

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

<b>LACEY JANINE ISSA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CAUSE NO. 1:15-cv-00050-SLC</b>
	)	
<b>COMMISSIONER OF SOCIAL</b>	)	
<b>SECURITY,</b>	)	
	)	
<b>Defendant.</b>	)	

**OPINION AND ORDER**

Plaintiff Lacey Janine Issa 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 Supplemental Security Income (“SSI”).<sup>1</sup> (DE 1). For the following reasons, the Commissioner’s decision will be AFFIRMED.

**I. PROCEDURAL HISTORY**

Issa applied for SSI on August 26, 2013, alleging disability as of May 15, 2012. (DE 14 Administrative Record (“AR”) 173-78). SSI, however, is not payable prior to the month following the month in which the application was filed. 20 C.F.R. § 416.335. Because Issa filed her application in August 2013, the first month in which she was eligible to receive SSI benefits was September 2013.

The Commissioner denied Issa’s application initially and upon reconsideration, and Issa requested an administrative hearing. (AR 89, 103, 108-14). On July 31, 2014, a hearing was conducted by Administrative Law Judge Terry L. Miller (“the ALJ”), at which Issa, who was

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<sup>1</sup> All parties have consented to the Magistrate Judge. (DE 18); *see* 28 U.S.C. § 636(c).

represented by counsel at the time; her mother; and Robert Barkhaus, a vocational expert (the “VE”), testified. (AR 32-77).

On October 20, 2014, the ALJ rendered an unfavorable decision to Issa, concluding that she was not disabled since August 26, 2013, the date her application was filed, because despite the limitations caused by her impairments, she could perform a significant number of unskilled, light occupations in the economy. (AR 15-26). The Appeals Council denied Issa’s request for review (AR 1-4), at which point the ALJ’s decision became the final decision of the Commissioner. *See* 20 C.F.R. § 416.1481.

Issa filed a complaint with this Court on February 18, 2015, seeking relief from the Commissioner’s final decision. (DE 1). Issa argues in this appeal that the ALJ: (1) improperly discounted the credibility of her symptom testimony, and (2) failed to account for her limitations caused by her gastrointestinal (“GI”) symptoms when assessing her residual functional capacity (“RFC”). (DE 19 at 6-13).

## **II. FACTUAL BACKGROUND<sup>2</sup>**

### *A. Background*

At the time of the ALJ’s decision, Issa was 35 years old (DE 204); had a tenth grade education (DE 209); and had prior work experience as a grinder/cleaner in a factory and at a ticket booth at a drive-in theater. (AR 209). Issa represented in her SSI application that she was seeking disability due to problems with her pancreas, removal of a tumor, nausea, and stomach pain (AR 208); she subsequently cited mental impairments as well (AR 22). Issa does not challenge the ALJ’s consideration of her mental impairments, and thus, the Court will focus on

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<sup>2</sup> In the interest of brevity, this Opinion recounts only the portions of the 614-page administrative record necessary to the decision.

the evidence pertaining to her physical conditions.

*B. Issa's Testimony at the Hearing*

At the hearing, Issa testified that since her divorce, she lives in a house with her mother and her three-month old daughter. (AR 37-39). Issa was receiving food stamps and Medicaid benefits; she performs her self care independently and drives a car. (AR 40, 59-60). In a typical day, Issa gets up every three hours to care for her baby. (AR 59-60). She stated that if she is having a good day, she goes out to visit friends and family, but if she is not feeling well, she spends most of her time lying in bed. (AR 59). She estimated that she has four or five bad days a week. (AR 67). On a bad day, Issa's mother cares for the baby. (AR 68). Issa grocery shops occasionally, but her mother usually does the cooking; Issa helps out with household chores and does her own laundry. (AR 60-61). She enjoys sewing blankets, spending time on social media, and watching television. (AR 59, 61-62).

Issa identified her primary physical problem as intraductal papillary mucinous neoplasm of the pancreas, stating that she underwent surgery to remove the benign tumor in October 2012. (AR 46-47). She experienced abdominal pain and vomiting in the month before the surgery. (AR 47). Since the surgery, she has been on a strict diet. (AR 47-50). She testified that even though she takes medications, she experiences nausea, vomiting, and diarrhea every day, and she has pain every time she eats. (AR 47-50). She rated her abdominal pain as a "seven or eight" on a scale of one to 10. (AR 50). She stated that she keeps a trash can beside her bed and carries bags with her in the car in case she needs to vomit. (AR 63, 66). She asserted that she can never finish her shopping before needing to use a restroom. (AR 63). She estimated that she had four urinary or fecal accidents in the week before the hearing, commenting that this was a typical

week for her. (AR 63-64).

Issa testified that her GI problems are aggravated by stress and by bending over, sitting, or standing too long. (AR 50-54). She stated that the only time she does not experience GI symptoms is when she is lying down, and thus, she spends about 70 percent of her day lying down on a bed or the floor. (AR 52-53). She avoids climbing stairs because she gets lightheaded and dizzy; she can lift up to 20 pounds. (AR 50, 52-54). Her symptoms worsened during her recent pregnancy. (AR 57). She smokes cigarettes, but has reduced from one-half pack to three cigarettes a day; she uses marijuana to help control her nausea when medications fail to do so. (AR 57-58). Issa stated that her medications sometimes make it difficult for her to sleep and that her nausea medication sometimes make her sick.<sup>3</sup> (AR 65).

### *C. Summary of the Relevant Medical Evidence*

Issa sought emergency room treatment in June 2012 for abdominal pain and vomiting. (AR 336). In September 2012, Issa underwent an esophagogastroduodenoscopy with biopsy and endoscopic ultrasound due to repeated episodes of pancreatitis. (AR 264-66). The procedure revealed an intraductal papillary mucinous neoplasm in the head of her pancreas. (AR 264). Due to the malignant potential of such tumors, Alan M. Yahanda, M.D., recommended that Issa undergo a pancreaticoduodenectomy, referred to as a “Whipple” procedure. (AR 382). Dr. Yahanda performed the surgery on October 30, 2012. (AR 305-08). Issa’s postoperative course was notable for a slow return of GI function, and she was started on a feeding tube, which she used through mid-December 2012. (AR 287, 324).

In February 2013, Issa underwent diagnostic imaging, the results of which were normal

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<sup>3</sup> Issa’s mother also testified at the hearing, essentially corroborating Issa’s testimony. (AR 69-71).

as to a person who had undergone a Whipple procedure. (AR 309).

In July 2013, Issa reported to a nurse at St. Martins Healthcare that she had lost her health insurance and needed medications. (AR 335). She complained of frequent stomach cramps, liquid stools, and that she was vomiting bile three to four times a day. (AR 335). The following month, Issa was again having difficulty with food, reporting that she was vomiting every day. (AR 334). She complained of feeling sluggish, tired, and dizzy upon standing; she asked for a nutritional consult. (AR 334). She had not seen Dr. Yahanda in four months and was not sure what medications she should be taking. (AR 334).

In September 2013, Issa complained to Dr. Yahanda of recurrent nausea with any oral intake and stated that she had to force herself to eat. (AR 386). Her abdomen was soft, tender, and non-distended. (AR 386). Dr. Yahanda prescribed several medications, including Sucralfate, which had helped Issa in the past. (AR 386).

In October 2013, Issa visited the emergency room due to leg cramping for the past 24 hours. (AR 357-58). In a review of systems, the examiner documented that Issa had “[p]retty standard intermittent and diffuse waxing and waning abdominal pain, which [was] nothing new or concerning to her at all,” and that her “[b]owel and bladder habits [had] not been compromised recently.” (AR 357). Upon exam, Issa’s abdomen was diffusely and mildly tender, but without rebound or guarding; Issa indicated that this was “pretty much her normal level.” (AR 357).

In November 13, 2013, Issa reported to Dr. Yahanda that she was unable to eat any large amount and had been maintaining her nutrition by consuming baby food. (AR 388). Her bowel movements were slightly constipated. (AR 388). Dr. Yahanda noted that Issa’s postoperative

course had been complicated by persistent nausea and vomiting, which was thought to be due to bile reflux gastritis. (AR 388). On examination, Issa appeared healthy, in no acute distress, and no thinner than at her previous visits. (AR 388). Her abdomen was soft, non-tender, and non-distended; her bowel sounds were normal. (AR 388). Dr. Yahanda noted that the Carafate seemed to be helping Issa's complaints, although it did not completely relieve her gastric irritation. (AR 388). Dr. Yahanda referred her to gastroenterology for management of her gastritis and for follow-up endoscopies. (AR 388). The next day, November 14, 2013, a urine screen revealed that Issa was pregnant. (AR 390).

On November 25, 2013, Issa was evaluated by Neil Sharma, M.D., upon request by Dr. Yahanda for evaluation of her nausea and vomiting. (AR 554-55). She was in her first trimester of pregnancy and was experiencing morning sickness. (AR 554). Her obstetrician had approved her taking Zofran, Creon, and Carafate for her GI problems during her pregnancy. (AR 554). Dr. Sharma found that Issa's nausea and vomiting were "currently well-controlled," and that she had not lost any weight. (AR 554). Her abdomen was non-distended and non-tender, and her bowel sounds were normal. (AR 555). The following month, Dr. Sharma again noted that Issa's nausea and vomiting were "currently well-controlled." (AR 443-44).

On December 2, 2013, Issa was seen at the office of Lindsay Coda, D.O., to begin her prenatal care. (AR 507). Issa told Dr. Coda that she had been "doing well" since undergoing the Whipple procedure in October 2012. (AR 507). She was taking her pancreatic enzymes. (AR 507). She denied any nausea or vomiting, but stated that she was having difficulty taking prenatal vitamins due to stomach pain. (AR 507). Issa appeared well-nourished, her abdomen was soft without tenderness, and her bowel sounds were normal. (AR 508). She was counseled

to stop smoking tobacco and marijuana. (AR 509).

On December 15, 2013, H.M. Bacchus, M.D., evaluated Issa at the request of Social Security. (AR 413-15). She reported that she had to stop many of her medications due to her pregnancy, but was still taking Zofran. (AR 413). She complained of severe constipation or diarrhea, vomiting bile, severe pain with movement, daily nausea, that she has to maintain a strict diet, and that she has to lie down after she eats. (AR 413). She estimated that she could sit for 90 minutes, stand for 45 minutes, and walk for 30 minutes, but that she could not carry any weight while walking. (AR 413). Upon physical exam, Issa moved on and off of a chair without difficulty, and her gait and station were steady and upright. (AR 414). She was unable to hop on both feet, but she could walk on heels and toes, squat, and tandem gait. (AR 414). Her range of motion and upper extremity strength were normal; her lower extremity strength was 4/5. (AR 414). Her abdomen was soft, non-tender, and without guarding. (AR 414). Dr. Bacchus's impression was a tumor removed from her pancreas and bile duct, surgery in October 2012; and stomach problems secondary to the surgery in October 2012. (AR 414).

On December 26, 2013, M. Brill, M.D., a state agency physician, reviewed Issa's record and completed a physical RFC assessment. (AR 83-85). Issa was nine weeks pregnant at the time. (AR 85). Dr. Brill found that Issa could lift and carry 10 pounds frequently and 20 pounds occasionally; stand or walk six hours in an eight-hour workday; sit for six hours in an eight-hour workday; perform unlimited pushing or pulling within her lifting limitations; occasionally balance, stoop, kneel, crouch, crawl, and climb ramps and stairs, but never climb ladders, ropes, or scaffolds; and must avoid concentrated exposure to wetness and hazards such as machinery or heights. (AR 84-85).

On January 3, 2014, Issa was seen for a follow-up visit by a nurse practitioner working with Bret Kueber, M.D. (AR 417). Issa had been without her GI medications and was experiencing severe nausea and vomiting. (AR 417). (AR 417). The nurse practitioner refilled Issa's prescriptions. (AR 418).

On January 7, 2014, Dr. Coda saw Issa for a prenatal visit. (AR 482). Issa's appetite was normal, but she had mild nausea; she denied any weakness or dizziness. (AR 482). She had been out of her pancreatic medication for four weeks and had been vomiting blood. (AR 481-82). One week later, Issa saw Laura Hughes, M.D., for an obstetric consultation. (AR 483). Issa complained to Dr. Hughes of persistent nausea and vomiting since her Whipple procedure, but denied any obstetric complaints. (AR 483). Issa had been using marijuana for symptomatic relief, and Dr. Hughes advised Issa to refrain from smoking tobacco or marijuana during her pregnancy. (AR 483). On February 4, 2014, Issa told Dr. Hughes that she had stopped smoking marijuana and had decreased to five cigarettes a day. (AR 484). On March 3, 2014, it was noted that Issa was doing well. (AR 485). Dr. Coda recommended that Issa follow up with Dr. Sharma, her GI doctor. (AR 484).

In March 2014, Issa saw Dr. Kueber for abdominal cramps and cold symptoms. (AR 430). She denied any problems with diarrhea or vomiting. (AR 430). On April 10, 2014, Issa returned to Dr. Sharma upon request of Dr. Coda for evaluation of nausea. (AR 551). He noted that Issa was pregnant and was experiencing morning sickness. (AR 552). He tentatively scheduled an endoscopic ultrasound to evaluate the pancreas after her baby was born. (AR 552).

In April 2014, Dr. Coda indicated that Issa had gained 26 pounds. (AR 485). Dr. Coda referred Issa to a dietician due to excessive weight gain during her pregnancy. (AR 485). On



May 8, 2014, Dr. Coda indicated that Issa really needed to gain less weight during her pregnancy. (AR 485). Issa had gained 50 pounds, where the recommended weight gain was 25 to 35 pounds. (AR 485). Issa admitted to eating meals with a lot of carbohydrates. (AR 485). Dr. Coda discussed the importance of proper weight gain and the health risks of gaining too much weight; she counseled Issa that she needed to be responsible for her food choices and portion sizes. (AR 485). Issa reported having some lower abdominal and hip pain. (AR 485).

On May 12, 2014, Issa had gained six pounds in four days and had recent swelling in her hands and feet. (AR 486). She had no epigastric pain, and her abdomen was non-tender. (AR 486). On May 19, 2014, Issa was hospitalized with severe preeclampsia, and she underwent a caesarian delivery of her baby two days later. (AR 492, 500). Three days after delivery, Issa was doing well. (AR 486). She was without nausea and was eating well; her bowel sounds were positive. (AR 486-88). She was ambulating without difficulty upon discharge. (AR 486).

In July 2014, Issa underwent an endoscopy, the results of which were normal as to a person who had undergone a Whipple procedure. (AR 612).

### **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 of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g); *see* 42 U.S.C. § 1383(c)(3). 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).

To determine if substantial evidence exists, the Court reviews the entire administrative record but does not re-weigh 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. *Id.* Nonetheless, "substantial evidence" review should not be a simple rubber-stamp of the Commissioner's decision. *Id.*

#### IV. ANALYSIS

##### A. *The Law*

Under the Act, a plaintiff is entitled to SSI if she "is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 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. § 1382c(a)(3)(D).

