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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HERBERT F.,)	NO. CV 20-4280-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
ANDREW SAUL, Commissioner of)	
Social Security,)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a complaint on May 12, 2020, seeking review of the Commissioner's denial of benefits. On June 16, 2020, the parties consented to proceed before a United States Magistrate Judge. Plaintiff filed a motion for summary judgment on October 8, 2020. Defendant filed a motion for summary judgment on November 20, 2020. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed May 13, 2020.

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1 **BACKGROUND**

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3 Plaintiff filed an application for Supplemental Security Income
4 on September 10, 2016, asserting disability since January 1, 2004,
5 based on alleged mental problems (Administrative Record ("A.R.") 44,
6 154). An Administrative Law Judge ("ALJ") reviewed the record and
7 heard testimony from Plaintiff and a vocational expert (A.R. 15-43).
8 The ALJ found Plaintiff has severe "bipoloar disorder, generalized
9 anxiety disorder and autism spectrum disorder" (A.R. 17). However,
10 the ALJ also found that Plaintiff retains the residual functional
11 capacity to work at all exertional levels, limited to simple, routine
12 tasks not requiring interaction with the public and not requiring more
13 than occasional interaction with co-workers and supervisors (A.R. 18-
14 23). Relying on the testimony of the vocational expert, the ALJ
15 determined that a person having this capacity could perform jobs
16 existing in significant numbers in the national economy (A.R. 24-25,
17 41-42). The Appeals Council denied review (A.R. 1-3).

18
19 **STANDARD OF REVIEW**

20
21 Under 42 U.S.C. section 405(g), this Court reviews the
22 Administration's decision to determine if: (1) the Administration's
23 findings are supported by substantial evidence; and (2) the
24 Administration used correct legal standards. See Carmickle v.
25 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
26 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
27 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
28 relevant evidence as a reasonable mind might accept as adequate to

1 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
2 (1971) (citation and quotations omitted); see also Widmark v.
3 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

4
5 If the evidence can support either outcome, the court may
6 not substitute its judgment for that of the ALJ. But the
7 Commissioner's decision cannot be affirmed simply by
8 isolating a specific quantum of supporting evidence.
9 Rather, a court must consider the record as a whole,
10 weighing both evidence that supports and evidence that
11 detracts from the [administrative] conclusion.

12
13 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
14 quotations omitted).

15
16 **DISCUSSION**

17
18 After consideration of the record as a whole, Defendant's motion
19 is granted and Plaintiff's motion is denied. The Administration's
20 findings are supported by substantial evidence and are free from
21 material¹ legal error. Plaintiff's contrary arguments are unavailing.

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27 ¹ The harmless error rule applies to the review of
28 administrative decisions regarding disability. See Garcia v.
Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 I. Substantial Evidence Supports the Conclusion Plaintiff Can Work

2
3 Substantial medical evidence supports the Administration's
4 conclusion Plaintiff is not disabled from all employment. Dr. Michael
5 Cohen, a consultative psychologist, examined Plaintiff and opined that
6 Plaintiff can work (A.R. 303-07). Dr. Cohen's opinion constitutes
7 substantial evidence to support the Administration's non-disability
8 determination. See Orn v. Astrue, 495 F.3d 625, 631-32 (9th Cir.
9 2007) (opinion of examining physician based on independent clinical
10 findings can provide substantial evidence to support administrative
11 conclusion of non-disability).

12
13 Substantial non-medical evidence also supports the
14 Administration's determination. For example, the record contains
15 evidence of extensive activities by Plaintiff, including caring for
16 his five year old daughter and surfing the internet seven to eight
17 hours each day (A.R. 37-38, 196). The evidence also reflects that
18 Plaintiff earned a liberal arts associates degree in 2013 (A.R. 35).
19 An ability to succeed in school may betray an ability to work. See
20 Chavez v. Department of Health and Human Services, 103 F.3d 849, 853
21 (9th Cir. 1996); Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir.
22 1993); Sorensen v. Weinberger, 514 F.2d 1112, 1118 (9th Cir. 1975).

23
24 The vocational expert testified that a person with the residual
25 functional capacity the ALJ found to exist could perform certain jobs
26 existing in significant numbers in the national economy (A.R. 41-42).
27 The ALJ properly relied on this testimony in denying disability
28 benefits. See Barker v. Secretary of Health and Human Services, 882

1 F.2d 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771,
2 774-75 (9th Cir. 1986).

3
4 To the extent any of the evidence is in conflict, it was the
5 prerogative of the ALJ to resolve such conflicts. See Lewis v.
6 Apfel, 236 F.3d 503, 509 (9th Cir. 2001); see also Treichler v.
7 Commissioner, 775 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to
8 the ALJ" "to resolve conflicts and ambiguities in the record"). When
9 evidence "is susceptible to more than one rational interpretation,"
10 the Court must uphold the administrative decision. See Andrews v.
11 Shalala, 53 F.3d at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947,
12 954 (9th Cir. 2002); Sandgate v. Chater, 108 F.3d 978, 980 (9th Cir.
13 1997). The Court will uphold the ALJ's rational interpretation of the
14 evidence in the present case notwithstanding any conflicts in the
15 evidence.

16
17 **II. The ALJ did Not Materially Err in Discounting the Treating**
18 **Physician's Opinions.**

19
20 A treating physician's conclusions "must be given substantial
21 weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see
22 Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must
23 give sufficient weight to the subjective aspects of a doctor's
24 opinion. . . . This is especially true when the opinion is that of a
25 treating physician") (citation omitted); see also Orn v. Astrue, 495
26 F.3d 625, 631-33 (9th Cir. 2007) (discussing deference owed to
27 treating physician opinions). Where, as here, the treating
28 physician's opinions are contradicted, "if the ALJ wishes to disregard

1 the opinion[s] of the treating physician he . . . must make findings
2 setting forth specific, legitimate reasons for doing so that are based
3 on substantial evidence in the record." Winans v. Bowen, 853 F.2d
4 643, 647 (9th Cir. 1987) (citation, quotations and brackets omitted);
5 see Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the
6 treating physician's opinion, but only by setting forth specific,
7 legitimate reasons for doing so, and this decision must itself be
8 based on substantial evidence") (citation and quotations omitted).
9 Contrary to Plaintiff's argument, the ALJ stated sufficient reasons
10 for discounting the opinions of Plaintiff's treating psychiatrist, Dr.
11 Syam Kunam.

12
13 The ALJ stated that Dr. Kunam's opinions were inconsistent with
14 Dr. Kunam's own treatment notes (A.R. 23). Substantial evidence
15 supports the ALJ's reasoning (A.R. 327-35). The ALJ also stated that
16 Dr. Kunam's opinions were inconsistent with and unsupported by
17 examination findings in the record (A.R. 23). Substantial also
18 supports this reasoning (A.R. 303-07, 327-32). An ALJ may properly
19 reject a treating physician's opinion where, as here, the opinion is
20 not adequately supported by treatment notes or objective clinical
21 findings. See Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir.
22 2008) (ALJ may reject a treating physician's opinion that is
23 inconsistent with other medical evidence, including the physician's
24 treatment notes); Batson v. Commissioner, 359 F.3d 1190, 1195 (9th
25 Cir. 2004) (ALJ properly may reject a treating physician's opinion
26 that is "unsupported by the record as a whole . . . or by objective
27 medical findings"); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir.
28 2003) (treating physician's opinion properly rejected where

1 physician's treatment notes "provide no basis for the functional
2 restrictions he opined should be imposed on [the claimant]"); see also
3 20 C.F.R. §§ 404.1527(c), 416.927(c) (factors to consider in weighing
4 treating source opinion include the supportability of the opinion by
5 medical signs and laboratory findings as well as the opinion's
6 consistency with the record as a whole).

7
8 As the ALJ also observed, Dr. Kunam's extreme opinions regarding
9 Plaintiff's alleged incapacity are rendered suspect by the course of
10 treatment reported by Plaintiff and reflected in the record (A.R. 23).
11 For example, Plaintiff testified that he had been taking the same
12 medication for 10 years (A.R. 37). The ALJ evidently reasoned that,
13 if Plaintiff were severely impaired as represented by Dr. Kunam,
14 Plaintiff's treatment would not have been so unvarying (see A.R. 23).

15
16 The ALJ also stated that the issue of a claimant's disability is
17 "reserved for the Commissioner" (A.R. 23). Acknowledgment of this
18 reservation does not provide a specific or legitimate reason to reject
19 a treating physician's opinion that a claimant is disabled. Even
20 though the issue of disability is "reserved to the Commissioner," the
21 ALJ still must set forth specific, legitimate reasons for rejecting a
22 treating physician's opinion that a claimant is disabled. See
23 Rodriguez v. Bowen, 876 F.2d at 762 n.7 ("We do not draw a distinction
24 between a medical opinion as to a physical condition and a medical
25 opinion on the ultimate issue of disability."); see also Social

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1 Security Ruling 96-5p² ("adjudicators must always carefully consider
2 medical source opinions about any issue, including opinions about
3 issues that are reserved to the Commissioner"). However, as discussed
4 above, the ALJ did set forth other specific, legitimate reasons for
5 rejecting Dr. Kunam's opinions. Therefore, the ALJ's statement
6 regarding the issue of disability being reserved for the Commissioner
7 is properly viewed as surplusage or harmless error.

8
9 **III. The ALJ did Not Materially Err in Discounting Plaintiff's**
10 **Subjective Complaints.**

11
12 An ALJ's assessment of a claimant's credibility is entitled to
13 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
14 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as
15 here, an ALJ finds that the claimant's medically determinable
16 impairments reasonably could be expected to cause some degree of the
17 alleged symptoms of which the claimant subjectively complains, any
18 discounting of the claimant's complaints must be supported by
19 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234
20 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
21 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
22 (indicating that ALJ must offer "specific, clear and convincing"
23 reasons to reject a claimant's testimony where there is no evidence of

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27 ² Social Security rulings are binding on the
28 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1
(9th Cir. 1990).

1 "malingering").³ An ALJ's credibility finding "must be sufficiently
2 specific to allow a reviewing court to conclude the ALJ rejected the
3 claimant's testimony on permissible grounds and did not arbitrarily
4 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d
5 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);
6 see also Social Security Ruling ("SSR") 96-7p (explaining how to
7 assess a claimant's credibility), superseded, SSR 16-3p (eff. Mar. 28,
8 2016).⁴ As discussed below, the ALJ stated sufficient reasons for
9 deeming Plaintiff's subjective complaints less than fully credible.

10
11 The ALJ determined that the objective medical evidence was
12 inconsistent with Plaintiff's claimed inability to function. An ALJ
13 permissibly may rely in part on a lack of supporting objective medical
14 evidence in discounting a claimant's allegations of disabling
15 symptomatology. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir.

16
17 ³ In the absence of an ALJ's reliance on evidence of
18 "malingering," most recent Ninth Circuit cases have applied the
19 "clear and convincing" standard. See, e.g., Leon v. Berryhill,
20 880 F.3d 1041, 1046 (9th Cir. 2017); Brown-Hunter v. Colvin, 806
21 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d
22 1133, 1136-37 (9th Cir. 2014); Treichler v. Commissioner, 775
23 F.3d 1090, 1102 (9th Cir. 2014); Ghanim v. Colvin, 763 F.3d 1154,
24 1163 n.9 (9th Cir. 2014); Garrison v. Colvin, 759 F.3d 995, 1014-
15 & n.18 (9th Cir. 2014); see also Ballard v. Apfel, 2000 WL
1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting earlier
cases). In the present case, the ALJ's findings are sufficient
under either standard, so the distinction between the two
standards (if any) is academic.

25 ⁴ The appropriate analysis under the superseding SSR is
26 substantially the same as the analysis under the superseded SSR.
27 See R.P. v. Colvin, 2016 WL 7042259, at *9 n.7 (E.D. Cal. Dec. 5,
28 2016) (stating that SSR 16-3p "implemented a change in diction
rather than substance") (citations omitted); see also Trevizo v.
Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that
SSR 16-3p "makes clear what our precedent already required").

1 2005) ("Although lack of medical evidence cannot form the sole basis
2 for discounting pain testimony, it is a factor the ALJ can consider in
3 his [or her] credibility analysis."); Rollins v. Massanari, 261 F.3d
4 853, 857 (9th Cir. 2001) (same); see also Carmickle v. Commissioner,
5 533 F.3d at 1161 ("Contradiction with the medical record is a
6 sufficient basis for rejecting the claimant's subjective testimony");
7 SSR 16-3p ("[O]bjective medical evidence is a useful indicator to help
8 make reasonable conclusions about the intensity and persistence of
9 symptoms, including the effects those symptoms may have on the ability
10 to perform work-related activities . . .").

11
12 The ALJ deemed some of Plaintiff's activities to be inconsistent
13 with Plaintiff's claimed incapacity (A.R. 18-19, 22). The record
14 reflects activities by Plaintiff inconsistent with his claimed
15 incapacity (taking care of a five year old, earning a college degree,
16 etc.), as well as contradictions between various of Plaintiff's
17 statements (e.g. his testimony that he never goes out alone versus his
18 admissions that he does) (A.R. 37-40, 196, 198, 304). Inconsistencies
19 between claimed incapacity and actual activities properly can impugn a
20 claimant's credibility. See, e.g., Molina v. Astrue, 674 F.3d at 1112
21 ("the ALJ may consider inconsistencies in the claimant's testimony or
22 between the testimony and the claimant's conduct"); Valentine v.
23 Commissioner, 574 F.3d 685, 693 (9th Cir. 2009) (claimant's admitted
24 activities did not suggest that claimant could work, but did suggest
25 that claimant was exaggerating the severity of claimant's
26 limitations); Lingenfelter v. Astrue, 504 F.3d 1028, 1040 (9th Cir.
27 2007) (activities inconsistent with alleged symptoms relevant to
28 credibility determination); Thomas v. Barnhart, 278 F.3d 947, 958-59

1 (9th Cir. 2002) (inconsistency between claimant's testimony and
2 claimant's actions supported rejection of claimant's credibility);
3 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (activities
4 including taking care of children's needs inconsistent with claimant's
5 testimony); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999)
6 (inconsistency between claimant's testimony and claimant's actions
7 cited as a clear and convincing reason for rejecting claimant's
8 testimony); Morgan v. Commissioner, 169 F.3d 595, 600 (9th Cir. 1999)
9 (inconsistency between claimant's testimony and claimant's activities
10 including sometimes carrying for the child for a friend).

11
12 The ALJ also doubted the accuracy of Plaintiff's subjective
13 complaints based on the nature of Plaintiff's treatment (A.R. 22). As
14 previously discussed, Plaintiff's treatment appears to have been
15 conservative and largely unvarying. Additionally, for months at a
16 time, Plaintiff sought no treatment at all, including no treatment for
17 his autism diagnosis. A claimant's failure to pursue more aggressive
18 treatment for allegedly disabling impairments properly may cast doubt
19 on a claimant's credibility. See Molina v. Astrue, 674 F.3d 1104,
20 1113 (9th Cir. 2012); Burch v. Barnhart, 400 F.3d at 681; Batson v.
21 Commissioner, 359 F.3d 1190, 1196 (9th Cir. 2004); Fair v. Bowen, 885
22 F.2d 597, 603 (9th Cir. 1989). In the same vein, the relatively
23 conservative nature of a claimant's treatment properly may factor into
24 the evaluation of the claimant's subjective complaints. See
25 Tommasetti v. Astrue, 533 F.3d at 1039-40; Parra v. Astrue, 481 F.3d
26 742, 751 (9th Cir. 2007), cert. denied, 552 U.S. 1141 (2008);
27 Osenbrock v. Apfel, 240 F.3d 1157, 1166 (9th Cir. 2001).

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1 The ALJ also commented on Plaintiff's poor work history (A.R.
2 22). Although Plaintiff argues that such consideration lacks probity
3 (given the early alleged onset date), an ALJ may consider a claimant's
4 work record when weighing the claimant's subjective complaints.
5 See 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (in evaluating the
6 intensity and persistence of a claimant's symptoms, the fact finder
7 "will consider all of the evidence presented, including information
8 about [the claimant's] prior work record"); Thomas v. Barnhart, 278
9 F.3d 947, 959 (9th Cir. 2002) (claimant's limited work history can
10 affect credibility of claims regarding inability to work).

11
12 It may be that not all of the ALJ's stated reasons for
13 discounting Plaintiff's subjective symptomatology are legally valid.
14 However, notwithstanding the invalidity of one or more of an ALJ's
15 stated reasons, a court may uphold an ALJ's credibility determination
16 where sufficient valid reasons have been stated. See Carmickle v.
17 Commissioner, 533 F.3d at 1162-63. In the present case, the ALJ
18 stated sufficient valid reasons to allow this Court to conclude that
19 the ALJ discounted Plaintiff's credibility on permissible grounds.
20 See Moisa v. Barnhart, 367 F.3d at 885. The Court therefore defers to
21 the ALJ's credibility determination. See Lasich v. Astrue, 252 Fed.
22 App'x 823, 825 (9th Cir. 2007) (court will defer to Administration's
23 credibility determination when the proper process is used and proper
24 reasons for the decision are provided); accord Flaten v. Secretary of

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