision thus became the final decision of the Commissioner. 20 C.F.R. §§ 404.981, 416.1481.

On January 13, 2012, Sangel filed a complaint in this court seeking review of the ALJ’s decision. On February 3, 2012, with the parties’ consent, United States District Judge Mark W. Bennett transferred the case to then-Chief United States Magistrate Judge Paul A. Zoss for final disposition and entry of judgment. On June 8, 2012, the case was reassigned to me. The parties have briefed the issues, and the matter is now fully submitted.

Summary of Evidence

I have read through the administrative record and find the following medical evidence relevant to Sangel’s claim.

A. Mental Impairments

Sangel was diagnosed with generalized anxiety disorder, panic disorder with agoraphobia and mixed personality traits by Nancy Howe, ARNP, at Seasons Center for Community Mental Health in 2007. AR 427-29. Sangel takes medication for her mental health symptoms and she attended individual therapy for approximately one

¹ The ALJ determined that she could not consider disability prior to December 13, 2007, because at the time of this application, Sangel had a previous Title II application pending on appeal with the U.S. District Court, which maintained jurisdiction over determining disability from her alleged onset date of March 15, 2001, through the date of the ALJ’s decision on December 12, 2007. For that reason, the ALJ correctly stated that she could not consider disability within that time period and only considered evidence relating to alleged disability since December 13, 2007.

year. She last received treatment for her mental health issues in 2009, although she still takes medication, which is refilled by her primary care physician. During her mental status exams in 2008 and 2009, Sangel usually presented in a good mood with full range of affect, used an appropriate voice tone and pace, maintained excellent eye contact and was alert and oriented. AR 582-83. Her Global Assessment of Functioning (GAF) scores ranged from 55-66.² She denied homicidal or suicidal ideations, although she would sometimes describe visual and auditory hallucinations involving violence toward others. AR 416, 421.

Sangel was referred to Dawn Howley, ARNP, by her attorney on August 5, 2011. AR 599-603. Ms. Howley conducted an assessment, reviewed Sangel's treatment records, and offered the following opinion:

This is a woman with chronic mood problems of course complicated by her chronic pain. She has apparent physical limitations, which prohibit her from working. Certainly, her psychiatric problems of both homicidal and suicidal ideation would be an impairment in the work place as well. Should she be awarded benefits, I believe she could manage these independently.

AR 603.

B. Physical Impairments

Sangel has had three failed back surgeries and now experiences chronic pain in her lower back. This pain is primarily treated by morphine, which Sangel takes three times per day. AR 460. In 2007, a magnetic resonance imaging ("MRI") test was performed on Sangel's lumbar spine which showed degenerative disc changes at L3-L4 and L4-L5 and L5-S1 with moderate disc height narrowing. AR 519-20. There was

² A GAF score represents a clinician's judgment of an individual's overall ability to function in social, school, or occupational settings, not including impairments due to physical or environmental limitations. See American Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 34 (4th ed.) (DSM-IV). A GAF of 51-60 is characterized by moderate symptoms or moderate difficulty in social, occupational, or school functioning. A score of 61-70 indicates mild impairment.

mild central spinal stenosis, but no evidence of impingement. *Id.* Sangel's other health issues include type II diabetes mellitus, obesity, and polycystic ovarian disease.

David Robison, D.O., is Sangel's current provider. After Dr. Robison's first visit with Sangel in August 2009, he made the following record in her treatment notes:

Transfer patient from Dr. Tighe. She's quite a train wreck. She has chronic back pain. She's had three failed back surgeries. She's on chronic narcotics. She's borderline personality with bipolar tendencies with suicidal and homicidal ideations. She sees Nancy Howe. She has a seizure disorder. She has polycystic ovarian disease and diabetes mellitus type II. She evidently sees an endocrinologist, she's seen a Dr. Hanson at the chronic pain center over in Sanford. She's failed on all treatments. Basically they just have her on morphine short acting CR 30 mg. She takes one pill every six hours and has done so for over a year or more. She explained to me why she's failed on some of the other long acting medications. Spent about forty-five minutes going over everything with her. Don't understand why she's not on total disability because this lady is mentally not stable or physically able to do any work. She goes from laughing to crying to tearful to just a lot of emotions. I did review her medications. For now we're just going to keep all her medications as is. Get her records from Sioux Falls and review them. I want to see her back in a month. My preference would be to put her on a longer acting form of pain medicine with breakthrough supplements for short acting rather than being on short acting all the time but we'll monitor closely. Also she requests a lipid profile so we'll get that today and notify her of results.

AR 460. His later treatment notes mostly detail changes he made to her medications and treatment relating to her diabetes and complaints of insomnia. AR 456-59.

C. Consultative Examinations

Consultative examinations were ordered by Disability Determination Services due to the lack of medical evidence that addressed Sangel's mental and physical impairments since December 13, 2007. Don Johnson, Psy.D., performed a consultative psychological evaluation on September 16, 2010. AR 522-26. He diagnosed Sangel with schizoaffective disorder depressive type and borderline personality disorder. AR 525. Dr. Johnson noted Sangel's limitations in work-related

activities. He said Sangel's ability to remember and understand instructions, procedures, and locations, was limited in that she "is so completely involved with her homicidal and suicidal impulses that it becomes extremely difficult for her to focus on any other events." AR 525. He found that carrying out instructions and maintaining attention, concentration and pace were "difficult for Sara in her present state." In response to whether he thought she could interact appropriately with supervisors, co-workers, and the public, Dr. Johnson noted that Sangel very openly stated she hates people, and the hatred is fairly broad but particularly focused on women. Finally, when asked whether she could use good judgment and respond appropriately to changes in the work place, he found that Sangel's judgment was impaired. *Id.* He assessed a GAF score of 47.

Jeannett Tan Wu, M.D., performed a consultative physical examination on September 28, 2010. AR 527-28. Dr. Wu noted that Sangel reported a constant ache in her lower back. She had tried physical therapy for one year after her second surgery. She also went to a pain clinic once a month for a year about two years ago. Sangel described the pain as worse when bending, going down to both of her knees and hips. She said she had the pain for the last two years. Sangel told Dr. Wu she could lift five pounds and carry five pounds for one to two minutes. She said she could not stand more than five minutes, but could walk about five to 10 minutes. She could sit for almost 20 minutes, but then needed to stand. She could not stoop, kneel, or crawl, and could only climb about 10 stairs.

Dr. Wu also performed a range of motion test. She found that Sangel exhibited normal muscle strength in her upper and lower extremities although she demonstrated some limitations in her lumbar spine and hips. AR 529-30. She also noted that Sangel had an antalgic gait.³

³ An antalgic gait is a limp adopted so as to avoid pain on weight-bearing structures, characterized by a very short stance phase. *Dorland's Illustrated Medical Dictionary* 764 (31st ed. 2007).

D. State Agency Medical Consultants

State agency medical consultants reviewed all the medical evidence in the record and offered the following assessments. Scott Shafer, Ph.D., performed a mental RFC assessment and a psychiatric review technique on September 27, 2010. AR 540-56. Based on his review of the medical evidence, he found moderate limitations in Sangel's ability to understand and remember detailed instructions, carry out detailed instructions, maintain attention and concentration for extended periods, complete a normal workday and workweek without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods, interact appropriately with the general public, accept instructions and respond appropriately to criticism from supervisors, and get along with coworkers or peers without distracting them or exhibiting behavioral extremes. After summarizing the medical evidence, Dr. Schafer concluded that while her examining sources indicated significant symptoms, they should be given reduced weight in light of observations of others who have known her over an extended period of time. He also noted inconsistencies between the examining source's conclusions and observations from the mental status examination. He found Sangel's credibility partially eroded by inconsistencies in the record and lack of active treatment for a mental condition. Her activities of daily living were also limited because of her physical, rather than mental condition, and he thought she retained the ability to engage in routine vocational tasks with limited contact with others. Dr. Shafer found a moderate degree of limitation in maintaining social functioning and concentration, persistence or pace and a mild degree of limitation in activities of daily living. AR 554.

Dr. Shafer's assessment was reconsidered by John Tedesco, Ph.D. on February 3, 2011. AR 563. On reconsideration, Sangel alleged her anxiety worsened beginning in August 2010 and her physical conditions worsened beginning October 2010. Dr. Tedesco noted that her updated activities of daily living were not substantially different from those alleged at the initial level and it appeared from the record that her

personality disorder had been present for several years and had not precluded work activity in the past. For those reasons, he affirmed Dr. Shafer's assessment as written.

Jan Hunter, D.O., performed a physical RFC assessment on October 5, 2010. AR 532-39. She noted Sangel's primary diagnosis was lumbar spine degenerative disc changes and her secondary diagnosis was post-operative scarring of the lumbar spine with moderate foraminal stenosis. AR 532. Dr. Hunter found that Sangel could occasionally lift and/or carry 20 pounds, frequently lift and/or carry 10 pounds, and could stand and/or walk about 6 hours in an 8-hour workday. AR 533. She could occasionally climb a ramp or stairs, balance, stoop, kneel, crouch and crawl, but could never climb a ladder, rope, or scaffolds. AR 534. Dr. Hunter noted Sangel was last seen for her back pain in May 2010 and at this time her pain was stabilized with the use of morphine. She summarized Dr. Wu's findings and the MRI from January 2007 which showed degenerative disc changes, post-operative scarring and moderate foraminal stenosis. Dr. Hunter found that Sangel's credibility regarding her self-identified limitations was somewhat eroded due to the difficulty of separating her mental and physical impairments. AR 537. She also had not sought treatment for her back pain and her most recent examination suggested that her back pain was adequately addressed through narcotic pain management. Dr. Hunter's assessment was affirmed as written upon reconsideration by Chrystalla Daly, D.O., on February 2, 2011. AR 562.

E. Functional Capacity Evaluation

In August 2011, Sangel underwent a functional capacity evaluation performed by Stephanie McClellan, licensed occupational therapist, of the Buena Vista Regional Medical Center. AR 606. McClellan found Sangel could perform at the sedentary level. *Id.* She could occasionally lift up to 20 pounds, but could only carry up to 10 pounds occasionally. AR 605. Sangel could sit for 8.25 hours per day and stand for 2.75 hours per day. *Id.* She could sit for one hour at a time and stand for 15 minutes

at a time. *Id.* McClellan also found that Sangel should avoid bending, squatting, and sustained kneeling. AR 613-14.

Hearing Testimony

A. Plaintiff's Testimony

At the hearing, Sangel testified that she was 34 years old, had completed one year of college and was married to Thomas Sangel. AR 34. Mr. Sangel owned a video rental business and she lived with him in an apartment at the back of the business. AR 35. Sangel explained that on a normal day she would sleep until 5:00 or 6:00 p.m., eat dinner, watch television and go back to bed around 1:00 a.m. sleeping until 5:00 or 6:00 in the evening again the next day. AR 40-41. She explained that she also liked to read when she was not watching television. AR 41. Sangel testified that she did not get out of the apartment much because she was unable to drive due to the morphine she took for her back pain and she did not deal with people very well. AR 35, 42. When she did leave, it would be for a hair appointment or shopping at Wal-Mart, which she did late at night. *Id.*

The ALJ also asked Sangel about her medical treatment. Sangel indicated she was not seeing anyone for mental health treatment and the last treatment she received was in August 2009 from Seasons Community Health Center. AR 36. She explained that she no longer went to Seasons Center because a doctor there “rub[bed] [her] the wrong way” and she could not afford it. AR 42. She continued to address her mental health issues through medication and her family physician provided refills. AR 36. She said those medications made her feel tired and dizzy. *Id.* Dr. Robison also addressed her other health issues as needed. AR 37. Sangel said she had not seen Dr. Robison in 2011 and explained that her pain medication was refilled over the phone. *Id.*

Sangel described her pain as 5 out of 10. AR 39. She said her medication helped to take the edge off, but she still suffered a lot of pain. She said it was the worst

in her lower back and would radiate down her right leg. *Id.* She was taking two types of morphine for her pain—a fast-acting one as needed for specific injuries or muscle spasms, and a general one she took three times a day. AR 45, 47. She said the medication made her feel tired and spacey and within an hour of taking a dose of morphine she would not be able to concentrate well enough to read a newspaper. AR 45. As for her limitations due to this pain, Sangel stated she could lift up to 10 pounds and could stand about 10 to 15 minutes, but walked around often. AR 42. She could fix meals and do laundry, but her husband had to help her change loads. AR 48.

Sangel last worked at a jewelry store in 2007. AR 43. She worked there for about two or three weeks until bending over hurt her back too much to continue. *Id.* She testified that she did not think there was any other type of work she could do because she had no ability to focus and would often forget things she had started or what she had been saying. AR 48.

