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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VENITA BENNETT,
Plaintiff

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. 2:15-cv-08144-GJS

**MEMORANDUM OPINION AND
ORDER**

INTRODUCTION

On October 10, 2015, Plaintiff Venita Bennett (“Plaintiff”) filed a complaint seeking review of the Commissioner’s unfavorable decision denying her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). Plaintiff alleges that the Administrative Law Judge (“ALJ”) erred by failing to fully and fairly develop the record to resolve ambiguities therein, particularly regarding Plaintiff’s mental and physical limitations based on a diagnosis of cerebral atrophy caused by a history of alcohol abuse. [Dkt. 18 (“Pltf.’s Mem.”) at 2-5.] For the reasons set forth below, the Court affirms the decision of the ALJ and orders that judgment be entered accordingly.

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1 **PROCEDURAL HISTORY**

2 Plaintiff applied for DIB on March 19, 2012, and for SSI on March 29, 2012.
3 [Dkt. 18. Administrative Record (“AR”) 16, 85, 86.] In both applications, she
4 alleged disability as of January 1, 2010, due to hypertension, psoriasis, hyperthoid
5 [sic], stomach problems, and severe depression. [AR 63, 74.] The applications
6 were denied initially on November 30, 2012. [AR 87-92.] On January 5, 2014, ALJ
7 Robert S. Eisman held a hearing. [AR 16-25.] The ALJ issued a decision finding
8 Plaintiff not disabled on April 1, 2014. [AR 13-29.] Plaintiff sought review from
9 the Appeals Council on April 24, 2014. [AR 10-12.] On September 15, 2015, the
10 Appeals Council denied review, and the ALJ’s decision became the Commissioner’s
11 final determination. [AR 1-4.] Plaintiff timely filed this action for judicial review
12 under 42 U.S.C. § 405(g).

13 **FACTUAL BACKGROUND**

14 As the parties are familiar with the proceedings below, the Court summarizes
15 only those facts relevant to the single issue presented. After reviewing the medical
16 records, conducting a hearing, and leaving the record open for submission of
17 additional medical records (some of which were provided [AR 16, 430-1094
18 (Harbor UCLA records)]), the ALJ found that Plaintiff had the following severe
19 impairments:

20 a history of moderate to severe global cerebral atrophy,
21 with microangiopathic ischemic changes (including a
22 history of Wernicke’s Encephalopathy); hypertension;
23 hypothyroidism; hyperlipidemia; eczema/psoriasis; a
history of anemia; low back and bilateral ankle arthritis;
and history of alcohol abuse disorder.

24 [AR 19 (citing 20 C.F.R. § 404.1520(c); 20 C.F.R. § 416.920(c)).] The ALJ found
25 that none of these impairments, alone or in combination, met or medically equaled
26 the severity of a listed impairment (including, among others, consideration of
27 substance abuse disorders). [AR 19 (internal citations omitted).]

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1 The ALJ considered the medical opinion and underlying records from Dr.
2 John Sedgh, a State Agency internal medicine consultative examiner. Dr. Sedgh
3 concluded that Plaintiff could lift and carry 20 pounds occasionally and 10 pounds
4 frequently; could stand and walk two hours in an eight-hour day with normal breaks;
5 that Plaintiff needed a cane for prolonged walking; could sit for six hours in an eight
6 hour day; and could occasionally kneel, crouch, and stoop. He also commented on
7 Plaintiff's limited range of motion and antalgic gait. [AR 20; 351-52.] Dr. Sedgh's
8 evaluation was based, in part, on a September 2012, lumbar spine x-ray, and
9 September 24, 2012, x-rays of claimants ankles. Dr. Sedgh's RFC assessment was
10 confirmed by the State Agency reviewing physician. [AR 63, 74.] The ALJ gave
11 Dr. Sedgh's confirmed opinion great weight, "[g]iven the absence of any treating
12 source medical statements." [AR 21.]

13 The ALJ also discussed Plaintiff's hospitalizations "for altered mental status
14 with a principal diagnosis of Wernicke's encephalopathy" [AR 21], and made
15 several significant observations based on the medical records. First, the ALJ noted
16 that the records from Plaintiff's hospitalizations did not indicate that her altered
17 mental status was an impairment that lasted (or was expected to last) 12 continuous
18 months in duration (citing Social Security Ruling ("SSR") 82-52 and 85-28)
19 requiring any additional limitations. [*Id.*] And, significantly, when questioned by
20 both the ALJ and her own counsel at the hearing, Plaintiff did not state that she had
21 any limitations related to mental state. [AR 45, 54-56.] It was the ALJ, not counsel
22 or Plaintiff, who later specifically noted the hospitalizations for altered mental status
23 and asked Plaintiff about them. [AR 56.] Plaintiff did not indicate that the problem
24 was significant or ongoing, and chalked the cause up to "a lot of stress." [AR 56.]

25 With respect to other potential issues raised in the medical records associated
26 with the hospitalizations, the ALJ considered a February 2011 MRI that showed
27 "moderate to severe cerebral atrophy" [AR 21; 267, 281, 315, 329, 490] due to
28 Wernicke's encephalopathy. The records showed that Plaintiff had only mild

1 dizziness that was improving, full motor strength, and intact motor function. She
2 was discharged in good condition. [AR 271, 446.] While she had some lower
3 extremity weakness and unstable gait, this was noted as improving and was
4 suspected to be caused by deconditioning from the long hospitalization, not due to
5 an impairment or any long-term (lasting more than 12 months) functional limitation.
6 [Id.] Taking a conservative approach, the ALJ addressed potential concerns from
7 the cerebral atrophy and Wernicke's diagnoses with additional limitations, beyond
8 those recommended by Dr. Sedgh, as shown in Plaintiff's ultimate RFC, below.

9 In sum, based primarily on Dr. Sedgh's RFC, but with additional limitations
10 added to address Plaintiff's history of alcohol abuse, diagnosis of Wernicke's
11 encephalopathy, and the results from her hospital stays in January, February, and
12 March 2011, the ALJ's determined that Plaintiff:

13 has the residual functional capacity to perform light work
14 as defined in 20 CFR 404.1567(b) and 20 CFR
15 416.967(b), in that she can exert up to 20 pounds of force
16 occasionally and/or up to 10 pounds of force frequently
17 and/or a negligible amount of force constantly to move
18 objects. The claimant can stand and walk up to 2 hours
19 and sit up to 6 hours in an 8-hour workday with normal
20 breaks (SSR 83-10; SSR 96-9p). She can perform work
21 that does not require climbing ladders, ropes or scaffolds,
22 and no more than occasional climbing of ramps or stairs,
23 balancing, stooping, kneeling, crouching, or crawling.
24 The claimant can do work that does not require more than
25 frequent exposure to extreme cold or unprotected heights,
26 and which does not require exposure to toxic or caustic
27 chemicals (20 CFR 404.1520; 20 CFR 416.920(e)).

28 [AR 19.]

GOVERNING STANDARD

Under 42 U.S.C. § 405(g), this Court reverses only if the Commissioner's
"decision was not supported by substantial evidence in the record as a whole or if
the [Commissioner] applied the wrong legal standard." *Molina v. Astrue*, 674 F.3d
1104, 1110 (9th Cir. 2012). Substantial evidence is "such relevant evidence as a
reasonable mind might accept as adequate to support a conclusion," and "must be

1 ‘more than a mere scintilla,’ but may be less than a preponderance.” *Id.* at 1110-11;
2 *see Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation and
3 quotations omitted). This Court “must consider the evidence as a whole, weighing
4 both the evidence that supports and the evidence that detracts from the
5 Commissioner’s conclusion.” *Rounds v. Comm’r of Soc. Sec. Admin.*, 807 F.3d 996,
6 1002 (9th Cir. 2015) (internal quotations omitted). If “the evidence is susceptible to
7 more than one rational interpretation, we must uphold the [Commissioner’s]
8 findings if they are supported by inferences reasonably drawn from the record.”
9 *Molina*, 674 F.3d at 1111.

10 DISCUSSION

11 Plaintiff’s sole issue in this appeal is her contention that the ALJ did not fully
12 and fairly develop the record. Specifically, while the ALJ determined from the
13 available medical records that Plaintiff had a history of moderate to severe cerebral
14 atrophy, with microangiopathic ischemic changes, including a diagnosis of
15 Wernicke’s Encephalopathy from severe alcohol use, Plaintiff contends that the ALJ
16 should have “sent the plaintiff out for a neurological consultative examination”
17 before assessing her RFC. [Pltf.’s Mem. at 2.] The Court does not find that the
18 ALJ’s duty to further develop the record was triggered here.

19 It is unquestionable that Plaintiff cannot “be considered to be under a
20 disability unless [s]he furnishes such medical and other evidence of the existence
21 thereof as the Secretary may require.” 42 U.S.C. § 423(d)(5); *see* 20 C.F.R.
22 §§ 404.1512(a) & (c). Put another way, she bore the “duty to prove that she was
23 disabled.” *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001). Although the
24 burden is on the claimant to show she is disabled, the Commissioner shares the
25 burden of developing the record evidence. “In Social Security cases, the ALJ has a
26 special duty to fully and fairly develop the record and to assure that the claimant’s
27 interests are considered.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005)
28 (internal quotations omitted).

1 Nonetheless, the ALJ is not a roving investigator; his duty “to develop the
2 record further is triggered only when there is ambiguous evidence or when the
3 record is inadequate to allow for proper evaluation of the evidence.” *Mayes*, 276
4 F.3d at 459-60 (emphasis added); *see Webb*, 433 F.3d at 683 (explaining that the
5 duty to enlarge the record only arises if the evidence is ambiguous, the ALJ finds
6 that the record is inadequate, or the ALJ relies on an expert’s conclusion that the
7 evidence is ambiguous).

8 Here, Plaintiff contends that the ALJ committed error because “he failed to
9 send plaintiff out for a neurological consultative examination (CE) even though
10 plaintiff was noted to have moderate to severe cerebral atrophy and/or failed to
11 obtain a medical expert to determine the severity of plaintiff’s physical impairments
12 and whether or not the plaintiff met or equaled a listing.” [Pltf.’s Mem. at 2]. The
13 Court disagrees. Plaintiff has not articulated a plausible theory that the record was
14 inadequate to allow proper evaluation of the evidence. Whether or not the internal
15 medicine consultative physician referenced Plaintiff’s cerebral atrophy or not, he
16 specifically evaluated her functional capacity and limitations, and that evaluation
17 was supported by another physician. The ALJ reviewed and considered objective
18 medical tests as well, such as Plaintiff’s MRI, noted doctors’ comments about her
19 abilities and progress, and used these comments in setting further limitations on
20 Plaintiff’s RFC. Plaintiff has not shown a “gap” in the evidence that would be filled
21 by an additional evaluation. Rather, she has only *speculated* that there might be
22 additional limitations that *might* be proposed by another consultative physician or
23 medical expert.¹ Nor has Plaintiff pointed to a fatal ambiguity (or any at all) in the

24
25 ¹ Plaintiff also speculates that a medical expert might have opined that Plaintiff met
26 or equaled some other listing not considered by the ALJ, such as that for Chronic
27 Brain Syndrome. [Pltf.’s Mem. at 3.] As the Commissioner correctly points out,
28 Plaintiff has not offered a plausible theory of equivalence with the Chronic Brain
Syndrome or any other listing. [Def.’s Mem. at 3, (citing *Lewis v. Apfel*, 236 F.3d
503, 514 (9th Cir. 2005)).] Consequently, the ALJ’s failure to consider other,
potentially equivalent listings is not error.

1 medical record. Thus, the ALJ's duty to further develop the record was not
2 triggered.

3 **CONCLUSION AND ORDER**

4 For the reasons stated above, the Court finds that the Commissioner's
5 decision is supported by substantial evidence and free from material legal error.
6 Neither reversal of the ALJ's decision nor remand is warranted.

7 Accordingly, **IT IS ORDERED** that Judgment shall be entered affirming the
8 decision of the Commissioner of the Social Security Administration.

9 **IT IS SO ORDERED.**

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11 DATED: August 31, 2016

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14 GAIL J. STANDISH
15 UNITED STATES MAGISTRATE JUDGE
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