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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 SHEILA HURT,) No. CV 11-00001-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 record before
24 the Commissioner. The parties have filed the Joint Stipulation
25 ("JS"), and the Commissioner has filed the certified Administrative
26 Record ("AR").

27 Plaintiff raises the following issues:

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

1 considered the consultative examiner's opinion;

2 2. Whether the ALJ properly assessed Plaintiff's residual
3 functional capacity; and

4 3. Whether the ALJ posed an incomplete hypothetical question to
5 the vocational expert.

6 (JS at 3.)

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8 This Memorandum Opinion will constitute the Court's findings of
9 fact and conclusions of law. After reviewing the matter, the Court
10 concludes that the decision of the Commissioner must be affirmed.

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12 I

13 **THE ALJ PROPERLY CONSIDERED PLAINTIFF'S**

14 **MENTAL RESIDUAL FUNCTIONAL CAPACITY AS OF 1982**

15 Plaintiff identifies three issues in this litigation, all of
16 which are interconnected. In her first issue, she contests the ALJ's
17 evaluation of the Complete Psychiatric Evaluation ("CE") of Plaintiff
18 performed on January 14, 2009 by psychiatrist Dr. Bagner. (See Report
19 at AR 529-535.) In her second issue, she asserts that Plaintiff's
20 mental residual functional capacity ("MFRC") was not properly
21 evaluated because the ALJ did not properly factor in Dr. Bagner's
22 evaluation. In the third issue, she asserts that the ALJ posed an
23 incomplete hypothetical question of the vocational expert ("VE")
24 because the hypothetical omitted Dr. Bagner's limitations.

25 Because of their interrelationship, the Court will address these
26 issues together.

27 Dr. Bagner performed a psychiatric CE on January 14, 2009, and
28 determined Plaintiff's mental functional limitations, including an

1 assessment that she would have moderate to marked limitations
2 completing a normal work week without interruption. (See AR at 532.)
3 Dr. Bagner concluded that Plaintiff is moderately to markedly limited
4 in her ability to respond appropriately to usual work situations and
5 to changes in a routine work setting. (AR 534.)

6 Plaintiff's matter had been previously heard by the ALJ, who
7 issued an unfavorable decision on April 15, 2008. Plaintiff was
8 granted review by the Appeals Council, which sent the matter back to
9 the ALJ, based on the fact that diagnostic and treatment records for
10 Plaintiff which went back to 1984 had been lost. Thus, the Appeals
11 Council ordered that,

12 "In light of this evidence and the fact that the
13 medical record was lost, ... a medical expert is necessary
14 to assist the Administrative Law Judge in evaluating the
15 severity of claimant's mental impairments during the remote
16 relevant period."

17 (AR 37.)
18

19 Consequently, the ALJ was ordered to obtain evidence from a
20 medical expert regarding the nature and severity of Plaintiff's mental
21 impairments. (AR 38.) The ALJ did this by obtaining a written
22 evaluation from Dr. Glassmire. (AR 536-537.) This evaluation is
23 incorporated into the ALJ's decision. (AR 14-23.) The ALJ gave "great
24 consideration" to the mental functional limitations described by Dr.
25 Bagner. But the ALJ noted that Dr. Glassmire had rendered an opinion
26 as to Plaintiff's mental functional limitations as of 1982, while Dr.

1 Bagner had not done this. (AR 20.)¹

2 With regard to the continuous nature of her asserted mental
3 disability, the ALJ did note that Plaintiff had engaged in substantial
4 gainful activity in 1985, when she earned over \$6,000 working as a
5 certified nursing assistant in a nursing home. (AR 17, 90, 541-542.)
6 But even if the issue of continuous disability was not thereby
7 resolved, the principal problem with Plaintiff's argument is that Dr.
8 Bagner did not render a longitudinal opinion, but only one that
9 assessed Plaintiff's mental functional condition as of the time of his
10 examination in 2009. To the contrary, Dr. Glassmire did review
11 relevant mental records going back to 1985, and his written report
12 indicated that Plaintiff scored in the moderate level in the areas of
13 social functioning, concentration, persistence and pace, and had no
14 episodes of decompensation. Further, the records indicate a worsening
15 of symptoms beginning in 1985, and in fact, Dr. Glassmire indicated
16 that her mental condition has progressively worsened over time, and
17 that her functioning was higher in 1982 than it is today. (AR 536.)
18 All of these conclusions were fully considered by the ALJ in his
19 decision. Plaintiff has provided no answer to the question of whether
20 there is any basis in the record to conclude that Dr. Bagner's
21 assessment of Plaintiff in 2009 would be at all consistent with her
22 mental condition in 1982, or thereafter. In fact, the only evidence

23
24 ¹ The importance of the 1982 date is that this case concerns
25 whether Plaintiff is entitled to disabled adult child's benefits based
26 her father's earnings record. The regulations (see 20 C.F.R. §
27 404.350(a)) require, among other things, that a claimant is entitled
28 to child's benefits based on the earnings record of an insured person
if the claimant became disabled before the age of 22. Therefore, as
the ALJ observed, Plaintiff had the burden to demonstrate her mental
disability as of 1982, when she became 22, and continuously
thereafter. See Smolen v. Chater, 80 F.3d 1273, 1280 (9th Cir. 1996).

1 in the record from a mental health professional concerning Plaintiff's
2 mental functional level in 1982 comes from Dr. Glassmire. In
3 contrast, there is nothing in Dr. Bagner's report which can even
4 support reasonable inferences as to Plaintiff's mental condition in
5 the past. Clearly, if this case concerned only Plaintiff's present
6 mental functional limitations, Dr. Bagner's report would be of more
7 significance.

8 For these reasons, Plaintiff's argument as to each of the three
9 issues must fail. The ALJ properly complied with the order of the
10 Appeals Council by obtaining the opinion of a medical expert who could
11 provide evidence concerning Plaintiff's mental functional capacity as
12 of the relevant start date. Thus, the Court must affirm the ALJ's
13 decision.

14 The decision of the ALJ will be affirmed. The Complaint will be
15 dismissed with prejudice.

16 **IT IS SO ORDERED.**

17
18 DATED: October 13, 2011

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE