

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

BOBBY McGEE,)	Case No. CV 08-5628 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") benefits. Plaintiff claims that the ALJ erred in 1) finding that his mental impairment did not meet or equal a Listed impairment; 2) failing to properly evaluate his credibility; and 3) determining his residual functional capacity. (Joint Stip. at 2.) Because the Agency's decision that Plaintiff was not disabled is not supported by substantial evidence, it is reversed and the case is remanded for further proceedings.

1 II. BACKGROUND

2 Plaintiff applied for SSI on August 31, 2005. (Administrative
3 Record ("AR") 41.) He claimed that he was disabled due to dyslexia,
4 hip/ankle replacements, and "mental/illiterate." (AR 133.) The
5 Agency denied the applications initially and on reconsideration. (AR
6 43, 49, 50.) Plaintiff then requested and was granted a hearing
7 before an Administrative Law Judge ("ALJ"). (AR 32, 42.) On October
8 22, 2007, Plaintiff appeared with counsel and testified at the
9 hearing. (AR 239-67.) On November 2, 2007, the ALJ issued a decision
10 denying the application. (AR 14-23.) The ALJ determined that
11 Plaintiff could perform sedentary work with some limitations. (AR 19,
12 23.) Plaintiff appealed the ALJ's decision, submitting school records
13 showing that he had been in special education classes in middle
14 school, but the Appeals Council denied his request for review. (AR 5-
15 7.) Thereafter, he commenced this action.

16 III. ANALYSIS

17 A. Listing 12.05

18 In his first claim of error, Plaintiff contends that the ALJ
19 erred by failing to find that he meets or equals Listing 12.05,
20 "Mental Retardation," based on the results of IQ tests administered by
21 consulting psychologist Michael Musacco.¹ (Joint Stip. at 2-5.) The
22

23 ¹ Listing 12.05 provides, "Mental retardation refers to
24 significantly subaverage general intellectual functioning with
25 deficits in adaptive functioning initially manifested during the
26 developmental period; i.e., the evidence demonstrates or supports
27 onset of the impairment before age 22." 20 C.F.R. Pt. 404, Subpt. P,
28 App. 1, 12.05. Plaintiff contends that he meets the requirements of
subsections (B) and (C) of the Listing. (Joint Stip. at 3.) Sub-
section 12.05(B) requires a showing of "[a] valid verbal,
performance, or full scale IQ of 59 or less." 20 C.F.R. Pt. 404,
Subpt. P, App. 1, 12.05(B). Subsection 12.05(C) is satisfied if there

1 ALJ dismissed these results because he found that Dr. Musacco found
2 that Plaintiff was malingering and, therefore, the test results were
3 invalid. Plaintiff argues that Dr. Musacco's findings that Plaintiff
4 was malingering were equivocal at best, noting that the doctor opined,
5 on the one hand, that Plaintiff might not have given his best effort
6 during the testing and, on the other hand, that he suffers from a
7 "genuine impairment in his functioning." (Joint Stip. at 3.)
8 Plaintiff also points out that Dr. Musacco recommended that other
9 records be obtained to confirm or rule out his suspicion that
10 Plaintiff was malingering and argues that the ALJ's failure to obtain
11 these records amounted to error. (Joint Stip. at 3-4.) For the
12 following reasons, the Court finds that further development of the
13 record is warranted on this issue.

14 When Dr. Musacco evaluated Plaintiff in March 2006, Plaintiff
15 reported that he was illiterate and suffered from depression. (AR
16 210.) Plaintiff told Dr. Musacco that he had attended a school for
17 emotionally and behaviorally disturbed children, had dropped out of
18 school in the ninth grade, and was suspended "all the time." (AR
19 211.) He denied any history of mental health treatment. Plaintiff
20 conceded that he used marijuana daily and contended that he did so to
21 cope with pain from injuries he sustained in a motorcycle accident
22 years earlier. (AR 211.)

23 Plaintiff claimed during his examination that he was unable to
24 correctly identify the date, month, or year, or the colors of the
25

26 is "[a] valid verbal, performance, or full scale IQ of 60 through 70
27 and a physical or other mental impairment imposing an additional and
28 significant work-related limitation of function." 20 C.F.R. Pt. 404,
Subpt. P, App. 1, 12.05(C).

1 American flag, but could name the President. (AR 211-12.) Dr.
2 Musacco and his assistant then administered a number of tests in an
3 effort to determine Plaintiff's cognitive functioning. One of the
4 tests was the Rey 15-item Memory Test, which is designed to screen out
5 malingerers. Plaintiff failed the test on two tries, which Dr.
6 Musacco interpreted as "support[ing] a concern for malingering or
7 intentional poor effort." (AR 212.) Plaintiff was also given a
8 Trails B test, the results of which suggested gross deficits in
9 cognitive functioning. (AR 213.) Here, again, however, Dr. Musacco
10 noted that "concerns for malingering prevent[] me from determining
11 whether these test results are valid." (AR 213.) Plaintiff was given
12 an IQ test and scored 54 on the verbal portion, 65 on the performance
13 portion, and 55 on the full scale portion. (AR 213.) Dr. Musacco
14 once again opined that "these test results should be interpreted with
15 caution as I am uncertain whether [Plaintiff] performed to the best of
16 his ability." (AR 213.) Similarly, Dr. Musacco concluded that
17 Plaintiff's scores on the Wechsler Memory Scale "fell in the
18 significantly impaired range[,] revealing pervasive deficits in his
19 memory skills," but he was uncertain whether the test results were
20 valid. (AR 214.) Ultimately, Dr. Musacco diagnosed Rule Out
21 Malingering, Cannabis Dependence, and Depressive Disorder, not
22 otherwise specified. (AR 214.) He also diagnosed Mild Mental
23 Retardation versus Borderline Intellectual Functioning, stating that
24 "the current test results underestimate[] [Plaintiff]'s functioning,
25 although it is possible that he still suffers from a significant or
26 borderline impairment in his intellectual functioning." (AR 214.) He
27 concluded that Plaintiff's daily activities and social functioning
28 were "significantly impaired," but stated that he was "not able to

1 offer a strong opinion regarding" his mental capacity. (AR 215.) Dr.
2 Musacco noted that, "[d]ue to validity concerns, I would likely
3 recommend that collateral records be obtained (if possible) in order
4 to confirm or rule out the diagnostic conclusions reached in my
5 evaluation." (AR 215.)

6 Based on Dr. Musacco's diagnoses, the ALJ found that Plaintiff's
7 "borderline intellectual functioning" was a severe impairment but did
8 not meet or equal a Listed impairment. (AR 19, 21.) He found that
9 Plaintiff's test results were invalid and that "[n]o work-related
10 psychological impairments were suggested," in Dr. Musacco's report.
11 (AR 21.) The ALJ noted that Dr. Musacco failed to assess functional
12 impairments corresponding to his diagnoses, so the ALJ determined on
13 his own that Plaintiff's borderline intellectual functioning caused
14 "mild to moderate impairments in capacities to understand and remember
15 instructions, sustain concentration and persistence, socially interact
16 with the general public, and adapt to workplace changes." (AR 19.)

17 Plaintiff argues that the ALJ erred by failing to note the IQ
18 scores derived from Dr. Musacco's testing and analyze them under
19 Listing 12.05. (Joint Stip. at 3.) The Agency counters that, because
20 the ALJ found that the scores were invalid, he was not required to
21 discuss the test scores or the Listing requirements in any detail.
22 *See, e.g., Gonzalez v. Sullivan*, 914 F.2d 1197, 1200-01 (9th Cir.
23 1990) (holding that the Agency's failure to discuss why claimant did
24 not satisfy the Listed impairments did not compel reversal where it
25 set forth an "adequate statement of the foundations on which the
26 ultimate factual conclusions are based."). For the reasons explained
27 below, the Court finds that the ALJ erred in not further developing
28

1 the record relating to whether Plaintiff was malingering during Dr.
2 Musacco's testing and remand is warranted on this issue.

3 An ALJ has a "special duty to fully and fairly develop the record
4 and to assure that the claimant's interests are considered," even when
5 the claimant is represented by counsel. *Smolen v. Chater*, 80 F.3d
6 1273, 1288 (9th Cir. 1996) (citation omitted). That duty is further
7 heightened where the claimant may have a mental impairment.
8 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). "The ALJ's
9 duty to supplement a claimant's record is triggered by ambiguous
10 evidence, the ALJ's own finding that the record is inadequate or the
11 ALJ's reliance on an expert's conclusion that the evidence is
12 ambiguous." *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005).

13 The findings contained in Dr. Musacco's report were ambiguous.
14 This is particularly true with regard to his finding regarding
15 Plaintiff's suspected malingering. Dr. Musacco noted his suspicion
16 that Plaintiff was malingering and recommended that the record be
17 developed further to resolve his concerns. For example, he pointed
18 out:

- 19 1. "While it appears that [Plaintiff] suffers from a legitimate
20 impairment in his functioning, it also appears that he was
21 not fully cooperative with the testing procedures." (AR
22 210.)
- 23 2. "[Plaintiff] did not appear to be cooperative insofar as he
24 failed the malingering screening test and appeared to
25 perform at a level beneath his abilities. An example of the
26 claimant's failure to provide basic information is
27 exemplified by his inability (or refusal) to correctly
28 identify the colors in the American flag." (AR 212.)

1 3. "[Plaintiff] failed this brief [Rey 15-Item] malingering
2 test. . . . These test results support a concern for
3 malingering or intentional poor effort." (AR 212.)

4 4. "These [Trailsmaking] test results suggest gross deficits in
5 [Plaintiff's] cognitive functioning, although the concerns
6 for malingering prevent[] me from determining whether these
7 test results are valid." (AR 213.)

8 5. "[T]hese [IQ] test results should be interpreted with
9 caution as I am uncertain whether [Plaintiff] performed to
10 the best of his ability." (AR 213.)

11 Dr. Musacco explained his findings as follows:

12 I offered the Rule Out diagnosis of Malingering to account
13 for [Plaintiff's] performance on the malingering screening
14 test and other psychological test administered in the
15 current evaluation. At times, it did not appear that
16 [Plaintiff] was providing a genuine effort. His failure to
17 pass the malingering screening test (which was administered
18 twice) is not believable. However, I also suspect that
19 [Plaintiff] suffers from a genuine impairment in his
20 functioning as noted by the other diagnostic
21 recommendations.

22 . . .

23 [Plaintiff's] daily activities and social functioning are
24 significantly impaired. He does not engage in productive
25 activities. It appears [Plaintiff's] primary limitations
26 revolve around his medical problems.

27 . . .

1 I am not able to offer a stronger opinion regarding
2 [Plaintiff's] mental capacity as I suspect that [he] did not
3 perform to the best of his ability during the current
4 evaluation.

5 . . .

6 Due to validity concerns, I would likely recommend that
7 collateral records be obtained (if possible), in order to
8 confirm or rule out the diagnostic conclusions reached in my
9 evaluation. It should be noted that [Plaintiff] was
10 repeatedly instructed to perform to the best of his ability,
11 although it does not appear that this occurred.

12 (AR 214-15.)

13 Thus, Dr. Musacco did not determine that Plaintiff was
14 malingering and that the test results were invalid. Nor, on the other
15 hand, did he determine that Plaintiff was not malingering and that the
16 test results were valid. He strongly suspected that Plaintiff was
17 malingering and recommended that the record be developed to confirm
18 his suspicions. But the ALJ did not develop the record. Instead, he
19 merely concluded that Plaintiff was malingering and that the test
20 scores were invalid. (AR 21.) This was in error. The ALJ was not
21 entitled to determine that Plaintiff was malingering based on Dr.
22 Musacco's suspicions that he was where, as here, the evidence was
23 ambiguous and even Dr. Musacco did not reach that conclusion. See
24 *Widmark v. Barnhart*, 454 F.3d 1063, 1069 (9th Cir. 2006) (holding that
25 ALJ failed to properly develop record where he "never sought
26 additional evidence to fill [a] perceived gap"); see also *Reddick v.*
27 *Chater*, 157 F.3d 715, 722-23 (9th Cir. 1998) (ALJ erred in developing

1 "evidentiary basis by not fully accounting for the context of
2 materials" and all parts of reports).

