



1 to walking 200 yards at a time, standing 1 hour at a time, and sitting 2 to 3 hours at a  
2 time. (AR 13, 44-45.) Plaintiff alleges that his symptoms include depression, panic  
3 attacks, night sweats, fatigue, and dizziness. (AR 13, 37.)

4 The ALJ found that Plaintiff's statements concerning his symptoms and limitations  
5 were not credible to the extent they were inconsistent with a residual functional capacity  
6 ("RFC") for a limited range of light work.<sup>1/</sup> (AR 12-15.) In finding Plaintiff less than fully  
7 credible, the ALJ noted that Plaintiff's complaints of fatigue and other reported  
8 debilitating symptoms related to HIV were unsupported by the objective medical  
9 evidence. (AR 13-15.) While subjective symptom testimony may not be rejected on the  
10 sole ground that it was not fully corroborated by objective medical evidence, the medical  
11 evidence was still a relevant factor in determining the severity of Plaintiff's pain and  
12 symptoms. *See* 20 C.F.R. § 416.929(c)(2); *Rollins v. Massanari*, 261 F.3d 853, 857 (9th  
13 Cir. 2001) (objective medical evidence may not be sole reason for discounting credibility  
14 but is nonetheless a legitimate and relevant factor to be considered in assessing  
15 credibility). Here, the ALJ found that the relevant treatment records consistently  
16 documented Plaintiff's HIV as stable. (AR 13-14, 162, 165, 166, 208, 306, 308-09, 311,  
17 314-16.) Lab tests also showed that Plaintiff's HIV was controlled with antiretroviral  
18 medication therapy. (AR 13-14, 138, 144, 157, 159, 248-49, 251, 254, 256-57, 263-64,  
19 268-69, 273-74, 278-79, 282-83, 286-87, 299-300, 353-54.) In addition, a physical  
20 examination of Plaintiff conducted in August 2010 by a consultative internist was  
21 generally unremarkable. (AR 14, 323-27.) In sum, the conflict between Plaintiff's  
22 subjective complaints and the objective medical evidence supported the ALJ's adverse  
23 credibility determination. *See, e.g., Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d

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25 <sup>1/</sup> Specifically, the ALJ determined that Plaintiff is capable of the following: lifting,  
26 carrying, pushing and pulling 20 pounds occasionally and 10 pounds frequently; standing  
27 and/or walking 6 hours in an 8-hour workday; sitting 6 hours in an 8-hour workday;  
28 climbing ramps and stairs occasionally; and balancing, stooping, kneeling, crouching, and  
crawling frequently. (AR 12.) The ALJ further found that Plaintiff is able to perform  
routine and repetitive work, but is precluded from climbing ladders, ropes or scaffolds,  
and must avoid all exposure to hazards, fumes, dust, and biological/chemical hazards.  
(AR 12.)

1 595, 600 (9th Cir. 1999) (ALJ may properly rely on conflict between claimant’s  
2 testimony of subjective complaints and objective medical evidence in the record); *see*  
3 *also Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)  
4 (explaining that impairments that can be controlled effectively with medication are not  
5 disabling for purposes of determining eligibility for benefits); *Tidwell v. Apfel*, 161 F.3d  
6 599, 601-02 (9th Cir. 1999) (in assessing claimant’s credibility, the ALJ did not err in  
7 considering that medication aided the claimant’s symptoms).

8         The ALJ also properly cited Plaintiff’s ability to participate in normal daily  
9 activities, which included cooking, performing housework, grocery shopping, driving,  
10 maintaining his personal care, taking care of his finances and going for short walks. (AR  
11 13, 323, 329.) The ALJ explained that some of the physical and mental abilities and  
12 social interactions associated with Plaintiff’s daily activities were the same as those  
13 necessary for obtaining and maintaining employment. (AR 13.) Although the level of  
14 Plaintiff’s activities may not suggest an automatic inference that Plaintiff is capable of  
15 working, Plaintiff’s activities were at odds with his testimony describing extremely  
16 limited functioning. (AR 44-45.) The inconsistency between Plaintiff’s testimony  
17 describing extreme functional limitations and his admitted daily activities constituted a  
18 specific, clear and convincing reason for finding Plaintiff’s subjective complaints less  
19 than fully credible.(AR 13); *see Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219,  
20 1227 (9th Cir. 2009) (ALJ may consider inconsistencies between the claimant’s  
21 testimony and her conduct, daily activities, and other factors in reaching a credibility  
22 determination); *Curry v. Sullivan*, 925 F.2d 1127, 1130 (9th Cir. 1990) (finding that  
23 claimant’s ability to “take care of her personal needs, prepare easy meals, do light  
24 housework and shop for some groceries . . . may be seen as inconsistent with the presence  
25 of a condition which would preclude all work activity”).

26         Accordingly, Plaintiff is not entitled to a reversal or remand based upon Issue #1.

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1 **Issue #2**

2 Plaintiff contends that the ALJ improperly rejected the opinion of his treating  
3 physician, Ryan Zane, M.D. (JS 12-16.) In June 2010, Dr. Zane assessed Plaintiff's  
4 ability to do work-related activities by completing a two-page HIV questionnaire  
5 physician statement form. (AR 203-08.) Dr. Zane reported on Plaintiff's most recent lab  
6 results and indicated that Plaintiff appeared chronically ill and visibly fatigued due to  
7 HIV and depression. (AR 207-08.) Dr. Zane opined that Plaintiff was limited to lifting  
8 and carrying 10 pounds occasionally and less than 10 pounds frequently, standing and  
9 walking less than 2 hours at a time, and sitting 6 hours at a time. (AR 207.) When asked  
10 how long these findings and limitations had been present, Dr. Zane responded, "Pt. states  
11 limitation since Feb/2008." (AR 207.) And, when asked to describe the objective findings  
12 to support the assessed limitations, Dr. Zane responded, "Patient's HIV is controlled with  
13 H.A.A.R.T. [medication]." (AR 208.) Dr. Zane also checked a box on the physician  
14 statement form to indicate that there were findings of a diagnosed mental impairment.  
15 (AR 208.) However, when asked for a description of the signs supporting the diagnosis,  
16 Dr. Zane failed to give a response. (AR 208.)

17 The ALJ permissibly rejected the extreme functional limitations assessed by Dr.  
18 Zane in the HIV questionnaire physician's statement, as unsupported by the objective  
19 medical evidence. (AR 14-15); *see Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir.  
20 2005) (noting that an ALJ need not accept a physician's opinion that is brief, conclusory  
21 and inadequately supported by clinical findings); *Batson v. Comm'r of Soc. Sec. Admin.*,  
22 359 F.3d 1190, 1195 (9th Cir. 2004) (holding that the ALJ did not err in giving "minimal  
23 evidentiary weight" to controverted treating source opinions that were "in the form of a  
24 checklist," and lacked supportive objective medical findings). Dr. Zane failed to provide  
25 adequate explanation to substantiate his assertions that Plaintiff has disabling functional  
26 limitations, and his treatment notes lacked substantive medical findings to support his  
27 conclusions. As discussed above and acknowledged by Dr. Zane himself, Plaintiff's HIV  
28 was controlled with antiretroviral medication. (AR 13-14, 138, 144, 157, 159, 162, 165,

1 166, 208, 248-49, 251, 254, 256-57, 263-64, 268-69, 273-74, 278-79, 282-83, 286-87,  
2 299-300, 306, 308-09, 311, 314-16, 353-54.) Moreover, the ALJ noted that Dr. Zane  
3 appeared to have based his opinion on Plaintiff's subjective complaints. (AR 15, 207.)  
4 This finding is supported by the HIV questionnaire physician statement. (AR 207.)  
5 Because the present record supports the ALJ's decision to discount Plaintiff's credibility,  
6 as discussed above, the ALJ properly disregarded Dr. Zane's opinion, to the extent it was  
7 premised on Plaintiff's subjective complaints. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149  
8 (9th Cir. 2001); *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989). Thus, the record does  
9 not support Dr. Zane's conclusion that Plaintiff's impairments caused the extreme  
10 functional limitations assessed. *Bayliss*, 427 F.3d at 1217.

11 Plaintiff asserts that the ALJ had a duty to recontact Dr. Zane to ascertain the basis  
12 for his opinion or to obtain additional evidence. (JS 15.) This contention lacks merit. The  
13 ALJ's "duty to develop the record further is triggered only when there is ambiguous  
14 evidence or when the record is inadequate to allow for proper evaluation of the evidence."  
15 *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). Dr. Zane's opinion was not  
16 ambiguous. He was asked to identify medical or clinical findings supporting his opinion,  
17 but failed to do so. (AR 207-08.) The record was also not inadequate to allow for proper  
18 evaluation of Dr. Zane's functional capacity assessment. The record contained numerous  
19 treatment records describing Plaintiff's HIV condition as stable and well controlled. (AR  
20 138, 144, 157, 159, 162, 165, 166, 208, 248-49, 251, 254, 256-57, 263-64, 268-69, 273-  
21 74, 278-79, 282-83, 286-87, 299-300, 306, 308-09, 311, 314-16, 353-54.) Under these  
22 circumstances, the ALJ did not commit legal error by failing to recontact Dr. Zane. *See*  
23 *Mayes*, 276 F.3d at 459-460 (rejecting the argument that the ALJ breached his duty to  
24 develop the record as an impermissible attempt to shift the burden of proving disability  
25 away from the claimant).

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Accordingly, Plaintiff is not entitled to a reversal or remand based upon Issue #2.

**ORDER**

The Court finds that the ALJ's determination of non-disability is free of legal error and supported by substantial evidence in the record. Therefore, Plaintiff's request for an order directing the payment of benefits or remanding this case for further proceedings is DENIED, and the Commissioner's request for an order affirming the Commissioner's final decision and dismissing the action is GRANTED. The clerk shall enter judgment, close the file and terminate all pending motions.

DATED: June 16, 2014

  
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ARTHUR NAKAZATO  
UNITED STATES MAGISTRATE JUDGE