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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

KASSANDRA RAMIREZ,)	Case No. ED CV 15-01732-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
v.)	ORDER OF REMAND
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

PROCEEDINGS

On August 26, 2015, Plaintiff filed a Complaint seeking review of the denial of her application for Supplemental Security Income. (Docket Entry No. 1). The parties consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12). On January 19, 2016, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 14-15). The parties filed a Joint Position

1 Statement ("Joint Stip.") on July 6, 2016, setting forth their
2 respective positions regarding Plaintiff's claims. (Docket Entry No.
3 23).

4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15; "Orders Re: Procedures In Social
6 Security Case," filed August 31, 2015 (Docket Entry No. 8).

7
8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
9

10 On April 14, 2011, Plaintiff (through her mother Lourdes Ramirez)
11 filed an application for Supplemental Social Security Income, alleging
12 a disability since April 5, 2011. (AR 202-08). On July 16, 2013, the
13 Administrative Law Judge ("ALJ"), Jennifer A. Simmons, heard testimony
14 from Plaintiff, Plaintiff's mother Lourdes Ramirez, and vocational
15 expert Gregory Jones. (See AR 68-95). On October 10, 2013, the ALJ
16 issued a decision denying Plaintiff's application. (See AR 50-61).
17 After determining that Plaintiff had severe impairments -- "bipolar
18 disorder and findings of seizure focus on EEG"¹ -- the ALJ found
19 that Plaintiff had the residual functional capacity ("RFC")² to perform
20 a full range of work at all exertional levels with the following
21 nonexertional limitations: jobs involving simple routine tasks,
22 occasional work in a teamwork setting, occasional contact with the
23 public, no driving as a requirement, and no work at heights or around
24 open water. (AR 57-60). After finding that Plaintiff had no past
relevant work (AR 60), the ALJ found that jobs existed in significant
numbers in the national economy that Plaintiff could perform, and

25 ¹ The ALJ determined that Plaintiff's other impairments --
26 headaches, brain injury, broken pelvis, broken ankle, broken knee,
27 broken left hand, broken back, and organic mental disorder or
cognitive disorder -- were not medically determinable or were non-
severe. (See AR 52-54).

28 ² A Residual Functional Capacity is what a claimant can still
do despite existing exertional and nonexertional limitations. See 20
C.F.R. § 404.1545(a)(1).

1 therefore found that Plaintiff was not disabled within the meaning of
2 the Social Security Act. (AR 60-61).

3
4 Plaintiff requested that the Appeals Council review the ALJ's
5 decision. (AR 41-43). On May 4, 2015, the Appeals Council granted the
6 request based on the ALJ's failure to evaluate the testimony of lay
7 witness Lourdes Ramirez, and indicated that it planned to make a finding
8 of non-disability. (AR 198-201).

9
10 On July 1, 2015, after considering additional arguments and
11 evidence, the Appeals Council issued a decision denying Plaintiff's
12 application. (See AR 4-7). After making two findings -- "1. Appeals
13 Council adopts in *toto* the Administrative Law Judge's Findings 1-10.
14 The Appeals Council finds that the claimant has not been under a
15 disability from April 13, 2011, the application date, through October
16 10, 2013, the date of the hearing decision." and "2. The Appeals Council
17 accords little weight to Ms. Guadalupe-Ramirez's testimony." (AR 5), the
18 Appeals Council found that Plaintiff was not disabled within the meaning
19 of the Social Security Act. (AR 6).

20
21 The Appeals Council's decision then became the final decision of
22 the Commissioner, allowing this Court to review the decision. See 42
23 U.S.C. §§ 405(g), 1383(c).

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PLAINTIFF'S CONTENTIONS

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30 Plaintiff alleges that the Appeals Council erred in: (1) according
31 little weight to Lourdes Ramirez's testimony; and (2) rejecting the
32 global assessment functioning scores assessed by Plaintiff's treating
33 physician and the consultative examiner. (See Joint Stip. at 5-11, 18-
34 23, 27-28).

1 school, she said the school stated they did not want to do the testing
2 because Plaintiff was over 18 years old (and therefore, the school
3 denied her request to place Plaintiff in a special education class or
4 something similar in order for Plaintiff to be able to finish school).
5 When asked about a consultative examiner's notations that Plaintiff did
6 not show a lot of effort and had low test scores, she said that when
7 Plaintiff is asked too many questions Plaintiff gets very confused and
8 completely shuts up (which often happens to Plaintiff around the house).
9 (See AR 83-91).

10 After briefly summarizing Lourdes Ramirez's testimony (see AR 5),
11 the Appeals Council provided the following assessment of Lourdes
12 Ramirez's testimony:

13 In regards to the above testimony from Ms. Guadalupe-
14 Ramirez, the Council notes that the school records show that
15 the claimant received an A and B+ in English IV, B in
16 Earth/Physical Science, and an A in Economics, with an overall
17 GPA of 2.83. Records further fail to indicate any need for an
18 IEP, or special education program, and there is no indication
19 of behavioral problems at school (EX 13F). The Council
20 further notes that the claimant reports that she attends to
21 her own personal needs and hygiene, prepares simple meals,
22 exercises, does household chores such as laundry, and
23 basically reports spending time watching television, texting,
24 talking on the phone, and listening to music. Further, as
25 reference (sic) above, the claimant continued in school
26 without any apparent difficulty. As Ms. Guadalupe-Ramirez
27 testified that the claimant cannot be left alone, the
28 claimant's mother was in a position to be aware of the above
inconsistencies, which therefore diminishes the probative
nature of her testimony. Thus, the Council accords little
weight to the testimony, and adopts all of the Administrative
Law Judge's Findings 1-10.

1 (AR 5).

2
3 The Court finds that the Appeals Council did not give germane
4 reasons for finding Plaintiff's mother's testimony not credible. See
5 Carmickle v. Commissioner, 533 F.3d 1155, 1164 (9th Cir. 2008); Greger
6 v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006); Smolen v. Chater, 80
7 F.3d 1273, 1288-89 (9th Cir. 1996). The reasons given by the Appeals
8 Council simply were not "germane to" Plaintiff's mother. Dodrill v.
9 Shalala, 12 F.3d 915, 919 (9th Cir. 1993). First, the Appeals Council's
10 reliance on certain grades achieved by Plaintiff after her accident, the
11 apparent lack of a need for Plaintiff to have special educational
12 programming after her accident, and the lack of an indication that
13 Plaintiff had behavioral problems at school was improper, since
14 Plaintiff's mother did not provide testimony about Plaintiff in any of
15 those areas. Moreover, it is not clear whether the Appeals Council took
16 into account the fact that Plaintiff was not able to receive a high
17 school diploma based on her failure to pass the math portion of the
18 California exit exam (see AR 72-73) or the fact that after the accident
19 Plaintiff received poor scores in other subjects (see AR 722). Second,
20 contrary to the Appeals Council's assertion, Plaintiff's testimony about
21 her ability to perform certain daily activities was not inconsistent
22 with Plaintiff's mother's testimony. Indeed, Plaintiff's testimony --
23 she does not drive a car after failing to pass a driver's test three
24 times (AR 73); after the accident she forgets things easily, cannot
25 focus or concentrate, and gets angry easily (AR 73-74); her mom is with
26 her during the day, she does not go anywhere without her mom, and she
27 does not take the bus (AR 74-75); her mom shops for her and reminds her
28 to take her medication (AR 75; see also AR 226); she makes simple meals
like cereal, sandwiches and soups, but does not cook because she does
not use the stove due to forgetfulness to turn it off (AR 75, 77; see
also AR 225); she does not get along with and sometimes fights with her
two sisters who live at home (AR 75); she spends her day at home
watching television, listening to music, and sometimes texting her
boyfriend or going onto Facebook on the computer (AR 74-75, 77-78); her

1 condition affects her abilities to coordinate and match clothes and to
2 wash and brush her hair (AR 224-25); she needs to be reminded to bathe
3 and needs help bathing (id.); and she does laundry, but only once a
4 month and with encouragement, due to a lack of interest (AR 225-26) --
5 appears to be consistent with her mother's testimony.

6 **C. Remand Is Warranted**

7
8 The decision whether to remand for further proceedings or order an
9 immediate award of benefits is within the district court's discretion.
10 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
11 useful purpose would be served by further administrative proceedings, or
12 where the record has been fully developed, it is appropriate to exercise
13 this discretion to direct an immediate award of benefits. Id. at 1179
14 ("[T]he decision of whether to remand for further proceedings turns upon
15 the likely utility of such proceedings."). However, where, as here, the
16 circumstances of the case suggest that further administrative review
17 could remedy the Commissioner's errors, remand is appropriate. McLeod
18 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, supra,
19 211 F.3d at 1179-81.

20 Since the Appeals Council failed to properly assess Plaintiff's
21 mother's credibility, remand is appropriate. Because outstanding issues
22 must be resolved before a determination of disability can be made, and
23 "when the record as a whole creates serious doubt as to whether the
24 [Plaintiff] is, in fact, disabled within the meaning of the Social
25 Security Act," further administrative proceedings would serve a useful
26 purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th
27 Cir. 2014)(citations omitted).³

28 ³ The Court has not reached any other issue raised by
Plaintiff except to determine that reversal with a directive for the
immediate payment of benefits would not be appropriate at this time.
"[E]valuation of the record as a whole creates serious doubt that
Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,
(continued...)

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ORDER

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

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: September 9, 2016

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

³ (...continued)
1021 (2014). Accordingly, the Court declines to rule on Plaintiff's claim concerning the Appeals Council's rejection of the global assessment functioning scores assessed by Plaintiff's treating physician and the consultative examiner (see Joint Stip. at 19-23, 27-28). Because this matter is being remanded for further consideration, this issue should also be considered on remand.