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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

EDITHA MEJIA,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL,<sup>1</sup>  
Acting Commissioner of the  
Social Security Administration,  
  
Defendant.

Case No. CV 16-6596 SS

**MEMORANDUM DECISION AND ORDER**

**I.  
INTRODUCTION**

Editha Mejia ("Plaintiff") seeks review of the final decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying her application for social security benefits. The parties consented, pursuant to 28 U.S.C.

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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for former Acting Commissioner Carolyn W. Colvin in this case. See Fed. R. Civ. P. 25(d).

1 § 636(c), to the jurisdiction of the undersigned United States  
2 Magistrate Judge. For the reasons stated below, the decision of  
3 the Commissioner is REVERSED and this case is REMANDED for an award  
4 of benefits consistent with this decision.

5  
6 **II.**

7 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

8  
9 To qualify for disability benefits, a claimant must  
10 demonstrate a medically determinable physical or mental impairment  
11 that prevents her from engaging in substantial gainful activity  
12 and that is expected to result in death or to last for a continuous  
13 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,  
14 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The  
15 impairment must render the claimant incapable of performing the  
16 work she previously performed and incapable of performing any other  
17 substantial gainful employment that exists in the national economy.  
18 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing  
19 42 U.S.C. § 423(d)(2)(A)).

20  
21 To decide if a claimant is entitled to benefits, an ALJ  
22 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The  
23 steps are:

- 24  
25 (1) Is the claimant presently engaged in substantial  
26 gainful activity? If so, the claimant is found not  
27 disabled. If not, proceed to step two.  
28

1 (2) Is the claimant's impairment severe? If not, the  
2 claimant is found not disabled. If so, proceed to  
3 step three.

4 (3) Does the claimant's impairment meet or equal one of  
5 the specific impairments described in 20 C.F.R.  
6 Part 404, Subpart P, Appendix 1? If so, the  
7 claimant is found disabled. If not, proceed to  
8 step four.

9 (4) Is the claimant capable of performing her past  
10 work? If so, the claimant is found not disabled.  
11 If not, proceed to step five.

12 (5) Is the claimant able to do any other work? If not,  
13 the claimant is found disabled. If so, the claimant  
14 is found not disabled.

15  
16 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
17 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R.  
18 §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

19  
20 The claimant has the burden of proof at steps one through  
21 four, and the Commissioner has the burden of proof at step five.  
22 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
23 affirmative duty to assist the claimant in developing the record  
24 at every step of the inquiry. Id. at 954. If, at step four, the  
25 claimant meets her burden of establishing an inability to perform  
26 past work, the Commissioner must show that the claimant can perform  
27 some other work that exists in "significant numbers" in the  
28 national economy, taking into account the claimant's residual

1 functional capacity ("RFC"), age, education, and work experience.  
2 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20  
3 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do  
4 so by the testimony of a vocational expert or by reference to the  
5 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404,  
6 Subpart P, Appendix 2 (commonly known as "the Grids"). Osenbrock  
7 v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant  
8 has both exertional (strength-related) and non-exertional  
9 limitations, the Grids are inapplicable and the ALJ must take the  
10 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,  
11 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340  
12 (9th Cir. 1988)).

### 13 14 III.

#### 15 THE ALJ'S DECISION

16  
17 The ALJ employed the five-step sequential evaluation process  
18 in evaluating Plaintiff's case. At step one, the ALJ found that  
19 Plaintiff met the insured status requirements of the Act through  
20 December 31, 2018, and had not engaged in substantial gainful  
21 activity since July 27, 2013, her alleged onset date. (Certified  
22 Administrative Record ("AR") 17). At step two, the ALJ found that  
23 Plaintiff had the following severe impairments: psychosis,  
24 schizoaffective disorder, conversion disorder, and depression. (AR  
25 17).

26  
27 At step three, the ALJ found that Plaintiff did not have an  
28 impairment or combination of impairments that met or medically

1 equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart  
2 P, Appendix 1. (AR 18).

3  
4 At step four, the ALJ determined that Plaintiff had the RFC  
5 to perform a full range of work at all exertional levels but with  
6 the following nonexertional limitations: she can have "occasional"  
7 interaction with the public; work should not require more than  
8 occasional supervision, defined as requiring a supervisor's  
9 critical checking of work; work should be limited to simple,  
10 routine, repetitive tasks in a work environment not requiring more  
11 than occasional production or pace work; and work should involve  
12 only simple work-related decisions, with few if any changes in the  
13 work place. (AR 19). In making this finding, the ALJ ruled that  
14 Plaintiff's statements concerning the intensity, persistence and  
15 limiting effects of her symptoms were not entirely credible. (AR  
16 20). The ALJ also discussed the results of a consultative mental  
17 status examination performed by Dr. David Starr, Ph.D.; assigned  
18 "little weight" to a global assessment of functioning ("GAF") score<sup>2</sup>  
19 assessed by treating physician Dr. David Kent; and assigned "some  
20 weight" to the opinions of non-treating non-examining State  
21 Disability Determination Services physicians. (AR 21-22).

22  
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25 \_\_\_\_\_  
26 <sup>2</sup> Clinicians use a GAF score to rate the psychological, social, and  
27 occupational functioning of a patient. A GAF score between 41 and  
28 50 indicates serious symptoms (e.g. suicidal ideation, severe  
obsessional rituals, frequent shoplifting) or any serious  
impairment in social, occupational, or school functioning (e.g.,  
no friends, unable to keep a job). Morgan v. Comm'r, 169 F.3d 595,  
598 n.1 (9th Cir. 1999).

1 At step four, the ALJ determined that Plaintiff could not  
2 perform her past relevant work. (AR 23). At step five, the ALJ  
3 considered Plaintiff's age, education, work experience, and RFC  
4 and concluded that Plaintiff could perform jobs available in  
5 significant numbers in the national economy, including dishwasher,  
6 potato peeler machine operator, and janitor. (AR 23-24).  
7 Accordingly, the ALJ concluded that Plaintiff was not disabled  
8 under the Agency's rules. (AR 24).

9  
10 **IV.**

11 **STANDARD OF REVIEW**

12  
13 Under 42 U.S.C. § 405(g), a district court may review the  
14 Commissioner's decision to deny benefits. The court may set aside  
15 the Commissioner's decision when the ALJ's findings are based on  
16 legal error or are not supported by "substantial evidence" in the  
17 record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035  
18 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v.  
19 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,  
20 885 F.2d 597, 601 (9th Cir. 1989)).

21  
22 "Substantial evidence is more than a scintilla, but less than  
23 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
24 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
25 evidence which a reasonable person might accept as adequate to  
26 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;  
27 Smolen, 80 F.3d at 1279). To determine whether substantial  
28 evidence supports a finding, the court must "consider the record

1 as a whole, weighing both evidence that supports and evidence that  
2 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d  
3 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
4 1993)). If the evidence can reasonably support either affirming  
5 or reversing that conclusion, the court may not substitute its  
6 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-  
7 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

8  
9 **V.**

10 **DISCUSSION**

11  
12 Plaintiff alleges that the ALJ erred in four ways. First,  
13 Plaintiff contends that the ALJ improperly found that Plaintiff  
14 did not meet a listing at step three. (Plaintiff's Memorandum of  
15 Points and Authorities ("P. Mem.") at 1, 4-7). Second, Plaintiff  
16 contends that the ALJ erred in failing to "evaluate and weigh" the  
17 opinion of Dr. Starr. (Id. at 1, 7-8). Third, Plaintiff contends  
18 that the ALJ improperly assigned "little weight" to the GAF score  
19 assessed by Dr. Kent and "some weight" to the opinions of the State  
20 agency physicians. (Id. at 1, 8-9). Fourth, Plaintiff contends  
21 that the ALJ erred in discrediting her testimony regarding the  
22 intensity, persistence and limiting effects of her symptoms. (Id.  
23 at 1, 9-11).

24  
25 For the reasons discussed below, the Court agrees with  
26 Plaintiff that this case should be remanded because the ALJ failed  
27 to properly evaluate the medical evidence in formulating an RFC  
28

1 and improperly discredited Plaintiff's testimony.<sup>3</sup> Because the  
2 record as a whole, including the improperly discredited testimony  
3 and medical evidence, establishes that Plaintiff is entitled to  
4 benefits, the Court remands this case for an award of benefits.  
5 See Garrison v. Colvin, 759 F.3d 995, 1019-20 (9th Cir. 2014).

6  
7 **1. The ALJ Did Not Properly Evaluate The Medical Evidence In**  
8 **Formulating an RFC**

9  
10 Social Security regulations require the Agency to "evaluate  
11 every medical opinion [it] receive[s]," generally giving more  
12 weight to evidence from a claimant's treating physician. 20 C.F.R.  
13 § 404.1527(c). Where the Agency finds the treating physician's  
14 opinion of the nature and severity of the claimant's impairments  
15 is well-supported by accepted medical techniques, and consistent  
16 with the other substantive evidence in the record, that opinion is  
17 ordinarily controlling. 20 C.F.R. § 404.1527(c)(2); Orn v. Astrue,  
18 495 F.3d 625, 631 (9th Cir. 2007); see also Garrison, 759 F.3d at  
19 1012 (even when contradicted, treating or examining physician's  
20 opinion is owed deference, and often the "greatest" weight).

21  
22 Where a treating source is not given "controlling weight,"  
23 the Agency must give "good reasons" for the deviation. 20 C.F.R.  
24 § 404.1527(c)(2); Garrison, 759 F.3d at 1012 & n.11. If the  
25 treating doctor's opinion is contradicted by another doctor, the  
26 ALJ must provide "specific and legitimate reasons" for rejecting

27  
28 <sup>3</sup> Because the Court remands on these grounds, it is unnecessary to  
address Plaintiff's other arguments.

1 the treating physician's opinion. Orn, 495 F.3d at 632; Reddick,  
2 157 F.3d at 725. "Where an ALJ does not explicitly reject a medical  
3 opinion or set forth specific, legitimate reasons for crediting  
4 one medical opinion over another, he errs. In other words, an ALJ  
5 errs when he rejects a medical opinion or assigns it little weight  
6 while doing nothing more than ignoring it, asserting without  
7 explanation that another medical opinion is more persuasive, or  
8 criticizing it with boilerplate language that fails to offer a  
9 substantive basis for his conclusion." Garrison, 759 F.3d at 1012-  
10 13 (citing Nguyen v. Chater, 100 F.3d 1462, 1464 (9th Cir. 1996)).  
11 Here, the Court agrees with Plaintiff that the ALJ failed to  
12 properly evaluate the medical evidence, including the treating  
13 doctor's opinions, in formulating an RFC.

14  
15 Plaintiff argues that the ALJ improperly failed to "evaluate  
16 and weigh" Dr. Starr's opinion. (P. Mem. at 1, 7-8). On November  
17 12, 2013, Dr. Starr performed a consultative psychological  
18 examination. (AR 430-33). Plaintiff reported "problems with  
19 anxiety and depression," occasional panic attacks, hearing voices,  
20 some sleep disturbance and nightmares, and suicidal thoughts. (AR  
21 431). Plaintiff reported that she had been prescribed Seroquel,  
22 haloperidol, and Loestrin. (AR 431). Dr. Starr examined  
23 Plaintiff's appearance, demeanor, and responses to several  
24 questions testing her mental status. (AR 431-32). Dr. Starr  
25 diagnosed Plaintiff with schizoaffective disorder, depressive  
26 type, first episode, currently in remission. (AR 432). Dr. Starr  
27 reported that Plaintiff had "problems with mood and thinking,"  
28 "problems with mood and anxiety with occasional panic attacks,"

1 and hallucinations. (AR 432). Dr. Starr found that Plaintiff was  
2 "marginally oriented" and had difficulty paying attention and  
3 concentrating; her fund of information was "extremely limited";  
4 she did not think abstractly; her judgment was impaired; and she  
5 required assistance to manage funds. (AR 432). The ALJ did not  
6 assign Dr. Starr's opinion any particular weight, but discussed  
7 the examination and stated that Dr. Starr "never opined that  
8 [Plaintiff] was precluded from work activity within the confines  
9 of the [RFC]." (AR 21-22).

10  
11 Although the RFC assessed by the ALJ limited Plaintiff's  
12 interaction with others and the complexity of Plaintiff's work,  
13 (AR 19), the Court disagrees with the ALJ's apparent conclusion  
14 that the RFC fully accounts for the limitations and conditions  
15 observed by Dr. Starr. For example, the ALJ does not adequately  
16 explain how the RFC accounts for Plaintiff's limited fund of  
17 information, suicidal thoughts, and hallucinations, (AR 432), or  
18 whether these conditions have any effect on Plaintiff's ability to  
19 work. The Court therefore agrees with Plaintiff that the ALJ's  
20 discussion of Dr. Starr's observations was inadequate.

21  
22 Plaintiff also alleges that the ALJ erred in assigning "little  
23 weight" to a GAF score of 45 assessed by treating physician Dr.  
24 David A. Kent, M.D., when Plaintiff was released from psychiatric  
25 hospitalization on September 6, 2013. (AR 21, 360). The ALJ gave  
26 this score "little weight" because it was "merely a snapshot view"  
27 of Plaintiff's functioning "at a particular time" and not  
28 reflective of "the entire period at issue." (AR 21). The Court

1 agrees with Plaintiff that the ALJ's opinion overlooks without  
2 explanation the GAF score of 45 assessed by treating physician Dr.  
3 Michael Millward on October 17, 2013, (AR 517-18), and a GAF score  
4 of 29 assessed by Dr. James Pikel at Intermountain Hospital on  
5 December 22, 2014. (AR 597). Elsewhere in his evaluation, Dr.  
6 Pikel reported that Plaintiff had been involuntarily admitted to  
7 Intermountain Hospital due to "overwhelming suicidal ideation and  
8 auditory hallucinations." (AR 594). Plaintiff "had a plan to kill  
9 herself with a knife, but allegedly her boyfriend took the knife  
10 away. In the ER, she was observed hitting herself with a chair."  
11 (AR 594).

12  
13 Defendant argues that a GAF score is not a "medical opinion,"  
14 and that the ALJ need not have discussed Plaintiff's GAF scores at  
15 all. (Defendant's Memorandum of Points and Authorities ("D. Mem.")  
16 at 6-8). Preliminarily, although a GAF score does not directly  
17 measure a claimant's ability to function in a work environment,  
18 the Agency has endorsed the use of GAF scores as one form of  
19 evidence reflective of mental functioning. SSA Administrative  
20 Message 13066 (effective July 22, 2013) ("We consider a GAF rating  
21 as opinion evidence."). In any event, the ALJ chose to analyze  
22 the GAF score assessed by Dr. Kent, rejecting it because it was  
23 "merely a snapshot view" of Plaintiff's condition. (AR 21). As  
24 noted supra, however, other physicians assessed low GAF scores at  
25 other times during Plaintiff's treatment history, directly  
26 contradicting the ALJ's sole stated reason for not affording more  
27 weight to Dr. Kent's score. Because there were numerous GAF scores  
28 indicating serious limitations in functioning, over a considerable

1 period of time, the ALJ should have evaluated this evidence. The  
2 ALJ therefore failed to provide adequate reasons for rejecting the  
3 score assessed by Dr. Kent. Garrison, 759 F.3d at 1012-13.

4  
5 Plaintiff also argues that the ALJ erred in assigning "some  
6 weight" to the opinions of non-treating, non-examining State agency  
7 physicians. (AR 22). The ALJ's opinion acknowledged that the  
8 State agency opinions "do not as a general matter deserve as much  
9 weight as those of examining or treating physicians," but  
10 nevertheless ruled that "those opinions do deserve some weight,  
11 particularly in a case like this in which there exist a number of  
12 other reasons to reach similar conclusions (as explained throughout  
13 this decision)." (AR 22). The ALJ noted that the opinions  
14 "supported a finding of 'not disabled.'" (AR 22).

15  
16 The Court agrees that the ALJ's reasons for assigning "some  
17 weight" to the opinions of the State agency doctors and relying on  
18 them in finding Plaintiff "not disabled" are so vague as to preclude  
19 review of his decision on this issue. To the extent that the ALJ  
20 relied on these opinions rather than the opinions of treating or  
21 examining physicians, he did not provide sufficient reasons for  
22 doing so. Garrison, 759 F.3d at 1012-13.

23  
24 For the foregoing reasons, the Court agrees with Plaintiff  
25 that the ALJ failed to properly evaluate the medical evidence in  
26 formulating an RFC.

27 \\

28 \\

1     **2. The ALJ Improperly Discredited Plaintiff's Testimony**

2  
3           Unless there is affirmative evidence showing that the claimant  
4 is malingering, the ALJ's reasons for rejecting a claimant's  
5 testimony regarding the intensity, persistence and limiting effects  
6 of her symptoms must be "clear and convincing." Valentine v.  
7 Comm'r, 574 F.3d 685, 693 (9th Cir. 2009). The ALJ may use  
8 "ordinary techniques of credibility evaluation" during this  
9 inquiry. Smolen, 80 F.3d at 1284. The ALJ may consider, among  
10 other things: (1) a plaintiff's reputation for truthfulness;  
11 (2) inconsistencies in her testimony or between testimony and  
12 conduct; (3) her daily activities; (4) her work record; and  
13 (5) testimony from physicians and third parties concerning the  
14 nature, severity, and effect of the symptoms of which she  
15 complains. Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.  
16 2002); see also Smolen, 80 F.3d 1273 at 1284. If the ALJ's  
17 credibility finding is supported by substantial evidence in the  
18 record, the court may not engage in second-guessing. Thomas, 80  
19 F.3d at 958-59.

20  
21           As Plaintiff observes, the ALJ's only clear statement  
22 regarding Plaintiff's credibility was:

23  
24           [Plaintiff] alleges an inability to perform work activity  
25 due to symptoms of her mental impairments such as an  
26 inability to concentrate, poor memory, limited focus,  
27 forgetfulness, panic attacks, and an inability to work  
28 with others due to anxiety and auditory hallucinations.

1 Her physical complaints have been discussed above and  
2 found non-severe.

3  
4 After careful consideration of the evidence, the  
5 undersigned finds that [Plaintiff's] medically  
6 determinable impairments could reasonably be expected to  
7 cause the alleged symptoms; however, [Plaintiff's]  
8 statements concerning the intensity, persistence and  
9 limiting effects of these symptoms are not entirely  
10 credible for the reasons explained in this decision.

11  
12 (AR 20). The ALJ wholly failed to identify the specific testimony  
13 that he found not credible and to link that testimony to specific  
14 portions of the record rebutting Plaintiff's testimony. The Court  
15 cannot conclude that the ALJ provided clear and convincing reasons  
16 for discrediting Plaintiff's testimony. See Burrell v. Colvin,  
17 775 F.3d 1133, 1138-39 (9th Cir. 2014) ("The government argues that  
18 [c]laimant's testimony that she has, on average, one or two  
19 headaches a week conflicts with the medical record. As an initial  
20 matter, the ALJ never connected the medical record to [c]laimant's  
21 testimony about her headaches. Although the ALJ made findings . . .  
22 concerning [c]laimant's treatment for headaches, he never stated  
23 that he rested his adverse credibility determination on those  
24 findings. For that reason alone, we reject the government's  
25 argument that the history of treatment for headaches is a specific,  
26 clear, and convincing reason to support the credibility finding.");  
27 Brown-Hunter v. Colvin, 806 F.3d 487, 494 (9th Cir. 2015). ("Our  
28 review of the ALJ's written decision reveals that . . . she simply

1 stated her non-credibility conclusion and then summarized the  
2 medical evidence supporting her RFC determination. This is not  
3 the sort of explanation or the kind of 'specific reasons' we must  
4 have in order to review the ALJ's decision meaningfully, so that  
5 we may ensure that the claimant's testimony was not arbitrarily  
6 discredited. Although the inconsistencies identified by the  
7 district court could be reasonable inferences drawn from the ALJ's  
8 summary of the evidence, the credibility determination is  
9 exclusively the ALJ's to make, and ours only to review. . . .  
10 Because the ALJ failed to identify the testimony she found not  
11 credible, she did not link that testimony to the particular parts  
12 of the record supporting her non-credibility determination. This  
13 was legal error.").

14  
15 Defendant nevertheless argues that the ALJ provided  
16 appropriate reasons for discrediting Plaintiff's testimony. In  
17 analyzing whether Plaintiff's impairments were "severe," the ALJ  
18 stated that, although Plaintiff complained of physical pain  
19 following a car accident in July 2013, treatment notes in November  
20 2013 stated that Plaintiff was in no "acute distress" and was not  
21 in pain. (AR 18). The ALJ also found that, although Plaintiff  
22 used a cane at times, there was "never a provider who prescribed a  
23 cane as there were no medical findings that she needed assistance  
24 with gait." (AR 18). The ALJ also noted that Plaintiff "did well  
25 with pain medications" after the accident, and "was quite active  
26 with walking and exercising. Thus, the accident was likely not as  
27 severe as alleged." (AR 20). Defendant also argues that the ALJ  
28 "noted a treatment record showing largely normal physical

1 findings.” (D. Mem. at 9 (citing AR 20-21)). With respect to  
2 Plaintiff’s mental impairments, Defendant argues that the ALJ  
3 “showed how Plaintiff’s psychological conditions stabilized with  
4 medication after treatment in September 2013” and noted a  
5 “treatment gap” between May 2014 and January 2015. (D. Mem. at 9-  
6 10 (citing AR 21-22)).

7  
8 A court can only affirm based upon the reasons that the ALJ  
9 actually relied upon in his decision. Bray v. Comm’r, 554 F.3d  
10 1219, 1225 (9th Cir. 2009) (“Long-standing principles of  
11 administrative law require us to review the ALJ’s decision based  
12 on the reasoning and factual findings offered by the ALJ – not post  
13 hoc rationalizations that attempt to intuit what the adjudicator  
14 may have been thinking.”). As discussed supra, the ALJ provided  
15 no clear reasons for discrediting Plaintiff’s testimony, and  
16 Defendant’s “post hoc rationalizations” do not disturb this  
17 conclusion.

18  
19 Moreover, several of the justifications asserted by Defendant  
20 are overstated or questionable. For example, although a claimant’s  
21 failure to seek or follow prescribed medical treatment may suggest  
22 that the alleged impairment is not severe or disabling, see Fair,  
23 885 F.2d at 603, the Ninth Circuit has cautioned against drawing  
24 such inferences when evaluating a claimant’s asserted mental  
25 impairments. Nguyen v. Chater, 100 F.3d 1462, 1465 (9th Cir. 1996)  
26 (claimant’s failure to seek treatment for depression is an improper  
27 basis from which to conclude that the claimant does not suffer from  
28

1 it).<sup>4</sup> Additionally, symptom-free periods or temporary improvement  
2 can be consistent with a claim of disability. See Lester v. Chater,  
3 81 F.3d 821, 833 (9th Cir. 1995) ("Occasional symptom-free periods  
4 - and even the sporadic ability to work - are not inconsistent with  
5 disability.").

6  
7 Defendant's remaining justifications for the ALJ's decision  
8 appear to be based on alleged inconsistencies between the medical  
9 evidence and Plaintiff's impairments. However, it is improper to  
10 reject subjective testimony based solely on its inconsistencies  
11 with the objective medical evidence. Bray, 554 F.3d at 1227.

12  
13 For the foregoing reasons, the Court agrees with Plaintiff  
14 that the ALJ failed to provide legally sufficient reasons for  
15 discrediting Plaintiff's testimony regarding her limitations.

16  
17 **3. The ALJ's Errors Warrant Remand For An Award Of Benefits**

18  
19 The Court remands for an award of benefits where "(1) the  
20 record has been fully developed and further administrative  
21 proceedings would serve no useful purpose; (2) the ALJ has failed  
22 to provide legally sufficient reasons for rejecting evidence,  
23 whether claimant testimony or medical opinion; and (3) if the  
24 improperly discredited evidence were credited as true, the ALJ  
25 would be required to find the claimant disabled on remand."

26  
27 \_\_\_\_\_  
28 <sup>4</sup> Moreover, the ALJ identified a "treatment gap" between May 2014  
and January 2015, (AR 22), but, as noted supra, it appears that  
Plaintiff was psychiatrically hospitalized in December 2014 due to  
overwhelming suicidal ideation and hallucinations. (AR 594).

1 Garrison, 759 F.3d at 1020 (citations omitted). The "credit-as-  
2 true" rule allows courts the flexibility to remand for further  
3 proceedings only where the record as a whole "creates serious  
4 doubt" that a claimant is disabled. Id. at 1021.

5  
6 Remand for benefits under Garrison is appropriate. The Court  
7 is satisfied that the record has been fully developed, that further  
8 administrative proceedings would serve no useful purpose, and that  
9 if the discounted testimony and opinions were credited as true,  
10 Plaintiff would be entitled to benefits.

11  
12 Particularly, the Court observes that the record as a whole  
13 leaves no serious doubt that Plaintiff is disabled. Garrison, 759  
14 F.3d at 1021. Plaintiff was 51 years old at the time of the April  
15 2, 2015 hearing before the ALJ. (AR 55). She testified that her  
16 body "hurts a lot," her right hand "malfunctions," and she hears  
17 voices, which tell her to "run" or "kill [her]self," "a lot." (AR  
18 60, 64). Plaintiff's medical history documents two  
19 hospitalizations for psychiatric issues along with medical and  
20 physical impairments that, taken together, would be disabling.

21  
22 The Court also notes that Plaintiff was granted disability  
23 benefits for a subsequent application covering the period after  
24 June 16, 2015. (Dkt. No. 19). Although Defendant is correct that  
25 the subsequent grant of benefits is not itself determinative of  
26 issues in this case, which covers an earlier time period, (D. Mem.  
27 at 11-12), it has some impact on the Court's analysis of whether  
28 there would be any value in further administrative proceedings.