3 On remand, the ALJ should obtain a definitive answer to the
4 question of whether Plaintiff was malingering on the IQ tests and then
5 proceed accordingly. If Dr. Musacco is willing to state that
6 Plaintiff was malingering and the test results are invalid, then the
7 ALJ need not consider them (though it would be helpful if he listed
8 the results and explained that they are not being considered because
9 they are not valid). If, on the other hand, Dr. Musacco is unwilling
10 or unable to definitively state that Plaintiff was malingering and the
11 test scores are invalid, then the ALJ will be required to either
12 consider them or send Plaintiff back to Dr. Musacco or to another
13 doctor to conduct similar IQ and malingering testing.²

14 B. The Credibility Determination

15 The ALJ determined that Plaintiff was not credible because:
16 1) his treatment was not consistent with his complaints of disabling
17 pain and mental impairment, 2) his failure to work during the previous
18 15 years suggested that his testimony was tainted by a desire to
19 obtain benefits in lieu of working, and 3) his claims of illiteracy
20 were undercut by Dr. Musacco's finding of malingering and by the fact
21 that Plaintiff had completed the eighth grade and had stated in his
22

23 ² The Court has not overlooked the significance of the fact that
24 Dr. Musacco administered the Rey 15-Item Memory Test and determined
25 that Plaintiff "failed this brief malingering screening inventory."
26 (AR 212.) It seems reasonable to conclude, based on this finding,
27 that Plaintiff was malingering throughout the testing with Dr.
28 Musacco. But Dr. Musacco deliberately, it seems, failed to reach this
conclusion and, instead, left the question open. (AR 212-15.) The
ALJ was not authorized to find that Plaintiff was malingering when the
doctor who administered the tests himself refused to make that
finding.

1 application that he could read and write. (AR 21-22.) Plaintiff
2 contends that this finding was in error. (Joint Stip. at 10-12.) For
3 the following reasons, the Court agrees.

4 ALJ's are tasked with judging the credibility of witnesses. In
5 making a credibility determination, an ALJ may take into account
6 ordinary credibility evaluation techniques. *Smolen*, 80 F.3d at 1284.
7 When a claimant has produced objective medical evidence of an
8 impairment which could reasonably be expected to produce the symptoms
9 alleged and there is no evidence of malingering, the ALJ can only
10 reject the claimant's testimony for specific, clear, and convincing
11 reasons. *Id.* at 1283-84. In making a credibility determination, the
12 ALJ may take into account, among other things, ordinary credibility
13 evaluation techniques and the claimant's daily activities. *Id.* at
14 1284.³

15 The first reason provided by the ALJ to discount Plaintiff's
16 testimony was the fact that, in the ALJ's view, Plaintiff's complaints
17 of disabling pain were not consistent with the treatment that he had
18 received to address that pain. (AR 21.) The ALJ relied on a
19 treatment record from January 6, 2007, to find that Plaintiff "takes
20 no prescription medications, including no prescription pain
21 medications[.]" (AR 20, 229.) Though this can be a legitimate reason
22 for discounting a claimant's subjective symptom testimony, *see, e.g.,*
23 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir.

24
25 ³ The ALJ did not rely on Dr. Musacco's ambiguous findings
26 regarding malingering in establishing the framework in which to
27 address the credibility issue. For that reason, the Court reviews the
28 ALJ's finding under the general standard of review set forth in
Smolen, i.e., that there must be specific, clear, and convincing
reasons supporting the credibility finding.

1 2008) (noting that "a conservative course of treatment can undermine
2 allegations of debilitating pain"), the overall record does not
3 support the ALJ's finding. Other treatment notes show that Plaintiff
4 often complained of pain and received prescriptions for narcotic pain
5 relievers in response. For example, in August 2001, Plaintiff
6 complained to his doctor that the Tylenol No. 3 and Motrin that he had
7 been prescribed did not relieve his pain and he requested stronger
8 medication, which he got. (AR 194.) From at least 2002 through 2007,
9 he complained repeatedly of chronic hip and leg pain, and was
10 prescribed Vicodin, Naproxen or Naprosyn, and Flexeril.⁴ (AR 196,
11 197, 198, 203, 204, 205, 229, 231.) The record also shows that a
12 referral for physical therapy was denied in July 2001 on the ground
13 that Plaintiff had too many chronic problems. (AR 193.)

14 The ALJ's reliance on the single entry from January 2007 to find
15 that Plaintiff did not take prescription pain medication and,
16 therefore, was not in as much pain as he claimed was an impermissibly
17 selective interpretation of the record and cannot serve as substantial
18 evidence to support his credibility determination. See *Robbins v.*
19 *Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) ("[A] reviewing
20 court must consider the entire record as a whole and may not affirm
21 simply by isolating a specific quantum of supporting evidence.")
22
23
24

25
26 ⁴ Vicodin is used to relieve "moderate to severe pain," at
27 www.drugs.com/vicodin.html. Naproxen is used "for the management of
28 mild to moderate pain, fever, and inflammation," at
www.medicinenet.com/naproxen/article.htm. Flexeril is a prescription
muscle relaxant, at www.drugs.com/pdr/flexeril.html.

1 (quotation omitted). On remand, the ALJ should address the totality
2 of Plaintiff's treatment and determine if it supports his claims.⁵

3 The ALJ also relied on the lack of mental health treatment for
4 finding that Plaintiff's claim of a mental impairment was exaggerated.
5 (AR 21.) The Court does not agree that this is a legitimate basis for
6 finding that Plaintiff was not credible. This is not a case where the
7 claimant was alleging that he suffered from anxiety, depression, or
8 insomnia, conditions which a mental health care professional could,
9 presumably, address with therapy, medication, and treatment.

10 Plaintiff's alleged impairment is a cognitive deficit. He claims that
11 his IQ is well below normal and he is unable to work as a result. The
12 ALJ did not explain what mental health treatment Plaintiff should have
13 obtained to correct this deficit. Nor is the Court aware of any
14 mental health treatment programs that can help a person overcome this
15 alleged condition. Perhaps, Plaintiff could have enrolled in special
16 education classes to improve his reading and writing ability so that
17 he could maintain a job, or vocational classes to learn job skills.
18 But the Court would not consider these types of classes mental health
19 treatment in the traditional sense. Absent any explanation as to what
20 treatment Plaintiff was supposed to pursue to overcome his alleged
21 learning disability, the Court rejects this reason for questioning
22 Plaintiff's credibility.

23 The ALJ also found that Plaintiff was not believable because he
24 had not worked in 15 years, which suggested to the ALJ that he was
25 pursuing disability for financial reasons. (AR 22.) Though the ALJ

26
27 ⁵ The Court notes also that the ALJ did not consider Plaintiff's
28 statement to Dr. Musacco that he regularly used marijuana to "deal
with his physical pain." (AR 211.) On remand, the ALJ should do so.

1 was entitled to take into account Plaintiff's poor work history in
2 assessing his credibility, *see, e.g., Smolen*, 80 F.3d at 1284, he
3 failed to address Plaintiff's and his wife's testimony that he had
4 attempted to get work "a bunch of times" through an agency but was
5 repeatedly let go because he could not read and write. (AR 243, 244,
6 258.) This explanation--assuming it was believed--provided some basis
7 for Plaintiff's lack of work and should have been discussed by the ALJ
8 when he found that Plaintiff was not credible because he had not
9 worked in 15 years.

10 Finally, the ALJ rejected Plaintiff's testimony because he had
11 been malingering during psychological testing, had completed the
12 eighth grade, and had stated in his disability application that he
13 could read English and write more than his own name. (AR 22.) As
14 discussed above, the evidence of Plaintiff's malingering is
15 inconclusive. And, though when the ALJ made his decision it was not
16 clear what type of school Plaintiff had attended, (AR 133, 138, 211,
17 243), thereafter, Plaintiff submitted his school transcripts, which
18 showed that he had been enrolled in special education classes in 7th,
19 8th, and 9th grades and that he did not do very well in school,
20 earning mostly Cs and Ds. (AR 233-34.) As to Plaintiff's concession
21 in the application that he could write more than his name and could
22 read in English, the Court is not convinced that this establishes
23 mental functioning beyond Plaintiff's claimed abilities. On remand,
24 the ALJ should reconsider all three reasons for rejecting Plaintiff's
25 credibility.

26 C. The Residual Functional Capacity Determination

27 In his third claim of error, Plaintiff contends that the ALJ
28 erred in determining his residual functional capacity. (Joint Stip.

