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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ARMENUHI PAMBUKCHYAN,)	No. CV 09-06682-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") erred in

1 failing to give appropriate weight to the treating
2 physicians (JS at 2-14;

- 3 2. Whether Defendant erred in determining Plaintiff's Residual
4 Functional Capacity (JS at 15-20); and
- 5 3. Whether the ALJ erred in improperly evaluating Plaintiff's
6 credibility (JS at 20-27).

7
8 This Memorandum Opinion will constitute the Court's findings of
9 fact and conclusions of law. After reviewing the matter, the Court
10 concludes that the decision of the Commissioner must be affirmed.

11
12 I

13 **THE ALJ DID NOT ERR IN ASSESSING THE OPINIONS**

14 **OF PLAINTIFF'S VARIOUS TREATING PHYSICIANS**

15 **A. Procedural Background.**

16 As indicated by the ALJ in his decision of September 4, 2008 (AR
17 74-85), Plaintiff has filed several prior applications for
18 Supplemental Security Income ("SSI"). Her fourth application of June
19 14, 2001 resulted in denial by an ALJ decision of March 28, 2005.
20 After proceeding unsuccessfully to the Appeals Council, Plaintiff
21 filed suit in District Court concerning that decision. While that
22 case, which was later adjudicated against Plaintiff, was pending, she
23 filed the application which is the subject of this lawsuit. Indeed,
24 Plaintiff filed the underlying application for SSI in this case,
25 alleging an onset date of March 29, 2005, the day after the previous
26 unfavorable decision was issued. (AR 74.)

27 Plaintiff takes issue with the ALJ's citation to the Ninth
28 Circuit's opinion in Chavez v. Bowen, 844 F.2d 691, 693 (9th Cir.

1 1988). Under that case, findings made by a previous ALJ as to a
2 plaintiff's residual functional capacity ("RFC"), education, and work
3 experience will receive some res judicata consideration. A resulting
4 presumption of continuing disability may be rebutted by a claimant if
5 changed circumstances, such as a change in age category, or an
6 increase in severity of impairments, are demonstrated. Plaintiff
7 argues that since the last decision, she attained the age of 50,
8 therefore entering into a new age category, which has been determined
9 to constitute a changed circumstance precluding the application of res
10 judicata (JS at 13); however, Plaintiff does acknowledge that "other
11 issues" in the previous decision may be entitled to some res judicata
12 effect, but can be overcome with new and material evidence. (Id.,
13 citing Chavez, 844 F.2d at 694.) Plaintiff believes that she has
14 provided new and additional material evidence from her treating
15 physicians which show both a continuing and worsening of her
16 impairments. For the reasons to be set forth, the Court disagrees.

17
18 **B. Discussion.**

19 In his decision, the ALJ found Plaintiff has the RFC to lift
20 and/or carry 20 pounds occasionally and 10 pounds frequently, stand
21 and/or walk for six out of eight hours; and sit for six hours in an
22 eight-hour workday. Certain postural and related limitations were
23 imposed, and as to mental limitations, it was found that Plaintiff can
24 perform simple repetitive tasks with occasional contact with
25 supervisors and coworkers. (AR 79.)

26 Plaintiff asserts error in the ALJ's diminishment of the opinions
27 of certain of her treating physicians: Dr. Ciasca (with regard to
28 mental limitations); Dr. Balian, and Dr. Maissian.

1 **1. Dr. Balian.**

2 As the ALJ noted, Plaintiff saw Dr. Balian once monthly from
3 October 2001 until June 1, 2004. (AR 83.) Although she testified that
4 she saw Dr. Balian once every two or three months, she did not see him
5 again until March 27, 2007, and after June 26, 2007, did not see him
6 again until April 23, 2008. (Id.) The ALJ declined to accept Dr.
7 Balian's opinion that Plaintiff can perform less than the full range
8 of sedentary work, because Dr. Balian relied on certain conditions,
9 including neck pain, knee pain and hand pain, that the ALJ found
10 Plaintiff failed to establish as medically determinable. Further, Dr.
11 Balian performed no muscle strength testing, although Plaintiff's
12 counsel argues that there is no evidence that this kind of objective
13 testing is necessary to render an opinion.

14 As the previous ALJ noted in his decision of March 28, 2005, Dr.
15 Balian, among other treating physicians, assessed extreme limitations
16 as to Plaintiff's ability to work, despite minimal objective findings.
17 (AR 64.) Dr. Balian opined that Plaintiff was required to use a cane,
18 which the previous ALJ found inconsistent with the entire record, and
19 therefore detracted from Dr. Balian's credibility and the weight of
20 his opinion. (Id.)

21 In the current case, Plaintiff strenuously argues that the ALJ
22 erred in finding no objective support for Dr. Balian's opinion, noting
23 that he ordered and reviewed an MRI of Plaintiff's lumbar spine in
24 July of 2007. (AR 339-40.) But, Plaintiff has not refuted the ALJ's
25 opinion that Dr. Balian relied upon impairments which were in fact not
26 medically determinable. (AR 83-84.) Moreover, as the ALJ discussed in
27 some detail, Dr. Balian documented positive straight leg raising in
28 only the extremes of motion, a reduced range of back motion, and

1 reduced sensation in the L5 area, in addition to what he called a
2 "guarded gait." (AR at 82.) These findings contrasted with those of
3 the consultative examiner ("CE"), Dr. Saeid, who examined Plaintiff on
4 April 26, 2007 (AR 292-96), and reported that although there was a
5 reduced range of motion in Plaintiff's back, she had negative
6 bilateral straight leg raise testing. (AR 79, 295.) Further, she had
7 normal range of motion in her hands (AR 78, 295), and finally, normal
8 range of motion in her knees, with no effusion or evidence of
9 instability. (AR 77-78, 295.)

10 Concerning the res judicata impact of the previous ALJ's
11 determination of Dr. Balian's opinion, Plaintiff has not demonstrated
12 changed circumstances indicating a greater disability after the March
13 28, 2005 date of her last ALJ decision. Even Dr. Balian noted that
14 Plaintiff's limitations have not changed since October 2002. (AR 334.)
15 Logically speaking, therefore, since Dr. Balian's opinions were
16 rejected by the previous ALJ's Decision, there is an absence of
17 changed circumstances which would militate in favor of giving
18 controlling weight to Dr. Balian's opinions.

19
20 **2. Dr. Maissian.**

21 On April 11, 2008, Dr. Maissian diagnosed Plaintiff with a
22 psychotic disorder (AR 78), but the ALJ found insufficient
23 documentation of a psychotic disorder in Dr. Maissian's clinical
24 notes. For example, the ALJ examined treatment notes of April 9,
25 2009, finding a failure to document any specific symptoms, nor was
26 there any indication that a mental status test was performed. (Id.)
27 Consequently, the ALJ rejected Dr. Maissian's opinion as
28 uncorroborated by clinical observations or assessments. (Id.) Dr.

1 Maissian also largely accepted Plaintiff's subjective complaints
2 rather than relying upon objective observations and testing. (AR 81-
3 82.) For example, on April 9, 2008, Dr. Maissian gave an opinion
4 similar to the one he had provided in 2003, asserting that Plaintiff
5 could not walk more than half a block; could not sit or stand for more
6 than ten minutes at a time; could never lift more than ten pounds,
7 could only occasionally move her head or hold it still; and was
8 significantly limited in reaching, handling and fingering. (AR 314-
9 316.) As the ALJ observed, there is no indication that Dr. Maissian
10 ever did any objective testing to substantiate such extreme findings.
11 He never recommended intensive treatment. (AR 84.) The ALJ instead
12 relied upon the objective testing and opinions of the CE, Dr. Saeid,
13 which were based upon independent clinical findings, and thus entitled
14 to reliance as substantial evidence. See Tonapetyan v. Halter, 242
15 F.3d 1144, 1149 (9th Cir. 2001).

16 17 **3. Dr. Ciasca.**

18 After the ALJ issued his September 4, 2008 decision, Plaintiff
19 submitted additional evidence from the Los Angeles County Department
20 of Mental Health - Verdugo Mental Health Center. (AR 4-8, 350-68.)
21 Included in this evidence was a new opinion from Dr. Ciasca dated
22 April 28, 2009, and some treatment records. (AR 357-60.) These
23 records were reviewed by the Appeals Council, which determined that
24 they did not provide a basis for changing the ALJ's decision. (AR 5.)

25 Dr. Ciasca first treated Plaintiff in 2003 (AR 365-68), and in
26 that year, rendered an opinion that Plaintiff had major depressive
27 disorder and panic disorder and a Global Assessment of Functioning
28 ("GAF") of 45. (AR 368.)

1 improper determination by the ALJ of Plaintiff's RFC, but it is
2 closely related to the first issue, in that its resolution depends
3 upon whether the ALJ's rejection of the opinions of Drs. Balian and
4 Maissian was supported by substantial evidence. The Court has already
5 determined that it was.

6 Plaintiff also asserts that the ALJ erred in finding that her
7 shoulder impairment would not pose additional limitations. (AR 83.)
8 Finally, Plaintiff asserts that the ALJ failed to consider her
9 frequent use of the bathroom due to her medication. (AR 83.)
10 Plaintiff argues that this has an effect on her ability to function
11 and must be considered.

12 The Court need not devote additional discussion to the ALJ's
13 rejection of Dr. Maissian and Balian, since these matters have already
14 been extensively discussed. Concerning Plaintiff's left shoulder
15 impairment, the ALJ noted that Dr. Saeid did not have certain records
16 documenting calcified tendinitis of the left shoulder (AR 83, 329),
17 there was in fact no record evidence that Plaintiff's left shoulder
18 required ongoing treatment. (Id.) Further, Dr. Saeid did perform a
19 complete examination, finding, as to Plaintiff's shoulders, that she
20 had normal range of bilateral motion. (AR 295.) Any calcification in
21 her left shoulders has not been shown to have any effect on her
22 capacity to work.

23 With regard to Plaintiff's assessment that medications required
24 her to often use the bathroom, and this would have an effect upon her
25 ability to work, the Court's examination of the record does not
26 demonstrate that Plaintiff in fact required such frequent use of the
27 bathroom that would limit her capacity for work. Consequently, the
28 Court finds no error, and if there was any error, it was certainly

1 harmless.

2
3 **III**

4 **THE ALJ PROPERLY EVALUATED PLAINTIFF'S CREDIBILITY**

5 The ALJ depreciated Plaintiff's credibility regarding subjective
6 symptoms. The ALJ followed the regulations (20 C.F.R. §404.1529(c)),
7 and Social Security Ruling ("SSR") 96-7p, which, together, describe
8 the methodology for assessment of credibility, and the evidence which
9 may be considered. After examining this evidence, the ALJ found that
10 Plaintiff's medically determinable impairments could reasonably be
11 expected to produce the alleged symptoms, but that the statements made
12 by Plaintiff concerning intensity, persistence and the limiting
13 effects of these symptoms are not entirely credible. The ALJ examined
14 the objective evidence, or lack of it, including evidence of her
15 treating physician, Dr. Maissian (AR 81), and Dr. Balian (AR 82).
16 With regard to Plaintiff's testimony that she falls, the ALJ found no
17 evidence of treatment for injuries sustained in a fall. Although
18 Plaintiff's counsel argues that a person does not necessarily need to
19 obtain treatment for a fall every time this occurs (JS at 22), it is
20 fair to say that Plaintiff is a person who has historically obtained
21 a wide variety of medical treatment for numerous types of conditions,
22 and it could be expected that a serious condition, such as repeatedly
23 falling down, would result in Plaintiff seeking medical care. Here,
24 there is no such evidence in the record. Indeed, without again
25 restating much of the evidence in the record, many of the "objective"
26 observations attributed to Plaintiff's treating physicians are in fact
27 largely recitations of her subjective complaints.

28 Plaintiff also complained of incapacitating headaches, but, as

