

1 spine, but that she retained the residual functional capacity (“RFC”) to perform light work that involved no
2 more than frequent stair-climbing, balancing, bending, kneeling, or crawling, and no more than occasional
3 stooping, crouching, or climbing of ladders and ropes. [AR 15]. The ALJ concluded that plaintiff was not
4 disabled because her RFC did not preclude her from performing work available in significant numbers in
5 the national economy. [AR 17-18].

6 **Standard of Review**

7 The Commissioner’s denial of benefits should be disturbed only if it is not supported by substantial
8 evidence or is based on legal error. Stout v. Comm’r, Social Sec. Admin., 454 F.3d 1050, 1054 (9th Cir.
9 2006); Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). “Substantial evidence” means “more than
10 a mere scintilla, but less than a preponderance.” Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th Cir.
11 2005). “It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
12 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)(internal quotation marks omitted). The court is
13 required to review the record as a whole and to consider evidence detracting from the decision as well as
14 evidence supporting the decision. Robbins v. Social Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006);
15 Verduzco v. Apfel, 188 F.3d 1087, 1089 (9th Cir. 1999). “Where the evidence is susceptible to more than
16 one rational interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be upheld.”
17 Thomas, 278 F.3d at 954 (citing Morgan v. Comm’r of Social Sec. Admin., 169 F.3d 595, 599 (9th
18 Cir.1999)).

19 **Discussion**

20 **Lay witness’s statements**

21 Plaintiff contends that the ALJ articulated legally insufficient reasons for rejecting statements made
22 by plaintiff’s daughter Brittany Brown (“Brown”) in a disability report. [See JS 3-9].

23 Plaintiff’s disability reports and testimony indicate that when she filed her application for SSI
24 benefits, plaintiff and her two children, Brown, aged 18, and a son, aged 15, lived with plaintiff’s parents
25 in their home. Plaintiff said that she rented a room from her parents at \$375 a month. Plaintiff said that her
26 only income consisted of \$555 a month in Aid to Families with Dependent Children (“AFDC”), and that she
27 received food stamps and Medi-Cal benefits in conjunction with her AFDC benefits. Plaintiff said that had
28 been receiving AFDC benefits continuously since 1996, and that her ex-husband had never paid support.

1 Plaintiff acknowledged that in order to receive AFDC benefits, she either had to work or get a doctor's note
2 excusing her from working. Plaintiff testified that she had last worked in the late 1980s, before her daughter
3 was born in 1989. She said that she had attended job training for about nine months through CalWorks, but
4 that her back started to hurt, so she obtained a doctor's note excusing her from completing the program. Her
5 doctor had exempted her from working for purposes of obtaining her AFDC benefits since approximately
6 2002. Plaintiff acknowledged that her AFDC benefits would end about two months after the hearing, when
7 her son turned 18. [See AR 107-108, 119-121, 160-163, 418-433, 435-437; see also AR 139-140].

8 On November 15, 2007, Brown noted on a disability report ("Third Party Function Report") that she
9 and her mother "spend all our time together, watch t.v." [AR 168]. Brown's disability report indicates that
10 on a daily basis, [plaintiff] watched TV, talked on the phone[,] and went to the store. She
11 took care of her son and had family members help with cooking and laundry. [Plaintiff]
12 cannot work due to a back injury received in a car accident [in 1998]. She has a hard time
13 raising her arms. She cooked and prepared sandwiches and frozen meals, did laundry and
14 dishes and dishes. She visits with friends. She is able to pay attention but cannot handle
15 stress due to panic attacks. She [had worn] a shoulder brace for about one year.
16 [JS 5; see AR 16-17, 114, 168-175].

17 The ALJ also noted that plaintiff's friend, Clara Nelson, completed a Third Party Function Report
18 stating that plaintiff "walked her children to the bus and did light housekeeping, watched TV[,] and read.
19 [Plaintiff] cleans house, waters the lawn[,] and does laundry. She shops for food and clothes." [AR 16; see
20 AR 139-146].

21 While the ALJ cannot disregard lay testimony regarding a claimant's ability to work without
22 comment, the ALJ may reject such testimony by providing "reasons that are germane to each witness."
23 Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006) (quoting Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir.
24 1993)). Germane reasons for rejecting a lay witness's testimony include inconsistencies between that
25 testimony and the claimant's presentation to treating physicians or the claimant's activities, and the
26 claimant's failure to participate in prescribed treatment. See Carmickle v. Comm'r, Soc. Sec. Admin., 533
27 F.3d 1155, 1164 (9th Cir. 2008); Greger, 464 F.3d at 971; Bayliss, 427 F.3d at 1218.

28 The ALJ indicated that he found "the following credibility factors" to be "particularly applicable"

1 to his finding that Brown’s statements were not fully credible:

2 whether and to what extent a person may have a pecuniary interest in the outcome of the
3 hearing; whether and to what extent the evidence may be colored by friendship or kinship;
4 whether and to what extent a person’s evidence is inconsistent with or contradicted by prior
5 statements or other evidence in the record.

6 [AR 16]. Plaintiff argues that the ALJ arbitrarily rejected Brown’s testimony and did not adequately explain
7 how he applied these factors to Brown’s testimony.

8 The ALJ’s interpretation of Brown’s disability report must be upheld if it “is supported by inferences
9 reasonably drawn from the record” Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th
10 Cir.2004); see Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989) (explaining that the ALJ need not
11 recite “magic words,” and that a reviewing court may draw inferences relevant to the ALJ’s analysis of the
12 evidence “if those inferences are there to be drawn”). Drawing reasonable inferences from the ALJ’s
13 decision and from the record as a whole, the ALJ provided germane reasons for his rejection of Brown’s
14 disability report.

15 The ALJ implicitly concluded that Brown’s report was inconsistent with that of plaintiff’s friend
16 Clara Nelson, a more disinterested witness who portrayed plaintiff as having fewer functional limitations
17 and a relatively normal range of daily activities. [AR 16, 139-146]. The ALJ also considered Brown’s family
18 ties and pecuniary motives, and the record supports his conclusion that those factors cast doubt on her
19 credibility. In April 2007, when plaintiff applied for SSI benefits, Brown was still living with her mother
20 and brother in her grandparents’ home. Brown apparently continued to reside there in November 2007, when
21 she completed the third party function report and said that she spent “all [her] time” with her mother. [AR
22 168]. Brown was born in 1989 and had turned 18 by the time her mother filed her April 2007 application
23 for SSI benefits. [AR 109, 436]. Plaintiff’s AFDC benefits would have been reduced when Brown turned
24 18. The ALJ pointed out that plaintiff had been dependent on AFDC benefits since 1996, and that she was
25 facing the complete loss of those benefits on her son’s upcoming 18th birthday. The ALJ permissibly
26 inferred that the timing of plaintiff’s SSI benefits application, filed several years after her alleged onset of
27 disability, could have been influenced by the approaching termination of the AFDC benefits she had used
28 to support herself and her children for the past 15 years. [See AR 16-17].

1 Standing alone, a claimant's financial motivation for obtaining benefits is not a valid reason for
2 discrediting the testimony of the claimant or family members. See Ratto v. Sec'y, Dept. of Health & Human
3 Servs., 839 F.Supp. 1415, 1428-1429 (D. Or. 1993) (“If the desire or expectation of obtaining benefits were
4 by itself sufficient to discredit a claimant's testimony, then no claimant (or their spouse, or friends, or family)
5 would ever be found credible.”). On the other hand, an ALJ is not required to ignore evidence suggesting
6 that the testimony of a claimant or other witnesses is motivated by financial reasons independent of any
7 legitimate claim of entitlement to benefits. See Gaddis v. Chater, 76 F.3d 893, 896 (8th Cir. 1996) (holding
8 that there was a “strong element of secondary gain in this case” justifying the ALJ's negative credibility
9 finding where the claimant sued his employer only after private benefits were terminated and said he planned
10 to work only until his lawsuit settled). The record supports the inference that plaintiff and Brown had
11 specific pecuniary and familial motives independent of any legitimate claim of entitlement by plaintiff that
12 undermine the reliability of Brown’s disability report. Cf. Greger, 464 F.3d at 972 (holding that an ALJ
13 permissibly rejected the claimant's ex-girlfriend's testimony because she maintained a “close relationship”
14 with the claimant and “was possibly influenced by her desire to help him”) (internal quotation marks and
15 alteration omitted).

16 The ALJ also noted that the Commissioner’s consultative internist, Dr. Mao H. Hung, considered
17 plaintiff’s subjective allegations of pain and functional limitations, such as persistent back pain and
18 temporary “paralysis” of both legs, which were similar to the symptoms described by plaintiff and Brown
19 in their disability reports. Dr. Hung found some abnormalities on physical examination, notably range of
20 motion limitations and tenderness to palpation in the back, and a positive straight-leg raising test indicative
21 of back pain. However, plaintiff’s gait, upper extremities, muscle strength, and sensory testing were normal.
22 Dr. Hung diagnosed herniated disc of the thoracic and lumbar spine and history of auto accident. He opined
23 that plaintiff could perform light work. [AR 17, 384-385]. To the extent Brown portrayed plaintiff as more
24 functionally limited than reflected in Dr. Hung’s examination findings and medical opinion, that
25 inconsistency was a germane reason for rejecting the more severe limitations described by Brown. Bayliss,
26 427 F.3d at 1218 (holding that the ALJ permissibly rejected lay testimony that was inconsistent with the
27 medical evidence). The ALJ provided germane reasons for his evaluation of Brown’s disability report.
28

1 **Treating source opinions**

2 Plaintiff contends that the ALJ did not properly consider the treating physician’s opinion and did not
3 properly develop the record. [See JS 9-24].

4 The record contains a series of “Authorization to Release Medical Information” (“Authorization”) forms for use by the county welfare department in soliciting information from plaintiff’s healthcare providers
5 to evaluate her “eligibility for public assistance” and “determine his/her work assignment.” [AR 245, 402,
6 404, 408]. The record also contains a series of “Medical Report” forms used by the county welfare
7 department to determine whether or not plaintiff was “incapacitated,” which “means that a physical or
8 mental disability prevents or substantially reduces the patient’s ability to engage in full-time work, training,
9 or provide necessary care for his/her child(ren).” [AR 403, 405-407]. The forms were signed by either Dr.
10 Albano or Dr. Ramos, both of whom were plaintiff’s treating physicians at LaSalle Medical Associates. [See
11 AR 420-425].
12

13 The Authorization forms indicate that: (1) plaintiff had “a medically verifiable condition that would
14 limit [her] from performing certain tasks”; (2) the date of onset of the condition was February 2003; (3) the
15 condition is “chronic”; (4) plaintiff is “actively seeking treatment”; (5) plaintiff is unable to work; (6)
16 plaintiff has “limitation[s] that affect [her] ability to work or participate in education or training”; (7)
17 plaintiff’s condition does not “prevent [her] from providing care the child(ren) in the home”; (8) plaintiff’s
18 condition does not “require someone to be in the home to care for [her].” The forms were signed in February
19 2005, April 2006, March 2007, and March 2009. [AR 245, 402, 404, 408].

20 “Medical Report” forms signed in July 2004, September 2004, and December 2004 indicate that: (1)
21 plaintiff was “‘incapacitated’ from work”; (2) she had diagnoses of “chronic back pain” and “osteoarthritis,
22 spine”; (3) the date of onset of incapacity was February 2003; (4) the expected duration of incapacity was
23 from July 2004 through February 2005; (5) the incapacity did not “require someone to be in the home to care
24 for [her]”; and (6) plaintiff’s “physical/mental ability is substantially reduced by” chronic back pain and
25 decreased mobility. [AR 405-407]. A “Medical Report” form signed in February 2006 said that plaintiff was
26 incapacitated by chronic low back pain and status post “D.C. & laparoscopy,” and that her “physical/mental
27 ability is substantially reduced by” low back pain and abdominal pain. [AR 403].

28 The ALJ must provide clear and convincing reasons, supported by substantial evidence in the record,

1 for rejecting an uncontroverted treating source opinion. If contradicted by that of another doctor, a treating
2 or examining source opinion may be rejected for specific and legitimate reasons that are based on substantial
3 evidence in the record. Batson, 359 F.3d at 1195; Tonapetyan v. Halter, 242 F.3d 1144, 1148-1149 (9th Cir.
4 2001); Lester v. Chater, 81 F.3d 821, 830-831 (9th Cir. 1995).

5 The opinions of Drs. Albano and Ramos were controverted by the opinion of the consultative
6 examining internist, Dr. Hung, that plaintiff could perform light work. Therefore, the ALJ was required to
7 articulate specific, legitimate reasons supported by substantial evidence for rejecting the opinions reflected
8 in the Authorization and Medical Release forms.¹

9 The ALJ articulated legally sufficient reasons for rejecting the treating source disability opinions.
10 First, he noted that “[t]he conclusionary forms are not supported by or accompanied by any objective
11 evidence.” [AR 17]. See Tonapetyan, 242 F.3d at 1148 (“When confronted with conflicting medical opinions,
12 an ALJ need not accept a treating physician's opinion that is conclusory and brief and unsupported by clinical
13 findings.”) (citing Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)). The Authorization forms did
14 not identify plaintiff's allegedly disabling impairment or condition and did not list any objective findings
15 or clinical data. [AR 245, 402, 404, 408]. The Medical Reports were only slightly more enlightening.
16 Three of the those reports said that plaintiff was incapacitated by chronic back pain and osteoarthritis. [AR
17 405-407]. A diagnosis of osteoarthritis does not establish the existence of a severe or disabling degree of
18 pain or functional limitation. Sample v. Schweiker, 694 F.2d 639, 642-643 (9th Cir. 1982) (noting that the
19 existence of a diagnosed emotional disorder “is not per se disabling,” and that “there must be proof of the
20 impairment's disabling severity”). No objective findings or clinical data—such as imaging reports, laboratory
21 results, or physical examination findings—were referenced to support the diagnosis of osteoarthritis or to
22 corroborate the presence or severity of chronic back pain. The fourth Medical Report omitted the diagnosis
23 of osteoarthritis altogether and instead indicated that plaintiff was incapacitated by chronic low back pain
24 and status post “D.C. & laparoscopy,” which are references to surgical procedures. The underlying condition
25 leading to use of those procedures is not identified; however, a post-operative report in the record lists

26
27 ¹ The ALJ did not mention each form, but he mentioned two of them specifically and also cited
28 Exhibits 17F and 18F [AR 402-408], which contain all of the forms except the Authorization form
at AR 245. Because the forms are all similar, the ALJ's summary was adequate.

1 diagnoses of abnormal bleeding, adhesions, and endometriosis. [AR 282].

2 Second, the ALJ observed that the Authorization and Medical Report forms did not describe any
3 specific limitations on plaintiff's ability to perform work activity. Meanel v. Apfel, 172 F.3d 1111, 1114 (9th
4 Cir. 1999) (holding that the ALJ properly rejected a treating physician's "meager" opinion that was
5 "conclusory and unsubstantiated by relevant medical documentation" and that failed to explain how the
6 claimant's mental impairment affected her ability to work). The Authorization forms indicated that plaintiff's
7 unidentified condition "limit[ed] or prevent[ed her] from performing certain tasks," but said nothing about
8 what specific limitations plaintiff had or how she was impaired in the performance of any tasks. [AR 245,
9 402, 406, 408]. The Medical Report forms said that plaintiff's "physical/mental ability is substantially
10 reduced by" chronic back pain and decreased mobility, or by low back pain and abdominal pain. [AR 403,
11 405-407]. Those vague, broad assertions are insufficient to establish the specific nature or extent of any
12 restriction on plaintiff's ability to perform work-related activities. See Morgan, 169 F.3d at 600 (holding
13 that the ALJ permissibly rejected an examining psychologist's report that did not show how the claimant's
14 symptoms translated into specific functional deficits which precluded work activity); cf. 20 C.F.R. §§
15 404.1527(a)(2), 416.927(a)(2) (defining medical opinions as statements from "acceptable medical sources
16 that reflect judgments about the nature and severity of your impairment(s), including your symptoms,
17 diagnosis, and prognosis, what you can still do despite impairment(s), and your physical and mental
18 restrictions.").

19 The ALJ's reasons for rejecting the treating source opinions were specific, legitimate, and supported
20 by substantial evidence. Plaintiff also contends, however, that the ALJ erred in failing to develop the record
21 to ascertain the bases for the treating physicians' opinions, and that the ALJ's duty was heightened because
22 plaintiff was unrepresented during the hearing.

23 The ALJ has a "special duty to fully and fairly develop the record and to assure that the claimant's
24 interests are considered," even where, as here, "the claimant is represented by counsel." Celaya v. Halter,
25 332 F.3d 1177, 1183 (9th Cir. 2003) (quoting Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)); see
26 Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996). A claimant, however, retains the burden of proving
27 that he is disabled. Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001). The ALJ's "duty to develop the
28 record further is triggered only when there is ambiguous evidence or when the record is inadequate to allow

1 for proper evaluation of the evidence.” Mayes, 276 F.3d at 459-460 (rejecting the argument that the ALJ
2 breached his duty to develop the record as an impermissible attempt to shift the burden of proving disability
3 away from the claimant).

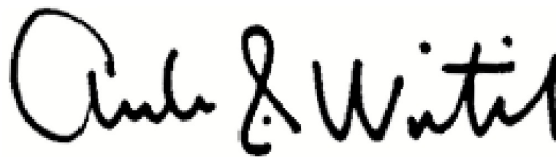
4 The ALJ’s duty to develop the record was not triggered because the evidence was not ambiguous and
5 the record was not inadequate to allow a proper evaluation of the evidence. Dr. Hung’s consultative
6 examining opinion constitutes substantial evidence supporting the ALJ’s finding that plaintiff can perform
7 a range of light work. Plaintiff’s treatment records show that plaintiff received physical therapy, chiropractic
8 treatment, and medication for back pain. [AR 195-198, 200-202, 204-208, 210-212, 214-240, 242-251, 252-
9 278, 283-289, 303-356, 359-361, 392-295, 412]. Imaging tests were unremarkable. [AR 205 (April 2004
10 note referring to normal cervical spine x-rays and a normal lumbar spine MRI); AR 284 (March 2004 normal
11 lumbar spine MRI); AR 277 (February 2003 lumbar spine x-ray showing mild degenerative changes and
12 accentuation of the lordotic curve)]. A January 2004 neurological consultation was grossly normal, with
13 a diagnosis of neck pain and back strain. [AR 287-289]. A bone scan in March 2007 showed osteopenia;
14 plaintiff testified that she was prescribed bone-strengthening medication. [AR 423-424]. The record
15 contains many progress reports from LaSalle Medical Associates, but those reports are generally brief and
16 contain few identifiable findings or documented abnormalities. [See AR 301-366]. Plaintiff does not suggest
17 that the record is missing any existing relevant medical evidence. Accordingly, her contention lacks merit.

18 **Conclusion**

19 The Commissioner's decision is supported by substantial evidence and is free of legal error.
20 Accordingly, the Commissioner's decision is **affirmed**.

21 **IT IS SO ORDERED.**

22 June 30, 2011



23
24 **ANDREW J. WISTRICH**
United States Magistrate Judge