

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

**Erica B. v. Leland Dudek, Acting Commissioner of Social Security
Administration**

Erica B. v. Dudek · No. 2:23-cv-10823-SP · Decided March 30, 2025

OPINION

Erica Joan Bufanda v. Martin O'Malley

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 ERICA B.,) Case No. 2:23-cv-10823-SP 12) Plaintiff,) 13)

v.) MEMORANDUM OPINION AND

14) ORDER

LELAND DUDEK, Acting) 15 Commissioner of Social Security) Administration,) 16)
Defendant.) 17)) 18 19 I.

20 INTRODUCTION

21 On December 27, 2023, plaintiff Erica B. filed a complaint against defendant, the 22
Commissioner of the Social Security Administration (“Commissioner”), seeking a review 23 of a
denial of an application for a period of disability and disability insurance benefits 24 (“DIB”) and
a denial of an application for supplemental security income (“SSI”). The 25 parties have fully
briefed the issue in dispute, and the court deems the matter suitable for 26 adjudication without
oral argument. 27 Plaintiff presents one disputed issue for decision, whether the Administrative
Law 28 Judge (“ALJ”) failed to properly evaluate plaintiff’s subjective symptom testimony. 1
Plaintiff’s Memorandum in Support of the Complaint (“P. Mem.”) at 3-6; see 2 Defendant’s Brief
 (“D. Mem.”) at 2-7. 3 Having carefully studied the parties’ memoranda, the Administrative Record
4 (“AR”), and the decision of the ALJ, the court concludes that, as detailed herein, the ALJ 5
properly evaluated plaintiff’s subjective symptoms. Consequently, the court affirms the 6 decision
of the Commissioner denying benefits. 7 II.

8 FACTUAL AND PROCEDURAL BACKGROUND

9 Plaintiff was 31 years old on her alleged disability onset date, February 28, 2018. 10 AR at 49,
69. She completed high school and has past relevant work as a waitress. AR at 11 45, 361. 12 On
March 26, 2021, plaintiff filed applications for a period of disability and DIB 13 and for SSI due
to: bipolar disorder, depressed without psychotic features; and major 14 depressive disorder. AR at
50, 70. The Commissioner denied plaintiff’s applications 15 initially and upon reconsideration,

after which plaintiff filed a request for a hearing. AR 16 at 49-67, 69-78, 90-113, 115-38, 158-59. 17 On April 25, 2023, plaintiff, represented by counsel, appeared and testified at a 18 hearing before the ALJ. AR at 33-58. The ALJ also heard testimony from Shelly 19 Cochlin, a vocational expert. AR at 33, 44-47. On May 10, 2023, the ALJ denied 20 plaintiff's claims for benefits. AR at 17-27. 21 Applying the well-known five-step sequential evaluation process, the ALJ found, 22 at step one, plaintiff had not engaged in substantial gainful activity since February 28, 23 2018, the alleged onset date. AR at 19. 24 At step two, the ALJ found plaintiff suffers the from the severe impairments of 25 depression, anxiety, and attention deficit hyperactivity disorder ("ADHD"). AR at 20. 26 At step three, the ALJ found plaintiff's impairments whether individually or in 27 combination did not meet or medically equal one of the listed impairments set forth in 20 28 C.F.R. part 404, Subpart P, Appendix 1. Id. 1 The ALJ then assessed plaintiff's residual functional capacity ("RFC"), and 2 determined plaintiff could perform a full range of work at all exertional levels, but with 3 the non-exertional limitations that plaintiff could: perform simple routine tasks; not 4 interact with the public; have occasional interaction with coworkers; not perform 5 production rate or pace work, such as work on an assembly line; and make occasional, 6 simple work-related decisions. AR at 21. 7 The ALJ found, at step four, that plaintiff was not able to perform her past relevant 8 work as a waitress. AR at 26. 9 At step five, the ALJ found there were jobs that existed in significant numbers in 10 the national economy which plaintiff could perform, including laundry worker, garment 11 bagger, and marker II. AR at 26-27. 12 Plaintiff filed a timely request for review of the ALJ's decision, which the Appeals 13 Council denied. AR at 1-3. The ALJ's decision stands as the final decision of the 14 Commissioner. 15 III.

16 STANDARD OF REVIEW

17 This court is empowered to review decisions by the Commissioner to deny 18 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security 19 Administration must be upheld if they are free of legal error and supported by substantial 20 evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001) (as amended). But 21 if the court determines the ALJ's findings are based on legal error or are not supported by 22 substantial evidence in the record, the court may reject the findings and set aside the 23 decision to deny benefits. *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); 24 *Tonapetyan v. Halter*, 242 F.3d 1144, 1147 (9th Cir. 2001). 25 "Substantial evidence is more than a mere scintilla, but less than a preponderance." 26 *Aukland*, 257 F.3d at 1035. Substantial evidence is such "relevant evidence which a 27 reasonable person might accept as adequate to support a conclusion." *Reddick v. Chater*, 28 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276 F.3d at 459. To determine whether 1 substantial evidence supports the ALJ's finding, the reviewing court must review the 2 administrative record as a whole, "weighing both the evidence that supports and the 3 evidence that detracts from the ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's 4 decision "cannot be affirmed simply by isolating a specific quantum of supporting 5 evidence." *Aukland*, 257 F.3d at 1035 (internal quotation marks and citation omitted). If 6 the evidence can reasonably support

either affirming or reversing the ALJ's decision, the 7 reviewing court "may not substitute its judgment for that of the ALJ." Id. (internal 8 quotation marks and citation omitted). 9 IV.

10 DISCUSSION

11 Plaintiff argues the ALJ failed to provide specific, clear and convincing reasons for 12 rejecting the severity of plaintiff's subjective complaints. P. Mem. at 5. In particular, 13 plaintiff argues the ALJ relied unduly on the opinion of a consultative examiner and the 14 fact plaintiff was not taking psychiatric medications. Id. 15 The court looks to Social Security Ruling ("SSR") 16-3p for guidance on 16 evaluating plaintiff's alleged symptoms. In adopting SSR 16-3p, the Social Security 17 Administration sought to "clarify that subjective symptom evaluation is not an 18 examination of an individual's character." SSR 16-3p, 2017 WL 5180304, at *2 (Oct. 19 25, 2017). 20 [SSR 16-3p] makes clear what our precedent already required: that 21 assessments of an individual's testimony by an ALJ are designed to evaluate 22 the intensity and persistence of symptoms after the ALJ finds that the 23 individual has a medically determinable impairment(s) that could reasonably 24 be expected to produce those symptoms, and not to delve into wide-ranging 25 scrutiny of the claimant's character and apparent truthfulness. 26 *Trevizo v. Berryhill*, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (cleaned up). 27 To evaluate a claimant's symptom testimony, the ALJ engages in a two-step 28 analysis. *Christine G. v. Saul*, 402 F. Supp. 3d 913, 921 (C.D. Cal. 2019) (citing *Trevizo*, 1 871 F.3d at 678). First, the ALJ must determine whether the claimant produced objective 2 medical evidence of an underlying impairment that could reasonably be expected to 3 produce the symptoms alleged. Id. Second, if the claimant satisfies the first step and 4 there is no evidence of malingering, the ALJ must evaluate the intensity and persistence 5 of the claimant's symptoms and determine the extent to which they limit her ability to 6 perform work-related activities. Id. 7 In assessing intensity and persistence, the ALJ may consider: the claimant's daily 8 activities; the location, duration, frequency, and intensity of the symptoms; precipitating 9 and aggravating factors; the type, dosage, effectiveness, and side effects of medication 10 taken to alleviate the symptoms; other treatment received; other measures used to relieve 11 the symptoms; and other factors concerning the claimant's functional limitations and 12 restrictions due to the symptoms. Id. (citing 20 C.F.R. § 416.929); SSR 16-3p at *4; 13 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). To reject the claimant's subjective 14 symptom statements at step two, the ALJ must provide "specific, clear, and convincing" 15 reasons, supported by substantial evidence in the record, for doing so. *Burrell v. Colvin*, 16 775 F.3d 1133, 1136-37 (9th Cir. 2014); *Smolen*, 80 F.3d at 1281, 1283-84. 17 Here, at the first step, the ALJ found plaintiff's medically determinable 18 impairments could reasonably be expected to cause plaintiff's alleged symptoms. AR at 19 22. At the second step, because the ALJ did not find any evidence of malingering, the 20 ALJ was required to provide clear and convincing reasons for discounting plaintiff's 21 testimony. The ALJ found plaintiff's "statements concerning the intensity, persistence, 22 and limiting effects" of plaintiff's "symptoms are not entirely consistent with the medical 23 evidence and other evidence in the record." Id. 24 Plaintiff's Conservative

and Inconsistent Treatment 25 The ALJ first indicated plaintiff's reports about the severity of her symptoms were 26 not credible because she received inconsistent and more conservative treatment than 27 might be expected given her complaints. AR at 22-23; see *Parra v. Astrue*, 481 F.3d 742, 28 751 (9th Cir. 2007) ("[E]vidence of 'conservative treatment' is sufficient to discount a 1 claimant's testimony regarding severity of an impairment."). The ALJ points to 2 plaintiff's lack of emergency room visits or psychiatric hospitalizations, as well as her 3 inconsistent use of psychiatric medication. AR at 22-23. 4 It is not clear why the ALJ would have expected hospitalization given plaintiff's 5 testimony, and the mere lack of psychiatric hospitalization is insufficient to constitute 6 conservative treatment. See *Tammy L. O. v. Comm'r*, 2018 WL 3090196, at *13 (D. Or.

7 June 20, 2018) (the "mere fact that a claimant has not been admitted to a hospital on an 8 inpatient basis" does not mean that a claimant received conservative treatment). 9 Additionally, plaintiff's medical records indicate plaintiff was prescribed a number of 10 psychiatric medications including sertraline (Zoloft), escitalopram (Lexapro), quetiapine 11 (Seroquel), aripiprazole (Abilify), lurasidone (Latuda), ziprasidone (Geodon), bupropion 12 (Wellbutrin), and dextroamphetamine-amphetamine (Adderall). AR at 499, 538, 666, 13 677. "The Ninth Circuit and district courts alike have recognized that prescription of 14 psychiatric medication for mental health impairments . . . is not indicative of conservative 15 treatment." *Joseph S. v. O'Malley*, 2024 WL 418632, at *13 (S.D. Cal. Feb. 5, 2024) 16 (collecting cases); see also *Drawn v. Berryhill*, 728 F. App'x 637, 642 (9th Cir. 2018). 17 Indeed, had plaintiff regularly taken all of her psychiatric medications as prescribed, there 18 would be no question such treatment is not conservative. 19 But plaintiff was in fact irregular in her compliance with her psychiatric 20 medications, which the ALJ determined further undermined her subjective statements. 21 See AR at 23. Although a lack of compliance with a course of treatment may be a reason 22 to discount the severity of an individual's symptoms, the ALJ must "consider[] possible 23 reasons he or she may not comply with treatment or seek treatment consistent with the 24 degree of his or her complaints." SSR 16-3p, 2017 WL 5180304, at *9 (Oct. 25, 2017); 25 see *Carmickle v. Comm'r*, 533 F.3d 1155, 1162 (9th Cir. 2008) (citing *Orn v. Astrue*, 495 26 F.3d 625, 638 (9th Cir. 2007)) ("[A]lthough a conservative course of treatment can 27 undermine allegations of debilitating pain, such fact is not a proper basis for rejecting the 28 claimant's credibility where the claimant has a good reason for not seeking more 1 aggressive treatment."). An acceptable reason for failing to comply with a prescribed 2 course of medication may include experiencing side effects. See *Dejalenda S. v. 3 O'Malley*, 2024 WL 2293010, at *7 (E.D. Wash. May 21, 2024) (holding ALJ gave 4 undue weight to plaintiff's cessation of psychiatric medication when the ALJ failed to 5 consider "whether medication side-effects, Plaintiff's mental disorders, or her relocations 6 contributed to [plaintiff's] stopping psychotropic medication."). 7 Here, plaintiff testified she had not been taking psychiatric medication since 2020 8 because some of the psychiatric medications caused her to "hallucinate and feel very 9 suicidal." AR at 41. Medical records show that after

plaintiff reported experiencing 10 suicidal ideation with her medication it was changed, but plaintiff then reported her 11 depressive symptoms were worsening and she had difficulty waking in the mornings. AR 12 at 538. Plaintiff also reported difficulty in scheduling an appointment with mental health 13 providers because many were not accepting new patients due to the COVID-19 14 pandemic. AR at 314. Moreover, among plaintiff's central claims for disability is her 15 inability to focus and concentrate. AR at 22, 41. It would not be unreasonable to assume 16 plaintiff's difficulty in remaining compliant and in pursuit of effective psychiatric 17 medication could be related to her inability to concentrate or follow directions. See 18 *Garrison v. Colvin*, 759 F.3d 995, 1018 n.24 (9th Cir. 2014) ("we do not punish the 19 mentally ill for occasionally going off their medication when the record affords 20 compelling reason to view such departures from prescribed treatment as part of 21 claimant's underlying mental afflictions.") (citation omitted). Additionally, plaintiff 22 sought treatment for her inability to concentrate relatively recently, as evidence by a

23 December 2022 prescription for Adderall. AR at 677.

24 In sum, the administrative record as a whole does not support the ALJ's conclusion 25 that plaintiff received treatment inconsistent with her complaints. Accordingly, this was 26 not a clear and convincing reason to discount her testimony. 27 // 28 1 Inconsistencies With the Objective Medical Record 2 Second, the ALJ reasoned plaintiff's allegations were inconsistent with the 3 objective medical evidence. AR at 26. Specifically, the ALJ points to several records of 4 largely normal mental status examinations and medical findings that plaintiff retained 5 "essentially normal" memory capabilities and "normal judgment and insight." AR at 23- 6 24; see e.g., AR at 513, 668-69, 699, 705, 755. "When objective medical evidence in the 7 record is inconsistent with the claimant's subjective testimony, the ALJ may indeed 8 weigh it as undercutting such testimony." *Smartt v. Kijakazi*, 53 F.4th 489, 498 (9th Cir. 9 2022). 10 The court agrees that the objective medical evidence is inconsistent with plaintiff's 11 subjective testimony. Plaintiff testified she is unable to work because she loses focus and 12 often has difficulty articulating her thoughts. AR at 22. But plaintiff's physicians have 13 noted plaintiff's "intact judgement and insight, intact comprehension, [and] normal 14 speech" multiple times. AR at 668, 699, 720, 743. An examination of the record also 15 reveals statements such as "during all four testing sessions, [plaintiff] worked hard and 16 learned and followed the instructions quickly," had "coherent" thought processes, as well 17 as cooperative behavior, good insight, and good judgment. AR at 720, 743, 755, 759. 18 Such statements are inconsistent with plaintiff's testimony, particularly her more extreme 19 statements that she has difficulty with simple tasks and "gets so lost in [her] thoughts" 20 that she urinates in her pants. AR at 307-08; P. Mem. at 4. While plaintiff may disagree 21 with the ALJ's interpretation of the record, the ALJ adequately described several 22 inconsistencies between plaintiff's testimony and her medical records. Accordingly, the 23 ALJ properly found the objective medical evidence undercuts her testimony. 24 Inconsistencies With Activities of Daily Living 25 Lastly, the ALJ reasoned plaintiff's subjective symptom testimony

was 26 inconsistent with her activities of daily living. AR at 20-21, 23. Engaging in daily 27 activities that are incompatible with the severity of symptoms alleged can support an 28 adverse credibility determination. See, e.g., *Orn*, 495 F.3d at 639; *Batson v. Comm’r of 1 Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004). At the same time, plaintiff does 2 not need to be “utterly incapacitated,” and “the mere fact a [plaintiff] has carried on 3 certain daily activities, such as grocery shopping, driving a car, or limited walking for 4 exercise, does not in any way detract from her credibility as to her overall disability.” 5 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); see *Vertigan v. Halter*, 260 F.3d 1044, 6 1050 (9th Cir. 2001). 7 Here, plaintiff claimed she had difficulty understanding and following instructions 8 and recalling information, and reported taking hours to complete even the simplest of 9 tasks. AR at 21, 41-42, 307-13. Plaintiff also claimed she had difficulty appearing in 10 public spaces and has severe anxiety around others. AR at 311. Yet plaintiff also 11 testified she shares custody of her three children and makes medical decisions for them 12 jointly with their father. AR at 39-40. Plaintiff reports taking her mother to her dialysis 13 appointments, performing chores around the home, and having a pet dog. AR at 308. 14 Plaintiff is able to cook simple meals, go grocery shopping, manage her own finances, 15 and drive. AR at 309-10. Plaintiff also reports being able to watch movies and play 16 board games with her children, getting her nails done in a public salon, attend a meeting 17 at a police station regarding her children’s absences from school, and take her children to 18 the park. AR at 311, 468, 542, 546. The ALJ found plaintiff’s claim she had severe 19 difficulty with simple tasks and understanding and following directions inconsistent with 20 plaintiff’s ability to prepare meals, manage her finances and drive. AR at 20. The ALJ 21 also noted it was inconsistent for plaintiff to testify she has severe social anxiety when 22 she is able to go to the grocery store multiple times a week. AR at 21. The court also 23 pointed out an apparent contradiction between plaintiff telling a physician she has no 24 outside activities and a visit to the emergency room with an injury from playing baseball. 25 AR at 23. The court finds these inconsistencies between plaintiff’s activities and her 26 claimed symptoms are a clear and convincing reason for discounting plaintiff’s 27 testimony. 28 1 In sum, the ALJ gave two clear and convincing reasons for discounting plaintiff’s 2 || testimony regarding the severity of her symptoms, namely, inconsistencies with the 3 medical evidence and her activities of daily living. Therefore, the ALJ did not err in this 4 || analysis. 5 V.

6 CONCLUSION

7 IT IS THEREFORE ORDERED that Judgment shall be entered AFFIRMING the 8 || decision of the Commissioner denying benefits, and dismissing the complaint with 9 || prejudice. 10 11 ||
Dated: March 30, 2025 LP 12

13 SHERI PYM

14 United States Magistrate Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28 10

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