

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAUNDRA L. JONES
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-1360-KJN

ORDER

Plaintiff Sandra Jones 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 March 29, 2013, the date that plaintiff’s SSI application was filed, through January 28, 2015, the date of the administrative law judge’s (“ALJ”) final decision. (ECF No. 20.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 22.) 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 DENIES
2 plaintiff's motion for summary judgment, GRANTS the Commissioner's cross-motion for
3 summary judgment, and AFFIRMS the Commissioner's final decision.

4 I. BACKGROUND

5 Plaintiff was born on May 8, 1970; has a ninth grade education; can communicate in
6 English; and previously worked as a caretaker and material handler. (Administrative Transcript
7 ("AT") 24-25, 38-39, 85, 88.)² On March 29, 2013, plaintiff applied for SSI, alleging that her
8 disability began on October 1, 2008. (AT 131, 212.) Plaintiff claimed that she was disabled due
9 to hearing voices, poor memory, anxiety attacks, back problems, and stomach problems. (AT
10 233.) After plaintiff's application was denied initially and on reconsideration, an ALJ conducted
11 a hearing on October 28, 2014, at which plaintiff, represented by counsel, and a vocational expert
12 ("VE") testified. (AT 13, 64-98.) The ALJ subsequently issued a decision dated January 28,
13 2015, determining that plaintiff had not been under a disability, as defined in the Act, from March
14 29, 2013, the date plaintiff's SSI application was filed, through the date of the ALJ's decision.
15 (AT 27.) The ALJ's decision became the final decision of the Commissioner when the Appeals
16 Council denied plaintiff's request for review on June 1, 2016. (AT 1-4.) Plaintiff subsequently
17 filed this action on June 17, 2016, to obtain judicial review of the Commissioner's final decision.
18 (ECF No. 1.)

19 II. ISSUES PRESENTED

20 On appeal, plaintiff raises the following issues: (1) whether the ALJ erroneously rejected
21 the opinion of plaintiff's treating psychiatrist; (2) whether the ALJ erred in concluding that
22 plaintiff did not meet or equal a Listing at step three; and (3) whether additional evidence
23 presented to the Appeals Council warrants remand.³

24 ////

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

³ Plaintiff's brief raises these issues in a somewhat different order.

1 III. LEGAL STANDARD

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

13 IV. DISCUSSION

14 Summary of the ALJ’s Findings

15 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard
16 five-step analytical framework.⁴ At the first step, the ALJ concluded that plaintiff had not

17 ⁴ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
18 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
19 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
20 an “inability to engage in any substantial gainful activity” due to “a medically determinable
21 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
22 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
23 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
24 42 (1987). The following summarizes the sequential evaluation:

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

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

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

Step four: Is the claimant capable of performing her past relevant work? If so, the

1 engaged in substantial gainful activity since March 29, 2013, plaintiff's SSI application date. (AT
2 16.) At step two, the ALJ found that plaintiff had the following severe impairments: lumbago
3 (low back pain), left knee pain, and adjustment disorder with depression and anxiety. (Id.)
4 However, at step three, the ALJ determined that plaintiff did not have an impairment or
5 combination of impairments that met or medically equaled the severity of an impairment listed in
6 20 C.F.R. Part 404, Subpart P, Appendix 1. (Id.)

7 Before proceeding to step four, the ALJ assessed plaintiff's RFC as follows:

8 After careful consideration of the entire record, the undersigned
9 finds that the claimant has the residual functional capacity to
10 perform medium work as defined in 20 CFR 416.967(c) except the
11 claimant can lift and carry 50 pounds occasionally and 25 pounds
12 frequently; stand, walk and sit for 6 hours each in an 8-hour
13 workday with normal breaks; occasionally bend and stoop; no
14 limitations in holding, fingering, or feeling objects; no limitations
in speech, hearing or vision. The claimant is able to perform simple
and repetitive tasks, and detailed and complex tasks; perform work
activities without special supervision; interact with supervisors
without any limitations and interact with coworkers and public on a
frequent basis; maintain regular attendance; and deal with the usual
stresses encountered in competitive work.

15 (AT 17.) At step four, the ALJ determined that plaintiff was capable of performing past relevant
16 work as a material handler. (AT 24.) Consequently, the ALJ concluded that plaintiff had not
17 been under a disability, as defined in the Act, from March 29, 2013, plaintiff's SSI application
18 filing date, through January 28, 2015, the date of the ALJ's decision. (AT 27.)

19 ///

20 ///

21 ///

22 claimant is not disabled. If not, proceed to step five.

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

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 Plaintiff's Substantive Challenges to the Commissioner's Determinations

2 *Whether the ALJ erroneously rejected the opinion of plaintiff's treating*
3 *psychiatrist*

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

10 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
11 considering its source, the court considers whether (1) contradictory opinions are in the record;
12 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
13 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
14 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be
15 rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's opinion
16 generally is accorded superior weight, if it is contradicted by a supported examining
17 professional's opinion (supported by different independent clinical findings), the ALJ may
18 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes
19 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the
20 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁵ except that the ALJ in any
21 event need not give it any weight if it is conclusory and supported by minimal clinical findings.
22 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally
23 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-
24 examining professional, by itself, is insufficient to reject the opinion of a treating or examining
25 professional. Lester, 81 F.3d at 831.

26 _____
27 ⁵ 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;
(6) specialization. 20 C.F.R. § 404.1527.

1 In this case, plaintiff’s treating psychiatrist, Dr. Swati Rao, completed a two-page mental
2 source statement dated October 6, 2014, indicating *inter alia* that plaintiff had a poor ability to
3 understand and remember detailed or complex instructions, attend and concentrate, interact with
4 the public, interact with coworkers, interact with supervisors, adapt to changes in the workplace,
5 and be aware of and react appropriately to normal hazards. (AT 389-90.) Because Dr. Rao’s
6 opinion was contradicted by other opinions in the record, the ALJ was required to provide
7 specific and legitimate reasons to discount Dr. Rao’s opinion. As discussed below, the court
8 concludes that the ALJ properly discharged that obligation.

9 As an initial matter, the ALJ reasonably observed that Dr. Rao’s severe opinion was not
10 supported by her own treatment records. (AT 20.) As the ALJ explained, Dr. Rao saw plaintiff
11 once on August 25, 2014, for only about ten minutes, and then again on October 6, 2014, to
12 complete the mental source statement. (AT 20, 23.) As such, at the time of Dr. Rao’s mental
13 source statement, Dr. Rao and plaintiff had an extremely brief and limited treatment relationship.
14 Moreover, the August 25, 2014 treatment note related to the 10-minute visit largely documents
15 plaintiff’s subjective complaints, which the ALJ properly found less than credible for the reasons
16 discussed below. (AT 20, 388.) Additionally, the mental source statement is unaccompanied by
17 any narrative report, despite explicit instructions on the form to submit such a report with the
18 mental source statement. (AT 389-90.)

19 Furthermore, the ALJ properly relied on the opinion of consultative examining
20 psychologist Dr. David Richwerger, who examined plaintiff on July 11, 2013. (AT 19-20, 347-
21 54.) Dr. Richwerger reviewed plaintiff’s records, performed a complete psychological
22 evaluation, and conducted psychological testing. (AT 347-48.) However, he found plaintiff’s test
23 results to be invalid, because they appeared to be “significant underestimates due to a
24 performance consistent with a low effort.” (AT 351.) Dr. Richwerger diagnosed plaintiff with a
25 mild to moderate adjustment disorder with anxiety and depression, and opined that plaintiff had
26 mild to no impairment in all mental functioning domains. (AT 353-54.) Because Dr. Richwerger
27 personally examined plaintiff and made independent clinical findings, his opinion constitutes
28 substantial evidence on which the ALJ was entitled to rely.

1 Additionally, as part of reviewing plaintiff’s prior records, Dr. Richwerger referenced and
2 reviewed a prior psychological evaluation performed on June 24, 2010, by Dr. Janice Nakagawa.
3 (AT 348.) Dr. Nakagawa diagnosed malingering, noting that plaintiff was “very vague and
4 inconsistent in clinical interview, emphasizing limitations and distorting information for
5 secondary gain. The well-normed test to screen for malingering was positive.” (AT 304.)

6 Therefore, in light of the deficiencies of Dr. Rao’s opinion and the well-supported opinion
7 of Dr. Richwerger (as bolstered by the consistent prior examining opinion of Dr. Nakagawa), the
8 ALJ properly discounted Dr. Rao’s opinion.

9 *Whether the ALJ erred in concluding that plaintiff did not meet or equal a Listing*
10 *at step three*

11 The claimant “bears the burden of proving that ... she has an impairment that meets or
12 equals the criteria of an impairment listed in Appendix 1 of the Commissioner’s regulations.”
13 Burch v. Barnhart, 400 F.3d 676, 683 (9th Cir. 2005). “For a claimant to show that his
14 impairment matches a listing, it must meet *all* of the specified medical criteria. An impairment
15 that manifests only some of those criteria, no matter how severely, does not qualify...For a
16 claimant to qualify for benefits by showing that his unlisted impairment, or combination of
17 impairments, is ‘equivalent’ to a listed impairment, he must present medical findings equal in
18 severity to *all* the criteria for the one most similar listed impairment.” Sullivan v. Zebley, 493
19 U.S. 521, 530-31 (1990). A determination of medical equivalence must rest on objective medical
20 evidence. See Lewis v. Apfel, 236 F.3d 503, 514 (9th Cir. 2001) (“A finding of equivalence must
21 be based on medical evidence only.”); Tackett v. Apfel, 180 F.3d 1094, 1100 (9th Cir. 1999)
22 (“Medical equivalence must be based on medical findings...A generalized assertion of functional
23 problems is not enough to establish disability at step three.”); 20 C.F.R. § 404.1529(d)(3) (“In
24 considering whether your symptoms, signs, and laboratory findings are medically equal to the
25 symptoms, signs, and laboratory findings of a listed impairment, we will look to see whether your
26 symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria.
27 However, we will not substitute your allegations of pain or other symptoms for a missing or
28 deficient sign or laboratory finding to raise the severity of your impairment(s) to that of a listed

1 impairment.”). Furthermore, “[t]he mere diagnosis of an impairment listed in Appendix 1 is not
2 sufficient to sustain a finding of disability.” Key v. Heckler, 754 F.2d 1545, 1549 (9th Cir. 1985).
3 Instead, all of the specified medical criteria must be met or equaled. Id. at 1550.

4 Plaintiff argues that the ALJ failed to properly consider her for various mental disorder
5 listings, including Listings 12.03 (schizophrenia and other psychotic disorders), 12.04 (depressive
6 disorders, bipolar disorder, and related disorders), 12.06 (anxiety and obsessive-compulsive
7 disorders), and 12.08 (personality and impulse-control disorders). However, when properly
8 weighed, the medical evidence of record do not support the existence of an extreme limitation of
9 one area, or a marked limitation of two areas, of mental functioning necessary to satisfy the
10 Paragraph B criteria of any of these listings. Furthermore, although plaintiff was diagnosed at
11 various points with some mental disorders that appear on a listing, a mere diagnosis is not
12 sufficient to show that plaintiff meets or equals a Listing.

13 Therefore, the court finds no error at step three.

14 *Whether additional evidence presented to the Appeals Council warrants remand*

15 “[W]hen the Appeals Council considers new evidence in deciding whether to review a
16 decision of the ALJ, that evidence becomes part of the administrative record, which the district
17 court must consider when reviewing the Commissioner’s final decision for substantial evidence.”
18 Brewes v. Comm’r of Soc. Sec., 682 F.3d 1157, 1163 (9th Cir. 2012).

19 Plaintiff submitted to the Appeals Council additional treatment notes by Dr. Rao dated
20 October 6, 2014; December 29, 2014; January 12, 2015; and January 26, 2015. (AT 397-402.)
21 The additional records show some ongoing medication management by Dr. Rao. Nevertheless,
22 those records again largely document plaintiff’s alleged subjective symptoms, with no actual
23 psychological testing performed, and also show that plaintiff frequently self-discontinued her
24 medications. To be sure, individuals with mental illness cannot always be faulted for failing to
25 comply with their treatment regimen. However, given the previous clear findings of malingering
26 and poor effort by two consultative examiners who personally examined plaintiff, the court is not
27 persuaded that the additional evidence presented to the Appeals Council disturbs the conclusion
28 that substantial evidence supports the ALJ’s final decision.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the foregoing reasons, the court concludes that the ALJ's decision was free from prejudicial error and supported by substantial evidence in the record as a whole. Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (ECF No. 20) is DENIED.
2. The Commissioner's cross-motion for summary judgment (ECF No. 22) is GRANTED.
3. The final decision of the Commissioner is AFFIRMED, and judgment is entered for the Commissioner.
4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: July 5, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE