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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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|------------------------|---|------------------------|
| MELISSA LOOMIS, |) | No. ED CV 10-01521-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 considered the treating psychiatrist's opinion;

2 2. Whether the ALJ provided a complete assessment of
3 Plaintiff's residual functional capacity; and

4 3. Whether the ALJ posed a complete hypothetical question to
5 the vocational expert.

6 (JS at 2.)

7
8 This Memorandum Opinion will constitute the Court's findings of
9 fact and conclusions of law. After reviewing the matter, the Court
10 concludes that the decision of the Commissioner must be affirmed.

11
12 I

13 **THE ALJ CORRECTLY ASSESSED PLAINTIFF'S**

14 **MENTAL RESIDUAL FUNCTIONAL CAPACITY**

15 Plaintiff raises three issues in this litigation, each of which
16 relates to the asserted error committed by the ALJ in failing to
17 properly assess the opinion of her treating psychiatrist, Dr. Leonard.
18 This question is posed as Issue No. 1. Related to that is Plaintiff's
19 assertion that the ALJ failed to provide a complete assessment of her
20 mental residual functional capacity (Issue Two), and the third issue
21 is that in failing to properly consider Dr. Leonard's diagnosis, the
22 ALJ posed an incomplete hypothetical question to the vocational expert
23 ("VE").

24 The Court will address each of these issues in this section.

25
26 **A. Applicable Law.**

27 **1. Mental Impairment.**

28 In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)

1 and §416.920a(c)(3)(4) mandate that consideration be given, among
2 other things, to activities of daily living ("ADLs"), social
3 functioning; concentration, persistence, or pace; and episodes of
4 decompensation. These factors are generally analyzed in a Psychiatric
5 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the
6 sequential evaluation to determine if a claimant is disabled under the
7 Listing of Impairments; however, the same data must be considered at
8 subsequent steps unless the mental impairment is found to be not
9 severe at Step Two. See SSR 85-16.

10 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require
11 consideration of "all relevant and available clinical signs and
12 laboratory findings, the effects of your symptoms, and how your
13 functioning may be affected by factors including, but not limited to,
14 chronic mental disorders, structured settings, medication and other
15 treatment."¹

16 SSR 85-16 suggests the following as relevant evidence:

17 "History, findings, and observations from medical
18 sources (including psychological test results), regarding
19 the presence, frequency, and intensity of hallucinations,
20 delusions or paranoid tendencies; depression or elation;
21 confusion or disorientation; conversion symptoms or phobias;
22 psycho-physiological symptoms, withdrawn or bizarre
23 behavior; anxiety or tension. Reports of the individual's

24
25 ¹ 20 C.F.R. §404.1545(c) and §416.945(c) also require
26 consideration of "residual functional capacity for work activity on a
27 regular and continuing basis" and a "limited ability to carry out
28 certain mental activities, such as limitations in understanding,
remembering, and carrying out instructions, and in responding
appropriately to supervision, co-workers, and work pressures in a work
setting."

1 activities of daily living and work activity, as well as
2 testimony of third parties about the individual's
3 performance and behavior. Reports from workshops, group
4 homes, or similar assistive entities."

5
6 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)
7 that the ALJ must consider the extent to which the mental impairment
8 interferes with an "ability to function independently, appropriately,
9 effectively, and on a sustained basis" including "such factors as the
10 quality and level of [] overall functional performance, any episodic
11 limitations [and] the amount of supervision or assistance []
12 require[d]."

13 Pursuant to the September 2000 amendments to the regulations
14 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ
15 is no longer required to complete and attach a PRTF. The revised
16 regulations identify five discrete categories for the first three of
17 four relevant functional areas: activities of daily living; social
18 functioning; concentration, persistence or pace; and episodes of
19 decomposition. These categories are None, Mild, Moderate, Marked, and
20 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must
21 incorporate pertinent findings and conclusions based on the PRTF
22 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show
23 "the significant history, including examination and laboratory
24 findings, and the functional limitations that were considered in
25 reaching a conclusion about the severity of the mental impairment(s).
26 The decision must include a specific finding as to the degree of
27 limitation in each of the functional areas described in paragraph (c)
28 of this section."

1 The Step Two and Three analyses (see Decision at AR 53-54) are
2 intended to determine, first, whether a claimant has a severe mental
3 impairment (Step Two), and if so, whether it meets or equals any of
4 the Listings (Step Three). It is also required under §404.1520a(c)(2)
5 and §416.920a(c)(2) that the ALJ must consider the extent to which the
6 mental impairment interferes with an "ability to function
7 independently, appropriately, effectively, and on a sustained basis"
8 including "such factors as the quality and level of [] overall
9 functional performance, any episodic limitations [and] the amount of
10 supervision or assistance [] require[d]."

11
12 **2. General Assessment of Functioning ("GAF").**

13 The GAF scale is intended to reflect a person's overall level of
14 functioning at or about the time of the examination, not for a period
15 of at least 12 consecutive months, which is required for a finding of
16 impairment or disability. (See 20 C.F.R. §§416.905, 416.920(c)(2006).)

17 GAF scores are intended to be used for clinical diagnosis and
18 treatment, and do not directly correlate to the severity assessment
19 set forth in Social Security regulations. (See Revised Medical
20 Criteria for Evaluating Mental Disorders and Traumatic Brain Injury,
21 65 Fed. Reg. 50746, 50764-65 (Aug. 21, 2000), and American Psychiatric
22 Ass'n, Diagnostic and Statistical Manual of Mental Disorders, Text
23 Revision 33 (4th Ed. 2000).

24
25 **B. Summary of Facts and ALJ's Decision.**

26 As Plaintiff notes, she received an Adult Intake Assessment at
27 the Riverside County Department of Mental Health ("Riverside Mental
28 Health"), on December 7, 2007. (AR 118.) At that time, a GAF of 48

1 was assessed. (Id.) In addition, there was a mental status
2 examination performed as part of that process, in which Plaintiff
3 self-reported that she was having auditory and visual hallucinations,
4 poor insight and judgment, and poor insight control. (AR 122.)

5 On February 4, 2008, Dr. Leonard completed an Initial Psychiatric
6 Assessment, in which she diagnosed Plaintiff with bipolar disorder,
7 Type II; post-traumatic stress disorder (chronic); ruling out
8 borderline IQ. Her GAF was noted to be 45. (AR 147.)

9 Plaintiff does not discuss, however, the chronological treatment
10 notes from Riverside Mental Health noted in the record, which indicate
11 substantial improvement under medication and treatment. (AR 226-227,
12 232, 235, 241-245, 253.) As an example, the treatment note from
13 December 11, 2008 (AR 241), reveal appropriate appearance; appropriate
14 mood, although anxious; appropriate affect; appropriate attention and
15 concentration; and appropriate speech. No hallucinations, delusions,
16 sleep problems, appetite problems, or drug or alcohol abuse are noted.
17 Plaintiff was adherent to medication, with no side effects. Plaintiff
18 indicated that the medication Strattera was helping her. (Id.) In the
19 same report, Plaintiff indicated that her financial aid was approved
20 to continue classes in business administration; that her relationships
21 were going well, and that she had noticed a big difference with her
22 medication.

23 Subsequent mental status examinations, such as one conducted in
24 August 2009 by Dr. Leonard, indicated that Plaintiff had judgment and
25 insight within normal limits. (AR 226.)

26 At no time did Dr. Leonard ever provide an opinion regarding
27 Plaintiff's mental functional capacity.

28 The ALJ took testimony from a medical expert ("ME"), Dr.

1 Glassmire. Based on Dr. Glassmire's review of the records, he
2 concluded that Plaintiff could perform simple repetitive tasks with no
3 public interaction; that she could have non-intense interaction with
4 co-workers and supervisors; and she could not perform tasks requiring
5 hyper-vigilance. (AR 269.)

6 In his decision, the ALJ noted Plaintiff's testimony regarding
7 hearing voices, anger outbursts, irritability, mood swings, and
8 anxiety. (AR 14.) Nevertheless, he found that Plaintiff's testimony
9 failed to credibly establish functional limitations greater than the
10 conclusions he reached in his decision.² Dr. Glassmire provided
11 testimony that Plaintiff had a bipolar disorder and post-traumatic
12 stress disorder which was secondary to childhood molestation and other
13 traumatic events. He noted that Plaintiff had anger problems but at
14 times was within normal limits. Her hallucinations as reported
15 appeared to be controlled by medication, and thus she would be able to
16 behave appropriately in the workplace.

17 The ALJ's assessment of Plaintiff's mental functional abilities
18 (denominated mental residual functional capacity ["MRFC"]) found mild
19 restriction in activities of daily living; moderate difficulties in
20 social functioning; moderate difficulties in concentration,
21 persistence or pace; and no experienced episodes of decompensation.
22 (AR 12-13.)

23
24 **C. Analysis.**

25 While Plaintiff's complaint is that the ALJ ignored the
26 conclusions of her psychiatrist, Dr. Leonard, which Plaintiff asserts
27

28 ² Plaintiff does not contest the ALJ's credibility assessment.

1 demonstrate a more significant level of mental impairment than the ALJ
2 allowed, the Court does not find that the ALJ either ignored Dr.
3 Leonard's reports, or, more importantly, that he disputed them. With
4 regard to acknowledging these reports, the decision indicates that he
5 in fact did review them. (See AR at 15.) As to the question of
6 whether Dr. Leonard in fact diagnosed more substantial restrictions
7 than did the ALJ, the Court's review of Dr. Leonard's treatment notes
8 indicates that this is not the case. As noted, Dr. Leonard never
9 formally assessed mental functional limitations. But in any event,
10 the treatment notes support a longitudinally based conclusion that
11 Plaintiff responded well to medication and treatment, and a diagnosis
12 of her mental condition which is less restrictive than that reflected
13 in the ALJ's conclusions. Further, Plaintiff's focus on the GAF
14 scores is misplaced.

15 Moreover, the Court finds that the testimony of the ME at the
16 hearing is supported by the longitudinal treatment records, and the
17 ALJ was correct in relying on this testimony in assessing Plaintiff's
18 MRFC. (See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996).)

19 The determination of this issue controls the result as to the
20 remaining two issues. The second issue questions whether the ALJ
21 provided a complete assessment of Plaintiff's MRFC. As noted in the
22 Court's analysis under its discussion of the first issue, the ALJ
23 followed the correct procedures in determining Plaintiff's mental
24 capacities. Further, the hypothetical question posed to the VE at the
25 hearing (see AR at 272) adequately and correctly summarized the
26 applicable mental limitations so that the VE could provide a response
27 at Step Five of the sequential evaluation process. (AR 272-273.) For
28 this reason, Plaintiff's third issue, which questions the adequacy of

1 the hypothetical question posed to the VE, is without merit.

2 For the foregoing reasons, the decision of the ALJ will be
3 affirmed. The Complaint will be dismissed with prejudice.

4 **IT IS SO ORDERED.**

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6 DATED: June 20, 2011

7 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE

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