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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JAYNIE M. SHEHAN,)	Case No. EDCV 08-01302 (MLG)
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security)	
Administration,)	
)	
Defendant.)	
)	

Plaintiff Jaynie M. Shehan ("Plaintiff") seeks review of the Commissioner's final decision denying her applications for disability insurance benefits ("DIB") and supplemental security income benefits ("SSI") pursuant to Titles II and XVI of the Social Security Act. For the reasons stated below, the Commissioner's decision is reversed, and this action is remanded for further proceedings.

I. Factual and Procedural Background

Plaintiff was born on August 5, 1949. (Administrative Record ("AR") at 11, 91). She has a high school education and relevant work experience

1 as a receptionist. (AR at 40).

2 Plaintiff filed applications for DIB and SSI on March 15, 2006,
3 alleging that she had been disabled since August 4, 2005, due to
4 osteoarthritis and a spinal disc narrowing. (AR at 39, 87). The Social
5 Security Administration denied Plaintiff's applications at the initial
6 and reconsideration levels. (AR at 34, 42-46, 48-52).

7 A *de novo* hearing was held before Administrative Law Judge Mason D.
8 Harrell, Jr. (the "ALJ") on November 15, 2007. (AR at 6-22). Plaintiff
9 testified in her own behalf and was represented by counsel. *Id.* A
10 vocational expert also testified at the hearing. (AR at 24-25). On
11 December 12, 2007, the ALJ issued a decision denying Plaintiff's
12 applications for DIB and SSI. (AR at 34-41). The ALJ found that
13 Plaintiff: (1) has not engaged in substantial gainful activity since her
14 alleged onset date of disability (step 1); (2) suffers from a
15 "questionably severe impairment of the musculoskeletal system with
16 residual low back pain" (step 2); (3) does not have any impairments that
17 meet or equal a Listed impairment (step 3); (4) has the residual
18 functional capacity ("RFC") to perform light work¹ and is able to perform
19 her past relevant work as a receptionist. (AR at 36-40). On August 12,
20 2008, the Appeals Council denied review. (AR at 1-3).

21 Plaintiff commenced this action for judicial review on September
22 30, 2008. On July, 20 2009, the parties filed a Joint Stipulation of
23 disputed issues. The issues presented are whether the ALJ: (1) properly
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26 ¹ Specifically, the ALJ found that Plaintiff is able to lift and
27 carry 20 pounds occasionally and 10 pounds frequently; stand and/or walk
28 six hours in an eight-hour workday, sit six hours with a sit/stand
option, and occasionally bend, stoop and crouch. (AR at 37). Plaintiff
can lie down during lunch breaks and should sit on a hard chair. (AR at
37).

1 considered the medical evidence; (2) properly considered Plaintiff's
2 subjective complaints and credibility; and (3) properly developed the
3 vocational evidence. (Joint Stipulation at 4-19). Plaintiff seeks remand
4 for a new administrative hearing and further development of the record.
5 (Joint Stipulation at 19). The Commissioner requests that the ALJ's
6 decision be affirmed. (Joint Stipulation at 20). The Joint Stipulation
7 has been taken under submission without oral argument.

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9 **II. Standard of Review**

10 Under 42 U.S.C. § 405(g), a district court may review the
11 Commissioner's decision to deny benefits. The Commissioner's or ALJ's
12 findings and decision should be upheld if they are free from legal error
13 and are supported by substantial evidence based on the record as a
14 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401
15 (1971); *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001).
16 Substantial evidence means such evidence as a reasonable person might
17 accept as adequate to support a conclusion. *Richardson*, 402 U.S. at 401;
18 *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). It is more than a
19 scintilla, but less than a preponderance. *Reddick*, 157 F.3d at 720. To
20 determine whether substantial evidence supports a finding, the reviewing
21 court "must review the administrative record as a whole, weighing both
22 the evidence that supports and the evidence that detracts from the
23 Commissioner's conclusion." *Id.* "If the evidence can reasonably support
24 either affirming or reversing," the reviewing court "may not substitute
25 its judgment" for that of the Commissioner. *Id.* at 720-721.

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1 **III. Discussion**

2 **A. Plaintiff's Subjective Pain Testimony**

3 Plaintiff contends that the ALJ failed to give proper consideration
4 to her testimony concerning the nature and extent of her pain and
5 functional limitations.

