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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEANETTE SHEPARD,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-2321-KJN

ORDER

Plaintiff Jeanette Shepard 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 October 26, 2011, the date that plaintiff’s SSI application was deemed filed, through May 13, 2015, the date of the final administrative decision. (ECF No. 15.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 16.) Subsequently, plaintiff also filed a reply brief. (ECF No. 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. 9, 21.)

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 June 20, 1962; has a limited education; can communicate in English;
6 and previously worked as a caregiver, in-home support care worker, and babysitter.

7 (Administrative Transcript ("AT") 32.)² On August 3, 2012, plaintiff applied for SSI, claiming
8 that she was disabled due to diabetes, hepatitis C, bipolar disorder, heart problems, arthritis,
9 migraines, swelling in feet and legs, and other "multiple problems." (AT 18, 87, 193.)³ After
10 plaintiff's application was denied initially and on reconsideration, an ALJ conducted a hearing on
11 March 17, 2015, at which plaintiff, represented by counsel, and a vocational expert ("VE")
12 testified. (AT 39-65.) The ALJ subsequently issued a decision dated May 13, 2015, determining
13 that plaintiff had not been under a disability, as defined in the Act, from October 26, 2011, the
14 date that plaintiff's SSI application was deemed filed, through the date of the ALJ's decision.
15 (AT 18-34.) The ALJ's decision became the final decision of the Commissioner when the
16 Appeals Council denied plaintiff's request for review on July 29, 2016. (AT 1-3.) Plaintiff
17 subsequently filed this action on September 28, 2016, to obtain judicial review of the
18 Commissioner's final decision. (ECF No. 1.)

19 II. ISSUES PRESENTED

20 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly weighed
21 the mental health opinion evidence; and (2) whether the ALJ erroneously discounted the
22 statement of plaintiff's mother.

24 ² Because the parties are familiar with the factual background of this case, including plaintiff's
25 medical and mental health history, the court does not exhaustively relate those facts in this order.
26 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.

27 ³ Plaintiff's filing date was subsequently amended to October 26, 2011, because the ALJ granted
28 plaintiff's motion to reopen a prior application. (AT 18.) Thus, for purposes of this appeal, the
operative filing date for plaintiff's SSI application is deemed to be October 26, 2011.

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 October 26, 2011, plaintiff's SSI application date.
2 (AT 20.) At step two, the ALJ found that plaintiff had the following severe impairments:
3 diabetes mellitus with neuropathy, depressive disorder, and bipolar disorder. (Id.) However, at
4 step three, the ALJ determined that plaintiff did not have an impairment or combination of
5 impairments that met or medically equaled the severity of an impairment listed in 20 C.F.R. Part
6 404, Subpart P, Appendix 1. (AT 22.)

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 light work as defined in 20 CFR 416.967(b) with the
11 following limitations: such an individual should not engage in any
12 climbing of ladders, ropes, or scaffolding; such an individual could
13 frequently climb ramps and stairs, frequently stoop, kneel, crouch,
and crawl; such an individual could understand, remember, and
carry out simple job instructions; such an individual could maintain
attention and concentration for simple job tasks; such an individual
could occasionally interact with the public; and such an individual
could interact appropriately with supervisors and co-workers.

14 (AT 24.) At step four, the ALJ determined that plaintiff was unable to perform any past relevant
15 work. (AT 32.) Nevertheless, at step five, the ALJ found that, in light of plaintiff's age,
16 education, work experience, and RFC, and in reliance on the VE's testimony, there were other
17 jobs that existed in significant numbers in the national economy that plaintiff could perform. (AT
18 32-33.)

19 Consequently, the ALJ concluded that plaintiff had not been under a disability, as defined
20 in the Act, from October 26, 2011, plaintiff's SSI application filing date, through May 13, 2015,
21 the date of the ALJ's decision. (AT 33.)

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 In this case, as plaintiff acknowledges, there is a “vacuum of treating evidence” for mental
2 health issues, with only a few scattered references to mental impairments mostly contained in
3 primary care treatment records. (ECF No. 15 at 5.) Thus, an evaluation of plaintiff’s mental
4 functional capacity largely hinges on the confliction opinions of two consultative examiners and
5 the state agency physicians.

6 On December 30, 2011, plaintiff was personally examined by consultative evaluating
7 psychologist Dr. T. Renfro. (AT 394-99.) Dr. Renfro diagnosed plaintiff with depressive
8 disorder and alcohol/amphetamine abuse/dependence in full sustained remission, and opined that
9 plaintiff could understand, remember, and carry out simple one- or two-step job instructions;
10 could accept simple instructions from supervisors; was unable to do detailed and complex
11 instructions; was mildly impaired in her ability to relate and interact with coworkers and the
12 public, associate with day-to-day work activity including attendance and safety, and perform
13 work activities without special or additional supervision; and was mildly to moderately impaired
14 in her ability to maintain persistence and pace, and perform work activities on a consistent basis.
15 (AT 398.)

16 Subsequently, on January 17, 2013, plaintiff was personally examined by consultative
17 evaluating psychologist Dr. Robert Noelker. (AT 402-04.) Even though, as plaintiff points out,
18 the underlying clinical findings of both consultative examinations were quite similar, Dr. Noelker
19 diagnosed plaintiff with bipolar disorder, and opined that plaintiff’s ability to understand and
20 remember simple one- or two-step job instructions was moderately to severely impaired, her
21 ability to sustain concentration and persistence was severely impaired, her social interactions
22 were severely impaired, and her ability to adapt to and respond effectively to pressures normally
23 found in the day-to-day work setting was severely impaired. (AT 403-04.)

24 Thereafter, on January 28, 2013, state agency psychologist Dr. Eric Wiener reviewed
25 plaintiff’s records and opined that plaintiff was limited to simple, repetitive tasks with brief lapses
26 of focus, a low demanding work environment, and only brief interactions with others. (AT 83.)
27 Finally, on January 9, 2014, state agency psychologist Dr. Tawnya Brode reviewed plaintiff’s
28 records and affirmed Dr. Wiener’s assessment. (AT 101.)

1 The ALJ’s decision discussed and evaluated each of the above-mentioned opinions, and
2 ultimately gave significant weight to Dr. Renfro’s opinion while giving little weight to Dr.
3 Noelker’s opinion. (AT 28-30.) Plaintiff correctly notes that some of the reasons provided by the
4 ALJ for her assignment of weight are unconvincing. For example, although Dr. Renfro’s opinion
5 was based on a personal examination, so was the opinion of Dr. Noelker. Furthermore, the ALJ’s
6 finding that Dr. Noelker’s opinion was inconsistent with plaintiff’s treatment notes is not
7 particularly persuasive, because the record contains such minimal mental health treatment notes.
8 Nevertheless, the ALJ reasonably found that Dr. Renfro’s opinion was more consistent with
9 plaintiff’s activities, which included sweeping, mopping, vacuuming, preparing meals, washing
10 dishes, spending time with her grandchildren, watching television with family, having a
11 boyfriend, shopping in stores for food, going to church, playing Bingo, being able to drive, and
12 being able to pay bills, count change, handle a savings account, and use a checkbook. (AT 29-30,
13 50, 56, 212, 216, 218, 396, 406, 583.) Those activities plausibly suggest that plaintiff is not as
14 limited as Dr. Noelker found. Although plaintiff’s counsel posits his lay opinion that even a
15 “raving schizophrenic” could perform such activities (ECF No. 15 at 6), plaintiff’s alternative
16 interpretation, even if well-founded, does not serve as a proper basis for reversal. See Rollins v.
17 Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (affirming even where the claimant’s testimony was
18 somewhat equivocal about how regularly she was able to keep up with all of the activities and
19 noting that the ALJ’s interpretation “may not be the only reasonable one”).

20 Based on such activities, as well as the opinion of Dr. Renfro, the ALJ also rationally
21 concluded that some of the limitations offered by the state agency physicians were overly
22 restrictive. (AT 29.) For example, as the ALJ reasoned, plaintiff’s ability to go to church, spend
23 time with her grandchildren, and play Bingo suggests that she need not be limited to only brief
24 interactions with others. (Id.) Dr. Renfro, who, unlike the state agency psychologists, personally
25 examined plaintiff, also did not feel that a limitation to a low demanding work environment was
26 necessary.

27 Because Dr. Renfro personally examined plaintiff and made independent clinical findings,
28 there is no question that his opinion constituted substantial evidence on which the ALJ was

1 entitled to rely. Moreover, as discussed above, the ALJ provided specific and legitimate
2 reasoning for why Dr. Renfro’s opinion was adopted over the opinions of the other mental health
3 professionals in the record. Even if this court may have weighed the evidence differently upon *de*
4 *novo* review, the court defers, as it must, to the ALJ’s rational resolution of the inconsistent
5 mental health opinion evidence.

6 Finally, to the extent that plaintiff suggests that Dr. Renfro’s mild to moderate mental
7 limitations are not adequately incorporated into the ALJ’s assessed RFC, that argument lacks
8 merit. The Ninth Circuit has already held that moderate mental limitations do not even require
9 vocational expert testimony. Hoopai v. Astrue, 499 F.3d 1071, 1077 (9th Cir. 2007). Moreover,
10 the mild to moderate limitations assessed by Dr. Renfro with respect to maintaining persistence
11 and pace, and performing work activities on a consistent basis, are adequately captured by the
12 ALJ’s restriction to simple tasks, which logically involve less mentally challenging activities and
13 require less mental stamina.

14 *Whether the ALJ erroneously discounted the statement of plaintiff’s mother*

15 “[C]ompetent lay witness testimony cannot be disregarded without comment” and “in
16 order to discount competent lay witness testimony, the ALJ must give reasons that are germane to
17 each witness.” Molina v. Astrue, 674 F.3d 1104, 1114 (9th Cir. 2012) (internal quotation and
18 citation omitted). Here, the ALJ specifically discussed the statement submitted by plaintiff’s
19 mother, clearly indicating that the ALJ had considered that information. (AT 25, 30-31.) The
20 ALJ reasoned that the statement of plaintiff’s mother was inconsistent with the medical evidence,
21 as properly weighed. (AT 31.) Furthermore, the ALJ noted that although plaintiff’s mother
22 stated that plaintiff did not spend time with others, in fact plaintiff went to church, watched
23 television with her family, played Bingo, and played with her grandchildren. (AT 31, 228.) As
24 such, the ALJ provided germane reasons for discounting the statement of plaintiff’s mother.

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V. CONCLUSION

For the foregoing reasons, the court concludes that the ALJ's decision is 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. 15) is DENIED.
2. The Commissioner's cross-motion for summary judgment (ECF No. 16) 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: January 24, 2018


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE