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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VYACHESLAV HRYZHUK,  
Plaintiff,  
v.  
CAROLYN COLVIN, Acting  
Commissioner of Social Security  
Defendant.

No. 2:14-cv-2561-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) terminating his previously granted Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act. The parties’ cross-motions for summary judgment are pending. For the reasons discussed below, plaintiff’s motion is granted, the Commissioner’s motion is denied, and the matter is remanded for further proceedings.

I. BACKGROUND

Plaintiff previously filed an application for SSI, alleging that he had been disabled since September 1, 2004. Administrative Record (“AR”) 157-161. He was found to be disabled and was awarded SSI. *Id.* at 70. However, on January 27, 2012, the Social Security Administration determined that plaintiff was no longer disabled as of January 1, 2012. *Id.* at 119-122. Plaintiff requested a hearing before an ALJ, *id.* at 105, which was held on April 18, 2013, before ALJ

1 Carol Eckersen. *Id.* at 43-69. Plaintiff had non-attorney Svetlana Kumansky at the hearing, at  
2 which plaintiff and a vocational expert (“VE”) testified. *Id.*

3 On June 14, 2013, the ALJ issued a decision finding that plaintiff was no longer disabled  
4 under section 1614(a)(3)(A) of the Act. *Id.* at 6-23. The ALJ made the following specific  
5 findings:

6 1. The most recent favorable medical decision finding that the claimant was disabled is the  
7 determination dated December 1, 2004. This is known as the “comparison point decision”  
8 or CPD.

9 2. At the time of the CPD, the claimant had the following medically determinable  
10 impairment: schizoaffective disorder.<sup>1</sup> This impairment was found to meet section(s)  
11 12.06 of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d)).

12 \* \* \*

13 3. The medical evidence establishes that, as of January 1, 2012, the claimant had the  
14 following medically determinable impairments: lumbar degenerative changes and  
15 depression. These are the claimant’s current impairments.

16 4. Since January 1, 2012, the claimant has not had an impairment or combination of  
17 impairments which meets or medically equals the severity of an impairment listed in 20  
18 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.925 and 416.926).

19 \* \* \*

20 5. Medical improvement occurred as of January 1, 2012 (20 CFR 416.994(b)(1)(i)).

21 \* \* \*

22 6. The medical improvement is related to the ability to work because, as of January 2012, the  
23 claimant’s CPD impairments(s) no longer met or medically equaled the same listing(s)  
24 that was met at the time of the CPD (20 CFR 416.994(b)(2)(iv)(A)).

25 \* \* \*

26 7. Beginning on January 1, 2012, the claimant has continued to have a severe impairment or  
27 combination of impairments (20 CFR 416.994(b)(5)(v)).

28 \* \* \*

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<sup>1</sup> The CDR in the administrative record is dated December 15, 2004, and indicates that plaintiff’s primary diagnosis was anxiety related disorders, with a secondary diagnosis of “Sprains and Strains – All Types.” AR 70.

1 8. Beginning on January 1, 2012, based on the current impairments, the claimant has had the  
2 residual functional capacity to perform medium work as defined in 20 CFR 416.967(c)  
3 except claimant is limited to occasional postural maneuvers such as climbing, stooping,  
4 crouching, and kneeling. In addition, he is limited to simple routine tasks.

4 \* \* \*

5 9. The claimant has no past relevant work (20 CFR 416.965).

6 10. On January 1, 2012, the claimant was a younger individual age 18-49 (20 CFR 416.963).

7 11. The claimant has a limited education and is able to communicate in English (20 CFR  
8 416.964).

9 12. Transferability of job skills is not an issue because the claimant does not have past  
10 relevant work (20 CFR 416.968).

11 13. Beginning on January 1, 2012, considering claimant's age, education, work experience,  
12 and residual functional capacity based on the current impairments, the claimant was able  
13 to perform a significant number of jobs in the national economy (20 CFR 416.960(c) and  
14 416.966).

14 \* \* \*

15 14. The claimant's disability ended on January 1, 2012, and the claimant has not become  
16 disabled again since that date (20 CFR 416.994(b)(5)(vii)).

17 *Id.* at 12-19.

18 Plaintiff's request for Appeals Council review was denied on September 4, 2014, leaving  
19 the ALJ's decision as the final decision of the Commissioner. *Id.* at 1-4.

## 20 II. LEGAL STANDARDS

21 The Commissioner's decision that a claimant is not disabled will be upheld if the findings  
22 of fact are supported by substantial evidence in the record and the proper legal standards were  
23 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);  
24 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,  
25 180 F.3d 1094, 1097 (9th Cir. 1999).

26 The findings of the Commissioner as to any fact, if supported by substantial evidence, are  
27 conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is  
28 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th

1 Cir. 1996). “It means such evidence as a reasonable mind might accept as adequate to support a  
2 conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v.*  
3 *N.L.R.B.*, 305 U.S. 197, 229 (1938)).

4 “The ALJ is responsible for determining credibility, resolving conflicts in medical  
5 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.  
6 2001) (citations omitted). “Where the evidence is susceptible to more than one rational  
7 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”  
8 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

### 9 III. ANALYSIS

10 Plaintiff argues that remand is necessary because (1) the ALJ failed to consider all of  
11 plaintiff’s medical records in determining that he was no longer disabled, and (2) the ALJ’s  
12 finding of medical improvement is not supported by substantial evidence. ECF No. 15 at 8-15.

13 Plaintiff first argues that the record is incomplete, as the underlying medical evidence  
14 upon which the comparison point decision (“CPD”) was based is not included in the record. ECF  
15 No. 15 at 5-6.

16 Social security claimants have the initial burden of proving disability. *Bowen v. Yuckert*,  
17 482 U.S. 137, 146 n.5; *Iida v. Heckler*, 705 F.2d 363 (9th Cir. 1983). “Once a claimant has been  
18 found to be disabled, however, a presumption of continuing disability arises in her favor.”  
19 *Bellamy v. Secretary of Health and Human Services*, 775 F.2d 1380, 1381 (9th Cir. 1985) (citing  
20 *Murray v. Heckler*, 722 F.2d 499, 500 (9th Cir. 1983)). A claimant that has been awarded SSI is  
21 subject to periodic disability review. 20 C.F.R. § 416.994(a). To determine whether a claimant  
22 continues to be disabled for purposes of receiving SSI benefits, the Commissioner must engage in  
23 a seven-step evaluation process. 20 C.F.R. § 416.994(b)(5)(i)-(vii). During step two, which is of  
24 particular importance to the instant dispute, the Commissioner determines whether the claimant  
25 has experienced “medical improvement.” 20 C.F.R. § 416.994(b)(5)(ii).

26 A “medical improvement” is defined as “any decrease in the medical severity of your  
27 impairment(s) which was present at the time of the most recent favorable medical decision that  
28 you were disabled or continued to be disabled. A determination that there has been a decrease in

1 medical severity must be based on changes (improvement) in the symptom, signs and/or  
2 laboratory findings associated with your impairment(s) . . . .” 20 C.F.R. § 416.994(b)(1)(i). The  
3 Commissioner bears the burden of proving “medical improvement.” *Bellamy*, 755 F.2d at 1381;  
4 *see also Murray*, 722 F.2d at 500 (finding the Secretary had the burden to come forward with  
5 substantial evidence of improvement). To determine whether “medical improvement” has  
6 occurred, the Commissioner “will compare the current medical severity of that impairment(s)  
7 which was present at the time of the most recent favorable medical decision that [the claimant  
8 was] disabled . . . to the medical severity of that impairment(s) at that time.” 20 C.F.R.  
9 § 404.1594(b)(7).

10 Plaintiff essentially argues that the ALJ could not have made this comparison because the  
11 ALJ “did not have the medical evidence, or virtually anything else, from the comparison point  
12 decision.” ECF No. 15 at 8-9. The Commissioner argues that plaintiff’s contention is speculation  
13 and that plaintiff “does not actually identify any evidence that was previously considered or  
14 somehow missed by the ALJ.” ECF No. 20 at 4-5.

15 Contrary to the Commissioner’s contention, plaintiff does identify evidence that the ALJ  
16 failed to consider. Plaintiff cites to a Disability Hearing Officer’s Decision dated October 3,  
17 2012, which indicates that the evidence from the time of the CPD included medical records from  
18 the Manzanita Medical Center dated January through September 2004, and records from “Turning  
19 Point/Sacramento” dated June through September 2004. ECF No. 15 at 3-4. The administrative  
20 record, however, contains no records from “Turning Point/Sacramento,” and the only document  
21 from the Manzanita Medical Center predating the CPD is an x-ray of plaintiff’s lumbosacral spine  
22 dated February 24, 2004. *See* AR 314.

23 As explained below, the medical records from the time of the CPD should have been  
24 included in the administrative record in this case. Since such evidence was not included in the  
25 administrative record, the Commissioner has failed to demonstrate that medical improvement  
26 occurred and the matter must therefore be remanded for further consideration.

27 The U.S. Court of Appeals for the Ninth Circuit has not yet addressed the precise manner  
28 in which an ALJ must compare a claimant’s previous and current impairments to determine

1 whether medical improvement has occurred. However, other circuit courts have found that an  
2 ALJ must evaluate the medical evidence upon which the claimant's original disability status was  
3 based, as well as the current medical evidence, when determining if medical improvement exists.  
4 *See Byron v. Heckler*, 742 F.2d 1232, 1236 (10th Cir. 1984) (per curiam) ("In order for evidence  
5 to be present, there must also be an evaluation of the medical evidence for the original finding of  
6 disability."); *Vaughn v. Heckler*, 727 F.2d 1040, 1043 (11th Cir. 1984) (holding the ALJ was  
7 "required to evaluate the medical evidence upon which [claimant] was originally found to be  
8 disabled" to prove medical improvement); *Veino v. Barnhart*, 312 F.3d 578, 587 (2d Cir. 2002)  
9 (finding that the court lacked an adequate basis to uphold the Commissioner's conclusion that  
10 medical improvement had occurred because the record did not include the medical evidence as to  
11 claimant's condition when he was initially found disabled). District courts in this Circuit that  
12 have reached the issue have similarly concluded that in deciding whether medical improvement  
13 has occurred, an ALJ must compare current medical evidence to the medical record from the time  
14 of the CPD. *See Thao v. Astrue*, 2010 WL 1795887 (E.D. Cal. May 4, 2010) (remanding a case  
15 for cessation of disability benefits where "the Commissioner has not presented this court with the  
16 record supporting the CPD."); *Chambers v. Astrue*, 2012 U.S. Dist. LEXIS 95095 (D. Or. Jul. 10,  
17 2012) (finding a short summary of the previous medical records was not enough to compare  
18 plaintiff's impairments and determine if medical improvement had occurred); *Lee v. Astrue*, 2012  
19 WL 928741 (E.D. Cal. Mar. 16, 2012) (remanding a case for cessation of disability benefit where  
20 it was "unclear whether the ALJ had reviewed or considered the medical evidence underlying the  
21 [CPD] in assessing whether plaintiff experienced medical improvement"). This comparative  
22 approach presents the most rational and least speculative means for making a determination of  
23 whether medical improvement has been demonstrated.

24 The Commissioner contends that the x-ray results, as well as medical records from the  
25 Ukrainian Department of Public Health, demonstrate that the ALJ had access to prior medical  
26 records. ECF No. 20 at 5. The Commissioner's argument ignores the complete lack of records in  
27 the administrative records from "Turning Point/Sacramento." Furthermore, the Disability  
28 Hearing Officer's Decision indicates that the CPD relied on nine months of medical records from

1 Manzanita Medical Center, not a single piece of paper documenting the results of an x-ray.  
2 Moreover, the probative value of the x-ray results to the determination of whether there was  
3 medical improvement is minimal given that plaintiff was determined to be disabled primarily due  
4 to “Anxiety Related Disorders.” *Id.* at 70.

5 As for documents from the Ukrainian Department of Public Health, these records consist  
6 of only three pages, one of which is a certification page. *Id.* at 216-218. These records, dated  
7 August 14, 2003, simply indicate that plaintiff was first diagnosed with schizophrenia in 1989 and  
8 that due to his impairment he was unable to work in “common industrial conditions.” *Id.* at 216-  
9 17. The inclusion of these negligible documents in the record does not demonstrate that the ALJ  
10 compared the medical evidence at the time of the CPD to the plaintiff’s current medical record.  
11 Significantly, the exhibit list attached to the ALJ’s decision demonstrates that with the exception  
12 of the x-ray results the ALJ did not consider records from the time of the CPD generated by  
13 Turning Point and Manzanita Medical Center.

14 Thus, it is clear that the ALJ did not compared plaintiff’s medical records from the time of  
15 the CPD to his current medical records. As noted before, the record contains a Disability Hearing  
16 Officer’s Decision, which discussed plaintiff’s prior medical records. AR 88-100. This decision,  
17 however, does not constitute evidence establishing plaintiff’s impairments at the time of the CPD.  
18 *See Veino*, 312 F.3d at 587. Furthermore, the ALJ’s decision does not cite to or reference any  
19 specific medical evidence from the time of the CPD. Accordingly, the ALJ failed to compare the  
20 current medical evidence with the medical record from the time of the CPD, and the matter must  
21 be remanded to permit the ALJ to conduct the appropriate comparison.<sup>2</sup>

22 IV. CONCLUSION

23 The ALJ’s decision is not supported by substantial evidence. Therefore, it is hereby  
24 ORDERED that:

- 25 1. Plaintiff’s motion for summary judgment is granted;
- 26 2. The Commissioner’s cross-motion for summary judgment is denied;

27 \_\_\_\_\_  
28 <sup>2</sup> Because the court finds that remand is necessary based on the ALJ’s failure to consider  
all of the medical evidence, the court declines to address plaintiff’s additional argument.

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- 3. The matter is remanded for further consideration consistent with this opinion; and
- 4. The Clerk is directed to enter judgment in plaintiff's favor.

DATED: March 24, 2016.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE