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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALBERTO SOLORZANO,)	Case No. ED CV 11-369-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI"). He claims that the Administrative Law Judge ("ALJ") erred when he failed to properly consider: (1) Global Assessment of Functioning ("GAF") scores; (2) a social worker's opinion; (3) Plaintiff's mother's testimony; (4) the consulting psychiatrist's opinion; and (5) the vocational expert's testimony. For the reasons discussed below, the Agency's decision is reversed and the case is remanded for further proceedings consistent with this decision.

1 II. SUMMARY OF PROCEEDINGS

2 In December 2007, Plaintiff applied for SSI, alleging that he was
3 disabled due to schizophrenia. (Administrative Record ("AR") 52-58,
4 68, 335.) The Agency denied the application initially and on
5 reconsideration. (AR 25-36.) Plaintiff then requested and was
6 granted a hearing before an ALJ. Plaintiff appeared with counsel and
7 testified at the hearing on January 22, 2010. (AR 332-53.) The ALJ
8 subsequently issued a decision denying benefits. (AR 13-22.)
9 Plaintiff appealed to the Appeals Council, which denied review. (AR
10 4-6.) He then commenced this action.

11 III. ANALYSIS

12 A. The GAF Scores

13 Throughout the course of his treatment, various mental health
14 professionals assigned Plaintiff GAF scores, ranging from a low of 21
15 to a high of 55. (AR 173-331.) The ALJ generally acknowledged the
16 existence of these scores but found them of limited evidentiary value
17 because they were subjective and revealed only a snapshot of
18 Plaintiff's then-current condition. (AR 19.) The ALJ put more
19 emphasis on "the objective details and chronology of the record,"
20 which he believed "more accurately describe[d Plaintiff's] impairments
21 and limitations." (AR 19-20.)

22 Plaintiff takes exception to the ALJ's treatment of the GAF
23 scores. He argues that it was not proper for the ALJ to brush all of
24 the scores aside with a single stroke of the pen and that more
25 specificity was required. (Joint Stip. at 5-6.) He argues further
26 that the ALJ's reasons for rejecting the scores--i.e., that they were
27 subjective, captured only a snapshot in time, and were inferior to the
28 more detailed records--was not sufficient to justify the ALJ's

1 conclusion. (Joint Stip. at 9-15.) For the following reasons, the
2 Court disagrees.

3 GAF scores are a tool used by mental health professionals to
4 quantify in a single measure a patient's overall level of functioning
5 at a given moment in time. See Diagnostic and Statistical Manual of
6 Mental Disorders, Fourth Ed., Text Revision ("DSM-IV-TR") at 32. As a
7 general rule, an ALJ is not required to consider GAF scores in
8 assessing a claimant's ability to work. See *Howard v. Comm'r of Soc.*
9 *Sec.*, 276 F.3d 235, 241 (6th Cir. 2002) ("While a GAF score may be of
10 considerable help to the ALJ in formulating the [residual functional
11 capacity], it is not essential to the [residual functional capacity]'s
12 accuracy. Thus, the ALJ's failure to reference the GAF score in the
13 [residual functional capacity], standing alone, does not make the
14 [residual functional capacity] inaccurate."). Arguably, however, GAF
15 scores can be probative of a claimant's mental health on a given day
16 and should at least be acknowledged by the ALJ. See, e.g., *Hacker v.*
17 *Astrue*, 2008 WL 4224952, at *5 n.2 (W.D. Okla. 2008) ("[I]t was error
18 for the administrative law judge to not at least address the GAF
19 scores and explain why they were not relevant.")

20 The ALJ acknowledged that there were GAF scores in the record and
21 explained why he was not relying on them. This was more than he was
22 required to do. As such, he did not err.

23 Plaintiff disagrees. He argues that the ALJ was required to
24 provide compelling reasons for discounting the scores and that he
25 failed to do so. This argument is rejected because there is no such
26 requirement. *Howard*, 276 F.3d at 241. Even assuming that the ALJ was
27 required to provide reasons for discounting the scores, the ALJ's
28 justification here was sufficient to satisfy that burden. Clearly, as

1 Plaintiff acknowledges, GAF scores are subjective and capture only a
2 brief moment in a claimant's overall course of treatment. The ALJ's
3 election to put more emphasis on objective findings from a
4 longitudinal perspective is a reasonable one that the Court will not
5 second-guess.

6 Plaintiff argues that the Court's ruling in *Dempster v. Astrue*,
7 2008 WL 4381541 (C.D. Cal. Sept. 23, 2008), supports his argument that
8 reversal is mandated here. Again, the Court disagrees. There, the
9 Court made clear that, had the ALJ not erred in other ways, it would
10 not have remanded the case based on the ALJ's failure to mention the
11 GAF score assessed by the plaintiff's treating psychiatrist. In fact,
12 in *Dempster*, the ALJ had overlooked the treating psychiatrist's
13 records altogether, which compelled remand. *Id.* at *2. Here, the ALJ
14 discussed the treating psychiatrist's records and acknowledged the GAF
15 scores. As such, the Court finds *Dempster* inapposite. For all these
16 reasons, this claim fails.

17 B. The Social Worker's Report

18 Plaintiff was treated at times by a social worker who provided
19 counseling and therapy for his schizophrenia. In December 2008, she
20 wrote a letter "To Whom it May Concern," explaining that Plaintiff was
21 being treated at an outpatient clinic for parolees to address his
22 schizophrenia. (AR 286.) In her view, Plaintiff was unable to work
23 due to his condition. (AR 286.) The ALJ discounted the social
24 worker's report because she was not an "acceptable medical source" and
25 because her opinion that Plaintiff was not capable of working was on
26 an issue left to the Agency. (AR 20.) Plaintiff claims that the ALJ
27 erred in doing so. As explained below, the Court finds that, to the
28 extent that the social worker's opinion was her own opinion, the ALJ

1 properly discounted it. The issue will be remanded, however, to allow
2 the ALJ to determine whether the social worker was, in fact, speaking
3 for the rest of the medical team when she offered her opinion. If so,
4 the opinion is entitled to deference. Even if not, however, the ALJ
5 should still consider those portions of the social worker's report
6 that amount to lay testimony of observations by the social worker.

7 Social workers are not "acceptable medical sources." *Wake v.*
8 *Comm'r of Soc. Sec.*, 2011 WL 6192763, at *2 (9th Cir. Dec. 14, 2011).
9 As a result, in order to reject the opinion of a social worker, an ALJ
10 need only provide reasons that are germane. *Id.* The ALJ provided
11 germane reasons for rejecting the social worker's opinion. As such,
12 to the extent that the social worker's report consists of her opinion
13 the ALJ did not err in rejecting it.

14 Acknowledging that the social worker's opinion is not entitled to
15 much weight on its own, Plaintiff argues that the social worker was
16 part of a treatment team, which consisted of psychiatrists and
17 psychologists, and, therefore, her opinion should be elevated to that
18 of an acceptable medical source. (Joint Stip. at 25-26.) The record
19 is ambiguous on this issue. Unfortunately, Plaintiff's counsel--
20 counsel from the same firm that represents Plaintiff in this appeal--
21 never mentioned to the ALJ his theory that the social worker's opinion
22 should be accorded the same weight as a doctor's opinion because she
23 was working closely with the doctors. Thus, the ALJ never explored
24 the issue and the Court is left addressing it for the first time in
25 this appeal. This is obviously not the best way to handle these
26 issues. It would have been much better if counsel had suggested this
27 theory to the ALJ during the administrative hearing and allowed the
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1 ALJ the opportunity to consider the issue and, possibly, develop the
2 record regarding it.

3 Ultimately, however, the Court finds that the record at least
4 arguably supports Plaintiff's claim here. It appears that the social
5 worker was working fairly closely with the doctors who were also
6 treating Plaintiff at this facility. The social worker met with the
7 doctors and Plaintiff in some sessions. (AR 303.) At other times,
8 the doctors and the social workers alternated their sessions with
9 Plaintiff. (AR 300-06.) The notes seem to indicate that the doctors
10 and the social worker were treating Plaintiff as a team, each taking
11 on different responsibilities. (AR 302-06.) That is not to say,
12 however, that the doctors endorsed the social worker's view in
13 December 2008 that Plaintiff was disabled as a result of
14 schizophrenia. Clearly, they never signed off on the opinion.
15 Further development of the record is necessary to resolve the issue.
16 If the ALJ determines that the social worker's relationship was such
17 that her opinion was, essentially, the opinion of the doctors, he
18 should consider it in determining whether Plaintiff is disabled. If
19 the ALJ reaches the opposite conclusion, he need not accept the
20 opinion.

21 Finally, the Court notes that, though the ALJ properly discounted
22 the social worker's conclusion that Plaintiff was disabled because
23 that is a decision left to the ALJ, he should not have simply ignored
24 the social worker's observations, e.g., that Plaintiff experiences
25 auditory hallucinations and is unable to follow simple directions.
26 *See, e.g., Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993)
27 (explaining ALJ must provide germane reasons for discounting lay
28 testimony of witnesses who see claimant only occasionally because

1 their testimony "still carries some weight"). On remand, he should
2 take these observations into account or explain why he chooses not to.

3 C. Plaintiff's Mother's Testimony

4 Plaintiff's mother testified at the administrative hearing that
5 his schizophrenia and delusions made it impossible for him to
6 function. (AR 339-48.) The ALJ rejected this testimony because he
7 found that, as a family member and someone who would benefit from
8 increased income to the household, she was biased. (AR 17.) He also
9 concluded that her testimony was not competent because she was not
10 qualified to diagnose Plaintiff's condition or to opine how it
11 impacted his ability to work. (AR 17.) Plaintiff claims that the ALJ
12 erred in doing so. For the following reasons, the Court agrees.¹

13 Testimony from a lay witness who is in a position to observe a
14 claimant's symptoms and daily activities is "competent evidence." See
15 *Smith v. Bowen*, 849 F.2d 1222, 1226 (9th Cir. 1988) (quoting *Sprague*
16 *v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). In order to reject
17 such testimony, an ALJ must provide reasons that are germane to the
18 witness. See *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001) ("Lay
19 testimony as to a claimant's symptoms is competent evidence that an
20 ALJ must take into account, unless he or she expressly determines to
21 disregard such testimony and gives reasons germane to each witness for
22 doing so." (citations omitted)).

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25 ¹ Plaintiff's mother also submitted a questionnaire in which she
26 reported that Plaintiff was limited due to his impairment. (AR 93-
27 100.) The ALJ rejected the questionnaire because he found that it
28 simply parroted a similar one submitted by Plaintiff. (AR 17.)
Plaintiff does not appear to be challenging this finding. (Joint
Stip. at 35-36.)

1 The ALJ's discounting of the mother's testimony based on the fact
2 that she was related to Plaintiff is arguably a germane reason for
3 questioning her credibility. Generally speaking, ALJs are entitled to
4 employ ordinary credibility evaluation techniques, *Smolen v. Chater*,
5 80 F.3d 1273, 1284 (9th Cir. 1996), and fact finders ordinarily
6 consider the relationship between a witness and a party when assessing
7 the witness's credibility. *See, e.g., Romero v. Tansy*, 46 F.3d 1024,
8 1030 (10th Cir. 1995) (concluding alibi testimony by a defendant's
9 family members is of significantly less value than that of an
10 objective witnesses); *and see* Ninth Circuit Model Civil Jury
11 Instruction No. 1.11, Credibility of Witnesses ("In considering the
12 testimony of any witness, you may take into account: . . . (4) the
13 witness's interest in the outcome of the case and any bias or
14 prejudice"). But, at least in this circuit, ALJs are not
15 allowed to consider the fact that the witness is related to the
16 claimant in assessing the witness's credibility. *See Regennitter v.*
17 *Comm'r of Social Sec.*, 166 F.3d 1294, 1298 (9th Cir. 1999); *and*
18 *Smolen*, 80 F.3d at 1289 ("The fact that a lay witness is a family
19 member cannot be a ground for rejecting his or her testimony."); *but*
20 *cf. Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (upholding
21 ALJ's rejection of claimant's former girlfriend's testimony based, in
22 part, on fact she had a close relationship with claimant and was
23 possibly influenced by her desire to help him). Thus, the ALJ erred
24 in discounting the mother's testimony on this premise.

25 The ALJ's second reason for discounting the mother's testimony--
26 that she stood to gain financially if Plaintiff was awarded SSI--may
27 have been a valid reason for questioning her credibility. *See*
28 *Valentine v. Comm'r Soc. Sec.*, 574 F.3d 685, 694 (9th Cir. 2009)

1 ("[E]vidence that a specific spouse exaggerated a claimant's symptoms
2 *in order* to get access to his disability benefits, as opposed to being
3 an 'interested party' in the abstract, might suffice to reject that
4 spouse's testimony."). Plaintiff's mother testified that Plaintiff
5 lived with her and that she supported him, his brother, and his father
6 on her income. (AR 347-48.) Thus, there certainly is evidence to
7 support the ALJ's finding that the mother's testimony was subject to
8 scrutiny because she had a financial interest in outcome of the case.
9 And, accepting *Valentine's* ambiguous language that this "might" be
10 enough to support a credibility finding, the Court sides with the ALJ
11 here.

12 The ALJ also rejected the mother's testimony because he found
13 that it was tantamount to a medical opinion that she was not competent
14 to make. (AR 17.) Here the Court disagrees. Most of the mother's
15 testimony centered on what Plaintiff could and could not do around the
16 house and the efforts she made to motivate him to do his chores and
17 take care of himself. (AR 339-48.) This was competent evidence and
18 the ALJ should not have dismissed it because the mother also offered
19 opinions about Plaintiff's medical condition, which she was not
20 qualified to do. *See Smith*, 849 F.2d at 1226.

21 In the end, only one of the three reasons the ALJ cited for
22 rejecting the mother's credibility is valid, i.e., that the mother had
23 a financial incentive in the outcome of the case. In this situation,
24 applying a harmless error standard, the Court must determine whether
25 this reason alone amounts to substantial evidence to support the ALJ's
26 credibility finding. *See Carmickle v. Comm'r, Soc. Sec.*, 533 F.3d
27 1155, 1162-63 (9th Cir. 2008) (holding reviewing court must determine
28 whether remaining valid reason(s) for ALJ's questioning of claimant's

1 credibility amounts to substantial evidence); and *Batson v. Comm'r of*
2 *Soc. Sec.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding court must
3 evaluate ALJ's credibility finding under harmless error standard where
4 some of ALJ's reasons for rejecting credibility are rejected and some
5 are upheld). The Court finds that this reason alone is not enough to
6 support the ALJ's credibility finding, particularly in light of the
7 ambiguous language of *Valentine* that financial incentive "might" be
8 enough to question a witness's testimony. As such, remand is required
9 on this issue.

10 D. The ALJ's Reliance on the Examining Psychiatrist

11 The ALJ relied on the opinion of examining psychiatrist Reynaldo
12 Abejuela to conclude that Plaintiff's psychiatric impairments were not
13 as severe as he claimed and that they did not preclude him from
14 working. (AR 19-20.) Plaintiff contends that this was error because
15 Dr. Abejuela did not have Plaintiff's medical records when he rendered
16 his opinion. (Joint Stip. at 46.) For the following reasons, the
17 Court finds that the ALJ did not err here.

18 Plaintiff has not cited any authority for the proposition that a
19 consulting doctor, or any doctor, is required to review the medical
20 records of other doctors before rendering an opinion in order for the
21 opinion to be valid. In fact, under controlling Ninth Circuit law, an
22 ALJ is entitled to rely on the opinion of an examining doctor that is
23 supported by independent clinical findings. *Orn v. Astrue*, 495 F.3d
24 625, 631-32 (9th Cir. 2007); see also *Castaneda v. Astrue*, 344 Fed.
25 App'x 396, 398 (9th Cir. 2009) (holding ALJ did not err in relying on
26 examining doctor's assessment, even if doctor did not review all
27 medical records). Clearly, Dr. Abejuela examined Plaintiff and
28 performed some rudimentary tests in order to gauge Plaintiff's

1 condition. (AR 238-45.) Thus, his opinion was supported by
2 independent clinical findings and the ALJ's reliance on it was not in
3 error. This is particularly true in the context of this case where
4 the treatment records that Dr. Abejuela did not consider were based
5 almost exclusively on Plaintiff's claimed, often feigned, symptoms.
6 For example, as the ALJ pointed out, in order to avoid being
7 transferred from one jail facility to another, Plaintiff falsely
8 claimed to jail staff that he was hearing voices. (AR 178 (chart note
9 records Plaintiff's statement to jail social worker that he was on
10 methamphetamines while in jail and, when told he was being transferred
11 to Orange County Jail, falsely claimed that he was hearing voices so
12 he could stay where he was).) The ALJ rejected Plaintiff's testimony
13 and found that he was not credible. Plaintiff has not challenged that
14 finding and it is, therefore, binding in this case. Thus, the records
15 Plaintiff complains Dr. Abejuela failed to consider are of limited
16 value. In this situation, the Court cannot find error in the doctor's
17 failure to consider them.

18 E. The Vocational Expert's Testimony

19 Finally, Plaintiff takes exception to the vocational expert's
20 testimony that he was capable of working. He argues that the
21 testimony was infirm because the ALJ failed to include in the
22 hypothetical question to the vocational expert limitations reflected
23 in the GAF scores and the social worker's opinion and instead relied
24 on the limitations expressed by Dr. Abejuela. (Joint Stip. at 50.)
25 The Court has already rejected Plaintiff's arguments relating to the
26 GAF scores and Dr. Abejuela. As to the social worker's opinion, if,
27 on remand, the ALJ determines that her opinion is entitled to some
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1 weight, he should take it into account in formulating Plaintiff's
2 residual functional capacity.

3 Plaintiff also objects to the vocational expert's testimony on
4 the ground that he failed to testify that his testimony was consistent
5 with the Dictionary of Occupational Titles ("DOT"). (Joint Stip. at
6 50-51.) Plaintiff argues that there are "apparent conflicts" between
7 the vocational expert's testimony and the DOT, which should have been
8 explained. (Joint Stip. at 51.) This argument is rejected for two
9 reasons. First, Plaintiff was represented by counsel at the
10 administrative hearing and, in fact, counsel questioned the vocational
11 expert. Yet he never asked the vocational expert about any conflicts
12 with the DOT, apparent or otherwise, and never prodded the ALJ to do
13 so, either. (AR 50-51.) If these conflicts were so apparent, counsel
14 should have pointed them out at that time and not waited until now to
15 raise the issue. Failure to do so is tantamount to inviting error.
16 This is particularly true in the context of social security cases like
17 this one where counsel from this firm routinely ask for fees in excess
18 of \$500 per hour, sometimes in excess of \$1,000 per hour, for their
19 work in these cases, signifying among other things their obvious
20 expertise in the field. Counsel are not supposed to be potted plants
21 at administrative hearings. They have an obligation to take an active
22 role and to raise issues that may impact the ALJ's decision while the
23 hearing is proceeding so that they can be addressed.

24 Second, though Plaintiff speaks of "apparent" conflicts, he does
25 not identify a single one, even in his response to the Agency's
26 argument that no such conflicts exist. (Joint Stip. at 50-54.)
27 Apparently, Plaintiff thinks it is incumbent on the Court to read the
28 DOT and determine if any conflicts exist. Plaintiff is mistaken. It

1 is his obligation to set forth in his brief a persuasive argument as
2 to why remand is warranted on this issue. He has not done so. The
3 Court will presume that the reason he has not identified a single
4 conflict in the 55-page joint stipulation he filed in this case is
5 because there is none. As such, any error committed by the ALJ in
6 failing to ask the vocational expert if there was a conflict is
7 harmless and does not merit remand. *Massachi v. Astrue*, 486 F.3d
8 1149, 1154 n.19 (9th Cir. 2007) (explaining ALJ's failure to inquire
9 about conflicts with DOT is harmless if there is no conflict).²

10 IV. CONCLUSION

11 For the reasons set forth above, the Agency's decision is
12 reversed and the case is remanded for further proceedings.

13 IT IS SO ORDERED.

14 DATED: January 10, 2012.

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17 PATRICK J. WALSH
18 UNITED STATES MAGISTRATE JUDGE

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26 _____
27 ² The Court has considered the occupations identified by the
28 vocational expert and accepted by the ALJ that Plaintiff can perform
and does not find any apparent or actual conflicts between Plaintiff's
functional capabilities and these jobs.