



1 **I. PROCEDURAL HISTORY**

2 Plaintiff initially received social security benefits based on disability as a child.

3 When plaintiff reached age 18, eligibility for benefits was redetermined under the rules for adult  
4 disability. On March 1, 2011, it was determined that plaintiff was no longer disabled as of that  
5 date. Following denial of reconsideration, plaintiff requested an administrative hearing, which  
6 was held on August 22, 2012, before Administrative Law Judge (“ALJ”) Peter F. Belli. In a  
7 September 28, 2012, decision, the ALJ concluded that plaintiff is not disabled based on the  
8 following relevant findings:

- 9 1. The claimant has the following severe impairment since March 1, 2011:  
10 borderline intellectual functioning.
- 11 2. Since March 1, 2011, the claimant does not have an impairment or  
12 combination of impairments that meets or medically equals an impairment  
13 listed in the regulations.
- 14 3. Since March 1, 2011, the claimant has the following residual functional  
15 capacity: the claimant can perform the full range of work at all exertional  
16 levels, with the following non-exertional limitations: the claimant is  
17 precluded from working with concentrated dusts, odors, and fumes; the  
18 claimant has no limitations on the ability to receive, remember,  
19 understand, and carry out simple job instructions; the claimant is limited to  
20 occasionally being able to receive, remember, understand, and carry out  
21 detailed job instructions; the claimant is unable to process complex job  
22 instructions; the claimant is able to frequently adjust to changes in the  
23 workplace; the claimant has no limitations on the ability to interact  
24 appropriately with the general public, co-workers, and supervisors; the  
25 claimant is able to make workplace adjustments and workplace judgments.
- 26 4. Considering the claimant’s age, education, work experience, residual  
functional capacity, and vocational expert testimony, there are jobs that  
exist in significant numbers in the national economy that the claimant can  
perform since March 1, 2011.

22 After the Appeals Council declined review on December 31, 2013, this appeal followed.

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## II. STANDARD OF REVIEW

The court reviews the Commissioner’s final decision to determine whether it is: (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). “Substantial evidence” is more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996). It is “. . . such evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole, including both the evidence that supports and detracts from the Commissioner’s conclusion, must be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner’s decision simply by isolating a specific quantum of supporting evidence. See Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative findings, or if there is conflicting evidence supporting a particular finding, the finding of the Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Therefore, where the evidence is susceptible to more than one rational interpretation, one of which supports the Commissioner’s decision, the decision must be affirmed, see Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

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## III. DISCUSSION

In her motion for summary judgment, plaintiff generally argues that she remains disabled because “mental retardation is an unvarying condition” and that the ALJ erred in denying continued benefits because no medical improvement occurred. More specifically, plaintiff contends that Social Security Ruling 11-2p required the ALJ to compare her most recent mental evaluations with the evaluations used to determine she was disabled as a child, and that

1 the ALJ erred in failing to do so. She also argues that the ALJ erred in concluding that Listing  
2 12.05 does not apply.

3 At the outset, the court disagrees with the gravamen of plaintiff's arguments in  
4 general that the ALJ was required to consider whether medical improvement occurred. As  
5 defendant correctly notes, the medical improvement analysis does not apply in cases where a  
6 child's disability is redetermined upon a claimant reaching age 18. See 20 C.F.R. § 416.987(b);  
7 see also SSR 11-2p (noting that the agency does ". . .not use the medical improvement review  
8 standard. . .in age 18 redeterminations"). The ALJ accurately set forth the applicable review  
9 standard as follows:

10 Section 1614(a)(3)(H) of the Social Security Act (the Act) provides that  
11 individuals who are eligible for supplemental security income benefits as  
12 children (individuals who have not attained age 18) for the month  
preceding the month in which they attain age 18 must have their disability  
redetermined under the rules for disability used for adults.

13 Section 1614(a)(3)(H) of the Act also provides that the medical  
14 improvement review standard in section 1614(a)(4) does not apply to  
15 disability redeterminations at age 18. Instead, the definition of disability  
used for adults who file new applications for supplemental security income  
payments based on disability must be applied.

16 The court rejects plaintiff's argument that the ALJ misapplied SSR 11-2p.

17 Plaintiff also argues that the ALJ erred in determining that Listing 12.05 does not  
18 direct a finding of disabled. The Social Security Regulations "Listing of Impairments" is  
19 comprised of impairments to fifteen categories of body systems that are severe enough to  
20 preclude a person from performing gainful activity. Young v. Sullivan, 911 F.2d 180, 183-84  
21 (9th Cir. 1990); 20 C.F.R. § 404.1520(d). Conditions described in the listings are considered so  
22 severe that they are irrebuttably presumed disabling. 20 C.F.R. § 404.1520(d). In meeting or  
23 equaling a listing, all the requirements of that listing must be met. Key v. Heckler, 754 F.2d  
24 1545, 1550 (9th Cir. 1985).

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1 Listing 12.05 relates to intellectual disability. The listing is satisfied and a  
2 claimant is considered disabled if any one of four conditions is satisfied. These four conditions  
3 set forth in the listing are:

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| 4  | Listing 12.05A | Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded.   |
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| 6  |                |   |
| 7  | Listing 12.05B | A valid verbal, performance, or full scale IQ of 59 or less.  |
| 8  | Listing 12.05C | A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.  |
| 9  |                |   |
| 10 | Listing 12.05D | A valid verbal, performance, or full scale IQ of 60 through 70 resulting in at least two of the following: (1) Marked restriction in activities of daily living; (2) Marked difficulties in maintaining social functioning; (3) Marked difficulties in maintaining concentration, persistence, or pace; and (4) Repeated episodes of decompensation, each of extended duration. |
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15 As to Listing 12.05, the ALJ stated: “[T]he current evidence of record does not support a finding  
16 that the claimant meets or equals Listing 12.05 (Mental Retardation) based on a valid full scale  
17 IQ of 73.

18 Substantial evidence of record supports the ALJ’s finding regarding plaintiff’s full  
19 scale IQ score. The ALJ discussed this evidence as follows:

20 The undersigned has given significant evidentiary weight to the findings of  
21 the consultative examining psychologist, Dr. Richwerger, who evaluated  
22 the claimant in February 2011. The undersigned finds persuasive his  
23 comprehensive and detailed report, with findings which are supported by  
24 acceptable psychological testing, mental status examination, and interview  
25 of the claimant. The claimant reported being moody and that she has  
26 difficulty with concentration. She denied psychiatric treatment or  
counseling. She had special education assistance and graduated from high  
school and was currently taking four classes at Sacramento City College.  
She had been attending since August 2010, and thought she was doing  
well. She lives with her family, does household chores, gets around by  
bus, goes to the gym, and goes dancing sometimes.

1 Mental status examination revealed the claimant's attention and  
2 concentration were normal, and a relative strength for the claimant.  
3 Understanding of instructions was within normal limits for simple tasks.  
4 She had some difficulty with complex tasks. Mood was depressed,  
5 anxious, and sad. She was fully oriented, cooperative, and pleasant.  
6 Thought process was logical and thought content was normal. Valid  
7 psychological testing revealed the claimant's full scale IQ was 73, placing  
8 her intellectual functioning in the borderline range. Dr. Richwerger's  
9 assessment was that the claimant would have slight to no impairment in  
10 her ability to perform simple and repetitive tasks (Exhibit 1F).

11 Given plaintiff's full scale IQ score of 73, the ALJ correctly concluded that Listing 12.05 does  
12 not apply.

#### 13 IV. CONCLUSION

14 Based on the foregoing, the court concludes that the Commissioner's final  
15 decision is based on substantial evidence and proper legal analysis. Accordingly, the  
16 undersigned recommends that:

- 17 1. Plaintiff's motion for summary judgment (Doc. 14) be denied;
- 18 2. Defendant's cross-motion for summary judgment (Doc. 17) be granted;
- 19 and
- 20 3. The Clerk of the Court be directed to enter judgment and close this file.

21 These findings and recommendations are submitted to the United States District  
22 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
23 after being served with these findings and recommendations, any party may file written  
24 objections with the court. Responses to objections shall be filed within 14 days after service of  
25 objections. Failure to file objections within the specified time may waive the right to appeal.

26 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: September 8, 2015

  
CRAIG M. KELLISON  
UNITED STATES MAGISTRATE JUDGE