

APR 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BETHANY R. NOTTER,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE,

Defendant - Appellee.

No. 07-35906

D.C. No. CV-06-05558-FDB

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Franklin D. Burgess, District Judge, Presiding

Argued and Submitted April 15, 2009  
Seattle, Washington

Before: B. FLETCHER, TASHIMA and THOMAS, Circuit Judges.

Bethany Notter appeals the district court's order affirming the decision of the Administrative Law Judge (ALJ) denying her claim for social security disability benefits. We affirm. Because the parties are familiar with the factual and procedural history of this case, we do not recount it here.

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

We review de novo a district court's order affirming an ALJ's denial of social security disability benefits, and "may set aside a denial of benefits only if it is not supported by substantial evidence or is based on legal error." Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1222 (9th Cir. 2009) (internal quotation marks and citation omitted). "Where the evidence as a whole can support either a grant or a denial, we may not substitute our judgment for the ALJ's." Id. (internal quotation marks and citation omitted).

Some of the ALJ's conclusions were problematic. However, after a careful review of the record, we conclude that the ALJ's decision is supported by sufficient evidence. There was medical evidence in the record supporting the ALJ's conclusions, and the ALJ provided "specific and legitimate reasons supported by substantial evidence in the record" for rejecting some of the medical conclusions. Lester v. Chater, 81 F.3d 830-31 (9th Cir. 1995). Similarly, the ALJ's credibility determination was supported by sufficient evidence in the record.

Still, the case presents some troubling aspects. The medical and psychological testimony was contradictory, and our review of the record leaves us with the impression that her true condition, in particular her psychological condition, has yet to be diagnosed fully. Nothing in our decision should be read as

precluding a future application based on new medical or psychological information.

However, based on our deferential standard of review and the state of the record, we conclude that the judgment of the district court should be affirmed.

**AFFIRMED.**