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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

LYNN MOYA,)	No. EDCV 09-850 CW
)	
Plaintiff,)	DECISION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner, Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner’s denial of disability benefits. As discussed below, the court finds that the Commissioner’s decision should be reversed and this matter remanded for further proceedings.

I. BACKGROUND

Plaintiff Lynn Moya was born on March 5, 1957, and was fifty-one years old at the time of her administrative hearing. [Administrative Record (“AR”) 28.] She has an eighth grade education and no past relevant work experience. [AR 71.] Plaintiff alleges disability on

1 the basis of a mental condition and auditory hallucinations [AR 30,
2 36.]

3 **II. PROCEEDINGS IN THIS COURT**

4 Plaintiff's complaint was lodged on May 1, 2009, and filed on May
5 12, 2009. On October 6, 2009, Defendant filed an Answer and
6 Plaintiff's Administrative Record ("AR"). On October 4, 2010, the
7 parties filed their Joint Stipulation ("JS") identifying matters not
8 in dispute, issues in dispute, the positions of the parties, and the
9 relief sought by each party. This matter has been taken under
10 submission without oral argument.

11 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

12 Plaintiff applied for supplemental security income ("SSI") on
13 July 17, 2006, alleging disability since July 16, 2006. [AR 9.] After
14 the application was denied initially on September 25, 2006, and upon
15 reconsideration on April 26, 2007, Plaintiff requested an
16 administrative hearing, which was held on June 2, 2008, before an
17 Administrative Law Judge ("ALJ"). [AR 21.] Plaintiff was represented
18 by counsel and gave testimony at the hearing. [AR 9.] The ALJ denied
19 benefits in a decision dated June 26, 2008 [AR 18.] When the Appeals
20 Council denied review on April 16, 2009, the ALJ's decision became the
21 Commissioner's final decision. [AR 1.]

22 **IV. STANDARD OF REVIEW**

23 Under 42 U.S.C. § 405(g), a district court may review the
24 Commissioner's decision to deny benefits. The Commissioner's (or
25 ALJ's) findings and decision should be upheld if they are free of
26 legal error and supported by substantial evidence. However, if the
27 court determines that a finding is based on legal error or is not
28 supported by substantial evidence in the record, the court may reject

1 the finding and set aside the decision to deny benefits. See Aukland
2 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
3 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
4 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
5 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
6 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
7 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

8 "Substantial evidence is more than a scintilla, but less than a
9 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
10 which a reasonable person might accept as adequate to support a
11 conclusion." Id. To determine whether substantial evidence supports
12 a finding, a court must review the administrative record as a whole,
13 "weighing both the evidence that supports and the evidence that
14 detracts from the Commissioner's conclusion." Id. "If the evidence
15 can reasonably support either affirming or reversing," the reviewing
16 court "may not substitute its judgment" for that of the Commissioner.
17 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

18 V. DISCUSSION

19 A. THE FIVE-STEP EVALUATION

20 To be eligible for disability benefits a claimant must
21 demonstrate a medically determinable impairment which prevents the
22 claimant from engaging in substantial gainful activity and which is
23 expected to result in death or to last for a continuous period of at
24 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
25 721; 42 U.S.C. § 423(d)(1)(A).

26 Disability claims are evaluated using a five-step test:

27 Step one: Is the claimant engaging in substantial
28 gainful activity? If so, the claimant is found not
disabled. If not, proceed to step two.

1 Step two: Does the claimant have a "severe" impairment?
2 If so, proceed to step three. If not, then a finding of not
3 disabled is appropriate.

4 Step three: Does the claimant's impairment or
5 combination of impairments meet or equal an impairment
6 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If
7 so, the claimant is automatically determined disabled. If
8 not, proceed to step four.

9 Step four: Is the claimant capable of performing his
10 past work? If so, the claimant is not disabled. If not,
11 proceed to step five.

12 Step five: Does the claimant have the residual
13 functional capacity to perform any other work? If so, the
14 claimant is not disabled. If not, the claimant is disabled.

15 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended
16 April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107
17 S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20
18 C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or
19 "not disabled" at any step, there is no need to complete further
20 steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

21 Claimants have the burden of proof at steps one through four,
22 subject to the presumption that Social Security hearings are non-
23 adversarial, and to the Commissioner's affirmative duty to assist
24 claimants in fully developing the record even if they are represented
25 by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at
26 1288. If this burden is met, a prima facie case of disability is
27 made, and the burden shifts to the Commissioner (at step five) to
28 prove that, considering residual functional capacity ("RFC")¹, age,

24 ¹ Residual functional capacity measures what a claimant can
25 still do despite existing "exertional" (strength-related) and
26 "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155
27 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to
28 work without directly limiting strength, and include mental, sensory,
postural, manipulative, and environmental limitations. Penny v.
Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155
n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a
nonexertional limitation. Penny, 2 F.3d at 959; Perminter v. Heckler,

1 education, and work experience, a claimant can perform other work
2 which is available in significant numbers. Tackett, 180 F.3d at 1098,
3 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

4 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

5 Here, the ALJ found that Plaintiff had not engaged in substantial
6 gainful activity since her disability application date (step one).
7 The ALJ held that Plaintiff had a medically determinable impairment,
8 namely adjustment disorder due to polysubstance abuse, and that she is
9 also hypertensive and has minor degenerative changes of the lumbar
10 spine. The ALJ found, however, that Plaintiff did not have a severe
11 impairment or combination of impairments (step two). [AR 11.]
12 Accordingly, Plaintiff was found not "disabled" as defined by the
13 Social Security Act. [AR 18.]

14 **C. ISSUES IN DISPUTE**

15 The parties' Joint Stipulation raises the following disputed
16 issues:

- 17 1. Whether the ALJ properly considered the treating physician's
18 opinion;
- 19 2. Whether the ALJ properly developed the record;
- 20 3. Whether the ALJ properly considered the type, dosage and
21 side effects of Plaintiff's prescribed medications;
- 22 4. Whether the ALJ properly considered the lay witness
23 statement; and
- 24 5. Whether the ALJ properly considered the severity of
25 Plaintiff's mental impairment.

26 [JS 2.]

27
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765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 As discussed below, Issue Five is dispositive.

2 **D. SEVERITY OF THE IMPAIRMENT**

3 At step two of the sequential evaluation, an impairment or
4 combination of impairments may be found "not severe" only if the
5 evidence establishes a "slight abnormality that has no more than a
6 minimal effect on an individual's ability to work." Webb v. Barnhart,
7 433 F.3d 683, 686 (9th Cir. 2005)(quoting Smolen v. Chater, 80 F.3d
8 1273, 1290 (9th Cir. 1996)); see also Yuckert v. Bowen, 841 F.2d 303,
9 306 (9th Cir. 1988). If an ALJ is "unable to determine clearly the
10 effect of an impairment or combination of impairments on the
11 individual's ability to do basic work activities, the sequential
12 evaluation should not end with the not severe evaluation step." Webb,
13 433 F.3d at 687 (quoting SSR 85-28, 1985 WL 56856 at *4). Thus, step
14 two involves a "de minimis screening device [used] to dispose of
15 groundless claims." Webb, 433 F.3d at 687 (quoting Smolen, 80 F.3d at
16 1290).

17 Here, the ALJ found that Plaintiff lacked a medically severe
18 impairment or combination of impairments because Plaintiff's
19 statements "concerning the intensity, persistence and limiting effects
20 of [the alleged] symptoms are not credible..." [AR 12.] The record
21 presents medical records from 1994 to 1997, and 2005 to 2008. Because
22 the alleged onset date is July 17, 2006, only the most recent records
23 are relevant. However, between 2005 to 2008, Plaintiff's condition
24 and reported symptoms varied greatly. Despite the fluctuation in
25 Plaintiff's symptoms, it is clear that Plaintiff's impairments satisfy
26 the de minimis standard required in a "severity" determination.

27 In 2005, the staff psychiatrist at Patton State Hospital found
28 plaintiff to be cooperative, euthymic, goal directed, and with no

1 acute psychotic symptoms. [AR 263.] In 2006, the examining
2 psychiatrist Dr. Linda Smith found that Plaintiff was inconsistent and
3 generally not credible, and was manipulated and maneuvered during her
4 examination. At this time, Dr. Smith diagnosed Plaintiff with
5 polysubstance abuse [AR 266-274.] In 2006 to 2007, Plaintiff's most
6 recent parole assessments indicated that her symptoms varied greatly.
7 At times she reported feeling better and having less mood swings
8 (12/11/2006), then later hearing voices and having problems
9 sleeping(1/22/2007 and 2/2/2007). At her last parole appointment she
10 did not refill her medication because she was doing better
11 (2/26/2007). [AR 293.] However, in 2007, the director of her housing
12 facility indicated that Plaintiff dressed abnormally, she could not
13 make decisions, focus, and comprehend, but could perform chores with
14 assistance, handle money and budgets, and work on computers. [AR 84.]
15 During this same period, Plaintiff also indicated that she cannot
16 bathe, hears voices, and cannot do her hair. [AR 94.]

17 On April 1, 2008, Plaintiff's treating physician, Dr. Marcia
18 Hudson, indicated on a county welfare form that Plaintiff was not able
19 to work and had limitations affecting her ability to do so. [AR 301.]
20 Also included in the record are various Medication Visit
21 Interdisciplinary Notes completed by Dr. Hudson. The first
22 Interdisciplinary Note dated January 24, 2008 indicates that Plaintiff
23 has "295.70" Schizoaffective Disorder and "304.80" polysubstance
24 dependencies. [AR 309.] The next note dated February 27, 2008
25 indicates that Plaintiff has "295.70 - continued AVH" (auditory visual
26 hallucinations) and "304.80 - SFR." [AR 308.] The final note dated
27 April 1, 2008 indicates that Plaintiff has "AVH/Anxiety 295.70." [AR
28 307.]

1 Although the ALJ has called into question the evidentiary value
2 of these records, the finding of non-severity at step two was not
3 "clearly established by the medical evidence." Webb, 433 F.3d at 687;
4 see also Yuckert, 841 F.2d at 306 ("Despite the deference usually
5 accorded to the Secretary's application of regulations, numerous
6 appellate courts have imposed a narrow construction upon the severity
7 regulation applied here."). Under this narrow standard, and
8 considering the record as a whole, Plaintiff has offered evidence that
9 was sufficient to satisfy the de minimis threshold at step two. Webb,
10 433 F.3d at 687. Although the court "do[es] not intimate that
11 [plaintiff] will succeed in proving that [s]he is disabled," the ALJ
12 should continue the sequential evaluation beyond step two "because
13 there was not substantial evidence to show that [plaintiff's] claim
14 was groundless." Id., at 688. Accordingly, the ALJ's finding that
15 the Plaintiff did not suffer from a severe mental impairment should be
16 reversed, and the matter should be remanded for further proceedings.

17 **F. REMAND FOR FURTHER PROCEEDINGS**

18 The decision whether to remand for further proceedings is within
19 the discretion of the district court. Harman v. Apfel, 211 F.3d 1172,
20 1175-1178 (9th Cir. 2000). Where no useful purpose would be served by
21 further proceedings, or where the record has been fully developed, it
22 is appropriate to exercise this discretion to direct an immediate
23 award of benefits. Harman, 211 F.3d at 1179 (decision whether to
24 remand for further proceedings turns upon their likely utility).
25 However, where there are outstanding issues that must be resolved
26 before a determination can be made, and it is not clear from the
27 record that the ALJ would be required to find the claimant disabled if
28 all the evidence were properly evaluated, remand is appropriate. Id.

1 Here, as set out above, outstanding issues remain before a finding of
2 disability can be made. Accordingly, remand is appropriate.

3 **VI. ORDERS**


4 Accordingly, **IT IS ORDERED** that:

5 1. The decision of the Commissioner is **REVERSED**.

6 2. This action is **REMANDED** to defendant, pursuant to Sentence
7 Four of 42 U.S.C. § 405(g), for further proceedings as discussed
8 above.

9 3. The Clerk of the Court shall serve this Decision and Order
10 and the Judgment herein on all parties or counsel.

11 DATED: October 26, 2010

12 
13 CARLA M. WOEHRLE
14 United States Magistrate Judge