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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EVANGELINA GUTIERREZ,)	No. CV 10-05399-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 Administrative Record ("AR") before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified AR.

Plaintiff raises the following issues:

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

1 failing to apply Grid Rule 202.09; and

- 2 2. Whether the ALJ provided specific and legitimate reasons to
3 reject the reaching limitations assessed by the treating
4 physicians.

5 (JS at 4; 11.)

6
7 This Memorandum Opinion will constitute the Court's findings of
8 fact and conclusions of law. After reviewing the matter, the Court
9 concludes that for the reasons set forth, the decision of the
10 Commissioner must be reversed.

11
12 I

13 **THE ALJ DID NOT ERR IN FAILING TO APPLY THE GRID RULES**

14 Following a hearing before the ALJ, held on October 26, 2009, at
15 which Plaintiff was represented by an attorney and assisted by an
16 interpreter, and a vocational expert ("VE") testified (AR 21-42), an
17 unfavorable decision was issued. (AR 11-20.) As pertinent to the
18 first issue, the ALJ found that Plaintiff could perform her past
19 relevant work ("PRW") as a housekeeper, thus completing the analytical
20 framework at Step Four of the sequential evaluation process. (20
21 C.F.R. §404.1520(a).) Plaintiff asserts, however, that the ALJ should
22 have applied the so-called "Grid Rules" found at 20 C.F.R., Part 404,
23 subpart P, appendix 2, and in particular, Grid Rule 202.09, which
24 would result in a finding of "disabled."

25
26 **A. Applicable Law.**

27 Once Plaintiff has established that she is unable to return to
28 her PRW (or that she has no PRW), the burden shifts to the

1 Commissioner to establish the existence of other jobs which exist in
2 significant numbers which Plaintiff can perform considering her age,
3 education, residual functional capacity, and vocational profile. The
4 Commissioner can meet this burden either by utilizing the Medical
5 Vocational guidelines ("Grids") in Appendix 2, Subpart P, 20 C.F.R.
6 Part 404 or by calling upon the services of a vocational expert.
7 Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999).

8
9 **B. Analysis.**

10 Plaintiff does not contest the Commissioner's legal contention
11 that the Grid Rules are inapplicable if a finding of non-disability is
12 made at Step Four. Instead, and primarily in her Reply, Plaintiff
13 would appear to argue that the job of "housekeeper" was not part of
14 Plaintiff's PRW, because she performed it only part of the year 1999.
15 (JS at 10.) This argument is not developed anywhere in the brief,
16 however, and thus it is relevant to clarify the definition of PRW, in
17 order to determine whether, indeed, Plaintiff's PRW included work as
18 a housekeeper.

19 20 C.F.R. §§404.1520(e), (f) identifies the expression "past
20 relevant work" as an operative concept at the fourth step of the
21 sequential evaluation process. The definition of PRW is set forth in
22 §404.1560(b)(1), as, "... work that you have done within the past 15
23 years, ..." Further assistance is provided in Social Security Rulings
24 ("SSR") 82-61 and 82-62. While Social Security Rulings do not carry
25 the force and effect of law, they are relevant to construe the Social
26 Security Administration's interpretation of its own regulations and
27 the statutes which it is empowered to administer. Under SSR 82-61,
28 three possible alternative tests are set forth for determining whether

1 or not a claimant retains the capacity to perform his or her PRW.

2 The first is described as,

3 "Whether the claimant retains the capacity to perform
4 a past relevant job based on a broad generic, occupational
5 classification of that job, e.g., 'delivery job,' 'packaging
6 job,' etc."

7 A second alternative definition is,

8 "Whether the claimant retains the capacity to perform
9 the particular functional demands and job duties peculiar to
10 an individual job as he or she actually performed it."

11 Finally, a third alternative is described as,

12 "Whether the claimant retains the capacity to perform
13 the functional demands and job duties of the job as
14 ordinarily required by employers throughout the national
15 economy."

16
17 In the Ninth Circuit, PRW is defined as not just encompassing a
18 claimant's former job, but her former type of work. See Villa v.
19 Heckler, 797 F.2d 794, 798 (9th Cir. 1986).

20 Additional assistance is provided by reference to SSR 82-62,
21 which provides in pertinent part that,

22 "The term 'work experience' means skills and abilities
23 acquired through work previously performed by the individual
24 which indicates the type of work the individual may be
25 expected to perform. Work for which the individual has
26 demonstrated a capability is the best indicator of the kind
27 of work that the individual can be expected to do."

28 Based on this legal framework, the Court has no basis to conclude

1 that Plaintiff's PRW does not include work as a housekeeper. Looked
2 at from that viewpoint, the issue of whether or not Plaintiff is
3 literate in English does not impact the analysis, because Plaintiff
4 actually performed this work.

5 Even if the Grid Rules were applicable, however, they would not
6 preclude Plaintiff from doing this PRW. As noted in 20 C.F.R. Part
7 404, subpart B, in section 2202.00(g),

8 "While illiteracy or the inability to communicate in
9 English may significantly limit the individual's vocational
10 scope, the primary work functions in the bulk of unskilled
11 work relate to working with things (rather than with data or
12 people) and in these work functions at the unskilled level,
13 literacy or ability to communicate in English has the least
14 significance."

15
16 Based on the foregoing, the Court finds no error in the ALJ's
17 failure to rely upon the Grid Rule, noting, however, that Plaintiff's
18 ability to do this PRW may be impacted on remand when the ALJ will
19 reevaluate the exertional limitations assessed by Plaintiff's treating
20 doctors. (See, Section II, infra.)

21
22 **II**

23 **THE ALJ FAILED TO PROVIDE SPECIFIC AND LEGITIMATE REASONS**
24 **TO REJECT REACHING LIMITATIONS ASSESSED BY HER TREATING PHYSICIANS**

25 In Plaintiff's second issue, she contends the ALJ failed to
26 articulate specific and legitimate reasons to reject reaching
27 limitations assessed by her treating and non-treating physicians.

28 The RFC as assessed by the ALJ allows Plaintiff to perform the

1 full range of light work as defined in 20 C.F.R. §404.1567(b). (AR
2 14.) In the decision, the ALJ reviews the opinions of various
3 physicians, including Dr. Sobol, who is correctly identified as
4 Plaintiff's treating physician, although the decision attributes to
5 him an assessment that Plaintiff is precluded from use of her right
6 arm at shoulder level or above in repetitive pushing and pulling
7 activities, when this in fact was assessed by Dr. Nagelberg, also a
8 treating physician. (AR 348.) While the ALJ considered that opinion
9 and gave it "great weight as it is generally consistent with the
10 entire record as a whole," the reaching limitations are not
11 specifically discussed (other than acknowledging them), and certainly
12 are not rejected. As Plaintiff correctly points out, if such
13 exertional limitations were accepted, they should have been included
14 in the hypothetical questions posed to the VE, but they were not.
15 While the Commissioner attempts to rescue the deficiencies in the
16 opinion by asserting that "the ALJ reasonably synthesized the medical
17 evidence and opinions, and they supported his RFC finding" (JS at 13),
18 in fact this is not the case. The Commissioner tacitly admits as much
19 by indicating that the ALJ did not specifically reject any of this
20 evidence. (Id.) If that is the case, then the evidence was not
21 properly synthesized, but simply left unaddressed in the RFC
22 evaluation. This error is significant and merits remand so that a new
23 hearing may be held, and the opinions of the physicians who examined
24 Plaintiff, and the various restrictions they assessed, can be
25 evaluated and then accepted or rejected based on articulated reasons.
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For the foregoing reasons, this matter will be remanded for
further hearing consistent with this Memorandum Opinion.

IT IS SO ORDERED.

DATED: June 7, 2011

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE