

1 UNITED STATES COURT OF APPEALS  
2  
3 FOR THE SECOND CIRCUIT  
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7 August Term 2002  
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9 Argued: March 20, 2003 Decided: July 10, 2003  
10 Errata Filed: July 16, 2003  
11

12 Docket No. 02-6133  
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16  
17 NINA GREEN-YOUNGER,  
18

19 Plaintiff-Appellant,  
20

21 - against -  
22

23 JOANNE B. BARNHART, Commissioner of the Social Security  
24 Administration,  
25

26 Defendant-Appellee.  
27  
28

29 -----X  
30

31 Before: FEINBERG, VAN GRAAFEILAND AND F. I. PARKER,  
32 Circuit Judges.

33 Appeal from an order of the United States District Court  
34 for the District of Connecticut (Droney, J.), affirming ALJ's  
35 decision to deny plaintiff disability benefits. We reverse  
36 and remand the case, because the ALJ erred in failing to  
37 accord controlling weight to the treating physician's opinion.

38 CHARLES A. PIRRO III, Pirro & Church, LLC,  
39 South Norwalk, CT, for Petitioner-  
40 Appellant.  
41

42 ANN M. NEVINS, Bridgeport, CT, (Kevin J.  
43 O'Connor, United States Attorney for the

1 District of Connecticut; Patrick J.  
2 Caruso; Jeffrey A. Meyer, of counsel), for  
3 Appellee.  
4

5 FEINBERG, Circuit Judge:

6 Plaintiff Green-Younger appeals from a judgment of the  
7 United States District Court for the District of Connecticut  
8 (Christopher F. Droney, J.), accepting the recommended ruling  
9 of Magistrate Judge William I. Garfinkel to affirm the  
10 decision of the Administrative Law Judge (ALJ) denying Green-  
11 Younger's application for social security disability benefits.  
12 On appeal, Green-Younger argues that the ALJ and the district  
13 court erred by failing to give controlling weight to the  
14 opinion of her treating physician that she suffers from  
15 fibromyalgia<sup>1</sup> and cannot work because of severe pain. For  
16 reasons stated below, we reverse and remand to the district  
17 court with instructions to remand the matter to the  
18 Commissioner of the Social Security Administration (SSA) for a  
19 calculation of disability benefits.  
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## 21 I. Background

22 At the time of her SSA hearing, Nina Green-Younger was 38  
23 years old, and married with three children. After completing

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<sup>1</sup> A syndrome of chronic pain of musculoskeletal origin but uncertain cause. Stedman's Medical Dictionary 671 (27th ed. 2000). This disorder is also commonly referred to as fibrositis.

1 two years of college, Green-Younger worked full-time as a  
2 long-distance telephone operator for Southern New England  
3 Telephone (SNET) from 1978 to 1995. She also worked part-time  
4 as a mail sorter from 1985 to 1988. From 1988 to 1995, Green-  
5 Younger took seven disability leaves from her job, which  
6 lasted between one month and one year, before being placed on  
7 long-term disability in 1997. Green-Younger avers that she  
8 became totally disabled in May 1995, when she last worked.

9 A. Medical History

10 According to medical records and her testimony, Green-  
11 Younger's difficulties began in 1982 when she injured her back  
12 in a motor vehicle accident in the eighth month of her last  
13 pregnancy. To treat her back pain, she tried various anti-  
14 inflammatory and pain medications, physical therapy and  
15 chiropractic treatment. In April 1991, Green-Younger  
16 consulted an orthopedist who diagnosed degenerative disc  
17 disease. A 1991 MRI showed degeneration in the "4-5 and 5-1"  
18 regions. A 1992 discogram, while normal at L4-L5, showed that  
19 L5-S1 was "severely degenerated."

20 Beginning February 1994, Green-Younger began regular  
21 treatments with osteopath Dr. Jeffrey Helfand, a  
22 rheumatologist. After an initial consultation and  
23 examination, Dr. Helfand reported that Green-Younger  
24 complained of

1 pain in her right leg and low back which she  
2 states goes down into her coccyx area  
3 associated with tingling and weakness in her  
4 right arm which has been present intermittently  
5 since 1982. She states that the pain is always  
6 present but can be more severe at sometimes  
7 than at others. . . . She states she has  
8 difficulty sitting or standing for any  
9 prolonged time and complains of frequent sleep  
10 difficulty. The most recent prolonged episode  
11 of low back and leg pain began around October  
12 1993 after approximately a six-month period  
13 when she was relatively symptom free.  
14

15 Dr. Helfand documented that "[m]usculoskeletal and  
16 extremity exams reveal multiple tender points in the  
17 distribution characteristic of fibromyalgia." He noted the  
18 results of a 1993 MRI showing minimal disc bulging at the L4-  
19 L5 and L5-S1 regions, but no disc herniation. Dr. Helfand  
20 found no reflex, sensory, or motor deficits, but he noted the  
21 presence of paresthesias<sup>2</sup>; significant spasm with limitation  
22 of lateral flexion and rotation in the lumbar paravertebral  
23 muscles; and marked tenderness over the posterior superior  
24 iliac spines bilaterally. Dr. Helfand eventually diagnosed  
25 Green-Younger as having fibromyalgia, as well as other  
26 illnesses--such as degenerative disc disease, chronic low back  
27 syndrome, and peroneal neuropathy<sup>3</sup>--associated with her back  
28 pain.

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<sup>2</sup> An abnormal sensation such as burning, prickling, tingling or tickling. Stedman's Medical Dictionary 1316.

<sup>3</sup> A disorder affecting the nerve extending along the fibula. Id. at 1211, 1354.

1           Green-Younger, who had taken a disability leave in  
2           January 1994, tried unsuccessfully to return to work after  
3           beginning treatment with Dr. Helfand. In April 1994, Dr.  
4           Helfand reported that she was "quite depressed and distraught  
5           regarding her condition and her persistent inability to go to  
6           work." The pain medications he prescribed, like many others  
7           Green-Younger had tried, did not provide her any significant  
8           relief.<sup>4</sup> Although Dr. Helfand continued to prescribe  
9           medication, he noted that "there is probably little to suggest  
10          she will have any improvement from any further trials with  
11          NSAID's."<sup>5</sup> In September 1994, Dr. Helfand informed SNET,  
12          Green-Younger's employer, that her return-to-work date was  
13          indeterminate.

14          Dr. Helfand referred Green-Younger to Dr. Gary Dee at  
15          Norwalk Hospital, a specialist in pain management. In October  
16          1994, Dr. Dee began treating Green-Younger with a series of  
17          epidural blocks and steroid trigger point injections. An MRI  
18          of the lumbar spine performed at this time revealed a mild  
19          asymmetrical disc bulge at the L4-L5 and L3-L4 regions. Dr.  
20          Helfand recorded that Green-Younger had "some improvement"  
21          following the trigger point injections and was "able to better

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<sup>4</sup> Green-Younger was prescribed 18 different drugs in 1994 and 1995.

<sup>5</sup> Nonsteroidal anti-inflammatory drugs.

1 tolerate massage therapy." Dr. Helfand's later progress  
2 notes, however, show that the injections afforded her only  
3 "short-term relief." He reported that Green-Younger  
4 "continues to have chronic pain which has been limiting her  
5 ability for physical activity and for work" and "has had no  
6 relief with mild narcotic analgesics such as Darvocet or  
7 Vicodin."

8 Green-Younger and Dr. Helfand discussed her prognosis and  
9 ability to return to work. A SNET representative had informed  
10 them that Green-Younger's job would be terminated in January  
11 1995 unless she returned. SNET's position was clear that they  
12 did not want her to "work a few weeks and then be out." Dr.  
13 Helfand recorded his view that "it is unlikely that she will  
14 be able to return to work full-time for any significant  
15 duration." Rather than recommend applying for long-term  
16 disability, however, he suggested that Green-Younger "try to  
17 go back to work part-time for 2-3 weeks at four hours daily  
18 and [see] how she does."

19 Green-Younger returned to work in early December 1994 on  
20 a part-time basis. A few weeks later, Dr. Helfand noted that  
21 Green-Younger was "having somewhat of a difficult time but has  
22 decided to continue as long as she can." She continued until  
23 early May 1995, at which time she stopped working because of  
24 "severe low back tenderness and paresthesias in the lower

1       extremities." Green-Younger also complained of pain in her  
2       upper back and right arm and hand. A physical exam showed a  
3       positive Tinel sign indicative of carpal tunnel syndrome.  
4       While an EMG performed in June did not show evidence of nerve  
5       entrapment, a subsequent EMG did.

