

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

SIALEI SEIULI,)	Case No. ED CV 08-1700-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

I. INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying her applications for Disability Insurance benefits ("DIB") and Supplemental Security Income ("SSI"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he: 1) failed to consider a treating doctor's statement that she needed a disabled placard for her car; 2) found that her hypertension was controlled with medication; 3) failed to consider the dosage of her prescribed medication; and 4) failed to properly consider whether she met or equaled Listing 1.02. (Joint Stip. at 3-4, 7-8, 9-10, 11-15.)

1 Because the Agency's decision that Plaintiff was not disabled is
2 supported by substantial evidence, it is affirmed.

3 II. SUMMARY OF PROCEEDINGS

4 Plaintiff applied for DIB and SSI on April 7, 2006, alleging that
5 she had been unable to work since November 30, 2005, because of
6 arthritis in her knees and ankle, and a left ankle fracture that she
7 suffered in a fall in October 2005. (Administrative Record ("AR") 39,
8 97.) The Agency denied the application initially and on reconsidera-
9 tion. (AR 35-42, 47-52.) Plaintiff then requested and was granted a
10 hearing before an ALJ. (AR 54, 62-66.) Plaintiff appeared with
11 counsel and testified at the hearing on February 5, 2008. (AR 15-34.)
12 On March 4, 2008, the ALJ issued a decision denying benefits. (AR 8-
13 14.) Plaintiff appealed to the Appeals Council, which denied review.
14 (AR 1-4.) Plaintiff then commenced the instant action.

15 III. DISCUSSION

16 1. The Treating Doctor's Opinion

17 In her first claim of error, Plaintiff contends that the ALJ
18 erred in failing to properly consider a May 24, 2006 chart note by her
19 treating doctor Edward Keiderling. In the note, Dr. Keiderling
20 reported that he had filled out a form for Plaintiff to obtain a
21 temporary disability placard from DMV, and that he intended to fill
22 out a disability form to place Plaintiff on disability for four
23 months. (AR 208.) Plaintiff argues that, though the ALJ referred to
24 this statement in his decision, he did not explain whether he accepted
25 or rejected this "opinion" that she was disabled. (Joint Stip. at 3-
26 4.) For the following reasons, the Court finds that this claim does
27 not warrant remand or reversal.

28

1 Dr. Keiderling's chart note from May 2006 was almost two years
2 old when the ALJ decided in March 2008 that Plaintiff was not
3 disabled. Accepting as true Dr. Keiderling's "opinion" that Plaintiff
4 was disabled and needed a DMV placard for four months (i.e., until
5 September 2006), it would still not have affected the ALJ's conclusion
6 that Plaintiff was not disabled in March 2008.

7 Furthermore, though, in general, a treating doctor's opinion is
8 entitled to deference, see *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir.
9 2007), a treating doctor's opinion regarding the ultimate issue of
10 disability is not entitled to any special weight. *Batson v. Comm'r of*
11 *Soc. Sec.*, 359 F.3d 1190, 1195 (9th Cir. 2004) ("[A] treating
12 physician's opinion is . . . not binding on an ALJ with respect to the
13 . . . ultimate determination of disability."); 20 C.F.R.
14 § 404.1527(e)(3); see also Social Security Ruling ("SSR") 96-5p
15 (stating that opinion that claimant is disabled, "even when offered by
16 a treating source, can never be entitled to controlling weight or
17 given special significance"). This is particularly true where, as
18 here, the doctor's opinion was based in large measure on Plaintiff's
19 reports to him of her subjective complaints and the ALJ found that she
20 was not credible. See *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th
21 Cir. 2008) ("An ALJ may reject a treating physician's opinion if it is
22 based to a large extent on a claimant's self-reports that have been
23 properly discounted as incredible.") (quotation omitted).

24 Assuming Plaintiff is right and Dr. Keiderling's May 2006 chart
25 note constitutes an opinion that Plaintiff was disabled, that opinion
26 is not entitled to any weight and, therefore, any error on the ALJ's
27 part in failing to discuss it further was harmless. See *Stout v.*
28 *Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006)

1 (holding error harmless where it is "inconsequential to the ultimate
2 nondisability determination.").

3 In light of the ALJ's discussion of the record, Plaintiff's claim
4 that the ALJ was obligated to state whether he accepted or rejected
5 Dr. Keiderling's May 24, 2006 opinion is meritless. In determining
6 that Plaintiff's osteoarthritis and obesity constituted severe
7 impairments (AR 10), the ALJ evidently accepted the treating doctor's
8 diagnosis. As for Plaintiff's subjective complaints noted by Dr.
9 Keiderling, the ALJ found that Plaintiff was not credible. (AR 11-
10 12.) And Plaintiff has not challenged the credibility finding. Thus,
11 the doctor's opinion, which is based in large measure on Plaintiff's
12 statements, is not entitled to great weight. *See Tommasetti*, 533 F.3d
13 at 1041.

14 Because the ALJ adequately addressed the medical evidence and
15 supported his conclusions, he did not err by failing to specifically
16 discuss the fact that Dr. Keiderling helped Plaintiff obtain a
17 disabled placard from DMV or that he put her on disability for four
18 months. Thus, this claim does not warrant remand or reversal.

19 2. Plaintiff's Hypertension

20 In her second claim of error, Plaintiff contends that the ALJ
21 misrepresented the record regarding her hypertension so that he could
22 ultimately conclude that it did not cause her significant problems.
23 Plaintiff argues that the record actually shows that her blood
24 pressure was very high but that the ALJ relied on an a random normal
25 reading to support his finding that it was under control. (Joint
26 Stip. at 7-8.) For the following reasons, the Court disagrees.

27 The ALJ found that Plaintiff's hypertension was controlled by
28 medication and that it had not caused significant problems for

1 Plaintiff. (AR 12.) In support of this finding, he referenced a
2 chart note from December 2007 in which Plaintiff's blood pressure was
3 recorded at 132/90. (AR 12, 222.) As Plaintiff points out, however,
4 her blood pressure was recorded at 140/80 three days later. (AR 221.)
5 And a fair reading of the record demonstrates that it had regularly
6 been measured as relatively high throughout the period in issue. (AR
7 226, 228, 229, 235.) The ALJ should have discussed the other
8 readings, showing that Plaintiff's blood pressure was high, as well as
9 the one showing that it was low, and explained how his conclusion that
10 Plaintiff's blood pressure was under control was supported by the
11 evidence. See *Gallant v. Heckler*, 753 F.2d 1450, 1455-56 (9th Cir.
12 1984) (holding ALJ cannot selectively parse record and focus only on
13 evidence that supports his conclusion).

14 Here again, however, though Plaintiff has pointed out that the
15 ALJ erred, she has not shown that that error calls into question the
16 ALJ's ultimate conclusion that Plaintiff was not disabled. Plaintiff
17 has not shown that the ALJ's other finding--that there was no
18 indication that Plaintiff's high blood pressure had caused her
19 significant problems--was erroneous. Nor has she attempted to show
20 how her high blood pressure prevented her from working. Instead, she
21 argues that, because high blood pressure carries a greater risk of
22 heart disease *in general*, the ALJ's decision must be reversed. (Joint
23 Stip. at 7-8.) This argument is rejected. Though Plaintiff may have
24 a greater than normal risk of developing heart disease as a result of
25 her high blood pressure--something that the record in this case does
26 not establish--she has not shown that such risk limits her ability to
27 work. Because Plaintiff had the burden of proving that her condition
28 is disabling, see *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.

1 1999) (noting that the burden of proof is on the claimant as to steps
2 one to four of the five-step sequential analysis), the ALJ's finding
3 that her hypertension was controlled with medication, assuming there
4 was error, does not require reversal.

5 3. Plaintiff's Prescribed Medications

6 In her third claim of error, Plaintiff contends that the ALJ
7 erred when he failed to consider the dosage of her prescription
8 medication. Plaintiff cites one clinic note, dated December 12, 2007,
9 which refers to a prescription for Vicodin that reads: "r.f. Vicodin
10 5/500 poQn-BID 45 prn." (Joint Stip. at 9; AR 221.) Plaintiff does
11 not explain how this notation supports her argument. Instead, she
12 argues that SSR 96-7p specifically requires an ALJ to consider a
13 claimant's prescription medication dosage, and that the ALJ's failure
14 to do so in this case requires reversal. (Joint Stip. at 9-10.)
15 Plaintiff also appears to argue that the ALJ improperly disregarded
16 her testimony regarding the side effects of her medication. (Joint
17 Stip. at 10.) For the following reasons, the Court disagrees.

18 Plaintiff has not shown that the ALJ failed to consider her
19 medication dosage. In his decision, the ALJ noted that Plaintiff took
20 pain medications, including Tylenol, Vicodin, Motrin, and Ultram. (AR
21 12, 13.) Plaintiff did not testify that these medications caused her
22 side effects. In several reports that she submitted, she reported
23 that pain killers sometimes made her feel dizzy. (AR 112, 121, 132.)
24 At the hearing, however, she testified that the only thing that kept
25 her from working was the pain and swelling in her feet. (AR 23.) She
26 then testified that she took medications to manage her pain, including
27 Vicodin, which sometimes worked, and sometimes did not. (AR 24.) She
28 did not mention any side effects, however. Given the dearth of

1 evidence in the record regarding side effects and her failure to raise
2 the issue at the hearing, the ALJ did not err in failing to further
3 address this issue in his decision.

4 Finally, even if Plaintiff had testified that her medications
5 were causing side effects that interfered with her ability to work,
6 the ALJ would have been justified in rejecting that testimony because
7 there was no objective medical evidence supporting the claimed side
8 effects and the ALJ found that Plaintiff was not credible, a finding
9 Plaintiff has not challenged here. *See Thomas v. Barnhart*, 278 F.3d
10 947, 960 (9th Cir. 2002) (affirming ALJ's exclusion of claimant's side
11 effects testimony where the ALJ properly found her testimony was
12 generally not credible). For these reasons, this claim is rejected.

13 4. Listing 1.02

14 In her fourth claim of error, Plaintiff contends that the ALJ
15 erred by failing to adequately consider whether her combination of
16 impairments met or equaled Listing 1.02. She argues that the medical
17 record shows that she is unable to ambulate effectively on a sustained
18 basis, as required by Listing 1.02(A), and that other objective
19 medical findings in the record show that she meets or medically equals
20 the Listing. (Joint Stip. at 11-15.) The Court disagrees, for the
21 following reasons.

22 Listing 1.02, "Major dysfunction of a joint(s) (due to any
23 cause)," reads, in relevant part, as follows:

24 Characterized by gross anatomical deformity (e.g.
25 subluxation, contracture, bony or fibrous ankylosis,
26 instability) and chronic joint pain and stiffness with signs
27 of limitation of motion or other abnormal motion of the
28 affected joint(s), and findings on appropriate medically

1 acceptable imaging of joint space narrowing, bony
2 destruction, or ankylosis of the affected joint(s). *With:*

3 A. Involvement of one major peripheral weight-
4 bearing joint (i.e. hip, knee, or ankle),
5 resulting in inability to ambulate effectively, as
6 defined in 1.00B2b[.]¹

7 20 C.F.R. § 404, Subpart P, App. 1, Listing 1.02A (emphases added).

8 The ALJ did not specifically discuss Listing 1.02 in his
9 decision. He found only that Plaintiff did not have an "impairment or
10 combination of impairments that meets or medically equals one of the
11 listed impairments[.]" (AR 10.) In making this finding, the ALJ
12 evidently relied on the opinions of the examining orthopedist, who
13 determined that Plaintiff did not have any significant physical
14 impairments or functional limitations, and of the reviewing state
15 agency physicians, who concluded that she could do light work, as set
16 forth above. (AR 12, 13, 184, 213-17.) Because these opinions are
17 not contradicted by any evidence in the record, except perhaps for the

18
19 ¹ 1.00B2b(2) provides, in relevant part:

20 To ambulate effectively, individuals must be capable
21 of sustaining a reasonable walking pace over a
22 sufficient distance to be able to carry out activities
23 of daily living [E]xamples of ineffective
24 ambulation include, but are not limited to, the
25 inability to walk without the use of a walker, two
26 crutches or two canes, the inability to walk a block
27 at a reasonable pace on rough or uneven surfaces, the
inability to use standard public transportation, the
inability to carry out routine ambulatory activities,
such as shopping and banking, and the inability to
climb a few steps at a reasonable pace with the use of
a single hand rail.

28 20 C.F.R. § 404, Subpart P, App. 1, Listing 1.00(B)(2)(b)(2).

1 treating doctor's opinion that Plaintiff was disabled for four months
2 in 2006, they constitute substantial evidence to support the ALJ's
3 decision. *See, e.g., Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.
4 1995) (holding that opinion of nontreating source that is based on
5 independent clinical findings may constitute substantial evidence to
6 support ALJ's decision).

7 In any event, Plaintiff has failed to establish that she meets or
8 equals the requirements of Listing 1.02. As set forth above, the
9 Listing requires, among other things, that the claimant be unable to
10 ambulate effectively. An inability to ambulate effectively, as
11 defined in the regulations, means "the inability to walk without the
12 use of a walker, two crutches or two canes . . . [or] the inability to
13 use standard public transportation, the inability to carry out routine
14 ambulatory activities, such as shopping and banking, and the inability
15 to climb a few steps at a reasonable pace with the use of a single
16 hand rail." 20 C.F.R. § 404, Subpart P, App. 1, Listing
17 1.00(B)(2)(b)(2). Plaintiff has not shown that she meets this
18 standard.

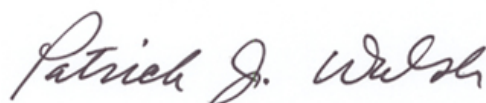
19 Plaintiff testified that she uses a cane only twice a week and
20 only when she goes out, if the pain and swelling is "real bad[.]" (AR
21 25.) She also testified that she could walk to her car, drive without
22 difficulty, and "get a little bit of grocer[ies]." (AR 28.) Her
23 abilities, as she herself described them, contradict her claim that
24 she is unable to ambulate effectively. Because Plaintiff did not meet
25 her burden of demonstrating that her condition met or equaled Listing
26 1.02, this claim does not require remand or reversal.

1 IV. CONCLUSION

2 For the foregoing reasons, the Agency's decision is affirmed and
3 the case is dismissed with prejudice.

4 IT IS SO ORDERED.

5 DATED: April 26, 2010.

6
7 

8

PATRICK J. WALSH
9 UNITED STATES MAGISTRATE JUDGE