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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARGARET MADA,)	Case No. CV 11-10019-OP
)	
Plaintiff,)	
v.)	MEMORANDUM OPINION AND
)	ORDER
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

The Court¹ now rules as follows with respect to the disputed issue raised in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 8, 9.)

² As the Court advised the parties in its Case Management Order, the decision in this case is being made on the basis of the pleadings, the Administrative Record (“AR”), and the JS filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 6 at 3.)

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I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issue raised by Plaintiff as the ground for reversal and/or remand is whether the Administrative Law Judge (“ALJ”) complied with this Court’s remand orders regarding the evaluation of Dr. Hirsch’s opinions. (JS at 3.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of more than one rational interpretation, the Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

III.

DISCUSSION

A. Summary of the Case.

On December 2, 2004, Plaintiff filed an application for a period of disability, disability insurance benefits, and Supplemental Security Income benefits, alleging the onset of disability commencing March 20, 2002. (AR at 62-

1 64, 65-67.)

2 On March 15, 2005, the Commissioner denied the applications for benefits.
3 (Id. at 39-42, 43-47.) Plaintiff sought reconsideration of that determination. (Id.
4 at 54.) On May 26, 2005, the Commissioner denied the request for
5 reconsideration. (Id. at 55-59.) Plaintiff then filed a request for a hearing before
6 an ALJ. (Id. at 60.)

7 On February 6, 2007, the ALJ presided over the hearing, and took testimony
8 from Plaintiff and a vocational expert (“VE”). (Id. at 484-526.) On February 27,
9 2007, the ALJ issued a decision to deny benefits.³ (Id. at 11-24.) Plaintiff
10 requested review of that decision. (Id. at 9.) On May 16, 2007, the Appeals
11 Council denied the request for review. (Id. at 5-8.) Plaintiff then filed a civil
12 action, seeking review of the Commissioner’s final decision. On July 9, 2008, this
13 Court reversed and remanded this matter for further administrative proceedings.
14 (Id. at 661-71.)

15 On February 18, 2010, the ALJ presided over the hearing for the second
16 time and took testimony from Plaintiff and a VE. (Id. at 689-707.) On March 11,
17 2010, the ALJ issued a decision to deny benefits. (Id. at 575-92.)

18 Plaintiff requested review of that unfavorable decision. (Id. at 571-74.) On
19 October 19, 2011, the Appeals Council denied the request for review. (Id. at 527-
20 29.)

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23 ³ The ALJ found that Plaintiff had the medically determinable impairments
24 of a back disorder (discogenic disease of the cervical and lumbar spines); mental
25 depression (depressive disorder, not otherwise specified); and an anxiety disorder
26 (adjustment disorder). (AR at 16.) He found that her mental impairments did not
27 qualify as a severe impairment. (Id. at 21.) He concluded that she had the residual
28 functional capacity (“RFC”) for light work without additional limitations, and that
she was capable of performing her past relevant work as a transcribing machine
operator (sedentary exertion); administrative assistant (sedentary exertion); and
medical secretary (sedentary exertion). (Id. at 23.)

1 **B. Discussion.**

2 In its July 9, 2008, Memorandum and Order (“Order”) remanding the
3 matter, the Court noted that the ALJ concluded that the Plaintiff’s “mental
4 impairments of an anxiety disorder and mental depression have not caused any
5 restriction on the [Plaintiff’s] activities of daily living, and have provided only
6 mild limitations on her social functioning and ability to maintain concentration,
7 persistence and pace.” (Id. (citing id. at 22).) The Court found that although the
8 ALJ’s decision cited as medical evidence the “Permanent and Stationary
9 Psychological Evaluation” findings conducted by Dr. Hirsch for the purposes of
10 Plaintiff’s workers’ compensation claim, the ALJ failed to adequately “translate”
11 Dr. Hirsch’s use of workers’ compensation terminology for the purposes of
12 analyzing Plaintiff’s social security disability claim as to her mental impairments.
13 (Id. (citing id. at 18)); see also Booth v. Barnhart, 181 F. Supp. 2d 1099, 1109
14 (C.D. Cal. 2002). The Court concluded that the ALJ failed to consider the
15 definitional differences between the workers’ compensation system and the Social
16 Security Act when he determined that the Plaintiff’s mental impairments did not
17 qualify as a severe impairment, and remanded the matter for further consideration
18 of this issue.

19 On remand, the ALJ again found that Plaintiff had the medically
20 determinable impairment of “mental depression (depressive disorder, not
21 otherwise specified) and an anxiety disorder (adjustment disorder),” but that these
22 impairments did not qualify as a severe impairment. (Id. at 582, 588.)

23 In compliance with this Court’s Order, the ALJ thoroughly discussed the
24 differences between the definitions of “slight,” “slight-to-moderate,” and
25 “moderate” as used by the California Workers’ Compensation system and the
26 Social Security disability evaluation process. (Id. at 584-85 n.4.) He concluded
27 that even giving Plaintiff the benefit of the doubt and construing the workers’
28 compensation definitions liberally, none of Dr. Hirsch’s findings corresponded to

1 a “markedly limited” finding with regard to Plaintiff’s mental limitations. (Id.)

2 With respect to Dr. Hirsch’s evaluation, the ALJ specifically stated:

3 I have considered Dr. Hirsch’s evaluation of the claimant’s mental
4 impairments under the California workers’ compensation scheme.
5 However, I give no significant weight to his assessment because: (1)
6 There is no indication of a *treating* (as opposed to *evaluating*)
7 relationship. Although the claimant testified that she received Paxil
8 from Dr. Hirsch, which would indicate a treating relationship, Dr. Hirsch
9 could not have prescribed Paxil since, under California law,
10 psychologists do not have the right to prescribe medication. Dr.
11 Hirsch’s records indicate evaluation, but no treatment. Consequently
12 Dr. Hirsch’s assessment is not entitled to special evidentiary weight as
13 a treating medical source. (2) Dr. Hirsch’s assessment is inconsistent
14 with the weight of the evidence of record, which reveals no limitation
15 secondary to the claimant’s alleged mental impairments. (3) Dr. Hirsch
16 has himself questioned the veracity of the claimant’s presentation and
17 has indicated that the results of some psychodiagnostic tests completed
18 by [her] are questionable. However, he appears to have ignored his own
19 doubts in assessing her mental capacity. Consequently, for these
20 reasons, I have concluded that Dr. Hirsch’s assessment is not entitled to
21 significant evidentiary weight.^[4]

22 (Id. at 589.)

23 The ALJ thoroughly reviewed the medical evidence of record regarding
24 Plaintiff’s mental impairment, including Dr. Hirsch’s report, and concluded:

25 The claimant has experienced some depressive symptoms,
26 including insomnia, appetite disturbance, and occasionally feelings of

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28 ⁴ In his February 27, 2007, decision, the ALJ did not specifically address
the weight given to Dr. Hirsch’s assessment.

1 hopelessness and helplessness. However, there is no evidence of record
2 of significant cognitive impairment. Although the claimant alleges
3 occasional irritability, there is no indication that [she] cannot interact
4 appropriately with supervisors, co-workers, and the general public.
5 Indeed, [she] was able to interact appropriately with all medical
6 professionals of record. There is no indication that the claimant's
7 feelings of depression in any way limit her ability to carry out her work
8 activities or adjust to routine changes in the workplace. [Her] activities
9 of daily living have not changed due to her mental impairments. There
10 are no documented side effects of psychotropic medication. [She] has
11 not been psychiatrically hospitalized nor are there . . . documented
12 episodes of psychotic or severely disorganized behavior that have lasted
13 for an extended period of time. The consultative psychiatric examiner
14 gave [her] a GAF score of 65, indicating mild severity to her mental
15 impairment. One of her treating psychiatrists also gave [her] a GAF
16 score of 65. The State Agency medical consultant opined that [her]
17 mental impairment was not a severe impairment and did not provide any
18 limitations in her activities of daily living, social functioning or ability
19 to maintain concentration, persistence and pace. He also found there
20 was no evidence that the impairment caused any episodes of
21 decompensation of extended duration.

22 (Id. at 588-89.)

23 Based on the above, the Court finds that the ALJ has substantially complied
24 with the Court's remand order regarding consideration of the definitional terms
25 used by Dr. Hirsch. Moreover, on remand, the ALJ clearly and properly
26 discounted Dr. Hirsch's opinion based on substantial evidence of record, giving
27 greater weight to the opinions of the consultative psychiatric examiner and the
28 State Agency medical consultant. (Id.) Thus, there was no legal error in the ALJ's

1 finding that Plaintiff's mental impairments were not severe.

2 **IV.**

3 **ORDER**

4 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
5 entered affirming the decision of the Commissioner, and dismissing this action
6 with prejudice.

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8 DATED: July 11, 2012



9 **HONORABLE OSWALD PARADA**
United States Magistrate Judge

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