

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**

MARIA GUADALUPE INDA DE ARIAS,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

Case No. CV 16-06226 AFM

**MEMORANDUM OPINION AND  
ORDER AFFIRMING DECISION  
OF COMMISSIONER**

**I.**

**BACKGROUND**

Plaintiff Maria Guadalupe Inda De Arias filed her application for disability benefits under Title II of the Social Security Act on October 16, 2012, alleging disability beginning May 1, 2012. After denial on initial review and on reconsideration, a hearing took place before an Administrative Law Judge (ALJ) on December 22, 2014, at which Plaintiff testified on her own behalf. A vocational expert (“VE”) also testified. (Administrative Record (“AR”) 111-118.) In a decision dated February 19, 2015, the ALJ found that Plaintiff was not disabled within the meaning of the Social Security Act from May 1, 2012, through the date of the decision. The Appeals Council declined to set aside the ALJ’s unfavorable

1 decision in a notice dated June 28, 2016. Plaintiff filed a Complaint herein on  
2 August 18, 2016, seeking review of the Commissioner’s denial of her application  
3 for benefits.

4 In accordance with the Court’s Order Re Procedures in Social Security  
5 Appeal, Plaintiff filed a memorandum in support of the complaint on April 14,  
6 2017 (“Pl. Mem.”) and the Commissioner filed a memorandum in support of her  
7 answer on April 20, 2017 (“Def. Mem.”). Plaintiff did not file a reply. This matter  
8 now is ready for decision.<sup>1</sup>

9 **II.**  
10 **DISPUTED ISSUE**

11 As reflected in the parties’ memoranda, the sole disputed issue in this case is  
12 whether the ALJ erred in his adverse credibility finding regarding Plaintiff’s  
13 testimony.

14 **III.**  
15 **STANDARD OF REVIEW**

16 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to  
17 determine whether the Commissioner’s findings are supported by substantial  
18 evidence and whether the proper legal standards were applied. *See Treichler v.*  
19 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial  
20 evidence means “more than a mere scintilla” but less than a preponderance. *See*  
21 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d  
22 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
23 reasonable mind might accept as adequate to support a conclusion.” *Richardson*,  
24 402 U.S. at 401. This Court must review the record as a whole, weighing both the  
25 evidence that supports and the evidence that detracts from the Commissioner’s  
26

---

27 <sup>1</sup> The decision in this case is being made based on the pleadings, the  
28 administrative record, and the parties’ memoranda in support of their pleadings.

1 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more  
2 than one rational interpretation, the Commissioner’s decision must be upheld. *See*  
3 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

4 **IV.**

5 **FIVE-STEP EVALUATION PROCESS**

6 The Commissioner (or ALJ) follows a five-step sequential evaluation process  
7 in assessing whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920;  
8 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995), *as amended* April 9, 1996.  
9 In the first step, the Commissioner must determine whether the claimant is  
10 currently engaged in substantial gainful activity; if so, the claimant is not disabled  
11 and the claim is denied. *Id.* If the claimant is not currently engaged in substantial  
12 gainful activity, the second step requires the Commissioner to determine whether  
13 the claimant has a “severe” impairment or combination of impairments significantly  
14 limiting his ability to do basic work activities; if not, a finding of nondisability is  
15 made and the claim is denied. *Id.* If the claimant has a “severe” impairment or  
16 combination of impairments, the third step requires the Commissioner to determine  
17 whether the impairment or combination of impairments meets or equals an  
18 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part  
19 404, subpart P, appendix 1; if so, disability is conclusively presumed and benefits  
20 are awarded. *Id.* If the claimant’s impairment or combination of impairments does  
21 not meet or equal an impairment in the Listing, the fourth step requires the  
22 Commissioner to determine whether the claimant has sufficient “residual functional  
23 capacity” to perform his past work; if so, the claimant is not disabled and the claim  
24 is denied. *Id.* The claimant has the burden of proving that he is unable to perform  
25 past relevant work. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). If the  
26 claimant meets this burden, a *prima facie* case of disability is established. *Id.* The  
27 Commissioner then bears the burden of establishing that the claimant is not  
28 disabled, because he can perform other substantial gainful work available in the

1 national economy. *Id.* The determination of this issue comprises the fifth and final  
2 step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; *Lester*, 81 F.3d at  
3 828 n.5; *Drouin*, 966 F.2d at 1257.

#### 4 V.

### 5 THE ALJ'S APPLICATION OF THE FIVE-STEP PROCESS

6 At step one, the ALJ found that Plaintiff had not engaged in substantial  
7 gainful activity since May 1, 2012, the alleged onset date. (AR 13.) At step two,  
8 the ALJ found that Plaintiff had the following severe impairments: arthritis;  
9 degenerative disc disease; fibromyalgia; obesity; history of hyperthyroidism; and  
10 bilateral plantar fasciitis. (*Id.*) At step three, the ALJ found that Plaintiff did not  
11 have an impairment or combination of impairments that meets or medically equals  
12 the severity of one of the listed impairments. (AR 16.) At step four, the ALJ found  
13 that Plaintiff had the following residual functional capacity (RFC) to perform  
14 sedentary work except: occasionally climb stairs, climb ladders/ropes/scaffolds,  
15 kneel, crouch, crawl, stoop; frequently but not constantly balance; no uneven  
16 ground. (*Id.*) The ALJ determined that Plaintiff is capable of performing her past  
17 relevant work as a customer service representative. (AR 17.) Accordingly, the ALJ  
18 concluded that Plaintiff was not disabled under the Social Security Act since  
19 May 1, 2012 through the date of the decision. (AR 17-18.)

#### 20 VI.

### 21 DISCUSSION

22 Plaintiff alleges disability based on fibromyalgia, and pain in her back, hip,  
23 shoulder and extremity. (AR 47-56.) Plaintiff contends that the ALJ erred in his  
24 adverse credibility finding. Her testimony during the administrative hearing can be  
25 found at AR 33-120.

26 An ALJ's assessment of pain severity and claimant credibility is entitled to  
27 "great weight." *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989). Where the  
28 claimant has produced objective medical evidence of an impairment that could

1 reasonably be expected to produce some degree of pain and/or other symptoms and  
2 where the record is devoid of any affirmative evidence of malingering, the ALJ  
3 may reject the claimant's testimony regarding the severity of the claimant's pain  
4 and/or other symptoms only if the ALJ makes specific findings stating clear and  
5 convincing reasons for doing so. *See Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th  
6 Cir. 1986); *see also Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996).

7 The ALJ found that the Plaintiff's statements about the intensity, persistence  
8 and limiting effects of her symptoms were not entirely credible and provided three  
9 reasons in support of that finding. (AR 16.)

10 First, the ALJ found that Plaintiff did not consistently follow through with  
11 instructions to attend pain management treatment, increase physical activity,  
12 continue physical therapy, and see a psychiatrist. (AR 17.) The ALJ stated that  
13 Plaintiff's failure to seek medical treatment suggested that her pain was not so  
14 severe as to prevent all work. (*Id.*) The record shows that the Plaintiff quit pain  
15 management treatment (AR 69), did not consistently follow instructions to increase  
16 physical exercise (AR 360, 445, 491, 507, 685, 723), was discharged from physical  
17 therapy because of failure to attend (AR 838), and chose to do self-therapy (AR  
18 76). Although Plaintiff suggests that her failure to seek treatment was due to  
19 financial limitations, the medical record indicates that this was only in relation to  
20 acupuncture and aqua therapy. (AR 652, 704, 709, 769.) There was no evidence in  
21 the record that financial limitations prevented her from following through on other  
22 areas of treatment. If the evidence of Plaintiff's failure to seek medical treatment  
23 could be subject to more than one interpretation, the ALJ's interpretation must be  
24 upheld if that interpretation is rational, as it is here. *See Burch v. Barnhart*, 400  
25 F.3d 676, 680-81 (9th Cir. 2005). Thus, the ALJ's finding that Plaintiff failed to  
26 seek treatment was supported by substantial evidence, and provides a valid basis for  
27 discounting Plaintiff's subjective symptom testimony. *See Tommasetti v. Astrue*,  
28 533 F.3d 1035, 1039 (9th Cir. 2008) (ALJ may consider failure to follow a

1 prescribed course of treatment in weighing a claimant's credibility); *Smolen*, 80  
2 F.3d at 1284; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

3 As a second reason, the ALJ stated that the Plaintiff's daily activities are not  
4 limited to the extent a person would expect given her complaints of disabling  
5 symptoms and limitations. (AR 17.) On one hand, Plaintiff testified that on a scale  
6 of one to ten, ten being the worst, she experienced a constant pain of eight for her  
7 back, a periodic pain of nine for her fibromyalgia, and a pain of eight or nine when  
8 walking. (AR 46, 48, 50.) Plaintiff also testified that due to the severity of her  
9 pain, her physical activity was extremely limited. For example: she can go on  
10 walks but no more than a block at a time (AR 67); can sit, stand or walk for no  
11 more than five to fifteen minutes (AR 71); has trouble holding a plate or a cup of  
12 coffee; cannot dress herself (AR 95); and takes hours to make her bed (AR 99). On  
13 the other hand, evidence in the record concerning daily activities also reflects that  
14 Plaintiff is more physically able and her pain is not as severe as she suggests.  
15 Plaintiff is able to drive (AR 95), cook (AR 96), grocery shop (AR 99), take the  
16 garbage out (AR 100), and was able to travel to Mexico (AR 1002). Thus,  
17 substantial evidence supports the ALJ's finding that certain of Plaintiff's daily  
18 activities were inconsistent with her subjective symptom testimony. This is a clear  
19 and convincing reason for discrediting Plaintiff's testimony. *See Molina v. Astrue*,  
20 674 F.3d 1104, 1112 (9th Cir. 2012) (ALJ may discredit claimant's testimony when  
21 "claimant engages in daily activities inconsistent with the alleged symptoms"); *see*  
22 *also Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009)  
23 (ALJ properly discounted claimant's testimony because "she leads an active  
24 lifestyle, including cleaning, cooking, walking her dogs, and driving to  
25 appointments").

26 As a final reason, the ALJ found that Plaintiff's subjective testimony was not  
27 substantiated by objective medical evidence in the record. (AR 13-15.) Although  
28 this may not be the *sole* reason to support an adverse credibility finding, "it is a

1 factor that the ALJ can consider in his credibility analysis.” *Burch, supra*, 400 F.3d  
2 at 681; *Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999)  
3 (ALJ may properly consider conflict between claimant’s testimony of subjective  
4 complaints and objective medical evidence in the record); *see also Tidwell v. Apfel*,  
5 161 F.3d 599, 602 (9th Cir. 1999) (ALJ may properly rely on weak objective  
6 support for the claimant’s subjective complaints); *Orteza v. Shalala*, 50 F.3d 748,  
7 750 (9th Cir. 1995) (ALJ may properly rely on lack of objective evidence to support  
8 claimant’s subjective complaints). In the present case, the ALJ’s assessment of the  
9 objective medical evidence was supported by substantial evidence and was not in  
10 error as part of the adverse credibility determination. Accordingly, the Court  
11 concludes that the ALJ did not err in his adverse credibility determination.

12 \*\*\*\*\*

13 IT THEREFORE IS ORDERED that Judgment be entered be entered  
14 affirming the decision of the Commissioner of Social Security Administration.

15  
16 DATED: June 28, 2017

17 

18 \_\_\_\_\_  
19 ALEXANDER F. MacKINNON  
20 UNITED STATES MAGISTRATE JUDGE  
21  
22  
23  
24  
25  
26  
27  
28