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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 TRACY ANNE BEDSAUL,
12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN,
15 Commissioner of Social Security,
16 Defendant.
17

No. CV 12-2527 AGR

MEMORANDUM OPINION AND ORDER

18 Plaintiff Tracy Anne Bedsaul filed this action on March 30, 2012. Pursuant to 28
19 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on May
20 14, 2012 and September 19, 2103. (Dkt. Nos. 11, 18.) On January 7, 2013, the parties
21 filed a Joint Stipulation ("JS") that addressed the disputed issues. The court has taken
22 the matter under submission without oral argument.

23 Having reviewed the entire file, the decision of the Commissioner is reversed and
24 this matter is remanded for payment of benefits for the period beginning April 3, 2009,
25 and for further proceedings as to whether to make representative payments and
26 selection of a representative payee, as appropriate.
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I.

PROCEDURAL BACKGROUND

On May 8, 2007, Bedsaul filed an application for supplemental security income, alleging a disability onset date of July 1, 1997. Administrative Record (“AR”) 12. The application was denied initially and on reconsideration. AR 12, 57-58. On April 29, 2009, an Administrative Law Judge (“ALJ”) conducted a hearing at which Bedsaul, a vocational expert (“VE”), and a certified addiction specialist appearing as a lay witness on Bedsaul’s behalf testified. AR 27-56. On May 20, 2009, the ALJ issued a decision denying benefits. AR 9-20. On July 20, 2009, the Appeals Council denied Bedsaul’s request for review. AR 1-4.

Bedsaul filed an action in the Central District. On April 14, 2011, this court filed a Report recommending that the action be remanded to the Commissioner for reconsideration of Bedsaul’s residual functional capacity (“RFC”), her credibility and the treating psychiatrist’s opinion. AR 456-68. On May 31, 2011, the district court adopted this court’s Report and Recommendation, entered judgment for Bedsaul and remanded the action to the Commissioner for further proceedings. AR 455.

On October 17, 2011, the Appeals Council vacated the ALJ’s decision and remanded the case to an ALJ for further proceedings. AR 471. The Appeals Council also combined Bedsaul’s claim with a subsequent claim for supplemental security income filed by Bedsaul on August 11, 2009. AR 453, 471; JS 4.

On December 12, 2011, the same ALJ conducted a hearing pursuant to the remand order and the subsequent claim for benefits. Bedsaul and a VE testified at the hearing. AR 384-411. On January 13, 2012, the ALJ issued a decision denying benefits. AR 342-52.

This action followed.

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II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), the court reviews the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

III.

DISCUSSION

A. Disability

A person qualifies as disabled, and thereby eligible for such benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

1 **B. The ALJ’s Findings**

2 Following the five-step sequential analysis of disability, *Lounsbury v. Barnhart*,
3 468 F.3d 1111, 1114 (9th Cir. 2006),¹ the ALJ found that Bedsaul has the severe
4 impairments of bipolar 1 disorder, a history of chronic substance induced mood
5 disorder, and methamphetamine and opiate dependence in remission. AR 14, 344.
6 She has the RFC to perform a full range of work at all exertional levels, but “is limited to
7 simple, repetitive tasks that do not require any significant interaction with the general
8 public.” AR 348; see also AR 17. She can tolerate only “incidental contact with the
9 public.” AR 348. “She is precluded from jobs requiring rapid paced high production
10 quotas.” AR 348; see also AR 17. She has no past relevant work, but jobs exist in
11 significant numbers in the national economy that she can perform. AR 19, 351.

12 **C. Treating Records**

13 Bedsaul contends the ALJ improperly considered her treating records from
14 CARES (Crisis and Recovery Emergency Services), which, during the relevant period,
15 contains records and opinions from Drs. Feliciano, Lin, Tilton, Crocker and Samson. As
16 of the date of the most recent hearing, Bedsaul lives in permanent supportive housing.²
17 AR 387.

18 An opinion of a treating physician is given more weight than the opinion of a
19 non-treating physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). To reject an
20 uncontradicted opinion of a treating physician, an ALJ must state clear and convincing
21 reasons that are supported by substantial evidence. *Bayliss v. Barnhart*, 427 F.3d

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23 ¹ The five-step sequential analysis examines whether the claimant engaged in
24 substantial gainful activity, whether the claimant’s impairment is severe, whether the
25 impairment meets or equals a listed impairment, whether the claimant is able to do his
26 or her past relevant work and whether the claimant is able to do any other work.
Lounsbury, 486 F.3d at 1114.

