

O

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VANESSA G. OWENS,)	Case No. EDCV 12-0455-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING THE COMMISSIONER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security Supplemental Security Income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed January 23, 2013, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

1 **II. BACKGROUND**

2 Plaintiff was born on June 8, 1961. (Administrative Record
3 ("AR") 112.) She has a 12th-grade education. (AR 131.) From
4 1971 to 1986 Plaintiff worked as a trapeze artist and stunt
5 performer, and from 1987 to 1995 she worked as a cashier. (AR
6 133.) She stopped working full time in 1995, when she gave birth
7 to a special-needs child. (AR 26-27.) She last worked in 1999,
8 as a home attendant. (AR 27, 33.) Plaintiff previously filed
9 two unsuccessful applications for SSI, the most recent of which
10 was denied on August 10, 2005. (AR 38.) On June 2, 2009,
11 Plaintiff filed the instant application for SSI, alleging a
12 disability onset date of August 11, 2005. (AR 112-17.)
13 Plaintiff claimed to be disabled because of degenerative disc
14 disease, fibromyalgia, hypertension, progressive cervical
15 spondylosis, bilateral knee pain, severe anxiety, migraine
16 headaches, and panic attacks. (AR 125.) Her SSI application was
17 initially denied on November 18, 2009. (AR 53-57.) Plaintiff
18 then requested reconsideration (AR 60), and on April 29, 2010,
19 her application was denied again (AR 61-65).

20 After Plaintiff's application was denied a second time, she
21 requested a hearing before an Administrative Law Judge ("ALJ").
22 (AR 67.) A hearing was held on May 31, 2011, at which Plaintiff,
23 who was represented by counsel, testified on her own behalf. (AR
24 23-34.) A vocational expert ("VE") also testified. (AR 45-50.)
25 On June 23, 2011, the ALJ issued a written decision determining
26 that Plaintiff was not disabled. (AR 9-22.) On July 14, 2011,
27 Plaintiff requested review of the ALJ's decision. (AR 7-8.) On
28 February 21, 2012, the Appeals Council denied Plaintiff's request

1 for review. (AR 1-6.) This action followed.

2 **III. STANDARD OF REVIEW**

3 Pursuant to 42 U.S.C. § 405(g), a district court may review
4 the Commissioner's decision to deny benefits. The ALJ's findings
5 and decision should be upheld if they are free of legal error and
6 supported by substantial evidence based on the record as a whole.
7 § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct.
8 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d
9 742, 746 (9th Cir. 2007). Substantial evidence means such
10 evidence as a reasonable person might accept as adequate to
11 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter
12 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than
13 a scintilla but less than a preponderance. Lingenfelter, 504
14 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,
15 882 (9th Cir. 2006)). To determine whether substantial evidence
16 supports a finding, the reviewing court "must review the
17 administrative record as a whole, weighing both the evidence that
18 supports and the evidence that detracts from the Commissioner's
19 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
20 1996). "If the evidence can reasonably support either affirming
21 or reversing," the reviewing court "may not substitute its
22 judgment" for that of the Commissioner. Id. at 720-21.

23 **IV. THE EVALUATION OF DISABILITY**

24 People are "disabled" for purposes of receiving Social
25 Security benefits if they are unable to engage in any substantial
26 gainful activity owing to a physical or mental impairment that is
27 expected to result in death or which has lasted, or is expected
28 to last, for a continuous period of at least 12 months. 42

1 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
2 (9th Cir. 1992).

3 A. The Five-Step Evaluation Process

4 The ALJ follows a five-step sequential evaluation process in
5 assessing whether a claimant is disabled. 20 C.F.R.

6 § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
7 1995) (as amended Apr. 9, 1996). In the first step, the

8 Commissioner must determine whether the claimant is currently
9 engaged in substantial gainful activity; if so, the claimant is
10 not disabled and the claim must be denied. § 416.920(a)(4)(i).

11 If the claimant is not engaged in substantial gainful activity,
12 the second step requires the Commissioner to determine whether
13 the claimant has a "severe" impairment or combination of

14 impairments significantly limiting her ability to do basic work
15 activities; if not, the claimant is not disabled and the claim
16 must be denied. § 416.920(a)(4)(ii). If the claimant has a

17 "severe" impairment or combination of impairments, the third step
18 requires the Commissioner to determine whether the impairment or
19 combination of impairments meets or equals an impairment in the

20 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
21 404, Subpart P, Appendix 1; if so, disability is conclusively
22 presumed and benefits are awarded. § 416.920(a)(4)(iii). If the

23 claimant's impairment or combination of impairments does not meet
24 or equal an impairment in the Listing, the fourth step requires
25 the Commissioner to determine whether the claimant has sufficient

1 residual functional capacity ("RFC")¹ to perform her past work;
2 if so, the claimant is not disabled and the claim must be denied.
3 § 416.920(a)(4)(iv). The claimant has the burden of proving that
4 she is unable to perform past relevant work. Drouin, 966 F.2d at
5 1257. If the claimant meets that burden, a prima facie case of
6 disability is established. Id. If that happens or if the
7 claimant has no past relevant work, the Commissioner then bears
8 the burden of establishing that the claimant is not disabled
9 because she can perform other substantial gainful work available
10 in the national economy. § 416.920(a)(4)(v). That determination
11 comprises the fifth and final step in the sequential analysis.
12 § 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

13 B. The ALJ's Application of the Five-Step Process

14 At step one, the ALJ found that Plaintiff had not engaged in
15 any substantial gainful activity since June 2, 2009, the date of
16 her SSI application. (AR 14.) At step two, the ALJ concluded
17 that Plaintiff had the severe impairments of "lumbosacral strain,
18 mild arthritis of the right knee, and bilateral carpal tunnel
19 syndrome." (Id.) At step three, the ALJ determined that
20 Plaintiff's impairments did not meet or equal any of the
21 impairments in the Listing. (AR 14-15.) At step four, the ALJ
22 found that Plaintiff was able to perform a full range of medium
23 work.² (AR 15.) Based on the VE's testimony, the ALJ concluded

24
25 ¹RFC is what a claimant can still do despite existing
26 exertional and nonexertional limitations. 20 C.F.R. § 416.945; see
Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

27 ²"Medium work" involves "lifting no more than 50 pounds at a
28 time with frequent lifting or carrying of objects weighing up to 25
pounds." 20 C.F.R. § 416.967(c). The regulations further specify

1 that Plaintiff could perform her past relevant work of in-home
2 support provider. (AR 17.) Accordingly, the ALJ determined that
3 Plaintiff was not disabled. (Id.)

4 **V. DISCUSSION**

5 Plaintiff alleges that the ALJ erred in finding that
6 Plaintiff's migraine headaches were not a severe impairment and
7 in evaluating the opinions of her treating physician. (J. Stip.
8 at 3.) Neither of these contentions warrants reversal.³

9 A. The ALJ Did Not Err in Considering the Opinions of
10 Plaintiff's Treating Physician

11 Plaintiff contends that the ALJ did not properly evaluate
12 the opinions of her treating physician, Dr. V. Duane Sisson. (J.
13 Stip. at 10-16.) Reversal is not warranted on this basis because
14 the ALJ gave specific and legitimate reasons for rejecting Dr.
15 Sisson's opinions, and those reasons were consistent with
16 substantial evidence in the record.

17 1. Applicable law

18 Three types of physicians may offer opinions in social
19 security cases: "(1) those who treat[ed] the claimant (treating
20 physicians); (2) those who examine[d] but d[id] not treat the
21 claimant (examining physicians); and (3) those who neither
22 examine[d] nor treat[ed] the claimant (non-examining
23 physicians)." Lester, 81 F.3d at 830. A treating physician's

24 _____
25 that "[i]f someone can do medium work, we determine that he or she
26 can also do sedentary and light work," as defined in § 416.967(a)-
(b). Id.

27 ³The Court has reversed the order in which it addresses
28 Plaintiff's claims from that followed by the parties to avoid
repetition and for other reasons.

1 opinion is generally entitled to more weight than the opinion of
2 a doctor who examined but did not treat the claimant, and an
3 examining physician's opinion is generally entitled to more
4 weight than that of a nonexamining physician. Id.

5 The opinions of treating physicians are generally afforded
6 more weight than the opinions of nontreating physicians because
7 treating physicians are employed to cure and have a greater
8 opportunity to know and observe the claimant. Smolen v. Chater,
9 80 F.3d 1273, 1285 (9th Cir. 1996). The weight given a treating
10 physician's opinion depends on whether it was supported by
11 sufficient medical data and was consistent with other evidence in
12 the record. See 20 C.F.R. § 416.927(c)(2). If a treating
13 physician's opinion was well supported by medically acceptable
14 clinical and laboratory diagnostic techniques and not
15 inconsistent with the other substantial evidence in the record,
16 it should be given controlling weight and rejected only for
17 "clear and convincing" reasons. See Lester, 81 F.3d at 830;
18 § 416.927(c)(2). When a treating physician's opinion conflicts
19 with other medical evidence or was not supported by clinical or
20 laboratory findings, the ALJ must provide only "specific and
21 legitimate reasons" for discounting that doctor's opinion. Orn
22 v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007). Indeed, the ALJ
23 may discredit treating-doctor opinions that are conclusory,
24 brief, and unsupported by the record as a whole or by objective
25 medical findings. See Batson v. Comm'r of Soc. Sec. Admin., 359
26 F.3d 1190, 1195 (9th Cir. 2004); Thomas v. Barnhart, 278 F.3d
27 947, 957 (9th Cir. 2002). Other factors relevant to the
28 evaluation of a treating physician's opinion include the

1 "[l]ength of the treatment relationship and the frequency of
2 examination" as well as the "[n]ature and extent of the treatment
3 relationship" between the patient and the physician.

4 § 416.927(c)(2)(i)-(ii).

5 2. Relevant facts

6 Dr. Sisson was Plaintiff's treating physician from at least
7 January 2009 to May 2011. (AR 275-94, 308-33.) The treatment
8 notes in the record indicated that she saw him approximately once
9 a month during that time. (Id.) Dr. Sisson's notes documented
10 Plaintiff's subjective complaints of back and knee pain, migraine
11 headaches, stress from caring for her special-needs children, and
12 requests for refills of her medication. (See id.) He noted that
13 she potentially had fibromyalgia, "chronic pain syndrome,"
14 depression, and "migraine headaches," but his notes did not
15 reference any test results or other medical evaluations. (See
16 id.) He also indicated that he prescribed medications including
17 Tylenol, Diphenhydramine (Benadryl), Tramadol, Soma, Maxalt,
18 Diazepam (Valium), Lotrel, Amitriptyline, Propranolol, and
19 Sulindac for Plaintiff's symptoms and that she visited him to
20 request refills of those medications. (See id.; see also AR 129-
21 30.) In February and March 2011, Dr. Sisson referred Plaintiff
22 to physical therapy. (AR 304-06.)

23 In December 2006, Plaintiff was referred by Dr. Sisson to a
24 neurologist, Dr. Richard Tindall, because of her migraine
25 headaches. (AR 205.) After examining Plaintiff, Dr. Tindall
26 found that her "neurologic examination is normal as is blood
27 pressure." (Id.) He noted that "in between headaches
28 [Plaintiff] does very well," and she had had "no episode of loss

1 of consciousness, paralysis or loss [of] vision or sensation."
2 (Id.) He also noted that her medication, Maxalt, "very much
3 helps the headaches." (Id.) He ultimately recommended that
4 Plaintiff remain on Maxalt and begin treatment for her sleep
5 disorder, finding that "once the sleep disorder is corrected the
6 headaches should begin to be reduced in severity and frequency."
7 (AR 206.)

8 In December 2007, Dr. Sisson signed an Authorization to
9 Release Medical Information form in connection with Plaintiff's
10 application for California Work Opportunity and Responsibility to
11 Kids ("CalWORKs") welfare benefits. (AR 211.) On the form,
12 boxes were checked indicating that Plaintiff had a "chronic"
13 "medically verifiable condition" that prevented her from
14 performing "certain tasks," but a box asking if Plaintiff was
15 "actively seeking treatment" was checked "no." (Id.) Boxes were
16 also checked indicating that Plaintiff was not able to work and
17 that her "condition" prevented her from "providing care for the
18 child(ren) in the home" and required "someone to be in the home
19 to care for [Plaintiff]." (Id.) From 2004 to 2006, Dr. Sisson
20 also signed yearly Medical Report forms in connection with
21 Plaintiff's CalWORKs applications, stating that Plaintiff was
22 permanently "incapacitated from work" because of chronic lower
23 back pain and knee pain, migraine headaches "2-3x / wk.," and
24 severe anxiety with panic disorder and chronic depression
25 aggravated by the stress of caring for a son with autism and
26 another with ADHD; he noted that she needed "someone to give
27 personal care [and] help with autistic child." (AR 215-17.)
28 Plaintiff's previous treating physician, Dr. Susan Lim, filled

1 out nearly identical forms in 2001, 2002, and 2003. (AR 218-20.)

2 In December 2007 Plaintiff apparently submitted to CalWORKs
3 a "Physical Capacities" questionnaire on which boxes were
4 checked⁴ indicating that Plaintiff could sit, stand, and walk "0-
5 2" hours at a time and "2-4" hours total in an eight-hour
6 workday. On the form it was also written that Plaintiff "cannot
7 sit, stand or lie down for more than 15 minutes without
8 experiencing severe pain"; her "incapacitation includes chronic
9 severe L.B.P.,⁵ radiculopathy [and] bilateral knee pain"; "C-T
10 scan of the back revealed diffuse disk [sic] bulge protrusion
11 pressing on the roof of the bilat. spine nerve"; "[patient] has
12 recurring [sic] carpal tunnel syndrom [sic] (bilat.) with
13 numbness and severe arthritis pain"; "in 2004, [patient's] x-rays
14 revealed progressively severe diffused [sic] involving the L2 to
15 5, early cervical degenerative disk [sic] disease C3-C6, lumbar
16 spondylosis w/degeneration retrolisthesis L5-5, with early
17 osteoarthritis to back [and] knees"; and "very sensitive upper
18 sinus allergies, treated presently with benerdyl [sic] daily."
19 (AR 212-14.) Boxes were checked on the form indicating that
20 Plaintiff could "never" and "occasionally" lift 10 pounds; she
21 could "never" climb, stoop, kneel, crouch, or reach below her
22 knees, from waist to knees, from waist to chest, or from chest to
23 shoulders; and she could "occasionally" balance, crawl, and reach
24 above her shoulders. (AR 213.) The form also included the

26
27 ⁴As discussed infra, the Court purposely uses the passive
28 voice throughout this paragraph.

⁵"L.B.P." presumably refers to lower back pain.

1 comments that "all physical movements are personal sacrifice
2 [sic] in order to care for her special need children [and] are
3 limited"; "some" of Plaintiff's medication "requires immediately
4 sitting or lying down to relax the body"; and Plaintiff's ability
5 to work was limited by "severe anxiety w/ frequent migranes
6 [sic], must wear back [and] knee supports at all times[,] not
7 being able to concentrate with panic attacks and early menopause
8 symptoms, must be available for special need children." (Id.)

9 With respect to Plaintiff's mental capabilities, a December
10 2007 "Mental Capacities" form contained the following comments:

11 Pt. has been overwhelmed by the responsibility of caring
12 for her 2 young children as a single parent without any
13 family help. Her eldest 12 yr old diagnosed (severely
14 handicapped) with autism, ADHD, cerebral palsy, severe
15 visual acuity following several eye surgeries.

16 . . .

17 Vanessa's overwhelming responsibilities resulted in
18 severe anxiety and panic disorder with sever [sic]
19 depression. With the patient's severe chronic +
20 progressive disorders and now experiencing menopause +
21 high blood pressure, Vanessa actually needs someone to
22 give personal in-home care for her 4 hrs. per day, not
23 just help care to [sic] the handicapp [sic] child.

24 . . .

25 Due to Vanessa's disabling medical condition, My
26 Professional opinion is that she remains disable [sic]
27 from any type of gainful employment and as requested
28 presently participating in further evaluation including

1 MRI's, pain management, and psychological support in
2 order to care for her family.

3 . . .

4 Vanessa's condition is chronic and permanent for more
5 than 10 yrs. now and should qualify for some type of in-
6 home help and or disability supplement.

7 (AR 214.) The two forms were not signed by Dr. Sisson or any
8 other doctor, though they each did bear a stamp with the name,
9 address, and phone number of "Baseline Medical Clinic," where Dr.
10 Sisson apparently practiced. (See AR 285.) The handwriting on
11 the forms does not match the handwriting on the CalWORKs forms
12 Dr. Sisson signed or in Dr. Sisson's treatment notes. (Compare
13 AR 212-14 with AR 215-17, 275-84, 288-90.) Rather, the
14 handwriting on the two forms appears similar to the handwriting
15 on documents Plaintiff submitted in connection with her SSI
16 application, including one document apparently written by
17 Plaintiff stating that she has "a chronic lumbar disease
18 progressively severe and diffuse, involving the L2 to 5 level
19 plus bilateral knee pain with daily swelling"; "early
20 degenerative cervical degeneration disk [sic] disease C3-C6,
21 lumbar spondylosis with degeneration retrobisthenis [sic] L5-S1,
22 and early osteoarthritis of the knees"; and "lumbar C-T scan of
23 her back revealed diffuse disk [sic] bulge with central disk
24 [sic] protrusion which is pressing the bilateral L5 nerve root,
25 but no spinal stenosis was revealed." (AR 168, 178.) The
26 administrative record does not contain copies of the x-rays and
27 CT scan referenced in the CalWORKs documents apparently filled
28 out by Plaintiff and Plaintiff's SSI application. As explained

1 below, however, it does include more recent x-rays.

2 In September 2009, Plaintiff was examined by consulting
3 orthopedist Dr. Bunsri Sophon. (AR 245-49.) Dr. Sophon found
4 that Plaintiff's posture and gait were normal; her cervical spine
5 had "normal curvature" with "no deformity or asymmetry,"
6 swelling, palpable mass, inflammation, or tenderness and no
7 evidence of muscle atrophy or spasm, with full range of motion.
8 (AR 246.) Further, her thoracic and lumbar spine showed no
9 evidence of tenderness or muscle spasm, with 60/90 degree
10 flexion, 20/30 degree extension, and 20/25 degree lateral bending
11 bilaterally; her straight-leg-raising test was normal; her upper
12 and lower extremities were all normal, with no decreased range of
13 motion and no deformity, swelling, palpable mass, inflammation, or
14 tenderness; her neurological examination and motor strength were
15 normal; and x-rays of her spine showed normal alignment as well
16 as narrowing of the L5-S1 disc space but no evidence of
17 spondylolisthesis. (AR 245-48.) Dr. Sophon diagnosed Plaintiff
18 with lumbosacral strain and concluded that she was "capable of
19 lifting and carrying 50 pounds occasionally, 25 pounds
20 frequently," and "is restricted to sitting, standing and walking
21 6 hours out of an 8-hour workday." (AR 248.)

22 In November 2009, consulting psychiatrist Dr. Linda Smith
23 performed a complete psychiatric evaluation of Plaintiff. (AR
24 254-60.) Dr. Smith found that Plaintiff "was not very genuine
25 and truthful," and there was "evidence of exaggeration,
26 manipulation and attempting to sidestep questions"; she concluded
27 that Plaintiff likely suffered from a "mood disorder not
28 otherwise specified" but was not impaired in her ability to work.

1 (Id.) Dr. Smith noted that Plaintiff "sounds like she believes
2 her claim is that she should receive social security for herself
3 because it is stressful raising a disabled child and she needs
4 assistance raising him from social security." (AR 254.)

5 Also in November 2009, consulting psychiatrist Dr. H.
6 Hurwitz evaluated Plaintiff and found that she had an affective
7 disorder, anxiety-related disorder, and disturbance of mood but
8 was only mildly restricted in her activities of daily living and
9 moderately limited in maintaining social functioning. (AR 261-
10 69.) He did not find any other limitations. (See id.) He noted
11 in evaluating Plaintiff's mental RFC that she was "moderately"
12 limited in her ability to work with others, interact with the
13 general public, accept instructions and respond to criticism, and
14 set realistic goals or make plans independently of others; he
15 found that she was not significantly limited in any other
16 category. (AR 272-74.) He concluded that Plaintiff's "cognition
17 is adequate to perform complex work tasks"; she "has adequate
18 pace and persistence to sustain complex work tasks"; she "can
19 relate in a reasonable fashion with coworkers and supervisors,
20 but not with the public"; and she "can adapt to a variety of work
21 settings." (AR 274.)

22 In her written opinion, the ALJ analyzed the medical
23 evidence from Dr. Tindall, Dr. Sophon, Dr. Sisson, Dr. Smith, and
24 Dr. Hurwitz. (AR 16-17.) With respect to the CalWORKs documents
25 and the evidence from Dr. Sisson, the ALJ noted:

26 The certifications of exemption from the CalWorks and
27 Welfare to Work Programs do not constitute medical
28 evidence for the Social Security disability program.

1 These forms indicate that the claimant is exempt from
2 work requirements because she must care for her special
3 needs children. Although reference is made to the
4 claimant's complaints of pain, there is no objective
5 medical or radiological evidence or findings which
6 document the existence or severity of her physical
7 impairments.

8 . . .

9 Treatment records from the claimant's primary care
10 physician, V. Duane Sisson, MD, covering the period from
11 December 16, 2009 through May 12, 2011 indicated that the
12 claimant was seen for various complaints including
13 fibromyalgia, back pain, headaches, and chronic pain
14 syndrome. There is no evidence that objective
15 radiological testing was performed. The claimant was
16 treated with analgesic medications.

17 (AR 16 (citations omitted).) The ALJ also found that Plaintiff's
18 subjective symptom testimony was not fully credible and further
19 gave little weight to a third-party function report submitted by
20 Plaintiff's neighbor, findings Plaintiff does not challenge. (AR
21 17.)

22 3. Analysis

23 Because Dr. Sisson's opinions conflicted with the opinions
24 of Dr. Tindall, Dr. Sophon, Dr. Smith, and Dr. Hurwitz as well as
25 other evidence in the record, his opinions were not entitled to
26 controlling weight and the ALJ needed only to provide "specific
27 and legitimate reasons" for discounting them. Orn, 495 F.3d at
28 632. The ALJ did so. With respect to Dr. Sisson's treatment

1 notes, he did not opine in those notes that Plaintiff was unable
2 to work. Rather, he documented Plaintiff's complaints, primarily
3 of pain, stress, and headaches, and noted the medications
4 prescribed for those complaints. (See AR 275-94, 308-33.) As
5 the ALJ noted, Dr. Sisson's treatment notes primarily reflected
6 Plaintiff's subjective complaints; there was no documentation in
7 the notes of objective testing or other medical evidence
8 supporting Plaintiff's disability claims. (AR 16.) To the
9 extent the ALJ rejected Dr. Sisson's opinions that Plaintiff's
10 ability to work was more restricted than the ALJ found, she gave
11 specific and legitimate reasons for doing so, and reversal is
12 therefore not warranted on that basis.

13 The ALJ was entitled to reject Dr. Sisson's opinions to the
14 extent they were based on Plaintiff's discredited subjective
15 complaints. See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th
16 Cir. 2001) ("Because the present record supports the ALJ in
17 discounting [claimant's] credibility . . . he was free to
18 disregard [treating physician's] opinion, which was premised on
19 her subjective complaints."). The ALJ properly found that
20 Plaintiff was not credible, as she appeared to be seeking
21 disability benefits because she was overwhelmed by caring for two
22 special-needs children, not because she was herself disabled.
23 (AR 16-17.) As the ALJ noted, the psychiatric evaluator, Dr.
24 Smith, found that Plaintiff did not appear to be genuine or
25 truthful, attempted to manipulate the results of the examination,
26 and exaggerated her symptoms. (AR 16, 254-60.) The record
27 demonstrates that Plaintiff has repeatedly stated that she
28 stopped working because of the birth of her disabled son in 1995

1 and that she needed disability benefits because she needed help
2 raising two special-needs children. (See AR 26-27, 29, 109, 122,
3 160, 163, 166, 179, 254, 306.) Plaintiff does not challenge the
4 ALJ's findings as to her credibility. (See generally J. Stip.)
5 Also, as the ALJ noted, the test results from Dr. Tindall and the
6 examination results from Dr. Sophon, Dr. Smith, and Dr. Hurwitz
7 all indicated that Plaintiff was not significantly limited in her
8 ability to work. (AR 16-17.) Based on that evidence, the ALJ
9 properly discounted Plaintiff's subjective testimony, and by
10 extension, Dr. Sisson's opinions to the extent they were based on
11 Plaintiff's subjective complaints and not on objective medical
12 findings. See Tonapetyan, 242 F.3d at 1149; Batson, 359 F.3d at
13 1195 ("The ALJ need not accept the opinion of any physician,
14 including a treating physician, if that opinion is brief,
15 conclusory, and inadequately supported by clinical findings.");⁶
16 Bruton v. Massanari, 268 F.3d 824, 826 (9th Cir. 2001) (holding
17 that ALJ properly considered fact that claimant stopped working
18 for reasons unrelated to medical disability). The fact that
19 Plaintiff's ailments were effectively treated with analgesic
20 medications was also a proper reason for the ALJ to reject Dr.
21 Sisson's opinion. See, e.g., Rollins v. Massanari, 261 F.3d 853,
22 856 (9th Cir. 2001) (ALJ may reject opinion of treating physician
23 who prescribed conservative treatment yet opined that claimant

24
25 ⁶For example, Dr. Sisson's opinion that Plaintiff likely had
26 fibromyalgia (AR 276-84) was not supported by the necessary
27 findings. See SSR 12-2P, 2012 WL 3104869, at *2-3 (listing
28 diagnostic criteria for fibromyalgia, including that claimant must
suffer widespread pain for at least three months and pain on
digital palpation should be present in at least 11 of 18 specific
sites on the body).

1 was disabled); cf. Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th
2 Cir. 2008) (ALJ may infer that claimant's "response to
3 conservative treatment undermines [claimant's] reports regarding
4 the disabling nature of his pain").⁷

5 The ALJ also properly rejected the CalWORKs documents.
6 Plaintiff contends that Dr. Sisson filled out the Physical
7 Capacities and Mental Capacities forms (AR 212-14) stating that
8 she was unable to work (see J. Stip. at 10-11), but it is not at
9 all clear that Dr. Sisson had anything to do with them. The
10 handwriting on the forms does not match Dr. Sisson's handwriting
11 on his treatment notes or on the other CalWORKs forms, which Dr.
12 Sisson signed. (Compare AR 212-14 with AR 215-17, 275-84, 288-
13 90.) The handwriting in fact appears similar to Plaintiff's
14 handwriting on documents she submitted in connection with her SSI
15 application. (See AR 168, 178.) There are other indications
16 that the forms were not filled out by Dr. Sisson. For example,
17 the forms contained emotional and subjective statements unlikely
18 to have come from an impartial doctor, such as that Plaintiff's
19 "physical movements" are "personal sacrafice [sic] in order to
20 care for her special need children" and caring for her children
21 is an "overwhelming responsibilit[y]." (AR 213-14.) The forms
22 also contained misspellings of common medical terms, such as
23 "syndrom" and "disk," that a doctor would have been unlikely to
24 consistently misspell. (AR 212-14.) Indeed, a document

25
26 ⁷To the extent Dr. Sisson's notes indicate that Plaintiff
27 suffered from additional impairments that the ALJ did not find to
28 be severe, such as anxiety, depression, and fibromyalgia, Plaintiff
does not appear to contest the ALJ's findings with respect to those
impairments. (See generally J. Stip.)

1 Plaintiff submitted with her SSI application contained identical
2 misspellings. (AR 168, 178.) It also contained nearly identical
3 statements regarding alleged "chronic lumbar disease," "cervical
4 degeneration disk disease C3-C6," "lumbar spondylosis with
5 degeneration retrobisthenis [sic] L5-S1," and references to x-
6 rays and CT scans that are not mentioned elsewhere in the record.
7 (See id.) In sum, because it appears that someone other than Dr.
8 Sisson - likely Plaintiff - filled out the CalWORKs Physical
9 Capacities and Mental Capacities forms, and only an address
10 stamp, not Dr. Sisson's signature, appears on them, nothing shows
11 that the doctor approved of their contents or was involved in any
12 way in filling them out, and the ALJ thus did not err in not
13 according them the deference given to treating-physician
14 opinions. (See AR 16); see Mercer v. Astrue, 319 F. App'x 625,
15 626 (9th Cir. 2009) (ALJ properly rejected "unsigned" " cursory
16 disability letter" allegedly from treating physician that
17 conflicted with other medical evidence of record, including
18 physician's own treatment notes); Moreno v. Astrue, No.
19 08cv1022-WQH-PCL, 2009 WL 2151855, at *16 & n.3 (S.D. Cal. July
20 17, 2009) (holding that ALJ properly rejected psychiatric review
21 form allegedly completed by treating physician when form was
22 unsigned and "multiple handwritings" on form did not match
23 doctor's handwriting).

24 In any event, to the extent Dr. Sisson did fill out and sign
25 CalWORKs forms indicating that Plaintiff could not work (see AR
26 211, 215-17), the ALJ gave specific and legitimate reasons for
27 rejecting them. As the ALJ correctly noted, determinations of
28 disability for purposes of obtaining state welfare benefits are

1 not determinative of disability for Social Security purposes, and
2 although Dr. Sisson's medical findings may have been entitled to
3 deference, his opinion that Plaintiff was unable to work was not.
4 (AR 16); see 20 C.F.R. § 416.945(e); SSR 96-5p, 1996 WL 374183,
5 at *5 (Commissioner must make ultimate disability determination;
6 opinions from medical sources about whether a claimant is
7 "disabled" or "unable to work" "can never be entitled to
8 controlling weight or given special significance"); McLeod v.
9 Astrue, 640 F.3d 881, 885 (9th Cir. 2011) (noting that "a
10 treating physician ordinarily does not consult a vocational
11 expert or have the expertise of one"; treating physician's
12 evaluation of claimant's ability to work thus not entitled to
13 deference because "[t]he law reserves the disability
14 determination to the Commissioner"); see also 20 C.F.R. § 416.904
15 (disability determinations by other agencies not binding on
16 Social Security Administration).

17 As the ALJ correctly noted, Dr. Sisson's opinions regarding
18 Plaintiff's functional capacity, as stated in the CalWORKs forms,
19 were unsupported by objective medical evidence and were in fact
20 contradicted by substantial evidence in the record. In
21 particular, as the ALJ noted, Dr. Sisson's statement that
22 Plaintiff was unable to care for herself or her children without
23 help was directly contradicted by Plaintiff's own statements that
24 she spent the majority of her time caring for her children and
25 doing extensive activities with them, without assistance. (See
26 AR 16, 41, 111, 144, 163, 170, 176-77, 179, 215-20, 256-57.)
27 Those activities included helping her children get ready for
28 school, cooking meals for them, driving at least one child to and

1 from school, helping her children with homework, doing household
2 chores, taking her children to doctor's appointments, going to
3 church, and playing games and doing other recreational activities
4 with her children. (See AR 163, 176-77, 256-57.) The ALJ
5 properly rejected Dr. Sisson's opinions on that basis. See
6 Rollins, 261 F.3d at 856 (ALJ's finding that doctor's
7 "restrictions appear to be inconsistent with the level of
8 activity that [plaintiff] engaged in by maintaining a household
9 and raising two young children, with no significant assistance
10 from her ex husband," was specific and legitimate reason for
11 discounting opinion); Montalvo v. Astrue, 237 F. App'x 259,
12 261-62 (9th Cir. 2007) (holding that ALJ properly discredited
13 treating physicians' conclusions regarding severity of conditions
14 based in part on claimant's daily living activities of bathing
15 and dressing herself, seeing her children off to school, helping
16 with household chores, meeting with family, and going to the
17 mall).

18 Plaintiff also asserts that to the extent the ALJ found that
19 Dr. Sisson's opinions were not supported by sufficient objective
20 evidence, she had the duty to recontact him. (J. Stip. at 15.)
21 "The claimant bears the burden of proving that she is disabled."
22 Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999). "An ALJ is
23 required to recontact a doctor only if the doctor's report is
24 ambiguous or insufficient for the ALJ to make a disability
25 determination." Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th
26 Cir. 2005); see also 20 C.F.R. § 416.912(e). The ALJ found the
27 evidence adequate to make a determination regarding Plaintiff's
28 disability, and, as noted above, her opinion was supported by

1 substantial evidence in the record. Plaintiff mostly seems to
2 contend that the ALJ had a duty to recontact Dr. Sisson to obtain
3 the results of the "2004" x-rays or CT scans referenced in the
4 CalWORKs documents. (See J. Stip. at 15; AR 212-14.) As an
5 initial matter, these radiological studies are referenced only in
6 the documents Plaintiff appears to have filled out, not any of
7 Dr. Sisson's notes. In any event, the ALJ had no duty to do so
8 because those documents were from December 2007 and the record
9 contained more recent x-ray and examination results, from
10 September 2009. (See AR 245-48.) Thus, the ALJ did not have a
11 duty to recontact Dr. Sisson. See Bayliss, 427 F.3d at 1217.

12 Because the ALJ gave specific and legitimate reasons in
13 support of her evaluation of the medical evidence and those
14 reasons were supported by substantial evidence in the record,
15 reversal is not warranted on this basis.

16 B. The ALJ Did Not Err in Determining that Plaintiff's
17 Migraine Headaches Were Not a Severe Impairment

18 Plaintiff also contends that the ALJ erred in determining
19 that Plaintiff's migraine headaches were not a severe impairment.
20 (J. Stip. at 3-5.) Reversal is not warranted on this basis
21 because substantial evidence in the record supports the ALJ's
22 finding that Plaintiff's migraine headaches were not severe.

23 At step two of the sequential evaluation process, a
24 plaintiff has the burden to present evidence of medical signs,
25 symptoms, and laboratory findings that establish a medically
26 determinable physical or mental impairment that is severe and can
27 be expected to result in death or last for a continuous period of
28 at least 12 months. Ukolov v. Barnhart, 420 F.3d 1002, 1004-05

1 (9th Cir. 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D));⁸
2 see 20 C.F.R. §§ 416.920, 416.909. Substantial evidence supports
3 an ALJ's determination that a claimant is not disabled at step
4 two when "there are no medical signs or laboratory findings to
5 substantiate the existence of a medically determinable physical
6 or mental impairment." Ukolov, 420 F.3d at 1004-05 (citing SSR
7 96-4p). An impairment may never be found on the basis of the
8 claimant's subjective symptoms alone. Id. at 1005.

9 Step two is "a de minimis screening device [used] to dispose
10 of groundless claims." Smolen, 80 F.3d at 1290. Applying the
11 applicable standard of review to the requirements of step two, a
12 court must determine whether an ALJ had substantial evidence to
13 find that the medical evidence clearly established that the
14 claimant did not have a medically severe impairment or
15 combination of impairments. Webb v. Barnhart, 433 F.3d 683, 687
16 (9th Cir. 2005); see also Yuckert v. Bowen, 841 F.2d 303, 306
17 (9th Cir. 1988) ("Despite the deference usually accorded to the
18 Secretary's application of regulations, numerous appellate courts
19 have imposed a narrow construction upon the severity regulation
20 applied here."). An impairment or combination of impairments is
21 "not severe" if the evidence established only a slight
22 abnormality that had "no more than a minimal effect on an
23 individual's ability to work." Webb, 433 F.3d at 686 (citation
24 omitted).

25 Although evidence in the record shows that Plaintiff likely
26

27 ⁸A "medical sign" is "an anatomical, physiological, or
28 psychological abnormality that can be shown by medically acceptable
clinical diagnostic techniques." Ukolov, 420 F.3d at 1005.

1 suffered from migraine headaches, the existence of migraine
2 headaches alone does not constitute a severe impairment if they
3 do not prevent a plaintiff from working. See 20 C.F.R.
4 § 416.920(c) (severe impairment is one that "significantly limits
5 [claimant's] physical or mental ability to do basic work
6 activities"). Substantial evidence supports the ALJ's finding
7 that Plaintiff's migraine headaches were not severe. In December
8 2006, Plaintiff was evaluated by Dr. Tindall, who found that her
9 neurologic results were normal and her headaches were effectively
10 treated with medication. (AR 205.) There is no evidence in the
11 record that Plaintiff underwent any further neurological
12 examinations. Based on the aforementioned evidence, the ALJ
13 reasonably concluded that Plaintiff's migraine headaches did not
14 affect her ability to work because they were controllable with
15 medication. (AR 14); see 20 C.F.R. § 416.929(c)(4)(iv) (ALJ may
16 consider effectiveness of medication in evaluating severity and
17 limiting effects of impairment); Warre v. Comm'r of Soc. Sec.
18 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that
19 can be controlled effectively with medication are not disabling
20 for the purpose of determining eligibility for SSI benefits.").

21 The only other evidence in the record documenting the
22 severity of Plaintiff's migraine headaches is her own testimony
23 and Dr. Sisson's treatment notes. Plaintiff stated that her
24 daily activities included extensive activities with her children,
25 such as cooking for them, getting them ready for school, helping
26 them with their homework, and playing with them. (See AR 163,
27 176-77, 256-57.) Plaintiff's ability to perform extensive daily
28 activities belies her claim that her headaches were severe. See

1 Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir.
2 2009); Curry v. Sullivan, 925 F.2d 1127, 1130 (9th Cir. 1990)
3 (finding that claimant's ability to "take care of her personal
4 needs, prepare easy meals, do light housework and shop for some
5 groceries . . . may be seen as inconsistent with the presence of
6 a condition which would preclude all work activity") (citing Fair
7 v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989)). Thus, the ALJ
8 properly discounted Plaintiff's subjective testimony. Dr.
9 Sisson's notes primarily document Plaintiff's subjective
10 complaints of headaches and her requests for refills of her
11 medications; the fact that Plaintiff consistently requested
12 refills of her medications and did not pursue other treatment
13 supports the ALJ's finding (and Dr. Tindall's (see AR 205)) that
14 Plaintiff's headaches were controlled with medication. (See AR
15 14, 276-77, 279, 282-83, 288, 308, 310, 312, 318-19, 328, 331.)
16 Plaintiff conceded at the hearing that Maxalt "allows the
17 headache to die down a little bit." (AR 31.) She also admitted
18 in her application that she sometimes forgot to take her migraine
19 medication, which could account for any continuing headaches.
20 (AR 161.) In sum, substantial evidence in the record supported
21 the ALJ's conclusion that Plaintiff's migraine headaches did not
22 have more than a minimal effect on her ability to work.

23 In any event, even if the ALJ erred by finding Plaintiff's
24 migraine headaches nonsevere, that error was harmless because she
25 considered Plaintiff's headaches when determining her RFC at step
26 four. See Lewis v. Astrue, 498 F.3d 909, 911 (9th Cir. 2007)
27 (failure to address particular impairment at step two harmless if
28 ALJ fully evaluates claimant's medical condition in later steps

1 of sequential evaluation process); see also Stout v. Comm'r, Soc.
2 Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (ALJ's error
3 harmless when "inconsequential to the ultimate nondisability
4 determination"). Specifically, the ALJ properly accounted for
5 any work-related impairments resulting from Plaintiff's migraines
6 by noting at step four that Plaintiff's headaches were
7 "associated with a sleep disorder and menopausal syndromes and
8 were controllable with medication," and thus they did not
9 significantly affect her ability to work. (AR 16.)

10 Plaintiff is not entitled to remand on this ground.

11 **VI. CONCLUSION**

12 Consistent with the foregoing, and pursuant to sentence four
13 of 42 U.S.C. § 405(g),⁹ IT IS ORDERED that judgment be entered
14 AFFIRMING the decision of the Commissioner and dismissing this
15 action with prejudice. IT IS FURTHER ORDERED that the Clerk
16 serve copies of this Order and the Judgment on counsel for both
17 parties.

18
19 DATED: February 27, 2013

20 
JEAN ROSENBLUTH
U.S. Magistrate Judge

21
22
23
24
25
26 _____
27 ⁹This sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record, a
judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."