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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DOREENA ARRIOLA,)	No. ED CV 08-00249-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 record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

This Memorandum Opinion will constitute the Court's findings of fact and conclusions of law.

1 Plaintiff states the following issues:

- 2 1. Whether the Administrative Law Judge ("ALJ") properly
3 considered significant longitudinal evidence that documents
4 a functionally limiting mental disorder;
- 5 2. Whether the ALJ properly considered the psychiatric
6 evaluation of Dr. Henry Khin;
- 7 3. Whether the ALJ properly considered the psychiatric
8 evaluation of Dr. Romeo Villar;
- 9 4. Whether the ALJ misrepresented the record and properly
10 considered Dr. Villar's medical report opinion of
11 disability;
- 12 5. Whether the ALJ complied with Social Security Ruling ("SSR")
13 96-7p, regarding type, dosage, effectiveness and side
14 effects of medication;
- 15 6. Whether the ALJ properly considered the treating clinician's
16 evaluation;
- 17 7. Whether the ALJ should have allowed Plaintiff's counsel to
18 pose a complete hypothetical question to the vocational
19 expert ("VE"); and
- 20 8. Whether the ALJ posed a complete hypothetical question to
21 the VE.

22
23 **I**

24 **THE ALJ DID NOT IMPROPERLY FAIL TO EVALUATE LONGITUDINAL**
25 **EVIDENCE REGARDING PLAINTIFF'S MENTAL DISORDER**

26 Plaintiff asserts that a Discharge Summary from San Bernardino
27 County Department of Mental Health ("SBCDMH") of May 23, 1994
28 indicates she has a history of depression, crying spells and feelings

1 of abandonment and social isolation. (JS at 3, citing AR 271.)
2 Plaintiff also objects to the ALJ's failure to consider her Global
3 Assessment of Functioning ("GAF") score of 46 as reported in the 1994
4 Discharge Summary. (Id.)

5 As the Commissioner has noted, a prior claim filed by Plaintiff
6 in which she alleged mental problems was administratively denied in
7 December 2004 due to insufficient evidence. (JS at 5, et seq., AR
8 391.) In addition, there is a notation of a prior denial of a claim
9 through an ALJ decision in 1995. (Id.) The Court agrees with the
10 Commissioner's contention that the ALJ was not required to address the
11 1994 medical evidence with regard to his consideration of the present
12 claim, which Plaintiff filed in November 2005. As the parties agree,
13 SSI entitlement begins no earlier than the month in which an
14 application is filed. (See 20 C.F.R. §416.335.) In any event, the
15 ALJ's decision here does reflect substantial consideration of
16 Plaintiff's longitudinal mental health history. (See AR at 15, 16.)

17 Discussion of GAF scores is in the next section.

18
19 **II**

20 **THE ALJ PROPERLY CONSIDERED THE PSYCHIATRIC EVALUATION OF DR. KHIN**

21 Dr. Henry Khin of the San Bernardino County Department of
22 Behavioral Health, completed a mental status form, which included
23 check-off boxes, on November 8, 2005. (AR 344-347.) Plaintiff notes
24 that Dr. Khin indicated she had rapid speech, depressed mood and
25 visual hallucinations. (Id.) He diagnosed Plaintiff with bipolar
26 disorder, NOS, and a GAF rating of 45. (Id.) Plaintiff asserts the
27 ALJ failed to consider Dr. Khin's findings.

28 Contrary to Plaintiff's assertion, the ALJ did consider Dr.

1 Khin's November 8, 2005 evaluation. (See AR at 11.) The ALJ
2 discounted Dr. Khin's findings because he instead relied upon the
3 testimony of Dr. Glassmire, the medical expert ("ME"), who testified
4 that Dr. Khin's conclusion that Plaintiff suffered from bipolar
5 syndrome with polysubstance and alcohol dependence is undermined by
6 the fact that Plaintiff presently was in sustained remission. (See JS
7 at 11, AR at 31.)

8 With regard to Plaintiff's assertion that the ALJ failed, in
9 particular, to consider Dr. Khin's assessment of her GAF, this Court
10 has often and consistently opined that the GAF score is largely
11 irrelevant to the determination of an individual's ability to function
12 in an occupation.

13 The GAF scale is intended to reflect a person's overall level of
14 functioning at or about the time of the examination, not for a period
15 of at least 12 consecutive months, which is required for a finding of
16 impairment or disability. (See 20 C.F.R. §§416.905, 416.920(c)(2006).)

17 GAF scores are intended to be used for clinical diagnosis and
18 treatment, and do not directly correlate to the severity assessment
19 set forth in Social Security regulations. (See Revised Medical
20 Criteria for Evaluating Mental Disorders and Traumatic Brain Injury,
21 65 Fed. Reg. 50746, 50764-65 (Aug. 21, 2000), and American Psychiatric
22 Ass'n, Diagnostic and Statistical Manual of Mental Disorders, Text
23 Revision 33 (4th Ed. 2000).

24 25 III

26 THE ALJ PROPERLY CONSIDERED THE EVALUATION OF DR. VILLAR

27 Dr. Villar, of San Bernardino County Department of Behavioral
28 Health, conducted a psychiatric evaluation of Plaintiff on June 8,

1 2007. (AR 401.) Dr. Villar diagnosed Plaintiff with bipolar disorder,
2 Type I, with psychotic features. On July 25, 2007, he provided the
3 identical diagnosis, and opined that Plaintiff was incapable of any
4 work. (AR 393.) Plaintiff asserts that the ALJ failed to consider the
5 mental status findings of Dr. Villar. (JS at 10.)

6 Initially, the Court notes that the ALJ determined that
7 Plaintiff's severe impairment consists of bipolar syndrome with
8 psychotic features, which is exactly the same as Dr. Villar's
9 diagnosis. Plaintiff's apparent complaint, therefore, is that the ALJ
10 ignored the opinion of Dr. Villar that Plaintiff is unable to work as
11 a result of this diagnosis. But, as the ALJ noted in his decision, at
12 the time Dr. Villar rendered his opinion regarding Plaintiff's
13 inability to work, he had only seen her three times. Moreover, as the
14 ALJ noted, Dr. Villar had also assessed recent improvement in
15 Plaintiff's condition, which included the absence of hallucinations.
16 (See AR at 399-402, and 15-16.) Indeed, the ALJ specifically and
17 correctly cited Social Security regulations embodied in 20 C.F.R.
18 §§404.1527 and 416.927, in addition to SSR 96-5p, all of which
19 unambiguously instruct that the determination of a claimant's residual
20 functional capacity ("RFC"), or the application of vocational factors
21 is the final responsibility of the Commissioner. Thus, the Court
22 rejects Plaintiff's apparent approach, which is that when an ALJ
23 disagrees with the ultimate opinion on disability expressed by a
24 physician, even a treating physician, that constitutes a disregard of
25 the opinion of the treating physician. Rather, the ALJ must, in all
26 cases, identify the medical evidence upon which he relies in making a
27 functional assessment. The opinion of a treating physician is not, of
28 course, necessarily determinative on the disability issue. See, e.g.,

1 Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing
2 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). In this case,
3 in addition, the ALJ relied upon the testimony and opinion of the ME,
4 Dr. Glassmire, which was supported by substantial, independent
5 evidence.

6 The above discussion is also applicable to the Court's rejection
7 of Plaintiff's fourth issue, which is that the ALJ misrepresented the
8 record and improperly failed to consider Dr. Villar's medical report
9 opinion of disability. (See JS at 13, et seq.)

10 Plaintiff also objects because the ALJ appeared to assess bias on
11 the part of Dr. Villar, charging that he "prepared [the medical
12 report] for the express purpose of enabling the [Plaintiff] to obtain
13 transitional assistance." (AR 15.) The Court agrees that there is
14 nothing in the record which would appear to support that assertion;
15 nevertheless, any error is deemed to be harmless, because the ALJ's
16 remaining assessment of the weight to be given to Dr. Villar's opinion
17 is supported by substantial evidence. (e.g., the fact that he had only
18 met with Plaintiff on three brief occasions prior to preparing his
19 medical report, and that he also reported Plaintiff to be improved and
20 without hallucinations.)

21
22 **IV**

23 **THE ALJ DID NOT FAIL TO CONSIDER SIDE EFFECTS OF MEDICATION**

24 Plaintiff notes that one of her treating physicians, Dr. Villar,
25 at one point increased the dosage of Seroquel (JS at 17, AR 395).
26 Plaintiff complains that the ALJ failed to consider evidence of side
27 effects of Seroquel, and cites a drug textbook which indicates
28 possible side effects of this medication. (AR 17.) As such, Plaintiff

1 asserts the ALJ failed to adhere to the requirements of SSR 96-7p,
2 which requires that such side effects be considered.

3 Plaintiff's argument only goes so far. While there is evidence
4 in the record that she was prescribed Seroquel, there is absolutely no
5 evidence that it led to any side effects whatsoever. In fact,
6 Plaintiff specifically denied side effects from any medication after
7 a medical evaluation on November 10, 2005. (AR 350.) Further, at the
8 hearing before the ALJ, Plaintiff testified in the past she stopped
9 taking a prescribed medication because her purse was stolen. (AR 25-
10 26.)

11 It is Plaintiff's burden to demonstrate that she has disabling
12 conditions. Thus, it would be the ALJ's obligation to consider side
13 effects of medication if, for example, the medical records documented
14 this, or if Plaintiff substantially raised complaints about such side
15 effects. Neither situation exists in this case. What Plaintiff
16 essentially postulates is that any time a claimant is on medication,
17 it is the Commissioner's responsibility to investigate whether any
18 possible side effects of medications taken by the claimant have been
19 manifested. The Court finds that the Commissioner is under no such
20 obligation, and that Plaintiff's argument is, therefore, without
21 merit.

22
23 V

24 **THE ALJ DID NOT FAIL TO PROPERLY CONSIDER**

25 **THE TREATING CLINICIAN'S EVALUATION**

26 In her sixth issue, Plaintiff asserts that the ALJ failed to
27 consider the July 30, 2001 evaluation of Holli Prince, licensed
28 clinical social worker of the San Bernardino County Department of

1 Behavioral Health, that Plaintiff has tangential and flight of idea
2 thought processing. (JS at 20, AR at 323.) Plaintiff acknowledges
3 that Ms. Prince is not a physician or otherwise considered to be an
4 "acceptable" medical source pursuant to 20 C.F.R. §416.913(a). (JS at
5 20.) Again, Plaintiff ignores the fact that the 2001 report of Ms.
6 Prince was issued four years prior to the SSI application which is at
7 issue in this case. As noted with regard to Plaintiff's claim
8 concerning her 1994 medical evaluation, Plaintiff's 2004 SSI claim,
9 which was denied in that year, is res judicata regarding the issue of
10 disability through December 2004, when it was denied. Plaintiff's
11 argument is without merit.

12
13 **VI**

14 **THE ALJ DID NOT FAIL TO PERMIT A**

15 **COMPLETE HYPOTHETICAL QUESTION TO THE VE**

16 Plaintiff notes that at the hearing, the ALJ posed a question to
17 the VE which incorporated moderate limitations in ability to get along
18 with coworkers or peers without distracting them or exhibiting
19 behavioral extremes. In the hypothetical, the ALJ defined "moderate"
20 as more than a slight limitation in the area. (AR 37-38.) Thereafter,
21 the ALJ disallowed the attempt by Plaintiff's counsel to amend the
22 word "moderate" to be defined as "significant" limitations. (AR 38.)
23 The ALJ indicated that,

24 "If you want to say she has significant limitations
25 that are in the marked area, more extreme, et cetera, you
26 may do so. But you may not change the definition of
27 moderate without a legal factual basis for changing it."

28 (AR 38-39.)

1 In response, the attorney indicated, "Okay. No further
2 questions." (AR 39.)

3 While Plaintiff claims that the ALJ made an arbitrary attempt to
4 change the definition of the word "moderate," the fact is that the
5 hypothetical question posed by the ALJ to the VE was based upon the
6 limitations set forth in Dr. Glassmire's testimony (AR 32), which was
7 accepted by the ALJ. The ALJ's definition of the term "moderate" is
8 referenced in the 2006 edition of SSA Form HA-1152, which defines that
9 term as, "There is more than a slight limitation in this area but the
10 individual is still able to function satisfactorily."

11 The ALJ's disallowance of a hypothetical question which would
12 have changed the accepted meaning of the term "moderate" was not
13 error. Plaintiff's counsel was unable to identify any legal support
14 for his own proposed definition of the term. The Court cannot find
15 any error in the ALJ's determination at the hearing to prohibit a
16 hypothetical question based on this unsubstantiated definition.

17
18 **VII**

19 **THE ALJ POSED A COMPLETE HYPOTHETICAL QUESTION TO THE VE**

20 Plaintiff asserts that at the hearing, the ALJ's hypothetical to
21 the VE did not include GAF scores of 45, 46 and 47, which Plaintiff
22 had previously received during various evaluations. The Court again
23 incorporates its prior discussion regarding the lack of relevance of
24 a GAF in determining occupational suitability, and the ability to
25 work. Indeed, the injection of GAF scores into a hypothetical
26 question would have rendered any answer ambiguous. The Court finds no
27 error in the ALJ's failure to include GAF questions in the
28 hypothetical posed to the VE.

