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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PETER AMSCHEL,
Plaintiff,
v.
MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.



NO. CV 10-7767 AGR

**MEMORANDUM OPINION AND
ORDER**

Peter Amschel filed this action on October 18, 2010. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on December 6 and 15, 2010. (Dkt. Nos. 6, 7.) On August 2, 2011, the parties filed a Joint Stipulation (“JS”) that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

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1 I.

2 **PROCEDURAL BACKGROUND**

3 On June 8, 2007, Amschel filed an application for disability insurance
4 benefits alleging a disability onset date of August 9, 2006. Administrative Record
5 (“AR”) 10. The application was denied initially and upon reconsideration. *Id.*
6 Amschel requested a hearing before an Administrative Law Judge (“ALJ”). *Id.*
7 On June 2, 2009, the ALJ conducted a hearing at which Amschel, a medical
8 expert and a vocational expert testified. AR 20-54. On August 26, 2009, the ALJ
9 issued a decision denying benefits. AR 10-19. On August 17, 2010, the Appeals
10 Council denied the request for review. AR 1-3. This action followed.

11 II.

12 **STANDARD OF REVIEW**

13 Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s
14 decision to deny benefits. The decision will be disturbed only if it is not supported
15 by substantial evidence, or if it is based upon the application of improper legal
16 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v.*
17 *Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

18 “Substantial evidence” means “more than a mere scintilla but less than a
19 preponderance – it is such relevant evidence that a reasonable mind might
20 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In
21 determining whether substantial evidence exists to support the Commissioner’s
22 decision, the court examines the administrative record as a whole, considering
23 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the
24 evidence is susceptible to more than one rational interpretation, the court must
25 defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

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1 III.

2 **DISCUSSION**

3 **A. Disability**

4 A claimant is disabled, “only if his physical or mental impairment or
5 impairments are of such severity that he is not only unable to do his previous
6 work but cannot, considering his age, education, and work experience, engage in
7 any other kind of substantial gainful work which exists in the national economy.”
8 *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333
9 (2003).

10 However, a finding of disabled does not automatically qualify a claimant for
11 disability benefits. *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007) (*citing*
12 *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001)). A claimant is not
13 eligible to receive disability benefits if drug or alcohol addiction is a “contributing
14 factor material to the Commissioner's determination that the individual is
15 disabled.” 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. § 404.1535(a). The claimant
16 bears the burden of proving that drug or alcohol addiction is not a contributing
17 factor material to his or her disability. *Parra*, 481 F.3d at 748. If the
18 Commissioner finds that the claimant is disabled and has medical evidence of the
19 claimant's drug addiction or alcoholism, “the ALJ must conduct a drug and
20 alcoholism analysis by determining which of the claimant's disabling limitations
21 would remain if the claimant stopped using drugs or alcohol.” *Id.*, 481 F.3d at
22 747; 20 C.F.R. § 404.1535(b)(2); *see also Bustamante*, 262 F.3d at 954; *Ball v.*
23 *Massanari*, 254 F.3d 817, 821 (9th Cir. 2001). If the remaining limitations would
24 still be disabling, then drug addiction or alcohol is not a contributing factor
25 material to his disability. *Parra*, 481 F.3d at 747. If the remaining limitations
26 would not be disabling, then the claimant's substance abuse is material and
27 benefits must be denied. *Id.*

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1 **B. The ALJ's Findings**

2 Amschel met the insured status requirements through June 30, 2011. AR
3 10, 12.

4 The ALJ found that Amschel has the following severe impairments: "an
5 organic affective disorder with major depressive symptoms; history of post-
6 traumatic stress disorder with some mild residual symptoms; a personality
7 disorder, not otherwise specified; and an active mixed substance abuse disorder."
8 AR 13. Amschel's impairments, including his substance abuse disorder, met
9 listing 12.04C2, a listing for affective disorders set forth in 20 C.F.R., Part 404,
10 Subpart P, Appendix 1. AR 14.

11 The ALJ also found that if Amschel stopped his substance use, his
12 impairments would not meet or equal any impairments in the listings. AR 16. He
13 would have the residual functional capacity to perform a full range of work at all
14 exertional levels but would be limited to performing no more than moderately
15 complex tasks. AR 16. The ALJ found that he would be able to perform his past
16 relevant work as an attorney. AR 18. The ALJ concluded that substance abuse
17 was a contributing factor material to the determination of disability.

18 **C. Opinions of Consulting Examiners**

19 Amschel contends the ALJ failed to provide specific and legitimate reasons
20 for rejecting the opinions of consulting examiners, Dr. Andonov and Dr. Adeyemo.

21 To reject an uncontroverted opinion of an examining physician, the
22 Commissioner must present "clear and convincing" reasons. *Lester v. Chater*, 81
23 F.3d 821, 830-31 (9th Cir. 1996). To may reject a controverted opinion of an
24 examining physician, he must provide "specific and legitimate reasons that are
25 supported by substantial evidence." *Id.*

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1 **1. Opinions of Dr. Andonov**

2 On August 31, 2007, Dr. Andonov performed a consultative psychological
3 examination of Amschel. AR 209-18. He found that Amschel suffered from major
4 depression and dyssomnia. AR 216. He also found that Amschel had suffered
5 from opiate dependency for three years which was “resolved at this time with total
6 abstinence and discontinuation of methadone maintenance in March 2007.” AR
7 216. He was not aware of any other current or recent substance use. AR 209-
8 18. He opined Amschel “is incapable of conducting either his [legal] practice or
9 engaging in any other gainful employment at the present time.” AR 217-18.

10 The ALJ considered the opinions of Dr. Andonov. AR 14-15. The ALJ
11 found that Dr. Andonov provided his opinions under the mistaken belief that
12 Amschel’s drug problem was in “total abstinence since March 2007.” AR 14. By
13 contrast, Amschel testified that he was currently using marijuana and
14 methamphetamines, and admitted to Dr. Adeyemo on October 11, 2007, that he
15 was currently using marijuana and intermittently using methamphetamines. AR
16 14-15, 26, 28, 220. He also noted that records from Loma Linda Veterans
17 Administration Medical Clinic (“LLVA”) showed continuous active use of
18 marijuana and methamphetamines. AR 14, 181, 194, 276, 282, 290, 296, 305,
19 307.¹ The ALJ concluded that Dr. Andonov’s opinions did not relate to Amschel’s
20 impairments and limitations if he stopped using drugs. AR 14-15.

21 Substantial evidence supports the ALJ’s findings that Amschel was
22 continuously using drugs and that Dr. Andonov opinions concerned Amschel’s

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24 ¹ Records from LLVA show the following: On May 16, 2008, Amschel
25 “states that he last used methamphetamines last [night]” (AR 276); on March 7,
26 2008, he “continues to abuse meth. Last used yesterday” (AR 282); on October
27 12, 2007, he “still uses amphetamine—last used yesterday” (AR 290); on August
28 24, 2007, he “uses methamphetamine on occasion—last use 2 days ago” (AR
296); on June 21, 2007, he was “using methamphetamine,” and “smoking one
joint of THC daily” (AR 305); on February 14, 2007, he admits “concurrent use of
methamphetamine” (AR 307); on October 18, 2006, he smoked “3 pipefuls of
crystal meth this past Saturday,” and “2-3 joints of marijuana [every] day” (AR
181); on April 17, 2006, he was using heroin, marijuana daily (AR 194).

1 limitations while he was using drugs. AR 14-15, 209-18, 181, 194, 276, 282, 290,
2 296, 305, 307. The ALJ properly considered Dr. Andonov's opinions and did not
3 err.

4 **2. Opinions of Dr. Adeyemo**

5 On October 11, 2007, Dr. Adeyemo performed a consultative psychiatric
6 evaluation of Amschel. AR 219-22. He found that Amschel suffered from mood
7 disorder, psychotic disorder, and multi-substance dependence (cannabinoid,
8 methamphetamines and cocaine) in early partial remission. He noted that "there
9 had been a significant decline in his level of functioning within the last 12
10 months." AR 222. He opined Amschel was able to understand, remember and
11 carry out simple instructions but his ability to carry out complex instructions was
12 significantly impaired; would "most likely have difficulties responding appropriately
13 to co-workers, supervisors and the public"; and would "have difficulties with work
14 related issues such as safety and attendance." AR 222.

15 Dr. Adeyemo opined Amschel would benefit from substance abuse
16 treatment and psychiatric treatment, and had a "fair prognosis if he is compliant
17 with recommended treatment given his limited psychiatric history, absence of
18 family history of mental illness, previous level of functioning as an attorney and
19 above average intelligence." AR 222.

20 The ALJ considered the opinions of Dr. Adeyemo. AR 15. Dr. Adeyemo's
21 opinions regarding Amschel's impairments and limitations while he was using
22 drugs was not inconsistent with the ALJ's finding that Amschel's impairments,
23 including drug abuse, was disabling.²

24 The ALJ's conclusions about Amschel's limitations if he stopped using
25 drugs was not inconsistent with the opinions of Dr. Adeyemo that he would

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28 ² The ALJ's finding that Amschel's impairments, including drug abuse, was
disabling was, if anything, more limiting than Dr. Adeyemo's opinions.

1 benefit from substance abuse treatment and had a “fair prognosis” if he were
2 compliant with treatment. AR 222. The ALJ did not err.

3 **D. Opinions of the Medical Expert**

4 Amschel contends the ALJ improperly relied on the opinion of medical
5 expert, Dr. Malancharuvil, that Amschel had no significant impairment absent his
6 drug abuse. JS 3-6.

7 Dr. Malancharuvil testified at Amschel’s administrative hearing. AR 29-37.
8 He opined that, with drug use, Amschel’s impairments met the listings. AR 29-30.
9 However, without drug use, Amschel would be able to do moderately complex
10 tasks and intellectual tasks of at least moderate complexity. AR 30.

11 The ALJ’s residual functional capacity findings are consistent with the
12 opinions of Dr. Malancharuvil. "The opinions of non-treating or non-examining
13 physicians may [] serve as substantial evidence when the opinions are consistent
14 with independent clinical findings or other evidence in the record." *Thomas v.*
15 *Barnhart*, 278 F.3d 948, 957 (9th Cir. 2002). Dr. Malancharuvil’s opinions are
16 consistent with the reports and opinions of Dr. Andonov and Dr. Adeyemo, and
17 the medical records. His opinions constitute substantial evidence on which the
18 ALJ properly could rely. *See Parra v. Astrue*, 481 F.3d at 750 (finding substantial
19 evidence to support finding of non-disability where medical expert testified that
20 abstinence generally ameliorates the effects of liver cirrhosis).³ The ALJ did not
21 err.

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26 ³ Amschel bore the burden of proof to establish that his drug abuse was
27 not a contributing factor material to his disability. *Parra*, 481 F.3d at 748. He
28 provided no evidence showing that his disabling limitations would remain if he
stopped using drugs. Inconclusive evidence as to the issue of materiality is
insufficient to satisfy the claimant's burden of proof. *Id.* at 749.

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IV.
ORDER

IT IS HEREBY ORDERED that the decision of the Commissioner is affirmed.

DATED: September 13, 2011



ALICIA G. ROSENBERG
United States Magistrate Judge