

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JANEL FLORES BAINES,	)	No. EDCV 07-1170-RC
	)	
Plaintiff,	)	
	)	OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Janel Flores Baines filed a complaint on September 25, 2007, seeking review of the Commissioner's decision denying her applications for disability benefits. The Commissioner answered the complaint on February 4, 2008, and the parties filed a joint stipulation on March 25, 2008.

**BACKGROUND**

**I**

On January 5, 2005, plaintiff applied for disability benefits under both Title II of the Social Security Act ("Act"), 42 U.S.C. § 423, and the Supplemental Security Income program ("SSI") of Title XVI

1 of the Act, 42 U.S.C. § 1382(a), claiming an inability to work since  
2 January 3, 2003, due to back pain and hip injuries. Certified  
3 Administrative Record ("A.R.") 12, 51-55, 63-64. The plaintiff's  
4 applications were initially denied on June 2, 2005, and were denied  
5 again on October 14, 2005, following reconsideration. A.R. 33-47.  
6 The plaintiff then requested an administrative hearing, which was held  
7 before Administrative Law Judge F. Keith Varni ("the ALJ") on  
8 January 26, 2007. A.R. 30, 209-23. On February 6, 2007, the ALJ  
9 issued a decision finding plaintiff is not disabled. A.R. 9-19. The  
10 plaintiff appealed the decision to the Appeals Council, which denied  
11 review on July 26, 2007. A.R. 4-8.

## 12 13 II

14 The plaintiff, who was born on March 6, 1977, is currently 31  
15 years old. A.R. 51, 211. She has an eleventh-grade education, has  
16 trained to be a certified nurse's assistant, and previously worked as  
17 a telephone service provider. A.R. 56-62, 64-65, 68, 212, 214.

18  
19 On January 9, 2003, plaintiff was hospitalized at the Arrowhead  
20 Regional Medical Center ("ARMC"), where she gave birth to a son, who  
21 weighed 12 pounds, 6 ounces. A.R. 120-30, 208. A pubiotomy<sup>1</sup> and  
22 symphysiotomy<sup>2</sup> were performed to aid the delivery. A.R. 121, 127. On

23  
24 \_\_\_\_\_  
25 <sup>1</sup> A pubiotomy is the "surgical separation of the pubic bone  
26 lateral to the median line." Dorland's Illustrated Medical  
27 Dictionary, 1491 (29th ed. 2000).

28 <sup>2</sup> A symphysiotomy involves "the division of the  
fibrocartilage of the symphysis pubis, in order to facilitate  
delivery, by increasing the diameter of the pelvis." Id. at  
1744.

1 January 17, 2003, plaintiff was doing well and walking without help.  
2 A.R. 90. On March 6, 2004, plaintiff was admitted to ARMC, where she  
3 underwent a cesarean section and tubal ligation. A.R. 107-19.  
4

5 On December 30, 2004, Harold Luke, M.D., examined plaintiff and  
6 diagnosed her with morbid obesity and right hip pain. A.R. 136.  
7 Lumbar spine x-rays taken January 23, 2006, were normal, while right  
8 hip x-rays taken the same day showed at least 3 cm. of diastasis<sup>3</sup> of  
9 the pubic symphysis, with no evidence of fracture. A.R. 158-59.  
10

11 On May 20, 2005, Buneri T. Sophon, M.D., examined plaintiff,  
12 diagnosed her with a history of an operative cut in the pubic bone,  
13 and opined plaintiff "does not have any significant physical  
14 impairment and there are no functional limitations." A.R. 139-43.  
15

16 On May 31, 2005, nonexamining physician George G. Spellman, M.D.,  
17 opined plaintiff can occasionally lift and/or carry 50 pounds,  
18 frequently lift and/or carry 25 pounds, and can sit, stand and/or walk  
19 for 6 hours in an 8-hour work day. A.R. 147-54. On September 26,  
20 2005, nonexamining physician John Meek, M.D., agreed with this  
21 assessment, stating there is no evidence of a severe physical  
22 impairment. A.R. 156.  
23

24 On April 20, 2006, plaintiff was treated in the emergency room at  
25

---

26 <sup>3</sup> Diastasis means "a form of dislocation in which there is  
27 a separation of two bones normally attached to each other without  
28 the existence of a true joint; as in separation of the pubic  
symphysis." Dorland's Illustrated Medical Dictionary at 494.

1 Redlands Community Hospital for dysfunctional uterine bleeding and  
2 dehydration. A.R. 196-97. Bilateral hip x-rays taken October 5,  
3 2006, were negative, while pelvic x-rays demonstrated a 3-cm. pubic  
4 diastasis, which appeared to be chronic, with mild associated  
5 bilateral SI joint degenerative changes and a solitary metallic  
6 surgical clip in the right upper pelvic tissues. A.R. 185. Plaintiff  
7 was again seen in the emergency room on December 22, 2006, when she  
8 was diagnosed with anemia, general malaise, and menorrhagia,<sup>4</sup> among  
9 other things. A.R. 186-87, 193-95. An electrocardiogram was  
10 abnormal, but chest x-rays were normal. A.R. 191-92.

11  
12 On June 6, 2006, plaintiff was examined at the New Millennium  
13 Medical Associates, when she was diagnosed with depression, chronic  
14 back pain, and obesity, and she was prescribed Wellbutrin.<sup>5</sup> A.R. 174-  
15 75. However, plaintiff never filled the Wellbutrin prescription  
16 because she "lost" it. A.R. 173.

17  
18 On January 22, 2007, Dennis M. Carden, D.O., stated:

19 //

20  
21 <sup>4</sup> Menorrhagia, or hypermenorrhea, is "excessive uterine  
22 bleeding occurring at regular intervals; the period of flow being  
23 of usual duration." Dorland's Illustrated Medical Dictionary at  
853, 1086. 2000).

24 <sup>5</sup> "Wellbutrin . . . is given to help relieve certain kinds  
25 of major depression. [¶] Major depression involves a severely  
26 depressed mood (for 2 weeks or more) and loss of interest or  
27 pleasure in usual activities accompanied by sleep and appetite  
28 disturbances, agitation or lack of energy, feelings of guilt or  
worthlessness, decreased sex drive, inability to concentrate, and  
perhaps thoughts of suicide. . . ." The PDR Family Guide to  
Prescription Drugs, 737 (8th ed. 2000).

1 [Plaintiff] underwent a vaginal delivery of a 13 pound  
2 infant on January 3, 2003. [¶] During the birth process,  
3 her pelvis became separated. This separation may have lead  
4 [sic] to pelvic instability. [Plaintiff] has received  
5 orthopedic treatment and physical therapy. [¶] She is  
6 currently in need of ambulatory assistance. The duration of  
7 this instability may be permanent.

8  
9 A.R. 208.

10  
11 **DISCUSSION**

12 **III**

13 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to  
14 review the Commissioner's decision denying plaintiff disability  
15 benefits to determine if his findings are supported by substantial  
16 evidence and whether the Commissioner used the proper legal standards  
17 in reaching his decision. Stubbs-Danielson v. Astrue, 539 F.3d 1169,  
18 1172 (9th Cir. 2008); Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d  
19 1155, 1159 (9th Cir. 2008).

20  
21 "In determining whether the Commissioner's findings are supported  
22 by substantial evidence, [this Court] must review the administrative  
23 record as a whole, weighing both the evidence that supports and the  
24 evidence that detracts from the Commissioner's conclusion." Reddick  
25 v. Chater, 157 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari,  
26 246 F.3d 1195, 1201 (9th Cir. 2001). "Where the evidence can  
27 reasonably support either affirming or reversing the decision, [this  
28 Court] may not substitute [its] judgment for that of the

1 Commissioner." Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007),  
2 cert. denied, 128 S. Ct. 1068 (2008); Lingenfelter v. Astrue, 504 F.3d  
3 1028, 1035 (9th Cir. 2007).

4  
5 The claimant is "disabled" for the purpose of receiving benefits  
6 under the Act if she is unable to engage in any substantial gainful  
7 activity due to an impairment which has lasted, or is expected to  
8 last, for a continuous period of at least twelve months. 42 U.S.C. §§  
9 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a).  
10 "The claimant bears the burden of establishing a prima facie case of  
11 disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995),  
12 cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273,  
13 1289 (9th Cir. 1996).

14  
15 The Commissioner has promulgated regulations establishing a five-  
16 step sequential evaluation process for the ALJ to follow in a  
17 disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**,  
18 the ALJ must determine whether the claimant is currently engaged in  
19 substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b).  
20 If not, in the **Second Step**, the ALJ must determine whether the  
21 claimant has a severe impairment or combination of impairments  
22 significantly limiting her from performing basic work activities. 20  
23 C.F.R. §§ 404.1520(c), 416.920(c). If so, in the **Third Step**, the ALJ  
24 must determine whether the claimant has an impairment or combination  
25 of impairments that meets or equals the requirements of the Listing of  
26 Impairments ("Listing"), 20 C.F.R. § 404, Subpart P, App. 1. 20  
27 C.F.R. §§ 404.1520(d), 416.920(d). If not, in the **Fourth Step**, the  
28 ALJ must determine whether the claimant has sufficient residual

1 functional capacity despite the impairment or various limitations to  
2 perform her past work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If not,  
3 in **Step Five**, the burden shifts to the Commissioner to show the  
4 claimant can perform other work that exists in significant numbers in  
5 the national economy. 20 C.F.R. §§ 404.1520(g), 416.920(g).

6  
7 Applying the five-step sequential evaluation process, the ALJ  
8 found plaintiff has not engaged in substantial gainful activity since  
9 her alleged onset date, January 3, 2003. (Step One). The ALJ then  
10 found that plaintiff "has the following severe combination of  
11 impairments: minor degree of pubic diastasis combined with obesity  
12 disorder" (Step Two); however, she does not have an impairment or  
13 combination of impairments that meets or equals a Listing. (Step  
14 Three). The ALJ next determined plaintiff can perform her past  
15 relevant work as a telephone service operator; therefore, she is not  
16 disabled. (Step Four).

#### 17 18 IV

19 The Step Two inquiry is "a de minimis screening device to dispose  
20 of groundless claims." Smolen, 80 F.3d at 1290; Webb v. Barnhart, 433  
21 F.3d 683, 687 (9th Cir. 2005). The Supreme Court has recognized that  
22 including a severity requirement at Step Two of the sequential  
23 evaluation process "increases the efficiency and reliability of the  
24 evaluation process by identifying at an early stage those claimants  
25 whose medical impairments are so slight that it is unlikely they would  
26 be found to be disabled even if their age, education, and experience  
27 were taken into account." Bowen v. Yuckert, 482 U.S. 137, 153, 107  
28 S. Ct. 2287, 2297, 96 L. Ed. 2d 119 (1987). However, an overly

1 stringent application of the severity requirement violates the Act by  
2 denying benefits to claimants who do meet the statutory definition of  
3 disabled. Corrao v. Shalala, 20 F.3d 943, 949 (9th Cir. 1994).

4  
5 A severe impairment or combination of impairments within the  
6 meaning of Step Two exists when there is more than a minimal effect on  
7 an individual's ability to do basic work activities. Webb, 433 F.3d  
8 at 686; Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001); see  
9 also 20 C.F.R. §§ 404.1521(a), 416.921(a) ("An impairment or  
10 combination of impairments is not severe if it does not significantly  
11 limit [a person's] physical or mental ability to do basic work  
12 activities."). Basic work activities are "the abilities and aptitudes  
13 necessary to do most jobs," including physical functions such as  
14 walking, standing, sitting, lifting, pushing, pulling, reaching,  
15 carrying or handling, as well as the capacity for seeing, hearing and  
16 speaking, understanding, carrying out, and remembering simple  
17 instructions, use of judgment, responding appropriately to  
18 supervision, co-workers and usual work situations, and dealing with  
19 changes in a routine work setting. 20 C.F.R. §§ 404.1521(b),  
20 416.921(b); Webb, 433 F.3d at 686. If the claimant meets her burden  
21 of demonstrating she suffers from an impairment affecting her ability  
22 to perform basic work activities, "the ALJ *must* find that the  
23 impairment is 'severe' and move to the next step in the SSA's five-  
24 step process." Edlund v. Massanari, 253 F.3d 1152, 1160 (9th Cir.  
25 2001) (emphasis in original); Webb, 433 F.3d at 686.

