

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CLIFFORD ALLEN KELLEMS,	)	CASE NO. ED CV 10-00304 RZ
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION
vs.	)	AND ORDER
	)	
MICHAEL J. ASTRUE, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff challenges the Administrative Law Judge’s determination that his drug abuse was a material factor contributing to his disabling condition. He argues both that the evidence does not support this conclusion, and that the Administrative Law Judge committed reversible error in assessing Plaintiff’s credibility and that of his mother. The Court disagrees.

The record contained evidence of Plaintiff’s drug use, and the treating physician’s opinion that Plaintiff’s capacity was affected by his use, on and off, of prohibited drugs. Plaintiff’s argument before the Court, over whether Plaintiff used drugs continuously or simply “on and off,” does not present a basis for invalidating the decision. It is a reasonable interpretation of the evidence that even “on and off” drug usage can be a material factor to disability. It does not matter whether a different interpretation might be placed on the evidence; the interpretation was the Administrative law Judge’s to make.

1 *Rollins v. Massanari*, 261 F. 3d 853, 857(9th Cir. 2001). The burden rested on Plaintiff  
2 to demonstrate that his drug usage was not a contributing factor material to his incapacity,  
3 *Brown v. Apfel*, 192 F.3d 492, 498 (9th Cir. 1999), and Plaintiff failed to sustain that  
4 burden. Moreover, the use of drugs, especially contrasted with professions of non-use,  
5 surely is a legitimate basis upon which to disbelieve Plaintiff. An Administrative Law  
6 Judge is entitled to use normal techniques of evaluating a witness when making his  
7 credibility determination. *Fair v. Bowen*, 885 F.2d 597, 604 n.5 (1989), and certainly one  
8 proper basis for discrediting testimony is that it is inconsistent with prior statements.  
9 *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991) (*en banc* ).

10 The Administrative Law Judge's discrediting of Plaintiff's mother's statement  
11 was problematic. However, *Valentine v. Commissioner of Social Security*, 574 F.3d 685,  
12 694 (9th Cir. 2009), provides that the statement is as discredited as that of the claimant,  
13 since it relies on the same complaints which have otherwise been discredited. Accordingly,  
14 the Court concludes that it was appropriate to not fully credit the mother's statement either.

15 There being no basis for reversal, the decision of the Commissioner is  
16 affirmed.

17  
18 DATED: December 6, 2010

19  
20  
21   
22 RALPH ZAREFSKY  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28