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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 JUDITH JEANETTE NEBLETT,) No. CV 14-01204-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 CAROLYN W. COLVIN, Acting)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
22 _____)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the record before
24 the Commissioner. The parties have filed the Joint Stipulation
25 ("JS"), and the Commissioner has filed the certified Administrative
26 Record ("AR").

27 Plaintiff raises the following issues:

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

1 considered the treating physician's opinion; and

2 2. Whether the ALJ properly considered Plaintiff's testimony
3 and made proper credibility findings.

4 (JS at 2.)

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

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10 I

11 **THE ALJ PROPERLY ASSESSED THE OPINION**
12 **OF TREATING PHYSICIAN DR. ORKIN**

13 Following a hearing on October 24, 2012, at which Plaintiff was
14 present with counsel, and testified, and testimony was also received
15 from a vocational expert ("VE") (AR 23-52), an unfavorable decision
16 was rendered on November 9, 2012. (AR 9-19.) The ALJ followed the five
17 step sequential evaluation process summarized in the decision (AR 10-
18 11), determining at Step Two that Plaintiff has severe impairments
19 consisting of the following: bipolar disorder; attention deficit
20 hyperactivity disorder ("ADHD"); and a history of polysubstance abuse,
21 in remission. (AR 12.) At the next step, the ALJ found that
22 Plaintiff's impairments do not meet or equal any of the Listings, and
23 he then determined that Plaintiff's residual functional capacity
24 ("RFC") allows her to perform the full range of work at all exertional
25 levels with the following non-exertional limitations: simple,
26 repetitive tasks; no prolonged public contact; and solitary work not
27 in coordination with others. (AR 13.) The ALJ found that Plaintiff
28 could not perform her past relevant work, and thus proceeded to Step

1 Five, concluding that there are jobs that exist in significant numbers
2 in the national economy that she can perform, thus rendering her not
3 disabled. (AR 17-18.)

4 The record contains an April 3, 2012 "check the box" type of
5 questionnaire entitled "Medical Opinion Re: Ability to Do Work-Related
6 Activities (Mental)" completed by treating psychologist Dr. Orkin. (AR
7 282-283.) There, Dr. Orkin concluded that Plaintiff has "no useful
8 ability to function" with regard to her ability to maintain attention
9 for two-hour segments of time and her ability to complete a normal
10 workday and workweek without interruptions from psychologically-baaed
11 symptoms, or an ability to set realistic goals and make plans
12 independently of others, an ability to deal with the stress of semi-
13 skilled and skilled work. Dr. Orkin noted that Plaintiff has "severe
14 ADHD" and Bipolar II Disorder, cannot maintain concentration or focus
15 for more than five to ten minutes, and could be expected to miss more
16 than four days of work per month due to her impairments. (AR 283.)

17 The ALJ rejected Dr. Orkin's conclusions, giving them "no weight"
18 because they are "simply not supported by the objective medical
19 findings or the longitudinal record." Plaintiff's first issue focuses
20 on asserted error with regard to this conclusion.

21 Plaintiff first notes that she has consistently been diagnosed
22 with bipolar disorder, and cites various portions of the record to
23 substantiate this. (JS at 4.) This conclusion was not disputed by the
24 ALJ, who in fact found that Plaintiff's bipolar disorder is a severe
25 impairment. (AR 12.) Further, Plaintiff notes that, during separate
26 mental health appointments, there are observations of a depressed or
27 anxious mood, perceptual disturbances, restlessness, irritability, and
28 feelings of hopelessness or worthlessness. (Id.) She also points to a

1 test that she indicates was designed to identify symptoms consistent
2 with ADHD. (JS at 4-5, citing AR 291.)

3 Plaintiff disputes the ALJ's conclusion that Dr. Orkin "appears
4 to have accepted the claimant's subjective complaints, and the above-
5 noted opinions appear reflective of a position of 'advocate' for the
6 patient." (JS at 5, citing AR 16.)

7 The Court must determine whether the ALJ's decision and
8 conclusions are supported by substantial evidence in the record.
9 Plaintiff has the burden to establish that she has a medically
10 determinable severe impairment which ultimately causes her disability.

11 As noted, Plaintiff has been diagnosed with bipolar disorder, as
12 evidenced in treatment notes in the record spanning the period 2006 to
13 October 2012 (AR 208-230, 277-328); however, the Commissioner is
14 correct in pointing out that these notes show that Plaintiff was
15 stable when on medication, that her mental status examinations did not
16 demonstrate cognitive deficits (AR 208-230, 277-328); that she did
17 work (although sometimes on a part time basis) during this period (and
18 in fact in October 2012 was currently working as a caregiver). (AR 32-
19 33, 37-38, 41.) With regard to that position, Plaintiff told her
20 therapist that she "loved" this job although she indicated to the ALJ
21 that it was stressful and made her cry. (AR 37-38, 41, 299.)

22 Indeed, the ALJ's assessment of the longitudinal records reflects
23 a thorough and fair reading of these documents. For example, on
24 January 12, 2010, Plaintiff presented to her treating facility, Kaiser
25 Permanente, with manic depressive symptoms, but indicated she was
26 doing well and that she viewed her only problem as losing Kaiser
27 Permanente health insurance. (AR 208.) During her mental status
28 examination, her anxiety level was described as "calm in session," she

1 was alert and oriented, did not have suicidal ideations or overt
2 psychotic symptoms. (AR 209.) Similar conclusions were reached in a
3 mental status examination during a Kaiser Permanente visit on November
4 12, 2009. (AR 211-213.)

5 In sum, the longitudinal record that the ALJ examined does not
6 demonstrate consistent or serious mental limitations. Indeed, at one
7 point Plaintiff attended school for computer classes. Her activities
8 of daily living were robust; she indicated she had friends at church,
9 maintained good relations with her family, and enjoyed being with her
10 grandchildren.

11 Further, Plaintiff was provided with a consultative psychiatric
12 evaluation ("CE") on November 22, 2011 (AR 237-240), which indicated
13 essentially benign and normal assessments. Considering that Dr.
14 Orkin's conclusions essentially rendered him an outlier, the ALJ
15 correctly discharged his function to weigh the evidence by examining
16 the entire record in concluding that Dr. Orkin's opinions were not
17 entitled to credibility. In any event, one of the least favored forms
18 of medical opinion in the context of Social Security adjudications are
19 "check the box" forms such as the one that was provided by Plaintiff's
20 current counsel to Dr. Orkin. See Batson v. Commissioner of Social
21 Security Administration, 359 F.3d 1190, 1196-1197 (9th Cir. 2004).

22 Finally, the ALJ allowed for mental limitations by assessing an
23 RFC that limited Plaintiff to the performance of simple, repetitive
24 tasks with no prolonged public contact, and solitary work not in
25 coordination with others. (AR 13.)

26 Thus, the ALJ relied not only on the record, but also the
27 conclusions of the CE, and the State Agency review physicians, who
28 noted that Plaintiff did not have significant mental difficulties with

1 the exception of her ability to interact with the general public and
2 maintain her concentration. (AR 15-16, 245-258, 259-262.)

3 All in all, the Court must respectfully disagree with Plaintiff's
4 contention that the ALJ did not provide specific and legitimate
5 reasons to depreciate or in fact entirely reject Dr. Orkin's
6 conclusions.

7
8 **II**

9 **THE ALJ PROPERLY CONSIDERED PLAINTIFF'S CREDIBILITY**

10 In Plaintiff's second issue, she asserts the ALJ erred in
11 depreciating her credibility as to subjective symptoms. During her
12 testimony at the hearing before the ALJ, she stated she experiences
13 some days on which she cannot get out of bed due to mental
14 impairments; that she is extremely forgetful; and that she had
15 difficulty completing tasks. (AR 34.) The ALJ found that Plaintiff's
16 statements concerning the intensity, persistence and limiting effects
17 of her symptoms are not credible to the extent they are inconsistent
18 with the determined RFC. In making this finding, the ALJ relied upon
19 Plaintiff's activities of daily living ("ADL"); the conflict between
20 Plaintiff's assertions and the objective medical evidence; the fact
21 that these records also indicated that Plaintiff responded well to
22 medication; and Plaintiff's own statements that she was doing well and
23 only regretted losing her health insurance. (AR 14-15.)

24 For reasons to be stated, the Court concludes that the ALJ did
25 find and cite to legitimate reasons to detract from Plaintiff's
26 credibility as to her own assessment of her subjective symptoms.

27 With regard to Plaintiff's response to her medication, the ALJ's
28 conclusion that Plaintiff was "very stable" on medication is borne out

1 by the records. (AR 14, 208-230, 277-328.) See Warre v. Commissioner
2 of Social Security, 439 F.3d 1001, 1006 (9th Cir. 2006). Further, as
3 the Court has noted, the longitudinal record of Plaintiff's treatment
4 does not evidence the type of disabling symptoms that would
5 substantially corroborate Plaintiff's subjective claims.

6 The ALJ must make specific credibility findings as mandated not
7 only by case law but by regulation. (See Social Security Regulation
8 ["SSR"] 96-7p.) The factors cited in the regulations are those which
9 would be expected to be referenced in any credibility determination.

10 Plaintiff's part time work during the time she claims disability
11 are a relevant factor considered alongside her routine daily
12 activities. See McCalmon v. Astrue, 319 Fed.Appx. 658, 660 (9th Cir.
13 2009); Harris v. Barnhart, 356 F.3d 926, 930 (8th Cir. 2004); Bray v.
14 Astrue, 554 F.3d 1219, 1227 (9th Cir. 2009). As noted, during the
15 hearing, Plaintiff indicated she was working as a personal caregiver,
16 and as also noted, she had indicated to her medical professionals that
17 she loved this job.

18 Plaintiff appeared to have a consistently good reaction to
19 medications as reflected in mental status examinations that
20 essentially indicated a normal level of mental functioning.

21 While Plaintiff claimed an inability to remember or to follow
22 written or verbal instructions and finish tasks, at the same time, as
23 the ALJ noted, she was able to look for work, obtain jobs and perform
24 jobs that required a mental state beyond her determined ability to
25 perform simple repetitive tasks with limited public contact and
26 solitary work.

27 With regard to the ALJ's own observations of Plaintiff, while
28 Plaintiff dismisses these as insignificant, and certainly the Court is

1 aware that "sit and squirm" jurisprudence is not acceptable, at the
2 same time, an ALJ may rely upon his observations of a plaintiff's
3 demeanor and functioning during a hearing as one factor in the
4 credibility analysis. See Berduzco v. Apfel, 188 F.3d 1087, 1090 (9th
5 Cir. 1999).

6 All in all, the Court must conclude that the credibility findings
7 here are supported by substantial evidence and do meet the
8 requirements set out by both regulation and the Ninth Circuit.
9 Consequently, the Court rejects Plaintiff's second issue as without
10 merit.

11 The decision of the ALJ will be affirmed. The Complaint will be
12 dismissed with prejudice.

13 **IT IS SO ORDERED.**

14
15 DATED: August 21, 2014

16 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE