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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 THOMAS G. LAWRENCE,

12 Plaintiff,

13 vs.

14 MICHAEL J. ASTRUE, Commissioner
of Social Security,

15 Defendant.
16

CASE NO. ED CV 10-01296 RZ

MEMORANDUM OPINION
AND ORDER

17 An applicant for Social Security disability payments who is not working and
18 who has a severe impairment is deemed disabled if he meets one of the listed impairments
19 found in 20 C.F.R., Part 404, Appendix I. *Lester v. Chater*, 81 F.3d 821, 828 (9th Cir.
20 1996). Plaintiff Thomas G. Lawrence contends that he met Listing 12.05, mental
21 retardation. Although Plaintiff asserted that Listing 12.05 applied [AR 28], the
22 Administrative law Judge did not address this Listing. Under the circumstances of this
23 case, this was error. While an administrative law judge is not required to state precisely
24 why particular elements of a Listing have not been met, *Gonzalez v Sullivan*, 914 F.2d
25 1197, 1201 (9th Cir. 1990), he is required to consider all applicable Listings. *Burnett v.*
26 *Commissioner*, 220 F.3d 112, 119-20 (3d Cir. 2000); *Clifton v. Chater*, 79 F.3d 1007, 1009
27 (10th Cir. 1996).
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1 Although the Administrative Law Judge did not refer specifically to Listing
2 12.05, however, he did make findings that pertain to this Listing, and thus there is a record
3 to review. As pertinent here, Listing 12.05 provides as follows:
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5 12.05 *Mental retardation*: Mental retardation refers to
6 significantly subaverage general intellectual functioning with
7 deficits in adaptive functioning initially manifested during the
8 developmental period; *i.e.*, the evidence demonstrates or
9 supports onset of the impairment before age 22.

10 The required level of severity for this disorder is met
11 when the requirements in A, B, C or D are satisfied.
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13 C. A valid verbal, performance, or full scale IQ of 60
14 through 70 and a physical or other mental impairment imposing
15 an additional and significant work-related limitation or function;
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18 There are two basic components to this listing, the IQ score and the presence
19 of a physical or mental impairment. Although the Administrative Law Judge did not
20 address this Listing, he did address both of the Listing's requirements. As to the first of
21 these requirements, concerning a valid IQ of between 60 and 70, Plaintiff took an IQ test
22 on the Wechsler Adult Intelligence Scale. On that test, Plaintiff had a Verbal IQ of 65, a
23 Performance IQ of 63, and a Full Scale IQ of 61. [AR 310-11] All of these numbers
24 would have satisfied the first prong of the listing, requiring an IQ score of between 60 and
25 70 on any one of the scales. The Administrative Law Judge, however, stated that he placed
26 "minimal reliance" on this testing "because the scores obtained are not reflective of actual
27 cognitive ability" and were inconsistent with Plaintiff's having achieved certain grades in
28 high school and community college. The Administrative Law Judge found it "difficult to

1 believe” that the community college would waste its time and scarce resources in teaching
2 Plaintiff automotive repair if such was beyond his capacity. [AR 16]

3 The Administrative Law Judge wrongly evaluated the IQ scores. There was
4 no evidence that the IQ test did not validly measure Plaintiff’s IQ or, stated another way,
5 no evidence that the IQ tests were not, in the Administrative Law Judge’s words,
6 “reflective of actual cognitive ability.” The Administrative Law Judge may have discretion
7 to reject the IQ scores if there are external reasons for believing that the scores are not
8 valid, since the regulation requires a “valid IQ,” but that was not the case here. A valid IQ
9 *test* measures what it is supposed to measure, 20 C.F.R. Part 404, Subpart P, Appx. 1 at
10 12.00(D)(5)(c)(1). Thus, when Listing 12.05(C) refers to a “valid IQ,” it refers to a score
11 that properly results from a valid test. Likewise, for the result not to be valid, there must
12 be some reason that the valid test produced a wrong result. Thus, for example, where an
13 applicant had not eaten for two days prior to the administration of the test, had been
14 drinking until two a.m. the night before the test, and the doctor administering the test
15 thought these factors might have lowered the score, the Administrative Law Judge properly
16 found the IQ score not valid, supplemented by other factors as well. *See Maggard v. Apfel*,
17 167 F.3d 376, 380 (7th Cir. 1999). Here, however, the administering psychologist did not
18 suggest that the scores themselves were *invalid*. In fact, the administering psychologist
19 also administered a test to determine if Plaintiff were malingering, and concluded that “he
20 is not attempting to simulate cognitive impairment.” [AR 311] While the treating
21 psychologist expressed surprise that Plaintiff could function as well as he could in certain
22 areas, and that he could pass *other* parts of the psychological examination given his IQ
23 score, there was no basis for saying that the IQ tests wrongly measured Plaintiff’s cognitive
24 ability.

25 There was some evidence, however, that Plaintiff had the capability to do
26 certain things, such as pass special education courses in high school and certain courses in
27 community college. That information does not affect the validity of the IQ score. The
28 ability to function differs from the person’s intellectual ability as measured by the IQ test.

1 Thus, even if a person has the present capability to perform past relevant work (but is not
2 working at the time of the application), this would not gainsay the fact that the IQ score
3 placed the person within the Listing. *Ambers v. Heckler*, 736 F.2d 1467 (11th Cir. 1984).

4 In short, the Administrative Law Judge had no lawful basis for saying that the
5 IQ scores did not accurately measure Plaintiff's cognitive ability.

6 The second prong of Listing 12.05(C) is that the claimant must have, in
7 addition to the low IQ score, "a physical or other mental impairment imposing an
8 additional and significant work-related limitation or function." Here, the comments of the
9 Administrative Law Judge as to Plaintiff's having passed special education classes and
10 certain community college classes in automotive repair, on their face, seem more pertinent.
11 However, this prong of the Listing in fact refers to something else. In *Fanning v. Bowen*,
12 827 F.2d 631, 633 (9th Cir. 1987), the Court of Appeals defined what this prong means:

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14 We have not had prior occasion to interpret the second
15 prong of section 12.05(C). Other circuits have concluded that an
16 impairment imposes a significant work-related limitation of
17 function when its effect on a claimant's ability to perform basic
18 work activities is more than slight or minimal. . . . We agree and
19 adopt this standard.

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21 (Citations omitted). While subsequent adjustment to the regulations may mean that
22 something more is required than a "slight or minimal" effect on a claimant's ability to
23 perform basic work activities, nevertheless a finding of an impairment at Step Two of the
24 sequential evaluation necessarily satisfies the second prong of § 12.05(C); *Fanning*, 827
25 F.2d at 633 n.3; *Rhein v. Astrue*, 2010 WL 4877796 at *10 (E.D. Cal. 2010).

26 The Administrative Law Judge here found that Plaintiff had two severe
27 impairments, cerebral palsy and depression. [AR 14] These findings were made at Step
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1 two of the process, and are independent of Plaintiff's intellectual capacity as measured by
2 the IQ test. Therefore, the second prong of the Listing also was satisfied.

3 In this Court, the Commissioner argues that Plaintiff did not satisfy the
4 preamble to the listing. The preamble, however, does not impose additional requirements
5 other than the requirement that the mental retardation have manifested itself before the
6 claimant turned 22. If it is accepted that Plaintiff *had* mental retardation, he clearly had so
7 before he was 22; the IQ test referred to above took place when Plaintiff was eighteen. In
8 addition, an IQ test taken when Plaintiff was nine also showed mental retardation. [AR
9 384] There can be no legitimate dispute that the symptoms were present at the time
10 required by the regulations.

11 Since it is clear on the record that Plaintiff met Listing 12.05, nothing is to be
12 gained by sending this matter back to the agency for further hearing. The Court's
13 disposition of this matter makes it unnecessary to consider other errors claimed by Plaintiff.
14 The decision of the Commissioner is reversed, and the matter is remanded to the
15 Commissioner for the awarding of benefits.¹

16 IT IS SO ORDERED.

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18 DATED: September 2, 2011

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21 RALPH ZARETSKY
22 UNITED STATES MAGISTRATE JUDGE
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25 ¹ Without explanation, the Administrative Law Judge also ruled that Plaintiff did not meet
26 Listing 11.07. [AR 14] Under that Listing, a person with cerebral palsy who has an IQ of 70 or
27 less (the regulation does not even say "valid IQ") is disabled. Since the Administrative Law
28 Judge found that Plaintiff has cerebral palsy and the record establishes an IQ of less than 70, it
appears that Plaintiff would satisfy this Listing also. However, Plaintiff does not raise the point
to this Court, and so the Court does not make a ruling based on it.