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

PAMELA DENISE CRAYTON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 15-03550 AFM

**MEMORANDUM OPINION AND
ORDER DENYING REQUEST FOR
REMAND AND AFFIRMING
DECISION OF COMMISSIONER**

The Joint Stipulation (“Jt. Stip.”)¹ presents two disputed issues, both of which relate to evidence not included in the administrative record.

Issue 1: Whether the matter should be remanded for further administrative proceedings based on evidence (Exs. C, D, and E) submitted for the first time to the Appeals Council — and not submitted to the Administrative Law Judge (“ALJ”).

Issue 2: Whether the matter should be remanded for further administrative proceedings based on evidence (Exs. F, G and H) submitted for the first time on this appeal — and not submitted to the ALJ or the Appeals Council.

¹ The parties also filed an Amended Joint Stipulation with the Exhibits (ECF No. 41.)

1 As discussed below, the Court concludes that the evidence cited by Plaintiff
2 in the Joint Stipulation does not justify remand for further proceedings and
3 therefore affirms the decision of the Commissioner.

4
5 **A. BACKGROUND**

6 Plaintiff Pamela Crayton applied for Supplemental Security Income benefits
7 and Social Security Disability benefits on June 19, 2012. (AR 20.) A hearing took
8 place before the ALJ on June 26, 2013. Plaintiff testified at the hearing and was
9 represented by an attorney. (AR 31-45.) The lack of medical records was
10 discussed by the ALJ with Plaintiff's attorney on the record during the hearing.
11 (AR 41-44.) Plaintiff's attorney agreed that there was insufficient medical
12 information in the record, and he took "full responsibility for the insufficiency of
13 records." (AR 41.) Plaintiff's attorney also committed to obtain subpoenas that he
14 would use to obtain the necessary records. (AR 43.) The ALJ agreed to keep the
15 record open for 15 days beyond the hearing to receive additional records and
16 offered to extend that time further if necessary. (AR 44.)

17 The ALJ rendered a decision denying benefits on July 31, 2013. (AR 17.) In
18 the decision, the ALJ made the following statement regarding the lack of evidence
19 of a medically determinable impairment:

20 Despite repeated requests for medical records from [Plaintiff's]
21 alleged treating sources, coupled with holding the record open after the
22 hearing for submission of alleged outstanding evidence, [Plaintiff]
23 failed to provide any evidence to support the existence of any
24 medically determinable impairment. In fact, the only treating evidence
25 during the relevant period is dated January 2012 and shows that
26 [Plaintiff] presented for blood pressure medication refill and routine
27 blood work-up (Exhibit 1F). Physical examination revealed normal
28 findings. (AR 23.)

1 In the Joint Stipulation, Plaintiff agreed that the “ALJ fairly summarized the
2 medical evidence.” (Jt. Stip. 2.)

3 A Request for Review was filed with the Appeals Council on September 30,
4 2013 by a new attorney for Plaintiff. (AR 15-16.) Following this filing — but
5 before a ruling from the Appeals Council — Plaintiff’s new attorney submitted two
6 letters from counsel (Exs. A and B to Amended Jt. Stip.), plus a letter from
7 Dr. Naeemah Ghafur, dated February 14, 2014, (Ex. C to Amended Jt. Stip.), and a
8 Medical Report Memorandum from Dr. Ghafur, dated May 8, 2014 (Ex. D to
9 Amended Jt. Stip.). The documents prepared by Dr. Ghafur address Plaintiff’s
10 heart condition, breathing difficulties, fatigue and weakness. Plaintiff also seems to
11 contend that a single page Psychological and Medication History from SRO was
12 submitted to the Appeals Council, dated January 9, 2015) (Ex. E to Amended Jt.
13 Stip.), but her supporting documentation does not reflect such a submission
14 between January 9, 2015 and the Appeals Council denial of review on March 20,
15 2015.

16 The Notice of Appeals Council Action (AR 1-4) did not make the documents
17 from Dr. Ghafur part of the administrative record, although it does reference having
18 received letters from Plaintiff and her representative and having reviewed a
19 “medical report and assessment” from Dr. Ghafur in the date range January 7, 2014
20 through March 17, 2014 (AR 2). These dates are found on the front of Ex. D and
21 presumably reference, at least, the Medical Report Memorandum of Dr. Ghafur.
22 The Appeals Council stated that the information from Dr. Ghafur “is new
23 information about a later time. Therefore, it does not affect the decision whether
24 you were disabled beginning on or before July 31, 2013.” (AR 2.)

25 In the Joint Stipulation, Plaintiff refers to other evidence that was not
26 presented to the ALJ or the Appeals Council: Exhibit F, a referral form for
27 treatment of Plaintiff for pancreatic cancer dated in May 2015; Exhibit G, a
28 collection of records from Harbor-UCLA Medical Center reflecting emergency

1 room visits between April 2011 and October 2012; Exhibit H, medical records from
2 California Hospital Medical Center from May 2015; and Exhibit I, medical records
3 from Southern California Hospital of Culver City from 2015.

4
5 **B. ANALYSIS**

6 Pursuant to Sentence Six of 42 U.S.C. § 405(g), the Court has jurisdiction to
7 remand the case to the Commissioner for the consideration of new evidence, but
8 “only upon a showing that there is new evidence which is material and that there is
9 good cause for the failure to incorporate such evidence into the record in a prior
10 proceeding.” *See also Allen v. Secretary of Health & Human Services*, 726 F.2d
11 1470, 1473 (9th Cir. 1984). To be material, the new evidence must bear directly
12 and substantially on the matter in issue, and there must be a real possibility that the
13 new evidence would have changed the outcome if it had been before the
14 Commissioner. *See Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986); *Booz v.*
15 *Secretary of Health & Human Services*, 734 F.2d 1378, 1380-81 (9th Cir. 1984).
16 The good cause requirement is satisfied if new information surfaces after the
17 Commissioner’s final decision and the claimant could not have obtained that
18 evidence at the time of the administrative proceeding. *See Key v. Heckler*, 754 F.2d
19 1545, 1551 (9th Cir. 1985). It is not sufficient, however, for a claimant to simply
20 obtain an opinion from an expert after an adverse result before an ALJ: “The
21 obvious explanation is that when [claimant] failed to succeed on his disability claim
22 . . . he sought out a new expert witness who might better support his position. The
23 ‘good cause’ requirement would ‘be meaningless if such circumstances were
24 sufficient to allow introduction of new evidence.’” *Id.*; *see also Mayes v.*
25 *Massanari*, 276 F.3d 453, 463 (9th Cir. 2001) (“A claimant does not meet the good
26 cause requirement by merely obtaining a more favorable report once his or her
27 claim has been denied.”); *Clem v. Sullivan*, 894 F.2d 328, 332 (9th Cir. 1990)
28 (same).

1 First, the Court finds that Plaintiff has not established good cause for failing
2 to submit Exhibits C, D and E (the documents from Dr. Ghafur and SRO) to the
3 ALJ. Plaintiff's attempt to use the opinions of Dr. Ghafur as a basis for a Sentence
4 Six remand runs afoul of the Ninth Circuit law in *Key, Mayes and Clem*. It is not
5 good cause for Plaintiff to seek out a medical expert opinion after the ALJ has
6 ruled, simply to get more favorable evidence than was before the ALJ. *Key*, 754
7 F.2d at 1551. Moreover, as the Commissioner points out, Dr. Ghafur's opinions
8 were based on medical study results from April and October 2012, well in advance
9 of the hearing before the ALJ and the ALJ's decision in the summer of 2013.
10 Plaintiff agrees: "All of this information from Dr. Ghafur was based on treatment
11 and objective findings going back prior to the hearing decision of July 2013."
12 (Jt. Stip. at 17.) Nothing in the record or the Joint Stipulation indicates why
13 Plaintiff's attorney did not use these 2012 study results to obtain and submit a
14 medical opinion prior to the ALJ's decision in 2013. *See Sanchez v. Secretary of*
15 *Health and Human Services*, 812 F.2d 509, 511-12 (9th Cir. 1987) (no good cause
16 where attorney did not explain his failure to obtain medical records, despite
17 knowing of claimant's memory loss).

18 The explanation offered for why the Ghafur opinions were not obtained and
19 submitted earlier is that Plaintiff had cognitive and physical impairments and was
20 homelessness without financial resources. (Jt Stip at 18.) According to Plaintiff's
21 argument, these conditions prevented her from understanding the need to collect
22 records and gather additional evidence, as well as causing her to lack the ability to
23 do so. Essentially, Plaintiff argues that her disabilities and finances constituted
24 good cause for the failure to obtain and present the opinions of Dr. Ghafur on a
25 timely basis. The Court does not find this to be adequate as a ground for good
26 cause under the facts of this case. Plaintiff was represented by counsel before and
27 during the ALJ's consideration of this matter. During the hearing, Plaintiff's then-
28 counsel had a direct interchange with the ALJ on the need for additional medical

1 evidence in the record, as well as counsel’s responsibility for obtaining that
2 evidence (which counsel accepted). In these circumstances, Plaintiff’s alleged
3 limitations do not establish good cause for the late submission of evidence that
4 counsel could have obtained. Plaintiff’s argument — if accepted in the context of
5 represented claimants — would largely eliminate the good cause requirement and
6 would be inconsistent with the concept of good cause expressed in cases such as
7 *Key, Mayes, Clem and Sanchez*. See also *Walton v. Astrue*, 773 F. Supp. 2d 742,
8 753 (N.D. Ohio 2011) (finding unpersuasive plaintiff’s alleged lack of finances or
9 health coverage as a basis for good cause because “the record does not reflect the
10 factors that would distinguish him from the majority of near destitute claimants
11 who timely submit medical evidence”).²

12 Although good cause is generally not a difficult standard to meet (*see, e.g.,*
13 *Burton v. Heckler*, 724 F.2d 1415, 1417-18 (9th Cir. 1984)), the Court finds that
14 Plaintiff has failed to meet that standard here because there is no indication why
15 prior counsel did not obtain and submit Dr. Ghafur’s evaluations in a timely
16 manner, and because counsel could have raised this issue before the ALJ with due
17 diligence. The fact that Dr. Ghafur’s report may be favorable to Plaintiff’s
18 disability claim is insufficient to overcome these circumstances.

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21 ² Regarding materiality, the Court finds that Exhibit C is not material because
22 there is not a reasonable possibility it would change the outcome of the
23 administrative proceeding. Exhibit C includes a conclusory statement by
24 Dr. Ghafur, without reference to objective medical findings. Moreover, Exhibit C
25 is dated February 14, 2014 and refers to the “next 12 months.” It thus does not
26 concern the relevant time period. Likewise, nothing in Exhibit E indicates a
27 reasonable possibility that it would change the result before the ALJ, and Plaintiff
28 has not presented argument or evidence establishing the materiality of this exhibit.
Because good cause has not been shown regarding Exhibit D, the Court has not
reached a conclusion regarding its materiality, but notes the Commissioner’s
argument and evidence that this exhibit would not change the administrative result.
(Jt. Stip. at 11-13.)

1 Second, Plaintiff has not shown good cause for the failure to timely submit
2 Exhibit G, a collection of records from Harbor-UCLA Medical Center reflecting
3 emergency room visits between April 2011 and October 2012. Plaintiff and her
4 attorney were afforded the opportunity to supplement the record after the
5 administrative hearing, and the ALJ indicated a willingness to provide more time if
6 necessary. At the conclusion of the hearing, Plaintiff’s counsel informed the ALJ
7 that he wished to subpoena additional medical records, and the ALJ agreed to leave
8 the record open for 15 more days. These circumstances do not suggest good cause
9 for not submitting records from 2011 and 2012 until these proceedings in 2016.
10 *See Hollon ex rel. Hollon v. Commissioner of Social Sec.*, 447 F.3d 477, 485 (6th
11 Cir. 2006) (finding failure to establish good cause where plaintiff “was represented
12 by counsel by the time the matter reached the Appeals Council — and, indeed, her
13 attorney was successful in supplementing the administrative record at that point”);
14 *Matthews v. Apfel*, 239 F.3d 589, 595 (3d Cir. 2001) (“[t]he ALJ even kept the
15 administrative record open in order to allow [plaintiff] to submit additional
16 evidence” yet “[plaintiff] did not submit [the medical] report until more than seven
17 months after the ALJ’s adverse decision”); *Lisa v. Secretary of Dept. of Health and*
18 *Human Services of U.S.*, 940 F.2d 40, 46 (2d Cir. 1991) (“the ALJ stressed at the
19 hearing the need for [plaintiff] to submit medical reports regarding her functional
20 capacity as of the time when she enjoyed insured status, and received in evidence
21 reports proffered by [plaintiff] subsequent to the hearing.”). And as discussed
22 above, the Court finds insufficient the argument that Plaintiff’s mental, physical
23 and financial impairments prevented her from submitting these records to the ALJ
24 — where Plaintiff was represented by counsel during the administrative process and
25 where counsel acknowledged the lack of medical records and the need for him to
26 gather and submit additional records to the ALJ. (AR 41-44.) Plaintiff has offered
27 no explanation of what prior counsel did or why he was unable to obtain the records
28 that Plaintiff now belatedly seeks to submit. *See Sanchez*, 812 F.2d at 511-12.

1 Third, the Court finds that Exhibits F, H and I are not material evidence
2 because they relate to diagnoses and observations made long after the ALJ's
3 decision in July 2013 — and thus do not create a reasonable possibility that the
4 outcome of the administrative proceeding would change in light of these records.
5 *See Mayes*, 276 F.3d at 462. Exhibits F and H are from 2015 and apparently relate
6 to a later diagnosis of metastatic pancreatic cancer that was not claimed to be a
7 disability of Plaintiff in 2013 when she appeared before the ALJ. Exhibit I
8 similarly relates to Plaintiff's physical condition in mid to late 2015, well outside
9 the period at issue. It does not purport to discuss Plaintiff's condition prior to July
10 2013.

11 * * * * *

12 IT THEREFORE IS ORDERED that Plaintiff's request for remand under
13 Sentence Six of 42 U.S.C. § 405(g) is DENIED, and that Judgment be entered
14 affirming the decision of the Commissioner and dismissing this action with
15 prejudice.

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17 DATED: September 22, 2016

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20 ALEXANDER F. MacKINNON
21 UNITED STATES MAGISTRATE JUDGE
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