UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GUILLERMINA R.,[1]

Plaintiff,

v.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No. 5:19-cv-02315-AFM

MEMORANDUM OPINION AND ORDER AFFIRMING DECISION OF THE COMMISSIONER

Plaintiff filed this action seeking review of the Commissioner's final decision denying her application for disability insurance benefits. In accordance with the Court's case management order, the parties have filed memorandum briefs addressing the merits of the disputed issues. The matter is now ready for decision.

BACKGROUND

In April 2016, Plaintiff applied for disability insurance benefits, alleging disability since November 1, 2015. Plaintiff's application was denied initially and upon reconsideration. (Administrative Record ["AR"] 80-84, 87-92.) A hearing took place on November 27, 2018 before an Administrative Law Judge ("ALJ"). Plaintiff

[1] Plaintiff's name has been 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.

(who was represented by counsel) and a vocational expert ("VE") testified at the hearing. (AR 31-53.)

In a decision dated December 12, 2018, the ALJ found that Plaintiff suffered from the following severe impairments: degenerative disc disease of the lumbar and cervical spine, obesity, anxiety, and depression. (AR 17.) After concluding that Plaintiff's impairments did not meet or equal a listed impairment, the ALJ assessed Plaintiff's residual functional capacity ("RFC") as retaining the capacity to:

> perform light work as defined in 20 CFR 404.1567(b) except she can occasionally climb, stoop, kneel, crouch, and crawl. She can frequently reach, handle, finger, and feel. She should avoid concentrated exposure to extreme cold, and work at heights or around hazards. She is capable of simple, routine tasks with occasional interaction with supervisors, coworkers and the public.

(AR 19.) Relying on the testimony of the VE, the ALJ concluded that Plaintiff could not perform her past relevant work, but could perform jobs that exist in significant numbers in the national economy – including housekeeping cleaner, cafeteria attendant, and dry cleaner. (AR 23-24.) Accordingly, the ALJ concluded that Plaintiff was not disabled. (AR 25.)

The Appeals Council subsequently denied Plaintiff's request for review (AR 1-6), rendering the ALJ's decision the final decision of the Commissioner.

DISPUTED ISSUES

1. Whether the ALJ's hypothetical properly incorporated limitations on Plaintiff's ability to stand and walk.
2. Whether the ALJ erred by failing to discuss Plaintiff's physical therapy records.
3. Whether the ALJ properly rejected Plaintiff's subjective complaints.

///

///

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine whether the Commissioner's findings are supported by substantial evidence and whether the proper legal standards were applied. *See Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Under the substantial evidence standard, this Court asks whether the administrative record contains sufficient evidence to support the Commissioner's factual determinations. *Biestek v. Berryhill*, __ U.S. __, 139 S. Ct. 1148, 1154 (2019). As the Supreme Court observed in *Biestek*, "whatever the meaning of 'substantial' in other contexts, the threshold for such evidentiary sufficiency is not high." *Id*. It means "more than a mere scintilla" but less than a preponderance, and is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). This Court must review the record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Where evidence is susceptible of more than one rational interpretation, the Commissioner's decision must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

DISCUSSION

I. The ALJ's RFC incorporated limitations on walking/standing.

Plaintiff argues that the ALJ erred in determining an RFC without explicitly including a limitation on her ability to stand/walk. (ECF No. 18 at 6-7.)

Plaintiff underwent an orthopedic consultative examination with Vicente R. Bernabe, D.O., on August 30, 2016. (AR 269-273.) Based on his physical examination and his review of Plaintiff's available medical records, Dr. Bernabe opined that Plaintiff would be capable of performing the full range of medium exertion work, including the ability "to walk and stand six hours out of an eight-hour day." (AR 273).

The ALJ considered Dr. Bernabe's opinion, but determined that it did not fully account for Plaintiff's pain and other conditions. Instead, the ALJ adopted a more restrictive RFC, limiting Plaintiff to a range of light work. (AR 19.) During the administrative hearing, the ALJ asked the VE a hypothetical regarding an individual of Plaintiff's age, education, and past work (AR 50) with the following RFC:

> the individual can perform light work, occasionally climb, stoop, kneel, crouch, and crawl, frequently reach, handle, finger, and feel; avoid concentrated exposure to extreme cold, work at heights, or work around hazards, limited to simple routine tasks and occasional interaction with supervisors, coworkers, and the public.

(AR 51-52.) [2]

Plaintiff contends that the hypothetical and RFC were deficient because the ALJ failed to explicitly incorporate Dr. Bernabe's limitation to standing/walking six hours in an eight-hour day. (ECF No. 18 at 6-7.) Essentially, Plaintiff argues that an RFC of light work contemplates standing/walking in excess of six hours in an eight-hour day and, therefore, is inconsistent with a standing/walking limitation. For the following reasons, the Court finds Plaintiff's argument unpersuasive.

In pertinent part, Social Security Ruling ("SSR") 83-10 provides that the "full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Sitting may occur intermittently during the remaining time." *See* 1983 WL 31251, at *6. Relying on SSR 83-10, courts have found that an ALJ's reference to "light work" or "medium work"[3] is widely understood to encompass the limitation to stand/walk for six hours in an eight-hour

---

[2] As mentioned above, the VE testified that such an individual could not perform any of Plaintiff's past work, but could perform the occupations of housekeeping cleaner (DOT 323.687-014), cafeteria attendant (DOT 311.677-010), and dry cleaner (DOT 589.685-038). (AR 52.)

[3] Like the definition of light work, SSR 83-10 provides that "medium work requires standing or walking, off and on, for a total of approximately 6 hours in an 8-hour workday ..." *See* 1983 WL 31251, at *6.

day. *See Christopher P. v. Saul*, 2020 WL 551596, at *3 (C.D. Cal. Jan. 31, 2020) (ALJ's reference to medium work in hypothetical sufficiently captured the plaintiff's RFC limitations to standing or walking for six hours in an eight-hour workday); *Mitzi D. v. Saul*, 2019 WL 8112507, at *2 (C.D. Cal. Dec. 13, 2019) ("Given that SSR 83-10 has been in play for over thirty years, there is no reason to think the VE understood light work to encompass anything other than approximately six hours of standing or walking."); *James T. v. Saul*, 2019 WL 3017755, at *2 (C.D. Cal. July 10, 2019) ("[T]he ALJ's reference to medium work [in the RFC] supplied a 6-hour limitation on walking and standing, and the ALJ did not pose an incomplete hypothetical to the VE."); *Goodman v. Berryhill*, 2017 WL 4265685, at *8 (W.D. Wash. Sept. 25, 2017) (rejecting argument that RFC was deficient because it failed to include a restriction to standing/walking 6 out of 8 hours, finding "such a restriction is part and parcel of the definition of 'light work'"), *aff'd*, 741 F. App'x 530 (9th Cir. 2018).

Plaintiff objects to this conclusion, insisting that SSR 83-10 does not incorporate a limitation to six hours of walking/standing. According to Plaintiff, the sentence "[s]itting may occur intermittently during the remaining time," implies that some standing must occur in the remaining two hours of the workday. The Court rejects that reading of SSR 83-10. While SSR 83-10 may not be perfectly written, the Court joins other courts in interpreting the language "standing or walking, off and on, *for a total* of approximately 6 hours of an 8-hour workday" as encompassing the limitation to standing/walking for six hours in an eight-hour workday. *See* 1983 WL 31251, at *5 (emphasis supplied); *Roberto H.P. v. Saul*, 2020 WL 4286877, at *7 (C.D. Cal. July 27, 2020) (rejecting argument that SSR 83-10 contemplates the ability to stand/walk for more than six hours because it provides that sitting may occur "intermittently" during remaining time and observing that "[t]ellingly, Plaintiff does not cite a single case to support his view"); *James T.*, 2019 WL 3017755, at *2 ("ALJs ... with experience conducting social security disability benefits hearings

have understood medium work as requiring the ability to stand or walk for *up to 6 hours*.") (emphasis added).

In her reply, Plaintiff also argues that SSR 83-10 is "incompetent to interpret or construe the DOT." (ECF No. 22 at 3-4.) Contrary to Plaintiff's position, the Ninth Circuit has endorsed relying on SSR 83-10 to determine the standing and walking requirements of different exertional categories of work. *See Aukland v. Massanari*, 257 F.3d 1033, 1035-1036 (9th Cir. 2001); *Macri v. Chater*, 93 F.3d 540, 546 (9th Cir. 1996); *see James T.*, 2019 WL 3017755, at *2 (rejecting argument that "SSR 83-10 is not entitled to deference because it is inconsistent with 20 C.F.R. § 404.1567(c) and does not implicate the Commissioner's expertise," noting that the Ninth Circuit has endorsed reliance on SSR 83-10 with respect to standing/walking requirements).

In light of the foregoing, the Court concludes that by limiting Plaintiff to light work, the ALJ fairly incorporated the limitation to walking/standing for a total of six hours in an eight-hour workday. It follows that the hypothetical to the VE was complete, and the ALJ could properly rely upon the VE's testimony to conclude that there are occupations existing in significant numbers that Plaintiff could perform.

II. The ALJ did not err with respect to Plaintiff's physical therapy records.

Plaintiff argues that reversal is warranted because the ALJ "did not summarize, reject, or state any germane reasons for rejecting the physical therapy findings." (ECF No. 18 at 7-8.) In support of this argument, Plaintiff points out that physical therapy records described Plaintiff's gait as "severely antalgic" in March 2016, "mildly antalgic" in April 2017, and "mild limping" in October 2018. (ECF No. 18 at 7; citing AR 537, 471, 528.)

As an initial matter, the legal basis for Plaintiff's claim is unclear. Plaintiff cites *Tadevosyan v. Holder*, 743 F.3d 1250, 1252-1253 (9th Cir. 2014), and *Tobeler v. Colvin*, 749 F.3d 830, 833 (9th Cir. 2014). Neither case, however, addresses an ALJ's obligation to address physical therapy notes such as the ones identified by Plaintiff. Indeed, the law is to the contrary. An ALJ "is not required to discuss every

piece of evidence." *Toulou v. Saul*, 796 F. App'x 945, 946 (9th Cir. 2020) (citing *Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012)); *see Howard v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) ("the ALJ does not need to discuss every piece of evidence," and the "ALJ is not required to discuss evidence that is neither significant nor probative") (citation and quotation marks omitted).

Moreover, the ALJ did discuss the physical therapy records to which Plaintiff refers. Specifically, the ALJ cited the evidence and observed that "the record reveals [Plaintiff] was referred to physical therapy in March 2016, April 2017, and again in October 2018 (see [AR 527, 531, 536]), but testified that she just started physical therapy three weeks prior to the hearing. This would suggest that [Plaintiff]'s symptoms might not have been as limiting as" she had alleged. (AR 21.)

III. The ALJ provided legally sufficient reasons for her credibility determination.

Plaintiff contends that the ALJ erred in discounting her testimony regarding her subjective symptoms and limitations. (ECF No. 18 at 8-9.) The Court disagrees.

A. Plaintiff's Testimony

At the hearing, Plaintiff testified that she was unable to work because of back pain. (AR 37.) The pain is in her low back and extends to her knees. (AR 39-40.) According to Plaintiff, she cannot stand up or sit down because of the pain. (AR 41.) She estimated that she could sit for about 20 minutes at a time before needing to stand up and she could stand for about half an hour at a time before needing to sit down. (AR 48-49.) Plaintiff takes Tylenol and Norco for the pain. On average, she takes medication for pain about twice a day. (AR 41.) She did not use anything to help her walk. (AR 42.)

Plaintiff also testified that she has "a lot of pain in [her] hands," but admitted that she had not told any physician about the pain in her hands and had not received treatment for her hands. (AR 40-41.)

Finally, Plaintiff testified that she experienced "a lot of anxiety and

depression." (AR 42.) She takes medication for anxiety and depression, which sometimes helps. (AR 42.) Plaintiff said that the medication sometimes caused dizziness. She was not sure which medication caused the dizziness and she had not reported the dizziness to her doctors. (AR 43.)

B. Relevant Law

Where, as here, a claimant has presented objective medical evidence of an underlying impairment that could reasonably be expected to produce pain or other symptoms and the ALJ has not made an affirmative finding of malingering, an ALJ must provide specific, clear and convincing reasons before discrediting a claimant's testimony about the severity of his symptoms. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017) (citing *Garrison v. Colvin*, 759 F.3d 995, 1014-1015 (9th Cir. 2014)). "General findings [regarding a claimant's credibility] are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)). The ALJ's findings "must be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and did not arbitrarily discredit a claimant's testimony regarding pain." *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 345-346 (9th Cir. 1991) (en banc)).

Factors an ALJ may consider include conflicts between the claimant's testimony and the claimant's conduct – such as daily activities, work record, or an unexplained failure to pursue or follow treatment – as well as ordinary techniques of credibility evaluation, such as internal contradictions in the claimant's statements and testimony. *See Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014). In addition, although an ALJ may not disregard a claimant's testimony solely because it is not substantiated by objective medical evidence, the lack of medical evidence is a factor that the ALJ can consider in making a credibility assessment. *Burch v. Barnhart*, 400

F.3d 676, 680-681 (9th Cir. 2005).

C. Analysis

The Commissioner argues that the ALJ's determination is supported by the following legally sufficient reasons: Plaintiff's subjective complaints were (1) not supported by the objective medical record; (2) inconsistent with her sporadic and conservative treatment; (3) inconsistent with her failure to pursue physical therapy; (4) inconsistent with the medical evidence showing that treatment was generally successful in controlling her mental health symptoms; and (5) inconsistent with her daily activities. (ECF No. 21 at 4-8.)[4]

Not consistent with the medical evidence

"Although lack of medical evidence cannot form the sole basis for discounting pain testimony, it is a factor that the ALJ can consider in his credibility analysis." *Burch*, 400 F.3d at 681; *see Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (lack of objective medical evidence to support claimant's subjective complaints constitutes substantial evidence in support of an ALJ's adverse credibility determination).

Here, the ALJ summarized Plaintiff's subjective complaints and found them "not entirely consistent with the medical evidence." (AR 20.) The ALJ then summarized the medical evidence, noting the following:

Plaintiff was diagnosed with degenerative disc disease of the lumbar and cervical spine. (AR 358, 360, 411, 454-455, 477.) In February 2016, Plaintiff was evaluated by Jonathan Allen, M.D., an orthopedic surgeon. She complained of low back pain radiating down her legs. Treatment notes indicate that Plaintiff ambulated without an assistive device with a normal heel to toe gait. She had moderate difficulty transferring from the chair to standing and from standing to the exam table, and tenderness to palpation in the back. The remainder of the findings were unremarkable – for example, Plaintiff had full range of motion, her motor function was normal,

[4] The Court notes that Plaintiff's reply does not address the Commissioner's argument.

sensation was intact, reflexes were normal, and straight leg raising was negative. Plaintiff was diagnosed with degenerative disc disease at L5-S1 with bilateral lower extremity symptoms. Dr. Allen noted that Plaintiff had not attempted any conservative care, and recommended oral medication and physical therapy. (AR 452-455.)

In April 2017, Plaintiff complained of chronic neck pain as well as pain in the right leg and foot. Diagnostic tests were ordered, and Plaintiff was referred to physical therapy. (AR 411-412.) An x-ray of Plaintiff's lumbar spine showed mild lumbar degenerative joint disease, minimal facet arthropathy and minimal osteophytosis developing. (AR 477.) An x-ray of Plaintiff's cervical spine revealed the intervertebral disc spaces were normally maintained, vertebral body heights were well maintained, and there was no acute osseous injury. (AR 478.)

On June 14, 2017, Plaintiff again complained of low back pain radiating to the right leg with tingling/numbness. She was diagnosed with lower back pain and treated with a Toradol injection. During the visit, Plaintiff reported that she had been receiving physical therapy for two months, and it was helping. (AR 359.)

Plaintiff complained of leg pain on June 19, 2017, but a physical examination was within normal limits. (AR 409.) The x-ray of bilateral knees taken on June 21, 2017 were negative. (AR 461.)

The next progress notes are dated February 2018. During an exam, Plaintiff showed lumbar spine pain with motion. (AR 405.) X-rays of the lumbar spine were taken and showed mild diffuse degenerative disc disease, but no spondylolisthesis, and Plaintiff's sacroiliac joints were normal. (AR 421.) An x-ray of Plaintiff's right knee in April 2018 was unremarkable. (AR 418.) In June 2018, Plaintiff complained of right hip and leg pain. Examination was unremarkable. (AR 402.) Bilateral knee x-ray from August 2018 showed no acute fractures, no significant joint effusions, unremarkable soft tissues, and no acute osseous injury. (AR 414.) An x-ray of Plaintiff's right hip taken the same date showed some mild degenerative joint disease

"just beginning." (AR 415.)

Based upon her complaints of lower extremity pain, an ultrasound of Plaintiff's bilateral legs was performed in September 2018. The results showed no evidence of deep vein thrombosis. (AR 413.)

The ALJ observed that despite the negative findings in the diagnostic x-rays of Plaintiff's knees, in 2018, a physical therapist assessed Plaintiff with osteoarthritis in the knees. It appears that the assessment was based upon Plaintiff's statements. (AR 527-529.)[5]

With regard to Plaintiff's depression and anxiety, the ALJ noted that Plaintiff had been diagnosed with, and treated for, depression and anxiety. In May 2017, Plaintiff reported that she had been taking medication for depression for the past year and it helped a little. She complained of poor concentration, insomnia, sadness, poor memory, nightmares, poor appetite, anhedonia, lack of libido, and panic attacks. Plaintiff's dosage of Zoloft was increased, and she was additionally prescribed Abilify and Xanax. (AR 281-285.)

At a follow-up appointment in June 2017, Plaintiff reported feeling better, her symptoms had improved and were fairly controlled. She denied depressed mood or difficulty staying asleep. Based upon residual symptoms, her Zoloft dosage was increased. (AR 286-287.) In July 2017, Plaintiff "present[ed] with excessive worry, but denie[d] difficulty falling asleep, difficulty staying asleep, diminished interests or pleasure, fatigue, paranoia, poor judgment, racing thoughts, restlessness of thoughts of death or suicide." (AR 288-289.) In October 2017, Plaintiff reported doing okay except increased stress due to discord between her son and his girlfriend. She wanted to decrease her medications, complaining that they were "too heavy" or

[5] The Court notes that Plaintiff underwent a rheumatology consultation in July 2017. Amro Elbalkhi, M.D., diagnosed Plaintiff with lumbar spine degenerative disk disease and positive rheumatoid factor without evidence of rheumatoid arthritis. Dr. Elbalkhi advised Plaintiff to continue physical therapy. He also offered Plaintiff trigger point injections for her lower back, but she declined. (AR 429.)

sedating. Her medications were adjusted. (AR 290-293.) In December 2017, Plaintiff was doing okay overall, her sleep was better, and she denied side effects from her medications. She reported "family situations" were causing distress. Her medications remained the same. (AR 294-296.) In April 2018, Plaintiff reported that she had run out of medication and was feeling depressed. She wanted medicine to help with intermittent insomnia. She reported ongoing marital discord. Her mental status examination was normal with the exception of a depressed anxious mood and constructed affect. She was prescribed Trazodone at bedtime, but her Zoloft prescription remained unaltered. (AR 298-302.) Plaintiff reported her mood was a bit better in June 2018, but she experienced "ongoing stress from being rejected by disability." Her medications were adjusted. (AR 303-306.) In July and August 2018, Plaintiff's mood and sleep were okay, and her mood was stable. She reported occasional depression resulting from situations with her family. In July 2018, her mental status examinations were unremarkable with the exception of a mildly impaired ability to make reasonable decisions and depressive thought content. (AR 445-448.) In August 2018, Plaintiff's mental status examination was unremarkable with the exception of a moderately impaired ability to make reasonable decisions. (AR 440-444.) In September 2018, Plaintiff's mood was better and stable, her sleep was okay, but she reported "depression resulting from situations with family." Her mental status examination revealed Plaintiff's mood was euthymic, her affect was full, her speech was clear, her thought process was logical, and her perception, cognition, insight, and judgment were all within normal limits. Her medication was continued with a slight adjustment in dosage. (AR 435-439.)

As set forth above, the objective medical evidence related to Plaintiff's physical impairments reveals only mild degenerative disc disease. The other clinical evidence consisted of normal findings. Similarly, the medical evidence related to Plaintiff's mental impairments contains a few mild positive findings in mental status examinations. Moreover, notwithstanding the limited medical evidence, the ALJ

restricted Plaintiff to a restricted range of light work and simple, routine tasks with only occasional interaction with supervisors, coworkers and the public. In light of the foregoing record, the ALJ properly relied upon the absence of objective medical evidence as one factor in her decision to discount Plaintiff's subjective complaints to the extent they exceeded the limitations incorporated in the RFC.

Evidence of sporadic, conservative treatment

An ALJ may properly rely upon infrequent and/or conservative treatment as a reason for discounting a claimant's subjective complaints. *See Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012); *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007); *see* SSR 16-3p, 2016 WL 1119029, at *7-*8 (ALJ may give less weight to subjective statements where "the frequency or extent of the treatment sought by an individual is not comparable with the degree of the individual's subjective complaints, or if the individual fails to follow prescribed treatment that might improve symptoms....").

In addressing Plaintiff's back impairment, the ALJ here found that the record showed "sporadic medical treatment" which she found inconsistent with Plaintiff's symptoms being as limiting as she alleged. The ALJ also noted that Plaintiff's physicians treated her with medication and referrals to physical therapy, and on one occasion, a Toradol injection. (AR 20.) The ALJ's characterization of Plaintiff's treatment as sporadic and conservative is supported by substantial evidence.

As set forth above, the record shows that after Plaintiff sought treatment for her back in February 2016, and her next treatment was not until April 2017, more than a year later. Then, after obtaining x-rays in June 2017, Plaintiff next sought treatment for her back in February 2018, more than seven months later. The fact that Plaintiff infrequently sought treatment for her back impairment reasonably suggests that her pain was not as severe as alleged. *See Giovannini v. Berryhill*, 2018 WL 1588714, at *5 (C.D. Cal. Mar. 28, 2018) ("ALJ properly gave less weight to plaintiff's subjective statements based on plaintiff's failure to seek a frequency of medical treatment that was consistent with the alleged severity of plaintiff's

subjective symptoms.").

The record also shows that Plaintiff's treatment consisted of medication – namely, Naproxen and Tramadol (*see* AR 186, 361, 369, 372, 509, 560-561)[6] – physical therapy referrals, and an injection. The ALJ could fairly characterize this treatment as conservative. *See Miner v. Colvin*, 609 F. App'x 454, 455 (9th Cir. 2015) (ALJ properly relied upon conservative treatment to discount claimant's subjective complaints where "despite [claimant's] allegations that she suffered disabling pain for years, [claimant's] doctors did not recommend surgeries or other aggressive treatments."); *Martin v. Colvin*, 2017 WL 615196, at *10 (E.D. Cal. Feb. 14, 2017) ("[T]he fact that Plaintiff has been prescribed narcotic medication or received injections does not negate the reasonableness of the ALJ's finding that Plaintiff's treatment as a whole was conservative, particularly when undertaken in addition to other, less invasive treatment methods."); *Zaldana v. Colvin*, 2014 WL 4929023, at *2 (C.D. Cal. Oct. 1, 2014) (a treatment regimen including Tramadol and "multiple steroid injections" was conservative); *see also Huizar v. Comm'r of Social Sec.*, 428 F. App'x 678, 680 (9th Cir. 2011) (ALJ properly discounted subjective complaints where claimant responded favorably to conservative treatment, which included "the use of narcotic/opiate pain medications").

Accordingly, the ALJ properly relied upon Plaintiff's infrequent and conservative treatment to discount Plaintiff's allegations of disabling pain.

Evidence that symptoms were effectively treated

The effectiveness of treatment is a relevant factor in determining the severity of a claimant's symptoms. 20 C.F.R. § 404.1529(c)(3); *see Tommasetti v. Astrue*, 533 F.3d 1035, 1039-1040 (9th Cir. 2008); *Warre v. Comm'r of Soc. Sec. Admin.*, 439

[6] The Court notes that in August 2016, Plaintiff reported to the consultative examiner that she took hydrocodone with acetaminophen. (AR 270.) While the record does not include evidence that Plaintiff was prescribed this medication, there is a notation from Plaintiff's June 2017 rheumatology consultation indicating that Plaintiff reported that she had been prescribed Norco, but her primary care physician discontinued that medication. (AR 490.)

F.3d 1001, 1006 (9th Cir. 2006). Substantial evidence of effective treatment may provide a specific, clear, and convincing reason to discount a claimant's subjective symptom testimony. *See Youngblood v. Berryhill*, 734 F. App'x 496, 499 (9th Cir. 2018).

Here, the ALJ found that while Plaintiff was diagnosed with depression and anxiety, the evidence showed that "treatment has been generally successful in controlling those symptoms." (AR 21.) As set forth above, the record reflects that Plaintiff repeatedly reported feeling better and stable with her medication. (*See, e.g.*, AR 286-287, 294-296, 435-439, 445-448.) On an occasion when Plaintiff reported an increase in symptoms, it turned out that she had run out of medication. (AR 298-302.) Based on the record, the ALJ's characterization of the record is supported by substantial evidence. Accordingly, the ALJ properly gave less weight to Plaintiff's subjective complaints to the extent treatment significantly alleviated Plaintiff's symptoms. *See Bailey v. Colvin*, 659 F. App'x 413, 415 (9th Cir. 2016) (evidence that "impairments had been alleviated by effective medical treatment," to the extent inconsistent with "alleged total disability[,]" specific, clear, and convincing reason for discounting subjective complaints); *Giovannini*, 2018 WL 1588714, at *5 (ALJ properly discounted subjective complaints because there was "some evidence that plaintiff's medications '[had] been relatively effective in controlling the [plaintiff's] symptoms.'") (alterations in original).

Daily activities

An ALJ may discredit testimony when a claimant reports participation in everyday activities indicating capacities that are transferable to a work setting. *Molina*, 674 F.3d at 1113. In addition, "[e]ngaging in daily activities that are incompatible with the severity of symptoms alleged can support an adverse credibility determination." *Ghanim*, 763 F.3d at 1165. Nevertheless, the Ninth Circuit has made clear that "ALJs must be especially cautious in concluding that daily activities are inconsistent with testimony about pain, because impairments that would

unquestionably preclude work and all the pressures of a workplace environment will often be consistent with doing more than merely resting in bed all day." *Garrison*, 759 F.3d at 1016. "[T]he mere fact that a plaintiff has carried on certain daily activities, such as grocery shopping, driving a car, or limited walking for exercise, does not in any way detract from her credibility as to overall disability." *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). Furthermore, an ALJ should explain "*which* daily activities conflicted with *which* part of [a] Claimant's testimony." *See Burrell*, 775 F.3d at 1138.

Here, the ALJ observed that Plaintiff was able to shower, run errands, drive short distances, shop, cook, and go places by herself. Plaintiff's daughter also reported that Plaintiff prepared simple meals, performed household chores, goes out three to four times a day, drives, shops, socializes, reads, and watches television. The ALJ found that Plaintiff's "ability to participate in such activities undermines the consistency of [her] allegations of disabling functional limitations." (AR 22.)

The Commissioner argues that, "[w]hile Plaintiff's activities were somewhat limited, the Ninth Circuit provides that an ALJ may consider 'whether the claimant engages in daily activities inconsistent with the alleged symptoms.'" (ECF No. 21 at 7, citing *Molina*, 674 F.3d at 1112.) However, neither the ALJ nor the Commissioner identify any specific activity or explain how it was inconsistent with any of Plaintiff's allegations. The ALJ's recitation of Plaintiff's daily activities in their entirety, without any explanation of which activity she considered to be inconsistent with which of Plaintiff's alleged symptom or limitation is insufficient to meet the Ninth Circuit's "requirements of specificity." *Burrell*, 775 F.3d at 1138 (quoting *Connett v. Barnhart*, 340 F.3d 871, 873 (9th Cir. 2003); *see generally Smolen v. Chater*, 80 F.3d 1273, 1287 n.7 (9th Cir. 1996) ("The Social Security Act does not require that claimants be utterly incapacitated to be eligible for benefits, and many home activities may not be easily transferable to a work environment where it might be impossible to rest periodically or take medication.") (citation omitted).

Although the ALJ's lack of specificity renders reliance upon Plaintiff's daily activities improper, that error is harmless in light of the other sufficiently clear and convincing reasons supporting the ALJ's credibility determination. *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (where the ALJ presented four other independent proper bases for discounting the plaintiff's testimony, reliance on claimant's continued smoking to discredit her, even if erroneous, amounted to harmless error); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163 (9th Cir. 2008) (ALJ's error in relying on claimant's receipt of unemployment benefits and on relatively conservative pain treatment regime was harmless where ALJ provided other specific and legitimate reasons for finding claimant's testimony incredible).

Failure to participate in physical therapy

The Commissioner points out that the ALJ also found it significant that Plaintiff was referred to physical therapy on three occasions – in March 2016, April 2017, and October 2018 – but she testified that she only began participating in physical therapy three weeks prior to the hearing. (ECF No. 21 at 6; AR 21.) It is true that an ALJ may consider failure to "seek treatment or to follow a prescribed course of treatment" in assessing credibility. *See Smolen*, 80 F.3d at 1284. Nevertheless, the record here does not entirely support the ALJ's conclusion. Not only were the questions posed at the hearing somewhat confusing, but fairly read, Plaintiff testified that she had participated in physical therapy on an occasion before her then-current physical therapy. (*See* AR 38-39.) Indeed, as the ALJ stated in her decision, the record includes a notation indicating that Plaintiff had participated in physical therapy in the two months prior to June 2017. (AR 359.) In any event, because the ALJ provided other legitimate reasons for her credibility determination, any error in relying on the failure to follow through with physical therapy was harmless. *See Carmickle*, 533 F.3d at 1163.

ORDER

IT IS THEREFORE ORDERED that Judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this action with prejudice.

DATED: 9/10/2020

ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE