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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THERESA QUINTANILLA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 14-8014-DFM

MEMORANDUM OPINION AND
ORDER

Plaintiff Theresa Quintanilla appeals from the final decision of the Administrative Law Judge (“ALJ”) denying her applications for Social Security benefits. The Court concludes that the ALJ’s finding that Plaintiff did not meet or equal a listed impairment was supported by substantial evidence. The Court also concludes that the ALJ offered clear and convincing reasons for discrediting Plaintiff’s credibility and properly considered the testimony of Plaintiff’s mother. Accordingly, the ALJ’s decision is affirmed and the matter is dismissed with prejudice.

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1 I.

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 Plaintiff filed applications for Disability Insurance and Supplemental
4 Security Income benefits on October 24, 2011, alleging disability beginning
5 September 23, 2011. Administrative Record (“AR”) 149-73. The ALJ found
6 that Plaintiff had the severe impairments of multiple sclerosis (“MS”) and
7 anxiety. Administrative Record (“AR”) 12. The ALJ concluded that Plaintiff
8 was not disabled because there was work available in significant numbers in
9 the national and regional economy which she could perform despite her
10 impairments. AR 20-21.

11 II.

12 **ISSUES PRESENTED**

13 The parties dispute whether the ALJ erred in failing to: (1) consider
14 whether Plaintiff’s MS meets or equals Listing 11.09(C); (2) properly assess
15 Plaintiff’s credibility; and (3) properly consider the testimony and written
16 statement of Plaintiff’s mother. See Joint Stipulation (“JS”) at 2.

17 III.

18 **DISCUSSION**

19 **A. The ALJ Properly Considered Whether Plaintiff’s Impairments Met**
20 **or Equaled a Listed Impairment**

21 **1. Applicable Law**

22 At step three of the sequential evaluation process, an ALJ considers
23 whether an applicant has an impairment or combination of impairments that
24 meets or medically equals an impairment included in the regulations’ listing of
25 disabling impairments. Listed impairments are those that are “so severe that
26 they are irrebuttably presumed disabling, without any specific finding as to the
27 claimant’s ability to perform his past relevant work or any other jobs.” Lester
28 v. Chater, 81 F.3d 821, 828 (9th Cir. 1996). Thus, if the claimant’s impairment

1 matches or is “equal” to one of the listed impairments, he qualifies for benefits
2 without further inquiry. 20 C.F.R. § 416.920(d); Sullivan v. Zebley, 493 U.S.
3 521, 525 (1990).

4 The claimant bears the burden of proving that she has an impairment
5 that meets or equals a listed impairment. Burch v. Barnhart, 400 F.3d 676, 683
6 (9th Cir. 2005); Zebley, 493 U.S. at 530 (noting burden of proof rests with
7 claimant to provide and identify medical signs and laboratory findings that
8 support all criteria for step three impairment determination). “To meet a listed
9 impairment, a claimant must establish that he or she meets each characteristic
10 of a listed impairment relevant to his or her claim.” Tackett v. Apfel, 180 F.3d
11 1094, 1099 (9th Cir. 1999). “To equal a listed impairment, a claimant must
12 establish symptoms, signs and laboratory findings ‘at least equal in severity and
13 duration’ to the characteristics of a relevant listed impairment.” Id. (quoting 20
14 C.F.R. § 404.1526). “A generalized assertion of functional problems is not
15 enough to establish disability at step three.” Id. at 1100; see 20 C.F.R.
16 § 416.926.

17 An ALJ “must evaluate the relevant evidence before concluding that a
18 claimant’s impairments do not meet or equal a listed impairment.” Lewis v.
19 Apfel, 236 F.3d 503, 512 (9th Cir. 2001). The ALJ need not, however, “state
20 why a claimant failed to satisfy every different section of the listing of
21 impairments.” Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990)
22 (concluding that ALJ did not err in failing to state what evidence supported
23 finding that claimant failed to meet or equal a listed impairment because four
24 page, single-spaced “‘evaluation of the evidence’” was “an adequate statement
25 of the ‘foundations on which the ultimate factual conclusions [were] based’”).
26 An ALJ’s decision that a plaintiff did not meet a Listing must be upheld if it
27 was supported by “substantial evidence.” See Warre v. Comm’r of Soc. Sec.
28 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006).

1 **2. Listing 11.09(C)**

2 Plaintiff contends that the ALJ erred by failing to explicitly consider
3 whether her MS met or equaled Listing 11.09, the listing for multiple sclerosis.
4 JS at 3-6. Listing 11.09 provides as follows:

5 Multiple sclerosis. With:

6 A. Disorganization of motor function as
7 described in 11.04B; or

8 B. Visual or mental impairment as described
9 under the criteria in 2.02, 2.03, 2.04, or 12.02; or

10 C. Significant, reproducible fatigue of motor
11 function with substantial muscle weakness on
12 repetitive activity, demonstrated on physical
13 examination, resulting from neurological dysfunction
14 in areas of the central nervous system known to be
15 pathologically involved by the multiple sclerosis
16 process.

17 20 C.F.R. pt. 404, subpt. P, app. 1, § 11.09. Plaintiff does not argue that she
18 meets subparagraph (A) or (B) of Listing 11.09, arguing only that “[t]he
19 medical evidence supports MS with significant fatigue.” JS at 3; see also id.
20 (“Complaints of fatigue are prevalent throughout the record.”).

21 The ALJ reviewed Plaintiff’s medical records regarding her symptoms
22 and treatment for MS, including her fatigue. See AR 16-19. Based on that
23 review, he found that “claimant’s impairments, considered singly and in
24 combination, do not meet or medically equal the criteria of any medical
25 listing.” AR 13. As noted above, the ALJ need not state why a claimant failed
26 to satisfy every different section of the listings. See Gonzalez, 914 F.2d at
27 1200-01.

28 In this case, the Court finds that the ALJ committed no error in finding

1 that Plaintiff did not meet or equal a listing. Although Plaintiff contends that
2 her MS satisfies the requirements for Listing 11.09, she never demonstrates
3 how she meets the listing criteria. Plaintiff notes that she has been diagnosed
4 with MS and cites to references in the medical record where she complained of
5 fatigue. JS at 3, 8. However, in order to meet or equal Listing 11.09(C),
6 Plaintiff must provide medically documented findings of “significant,
7 reproducible fatigue of motor function with substantial muscle weakness on
8 repetitive activity, demonstrated on physical examination, resulting from
9 neurological dysfunction in areas of the central nervous system known to be
10 pathologically involved by the multiple sclerosis process.” See 20 C.F.R.,
11 subpt. P, app. 1 § 11.09(C). No treating or examining physician ever
12 determined that Plaintiff’s fatigue satisfied this criteria, nor are there any such
13 objective clinical or diagnostic findings in the record. Plaintiff’s diagnosis of
14 MS and reports of fatigue, without more, do not establish the necessary criteria
15 for Listing 11.09(C).

16 Moreover, the medical record is not entirely clear that any fatigue was
17 actually caused by Plaintiff’s MS. For example, Plaintiff’s treating physician
18 noted on March 5, 2012, that Plaintiff’s fatigue may have been increased by
19 stressful personal circumstances, including a mother-in-law in a nursing facility
20 with renal failure and a sister in drug rehabilitation. AR 377. In fact, Plaintiff
21 testified that she was being referred to a rheumatologist and tested for lupus
22 because her physicians did not know what exactly was causing her fatigue. AR
23 39.

24 When considering the record as a whole, it is clear that Plaintiff has not
25 met her burden of showing that she meets or equals each of the required
26 elements of Listing 11.09(C). See Bowen v. Yuckert, 482 U.S. 137, 145-152
27 (1987) (placing burden on claimant to produce evidence that his impairment
28 meets a listing); see also Sullivan, 493 U.S. at 530 (noting that “[a]n

1 impairment that manifests only some of [the listed] criteria, no matter how
2 severely, does not qualify”). The ALJ reviewed all of the medical evidence in
3 detail and correctly found, at step three of the sequential analysis, that
4 Plaintiff’s impairments do not meet or equal any listed impairment. Plaintiff is
5 therefore not entitled to relief on this claim of error.

6 **B. The ALJ Properly Assessed Plaintiff’s Credibility**

7 At the hearing before the ALJ, Plaintiff testified that she stopped
8 working in 2009 because the symptoms of her MS worsened with numbness
9 and dragging in her legs; she had difficulty concentrating and focusing and
10 could not handle work stress; her primary complaint was fatigue; she could not
11 work a 40-hour week because she has vertigo and asthma that keeps her
12 bedridden for a week at a time; she would miss approximately two days of
13 work per month due to her vertigo; she had other symptoms such as tingling in
14 her face, eyelid twitching, and slurred speech; and she could not handle a less
15 stressful job because of her fatigue and vertigo. AR 31-51.

16 To determine whether a claimant’s testimony about subjective pain or
17 symptoms is credible, an ALJ must engage in a two-step analysis. Vasquez v.
18 Astrue, 572 F.3d 586, 591 (9th Cir. 2009) (citing Lingenfelter v. Astrue, 504
19 F.3d 1028, 1035-36 (9th Cir. 2013)). First, the ALJ must determine whether
20 the claimant has presented objective medical evidence of an underlying
21 impairment which could reasonably be expected to produce the alleged pain or
22 other symptoms. Lingenfelter, 504 F.3d at 1036. “[O]nce the claimant
23 produces objective medical evidence of an underlying impairment, an
24 adjudicator may not reject a claimant’s subjective complaints based solely on a
25 lack of objective medical evidence to fully corroborate the alleged severity of
26 pain.” Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). To the
27 extent that an individual’s claims of functional limitations and restrictions due
28 to alleged pain are reasonably consistent with the objective medical evidence

1 and other evidence, the claimant's allegations will be credited. SSR 96-7p,
2 1996 WL 374186 at *2 (explaining 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)).

3 If the claimant meets the first step and there is no affirmative evidence of
4 malingering, the ALJ must provide specific, clear and convincing reasons for
5 discrediting a claimant's complaints. Robbins v. Soc. Sec. Admin., 466 F.3d
6 880, 883 (9th Cir. 2006). "General findings are insufficient; rather, the ALJ
7 must identify what testimony is not credible and what evidence undermines
8 the claimant's complaints." Reddick v. Chater, 157 F.3d 715, 722 (9th Cir.
9 1998) (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1996)). The ALJ
10 must consider a claimant's work record, observations of medical providers and
11 third parties with knowledge of claimant's limitations, aggravating factors,
12 functional restrictions caused by symptoms, effects of medication, and the
13 claimant's daily activities. Smolen v. Chater, 80 F.3d 1273, 1283-84 & n.8 (9th
14 Cir. 1996). The ALJ may also consider an unexplained failure to seek
15 treatment or follow a prescribed course of treatment and employ other
16 ordinary techniques of credibility evaluation. Id. (citations omitted).

17 Here, the ALJ provided several reasons for finding that Plaintiff was not
18 fully credible, each of which is supported by substantial evidence in the record.
19 First, Plaintiff testified that she was laid off from her job as a paralegal
20 approximately two weeks after she told her employer she has MS. AR 31. The
21 ALJ could properly consider that Plaintiff stopped working for reasons other
22 than her impairment. See Bruton v. Massanari, 268 F.3d 824, 82 (9th Cir.
23 2001) (holding that ALJ properly considered the fact that the claimant stopped
24 working because she was laid off, not because of a medical disability).
25 Relatedly, Plaintiff testified that she was looking for work and had worked for
26 an attorney on a part-time basis. AR 31. The ALJ could also consider the fact
27 that Plaintiff had worked and sought work since she allegedly became disabled.
28 See Bray v. Astrue, 554 F.3d 1219, 1227 (9th Cir. 2009) (noting that claimant's

1 allegation of debilitating illness belied in part by fact that claimant had sought
2 out employment since alleged onset date); Thomas v. Barnhart, 278 F.3d 948,
3 958-59 (9th Cir. 2002) (inconsistency between the claimant’s testimony and
4 conduct supported rejection of claimant’s credibility).

5 Second, the ALJ properly considered Plaintiff’s activities of daily living
6 in assessing her credibility. The ALJ noted that, despite Plaintiff’s complaints
7 of debilitating pain, she was able to perform certain daily activities, such as
8 doing some household chores, running errands, driving her daughter to and
9 from school, preparing meals for herself and her family, independently
10 handling her personal care, shopping, and doing some light cleaning and
11 laundry. AR 15. While it is true that “one does not need to be ‘utterly
12 incapacitated’ in order to be disabled,” Vertigan v. Halter, 260 F.3d 1044, 1050
13 (9th Cir. 2001) (quoting Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989), the
14 extent of Plaintiff’s activity here supports the ALJ’s finding that Plaintiff’s
15 reports of the severity of her impairment were not fully credible. See Bray v.
16 Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009); Curry v.
17 Sullivan, 925 F.2d 1127, 1130 (9th Cir. 1991) (finding that the claimant’s
18 ability to “take care of her personal needs, prepare easy meals, do light
19 housework, and shop for some groceries . . . may be seen as inconsistent with
20 the presence of a condition which would preclude all work activity”) (citing
21 Fair, 885 F.2d at 604).

22 Finally, the ALJ noted that Plaintiff’s activities of daily living were
23 inconsistent with her written statement that she has difficulty standing,
24 walking, talking, seeing, remembering, concentrating, and understanding. AR
25 15 (citing AR 219). As noted above, an ALJ may properly consider any
26 inconsistencies between a claimant’s testimony and conduct. Thomas v.
27 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002).

28 On appellate review, the Court does not reweigh the hearing evidence

1 regarding Plaintiff's credibility. Rather, this Court is limited to determining
2 whether the ALJ properly identified clear and convincing reasons for
3 discrediting Plaintiff's credibility, which the ALJ did in this case. Smolen, 80
4 F.3d at 1284. It is the ALJ's responsibility to determine credibility and resolve
5 conflicts or ambiguities in the evidence. Magallanes v. Bowen, 881 F.2d 747,
6 750 (9th Cir. 1989). If the ALJ's findings are supported by substantial
7 evidence, as here, this Court may not engage in second-guessing. See Thomas,
8 278 F.3d at 959; Fair, 885 F.2d at 604. It was reasonable for the ALJ to rely on
9 all of the reasons stated above, each of which is fully supported by the record,
10 in rejecting Plaintiff's subjective testimony. Reversal is therefore not warranted
11 on this basis.

12 **C. The ALJ Properly Considered the Testimony of Plaintiff's Mother**

13 Plaintiff's mother, Helen Doherty, detailed her observations of Plaintiff's
14 abilities and daily activities in oral testimony and a written statement. AR 52-
15 54, 206-13. The ALJ rejected Doherty's statements for the following reasons:
16 (1) she has a financial interest in Plaintiff receiving benefits because Doherty
17 lives with Plaintiff; (2) she is not a medical doctor or other qualified expert,
18 and therefore cannot give a qualified opinion as to Plaintiff's impairments or
19 ability to perform work activity; and (3) her opinion largely mirrors Plaintiff's
20 own testimony, which the ALJ found not fully credible. AR 15-16.

21 A lay witness can provide testimony about a claimant's symptoms and
22 limitations. See Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996). "Lay
23 testimony as to a claimant's symptoms is competent evidence that an ALJ
24 must take into account, unless he or she expressly determines to disregard such
25 testimony and gives reasons germane to each witness for doing so." Lewis v.
26 Apfel, 236 F.3d 503, 511 (9th Cir. 2001); see also Dodrill v. Shalala, 12 F.3d
27 915, 918-19 (9th Cir. 1993).

28 The first two reasons offered by the ALJ for discounting Doherty's

1 testimony are suspect. The Ninth Circuit has consistently held that bias cannot
2 be presumed from a familial relationship. See, e.g., Regennitter v. Comm’r of
3 Soc. Sec. Admin., 166 F.3d 1294, 1298 (9th Cir. 1999). Likewise, it is not
4 appropriate to discount a lay witness’s testimony just because the lay witness is
5 not a medical professional; although an ALJ need not discuss “medical
6 diagnoses” made by lay witnesses because they “are beyond the competence of
7 lay witnesses and therefore do not constitute competent evidence,”
8 nevertheless “lay witness testimony as to a claimant’s symptoms or how an
9 impairment affects ability to work is competent evidence, and therefore cannot
10 be disregarded without comment.” Nguyen, 100 F.3d at 1467 (citations
11 omitted).

12 Where one or more of the ALJ’s several reasons supporting an adverse
13 credibility finding is invalid, the Court applies a harmless error standard. See
14 Carmickle v. Comm’r of Soc. Sec. Admin., 533 F.3d 1155, 1162 (9th Cir.
15 2008) (citing Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1195-
16 1197 (9th Cir. 2004)). As long as there remains “substantial evidence
17 supporting the ALJ’s conclusions” and the error “does not negate the validity
18 of the ALJ’s ultimate [credibility] conclusion,” the error is deemed harmless
19 and does not warrant reversal. Batson, 359 F.3d at 1197; see also Stout v.
20 Comm’r of Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (defining
21 harmless error as such error that is “irrelevant to the ALJ’s ultimate disability
22 conclusion”).

23 Here, even if the Court concludes that the ALJ should not have
24 discounted Doherty’s testimony for bias and because she is not a medical
25 professional, an ALJ may reject lay witness testimony predicated upon reports
26 of a claimant properly found not credible. See Molina v. Astrue, 674 F.3d 674,
27 1114 (9th Cir. 2012) (citing Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d
28 685, 694 (9th Cir. 2009) (upholding ALJ’s rejection of lay witness testimony

1 for same reasons that ALJ discounted claimant's similar testimony)). Here, the
2 record shows that Plaintiff's mother's testimony largely mirrored Plaintiff's
3 subjective complaints. Doherty's testimony and written report provide
4 essentially the same information regarding Plaintiff's alleged symptoms and
5 limitations as Plaintiff's testimony and does not provide any limitations
6 beyond those which Plaintiff herself described. Compare AR 49-50 with AR
7 53-54. Thus, the Court finds that any error was harmless. Reversal is not
8 warranted on this basis.

9 **IV.**

10 **CONCLUSION**

11 For the reasons stated above, the decision of the Social Security
12 Commissioner is **AFFIRMED** and the action is **DISMISSED** with prejudice.

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14 Dated: November 19, 2015



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DOUGLAS F. McCORMICK
United States Magistrate Judge
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