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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

LAURIE MACHUT,	)	No. CV 12-05220-VBK
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	AND ORDER
v.	)	
	)	(Social Security Case)
CAROLYN W. COLVIN, Acting	)	
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's ("ALJ") finding on

1 Plaintiff's residual functional capacity is not supported by  
2 substantial evidence and whether the relied-upon  
3 hypothetical question to the vocational expert was  
4 incomplete and inaccurate;

5 2. Whether the ALJ improperly rejected the opinions of  
6 Plaintiff's treating sources; and

7 3. Whether the ALJ improperly discredited the testimony of  
8 Plaintiff and her mother.

9 (JS at 3.)

10  
11 This Memorandum Opinion will constitute the Court's findings of  
12 fact and conclusions of law. After reviewing the matter, the Court  
13 concludes that for the reasons set forth, the decision of the  
14 Commissioner must be reversed and the matter remanded.

15  
16 I

17 **THIS MATTER WILL BE REMANDED FOR A NEW HEARING**

18 **TO FULLY CONSIDER MENTAL HEALTH EVIDENCE**

19 From a mental health standpoint, this is a complex case. The ALJ  
20 determined that Plaintiff has severe impairments of bipolar disorder  
21 and attention deficit hyperactivity disorder, with alternative  
22 diagnoses of major depressive disorder and a learning disorder. (AR  
23 18.) Largely based upon her reliance on the evaluations of two State  
24 Agency physicians, Drs. Lee and Leaf (respectively, AR 500-513, 550-  
25 563), the ALJ determined that Plaintiff's Residual Functional Capacity  
26 ("RFC") would allow her to perform simple repetitive tasks not  
27 requiring a rapid pace or high production quota; and limitation to  
28 occasional interaction with the general public. (AR 20.)

1 Plaintiff raises a number of issues with the ALJ's mental RFC  
2 determination. First, Plaintiff makes an unchallenged assertion that  
3 the State Agency physicians prepared their reports and rendered their  
4 opinions before the administrative file contained records from  
5 Plaintiff's treating psychologist, Dr. Gantt, covering the period  
6 2006-2010; her former psychiatrist, Dr. El-Asyouty (AR 714-718); and  
7 her current psychiatrist, Dr. De Guzman. (AR 634-636, 728-732).  
8 Plaintiff further asserts that the RFC finding fails to accurately  
9 reflect the opinions of Drs. Lee and Leaf, in that it does not address  
10 seven areas of functioning where Dr. Lee opined that Plaintiff had  
11 "moderate" mental limitations. Dr. Leaf adopted these limitations.  
12 Instead, the ALJ determined that Plaintiff has moderate impairments in  
13 three areas: (1) activities of daily living; (2) social functioning;  
14 and (3) concentration, persistence or pace. (AR 20.) Plaintiff thus  
15 contends that the ALJ's RFC limitation does not adequately encompass  
16 or reflect Dr. Lee's complete opinion.

17 Plaintiff also asserts that the hypothetical question posed to  
18 the vocational expert ("VE") was incomplete in that it failed to  
19 include all the exertional and non-exertional limitations which apply  
20 to Plaintiff.

21 The Commissioner's contention is that the ALJ properly relied  
22 upon the non-examining State Agency physicians because their opinions  
23 were corroborated by treating physician Dr. De Guzman.

24 Plaintiff does raise an issue concerning her physical limitations  
25 based upon obesity. The Commissioner responds that obesity was never  
26 alleged as a physical impairment until this litigation and that, in  
27 any event, there is no evidence that any physical impairments from  
28 which Plaintiff suffers were inadequately controlled with medication.

1           **A. Applicable Law.**

2           In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)  
3 and §416.920a(c)(3)(4) mandate that consideration be given, among  
4 other things, to activities of daily living ("ADLs"), social  
5 functioning; concentration, persistence, or pace; and episodes of  
6 decompensation. These factors are generally analyzed in a Psychiatric  
7 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the  
8 sequential evaluation to determine if a claimant is disabled under the  
9 Listing of Impairments; however, the same data must be considered at  
10 subsequent steps unless the mental impairment is found to be not  
11 severe at Step Two. See SSR 85-16.

12           20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require  
13 consideration of "all relevant and available clinical signs and  
14 laboratory findings, the effects of your symptoms, and how your  
15 functioning may be affected by factors including, but not limited to,  
16 chronic mental disorders, structured settings, medication and other  
17 treatment."<sup>1</sup>

18           SSR 85-16 suggests the following as relevant evidence:

19           "History, findings, and observations from medical  
20 sources (including psychological test results), regarding  
21 the presence, frequency, and intensity of hallucinations,  
22 delusions or paranoid tendencies; depression or elation;  
23 confusion or disorientation; conversion symptoms or phobias;

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24  
25           <sup>1</sup> 20 C.F.R. §404.1545(c) and §416.945(c) also require  
26 consideration of "residual functional capacity for work activity on a  
27 regular and continuing basis" and a "limited ability to carry out  
28 certain mental activities, such as limitations in understanding,  
remembering, and carrying out instructions, and in responding  
appropriately to supervision, co-workers, and work pressures in a work  
setting."

1 psycho-physiological symptoms, withdrawn or bizarre  
2 behavior; anxiety or tension. Reports of the individual's  
3 activities of daily living and work activity, as well as  
4 testimony of third parties about the individual's  
5 performance and behavior. Reports from workshops, group  
6 homes, or similar assistive entities."

7  
8 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)  
9 that the ALJ must consider the extent to which the mental impairment  
10 interferes with an "ability to function independently, appropriately,  
11 effectively, and on a sustained basis" including "such factors as the  
12 quality and level of [] overall functional performance, any episodic  
13 limitations [and] the amount of supervision or assistance []  
14 require[d]."

15 Pursuant to the September 2000 amendments to the regulations  
16 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ  
17 is no longer required to complete and attach a PRTF. The revised  
18 regulations identify five discrete categories for the first three of  
19 four relevant functional areas: activities of daily living; social  
20 functioning; concentration, persistence or pace; and episodes of  
21 decomposition. These categories are None, Mild, Moderate, Marked, and  
22 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must  
23 incorporate pertinent findings and conclusions based on the PRTF  
24 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show  
25 "the significant history, including examination and laboratory  
26 findings, and the functional limitations that were considered in  
27 reaching a conclusion about the severity of the mental impairment(s).  
28 The decision must include a specific finding as to the degree of

1 limitation in each of the functional areas described in paragraph (c)  
2 of this section."

3 The Step Two and Three analyses (see Decision at AR 53-54) are  
4 intended to determine, first, whether a claimant has a severe mental  
5 impairment (Step Two), and if so, whether it meets or equals any of  
6 the Listings (Step Three). It is also required under §404.1520a(c)(2)  
7 and §416.920a(c)(2) that the ALJ must consider the extent to which the  
8 mental impairment interferes with an "ability to function  
9 independently, appropriately, effectively, and on a sustained basis"  
10 including "such factors as the quality and level of [] overall  
11 functional performance, any episodic limitations [and] the amount of  
12 supervision or assistance [] require[d]."

13 These findings and conclusions are relevant to the Step Two and  
14 Three analysis of whether a claimant has a severe mental impairment,  
15 and if so, whether it meets or equals any of the Listings. (See 20  
16 C.F.R. Part 4, subpart p, App. 1.) The discussion in Listing 12.00,  
17 "Mental Disorders," is relevant:

18 "The criteria in paragraphs B and C describe  
19 impairment-related functional limitations that are  
20 incompatible with the ability to do any gainful activity.  
21 The functional limitations in paragraphs B and C must be the  
22 result of the mental disorders described in the diagnostic  
23 description, that is manifested by the medical findings in  
24 paragraph A.

25 In Listing 12.00C, entitled 'Assessment of Severity,'  
26 it is stated that, 'we assess functional limitations using  
27 the four criteria in paragraph B of the Listings: Activities  
28 of daily living; social functioning; concentration;

1 persistence, or pace; and episodes of decompensation. Where  
2 we use 'marked' as a standard for measuring the degree of  
3 limitation, it means more than moderate but less than  
4 extreme."

5  
6 Social Security Ruling ("SSR") 96-8p makes the same point in  
7 distinguishing evidence supporting a rating of mental severity at Step  
8 Two, a Listing level impairment at Step Three, and the determination  
9 of an individual's MRFC at Step Four.

10  
11 **B. Plaintiff's History of Mental Health Treatment.**

12 The record indicates that Plaintiff received continuous mental  
13 health treatment from various medical sources between 2006 and 2010.  
14 She began her treatment with Dr. Gantt on September 6, 2006 treating  
15 with Dr. Gantt for 51 sessions through August 4, 2010. (AR 672-710,  
16 724-727.)

17 From April 2006 to August 2008, Plaintiff was treated on 23  
18 occasions for both mental and physical impairments by various  
19 physicians at Central Coast Family Care. (AR 402-480.) In April 2006,  
20 Dr. John Okerblum diagnosed Plaintiff as suffering from depression  
21 with anxiety and Attention Deficit Disorder ("ADD"), and further noted  
22 that because her medications were both ineffective and caused negative  
23 side effects, he determined to refer Plaintiff for psychiatric  
24 evaluation by Dr. El-Asyouty, who then treated Plaintiff in 2006. (AR  
25 477-480, 714-718.)

26 The record would support a conclusion that between 2006 and 2008,  
27 Plaintiff's condition was unstable and deteriorating. Dr. Gantt made  
28 a notation in March 2008 that Plaintiff had been suicidal and in April

1 2008, she was hearing voices in her head, reported major mood swings,  
2 and was severely depressed. (AR 696.) Shortly thereafter, in May  
3 2008, Plaintiff told Dr. Gantt that she lost her job as a recess  
4 monitor at school because she was screaming at the children, told the  
5 Vice Principal that she was bipolar, and the children made fun of her.  
6 Plaintiff was hospitalized for her mental condition in May 2008. At  
7 that time, she was taking a variety of medications including Lithium,  
8 Loestrin, Lexapro, Geodon, Atenoll, Phentermine, and Abilify.  
9 Following a seven-day hospitalization, the Lexapro and Phentermine  
10 were discontinued, and Plaintiff began taking Strattera, Colnazapam,  
11 and Cymbalta. (AR 693, 700.) From this record alone, it would be  
12 difficult to conclude that Plaintiff was capable of full-time  
13 employment during this time period. Of course, in her Application  
14 Plaintiff alleged that she has been disabled since April 30, 2008, so  
15 the relevant question is whether Plaintiff's condition improved after  
16 her hospitalization such that it would be fair to conclude she was  
17 capable of full-time employment.

18 In November 2008, Plaintiff was assessed by clinical  
19 neuropsychologist Dr. Wylie, who summarized the results of cognitive  
20 functioning tests with a diagnosis on Axis I of major depressive  
21 disorder, generalized anxiety disorder, and learning disorder NOS. (AR  
22 548.)

23 The ALJ discussed the findings of treating psychologist Dr. De  
24 Guzman from October 2010. (AR 22-23.) In part, the ALJ noted that Dr.  
25 De Guzman reported bipolar disorder and improvement in compulsive  
26 shopping, and that Plaintiff's mood was more stable at times. The ALJ  
27 noted that Dr. De Guzman rendered a guarded prognosis, concluding that  
28 Plaintiff would likely need continued support from her parents.



1 Further noted were Dr. De Guzman's assessment of moderate limitations  
2 in Plaintiff's ability to remember work-like procedures; maintain  
3 attention for two-hour increments; maintain regular attendance and be  
4 punctual within customary tolerances' sustain an ordinary routine  
5 without special supervision; work in coordination with or proximity to  
6 others without being unduly distracted; make simple work-related  
7 decisions; complete a normal work day/week without interruptions from  
8 psychologically based symptoms; perform at a consistent pace without  
9 an unreasonable number and length of rest periods; accept instructions  
10 and respond appropriately to criticism from supervisors; get along  
11 with co-workers or peers without unduly distracting them or exhibiting  
12 behavioral extremes; respond appropriately to changes in a routine  
13 work setting; deal with normal work stress; be aware of normal hazards  
14 and take appropriate precautions; understand, remember and carry out  
15 detailed instructions; deal with semi-skilled and skilled work; and  
16 interact appropriately with the general public. Dr. De Guzman  
17 expected that due to her mental health impairments, Plaintiff would be  
18 absent from work more than four days per month. (AR 730-731.)

19 Despite this plethora of moderate mental health limitations, the  
20 ALJ did not indicate whether she accepted or rejected all or any of  
21 the conclusions rendered by Dr. De Guzman. Certainly, if Dr. De  
22 Guzman is correct that Plaintiff would be expected to be absent from  
23 work more than four days per month, then in a one-year period this  
24 would amount to almost 50 days, which would likely render Plaintiff  
25 unemployable. Of further concern to the Court is that even in 2010,  
26 when Dr. De Guzman wrote this report, she noted something which many  
27 of Plaintiff's mental health professionals had also regularly  
28 recognized, which is that, in Dr. De Guzman's words, "Despite her

1 compliance with her medications, individual therapy, and family  
2 support, patient's stability has always been brief that she has not  
3 been able to work at a regular job." (AR 732.) If this conclusion is  
4 accepted, again, a very definite question is raised as to Plaintiff's  
5 employability. Yet, the Court does not consider that the ALJ  
6 adequately weighed this evidence, or determined whether to accept it  
7 or reject it. In that regard, the Decision's reliance on earlier,  
8 non-examining State Agency physicians to render a mental RFC is  
9 troubling. Plaintiff has a very long history of mental health  
10 treatment, and has uniformly been diagnosed on Axis I with serious  
11 disorders. Based on all the evidence in the record, the Court must  
12 conclude that substantial evidence does not support the ALJ's RFC  
13 determination. As in many cases involving mental health issues, there  
14 are often times when medications may work better than at other times,  
15 or a patient may show some improvement. But in Plaintiff's case,  
16 there would appear to be a well-documented history of instability,  
17 unsuccessful response to medications, and ongoing issues which relate  
18 directly to Plaintiff's ability to be employed. For this reason, the  
19 Court agrees with the position articulated by Plaintiff as to the  
20 mental health issues in dispute in this case, and will remand for  
21 further hearing to address these issues.<sup>2</sup>

22 Further, on remand, the ALJ will examine whether Plaintiff is  
23 obese, and if so, whether her obesity has any impact on her asthma and  
24 knee problems. Further, a determination will be made as to whether

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26 <sup>2</sup> Concerning Plaintiff's argument in Issue 1 that the ALJ  
27 erred in failing to address all mental functioning limitations  
28 assessed by Dr. De Guzman, this is not necessarily correct. Rather,  
an ALJ is required to specifically address the relevant categories  
identified in the regulations (see infra at pp. 5-6). See Thomas v.  
Barnhart, 278 F.3d 947, 956 (9th Cir. 2002).

1 Plaintiff has any deleterious side effects from her medication which  
2 are relevant to assessing her ability to work.

3 Finally, with regard to the third issue, concerning the  
4 evaluation of Plaintiff's credibility and the consideration of the  
5 evidence from Plaintiff's mother, the Commissioner argues that based  
6 on the ALJ's determination that Plaintiff "stabilized with medication"  
7 (AR 23), Plaintiff's subjective testimony could legitimately be  
8 rejected as not fully credible. But as the Court has indicated, there  
9 are serious questions to be resolved as to whether Plaintiff's  
10 medication in fact has stabilized her mental health condition so as to  
11 render her employable, and whether there are side effects from her  
12 medications. In addition, the Court rejects the Commissioner's  
13 contention that the testimony of Plaintiff's mother was cumulative to  
14 her own testimony. Indeed, it can reasonably be viewed that the  
15 testimony of Plaintiff's mother might provide corroboration, for  
16 example, of Dr. De Guzman's conclusion that Plaintiff would miss about  
17 four days of work per month due to her mental condition. This was the  
18 exact testimony offered by Plaintiff's mother. Consequently, the  
19 Court orders that on remand, the determination of Plaintiff's  
20 credibility and the weight to be afforded to the testimony of her  
21 mother will be reevaluated do novo.

22 For the foregoing reasons, this matter will be remanded for  
23 further hearing consistent with this Memorandum Opinion.

24 **IT IS SO ORDERED.**

25  
26 DATED: July 25, 2013

\_\_\_\_\_  
/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE