UNPUBLISHED

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

SUSAN M. KNUDSEN, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	No. C02-4108-MWB **REPORT AND RECOMMENDATION**

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I. INTRODUCTION

The plaintiff Susan M. Knudsen ("Knudsen") appeals a decision by an administrative law judge ("ALJ") denying her application for Title II disability insurance ("DI") benefits. Knudsen argues the Record does not contain substantial evidence to support the ALJ's decision. (*See* Doc. No. 9)

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

On October 19, 2000,[1] Knudsen filed an application for DI benefits, alleging a disability onset date of September 1, 1998. (R. 92-94) The application was denied initially on January 30, 2001 (R. 68, 70-73), and on reconsideration on May 31, 2001 (R. 69, 75-78). On June 5, 2001, Knudsen requested a hearing (R. 79), and a hearing was held before ALJ Ronald Lahners on December 14, 2001, in South Sioux City, Nebraska. (R. 24-67) Knudsen was represented at the hearing by non-attorney Lee Sturgeon. Knudsen testified at the hearing, as did Vocational Expert ("VE") Sandra Trudeau.

On April 24, 2002, the ALJ ruled Knudsen was not entitled to benefits. (R. 10-22) On October 4, 2002, the Appeals Council of the Social Security Administration denied Knudsen's request for review (R. 5-6), making the ALJ's decision the final decision of the Commissioner.

Knudsen filed a timely Complaint in this court on November 18, 2002, seeking judicial review of the ALJ's ruling. (Doc. No. 1) In accordance with Administrative Order #1447, dated September 20, 1999, this matter was referred to the undersigned

[1] The ALJ, in his opinion, and the Commissioner, in her brief, state Knudsen's application was filed on October 23, 2000. (R. 13; Doc. No. 16, p. 1) The date stamp on the top of the application is October 17, 2000, and Knudsen signed the application on October 19, 2000, which is the date Knudsen states she filed her application. (*See* Doc. No. 12, p. 1)

United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), for the filing of a report and recommended disposition of Knudsen's claim. Knudsen filed a brief supporting her claim on May 15, 2003. (Doc. No. 12) The Commissioner filed a responsive brief on July 7, 2003. (Doc. No. 16). The matter is now fully submitted, and pursuant to 42 U.S.C. § 405(g), the court turns to a review of Knudsen's claim for benefits.

B. Factual Background

1. Introductory facts and Knudsen's daily activities

At the time of the hearing, Knudsen was 46 years old, and living in Sioux City, Iowa. She stated she was 5'1½" tall, and she weighed 110 pounds. (R. 27-28)

Knudsen stated she has been unable to work since she was admitted into the hospital on September 1, 1998, and was diagnosed with bipolar disorder. She worked at the Sioux City Art Center for about six weeks in 1999 or 2000, during the summer, and she has done some volunteer work at the Art Center, but otherwise she has had no income since her alleged disability onset date. (R. 28-29) She stated she graduated from high school, and was about to complete the requirements for an Associate Degree in child development when she became disabled. She confirmed she can read and write the English language, and she handles her own finances. (R. 29)

Knudsen indicated her past work includes being a teacher's aide, sales attendant, automatic photo developer, sales clerk, and telephone answering service operator. She worked at the sales clerk job for about five years, and she sold and rented videotapes at a video store. She stated her rate of pay was minimum wage. (R. 30-31) Other than those listed, she could not recall any other jobs she had performed in the fifteen years preceding the hearing. (R. 31)

Knudsen stated it takes her "like three hours to get up in the morning, and get going." (R. 31) By the time she gets up, her husband has already left for work. (R. 36) She will set the alarm clock for 8:00 a.m., get up, smoke a cigarette, watch the news, say her prayers, take her medication, feed her fish, and eat breakfast, consisting of a breakfast bar and a glass of juice. She stated she usually dresses about 11:00 a.m., and then she will work around the house for two to three hours before she needs a nap. (R. 31, 36-37) She explained her activities as follows:

> Wash clothes, or do dishes, dust, clean the bathroom[.] I have photo hobbies I like to work on, and watch some TV[.] [I]f I have an appointment I go to my appointment[.] I have a friend who comes over once every two or three weeks. And I put like the meat out for supper, I set the table, and I get dinner ready, and my husband cooks it.

(R. 37) She stated some days she feels worse and is unable to do as many of these activities. For example, if she is "really depressed," she will "just stay in bed" all day, and none of the household chores get done. (R. 37-38) She estimated this happens one or two days a week. (R. 38) She drives herself to doctors' appointments, and sometimes will pick up her prescriptions. She goes to the Art Center to work about twice a month and drives herself there, but she will not go to the grocery store alone and noted, "I'm just not really comfortable with that. I don't go too many places." (R. 46)

Knudsen described her work at the Sioux City Art Center, explaining she is a docent. She will take a class of children around to view and discuss the artwork on display, and then they will have "an artwork project at the end of the tour." (R. 47, 59) Records indicate she worked as a children's docent for thirteen days, one to two hours a day, during June and July 2000. (R. 59) The children's tours are scheduled for an hour to an hour-and-a-half on specific days, but if Knudsen is not feeling well, she will stay home. She stated she sometimes is unable to go to the Art Center due to both physical and

mental problems. She noted she is "always scared before [she goes]" and wants to make sure she knows what she is doing and what she is going to say. (R. 47) Other than going to the Art Center, Knudsen stated she has no other outside activities. She used to belong to a support group for people with depression and manic depression but the group no longer meets. She stated she used to have a lot of friends, but once her friends found out she was hospitalized for manic depression, they quit taking her calls, and now she is down to one friend, who lives in town and visits her twice a month. (R. 48)

Knudsen stated her bipolar disorder causes her to have memory problems, and she sometimes will forget what she is saying in mid-sentence. (R. 31-32) According to Knudsen, she suffers from fibromyalgia, irritable bowel syndrome, and Raynaud's phenomenon, which began when she was 34 years old. She stated that until September 1998, those conditions did not limit her ability to work. (R. 35) She explained that her physical problems from fibromyalgia "would go up and down," getting worse in cold or wet weather. (R. 36) She stated she was diagnosed with bipolar disorder when she was 43 years old. (R. 35)

Knudsen stated she had been seeing Rodney J. Dean, M.D., a psychiatrist, for about three years, for her bipolar disorder, and P. James Eckhoff, M.D. for fibromyalgia, Raynaud's phenomenon, and irritable bowel syndrome. (R. 32) She explained that she takes "up to 18 drugs a day" for her bipolar disorder. (R. 31) She listed her current daily medications as follows:

- Lithobid, 1200 mg., for manic depression
- Sulindac, 400 mg., for fibromyalgia

- Cytotec, 200 mg., for fibromyalgia[2]
- Norvasc, 5 mg., for Raynaud's phenomenon
- Seroquel, 25 mg., for manic depression
- Lorazepam, 1 mg., for depression
- Claritin, 10 mg., for allergies
- Calcium D, 1000 mg., for osteoporosis
- Effexor XR, 75 mg., for depression
- Lomotil, as needed, for irritable bowel syndrome
- Nitroglycerin ointment, as needed, on her hands and feet for Raynaud's phenomenon

(R. 34-35) She stated her medications had been changed at various times over the preceding three years. (R. 39) According to Knudsen, three or four of her medications have drowsiness as a side effect, and people taking the medications are advised not to operate heavy equipment or drive while taking them. (R. 45) She noted that she drives anyway because otherwise, she would be unable to get to her doctor's appointments. (*Id.*) She believes part of her "problem" is that she takes so much medication, but stated she just has to live with it. (R. 46) Knudsen stated she asks every time she goes to the doctor whether she can discontinue any of her medications, but he advises there are none of them she can do without. (*Id.*)

Knudsen stated that when she is in a "bad period," her hair will fall out. She stated Dr. Dean prescribed Effexor for depression because he knows it bothers her when her hair falls out. (R. 38) She has had bad periods that lasted longer than thirty days, and also periods of more than thirty days when she did not have any bad days. She explained that in 1999, she had a long period when she felt better and thought she was getting well. At

[2]The court notes Cytotec is indicated for the prevention of gastric ulcers, particularly in patients taking non-steroidal anti-inflammatory medications, such as the Sulindac Knudsen was taking for her fibromyalgia.

her request, Dr. Dean took her off some of her medications because she thought she no longer needed them, but "it didn't work out." (R. 38-39)

Knudsen testified that for her regular counseling visits, she sees therapist Judy Conner in Dr. Dean's office. Knudsen had dropped down to one visit per month, but when she became depressed and Dr. Dean put her on Effexor, she went "back up to twice a month." (R. 39-40) She sees Judy twice a month for counseling, and she sees her "regular doctor," Lonnie L. Lanferman, D.O., if she has anything "just normally wrong" with her. (R. 46)

Knudsen stated she thinks of herself as a bright person, and before she became ill, she was very efficient, organized, happy, bright, and enjoyed her job. She gave an example of her memory problems, stating she might check a book out from the library and not realize until the end of the book that she had read it before. She stated she also has problems with her attention wandering while she is reading, and she never watches a full television show because she will lose concentration. She stated when she is talking to people, she will forget what she is talking about. (R. 40-41)

Knudsen testified she has had thoughts of suicide, and she made one suicide attempt at age sixteen. (R. 41) During the three years preceding the hearing, she stated her worst mental problems had been fear and paranoia, giving the following examples:

> Well it can be like I don't believe my husband is my husband, you know. Something just doesn't seem right. Or my neighbors like I thought they were in like this weird organization it[']s just so that I wouldn't talk to them. And sometimes you feel like people are watching you, or following you. Like at the grocery store, or sometimes you think, you know, they're just looking at you a certain way.

(R. 42) She indicated that while she was in the hospital in 1998, she experienced delusions, thinking "people could see through walls," and that she was either a devil or

an angel and her doctor was God. She stated, "I couldn't eat the food, because I thought that they were trying to poison me with the food. And there was a lot of people up there who were even sicker than I was, and I was just terrified of them. . . . [T]hey had locks on the outside of the showers, and . . . I didn't want to take a shower unless like my husband was there, or something, because I thought someone was going to lock me in the shower." (R. 42-43)

Knudsen stated she still has manic periods, when her "thinking will become very fast and rapid." (R. 44) She explained that her manic and depressive phases will last a long time, rather than switching rapidly from one to the other. She opined she was probably depressed all her life and just never knew it. (R. 44) She explained that she is less capable during a depressed period and just wants to sleep or "make it go away," while during a manic period, she will be "just doing everything, which sounds okay, but pretty soon, . . . you're doing too much, and your mind just can't keep up with it." (R. 45) Knudsen stated she sometimes has crying spells, but not on a daily basis. (*Id.*)

Describing her physical difficulties, Knudsen stated her discomfort from the Raynaud's phenomenon is different from pain, noting the feeling is "more like intense cold in your fingers, and hands, and feet." (R. 49) The pain she experiences from fibromyalgia is in her back (both upper and lower), hands, and elbows. The pain is not in the same place all the time. For example, the pain will be in her low back at one time and her upper back at another. The pain is not constant; she stated she will have pain once or twice a month that is severe enough to affect her ability to do things. (*Id.*) Knudsen opined that if she did not have any mental impairments, the fibromyalgia, by itself, would not prevent her from working. (R. 50) She agreed with her doctors' statements in February 2001, that her Raynaud's and fibromyalgia are well controlled with medication.

(R. 55) She stated her doctor has encouraged her to stop smoking, and she planned to stop at the beginning of 2002, as her New Year's resolution. (R. 55-56)

Knudsen explained she also has irritable bowel syndrome ("IBS") for which she takes medication. She opined that if she were working at a full-time job, the IBS would interfere with her job about twice a day in addition to regular breaks and the lunch break. (R. 50-51) She stated she cannot predict when she will have to go to the bathroom. (R. 51)

According to Knudsen, stress affects the symptoms of her Raynaud's and her IBS. (*Id.*) She stated her former job as a telephone answering service operator was the most stressful job she ever had, explaining:

> [T]hey had 300 or 400 customers. They had 16 different ways of communicating with those customers, and I was told when I was hired that, you know, there will always be several people working there. But as – with a lot of part-time, you know, jobs they lied. And I would be there by myself, and 16 phones would be going off, and all these things would be ringing, and you have so long to answer, and it was very stressful. . . . Plus I had to stay sitting most of the time so physically, you know, for someone with fibromyalgia it[']s harder just to sit the whole time rather than – even as a sales clerk, and stuff, you get up and move around, and do other things.

(R. 52) Knudsen opined that working in a similar job in her current condition would be difficult because she would have to leave unannounced and go to the bathroom. (R. 53)

Knudsen stated she could lift five or ten pounds, but admitted she really does not know what her lifting limits would be because she is not required to lift anything on a regular basis. (*Id.*) She recalled Dr. Eckhoff telling her not to pick up children, and she noted she is very careful about lifting anything heavy, or lifting anything frequently, because of her fibromyalgia. (R. 54) She does not know how long she could sit or stand

at one time before having problems because she is able to change positions as needed throughout the day. (*Id.*) She confirmed that she has no functional problems with her hands, arms, and legs, and she does not experience physical problems from standing and sitting. (R. 55)

Knudsen expressed her desire to be "back where [she] was three years ago." (*Id.*) She stated the time at home had not been pleasant for her, noting she always enjoyed working and she would like to be able to work. (*Id.*)

2. Knudsen's medical history

Knudsen claims disability based on fibromyalgia, Raynaud's phenomenon, irritable bowel syndrome, and bipolar disorder (manic depression).[3] (R. 107) As noted above in the summary of her testimony, Knudsen testified that if she did not have mental problems, her fibromyalgia and associated Raynaud's phenomenon would not prevent her from working. (R. 49-50) Therefore, the court will focus primarily on the evidence relating to her bipolar disorder.

From the Record, it appears Knudsen was treated for mental illness during her teens, and she was treated for postpartum depression at age 18, after the birth of her first child. Following that treatment, she appears to have had no further mental problems, and she took no medications for a mental illness, until the onset of her current bipolar disease in September 1998. Knudsen was taken to the emergency room on the evening of September 1, 1998. She was confused, and "thought she was there to be with her husband who had been in an accident[,] which was not true." (R. 205) Knudsen said she was

[3]The ALJ stated Knudsen alleges she became disabled "due to a bipolar disorder, memory deficits and fibromyalgia." (R. 13) However, the Disability Report submitted by Knudsen in connection with her application lists fibromyalgia, Raynaud's, IBS, and bipolar disorder. (R. 107)

pregnant, which also was not true, and she gave her age as 18 and told hospital staff she lived at her parent's address. She was admitted into the hospital's Behavioral Unit, and was examined the next day by Chad E. Bittner, M.D., who noted Knudsen was agitated, disheveled, and "hyper." She had difficulty focusing and exhibited disjointed thought processes. Dr. Bittner diagnosed her with "Bipolar disorder, manic, working." (R. 206) He noted her level of functioning was very low, and assessed her current GAF at 37[4], with an estimated GAF of 75 over the preceding year. (*Id.*) Knudsen was started on Depakote therapy and Risperidone. Her condition improved, and she was discharged on September 6, 1998, "in stable condition on [her prescribed] medications," which included Depakote, Risperidone, Cardene[5], Hydroxyzine[6], Claritin (an antihistamine), and Sulindac[7]. (R. 204)

Knudsen's husband took her back to the emergency room on September 18, 1998, reporting that she was "out of control" and had "not been acting herself" since the previous evening. (R. 235) Knudsen refused to allow herself to be examined and stated she would not take any medications. Her husband reported that Knudsen had not taken her medications that day, and he was not sure she had taken all of them the day before.

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[4]A GAF of 37 indicates "[b]ehavior is considerably influenced by delusions or hallucinations or serious impairment in communication or judgment (*e.g.,* sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) or inability to function in almost all areas (*e.g.*, stays in bed all day; no job, home, or friends)." American Psychiatric Assoc., *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. 1994) ("DSM-IV"), at 32.

[5]Cardene is a calcium ion flux inhibitor usually prescribed for hypertension and chronic stable angina. It appears Knudsen was taking Cardene to relieve the symptoms of Raynaud's phenomenon. (*See* R. 350)

[6]Hydroxyzine is prescribed for symptomatic relief of anxiety and tension.

[7]Sulindac is a non-steroidal anti-inflammatory agent, likely prescribed to treat Knudsen's fibromyalgia.

The admitting doctor noted Knudsen's speech was pressured and her thoughts were garbled. Knudsen told the hospital staff that "it was a domestic abuse scene, [and] I don't want to be here. . . . He was mad at me and made me anxious, [but] it's fine now." (R. 237) Knudsen was admitted to the Behavioral Unit for further evaluation and treatment. (R. 235) She remained "very manipulative and uncooperative" for several days, continuing to refuse examination. (R. 243) She took Haldol and Ativan, but refused all other medications. The staff noted Knudsen might have an eating disorder in addition to her other problems (R. 244), but the Record does not contain further documentation of an eating disorder. She was started on Prilosec and Carafate to relieve her stomach distress. (*Id.*)

On September 23, 1998, Knudsen began taking her medications again. She remained very ambivalent about treatment, which the staff noted made her very difficult to treat. (R. 245) She was discharged on October 8, 1998, "to outpatient care setting with bipolar and psychosis disorder, history of fibromyalgia, Raynaud's syndrome." (R. 234) The outpatient service developed a treatment plan for her that included the following assessment and treatment objectives:

> Strengths: -- Tries to make good choices, has a work history, is on time, conscientious about following schedule, is willing to do whatever it takes to get better.
>
> Weaknesses: -- Needs to feel better about herself and to have trust in others.
>
> Goals: -- Build physical and mental health; effective symptom management; medication management; develop independent living skills.
>
> Treatment Objectives: -- 1. Will follow good health habits such as eating nutritious regular meals, walking, following recommendations for mental health and physical health care. 2. Will attend AM group therapy and cognitive therapies to

> increase understanding of mental illness and to develop effective coping skills such as relaxation techniques, cognitive restructuring, etc. Will identify at least 2 coping techniques she uses. 3. Will take medication as prescribed. R.N. will assist in working out manageable medication schedule and staff will reinforce medication compliance. 4. Will plan and eat meals with husband. Will consult with husband on sharing household responsibilities. Will carry out tasks at home as needed. Will look at possible employment options when more stable.
>
> Services to be provided: -- AM group therapy, medication management, cognitive therapy, education class, self esteem class.

(R. 254) It was estimated Knudsen would be in the outpatient program through October and November 1998, and she would be discharged when her mood stabilized, she was taking her medications as directed, she could handle the requirements of daily living at a satisfactory level, and she had "identified alternative purposeful activity[,] such as some type of employment." (R. 254-55)

In the social history Knudsen gave when she entered the outpatient program, she noted she had worked in the past as a teacher's aide, and she was working in that capacity at Goldenrod Hills Community Action Agency until she became ill. (R. 259) She expressed concern about the cost of her care, stating she and her husband were worried about money and she felt she should return to work. (*Id.*) There are no further treatment notes from Knudsen's treatment in the outpatient program.

On January 6, 1999, Knudsen began seeing counselor Judy Conner, under the supervision of psychiatrist Rodney J. Dean, M.D. In her intake examination, Knudsen stated she was seeking therapy because she was feeling depressed. She reported feeling troubled because she had suffered hair loss from the Depakote. Ms. Conner noted Knudsen "also recently lost her job and tells me she feels worthless because she isn't able

to work at this time. She talked about worrying incessantly and not being able to resolve any problems or make even the most minute decision." (R. 336) Ms. Conner assessed Knudsen's current GAF at 50[8], with a high during the previous year of 65. Ms. Conner scheduled weekly individual therapy sessions with Knudsen, and noted she would "continue to see Dr. Dean for medication." (R. 337) Knudsen was instructed to monitor her mental and emotional states very carefully, and to let Ms. Conner or Dr. Dean know if she had any indication that her bipolar symptoms were returning. (*Id.*)

Knudsen saw Ms. Conner again on January 14, 1999, accompanied by her husband Ed. Ms. Conner explained depression and bipolar disorder to Ed, and answered his questions about his wife's illness. Knudsen became angry at one point, stating Ed blamed her for being depressed. Ed stated his wife's condition was worse than he had ever seen it, and it was frightening and frustrating for him. He expressed fear that Knudsen would hurt herself or have to be hospitalized again. Ms. Conner suggested Ed attend Knudsen's next appointment with Dr. Dean, who could answer more of his questions. (R. 335)

Knudsen saw Dr. Dean for the first time on January 18, 1999. She apparently had been referred to Dr. Dean by Dr. Dale Wassmuth, a psychiatrist who had treated Knudsen during her hospitalization. Knudsen told Dr. Dean she wanted a second opinion because she was concerned her diagnosis might not be accurate. (R. 332) Dr. Dean found Knudsen to be pleasant but tearful, soft spoken, somewhat sad, and oriented to person, place, time, and situation. He noted Knudsen's history indicated she had experienced manic symptoms. He diagnosed her with Bipolar I Disorder with Psychosis in Partial Remission, and assessed her current GAF at 55. (R. 333) Dr. Dean noted Knudsen was doing much better than she had been in 1998. He stated, "She does appear to have Bipolar

[8]A GAF of 50 indicates either serious symptoms or "any serious impairment in social, occupational, or school functioning (*e.g.*, no friends, unable to keep a job)." DSM-IV at 32.

Disorder but this is just difficult for her to accept." (R. 334) Knudsen indicated her willingness to participate in "an aggressive treatment program that includes the ongoing use of both the Lithium, Seroquel, and potentially the Lorazepam," and she planned to continue seeing therapist Judy Conner. Dr. Dean instructed her to return for follow-up in two months. (R. 334)

Knudsen saw Ms. Conner again on January 20, 1999, when the therapist noted she "appear[ed] today to be doing quite a bit better." (R. 331) They scheduled a regular weekly therapy session. (*Id.*) At her next session on January 28, 1999, the therapist noted Knudsen was feeling somewhat better and was "doing quite well considering the seriousness of her illness a short time ago." (R. 330) She indicated Knudsen was "continuing to work in therapy," and opined her prognosis was "fairly good." (*Id.*) Her next session was on February 5, 1999, and the therapist noted Knudsen was continuing to improve. She observed Knudsen had experienced "a lot of difficulties all of her life," including an abusive father, which seemed to impact Knudsen's relationship with her husband. However, she noted Knudsen was "doing quite a bit better with standing up to her husband" and not allowing him to control her, which the therapist viewed as positive. (R. 328)

Knudsen saw Dr. Eckhoff for medical follow-up on February 18, 1999. She related her recent history and diagnosis with Bipolar Disorder. Among other things, Knudsen reported the recent onset of tremors and a lot of stiffness, which the doctor related to her use of Lithium. The doctor also noted possible adverse effects from the interactions of the Lithium with the Cardene and Sulindac, and he instructed her to tell Dr. Dean about her Sulindac dosage, which he opined could affect her Lithium levels. Among other things, Dr. Eckhoff noted Knudsen had "been doing fairly well this past winter with very few, if any, episodes of Raynaud's phenomenon." (R. 356)

Knudsen saw Ms. Conner again on February 19, 1999. She reported there were times when she felt she was beginning to go into a manic phase, but she had been able to control this with the help of medication. "She also talked about wanting to get a job so that her husband cannot be so controlling of her, but feeling caught because she doesn't feel well enough mentally and emotionally to do that." (R. 327) Ms. Conner suggested Knudsen not hurry into a job too quickly, giving herself time to recover physically and emotionally before she returned to full-time work. She suggested Knudsen might do some volunteer work or take a class. Ms. Conner noted Knudsen was more accepting of her Bipolar Disorder and had positive goals for her treatment. (*Id.*)

At Knudsen's next session on March 1, 1999, she was feeling better about herself because her hair was starting to grow back. Ms. Conner noted it "was understandably . . . very traumatic to lose her hair because of the medication and a real blow to her already fragile self-esteem." (R. 326) Knudsen expressed further understanding of her condition, and she described how her previous job allowed people to take advantage of her. The therapist noted the following:

> [Knudsen] is a highly intelligent woman who has been very interesting to work with therapeutically. She has a pretty good idea that the stress she has been under in her life plus the abuse in her childhood has really activated the genetic predisposition to Bipolar Disorder. She also wanted to do some talking about the fact she has always been a caretaker and how when she got into her last job where she had to be hospitalized because of becoming so manic, it was a perfect set-up for people to take advantage of her and the fact she is a caretaker. She related that she would work 10-12 hours every day, go home and work another 6 hours at night, wake up in the morning and start all over again. Obviously, she was not able to keep this up forever, but kept it up long enough that it is amazing to me.

(*Id.*)

Knudsen saw Ms. Conner again on March 11, 1999, and the therapist noted she seemed "to be doing well emotionally," and was "doing a very good job in therapy." (R. 325) When she saw Knudsen again on March 18, 1999, the therapist noted Knudsen was "feeling a push to get back to work," but the therapist opined she was "not mentally strong enough to take on a job at this time." (R. 324)

Knudsen saw Dr. Dean for follow-up on March 22, 1999. The doctor told Knudsen and her husband that she could anticipate dealing with Bipolar Disorder for the rest of her life, and they talked about how this might affect Knudsen's level of functioning. They discussed the side effects of her medications, including the tremors, excessive snoring, and "excessive oiliness in her face," but the doctor noted these were "not really problematic." (R. 323) He maintained her on the same medication regimen including Seroquel, Ativan, and Lithium, and directed her to return for follow-up in a few months. (*Id.*)

Ms. Conner saw Knudsen for a regular counseling session on April 1, 1999. Knudsen reporting feeling less depressed and doing somewhat better. (R. 322) She continued to report doing well at her next session on April 8, 1999. In addition, she reported feeling embarrassed by what she deemed her bizarre behavior that led to her hospitalization. (R. 321) At her next visit on April 15, 1999, Knudsen reported beginning a volunteer job at the Art Center, which the therapist viewed as positive. She noted Knudsen "struggles with wanting to be out there working again because she sees the strain that it puts on her husband and family finances without her income"; however, the therapist continued to encourage Knudsen "to take it slow, to do some volunteering for a few months just to see how it is going to feel for her to start back out into the job market." (R. 320) When Ms. Conner saw Knudsen again on April 22, 1999, she noted Knudsen "seems to be gaining insight every appointment." (R. 319) Knudsen denied having any active Bipolar symptoms at that time. She was continuing to volunteer at the Art Center

"providing tours with an emphasis being on tours with children." (*Id.*) She continued to report feeling better emotionally and mentally at her next session on April 28, 1999. (R. 318)

When Ms. Conner saw Knudsen on May 12, 1999, Knudsen reported she had gained some weight, which was causing her distress. The therapist noted Knudsen "realizes that there is some weight gain associated with her medication, but she tells me she isn't willing to discontinue any of her meds because she feels she is doing so well with the meds she is taking at this time." (R. 317) At her next session on May 26, 1999, Knudsen reported an episode "where she felt she was getting manic." (R. 316) She was able to calm herself, and reportedly was surprised at how much it helped just to remind herself "that there are some things beyond her control and she needs to not dwell on those things to have them become a real problem for her." (*Id.*) The therapist noted, "Depression does not seem to be a big problem for [Knudsen] at this time." (*Id.*)

Knudsen continued seeing Ms. Conner regularly for therapy sessions for at least the next fourteen months, with sessions on June 3 and 28, July 13 and 27, August 10 and 25, September 1 and 22, October 6 and 20, November 2 and 16, and December 2 and 22, 1999; and on January 7 and 21, February 10 and 25, March 13, April 11, May 2 and 22, June 19, July 5 and 24, August 7, 2000. (R. 286-315) During that time period, Ms. Conner reported Knudsen continued to make progress in therapy and to do reasonably well overall. Knudsen recognized the impact stress has on her condition, and developed strategies for relapse prevention and a family plan to address any manic episodes that might occur. She saw Dr. Dean periodically for medication management, and saw Dr. Eckhoff for follow-up of her medical conditions. Highlights from the Record that are pertinent to her disability claim include the following.

On June 28, 1999, after returning from a vacation to New Orleans, Knudsen reported not sleeping well and complained of her back aching. She wondered if she was beginning to feel manic, which made her quite nervous. The therapist encouraged her "to focus on how well she is doing rather than thinking every ache and pain is once again bringing her into a major depression or some psychosis." (R. 313) Dr. Dean continued Knudsen on her medication regimen of Lithobid, Ativan, and Seroquel, and scheduled her for a six-month follow-up, noting "she is really doing very well and has been stable for some time." (R. 314)

Knudsen repeatedly talked about wanting to return to work, but also reported being frightened at the prospect, particularly working in a preschool setting. (R. 310, 311, 312) On August 25, 1999, Knudsen reporting feeling somewhat depressed, which she attributed to boredom. (R. 309) At her session on September 22, 1999, Knudsen reported a manic episode that had occurred four days earlier, and she was "understandably upset" over the episode. (R. 307) Knudsen stated she had called Dr. Dean, who had given her medication that helped bring her out of the manic state. The therapist noted, "One of the biggest fears she has is that she will again be psychotic when she becomes manic and that didn't happen this time." (*Id.*) She identified recent family stressors that could have contributed to the onset of the manic episode. (*Id.*)

At her session on October 6, 1999, Knudsen reported she was starting a part-time job and she was very excited about it. (R. 306) When Knudsen saw Ms. Conner on November 2, 1999, she talked about her diagnosis of fibromyalgia and "how painful that is for her." (R. 303) She stated her mother wanted her to take care of her grandmother, but she did not feel emotionally and physically able to do that. (*Id.*) At a medication check with Dr. Dean on October 15, 1999, Knudsen expressed some concern about excessive oiliness in her face, and reported that at the lower dose of Lithobid, she

sometimes felt "a little anxious." (R. 305) Dr. Dean increased her Seroquel dosage, and continued her other medications. He noted Knudsen "is doing extremely well, has some mild agitation, maybe hypomania, but certainly no psychosis or suicidal ideations." (*Id.*)

Knudsen saw Dr. Eckhoff for follow-up of her medical conditions on October 18, 1999. She reported feeling quite well, with occasional flare-ups of fibromyalgia and no episodes of Raynaud's phenomenon. She was very happy with her job at the Art Center, her Bipolar Disorder seemed to be well controlled, and she reported feeling "more calm and happy than she [had] been in a long time." (R. 350)

Knudsen saw Ms. Conner on December 2, 1999, and reported that her grandmother had died. She stated that when she had the teaching position, she liked the job "so much that she became manic because she wasn't able to do everything 'perfect enough'." (R. 301) When she saw Ms. Conner on December 22, 1999, Knudsen reported taking on some additional duties at the Art Center, teaching some classes. She related that "when she got into planning for the classes she was going to teach, she recognized some of her racing thoughts and the fact she seemed to be getting manic. She stopped herself and was able to refocus and not follow through with the perfectionism and some of the behaviors that she got into when she was teaching full time." (R. 300)

At a session on January 21, 2000, Knudsen related having continuing problems with her digestion and diarrhea, noting she was seeing her family doctor for treatment of those problems. (R. 298) At a medical follow-up with Dr. Eckhoff on February 14, 2000, Knudsen reported having "intermittent diarrhea . . . [that] was quite prominent for awhile but has calmed down." (R. 348) He gave her a prescription for Lomotil in case she had further problems with diarrhea. (*Id.*) Regarding her other medical problems, Dr. Eckhoff noted Knudsen's Raynaud's was "very well controlled because of the milder winter," and her "[f]ibromyalgia symptoms [were] better because of her better life situation." (*Id.*)

Knudsen saw Dr. Dean for follow-up on February 24, 2000. She complained about some excessive sedation and fatigue, which the doctor related to the Seroquel, noting he had been "backing down on that dosage progressively." (R. 296) Knudsen's Lithium level was within therapeutic limits, but she was continuing to have intermittent tremors. He noted, "I think if she doesn't drink a lot of water and is under high stress the tremors are more problematic, but her husband says she is sleeping and eating well." (*Id.*) He observed that Knudsen looked good; she was not having any psychotic, depressive, or manic symptoms; and she was "participating fairly actively in her therapy." (*Id.*) He reduced her Seroquel dosage.

On February 25, 2000, Knudsen saw Ms. Conner, and reported that she was "committed to starting back to work very slowly." (R. 295) She related that she had taken "a very part-time job at the Sioux City Art Center." (*Id.*) The therapist cautioned her "to be very aware [of] the way she tends to begin a job or a project and after awhile it consumes all her waking hours," noting Knudsen "basically has done a very good job of being able to identify problem areas related to being in danger of becoming manic if she becomes too consumed with any project." (*Id.*) At her session on March 13, 2000, Knudsen reported liking her part-time job at the Art Center, and she brought in some bracelets she had been making as a hobby. (R. 294)

When Ms. Conner saw Knudsen on April 11, 2000, Knudsen "talked about going to work [in the] summer on a very part time job. She is going to be heading up some classes for 3 and 4 year olds for the Art Center." (R. 293) The therapist opined it had been helpful for Knudsen to begin working part time because Knudsen was feeling better about herself, and she enjoyed doing work that allowed her to use her artistic ability. The therapist noted Knudsen continued "to make steady improvement," and, despite Knudsen's fears, she had "not had either a serious manic or depressive incident since she was

hospitalized." (*Id.*) At her session on May 2, 2000, Knudsen stated if the part-time summer job at the Art Center went well, she was considering a part-time job in the fall. (R. 292)

Knudsen saw Dr. Dean for follow-up on June 9, 2000. She reported things were "going reasonably well for her," and she questioned how long she would have to be on her medications. The doctor noted:

> [I]t is clear that in the past when we have tried to reduce her medications she has become hypomanic and mildly paranoid. She is just on a combination of Seroquel and Lithobid with low dose Ativan. She does pretty well in terms of her general level of functioning, but she has to be on the medication and if she really pushes herself . . . then she can decompensate pretty easily. But as long as she doesn't push herself too much, takes her medicines regularly and makes sure she eats and sleeps[,] she actually is pretty comfortable. She certainly is not suicidal or homicidal and no psychotic symptoms at this time.

(R. 290)

When Knudsen saw Ms. Conner on June 19, 2000, she reported feeling a manic episode coming on the previous week, but the therapist noted she "actually did a very good job of talking her way through becoming manic and she never actually experienced the manic episode." (R. 289) At her session on July 5, 2000, Knudsen denied feeling either depressive symptoms or struggling with mania, despite ongoing stress related to her family situation. (R. 288)

Knudsen saw Ms. Conner on July 24, 2000. She reported learning that she would be working with South Sioux City Head Start, which was her former employer, as part of her job at the Art Center. Knudsen said she became physically ill and had an anxiety attack just thinking about working with the Head Start staff again, "particularly one woman with whom [she] had a good deal of conflict." (R. 287) Knudsen had called Ms. Conner

the day she found out about working with Head Start to get support for her physical and emotional reactions to the news. The therapist noted, "The more we talked, [she] was able to make some connections between feeling helpless and battered as a child and the way she felt in her relationship with a particular staff member at the Head Start in South Sioux City. Hopefully helping her have a better understanding of just why she was having so much emotional and physical reaction to this situation will help any future encounters she has of a similar nature." (*Id.*)

The Record contains no office notes from further counseling sessions after August 7, 2000, although Dr. Dean and Ms. Conner later indicated Knudsen had continued to be involved in "ongoing counseling and medication management." (R. 368) Knudsen saw Dr. Dean for follow-up on October 2, 2000, and he noted she was "seeing her therapist." The doctor stated Knudsen was "easily overwhelmed when there are some significant changes in her environment," but she was addressing stressors appropriately, taking her medications, and trying to make sure she ate and slept on a regular schedule. (*Id.*) He concluded, "She has kept herself under pretty good control and I think she will continue to do so as long as she is functioning reasonably well. . . . So far she is tolerating the stress, but she has to work a little harder at it." (*Id.*) He continued her medication regimen of Ativan, Seroquel, and Lithobid, and expected to see her for follow-up visits every three to six months. (*Id.*)

Knudsen saw Dr. Eckhoff for medical follow-up on October 16, 2000. (R. 344-47) He noted she continued to have Raynaud's symptoms, but she had no soft tissue injury or loss of fingertip pulp due to the disease. She reported continuing to have soft tissue muscular pain from her fibromyalgia. The doctor noted Knudsen was "not exercising very much," and noted, "She basically doesn't like to do it. She worked out with someone else who really worked much harder than she did and she couldn't keep up and caused her to

have a great deal of pain, stiffness, and soreness." (R. 344) He refilled her medications and scheduled a follow-up in six months. (*Id.*)

Dr. Dean wrote an opinion letter to the Iowa Disability Determination Services Bureau on December 8, 2000, regarding Knudsen's condition. He limited his opinion to her Bipolar Disorder, "work-related mental abilities relative to the same and her capacity to handle her own cash benefits." (R. 283) Dr. Dean listed Knudsen's diagnosis as "Bipolar I Disorder, Mixed Type, with Psychosis, in Full Remission," manifesting itself "with a combination of mania; expansive mood, flight of ideas, pressured speech and delusional thoughts with auditory hallucinations and paranoia." (*Id.*) He noted she had responded well to treatment and had a good prognosis.

Dr. Dean offered the following opinion regarding Knudsen's mental status and work-related mental abilities:

> The patient's current mental status exam is unremarkable. There is no evidence of psychosis, organicity, thought disorder or mania. She sleeps and eats reasonably well and has no suicidal or homicidal ideation's [sic]. She does maintain a history, at least over the past two years, which reflects attempts to become involved in fairly structured work-like settings, i.e. 8 hour days, 40 hour weeks, resulting in fairly abrupt decompensation leading to a return of both manic and psychotic symptoms.
>
> In terms of the patient's work-related mental abilities, she certainly does have the ability to remember and understand instructions, procedures and locations. She has some difficulties maintaining attention, concentration and pace because while most of her symptoms are in remission, she does have episodes where there are a lot of thoughts in her mind and "flight of ideas". She tends to be a very pleasant lady and interacts with most people, as long as there are not large numbers of individuals. When she gets in situations where there are a whole lot of people such as walking through

> the Mall during the Christmas rush time[,] she will get a little paranoid, but no hallucinations. She does use good judgment both in taking her medications and her treatment follow up, but has difficulty responding to changes in the workplace. Usually the changes are associated with some decompensation in terms of symptom recurrence, but she has learned to deal with this fairly well. As a result, I see her having no problems in handling her own cash benefits at all.

(R. 283-84)

Knudsen underwent an examination by Douglas W. Martin, M.D. at the St. Luke's Occupational Medical Clinic on December 19, 2000, in connection with her application for disability benefits. (R. 275-81) Dr. Martin found Knudsen's fibromyalgia to be long-standing and relatively stable. He found her able to lift and carry twenty-five to thirty pounds occasionally, ten to fifteen pounds frequently, and five pounds constantly. He found no limitations in her ability to stand, move about, walk, sit, stoop, climb, kneel, crawl, see, hear, speak, or travel. Due to her Raynaud's problem, he recommended limiting her repetitious grasping and gripping to only an occasional basis, and keeping her from temperature extremes. He found she had no other environmental restrictions. (R. 278)

David G. Beeman, Ph.D. performed a Mental Residual Functional Capacity Assessment of Knudsen, based on his review of her records, on January 10, 2001. Dr. Beeman attempted to contact Dr. Dean for clarification of his statement in the December 8, 2000, letter that Knudsen had attempted to return to full-time work but had abruptly decompensated with return of both manic and psychotic symptoms. Dr. Dean was on vacation, and counselor Judy Conner speculated he may have meant that after Knudsen's initial hospitalization in 1998, "she had attempted to return to work and then quickly decompensated." (R. 338) Ms. Conner opined Knudsen was not capable of

working, noting she was unable to maintain very simple part-time work at the Art Center. Dr. Beeman noted Ms. Conner concluded Knudsen "does well in a very nonstressful environment but that any added stress and she does not do so well. She then has trouble concentrating and her thoughts race." (*Id.*)

Based on his review of the Record and his conversation with Ms. Conner, Dr. Beeman found Knudsen to be moderately limited in her ability to maintain attention and concentration for extended periods; to work in coordination with or proximity to others without being distracted by them; to complete a normal workday and workweek without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; to interact appropriately with the general public; and to respond appropriately to changes in the work setting. He did not find her to be significantly limited in her ability to remember locations and work-like procedures, or to understand and remember both short and simple instructions and detailed instructions. Other than as noted above, he found no other limitations in her ability to sustain concentration and persistence, to engage in social interaction, and to adapt to changes in the work setting. (R. 371-72)

In his review summary, Dr. Beeman noted that although Knudsen "clearly had marked limitations at the time of her [alleged onset of disability], . . . those symptoms cleared relatively well with treatment and at one year's duration[,] Dr. Dean's notes indicate she was doing well." (R. 375) He found the available information indicated Knudsen "retains the ability to complete a wide range of work-related functions provided the stress levels are low and the amount of contact with others is not great. This includes both simple, unskilled work as well as some detailed, complex work." (R. 376) He was unable to reach a conclusion regarding her functional capacity on the "C" criteria of the Listings (*i.e.*, whether she has "more than a minimal limitation of ability to do any basic

work activity, with symptoms or signs currently attenuated by medication or psychosocial support," and repeated episodes of decompensation of extended duration, residual disease process resulting in decompensation, or a history of inability to function outside a highly supportive living arrangement and indicated need for continuation of such an arrangement; *see* R. 388). (*Id.*)

Dr. Beeman concurrently completed a Psychiatric Review Technique (R. 377-390A), in which he concluded Knudsen suffers from Bipolar Disorder that would result in a mild limitation and restriction of the activities of daily living and difficulties in maintaining social functioning, and moderate limitation in the area of difficulties maintaining concentration, persistence, or pace. (*Id.*) He again noted he was unable to reach a conclusion regarding the "C" criteria of the Listings. (R. 388) Philip R. Laughlin, Ph.D. reviewed the evidence on May 29, 2001, and concurred in Dr. Beeman's conclusions. (R. 377; 399)

Melodee S. Woodward, M.D. performed a Physical Residual Functional Capacity Assessment on January 29, 2001 (R. 391-98), and found Knudsen could lift/carry thirty pounds occasionally and fifteen pounds frequently; and stand, walk and sit for a total of about six hours in an eight-hour workday. She found Knudsen to have no other functional limitations. Regarding environmental limitations, the doctor noted Knudsen should avoid concentrated exposure to extreme cold, noting "[c]old protection maneuvers can be instillated for more moderate exposures." (R. 395) Knudsen also should avoid significant vibration of her hands. Unlike Dr. Martin, Dr. Woodward found Knudsen would not be limited in her ability to grasp or grip, due to "excellent strength in her extremities . . . and good function in these areas." Dr. Woodward noted, "The medical literature suggests that limitation in significant vibration (e.g. power tools) and temperature exposure are more

important than limiting grasp/grip for prevention of the Raynaud's phenomena and this is reflected in the RFC." (R 397)

In her review summary, Dr. Woodward noted Knudsen's medically-determinable physical impairments as fibromyalgia and Raynaud's phenomena. She found those impairments to be severe, but concluded they did not meet the Listing criteria. (R. 400) She found the evidence did not support a finding that Knudsen is impaired due to irritable bowel syndrome. (R. 400-01)

Knudsen returned to see Dr. Eckhoff for follow-up on February 5, 2001. She reported no problems with Raynaud's, but stated she had not been outdoors much. The doctor observed that Knudsen appeared to be depressed, and he opined she might be suffering from "a component of seasonal affective disorder." (R. 340) He suggested she talk with Dr. Dean about this. Knudsen stated she had been enjoying some artwork projects, but she had not been working much. She continued to exhibit tender points suggestive of fibromyalgia. The doctor noted, "She has not really been exercising at all and her fibromyalgia symptoms are 'as bad as ever'." (*Id.*)

In a Medical Source Statement completed by Dr. Dean and Ms. Conner on February 9, 2001, they indicated Knudsen has a chronic history of Bipolar I Disorder with psychosis, and her condition has existed and persisted at least since September 1998. They noted she has "no current psychosis but ongoing depressive symptoms and family problems." (R. 368) They stated she was involved in ongoing counseling and medication management. The doctor and therapist assessed Knudsen's work-related mental abilities as follows: "fair" ability to maintain attention for extended periods of two-hour segments; to work in coordination with or proximity to others without being unduly distracted by them; to make simple work-related decisions; to accept instructions and respond appropriately to criticism from supervisors; to get along with coworkers or peers without

distracting them unduly or exhibiting behavioral extremes; and to respond appropriately to changes in a routine work setting; and "good" ability to remember work-like procedures; to understand, remember, and carry out very short and simple instructions; to maintain regular attendance and be punctual within customary tolerances; to sustain an ordinary routine without special supervision; to complete a normal workday and workweek without interruptions from psychologically-based symptoms; to perform at a consistent pace without an unreasonable number and length of rest periods; to ask simple questions or request assistance; and to be aware of normal hazards and take appropriate precautions. (R. 367-68) Notably, the form completed by Dr. Dean and Ms. Conner define "fair" as follows: "Substantial loss of ability to perform the named activity in regular, competitive employment and, at best, could do so only in a sheltered work setting where special considerations and attention are provided." (R. 367)

On January 9, 2002, Dr. Eckhoff completed a Fibromyalgia Residual Functional Capacity Questionnaire concerning Knudsen. He stated he had seen her for office visits every six months since 1990. He indicated she exhibits multiple tender points on examination, and her symptoms include nonrestorative sleep, chronic fatigue, subjective swelling, Raynaud's Phenomenon, depression; and daily pain that varies in intensity in her back, shoulders, arms, hips, and legs. He noted Knudsen's symptoms and functional limitations are affected by emotional factors, and her pain can be precipitated by changing weather, fatigue, movement/overuse or static position, stress, and cold. Dr. Eckhoff opined that Knudsen's pain is seldom severe enough to interfere with her attention and concentration. He found she is able to sit for thirty minutes at one time, stand for fifteen minutes at one time, she would need to walk around for five minutes every half hour during an eight-hour working day, and she would need to shift positions at will from sitting, standing, or walking. She sometimes would need to take unscheduled breaks

during the workday. He stated she can lift up to ten pounds occasionally, and should never lift more than ten pounds. He opined she has significant limitations in the ability to do repetitive reaching, handling, or fingering. The doctor estimated Knudsen is likely to be absent from work as a result of her impairments or treatment an average of three times a month. (R. 411-17)

3. Vocational expert's testimony

The ALJ asked VE Sandra Trudeau the following hypothetical question:

> Let's assume that we have someone such as [Knudsen], of the same age, education, and past work history. Both as to exertional and skill level. With some transferable skills from her previous employment, and then with these following limitations and restrictions. That such a person could lift up to 20 pounds on occasion, 10 pounds on a frequent basis[;] could sit for six hours, could stand for six hours, and with normal breaks complete [an] eight-hour work day. Has no limitation with regard to movement, and so forth of the limbs. However, she's – such a person that should not be exposed to concentrated cold or vibration. Should not do repetitious grasping or gripping, can do it on an occasional basis. . . . [D]ue to the mental problem that she has, she would be moderately limited . . . in the following respects. The ability to maintain attention and concentration for extended periods. The ability to work in coordination with or proximity to others without being distracted by them. The ability to complete a normal workday, and workweek, without interruption[] [f]rom psychologically based symptoms, and to perform at a consistent pace without an unreasonable number and length of rest periods. The ability to interact appropriately with the general public. And the ability to respond appropriately to changes in the work setting. Now then with such limitations would such a person be able to do any of [Knudsen's] past relevant work?

(R. 61-62) The VE responded that the hypothetical individual would be able to perform her past jobs as a photo shop developer and a sales clerk. (R. 62) The VE stated there are also other jobs the person could perform, such as cashier, information clerk, and office clerk. (R. 63)

The ALJ then asked the VE whether the same person would be able to perform the same work if the person had irritable bowel syndrome that would act up, requiring unscheduled breaks of five minutes or so in addition to the normally scheduled breaks. The VE answered the hypothetical person would not be able to perform any of the listed jobs. (R. 63-64) Further, if the same person would miss one day per week at unscheduled times due to depression or other mental problems, the person would be unable to sustain any type of employment. (R. 64)

Knudsen's attorney asked the VE to consider a person with the limitations stated in the ALJ's second hypothetical question, but the person would have frequent difficulty maintaining concentration and pace, repeated episodes of decompensation in work settings, and a substantial loss of the ability to maintain attention for a two-hour segment, to work in coordination with or proximity to others, to get along with coworkers and peers, to make work-related decisions, and to accept instructions and criticism from supervisors. The VE stated the hypothetical person would be unable to return to any of her past relevant work, or to perform any other competitive work. (R. 64-65)

The ALJ then asked the VE to consider a person of Knudsen's age and experience, with no physical limitations, but the following mental limitations: a fair ability to maintain attention for extended periods of two-hour segments, to work in coordination with or proximity to others without being unduly distracted by them, to make simple work-related decisions, to accept instructions and respond appropriately to criticism from supervisors, to get along with coworkers or peers without unduly distracting them or exhibiting

behavioral extremes, and to respond appropriately to changes in a routine work setting; and a good ability to remember work-like procedures; to understand, remember, and carry out very short and simple instructions; to maintain regular attendance and be punctual within customary tolerances; to sustain an ordinary routine without special supervision; to complete a normal workday and work week without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; to ask simple questions or request assistance; and to be aware of normal hazards and take appropriate precautions; resulting in an overall rating of moderate severity in restrictions of the activities of daily living, and deficiencies of concentration, persistence or pace resulting in a failure to complete tasks in a timely manner, in work settings or elsewhere. (R. 64-65)

The VE stated the hypothetical individual would be unable to perform any jobs in the regional and national economy. (R. 65)

4. The ALJ's conclusions

The ALJ concluded Knudsen had not engaged in any substantial gainful activity since her alleged disability onset date. (R. 14; R. 21 ¶ 2) He found that her bipolar disorder is a severe impairment, but does not approach the level of severity required by the Listings. (R. 16-17; R. 21, ¶¶ 2 & 3; *see* R. 15-16) The ALJ found Knudsen's functional ability to be limited by her bipolar disorder as follows: "she has mild restrictions of her activities of daily living, mild difficulty maintaining social functioning, [and] has moderate deficiencies of concentration, persistence, or pace that result in failure to complete tasks in a timely manner." (R. 16) He also found that within the year preceding the hearing, Knudsen had "not experienced any episodes of deterioration or decompensation in work or work-like settings, which caused her to withdraw from that

situation or to experience exacerbation of signs and symptoms." (R. 16-17) Although he noted Knudsen suffers from fibromyalgia, irritable bowel syndrome, and Raynaud's phenomenon, the ALJ found that none of those impairments, either singly or in combination, equaled the Listing requirements. (R. 17)

The ALJ found Knudsen's subjective complaints to be "not fully credible." (R. 17; R. 21, ¶ 5) He noted Knudsen "performs routine household tasks including laundry, washing dishes and cleaning"; she "enjoys photo hobbies"; and she had worked on both a paid and a volunteer basis after her alleged disability onset date. (R. 17) He observed, "Although that work activity did not constitute disqualifying substantial gainful activity, it does indicate that [Knudsen's] daily activities have, at least at times, been somewhat greater than [she] has generally reported." (*Id.*) The ALJ further noted the following regarding his finding that Knudsen's subjective complaints were not totally credible:

> [Knudsen] testified it is her bipolar disorder that limits her ability to work, not her physical impairments. She testified that at least one day per week[,] she is unable to function because of depression[,] but rheumatologist, Dr. Eckhoff reported that she might be absent about 3 times per month and psychiatrist, Dr. Dean has stated that her bipolar disorder was generally in remission. While it is evident that [Knudsen] experienced decompensation in 1998[,] there is no evidence that these episodes were of extended repetitive periods during any consecutive 12-month period. There is no evidence of any extended severe decompensation since 1998. There is no evidence that she has complained to either doctor of her alleged frequent total inability to function due to depression.
>
> Although [she] has received treatment for the allegedly disabling impairments, since 1998 that treatment has been essentially routine and/or conservative in nature. Her rheumatologist examines her only every six months and there is no current evidence regarding [her] psychiatric care or counseling other than her testimony that she sees her counselor twice a

> month. If [Knudsen] were truly unable to function for one day per week, it would be presumed that her mental health treating source would have commented on this problem.
>
> In her application for benefits[,] [Knudsen] completed a Personal Pain/Fatigue Questionnaire on November 10, 2000[,] in which she indicated that exercise and walking help to relieve her pain and fatigue. . . . However, she has repeatedly informed her treating physician that she does not exercise and does not like to exercise. She has not been referred to physical therapy or a pain clinic for treatment of fibromyalgia. She has not been prescribed any pain medication or been given injections of cortisone or novocaine into focal tender points. Thus the presumption must be that the symptoms of fibromyalgia are not disabling.
>
> [Knudsen] has been prescribed and has taken appropriate medications for the alleged impairments, which weighs in her favor, but the medical records reveal that the medications have been relatively effective in controlling [her] symptoms. She has reported various side effects from her medications, including severe hair loss. However, there is no medical evidence of any physician's findings that [she] has persistent and adverse side effects due to her prescribed medications, resulting in significant limitations of her functional capacity, which were incapable of being controlled by medication adjustments or changes.
>
> In addition to the medical evidence, the [ALJ] has considered [Knudsen's] work history, and notes that her earnings record reveals sporadic levels of work activity and generally low levels of income since 1987. Such a work history suggests that [she] may not have been highly motivated to work even before her alleged disability began. . . . In addition, there is evidence in Dr. Eckhoff's record of some financial problems in the household. . . .

(R. 17; citations omitted)

The ALJ discounted Dr. Eckhoff's opinion regarding Knudsen's physical functional capacity because the doctor "apparently relied quite heavily on the subjective report of symptoms and limitations provided by [Knudsen], and seemed to uncritically accept as true most, if not all, of what [she] reported." (R. 19) The ALJ therefore relied on the consulting physician Dr. Martin's opinion, which he found generally supported the residual functional capacity the ALJ reached. He found Knudsen retains the residual functional capacity to perform light exertional level work, with the following limitations:

> She is able to lift no more than 20 pounds occasionally and 10 pounds frequently. She is able to sit and stand for six hours during an eight-hour workday. She has no limitations with regard to movement of limbs. She should not be exposed to concentrated cold or vibration. She should not perform repetitive grasping or gripping, although she could occasionally perform such tasks. Due to symptoms from a bipolar disorder, she would be moderately limited in her ability to work in coordination or close proximity with others without being distracted. She is moderately limited in her ability to complete a normal workday and work week without interruption by psychiatric symptoms. She is moderately limited in her ability to perform at a reasonable pace with rest periods, ability to interact with the general public and in her ability to respond appropriately to changes in the work setting.

(R. 20; *see* R. 21-22, ¶ 7) With this residual functional capacity, and based on the VE's testimony when considering a person with this capacity of Knudsen's age, education, and work experience, the ALJ found Knudsen is able to perform her past relevant work as a sales attendant, photo developer, and sales clerk. (R. 20; R. 22, ¶¶ 8 & 9)

Because he found Knudsen is able to perform her past relevant work, the ALJ did not reach step five of the sequential evaluation process. He found Knudsen was not under a disability at any time through the date of his decision, and therefore denied her claim for benefits. (R. 22)

III. DISABILITY DETERMINATIONS, THE BURDEN OF PROOF, AND THE SUBSTANTIAL EVIDENCE STANDARD

A. Disability Determinations and the Burden of Proof

Section 423(d) of the Social Security Act defines a disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. § 404.1505. A claimant has a disability when the claimant is "not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country." 42 U.S.C. § 432(d)(2)(A).

To determine whether a claimant has a disability within the meaning of the Social Security Act, the Commissioner follows a five-step process outlined in the regulations. 20 C.F.R. §§ 404.1520 & 416.920; *see Kelley v. Callahan*, 133 F.3d 583, 587-88 (8th Cir. 1998) (citing *Ingram v. Chater*, 107 F.3d 598, 600 (8th Cir. 1997)). First, the Commissioner must determine whether the claimant is currently engaged in substantial gainful activity. Second, he looks to see whether the claimant labors under a severe impairment; *i.e.*, "one that significantly limits the claimant's physical or mental ability to perform basic work activities." *Kelley*, 133 F.3d at 587-88. Third, if the claimant does have such an impairment, then the Commissioner must decide whether this impairment meets or equals one of the presumptively disabling impairments listed in the regulations. If the impairment does qualify as a presumptively disabling one, then the claimant is considered disabled, regardless of age, education, or work experience. Fourth, the

Commissioner must examine whether the claimant retains the residual functional capacity to perform past relevant work.

Finally, if the claimant demonstrates the inability to perform past relevant work, then the burden shifts to the Commissioner to prove there are other jobs in the national economy that the claimant can perform, given the claimant's impairments and vocational factors such as age, education and work experience. *Id.*; *accord Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001) ("[I]f the claimant cannot perform the past work, the burden then shifts to the Commissioner to prove that there are other jobs in the national economy that the claimant can perform.") (citing *Cox v. Apfel*, 160 F.3d 1203, 1206 (8th Cir. 1998)).

Step five requires that the Commissioner bear the burden on two particular matters:

> In our circuit it is well settled law that once a claimant demonstrates that he or she is unable to do past relevant work, the burden of proof shifts to the Commissioner to prove, first that the claimant retains the residual functional capacity to do other kinds of work, and, second that other work exists in substantial numbers in the national economy that the claimant is able to do. *McCoy v. Schweiker*, 683 F.2d 1138, 1146-47 (8th Cir. 1982) (*en banc*); *O'Leary v. Schweiker*, 710 F.2d 1334, 1338 (8th Cir. 1983).

Nevland v. Apfel, 204 F.3d 853, 857 (8th Cir. 2000) (emphasis added); *accord Weiler v. Apfel*, 179 F.3d 1107, 1110 (8th Cir. 1999) (analyzing the fifth-step determination in terms of (1) whether there was sufficient medical evidence to support the ALJ's residual functional capacity determination and (2) whether there was sufficient evidence to support the ALJ's conclusion that there were a significant number of jobs in the economy that the claimant could perform with that residual functional capacity); *Fenton v. Apfel*, 149 F.3d 907, 910 (8th Cir. 1998) (describing "the Secretary's two-fold burden" at step five to be, first, to prove the claimant has the residual functional capacity to do other kinds of work,

and second, to demonstrate that jobs are available in the national economy that are realistically suited to the claimant's qualifications and capabilities).

B. The Substantial Evidence Standard

Governing precedent in the Eighth Circuit requires this court to affirm the ALJ's findings if they are supported by substantial evidence in the record as a whole. *Krogmeier v. Barnhart*, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1012 (8th Cir. 2000)); *Weiler, supra,* 179 F.3d at 1109 (citing *Pierce v. Apfel*, 173 F.3d 704, 706 (8th Cir. 1999)); *Kelley, supra,* 133 F.3d at 587 (citing *Matthews v. Bowen*, 879 F.2d 422, 423-24 (8th Cir. 1989)); 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive. . . ."). Under this standard, "[s]ubstantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." *Krogmeier, id.*; *Weiler, id.*; *accord Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citing *Craig v. Apfel*, 212 F.3d 433, 436 (8th Cir. 2000)); *Hutton v. Apfel*, 175 F.3d 651, 654 (8th Cir. 1999); *Woolf v. Shalala*, 3 F.3d 1210, 1213 (8th Cir. 1993).

Moreover, substantial evidence "on the record as a whole" requires consideration of the record in its entirety, taking into account both "evidence that detracts from the Commissioner's decision as well as evidence that supports it." *Krogmeier,* 294 F.3d at 1022 (citing *Craig*, 212 F.3d at 436); *Willcuts v. Apfel*, 143 F.3d 1134, 1136 (8th Cir. 1998) (quoting *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488, 71 S. Ct. 456, 464, 95 L. Ed. 456 (1951)); *Gowell, id.; Hutton*, 175 F.3d at 654 (citing *Woolf*, 3 F.3d at 1213); *Kelley*, 133 F.3d at 587 (citing *Cline v. Sullivan*, 939 F.2d 560, 564 (8th Cir. 1991)).

In evaluating the evidence in an appeal of a denial of benefits, the court must apply a balancing test to assess any contradictory evidence. *Sobania v. Secretary of Health & Human Serv.*, 879 F.2d 441, 444 (8th Cir. 1989) (citing *Steadman v. S.E.C.*, 450 U.S. 91, 99, 101 S. Ct. 999, 1006, 67 L. Ed. 2d 69 (1981)). The court, however, does "not reweigh the evidence or review the factual record *de novo*." *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996) (quoting *Naber v. Shalala*, 22 F.3d 186, 188 (8th Cir. 1994)). Instead, if, after reviewing the evidence, the court finds it "possible to draw two inconsistent positions from the evidence and one of those positions represents the agency's findings, [the court] must affirm the [Commissioner's] decision." *Id.* (quoting *Robinson v. Sullivan*, 956 F.2d 836, 838 (8th Cir. 1992), and citing *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989)); *see Hall v. Chater*, 109 F.3d 1255, 1258 (8th Cir. 1997) (citing *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996)). This is true even in cases where the court "might have weighed the evidence differently." *Culbertson v. Shalala*, 30 F.3d 934, 939 (8th Cir. 1994) (citing *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir. 1992)); *accord Krogmeier,* 294 F.3d at 1022 (citing *Woolf*, 3 F.3d at 1213). The court may not reverse "the Commissioner's decision merely because of the existence of substantial evidence supporting a different outcome." *Spradling v. Chater*, 126 F.3d 1072, 1074 (8th Cir. 1997); *accord Pearsall,* 274 F.3d at 1217; *Gowell, supra*.

On the issue of an ALJ's determination that a claimant's subjective complaints lack credibility, the Sixth and Seventh Circuits have held an ALJ's credibility determinations are entitled to considerable weight. *See, e.g., Young v. Secretary of H.H.S.,* 957 F.2d 386, 392 (7th Cir. 1992) (citing *Cheshier v. Bowen,* 831 F.2d 687, 690 (7th Cir. 1987)); *Gooch v. Secretary of H.H.S.,* 833 F.2d 589, 592 (6th Cir. 1987), *cert. denied*, 484 U.S. 1075, 108 S. Ct. 1050, 98 L. Ed. 2d. 1012 (1988); *Hardaway v. Secretary of H.H.S.,* 823 F.2d 922, 928 (6th Cir. 1987). Nonetheless, in the Eighth Circuit, an ALJ may not

discredit a claimant's subjective allegations of pain, discomfort or other disabling limitations simply because there is a lack of objective evidence; instead, the ALJ may only discredit subjective complaints if they are inconsistent with the record as a whole. *See Hinchey v. Shalala,* 29 F.3d 428, 432 (8th Cir. 1994); *see also Bishop v. Sullivan,* 900 F.2d 1259, 1262 (8th Cir. 1990) (citing *Polaski v. Heckler,* 739 F.2d 1320, 1322 (8th Cir. 1984)). As the court explained in *Polaski v. Heckler:*

> The adjudicator must give full consideration to all of the evidence presented relating to subjective complaints, including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as:
>
> 1) the claimant's daily activities;
> 2) the duration, frequency and intensity of the pain;
> 3) precipitating and aggravating factors;
> 4) dosage, effectiveness and side effects of medication;
> 5) functional restrictions.

Polaski, 739 F.2d 1320, 1322 (8th Cir. 1984). *Accord Ramirez v. Barnhart*, 292 F.3d 576, 580-81 (8th Cir. 2002).

IV. ANALYSIS

The court finds the Record contains substantial evidence, including Knudsen's own testimony, to support the ALJ's finding that Knudsen is not disabled by virtue of her physical difficulties. Knudsen's doctors indicate her fibromyalgia and attendant Raynaud's Phenomenon are well controlled by medication, and Knudsen agreed with this assessment at the hearing. Further, as noted by the ALJ, despite being advised that exercise and quitting smoking would help her symptoms, Knudsen has chosen to continue smoking and repeatedly reported she was not exercising.

Knudsen's Bipolar Disorder presents a more difficult question. As noted above, to be disabled for purposes of the Social Security Act, a person must be unable to engage in any substantial gainful activity "for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. § 404.1505. Clearly, as the ALJ noted, Knudsen's Bipolar Disorder was severe enough to be disabling on September 1, 1998. The real issue is whether her condition remained disabling for at least twelve months after that date.

Knudsen's treating physician Dr. Dean, and her treating therapist Judy Conner, opined on February 9, 2001, that Knudsen had a substantial loss of the ability to perform the following activities in regular, competitive employment: to maintain attention for extended periods of two-hour segments; to work in coordination with or proximity to others without being unduly distracted by them; to make simple work-related decisions; to accept instructions and respond appropriately to criticism from supervisors; to get along with coworkers or peers without unduly distracting them or exhibiting behavioral extremes; and to respond appropriately to changes in a routine work setting. (R. 367-68) When the ALJ included these limitations in a hypothetical question to the VE, the VE stated an individual with these specific limitations would be unable to perform any jobs in the regional and national economy. (R. 64-65) If the opinions of Dr. Dean and Ms. Conner are accepted, those opinions would constitute substantial evidence that Knudsen remained disabled for a period in excess of twelve months (*i.e.*, from September 1, 1998, to February 9, 2001). Knudsen argues the ALJ erred in rejecting the opinions of these treating medical professionals. (*See* Doc. No. 12)

In rejecting Dr. Dean's opinion, the ALJ stated:

> The opinion of Dr. Dean, [Knudsen's] treating psychiatrist, regarding [Knudsen's] mental functional ability is given great weight but the report appears to contain inconsistencies, and the doctor's opinion is accordingly rendered less persuasive.

> His remarks in February 2001 [regarding her functional restrictions] . . . all appear relevant to her symptoms in 1998 and immediately thereafter. However, there is no evidence that she has experienced any periods of decompensation within the past twelve months. In fact, Dr. Dean also reported in December 2000 that most of her symptoms were in remission. The possibility always exists that a doctor may express an opinion in an effort to assist a patient with whom he or she sympathizes for one reason or another.

(R. 19) The ALJ noted he was giving therapist Judy Conner's opinion "due consideration," but "little weight." (*Id.*)

Instead, the ALJ relied on the opinions of the State agency psychological consultants, giving their opinions "great weight" and finding their opinions were "consistent with the evidence of record." (*Id.*)

"A treating physician's opinion should not ordinarily be disregarded and is entitled to substantial weight. *Ghant v. Bowen*, 930 F.2d 633, 639 (8th Cir. 1991). By contrast, '[t]he opinion of a consulting physician who examines a claimant once or not at all does not generally constitute substantial evidence.' *Kelley v. Callahan*, 133 F.3d 583, 589 (8th Cir. 1998)." *Jenkins v. Apfel*, 196 F.3d 922, 925 (8th Cir. 1999).

In *Prosch v. Apfel*, 201 F.3d 1010 (8th Cir. 2000), the Eighth Circuit Court of Appeals discussed the weight to be given to the opinions of treating physicians:

> The opinion of a treating physician is accorded special deference under the social security regulations. The regulations provide that a treating physician's opinion regarding an applicant's impairment will be granted "controlling weight," provided the opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] record." 20 C.F.R. § 404.1527(d)(2). Consistent with the regulations, we have stated that a treating physician's opinion is "normally entitled to great weight," *Rankin v. Apfel*, 195

> F.3d 427, 430 (8th Cir. 1999), but we have also cautioned that such an opinion "do[es] not automatically control, since the record must be evaluated as a whole." *Bentley v. Shalala*, 52 F.3d 784, 785-86 (8th Cir. 1995). Accordingly, we have upheld an ALJ's decision to discount or even disregard the opinion of a treating physician where other medical assessments "are supported by better or more thorough medical evidence," *Rogers v. Chater*, 118 F.3d 600, 602 (8th Cir. 1997), or where a treating physician renders inconsistent opinions that undermine the credibility of such opinions, *see Cruze v. Chater*, 85 F.3d 1320, 1324-25 (8th Cir. 1996).
>
> Whether the ALJ grants a treating physician's opinion substantial or little weight, the regulations provide that the ALJ must "always give good reasons" for the particular weight given to a treating physician's evaluation. 20 C.F.R. § 404.1527(d)(2); *see also* SSR 96-2p.

Prosch, 201 F.3d at 1012-13. *Accord Wiekamp v. Apfel*, 116 F. Supp. 2d. 1056 (N.D. Iowa 2000) (Bennett, C.J.).

With regard to the opinion of therapist Conner, the ALJ must give appropriate weight to her opinions as an "other" medical source. She has seen Knudsen on a regular basis since the onset of her disease, and is an appropriate source of evidence regarding the effect of Knudsen's impairment on her ability to work. Indeed, due to her "examining relationship" with Knudsen, Ms. Conner's opinion "would be given more weight than a source who had not examined [her]." *Shontos v. Barnhart*, 328 F.3d 418, 425 (8th Cir. 2003). Further, "'the longer and more frequent the contact between the treating source, the greater the weight will be given the opinion.'" *Id.*, 328 F.3d at 426; *accord Deakins v. Barnhart*, 2003 WL 21955012, at *5 (N.D. Iowa. Aug. 6, 2003) (Bennett, C.J.) (quoting *Shontos*).

The court finds the ALJ failed to justify adequately his decision to discount the opinions of Dr. Dean and Ms. Conner. According to these treating sources, Knudsen

continued in regular therapy sessions and had regularly scheduled medication reviews from September 1, 1998, onward. Despite her attempts to rejoin the workforce and her expressed desire to return to work, both the doctor and the therapist continued to believe, as late as February 2001, that she would be unable to do so. When the VE was presented with limitations consistent with these sources' opinions, the VE opined Knudsen would be unable to work in a competitive environment. The ALJ's speculation that Dr. Dean was simply attempting to assist a patient with whom he sympathizes was unwarranted and improper on the evidence in this case. There is no evidence in the Record that either Dr. Dean or Ms. Conner was overly or inappropriately sympathetic to Knudsen at any point during her treatment. There is also no evidence in the Record to support the ALJ's conclusion that the treating sources' opinions related only to the September 1998 onset of her disease, rather than to the date of their opinions. The record indicates Knudsen exhibited ongoing improvement during her treatment, but her treating sources continued to believe she should not return to full-time employment.

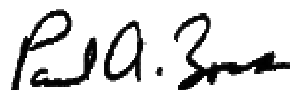
This is not to say Knudsen remains disabled to this day. This appeal concerns only the period from September 1, 1998, through April 24, 2002, the date of the ALJ's decision. The court finds Knudsen's impairment lasted throughout that period of time, and she was disabled during that period of time. Given Knudsen's ongoing progress in treatment, further review may be warranted by the Commissioner to determine whether the disability continued after that date.

IV. CONCLUSION

For the reasons discussed above, **IT IS RESPECTFULLY RECOMMENDED**, unless any party files objections[9] to the Report and Recommendation in accordance with 28 U.S.C. § 636 (b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this Report and Recommendation, that the Commissioner's decision be reversed, judgment be entered for the plaintiff, and this matter be remanded for a calculation and award of benefits.[10]

IT IS SO ORDERED.

DATED this 16th day of December, 2003.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

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[9] Objections must specify the parts of the report and recommendation to which objections are made. Objections must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).

[10] **NOTE TO PLAINTIFF'S COUNSEL:** If final judgment is entered for the plaintiff, the plaintiff's counsel must comply with the requirements of Local Rule 54.2(b) in connection with any application for attorney fees.