

MAR 18 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>LELA J. STEWART,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>MICHAEL J. ASTRUE, Commissioner of Social Security,</p> <p style="text-align: center;">Defendant - Appellee.</p> |
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No. 07-35877

D.C. No. CV-06-00092-JCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jeremiah C. Lynch, Magistrate Judge, Presiding

Submitted March 13, 2009**
Seattle, Washington

Before: W. FLETCHER, GOULD and TALLMAN, Circuit Judges.

Lela Stewart (“Stewart”) filed for supplemental insurance income on
December 18, 2002 and for disability benefits on January 18, 2003. The
Administrative Law Judge (“ALJ”) found Stewart not disabled because she could

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

return to her past relevant work as an office clerk. The district court affirmed. We affirm the district court's decision because substantial evidence in the record supports the ALJ's finding that Stewart is not disabled.

This court reviews a district court's decision upholding the denial of social security benefits de novo. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1172 (9th Cir. 2008). "The Social Security Administration's disability determination should be upheld unless it is based on legal error or is not supported by substantial evidence." *Ryan v. Comm'r of Social Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008).

Stewart argues that the ALJ's decision is not supported by substantial evidence based on two asserted errors. She first argues that the ALJ improperly relied on residual functional capacity opinions of Stewart's doctors to determine the severity of Stewart's impairments and Stewart's residual functional capacity. Social Security Ruling ("SSR") 96-5p instructs adjudicators to "not assume that a medical source using terms such as 'sedentary' and 'light' is aware of [the SSA's] definitions of these terms." 1996 WL 374183, at *5. The ALJ did not rely on vocational assessments to determine whether Stewart's impairments were severe. There is also no evidence that the ALJ improperly equated medical sources' use of terms such as "sedentary" and "light" with the meaning of these terms under Social Security Administration regulations. The ALJ evaluated Stewart's entire medical

record, which included statements by her doctors about what activities she could and could not do, and made his own residual functional capacity determination.

Stewart next argues that the ALJ erred by improperly rejecting the opinion of Stewart's counselor, Joan Christiansen. There is substantial evidence to support the ALJ's decision to discount Christiansen's opinion. First, her opinion was inconsistent with other medical sources in the record. Dr. Trontel, Dr. Rushworth, and Dr. Bateen all determined that Stewart's mental impairments were not severe. Second, Christiansen is not an acceptable medical source under C.F.R.

§ 404.1513(a). "The fact that a medical opinion is from an 'acceptable medical source' is a factor that may justify giving that opinion greater weight than an opinion from a medical source who is not an 'acceptable medical source' because . . . 'acceptable medical sources' 'are the most qualified health care professionals.'" SSR 06-03p, 2006 WL 2329939, at *4. The ALJ adequately explained that he gave less weight to Christiansen's opinion because of these two factors.

AFFIRMED.