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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRUZ LOBATO,	)	NO. SACV 11-01337-MAN
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	
v.	)	AND ORDER
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff filed a Complaint on September 14, 2011, seeking review of the denial by the Social Security Commissioner ("Commissioner") of plaintiff's application for a period of disability ("POD") and disability insurance benefits ("DIB"). On October 4, 2011, the parties consented to proceed before the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). On August 7, 2012, the parties filed a Joint Stipulation, in which: plaintiff seeks an order reversing the Commissioner's decision and awarding benefits or, in the alternative, remanding the matter for further administrative proceedings; and defendant seeks an order affirming the Commissioner's

1 decision or, in the alternative, remanding the matter for further  
2 administrative proceedings. The Court has taken the parties' Joint  
3 Stipulation under submission without oral argument.

4  
5 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**  
6

7 On October 31, 2006, plaintiff filed an application for POD and  
8 DIB. (Administrative Record ("A.R.") 81-85.) In the disability report  
9 accompanying her application, plaintiff alleged shoulder injury,  
10 learning disorder, stress, and dyslexia as impairments and asserted that  
11 she cannot work due to these impairments, because she cannot perform  
12 assigned tasks and cannot read and write. (A.R. 94.) At the  
13 reconsideration level, plaintiff additionally alleged that she suffers  
14 from depression, which commenced in April 2006. (A.R. 94, 135.)  
15

16 The Commissioner denied plaintiff's claim initially, and upon  
17 reconsideration. (A.R. 33-36, 42-45.) On July 3, 2008, plaintiff, who  
18 was represented by counsel, testified at a hearing before Administrative  
19 Law Judge Barry S. Brown ("ALJ Brown"). (A.R. 15-30.) On October 8,  
20 2008, ALJ Brown denied plaintiff's claim. (A.R. 4-13.) Subsequently, the  
21 Appeals Council denied plaintiff's request for review of ALJ Brown's  
22 decision. (A.R. 1-3.)  
23

24 On January 7, 2009, plaintiff sought review in this Court, which  
25 remanded the case for further proceedings in a September 8, 2010 Order  
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1 ("Remand Order").<sup>1</sup> (A.R. 450-70.)

2  
3 On September 20, 2010, the Appeals Council effectuated the Court's  
4 Remand Order, and remanded the matter to the ALJ for further actions  
5 consistent with the Order. (A.R. 446-48.)

6  
7 On April 4 and May 5, 2011, a remand hearing was held before ALJ  
8 Joseph Lisiecki ("ALJ"). (A.R. 425-32, 433-45.) Plaintiff, who was  
9 represented by an attorney, appeared and testified at both hearings.  
10 (*Id.*) At the April hearing, Stephen Wells, a medical expert, testified.  
11 (A.R. 425-32.) At the May hearing, Craig C. Rath, a medical expert, and  
12 Alan L. Ey, a vocational expert, also testified. (A.R. 433-45.) On  
13 June 13, 2011, the ALJ issued an unfavorable decision. (A.R. 376-85.)

14  
15 **SUMMARY OF ADMINISTRATIVE DECISION**

16  
17 The ALJ found that plaintiff last met the insured status  
18 requirements of the Social Security Act on December 31, 2005, and that  
19 she had not engaged in substantial gainful activity during the period  
20 from her alleged onset date of October 30, 2000, through December 31,  
21 2005, her date last insured ("DLI"). (A.R. 379.) The ALJ also found  
22 that, through the DLI, plaintiff has the severe impairment of "attention

23  
24 <sup>1</sup> It appears that plaintiff filed a subsequent application for DIB as  
25 well as for supplemental security income, dated March 12, 2009, alleging  
26 depression, attention deficit hyperactivity disorder, lupus, arthritis,  
27 vision impairment, inability to read at normal level, learning  
28 disability, back, neck and shoulder injury, foot and leg problems,  
spinal and back damage, and sleep deprivation. (A.R. 538-60.) The  
applications do not appear to be before this Court, as neither plaintiff  
or defendant discuss these applications in their Joint Stipulation and  
there are no other documents in the record indicating the outcome of  
this application.

1 deficit hyperactivity disorder, inattentive type" ("ADHD").<sup>2</sup> (*Id.*) The  
2 ALJ further found that, through the DLI, plaintiff did not have an  
3 impairment or combination of impairments that met or medically equaled  
4 the criteria of an impairment listed in 20 C.F.R. Part 404, Subpart P,  
5 Appendix 1, the Listing of Impairments. (A.R. 380.)

6  
7 After reviewing the record, the ALJ determined that plaintiff has  
8 the residual functional capacity ("RFC") to "perform a full range of  
9 work at all exertional levels but with the following nonexertional  
10 limitations: [plaintiff] is precluded from working at unprotected  
11 heights or around dangerous or fast-moving machinery; [plaintiff] must  
12 not be responsible for the safety operations of others; and [plaintiff]  
13 requires the ability to learn tasks by example, not by reading." (A.R.  
14 381.)

15  
16 The ALJ found that plaintiff's past relevant work ("PRW") as a  
17 Cleaner, Commercial or Institutional ("Cleaner") does not require the  
18 performance of work-related activities precluded by her RFC. (A.R.  
19 384.) Accordingly, the ALJ concluded that plaintiff has not been under  
20 a disability, as defined in the Social Security Act, since October 30,  
21 2000, the alleged onset date, through December 31, 2005, the DLI. (A.R.  
22 385.)

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26 <sup>2</sup> With respect to plaintiff's other claimed impairments, the ALJ  
27 stated that the "prior ALJ found, in a decision dated October 8, 2008,  
28 of status post cervical sprain and status post left shoulder strain,"  
and he incorporated that finding -- which has not been challenged by  
plaintiff -- by reference. (A.R. 379.)



1 affirm the ALJ on a ground upon which he did not rely." Orn, 495 F.3d  
2 at 630; see also Connett, 340 F.3d at 874. The Court will not reverse  
3 the Commissioner's decision if it is based on harmless error, which  
4 exists only when it is "clear from the record that an ALJ's error was  
5 'inconsequential to the ultimate nondisability determination.'" Robbins  
6 v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)(quoting Stout v.  
7 Comm'r, 454 F.3d 1050, 1055-56 (9th Cir. 2006)); see also Burch, 400  
8 F.3d at 679.

9  
10 **DISCUSSION**

11  
12 Plaintiff alleges the following issues: (1) whether the ALJ  
13 properly determined that plaintiff is capable of performing her PRW as  
14 a Cleaner; (2) whether the ALJ properly developed the record regarding  
15 plaintiff's learning disability and dyslexia; and (3) whether the ALJ  
16 properly considered plaintiff's testimony. (Joint Stipulation ("Joint  
17 Stip.") at 3.)

18  
19 **I. The ALJ Committed No Reversible Error In Determining That**  
20 **Plaintiff Could Perform Her PRW As A Cleaner, Commercial**  
21 **Or Institutional.**

22  
23 Plaintiff asserts that the ALJ improperly determined that she could  
24 perform her PRW as a Cleaner. (Joint Stip. at 3-6.) Specifically,  
25 plaintiff alleges that the job of Cleaner is inconsistent with her RFC  
26 precluding work "around dangerous or fast-moving machinery." (Joint  
27 Stip. at 4.)

1 At step four of the sequential evaluation process, a claimant bears  
2 the burden of proving that he or she can no longer perform his or her  
3 PRW. Pinto v. Massanari, 249 F.3d 840, 844 (9th Cir. 2001).  
4 Notwithstanding the claimant's burden at this step, the ALJ still has a  
5 duty to make the requisite factual findings to support his or her  
6 conclusion regarding the claimant's ability to perform his or her PRW.  
7 *Id.* (citation omitted). A claimant must be able to perform: (1) "[t]he  
8 actual functional demands and job duties of a particular past relevant  
9 job"; or (2) "[t]he functional demands and job duties of the occupation  
10 as generally required by employers throughout the national economy."  
11 *Id.* at 845 (citation omitted). Accordingly, the ALJ must make "specific  
12 findings as to the claimant's [RFC], the physical and mental demands of  
13 the [PRW], and the relation of the [RFC] to the past work." *Id.*  
14 (citation omitted) The ALJ need only make findings as to either general  
15 or actual performance of past relevant work, but not both. *Id.* ("We  
16 have never required explicit findings at step four regarding a  
17 claimant's past relevant work both as generally performed and as  
18 actually performed.").

19  
20 In general, an ALJ should consider first whether claimant can  
21 perform his or her PRW as actually performed and then as generally  
22 performed. Pinto, 249 F.3d at 845. Typically, the best source for how  
23 a job is generally performed is the Dictionary of Occupational Titles  
24 (the "DOT"). *Id.* at 845-46; Social Security Ruling ("SSR") 00-4p, 2000  
25 WL 1898704, at \*2 (noting that "we rely primarily on the DOT . . . for  
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1 information about the requirements of work in the national economy").<sup>3</sup>  
2 Although occupational evidence provided by a vocational expert is  
3 generally expected to be consistent with the DOT, "[n]either the DOT nor  
4 the [vocational expert's] evidence automatically 'trumps' when there is  
5 a conflict." *Id.*, at \*2. An ALJ may rely on two sources "to define a  
6 claimant's past relevant work as actually performed: a properly  
7 completed vocational report, SSR 82-61, and the claimant's own  
8 testimony, SSR 82-41." Pinto, 249 F.3d at 845. The vocational expert  
9 merely has to find that a claimant can or cannot continue his or her  
10 past relevant work as defined by the regulations. See Villa v. Heckler,  
11 797 F.2d 794, 798 (1986)("[t]he claimant has the burden of proving an  
12 inability to return to his former type of work and not just to his  
13 former job").

14  
15 Here, the ALJ determined that plaintiff could perform her PRW as a  
16 Cleaner as actually and generally performed. (A.R. 385.) Plaintiff  
17 asserts that this finding is error, because she was precluded from  
18 working around dangerous or fast-moving machinery, but as defined in the  
19 DOT, the job of Cleaner "may" require a worker to: (1) "cut and trim  
20 grass, and shovel snow, using power equipment or handtools;" (2) "use a  
21 lawnmower, to cut the grass, which has very fast moving blades;" (3) use  
22 a "weedwacker, in trimming grass [which] may also be considered fast  
23 moving equipment"; and (4) use "snowblowers[, which] are fast-moving  
24 equipment and may also be dangerous." (Joint Stip. at 4-5.) These

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25  
26 <sup>3</sup> Social Security Rulings do not have the force of law.  
27 Nevertheless, they "constitute Social Security Administration  
28 interpretations of the statute it administers and of its own  
regulations." Han v. Bowen, 882 F.2d 1453, 1457 (9th Cir. 1989).  
Accordingly, they are given deference, "unless they are plainly  
erroneous or inconsistent with the Act or regulations." *Id.*



1 asserted inconsistencies do not render the ALJ's step four finding  
2 erroneous. Although the description of the Cleaner job in the DOT may  
3 suggest that plaintiff would have difficulty performing that job as it  
4 is sometimes performed in the national economy, this possibility does  
5 not preclude a finding that plaintiff could return to her job as she  
6 *actually* performed it. As to the latter determination, as noted above,  
7 the two sources of information which may be used to define a claimant's  
8 past relevant work as actually performed are a properly completed  
9 vocational report and the claimant's own testimony. Pinto, 249 F.3d at  
10 845. Here, in her work history report completed in November 2006,  
11 plaintiff reported that her job as a "custodian," required that she  
12 "dust, clean [chalkboards] and rails, clean [and] disinfect furniture,  
13 wash walls [and] graffiti, move furniture, vacuum, remove spots on rugs,  
14 pick-up trash, and use extractor on carpets, mop, sweep, windows,  
15 miniblinds." (A.R. 117-18.) These demands would not require plaintiff  
16 to handle dangerous or fast-moving machinery.

17

18 Accordingly, it was not unreasonable for the ALJ to conclude that  
19 plaintiff's preclusion from handling dangerous or fast-moving machinery  
20 would not prevent her from performing the actual functional demands and  
21 job duties of her PRW as a Cleaner. No reversible error, therefore, can  
22 be found based on plaintiff's first issue.

23

24 **II. The ALJ Properly Developed The Record Regarding**  
25 **Plaintiff's Alleged Learning Disorder And Dyslexia.**

26

27 An ALJ has an independent duty to fully and fairly develop the  
28 record and to assure that the claimant's interests are considered, even

1 when the claimant is represented, as in this case. Tonapetyan v.  
2 Halter, 242 F.3d 1144, 1150 (9th Cir. 2001). However, an ALJ's duty to  
3 develop the record further is triggered "only when there is ambiguous  
4 evidence or when the record is inadequate to allow for proper evaluation  
5 of the evidence." Mayes v. Massanari, 276 F.3d 453, 459-60 (9th Cir.  
6 2001).

7  
8 The ALJ found that the date on which plaintiff was last insured was  
9 December 31, 2005 -- a finding that are uncontested in this action.  
10 (A.R. 379.) Thus, plaintiff had to establish she had a disability on or  
11 before that date in order to be entitled to DIB. The initial mental  
12 evaluation and commencement of psychiatric treatment by plaintiff's  
13 treating psychiatrist, Clayton Chau, M.D. did not occur until June 6,  
14 2006, well after plaintiff's DLI. (A.R. 367-72, 379.) Dr. Chau  
15 diagnosed plaintiff with major depressive disorder; post-traumatic  
16 stress disorder; ADHD, predominantly inattentive type; dissociative  
17 disorder, NOS; and bipolar II disorder. (A.R. 372.)

18  
19 In its Remand Order, the Court noted that there was "no evidence  
20 in the record of any psycho-educational or IQ testing of plaintiff" or  
21 that "plaintiff, prior to her DLI, was treated for any learning  
22 disorder." (A.R. 462.) As the Court further noted, plaintiff's  
23 testimony that she cannot read or write (despite completing high school)  
24 and was "always" included in special education classes, when coupled  
25 with Dr. Yun's finding regarding plaintiff's limited comprehension span,  
26 suggested that plaintiff suffered from a learning disorder before her

1 DLI.<sup>4</sup> (A.R. 462.) Thus, the ALJ had "before him at least some evidence  
2 indicating that plaintiff does suffer from some sort of learning  
3 disorder or other condition that impairs her ability to read and write  
4 and, relatedly, her comprehension abilities," which the ALJ had failed  
5 to consider at step two. (A.R. 463.) As a result, the Court ordered  
6 the ALJ to: (1) develop the record regarding plaintiff's alleged  
7 learning disorder and dyslexia; (2) properly address plaintiff's claimed  
8 mental impairments, *to wit*, her asserted learning disorder, dyslexia,  
9 inability to read and write, special education, and/or low comprehension  
10 ability ("Claimed Mental Impairment"); and (3) consider the impact of  
11 all of plaintiff's impairments on her ability to engage in and sustain  
12 full-time work. (A.R. 469.) Plaintiff now argues that the ALJ failed  
13 to comply with the Remand Order, because he did not develop the record  
14 regarding plaintiff's claimed learning disorder and dyslexia, and he  
15 failed to order that "plaintiff undergo psycho-educational or IQ testing  
16 or continu[e] the hearing to supplement the record to accurately and  
17 appropriately determine plaintiff's current status of her Claimed Mental  
18 Impairment." (Joint Stip. at 9.)

19  
20 In response to the Remand Order, the ALJ sought the assistance of  
21 medical expert Craig Rath, M.D. to assess and render an opinion  
22 regarding plaintiff's asserted mental impairments. (A.R. 379, 436-37.)  
23 Dr. Rath stated that he had examined plaintiff's medical records for  
24 evidence of learning disability and dyslexia, and "those particular

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25  
26 <sup>4</sup> On October 16, 2007. Kyu Ho Yun, M.D., a doctor of internal  
27 medicine and radiology and plaintiff's treating physician, completed a  
28 "Medical Opinion Re: Ability To Do Work-Related Activities (Physical),"  
in which he noted that plaintiff has "low comprehension span, cannot  
read to understand clear and concise directive. Needs to be shown,  
however, still has problem." (A.R. 353.)

1 issues." (A.R. 437.) He observed that plaintiff had been diagnosed  
2 with "Attention Deficit Hyperactivity Disorder, inattentive type," and  
3 she had been treated with Strattera, "which is consistent with ADHD."  
4 (*Id.*) Dr. Rath recounted plaintiff's statement that she was "put in  
5 Special Education for problems," but the real problem, according to  
6 plaintiff's self-reporting, seemed to be that her mind would wonder and  
7 she would daydream a lot. (A.R. 438.) Dr. Rath opined that this  
8 circumstance was "more consistent with ADHD, inattentive type, than a  
9 specific learning disability." (*Id.*) He explained that, although  
10 "learning disabilities are correlated with ADHD, so the fact that ADHD  
11 is present makes it more likely there's a learning disability," there  
12 was no indication in plaintiff's medical records of a learning  
13 disability prior to the DLI.<sup>5</sup> (A.R. 441.) Dr. Rath opined that  
14 plaintiff would have some problems focusing, but that problem "was not  
15 very severe," and therefore, the only limitation he found appropriate  
16 was to "give the safety precautions of heights, dangerous moving  
17 equipment, not in charge of safety operations of others." (A.R. 438.)

18  
19 The ALJ relied on Dr. Rath's opinion in determining that plaintiff  
20 had a severe impairment of ADHD prior to her DLI, and that there was no  
21 evidence to support the existence of her claim of having the impairments  
22 of learning disability and dyslexia prior to her DLI. (A.R. 379, 382.)  
23 Dr. Rath's opinion constituted substantial evidence upon which the ALJ  
24 could rely. See Tonapetyan, 242 F.3d at 1149 (holding that opinions of  
25 nontreating or nonexamining doctors may serve as substantial evidence

26 \_\_\_\_\_  
27 <sup>5</sup> In response to plaintiff's assertion that she was in "a special  
28 school all [her] life," Dr. Rath specifically noted that "somebody can  
go to a special school for ADHD." (A.R. 441.)

1 when consistent with independent clinical findings or other evidence in  
2 the record); see also Andrews, 53 F.3d at 1041 ("reports of the  
3 nonexamining advisor need not be discounted and may serve as substantial  
4 evidence when they are supported by other evidence in the record and are  
5 consistent with it").

6  
7       Moreover, as noted by the ALJ, despite knowing that the significant  
8 issue on remand was that insufficient evidence supported plaintiff's  
9 allegations regarding the Claimed Mental Impairment, plaintiff still  
10 failed to submit school records or medical evidence documenting any  
11 learning disorder or dyslexia, or other mental impairment, which existed  
12 prior to her DLI. (A.R. 379 n.2.) Rather, plaintiff submitted  
13 treatment records from Cypress Family Counseling and Dr. Kris Hans  
14 Khurana dated well after her POD and DLI, which failed to reveal the  
15 existence of such impairments prior to plaintiff's DLI. (A.R. 570-603,  
16 604-16, 617-19.) Thus, the ALJ did not err in finding that these  
17 records likewise did not support a finding of any other Claimed Mental  
18 Impairment during the relevant time period. (A.R. 379 n.2.) Plaintiff  
19 had ample opportunity between the date of the September 2010 Remand  
20 Order and the ALJ's June 2011 decision to supplement the record  
21 regarding the existence, nature, and extent of her alleged learning  
22 disorder and dyslexia prior to her DLI, and she failed to do so.

23  
24       Although the ALJ has an obligation to assist in developing the  
25 record, the claimant has the burden of proving that he or she became  
26 disabled before the expiration of her insurance. See Tidwell v. Apfel,  
27 161 F.3d 599, 601 (9th Cir. 1998). Therefore, an ALJ does not fail in  
28 his duty to develop the record by not seeking evidence or ordering

1 further examination or consultation regarding a claimed mental  
2 impairment, if no medical evidence indicates that such an impairment  
3 exists. See Ukolov v. Barnhart, 420 F.3d 1002, 1005 (9th Cir. 2005); 20  
4 C.F.R. § 404.1508 (“[a] physical or mental impairment must be  
5 established by medical evidence consisting of signs, symptoms, and  
6 laboratory findings, not only by [a claimant’s] statement of symptoms”);  
7 SSR 96-4p, 1996 WL 374187, at \*1 (“regardless of how many symptoms an  
8 individual alleges, or how genuine the individual’s complaints may  
9 appear to be, the existence of a medically determinable physical or  
10 mental impairment cannot be established in the absence of objective  
11 medical abnormalities; i.e., medical signs and laboratory findings”).  
12

13 Plaintiff’s testimony alone did not trigger the ALJ’s duty to  
14 develop the record on this issue, because there was no objective  
15 evidence that plaintiff suffered from a learning disorder and/or  
16 dyslexia. The only arguable “evidence” in the record was plaintiff’s  
17 testimony, which the ALJ found, as discussed *infra*, had credibility  
18 problems. As a result, there was no credible evidence in the record  
19 that plaintiff suffered from a learning disorder and dyslexia, and the  
20 ALJ was not obligated to further develop the record on this issue,  
21 including ordering that plaintiff undergo psycho-educational or IQ  
22 testing. Accordingly, the ALJ did not commit reversible error and  
23 plaintiff’s second issue does not warrant reversal.

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1            III. The ALJ Provided The Requisite Clear And Convincing  
2            Reasons For Rejecting Plaintiff's Subjective Pain  
3            Testimony.

4  
5            In her third issue, plaintiff argues that the ALJ erred in his  
6 consideration of her subjective symptom testimony. For the reasons set  
7 forth below, the Court disagrees.

8  
9            Once a disability claimant produces objective medical evidence of  
10 an underlying impairment that is reasonably likely to be the source of  
11 claimant's subjective symptom(s), all subjective testimony as to the  
12 severity of the symptoms must be considered. Moisa v. Barnhart, 367  
13 F.3d 882, 885 (9th Cir. 2004); Bunnell v. Sullivan, 947 F.2d 341, 345  
14 (9th Cir. 1991); see also 20 C.F.R. § 404.1529(a) (explaining how pain  
15 and other symptoms are evaluated). "[U]nless an ALJ makes a finding of  
16 malingering based on affirmative evidence thereof, he or she may only  
17 find an applicant not credible by making specific findings as to  
18 credibility and stating clear and convincing reasons for each."  
19 Robbins, 466 F.3d at 883. The factors to be considered in weighing a  
20 claimant's credibility include: (1) the claimant's reputation for  
21 truthfulness; (2) inconsistencies either in the claimant's testimony or  
22 between the claimant's testimony and her conduct; (3) the claimant's  
23 daily activities; (4) the claimant's work record; and (5) testimony from  
24 physicians and third parties concerning the nature, severity, and effect  
25 of the symptoms of which the claimant complains. See Thomas v.  
26 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); see also 20 C.F.R. §  
27 404.1529(c).

1 The ALJ found that "[a]fter careful consideration of the evidence  
2 . . . [plaintiff]'s medically determinable impairment could reasonably  
3 be expected to cause the alleged symptoms" (A.R. 381.) Further, the  
4 ALJ cited no evidence of malingering by plaintiff. Accordingly, the  
5 ALJ's reason(s) for rejecting plaintiff's credibility must be "clear and  
6 convincing."

7  
8 Plaintiff testified that she cannot drive by herself, gets lost  
9 when driving unless someone else is with her to help her navigate,  
10 obtained a driver's license even though she cannot read and write at  
11 all, cannot write a simple note to advise a family member of her  
12 whereabouts, cannot pay bills and her husband and mother take care of  
13 that for her, and could only perform her job in the past by relying on  
14 co-workers to read things for her. (A.R. 438-42.) The ALJ found that  
15 plaintiff's "statements concerning the intensity, persistence and  
16 limiting effects of [her] symptoms are not credible to the extent they  
17 are inconsistent with [the ALJ's RFC] assessment." (A.R. 382.) The ALJ  
18 specifically articulated multiple, legally sufficient reasons for  
19 declining to credit plaintiff's statements regarding the extent of the  
20 limitations and their impact on her ability to work.

21  
22 First, the ALJ noted that there were "some significant  
23 inconsistencies between [plaintiff's] testimony and other evidence,"  
24 thus detracting from her credibility. (A.R. 384.) For example,  
25 plaintiff testified that she is not able to pay bills; however, the  
26 record shows that plaintiff told Dr. Chau, "I do the bills at home. I  
27  
28



1 make sure the bill is paid. I know how to survive." (A.R. 372, 382.)<sup>6</sup>  
2 In addition, plaintiff testified at the July 2008 hearing that her  
3 husband mops, because she is unable to do so; however, she reported to  
4 her treating psychiatrist Dr. Chau, on two different occasions, that her  
5 husband does "not do any housework." (A.R. 356, 366.) Additionally,  
6 plaintiff testified that she could perform only limited daily activities  
7 (A.R. 419-20), but as reported by her sister, Yolanda Jordan, plaintiff  
8 is able to get her children ready for school, prepare their breakfast,  
9 take them to school, clean the house, make snacks for the children, do  
10 laundry, and prepare dinner. (A.R. 100, 102, 383.) Plaintiff's sister  
11 also reported -- contrary to plaintiff's testimony -- that plaintiff can  
12 drive alone and, further, can shop for groceries on her own. (A.R.  
13 103.) The ALJ also noted where "Ms. Jordan checked the boxes for  
14 activities affected by [plaintiff's] alleged impairments, she only  
15 checked the boxes for 'lifting,' and did not check the boxes for memory,  
16 completing tasks, concentration, or following instructions." (A.R. 105,  
17 383). These inconsistencies between the evidence of record and  
18 plaintiff's testimony, as found by the ALJ, were a valid reason for  
19 finding that plaintiff lacked credibility. See, e.g., Berry v. Astrue,  
20 622 F.3d 1228, 1234-35 (9th Cir. 2010)(credibility was undermined by  
21 self-reported activities that suggested a greater functional capacity  
22 than claimed in testimony); Morgan v. Comm'r, 169 F.3d 595, 600 (9th  
23 Cir. 1999)(holding that contradictions between reported activities and  
24 asserted limitations calls credibility into question).

25

26

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27 <sup>6</sup> The ALJ acknowledged plaintiff's testimony that she did not tell  
28 anyone she pays the bills but found it "not credible," given the  
detailed notes Dr. Chau had made regarding his discussions with  
plaintiff. (A.R. 382.)

1 The ALJ also found that plaintiff's credibility was undermined by  
2 inconsistencies with respect to her claimed inability to read and write.  
3 (A.R. 384.) At the May 2011 hearing, plaintiff testified that she  
4 cannot read and write at all. (A.R. 438.) However, when asked if she  
5 ever learned to read and write, plaintiff responded that she "learned,"  
6 and "they taught me, but I forget." (A.R. 438-39.) Plaintiff also  
7 testified that she took and passed her driver's license examinations in  
8 English. (A.R. 439.) Plaintiff testified that she had a special  
9 education teacher help her everyday to study for the license  
10 examination, but that if she went to get a license now, she would not be  
11 able to. (*Id.*) Further, plaintiff testified that she graduated from  
12 high school in "special ed." (A.R. 441.) The ALJ concluded that  
13 plaintiff's test-taking ability and high school graduation, as well as  
14 her admission that she learned to read and write, cast doubt her  
15 testimony that she cannot read and write at all. (A.R. 384.) Although  
16 plaintiff may disagree with the ALJ's conclusion, the Court may not  
17 overturn it, because it is rational and supported by the record.  
18 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989).

19  
20 The ALJ likewise properly inferred from the fact of plaintiff's  
21 gainful employment as a janitor for 15 years that, because her alleged  
22 mental impairments had not prevented her from working during that time,  
23 this suggests that such impairments would not currently render her  
24 unable to work. (A.R. 384.) As noted by the ALJ, despite plaintiff's  
25 contention that she suffered from mental impairments for many years  
26 prior to when she stopped working, plaintiff continued to work at her  
27 job as a janitor until October 2000, and no medical evidence suggested  
28 that she stopped working because of any mental impairment. (*Id.*) See

1 Bean v. Chater, 77 F.3d 1210, 1213 (10th Cir. 1995)(claimant's prior  
2 work record can be considered in evaluating credibility; ALJ did not err  
3 in considering that claimant quit working several years before the  
4 alleged onset of disability). The ALJ did not err in exercising  
5 reasonable judgment and concluding from the evidence of plaintiff's  
6 lengthy work history that she was not as limited as she alleges. Again,  
7 while this may not be the only interpretation of the evidence, it is a  
8 reasonable interpretation of the evidence, and the Court must uphold the  
9 ALJ's decision where the evidence is susceptible to more than one  
10 rational interpretation. Magallanes, 881 F.2d at 750.

11  
12 Finally, as discussed above, the ALJ found that the medical  
13 evidence failed to fully support plaintiff's claimed limitations. See  
14 Lewis v. Apfel, 263 F.3d 503, 511 (9th Cir. 2001)(one reason for which  
15 an ALJ may discount testimony is that it conflicts with medical  
16 evidence). The ALJ stated that there was no evidence in the record of  
17 plaintiff's alleged learning disorder and dyslexia. (A.R. 382.) There  
18 was no record of any psycho-educational or IQ testing of plaintiff, or  
19 any medical records, prior to plaintiff's DLI and during the POD, that  
20 established she was diagnosed with and/or treated for any of her alleged  
21 mental impairments, with the exception of her ADHD.<sup>7</sup> (*Id.*)

22  
23 <sup>7</sup> The ALJ rejected Dr. Chau's opinion regarding plaintiff's mental  
24 limitations, because "Dr. Chau first examined and treated [plaintiff]  
25 well after the DLI." (A.R. 383.) The ALJ also rejected Dr. Yun's  
26 opinion -- that plaintiff had a "low comprehension span" and "cannot  
27 read to understand clear and concise directive. Needs to be shown,  
28 however still has problem" -- because this opinion was "well outside the  
period of adjudication, outside the area of Dr. Yun's expertise, and was  
not expressly or implicitly supported by any relevant objective medical  
evidence." (A.R. 383.) The ALJ did not err in this respect. See  
Carmickle v. Comm'r, 533 F.3d 1155, 1165 (9th Cir.2008) (noting that  
"[m]edical opinions that predate the alleged onset of disability are of

1 In sum, when, as here, the ALJ's credibility determination is  
2 reasonable and supported, it is not the Court's role to second-guess it.  
3 See Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Reversal  
4 is not warranted on this basis.

5  
6 **CONCLUSION**

7  
8 For the foregoing reasons, the Court finds that the Commissioner's  
9 decision is supported by substantial evidence and is free from material  
10 legal error. Neither reversal of the Commissioner's decision nor remand  
11 is warranted.

12  
13 Accordingly, IT IS ORDERED that Judgment shall be entered affirming  
14 the decision of the Commissioner of the Social Security Administration.  
15 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of  
16 this Memorandum Opinion and Order and the Judgment on counsel for  
17 plaintiff and for the Commissioner.

18  
19 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

20  
21 DATED: November 30, 2012

22   
23 \_\_\_\_\_  
24 MARGARET A. NAGLE  
25 UNITED STATES MAGISTRATE JUDGE

26  
27 \_\_\_\_\_  
28 limited relevance").