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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARY ANN J.,¹)	NO. EDCV 19-1955-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
ANDREW SAUL, Commissioner of Social Security,)	
Defendant.)	

INTRODUCTION

Mary Ann J. (“Plaintiff”) filed a Complaint on October 11, 2019, seeking review of the denial of her application for Supplemental Security Insurance (“SSI”). (Dkt. No. 1.) On November 19, 2019, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13.) On July 7, 2020, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 19.) Plaintiff seeks an order reversing and remanding for immediate award of benefits. (Joint Stip. at 15.) The Commissioner requests that the ALJ’s decision be affirmed or, in the alternative, remanded for further

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 proceedings. (*Id.* at 15-16.) The Court has taken the matter under submission without oral
2 argument.

4 SUMMARY OF PRIOR PROCEEDINGS

5
6 On June 24, 2016, Plaintiff, who was born on July 30, 1961, filed an application for
7 SSI.² (*See* Administrative Record (“AR”) 25, 165-69.) Plaintiff alleged that she was unable
8 to work as of May 1, 2005, due to seizures, blood clots, asthma, and high cholesterol. (AR
9 165, 169.) Plaintiff’s onset date was later amended to June 24, 2016, the date of her SSI
10 application.³ She had not previously worked. (AR 25.) After the Commissioner initially
11 denied Plaintiff’s application and reconsideration thereof (AR 51-59, 61-74), Plaintiff
12 requested a hearing. (AR 87-101.) Administrative Law Judge Katherine Loo (the “ALJ”) held
13 a hearing on November 20, 2018. (AR 32.) Plaintiff and a vocational expert testified. (AR
14 36-49.) On December 27, 2018, the ALJ issued an unfavorable decision. (AR 12-26.) On
15 August 15, 2019, the Appeals Council denied Plaintiff’s request for review. (AR 1-6.)
16

17 SUMMARY OF ADMINISTRATIVE DECISION

18
19 The ALJ found that Plaintiff had not engaged in substantial gainful activities since June
20 24, 2016, the amended alleged disability onset date. (AR 17.) She determined that Plaintiff
21 had the following severe impairments: seizure disorder; history of deep vein thrombosis
22 (DVT); hypertension; chronic obstructive pulmonary disease (COPD); bilateral carpal tunnel
23 syndrome (CTS); morbid obesity; depression; and posttraumatic stress disorder (PTSD). (*Id.*)
24

25 ² Plaintiff was 54 years old at the time she filed her SSI application and thus met the agency’s definition of a person
26 “closely approaching advanced age.” *See* 20 C.F.R. § 416.963(d). She has since changed age category to a person of
“advanced age.” *See* 20 C.F.R. § 416.963(e).

27 ³ SSI benefits are not available retroactively, so as a practical matter, the earliest disability date that may be claimed
28 for purposes of SSI benefits is the protective filing date of a claimant’s application. *See* 20 C.F.R. § 416.501. Here,
Plaintiff does not rely on any effective protective filing date prior to June 24, 2016; thus, the earliest date she can be eligible
for SSI benefits is June 24, 2016, the date she filed her application.

1 After specifically considering listings 12.04 and 12.15, the ALJ concluded that Plaintiff did
2 not have an impairment or combination of impairments that met or medically equaled the
3 severity of an impairment listed in 20 C.F.R. part 404, subpart P, appendix 1 (20 C.F.R.
4 §§ 416.920(d), 416.925, 416.926). (AR 18.) The ALJ determined that Plaintiff had the
5 residual functional capacity (“RFC”) to perform medium work with the following
6 modifications:

7
8 “[She could] frequently climb ramps and stairs as well as stoop; occasionally
9 kneel, crouch and crawl; frequently reach, handle, finger and feel; avoid
10 concentrated exposure to respiratory irritants; no work at heights or around
11 hazardous machinery; no climbing of ladders, ropes or scaffolds’ limited to simple
12 routine tasks; can maintain concentration, persistence and pace for two hour
13 increments with normal breaks; as well as occasionally interact with coworkers,
14 supervisors and the public.”

15
16 (AR 19.) The ALJ found that Plaintiff had no past relevant work. (AR 25.) She then
17 determined that, based on the vocational expert’s testimony, and considering Plaintiff’s age,
18 education, work experience, and RFC, there were jobs that existed in significant numbers in
19 the national economy that Plaintiff could perform, including the jobs of stores laborer (DOT⁴
20 922.687-058), bagger (DOT 920.687-018), and checker/laundry sorter (DOT 369.687-014).
21 (AR 25-26.) Accordingly, the ALJ determined that Plaintiff had not been under a disability,
22 as defined in the Social Security Act, from the amended onset date through the date of the
23 ALJ’s decision. (AR 26.)

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28 ⁴ “DOT” refers to the *Dictionary of Occupational Titles*.

1 **STANDARD OF REVIEW**

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3 This Court reviews the Commissioner’s decision to determine whether it is free from
4 legal error and supported by substantial evidence in the record as a whole. 42 U.S.C. § 405(g);
5 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is ‘more than a mere
6 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might
7 accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519,
8 522-23 (9th Cir. 2014) (citation omitted). “Even when the evidence is susceptible to more
9 than one rational interpretation, [the Court] must uphold the ALJ’s findings if they are
10 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
11 1110 (9th Cir. 2012).

12
13 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
14 nonetheless must review the record as a whole, “weighing both the evidence that supports and
15 the evidence that detracts from the Commissioner’s conclusion.” *Reddick v. Chater*, 157 F.3d
16 715, 720 (9th Cir. 1988). “The ALJ is responsible for determining credibility, resolving
17 conflicts in medical testimony, and for resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d
18 1035, 1039 (9th Cir. 1995). The Court will uphold the Commissioner’s decision when the
19 evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d
20 676, 679 (9th Cir. 2005). However, the Court may review only the reasons stated by the ALJ
21 in her decision “and may not affirm the ALJ on a ground upon which [s]he did not rely.” *Orn*,
22 495 F.3d at 630. The Court will not reverse the Commissioner’s decision if it is based on
23 harmless error, which exists if the error is “‘inconsequential to the ultimate nondisability
24 determination,’ or if despite the legal error, ‘the agency’s path may reasonably be discerned.’”
25 *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (citations omitted).

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1 conclusory, and inadequately supported by clinical findings” or “by the record as a whole.”
2 *See Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Alternatively,
3 “[i]f a treating or examining doctor’s opinion is contradicted by another doctor’s opinion, an
4 ALJ may only reject it by providing specific and legitimate reasons that are supported by
5 substantial evidence.” *Trevizo*, 871 F.3d at 675. “The ALJ can meet this burden by setting
6 out a detailed and thorough summary of the facts and conflicting clinical evidence, stating
7 [her] interpretation thereof, and making findings.” *Id.* (quoting *Magallanes v. Bowen*, 881
8 F.2d 747, 751 (9th Cir. 1989)).

9 10 **II. The Opinion Evidence**

11
12 On either June 21, 2011 or June 21, 2018,⁵ Dharamkumar Wilson Gomer, M.D., a
13 specialist in internal medicine and Plaintiff’s treating physician, completed a “Medical
14 Opinion Re: Ability to Do Work-Related Activities (Physical).” (AR 471-73.) Dr. Gomer
15 opined that Plaintiff could not lift more than 10 pounds occasionally or frequently; could only
16 walk less than 2 hours during an 8-hour day (with normal breaks); and could sit and/or stand
17 for no more than 15 minutes before changing position. (AR 471.) Every 15 minutes, Plaintiff
18 had to walk for 15 minutes; she needed the opportunity to shift at will from sitting or
19 standing/walking; and she sometimes needed to lie down at unpredictable intervals during a
20 work shift (once daily). (AR 472.) Dr. Gomer stated that the foregoing opinion was based on
21 Plaintiff’s history of seizures and anxiety. (*Id.*)

22
23 Dr. Gomer opined that Plaintiff could never twist, stoop (bend), crouch, climb stairs, or
24 climb ladders. (*Id.*) Plaintiff could not perform any reaching, handling, fingering, feeling,
25 pushing or pulling, due to carpal tunnel syndrome. (*Id.*) Based on medical findings of seizure,
26

27 ⁵ The date of Dr. Gomer’s opinion is not immediately apparent, as his handwriting is difficult to decipher. (*See* AR
28 473.) Because the date of Dr. Gomer’s opinion was a reason given by the ALJ for discounting his opinion, the Court
further discusses this point in its Analysis. *See infra* § III.

1 Plaintiff had to avoid all exposure to extreme cold, extreme heat, wetness, humidity, noise,
2 fumes, odors, dusts, gases, poor ventilation, and hazards (machinery, heights, etc.). (AR 473.)
3 Additionally, Plaintiff's carpal tunnel syndrome affected her physical abilities in unspecified
4 ways. (*Id.*) Finally, Dr. Gomer anticipated that Plaintiff impairments would cause her to be
5 absent from work more than three times per month. (*Id.*)
6

7 **III. Analysis**

8

9 The ALJ gave no weight to Dr. Gomer's opinion, reasoning as follows: "the treatment
10 provided by Dr. Gomer [did] not support the extent of limitations provided. Specifically,
11 treatment has consisted only of medication management other than a surgical consultation for
12 [Plaintiff's] right wrist wherein she was found to not be a candidate for surgery. Further, the
13 opinion predates the amended alleged onset date, which makes it less persuasive." (AR 22
14 (citations omitted).)
15

16 Plaintiff contends that the reasons the ALJ provided to reject Dr. Gomer's opinion are
17 insufficient. (Joint Stip. at 6-8, 13-14.) Plaintiff first argues that the ALJ erred by asserting
18 that Dr. Gomer's opinion was less persuasive because it predates the alleged onset date,
19 because it was actually written in 2018, two years after the onset date. (*Id.* at 6-7, 13.) Second,
20 Plaintiff argues that the ALJ failed to explain her statement that Dr. Gomer's treatment did not
21 support the limitations he assessed and she impermissibly substituted her own interpretation
22 of the medical evidence for Dr. Gomer's opinion. (*Id.* at 6-8, 13-14.) Finally, Plaintiff avers
23 that because the ALJ's reasons for rejecting Dr. Gomer's opinion were inadequate, the Court
24 should credit his opinion as true and remand for immediate award of benefits. (*Id.* at 8.)
25

26 The Court turns first to the issue of the date of Dr. Gomer's opinion. If Dr. Gomer
27 authored his opinion in 2011, as the ALJ concluded, then the ALJ's rejection of the opinion
28 as predating the onset date would be specific and legitimate. *See Carmickle v. Comm'r, Soc.*

1 *Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008) (“Medical opinions that predate the alleged
2 onset date of disability are of limited relevance.”). However, the Court cannot conclude
3 simply by looking at the date written on Dr. Gomer’s opinion that it was authored either in
4 2011 or 2018 because Dr. Gomer’s handwriting is not clear. (AR 473.) Accordingly, the date
5 is ambiguous; where an ambiguity exists in the record, the ALJ has an independent duty to
6 further develop the record to resolve the ambiguity. *Tonapetyan v. Halter*, 242 F.3d 1144,
7 1150 (9th Cir. 2001).

8
9 Here, the ALJ erred by failing to further develop the record to resolve the ambiguity to
10 discern the date of Dr. Gomer’s opinion. This is especially so because the record suggests that
11 Dr. Gomer authored his opinion in 2018, not in 2011. The letterhead of the opinion form
12 shows that it was prepared by the Law Offices of Bill LaTour, Plaintiff’s counsel in this action.
13 (AR 471.) The record reveals that Plaintiff’s counsel began representing her in June 2016.
14 (AR 76 (Claimant’s Appointment of Representative).) Additionally, the record consists of
15 treatment records from Dr. Gomer dated between August 2015 and July 2018, and no earlier.
16 (AR 303-38, 601-30; *but see* AR 137-38 (2019 letter request to Appeals Council to review
17 ALJ decision stating Dr. Gomer’s opinion as having been written in 2011.) So, while it is
18 possible that Dr. Gomer treated Plaintiff in 2011 as well and Plaintiff’s counsel had
19 represented her in some capacity, that conclusion cannot be drawn by examining record
20 evidence; the record suggests that the more plausible explanation is that Dr. Gomer gave his
21 opinion in 2018 on form provided to him by Plaintiff’s counsel sometime between 2016 and
22 2018. Thus, the ALJ failed to fulfill her duty to fully develop the record to resolve the
23 ambiguity created by the unclear date of Dr. Gomer’s opinion.

24
25 The ALJ’s error, however, is harmless because the other reason provided the ALJ for
26 rejecting Dr. Gomer’s opinion was specific, legitimate, and supported by substantial evidence.
27 An ALJ may reject the opinion of a treating physician who prescribed conservative treatment,
28 yet opines that a claimant suffers disabling limitations. *Rollins v. Massanari*, 261 F.3d 853,

1 856 (9th Cir. 2001) (finding that ALJ properly rejected opinion of treating physician where
2 physician had prescribed conservative treatment and plaintiff’s activities and lack of
3 complaints were inconsistent with physician’s disability assessment). Here, the ALJ did just
4 that—in support of her statement that the treatment Dr. Gomer provided did not support his
5 opined limitations, the ALJ explained that Plaintiff’s treatment consisted only of medication
6 management (apart from a surgical consultation related to Plaintiff’s wrist). (AR 22.) The
7 ALJ sufficiently articulated this finding to permit this Court’s review and did not substitute
8 her own interpretation of the evidence for that of Dr. Gomer. *See Magallanes*, 881 F.2d at
9 755 (finding the specific and legitimate standard met where the ALJ “summarized the facts
10 and conflicting clinical evidence in detailed and thorough fashion, stating his interpretation
11 and making findings”); *Dupre v. Berryhill*, 765 F. App’x 258, 259 (9th Cir. 2019) (“The ALJ
12 specifically stated [the doctor’s] opinion conflicted with the fairly normal mental status
13 examination” and although “the ALJ may have explained her decision with less than ideal
14 clarity, the ALJ’s path may be reasonably discerned.” (internal quotation marks omitted)).
15

16 To uphold the ALJ’s decision, however, the incongruity between Dr. Gomer’s opinion
17 and his treatment records must be supported by substantial evidence. The record shows that
18 Dr. Gomer treated Plaintiff between August 2015 and July 2018. (AR 303-38, 601-30.) In
19 August 2015, Plaintiff presented to Dr. Gomer for a regular checkup and medication refill
20 complaining of leg pain and vaginal bleeding. (AR 303-04.) He did not recommend any
21 specific treatment. (*Id.*) In January, June, and July 2016, Plaintiff saw Dr. Gomer for regular
22 checkups and medication refills, with no additional complaints. (AR 305-06, 309-10, 314-17,
23 323-24.) In April 2016, Plaintiff presented for a regular checkup and medication refill with
24 bilateral edema on her legs. (AR 307-08, 311.) Dr. Gomer’s examination revealed carpal
25 tunnel syndrome, unspecified upper limb; COPD; edema leg; menorrhagia; and anxiety. (AR
26 312-13.) He continued Plaintiff’s pain, hormonal, and anxiety medications without altering
27 dosages. (AR 313.) When Plaintiff presented in July 2016 with urinary incontinence and
28

1 lipoma on her right wrist, Dr. Gomer continued Plaintiff on existing medications, and added
2 Percocet to her medication regimen. (AR 317, 324.)
3

4 In September 2016, Plaintiff presented to Dr. Gomer for medication refills; she also
5 complained of hand pain and had recently had a seizure. (AR 319-21.) Dr. Gomer continued
6 some of Plaintiff's existing medications for hyperlipidemia, gastroesophageal reflux disease,
7 DVT, and COPD, started her on a new seizure medication, and referred her for an orthopedic
8 surgery consultation for her carpal tunnel syndrome. (AR 321.) Between August and October
9 2016, Plaintiff's DVT medication was continued without alteration. (AR 325-28.) Between
10 October 2016 and July 2018, Dr. Gomer's assessments of Plaintiff's condition generally
11 remained constant. (See AR 603, 607, 612, 616, 620, 623-24, 628.) During each appointment
12 during that period, Plaintiff presented to Dr. Gomer for a general checkup and for medication
13 refills, and Dr. Gomer treated Plaintiff by continuing his medication regimens and, in some
14 instances, referring Plaintiff to specialists for particularized issues. (AR 603-04 (July 2018
15 medication refill with referrals to specialists for migraines, to obtain diabetes shoes, and for a
16 gynecology consultation), 606-08 (April 2018 medication refill), 612-13 (January 2018
17 medication refill with referral to specialist for urinary incontinence), 616-17 (October 2017
18 medication refill), 620-21 (April 2017 medication refill), 624 (November 2016 medication
19 refill and referral to general surgery for carpal tunnel syndrome for evaluation and treatment),
20 628 (October 2016 medication refill).)
21

22 After a thorough review of the record evidence, it is clear that the ALJ accurately
23 characterized Dr. Gomer's treatment of Plaintiff's condition. The record reveals that Dr.
24 Gomer's treatment largely consisted of medication management apart from a surgical
25 consultation for Plaintiff's right wrist. The record does not suggest that Plaintiff suffered
26 adverse side effects as a result of her medications, nor that Dr. Gomer's treatment by
27 medication management was not effective. Although Plaintiff occasionally complained of
28 pain, more often, she had no specific complaints during her routine checkups and Dr. Gomer

1 simply refilled her medications. The Court finds that this course of treatment is inconsistent
2 with Dr. Gomer’s opined limitations. One would expect an individual with the severely
3 disabling limitations that Dr. Gomer described to require, and have received, much more
4 aggressive treatment. Yet, Dr. Gomer’s treatment cannot be described as aggressive. Thus,
5 the “incongruity between Dr. [Gomer’s] Questionnaire responses and her medical records
6 provides a[] . . . specific and legitimate reason for rejecting Dr. [Gomer’s] opinion of
7 [Plaintiff’s] limitations.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).

8
9 In sum, the record shows the ALJ’s rejection of Dr. Gomer’s opinion on the basis of its
10 inconsistency with his own treatment records is a specific and legitimate reason supported by
11 substantial evidence for making her determination. Accordingly, the ALJ’s evaluation of the
12 medical evidence is free of material legal effort and must be affirmed.

13
14 **CONCLUSION**

15
16 For the reasons stated above, the Court finds that the Commissioner’s decision is
17 supported by substantial evidence and free from material legal error. Neither reversal of the
18 ALJ’s decision nor remand is warranted.

19
20 Accordingly, it is ORDERED that Judgment shall be entered affirming the decision of
21 the Commissioner of the Social Security Administration.

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1 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
2 Memorandum Opinion and Order and the Judgment on counsel for Plaintiff and for Defendant.

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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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7 DATE: July 23, 2020



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9 KAREN L. STEVENSON
10 UNITED STATES MAGISTRATE JUDGE
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