6                In July 1995, Dr. Helfand wrote several letters  
7       describing Green-Younger's current limitations. In one letter  
8       requesting a medical exemption from jury service, Dr. Helfand  
9       explained that it was "difficult for [Green-Younger] to sit in  
10      any one position for more than 30 minutes without needing to  
11      get up and walk around." In other letters, he described her  
12      current limitations to include "sitting and/or standing for 4  
13      hours or less daily," or "continuous sitting/and or sitting  
14      for no more than 60 minutes without a rest period," and no  
15      lifting, pulling or pushing.

16               In August 1995, physical therapist Jill Tomasello  
17      performed a two-day work fitness evaluation of Green-Younger  
18      for SNET. Tomasello found that "test results did not meet the  
19      criteria for consistent or maximum effort," explaining that  
20      "[t]his is not unusual for the initial test" and that "repeat  
21      testing is needed to verify the results." Tomasello  
22      nevertheless concluded that Green-Younger "has demonstrated  
23      the ability to work at a sedentary work level," and  
24      recommended a work hardening program if she is "unable to

1 tolerate a return to work." However, a subsequent evaluation  
2 performed in July 1996 suggested that Green-Younger "was able  
3 to tolerate seated activity at a work site for a maximum of 30  
4 minutes before she would need to get up and move around  
5 freely."

6 In October 1995, Dr. Helfand informed SNET that Green-  
7 Younger could not return to work because of fibromyalgia,  
8 peroneal neuropathy, and chronic low back syndrome. Dr.  
9 Helfand explained in his progress notes that he had elected to  
10 consider her permanently disabled because "she has not had any  
11 dramatic improvement with any of the measures we have tried."

12 Dr. Helfand referred Green-Younger to a number of other  
13 doctors. Dr. Don Goldenberg, Chief of Rheumatology at the  
14 Newton-Wellesley Hospital in Massachusetts and a fibromyalgia  
15 specialist, confirmed Dr. Helfand's diagnosis of fibromyalgia.  
16 Dr. Robert Goldring, who was providing chiropractic treatment  
17 at this time to alleviate pain and spasms, stated that Green-  
18 Younger's "long term pain" was "essentially due to her  
19 fibromyalgia." Green-Younger also consulted with orthopedist  
20 Dr. Ramon Batson. On a physical exam, he found "diffuse  
21 tenderness to palpation along the axial spine and in the SI  
22 joints bilaterally" and "trigger points present in the right  
23 trapezius muscles and in the right glutei." Dr. Batson noted  
24 Green-Younger's history of disc disease but not disc

1 herniation, and recommended treatment for myofascial pain  
2 syndrome<sup>6</sup> if studies proved negative for surgical pathology.

3 A number of tests were ordered, apparently in part to  
4 rule out surgical pathology. Plain films did not reveal any  
5 abnormal movement or osseous lesions, but an MRI of the lumbar  
6 spine taken in 1995 again revealed bulging at the L3-L4 and  
7 L4-L5 regions. Green-Younger underwent a full body scan in  
8 July 1996. The scan revealed "one significant abnormality:  
9 there is increased activity in the right sacroiliac joint  
10 which may represent sacroiliitis<sup>7</sup> or a consequence of previous  
11 trauma." Dr. Helfand pursued the possibility of implanting a  
12 spinal cord stimulator, but abandoned this option after  
13 neurosurgeon Dr. Charles Needham "excluded any significant  
14 nerve compression disease and any surgical approach to  
15 management."

16 In July 1996, Dr. Helfand again diagnosed Green-Younger  
17 with "severe fibromyalgia." He explained that fibromyalgia is  
18 "typically characterized by severe fatigue, diffuse muscular  
19 soreness and tenderness which in certain instances can be

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<sup>6</sup> According to the medical articles included in Green-Younger's brief, myofascial pain syndrome is a disorder closely related to fibromyalgia.

<sup>7</sup> An inflammation of the sacroiliac joint, which connects the sacrum, or lower back forming part of the pelvis, to the ilium, or hip bone. Stedman's Medical Dictionary at 1587-88, 875.

1 debilitating." He noted the difficulty of proving disability  
2 on this basis because of the absence of objective evidence to  
3 quantify the severity of the pain. He reported that "her pain  
4 is frequently overwhelming and the associated fatigue can  
5 cause a significant limitation in her ability to function on a  
6 daily basis." Dr. Helfand opined that "her ability to  
7 function at a normal level because of the persistent, severe  
8 pain is markedly limited." In a December 1998 letter to  
9 Green-Younger's attorney, Dr. Helfand explained that "she  
10 continues to experience significant difficulty with her  
11 activities of daily living," and noted a "relatively acute  
12 onset of severe tenderness and stiffness . . . with multiple  
13 tender points." He concluded that "it should probably be  
14 obvious that she continues to have significant disability and  
15 at this time will most likely be unable to retain any  
16 significant gainful employment."

#### 17 B. Procedural History

18 In August 1995, Green-Younger filed an application for  
19 disability benefits.<sup>8</sup> The SSA denied her application  
20 initially in October 1995 and upon reconsideration in December  
21 1995. The SSA consulting physicians disagreed with Dr.  
22 Helfand's conclusion that Green-Younger was "limited to

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<sup>8</sup> This was Green-Younger's second application. She first applied for disability benefits in January 1989 but was denied. She did not appeal that decision.

1 sitting and/or standing for four hours or less," because  
2 "[e]vidence does not show deficits of motor function or  
3 significant arthritis to severely limit standing or sitting."  
4 Green-Younger sought a review before an ALJ of the SSA Office  
5 of Hearings and Appeals.<sup>9</sup> A hearing was conducted in August  
6 1997. Green-Younger, who was represented by counsel,  
7 testified on her own behalf with regard to her medical history  
8 and daily limitations, including her inability to do most  
9 housework or to sit or stand comfortably for more than 30  
10 minutes. Jeff Blanks, Ph.D., a vocational expert, also  
11 testified. He identified Green-Younger's past work as a  
12 telephone operator and mail clerk as semiskilled and  
13 unskilled, respectively, and sedentary in nature. The ALJ  
14 asked Dr. Blanks whether an individual could perform Green-  
15 Younger's past work if she could sit for six hours a day and  
16 stand and walk for a total of two hours a day, or  
17 alternatively sit or stand at least every hour. Dr. Blanks  
18 answered that the individual could perform Green-Younger's  
19 past work as a mail clerk but not as a telephone operator.  
20 Green-Younger's counsel, in turn, asked him whether an  
21 individual who could sustain the sitting position for only

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<sup>9</sup> The SSA initially denied this request as untimely and dismissed the case. In October 1996, the dismissal was vacated at Green-Younger's request. In May 1997, the SSA Appeals Council remanded the dismissal to an ALJ with instructions to hold a hearing.

1 about 30 minutes at a time, sit and/or stand for a total of  
2 only four hours and tolerate upper body activities for only  
3 two minutes at a time would be able to perform Green-Younger's  
4 past work. Dr. Blanks answered no and also opined, on  
5 counsel's inquiry, that there is no other type of job a person  
6 with those limitations might be able to perform.

7 In September 1997, the ALJ issued a decision denying  
8 Green-Younger's application. Although the ALJ found that the  
9 "medical evidence of record documents that the claimant has  
10 fibromyalgia and degenerative disc disease" and that these  
11 impairments were severe, the ALJ also found that Green-Younger  
12 retained the residual functional capacity to occasionally lift  
13 and carry up to 10 pounds, sit for six hours a day and walk or  
14 stand for two hours a day. The ALJ concluded that Green-  
15 Younger could perform her past work as a mail clerk and  
16 therefore was not disabled within the meaning of the Social  
17 Security Act. Specifically, the ALJ found that "[c]ontrary to  
18 the claimant's persistent complaints of pain, there are no  
19 objective medical findings." He noted in this regard that  
20 there was no "evidence of radiculopathy," "signs of  
21 sacroilitis," "abnormal chest examinations," or "abnormal  
22 movement or osseous lesions." As a result, the ALJ found that  
23 (1) the opinions of Dr. Helfand regarding Green-Younger's  
24 limitations "cannot be afforded extra weight because they are

1 not well-supported by medically acceptable clinical and  
2 laboratory diagnostic techniques, and are inconsistent with  
3 the other substantial evidence of record," namely physical  
4 therapist Tomasello's work capacity evaluation; and (2) Green-  
5 Younger's "allegations of pain and functional limitations are  
6 . . . not entirely credible in light of the minimal objective  
7 medical findings." In total, the ALJ's six-page opinion  
8 referred five times to a lack of objective evidence. Finally,  
9 the ALJ also noted that Green-Younger was currently taking  
10 only one medication for her pain, and that "the evidence does  
11 not show that there have been any changes in her condition  
12 from prior to that time when she had worked while also  
13 receiving treatment for her alleged impairments."

14 The SSA Appeals Council affirmed the ALJ's decision and  
15 Green-Younger timely appealed to the United States District  
16 Court for the District of Connecticut, asserting numerous  
17 grounds for remand. In August 2001, Magistrate Judge William  
18 Garfinkel issued a lengthy ruling recommending affirmance of  
19 the ALJ's decision. In March 2002, the district court entered  
20 a brief order accepting the recommended ruling in its  
21 entirety.

22 This appeal followed.

23 II. Discussion

1           In this court, Green-Younger argues that the ALJ  
2 misapplied SSA regulations by failing to give controlling  
3 weight to the opinion of her treating physician that she  
4 suffers from fibromyalgia and that the attendant pain and  
5 fatigue severely limit her ability to function and work on a  
6 daily level. She argues that the ALJ, as well as the district  
7 court, misunderstood the nature of fibromyalgia in requiring  
8 "objective" evidence beyond those clinical signs and symptoms  
9 necessary for a diagnosis. The government notes that the ALJ  
10 did credit Dr. Helfand's diagnosis of fibromyalgia, but argues  
11 that his conclusion on the ultimate issue of legal disability  
12 was not entitled to controlling weight and that substantial  
13 evidence supports the ALJ's decision.

14           A. Standard of Review

15           "When deciding an appeal from a denial of disability  
16 benefits, we focus on the administrative ruling rather than  
17 the district court's opinion." *Curry v. Apfel*, 209 F.3d 117,  
18 122 (2d. Cir. 2000) (citing *Schaal v. Apfel*, 134 F.3d 496,  
19 500-01 (2d Cir. 1998)). We conduct a plenary review of the  
20 administrative record to determine "whether the Commissioner's  
21 conclusions 'are supported by substantial evidence in the  
22 record as a whole or are based on an erroneous legal  
23 standard.'" *Id.* (internal citation omitted); see also *Balsamo*  
24 *v. Chater*, 142 F.3d 75, 79 (2d Cir. 1998). Substantial

1 evidence "means such relevant evidence as a reasonable mind  
2 might accept as adequate to support a conclusion.'" Curry,  
3 209 F.3d at 122 (quoting Richardson v. Perales, 402 U.S. 389,  
4 401 (1971)).

5 B. Merits

6 To be eligible for disability benefits under the Social  
7 Security Act, a claimant must establish "inability to engage  
8 in any substantial gainful activity by reason of any medically  
9 determinable physical or mental impairment . . . which has  
10 lasted or can be expected to last for a continuous period of  
11 not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The SSA  
12 has promulgated regulations prescribing a five-step analysis  
13 for evaluating disability claims. "In essence, if the  
14 Commissioner determines (1) that the claimant is not working,  
15 (2) that he has a 'severe impairment,' (3) that the impairment  
16 is not one [listed in Appendix 1 of the regulations] that  
17 conclusively requires a determination of disability, and (4)  
18 that the claimant is not capable of continuing in his prior  
19 type of work, the Commissioner must find him disabled if (5)  
20 there is not another type of work the claimant can do."  
21 Draegert v. Barnhart, 311 F.3d 468, 472 (2d Cir. 2002); see  
22 also Shaw v. Chater, 221 F.3d 126, 132 (2d Cir. 2000). The  
23 claimant bears the burden of proof on the first four steps,  
24 while the SSA bears the burden on the last step. See id.

1           In this case, as we have indicated, the ALJ found that  
2 Green-Younger has fibromyalgia and degenerative disc disease;  
3 that her impairments were severe but did not equal or exceed a  
4 listed impairment; and that she had the residual functional  
5 capacity to do sedentary work, involving six hours a day of  
6 sitting and two hours of standing or walking. The ALJ  
7 rejected the contrary opinion of Green-Younger's treating  
8 physician, Dr. Helfand, that her limitations were more severe.

9           The SSA recognizes a "treating physician" rule of  
10 deference to the views of the physician who has engaged in the  
11 primary treatment of the claimant. "A treating physician's  
12 statement that the claimant is disabled cannot itself be  
13 determinative." *Snell v. Apfel*, 177 F.3d 128, 133 (2d Cir.  
14 1999). However, SSA regulations advise claimants that "a  
15 treating source's opinion on the issue(s) of the nature and  
16 severity of your impairment(s)" will be given "controlling  
17 weight" if the opinion is "well supported by medically  
18 acceptable clinical and laboratory diagnostic techniques and  
19 is not inconsistent with the other substantial evidence in  
20 your case record." 20 C.F.R. § 404.1527(d)(2) (emphasis  
21 added). See also *Shaw*, 221 F.3d at 134; *Rosa v. Callahan*, 168  
22 F.3d 72, 78-79 (2d Cir. 1999) ("[T]he ALJ cannot arbitrarily  
23 substitute his own judgment for competent medical opinion.").

1           We conclude from the record before us that the ALJ erred  
2 by failing to give controlling weight to the treating  
3 physician's opinion and effectively requiring objective  
4 evidence beyond the clinical findings necessary for a  
5 diagnosis of fibromyalgia under established medical  
6 guidelines. Dr. Helfand's opinion regarding Green-Younger's  
7 impairments meets the standard under the SSA regulations and  
8 should have been accorded controlling weight. Contrary to the  
9 government's contention, Dr. Helfand was not offering an  
10 opinion on the ultimate issue of legal disability, but rather  
11 on the "nature and severity of [Green-Younger's]  
12 impairment(s)." He opined that "her ability to function at a  
13 normal level because of the persistent, severe pain is  
14 markedly limited," noting specifically that she could not sit  
15 or stand for more than four hours a day, that she could not  
16 continuously sit or stand for 60 minutes without a rest  
17 period, and that it was difficult for her to sit for more than  
18 30 minutes at a time.<sup>10</sup>

19           At the time of the hearing in 1997, Dr. Helfand had  
20 coordinated Green-Younger's care for over three years, during

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<sup>10</sup> The government argues that Dr. Helfand's opinion that appellant could not continuously sit or stand for more than one hour is inconsistent with his statement that it would be difficult for her to sit for more than thirty minutes. In fact, having difficulty sitting for half an hour and being unable to sit continuously for one hour are completely consistent with one another.

1       which time she underwent numerous physical examinations and  
2       diagnostic procedures.<sup>11</sup> Dr. Helfand's diagnosis of severe  
3       fibromyalgia and degenerative disc disease are "well supported  
4       by medically acceptable clinical and laboratory diagnostic  
5       techniques." Green-Younger exhibited the clinical signs and  
6       symptoms to support a fibromyalgia diagnosis under the  
7       American College of Rheumatology (ACR) guidelines, including  
8       primarily widespread pain in all four quadrants of the body  
9       and at least 11 of the 18 specified tender points on the body.  
10      See SSA Memorandum, *Fibromyalgia, Chronic Fatigue Syndrome,*  
11      *and Objective Medical Evidence Requirements for Disability*  
12      *Adjudication*, at 5 (May 11, 1998) (explaining that the signs  
13      for fibromyalgia, according to the ACR, "are primarily the  
14      tender points"); see also *Sarchet v. Chater*, 78 F.3d 305, 306  
15      (7th Cir. 1996); *Lisa v. Sec. of the Dep't of Health and Human*  
16      *Servs.*, 940 F.2d 40, 43 (2d Cir. 1991). As noted earlier, Dr.  
17      Helfand documented that "[m]usculo-skeletal and extremity  
18      exams reveal multiple tender points in the distribution  
19      characteristic of fibromyalgia." A number of other doctors,  
20      including a fibromyalgia specialist, concurred in that  
21      diagnosis, presumably using proper diagnostic techniques.<sup>12</sup> In

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<sup>11</sup> As of the time of the appeal in May 2002, Dr. Helfand had treated Green-Younger for eight years.

<sup>12</sup> That was certainly the contention in Green-Younger's brief and at oral argument and the government did not dispute it.

1 addition, several MRIs showed some bulging in her discs and  
2 several doctors concurred that Green-Younger had a history of  
3 degenerative disc disease.

4 The fact that Dr. Helfand also relied on Green-Younger's  
5 subjective complaints hardly undermines his opinion as to her  
6 functional limitations, as "[a] patient's report of  
7 complaints, or history, is an essential diagnostic tool."  
8 *Flanery v. Chater*, 112 F.3d 346, 350 (8th Cir. 1997). Partly  
9 in an effort to avoid long-term disability status for Green-  
10 Younger, Dr. Helfand ordered various treatments, including  
11 medication, trigger point steroid injections and epidural  
12 blocks, and physical and chiropractic therapy. He personally  
13 monitored the effectiveness of various therapies and found  
14 that they failed to provide any significant improvement in  
15 Green-Younger's condition.

16 By contrast, the only evidence which might be  
17 inconsistent with Dr. Helfand's opinion is not substantial--  
18 that is, it cannot reasonably support the conclusion that  
19 appellant can work. The ALJ relied on the 1995 work fitness  
20 evaluation conducted by physical therapist Tomasello. Given  
21 that Tomasello was not a physician, that she stated that her  
22 conclusion was based on inconsistent results and required  
23 verification, and that a subsequent evaluation produced  
24 contrary results, Tomasello's one-shot evaluation is not

1 substantial evidence. Similarly, the reports of two SSA  
2 consulting physicians, who did not examine Green-Younger, are  
3 also not substantial evidence. The first appears to rely  
4 entirely on Tomasello's report, whereas the second found that  
5 Green-Younger could perform sedentary work because "[e]vidence  
6 does not show deficits of motor function or significant  
7 arthritis to severely limit sitting or standing." However,  
8 Green-Younger was not complaining of deficits in motor  
9 functioning or arthritis, she was complaining of debilitating  
10 pain from fibromyalgia.

11 It also appears to us that the ALJ, like the SSA  
12 consulting physicians, did not actually credit Dr. Helfand's  
13 diagnosis of fibromyalgia or misunderstood its nature. The  
14 ALJ effectively required "objective" evidence for a disease  
15 that eludes such measurement. As a general matter,  
16 "objective" findings are not required in order to find that an  
17 applicant is disabled.<sup>13</sup> See *Donato v. Sec. of Dep't of Health*  
18 *and Human Servs.*, 721 F.2d 414, 418-19 (2d Cir. 1983)  
19 ("Subjective pain may serve as the basis for establishing  
20 disability, even if . . . unaccompanied by positive clinical

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<sup>13</sup> In concluding otherwise, the magistrate judge cited a case from the Eastern District of Illinois, *May v. Apfel*, 1999 WL1011927, at 14 (N.D. Ill. 1999), which both misstated the underlying law and appears to be contrary to Seventh Circuit precedent that allows fibromyalgia to be the basis for a disability determination even though "its symptoms are entirely subjective." *Sarchet*, 78 F.3d at 306.

1 findings of other 'objective' medical evidence") (emphasis in  
2 original) (citation omitted); *Cruz v. Sullivan*, 912 F.2d 8, 12  
3 (2d Cir. 1990); *Eiden v. Secretary of Health, Educ., and*  
4 *Welfare*, 616 F.2d 63, 65 (2d Cir. 1980); *Cutler v. Weinberger*,  
5 516 F.2d 1282, 1286-87 (2d Cir. 1975); *Cline v. Sullivan*, 939  
6 F.2d 560, 566 (8th Cir. 1991).

7 Moreover, a growing number of courts, including our own,  
8 see *Lisa*, 940 F.2d at 44-45, have recognized that fibromyalgia  
9 is a disabling impairment and that "there are no objective  
10 tests which can conclusively confirm the disease." *Preston v.*  
11 *Sec. of Health and Human Servs.*, 854 F.2d 815, 818 (6th Cir.  
12 1988); see *Sarchet*, 78 F.3d at 306; see also *Harman v. Apfel*,  
13 211 F.3d 1172, 1179-80 (9th Cir. 2000); *Kelley v. Callahan*,  
14 133 F.3d 583, 585 n.2 (8th Cir. 1998). Yet each of the ALJ's  
15 determinations turned on a perceived lack of objective  
16 evidence. First, the ALJ determined that Dr. Helfand's  
17 opinion was not "well supported by medically acceptable  
18 clinical and laboratory diagnostic techniques" because of a  
19 lack of "objective" findings.<sup>14</sup> Second, the ALJ determined  
20 that Dr. Helfand's opinion was "inconsistent with other  
21 substantial evidence," namely Tomasello's work fitness  
22 evaluation, because it was not supported by "objective"

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<sup>14</sup> Notably, the ALJ did not mention the presence of tender points, the primary diagnostic technique for fibromyalgia.

1 findings. Finally, the ALJ also found that Green-Younger's  
2 "allegations of pain and functional limitations are found not  
3 to be entirely credible, particularly in light of the minimal  
4 objective findings."

5 As we have discussed, the ALJ erred in not giving  
6 controlling weight to Dr. Helfand's opinions. With regard to  
7 the issue of Green-Younger's credibility, her complaints of  
8 pain in her back, legs, and upper body, fatigue, and disturbed  
9 sleep are internally consistent and consistent with common  
10 symptoms of fibromyalgia. Dr. Helfand's diagnosis of  
11 fibromyalgia bolsters the credibility of Green-Younger's  
12 complaints. See *Lisa*, 940 F.2d at 44. By comparison, the  
13 reasons suggested by the ALJ simply do not undermine her  
14 credibility. First, the ALJ found that the relative lack of  
15 physical abnormalities undercut her credibility.<sup>15</sup> However, we  
16 have recognized that "[i]n stark contrast to the unremitting  
17 pain of which fibrositis patients complain, physical  
18 examinations will usually yield normal results--a full range  
19 of motion, no joint swelling, as well as normal muscle  
20 strength and neurological reactions." *Id.* at 45 (quoting  
21 *Preston*, 854 F.2d at 818). Hence, the absence of swelling  
22 joints or other orthopedic and neurologic deficits "is no more

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<sup>15</sup> Moreover, the ALJ's evaluation of the medical evidence understates the degree to which laboratory tests revealed the presence of physical abnormalities.

1 indicative that the patient's fibromyalgia is not disabling  
2 than the absence of a headache is an indication that a  
3 patient's prostate cancer is not advanced." Sarchet, 78 F.3d  
4 at 307. Rather, these negative findings simply confirm a  
5 diagnosis of fibromyalgia by a process of exclusion,  
6 eliminating "other medical conditions which may manifest  
7 fibrositis-like symptoms of musculoskeletal pain, stiffness,  
8 and fatigue." Preston, 854 F.2d at 819.

9 Second, the ALJ noted that Green-Younger was only taking  
10 one medication for pain. But Dr. Helfand's records show that  
11 he reduced the number of pain medications, not because Green-  
12 Younger's pain lessened, but because the medications were  
13 ineffective in alleviating pain, necessitating alternative  
14 approaches. Moreover, it would seem that the strength, not  
15 the quantity, of painkillers is what matters. Finally, the  
16 absence of marked physical change between when Green-Younger  
17 was working and when she stopped is of little consequence  
18 given that she could not acceptably perform her job while  
19 employed and would not be welcomed back if she continued to  
20 exhibit her historical levels of absenteeism. As the  
21 magistrate judge noted, "in the six-year, ten-month period  
22 from July 20, 1988 until she stopped working on May 8, 1995,  
23 Green-Younger was out of work on disability leave for a period  
24 of at least four years."

1 III. Conclusion

2 After a full review of the record, we conclude that the  
3 ALJ's decision that Green-Younger is not legally disabled is  
4 based on an erroneous legal standard and is not supported by  
5 substantial evidence. When Dr. Helfand's opinions regarding  
6 Green-Younger's limitations are given controlling weight, it  
7 is clear that Green-Younger would not be able to perform her  
8 past work as a mail clerk. Dr. Blanks, the only vocational  
9 expert to testify before the ALJ, admitted that a person who  
10 could sit for only 30 minutes at a time and sit or stand for  
11 only four hours a day could not work as a mail clerk, or be  
12 otherwise employed in the national economy. Cf. Harman, 211  
13 F.3d at 1180 (remanding for further proceedings because "there  
14 was no testimony from the vocational expert that the  
15 limitations found by the [treating physician] would render  
16 Appellant unable to engage in any work"). Accordingly, we  
17 reverse and remand to the district court with instructions to  
18 remand the matter to the Commissioner of the SSA for a  
19 calculation of disability benefits.