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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MIKA MILLER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 1:13-cv-01597-SAB

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF’S SOCIAL  
SECURITY APPEAL AND DEFENDANT’S  
CROSS MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR  
FURTHER ADMINISTRATIVE  
PROCEEDINGS

(ECF Nos. 13, 14, 15)

**I.**

**INTRODUCTION**

Plaintiff Mika Miller (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for disability benefits pursuant to the Social Security Act and Defendant’s cross motion for summary judgment. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Stanley A. Boone.<sup>1</sup>

Plaintiff suffers from obesity, status post injury to non-dominant left upper extremity; posttraumatic stress disorder; and polysubstance dependence in early remission. For the reasons set forth below, Plaintiff’s Social Security appeal and Defendant’s cross motion for summary

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<sup>1</sup> The parties have consented to the jurisdiction of the United States Magistrate Judge. (See ECF Nos. 6, 7.)

1 judgment shall be granted in part and denied in part.

2 **II.**

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 Plaintiff protectively filed an application for a period of disability and disability insurance  
5 benefits and a Title XVI application for supplemental security income on May 6, 2010. (AR  
6 147-150, 151-152.) Plaintiff's applications were initially denied on September 23, 2010, and  
7 denied upon reconsideration on April 1, 2011. (AR 85-88, 89-92, 96-99, 100-103.) Plaintiff  
8 requested and received a hearing before Administrative Law Judge Sherrill A. LaPrade Carvalho  
9 ("the ALJ"). Plaintiff appeared for a hearing on May 24, 2012. (AR 50-80.) On June 14, 2012,  
10 the ALJ found that Plaintiff was not disabled. (AR 22-36.) The Appeals Council denied  
11 Plaintiff's request for review on August 7, 2013. (AR 1-4.)

12 **A. Hearing Testimony**

13 Plaintiff testified at the hearing on May 24, 2012, without representation of counsel. (AR  
14 52-67; 73-76.) The ALJ explained Plaintiff's right to be represented by an attorney or non-  
15 attorney at the hearing and offered Plaintiff the opportunity to have his mother present at the  
16 hearing. (AR 52-56.) Plaintiff wished to proceed with the hearing. (AR 57.)

17 Plaintiff was born on October 7, 1966, and graduated high school. (AR 58.) Plaintiff has  
18 attended two years of community college and had some vocational training. (AR 59.) He lives  
19 at home with his mother. (AR 58.) Plaintiff has used marijuana, cocaine, and alcohol in the  
20 past. (AR 75.) Plaintiff has not used cocaine in twenty years or marijuana and alcohol for about  
21 a year. (AR 75-76.)

22 During the hearing Plaintiff complained that the pain in his arm was killing him. (AR  
23 59.) He stated the pain goes from the middle of his back through his fingers. (AR 59.) The  
24 fingers are numb and tingling all the time. (AR 60.) The doctor told him to go to the local  
25 hospital and sign up for something if he did not have insurance, but Plaintiff has not had the  
26 chance to do so. (AR 60.) Plaintiff takes Extra Strength Excedrin for the pain. (AR 60.)  
27 Plaintiff has not taken prescription pain medication for about a month. (AR 60.)

28 Plaintiff was stabbed in the abdomen and his arm was slashed during a robbery. (AR 61.)

1 He had two surgeries on his arm and three of the fingers are numb. (AR 61.) The pain in  
2 Plaintiff's arm comes and goes. (AR 61.)

3 Plaintiff is unable to work because his mother says he has a mental attitude problem.  
4 (AR 61.) He does not get along well with people. (AR 61.) He has to watch out for people that  
5 are after him. (AR 61-62.)

6 Plaintiff last worked in 2009 and has looked for work since then. (AR 62.) Plaintiff has  
7 looked for side jobs, such as yard work. (AR 62.) Plaintiff might be able to work depending on  
8 the people. (AR 62.) He will not work for anyone who is mean. (AR 63.) Plaintiff has not  
9 worked at all since he was stabbed. (AR 64.)

10 Plaintiff sees a doctor at behavioral mental health a couple times a month. (AR 64-65.)  
11 He is taking medication that helps him a little bit. (AR 66.) Plaintiff was put in a mental  
12 hospital a couple years ago after the doctor said he almost hit a little kid. (AR 66.)

13 A vocational expert ("the VE"), Judith Najerian, testified at the hearing. (AR 67-78.)  
14 The VE testified that Plaintiff's prior job history was a box bender, medium, SVP 1, unskilled;  
15 cook/helper, medium, SVP 2, unskilled; labor stores, medium, SVP 2, unskilled; construction  
16 worker II or painter/helper, light; packager/hand, medium, SVP 2, unskilled; and flagger, SVP 2,  
17 unskilled. (AR 67-71.)

18 The ALJ presented a hypothetical of an individual of Plaintiff's age, education, and work  
19 history, who is able to lift and or carry up to fifty pounds occasionally and twenty five pounds  
20 frequently; who can sit, stand, and or walk up to six hours in an eight hour workday; can  
21 occasionally handle, finger, and feel with the non-dominant left upper extremity. This individual  
22 is limited to simple, routine tasks and can have occasional contact with the public and could  
23 work in the presence of coworkers and supervisors with occasional interaction with them. (AR  
24 72.) The VE opined that this individual would be able to perform Plaintiff's past work as a  
25 flagger. (AR 73.) This job would require frequent handling and occasional fingering, but the  
26 handling would be gripping the flag with the dominant hand. (AR 73.)

27 The VE opined that this individual would be able to perform other jobs such as a bakery  
28 worker/conveyor line, 313 jobs in California and nine times that in the United States;

1 blending/paint tender/helper, handling is occasional and fingering is less than occasional; 153  
2 jobs in California and nine times that in the United States; and scaling machine operator, both  
3 handling and fingering are occasional, 813 jobs in California and nine times that in the United  
4 States. (AR 73-74.)

5 The ALJ presented a second hypothetical of an individual of Plaintiff's age, education,  
6 and work experience with the same exertional and non-exertional limitations, who could perform  
7 simple routine tasks, occasional contact with the public and could perform isolated work  
8 requiring only occasional supervision. (AR 76-77.) The VE opined that this individual would be  
9 unable to perform any past work due to the isolation requirement. (AR 76-77.) This individual  
10 would be able to work as a surveillance monitor, sedentary, SVP 2, 2,566 jobs in California and  
11 nine times that in the United States. (AR 77.)

12 The ALJ presented a third hypothetical with the same exertional and non-exertional  
13 limitations as previously stated, able to perform simple routine tasks with occasional public  
14 contact and a low-stress job requiring only occasional changes in the work setting. (AR 78.)  
15 The VE opined that this individual would be able to perform Plaintiff's prior work as a flagger  
16 and the jobs identified in the first hypothetical. (AR 78.)

17 **B. ALJ Findings**

18 The ALJ found that Plaintiff had sufficient quarters to remain insured through June 30,  
19 2013 and must establish disability on or before that date to be entitled to benefits. (AR 25.) The  
20 ALJ concluded that Plaintiff had not been under a disability within the meaning of the Social  
21 Security Act from March 30, 2010, the date Plaintiff alleged his disability began, through the  
22 date of decision. (AR 25.)

23 Plaintiff has the following severe impairments: status post injury to the non-dominant left  
24 upper extremity; posttraumatic stress disorder; and polysubstance dependence in early remission.  
25 (AR 27.) Plaintiff's impairments, alone or in combination, do not meet or equal the severity of a  
26 listed impairment. (AR 28.) Plaintiff has the residual functional capacity to perform a range of  
27 medium work and can lift and or carry 50 pounds occasionally and 25 pound frequently; stand,  
28 walk, and or sit for six hours in an eight hour workday with regular breaks; unlimited in ability to

1 push and pull other than the limitations on lifting; occasionally handle, finger, and feel with the  
2 non-dominant left upper extremity; limited to performing simple routine tasks; occasional  
3 contact with the public; and can work in the presence of coworkers and supervisors but is limited  
4 to occasional interaction with them. (AR 29.)

5 The claimant is able to perform his past relevant work as a flagger. (AR 33.) Plaintiff  
6 has not been under a period of disability as defined in the Social Security Act. (AR 35.)

### 7 III.

### 8 LEGAL STANDARD

9 Congress has provided that an individual may obtain judicial review of any final decision  
10 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g).  
11 In reviewing findings of fact in respect to the denial of benefits, this court “reviews the  
12 Commissioner’s final decision for substantial evidence, and the Commissioner’s decision will be  
13 disturbed only if it is not supported by substantial evidence or is based on legal error.” Hill v.  
14 Astrue, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means more than a  
15 scintilla, but less than a preponderance. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996)  
16 (internal quotations and citations omitted). “Substantial evidence is relevant evidence which,  
17 considering the record as a whole, a reasonable person might accept as adequate to support a  
18 conclusion.” Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002) (quoting Flaten v. Sec’y of  
19 Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)).

20 “[A] reviewing court must consider the entire record as a whole and may not affirm  
21 simply by isolating a specific quantum of supporting evidence.” Hill, 698 F.3d at 1159 (quoting  
22 Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006). However, it is not  
23 this Court’s function to second guess the ALJ’s conclusions and substitute the court’s judgment  
24 for the ALJ’s. See Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (“Where evidence is  
25 susceptible to more than one rational interpretation, it is the ALJ’s conclusion that must be  
26 upheld.”)

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1 IV.

2 DISCUSSION AND ANALYSIS

3 Plaintiff contends that the ALJ erred by failing to credit the limits stated by Dr. Walker<sup>2</sup>  
4 and finding Plaintiff's subjective complaints to not be credible and the appeals counsel erred by  
5 failing to consider the opinion of Dr. Kalman.

6 A. Plaintiff's Credibility

7 Plaintiff contends that the ALJ erred by finding that his subjective complaints are not  
8 credible. The Commissioner argues that the ALJ set forth specific and reasons supported by  
9 substantial evidence in making the credibility determination.

10 Determining whether a claimant's testimony regarding subjective pain or symptoms is  
11 credible, requires the ALJ to engage in a two-step analysis. Molina v. Astrue, 674 F.3d 1104,  
12 1112 (9th Cir. 2012). The ALJ must first determine if "the claimant has presented objective  
13 medical evidence of an underlying impairment which could reasonably be expected to produce  
14 the pain or other symptoms alleged." Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.  
15 2007) (internal punctuation and citations omitted). This does not require the claimant to show  
16 that her impairment could be expected to cause the severity of the symptoms that are alleged, but  
17 only that it reasonably could have caused some degree of symptoms. Smolen, 80 F.3d at 1282.

18 Second, if the first test is met and there is no evidence of malingering, the ALJ can only  
19 reject the claimant's testimony regarding the severity of her symptoms by offering "clear and  
20 convincing reasons" for the adverse credibility finding. Carmickle v. Commissioner of Social  
21 Security, 533 F.3d 1155, 1160 (9th Cir. 2008). The ALJ must specifically make findings that  
22 support this conclusion and the findings must be sufficiently specific to allow a reviewing court  
23 to conclude the ALJ rejected the claimant's testimony on permissible grounds and did not  
24 arbitrarily discredit the claimant's testimony. Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir.  
25 2004) (internal punctuation and citations omitted).

26 \_\_\_\_\_  
27 <sup>2</sup> Initially, Plaintiff contended that the ALJ erred by failing to address the opinion of Dr. Rush. Defendant responded  
28 that since Dr. Rush's opinion was issued prior to the time period at issue in this action and in connection with  
Plaintiff's previous application for Social Security benefits it is not relevant to the current application. Plaintiff  
subsequently withdrew the argument that the ALJ erred by failing to consider the opinion of Dr. Rush.

1 In assessing the claimant's credibility, the ALJ may consider “(1) ordinary techniques of  
2 credibility evaluation, such as the claimant's reputation for lying, prior inconsistent statements  
3 concerning the symptoms, and other testimony by the claimant that appears less than candid;  
4 [and] (2) unexplained or inadequately explained failure to seek treatment or to follow a  
5 prescribed course of treatment. . . .” Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008)  
6 (quoting Smolen, 80 F.3d at 1284).

7 1. Failure to Seek Treatment

8 Plaintiff contends that the ALJ erred by considering the lack of treatment because due to  
9 the nature of his symptoms; weakness, limited motion, and lack of sensation stemming from  
10 nerve damage; his physician could not recommend any other procedures during this time.  
11 However, the ALJ specifically referenced Plaintiff’s allegations of pain, which Plaintiff does not  
12 address.

13 The ALJ considered that Plaintiff complained he was unable to work due to pain in his  
14 left arm which was injured when he was stabbed during a robbery. (AR 29.) Plaintiff  
15 complained of pain around the left bicep muscle and tingling and numbness in his fingers. (AR  
16 29.) The ALJ found that Plaintiff’s medically determinable impairments could reasonably be  
17 expected to cause some of the alleged symptoms, but the statements regarding the intensity,  
18 persistence and limiting effects of the symptoms were not credible. (AR 30.)

19 Although Plaintiff alleged he had significant pain and functional limitations, there is no  
20 medical evidence that he received any additional treatment after December 2010. (AR 30.) The  
21 ALJ found that if Plaintiff’s symptoms were as severe and debilitating as he stated it would be  
22 reasonable to assume he would have sought additional medical treatment over the year and one  
23 half since his last documented treatment. (AR 30.)

24 During the May 24, 2010 hearing, Plaintiff told the ALJ that his arm was killing him.  
25 (AR 59.) He stated that his pain was usually worse. (AR 59.) Plaintiff identified the pain as  
26 starting from the middle of his back and going through his fingers. (AR 59.) Plaintiff stated that  
27 his fingers were numb and tingling all the time and the muscle all the way around into his back  
28 caused him pain. (AR 60.) Plaintiff said that he had been to the emergency room for the pain

1 and received medication. (AR 61.) The doctor told him to go to the hospital to sign up for  
2 something since he did not have insurance, but he had not got around to going to the hospital.  
3 (AR 60.) Later in the hearing, Plaintiff complained that he was hurting so bad he needed to get  
4 some air and stand up. (AR 67.)

5 The ALJ can properly consider that Plaintiff has not sought treatment for his alleged  
6 symptoms. In this instance, the record supports the ALJ's finding that Plaintiff did not seek  
7 medical treatment for pain during the one and one half year since he last saw the specialist  
8 regarding his hand. Further, the fact that Plaintiff did not find his pain significant enough to go  
9 to the hospital to sign up for the program the emergency room doctor suggested is substantial  
10 evidence that Plaintiff's pain is not as severe he alleges.

11 2. Hallucinations

12 The ALJ found that Plaintiff's allegations regarding his auditory and visual hallucinations  
13 were not credible. Plaintiff told Dr. Gratton that he had begun experiencing visual and auditory  
14 hallucinations only months prior to his consultative exam. Dr. Gratton found that it was  
15 extremely unusual for schizophrenia to begin in the 40's and that Plaintiff's description of the  
16 occurrences was not credible. (AR 516.) The ALJ found that Plaintiff had not alleged the  
17 hallucinations during the May 24, 2010 hearing and there was no evidence that he complained of  
18 hallucinations to treating physicians. (AR 30.) However, the record demonstrates that Plaintiff  
19 had been treated for hallucinations since at least June 29, 2004 where the record indicates he had  
20 been hearing voices since 1987. (AR 480.) There are also intermittent references to  
21 hallucinations throughout the medical record. (AR 481, 482, 483, 484, 487, 488, 392, 429, 453,  
22 503.) This finding is not supported by substantial evidence in the record.

23 3. Routine and Conservative Treatment

24 Plaintiff contends that the treatment he received was not routine and conservative. He  
25 received surgery for his hand and continued to see a hand surgeon and attend physical therapy.  
26 Further, Plaintiff contends that his mental illness has been treated with anti-psychotic and anti-  
27 depressant medications.

28 The ALJ found that the credibility of Plaintiff's allegations regarding the severity of his



1 symptoms and limitations is diminished due to the lack of more aggressive treatment for his  
2 complaints of left upper extremity pain and mental illness. (AR 30.) The ALJ may properly  
3 consider that Plaintiff only received conservative treatment for his impairments. Tommasetti,  
4 533 F.3d at 1039. In regards to Plaintiff's complaints of pain, he is being treated with Extra  
5 Strength Excedrin. Evidence that Plaintiff only received conservative treatment is sufficient to  
6 discount a claimant's testimony regarding the severity of his impairment. Parra v. Astrue, 481  
7 F.3d 742, 751 (9th Cir. 2007). Further, as discussed above, the ALJ properly considered that he  
8 was advised to apply at the hospital for a program since he did not have insurance and Plaintiff  
9 did not get around to it. The ALJ properly considered that Plaintiff only received conservative  
10 treatment for his alleged debilitating pain.

11 Similarly, review of the medical record demonstrates that Plaintiff only received  
12 intermittent outpatient treatment for his mental health issues and that his symptoms were  
13 controlled when he was compliant with his medication.<sup>3</sup> (AR 479, 480, 482, 483, 484, 485, 488,  
14 489, 490, 506, 546, 563, ) Plaintiff was intoxicated on March 31, 2010 when he was hospitalized  
15 after being stabbed. (AR 420.) While Plaintiff has submitted evidence of hospitalization for  
16 other issues, there are no medical records demonstrating that Plaintiff received in-patient  
17 treatment for any mental health issues, contrary to his statements that he has on multiple  
18 occasions been hospitalized for such treatment. The ALJ's determination that Plaintiff only  
19 received routine and conservative treatment for his mental health issues is supported by  
20 substantial evidence in the record.

21 The ALJ did provide clear and convincing reasons supported by substantial evidence to  
22 question Plaintiff's credibility.

### 23 **B. Plaintiff's Limitations Due to the Impairment of His Left Hand**

24 Plaintiff also contends that the ALJ erred by ignoring Dr. Walker's finding that Plaintiff  
25 had no practical use of his left hand for reaching, pushing, pulling, grasping or fingering.

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26  
27 <sup>3</sup> The Court does note that there are statements by Plaintiff and his family that he received inpatient treatment for his  
28 mental health issues, but no medical records were provided to substantiate these claims. Further, due to the false  
nature of statements made to Dr. Kalman by Plaintiff's family members during the examination, the reliability of  
these statements is questionable.

1 Defendant argues that Dr. Walker’s inconsistent opinion appears to be simply recounting  
2 Plaintiff’s symptoms and his own testing found Plaintiff’s fine and gross motor skills to be  
3 normal in both hands and that he was able to pick up small objects and manipulate objects  
4 without difficulty.

5 Dr. Walker saw Plaintiff for a consultative examination on July 26, 2010. Dr. Walker  
6 completed an All Systems Form. (AR 458-61.) The doctor is to describe the claimant’s fine and  
7 gross coordination of the affected upper extremities. Dr. Walker reported, “No practical use of  
8 left hand for reaching, pushing, pulling, grasping or fingering.” (AR 461.) As examples of the  
9 functional use of the impaired extremity, Dr. Walker stated, “Claimant will have difficulty with  
10 use of the left hand for personal hygiene, filing, sorting, handling, typing, buttoning or tying.”  
11 (AR 461.)

12 In his report, Dr. Walker states that he reviewed Plaintiff’s medical records and found a  
13 note dated May 5, 2010 by Dr. Howell to be significant. (AR 462.) “This letter states that Mr.  
14 Miller had a laceration to his arm with injury to his brachial artery and median nerve. He will  
15 certainly never gain full function of his left arm. He will always have decreased sensation of the  
16 thumb, index, and long finger. He will have decreased grip strength and decreased use of his  
17 thumb.” (AR 462.)

18 Dr. Walker opined that Plaintiff’s daily living activities would be impacted because  
19 Plaintiff cannot lift anything with his left hand and is not really able to use his left hand for any  
20 functions. (AR 462.) As relevant here, Dr. Walker found weakness in Plaintiff’s hand. (AR  
21 463.) Plaintiff’s reflexes were 2/4 in both his upper and lower extremities. (AR 464.) Fine and  
22 gross manipulations were normal with the right and left hands. Plaintiff was able to pick up  
23 small objects and manipulate objects without difficulty. (AR 464.) Plaintiff was able to stoop  
24 and pick up items off the floor with both hands. (AR 464.) Dr. Walker found that Plaintiff had  
25 limited use of the left hand. (AR 465.)

26 The ALJ has an independent "duty to fully and fairly develop the record and to assure  
27 that the claimant's interests are considered." Widmark v. Barnhart, 454 F.3d 1063, 1068 (9th Cir.  
28 2006) (quoting Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)). The ALJ must be

1 especially diligent when the claimant is unrepresented. McLeod v. Astrue, 640 F.3d 881, 885  
2 (9th Cir. 2011) "[W]here the claimant is not represented, it is incumbent upon the ALJ to  
3 scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts. He  
4 must be especially diligent in ensuring that favorable as well as unfavorable facts and  
5 circumstances are elicited." Higbee v. Sullivan, 975 F.2d 558, 561 (9th Cir. 1992) ( quoting Cox  
6 v. Califano, 587 F.2d 988, 991 (9th Cir. 1978)). The ALJ may discharge this duty by  
7 subpoenaing or submitting questions to the claimant's physician, continuing the hearing, or  
8 keeping the record open after the hearing to allow the claimant to supplement the record.  
9 Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001). Further, the ALJ's duty to fully  
10 develop the record is heightened where the claimant may be mentally disabled and, therefore,  
11 unable to protect his own interests. Higbee, 975 F.2d at 562.

12 In this instance, there was a clear inconsistency in Dr. Walker's opinion. On August 18,  
13 2010, Dr. Model Neway completed a case analysis and noted that the finding that Plaintiff's fine  
14 and gross manipulation was normal on the right and left hands and his ability to pick up and  
15 manipulate objects without difficulty was inconsistent with the evidence. (AR 466.) Dr. Neway  
16 requested a follow up as there in inconsistency in the consultative examination about function.  
17 (AR 466, 474.)

18 The ALJ considered the opinion of Dr. Walker and gave it great weight finding that Dr.  
19 Walker had the opportunity to perform a full evaluation of Plaintiff and concluded that he had no  
20 functional restrictions other than those restrictions regarding the use of the left upper extremity.  
21 (AR 32.) The ALJ found this opinion generally consistent with the residual functional capacity  
22 and supported by the medical evidence which documented difficulty with gripping and  
23 manipulation of the left upper extremity. (AR 32.) The ALJ found that Plaintiff is unlimited as  
24 to pushing and pulling, and can occasionally handle, finger, and feel with the non-dominant left  
25 upper extremity. (AR 29.)

26 In looking at Dr. Walker's report, the statement that Plaintiff is not able to use his left  
27 hand for any functions appears to be Plaintiff's recitation of his physical limitations. However,  
28 the form which was completed by Dr. Walker shows that Plaintiff rated 1/5 for pinch and grip in

1 his left hand. (AR 460.) This is consistent with the statement that Plaintiff had no practical use  
2 of the left hand for reaching, pushing, pulling, grasping or fingering and that he would have  
3 difficulty with using his left hand for filing, sorting, handling, typing, buttoning, or tying. (AR  
4 461.)

5 Dr. Walker also found that Plaintiff's fine and gross manipulations were normal with the  
6 right and left hands and he was able to pick up small objects and manipulate objects without  
7 difficulty and pick up items off the floor with both hands. These inconsistent findings were  
8 noted by Dr. Neway who requested a follow up as to Plaintiff's function. No follow-up was  
9 done. While recognizing that Dr. Walker found Plaintiff to have no practical use of his left hand  
10 (AR 31), the ALJ relied on these inconsistent findings in determining Plaintiff's residual  
11 functional capacity.

12 In his May 5, 2010, letter, Dr. Howell stated that he expected Plaintiff to have a good  
13 recovery, but he would certainly never regain full function of his left arm and will always have  
14 decreased sensation in the thumb, index, and long finger and will have decreased grip strength  
15 and decreased use of the thumb. (AR 628.) Although it appears that Plaintiff may have some  
16 use of his left hand, the ALJ's determination that Plaintiff was able to occasionally handle, finger  
17 and feel with the non-dominant left upper extremity is not supported by substantial evidence in  
18 the record. This action shall be remanded for further evidentiary development on the extent of  
19 Plaintiff's functional limitations in using his left hand.

20 **C. Plaintiff's Limitations Due to Mental Health Issues**

21 Finally, Plaintiff claims that the Commissioner committed legal error by failing to  
22 consider the opinion of Dr. Kalman which was submitted on appeal. Defendant argues that the  
23 Appeals Council's decision not to review Dr. Kalman's opinion is not reviewable by this Court.  
24 Defendant further contends that even if the ALJ had Dr. Kalman's opinion it is contradicted by  
25 Plaintiff's own work history. Plaintiff replies that he is not seeking reversal of the Appeals  
26 Council's decision, but argues that Dr. Kalman's report undermines the ALJ's decision that  
27 Plaintiff is not disabled.

28 The ALJ found that Plaintiff had sufficient quarters to remain insured through June 30,

1 2013 and must establish disability on or before that date to be entitled to benefits. (AR 25.) Dr.  
2 Kalman examined Plaintiff on June 14, 2013. (AR 631-634, 637-644.) Dr. Kalman's report was  
3 submitted to the Appeals Council who found that the opinion was issued after the hearing and  
4 was about a later time and does not affect the decision as to whether Plaintiff was disabled before  
5 June 14, 2012. (AR 2.)

6 When new evidence is submitted to the Appeals Council that was not before the ALJ and  
7 the Appeals Council considers it in denying review of the ALJ's decision, the new evidence is  
8 part of the administrative record. Brewes v. Commissioner of Social Sec. Admin., 682 F.3d  
9 1157, 1160 (9th Cir. 2012). In this instance, Dr. Kalman's report was not considered in denying  
10 the review of the ALJ's decision because it was found to be for a period after the ALJ issued his  
11 decision and does not affect the decision as to whether Plaintiff was disabled before June 14,  
12 2012. (AR 2.)

13 The Social Security Act grants the district court jurisdiction to review final decisions of  
14 the Commissioner. Klemm v. Astrue, 543 F.3d 1139, 1144 (9th Cir. 2008)( quoting 42 U.S.C. §  
15 405(g)). An exception to the final decision rule applies "to any colorable constitutional claim of  
16 due process violation that implicates a due process right either to a meaningful opportunity to be  
17 heard or to seek reconsideration of an adverse benefits determination." Klemm, 543 F.3d at  
18 1144 (citations omitted). "A constitutional claim is colorable if it is "not 'wholly insubstantial,  
19 immaterial, or frivolous.' " Id. Plaintiff does not argue that the failure to review Dr. Kalman's  
20 opinion constitutes a due process violation, rather he argues that the Appeals Council improperly  
21 rejected the consultative examiner's opinion.

22 The Ninth Circuit has held that "medical evaluations made after the expiration of a  
23 claimant's insured status are relevant to the evaluation of the preexisting condition." Taylor v.  
24 Comm'r of Soc. Sec. Admin., 659 F.3d 1228, 1233 (9th Cir. 2011) (quoting Lester v. Chater, 81  
25 F.3d 821, 832 (9th Cir. 1996)). The district court can consider the opinion of a physician that  
26 was rejected by the Appeals Council in determining "whether, in light of the record as a whole,  
27 the ALJ's decision was supported by substantial evidence and was free of legal error." Taylor,  
28 659 F.3d at 1232.

1 The ALJ gave great weight to the State agency mental review consultant on initial  
2 review. (AR 32.) These opinions were found to be generally consistent with the residual  
3 functional capacity limitations assessed in the decision. (AR 32.) The ALJ gave some weight,  
4 but not great weight to the opinion of consultative examiner, Dr. Gratton. (AR 32.)

5 1. Relevant Medical Record

6 On April 27, 2010, Plaintiff was seen by LCSW Raymond Stegall for an in clinic  
7 behavioral health assessment. (AR 496-501.) Plaintiff reported that he was separated from his  
8 wife and living with a friend. (AR 497.) Plaintiff reported no substance abuse since January and  
9 episodic substance abuse up to January 2010. (AR 497.) Plaintiff had a fair support network of  
10 family and friends. (AR 497.) Plaintiff was found to have eight of thirteen behaviors consistent  
11 with bipolar disorder. (AR 498). Plaintiff complained of persistent re-experience of trauma,  
12 racing thoughts, significant mood instability, and insomnia. (AR 500.)

13 Plaintiff saw Dr. Perez on May 25, 2010. (AR 544-549.) Plaintiff reported having  
14 flashbacks and that his medications had made him calm in the past. (AR 544.) Plaintiff was on  
15 his fifth rehab for marijuana and cocaine. (AR 544.) Plaintiff used to be a very heavy drinker,  
16 even blacking out, and drinks a can of beer on occasion to help him sleep. (AR 544.) Plaintiff  
17 complained of low energy, racing thoughts, and depressed mood. (AR 545.) Plaintiff stated that  
18 he messes up when he stops taking his medication and he last took medication a few years ago.  
19 (AR 545.)

20 Dr. Perez found Plaintiff to be alert and oriented to person, place, and time. (AR 545.)  
21 His interpersonal behavior was bizarre and he avoided eye contact. (AR 545.) Plaintiff was  
22 fidgeting. (AR 545.) Plaintiff's speech rate and volume were normal. (AR 546.) Plaintiff had  
23 impaired long term memory. (AR 546.) His mood was bland and affect blunted. (AR 546.)  
24 Thought process was circumlocutious and thought content was paranoid/persecutory. (AR 546.)  
25 Plaintiff denied hallucinations. (AR 546.) Plaintiff exhibited regressed behavior by making  
26 humming sounds and moving from side to side. (AR 546.)

27 On June 9, 2010, Plaintiff was seen again by Dr. Perez. (AR 502-503.) Plaintiff came to  
28 the appointment on his bicycle. (AR 502.) Plaintiff was angry with the police as he had been

1 arrested for a drunk and disorderly. (AR 502.) Plaintiff was worried that a lady in the parking  
2 lot was going to steal his bicycle. (AR 502.) Plaintiff's wife says that he can live with her if he  
3 takes his medication. (AR 502.)

4 Plaintiff was alert and oriented to person, place, and time. (AR 503.) He was  
5 cooperative, but restless. (AR 503.) Plaintiff's speech was normal and his memory was grossly  
6 intact. (AR 503.) Plaintiff mood and affect were anxious. (AR 503.) Plaintiff's thought process  
7 was coherent; and his thought content was paranoid. (AR 503.) Plaintiff had auditory  
8 hallucinations, hearing voices telling him to "watch out" and "watch your back" and to hit  
9 people, mainly when they sneak up on him. (AR 503.) Plaintiff was unable to sit in the office,  
10 sanding the wood on the window with his nails and playing with a rubber band on the desk. (AR  
11 503.)

12 On July 26, 2010, Plaintiff was examined by Dr. Walker. Plaintiff reported that he is able  
13 to handle his own money, go to the grocery store, can lift 20 pounds with his right hand without  
14 difficulty, and can help out around the house using his right hand. (AR 462.) Plaintiff did pace  
15 around the room and was somewhat inattentive, but answered questions fairly appropriately.  
16 (AR 463.) Plaintiff's affect was flat, he was oriented to person, place, time and current events.  
17 (AR 464.)

18 Plaintiff saw Dr. Perez again on July 28, 2010. (AR 506-507.) Plaintiff stated that he  
19 received Zyprexa in jail and was better on the Zyprexa. (AR 506.) Plaintiff reported staying at  
20 home thinking that people were out to get him. (AR 506.) Plaintiff was alert and oriented to  
21 person, place, and time. (AR 506.) Plaintiff was cooperative and calm. (AR 507.) His memory  
22 was grossly intact. (AR 507.) Mood and affect were anxious. (AR 507.) Plaintiff's thought  
23 process was coherent; and his thought content was paranoid. (AR 507.) Plaintiff denied any  
24 hallucinations. (AR 507.)

25 Dr. Perez saw Plaintiff on August 25, 2010. (AR 510-512.) Plaintiff reported that he was  
26 living with his wife and had not started his Depakote. (AR 510.) Plaintiff was alert and oriented  
27 to person, place, and time. (AR 510.) He was cooperative, but fidgeting. (AR 511.) Plaintiff's  
28

1 speech was normal and memory was grossly intact. (AR 511.) Mood and affect were euthymic.<sup>4</sup>  
2 (AR 511.) Plaintiff's thought process was coherent; and his thought content was persecutory.  
3 (AR 511.) Plaintiff denied any hallucinations. (AR 511.) Plaintiff was unable to work due to  
4 the injury to his arm. (AR 512.)

5 Plaintiff was seen for a consultative examination by Dr. Gratton on September 14, 2010.  
6 (AR 514-517.) Plaintiff came to the examination unaccompanied on public transit. (AR 514.)  
7 Plaintiff reported three inpatient stays for psychiatric care at Cobb Community Hospital for  
8 treatment of bipolar disorder and schizophrenia. (AR 514.) Plaintiff stated he had been clean  
9 and sober for nine months. (AR 514.) Plaintiff had last worked on an assembly line for two  
10 years and was let go in February 2010 when work slowed down. (AR 514.) Plaintiff was living  
11 with his wife and daughter and reported that he was able to structure and execute his daily  
12 routine. (AR 515.) Plaintiff's daily activities included fixing breakfast, reading the newspaper,  
13 sitting on the patio drinking coffee and smoking cigarettes, and watching television. (AR 515.)  
14 Plaintiff regularly attended church. (AR 515.) Plaintiff was unable to do any yard work, house  
15 cleaning or grocery shopping, and his wife prepares all meals due to the injury to his left arm.  
16 (AR 515.) Plaintiff needed help in all aspects of bathing, dressing, and hair care. (AR 515.) He  
17 was able to help with the laundry and reported no difficulty with sorting, measuring detergent  
18 accurately, and adjusting the settings on the washer and dryer. (AR 515.) Plaintiff believed that  
19 he was capable of all aspects of bill paying and financial management. (AR 515.)

20 Plaintiff reported that he began having auditory and visual hallucinations two months  
21 prior to the examination. (AR 515.) He heard voices telling him to "watch out" because  
22 someone was going to get him. (AR 515.) Plaintiff was unable to give any other information  
23 about auditory hallucinations and could or would not elaborate on visual hallucinations. (AR  
24 515.) Dr. Gratton believed that Plaintiff's portrayal of his activities of daily living were possibly  
25 under reported. (AR 515.)

26 Plaintiff walked without the aid of any devices and appeared in no apparent physical  
27

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28 <sup>4</sup> Moderation of mood, not manic or depressed. Stedman's Medical Dictionary 678 (28th Ed. 2006).



1 pain. (AR 515.) He did not verbally complain of pain and there were no unusual postural  
2 adjustments to express or imply relief of pain. (AR 515-516.) Plaintiff was cooperative and his  
3 articulation was good. (AR 516.) There were no obvious behavioral abnormalities noted. (AR  
4 516.) Dr. Gratton found:

5 Mr. Miller's speech was fluent, prosodic, and free from paraphasic errors. His  
6 mood was normothymic<sup>5</sup> and his affect was appropriate to ideational content.  
7 The depth and range of his affect was broad and appropriately variable. He  
8 denied visual and auditory hallucinations but alleged a history of both. . . . His  
9 thought processes were logical and coherent and were not characterized by  
10 loosening of associations, clang associations, circumstantiality, tangentiality,  
11 perseveration, or flight of ideas. His rate of mentation was within normal limits.  
12 He was able to comprehend abstraction without difficulty. His attentional  
13 capacity was within normal limits. He was alert throughout the assessment. He  
14 was oriented in all spheres. All aspects of memory functioning appeared intact,  
15 although formal memory testing was not performed. No vegetative symptoms  
16 were noted and were denied at questioning.

17 In general, Mr. Miller was possibly less than a fully reliable historian. He did not  
18 appear to malingering, embellish symptoms, or minimize his strengths in a  
19 particularly flagrant way, but inconsistencies between his report and his medical  
20 record suggests that he may have been minimizing his strengths.

21 (AR 516.)

22 Dr. Gratton found that Plaintiff did not appear fully motivated to present an honest  
23 depiction of his mental status. (AR 516.) Dr. Gratton stated that it is unusual for an individual to  
24 develop schizophrenia in his forties and for that reason found his description of auditory and  
25 visual hallucinations not to be credible. (AR 516.) There was no other indication of a formal  
26 thought disorder. (AR 516.)

27 Based on the results of her assessment, Dr. Gratton opined that Plaintiff finds it generally  
28 easy to comprehend and carry out simple instructions from a cognitive standpoint and was not  
likely to be challenged by difficulties getting along with others. (AR 516.) His attention was  
sufficient to execute his daily activities. (AR 516.) Plaintiff would not be likely to  
decompensate under stressful conditions unless there was significant secondary gain available to  
him. (AR 516.) Plaintiff's attention to timely completion of tasks and assignments would not

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<sup>5</sup> "Normothymic states in bipolar disorders are generally considered to be devoid of severe symptoms." M'bailara, K.; Demotes-Mainard, et al., Emotional Hyper-Reactivity in Normothymic Bipolar Patients, (Feb. 11, 2009) <http://www.ncbi.nlm.nih.gov/pubmed/19133967>

1 necessarily probe difficult and he would be capable of self-management of funds. (AR 516.)

2         On September 22, 2010, Dr. Gore completed a mental residual functional capacity  
3 assessment and found that Plaintiff was moderately limited in his ability to interact appropriately  
4 with the general public, ability to accept instructions and respond appropriately to criticism, and  
5 ability to get along with coworkers or peers without distracting them or exhibiting behavioral  
6 extremes. Dr. Gore found Plaintiff not significantly limited in all other areas. (AR 519.) Dr.  
7 Gore opined that Plaintiff could follow rules and remember simple one or two step instructions;  
8 attend to simple repetitive tasks for two hour blocks of time in an eight hour workday without  
9 significant interference from psychiatric symptoms, make simple work-related decisions, and  
10 respond to minor changes in work routine with minimal supervision. (AR 520.) He opined that  
11 Plaintiff should not work with the public or in the stress of close coordination with others, but  
12 can work in the presence of others and accept supervision and feedback regarding work  
13 performance in a non-stressful routine. (AR 520.) Dr. Gore found Plaintiff could make simple  
14 plans, set simple goals with moderate difficulty, avoid common workplace hazards; and use  
15 public transportation, and maintain appropriate appearance and hygiene. (AR 520.) Plaintiff's  
16 adaptation was moderately limited. (AR 520.)

17         Dr. Gore found Plaintiff to be mildly restricted in his activities of daily living and  
18 maintaining concentration, persistence or pace and moderately limited in maintaining social  
19 functioning. (AR 532.) There were no episodes of decompensation. (AR 532.) Dr. Gore noted  
20 that Plaintiff had a history of psychosis with improvement in the most recent notes. (AR 534.)  
21 Additionally, there is limited recent treatment history and Plaintiff returned to treatment due to a  
22 court order. (AR 534.)

23         On November 22, 2010, Plaintiff saw Dr. Perez. (AR 562-565.) Plaintiff was alert and  
24 oriented to person, time, and place. (AR 563.) He was cooperative, calm, and speech was  
25 normal. (AR 563.) Plaintiff's memory was grossly intact and his mood and affect were  
26 euthymic. (AR 563.) Plaintiff thought process was coherent and thought content was normal.  
27 (AR 563.) Plaintiff denied any hallucinations. (AR 563.)

28         On March 31, 2011, a psychiatric review technique was completed by Dr. Steven Kaye.

1 (AR 589-602. Dr. Kaye found Plaintiff to be mildly limited in his activities of daily living,  
2 maintaining social functioning, and maintaining concentration, persistence, or pace. (AR 599.)  
3 Dr. Kaye noted that although Plaintiff contends that his symptoms are getting worse, the  
4 allegation is not credible. (AR 601.) Medical records from his provider show that he is doing  
5 well. (AR 601.) Plaintiff has not returned for treatment since November 22, 2010. (AR.) His  
6 mental status examination on that date was within normal limits and there was no evidence of  
7 paranoia or psychosis. (AR 601.)

8 Plaintiff was seen by Dr. Thao on May 15, 2012. (AR 620-625.) Dr. Thao diagnosed  
9 Plaintiff with bipolar disorder, provisional, asthma, and chronic pain with a GAF of 51. (AR  
10 620.) Dr. Thao found that Plaintiff had emotional lability, impairment of impulse control, and  
11 paranoid thinking or inappropriate suspiciousness. (AR 621.)

12 Dr. Kalman examined Plaintiff on June 14, 2013, and completed the questionnaire on the  
13 same date. (AR 631-634, 637-644.) The source of information for the report were Plaintiff  
14 “who was a poor historian and his family who were better historians and accompanying records  
15 which included diagnosis of Bipolar I disorder, severe with psychotic features.” (AR 631.)

16 During the evaluation, Plaintiff told the examining doctor that he last worked in 2009,  
17 “but his brother corrected him.” (AR 632.) Dr. Kalman was informed that Plaintiff had not  
18 worked since the 1990s. (AR 632.) Dr. Kalman was told that medications were not helping and  
19 that Plaintiff was hospitalized twice in the 1990s on a 5150. (AR 631-632.) Dr. Kalman’s  
20 findings were based upon his current examination and observation of Plaintiff. (AR 639.)

21 Dr. Kalman found Plaintiff markedly limited in his ability to understand and remember  
22 detailed instructions, ability to carry out detailed instructions, ability to maintain attention and  
23 concentration for extended periods, ability to work in coordination with or proximity to others  
24 without being distracted by them, ability complete a normal workweek without interruptions  
25 from psychologically based symptoms and perform at a consistent pace without an unreasonable  
26 number and length of rest periods, ability to interact appropriately with the general public, ability  
27 to accept instructions and respond appropriately to criticism from supervisors, and ability to set  
28 realistic goals or make plans independently. Plaintiff was found to be moderately limited in his

1 ability to remember locations and work-like procedures, ability to understand and remember one  
2 or two step instructions, ability to carry out one or two step instructions, ability to perform  
3 activities within a schedule, maintain regular attendance, and to be punctual within customary  
4 tolerance, ability to sustain ordinary routine without supervision, ability to make simple work  
5 related decisions, ability to ask simple questions or request assistance, ability to get along with  
6 co-workers or peers without distracting them or exhibiting behavioral extremes, and ability to  
7 travel to unfamiliar places or use public transportation. Plaintiff was mildly limited in his ability  
8 to maintain socially appropriate behavior and to adhere to basic standards of neatness and  
9 cleanliness, ability to respond appropriately to changes in the work setting, and ability to be  
10 aware of normal hazards and take appropriate precautions. (AR 640-642.)

11 Dr. Kalman reported that Plaintiff's symptoms and limitations applied since 1995. (AR  
12 644.) Dr. Kalman found Plaintiff to be somewhat tense, guarded. (AR 632.) His speech was  
13 average rate and volume; eye contact was fair. (AR 632.) Plaintiff's responses were delayed and  
14 he appeared confused. (AR 632.) He was alert to person, place, and situation, but did not know  
15 the date. (AR 632.) Plaintiff could recall none of three objects at five minutes. (AR 632.) He  
16 was able to repeat three digits forward and two digits backwards. (AR 632.) He could not do  
17 serials or spell "world" backwards. (AR 632.)

18 Plaintiff was unable to do basic math and his intelligence was found to be below average.  
19 (AR 633.) Plaintiff recalled two of the past five presidents. (AR 633.) His abstractions were not  
20 intact. He stated that "apples are not oranges," and a dog and cat were both "simple boy and  
21 girl." (AR 633.) Plaintiff did not know proverbs. (AR 633.) Plaintiff stated if he found a  
22 stamped envelope on the ground he would "keep going," and if he were the first person in a  
23 theater to see a fire, he would "keep going." (AR 633.)

24 Dr. Kalman found Plaintiff's insight into his mental illness and judgment to be poor.  
25 (AR 633.) Plaintiff's mood was depressed, irritable, perplexed and affect and emotions were  
26 labile.<sup>6</sup> (AR 633.) Plaintiff denied suicidal or homicidal thoughts. (AR 633.) Plaintiff had

27 \_\_\_\_\_  
28 <sup>6</sup> Denoting free and uncontrolled mood or behavioral expression of the emotions. Stedman's Medical Dictionary  
1037 (28th Ed. 2006).

1 insomnia with nightmares, and impaired memory, attention and concentration. (AR 633.) His  
2 thought process was illogical at times, disorganized, vague. (AR 633.) There were no loose  
3 associations or mood swings. (AR 633.) Plaintiff's thought process was positive for  
4 hallucinations. (AR 633.) No delusions were elicited. (AR 633.)

5 Dr. Kalman stated that Plaintiff does not do his own shopping, cooking and  
6 housekeeping, and cannot manage his own transportation. (AR 633.) He is capable of caring for  
7 his own personal hygiene, but does not pay his own bills. (AR 633.) Plaintiff sometimes gets  
8 along with his family and has few friends. A typical day is described as playing with his dog,  
9 riding his bike, watching cooking shows and trying to stay calm and away from people. (AR  
10 633.) Plaintiff was diagnosed with schizoaffective disorder; cognitive disorder, secondary to  
11 head trauma; post traumatic stress disorder; antisocial personality disorder; borderline  
12 intellectual functioning; status post head trauma; severed artery in left arm with decreased  
13 strength and mobility; chronic back pain; illness in self; and had a GAF of 45. (AR 634.)

14 Dr. Kalman opined that Plaintiff was incapable of tolerating even low work stress, and  
15 would miss more than three days a month as a result of his impairments or treatment. (AR 643-  
16 644.)

## 17 2. Discussion

18 Although Dr. Kalman noted on the form that Plaintiff's limitations date to 1995, this is  
19 clearly contrary to the record which shows that Plaintiff worked until 2009. (AR 62, 191.)  
20 Further, during those periods of time prior to 2010 in which Plaintiff was not working it was not  
21 due to a disability, but because he was incarcerated. (AR 218.) Dr. Kalman's opinion that  
22 Plaintiff's limitations dated to 1995 is contrary to the record as a whole and appears to be based  
23 on false statements by Plaintiff's family that he had not worked since the 1990s.

24 Dr. Kalman based his opinion of Plaintiff's limitations on his current assessment of  
25 Plaintiff. Dr. Kalman's description of Plaintiff is inconsistent with the prior medical record. Dr.  
26 Kalman found Plaintiff to be confused and he did not know the date. (AR 632.) However,  
27 Plaintiff's prior medical records show he presented for his appointments oriented to person,  
28 place, and time. (AR 464, 506, 510, 516, 545, 563.) While Dr. Kalman found Plaintiff to be

1 confused, other than a single instance where Plaintiff's thought process was found to be  
2 circumlocutious (AR 546), his other physicians found that he was coherent. (AR 503, 507, 511,  
3 516, 563.) Dr. Kalman found Plaintiff to be depressed, irritable, and perplexed, but the record  
4 demonstrates that his prior physicians found him to be alert and cooperative, with no finding of  
5 depression. (AR 504, 506, 563.) Dr. Kalman also found Plaintiff's long term memory to be  
6 impaired, while his medical record shows that, other than his initial appointment with Dr. Perez  
7 prior to starting back on his medication, his memory was grossly intact. (AR 503, 507, 511, 516,  
8 546, 563.)

9 Dr. Kalman only examined Plaintiff on one occasion; a year after the ALJ issued her  
10 decision. The medical record demonstrates that initially, Plaintiff was found to have  
11 hallucinations, (AR 503, 546), once on his medication these symptoms were controlled (AR 507,  
12 511, 563). Also, while Plaintiff did suffer from some paranoia, he stated that these symptoms  
13 were controlled on medication. Dr. Gratton found that other than Plaintiff's allegations of  
14 auditory and visual hallucinations, there was no indication of a formal thought disorder. On  
15 November 22, 2010, Dr. Perez found his thought content to be normal. Dr. Kalman's opinion  
16 finding Plaintiff markedly and moderately limited in almost all areas is inconsistent with the  
17 medical record prior to the ALJ's June 14, 2012 opinion.

18 The ALJ found that Plaintiff received routine and conservative care for his mental health  
19 issues. As discussed above, there is substantial evidence in the record that Plaintiff only received  
20 intermittent outpatient treatment for his mental health issues. Plaintiff had a consultative  
21 examination with Dr. Gratton on September 14, 2010. While Dr. Gratton did question Plaintiff's  
22 complaints of auditory and visual hallucinations, her findings were within normal limits and  
23 indicated no formal thought disorder. Dr. Perez' August 25, 2010 and November 22, 2010 notes  
24 contain similar findings. Other than the consultative examination with Dr. Kalman, the record  
25 demonstrates that Plaintiff did not receive any further mental health treatment after his last visit  
26 with Dr. Perez on November 22, 2010. In viewing the record as a whole, the ALJ's decision in  
27 regards to Plaintiff's mental health issues is supported by substantial evidence.

28 ///

V.

**CONCLUSION AND ORDER**

Based on the foregoing, the Court finds that the ALJ did not err in finding that Plaintiff's subjective complaints were not credible or in determining his mental capacity limitations. However, the ALJ did err by relying on the inconsistent opinion of Dr. Walker. Accordingly,

IT IS HEREBY ORDERED that

1. Plaintiff's appeal from the decision of the Commissioner of Social Security is GRANTED IN PART AND DENIED IN PART.

2. Defendant's motion cross motion for summary judgment is GRANTED IN PART AND DENIED IN PART.

3. The Court REMANDS this action back to the Commissioner for further administrative proceedings consistent with this opinion.

4. It is FURTHER ORDERED that judgment be entered in favor of Plaintiff Mika Miller and against Defendant Commissioner of Social Security.

5. The Clerk of the Court is directed to CLOSE this action.

IT IS SO ORDERED.

Dated: December 23, 2014

  
UNITED STATES MAGISTRATE JUDGE