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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JENNIFER BARRAGAN,
Plaintiff,
v.
CAROLYN W. COLVIN,
Acting Commissioner of Social Security,
Defendant.

No. 2:13-cv-0584 CKD
ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act (“Act”), respectively. For the reasons discussed below, the Court will grant plaintiff’s motion for summary judgment, deny the Commissioner’s cross-motion for summary judgment, and remand this matter under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff, born June, 13, 1979, applied for DIB and SSI benefits on September 17, 2010, alleging disability February 28, 2006.¹ Administrative Transcript (“AT”) 147-48. Plaintiff alleged she was unable to work due to seizures, back pain, and anxiety. AT 152. In a decision

¹ Under the Act, payment of SSI benefits is precluded for any months prior to the month the application was filed, regardless of the alleged onset date of disability.

1 dated January 31, 2012, the ALJ determined that plaintiff was not disabled.² AT 17-26. The ALJ
2 made the following findings (citations to 20 C.F.R. omitted):

- 3 1. The claimant meets the insured status requirements of the
4 Social Security Act through March 31, 2010.
- 5 2. The claimant has not engaged in substantial gainful activity
6 since February 28, 2006, the alleged onset date.
- 7 3. The claimant has the following severe impairments: back
8 strain and seizure disorder.
- 9 4. The claimant does not have an impairment or combination
of impairments that meets or medically equals the severity
of one of the listed impairments in 20 CFR Part 404,
Subpart P, Appendix 1.

10 ² Disability Insurance Benefits are paid to disabled persons who have contributed to the
11 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
12 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
13 part, as an “inability to engage in any substantial gainful activity” due to “a medically
14 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

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

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

19 Step three: Does the claimant’s impairment or combination
20 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
21 determined disabled. If not, proceed to step four.

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

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

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

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the
burden if the sequential evaluation process proceeds to step five. Id.

- 1 5. After careful consideration of the entire record, the
2 undersigned finds that the claimant has the residual
3 functional capacity to perform light as work defined in 20
4 CFR 404.1567 (b) and 416.967 (b) except she is restricted
5 from working at heights and around dangerous machinery.
6
7 6. The claimant is capable of performing past relevant work as
8 a cashier-checker. This work does not require the
9 performance of work related activities precluded by the
10 claimant’s residual functional capacity.
11
12 7. The claimant has not been under a disability, as defined in
13 the Social Security Act, from February 28, 2006, through
14 the date of this decision.

15 AT 19-26.

16 ISSUES PRESENTED

17 Plaintiff argues that the ALJ committed the following errors in finding her not disabled:
18 (1) the ALJ erred in finding that there was no severe mental impairment at step two; (2) the ALJ
19 improperly relied on the opinion of Dr. Torrez; (3) the ALJ erred in finding that plaintiff’s seizure
20 disorder did not meet the listing requirements; (4) the ALJ erred in finding that plaintiff had
21 minimal residual functioning; and, (5) the ALJ erred in failing to obtain vocational expert
22 testimony. ECF No. 19.

23 LEGAL STANDARDS

24 The court reviews the Commissioner’s decision to determine whether (1) it is based on
25 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
26 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
27 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
28 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
responsible for determining credibility, resolving conflicts in medical testimony, and resolving
ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
“The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

1 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
2 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ's
3 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
4 affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see
5 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
6 administrative findings, or if there is conflicting evidence supporting a finding of either disability
7 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
8 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
9 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

10 ANALYSIS

11 Plaintiff initially contends that the ALJ committed error at step two of the sequential
12 evaluation process by failing to find that plaintiff's mental impairments were severe. ECF No.
13 19, 28. She alleges that the ALJ ignored significant findings made by her physicians and failed to
14 adequately develop the record. Id. at 29. Plaintiff's primary argument is that the ALJ failed to
15 meaningfully discuss and assess her records from Kaiser Permanente ("Kaiser"), which include
16 various opinions by treating physicians. This assertion remains an underlying issue in plaintiff's
17 remaining claims.

18 The weight given to medical opinions depends in part on whether they are proffered by
19 treating, examining, or non-examining professionals. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
20 1995). Ordinarily, more weight is given to the opinion of a treating professional, who has a
21 greater opportunity to know and observe the patient as an individual. Id.; Smolen v. Chater, 80
22 F.3d 1273, 1285 (9th Cir. 1996).

23 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
24 considering its source, the court considers whether (1) contradictory opinions are in the record,
25 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
26 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
27 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may
28 be rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's

1 opinion generally is accorded superior weight, if it is contradicted by a supported examining
2 professional's opinion (e.g., supported by different independent clinical findings), the ALJ may
3 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes
4 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). In any event, the ALJ need not give weight to
5 conclusory opinions supported by minimal clinical findings. Meanel v. Apfel, 172 F.3d 1111,
6 1113 (9th Cir. 1999) (treating physician's conclusory, minimally supported opinion rejected); see
7 also Magallanes, 881 F.2d at 751. The opinion of a non-examining professional, without other
8 evidence, is insufficient to reject the opinion of a treating or examining professional. Lester, 81
9 F.3d at 831.

10 At step two of the sequential evaluation process, the ALJ found that plaintiff's medically
11 determinable mental impairments of depression and anxiety do not cause more than a minimal
12 limitation in her ability to perform basic mental work activities and are thus non-severe. AT 20-
13 22. In making his mental impairment finding, the ALJ relied on the opinion of Dr. Silvia Torrez,
14 dated December 13, 2010, and the psychiatric review technique form filled out by state agency
15 medical consultant D.B. Johnson, dated February 25, 2011. AT 20-22, 522-527, 605-619. The
16 ALJ noted that Dr. Torrez found plaintiff had: no bizarre or inappropriate behavior; normal
17 stream of thought and mental activity; logical, coherent, and concise speech; appropriate thought
18 content; no indications of hallucinations or delusions; dysthymic mood; affect congruent with
19 mood; average intellectual functioning; normal concentration, abstract thinking, judgment, and
20 insight; and, a Global Assessment of Functioning ("GAF") score of 67.³ AT 20-22. Dr. Torrez
21 also noted that plaintiff's functional abilities are generally good and that the likelihood of her
22 emotionally deteriorating in the work environment is minimal. AT 526-527. The ALJ found Dr.
23 Torrez's opinion to be persuasive and assigned it significant weight. AT 20. The ALJ also relied

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25 ³ Global Assessment of Functioning is a scale reflecting the "psychological, social, and
26 occupational functioning on a hypothetical continuum of mental health-illness." Diagnostic and
27 Statistical Manual of Mental Disorders at 34 (4th ed. 2000) ("DSM IV-TR"). A 61-70 GAF
28 rating indicates some mild 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 some meaningful interpersonal
relationships. Id. at 34.

1 on the state agency medical consultant's findings that plaintiff had: mild restriction in activities of
2 daily living; no difficulties maintaining social functioning; mild difficulties in maintaining
3 concentration, persistence, and pace; and, no episodes of decompensation of extended duration.
4 AT 21, 605-619. Although this is the only other opinion relied on by the ALJ in making his
5 mental impairment findings, he did not expressly assign it any weight.

6 Lastly, in making his finding, the ALJ briefly discussed plaintiff's records from her
7 numerous visits to Kaiser, stating:

8 Kaiser Permanente practitioners similarly noted that speech was
9 normal. Affect was full range and appropriate. Thought process
10 was logical and thought content was normal and goal directed. The
11 [plaintiff] was fully oriented with normal attention and
concentration. Recent and remote memory was intact. Fund of
knowledge was normal. Impulse control, insight and judgment
were good.

12 AT 20. This paragraph purportedly assesses three reports dealing with plaintiff's mental
13 impairments from 2008. AT 234-251. However, it does not purport to address other reports from
14 Kaiser dealing with plaintiff's mental impairments that are elsewhere in the record. See AT 382-
15 391, 584-601.

16 In rejecting the opinions of the treating Kaiser mental health practitioners, the ALJ was
17 required to set forth specific and legitimate reasons for assigning great weight to Dr. Torrez's
18 opinion⁴ and relying heavily on the state agency medical consultant's opinion. Lester, 81 F.3d at
19 830. Also, in making his determination, the ALJ was required to consider the record as a whole.
20 Howard, 782 F.2d at 1487. Furthermore, it was necessary for the ALJ to weigh both evidence
21 that supports and that which detracts from his conclusion. See Jones, 760 F.2d at 995; see also
22 Hammock, 879 F.2d at 501.

23 Although the ALJ thoroughly addressed Dr. Torrez's opinion, there is a substantial
24 amount of relevant information from the remaining sources that the ALJ failed to discuss. The
25 state agency medical consultant's check-box form indicates that plaintiff had medically
26 determinable impairments of major depression, anxiety disorder, and panic disorder. AT 608,
27

28 ⁴ No records were made available to Dr. Torrez for review. AT 522.

1 610. However, the ALJ did not discuss how those findings relate to the consultant's findings that
2 plaintiff has only mild restrictions in activities of daily living, mild difficulties maintaining
3 concentration, persistence, or pace, and no difficulties in maintaining social functioning. AT 615.
4 Also, the ALJ also did not discuss that the Kaiser records indicate that plaintiff had: a family
5 history of depression, bipolar disorder, and schizophrenia; a risk of "bi-polar disorder vs. [p]anic
6 disorder with agoraphobia and MDD, single episode"; GAF scores of 51-60⁵ and 41-50⁶; a
7 depressed, anxious, and dysphoric mood; increased seizure episodes when under stress;
8 occasional passive suicide ideation; diagnoses of panic disorder and depression; and, problems
9 related to social environment. AT 234-250.

10 Furthermore, the ALJ completely failed to address some of the Kaiser records, which
11 contain a substantial amount of information regarding plaintiff's mental impairments. Dr.
12 Muhammad Ali Meatchem saw plaintiff on December 8, 2010 and January 6, 2010, and
13 diagnosed plaintiff with anxiety disorder, recurrent major depression, and panic disorder. AT
14 584, 590. Dr. Meatchem gave plaintiff a GAF score of 51-60 and noted that plaintiff had a
15 depressed and anxious mood and congruent affect. AT 587, 592. Dr. Patrick Wong saw plaintiff
16 on February 2, 2011, and diagnosed plaintiff with anxiety disorder. AT 594. Dr. Wong gave
17 plaintiff a GAF score of 51-60 and noted that plaintiff had a somatic expression of anxiety and
18 had an anxious but well-modulated affect. AT 596.

19 The ALJ similarly failed to account for these medical records in his analysis of plaintiff's
20 residual functional capacity. In his analysis, the ALJ's only mention of plaintiff's mental
21 impairments was as follows:

22 Despite [plaintiff's] reported symptoms and history, practitioners
23 noted that she did not appear to be suffering from a major mental
24 disorder and was functioning adequately. Although she reported
anxiety when interacting with others and in especially (sic) crowds,
she goes outside daily, shops, goes to church and takes public

25 ⁵ A 51-60 GAF rating indicates moderate symptoms (e.g., flat affect and circumstantial
26 speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school
functioning (e.g., few friends, conflicts with peers or co-workers). DSM IV-TR at 34.

27 ⁶ A 41-50 GAF rating indicates serious symptoms (e.g., suicidal ideation, severe
28 obsessional rituals, frequent shoplifting) OR any serious impairment in social, work, or school
functioning (e.g., no friends, unable to keep a job). DSM IV-TR at 34.

1 transportation. She reported that she has 20-25 friends who she
2 „hangs out with“, goes to lunch or coffee with, visits at their other’s
3 (sic) homes and goes places (such as the zoo) with their children.
4 She has never participated in counseling, never has been admitted
5 into a psychiatric facility, has never attempted suicide and does not
6 get into physical altercations.

7 AT 24. This description of plaintiff’s mental impairment record is not only inadequate, as shown
8 above, but it is also contrary to other aspects of plaintiff’s record that the ALJ failed to address.
9 For instance, plaintiff testified that she has one “lady friend” that does not live in Sacramento and
10 she does not have a driver’s license due to her seizures, so she uses public transportation to her
11 appointments when necessary. AT 61-62, 65. There are numerous notes in the record indicating
12 that plaintiff attended psychiatric counseling. See AT 234, 238, 244, 591. Also, as for her
13 participation in physical altercations, there is evidence in the record that her husband was abusive
14 and that she was involved in an assault and battery by two women. AT 245, 248, 249, 307.

15 Again, the ALJ cannot isolate evidence supporting his decision without weighing
16 evidence that detracts from it. See Jones, 760 F.2d at 995; see also Hammock, 879 F.2d at 501.
17 The conflicting evidence in the record should have been, but was not, assessed by the ALJ.
18 Because the ALJ did not properly assess the whole record, as discussed above, he has failed to set
19 forth specific and legitimate reasons for crediting and assigning significant weight to Dr. Torrez’s
20 opinion and relying so heavily on the state agency medical consultant’s opinion. Failing to
21 appropriately address the whole record also undermines the ALJ’s findings on credibility⁷ and
22 residual functional capacity.

23 For these reasons, this matter will be remanded so the whole record may be fully and
24 properly addressed by the ALJ in his or her assessment of the medical opinions in the record,
25 plaintiff’s credibility, and the resulting residual functional capacity.

26 ⁷ Upon review of the record, this Court has found that plaintiff often provided inconsistent
27 information to her numerous physicians and during her testimony before the ALJ. However, it is
28 not in this Court’s purview to assess the plaintiff’s credibility based on this finding. See, e.g.,
Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1995). Because the ALJ failed to properly assess the
aforementioned medical records and did not establish that plaintiff was malingering, his
assessment of plaintiff’s credibility cannot be said to be based on clear and convincing evidence.
See Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).

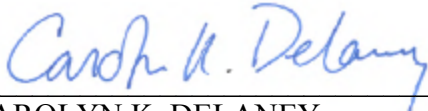
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CONCLUSION

For the reasons stated herein, this matter will be remanded under sentence four of 42 U.S.C. § 405(g) for further development of the record and for further findings addressing the deficiencies noted above. Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (ECF No. 19) is granted for purposes of readdressing the medical opinions in the record, plaintiff's credibility, and the resulting residual functional capacity.
2. The Commissioner's cross-motion for summary judgment (ECF No. 24) is denied; and,
3. This matter is remanded for further proceedings consistent with this order.

Dated: March 18, 2014



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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