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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALPHONSO MAURICE WILLIS,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 16-5898 JC

MEMORANDUM OPINION
AND ORDER OF REMAND

I. SUMMARY

On August 8, 2016, Alphonso Maurice Willis (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before the undersigned United States Magistrate Judge. This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”) (collectively “Motions”). The Court has also considered the parties’ responses to the Court’s April 17, 2017 Order Directing Supplemental Briefing, respectively (“Plaintiff’s Supp. Memo”) and (“Defendant’s Supp. Memo”), as well as the parties’ arguments at the telephonic hearing before the Court on September 4, 2017 (“Sep. 4 Hearing”). The Court has

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1 taken the Motions under submission without oral argument. See Fed. R. Civ. P.
2 78; L.R. 7-15; August 9, 2016 Case Management Order ¶ 5.

3 Based on the record as a whole and the applicable law, the decision of the
4 Commissioner is remanded for further proceedings consistent with this
5 Memorandum Opinion and Order of Remand.

6 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
7 **DECISION**

8 On July 1, 2013, plaintiff filed an application for Disability Insurance
9 Benefits alleging disability beginning on January 1, 2009, due to multiple physical
10 and mental impairments. (Administrative Record (“AR”) 25, 254, 308-09). The
11 Administrative Law Judge (“ALJ”) examined the medical record and heard
12 testimony from plaintiff (who was represented by counsel) and a vocational expert
13 on January 11, 2016. (AR 53-105).

14 On April 27, 2016, the ALJ found, in pertinent part, that (1) plaintiff was
15 under a disability as defined by the Social Security Act from January 1, 2009
16 through September 30, 2014; (2) plaintiff completed a trial work period with
17 service months that began in October 2013 and ended in June 2014; (3) after
18 completing the trial work period, plaintiff first performed substantial gainful
19 activity in October 2014; and therefore (4) plaintiff’s “disability ended” October 1,
20 2014. (AR 25-34).

21 On July 5, 2016, the Appeals Council denied plaintiff’s application for
22 review.¹ (AR 1-6).

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26 ¹The Appeals Council, among other things, stated that it had considered a June 1, 2016
27 letter brief from plaintiff’s attorney in support of plaintiff’s request for review (AR 527-28), and
28 “concluded that the additional evidence [did] not provide a basis for changing the [ALJ’s]
decision.” (AR 2). Plaintiff’s counsel represented at the hearing that the exhibit attached to
Plaintiff’s Motion was provided to the Appeals Council.

1 **III. APPLICABLE LEGAL STANDARDS**

2 **A. Standard of Review**

3 Pursuant to 42 U.S.C. section 405(g), a court may set aside a “final decision
4 of the Commissioner of Social Security” denying an application for benefits only
5 if the denial is not supported by substantial evidence or if it is based on legal error.
6 Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006)
7 (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th
8 Cir. 1995)).

9 Substantial evidence is “such relevant evidence as a reasonable mind might
10 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,
11 401 (1971) (citations and quotations omitted). It is more than a mere scintilla but
12 less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan,
13 911 F.2d 180, 183 (9th Cir. 1990)). To determine whether substantial evidence
14 supports a finding, a court must ““consider the record as a whole, weighing both
15 evidence that supports and evidence that detracts from the [Commissioner’s]
16 conclusion.”” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)
17 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)).

18 An ALJ’s decision to deny benefits must be upheld if the evidence could
19 reasonably support either affirming or reversing the decision. Robbins, 466 F.3d
20 at 882 (citing Flaten, 44 F.3d at 1457).

21 **B. Pertinent Law**

22 The Social Security Administration (“SSA”) offers several incentives to
23 certain individuals who have been receiving disability benefit payments (*i.e.*, a
24 “beneficiary”) to encourage them to attempt to return to work. For instance,
25 during a “trial work period” beneficiaries may perform work activity (*i.e.*,
26 “services”) for up to nine months total and “still be considered disabled” (*i.e.*, not
27 lose their eligibility for benefits or have their benefit payments suspended).
28 20 C.F.R. § 404.1592(a); see also SSA Program Operations Manual System

1 (“POMS”)² § DI 13010.035 (The Trial Work Period). In addition, beneficiaries
2 who complete a full nine-month trial work period and still have “a disabling
3 impairment” (as defined in 20 C.F.R. § 404.1511) may also qualify for an
4 Extended Period of Eligibility (“EPE”). 42 U.S.C. § 423(a)(1); 20 C.F.R.
5 § 404.1592a(a). An EPE, in pertinent part, provides a 36-month “reentitlement
6 period” during which certain beneficiaries may continue to try to work without
7 losing their overall entitlement to disability benefits, and may even be paid cash
8 benefits in certain months depending on their level of work activity. 20 C.F.R.
9 § 404.316(b)(4), (d) (citing 20 C.F.R. §§ 404.1511, 404.1592, 404.1592a); 20
10 C.F.R. § 404.1592a(a); see also 20 C.F.R. § 404.1594(g)(3) (“[W]e may pay you
11 benefits for certain months in . . . the reentitlement period which follows the trial
12 work period.”) (citing 20 C.F.R. §§ 404.316, 404.1592a); see generally POMS”
13 §§ DI 13010.210 (“Extended Period of Eligibility[] – Overview”), DI 13010.215
14 (“Procedure for Extended Period of Eligibility[]”); DI 28055.001(A) (“Extended
15 Period of Eligibility[] . . . – General”); DI 28055.005(A) (“How the EPE Works”).
16 The first time a qualifying beneficiary engages in substantial gainful activity
17 (“SGA”) during the Extended Period of Eligibility, the Commissioner will find
18 that the beneficiary’s “disability ceased” and – after any applicable “grace period”
19 (during which payments continue irrespective of whether or not substantial gainful
20 activity is performed) – stop paying monthly disability benefits to the beneficiary.
21 See 42 U.S.C. § 423(a)(1)(E), (e)(1); 20 C.F.R. §§ 404.401a, 404.1592a(a)(1);
22 20 C.F.R. § 404.1594(d)(5), (f)(1). However, if, during an applicable
23 reentitlement period, payment of benefits is suspended on the foregoing basis,
24 benefits may be reinstated without a new application, Disability Determination
25

26 ²POMS is entitled to respect to the extent it provides a persuasive interpretation of an
27 ambiguous regulation, but it does not impose judicially enforceable duties on either the court or
28 the ALJ. Kennedy v. Colvin, 738 F.3d 1172, 1177 (9th Cir. 2013) (citations, quotation marks
and internal quotation marks omitted).

1 Services (DDS) determination, or waiting period, in any month when the
2 beneficiary's work is not at the SGA level. See 20 C.F.R. § 404.316(b)(4), (d);
3 20 C.F.R. § 404.1592a(a), (a)(2)(i); see also 20 C.F.R. § 404.1594(g)(3) (“[W]e
4 may pay you benefits for certain months in . . . the reentitlement period which
5 follows the trial work period.”).

6 **IV. DISCUSSION**

7 Here, it is undisputed that plaintiff completed a full trial work period by
8 June 2014, and that plaintiff thereafter engaged in substantial gainful activity
9 approximately from October 2014 through February 2015.³ (AR 33; Plaintiff's
10 Motion at 4; Defendant's Motion at 1; Plaintiff's Supp. Memo at 2; Defendant's
11 Supp. Memo at 2; Sep. 4 Hearing). Plaintiff essentially contends that the ALJ
12 erroneously determined that plaintiff's "disability ended" in October 2014 instead
13 of finding that plaintiff "was still disabled under a[n] Extended Period Of
14 Eligibility" and that the ALJ improperly failed to "re-instate[]" benefit payments
15 when plaintiff stopped performing substantial gainful activity during the
16 reentitlement period. (Plaintiff's Motion at 4; Plaintiff's Supp. Memo at 2-3).
17 Defendant essentially appears to argue that plaintiff was not entitled to an
18 Extended Period of Disability because "[p]laintiff [had] not proven that he was
19 eligible for a reentitlement period after his TWP" and "[had] not proven that he
20 had a disabling impairment" after having engaged in work at the SGA level, and
21 thus the ALJ properly determined that plaintiff's disability ended in October 2014
22 due to plaintiff's performance of substantial gainful activity from late 2014 to
23 early 2015, and in turn such finding properly triggered a termination of plaintiff's
24 disability benefits in October 2014. (Defendant's Motion at 1-2; Defendant's
25 Supp. Memo at 2; Sep. 4 Hearing).

26
27 ³The ALJ determined that plaintiff first performed substantial gainful activity (after
28 completing the trial work period) in October 2014 (AR 33), whereas plaintiff takes the position
that it was in September 2014 (Plaintiff's Motion 4, Exhibit 1).

1 Since the record lacks sufficient clarity for the Court to render a decision on
2 the merits, the matter is remanded for the Commissioner to address the issues
3 below. See generally Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015)
4 (Social Security Administration “[must] set forth the reasoning behind its
5 decisions in a way that allows for meaningful review.”).

6 First, this matter is remanded for the Commissioner to make a finding as to
7 whether or not plaintiff qualified for/was on an Extended Period of Eligibility
8 following the completion of the trial work period in June 2014. See generally
9 Marsh v. Colvin, 792 F.3d 1170, 1173 (9th Cir. 2015) (“[T]he decision on
10 disability rests with the ALJ and the Commissioner of the Social Security
11 Administration in the first instance, not with a district court.”) (citing 20 C.F.R. §
12 404.1527(d)(1)-(3)).

13 Second, to the extent it is the Commissioner’s position that plaintiff did not
14 qualify for an EPE, the Commissioner shall set forth the factual and legal basis for
15 such conclusion with sufficient clarity and specificity to allow for meaningful
16 review.⁴

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18 ⁴The Court recognizes that beneficiaries may qualify for an EPE only if they have
19 completed nine months of trial work and have a “disabling impairment” (as defined in 20 C.F.R.
20 § 404.1511). Section 404.1511 defines a “disabling impairment,” in pertinent part, as an
21 impairment (or combination of impairments) that, “when considered with [a beneficiary’s] age,
22 education, and work experience, would result in a finding that [the beneficiary is] disabled under
23 [20 C.F.R. § 404.1594].” 20 C.F.R. § 404.1511(a). Section 404.1594(f)(1) – upon which the
24 ALJ appears to have relied (AR 27, 34) – essentially provides that the SSA will find “disability
25 to have ended” whenever a beneficiary is engaging in substantial gainful activity after “any
26 applicable trial work period has been completed[.]” 20 C.F.R. § 404.1594(f)(1). Section
27 404.1511, however, expressly provides that “earnings are not considered[.]” in the determination
28 as to whether a beneficiary has a disabling impairment. 20 C.F.R. § 404.1511(a). Moreover,
Section 404.1594(f)(1) itself references Section 404.1594(d)(5), which suggests that the fact that
an individual is “currently engaging in substantial gainful activity” is not a factor considered
under Section 404.1511 when determining whether a beneficiary continues to have a disabling
impairment(s) “for purposes of deciding [] eligibility for a reentitlement period [under Section
404.1592a.” 20 C.F.R. § 404.1594(d)(5). Thus, to the extent the ALJ may have deemed plaintiff
(continued...)

1 Third, to the extent it is the Commissioner’s position that plaintiff did
2 qualify for an Extended Period of Eligibility, the Commissioner shall (1) so state;
3 (2) specify when the applicable EPE began, whether the EPE has ended and, if so,
4 when; (3) also specify when the applicable reentitlement period began and ended;
5 (4) specify whether and, if so, when plaintiff’s disability “ceased” for purposes of
6 20 C.F.R. § 404.1592a(a)(1) (“The first time [a beneficiary] work[s] after the end
7 of [a] trial work period and engage[s] in substantial gainful activity, we will find
8 that [the beneficiary’s] disability ceased.”) – *e.g.*, clarify whether the ALJ’s
9 finding that “[plaintiff’s] disability ended October 1, 2014” was intended to
10 comport with 20 C.F.R. § 404.1592a(a)(1); (5) identify the month(s) for which
11 plaintiff was entitled to payment of cash benefits (or reinstatement thereof to the
12 extent payment would have been suspended due to SGA earnings in a prior month)
13 during any applicable reentitlement period and/or grace period; and (6) take
14 whatever administrative action is necessary to process plaintiff’s EPE case
15 appropriately.

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27 ⁴(...continued)
28 ineligible for an Extended Period of Eligibility in the first instance based upon plaintiff’s work at
an SGA level, such a finding does not appear to be consistent with the governing regulations.

1 **V. CONCLUSION⁵**

2 For the foregoing reasons, the decision of the Commissioner of Social
3 Security is reversed in part, and this matter is remanded for further administrative
4 action consistent with this Opinion.⁶

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6 DATED: September 15, 2017

7 /s/

8 Honorable Jacqueline Chooljian
9 UNITED STATES MAGISTRATE JUDGE

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23 ⁵The Court need not, and has not adjudicated any other challenges to the ALJ’s decision,
24 except insofar as to determine that a reversal and remand for immediate payment of benefits
would not be appropriate.

25 ⁶When a court reverses an administrative determination, “the proper course, except in rare
26 circumstances, is to remand to the agency for additional investigation or explanation.”
27 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
28 quotations omitted). Remand is proper where, as here, “additional proceedings can remedy
defects in the original administrative proceeding. . . .” Garrison v. Colvin, 759 F.3d 995, 1019
(2014) (citation and internal quotation marks omitted).