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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICIA MURRAY,)	NO. EDCV 11-00726-MAN
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	AND ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

Plaintiff filed a Complaint on May 16, 2011, seeking review of the denial of plaintiff's application for supplemental security income ("SSI"). On June 10, 2011, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation ("Joint Stip.") on January 17, 2012, in which: plaintiff seeks an order reversing the Commissioner's decision and remanding this case for the payment of benefits or, alternatively, for further administrative proceedings; and the Commissioner requests that his decision be affirmed or, alternatively, remanded for further administrative proceedings. (Joint Stip. at 5-8.) The Court has taken the parties' Joint Stipulation under

1 submission without oral argument.

2
3 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**
4

5 On July 13, 2007, plaintiff filed an application for SSI.
6 (Administrative Record ("A.R.") 9.) Plaintiff, who was born on October
7 8, 1961 (A.R. 99),¹ claims to have been disabled since April 20, 2007
8 (A.R. 9), due to bipolar disorder, depression, anxiety, and non-cardiac
9 chest pain (A.R. 60, 65). Plaintiff has past relevant work experience
10 as a housekeeper. (A.R. 18.)
11

12 After the Commissioner denied plaintiff's claim initially and upon
13 reconsideration (A.R. 9, 60-70), plaintiff requested a hearing (A.R.
14 71). On June 29, 2009, plaintiff, who was represented by counsel,
15 appeared and testified at a hearing before Administrative Law Judge
16 Joseph D. Schloss (the "ALJ"). (A.R. 9, 24-41.) Vocational expert
17 David A. Rinhart also testified. (*Id.*) On November 24, 2009, the ALJ
18 denied plaintiff's claim (A.R. 9-19), and the Appeals Council
19 subsequently denied plaintiff's request for review of the ALJ's decision
20 (A.R. 1-3). That decision is now at issue in this action.
21

22 **SUMMARY OF ADMINISTRATIVE DECISION**
23

24 The ALJ found that plaintiff has not engaged in substantial gainful
25 activity since July 13, 2007, her application date. (A.R. 11.) The ALJ
26 determined that plaintiff has the following severe impairments:
27

28 ¹ On the date the application was filed, plaintiff was 45 years
old, which is defined as a younger individual. 20 C.F.R. § 416.963.

1 "Bipolar Disorder, Depression, Post Traumatic Stress Syndrome, [and] S/P
2 Carpal Tunnel Syndrome." (*Id.*) The ALJ also determined that plaintiff
3 does not have an impairment or a combination of impairments that meets
4 or medically equals one of the listed impairments in 20 C.F.R. Part 404,
5 Subpart P, Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925, 416.926).
6 (A.R. 15.)

7
8 After reviewing the record, the ALJ determined that plaintiff has
9 the residual functional capacity ("RFC") to perform medium work, as
10 defined in 20 C.F.R. § 416.967(c), with the following exceptions:
11 "[plaintiff] is able to frequently perform gross hand and fine motor
12 finger movements; and is moderately limited in her ability to
13 understand, remember, and carryout [sic] detailed instructions and set
14 realistic goals or make plans independently of others." (A.R. 16.)

15
16 The ALJ determined that plaintiff "is capable of performing [her]
17 past relevant work as a housekeeper," because "[t]his work does not
18 require the performance of work-related activities precluded by
19 [plaintiff's RFC]." (A.R. 18.) Accordingly, the ALJ concluded that
20 plaintiff has not been under a disability, as defined in the Social
21 Security Act, since July 13, 2007, the date her SSI application was
22 filed. (*Id.*)

23
24 **STANDARD OF REVIEW**

25
26 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's
27 decision to determine whether it is free from legal error and supported
28 by substantial evidence in the record as a whole. Orn v. Astrue, 495

1 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is “such relevant
2 evidence as a reasonable mind might accept as adequate to support a
3 conclusion.” *Id.* (citation omitted). The “evidence must be more than
4 a mere scintilla but not necessarily a preponderance.” Connett v.
5 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). “While inferences from the
6 record can constitute substantial evidence, only those ‘reasonably drawn
7 from the record’ will suffice.” Widmark v. Barnhart, 454 F.3d 1063,
8 1066 (9th Cir. 2006)(citation omitted).

9
10 Although this Court cannot substitute its discretion for that of
11 the Commissioner, the Court nonetheless must review the record as a
12 whole, “weighing both the evidence that supports and the evidence that
13 detracts from the [Commissioner’s] conclusion.” Desrosiers v. Sec’y of
14 Health and Hum. Servs., 846 F.2d 573, 576 (9th Cir. 1988); *see also*
15 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). “The ALJ is
16 responsible for determining credibility, resolving conflicts in medical
17 testimony, and for resolving ambiguities.” Andrews v. Shalala, 53 F.3d
18 1035, 1039 (9th Cir. 1995).

19
20 The Court will uphold the Commissioner’s decision when the evidence
21 is susceptible to more than one rational interpretation. Burch v.
22 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may
23 review only the reasons stated by the ALJ in his decision “and may not
24 affirm the ALJ on a ground upon which he did not rely.” Orn, 495 F.3d
25 at 630; *see also* Connett, 340 F.3d at 874. The Court will not reverse
26 the Commissioner’s decision if it is based on harmless error, which
27 exists only when it is “clear from the record that an ALJ’s error was
28 ‘inconsequential to the ultimate nondisability determination.’” Robbins

1 v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)(quoting Stout v.
2 Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch, 400 F.3d
3 at 679.

5 DISCUSSION

7 Plaintiff claims that the ALJ did not properly consider the April
8 7, 2008 opinion of State agency physician Donald Williams, M.D. (Joint
9 Stip. at 3.) Specifically, plaintiff claims that the ALJ erred in
10 failing to include a number of "impairments," in which plaintiff was
11 found to be "not significantly limited," in his RFC assessment for
12 plaintiff. (*Id.* at 4-5.)

14 It is the responsibility of the ALJ to analyze evidence and resolve
15 conflicts in medical testimony. Magallanes v. Bowen, 881 F.2d 747, 750
16 (9th Cir. 1989). In the hierarchy of physician opinions considered in
17 assessing a social security claim, "[g]enerally, a treating physician's
18 opinion carries more weight than an examining physician's, and an
19 examining physician's opinion carries more weight than a reviewing
20 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.
21 2001); 20 C.F.R. § 416.927(d).

23 In evaluating opinion evidence, an ALJ is required to consider the
24 opinions and findings of State agency medical consultants. 20 C.F.R.
25 § 416.927(f)(2)(i). Further, "[u]nless a treating source's opinion is
26 given controlling weight, the [ALJ] must explain in the decision the
27 weight given to the opinions of a State agency [consultant]." 20 C.F.R.
28 § 416.927(f)(2)(ii); see SSR 96-6p (1996), 1996 SSR LEXIS 3, at *5, 1996

1 WL 374180, at *2 (stating that an ALJ "may not ignore" the opinions of
2 State agency medical consultants "and must explain the weight given to
3 the opinions in their decision").
4

5 In determining a claimant's RFC, an ALJ will consider all the
6 relevant evidence in the record. 20 C.F.R. § 416.945(a). In so doing,
7 the ALJ will consider all claimant's medically determinable impairments,
8 including those that are not "'severe.'" *Id.* "An impairment or
9 combination of impairments is not severe if it does not significantly
10 limit [claimant's] physical or mental ability to do basic work
11 activities." 20 C.F.R. § 416.921(a).
12

