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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOSEPH M. ESTRADA ROBERTS,

No. 2:14-CV-1195-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action under 42 U.S.C. § 405(g) for judicial review of a final decision of the Commissioner of Social Security. Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff’s motion for summary judgment (Doc. 20) and defendant’s cross-motion for summary judgment (Doc. 21).

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1 **I. PROCEDURAL HISTORY**

2 Plaintiff, who was a child under age 18 at the time, applied for social security
3 benefits on March 21, 2011. Plaintiff’s claim was initially denied. Following denial of
4 reconsideration, plaintiff requested an administrative hearing, which was held on October 9,
5 2012, before Administrative Law Judge (“ALJ”) Mark C. Ramsey. In a November 20, 2012,
6 decision, the ALJ concluded that plaintiff is not disabled based on the following relevant
7 findings:

- 8 1. The claimant had the following severe impairment(s) before attaining age
9 18 on April 27, 2011: Marfans syndrome with deformity of the ankles on
10 standing, obesity, hyperlipidemia, and borderline intellectual functioning;
- 11 2. Before attaining age 18, the claimant did not have an impairment or
12 combination of impairments that meets or medically equals an impairment
13 listed in the regulations;
- 14 3. The claimant has not developed any new impairment or impairments since
15 attaining age 18;
- 16 4. Since attaining age 18, the claimant has continued to have a severe
17 impairment or combination of impairments;
- 18 5. Since attaining age 18, the claimant does not have an impairment or
19 combination of impairments that meets or medically equals an impairment
20 listed in the regulations;
- 21 6. The claimant has the following residual functional capacity since attaining
22 age 18: the claimant can perform sedentary work; the claimant can
23 lift/carry 20 pounds occasionally and 10 pounds frequently; he can only
stand for two hours in an 8-hour workday; he can sit for six hours in an 8-
hour workday; he can occasionally climb ramps, stairs, ladders, ropes, or
scaffolds; he can occasionally balance or stoop; he can frequently kneel or
crouch; he can occasionally crouch or crawl; he is limited to simple,
repetitive tasks with limited contact with the public or co-workers; and
- 24 7. Since attaining age 18, considering the claimant’s age, education, work
25 experience, residual functional capacity, and the Medical-Vocational
26 Guidelines, there are jobs that exist in significant numbers in the national
economy that the claimant can perform.

24 After the Appeals Council declined review on March 24, 2014, 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 his motion for summary judgment, plaintiff argues that ALJ impermissibly rejected the opinion of Dr. Cormier. The weight given to medical opinions depends in part on whether they are proffered by treating, examining, or non-examining professionals. See Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995). Ordinarily, more weight is given to the opinion of a treating professional, who has a greater opportunity to know and observe the patient as an

1 individual, than the opinion of a non-treating professional. See id.; Smolen v. Chater, 80 F.3d
2 1273, 1285 (9th Cir. 1996); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The least
3 weight is given to the opinion of a non-examining professional. See Pitzer v. Sullivan, 908 F.2d
4 502, 506 & n.4 (9th Cir. 1990).

5 In addition to considering its source, to evaluate whether the Commissioner
6 properly rejected a medical opinion the court considers whether: (1) contradictory opinions are
7 in the record; and (2) clinical findings support the opinions. The Commissioner may reject an
8 uncontradicted opinion of a treating or examining medical professional only for “clear and
9 convincing” reasons supported by substantial evidence in the record. See Lester, 81 F.3d at 831.
10 While a treating professional’s opinion generally is accorded superior weight, if it is contradicted
11 by an examining professional’s opinion which is supported by different independent clinical
12 findings, the Commissioner may resolve the conflict. See Andrews v. Shalala, 53 F.3d 1035,
13 1041 (9th Cir. 1995). A contradicted opinion of a treating or examining professional may be
14 rejected only for “specific and legitimate” reasons supported by substantial evidence. See Lester,
15 81 F.3d at 830. This test is met if the Commissioner sets out a detailed and thorough summary of
16 the facts and conflicting clinical evidence, states her interpretation of the evidence, and makes a
17 finding. See Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989). Absent specific and
18 legitimate reasons, the Commissioner must defer to the opinion of a treating or examining
19 professional. See Lester, 81 F.3d at 830-31. The opinion of a non-examining professional,
20 without other evidence, is insufficient to reject the opinion of a treating or examining
21 professional. See id. at 831. In any event, the Commissioner need not give weight to any
22 conclusory opinion supported by minimal clinical findings. See Meanel v. Apfel, 172 F.3d 1111,
23 1113 (9th Cir. 1999) (rejecting treating physician’s conclusory, minimally supported opinion);
24 see also Magallanes, 881 F.2d at 751.

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1 As to Dr. Cormier, the ALJ provided the following detailed discussion of the
2 doctor's clinical findings and opinions:

3 On appeal of the initial denial of his claim, the claimant as noted above
4 alleged worsening of his condition and that he had attention deficit
5 disorder (ADD), dyslexia, and low comprehension of math (9E). Thus,
6 the Disability Determination Service reviewing procured a psychological
7 consultative examination. On July 28, 2011, consultative psychologist,
8 Sid Cormier, examined the claimant who reported his primary work-
9 limiting problems included difficulty interacting socially, low self-esteem,
10 anger issues, difficulty with memory, and inability to walk or stand for
11 longer than ten minutes, and complications associated with Marfan's
12 syndrome. . . .

13 Dr. Cormier noted the claimant exhibited an abnormal gait walking with
14 both feet pointing outward. His fine motor performance was mildly
15 hypotonic. He was able to read, comprehend, and respond in writing to
16 the history questionnaire but asked his mother to complete the majority of
17 it. He did not exhibit obvious signs of psychological distress. The
18 claimant reported his mood was typically "good" although his mother
19 indicated he becomes frustrated easily. The claimant then indicated that
20 he participated in anger management classes at school which he found
21 "incredibly beneficial." He sleeps all day and stays up all night. He said
22 he as low energy. He said he loses his balance easily attributing it to his
23 Marfan's. Dr. Cormier had the benefit of review of the Teacher's
24 Questionnaire, and the echocardiogram study.

25 The claimant reported graduating from high school in 2001 after a long
26 history of special education classes. He struggled to earn good grades but
earned a "C" average in his senior year. He completed high school in a
continuation high school setting because of his behavioral issues and [he
stated] that his anger management class helped him cope. He reported
having ten friends which his mother contradicted stating he has none. He
said his friends come over. He does not like large groups and is self-
conscious in social situations. He likes to play video games, draw, and
write. He can care for his own self hygiene, prepare his own meals, and do
routine household chores. He has never paid his own bills but said he
could do so if taught. He requires assistance shopping in order to make
healthy choices. He does not have a driver's license.

On mental status examination, the claimant was alert and oriented. His
sensorium was clear and he denied any history of hallucinations or
delusions. Dr. Cormier noted his thought processes proceeded in a
somewhat slow and lethargic fashion which he opined was consistent with
possible psychomotor retardation. His mood appeared good although
somewhat lethargic and he presented with a slightly flattened affect. Dr.
Cormier indicated the claimant's concentration capacity was borderline as
he was able to recall up to 7 digits forward and 5 digits in sequence but
only 3 digits backwards His abstract thinking appeared borderline range.
His foresight appeared below average as he seemed to have a basic grasp

1 of anticipating consequences of his own and other peoples' behaviors. His
2 vocabulary was within normal limits. Dr. Cormier opined the claimant's
3 general vocabulary, word usage, reported history, and ability to
conceptualize suggests an individual of high borderline intellectual
functioning whose verbal abilities are stronger than his nonverbal abilities.

4 Dr. Cormier administered a battery of psychometric tests including the
5 Wechsler Adult Intelligence Scale IV, the Bender Visual Motor Gestalt
6 Test II, the Trials A and B, and the Wechsler Memory Scale III. On the
7 intelligence test, the claimant achieved a verbal comprehension index of
8 96, a perceptual reasoning index of 75, a working memory index of 80, a
9 processing speed in index of 79, and a full scale 10 score of 79. This
10 places his current level of overall intellectual functioning within the higher
11 end of the borderline. Furthermore, his verbal comprehension abilities
12 were significantly stronger than the rest of his abilities. On the Bender
13 Visual Motor Gestalt test, the claimant performed within the average and
14 below average ranges on the copy and recall trials of this test, respectively.
His performance was not suggestive of any significant improvement in
areas of perceptual/motor or recall/reproductive functioning. On the Trials
tests, he was able to complete both trials of this test without errors; the
amount of time it took was slightly longer than his agemates, suggesting
mild impairment in processing speed. This is consistent with the other
measures of processing speed given in this evaluation. On the Memory
test, the claimant demonstrated average visual memory, on both immediate
and delayed tasks. However, his auditory memory ranged from the
borderline to average ranges, suggesting possible impairment in
remembering spoken information.

15 Dr. Cormier diagnosed the claimant with learning disorder, not otherwise
16 specified, rule out dysthymic disorder, rule out cognitive disorder, not
17 otherwise specified, and borderline intellectual functioning. He assessed
the claimant's Global Assessment of Functioning score as 60. . . .

18 Functionally, Dr. Cormier opined that psychologically and behaviorally,
19 the ramifications of the claimant's borderline intellectual functioning,
20 impaired nonverbal abilities, impaired auditory memory functioning, and
21 possible dysthymic disorders are likely to seriously impair his ability to
22 perform complex and detailed tasks, but perhaps only mildly to moderately
23 impair his ability to perform simple and repetitive ones. The
24 aforementioned conditions may mildly impair his ability to maintain
25 regular attendance but moderately impair his ability to perform work
26 activities on a consistent basis. He may benefit from special or additional
supervision, particularly in training in new tasks. His ability to complete a
normal workday or workweek without interruptions resulting from the
ramifications of his borderline intellectual functioning, learning disorder,
auditory memory impairments, and possible dysthymic disorder overall
appeared moderately impaired. Formal memory testing suggested mild to
moderate impairment regarding his ability to accept and remember
instructions from supervisors. His history and interview behavior
suggested mild to moderate impairment regarding his ability to interact
with co-workers and the general public, and he admitted to feeling

1 extremely self-conscious and somewhat paranoid in social situations due
2 to his abnormal height and weight. His history in response to the stress of
3 the evaluation suggested mild impairment regarding his ability to deal with
4 typical stresses that he might encounter [in] any competitive work
5 situation. He demonstrated mild concentration lapses, as well as mild
6 impairment in pace, although no significant impairment in persistence. He
7 neither described nor evidenced any suggestive indications of
8 decomposition [sic] in a work or work-like setting. Cognitively, he may
9 become compromised regarding his ability to adjust to routine changes in a
10 work situation. However, he does not appear to represent a psychological
11 or behavioral safety concern [in] any work setting up [to] this time. He
12 indicated that he is currently capable of performing most activities of daily
13 living but does not yet have a driver's license and does not know how to
14 pay bills. Ostensibly, he did not appear psychologically functional outside
15 of a moderately supportive situation at this time (3F).

16 The ALJ concluded that Dr. Cormier's findings "are consistent with an ability to perform simple
17 repetitive tasks and that the claimant has some difficulty socially." The ALJ rejected the doctor's
18 opinion regarding plaintiff's functionality outside a "moderately supportive situation." The ALJ
19 concluded:

20 . . . Dr. Cormier's opinion that the claimant cannot function outside of a
21 moderately supportive situation is not supported by these findings. He
22 takes college level courses with some assistance with his education plan
23 and some accommodation for his size. He said he was provided more
24 comfortable seating and some tutoring help. The claimant demonstrates a
25 greater level of independent functioning than opined by Dr. Cormier.
26 Thus, the undersigned assigns limited weight to his opinion but great
weight to his clinical observations and examination results. . . .

27 Plaintiff argues that the ALJ failed to provide sufficient reasons to reject Dr.
28 Cormier's opinion that plaintiff "cannot function outside of a moderately supportive situation."
29 According to plaintiff:

30 . . . The ALJ states that Mr. Roberts demonstrates a greater level of
31 independent functioning than opined by Dr. Cormier. (A.R. 29). In
32 support of this claim, the ALJ relies on the fact that Mr. Roberts is
33 enrolled in college level courses and receives assistance with "some
34 tutoring" and "some assistance" with his education plan as well as
35 comfortable seating due to his size. *Id.*

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1 Plaintiff contends that the ALJ misstated the evidence in concluding that plaintiff's enrollment in
2 college classes demonstrates independent functioning. Plaintiff argues that the ALJ's analysis is
3 "void of any details as to the extent of the assistance Mr. Roberts receives." Plaintiff asserts that
4 the ALJ's conclusion "that the unspecified degree of assistance is inconsistent with Dr.
5 Cormier's opinion regarding a moderately supportive situation is nothing more than an
6 unsupported conclusion and not supportive of rejection." Plaintiff adds:

7 Furthermore, the fact that Mr. Roberts requires tutoring and
8 assistance with education planning for three college level classes at Shasta
9 College and is enrolled in the Disabled Students Program arguably
10 provides the best evidence confirming Dr. Cormier's opinion that Mr.
11 Roberts requires a moderately supportive environment, not the other way
12 around. Mr. Roberts cannot take classes without accommodation. . . .

11 Plaintiff also argues that the ALJ improperly ignored Dr. Cormier's opinion that
12 plaintiff is moderately impaired in his ability to perform work activities on a consistent basis and
13 complete a normal workday or workweek without interruptions, and that plaintiff "may benefit
14 from special or additional supervision, particularly in the training of new tasks." According to
15 plaintiff: "The ALJ does not offer any reason for rejecting the aforementioned limitations at [sic]
16 that is error."

