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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ryan Christopher Melton,

10 Plaintiff,

11 v.

12 Commissioner of Social Security,

13 Defendant.
14

No. CV-14-02144-PHX-JAT

ORDER

15 Plaintiff Ryan Christopher Melton (“Plaintiff”) appeals the Commissioner of
16 Social Security’s (the “Commissioner”) denial of a request for waiver of recovery for
17 overpayment of Social Security benefits. The Court now rules on his appeal.

18 **I. Factual and Procedural Background**

19 On December 1, 2003, Plaintiff was found to be disabled by the Social Security
20 Administration (“SSA”), based upon mental impairments which included Tourette’s
21 Syndrome, bipolar disorder, attention deficit disorder, and obsessive compulsive disorder.
22 (Tr. at 24). On May 1, 2004, Plaintiff began receiving Supplemental Security Income
23 (“SSI”). (Tr. at 48). In 2006, Plaintiff began working. (Tr. at 64, 159). During this time,
24 Plaintiff’s monthly earnings exceeded the amount permitted by the SSA to still receive
25 supplemental income. (Tr. at 64, 66-67). In November 2010, the SSA terminated
26 Plaintiff’s benefits retroactively to November 2007 and demanded repayment of
27 \$39,417.10 for benefits paid after that date. (Tr. at 70).

28 Plaintiff’s initial request for waiver of the overpayment and subsequent requests

1 for reconsideration were denied. (Tr. at 75, 98-101, 108, 114). On October 19, 2012, an
2 Administrative Law Judge (“ALJ”) conducted a hearing to review Plaintiff’s request for
3 waiver. (Tr. at 150-89). On December 12, 2012, the ALJ denied Plaintiff’s request to
4 waive the overpayment of benefits and found Plaintiff liable for \$36,916.10.¹ (Tr. at 19-
5 21). After the SSA Appeals Council denied review, the ALJ’s decision became the final
6 decision of the Commissioner. (Tr. at 4-6). Plaintiff then timely filed an appeal with the
7 Court, seeking judicial review. (Doc. 1).

8 **A. The ALJ Hearing**

9 Plaintiff did not appear before the ALJ at the hearing on October 19, 2012. (Tr. at
10 152). Instead, Plaintiff’s father acted as his representative and Plaintiff’s mother (“Mrs.
11 Melton”) testified on his behalf. (Tr. at 155-56). Mrs. Melton initially testified that
12 Plaintiff possessed a driver’s license, drove himself to and from work, and handled his
13 own finances.² (Tr. at 159). However, Mrs. Melton later testified that Plaintiff was unable
14 to make any major financial decisions. (Tr. at 166). Mrs. Melton also testified that
15 Plaintiff’s psychological problems prevent him from being able to fully comprehend or
16 respond to daily life occurrences. (Tr. at 167).

17 Mrs. Melton further testified that she and her husband had made repeated
18 notifications to the SSA of Plaintiff’s employment status, in writing, by telephone, and in
19 person, beginning in late 2007 or early 2008. (Tr. at 142, 162-64, 169, 170, 172-73). Mrs.
20 Melton also testified the notifications were made at Plaintiff’s request and Plaintiff was
21 aware his employment could affect his benefits. (Tr. at 161-64). Mrs. Melton testified
22 that to her knowledge, Plaintiff had never been told that he should return any benefit
23 checks that he received. (Tr. at 182-83). However, Mrs. Melton admitted that neither she

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25 ¹ The ALJ noted in his December 12, 2012 decision that \$2,501 had already been
26 recouped by the Internal Revenue Service from Plaintiff’s federal income tax return. (Tr.
at 25).

27 ² At the oral arguments on September 15, 2015, Plaintiff’s counsel claimed that
28 during oral arguments Mrs. Melton “misspoke” and thought the ALJ was asking whether
Plaintiff could handle cash. However, the record contains no evidence to support this
claim.

1 nor Plaintiff had asked the SSA what they should do with the checks after they reported
2 Plaintiff's employment. (Tr. at 183).

3 **B. The ALJ's Findings**

4 On December 12, 2012, the ALJ returned an unfavorable ruling against Plaintiff.
5 (Tr. at 19). The ALJ found: (1) Plaintiff was overpaid \$39,417.10 in benefits between
6 November 2007 and July 2010; (2) Plaintiff was at fault in causing and accepting the
7 overpayment; and (3) recovery of the overpayment is not waived. (Tr. at 24-25). The ALJ
8 noted that "[a]lthough [Plaintiff's] impairments are mental disorders, he did complete his
9 GED, he drives himself to and from work, and he manages his own finances." (Tr. at 24).
10 The ALJ also observed that though "claimant's parent's allege they help him with
11 handling his money . . . the records do not indicate the need for a representative payee."
12 (*Id.*) The ALJ found the Plaintiff "should be able to comprehend the basic information
13 about reporting work activity to the SSA." (*Id.*) Further, the ALJ noted the evidence and
14 testimony provided demonstrated Plaintiff was aware of his reporting requirements and
15 that his benefits may be affected by his employment. (Tr. at 24-25). The ALJ found no
16 representation by the SSA that "substantial gainful activity could be performed for years
17 and that benefits would continue to be paid during that time." (Tr. at 24). Lastly, the ALJ
18 rejected Plaintiff's claim that he was without fault in accepting the overpayment, instead
19 finding that Plaintiff was notified by the SSA that work may affect his benefits and failed
20 to inquire further when his benefit payments continued. (Tr. at 25).

21 **II. Standard of Review**

22 The Court has the authority to review the final decision of the Commissioner as to
23 any fact to determine whether it is supported by substantial evidence. *See* 42 U.S.C. §
24 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported
25 by substantial evidence, shall be conclusive . . ."). The Court will set aside the ALJ's
26 findings only if they are "based on legal error or are not supported by substantial
27 evidence." *Hiler v. Astrue*, 687 F.3d 1208, 1211 (9th Cir. 2012) (citing *McCartey v.*
28 *Massanari*, 298 F.3d 1072, 1075 (9th Cir. 2002)). Substantial evidence is "more than a

1 mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable
2 mind might accept as adequate to support a conclusion.” *Andrews v. Shalala*, 53 F.3d
3 1035, 1039 (9th Cir. 2000) (citing *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
4 1989)). If the evidence can have more than one interpretation, “one of which supports the
5 ALJ's decision, the ALJ's conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d
6 947, 954 (9th Cir. 2002). The ALJ is responsible for determining credibility and resolving
7 ambiguities. *Andrews*, 53 F.3d at 1039 (internal citation omitted).

8 **III. Legal Standard**

9 The Social Security Act provides that repayment for SSI benefits may be waived
10 “with a view to avoiding penalizing [an] individual . . . who was without fault in
11 connection with the overpayment, if adjustment or recovery on account of such
12 overpayment in such case would defeat the purposes of this subchapter, or be against
13 equity and good conscience . . .” 42 U.S.C. § 1383(b)(1)(B); *see also* 20 CFR § 416.550.
14 Thus, to qualify for waiver of repayment, a plaintiff must be (1) without fault; and (2)
15 repayment would either defeat the purpose of the Act or be against equity and good
16 conscience. *See* 42 U.S.C. § 404(b); *Quinlivan v. Sullivan*, 916 F.2d 524, 527 (9th Cir.
17 1990).

18 Fault, as it pertains to the overpayment of SSI benefits, is defined as:

- 19 (a) An incorrect statement made by the individual which he knew or
20 should have known to be incorrect; or (b) Failure to furnish
21 information which he knew or should have known to be material; or
22 (c) With respect to the overpaid individual only, acceptance of a
23 payment which he either knew or could have been expected to know
was incorrect.

24 *Anderson v. Sullivan*, 914 F.2d 1121, 1122 (9th Cir. 1990) (quoting 20 C.F.R. 404.507);
25 *see also* 20 C.F.R. § 416.552. When determining fault, the SSA “will consider all
26 pertinent circumstances, including the individual's age and intelligence, and any physical,
27 mental, educational, or linguistic limitations . . . the individual has.” 20 C.F.R. § 404.507.
28 The fault determination is “highly subjective, highly individualized, and highly

1 dependent on the interaction between the intentions and state of mind of the claimant and
2 the peculiar circumstances of his situation.” *Albalos v. Sullivan*, 907 F.2d 871, 873 (9th
3 Cir. 1990) (quoting *Elliott v. Weinberger*, 564 F.2d 1219, 1233 (9th Cir.1977), *aff'd in*
4 *part and rev'd in part sub nom. Califano v. Yamasaki*, 442 U.S. 682, 687–88 (1979)).

5 Additionally, even if the SSA was at fault for making an overpayment, “that fact
6 does not relieve the overpaid individual . . . from liability for repayment if such
7 individual is not without fault.” 20 C.F.R. § 404.507. The individual bears the burden of
8 proving he or she is without fault with regards to the overpayment. *Harrison v. Heckler*,
9 746 F.2d 480, 482 (9th Cir. 1984).

10 **IV. Discussion**

11 The outcome of this case hinges on the first step of the waiver analysis: whether
12 the ALJ erred in determining that Plaintiff was at fault in connection with the
13 overpayment of SSI. (Doc. 13 at 7; Doc. 15 at 6). Plaintiff argues that the ALJ failed to
14 adequately consider Plaintiff’s mental disabilities when making her determination of
15 fault. (Doc. 13 at 7). Plaintiff further claims the Commissioner’s decision was the result
16 of “prohibited discriminatory treatment of Plaintiff at the hearing since [Plaintiff’s]
17 substantial mental impairments were not taken into consideration by the ALJ.” (*Id.* at 9).
18 Finally, Plaintiff claims the ALJ failed to consider that repeated notices had been given to
19 the SSA concerning Plaintiff’s employment and that these notices “are also requests for
20 appropriate action or guidance.” (*Id.*)

21 In response, Defendant asserts the ALJ’s decision was based upon “substantial
22 evidence and the proper legal standards.” (Doc. 15 at 6). Defendant further asserts the
23 ALJ properly considered the record and the testimony presented regarding Plaintiff’s
24 mental impairments, including that there was no representative payee on record; there
25 was conflicting testimony presented regarding Plaintiff’s mental capabilities; and that
26 notification of Plaintiff’s employment status was provided to the SSA by Plaintiff’s
27 parents at his request. (*Id.* at 7-11).

28 The ALJ denied Plaintiff’s request for waiver of repayment, finding Plaintiff at

1 fault for causing and accepting overpayment. (Tr. at 24). She noted that Plaintiff had been
2 repeatedly advised in writing that working may affect his benefits. (Tr. at 27, 38, 43, 49,
3 164-65). Additionally, Plaintiff requested his parents notify the SSA of his employment,
4 which they did repeatedly, beginning in late 2007 or early 2008. (Tr. at 142, 162). The
5 ALJ concluded Plaintiff “could have held onto his benefit checks while working” and
6 “did not follow up in questioning how his benefits would be affected by continued work.”
7 (Tr. at 25).

8 Plaintiff’s argues that the ALJ “made short shrift” of Plaintiff’s mental disabilities
9 and challenges, and did not consider them in making her decision. (Doc. 13 at 7).
10 However, this is not supported by the record. The ALJ stated in her decision that
11 “[a]though the claimant’s impairments are mental disorders, he did complete his GED, he
12 drives himself to and from work, and he manages his own finances.” (Tr. at 24).
13 Additionally, the ALJ noted that Plaintiff “does not have a representative-payee to assist
14 him in managing benefits payments” and “[t]hese factors demonstrate he should be able
15 to comprehend the basic information about reporting work activity to the SSA.” *Id.* The
16 ALJ’s findings are supported by the testimony of Mrs. Melton, and demonstrate the ALJ
17 did consider evidence and testimony pertaining to Plaintiff’s mental limitations when
18 making her determination. (Tr. at 158-59, 162).

19 Plaintiff cites *Fremont v. Sullivan*, 959 F.2d 240, 1992 WL 68263 (9th Cir. Apr. 7,
20 1992) (unpublished table decision) to support his argument. (Doc. 13 at 7-8). However,
21 Plaintiff overlooks several important differences between *Fremont* and the present action.
22 First, the plaintiff in *Fremont* claimed he was not aware of his duty to report earnings
23 from another source. *Fremont*, 1992 WL 68263, at *1. This is vastly different from here,
24 where Plaintiff was not only aware of his responsibility to notify the SSA of his
25 employment status, but repeatedly did so. (Tr. at 142, 161-62). Second, in *Fremont* the
26 court found the plaintiff without fault because there was insufficient evidence to show the
27 plaintiff was aware of the requirement to report his income. *Fremont*, 1992 WL 68263,
28 at *3. Here, the record and Mrs. Melton’s testimony provide substantial evidence to infer

1 Plaintiff was aware his payments were incorrect. (Tr. at 27, 38, 43, 49, 52, 142, 162-64).

2 Plaintiff also claims the “uncontradicted evidence presented at the hearing was
3 that [Plaintiff] cannot handle his own finances without assistance.” (Doc. 13 at 7).
4 However this claim is unsupported by the record and the testimony of Mrs. Melton, who
5 testified first that Plaintiff handled his own finances and later that Plaintiff was unable to
6 “handle any important financial matter” by himself. (Tr. at 159, 166). Additionally, Mrs.
7 Melton testified that Plaintiff was aware that he was required to report his employment to
8 the SSA, and requested his parents perform the notification. (Tr. at 161-62). Thus, there
9 is contradictory evidence regarding the severity of Plaintiff’s mental limitations. “The
10 trier of fact and not the reviewing court must resolve conflicts in the evidence, and if the
11 evidence can support either outcome, the court may not substitute its judgment for that of
12 the ALJ.” *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992).

13 Plaintiff further claims the ALJ’s failure to consider Plaintiff’s mental
14 impairments constituted discrimination on the basis of his disability.³ (Doc. 13 at 9).
15 However, the ALJ did consider evidence and testimony concerning Plaintiff’s mental
16 impairments when making her fault determination. (Tr. at 24). As previously discussed,
17 the ALJ specifically mentioned Plaintiff’s mental conditions in her decision and the
18 evidence she considered. (*Id.*) The ALJ could have given greater weight to Mrs. Melton’s
19 testimony regarding Plaintiff’s limitations. (Tr. at 160-61, 166-68, 183). However, the
20 ALJ noted discrepancies between the record and the testimony presented by Mrs. Melton,
21 specifically regarding Plaintiff’s need for his parents to help with his finances. (Tr. at 24,
22 159, 166). The Court notes determinations of credibility fall within the purview of the
23 ALJ. *See Andrews*, 53 F.3d at 1039-40 (citation omitted). Thus, because the ALJ did
24 consider Plaintiff’s mental impairments when making her decision, Plaintiff’s claim of

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26 ³ At the oral arguments on September 15, 2015, Plaintiff’s counsel also claimed
27 the ALJ violated Plaintiff’s due process rights by failing to grant a continuance to the
28 hearing conducted on October 19, 2012. However, Plaintiff’s brief does not contain this
claim. The Court will review “only those issues argued specifically and distinctly in a
party’s brief.” *Carroll v. Nakatani*, 342 F.3d 934, 944 (9th Cir. 2003) (citing *Greenwood*
v. FAA, 28 F.3d 971, 977 (9th Cir.1994)).

1 discrimination fails.

2 Plaintiff's remaining claim is that the ALJ failed to consider the significance of
3 repeated notifications presented to the SSA for the purpose of notifying them of
4 Plaintiff's employment. (Doc. 13 at 9). Plaintiff contends that these notices are "also
5 requests for appropriate action and/or guidance." (*Id.*) However, even if the SSA is at
6 fault, it does not also relieve Plaintiff of any fault. *See* 20 C.F.R. § 404.507; 20 C.F.R. §
7 416.552. Plaintiff's request to his parents to notify the SSA demonstrates he was aware of
8 his responsibility to report his employment. (Tr. 163-64). Further, the repeated
9 notifications to the SSA concerning his employment demonstrate that Plaintiff was aware
10 his benefits may have been incorrect. (Tr. 163, 169). Therefore, the ALJ properly
11 determined Plaintiff accepted a payment "which he knew or could have been expected to
12 know was incorrect." *See* 20 C.F.R. § 404.507.

13 Plaintiff argues the ALJ violated "not only controlling precedent but also the
14 SSA's own rules" by devoting only a single line to the determination that collection of
15 the overpayment was not against equity and good conscience. (Doc. 13 at 10). However,
16 because the ALJ did not find Plaintiff to be without fault, the ALJ did not need to make a
17 determination regarding the financial requirement for a waiver or to discuss the subject at
18 length. *See Anderson*, 914 F.2d at 1124 ("The ALJ did not address whether appellant
19 meets the financial requirement for waiver . . . because of the finding that appellant was
20 at fault regarding the overpayment.").

21 **V. Conclusion**

22 Based on the foregoing, the Court finds the Commissioner's decision to deny
23 waiver for overpayment is supported by substantial evidence.

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IT IS ORDERED that the decision of the Administrative Law Judge is affirmed.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment accordingly. The judgment will serve as the mandate of this Court.

Dated this 17th day of September, 2015.



James A. Teilborg
Senior United States District Judge