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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAVIS WILLIAM SUITER,)	NO. CV 10-05430 SS
)	
Plaintiff,)	
)	
v.)	MEMORANDUM DECISION AND ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

I.
INTRODUCTION

Travis William Suiter ("Plaintiff") seeks review of the final decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") to deny his application for Supplemental Security Income ("SSI") Benefits, and requests this Court remand this matter for further review.

//

1 The parties consented, pursuant to 28 U.S.C. § 636(c), to the
2 jurisdiction of the undersigned United States Magistrate Judge. For the
3 reasons stated below, the decision of the Commissioner is REVERSED and
4 the case is REMANDED for further proceedings consistent with this
5 decision.

6
7 **II.**

8 **PROCEDURAL HISTORY**

9
10 Plaintiff applied for Title XVI SSI Benefits and Title II Social
11 Security Disability Insurance ("SSDI") Benefits on April 10, 2007,
12 claiming disability since December 31, 2003. (Administrative Record
13 ("AR") 107-12, 113-14). The Agency initially denied both claims on
14 August 31, 2007. (AR 60-61, 64-68). Plaintiff requested
15 reconsideration on September 24, 2007. (AR 69). The Agency denied his
16 application again on December 10, 2007. (AR 62-63, 70-79). Thereafter,
17 Plaintiff filed a Request For Hearing By Administrative Law Judge on
18 January 29, 2008. (AR 80-81).

19
20 The Agency scheduled a hearing for October 21, 2008, wherein
21 Plaintiff testified before an Administrative Law Judge ("ALJ") in Los
22 Angeles, California. (AR 22-40, 86-95). The hearing was ultimately
23 continued to January 13, 2009 to give Plaintiff time to provide the
24 Agency with more records of his most recent medical treatment. (AR 22-
25 40, 41-59). At the January 13, 2009 hearing Plaintiff again testified
26 before the ALJ. (AR 41-59). Sandra Schneider, a vocational expert also

1 testified at this hearing. (Id.). At the October 21, 2008 and January
2 13, 2009 hearings, Plaintiff was represented by the Law Offices of Bill
3 LaTour. (AR 22-40, 41-59, 82-83). The ALJ denied Plaintiff's
4 application for benefits on September 8, 2009. (AR 9-21). On November
5 12, 2009, Plaintiff requested review of the ALJ's decision. (AR 6-8).
6 On May 18, 2010, the Agency denied Plaintiff's request, (AR 1-3), and
7 Plaintiff commenced this action on July 22, 2010.

8
9 **III.**

10 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

11
12 To qualify for disability benefits, a claimant must demonstrate a
13 medically determinable physical or mental impairment that prevents him
14 from engaging in substantial gainful activity¹ and that is expected to
15 result in death or to last for a continuous period of at least twelve
16 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42
17 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant
18 incapable of performing the work he previously performed and incapable
19 of performing any other substantial gainful employment that exists in
20 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
21 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

22
23 To decide if a claimant is entitled to benefits, an ALJ conducts a
24 five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

25 _____
26 ¹ Substantial gainful activity means work that involves doing
27 significant and productive physical or mental duties and is done for pay
or profit. See 20 C.F.R. §§ 404.1510, 416.910.

1 (1) Is the claimant presently engaged in substantial gainful
2 activity? If so, the claimant is found not disabled. If
3 not, proceed to step two.

4 (2) Is the claimant's impairment severe? If not, the
5 claimant is found not disabled. If so, proceed to step
6 three.

7 (3) Does the claimant's impairment meet or equal one of the
8 specific impairments described in 20 C.F.R. Part 404,
9 Subpart P, Appendix 1? If so, the claimant is found
10 disabled. If not, proceed to step four.

11 (4) Is the claimant capable of performing his past work? If
12 so, the claimant is found not disabled. If not, proceed
13 to step five.

14 (5) Is the claimant able to do any other work? If not, the
15 claimant is found disabled. If so, the claimant is found
16 not disabled.

17
18 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
19 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§
20 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

21
22 The claimant has the burden of proof at steps one through four, and
23 the Commissioner has the burden of proof at step five. Bustamante, 262
24 F.3d at 953-54. Additionally, the ALJ has an affirmative duty to assist
25 the claimant in developing the record at every step of the inquiry. Id.
26 at 954. If, at step four, the claimant meets his burden of establishing
27

1 an inability to perform past work, the Commissioner must show that the
2 claimant can perform some other work that exists in "significant
3 numbers" in the national economy, taking into account the claimant's
4 residual functional capacity² ("RFC"), age, education, and work
5 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721;
6 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so
7 by the testimony of a vocational expert ("VE") or by reference to the
8 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart
9 P, Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
10 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
11 (strength-related) and non-exertional limitations, the Grids are
12 inapplicable and the ALJ must take the testimony of a vocational expert.
13 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v.
14 Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

16 IV.

17 STANDARD OF REVIEW

18
19 Under 42 U.S.C. § 405(g), a district court may review the
20 Commissioner's decision to deny benefits. The court may set aside the
21 Commissioner's decision when the ALJ's findings are based on legal error
22 or are not supported by substantial evidence in the record as a whole.
23 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing

24
25
26 ² Residual functional capacity is "the most [one] can still do
27 despite [his] limitations" and represents an "assessment based upon all
of the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th
2 Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

3
4 "Substantial evidence is more than a scintilla, but less than a
5 preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v. Chater,
6 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant evidence which a
7 reasonable person might accept as adequate to support a conclusion." Id.
8 (citing Jamerson, 112 F.3d at 1066; Smolen, 80 F.3d at 1279). To
9 determine whether substantial evidence supports a finding, the court
10 must "'consider the record as a whole, weighing both evidence that
11 supports and evidence that detracts from the [Commissioner's]
12 conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2
13 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support
14 either affirming or reversing that conclusion, the court may not
15 substitute its judgment for that of the Commissioner. Reddick, 157 F.3d
16 at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

17
18 **V.**

19 **DISCUSSION**

20
21 Plaintiff contends the ALJ erred in three respects in his decision
22 to deny benefits. (Plaintiff's Memorandum at 2, 7, 10). First,
23 Plaintiff argues the ALJ improperly rejected the opinion of a treating
24 physician. (Id. at 2-7). Second, Plaintiff argues the ALJ erred in his
25 assessment of Plaintiff's credibility. (Id. at 7-10). Finally,
26 Plaintiff argues the ALJ failed to consider all of Plaintiff's

1 impairments when determining Plaintiff's Residual Functional Capacity
2 ("RFC"). (Id. at 10-14).

3
4 The Court agrees that remand is necessary. The Court also finds
5 the ALJ erred in one additional respect, i.e., by finding that
6 Plaintiff's depression was "non-severe" at step-two of the evaluation
7 process. For the reasons discussed below, the Court finds that the
8 ALJ's decision should be reversed and this action remanded for further
9 proceedings.

10
11 **A. The ALJ Improperly Rejected The Medical Opinions Of The Treating**
12 **Physician**

13
14 Plaintiff contends that the ALJ did not give proper weight to the
15 opinion of Plaintiff's treating physician, Dr. Mehri McKellar ("Dr.
16 McKellar"). (Plaintiff's Memorandum at 2-7). Specifically, Plaintiff
17 argues that the ALJ ignored the portions of Dr. McKellar's treatment
18 records that document the diagnosis and treatment of Plaintiff's chronic
19 headaches, and failed to give "specific and legitimate" reasons for
20 doing so. (Id.). The Court agrees.

21
22 Where the treating doctor's opinion is not contradicted by another
23 doctor, it may be rejected only for "clear and convincing" reasons.
24 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended). Even
25 if the treating physician's opinion is contradicted by another doctor,
26 the ALJ may not reject this opinion without providing specific,
27

1 legitimate reasons, supported by substantial evidence in the
2 record. Id. The opinions of treating physicians are entitled to
3 special weight because the treating physician is hired to cure and has
4 a better opportunity to know and observe the claimant as an individual.
5 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989).

6
7 Here, the ALJ improperly disregarded Dr. McKellar's opinion
8 regarding the severity of Plaintiff's headaches. In the November 7,
9 2007 HIV Questionnaire used to evaluate Plaintiff's ability to function
10 with respect to his HIV status, Dr. McKellar opined that Plaintiff's
11 chronic headaches and depression were contributing factors that
12 explained why Plaintiff appeared chronically ill and visibly fatigued.
13 (AR 156). In this same Questionnaire, Dr. McKellar described
14 Plaintiff's headaches as "ongoing" and as his "biggest problem." (AR
15 156-57). Additionally, Dr. McKellar observed Plaintiff's depression and
16 anxiety were indications that Plaintiff suffered from a mental
17 impairment. (AR 157). On November 21, 2007, Dr. McKellar found that
18 Plaintiff suffered from "chronic headaches," and ordered lab work to be
19 performed. (AR 306). On April 17, 2008, Dr. McKellar again offered her
20 opinion regarding Plaintiff's headaches in the form of a letter, in
21 which she asked the ALJ to excuse Plaintiff from attendance at a court
22 date in January 2008 due to his "chronic headaches and fatigue." (AR
23 346). Moreover, the record supports Dr. McKellar's opinions regarding
24 Plaintiff's headaches and depression, as the record shows that Plaintiff
25 was consistently prescribed Midrin and Ibuprofen for headaches, (AR 294,
26 296, 301, 307, 312), and Wellbutrin for depression. (AR 299, 307).

1 Instead of addressing Dr. McKellar’s opinions regarding Plaintiff’s
2 headaches and depression, the ALJ focused exclusively on Dr. McKellar’s
3 functional capacity assessment. (AR 19). The ALJ failed to provide any
4 reasons for omitting Dr. McKellar’s assessments regarding Plaintiff’s
5 headaches and depression. Such selective treatment of the treating
6 doctor’s opinions is improper in the absence of “clear and convincing
7 reasons” for doing so. See Lester 81 F.3d at 830. Accordingly, on
8 remand, the ALJ shall consider and address Dr. McKellar’s opinions
9 regarding Plaintiff’s headaches and depression when conducting the
10 disability analysis, as well as any other evidence relevant to
11 Plaintiff’s mental impairments and pain.

12

13 **B. The ALJ Failed To Provide Clear And Convincing Reasons For**
14 **Rejecting Plaintiff’s Credibility**

15

16 The Plaintiff argues that the ALJ failed to provide clear and
17 convincing reasons for rejecting Plaintiff’s credibility. (Plaintiff’s
18 Memorandum at 7-10). This Court agrees.

19

20 Whenever an ALJ’s disbelief of a claimant’s testimony is a critical
21 factor in a decision to deny benefits, as it is here, the ALJ must make
22 explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231
23 (9th Cir. 1990); see Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir.
24 1990) (implicit finding that claimant was not credible is insufficient).
25 Unless there is affirmative evidence showing that the claimant is
26 malingering, the ALJ’s reasons for rejecting the claimant’s testimony

27

28

1 must be "clear and convincing." Lester, 81 F.3d at 834. As long as the
2 plaintiff offers evidence of a medical impairment that could reasonably
3 be expected to produce pain, the ALJ may not require the degree of pain
4 to be corroborated by objective medical evidence. Bunnell v. Sullivan,
5 947 F.2d 341, 346-47 (9th Cir. 1991) (en banc); Smolen, 80 F.3d at 1282.

6
7 The ALJ can, however, reject plaintiff's testimony regarding the
8 severity of her symptoms if he points to clear and convincing reasons
9 for doing so. See Smolen, 80 F.3d at 1283-84. To determine whether
10 plaintiff's testimony regarding the severity of his symptoms is
11 credible, the ALJ may consider, among other things, the following
12 evidence: (1) ordinary techniques of credibility evaluation, such as the
13 claimant's reputation for lying, prior inconsistent statements
14 concerning the symptoms, and other testimony by the claimant that
15 appears less than candid; (2) unexplained or inadequately explained
16 failure to seek treatment or to follow a prescribed course of treatment;
17 and (3) the claimant's daily activities. Id. at 1284.

18
19 In making his credibility determination, the ALJ relied solely on
20 selective portions of the evidence without considering the portions of
21 the record that supported Plaintiff's testimony. This was erroneous.
22 See Valentine v. Comm'r of the Soc. Sec. Admin., 574 F.3d 685, 693 (9th
23 Cir. 2009) ("The ALJ must specifically identify what testimony is
24 credible and what testimony undermines the claimant's
25 complaints."). The record indicates that Plaintiff consistently sought
26 treatment for the illnesses relevant to his disability claim. (See AR

1 241-51, 293, 296, 298, 301-02, 304, 306-07, 309, 313, 364, 408-09, 411).
2 Plaintiff visited the Hollywood Healthcare Center seven times for HIV-
3 related issues and other ailments between June 13, 2006 and December 20,
4 2007. (AR 241-51, 293-313). At several of these visits, Plaintiff
5 reported that he suffered from headaches and depression. (AR 244, 293,
6 298, 304). As a result, Plaintiff was prescribed Midrin and Ibuprofen
7 for his headaches, and Amitriptyline and Wellbutrin for his
8 depression. (AR 304-13). Thus, Plaintiff's treatment records support
9 Plaintiff's subjective complaints of headache pain and mental
10 impairment.

11
12 The ALJ specifically discounted Plaintiff's credibility because the
13 "intensity, persistence and limiting effects" of Plaintiff's symptoms
14 were not supported by the objective medical evidence. (AR 17). The
15 ALJ's decision lacks specificity, however, and it is unclear why the ALJ
16 found that the medical evidence did not support the degree of pain and
17 limitation that Plaintiff claimed. The record certainly reflects
18 considerable medical treatment of Plaintiff, including treatment with
19 prescription medications.

20
21 Defendant argues that the ALJ's credibility assessment was proper
22 for two additional reasons. (Defendant's Memorandum at 5-6). First,
23 Defendant argues the credibility assessment was proper because the ALJ
24 based his assessment on Plaintiff's failure to follow prescribed
25 treatment. (Id.). The ALJ based this assessment off of the Independent
26 Internal Medicine Evaluation of a consultative examiner, dated June 27,

1 2007, which showed that Plaintiff was not taking medication for his HIV,
2 and was only taking Wellbutrin. (AR 18, 262-67). However, the ALJ
3 failed to take into account that the same evaluation noted that his
4 other medications were "stopped secondary to side effects." (AR 262).

5
6 Second, Defendant argues the ALJ's assessment was proper because
7 Plaintiff often failed to report any symptoms to healthcare providers.
8 (Defendant's Memorandum at 6). Defendant points out that many of the
9 office visit notes documenting Plaintiff's medical treatment showed that
10 Plaintiff often did not specify any particular complaint, "which
11 contrasted with his claim of ongoing, disabling symptoms." (Id. at 6).
12 Defendant cites Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006),
13 in which the court found that the claimant's failure to report symptoms
14 during the relevant period was a clear and convincing reason to reject
15 his subjective complaints. (Id.). However, Greger is distinguishable
16 from this case, as the plaintiff in Greger "failed to report any"
17 symptoms consistent with his alleged impairment, did not participate in
18 any treatment for his alleged impairments, and admitted to participating
19 in physical activities inconsistent with his alleged disabilities.
20 Greger, 464 F.3d at 972 (emphasis added). In contrast, the record in
21 this case reflects Plaintiff reported symptoms of his alleged
22 impairments on many occasions, received treatment consistent with those
23 alleged impairments, and did not participate in any physical activities
24 inconsistent with his alleged disabilities. (AR 244, 248, 293, 304,
25 309, 389-412).

1 As there was no "affirmative evidence showing that [Plaintiff] was
2 malingering," and because the ALJ failed to offer a clear and convincing
3 reasons for rejecting Plaintiff's testimony, the ALJ's credibility
4 assessment was improper. See Valentine, 574 F.3d at 693 (citations
5 omitted). On remand, if the ALJ again rejects Plaintiff's credibility,
6 the ALJ should specifically identify what evidence undermines the
7 credibility of Plaintiff's specific complaints and how this evidence is
8 supported by the record.

9
10 **C. The ALJ Failed To Consider The Combined Effects Of Plaintiff's**
11 **Impairments When Determining Plaintiff's RFC**

12
13 Plaintiff argues that the ALJ did not adequately consider all of
14 Plaintiff's impairments when determining Plaintiff's RFC. (Plaintiff's
15 Memorandum at 10-14). Specifically, the Plaintiff asserts the ALJ
16 failed to incorporate the effect of Plaintiff's chronic headaches and
17 pain into his RFC assessment. (Id. at 11-12). The Court agrees.
18 Additionally, the ALJ failed to adequately incorporate the findings of
19 Dr. Steven J. Brawer's Psychological Evaluation, dated November 7, 2007,
20 into his RFC assessment.

21
22 "A claimant's residual functional capacity is what he can still do
23 despite his physical, mental, nonexertional, and other limitations."
24 Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989) (citing 20
25 C.F.R. § 404.1545). An RFC assessment requires the ALJ to consider a
26 claimant's impairments and any related symptoms that may "cause physical
27

1 and mental limitations that affect what [he] can do in a work setting."
2 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). In determining a claimant's
3 RFC, the ALJ considers all relevant evidence, including residual
4 functional capacity assessments made by consultative examiners, State
5 Agency physicians and medical experts. 20 C.F.R. §§ 404.1545(a)(3),
6 416.945(a)(3). See also, 20 C.F.R. §§ 404.1513(c), 416.913(c). If a
7 physician's RFC assessment is not contradicted by another physician, the
8 ALJ must provide clear and convincing reasons for rejecting that
9 opinion. Lester, 81 F.3d at 830 (as amended) ("[T]he Commissioner must
10 provide 'clear and convincing' reasons for rejecting the uncontradicted
11 opinion of an examining physician.").

12
13 "The ALJ is required to consider all of the limitations imposed by
14 the claimant's impairments, even those that are not severe. . . . Even
15 though a non-severe impairment[] standing alone may not significantly
16 limit an individual's ability to do basic work activities, it may - when
17 considered with limitations or restrictions due to other impairments -
18 be critical to the outcome of a claim." Carmickle v. Comm'r of the Soc.
19 Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting Social
20 Security Ruling 96-8p (1996))(internal quotation marks omitted)
21 (citations omitted).

22
23 Here, the functional limitations contained within the ALJ's RFC do
24 not adequately address all of Plaintiff's limitations. The ALJ's RFC
25 only contains restrictions on Plaintiff's ability to twist, stoop,
26 crouch, climb and be exposed to "humidity or respiratory irritants." (AR

1 16). Although these limitations are consistent with those impairments
2 the ALJ determined to be "severe," these limitations do not adequately
3 address the collective impact of Plaintiff's other limitations. In
4 particular, the RFC does not account for Plaintiff's symptoms of
5 headaches, fatigue, diarrhea, incontinence or depression. (AR 16). Nor
6 does the ALJ's RFC analysis reference pain, which is a central issue in
7 this case. The ALJ must "consider all the limitations imposed by the
8 [Plaintiff's] impairments, even those that are not severe." Carmickle,
9 533 F.3d at 1164.

10
11 Furthermore, the ALJ improperly rejected the opinion of Dr. Brawer,
12 an examining psychologist, who opined, "given [Plaintiff's] dysphoria
13 and somatic complaints, [Plaintiff] may have difficulty sustaining
14 motivation and stamina" and that, "[Plaintiff] may have mild limitations
15 in sustaining cooperative relationships with coworkers and supervisors"
16 due to his "dysphoria, irritability and preference for social
17 isolation." (AR 284). As discussed in the next section, the ALJ's
18 purported reason for disregarding Dr. Brawer's opinion is not supported
19 by the record. Accordingly, the ALJ's failure to incorporate Dr.
20 Brawer's opinion into the RFC was error.

21
22 Defendant argues that the ALJ properly rejected Plaintiff's
23 subjective complaints because the Plaintiff failed to "explain how
24 headaches treated with Ibuprofen, Mitrin, and chiropractics would have
25 prevented him from doing a wide range of sedentary work." (Defendant's
26 Memorandum at 8). Specifically, Defendant argues Plaintiff's

1 impairments were effectively controlled by medication, and were, thus,
2 rightly excluded from the ALJ's RFC assessment. (Id.). In support of
3 this proposition, Defendant cites Warre v. Comm'r of the Soc. Sec.
4 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) and Odle v. Heckler, 707
5 F.2d 439, 440 (9th Cir. 1983). (Id.). However, Warre and Odle are
6 distinguishable from the present case because both decisions were based
7 on the premise that the plaintiffs in those cases had effectively
8 controlled their impairments with medication. In contrast, the record
9 in the present case demonstrates Plaintiff's headaches were not
10 effectively controlled by medication. Rather, Plaintiff was forced to
11 seek chiropractic and other treatment to supplement the Ibuprofen and
12 Midrin prescribed to treat his chronic headaches. (AR 390-412).
13 Accordingly, the ALJ improperly disregarded Plaintiff's documented
14 limitations and failed to consider the collective impact of those
15 limitations on Plaintiff's RFC.

16
17 **D. The ALJ Erred By Finding That Plaintiff's Depression Was "Non-**
18 **Severe" At Step-Two**

19
20 In addition to the grounds alleged by the Plaintiff, the Court also
21 finds the ALJ erroneously found Plaintiff's depression "non-severe." As
22 discussed previously, the ALJ dismissed Dr. Brawer's opinion that
23 Plaintiff suffered from depression because the ALJ believed Dr. Brawer's
24 opinion was based primarily on Plaintiff's subjective reports of
25 "depressive symptoms and display of sad/somber affect." (AR 15). The
26 ALJ reasoned that Plaintiff's depression was not severe because the

1 problems with Plaintiff's credibility undermined Dr. Brawer's diagnosis
2 of depression. (Id.). This was an improper assessment of the entire
3 record concerning Plaintiff's depression. The record reflects that
4 Plaintiff reported symptoms of depression as early as June 13, 2006, (AR
5 241), received on-going treatment for depression, and eventually
6 received prescriptions for two antidepressants, Amitriptyline, and
7 Wellbutrin. (AR 304, 310). This evidence more than satisfies the
8 "severe impairment" test at step two.

9
10 By its own terms, the evaluation at step two is a de minimis test
11 intended to weed out the most minor of impairments. See Bowen v.
12 Yuckert, 482 U.S. 137, 153-154, 107 S. Ct. 2287, 96 L. Ed. 2d 119
13 (1987); Edlund v. Massanari, 253 F.3d 1152, 1158 (9th Cir. 2001)(stating
14 that the step two inquiry is a de minimis screening device to dispose of
15 groundless claims) (quoting Smolen, 80 F.3d at 1290). An impairment is
16 not severe only if the evidence establishes "a slight abnormality that
17 has no more than a minimal effect on an individuals ability to work."
18 Smolen, 80 F.3d at 1290 (internal quotations omitted) (internal
19 citations omitted).

20
21 The ALJ here applied more than a de minimis test when he determined
22 that Plaintiff's depression was not severe. The objective medical
23 findings in the present case indicate that Plaintiff suffered from a
24 severe mental health impairment. See 20 C.F.R. § 416.927(a)(2)
25 ("Medical opinions . . . that reflect judgments about the nature and
26 severity of [a plaintiff's] impairment(s), including symptoms, diagnosis

1 and prognosis," are evidence that a plaintiff may submit in support of
2 his disability claim). The ALJ, however, failed to follow the
3 Secretary's regulations for evaluating mental impairments. Accordingly,
4 the ALJ must re-do the analysis at step-two and properly apply the
5 agency's own regulations for evaluation of a severe mental impairment.

6
7 **VI.**

8 **CONCLUSION**

9
10 Consistent with the foregoing, IT IS ORDERED that Judgment be
11 entered REVERSING the decision of the Commissioner and REMANDING this
12 action for further proceedings consistent with this decision. The Clerk
13 of the Court shall serve copies of this Order and the Judgment on
14 counsel for both parties.

15
16 DATED: July 28, 2011

17
18 _____ /S/
19 SUZANNE H. SEGAL
20 UNITED STATES MAGISTRATE JUDGE
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