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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ZENA SMITH, o/b/o C. T.,	)	No. ED CV 09-02146-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").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 complied with the District Court's remand order and the  
2 subsequent Appeals Council order requiring the ALJ to  
3 recontact Dr. Dey in order to provide a basis for  
4 determining the extent of the child's functional limitations  
5 in the six relevant domains; and

- 6 2. Whether the ALJ properly complied with SSR 96-7p regarding  
7 the type, dosage, effectiveness and side effects of  
8 medications.

9 (JS at 3.)

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11 This Memorandum Opinion will constitute the Court's findings of  
12 fact and conclusions of law. After reviewing the matter, the Court  
13 concludes that the decision of the Commissioner must be affirmed.

14  
15 I

16 **THE ALJ PROPERLY COMPLIED WITH THE DISTRICT COURT REMAND ORDER**

17 Plaintiff contends that the ALJ failed to properly comply with  
18 the District Court remand order and the subsequent Appeals Council  
19 order.

20 In this Court's previous Memorandum Opinion, the Court reversed  
21 and remanded the matter to the Commissioner on July 17, 2007, with  
22 instructions. (AR 4311-443.) The instructions, set forth on the last  
23 page of the Decision (AR 443), mandated development of the record in  
24 the following specific language: "Therefore, the ALJ should recontact  
25 Dr. Dey and/or obtain an independent consultative evaluation by a  
26 qualified psychiatrist in order to provide a basis for determining the  
27 extent of the child's functional limitations in the six relevant  
28 domains."

1 On remand, the ALJ conducted a hearing on May 22, 2008 (AR 379-  
2 388), at which time the child claimant appeared, along with her  
3 attorney (the principal of the law office representing Plaintiff in  
4 this litigation), and a medical expert ("ME"). Following the hearing,  
5 the ALJ issued a partially favorable decision. (AR 360-376.) The ALJ  
6 found that, based on the evidence, the claimant was disabled from the  
7 period June 28, 2004 through December 31, 2005, but not thereafter.  
8 (AR 364.)

9 During the hearing, the ALJ noted that Dr. Dey was subpoenaed to  
10 attend, but failed to attend the hearing. (AR 387.)

11 In determining the issue of disability, the ALJ relied upon  
12 evidence which included the testimony of the ME at the hearing, along  
13 with a report of a psychiatric consultative examination ("CE") which  
14 was obtained on January 15, 2008. (AR 473-479.)

15 Plaintiff does not complain that the ALJ misconstrued the  
16 evidence, in particular, the psychiatric CE, and the testimony of the  
17 ME. Instead, Plaintiff frames the issue as whether the ALJ properly  
18 complied with this Court's remand order. As such, Plaintiff  
19 essentially raises a frivolous issue. The Court's remand order  
20 provided that development of the record could be done by either  
21 recontacting Dr. Dey and/or obtaining an independent consultative  
22 evaluation by a qualified psychiatrist. The ALJ did obtain a new  
23 psychiatric CE, and had he done nothing further, he would have been in  
24 full compliance with the Court's remand order. The ALJ also  
25 subpoenaed Dr. Dey to attend the hearing, but Plaintiff is seemingly  
26 unsatisfied with the ALJ's recitation on the record that Dr. Dey had  
27 in fact been subpoenaed but had not shown up, arguing that there is  
28 "absolutely no proof to show that he was in fact subpoenaed to appear

1 at the hearing." (JS at 4.) These types of pejorative accusations,  
2 based on nothing more than speculation, have no proper place in the  
3 litigation context. The Court will chalk that up to the apparent  
4 inexperience of the attorney assigned to this case by the office of  
5 Plaintiff's counsel. Essentially, Plaintiff's first issue contains  
6 nothing of substance, as it is plainly apparent that the ALJ did  
7 comply with the Court's remand order by obtaining a new psychiatric  
8 CE.

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10 **II**

11 **THE ALJ DID NOT DISREGARD ISSUES CONCERNING**  
12 **THE SIDE EFFECTS OF MEDICATIONS**

13 Plaintiff's second issue asserts that because the child claimant  
14 was taking the drug Risperidal, which may, in certain individuals,  
15 cause side effects, the ALJ erred by not looking into those side  
16 effects and their possible effect on the claimant. This is, again, a  
17 frivolous issue. In another speculative and conclusory statement,  
18 Plaintiff's counsel claims that because the claimant is a 15-year-old  
19 child, "these side effects could be significantly affecting her life."  
20 (JS at 11.) But there is absolutely nothing in the record to indicate  
21 that there are any actual side effects. In fact, the evidence is to  
22 the contrary. The child claimant herself never alleged she had any  
23 adverse side effects from the medication at any time, whether in her  
24 application, at the psychiatric CE, or during the hearing. (AR 85,  
25 413, 478.) It was not the ALJ's obligation to address non-existent  
26 issues, in particular, undocumented and unreported side effects of  
27 medication. See Miller v. Heckler, 70 F.2d 845, 849 (9<sup>th</sup> Cir. 1985).

28 The Court will not sanction Plaintiff's counsel for what is, in

1 effect, a frivolous pleading, in this instance. The Court expects,  
2 however, that the associate who prepared this pleading on behalf of  
3 Plaintiff will receive proper guidance and supervision from senior  
4 attorneys in the office of Plaintiff's counsel.

5 The matter is affirmed, and the Complaint is dismissed with  
6 prejudice.

7 **IT IS SO ORDERED.**

8  
9 DATED: August 31, 2010

\_\_\_\_\_/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE

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