B. Mr. Sangel's Testimony

Mr. Sangel also testified at the hearing. He met the claimant in July 2003 and they have been married since September 2004. AR 50. When asked why he thought Sangel would not be able to work he said, “She has a lot of issues in her head that I believe . . . limit her. She doesn’t like to be around people quite a bit. Being out in public is very aggravating and distracting.” AR 51. As an example, he said when Sangel goes out in public it is usually to Wal-Mart and she will have to sometimes wear earplugs to limit her exposure to noises and people. *Id.* For that reason, he said he usually does the shopping himself. Mr. Sangel explained he usually drives the claimant to doctor appointments because her medication makes her extremely sleepy. AR 52. He confirmed that she would usually wake up around 7:00 p.m., eat supper, watch television, and then go back to bed around 11:00 p.m. or midnight. He explained that she used an alarm clock to wake her up during the day to take medication. AR 54.

C. Vocational Expert's Testimony

Warren Haagenson testified as a vocational expert at the hearing. The ALJ gave him a hypothetical of an individual who could lift up to 20 pounds occasionally and 10 pounds frequently. She stated the individual could stand and walk for up to six hours and sit for six hours in an eight-hour day, with normal breaks. The individual could never climb ladders, ropes or scaffolds and could occasionally balance, stoop, kneel, crouch or crawl. The individual could perform routine and repetitive vocational tasks, and would have to have brief, superficial interaction with the public and co-workers. AR 56. The ALJ asked if an individual with these limitations would be able to perform any of Sangel's past work. The VE answered no. However, the VE thought an individual with the described limitations could perform work as a collator operator, poly packer or a small parts assembler. AR 57. These jobs are light and unskilled and exist in significant numbers in the national and regional economy.

In a second hypothetical, the ALJ asked the VE to consider an individual who could lift up to 10 pounds occasionally and frequently, could stand and walk for up to two hours and sit for up to six hours in an eight-hour workday with normal breaks and could occasionally climb ramps or stairs but never ladders, ropes or scaffolds. AR 57. This individual could also occasionally balance, stoop, kneel, crouch or crawl and needed to perform routine and repetitive tasks with brief and superficial interaction with the public and co-workers. This individual should also avoid concentrated exposure to the operational control of moving and hazardous machinery and unprotected heights. AR 57-58. The VE stated an individual with these limitations could not perform any of the claimant's past work, but sedentary jobs such as assembling eyeglass frames or inserting eyeglass lenses and stuffing toys and sporting equipment would be appropriate. These jobs also exist in significant numbers in the national and regional economy. AR 58.

The VE further testified that employers generally allow two unexcused absences a month and customary breaks include a 15-minute break in the morning, a half-hour to

an hour break for lunch and a 15-minute break in the afternoon. Exceeding these breaks on a regular basis would eliminate competitive employment. AR 59.

Sangel's attorney also presented the VE with a hypothetical. He asked the VE to consider an individual who slept as much as eight to ten hours every day and had difficulty with concentration due to a combination of medications. The VE responded that he could not comment on concentration because he was unclear about the level described, but he knew of no job in the economy that would allow someone to sleep for eight to ten hours during the workday. AR 60. All competitive employment would be ruled out for an individual with that limitation. *Id.*

Summary of ALJ's Decision

The ALJ made the following findings:

- (1) The claimant meets the insured status requirements of the Social Security Act through June 1, 2009.
- (2) The claimant has not engaged in substantial gainful activity since December 13, 2007, the date after the last Administrative Law Decision.
- (3) The claimant has the following severe impairments: schizoaffective disorder, borderline personality disorder, degenerative disc disease of the lumbar spine, degenerative disc disease of the C5-6 levels, and obesity.
- (4) The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments.
- (5) After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform less than a full range of sedentary work as defined in 20 C.F.R. 404.1567(a) and 416.967(a). She can lift up to 10 pounds occasionally and frequently. The claimant can stand and walk for up to two hours and sit for up to six hours in an eight-hour workday with normal breaks. She can occasionally balance, stoop, kneel, crouch, or crawl. She should avoid concentrated exposure to unprotected heights and the operational control of moving and hazardous machinery. The claimant can perform routine and repetitive tasks and she can also sustain brief and superficial interaction with the public and coworkers.

- (6) The claimant is unable to perform any past relevant work.
- (7) The claimant was born on November 8, 1976 and was 24 years old, which is defined as a younger individual age 18-44, on the alleged disability onset date.
- (8) The claimant has at least a high school education and is able to communicate in English.
- (9) Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is “not disabled,” whether or not the claimant has transferable job skills.
- (10) Considering the claimant’s age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform.
- (11) The claimant has not been under a disability, as defined in the Social Security Act, from December 13, 2007, through the date of this decision.

AR 11-22.

In determining Sangel’s RFC, the ALJ conducted a credibility analysis based on the factors in *Polaski v. Heckler*, 739 F.2d 1320 (8th Cir. 1984). She found that Sangel’s physical and mental impairments were not as severe as alleged. She reasoned that for both her mental and physical impairments, Sangel had stopped seeking treatment and primarily relied on her medication to control her symptoms. The ALJ credited Sangel’s allegations to the extent they were supported by other evidence in the record. Some of Sangel’s own descriptions of her limitations did not indicate they were disabling. For instance, Sangel said she could lift up to 10 pounds and she could stand for 10 to 15 minutes before needing to sit down again, but she had no walking limitation and often had to walk around because her legs bothered her. The ALJ adopted the 10-pound lifting restriction and found that Sangel could stand and walk for up to two hours and sit for up to six hours in a workday. The ALJ also considered Sangel’s daily activities and found there was nothing to link the limitations and their alleged severity to Sangel’s medical conditions, such as a need to sleep for more than

16 hours during the day. Overall, she concluded that Sangel's mental and physical impairments caused some limitations, but these limitations were not so severe as to be disabling.

The ALJ also considered Mr. Sangel's testimony and gave some credit to his statements which were consistent with the claimant's account of her daily activities. The ALJ concluded that despite his allegations, in light of the record as a whole, Sangel's symptoms and resulting limitations did not preclude all work activity.

The ALJ also considered the medical and other opinions in determining Sangel's RFC. She gave little weight to Dr. Robison's comment about Sangel's alleged disability, because he had only seen the claimant once, he did not identify any specific physical or mental limitations, and his conclusion was not supported by substantial evidence in the record. The ALJ gave "some weight" to Dr. Johnson's opinions that were consistent with Sangel's treatment notes, but also found that he failed to set forth quantifiable limitations. Dawn Howley's similar statements about Sangel's suicidal and homicidal ideations being an impairment in the workplace were also given some weight because they did not specify how those impairments would affect Sangel's ability to function in the workplace. The ALJ gave considerable weight to the opinion of the state agency psychological consultant, Dr. Shafer, finding that it was consistent with Sangel's treatment history and the record as a whole. The physical assessment performed by the state agency medical consultant, Dr. Hunter, was given little weight because the ALJ found the functional capacity evaluation provided more compelling evidence. The only finding from the functional capacity evaluation the ALJ found inconsistent with the objective evidence was Sangel's need to avoid bending, squatting, and sustained kneeling. The ALJ concluded the objective evidence indicated Sangel could perform these activities on at least an occasional basis.

Because the exertional demands of Sangel's past relevant work exceeded the RFC as determined by the ALJ, the ALJ relied on the VE's testimony to conclude that

other work existed in significant numbers in the national economy that Sangel could perform, and she was therefore not disabled since December 13, 2007. AR 22.

Disability Determinations and the Burden of Proof

A disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505, 416.905. A claimant has a disability when the claimant is “not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

To determine whether a claimant has a disability within the meaning of the Social Security Act, the Commissioner follows a five-step sequential evaluation process outlined in the regulations. 20 C.F.R. §§ 404.1520, 416.920; *see Kirby v. Astrue*, 500 F.3d 705, 707 (8th Cir. 2007). First, the Commissioner will consider a claimant’s work activity. If the claimant is engaged in substantial gainful activity, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

Second, if the claimant is not engaged in substantial gainful activity, the Commissioner looks to see “whether the claimant has a severe impairment that significantly limits the claimant’s physical or mental ability to perform basic work activities.” *Dixon v. Barnhart*, 353 F.3d 602, 605 (8th Cir. 2003). “An impairment is not severe if it amounts only to a slight abnormality that would not significantly limit the claimant’s physical or mental ability to do basic work activities.” *Kirby*, 500 F.3d at 707; *see* 20 C.F.R. §§ 404.1520(c), 404.1521(a), 416.920(c), 416.921(a).

The ability to do basic work activities is defined as “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§ 404.1521(b), 416.921(b). These abilities and aptitudes include (1) physical functions such as walking, standing, sitting, lifting,

pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers, and usual work situations; and (6) dealing with changes in a routine work setting. *Id.* §§ 404.1521(b)(1)-(6), 416.921(b)(1)-(6); *see Bowen v. Yuckert*, 482 U.S. 137, 141, 107 S. Ct. 2287, 2291 (1987). “The sequential evaluation process may be terminated at step two only when the claimant’s impairment or combination of impairments would have no more than a minimal impact on her ability to work.” *Page v. Astrue*, 484 F.3d 1040, 1043 (8th Cir. 2007) (internal quotation marks omitted).

Third, if the claimant has a severe impairment, then the Commissioner will consider the medical severity of the impairment. If the impairment meets or equals one of the presumptively disabling impairments listed in the regulations, then the claimant is considered disabled, regardless of age, education, and work experience. 20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii), 416.920(d); *see Kelley v. Callahan*, 133 F.3d 583, 588 (8th Cir. 1998).

Fourth, if the claimant’s impairment is severe, but it does not meet or equal one of the presumptively disabling impairments, then the Commissioner will assess the claimant’s RFC to determine the claimant’s “ability to meet the physical, mental, sensory, and other requirements” of the claimant’s past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1545(a)(4), 416.920(a)(4)(iv), 416.945(a)(4). “RFC is a medical question defined wholly in terms of the claimant’s physical ability to perform exertional tasks or, in other words, what the claimant can still do despite his or her physical or mental limitations.” *Lewis v. Barnhart*, 353 F.3d 642, 646 (8th Cir. 2003) (internal quotation marks omitted); *see* 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The claimant is responsible for providing evidence the Commissioner will use to make a finding as to the claimant’s RFC, but the Commissioner is responsible for developing the claimant’s “complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help [the claimant]

get medical reports from [the claimant's] own medical sources.” 20 C.F.R. §§ 404.1545(a)(3), 416.945(a)(3). The Commissioner also will consider certain non-medical evidence and other evidence listed in the regulations. *See id.* If a claimant retains the RFC to perform past relevant work, then the claimant is not disabled. *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

Fifth, if the claimant's RFC as determined in Step Four will not allow the claimant to perform past relevant work, then the burden shifts to the Commissioner to prove that there is other work that the claimant can do, given the claimant's RFC as determined at Step Four, and his or her age, education, and work experience. *See Bladow v. Apfel*, 205 F.3d 356, 358-59 n.5 (8th Cir. 2000). The Commissioner must prove not only that the claimant's RFC will allow the claimant to make an adjustment to other work, but also that the other work exists in significant numbers in the national economy. *Eichelberger v. Barnhart*, 390 F.3d 584, 591 (8th Cir. 2004); 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant can make an adjustment to other work that exists in significant numbers in the national economy, then the Commissioner will find the claimant is not disabled. If the claimant cannot make an adjustment to other work, then the Commissioner will find that the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). At Step Five, even though the burden of production shifts to the Commissioner, the burden of persuasion to prove disability remains on the claimant. *Stormo v. Barnhart*, 377 F.3d 801, 806 (8th Cir. 2004).

The Substantial Evidence Standard

The Commissioner's decision must be affirmed “if it is supported by substantial evidence on the record as a whole.” *Pelkey v. Barnhart*, 433 F.3d 575, 577 (8th Cir. 2006); *see* 42 U.S.C. § 405(g) (“The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive . . .”). “Substantial evidence is less than a preponderance, but enough that a reasonable mind

might accept as adequate to support a conclusion.” *Lewis*, 353 F.3d at 645. The Eighth Circuit explains the standard as “something less than the weight of the evidence and [that] allows for the possibility of drawing two inconsistent conclusions, thus it embodies a zone of choice within which the [Commissioner] may decide to grant or deny benefits without being subject to reversal on appeal.” *Culbertson v. Shalala*, 30 F.3d 934, 939 (8th Cir. 1994).

In determining whether the Commissioner’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.” *Wester v. Barnhart*, 416 F.3d 886, 889 (8th Cir. 2005). The court considers both evidence which supports the Commissioner’s decision and evidence that detracts from it. *Kluesner v. Astrue*, 607 F.3d 533, 536 (8th Cir. 2010). The court must “search the record for evidence contradicting the [Commissioner’s] decision and give that evidence appropriate weight when determining whether the overall evidence in support is substantial.” *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (citing *Cline v. Sullivan*, 939 F.2d 560, 564 (8th Cir. 1991)).

In evaluating the evidence in an appeal of a denial of benefits, the court must apply a balancing test to assess any contradictory evidence. *Sobania v. Sec’y of Health & Human Servs.*, 879 F.2d 441, 444 (8th Cir. 1989). The court, however, does not “reweigh the evidence presented to the ALJ,” *Baldwin*, 349 F.3d at 555 (citing *Bates v. Chater*, 54 F.3d 529, 532 (8th Cir. 1995)), or “review the factual record de novo.” *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996) (citing *Naber v. Shalala*, 22 F.3d 186, 188 (8th Cir. 1994)). Instead, if, after reviewing the evidence, the court finds it “possible to draw two inconsistent positions from the evidence and one of those positions represents the Commissioner’s findings, [the court] must affirm the [Commissioner’s] denial of benefits.” *Kluesner*, 607 F.3d at 536 (quoting *Finch v. Astrue*, 547 F.3d 933, 935 (8th Cir. 2008)). This is true even in cases where the court “might have weighed the evidence differently.” *Culbertson*, 30 F.3d at 939 (quoting *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir. 1992)). The court may not reverse

the Commissioner's decision "merely because substantial evidence would have supported an opposite decision." *Baker v. Heckler*, 730 F.2d 1147, 1150 (8th Cir. 1984); *see Goff v. Barnhart*, 421 F.3d 785, 789 (8th Cir. 2005) ("[A]n administrative decision is not subject to reversal simply because some evidence may support the opposite conclusion.").

Discussion

Sangel argues that the ALJ improperly evaluated the medical evidence. She highlights several excerpts from various medical records that she believes provide evidence that she cannot perform competitive employment and therefore argues the ALJ's decision is not supported by substantial evidence. The Commissioner responds that the ALJ properly evaluated both the medical evidence and the credibility of Sangel's subjective complaints to formulate her RFC. He asserts that the RFC is supported by substantial evidence and that the Commissioner met his burden of demonstrating that Sangel could perform "other work" that exists in significant numbers in the national and regional economy.

Although Sangel only contests the ALJ's evaluation of the medical evidence, I will also consider whether the ALJ conducted a proper credibility analysis to determine Sangel's RFC and whether the Commissioner met his burden of proving Sangel could perform other work available in significant numbers in the national economy.

A. Evaluation of Medical Evidence

As evidence that the medical record necessitates a finding of disability, Sangel first cites the treatment note from Dr. Robison. The treatment note is from Sangel's initial visit on August 10, 2009, when Sangel was transferred to Dr. Robison from her family care physician. It states:

Transfer patient from Dr. Tighe. She's quite a train wreck. She has chronic back pain. She's had three failed back surgeries. She's on chronic narcotics. She's borderline personality with bipolar tendencies

with suicidal and homicidal ideations. She sees Nancy Howe. She has a seizure disorder. She has polycystic ovarian disease and diabetes mellitus type II. She evidently sees an endocrinologist, she's seen a Dr. Hanson at the chronic pain center over in Sanford. She's failed on all treatments. Basically they just have her on morphine short acting CR 30 mg. She takes one pill every six hours and has done so for over a year or more. She explained to me why she's failed on some of the other long acting medications. Spent about forty-five minutes going over everything with her. Don't understand why she's not on total disability because this lady is mentally not stable or physically able to do any work. She goes from laughing to crying to tearful to just a lot of emotions. I did review her medications. For now we're just going to keep all her medications as is. Get her records from Sioux Falls and review them. I want to see her back in a month. My preference would be to put her on a longer acting form of pain medicine with breakthrough supplements for short acting rather than being on short acting all the time but we'll monitor closely. Also she requests a lipid profile so we'll get that today and notify her of results.

AR 460. The ALJ gave little weight to this opinion, as Dr. Robison had only examined Sangel on one occasion when he made this statement. The ALJ also reasoned it was conclusory, did not provide any specific physical or mental limitations and it was not supported by other substantial evidence in the record. AR 19.

A treating physician's opinion that a claimant is disabled or cannot be gainfully employed gets no deference because it invades the province of the Commissioner to make the ultimate disability determination. *House v. Astrue*, 500 F.3d 741, 745 (8th Cir. 2007); 20 C.F.R. § 404.1527(d)(1). At the time Dr. Robison made this statement he did not qualify as a treating physician, so his opinion certainly warrants no deference. *See* 20 C.F.R. § 404.1502 (defining a treating source as "your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you."). Aside from this opinion, nothing in this treatment note provides evidence of disabling impairments. It simply lists Sangel's diagnoses, her current treatment, and future plans for treatment. The ALJ did not err in giving this opinion little weight.

Sangel also cites the opinion of Dr. Johnson who performed a consultative examination on September 16, 2010. AR 522-25. The portion of the opinion cited by Sangel is Dr. Johnson's conclusions regarding Sangel's mental limitations for certain work-related activities.

Remembering and understanding instructions, procedures, and locations: Sara is so completely involved with her homicidal and suicidal impulses that it becomes extremely difficult for her to focus on any other events.

Carrying out instructions by maintaining attention, concentration and pace: These kinds of activities are difficult for Sara in her present state.

Interacting appropriately with supervisors, co-workers, and the public: Sara stated very openly that she hates people. This hatred is fairly broad but is particularly focused on women.

Using good judgment and responding appropriately to changes in the work place: Sara's judgment is impaired.

Impressions:

As she presents at this time, Sara Sangel would appear to be described with the following diagnostic criteria.

- Axis I: 295.70 Schizoaffective Disorder, Depressive Type
- Axis II: 301.83 Borderline Personality Disorder
- Axis III: See Presenting Problem Above
- Axis IV: Occupational, Economic, Access to Health Care Problems
- Axis V: GAF: 47

AR 525. The ALJ gave "some weight" to Dr. Johnson's opinions finding them consistent with Sangel's treatment notes. However, she found that he failed to set forth quantifiable limitations. AR 20. For instance, although he noted impairments, he did not specify how those impairments would affect her ability to function in the workplace.

RFC is defined as “the most [a claimant] can still do despite” his or her “physical or mental limitations.” 20 C.F.R. § 404.1545(a). It has been described as a “function-by-function” assessment based on all the relevant evidence of an individual’s ability to do work-related activities. SSR 96-8p, 1996 WL 374184 (July 2, 1996). “[S]ome medical evidence must support the determination of the claimant’s RFC, and the ALJ should obtain medical evidence that addresses the claimant’s “ability to function in the workplace.” *Lauer v. Apfel*, 245 F.3d 700, 704 (8th Cir. 2001) (quoting *Nevland v. Apfel*, 204 F.3d 853, 858 (8th Cir. 2000)) [internal citation omitted]. When describing limitations, an explicit reference to “work” is not always necessary as long as the ALJ can ascertain a claimant’s functional limitations “with sufficient generalized clarity to allow for an understanding of how those limitations function in a work environment.” *Cox v. Astrue*, 495 F.3d 614, 620 n.6 (8th Cir. 2007).

The ALJ did not err by giving “some weight” to Dr. Johnson’s opinions based on the lack of quantifiable limitations and support by other medical evidence in the record. Limitations for memory, understanding instructions, carrying out instructions by maintaining attention, concentration, and pace, use of good judgment, and responding appropriately to changes in the workplace are accounted for in the ALJ’s RFC assessment in the limitation of routine and repetitive work. Her difficulty with social interactions is also addressed by the limitation of brief and superficial interaction with the public and co-workers. These limitations as set forth in the ALJ’s RFC assessment are not inconsistent with Dr. Johnson’s opinion, as Dr. Johnson did not describe the severity of Sangel’s “difficulty” in some of these areas or give any indication as to how they affected her ability to function in the workplace.

Sangel next cites a portion of Dr. Wu’s evaluation as evidence of her disabling condition. Dr. Wu performed a consultative physical examination on September 28, 2010. AR 527. The part of her evaluation cited by Sangel states:

REVIEW OF SYSTEMS . . . Joint pains, entire back, constant ache 24/7, her low back. She did physical therapy for 1 year after her 2nd surgery. Then she was going to the Pain Clinic in Sioux Falls regularly, monthly for 1 year about 2 years ago. But she's not doing that any more. The pain is worse when she's bending; gets a spasm. Goes down to the right and left knee, hips. She has this pain for the last 2 years. No injury. Occasional ankle discomfort. She can lift 5 lbs. for 1-2 minutes. She can stand less than 5 minutes. She can walk about 5-10 minutes. She can sit for almost 20 minutes, and then she has to stand. She cannot stoop. She can climb stairs about 10 steps. She cannot kneel. She cannot crawl. She admits to hearing voices or the television.

* * *

IMPRESSION: 33 YEAR OLD FEMALE, WITH DIABETES, HYPERLIPIDEMIA, HISTORY OF PALPITATIONS, CONTROLLED WITH DILTIAZEM, ALTHOUGH SLIGHTLY TACHYCARDIAC TODAY, WITH CHRONIC PAIN SYNDROME, WITH BACK SURGERY WITH DEPRESSIVE DISORDER.

Sangel asserts this opinion does not suggest Sangel is magnifying her symptoms or that her physical complaints are unfounded or unwarranted.

The ALJ considered Dr. Wu's opinion along with the functional capacity evaluation performed in August 2011. AR 16. She noted that both of these examinations demonstrated Sangel "exhibited full range of motion in all of her extremities, with the exception of her shoulders and hips." *Id.* Sangel also had some slight limitations in her shoulder abduction and external rotation, but she exhibited full strength in her upper extremities and grip. *Id.* She had some difficulties with lumbar flexion, extension, rotation, and lateral flexion during both examinations and the strength in her lower extremities went from five out of five in September 2010 to four out of five in August 2011. AR 17. While the August 2011 examination also showed some reduced strength to her upper extremities and restricted movement in her bilateral hips, these limitations were minimal. *Id.*

The part of Dr. Wu's evaluation cited by Sangel appears to be Sangel's own description of her symptoms. Dr. Wu's objective opinion is contained in her

impression and the results of her physical examination, which included testing Sangel's range of motion. AR 528-30. As noted by the ALJ, this examination revealed some limitations in movement and strength, but Dr. Wu did not provide an opinion about Sangel's physical limitations in the workplace. She did not confirm the lifting, sitting, standing and walking limitations expressed by Sangel, and Dr. Wu's physical examination provides no objective medical evidence to corroborate those allegations.

Sangel also cites an excerpt from Dawn Howley's assessment performed on August 5, 2011. AR 599-604. Sangel was referred to Ms. Howley by her attorney. Ms. Howley reviewed Sangel's records from Dr. Robison, Dr. Wu, Seasons Center for Community Mental Health, and Dr. Johnson. AR 601. Ms. Howley noted that her diagnosis from Seasons Center remained consistent throughout her treatment there which was generalized anxiety disorder, panic disorder with agoraphobia, and mixed personality traits. AR 601. She assessed a GAF score of 50. AR 603. Sangel cites Ms. Howley's summary as evidence of disability:

This is a woman with chronic mood problems of course complicated by her chronic pain. She has apparent physical limitations, which prohibit her from working. Certainly, her psychiatric problems of both homicidal and suicidal ideation would be an impairment in the work place as well. Should she be awarded benefits, I believe she could manage these independently.

AR 603. The ALJ noted that Ms. Howley indicated Sangel's suicidal and homicidal ideation would be an impairment in the workplace, but like Dr. Johnson's opinion, Ms. Howley did not specify how this would affect Sangel's ability to function in the workplace. AR 20.

Ms. Howley's statement is not considered a "medical opinion" under the regulations which define a medical opinion as "statements from physicians and

psychologists or other acceptable medical sources⁴ that reflect judgment about the nature and severity of [the claimant's] impairments.” 20 C.F.R. § 416.927(a)(2). Ms. Howley would be considered an “other source.” 20 C.F.R. § 416.913(d)(1). The ALJ may give more weight to a medical source who is not an acceptable medical source if “he or she has seen the individual more often than the treating source and has provided better supporting evidence and a better explanation for his or her opinion.” *Lacroix v. Barnhart*, 465 F.3d 881, 887 (8th Cir. 2006); *see also* SSR 06-03p, 2006 WL 2329939, *5 (Aug. 9, 2006).

Ms. Howley only saw Sangel once and provided little explanation for her opinion, so the ALJ did not err in giving it little weight. Ms. Howley’s opinion does not indicate more severe limitations than those outlined in the ALJ’s RFC assessment. She only states that Sangel’s homicidal and suicidal ideations would be an impairment in the workplace. The ALJ agrees that Sangel has a mental impairment, but the relevant inquiry here is how and to what extent that impairment affects Sangel’s ability to function in the workplace. Without a more detailed explanation, the ALJ has no basis to consider whether it limits her from performing all types of work. Therefore, it was not error for the ALJ to rely on other medical evidence in the record to determine Sangel’s work-related limitations in calculating her RFC.

Finally, Sangel references the functional capacity evaluation performed in August 2011 as evidence of her disability. She admits that the evaluation concluded she could perform within the sedentary physical demand level based on her ability to lift, carry, push and pull, but that bending was to be avoided, and walking and reaching were limited to the occasional exertional level.

The functional capacity evaluation is consistent with the ALJ’s RFC assessment. McClellan found Sangel could perform at the sedentary level. *Id.* She could

⁴ “Acceptable medical sources” are licensed physicians, licensed or certified psychologists, licensed optometrists, licensed podiatrists, and qualified speech-language pathologists. 20 C.F.R. § 416.913.

occasionally lift up to 20 pounds, but could only carry up to 10 pounds occasionally. AR 605. Sangel could sit for 8.25 hours per day and stand for 2.75 hours per day. *Id.* She could sit for one hour at a time and stand for 15 minutes at a time. *Id.*

The ALJ found that Sangel could perform less than the full range of sedentary work as defined in 20 C.F.R. §§ 404.1567(a), 416.96(a). She could lift up to 10 pounds occasionally and frequently. She could also stand and walk for up to two hours and sit for up to six hours in an eight-hour workday with normal breaks. The only inconsistency is the recommendation in the functional capacity evaluation that Sangel should avoid bending, squatting and sustained kneeling. The ALJ found that the objective medical evidence indicated Sangel could perform these activities at least on an occasional basis. AR 20. This conclusion is supported by substantial evidence. The range of motion tests performed by Dr. Wu indicated that Sangel had normal muscle strength in her lower extremities and some limitations in flexion, extension and lateral flexion in her lumbar spine, but did not indicate these movements should be avoided.

Overall, the ALJ's RFC determination is supported by substantial evidence in the record, including medical evidence. As for her physical impairments, a MRI reveals Sangel has degenerative disc disease. Treatment notes indicate that Sangel suffers pain from this impairment, which is primarily treated with medication. Treatment notes from Dr. Wu also indicate that Sangel experiences some limitations to movement because of this impairment. These limitations were discussed in more detail in the functional capacity evaluation. The ALJ incorporated these limitations into the RFC. As for her mental impairments, Sangel has been diagnosed with schizoaffective disorder and borderline personality disorder by licensed professionals. Her symptoms are controlled through medication and she has not received other treatment for her mental impairments since August 2009. Treatment notes indicate these impairments cause moderate difficulties with social functioning and maintaining concentration, persistence or pace. Limitations in these areas were included in the ALJ's RFC determination.

Any other alleged limitations that are more severe than those outlined in the RFC come from Sangel's subjective allegations. The ALJ considered these allegations, but discredited them based on inconsistencies with the record as a whole discussed in more detail below.

B. Claimant's Credibility

Sangel does not challenge the ALJ's credibility determination, but because the ALJ evaluated the credibility of Sangel's subjective allegations to determine her RFC, I will consider whether the ALJ's credibility determination is supported by substantial evidence.

"An ALJ who rejects [subjective] complaints must make an express credibility determination explaining the reasons for discrediting the complaints." *Singh v. Apfel*, 222 F.3d 448, 452 (8th Cir. 2000). In assessing a claimant's credibility, the ALJ must consider "the claimant's prior work history; daily activities, duration, frequency, and intensity of pain; dosage, effectiveness and side effects of medication; precipitating and aggravating factors; and functional restrictions." *Medhaug v. Astrue*, 578 F.3d 805, 816 (8th Cir. 2009) (citing *Polaski*, 739 F.2d at 1322). "Other relevant factors include the claimant's relevant work history and the absence of objective medical evidence to support the complaints." *Mouser v. Astrue*, 545 F.3d 634, 638 (8th Cir. 2008) (quoting *Wheeler v. Apfel*, 224 F.3d 891, 894 (8th Cir. 2000)). However, lack of objective medical evidence cannot be the sole reason for discounting a claimant's subjective complaints. *Mouser*, 545 F.3d at 638. An ALJ may discount a claimant's subjective complaints if there are inconsistencies in the record as a whole. *Van Vickie v. Astrue*, 539 F.3d 825, 828 (8th Cir. 2009). The ALJ does not need to discuss each *Polaski* factor as long as he or she "acknowledges and considers the factors before discounting a claimant's subjective complaints." *Moore v. Astrue*, 572 F.3d 520, 524 (8th Cir. 2009).

The ALJ acknowledged the *Polaski* factors here. She noted that Sangel has not generally received the type of medical treatment for her back that one would expect for a totally disabled individual. Since December 2007, she has relied solely on the use of medication and the record reveals infrequent trips to the doctor for treatment of her back pain. Sangel had not seen a doctor for her back pain in 2011 and her prescriptions are simply refilled over the phone. AR 17. The ALJ stated, “While her use of medication certainly suggests that her back pain is significant, it does not suggest the presence of an impairment which is more limiting than found in this decision.” *Id.* This conclusion is supported by the substantial evidence in the record. Dr. Wu and the functional capacity evaluator found that her back pain caused only some physical limitations and Sangel herself reported she could lift up to 10 pounds and could only stand for about 10 to 15 minutes before needing to sit again, but that she also had no problem walking and needed to walk around often because her legs bothered her. The ALJ included Sangel’s credible allegations in the RFC determination.

The ALJ noted that Sangel’s mental impairments are also treated primarily through medication and they have remained the same since adjustments were made in 2008. AR 18. She has received no other mental health treatment since 2009. Her lowest GAF score was 47 and was assessed by the consultative examiner. The ALJ noted this was a one-time examination and Sangel had not received treatment for over a year at that time. Otherwise, she displayed good eye contact and normal speech at that examination, and although her communications were bizarre, they were relevant. The ALJ concluded that her mental impairment was not as disabling as alleged, but acknowledged that Sangel did have some limitations based on her violent thoughts about others and difficulties with concentration. AR 18. This conclusion is supported by substantial evidence. Treatment notes indicate that she suffers from mental impairments, but she has never acted on her violent thoughts and she is able to get out of the house for hair appointments and to go shopping at night. The ALJ’s limitations

of routine and repetitive work and brief and superficial interaction with the public and coworkers encompass Sangel's credible allegations.

The ALJ also considered Sangel's daily activities. Sangel indicated that her impairments had significantly limited her capacity such that her husband performs all of the household chores, although she helps with some of the laundry. She also reported she does not get along well with others, although she spends time with her husband, parents and brother. According to Sangel she spends most of her day sleeping (sometimes more than sixteen hours), and when she wakes up in the evening, she will eat and then sit in her recliner to watch television or read until she goes to bed again around 1:00 a.m. The ALJ remarked that Sangel's allegedly limited daily activities could not be objectively verified with any reasonable degree of certainty, and even if her activities were truly as limited as alleged, it would be difficult to attribute that degree of limitation to her medical condition considering the relatively weak medical evidence. The ALJ considered her reported limited daily activities outweighed by the other factors discussed in her decision. AR 19.

The ALJ appropriately evaluated the credibility of Sangel's daily activities. Without expressly discrediting her allegations, the ALJ acknowledged that nothing in the evidence corroborated the severity of the limitations as alleged and that other factors she considered provided better evidence of Sangel's impairments. This is supported by substantial evidence since nothing in the record suggests Sangel's impairments compelled her to sleep for up to sixteen hours or that she could not perform the physical maneuvers of household chores. In fact, some of the evidence, such as Dr. Wu's evaluation and the functional capacity evaluation, suggests that she could perform physical work-related activities within defined limitations.

Finally, the ALJ considered Sangel's work history, and stated it provided probative weight towards credibility, but there was one inconsistency that eroded that weight. Sangel worked in the five years leading up to her alleged onset date of March 2001, and stopped working due to her physical problems, which is supported by reports

she made to various health providers. However, she never made an effort to determine her eligibility for retraining or fitness for work through Vocational Rehabilitation or other employment services. AR 18. In addition, she now also claims her mental impairments prevent her from working, but she did not acknowledge them as a reason for her employment ending in the past. The ALJ does not appear to rely heavily on this factor in determining Sangel's credibility, as there is better evidence of the extent of her mental and physical limitations.

Overall, the ALJ conducted a proper analysis of Sangel's credibility. She credited Sangel's subjective allegations which were supported by substantial evidence in the record and discredited those allegations that were inconsistent with other evidence in the record or had no objective support. The ALJ's credibility analysis and her RFC determination are supported by substantial evidence.

C. Claimant's Ability to Perform "Other Work" in National Economy

Sangel does not contest the ALJ's hypothetical question to the VE or the VE's testimony based on the hypotheticals, but because the Commissioner has the burden to prove that the claimant could perform other work in the national economy, I will consider whether the Commissioner has met that burden. Once it has been determined at step four that the claimant does not have the RFC to perform his or her past relevant work, the burden shifts to the Commissioner to prove that there are other jobs in the national economy that the claimant can perform. *Cox v. Apfel*, 160 F.3d 1203, 1206 (8th Cir. 1998). The Commissioner can meet this burden through one of two means.

If an applicant's impairments are exertional, (affecting the ability to perform physical labor), the Commissioner may carry this burden by referring to the medical-vocational guidelines or 'Grids,' which are fact-based generalizations about the availability of jobs for people of varying ages, educational backgrounds, and previous work experience, with differing degrees of exertional impairment.

Pearsall v. Massanari, 274 F.3d 1211, 1219 (8th Cir. 2001) (quoting *Gray v. Apfel*, 192 F.3d 799, 802 (8th Cir. 1999)). If the claimant has nonexertional impairments, the ALJ is required to utilize the testimony of a VE. *Reed v. Sullivan*, 988 F.2d 812, 815-16 (8th Cir. 1993). The Commissioner may then rely on the testimony of the VE to satisfy his burden of showing that the claimant can perform other work. *See Guilliams*, 393 F.3d at 804 (“The Commissioner may rely on a vocational expert’s response to a properly formulated hypothetical question to show that jobs that a person with the claimant’s RFC can perform exist in significant numbers.”) “Testimony from a vocational expert is substantial evidence only when the testimony is based on a correctly phrased hypothetical question that captures the concrete consequences of a claimant’s deficiencies.” *Cox*, 495 F.3d at 620.

The ALJ asked the VE two hypothetical questions. The first was an individual who could lift up to 20 pounds occasionally and 10 pounds frequently. The individual could stand and walk for up to six hours and sit for six hours in an eight-hour day, with normal breaks. The individual could never climb ladders, ropes, or scaffolds and could occasionally balance, stoop, kneel, crouch, or crawl. The individual could perform routine and repetitive vocational tasks, and could only have brief, superficial interaction with the public and co-workers. AR 56. The VE stated an individual with these limitations would not be able to perform any of Sangel’s past work. However, the VE thought an individual with the described limitations could perform work as a collator operator, poly packer, or a small parts assembler. AR 57. These jobs were light and unskilled and existed in significant numbers in the national and regional economy.

In the second hypothetical, the ALJ asked the VE to consider an individual who could lift up to 10 pounds occasionally and frequently, could stand and walk for up to two hours and sit for up to six hours in an eight-hour workday with normal breaks, and could occasionally climb ramps or stairs but never ladders, ropes or scaffolds. AR 57. This individual could also occasionally balance, stoop, kneel, crouch, or crawl and needed to perform routine and repetitive tasks with brief and superficial interaction with

the public and co-workers. This individual should avoid concentrated exposure to the operational control of moving and hazardous machinery and unprotected heights. AR 57-58. The VE stated an individual with these limitations could not perform any of the claimant's past work, but sedentary jobs such as assembling eyeglass frames or inserting eyeglass lenses and stuffing toys and sporting equipment would be appropriate. These jobs also existed in significant numbers in the national and regional economy. AR 58. Based on the VE's response to these hypotheticals, the ALJ concluded that "considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy" and found her not disabled. AR 22.

The Commissioner met his burden of proving that Sangel could perform other work in the national economy. Sangel's limitations as described in the RFC were accurately included in the hypothetical questions for the VE to consider. The only additional limitation that Sangel's attorney asked the VE to consider was an individual who slept as much as eight to ten hours every day and had difficulty with concentration due to a combination of medications. The VE responded that he could not comment on the concentration because he was unclear about the level described, but he knew of no job in the economy that would allow someone to sleep for eight to ten hours during the workday. AR 60. The ALJ addressed Sangel's difficulty with concentration with the limitation that the individual could only perform routine and repetitive tasks. The sleep limitation is not supported by substantial evidence in the record as nothing suggests that Sangel's impairments compel her to sleep for eight to ten hours during the day. The ALJ was not required to consider the VE's response to that hypothetical. The ALJ's second hypothetical accurately captured the concrete consequences of Sangel's impairments which were supported by substantial evidence and therefore the ALJ could rely on the VE's response that other work was available in the national economy for an individual with those impairments.

Conclusion

After a thorough review of the entire record and in accordance with the standard of review this court must follow, the court concludes that the ALJ's determination that Sangel was not disabled within the meaning of the Act is supported by substantial evidence in the record. Accordingly, the decision of the ALJ must be **affirmed** and judgment will be entered in favor of the Commissioner and against Sangel.

IT IS SO ORDERED.

DATED this 21st day of December, 2012.



LEONARD T. STRAND
UNITED STATES MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA