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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CHRISTINA TRINCHERE,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of the Social  
Security Administration,  
Defendant.

) NO. EDCV 07-01213 SS

) MEMORANDUM DECISION AND ORDER

INTRODUCTION

Plaintiff Christina Trinchere ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. This matter is before the Court on the parties' Joint Stipulation ("Jt. Stip.") filed on June 10, 2008. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

1  
2  
3 **PROCEDURAL HISTORY**

4 Plaintiff filed an application for SSI benefits on January 5, 2005  
5 (Administrative Record ("AR") 14, 27).<sup>1</sup> She alleged a disability onset  
6 date of January 5, 2005 due to bipolar disorder. (AR 14-16, 27).

7 The Agency denied Plaintiff's claim initially on April 12, 2005 and  
8 upon reconsideration on May 24, 2005. (AR 14, 42-52). On October 26,  
9 2006, Administrative Law Judge ("ALJ") Mason D. Harrell, Jr., conducted  
10 a hearing to review Plaintiff's claim. (AR 14, 319). The ALJ denied  
11 benefits on December 4, 2006. (AR 11-23). Plaintiff sought review of  
12 the ALJ's decision before the Appeals Council. (AR 9). On August 4,  
13 2007, the Appeals Council denied Plaintiff's request for review and the  
14 ALJ's decision became the final decision of the Commissioner. (AR 5).  
15 Plaintiff commenced the instant action on October 9, 2007.

16  
17 **FACTUAL BACKGROUND**

18  
19 Plaintiff was born on October 10, 1952 and was fifty-four years old  
20 at the time of the hearing. (AR 27, 322). She has a Bachelor of Arts  
21 degree in Psychology. (AR 322). Her relevant work includes employment  
22 as a vocational specialist, teaching assistant, health information  
23 services technician, student assistant, credit and collection agent,  
24

25  
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<sup>1</sup> Plaintiff previously filed applications for SSI and disability  
27 insurance benefits on July 22, 2003 and February 11, 2004. (AR 65-68,  
28 69-72). These applications were denied initially and upon  
reconsideration. (AR 24-26, 54-58, 61-64). Plaintiff did not further  
pursue these applications.

1 accounts receivable/receptionist, administrative assistant, customer  
2 service representative, and sales representative. (AR 154).

3

4 **A. Post-Hearing Evidence**

5

6 On December 11, 2006, after the ALJ issued his decision, Plaintiff  
7 submitted a Work Capacity Evaluation [Mental] form to the Agency. (See  
8 AR 315-16). The form was completed by Dr. Dau Van Nguyen of the San  
9 Bernardino County Department of Behavioral Health ("SBC-DBH"). (See AR  
10 315). The evaluation is a check-off form which indicates that Plaintiff  
11 has a slight limitation in her ability to ask simple questions or  
12 request assistance. (AR 315). The form also noted that Plaintiff has  
13 moderate limitations in her ability to remember locations and work-like  
14 procedures, understand and remember very short and simple instructions,  
15 carry out very short and simple instructions, sustain an ordinary  
16 routine without special supervision, make simple work-related decisions,  
17 maintain socially appropriate behavior, adhere to basic standards of  
18 neatness and cleanliness, and be aware of normal hazards and take  
19 appropriate precautions. (AR 315-16). The evaluation determined that  
20 Plaintiff has marked limitations in her ability to maintain attention  
21 and concentration for extended periods, perform activities within a  
22 schedule, maintain regular attendance, be punctual within customary  
23 tolerances, work in coordination with or in proximity to others without  
24 being distracted by them, interact appropriately with the general  
25 public, accept instructions and respond appropriately to criticisms from  
26 supervisors, get along with co-workers or peers without distracting them  
27 or exhibiting behavioral extremes, and set realistic goals or make plans  
28 independently of others. (Id.).

1 **B. Relevant Medical History**

2  
3 Plaintiff received mental health services from SBC-DMH beginning in  
4 May 2000. (See AR 290-96). However, the record does not indicate that  
5 Plaintiff's treatment was consistent or regular until 2003.

6  
7 On May 25, 2000, Dr. Donna Barrozo of SBC-DMH conducted a  
8 Medication Support Services Psychiatric Evaluation. (AR 294-96). In  
9 this initial evaluation, Dr. Barrozo noted that Plaintiff's mood and  
10 affect was anxious, that she had slight but fair impulse control, a  
11 tight thought process, hyper-verbal and sometimes pressured speech, and  
12 a Global Assessment of Functioning ("GAF") score of fifty.<sup>2</sup> (Id.).

13  
14 On March 6, 2003, a treating marriage and family therapist, Amelia  
15 Gavogo,<sup>3</sup> completed a Care Necessity (Qualification for Services) form.  
16 (AR 275). This check-off form noted that Plaintiff had a probability of  
17 a significant deterioration in an important area of life functioning and  
18

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19 <sup>2</sup> A GAF score is the clinician's judgment of the individual's  
20 overall level of functioning. It is rated with respect only to  
21 psychological, social, and occupational functioning, without regard to  
22 impairments in functioning due to physical or environmental limitations.  
23 See American Psychiatric Association, Diagnostic and Statistical Manual  
24 of Mental Disorders, 32 (4th ed. 2000) (hereafter, "DSM IV").

24 A rating of 41-50 on the GAF scale indicates "[s]erious symptoms  
25 (e.g., suicidal ideation, severe obsessional rituals, frequent  
26 shoplifting) OR any serious impairment in social, occupational, or  
27 school functioning (e.g., no friends, unable to keep a job)." See DSM  
28 IV, at 34.

27 <sup>3</sup> The name of the marriage and family therapist is illegible in the  
28 record but Plaintiff reports that the clinician's name is Amelia Gavogo.  
(Jt. Stip. at 10).

1 that planned interventions would address impairment conditions and  
2 prevent significant deterioration in an important area of life function.  
3 (Id.).

4  
5 Subsequent treating notes from SBC-DMH indicate that Plaintiff was  
6 being treated for bipolar disorder with medication, that she was not  
7 suicidal or homicidal, that she denied auditory or visual  
8 hallucinations, and that there was no evidence of psychosis. (See e.g.,  
9 AR 246, 308-09).

10  
11 **C. Vocational Expert's Testimony**

12  
13 Vocational Expert ("VE") Sandra Fioretti testified at the October  
14 26, 2006 hearing. (AR 349-50). The ALJ posed the following  
15 hypothetical question:

16  
17 All right, Ms. Fioretti, let's suppose someone that has  
18 a high school or above education but they're limited to  
19 simple, repetitive tasks in a habituated setting. That would  
20 be just two or three steps of instructions. No safety  
21 operations, no operation of hazardous machinery or being,  
22 working around; and no requirements for hypervigilance. With  
23 those limitations, could someone perform any of the  
24 [Plaintiff's] past relevant work?

25  
26 (AR 349). The VE responded that someone with the limitations described  
27 could not perform Plaintiff's past relevant work. (Id.). The ALJ then  
28 augmented his previous question by asking, "[T]here would be no

1 transferable skills . . . [a]nd can you identify any unskilled jobs that  
2 could be performed?" (Id.). The VE responded that the hypothetical  
3 person could perform work as a office helper (D.O.T. 239.567-010), a  
4 cashier (D.O.T. 211.462-010), and a cleaner (D.O.T. 381.687-018). (AR  
5 349-50). Finally, the ALJ asked the VE, "Suppose in addition to the  
6 limitations I gave the individual would miss work more than twice a  
7 month on a regular basis. Would that eliminate these and all other  
8 jobs?" (AR 350). The VE testified that such a limitation would  
9 eliminate all work possibilities. (Id.).

10  
11 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**  
12

13 To qualify for disability benefits, a claimant must demonstrate a  
14 medically determinable physical or mental impairment that prevents her  
15 from engaging in substantial gainful activity<sup>4</sup> and that is expected to  
16 result in death or to last for a continuous period of at least twelve  
17 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42  
18 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant  
19 incapable of performing the work she previously performed and incapable  
20 of performing any other substantial gainful employment that exists in  
21 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.  
22 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

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27 <sup>4</sup> Substantial gainful activity means work that involves doing  
28 significant and productive physical or mental duties and is done for pay  
or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 To decide if a claimant is entitled to benefits, an ALJ conducts a  
2 five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are as  
3 follows:

4  
5 (1) Is the claimant presently engaged in substantial gainful  
6 activity? If so, the claimant is found not disabled. If  
7 not, proceed to step two.

8 (2) Is the claimant's impairment severe? If not, the  
9 claimant is found not disabled. If so, proceed to step  
10 three.

11 (3) Does the claimant's impairment meet or equal one of list  
12 of specific impairments described in 20 C.F.R. Part 404,  
13 Subpart P, Appendix 1? If so, the claimant is found  
14 disabled. If not, proceed to step four.

15 (4) Is the claimant capable of performing her past work? If  
16 so, the claimant is found not disabled. If not, proceed  
17 to step five.

18 (5) Is the claimant able to do any other work? If not, the  
19 claimant is found disabled. If so, the claimant is found  
20 not disabled.

21  
22 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d  
23 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§  
24 404.1520(b) - (g) (1), 416.920(b) - (g) (1).

25  
26 The claimant has the burden of proof at steps one through four, and  
27 the Commissioner has the burden of proof at step five. Bustamante, 262  
28 F.3d at 953-54. If, at step four, the claimant meets her burden of

1 establishing an inability to perform past work, the Commissioner must  
2 show that the claimant can perform some other work that exists in  
3 "significant numbers" in the national economy, taking into account the  
4 claimant's residual functional capacity ("RFC")<sup>5</sup>, age, education, and  
5 work experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at  
6 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may  
7 do so by the testimony of a vocational expert or by reference to the  
8 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart  
9 P, Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240  
10 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional  
11 (strength-related) and nonexertional limitations, the Grids are  
12 inapplicable and the ALJ must take the testimony of a vocational expert.  
13 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

14  
15 **THE ALJ'S DECISION**  
16

17 The ALJ employed the five-step sequential evaluation process and  
18 concluded that Plaintiff was not disabled within the meaning of the  
19 Social Security Act. (AR 14-23). At the first step, the ALJ observed  
20 that Plaintiff had not engaged in substantial gainful activity since  
21 January 5, 2005, the alleged onset date. (AR 16). Next, he found that  
22 Plaintiff has the severe impairment of bipolar disorder. (Id.). At the  
23 third step, the ALJ found that the severe impairment at step two did not  
24 meet or medically equal a listed impairment. (AR 20).

25  
26  
27 <sup>5</sup> Residual functional capacity is "the most [one] can still do  
28 despite [her] limitations" and represents an assessment "based on all  
the relevant evidence in [one's] case record." 20 C.F.R. §§  
404.1545(a), 416.945(a).



1 At step four, the ALJ found that Plaintiff retained the RFC to  
2 perform work "involving simple repetitive tasks with two to three steps  
3 of instructions, performed in a habituated setting." (AR 20). He  
4 further found Plaintiff unable to perform safety operations, could not  
5 operate or work around hazardous machinery, and could not perform work  
6 requiring hypervigilance. (Id.). He concluded that Plaintiff was  
7 unable to return to any of her past relevant work. (AR 21).

8  
9 Finally, at step five, the ALJ concluded that based on Plaintiff's  
10 RFC, age, education, work experience, and testimony by the VE, there are  
11 jobs that exist in significant numbers in the national economy that the  
12 Plaintiff can perform. (AR 22). He found that, among these jobs,  
13 Plaintiff could perform work as an office assistant, cashier, and  
14 cleaner. (Id.).

#### 15 16 STANDARD OF REVIEW

17  
18 Under 42 U.S.C. § 405(g), a district court may review the  
19 Commissioner's decision to deny benefits. The court may set aside the  
20 Commissioner's decision when the ALJ's findings are based on legal error  
21 or are not supported by substantial evidence in the record as a whole.  
22 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.  
23 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

24  
25 "Substantial evidence is more than a scintilla, but less than a  
26 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence  
27 which a reasonable person might accept as adequate to support a  
28 conclusion." Id. To determine whether substantial evidence supports a

1 finding, the court must "consider the record as a whole, weighing both  
2 evidence that supports and evidence that detracts from the  
3 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny  
4 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can  
5 reasonably support either affirming or reversing that conclusion, the  
6 court may not substitute its judgment for that of the Commissioner.  
7 Reddick, 157 F.3d at 720-21.

8  
9 **DISCUSSION**

10  
11 Plaintiff argues that the ALJ's decision should be overturned for  
12 four reasons. First, she argues that the Appeals Council failed to  
13 properly consider the Work Capacity Evaluation [Mental] form prepared by  
14 a treating physician. (Jt. Stip. at 3-5). Second, Plaintiff alleges  
15 that the ALJ failed to properly consider the psychiatric evaluation  
16 completed by a treating physician. (Jt. Stip. at 7-8). Third,  
17 Plaintiff contends that the ALJ did not properly consider the Care  
18 Necessity Evaluation that was performed by a treating clinician. (Jt.  
19 Stip. at 10). Finally, Plaintiff claims that the ALJ posed an  
20 incomplete hypothetical question to the VE. (Jt. Stip. at 11-12). The  
21 Court disagrees with Plaintiff's contentions.

22  
23 **A. Plaintiff's Claim That The Appeals Council Did Not Properly**  
24 **Consider A Treating Physician's Opinion Does Not Warrant Remand**

25  
26 Plaintiff contends that the Work Capacity Evaluation [Mental] form  
27 prepared by Dr. Dau Van Nguyen, a treating physician, was not properly  
28 considered by the Appeals Council. (Jt. Stip. at 3-5). Plaintiff

1 contends that the Appeals Council should have either remanded the matter  
2 to the ALJ for further consideration in light of Dr. Nguyen's opinion or  
3 given clear and convincing reasons for rejecting Dr. Nguyen's opinion.  
4 (Id.). Plaintiff's claim does not warrant remand.

5  
6 Although a treating physician's opinion is entitled to great  
7 deference, it is "not necessarily conclusive as to either the physical  
8 condition or the ultimate issue of disability." Morgan v. Comm'r of  
9 Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). If the treating  
10 doctor's opinion is not contradicted by another doctor, it may be  
11 rejected only for "clear and convincing" reasons supported by  
12 substantial evidence in the record. Lester v. Chater, 81 F.3d 821, 830  
13 (9th Cir. 1995) (citing Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th  
14 Cir. 1991)). "Even when the treating doctor's opinion is contradicted  
15 by the opinion of another doctor, the ALJ may not reject this opinion  
16 without providing 'specific and legitimate reasons' supported by  
17 substantial evidence in the record." Orn v. Astrue, 495 F.3d 625, 633  
18 (9th Cir. 2007) (quoting Reddick, 157 F.3d at 725). The ALJ can meet  
19 this burden by setting forth a detailed and thorough summary of the  
20 facts and conflicting clinical evidence. See Magallanes v. Bowen, 881  
21 F.2d 747, 751, 753-55 (9th Cir. 1989) (noting that the court may draw  
22 inferences from the ALJ's discussion of the evidence in the record that  
23 reveal his rationale).

24  
25 When applicable, the Appeals Council shall evaluate the entire  
26 record, including new relevant evidence. Ramirez v. Shalala, 8 F.3d  
27 1449, 1451-52 (9th Cir. 1993) (where the plaintiff submits evidence  
28 after the ALJ's decision and the Appeals Council specifically considers

1 that evidence, "we consider the ruling of both the ALJ and the Appeals  
2 Council," and the record for review includes the new evidence); see also  
3 20 C.F.R. §§ 404.970(b) & 416.1470(b).

4  
5 Here, the Appeals Council's denied review of the ALJ's decision.  
6 (AR 5). The Appeals Council indicated that it considered Dr. Nguyen's  
7 evaluation form and made it part of the record. (AR 5, 8). The Appeals  
8 Council found that "this information does not provide a basis for  
9 changing the [ALJ's] decision." (AR 6).

10

11 Although the Appeals Council did not discuss Dr. Nguyen's  
12 evaluation form in detail, there was no error. The Appeals Council need  
13 not provide particular evidentiary findings when it rejects evidence  
14 submitted subsequent to the ALJ's decision without accepting review.  
15 Gomez v. Chater, 74 F.3d 967, 972 (9th Cir. 1996).

16

17 Even if the Appeals Council had failed to properly consider Dr.  
18 Nguyen's evaluation form, the error would have been harmless as the  
19 outcome would have been the same. See Curry v. Sullivan, 925 F.2d 1127,  
20 1129 (9th Cir. 1990) (harmless error rule applies to review of  
21 administrative decisions regarding disability); Booz v. Sec'y of Health  
22 and Human Servs., 734 F.2d 1378, 1380-81 (9th Cir. 1984) (same). Dr.  
23 Nguyen's evaluation form was a check-off report with no explanation for  
24 his medical findings. (See AR 315-16). The Appeals Council was under  
25 no obligation to accept or credit a conclusory opinion such as that  
26 contained in the instant evaluation form. See Magallanes, 881 F.2d at  
27 751 (finding that the ALJ need not consider conclusory opinions); see  
28 also Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (holding that

1 the ALJ properly rejected doctor's opinion because they were check-off  
2 reports that did not contain any explanation of the bases of their  
3 conclusions).

4  
5 Moreover, Dr. Nguyen's evaluation form was inconsistent with his  
6 own treating notes. Dr. Nguyen's treating notes indicate that Plaintiff  
7 was adequately complying with her medication treatment and that no  
8 significant changes in medication were required. (See AR 302-13). The  
9 notes also demonstrate that Plaintiff was receiving treatment every four  
10 to six weeks. (See id.). As such, Dr. Nguyen's notes regarding  
11 Plaintiff's relatively conservative treatment appear to be inconsistent  
12 with the level of limitations Dr. Nguyen reports in the evaluation form.  
13 See Johnson v. Shalala, 60 F.3d 1428, 1433 (9th Cir. 1995) (holding ALJ  
14 properly rejected uncontradicted opinion of treating physician that  
15 claimant was totally disabled where physician also opined that claimant  
16 needed only "program of conservative care"). Accordingly, the Appeals  
17 Council was not required to accept or credit Dr. Nguyen's evaluation  
18 form.

19  
20 Further, Dr. Nguyen's evaluation form is contradicted by the  
21 opinions of state agency reviewing physician, Dr. Gregg and the medical  
22 expert, Dr. J. Malancharuvil. Both Dr. Gregg and Dr. Malancharuvil  
23 found that Plaintiff did not have any marked mental limitations and that  
24 her condition was well-managed with medication. (See AR 221-35, 328-29,  
25 332-34).

26  
27 Finally, Plaintiff's activities belie Dr. Nguyen's evaluation form.  
28 Among other things, Plaintiff completed a Bachelor's degree in

1 Psychology during the time period she alleged she was disabled due to  
2 bipolar disorder. (See AR 65-68, 69-72, 322).

3  
4 In sum, the Appeals Council did not err by rejecting Dr. Nguyen's  
5 evaluation form. Even if the Appeals Council had erred, the error, if  
6 any, was harmless. Accordingly, Plaintiff's claim does not warrant  
7 remand.

8  
9 **B. Plaintiff's Claim That The ALJ Did Not Properly Consider The**  
10 **Treating Doctor's Psychiatric Evaluation Does Not Warrant Remand**

11  
12 Plaintiff alleges that Dr. Barrozo's May 25, 2000 Medication  
13 Support Services Psychiatric Evaluation was not properly considered by  
14 the ALJ. (See Jt. Stip. at 7-8). Specifically, Plaintiff complains  
15 that Dr. Barrozo's assessment of her GAF score was not considered by the  
16 ALJ. (Jt. Stip. at 9-10). Plaintiff's claim fails.

17  
18 Here, the ALJ did not discuss the completed form nor did he offer  
19 reasons for rejecting it. Nonetheless, even if the ALJ had accorded  
20 greater weight to this opinion, the result would be the same. Dr.  
21 Barrozo's evaluation was conducted approximately four and a half years  
22 before Plaintiff's SSI application at issue here. (See AR 73).  
23 Plaintiff had previously applied for SSI and disability insurance  
24 benefits on July 22, 2003 and February 11, 2004. (AR 65-68, 69-72).  
25 The Agency determined that Plaintiff was not disabled through March  
26 2004. (AR 24-26, 54-58, 61-64). Plaintiff did not pursue these  
27 applications any further. The instant application alleged a disability  
28 onset date of January 5, 2005. (AR 73). Accordingly, Dr. Barrozo's

1 report is not relevant to the ultimate issue, i.e., whether Plaintiff  
2 was disabled as of January 2005. Any error, if it occurred at all, was  
3 therefore harmless error as the outcome would have been the same. See  
4 Curry, 925 F.2d at 1129; Booz, 734 F.2d at 1380-81.

5

6 Moreover, Plaintiff's chief complaint, that the ALJ did not  
7 consider Dr. Barrozo's assessment of Plaintiff's GAF score, does not  
8 warrant remand. GAF scores are not dispositive in social security  
9 cases. See 65 Fed. Reg. 50746, 50765 (August 21, 2000) (GAF scores are  
10 not directly correlative to Social Security severity assessments). A  
11 GAF score is only intended to be used to plan treatment and measure its  
12 impact. See DSMV IV, at 32. The ALJ's failure to reference the GAF  
13 score does not, by itself, make the ALJ's assessment inaccurate. See  
14 Howard v. Comm'r of Social Security, 276 F.3d 235, 241 (6th Cir. 2002)  
15 ("While a GAF score may be of considerable help to the ALJ in  
16 formulating the RFC, it is not essential to the RFC's accuracy. Thus,  
17 the ALJ's failure to directly reference the GAF score in the RFC,  
18 standing alone, does not make the RFC inaccurate."); see also Smith v.  
19 Astrue, 2008 WL 495735, \*7 n. 6 (E.D. Cal. Feb. 21, 2008) (citing  
20 Howard); Brewster v. Barnhart, 366 F. Supp. 2d 858, 876 (E.D. Mo. 2005)  
21 (citing Howard).

22

23 In sum, Plaintiff's contention that the ALJ's failure to discuss  
24 the assessed GAF score warrants remand is not persuasive. Accordingly,  
25 Plaintiff's claim fails.

26 \\

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1 C. Plaintiff's Claim That The ALJ Did Not Properly Consider The  
2 Treating Clinician's Care Necessity Evaluation Does Not Warrant  
3 Remand

4  
5 Plaintiff contends that the ALJ did not properly consider the Care  
6 Necessity Evaluation that was performed by marriage and family  
7 therapist, Amelia Gavogo. (Jt. Stip. at 10). Plaintiff's claim does  
8 not warrant remand.

9  
10 Because therapists are "other sources" pursuant to 20 C.F.R.  
11 section 404.1513(d), an ALJ is entitled to accord them "less weight than  
12 opinions from acceptable medical sources." Gomez, 74 F.3d at 970-71.<sup>6</sup>  
13 Although the ALJ did not explicitly discuss or reject the therapist's  
14 assessment, the ALJ's failure to address every single item in the  
15 administrative record does not constitute legal error. An ALJ need not  
16 expressly discuss all of the evidence presented. Howard ex rel. Wolff  
17 v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) ("[I]n interpreting the  
18 evidence and developing the record, the ALJ does not need to discuss  
19 every piece of evidence." (internal quotation marks and citations  
20 omitted)).

21  
22 Further, an ALJ is not required to discuss evidence that is neither  
23 significant nor probative. Id. Here, Amelia Gavogo's Care Necessity  
24 form is neither significant nor probative. The form was completed on  
25

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26  
27 <sup>6</sup> The Court notes that a therapist whose work is supervised by a  
28 physician may constitute an acceptable medical source. See Gomez, 74  
F.3d at 971. However, it is unclear if Amelia Gavogo was being  
supervised by a physician. (See AR 275).



1 March 6, 2003, before Plaintiff's alleged disability onset date of  
2 January 5, 2005. (See AR 73, 275). Accordingly, Amelia Gavogo's Care  
3 Necessity form is not relevant to the ultimate issue, i.e., whether  
4 Plaintiff was disabled as of January 2005. Moreover, Amelia Gavogo's  
5 Care Necessity form is a check-off report used to determine whether a  
6 patient is qualified for Medi-Cal benefits. (See AR 275). It does not  
7 indicate that substantial clinical findings were made or relied upon.  
8 (See id.); see also Batson, 359 F.3d at 1195 (rejecting a treating  
9 physician's opinion, in part, because it was "conclusory in the form of  
10 a check list" and "lack[ed] substantive medical findings to support  
11 [the] conclusion."); Tonapetyan v. Comm'r of Soc. Sec., 242 F.3d 1144,  
12 1149 (9th Cir. 2001) (an ALJ may discredit treating physicians' opinions  
13 that are conclusory, brief, and unsupported by the record as a whole).  
14 As such, the ALJ was not required to address the Care Necessity form.

15

16       Regardless, the ALJ specifically discussed Amelia's Gavogo's  
17 treatment notes from March 6, 2003, the same date the Care Necessity  
18 form was completed. (See AR 18; see also AR 275, 278). As such, it is  
19 clear that the ALJ thoroughly reviewed the record and considered Amelia  
20 Gavogo's opinion that Plaintiff had bipolar disorder in partial  
21 remission. (See id.).

22

23       In sum, the ALJ did not err in failing to discuss Amelia Gavogo's  
24 Care Necessity form. Accordingly, Plaintiff's claim does not warrant  
25 remand.

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1 **D. The ALJ Posed A Complete Hypothetical To The VE**

2  
3 Plaintiff claims that the ALJ posed an incomplete hypothetical  
4 question to the VE. (Jt. Stip. at 11-12). Specifically, Plaintiff  
5 alleges that the ALJ's erroneously failed to incorporate the fact that  
6 Plaintiff was found to have a GAF score of fifty and has a probability  
7 of significant deterioration in an important area of life. (Jt. Stip.  
8 at 12). Essentially, Plaintiff is arguing that the ALJ failed to  
9 incorporate the findings from Dr. Barrozo's May 25, 2000 Medication  
10 Support Services Psychiatric Evaluation and therapist Amelia Gavogo's  
11 March 6, 2003 Care Necessity Form into his hypothetical. (See id.).  
12 Plaintiff's claim does not warrant remand.

13  
14 In order for the VE's testimony to constitute substantial evidence,  
15 the hypothetical question posed must "consider all of the claimant's  
16 limitations." Andrews, 53 F.3d at 1044. However, the ALJ is not  
17 required to include limitations that are not supported by substantial  
18 evidence. See Osenbrock, 240 F.3d at 1164-65; see also Rollins v.  
19 Massanari, 261 F3d 853, 857 (9th Cir. 2001) ("Because the ALJ included  
20 all of the limitations that he found to exist, and because his findings  
21 were supported by substantial evidence, the ALJ did not err in omitting  
22 the other limitations that [the plaintiff] had claimed, but had failed  
23 to prove."). The limitations that Plaintiff suggests should have been  
24 incorporated into the hypothetical question to the VE are not relevant  
25 to Plaintiff's RFC as of the January 5, 2005 disability onset date.  
26 (See Discussion supra Parts B & C). Moreover, the other evidence in the  
27 record did not support a finding of such limitations. As the asserted  
28

1 limitations are not supported by substantial evidence, the ALJ was not  
2 obligated to include them in his hypothetical question to the VE.

3  
4 In sum, the ALJ included all of the limitations that he found to  
5 exist in the hypothetical question. (See AR 349-50). As such, the ALJ  
6 did not err by omitting the limitations found in Dr. Barrozo's May 25,  
7 2000 Medication Support Services Psychiatric Evaluation and therapist  
8 Amelia Gavogo's March 6, 2003 Care Necessity Form. Accordingly,  
9 Plaintiff's claim does not warrant remand.

10  
11 **CONCLUSION**  
12

13 Consistent with the foregoing, and pursuant to sentence four of 42  
14 U.S.C. § 405(g),<sup>7</sup> IT IS ORDERED that judgment be entered AFFIRMING the  
15 decision of the Commissioner and dismissing this action with prejudice.  
16 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
17 Order and the Judgment on counsel for both parties.

18  
19 DATED: September 3, 2008.

20 /s/

21  
22 SUZANNE H. SEGAL  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25

26  
27 <sup>7</sup> This sentence provides: "The [district] court shall have power  
28 to enter, upon the pleadings and transcript of the record, a judgment  
affirming, modifying, or reversing the decision of the Commissioner of  
Social Security, with or without remanding the cause for a rehearing."