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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BEVERLY JEAN GARCIA,	)	1:08-cv-01799-SMS
	)	
Plaintiff,	)	DECISION AND ORDER DENYING
v.	)	PLAINTIFF'S SOCIAL SECURITY
	)	COMPLAINT (DOC. 1)
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF SOCIAL	)	ORDER DIRECTING THE ENTRY OF
SECURITY,	)	JUDGMENT FOR DEFENDANT MICHAEL J.
	)	ASTRUE, COMMISSIONER OF SOCIAL
Defendant.	)	SECURITY, AND AGAINST PLAINTIFF
	)	BEVERLY JEAN GARCIA
	)	

Plaintiff is proceeding in forma pauperis and with counsel with an action seeking judicial review of a final decision of the Commissioner of Social Security (Commissioner) denying Plaintiff's application of November 2, 2005, made pursuant to Title XVI of the Social Security Act (the Act), for supplemental security income (SSI), in which she had alleged that she had been disabled since November 1, 2004, due to trouble breathing and pain in her knee when she sat, stood, bent her knee, or walked. (A.R. 100-106, 129.) The parties have consented to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1), manifesting their consent in writings signed by the parties' authorized representatives and filed on behalf of

1 Plaintiff on December 3, 2008, and on behalf of Defendant on  
2 December 10, 2008. Thus, the matter is assigned to the Magistrate  
3 Judge to conduct all further proceedings in this case, including  
4 entry of final judgment.

5 The decision under review is that of Social Security  
6 Administration (SSA) Administrative Law Judge (ALJ) Michael J.  
7 Haubner, dated March 27, 2008 (A.R. 8-13), rendered after a  
8 hearing held on January 17, 2008, at which Plaintiff appeared and  
9 testified with the assistance of an attorney (A.R. 14-40). A  
10 vocational expert also testified.

11 The Appeals Council denied Plaintiff's request for review of  
12 the ALJ's decision on September 26, 2008 (A.R. 1-3), and  
13 thereafter Plaintiff filed the complaint in this Court on  
14 November 20, 2008. Briefing commenced on September 2, 2009, and  
15 was completed with the filing of Defendant's brief on October 5,  
16 2009. The matter has been submitted without oral argument to the  
17 Magistrate Judge.

18 I. Jurisdiction

19 The Court has jurisdiction over the subject matter of this  
20 action pursuant to 42 U.S.C. §§ 1383(c)(3) and 405(g), which  
21 provide that an applicant suffering an adverse final  
22 determination of the Commissioner of Social Security with respect  
23 to SSI benefits after a hearing may obtain judicial review by  
24 initiating a civil action in the district court within sixty days  
25 of the mailing of the notice of decision. Plaintiff filed his  
26 complaint on November 20, 2008, less than sixty days after the  
27 mailing of the notice of decision on or about September 26, 2008.

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1        II. Standard and Scope of Review

2        Congress has provided a limited scope of judicial review of  
3 the Commissioner's decision to deny benefits under the Act. In  
4 reviewing findings of fact with respect to such determinations,  
5 the Court must determine whether the decision of the Commissioner  
6 is supported by substantial evidence. 42 U.S.C. § 405(g).

7 Substantial evidence means "more than a mere scintilla,"  
8 Richardson v. Perales, 402 U.S. 389, 402 (1971), but less than a  
9 preponderance, Sorenson v. Weinberger, 514 F.2d 1112, 1119, n. 10  
10 (9th Cir. 1975). It is "such relevant evidence as a reasonable  
11 mind might accept as adequate to support a conclusion."

12 Richardson, 402 U.S. at 401. The Court must consider the record  
13 as a whole, weighing both the evidence that supports and the  
14 evidence that detracts from the Commissioner's conclusion; it may  
15 not simply isolate a portion of evidence that supports the  
16 decision. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9<sup>th</sup> Cir.  
17 2006); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985).

18 It is immaterial that the evidence would support a finding  
19 contrary to that reached by the Commissioner; the determination  
20 of the Commissioner as to a factual matter will stand if  
21 supported by substantial evidence because it is the  
22 Commissioner's job, and not the Court's, to resolve conflicts in  
23 the evidence. Sorenson v. Weinberger, 514 F.2d 1112, 1119 (9<sup>th</sup>  
24 Cir. 1975).

25        In weighing the evidence and making findings, the  
26 Commissioner must apply the proper legal standards. Burkhart v.  
27 Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must  
28 review the whole record and uphold the Commissioner's

1 determination that the claimant is not disabled if the  
2 Commissioner applied the proper legal standards, and if the  
3 Commissioner's findings are supported by substantial evidence.  
4 See, Sanchez v. Secretary of Health and Human Services, 812 F.2d  
5 509, 510 (9th Cir. 1987); Jones v. Heckler, 760 F.2d at 995. If  
6 the Court concludes that the ALJ did not use the proper legal  
7 standard, the matter will be remanded to permit application of  
8 the appropriate standard. Cooper v. Bowen, 885 F.2d 557, 561 (9<sup>th</sup>  
9 Cir. 1987).

10 III. Disability

11 A. Legal Standards

12 In order to qualify for benefits, a claimant must establish  
13 that she is unable to engage in substantial gainful activity due  
14 to a medically determinable physical or mental impairment which  
15 has lasted or can be expected to last for a continuous period of  
16 not less than twelve months. 42 U.S.C. § 1382c(a)(3)(A). A  
17 claimant must demonstrate a physical or mental impairment of such  
18 severity that the claimant is not only unable to do the  
19 claimant's previous work, but cannot, considering age, education,  
20 and work experience, engage in any other kind of substantial  
21 gainful work which exists in the national economy. 42 U.S.C.  
22 1382c(a)(3)(B); Quang Van Han v. Bowen, 882 F.2d 1453, 1456 (9<sup>th</sup>  
23 Cir. 1989). The burden of establishing a disability is initially  
24 on the claimant, who must prove that the claimant is unable to  
25 return to his or her former type of work; the burden then shifts  
26 to the Commissioner to identify other jobs that the claimant is  
27 capable of performing considering the claimant's residual  
28 functional capacity, as well as her age, education and last

1 fifteen years of work experience. Terry v. Sullivan, 903 F.2d  
2 1273, 1275 (9<sup>th</sup> Cir. 1990).

3       The regulations provide that the ALJ must make specific  
4 sequential determinations in the process of evaluating a  
5 disability: 1) whether the applicant engaged in substantial  
6 gainful activity since the alleged date of the onset of the  
7 impairment, 2) whether solely on the basis of the medical  
8 evidence the claimed impairment is severe, that is, of a  
9 magnitude sufficient to limit significantly the individual's  
10 physical or mental ability to do basic work activities; 3)  
11 whether solely on the basis of medical evidence the impairment  
12 equals or exceeds in severity certain impairments described in  
13 Appendix I of the regulations; 4) whether the applicant has  
14 sufficient residual functional capacity, defined as what an  
15 individual can still do despite limitations, to perform the  
16 applicant's past work; and 5) whether on the basis of the  
17 applicant's age, education, work experience, and residual  
18 functional capacity, the applicant can perform any other gainful  
19 and substantial work within the economy. See 20 C.F.R. § 416.920.<sup>1</sup>

20           B. The ALJ's Findings

21       The ALJ found that Plaintiff had severe impairments of  
22 asthma, chronic obstructive pulmonary disease, and chronic  
23 smoking, but Plaintiff had no impairment or combination thereof  
24 that met or medically equaled a listed impairment. (A.R. 10.)  
25 Plaintiff retained an unlimited exertional capacity to perform  
26 work, but she must avoid concentrated exposure to pulmonary

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28       <sup>1</sup>All references to the Code of Federal Regulations are to the version in effect in 2008 unless otherwise stated.

1 irritants. (A.R. 10.) She could perform her past relevant work of  
2 assembler and thus had not been under a disability since November  
3 2, 2005, the date the application for SSI was filed. (A.R. 12.)

4 C. Plaintiff's Contentions

5 Plaintiff's arguments concern step three, at which Plaintiff  
6 contends that the ALJ failed to 1) consider adequately whether  
7 Plaintiff's impairments met a listed impairment, namely, §3.03A  
8 or 3.03B for asthma, and 2) state adequate reasoning concerning  
9 his conclusion that Plaintiff's impairments did not meet a listed  
10 impairment.

11 IV. Facts<sup>2</sup>

12 The parties essentially agree on the only critical facts,  
13 which concern the medical symptoms, signs, events, and opinions  
14 pertinent to the precise requirements of listings for asthma, §  
15 3.03A or 3.03B. (Pltf.'s brief pp. 3-4, Deft.'s brief p. 2.)

16 Dr. Enok Lohne, M.D., opined that a pulmonary function  
17 study, dated April 2003, showed moderate to severe obstructive  
18 lung disease; the recommendation was to avoid exposure to  
19 cigarette smoke. (A.R. 165.)

20 Plaintiff admitted having been out of medications in July  
21 2004 (A.R. 163), but by August 2004 her peak flows were steady  
22 and had improved to the 270 ranges, which was the low, green zone  
23 for Plaintiff. Plaintiff was counseled on the importance of  
24 compliance with her asthma action plan. (A.R. 162).

25 Plaintiff was admitted to the hospital for acute  
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27 <sup>2</sup> Because Plaintiff has raised no issue involving the ALJ's findings  
28 concerning Plaintiff's credibility, and Plaintiff's contentions concern only  
the ALJ's reasoning at step three, the details of Plaintiff's testimony are  
not set forth.

1 exacerbation of asthma and hypoxia with cough, sinus drainage and  
2 sneezing, and fever on March 11, 2005. Plaintiff reported that  
3 she came to the emergency department infrequently and had  
4 experienced one previous attack four to five years before. (A.R.  
5 216-218). An x-ray reflected no acute cardiopulmonary disease.  
6 (A.R. 210.) She remained in the hospital March 12, 2005, and was  
7 observed overnight. She reported smoking with a history of having  
8 smoked a half pack of cigarettes every day for the last twenty-  
9 seven years. She was much improved after treatment and was  
10 observed overnight; the impression was exacerbation of asthma by  
11 an upper respiratory tract infection. (A.R. 204-05.)

12 Plaintiff went to the emergency department at the hospital  
13 for treatment on July 7, 2005, for treatment for acute  
14 exacerbation of asthma with dyspnea; she was discharged as stable  
15 the same day with instructions. (A.R. 197-200.) On July 12, 2005,  
16 at a follow-up visit, Plaintiff was advised that quitting smoking  
17 was very important, and medication and a smoking cessation clinic  
18 were prescribed. (A.R. 196.)

19 In a follow-up visit in February 2006, Plaintiff admitted  
20 that she still smoked a pack of cigarettes and drank a six-pack  
21 of beer daily; her shortness of breath had not worsened, and she  
22 declined a new, follow-up pulmonary function test. (A.R. 193.)  
23 However, in February 2006, more tests were run; pulmonary  
24 function studies dated February 20, 2006, reflected mild  
25 obstruction and indicated values more than twice listing levels.  
26 (A.R. 170, 312-313). Izhar Hasan, M.D., examined Plaintiff and  
27 found that Plaintiff's breath sounds were symmetric, there were  
28 no rhonchi or rales, and the expiratory phase was within normal

1 limits. (A.R. 168.) His assessment was that Plaintiff had mild to  
2 moderate asthma. (A.R. 170-72.)

3 In May 2006, Plaintiff denied shortness of breath and  
4 reported that she was still smoking a pack per day. (A.R. 187.)  
5 In July 2006, a chest study was negative. (A.R. 186.)

6 On July 25, 2006, Plaintiff sought treatment at the  
7 emergency room for tightness of the chest that she had  
8 experienced for five days; she was treated for a moderate  
9 exacerbation of asthma. (A.R. 252-66.) She reported that she was  
10 still smoking and had run out of medications for a day. (A.R.  
11 255.) A chest study was negative. Expiratory flow readings are  
12 included in the records. (A.R. 265.) She was discharged with  
13 medication. (A.R. 184-86, 252-66.)

14 Jon D. Hirasuna, M.D., opined that tests completed in  
15 October 2006 yielded an impression of mild to moderate  
16 obstructive airways disease, no evidence of restrictive  
17 dysfunction, a total lung capacity slightly above the normal  
18 predicted range, and reduced diffusing capacity. (A.R. 315-16.)

19 Plaintiff received treatment overnight at the emergency room  
20 on December 4 and 5, 2006, for shortness of breath and cough; she  
21 admitted that she had been out of Albuterol, Advent, and  
22 Singulair for about a month. She was advised to take her  
23 medications and quit smoking. (A.R. 236-48, 241.) Expiratory flow  
24 readings are included in the record. (A.R. 250.)

25 On the evening of June 14 and early morning of June 15,  
26 2007, Plaintiff received treatment at the emergency department  
27 for several hours for shortness of breath and was discharged home  
28 as stable with advice to stop smoking. (A.R. 299-310.)



1 On July 6, 2007, Plaintiff received treatment for several  
2 hours in the emergency room for acute exacerbation of asthma with  
3 shortness of breath and wheezing. (A.R. 284-98.)

4 V. The ALJ's Analysis at Step Three

5 The ALJ stated:

6 **3. The claimant does not have an impairment or**  
7 **combination of impairments that meets or medically**  
8 **equals one of the listed impairments in 20 CFR**  
9 **Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d),**  
10 **416.925 and 416.926).**

11 The claimant does not have any of the requisite  
12 clinical findings so as to meet, equal or approach  
13 the level of severity discussed in Sections 3.02,  
14 3.03, 20 CFR Part 404, Subpart P, Appendix 1  
15 (See, Exhibit 2F, p. 4; Exhibit 6F, p. 29).

16 (A.R. 10.) The ALJ also analyzed the medical evidence in  
17 connection with determining Plaintiff's RFC:

18 In terms of the claimant's alleged respiratory  
19 impairment, while no treating physician gave  
20 a residual functional capacity, the Family Practitioner  
21 consulting physician imposed no limits, noting a  
22 completely normal physical examination (Exhibit 2F,  
23 pp. 1-3, 7). While an older (pre-alleged onset  
24 date of disability, and well before claimant's  
25 protective filing date) pulmonary function study  
26 showed moderate to severe chronic obstructive  
27 pulmonary disease (Exhibit 1F, p. 10, of April, 2003),  
28 the more recent pulmonary function studies indicate  
values more than twice (i.e., no where near meeting)  
listing levels (Exhibit 2F, p. 4 and Exhibit 6F,  
p. 29). Furthermore, all claimant's chest x-rays  
are negative (Exhibit 4F, p. 6; 4F, p. 3; 5F, p. 43).

While it appears claimant had one hospitalization for  
breathing problems since her alleged onset date (in  
March 2005; Exhibit 4F, pp. 37-38), that note indicates  
the only similar incident occurred 4-5 years earlier.  
Furthermore, while claimant alleges she needs a doctor  
or emergency room assisted breathing treatment 2 to 3  
times every year, that is not supported by the medical  
evidence of record (See, e.g., "ED" assists "infrequent,"  
Exhibit 4F, pp. 37-38).

(A.R. 11.)

The pertinent legal principles are established. It is

1 Plaintiff's burden to establish that her impairment met a  
2 listing. Bowen v. Yuckert, 482 U.S. 137, 146 n.5 (1987). Mere  
3 diagnosis of a listed impairment is not sufficient to sustain a  
4 finding of disability; the claimant must also submit medical  
5 findings equal in severity to all the criteria stated in the most  
6 similar listing. Sullivan v. Zebley, 493 U.S. 521, 529-30 (1990);  
7 Young v. Sullivan, 911 F.2d 180, 183 (9<sup>th</sup> Cir. 1990); 20 C.F.R. §  
8 416.925(d). Generally, specific medical findings are needed to  
9 support the diagnosis and the required level of severity. 20  
10 C.F.R. §§ 404.1525(c)-(d), 416.925(c). The Commissioner is not  
11 required to state why a claimant failed to satisfy every  
12 different section of the listing of impairments; rather, it is  
13 sufficient to evaluate the evidence upon which the ultimate  
14 factual conclusions are based. Otherwise, an undue burden would  
15 be put on the social security disability process. Gonzales v.  
16 Sullivan, 914 F.2d 1197, 1200-01 (9<sup>th</sup> Cir. 1990).

17       The regulations governing the inquiry are specific and  
18 extensive. In the listing of impairments, 20 C.F.R. Pt. 404,  
19 Subpt. P, App. 1, § 3.00(A), it is provided that respiratory  
20 disorders and any associated impairments must be established by  
21 medical evidence that is provided in sufficient detail to permit  
22 an independent reviewer to evaluate the severity of the  
23 impairment. It specifies that the asthma listing specifically  
24 includes a requirement for continuing signs and symptoms despite  
25 a regimen of prescribed treatment. Id. Further, because the  
26 symptoms of chronic pulmonary disease are common to many other  
27 diseases, a chest x-ray or other appropriate imaging technique is  
28 required to establish chronic pulmonary disease, and pulmonary

1 function testing, such as spirometric pulmonary function testing,  
2 is required to assess the severity of the respiratory impairment  
3 once a disease process is established by appropriate clinical and  
4 laboratory findings. Id.

5 With respect to episodic respiratory diseases such as  
6 asthma, the regulations provide that the frequency and intensity  
7 of episodes that occur despite prescribed treatment are often the  
8 major criteria for determining the level of impairment.

9 Documentation for these exacerbations should include the date and  
10 time of treatment, treatment and response thereto, and clinical  
11 and laboratory findings on presentation, such as the results of  
12 spirometry and arterial blood gas studies (ABGS). § 3.00 (C).

13 The regulations define "attacks" of asthma as referred to in  
14 paragraph B of § 3.03 as prolonged symptomatic episodes lasting  
15 one or more days and requiring intensive treatment, such as  
16 intravenous bronchodilator or antibiotic administration or  
17 prolonged inhalational bronchodilator therapy in a hospital,  
18 emergency room or equivalent setting. Id. "Hospital admissions"  
19 are defined as inpatient hospitalizations for longer than twenty-  
20 four hours. The medical evidence must also include  
21 information documenting adherence to a prescribed regimen of  
22 treatment as well as a description of physical signs. For asthma,  
23 the medical evidence should include spirometric results obtained  
24 between attacks that document the presence of baseline airflow  
25 obstruction. Id. Detailed requirements for documentation of  
26 pulmonary function testing and chronic impairment of gas exchange  
27 are set forth. §3.00 (E), (F).

28 The pertinent listing states:

1 3.03 Asthma. With:

2 A. Chronic asthmatic bronchitis. Evaluate under  
3 the criteria for chronic obstructive pulmonary  
4 disease in 3.02A;

5 Or

6 B. Attacks (as defined in 3.00C), in spite of  
7 prescribed treatment and requiring physician  
8 intervention, occurring at least once every 2  
9 months or at least six times a year. Each  
10 in-patient hospitalization for longer than  
11 24 hours for control of asthma counts as two  
12 attacks, and an evaluation period of at least  
13 12 consecutive months must be used to determine  
14 the frequency of attacks.

15 Further, § 3.02(A), referred to in § 3.03(A), provides:

16 3.02 Chronic pulmonary insufficiency.

17 A. Chronic obstructive pulmonary disease, due  
18 to any cause, with the FEV<sub>1</sub> equal to  
19 or less than the values specified in table I  
20 corresponding to the person's height without  
21 shoes. (In cases of marked spinal deformity,  
22 see 3.00E.).... (table omitted).

23 Here, with respect to § 3.03(A), which requires an  
24 evaluation of Plaintiff's symptoms under the criteria for chronic  
25 pulmonary disease in 3.02A, Plaintiff does not suggest what  
26 evidence meets the stated criteria.

27 The ALJ did not ignore or overlook the relevant evidence.  
28 The ALJ referred to the record evidence, noting the results of  
tests performed back in April 2003 (A.R. 11, 165), but he  
concluded that the more recent studies indicated values more than  
twice listing levels which thus were nowhere near meeting the  
levels required in the listing. (A.R. 11, 170 [February 2006],  
312 [October 2006].) He also pointed to the negative radiological  
studies. In addressing the evidence and specifically pointing out  
its deficiencies, the ALJ adequately set forth his reasoning.

Plaintiff does not point to any specific medical findings or  
other medical evidence that satisfies the very specific criteria

1 of the listing.

2 With respect to § 3.03(B), the listing specifically requires  
3 attacks at least once every two months or at least six times a  
4 year. Plaintiff's visits amounted to two per year for 2005  
5 through 2007 (March 12, 2005, July 7, 2005, July 25, 2006,  
6 December 4, 2006, June 14, 2007, and July 6, 2007). Not all of  
7 Plaintiff's hospital treatments qualified as "hospitalizations"  
8 or "hospital admissions," but even if they had, Plaintiff's  
9 episodes still would not have met the requirements of the  
10 listing.

11 Further, the ALJ provided numerous citations to record  
12 evidence and pointed out that contrary to Plaintiff's testimony  
13 that she was fully treatment and medication compliant, the  
14 medical evidence of record showed otherwise, namely, that she  
15 smoked against medical advice and multiple orders to quit, and  
16 some of her breathing problem exacerbations occurred when she ran  
17 out of medication. (A.R. 12.) As the foregoing summary of the  
18 medical evidence reflects, substantial evidence supports this  
19 finding by the ALJ.

20 Plaintiff asserts that the ALJ's statement that Plaintiff  
21 had one "hospitalization for breathing problems since her alleged  
22 onset date (in March, 2005; Exhibit 4F, pp. 37-38 [A.R. 217-18]"  
23 (A.R. 11) demonstrates that the ALJ ignored significant portions  
24 of the record reflecting Plaintiff's other treatment at the  
25 hospital. However, in view of the ALJ's documented familiarity  
26 with the record, and considering the pertinent regulatory  
27 context, it is more likely that the ALJ is referring to hospital  
28 admissions for longer than twenty-four hours, the pertinent

1 period in the governing regulations for counting attacks and  
2 determining the intensity of the incident. Although Plaintiff  
3 received treatment at the hospital on other occasions, her stays  
4 were for periods shorter than twenty-four hours. (A.R. 199-200  
5 [July 7, 2005]; 252 [July 25, 2006]; 236 [December 4 and 5,  
6 2006]; 299 [June 14 and 15, 2007]; and 284 [July 6, 2007].)

7 The Court concludes that the ALJ stated adequate reasons for  
8 his conclusion that Plaintiff's impairments did not meet the  
9 listing.

10 Plaintiff challenges the ALJ's failure to find that  
11 Plaintiff's impairments equaled a listing as well as the ALJ's  
12 analysis of the issue.

13 Medical equivalence means that the medical findings  
14 regarding an impairment are at least equal in severity and  
15 duration to the listed findings. § 416.926(a). If a claimant does  
16 not exhibit one or more medical findings specified in the  
17 listing, or she exhibits all medical findings but one or more  
18 findings is not as severe as specified in the listing, then the  
19 impairment will be medically equivalent to the listing if the  
20 claimant has other medical findings related to the impairment  
21 that are at least of equal medical significance. § 416.926(a).

22 However, one who claims upon review that the ALJ erred in  
23 not determining and finding that a claimant's combined  
24 impairments equaled a listing must offer a theory of how the  
25 impairments combined to equal a listed impairment and point to  
26 evidence that shows that the claimant's combined impairments  
27 equal a listed impairment. Lewis v. Apfel, 236 F.3d 503, 514 (9<sup>th</sup>  
28 Cir. 2001).

1 Here, the ALJ expressly found that the impairments did not  
2 meet or equal a listed impairment. The foregoing detailed summary  
3 and analysis of the evidence and reasoning demonstrates that the  
4 ALJ's conclusion was supported by substantial evidence.

5 Plaintiff offers no theory, plausible or otherwise, as to  
6 how her pulmonary impairments combined to equal a listed  
7 impairment, and she points to no evidence that shows that her  
8 combined impairments equaled a listed impairment.

9 VI. Disposition

10 Based on the foregoing, the Court concludes that the ALJ's  
11 decision was supported by substantial evidence in the record as a  
12 whole and was based on the application of correct legal  
13 standards.

14 Accordingly, the Court AFFIRMS the administrative decision  
15 of the Defendant Commissioner of Social Security and DENIES  
16 Plaintiff's Social Security complaint.

17 The Clerk of the Court IS DIRECTED to enter judgment for  
18 Defendant Michael J. Astrue, Commissioner of Social Security,  
19 and against Plaintiff Beverly Jean Garcia.

20

21 IT IS SO ORDERED.

22 Dated: April 1, 2010

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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