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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ZARLASHT K. GUL,  
Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,  
Defendant.

) Case No. SACV 09-97 JC

) MEMORANDUM OPINION

**I. SUMMARY**

On January 8, 2009, plaintiff Zarlasht K. Gul (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have filed a consent to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; January 13, 2009 Case Management Order ¶ 5.

1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is AFFIRMED. The material findings of the Administrative Law  
3 Judge (“ALJ”) regarding plaintiff’s credibility are supported by substantial  
4 evidence and are free from material error.<sup>1</sup>

5 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
6 **DECISION**

7 On August 10, 2005, plaintiff filed an application for Supplemental Security  
8 Income benefits. (Administrative Record (“AR”) 186, 194). Plaintiff asserted that  
9 she became disabled on January 1, 2001, due to a neck injury, a back problem and  
10 shoulder pain. (AR 240). The ALJ examined the medical record and heard  
11 testimony from plaintiff (who was represented by counsel and assisted by an  
12 interpreter) and a vocational expert on January 10, 2007. (AR 388-99).

13 On February 22, 2007, the ALJ determined that plaintiff was not disabled  
14 through the date of the decision. (AR 186-92). Specifically, the ALJ found:  
15 (1) plaintiff suffered from the following severe impairments: lumbar disc disease  
16 and chronic pain syndrome (AR 188, 191); (2) plaintiff’s impairments, considered  
17 singly or in combination, did not meet or medically equal one of the listed  
18 impairments (AR 188, 191); (3) plaintiff could perform a significant range of  
19 sedentary and light work (AR 192);<sup>2</sup> (4) plaintiff has no past relevant work (AR  
20 191); and (5) there are a significant number of jobs in the national economy that  
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23 <sup>1</sup>The harmless error rule applies to the review of administrative decisions regarding  
24 disability. See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196  
25 (9th Cir. 2004) (applying harmless error standard); see also Stout v. Commissioner, Social  
Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006) (discussing contours of  
application of harmless error standard in social security cases).

26 <sup>2</sup>The ALJ determined that plaintiff: (i) could lift and/or carry less than 10 pounds  
27 frequently and 10 pounds occasionally; (ii) could sit for 6 hours total in an 8-hour workday;  
28 (iii) could stand and/or walk for 4 hours total in an 8-hour workday; and (iv) could occasionally  
balance, kneel, climb, crawl, crouch and stoop. (AR 191).

1 plaintiff could perform (AR 192); and (6) plaintiff's allegations regarding her  
2 limitations were not totally credible. (AR 191).

3 Plaintiff thereafter appealed to the Appeals Council and submitted  
4 additional evidence. (AR 8-179). The Appeals Council denied plaintiff's  
5 application for review. (AR 4-7).

### 6 **III. APPLICABLE LEGAL STANDARDS**

#### 7 **A. Sequential Evaluation Process**

8 To qualify for disability benefits, a claimant must show that she is unable to  
9 engage in any substantial gainful activity by reason of a medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of at least twelve  
12 months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C.  
13 § 423(d)(1)(A)). The impairment must render the claimant incapable of  
14 performing the work she previously performed and incapable of performing any  
15 other substantial gainful employment that exists in the national economy. Tackett  
16 v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

17 In assessing whether a claimant is disabled, an ALJ is to follow a five-step  
18 sequential evaluation process:

- 19 (1) Is the claimant presently engaged in substantial gainful activity? If  
20 so, the claimant is not disabled. If not, proceed to step two.
- 21 (2) Is the claimant's alleged impairment sufficiently severe to limit  
22 her ability to work? If not, the claimant is not disabled. If so,  
23 proceed to step three.
- 24 (3) Does the claimant's impairment, or combination of  
25 impairments, meet or equal an impairment listed in 20 C.F.R.  
26 Part 404, Subpart P, Appendix 1? If so, the claimant is  
27 disabled. If not, proceed to step four.

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1 (4) Does the claimant possess the residual functional capacity to  
2 perform her past relevant work?<sup>3</sup> If so, the claimant is not  
3 disabled. If not, proceed to step five.

4 (5) Does the claimant’s residual functional capacity, when  
5 considered with the claimant’s age, education, and work  
6 experience, allow her to adjust to other work that exists in  
7 significant numbers in the national economy? If so, the  
8 claimant is not disabled. If not, the claimant is disabled.

9 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th  
10 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

11 The claimant has the burden of proof at steps one through four, and the  
12 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262  
13 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679  
14 (claimant carries initial burden of proving disability).

15 **B. Standard of Review**

16 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of  
17 benefits only if it is not supported by substantial evidence or if it is based on legal  
18 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.  
19 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457  
20 (9th Cir. 1995)). Substantial evidence is “such relevant evidence as a reasonable  
21 mind might accept as adequate to support a conclusion.” Richardson v. Perales,  
22 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a  
23 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing  
24 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

25 To determine whether substantial evidence supports a finding, a court must  
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27 <sup>3</sup>Residual functional capacity is “what [one] can still do despite [ones] limitations” and  
28 represents an “assessment based upon all of the relevant evidence.” 20 C.F.R. § 416.945(a).

1 ““consider the record as a whole, weighing both evidence that supports and  
2 evidence that detracts from the [Commissioner’s] conclusion.”” Aukland v.  
3 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d  
4 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming  
5 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that  
6 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

#### 7 **IV. DISCUSSION**

8 Plaintiff asserts that a reversal or remand is appropriate because the ALJ  
9 materially erred in assessing her credibility. This Court disagrees.

#### 10 **A. Pertinent Facts**

##### 11 **1. Plaintiff’s Statements/Testimony**

12 In an August 29, 2005 pain questionnaire, plaintiff stated: Beginning in  
13 2001, she began to feel pain from her neck all the way to her lower back. (AR  
14 256). Her pain was constant, but was more severe in the morning, and spread from  
15 her upper neck to her shoulders and lower back. (AR 256). The pain was brought  
16 on by activity, such as doing the same thing, picking up her son, standing or sitting  
17 for a long time, and cleaning the house. (AR 256). Medication – tylenol,  
18 salsalate, and ibuprofen – which she has taken three times a day since 2001, helps  
19 a little and relieves the pain in about thirty minutes. (AR 256). The medication  
20 causes constipation, loss of appetite, and sleepiness. (AR 257). Rest relieves the  
21 pain in thirty minutes. (AR 256). Acupuncture also relieves the pain. (AR 257).  
22 Prior to suffering from the pain, she could do the following activities that she  
23 could no longer do: walking, shopping, sitting, standing, and household chores  
24 for more than one or two hours a day. (AR 257). As of the date she completed the  
25 questionnaire, her usual daily activities consisted of: walking for 5 to 10 minutes,  
26 cooking for her kids, and doing basic household chores to the extent of her ability.  
27 (AR 257). She stops an activity due to pain every five to ten minutes. (AR 258).  
28 She needs assistance to take care of her little children. (AR 258). She is able to

1 walk and stand 5 to 10 minutes at a time, and is able to sit 10 to 15 minutes at a  
2 time. (AR 258). She needs the assistance of her daughter and husband with  
3 chores. (AR 258).

4 At the January 10, 2007 administrative hearing, in response to the ALJ's  
5 inquiry as to why it was that she has not worked or was not then working, plaintiff  
6 responded: "I stay at home. I take care of my children, and I work inside, in the  
7 house." (AR 392). She further testified to the following: "[N]owadays at the  
8 present" she could not work too much – her children helped her. (AR 392).  
9 "[O]therwise," she would sew and do home chores. (AR 392). Her children  
10 would help her with that. (AR 392). She could not work on her own due to the  
11 neck and back pain. (AR 392). When she would get up in the morning her neck,  
12 shoulder, both arms and back would hurt. (AR 392). She would have neck pain  
13 the whole day – not a dull pain, not an excruciating pain, but a constant pain all of  
14 the time. (AR 393). Medications would help her for a little while, but after that,  
15 the pain would start again. (AR 393). Although the pain was constant, it hurt  
16 more if she picked up something from the floor, tried to pull something from the  
17 shelf, or sat too long. (AR 393). She would get a little bit of relief when she went  
18 to the doctor and to gymnastics, when she sat on the couch and put her head back,  
19 and when she took pain medication, which also helped her. (AR 393). She had  
20 constant moderate lower back pain. (AR 394). The back pain would get  
21 aggravated when she stood for too long, sat for too long, or was working and  
22 moving all the time. (AR 394). She could not pick up her two year old child.  
23 (AR 394). She has pain in both of her shoulders and arms. (AR 394). When she  
24 gets up in the morning such pain is constant. (AR 394-95). Gymnastics helps a  
25 lot. (AR 395). Pain medication also helps but when the pain medication wears off  
26 in the evenings, the pain returns. (AR 395). She could stand for no more than 10  
27 to 15 minutes without having to change positions due to pain. (AR 395). A gallon

