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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY BAKEWELL,

Plaintiff - Appellant,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant - Appellee.

No. 08-35991

D.C. No. 3:07-cv-01295-BR

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Argued and Submitted December 10, 2009
Portland, Oregon

Before: FARRIS, D.W. NELSON and BERZON, Circuit Judges.

Mary Bakewell appeals the district court's order affirming an Administrative Law Judge's determination that Bakewell was not disabled and therefore not entitled to Social Security disability benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291 and we reverse.

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

“We review the district court’s order affirming the ALJ’s denial of social security benefits de novo, and will disturb the denial of benefits only if the decision contains legal error or is not supported by substantial evidence.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (citations omitted).

At step two of the sequential process for evaluating disability, 20 C.F.R. § 404.1520(a)(4)(ii), the ALJ concluded that Bakewell’s migraines were not a severe impairment. The ALJ’s conclusion that Bakewell’s migraines remained under excellent control with medication is not supported by substantial evidence. The record indicates without contradiction that Bakewell’s migraines incapacitated her for several days and that her persistent symptoms were not controlled effectively with medication. Accordingly, there is no substantial evidence supporting the ALJ’s position that Bakewell’s migraines do not “significantly limit[] [her] physical or mental ability to do basic work activities,” 20 C.F.R. § 404.1520(c), as the ALJ’s conclusion was based upon the erroneous factual finding that Bakewell’s migraines are under control.

Furthermore, the ALJ did not provide “specific and legitimate reasons that are supported by substantial evidence in the record,” *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995), for rejecting the opinion of Bakewell’s examining physician, Dr. Roberts. The ALJ did not credit Dr. Roberts’s assessment of

limitations on Bakewell's repetitive use of her hand, nor did the ALJ provide any reason to reject this assessment. Because the ALJ ignored the opinion of Dr. Roberts entirely, the ALJ erred. *See id.*

The ALJ predicated his ruling that Bakewell is not disabled on the erroneous factual finding regarding Bakewell's migraines, and he committed legal error by ignoring the findings of Dr. Roberts. We therefore reverse the order of the district court and remand with directions to reassess Bakewell's claim consistent with this disposition.

REVERSED AND REMANDED.