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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CHRIS SHELTON,)	No. CV 09-06316-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the evaluating physician's initial assessment;
2 and

3 2. Whether the ALJ properly developed the record.
4

5 This Memorandum Opinion will constitute the Court's findings of
6 fact and conclusions of law. After reviewing the matter, the Court
7 concludes that the decision of the Commissioner must be affirmed.
8

9 I

10 THE ALJ PROPERLY EVALUATED PLAINTIFF'S
11 MENTAL STATUS AND FUNCTIONAL LIMITATIONS

12 In Plaintiff's first issue, he asserts that the ALJ failed to
13 properly consider the evaluation of his treating physician, Dr.
14 Hernandez, of the Los Angeles County Department of Mental Health,
15 Compton Mental Health Unit. (JS at 3, et seq., AR at 299-310,
16 hereinafter "Compton Mental Health.") Plaintiff notes his diagnosis
17 of schizoaffective disorder, bipolar type, major depression, alcohol
18 dependence, and a Global Assessment of Function ("GAF") score of 55.
19 (JS at 3, citing AR at 307. Further, Plaintiff notes that the ALJ
20 should have considered the "Adult Initial Assessment" of Compton
21 Mental Health, which indicated, in part, that Plaintiff has a
22 dysphoric and irritable mood with blunted affect, and exhibited
23 command and persecutory auditory hallucinations, known to begin at age
24 13. Plaintiff was found to have impaired concentration and thought
25 blocking, excessive worry, apathy, and displayed inappropriate crying.
26 (AR 306.)

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1 **A. The ALJ's Decision.**

2 The ALJ summed up his analysis of Plaintiff's mental impairments
3 in the following portion of his opinion:

4 "Regarding [Plaintiff's] mental impairments, about a
5 year ago, as per [Plaintiff's] testimony and as evidenced by
6 the record, [Plaintiff] was abusing drugs. The evidence of
7 suicidal and homicidal ideation which led to [Plaintiff's]
8 hospitalization due to psychotic symptoms occurred primarily
9 because he was abusing drugs. Absent substance abuse and
10 under treatment however, the record shows [Plaintiff] is
11 stable and functional, with few if any restrictions. Indeed
12 some treatment notes indicate no work restrictions were
13 recommended, while others indicate [Plaintiff] was stable
14 and doing well, without any medication side effects."

15 (AR 15, exhibit citations omitted.)

16
17 Dr. Hernandez' report is dated April 19, 2005. (AR 307.) The ALJ
18 relied upon evidence developed later in time. This included the
19 report of consultative examining psychiatrist Dr. Yang (AR 275-78),
20 and State Agency psychiatrist Dr. McDowell (AR 279-92). Dr. Yang
21 performed a consultative examination on August 29, 2007, in which he
22 diagnosed Plaintiff with polysubstance dependence and anxiety
23 disorder. (AR 277.) There was no evidence of any cognitive deficits,
24 perceptual disturbances, or delusional disorders. (AR 278.) Plaintiff
25 was able to focus his attention adequately. (AR 278.) It was noted
26 that Plaintiff indicated he has had problems with an addiction to
27 alcohol, cocaine, PCP and marijuana, but that he has been "clean" for
28 over eight months, having attended a 12-step program. (AR 276.)

1 After reviewing the record, Dr. McDowell completed a Psychiatric
2 Review Technique Form ("PRTF") on September 17, 2007. (AR 279-289.)
3 This resulted in an assessment of only mild functional limitations in
4 daily living and social functioning; moderate limitations in
5 maintaining concentration, persistence, or pace; and insufficient
6 evidence of repeated episodes of decompensation. (AR 287.) The ALJ
7 adopted Dr. McDowell's analysis regarding the extent of limitations in
8 each of these four areas. (AR 12-13, see infra.) The ALJ noted that
9 this residual mental functional capacity (see AR at 13, ¶ 4), was
10 supported by Dr. Yang's consultative examination and opinion, and
11 affirmed by two State Agency reviewing medical sources. The ALJ noted
12 that he assigned the greatest weight to Dr. Yang's opinion, and the
13 State Agency psychiatrists. (AR 16.)

14 The ALJ did acknowledge Plaintiff's treatment at the Compton
15 Mental Health Center, by Dr. Hernandez. (See AR at 12, 15.)
16 Plaintiff's specific complaint, however, is that the ALJ failed to
17 provide specific and legitimate reasons to reject Dr. Hernandez'
18 opinion.

19
20 **B. Applicable Law.**

21 In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)
22 and §416.920a(c)(3)(4) mandate that consideration be given, among
23 other things, to activities of daily living ("ADLs"), social
24 functioning; concentration, persistence, or pace; and episodes of
25 decompensation. These factors are generally analyzed in a Psychiatric
26 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the
27 sequential evaluation to determine if a claimant is disabled under the
28 Listing of Impairments; however, the same data must be considered at

1 subsequent steps unless the mental impairment is found to be not
2 severe at Step Two. See SSR 85-16.

3 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require
4 consideration of "all relevant and available clinical signs and
5 laboratory findings, the effects of your symptoms, and how your
6 functioning may be affected by factors including, but not limited to,
7 chronic mental disorders, structured settings, medication and other
8 treatment."¹

9 SSR 85-16 suggests the following as relevant evidence:

10 "History, findings, and observations from medical
11 sources (including psychological test results), regarding
12 the presence, frequency, and intensity of hallucinations,
13 delusions or paranoid tendencies; depression or elation;
14 confusion or disorientation; conversion symptoms or phobias;
15 psycho-physiological symptoms, withdrawn or bizarre
16 behavior; anxiety or tension. Reports of the individual's
17 activities of daily living and work activity, as well as
18 testimony of third parties about the individual's
19 performance and behavior. Reports from workshops, group
20 homes, or similar assistive entities."

21
22 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)
23 that the ALJ must consider the extent to which the mental impairment

24
25 ¹ 20 C.F.R. §404.1545(c) and §416.945(c) also require
26 consideration of "residual functional capacity for work activity on a
27 regular and continuing basis" and a "limited ability to carry out
28 certain mental activities, such as limitations in understanding,
remembering, and carrying out instructions, and in responding
appropriately to supervision, co-workers, and work pressures in a work
setting."

1 interferes with an "ability to function independently, appropriately,
2 effectively, and on a sustained basis" including "such factors as the
3 quality and level of [] overall functional performance, any episodic
4 limitations [and] the amount of supervision or assistance []
5 require[d]."

6 Pursuant to the September 2000 amendments to the regulations
7 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ
8 is no longer required to complete and attach a PRTF. The revised
9 regulations identify five discrete categories for the first three of
10 four relevant functional areas: activities of daily living; social
11 functioning; concentration, persistence or pace; and episodes of
12 decomposition. These categories are None, Mild, Moderate, Marked, and
13 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must
14 incorporate pertinent findings and conclusions based on the PRTF
15 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show
16 "the significant history, including examination and laboratory
17 findings, and the functional limitations that were considered in
18 reaching a conclusion about the severity of the mental impairment(s).
19 The decision must include a specific finding as to the degree of
20 limitation in each of the functional areas described in paragraph (c)
21 of this section."

22 The Step Two and Three analyses are intended to determine, first,
23 whether a claimant has a severe mental impairment (Step Two), and if
24 so, whether it meets or equals any of the Listings (Step Three). It
25 is also required under §404.1520a(c)(2) and §416.920a(c)(2) that the
26 ALJ must consider the extent to which the mental impairment interferes
27 with an "ability to function independently, appropriately,
28 effectively, and on a sustained basis" including "such factors as the

1 quality and level of [] overall functional performance, any episodic
2 limitations [and] the amount of supervision or assistance []
3 require[d].”

4 The GAF scale is intended to reflect a person’s overall level of
5 functioning at or about the time of the examination, not for a period
6 of at least 12 consecutive months, which is required for a finding of
7 impairment or disability. (See 20 C.F.R. §§416.905, 416.920(c)(2006).)

8 GAF scores are intended to be used for clinical diagnosis and
9 treatment, and do not directly correlate to the severity assessment
10 set forth in Social Security regulations. (See Revised Medical
11 Criteria for Evaluating Mental Disorders and Traumatic Brain Injury,
12 65 Fed. Reg. 50746, 50764-65 (Aug. 21, 2000), and American Psychiatric
13 Ass’n, Diagnostic and Statistical Manual of Mental Disorders, Text
14 Revision 33 (4th Ed. 2000).

15
16 **C. Analysis.**

17 The ALJ carefully distinguished the various determinations of
18 Plaintiff’s mental functional limitations based upon whether, at the
19 time he was examined or tested, he was experiencing the effects of
20 alcoholism and/or drug dependence. With regard to the records of
21 Compton Mental Health, and Dr. Hernandez, in 2005, the ALJ noted that,
22 at that time, Plaintiff was excessively utilizing alcohol and drugs,
23 and that the mental functional limitations which were diagnosed were
24 integrally intertwined with his use of these substances. As the ALJ
25 noted, Plaintiff’s excessive use of alcohol and drugs continued into
26 late 2006, when he self-reported to Centinela Hospital Medical Center
27 and toxicology reports were positive for cocaine and marijuana. (AR
28 11, citing AR at 213-16.) A few days later, at the Penn Mar

1 Therapeutic Center, Plaintiff was treated for a diagnosis of psychotic
2 disorder, NOS. He admitted that he had increased his abuse of
3 alcohol, marijuana, and cocaine. The ALJ observed that, "The
4 [Plaintiff's] condition was noted to have steadily improved during
5 admission until he was no longer experiencing hallucinations,
6 paranoid, suicidal or homicidal ideation, and he had no side effects
7 from the medication." (AR 11.)

8 Thus, Dr. Yang's psychiatric evaluation on August 29, 2007 can be
9 placed in better perspective vis-a-vis Plaintiff's intake of alcohol
10 and drugs. At that time, Plaintiff reported that he had been "clean"
11 (presumably, of alcohol and drugs) for over eight months, and had
12 attended a twelve-step program. Plaintiff was working, doing odd jobs
13 such as laying tile and remodeling houses, and was taking psychiatric
14 medications, which Dr. Yang indicated were helpful. He attended
15 church, ran errands, and had a good relationship with friends. (AR
16 278.) Dr. Yang concluded that Plaintiff had no evidence of cognitive
17 deficits, perceptual disturbances or delusional disorders. He was
18 fairly groomed, and seemed capable of taking care of his own needs.
19 He was able to focus attention adequately, was able to follow one- and
20 two-part instructions, could adequately remember and complete simple
21 and complex tasks, was able to tolerate stress inherent in the work
22 environment, maintain regular attendances, and work without
23 supervision. Further, Dr. Yang assessed that Plaintiff was able to
24 interact appropriately both with himself and staff, and he surmised
25 that Plaintiff would be able to interact in the same manner with
26 supervisors, co-workers, and the public in the workplace. (AR 278.)

27 On reviewing this record, the State Agency psychiatrist, Dr.
28 McDowell, completed a PRTF on September 17, 2007 (AR 279-89), and

1 observed the level of mental functioning in the four relevant areas
2 which the Court has previously summarized in this decision. The ALJ
3 relied upon these opinions in finding that Plaintiff did not have a
4 mental disability. (See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
5 2002)(the opinions of non-treating or non-examining physicians may be
6 relied upon as substantial evidence when they are consistent with
7 independent clinical findings or other evidence in the record)).

8 In sum, while the ALJ's reference to the opinions of Dr.
9 Hernandez in 2005, a period when Plaintiff was abusing drugs and
10 alcohol, may not have been accompanied by a specific or lengthy
11 discussion, the Court cannot disagree with the correctness of the
12 ALJ's analysis, which correlated Plaintiff's mental problems with his
13 excessive use of alcohol and drugs, and conversely, correlated his
14 improved mental status with his cessation of the use of these
15 substances. Even if, hypothetically, Plaintiff might have been
16 considered disabled based on mental health reasons during part of the
17 2005 period covered by the Compton Mental Health Center records, the
18 fact that his mental functioning was integrally related to his abuse
19 of alcohol and drugs would have vitiated any finding of disability,
20 based on applicable regulations.

21 For the foregoing reasons, the Court finds no error with regard
22 to the ALJ's determination of Plaintiff's mental status and
23 functioning.

24 II

25 THE ALJ DID NOT FAIL TO PROPERLY DEVELOP THE RECORD

26 In Plaintiff's second issue, he asserts that the ALJ failed to
27 properly develop the record with regard to a June 27, 2008 letter from
28

1 Rose Marie Andrews, OTR, from the Los Angeles County Department of
2 Mental Health. In that letter (see AR at 331), Ms. Andrews,
3 denominated a "Vocation Services Coordinator" (Id.), commented that
4 Plaintiff has been a patient, or client, at Compton Mental Health
5 since February 2005, that he has suffered from mental health problems
6 all his life, and that he remains in dire need of treatment and other
7 support services. Ms. Andrews opined that Plaintiff has a chronic,
8 permanent mental disorder which requires persistent medical treatment
9 and other living assistance, that he is not able to perform for a
10 compensated job, be productive, concentrate, focus, follow directions,
11 or process multiple step information. Finally, she opined that
12 Plaintiff is not able to generate enough income to provide for
13 himself. (Id.)

14 The ALJ rejected Ms. Andrews' opinion, noting that she failed to
15 indicate the nature and extent of her relationship with Plaintiff, and
16 that as a Vocational Services Coordinator, "she appears to lack any
17 form of specialization to give an opinion regarding the [Plaintiff's]
18 mental health history, his diagnoses, his current ability to function
19 mentally, and his sustained ability to perform work-related
20 functions." (AR 16.)

21 Plaintiff's counsel argues that the ALJ should have developed the
22 record to determine what treatment relationship Ms. Andrews had with
23 Plaintiff.

24 It is apparent that Ms. Andrews did not have an ongoing treatment
25 relationship with Plaintiff, because her descriptions of Plaintiff's
26 mental infirmities, along with her opinions about Plaintiff's
27 inability to work, or support himself, are totally at odds with
28 concurrent actual reports of mental health professionals contained in

