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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CHRISTINE McCARTHY,	)	No. CV 10-07773-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 rejecting the opinion of Plaintiff's treating psychiatrist;  
2 and

- 3 2. Whether the ALJ failed to provide clear and convincing  
4 reasons to reject Plaintiff's subjective complaints.

5 (JS at 3.)  
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 and the matter remanded.  
11

12 I

13 **THE ALJ ERRED AT STEP TWO IN FINDING THAT PLAINTIFF**

14 **DOES NOT SUFFER FROM A SEVERE MENTAL IMPAIRMENT**

15 In her first issue, Plaintiff asserts that the ALJ erred in  
16 rejecting the opinions of her treating psychiatrist, Dr. Alexanian, as  
17 to her mental functional restrictions, and instead erroneously  
18 accepted the opinion of a one-time consultative examiner and a non-  
19 examining State Agency physician.

20 At Step Two of the sequential evaluation process (see below), the  
21 ALJ found that although Plaintiff has a medically determinable  
22 impairment of mental depression, that impairment "does not provide any  
23 limitations on the claimant's daily living activities, social  
24 functioning, or ability to maintain concentration, persistence and  
25 pace. It has not caused any episodes of decompensation of extended  
26 duration. This is not a severe impairment." (AR 22.)

27 The ALJ acknowledged that Plaintiff had been treated by Dr.  
28 Alexanian of MCLA Psychiatric Medical Group from July 2008 into 2009,

1 but rejected Dr. Alexanian's conclusions as inconsistent with both his  
2 treatment notes and with Plaintiff's own function report, in which she  
3 described engaging in a wide range of activities of daily living  
4 ("ADL"). (AR 22-23.) The ALJ instead relied upon and accepted the  
5 results of a complete psychiatric examination ("CE") performed in  
6 January 2009 by Dr. Bagner (AR 356-359), and the supporting opinion of  
7 a non-examining State Agency physician, Dr. Brooks (AR 23-24), who  
8 found that Plaintiff's ADLs were not restricted, and that she had no  
9 difficulties in maintaining social functioning, or in the areas of  
10 concentration, persistence and pace.

11  
12 **A. Applicable Law.**

13 The Ninth Circuit has clearly articulated that an impairment or  
14 combination of impairments may be found to be not severe if the  
15 evidence establishes a slight abnormality that has no more than a  
16 minimal effect on an individual's ability to work. Smolen v. Chater,  
17 80 F.3d 1273, 1290 (9<sup>th</sup> Cir. 1996). Moreover, the Commissioner has  
18 stated in Social Security Ruling ("SSR") 85-28 (1985) that "[I]f an  
19 adjudicator is unable to determine clearly the effect of an impairment  
20 or combination of impairments on the individual's ability to do basic  
21 work activities, the sequential evaluation should not end with the  
22 non-severe evaluation step." Thus, it is well understood that step  
23 two is a "de minimis screening device [used] to dispose of groundless  
24 claims," Smolen, 80 F.3d at 1290. An ALJ may only find that a  
25 claimant lacks a medically severe impairment or combination of  
26 impairments when the conclusion to that effect is "clearly established  
27 by medical evidence." SSR 85-28. Further, while a claimant's  
28 statements about pain or other symptoms do not alone establish

1 disability, such evidence, in combination with medical signs and  
2 laboratory findings demonstrating a medical impairment, is clearly  
3 relevant. See 20 C.F.R. §416.929(a)(2010).

4  
5 **B. Analysis.**

6 On August 20, 2008, Plaintiff completed, in detail, a Function  
7 Report in which she identified her ADLs. (AR 169-176.) She described  
8 in great detail how she takes care of herself and her cat, and is able  
9 to prepare her own meals. If she is hungry, she will prepare several  
10 courses, including appetizers, salad, main meal and dessert. She  
11 prepares breakfast and lunch every day or sometimes just breakfast and  
12 dinner. This takes her a half hour to an hour. (AR 171.) As  
13 impressive as that might sound, she then indicates that she lives in  
14 an apartment without a kitchen. (Id.) One questions how she might be  
15 able to prepare three and four course meals without a kitchen.  
16 Similarly, some disturbing entries creep into her report. She  
17 indicates, for example, that, "I can get angry often and yell at  
18 people for no apparent reason." (AR 174.) She says that she does not  
19 handle stress very well, gets very upset, and often cries. (AR 175.)  
20 She admits to being "delusional" regarding her apartment, stating that  
21 she believes that there are people hiding in the walls and her closet  
22 or under the floor, like a trap door with secret passages. (Id.)

23 These signposts of mental illness would not appear to have been  
24 erected by Plaintiff for the purpose of getting Social Security  
25 benefits. Dr. Alexanian, who treated Plaintiff for quite a lengthy  
26 period of time, in July 2008 diagnosed that she was suffering from  
27 Major Depressive Disorder, Severe, with psychotic features and Post  
28 Traumatic Stress Disorder. (AR 299.) In November 2008, Dr. Alexanian

1 completed a mental residual functional capacity ("RFC") assessment of  
2 Plaintiff, in which he made the same diagnosis.

3 In a Mental Disorder Questionnaire Form (AR 323-327), Dr.  
4 Alexanian noted that Plaintiff was very depressed and tearful; that  
5 she had anxiety, restlessness and difficulty in relaxing, and, that  
6 she had poor memory and difficulty concentrating. Dr. Alexanian also  
7 noted that she had auditory delusions, and believed that people were  
8 monitoring the doctor and tapping his phone. (AR 325.) Plaintiff was  
9 unable to use public transportation because of her fears, and she was  
10 socially isolated with no friends or social life.

11 Dr. Alexanian assessed a General Assessment of Functioning  
12 ("GAF") score in the range of 40 to 45, on a consistent basis. As  
13 this Court has noted in other decisions, the GAF score is intended to  
14 reflect a person's overall level of functioning at or about the time  
15 of the examination, not for a period of at least 12 consecutive  
16 months, which is required for a finding of impairment or disability.  
17 (See 20 C.F.R. §§ 416.905, 416.920(c) (2006).) GAF scores are  
18 intended to be used for clinical diagnosis and treatment and therefore  
19 do not directly correlate to the severity assessment set forth in  
20 Social Security regulations. Here, the ALJ failed to discuss them at  
21 all, and certainly did not rebut Dr. Alexanian's conclusion that  
22 Plaintiff's GAF scores are consistent with his diagnostic impressions.  
23 The Court's primary task here is to determine whether the ALJ was  
24 justified in rejecting Dr. Alexanian's opinion because it either was  
25 not supported by objective evidence, or was inconsistent with his  
26 treatment notes. On that score, the ALJ's decision falls short. The  
27 Court finds that Dr. Alexanian's conclusions are supported by his  
28 treatment notes, and they certainly appear to indicate a level of

1 impairment which qualifies as severe at Step Two of the sequential  
2 evaluation process.

3 The Court need not devote substantial attention to the  
4 consultative examination of Dr. Bagner. The issue here is not,  
5 strictly speaking, whether Dr. Bagner's conclusions should be accepted  
6 over those of Dr. Alexanian, because the Court has already determined  
7 that Dr. Alexanian's opinion was rejected without sufficient basis in  
8 the decision. But the Court does note that Dr. Bagner reported that  
9 Plaintiff would have mild to moderate limitations handling stress. In  
10 and of itself, this would appear to support a finding of severe mental  
11 impairment, since the regulations provide that where an impairment  
12 only causes mild limitations in defined areas of Plaintiff's mental  
13 functioning, the mental impairment will not be considered severe. (See  
14 20 C.F.R. §§ 404.1520a(d)(1) and 416.920a(d)(1).) While a finding  
15 that a claimant has a moderate limitation in a relevant area of mental  
16 functioning may not mandate a conclusion that a severe mental  
17 impairment exists, in this case such evidence would seem to  
18 corroborate the conclusions of the treating psychiatrist more than  
19 contradict them.

20 The Court need not devote substantial attention to Plaintiff's  
21 second issue, which concerns whether or not the ALJ erred in rejecting  
22 her subjective complaints. The ALJ relied upon asserted  
23 contradictions between Plaintiff's testimony at the hearing, and self-  
24 reporting in her Function Report. As the Court has already noted in  
25 its discussion of the first issue, there appear to be substantial  
26 questions about the accuracy of Plaintiff's self-reporting. These  
27 questions concern certain delusional statements (which were  
28 corroborated by her treating psychiatrist), such as indications that