27 ² The facility is Faulding Hotel. Bedsaul graduated from Hotel de Rivera, a dual
28 diagnosis program for individuals who have mental illness combined with alcohol or
drug abuse problems. AR 726.

1 1211, 1216 (9th Cir. 2005). When, as here, a treating physician’s opinion is
2 contradicted by another doctor, “the ALJ may not reject this opinion without providing
3 specific and legitimate reasons supported by substantial evidence in the record. This
4 can be done by setting out a detailed and thorough summary of the facts and conflicting
5 clinical evidence, stating his interpretation thereof, and making findings.” *Orn*, 495 F.3d
6 at 632 (citations omitted and internal quotations omitted). When the ALJ declines to
7 give a treating physician’s opinion controlling weight, the ALJ considers several factors,
8 including the following: (1) the length of the treatment relationship and frequency of
9 examination;³ (2) the nature and extent of the treatment relationship;⁴ (3) the amount of
10 relevant evidence supporting the opinion and the quality of the explanation provided; (4)
11 the consistency with the record as a whole; and (5) the specialty of the physician
12 providing the opinion. See *Orn*, 495 F.3d at 631; 20 C.F.R. § 404.1527(d)(1)-(6).
13 “When there is conflicting medical evidence, the Secretary must determine credibility
14 and resolve the conflict.” *Thomas*, 278 F.3d at 956-57 (citation and quotation marks
15 omitted).

16 In a report dated January 25, 2008, Dr. Feliciano stated that he had treated
17 Bedsaul weekly since May 2007. AR 302. He found marked limitations in Bedsaul’s
18 activities of daily living, social functioning, and concentration, persistence or pace, with
19 continual episodes of deterioration or decompensation. AR 306. The term “marked”
20 was defined as the “[a]bility to function in this area is seriously limited.” AR 304.

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22 ³ “Generally, the longer a treating source has treated you and the more times you
23 have been seen by a treating source, the more weight we will give to the source’s
24 medical opinion. When the treating source has seen you a number of times and long
25 enough to have obtained a longitudinal picture of your impairment, we will give the
26 source’s opinion more weight than we would give it if it were from a nontreating source.”
20 C.F.R. § 404.1527(d)(2)(i).

27 ⁴ “Generally, the more knowledge a treating source has about your impairment(s)
28 the more weight we will give to the source’s medical opinion.” 20 C.F.R. §
404.1527(d)(2)(ii).

1 Bedsaul had marked limitations in fifteen of the sixteen categories of mental abilities
2 needed to do unskilled work. AR 304-05. Dr. Feliciano explained that “severe mood
3 swings, paranoia make it difficult to understand even simple instructions and to interact
4 with others; she is easily confused and panics.” AR 305. In addition, she is “unable to
5 deal with a structured work routine, unable to follow simple directions.” *Id.* Her Global
6 Assessment of Functioning (“GAF”) was 42.⁵ AR 302.

7 On April 3, 2009, Dr. Feliciano stated he had been treating Bedsaul in “one on
8 one weekly [sessions] since 5-1-07” and in a “dual diagnosis group, 1x week since 2-1-
9 08.” AR 333. Although her GAF had improved to 55 (*id.*),⁶ Dr. Feliciano continued to
10 assess marked or frequent limitations in activities of daily living, social functioning, and
11 concentration, persistence, or pace, with continual episodes of deterioration or
12 decompensation. AR 337. He explained that Bedsaul’s “severe mental illness mood
13 swings and paranoia prevent [her] from being able to follow simple directions[;] [she is]
14 easily confused.” AR 336. Bedsaul continued to be “unable to deal with a structured
15 work routine and environment.” *Id.*

16 In the 2009 decision, the ALJ rejected Dr. Feliciano’s opinions because they
17 “were inconsistent with his progress notes.” AR 19, 466. Dr. Feliciano’s notes showed
18 “good control of mental health symptoms with medication and counseling and few
19 mental health findings.” AR 15, 466. The ALJ also noted Bedsaul’s “excellent response
20 to the substance abuse treatment program, and her smooth transition to independent
21 living.” AR 19, 466. She noted that Dr. Feliciano’s opinions were inconsistent with “the
22 weight of the medical evidence and the other functional capacity assessments in the
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25 ⁵ A GAF of 41-50 indicates serious symptoms or any serious impairment in social,
26 occupational or school functioning, such as being unable to keep a job. DSM IV–TR at
34.

27 ⁶ A GAF of 51-60 indicates moderate symptoms or moderate difficulty in social,
28 occupational, or school functioning. DSM IV-TR at 34.

1 record.” AR 15, 19, 466-67. The state agency psychiatrists concluded Bedsaul did not
2 have a severe mental impairment. AR 19, 467.

3 In the 2011 Report and Recommendation, this court noted that Dr. Feliciano’s
4 treatment notes in 2007 reflect that Bedsaul reported doing well on medication and
5 exhibited no “psychosis, mania, suicidal or homicidal ideation or cognitive deficits.” AR
6 229, 276, 280, 285, 467. However, Dr. Feliciano’s treatment note on January 25, 2008
7 reflects that Bedsaul reported feeling depressed and suffering from insomnia. AR 330,
8 467. This court noted that Bedsaul appears to have experienced her relapse shortly
9 thereafter. AR 327, 467. However, the record at that time contained no non-medication
10 related treatment notes after January 2008. This court noted that Bedsaul’s case
11 worker, Crable, testified at the April 29, 2009 hearing that Bedsaul had been a
12 “tremendous client” who has done all of the work asked of her, completed an 18-month
13 long residential dual diagnosis program “with flying colors” and had only one relapse.⁷
14 AR 463 (citing AR 31, 33-34). As of April 29, 2009, Crable felt Bedsaul could not show
15 up for work on a regular basis in a full-time job. AR 463 (citing AR 37). She was
16 learning to navigate daily stresses without drugs and deal with anxiety in public. When
17 one puts a client into a work environment too soon, “the client backslides.” AR 463
18 (citing AR 36). The Report recommended that the matter be remanded.

19 In the 2012 decision, the ALJ again rejected the January 2008 and April 2009
20 assessments of Dr. Feliciano. AR 345. She noted that the assessments “were not
21 consistent with the medical evidence or [with Dr. Feliciano’s and other mental health
22 professionals’] reports of significant improvement in her mental health symptoms when
23 she is compliant with taking her medications” and is sober.⁸ AR 345, 350. She also

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25 ⁷ Medical records on remand confirm the one relapse occurred in early 2008. AR
26 619.

27 ⁸ To the extent Bedsaul contends the ALJ should have re-contacted Dr. Feliciano for
28 clarification of his opinions, her claim fails. JS 34 (citing SSR 96-5p). The ALJ did not
err in failing to contact Dr. Feliciano for clarification of his opinions because there is no

1 noted that Dr. Feliciano's opinions conflicted with records from Santa Barbara County
2 Mental Health. AR 345. An ALJ may reject a treating physician's opinion that is
3 unsupported or contradicted by treatment records. See *Bayliss*, 427 F.3d at 1216;
4 *Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003).

5 However, the ALJ's finding is not supported by substantial evidence during the
6 period beginning April 3, 2009, the date of Dr. Feliciano's opinion, which is consistent
7 with Crable's testimony in the same month.

8 The record on remand included medical evidence through September 2011. AR
9 610-732. In November 2009, Dr. Lin's notes indicate Bedsaul was fearful of being
10 abducted in trucks and being electrocuted. She had been off her medications "because
11 she was too fearful to leave her place" to pick them up. AR 677. Dr. Lin noted paranoid
12 delusions, anxiety and a dysphoric, tearful affect. She diagnosed psychosis NOS and
13 rule out recent stimulant abuse.⁹ *Id.* In March 2010, Bedsaul again presented with
14 paranoid delusions about abduction and electrocution. She was extremely anxious and
15 afraid to leave her home or be in public. She had not been taking her medications since
16 January 2010 because she had to take her daughter to the ER on the date they were
17 ordered. Dr. Lin again diagnosed psychosis NOS, rule out stimulant abuse. AR 675.
18 In November 2010, Dr. Tilton noted paranoia about abduction and electrocution.
19 Bedsaul does not watch TV and turns off all electrical devices in her home. Bedsaul
20 claimed that Risperdal did not help and she had not taken Remeron because she could
21 not afford it. She felt calmer with her boyfriend because he could protect her. AR 700.
22 Dr. Tilton noted paranoid delusions, poor insight and fair judgment. *Id.* Dr. Tilton

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24 indication of any ambiguity in the record. See SSR 96-5p ("For treating sources, the
25 rules also require that we make every reasonable effort to recontact such sources for
26 clarification when they provide opinions on issues reserved to the Commissioner and
27 the bases for such opinions are not clear to us.").

28 ⁹ As described below, in 2011 police picked up Bedsaul based on her bizarre
behavior and took her to an emergency room, where she tested negative for all drugs.
AR 704.

1 diagnosed psychosis NOS, rule out stimulant abuse, and anxiety disorder NOS with
2 panic attacks. He assessed a GAF of 43 or 45 with a poor prognosis. *Id.*

3 On August 20, 2011, police picked up Bedsaul when she was riding her bike
4 down the street and “dragging another.” AR 704. She appeared under the influence
5 but “rambled on about being part of CARES.” *Id.* Bedsaul was taken to an emergency
6 room, where her drug tests were all negative.¹⁰ Bedsaul presented as hypomanic,
7 possible bipolar disorder, some pressured speech and tangential thinking. AR 701. A
8 CARES mobile crisis worker was called to the ER. *Id.* On August 24, 2011, Bedsaul
9 was seen by her therapist, Mr. Money. She had stopped taking her medications about
10 six months earlier and stopped going to CARES.¹¹ She wanted to restart services with
11 CARES. Bedsaul was assessed with a GAF of 38, severely disabled with a guarded
12 prognosis and unstable on medications. AR 701-02. She was scheduled for a CARES
13 assessment. AR 701.

14 On August 30, 2011, Dr. Crocker completed an extensive CARES assessment.
15 AR 703-23. Bedsaul’s symptoms included depression, tearfulness, anhedonia,
16 isolating, worthlessness and suicidal thoughts without a specific plan. AR 704, 711-12.
17 She expressed fears of abduction and electrocution, and actually being able to feel the
18 electricity in her legs when she has these thoughts. AR 704-05. She feels she is
19 “almost hit” by cars when she tries to get away. AR 705. Dr. Crocker noted a sad
20 mood, anxious affect, hallucinations and delusions. AR 716-17. Bedsaul had fair
21 insight and judgment. AR 717. Dr. Crocker diagnosed mood disorder NOS, rule out
22 bipolar 1 disorder; psychotic disorder NOS, rule out schizoaffective disorder and
23 substance induced psychotic disorder. Bedsaul’s GAF was 50. AR 721. Dr. Crocker

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26 ¹⁰ Specifically, she tested negative for amphetamine, cocaine, opiates, marijuana,
benzo and methadone. AR 701.

27 ¹¹ According to a later medical record, Bedsaul did not return to CARES because
28 she did not like the physician at the time. AR 726.

1 indicated that Bedsaul's goals were to reduce symptoms of mental illness, achieve
2 100% compliance with medications, attend all doctor appointments and develop self
3 care and coping skills, and develop psychiatric relapse prevention skills. AR 724. Dr.
4 Crocker prescribed daily 30-minute sessions with Mr. Money for one year. AR 724-25.

5 On September 9, 2011, Dr. Samson treated Bedsaul and completed a Residual
6 Functional Capacity - Mental form. AR 726-32. Dr. Samson based his assessment on
7 his review of the chart with CARES staff and one face-to-face visit.¹² AR 732. Dr.
8 Samson noted that Bedsaul had been treated at CARES for three years of "episodic
9 and irregular visits." AR 727. Bedsaul did not or "cannot follow through – recently
10 afraid of MD." *Id.* Bedsaul was afraid to leave home but found one Zyprexa tablet and
11 was able to come to her appointment. She had a guarded prognosis for slight
12 improvement. *Id.* She had inappropriate affect, mood disturbance, paranoid thinking,
13 seclusiveness, bipolar symptoms, persistent irrational fears, perceptual disturbances,
14 delusions, emotional lability, pathologically inappropriate suspiciousness and recurrent
15 severe panic attacks. AR 728.

16 With respect to work capacity, Dr. Samson opined that Bedsaul had no useful
17 ability to complete a normal workday and workweek without interruptions from
18 psychologically based symptoms; or to accept instructions and respond appropriately to
19 criticism from supervisors. AR 729. She was unable to meet competitive standards in
20 terms of maintaining regular attendance and punctuality; maintaining attention for two-
21 hour segments; sustaining an ordinary routine without special supervision, dealing with
22 normal work stress; and working with co-workers without unduly distracting them or
23 exhibiting behavioral extremes. *Id.* Dr. Samson explained that his assessment was
24 based on her paranoia, disassociative behaviors and strange conduct that resulted in
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27 ¹² During examination, Bedsaul felt paranoid about her boyfriend and unable to
28 continue seeing him. AR 726. Dr. Samson observed that Bedsaul's panic attacks
sounded more like acute decompensation and possible disassociative state. *Id.*

1 her being taken to the hospital. AR 729-30. Bedsaul had an anxiety disorder and
2 complete inability to function independently outside the home. AR 730. She was
3 unable to meet competitive standards in the areas of maintaining socially appropriate
4 behaviors and interacting appropriately with the public. She rode her bike but was
5 limited in her ability to take a bus due to her agoraphobia and paranoid symptoms.
6 Bedsaul had marked limitations in activities of daily living and maintaining
7 concentration, persistence, or pace; and extreme limitations in maintaining social
8 functioning. AR 731. Bedsaul was not malingering. Dr. Samson estimated that
9 Bedsaul would be absent more than four days per month. AR 732.

10 The ALJ did not provide specific and legitimate reasons supported by substantial
11 evidence for rejecting the longitudinal treating records at CARES for the period
12 beginning April 3, 2009. Those records must be credited. See *Widmark v. Barnhart*,
13 454 F.3d 1063, 1069 (9th Cir. 2006). According to those records, Bedsaul is not
14 capable of full-time work on a sustained basis. See *Reddick v. Chater*, 157 F.3d 715,
15 724 (9th Cir. 1998); 20 C.F.R. § 404.1512(a). “[O]ccasional symptom-free periods –
16 and even the sporadic ability to work – are not inconsistent with disability.” *Lester v.*
17 *Chater*, 81 F.3d 821, 833 (9th Cir. 1995). Even assuming the ALJ could reasonably
18 infer that Bedsaul’s condition would improve somewhat if she were compliant with
19 medication, it does not necessarily follow that her impairments, when treated, would no
20 longer seriously affect her ability to function in the workplace. See *Ryan v. Comm’r of*
21 *Soc. Sec. Admin.*, 528 F.3d 1194, 1201 (9th Cir. 2008) (“That a person who suffers from
22 severe panic attacks, anxiety, and depression makes some improvement does not
23 mean that the person’s impairments no longer seriously affect her ability to function in a
24 workplace.”) (citation and quotation marks omitted). The medication, together with 24/7
25 support from CARES, has enabled Bedsaul to leave her home for weekly appointments
26 at CARES, annual appointments for housing benefits and her hearing before the ALJ.

1 There is no indication Bedsaul would be able to work full-time five days per week as of
2 the date of the ALJ's decision.¹³

3 The court has concerns that Bedsaul is unable to manage her own benefits.
4 Although Dr. Feliciano indicated in April 2009 that Bedsaul could manage benefits in her
5 own interest (AR 337), Dr. Samson responded that her ability to do so was "unknown"
6 as of September 2011. AR 732. The treating records indicate that Bedsaul's paranoid
7 delusions and perceptual disturbances became worse after April 2009. Accordingly this
8 matter will be remanded for proceedings pursuant to 20 C.F.R. §§ 416.601-630.

9 **IV.**

10 **ORDER**

11 IT IS HEREBY ORDERED that the decision of the Commissioner is reversed and
12 this matter remanded for payment of benefits for the period beginning April 3, 2009, and
13 for further proceedings as to whether to make representative payments and selection of
14 a representative payee, as appropriate.

15 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the
16 Judgment herein on all parties or their counsel.

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19 DATED: September 23, 2013



ALICIA G. ROSENBERG
United States Magistrate Judge

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¹³ Given this result, it is unnecessary to reach Bedsaul's other arguments.