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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KENNETH MACKEY,)	Case No. ED CV 10-1073 PJW
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

17 Before the Court is Plaintiff's appeal of a decision by Defendant
18 Social Security Administration ("the Agency"), denying his application
19 for supplemental security income ("SSI"). Plaintiff claims that the
20 Administrative Law Judge ("ALJ") erred when he rejected the
21 psychiatrists' opinions that he suffered from a severe psychological
22 impairment. For the reasons set forth below, the Court finds that the
23 ALJ did not err.

24 This is the second time that this case has been before the Court.
25 The first time, the Court reversed the Agency's decision and remanded
26 for consideration of treating psychiatrist Jeremiah Umakanthan's
27 opinion that Plaintiff suffered from depression and had a Global
28 Assessment of Functioning ("GAF") score of 40. (AR 379-84.) On

1 remand, the ALJ considered Dr. Umakanthan's findings and rejected
2 them. (AR 357-63.) Plaintiff contends that this was error. (Joint
3 Stip. at 3-4, 9-12.)

4 The starting point for the Court's analysis is not Dr.
5 Umakanthan's opinion but, rather, the ALJ's credibility finding. The
6 ALJ found in his most recent decision in 2010, like the one in 2007,
7 that Plaintiff was not credible. (AR 18-20, 360-62.) Plaintiff has
8 not challenged either finding and apparently with good reason. The
9 record is replete with evidence that Plaintiff is motivated to obtain
10 benefits and that he has at the very least greatly exaggerated his
11 claims of disability, if not lied about them.

12 Plaintiff has applied for benefits at least seven times since
13 1994. (AR 12-21, 36-37.) Plaintiff's applications in the 1990s
14 through 2001 were based on physical ailments, like headaches, chest
15 pains, etc. (AR 36-37.) In a questionnaire he submitted with his
16 October 2004 application, however, he added hallucinations to his list
17 of ails. (AR 89, 97.) This is significant because Plaintiff alleged
18 that these hallucinations began when he was a child (though he has
19 also alleged that they began in 2004, when he was 32 years old). (AR
20 201, 550.) In a form he submitted four months later, Plaintiff
21 omitted hallucinations. (AR 147-48.)

22 Plaintiff was involved in an automobile accident in 1999. He
23 claimed in the first administrative hearing that he was prescribed a
24 cane by one of his doctors to help him walk. (AR 347.) There is no
25 record of any doctor prescribing him a cane, which the ALJ pointed out
26 in his decision denying Plaintiff's claim for benefits in 2007. (AR
27 18.) Despite the ALJ's prompting, when Plaintiff returned for a
28 second administrative hearing in March 2010, cane in hand and

1 explaining, again, that it had been prescribed, he failed to submit
2 any evidence that this was true or that he needed a cane to walk. (AR
3 560.) Interestingly, just two months before the 2010 administrative
4 hearing, in January 2010, Plaintiff went to consulting psychiatrist
5 Duong's office for an examination without a cane and walked just fine
6 without it. (AR 550.)

7 In a questionnaire Plaintiff submitted to the Agency in support
8 of his application in October 2004, he claimed that he could walk only
9 six feet. (AR 115.) There is absolutely no evidence that this was
10 true and, in fact, the evidence suggests that it was false. (AR 209
11 (examining physician report from January 2005, finding Plaintiff can
12 stand/walk for two hours in an eight-hour day).) Medical personnel
13 who interacted with Plaintiff during the relevant period recognized
14 that Plaintiff was likely feigning his symptoms. (AR 201-04
15 (examining psychiatrist noting that he suspected that Plaintiff was
16 not trying in examination and was motivated to appear more disabled
17 than he was); AR 250 (noting on intake form in March 2005 to rule out
18 "secondary gain issues").) And when Plaintiff testified before the
19 ALJ in 2007, he pretended to be falling asleep, apparently to buttress
20 his testimony that he sleeps only thirty minutes a night and falls
21 asleep every five or ten minutes during the day. (AR 19, 346.)¹

22 With this backdrop, the Court turns to Plaintiff's complaint that
23 the ALJ erred when he rejected treating psychiatrist Umakanthan's
24 March 2005 diagnosis that Plaintiff suffered from major depressive

25
26 ¹ The ALJ also pointed out that Plaintiff was able to care for a
27 young child at home, frequently canceled or failed to show up for
28 appointments, and repeatedly failed to comply with prescribed
medications as reasons for questioning Plaintiff's credibility. (AR
358, 361.)

1 disorder and had a GAF of 40, which essentially translates into severe
2 psychological impairment. The ALJ discounted these findings because
3 they were based on Plaintiff's subjective claims and Plaintiff was not
4 credible. (AR 357-59.) This is a legitimate reason to reject a
5 treating psychiatrist's opinion, see *Morgan v. Comm'r of Soc. Sec.*,
6 169 F.3d 595, 602 (9th Cir. 1999) (approving ALJ's rejection of
7 treating and examining psychiatrists' opinions that were based on the
8 claimant's statements because ALJ determined that claimant was not
9 credible), and, as explained above, is well supported by the record.

10 Plaintiff argues that there was objective evidence supporting his
11 ailments that was noted by Dr. Umakanthan. (Joint Stip. at 8-9.) He
12 points out, for example, that Dr. Umakanthan noted that Plaintiff had
13 poor eye contact, was withdrawn, exhibited psychomotor retardation,
14 depression, flat affect, suicidal ideation, etc. (Joint Stip. at 9.)
15 Plaintiff's argument is misplaced. All of these "objective" signs are
16 not objective at all. They are subjective and controlled by
17 Plaintiff. For example, to determine whether Plaintiff was harboring
18 any thoughts about killing himself, Dr. Umakanthan presumably asked
19 him, "Do you harbor any thoughts of killing yourself." And Plaintiff
20 must have responded, "Yes." Dr. Umakanthan did not have any objective
21 test to determine what Plaintiff was actually thinking.

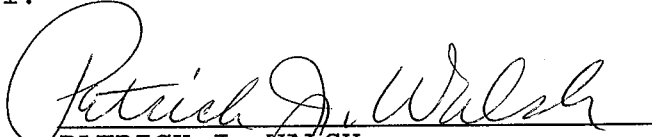
22 Thus, Plaintiff's claim that the ALJ erred when he discounted Dr.
23 Umakanthan's diagnosis is rejected. So, too, is his claim that the
24 ALJ erred in rejecting examining psychiatrist Dr. Minh-Khoi Duong's
25 findings that Plaintiff had a psychotic disorder and a GAF of 60. Dr.
26 Duong's findings, like Dr. Umakanthan's, were based exclusively on
27 Plaintiff's performance during the examination (AR 551-53), a
28 performance that, albeit apparently convincing to Dr. Duong, was not a

1 true representation of Plaintiff's actual psychiatric state. As such,
2 the ALJ's rejection of Dr. Duong's findings was supported by the law
3 and the evidence and will not be disturbed.

4 For these reasons, the Agency's decision denying Plaintiff's
5 application for benefits is affirmed and the case is dismissed with
6 prejudice.

7 IT IS SO ORDERED.

8 DATED: September 21, 2011.

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11 PATRICK J. WALSH
12 UNITED STATES MAGISTRATE JUDGE
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