

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

10 K.C.T., a minor, by through his ) 1:09-cv-2235 GSA  
11 Guardian ad Litem, Taneshi Madkins, )  
12 Plaintiff, ) ORDER REGARDING PLAINTIFF'S SOCIAL  
13 v. ) SECURITY COMPLAINT  
14 MICHAEL J. ASTRUE, Commissioner )  
15 of Social Security, )  
16 Defendant. )

## BACKGROUND

18 Plaintiff K.C.T., by and through his guardian ad litem Taneshi Madkins (hereinafter  
19 referred to as “Ms. Madkins”), seeks judicial review of a final decision of the Commissioner of  
20 Social Security (“Commissioner”) denying his application for child’s supplemental security  
21 income, pursuant to Title XVI of the Social Security Act. The matter is currently before the  
22 Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable Gary  
23 S. Austin, United States Magistrate Judge.<sup>1</sup>

24 | //

25 | //

26 | //

<sup>1</sup> The parties consented to the jurisdiction of the United States Magistrate Judge. See Docs. 11 & 12.

## **FACTS AND PRIOR PROCEEDINGS<sup>2</sup>**

Ms. Madkins filed an application for benefits on July 14, 2006. AR 68, 74, 101. After being denied both initially and upon reconsideration, Ms. Madkins requested a hearing before an Administrative Law Judge (“ALJ”). AR 68, 74, 93. ALJ Christopher Larsen held a hearing on January 12, 2009. AR 32-44 . The ALJ issued a decision denying benefits on April 6, 2009. AR 14-25. On May 1, 2009, the Appeals Council denied review. AR 2-4.

## Hearing Testimony

The hearing was held on April 3, 2008, in Fresno, California. AR 32. K.C.T was present and was represented by attorney Geoffrey L. Hayden. AR 34. K.C.T's father, Mr. Thurman testified at the hearing. AR 32-44.

Mr. Thurman testified that Plaintiff, who had no problems at birth, had speech difficulties that made him difficult to understand. AR 38-40. He reported that Plaintiff receives average grades in school and attends regular classes. AR 40, 43. He said that Plaintiff's hearing was normal but people, other than his parents, could not understand him. AR 42-43. He testified that Plaintiff was in the second grade, that he had friends, he can count change, and he can tell time on a digital clock. AR 42. He stated that Plaintiff attended speech counseling but without noticeable improvement or worsening. AR 42.

## Medical Record

The entire medical record was reviewed by the Court. Summaries of the relevant reports and treatment notes are provided below.

### *The Opinion of Speech Pathologist, Terri Plake*

On October 11, 2006, Terri Plake, M.C.D., a speech and language specialist, evaluated Plaintiff at the age of four in connection with his disability application. AR 145-48. Ms. Plake noted that plaintiff's grandmother accompanied Plaintiff to the evaluation. AR 145. She observed that plaintiff was cooperative during the examination and demonstrated fluent speech throughout. AR 146. Ms. Plake also found Plaintiff's conversational intelligibility to be at sixty percent

<sup>2</sup> References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 intelligible but noted that it improved with repetition. AR 146. She concluded that Plaintiff's  
2 language skills were in the low normal range and that with articulation therapy "the progress for  
3 complete remediation of [Plaintiff's] poor articulation [was] excellent." AR 147.

4 *The Opinion of Psychologist, Kimball Hawkins*

5 On October 16, 2006, Kimball Hawkins, Ph.D., a psychologist, evaluated Plaintiff. AR  
6 149-151. Dr. Hawkins observed that Plaintiff was not easy to understand and had poor  
7 articulation. AR 150. Dr. Hawkins summarized Plaintiff's abilities as follows:

8 • Communication Domain: Plaintiff used complex prepositions, asked questions when  
9 speaking, and spoke in short sentences but was not easy to understand, did not state both  
10 his first and last name when asked, and did not speak without sound substitutes (AR 150).  
11 • Daily Living Skills: Plaintiff reported that he could dry himself with a towel, take care  
12 of his toileting, answer the phone, call someone to the phone, and dress himself with help,  
13 but he did not put his shoes on the correct foot and had trouble with zippers and buttons  
14 (AR150).  
15 • Socialization: Plaintiff said he had preferred friends and was able to label some  
16 emotions; he could also engage in some make believe and pretend play but did not share  
17 things without being told and did not follow rules without being reminded. (AR 151).  
18 • Motor Skills: Plaintiff reported that he could hop on one foot, climb on high equipment,  
19 walk up and down stairs, and open and close scissors with one hand; he could cut along a  
20 line with scissors (AR 151).

21 Dr. Hawkins diagnosed Plaintiff with a speech disorder and found Plaintiff was at risk for  
22 a learning disorder. AR 151. Dr. Hawkins recommended speech therapy and ongoing  
23 educational programs. AR 151.

24 *The Opinion of Dr. G.W. Bugg*

25 On November 22, 2006, G.W. Bugg, M.D., assessed the evidence on behalf of the State  
26 disability service, describing the evidence as follows:

27 • Acquiring and Using Information: Plaintiff is not easily understood and can not explain  
28 things well;

- 1 • Attending and Completing Tasks: Plaintiff is hyper and stays busy doing “bad things  
2 while playing;”
- 3 • Interacting with Others: Plaintiff does not share or follow rules without a reminder;
- 4 • Moving about and Manipulating Objects: Plaintiff does not cut along a line with  
5 scissors (AR 152-54).

6 Dr. Bugg concluded that Plaintiff did not meet, equal, or functionally equal any listing. AR 154.  
7 He also determined that Plaintiff had less than marked limitations in acquiring and using  
8 information, and interacting and relating to other, moving about and manipulating objects, caring  
9 for himself. Dr. Bugg also opined K.C.T. and no limitation with regard to attending and  
10 completing tasks as well as health and physical well being. AR 156-157.

11 *The Opinion of Roberta Evans-Joseph, Speech and Language Pathologist*

12 On January 19, 2007, Roberta Evans-Joseph, M.S., a speech and language pathologist  
13 with the Bakersfield City School District, evaluated Plaintiff, who was then about four and a half  
14 years old. AR 161-62. Testing showed auditory comprehension in the range of a three to four  
15 year old and communication at the level of a three-year, nine-month old, resulting in an overall  
16 score of that of a three and a half year old. Testing also showed that Plaintiff initiated  
17 conversation, stayed on topic, and engaged in a variety of speech acts, including requests,  
18 questions, and comments. AR 162. Ms. Evans-Joseph found that Plaintiff’s non-verbal  
19 components, including eye contact and physical proximity were appropriate. AR 162. She  
20 concluded that a severe discrepancy existed between Plaintiff’s chronological age and speech and  
21 language performance with language delays in auditory comprehension of about one year below  
22 his chronological age AR 162. Specifically, at the time of the assessment K.C.T. was four years  
23 and seven months old, and his auditory comprehension was in the 3 to 4 year range; his  
24 expressive communication was in the range of a 3.9 year-old. His total language score was that  
25 of a 3.5 year old. AR 162.

26 **SCOPE OF REVIEW**

27 Congress has provided a limited scope of judicial review of the Commissioner’s decision  
28 to deny benefits under the Act. In reviewing findings of fact with respect to such determinations,

1 the Court must determine whether the decision of the Commissioner is supported by substantial  
2 evidence. [42 U.S.C. § 405](#) (g). Substantial evidence means “more than a mere scintilla,”  
3 [Richardson v. Perales](#), 402 U.S. 389, 402 (1971), but less than a preponderance. [Sorenson v.](#)  
4 [Weinberger](#), 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is “such relevant evidence as a  
5 reasonable mind might accept as adequate to support a conclusion.” [Richardson](#), 402 U.S. at  
6 [401](#). The record as a whole must be considered, weighing both the evidence that supports and  
7 the evidence that detracts from the Commissioner’s conclusion. [Jones v. Heckler](#), 760 F.2d 993,  
8 [995](#) (9th Cir. 1985). In weighing the evidence and making findings, the Commissioner must  
9 apply the proper legal standards. *E.g.*, [Burkhart v. Bowen](#), 856 F.2d 1335, 1338 (9th Cir. 1988).  
10 This Court must uphold the Commissioner’s determination that the claimant is not disabled if the  
11 Secretary applied the proper legal standards, and if the Commissioner’s findings are supported by  
12 substantial evidence. See [Sanchez v. Sec’y of Health and Human Serv.](#), 812 F.2d 509, 510 (9th  
13 Cir. 1987).

#### 14 REVIEW

15 The childhood disability standard was changed by the Personal Responsibility and Work  
16 Opportunity Act of 1996. [Pub. L. No. 104-193](#), § 211, [110 Stat. 2105](#) (1996), amending [42](#)  
17 [U.S.C. § 1382c\(a\)\(3\)\(A\)](#). The amendment provides:

18 [A]n individual under the age of 18 shall be considered disabled . . . if that individual has  
19 a medically determinable physical or mental impairment, which results in marked or  
severe functional limitations, and which can be expected to result in death or which has  
lasted or can be expected to last for a continuous period of not less than 12 months.

20 [42 U.S.C. § 1382c\(a\)\(3\)\(C\)\(I\)](#).

21 To apply the new statutory standard, the Commissioner now uses a three-step sequential  
22 evaluation procedure for determining whether a child’s impairments result in marked and severe  
23 functional limitations and is therefore disabled. [20 C.F.R. § 416.924\(b\)-\(d\)](#) (2001). The  
24 amendment eliminated the fourth step in the disability analysis: determining whether the child  
25 had an impairment or impairments of comparable severity to that which would disable an adult.  
26 This new standard applies to new claims filed on or after August 22, 1996, and to new claims not  
27 yet finally adjudicated on that date. [42 U.S.C. § 1382c](#). A claim is not finally adjudicated if an  
28

1 administrative or judicial appeal was pending on or after that date regarding a claim that has been  
2 denied in whole. *Id.*; see *Jamerson v. Chater*, 112 F.3d 1064, 1065 n.1 (9th Cir. 1997).

3 The relevant inquiry at step one is whether the child is engaged in substantial gainful  
4 activity. [20 C.F.R. § 416.924\(b\)](#). If not, step two requires the fact finder to determine whether  
5 the child has a medically severe impairment or combination of impairments. [20 C.F.R. §](#)  
6 [416.924\(c\)](#). Plaintiff bears the burden of demonstrating a severe impairment. [20 C.F.R. §](#)  
7 [416.924](#). If the impairment is a “slight abnormality or a combination of slight abnormalities that  
8 cause no more than a minimal functional limitation,” the Commissioner will find that the child  
9 does not have a severe impairment and therefore is not disabled. [20 C.F.R. § 416.924\(c\)](#).

10 Step three requires determining whether the severe impairment meets or equals in severity  
11 any impairment that is listed in [20 C.F.R. Part 404](#), Subpart P, Appendix 1. [20 C.F.R. §](#)  
12 [416.924\(d\)](#). If such an impairment exists, the Commissioner must find the child disabled. *Id.* If  
13 the child’s impairment does not meet or medically equal any listing, then the Commissioner must  
14 determine if the limitations caused by the impairment functionally equal a listing in the Listing of  
15 Impairments. *Id.* To do so, the Commissioner will assess all of the functional limitations caused  
16 by the child’s impairments in six domains: (1) acquiring and using information; (2) attending and  
17 completing tasks; (3) interacting and relating with others; (4) moving about and manipulating  
18 objects; (5) caring for self; and (6) health and physical well being. See [20 C.F.R. § 416.926a\(a\)-\(b\)](#).  
19 To functionally equal a listing, the impairments must result in marked limitations in two  
20 domains of functioning or an “extreme” limitation in one domain. [20 C.F.R. § 416.926a\(a\)](#).

21 ***The ALJ’s Findings***

22 After applying the childhood disability standard, the ALJ found that K.C.T.: (1) did not  
23 engage in any substantial gainful activity at any time relevant to the decision because he was a  
24 school-age child at the time of filing the claim; (2) has a severe impairment of speech articulation  
25 disorder; (3) however, the severe impairment did not medically or functionally equal the listings.  
26 AR 17.

27 More specifically, the ALJ found K.C.T. had “no limitation” for completing tasks and  
28 health and physical well-being. AR 20, 24. He also found “less than marked” limitations for

1 acquiring and using information, interacting and relating with others, moving about and  
2 manipulating objects, caring for self, and health. AR 19, 22-24. Because K.C.T. did not have  
3 two “marked” limitations in any of the domains, or one “extreme” limitation in a single domain,  
4 the ALJ determined that K.C.T was not disabled. AR 24-25.

5 **DISCUSSION**

6 Plaintiff argues that the ALJ does not offer any legally sufficient reasons to reject the  
7 testimony of K.C.T’s father. Specifically, Plaintiff argues the ALJ’s decision is improper  
8 because the medical records document that K.C.T. has a speech impairment, and K.C.T’s father  
9 described limitations regarding K.C.T’s ability to articulate his speech, yet the ALJ failed to  
10 consider the father’s testimony. Doc. 17 at pg. 8. Defendant contends that the ALJ did consider  
11 the father’s testimony, but that K.C.T’s speech had improved with therapy and the medical  
12 evidence did not support a finding of disability. Therefore, the ALJ’s analysis was proper. Doc.  
13 18 at pgs. 6-7.

14 Lay witness testimony by family members and friends who have the opportunity to  
15 observe plaintiff on a daily basis “constitutes qualified evidence” that the ALJ must consider.  
16 *Sprague v. Brown*, 812 F.2d 1226, 1231-32 (9<sup>th</sup> Cir. 1987); see *Dodrill v. Shalala*, 12 F.3d 915,  
17 919 (9<sup>th</sup> Cir. 1993) (“An eyewitness can often tell whether someone is suffering or merely  
18 malingering. While this is particularly true of witnesses who view the claimant on a daily basis,  
19 the testimony of those who see the claimant less often still carries some weight”). To reject lay  
20 testimony, an ALJ must give reasons “germane to each witness” for doing so. *Dodrill v. Shalala*,  
21 12 F.3d at 919. Thus, the ALJ must give germane reasons for rejecting Mr. Thurman’s  
22 testimony.

23 After summarizing Mr. testimony, the ALJ notes the following with regard to credibility:

24 After considering the evidence of record, I find the [claimant’s] medically  
25 determinable impairments could reasonably be expected to produce the alleged  
26 symptoms. But the statements concerning the intensity, persistence and limiting  
27 effects of [claimant’s] symptoms are not credible to the extent they are  
inconsistent with finding that the claimant does not have an impairment or  
combination of impairments that functionally equals the listings for the reasons  
explained below...

28 AR 18.

1 To support this conclusion, the ALJ provides a very detailed analysis of all of the medical  
2 records as well as school assessments. AR 18-24. In this case, however, the ALJ also relied on  
3 the testimony of K.C.T's father, as well as evaluations from speech and language pathologists, a  
4 doctor, and a psychologist, which assessed Plaintiff's physical, educational, and social abilities.  
5 AR 16-19.

6 Plaintiff argues the ALJ did not cite to one single legally sufficient reason to reject the  
7 testimony. However, other than making this broad assertion, Plaintiff's argument lacks any  
8 substantive analysis. A review of the ALJ's decision indicates that the ALJ did not reject the  
9 testimony of the lay witness; rather he relied on it, along with the medical and other evidence, to  
10 find that Plaintiff was not disabled. This is illustrated throughout the ALJ's findings.

11 For example, the ALJ observed that Ms. Plake assessed Plaintiff's intelligibility at sixty  
12 percent, found that his intelligibility improved with repetition, and concluded that, with speech  
13 therapy, his prognosis was excellent. AR 18-19, 21, 146. The ALJ also considered the findings of  
14 Dr. Hawkins, who reported on Plaintiff's abilities in a variety of areas. AR 18, 21-23, 150-51. Dr.  
15 Hawkins's observations, as reported by the ALJ, included that Plaintiff used complex  
16 prepositions, asked questions when speaking, and answered the phone. AR 18, 21-23, 150-51.  
17 The ALJ additionally relied on the findings by Dr. Bugg, who concluded that Plaintiff did not  
18 meet, equal, or functionally equal any of the listings. AR 18, 154. Finally, ALJ also noted that  
19 Ms. Evans-Joseph observed that Plaintiff engaged in a variety of speech acts and had appropriate  
20 non-verbal components but found Plaintiff's auditory comprehension at about one year below his  
21 chronological age. AR 18, 21, 162.

22 In conjunction with the medical and other evidence, the ALJ discussed Plaintiff's father's  
23 testimony in great detail, reciting Plaintiff's father's statements that Plaintiff had perfect hearing  
24 but was difficult to understand and had not improved or worsened with speech therapy. AR 17.  
25 The ALJ also recounted Plaintiff's father's statements that Plaintiff was in mainstream classes,  
26 received average grades, had friends, could count change, and could tell time on a digital clock.  
27 AR 18. He noted that Plaintiff's father believed that Plaintiff was disabled because people  
28 unfamiliar with him could not understand him. AR 18. The ALJ did not reject any of this

1 testimony; instead he relied on it however the ALJ found that such evidence did not support a  
2 finding of disability. Plaintiff cites no authority for his position that a child who is difficult to  
3 understand is entitled to disability benefits. AR 18. While the ALJ recognized that Plaintiff's  
4 articulation disorder might limit Plaintiff's ability to communicate and socially interact, he  
5 concluded that the medical findings, along with Plaintiff's father's testimony regarding Plaintiff's  
6 abilities, schooling, and social interactions, supported a finding that Plaintiff had no marked  
7 limitations and did not meet, equal, or functionally equal any listing. AR 17-24. Thus, the only  
8 aspect of Plaintiff's father's testimony that the ALJ rejected was the father's assertion that  
9 Plaintiff was disabled, which is a legal conclusion reserved for the ALJ AR 17- 24. 20 C.F.R. §  
10 416.927(e) (stating that the Commissioner is responsible for making a determination as to  
11 whether a claimant meets the statutory definition of disability); *see Magallanes v. Bowen*, 881  
12 F.2d 747, 751 (9th Cir. 1989) (stating that an opinion as to the ultimate issue of disability is not  
13 conclusive); *see also Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (observing that  
14 “[l]ay testimony as to a claimant's symptoms is competent evidence which the [Commissioner]  
15 must take into account”) (emphasis in original)(citation omitted)). Accordingly, Plaintiff's  
16 argument has no merit, and substantial evidence supports the ALJ's decision.

17 In sum, the ALJ conducted a thorough review of the entire record. He considered  
18 Plaintiff's testimony as evidenced by the summary and analysis in the opinion.  
19 Thereafter the ALJ made a disability determination which is supported by substantial evidence  
20 and is free of legal error.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

## **CONCLUSION**

Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court DENIES Plaintiff's appeal from the administrative decision of the Commissioner of Social Security. The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant Michael J. Astrue, Commissioner of Social Security, and against Plaintiff K.C.T, by and through his Guardian ad Litem Taneshi Madkins.

IT IS SO ORDERED.

Dated: March 8, 2011

/s/ **Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE