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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CARMEL NORWOOD,	)	Case No. CV 07-06946-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
	)	

Plaintiff Carmel Norwood ("Plaintiff") seeks review of the Commissioner's final decision denying her applications for Widow's Insurance Benefits<sup>1</sup> and Supplemental Security Income ("SSI"). For the reasons discussed below, the Commissioner's decision is reversed, and this action is remanded for further proceedings.

**I. Factual and Procedural Background**

Plaintiff was born on July 12, 1944. (Administrative Record ("AR") at 84, 629). She has a high school education and relevant work

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<sup>1</sup> Plaintiff applied for widow's benefits based on her deceased husband's social security record. (AR at 84-85).

1 experience as an administrative clerk and telemarketer. (AR at 542-43,  
2 629).

3 In June 1997, Plaintiff filed applications for Widow's Insurance  
4 Benefits and SSI alleging that she has been disabled and unable to work  
5 since February 1, 1991, due to depression, vision problems, and pain in  
6 her stomach, chest, back, right leg and right knee. (AR 84-85, 89, 98,  
7 100, 102, 110, 150, 536). Plaintiff's applications were denied initially  
8 and upon reconsideration. (AR 71-75, 77-80, 536).

9 At Plaintiff's request, an administrative hearing was held before  
10 Administrative Law Judge Walter J. Fisher ("ALJ Fisher"). (AR at 37-61).  
11 On April 16, 1999, ALJ Fisher issued a decision ("Decision #1") denying  
12 Plaintiff's requests for benefits. (AR at 328-37). The Appeals Council  
13 denied review. (AR at 5-6).

14 Plaintiff commenced an action seeking review in this Court. On July  
15 26, 2002, this Court remanded the case to the Commissioner for further  
16 consideration of medical evidence concerning Plaintiff's mental  
17 impairment. *Norwood v. Apfel*, No. CV 00-10092 (MLG); (AR at 344-54).

18 A supplemental hearing was conducted. (AR at 505-32). On May 9,  
19 2005, ALJ Fisher issued a decision ("Decision #2") denying Plaintiff's  
20 requests for benefits. (AR at 306-11). The Appeals Council denied  
21 review. (AR at 296-98). Once again, Plaintiff sought review in this  
22 Court. On October 25, 2006, pursuant to a stipulation by the parties,  
23 this Court remanded the case to the Commissioner for further  
24 consideration of the opinions of Plaintiff's treating and examining  
25 psychiatrists. *Norwood v. Barnhart*, No. CV 05-8738-MLG; (AR at 556-58).

26 On June 27, 2007, an administrative hearing was held before  
27 Administrative Law Judge Mary L. Everstine ("ALJ Everstine"). (AR at  
28 626-48). On August 8, 2007, ALJ Everstine issued a decision ("Decision

1 #3") concluding that Plaintiff was not disabled. (AR at 536-45). ALJ  
2 Everstine found that Plaintiff had not engaged in substantial gainful  
3 activity since February 1, 1991, and that Plaintiff suffers from  
4 emphysema and a history of alcohol abuse in remission, but that  
5 Plaintiff's mental condition was not severe because it did not meet the  
6 twelve month durational requirement. (AR at 538, 540 (citing Social  
7 Security Ruling 82-52 ("In considering 'duration,' it is the inability  
8 to engage in [substantial gainful activity] that must last the required  
9 12-month period")); see also 42 U.S.C. § 1382c(a)(3)(A). ALJ Everstine  
10 found that Plaintiff's impairments did not meet or medically equal one  
11 of the listed impairments in 20 C.F.R., Part 404, Subpart P, Appendix 1.  
12 (AR at 541). ALJ Everstine assessed Plaintiff with the residual  
13 functional capacity for work at all levels of exertion, but found that  
14 Plaintiff should avoid unprotected heights, hazardous machinery, and  
15 concentrated exposure to dust, fumes or other respiratory irritants. (AR  
16 at 541). ALJ Evertstine concluded that Plaintiff remained capable of  
17 performing her past relevant work as an administrative clerk and  
18 telemarketer during the period at issue in this case, February 1, 1991,  
19 through July 11, 2004.<sup>2</sup> (AR at 542). In addition, ALJ Everstine found  
20 that Plaintiff was able to perform other work such as food packer,  
21 weigher/food product, kitchen helper, and sandwich maker. (AR at 544).

22 On November 5, 2007, Plaintiff commenced this action for judicial  
23 review. Plaintiff contends that ALJ Everstine erred by disregarding the  
24 opinion of her treating psychiatrist, Sohini Parikh, M.D. (Joint  
25 Stipulation at 4-9, 11-13). Plaintiff seeks remand for payment of  
26 benefits or, in the alternative, remand for further administrative

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27 <sup>2</sup> Plaintiff began receiving widow's benefits in July 2004 when she  
28 reached age 60. (AR at 536).

1 proceedings. (Joint Stipulation at 13). The Commissioner requests that  
2 Decision #3 be affirmed. (AR at 14). The Joint Stipulation has been  
3 taken under submission without oral argument.

## 4 5 **II. Standard of Review**

6 Under 42 U.S.C. § 405(g), a district court may review the  
7 Commissioner's decision to deny benefits. The Commissioner's decision  
8 should be upheld if it is free from legal error and supported by  
9 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);  
10 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Substantial evidence  
11 means "more than a mere scintilla," *Richardson*, 402 U.S. at 402, but  
12 less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119,  
13 n.10 (9th Cir. 1975). It is "such relevant evidence as a reasonable mind  
14 might accept as adequate to support a conclusion." *Richardson*, 402 U.S.  
15 at 401; *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). To  
16 determine whether substantial evidence supports a finding, the reviewing  
17 court "must review the administrative record as a whole, weighing both  
18 the evidence that supports and the evidence that detracts from the  
19 Commissioner's conclusion." *Reddick*, 157 F.3d at 720. "If the evidence  
20 can reasonably support either affirming or reversing," the reviewing  
21 court "may not substitute its judgment" for that of the Commissioner.  
22 *Id.* at 720-721.

## 23 24 **III. Discussion**

### 25 **A. Plaintiff's Mental Impairment**

26 Plaintiff contends that ALJ Everstine erred by rejecting the  
27 opinion of her treating psychiatrist at the Augustus F. Hawkins Mental  
28 Health Center, Sohini Parikh, M.D. (Joint Stipulation at 4-9, 11-13).

1 In March 1998, Plaintiff went to the Augustus F. Hawkins Mental  
2 Health Center with complaints of depression, fatigue, and lack of  
3 energy.<sup>3</sup> (AR at 271-74). Plaintiff's mood was "blue" and she had a  
4 tearful affect. (AR at 271). Plaintiff was diagnosed with depressive  
5 disorder not otherwise specified (Diagnostic and Statistical Manual of  
6 Mental Disorders (4th ed.) ("DSM-IV") code 311, and rule out major  
7 depressive disorder without psychotic features (DSM-IV code 296.33). (AR  
8 at 271). Plaintiff was assessed with a Global Assessment of Functioning  
9 ("GAF") scale of 60, indicating moderate symptoms or moderate difficulty  
10 in social, occupational, or school functioning. DSM-IV at 32.

11 Dr. Parikh began treating Plaintiff in April 1998. (AR at 269). Dr.  
12 Parikh noted that Plaintiff was experiencing depression, fatigue, and  
13 appetite and sleep disturbances. (AR at 267). After diagnosing Plaintiff  
14 with depressive disorder NOS (DSM-IV code 311), substance induced  
15 anxiety disorder (DSM-IV code 292.89) and rule out major depressive  
16 disorder, recurrent (DSM-IV code 296.30), Dr. Parikh prescribed an  
17 antidepressant medication (nefazodone). (AR at 267). Plaintiff returned  
18 to Dr. Parikh later that same month with complaints of agitation. (AR at  
19 256). Dr. Parikh concluded that Plaintiff was suffering from major  
20 depressive disorder, and began prescribing Zoloft (indicated for the  
21 treatment of major depression). (AR at 256-57). Plaintiff saw Dr. Parikh  
22 for treatment in May 1998, June 1998, July 1998, and September 1998. (AR  
23 at 251-55). Dr. Parikh noted Plaintiff's subjective complaints of  
24 depression, forgetfulness, and pain from arthritis. (AR at 251-54). Dr.

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25  
26 <sup>3</sup> The Court notes that there is evidence in the record that  
27 Plaintiff received some treatment at Augustus F. Hawkins Mental Health  
28 Center prior to 1998, including emergency psychiatric treatment in July  
1991, outpatient psychiatric treatment in July 1995, and inpatient  
psychiatric treatment in 1993 or 1994. (AR at 260, 267, 286).

1 Parikh continued to prescribe Zoloft. (AR at 251-55).

2 Although the record does not contain treatment notes from Dr.  
3 Parikh dated after September 1998, the record does contain other  
4 evidence showing that Dr. Parikh continued to treat Plaintiff. (AR at  
5 285, 294). For example, in a June 1999 letter, Dr. Parikh verified that  
6 Plaintiff was receiving outpatient psychiatric treatment at the Augustus  
7 F. Hawkins Mental Health Center. (AR at 294). Dr. Parikh diagnosed  
8 Plaintiff with major depressive disorder, recurrent, unspecified, and  
9 concluded that Plaintiff was not able to work at that time. (AR at 295).  
10 In September 1999, Dr. Parikh completed a Medical Assessment Form  
11 (Mental) and an Evaluation Form of Mental Disorders. (AR at 285-93). Dr.  
12 Parikh indicated that Plaintiff had last been examined at the Augustus  
13 F. Hawkins Mental Health Center in August 1999. (AR at 285). Dr. Parikh  
14 opined that Plaintiff's ability to work was restricted by her  
15 depression, sleep disturbances, impaired insight, impaired memory, poor  
16 coping mechanisms, and questionable impulse control. (AR 285, 289, 295).  
17 Dr. Parikh found that Plaintiff had only a "fair" ability to: follow  
18 work rules, relate to co-workers, deal with the public, use judgment,  
19 interact with supervisors, deal with work stresses, function  
20 independently, maintain attention and/or concentration, behave in an  
21 emotionally stable manner, and relate predictably in social situations.  
22 (AR 292-94). Dr. Parikh further found that Plaintiff's ability to  
23 maintain persistent pace throughout the workday and understand,  
24 remember, and carry out simple and complex job instructions was "poor."  
25 (AR 292).

26 ALJ Everstine reviewed Dr. Parikh's findings and opinion in  
27 Decision #3 before rejecting them. (AR at 539-40). While Dr. Parikh's  
28 opinion may not have been conclusive on the ultimate issue of

1 disability, see *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989),  
2 ALJ Everstine did not state adequate reasons for rejecting a treating  
3 physician's opinion. See *Orn v. Astrue*, 495 F.3d 625, 631-32 (9th Cir.  
4 2007) (a treating physician's opinion must be given controlling weight  
5 if it is well-supported and not inconsistent with the other substantial  
6 evidence in the record); see also *Benton ex. rel. Benton v. Barnhart*,  
7 331 F.3d 1030, 1036 (9th Cir. 2003) (explaining that even if a treating  
8 physician's opinion is contradicted by other medical evidence, an ALJ  
9 may not reject the treating physician's opinion without providing  
10 "specific and legitimate reasons" for doing so that are supported by  
11 "substantial evidence in the record"); *Lester v. Chater*, 81 F.3d 821,  
12 830-31 (9th Cir. 1996)). For example, ALJ Everstine stated that "Dr.  
13 Parikh acknowledges that the claimant had only 2 months of treatment in  
14 1998, one year before his opinion was rendered." (AR at 539). This  
15 reason is not only a misinterpretation of Dr. Parikh's opinion, but it  
16 is also belied by the record. As noted above, Dr. Parikh's treatment  
17 records show that he examined Plaintiff in April 1998, May 1998, June  
18 1998, July 1998, and September 1998. (AR at 251-56, 267, 269, 294). Dr.  
19 Parikh also reported that Plaintiff continued to receive psychiatric  
20 treatment at the Augustus F. Hawkins Mental Health Center through August  
21 1999. (AR at 285, 294).

22       Next, ALJ Everstine found that Dr. Parikh assessed Plaintiff with  
23 significant mental functional abilities. (AR at 539). In particular, ALJ  
24 Everstine noted that in September 1999, Dr. Parikh reported that  
25 Plaintiff's "concentration was in tact, she denied suicidal and  
26 homicidal ideations, she denied hallucinations, she did not need  
27 assistance for self-care, and she was competent enough to handle funds  
28 without assistance. (AR at 287-89, 539). However, ALJ Everstine's

1 description of Dr. Parikh's opinion is misleading because it ignores the  
2 significant symptoms identified by Dr. Parikh that restrict Plaintiff's  
3 ability to work (e.g., depression, sleep disturbances, impaired insight,  
4 impaired memory, poor coping mechanisms, and questionable impulse  
5 control). (AR 285, 289, 295). ALJ Everstine was obligated to consider  
6 the evidence as a whole in making the disability determination. See *Clem*  
7 *v. Sullivan*, 894 F.2d 328, 320 (9th Cir. 1990) ("We consider the record  
8 as a whole, weighing both the evidence that supports and the evidence  
9 that detracts from the ALJ's conclusion").

10 ALJ Everstine also discounted Dr. Parikh's opinion because it was  
11 not supported by psychological testing. (AR at 539). It was improper for  
12 ALJ Everstine to reject Dr. Parikh's opinion simply due to a lack of  
13 psychological testing. See *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th  
14 Cir. 1987) (When a treating physician diagnosed claimant with  
15 depression, set forth clinical observations supporting the diagnosis,  
16 and prescribed psychotherapeutic drugs, ALJ erred in finding claimant  
17 had not set forth sufficient evidence to substantiate mental  
18 impairment). Dr. Parikh's records reveal that every time he examined  
19 Plaintiff he assessed Plaintiff's mental status and evaluated  
20 Plaintiff's medications. (AR at 251-57, 267, 269). While his notations  
21 were often brief, he described his clinical findings and Plaintiff's  
22 symptoms in greater detail in the mental evaluation forms. (AR at 285-  
23 93). If ALJ Everstine questioned the objective basis for Dr. Parikh's  
24 opinion, he should have inquired further. See, e.g., *Smolen v. Chater*,  
25 80 F.3d 1273, 1288 (9th Cir. 1996); see also *Brown v. Heckler*, 713 F.2d  
26 441, 443 (9th Cir. 1983) (ALJ's duty to fully and fairly develop the  
27 record exists even when the claimant is represented by counsel).

28 Finally, in rejecting Dr. Parikh's opinion, ALJ Everstine relied on



1 the opinions of two examining psychiatrists, Chris H. Ho, M.D. and Alex  
2 Dusovich, M.D. (AR at 190-94, 214-17, 540). These doctors, both of whom  
3 examined Plaintiff on only a single occasion, concluded that Plaintiff  
4 did not suffer from a mental impairment that would preclude her from  
5 performing work related activities. (AR at 193-94, 217). Specifically,  
6 in July 1997, Dr. Ho found that although Plaintiff suffered from alcohol  
7 abuse and dependence, she was capable of making simple social,  
8 occupational, and personal adjustments. (AR at 216-17). Dr. Ho further  
9 found that Plaintiff could work at simple tasks at a normal pace,  
10 provided that she is not using alcohol. (AR at 217). In December 1997,  
11 Dr. Dusovich diagnosed Plaintiff as suffering from adjustment disorder,  
12 chronic with depressed mood and "alcohol abuse vs. dependence." (AR at  
13 193). Dr. Dusovich concluded that Plaintiff was capable of:  
14 understanding, remembering, and following simple and detailed  
15 instructions; functioning appropriately in a usual work setting in such  
16 matters as attendance, safety and changes in work routine; and  
17 responding appropriately to co-workers, supervisors, and the general  
18 public. (AR at 193-94). Plaintiff contends, and the Court agrees, that  
19 these examining doctors' opinions were not a valid basis for rejecting  
20 Dr. Parikh's opinion or concluding that her psychiatric impairment was  
21 not severe.

22 An examining physician's opinion constitutes substantial evidence  
23 for rejecting a treating physician's opinion if the examining physician  
24 relied on "independent clinical findings that differ from the findings  
25 of the treating physician." *Orn*, 495 F.3d at 631-32. Even if there is  
26 substantial evidence in the record contradicting a treating physician's  
27 opinion, the treating physician's opinion is "still entitled to  
28 deference and must be weighed using the following factors: "[l]ength of

1 the treatment relationship and the frequency of examination" by the  
2 treating physician; and the "nature and extent of the treatment  
3 relationship" between the patient and the treating physician. 20 C.F.R.  
4 §§ 404.1527(d)(2)(i)-(ii), 416.927(d)(2)(i)-(ii); *Orn*, 495 F.3d at 631-  
5 33. Other factors to be considered include the supportability of the  
6 treating physician's opinion, consistency with the record as a whole,  
7 the specialization of the physician, and the extent to which the  
8 physician is familiar with disability programs and evidentiary  
9 requirements. 20 C.F.R. §§ 404.1527(d)(3)-(6), 416.927(d)(3)-(6). Thus,  
10 "[i]n many cases, a treating source's medical opinion will be entitled  
11 to the greatest weight and should be adopted, even if it does not meet  
12 the test for controlling weight." S.S.R. 96-2p; *Orn*, 495 F.3d at  
13 632-633.

14 Here, Dr. Parikh's opinion was entitled to deference. SSR 96-2p;  
15 *Orn*, 495 F.3d at 632-633. Indeed, the factors identified in the  
16 regulations weigh in favor of Dr. Parikh's opinion. 20 C.F.R. §§  
17 404.1527, 416.927. For example, the nature and extent of Plaintiff's  
18 relationship with Dr. Parikh provides a unique longitudinal perspective  
19 on Plaintiff's mental condition, adding weight to Dr. Parikh's opinion.  
20 See 20 C.F.R. §§ 404.1527(d)(2)(i)-(ii), 416.927(d)(2)(i)-(ii); *Orn*, 495  
21 F.3d at 633. As discussed above, Plaintiff treated with Dr. Parikh  
22 and/or other physicians at the Augustus F. Hawkins Mental Health Center  
23 from April 1998 through at least August 1999. (AR at 285, 294). Dr.  
24 Parikh offered diagnoses of Plaintiff's mental condition, made clinical  
25 findings, assessed Plaintiff's ability to work, and prescribed  
26 medications. (AR at 251-55, 267, 269, 285-94). While Dr. Parikh's  
27 treatment records do not reveal detailed discussions regarding  
28 Plaintiff's mental condition, "[t]he primary function of medical records

1 is to promote communication and recordkeeping for health care personnel  
2 - not to provide evidence for disability determinations." *Orn*, 495 F.3d  
3 at 634. And, Dr. Parikh did provide a more reasoned explanation for his  
4 opinion in the mental assessment forms. (AR at 285-93); see 20 C.F.R. §§  
5 404.1527(d)(3) ("Supportability. The more a medical source presents  
6 relevant evidence to support an opinion, particularly medical signs and  
7 laboratory findings, the more weight we will give that opinion."),  
8 416.927(d)(3) (same); see also *Orn*, 495 F.3d at 634 ("a medical  
9 condition [need not] be mentioned in every report to conclude that a  
10 physician's opinion is supported by the record"). Thus, when viewed in  
11 its entirety, the record provides ample support for Dr. Parikh's  
12 opinion.

13 Accordingly, ALJ Everstine's decision to reject the opinion of  
14 Plaintiff's treating psychiatrist, Dr. Parikh, was not supported by  
15 substantial evidence.

#### 16 17 **IV. Conclusion**

18 The decision whether to remand for further proceedings is within  
19 this Court's discretion. See *Connett v. Barnhart*, 340 F.3d 871, 876 (9th  
20 Cir. 2003); *Harman v. Apfel*, 211 F.3d 1172, 1175-1178 (9th Cir. 2000).  
21 Where no useful purpose would be served by further administrative  
22 proceedings, or where the record has been fully developed, it is  
23 appropriate to exercise this discretion to direct an immediate award of  
24 benefits. *Harman*, 211 F.3d at 1179 ("the decision of whether to remand  
25 for further proceedings turns upon the likely utility of such  
26 proceedings"). However, where there are outstanding issues that must be  
27 resolved before a determination of disability can be made, and it is not  
28 clear from the record that the ALJ would be required to find the


1 claimant disabled if all the evidence were properly evaluated, remand is  
2 appropriate. *Id.*; *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir.  
3 2003).

4 Here, there are outstanding issues that must be resolved before a  
5 determination of disability can be made. *See, e.g. Bunnell*, 336 F.3d at  
6 1115-16 (remanding for reconsideration where, inter alia, ALJ "failed to  
7 provide adequate reasons for rejecting the opinion of the treating  
8 physicians" and "did not properly reject [the claimant's] subjective  
9 complaints"). As ALJ Everstine failed to adequately evaluate Dr.  
10 Parikh's opinion, issues remain as to the nature and extent of  
11 Plaintiff's mental impairment, and its impact, if any, on Plaintiff's  
12 ability to perform her past work or other work during the relevant time  
13 period. Thus, the Court cannot find that "the record has been fully  
14 developed" or that "further administrative proceedings would serve no  
15 useful purpose." *See Smolen*, 80 F.3d at 1292. Consequently, further  
16 administrative proceedings are necessary.

17  
18 **ORDER**

19 **IT IS HEREBY ORDERED** that this action be **REMANDED** to defendant,  
20 pursuant to Sentence Four of 42 U.S.C. § 405(g), for further proceedings  
21 as described above.

22 Dated: September 24, 2008

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25 \_\_\_\_\_  
26 Marc L. Goldman  
27 United States Magistrate Judge  
28