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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

A.Y.V.,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,

Defendant.

Case No. 5:19-cv-01582-SHK

OPINION AND ORDER

Plaintiff A.Y.V.¹ (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of the Social Security Administration (“Commissioner,” “Agency,” or “Defendant”) denying her application for supplemental security income (“SSI”), under Title XVI of the Social Security Act (the “Act”). This Court has jurisdiction under 42 U.S.C. § 1383(c)(3), and, pursuant to 28 U.S.C. § 636(c), the parties have consented to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the Commissioner’s decision is REVERSED, and this action is REMANDED for further proceedings consistent with this Order.

¹ The Court substitutes Plaintiff’s initials for Plaintiff’s name to protect Plaintiff’s privacy with respect to Plaintiff’s medical records discussed in this Opinion and Order.

1 **I. BACKGROUND**

2 Plaintiff filed an application for SSI on March 31, 2015, alleging disability
3 beginning on February 27, 2015. Transcript (“Tr.”) 190-98.² Following a denial of
4 benefits, Plaintiff requested a hearing before an administrative law judge (“ALJ”)
5 and, on July 2, 2018, ALJ Paul Isherwood determined that Plaintiff was not
6 disabled. Tr. 21-27. Plaintiff sought review of the ALJ’s decision with the Appeals
7 Council, however, review was denied on July 15, 2019. Tr. 1-8. This appeal
8 followed.

9 **II. STANDARD OF REVIEW**

10 The reviewing court shall affirm the Commissioner’s decision if the decision
11 is based on correct legal standards and the legal findings are supported by
12 substantial evidence in the record. 42 U.S.C. § 405(g); Batson v. Comm’r Soc.
13 Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is “more
14 than a mere scintilla. It means such relevant evidence as a reasonable mind might
15 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,
16 401 (1971) (citation and internal quotation marks omitted). In reviewing the
17 Commissioner’s alleged errors, this Court must weigh “both the evidence that
18 supports and detracts from the [Commissioner’s] conclusions.” Martinez v.
19 Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

20 ““When evidence reasonably supports either confirming or reversing the
21 ALJ’s decision, [the Court] may not substitute [its] judgment for that of the ALJ.””
22 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting Batson, 359 F.3d at
23 1196); see also Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (“If the
24 ALJ’s credibility finding is supported by substantial evidence in the record, [the
25 Court] may not engage in second-guessing.”) (citation omitted). A reviewing
26

27 ² A certified copy of the Administrative Record was filed on January 22, 2020. Electronic Case
28 Filing Number (“ECF No.”) 16. Citations will be made to the Administrative Record or
Transcript page number rather than the ECF page number.

1 court, however, “cannot affirm the decision of an agency on a ground that the
2 agency did not invoke in making its decision.” Stout v. Comm’r Soc. Sec. Admin.,
3 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). Finally, a court may not
4 reverse an ALJ’s decision if the error is harmless. Burch v. Barnhart, 400 F.3d 676,
5 679 (9th Cir. 2005) (citation omitted). “[T]he burden of showing that an error is
6 harmful normally falls upon the party attacking the agency’s determination.”
7 Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

8 III. DISCUSSION

9 A. Establishing Disability Under The Act

10 To establish whether a claimant is disabled under the Act, it must be shown
11 that:

12 (a) the claimant suffers from a medically determinable physical or
13 mental impairment that can be expected to result in death or that has
14 lasted or can be expected to last for a continuous period of not less than
15 twelve months; and

16 (b) the impairment renders the claimant incapable of performing the
17 work that the claimant previously performed and incapable of
18 performing any other substantial gainful employment that exists in the
19 national economy.

20 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
21 § 423(d)(2)(A)). “If a claimant meets both requirements, he or she is ‘disabled.’”
22 Id.

23 The ALJ employs a five-step sequential evaluation process to determine
24 whether a claimant is disabled within the meaning of the Act. Bowen v. Yuckert,
25 482 U.S. 137, 140 (1987); 20 C.F.R. § 416.920(a). Each step is potentially
26 dispositive and “if a claimant is found to be ‘disabled’ or ‘not-disabled’ at any step
27 in the sequence, there is no need to consider subsequent steps.” Tackett, 180 F.3d
28 at 1098; 20 C.F.R. § 416.920. The claimant carries the burden of proof at steps one

1 through four, and the Commissioner carries the burden of proof at step five.
2 Tackett, 180 F.3d at 1098.

3 The five steps are:

4 Step 1. Is the claimant presently working in a substantially gainful
5 activity [(“SGA”)]? If so, then the claimant is “not disabled” within
6 the meaning of the [] Act and is not entitled to [SSI]. If the claimant is
7 not working in a [SGA], then the claimant’s case cannot be resolved at
8 step one and the evaluation proceeds to step two. See 20 C.F.R.
9 § 404.1520(b).[³]

10 Step 2. Is the claimant’s impairment severe? If not, then the
11 claimant is “not disabled” and is not entitled to [SSI]. If the claimant’s
12 impairment is severe, then the claimant’s case cannot be resolved at
13 step two and the evaluation proceeds to step three. See 20 C.F.R.
14 § 404.1520(c).

15 Step 3. Does the impairment “meet or equal” one of a list of
16 specific impairments described in the regulations? If so, the claimant is
17 “disabled” and therefore entitled to [SSI]. If the claimant’s
18 impairment neither meets nor equals one of the impairments listed in
19 the regulations, then the claimant’s case cannot be resolved at step
20 three and the evaluation proceeds to step four. See 20 C.F.R.
21 § 404.1520(d).

22 Step 4. Is the claimant able to do any work that he or she has
23 done in the past? If so, then the claimant is “not disabled” and is not
24 entitled to [SSI]. If the claimant cannot do any work he or she did in
25 the past, then the claimant’s case cannot be resolved at step four and
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27
28 ³ The Court has also considered the parallel regulations set forth in 20 C.F.R. § 416.920 et seq.,
when analyzing the ALJ’s denial of Plaintiff’s SSI application.

1 the evaluation proceeds to the fifth and final step. See 20 C.F.R.
2 § 404.1520(e).

3 Step 5. Is the claimant able to do any other work? If not, then
4 the claimant is “disabled” and therefore entitled to [SSI]. See 20
5 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then
6 the Commissioner must establish that there are a significant number of
7 jobs in the national economy that claimant can do. There are two ways
8 for the Commissioner to meet the burden of showing that there is other
9 work in “significant numbers” in the national economy that claimant
10 can do: (1) by the testimony of a vocational expert [(“VE”)], or (2) by
11 reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404,
12 subpt. P, app. 2. If the Commissioner meets this burden, the claimant
13 is “not disabled” and therefore not entitled to [SSI]. See 20 C.F.R. §§
14 404.1520(f), 404.1562. If the Commissioner cannot meet this burden,
15 then the claimant is “disabled” and therefore entitled to [SSI]. See id.
16 Id. at 1098-99.

17 **B. Summary Of ALJ’s Findings**

18 The ALJ found at step one, that “[Plaintiff] has not engaged in [SGA] since
19 March 31, 2015, the alleged onset date (20 CFR 416.971 et seq..” Tr. 23. At step
20 two, the ALJ found that “[Plaintiff] has the following medically determinable
21 impairments: diabetes, back pain, dizziness, and cataracts (20 CFR 416.921 et
22 seq..” Id. The ALJ added that Plaintiff “does not have an impairment or
23 combination of impairments that has significantly limited (or is expected to
24 significantly limit) the ability to perform basic work-related activities for 12
25 consecutive months; therefore, [Plaintiff] does not have a severe impairment or
26 combination of impairments (20 CFR 416.921).” Id.

27 In finding that none of Plaintiff’s impairments were severe, the ALJ
28 “considered all of [Plaintiff’s] complaints” and “[a]fter considering the evidence

1 of record,” found that Plaintiff’s “medically determinable impairments could
2 reasonably be expected to produce the alleged symptoms; however, [Plaintiff’s]
3 statements concerning the intensity, persistence, and limiting effects of these
4 symptoms are not entirely consistent with the medical evidence and other evidence
5 in the record for the reasons explained in th[e] decision.” Tr. 24.

