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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BRENDA BARRETT,
Plaintiff,
v.
MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.



NO. EDCV 10-1358 AGR

**MEMORANDUM OPINION AND
ORDER**

Brenda Barrett filed this action on September 9, 2010. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on September 29 and October 1, 2010. (Dkt. Nos. 7, 9.) On May 23, 2011, the parties filed a Joint Stipulation (“JS”) that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

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1 I.

2 **PROCEDURAL BACKGROUND**

3 On November 30, 2007, Barrett filed an application for disability insurance
4 benefits and supplemental security income alleging a disability onset date of June
5 1, 2004. Administrative Record (“AR”) 9. The application was denied initially and
6 upon reconsideration. *Id.* Barrett requested a hearing before an Administrative
7 Law Judge (“ALJ”). AR 90. On October 22, 2009, the ALJ conducted a hearing
8 at which Barrett and a vocational expert testified. AR 22-70. On December 16,
9 2009, the ALJ issued a decision denying benefits. AR 6-18. On August 11,
10 2010, the Appeals Council denied the request for review. AR 1-3. This action
11 followed.

12 II.

13 **STANDARD OF REVIEW**

14 Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s
15 decision to deny benefits. The decision will be disturbed only if it is not supported
16 by substantial evidence, or if it is based upon the application of improper legal
17 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v.*
18 *Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

19 “Substantial evidence” means “more than a mere scintilla but less than a
20 preponderance – it is such relevant evidence that a reasonable mind might
21 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In
22 determining whether substantial evidence exists to support the Commissioner’s
23 decision, the court examines the administrative record as a whole, considering
24 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the
25 evidence is susceptible to more than one rational interpretation, the court must
26 defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

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III.

DISCUSSION

A. Disability

A person qualifies as disabled, and thereby eligible for such benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

B. The ALJ’s Findings

The ALJ found that Barrett met the insured status requirements through September 21, 2006. AR 11.

Barrett has the following severe impairments: asthma, bipolar disorder, polysubstance abuse, and limited vision in one eye. *Id.* She has the residual functional capacity to perform “less than a full range of light work.” AR 13. She “is limited to occasional performance of postural activities; no ladders, ropes, scaffolds, hazardous machinery, or heights; [she] needs to work in a clean air environment; she can only perform non-complex work that is object oriented; she is limited to non public work with occasional contact with others; and [she is limited to] work that permits [her] to only see colors in one eye.” *Id.*

Barrett is unable to perform her past relevant work. AR 17. However, “there are jobs that exist in significant numbers in the national economy that the claimant can perform” such as paramutual ticket taker, officer helper and routing clerk. AR 17-18.

C. Treating Psychiatrist

Barrett argues the ALJ improperly rejected the opinions of her treating psychiatrist, Dr. Eklund and her treating therapist, Ms. Miller, both of whom treated her at the San Bernardino County Department of Behavioral Health.

1 An opinion of a treating physician is given more weight than the opinion of
2 a non-treating physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir.2007). When,
3 as here, a treating physician's opinion is contradicted by another doctor, "the ALJ
4 may not reject this opinion without providing specific and legitimate reasons
5 supported by substantial evidence in the record. This can be done by setting out
6 a detailed and thorough summary of the facts and conflicting clinical evidence,
7 stating his interpretation thereof, and making findings." *Id.* at 632 (citations
8 omitted and internal quotations omitted). When the ALJ declines to give a
9 treating physician's opinion controlling weight, the ALJ considers several factors,
10 including the following: (1) the length of the treatment relationship and frequency
11 of examination;¹ (2) the nature and extent of the treatment relationship;² (3) the
12 amount of relevant evidence supporting the opinion and the quality of the
13 explanation provided; (4) the consistency with the record as a whole; and (5) the
14 specialty of the physician providing the opinion. See *Id.* at 631; 20 C.F.R. §
15 404.1527(d)(1)-(6). "When there is conflicting medical evidence, the Secretary
16 must determine credibility and resolve the conflict." *Thomas v. Barnhart*, 278
17 F.3d 947, 956-57 (9th Cir. 2002) (citation and quotation marks omitted).

18 The ALJ found that Barrett's treatment records "do not contain objective
19 evidence that establishes [she] has been unable to perform work activity for any
20 twelve month period of time." AR 15. In addition, none of the treatment providers
21 opined that Barrett was unable to work for any twelve month period of time. AR
22 16. The ALJ noted that Barrett's "records and testimony has established [she]

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24 ¹ "Generally, the longer a treating source has treated you and the more
25 times you have been seen by a treating source, the more weight we will give to
26 the source's medical opinion. When the treating source has seen you a number
of times and long enough to have obtained a longitudinal picture of your
impairment, we will give the source's opinion more weight than we would give it if
it were from a nontreating source." 20 C.F.R. § 404.1527(d)(2)(i).

27 ² "Generally, the more knowledge a treating source has about your
28 impairment(s) the more weight we will give to the source's medical opinion." 20
C.F.R. § 404.1527(d)(2)(ii).

1 was able to perform work activity in 2007 and 2008. The claimant testified she
2 stopped working due to her move not because of an inability to perform work
3 activity.” AR 15. The Global Assessment of Functioning (“GAF”) scores from
4 both providers were “inconsistent with the claimant’s records and activities of
5 daily living.” *Id.*

6 The ALJ’s reasons for discounting the opinions of Dr. Eklund and Ms. Miller
7 are supported by substantial evidence. Dr. Eklund filled out a mental status
8 examination form on January 9, 2008. AR 259-60. Barrett complained of recent
9 paranoia, insomnia, anxiety, and auditory hallucinations. She told Dr. Eklund she
10 could not work because she could not leave the house and felt confused. AR
11 259. She had been off of her medications for one year. *Id.* Dr. Eklund found that
12 her appearance, behavior and speech were within normal limits. AR 260. Her
13 mood was depressed and anxious, she had auditory hallucinations, and her
14 thought process was tangential and paranoid/persecutory. *Id.* He diagnosed her
15 with schizoaffective disorder, bipolar type, and a history of marijuana dependence
16 in sustained remission. *Id.* Her current GAF score was 40. *Id.* A GAF score of
17 31 to 40 indicates “some impairment in reality testing or communication (e.g.,
18 speech is at times illogical, obscure, or irrelevant) or major impairment in several
19 areas, such as work or school, family relations, judgment, thinking, or mood (e.g.,
20 depressed man avoids friends, neglects family, and is unable to work; child
21 frequently beats up younger children, is defiant at home, and is failing at school).”
22 Diagnostic and Statistical Manual of Mental Disorders (4th ed. 2000) (“DSM-IV”)
23 at 34. Dr. Eklund did not provide specific opinions as to Barrett’s ability to
24 perform work-related activities.

25 Previously, on November 29, 2007, Ms. Miller filled out intake forms. AR
26 266-72, 298-305. She noted Barrett was not taking medications at that time. AR
27 303. Ms. Miller diagnosed mood disorder, not otherwise specified, and cannabis
28 abuse. She opined Barrett had a GAF score of 45, and a high GAF score of 50

1 over the past year. AR 298, 300. A GAF score of 41 to 50 indicates “serious
2 symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting)
3 or any serious impairment in social, occupational, or school functioning (e.g., no
4 friends, unable to keep a job).” DSM-IV at 34. Ms. Miller did not provide specific
5 opinions as to Barrett’s ability to perform work-related activities.

6 On October 22, 2009, Barrett testified that she last worked in 2007 to 2008
7 as an “inpatient homecare” provider or home attendant taking care of a patient in
8 his home. AR 25-26, 30, 64. She did not know how many days a week, how
9 many months she worked³ or how much money she made at this job, but
10 earnings records indicated she made \$6,318.00 in 2007 and \$8,977.00 in 2008.
11 AR 25-26, 31, 155. Her duties included laundry, cooking and cleaning. AR 32.
12 She drove the patient and lifted more than 20 pounds while working. AR 32-33.
13 She stopped working at this job because she moved. AR 33.

14 Barrett testified she had seen Dr. Eklund for four years. AR 49-50. She
15 used to hear voices, and the last time she heard them was when she was off her
16 medication. AR 51. She takes Seroquel and Paxil, which seem to help. Her
17 psychological condition has improved with medication. AR 46. She cannot work
18 because she freezes up around people; she does not like being around people;
19 and she does not “function right.” AR 34. However, she did not know what would
20 keep her from working in a job that did not require her to be around people. AR
21 36. She thought she would “be okay” doing a job similar to putting shoes in a box
22 all day long, working by herself but around other people.⁴ AR 36-37.

23 The ALJ properly found that the Dr. Eklund’s January 9, 2008 opinion and
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25 ³ Barrett also testified that in 2008 she worked “probably five or six months
26 maybe. I’m not sure exactly.” AR 26.

27 ⁴ As noted above, the ALJ determined that Barrett could performed only
28 non-public, non-complex work that is object oriented and limited to occasional
contact with others. AR 13. He gave great weight to the opinions of Dr. Schrift to
make this determination. AR 16-17.

1 Ms. Miller's November 29, 2007 opinion were inconsistent with Barrett's earnings
2 records and her testimony indicating she could and, in fact, did work in 2007 and
3 2008 providing "inpatient homecare." AR 25-26, 30, 155. She testified that she
4 did laundry, cooked, cleaned, and lifted more than 20 pounds while working. AR
5 32-33. She stopped working because she moved, not because she was unable
6 to perform the work. AR 33. The ALJ provided specific and legitimate reasons to
7 reject the opinions of Dr. Eklund and Ms Miller and their GAF scores as "only a
8 snapshot in time and not an indication of [her] overall mental health over a twelve
9 month period. The ALJ did not err.

10 **D. Lay Witness Testimony**

11 Barrett argues the ALJ failed to provide germane reasons for rejecting the
12 lay witness testimony of her friend, Ms. Gaspelin, who completed a third party
13 function report on August 13, 2008. AR 188-95.

14 The ALJ summarized Ms. Gaspelin's report and concluded that it
15 essentially "parrot[s] [Barrett's] function report and testimony." AR 14. The ALJ
16 found her report credible only to the extent it was consistent with his decision. *Id.*
17 He found that she was Barrett's long-time friend and "as such" biased, and was
18 not a medical doctor or vocation expert qualified to provide expert evidence as to
19 Barrett's impairments or ability to perform work activities. AR 14-15.

20 An ALJ must take into account lay witness testimony concerning a
21 claimant's ability to work unless the ALJ expressly determines not to and gives
22 reasons germane to each witness for doing so. *Parra v. Astrue*, 481 F.3d 742,
23 750 (9th Cir. 2007); *Stout v. Commissioner*, 454 F.3d 1050, 1053 (9th Cir. 2006).
24 However, when an ALJ has provided clear and convincing reasons for rejecting
25 the claimant's testimony, and the lay witness' testimony was similar to the
26 claimant's testimony, "it follows that the ALJ also gave germane reasons for
27 rejecting the [lay witness'] testimony." *Valentine v. Commissioner Social Sec.*
28 *Admin.*, 574 F.3d 685, 694 (9th Cir. 2009). Barrett does not challenge the ALJ's

1 credibility finding as to Barrett. A comparison of Ms. Gaspelin's report with
2 Barrett's report and testimony supports the ALJ's finding that Ms. Gaspelin's
3 report essentially parrots Barrett's report and testimony. Accordingly, any error
4 was harmless.⁵ See *Stout*, 454 F.3d at 1056 (“[W]here the ALJ's error lies in a
5 failure to properly discuss competent lay testimony favorable to the claimant, a
6 reviewing court cannot consider the error harmless unless it can confidently
7 conclude that no reasonable ALJ, when fully crediting the testimony, could have
8 reached a different disability determination.”).

9 **IV.**

10 **ORDER**

11 IT IS HEREBY ORDERED that the decision of the Commissioner is
12 affirmed.

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14 DATED: September 13, 2011

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16 ALICIA G. ROSENBERG
17 United States Magistrate Judge
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23 _____
24 ⁵ Contrary to the ALJ's finding, lay witness testimony may be introduced to
25 show the severity of a claimant's impairment(s) and how it affects his ability to
26 work. *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009) (“A lay person,
27 Bruce's wife, though not a vocational or medical expert, was not disqualified from
28 rendering an opinion as to how her husband's condition affects his ability to
perform basic work activities.”). The ALJ's reliance on bias also was not
appropriate. “[R]egardless of whether they are interested parties, ‘friends and
family members in a position to observe a claimant's symptoms and daily
activities are competent to testify as to [his or] her condition.’” *Valentine*, 574 F.3d
at 694 (citation omitted).