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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 JUDY HOBART,

12 Plaintiff,

13 vs.

14 MICHAEL J. ASTRUE, Commissioner  
of Social Security,

15 Defendant.  
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CASE NO. ED CV 12-00353 RZ

MEMORANDUM OPINION  
AND ORDER

17 Under *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988), a final administrative  
18 determination of non-disability creates a presumption of continuing non-disability, and a  
19 presumption that the claimant continues to have the same residual functional capacity. This  
20 presumption can be rebutted by changed circumstances. In his decision of June 2, 2008,  
21 the Administrative Law Judge found that Plaintiff had the residual functional capacity to  
22 do work at any exertional level, with the non-exertional limitation that she was limited to  
23 unskilled, entry level work. [AR 43] The Administrative Law Judge further found that  
24 Plaintiff was capable of performing past relevant work as a care provider, fast food worker,  
25 or a housekeeper. [AR 46] This decision established the *Chavez* presumptions.

26 Six months later, Plaintiff filed the present claim, again seeking disability  
27 benefits or Supplemental Security Income. The Administrative Law Judge found the same  
28 residual functional capacity [AR 12] and the same capacity to perform Plaintiff's past

1 relevant work. [AR 15] The central question for review is whether Plaintiff has rebutted  
2 the presumptions that she continues not to be disabled.

3 Plaintiff does not directly argue that there are any changed circumstances  
4 justifying a rebuttal of the *Chavez* presumptions. At best she indirectly does so, by  
5 challenging the Administrative Law Judge's determination of the residual functional  
6 capacity, arguing that it does not take into account the limitations imposed by the treating  
7 physician, Terry Roh, who did evaluate Plaintiff one week after the previous decision.  
8 [AR 149] But, as the Administrative Law Judge pointed out, while Dr. Roh found that  
9 Plaintiff was depressed and had poor concentration, she also found that Plaintiff was  
10 having no hallucinations and otherwise presented normally. [AR 14, 149] Further, as the  
11 Administrative Law Judge noted, Dr. Roh's assessment called for follow-up visits, and on  
12 those follow-up visits Plaintiff "was found to be overall normal" [AR 14]. Further, the  
13 Administrative Law Judge indicated that Plaintiff was not always taking her medication.  
14 And Plaintiff's residual functional capacity, limiting her to unskilled, entry-level work, also  
15 took her mental status into account.

16 Plaintiff also challenges two aspects of the Administrative Law Judge's  
17 finding that she could perform her past relevant work. First, she asserts that the  
18 Administrative Law Judge did not explain the demands of the past relevant work, and  
19 compare those demands to the residual functional capacity. In this Plaintiff is correct.  
20 *Pinto v. Massanari*, 249 F.3d 840 (9th Cir. 2001). However, the error is harmless. The  
21 Administrative Law Judge found that Plaintiff could perform work at any exertional level;  
22 that obviously includes any past relevant work. As for the non-exertional limitations,  
23 Plaintiff concedes that the past relevant work of a fast-food worker involves an Specific  
24 Vocation Preparation ("SVP") level of 2. Since past relevant work is work either as  
25 actually performed or as performed in the general economy, *Pinto*, 249 F.3d at 845,  
26 Plaintiff's past work therefore qualifies.

27 Second, Plaintiff asserts that the Administrative Law Judge was incorrect  
28 when he said that Plaintiff "is able to perform [her past relevant work] as actually

1 performed. This is consistent with the Dictionary of Occupational Titles.” [AR 15]  
2 Plaintiff points out that for two of the three jobs Plaintiff performed in the past, that of care  
3 provider and housekeeper, the closest descriptions in the Dictionary have SVP’s higher  
4 than 2. Accepting this, however, does not help Plaintiff, because Plaintiff concedes that  
5 the fast food worker job has an SVP of 2, which fits within the residual functional capacity  
6 that the Administrative Law Judge found. Again, therefore, if there was error, the error  
7 was harmless.

8 Plaintiff also asserts that the Administrative Law Judge erred by not calling  
9 a vocational expert. However, an administrative law judge is not required to call a  
10 vocational expert as to the determination of ability to perform past relevant work. *Moore*  
11 *v. Apfel*, 216 F.3d 864, 870-71 (9th Cir. 2000), citing *Lewis v. Barnhart*, 353 F.3d 642, 648  
12 (8th Cir. 2003) and *Miles v. Barnhart*, 374 F.3d 694, 700 (8th Cir. 2004).

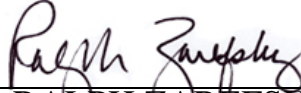
13 Finally, Plaintiff asserts that the Administrative Law Judge wrongly  
14 discredited her testimony and made incomplete credibility findings. But all that Plaintiff  
15 does in this argument is to cite the law and quote some of the Administrative Law Judge’s  
16 decision. There is no explanation of where the Administrative Law Judge supposedly got  
17 it wrong, and no assessment of how things would be different if he had gotten it right. In  
18 fact, the Administrative Law Judge did what the law requires. He was entitled to use  
19 ordinary techniques of questioning a witness’s credibility, *Fair v. Bowen*, 885 F.2d 597,  
20 603 (9th Cir. 1989), and he did so, indicating that current complaints of medication side  
21 effects did not match contemporary records, that medication was effective but sometimes  
22 not used, and that Plaintiff missed medical appointments . These were sufficient bases to  
23 cast doubt on some of Plaintiff’s assertions, such as that she could not concentrate longer  
24 than two seconds.

25 The Administrative Law Judge concluded that he did not see “any credible  
26 evidence of any substantial change in the claimant’s condition from the time of the last  
27 hearing to this current decision.” [AR 15] The Court agrees. Plaintiff has shown no  
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1 reason that the presumption of continuing disability does not apply, and has shown no  
2 errors justifying reversal of the decision.

3 The Commissioner's decision is affirmed.

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5 DATED: November 2, 2012

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8 RALPH ZAREFSKY  
9 UNITED STATES MAGISTRATE JUDGE  
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