UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

VALERIE R. MYERS DONAHUE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CAUSE NO. 1:14-cv-00387-SLC**
	)	
COMMISSIONER OF SOCIAL SECURITY, ***sued as Carolyn W. Colvin, Acting Commissioner of SSA,***	)	
	)	
Defendant.	)	

OPINION AND ORDER

Plaintiff Valerie R. Myers Donahue appeals to the district court from a final decision of the Commissioner of Social Security ("Commissioner") denying her application under the Social Security Act (the "Act") for a period of disability and Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI").[1] (DE 1). For the following reasons, the Commissioner's decision will be AFFIRMED.

I. PROCEDURAL HISTORY

Myers Donahue applied for DIB and SSI in February 2012, alleging disability as of January 1, 2010, which she later amended to September 1, 2010. (DE 11 Administrative Record ("AR") 32, 159-60, 163-69). She was last insured for DIB on September 30, 2012. (AR 247); *see Stevenson v. Chater*, 105 F.3d 1151, 1154 (7th Cir. 1997) (explaining that with respect to a DIB claim, a claimant must establish that she was disabled as of her date last insured in order to recover DIB). The Commissioner denied Myers Donahue's application initially and upon

[1] All parties have consented to the Magistrate Judge. (DE 14); *see* 28 U.S.C. § 636(c).

reconsideration. (AR 92-99, 103-16). After a timely request, a hearing was held on May 30, 2013, before Administrative Law Judge William D. Pierson ("the ALJ"), at which Myers Donahue, who was represented by counsel; her sister-in-law; and a vocational expert, Marie Kieffer (the "VE"), testified. (AR 30-87). On July 23, 2013, the ALJ rendered an unfavorable decision to Myers Donahue, concluding that she was not disabled because despite the limitations caused by her impairments, she could perform a significant number of unskilled light jobs in the economy. (AR 12-24). The Appeals Council denied Myers Donahue's request for review (AR 1-8, 276-78), at which point the ALJ's decision became the final decision of the Commissioner. *See* 20 C.F.R. §§ 404.981, 416.1481.

Myers Donahue filed a complaint with this Court on December 11, 2014, seeking relief from the Commissioner's final decision. (DE 1). Myers Donahue advances just one argument in her appeal—that the ALJ improperly evaluated the medical source statement of Randal Podoll, P.A., and Scott Gutowski, D.O., dated October 30, 2012. (DE 20 at 9-11).

II. FACTUAL BACKGROUND[2]

At the time of the ALJ's decision, Myers Donahue was 51 years old (AR 159); had a high school education (AR 37); and possessed past work experience as a machine operator, stocker, rehabilitation aide, saw operator, material handler, and plastics handler (DE 20 at 2; AR 199, 275). She alleges disability due to lumbar spondylosis, lumbar degenerative disc disease, small enthesophyte of the greater trochanters (left greater than right), chronic back pain, right shoulder pain, major depressive disorder, anxiety, and post traumatic stress disorder ("PTSD"). (DE 20 at

[2] In the interest of brevity, this Opinion recounts only the portions of the 443-page administrative record necessary to the decision.

2). Myers Donahue does not challenge the ALJ's consideration of her mental impairments, and thus, the Court will focus on the evidence pertaining to her physical limitations. (DE 20 at 9-11; DE 30).

A. Myers Donahue's Testimony at the Hearing

At the hearing, Myers Donahue testified that she lives in a house with her boyfriend; she had obtained Medicaid as of January 2013 and receives food stamps. (AR 36-37, 61, 64). She drives a car, but not more than 30 minutes at a time due to her back pain. (AR 37). She can dress herself, but her daughter helps her to wash her back and shave her legs; her family also assists her with household chores. (AR 68-69, 74-75). On a typical day, Myers Donahue performs light household tasks, including vacuuming and laundry, interspersed with frequent periods of rest. (AR 60-61, 69-70). She goes shopping with others because she needs help lifting heavy items. (AR 62).

Myers Donahue cited her shoulder and back pain as the primary ailments that prevent her from working. (AR 45). She has pain in her right shoulder if she lifts 10 pounds; she can raise her right arm just halfway up. (AR 46-47). She is right-hand dominant; she can no longer play horseshoes or lift pans out of the oven with her right arm, but she can keyboard, write, cook, and feed herself with her right hand. (AR 46, 49-50, 63). She tries not to use her right arm much because of the pain, and the pain interferes with her sleep. (AR 45-46, 49). On a ten-point scale, she rated her shoulder pain at rest as a two or three with pain medication and a five or six without medication; when using her shoulder, the pain increases to a seven with medication. (AR 17-18).

