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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

MARIA CACAU,	)	Case No. EDCV 08-00034-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Maria Cacau seeks judicial review of the Commissioner's denial of her application for Supplemental Security Income benefits ("SSI") under the Social Security Act. For the reasons stated below, this case is remanded for further proceedings consistent with this opinion.

**I. Facts and Procedural History**

Plaintiff was born on December 12, 1952, and she has an eighth-grade education. (Administrative Record ("AR") 412, 501.) Plaintiff has no relevant work history with the meaning of 20 C.F.R. § 416.965. (AR 429.)

1 Plaintiff filed an application for SSI benefits on October 5, 1999,  
2 alleging a disability onset date of March 1, 1997, due to a number of  
3 different impairments. (AR 22; Joint Stip. 2.) The Commissioner denied  
4 Plaintiff's application initially and on reconsideration. After  
5 Plaintiff's timely request, Administrative Law Judge ("ALJ") F. Keith  
6 Varni held a hearing on June 21, 2001, at which Plaintiff testified and  
7 was represented by counsel. (AR 10.) On July 24, 2001, the ALJ  
8 determined that Plaintiff was not disabled under the Social Security  
9 Act, applying the five-step sequential analysis mandated by the Social  
10 Security Regulations in reaching his decision.<sup>1</sup> (AR 10-15.) The Appeals  
11 Council denied Plaintiff's request for review on January 10, 2002, (AR  
12 4), and Plaintiff filed an action for judicial review in this Court on  
13 February 19, 2002. *Cacau v. Barnhart*, Case No. EDCV 02-102-MLG.

14 On January 25, 2002, Plaintiff filed a second application for SSI  
15 benefits. The Commissioner found Plaintiff to be disabled as of that  
16 date and began paying benefits accordingly. (AR 422.) In the meantime,  
17 Plaintiff continued to pursue her initial application, seeking SSI  
18 benefits for the period between 1999 to 2002. Upon the parties'  
19 stipulation, this Court remanded the case to the Commissioner for  
20 further administrative proceedings on June 8, 2004. (AR 245-48.)

21 Plaintiff appeared for a second hearing before ALJ Varni on July  
22 24, 2004. (AR 409.) On May 24, 2006, the ALJ issued a decision again  
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24 <sup>1</sup> The five-step inquiry is as follows: (1) whether the claimant is  
25 engaged in substantial gainful activity; (2) whether the claimant's  
26 impairment is "severe"; (3) whether the impairment meets or equals one  
27 of the listings in 20 C.F.R. § 404, Subpart P, Appendix 1; (4) whether  
28 the claimant is able to return to past relevant work; and (5) whether  
the claimant can do other types of work. 20 C.F.R. § 404.1520(a)(4).  
These steps are cumulative, meaning that the ALJ need not consider  
further steps after finding that a step does not favor the claimant.

1 concluding that Plaintiff was not disabled during the relevant time  
2 period. (AR 237-44.) Plaintiff filed a new lawsuit in this Court on  
3 August 8, 2006. *Cacau v. Barnhart*, No. EDCV 06-823 MLG (C.D. Cal.). Once  
4 again, the parties stipulated that the case should be remanded for  
5 further proceedings, which the Court ordered on February 16, 2007. (AR  
6 437-38.)

7 A third hearing was held before ALJ John W. Belcher on August 28,  
8 2007, at which Plaintiff, two medical experts, and a vocational expert  
9 testified. (AR 422.) The ALJ determined that Plaintiff had not engaged  
10 in substantial gainful activity during the relevant time period, and  
11 that she had several severe impairments, including mixed connective  
12 tissue disease, mild anemia, hypertension, urinary incontinence,  
13 gastroesophageal reflux disease, and anxiety disorder, not otherwise  
14 specified. (AR 424.) After concluding that Plaintiff's impairments did  
15 not meet or equal the listed impairments in 20 C.F.R. Part 404, Subpart  
16 P, Appendix 1, the ALJ determined that Plaintiff had retained the  
17 residual functional capacity ("RFC")<sup>2</sup> to perform light work between  
18 October 5, 1997 and January 25, 2002, with the following limitations: she  
19 could sit for four hours out of an eight-hour day; finger and handle  
20 frequently but not constantly; and stoop crouch, kneel, crawl, balance,  
21 and climb stairs occasionally but not frequently, with no climbing  
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26 <sup>2</sup> A claimant's RFC is what he or she is capable of doing despite  
27 physical and mental limitations. 20 C.F.R. § 404.1545(a)(1); *Cooper v.*  
28 *Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "RFC is an assessment  
of an individual's ability to do sustained work-related physical and  
mental activities in a work setting on a regular and continuing basis."  
SSR 96-8p, 1996 WL 374184, at \*1 (S.S.A. July 2, 1996).

1 stairs,<sup>3</sup> ladders, or scaffolds, no walking on uneven terrain, no using  
2 vibrating tools, and no exposure to hazards such as unprotected heights.  
3 (AR 425.) Additionally, the ALJ determined that Plaintiff needed to work  
4 in an air-conditioned environment, and that she could perform "at least  
5 basic mental work-related activities involving no safety operations on  
6 a sustained full time basis with customary breaks." (AR 425-26.)

7 After noting that Plaintiff had no past relevant work as  
8 contemplated by the regulations, the ALJ determined that, prior to  
9 January 25, 2002, Plaintiff could have worked as an electronics  
10 assembler, hand packer, or packing machine operator. (AR 429.) The ALJ  
11 concluded that Plaintiff was not disabled between October 5, 1999, and  
12 January 25, 2002. (AR 430.)

13 Plaintiff filed the present action on January 17, 2008, alleging  
14 that the ALJ erred as follows: (1) that the ALJ failed to consider a  
15 consulting psychiatrist's opinion in reaching the disability  
16 determination; (2) that the ALJ failed to consider a state agency  
17 physician's opinion; (3) that the ALJ posed an incomplete hypothetical  
18 to the vocational expert at the hearing; (4) that the ALJ did not  
19 establish that Plaintiff could perform the jobs of electronics  
20 assembler, hand packer, or packing machine operator; and (5) that the  
21 ALJ improperly discounted Plaintiff's credibility. (Joint Stip. 3.)  
22 Plaintiff asks this Court to order an award of benefits, or, in the  
23 alternative, to remand the case for a new administrative hearing. (Joint  
24 Stip. 24.)

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27 <sup>3</sup> The ALJ offered two conflicting assessments of Plaintiff's  
28 ability to climb stairs in this RFC - that she should could climb stairs  
occasionally, and that she never climb stairs. This conflict is not  
materials to this Court's decision.

1 **II. Standard of Review**

2 The Court must uphold the Social Security Administration's  
3 disability determination unless it is not supported by substantial  
4 evidence or is based on legal error. *Ryan v. Comm'r of Soc. Sec.*, 528  
5 F.3d 1194, 1198 (9th Cir. 2008)(citing *Stout v. Comm'r of Soc. Sec.*  
6 *Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006)). Substantial evidence means  
7 more than a scintilla, but less than a preponderance; it is evidence  
8 that a reasonable person might accept as adequate to support a  
9 conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.  
10 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.  
11 2006)). To determine whether substantial evidence supports a finding,  
12 the reviewing court "must review the administrative record as a whole,  
13 weighing both the evidence that supports and the evidence that detracts  
14 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,  
15 720 (9th Cir. 1996). "If the evidence can support either affirming or  
16 reversing the ALJ's conclusion," the reviewing court "may not substitute  
17 [its] judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

18  
19 **III. The ALJ Failed to Address Relevant Medical Opinions in Assigning**  
20 **Plaintiff's Residual Functional Capacity**

21 On April 7, 2000, consulting psychiatrist Linda Smith, M.D.,  
22 completed a psychiatric evaluation of Plaintiff for the Social Security  
23 Administration. (AR 109-13.) Dr. Smith diagnosed Plaintiff with panic  
24 disorder and opined that Plaintiff would have the following functional  
25 limitations:

- 26 (1) mild impairment in her ability to understand, remember, or  
27 complete simple commands;  
28 (2) moderate impairment in her ability to understand, remember, or

1 complete complex commands;

2 (3) mild impairment in her ability to interact appropriately with  
3 supervisors, coworkers, and the public;

4 (4) moderate impairment in her ability to comply with job rules  
5 such as safety and attendance;

6 (5) moderate impairment in her ability to respond to changes in  
7 the normal workplace setting; and

8 (6) moderate impairment in her ability to maintain persistence and  
9 pace in a normal workplace setting. (AR 113.)

10 In addition, a non-examining state agency psychiatrist, K.L.  
11 Immerman, M.D., completed a mental residual functional capacity  
12 assessment of Plaintiff on July 27, 2000. (AR 162-65.) Dr. Immerman  
13 opined that Plaintiff was moderately limited in her ability to  
14 understand, remember, and carry out detailed instructions, to work in  
15 coordination with or proximity to others without being distracted by  
16 them, to interact appropriately with the general public, and to set  
17 realistic goals or make plans independently of others. (AR 162-63.) Dr.  
18 Immerman ultimately concluded that Plaintiff could perform nonpublic,  
19 simple, and repetitive tasks. (AR 165.)

20 At the August 28, 2007, hearing, a non-examining psychologist,  
21 Joseph Malancharuvil, Ph.D., testified as a medical expert. (AR 505.)  
22 Dr. Malancharuvil disagreed with Dr. Smith's panic disorder diagnosis,  
23 testifying that Plaintiff instead suffered from an anxiety disorder, not  
24 otherwise specified. (AR 507-08.) Dr. Malancharuvil explained his  
25 reasons for disagreeing with Dr. Smith during the hearing, and opined  
26 that Plaintiff's mental limitations only precluded her from "safety  
27 operation on hazardous machinery." (AR 509-10.)

28 In his decision, the ALJ relied heavily on Dr. Malancharuvil's

1 testimony, with little to no reference to either Dr. Smith's or Dr.  
2 Immerman's reports. He concluded that Plaintiff's severe mental  
3 impairment was an anxiety disorder, not otherwise specified, as Dr.  
4 Malancharuvil diagnosed, rather than panic disorder as Dr. Smith  
5 diagnosed. (AR 424.) In assessing Plaintiff's credibility, the ALJ noted  
6 that Plaintiff had not sought significant treatment for mental illness,  
7 which suggested to him that "her mental problems if present have been at  
8 most mild." (AR 428.) Though he questioned the severity of her mental  
9 impairment, the ALJ indicated that he deferred to the findings of Dr.  
10 Malancharuvil and "the consultative psychiatric examiner of record,"  
11 which presumably would be Dr. Smith. (*Id.*) This was the only statement  
12 the ALJ made in his decision that even arguably references the  
13 psychiatric reports, and the RFC assessment he reached did not  
14 incorporate the limitations those reports suggested.

15 The ALJ posed the following hypothetical to the vocational expert  
16 at the hearing:

17 Okay, I want you to assume an individual who at all times  
18 during the relevant period was [a] younger individual who has  
19 a limited education and no experience in the work place. This  
20 person would be limited to lifting no more than 20 pounds  
21 occasionally, less than 10 pounds frequently with pushing and  
22 pulling limitations consistent with the lifting and carrying  
23 limitations. This person could stand or walk for four hours  
24 out of an eight-hour day and sit for six hours out of an  
25 eight-hour day provided that they did not have to climb  
26 ladders, ropes or scaffolding or walk on uneven ground.  
27 However, they could occasionally climb stairs, balance, bend  
28 or stoop, kneel, crouch or crawl. The person should avoid any

1 concentrated exposure to extreme heat or cold, should not work  
2 with laboratory tools, should not work around [inaudible] or  
3 fast-paced machinery or at unprotected heights. The individual  
4 would also not be allowed to perform safety operations.

5 (AR 515-16.) The vocational expert testified that a person with such  
6 limitations could work as an electronics assembler, hand packer, and  
7 packing machine operator.

8 It is the ALJ's responsibility to resolve conflicts and ambiguities  
9 in the medical record and to determine credibility. *Meanel v. Apfel*, 172  
10 F.3d 1111, 1113 (9th Cir. 1999); *Andrews v. Shalala*, 53 F.3d 1035, 1039  
11 (9th Cir. 1989). The ALJ determines which medical opinions should be  
12 given the most weight. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
13 1996). Moreover, the ALJ need not accept the opinion of any medical  
14 source, including a treating medical source, "if that opinion is brief,  
15 conclusory, and inadequately supported by clinical findings." *Bayliss v.*  
16 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005); *Thomas v. Barnhart*, 278  
17 F.3d 947, 957 (9th Cir. 2002); *accord Tonapetyan v. Halter*, 242 F.3d  
18 1144, 1149 (9th Cir. 2001).

19 In this case, the ALJ simply adopted Dr. Malancharuvil's opinion  
20 without in any way addressing the limitations suggested by two other  
21 psychiatrists. Whether the limitations presented in the consultative  
22 reports would preclude Plaintiff from all work is a question that this  
23 Court cannot answer, and which should have been presented to the  
24 vocational expert at the hearing.

25 It is unclear why the ALJ did not specifically discuss these  
26 opinions, either by rejecting them outright or by explaining how they  
27 fit within his RFC determination. While the ALJ is not bound by these  
28 non-treating psychiatrists' assessments, he may not ignore their



1 opinions. 20 C.F.R. § 404.1527(f); SSR 96-6p, 1996 WL 374180, at \*1  
2 (S.S.A. July 2, 1996). His failure to acknowledge the these reports  
3 suggesting additional mental limitations while reaching an RFC  
4 assessment and disability determination that does not include them is  
5 error.

6 Because the ALJ failed to explain his reasoning for rejecting Dr.  
7 Smith's and Dr. Immerman's reports in reaching Plaintiff's RFC, or,  
8 alternatively, why the RFC determination does not conflict with those  
9 reports, the case must be remanded. The Court need not address  
10 Plaintiff's other assignments of error.

11  
12 **IV. Conclusion**

13 For the reasons stated above, it is **ORDERED** that the case be  
14 remanded to the Commissioner for proceedings consistent with this  
15 opinion.

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17 DATED: October 9, 2008

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MARC L. GOLDMAN  
United States Magistrate Judge