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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TYRONE METCALFE,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

NO. EDCV 07-1039 AGR

MEMORANDUM OPINION AND
ORDER

Tyrone Metcalfe filed this action on August 17, 2007. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before Magistrate Judge Rosenberg on May 20 and 21, 2008. On June 3, 2008, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. The Court has taken the matter under submission without oral argument.

Having reviewed the entire file, the Court affirms the Commissioner's decision.

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1 I.

2 **PROCEDURAL BACKGROUND**

3 On February 7, 2005, an application for supplemental security income
4 benefits was filed on behalf of Metcalfe, who was a minor at the time of filing but
5 attained the age of 18 in July 2006. A.R. 12, 16. The application was denied
6 initially and upon reconsideration. A.R. 12. The Administrative Law Judge
7 (“ALJ”) conducted a hearing on February 1, 2007, at which Metcalfe, a medical
8 expert, and a vocational expert testified. A.R. 151-172. On February 23, 2007,
9 the ALJ issued a decision denying benefits. A.R. 9-24. Metcalfe requested
10 review. A.R. 6. On July 17, 2007, the Appeals Council denied Metcalfe’s request
11 for review. A.R. 3-5.

12 This lawsuit followed.

13 II.

14 **STANDARD OF REVIEW**

15 Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner’s
16 decision to deny benefits. The decision will be disturbed only if it is not supported
17 by substantial evidence, or if it is based upon the application of improper legal
18 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v.*
19 *Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

20 “Substantial evidence” means “more than a mere scintilla but less than a
21 preponderance – it is such relevant evidence that a reasonable mind might
22 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In
23 determining whether substantial evidence exists to support the Commissioner’s
24 decision, the Court examines the administrative record as a whole, considering
25 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the
26 evidence is susceptible to more than one rational interpretation, the Court must
27 defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

1 III.

2 **DISCUSSION**

3 **A. Pertinent Legal Standards**

4 **1. Adult Definition of Disability**

5 “A person qualifies as disabled, and thereby eligible for such benefits, only
6 if his physical or mental impairment or impairments are of such severity that he is
7 not only unable to do his previous work but cannot, considering his age,
8 education, and work experience, engage in any other kind of substantial gainful
9 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,
10 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003) (citation and internal quotation
11 marks omitted).

12 **2. Child Definition of Disability**

13 “An individual under the age of 18 shall be considered disabled . . . if that
14 individual has a medically determinable physical or mental impairment, which
15 results in marked and severe functional limitations, and which can be expected to
16 result in death or which has lasted or can be expected to last for a continuous
17 period of not less than 12 months.” 42 U.S.C. § 1382c(C)(i).¹ An impairment is
18 “marked and severe” if it meets, medically equals, or functionally equals an
19 impairment listed in 20 C.F.R. § 404, Subpart P, Appendix I. 20 C.F.R. §
20 416.924(d)(1). A claimant “meets” a listed impairment if the claimant’s
21 impairment matches the listed impairment. *Id.* A claimant “medically equals” the
22 listed impairment by demonstrating medical findings that are of equal medical
23 significance to the listed impairment. 20 C.F.R. § 416.926(b). A claimant
24 “functionally equals” a listed impairment by showing either a marked limitation in
25 two functional domains (out of six) or an extreme limitation in one domain. 20
26 C.F.R. § 416.926a(a); See *Warre v. Comm’r of the Soc. Sec. Admin.*, 439 F.3d

27 _____
28 ¹ “[N]o individual under the age of 18 who engages in substantial gainful
activity . . . may be considered to be disabled.” 42 U.S.C. § 1382c(C)(ii).

1 1001, 1004 (9th Cir. 2006). The six domains are acquiring and using information,
2 attending and completing tasks, interacting and relating with others, moving about
3 and manipulating objects, caring for yourself, and health and physical well-being.
4 20 C.F.R. § 416.926a(b)(1)(i-vi). A marked limitation is more than moderate and
5 less than extreme, and occurs when an impairment(s) “interferes seriously with
6 your ability to independently initiate, sustain, or complete activities.” 20 C.F.R. §
7 416.926a(e)(2). An extreme limitation occurs when an impairment(s) “interferes
8 very seriously with your ability to independently initiate, sustain, or complete
9 activities.” 20 C.F.R. § 416.926a(e)(3).

