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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

10	ANGELANETTE EDWARDS,	)	Case No. CV 10-4093-MLG
		)	
11	Plaintiff,	)	MEMORANDUM OPINION AND ORDER
		)	
12	v.	)	
		)	
13	MICHAEL J. ASTRUE,	)	
	Commissioner of the Social	)	
14	Security Administration,	)	
		)	
15		)	
	Defendant.	)	
16	_____	)	

18 Plaintiff Angelanette Edwards seeks judicial review of the  
19 Social Security Commissioner's denial of her application for  
20 Supplemental Security Income ("SSI") benefits. For the reasons  
21 stated below, the decision of the Commissioner is REVERSED and the  
22 matter REMANDED for further proceedings consistent with this  
23 opinion.

24  
25 **I. Facts and Procedural Background**

26 Plaintiff was born on February 5, 1962. She has an eleventh  
27 grade education and has work experience as an in-home care giver.  
28 (Administrative Record ("AR") 18, 40, 98, 149.) Plaintiff filed an

1 application for SSI benefits on June 14, 2006, alleging disability  
2 as of December 30, 2003, due to diabetes mellitus, disorders of the  
3 muscle, ligament and fascia, and depression. (AR 40, 93.)

4 Plaintiff's application was denied initially and upon  
5 reconsideration. (AR 42-46, 51-54.) An administrative hearing was  
6 held June 16, 2008, before Administrative Law Judge ("ALJ") James  
7 D. Goodman. Plaintiff, represented by attorney Bill LaTour,  
8 testified at the administrative hearing. (AR 21-39.)

9 ALJ Goodman issued an unfavorable decision on August 21, 2008.  
10 (AR 9-18.) The ALJ found that Plaintiff suffered from the following  
11 severe impairments: history of diabetes, right shoulder pain,  
12 obesity, depressive disorder not otherwise specified, and cocaine  
13 abuse in remission. (AR 12.) Plaintiff's impairments were deemed  
14 not to meet the requirements of a listed impairment found in 20  
15 C.F.R. Part 404, Subpart P, Appendix 1. (Id.) The ALJ further found  
16 that Plaintiff retained the residual functional capacity ("RFC") to  
17 "perform medium work as defined in 20 C.F.R. 416.967(c) except that  
18 she can frequently climb, balance, kneel, crouch, crawl and stoop,  
19 and she can frequently do handling, grasping, and fingering as well  
20 as above-the-shoulder lifting, pushing and pulling. In the mental  
21 realm, the claimant can perform simple, routine, and repetitive  
22 work." (AR 14.) The ALJ also determined that Plaintiff was able to  
23 perform her past relevant work as an in-home care giver. (AR 18.)  
24 The ALJ concluded that Plaintiff was not disabled as defined in the  
25 Social Security Act. (Id.)

26 The Appeals Council denied review on April 27, 2010. (AR 1-3.)  
27 Plaintiff commenced this action on June 4, 2010, and on December 7,  
28 2010, the parties filed a joint stipulation ("Joint Stip.") of

1 disputed facts and issues. Plaintiff contends that the ALJ erred by  
2 failing to fully consider the opinions of (1) State Agency  
3 physician M. Sohn, M.D., (2) psychiatric consultative examiner  
4 Ernest A. Bagner III, M.D., and (3) State Agency physician P. M.  
5 Balson, M.D.; and (4) that the ALJ erred in his Step Four finding  
6 that Plaintiff could perform her past work as a care-giver. (Joint  
7 Stip. 2-3.) Plaintiff asks the Court to reverse and order an award  
8 of benefits or, in the alternative, to remand for further  
9 proceedings. (Joint Stip. 14-15.) The Commissioner requests that  
10 the ALJ's decision be affirmed. (Joint Stip. 15.)

11 After reviewing the parties' respective contentions and the  
12 record as a whole, the Court concludes that the ALJ erred in  
13 finding, at Step Four of the sequential evaluation, that Plaintiff  
14 could perform the job of Home Attendant, which requires a reasoning  
15 Level 3, given her limitation to simple, repetitive tasks.  
16 Accordingly, the matter shall be remanded for further proceedings  
17 consistent with this opinion.

## 18

## 19 **II. Standard of Review**

20 Under 42 U.S.C. § 405(g), a district court may review the  
21 Commissioner's decision to deny benefits. The Commissioner's  
22 decision must be upheld unless "the ALJ's findings are based on  
23 legal error or are not supported by substantial evidence in the  
24 record as a whole." *Tackett v. Apfel*, 180 F.3d 1094 (9th Cir.  
25 1999); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).  
26 Substantial evidence means more than a scintilla, but less than a  
27 preponderance; it is evidence that a reasonable person might accept  
28 as adequate to support a conclusion. *Lingenfelter v. Astrue*, 504

1 F.3d 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*,  
2 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
3 substantial evidence supports a finding, the reviewing court "must  
4 review the administrative record as a whole, weighing both the  
5 evidence that supports and the evidence that detracts from the  
6 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720  
7 (9th Cir. 1996). "If the evidence can support either affirming  
8 or reversing the ALJ's conclusion," the court "may not substitute  
9 its judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

### 11 **III. Discussion**

#### 12 **A. The ALJ Properly Considered the Opinion of State Agency** 13 **Physician Dr. Sohn**

14 Plaintiff contends that the ALJ erred by failing to consider  
15 a portion of the September 15, 2006, opinion of State Agency  
16 physician M. Sohn, M.D. (Joint Stip. 3.) More specifically,  
17 Plaintiff argues that the ALJ failed to address a supposed  
18 inconsistency between Dr. Sohn's opinion and the medical opinion of  
19 the internal medicine consultative examiner, Dr. Concepcion A.  
20 Enriquez. (Id.)

21 With regard to Plaintiff's right shoulder, Dr. Enriquez  
22 concluded that "[t]he patient can still do above-the-shoulder  
23 lifting, pushing, and pulling." (AR 180.) The ALJ stated that he  
24 based his physical RFC finding primarily on the opinion of Dr.  
25 Enriquez. (AR 14.) The ALJ found that Dr. Enriquez's opinion "is  
26 consistent with that of the State Agency physician who similarly  
27 found the claimant is limited to a wide range of medium work. There  
28 is no contrary opinion evidence." (AR 14, 208-212.) Plaintiff

1 argues that, contrary to the ALJ's contention, the opinion of the  
2 State Agency reviewing physician, Dr. Sohn, differed from that of  
3 Dr. Enriquez because Dr. Sohn limited Plaintiff's work with her  
4 right arm to occasional reaching above shoulder level and working  
5 overhead with her hand. (Joint Stip. 3; AR 210.)

6 From a review of the opinions of the consultative and State  
7 Agency physicians, it is apparent that they are substantially  
8 similar and are not inconsistent. Both physicians concluded that  
9 Plaintiff could lift 50 pounds occasionally and 25 pounds  
10 frequently; could stand, sit or walk for six hours in an eight-hour  
11 work day, and could frequently perform handling, grasping and  
12 fingering functions. (AR 180, 209.) In fact, the reviewing State  
13 Agency physician specifically noted that his conclusions regarding  
14 Plaintiff's limitations or restrictions were not significantly  
15 different from those of the examining physician. (AR 212.) The only  
16 difference between the two opinions is that Dr. Enriquez found that  
17 Plaintiff "can still do above-the-shoulder lifting, pushing and  
18 pulling," while Dr. Sohn found that Plaintiff could only  
19 occasionally reach above shoulder level with her right hand and  
20 frequently with her left. (AR 180, 210.) The ALJ's conclusion that  
21 the two opinions were consistent was reasonable. See *Thomas v.*  
22 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) ("Where the evidence is  
23 susceptible to more than one rational interpretation, one of which  
24 supports the ALJ's decision, the ALJ's conclusion must be  
25 upheld."). Accordingly, the Court finds that this claim of error is  
26 without merit.

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1           **B. The ALJ Properly Considered the Opinion of the**  
2           **Psychiatric Consultative Examiner**

3           Plaintiff contends that the ALJ erred in failing to properly  
4 consider portions of the August 30, 2007, report by the  
5 consultative psychiatric examining physician, Dr. Ernest A. Bagner  
6 III. (Joint Stip. 5.) More specifically, Plaintiff argues that the  
7 ALJ failed to explain why he relied more heavily upon the State  
8 Agency reviewing physicians' reports than upon Dr. Bagner's report,  
9 and also that the ALJ erred in failing to incorporate Dr. Bagner's  
10 assessment of Plaintiff's mental functioning in the RFC assessment.

11           In his report, Dr. Bagner concluded that "[t]he patient would  
12 have mild limitations interacting with supervisors, peers and the  
13 public, maintaining concentration and attention and completing  
14 simple tasks. She would have mild to moderate limitations handling  
15 normal stresses at work, completing complex tasks and completing a  
16 normal workweek without interruption." (AR 207.) The ALJ stated  
17 that he based his mental RFC assessment "primarily on the opinion  
18 of the State Agency psychiatrist, who found the claimant can  
19 sustain simple, routine, and repetitive tasks, assuming she  
20 maintains sobriety." (AR 14-15.) The ALJ found that these opinions  
21 were "consistent for the most part with that of the consultative  
22 examiner," Dr. Bagner. (AR 15.)

23           Contrary to Plaintiff's contention, the ALJ properly credited  
24 Dr. Bagner's opinion, to the extent that it was consistent with all  
25 of the other medical evidence in the record. *See Thomas*, 278 F.3d  
26 at 957 ("The opinions of non-treating or non-examining physicians  
27 may also serve as substantial evidence when the opinions are  
28 consistent with independent clinical findings or other evidence in

1 the record.") Here, both State Agency physicians, Drs. Skopec and  
2 Balson, concluded that Plaintiff's mental impairments did not  
3 significantly impair her functioning or prevent her from working.  
4 (AR 223, 296.) The fact that Dr. Bagner concluded that Plaintiff  
5 would have some mild to moderate limitations in performing work-  
6 related tasks does not make his opinion inconsistent with those of  
7 the State Agency physicians. The ALJ properly synthesized the  
8 opinions of the State Agency reviewing physicians with that of Dr.  
9 Bagner's to determine Plaintiff's mental RFC.

10 Further, the ALJ's failure to mention a portion of Dr.  
11 Bagner's report is not fatal to his decision. The ALJ is not  
12 required to address every detail of the consultative examining  
13 physician's report or every piece of evidence in the record in  
14 reaching a disability determination. *Howard ex. rel. Wolff v.*  
15 *Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003).

16 **C. The ALJ Properly Considered the Opinion of State Agency**  
17 **Physician Dr. Balson**

18 Plaintiff next contends that the ALJ erred by implicitly  
19 rejecting the April 16, 2007 opinion of State Agency physician P.  
20 M. Balson, M.D. (Joint Stip. 9.) In his mental RFC assessment, Dr.  
21 Balson concluded that Plaintiff would have mild to moderate  
22 limitation in the ability to maintain a normal workday without  
23 interruption; the ability to carry out detailed instructions; and  
24 the ability to understand and remember detailed instructions. (AR  
25 294-95.) Plaintiff contends that the ALJ erred by not specifically  
26 citing Dr. Balson's findings and also by failing to incorporate  
27 these findings into the mental RFC assessment. (Joint Stip. 9.)

28 As discussed in detail above, the ALJ was not required to

1 discuss and adopt each and every finding in Dr. Balson's report in  
2 order to credit Dr. Balson's opinion as substantial evidence when  
3 assessing Plaintiff's mental RFC. *See Howard*, 341 F.3d at 1012.  
4 Both State Agency physicians agreed that Plaintiff's mental  
5 impairment did not prevent her from performing most work-related  
6 tasks. Dr. Skopec noted that Plaintiff's psychiatric symptoms did  
7 not significantly decrease her ability to function. (AR 223.)  
8 Similarly, Dr. Balson concluded that Plaintiff could predictably  
9 sustain simple repetitive tasks. (AR 296.) The ALJ properly  
10 credited Dr. Balson's opinion in determining that Plaintiff was  
11 capable of performing simple, routine and repetitive work. (AR 14-  
12 16.) Therefore, Plaintiff's argument is without merit.

13       **D. The ALJ Erred at Step Four of the Sequential Evaluation**  
14               **in Finding That Plaintiff Could Perform the Job of Home**  
15               **Attendant**

16       Plaintiff next argues that the ALJ erred at Step Four of the  
17 sequential evaluation because he determined that Plaintiff could  
18 perform her past relevant work as she actually performed it. (Joint  
19 Stip. 11.) The ALJ determined that Plaintiff could perform a wide  
20 range of medium work, which would require her to lift 25 pounds  
21 frequently and 50 pounds occasionally. (AR 13-14.) In her work  
22 history report, Plaintiff described the duties of her past relevant  
23 work as "lifted things" from 8:00 a.m. to 5:00 p.m. and "did hair"  
24 from 12:00 p.m. to 3:00 p.m. (AR 148.) She also checked the box  
25 that indicated that she lifted 50 pounds or more frequently. (AR  
26 149-151.) Plaintiff contends that her past relevant work as an in-  
27 home care giver, as she actually performed it, required her to lift  
28 50 pounds frequently, not merely occasionally. (Joint Stip. 11.)



1 Plaintiff "bears the initial burden of establishing disability  
2 by showing that a physical or mental impairment prevents [her] from  
3 engaging in any of [her] previous occupations." *Allen v. Secretary*  
4 *of Health & Human Serv.*, 726 F.2d 1470, 1472 (9th Cir. 1984).  
5 However, it is Plaintiff's burden to prove that she cannot return  
6 to her former *type* of work, not just to her former job. *Villa v.*  
7 *Heckler*, 797 F.2d 794, 798 (9th Cir. 1986). A claimant is not  
8 disabled if she can perform the duties of her past relevant work.  
9 See 20 C.F.R. § 404.1520(f).

10 In assessing a claimant's ability to perform past relevant  
11 work, an ALJ may consider the physical and mental demands of the  
12 job either as actually performed or as usually performed in the  
13 general economy. S.S.R. 82-62, \*3 ("The RFC to meet the physical  
14 and mental demands of jobs a claimant has performed in the past  
15 (either the specific job a claimant performed or the same kind of  
16 work as it is customarily performed throughout the economy) is  
17 generally a sufficient basis for a finding of 'not disabled.'").  
18 The ALJ may rely on the Dictionary of Occupational Titles ("DOT")  
19 for establishing the mental and physical demands of a particular  
20 job as usually performed in the general economy. S.S.R. 82-61, \*2;  
21 *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir. 2001)("[T]he best  
22 source for how a job is generally performed is usually the [DOT].")

23 Once an ALJ determines that the claimant's limitations do not  
24 preclude the work as usually performed in the general economy, the  
25 ALJ must find that the claimant is not disabled. S.S.R. 82-61, \*2.  
26 The ALJ need not conclude that the claimant can return to the prior  
27 position as actually performed. *Pinto*, 249 F.3d at 845 ("We have  
28 never required explicit findings at step four regarding a

1 claimant's past relevant work both as generally performed *and* as  
2 actually performed." )(emphasis in original).

3 Here, the ALJ found that Plaintiff's past relevant work as an  
4 in-home care giver most closely matched that of a Home Attendant  
5 (DOT 354.377-014). (AR 18.) The occupation of Home Attendant is a  
6 medium work job, which requires exerting 20 to 50 pounds of force  
7 only occasionally, not frequently, as Plaintiff claims she actually  
8 performed it. Because the ALJ was not required to determine whether  
9 Plaintiff could perform the job as usually performed *and* as  
10 Plaintiff actually performed it, he properly determined, at step  
11 four of the sequential evaluation, that Plaintiff was able to  
12 perform her past relevant work.

13 Plaintiff also argues that the ALJ erred in finding that she  
14 could perform her past relevant work as generally performed in the  
15 national economy because the job of Home Attendant (DOT 354.377-  
16 014) requires a Reasoning Level 3, which is inconsistent with  
17 Plaintiff's RFC limitation to "simple, routine, and repetitive"  
18 work. (Joint Stip. 12; AR 13-14.) Plaintiff contends that simple,  
19 repetitive tasks refer to unskilled work at Reasoning Level 2.  
20 (Joint Stip. 12.)

21 It appears that the Ninth Circuit has not yet addressed this  
22 issue. However, district courts in this Circuit have held that a  
23 limitation to simple, repetitive tasks is inconsistent with  
24 Reasoning Level 3 jobs. *See, e.g., Burns v. Astrue*, 2010 WL  
25 4795562, \*6 (C.D.Cal. 2010); *Bagshaw v. Astrue*, 2010 WL 256544, \*6  
26 (C.D.Cal. 2010); *Etter v. Astrue*, 2010 WL 4314415, \*4 (C.D.Cal.  
27 2010); *Pak v. Astrue*, 2009 WL 2151361, \*7 (C.D.Cal. 2009); *Tudino*  
28 *v. Barnhart*, 2008 WL 4161443, \*10-\*11 (S.D.Cal. 2008); *Torrez v.*

1 Astrue, 2010 WL 2555847, \*7-\*9 (E.D.Cal. 2010). Thus, absent  
2 persuasive evidence to justify a variation from the requirements of  
3 the job as identified in the DOT, such as the testimony of a  
4 Vocational Expert, the ALJ's limiting Plaintiff to simple,  
5 repetitive tasks is inconsistent with the finding that Plaintiff  
6 could perform the job of Home Attendant, which requires Reasoning  
7 Level 3. Accordingly, the matter shall be remanded for additional  
8 proceedings to determine whether Plaintiff can perform her past  
9 work and, if not, whether any other jobs exist in the economy that  
10 she can perform.

11  
12 **IV. Conclusion**

13 For the reasons stated above, the decision of the Social  
14 Security Commissioner is REVERSED and REMANDED for further  
15 proceedings consistent with this opinion.

16  
17 Dated: December 17, 2010

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19  
20 **MARC L. GOLDMAN**

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Marc L. Goldman  
United States Magistrate Judge