17 As to the ALJ's analysis of Dr. Cormier's opinion that plaintiff cannot function
18 outside a "moderately supportive situation," defendant argues:

19 At the 2012 hearing, Plaintiff testified that at the time of the
20 hearing he was taking three courses at college, including math, figure
21 drawing, and ceramics (AR 59). He had previously taken two semesters of
22 art courses (AR 59, 63, 68). Plaintiff indicated that he was not taking
23 more courses because he found it physically demanding to walk around the
24 campus, not because he found it intellectually challenging (AR 51, 70,
25 233). Plaintiff stated that he was eligible for assistance at Shasta (AR 70).

26 The crux of Plaintiff's argument revolves around this assistance at
Shasta. Plaintiff contends in his brief that this evidences a "moderately
supportive" environment. However, he provided no such testimony at the
hearing, and provided no such evince elsewhere in support of his claim.
Plaintiff testified that he could get accommodations for seating if it was
uncomfortable, get tutors, or help with his education plan (AR 70).
Plaintiff did not testify that he found college intellectually challenging, or
that he was unable to attend classes without intellectual accommodation or

1 assistance (AR 51, 59, 63, 68, 70). . . . While it appears that Plaintiff was
2 eligible for assistance, the evidence of record supports the ALJ’s finding
3 that Plaintiff’s successful completion of three semesters of college evinced
4 his ability to intellectually function independently. . . .

5 At the outset, the court observes that Dr. Cormier’s statement that plaintiff cannot
6 “psychologically function outside of a moderately supportive situation” represents a generalized
7 summary of the doctor’s specific opinions and is not itself a specific opinion. This observation is
8 indicated by the doctor’s use of the word “ostensibly” preceding this statement, which concludes
9 the doctor’s assessment.

10 In any event, defendant’s argument is persuasive. Contrary to plaintiff’s
11 contention that “the fact that Mr. Roberts requires tutoring and assistance with education
12 planning for three college level classes at Shasta College and is enrolled in the Disabled Students
13 Program arguably provides the best evidence confirming Dr. Cormier’s opinion that Mr. Roberts
14 requires a moderately supportive environment,” plaintiff provided no evidence that he actually
15 required tutoring or other academic assistance with the classes he was taking at Shasta College.
16 While there is evidence that academic assistance was available to plaintiff, there is no evidence
17 he required it or sought it.¹

18 Plaintiff also argues that the ALJ improperly rejected Dr. Cormier’s statement that
19 plaintiff is moderately impaired in his ability to perform work activities on a consistent basis.
20 Plaintiff further argues that the ALJ improperly rejected Dr. Cormier’s statement that plaintiff
21 may benefit from special or additional supervision. In his report, Dr. Cormier stated that
22 plaintiff’s conditions “*may* . . . moderately impair his ability to perform work activities on a
23 consistent basis.” (emphasis added). Dr. Cormier also stated: “He *may* benefit from special or
24 additional supervision, particularly in the training of new tasks.” (emphasis added). As to these

25 ¹ Evidence that plaintiff actually received physical accommodations is irrelevant to
26 review of the ALJ’s analysis of Dr. Cormier’s opinions regarding plaintiff’s mental functional
capabilities.

1 limitations, the doctor expressed nothing more than a possibility, as indicated by the use of the
2 word “may.” The ALJ did not err in disregarding these statements.

3 Finally, plaintiff argues that the ALJ improperly rejected Dr. Cormier’s opinion as
4 to plaintiff’s ability to complete a normal workday or workweek without interruptions. In this
5 regard, Dr. Cormier opined that plaintiff’s “ability to complete a normal workday or workweek
6 without interruptions. . . appeared moderately impaired.” The court does not agree with plaintiff
7 that the ALJ “does not offer any reason” for rejecting this limitation. To the contrary, the ALJ
8 stated that Dr. Cormier’s opined limitations – but not his objective clinical findings – were
9 inconsistent with plaintiff’s demonstrated level of intellectual functioning. As defendant notes:
10 “Once again, Plaintiff’s success at college for three semesters is powerful evidence
11 demonstrating that he was able to complete assigned tasks on a consistent basis, and undermined
12 Dr. Cormier’s opinion.” As defendant also notes, the reviewing doctors’ assessments – to which
13 the ALJ assigned great weight – provide substantial evidence supporting the ALJ’s conclusion.

14 **IV. CONCLUSION**

15 Based on the foregoing, the court concludes that the Commissioner’s final
16 decision is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY
17 ORDERED that:

- 18 1. Plaintiff’s motion for summary judgment (Doc. 20) is denied;
- 19 2. Defendant’s cross-motion for summary judgment (Doc. 21) is granted; and
- 20 3. The Clerk of the Court is directed to enter judgment and close this file.

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22 DATED: March 11, 2016

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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