26  
27 The plaintiff contends that the ALJ erred in failing to find she  
28 has a severe mental impairment. The Court disagrees.

1 "A physical or mental impairment must be established by medical  
2 evidence consisting of signs, symptoms, and laboratory findings, not  
3 only by the claimant's statement of symptoms." 20 C.F.R. §§ 404.1508,  
4 416.908; Ukolov v. Barnhart, 420 F.3d 1002, 1005 (9th Cir. 2005).  
5 Here, plaintiff, who was represented by counsel at the administrative  
6 hearing, A.R. 211, predicated her disability claim on her physical  
7 complaints, rather than any mental impairment. See, e.g., A.R. 63-64.  
8 Moreover, at the administrative hearing, plaintiff testified she was  
9 not receiving any mental health treatment, but she was talking to her  
10 pastor. A.R. 221. Nevertheless, plaintiff also testified she had  
11 been taking Wellbutrin twice a day for approximately 6 months; but  
12 this statement is not supported by the medical record, which shows  
13 that although her treating physician diagnosed her with depression and  
14 prescribed Wellbutrin, she lost the prescription and never had it  
15 filled. A.R. 168-75.

16  
17 Although plaintiff's treating physician diagnosed her with  
18 depression in June 2006, A.R. 174-75, that diagnosis, by itself, does  
19 not demonstrate plaintiff has a severe mental impairment, see, e.g.,  
20 Verduzco v. Apfel, 188 F.3d 1087, 1089 (9th Cir. 1999) ("Although the  
21 [claimant] clearly does suffer from diabetes, high blood pressure, and  
22 arthritis, there is no evidence to support his claim that those  
23 impairments are 'severe.'"); Matthews v. Shalala, 10 F.3d 678, 680  
24 (9th Cir. 1993) ("The mere existence of an impairment is insufficient  
25 proof of a disability."), and there is simply no evidence in the  
26 record supporting plaintiff's claim of a severe mental impairment.  
27 Therefore, the ALJ's implied finding that plaintiff does not have a

28 //

1 severe mental impairment is supported by substantial evidence.<sup>6</sup>  
2 Carmickle, 533 F.3d at 1164-65; Ukolov, 420 F.3d at 1006.

3  
4 **V**

5 A claimant's residual functional capacity ("RFC") is what she can  
6 still do despite her physical, mental, nonexertional, and other  
7 limitations. Mayes, 276 F.3d at 460; Cooper v. Sullivan, 880 F.2d  
8 1152, 1155 n.5 (9th Cir. 1989). Here, the ALJ found plaintiff retains  
9 the RFC to perform a full range of medium work.<sup>7</sup> A.R. 15. However,  
10 plaintiff contends the ALJ's decision is not supported by substantial  
11 evidence because the ALJ did not address the side effects of her  
12 medication and erroneously rejected the opinion of her treating  
13 physician, Dr. Carden.

14  
15 **A. Side Effects From Medication:**

16 In determining a claimant's limitations, the ALJ must consider  
17 all factors that might have a significant impact on a claimant's

18 \_\_\_\_\_  
19 <sup>6</sup> Alternately, even if the ALJ should have found plaintiff  
20 has a severe mental impairment, his failure to do so was harmless  
21 error since plaintiff "has not set forth, and there is no  
22 evidence in the record, of any functional limitations as a result  
23 of her [mental impairment] that the ALJ failed to consider."  
24 Burch v. Barnhart, 400 F.3d 676, 682-84 (9th Cir. 2005); see also  
25 Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008) ("The  
26 court will not reverse an ALJ's decision for harmless error,  
27 which exists when it is clear from the record that the ALJ's  
28 error was inconsequential to the ultimate nondisability  
determination." (citations and internal quotation marks  
omitted)).

<sup>7</sup> Under Social Security regulations, "[m]edium work  
involves lifting no more than 50 pounds at a time with frequent  
lifting or carrying of objects weighing up to 25 pounds." 20  
C.F.R. §§ 404.1567(c), 416.967(c).

1 ability to work, including the side effects of medication. Erickson  
2 v. Shalala, 9 F.3d 813, 817-18 (9th Cir. 1993); Varney v. Sec'y of  
3 Health & Human Servs., 846 F.2d 581, 585 (9th Cir. 1988). "[S]ide  
4 effects can be a 'highly idiosyncratic phenomenon' and a claimant's  
5 testimony as to their limiting effects should not be trivialized."  
6 Varney, 846 F.2d at 585. Thus, when a claimant testifies she is  
7 experiencing a side effect known to be associated with a particular  
8 medication, the ALJ may disregard the testimony only if he "support[s]  
9 that decision with specific findings similar to those required for  
10 excess pain testimony, as long as the side effects are in fact  
11 associated with the claimant's medication(s)." Id.

12  
13 Here, plaintiff testified she takes Darvocet for pain,<sup>8</sup> and that  
14 medication "seems to . . . make [her] a little dizzy. . . ." <sup>9</sup> A.R.  
15 217-18. The ALJ noted this testimony, but concluded it was not  
16 credible to the extent it conflicted with plaintiff's ability to  
17 perform medium work. A.R. 16-18. Since plaintiff has not challenged  
18 the ALJ's negative credibility determination, this finding provides a  
19 sufficient basis to reject her testimony about the side effects of  
20 Darvocet. See Thomas v. Barnhart, 278 F.3d 947, 960 (9th Cir. 2002)  
21 (ALJ properly rejected claimant's alleged side effects, including  
22 dizziness and difficulties in concentration, with finding claimant

---

23  
24 <sup>8</sup> Darvocet is a "mild narcotic analgesic[] prescribed for  
25 the relief of mild to moderate pain, with or without fever." The  
26 PDR Family Guide to Prescription Drugs, 177 (8th ed. 2000).  
Dizziness is a common side effect of Darvocet. Id.

27 <sup>9</sup> The plaintiff also stated she previously took Vicodin and  
28 Tylenol with Codeine for pain, and those medications sometimes  
made her "blitzed[,] " so her medication was changed to Darvocet.  
A.R. 217-18.

1 lacked credibility). Moreover, plaintiff points to no specific  
2 evidence in the record demonstrating she complained to any physician  
3 about the side effects of Darvocet. To the contrary, when examined at  
4 Redlands Community Hospital on December 22, 2006, approximately one  
5 month before the administrative hearing, plaintiff reported no  
6 reaction to the medication she was taking. A.R. 193. Therefore, the  
7 ALJ did not err in failing to address the alleged side effects from  
8 plaintiff's medication. Greger v. Barnhart, 464 F.3d 968, 973 (9th  
9 Cir. 2006); see also McFarland v. Astrue, 288 Fed. Appx. 357, 360 (9th  
10 Cir. 2008) ("[Claimant] claims the ALJ failed to consider medication  
11 side effects. However, [claimant] points to no specific evidence in  
12 the record where he complained of medication side effects. To the  
13 contrary, the record is replete with statements by [claimant] to  
14 medical care providers that he was not experiencing side effects from  
15 his various medications. Thus, we find the ALJ did not err in failing  
16 to address side effects of medication in his decision.").<sup>10</sup>

#### 17 18 **B. Treating Physician's Opinion:**

19 The medical opinions of treating physicians are entitled to  
20 special weight because the treating physician "is employed to cure and  
21 has a greater opportunity to know and observe the patient as an  
22 individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987);  
23 Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir.  
24 1999). Therefore, the ALJ must provide clear and convincing reasons  
25 for rejecting the uncontroverted opinion of a treating physician, Ryan  
26 v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008); Reddick,

27  
28 <sup>10</sup> See Fed. R. App. P. 32.1(a); Ninth Circuit Rule 36-3(b).

1 157 F.3d at 725, and “[e]ven if [a] treating doctor’s opinion is  
2 contradicted by another doctor, the ALJ may not reject this opinion  
3 without providing ‘specific and legitimate reasons’ supported by  
4 substantial evidence in the record.” Reddick, 157 F.3d at 725;  
5 Tommasetti, 533 F.3d at 1041.

6  
7 On January 22, 2007, Dr. Carden recited that on January 3, 2003,  
8 plaintiff’s pelvis became separated while giving birth, she has  
9 received orthopedic treatment and physical therapy for this condition,  
10 and she currently needs ambulatory assistance. A.R. 208. The ALJ  
11 rejected Dr. Carden’s opinion that plaintiff “currently needs  
12 ambulatory assistance,” finding it “unpersuasive, tentative,  
13 speculative, and unsupported by any citation of clinically  
14 determinable limitations.”<sup>11</sup> A.R. 18. In making this determination,  
15 the ALJ found that Dr. Carden did not “support this assertion with any  
16 diagnostic findings[,]” did not “articulate with specificity[] the  
17 details of [plaintiff’s] instability[] or the nature of the ambulatory  
18 assistance that she needs[,]” and “did not indicate what[,] if any,  
19 prescription of treatment the [plaintiff’s] condition requires.” A.R.  
20 18. Since “[t]he ALJ need not accept the opinion of any physician,  
21 including a treating physician, if that opinion is brief, conclusory,  
22 and inadequately supported by clinical findings[,]” Thomas, 278 F.3d  
23 at 957; Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005), this

---

24  
25 <sup>11</sup> The ALJ also stated “Dr. Carden . . . does not appear to  
26 be a treating physician as there are no medical records to show  
27 that Dr. Carden has actually treated the claimant or ever  
28 examined her for that matter.” A.R. 18. The Court disagrees  
since ARMC medical records show Dr. Carden has treated plaintiff.  
See, e.g., A.R. 85-87, 89, 119-21.

1 reason for rejecting Dr. Carden's opinion is a specific and legitimate  
2 reason supported by substantial evidence.

3  
4 The ALJ also found that Dr. Carden's opinion is inconsistent with  
5 diagnostic findings in the record showing plaintiff's ambulation is  
6 unimpaired. A.R. 18. This finding, too, is supported by substantial  
7 evidence in the record, A.R. 90, 107, 140, and constitutes a specific  
8 and legitimate reason for rejecting Dr. Carden's opinion. Batson v.  
9 Comm'r of the Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004);  
10 Morgan, 169 F.3d at 602; see also Connett v. Barnhart, 340 F.3d 871,  
11 875 (9th Cir. 2003) (ALJ properly rejected treating physician's  
12 opinion that was inconsistent with other physicians' examination of  
13 claimant). Thus, "the ALJ provided 'specific and legitimate' reasons  
14 based on substantial evidence for [his] rejection of [Dr. Carden's]  
15 opinion."<sup>12</sup> Tommasetti, 533 F.3d at 1037. Thus, there is no merit to  
16 plaintiff's claim that the ALJ's Step Four determination is not  
17 supported by substantial evidence.

18  
19 **ORDER**

20 IT IS ORDERED that: (1) plaintiff's request for relief is denied;

21 //

22 \_\_\_\_\_  
23 <sup>12</sup> The plaintiff also claims the ALJ failed to fully  
24 develop the record because he did not recontact Dr. Carden to  
25 inquire about the basis for Dr. Carden's opinion. However, "[a]n  
26 ALJ's duty to develop the record further is triggered only when  
27 there is ambiguous evidence or when the record is inadequate to  
28 allow for proper evaluation of the evidence." Mayes, 276 F.3d at  
459-60; Webb, 433 F.3d at 687. Here, "[t]he record before the  
ALJ was neither ambiguous nor inadequate to allow for proper  
evaluation of the evidence." Mayes, 276 F.3d at 460. Therefore,  
the ALJ did not fail to properly develop the medical record.

1 and (2) the Commissioner's decision is affirmed, and Judgment shall be  
2 entered in favor of defendant.

3

4 DATE: December 11, 2008

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

5

6 R&R-MDO\07-1170.mdo  
12/11/08

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28