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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MARJORIE ALLENDE-SCOTT,	)	No. CV 09-9404 CW
	)	
Plaintiff,	)	DECISION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner, Social	)	
Security Administration,	)	
	)	
Defendant.	)	
_____	)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner’s denial of disability benefits. As discussed below, the court finds that the Commissioner’s decision should be reversed and this matter remanded for further proceedings.

**I. BACKGROUND**

Plaintiff Marjorie Allende-Scott was born on October 28, 1969, and was thirty-nine years old at the time of her administrative hearing. [Administrative Record (“AR”) 36, 39.] She has a twelfth grade education and past relevant work experience as a real estate

1 agent, payroll clerk, and accounting clerk. [AR 71, 73.] Plaintiff  
2 alleges disability on the basis of interstitial cystitis,  
3 hypertension, back pain, headaches, status post gunshot wound, and  
4 obesity. [AR 52, 54-56.]

5 **II. PROCEEDINGS IN THIS COURT**

6 Plaintiff's complaint was lodged on December 23, 2009, and filed  
7 on January 4, 2010. On August 4, 2010, Defendant filed an answer and  
8 Plaintiff's Administrative Record ("AR"). On November 8, 2010, the  
9 parties filed their Joint Stipulation ("JS") identifying matters not  
10 in dispute, issues in dispute, the positions of the parties, and the  
11 relief sought by each party. This matter has been taken under  
12 submission without oral argument.

13 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

14 Plaintiff applied for a period of disability and disability  
15 insurance benefits ("DIB") on May 22, 2007, alleging disability since  
16 December 31, 2004. [AR 9.] Plaintiff was last insured for DIB on  
17 December 31, 2006. [AR 29.] After the application was denied  
18 initially and on reconsideration, Plaintiff requested an  
19 administrative hearing, which was held on May 11, 2009, before an  
20 Administrative Law Judge ("ALJ"). [AR 36.] Plaintiff appeared with  
21 counsel, and testimony was taken from Plaintiff, her husband Michael  
22 Scott, and vocational expert Alan E. Cummings. [AR 37.] The ALJ  
23 denied benefits in a decision dated August 6, 2009. [AR 6-33.] When  
24 the Appeals Council denied review on October 21, 2009, the ALJ's  
25 decision became the Commissioner's final decision. [AR 1.]

26 **IV. STANDARD OF REVIEW**

27 Under 42 U.S.C. § 405(g), a district court may review the  
28 Commissioner's decision to deny benefits. The Commissioner's (or

1 ALJ's) findings and decision should be upheld if they are free of  
2 legal error and supported by substantial evidence. However, if the  
3 court determines that a finding is based on legal error or is not  
4 supported by substantial evidence in the record, the court may reject  
5 the finding and set aside the decision to deny benefits. See Aukland  
6 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.  
7 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240  
8 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,  
9 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
10 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada  
11 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

12 "Substantial evidence is more than a scintilla, but less than a  
13 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence  
14 which a reasonable person might accept as adequate to support a  
15 conclusion." Id. To determine whether substantial evidence supports  
16 a finding, a court must review the administrative record as a whole,  
17 "weighing both the evidence that supports and the evidence that  
18 detracts from the Commissioner's conclusion." Id. "If the evidence  
19 can reasonably support either affirming or reversing," the reviewing  
20 court "may not substitute its judgment" for that of the Commissioner.  
21 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

## 22 V. DISCUSSION

### 23 A. THE FIVE-STEP EVALUATION

24 To be eligible for disability benefits a claimant must  
25 demonstrate a medically determinable impairment which prevents the  
26 claimant from engaging in substantial gainful activity and which is  
27 expected to result in death or to last for a continuous period of at  
28 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at

1 721; 42 U.S.C. § 423(d)(1)(A).

2 Disability claims are evaluated using a five-step test:

3 Step one: Is the claimant engaging in substantial  
4 gainful activity? If so, the claimant is found not  
5 disabled. If not, proceed to step two.

6 Step two: Does the claimant have a "severe" impairment?  
7 If so, proceed to step three. If not, then a finding of not  
8 disabled is appropriate.

9 Step three: Does the claimant's impairment or  
10 combination of impairments meet or equal an impairment  
11 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If  
12 so, the claimant is automatically determined disabled. If  
13 not, proceed to step four.

14 Step four: Is the claimant capable of performing his  
15 past work? If so, the claimant is not disabled. If not,  
16 proceed to step five.

17 Step five: Does the claimant have the residual  
18 functional capacity to perform any other work? If so, the  
19 claimant is not disabled. If not, the claimant is disabled.

20 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended  
21 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107  
22 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20  
23 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or  
24 "not disabled" at any step, there is no need to complete further  
25 steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

26 Claimants have the burden of proof at steps one through four,  
27 subject to the presumption that Social Security hearings are non-  
28 adversarial, and to the Commissioner's affirmative duty to assist  
claimants in fully developing the record even if they are represented  
by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at  
1288. If this burden is met, a prima facie case of disability is  
made, and the burden shifts to the Commissioner (at step five) to

1 prove that, considering residual functional capacity ("RFC")<sup>1</sup>, age,  
2 education, and work experience, a claimant can perform other work  
3 which is available in significant numbers. Tackett, 180 F.3d at 1098,  
4 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

#### 5 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

6 Here, the ALJ found that Plaintiff had not engaged in substantial  
7 gainful activity from her alleged disability onset date to her date  
8 last insured (step one); that Plaintiff had medically determinable  
9 impairments, namely interstitial cystitis, hypertension, back pain,  
10 headaches, status post gunshot wound and obesity; but that Plaintiff  
11 did not have a "severe" impairment or combination of impairments (step  
12 two). [AR 29-30.] Accordingly, Plaintiff was found not "disabled" as  
13 defined by the Social Security Act. [AR 32.]

#### 14 **C. ISSUE IN DISPUTE**

15 The parties' Joint Stipulation identifies a single disputed  
16 issue: whether the ALJ properly determined that Plaintiff's condition  
17 was non-severe at Step Two. [JS 3.]

#### 18 **D. INTERSTITIAL CYSTITIS**

19 The record shows that Dr. Eric B. Robins, a urologist at South  
20 Bay Medical Center, had treated Plaintiff since July 2005 for  
21 interstitial cystitis and other conditions. [AR 447.] In September  
22 2005, Dr. Robins prescribed Plaintiff an Oxytrol medical patch, due to

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24 <sup>1</sup> Residual functional capacity measures what a claimant can  
25 still do despite existing "exertional" (strength-related) and  
26 "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155  
27 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to  
28 work without directly limiting strength, and include mental, sensory,  
postural, manipulative, and environmental limitations. Penny v.  
Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155  
n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a  
nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler,  
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 her complaint that she voided every 10 to 60 minutes, and that her  
2 previous treatments did not alleviate the condition. [AR 459.] The  
3 patch helped Plaintiff limit the frequency of her voidings to every  
4 hour, until Plaintiff was admitted to the hospital for exacerbation of  
5 abdominal pain in July 2006. [AR 244.] Plaintiff's frequency of  
6 voidings had returned to every 10 minutes, even with the use of the  
7 patch. [Id.] In a follow-up visit on May 2007, Dr. Robins noted that  
8 Plaintiff's voiding frequency was again limited to about every hour.  
9 [AR 351-352.]

10 The ALJ, in reference to the above record, determined that  
11 Plaintiff's interstitial cystitis "responded well to treatment with  
12 the patch," and that Plaintiff did not "need emergency appointments  
13 with the urologist because of a failure of the patch, or because of  
14 unremitting symptoms of pain, cramping, etc." [AR 21.] The ALJ  
15 concluded that there is no evidence to show that Plaintiff's condition  
16 "occurred at a frequency, severity or duration so as to preclude the  
17 performance of sustained work activities in an ordinary work setting  
18 on a regular continuing basis." [Id.] Plaintiff argues that the ALJ's  
19 conclusion was not supported by substantial evidence.

20 At step two of the five-step disability evaluation, an impairment  
21 or combination of impairments may be found "not severe" only if the  
22 evidence establishes a "slight abnormality that has no more than a  
23 minimal effect on an individual's ability to work." Webb v. Barnhart,  
24 433 F.3d 683, 686 (9<sup>th</sup> Cir. 2005)(quoting Smolen v. Chater, 80 F.3d  
25 1273, 1290 (9<sup>th</sup> Cir. 1996)); see also Yuckert v. Bowen, 841 F.2d 303,  
26 306 (9<sup>th</sup> Cir. 1988). If an ALJ is "unable to determine clearly the  
27 effect of an impairment or combination of impairments on the  
28 individual's ability to do basic work activities, the sequential

1 evaluation should not end with the not severe evaluation step." Webb,  
2 433 F.3d at 687 (quoting SSR 85-28, 1985 WL 56856 at \*4). Step two,  
3 then, involves a "de minimis screening device used to dispose of  
4 groundless claims, and an ALJ may find that a claimant lacks a  
5 medically severe impairment or combination of impairments only when  
6 his conclusion is clearly established by the medical evidence." Webb,  
7 433 F.3d at 687 (citations omitted); see also Yuckert, 841 F.2d at 306  
8 ("Despite the deference usually accorded to the Secretary's  
9 application of regulations, numerous appellate courts have imposed a  
10 narrow construction upon the severity regulation applied here.").

11 Under this narrow standard for step two evaluations, the finding  
12 that Plaintiff did not have a severe impairment or combination of  
13 impairments is not clearly established by the medical evidence.  
14 Although the Oxytrol medical patch may have helped Plaintiff in  
15 improving her condition, the hospitalization and regression in July  
16 2006 show that the patch did not control her interstitial cystitis  
17 enough to completely ensure her functional ability. Here, the ALJ  
18 failed to consider properly Plaintiff's hospitalization in July 2006  
19 that was related to interstitial cystitis. This hospitalization and  
20 the regression of Plaintiff's voiding frequency around the same time  
21 call into question the stability of her treatment with the patch  
22 beyond the initial period. [AR 308-309.]

23 In addition, the record shows that Plaintiff received continuous  
24 medical health treatment, takes medication for her condition such as  
25 Hydrocodone-Acetaminophen 5, Fluoxetine, Oxepam, Alprozolam and  
26 Atenolol [AR 185, 246, 277, 353-355], and has individual sessions with  
27 a urologist. Based on the existing record, the evidence of  
28 Plaintiff's claim of interstitial cystitis and other impairments "is

1 sufficient to pass the de minimis threshold of step two." Webb, 433  
2 F.3d at 687. Although the court "do[es] not intimate that [plaintiff]  
3 will succeed in proving that [s]he is disabled," the ALJ "should have  
4 continued the sequential analysis beyond step two because there was  
5 not substantial evidence to show that [plaintiff's] claim was  
6 groundless." Webb, 433 F.3d at 688. Accordingly, the ALJ's finding  
7 that the plaintiff did not suffer from a severe impairment should be  
8 reversed, and the matter should be remanded for further proceedings.

9 **E. REMAND FOR FURTHER PROCEEDINGS**

10 The decision whether to remand for further proceedings is within  
11 the discretion of the district court. Harman v. Apfel, 211 F.3d 1172,  
12 1175-1178 (9th Cir. 2000). Where no useful purpose would be served by  
13 further proceedings, or where the record has been fully developed, it  
14 is appropriate to exercise this discretion to direct an immediate  
15 award of benefits. Harman, 211 F.3d at 1179 (decision whether to  
16 remand for further proceedings turns upon their likely utility).  
17 However, where there are outstanding issues that must be resolved  
18 before a determination can be made, and it is not clear from the  
19 record that the ALJ would be required to find the claimant disabled if  
20 all the evidence were properly evaluated, remand is appropriate. Id.  
21 Here, as set out above, outstanding issues remain before a finding of  
22 disability can be made. Accordingly, remand is appropriate.

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1 **VI. ORDERS**


2 Accordingly, **IT IS ORDERED** that:

3 1. The decision of the Commissioner is **REVERSED**.

4 2. This action is **REMANDED** to defendant, pursuant to Sentence  
5 Four of 42 U.S.C. § 405(g), for further proceedings as discussed  
6 above.

7 3. The Clerk of the Court shall serve this Decision and Order  
8 and the Judgment herein on all parties or counsel.

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10 DATED: November 27, 2010

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12 CARLA M. WOEHRLE  
13 United States Magistrate Judge  
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