



(SS) Mata v. Commissioner of Social Security Administration

2014 | Cited 0 times | E.D. California | October 28, 2014

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 EASTERN DISTRICT OF CALIFORNIA

Sonia Mata asserts she is entitled to disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. Plaintiff argues the administrative law erred in evaluating the credibility of her subjective complaints. Because the ALJ applied the presumption of continuing non-disability and met his burden of identifying clear and convincing reas testimony is AFFIRMED. I. Procedural History

residual functional capacity to work at all exertional levels, and . . . perform simple, routine tasks with occasional contact with co-workers, supervisors, and the -3 at 16.) Plaintiff filed the applications for benefits now before the Court on March 2, 2010, alleging disability beginning on October 17, 2009. (Id.) The Social Security Administration denied her claims initially and upon SONIA A. MATA, Plaintiff, v. CAROLYN W. COLVIN, Acting Commissioner of Social Security, Defendant.

Case No.: 1:13-cv-01113 - JLT ORDER DIRECTING ENTRY OF JUDGMENT IN FAVOR OF DEFENDANT, CAROLYN W. COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY, AND AGAINST PLAINTIFF, SONIA MATA 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

reconsideration. (Id.; see also Doc. 10-5 at 2-5.)

After requesting a hearing, Plaintiff testified before an ALJ on November 16, 2011. (Doc. 10-3 at 16.) severity of an i Id.) Therefore, the ALJ applied the presumption of continuing non-

the Social Security Act. (Id.) The Appeals Council denied Plai

decision on May 1, 2013. (Id. at 6.) s determination became the final decision of the Commissioner of Social Security (Commissioner). II. Standard of Review

District courts have a limited scope of judicial review for disability claims after a decision by the Commissioner to deny benefits under the Social Security Act. When reviewing findings of fact, such as whether a claimant was disabled, the Court must det determination that the claimant is not disabled must be upheld by the Court if the proper legal standards



(SS) Mata v. Commissioner of Social Security Administration

2014 | Cited 0 times | E.D. California | October 28, 2014

were applied and the findings are supported by substantial evidence. Human Serv., 812 F.2d 509, 510 (9th Cir. 1987).

reasonable mind might a *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)). The record as a whole s and evidence that *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). III. Disability Benefits To qualify for benefits under the Social Security Act, Plaintiff must establish she is unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment that has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. § 1382c(a)(3)(A). An individual shall be considered to have a disability only if:

physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work, but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the 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

national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. 42 U.S.C. § 1382c(a)(3)(B). The burden of proof is on a claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). If a claimant establishes a prima facie case of disability, the burden shifts to the Commissioner to prove the claimant is able to engage in other substantial gainful employment. *Maounis v. Heckler*, 738 F.2d 1032, 1034 (9th Cir. 1984). IV. Administrative Determination To achieve uniform decisions, the Commissioner established a sequential five-step process for evaluating . 20 C.F.R. §§ 404.1520, 416.920(a)-(f). The process requires the ALJ to determine whether Plaintiff (1) engaged in substantial gainful activity during the period of alleged disability, (2) had medically determinable severe impairments (3) that met or equaled one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1; and whether Plaintiff (4) had the residual functional capacity to perform to past relevant work or (5) the ability to perform other work existing in significant numbers at the state and national level. *Id.* The ALJ must consider testimonial and objective medical evidence. 20 C.F.R. §§ 404.1527, 416.927. A. Relevant Medical Opinions On May 20, 2010, Dr. Ian Ocrant -8 at 38.) Dr. Ocrant noted Plaintiff

ce [ALJ] *Id.*)

Dr. Aquino-Caro completed a psychiatric review technique form and mental residual functional capacity assessment on May 26, 2010. (Doc. 10-8 at 23-38.) Dr. Aquino-Caro noted Plaintiff suffered from depression. (*Id.* at 23, 29.) According to Dr. Aquino- activities of daily living; difficulties in maintaining social functioning; and difficulties in maintaining concentration, persistence, or pace. (*Id.* at 34.) Dr. Aquino-Caro found Plaintiff could perform simple and repetitive tasks with limited contact with others. (*Id.* at 38.)



(SS) Mata v. Commissioner of Social Security Administration

2014 | Cited 0 times | E.D. California | October 28, 2014

This opinion was affirmed by Dr. Tashjian on September 10, 2010. (Id. at 40.) 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

Dr. Evangeline Murillo -8 at

65-67.) Id. mood swings, and social isolation. (Id. at 66.) Dr. Muri o living were not impaired. (Id.)

B. Administrative Hearing Testimony Plaintiff testified that she suffered from depression, stress, anxiety attacks, and panic attacks. (Doc. 10-3 at 33.) Plaintiff reported this all caused a lack of appetite, and she lost about fifty pounds over the course of three to four months. (Id.) She stated that she last worked doing in-home care for her mother, who died in 2005. (Id. at 35.) Plaintiff believed she was no longer able to work due to her panic attacks, fear, and problems with her legs. (Id. at 36.)

difficulty with walking, stating: (Doc. 10-3 at 36.) Plaintiff testified she was not receiving

treatment for her legs because she did not have MediCal. (Id.)

very two days that lasted for approximately half an hour each

episode. (Doc. 10-3 at 37.) She said her depression affected her ability to function because she could Id. at 37.) Plaintiff believed she was unable to concentrate for te for fifteen minutes. (Id. at 38.) Further, Plaintiff reported she had suicidal thoughts about every two weeks. (Id. at 37.)

-3 at 38.) She no longer had any interests or hobbies, and did not visit with others. (Id.) Plaintiff she did not want anyone around her. (Id. at 39.) She reported that she did not keep up her personal

-3 at 38.) 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

-3 at 40.) In addition, Plaintiff said she watched

television at night when she was unable to sleep, for about two hours each night. (Id. at 41.) She Id. at 42.) C. ngs

-

presumption of continuing non- Id.) Nevertheless, the ALJ continued through the five-step process set forth in the Regulations.

First, the ALJ determined that Plaintiff did not engage in substantial activity after the alleged onset date of October 17, 2009. (Id. at 18.) . (Id.) Next, the ALJ found Plaintiff did not have an impairment or a combination of impairments that met or medically equaled a Listing. (Id. at 17.) The ALJ



(SS) Mata v. Commissioner of Social Security Administration

2014 | Cited 0 times | E.D. California | October 28, 2014

determined Plaintiff had the residu to perform simple repetitive tasks with occasional contact with co- Id. at 20.) With this RFC, the ALJ concluded Plaintiff was cap (Id.

the Social Security Act, from October 17, 2009 Id. at 23.) V. Discussion and Analysis

Appealing the decision to deny her application for benefits, Plaintiff asserts the ALJ erred in assessing the credibility of her subjective complaints. failed to articulate legally sufficient (sic) and factually supported reasons supporting the rejection of

found the presumption of continuing non- ations for benefits.

A. Presumption of continuing of Non-Disability The Ninth Circuit has determined that a presumption of continuing non-disability may be rity income application was previously denied by an ALJ. See Chavez v. Bowen, 844 F.2d 691, 693 (9th Cir. 1988). 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

Lester v. Chater, 81 F.3d 821, 827 (9th Cir. 1995) (quoting Miller v. Heckler, 770 F.2d 845, 848 (9th Cir. 1985)). However, the presumption does not apply Taylor v. Heckler,

psychiatr impairment not considered in the previous application. Id. (citing Gregory v. Bowen, 844 F.2d 664,

666 (9th Cir. 1988)).

The Ninth Circuit explains that the bur Chavez, 884 F.2d at 693. Here, the ALJ found

Plaintiff did not carry her burden to show changed circumstances at the administrative level, and did not pre (Doc. 10-3 at 16.)

Id. at 21.)

Seeking judicial review of the denial of her applications for benefits, Plaintiff does not assert the ALJ erred in applying the presumption of non-disability. Indep. Towers of Wash. v.

Washington, 350 F.3d 925, 929 (9th Cir. 2003) (quoting Greenwood v. Fed. Aviation Admin., 28 F.3d Id. When a claim of error is not raised and explained, the argument is waived. See, id. at

929-30 (holding that party s argument was waived because the party made only a bold assertion of error, with little if any analysis to assist the court in evaluating its legal challenge); see also Hibbs v. t of Human Res., 273 F.3d 844, 873 n.34 (9th Cir. 2001) (finding an allegation of error was too undeveloped to be capable of assessment). Thus, because Plaintiff does not assert in her appeal that



(SS) Mata v. Commissioner of Social Security Administration

2014 | Cited 0 times | E.D. California | October 28, 2014

the ALJ erred in applying the presumption of non-disability, she has waived her right to do so.

B. improperly assessed her subjective symptom testimony in assessing the residual function capacity 16 at 8.) In evaluating credibility, an ALJ must 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

Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (quoting Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991)). Next, if credibility. Id. at 1036. In this case, the ALJ determin -determinable

-3 at 20.)

[her] symptoms are Id.)

An adverse credibility determination must be based on clear and convincing evidence where

evidence establishing that the claimant suffers from an impairment that could reasonably produce the , 533 F.3d 1155, 1160 (9th Cir. 2008). vidence undermines Lester, 81 F.3d at 834. Here, daily activities, the treatment she received, and her work history. (See id. at 20-21.) The Ninth Circuit has determined these are relevant factors in assessing the credibility of a claimant. See, e.g., Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002).

1. Daily activities When a claimant spends the day engaged in activities that are transferable to a work setting, a Morgan, 169 F.3d at 600 (citing Fair v. Bowen, 885 F.2d ability to cook, clean, do laundry and manage finances may be sufficient to support an adverse finding

of credibility. See Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008); Likewise, an ALJ may conc and participates in community activities. , 574 F.3d 685, 693

(9th Cir. 2009).

In Burch v. Barnhart, the ALJ explained th suggest that she is quite functional. She is able to care for her own personal needs, cook, clean and shop Id., 400 F.3d 676, 680 (9th Cir. 2005). Likewise, he lived alone, cleaned, prepared simple meals, 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

-3 at 20.) As the Ninth Circuit explained in Burch

Burch, 400 F.3d at 680 (quoting Magallanes activities support the adverse credibility determination.

2. Treatment When assessing and side effects of any medica Further, the Ninth Circuit determined



(SS) Mata v. Commissioner of Social Security Administration

2014 | Cited 0 times | E.D. California | October 28, 2014

Burch, 400 with numbness aggravated by walking too -3 at 20.) In pain, and Benadryl as needed for allergies (over-the- Id. at 21.) These facts were proper

considerations in finding Plaintiff lacked credibility. See Meanel v. Apfel, 172 F.3d 1111, 1114 (9th

3. Compliance with treatment A Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996); see also Fair v. Bowen, 885 F.2d 597, 603 (an

adverse credibility determination). Here, reviewing the medical record, the AL -3 at 21.) As the ALJ Id.)

4. Work history An ALJ may consider a clai alleged impairment. Bruton v. Massanari, 268 F.3d 824, 828 (9th Cir. 2001); see also Drouin v. 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

Sullivan, 966 F.2d 1255, 1259 (9th Cir. 1992) (the ALJ properly considered that the plaintiff stopped working for reasons other than her alleged pain). Here, the ALJ noted Plaintiff testified that she -3 at 21.) Because Plaintiff stopped working for reasons other than her impairments, her work history was a proper factor in the adverse credibility determination.

In light of the number of factors considere

Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004. VI. Conclusion and Order

For the reasons set forth above, the Court finds application of the continuing presumption of non-disability. Even assuming the presumption was not

applied credibility, which were Thomas, 278 F.3d at 958. Because the ALJ applied the proper

legal standards, his conclusion that Plaintiff is not disabled as defined by the Social Security Act must be upheld by the Court. See Sanchez, 812 F.2d at 510.

Accordingly, IT IS HEREBY ORDERED: 1. The decision of the Commissioner of Social Security is AFFIRMED; and 2. The Clerk of Court IS DIRECTED to enter judgment in favor of Defendant Carolyn

Colvin, Acting Commissioner of Social Security, and against Plaintiff Sonia Mata.

IT IS SO ORDERED. Dated: October 27, 2014 /s/ Jennifer L. Thurston UNITED STATES
MAGISTRATE JUDGE

