

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

PATRICIA J. LUDERS,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

No. C07-2063

RULING ON JUDICIAL REVIEW

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I. INTRODUCTION

This matter comes before the Court on the Complaint (docket number 1) filed by Plaintiff Patricia J. Luders on September 12, 2007, requesting judicial review of the Social Security Commissioner's decision to deny her application for Title II disability insurance benefits. Luders asks the Court to reverse the decision of the Social Security Commissioner ("Commissioner") and order the Commissioner to provide her disability insurance benefits. In the alternative, Luders requests the Court to remand this matter for further proceedings.

II. PRIOR PROCEEDINGS

On September 9, 2005, Luders applied for disability insurance benefits. In her application, Luders alleged an inability to work since March 11, 2005, due to spinal stenosis, depression, fibromyalgia, degenerative arthritis, carpal tunnel, and tendinitis. Luders' application was denied on November 30, 2005. On March 30, 2006, her application was denied on reconsideration. On May 11, 2006, Luders requested an administrative hearing before an Administrative Law Judge ("ALJ"). On November 7, 2006, Luders appeared with counsel, via video conference, before ALJ John E. Sandbothe. Luders, her husband, Ronald Luders, and vocational expert Roger Marquardt testified at the hearing. In a decision dated February 6, 2007, the ALJ denied Luders' claim. The ALJ determined that Luders was not disabled and not entitled to disability insurance benefits because she was functionally capable of performing her past relevant work as a bank switchboard operator. Luders appealed the ALJ's decision. On July 16, 2007, the Appeals Council denied Luders' request for review. Consequently, the ALJ's February 6, 2007 decision was adopted as the Commissioner's final decision.

On September 12, 2007, Luders filed this action for judicial review. The Commissioner filed an answer on December 3, 2007. On January 3, 2008, Luders filed a brief arguing there is not substantial evidence in the record to support the ALJ's finding that she is not disabled and that she could perform her past relevant work. On March 3,

2008, the Commissioner filed a responsive brief arguing the ALJ's decision was correct and asking the Court to affirm the ALJ's decision. On October 17, 2007, both parties consented to proceed before the undersigned in this matter pursuant to the provisions set forth in 28 U.S.C. § 636(c).

III. PRINCIPLES OF REVIEW

Title 42, United States Code, Section 405(g) provides that the Commissioner's final determination following an administrative hearing not to award disability insurance benefits is subject to judicial review. 42 U.S.C. § 405(g). 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. Luders’ Education and Employment Background

Luders was born in 1952. She is a high school graduate. Luders worked for Wells Fargo Bank from 1990 to 2005. She was a switchboard operator for customer service. She worked part-time her final two to three years at the bank. The bank also allowed her special work accommodations in the last two to three years of her employment. For example, her work schedule was set up so that she only worked every other day. Luders was also allowed to stand or sit as needed throughout her work day. Luders testified that she stopped working because her job was eliminated due to her inability to perform the work required by the bank.

B. Administrative Hearing Testimony

1. Luders’ Testimony

At the administrative hearing, Luders’ attorney first questioned Luders about her pain and fibromyalgia and its effect on her work at the bank. According to Luders, her pain and problems with fibromyalgia started twenty to twenty-five years ago. She testified that the pain caused her fatigue. As a result of the fatigue, she had difficulty staying awake at her bank job and would doze off while driving her car. She also testified that the pain and fatigue made it difficult to concentrate and remember things at work. She also missed days she was supposed to work, had to leave work early, and took more than normal breaks at work because of her problems with pain and fatigue.

Next, Luders’ attorney inquired whether she continued to have any complications from past back surgery which was performed in 1982. Luders testified that she has pain

which starts in her back and radiates down her left leg to her left foot. The pain also causes numbness in her left leg and foot.

Luders also indicated that she needed to have surgery on her left knee. According to Luders, her knee pain was 10 plus on a scale of 0 to 10. She testified that her knee pain made it difficult for her to stand for any length of time. She also testified that pain medication was not successful in alleviating her discomfort. When asked how she functions with her knee problem, Luders responded "I don't function with it."¹

Luders' attorney also asked Luders about her sleep patterns. According to Luders, she has difficulty sleeping all night. She testified that she is able to sleep for one to two hours and then she up for one to two hours. Luders also testified that she sleeps half of the time during the day.

Luders and her attorney had the following colloquy regarding her problems with depression:

- Q: . . . [W]hat are your depression symptoms?
A: Well, it's hard to concentrate, hard to function. I don't like to do anything.
Q: No energy or ambition?
A: No.
Q: Has your social life changed significantly because of it?
A: Yes, it has.
Q: And how has it changed? Have you had to give up things?
A: I've given up, I've given up family functions. I've given up my church. . . .
Q: Do you ever go out? I mean do you ever go out to dinner, go out to eat, go out to a movie --
A: No.
Q: -- any entertainment?
A: No.

(Administrative Record at 296-97.)

¹ See Administrative Record at 294.

Lastly, Luders testified that she is unable to do any housework. According to Luders, her husband does most of the housework. Her seventy-five year old mother also helps with the housework. Luders also testified that she does very little cooking and receives help from her mother when she does cook.

The ALJ also questioned Luders. The ALJ first asked Luders about her exertional limitations. Luders testified that she can: (1) lift five pounds; (2) walk for two minutes at a time; (3) sit ten to fifteen minutes at one time; and (4) stand for five minutes at one time. When asked whether she does any laundry shopping, cooking, or cleaning, Luders replied that she is unable to do any of those activities and relies on her husband to do them.² When asked to describe her typical day, Luders replied:

I get up at, I'm up for the day, let's put it that way, at 5:00 [a.m.] and I sit in my chair, watch TV, make sure [my grandson] is ready for school. The bus comes and picks him up. After that I go back and I sit in my chair until my husband gets home. [My grandson] gets home on the bus and [he] has supper. My husband gets his own supper. I don't fix supper. He gets his own supper and then we go to bed.

(Administrative Record at 302.)

2. *Ronald Luders' Testimony*

Ronald Luders ("Ronald") is Luders' husband. They have been married for thirty-two years. Ronald testified that Luders is unable to do dishes or the laundry and he does most of the housework himself. Ronald further testified that he and Luders no longer take long walks or bike rides. According to Ronald, he and Luders do not have much of a social life. When asked whether Luders is able to take care of their grandson, Ronald responded:

A: Well, he sort of takes care of himself. Like when I'm leaving, he knows to run the microwave. He actually makes scrambled eggs and he makes his own chocolate milk, makes a mess.

² Luders testified that she is able to go to the doctor and get her prescriptions.

Q: But she doesn't have to lift him up, carry him?

A: Absolutely not. She could not do that, no.

(Administrative Record at 305-06.) Lastly, Ronald testified that Luders lacks endurance when she has to leave the house. Accordingly to Ronald, after about fifteen minutes of being out, Luders pain becomes problematic and she needs to return home and rest.

3. *Vocational Expert's Testimony*

At the hearing, the ALJ provided vocational expert Roger Marquardt with a hypothetical for an individual who would be able to: (1) occasionally lift 10 pounds, (2) frequently lift 5 pounds, (3) be on her feet no more than two hours total in a normal work day, and (4) occasionally balance, stoop, crouch, kneel, crawl, and climb. The vocational expert testified that under such limitations, Luders could perform her past relevant work as a switchboard operator. The ALJ provided the vocational expert with a second hypothetical with the same limitations, except that the individual would have two or more absences from work each month. The vocational expert testified that the additional limitation in the second hypothetical would make Luders unemployable.

Luders' attorney also questioned the vocational expert and asked him the following questions:

Q: If [Luders] had to work at a slow pace up to a third of the work day, . . . would she be able to be competitively employed?

A: Not on a consistent basis[.] . . .

Q: And if she had to take on more than the normal work breaks that were allowed per day up to two or three, a half-hour at a time, would that be acceptable to any employer?

A: No.

Q: So would that eliminate any past work?

A: It would.

(Administrative Record at 309-10.)

C. Luders' Medical History

A psychologist progress note, dated January 6, 2004, is the earliest pertinent medical record contained in the administrative record. According to the progress note, Luders met with Dr. Sunita Kantamneni, M.D., for a follow-up appointment. At the appointment, Luders complained of significant difficulty going to sleep, irritability, and being tired. Dr. Kantamneni diagnosed Luders with major depression and prescribed Vistaril to help her get to sleep. At another follow-up appointment, on January 22, 2004, Luders reported that she was doing much better and was having good sleep while on Vistaril.

On March 25, 2004, Luders met with Dr. Claro T. Palma, M.D., for a follow-up appointment. Luders' primary complaint was pain in both of her knees. Luders indicated that she had "much difficulty" with: (1) bending to pick something up off the floor; (2) reaching overhead to get a five pound object; (3) getting in and out of a car; (4) running errands and shopping; (5) getting in and out of bed; (6) opening a new milk carton; and (7) walking outdoors on flat ground. Luders claimed that her pain was a 10 on a scale of 1 to 10 with 10 being severe pain. She also claimed that fatigue was a major problem.³ Luders also informed Dr. Palma that she "sometimes" got adequate rest and sleep at night, had stiffness in her joints when she woke up in the morning, and her joints "never" loosened up during the day. Dr. Palma diagnosed Luders with: (1) fibromyalgia with variable and persistent symptoms; (2) degenerative spine arthritis of the cervical and lumbar spine, with previously documented spinal stenosis, with chronic pain; (3) recent episode of tendinitis in the left knee; (4) rotator cuff tendinitis of the left shoulder stable; and (5) osteoarthritis of the peripheral joints stable. Dr. Palma recommended medication as treatment and encouraged regular aerobic exercise and stretching exercises.

³ She ranked her fatigue as a 10 on a scale of 1 to 10 with 10 being "fatigue is a major problem." See Administrative Record at 181.

On September 30, 2004, Luders had her next follow-up appointment with Dr. Palma. Luders' primary complaint was pain in her arms and elbows. Luders reported that she had "much difficulty" with: (1) bending to pick something up off the floor; (2) reaching overhead to get a five pound object; (3) getting in and out of a car; (4) running errands and shopping; (5) getting in and out of bed; (6) opening a new milk carton; (7) walking outdoors on flat ground; (8) washing and drying herself; (9) turning faucets on and off; (10) opening car doors; (11) dressing herself; (12) standing up straight from a chair; and (13) climbing up five steps. Again, Luders claimed that her pain was a 10 and fatigue was a major problem. She further stated that she did not get adequate rest or sleep at night. Dr. Palma diagnosed Luders with: (1) fibromyalgia with variable and persistent symptoms; (2) degenerative spine arthritis of the cervical and lumbar spine, with previously documented spinal stenosis, with stable symptoms; (3) rotator cuff tendinitis of the left shoulder stable; (4) lateral epicondylitis of both elbows; and (5) osteoarthritis of the peripheral joints. Dr. Palma recommended medication and ice for elbows as treatment.

On April 1, 2004, Luders had another follow-up appointment with Dr. Kantamneni. At the appointment, Luders reported that she was doing "very well" without any concerns. On August 4, 2004, Luders continued to have no concerns. On December 16, 2004, Luders informed Dr. Kantamneni that she was not doing very well. She reported that she had "experienced [a] more depressed mood lately and [was] having difficulty doing her day to day chores."⁴ Dr. Kantamneni prescribed Lexapro as treatment. On February 3, 2005, Luders reported that she was doing very well and indicated that her depression had "improved significantly" after starting Lexapro. On April 5, 2005, she continued to be doing "very well."

On April 7, 2005, Luders had another follow-up appointment with Dr. Palma. Her chief complaint was joint pain. According to Luders she had "much difficulty" with:

⁴ See Administrative Record at 190.

(1) bending to pick something up off the floor; (2) reaching overhead to get a five pound object; (3) getting in and out of a car; (4) running errands and shopping; (5) getting in and out of bed; (6) opening a new milk carton; (7) walking outdoors on flat ground; (8) opening car doors; (9) dressing herself; (10) standing up straight from a chair; and (11) climbing up five steps. Again, Luders claimed that her pain was a 10 and fatigue was a major problem. She further stated that she did not get adequate rest or sleep at night. Dr. Palma diagnosed Luders with: (1) fibromyalgia with variable and persistent symptoms; (2) degenerative spine arthritis of the cervical and lumbar spine, with previously documented spinal stenosis, with variable symptoms; (3) osteoarthritis of the peripheral joints with variable knee pain; and (4) rotator cuff tendinitis with persistent symptoms of the left shoulder. Dr. Palma continued to treat Luders with medication.

Luders next visited Dr. Palma on May 12, 2005. She reported that she had “much difficulty” with: (1) bending to pick something up off the floor; (2) opening car doors; (3) getting in and out of a car; (4) dressing herself; (5) getting in and out of bed; (6) walking outdoors on flat ground; (7) lifting a full cup or glass to her mouth; (8) shampooing her hair; (9) standing up straight from a chair; and (10) climbing up five steps. Luders also indicated that she was unable to take a tub bath, reach overhead to get a five pound object, and run errands or go shopping. Luders further claimed that her pain was a 10 and fatigue was a major problem. She also stated that she did not get adequate rest or sleep at night. Dr. Palma gave Luders a cortisone injection in her left knee as treatment.

On June 7, 2005, Luders had another follow-up appointment with Dr. Kantamneni. At the appointment, Luders reported that she was doing “exceptionally” well and had no concerns. On October 3, 2005, Luders reported that she was depressed, tired, overwhelmed, and unable to get things done at home. Luders also indicated that she was sleeping 12-14 hours per day. Dr. Kantamneni prescribed Ritalin and continued Effexor and Lexapro as treatment.

On October 12, 2005, Dr. Beverly Westra, Ph.D., reviewed Luders' medical records and provided Disability Determination Services ("DDS") with a Psychiatric Review Technique assessment for Luders. Dr. Westra diagnosed Luders with major depressive disorder. Dr. Westra determined that Luders had no limitations in her restriction of activities of daily living and maintaining social functions. Dr. Westra found that Luders would have mild limitations in maintaining concentration, persistence, or pace. Dr. Westra concluded that:

[Luders] was diagnosed with Major Depression, and her symptoms improved significantly with medication. . . .

ADL's [(activities of daily living)] are intact. She and her husband have guardianship for her 4 year old grandson. She reports no significant social or cognitive problems. She reports panic attacks, but this is not reflected in the MER [(medical evidence reports)]. Third party reports ADL's are inhibited primarily by pain.

Impairment is nonsevere. MER and ADL's are consistent in this regard. Allegation of depression is credible to this extent.

(Administrative Record at 208.)

On November 3, 2005, Luders had her next follow-up appointment with Dr. Kantamneni. She reported that she was doing "much better" since her previous appointment. She informed Dr. Kantamneni that she was less tired and sleeping less time during the day. She also indicated that she was able to do her housework "much more effectively." Dr. Kantamneni continued Luders' medications as treatment.

On November 4, 2005, Luders met with Dr. Amanda R. Tew, D.O., complaining of pain and fatigue. In reviewing Luders' medical history, Dr. Tew noted:

[Luders] is able to care for her[self] and dress herself. As far as heavy cleaning, lifting, yard work, she depends on her husband for these. She states she could at one-time carry 10 pounds but for a short period of time due to the pain in her hands and wrists. Standing and walking, she is able to do these. She does have pain down her left leg, occasionally

giving out on her. Sitting for long periods of time, she has difficulty getting up after sitting. She has a lot of pain in her back and lower extremities. [Luders] says, 'I feel like 100 years old.'

(Administrative Record at 210.) Upon examination, Dr. Tew also noted that Luders is able to walk without assistance. Dr. Tew found, however, that she fidgeted in her chair and readjusted her position often. Dr. Tew also noted that Luders was slow getting up from sitting to standing. Additionally, Dr. Tew found that Luders' deep tendon reflexes were intact at 2/4 bilaterally in her upper and lower extremities. Her strength was slightly reduced at 4/5 in both the upper and lower extremities. She had no gross abnormalities on her range of motion. Luders had "some mild" limitations with her hip flexion, back extension, and side flexion in the back. Lastly, Dr. Tew noted seven positive fibromyalgia tender points. Dr. Tew diagnosed Luders with: (1) osteoarthritis, global, (2) fibromyalgia, (3) lumbar stenosis, and (4) depression. Dr. Tew concluded:

Given [Luders'] diagnoses, she states that she has limitations as far as heavy cleaning, lifting, yard work. She had difficulty standing for long periods of time and sitting for long periods of time secondary to her above complaints. Difficulty getting around after sitting for long periods of time is consistent with osteoarthritis. If she does have radicular pain secondary to lumbar stenosis, she may continue to have left leg pain and difficulty with standing for long periods of time. Otherwise, [Luders] is able to handle cash and no other noted limitations.

(Administrative Record at 211.)

On November 28, 2005, Dr. Claude Koons, M.D., reviewed Luders' medical records and provided DDS with a physical residual functional capacity ("RFC") assessment. Dr. Koons determined that Luders could: (1) occasionally lift and/or carry 10 pounds, (2) frequently lift and/or carry less than 10 pounds, (3) stand and/or walk with normal breaks for a total of at least 2 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. Koons further determined that Luders could balance, stoop,

kneel, crouch, and crawl occasionally. Dr. Koons also opined that Luders could occasionally climb ramps or stairs, but could never climb ladders, ropes, or scaffolds. Dr. Koons found no manipulative, visual, communicative, or environmental limitations. Dr. Koons concluded that:

Evidence does indicate that [Luders] does have the diagnosis of fibromyalgia with varying symptoms. . . . She has also been diagnosed with lumbar stenosis and osteoarthritis. She does take multiple medications for her pain. She gets limited relief, she has undergone steroid injections with no relief. . . . [Luders] reports that she is able to care for her 4 year old grandson. She reports that she spends much of her day sitting. She is able to prepare simple meals. She is able to do laundry, some dusting, and loading/unloading the dishwasher. She is able to drive and do errands such as grocery shopping. . . .

(Administrative Record at 218-19.)

On January 16, 2006, Luders had another follow-up appointment with Dr. Kantamneni. Luders reported that she was doing better, but continued to experience a depressed mood and tiredness. Dr. Kantamneni continued to treat her with medication. On February 15, 2006, Luders reported that she continued to feel tired and depressed often. Dr. Kantamneni prescribed Cymbalta and discontinued Lexapro as treatment. Luders also continued taking Effexor and Ritalin as treatment. On March 13, 2006, Luders indicated that she did better on Lexapro than on Cymbalta and requested an increased dosage of Lexapro. Dr. Kantamneni had her discontinue Cymbalta and increased her dosage of Lexapro from 10 mg to 20 mg.

On March 30, 2006, Dr. Kantamneni filled out a mental impairment questionnaire provided by Luders' attorney. Dr. Kantamneni diagnosed Luders with major depression, recurrent. Dr. Kantamneni indicated that Luders is treated with medication and her response to the treatment is moderate. Dr. Kantamneni found that Luders was limited but satisfactory in her ability to maintain attention for a two hour segment, maintain regular attendance and be punctual within customary, usually strict tolerances, sustain an ordinary

routine without special supervision, work in coordination with or proximity to others without being unduly distracted, make simple work-related decisions, complete a normal workday and workweek without interruptions from psychologically based symptoms, ask simple questions or request assistance, get along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes, respond appropriately to changes in a routine work setting, deal with normal work stress, be aware of normal hazards and take appropriate precautions, understand and remember detailed instructions, carry out detailed instructions, set realistic goals or make plans independently of others, and travel in unfamiliar places. Dr. Kantamneni also found that she was seriously limited, but not precluded from accepting instructions and responding appropriately to criticism from supervisors and dealing with stress of semi-skilled and skilled work. Dr. Kantamneni further found that Luders had mild difficulties in maintaining social functioning, mild deficiencies of concentration, persistence, or pace, and mild restriction of activities of daily living. Dr. Kantamneni noted that Luders's depression made it difficult for her tolerate physical pain. Thus, Dr. Kantamneni opined that Luders' impairments or treatment would cause her to be absent more than four days per month from work.

On April 10, 2006, Luders had a follow-up appointment with Dr. Kantamneni. Luders reported that she was doing "reasonably well" and had no new concerns. Dr. Kantamneni treated her with medication. On June 5, 2006, Luders informed Dr. Kantamneni that she was doing "better" and was keeping herself busy with her grandson. On July 5, 2006, Luders reported that was doing "better" and had no specific concerns. She noted that she continued to experience some tiredness and was dealing with symptoms of fibromyalgia. Dr. Kantamneni continued to treat her with medication. On August 16, 2006, Luders reported that she was often feeling anxious and had been unable to sleep. She indicated that taking care of her grandson caused her a great deal stress. Dr. Kantamneni prescribed Klonopin as treatment and had her continue her other medications.

On August 17, 2006, Luders had a follow-up appointment with Dr. Palma. Dr. Palma diagnosed Luders with: (1) fibromyalgia with variable symptoms; (2) degenerative disc disease of the cervical and lumbar spine with previously documented lumbar spinal stenosis; (3) osteoarthritis of the peripheral joints with increasing left knee pain; and (4) rotator cuff tendinitis of the left shoulder. Dr. Palma treated Luders with medication. Additionally, Dr. Palma ordered x-rays of Luders' left knee. The x-rays showed moderate narrowing of the medial joint compartment consistent with degenerative joint disease. Dr. Palma also ordered a bone densitometry report. The report showed that Luders was osteopenic at the AP spine in the L1-L3 region. Luders' bone density in this region of the spine was "10 to 25% below young normal." Her risk of fracture was moderate. Dr. Palma recommended vitamin D and calcium supplements as treatment.

On September 8, 2006, Luders had a follow-up appointment with Dr. Kantamneni. Luders reported that she was doing "very well" and had no concerns. Dr. Kantamneni had Luders continue her medications as treatment.

On December 27, 2006, Dr. Palma filled out a fibromyalgia RFC questionnaire provided by Luders' attorney. Dr. Palma diagnosed Luders with fibromyalgia, lumbar spinal stenosis, osteoarthritis, and rotator cuff tendinitis. Dr. Palma described Luders' symptoms as multiple tender points, nonrestorative sleep, and morning stiffness. Dr. Palma opined that Luders suffered from pain in her lumbosacral spine and cervical spine. Dr. Palma noted that the severity of her pain was variable, but she had persistent daily pain. Dr. Palma found that Luders' pain was precipitated by changing weather, cold, static position, and movement/overuse. Dr. Palma opined that during a typical workday, Luders would frequently experience pain or other symptoms severe enough to interfere with her attention and concentration to perform simple tasks. Dr. Palma also determined that Luders was capable of low stress jobs.

Additionally, Dr. Palma noted that Luders could sit at one time for thirty minutes, and could stand at one time for thirty minutes. Dr. Palma determined that she could sit

and stand/walk about six hours in an eight-hour workday. Dr. Palma noted that Luders would need a job that allowed periods of walking around for about one minute during a six hour workday. She would also need a job that permitted shifting positions at will from sitting, standing, or walking, and allowed her to take unscheduled breaks during an eight-hour workday. Dr. Palma limited Luders to lifting less than 10 pounds occasionally, 10 pounds occasionally, 20 pounds rarely, and never lifting 50 pounds. Dr. Palma further limited Luders to rarely twisting, stooping, and climbing stairs or ladders, and never crouching or squatting. Dr. Palma found that Luders had no limitations with reaching, handling, or fingering. Lastly, Dr. Palma opined that he could not predict how often Luders would be absent from work due to her impairments or treatment.

V. CONCLUSIONS OF LAW

A. ALJ's Disability Determination

The ALJ determined that Luders 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 Luders had not engaged in substantial gainful activity since her alleged disability onset date, March 11, 2005. At the second step, the ALJ concluded that Luders had the following impairments “degenerative disc disease, depression, fibromyalgia, and carpal tunnel syndrome.” At the third step, the ALJ found that Luders 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 Luders’ RFC as follows:

[Luders] has the residual functional capacity to lift up to 10 pounds occasionally and five pounds frequently and to stand/walk for a total of two hours in an eight-hour workday with normal breaks. She can balance, stoop, crouch, kneel, crawl and climb occasionally. She [can] work at a regular pace but not any faster.

Using this RFC, the ALJ determined that Luders could perform her past relevant work as a bank switchboard operator. Therefore, the ALJ concluded that because Luders was capable of performing her past relevant work, she was not disabled.

B. Whether the ALJ Fully and Fairly Developed the Record

Luders contends that the ALJ erred in three respects. First, Luders argues that the ALJ improperly evaluated the opinions of her treating physicians. Next, Luders argues that the ALJ's decision is not supported by substantial medical evidence. Lastly, Luders argues that the ALJ's hypothetical question posed to the vocational expert did not adequately describe her functional limitations.

1. Opinions of Treating Physicians

Luders argues that the ALJ failed to fully consider Dr. Palma's medical opinions and incorporate all of those opinions in his RFC assessment, especially his opinions on Luders' functional limitations. Specifically, Luders maintains that the ALJ failed to address Dr. Palma's limitations on sitting 30 minutes and her need to alternate between sitting and standing. Luders further argues that the ALJ failed to give good reasons for rejecting those limitations. Luders asserts:

Though the ALJ summarized the opinions of the treating physicians, he provided no substantive analysis of the medical evidence. The ALJ's explanation for disregarding the treating physician opinions was extremely superficial and did not identify internally contradictory evidence or alternate medical evidence to support his decision to exclude limitations from . . . Luders' residual functional capacity.

(See Luders' Brief at 17.) Similar to the opinions of Dr. Palma, Luders also argues that the ALJ failed to consider all of Dr. Kantamneni's medical opinions and functional limitations. For example, Luders points out that the ALJ failed to include any limitations on her ability to handle the demands of skilled or semi-skilled work, deal with stress, or accept criticism from supervisors. Luders further argues that the ALJ failed to give good reasons for rejecting those limitations.

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

should not ordinarily be disregarded and is entitled to substantial weight. A treating physician’s opinion regarding an applicant’s impairment will be granted controlling weight, provided the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record.

Singh v. Apfel, 222 F.3d 448, 452 (8th Cir. 2000) (citations omitted). The regulations provide that the longer the treating relationship between a physician and a patient, the more weight should be given to that treating physician’s medical opinions. *See* 20 C.F.R. § 404.1527(d)(2)(I). Furthermore, an ALJ is “encouraged to give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.” *Singh*, 222 F.3d at 452. The regulations require an ALJ to give “good reasons” for giving weight to statements provided by a treating physician. *See* 20 C.F.R. § 404.1527(d)(2). The regulations also require an ALJ to give “good reasons” for rejecting statements provided by a treating physician. *Id.* “Although a treating physician’s opinion is entitled to great weight, it does not automatically control or obviate the need to evaluate the record as a whole.” *Hogan v. Apfel*, 239 F.3d 958, 961 (8th Cir. 2001) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1013 (8th Cir. 2000)). “The ALJ may discount or disregard such an opinion if other medical assessments are supported by superior medical evidence, or if the treating physician has offered inconsistent opinions.” *Id.*; *see also Travis*, 477 F.3d at 1041 (“A physician’s statement that is ‘not supported by diagnoses based on objective evidence’ will not support a finding of disability. *Edwards v. Barnhart*, 314 F.3d 964, 967 (8th Cir. 2003). If the doctor’s opinion is ‘inconsistent with or contrary to the medical evidence as a whole, the ALJ can accord it less weight.’ *Id.*”); *Strongson*, 361 F.3d at 1070 (an ALJ does not need

to give controlling weight to a physician's RFC assessment if it is inconsistent with other substantial evidence in the record); *Cabrnoch v. Bowen*, 881 F.2d 561, 564 (8th Cir. 1989) (the resolution of conflicts of opinion among various treating and examining physicians is the proper function of an ALJ).

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

The ALJ's decision provides a detailed summary of the medical opinions of both Drs. Palma and Kantamneni. The ALJ does not, however, offer any discussion or determination of the weight Drs. Palma's and Kantamneni's opinions should receive. Furthermore, as Luders points out, the ALJ, in determining her RFC, provides no discussion or indication that he considered Dr. Palma's opinions that she: (1) would be limited to sitting for 30 minutes at one time; (2) would be limited to standing for 30 minutes at one time; (3) would need to alternate between sitting and standing throughout an eight-hour workday; (4) would need unscheduled breaks during an eight-hour workday;

and (5) would frequently experience pain or other symptoms severe enough to interfere with her attention and concentration to perform simple tasks. Luders also correctly points out that the ALJ failed to discuss Dr. Kantamneni's opinions that she had limitations in her ability to handle the demands of skilled or semi-skilled work, deal with stress, and accept criticism from supervisors.

An ALJ has a duty to develop the record fully and fairly. *Cox*, 495 F.3d at 618. An ALJ must also assess a claimant's RFC on all of the relevant evidence. *Guilliams*, 393 F.3d at 803. Relevant evidence includes the opinions of treating physicians. *Lacroix*, 465 F.3d at 887. If an ALJ rejects the opinions of a treating physician, the regulations require that the ALJ give "good reasons" for rejecting those opinions. *See* 20 C.F.R. § 404.1527(d)(2). The Court finds that the ALJ has failed to meet these requirements. In addition to failing to weigh Drs. Palma's and Kantamneni's opinions, the ALJ, in his decision, failed to provide any reasons, let alone "good reasons" for either including or excluding Drs. Palma's and Kantamneni's opinions regarding Luders' RFC in his own RFC determination. 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. Palma's and Kantamneni's opinions. On remand, the ALJ shall provide clear reasons for accepting or rejecting Drs. Palma's and Kantamneni's opinions and support his reasons with evidence from the record, particularly with regard to Luders' RFC. Additionally, if the ALJ determines that a critical issue is undeveloped in the record, he should seek additional clarifying statements from Luders' treating physicians. *See Stormo v. Barnhart*, 377 F.3d 801, 806 (8th Cir. 2004).

2. Substantial Medical Evidence

Luders argues that the ALJ's decision is not supported by substantial medical evidence because the ALJ relied solely on the opinions of non-treating, non-examining state agency physicians and failed to properly consider the opinions of Drs. Palma and Kantamneni. Similar to Drs. Palma and Kantamneni, the ALJ's decision provides a

detailed summary of the opinions of the non-treating, non-examining state agency physicians, but offers no discussion or explanation of how those opinions were determinative for Luders' RFC or why those opinions should outweigh the opinions of Drs. Palma and Kantamneni. An ALJ has a duty to develop the record fully and fairly. *Cox*, 495 F.3d at 618. By simply summarizing the medical evidence and failing to explain how the medical evidence supports his decision, the ALJ has not fully or fairly developed the record in this case. Therefore, the Court finds that this case should be remanded for further development of the medical evidence. On remand, the ALJ must explain his reasons for accepting or rejecting the medical evidence which is pertinent to Luders' RFC assessment. Only then will the Court be able to determine "whether the ALJ's decision is supported by substantial evidence on the record as a whole." *Vester*, 416 F.3d at 889.

3. *The Hypothetical Question*

Luders argues that the ALJ's hypothetical question to the vocational expert did not adequately describe her limitations. Hypothetical questions posed to a vocational expert, including a claimant's RFC, must set forth his or her physical and mental impairments. *Goff*, 421 F.3d at 794. "The hypothetical question must capture the concrete consequences of the claimant's deficiencies." *Hunt v. Massanari*, 250 F.3d 622, 625 (8th Cir. 2001) (citing *Taylor v. Chater*, 118 F.3d 1274, 1278 (8th Cir. 1997)). The ALJ is required to include only those impairments which are substantially supported by the record as a whole. *Goose v. Apfel*, 238 F.3d 981, 985 (8th Cir. 2001); *see also Haggard v. Apfel*, 201 F.3d 591, 595 (8th Cir. 1999) ("A hypothetical question 'is sufficient if it sets forth the impairments which are accepted as true by the ALJ.' *See Davis v. Shalala*, 31 F.3d 753, 755 (8th Cir. 1994) (quoting *Roberts v. Heckler*, 783 F.2d 110, 112 (8th Cir. 1985)."). In sections **V.B.1** and **V.B.2** of this decision, the Court remanded this matter for further consideration of the opinions of Drs. Palma and Kantamneni and for further consideration of the medical evidence as a whole. Accordingly, the Court determines that on remand, the ALJ should also reconsider the hypothetical posed to the vocational expert to make sure

that it captures the concrete consequences of Luders' limitations based on the medical evidence as a whole, including the opinions of Drs. Palma and Kantamneni. *See Hunt*, 250 F.3d at 625.

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. Palma and Kantamneni and the medical evidence as a whole. 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. Palma and Kantamneni, provide clear reasons for accepting

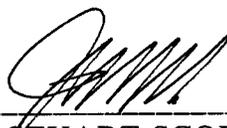
or rejecting their opinions, and support his reasons with evidence from the record. Similarly, the ALJ must fully develop the record with regard to the medical evidence as a whole, including the opinions of non-treating, non-examining state agency physicians. The ALJ should also reconsider the hypothetical he posed to the vocational expert in accordance with his reconsideration of the other issues on remand.

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 5th day of September, 2008.



JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA