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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NIGELLE L. CHASE,
Plaintiff,

vs.

CAROLYN W. COLVIN,
Acting Commissioner of Social
Security,
Defendant.

No. 2:14-CV-00081-LRS

**ORDER GRANTING
DEFENDANT'S MOTION FOR
JUDGMENT, *INTER ALIA***

BEFORE THE COURT are the Plaintiff's Motion For Summary Judgment (ECF No. 14) and the Defendant's Motion For Summary Judgment (ECF No. 17).

JURISDICTION

Nigelle E. Chase, Plaintiff, applied for Title XVI Supplemental Security Income benefits (SSI) on March 22, 2011. The application was denied initially and on reconsideration. Plaintiff timely requested a hearing and a hearing was held on October 22, 2012, before Administrative Law Judge (ALJ) R.J. Payne. Plaintiff, represented by counsel, testified at the hearing, as did William F. Spence, M.D., and Margaret R. Moore, Ph.D., as medical experts. On December 5, 2012, the ALJ issued a decision denying benefits. The Appeals Council denied a request for review and the ALJ's decision became the final decision of the Commissioner. This decision is appealable to district court pursuant to 42 U.S.C. § 1383(c)(3).

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT- 1**

1 **STATEMENT OF FACTS**

2 The facts have been presented in the administrative transcript, the ALJ's
3 decision, the Plaintiff's and Defendant's briefs, and will only be summarized here.
4 At the time of the administrative hearing, Plaintiff was 24 years old. She has less
5 than a high school education and no past relevant work experience. Plaintiff
6 alleges disability since March 3, 2011.

7
8 **STANDARD OF REVIEW**

9 "The [Commissioner's] determination that a claimant is not disabled will be
10 upheld if the findings of fact are supported by substantial evidence...." *Delgado v.*
11 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983). Substantial evidence is more than a
12 mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975),
13 but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th
14 Cir. 1989); *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573,
15 576 (9th Cir. 1988). "It means such relevant evidence as a reasonable mind might
16 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389,
17 401, 91 S.Ct. 1420 (1971). "[S]uch inferences and conclusions as the
18 [Commissioner] may reasonably draw from the evidence" will also be upheld.
19 *Beane v. Richardson*, 457 F.2d 758, 759 (9th Cir. 1972); *Mark v. Celebrezze*, 348
20 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a
21 whole, not just the evidence supporting the decision of the Commissioner.
22 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *Thompson v. Schweiker*, 665
23 F.2d 936, 939 (9th Cir. 1982).

24 It is the role of the trier of fact, not this court to resolve conflicts in
25 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
26 rational interpretation, the court must uphold the decision of the ALJ. *Allen v.*
27 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

28 A decision supported by substantial evidence will still be set aside if the

1 proper legal standards were not applied in weighing the evidence and making the
2 decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433
3 (9th Cir. 1987).

4 5 **ISSUES**

6 Plaintiff argues the ALJ erred: 1) by relying on the testimony of medical
7 expert Margaret R. Moore, Ph.D., over the conclusions of examining psychologist
8 W. Scott, Mabee, Ph.D, with regard to Plaintiff's mental condition; 2) by
9 disregarding the opinion of treating physician Paul C. Jones, D.P.M., with regard
10 to Plaintiff's physical condition; and 3) by failing to obtain testimony from a
11 vocational expert.

12 13 **DISCUSSION**

14 **SEQUENTIAL EVALUATION PROCESS**

15 The Social Security Act defines "disability" as the "inability to engage in
16 any substantial gainful activity by reason of any medically determinable physical
17 or mental impairment which can be expected to result in death or which has lasted
18 or can be expected to last for a continuous period of not less than twelve months."
19 42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be
20 determined to be under a disability only if her impairments are of such severity
21 that the claimant is not only unable to do her previous work but cannot,
22 considering her age, education and work experiences, engage in any other
23 substantial gainful work which exists in the national economy. *Id.*

24 The Commissioner has established a five-step sequential evaluation process
25 for determining whether a person is disabled. 20 C.F.R. § 416.920; *Bowen v.*
26 *Yuckert*, 482 U.S. 137, 140-42, 107 S.Ct. 2287 (1987). Step one determines if she
27 is engaged in substantial gainful activities. If she is, benefits are denied. 20
28 C.F.R. § 416.920(a)(4)(i). If she is not, the decision-maker proceeds to step two,

1 which determines whether the claimant has a medically severe impairment or
2 combination of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant does
3 not have a severe impairment or combination of impairments, the disability claim
4 is denied. If the impairment is severe, the evaluation proceeds to the third step,
5 which compares the claimant's impairment with a number of listed impairments
6 acknowledged by the Commissioner to be so severe as to preclude substantial
7 gainful activity. 20 C.F.R. § 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpart P, App.
8 1. If the impairment meets or equals one of the listed impairments, the claimant is
9 conclusively presumed to be disabled. If the impairment is not one conclusively
10 presumed to be disabling, the evaluation proceeds to the fourth step which
11 determines whether the impairment prevents the claimant from performing work
12 she has performed in the past. If the claimant is able to perform her previous
13 work, she is not disabled. 20 C.F.R. § 416.920(a)(4)(iv). If the claimant cannot
14 perform this work, the fifth and final step in the process determines whether she is
15 able to perform other work in the national economy in view of her age, education
16 and work experience. 20 C.F.R. § 416.920(a)(4)(v).

17 The initial burden of proof rests upon the claimant to establish a prima facie
18 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921
19 (9th Cir. 1971). The initial burden is met once a claimant establishes that a
20 physical or mental impairment prevents her from engaging in her previous
21 occupation. The burden then shifts to the Commissioner to show (1) that the
22 claimant can perform other substantial gainful activity and (2) that a "significant
23 number of jobs exist in the national economy" which claimant can perform. *Kail*
24 *v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

25 26 **ALJ'S FINDINGS**

27 The ALJ found the following: 1) Plaintiff has not engaged in substantial
28 gainful activity since March 3, 2011; 2) Plaintiff has "severe" impairments which

1 include foot pain, palmar plantar hyperkeratoris, calluses and bunions, personality
2 disorder, anxiety and somatoform disorder; 3) Plaintiff does not have an
3 impairment or combination of impairments that meets or equals any of the
4 impairments listed in 20 C.F.R. § 404 Subpart P, App. 1; 4) Plaintiff has the
5 residual functional capacity (RFC) to perform light exertional activity that does
6 not require her to climb ladders, ropes or scaffolds; she can frequently climb
7 ramps or stairs, balance, and crouch; and she has no limitations in stooping,
8 kneeling, or crawling; 5) Plaintiff has no more than minimal to occasional
9 limitations arising from her “severe” mental impairments; and 6) Plaintiff’s
10 physical and mental RFC allows her to perform jobs existing in significant
11 numbers in the national economy. Accordingly, the ALJ concluded the Plaintiff is
12 not disabled.

14 **RESIDUAL FUNCTIONAL CAPACITY (RFC)**

15 **A. Mental RFC**

16 The opinion of a non-examining medical advisor/expert need not be
17 discounted and may serve as substantial evidence when it is supported by other
18 evidence in the record and consistent with the other evidence. *Andrews v. Shalala*,
19 53 F.3d 1035, 1041 (9th Cir. 1995). The ALJ gave “significant weight” to the
20 opinions of Dr. Moore in arriving at his (the ALJ’s) conclusions regarding
21 Plaintiff’s mental RFC. (Tr. at p. 34). Dr. Moore opined there were no limitations
22 on Plaintiff’s activities of daily living, that she was mildly to moderately limited in
23 terms of social functioning, that she was at most mildly limited with regard to
24 maintaining concentration, persistence and pace, and that there were no episodes
25 of decompensation. (Tr. at p. 94 and p. 594). The court finds that Dr. Moore’s
26 opinions are supported by other evidence in the record and are consistent with that
27 other evidence, and therefore serve as substantial evidence of Plaintiff’s mental
28 RFC. Furthermore, the ALJ properly discounted the opinions of Dr. Mabee.

1 According to the ALJ:

2 The undersigned has given limited weight to the DSHS
3 psychological evaluations completed before the relevant
4 time period in 2010 and in 2011 by Dr. Mabee
5 While there is objective evidence that the claimant has
6 mental health conditions and some resulting limitations,
7 the undersigned finds that the evaluations conducted by
8 [DSHS] evaluators are largely based on the claimant's
9 self-reported symptoms and complaints, and the undersigned
10 does not find the claimant entirely credible. The undersigned
11 also notes that the evaluations were conducted for the purpose
12 of determining the claimant's eligibility for state assistance;
13 the claimant was likely aware that the continuation of [her]
14 state assistance was dependent upon the DSHS evaluations,
15 and she therefore had incentive to overstate her symptoms
16 and complaints. Furthermore, the DSHS evaluators usually
17 do not have a treating relationship with the claimant.
18 Moreover, the undersigned notes that the evaluation forms
19 were completed by checking boxes and contain few objective
20 findings in support of the degree of limitation opined.

21 (Tr. at p. 34).

22 Dr. Mabee completed a DSHS evaluation in September 2010. He checked
23 boxes indicating Plaintiff was markedly limited in her abilities to exercise
24 judgment and make decisions and to respond appropriately to and tolerate the
25 pressures and expectations of a normal work setting, and that she was moderately
26 limited in her abilities to understand, remember and follow complex (more than
27 two step) instructions, to learn new tasks, to perform routine tasks, to relate
28 appropriately to co-workers and supervisors, to interact appropriately in public
contacts, and to maintain appropriate behavior in a work setting. (Tr. at p. 312).

Notwithstanding that, he also wrote:

[Plaintiff] will be able to remember locations and work-like
procedures. She will be able to understand, remember and
carry out simple and verbal written instructions. She will be
able to maintain attention and concentration for limited
periods. She will be able to make simple work related decisions.
She will be able to ask simple questions. She will be able
to accept instructions. She will be able to adhere to basic
standards of neatness and cleanliness. She will be able to
be aware of normal hazards and take appropriate precautions.
She will be able to use public transportation.

(Tr. at p. 312).

1 Plaintiff asserts that objective testing conducted by Dr. Mabee- the
2 Personality Assessment Inventory (PAI) and a mental status examination- supports
3 the severity of the limitations opined by him. The PAI, however, is based on a
4 patient's self-reporting and moreover, Dr. Mabee noted that in Plaintiff's case,
5 "[h]er profile was deemed questionably valid." (Tr. at p. 314). According to Dr.
6 Mabee:

7 There appears to have been some inconsistent responses
8 to similar items. Her response pattern is unusual because
9 she indicated defensiveness about particular personal
10 shortcomings as well as an exaggeration of certain
11 problems. She endorsed items that present an unfavorable
12 impression.

13 (*Id.*).

14 In his May 2011 evaluation, Dr. Mabee indicated that Plaintiff was
15 markedly limited in her ability to communicate and perform effectively in a work
16 setting with public contact, and that she was moderately limited in her abilities to
17 understand, remember, and persist in tasks by following complex instructions of
18 three or more steps, to learn new tasks, to perform routine tasks without undue
19 supervision, to communicate and perform effectively in a work setting with
20 limited public contact, and to maintain appropriate behavior in a work setting. (Tr.
21 at p. 423).¹ Dr. Mabee conducted another mental status examination in
22 conjunction with this evaluation (Tr. at pp. 425-27), but he did not repeat the PAI
23 this time around.

24 The ALJ legitimately called into question the Plaintiff's credibility about the
25 severity of her mental health conditions. This was an additional independent basis
26 for discounting Dr. Mabee's opinions. Plaintiff missed mental health counseling
27 appointments. Non-compliance with treatment may support an adverse credibility

28 ¹ It appears that with regard to "Functional Limitations," there were
modifications to the DSHS form between September 2010 and May 2011.

1 finding. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

2 In July 2011, Plaintiff was seeing Carla Paullin, a Chemical Dependency
3 Professional/Licensed Mental Health Counselor, to “[d]ecrease anxiety and
4 depression” and perform a “[c]omplete psychological evaluation.” (Tr. at p. 476) .

5 Ms. Paullin’s notes reflect as follows:

6 Nigelle attended two of four scheduled sessions in July.
7 She then called and left me a message to cancel her next
8 two appointments one on 8/3 and 8/10 as she stated “her
9 mother was in town.” I left her a message to see if she
10 plans to continue counseling on 8/10 but she did not call
me back. At this point, she will have to go to my waiting
list to get back in . . . Nigelle will have to call me to get
back on . . . my waiting list if she wants to continue
counseling.

11 (Tr. at p. 477). There is no indication in the record that any follow-up with Ms.
12 Paullin occurred. While the symptoms of a claimant’s mental impairment may
13 explain her non-compliance with treatment, *Nguyen v. Chater*, 100 F.3d 1462,
14 1465 (9th Cir. 1996), no medical provider in this case, including Ms. Paullin, made
15 a connection between Plaintiff’s non-compliance and her mental health
16 impairment. *Molina v. Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012).

17 Ms. Paullin thought a drug/alcohol assessment would be appropriate
18 because Plaintiff had been taking “opiate pain killers for a long period of time.”
19 (Tr. at p. 477). And indeed, there are multiple references in the record suggesting
20 drug-seeking behavior by the Plaintiff with regard to narcotic pain medication.
21 (Tr. at pp. 415, 431, 456, 460, 463, 536-37 and 554). Drug-seeking behavior is an
22 appropriate basis for discounting a Plaintiff’s credibility. *Lewis v. Astrue*, 498
23 F.3d 909, 910 (9th Cir. 2007).

24 Also, at the administrative hearing, when asked what the “biggest reason”
25 was that she could not work, the Plaintiff testified that it was because of “[her]
26 feet,” noting that she was “getting help with [her] emotional needs” and taking
27 Zoloft which was helping her “feel a little better about [herself].” (Tr. at p. 45).

1 The ALJ offered specific and legitimate reasons to reject Dr. Mabee’s
2 opinions regarding the severity of Plaintiff’s mental health limitations. *Lester v.*
3 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996) Those reasons are supported by
4 substantial evidence, as is the mental RFC found by the ALJ.

6 **B. Physical RFC**

7 Paul C. Jones, D.P.M., was Plaintiff’s treating physician regarding her foot
8 problems. He performed a bunionectomy on Plaintiff’s right foot in February
9 2011. (Tr. at pp. 362-63). In April 2011, he wrote a note “To Whom It May
10 Concern” which stated: “The [Plaintiff] has been under my care for a while now
11 and has had continued debilitation secondary to pain on ambulation of bilateral
12 feet.” (Tr. at p. 470). Dr. Jones did not, however, opine what this “debilitation”
13 specifically meant in terms of Plaintiff’s physical residual functional capacity.
14 Moreover, Dr. Jones’s written statement is significantly colored by Plaintiff’s
15 unexplained failure to attend many of the scheduled appointments she had with
16 him. (Tr. at pp. 365, 413, 489, 490 and 494). On May 4, 2011, Dr. Jones noted the
17 Plaintiff was a “no show” for an appointment and that “[s]he has a habit of doing
18 this.” (Tr. at p. 413). On July 14, 2011, Dr. Jones noted the Plaintiff had missed
19 an appointment on Monday. According to the doctor: “She was supposed to call
20 in and get in to see me. I definitely believe this demonstrates a lack of adherence
21 and poses a risk to the patient in doing any further surgery” (Tr. at p. 494).

22 Plaintiff’s non-compliance with treatment constitutes a clear and convincing
23 reason for the ALJ to discount Plaintiff’s credibility regarding pain in her feet.
24 *Smolen v. Chater*, 80 F.3d 1273, 1283-84 (9th Cir. 1996). In turn, it constitutes a
25 “specific and legitimate” reason for rejecting Dr. Jones’s April 2011 statement to
26 the extent it is to be construed as an opinion that Plaintiff was physically
27 precluded from performing any type of work or that she was more physically
28 limited than found by the ALJ. *Lester*, 81 F.3d at 830.

1 **USE OF MEDICAL-VOCATIONAL RULES (GRIDS)**

2 At step five, the Commissioner has the burden of establishing there are a
3 significant number of jobs in the national economy the claimant can perform. The
4 Commissioner may meet this burden by taking the testimony of a vocational
5 expert, or by consulting the grids. *Tackett v. Apfel*, 180 F.3d 1094, 1100-1101 (9th
6 Cir. 1999). For the grids to be inadequate, the non-exertional limitations must be
7 “sufficiently severe so as to significantly limit the range of work permitted by the
8 claimant’s exertional limitations.” *Hoopai v. Astrue*, 499 F.3d 1071, 1075 (9th Cir.
9 2007). When “a claimant’s non[-]exertional limitations are in themselves enough
10 to limit his range of work, the grids do not apply, and the testimony of a vocational
11 expert is required to identify specific jobs within the claimant’s abilities.” *Polny*
12 *v. Bowen*, 864 F.2d 661, 663-64 (9th Cir. 1988).

13 Here, the ALJ found as follows:

14 If the claimant had the residual functional capacity to
15 perform the full range of light work, considering the
16 claimant’s age, education, and work experience, a
17 finding of “not disabled” would be directed by
18 Medical-Vocational Rule 202.17. However, the
19 additional limitations have little or no effect on the
20 occupational base of unskilled light work. A finding
21 of “not disabled” is therefore appropriate under the
22 framework of this rule. Given an individual with the
23 same age, education, and work experiences as the
24 claimant in this case, the types of exertional and
25 physical non-exertional limitations, which are present
26 in the case at hand, would not significantly erode the
27 job base [at] the sedentary and light job level. See
28 SSR 83-10, SSR 83-12, SSR 83-14, SSR 85-5, and
SSR 96-9p.

(Tr. at p. 36).

Other than making a conclusory assertion that a vocational expert was
required because of the presence of non-exertional limitations, Plaintiff does not
explain how her particular non-exertional limitations, as determined by the ALJ,
significantly eroded the job base at the sedentary and light levels. Plaintiff does
not take issue with the particular Social Security Rulings [SSRs] cited by the ALJ

1 in support of his conclusion that it was appropriate to rely on the grids. As
2 discussed above, the ALJ's determination regarding the extent of Plaintiff's
3 exertional and non-exertional limitations is supported by substantial evidence in
4 the record. Because those non-exertional limitations were not sufficient in
5 themselves to limit Plaintiff's range of light work, the ALJ did not need to consult
6 a vocational expert and appropriately relied on the grids.

7
8 **CONCLUSION**

9 Defendant's Motion For Summary Judgment (ECF No. 17) is **GRANTED**
10 and Plaintiff's Motion For Summary Judgment (ECF No. 14) is **DENIED**. The
11 Commissioner's decision denying benefits is **AFFIRMED**.

12 **IT IS SO ORDERED.** The District Executive shall enter judgment
13 accordingly and forward copies of the judgment and this order to counsel of
14 record.

15 **DATED** this 26th of February, 2015.

16
17 *s/Lonny R. Suko*

18 _____
19 LONNY R. SUKO
20 Senior United States District Judge