

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAVAL SMITH,	)	Case No. CV 07-4991 PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	

---

I.

INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI"). For the reasons discussed below, the Agency's decision is REVERSED and the action is REMANDED for further proceedings consistent with this opinion.

II.

STATEMENT OF FACTS

Plaintiff was born in 1967 and was 39 years old at the time of the administrative hearing. (Administrative Record ("AR") 54, 200.)

1 He has worked numerous jobs since graduating from high school in 1987,  
2 including janitor, umpire, security guard, carpenter, and handyman.  
3 (AR 88, 200.)

4 In August 2005, Plaintiff was involuntarily committed to a  
5 psychiatric hospital after exhibiting psychotic behavior. (AR 122-  
6 32.) Plaintiff was held at the hospital for three days, until he was  
7 stabilized with medication and therapy, and then released. (AR 123,  
8 124.) Thereafter, he filed an application for SSI, alleging he had  
9 been disabled due to a mental impairment since July 2005. (AR 53-59.)

10 In May 2006, Plaintiff was, again, involuntarily committed after  
11 experiencing another psychotic episode. (AR 168.) Plaintiff spent  
12 ten days in the hospital that time and was released after he was  
13 stabilized with medication and therapy. (AR 180.)

14 Plaintiff's application for SSI was denied by the Agency. He  
15 then requested and was granted a hearing before an Administrative Law  
16 Judge ("ALJ"). (AR 192-207.) Following the hearing, the ALJ issued a  
17 decision denying the application. (AR 12-21.) The ALJ found that  
18 Plaintiff suffered from a psychotic disorder, not otherwise specified  
19 ("NOS"). (AR 17.) He determined that this condition resulted in  
20 Plaintiff having mild restrictions in activities of daily living, and  
21 moderate difficulties in maintaining social functioning,  
22 concentration, persistence, and pace. (AR 19.) The ALJ discounted  
23 Plaintiff's testimony that he was unable to maintain a job and  
24 concluded that Plaintiff could perform his former work as a janitor.  
25 (AR 20-21.)

26 Plaintiff appealed to the Appeals Council, which denied his  
27 request for review on June 18, 2007. (AR 4-7.) Plaintiff then  
28 commenced this action.

1 III

2 ANALYSIS

3 Plaintiff claims that the ALJ erred when he failed to:

4 1) properly consider his testimony; 2) fully and fairly specify the  
5 duties of Plaintiff's past relevant work as a janitor; and 3) consider  
6 medical evidence which established that Plaintiff could not work.  
7 (Joint Stip. at 3-7, 16-17, 19-23.) As set forth below, the Court  
8 concludes that the ALJ erred in all three areas and, therefore, remand  
9 is warranted.

10 A. Standard Of Review

11 "Disability" under the regulations is defined as an inability to  
12 perform any substantial gainful activity due to any "medically  
13 determinable physical or mental impairment which can be expected to  
14 result in death or which has lasted or can be expected to last for a  
15 continuous period of not less than 12 months." See 42 U.S.C.  
16 § 423(d)(1)(A). The Court may overturn the ALJ's decision that a  
17 claimant is not disabled only if the decision is not supported by  
18 substantial evidence or if the decision is based on legal error.  
19 *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.  
20 2006). "Substantial evidence" is such "relevant evidence as a  
21 reasonable mind might accept as adequate to support a conclusion."  
22 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (internal  
23 quotation marks and citation omitted). It is "more than a mere  
24 scintilla but less than a preponderance." *Bayliss v. Barnhart*, 427  
25 F.3d 1211, 1214 n.1 (9th Cir. 2005). This Court must uphold the ALJ's  
26 conclusion even if the evidence in the record "is susceptible to more  
27 than one rational interpretation." *Burch*, 400 F.3d at 679.

1 B. The ALJ's Credibility Determination

2 The ALJ found that Plaintiff's claim that his mental impairment  
3 precluded him from working was not credible. Plaintiff takes  
4 exception to this finding and argues that the record does not support  
5 it. (Joint Stip. at 4-7.) For the following reasons, the Court finds  
6 that the ALJ erred in his credibility analysis and remands the case  
7 for further consideration of the issue.

8 The ALJ found that Plaintiff produced objective medical evidence  
9 of an impairment which could reasonably be expected to produce some  
10 limitation. (AR 20.) The ALJ did not find that Plaintiff was a  
11 malingerer. Thus, the ALJ could reject Plaintiff's testimony only for  
12 specific, clear, and convincing reasons. *Tommasetti v. Astrue*, 533  
13 F.3d 1035, 1039 (9th Cir. 2008) (quoting *Smolen v. Chater*, 80 F.3d  
14 1273, 1281, 1283-84 (9th Cir. 1996)). In evaluating Plaintiff's  
15 credibility, the ALJ was free to consider many factors, including  
16 "ordinary techniques of credibility evaluation[,]. . . unexplained or  
17 inadequately explained failure to seek treatment or to follow a  
18 prescribed course of treatment, . . . and the claimant's daily  
19 activities." *Tommasetti*, 533 F.3d at 1039 (quoting *Smolen*, 80 F.3d at  
20 1284).

21 The ALJ rejected Plaintiff's claim that his mental impairment  
22 precluded him from working for five reasons:

- 23 1. There was a lack of objective medical evidence supporting  
24 this claim;
- 25 2. Plaintiff's behavior;
- 26 3. There was a very limited mental health treatment history;
- 27 4. The medical records indicated that Plaintiff was able to  
28 function adequately when he took his medications; and

1           5.    Plaintiff was lucid, logical, and appropriate at the  
2                    administrative hearing.

3    (AR 20.)

4           As to the first reason--the lack of objective medical evidence--  
5    the Court notes that there was medical evidence that Plaintiff  
6    suffered from a psychotic disorder, which caused him to have psychotic  
7    breaks. (AR 121-88.) On two occasions Plaintiff was involuntarily  
8    committed to a psychiatric hospital for treatment. (AR 122, 167.)  
9    Thus, the Court disagrees with the ALJ's generalization that the  
10   objective medical evidence does not support Plaintiff's claim. A fair  
11   reading of the record establishes that some of the evidence supports  
12   his claim and some does not. The Court is unable to determine what  
13   evidence the ALJ was relying on when he found that it did not support  
14   Plaintiff's claim. For that reason, the Court cannot conclude that  
15   this was a valid justification for rejecting Plaintiff's credibility.  
16   *See Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 884 (9th Cir. 2006)  
17   (noting ALJ's justification for discounting claimant's testimony,  
18   i.e., that it was not consistent with or supported by the overall  
19   medical evidence of record, was "exactly the type we have previously  
20   recognized the regulations prohibit") (citations omitted).

21           The second reason cited by the ALJ in support of his finding that  
22   Plaintiff was not credible was Plaintiff's "behavior." (AR 20.) The  
23   ALJ did not explain what behavior he was referring to, i.e. whether it  
24   was Plaintiff's failure to comply with his doctor's orders and take  
25   his medication; whether it was Plaintiff's conduct at the hearing,  
26   which the ALJ noted was appropriate; or some other behavior. Without  
27   more, the Court cannot conclude that this was a proper justification  
28   for discounting Plaintiff's credibility.

1           The next reason the ALJ provided was that there was a very  
2 limited mental health treatment history. (AR 20.) The ALJ explained  
3 that the medical records showed that Plaintiff was involuntarily  
4 committed on one occasion. (AR 20.) This finding is not accurate.  
5 In fact, Plaintiff was involuntarily committed twice, in August 2005  
6 and in May 2006, (AR 120-32, 167-68), which the ALJ noted in a  
7 different section in his decision. (AR 17, 19.) It is unclear why,  
8 when addressing Plaintiff's credibility, the ALJ made a different  
9 finding as to how many times Plaintiff had been involuntarily  
10 committed. Regardless, this reason is not supported by substantial  
11 evidence and, therefore, is rejected.

12           The fourth reason relied on by the ALJ for discounting  
13 Plaintiff's credibility was that Plaintiff's medications controlled  
14 his behavior and allowed him to function normally. (AR 20.) This is  
15 a valid reason for discounting a claimant's testimony. *See Bunnell v.*  
16 *Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991) (en banc); *see also* Social  
17 Security Ruling ("SSR") 88-13. Further, the evidence supports this  
18 finding. (AR 122-32, 167-68.) In fact, Plaintiff himself admitted  
19 that the medication controlled his behavior. (AR 201, 202, 204.)

20           The final reason provided by the ALJ for finding Plaintiff not  
21 credible was that he was "lucid, logical, and appropriate" at the  
22 hearing. (AR 20.) This, too, is a valid reason for questioning a  
23 claimant's testimony, *see Morgan v. Comm'r of Soc. Sec. Admin.*, 169  
24 F.3d 595, 600 (9th Cir. 1999), and it, too, was supported by the  
25 record. Plaintiff had no apparent problem responding to the ALJ's  
26 questions and acting appropriately at the hearing. (AR 198-205.)

27           In addition to the five factors the ALJ did address, the Court  
28 notes that the ALJ failed to address Plaintiff's father's submission.

1 Plaintiff lived with his father. In October 2005, Plaintiff's father  
2 completed a form in which he set forth his observations of Plaintiff's  
3 behavior and his ability to function. (AR 80-87.) Among other  
4 things, Plaintiff's father noted that Plaintiff sees himself as a "big  
5 man," who was responsible for sending the storm (presumably Hurricane  
6 Katrina) to New Orleans. (AR 84.) Plaintiff's father also observed  
7 that Plaintiff hears voices and sometimes thinks pigeons are talking  
8 to him. (AR 85, 87.) The ALJ did not discuss this testimony and that  
9 was a mistake; he should have considered the father's input in  
10 assessing Plaintiff's credibility. See *Stout*, 454 F.3d at 1056. The  
11 ALJ was not at liberty to consider only the evidence that supported  
12 his credibility finding. See *Gallant v. Heckler*, 753 F.2d 1450, 1456  
13 (9th Cir. 1984) (explaining ALJ cannot ignore competent evidence in  
14 record that contradicts his conclusion); *Day v. Weinberger*, 522 F.2d  
15 1154, 1156 (9th Cir. 1975) ("[A] reviewing court must consider both  
16 evidence that supports, and evidence that detracts from" ALJ's  
17 conclusion).<sup>1</sup>

18 Having addressed each of the ALJ's reasons for rejecting  
19 Plaintiff's credibility, and a sixth consideration that the ALJ did  
20 not discuss, the Court finds that there are two reasons supporting the  
21 rejection of Plaintiff's credibility and four that either do not  
22

---

23  
24 <sup>1</sup> In an apparent separate ground, Plaintiff complains that the  
25 ALJ failed to discuss the questionnaire filled out and submitted by  
26 his father. (Joint Stip. at 4.) The ALJ was required to consider the  
27 father's input. *Stout*, 454 F.3d at 1053 ("[A]n ALJ must consider lay  
28 witness testimony concerning a claimant's ability to work"). His  
failure to do so was not harmless because, had he credited the  
father's testimony, he likely would have reached a different  
conclusion. *Id.* at 1056. On remand, the ALJ should address the  
father's questionnaire.

1 support the rejection or are neutral. It is difficult to determine at  
2 this time whether, had the ALJ considered all these factors, he would  
3 have concluded that Plaintiff's testimony should be credited. See  
4 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir.  
5 2007) (explaining court should look at whether ALJ's decision remains  
6 valid, despite erroneous reliance on invalid factors). The Court  
7 concludes that the prudent course is to remand the case to the ALJ and  
8 let him determine in the first instance whether Plaintiff's testimony  
9 should be credited.

10 C. The ALJ's Finding That Plaintiff Could Perform His Past Work

11 Plaintiff contends that the ALJ erred when he determined that  
12 Plaintiff could perform his past work as a janitor. In Plaintiff's  
13 view, the ALJ failed to match the specific duties required of that job  
14 with Plaintiff's abilities. (Joint Stip. at 16-17.) The Agency  
15 disagrees. It argues that the vocational expert's testimony addressed  
16 all of Plaintiff's limitations and matched them with the functional  
17 demands of the job of janitor. (Joint Stip. at 17.) The Agency's  
18 argument is not supported by the record.

19 The ALJ found that Plaintiff had moderate difficulties in  
20 maintaining concentration, persistence, and pace. (AR 19.) When the  
21 ALJ included this limitation in a hypothetical question to the  
22 vocational expert, the vocational expert concluded that Plaintiff  
23 could not work as a janitor. (AR 206.) The ALJ ultimately  
24 determined, however, that Plaintiff could work, relying on the answer  
25 the vocational expert gave to a different hypothetical that left out  
26 this limitation. This was a mistake. The ALJ was required to base  
27 his finding on all of Plaintiff's limitations. His failure to do so  
28 mandates remand on this issue.



1 D. The ALJ's Finding That Plaintiff Could Work

2 In his third and final claim, Plaintiff argues that the ALJ  
3 failed to properly assess whether Plaintiff could sustain employment.  
4 (Joint Stip. at 19-23.) The Agency disagrees. It argues that the  
5 ALJ's finding that Plaintiff could sustain employment was supported by  
6 the medical evidence, particularly the state agency physician who  
7 found that Plaintiff had "no significant limitation in the ability to  
8 maintain concentration, persistence, and pace . . . ." (Joint Stip. at  
9 23.) The problem with the Agency's argument here is that, though the  
10 state agency physician may have reached this conclusion, the ALJ  
11 reached a different conclusion. He found that Plaintiff would have  
12 "moderate difficulties in maintaining concentration, persistence, and  
13 pace . . . ." (AR 19.) As such, the Agency's argument is misplaced.  
14 On remand, the ALJ must reconcile his finding that Plaintiff would  
15 have moderate difficulties in concentration, persistence, and pace  
16 with his finding that Plaintiff would still be able to hold down a job  
17 as a janitor.

18 IV

19 CONCLUSION

20 For the reasons set forth above, the Agency's decision is  
21 reversed and the case is remanded for further proceedings consistent  
22 with this opinion.

23 IT IS SO ORDERED.

24 DATED: November 14, 2008.

25 

26 \_\_\_\_\_  
27 PATRICK J. WALSH  
28 UNITED STATES MAGISTRATE JUDGE