6 The determination of credibility and the resolution of conflicts in
7 the testimony are functions of the ALJ acting on behalf of the
8 Commissioner. *Morgan v. Commissioner of Social Security*, 169 F.3d 595,
9 599 (9th Cir. 1999); *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996).
10 In general, an ALJ's assessment of credibility should be given great
11 weight. *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1985). The ALJ may
12 employ ordinary techniques of credibility evaluation and may take into
13 account prior inconsistent statements or a lack of candor by the
14 witness. *Fair v. Bowen*, 885 F.2d 597, 604 n. 5 (9th Cir. 1989). However,
15 once a claimant has presented medical evidence of an underlying
16 impairment, the ALJ may not discredit the claimant's testimony regarding
17 subjective pain and other symptoms merely because the symptoms, as
18 opposed to the impairments, are unsupported by objective medical
19 evidence. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir.
20 2007); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998); *Light v.*
21 *Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). "[T]he ALJ can
22 reject the claimant's testimony about the severity of her symptoms only
23 by offering specific, clear and convincing reasons for doing so."
24 *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen v. Chater*, 80 F.3d 1273,
25 1281 (9th Cir. 1996)).

26 In this case, Plaintiff reported that she is unable to sit more
27 than 20 minutes, has many "bad days," and needs to lie down three to
28 four times a day. (AR at 15-16, 18-20). Plaintiff testified that she

1 often uses a TENS unit for pain. (AR at 15-16).

2 As an initial matter, the Commissioner contends that there was no
3 objective evidence to support the extent of Plaintiff's subjective
4 symptom testimony. (Joint Stipulation at 12). This argument is without
5 merit. A lack of objective evidence to support a claimant's statements
6 regarding her limitations is not a proper basis for rejecting a
7 claimant's allegations of disabling pain. *Lingenfelter*, 504 F.3d at
8 1035-36. Further, the ALJ never cited a lack of objective evidence as a
9 reason for discounting Plaintiff's complaints. Rather, the ALJ
10 acknowledged that Plaintiff's impairments could reasonably be expected
11 to cause some limitations, but concluded that Plaintiff's allegations
12 concerning her symptoms and their impact on her ability to work were not
13 entirely credible. (AR at 39). A reviewing court can evaluate an
14 agency's decision only on the grounds articulated by the agency."
15 *Ceguerra v. Secretary of Health & Human Services*, 933 F.2d 735, 738 (9th
16 Cir. 1991) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)).

17 In the decision, the ALJ gave the following reasons for the adverse
18 credibility determination: (1) Plaintiff was not forced to stop working
19 due to her impairments and limitations, but was laid off or quit for
20 other reasons; (2) Plaintiff was not taking medications for her
21 symptoms; (3) Plaintiff did not receive medical treatment; and (4)
22 Plaintiff has a poor work history. (AR at 39). The ALJ's stated reasons
23 do not provide an adequate basis for rejecting Plaintiff's subjective
24 complaints.

25 In support of the ALJ's first reason for rejecting Plaintiff's
26 credibility, (Plaintiff did not stop working due to her disability), the
27 Commissioner cites *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir.
28 2001). That facts of that case are quite different than those presented

1 here. In *Bruton*, the claimant's alleged onset date of disability was the
2 same date that he was laid off from his job as a machinist. *Id.* at 826.
3 Although the claimant alleged that he stopped working for medical
4 reasons, he waited nine months before seeking any medical treatment and
5 he even admitted that he had left his job because he had been laid off,
6 not because of an injury. *Id.* at 828. Unlike *Bruton*, the record here
7 does not support the inference that Plaintiff sought disability benefits
8 simply because she was laid off from work. Although Plaintiff admitted
9 that she stopped working in her previous two positions for reasons
10 unrelated to her alleged impairments, both jobs ended long before her
11 alleged onset date of August 2005. (AR at 9-13, 34, 82). Plaintiff's
12 work as a tax receptionist ended in June 2004 and her job as a customer
13 service representative ended in 2003. (AR at 12, 26, 88). There was also
14 evidence that Plaintiff's condition deteriorated since she was last able
15 to work. (See AR at 18-19, 38). Thus, Plaintiff's reasons for leaving
16 her earlier jobs was not a proper basis for rejecting her credibility.

17 The ALJ's second and third reasons for rejecting credibility (lack
18 of medications and medical treatment) are not substantially supported
19 because there was evidence that Plaintiff could not afford to see a
20 medical provider. (AR at 17); *Orn v. Astrue*, 495 F.3d 625 (9th Cir. 2007)
21 ("'[d]isability benefits may not be denied because of the claimant's
22 failure to obtain treatment he cannot obtain for lack of funds'")
23 (quoting *Gamble v. Chater*, 68 F.3d 319, 321 (9th Cir. 1995)). Plaintiff
24 testified that she could not afford to pay for medical insurance. (AR at
25 17). When Plaintiff sought medical services from the county, she was told
26 that she did not qualify due to her husband's income. (AR at 17). The ALJ
27 did not question the sincerity of Plaintiff's proffered explanation. See
28 Social Security Ruling 96-7p at *7-8 (stating that an "adjudicator must

1 not draw any inferences about an individual's symptoms and their
2 functional effects from a failure to seek or pursue regular medical
3 treatment without first considering any explanations that the individual
4 may provide, or other information in the case record, that may explain
5 infrequent or irregular medical visits or failure to seek medical
6 treatment" including inability to pay, whether "[t]he individual's daily
7 activities may be structured so as to minimize symptoms to a tolerable
8 level or eliminate them entirely," and whether medication may relieve
9 symptoms).

10 Lastly, the ALJ's finding that Plaintiff had a poor work history is
11 belied by the record. (AR at 39). The record shows that Plaintiff worked
12 as a customer service representative for Electronic Data Systems from
13 1991 through 2003. (AR at 26, 88). Plaintiff was laid off shortly after
14 transferring from a Northern California office to a Southern California
15 office. (AR at 26). And, while her work as a tax receptionist lasted for
16 only a few months in 2004, Plaintiff testified that she had been laid off
17 because the tax season had ended. (AR at 26).

18 Accordingly, the ALJ's credibility determination is not supported
19 by substantial evidence in the record.

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21 **IV. Conclusion**

22 In general, the choice whether to reverse and remand for further
23 administrative proceedings, or to reverse and simply award benefits, is
24 within the discretion of the court. *See Harman v. Apfel*, 211 F.3d 1172,
25 1178 (9th Cir. 2000) (holding that the district court's decision whether
26 to remand for further proceedings or for payment of benefits is
27 discretionary and is subject to review for abuse of discretion)). The
28 Ninth Circuit has observed that "the decision whether to remand for

1 further proceedings turns upon the likely utility of such proceedings."
2 *Id.* at 1179; see *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004)
3 (noting that a remand for further administrative proceedings is
4 appropriate "if enhancement of the record would be useful").

5 When an ALJ fails to articulate sufficient reasons for rejecting a
6 claimant's pain testimony, courts "have some flexibility" in determining
7 whether to remand for further proceedings. *Vasquez v. Astrue*, 572 F.3d
8 586, 2009 WL 1941485, *10 (9th Cir. 2009); *Connett v. Barnhardt*, 340 F.3d
9 871, 876 (9th Cir. 2003) (discussing the Ninth Circuit's conflicting case
10 law and holding that the doctrine is not mandatory because the court has
11 "some flexibility in applying the 'crediting as true' theory"). In this
12 case, the record has not been fully developed and, therefore, further
13 administrative proceedings would be useful. (Joint Stipulation at 19);
14 *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir. 1993) (remanding "for the ALJ
15 to repeat the step four analysis, articulating specific findings for
16 rejecting [the plaintiff's] pain testimony . . ." among other things).
17 Accordingly, the appropriate remedy is a remand for further
18 administrative proceedings and a new hearing decision.²

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23 ² Because the record is not sufficiently developed to support a
24 determination of disability without further proceedings, the Court will
25 not decide whether the remaining issues raised by Plaintiff would
26 independently require reversal. See *Bunnell v. Barnhart*, 336 F.3d 1112,
27 1115-16 (9th Cir. 2003) (where there are outstanding issues that must be
28 resolved before a determination of disability can be made, and it is not
clear from the record that the ALJ would be required to find the
claimant disabled if all the evidence were properly evaluated, remand is
appropriate). The Court recommends, however, that all of Plaintiff's
arguments be considered when determining the merits of her case on
remand.

1 Accordingly, IT IS HEREBY ORDERED that the decision of the
2 Commissioner is reversed and this action is remanded for further
3 proceedings consistent with this Memorandum Opinion.

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5 Dated: August 17, 2009

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Marc L. Goldman
United States Magistrate Judge

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