Myers Donahue stated that her chronic back pain is a bigger problem than her shoulder pain. (AR 50). Her back pain is constant and interferes with her sleep (AR 51-52); the pain also

shoots to her feet (AR 55). She stated that she gets three hours of sleep on a good night and 15 minutes of sleep on a bad night; she has five bad nights a week. (AR 51-52). She naps three times a day on the couch or in the recliner from 15 minutes to two hours at a time. (AR 52-53). To help relieve her pain, she uses heat and ice, reclines, and takes about 90 Vicodin tablets a month; the Vicodin helps reduce her pain for about an hour, but then the pain returns at a higher intensity. (AR 53-54, 69). She rated her back pain as a nine or 10 even when taking Vicodin. (AR 54). Her back pain worsens if she sits longer than 20 minutes or stands longer than 30 minutes; she estimated that she could walk for 20 minutes, but walking does not help to relieve her pain. (AR 55). She avoids climbing stairs and has difficulty bending over to reach her feet. (AR 63, 68-69).

Additionally, Myers Donahue testified that she experiences pain at least once a day in her left hand and about two to three times a day in her right hand; her hand pain feels "like needles or being poked." (AR 56). She was not taking any medication for her hand complaints. (AR 55-56). She also complained of difficulty gripping items with her right hand and stated that she often drops things.[3] (AR 62).

B. Summary of the Relevant Medical Evidence

On August 27, 2010, Myers Donahue sustained an injury on the job when attempting to maneuver an occupied wheelchair over a curb. (AR 285-86). She initially complained of low back pain. (AR 285-86).

Myers Donahue was treated at Prompt Care Express in September 2010 for complaints of

[3] Myers Donahue's sister-in-law also testified at the hearing, essentially corroborating her testimony. (AR 73-78).

low back pain and right shoulder pain. (AR 309). An X-ray of her back showed mild lumbar spondylosis, but no acute abnormality, and an X-ray of her shoulder showed no acute abnormality. (AR 309-11, 322-23). She went to physical therapy for a low back strain; by the end of September, her back pain was improving, although she still experienced some pain. (AR 309, 315-18). She also was diagnosed with acute tendinitis of the right shoulder; she received a shoulder injection, which resulted in some improvement. (AR 312, 314).

Myers Donahue underwent an initial evaluation at NovaCare Rehabilitation in October 2010 for a right shoulder sprain. (AR 302-05). She complained of throbbing pain in her right shoulder with tingling to her right hand; the pain worsened at night. (AR 302). She reported difficulty with donning a shirt. (AR 302). She was avoiding doing household chores for fear that they would increase her pain. (AR 302). She had a moderate limitation in range of motion of her right shoulder, tenderness to palpation, and slightly decreased strength; she was instructed in exercises and received ultrasound treatment. (AR 303, 349). She rated her pain as a five on a ten-point scale. (AR 349). She had a good prognosis and was expected to reach her goals in six weeks of therapy. (AR 358). However, Myers Donahue was discharged from therapy after just three visits due to an insurance issue. (AR 349).

In January 2011, Myers Donahue saw Randal Podoll, P.A., a physician's assistant with Jonesville Health Care, for her shoulder and back pain. (AR 294-95). He noted that her pain persisted despite physical therapy, a cortisone injection, oral pain medications, and work restrictions. (AR 294). He indicated that she had experienced shoulder bursitis in 2007, which resolved with conservative treatment. (AR 294). An examination revealed pain with shoulder abduction and dullness to pinprick on the right arm, but normal reflexes and pulses in the right

arm. (AR 294). She had normal reflexes and sensation to pinprick in her lower extremities. (AR 295). A straight leg raise test was painful on the left lower back at full extension of the left leg. (AR 295). Range of motion of her back was normal, but caused some discomfort. (AR 295). Mr. Podoll prescribed Elavil, Naprosyn, and Vicodin, and recommended that she undergo an MRI and see an orthopedist. (AR 295). He assigned temporary work restrictions of no repetitive lifting, bending, reaching overhead, or lifting more than 20 pounds. (AR 295). He further recommended that Myers Donahue undergo a functional capacity examination once the MRIs and consults were completed to assign more definitive work restrictions, if any were needed after completion of the work up. (AR 295).

In March 2011, Myers Donahue saw Dr. Kevin Anderson, an orthopedist, at Mr. Podoll's request for evaluation of her right shoulder pain. (AR 291-92). On examination, Myers Donahue was quite hyperactive to pain in various regions of her right shoulder, but she had no significant pain in her hand, wrist, or elbow. (AR 291). She had 35 degrees of active shoulder abduction and 65 degrees passive abduction; she reported pain and tenderness with all maneuvers of her shoulder. (AR 291). Dr. Anderson found it difficult to perform a detailed examination due to her discomfort, and he was "unsure of the validity" of her pain. (AR 291). An X-ray of her right shoulder was unremarkable and "[w]ithin normal limits for the patient's age." (AR 291, 293). Dr. Anderson diagnosed her with right shoulder pain, administered a shoulder injection, prescribed anti-inflammatories, and referred her to therapy for instruction in a home exercise program. (AR 292).

Myers Donahue returned to Dr. Anderson in May 2011. (AR 290). He found it "interesting[]" that, this time, she complained more of pain in her left, rather than her right,

shoulder. (AR 290). He also noted that her back was giving her more issues. (AR 290). Otherwise, her right shoulder was unchanged and still limited in range of motion. (AR 290). He noted that Naprosyn did not appear to be helping; Myers Donahue inquired about narcotic pain medication, and Dr. Anderson referred her to a pain clinic. (AR 290). He stated that he would like to get her involved in therapy, but she had no insurance. (AR 290). He noted that she had litigation pending. (AR 290).

Myers Donahue returned to Mr. Podoll in May 2011 for her chronic back and shoulder problems. (AR 333). Mr. Podoll's goal was to get her involved in therapy and to obtain an MRI; he noted that she had an upcoming court hearing. (AR 333). In July 2011, an examination revealed a positive straight leg raise test on the left, as well as "poor" shoulder abduction. (AR 332). In November 2011, Mr. Podoll documented that Myers Donahue had ongoing shoulder and back pain; he hoped that she could get coverage for an MRI as a result of her court hearing. (AR 329-30). In February 2012, Mr. Podoll noted that Myers Donahue's court cases relating to her shoulder and back pain were still ongoing; he reiterated his hope that coverage for an MRI would be approved. (AR 329). He described her shoulder pain as "poor," but did not include specific measurements. (AR 330).

In April 2012, David Ringel, D.O., examined Myers Donahue at the request of the state agency. (AR 365-67). He noted that she had not had an MRI because worker's compensation refused to pay for it. (AR 365). She was currently on a 15-pound lifting restriction. (AR 365). She initially reported that she needed help with dressing, bathing, cooking, and cleaning, but later clarified that she could perform most of these tasks independently, provided that she takes her time. (AR 365). She had a normal gait, could lie straight back on the examining table, had no

difficulty getting on and off the exam table, and was able to dress and undress for the examination. (AR 366). She could stand on her heels and toes, but could not take steps; she performed a partial squat due to back pain. (AR 367). Her grip strength was 4/5 bilaterally; she could button and zip without difficulty. (AR 367). An examination of her back revealed spasms in the thoracic area, more on the right than the left; she also had pain in the left lumbar and upper right thoracic region. (AR 367). She had reduced range of motion in her shoulders (more distinctly decreased in the right shoulder as compared to the left), hips, and back; her muscle strength was 5/5 in all four extremities, and her sensation was intact. (AR 367).

That same month, R. Fife, M.D., a state agency physician, reviewed Myers Donahue's record and completed a physical residual functional capacity ("RFC") form. (AR 390-97). Dr. Fife concluded that Myers Donahue could lift up to 10 pounds frequently and up to 20 pounds occasionally; stand or walk about six hours in an eight-hour workday; sit for six hours in an eight-hour workday; perform unlimited pushing or pulling (within her lifting restrictions); and occasionally climb, balance, stoop, kneel, crouch, and crawl; but should avoid concentrated exposure to wetness and hazards. (AR 394). Dr. Fife's opinion was later affirmed by a second state agency physician, J. Sands, M.D. (AR 407).

In July 2012, Myers Donahue underwent a lumbar MRI, which showed a small left foraminal disc bulge at L3-4 with mild narrowing of the inferomedial neural foramina and disc degeneration at L4-5 accompanied by a left foraminal bulge-annular tear and facet hypertrophy with mild to moderate left foraminal compromise. (AR 401-02). That same month, Myers Donahue saw Mr. Podoll for her back pain, stating that it "radiates down her legs and up into her neck and arms." (AR 403). She had tenderness of her right shoulder and "poor" shoulder

abduction; a straight leg raise test was more painful on the left. (AR 405). Her grip strength was normal, but she was dull to pinprick on her right hand and left lower leg. (AR 405).

On October 30, 2012, Myers Donahue brought disability forms to Mr. Podoll (AR 431-33), and Mr. Podoll and Scott Gutowski, D.O., completed a physical medical source statement at Myers Donahue's request (AR 409-12).[4] They listed diagnoses of degenerative disc disease in the low back with herniation and right shoulder pain, indicating that her prognosis was guarded. (AR 409). Her symptoms were chronic pain in her right shoulder and left low back. (AR 409). Clinical findings and objective signs were a positive straight leg raise test on the left at 35 degrees, "duller to pinprick," slow up and down from the table, poor abduction of the right shoulder, and decreased grip strength. (AR 409). They indicated that she could walk less than one block, sit for 30 minutes at a time and up to six hours in an eight-hour workday, stand for 15 minutes at a time and stand or walk less than two hours in an eight-hour workday, and lift less than 10 pounds occasionally and never more than 10 pounds. (AR 410-11). They further opined that she would have to walk around for eight minutes every 30 minutes, and that she would need to take up to a 10-minute break every hour due to pain, paresthesias, and numbness. (AR 410). They indicated that she could rarely twist, stoop, bend, squat, or climb stairs, and should never climb ladders. (AR 411). They also concluded that she could not use her right arm, hand, or fingers at all for grasping, fine manipulations, or reaching, but that she could use her left arm, hand, and fingers 80 percent of the time for such activities. (AR 411). Finally, Mr. Podoll and Dr. Gutowski stated that she would be off task from even simple tasks at least 25 percent of the

[4] At the hearing, Myers Donahue testified that although she had seen Dr. Gutowski, she had been treated by Mr. Podoll more often. (AR 65). The Court notes that the only document in the record from Dr. Gutowski is the physical medical source statement dated October 30, 2012. (DE 409-12).

time due to her symptoms. (AR 412).

In January 2013, Myers Donahue went to an urgent care clinic complaining of "pain from head to toes (including toes)." (AR 425). It was noted that she had been receiving 90 Vicodin a month for the past year. (AR 425). The following month, Myers Donahue asked Mr. Podoll for "refills on her pain medications or something stronger," reporting that her pain was worsening. (AR 416). In April 2013, Myers Donahue visited Mr. Podoll for ear pain and to complete disability paperwork. (AR 428-30).

In April 2013, Myers Donahue went to the emergency room for her back pain. (AR 418). Thomas Huntington, M.D., observed that she could move her arms and legs well and that she had intact strength, tone, and senses; however, he noted lumbar spine tenderness. (AR 419). X-rays showed mild lumbar spondylosis and degenerative changes at L5-S1. (AR 421-22). Dr. Huntington wrote that Myers Donahue had not reported that she was taking Vicodin, but the pharmacy discovered this information. (AR 421). He advised her to use her Vicodin and to see her primary care physician if she needed pain management. (AR 421). On June 20, 2013, Myers Donahue told Mr. Podoll that she had been having pain down both of her legs for the past month and that sometimes her legs swell. (AR 442-43).

III. STANDARD OF REVIEW

Section 405(g) of the Act grants this Court "the power to enter, upon the pleadings and transcript of the record, 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 Court's task is limited to determining whether the ALJ's factual findings are supported by substantial evidence, which means "such relevant evidence as a reasonable mind might accept as

adequate to support a conclusion." *Schmidt v. Barnhart*, 395 F.3d 737, 744 (7th Cir. 2005) (citation omitted). The decision will be reversed only if it is not supported by substantial evidence or if the ALJ applied an erroneous legal standard. *Clifford v. Apfel*, 227 F.3d 863, 869 (7th Cir. 2000) (citation omitted).

To determine if substantial evidence exists, the Court reviews the entire administrative record but does not reweigh the evidence, resolve conflicts, decide questions of credibility, or substitute its judgment for the Commissioner's. *Id.* Rather, if the findings of the Commissioner are supported by substantial evidence, they are conclusive. *Jens v. Barnhart*, 347 F.3d 209, 212 (7th Cir. 2003) (citation omitted). "In other words, so long as, in light of all the evidence, reasonable minds could differ concerning whether [the claimant] is disabled, we must affirm the ALJ's decision denying benefits." *Books v. Chater*, 91 F.3d 972, 978 (7th Cir. 1996).

IV. ANALYSIS

A. The Law

Under the Act, a claimant is entitled to DIB or SSI if she establishes an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to . . . last for a continuous period of not less than 12 months." 42 U.S.C. §§ 416(i)(1), 423(d)(1)(A), 1382c(a)(3)(A). A physical or mental impairment is "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D).

The Commissioner evaluates disability claims pursuant to a five-step evaluation process, requiring consideration of the following issues, in sequence: (1) whether the claimant is currently

unemployed; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets or equals one of the impairments listed by the Commissioner, *see* 20 C.F.R. § 404, Subpt. P, App'x 1; (4) whether the claimant is unable to perform her past work; and (5) whether the claimant is incapable of performing work in the national economy.[5] *See Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001) (citations omitted); 20 C.F.R. §§ 404.1520, 416.920. An affirmative answer leads either to the next step or, on steps three and five, to a finding that the claimant is disabled. *Zurawski v. Halter*, 245 F.3d 881, 886 (7th Cir. 2001) (citation omitted). A negative answer at any point other than step three stops the inquiry and leads to a finding that the claimant is not disabled. *Id.* (citation omitted). The burden of proof lies with the claimant at every step except the fifth, where it shifts to the Commissioner. *Clifford*, 227 F.3d at 868 (citation omitted).

B. The Commissioner's Final Decision

On July 23, 2013, the ALJ issued the decision that ultimately became the Commissioner's final decision. (AR 12-24). The ALJ noted at step one of the five-step analysis that Myers Donahue had not engaged in substantial gainful activity since her alleged onset date of September 1, 2010. (AR 14). At step two, the ALJ found that Myers Donahue had the following severe impairments: mild lumbar spondylosis, lumbar degenerative disc disease, small enthesophyte of the greater trochanters (left greater than right), chronic back pain, right shoulder pain, major depressive disorder, anxiety, and PTSD. (AR 14).

[5] Before performing steps four and five, the ALJ must determine the claimant's RFC or what tasks the claimant can do despite her limitations. 20 C.F.R §§ 404.1520(e), 404.1545(a), 416.920(e), 416.945(a). The RFC is then used during steps four and five to help determine what, if any, employment the claimant is capable of. 20 C.F.R. §§ 404.1520(e), 416.920(e).

At step three, the ALJ concluded that Myers Donahue did not have an impairment or combination of impairments severe enough to meet or equal a listing. (AR 15-16). Before proceeding to step four, the ALJ determined that Myers Donahue's symptom testimony was not credible to the extent it was inconsistent with the following RFC:

> [T]he claimant has the [RFC] to perform light work . . . except she can only occasionally reach overhead with dominant upper extremity and only occasionally use ramps or stairs. Additionally, she is limited to simple, routine, repetitive tasks and low stress work activity, which is defined as only involving occasional decision-making and occasional changes in the work setting.

(AR 17).

Based on this RFC and the VE's testimony, the ALJ concluded at step four that Myers Donahue could not perform any of her past relevant work. (AR 22). At step five, however, the ALJ found that Myers Donahue could perform a significant number of unskilled light jobs in the economy, including small products assembler, electronics worker, and electrical accessories worker.[6] (AR 23). Therefore, Myers Donahue's applications for DIB and SSI were denied. (AR 23-24).

C. The ALJ's Consideration of Mr. Podoll's and Dr. Gutowski's Physical Medical Source Statement Is Supported by Substantial Evidence

Myers Donahue's sole argument on appeal is that the ALJ improperly discounted the physical medical source statement penned by Mr. Podoll and Dr. Gutowski on October 30, 2012. Myers Donahue's argument, however, is unpersuasive, as the ALJ's decision to assign "little weight" to the medical source statement is supported by substantial evidence. (AR 20).

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[6] The ALJ incorporated additional restrictions in the hypotheticals posed to the VE at the hearing, including occasional kneeling, crouching, crawling, squatting; frequent bending and stooping; and no use of ropes, ladders, or scaffolds. (AR 80-81).

The Seventh Circuit Court of Appeals has stated that "more weight is generally given to the opinion of a treating physician because of his greater familiarity with the claimant's conditions and circumstances." *Clifford*, 227 F.3d at 870; *see* 20 C.F.R. §§ 404.1527(c)(2), 416.927(c)(2). However, this principle is not absolute, as "a treating physician's opinion regarding the nature and severity of a medical condition is [only] entitled to controlling weight if it is well supported by medical findings and not inconsistent with other substantial evidence in the record."[7] *Clifford*, 227 F.3d at 870; *see Johansen v. Barnhart*, 314 F.3d 283, 287 (7th Cir. 2002); 20 C.F.R. §§ 404.1527(c)(2), 416.927(c)(2). The Commissioner must always give good reasons for the weight ultimately applied to the treating source's opinion. *Clifford*, 227 F.3d at 870; 20 C.F.R. §§ 404.1527(c)(2), 416.927(c)(2).

Although an ALJ may decide to adopt the opinions in a medical source statement concerning the ability of a claimant to perform work-related activities, the RFC assessment is an issue reserved to the ALJ. 20 C.F.R. §§ 404.1545(e), 416.945(e); SSR 96-5p, 1996 WL 374183, at *2 (July 2, 1996) ("[A] medical source statement must not be equated with the administrative finding known as the RFC assessment."). The RFC is a determination of the tasks a claimant can do despite her limitations. 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC assessment:

> is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomology, an individual's own statement of what he or she is able or unable to do, and many other factors that could help the adjudicator determine the most reasonable findings in light of all

[7] In the event the treating physician's opinion is not well supported or is inconsistent with other substantial evidence, the Commissioner must apply the following factors to determine the proper weight to give the opinion: (1) the length of the treatment relationship and frequency of examination; (2) the nature and extent of the treatment relationship; (3) how much supporting evidence is provided; (4) the consistency between the opinion and the record as a whole; (5) whether the treating physician is a specialist; and (6) any other factors brought to the attention of the Commissioner. *See Books*, 91 F.3d at 979; 20 C.F.R. §§ 404.1527(c), 416.927(c).

the evidence.

SSR 96-5p, 1996 WL 374183, at *5; *see* 20 C.F.R. §§ 404.1545, 416.945. Thus, a medical source opinion concerning a claimant's work ability is not determinative of the RFC assigned by the ALJ. *See Thomas v. Colvin*, 745 F.3d 802, 808 (7th Cir. 2014) ("[T]he determination of a claimant's RFC is a matter for the ALJ alone—not a treating or examining doctor—to decide." (citation omitted)); *see* SSR 96-5p, 1996 WL 374183, at *5.

To review, Mr. Podoll's and Dr. Gutowski's medical source statement indicated that Myers Donahue could walk less than one block; could sit up to six hours in an eight-hour workday; could stand or walk less than two hours in an eight-hour workday; could lift less then 10 pounds occasionally and never more than 10 pounds; must walk for eight minutes every 30 minutes; must take up to a 10-minute break every hour; could never use her right arm, hand, or fingers; could use her left arm, hand, and fingers up to 80 percent of the time; and could rarely twist, stoop, bend, squat, or climb stairs, but never climb ladders. (AR 410-11). They also indicated that her symptoms would cause her to be off task from even simple tasks at least 25 percent of a workday. (AR 412).

The ALJ ultimately afforded Mr. Podoll's and Dr. Gutowski's medical source statement "little weight." (AR 20). The ALJ provided two reasons for doing so: the restrictions imposed in the statement "stand apart from the rest of the medical records"; and the conclusions were "unsupported by diagnostic imaging and objective medical findings in the treatment notes." (AR 20). The Court will discuss the ALJ's reasoning in two parts: the restrictions pertaining to Myers Donahue's right shoulder problems and the restrictions pertaining to her low back impairment.

1. The Conclusions Pertaining to Myers Donahue's Right Upper Extremity

Myers Donahue does not contest the ALJ's finding that the severe conclusions in the medical source statement with respect to her right upper extremity are unsupported by diagnostic imaging. X-rays of her right shoulder were unremarkable and within normal limits for her age, and there is no MRI or other imaging evidence of her right shoulder. (AR 291, 293, 311); *see Scheck v. Barnhart*, 357 F.3d 697, 702 (7th Cir. 2004) ("It is axiomatic that the claimant bears the burden of supplying adequate records and evidence to prove [her] claim of disability." (citing 20 C.F.R. § 404.1512(c); *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987))).

Myers Donahue argues, rather, that the medical source statement and Mr. Podoll's treatment notes reveal objective medical findings supportive of the right upper extremity restrictions. *See* 20 C.F.R. §§ 404.1528(b), 416.928(b) ("Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques."). These signs are "poor" range of motion of the shoulder, particularly abduction; dullness to pinprick on the right arm; and grip strength "loss." (AR 294, 330, 332, 433, 443). A treating physician's opinion, however, is entitled to controlling weight only "if it is *well* supported by medical findings and not inconsistent with other substantial evidence in the record." *Clifford*, 227 F.3d at 870 (emphasis added) (citation omitted); *see* 20 C.F.R. §§ 404.1527(d)(2) 416.927(d)(2). Here, the minimal objective medical findings cited by Mr. Podoll and Dr. Gutowski do not support a restriction precluding *all* use of Myers Donahue's right arm, hand, and fingers.[8] As such, the opinion is not

[8] Even Myers Donahue admitted during her testimony at the hearing that she could do many things with her right arm and hand, although she could no longer play horseshoes or lift pans out of the oven with her right arm. (AR 46, 49-50, 63).

entitled to controlling or significant weight. *See* 20 C.F.R §§ 404.1527(d), 416.927(d) ("[T]he more a medical source presents relevant evidence to support an opinion . . . the more weight is given to that opinion.").

Furthermore, as the ALJ observed, the severe conclusions in the medical source statement concerning Myers Donahue's right upper extremity "stand apart," that is, are inconsistent with, other substantial evidence of record and Mr. Podoll's own treatment notes. *See Skarbek v. Barnhart*, 390 F.3d 500, 503 (7th Cir. 2004) ("An ALJ may discount a treating physician's medical opinion if it is inconsistent with the opinion of a consulting physician, or when the treating physician's opinion is internally inconsistent, as long as he minimally articulate[s] his reasons for crediting or rejecting evidence of disability." (alteration in original) (citation omitted)). As the ALJ discussed, Dr. Anderson, the orthopedist, indicated that he was "unsure of the validity" of Myers Donahue's shoulder pain at his initial evaluation in March 2011; he also documented that Myers Donahue had no significant pain in her hand, wrist, or elbow. (AR 19, 291-92). At her second appointment, Dr. Anderson found it "interesting" that she complained more about pain in her left, rather than her right, shoulder. (AR 19, 290). The ALJ also discussed Dr. Ringel's April 2012 consultative examination in which Dr. Ringel documented findings that Myers Donahue had distinctly decreased range of motion in the right shoulder, normal extremity strength, 4/5 grip strength, intact sensation, and good thumb-finger opposition; could fasten buttons and zippers without difficulty; and had no difficulty dressing or undressing for the examination. (AR 20, 367). The ALJ further observed that Myers Donahue told Dr. Ringel that she could do nearly all of her household chores, including vacuuming, provided that she takes her time and avoids heavy lifting. (AR 21, 365).

