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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ADELENA ESCOBAR,)	No. EDCV 10-771 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 Adelena Escobar was born on January 27, 1959, and was 50 years old at the time of her administrative hearing. [Administrative Record (“AR”) 20, 87.] She has a twelfth grade

1 education and past relevant work experience as an in-home support
2 services caretaker and a retail stocker. [AR 16, 102.] Plaintiff
3 alleges disability on the basis of carpal tunnel syndrome, depression,
4 anxiety, schizoaffective disorder, rheumatoid arthritis, and
5 osteoporosis in the right knee [AR 40.]

6 **II. PROCEEDINGS IN THIS COURT**

7 Plaintiff's complaint was lodged on May 24, 2010, and filed on
8 June 2, 2010. On November 26, 2010, Defendant filed an answer to the
9 complaint and plaintiff's Administrative Record ("AR"). On January
10 27, 2011, the parties filed their Joint Stipulation ("JS") identifying
11 matters not in dispute, issues in dispute, the positions of the
12 parties, and the relief sought by each party. This matter has been
13 taken under submission without oral argument.

14 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

15 On September 26, 2007, Plaintiff filed an application for
16 supplemental security income ("SSI"), alleging disability beginning
17 June 1, 2001. [AR 8, 87.] After the application was denied initially
18 and on reconsideration, Plaintiff requested an administrative hearing,
19 which was held on August 10, 2009, before an Administrative Law Judge
20 ("ALJ"). [AR 18.] Plaintiff appeared with counsel, and her testimony
21 was taken. [AR 20.] The ALJ denied benefits in a decision filed on
22 October 20, 2009. [AR 17.] When the Appeals Council denied review on
23 April 23, 2010, the ALJ's decision became the Commissioner's final
24 decision. [AR 1.]

25 **IV. STANDARD OF REVIEW**

26 Under 42 U.S.C. § 405(g), a district court may review the
27 Commissioner's decision to deny benefits. The Commissioner's (or
28 ALJ's) findings and decision should be upheld if they are free of

1 legal error and supported by substantial evidence. However, if the
2 court determines that a finding is based on legal error or is not
3 supported by substantial evidence in the record, the court may reject
4 the finding and set aside the decision to deny benefits. See Aukland
5 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
6 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
7 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
8 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
9 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
10 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

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

21 V. DISCUSSION

22 A. THE FIVE-STEP EVALUATION

23 To be eligible for disability benefits a claimant must
24 demonstrate a medically determinable impairment which prevents the
25 claimant from engaging in substantial gainful activity and which is
26 expected to result in death or to last for a continuous period of at
27 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
28 721; 42 U.S.C. § 423(d)(1)(A).

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

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

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

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

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

16 Step five: Does the claimant have the residual
17 functional capacity to perform any other work? If so, the
18 claimant is not disabled. If not, the claimant is disabled.

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

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

¹ Residual functional capacity measures what a claimant can still do despite existing "exertional" (strength-related) and "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to

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 application date (step one), that Plaintiff
7 had "severe" impairments, namely obesity and degenerative joint
8 disease in the knees (step two), and that Plaintiff did not have an
9 impairment or combination of impairments that met or equaled a
10 "listing" (step three). [AR 10-11.] Plaintiff was assessed an RFC
11 enabling her to perform the full range of medium work. [AR 11.] Based
12 upon Plaintiff's RFC, the ALJ found that Plaintiff could perform her
13 past relevant work as an in-home support services caretaker and a
14 retail stocker as actually and generally performed in the national
15 economy (step four). [AR 16.] Accordingly, Plaintiff was found not
16 "disabled" as defined by the Social Security Act. [Id.]

17 **C. ISSUES IN DISPUTE**

18 The parties' Joint Stipulation identifies three disputed issues:

- 19 1. Whether the ALJ properly assessed the lay statement of
20 Sandra Hansley, Plaintiff's Twelve-Step sponsor;
21 2. Whether the ALJ properly assessed the lay statement of
22 Breana Perez, Plaintiff's daughter; and
23 3. Whether the ALJ properly assessed Plaintiff's ability to
24 perform her past relevant work.

25 _____
26 work without directly limiting strength, and include mental, sensory,
27 postural, manipulative, and environmental limitations. Penny v.
28 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,
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 [JS 2.]

2 As discussed below, Issue Three is dispositive.

3 **D. DISCUSSION**

4 As noted, the ALJ held that Plaintiff has the residual functional
5 capacity to perform a full range of medium work. [AR 11.] "Medium
6 work involves lifting no more than 50 pounds at a time with frequent
7 lifting or carrying of objects weighing up to 25 pounds." Social
8 Security Ruling ("SSR") 83-14. "A full range of medium work requires
9 standing or walking, off and on, for a total of approximately 6 hours
10 in an 8-hour workday." SSR 83-10. Accordingly, the ALJ found that
11 Plaintiff is capable of performing her past relevant work as an in-
12 home support services caretaker and a retail stocker, based on how the
13 jobs are actually and generally performed in the national economy [AR
14 16.] Plaintiff claims that the ALJ's finding was conclusory, and that
15 the ALJ failed to conduct a proper analysis with respect to this
16 issue.

17 In the Ninth Circuit, a step four finding must include "specific
18 findings as to the claimant's residual functional capacity, the
19 physical and mental demands of the past relevant work, and the
20 relation of the residual functional capacity to the past work." Pinto
21 v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001). Although the
22 claimant continues to bear the burden of proof at step four in the
23 sequential evaluation, the ALJ "still has a duty to make requisite
24 factual findings to support his conclusion." Id. at 844.

25 Here, there was no explanation for the ALJ's step four finding
26 that Plaintiff could perform her past relevant work as it was actually
27 or generally performed. Although the ALJ found that Plaintiff could
28 perform medium level work, none of the usual sources of evidence as to

1 the physical and mental demands of a claimant's past relevant work,
2 such as vocational expert testimony, the Dictionary of Occupational
3 Titles ("DOT"), or the claimant's own testimony, were referenced in
4 the decision; nor was there reference to any other evidence of the
5 functional demands of Plaintiff's past relevant work. Under these
6 circumstances, "the court has no basis on which to review the agency's
7 decision" that Plaintiff could perform her past relevant work.
8 Carmickle v. Commissioner, Social Sec. Admin., 533 F.3d 1155, 1167
9 (9th Cir. 2008)(reversing where ALJ relied on generic occupational
10 classification at Step four without explanation because "the ALJ
11 failed sufficiently to support his conclusion"); see also Pinto, 249
12 F.3d at 847 ("Requiring the ALJ to make specific findings on the
13 record at each phase of the step four analysis provides for meaningful
14 judicial review" (citation omitted)). Accordingly, reversal and
15 remand for further administrative proceedings are appropriate.

16 **E. REMAND FOR FURTHER PROCEEDINGS**

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

1 disability can be made.² Accordingly, remand is appropriate.

2 **VI. ORDERS**


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

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

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

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

10
11 DATED: April 8, 2011

12 
13 CARLA M. WOHRLE
14 United States Magistrate Judge

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27 _____
28 ² The remaining issues raised by Plaintiff in the Joint
Stipulation would not direct a finding of disability on the basis of
the current record.