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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SHAWN M. MARTIN,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,<sup>1/</sup>

Defendant.

) Case No. CV 12-8470 JCG

) **MEMORANDUM OPINION AND  
ORDER**

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Shawn M. Martin (“Plaintiff”) challenges the Social Security Commissioner’s decision denying her application for supplemental security benefits. Four issues are presented for decision here, namely (1) whether the Administrative Law Judge (“ALJ”) erred in finding that Plaintiff’s condition did not meet listing level severity, (*see* Joint Stip. at 3-5, 23-25); (2) whether the ALJ failed to account for additional severe impairments, (*see id.* at 25-26, 30); (3) whether the ALJ erred in assessing Plaintiff’s residual functional capacity, (*see id.* at 31-32, 37-38); and (4) whether the ALJ improperly rejected Plaintiff’s credibility, (*see id.* at 38-40, 46-47).

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<sup>1/</sup> Carolyn W. Colvin is substituted as the proper Defendant herein. *See* Fed. R. Civ. P. 25(d).

1 The Court addresses – and rejects – each of Plaintiff’s contentions below.

2 A. The ALJ’s Listings Analysis

3 1. Background

4 First, Plaintiff claims that the ALJ erred in her analysis of whether Plaintiff  
5 met Listing 12.04 for Affective Disorders. Specifically, Plaintiff argues that the  
6 ALJ’s analysis is incomplete because she focused only on the requirements of  
7 paragraph B of the Listing and failed to analyze the criteria in paragraph A. (Joint  
8 Stip. at 3-5, 23-25); 20 C.F.R. Pt. 404, Subpt. P. App. 1, § 12.04. After discussing  
9 the evidence of record and rejecting some of the opinions of Plaintiff’s treating  
10 psychologist A.M. Aragon, Ph.D., the ALJ found that Plaintiff did not meet the  
11 paragraph B criteria and thus did not meet Listing 12.04. (Administrative Record  
12 (“AR”) at 22-24.)<sup>2/</sup>

13 2. Failure to Address Paragraph A Criteria

14 If a plaintiff establishes that she suffers from a “severe” impairment, or  
15 combination of “severe” impairments, that meets or equals a listed impairment as set  
16 forth in 20 C.F.R. Pt. 404, Subpt. P, Appendix 1, she is deemed disabled. *See* 20  
17 C.F.R. §§ 404.1520(a)(4)(iii), (d); 416.92(a)(4)(iii). The plaintiff has the burden to  
18 prove that she has an impairment that meets or equals the criteria listed in Appendix  
19 1. *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). To meet a listed  
20 impairment, a disability claimant must establish that her condition satisfies *each*  
21 element of the listed impairment in question. *Sullivan v. Zebley*, 493 U.S. 521, 530  
22 (1990); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999).

23 Under Listing 12.04, “[t]he required level of severity for [affective disorders]  
24 is met when the requirements in both A *and* B are satisfied, or when the  
25 requirements in C are satisfied.” 20 C.F.R. Pt. 404, Subpt. P. App. 1, § 12.04

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27 <sup>2/</sup> Although the ALJ further found that Plaintiff did not meet the criteria in  
28 paragraph C, (AR at 24), Plaintiff does not challenge this determination.

1 (emphasis added). The listing plainly requires that the claimant meet both the  
2 paragraph A and paragraph B criteria in order to establish a listing level impairment.

3 Here, because the ALJ found the evidence did not support Plaintiff's claim  
4 with respect to the paragraph B criteria, she was not obligated to further analyze the  
5 paragraph A criteria. *Zebley*, 493 U.S. at 530 (claimant must establish that her  
6 condition satisfies every element of the listing); *Tackett*, 180 F.3d at 1099 (same).

7 3. Decision Regarding Paragraph B Criteria

8 To the extent that Plaintiff argues that the ALJ erred in finding that she did not  
9 meet the paragraph B criteria, her claim still fails. The only evidence that Plaintiff  
10 met the requirements of paragraph B of Listing 12.04 was the checkbox form  
11 completed by Dr. Aragon. (AR at 346.) Specifically, Dr. Aragon reported that  
12 Plaintiff had marked restrictions in activities of daily living and difficulties in  
13 maintaining social functioning, each of which are listed in paragraph B of Listing  
14 12.04. (*Id.*) However, the ALJ properly rejected Dr. Aragon's opinions.

15 "As a general rule, more weight should be given to the opinion of a treating  
16 source than to the opinion of doctors who do not treat the claimant." *Lester v.*  
17 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *accord Benton v. Barnhart*, 331 F.3d  
18 1030, 1036 (9th Cir. 2003). This is so because a treating physician "is employed to  
19 cure and has a greater opportunity to know and observe the patient as an individual."  
20 *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987).

21 Where the "treating doctor's opinion is contradicted by another doctor, the  
22 [ALJ] may not reject this opinion without providing specific and legitimate reasons  
23 supported by substantial evidence in the record[.]" *Lester*, 81 F.3d at 830 (citation  
24 omitted). The ALJ can meet the requisite specific and legitimate standard "by  
25 setting out a detailed and thorough summary of the facts and conflicting clinical  
26 evidence, stating his interpretation thereof, and making findings." *Magallanes v.*  
27 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted).

28 Here, the ALJ rejected Dr. Aragon's opinion with respect to the paragraph B

1 criteria because they were inconsistent with the psychologist’s other findings and the  
2 other medical evidence of record. (AR at 22-23.) This was a specific and legitimate  
3 reason for rejecting Dr. Aragon’s assessment of the paragraph B criteria.

4 First, although Dr. Aragon concluded that Plaintiff had marked restrictions in  
5 activities of daily living, his other findings within the same report are inconsistent  
6 with this conclusion. For example, according to Dr. Aragon, Plaintiff did not have  
7 difficulty thinking or concentrating; she did not have psychomotor agitation or  
8 retardation; she did not have a disturbance of vision, speech, hearing, or movement;  
9 she had no hallucinations and was not catatonic; she did not suffer a memory  
10 impairment; and her sleep was not disturbed. (*Id.* at 343.) Dr. Aragon also reported  
11 that Plaintiff’s loss of interest in activities occurred only “[at] times,” and that she  
12 could perform most mental abilities to do unskilled work. (*Id.* at 343-45.) Finally,  
13 Dr. Aragon reported that Plaintiff could function independently outside her home,  
14 travel, and could manage benefits in her own best interest. (*Id.* at 346, 347.)

15 Similarly, Dr. Aragon’s conclusion that Plaintiff had marked difficulties in  
16 maintaining social functioning is not supported by his other findings. Dr. Aragon  
17 noted that Plaintiff did not have a change in personality, did not have inappropriate  
18 suspicions, was not emotionally withdrawn or isolated, did not have unstable  
19 interpersonal relationships, and had a satisfactory ability to get along with peers  
20 without distracting them or exhibiting behavioral extremes. (*Id.* at 343, 344.)

21 Thus, the ALJ properly rejected Dr. Aragon’s findings regarding the  
22 paragraph B criteria, and properly found that Plaintiff did not meet Listing 12.04.

23 B. The ALJ’s Assessment of Plaintiff’s Severe Impairments

24 1. Severe Impairments

25 Plaintiff next argues that the ALJ erred by failing to include within the list of  
26 Plaintiff’s severe impairments her complaints of lower back pain, heartburn, reflux,  
27 stomach pain, diabetes mellitus, and anxiety. (Joint Stip. at 25-26, 30.)

28 Although an ALJ found that Plaintiff’s lumbar spine condition was severe at

1 the time of Plaintiff’s previous social security application, there is no evidence in the  
2 record to support a finding that Plaintiff’s lumbar spine condition continued to  
3 amount to a severe impairment. Indeed, the diagnoses and treatment after Plaintiff’s  
4 back injury was exacerbated by an accident focused only on cervical and thoracic  
5 spine pain. Significantly, approximately two months into treatment, Plaintiff’s  
6 thoracic spine had made a “remarkable recovery,” (*id.* at 384), leaving symptoms  
7 only in Plaintiff’s cervical spine. (*Id.* at 351-403.) And, a consultative examination  
8 revealed only mild findings with respect to Plaintiff’s lumbar spine. (*Id.* at 406-07.)

9 Next, there are notes in the record regarding Plaintiff’s complaints of  
10 abdominal and pelvic pain, as well as a generalized diagnosis of gastroesophageal  
11 reflux disease (“GERD”). (*Id.* at 314, 416, 417.) However, there is no evidence  
12 that Plaintiff suffers any limitations as a result of her abdominal symptoms.<sup>3/</sup>

13 Plaintiff also complains that the ALJ should have considered her diabetes  
14 mellitus. However, there is simply no evidence in the record that Plaintiff has been  
15 diagnosed with diabetes. The only evidence in this regard is a single blood test in  
16 which Plaintiff had an elevated glucose level. (*Id.* at 244.) This single test is  
17 insufficient to warrant a finding that Plaintiff suffered from diabetes, and does not  
18 support a finding that Plaintiff suffers any limitations as a result of this disease.

19 Finally, it appears that the ALJ considered Plaintiff’s anxiety within her  
20 diagnosis of depression, an analysis that is supported by the record. (*Id.* at 20, 318,  
21 323, 342, 343.)

22 To the extent that Plaintiff also argues that the ALJ failed to consider all of  
23 Plaintiff’s alleged impairments, regardless of severity, her claim also fails. The ALJ  
24 considered *all* of the alleged impairments at issue and found that they did not result  
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27 <sup>3/</sup> Plaintiff also has a history of hysterectomy and appendectomy, but there is no  
28 evidence that she suffered any complications from surgery or any other ongoing  
symptoms. (AR at 405.)

1 in more severe limitations on Plaintiff's ability to work.<sup>4/</sup> (AR at 20-24.) As  
2 detailed above, the medical evidence supports this conclusion.

3           2.     Classification of Plaintiff's Mental Health Impairment

4           Plaintiff further faults the ALJ for classifying her mental health impairment as  
5 "depressive disorder," despite evidence that Plaintiff suffered from "major  
6 depression with psychotic features." (Joint Stip. at 26.) However, by classifying  
7 Plaintiff's impairment as "depressive disorder," the ALJ did not necessarily dispute  
8 that Plaintiff's depression was major. In fact, the ALJ did not otherwise classify  
9 Plaintiff's depressive disorder as moderate or mild. In addition, in addressing  
10 Plaintiff's mental health impairment, the ALJ considered *all* of the evidence related  
11 to her depressive disorder. (AR at 22-24.) And, in rejecting Plaintiff's subjective  
12 complaints, the ALJ also noted that Plaintiff's reports of psychotic symptoms were  
13 inconsistent. Accordingly, the ALJ's classification of Plaintiff's mental health  
14 impairment was supported by the record.

15           C.     The ALJ's Assessment of Plaintiff's Residual Functional Capacity

16           In her next claim, Plaintiff argues that the ALJ's assessment of Plaintiff's  
17 residual functional capacity ("RFC") did not account for her neck, shoulder, hand,  
18 and back pain. (Joint Stip. at 31-32, 37-38.)

19           The ALJ concluded that Plaintiff maintained the RFC to perform "simple,  
20 repetitive [] medium work as defined in 20 CFR 416.967(c) with occasional  
21 overhead reaching and with no more than occasional exposure to the general public  
22 and coworkers." (AR at 24.)

23           Here, Plaintiff fails to cite to evidence that would support a more restrictive  
24 RFC. Plaintiff explains that she had positive findings upon examination of her back  
25 and shoulder, and that an MRI supported these findings. But, the ALJ did not

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27           <sup>4/</sup> The ALJ did not consider Plaintiff's alleged diabetes. However, as explained  
28 above, there is no evidence that Plaintiff suffers from this disease.

1 dispute that she had severe impairments of her back and shoulder. Instead, the  
2 record simply does not support a finding that these severe impairments resulted in an  
3 RFC more restrictive than that provided for by the ALJ. In addition, while Plaintiff  
4 complained of hand pain and was diagnosed with wrist tendonitis and carpal tunnel  
5 syndrome, (*id.* at 416, 418), none of the treating or examining sources suggested that  
6 Plaintiff’s hand pain resulted in physical limitations.

7       The Court recognizes that Plaintiff’s chiropractor suggested that she reduce or  
8 modify her activity while she was under treatment for her injuries. However, there  
9 is no evidence that the chiropractor suggested that Plaintiff’s activity be similarly  
10 limited after her treatment concluded, other than generic precautions aimed at  
11 preventing an exacerbation of symptoms. (AR at 357-58.) Ultimately, none of  
12 Plaintiff’s doctors suggested that her physical activities were more severely limited  
13 or precluded by her impairments.<sup>5/</sup>

14       Thus, the Court finds that the ALJ did not err in assessing Plaintiff’s RFC.

15       4.     The ALJ’s Assessment of Plaintiff’s Testimony

16       Finally, Plaintiff asserts that the ALJ improperly assessed her credibility.  
17 (Joint Stip. at 38-40, 46-47.) The Court disagrees.

18       An ALJ can reject a claimant’s subjective complaints by expressing clear and  
19 convincing reasons for doing so. *Benton*, 331 F.3d at 1040. “General findings are  
20 insufficient; rather, the ALJ must identify what testimony is not credible and what  
21 evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834.

22       Here, the ALJ presented at least *four* clear and convincing reasons for  
23 rejecting Plaintiff’s credibility.

24       First, the ALJ noted that Plaintiff’s subjective complaints are contradicted by

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27       <sup>5/</sup> The remainder of Plaintiff’s argument is premised on her subjective assessment  
28 of her own limitations. However, as discussed below, the ALJ properly rejected  
Plaintiff’s subjective complaints.

1 the findings of agency psychiatrist R.E. Brooks, M.D. (AR at 25.) Despite  
2 Plaintiff's complaints of severe psychiatric symptoms, Dr. Brooks found fairly mild  
3 limitations. (*Id.* at 277-92.) "Contradiction with the medical record is a sufficient  
4 basis for rejecting the claimant's subjective testimony." *Carmickle v. Comm'r Soc.*  
5 *Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Of course, "once the claimant  
6 produces objective medical evidence of an underlying impairment, [the ALJ] may  
7 not reject a claimant's subjective complaints based *solely* on a lack of objective  
8 medical evidence to fully corroborate the alleged severity of pain." *Bunnell v.*  
9 *Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (emphasis added). However, as  
10 explained below, the ALJ did not rely solely on the lack of objective medical  
11 findings in rejecting Plaintiff's credibility.

12         Second, the ALJ explained that Plaintiff's medical treatment was irregular and  
13 infrequent, and that there was no evidence of ongoing physical or occupational  
14 therapy, or other rehabilitative treatment. (AR at 25.) The record reveals that  
15 Plaintiff underwent rather conservative treatment for her back, when she received  
16 any treatment at all. The most extensive treatment she received for her back  
17 impairment was the chiropractic care from Wilmore Premier Health Group, in which  
18 she received only one course of physical therapy. (*Id.* at 351-03.) Although  
19 Plaintiff has claimed that she refused recommended surgery and epidural injections,  
20 there is no indication in the record that such forms of treatment were recommended.  
21 (*Id.* at 37-38.) Further, there is no evidence in the record that Plaintiff had been  
22 prescribed narcotic pain medication. (*See id.* at 36, 37, 251.) The ALJ thus properly  
23 relied on Plaintiff's conservative treatment to reject her more severe subjective  
24 complaints. *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995).

25         Third, the ALJ correctly rejected Plaintiff's credibility based upon her  
26 noncompliance with mental health treatment. (AR at 25.) The record reflects that  
27 Plaintiff frequently missed or rescheduled mental health appointments. (*Id.* at 256-  
28 58, 267, 342.) She also had to be reminded to be treatment compliant and, at times,



1 was completely noncompliant. (*Id.* at 257, 259-60, 342.) Noncompliance with a  
2 prescribed course of treatment is a relevant consideration in assessing a plaintiff's  
3 credibility, especially where, as here, a plaintiff's mental health symptoms *improve*  
4 with required medication. *Bunnell*, 947 F.2d at 346; (*id.* at 262, 331, 425.)

5 Finally, the ALJ explained that Plaintiff had a history of polysubstance abuse  
6 and that her statements with respect to her alleged cessation of drug and alcohol use  
7 were inconsistent. This reason is fully supported by the record. For example, at the  
8 2011 hearing before the ALJ, Plaintiff claimed that she had stopped using drugs and  
9 alcohol nine years prior. (*Id.* at 43, 45, 320.) However, the record indicates more  
10 recent drug and alcohol use. On February 1, 2008, for example, Plaintiff claimed  
11 she had consumed alcohol the day before and that she had stopped using drugs in  
12 2005. (*Id.* at 320.) On the same day, she admitted that she suffered a drug  
13 possession conviction. (*Id.* at 320, 321, 323.) In addition, on June 2, 2010, Plaintiff  
14 admitted that she drank two beers most days and had done so for the previous 20  
15 years. (*Id.* at 418.) Finally, Plaintiff's treating psychiatrist questioned whether  
16 Plaintiff had recently abused controlled substances. (*Id.* at 260.) In sum, Plaintiff's  
17 inconsistent statements are proper bases on which her credibility can be rejected.  
18 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

19 Accordingly, the Court finds that substantial evidence supported the ALJ's  
20 decision regarding Plaintiff's credibility.

21 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
22 **AFFIRMING** the decision of the Commissioner denying benefits.

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24 Dated: August 26, 2013

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26   
Hon. Jay C. Gandhi

27 United States Magistrate Judge  
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