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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RHONDA L. CISNEROS,)	No. EDCV 07-1045-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Rhonda L. Cisneros filed a complaint on August 17, 2007, seeking review of the Commissioner’s decision denying her application for disability benefits. The Commissioner answered the complaint on February 5, 2008, and the parties filed a joint stipulation on March 19, 2008.

BACKGROUND

I

On December 18, 2002, plaintiff applied for disability benefits under the Supplemental Security Income program (“SSI”) of Title XVI of the Act, 42 U.S.C. § 1382(a), claiming an inability to work since

1 September 30, 2001, due to migraine headaches, back pain, depression,
2 and memory loss. Certified Administrative Record ("A.R.") 55-57, 64.
3 The plaintiff's application was initially denied on May 8, 2003, and
4 was denied again on July 3, 2003, following reconsideration. A.R. 32-
5 40. On February 28, 2005, plaintiff requested an administrative
6 hearing, which was held before Administrative Law Judge Lowell Fortune
7 ("the ALJ") on September 19, 2006.¹ A.R. 50-51, 415-68. On
8 December 22, 2006, the ALJ issued a decision finding plaintiff is not
9 disabled. A.R. 9-20. The plaintiff appealed the decision to the
10 Appeals Council, which denied review on June 25, 2007. A.R. 5-8, 393,
11 412-14.

12 13 II

14 The plaintiff, who was born on October 20, 1958, is currently 50
15 years old. A.R. 55, 418. She has a tenth-grade education and
16 previously worked as a cashier, a dispatcher, an inspector, a clerk,
17 and a waitress. A.R. 65, 70, 73-80, 398, 403, 418-20.

18
19 The plaintiff has a history of mental health problems dating back
20 to 2003,² when she began receiving therapy with a mental health
21 professional in Albuquerque, New Mexico.³ A.R. 119. On April 8,
22 2003, Gerald Fredman, M.D., a psychiatrist, examined plaintiff,
23

24 ¹ The ALJ found good cause for plaintiff's tardy
25 administrative hearing request. A.R. 12.

26 ² Although plaintiff has both mental and physical problems,
27 this opinion focuses on plaintiff's mental health complaints.

28 ³ These medical records are not part of the administrative
record.

1 diagnosed her with post-traumatic stress disorder and agoraphobia, and
2 determined plaintiff's Global Assessment of Functioning ("GAF") was
3 50.⁴ A.R. 119-22. Dr. Fredman found plaintiff "has a history
4 consistent with post-traumatic stress disorder related to childhood
5 abuse and neglect. The abuse was both physical and sexual." A.R.
6 121. "The physical abuse was by her mother and the sexual abuse
7 (rapes) was from [her] mother's old boyfriends. The first rape was at
8 age 9, the second at 12, and the third at 14[;] two of the men were
9 boyfriends of her mother and the third one was a friend of [her]
10 mother." A.R. 119. Dr. Fredman concluded:

11
12 From a psychiatric perspective there would be mild
13 limitations understanding and remembering basic
14 instructions. There would be mild limitations with
15 concentration. There would be moderate limitations adapting
16 to changes in a workplace. There would be moderate
17 limitations persisting [in] a task of basic work. There
18 would be marked limitations interacting with the general
19 public, co-workers and supervisors. She is probably capable

21 ⁴ A GAF score reflects "the clinician's judgment of the
22 individual's overall level of functioning" regarding only
23 psychological, social and occupational functioning but not
24 considering physical or environmental limitations. American
25 Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental
26 Disorders, 32 (4th ed. (Text Revision) 2000); Langley v.
27 Barnhart, 373 F.3d 1116, 1122-23 n. 3 (10th Cir. 2004). A GAF of
28 50 means the individual exhibits "[s]erious 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)."
American Psychiatric Ass'n, Diagnostic and Statistical Manual of
Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 of handling whatever funds are due her.

2
3 A.R. 122. Dr. Fredman further opined plaintiff was: "markedly
4 limited"⁵ in her ability to interact with the public, co-workers, and
5 supervisors; "moderately limited"⁶ in her ability to work without
6 supervision, adapt to workplace changes, and use public transportation
7 or travel to unfamiliar places; "mildly limited"⁷ in her ability to
8 understand and remember detailed instructions, carry out instructions,
9 attend and concentrate, and be aware of normal hazards and react
10 appropriately; and "not limited" in her ability to understand and
11 remember very short and simple instructions. A.R. 130-32.

12
13 On May 1, 2003, nonexamining psychiatrist E. Ching, M.D., opined
14 plaintiff has an anxiety-related disorder that causes "mild"
15 restriction in her activities of daily living, "moderate" difficulty
16 maintaining social functioning, and "mild" difficulties maintaining
17 concentration, persistence or pace, and has caused no episodes of
18 decompensation. A.R. 138-51. Dr. Ching also opined plaintiff is
19 "markedly limited" in her ability to interact appropriately with the
20 general public, "moderately limited" in her ability to: work in

21 _____
22 ⁵ In this regard, "markedly limited" means "the evidence
23 supports the conclusion that the individual cannot usefully
perform or sustain the activity." A.R. 130.

24 ⁶ "Moderately limited" means "[t]he evidence supports the
25 conclusion that the individual's capacity to perform the activity
26 is impaired but the degree/extent of the impairment needs to be
further described." Id.

27 ⁷ "Mildly limited" means "[t]he effects of the mental
28 disorder do not significantly limit the individual from
consistently and usefully performing the activity." Id.

1 coordination with or proximity to others without being distracted by
2 them; accept instructions and respond appropriately to criticism from
3 supervisors; get along with coworkers or peers without distracting
4 them or exhibiting behavioral extremes; respond appropriately to
5 changes in the work setting; and travel in unfamiliar places or use
6 public transportation; and otherwise not significantly limited. A.R.
7 134-37. Dr. Ching concluded plaintiff can do non-public type work.
8 A.R. 136. On July 3, 2003, another nonexamining physician affirmed
9 Dr. Ching's opinions. A.R. 136, 138.

10
11 On January 10, 2005, plaintiff was examined at the Riverside
12 County Community Health Agency, where she was diagnosed with
13 depression and referred for mental health treatment. A.R. 190. On
14 January 18, 2005, plaintiff was hospitalized at the Hemet Valley
15 Medical Center ("HVMC"), where Timothy Almquist, M.D., diagnosed her
16 as having depression, with suicidal ideation, and anxiety. A.R. 172-
17 73. On January 19, 2005, Julie Wareham, M.D., examined plaintiff and
18 diagnosed her with single episode, severe major depression and post-
19 traumatic stress disorder without psychosis, and determined
20 plaintiff's GAF was 25.⁸ A.R. 177-80. Dr. Wareham described
21 plaintiff as disheveled, sad, depressed, and expressing suicidal
22 ideations of walking in front of a car; but also noted plaintiff was

23
24 ⁸ A GAF of 21-30 means that the individual's "[b]ehavior is
25 considerably influenced by delusions or hallucinations or serious
26 impairment in communication or judgment (e.g., sometimes
27 incoherent, acts grossly inappropriately, suicidal preoccupation)
28 or inability to function in almost all areas (e.g., stays in bed
all day; no job, home, or friends)." American Psychiatric Ass'n,
Diagnostic and Statistical Manual of Mental Disorders, 34 (4th
ed. (Text Revision) 2000).

1 alert and oriented (x3), had no racing thoughts or homicidal ideations
2 and her memory and attention were intact. A.R. 177-79. Dr. Wareham
3 prescribed medication to plaintiff, and noted plaintiff stated she had
4 not been taking medication because she could not afford it. A.R. 170,
5 177. Dr. Wareham discharged plaintiff from HVMC on January 26, 2005,
6 at which time plaintiff's GAF was 38.⁹ A.R. 170-71.

7
8 On February 10, 2005, E. Leonard, M.D., examined plaintiff at the
9 Riverside County Department of Mental Health, diagnosed her with
10 recurrent major depression and prescribed medication. A.R. 220, 225-
11 29. The plaintiff continued to receive treatment. A.R. 198-224.

12
13 On April 4, 2005, plaintiff was again admitted to HVMC, where
14 Richard B. Mantell, M.D., examined her and diagnosed her as having
15 depression with suicidal ideation and a history of bipolar disorder.
16 A.R. 157-58. On April 5, 2005, plaintiff, who was again voicing
17 suicidal ideations, was diagnosed with bipolar disorder and prescribed
18 medication. A.R. 155, 162-65. Plaintiff remained hospitalized at
19 HVMC until April 11, 2005, when Dr. Wareham discharged her with a
20 diagnosis of bipolar disorder, without psychotic features. A.R. 155-
21 56.

22
23 _____
24 ⁹ A GAF of 31-40 indicates an individual has "[s]ome
25 impairment in reality testing or communication (e.g., speech is
26 at times illogical, obscure, or irrelevant) or major impairment
27 in several areas, such as work or school, family relations,
28 judgment, thinking, or mood (e.g., depressed man avoids friends,
neglects family, and is unable to work; child frequently beats up
younger children, is defiant at home, and is failing at school).
American Psychiatric Ass'n, Diagnostic and Statistical Manual of
Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 On April 12, 2006, Harrell Reznick, Ph.D., a clinical
2 psychologist, examined plaintiff, conducted psychological testing, and
3 diagnosed plaintiff as having an unspecified mood disorder and an
4 unspecified personality disorder. A.R. 238-48. Dr. Reznick noted
5 plaintiff "presented with what appeared to be a sub-optimal effort
6 throughout this evaluation, resulting in test performances that seem
7 to underestimate her actual levels of functioning." A.R. 238. Dr.
8 Reznick further noted plaintiff "presented with some signs and
9 symptoms of depression, although she appeared to exaggerate them
10 during this evaluation, apparently for self-serving reasons." A.R.
11 239. Dr. Reznick concluded:

12
13 [Plaintiff] can perform simple and repetitive tasks with
14 minimal supervision and is able to perform these tasks with
15 appropriate persistence and pace over a normal work cycle.
16 She is able to understand, remember and carry out at least
17 simple to moderately complex verbal instructions without
18 difficulty. She would experience mild difficulties
19 tolerating ordinary work pressures and mild difficulties
20 interacting with others in the workplace. She can observe
21 basic work and safety standards in the workplace without
22 difficulty. She is also capable of handling her own
23 financial affairs independently.

24
25 A.R. 244-48.
26

27 On December 16, 2006, plaintiff was taken by ambulance to, and
28 admitted at, the Riverside County Regional Medical Center under

1 California Welfare & Institutions Code § 5150,¹⁰ diagnosed with
2 bipolar disorder II, and prescribed medication. A.R. 359-92. On
3 December 17, 2006, plaintiff was discharged to her mother's care.
4 A.R. 376.

5
6 **DISCUSSION**

7 **III**

8 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
9 review the Commissioner's decision denying plaintiff disability
10 benefits to determine if his findings are supported by substantial
11 evidence and whether the Commissioner used the proper legal standards
12 in reaching his decision. Stubbs-Danielson v. Astrue, 539 F.3d 1169,
13 1172 (9th Cir. 2008); Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d
14 1155, 1159 (9th Cir. 2008).

15
16 The claimant is "disabled" for the purpose of receiving benefits
17 under the Act if she is unable to engage in any substantial gainful
18 activity due to an impairment which has lasted, or is expected to

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¹⁰ Section 5150 provides, in pertinent part:

21 When any person, as a result of mental disorder, is a
22 danger to others, or to himself or herself, or gravely
23 disabled, a peace officer, member of the attending
24 staff . . . of an evaluation facility designated by the
25 county, designated members of a mobile crisis team
26 . . . , or other professional person designated by the
27 county may, upon probable cause, take, or cause to be
28 taken, the person into custody and place him or her in
a facility designated by the county and approved by the
State Department of Mental Health as a facility for 72-
hour treatment and evaluation.

28 Cal. Welf. & Inst. Code § 5150.

1 last, for a continuous period of at least twelve months. 42 U.S.C. §
2 1382c(a)(3)(A); 20 C.F.R. § 416.905(a). "The claimant bears the
3 burden of establishing a prima facie case of disability." Roberts v.
4 Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122
5 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

6
7 The Commissioner has promulgated regulations establishing a five-
8 step sequential evaluation process for the ALJ to follow in a
9 disability case. 20 C.F.R. § 416.920. In the **First Step**, the ALJ
10 must determine whether the claimant is currently engaged in
11 substantial gainful activity. 20 C.F.R. § 416.920(b). If not, in the
12 **Second Step**, the ALJ must determine whether the claimant has a severe
13 impairment or combination of impairments significantly limiting her
14 from performing basic work activities. 20 C.F.R. § 416.920(c). If
15 so, in the **Third Step**, the ALJ must determine whether the claimant has
16 an impairment or combination of impairments that meets or equals the
17 requirements of the Listing of Impairments ("Listing"), 20 C.F.R. §
18 404, Subpart P, App. 1. 20 C.F.R. § 416.920(d). If not, in the
19 **Fourth Step**, the ALJ must determine whether the claimant has
20 sufficient residual functional capacity despite the impairment or
21 various limitations to perform her past work. 20 C.F.R. § 416.920(f).
22 If not, in **Step Five**, the burden shifts to the Commissioner to show
23 the claimant can perform other work that exists in significant numbers
24 in the national economy. 20 C.F.R. § 416.920(g).

25
26 Moreover, where there is evidence of a mental impairment that may
27 prevent a claimant from working, the Commissioner has supplemented the
28 five-step sequential evaluation process with additional regulations

1 addressing mental impairments. Maier v. Comm'r of the Soc. Sec.
2 Admin., 154 F.3d 913, 914 (9th Cir. 1998) (per curiam). First, the
3 ALJ must determine the presence or absence of certain medical findings
4 relevant to the ability to work. 20 C.F.R. § 416.920a(b)(1). Second,
5 when the claimant establishes these medical findings, the ALJ must
6 rate the degree of functional loss resulting from the impairment by
7 considering four areas of function: (a) activities of daily living;
8 (b) social functioning; (c) concentration, persistence, or pace; and
9 (d) episodes of decompensation. 20 C.F.R. § 416.920a(c)(2-4). Third,
10 after rating the degree of loss, the ALJ must determine whether the
11 claimant has a severe mental impairment. 20 C.F.R. § 416.920a(d).
12 Fourth, when a mental impairment is found to be severe, the ALJ must
13 determine if it meets or equals a Listing. 20 C.F.R. §
14 416.920a(d)(2). Finally, if a Listing is not met, the ALJ must then
15 perform a residual functional capacity assessment, and the ALJ's
16 decision "must incorporate the pertinent findings and conclusions"
17 regarding plaintiff's mental impairment, including "a specific finding
18 as to the degree of limitation in each of the functional areas
19 described in [§ 416.920a(c)(3)]." 20 C.F.R. § 416.920a(d)(3), (e)(2).

20
21 Applying the five-step sequential evaluation process, the ALJ
22 found plaintiff has not engaged in substantial gainful activity since
23 her alleged onset date, September 1, 2001. (Step One). The ALJ then
24 found plaintiff has the severe impairments of chronic migraine
25 headaches, gastroesophageal reflux disease, a back disorder, a neck
26 disorder, a thyroid disorder, and post-traumatic stress disorder (Step
27 Two); however, she does not have an impairment or combination of
28 impairments that meets or equals a Listing. (Step Three). The ALJ

1 next determined plaintiff cannot perform her past relevant work.
2 (Step Four). Finally, the ALJ found plaintiff can perform a
3 significant number of jobs in the national economy; therefore, she is
4 not disabled. (Step Five).

6 IV

7 A claimant's residual functional capacity ("RFC") is what she can
8 still do despite her physical, mental, nonexertional, and other
9 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
10 Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). Here,
11 the ALJ found:

12
13 [Plaintiff] has the [RFC] to perform a significant range of
14 light work.¹¹ Specifically, [she] is able to lift and
15 carry 10 pounds frequently and 20 pounds occasionally, and
16 to sit for 6 hours in an 8-hour workday and stand and/or
17 walk for a total of 6 [hours] as well. She is able to climb
18 a ramp or stairs frequently, but not a ladder, rope, or
19 scaffolding. She is able to balance, bend, stoop, crouch,

21 ¹¹ Under Social Security regulations, "[l]ight work
22 involves lifting no more than 20 pounds at a time with frequent
23 lifting or carrying of objects weighing up to 10 pounds. Even
24 though the weight lifted may be very little, a job is in this
25 category when it requires a good deal of walking or standing, or
26 when it involves sitting most of the time with some pushing and
27 pulling of arm or leg controls. To be considered capable of
28 performing a full or wide range of light work, you must have the
ability to do substantially all of these activities." 20 C.F.R.
§ 416.967(b). "[T]he full range of light work requires standing
or walking for up to two-thirds of the workday." Gallant v.
Heckler, 753 F.2d 1450, 1454 n.1 (9th Cir. 1984); SSR 83-10, 1983
WL 31251, *6.

1 and kneel or squat frequently; and to crawl occasionally.
2 The [plaintiff] is limited to even moderate exposure to
3 hazards such as dangerous or fast-moving machinery and
4 unprotected heights. She is also limited to even moderate
5 exposure to fumes, odors, gases, and chemicals. The
6 [plaintiff] should avoid all exposure to extreme noise and
7 bright lighting. She cannot operate motorized vehicles or
8 equipment. Mentally, the [plaintiff] is able to understand
9 and remember moderately detailed instructions, and [she] can
10 carry out moderately complex tasks. She cannot work at a
11 production-rate pace or perform work that requires hyper-
12 vigilance. She can "frequently" interact appropriately with
13 coworkers, supervisors, and the public. She cannot assume
14 any responsibility for coworkers or safety operations.

15
16 A.R. 15 (footnote added). However, plaintiff contends the ALJ's RFC
17 and Step Five determinations are not supported by substantial evidence
18 because, among other reasons, the ALJ did not properly assess her
19 mental limitations, including the opinions of Dr. Fredman and Dr.
20 Ching. The plaintiff is correct.

21
22 The ALJ "must provide 'clear and convincing' reasons for
23 rejecting the uncontradicted opinion of an examining physician[,]"
24 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995); Widmark v.
25 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006), and "[e]ven if
26 contradicted by another doctor, the opinion of an examining doctor can
27 be rejected only for specific and legitimate reasons that are
28 supported by substantial evidence in the record." Regennitter v.

1 Comm'r of the Soc. Sec. Admin., 166 F.3d 1294, 1298-99 (9th Cir.
2 1999); Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir.
3 2008). Similarly, the ALJ may only reject "the opinion of a
4 nonexamining physician by reference to specific evidence in the
5 medical record." Sousa v. Callahan, 143 F.3d 1240, 1244 (9th Cir.
6 1998).

7
8 Here, in assessing plaintiff's limitations, Dr. Fredman opined
9 plaintiff is "markedly limited" in her ability to interact with the
10 public, co-workers and supervisors, meaning plaintiff "cannot usefully
11 perform or sustain the activity." A.R. 122, 130-31. Similarly, Dr.
12 Ching opined plaintiff is "markedly limited" in her ability to
13 interact appropriately with the general public, and requires non-
14 public work. A.R. 135-36. Contrary to these opinions, however, the
15 ALJ found plaintiff retains the RFC to "'frequently' interact
16 appropriately with coworkers, supervisors, and the public[,]" A.R. 15,
17 without explaining why he was disagreeing with Drs. Fredman and Ching.
18 The ALJ's failure to provide any explanation for rejecting the
19 opinions of Drs. Fredman and Ching is clear legal error. Lingenfelter
20 v. Astrue, 504 F.3d 1028, 1038 n.10 (9th Cir. 2007); Stoner v. Comm'r
21 of Soc. Sec., 239 Fed. Appx. 359, 360 (9th Cir. 2007).¹²

22
23 Because the ALJ failed to provide any reasons for rejecting Dr.
24 Fredman's opinions, this Court credits them as a matter of law.
25 Widmark, 454 F.3d at 1069; Edlund v. Massanari, 253 F.3d 1152, 1160
26 (9th Cir. 2001). As such, and given the ALJ's legal error, the ALJ's
27

28 ¹² See Fed. R. App. P. 32.1(a); Ninth Circuit Rule 36-3(b).

1 Step Five determination that plaintiff can perform a significant
2 number of jobs in the national economy, which was based on the
3 testimony of vocational expert ("VE") Corrine Porter in response to a
4 hypothetical question stating, in part, plaintiff "[i]s frequently
5 able to interact with co-workers and with supervisors" and the public,
6 A.R. 19-20, 458-61, is not supported by substantial evidence. See
7 Carmickle, 533 F.3d at 1166 ("[B]ecause the ALJ erred in excluding
8 some of [the claimant's] limitations from the RFC assessment . . . ,
9 and thus from the VE hypothetical, the VE's testimony 'has no
10 evidentiary value.'" (citations omitted)); Edlund, 253 F.3d at 1160
11 (ALJ erred in not including limitations from claimant's mental
12 impairment in hypothetical question posed to vocational expert).

13
14 **V**

15 When the Commissioner's decision is not supported by substantial
16 evidence, the Court has authority to affirm, modify, or reverse the
17 Commissioner's decision "with or without remanding the cause for
18 rehearing." 42 U.S.C. § 405(g); McCartey v. Massanari, 298 F.3d 1072,
19 1076 (9th Cir. 2002). "Generally when a court . . . reverses an
20 administrative determination, 'the proper course, except in rare
21 circumstances, is to remand to the agency for additional investigation
22 or explanation.'" Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir.
23 2004) (citations omitted); Moisa v. Barnhart, 367 F.3d 882, 886 (9th
24 Cir. 2004). "In cases where the testimony of the vocational expert
25 has failed to address a claimant's limitations as established by
26 improperly discredited evidence, [the Ninth Circuit] consistently
27 ha[s] remanded for further proceedings rather than payment of
28 benefits." Harman v. Apfel, 211 F.3d 1172, 1180 (9th Cir.), cert.

1 denied, 531 U.S. 1038 (2000); Vasquez v. Astrue, __ F.3d __, 2008 WL
2 4791860, *7 (9th Cir. (Cal.)). Therefore, remand is appropriate
3 here.¹³
4

5 **ORDER**

6 IT IS ORDERED that: (1) plaintiff's request for relief is
7 granted; and (2) the Commissioner's decision is reversed, and the
8 action is remanded to the Social Security Administration for further
9 proceedings consistent with this Opinion and Order, pursuant to
10 sentence four of 42 U.S.C. § 405(g), and Judgment shall be entered
11 accordingly.
12

13 DATE: November 26, 2008

/S/ Rosalyn M. Chapman
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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25 _____
26 ¹³ Having reached this conclusion, the Court need not
27 address the other claims plaintiff makes, none of which warrant
greater relief than herein granted.