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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ANDY QUACH,	)	No. CV 12-01674-VBK
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	AND ORDER
v.	)	
	)	(Social Security Case)
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the Administrative Record ("AR") before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified AR.

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") erred in the

1 assessment of Plaintiff's mental residual functional  
2 capacity;

3 2. Whether the ALJ erred in the credibility findings; and

4 3. Whether the ALJ erred in relying on the vocational experts'  
5 response to his incomplete hypothetical question.

6 (JS at 2-3.)

7  
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 for the reasons set forth, the decision of the  
11 Commissioner must be reversed and the matter remanded.

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14 **THIS CASE WILL BE REMANDED FOR FURTHER EVALUATION OF**  
15 **PLAINTIFF'S MENTAL RESIDUAL FUNCTIONAL CAPACITY AND CREDIBILITY**

16 Plaintiff Andy Quach ("Plaintiff") was born on August 16, 1991.  
17 (AR 380.) In his Decision (AR 13-22), the ALJ determined that  
18 Plaintiff has severe impairments of autistic disorder (Asperger's)  
19 syndrome, and attention deficit hyperactivity disorder ("ADHD"). (AR  
20 15.) The ALJ determined that Plaintiff has non-exertional  
21 limitations, due to mental functioning issues, restricting him to jobs  
22 involving only simple, repetitive tasks with limited public contact.  
23 (AR 16.)

24 There are numerous diagnostic and evaluative records in the AR,  
25 including reports from psychiatrists, school psychologists, teachers,  
26 and other professionals. Pertinent reports were prepared by Dr.  
27 Robert Rome, Ph.D., who performed a psychological evaluation on August  
28 9, 2006 at the request of the North Los Angeles Regional Center (AR

1 270-277); a report of the Behavior Education Services Team ("BEST") to  
2 whom Plaintiff was referred by the North Los Angeles Regional Center  
3 (AR 310-312); a report of Los Angeles Unified School District  
4 ("LAUSD") school psychologist Dr. Marjorie Warren-Goldstein (AR 380-  
5 388); a report of Dr. Jerold Parrish, M.D., Plaintiff's treating  
6 psychiatrist at Kaiser Permanente (AR 646-656); a report of Dr. Donald  
7 Gallo, Ph.D., a psychologist at Kaiser Permanente (AR 640-644); a  
8 report of consultative psychological examiner ("CE") Dr. Lou Sherrill,  
9 Ph.D. (AR 604-609); and the opinion of the State Agency non-examining  
10 consultant, Dr. R. Tasjian, M.D. (AR 615-617, 618-628).

11 What is apparent from an overall reading of these documents is  
12 that Plaintiff has manifested continuous and extreme behavior  
13 difficulties, including difficulties with peers, teachers, and his  
14 parents, and severe difficulties following instructions. The report  
15 of treating psychiatrist Dr. Parrish, and in particular, and the form  
16 he thereafter filled out entitled Medical Source Statement of Ability  
17 to do Work-Related Activities ("Mental") is particularly relevant and  
18 instructive. Consistent with the ALJ's finding of severe impairments,  
19 Dr. Parrish diagnosed Plaintiff on Axis I with Asperger's disorder and  
20 ADHD. (AR 648.) Dr. Parrish noted moderate limitations in Plaintiff's  
21 ability to understand and remember short, simple instructions and to  
22 carry out short and simple instructions. As to Plaintiff's ability to  
23 carry out detailed instructions, Dr. Parrish found marked limitations,  
24 as he did with Plaintiff's ability to make judgment on simple work-  
25 related decisions, and in understanding and remembering detailed  
26 instructions. (AR 654.) The psychiatrist found extreme limitations  
27 (i.e., greater than "marked") in Plaintiff's ability to interact  
28 appropriately with the public, with co-workers, and to respond

1 appropriately to work pressures in a usual work setting. Marked  
2 limitations were found in Plaintiff's ability to respond appropriately  
3 to changes in a routine work setting. (AR 655.)

4 The ALJ summarized Dr. Parrish's conclusions, but found that they  
5 were "not supported by the evidence of record referred to above [e.g.,  
6 the evidence summarized at AR 17-19], insofar as the [Plaintiff]  
7 demonstrates he is able to function, especially with tasks involving  
8 simple instructions. Therefore, Dr. Parrish's opinions are entitled  
9 to some but not controlling weight." (AR 20.) For the following  
10 reasons, the Court finds that the ALJ's articulated reasons fall short  
11 of the substantial evidence requirement.

12 First, the ALJ's statement that Dr. Parrish's conclusions are not  
13 supported by the evidence in the record is an over-generalization, and  
14 renders it difficult for the Court to determine exactly what specific  
15 evidence the ALJ found in the record to be inconsistent with Dr.  
16 Parrish's finding and opinion. In addition, the ALJ failed to note  
17 that Dr. Parrish's "check the box" form was supported by his treatment  
18 notes. (AR 646-652.) In any event, there are very substantial  
19 indications in the record from both medical professionals, teachers,  
20 and other qualified lay witnesses that Plaintiff has very extreme or  
21 marked difficulties in social interactions. This is noted, for  
22 example, in the very extensive discussion in the BEST report (AR 310-  
23 312), in which the BEST team observed Plaintiff become easily agitated  
24 and have difficulty following instructions. (AR 311-312.) The  
25 observation team opined that, "It is believed that [Plaintiff's]  
26 bursts of anger, aggression and property destruction function to  
27 escape or avoid situations in which he does not want to take part or  
28 activities he does not want to do." (AR 312.)

1           The school psychologist, Dr. Warren-Goldstein, found that  
2 Plaintiff has "severe difficulties with attention skills," gets  
3 "easily distracted," and is "disruptive both at home and at school."  
4 He becomes fixated on his computer and does not want to do anything  
5 else, has difficulties following directions or paying attention, and  
6 is disruptive. He has few friends. (AR 387-388.) It is difficult to  
7 see how there is any inconsistency between Dr. Parrish's assessments  
8 and those of Dr. Warren-Goldstein. The ALJ acknowledged Plaintiff's  
9 "limitations in attention/concentration and difficulty getting along  
10 with people," but found that these were not "totally disabling." The  
11 ALJ stated, "Moreover, just because the [Plaintiff] required services  
12 from the Los Angeles Unified School District and the Regional Center,  
13 this does not mean he is unable to function in an employment  
14 situation." (AR 20, exhibit citation omitted.) This is basically a  
15 non sequitur. Moreover, it is followed by the ALJ's notation that,  
16 "the evidence of record shows the [Plaintiff] is able to attend school  
17 daily, go to the gymnasium and work extensively on the family computer  
18 despite his sleepiness." (Id., citation omitted.) An examination of  
19 these statements indicates that they are factually unsupported.

20           As to the ALJ's conclusion that Plaintiff is able to "work  
21 extensively on the family computer," a brief examination of the  
22 testimony at the hearing (AR 53-76) belies that characterization.  
23 When questioned by the ALJ, Plaintiff indicated that he spent five or  
24 six hours a day, and had done so over a long period of time, on his  
25 computer, but what he does is play games and watch shows. (AR 63.)  
26 There is nothing to indicate that he works or does anything productive  
27 on his computer. Other records support the fact that Plaintiff does  
28 not do anything productive on his computer. For example, the report

1 of the BEST team indicates that Plaintiff "plays" on his computer. (AR  
2 310.)

3 The report of the LAUSD school psychiatrist lends further  
4 consistency to the inadequacy of the ALJ's characterization that  
5 Plaintiff is "able to attend school daily." Indeed, the school  
6 psychologist indicated that "efforts to intervene in the regular  
7 classroom did not result in [Plaintiff's] ability to perform  
8 successfully in the regular classroom and is the impetus of this  
9 evaluation." (AR 381.) At the time of the evaluation, Plaintiff was  
10 "failing many of his classes. His effort and cooperation grades are  
11 unsatisfactory as well. [Plaintiff] is reported to be disruptive, has  
12 difficulties following directions, is inattentive, and easily  
13 distracted." (AR 382.)

14 Finally, the ALJ's reliance on a conclusion that Plaintiff goes  
15 to the gymnasium is, even if it were true, irrelevant to the  
16 disability determination. But in any event, according to the ALJ,  
17 Plaintiff reported "he would not exercise unless someone accompanied  
18 him to the gymnasium, ..." (AR at 20.) If Plaintiff were placed in a  
19 job requiring simple, repetitive tasks, no one would accompany him.

20 The question here is not whether Plaintiff has the intellectual  
21 ability to do simple, repetitive tasks. Rather, it is whether  
22 Plaintiff can work 40 hours a week at a job which would require him to  
23 be prompt and diligent, focus on the task, get along with co-workers  
24 and with supervisors, and function successfully. While the Court is  
25 aware that individuals with autism and Asperger's syndrome can and do  
26 function in society and in the workplace with proper professional  
27 assistance and guidance, consider Plaintiff, who in the Summary  
28 prepared by the LAUSD school psychiatrist, is functioning at the

1 following level:

2 "Parents and teachers rate [Plaintiff] as having severe  
3 difficulties with attention skills, as being easily  
4 distracted, and as being disruptive both at home and at  
5 school. [Plaintiff] is described at home as being fixated  
6 on his Computer and not wanting to do anything else. At  
7 school, [Plaintiff] is described as being unmotivated, as  
8 having difficulties following directions, paying attention,  
9 and as being disruptive. He will yell out random phrases in  
10 the classroom, fidgets with his hair and his fingers, has  
11 difficulty making eye contact, has difficulties having a  
12 conversation with adults or peers, and has few friends.  
13 These difficulties are severely impacting his educational  
14 performance."

15 (AR 387-388.)

16  
17 The Court has seriously considered simply remanding this matter  
18 for calculation of benefits. The Court has determined, however, to  
19 remand this to the Commissioner for a full and further hearing and  
20 examination. On rehearing, the ALJ must be mindful of the  
21 hypothetical question posed at the hearing to the vocational expert  
22 ("VE") (AR 72-73), which posited only moderate limitations in  
23 Plaintiff's behavioral functioning. If Dr. Parrish's conclusions were  
24 to be accepted, and instead, a hypothetical were to be posed to a VE  
25 which contained limitations more consistent with those rendered by Dr.  
26 Parrish, and indeed, more consistent with the record as a whole, the  
27 result would be such as the VE testified; i.e., this individual would  
28 not be able to participate in the competitive job market. (See AR at

1 74-75.) Unless there are compelling reasons to reject this evidence  
2 in the record, it would appear that Plaintiff will be found disabled.

3 The Court's discussion effectively disposes of the second and  
4 third issues. As to the second issue, the credibility findings, the  
5 Court has already noted that the ALJ's reliance upon Plaintiff's  
6 ability to attend school daily, go the gymnasium, and work extensively  
7 on the family computer are all incomplete and/or incorrect statements,  
8 and may not be relied upon in the credibility determination.

9 As to the third issue, the hypothetical question posed to the VE,  
10 the Court has already indicated that if Dr. Parrish's non-exertional  
11 limitations are accepted, then the hypothetical question posed to the  
12 VE by the ALJ is incomplete and may not be relied upon.

13 This matter will be remanded for further hearing pursuant to the  
14 instructions set forth in this Opinion.

15 **IT IS SO ORDERED.**

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17 DATED: November 30, 2012

17 /s/  
18 VICTOR B. KENTON  
19 UNITED STATES MAGISTRATE JUDGE  
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