10 **B. The ALJ’s Findings**

11 Before reaching the age of 18, Metcalfe had the severe impairments of
12 social phobia and reactive depression. A.R. 16. However, Metcalfe did not have
13 an impairment that met, medically equaled, or functionally equaled a listing. *Id.*

14 After reaching the age of 18, Metcalfe had the following severe
15 impairments: social phobia, depressive disorder not otherwise specified, and
16 personality disorder not otherwise specified with avoidant features. A.R. 23.
17 Metcalfe had no physical limitations. *Id.* “Mentally, the Claimant is able to
18 understand and remember moderately detailed instructions, and is able to carry
19 out moderately complex tasks. His work should be independent, allowing for
20 occasional non-intense interactions with coworkers and no interaction with the
21 general public.” *Id.* Metcalfe has no past relevant work but should be able to
22 perform various jobs, including cleaner and library page. A.R. 23-24.

23 **C. The Medical Records**

24 Metcalfe argues that, when he was under the age of 18, he had marked
25 limitations in two domains, acquiring and using information,² and interacting and

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27 ² Acquiring and using information involves how well a child acquires or
28 learns information, and how well a child uses the information he or she has
learned. 20 C.F.R. § 416.926a(g); *Id.* § 416.926a(g)(2)(v) (description for
adolescents age 12 until age 18).

1 relating to others.³ JS 4. According to Metcalfe, the ALJ erred in finding that,
2 before Metcalfe reached the age of 18, he had “no limitation in acquiring and
3 using information” (A.R. 19), and had “less than marked limitation in interacting
4 and relating to others” (A.R. 21). In support of his argument, Metcalfe points to
5 the facts that he repeated the 9th grade, completed high school via online
6 courses, and had low Global Assessment of Functioning (“GAF”) scores in March
7 and April 2004. JS 4-5; A.R. 149, 150.

8 The ALJ noted that the medical records were “sparse.” A.R. 18. The ALJ
9 stated that he considered the complete medical history even though benefits
10 were not payable until the month following the month in which the application was
11 filed, February 7, 2005. A.R. 12.

12 An opinion of a treating physician is given more weight than the opinion of
13 a non-treating physician. *Orn*, 495 F.3d at 631. When, as here, a treating
14 physician’s opinion is contradicted by another doctor, “the ALJ may not reject this
15 opinion without providing specific and legitimate reasons supported by substantial
16 evidence in the record. This can be done by setting out a detailed and thorough
17 summary of the facts and conflicting clinical evidence, stating his interpretation
18 thereof, and making findings.” *Id.* at 632 (citations and internal quotation marks
19 omitted).

20 The ALJ addressed the records in Exhibit 5F.⁴ Nevertheless, Metcalfe
21 argues that the ALJ erred in failing to mention his GAF of “35 50” on April 30,
22 2004, and “30/50” on March 21, 2004. A.R. 149-150. An ALJ’s failure to

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24 ³ Interacting and relating to others involves initiating and responding to
25 exchanges with other people for practical or social purposes, and forming
26 relationships with family members and friends, and sustaining those relationships
over time. 20 C.F.R. § 416.926a(i)(1)(i)-(ii); *Id.* § 416.926a(i)(2)(v) (description for
adolescents age 12 until age 18).

27 ⁴ The ALJ mistakenly identified the records as being from Kaiser
28 Permanente. A.R. 18. They are from Dogon Community Services. A.R. 105,
148. The Kaiser Permanente records are Exhibit 4F and cover a shorter time
period. A.R. 135-141.

1 reference a GAF, standing alone, does not constitute legal error. See *Howard v.*
2 *Comm’r of Soc. Sec.*, 276 F.3d 235, 241 (6th Cir. 2002) (rejecting argument that
3 ALJ erred in failing to mention GAF score).⁵ A GAF is not determinative of mental
4 disability for social security purposes. See 65 Fed. Reg. 50746, 50765 (August
5 21, 2000) (“[The GAF scale] does not have a direct correlation to the severity
6 requirements in our mental disorder listings.”).

7 Here, the forms do not indicate any basis for a GAF score of 30-50 even in
8 March/April 2004 (which precedes the time frame for benefits).⁶ A.R. 149-150.
9 As the ALJ acknowledged, the notes in January 2005 indicate Metcalfe was
10 “doing real good in school.”⁷ A.R. 18, 145. In March 2005, the notes indicate that
11 Metcalfe appears bright but does not use his mental capabilities. A.R. 18, 144.
12 In April 2005, Metcalfe was “considering computer design as a future education
13 beyond high school.” A.R. 18, 142. Accordingly, contrary to Metcalfe’s
14 argument, these records do not support a marked limitation in acquiring and
15 using information.

18 ⁵ See also *McFarland v. Astrue*, Case No. 06-35549, 2008 U.S. App.
19 LEXIS 16011 at *3 (9th Cir. July 25, 2008) (unpublished).

20 ⁶ Based on a Mental Status Exam, Metcalfe’s mood was euthymic, his
21 affect was normal, he was alert, fully oriented, and had “ok” judgment. A.R. 148.
22 He had no hallucinations or delusions, no suicidal ideation, and his response to
23 medication treatment was “pretty good.” *Id.* By contrast, a GAF of 30 indicates
24 behavior considerably influenced by delusions or hallucinations, or serious
25 impairment in communication or judgment, or inability to function in almost all
26 areas. A GAF of 31-40 indicates some impairment in reality testing or
27 communications or major impairment in several areas. A GAF of 41-50 denotes
28 serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent
shoplifting) or any serious impairment in social, occupational, or school
functioning (e.g., no friends, unable to keep a job). See American Psychiatric
Association, *Diagnostic and Statistical Manual of Mental Disorders*, 34 (4th ed.
2000) (“DSM-IV”).

⁷ Like the ALJ, the Court reads the December 2004 notes to relate to
Metcalfe only insofar as they state he is attending school by computer and has
very poor self esteem. A.R. 18, 146. The remainder of the notes appear to relate
to a female with different symptoms. A.R. 146.

1 Metcalfe also testified at the hearing that he was doing “pretty good” in online
2 school. A.R. 158.

3 Metcalfe also points to a GAF of 55 on October 11, 2006. JS 5; A.R. 141.
4 A GAF of 51-60 indicates “[m]oderate symptoms (e.g., flat affect and
5 circumstantial speech, occasional panic attacks OR moderate difficulty in social,
6 occupational, or school functioning (e.g., few friends, conflicts with peers or co-
7 workers).” DSM-IV at 34. Because a marked limitation requires “more than
8 moderate” limitations, 20 C.F.R. § 416.926a(e)(2), a GAF of 55 does not support
9 Metcalfe’s argument that he had marked limitations in two domains.⁸ Particularly
10 when, as here, the GAF is consistent with the ALJ’s findings, failure to mention a
11 GAF score is not, standing alone, legal error. Although the ALJ did not mention
12 the GAF score in his decision, the Court notes that the ALJ questioned the
13 medical expert about it. The medical expert responded that the GAF is not
14 inconsistent with his findings. A.R. 168.

15 Finally, the ALJ took into account the undisputed facts that Metcalfe had to
16 repeat the 9th grade due to social phobia and went to high school online. A.R.
17 17. These facts, however, do not establish a marked limitation in acquiring and
18 using information.

19 The ALJ relied on the opinions of an examining physician (A.R. 18, 116-
20 118), a medical expert (A.R. 18, 162-169), and State agency nonexamining
21 physicians (A.R. 18, 119-124, 127-132). The ALJ also addressed the reports
22 completed by Metcalfe’s stepfather and mother on June 24, 2005. A.R. 18, 87-
23 95, 96-103. Metcalfe could take care of himself, cook meals for himself, and do
24 chores. A.R. 88-89. Metcalfe’s mother reported that Metcalfe “pays attention
25 well,” “can usually follow spoken instructions,” and “handles stress as well as
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28 ⁸ Moreover, the GAF was assessed by a licensed clinical social worker,
who is not an acceptable medical source. 20 C.F.R. § 416.913(a).

1 anyone else.” A.R. 101-102. These records do not support a marked limitation in
2 acquiring and using information.

3 Thus, even assuming that Metcalfe had marked limitations in interacting
4 and relating to others, the ALJ did not err in finding that Metcalfe did not have
5 marked limitation in acquiring and using information.

6 **D. Credibility of Claimant and His Parents**

7 The ALJ’s RFC included a limitation that “work should be independent,
8 allowing for occasional non-intense interactions with coworkers and no interaction
9 with the general public.” A.R. 23.

10 Metcalfe argues that the ALJ necessarily rejected statements by Metcalfe,
11 his mother and his stepfather. JS 13. “To determine whether a claimant’s
12 testimony regarding subjective pain or symptoms is credible, an ALJ must
13 engage in a two-step analysis.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36
14 (9th Cir. 2007). First, “the ALJ must determine whether the claimant has
15 presented objective medical evidence of an underlying impairment ‘which could
16 reasonably be expected to produce the pain or other symptoms alleged.’” *Id.*
17 (citations omitted). The ALJ found that Metcalfe’s medically determinable
18 impairments could reasonably be expected to produce the alleged symptoms.
19 A.R. 18.

20 “Second, if the claimant meets this first test, and there is no evidence of
21 malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her
22 symptoms only by offering specific, clear and convincing reasons for doing so.’”
23 *Lingenfelter*, 504 F.3d at 1036 (citations omitted). “In making a credibility
24 determination, the ALJ ‘must specifically identify what testimony is credible and
25 what testimony undermines the claimant’s complaints.’” *Greger v. Barnhart*, 464
26 F.3d 968, 972 (9th Cir. 2006) (citation omitted).

27 The ALJ addressed the statements of Metcalfe and his parents. A.R. 17-
28 19. He did not reject their statements. *Id.* When Metcalfe was under the age of

1 18, the ALJ found that Metcalfe had the severe impairments of social phobia and
2 reactive depression. A.R. 16. Due to his impairments, Metcalfe “ditched” school
3 and had to repeat the 9th grade. A.R. 17, 156-157. He attended high school
4 through online courses. A.R. 17. While Metcalfe was a minor, his mother and
5 stepfather submitted written questionnaires indicating that Metcalfe would not go
6 out of the house and attend school. The ALJ noted that the stepfather said
7 Metcalfe generally “did not go out in public” and “was fearful of going outside the
8 house alone.” A.R. 18. The ALJ also noted that the mother said that Metcalfe
9 “did not go out alone.” A.R. 19. This evidence formed part of the basis of the
10 ALJ’s assessment that Metcalfe had less than marked limitation in interacting and
11 relating to others as a minor. A.R. 21.

12 The issue here, however, is whether Metcalfe was capable of work after
13 attaining the age of 18. On this question, the ALJ relied on Metcalfe’s testimony
14 at the hearing, when Metcalfe was 18 years old. A.R. 17-18. Metcalfe testified
15 that he would graduate in June 2007 and had recently obtained a driver’s license.
16 A.R. 154-155. He testified that he was very familiar with computers and devoted
17 about seven hours per day to online high school. A.R. 157-158. He went outside
18 of the home to pick up books and take certain tests that were not available on
19 computer. He did pretty well on those tests. A.R. 158. He enjoyed playing video
20 games and designing web pages. A.R. 160. He went to friends’ houses to visit.
21 *Id.* He went to the movies with a friend about once every two months “when
22 there’s maybe one really good movie out that I want to go see.” A.R. 160-161.
23 He also did chores around the house. A.R. 159-160. The ALJ relied on a
24 treatment record which reported that Metcalfe was considering computer design
25 as future education beyond high school. A.R. 18, 142.

26 The ALJ also relied on the medical expert’s testimony. A.R. 18. The
27 medical expert testified: “This is basically, his problems are with the public. You
28 know, he’s a functioning young man. He’s having an aspiration to work as a

1 computer-based person. It is perfectly fit (sic) for him.” A.R. 168. The medical
2 expert explained that he assessed moderate limitations because “[h]e’s okay with
3 people [inaudible], goes to the movies, for example, some difficulty and some
4 pain associated with it but he’s still able to manage it. He goes and visits his
5 friends so he’s not an isolate (sic).” A.R. 169. The medical expert recommended
6 no interaction with the public, which the ALJ accepted. *Id.* The medical expert
7 also distinguished the school environment, which has a “not very kind population
8 there,” “especially at his age.” *Id.*

9 The Court cannot say that the ALJ’s interpretation of the evidence, viewed
10 as whole, as to Metcalfe’s residual functional capacity after attaining the age of
11 18 is not reasonable or supported by substantial evidence. Metcalfe does not
12 point to any contrary statements or medical records after Metcalfe reached the
13 age of 18.⁹ When the evidence is susceptible to more than one rational
14 interpretation, the Court must defer to the Commissioner’s decision. *Moncada*,
15 60 F.3d at 523.

16 **ORDER**

17 IT IS HEREBY ORDERED that the Commissioner’s decision is affirmed.

18 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
19 Order and the Judgment herein on all parties or their counsel.

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22 DATED: September 29, 2008

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ALICIA G. ROSENBERG
United States Magistrate Judge

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25 ⁹ The Court notes that the only statements by Metcalfe’s mother after he
26 reached age 18 were reported by a licensed social worker at Kaiser (who
27 assessed a GAF of 55 as discussed above). According to the notes, Metcalfe’s
28 mother said that, at 18, Metcalfe “talks of wanting to drive, move out.” A.R. 136.
Also, Metcalfe thinks of maybe being a “video game designer or go to college.”
A.R. 137. He “doesn’t fear leaving the house, fears crowds.” *Id.* School is the
worst. *Id.* These statements are not inconsistent with the hearing testimony of
the medical expert and Metcalfe.