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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANGELA PIRTLE
Plaintiff,
v.
COMMISSIONER OF SOCIAL SECURITY,
Defendant.

No. 2:16-cv-1080-KJN

ORDER

Plaintiff Angela Pirtle seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).¹ In her motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from September 4, 2012, the date that plaintiff’s SSI application was filed, through October 21, 2014, the date of the administrative law judge’s (“ALJ”) final decision. (ECF No. 16.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 17.) No optional reply brief was filed.

¹ This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 10.)

1 After carefully considering the record and the parties' briefing, the court GRANTS IN
2 PART plaintiff's motion for summary judgment, DENIES the Commissioner's cross-motion for
3 summary judgment, and REMANDS the action for further proceedings consistent with this order
4 pursuant to sentence four of 42 U.S.C. § 405(g).

5 I. BACKGROUND

6 Plaintiff was born in 1963; has a limited education; can communicate in
7 English; and has no past relevant work. (Administrative Transcript ("AT") 22.)² On September
8 4, 2012, plaintiff applied for SSI, alleging that her disability began on May 1, 1977. (AT 14.)
9 Plaintiff claimed that she was disabled due to her impairments of rheumatoid arthritis and lupus.
10 (AT 264.) After plaintiff's application was denied initially and on reconsideration, an ALJ
11 conducted a hearing on September 23, 2014, at which plaintiff, represented by counsel, and a
12 vocational expert ("VE") testified. (AT 14, 30-54.) The ALJ subsequently issued a decision
13 dated October 21, 2014, determining that plaintiff had not been under a disability, as defined in
14 the Act, from September 4, 2012, the date plaintiff's SSI application was filed, through the date
15 of the ALJ's decision. (AT 14-24.) The ALJ's decision became the final decision of the
16 Commissioner when the Appeals Council denied plaintiff's request for review on March 21,
17 2016. (AT 1-3.) Plaintiff subsequently filed this action on May 20, 2016, to obtain judicial
18 review of the Commissioner's final decision. (ECF No. 1.)

19 II. ISSUES PRESENTED

20 Plaintiff raises the following issues: (1) whether the ALJ improperly weighed the medical
21 opinion evidence; and (2) whether the ALJ erroneously discounted plaintiff's credibility.

22 III. LEGAL STANDARD

23 The court reviews the Commissioner's decision to determine whether (1) it is based on
24 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record

25 _____
26 ² Because the parties are familiar with the factual background of this case, including plaintiff's
27 medical history, the court does not exhaustively relate those facts in this order. The facts related
28 to plaintiff's impairments and treatment will be addressed insofar as they are relevant to the issues
presented by the parties' respective motions.

1 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
2 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
3 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
4 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
5 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
6 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
7 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
8 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
9 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

10 IV. DISCUSSION

11 A. Summary of the ALJ’s Findings

12 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard
13 five-step analytical framework.³ At the first step, the ALJ concluded that plaintiff had not

14 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
15 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
16 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
17 an “inability to engage in any substantial gainful activity” due to “a medically determinable
18 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
19 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
21 42 (1987). The following summarizes the sequential evaluation:

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

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

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

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

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.

1 engaged in substantial gainful activity since September 4, 2012, plaintiff's SSI application date.
2 (AT 16.) At step two, the ALJ found that plaintiff had the following severe impairments:
3 hepatitis C, rheumatoid arthritis, and systemic lupus erythematosus. (Id.) However, at step three,
4 the ALJ determined that plaintiff did not have an impairment or combination of impairments that
5 met or medically equaled the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P,
6 Appendix 1. (AT 17.)

7 Before proceeding to step four, the ALJ assessed plaintiff's residual functional capacity
8 ("RFC") as follows:

9 After careful consideration of the entire record, the undersigned
10 finds that the claimant has the residual functional capacity to
11 perform light work as defined in 20 CFR 416.967(b) except the
12 claimant can never climb ladders, ropes, or scaffolds. She can
13 occasionally climb ramps or stairs. The claimant can occasionally
14 balance, kneel, or crawl. The claimant is limited to frequent
handling of objects, that is gross manipulation, and frequent
fingering, that is fine manipulation. The claimant has to avoid
concentrated use of hazardous machinery and concentrated
exposure of unprotected heights.

15 (AT 17-18.) At step four, the ALJ determined that plaintiff had no past relevant work. (AT 22.)
16 However, at step five, the ALJ found that, considering plaintiff's age, education, work
17 experience, and RFC, and based on the VE's testimony, there were jobs that exist in significant
18 numbers in the national economy that plaintiff could perform. (Id.) Consequently, the ALJ
19 concluded that plaintiff had not been under a disability, as defined in the Act, from September 4,
20 2012, plaintiff's SSI application date, through October 21, 2014, the date of the ALJ's decision.
21 (AT 23.)

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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
27 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
28 evaluation process proceeds to step five. Id.

1 B. Plaintiff's Substantive Challenges to the Commissioner's Determinations

2 *Whether the ALJ improperly weighed the medical opinion evidence*

3 The weight given to medical opinions depends in part on whether they are proffered by
4 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,
5 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,
6 a treating physician's opinion carries more weight than an examining physician's opinion, and an
7 examining physician's opinion carries more weight than a non-examining physician's opinion.
8 Holohan, 246 F.3d at 1202.

9 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
10 considering its source, the court considers whether (1) contradictory opinions are in the record;
11 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
12 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
13 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be
14 rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's opinion
15 generally is accorded superior weight, if it is contradicted by a supported examining
16 professional's opinion (supported by different independent clinical findings), the ALJ may
17 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes
18 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the
19 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁴ except that the ALJ in any
20 event need not give it any weight if it is conclusory and supported by minimal clinical findings.
21 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally
22 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-
23 examining professional, by itself, is insufficient to reject the opinion of a treating or examining
24 professional. Lester, 81 F.3d at 831.

25 In this case, the ALJ reasonably discounted the opinion of plaintiff's treating physician,
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27 ⁴ The factors include: (1) length of the treatment relationship; (2) frequency of examination; (3)
28 nature and extent of the treatment relationship; (4) supportability of diagnosis; (5) consistency;
and (6) specialization. 20 C.F.R. § 404.1527.

1 Dr. Donald Powell, who indicated *inter alia* that plaintiff had little to no ability to reach, grasp,
2 and manipulate objects; was incapable of even low stress work; and would be absent from work
3 more than four days per month. (AT 483-87.) As the ALJ observed, Dr. Powell only treated
4 plaintiff three times, the last time being in August 2013, before he provided his opinion in
5 February 2014. (AT 22.) Moreover, Dr. Powell's severe opinion was inconsistent with plaintiff's
6 conservative treatment with only oral medication and plaintiff's activities, which included making
7 coffee, washing and combing her hair, and going grocery shopping, suggesting that plaintiff was
8 not as severely limited in her fine and gross manipulation as Dr. Powell opined. (Id.) Therefore,
9 the court finds no reversible error with respect to the ALJ's evaluation of Dr. Powell's opinion.

10 The ALJ also partially discounted the opinion of the consultative examiner, Dr. Bao
11 Nguyen. (AT 21, 476-80.) Dr. Nguyen personally examined plaintiff; diagnosed plaintiff with
12 rheumatoid arthritis, systemic lupus erythematosus, and high blood pressure; and opined *inter*
13 *alia* that plaintiff could lift and carry 15 pounds occasionally and 10 pounds regularly; could
14 stand and walk for six hours out of an eight-hour workday; had no sitting limitations; and could
15 occasionally do simple grasping and fine manipulation. (AT 479.)

16 The ALJ found Dr. Nguyen's fingering and manipulative limitations to be overly
17 restrictive, because plaintiff's "good activities of daily living, such as making coffee, grocery
18 shopping, and combing her hair, do not support the severity of [her] restrictions." (AT 21.)
19 However, although plaintiff acknowledged performing those activities, she also testified that she
20 had difficulty doing so, receiving assistance from another individual during shopping trips and
21 using a cart at the grocery store to move around. (AT 36-37, 43-44.) Although plaintiff's
22 activities were inconsistent with Dr. Powell's severe opinion that plaintiff had essentially little to
23 no ability to reach, grasp, and manipulate, her level of activities is not obviously inconsistent with
24 the occasional simple grasping and fine manipulation limitations assessed by Dr. Nguyen.
25 Additionally, the ALJ entirely failed to explain why he rejected Dr. Nguyen's assessed lifting
26 limitations. Moreover, the court on this record cannot find that the ALJ's errors were harmless,
27 because the ALJ did not solicit vocational expert testimony that adequately accounted for Dr.
28 Nguyen's proposed limitations.

