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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tashivea Renee Kirkendoll,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-16-04461-PHX-DLR

ORDER

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16 Pursuant to 42 U.S.C § 405(g), Plaintiff Tashivea Kirkendoll appeals the final
17 decision of Defendant the Commissioner of the Social Security Administration
18 (“Commissioner”). The Court affirms.

19 **I. Background**

20 Kirkendoll applied for disability insurance benefits in September 2012, alleging
21 disability beginning December 10, 2011. (A.R. 28.) After state agency denials,
22 Kirkendoll appeared for a hearing and testified before an Administrative Law Judge
23 (“ALJ”). (*Id.* at 53.) Following the hearing, the ALJ issued a decision finding that
24 Kirkendoll was disabled for a two-year period from May 3, 2012 through April 3, 2014,
25 but that Kirkendoll experienced sufficient improvement after April 3, 2014 to return to
26 work. (*Id.* at 28-44.) In doing so, the ALJ found that Kirkendoll has a number of severe
27 impairments, only one of which is at issue in this appeal: Kirkendoll’s Chiari I
28 malformation, which is a defect in the cerebellum—the part of the brain that controls

1 balance—that can cause headaches. (*Id.* at 32; Doc. 17 at 3-5.) The ALJ’s decision
2 became the Commissioner’s final decision when the Social Security Administration
3 Appeals Council denied Kirkendoll’s request for review, and this appeal followed. (A.R.
4 1-6.)

5 **II. Standard of Review**

6 On appeal, the district court does not review the ALJ’s decision de novo or
7 determine whether the claimant is disabled. Instead, the court reviews only those issues
8 raised by the party challenging the ALJ’s decision and reverses only if the decision is not
9 supported by substantial evidence or is based on harmful legal error. *Orn v. Astrue*, 495
10 F.3d 625, 630 (9th Cir. 2007); *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).
11 Substantial evidence is more than a scintilla, less than a preponderance, and relevant
12 evidence that a reasonable person might accept as adequate to support a conclusion
13 considering the record as a whole. *Orn*, 495 F.3d at 630.

14 **III. Discussion**

15 Kirkendoll raises two issues on appeal: did the ALJ err in finding that Kirkendoll
16 (1) became disabled on May 3, 2012 instead of December 10, 2011, and (2) improved
17 sufficiently after April 3, 2014 that she could again engage in substantial gainful activity?
18 (Doc. 17 at 1; Doc. 19 at 1.) As previously noted, this appeal focuses on the limiting
19 effects of Kirkendoll’s Chiari I malformation. Therefore, the Court considers whether
20 substantial evidence supports the ALJ’s conclusion that the effects of Kirkendoll’s Chiari
21 I malformation were not disabling before May 3, 2012 or after April 3, 2014.

22 **A. Disability Onset Date**

23 The ALJ did not err in finding that Kirkendoll became disabled on May 3, 2012
24 rather than December 10, 2011. Kirkendoll submitted relatively few treatment records
25 prior to May 2012 and, although records before that date note the existence of neuropathy
26 and lower back pain, the record lacks evidence of regular treatment for these conditions
27 during that time. (A.R. 34, 327-29.) In February 2012, Kirkendoll complained to Dr.
28 George Wang of numbness and tingling bilaterally in her lower extremities and her

1 neurological exam showed signs of peripheral neuropathy, but her gait and station
2 remained normal. (*Id.* at 34, 287-88.) Further, Kirkendoll did not have her initial
3 consultation with Dr. Vikram Kumar, her neurosurgeon, until August 2012, and even
4 then she reported that her legs had been shaky for only a couple months. (*Id.* at 34, 306.)
5 Based on this evidence, it was reasonable for the ALJ to conclude that Kirkendoll would
6 have been seeking and receiving regular medical treatment for her Chiari I malformation
7 if its effects were disabling as early as December 2011.

8 Moreover, although Kirkendoll testified that she stopped working in December
9 2011 because she could no longer stand long enough to perform her job, the ALJ noted
10 that earnings records indicated Kirkendoll did not earn any noteworthy income since
11 2009. (*Id.* at 35, 171.) It therefore was reasonable for the ALJ to infer that, at least prior
12 to May 2012, something other than the effects of Kirkendoll’s Chiari I malformation kept
13 her from working.

14 Kirkendoll points to records that she experienced headaches prior to May 2012 as
15 evidence that her disability began in December 2011. (Doc. 19 at 2.) But simply because
16 there is some evidence contradicting the ALJ’s conclusion does not mean that there is not
17 also substantial evidence supporting it. Nor does the mere existence of symptoms
18 automatically mean that they are disabling. Kirkendoll essentially asks the Court to
19 reweigh the evidence, which is not within the Court’s purview. The Court finds no error.

20 **B. Sufficient Medical Improvement**

21 Next, the Court considers whether substantial evidence supports the ALJ’s
22 conclusion that Kirkendoll’s impairments improved sufficiently after April 3, 2014 to
23 allow her to return to work. A claimant is no longer entitled to disability insurance
24 benefits when (1) “there has been any medical improvement in the [claimant’s]
25 impairment” and (2) the claimant “is now able to engage in substantial gainful activity.”
26 42 U.S.C. § 423(f)(1). When assessing whether a claimant has experienced medical
27 improvement, the ALJ must “compare the current medical severity” of the claimant’s
28 impairment to its severity “at the time of the most recent favorable medical decision that

1 [the claimant] w[as] disabled or continued to be disabled.” 20 C.F.R. § 404.1594(b)(7).
2 This matter is a so-called “closed period” case, meaning the ALJ found in a single
3 decision that Kirkendoll was disabled for a period of time but has since improved.
4 Nonetheless, the Ninth Circuit has held that the same standards apply. *Attmore v. Colvin*,
5 827 F.3d 872, 876-77 (9th Cir. 2016).

6 At the outset, the ALJ made the appropriate comparison for a closed period
7 disability case. The ALJ thoroughly discussed the limiting effects of Kirkendoll’s
8 impairments during the closed period and assessed a residential functional capacity
9 (“RFC”) that precluded sustained work. (A.R. 35-41.) Kirkendoll does not quarrel with
10 this part of the ALJ’s decision. The ALJ then discussed the medical evidence after April
11 3, 2014 and assessed an RFC that mirrored the RFC for the closed period in all but one
12 respect: the ALJ found that from May 3, 2012 through April 3, 2014 Kirkendoll likely
13 would miss two days of work per month due to her impairments, but that after April 3,
14 2014 she would not miss work this frequently. (*Id.* at 35, 41-42.) Based on vocational
15 expert testimony, the ALJ concluded that Kirkendoll would be able to sustain work
16 without this attendance limitation. Thus, the sole issue on appeal is whether substantial
17 evidence supports the ALJ’s conclusion that, after April 3, 2014, Kirkendoll’s Chiari I
18 malformation improved enough that she no longer would be likely to miss two days of
19 work per month.

20 Substantial evidence supports the ALJ’s decision. First, Kirkendoll lost a
21 significant amount of weight following weight loss surgery and, as a result, experienced
22 improvement in the severity and frequency of her headaches. (*Id.* at 42, 477-83.)
23 Medical records from 2014 indicate that Kirkendoll still experienced low level
24 headaches, “but nothing very bothersome.” (*Id.* at 479.) Moreover, Dr. Kumar noted that
25 surgery might still be required in the future, but he was skeptical that a Chiari
26 compression surgery would be helpful. (*Id.* at 480.) Instead, he believed Kirkendoll’s
27 headaches were more likely migraines than the tussive headaches typically associated
28 with Chiari malformations, and elected to continue with medical management of her

1 headaches (such as physical therapy) rather than surgical intervention. (*Id.* at 477-79.)
2 Although Kirkendoll limits her appeal to her Chiari I malformation, the Court notes that
3 the ALJ also detailed improvement in Kirkendoll’s other conditions following her weight
4 loss. (*Id.* at 42.)

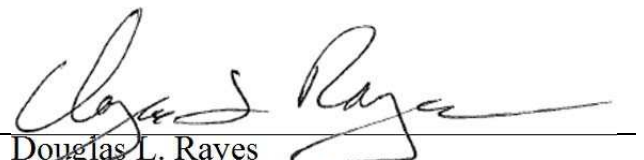
5 Once again, Kirkendoll points to the continued existence of headaches after April
6 3, 2014 as evidence that she remained disabled. In so doing, Kirkendoll again asks the
7 Court to reweigh the evidence rather than assess whether substantial evidence supports
8 the conclusion that the ALJ reached. Where, as here, “the evidence is susceptible to more
9 than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s
10 conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).
11 The Court finds no error.

12 **IV. Conclusion**

13 The ALJ’s decision is free of harmful legal error and supported by substantial
14 evidence. Therefore,

15 **IT IS ORDERED** that the Commissioner’s decision is **AFFIRMED**. The Clerk
16 of the Court shall terminate this case.

17 Dated this 27th day of March, 2018.

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22 Douglas L. Rayes
23 United States District Judge
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