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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HEATHER REESE, o/b/o J.R.,)	No. ED CV 11-00149-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the Administrative Record ("AR") before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified AR.

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered the consultative examiner's opinion;

2 2. Whether the ALJ properly assessed Plaintiff's residual
3 functional capacity;

4 3. Whether the ALJ posed incomplete hypothetical questions to
5 the vocational expert; and

6 4. Whether the ALJ's Step Five determination that Plaintiff is
7 capable of performing the jobs of bench assembler and
8 inspector/hand packager is supported by substantial
9 evidence.

10 (JS at 3.)

11
12 This Memorandum Opinion will constitute the Court's findings of
13 fact and conclusions of law. After reviewing the matter, the Court
14 concludes that for the reasons set forth, the decision of the
15 Commissioner must be reversed and the matter remanded.

16
17 I

18 **THE ALJ DID NOT PROPERLY CONSIDER THE PSYCHOLOGICAL**
19 **CONSULTATIVE EXAMINER'S OPINION REGARDING THE EFFECTS OF**
20 **PLAINTIFF'S HUNTINGTON'S DISEASE**

21 This matter originally proceeded to an administrative hearing
22 before the ALJ on August 28, 2007. (AR 375-400.) At that hearing,
23 which occurred after the death of Jason Reese, testimony was taken
24 from Dr. Laudau, a medical expert ("ME"), in addition to testimony
25 from a vocational expert ("VE"), and from Heather Reese, Jason Reese's
26 daughter. Heather Reese testified that in the two-year period prior
27 to Jason Reese's death, which occurred on February 19, 2007 (AR 404),
28 she observed that he had problems with physical activities, such as

1 getting in and out of his truck; with gripping and handling things (he
2 would drop things "all the time"); and with fatigue. (AR 389-390.)
3 Significantly, she testified that he had problems concentrating. For
4 example, he had historically braided his daughter's hair, but could no
5 longer focus enough to do it any more. He could no longer sit and
6 concentrate enough to read a book or work on a computer. Heather
7 Reese indicated that she observed these events in the latter part of
8 2005. (AR 390-391.)

9 In the first decision in this matter issued by the ALJ on
10 September 21, 2007 (AR 10-18), the credibility of Heather Reese's
11 observations was depreciated as being not supported by the "mild
12 objective findings." (AR 14.) The ALJ made reference to a normal
13 neurological examination on June 28, 2004; and another neurological
14 consultative examination ("CE") on September 30, 2005, in addition to
15 an internal medicine CE which was conducted on June 17, 2006. (AR 14-
16 15.) The ALJ relied upon these examinations to support his conclusion
17 that Jason Reese's physical abilities and concentration were not as
18 impaired as Heather Reese's testimony indicated. Reliance was also
19 placed on the ME, who testified that Jason Reese's condition worsened
20 toward the end of 2006. (AR 15-16.) Little attention was focused on
21 a CE conducted by clinical psychologist Dr. Riahinejad on September
22 27, 2005. (AR 322-326.) Although the testifying ME likely reviewed
23 Dr. Riahinejad's report (see AR at 378), he made no mention of it in
24 his testimony at the first administrative hearing. (See AR at 378-
25 388.)

26 In the ALJ's first decision, he found that Jason Reese had severe
27 impairments, including Huntington's Disease. (AR 12.) The ALJ
28 acknowledged that Jason Reese had been found to carry the Huntington's

1 Disease mutation gene in October 2004. (AR 14.) At the first hearing,
2 the ME described Huntington's Disease as "a congenital degenerative
3 disease of the brain, ..." (AR 386.) As to its symptomology, part of
4 the ME's testimony included the following: "And you develop dementia
5 movements and eventually you lose the ability to move ... And it's a
6 gradual deterioration of the mind and the body." (AR 387.)

7 The ALJ's unfavorable decision, which was upheld by the Appeals
8 Council (AR 2-4), resulted in a lawsuit being filed in the District
9 Court, which was assigned to the undersigned (see United States
10 District Court, Central District of California, Case No. CV 09-340-
11 VBK). The parties entered into a Stipulation to Voluntary Remand
12 pursuant to Sentence 4 of 42 U.S.C. § 305(g). The Stipulation
13 provided, in part, the following:

14 "Upon remand, the Administrative Law Judge (ALJ) will
15 be directed to reconsider the lay witness evidence from
16 Plaintiff's daughter. If the ALJ rejects Plaintiff's
17 daughter's opinion, the ALJ shall provide reasons germane to
18 that witness for doing so. The ALJ shall take any further
19 action necessary to complete the administrative record."

20 (AR 414-415.)

21
22 Thereafter, the Appeals Council issued an Order remanding the
23 case to the ALJ, with the following instructions:

24 "The decision addressed the lay witness testimony;
25 however, it did not provide the reasons the Administrative
26 Law Judge rejected the lay witness evidence submitted from
27 the claimant's daughter that was favorable to the claimant
28 (Tr. 10, 377, 389-390). The claimant passed away prior to

1 the hearing. The claimant's daughter testified that the
2 claimant had problems with walking, gripping, handling,
3 climbing stairs, concentration, and depression as far back
4 as 2005. The Administrative Law Judge's residual functional
5 capacity assessment addressed some of the claimant's
6 physical limitations; however, it did not include the mental
7 limitations expressed by the daughter's testimony such as
8 the claimant's problems with concentration and depression.
9 Accordingly, further evaluation of the law witness evidence
10 is necessary.

11 Upon remand, the Administrative Law Judge will
12 reconsider the law witness evidence from the claimant's
13 daughter and provide reasons germane to that witness if
14 rejecting the opinion and take any further action necessary
15 to complete the administrative record."

16 (AR 420-421.)

17
18 Following this remand order by the Appeals Council, a second
19 hearing was held on July 28, 2010 before the same ALJ. (AR 448-453.)
20 Heather Reese appeared, and was represented by counsel. No additional
21 testimony was taken from Ms. Reese, and the ALJ indicated that,
22 "What's required is further testimony from the vocational expert about
23 how memory problems might impact in the jobs that were identified."
24 (AR 450.) The ALJ then posed a hypothetical to the VE which included
25 no limitations as to concentration or related mental factors. (AR
26 451.) What was added to the hypothetical was that "the individual
27 would be limited to simple, repetitive tasks." (Id.) The VE indicated
28 that this hypothetical would not change the jobs previously

1 identified. (AR 452.) The hearing then ended.

2 On September 14, 2010, the ALJ issued another unfavorable
3 decision. (AR 404-414.) Noting that Ms. Reese did not testify at the
4 second hearing, the ALJ summarized her testimony at the first hearing,
5 including that she noticed that Jason Reese was having difficulty with
6 depression and concentration in late 2005. (AR 408.) Again, however,
7 reiterating the other medical and neurological evidence which he had
8 discussed in his first decision (AR 408), and the testimony of the ME
9 at that prior hearing, the ALJ essentially rejected Ms. Reese's
10 testimony. The following constitutes his discussion:

11 "With regard to the daughter's testimony that the
12 claimant was depressed and had poor concentration, there is
13 no evidence that such would preclude the performance of
14 simple, repetitive tasks. There is no longitudinal history
15 of a psychiatric impairment, or repeated hospitalizations,
16 or of prolonged outpatient treatment. The claimant neither
17 required nor received extensive psychiatric treatment and
18 used no psychotropic medications. The claimant underwent
19 a psychological consultative examination on September 27,
20 2005. Concentration and attention span were fair as was
21 memory. At the neurological examination in 2004, memory was
22 good. At the neurological consultative examination in
23 September 2005, attention and concentration were not
24 impaired.

25 (AR 409-410, Exhibit references omitted).

26
27 The Appeals Council denied review, and this lawsuit ensued. For
28 the reasons to be discussed, the Court reverses the decision of the

1 ALJ, and remands the matter for further hearing.

2 Although, consistent with the prior stipulation of the parties
3 and this Court's Order and Judgment, the Appeals Council ordered that
4 the ALJ reevaluate Heather Reese's testimony with regard to Jason
5 Reese's difficulties with concentration and similar matters, what
6 occurred, essentially, was simply another rejection of Heather Reese's
7 testimony, based on the same evidence which had been taken at the
8 first hearing. Again, no substantial discussion was devoted to the
9 examination and report of the psychological CE, Dr. Riahinejad.¹

10 It would appear that if, indeed, the ALJ implicitly rejected Dr.
11 Riahinejad's findings, it was because of his stated reliance on the
12 fact that Jason Reese had no history of psychiatric treatment or
13 repeated hospitalizations, or any prolonged outpatient treatment.
14 This theme appears to be reiterated by the Commissioner in his portion
15 of the JS, where he argues that there is no evidence in the record
16 that "Plaintiff ever complained of psychological symptoms, or ever
17 sought psychological treatment." (JS at 6, with citations.) The
18 Commissioner indicates that, "The only evidence of mental impairment
19 is the report of the psychological consultative examiner." (Id.) The
20 Commissioner continues by noting that, "As the ALJ pointed out, there
21 is no evidence that Plaintiff sought out any psychological treatment"
22 (JS at 7, citations omitted), and finally, the Commissioner notes that
23 "Dr. Riahinejad did not diagnose any actual psychological condition."
24 (Id., citation to record omitted.)

25 Thus, the foundation upon which the ALJ appears to have rejected
26

27 ¹ In any event, the ALJ's characterization of Dr. Riahinejad's
28 findings, as reflecting fair concentration and attention span
inaccurately interprets that report. (See, infra.)

1 Heather Reese's testimony appears to be that Huntington's Disease has
2 symptoms which manifest themselves only in physical or neurological
3 ways. But, as noted, the testimony of the ME at the first hearing was
4 that this disease represents "a gradual deterioration of the mind and
5 the body." (AR 387.) Indeed, as set forth in A.D.A.M. Medical
6 Encyclopedia, it appears to be the case that Huntington's Disease,
7 also known as Huntington's Chorea, may be accompanied by dementia
8 which may include the following symptoms: disorientation or confusion;
9 loss of judgment; loss of memory; personality changes; and speech
10 changes. Dr. Riahinejad specifically found that although Jason Reese
11 "is able to understand and remember complex instructions, his ability
12 to carry out such instructions seems to be impaired, due to the
13 complications of his Huntington's Disease. He also has significant
14 difficulty with persistence." Even as to simple instructions, Dr.
15 Riahinejad found that Jason Reese could understand, remember, and
16 carry them out "with difficulty." Certainly, the testimony of Heather
17 Reese at the first hearing consistently supported such observations,
18 which Heather Reese first noticed at the beginning of 2005. The ALJ's
19 finding (AR 407) that Jason Reese is capable of performing simple,
20 repetitive tasks in a full-time workday and workweek is suspect, if
21 credence is accorded to the observations of Heather Reese and the
22 functional findings of the 2005 psychological CE. The rejection by
23 the ALJ of these opinions and observations appears to be based on a
24 misapprehension that psychological symptoms from Huntington's Disease
25 either do not exist, or must be corroborated by psychological
26 treatment. Yet, as the ME testified, there is no treatment for
27 Huntington's Disease. Consequently, the underpinning of the ALJ's
28 decision which relies on these concepts is faulty and unsustainable.

1 Certainly, in the accepted parlance which governs evaluation of
2 examining opinions in Social Security cases, the ALJ failed to provide
3 specific and legitimate reasons supported by substantial evidence in
4 the record. See Lester v. Chater, 81 F.3d 821, 830-831, 834 (9th Cir.
5 1995); Regennitter v. Commissioner, 166 F.3d 1294, 1299 (9th Cir.
6 1999).

7 These defects in the ALJ's decision necessitate remand for
8 further consideration. The remaining issues need not be discussed in
9 any detail, because the error as to the first issue affects these
10 issues. Thus, as to the second issue, whether the ALJ properly
11 assessed Plaintiff's residual functional capacity, the ALJ's
12 conclusions, again, were based upon rejection of Dr. Riahinejad's and
13 Heather Reese's testimony. The third issue, as to whether the ALJ
14 posed an incomplete hypothetical question to the VE, is materially
15 affected by the Court's conclusions as to the first issue, since the
16 hypothetical question did not include any limitations as to
17 Plaintiff's ability to concentrate, or other mental manifestations of
18 Huntington's disease as reflected in Dr. Riahinejad's report, and in
19 Heather Reese's observations. Finally, the fourth issue, whether the
20 ALJ erred at Step Five in finding that Jason Reese was capable of
21 performing his past relevant work, will require reevaluation based
22 upon the Court's finding and conclusions as to the error concerning
23 the first issue.

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