Additionally, the ALJ considered that Myers Donahue was not frequently reported to be in acute pain at medical appointments or to exhibit significant pain behaviors such as uncomfortable movement. (AR 21). The ALJ also observed that Myers Donahue had not followed through on pain management referrals; had not sought free or low cost healthcare; visited the emergency room on only one occasion; and that her treatment had been quite conservative, including heat, ice, reclining, and medications. (AR 21-22).

Finally, the ALJ contrasted the severe limitations in the medical source statement with Mr. Podoll's own treatment notes, demonstrating an internal inconsistency in Mr. Podoll's own documentation. (AR 20); *see Clifford*, 227 F.3d at 871 (explaining that medical evidence may be discounted if it is internally inconsistent). In January 2011, Mr. Podoll restricted Myers Donahue from performing repetitive lifting, reaching overhead, or lifting more than 20 pounds. (AR 20). The ALJ found Mr. Podoll's January 2011 opinion more consistent with the substantial evidence of record, and thus, he assigned that opinion significant weight, rather than the severe limitation precluding *all* use of her right arm, hand, and fingers as opined in the medical source statement. (AR 20).

In sum, the conclusions reached by Mr. Podoll and Dr. Gutowski in the medical source statement pertaining to Myers Donahue's right upper extremity are not well supported by the objective medical evidence and are inconsistent with other substantial evidence of record. As such, the ALJ's discounting of the medical source statement is supported by substantial evidence.[9]

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[9] When considering the medical source statement with respect to Myers Donahue's right shoulder problem, the ALJ additionally stated: "To date, these providers have been unable to confirm an etiology for the claimant's right upper extremity pain and have thus failed to provide a medically determinable impairment." (AR 20). As

2. The ALJ's Conclusions Pertaining to Myers Donahue's Back Impairment

Myers Donahue argues that the ALJ's rationale for discounting Mr. Podoll's and Dr. Gutowski's conclusions in the medical source statement pertaining to her back problems are not supported by substantial evidence. More specifically, she contends that the conclusions in the medical source statement are supported by the July 2012 MRI of her spine, as well as the objective findings in the medical source statement and Mr. Podoll's treatment notes.

Myers Donahue emphasizes that Mr. Podoll ordered the MRI and that the test results were in his file. But Mr. Podoll and Dr. Gutowski never mentioned, much less discussed, in their medical source statement how the MRI results support the limitations they assigned. In fact, the diagnosis on the medical source statement indicates degenerative disc disease, low back "with herniation" (AR 409), but the MRI results do not reveal a disc herniation (AR 401-02). Furthermore, X-rays of Myer Donahue's lumbar spine revealed just mild degenerative disc disease. (AR 322, 422). Nor did Mr. Podoll alter Myers Donahue's treatment after the MRI, as he continued her conservative treatment course. (AR 414-16, 428-30, 443). Here, the ALJ thoughtfully considered the MRI results, specifically noting that the state agency physicians did not have an opportunity to review them. (AR 21). The ALJ observed that the MRI findings did

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Myers Donahue points out, the ALJ contradicted himself in finding that her right shoulder pain was a severe impairment at step two and later stating that Mr. Podoll and Dr. Gutowski failed to provide a medically determinable impairment with respect to her right shoulder pain. For a condition to constitute a severe impairment at step two, the condition must be a medically determinable impairment. *See* 20 C.F.R. § 404.1520(a)(4)(ii) (At step two, "[i]f you do not have a severe *medically determinable physical or mental impairment* that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled." (emphasis added)); 20 C.F.R. § 416.920(a)(4)(ii) (same). However, because the ALJ's discounting of the medical source statement is well supported on other grounds, the ALJ's mis-statement is harmless. *See Shramek v. Apfel*, 226 F.3d 809, 814 (7th Cir. 2000) (affirming the ALJ's decision despite errors because none of the errors affected the outcome).

not document "severe compromise, such as severe canal stenosis, cord indentation or severe nerve root impingement," and as such, did not support the severe restrictions penned by Mr. Podoll and Dr. Gutowski in the medical source statement. (AR 20).

Myers Donahue argues that the ALJ inappropriately "played doctor" by evaluating the MRI results as he did and concluding that they were inconsistent with the back restrictions assigned in the medical source statement. *See Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996) ("ALJs must not succumb to the temptation to play doctor and make their own independent medical findings." (citations omitted)). She emphasizes that the ALJ did not rely on any of the state agency physicians because those doctors never reviewed the MRI results. However, the ALJ did not interpret the MRI; he simply summarized the impression of Dr. Ross Benjoya, who reviewed the MRI. (AR 401-02); *see, e.g.*, *Mitchell v. Colvin*, No. 10 C 7464, 2013 WL 3729722, at *10 (N.D. Ill. July 11, 2013) ("Because the ALJ made an informed decision on the basis of the interpreting physician's impression [of the MRI] and the record as a whole, the ALJ did not play doctor."); *Brown v. Barnhart*, 298 F. Supp. 2d 773, 791 (E.D. Wis. 2004) (stating that the ALJ did not interpret the MRI, but simply paraphrased the reviewing physician's impression of the MRI). While ALJs are forbidden to play doctor and make their own medical findings, they must discuss and weigh the medical evidence. *See Olsen v. Colvin*, 551 F. App'x 868, 875 (7th Cir. 2014) ("The ALJ did not ignore relevant evidence and substitute her own judgment here. To the contrary, the ALJ summarized the results of each MRI and drew a conclusion from those diagnostic tests that [the claimant's] abnormalities mostly were mild."). Here, the ALJ accurately discussed and weighed the MRI results, as interpreted by Dr. Benjoya, and the ALJ reasonably concluded that they did not support imposing a more restrictive RFC.

(AR 20).

Myers Donahue also argues that the ALJ was incorrect when stating that the conclusions in Mr. Podoll's and Dr. Gutowski's medical source statement pertaining to her back impairment lacked the support of objective medical findings. She emphasizes that the medical source statement and Mr. Podoll's treatment notes reflect positive straight leg raise tests, duller sensation to pinprick in the left leg, and slowness in getting up and down on the examining table. (AR 295, 416, 443). But to reiterate, a treating physician's opinion is entitled to controlling weight "if it is *well* supported by medical findings and not inconsistent with other substantial evidence in the record." *Clifford*, 227 F.3d at 870 (emphasis added) (citation omitted); *see* 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). Here, the minimal findings cited by Mr. Podoll and Dr. Gutowski do not offer the support necessary to undermine the ALJ's decision. *See* 20 C.F.R §§ 404.1527(d), 416.927(d) ("[T]he more a medical source presents relevant evidence to support an opinion . . . the more weight is given to that opinion."); *see also Knight v. Chater*, 55 F.3d 309, 314 (7th Cir. 1995) ("The ALJ was allowed to conclude that [the treating doctor's] notes do not provide adequate clinical support for [the doctor's] opinion on the residual capacity form." (collecting cases)).

Furthermore, the conclusions in the medical source statement concerning Myers Donahue's back impairment are not particularly consistent with other substantial evidence of record. *See Skarbek*, 390 F.3d at 503. The ALJ discussed the consultative examination of Dr. Ringel indicating that Myers Donahue's gait was completely normal, her strength in all extremities was 5/5, her sensation was intact, and she had no difficulty getting on and off the examination table or dressing or undressing. (AR 20, 367). The ALJ also observed that during the examination Myers Donahue responded positively to a straight leg raise test while supine, but

responded negatively while sitting. (AR 20, 367). The ALJ further considered that Myers Donahue told Dr. Ringel that she could do nearly all of her household chores, including vacuuming, provided that she takes her time and avoids heavy lifting. (AR 21). Similarly, in April 2013, Dr. Huntington observed that while Myers Donahue had lumbar spine tenderness, she demonstrated good movement of her extremities as well as intact strength and sensation. (AR 418-19).

To reiterate, Myers Donahue was not frequently reported to be in acute pain at medical appointments or to exhibit significant pain behaviors such as uncomfortable movement. (AR 21). The ALJ also considered that Myers Donahue had not followed through on pain management referrals; had not sought free or low cost healthcare; visited the emergency room on only one occasion; and her treatment had been quite conservative, including heat, ice, reclining, and medications. (AR 21-22).

In sum, the ALJ's decision to give little weight to the conclusions penned by Mr. Podoll and Dr. Gutowski in the medical source statement dated October 30, 2012, is supported by substantial evidence. Mr. Podoll and Dr. Gutowski did not cite the MRI results in support of their conclusions; the objective medical findings identified in the medical source statement and Mr. Podoll's treatment notes were minimal; and their conclusions were not consistent with other substantial evidence of record. Accordingly, the ALJ's decision will be affirmed.

V. CONCLUSION

For the foregoing reasons, the decision of the Commissioner is AFFIRMED. The Clerk

is directed to enter a judgment in favor of the Commissioner and against Myers Donahue.

SO ORDERED.

Enter for this 31st day of March 2016.

/s/ Susan Collins
Susan Collins,
United States Magistrate Judge