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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 ANGEL AGUIRRE,) No. CV 10-09831-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 MICHAEL J. ASTRUE,)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
22 _____)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the Administrative
24 Record ("AR") before the Commissioner. The parties have filed the
25 Joint Stipulation ("JS"), and the Commissioner has filed the certified
26 AR.

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") properly

1 rejected the opinion of the long time treating mental health
2 professionals and portions of the consultative examiner's
3 opinion.

4 (JS at 3.)
5

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

11 I

12 **THE ALJ'S REJECTION OF THE OPINION OF PLAINTIFF'S TREATING**

13 **PSYCHIATRIST CANNOT BE SUSTAINED BASED UPON**

14 **THE REASONS OFFERED IN THE DECISION**

15 As set forth in the parties' "Summary of the Case," Plaintiff's
16 application for Disability and SSI was initially rejected following an
17 August 15, 2007 hearing before an ALJ. (AR 490-504.) The unfavorable
18 decision finding Plaintiff not be disabled was issued on August 23,
19 2007. (AR 28-37.) Ultimately, the Appeals Council issued a remand
20 order. (AR 52-54.) This resulted in a second hearing for a new ALJ
21 (AR 505-526), and an unfavorable decision by that ALJ (AR 14-20).

22 The order of the Appeals Council did not require further
23 evaluation of Plaintiff's mental health issues, and consequently, in
24 the second decision, the ALJ adopted the rationale from the prior
25 decision, and thus provided no further discussion as to Plaintiff's
26 mental health. (See AR at 18.) Consequently, the Court will review
27 the first decision to determine whether the ALJ adequately assessed
28 the mental health evidence. For the reasons to be set forth, the

1 Court concluded that he did not.

2 In the first decision, the ALJ reviewed Plaintiff's mental health
3 history, noting that Plaintiff had received a consultative
4 psychological examination ("CE") from Dr. Brawer on July 19, 2006. (AR
5 35, 115-121.) The ALJ also briefly summarized a Mental Impairment
6 Questionnaire of July 10, 2007, which was described as a "form ...
7 completed by the nurse and signed by the psychiatrist." (AR 35, 392-
8 397.) Finally, the ALJ noted that Dr. Dudley, a State Agency
9 psychiatrist, had reviewed the evidence and come up with an analysis
10 of Plaintiff's mental functional abilities. The ALJ concluded that he
11 would "give[s] weight to these opinions as they are supported by the
12 objective medical evidence of record (SSR 96-6p)." (AR 36.) Based on
13 the context of the decision, the Court perceives that the ALJ
14 determined to give weight to the opinions of the CE and of the State
15 Agency psychiatrist, and to essentially reject the opinion of the
16 treating psychiatrist, Dr. Baig.

17 The Court must discern from the ALJ's decision why he determined
18 to reject the opinion of Dr. Baig. The first apparent reason is that
19 the ALJ perceived that the Mental Impairment Questionnaire was
20 completed by the nurse and only signed by the psychiatrist. Indeed,
21 the Commissioner amplifies on this point in his portion of the JS in
22 arguing that the Questionnaire is essentially the opinion of the
23 nurse, and not that of the psychiatrist. As such, the Commissioner
24 argues that the ALJ was entitled to give it less weight. The Court
25 will address this concern, infra. In addition, it appears that the
26 ALJ perceived that the patient's "case manager," who was apparently
27 the same person as the nurse who was involved in the Questionnaire,
28 was an advocate for Plaintiff in his Social Security case because the

1 ALJ read the record as indicating, in his words, that, "The case
2 manager visited the office of the claimant's attorney to 'strategize'
3 for the claimant's hearing [citing AR at 347]." (AR 35.)

4 The ALJ reported that there were differences between the
5 conclusions of the treating psychiatrist in the Questionnaire and that
6 of the CE on issues such as Plaintiff's memory and concentration. (AR
7 36.)

8 Finally, the ALJ provided an overall basis for rejecting Dr.
9 Haig's opinion because it was "not supported by, and is contradicted
10 by, the objective medical evidence of record, including the mental
11 health treatment notes." (AR 36.) No discussion whatsoever is
12 provided, however, as to what those contradictions are, and thus, the
13 Court is left with a bare conclusion which, as will be discussed,
14 provides no basis for review.

15 First, the Commissioner is incorrect in citing 20 C.F.R. §§
16 404.1513 and 416.913 for the proposition that because a nurse or case
17 manager was involved in preparing an evaluation signed by a
18 psychiatrist, that evaluation is entitled to less weight, because it
19 is not, effectively, the evaluation of the psychiatrist, in this case,
20 the treating psychiatrist, Dr. Baig. These regulations do not stand
21 for that proposition, and moreover, there is no reported case of this
22 Court is aware which would support that claim. As such, the opinion
23 set forth in the Questionnaire must be viewed as those of the treating
24 psychiatrist, Dr. Baig.

25 The ALJ, and also the Commissioner, seem to believe that Dr.
26 Baig's opinion should also be depreciated because the case manager was
27 biased, and acting as an advocate for Plaintiff. To support this, the
28 ALJ and the Commissioner both point to Progress Notes of July 3, 2007,

1 apparently prepared by the case manager, which reference the upcoming
2 hearing on August 15, 2007 before the ALJ. Indeed, as noted, the ALJ
3 put quotes around the word "strategize," apparently believing that
4 this word was contained in the Progress Notes. It is not. Moreover,
5 a fair reading of the Progress Notes simply indicates that the case
6 manager wanted to make sure that all relevant records needed by
7 Plaintiff's attorney would be provided for use at the hearing.
8 Certainly, neither the ALJ or the Commissioner would dispute that full
9 and complete records should be provided so that a correct and adequate
10 evaluation can be made of a Plaintiff's mental health condition.
11 Moreover, in the context of the Progress Notes, the Court finds
12 absolutely nothing wrong with the fact that the case manager helped to
13 prepare Plaintiff to appear at a hearing. This is especially true in
14 a case such as this, where even the ALJ found that Plaintiff suffers
15 from severe impairments of depression/anxiety (AR 30), and has
16 moderate difficulties with concentration, persistence or pace. (AR
17 31.) It cannot be disputed that even a person without depression or
18 anxiety may experience such things as increased anxiety when preparing
19 for a stressful hearing. Thus, as a part of Plaintiff's mental health
20 treatment, the Court cannot fault his treating professionals with
21 preparing him to be able to undergo the stress of an administrative
22 hearing. In no manner do the records, however, indicate that the case
23 manager was biased because she might have been acting as an advocate
24 for Plaintiff. Helping an individual to mentally prepare for the
25 stress of the hearing, and be able to adequately testify and describe
26 their condition, does not constitute the type of advocacy which would
27 render that mental health professional biased.

28 Turning to other issues, the ALJ's reliance on the State Agency

1 psychiatrist cannot be sustained, because there is an indication in
2 the record that this psychiatrist did not examine any of Plaintiff's
3 treatment records. ("There are no psychiatric treatment notes for
4 review, so a CE was purchased for this case." [AR 114.]) Further,
5 while seemingly aware of the existence of treating psychiatrist, the
6 State Agency psychiatrist did not obtain, or perhaps was unable to
7 obtain, further information. ("The claimant is prescribed psychotropic
8 medications by his [sic] current treating source who has not
9 responded." [Id.])

10 Thus, what is left is the ALJ's statement that the treating
11 psychiatrist's assessment is not supported by and is contradicted by
12 "the objective medical evidence of record, including the mental health
13 treatment notes." This type of a generic and conclusory evaluation
14 does not even approach the "specific, legitimate reasons" which must
15 provided in an ALJ's decision so that the Court can conduct an
16 adequate review. See Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.
17 1995). The Commissioner's multi-page explanation of what the ALJ
18 might have meant by this conclusory statement in his decision is
19 simply a post-hoc evaluation which this Court will not give credence
20 to, because it is the decision which must be reviewed, not the
21 Commissioner's interpretation of it.

22 For the foregoing reasons, the decision of the Commissioner is
23 reversed, and this matter will be remanded for further hearing
24 consistent with this Memorandum Opinion.

25 **IT IS SO ORDERED.**

26
27 DATED: December 1, 2011

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE