



1 which authorizes the Court to enter judgment upon the pleadings and transcript  
2 of the record before the Commissioner. The plaintiff and the defendant have  
3 filed their pleadings (Plaintiff’s Opening Brief [“Plaintiff’s Brief”]; Defendant’s  
4 Memorandum of Points and Authorities in Opposition to Plaintiff’s Opening  
5 Brief), and the defendant has filed the certified transcript of record. After  
6 reviewing the matter, the Court concludes that the decision of the Commissioner  
7 should be reversed and remanded.  
8

9 **II. BACKGROUND**

10 On July 19, 2011, plaintiff William Michael Kenner (“plaintiff”) filed an  
11 application for Supplemental Security Income. On July 20, 2011, plaintiff filed  
12 an application for a period of disability or Disability Insurance. Both  
13 applications alleged an inability to work since December 27, 2008. (See  
14 Administrative Record [“AR”] 161-74). On December 6, 2012 (following an  
15 administrative hearing on July 11, 2011, see AR 33-54), an Administrative Law  
16 Judge (“ALJ”) found that plaintiff had an impairment -- depression. However,  
17 the ALJ found that plaintiff did not have an impairment or combination of  
18 impairments that significantly limited (or was expected to significantly limit) the  
19 ability to perform basic work-related activities and thus did not have a severe  
20 impairment. Consequently, the ALJ determined that plaintiff was not disabled  
21 within the meaning of the Social Security Act. (See AR 16-24).

22 Following the Appeals Council’s denial of plaintiff’s request for a review  
23 of the hearing decision (AR 4-8), plaintiff filed an action in this Court.

24 Plaintiff solely alleges that the ALJ erred in finding that plaintiff did not  
25 suffer from any severe impairments.

26 For the reasons discussed below, the Court finds that the ALJ’s Decision  
27 should be reversed and remanded.  
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1 **III. DISCUSSION**

2 Plaintiff asserts that the ALJ improperly found plaintiff’s mental  
3 impairment to be non-severe, based on plaintiff’s GAF scores and medical  
4 records. Defendant asserts that the ALJ properly found that plaintiff did not have  
5 a severe impairment.

6 A severe impairment is one that significantly limits the physical or mental  
7 ability to perform basic work activities. 20 C.F.R. §§ 404.1520(c), 416.921(a);  
8 Social Security Ruling 96-3p. Basic work activities include the abilities to  
9 perform physical functions, to see, hear and speak, to understand, carry out, and  
10 remember simple instructions, to use judgement, to respond appropriately to  
11 supervision, co-workers and usual work situations, and to deal with changes in a  
12 routine work setting. 20 C.F.R. §§ 404.1521(b), 416.921(b). Plaintiff is not  
13 required to establish total disability at this level of the evaluation. Rather, the  
14 severe impairment requirement is a threshold element that plaintiff must prove in  
15 order to establish disability within the meaning of the Social Security Act.  
16 Bowen v. Yuckert, 482 U.S. 137, 146, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987);  
17 see Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999 (“The burden of proof  
18 is on the claimant as to steps one to four” ). An impairment will be considered  
19 non-severe when medical evidence establishes only a “slight abnormality or  
20 combination of slight abnormalities which would have not more than a minimal  
21 effect on the individual’s ability to work, even if age, education or work  
22 experience were specifically considered.” Social Security Ruling 85-28; Bowen  
23 v. Yuckert, supra, 482 U.S. at 153-54. “[T]he step-two inquiry is a de minimis  
24 screening device to dispose of groundless claims.” Smolen v. Chater, 80 F.3d  
25 1273, 1290 (9th Cir. 1996).

1 After discussing plaintiff's hearing testimony, plaintiff's statements in an  
2 Adult Function Report, and plaintiff's friend's statements in a Third Party  
3 Function Report, and after finding plaintiff's testimony concerning the intensity,  
4 persistence and limiting effects his symptoms not credible (and plaintiff's  
5 friend's statements not credible) to the extent they were inconsistent with the  
6 ALJ's determination about the severity of her impairment (depression), the ALJ  
7 determined that plaintiff did not have a severe mental impairment or combination  
8 of impairments based on the medical evidence in the record, including plaintiff's  
9 GAF scores, two mental status examinations, and the State agency medical  
10 consultant's opinion. (See AR 19-23). The ALJ stated: "In sum, the claimant's  
11 mental impairment, considered singly and in combination, does not significantly  
12 limit the claimant's ability to perform basic work activities. The longitudinal  
13 record does not show the level of memory problems and difficulty in activities of  
14 daily living that the claimant alleges. The claimant's mental status examinations  
15 in most part have been unremarkable. Thus, the claimant does not have a severe  
16 impairment or combination of impairments. (AR 23).

17 In making this finding, the ALJ considered four broad functional areas,  
18 known as paragraph "B criteria" -- activities of daily living; social functioning,  
19 concentration, persistence or pace; and episodes of decompensation -- and  
20 determined that since plaintiff had "no more than 'mild' limitations in any of the  
21 first three functional areas, and "'no' episodes of decompensation which have  
22 been of extended duration," his impairment was non-severe. (AR 23).

23 Contrary to plaintiff's contention (see Plaintiff's Brief at 5-7), there was  
24 no reason for the ALJ to consider plaintiff's GAF scores and a suicide attempt  
25 many months prior to the disability onset date of December 15, 2008 (see AR  
26 354, 362-63, 390-91 [on January 2, 2008, plaintiff received GAF scores of 30  
27 and 39], 389 [on January 31, 2008, plaintiff received a GAF score of 35], 387  
28 [on April 25, 2008, plaintiff received a GAF score of 60 ], and 358 [in an Initial

1 Mental Health Assessment form dated January 2, 2008, it was noted that at least  
2 thirteen days earlier plaintiff had attempted suicide by overdose)], see Vincent v.  
3 Heckler, 739 F.2d 1393, 1996 (9th Cir. 1984)(“The Secretary, however, need not  
4 discuss *all* evidence presented to her. Rather, she must explain why ‘significant  
5 probative evidence has been rejected.’”). The ALJ nonetheless erred in failing to  
6 find plaintiff’s mental impairment was severe, based on the medical record  
7 which reflects that plaintiff sought and received medical services for depression,  
8 including psychotropic medication, (A.R. 582, 471) and that plaintiff suffered  
9 low GAF scores (including a GAF score of 40 on June 4, 2009,<sup>1</sup> see AR 406,  
10 which the ALJ did not discuss<sup>2</sup>), at various times from April 6, 2009 to March  
11 19, 2012 (see AR 384-87, 394-410, 418-24, 450-67, 487-42, 558-74). Plaintiff  
12 has met his burden of showing his mental impairment was severe.

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23 <sup>1</sup> A GAF score of 31-40 indicates “[s]ome impairment in reality testing or  
24 communication (e.g., speech is at times illogical, obscure or irrelevant) or major  
25 impairment in several areas, such as work or school, family relations, judgment,  
26 thinking, or mood (e.g., depressed man avoids friends, neglects family, and is  
unable to work; child frequently beats up younger children, is defiant at home, and  
is failing at school).” See Diagnostic and Statistical Manual of Mental Disorders,  
Fourth Edition, Text Revision (“DSM-IV-TR”), 34 (2000).

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28 <sup>2</sup> The Court notes that the ALJ did address plaintiff’s GAF score of 45 on  
August 25, 2011 (see AR 22-23).

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**IV. ORDER**

For the foregoing reasons, the decision of the Commissioner should be reversed, and the matter should be remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

DATED: February 20, 2015



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STEPHEN J. HILLMAN  
UNITED STATES MAGISTRATE JUDGE