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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JOANN B. SIMPSON,)	1:10cv0337 DLB
)	
Plaintiff,)	ORDER REGARDING PLAINTIFF'S
)	SOCIAL SECURITY COMPLAINT
)	
vs.)	
)	
MICHAEL J. ASTRUE, Commissioner of)	
Social Security,)	
)	
Defendant.)	

Plaintiff Joann B. Simpson (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for Supplemental Security Income (“SSI”) pursuant to Title XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable Dennis L. Beck, United States Magistrate Judge.¹

BACKGROUND

In May 1999, Plaintiff filed her application for SSI. AR 152-54. She alleged disability since October 26, 1998, due to a spot on her kidney, severe low back pain and acute asthma. AR 159. The application was denied initially and upon reconsideration. AR 94-97, 99-102. Following multiple remands, Administrative Law Judge (“ALJ”) Robert A. Evans held hearings on August 23,

¹ The parties consented to the jurisdiction of the United States Magistrate Judge.

1 2006, and on April 17, 2007. AR 437-45, 446-72. ALJ Evans issued a partially favorable decision
2 on June 15, 2007, finding Plaintiff disabled beginning May 3, 1999, and ending on December 1,
3 2000. AR 22-35. On December 3, 2009, the Appeals Council denied review. AR 7-9.

4 Hearing Testimony

5 1. August 23, 2006 Hearing

6 ALJ Evans held a hearing on August 23, 2006, in Palmdale, California. Plaintiff appeared
7 without counsel. Joseph Jensen, a medical expert, and Sandra Schneider, a vocational expert, also
8 appeared. AR 439.

9 At the outset of the hearing, the ALJ reviewed the procedural history of the case. He first
10 noted that Plaintiff had been denied benefits in 2001, when an ALJ found that she had the ability to
11 perform full, medium work. Following that determination, the Appeals Council remanded the case
12 to a different ALJ, who decided the case in Plaintiff's favor without a hearing and determined that
13 she was less than sedentary. Thereafter, the Appeals Council found no evidence to support the
14 determination that her condition had worsened from medium to less than sedentary. Thus, the
15 Appeals Council again remanded the case. AR 439-40.

16 The ALJ next asked the medical expert, Dr. Jensen, if Plaintiff met or equaled a listing based
17 on the records. Dr. Jensen testified that he did not have adequate medical records after Plaintiff
18 underwent back surgery to make that determination. Given Dr. Jensen's response, the ALJ
19 continued the hearing to obtain additional medical records. AR 443.

20 2. April 17, 2007

21 ALJ Evans reconvened the hearing on April 17, 2007, in Palmdale, California. Plaintiff
22 appeared with her attorney, Sherman Hardaway. John Vivian, M.D., a medical expert, also appeared
23 and testified. AR 448.

24 Based on a review of the records, Dr. Vivian testified that Plaintiff had complained of low
25 back pain with some arthritic changes and diabetes. He did not think Plaintiff would meet or equal
26 any listing. He opined that she could perform light work primarily, with occasional postural
27 limitations relative to her back pain. Dr. Vivian disagreed with the 1999 consultative examination

1 finding that she was unable to work a full eight-hour day. He explained that the inability to work
2 would have been through the postoperative period of recovery after her surgery and for no more than
3 a year. AR 456. His opinion was more in accord with the consultative examination completed two
4 years later. AR 456-57.

5 In response to questions from Plaintiff's attorney, Dr. Vivian testified that Plaintiff's foot
6 pain in December 2006 could possibly be a sign or symptom of a person who suffers from diabetes.
7 Dr. Vivian would not disagree with the treating source opinion that Plaintiff would not be able to do
8 the full range of sedentary work at that point in time. AR 457-58.

9 The ALJ also questioned Plaintiff about her past relevant work. Plaintiff testified that prior
10 to her back laminectomy she had foster kids, but never worked. She got a check for each of the four
11 kids, but did not use the money for herself. She paid her rent out of her own AFDC. AR 460-63.

12 In response to questions from her attorney, Plaintiff testified that she is not working now
13 because of her back pain and her feet. She cannot "stand up too long" and cannot sit down. AR 463.
14 After her back surgery, her back pain did not improve and she developed depression and anxiety.
15 She also has problems with her shoulders. She has diabetes, which causes dizziness and sometimes
16 nausea. She has pain in her feet. She takes pain pills, but they do not help. The doctor gave her
17 crutches, which she uses when her feet hurt. She also has a cane from her primary doctor. AR 463-
18 65. She can stand about 20 minutes and sit about 20 minutes. She cannot walk anywhere without
19 her crutches or her cane, but with them she can walk for 30 or 40 minutes without rest. AR 465-66.

20 Plaintiff further testified she takes Tylenol with codeine every four hours, which does not
21 cause any side effects. She takes Vicodin for back pain twice a day with no side effects. She takes
22 diabetes, allergy and high blood pressure medications. She also takes medications for anxiety and
23 depression. She takes a muscle relaxer for her back and another pain medication. She takes all of
24 these pills every day. She suffers from drowsiness and is tired from her medications. AR 466-70.

25 During the day, she takes her medicine and lies back down. She gets up, cleans herself and
26 gets dressed. She does not have any difficulty getting dressed or taking care of her personal hygiene.
27 She lives with a nurse who prepares meals, but she can prepare meals when not in pain. AR 470-71.

1 On November 10, 1999, Dr. Anne M. Khong, a state agency physician, completed a Physical
2 Residual Functional Capacity Assessment form. Dr. Khong opined that Plaintiff could lift and/or
3 carry 10 pounds occasionally, less than 10 pounds frequently, could stand and/or walk at least 2
4 hours in an 8-hour workday and could sit about 6 hours in an 8-hour workday. She could push
5 and/or pull without limitation. AR 201. She frequently could climb and balance and occasionally
6 could stoop, kneel, crouch and crawl. AR 202. She had no manipulative, visual, communicative or
7 environmental limitations. AR 203-04.

8 On December 1, 1999, Plaintiff underwent a lumbar laminectomy and diskectomy at L4-5
9 and L5-S1 on the left side for a herniated disk. AR 270-71.

10 On February 25, 2000, Dr. Edward I. Cherniss, a state agency physician, completed a
11 Physical Residual Functional Capacity Assessment form for the period from October 1998 to
12 November 30, 1999. Dr. Cherniss opined that Plaintiff could lift and/or carry 10 pounds
13 occasionally, less than 10 pounds frequently, could stand and/or walk at least 2 hours in an 8-hour
14 workday, and could sit about 6 hours in an 8-hour workday. She could push and/or pull without
15 limitation. AR 212. She frequently could climb and balance and occasionally could stoop, kneel,
16 crouch and crawl. AR 213. She had no manipulative, visual, or communicative limitations. She
17 should avoid even moderate exposure to fumes, odors, dusts, gases, poor ventilation, etc. due to
18 asthma. AR 215.

19 On February 25, 2000, Dr. Cherniss also completed a Physical Residual Functional Capacity
20 Assessment form for the period from December 1, 1999 to December 2000. AR 222. Dr. Cherniss
21 opined that Plaintiff could lift and/or carry 20 pounds occasionally, 10 pounds frequently, could
22 stand and/or walk about 6 hours in an 8-hour workday, and could sit about 6 hours in an 8-hour
23 workday. She could push and/or pull without limitation. AR 223. She frequently could climb,
24 balance, kneel and crawl and occasionally could stoop and crouch. AR 224. She had no
25 manipulative, visual, or communicative limitations. AR 225-26. She should avoid even moderate
26 exposure to fumes, odors, dusts, gases, poor ventilation, etc. Due to her history of asthma, she
27 should refrain from working in environments with poor air quality. AR 226.

1 On January 15, 2001, Plaintiff reported she was unable to walk since the morning. However,
2 it was noted that she ambulated into the waiting room. AR 309. On the same day, Plaintiff received
3 emergency room treatment for shortness of breath. She was diagnosed with asthma. AR 310-12.

4 A chest x-ray completed on June 22, 2001, was normal. AR 321.

5 On July 14, 2001, Dr. Emily Rubenstein, a Senior Resident in Neurology, completed a
6 consultative orthopedic evaluation. Plaintiff complained of severe left leg pain, weakness and
7 numbness. She reported being unable to perform any activity except for dressing and bathing
8 herself, spending all day lying on the couch. AR 295. On examination, Plaintiff walked without an
9 assistive device and sat down comfortably in a chair. She was able to climb on and off the
10 examination table without difficulty. AR 296. Straight leg raising caused pain in both legs. She had
11 normal bulk and tone with no atrophy. She had 5-/5 motor strength proximally in the left lower
12 extremity with some poor effort. The top of the left foot was numb to light touch and pinprick with
13 no dermatomal distribution. She was able to ambulate without assistance. She walked somewhat
14 slowly and guardedly, but had normal stance and normal base. There was no unsteadiness. She had
15 mild difficulty with heel walking, but was able to toe walk and tandem walk without difficulty.
16 Based on examination, Dr. Rubenstein opined that Plaintiff could be expected to stand and/or walk
17 about six hours in an eight-hour workday. She had no restrictions to sitting and an assistive device
18 was not medically necessary. She should be able to lift and carry 50 pounds occasionally and 20
19 pounds frequently. She had no postural, manipulative or environmental limitations. AR 297-98.

20 On July 25, 2001, Dr. Rubenstein completed a Medical Source Statement of Ability to Do
21 Work-Related Activities (Physical) form. AR 303-05. She opined that Plaintiff could lift and/or
22 carry 50 pounds occasionally, 20 pounds frequently and could stand and/or walk about 6 hours in an
23 8-hour workday. She had no sitting, pushing or pulling limitations. Dr. Rubenstein's conclusions
24 were based on Plaintiff's low back pain with no objective deficits. AR 303-04. Dr. Rubenstein
25 further opined that Plaintiff occasionally could climb, balance, kneel, crouch and crawl. She had no
26 manipulative, visual, communicative or environmental limitations. AR 304-05.

1 A March 2004 radiologic report showed no significant abnormality of Plaintiff's L-spine.
2 AR 398.

3 In May 2004, Plaintiff complained of increasing lower back pain. She was referred to the
4 orthopedic clinic at Harbor/UCLA for lower back pain with radiculopathy. AR 380, 381, 386.

5 In June 2004, Plaintiff complained of increased anxiety and stress. She was advised to
6 follow-up with mental health. AR 378.

7 In February 2005, a Nurse Practitioner diagnosed Plaintiff with hypertension. It was noted
8 that Plaintiff was doing well with her diabetes. AR 369.

9 In September 2005, Plaintiff was diagnosed with anxiety. AR 353.

10 On September 16, 2005, Plaintiff sought treatment from Dr. Jose Pascual, who noted chronic
11 low back pain syndrome. AR 352.

12 In November 2005, Plaintiff complained of severe right big toe pain. Dr. Pascual diagnosed
13 gout. AR 351. A subsequent x-ray showed no evidence of recent or healing fracture or dislocation.
14 She had minimal hallux valgus deformity of the right big toe, but no other significant radiologically
15 detectable pathology. AR 364.

16 A lumbar spine x-ray completed on November 8, 2005, was normal. AR 365. A lumbar
17 spine CT scan in January 2006 showed no significant radiographic abnormality. AR 362.

18 At some point in 2006, Plaintiff first saw Dianne L. DeFreece, PsyD, for complaints of
19 anxiety and depression. On mental status exam, Plaintiff's mood was tearful, but her concentration,
20 insight and judgment were within normal limits and she had no apparent thought disorder. Dr.
21 DeFreece diagnosed a depressive disorder NOS and recommended a medication review. AR 343.

22 On May 23, 2006, Dr. Pascual noted Plaintiff had chronic low back pain since 1999. AR
23 344.

24 On July 7, 2006, Plaintiff complained to Dr. Pascual that her low back pain was worse. He
25 diagnosed her with chronic low back pain since 1998 and depression. AR 342.

26 On August 9, 2006, Plaintiff saw Dr. DeFreece for a follow-up appointment. Although
27 Plaintiff was "in severe stress" because of family issues, her mental status exam was within normal
28

1 limits. Dr. DeFreece recommended medication services to determine the plausibility of increasing
2 Prozac during the crisis. AR 341.

3 In September 2006, Plaintiff sought follow-up treatment with Dr. Pascual after a reported
4 seizure. AR 424. An EEG report dated November 20, 2006, noted Plaintiff had two seizures after
5 starting Prozac. Her medication was switched to Paxil and Dilantin was added. The EEG showed no
6 positive evidence of cerebral dysfunction or epileptic irritability. However, there was possible
7 obstructive sleep apnea. AR 427-28.

8 An x-ray of Plaintiff's left foot on October 13, 2006, was normal. AR 426.

9 On October 25, 2006, Plaintiff saw Dr. DeFreece. Plaintiff's mental status exam was within
10 normal limits. She reported getting joy from caring for her grandchildren. AR 419.

11 In December 2006, Plaintiff was referred to podiatry and crutches were ordered for an early
12 foot ulcer. AR 414-15.

13 On January 17, 2007, Plaintiff's mental status exam was within normal limits. She again
14 reported to Dr. DeFreece that she was caring for a grandchild and also was looking forward to having
15 her granddaughters for the summer. AR 410.

16 On January 20, 2007, Plaintiff sought urgent care treatment for neck pain. She was provided
17 a prescription for physical therapy. AR 406. On January 25, 2007, Plaintiff complained of pain from
18 her shoulder to her back. Dr. Pascual diagnosed lumbar spine strain. AR 409. On January 30, 2007,
19 Plaintiff continued to complain of swelling on both sides of her neck and pain. Her neurological
20 evaluation showed no deficits. AR 407.

21 On February 2, 2007, Dr. Pascual completed a Physical Residual Functional Capacity
22 Questionnaire form. He reported seeing Plaintiff every two months for the period between
23 November 7, 2005 and February 2, 2007. Plaintiff had diagnoses of chronic low back pain, diabetes
24 mellitus and seizures. He described Plaintiff's pain as hurting all day with an intensity of 9-10/10.
25 Plaintiff's medications included Vicodin, Ultram, and Wellbutrin. AR 433. Dr. Pascual opined that
26 Plaintiff was not a malinger. Although emotional factors did not contribute to the severity of her
27 symptoms and functional limitations, she had anxiety. Dr. Pascual stated that Plaintiff's pain or
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1 other symptoms were severe enough to interfere constantly with the attention and concentration
2 necessary to sustain simple, repetitive work tasks. She was incapable of even “low stress” work
3 because she could not sit or stand too long. AR 434. Plaintiff could sit 30 minutes at one time and
4 could stand 30 minutes at one time. She could sit, stand and/or walk less than 2 hours total in an 8-
5 hour workday. She required 4 unscheduled breaks per 2 hour period. She could not lift less than 10
6 pounds. She could never twist, crouch or climb stairs and could rarely stoop/bend or climb stairs.
7 She did not have any limitation in doing repetitive reaching, handling or fingering. AR 434-35. Dr.
8 Pascual estimated that she was likely to be absent more than 4 days per month as a result of her
9 impairments. AR 436.

10 ALJ’s Findings

11 The ALJ found that Plaintiff did not engage in substantial gainful activity from May 3, 1999,
12 through November 30, 2000. She had the severe impairments of status post lumbar laminectomy in
13 December 1999, chronic low back pain syndrome, and diabetes mellitus. For the period from May 3,
14 1999, through November 30, 2000, Plaintiff had a residual functional capacity (“RFC”) that
15 precluded even sustained sedentary work in an ordinary work setting and there were no jobs in the
16 national economy that she could perform. The ALJ further determined that beginning on December
17 1, 2000, Plaintiff had the RFC to perform light work with a limitation to occasional climbing,
18 balancing, stooping, kneeling, crouching and crawling. With this RFC, she could perform a
19 significant number of jobs in the national economy. AR 31-35.

20 SCOPE OF REVIEW

21 Congress has provided a limited scope of judicial review of the Commissioner’s decision to
22 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, the
23 Court must determine whether the decision of the Commissioner is supported by substantial
24 evidence. [42 U.S.C. § 405\(g\)](#). Substantial evidence means “more than a mere scintilla,” [Richardson](#)
25 [v. Perales, 402 U.S. 389, 402 \(1971\)](#), but less than a preponderance. [Sorenson v. Weinberger, 514](#)
26 [F.2d 1112, 1119, n. 10 \(9th Cir. 1975\)](#). It is “such relevant evidence as a reasonable mind might
27 accept as adequate to support a conclusion.” [Richardson, 402 U.S. at 401](#). The record as a whole

1 must be considered, weighing both the evidence that supports and the evidence that detracts from the
2 Commissioner's conclusion. [Jones v. Heckler, 760 F.2d 993, 995 \(9th Cir. 1985\)](#). In weighing the
3 evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*,
4 [Burkhart v. Bowen, 856 F.2d 1335, 1338 \(9th Cir. 1988\)](#). This Court must uphold the
5 Commissioner's determination that the claimant is not disabled if the Commissioner applied the
6 proper legal standards, and if the Commissioner's findings are supported by substantial evidence.
7 See [Sanchez v. Sec'y of Health and Human Serv., 812 F.2d 509, 510 \(9th Cir. 1987\)](#).

8 REVIEW

9 In order to qualify for benefits, a claimant must establish that she is unable to engage in
10 substantial gainful activity due to a medically determinable physical or mental impairment which has
11 lasted or can be expected to last for a continuous period of not less than 12 months. [42 U.S.C. §](#)
12 [1382c \(a\)\(3\)\(A\)](#). A claimant must show that she has a physical or mental impairment of such
13 severity that she is not only unable to do her previous work, but cannot, considering her age,
14 education, and work experience, engage in any other kind of substantial gainful work which exists in
15 the national economy. [Quang Van Han v. Bowen, 882 F.2d 1453, 1456 \(9th Cir. 1989\)](#). The burden
16 is on the claimant to establish disability. [Terry v. Sullivan, 903 F.2d 1273, 1275 \(9th Cir. 1990\)](#).

17 In an effort to achieve uniformity of decisions, the Commissioner has promulgated
18 regulations which contain, inter alia, a five-step sequential disability evaluation process. [20 C.F.R. §](#)
19 [416.920 \(a\)-\(g\)](#) Applying the process in this case, the ALJ found that Plaintiff: (1) had not engaged
20 in substantial gainful activity from May 3, 1999, through November 30, 2000; (2) has an impairment
21 or a combination of impairments that is considered "severe" (status post lumbar laminectomy in
22 December 1999, chronic low back pain syndrome, and diabetes mellitus) based on the requirements
23 in the Regulations ([20 C.F.R. § 416.920\(c\)](#)); (3) does not have an impairment or combination of
24 impairments which meets or equals one of the impairments set forth in Appendix 1, Subpart P,
25 Regulations No. 4; (4) she has no past relevant work; and (5) could not perform other jobs in the
26 national economy during the period from May 3, 1999, through November 30, 2000. However,
27 beginning December 1, 2000, she could perform a significant number of jobs in the national

1 economy. AR 31-35.

2 Here, Plaintiff contends that the ALJ erred by rejecting the functional capacity assessment of
3 her treating physician, Dr. Pascual. She concedes the issue of disability prior to treatment with Dr.
4 Pascual in 2005. Opening Brief, p. 8

5 DISCUSSION

6 Plaintiff essentially contends that the ALJ improperly rejected the opinion of her treating
7 physician, relying instead on the medical experts's opinion that she would be capable of light work
8 with postural limitations within one year after her back surgery. AR 28, 31. Generally, more weight
9 is given to a treating physician's opinion because "he is employed to cure and has a greater
10 opportunity to know and observe the patient as an individual." [Magallanes v. Bowen, 881 F.2d 747,](#)
11 [751 \(9th Cir. 1989\)](#). Where, as here, a non-treating physician's opinion contradicts that of a treating
12 physician "but is not based on independent clinical findings, or rests on clinical findings also
13 considered by the treating physician, the opinion of the treating physician may be rejected only if the
14 ALJ gives specific, legitimate reasons for doing so that are based on substantial evidence in the
15 record." [Andrews v. Shalala, 53 F.3d 1035, 1041 \(9th Cir. 1995\)](#). "This can be done by setting out a
16 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
17 interpretation thereof, and making findings." [Orn v. Astrue, 495 F.3d 625, 631 \(9th Cir. 2007\)](#)
18 (citations and quotations omitted).

19 In this case, the ALJ set out a detailed and thorough summary the facts and clinical evidence,
20 stated his interpretations and made findings. In so doing, the ALJ did not rely solely on the medical
21 expert's testimony to reject Dr. Pascual's opinion regarding Plaintiff's functional capacity. *See*
22 [Magallanes, 881 F.2d at 752](#). First, the ALJ declined to give weight to Dr. Pascual's RFC
23 assessment in favor of Plaintiff's treatment records. An ALJ may properly reject a treating
24 physician's opinion that is not supported by clinical findings. [Bray v. Comm'r of Soc. Sec. Admin.,](#)
25 [554 F.3d 1219, 1228 \(9th Cir. 2009\)](#); [Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195](#)
26 [\(9th Cir.2004\)](#). The ALJ noted that Dr. Pascual based his functional assessment on Plaintiff's neck
27 and back pain, diabetes and seizures. However, the ALJ cited treatment records showing Plaintiff

1 had full range of motion of the neck and upper extremities with normal muscle strength and no
2 neurological deficits; she had been doing well with her diabetes; she has had no repeat seizure
3 activity since her medication was changed and an EEG showed no epileptic activity. AR 30, 367,
4 407-08, 427-28.

5 Second, the ALJ rejected Dr. Pascual's opinion because the alleged physical limitations were
6 inconsistent with Plaintiff's report to Dr. DeFreece that she cared for her grandchildren. *See, e.g.,*
7 [Rollins v. Massanari, 261 F.3d 853, 856 \(9th Cir. 2001\)](#) (ALJ properly rejected treating physician's
8 restrictions in part because they were inconsistent with claimant's activity level, including care of
9 children). According to the record, Plaintiff reported to Dr. DeFreece in October 2006 that she was
10 "getting joy from caring for her grandchildren." AR 419. In January 2007, Plaintiff again reported
11 to Dr. DeFreece that she was "caring for [her] grandchild" and looking forward to "having
12 granddaughters [sic] for the summer." AR 410.

13 Third, the ALJ properly discounted Dr. Pascual's limitations based on his treatment of
14 Plaintiff's chronic back pain with conservative measures. *See, e.g., Rollins, 261 F.3d at 856* (ALJ
15 properly rejected opinion of treating physician who prescribed conservative treatment); [Jones v.](#)
16 [Astrue, 2011 WL 1253727, *4 \(E.D. Cal. Mar. 31, 2011\)](#) ("[A] conservative course of treatment
17 relative to a finding of total disability is a proper basis for discounting the extreme restrictions
18 reported by a treating physician."). The ALJ cited Dr. Pascual's treatment records demonstrating
19 that Plaintiff was provided medications, but no other means to address her alleged back pain. AR 30.
20 For instance, Dr. Pascual instructed Plaintiff in September and October 2006 to continue her
21 medications. AR 420-24. In 2007, Dr. Pascual saw Plaintiff for complaints of neck, back and leg
22 pain. He provided her with medications and she was advised to return in three months. AR 30, 404-
23 05.

24 Plaintiff argues that the ALJ rejected Dr. Pascual's functional capacity assessment based on
25 an incorrect assumption that it was generated to qualify Plaintiff for benefits. Opening Brief, p. 8.
26 According to the record, the ALJ gave less weight to Dr. Pascual's opinion because the form "was
27 completed solely for the purpose of qualifying the claimant for benefits." AR 30. However, the ALJ
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1 further explained that the form was “not credible or reliable” because it stated “findings and
2 limitations that were inconsistent with the findings and opinions noted in the longitudinal treatment
3 notes.” AR 30. As explained above, the ALJ properly discounted Dr. Pascual’s opinion as
4 inconsistent with the clinical findings.

5 Plaintiff next argues that the ALJ incorrectly attributed Dr. Pascual’s opinion about
6 intolerance for low stress work to her mental functioning, not her physical functioning. Plaintiff’s
7 argument lacks merit and incorrectly summarizes the ALJ’s analysis. In the functional capacity
8 assessment, Dr. Pascual stated that Plaintiff’s pain or other symptoms were severe enough to
9 interfere constantly with the attention and concentration necessary to sustain, simple, repetitive work
10 tasks. He further opined that Plaintiff was incapable of even “low stress” work because she “can’t sit
11 too long or stand too long.” AR 434. The ALJ rejected Dr. Pascual’s assessment that Plaintiff could
12 not “withstand even low stress work or that her concentration [was] comprised” because it was
13 inconsistent with the treating records from Dr. DeFreece. AR 30. The ALJ referenced Dr.
14 DeFreece’s express notations that Plaintiff’s concentration and mental status examinations were
15 within normal limits. AR 29, 30, 341, 343, 410, 419. Plaintiff admits that Dr. Pascual found no
16 discrete mental impairment in function. Rather, Plaintiff believes that Dr. Pascual’s limitations were
17 from a “physical standpoint.” Opening Brief, p. 9. However, Plaintiff overlooks the ALJ’s
18 determination that the “alleged mental and *physical* limitations” were inconsistent with Plaintiff’s
19 reports that she cared for her grandchildren. AR 30 (emphasis added). As discussed above, the ALJ
20 properly rejected Dr. Pascual’s physical limitations in part because of Plaintiff’s actions in caring for
21 her grandchildren.

22 As a final argument, Plaintiff contends that Dr. Vivian, the medical expert, agreed with Dr.
23 Pascual’s functional limitation assessment. To support this contention, Plaintiff states that when Dr.
24 Vivian was asked if he would disagree with the treating physician at the point in time when
25 Plaintiff’s diabetes caused an ulcer on one foot, Dr. Vivian stated he would not “at that point time.”
26 Opening Brief, p. 9.

1 According to the transcript, Dr. Vivian testified as follows:

2 Q Did you notice in 15F that in December of last year she was prescribed crutches?

3 A 15F she what?

4 Q She

5 A That she had limping, yes, on the left.

6 Q Right, in December of '06.

7 A Yes.

8 Q Would you state at any point after the, that period that she would have some
9 difficulties with ambulation?

10 A Well, she had foot pain, on the left foot, also on the sole of her foot which she,
11 through, through the period of time that that was healed

12 Q Would that be a sign or a symptom of a person who suffers from diabetes, possibly?

13 A Possibly, yes.

14 Q Okay. Would you say that as of at least that particular point in time she would not be
15 able to do a full range of sedentary work based upon Exhibit, her treating physician in
16 16F.

17 A I think she should be able to do sedentary work during that time.

18 Q After the diabetes diagnosis and

19 A Yes.

20 Q and after her treating source told her she could not? So you disagree with her
21 treating source?

22 A I do not have that information, but I wouldn't disagree with that.

23 Q You would not?

24 A I would not disagree with the treating source at that point in time.

25 AR 457-58. Contrary to Plaintiff's argument, this testimony does not demonstrate that Dr. Vivian
26 agreed that Plaintiff was unable to maintain even sedentary work for the entire period from 2005
27 through 2007. Instead, it is clear that Dr. Vivian limited his agreement to an isolated point in time.
28 Dr. Vivian believed that Plaintiff would have limitations while her foot healed, but there was no
indication that Plaintiff's foot problems were ongoing. Indeed, the ALJ expressly found no evidence

1 of an ongoing foot ulcer. AR 31. Plaintiff does not cite record evidence to contradict this finding.

2 Plaintiff's argument is further undermined by Dr. Vivian's express testimony that diabetes
3 had not been a significant medical problem and that Plaintiff could perform the equivalent of light
4 work with occasional postural limitations due to back pain. AR 455-56.

5 For the reasons stated, the ALJ provided specific and legitimate reasons for discounting Dr.
6 Pascual's functional assessment.

7

8 **CONCLUSION**

9 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
10 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
11 DENIES Plaintiff's appeal from the administrative decision of the Commissioner of Social Security.
12 The clerk of this Court is DIRECTED to enter judgment in favor of Defendant Michael J. Astrue,
13 Commissioner of Social Security, and against Plaintiff Joann B. Simpson.

14 IT IS SO ORDERED.

15 Dated: June 1, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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