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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSHUA C.,¹

Plaintiff,

v.

ANDREW M. SAUL,
Commissioner of Social Security,
Defendant.

Case No. 5:19-cv-01706-MAA

**MEMORANDUM DECISION AND
ORDER REVERSING DECISION OF
THE COMMISSIONER AND
REMANDING FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

On September 9, 2019, Plaintiff filed a Complaint seeking review of the Social Security Commissioner's final decision denying his application for a period of disability and disability insurance benefits pursuant to Title II of the Social Security Act. This matter is fully briefed and ready for decision. For the reasons discussed below, the Commissioner's final decision is reversed, and this action is remanded for further administrative proceedings.

¹ Plaintiff's name is partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

ADMINISTRATIVE BACKGROUND

1
2 On December 7, 2015, Plaintiff protectively filed an application for a period
3 of disability and disability insurance benefits, alleging disability beginning on
4 January 7, 2015. (Administrative Record (“AR”) 15, 95, 110.) Plaintiff alleged
5 disability because of an inoperable benign tumor in the spinal cord, nerve pain
6 throughout the back, pain in the back leg, weakness in the left leg all the way to the
7 foot, numbness in the legs, and a tumor between T6-T7 of the spine. (AR 85, 97.)
8 After his claim was denied initially and upon reconsideration, Plaintiff requested a
9 hearing before an Administrative Law Judge (“ALJ”). (AR 122-25.) During a
10 hearing held on July 23, 2018, at which Plaintiff appeared with counsel, the ALJ
11 heard testimony from Plaintiff and a vocational expert. (AR 35-84.)

12 In a decision issued on August 15, 2018, the ALJ denied Plaintiff’s claim
13 after making the following findings pursuant to the Commissioner’s five-step
14 evaluation. (AR 15-29.) Plaintiff had not engaged in substantial gainful activity
15 since his alleged disability onset date of January 7, 2015 through his date last
16 insured of March 31, 2017. (AR 17.) He had severe impairments consisting of
17 thoracic astrocytoma, status-post subtotal resection; malignant neoplasm of the
18 spinal cord; and lumbar spine degenerative disc disease. (*Id.*) He did not have an
19 impairment or combination of impairments that met or medically equaled the
20 requirements of one of the impairments from the Commissioner’s Listing of
21 Impairments. (AR 21.) He had a residual functional capacity for sedentary work
22 with further limitations. (*Id.*) He could not perform his past relevant work in the
23 following occupations: pest control worker; a composite occupation of bartender
24 and delivery driver, route sales; sewer line photo inspector; a composite occupation
25 of grocery clerk and grocery stock clerk; parts clerk; and retail sales worker. (AR
26 26-27.) He could perform other work in the national economy, as an election clerk,
27 document preparer, and call out operator. (AR 28.) In sum, the ALJ concluded that
28 Plaintiff was not disabled as defined by the Social Security Act. (AR 29.)

1 On July 10, 2019, the Appeals Council denied Plaintiff's request for review.
2 (AR 1-6.) Thus, ALJ's decision became the final decision of the Commissioner.

3 4 **DISPUTED ISSUES**

- 5 1. Whether the ALJ properly evaluated the opinion evidence.
- 6 2. Whether the ALJ offered clear and convincing reasons for discounting
7 Plaintiff's subjective symptom testimony.

8 (ECF No. 16, Parties' Joint Stipulation ["Joint Stip."] at 3.)
9

10 **STANDARD OF REVIEW**

11 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's final
12 decision to determine whether the Commissioner's findings are supported by
13 substantial evidence and whether the proper legal standards were applied. *See*
14 *Treichler v. Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir.
15 2014). Substantial evidence means "more than a mere scintilla" but less than a
16 preponderance. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter*
17 *v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Substantial evidence is "such
18 relevant evidence as a reasonable mind might accept as adequate to support a
19 conclusion." *Richardson*, 402 U.S. at 401. The Court must review the record as a
20 whole, weighing both the evidence that supports and the evidence that detracts from
21 the Commissioner's conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is
22 susceptible of more than one rational interpretation, the Commissioner's
23 interpretation must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
24 2007).

25 26 **DISCUSSION**

27 For the reasons discussed below, reversal and remand for further
28 administrative proceedings are warranted for Issue Two, based on Plaintiff's

1 subjective symptom testimony. It is therefore unnecessary to address Issue One.
2 *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) (“Because we remand the
3 case to the ALJ for the reasons stated, we decline to reach [plaintiff’s] alternative
4 ground for remand.”); *see also Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d
5 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court need not address the other claims
6 plaintiff raises, none of which would provide plaintiff with any further relief than
7 granted, and all of which can be addressed on remand.”).

8
9 **I. Plaintiff’s Subjective Symptom Testimony (Issue Two).**

10 **A. Legal Standard.**

11 An ALJ must make two findings in assessing a claimant’s pain or symptom
12 testimony. SSR 16-3P, 2017 WL 5180304, at *3; *Treichler*, 775 F.3d at 1102.
13 “First, the ALJ must determine whether the claimant has presented objective
14 medical evidence of an underlying impairment which could reasonably be expected
15 to produce the pain or other symptoms alleged.” *Treichler*, 775 F.3d at 1102
16 (citation omitted). “Second, if the claimant has produced that evidence, and the ALJ
17 has not determined that the claimant is malingering, the ALJ must provide specific,
18 clear and convincing reasons for rejecting the claimant’s testimony regarding the
19 severity of the claimant’s symptoms” and those reasons must be supported by
20 substantial evidence in the record. *Id.*; *see also Marsh v. Colvin*, 792 F.3d 1170,
21 1174 n.2 (9th Cir. 2015).

22 “A finding that a claimant’s testimony is not credible ‘must be sufficiently
23 specific to allow a reviewing court to conclude the adjudicator rejected the
24 claimant’s testimony on permissible grounds and did not arbitrarily discredit a
25 claimant’s testimony regarding pain.’” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493
26 (9th Cir. 2015) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991)
27 (*en banc*)).

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1 Beginning on March 28, 2016, SSR 16-3P rescinded and superseded the
2 Commissioner’s prior rulings as to how the Commissioner will evaluate a
3 claimant’s statements regarding the intensity, persistence, and limiting effects of
4 symptoms in disability claims. *See* SSR 16-3P, 2017 WL 5180304, at *1. Because
5 the ALJ’s decision in this case was issued on August 15, 2018, it is governed by
6 SSR 16-3P. *See id.* at *13 and n.27. In pertinent part, SSR 16-3P eliminated the
7 use of the term “credibility” and clarified that the Commissioner’s subjective
8 symptom evaluation “is not an examination of an individual’s character.” SSR 16-
9 3P, 2017 WL 5180304, at *2; *see also Trevizo v. Berryhill*, 871 F.3d 664, 678 n.5
10 (9th Cir. 2017). These changes are largely stylistic and are consistent in substance
11 with Ninth Circuit precedent that existed before the effective date of SSR16-3P.
12 *See Trevizo*, 871 F.3d at 678 n.5.

13
14 **B. Background.**

15 In January 2015, an MRI of Plaintiff’s thoracic spine revealed a large mass
16 replacing much of the thoracic cord at T4 through T9. (AR 269.) He was found to
17 have a thoracic intradural intramedullary lesion with cord expansion. (AR 369.) In
18 March 2015, he underwent a T5 through T8 laminectomy with partial excision of
19 the tumor; fenestration of a spinal cord cyst from T6 through T7; and T5 through
20 T8 duraplasty. (AR 368.) Biopsy of the tumor revealed a grade 2 astrocytoma.
21 (AR 301.)

22 After the surgery, a series of MRI scans were stable or showed no evidence
23 that the tumor had progressed. (AR 330, 501, 665, 698, 706.) However, Plaintiff
24 consistently complained of pain or numbness in his back and lower extremities.
25 (AR 329, 473, 500, 555, 680, 698, 705.) He was prescribed pain medications (AR
26 502, 664, 680, 697, 705), referred to pain management for further treatment options
27 (AR 665, 681, 698, 706).

28 ///

1 At the administrative hearing, Plaintiff testified about his condition as
2 follows:

3 He spends most of his time on a reclining couch. (AR 62.) He drives once
4 or twice per week, but it is painful to do so, and he can do it for one to two and a
5 half hours at a time. (AR 41-42.) He uses a computer sparingly. (AR 43.) He can
6 sit in a chair for a couple of hours comfortably. (AR 61.) Standing is harder than
7 sitting, but keeping any position for any amount of time is painful. (*Id.*)

8 He experiences numbness and tingling throughout his body. (AR 62-63.)
9 The back surgery made his condition worse. (AR 64.) He takes Gabapentin and
10 Lyrica, but they cause side effects that feel like dementia symptoms. (AR 65.)

11 He lives with his parents. (AR 73.) He does some light housework such as
12 vacuuming, sweeping, and watering the yard. (*Id.*) He can perform his own
13 personal care. (AR 73-74.)

14 15 **C. Analysis.**

16 The ALJ first found that Plaintiff's medically determinable impairments
17 could reasonably be expected to cause the alleged symptoms. (AR 22-23.)
18 However, the ALJ next found that Plaintiff's statements concerning the intensity,
19 persistence, and limiting effects of these symptoms were not entirely consistent
20 with the medical evidence and other evidence in the record. (AR 23.) The ALJ
21 stated two reasons for his findings, which the Court considers in turn.

22 23 **1. Improvement in chronic pain syndrome.**

24 The ALJ found that "in September 2016, [Plaintiff's] primary care physician
25 reported [Plaintiff's] chronic pain syndrome had improved." (AR 23.) The report
26 at issue was written by Plaintiff's primary care physician, Dr. Sharma. (AR 843.)

27 Evidence of improvement in physical pain that is "only partial and short-
28 lived," is "only variable," or lasts for "brief periods of time" is not a clear and

1 convincing basis to reject a claimant’s pain testimony. *See Garrison v. Colvin*, 759
2 F.3d 995, 1015 (9th Cir. 2014). Here, Dr. Sharma’s September 2016 report of
3 improvement in Plaintiff’s chronic pain syndrome was not substantial evidence
4 showing, clearly and convincingly, that Plaintiff’s pain had been alleviated
5 sufficiently such that his testimony regarding pain was incredible.

6 Dr. Sharma’s September 2016 report was the only evidence suggesting some
7 improvement in Plaintiff’s pain, but the record on the whole does not contain
8 substantial evidence that any such improvement was significant. At Plaintiff’s next
9 visit with Dr. Sharma, six months later, Plaintiff complained of pain in his back that
10 was “aching/stinging/burning.” (AR 846.) And near the time of Dr. Sharma’s
11 September 2016 report, Plaintiff consistently complained to his other physicians of
12 continuous and severe pain in his back and lower extremities, despite taking
13 prescription pain medications. (AR 697 [May 2016], 664 [August 2016], 680
14 [November 2016].) Given this medical record as a whole, which the Court is
15 required to consider, *see Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir.
16 2001), Dr. Sharma’s single, September 2016 report was not a clear and convincing
17 reason based on substantial evidence to reject Plaintiff’s subjective symptom
18 testimony.

19 20 **2. Imaging studies and examinations.**

21 The ALJ also found that “imaging studies of the thoracic spine have been
22 stable with no disease progression” (AR 23) and found that physical examinations
23 resulted in some “normal” findings (*id.*). These objective medical findings cannot
24 be the sole basis for rejecting Plaintiff’s subjective symptom testimony. *See*
25 *Bunnell*, 947 F.2d at 345 (“[O]nce the claimant produces objective medical
26 evidence of an underlying impairment, an adjudicator may not reject a claimant’s
27 subjective complaints based solely on a lack of objective medical evidence to fully
28 corroborate the alleged severity of pain.”); *see also* SSR 16-3P, 2017 WL 5180304,

1 at *5; 20 C.F.R. § 404.1529(c)(2) (2011). Thus, this sole remaining reason based
2 on the objective medical evidence, by itself, is insufficient to reject Plaintiff's
3 subjective symptom testimony. See *Robbins v. Social Sec. Admin.*, 466 F.3d 880,
4 884 (9th Cir. 2006) (citing *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
5 1997)).

6 7 **D. Conclusion.**

8 The ALJ's stated reasons for rejecting Plaintiff's subjective symptom
9 testimony were not clear and convincing reasons based on substantial evidence.
10 Although the Commissioner states additional possible reasons for discounting
11 Plaintiff's subjective symptom testimony, such as the supposedly conservative
12 nature of Plaintiff's treatment (Joint Stip. at 30), these reasons were not stated by
13 the ALJ. Thus, the Court cannot review them. See *Burrell v. Colvin*, 775 F.3d
14 1133, 1139 (9th Cir. 2014) ("Although the ALJ made findings . . . concerning
15 Claimant's treatment . . ., he never stated that he rested his adverse credibility
16 determination on those findings."). In sum, reversal is warranted.

17 18 **II. Remand for Further Administrative Proceedings.**

19 "A district court may reverse the decision of the Commissioner of Social
20 Security, with or without remanding the cause for a rehearing, but the proper
21 course, except in rare circumstances, is to remand to the agency for additional
22 investigation of explanation." *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir.
23 2015) (internal citations and quotation marks omitted).

24 This case does not present rare circumstances that would warrant a remedy
25 other than a remand to the agency for further proceedings. Outstanding factual
26 issues remain, such that further administrative proceedings would be useful. See
27 *Leon v. Berryhill*, 880 F.3d 1041, 1046 (9th Cir. 2017) (citing *Treichler*, 775 F.3d
28 at 1101). For example, the ALJ cited objective medical evidence that showed

1 Plaintiff's spine was stable and did not show disease progression. (AR 23-24.)
2 Although, as discussed above, this objective medical evidence was insufficient by
3 itself to reject Plaintiff's subjective symptom testimony, it nonetheless was
4 sufficient to suggest an ambiguity or a conflict with that testimony, such that further
5 administrative proceedings would be useful. *See Treichler*, 775 F.3d at 1103-04
6 (holding that although an ALJ erred in assessing a claimant's testimony, a conflict
7 between that testimony and the objective medical evidence warranted remand for
8 further proceedings). Accordingly, this case "should be resolved through further
9 proceedings on an open record before a proper disability determination can be made
10 by the ALJ in the first instance." *See Brown-Hunter*, 806 F.3d at 496.

11 Therefore, based on its review and consideration of the entire record, the
12 Court has concluded on balance that a remand for further administrative
13 proceedings pursuant to sentence four of 42 U.S.C. § 405(g) is warranted here. It is
14 not the Court's intent to limit the scope of the remand.

15
16 **ORDER**

17 It is ordered that Judgment be entered reversing the final decision of the
18 Commissioner of Social Security and remanding this matter for further
19 administrative proceedings.

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21 DATED: December 4, 2020

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23 
24 _____
25 MARIA A. AUDERO
26 UNITED STATES MAGISTRATE JUDGE
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