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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW LOPEZ MONREAL,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

) Case No. EDCV 07-1663 RNB

) ORDER REVERSING DECISION OF
) COMMISSIONER AND REMANDING
) FOR FURTHER ADMINISTRATIVE
) PROCEEDINGS

Plaintiff filed a Complaint herein on December 27, 2007, seeking review of the Commissioner’s denial of his application for disability insurance benefits. In accordance with the Court’s Case Management Order, the parties filed a Joint Stipulation on October 7, 2008. Thus, this matter now is ready for decision.¹

DISPUTED ISSUES

¹ 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 Joint Stipulation (“Jt Stip”) 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).

1 As reflected in the Joint Stipulation, the disputed issues that plaintiff is raising
2 as the grounds for reversal and remand are as follows:

3 1. Whether the Administrative Law Judge (“ALJ”)
4 misrepresented the record and properly considered the lay witness
5 statements.

6 2. Whether the ALJ made proper credibility findings.

7 3. Whether the ALJ misrepresented the record and properly
8 considered the treating psychiatrist’s opinions.

9 4. Whether the ALJ considered the severity of plaintiff’s
10 mental impairment.

11 **DISCUSSION**

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13 In Bustamante v. Massanari, 262 F.3d 949, 953-55 (9th Cir.2001), the Ninth
14 Circuit held that, in determining whether an individual is disabled, the ALJ must
15 conduct the five-step inquiry contained in 20 C.F.R. § 404.1520(b)-(f) before
16 considering the impact of alcoholism or drug addiction. See also, e.g., Taylor v.
17 Astrue, 2008 WL 2018430, *8 (E.D. Cal. May 8, 2008) (“An ALJ must first conduct
18 the five-step inquiry without separating out the impact of alcoholism or drug
19 addiction.”); Lindsay v. Barnhart, 370 F. Supp. 2d 1036, 1044 (C.D. Cal. 2005)
20 (noting that “it is reversible error for an ALJ to attempt to separate out the impact of
21 a claimant's alcohol abuse before determining whether the claimant is disabled”).
22 Thus, to the extent that the Commissioner is correct in his characterization that the
23 ALJ “found that, absent his substance abuse, [p]laintiff did not have a medically
24 determinable mental impairment” (see Jt Stip at 6-7, citing AR 16), the Court finds
25 that the ALJ erred. Moreover, to the extent that the Commissioner’s position with
26 respect to Disputed Issue Nos. 1, 2, and 3 is premised on the ALJ’s finding that
27 plaintiff did not establish that he had a medically determinable mental impairment
28 independent of substance abuse (see Jt Stip at 7-8, 10-11, 14), the Court is compelled

1 to reject the Commissioner’s position.

2 The Court further notes that, in the October 26, 2005 decision on plaintiff’s
3 prior benefits applications, the prior ALJ found inter alia that plaintiff suffered from
4 a severe mental impairment. Consequently, the prior ALJ limited plaintiff to entry
5 level work consisting of routine, repetitive tasks in his residual functional capacity
6 (“RFC”) assessment. Based on his RFC determination, the prior ALJ found that
7 plaintiff was not disabled because he was capable of performing his past relevant work
8 as a waiter and that, even if plaintiff had no past relevant work or was unable to return
9 to his past relevant work, he was not disabled because jobs existed in significant
10 numbers in the national economy that a person with plaintiff’s vocational factors and
11 RFC could perform. (See AR 24, 29, 30, 31). Under Chavez v. Bowen, 844 F.2d 691,
12 694 (9th Cir. 1988), principles of res judicata made the prior ALJ’s determination of
13 plaintiff’s RFC (which was premised on a finding that plaintiff suffered from a severe
14 mental impairment) binding on the ALJ who rendered the decision in the instant case,
15 absent new information not presented to the prior ALJ. See Stubbs-Danielson v.
16 Astrue, 539 F.3d 1169, 1173 (9th Cir. 2008). Since the Commissioner has failed to
17 point out any such new information, the Court finds that the ALJ in the instant case
18 erred in concluding that plaintiff did not suffer from a severe mental impairment.
19 Moreover, to the extent that the Commissioner’s position with respect to Disputed
20 Issue No. 4 is premised on the ALJ’s finding that plaintiff “did not show he had a
21 medically determinable mental impairment during the relevant time period” (see Jt
22 Stip at 16), the Court is compelled to reject the Commissioner’s position.

23 24 **CONCLUSION AND ORDER**

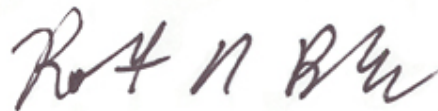
25 The law is well established that the decision whether to remand for further
26 proceedings or simply to award benefits is within the discretion of the Court. See,
27 e.g., Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990); McAllister, 888 F.2d at
28 603; Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). Remand is warranted

1 where additional administrative proceedings could remedy defects in the decision.
2 See, e.g., Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984); Lewin, 654 F.2d at
3 635. Remand for the payment of benefits is appropriate where no useful purpose
4 would be served by further administrative proceedings, Kornock v. Harris, 648 F.2d
5 525, 527 (9th Cir. 1980); where the record has been fully developed, Hoffman v.
6 Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); or where remand would unnecessarily
7 delay the receipt of benefits, Bilby v. Schweiker, 762 F.2d 716, 719 (9th Cir. 1985).

8 Here, it appears to the Court that additional administrative proceedings could
9 remedy the defects in the ALJ's decision since the Court is not convinced from its
10 review of the record that plaintiff can sustain his burden of overcoming the
11 presumption of continuing non-disability arising from the prior ALJ decision. See
12 Chavez, 844 F.2d at 693.

13 Accordingly, pursuant to sentence four of 42 U.S.C. § 405(g), IT IS ORDERED
14 that Judgment be entered reversing the decision of the Commissioner of Social
15 Security and remanding this matter for further administrative proceedings.²

16
17 DATED: October 24, 2008



18
19 **ROBERT N. BLOCK**
20 UNITED STATES MAGISTRATE JUDGE

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23 ² The Court's review of the administrative record reveals another issue that
24 neither side raised, but that will need to be addressed by the Commissioner on remand.
25 The ALJ purported to be rendering a decision solely on the application for disability
26 insurance benefits that plaintiff filed on December 21, 2005. (See AR 12, 73-77).
27 However, there are numerous indications in the Administrative Record that plaintiff
28 concurrently filed an application for Supplemental Security Income benefits (as the
prior ALJ decision reflects plaintiff had done in 2003). (See AR 34, 94, 379, 385,
400, 404, 427).