1 at 16-18.) Plaintiff challenges the ALJ's determination in three
2 respects. First, he argues that the ALJ's finding that he could stand
3 and walk for no more than two hours in an eight-hour workday is
4 inconsistent with treating doctor Markley's opinion that Plaintiff is
5 unable to stand and walk for long periods of time due to his hip
6 replacement and ankle surgery. (Joint Stip. at 16.) Second, he
7 argues that the ALJ erred by not including his need to use a cane or
8 walker. (Joint Stip. at 16.) And third, Plaintiff argues that the
9 mental restrictions found by the ALJ are not based on any medical
10 opinion. (Joint Stip. at 17.) For the following reasons, the Court
11 rejects Plaintiff's first two arguments but accepts the third.

12 The governing regulations provide that the responsibility for
13 deciding a claimant's residual functional capacity is reserved to the
14 Agency. 20 C.F.R. § 404.927(e)(2). Nevertheless, "a [residual
15 functional capacity assessment] that fails to take into account a
16 claimant's limitations is defective." *Valentine v. Comm'r, Soc. Sec.*
17 *Admin.*, 574 F.3d 685, 690 (9th Cir. 2009).

18 As Plaintiff himself acknowledges, Dr. Markley did not specify
19 the length of time he could stand; he merely indicated on a form
20 completed on October 12, 2005, that Plaintiff was "unable to
21 stand/walk [for] long periods." (AR 180.) By contrast, consultative
22 orthopedist Juliane Tran determined after an examination on February
23 27, 2006, that Plaintiff could stand up to four hours a day,
24 increasing to six hours a day when using an assistive device. (AR
25 221.) In his decision, the ALJ accepted Dr. Markley's walking
26 limitation instead of Dr. Tran's, finding that Plaintiff could stand
27 or walk no more than two hours a day, instead of up to four. (AR 21.)
28 Though the two-hour stand/walk limitation was not based expressly on

1 Dr. Markley's opinion, it was not inconsistent with it either, and
2 Plaintiff has not shown why it was unreasonable for the ALJ to
3 interpret Markley's opinion in that way.

4 As to Plaintiff's need for an assistive device, the ALJ
5 reasonably interpreted the treating and examining physicians' opinions
6 as setting forth the amount of time Plaintiff could stand or walk
7 unassisted by a cane or other device. Indeed, Dr. Tran explicitly
8 based her stand/walk limitation on Plaintiff's use of a cane. (AR
9 221.) Though Dr. Markley did not mention the use of a cane in her
10 form evaluation, once again, Plaintiff has failed to show that the
11 ALJ's interpretation of her opinion was unreasonable. See *Macri v.*
12 *Chater*, 93 F.3d 540, 544 (9th Cir. 1996) (noting that "the ALJ is
13 entitled to draw inferences logically flowing from the evidence.")
14 (quotation omitted).

15 Finally, as to the ALJ's findings regarding Plaintiff's mental
16 limitations, the Court agrees that they are not supported by
17 substantial evidence in the record. Dr. Musacco opined that
18 Plaintiff's "daily activities and social functioning are significantly
19 impaired" but "suspect[ed] that he is able to understand and carry out
20 simple tasks." (AR 215.) Dr. Musacco recommended that a payee be
21 authorized to ensure that Plaintiff's funds were adequately managed.
22 (AR 215.) No other mental residual functional capacity determination
23 was carried out.

24 Because it is not clear what evidence the ALJ relied on to
25 determine that Plaintiff's mental impairment resulted in "mild to
26 moderate impairments in capacities to understand and remember
27 instructions, sustain concentration and persistence, socially interact
28 with the general public, and adapt to workplace changes," (AR 21), his

1 residual functional capacity determination is not substantially
2 supported in this respect. On remand, the ALJ should reconsider the
3 limitations imposed by Plaintiff's mental impairment and set forth
4 what opinions he is relying on in reaching his conclusions.

5 For the reasons set forth above, the Agency's decision is
6 reversed and the case is remanded for further proceedings consistent
7 with this Opinion.

8 IT IS SO ORDERED.

9 DATED: November 9, 2009.

10 

11
12

PATRICK J. WALSH
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27