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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HOWARD FORD, JR.,)	CASE NO. ED CV 11-01050 RZ
)	
Plaintiff,)	
)	MEMORANDUM OPINION
vs.)	AND ORDER
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
_____)	

When Plaintiff turned 18, the Social Security Administration reassessed him to see if he still qualified for disability benefits, as he had as a minor. This the agency was required to do by law, and it was required now to assess him under the standards applicable to adults. 42 U.S.C. § 1382c(a)(3)(H)(iii). Among Plaintiff’s complaints to this Court is the assertion that nothing changed other than Plaintiff’s age. But, for many aspects of the law, a juvenile is held to one standard before he turns 18, and a different, more stringent standard thereafter. The question before this Court is not whether Plaintiff had greater capability once he turned 18, but rather whether the Administrative Law Judge’s decision was backed by substantial evidence and was free of legal error. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

Plaintiff asserts that the finding that he was mentally capable of working on a full-time basis was not supported by substantial evidence. Beyond the misconception that

1 Plaintiff's disability as a minor requires something more than the agency's evaluation
2 under the standard 5-step analysis, this argument essentially is an argument that the
3 Administrative Law Judge needed to develop the record further. Contrary to Plaintiff's
4 argument, however, the Administrative Law Judge did not rely solely on the opinion of the
5 consulting psychiatrist Dr. Bagner. He also referenced the records from the San
6 Bernardino County Department of Behavioral Health. [AR 34]

7 Plaintiff asserts that it was "harmful error to accord great weight to
8 Dr. Bagner's report." (Plaintiff's Memorandum in Support of Complaint 7:16). The
9 consultant did not have the longitudinal record, it is true, but that did not make his report
10 inaccurate. (As noted, the records were available to the Administrative Law Judge.) The
11 Court does not understand the inconsistencies Plaintiff asserts to exist; quoting Plaintiff's
12 statement that he feels "all right" is not inconsistent with a doctor's assessment that the
13 Plaintiff has a mood disorder, not otherwise specified, and has borderline intellectual
14 functioning.

15 The Administrative Law Judge could have contacted treating physicians, but
16 he was not obligated to do so. Developing the record beyond what is present is an
17 obligation that arises when there is a material ambiguity. *Mayes v. Massanari*, 276 F.3d
18 453,459-60 (9th Cir. 2001) (*citing Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir.
19 2001)). Plaintiff identifies no such ambiguity requiring that there be further contacting of
20 the physician. The most that Plaintiff references is an increase in dosage of his medication
21 Concerta, but that does not demonstrate a need to contact the physician further.

22 Plaintiff also contends that the Administrative Law Judge erred in his
23 credibility assessments of both Plaintiff and his grandmother. While the Court agrees with
24 Plaintiff that the Administrative Law Judge has relied largely on boilerplate language that
25 appears in every decision, this is one of those circumstances in which the boilerplate
26 language actually fits.

27 The Administrative Law Judge first listed a number of factors that, in the
28 abstract, could be considered in assessing a witness' testimony. [AR 33] He then gave a

1 short statement about Plaintiff's testimony, and a short statement about Plaintiff's
2 grandmother's testimony. [*Id.*] He said that the grandmother's testimony was not fully
3 credible, and that the factors he considered in reaching this determination were whether she
4 had a pecuniary interest in the outcome and whether the evidence is colored by kinship.
5 [*Id.*] Presumably he meant that the grandmother's testimony was not fully credible because
6 she *did* have a pecuniary interest in the outcome and because she *was* Plaintiff's kin.

7 As it turns out, however, the grandmother did not say very much. She made
8 a statement that occupies only two pages of transcript; the only salient points contained in
9 that statement are that Plaintiff has been prescribed Zyprexa, but does not always take it
10 because it gives him headaches, and that "I see the pain that he goes through you know
11 with his legs hurt and he can't move and they swell and we have to put ice packs on them"
12 [AR 949-50].

13 As for Plaintiff, the Administrative Law Judge accurately recounted his
14 testimony that Plaintiff applied for part-time jobs after school, and that the reason that he
15 could not work full time was that he could not stand for more than 60 minutes nor sit for
16 more than 30 minutes. [AR 33]

17 The Administrative Law Judge had this to say about credibility:
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19 After considering the evidence of record, I find that, since
20 January 1, 2008, the claimant's medically determinable
21 impairments could reasonably be expected to produce the
22 alleged symptoms; however, the claimant's statements
23 concerning the intensity, persistence and limiting effects of these
24 symptoms are not credible to the extent they are inconsistent
25 with the residual functional capacity assessment for the reasons
26 explained below.
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1 [AR 33] This statement is complete boilerplate, appearing again and again from one
2 decision to another. It usually is not a sufficient basis for impeaching credibility, because
3 it is so general and non-specific. In this case, however, “the reasons explained below” do
4 give a proper basis for the Administrative Law Judge’s statement.

5 Following the boilerplate, the Administrative Law Judge recounted the
6 testimony of the medical expert as to Plaintiff’s history of Osgood-Schlatter’s disease, and
7 the expert’s belief that Plaintiff could perform within the capacity that the Administrative
8 Law Judge identified. The Administrative Law Judge further referenced the results of the
9 consultative internal medicine examination, which showed that the joints and back were
10 normal, and various other results, all within the normal range. The Administrative Law
11 Judge also summarized the report of the treating physician, indicating that, following the
12 casting of both legs, Plaintiff had only minimal swelling, full range of motion, stable
13 ligaments, and was intact neurologically. The Administrative Law Judge also referenced
14 earlier x-rays that were normal. [AR 34]

15 This testimony stood in contrast to Plaintiff’s testimony that he could only
16 stand for an hour and sit for 30 minutes, and therefore, it impeached his credibility. One
17 reason for impeaching credibility is that the testimony as to the medical symptoms conflicts
18 with the medical evidence. *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001), *citing*
19 *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984). Thus, in this setting, the
20 Administrative Law Judge did give valid reasons for not believing that Plaintiff was as
21 incapacitated as he stated.

22 In this Court, Plaintiff also asserts that the Administrative Law Judge should
23 have asked him about his ADHD, learning disorder or depression, and delved into the
24 medication Plaintiff used, and its side effects. It is not clear why Plaintiff asserts this,
25 however. Plaintiff points to no ambiguity in the record that required further development,
26 *see Mayes v. Massanari, supra*, and Plaintiff does not say what information such questions
27 would have elicited. Plaintiff does not even argue that the Administrative Law Judge
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1 should have found other impairments than those he identified. The Court sees no error
2 here.

3 In accordance with the foregoing, the decision of the Commissioner is
4 affirmed.

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6 DATED: January 30, 2012

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9 RALPH ZAREFSKY
10 UNITED STATES MAGISTRATE JUDGE
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