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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 VINCENT BRAGDON,

11 Plaintiff,

No. CIV S-08-2705 EFB

12 vs.

13 MICHAEL J. ASTRUE,
Commissioner of Social Security,

14 Defendant.

ORDER

15 _____ /
16 Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security
17 (“Commissioner”) denying his application for Supplemental Security Income (“SSI”) under Title
18 XVI of the Social Security Act. For the reasons discussed below, the court grants defendant’s
19 motion and denies plaintiff’s motion.

20 I. BACKGROUND

21 Plaintiff formally applied for SSI on December 19, 2005, alleging that he became
22 disabled on April 5, 2004. Administrative Record (“AR”) 7. Plaintiff’s application was denied
23 initially and upon reconsideration, and plaintiff requested an administrative hearing. AR 27, 28,
24 45. On February 7, 2008, a hearing was held before administrative law judge (“ALJ”) Stanley R.
25 Hogg. AR 18-46. Plaintiff was represented by counsel at the hearing, and testified at the
26 hearing. *Id.*

1 The ALJ issued a decision on April 14, 2008, finding that plaintiff was not disabled.¹ AR

2 7-17. The ALJ made the following specific findings:

3 1. The claimant has not engaged in substantial gainful activity
4 since December 19, 2005, the application date (20 CFR 416.920(b)
and 416.971 *et seq.*).

5 ***

6 2. The claimant has the following severe impairments: Seizure
7 disorder, depressive mood disorder, borderline intellectual
functioning, and obesity (20 CFR 416.920(c)).

8 ***

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

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14 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
15 Social Security program, 42 U.S.C. §§ 401 *et seq.* Supplemental Security Income is paid to
16 disabled persons with low income. 42 U.S.C. §§ 1382 *et seq.* Both provisions define disability,
17 in part, as an “inability to engage in any substantial gainful activity” due to “a medically
determinable physical or mental impairment. . . .” 42 U.S.C. § 1382c(a)(3)(A). A five-step
sequential evaluation governs eligibility for benefits under both programs. *See* 20 C.F.R. §§
404.1520, 404.1571-76, 416.920 and 416.971-76; *Bowen v. Yuckert*, 482 U.S. 137, 140-42
(1987). The following summarizes the sequential evaluation:

18 Step one: Is the claimant engaging in substantial gainful activity? If so,
the claimant is found not disabled. If not, proceed to step two.

19 Step two: Does the claimant have a “severe” impairment? If so, proceed
20 to step three. If not, then a finding of not disabled is appropriate.

21 Step three: Does the claimant’s impairment or combination of
impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P,
App.1? If so, the claimant is automatically determined disabled. If not, proceed
22 to step four.

23 Step four: Is the claimant capable of performing his past work? If so, the
claimant is not disabled. If not, proceed to step five.

24 Step five: Does the claimant have the residual functional capacity to
perform any other work? If so, the claimant is not disabled. If not, the claimant
is disabled.

25 *Lester v. Chater*, 81 F.3d 821, 828, n.5 (9th Cir. 1995).

26 The claimant bears the burden of proof in the first four steps of the sequential evaluation
process. *Bowen*, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. *Id.*

1 4. After careful consideration of the entire record, the undersigned
2 finds that the claimant has the residual functional capacity to
3 perform a full range of work at all exertional levels but with the
4 following nonexertional limitations: he is capable of performing
5 simple unskilled work while adhering to seizure precautions.

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7 5. The claimant is unable to perform any past relevant work (20
8 CFR 416.965).

9 ***

10 6. The claimant was born on August 10, 1958 and was 47 years
11 old, which is defined as a younger individual age 45-49, on the
12 date the SSI application was filed (20 CFR 416.963).

13 7. The claimant has a limited education and is able to
14 communicate in English (20 CFR 416.964).

15 8. Transferability of job skills is not material to the determination
16 of disability because using the Medical-Vocational Rules as a
17 framework supports a finding that the claimant is "not disabled,"
18 whether or not the claimant has transferable job skills (See SSR
19 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

20 9. Considering the claimant's age, education, work experience,
21 and residual functional capacity, there are jobs that exist in
22 significant numbers in the national economy that the claimant can
23 perform (20 CFR 416.960(c) and 416.966).

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25 10. The claimant has not been under a disability, as defined in the
26 Social Security Act, since December 19, 2006, the date the
application was filed (20 CFR 416.920(g)).

AR 7-17.

Plaintiff filed a Request for Review of Hearing Decision/Order with the Appeals Council on April 14, 2008, and the Appeals Council subsequently denied plaintiff's request for review in a Notice and Order of Appeals Council Action dated September 25, 2008. AR 1-3.

II. SUMMARY OF TESTIMONY

Plaintiff testified at the hearing before ALJ Hogg that he started having seizures in April 2004, and that he has numbness in his left side, which occurs at least 20-30 times per day and

1 makes it difficult to stand, walk or grasp any object. *Id.* at 33. Plaintiff also testified that during
2 the numbness, his mind gets “delusional” and he “can’t function.” *Id.* He testified that he takes
3 Dilantin to prevent a full-blown seizure, and that he can sit for half an hour or 45 minutes and
4 walk for 5-10 minutes. *Id.* at 33-36.

5 Plaintiff also testified that he cannot concentrate well and has memory difficulties, and
6 that he once left a faucet running and flooded his sister’s kitchen. *Id.* at 36-37. He testified that
7 taking care of himself is a challenge as far as bathing and getting dressed, but he manages. *Id.* at
8 38. Plaintiff’s niece, who plaintiff lives with, does his grocery shopping and laundry for him, but
9 he vacuums a little bit and can go shopping for a short period of time. *Id.* at 39. He spends time
10 watching television and he sleeps about three hours per night and catnaps at least 10 times during
11 the day. *Id.* at 40-41. His niece cooks dinner for him, and afterward, he goes for a five-minute
12 walk. *Id.* at 41. Plaintiff testified that he was unable to do the work he used to do as a
13 handyman, because he can’t read a tape measure anymore or add or subtract. *Id.* at 42.

14 In addition to the numbness and seizures, plaintiff gets monthly shots for hepatitis C and
15 takes Thiamine for arthritis in his hips. *Id.* at 43-44. He testified that he used to drink alcohol,
16 but doesn’t anymore. *Id.* at 44-45.

17 III. RELEVANT MEDICAL EVIDENCE

18 On December 6, 2004, neurologist Asish Ghoshal, M.D., evaluated plaintiff for
19 complaints of seizures. *Id.* at 197. Plaintiff told Dr. Ghoshal that, in April 2004, he was
20 witnessed having a tonic-clonic seizure and was treated in the emergency room. *Id.* He said he
21 was drinking on a daily basis at that time and had a history of cocaine abuse. *Id.* Dr. Ghoshal
22 noted, subsequent to that, plaintiff had not had “any significant use of cocaine,” but drank an
23 average of 2 beers a day. *Id.* Plaintiff said he had two recurrent seizure episodes. *Id.* Plaintiff
24 was taking Dilantin and reported no adverse side effects. Dr. Ghoshal noted plaintiff complained
25 of some symptoms of numbness involving the right forearm, hand and thigh. *Id.* Plaintiff also
26 reported experiencing “ascending symptoms of numbness or tingling involving the left leg” at

1 which time he felt near fainting. *Id.* He denied any motor deficits. *Id.*

2 Dr. Ghoshal's neurological examination was normal, including cognitive functioning,
3 strength, and gait. *Id.* Dr. Ghoshal's impression was a history of generalized seizures and a
4 questionable abnormality on a CT scan. *Id.* He planned to have plaintiff undergo an MRI and
5 increased plaintiff's Dilantin dose. *Id.*

6 On January 24, 2005, Dr. Ghoshal noted plaintiff had not had any recurrent seizures and
7 that he was taking Dilantin. *Id.* at 196. Plaintiff told Dr. Ghoshal that he had no generalized
8 tonic-clonic seizures, but every day he experienced "episodes of left-sided tingling" lasting for a
9 few minutes with no confusion or loss of consciousness only "some difficulty" with balance.
10 Plaintiff told Dr. Ghoshal that he was applying for disability because he felt his episodes were
11 not under good control. *Id.* Dr. Ghoshal stated that it was possible plaintiff was having focal
12 sensory seizures, referred him to an epilepsy clinic, and indicated that plaintiff might eventually
13 benefit from surgery. *Id.*

14 On March 10, 2006, Barry N. Finkel, Ph.D., performed a consultative examination and
15 administered psychiatric tests. *Id.* at 198-201. Plaintiff reported left-sided weakness and
16 numbness beginning "about four years ago," which was intermittent. *Id.* at 198. He said a
17 doctor told him to stop drinking, he did and "experienced a series of grand mal seizures." *Id.*
18 Dr. Finkel noted plaintiff "began treatment with Dilantin and does not report any subsequent
19 seizures." *Id.* Plaintiff told Dr. Finkel he "smoked crack cocaine from age 28-33." *Id.* at 199.
20 Dr. Finkel diagnosed a mood disorder secondary to medical issues with depressive features,
21 alcohol dependence in 2-year remission, cocaine abuse/dependence in long-term remission and
22 borderline intellectual functioning; and he assessed a Global Assessment of Functioning
23 ("GAF") score of 65.² *Id.* at 200. Dr. Finkel also indicated plaintiff's attention and pace and his
24

25 ² The GAF Scale "[c]onsider[s] psychological, social, and occupational functioning on a
26 hypothetical continuum of mental health-illness." The American Psychiatric Association's
Multiaxial Assessment, set forth in the Diagnostic and Statistical Manual of Psychiatric

1 ability to attend to a regular, 8-hour work day were moderately impaired. *Id.* at 201. He opined
2 that plaintiff “can follow at least simple instructions” and was “able to attend to and follow
3 through on at least simple tasks without direct supervision”; that plaintiff’s concentration was
4 “within normal limits”; and that plaintiff could “interact appropriately with supervisors and
5 peers.” *Id.*

6 On March 11, 2006, neurologist Steve McIntire, M.D., performed a consultative
7 examination of plaintiff. *Id.* at 203-06. Plaintiff told Dr. McIntire that he started having seizures
8 in 2004, and described his seizures as “a sense of numbness spreading over the left leg and arm”
9 that did not spread above the head and lasted for 2-5 minutes, 20-30 times a day. *Id.* at 203. Dr.
10 McIntire noted plaintiff was treated with Dilantin and that his “treatment history does not
11 suggest difficult to control seizures.” *Id.* Dr. McIntire’s examination findings were normal. *Id.*
12 at 204-05. He indicated that plaintiff’s subjective account described only “possible partial
13 seizures” and that they were “frequent episodes of sensory changes that involve the left side
14 without significant alteration in consciousness.” *Id.* at 205. Dr. McIntire opined plaintiff should
15 not work at heights, over the water, or with very heavy machinery” but he should “be able to
16 work in most capacities.” *Id.* at 204-05.

17 IV. ISSUES PRESENTED

18 Plaintiff contends that the Commissioner erred in sustaining the ALJ’s determination that
19 he is “not disabled” because (1) the ALJ failed to provide clear and convincing evidence to
20 discredit plaintiff; (2) the ALJ improperly ignored the limitations imposed by the psychological
21 consultative examiner; and (3) the ALJ improperly discredited the Adult Third Party Report
22 completed by plaintiff’s niece. Dckt. No. 16 at 2.

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25 Disorders, (“DSM-IV”) (4th Ed. 2005), at 34. A GAF of 61 to 70 denotes “Some mild
26 symptoms (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational,
or school functioning (e.g., occasional truancy, or theft within the household), but generally
functioning pretty well, has meaningful interpersonal relationships.”

1 V. LEGAL STANDARDS

2 The Commissioner's decision that a claimant is not disabled will be upheld if the findings
3 of fact are supported by substantial evidence in the record and the proper legal standards were
4 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);
5 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,
6 180 F.3d 1094, 1097 (9th Cir. 1999).

7 The findings of the Commissioner as to any fact, if supported by substantial evidence,
8 are conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is
9 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521
10 (9th Cir. 1996). "It means such evidence as a reasonable mind might accept as adequate to
11 support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol.*
12 *Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938)).

13 "The ALJ is responsible for determining credibility, resolving conflicts in medical
14 testimony, and resolving ambiguities." *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.
15 2001) (citations omitted). "Where the evidence is susceptible to more than one rational
16 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld."
17 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

18 VI. ANALYSIS

19 A. Plaintiff's Testimony

20 Plaintiff contends that the ALJ failed to provide clear and convincing evidence for
21 discrediting plaintiff. Dckt. No. 16 at 10. The ALJ determines whether a disability applicant is
22 credible, and the court defers to the ALJ's discretion if the ALJ used the proper process and
23 provided proper reasons. *See, e.g., Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1995). If
24 credibility is critical, the ALJ must make an explicit credibility finding. *Albalos v. Sullivan*, 907
25 F.2d 871, 873-74 (9th Cir. 1990); *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)
26 (requiring explicit credibility finding to be supported by "a specific, cogent reason for the

1 disbelief”).

2 In evaluating whether subjective complaints are credible, the ALJ should first determine
3 whether the claimant has presented objective medical evidence of an underlying impairment
4 “which could reasonably be expected to produce the pain or other symptoms alleged.” *Bunnell*
5 *v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc). If there is objective medical evidence
6 of an impairment, the ALJ then may consider the nature of the symptoms alleged, including
7 aggravating factors, medication, treatment and functional restrictions. *Id.* at 345-47. The ALJ
8 also may consider: (1) the applicant’s reputation for truthfulness, prior inconsistent statements or
9 other inconsistent testimony, (2) unexplained or inadequately explained failure to seek treatment
10 or to follow a prescribed course of treatment, and (3) the applicant’s daily activities. *Orn v.*
11 *Astrue*, 495 F.3d 625, 636 (9th Cir. 2007); *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).
12 “Without affirmative evidence showing that the claimant is malingering, the Commissioner’s
13 reasons for rejecting the claimant’s testimony must be clear and convincing.” *Morgan v.*
14 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *see also Lingenfelter v. Astrue*,
15 504 F.3d 1028, 1036 (9th Cir. 2007). To support a lack of credibility finding, the ALJ must
16 “point to specific facts in the record which demonstrate that [the claimant is in less pain or the
17 claimant’s symptoms are less severe] than she claims.” *Vasquez v. Astrue*, 547 F.3d 1101, 1105
18 (9th Cir. 2008).

19 Here, the ALJ made specific findings regarding plaintiff’s credibility, as follows:

20 After considering the evidence of record, the undersigned finds
21 that the claimant’s medically determinable impairments could
22 reasonably be expected to produce the alleged symptoms;
23 however, the claimant’s statements concerning the intensity,
24 persistence and limiting effects of these symptoms are not credible
25 to the extent they are inconsistent with the residual functional
26 capacity assessment for the reasons explained below.

24 As for the opinion evidence, with correct diagnosis and proper
25 medication epileptic seizures are manageable. The claimant
26 demonstrates a history of good seizure control.

26 ///

1 In his December 2005 Seizure Questionnaire, the claimant reported
2 that he had a seizure every day for 2 1/2 years. His seizures lasted
3 three minutes, and it took five minutes post seizure for him to
4 resume normal activities. He acknowledged that he had been
taking his medication properly and the medications prevented
“full” seizures. In March of 2006, he reported to Dr. McIntire that
he had four generalized tonic-clonic seizures in his life.

5 The undersigned questions the veracity of the claimant’s
6 allegations and reports. He reported that he experiences left side
7 numbness from his arm to his feet 20 to 30 times per day. In his
8 Seizure Questionnaire, he reported that he had seizures every day
for over two years. However, he reported to Dr. Ghoshal and Dr.
Finkel that he had stopped having seizures once he started taking
Dilantin. Clearly, the objective medical evidence does not support
this allegation, and his credibility suffers as a result.

9 Although he claims memory problems related to his seizure
10 activity, the undersigned again questions his credibility. He told
11 Dr. Finkel in March of 2006 that he stopped working in 1997.
12 That same month he told Dr. McIntire that he stopped working in
2004. There is also evidence that he has been less than candid
13 about his abuse of illicit drugs. He had reported being in
remission, however, in July of 2006, he admitted he had a “one
time use” of Cocaine .

14 The claimant attended a face-to-face interview when he filed this
15 claim and the SSA interviewer did not observe any severe
16 impairment or behavior. The claimant attended the interview
alone, and had ridden Regional Transit Light Rail to his
17 appointment. He was fairly dressed and poorly groomed. He was
5'8 at 185 lbs. He appeared older than his age. He was nice and
18 cooperative. He had great difficulty with memory. He even called
his niece, with whom he lived, to ask her what her child’s name is
because he forgot. He has lived with them for 2 years. He spoke
19 clearly and made good eye contact. He was alert and even
completed his 3368 Disability Report. He had poor grammar and
20 spelling. The interviewer did not observe any other problems.

21 In sum, the above residual functioning capacity assessment is
22 supported by his lack of longitudinal potent medicinal regimen.
23 He reported that he takes a few supplemental vitamins. He
24 reported that if he takes his (seizure) medicine he is fine. The
medical record of evidence does not demonstrate that he
experiences full-blown seizures when he is taking his medications
properly. The severity and pattern of his seizure activity is
25 questionable based upon the evidence presented by the claimant.

26 AR 15-16 (internal citations omitted).

1 Ultimately, the ALJ concluded that plaintiff was not fully credible due to inconsistencies
2 in plaintiff's testimony; inconsistencies between plaintiff's claims and his treatment records;
3 because many of plaintiff's subjective symptoms were controlled by medication; and because
4 plaintiff engaged in activities that undermined his claim of disability. *Id.*

5 Plaintiff disagrees with the ALJ's credibility findings. Specifically, plaintiff argues that
6 the ALJ's statement that plaintiff reported to Drs. Finkel and Ghoshal that he stopped having
7 seizures once he had started taking Dilantin is erroneous. Dckt. No. 16 at 11. According to
8 plaintiff, the ALJ confused generalized tonic-clonic seizures with local sensory seizures, and that
9 the latter, as stated by examining physicians, continues to afflict plaintiff. *Id.* at 12. Thus,
10 plaintiff's testimony that he suffers from daily seizures is credible; they are just local sensory
11 seizures rather than generalized tonic-clonic seizures. *Id.* Plaintiff also disagrees with the ALJ's
12 finding that plaintiff's complaints regarding his memory problems were not credible in light of
13 plaintiff's face-to-face interview at the Administration. *Id.* (citing AR at 15). Plaintiff points out
14 that at that interview, plaintiff was "poorly groomed," and could not remember the name of his
15 niece's child with whom he had lived for two years. *Id.* (citing AR at 95).

16 Finally, plaintiff disagrees with the ALJ's findings that plaintiff was inconsistent about
17 when he ceased working and about his substance abuse. *Id.* at 12-13. Plaintiff contends that
18 there was confusion about when plaintiff stopped working due to company closure (in 1997) and
19 when he stopped working due to his seizures (in 2004), and about plaintiff's prior alcohol and
20 cocaine use, but clarifies that plaintiff stated that he no longer uses alcohol or cocaine (with the
21 exception of a "one time use" of cocaine). *Id.*

22 Here, the ALJ's credibility findings were thoroughly explained and supported in the
23 ALJ's decision. Although plaintiff may disagree with the specific findings, because the findings
24 were supported by clear and convincing evidence in the record, the court will not second-guess
25 that finding. *Thomas*, 278 F.3d at 959. Therefore, plaintiff's challenge on this ground fails.

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1 B. Limitations Imposed by Psychological Consultative Examiner

2 Plaintiff further argues that the ALJ improperly ignored the limitations imposed by the
3 psychological consultative examiner, Dr. Finkel. Dckt. No. 16 at 13-15. Specifically, plaintiff
4 contends that Dr. Finkel imposed the following limitations: “Attention and pace are moderately
5 impaired. Concentration is within normal limits. His ability to work over an eight-hour day and
6 attend to a regular work schedule is likely moderate[ly] impaired.” *Id.* (citing AR at 201).
7 Plaintiff contends that the ALJ never discredited those findings yet failed to include the
8 limitations in his RFC findings. *Id.* (citing AR at 14). According to plaintiff, the ALJ’s
9 limitation to simple unskilled work did not address plaintiff’s inability to maintain a normal
10 work pace nor his inability to be punctual, and argues that the error is material because the ALJ
11 relied on the “grids” to satisfy his burden at step five and mental limitations are not factored into
12 the “grids.” *Id.* at 14 (citing *Tackett v. Apfel*, 180 F.3d 1094, 1101-02 (9th Cir. 1999)).

13 Defendant counters that plaintiff does not point to any errors in the ALJ’s treatment of
14 Dr. Finkel’s opinion. Dckt. No. 19 at 8. Defendant contends that plaintiff’s argument fails to
15 acknowledge that Dr. Finkel unequivocally opined that plaintiff could perform simple work. *Id.*
16 (citing AR at 201). Defendant further argues that the fact that Dr. Finkel opined that plaintiff
17 had some moderate limitations was not inconsistent with his opinion that plaintiff had the ability
18 to perform simple unskilled work. *Id.*

19 Here, although plaintiff argues that the ALJ failed to consider all of the limitations
20 imposed by Dr. Finkel, it is clear that the ALJ relied heavily on Dr. Finkel’s opinion, and noted
21 the limitations plaintiff contends the ALJ ignored. With regard to Dr. Finkel, the ALJ
22 specifically stated:

23 Due to the lack of medical evidence, on March 10, 2006, [plaintiff]
24 attended a consultative psychological evaluation performed by Dr.
25 Barry N. Finkel. He arrived one hour early for his appointment and
26 was alone. He had taken Regional Light Rail to the appointment.
He reported his main problem as his left-sided weakness and
numbness which he had for approximately four years. He had last
worked in 1997. He also reported that he was advised to stop

1 drinking and after he stopped, he experienced a series of grand mal
2 seizures. He began taking Dilantin and reported no subsequent
3 seizures. He reported that he could shower and dress himself. He
4 vacuumed and did his own laundry. He spent the day watching
5 television or visiting with a neighbor.

6 Upon evaluating the claimant, Dr. Finkel found that he was able to
7 groom and dress himself appropriately. He could follow simple
8 instruction. He could follow through on simple tasks without
9 direct supervision. He was able to interact appropriately with
10 supervisors and peers. His attention and pace were moderately
11 impaired and his concentration was within normal limits. His
12 ability to work over an eight-hour day and attend to a regular work
13 schedule was likely moderately impaired. He was diagnosed with
14 a mood disorder, secondary to medical issues with depressive
15 features and in remission from alcohol and cocaine abuse.
16 Additionally, he had borderline intellectual functioning[.]

17 ***

18 The undersigned accords substantial weight to the opinion of Dr.
19 Finkel and D[r]. McIntire. Their opinions are consistent with and
20 supported by the objective medical evidence.

21 AR at 12-13, 14.

22 A review of Dr. Finkel's opinion reveals that although Dr. Finkel opined that plaintiff's
23 attention and pace are moderately impaired and his ability to work over an eight-hour day and
24 attend to a regular work schedule is likely moderately impaired, Dr. Finkel also expressly opined
25 that plaintiff: "is able to groom and dress himself appropriately"; "can follow at least simple
26 instructions"; "should be able to attend to and follow through on at least simple tasks without
direct supervision"; and "is able to interact appropriately with supervisors and peers." AR at
201. Dr. Finkel also opined that plaintiff's concentration was "within normal limits" and he is
"competent to manage funds." *Id.* Dr. Finkel also assessed a GAF score of 65, which is
indicative of only mild psychiatrically-based limitations. *See supra*, n.2. The fact that Dr.
Finkel also opined that plaintiff's attention and pace are moderately impaired and his ability to
work over an eight-hour day and attend to a regular work schedule is likely moderately impaired
does not mean that the ALJ's finding that plaintiff has the residual functional capacity to perform
simple unskilled work while adhering to seizure precautions was inconsistent with Dr. Finkel's

1 opinion or that Dr. Finkel’s opinion precluded the ALJ from using the “grids.”

2 The Medical-Vocational Guidelines, also known as “the grids,” are “a matrix system for
3 handling claims that involve substantially uniform levels of impairment.” *Tackett*, 180 F.3d at
4 1101 (citing 20 C.F.R. pt. 404, subpt. P, appx. 2). They “present, in table form, a short-hand
5 method for determining the availability and numbers of suitable jobs for a claimant.” *Id.* “The
6 Commissioner’s need for efficiency justifies use of the grids at step five where they completely
7 and accurately represent a claimant’s limitations. . . . In other words, a claimant must be able to
8 perform the full range of jobs in a given category, i.e., sedentary work, light work, or medium
9 work.” *Id.* While it is true that significant non-exertional impairments may make reliance on the
10 grids inappropriate, “the fact that a non-exertional limitation is alleged does not automatically
11 preclude application of the grids. The ALJ should first determine if a claimant's non-exertional
12 limitations significantly limit the range of work permitted by his exertional limitations.” *Id.* at
13 1101-02. Here, although Dr. Finkel found that plaintiff’s attention and pace are moderately
14 impaired and his ability to work over an eight-hour day and attend to a regular work schedule is
15 likely moderately impaired, he also specifically opined that those limitations would not affect his
16 ability to “attend to and follow through on at least simple tasks.” AR at 201. Moreover, the
17 limitations expressed by Dr. Finkel do not significantly limit the range of work permitted by
18 plaintiff’s exertional limitations. *See Hoopai v. Astrue*, 499 F.3d 1071, 1076-77 (9th Cir. 2007)
19 (holding that an ALJ did not err by applying the grids and limiting the claimant to simple
20 unskilled work when a medical source had concluded the claimant had “moderate” limitations in
21 multiple areas of mental functioning including exactly the functions relevant in this case:
22 maintaining attention and concentration for extended periods; performing activities within a
23 schedule, maintaining regular attendance, and being punctual with customary tolerance;
24 completing a normal workday and workweek without interruption from psychologically-based
25 symptoms; and performing at a consistent pace without an unreasonable number and length of
26 rest periods). Therefore, the ALJ did not improperly apply the grids.

1 Because it appears that the ALJ properly relied upon Dr. Finkel's opinion, and did not
2 ignore the limitations set forth therein or improperly apply the grids, as plaintiff contends,
3 plaintiff is not entitled to relief on this ground.

4 C. Plaintiff's Niece's Testimony

5 Finally, plaintiff contends that the ALJ improperly discredited the Adult Third Party
6 Report completed by plaintiff's niece, Tamanii C. Andrews. Dckt. No. 16 at 15-16. According
7 to plaintiff, his niece's testimony that plaintiff suffers from debilitating forgetfulness shows that
8 plaintiff "would need additional supervision at work and therefore his case would be taken
9 outside of the grids." *Id.* Therefore, according to plaintiff, the ALJ's error in discrediting that
10 testimony as financially self-serving constituted a material error. *Id.*

11 Defendant counters that the ALJ properly considered the lay witness statements of
12 plaintiff's niece, and properly rejected them because she merely repeated plaintiff's subjective
13 complaints and because they were self-serving in that Ms. Andrews referred to the fact that
14 plaintiff's family could not keep supporting him financially. Dckt. No. 19 at 9 (citing AR 16,
15 129, 133).

16 "[L]ay witness testimony as to a claimant's symptoms or how an impairment affects
17 ability to work is competent evidence, and therefore cannot be disregarded without comment."
18 *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996); *see also Dodrill v. Shalala*, 12 F.3d 915,
19 918-19 (9th Cir. 1993) (friends and family members in a position to observe a plaintiff's
20 symptoms and daily activities are competent to testify to condition); 20 C.F.R. § 404.1513(d)(4)
21 (providing that evidence provided by lay witnesses may be used to show "the severity of [a
22 claimant's] impairment(s) and how it affects [the claimant's] ability to work"). Here, the ALJ
23 did not ignore plaintiff's niece's testimony. With regard to that testimony, the ALJ stated:

24 The undersigned has also considered the letters of support and
25 Adult Third Party Reports from his niece, Timanii (difficult to read
26 writing) C. Andrews, and his sister Nancy Andrews (difficult to
read writing). These letters are accorded minimal weight as they
repeat the claimant's subjective complaints, and are self-serving as

1 they refer to their inability to continue assisting him financially.
2 His niece did not report that he had a seizure every day.

3 AR at 16.

4 “If the ALJ wishes to discount the testimony of the lay witnesses, he must give reasons
5 that are germane to each witness.” *Dodrill*, 12 F.3d at 919; *see also Bruce v. Astrue*, 2009 WL
6 539945, at *1 (9th Cir. Mar. 5, 2009) (finding that the ALJ erred in rejecting, without sufficient
7 comment, the lay witness testimony of the plaintiff’s wife); *Stout v. Comm’r of Soc. Sec.*, 454
8 F.3d 1050, 1054 (9th Cir. 2006) (finding that the ALJ erred by failing to consider the lay
9 testimony of two witnesses about how the plaintiff’s impairments affected his ability to work).
10 Here, the ALJ specifically stated that he was giving the testimony of plaintiff’s niece “minimal
11 weight as they repeat the claimant’s subjective complaints, and are self-serving as they refer to
12 their inability to continue assisting him financially.” AR at 16. Although plaintiff argues
13 otherwise, it was not improper to regard plaintiff’s niece’s testimony as duplicative of plaintiff’s
14 subjective complaints, which the ALJ properly discredited, and as financially self-serving.
15 *Valentine v. Comm’r of the Soc. Sec. Admin*, 574 F.3d 685, 694 (9th Cir. 2009) (“In light of our
16 conclusion that the ALJ provided clear and convincing reasons for rejecting Valentine’s own
17 subjective complaints, and because Ms. Valentine’s testimony was similar to such complaints, it
18 follows that the ALJ also gave germane reasons for rejecting her testimony”); *Greger v.*
19 *Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (“The ALJ also considered Shields’ “close
20 relationship” with Greger, and that she was possibly “influenced by her desire to help [him]”).
21 Therefore, plaintiff is not entitled to relief on this ground.

22 VII. CONCLUSION

23 In conclusion, the court finds that the ALJ’s decision is supported by substantial evidence
24 in the record and based on the proper legal standards. Therefore, IT IS ORDERED that:

25 1. Plaintiff’s motion for summary judgment is denied;

26 ////

1 2. The Commissioner's cross-motion for summary judgment is granted; and

2 3. The Clerk is directed to enter judgment in the Commissioner's favor.

3 DATED: March 31, 2010.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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