UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROSE WILLIAMS, Plaintiff, v. MICHAEL J. ASTRUE, Commissioner, Social Security Administration, Defendant.	No. CV 11-2634 CW DECISION AND ORDER

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner's denial of supplemental security income ("SSI") benefits. For the reasons stated below, this matter should be reversed and remanded for further administrative proceedings consistent with this decision and order.

I. BACKGROUND

Plaintiff Rose Anne Williams was born on May 7, 1965, and was forty-four years old at the time of her administrative hearing. [Administrative Record ("AR") 64, 165.] She completed tenth grade, and

has no significant past work experience.[AR 179-188.]

Plaintiff alleged disability due to: stomach cramps, diarrhea, fatigue, pain, nausea, and depression. [See AR 184.]

II. PROCEEDINGS IN THIS COURT

On April 6, 2011, Plaintiff's complaint was filed in this court. On October 28, 2011, Defendant filed an answer and the certified administrative record. On January 2, 2012, the parties filed their Joint Stipulation ("JS") identifying matters not in dispute, issues in dispute, the positions of the parties, and the relief sought by each party. This matter has been taken under submission without oral argument.

III. PRIOR ADMINISTRATIVE PROCEEDINGS

On August 10, 2007, Plaintiff filed an application for supplemental security income alleging disability beginning October 29, 2001.[1] [AR 64, 165-66.] After the application was denied initially, Plaintiff requested an administrative hearing, which was held on October 14, 2009, before Administrative Law Judge ("ALJ") Robert S. Eisman. [AR 75-131.] Plaintiff appeared without counsel, and testimony was taken from Plaintiff and vocational expect ("VE") Randi Langford-Hetrick. [Id.] The ALJ denied benefits in an administrative decision dated October 20, 2009. [AR 64-72.] When the Appeals Council denied review on January 28, 2011, the ALJ's decision became the Commissioner's final decision. [AR 1.] This action followed.

[1] Plaintiff subsequently filed a second application for benefits and was found to be disabled beginning December 17, 2009. [AR 2.] This action involves only the first application for benefits and addresses only whether Plaintiff was disabled prior to December 17, 2009.

IV. STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The Commissioner's (or ALJ's) findings and decision should be upheld if they are free of legal error and supported by substantial evidence. However, if the court determines that a finding is based on legal error or is not supported by substantial evidence in the record, the court may reject the finding and set aside the decision to deny benefits. See Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v. Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

"Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." Id. To determine whether substantial evidence supports a finding, a court must review the administrative record as a whole, "weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." Id. "If the evidence can reasonably support either affirming or reversing," the reviewing court "may not substitute its judgment" for that of the Commissioner. Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

V. DISCUSSION

A. THE FIVE-STEP EVALUATION

To be eligible for disability benefits a claimant must demonstrate a medically determinable impairment which prevents the

claimant from engaging in substantial gainful activity and which is expected to result in death or to last for a continuous period of at least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at 721; 42 U.S.C. § 423(d)(1)(A).

Disability claims are evaluated using a five-step test:

> Step one: Is the claimant engaging in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.
>
> Step two: Does the claimant have a "severe" impairment? If so, proceed to step three. If not, then a finding of not disabled is appropriate.
>
> Step three: Does the claimant's impairment or combination of impairments meet or equal an impairment listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If so, the claimant is automatically determined disabled. If not, proceed to step four.
>
> Step four: Is the claimant capable of performing his past work? If so, the claimant is not disabled. If not, proceed to step five.
>
> Step five: Does the claimant have the residual functional capacity to perform any other work? If so, the claimant is not disabled. If not, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or "not disabled" at any step, there is no need to complete further steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

Claimants have the burden of proof at steps one through four, subject to the presumption that Social Security hearings are non-adversarial, and to the Commissioner's affirmative duty to assist claimants in fully developing the record even if they are represented by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at 1288. If this burden is met, a prima facie case of disability is made, and the burden shifts to the Commissioner (at step five) to prove that, considering residual functional capacity ("RFC")[2], age, education, and work experience, a claimant can perform other work which is available in significant numbers. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE

Here, the ALJ found Plaintiff had not engaged in substantial gainful activity since August 10, 2007, the application date (step one); that she has the "severe" impairment(s) of depression, anxiety, HIV/AIDS, and a history of polysubstance abuse/addiction (step two); and that Plaintiff did not have an impairment or combination of impairments that met or equaled a "listing" (step three). [AR 66.] The ALJ found that Plaintiff retains the RFC to:

> [P]erform light work as defined in 20 CFR 416.967(b), in that she can exert up to 20 pounds of force occasionally and/or up to 10 pounds of force frequently and/or a

---

[2] Residual functional capacity measures what a claimant can still do despite existing "exertional" (strength-related) and "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to work without directly limiting strength, and include mental, sensory, postural, manipulative, and environmental limitations. Penny v. Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155 n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler, 765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

> negligible amount of force constantly to move objects. A job should be rated as light work when it involves walking or standing to a significant degree or requires sitting most of the time but entails pushing or pulling of arm or leg controls and/or requires working at a production rate pace entailing the constant pushing and pulling of materials even though the weight of those materials is negligible. The claimant can stand and walk up to a total of 6 hours in an 8-hour workday, with normal breaks. She can perform work that does not require climbing ladders, ropes, or scaffolds, and no more than occasional climbing of ramps or stairs, stooping, kneeling, crouching and crawling. The claimant can perform work that does not involve any exposure to hazardous machinery, unprotected heights, or other high risk, hazardous or unsafe conditions. She can perform work that is limited to simple, routine, and repetitive tasks in a low stress environment, which is defined as work requiring no (i.e. rare) decision making or judgment, no changes in work setting, and not requiring any usual, very fast pace or production rate requirements. The claimant can perform work that does not require interaction with the public or coworkers and does not require the performance of tandem tasks with coworkers.

[AR 67-68.] He found that Plaintiff has no past relevant work (step four). [AR 72.] He found, however, that given Plaintiff's age (as a "younger individual"), "limited education," lack of past work experience, and RFC, Plaintiff could perform other work existing in significant numbers in the national economy (step five). [AR 71.]

Accordingly, Plaintiff was found not "disabled" as defined by the Social Security Act. [AR 72.]

C. ISSUES IN DISPUTE

The Joint Stipulation identifies as disputed issues whether the ALJ:

1. Should have afforded heavier weight to the opinions of the treating mental health professionals [JS at 4-14];
2. Provided clear and convincing reasons to reject Plaintiff's subjective statements [JS at 15-22.]

Issue one is dispositive.

D. ISSUE ONE: TREATING MENTAL HEALTH PROFESSIONALS

The crux of issue one is whether the Commissioner employed proper legal standards in rejecting the opinion of treating psychiatrist Christine Schneider, M.D.[3], who, after visits with Plaintiff in September and October 2009, diagnosed her with Chronic Paranoid Schizophrenia and possible Shizoaffective Disorder, and opined that Plaintiff was unable to work for at least one year due to this mental illness. [See AR 374.]

The relevant background is as follows. In the October 20, 2009

---

[3] A physician will be considered a treating physician when, as here, that physician sees plaintiff twice within a 14-month period preceding the hearing, where plaintiff requested that the physician treat plaintiff, and the physician is the one with the most extensive contact with plaintiff. Ghokassian v. Shalala, 41 F.3d 1300, 1303 (9th Cir. 1994). Similarly, a physician may be considered a treating physician pursuant to 20 C.F.R. § 404.1502 where, as appears also to have been the case here, the physician is responsible for prescribing and monitoring medication and treatment but leaves most of the direct patient contact to others within a treatment team. Benton v. Barnhart, 331 F.3d 1030, 1035 (9th Cir. 2003) (finding psychiatrist may be considered a treating physician pursuant to 20 C.F.R. § 404.1502 where the psychiatrist is responsible for prescribing and monitoring medication but leaves most of the direct patient contact to others within the treatment team).

hearing decision, the ALJ rejected Dr. Schneider's diagnosis and opinion because: the determination of disability is reserved for the Commissioner; the diagnosis of schizophrenia was not mentioned in any prior treatment record; she treated plaintiff only twice; and her diagnosis was contradicted by her treatment notes. [AR 70.] Plaintiff subsequently submitted records to the Appeals Council establishing that in March 2010 she was admitted for six-weeks of in-patient treatment for schizophrenia. [AR 10.] The Appeals Council considered the new evidence of Plaintiff's schizophrenia and found that it did not alter the ultimate conclusion of non-disability because the treatment post-dated the hearing decision by approximately five months. [AR 2.]

In reviewing the denial of benefits here, the court considers the rulings of both the ALJ and the Appeals Council, including the new evidence, which was incorporated into the Administrative record and considered by the Appeals Council. Ramirez v. Shalala, 8 F.3d 1449, 1451-52 (9th Cir. 1993)(citations omitted). A review of the record as a whole, including this new evidence, establishes the Commissioner did not articulate legally sufficient reasons for rejecting Dr. Shneider's opinion.

If the opinion of a treating physician, such as that of Dr. Schneider, is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence in [the] case record, [it will be given] controlling weight." 20 C.F.R. § 416.927(d)(2). If the physician's opinion is not given "controlling weight," it is because it is not "well-supported" or because it is inconsistent with other substantial evidence in the record. See Orn v. Astrue, 495 F.3d 625, 631 (9th

Cir. 2007). Here, no evidence in the record contradicts Dr. Schneider's opinion. The mere absence of corroboration for a treating or examining physician's opinion, the most that existed in this case (and one of the few reasons cited by the ALJ for rejecting Dr. Schneider's opinion) does not constitute a "conflict" with that opinion. Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006). Thus, the Commissioner was required to articulate clear and convincing reasons to reject Dr. Schneider's opinion.

No such clear and convincing reasons are present.

First, it is well-settled, and should be self-evident, that the diagnosis of a condition may properly occur after the onset of that condition; the Appeals Council is thus not entitled to outright reject a medical opinion on that basis. Lester v. Chater, 81 F.3d 821, 832 n.9 (9th Cir. 1995); see also Smith v. Bowen, 849 F.2d 1222, 1225 (9th Cir. 1988)(citation omitted)(holding that the mere fact that a medical report was issued retrospectively is not a basis to disregard that report). Thus, the Appeals Council materially erred in declining to credit the evidence of Plaintiff's March 2010 treatment. It strains reason to suggest that Plaintiff's schizophrenia might have suddenly appeared in March 2010, the month that in-patient treatment was found to be necessary. To the contrary, the fact that another psychiatrist ordered Plaintiff to obtain in-patient treatment shortly after Dr. Schneider issued her diagnosis strongly supports Dr. Schneider's opinion that Plaintiff was suffering from listing-level schizophrenia by no later than October 9, 2009. And, thus, contrary to the Appeals Council's conclusion that the new evidence was "irrelevant" to the non-disability finding, it directly contradicts the ALJ's conclusion that Dr. Schneider's opinion was "unsupported" and "inconsistent" with

the mental health treatment record as a whole. Thus, the rejection of Dr. Schneider's opinion is not based upon the requisite "clear and convincing" quantum of evidence required to reject the opinion of a treating physician. The proper course of action in such a case would have been for the Appeals Council to remand to the ALJ for further review. See Booz v. Sec'y of Health and Human Servs., 734 F.2d 1378, 1380 (9th Cir. 1984). Because the Appeals Council failed to do so, the denial of benefits is materially in error.

Because the Appeals Council did not properly consider the new evidence before it, and the ALJ's rejection of Dr. Schneider's opinion is not based upon clear and convincing record evidence, reversal is required.

E. REMAND FOR FURTHER PROCEEDINGS

The decision whether to remand for further proceedings is within the discretion of the district court. Harman v. Apfel, 211 F.3d 1172, 1175-1178 (9th Cir. 2000). Where no useful purpose would be served by further proceedings, or where the record has been fully developed, it is appropriate to exercise this discretion to direct an immediate award of benefits. Harman, 211 F.3d at 1179 (decision whether to remand for further proceedings turns upon their likely utility). However, where there are outstanding issues that must be resolved before a determination can be made, and it is not clear from the record that the ALJ would be required to find the claimant disabled if all the evidence were properly evaluated, remand is appropriate. Id.

Here, a remand for further administrative proceedings, including reevaluation of Plaintiff's credibility in light of the record as a

whole, is appropriate.[4] See e.g., Strauss v. Comm'r of Soc. Sec. Admin., 635 F.3d 1135, 1136 (9th Cir. 2011) (remand for automatic payment of benefits inappropriate unless evidence unequivocally establishes disability). Because the evaluation of Dr. Schneider's opinion was materially in error, this evidence shall be credited as true. Vasquez v. Astrue, 572 F.3d 586, 594 (9th Cir. 2009). When crediting this evidence as true, and considering it in light of the record as a whole, the evidence strongly suggests Plaintiff suffered from listing-level schizophrenia for some period of time prior to October 2009. The Listing of Impairments for schizoprenic, paranoid or other psychotic disorders requires a finding of disability when the requirements within the following categories A and B, both, are satisfied, or when the requirements in category C are satisfied:

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

a. Blunt affect; or

b. Flat affect; or

c. Inappropriate affect; or

4. Emotional withdrawal and/or isolation;

And

[4] The ALJ's credibility determination is not materially in error such that a remand for automatic payment of benefits would be merited on that basis alone.

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

Or

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

See 20 C.F.R. Pt. 404, Subpt. P, App. 1, Listing 12.03.

The record contains evidence showing that Plaintiff suffered from depression and anxiety since at least 2007, that she reported

suffering from hallucinations and hearing voices by at least 2007, that she suffered from years of drug addiction, that she was often homeless, that she was able to function best inside a supportive living arrangement, and that she did not ever engage in regular work activity. [AR 246, 255, 377.] Furthermore, based upon this and other evidence, the ALJ found that Plaintiff's mental functioning was limited to:

> [S]imple, routine, and repetitive tasks in a low stress environment, which is defined as work requiring no (i.e., rare) decision making or judgment, no change in work setting, and not requiring any usual, very fast pace or production rate requirements. [Plaintiff] can perform work that does not require interaction with the public or coworkers and does not require tandem tasks with coworkers.

[AR 68.]

Crediting Dr. Schneider's opinion as true, and given this other evidence and the ALJ's findings, the question remaining for the Commissioner on remand is when Plaintiff's schizophrenia developed to such a degree that it was disabling, as that term is defined in the Social Security Act. In such a circumstance, the proper course of action is for the ALJ to call a medical expert to aid in the determination of the actual onset date of Plaintiff's condition and the nature of the limitations it might impose. See Armstrong v. Commissioner of Social Security Administration, 160 F.3d 587, 589-90 (9th Cir. 1998). In Armstrong, the court pointed to record evidence suggesting that the plaintiff suffered from mental functional limitations long before he was diagnosed with depression. Noting that the depression could thus have been disabling "long before" any

diagnosis was made, the court held that, because "[e]xactly when" that happened was "unclear," the ALJ "was required to call a medical expert to help him clarify the dates and extent of the plaintiff's disability. Id. This reasoning applies with equal force in this situation, because the record strongly suggests limitations consistent with schizophrenia long predating Plaintiff's diagnosis.

VI. ORDERS

Accordingly, **IT IS ORDERED** that:

1. The decision of the Commissioner is **REVERSED.**
2. This action is **REMANDED** to defendant, pursuant to Sentence Four of 42 U.S.C. §405(g), for further administrative proceedings consistent with instructions set forth in the body of the decision.
3. The Clerk of the Court shall serve this Decision and Order and the Judgement herein on all parties or counsel.

DATED: May 1, 2012

Carla M. Woehrle

CARLA M. WOEHRLE
United States Magistrate Judge