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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CATHY PAGE,)	NO. CV 13-965-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
CAROLYN W. COLVIN, ACTING)	AND ORDER OF REMAND
COMMISSIONER OF SOCIAL SECURITY, ¹)	
)	
Defendant.)	
_____)	

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
judgment are denied, and this matter is remanded for further
administrative action consistent with this Opinion.

PROCEEDINGS

Plaintiff filed a complaint on February 13, 2013, seeking review
of the Commissioner's denial of benefits. The parties consented to

¹ Carolyn W. Colvin, who became Acting Commissioner of
Social Security as of February 14, 2013, is hereby substituted as
Defendant in this matter. See Fed. R. Civ. P. 25(d)(1); 42
U.S.C. § 405(g).

1 proceed before a United States Magistrate Judge on March 20, 2013.
2 Plaintiff filed a motion for summary judgment on August 23, 2013.
3 Defendant filed a motion for summary judgment on September 23, 2013.
4 The Court has taken the motions under submission without oral
5 argument. See L.R. 7-15; "Order," filed February 19, 2013.

6
7 **BACKGROUND**
8

9 Plaintiff asserts disability since August 1, 2005, based on,
10 inter alia, alleged psychiatric problems (Administrative Record
11 ("A.R.") 51-52, 57-58, 153-60, 174). A "Mental Impairment
12 Questionnaire" introduced into the Administrative Record as Exhibit
13 B20F reflects medical opinions that Plaintiff: (1) would have
14 "difficulty working at a regular job on a sustained basis"; (2) has
15 "moderate" "restriction of activities of daily living"; (3) has
16 "moderate" "difficulties in maintaining social functioning"; (4)
17 "often" experiences "deficiencies of concentration, persistence or
18 pace resulting in failure to complete tasks in a timely manner (in
19 work settings or elsewhere)"; and (5) would have to be absent from
20 work "about twice a month" (A.R. 491-94). Exhibit B20F appears to
21 have been signed jointly by Patrick Humphreys, a licensed clinical
22 social worker, and Dr. T. Angeles, Plaintiff's treating psychiatrist
23 (A.R. 494).

24
25 In a decision dated May 14, 2010, the Administrative Law Judge
26 ("ALJ") found Plaintiff not disabled (A.R. 70-75). This decision
27 failed to mention Exhibit B20F (id.). On December 15, 2010, the
28 Appeals Council remanded the matter to the ALJ because, inter alia,

1 the ALJ's May 14, 2010 decision failed to mention Exhibit B20F (A.R.
2 81-82).

3
4 In a decision dated April 5, 2011, the ALJ again found Plaintiff
5 not disabled (A.R. 11-17). This decision again failed to mention
6 Exhibit B20F (id.). The decision did cite Exhibit B21F, which
7 consists of records from the same mental health provider that employs
8 the authors of Exhibit B20F (Long Beach Mental Health Center) (A.R.
9 14). As to Exhibit B21F, the ALJ stated, "I give no weight to records
10 from the Long Beach Mental Health Center, because their assessment is
11 self-serving and not consistent with the objective findings or the
12 record as a whole (Exhibit B-21F)" (id.).

13
14 Plaintiff then argued to the Appeals Council that the ALJ again
15 had "failed to properly evaluate the opinions of treating sources at
16 Long Beach Mental Health, Exhibit B20F" (A.R. 151). This time,
17 however, the Appeals Council denied review (A.R. 1-4).

18
19 **STANDARD OF REVIEW**

20
21 Under 42 U.S.C. section 405(g), this Court reviews the
22 Administration's decision to determine if: (1) the Administration's
23 findings are supported by substantial evidence; and (2) the
24 Administration used correct legal standards. See Carmickle v.
25 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
26 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
27 relevant evidence as a reasonable mind might accept as adequate to
28 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401

1 (1971) (citation and quotations omitted); see also Widmark v.
2 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

3
4 **DISCUSSION**

5
6 Plaintiff contends, inter alia, that the Administration erred
7 with respect to the medical opinions reflected in Exhibit B20F. For
8 the reasons discussed below, the Court agrees.

9
10 A treating physician's conclusions "must be given substantial
11 weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see
12 Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must
13 give sufficient weight to the subjective aspects of a doctor's
14 opinion. . . . This is especially true when the opinion is that of a
15 treating physician") (citation omitted); see also Orn v. Astrue, 495
16 F.3d 625, 631-33 (9th Cir. 2007) (discussing deference owed to
17 treating physician opinions). Even where the treating physician's
18 opinions are contradicted,² "if the ALJ wishes to disregard the
19 opinion[s] of the treating physician he . . . must make findings
20 setting forth specific, legitimate reasons for doing so that are based
21 on substantial evidence in the record." Winans v. Bowen, 853 F.2d
22 643, 647 (9th Cir. 1987) (citation, quotations and brackets omitted);
23 see Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the
24 treating physician's opinion, but only by setting forth specific,

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² Rejection of an uncontradicted opinion of a treating
28 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Gallant v.
Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984).

1 legitimate reasons for doing so, and this decision must itself be
2 based on substantial evidence") (citation and quotations omitted).

3
4 Furthermore, "[t]he ALJ has a special duty to fully and fairly
5 develop the record and to assure that the claimant's interests are
6 considered. This duty exists even when the claimant is represented by
7 counsel." Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983); see
8 also Sims v. Apfel, 530 U.S. 103, 110-11 (2000) ("Social Security
9 proceedings are inquisitorial rather than adversarial. It is the
10 ALJ's duty to investigate the facts and develop the arguments both for
11 and against granting benefits. . . ."). As effective at the time the
12 ALJ rendered his most recent decision, section 404.1512(e) of 20
13 C.F.R. provided that the Administration "will seek additional evidence
14 or clarification from your medical source when the report from your
15 medical source contains a conflict or ambiguity that must be resolved,
16 the report does not contain all of the necessary information, or does
17 not appear to be based on medically acceptable clinical and laboratory
18 diagnostic techniques." See 20 C.F.R. § 404.1512(e) (eff. through
19 Mar. 25, 2012);³ see also Smolen v. Chater, 80 F.3d at 1288 ("If the
20 ALJ thought he needed to know the basis of Dr. Hoeflich's opinions in
21 order to evaluate them, he had a duty to conduct an appropriate
22 inquiry, for example, by subpoenaing the physicians or submitting
23 further questions to them. He could also have continued the hearing
24 to augment the record") (citations omitted). The ALJ's duty under
25 former section 404.1512(e) is triggered "when there is ambiguous
26 evidence or when the record is inadequate to allow for proper

27
28 ³ Paragraph (e) has since been deleted from this section.
See 20 C.F.R. § 404.1512.

1 evaluation of the evidence." Mayes v. Massanari, 276 F.3d 453, 459-60
2 (9th Cir. 2001) (citation omitted).

3
4 In the present case, the ALJ erred by failing to mention the
5 treating psychiatrist's opinions reflected in Exhibit B20F. See
6 Lingenfelter v. Astrue, 504 F.3d 1028, 1038 n.10 (9th Cir. 2007) ("Of
7 course, an ALJ cannot avoid these requirements [to state specific,
8 legitimate reasons] by not mentioning the treating physician's opinion
9 and making findings contrary to it."); Salvadore v. Sullivan, 917 F.2d
10 13, 15 (9th Cir. 1990) (implicit rejection of treating physician's
11 opinion cannot satisfy Administration's obligation to set forth
12 "specific, legitimate reasons").

13
14 Defendant's Motion appears to suggest that the medical opinions
15 reflected in Exhibit B20F may not have been the opinions of Dr.
16 Angeles (as distinguished from the opinions of Mr. Humphreys)
17 (Defendant's Motion at 2-3). Even if Dr. Angeles' signature on
18 Exhibit B20F did not unambiguously indicate that the report expressed
19 Dr. Angeles' opinions, the ALJ erred by failing to address the matter.
20 At a minimum, the ALJ should have further developed the record to
21 clarify any alleged ambiguity arising from the joint signatures on
22 Exhibit B20F. See Sims v. Apfel, 530 U.S. at 110-11, Mayes v.
23 Massanari, 276 F.3d at 459-60; former C.F.R. § 404.1512(e).

24
25 To the extent the ALJ intended the stated reasoning directed to
26 Exhibit B21F to apply also to Exhibit B20F, the ALJ's stated reasoning
27 was legally insufficient. As a matter of law, the statement that the
28 "assessment is self-serving and not consistent with the objective

1 findings or the record as a whole," fails to state specific,
2 legitimate reasons for rejecting the opinion of a treating physician.
3 See, e.g., McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989)
4 ("broad and vague" reasons for rejecting treating physician's opinions
5 do not suffice); Embrey v. Bowen, 849 F.2d at 421 ("To say that the
6 medical opinions are not supported by sufficient objective findings or
7 are contrary to the preponderant conclusions mandated by the objective
8 findings does not achieve the level of specificity our prior cases
9 have required. . . .").

10
11 Defendant appears to argue that the ALJ's reliance on the
12 conflicting opinions of the consultative examining psychiatrist
13 suffices to justify the ALJ's implicit rejection of Dr. Angeles'
14 opinions (Defendant's Motion at 5-6). This argument must be rejected.
15 The contradiction of a treating physician's opinion by another
16 physician's opinion triggers rather than satisfies the requirement of
17 stating "specific, legitimate reasons." See, e.g., Valentine v.
18 Commissioner, 574 F.3d 685, 692 (9th Cir. 2009); Orn v. Astrue, 495
19 F.3d at 631-33; Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).

20
21 To the extent Defendant suggests other reasons why the ALJ may
22 have implicitly rejected Dr. Angeles' opinions, the Court is unable to
23 affirm the ALJ's decision on the basis of any of the suggested
24 reasons. See Pinto v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001)
25 (court "cannot affirm the decision of an agency on a ground that the
26 agency did not invoke in making its decision").

27 ///

28 ///

1 The Court is also unable to conclude that the ALJ's errors were
2 harmless. For example, Dr. Angeles opined that Plaintiff's
3 psychiatric impairment would cause Plaintiff to be absent from work
4 "about twice a month" (A.R. 493). At the most recent administrative
5 hearing, a vocational expert testified that an acceptable number of
6 days missed from work would be "approximately one" day per month (A.R.
7 62).

8
9 Because the circumstances of this case suggest that further
10 administrative review could remedy the ALJ's errors, remand is
11 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); see
12 generally INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an
13 administrative determination, the proper course is remand for
14 additional agency investigation or explanation, except in rare
15 circumstances).⁴

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23 ⁴ There are outstanding issues that must be resolved
24 before a proper disability determination can be made in the
25 present case. For example, it is not clear whether the ALJ would
26 be required to find Plaintiff disabled for the entire claimed
27 period of disability, even if the opinions of Dr. Angeles were
28 fully credited. See Luna v. Astrue, 623 F.3d 1032, 1035 (9th
Cir. 2010). For at least this reason, the Ninth Circuit's
decision in Harman v. Apfel, 211 F.3d 1172 (9th Cir.), cert.
denied, 531 U.S. 1038 (2000) does not compel a reversal for the
immediate payment of benefits.

1 **CONCLUSION**

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3 For all of the foregoing reasons,⁵ Plaintiff's and Defendant's
4 motions for summary judgment are denied and this matter is remanded
5 for further administrative action consistent with this Opinion.
6

7 LET JUDGMENT BE ENTERED ACCORDINGLY.
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9 DATED: October 2, 2013.
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11 _____/s/_____
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE
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27 ⁵ The Court has not reached any other issue raised by
28 Plaintiff except insofar as to determine that reversal with a
directive for the immediate payment of benefits would not be
appropriate at this time.