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

MYRNA DIAZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 2:17-CV-08639-AFM

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

Plaintiff seeks review of the Commissioner’s final decision denying her applications for disability insurance benefits and supplemental security income benefits. In accordance with the Court’s case management order, the parties have filed memorandum briefs addressing the merits of the disputed issues. This matter is now ready for decision.

BACKGROUND

Plaintiff applied for disability insurance benefits and supplemental security income in 2014, alleging that she became disabled on June 23, 2012. Plaintiff’s claims were denied initially. A hearing was held before an Administrative Law Judge (“ALJ”) on May 10, 2016, at which Plaintiff, and Vocational Expert (“VE”) were present. (AR 248-99.) Plaintiff was not represented by counsel at the hearing. The

1 ALJ issued a decision on August 25, 2016, denying Plaintiffs' claim for benefits.
2 (AR 73-85.) The Appeals Council denied review, thereby rendering the ALJ's
3 decision the final decision of the Commissioner. (AR 1-7.) This civil action followed.

4 **DISPUTED ISSUE**

5 Whether the ALJ provided a legally sufficient basis for discounting the opinion
6 of examining psychologist, Avazeh Chehrazi, Ph.D.

7 **STANDARD OF REVIEW**

8 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
9 determine whether the Commissioner's findings are supported by substantial
10 evidence and whether the proper legal standards were applied. *See Treichler v.*
11 *Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014).
12 Substantial evidence means "more than a mere scintilla" but less than a
13 preponderance. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v.*
14 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Substantial evidence is "such relevant
15 evidence as a reasonable mind might accept as adequate to support a conclusion."
16 *Richardson*, 402 U.S. at 401. Where evidence is susceptible of more than one rational
17 interpretation, the Commissioner's decision must be upheld. *See Orn v. Astrue*, 495
18 F.3d 625, 630 (9th Cir. 2007); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190,
19 1196 (9th Cir. 2004) ("When evidence reasonably supports either confirming or
20 reversing the ALJ's decision, [the court] may not substitute [its] judgment for that of
21 the ALJ.").

22 **DISCUSSION**

23 Plaintiff contends that the ALJ improperly rejected portions of the opinion of
24 the examining psychologist, Dr. Chehrazi. For the following reasons, Plaintiff's
25 contention lacks merit.

26 The medical opinion of a claimant's treating or examining physician is entitled
27 to controlling weight so long as it is supported by medically acceptable clinical and
28 laboratory diagnostic techniques and is not inconsistent with other substantial

1 evidence in the record. *Trevizo v. Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017)
2 (quoting 20 C.F.R. § 404.1527(c)(2)). If the physician’s medical opinion is
3 uncontradicted, the ALJ may only reject it based on clear and convincing reasons.
4 *Trevizo*, 871 F.3d at 675; *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1198
5 (9th Cir. 2008). If the physician’s opinion is contradicted, the ALJ must provide
6 specific and legitimate reasons supported by substantial evidence in the record before
7 rejecting it. *Trevizo*, 871 F.3d at 675; *Ghanim v. Colvin*, 763 F.3d 1154, 1160-1061
8 (9th Cir. 2014); *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). The ALJ can
9 meet the requisite specific and legitimate standard “by setting out a detailed and
10 thorough summary of the facts and conflicting clinical evidence, stating his
11 interpretation thereof, and making findings.” *Trevizo*, 871 F.3d at 675 (citations and
12 internal quotation marks omitted).

13 The ALJ here accorded significant weight to most of Dr. Chehrazi’s opinion,
14 but gave little weight to the portion of Dr. Chehrazi’s opinion that Plaintiff would
15 have severe difficulty complying with job rules such as safety and attendance. (AR
16 82, 648.) In doing so, the ALJ explained that Dr. Chehrazi’s opinions were not
17 supported by the record:

18 There is no evidence to suggest that the claimant would have significant
19 problems in this area of functioning. The claimant arrived “early” to the
20 consultative psychological examination and she arrived “on time” to the
21 consultative neurological examination (Exhibits 5F/3; 15F/1 [A.R. 643;
22 901]). There is no evidence of any significant problems with attending
23 her doctors’ appointments in a timely fashion or following her
24 healthcare providers’ advice on treatment. While the claimant testified
25 to limited activities of daily living, there was no suggestion that she had
26 problems keeping herself safe. Furthermore, the functional report
27 completed by Ms. Perez indicates that the claimant attends parent
28 conferences for her child, and did not mention that she has difficulty
arriving at these events in a timely manner (Exhibit 3E [A.R. 407-416]).

(AR 82.)

1 An ALJ's conclusion that an examining or treating physician's opinion lacks
2 evidentiary support in the record is a clear and convincing (and specific and
3 legitimate) basis for discounting that opinion. *See King v. Comm'r of SSA*, 475
4 F. App'x 209, 210 (9th Cir. 2012) (an ALJ's rejection of an examining physician's
5 opinion because of "the absence of mental health treatment records" was a clear and
6 convincing reason); *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995)
7 (inadequate clinical findings provide clear and convincing reasons for ALJ to reject
8 treating physician's opinion); *Payne v. Astrue*, 2009 WL 176071, at *6 (C.D. Cal.
9 Jan. 23, 2009) (same); *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
10 (ALJ may reject a treating physician's opinion that is inconsistent with other medical
11 evidence, including the physician's own treatment notes); *Batson*, 359 F.3d at 1195
12 (ALJ may discredit treating physician's opinions that are unsupported by the record
13 as a whole or by objective medical findings).

14 Here, the ALJ's conclusion is supported by substantial evidence in the record.
15 First, as the ALJ noted, there was no suggestion in the record that Plaintiff had
16 problems keeping herself safe, and the ALJ further observed that Plaintiff could
17 perform certain daily activities without any identified safety problems. (AR 82.)
18 Plaintiff's briefing has cited to no evidence indicating that the ALJ erred in this
19 regard. Second, the ALJ pointed to the evidence in the record that Plaintiff arrived
20 early or on time to her appointments for a consultative neurological examination and
21 for a consultative psychological examination. (AR 82, citing AR 643, 901). The ALJ
22 further stated that there was no evidence that Plaintiff had any significant problems
23 attending doctors' appointments in a timely fashion or following the advice of
24 healthcare providers. (AR 82.) Again, the cited evidence in the ALJ's decision
25 substantially supports these findings.

26 Plaintiff objects that the ALJ improperly characterized the record and points
27 to function reports prepared by Plaintiff (AR 429-37) and Plaintiff's friend Marcela
28 Perez. (AR 407-15.) As to Plaintiff's own function report, the ALJ considered

1 Plaintiff's subjective symptom reports and concluded that the evidence did not
2 support the subjective limitations set out in her written report and her testimony. (AR
3 83.) Plaintiff has not challenged this finding regarding her symptoms, and the ALJ
4 could properly reject Dr. Chehrazi's opinion to the extent it was based on Plaintiff's
5 self reports. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). With
6 regard to the function report prepared by Ms. Perez, it states that Plaintiff's daughter
7 drives her to doctor visits "most of the time" (AR 411), but does not indicate that this
8 causes Plaintiff to miss appointments. As to parent conferences at school, Ms. Perez
9 stated that Plaintiff needed to rest before going to the school (AR 412), but did not
10 state any problem concerning safety or attendance. Ms. Perez also stated that
11 Plaintiff's daughter drives Plaintiff to doctor visits, parent conferences and shopping.
12 (AR 10.) But this need for transportation does not indicate that Plaintiff would have
13 poor attendance or that she would have difficulty in following safety rules at work.
14 Indeed, Ms. Perez reported that Plaintiff follows spoken instructions "well" and
15 writes down written instructions on her calendar. (AR 412.) In addition, it was stated
16 by Ms. Perez that Plaintiff gets along "great" with authority figures including bosses.
17 (AR 413.) In short, Plaintiff has not pointed to any objective evidence contradicting
18 the ALJ's conclusion regarding Dr. Chehrazi's opinion as to compliance with job
19 rules such as safety and attendance.

20 For the foregoing reasons, IT IS ORDERED that Judgment be entered
21 affirming the decision of the Commissioner and dismissing this action with prejudice.

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23 DATED: 10/9/2018

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26 ALEXANDER F. MacKINNON
27 UNITED STATES MAGISTRATE JUDGE
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