THE COURT: I'm going to find that the plaintiff
has raised two errors on appeal.

The first is a question of whether the ALJ has
performed an improper credibility finding in this case, and
I'm going to find that I have reviewed the ALJ's decision at
pages 32 through 35 of the record. In this case the ALJ did
extensively discuss the entire course of medical treatment.
He discussed the consultative examinations. He did come to
the conclusion, the ALJ in this case, that the plaintiff was
performing some work functions and that while that is not
dispositive of being able to work, it is a relevant factor that
he might consider with respect to credibility issues only, not
necessarily RFC issues.

There is perhaps one misquoting with respect to the
issue of whether the plaintiff himself made the statement that
he wanted to be able to work but was required to take care of
his mother. While that may be or may not be a misquote of the
plaintiff himself, given the medical record that it came from,
that one misstatement does not affect overall the credibility
assessment where the ALJ has looked at the extensive medical
record and discussed it and considered all the medical
treatment in that regard. I'm not able to find that the
determination was patently wrong in this case with respect to

credibility.

With respect to Listing 1.04A, I'm going to find that the ALJ's decision at page nine that the plaintiff did not meet the listing is technically correct. The evidence before the Court shows that the nerve root compression was in fact relieved by surgery, that the treatment after the nerve root compression, that the only evidence thereafter was that there was a mild irritation of the nerve root. And there has not been a showing of meeting nerve root compression for a significant-enough period of time to meet the listing of 1.04A technically, and there is no reversible error in that regard.

With respect to the issue of whether the plaintiff's conditions were the equivalent of Listing 1.04, I find under the case law cited by the defendants in their brief, medical equivalence requires a medical opinion. In this case I'm going to conclude that Dr. Sharifi's records do not constitute the necessary medical opinion of equivalency in this particular case. I'm going to conclude that the ALJ was entitled to rely on the state agency reviewers, who did not find medical equivalency. For those reasons I would have to affirm the decision of the ALJ.

Tom Newlin, I think you have done a very good job of articulating where the issue is that would be on appeal in this case, and that is specifically whether the ALJ should have

found equivalency by review of Dr. Sharifi's records. I think that will be an issue that is clearly highlighted on appeal in this case.

But in this case I believe that where the plaintiff was represented by counsel, it was not incumbent on the ALJ to, on his or her own volition, order an equivalency opinion and that I would not be able to find error in failing to ask for that opinion by the ALJ under a circumstance where a claimant is represented by counsel.

It would be a more difficult opinion if the claimant had not been represented by counsel. The ALJ's duty to develop the record under that circumstance might have required the ALJ to seek equivalency under that circumstance. But that is again a very close call, and I do recognize that the Seventh Circuit on appeal may clearly disagree with me, may clearly find that Dr. Sharifi's records are sufficient to amount to an equivalency circumstance or opinion.

But if they do, there would be a situation in which Dr. Sharifi's opinion was that it was medically equivalent. The state agency reviewers were also admissible and substantial evidence that equivalency was not met, and I believe that for me to find that it should be remanded for that would require me to reweigh the evidence and find that Dr. Sharifi was entitled to more weight than the state agency

physicians, and I don't believe that I'm entitled to reweigh the evidence.

So those are my reasons why I feel I need to affirm at this point in time.