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1 of water or milk was too much for her to lift without pain. (AR 395). She lies  
2 down during the day due to pain. (AR 395).

3 **2. Pertinent Medical Evidence**

4 Beginning in at least June 2004, plaintiff was treated by Dr. Josephine Choa  
5 at the Universal Care Medical Group for complaints of pain in her neck and back.  
6 (AR 284, 291, 326). Dr. Choa prescribed medication and physical therapy. (AR  
7 284, 326).

8 On May 24, 2005, x-rays of cervical, thoracic and lumbar spines were all  
9 normal. (AR 382).

10 In July 2005, plaintiff complained of upper and midback pain that she had  
11 suffered for two years, was diagnosed with myofascial pain and hypothyroidism,  
12 and was prescribed medication and additional physical therapy. (AR 284).

13 On August 29, 2005, chiropractor Gerald Weeks, who began treating  
14 plaintiff in approximately October 2003, prepared a musculoskeletal report and  
15 medical source statement which reflect the following: Plaintiff's cervical and  
16 lumbar spines had normal flexion, extension and rotation. (AR 276). Plaintiff  
17 suffered from daily tenderness in her cervical, thoracic, and lumbar joints and  
18 paravertebral muscle spasms. (AR 276). Plaintiff had subluxations, primarily in  
19 the lumbar spine. (AR 277). Plaintiff could walk one block/30 minutes without  
20 an assistive device and did not need an assistive device for balance or to walk on  
21 even or uneven terrain. (AR 277). She had no limitations in reaching, handling,  
22 fingering, or feeling. (AR 277, 280). Plaintiff's relief from treatment was  
23 temporary, and her prognosis was poor for a full pain free recovery. (AR 278,  
24 280). Plaintiff could occasionally lift 20 pounds and frequently lift less than 10  
25 pounds. (AR 279). She could stand and/or walk at least 2 hours in an 8 hour  
26 workday with normal breaks. (AR 279). Plaintiff could sit for 3 hours in an 8  
27 hour workday and needed a break after sitting for 30 minutes. (AR 279). She

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1 could never climb, stoop, crouch or crawl, but could occasionally balance and  
2 kneel. (AR 280).

3 In January 2006, Dr. Choa diagnosed plaintiff with neck and upper back  
4 pain and muscle spasms. (AR 345). She opined that plaintiff had the ability to  
5 independently initiate/sustain/complete daily activities, sufficient lower extremity  
6 functioning to permit independent ambulation without the use of any assistive  
7 device, and effective usage of her upper extremities for reaching, grasping and  
8 fingering. (AR 345). However, Dr. Choa noted that plaintiff would suffer neck  
9 and back pain in reaching, handling or fingering and may be limited in her ability  
10 to push and pull due to her neck/back pain and muscle spasms. (AR 345, 347).  
11 She indicated that plaintiff's sensation was grossly intact. (AR 346). She was  
12 unable to detect any abnormality in plaintiff's range of motion in all joints, and  
13 noted no swelling, warmth, redness, or tenderness in plaintiff's joints. (AR 346).  
14 She reported that plaintiff had been referred to chiropractic care but that,  
15 according to plaintiff, such care did not relieve her symptoms much. (AR 348). In  
16 terms of a prognosis, Dr. Choa noted that plaintiff had not improved much with  
17 treatment. (AR 348). She also noted, however, that plaintiff would come to her  
18 office alone and did not require assistance. (AR 349).

19 On February 25, 2006, plaintiff had MRIs on her cervical and lumbar  
20 spines. (AR 350-51, 378-79). The MRI of the cervical spine showed a mild  
21 reversal of the normal cervical lordosis and was otherwise unremarkable. (AR  
22 378-79). The MRI of the lumbar spine showed a 3 mm central disc protrusion at  
23 L5-S1 with an annular tear, causing mild narrowing of the spinal canal and a mild  
24 facet arthropathy at L5-S1, but was otherwise unremarkable. (AR 350-51, 376-  
25 77). Treatment notes dated November 9, 2006, reflect that the results of the  
26 cervical and lumbar spine MRIs were "not significant." (AR 355).

27 March 2006 treatment notes from Dr. Choa reflect that plaintiff suffered  
28 from neck and back muscle spasms and chronic neck and back pain. (AR 362).



1 June 2006 treatment notes from Dr. Choa's office reflect that plaintiff was  
2 English speaking and had chronic neck and back pain requiring more physical  
3 therapy. (AR 359).

4 On November 9, 2006, plaintiff again complained of pain in her back, was  
5 diagnosed with neck pain and hypothyroidism, and was treated with medications.  
6 (AR 355).<sup>4</sup>

### 7 3. ALJ's Credibility Assessment

8 After summarizing the medical evidence in the record, the ALJ determined  
9 that plaintiff suffers from a medically determined impairment which could be  
10 expected to produce some pain. (AR 189). He noted that because plaintiff's  
11 allegations of disability due to pain were based primarily on plaintiff's subjective  
12 symptoms, her credibility was a major factor. (AR 189). The ALJ found that  
13 plaintiff's testimony and evidence, although appearing sincere, were not fully  
14 credible regarding the extent, intensity, and duration of the alleged subjective pain  
15 and functional limitations and restrictions "for the reasons stated above." (AR  
16 189).

17 In making the last above-noted statement, it appears that the ALJ was  
18 referring to the four preceding paragraphs. In such paragraphs, the ALJ noted the  
19 following: (1) at the hearing, plaintiff's thoughts did not seem to wander and all  
20 questions were answered alertly and appropriately; (2) although plaintiff testified  
21 that she has pain in her neck, arms, shoulder and low back, and takes medications  
22 which "help for a little while," there was "no credible evidence that the regular  
23 usage of those medications to alleviate pain would significantly impair [plaintiff's]  
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25 <sup>4</sup>Additional medical records from Dr. Choa through February 13, 2007, were submitted to  
26 the Appeals Council after the ALJ issued his decision. (AR 19-178). Such records, which were  
27 somewhat duplicative of the records which were already in the record, reflect, among other  
28 things, that plaintiff has chronic back pain/chronic lower back pain/chronic neck pain,  
complained of neck, back and shoulder pain, and required physical therapy and medication for  
such pain. (AR 20, 24, 26, 29, 31, 33, 36, 44, 50, 61, 62, 157, 158).

1 ability to do basic work activities” and “no evidence in the medical record of any  
2 significant side effects; (3) in an August 29, 2005 pain questionnaire, plaintiff  
3 noted only minor side effects from her medications, and indicated that her  
4 medication usually relieved her pain after 30 minutes; (4) plaintiff’s statements  
5 and conduct reflect that she is able to read, write and understand English and to  
6 communicate with her doctors/their staff without an interpreter (conduct which the  
7 ALJ presumably found to be inconsistent with plaintiff’s use of an interpreter at  
8 the administrative hearing); (5) although plaintiff indicated that she was able to  
9 perform only very limited daily activities, the great weight of the evidence showed  
10 that she was at least capable of performing activities including basic household  
11 chores, cooking and caring for her children, and that plaintiff had not performed  
12 any substantial gainful activity because she worked in the house and took care of  
13 her children (rather, presumably, than because she was unable to do so). (AR  
14 189).

15 **B. Pertinent Law**

16 An ALJ is not required to believe every allegation of disabling pain or other  
17 non-exertional impairment. Orn v. Astrue, 495 F.3d 625, 635 (9th Cir. 2007)  
18 (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)). If the record establishes  
19 the existence of a medically determinable impairment that could reasonably give  
20 rise to symptoms assertedly suffered by a claimant, an ALJ must make a finding as  
21 to the credibility of the claimant’s statements about the symptoms and their  
22 functional effect. Robbins, 466 F.3d 880 at 883 (citations omitted). Where the  
23 record includes objective medical evidence that the claimant suffers from an  
24 impairment that could reasonably produce the symptoms of which the claimant  
25 complains, an adverse credibility finding must be based on clear and convincing  
26 reasons. Carmickle v. Commissioner, Social Security Administration, 533 F.3d  
27 1155, 1160 (9th Cir. 2008) (citations omitted). The only time this standard does  
28 not apply is when there is affirmative evidence of malingering. Id. The ALJ’s

1 credibility findings “must be sufficiently specific to allow a reviewing court to  
2 conclude the ALJ rejected the claimant’s testimony on permissible grounds and  
3 did not arbitrarily discredit the claimant’s testimony.” Moisa v. Barnhart, 367  
4 F.3d 882, 885 (9th Cir. 2004).

5 To find the claimant not credible, an ALJ must rely either on reasons  
6 unrelated to the subjective testimony (*e.g.*, reputation for dishonesty), internal  
7 contradictions in the testimony, or conflicts between the claimant’s testimony and  
8 the claimant’s conduct (*e.g.*, daily activities, work record, unexplained or  
9 inadequately explained failure to seek treatment or to follow prescribed course of  
10 treatment). Orn, 495 F.3d at 636; Robbins, 466 F.3d at 883; Burch, 400 F.3d at  
11 680-81; SSR 96-7p. Although an ALJ may not disregard such claimant’s  
12 testimony solely because it is not substantiated affirmatively by objective medical  
13 evidence, the lack of medical evidence is a factor that the ALJ can consider in his  
14 credibility assessment. Burch, 400 F.3d at 681.

15 Where some reasons supporting an ALJ’s credibility analysis are found  
16 invalid, the error is harmless if the remaining reasons provide substantial evidence  
17 to support the ALJ’s credibility conclusions and the error does not negate the  
18 validity of the ALJ’s ultimate credibility conclusion. See Carmickle, 533 F.3d at  
19 1162 (citing Batson, 359 F.3d at 1195) (citation and internal quotation marks  
20 omitted).

21 Questions of credibility and resolutions of conflicts in the testimony are  
22 functions solely of the Commissioner. Greger v. Barnhart, 464 F.3d 968, 972 (9th  
23 Cir. 2006). If the ALJ’s interpretation of the claimant’s testimony is reasonable  
24 and is supported by substantial evidence, it is not the court’s role to  
25 “second-guess” it. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

### 26 C. Analysis

27 Plaintiff asserts that the ALJ failed properly to assess plaintiff’s credibility  
28 and that a reversal or remand is appropriate on such basis. While one or two of the

1 reasons cited by the ALJ do not appear to support the rejection of plaintiff's  
2 complaints of pain, a remand or reversal is not appropriate because other reasons  
3 noted by the ALJ are clear and convincing and are supported by substantial  
4 evidence and any error does not negate the validity of the ALJ's ultimate  
5 credibility conclusion in this case. The Court addresses the ALJ's reasoning  
6 below.

7 First, it is unclear to the Court how the fact that plaintiff's thoughts did not  
8 seem to wander and all questions were answered alertly and appropriately at the  
9 hearing is a basis upon which to discount plaintiff's subjective pain complaints.  
10 Plaintiff asserted that she was physically unable to work due to her pain – not that  
11 the pain prevented her from thinking clearly or otherwise impacted her mental  
12 abilities. This Court is not persuaded that this first reason articulated by the ALJ  
13 constitutes a clear and convincing reason to discount plaintiff's subjective pain  
14 complaints.

15 Second, contrary to plaintiff's current assertion, substantial evidence in the  
16 record does support the ALJ's determination that plaintiff's medications relieve  
17 her pain within 30 minutes. (Plaintiff's Motion at 6). In so stating, the ALJ  
18 referred to plaintiff's representation in an August 29, 2005 pain questionnaire.  
19 (AR 189). In such questionnaire, plaintiff stated that medication usually relieved  
20 her pain in thirty minutes. (AR 256). The ALJ also accurately noted that plaintiff  
21 testified that medications would help her for a little while. (AR 189, 393, 395).  
22 When viewed in the context of Dr. Choa's opinion that plaintiff had the ability to  
23 independently initiate/sustain/complete daily activities, sufficient lower extremity  
24 functioning to permit independent ambulation without the use of any assistive  
25 device, and effective usage of her upper extremities for reaching, grasping and  
26 fingering (AR 345), this Court finds no error in the ALJ's conclusion that  
27 plaintiff's complaints should be discounted to the extent they suggested that she  
28 was unable to do basic work activities while on pain medication. While plaintiff

1 may constantly be in pain, it was not error for the ALJ to conclude, contrary to  
2 plaintiff's subjective complaints, that she could nonetheless work while on pain  
3 medication.

4 Third, the Court is not persuaded that plaintiff's statements and conduct  
5 reflecting an ability to read, write, understand and communicate in English is  
6 inconsistent with the fact that she utilized an interpreter during the administrative  
7 hearing or that such asserted inconsistency constitutes a clear and convincing  
8 reason to discount her subjective pain complaints. As plaintiff suggests, the fact  
9 that someone who is capable of communicating in English, but whose first  
10 language is not English, desires an interpreter at a formal hearing where she is  
11 being called upon to testify under oath, is not indicative of dishonesty. The record  
12 does not reflect that plaintiff tried to persuade the ALJ that she was unable to work  
13 based upon difficulties with the English language.

14 Finally, substantial evidence in the record supports the ALJ's determination  
15 that although plaintiff indicated that she was able to perform only very limited  
16 daily activities, the weight of the evidence showed that she was at least capable of  
17 performing activities including basic household chores, cooking and caring for her  
18 children, and that plaintiff had not performed any substantial gainful activity  
19 because she worked in the house and took care of her children rather, than because  
20 she was unable to do so. As noted above, plaintiff testified, in response to the  
21 ALJ's question about why she did not work, that she stayed at home, took care of  
22 her children and worked inside the house. (AR 392). Although plaintiff then  
23 equivocated about the amount and degree of work she could do without assistance  
24 in light of her pain, it was reasonable for the ALJ to infer that plaintiff meant what  
25 she originally said, particularly in light of the opinion of plaintiff's primary  
26 treating physician, Dr. Choa, that plaintiff had the ability to independently  
27 initiate/sustain/complete daily activities, sufficient lower extremity functioning to  
28 permit independent ambulation without the use of any assistive device, and

1 effective usage of her upper extremities for reaching, grasping and fingering (AR  
2 345). As Dr. Choa also noted, plaintiff was able to come to Dr. Choa's office  
3 alone and did not require assistance. (AR 349). As substantial evidence supports  
4 the ALJ's conclusion that plaintiff's activities were inconsistent with her position  
5 that she could not work due to her pain, such inconsistency is a clear and  
6 convincing reason to discount plaintiff's complaints regarding her inability to  
7 work due to her pain.

8 As noted above, although the Court is not persuaded the two of the bases  
9 upon which the ALJ discredited plaintiff's pain testimony were appropriate, the  
10 other two reasons cited by the ALJ are clear and convincing and are supported by  
11 substantial evidence. The Court further concludes that any error by the ALJ in  
12 discounting plaintiff's credibility on the first and third bases noted above does not  
13 negate the validity of the ALJ's ultimate credibility conclusion in this case.  
14 Accordingly, a reversal or remand is not warranted.

15 **V. CONCLUSION**

16 For the foregoing reasons, the decision of the Commissioner of Social  
17 Security is affirmed.

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19 DATED: December 28, 2009

20 \_\_\_\_\_  
/s/

21 Honorable Jacqueline Chooljian  
22 UNITED STATES MAGISTRATE JUDGE  
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