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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LINDA GOODWIN,)	Case No. CV 11-10586-MLG
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

Plaintiff Linda Goodwin seeks judicial review of the Social Security Commissioner's denial of her application for Supplemental Security Income ("SSI") benefits under the Social Security Act. For the reasons set forth below, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings consistent with this opinion.

I. Factual and Procedural History

Plaintiff was born on May 26, 1951 and was 59 years old at the time of the administrative hearing. (Administrative Record ("AR") at 49.) She

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2 completed the 11th grade and has work experience as a baby sitter and as
3 a cook in a day care center. (AR at 118, 122.) Plaintiff filed an
4 application for SSI benefits on June 18, 2009, alleging that she had
5 been disabled since January 1, 2009, due to back, hand and leg pain,
6 arthritis, migraines, hepatitis C and hypertension. (AR at 49.)
7 Plaintiff's application was denied initially on January 29, 2010. (AR at
8 50-54.)

9 An administrative hearing was held on February 8, 2011 before
10 Administrative Law Judge ("ALJ") Marilyn Mann Faulkner. (AR at 22-43.)
11 ALJ Faulkner issued an unfavorable decision on April 29, 2011. (AR at
12 12-16.) The ALJ found that Plaintiff had not engaged in substantial
13 gainful activity during the relevant time period. (AR at 14.) The ALJ
14 concluded at step 2 of the sequential evaluation process that there were
15 no medical signs or laboratory findings to substantiate the existence of
16 a medically determinable impairment due to a lack of medical records.
17 (AR at 14-15.) Accordingly, the ALJ concluded that Plaintiff was not
18 disabled within the meaning of the Social Security Act. (AR at 16.)

19 Subsequent to the ALJ's decision, Plaintiff submitted medical
20 records from Martin Luther King Jr. Multi-Service Ambulatory Care Center
21 to the Appeals Council. (AR at 159-184.) On October 20, 2011, the
22 Appeals Council denied review (AR at 1-6), and Plaintiff timely
23 commenced this action for judicial review. On July 6, 2012, the parties
24 filed a Joint Stipulation ("Joint Stip.") of disputed facts and issues,
25 including the following claims of error: (1) the Appeals Council failed
26 to properly review and evaluate the additional submitted medical
27 evidence to establish the severity of Plaintiff's impairment at step 2
28 of the sequential evaluation; (2) Plaintiff has established that she has

1 a severe impairment(s) based upon the additional medical records; (3)
2 the ALJ failed to properly consider the Medical-Vocational Guidelines;
3 (4) the ALJ failed to provide proper notice to Plaintiff to attend the
4 consultative examination; (5) the ALJ failed to fully and fairly develop
5 the record; and (6) the ALJ failed to make proper credibility findings.
6 (Joint Stip. at 2-3.) Plaintiff asks the Court to reverse and award
7 benefits, or in the alternative, remand for further administrative
8 proceedings. (Joint Stip. at 28.) The Commissioner requests that the
9 ALJ's decision be affirmed. (Joint Stip. at 29.)

10 After reviewing the parties' arguments and the record as a whole,
11 the Court agrees with Plaintiff's contention that in light of the
12 medical records submitted to the Appeals Council, the finding that
13 Plaintiff does not suffer from a "severe" impairment within the meaning
14 of the Social Security Act is not supported by substantial evidence.
15 Accordingly, this matter is remanded for further proceedings consistent
16 with this opinion.¹

17

18 **II. Standard of Review**

19 Under 42 U.S.C. § 405(g), a district court may review the Social
20 Security Commissioner's decision to deny benefits. The Court must uphold
21 the Social Security Administration's disability determination unless it
22 is not supported by substantial evidence or is based on legal error.
23 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
24 *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.

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26

27 ¹ The Court does not reach the remaining claims of error and will
28 not decide whether these issues would independently warrant relief. Upon
remand, the ALJ may wish to consider the other issues raised by
Plaintiff.

1 2006)). Substantial evidence means more than a scintilla, but less than
2 a preponderance; it is evidence that "a reasonable person might accept
3 as adequate to support a conclusion." *Lingenfelter v. Astrue*, 504 F.3d
4 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d
5 880, 882 (9th Cir. 2006)). To determine whether substantial evidence
6 supports a finding, the reviewing court "must review the administrative
7 record as a whole, weighing both the evidence that supports and the
8 evidence that detracts from the Commissioner's conclusion." *Reddick v.*
9 *Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can support
10 either affirming or reversing the ALJ's conclusion," the reviewing court
11 "may not substitute [its] judgment for that of the ALJ." *Robbins*, 466
12 F.3d at 882.

14 **III. Discussion**

15 Plaintiff contends that the Appeals Council failed to properly
16 review and evaluate the new medical records from Martin Luther King
17 Medical Center (AR at 159-184), which establish that Plaintiff's
18 impairments are severe in the meaning of step 2 of the sequential
19 evaluation process. (Joint Stip. at 3.) The Court agrees.

20 Plaintiff testified at the administrative hearing to the following
21 symptoms and functional limitations: she has back, bilateral hand and
22 leg pain, as well as arthritis, migraines, hepatitis C and hypertension;
23 she can stand for only 10 to 15 minutes; she can walk only about one-
24 half of a block; and she can only sit for 15 to 20 minutes at a time.
25 (AR at 27-39.) Because there were no medical records to substantiate
26 Plaintiff's claims of pain and functional limitations, the ALJ properly
27 determined at step 2 that Plaintiff did not have any severe impairments,
28 and therefore concluded that Plaintiff was not disabled as defined in

1 the Social Security Act. (AR at 14-16.) However, after the
2 administrative hearing, Plaintiff submitted medical records from Martin
3 Luther King Medical (AR at 159-184) to the Appeals Council, which
4 considered the records in deciding whether to review the ALJ's decision.
5 (AR at 1-6.) As noted, review was denied.

6 The Ninth Circuit Court of Appeals recently determined that a
7 district court must consider evidence reviewed by the Appeals Council in
8 determining whether the ALJ's decision was supported by substantial
9 evidence and free from legal error. See *Brewes v. Comm'r of Soc. Sec.*
10 *Admin.*, --- F.3d ---, 2012 WL 2149465, *4 (9th Cir. June 14, 2012)
11 ("When the Appeals Council considers new evidence in deciding whether to
12 review a decision of the ALJ, that evidence becomes part of the
13 administrative record, which the district court must consider when
14 reviewing the Commissioner's final decision for substantial evidence.").
15 The *Brewes* Court also determined that a plaintiff is not required to
16 demonstrate that these later admitted medical records meet the
17 materiality standard of 42 U.S.C. § 405(g)² because that standard applies
18 only to new evidence that is not part of the administrative record and
19 is presented in the first instance to the district court. *Id.* at *5.
20 Rather, "evidence submitted to and considered by the Appeals Council is
21 not new but rather part of the administrative record properly before the
22 district court." *Id.*

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26 ² Section 405(g) provides in relevant part as follows: "The
27 [district] court may ... at any time order additional evidence to be
28 taken before the Commissioner, ... but only upon a showing that there is
new evidence which is material and that there is good cause for the
failure to incorporate such evidence into the record in a prior
proceeding."

1 Here, the medical records submitted by Plaintiff and considered by
2 the Appeals Council provide sufficient evidence of a severe impairment
3 within the meaning of the Act. Accordingly, the Commissioner's finding
4 to the contrary is not supported by substantial evidence.

5 The existence of a severe impairment is demonstrated when the
6 evidence establishes that an impairment has more than a minimal effect
7 on an individual's ability to perform basic work activities. *Smolen v.*
8 *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996); 20 C.F.R. §§ 404.1521(a),
9 416.921(a). The regulations define "basic work activities" as "the
10 abilities and aptitudes necessary to do most jobs," which include
11 physical functions such as walking, standing, sitting, pushing,
12 carrying; capacities for seeing, hearing and speaking; understanding and
13 remembering simple instructions; responding appropriately in a work
14 setting; and dealing with changes in a work setting. 20 C.F.R. §
15 404.1521(b). The inquiry at this stage is "a de minimis screening device
16 to dispose of groundless claims." *Smolen*, 80 F.3d at 1290 (citing *Bowen*
17 *v. Yuckert*, 482 U.S. 137, 153-54 (1987)). An impairment is not severe
18 only if it is a slight abnormality with "no more than a minimal effect
19 on an individual's ability to work." See SSR 85-28; *Yuckert v. Bowen*,
20 841 F.2d 303, 306 (9th Cir. 1988).

21 Given the minimal threshold required to show that an impairment is
22 severe, the Commissioner's determination that Plaintiff's impairments
23 are not severe was not supported by substantial evidence. The medical
24 records from Martin Luther King Medical show that Plaintiff was seen on
25 several occasions, complaining of pain in her leg, knee and hand. (AR at
26 160-184.) Plaintiff's treating physicians opined that her leg pain could
27 be the result of a fracture (AR at 175) and that her hand pain could be
28 caused by hypertension. (AR at 164-166.) It was also noted that testing

1 indicated an "abnormal lateral tibial plateau." (AR at 184.) This
2 medical evidence is sufficient to demonstrate that her physical
3 impairments had more than a minimal effect on her ability to perform
4 work-related functions.

5 Therefore, in light of the evidence before the ALJ and the
6 additional evidence submitted to the Appeals Council, the Court cannot
7 conclude that the Commissioner's decision is supported by substantial
8 evidence, or that any error was harmless.

9
10 **IV. Conclusion**

11 Because the disability determination terminated at step 2 of the
12 administrative process, an evaluation must be made as to whether
13 Plaintiff can perform her past work or any other work that exists in
14 significant numbers in the economy. Accordingly, the matter is remanded
15 for further proceedings consistent with this opinion and order.

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17 DATED: July 16, 2012

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20 **MARC L. GOLDMAN**

21 MARC L. GOLDMAN
22 United States Magistrate Judge
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