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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LATASHA M. WASHINGTON,)	NO. EDCV 07-01068 SS
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
)	

INTRODUCTION

Latasha M. Washington ("Plaintiff") brings this action seeking to reverse and remand the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI") benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED for further proceedings.

1 404, Subpart P, Appendix 1? If so, the claimant is
2 found disabled. If not, proceed to step four.

3 (4) Is the claimant capable of performing his past work? If
4 so, the claimant is found not disabled. If not, proceed
5 to step five.

6 (5) Is the claimant able to do any other work? If not, the
7 claimant is found disabled. If so, the claimant is
8 found not disabled.

9
10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
11 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§
12 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

13
14 The claimant has the burden of proof at steps one through four, and
15 the Commissioner has the burden of proof at step five. Bustamante, 262
16 F.3d at 953-54. If, at step four, the claimant meets his burden of
17 establishing an inability to perform past work, the Commissioner must
18 show that the claimant can perform some other work that exists in
19 "significant numbers" in the national economy, taking into account the
20 claimant's residual functional capacity ("RFC"),² age, education, and
21 work experience. Tackett, 180 F.3d at 1100; 20 C.F.R. §§
22 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so by the
23 testimony of a vocational expert or by reference to the Medical-
24 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
25 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
26

27 ² Residual functional capacity is "what [one] can still do
28 despite [his] limitations" and represents an "assessment based upon all
of the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
2 (strength-related) and nonexertional limitations, the Grids are
3 inapplicable and the ALJ must take the testimony of a vocational expert.
4 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

5
6 **STANDARD OF REVIEW**
7

8 Under 42 U.S.C. § 405(g), a district court may review the
9 Commissioner's decision to deny benefits. The court may set aside the
10 Commissioner's decision when the ALJ's findings are based on legal error
11 or are not supported by substantial evidence in the record as a whole.
12 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
13 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).
14

15 "Substantial evidence is more than a scintilla, but less than a
16 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
17 which a reasonable person might accept as adequate to support a
18 conclusion." Id. To determine whether substantial evidence supports
19 a finding, the court must "'consider the record as a whole, weighing
20 both evidence that supports and evidence that detracts from the
21 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny
22 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can
23 reasonably support either affirming or reversing that conclusion, the
24 court may not substitute its judgment for that of the Commissioner.
25 Reddick, 157 F.3d at 720-21.
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1 DISCUSSION

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3 Plaintiff contends that the ALJ erred for a number of reasons.
4 Incorporated into several of her arguments is her contention that the
5 ALJ erred when he found that her depression did not constitute a "severe
6 mental impairment" at step-two of the sequential evaluation process.
7 For the reasons discussed below, the Court finds that the ALJ's decision
8 should be reversed and this action remanded for further proceedings.
9

10 The ALJ Failed To Properly Assess Plaintiff's Mental Health
11 Impairment At Step Two Of The Evaluation Process
12

13 Plaintiff argues that the ALJ erred by finding that her mental
14 impairment was not severe. (Jt. Stip. at 12-13). Specifically,
15 Plaintiff complains that the ALJ "ignored" a medical diagnosis by her
16 treating physician of "Major Depression Disorder, Recurrent." (AR 315).
17 She was also diagnosed with a GAF score of 50, which indicates "serious
18 symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent
19 shoplifting) or any serious impairment in social, occupational, or
20 school functioning (e.g., no friends, unable to keep a job)." (Jt.
21 Stip. at 12). Plaintiff received outpatient care for her depressive
22 disorder at the Riverside County Department of Mental Health. (AR 17-
23 18, 248-263, 301-309, 311-324).
24

25 By its own terms, the evaluation at step two is a de minimis test
26 intended to weed out the most minor of impairments. See Bowen v.
27 Yuckert, 482 U.S. 137, 153-154, 107 S. Ct. 2287, 96 L. Ed. 2d 119
28 (1987); Edlund v. Massanari, 253 F.3d 1152, 1158 (9th Cir. 2001)(stating

1 that the step two inquiry is a de minimis screening device to dispose
2 of groundless claims)(quoting Smolen, 80 F.3d at 1290). An impairment
3 is not severe only if the evidence establishes "a slight abnormality
4 that has no more than a minimal effect on an individuals ability to
5 work." Smolen, 80 F.3d at 1290 (internal quotations and citations
6 omitted).

7
8 The ALJ here applied more than a de minimis test when he determined
9 that Plaintiff's mental impairment was not severe. Moreover, he failed
10 to follow the Secretary's own regulations governing the evaluation of
11 mental impairments, as described below.

12
13 Where there is evidence of a mental impairment that allegedly
14 prevents the plaintiff from working, as there is here, the Agency has
15 supplemented the five-step sequential evaluation process with additional
16 regulations.³ Maier v. Comm'r of the Soc. Sec. Admin., 154 F.3d 913,
17 914-15 (9th Cir. 1998)(citing 20 C.F.R. § 416.920a)(per curiam). First,
18 the ALJ must determine the presence or absence of certain medical
19 findings relevant to the plaintiff's ability to work. 20 C.F.R. §
20 416.920a(b)(1). Second, when the plaintiff establishes these medical
21 findings, the ALJ must rate the degree of functional loss resulting from
22 the impairment by considering four areas of function: (a) activities of
23 daily living; (b) social functioning; (c) concentration, persistence,
24 or pace; and (d) episodes of decompensation. 20 C.F.R. §

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26 _____
27 ³ These additional steps are intended to assist the ALJ in
28 determining the severity of mental impairments at steps two and three.
The mental RFC assessment used at steps four and five of the evaluation
process, on the other hand, require a more detailed assessment. Social
Security Ruling 96-8P, 1996 WL 374184 at * 4.

1 416.920a(c)(2)-(4). Third, after rating the degree of loss, the ALJ
2 must determine whether the claimant has a severe mental impairment. 20
3 C.F.R. § 416.920a(d). Fourth, when a mental impairment is found to be
4 severe, the ALJ must determine if it meets or equals a listing in 20
5 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. § 416.920a(d)(2).
6 Finally, if a listing is not met, the ALJ must then assess the
7 plaintiff's RFC, and the ALJ's decision "must incorporate the pertinent
8 findings and conclusions" regarding the plaintiff's mental impairment,
9 including "a specific finding as to the degree of limitation in each of
10 the functional areas described in [§ 416.920a(c)(3)]." 20 C.F.R. §
11 416.920a(d)(3), (e)(2).

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13 The regulations describe an impairment as follows:

14
15 A physical or mental impairment must result from anatomical,
16 physiological, or psychological abnormalities which can be
17 shown by medically acceptable clinical and laboratory
18 diagnostic techniques. A physical or mental impairment must
19 be established by medical evidence consisting of signs,
20 symptoms, and laboratory findings, not only by [a
21 plaintiff's] statements of symptoms.

22
23 20 C.F.R. § 416.908; see also Ukolov v. Barnhart, 420 F.3d 1002, 1005
24 (9th Cir. 2005) (noting that the existence of a medically determinable
25 physical or mental impairment may only be established with objective
26 medical findings) (citing Social Security Ruling 96-4p, 1996 WL 374187
27 at *1-2).

1 Here, the ALJ failed to thoroughly discuss or address the medical
2 evidence when making his step-two evaluation. Defendant argues that the
3 records did not indicate any "acute mental crisis," (Jt. Stip. at 4),
4 but an "acute mental crisis" is not required for the step-two "severity"
5 evaluation. Plaintiff provided objective medical evidence demonstrating
6 that her depression is more than "a slight abnormality" and that her
7 depression has "more than a minimal effect" on her ability to work.
8 Smolen, 80 F.3d at 1290 (internal quotations and citations).

9
10 Objective medical findings indicate that Plaintiff suffered from
11 a mental health impairment. See 20 C.F.R. § 416.927(a)(2) ("Medical
12 opinions . . . that reflect judgments about the nature and severity of
13 [a plaintiff's] impairment(s), including symptoms, diagnosis and
14 prognosis," are evidence that a plaintiff may submit in support of his
15 disability claim). The ALJ, however, failed to follow the Secretary's
16 regulations for evaluating mental impairments. Moreover, although the
17 step-two analysis has been recognized as a de minimis test designed to
18 identify and dismiss only frivolous claims, the ALJ found that she did
19 not have a "severe" mental impairment at step-two. Thus, the ALJ
20 applied more than a de minimis test and his conclusion at step two that
21 Plaintiff does not suffer from a severe mental impairment was error.
22 See 20 C.F.R. § 416.920a(b)(1).

23
24 Remand for further proceedings is appropriate where additional
25 proceedings could remedy defects in the Commissioner's decision. See
26 Harman v. Apfel, 211 F.3d 1172, 1179 (9th Cir. 2000); Kail v. Heckler,
27 722 F.2d 1496, 1497 (9th Cir. 1984). Because the ALJ improperly
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1 evaluated Plaintiff's mental health impairment at step two, the case
2 must be remanded to remedy this defect.

3
4 Upon remand, the ALJ must conduct the supplemental evaluation of
5 mental impairment evidence. Normally, the ALJ must first determine the
6 presence or absence of certain medical findings relevant to the
7 plaintiff's ability to work. 20 C.F.R. § 416.920a(b)(1). However, this
8 Court has determined that there is objective medical evidence that
9 Plaintiff suffers from a mental impairment relevant to her ability to
10 work. Thus, the ALJ need not address this question. Accordingly, the
11 ALJ must only complete the remaining inquiries required in the
12 supplemental evaluation of mental impairment evidence.⁴

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21 ⁴ Specifically, the ALJ must rate the degree of functional loss
22 resulting from the impairment by considering four areas of function: (a)
23 activities of daily living; (b) social functioning; (c) concentration,
24 persistence, or pace; and (d) episodes of decompensation. 20 C.F.R. §
25 416.920a(c)(2)-(4). Next, after rating the degree of loss, the ALJ must
26 determine whether the claimant has a severe mental impairment. 20
27 C.F.R. § 416.920a(d). If the mental impairment is found to be severe,
28 the ALJ must determine if it meets or equals a listing in 20 C.F.R. Part
404, Subpart P, Appendix 1. 20 C.F.R. § 416.920a(d)(2). Finally, if a
listing is not met, the ALJ must then assess the plaintiff's RFC, and
the ALJ's decision "must incorporate the pertinent findings and
conclusions" regarding the plaintiff's mental impairment, including "a
specific finding as to the degree of limitation in each of the
functional areas described in [§ 416.920a(c)(3)]." 20 C.F.R. §
416.920a(d)(3), (e)(2).