In determining whether Issa is disabled as defined by the Act, the ALJ conducted the familiar five-step analytical process, which required him to consider 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.<sup>4</sup> *See Dixon v. Massanari*, 270 F.3d 1171, 1176 (7th Cir. 2001); 20 C.F.R. § 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). 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.* The burden of proof lies with the claimant at every step except the fifth, where it shifts to the Commissioner. *Id.* at 885-86.

### *B. The ALJ's Decision*

On October 20, 2014, the ALJ issued the decision that ultimately became the Commissioner's final decision. (Tr. 15-26). He found at step one of the five-step analysis that although Issa had worked after her alleged onset date, the income from the work activity was below substantial gainful activity levels, and thus, it did not constitute disqualifying substantial gainful activity. (AR 17). At step two, he determined that Issa had the following impairments, which were severe when considered in combination: history of recurrent episodes of pancreatitis with an intraductal papillary mucinous neoplasm of the pancreas, requiring a Whipple procedure in October 2012; bipolar disorder; panic disorder; post traumatic stress disorder; and personality disorder. (AR 17). At step three, the ALJ determined that Issa's impairment or combination of impairments were not severe enough to meet a listing. (AR 18).

Before proceeding to step four, the ALJ determined that Issa's symptom testimony was "not entirely credible" and assigned the following RFC:

[T]he claimant has the [RFC] to perform light work . . . (lifting, carrying, pushing,

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<sup>4</sup> 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 §§ 416.920(e), 416.945. 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. §§ 416.920(e), 416.945(a)(5).

and pulling up to 20 pounds occasionally and 10 pounds frequently and, in an eight-hour period, standing/walking, in combination, up to at least 6 hours and sitting up to at least 6 hours), further limited as follows: she needs a sit/stand option (which allows for alternating between sitting and standing up to every 30 minutes, if needed, but the positional change will not render the individual off task[]). In addition, she can only occasional[ly] climb ramps and stairs, balance, stoop, kneel, crouch, and crawl and she can never climb ladders, ropes, or scaffolds. She also needs to avoid concentrated exposure to hazards (i.e. unprotected heights, and slippery/uneven/moving surfaces). Mentally, the claimant cannot understand, remember, or carry out detailed or complex job instructions but she can perform simple, repetitive tasks on a sustained basis (meaning 8 hours a day/5 days a week, or an equivalent work schedule). She also cannot perform tasks requiring intense/focused attention for prolonged periods.

(AR 20). At step four, the ALJ acknowledged that Issa had no past relevant work. (AR 24). At step five, based on the assigned RFC and the VE's testimony, the ALJ concluded that a hypothetical individual with Issa's RFC, experience, and education could perform a significant number of unskilled, light occupations in the economy, including electrical accessories assembler, cashier, and small products assembler. (AR 25). Therefore, Issa's claim for SSI was denied. (AR 25-26).

### *C. The ALJ's Credibility Determination Will Not Be Disturbed*

To begin, Issa argues that the ALJ improperly discounted the credibility of her symptom testimony—specifically, her testimony about her GI problems. For the following reasons, the ALJ's credibility assessment will not be disturbed.

An ALJ's credibility determination is entitled to special deference because the ALJ is in the best position to evaluate the credibility of a witness. *Powers v. Apfel*, 207 F.3d 431, 435 (7th Cir. 2000). If an ALJ's determination is grounded in the record and he articulates his analysis of the evidence “at least at a minimum level,” *Ray v. Bowen*, 843 F.2d 998, 1002 (7th Cir. 1988) (citation omitted), creating “an accurate and logical bridge between the evidence and the result,”

*Ribaudo v. Barnhart*, 458 F.3d 580, 584 (7th Cir. 2006) (citation omitted), his determination will be upheld unless it is “patently wrong,” *Powers*, 207 F.3d at 435. See *Carradine v. Barnhart*, 360 F.3d 751, 754 (7th Cir. 2004) (remanding an ALJ’s credibility determination because the ALJ’s decision was based on “serious errors in reasoning rather than merely the demeanor of the witness”); *Herron v. Shalala*, 19 F.3d 329, 335 (7th Cir. 1995) (“[Because] the ALJ is in the best position to observe witnesses, [courts] usually do not upset credibility determinations on appeal so long as they find some support in the record and are not patently wrong.” (citations omitted)).

Here, the ALJ accurately summarized Issa’s testimony about her GI problems, including that she has abdominal pain at a level “seven” or “eight” on a 10-point scale; that she vomits and has diarrhea every day, that she must go to the bathroom frequently, that she becomes lightheaded if she bends over too long, that she lies down 70 percent of the day, that she stays in bed four days a week, that she usually keeps a can or bag near her in case she vomits, that she has four bladder or bowel accidents a week, that she needs to use a restroom before she finishes her shopping, that her condition is worsened by stress, that she cannot stand for long periods, that her weight fluctuates, and that her medication side effects include sleeping and sickness. (AR 20-21). The ALJ, however, found Issa’s symptom testimony “not entirely credible.” (AR 21). The ALJ discounted Issa’s credibility based on several factors, including her poor work history, her daily activities, several inconsistencies in the record, the objective medical evidence, and that no treating source assigned her any physical limitations. The Court will discuss each of these in turn.

1. Poor Work History

First, the ALJ observed that Issa had a poor work history prior to her alleged onset date.

(AR 21); *see* 20 C.F.R. § 416.929(c)(3) (When evaluating credibility, “[w]e will consider all of the evidence presented, including information about your prior work record . . .”). Specifically, the ALJ noted that Issa had never earned more than \$6,900 a year, which suggested to the ALJ that she had a “poor connection to or motivation for working.” (AR 21 (citing AR 179-80)). The ALJ also considered that Issa’s best two years of earnings were *after* her alleged onset date, which he found inconsistent with a finding of disability. (AR 21).

Issa argues that the ALJ “misunderstood” her work history. (DE 19 at 12). She emphasizes that in addition to the two past jobs of grinder/cleaner and ticket taker that she had reported on her SSI application and were included in the VE’s past work summary (AR 209, 257-58), she had also worked at her mother’s Subway franchise, worked as an exotic dancer for 15 years, and had “summer gig[s]” as a bartender. (DE 19 at 12). Issa suggests that she was paid in cash and did not report earnings for much of this work. (DE 19 at 12). She also argues that the ALJ overlooked her two unsuccessful attempts to return to work after her Whipple procedure.

First, the ALJ did not overlook Issa’s two work attempts after her Whipple procedure. Rather, the ALJ specifically observed that those work attempts were her best two years of earning. Furthermore, the ALJ’s conclusion that Issa had a poor work history was reasonable on this record. The ALJ asked Issa at the hearing if she had held any jobs in the past 15 years other than at the foundry and the drive-in theater. (AR 44). She responded: “No, I was married. And I didn’t work when I was married. And then I, I lived with my mom, down in South Carolina. And before that, the last job was with her, her restaurant.” (AR 44). When questioned further about whether she had any other jobs after age 19, Issa added that she had delivered pizzas for a

short time, had worked as a bartender a few summers and was paid “under the table,” and had done some sewing. (AR 45-46). However, Issa never stated at the hearing that she had worked as an exotic dancer, much less that she had done so for 15 years. (AR 41-46; *see also* AR 209, 257-58).

The only record that Issa cites about her purported work history as an exotic dancer is a snippet included in the psycho-social history portion of an admission report at Northeastern Center. (DE 19 at 12 (citing DE 436, 438)). Considering Issa’s earnings report, her testimony at the hearing, and the VE’s report—none of which reflect any work history as an exotic dancer—the ALJ was reasonable in concluding that Issa had a poor work history and that such poor work history undermined her credibility.<sup>5</sup> *See McCurrie v. Astrue*, 401 F. App’x 145, 149 (7th Cir. 2010) (affirming the ALJ’s credibility determination where the claimant’s work and earnings history were sporadic more than 10 years before his back injury); *Simila v. Astrue*, 573 F.3d 503, 520 (7th Cir. 2009) (considering, pursuant to 20 C.F.R. § 404.1529(c)(3), that the claimant’s declining earnings prior to the onset of his alleged disability was an indicator of a lack of effort to find work). “[A]n ALJ is entitled to presume that a claimant represented by counsel in the administrative hearings has made [her] best case.” *Sears v. Bowen*, 840 F.2d 394, 402 (7th Cir. 1988) (citing *Glenn v. Sec’y of Health & Human Servs.*, 814 F.2d 387, 391 (7th Cir. 1987)).

## 2. Daily Activities

The ALJ also considered as a factor that Issa was “able to engage in a rather full range of

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<sup>5</sup> Of course, Issa’s contention now that she has past work that she did not reveal to the ALJ or in her SSI application certainly does not bolster her credibility at this juncture.

activities.” (AR 24; *see also* AR 21). Issa argues that in doing so, the ALJ ignored that she can only perform such activities when she is feeling well, which she contends is only about two to three days a week. (AR 19 at 11). She further contends that even on good days, her activities are punctuated with GI emergencies. (AR 19 at 11).

The ALJ considered Issa’s testimony that she stays in bed four days a week, and that even on good days, she spends 70 percent of the day lying down. (AR 21). Despite this testimony, the ALJ observed that Issa still cares for her infant with help from her mother, cares for pets, visits family and friends, sees the father of her child several times a week, drives a car, performs her self care, makes simple meals, shops, goes outside every day, sews, plays cards, pays bills, uses the computer, and does household tasks such as washing dishes, laundry, vacuuming, and dusting. (AR 21-22, 55, 60-61, 218-20, 226-28). As such, the ALJ’s statement that Issa was “able to engage in a rather full range of activities” is quite accurate. (AR 21). Of course, the ALJ was entitled to consider Issa’s activities when assessing her credibility. *See* 20 C.F.R. § 416.929(c)(3).

The Court agrees, however, that ALJ should have acknowledged Issa’s qualifications about her “bad days” when the ALJ commented that Issa’s activities were “not inconsistent” with the assigned RFC. (AR 24); *see Bjornson v. Astrue*, 671 F.3d 640, 647 (7th Cir. 2012) (“The critical differences between activities of daily living and activities in a full-time job are that a person has more flexibility in scheduling the former than the latter, can get help from other persons . . . , and is not held to a minimum standard of performance, as she would be by an employer.”). Nevertheless, the ALJ specified several other valid reasons for finding Issa not entirely credible, and he did not place undue weight on Issa’s daily activities, considering them as just one of several factors in his credibility analysis. Therefore, although the ALJ’s discussion



of Issa's activities could have been better, the ALJ's credibility determination is still amply supported. *See Schreiber v. Colvin*, 519 F. App'x 951, 961 (7th Cir. 2013) (affirming the ALJ's credibility determination despite that it "was not ideal" in that the ALJ failed to acknowledge the qualifications the claimant made about her activities on "bad days").

### 3. Inconsistencies of Record

The ALJ also found that certain inconsistencies in the record undermined Issa's credibility. *See* SSR 96-7p, 1996 WL 374186, at \*5 (July 2, 1996)<sup>6</sup> ("One strong indication of the credibility of an individual's statements is their consistency, both internally and with other information in the case record."). For example, the ALJ considered Issa's testimony that her weight fluctuated and that she had difficulty keeping food down. (AR 21, 60, 62-63). The ALJ observed, however, that there was "no evidence in the record that she ha[d] experienced significant weight loss or that her body mass index had been less than 20 or higher than 20 when she was not pregnant." (AR 24). Records from August to December 2013 indicate that Issa consistently weighed from 121 to 125 pounds. (AR 334, 371, 386, 413, 423). Dr. Yahanda documented that Issa was "healthy-appearing" and "really looked no thinner than on previous visits," despite her complaint of difficulty eating. (AR 388). Moreover, Dr. Coda cautioned Issa during her pregnancy that she was gaining too much weight and counseled her in proper food choices and portion sizes. (AR 574). On this record, the ALJ reasonably found Issa's complaints about her weight loss and her difficulty keeping food down were not particularly consistent with the medical evidence concerning her weight during that time period.

The ALJ also considered that Issa made inconsistent statements about her education. *See*

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<sup>6</sup> Although Social Security Ruling 96-7p was superseded by Social Security Ruling 16-3p in March 2016, *see* SSR 16-3p, 2016 WL 1119029 (Mar. 16, 2016), Social Security Ruling 96-7p governed at the time the ALJ issued his decision and the Commissioner refers to Social Security Ruling 96-7p in its brief. Accordingly, the Court will refer to SSR 96-7p herein.

SSR 96-7p, 1996 WL 374186, at \*5 (“The adjudicator must compare statements made by the individual in connection with his or her claim for disability benefits with statements he or she made under other circumstances, when such information is in the case record.”). The ALJ noted that Issa stated in her application in adult disability report in October 2013 that she had not been in special education classes, but she told Dr. Bingi one month later just the opposite. (AR 18 (citing AR 209, 400)).

Issa argues that these inconsistencies detected by the ALJ are of *de minimis* probative value. (DE 26 at 5). Nevertheless, the ALJ was entitled to consider any inconsistencies of record when assessing Issa’s credibility. SSR 96-7p, 1996 WL 374186, at \*5. As such, the ALJ was not “patently wrong” in considering these inconsistencies as one of several factors in his credibility determination. *Powers*, 207 F.3d at 435.

#### 4. Objective Medical Evidence

The ALJ also considered the objective medical evidence concerning Issa’s physical impairments when assessing the credibility of her symptom testimony.<sup>7</sup> The ALJ observed that Issa had sought treatment for pancreatitis in June 2012 and underwent a Whipple procedure in October 2012. (AR 23). The ALJ also considered Issa’s complaints of abdominal pain, nausea, vomiting, fatigue, dizziness, and diarrhea to medical providers and that she was prescribed various medications for her GI problems. (AR 23).

However, the ALJ further observed that Issa’s nausea and vomiting were noted by Dr. Sharma in late 2013 to be “well-controlled.” (AR 24 (citing AR 443, 554)). The ALJ also considered that there was no indication that Issa would need any additional GI surgeries; that an

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<sup>7</sup> The ALJ additionally cited objective medical evidence and treatment history pertaining to Issa’s mental impairments when discounting the credibility of her symptom testimony. (See AR 22-23). Because Issa does not challenge the ALJ’s credibility determination with respect to her mental RFC, the Court will limit its discussion to the medical evidence and treatment concerning Issa’s physical problems.

endoscopy and other exams done in February 2013 and July 2014 were normal, except for post-operative changes (AR 24 (citing AR 443, 612)); and that there was no evidence indicating that Issa had significant bowel or bladder control problems that would significantly limit her ability to perform basic work-related activities (AR 24).

Issa takes issue with the ALJ's consideration of the objective medical evidence. Specifically, she argues that the ALJ "cherry-picked" the record by citing Dr. Sharma's two notes from late 2013 and by ignoring her complaints of nausea and vomiting in the record. (DE 19 at 9); *see Denton v. Astrue*, 596 F.3d 419, 425 (7th Cir. 2010) ("An ALJ has the obligation to consider all relevant medical evidence and cannot simply cherry-pick facts that support a finding of non-disability while ignoring evidence that points to a disability finding."). However, the few records that Issa points to as evidence of her continued problems with nausea and vomiting pertain, for the most part, to periods when she was off of her GI medications. (*See* AR 334 (reporting nausea and vomiting in August 2013, but stating that she had not talked to Dr. Yahanda in four months and was unsure of what medications she should be taking); 482 (noting mild nausea and bloody emesis at Issa's initial prenatal visit in January 2014 and that "[p]t ran out of her pancreatic enzyme meds and just restarted them"); 483 ("Has been vomiting blood. She was out of her medication for her pancreatic tumor for 4 weeks and just started taking it again this morning.")). Therefore, the records that Issa cite do not materially undermine the ALJ's assessment of her nausea and vomiting.

Furthermore, the record contains other references that are consistent with Dr. Sharma's records in late 2013 indicating that her nausea and vomiting were well-controlled. At an emergency room visit in October 2013 for leg cramps, Issa reported "[p]retty standard intermittent and diffuse waxing and waning abdominal pain, which is nothing new or concerning

to her at all. Bowel and bladder habits have not been compromised recently.” (AR 357). In December 2013, Dr. Coda reviewed Issa’s history of a Whipple procedure and noted that she “has been doing well since then.” (AR 507). In April 2014, Issa denied any symptoms of diarrhea or vomiting to Dr. Kueber. (AR 430). In May 2014, during her hospitalization for the birth of her child, Issa was tolerating a normal diet, denied any nausea, had a “good appetite,” and was “eating well.” (AR 486, 575-77). Thus, the ALJ’s observation that Issa’s nausea and vomiting were well-controlled by late 2013 is not an unfair assessment of the record. These records documenting Issa’s nausea and vomiting problems sharply contrast with her allegations that her GI problems are so severe that she suffers from abdominal pain, nausea, vomiting, and diarrhea every day and that she spends 70 percent of her day lying down.

Additionally, Issa disputes the ALJ’s assessment that “[t]here is also no evidence in the record that the claimant has significant bowel or bladder control problems which would significantly limit her ability to perform basic work-related activities.” (AR 24). Issa contends that she has repeatedly been diagnosed with and treated for chronic diarrhea. Yet, Issa cites just two medical records in support of her assertion, both of which merely reflect a *past* medical history of chronic diarrhea but not a *current* problem of diarrhea. (DE 19 at 10 (citing AR 487, 606)). “The issue for disability benefits is not whether a claimant has a disease, but whether that disease affects her ability to work.” *Bucholz v. Astrue*, No. 08-cv-4042, 2009 WL 4931393, at \*11 (C.D. Ill. Dec. 15, 2009) (citing 20 C.F.R. §§ 404.1545(a)(1); 416.945(a)(1)). Here, the two records that Issa cites do not adequately support her assertion that she suffers from disabling bowel or bladder problems, and it is not the Court’s duty to scour the record in search of evidence to support her arguments. *See generally Gross v. Town of Cicero, Ill.*, 619 F.3d 697, 702 (7th Cir. 2010) (“Judges are not like pigs, hunting for truffles buried in [the record].” (alteration in

original) (citation omitted)).

Pointedly, “[t]he discrepancy between the degree of [symptoms] attested to by the witness and that suggested by the medical evidence is probative that the witness may be exaggerating [her] condition.” *Powers*, 207 F.3d at 435-36; *see* 20 C.F.R. § 416.929(c)(2) (“Objective medical evidence . . . is a useful indicator to assist [the Commissioner] in making reasonable conclusions about the intensity and persistence of your symptoms and the effect those symptoms, such as pain, may have on your ability to work.”). Here, there is a significant disparity between Issa’s testimony about her symptoms and the objective medical evidence of record. Consequently, on this record, the ALJ reasonably concluded that the objective medical findings of record do not corroborate Issa’s testimony that her GI problems are of disabling severity.

#### 5. The Medical Source Opinions

In determining Issa’s RFC, the ALJ afforded “significant weight” to the opinion of Dr. Brill, the state agency physician, who found that Issa could perform light work that did not involve any climbing of ladders, ropes, or scaffolds; more than occasional climbing of ramps and stairs, balancing, stopping, kneeling, crouching, and crawling; or any concentrated exposure to certain environmental factors. (AR 24); *see Ottman v. Barnhart*, 306 F. Supp. 2d 829, 839 (N.D. Ind. 2004) (“The regulations, and this Circuit, clearly recognize that reviewing physicians and psychologist[s] are experts in their field and the ALJ is entitled to rely on their expertise.” (citations omitted)); 20 C.F.R. § 416.927(f)(2)(i) (“State agency medical and psychological consultants and other program physicians, psychologists, and other medical specialists are highly qualified physicians, psychologists, and other medical specialists who are also experts in Social Security disability evaluation.”). The ALJ then added an additional accommodation of a sit-to-stand option up to every 30 minutes due to Issa’s allegations of abdominal pain and history of a

Whipple procedure. (AR 24). As a result, the ALJ assigned Issa an RFC that was even *more* accommodating than that assigned by Dr. Brill.

In doing so, the ALJ observed that there was no opinion offered by a treating medical source assigning Issa any physical limitations and no medical opinion that fully corroborated her symptom testimony. (AR 24); *see Castile v. Astrue*, 617 F.3d 923, 930 (7th Cir. 2010) (“The ALJ found it illuminating and persuasive on its face that none of Castile’s doctors opined that she was unable to work.”). Issa does not challenge the ALJ’s consideration of the medical source opinions of record with respect to his credibility determination. As such, this evidence further bolsters the ALJ’s credibility determination.

In sum, “an ALJ’s credibility assessment will stand ‘as long as [there is] some support in the record.’” *Berger v. Astrue*, 516 F.3d 539, 546 (7th Cir. 2008) (alteration in original) (quoting *Schmidt v. Astrue*, 496 F.3d 833, 842 (7th Cir. 2007)). Here, the ALJ’s credibility assessment is amply supported by the evidence of record—in particular, Issa’s poor work history, the inconsistencies in the record, her full range of activities, the treatment notes (or lack thereof), and the lack of any corroboration by medical sources of the severe limitations that she alleges. In light of these reasons provided by the ALJ for discounting her credibility, the fact that the ALJ did not specifically acknowledge Issa’s qualifications to her activities on her “bad days” when commenting that her activities were “not inconsistent” with the assigned RFC does not materially undercut the ALJ’s reasoning. Ultimately, the ALJ built an adequate and logical bridge between the evidence of record, *see Ribaldo*, 458 F.3d at 584, and his conclusion about the credibility of Issa’s symptom testimony is not “patently wrong,” *Powers*, 207 F.3d at 435. Therefore, the ALJ’s credibility determination, which is entitled to special deference, *Powers*, 207 F.3d at 435, will not be disturbed.

*D. The RFC Assigned by the ALJ Is Supported by Substantial Evidence*

Issa also argues that the ALJ failed to adequately account for her GI problems in the RFC and in the hypotheticals posed to the VE at step five. On the record presented, Issa's argument is unpersuasive.

The RFC is "the individual's *maximum* remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis." SSR 96-8p, 1996 WL 374184, at \*2 (July 2, 1996). That is, the "RFC is not the *least* an individual can do despite his or her limitations or restrictions, but the *most*." SSR 96-8p, 1996 WL 374184, at \*1; *see* 20 C.F.R. § 404.1545(a)(1); *see* 20 C.F.R. § 416.945(a)(1) ("Your [RFC] is the most you can still do despite your limitations."); *see also* *Young v. Barnhart*, 362 F.3d 995, 1000-02 (7th Cir. 2004) (citations omitted). 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 the evidence." SSR 96-5p, 1996 WL 374183, at \*5 (July 2, 1996); *see* 20 C.F.R. § 416.945. Therefore, when determining the RFC, the ALJ must consider all medically determinable impairments, mental and physical, even those that are non-severe. 20 C.F.R. § 416.945(a)(2); *see also* *Craft v. Astrue*, 539 F.3d 668, 676 (7th Cir. 2008).

Here, the ALJ assigned Issa a physical RFC for light work, as further limited by a sit-to-stand option; occasional postural maneuvers, but no climbing of ladders, ropes, or scaffolds; and certain environmental limitations. (AR 20); *see* 20 C.F.R. § 416.967(b). Issa contends that in assigning this RFC, the ALJ failed to account for any limitations caused by her GI problems—her daily nausea, vomiting, and diarrhea and her need to lie flat up to 70 percent of the day. (DE 19

at 7-8). But in advancing this argument, Issa relies heavily on her own testimony about her GI symptoms, which the ALJ found not entirely credible. The Court has already determined that the ALJ's credibility determination is adequately articulated and not "patently wrong." *Powers*, 207 F.3d at 435. Therefore, to the extent Issa points to her own testimony as evidence to support a more accommodating RFC, that argument is unavailing.

The Court has also discussed the relevant medical evidence pertaining to Issa's GI symptoms, and that discussion need not be repeated here. In short, although the record reflects that Issa did complain of nausea and vomiting to some medical sources, the ALJ found that her nausea and vomiting were well-controlled at least by late 2013. The Court agrees that the ALJ's assessment of the evidence of record pertaining to Issa's nausea and vomiting is a fair representation of the medical evidence of record. To reiterate, "the claimant bears the burden of supplying adequate records and evidence to prove [her] claim of disability." *Scheck v. Barnhart*, 357 F.3d 697, 702 (7th Cir. 2004) (citing *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987)); 20 C.F.R. § 404.1512(c)). "It is not unreasonable to require the claimant, who is in a better position to provide information about h[er] own medical condition, to do so." *Bowen*, 482 U.S. at 146 n.5; *see also Flener ex rel. Flener v. Barnhart*, 361 F.3d 442, 448 (7th Cir. 2004) ("[T]he primary responsibility for producing medical evidence demonstrating the severity of impairments remains with the claimant." (citation omitted)).

In sum, the ALJ assigned an RFC that incorporated all of the limitations in the opinion of Dr. Brill, to which the ALJ gave significant weight, as well as an additional sit-to-stand option to accommodate Issa's complaints of abdominal pain and her past Whipple procedure. Issa has failed to carry her burden of producing a medical source opinion or medical evidence adequate to support her assertion that her GI problems require any greater accommodation than that



incorporated into the RFC. *See Scheck*, 357 F.3d at 702. Consequently, on the record presented, Issa's challenge to the RFC assigned by the ALJ does not warrant a remand of the Commissioner's final decision.

## 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 Issa.

SO ORDERED.

Enter for this 29th day of September 2016.

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