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

AMBER C.,¹

Plaintiff,

v.

ANDREW M. SAUL,²
Commissioner of Social Security,

Defendant.

Case No. 2:19-cv-03208-MAA

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

On April 23, 2019, Plaintiff filed a Complaint seeking review of the Social Security Commissioner’s final decision denying her application for Supplemental Security Income pursuant to Title XVI of the Social Security Act. This matter is fully briefed and ready for decision. For the reasons discussed below, the Commissioner’s final decision is affirmed, and this action is dismissed with prejudice.

¹ Plaintiff’s name is partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² The Commissioner of Social Security is substituted as the Defendant pursuant to Federal Rule of Civil Procedure 25(d).

1 **PROCEDURAL HISTORY**

2 On September 28, 2015, Plaintiff filed an application for Supplemental
3 Security Income, alleging disability beginning on November 8, 2014.
4 (Administrative Record [AR] 17, 190-94.) Plaintiff alleged disability because of
5 carpal tunnel syndrome, a pinched back, and hip problems. (AR 67.) After her
6 application was denied initially and on reconsideration, Plaintiff requested a hearing
7 before an Administrative Law Judge (“ALJ”). (AR 111-13.) At a hearing held on
8 February 21, 2018, at which Plaintiff appeared with counsel, the ALJ heard
9 testimony from Plaintiff, a medical expert, and a vocational expert. (AR 29-66.)

10 In a decision issued on April 26, 2018, the ALJ denied Plaintiff’s application
11 after making the following findings pursuant to the Commissioner’s five-step
12 evaluation. (AR 17-24.) Plaintiff had not engaged in substantial gainful activity
13 since her application date of September 28, 2015. (AR 19.) She had severe
14 impairments consisting of “osteoarthritis of the bilateral feet, status-post open
15 reduction internal fixation (ORIF) of the pelvis, status-post open reduction of ankle
16 fracture, and low back pain.” (*Id.*) She did not have an impairment or combination
17 of impairments that met or medically equaled the requirements of one of the
18 impairments from the Commissioner’s Listing of Impairments. (AR 19-20.) She
19 had a residual functional capacity for light work with additional limitations. (AR
20 20.) She could perform her past relevant work as a case aid, as it is actually and
21 generally performed. (AR 23.) Thus, the ALJ concluded that Plaintiff was not
22 disabled as defined by the Social Security Act. (*Id.*)

23 On February 20, 2019, the Appeals Council denied Plaintiff’s request for
24 review. (AR 3-8.) Thus, the ALJ’s decision became the final decision of the
25 Commissioner.

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1 **DISPUTED ISSUE**

2 The parties raise the following disputed issue: whether the ALJ properly
3 assessed the opinion of Plaintiff’s treating physician regarding Plaintiff’s need for a
4 walker and the physical therapy record. (ECF No. 17, Parties’ Joint Stipulation
5 [“Joint Stip.”] at 4.)
6

7 **STANDARD OF REVIEW**

8 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s final
9 decision to determine whether the Commissioner’s findings are supported by
10 substantial evidence and whether the proper legal standards were applied. *See*
11 *Treichler v. Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir.
12 2014). 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*
14 *v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Substantial evidence is “such
15 relevant evidence as a reasonable mind might accept as adequate to support a
16 conclusion.” *Richardson*, 402 U.S. at 401. The Court must review the record as a
17 whole, weighing both the evidence that supports and the evidence that detracts from
18 the Commissioner’s conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is
19 susceptible of more than one rational interpretation, the Commissioner’s
20 interpretation must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
21 2007).
22

23 **DISCUSSION**

24 **A. Legal Standard.**

25 A claimant’s residual functional capacity (“RFC”) represents the most he can
26 do despite his limitations. 20 C.F.R. § 416.945(a)(1); *Reddick v. Chater*, 157 F.3d
27 715, 724 (9th Cir. 1998); *Smolen v. Chater*, 80 F.3d 1273, 1291 (1996). An ALJ’s
28 RFC determination “must set out *all* the limitations and restrictions of the particular

1 claimant.” *Valentine v. Commissioner Social Sec. Admin.*, 574 F.3d 685, 690 (9th
2 Cir. 2009) (emphasis in original). An ALJ will assess a claimant’s RFC “based on
3 all of the relevant medical and other evidence.” 20 C.F.R. § 416.945(a)(3).

4 Here, the ALJ determined that Plaintiff had an RFC for light work with
5 additional postural and manipulative limitations. (AR 20.) A claimant’s ability to
6 meet the requirements of light work may be eroded by her need to use a hand-held
7 assistive device such as a walker. *See* Social Security Ruling (“SSR”) 96-9P, 1996
8 WL 374185, at *7 (discussing the erosion of the sedentary occupational base by a
9 claimant’s use of a medically required hand-held assistive device); *see also Staples*
10 *v. Astrue*, 329 F. App’x 189, 191 n.1 (10th Cir. 2009) (noting that although SSR 96-
11 9P analyzes the erosion of the sedentary occupational base by a claimant’s need to
12 use a hand-held assistance device, the ruling also applies to the erosion of the light
13 occupational base on the same basis); *Contreras v. Berryhill*, 2017 WL 2798521, at
14 *7 (C.D. Cal. June 28, 2017) (“Use of a cane may limit a claimant’s ability to
15 perform light work, but it is less likely to preclude sedentary work.”). Thus, an
16 ALJ must consider a claimant’s need to use a hand-held assistive device that is
17 “medically required.” *See* SSR 96-9P, 1996 WL 374185, at *7.

18 19 **B. Background.**

20 Approximately 20 years before she applied for disability benefits, Plaintiff
21 broke her hip and ankles in a major car accident. (AR 40.) More recently, she had
22 multiple rounds of physical therapy. (AR 275, 277-78, 293, 311-13, 317, 369-73,
23 384, 399, 587-90.) Objective medical evidence showed osteoarthritis in her feet
24 (AR 295), carpal tunnel syndrome (AR 360), and symptoms such as tenderness or
25 pain in her right hip, knees, and back (AR 277, 342). Plaintiff displayed a normal
26 gait during several examinations. (AR 278, 285, 289, 290, 317, 343, 648).

27 In August 2016, Plaintiff asked her treating physician, Dr. Kamath, to give
28 her a prescription for a walker. (AR 541.) Dr. Kamath prescribed a walker. (AR

1 543.) A few days later, before the walker had arrived, Plaintiff revised her request
2 to ask Dr. Kamath to prescribe a walker with a seat. (AR 559.) Dr. Kamath
3 prescribed a walker with a seat. (*Id.*) Eventually, a physical therapist trained
4 Plaintiff in how to use it. (AR 594.)

5 As for the frequency in which Plaintiff should use a walker, Dr. Kamath
6 stated only that it should be “routine.” (AR 544.) The physical therapist who
7 trained Plaintiff how to use it declined to state a frequency, so his notes stated that
8 the walker should be used “na times every na week,” with a duration of “na weeks.”
9 (AR 594.)

10 During the hearing, the non-examining medical expert, Dr. Todd, testified
11 that he did not think the walker was medically necessary:

12 I don’t think she’d need a walker, I don’t think — there’s no physical
13 evidence in the record that shows impaired strength and she would
14 require a walker, this — given the walker — like this is absolutely not
15 indicated, it is not necessary, it’s not reasonable, it’s not the right thing
16 to do.

17 (AR 48.)

18 In the administrative decision, the ALJ did not incorporate the need to use a
19 walker in the RFC assessment. (AR 20.) The ALJ cited Dr. Todd’s hearing
20 testimony that there was “no indication or documentation in the record to support
21 [Plaintiff’s] need for a walker” and Dr. Todd’s inability “to understand the
22 underlying impairment that would require use of a walker.” (AR 21.)

23
24 **C. Analysis.**

25 Plaintiff contends that the ALJ erred in relying on Dr. Todd’s testimony
26 about the walker because the ALJ failed to address the record on the whole,
27 including evidence of Dr. Kamath’s treatment, evidence of Plaintiff’s lack of
28 success in physical therapy, and objective findings of problems in her feet, hands,

1 hip, knees, and back. (Joint Stip. at 13.)

2 This evidence did not satisfy Plaintiff's burden of showing that a walker was
3 medically required. "To find that a hand-held assistive device is medically
4 required, there must be medical documentation establishing the need for a hand-
5 held assistive device to aid in walking or standing, and *describing the*
6 *circumstances for which it is needed (i.e., whether all the time, periodically, or only*
7 *in certain situations; distance and terrain, and any other relevant information).*"
8 SSR 96-9P, 1996 WL 374185, at *7 (emphasis added).

9 None of the evidence cited by Plaintiff described the "circumstances" for
10 which the walker was needed. The evidence from Dr. Kamath stated vaguely that
11 the walker should be used with "routine" frequency (AR 544), but it did not
12 indicate duration, distance, terrain or any other relevant information. Thus, it failed
13 to satisfy SSR 96-9P. *See Sou v. Saul*, 799 F. App'x 563, 564-65 (9th Cir. 2020)
14 (holding that a claimant failed to show a cane was medically required where the
15 evidence "did not describe the circumstances for which a cane was needed"); *see*
16 *also Tripp v. Astrue*, 489 F. App'x 951, 955 (7th Cir. 2012) (requiring an
17 "unambiguous opinion from a physician stating the circumstances in which an
18 assistive device is medically necessary"). And evidence that Dr. Kamath prescribed
19 the walker also was insufficient. *See Spaulding v. Astrue*, 379 F. App'x 776, 780
20 (10th Cir. 2010) ("[T]he legal issue does not turn on whether a cane was
21 'prescribed' for Spaulding, but whether a cane was 'medically required.'"); *see also*
22 *Dean N. v. Saul*, 2020 WL 430962, at *2 (C.D. Cal. Jan. 28, 2020) (physician's
23 statement that claimant "needs the cane for ambulation" was insufficient).

24 The other types of evidence cited by Plaintiff also failed to show the
25 circumstances for which the walker was needed. The physical therapy notes,
26 including the note regarding Plaintiff's training to use the walker, did not describe
27 such circumstances and, in any event, such notes were not the type of medical
28 documentation contemplated by SSR 96-9P. *See Sou*, 799 F. App'x at 564 and n.1

1 (physical therapy notes were insufficient as medical documentation for a hand-held
2 assistive device). The objective medical evidence of problems with Plaintiff's feet,
3 hands, hip, knees, and back failed to describe the circumstances in which a walker
4 would be needed and, in any event, also did not meet the documentation
5 requirements of SSR 96-9P. *See Staples*, 329 F. App'x at 192 ("But SSR 96-9P
6 requires more than generalized evidence of a condition that might require use of a
7 cane.").

8 Finally, even if the record contained medical documentation showing a
9 walker was medically required (specifically, showing the circumstances in which it
10 was needed), the ALJ would not have been required to credit it. The non-
11 examining medical expert, Dr. Todd, unambiguously testified that the walker was
12 not medically required. (AR 48.) The opinion of a non-examining medical expert
13 "may constitute substantial evidence when it is consistent with other independent
14 evidence in the record." *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)
15 (citing *Magallanes v. Bowen*, 881 F.2d 747, 752 (9th Cir. 1989)). Dr. Todd's
16 testimony was consistent with other independent evidence in the record showing
17 that Plaintiff had a normal gait (AR 278, 285, 289, 290, 317, 343), including a
18 normal gait in February 2017 (AR 648), six months after the walker was prescribed
19 in August 2016. In sum, reversal is not warranted.

20
21 **ORDER**

22 It is ordered that Judgment be entered affirming the decision of the
23 Commissioner of Social Security and dismissing this action with prejudice.

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25 DATED: April 29, 2020

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MARIA A. AUDERO
UNITED STATES MAGISTRATE JUDGE