

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

ANGELICA GUTIERREZ GOMEZ,)
) Plaintiff,)
) v.)
CAROLYN W. COLVIN, Acting)
Commissioner of Social Security,)
) Defendant.)
_____)

Case No. CV 14-2556 (SH)
MEMORANDUM DECISION
AND ORDER

This matter is before the Court for review of the decision by the Commissioner of Social Security denying plaintiff’s applications for Disability Insurance Benefits and for Supplemental Security Income. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case may be handled by the undersigned. 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 plaintiff and the defendant have filed their pleadings (Plaintiff’s Brief in Support of Complaint [“Plaintiff’s Brief”]);

1 Defendant's Brief in Support of Defendant's Answer ["Defendant's Brief"]; Plaintiff's
2 Reply Brief), and the defendant has filed the certified transcript of record. After
3 reviewing the matter, the Court concludes that the decision of the Commissioner should
4 be reversed and remanded.

5 On April 20, 2011, plaintiff Angelica Gutierrez Gomez filed applications for a
6 period of disability or Disability Insurance Benefits and for Supplemental Security
7 Income, both alleging an inability to work since January 27, 2009. (See Administrative
8 Record ["AR"] 163-71). On September 27, 2012 (following a hearing on September 5,
9 2012, see AR 44-75), an Administrative Law Judge ("ALJ") determined that plaintiff had
10 severe impairments -- diabetes, hypertension, and depression -- but found that plaintiff
11 was not disabled within the meaning of the Social Security Act. (See AR 21-38).

12 Following the Appeals Council's denial of plaintiff's request for a review of the
13 hearing decision (see AR 1-4), plaintiff filed this action in this Court.

14 Plaintiff makes five challenges to the ALJ's Decision. Plaintiff alleges the ALJ
15 erred in (1) failing to determine that plaintiff's other mental impairments were severe, (2)
16 failing to properly assess plaintiff's mental residual functional capacity; and (3) failing to
17 properly assess plaintiff's credibility.

18 For the reasons discussed below, the Court concludes that plaintiff's first claim of
19 error has merit. Since the Court is remanding the matter based on plaintiff's first claim of
20 error, the Court will not address plaintiff's second and third claims of error.
21
22

23 24 I. DISCUSSION

25 Plaintiff asserts that the ALJ failed to consider all of plaintiff's severe impairments,
26 specifically chest pains with cardiac symptoms and a mental impairment (AR 474-75).
27 Defendant argues that, because the ALJ found one mental impairment (depression)
28 severe, the ALJ necessarily considered the functional effect of all of plaintiff's

1 impairments, severe and non-severe. Defendant further argues that any error by the ALJ
2 in not finding plaintiff's other mental impairments severe was harmless.

3 "An impairment or combination of impairments is not severe if it does not
4 significantly limit [the claimant's] physical and mental ability to do work activities." 20
5 C.F.R. § 404.1521(a). "[T]he ALJ must consider the combined effect of all of the
6 claimant's impairments on her ability to function, without regard to whether each alone
7 was sufficiently severe." Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996). An
8 impairment or combination of impairments is not severe "if the evidence establishes a
9 slight abnormality that has 'no more than a minimal effect on a individual's ability to
10 work.'" Id.; Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988).

12 In the Decision, the ALJ discussed medical records in which plaintiff's mental
13 impairments other than depression -- specifically anxiety, panic attacks, psychosis, and
14 agoraphobia -- were mentioned (see AR 24, citing AR 399-400 [Mission City
15 Community Network, Inc., Psychiatry Initial Evaluation Note, dated August 20, 2010,
16 containing diagnosis of adjustment reaction with anxious mood]; AR 26, citing AR [Serra
17 Community Medical Community, Inc., Adult Progress Note, dated April 28, 2011,
18 containing diagnosis of anxiety]; AR 26, citing AR 412 [Mission City Community
19 Network, Inc., Psychiatry Progress Note, dated June 20, 2011, noting plaintiff's
20 complaint of anxiety and containing diagnosis of adjustment reaction with anxiety]; AR
21 27, citing AR 458 [Mission City Community Network, Inc., Psychiatry Progress Note,
22 dated August 16, 2011, containing diagnosis of anxious mood]; AR 27, citing AR 456
23 [Mission City Community Network, Inc, Psychiatry Progress Note, dated September 12,
24 2011, containing diagnosis of anxiety]; AR 27, citing AR 476 [Mission City Community
25 Network, Inc., Psychiatry Progress Note, dated October 10, 2011, noting plaintiff's
26 statement that Clonazepam helped her anxiety more than Xanax, and containing
27 diagnosis of anxiety]; AR 27, citing AR 474 [Mission City Community Network, Inc.,
28 Psychiatry Progress Note, dated December 23, 2011, noting plaintiff's complaint of panic

1 attacks]; AR 27, citing AR 473 [Mission City Community Network, Inc., Psychiatry
2 Progress Note, dated February 17, 2012, noting plaintiff's complaints of anxiety and
3 panic attacks]; AR 27, citing AR 472 [Mission City Community Network, Inc.,
4 Psychiatry Progress Note, dated March 15, 2012, noting a lessening of psychosis]; AR
5 27, citing AR 471 [Mission City Community Network, Inc., Psychiatry Progress Note,
6 dated April 13, 2012, noting plaintiff's complaints of panic attacks and agoraphobia]; AR
7 27, citing AR 468 [Mission City Community Network, Inc., Psychiatry Progress Note,
8 dated July 3, 2012, noting plaintiff's complaints of panic attacks].
9

10 The medical records reflect that plaintiff was diagnosed at various times with
11 anxiety (see AR 382, 400, 412, 414, 456, 458, 461, 463, 475), panic attacks (see AR 465-
12 66, 468-74, 488), agoraphobia (see AR 465, 468-75), and bipolar affective disorder (see
13 AR 481, 485-86) and psychosis (see AR 466, 468-74, 481, 485-86, 488). However, as
14 plaintiff asserts, there is no indication that the ALJ considered whether these impairments
15 were severe or non-severe, either individually or in combination.

16 Thus, the Court finds that the ALJ erred in failing to consider whether plaintiff's
17 mental impairments, as identified above, were severe, individually and/or in combination.
18 Although defendant conclusorily asserts that the ALJ's error was harmless, the Court at
19 this point has no basis for making that determination.
20

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///

27 **ORDER**
28

1 For the foregoing reasons, the decision of the Commissioner is reversed, and the
2 matter is remanded for further proceedings in accordance with the decision, pursuant to
3 Sentence 4 of 42 U.S.C. § 405(g).

4 DATED: December 9, 2014

A handwritten signature in black ink that reads "Stephen Hillman". The signature is written in a cursive style with a horizontal line underneath it.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE