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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY GREENWOOD,)	No. EDCV 09-1781-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Timothy Greenwood filed a complaint on September 28, 2009, seeking review of the Commissioner's decision denying his application for disability benefits. On February 16, 2010, the Commissioner answered the complaint, and the parties filed a joint stipulation on March 31, 2010.

BACKGROUND

On April 24, 2007, plaintiff, who was born on December 25, 1960, applied for disability benefits under the Supplemental Security Income program ("SSI") of Title XVI of the Social Security Act ("Act"), claiming an inability to work since July 4, 2005, due to bipolar and psychotic disorders. Certified Administrative Record ("A.R.") 124-26. The plaintiff's application was initially denied on August 21, 2007,

1 and was denied again on December 21, 2007, following reconsideration.
2 A.R. 63-67, 70-75. The plaintiff then requested an administrative
3 hearing, which was held before Administrative Law Judge Charles E.
4 Stevenson ("the ALJ") on May 21, 2009. A.R. 38-58, 76. On July 14,
5 2009, the ALJ issued a decision finding plaintiff is not disabled.
6 A.R. 5-20. The plaintiff appealed this decision to the Appeals
7 Council, which denied review on September 1, 2009. A.R. 1-4.

8 9 DISCUSSION

10 I

11 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
12 review the Commissioner's decision denying plaintiff disability
13 benefits to determine if his findings are supported by substantial
14 evidence and whether the Commissioner used the proper legal standards
15 in reaching his decision. Vasquez v. Astrue, 572 F.3d 586, 591 (9th
16 Cir. 2009); Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009).

17
18 The claimant is "disabled" for the purpose of receiving benefits
19 under the Act if he is unable to engage in any substantial gainful
20 activity due to an impairment which has lasted, or is expected to
21 last, for a continuous period of at least twelve months. 42 U.S.C.
22 § 1382c(a)(3)(A); 20 C.F.R. § 416.905(a). "The claimant bears the
23 burden of establishing a prima facie case of disability." Roberts v.
24 Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122
25 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

26
27 The Commissioner has promulgated regulations establishing a five-
28 step sequential evaluation process for the ALJ to follow in a

1 disability case. 20 C.F.R. § 416.920. In the **First Step**, the ALJ
2 must determine whether the claimant is currently engaged in
3 substantial gainful activity. 20 C.F.R. § 416.920(b). If not, in the
4 **Second Step**, the ALJ must determine whether the claimant has a severe
5 impairment or combination of impairments significantly limiting him
6 from performing basic work activities. 20 C.F.R. § 416.920(c). If
7 so, in the **Third Step**, the ALJ must determine whether the claimant has
8 an impairment or combination of impairments that meets or equals the
9 requirements of the Listing of Impairments ("Listing"), 20 C.F.R.
10 § 404, Subpart P, App. 1. 20 C.F.R. § 416.920(d). If not, in the
11 **Fourth Step**, the ALJ must determine whether the claimant has
12 sufficient residual functional capacity despite the impairment or
13 various limitations to perform his past work. 20 C.F.R. § 416.920(f).
14 If not, in **Step Five**, the burden shifts to the Commissioner to show
15 the claimant can perform other work that exists in significant numbers
16 in the national economy. 20 C.F.R. § 416.920(g). Moreover, where
17 there is evidence of a mental impairment that may prevent a claimant
18 from working, the Commissioner has supplemented the five-step
19 sequential evaluation process with additional regulations addressing
20 mental impairments.¹ Maier v. Comm'r of the Soc. Sec. Admin., 154

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22 ¹ First, the ALJ must determine the presence or absence of
23 certain medical findings relevant to the ability to work. 20
24 C.F.R. § 416.920a(b)(1). Second, when the claimant establishes
25 these medical findings, the ALJ must rate the degree of
26 functional loss resulting from the impairment by considering four
27 areas of function: (a) activities of daily living; (b) social
28 functioning; (c) concentration, persistence, or pace; and (d)
episodes of decompensation. 20 C.F.R. § 416.920a(c)(2-4).
Third, after rating the degree of loss, the ALJ must determine
whether the claimant has a severe mental impairment. 20 C.F.R.
§ 416.920a(d). Fourth, when a mental impairment is found to be
severe, the ALJ must determine if it meets or equals a Listing.

1 F.3d 913, 914-15 (9th Cir. 1998) (per curiam).

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3 However, “[a] finding of ‘disabled’ under the five-step inquiry
4 does not automatically qualify a claimant for disability benefits.”
5 Bustamante v. Massanari, 262 F.3d 949, 954 (9th Cir. 2001); Parra v.
6 Astrue, 481 F.3d 742, 746 (9th Cir. 2007), cert. denied, 552 U.S. 1141
7 (2008). Rather, the Act provides that “[a]n individual shall not be
8 considered disabled . . . if alcoholism or drug addiction would . . .
9 be a contributing factor material to the Commissioner’s determination
10 that the individual is disabled.” 42 U.S.C. § 423(d)(2)(C). “[T]he
11 claimant bears the burden of proving that drug or alcohol addiction is
12 not a contributing factor material to his disability.” Parra, 481
13 F.3d at 744-45, 748; Ball v. Massanari, 254 F.3d 817, 821 (9th Cir.
14 2001).

15
16 “The ‘key factor . . . in determining whether drug addiction or
17 alcoholism is a contributing factor material to the determination of
18 disability’ is whether an individual would still be found disabled if
19 [he] stopped using alcohol or drugs.” Sousa v. Callahan, 143 F.3d
20 1240, 1245 (9th Cir. 1998) (citation omitted); see also 20 C.F.R.
21 § 416.935(b)(1) (same). “In making this determination, [the ALJ] will
22 evaluate which of [the claimant’s] current physical and mental
23 limitations . . . would remain if [the claimant] stopped using drugs

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25 20 C.F.R. § 416.920a(d)(2). Finally, if a Listing is not met,
26 the ALJ must then perform a residual functional capacity
27 assessment, and the ALJ’s decision “must incorporate the
28 pertinent findings and conclusions” regarding plaintiff’s mental
impairment, including “a specific finding as to the degree of
limitation in each of the functional areas described in
[§ 416.920a(c)(3)].” 20 C.F.R. § 416.920a(d)(3), (e)(2).

1 or alcohol and then determine whether any or all of [the claimant's]
2 remaining limitations would be disabling." 20 C.F.R. § 416.935(b)(2).
3 "If the remaining limitations would still be disabling, then the
4 claimant's drug addiction or alcoholism is not a contributing factor
5 material to his disability." Parra, 481 F.3d at 747. "If [the] . . .
6 remaining limitations would not be disabling, [the ALJ] will find that
7 [the claimant's] drug addiction or alcoholism is a contributing factor
8 material to the determination of disability[,]" 20 C.F.R.
9 § 416.935(b)(2)(i); Parra, 481 F.3d at 747, and benefits will be
10 denied.

11
12 For individuals such as plaintiff, who have a substance abuse
13 problem, the ALJ:

14
15 must first conduct the five-step inquiry without separating
16 out the impact of alcoholism or drug addiction. If the ALJ
17 finds that the claimant is not disabled under the five-step
18 inquiry, then the claimant is not entitled to benefits and
19 there is no need to proceed with the analysis under 20
20 C.F.R. § . . . 416.935. If the ALJ finds that the claimant
21 is disabled and there is "medical evidence of [his or her]
22 drug addiction or alcoholism," then the ALJ should proceed
23 under § . . . 416.935 to determine if the claimant "would
24 still [be found] disabled if [he or she] stopped using
25 alcohol or drugs."

26
27 Bustamante, 262 F.3d at 955 (citations omitted); see also 20 C.F.R. §
28 416.935(a) ("***If we find that you are disabled and have medical***

1 **evidence of your drug addiction or alcoholism**, we must determine
2 whether your drug addiction or alcoholism is a contributing factor
3 material to the determination of disability." (emphasis added));
4 Brueggemann v. Barnhart, 348 F.3d 689, 694-95 (8th Cir. 2003) ("The
5 plain text of the relevant regulation requires the ALJ first to
6 determine whether [the claimant] is disabled . . . without segregating
7 out any effects that might be due to substance abuse disorders. . . .
8 If the gross total of a claimant's limitations, including the effect
9 of substance use disorders, suffices to show disability, then the ALJ
10 must next consider which limitations would remain when the effects of
11 the substance use disorders are absent." (citations and footnote
12 omitted)); Drapeau v. Massanari, 255 F.3d 1211, 1214 (10th Cir. 2001)
13 ("The implementing regulations make clear that a finding of disability
14 is a condition precedent to an application of § 423(d)(2)(C). The
15 [ALJ] must first make a determination that the claimant is disabled.
16 He must then make a determination whether the claimant would still be
17 found disabled if he or she stopped abusing alcohol." (citations
18 omitted)).

19
20 Applying the five-step sequential evaluation process, the ALJ
21 found plaintiff has not engaged in substantial gainful activity since
22 April 17, 2007, his application date. (Step One). The ALJ then found
23 plaintiff has the following severe combination of impairments: "a
24 mood disorder with psychotic features, asthma and a history of
25 substance abuse." (Step Two). The ALJ found that plaintiff's
26 substance abuse meets Listing 12.09 (Step Three), and plaintiff is
27 disabled based on his substance abuse. A.R. 11-13. The ALJ next
28 determined that even if plaintiff stopped his substance abuse, he

1 would continue to have a severe impairment (Step Two); however, it
2 would not meet or equal a Listing. (Step Three). The ALJ then found
3 plaintiff has no past relevant work. (Step Four). Finally, the ALJ
4 determined that if plaintiff stopped his substance abuse, he could
5 perform a significant number of jobs in the national economy;
6 therefore, he is not disabled. (Step Five).

8 II

9 A claimant's residual functional capacity ("RFC") is what he can
10 still do despite his physical, mental, nonexertional, and other
11 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
12 see also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th
13 Cir. 2009) (RFC is "a summary of what the claimant is capable of doing
14 (for example, how much weight he can lift)."). Here, the ALJ found
15 that if plaintiff stopped abusing drugs, he could "perform a full
16 range of work at all exertional levels but with the following
17 nonexertional limitations: he is limited to simple and repetitive
18 tasks, and to work requiring no significant contact with the public
19 although incidental contact would be permissible, and as a precaution,
20 he is limited to work not involving exposure to concentrated fumes,
21 odors, dusts and gases." A.R. 14. However, plaintiff contends the
22 ALJ's RFC assessment is not supported by substantial evidence because
23 the ALJ failed to properly consider the opinion of Inderjit Seehrai,
24 M.D., an examining psychiatrist. The plaintiff is correct.

25
26 "[T]he ALJ may only reject . . . [an] examining physician's
27 uncontradicted medical opinion based on 'clear and convincing
28 reasons[,]'" Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155,

1 1164 (9th Cir. 2008) (citation omitted); Widmark v. Barnhart, 454 F.3d
2 1063, 1066 (9th Cir. 2006), and “[e]ven if contradicted by another
3 doctor, the opinion of an examining doctor can be rejected only for
4 specific and legitimate reasons that are supported by substantial
5 evidence in the record.” Regennitter v. Comm’r of the Soc. Sec.
6 Admin., 166 F.3d 1294, 1298-99 (9th Cir. 1999); Ryan v. Comm’r of Soc.
7 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008).

8
9 On July 21, 2007, Dr. Seehrai examined plaintiff and diagnosed
10 him as having an unspecified mood disorder and an unspecified
11 psychotic disorder and a history of polysubstance dependency, in early
12 remission; however, Dr. Seehrai wanted to rule out bipolar disorder I
13 with psychotic features and schizoaffective disorder, bipolar disorder
14 type, and substance/alcohol-induced mood disorder and psychotic
15 disorder. A.R. 221-25. Dr. Seehrai found plaintiff had marginal
16 insight and judgment and is not capable of managing funds by himself,
17 and opined plaintiff’s Global Assessment of Functioning (“GAF”) was
18 50.² A.R. 224-25. Dr. Seehrai found:

19
20 [plaintiff] was cooperative at the time of the interview.
21 He did not show any anger or irritable mood. He is capable
22 of interacting with other people and the public when he is
23 in a mallow [sic] mood. His mental status examination and

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25 ² A GAF of 50 means that the plaintiff exhibits “[s]erious
26 symptoms (e.g., suicidal ideation, severe obsessional rituals,
27 frequent shoplifting) or any serious impairment in social,
28 occupational, or school functioning (e.g. no friends, unable to
keep a job).” American Psychiatric Ass’n, Diagnostic and
Statistical Manual of Mental Disorders, 34 (4th ed. (Text
Revision) 2000).

1 history show that he has mood swings between depression,
2 anger and psychosis. He is capable of doing simple and
3 repetitive tasks but he has moderate impairment to do
4 detailed and complex tasks because of his mood swings,
5 sedative medications and medical problems. He has moderate
6 impairment to finish his workday or workweek because of his
7 mood swings, psychosis, short-term memory deficit, physical
8 problems and sedative medication.

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10 A.R. 225.

11
12 The ALJ relied on some of Dr. Seehrai's opinions in assessing
13 plaintiff's RFC, and found plaintiff can only perform simple
14 repetitive tasks and work requiring no significant public contact.
15 A.R. 14, 17. However, the ALJ ignored, and implicitly rejected
16 without any explanation,³ Dr. Seehrai's opinions that plaintiff has a
17 moderate impairment in his ability to finish his workday or workweek
18 because of his mood swings, psychosis, short-term memory deficit,
19 physical problems and sedative medication. Ibid. This was legal
20 error. Lingenfelter, 504 F.3d at 1038 n.10; Smolen, 80 F.3d at 1286.
21 Moreover, since the ALJ relied on only some of Dr. Seehrai's opinions
22 in assessing plaintiff's RFC, see A.R. 17-18, "substantial evidence
23 does not support the [ALJ's RFC] assessment." Lingenfelter, 504 F.3d

24
25 ³ It is of course true, as the Commissioner argues, that
26 "an ALJ is not required to adopt all of an examining physician's
27 assessment." Jt. Stip. at 6:1-8; Magallanes v. Bowen, 881 F.2d
28 747, 753 (9th Cir. 1989). However, the ALJ is required to
explain his reasons for rejecting those portions of an examining
physician's assessment he chooses not to adopt. Lingenfelter v.
Astrue, 504 F.3d 1028, 1038 n.10 (9th Cir. 2007).

1 at 1040; Widmark, 454 F.3d at 1070. "Nor does substantial evidence
2 support the ALJ's step-five determination, since it was based on this
3 erroneous RFC assessment."⁴ Lingenfelter, 504 F.3d at 1041.

4
5 **III**

6 When the Commissioner's decision is not supported by substantial
7 evidence, the Court has authority to affirm, modify, or reverse the
8 Commissioner's decision "with or without remanding the cause for
9 rehearing." 42 U.S.C. § 405(g); McCartey v. Massanari, 298 F.3d 1072,
10 1076 (9th Cir. 2002). "Remand for further administrative proceedings
11 is appropriate if enhancement of the record would be useful." Benecke
12 v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004). Here, remand is
13 appropriate so the ALJ can properly consider Dr. Seehrai's opinions in
14 determining plaintiff's RFC and whether plaintiff is disabled.
15 Widmark, 454 F.3d at 1070; Bunnell v. Barnhart, 336 F.3d 1112, 1116
16 (9th Cir. 2003).

17
18 **ORDER**

19 IT IS ORDERED that: (1) plaintiff's request for relief is granted
20 and defendant's request for relief is denied; and (2) the
21 Commissioner's decision is reversed, and the action is remanded to the
22 Social Security Administration for further proceedings consistent with
23 this Opinion and Order, pursuant to sentence four of 42 U.S.C.
24 § 405(g), and Judgment shall be entered accordingly.

25 DATE: November 15, 2010 /S/ ROSALYN M. CHAPMAN
26 _____ ROSALYN M. CHAPMAN

27 ⁴ Having reached this conclusion, it is unnecessary to
28 reach the other issues plaintiff raises, none of which warrant
any further relief than herein granted.

UNITED STATES MAGISTRATE JUDGE

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