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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLORIA DAWN MANUS
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-1964-KJN

ORDER

Plaintiff Gloria Manus seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI, respectively, 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 July 16, 2010, plaintiff’s alleged disability onset date, through November 8, 2014, the date of the final administrative decision. (ECF No. 17.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment, and plaintiff filed a reply brief. (ECF Nos. 18, 19.)

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. 8, 9.)

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 administrative proceedings.

4 I. BACKGROUND

5 Plaintiff was born on February 25, 1964; has completed an associate's degree; can
6 communicate in English; and previously worked as an eyeglasses salesperson. (Administrative
7 Transcript ("AT") 33, 64-65, 226.)² In July 2012, plaintiff applied for DIB and SSI, alleging that
8 her disability began on July 16, 2010, and that she was disabled due to jaundice, abdominal
9 swelling/water bloat, stomach pain, constant itchiness, diarrhea, stinging eyes, back pain,
10 depression, and listlessness. (AT 22, 116-17, 205, 207, 227.) After plaintiff's application was
11 denied initially and on reconsideration, an ALJ conducted a hearing on July 24, 2014, at which
12 plaintiff, represented by counsel, testified. (AT 60-91.) The ALJ subsequently issued a decision
13 dated November 8, 2014, finding that plaintiff had not been under a disability, as defined in the
14 Act, from July 16, 2010, plaintiff's alleged disability onset date, through the date of the ALJ's
15 decision. (AT 22-34.) That decision became the final decision of the Commissioner when the
16 Appeals Council denied plaintiff's request for review on June 13, 2016. (AT 1-3.) Plaintiff
17 thereafter filed this action on August 18, 2016, to obtain judicial review of the Commissioner's
18 final decision. (ECF No. 1.)

19 II. ISSUES PRESENTED

20 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly evaluated
21 the medical opinion evidence; and (2) whether the ALJ erred at step two by failing to find
22 plaintiff's depression severe.

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

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 DIB and SSI pursuant to the Commissioner’s
16 standard five-step analytical framework.³ As an initial matter, the ALJ found that plaintiff met

17 ³ 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 the insured status requirements of the Act for purposes of DIB through March 31, 2011. (AT 24.)
2 At the first step, the ALJ concluded that plaintiff had not engaged in substantial gainful activity
3 since July 16, 2010, plaintiff’s alleged onset date. (Id.) At step two, the ALJ found that plaintiff
4 had the following severe impairment: alcoholic liver disease. (Id.) However, at step three, the
5 ALJ determined that plaintiff did not have an impairment or combination of impairments that met
6 or medically equaled the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P,
7 Appendix 1. (AT 28.)

8 Before proceeding to step four, the ALJ assessed plaintiff’s residual functional capacity
9 (“RFC”) as follows: “After careful consideration of the entire record, the undersigned finds that
10 the claimant has the residual functional capacity to perform a full range of light work as defined
11 in 20 CFR 404.1567(b) and 416.967(b).” (AT 29.) Then, at step four, the ALJ determined that
12 plaintiff was capable of performing past relevant work in eyeglasses sales. (AT 33.) In the
13 alternative, the ALJ proceeded to step five and found, based on the Grids, that plaintiff was
14 capable of performing other jobs that existed in significant numbers in the national economy.
15 (AT 34.) Consequently, the ALJ concluded that plaintiff had not been under a disability, as
16 defined in the Act, from July 16, 2010, plaintiff’s alleged disability onset date, through November
17 8, 2014, the date of the ALJ’s decision. (Id.)

18 Plaintiff’s Substantive Challenges to the Commissioner’s Determinations

19 *Whether the ALJ improperly evaluated the medical opinion evidence*

20 The weight given to medical opinions depends in part on whether they are proffered by
21 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,

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 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,
2 a treating physician’s opinion carries more weight than an examining physician’s opinion, and an
3 examining physician’s opinion carries more weight than a non-examining physician’s opinion.
4 Holohan, 246 F.3d at 1202.

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

21 The court first addresses the medical evidence concerning plaintiff’s physical functional
22 limitations before turning to the evidence concerning mental functional limitations.

23 Physical Functional Limitations

24 For the reasons discussed below, the court concludes that the ALJ appropriately weighed
25 the medical opinions concerning plaintiff’s physical functional limitations.

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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 The ALJ reasonably discounted the opinion of consultative examiner Dr. Christine
2 Fernando, who essentially limited plaintiff to sedentary work, noting that plaintiff gets tired and
3 fatigued due to cirrhosis of the liver. (AT 1067-72.) As the ALJ explained:

4 It appears that Dr. Fernando relied heavily on the claimant's own
5 subjective statements rather than on objective findings of physical
6 disease, and seemed to accept uncritically as true most, if not all, of
7 what the claimant reported. Yet, as discussed elsewhere in this
8 decision, there is reason for questioning the reliability of the
9 claimant's subjective complaints.⁵ Moreover, her own findings on
10 examination were inconsistent with the claimant's statements. For
11 example, the claimant reported to Dr. Fernando that she cannot
12 walk far but admitted that she is able to go grocery shopping (Ex.
13 20F/4). The claimant reported that she has difficulty sitting and
getting up from a sitting position (Ex. 20F/4). However, Dr.
Fernando observed that the claimant "gets into the chair without
difficulty and gets out of the chair without difficulty. There was no
apparent ataxia or dyspnea" (Ex. 20F/6). Examination further
revealed only a "minimally tender" abdomen without evidence of
hepatosplenomegaly, ascites, rebound, or guarding. There was no
peripheral edema or jaundice. Her standard gait, sensation, reflexes
and muscle strength were intact (Ex. 20F/6-9).

14 (AT 31-32.) Indeed, Dr. Fernando did not adequately explain how she derived a mere sedentary
15 functional capacity from plaintiff's largely normal physical examination.

16 Additionally, the ALJ properly discounted the opinion of treating physician Dr. William
17 Trusnovic, who opined, *inter alia*, that plaintiff, due to her liver disease, could only occasionally
18 lift less than 10 pounds, walk 1-2 blocks without rest or significant pain, and would need to take
19 hourly 15-20 minute breaks during a workday. (AT 1046-47.) As an initial matter, the opinion is
20 conclusory and unsupported by any specific clinical findings or rationale. See Meanel, 172 F.3d
21 at 1114 (treating physician's conclusory, minimally supported opinion rejected); see also
22 Magallanes, 881 F.2d at 751. Given the severity of the opinion, one would expect greater
23 justification and substantiation for the extreme limitations assessed. Also, as the ALJ explained:

24 Dr. Trusnovic's own findings on examinations fail to support the
25 limitations he provided. His examinations include few specific
26 objective findings to support his opinion. For example, in
November 2013, when he wrote this opinion, his clinic note shows

27 ⁵ The ALJ primarily found plaintiff less than credible based on "inconsistent and unpersuasive
28 statements about her alcohol use." (AT 31.) Plaintiff has not challenged the ALJ's evaluation of
her credibility on appeal.

1 that the claimant was seen merely for “cold symptoms.”
2 Examination revealed merely upper respiratory signs of ear
3 effusions (Ex. 24F/11-13). Subsequent visits in January 2014
4 revealed no gastric complaints or findings (EX 24F/3-9, 25F).
5 Even prior to this opinion in July 2013, Dr. Trusnovic noted no
6 abdominal findings other than moderate epigastric tenderness (Ex.
7 25F/23).

8 (AT 32.) Indeed, as the ALJ also observed, “[a]lthough the claimant has had temporary
9 exacerbations of her alcoholic liver disease, the record reveals that her condition improved with
10 treatment and alcohol abstinence.” (See AT 30 [summarizing and discussing various treatment
11 records].)

12 Furthermore, the ALJ legitimately gave reduced weight to the opinion of treating
13 physician Dr. Katherine Schlaerth, who limited plaintiff to standing and walking only 3 hours a
14 day (i.e., less than the 6 hours of standing/walking required for light work). (AT 537-38.) The
15 ALJ reasoned that Dr. Schlaerth only treated plaintiff for a limited period of time between August
16 2012 and November 2012, and that although plaintiff’s condition had been more severe during
17 that period of time, the record shows that plaintiff’s condition subsequently improved
18 significantly. (AT 32.)

19 Finally, the ALJ rationally relied on the opinions of the state agency physicians, who
20 found that plaintiff was capable of performing light work. (AT 31.) As the ALJ pointed out, their
21 opinions were consistent with the treatment records, which the ALJ discussed in detail,
22 suggesting that plaintiff’s symptoms improved with treatment and alcohol abstinence. (Id.) See
23 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (“Although the contrary opinion of a
24 non-examining medical expert does not alone constitute a specific, legitimate reason for rejecting
25 a treating or examining physician’s opinion, it may constitute substantial evidence when it is
26 consistent with other independent evidence in the record.”).

27 Therefore, the court finds that the ALJ’s evaluation of the medical evidence concerning
28 plaintiff’s physical limitations is supported by the record and by the proper analysis.

Mental Functional Limitations

29 In this case, the ALJ entirely failed to address the separate mental health opinion of
30 plaintiff’s treating physician, Dr. Trusnovic, which assessed various mental limitations based on a

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V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (ECF No. 17) is GRANTED IN PART.
2. The Commissioner's cross-motion for summary judgment (ECF No. 18) is DENIED.
3. The final decision of the Commissioner is REVERSED, and the case is REMANDED for further administrative proceedings consistent with this order pursuant to sentence four of 42 U.S.C. § 405(g).
4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: January 9, 2018


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE