

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

LASHELLE M. MARTIN,)	CV 13-02392-SH
)	
Plaintiff,)	MEMORANDUM DECISION
)	AND ORDER
v.)	
)	
CAROLYN W. COLVIN, Commissioner,)	
Social Security Administration,)	
)	
Defendant.)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying plaintiff’s application for Social Security Disability Insurance Benefits pursuant to Title II of the Social Security Act. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the undersigned. The action arises under 42 U.S.C. § 405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. Plaintiff and Defendant have filed their pleadings (Plaintiff’s Memorandum of Points and Authorities; Defendant’s Brief

1 in Opposition [“Defendant’s Brief”]; Plaintiff’s Reply Memorandum), and the
2 defendant has filed the certified transcript of record.

3 On July 12, 2010, plaintiff Lashelle Marie Martin filed an application for
4 a period of disability, Disability Insurance Benefits, and Supplemental Security
5 Income, alleging an inability to work since July 1, 2010. (See Administrative
6 Record [“AR”] 135-150, 162). Plaintiff’s claim was denied initially on
7 September 27, 2010, and upon reconsideration on February 23, 2011. (See AR
8 66, 78). On April 25, 2011, Plaintiff requested a hearing before an
9 Administrative Law Judge (“ALJ”). (See AR 87). On May 31, 2012, following
10 an administrative hearing (see AR 28), the ALJ determined that Plaintiff suffered
11 from the following severe impairments: status post open reduction and internal
12 fixation of the right tibia and left proximal humerus, and mood disorder, not
13 otherwise specified. (See AR 22). However, the ALJ found that Plaintiff was
14 not disabled within the meaning of the Social Security Act. (See AR 20-23).

15 The Appeals Council denied Plaintiff’s request for review on November 8,
16 2013 (see AR 1-3), and the plaintiff filed a Complaint in this Court.

17 Plaintiff challenges the ALJ’s Decision denying benefits, solely alleging
18 that the ALJ erred in rejecting the medical opinion of Dr. Arteaga, the treating
19 physician. After reviewing the matter, the Court concludes that the decision of
20 the Commissioner should be reversed and remanded.

21 22 **II. DISCUSSION**

23 **A. The ALJ improperly rejected the treating physician’s opinion**

24 A treating physician’s opinion is generally entitled to more weight than
25 that of a physician with a lesser relationship to the claimant. See Lester v.
26 Chater, 81 F.3d 821, 830 (9th Cir. 1996); 20 C.F.R. §§ 404.1527(d), 416.927(d).
27 If the treating physician’s opinion is uncontroverted by another doctor, it may be
28

1 rejected only for “clear and convincing” reasons. Lester v. Chater, 81 F.3d 821,
2 830 (9th Cir. 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991).

3 Dr. Edna Arteaga-Hernandez was Plaintiff’s treating physician. Dr.
4 Arteaga opined that Plaintiff could not reach, handle, push, and pull “routinely”,
5 and needed to avoid any exposure to extreme heat, cold, wetness, humidity, and
6 hazards in order to avoid complications resulting from her medications or “metal
7 hardware”. (AR 335). Dr. Arteaga found that Plaintiff was limited to lifting and
8 carrying less than 10 pounds on both an occasional and frequent basis, and was
9 limited to standing and walking for less than 2 hours in an 8-hour workday, with
10 an allowance for shifting between sitting, standing, and walking. (AR 333-34).

11 The ALJ rejected Dr. Arteaga’s opinion, finding that Plaintiff has a
12 residual functional capacity (RFC)¹ of sedentary work², with the following
13 exceptions: “limited to simple routine tasks, cannot have public contact, requires
14 a cane for ambulation, and cannot perform overhead reaching with the left upper
15 extremity.” (AR 23). The ALJ rejected the treating physician’s findings because
16 “Dr. Arteaga’s physical and mental functional assessments overstate the
17 claimant’s limitations when compared to the objective medical findings and the
18 claimant’s description of her current activities of daily living.” (AR 26).

19 Plaintiff asserts that the ALJ failed to provide “clear and convincing
20 reasons” for rejecting the treating physician’s uncontroverted opinion. (See
21 Lester v. Chater, 81 F.3d at 831). The defense responds that the ALJ was
22 entitled to dismiss the treating physician’s opinion because the opinion was
23 based on Plaintiff’s self-reports. (See Tommasetti v. Astrue, 533 F.3d 1035,
24 1041 (9th Cir. 2008) (holding that the ALJ can reject a treating physician’s

25 ¹ Residual functional capacity is what a claimant can still do despite existing exertional and
26 nonexertional limitations. (See 20 C.F.R. § 404.1545(a)(1); Valentine v. Comm’r Soc. Sec.
Admin., 574 F.3d 685 (9th Cir. 2009); Frost v. Barnhart, 314 F.3d 359, 366 (9th Cir. 2002)).

27 ² “Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting
28 or carrying articles like docket files, ledgers, and standing, with walking and standing required
occasionally.” (20 C.F.R. § 404.1567(a)).

1 opinion when the opinion is based to a large extent on claimant's self-reports
2 which have been discounted as incredible)). However, the ALJ gave no
3 indication that it had rejected the treating physician's opinion because the
4 opinion had been based on Plaintiff's self-reports. Moreover, there is no
5 indication in the record that the treating physician based her opinion on the
6 Plaintiff's self-reports. (See AR 333-38).

7 In addition, Defendant asserts that the objective medical findings are
8 incompatible with the treating physician's opinion, given that Plaintiff's June
9 2010 shoulder and knee surgery had "healed well", Plaintiff's leg had a stable
10 appearance with no acute abnormality, Plaintiff had full muscle strength in her
11 picofarad and 3/5 strength in her foot, a prior X-ray found that Plaintiff's
12 shoulder fracture had healed, and Plaintiff's prescription for pain medication had
13 not been increased for two years. (See Defendant's Brief at 7). However, the
14 ALJ did not indicate how plaintiff's medical history contradicts her physician's
15 opinion, nor did it indicate which aspects of the objective medical findings were
16 incompatible with the physician's assessment. (See Day v. Weinberger, 522
17 F.2d 1154, 1156 (9th Cir. 1975) (holding that the ALJ is forbidden from making
18 an independent medical assessment beyond that demonstrated by the record)).

19 Furthermore, although the defense asserts that the plaintiff's ability to
20 shower, cook meals, do the dishes, do laundry, and visit her neighbor was
21 incompatible with the treating physician's opinion, these daily activities are not
22 inconsistent with the treating physician's assessment that Plaintiff is limited to
23 lifting and carrying less than 10 pounds and to standing and walking for less than
24 2 hours per 8-hour workday. (See Defendant's Brief at 5).

25 "The ALJ must do more than offer his conclusions. He must set forth his
26 own interpretations and explain why they, rather than the doctors', are correct."
27 (Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988)). Here, the mere
28 assertion by the ALJ that the treating physician overstated the claimant's

1 limitations is insufficient to discredit the physician. Since the ALJ failed to
2 demonstrate that the treating physician's assessment was inconsistent with either
3 the objective medical findings or the plaintiff's description of her current
4 activities of daily living, the ALJ improperly rejected the treating physician's
5 opinion.

6
7 **III. CONCLUSION**

8 For the foregoing reasons, the Decision of the Commissioner is reversed and
9 remanded for further proceedings in accordance with this decision, pursuant to
10 Sentence 4 of 42 U.S.C. § 405(g).

11 DATED: August 11, 2014

12
13 

14 **STEPHEN J. HILLMAN**
15 **UNITED STATES MAGISTRATE JUDGE**