6 The ALJ began by providing three broad reasons for rejecting Plaintiff’s
7 statements. First, the ALJ explained that “[d]espite notice, [Plaintiff] failed to
8 show up for two consultative examination[s]” and “[t]his failure to participate in
9 the consultative examination process without providing a good reason undermines
10 the consistency [Plaintiff’s] subjective complaints and alleged disability.” Id.
11 (citations omitted). The ALJ added, however, that “[a]lthough the failure or
12 refusal to take part in a consultative examination without a good reason is a basis
13 for finding [Plaintiff] is not disabled, the [ALJ] considered it as a factor in this case
14 and d[id] not base the ultimate decision in this case on this factor alone (20 CFR
15 416.918).” Id.

16 Second, the ALJ explained that Plaintiff’s “record[s] show [Plaintiff]
17 received little or no treatment for dizziness, back pain, diabetes, and cataracts” and
18 “[t]he absence of regular treatment for these impairments [is] inconsistent with the
19 alleged severity of the functional limitations imposed by the impairment and
20 diminishes the credibility of those allegations.” Tr. 25. “Accordingly, the [ALJ]
21 f[ound] that the objective medical evidence does not support the level of
22 symptomology that [Plaintiff] alleged and is inconsistent with [Plaintiff’s]
23 statements concerning the alleged intensity, persistence, and limiting effects of
24 symptoms.” Id.

25 Third, the ALJ “great weight” to the opinions of the State agency medical
26 consultants who “found that [Plaintiff] did not have any severe physical or mental
27 impairments . . . because the opinions are based on a review of the case record that
28 includes medical reports of [Plaintiff’s] particular impairments.” Tr. 26 (citations

1 omitted). The ALJ added that the consultants “have an understanding of Social
2 Security disability program policies and their evidentiary requirements” and their
3 “opinions are supported by the objective medical evidence or other medical
4 evidence.” Id. The ALJ gave these opinions great weight because Plaintiff “had
5 very minimal medical records for her alleged impairments, very infrequent, and
6 very mild findings when she did seek out treatment.” Id.

7 After providing three broad reasons for rejecting Plaintiff’s symptom
8 statements, the ALJ next addressed each of Plaintiff’s alleged symptoms
9 individually and made the following findings.

10 First, the ALJ found that Plaintiff’s diabetes was “nonsevere” because: (1)
11 “the medical evidence of record reveals mild findings”; (2) Plaintiff’s “exams for
12 her diabetes were not regular or consistent” and “showed that she did not check
13 her blood sugar, take insulin regularly, or follow recommendations for diet and
14 exercise to control her diabetes”; (3) Plaintiff “did not seek regular treatment or
15 seek consultation from a specialist for this impairment”; and (4) “the record
16 indicates no findings related to diabetes complications, such as issues with
17 increased thirst, cardiovascular disease, chronic kidney failure, foot ulcers, vision
18 loss, any end organ damage, neuropathy, or acidosis” and “no aggressive treatment
19 was recommended [or] anticipated for this condition.” Tr. 25 (citations omitted).

20 Second, the ALJ found that Plaintiff’s back pain was “nonsevere” because
21 “the record indicates mild or no findings related to back pain, such as issues with
22 bladder incontinence, progressive leg weakness, bone fracture, fever, unexplained
23 weight loss, or more than minimal stenosis, ruptured discs, nerve root irritation, or
24 degenerative changes.” Tr. 25-26. The ALJ added that “no aggressive treatment
25 was recommended or anticipated for this condition and [Plaintiff] did not seek
26 regular treatment for her back pain, seek physical therapy, or consult with
27 specialists.” Tr. 26.

28 / / /

1 Third, the ALJ found that Plaintiff's dizziness was "nonsevere" because
2 computerized tomography ("CT") scans from March 2011 and October 2015
3 "showed that there was no acute intercranial hemorrhage" and in October 2015,
4 Plaintiff "presented to the emergency room complaining of headache and
5 dizziness, but it was resolved with medication." Id. (citation omitted). The ALJ
6 added that "[t]he medical evidence of record . . . reveals unremarkable findings[,]"
7 and "mild or no findings related to dizziness, such as problems with nystagmus,
8 ringing of the ears, hearing loss, weakness, double vision, and numbness." Id. The
9 ALJ also added that "no aggressive treatment was recommended or anticipated for
10 this condition[,] " Plaintiff "did not seek out regular treatment for her dizziness or
11 consult with specialists[,] " and "[t]he source of [Plaintiff's] dizziness could be
12 uncontrolled type 2 diabetes as her records suggest." Id. (citation omitted).

13 Fourth, the ALJ found that Plaintiff's cataracts was "nonsevere" because
14 "[t]he medical evidence of record . . . reveals unremarkable findings[,] " such as '1-
15 2+ nuclear sclerotic cataracts in the left eye OU[,] " Plaintiff's "distance visual
16 acuity showed hand motion for both eyes[,] " Plaintiff "was diagnosed with mild-
17 moderate cataracts and hyperopia" and "has severely reduced vision in both
18 eyes." Id. (citing Tr. 465-67). The ALJ found, "[h]owever, [that] the amount of
19 cataracts [Plaintiff had] would not cause this amount of reduced vision" and "[t]he
20 consultative examiner noted that there was a discrepancy between the amount of
21 vision loss and the amount of pathology in each eye." Id. The ALJ added that
22 Plaintiff "did not require assistance to enter the exam room and to sit in the exam
23 chair, which suggests that [Plaintiff] may have been malingering during her eye
24 exam." Id. Finally, the ALJ added that "no aggressive treatment was
25 recommended or anticipated for this condition." Id.

26 Having found that none of Plaintiff's impairments were severe, the ALJ
27 concluded that "[Plaintiff] has not been under a disability, as defined in the . . . Act,
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1 since March 31, 2015, the date the application was filed (20 CFR 416.920(c))”
2 through July 2, 2018, the date of the decision. Tr. 27.

3 **C. Issue Presented And Parties’ Arguments**

4 In this appeal, Plaintiff raises one issue, “whether the ALJ has properly
5 considered the relevant medical evidence of record and subjective statements of
6 record in reaching the determination that Plaintiff has no severe impairment.”
7 ECF No. 21, Joint Stip. at 3 (capitalization normalized).

8 Plaintiff asserts that the ALJ’s step two finding is not supported by
9 substantial evidence because “the ALJ has failed to properly consider significant
10 medical evidence of record as well as Plaintiff’s subjective statements of record.”
11 Id. Plaintiff adds that “she is incapable of working due to a combination of poor
12 vision, arthritis, high blood pressure, and diabetes[,]” that she also “suffers from
13 weakness, dizziness, bad vision, difficulty walking, and shortness of breath.” Id. at
14 5 (citations omitted). Plaintiff also adds that “she uses a cane for support” and
15 “her prescriptive medications cause tiredness and fatigue[,]” which she listed as a
16 reason for not being able to work. Id. (citing Tr. 39, 46, 250).

17 Defendant responds that the ALJ “properly assessed Plaintiff’s statements,
18 which is the only objection Plaintiff has raised to the ALJ’s determination that
19 Plaintiff’s impairments were nonsevere.” Id. at 15. Defendant asserts that “the
20 ALJ validly determined that Plaintiff’s statements were inconsistent with the
21 evidence in the record” including “both doctors who assessed Plaintiff’s functional
22 limitations [who] agreed with the ALJ that Plaintiff’s impairments were not
23 severe.” Id. at 11 (citing Tr. 26, 71-73, 83).

24 With respect to each of the limitations Plaintiff claims were debilitating,
25 Defendant argues that “Plaintiff’s diabetes was uncontrolled not because it could
26 not be controlled, but because Plaintiff did not take adequate measures to control
27 it.” Id. at 13. Defendant also points to “none-to-mild findings related to back pain
28 in the record[,]” a lack of recommendations by doctors for more “aggressive” or

1 “regular treatment” to ameliorate Plaintiff’s conditions, the ALJ’s finding that
2 Plaintiff “‘may have been malingering during her eye exam[,]’” “the ALJ[’s]
3 observ[ation] that Plaintiff failed to show [up] for two consultative
4 examinations[,]” and that “Plaintiff’s doctors surmised that the dizziness (which
5 sometimes caused [Plaintiff] to fall) could be related to diabetes[,]” which Plaintiff
6 “did not take adequate measures to control.” *Id.* at 13-15 (citing Tr. 24-26, 692).

7 **D. Applicable Legal Standards**

8 **1. Step Two Finding**

9 An “impairment or combination of impairments” is “severe” if it
10 “significantly limits [a claimant’s] physical or mental ability to do basic work
11 activities.” 20 C.F.R. § 416.920(c). See also 20 C.F.R. §416.922(a) (“An
12 impairment or combination of impairments is not severe if it does not significantly
13 limit [a claimant’s] physical or mental ability to do basic work activities.”). “Basic
14 [physical] work activities” include: “[p]hysical functions such as walking, standing,
15 sitting, lifting, pushing, pulling, reaching, carrying, or handling;” and “[c]apacities
16 for seeing, hearing, and speaking[.]” 20 C.F.R. §416.922(b).

17 “[T]he step-two inquiry is a de minimis screening device to dispose of
18 groundless claims’; at step two, an impairment ‘can be found not severe only if the
19 evidence establishes a slight abnormality that has no more than a minimal effect on
20 an individual’s ability to work.’” *Venezia v. Berryhill*, 765 Fed. App’x 319, 320
21 (9th Cir. 2019) (unpublished mem.) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1290
22 (9th Cir. 1996)).

23 **2. Plaintiff’s Symptom Testimony**

24 When a claimant has medically documented impairments that “might
25 reasonably produce the symptoms or pain alleged and there is no evidence of
26 malingering, the ALJ must give ‘specific, clear, and convincing reasons for
27 rejecting’ the testimony by identifying ‘which testimony [the ALJ] found not
28 credible’ and explaining ‘which evidence contradicted that testimony.’” *Laborin*

1 v. Berryhill, 867 F.3d 1151, 1155 (9th Cir. 2017) (emphasis in original) (quoting
2 Brown-Hunter v. Colvin, 806 F.3d 487, 489, 494 (9th Cir. 2015). “This is not an
3 easy requirement to meet: ‘the clear and convincing standard is the most
4 demanding required in Social Security cases.’” Garrison v. Colvin, 759 F.3d 995,
5 1015 (9th Cir. 2014) (quoting Moore v. Comm’r Soc. Sec. Admin., 278 F.3d 920,
6 924 (9th Cir. 2002)).

7 “The ALJ may consider inconsistencies either in the claimant’s testimony or
8 between the testimony and the claimant’s conduct.” Molina v. Astrue, 674 F.3d
9 1104, 1112 (9th Cir. 2012). Also, while an ALJ cannot reject the severity of
10 subjective complaints solely on the lack of objective evidence, the ALJ may
11 nonetheless look to the medical record for inconsistencies. See Morgan v. Comm’r
12 Soc. Sec. Admin., 169 F.3d 595, 599-600 (9th Cir. 1999) (finding that “[t]he ALJ
13 provided clear and convincing reasons for rejecting [Plaintiff’s] testimony” by
14 “point[ing] to specific evidence in the record—including reports by [Plaintiff’s
15 doctors]—in identifying what testimony was not credible and what evidence
16 undermined [Plaintiff’s] complaints.”).

17 **E. ALJ’s Decision Is Not Supported By Substantial Evidence**

18 Here, the ALJ’s finding that Plaintiff had no severe impairments is not
19 supported by substantial evidence in the record for the following reasons.

20 First, the ALJ’s finding that Plaintiff’s subjective complaints were
21 “undermine[d]” by Plaintiff’s “fail[ure] to show up for two consultative
22 examination[s] . . . without providing a good reason[,]” is not supported by the
23 record. Tr. 24. An inspection of the transcript from the administrative hearing
24 reveals that Plaintiff’s attorney provided a good reason that Plaintiff missed her
25 consultative examinations: Plaintiff was frequently moving during the relevant time
26 period due to indigency and, consequently, Plaintiff’s counsel was unable to locate
27 Plaintiff to timely notify her of the scheduled examinations and missed
28 appointments. See Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (“[A]n

1 unexplained, or inadequately explained, failure to seek treatment . . . can cast doubt
2 on the sincerity of the claimant’s pain testimony” unless one of a “number of good
3 reasons for not doing so applies.”); see also Tr. 41-42 (Plaintiff’s counsel testifying
4 that “there’s been four different addresses at least since I’ve represented [Plaintiff]
5 [a]nd, I think that’s a big part of it . . . we had difficulty getting a hold of [Plaintiff]
6 when we had those notifications” for the consultative examinations); Tr. 48-49
7 (Plaintiff testifying that her church found her housing because Plaintiff had no
8 money and could not pay rent); Tr. 50-51 (Plaintiff testifying that “[e]ver since
9 [she] got sick, and because [she] did not have any form of income, [her] church
10 allows [her] to go ahead, and have a place to live with fellow people from the
11 church” and that Plaintiff has “had to stay with somebody else[] [s]ince 2012.”).

12 Accordingly, because the ALJ considered only evidence that Plaintiff failed
13 to appear at two consultative examinations and ignored the above discussed
14 evidence explaining Plaintiff’s reason for missing the examinations—that her
15 attorney could not timely notify Plaintiff due to her frequent moves stemming from
16 her indigency—the ALJ’s first reason for rejecting Plaintiff’s symptom statements
17 fails. See Holohan v. Massanari, 246 F.3d 1195, 1207-08 (9th Cir. 2001) (holding
18 an ALJ cannot selectively rely on some entries in plaintiff’s records while ignoring
19 others).

20 Second, the ALJ’s rejection of Plaintiff’s symptom statements due to
21 conservative treatment fails because the ALJ failed to consider the extensive
22 evidence in the record of Plaintiff’s indigency and her resulting inability to afford
23 more treatment. Id.; see also Orn v. Astrue, 495 F.3d 625, 638 (9th Cir. 2007)
24 (“ “[d]isability benefits may not be denied because of the claimant’s failure to
25 obtain treatment [s]he cannot obtain for lack of funds[]’”) (quoting Gamble v.
26 Chater, 68 F.3d 319, 321 (9th Cir. 1995)). For example, in addition to the evidence
27 of Plaintiff’s indigency discussed above, Plaintiff also testified that “gets coupons
28 for food . . . like food stamps” and that she used the “little bit of money [she had]

1 saved” and “sold all [her] gold, [and] all [her] jewelry” to pay rent and living
2 expenses before turning to her church for housing assistance. Tr. 51. Plaintiff also
3 explained that her church “help[s] match people with somebody willing to care for
4 them” by “help[ing] them find a place where they can sleep, and they can
5 bathe . . . [w]hen one does not have housing, or family, and they do not have
6 income[.]” Tr. 66. Plaintiff also testified that her church, rather than a doctor,
7 gave her a cane—which the ALJ observed Plaintiff using at the hearing—to help
8 “support [her]self with” when she “los[es] [her] equilibrium” and her “legs
9 become loose[.]” Tr. 46. Accordingly, on this record, Plaintiff’s minimal
10 treatment regime was not a valid reason for rejecting her symptom statements
11 because her lack of treatment is explainable by her indigency, which the ALJ failed
12 to consider or discuss.

13 Third, the ALJ failed to consider or discuss evidence of adverse side effects
14 caused by Plaintiff’s medication when rejecting Plaintiff’s symptom statements due
15 to her treatment being conservative. See Carmickle v. Comm’r, Soc. Sec. Admin.,
16 533 F.3d 1155, 1162 (9th Cir. 2008) (“[A]lthough a conservative course of
17 treatment can undermine allegations of debilitating pain, such fact is not a proper
18 basis for rejecting the claimant’s credibility where the claimant has a good reason
19 for not seeking more aggressive treatment[.]” such as “not tak[ing] . . . medication
20 because of adverse side effects.”) (internal citation omitted).

21 Specifically, at the administrative hearing, Plaintiff testified that the
22 medications her doctors prescribed to treat her dizziness “were making [her] feel
23 worse[.]” “very nervous[.]” and “ma[d]e [her] vomit.” Tr. 55. Plaintiff also
24 testified that she “only used [her prescribed medication for dizziness] for one
25 week” because she “couldn’t tolerate them.” Id. Plaintiff also indicated that her
26 prescribed diabetes medication made her feel “tired” and “fatigued,” and
27 Plaintiff’s counsel indicated at the administrative hearing that Plaintiff’s fatigue
28 was one of the reasons Plaintiff could not return to work. Tr. 39, 250.

