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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Elizabeth Parker,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-14-2135-TUC-DTF

ORDER

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15 Plaintiff Elizabeth Parker filed this action pursuant to 42 U.S.C. § 405(g) seeking
16 judicial review of a final decision by the Commissioner of Social Security
17 (Commissioner). (Doc. 1.) Before the Court are Parker's Opening Brief and Defendant's
18 Responsive Brief. (Docs. 31, 32.) The parties have consented to Magistrate Judge
19 jurisdiction. (Doc. 13.) Based on the pleadings and the administrative record submitted to
20 the Court, the Commissioner's decision is affirmed.

21 **PROCEDURAL HISTORY**

22 Parker filed an application for Disability Insurance Benefits (DIB) and
23 Supplemental Security Income (SSI) on September 9, 2011. (Administrative Record (AR)
24 203, 210.) She alleged disability from August 12, 2011. (AR 203, 210.) Parker's
25 application was denied upon initial review (AR 93-94) and on reconsideration (AR 121-
26 22). A hearing was held on January 25, 2013 (AR 28-58), after which ALJ Laura Speck
27 Havens found, at Step Five, that Parker was not disabled (AR 13-23). The Appeals
28 Council denied Parker's request to review the ALJ's decision. (AR 1.)

1 **FACTUAL HISTORY**

2 Parker was born on December 11, 1960, making her 50 years of age at the onset
3 date of her alleged disability. (AR 203.) Parker last worked in 2008. She had been
4 employed as a respiratory therapist for approximately twenty years, as a CPS case aide
5 and at call centers. (AR 235, 246.) On August 12, 2011, Parker intentionally overdosed
6 on medication and was admitted to the hospital. (AR 298.)

7 The ALJ found Parker had severe impairments, depression, bipolar disorder, and
8 schizophrenia. (AR 16.) She found that Parker did not meet a listed impairment. (AR 17.)
9 The ALJ concluded that Parker had the Residual Functional Capacity (RFC) to do work
10 at all exertional levels, but limited her to simple job instructions and occasional
11 interaction with co-workers, the public, and supervisors. (AR 19.) Parker could not
12 perform her past relevant work. (AR 21.) However, the ALJ determined (based on
13 testimony from a vocational expert) that Parker could perform other work available in the
14 national economy. (AR 22-23.)

15 **STANDARD OF REVIEW**

16 The Commissioner employs a five-step sequential process to evaluate SSI and
17 DIB claims. 20 C.F.R. §§ 404.1520; 416.920; *see also Heckler v. Campbell*, 461 U.S.
18 458, 460-462 (1983). To establish disability the claimant bears the burden of showing she
19 (1) is not working; (2) has a severe physical or mental impairment; (3) the impairment
20 meets or equals the requirements of a listed impairment; and (4) claimant’s RFC
21 precludes her from performing her past work. 20 C.F.R. §§ 404.1520(a)(4),
22 416.920(a)(4). At Step Five, the burden shifts to the Commissioner to show that the
23 claimant has the RFC to perform other work that exists in substantial numbers in the
24 national economy. *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). If the
25 Commissioner conclusively finds the claimant “disabled” or “not disabled” at any point
26 in the five-step process, she does not proceed to the next step. 20 C.F.R.
27 §§ 404.1520(a)(4), 416.920(a)(4).

1 **Step Three**

2 Parker argues the ALJ erred in finding that she did not meet listing 12.03,
3 paragraph C(3). “Conditions contained in the ‘Listing of Impairments’ are considered so
4 severe that they are irrebuttably presumed disabling, without any specific finding as to
5 the claimant’s ability to perform his past relevant work or any other jobs.” *Lester v.*
6 *Chater*, 81 F.3d 821, 828 (9th Cir. 1995), *as amended* (Apr. 9, 1996) (citing 20 C.F.R.
7 § 404.1520(d)).

8 The claimant bears the burden to establish that she meets a listing. *Burch v.*
9 *Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). At Step Three, the ALJ is required to
10 evaluate the relevant evidence and make sufficient findings for review. *See Lewis v.*
11 *Apfel*, 236 F.3d 503, 512 (9th Cir. 2001); *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir.
12 1990); *Gonzalez v. Sullivan*, 914 F.2d 1197, 1200 (9th Cir. 1990).

13 The impairment listed at 12.03 is captioned as “Schizophrenic, Paranoid and Other
14 Psychotic Disorders” and provides:

15 Characterized by the onset of psychotic features with deterioration from a
16 previous level of functioning.
17 The required level of severity for these disorders is met when the
18 requirements in both A and B are satisfied, or when the requirements in C
19 are satisfied.

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19 C. Medically documented history of a chronic schizophrenic, paranoid, or
20 other psychotic disorder of at least 2 years’ duration that has caused more
21 than a minimal limitation of ability to do basic work activities, with
22 symptoms or signs currently attenuated by medication or psychosocial
23 support, and one of the following

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23 3. Current history of 1 or more years’ inability to function outside a highly
24 supportive living arrangement, with an indication of continued need for
25 such an arrangement.

25 As to paragraph C(3), the ALJ found “there is no evidence to suggest that the claimant
26 needs to live in a highly structured living arrangement. The claimant has demonstrated
27 the ability to care for personal needs, interact socially and obtain and sustain
28 employment.” (AR 18-19.)

1 First, Parker argues the ALJ failed to cite any record evidence to support her
2 evaluation of Parker’s functional abilities. Although the ALJ did not cite record evidence
3 in her discussion of paragraph C, immediately preceding that analysis she cited to the
4 record in evaluating the paragraph B criteria. (AR 18-19.) Specifically, the ALJ discussed
5 Parker’s limitations in activities of daily living and social functioning with citations to the
6 record. (AR 18.) Thus, there was no error in the ALJ’s citations. Parker also argues that
7 the level of functioning found by the ALJ is counter to the testimony from her sister and
8 her medical records that establish her schizophrenia and her need for social and
9 therapeutic support. Parker provided no record citations for this argument and failed to
10 establish that the ALJ’s finding was not supported by substantial evidence.

11 Second, Parker argues that her father’s home qualifies as a “highly supportive
12 living environment,” and that the ALJ erred by not considering that. To qualify, the
13 environment must be “highly structured and supportive.” 20 C.F.R. pt. 404, subpt. P, app.
14 1, § 12.00F. Examples of such a placement are a “hospital, halfway house, [or] board and
15 care facility.” *Id.* The substance of Parker’s argument is that her stability depended upon
16 her family support. Although a home may qualify, Parker provided no record citations to
17 support her assertion that her father’s home was equivalent to the regulatory examples
18 described above. She has not presented substantive evidence of structure and support tied
19 to her living environment. Accordingly, Parker failed to establish an error at Step Three.

20 **Credibility**

21 Parker challenges the ALJ’s finding on her credibility. The ALJ discounted the
22 following testimony that Parker gave at the hearing:

23 On a good night, I’ll sleep eight hours. . . . [On a bad night,] None.

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25 I had this thought that someone told me that I was dead and not to
26 talk to anybody. So I didn’t talk to my daughter – . . . And, every time she
27 called, I didn’t answer the phone. . . . I mean, I don’t know how you can
28 work like that if that’s happening. Plus, my sleep issues – . . . I mean, if I
don’t get a good night’s sleep, I can’t function during the day.

. . . .

1 I thought that my brain was being used by the – by the government
2 satellites for some – something going on in Syria. . . . My biggest delusion
3 was that the government had a weapon made out of the – like, a sun
4 weapon. . . . And it was going to kill me.

[In telling reality from non-reality,] [s]ome days are better than others, you
know.

5 (AR 38, 40-41, 42-43, 44.)

6 The ALJ found that Parker’s testimony was not fully credible. Specifically, she
7 found that Parker experienced improvement with medication management and
8 compliance; she was bored from not working and believed she was capable of working,
9 but chose to discontinue employment services; her delusional thinking does not
10 significantly affect her ability to perform activities of daily living or interact socially; and
11 her limitations were not fully consistent with the objective medical evidence. (AR 20.)

12 In general, “questions of credibility and resolution of conflicts in the testimony are
13 functions solely” for the ALJ. *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007)
14 (quoting *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982)). When an ALJ finds
15 that a claimant’s subjective symptom testimony is not credible, she must set forth
16 specific, clear and convincing reasons for discounting it to ensure a reviewing court that
17 the determination is not arbitrary. *Bunnell v. Sullivan*, 947 F.2d 341, 345-346 (9th Cir.
18 1995); *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014); SSR 96-7p. “If the ALJ’s
19 credibility finding is supported by substantial evidence in the record, we may not engage
20 in second-guessing.” *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

21 First, the ALJ found Parker not credible because she experienced improvement
22 with medication management and compliance. There is substantial evidence in the record
23 to support this finding. In August 2011 (the alleged onset date), Parker intentionally
24 overdosed on medication and was admitted to the hospital. (AR 298.) She reported
25 paranoia and delusions, and was rated with a GAF of 30.¹ (*Id.*) She was given a GAF of

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27 ¹ The GAF is a 100-point scale that provides a “rough estimate of an
28 individual's psychological, social, and occupational functioning used to reflect the
individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2 (9th
Cir.1998); see American Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental
Disorders* (“*DSM IV*”), at 32, 34 (4th ed. 2000). According to the *DSM-IV*, a GAF score

1 50 at the time of her release. (AR 299.) Soon thereafter she began treatment at COPE.
2 Parker's treating nurse practitioner, NP Danker rated her GAF at 55 initially, then at 60
3 until January 2012. (AR 325, 349, 351, 352.) In February, NP Danker recorded that
4 Parker continued to hear a slight static sound but reported no other hallucinations or
5 delusions, and her GAF was a 65. (AR 347.) Examining psychologist Glenn Marks rated
6 Parker's GAF at 55-60 in March 2012, and concluded she could do work that was not
7 complex or interactive. (AR 392-96.) In April 2012, COPE completed an assessment
8 finding that Parker had made significant improvement, and Parker stated that she was
9 doing much better than at the time of her last assessment and was serious about returning
10 to work. (AR 383.) NP Danker continued to rate Parker's GAF at 65 until September
11 2012, and Parker did not report any psychotic symptoms during this period. (AR 534,
12 536, 538, 541, 542, 544, 580, 582.) In October and November, NP Danker recorded a
13 GAF of 60 and, in November 2012, Parker began to report psychotic symptoms. (AR
14 584, 586.) In 2013, Parker switched from COPE to CODAC. She was still experiencing
15 delusions and treating physician's assistant rated her GAF at a 51. (AR 647.) As noted by
16 the ALJ, Parker continued during this time to attend Camp Wellness and Art
17 Awakenings. (AR 649.)

18 Parker relies upon the *Garrison* case, in which the court concluded the ALJ
19 "improperly singled out a few periods of temporary well-being from a sustained period of
20 impairment and relied on those instances to discredit Garrison." *Garrison v. Colvin*, 759
21 F.3d 995, 1018 (9th Cir. 2014). Parker fails to provide any record citations to support this
22 contention (Doc. 31 at 11-12), which greatly undermines her argument and is in violation
23 of the Local Rules. *See* LRCiv 16.1(a)(4). Parker's factual record is distinct from the
24 evidence in *Garrison*. Here, Parker improved and stabilized with treatment from the
25 alleged onset date of August 2011, through October 2012. After that time, she did have a
26 recurrence of psychotic symptoms that are evident in the November 2012 and February

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28 between 41 and 50 describes "serious symptoms" or "any serious impairment in social,
occupational, or school functioning." A GAF score between 51 to 60 describes "moderate
symptoms" or any moderate difficulty in social, occupational, or school functioning."

1 2013 records (Parker switched mental health service providers and there is a record gap
2 between these two dates, during which Parker's symptoms and treatment are unknown).
3 Although Parker's improvement was not without set-backs, there is substantial evidence
4 to support the ALJ's finding that she improved with treatment.

5 Second, the ALJ relied upon Parker's pursuit, and discontinuation, of employment
6 training finding it was inconsistent with disabling limitations. In mid-2012, Parker
7 expressed boredom without work and entered an employment training program, DKA. In
8 July 2012, COPE documented that Parker was doing well at DKA. (AR 580.) In
9 September, Parker told her case manager that she was feeling better (after suffering
10 lithium toxicity) but did not feel well enough to work and she was not going to complete
11 her DKA training. (AR 593.) Therefore, the ALJ's finding is supported by substantial
12 evidence in the record. Further, at the hearing, Parker testified that her employment
13 specialist at DKA did not think she would be able to work. (AR 33.) That testimony is
14 inconsistent with the administrative record, which documents her discontinuation of
15 employment services. (AR 593.) The ALJ may rely upon inconsistencies between a
16 claimant's testimony and the record. *See Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th
17 Cir. 2012).

18 Third, the ALJ found that Parker's statements were not fully corroborated by
19 objective medical evidence. Drs. Marks and Penner both concluded Parker could work
20 despite her reported delusions and diagnosis of schizophrenia/ schizoaffective disorder.
21 (AR 144-47, 149, 392-96.) A claimant's subjective testimony can be rejected, in part,
22 based on a doctor's opinion. *See Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155,
23 1161 (9th Cir. 2008).

24 Because the Court finds that the ALJ relied on several valid clear and convincing
25 reasons, supported by substantial evidence, to discount Parker's credibility, the Court
26 need not evaluate the remaining finding by the ALJ. *Id.* at 1163.

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1 **Treating Physician’s Assistant**

2 Parker argues the ALJ should have given weight to Ahmad Taylor, her treating
3 physician’s assistant. On February 6, 2013, PA Taylor completed a medical source
4 statement. He found that Parker had: no limitations on remembering, understanding, and
5 carrying out simple instructions; marked limitations in making judgments on simple
6 decisions, interacting appropriately with public, supervisors, and co-workers, and
7 responding to work situations; and extreme limitations on understanding, remembering
8 and carrying out complex instructions, and making complex decisions. (AR 639-41.) PA
9 Taylor stated that to his knowledge these limitations were present as of January 23, 2013.
10 (AR 640.)

11 The ALJ gave Taylor’s opinion limited weight because he is not an acceptable
12 medical source. (AR 21.) The ALJ relied upon the fact that Taylor’s assessment drew
13 from Parker’s self-reported symptoms. Also, Taylor only saw Parker once or twice before
14 providing his opinion, and he did not address her prior improvements or GAF scores
15 from her treatment records.

16 Because the opinion of a physician’s assistant is not entitled to the deference given
17 the opinion of an acceptable medical source, 20 C.F.R. §§ 404.1513(a) & (d), to discount
18 his testimony as an “other” medical source an ALJ need provide only germane reasons.
19 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (contrasting the requirement that a
20 treating physician’s opinion can be rejected only with specific, legitimate reasons). In
21 contrast to the weight given to PA Taylor, the ALJ gave significant weight to consulting
22 examiner Dr. Glenn Marks’s opinion. An ALJ is allowed to give additional weight to Dr.
23 Marks because he was an acceptable medical source.² *Johnson v. Astrue*, 303 F. App’x
24 543, 545 (9th Cir. 2008).

25 The ALJ relied upon the fact that PA Taylor’s assessment drew from Parker’s self-
26 reported symptoms. This is a germane reason to discount his opinion. *See Koepke v.*

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28 ² It is notable, however, that the ALJ’s reason for discounting PA Taylor’s
opinion is equally applicable to Dr. Marks – no treating history and no record review.

1 *Comm'r Soc. Sec. Admin.*, 490 F. App'x 864, 866 (9th Cir. 2012). For example, PA
2 Taylor stated that Parker has been unable to work for the past five years; however, he
3 gave January 2013, as the effective date for the limitations he found. PA Taylor also
4 noted that Parker reported that her impairments have impacted prior employment
5 relationships. (AR 640.) In light of the fact that PA Taylor began to see Parker only in
6 2013, this information comes solely from information provided by Parker. PA Taylor
7 referred to a psychiatric assessment (AR 639), but the administrative record does not
8 contain such an assessment from CODAC where PA Taylor worked.

9 The ALJ relied upon PA Taylor's limited relationship with Parker at the time he
10 offered his opinion. In conjunction with that finding, the ALJ noted that PA Taylor did
11 not address any of Parker's treatment records reflecting prior improvements or GAF
12 scores. These are specific reasons germane to this witness and supported by the record.

13 The ALJ did not err in giving PA Taylor's opinion limited weight. *See Fleming v.*
14 *Astrue*, 303 F. App'x 546, 548-49 (9th Cir. 2008) (finding nurse practitioner's opinion
15 was properly discounted because it relied upon self-reporting and exceeded limitations
16 found by physicians).

17 **Residual Functional Capacity**

18 Parker argues that the ALJ's RFC failed to account for her delusions and
19 disconnect from reality. The ALJ's RFC finding was supported by the opinion of
20 examining psychologist Glenn Marks and the State agency consultants. Dr. Marks's
21 opinion constitutes substantial evidence to support the ALJ's RFC finding because he
22 conducted an independent exam of Parker. *See Tonapetyan v. Halter*, 242 F.3d 1144,
23 1149 (9th Cir. 2001). Psychologist Eric Penner reviewed the records and offered an
24 opinion consistent with that of Dr. Marks. (AR 147-49, 396.) Thus, there was substantial
25 evidence in the record to support the ALJ's RFC finding.

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IT IS ORDERED that Plaintiff's case is **DISMISSED** and the Clerk of Court shall enter judgment.

Dated this 27th day of May, 2015.



D. Thomas Ferraro
United States Magistrate Judge