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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICKY DAHL,)	CASE NO. ED CV 10-01122 RZ
)	
Plaintiff,)	
)	MEMORANDUM OPINION
vs.)	AND ORDER
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Micky Anne Dahl makes two arguments in support of her Complaint that the Social Security Commissioner wrongly denied her claim for disability benefits. She argues first that the jobs for which she was found capable do not match her residual functional capacity. She argues second that the Administrative Law Judge wrongly rejected certain medical opinion. The Court discusses these arguments below.

Relying on testimony from the vocational expert, the Administrative Law Judge concluded that there were sufficient jobs in the economy that Plaintiff could perform. Among these were the jobs of mail order clerk, library page, and linen room attendant. [AR 17] Plaintiff says in her first argument that the mail order clerk and linen room attendant jobs require a reasoning level of three on the Labor Department’s scale, as found in the DICTIONARY OF OCCUPATIONAL TITLES, and that this is inconsistent with the finding that her residual functional capacity limits her to work with “simple, repetitive tasks.” [AR

1 11] Plaintiff also says that the job of library page, while not demanding a level-three
2 reasoning capability, nevertheless conflicts with her residual functional capacity, because
3 the Administrative Law Judge found that she had to have a job where she had no public
4 contact. The Court disagrees with both assertions.

5 Starting with the library page position, there is nothing in the record that
6 indicates that this is a position that requires public contact as part of the job itself. It is, of
7 course, possible that a person shelving or retrieving books or magazines from the library
8 stacks might be asked a question by a member of the public, but that is not the essence of
9 the job as defined in the DICTIONARY OF OCCUPATIONAL TITLES. Rather, the function of
10 the job is retrieval and replacement of materials, a job that does not itself demand public
11 interaction in order to be performed. There was nothing in the nature of Plaintiff's
12 impairment that proscribed all communication with a member of the public, even if such
13 communication was incidental and perfunctory.

14 The other two positions require level-three reasoning which, according to the
15 Labor Department, requires a person to “[a]pply commonsense understanding to carry out
16 instructions furnished in written, oral, or diagrammatic form [and to d]eal with problems
17 involving several concrete variables in or from standardized situations.” DICTIONARY OF
18 OCCUPATIONAL TITLES at Appx. C III. A vocational expert must give reasons for deviating
19 from the definitions in the DICTIONARY, *see Massachi v. Astrue*, 486 F.3d 1149, 1152-53
20 (9th Cir. 2007), but there is no reason to believe that the expert here did in fact deviate.
21 Simple, repetitive tasks are not necessarily inconsistent with level-three reasoning; the
22 Labor Department's reference to dealing with standardized situations — situations that are
23 materially the same every time — merges easily with the limitation to repetitive tasks. It
24 is hard to conceive of the jobs of mail order clerk and linen room attendant as demanding
25 a reasoning level exceeding Plaintiff's capacity. *See Renfrow v. Astrue*, 496 F.3d 918, 921
26 (8th Cir. 2007); *but see Hackett v. Barnhart*, 395 F.3d 1168, 1176 (10th Cir. 2005). In
27 short, there is no reversible error with respect to the jobs identified for which Plaintiff is
28 capable.

1 A different situation exists with respect to the medical assessment. While a
2 treating physician's opinion is owed deference, *Aukland v. Massanari*, 257 F.3d 1033,
3 1036 (9th Cir. 2001), it is not inviolate. Plaintiff's treating physician A. Salvan, M.D.
4 filled out a form giving his opinion on Plaintiff's inability to work, but the form was thin,
5 not backed by the medical records the doctor submitted, many of which dealt with physical,
6 not mental, difficulties. [E.g., AR 212-18] This lack of strong record support could be a
7 legitimate basis upon which an administrative law judge could conclude that the opinion
8 is not entitled to as much deference as usual. *Batson v. Commissioner of Social Security*
9 *Administration*, 359 F.3d 1190 (9th 2004). Had the rejection of Dr. Salvan's opinion been
10 the only issue, then the Court might have been willing to affirm on this record.

11 Plaintiff also complains, however, that the Administrative Law Judge ignored
12 the opinion of Dr. Ecklund, another physician who treated Plaintiff. Defendant points out
13 that the Administrative Law Judge addressed the very document that Plaintiff accuses her
14 of ignoring. [AR 14] The problem is that in addressing Dr. Ecklund's assessment, the
15 Administrative Law Judge was wrong. The Administrative Law Judge stated as follows:

16
17 Specifically, on June 11, 2008, the claimant was rated "within
18 normal limits" on her mental status examination, even though
19 she was given a Global Assessment of Functioning ("GAF")
20 score range of 45 to 50 (Ex. B14F, p. 11).

21
22 [AR 14-15 (fn. omitted)] On the cited exhibit, however, there was no overall rating of
23 Plaintiff on the Mental Status portion of the examination, and so Plaintiff was not rated as
24 "within normal limits" insofar as her mental status was concerned. In some sub-categories
25 of the Mental Status category — Appearance/Hygiene; Behavior; Perceptual Process; and
26 Thought Content — Plaintiff was in fact evaluated as being "Within Normal Limits."
27 However, the assessment was different in other sub-categories. In "Thought Process," she
28 was evaluated as "Tangential," and "Circumstantial," as opposed to "Within Normal

1 Limits;" her speech was assessed at "Other: talkative," as opposed to "Within Normal
2 Limits;" and, most importantly here, in the category "Mood/Affect," instead of being
3 evaluated as being "Within Normal Limits," Plaintiff was assessed as Depressed, Anxious,
4 and Tearful. This assessment is consistent with the diagnosis she was given of "Major
5 depression recurrent," and a panic disorder, with bipolar disorder and learning disorders
6 to be ruled out. And, contrary to the Administrative Law Judge's statement that the Mental
7 Status assessment was inconsistent with the GAF, properly read it is entirely consistent.

8 This error is significant. Whereas a rating of normality on the mental status
9 examination would have undercut Dr. Ecklund's opinion, and made more justifiable the
10 simultaneous rejection of Dr. Salvan's opinion, the reverse now is true. The two doctors
11 were treating Plaintiff at approximately the same time. They apparently were seeing the
12 same symptoms. Their conclusions were the same. The Administrative Law Judge was
13 wrong to reject the perspective of Dr. Ecklund and, under the circumstances, also therefore
14 was wrong to reject the opinion of Dr. Salvan. Both should have been given more
15 deference; the Administrative Law Judge could, of course, have re-contacted the doctors
16 if either opinion needed fleshing out. When the case returns, the Administrative Law Judge
17 will have that option if he chooses to exercise it.

18 In accordance with the foregoing, the decision of the Commissioner must be
19 reversed. The matter is remanded to the Commissioner, who shall revisit the decision,
20 giving proper deference to the treating physicians, and otherwise proceeding as appropriate.

21 IT IS SO ORDERED.

22 DATED: July 18, 2011

23
24 
25 _____
26 RALPH ZAREFSKY
27 UNITED STATES MAGISTRATE JUDGE
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