13 On April 7, 2008, Dr. Williams, a State agency medical consultant,
14 completed a nonexamining, consultative review of plaintiff's medical
15 record. (A.R. 358-72.) Dr. Williams determined that plaintiff has a
16 medically determinable impairment that does not precisely satisfy the
17 diagnostic criteria for the following listed disorders: 12.04 Affective
18 Disorder; 12.06 Anxiety Disorder; and 12.09 Substance Addiction
19 Disorder. (A.R. 361-65.) Notwithstanding this determination, Dr.
20 Williams opined that plaintiff has functional limitations, including:
21 mild restriction in activities of daily activities; mild difficulties in
22 maintaining social functioning; and moderate difficulties in maintaining
23 concentration, persistence, or pace.² (A.R. 367.) Dr. Williams noted,
24 however, that plaintiff's symptoms are either reduced or eliminated when
25 she complies with her medication regime and avoids abusing substances.
26 (A.R. 361-65.)

27 ² He also noted that plaintiff has had no episodes of
28 decompensation. (*Id.*)

1 As part of his consultative review, Dr. Williams completed a
2 "Mental Residual Functional Capacity Assessment" ("Assessment") of
3 plaintiff. The Assessment consists of three sections. In Section I,
4 entitled "Summary Conclusions," the evaluator is directed to record
5 "summary conclusions derived from the evidence in file" with respect to
6 "the individual's capacity to sustain [each mental] activity over a
7 normal workday and workweek, on an ongoing basis." (A.R. 370.) The
8 Assessment instructs the evaluator, however, to record a "[d]etailed
9 explanation of the degree of limitation for each [of the four categories
10 of mental functioning], as well as any other assessment information
11 [he/she] deem[s] appropriate, . . . in Section III (Functional Capacity
12 Assessment)." (*Id.*)

13
14 Section II of the Assessment, entitled "Remarks," is to be
15 completed by the evaluator when there is insufficient documentation to
16 perform an accurate functional capacity assessment. (A.R. 370-71.)
17 Assuming there are no such deficiencies, the evaluator completes Section
18 III of the Assessment, entitled "Functional Capacity Assessment." In
19 it, the evaluator explains his or her summary conclusions in narrative
20 form. (A.R. 372.) Section III is to be filled out "only after the
21 Summary Conclusion section has been completed." (*Id.*; emphasis
22 omitted.)

23
24 As explained in the Social Security Program Operations Manual
25 System ("POMS"),³ "[t]he purpose of [S]ection I ('Summary Conclusion')

26
27 ³ The Ninth Circuit has recognized that while the POMS "does not
28 have the force of law," it is "persuasive authority." Warre v. Comm'r
of SSA, 439 F.3d 1001, 1005 (9th Cir. 2006).

1 . . . is chiefly to have a worksheet to ensure that the [evaluator] has
2 considered each of these pertinent mental activities and the claimant's
3 . . . degree of limitation for sustaining these activities over a normal
4 workday and workweek on an ongoing, appropriate, and independent basis."
5 POMS DI 25020.010(B)(1). Significantly, the POMS notes that "[i]t is
6 **the narrative** written by the [evaluator] **in [S]ection III** ('Functional
7 Capacity Assessment') **that adjudicators are to use as the assessment of**
8 **RFC.**" (*Id.*) Accordingly, the "[a]judicators must take the RFC
9 assessment **in [S]ection III** and decide what significance the elements
10 discussed in this RFC assessment have in terms of the [claimant]'s
11 ability to meet the mental demands of past work or other work." *Id.*
12 (emphasis in original).

13
14 In the "Understanding and Memory" portion of Section I, Dr.
15 Williams found plaintiff to be: "Moderately Limited" in her ability to
16 understand and remember detailed instructions; and "Not Significantly
17 Limited" in her ability to understand very short and simple instructions
18 and remember locations and work-like procedures. (A.R. 370.)

19
20 In the "Sustained Concentration and Persistence" portion of Section
21 I, Dr. Williams found plaintiff to be "Moderately Limited" in her
22 ability to carry out detailed instructions, and "Not Significantly
23 Limited" in her ability to: carry out very short and simple
24 instructions; sustain an ordinary routine without special supervision;
25 and perform activities within a schedule, maintain regular attendance,
26 and be punctual within customary tolerances. (*Id.*) He also found
27 plaintiff to have "No Evidence of Limitation" in her ability to: (1)
28 maintain attention and concentration for extended periods; (2) work in

1 coordination with or proximity to others without being distracted by
2 them; (3) make simple work-related decisions; and (4) "complete a normal
3 workday and workweek without interruptions from psychologically based
4 symptoms and to perform at a consistent pace without an unreasonable
5 number and length of rest periods." (A.R. 370-71.)

6
7 In the "Social Interaction" portion of Section I, Dr. Williams
8 found plaintiff to be "Not Significantly Limited" in her ability to:
9 ask simple questions or request assistance; maintain socially
10 appropriate behavior; and adhere to basic standards of neatness and
11 cleanliness. (A.R. 371.) Dr. Williams also found plaintiff to have "No
12 Evidence of Limitation" in her ability to: interact appropriately with
13 the general public; accept instructions and respond appropriately to
14 criticism from supervisors; and get along with coworkers or peers
15 without distracting them or exhibiting behavioral extremes. (*Id.*)

16
17 Finally, in the "Adaptation" portion of Section I, Dr. Williams
18 found plaintiff to be: "Moderately Limited" in her ability to set
19 realistic goals or make plans independently of others; and "Not
20 Significantly Limited" in her ability to be aware of normal hazards and
21 take appropriate precautions, and to travel in unfamiliar places or use
22 public transportation. He also found "No Evidence of Limitation" in
23 plaintiff's ability to respond appropriately to changes in the work
24 setting. (*Id.*)

25
26 After completing Section I and finding no deficiencies in Section
27 II, Dr. Williams completed Section III of the Assessment. Dr. Williams
28 opined, *inter alia*, that plaintiff can relate adequately, keep

1 appointments, and perform unskilled work that involves working with the
2 public. (A.R. 372.)

3
4 Contrary to plaintiff's contention, the ALJ committed no reversible
5 error in considering the opinion of Dr. Williams. In his decision, the
6 ALJ specifically referred to Dr. Williams' April 7, 2008 Assessment.
7 (A.R. 13, 18.) The ALJ noted, for example, that Dr. Williams found
8 plaintiff to be "moderately limited in her ability to understand,
9 remember and carry out detailed instructions and set realistic goals or
10 make plans independently of others." (A.R. 13.) The ALJ also noted
11 that Dr. Williams "rated [plaintiff] as having restrictions and/or
12 limitations in the broad areas of functioning under the 'B' criteria of
13 Listings 12.04 and 12.09 to include mild limitations in daily living
14 activities and social functioning but moderate limitations in
15 concentration and no episodes of decompensation." (*Id.*) Further, the
16 ALJ specifically noted that "Dr. Williams did not find any evidence of
17 [plaintiff] having limitations in the area of responding appropriately
18 to supervision and co-workers and usual work situations or in dealing
19 with changes in routine work settings." (*Id.*)

20
21 Although the ALJ clearly considered the opinion of Dr. Williams in
22 assessing plaintiff's RFC, he ultimately gave more "considerable weight"
23 to the conclusions reached by plaintiff's treating physician, Elizabeth
24 Leonard, M.D., after plaintiff "bec[a]me clean and sober."⁴ (A.R. 16.)
25 As noted in the ALJ's decision, beginning in March 2008, plaintiff's

26
27 ⁴ The ALJ also noted that he gave weight to the program
28 consultant's functional assessment of plaintiff to the extent it was
consistent with that of Dr. Leonard. (A.R. 16.)

1 symptoms began to improve as plaintiff became more compliant with her
2 medication regime and stayed sober from alcohol and drugs. (A.R. 11.)
3 By April 30, 2008, plaintiff's "thoughts were noted as logical and
4 [plaintiff] denied having acute depressive or anxious symptoms." (A.R.
5 13.) On July 23, 2008, plaintiff's symptoms were "increasingly under
6 control; and, on April 9, 2009[,] Dr. Leonard noted that [plaintiff]'s
7 symptoms were increasingly under control; [and her] appearance, affect,
8 moods, attention, and speech were entirely appropriate. [Dr. Leonard]
9 also added that there was 'no psychosis, no substance abuse' "
10 (*Id.*) Accordingly, based on Dr. Leonard's later treatment records --
11 records which reflect plaintiff's improved condition when she complied
12 with her medication regime and did not abuse substances in and following
13 March 2008 -- the ALJ determined that plaintiff has the RFC to perform
14 medium work but is "moderately limited in her ability to understand,
15 remember, and carryout [sic] detailed instructions and set realistic
16 goals or make plans independently of others."⁵ (A.R. 16.)

17
18 Plaintiff claims that the ALJ committed error by failing to include
19 in his assessment of plaintiff's RFC the above described areas in which
20 Dr. Williams found plaintiff to be "Not Significantly Limited." As an
21 initial matter, the ALJ properly gave greater weight to records from
22 plaintiff's treating source, Dr. Leonard, in assessing plaintiff's RFC.
23 Dr. Leonard's treatment records -- which either postdate or do not
24 appear to have been considered by Dr. Williams -- reflect plaintiff's
25 improved condition after becoming sober and complying with her
26

27
28 ⁵ The ALJ also found that plaintiff was "able to frequently perform gross hand and fine motor finger movements." (A.R. 16.)

1 medication regime.⁶ Moreover, even assuming *arguendo* that the ALJ
2 committed error in failing to include in his assessment of plaintiff's
3 RFC the Section I areas of the Assessment in which Dr. Williams found
4 plaintiff to be "Not Significantly Limited," any such error was
5 harmless. In Section III of the Assessment -- the section which the
6 POMS directs the ALJ to use in assessing plaintiff's RFC -- Dr. Williams
7 specifically found that plaintiff was capable of performing unskilled
8 work with the public, notwithstanding her mental limitations. As such,
9 and as noted by the ALJ,⁷ Dr. Williams' finding is not inconsistent with
10 the ALJ's determination that plaintiff can perform her past relevant
11 work as a housekeeper. Accordingly, the ALJ committed no reversible
12 error in his consideration of the opinion of Dr. Williams.

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24 ⁶ Significantly, as noted *supra*, Dr. Williams found that
25 plaintiff's symptoms were either reduced or eliminated when she complied
with her medication regime and did not abuse substances.

26 ⁷ In finding plaintiff capable of performing her past relevant
27 work, the ALJ noted that plaintiff "demonstrates the ability to work
28 with supervision and others as co-workers and to deal with others in a
changing work setting." (A.R. 18.) The ALJ specifically noted that
"[t]his pattern of behavior is also consistent with the findings of Dr.
Williams . . . who found no limitations in th[is] specific area." (*Id.*)

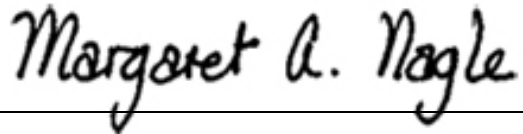
1 **CONCLUSION**

2
3 For the foregoing reasons, the Court finds that the Commissioner's
4 decision is supported by substantial evidence and is free from material
5 legal error. Neither reversal of the Commissioner's decision nor remand
6 is warranted.

7
8 Accordingly, IT IS ORDERED that Judgment shall be entered affirming
9 the decision of the Commissioner of the Social Security Administration.
10 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of
11 this Memorandum Opinion and Order and the Judgment on counsel for
12 plaintiff and for the Commissioner.

13
14 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

15
16 DATED: February 8, 2012

17
18 

19 MARGARET A. NAGLE
20 UNITED STATES MAGISTRATE JUDGE