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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

10   MARIA NEVEZI,

11   Plaintiff,   No. CIV S-08-2837 KJM PS

12   vs.

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      MICHAEL J. ASTRUE,
14   Commissioner of Social Security,

15   Defendant.   ORDER

16   _____/

17   Plaintiff, proceeding pro se, seeks judicial review of a final decision of the

18   Commissioner of Social Security ("Commissioner") finding plaintiff did not continue to be

19   disabled for purposes of receiving Supplemental Security Income ("SSI") under Title XVI of the

20   Social Security Act ("Act"). For the reasons discussed below, the court will deny plaintiff's

21   motion for summary judgment and grant the Commissioner's cross-motion for summary

22   judgment.

23   I. Factual and Procedural Background

24   In a decision dated, the ALJ determined plaintiff was no longer entitled to

25   disability benefits because she earned income of $9,335.00 per month beginning September

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2003.[1] Administrative Transcript ("AT") 18, 26. The ALJ's decision became the final decision

of the Commissioner when the Appeals Council denied plaintiff's request for review. Plaintiff

contends substantial evidence does not support the ALJ's decision.

II. Standard of Review

        When previously granted benefits are terminated by the Commissioner, the burden

of proof ordinarily shifts. Rather than resting on a current recipient of disability benefits to prove

that he or she is disabled, the burden rests on the Commissioner to prove that the applicant is no

longer disabled. "Once a claimant has been found to be disabled, . . .a presumption of continuing

disability arises in [his] favor[, and the Commissioner] bears the burden of producing evidence

sufficient to rebut this presumption of continuing disability." Bellamy v. Secretary of Health &

Human Serv., 755 F. 2d 1380, 1381 (9th Cir. 1985); see also Saltzman v. Apfel, 125 F.Supp.2d

1014 (C.D. Cal. 2000) (same). This evidence then is reviewed under the substantial evidence

standard. Saltzman, 125 F.Supp.2d at 1019 (citing Murray v. Heckler, 722 F.2d 499, 500 (9th

Cir. 1983)).

        Substantial evidence means more than a mere scintilla of evidence, but less than a

preponderance. Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996) (citing Sorenson v.

Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975)). "It means such evidence as a reasonable

mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389,

402, 91 S. Ct. 1420 (1971) (quoting Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229, 59

S. Ct. 206 (1938)). The record as a whole must be considered, Howard v. Heckler, 782 F.2d

1484, 1487 (9th Cir. 1986), and both the evidence that supports and the evidence that detracts

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   [1] Supplemental Security Income ("SSI") is paid to disabled persons with low income. 42
U.S.C. § 1382 et seq. Disability is defined, 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).
   Plaintiff's disability benefits were terminated pursuant to a continuing disability review
(CDR). This type of review is routinely conducted by the Commissioner to determine whether
an individual is still disabled. An eight-step sequential process is used in the CDR. 20 C.F.R.
§ 416.994(f).

1   from the ALJ's conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985).

2   The court may not affirm the ALJ's decision simply by isolating a specific quantum of

3   supporting evidence. Id.; see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If

4   substantial evidence supports the administrative findings, or if there is conflicting evidence

5   supporting a finding of either disability or nondisability, the finding of the ALJ is conclusive, see

6   Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an

7   improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d

8   1335, 1338 (9th Cir. 1988).

9   III. Analysis

10   In this case, the sequential process ended at the first step because it was

11   determined that plaintiff had engaged in substantial gainful activity beginning September 2003.

12   AT 18; see 20 C.F.R. §§ 416.972 (Table 1), 416.994(f)(1). As a result, plaintiff became

13   ineligible for SSI beginning April 1, 2004. AT 18, 146. Plaintiff contends substantial evidence

14   does not support the ALJ's finding that plaintiff earned income as a board and care provider.

15   Specifically, plaintiff contends the ALJ erroneously attributed her daughter's

16   earnings to plaintiff because she and her daughter share the same name. In finding that the

17   earnings should be attributed to plaintiff, the ALJ acknowledged that some of the evidence was

18   circumstantial but found the following evidence, in combination, strong and persuasive: the

19   statements of Mr. Sava, who placed residents at the board and care facility at issue; the

20   statements of plaintiff's past care provider, who said she had quit giving care to plaintiff because

21   she did not need assistance; the investigators' observations; and the records of In-Home-Support-

22   Services (IHSS). AT 24, 25. This finding is supported by substantial evidence. AT 66, 80, 85,

23   111-114, 143, 163, 177, 200-209, 211-216, 219-222. The ALJ provided proper reasons for

24   discrediting plaintiff and her daughter, noting several inconsistencies in the record with respect to

25   plaintiff's ability to work, reports by a third party of plaintiff's engaging in fraud, and deceptive

26   behavior regarding gambling, driving, and ability to speak English. AT 20, 24, 111, 143, 152,

1   177, 201-202, 204, 219. The reasons stated are sufficient to support the credibility finding. <u>See</u>

2   <u>Bunnell v. Sullivan</u>, 947 F.2d 341, 345-46 (9th Cir. 1991).

3   The ALJ's decision is fully supported by substantial evidence in the record and

4   based on the proper legal standards. Accordingly, IT IS HEREBY ORDERED that:

5   1. Plaintiff's motion for summary judgment or remand is denied, and

6   2. The Commissioner's cross-motion for summary judgment is granted.

7   DATED: March 28, 2010.

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    U.S. MAGISTRATE JUDGE

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