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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CHARLES STURDEVANT III,	)	Case No. ED CV 11-1179-PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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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: (1) rejected a treating psychiatrist's opinion; and (2) found that Plaintiff was not credible. For the reasons discussed below, the Agency's decision is reversed and the case is remanded for further consideration.

II. SUMMARY OF PROCEEDINGS

In April 2007, Plaintiff applied for SSI, alleging that he was disabled due to depression with psychosis, migraines, and right shoulder pain. (Administrative Record ("AR") 83, 121-23, 136.) His

1 application was denied initially and on reconsideration. (AR 79, 80,  
2 83-93.) He then requested and was granted a hearing before an ALJ.  
3 (AR 95, 97-98.) On November 18, 2009, he appeared with counsel for  
4 the hearing. (AR 46-78.) On December 17, 2009, the ALJ issued a  
5 decision denying benefits. (AR 7-18.) Plaintiff appealed to the  
6 Appeals Council, which denied review. (AR 1-3, 5.) This action  
7 followed.

### 8 III. ANALYSIS

#### 9 A. The Treating Psychiatrist's Opinion

10 Plaintiff contends that the ALJ erred when he rejected the  
11 opinion of treating psychiatrist Marc Stolar, who concluded in,  
12 essence, that Plaintiff's severe mental illness prevented him from  
13 working. (AR 513.) The ALJ gave very little weight to this opinion,  
14 finding instead that Plaintiff would be able to perform work involving  
15 simple tasks that did not involve contact with the public as  
16 determined by the reviewing psychiatrists. (AR 13-15.) For the  
17 following reasons, the Court concludes that further consideration of  
18 this issue is warranted.

19 "By rule, the [Agency] favors the opinion of a treating physician  
20 over non-treating physicians." *Orn v. Astrue*, 495 F.3d 625, 631 (9th  
21 Cir. 2007); *see also Morgan v. Comm'r*, 169 F.3d 595, 600 (9th Cir.  
22 1999) (explaining that a treating physician's opinion "is given  
23 deference because 'he is employed to cure and has a greater  
24 opportunity to know and observe the patient as an individual'"  
25 (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987))). For  
26 this reason, generally speaking, a treating physician's opinion that  
27 is well-supported and not inconsistent with other substantial evidence  
28 in the record will be given controlling weight. *Orn*, 495 F.3d at 631.

1           That being said, however, an ALJ is not required to simply accept  
2 a treating doctor's opinion. Where, as here, the opinion is  
3 contradicted by another doctor's opinion, the ALJ is empowered to  
4 reject it for specific and legitimate reasons that are supported by  
5 substantial evidence in the record. See *Thomas v. Barnhart*, 278 F.3d  
6 947, 957 (9th Cir. 2002) (quoting *Magallanes v. Bowen*, 881 F.2d 747,  
7 751 (9th Cir. 1989)); *Morgan*, 169 F.3d at 600.<sup>1</sup>

8           On September 15, 2008, Dr. Stolar completed a pre-printed,  
9 "Narrative Report" form, circling various options to indicate  
10 Plaintiff's condition. (AR 511.) Dr. Stolar noted that Plaintiff's  
11 memory and judgment were intact and that he would be able to maintain  
12 a sustained level of concentration and manage funds. (AR 511.)  
13 Because he had seen Plaintiff only once at the time of the report,  
14 however, he indicated that it was "unknown" whether Plaintiff would be  
15 able to sustain repetitive tasks for an extended period, adapt to new  
16 or stressful situations, interact appropriately with co-workers and  
17 supervisors, and complete a 40-hour work week without decompensating.  
18 (AR 511.) Ultimately, he diagnosed Plaintiff with schizoaffective  
19 disorder. (AR 511.)

20           In an August 7, 2009, hand-written, two-paragraph, "To Whom It  
21 May Concern" letter, Dr. Stolar wrote that he had been treating  
22 Plaintiff for one year. (AR 513.) He again diagnosed him with  
23 schizoaffective disorder, but this time bipolar type. (AR 513.) Dr.  
24 Stolar also opined that, due to Plaintiff's mental illness, he would  
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26           <sup>1</sup> Dr. Stolar's opinion was contradicted by reviewing  
27 psychiatrists H.M. Skopec and Edward O'Malley, both of whom determined  
28 that Plaintiff could perform simple repetitive tasks not involving  
contact with the public. (AR 404, 506-08.)

1 not be able to maintain a sustained level of concentration, perform  
2 repetitive tasks for an extended period of time, interact  
3 appropriately with co-workers and supervisors, or work a 40-hour week  
4 without decompensating. (AR 513.)

5 The ALJ rejected Dr. Stolar's opinion because it was not  
6 supported by any objective findings and did not include even the most  
7 basic information, such as how often he had seen Plaintiff,  
8 Plaintiff's response to medication, and whether other therapy  
9 modalities had been tried. (AR 15.) The ALJ also noted that Dr.  
10 Stolar had not mentioned any objective signs or symptoms to support  
11 his opinion. (AR 15.) Moreover, although Dr. Stolar stated in August  
12 2009 that he had been treating Plaintiff for a year, he did not  
13 provide any treatment notes documenting this treatment. (AR 15.)

14 These are legitimate reasons for rejecting Dr. Stolar's opinion.  
15 See *Thomas*, 278 F.3d at 957 (holding ALJ not required to accept  
16 treating physician's opinion that is brief, conclusory, and  
17 inadequately supported by clinical findings); *Crane v. Shalala*, 76  
18 F.3d 251, 253 (9th Cir. 1996) (holding ALJ may reject "check-off  
19 reports that [do] not contain any explanation of the bases of their  
20 conclusions."). And there is support in the record for the ALJ's  
21 findings. The problem with these findings, however, is that the  
22 record is woefully incomplete regarding Dr. Stolar's work. The only  
23 records from Dr. Stolar are his 2008 check-the-box form and his 2009  
24 letter. (AR 511, 513.) It is impossible to assess the relevance of  
25 Dr. Stolar's opinion on this record and, as explained below, both the  
26 ALJ and Plaintiff should have done more to obtain the records to do  
27 so.

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1           The ALJ had a special duty to "fully and fairly" develop the  
2 record. *See Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996).  
3 This included obtaining Dr. Stolar's medical records that presumably  
4 support his opinion that Plaintiff was disabled. *Id.* ("If the ALJ  
5 thought he needed to know the basis of [the treating doctor's]  
6 opinions in order to evaluate them, he had a duty to conduct an  
7 appropriate inquiry, for example, by subpoenaing the physicians or  
8 submitting further questions to them.").

9           Plaintiff also had a duty to obtain the records as he had the  
10 burden of establishing that he is disabled. *See Parra v. Astrue*, 481  
11 F.3d 742, 746 (9th Cir. 2007) ("[A]t all times, the burden is on the  
12 claimant to establish his entitlement to disability insurance  
13 benefits.") (citation omitted). Not only is this duty clearly set out  
14 in the regulations and the case law, the Agency sent Plaintiff's  
15 counsel--a seasoned social security lawyer--a letter in September  
16 2009, reminding him of this obligation. (AR 232-33.) Two months  
17 later, counsel faxed Dr. Stolar's two-paragraph letter in which Dr.  
18 Stolar summarily concluded that Plaintiff was disabled. (AR 512-13.)  
19 This letter, by itself, is hardly worth the paper it is written on and  
20 counsel should have known that. The earlier one-page opinion that Dr.  
21 Stolar prepared the day he met Plaintiff is even less valuable. The  
22 value of a doctor's opinion is based on underlying medical records  
23 that support the opinion. Without them, a doctor's opinion is not  
24 worth much.

25           The weight to be attributed to a doctor's opinion is based on the  
26 underlying medical records that support the opinion. Without them,  
27 the opinion is not worth much. If all it took to obtain disability  
28 benefits was a letter from a treating physician that a claimant was

1 disabled, there would be no need for the administrative process. All  
2 that the Agency would need to conduct its business would be a fax  
3 machine, a checkbook, and a bookkeeper authorized to write checks.

4 The Agency argues that the ALJ's decision should be affirmed  
5 because he relied on reviewing psychiatrists Skopec and O'Malley's  
6 opinions that Plaintiff was not disabled and these opinions amounted  
7 to substantial evidence. The Court does not agree. To begin with,  
8 these doctors did not consider Dr. Stolar's opinions, which were  
9 prepared after they offered their opinions. (AR 402-09, 506-08, 511,  
10 513.) Further, though the reviewing doctors correctly pointed out  
11 that Plaintiff's doctors at Riverside Community Mental Health Clinic  
12 reported that he was stable when he was compliant with his medications  
13 (AR 312, 314, 315, 385, 406, 408, 468), stable is not the same as  
14 unimpaired. For example, at times when Riverside staff were reporting  
15 that Plaintiff was stable, they were also reporting that he was  
16 hallucinating and/or having delusions. (AR 312, 314.) Presumably, it  
17 would be difficult if not impossible for Plaintiff to hold down a job  
18 while experiencing delusions and hallucinations even if he was  
19 "stable."

20 For these reasons, remand is required. If Plaintiff wants the  
21 Agency and the Court to seriously consider Dr. Stolar's opinion, he  
22 needs to provide Dr. Stolar's records so that his opinion can be  
23 evaluated. If Plaintiff fails again to supply the records, the ALJ  
24 should contact Dr. Stolar and obtain them on his own. If no records  
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1 are forthcoming and it is impossible to tell what Dr. Stolar based his  
2 opinion on, the opinion should be disregarded.<sup>2</sup>

3 B. The Credibility Finding

4 Plaintiff argues that the ALJ erred when he found that Plaintiff  
5 was not credible. He contends that the ALJ's justifications for this  
6 finding were inadequate. (Joint Stip. at 12-14.) For the following  
7 reasons, the Court remands this issue as well.

8 ALJs are tasked with judging the credibility of witnesses. In  
9 doing so, they may rely on ordinary credibility evaluation techniques.  
10 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). Where a  
11 claimant produces objective medical evidence of an impairment that  
12 reasonably could be expected to produce the alleged symptoms, an ALJ  
13 may not discount the testimony without providing "specific, clear and  
14 convincing reasons." *Smolen*, 80 F.3d at 1281.

15 Plaintiff testified that his short-term memory was very poor; he  
16 suffered from visual hallucinations, auditory hallucinations, and  
17 night terrors; and he was subject to extremes of emotions, which  
18 included the desire to hit other people or himself. (AR 55, 57-59,  
19 63-64.) He also testified that his medications helped him "a little  
20 bit" but that the relief did not last long. (AR 57.) He explained  
21 further that he thought about suicide "all the time." (AR 61.)

22 The ALJ found that the objective evidence did not support these  
23 allegations. (AR 16.) This is a legitimate basis for questioning a  
24 claimant's testimony. See *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th  
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26 <sup>2</sup> It appears that it would also be beneficial to have a  
27 consulting psychiatrist evaluate Plaintiff and provide a report. In  
28 lieu of that, perhaps a medical expert could testify at the hearing to  
assist in assessing Plaintiff's condition.

1 Cir. 2012) (affirming ALJ's credibility determination in part because  
2 claimant's allegations were undermined by doctor's reports and  
3 inconsistent with other medical evidence in the record); *Morgan*, 169  
4 F.3d at 599-600 (upholding ALJ's credibility determination in part  
5 because psychiatric reports of claimant's symptoms undermined his  
6 complaints). Furthermore, the record, as it stands, supports the  
7 ALJ's determination as his health care providers routinely found him  
8 to be in relatively good condition. (AR 329-31 (social worker upon  
9 examination noting Plaintiff's concentration was good, his memory was  
10 intact, and his thought processes were normal but Plaintiff "reported  
11 grossly exaggerated" symptoms, his mood was incongruent with his  
12 reports, and the content of his reported auditory and visual  
13 hallucinations were "vague and grossly exaggerated."); AR 305 (social  
14 worker noted on mental status exam form that, although Plaintiff was  
15 depressed and his affect flat, he was oriented times four and alert,  
16 his concentration was good, and his memory was intact); AR 305  
17 (Plaintiff reported to social worker that symptoms had "minimized"  
18 since he had been compliant with his medications); AR 310-15 (treating  
19 psychiatrist Patel noted that Plaintiff had no suicidal ideations and  
20 his sleep was "OK," generally doing well on medication, anxiety  
21 decreased, no more than occasional delusions and no suicidal  
22 ideations).) The problem with the ALJ's finding, however, is that the  
23 record he relied on to reach it is incomplete because Dr. Stolar's  
24 treatment records are not included. Thus, the ALJ was unable to  
25 consider them in evaluating Plaintiff's credibility. On remand, he  
26 will have that opportunity.

27 The ALJ's second justification for questioning Plaintiff's  
28 credibility was that Plaintiff did not fully comply with his treatment



1 plan, failed to consistently take his psychotropic medications, and  
2 failed to attend psychiatric appointments, job counseling sessions,  
3 and vocational rehabilitation classes. (AR 16.) Generally speaking,  
4 these are valid reasons for discounting a claimant's testimony. See  
5 *Molina*, 674 F.3d at 1113-14; *Smolen*, 80 F.3d at 1284 (explaining ALJ  
6 may consider claimant's failure to follow a prescribed course of  
7 treatment in evaluating credibility), and there is some support for  
8 them in the record. (AR 376, 377, 381, 384, 385, 492.) It is not  
9 clear, however, whether Plaintiff's alleged schizoaffective-bipolar  
10 disorder had any impact on his ability to follow his treatment plan.  
11 See, e.g., *Pate-Fires v. Astrue*, 564 F.3d 935, 945-46 (8th Cir. 2009)  
12 (holding ALJ cannot rely on schizoaffective/bipolar claimant's failure  
13 to comply with treatment plan as evidence that she was not credible  
14 since failure to comply was manifestation of schizoaffective/bipolar  
15 disorder).

16 On remand, the ALJ should reconsider Plaintiff's credibility  
17 based on the record before him at that time. Assuming that the ALJ  
18 will take into account Plaintiff's compliance or lack thereof with his  
19 treatment program, he should explain how Plaintiff's condition does or  
20 does not impact his ability to comply with the program.

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1 IV. CONCLUSION

2 For these reasons, the Agency's decision is reversed and the case  
3 is remanded for further consideration.<sup>3</sup>

4 IT IS SO ORDERED.

5 DATED: October 17, 2012

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PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>3</sup> The Court has considered Plaintiff's request that the case be  
28 remanded for an award of benefits and finds that this relief is not  
warranted here because it is not clear whether Plaintiff is disabled.