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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 EASTERN DIVISION

10 CYNTHIA BELL,

11 Plaintiff,

12 v.

13 MICHAEL J. ASTRUE,
Commissioner of Social Security,

14 Defendant.
15

No. EDCV 10-1485 FFM

MEMORANDUM DECISION AND
ORDER

16 Plaintiff brings this action seeking to overturn the decision of the Commissioner
17 of the Social Security Administration denying her application for Supplemental
18 Security Income benefits. On October 20, 2010 and November 2, 2010, plaintiff and
19 defendant, respectively, consented to the jurisdiction of the undersigned United States
20 Magistrate Judge pursuant to 28 U.S.C. § 636(c). Pursuant to the Case Management
21 Order entered on October 13, 2010, on June 9, 2011, the parties filed a Joint
22 Stipulation detailing each party's arguments and authorities. The Court has reviewed
23 the administrative record (the "AR"), filed by defendant on April 7, 2011, and the Joint
24 Stipulation. For the reasons stated below, the decision of the Commissioner is
25 affirmed.

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1 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402
2 U.S. at 401. This Court must review the record as a whole and consider adverse as
3 well as supporting evidence. *Green v. Heckler*, 803 F.2d 528, 529-30 (9th Cir. 1986).
4 Where evidence is susceptible to more than one rational interpretation, the
5 Commissioner’s decision must be upheld. *Gallant v. Heckler*, 753 F.2d 1450, 1452
6 (9th Cir. 1984). However, even if substantial evidence exists in the record to support
7 the Commissioner’s decision, the decision must be reversed if the proper legal standard
8 was not applied. *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1014-15 (9th Cir.
9 2003); *see also Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996).

11 DISCUSSION

12 Plaintiff contends that the ALJ improperly rejected the findings of treating
13 psychiatrist, Dr. Krishna Murphy, contained in a Mental Disorder Questionnaire Form.

14 In evaluating physicians’ opinions, the case law and regulations distinguish
15 among three types of physicians: (1) those who treat the claimant (treating
16 physicians); (2) those who examine but do not treat the claimant (examining
17 physicians); and (3) those who neither treat nor examine the claimant (non-examining
18 physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), *limited on other*
19 *grounds, Saelee v. Chater*, 94 F.3d 520, 523 (9th Cir. 1996); *see also* 20 C.F.R. §§
20 404.1502, 404.1527(d). As a general rule, more weight should be given to the opinion
21 of a treating source than to the opinions of physicians who do not treat the claimant.
22 *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir. 1987); *see also* 20 C.F.R. §
23 404.1527(d)(2).

24 The Ninth Circuit has held that an ALJ may reject a treating physician’s
25 uncontradicted opinion only with “clear and convincing” reasons supported by
26 substantial evidence in the record. *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.
27 1998) (quoting *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993)) (internal
28 quotation marks omitted). If the treating physician’s opinion is controverted, the ALJ

1 must still provide “specific and legitimate” reasons, supported by substantial evidence
2 in the record, in order to reject the treating physician’s opinion. *Lester*, 81 F.3d at 830;
3 *Holohan v. Massanari*, 246 F.3d 1195, 1202-03 (9th Cir. 2001). “The ALJ could meet
4 this burden by setting out a detailed and thorough summary of the facts and conflicting
5 clinical evidence, stating his interpretation thereof, and making findings.” *Magallanes*
6 *v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal quotation marks omitted).

7 Here, the consultative examining psychiatrist, Dr. Ernest A. Bagner III, and the
8 State agency non-examining physicians contradicted Dr. Murphy’s conclusions.
9 Therefore, the ALJ was required to provide specific and legitimate reasons for
10 rejecting Dr. Murphy’s opinion.

11 The ALJ noted that no objective evidence supported Dr. Murphy’s conclusions
12 in the Mental Disorder Questionnaire Form that he completed May 15, 2008.
13 Moreover, Dr. Murphy’s own treatment record, as well as plaintiff’s treatment record
14 as a whole, did not support the limitations set forth in the form. This lack of support in
15 the treatment notes, objective evidence, and medical record as a whole is a specific and
16 legitimate reason supported by substantial evidence for rejecting Dr. Murphy’s
17 opinion.

18 Although plaintiff contends that the ALJ should have contacted Dr. Murphy to
19 further develop the record, the Court finds that remand is not required. The ALJ has an
20 independent duty to fully and fairly develop the record and to assure that the
21 claimant’s interests are considered, even when the claimant is represented.

22 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001); *Crane v. Shalala*, 76 F.3d
23 251, 255 (9th Cir. 1996) (citing *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983)).
24 However, “[a]n ALJ’s duty to develop the record further is triggered only when there
25 is ambiguous evidence or when the record is inadequate to allow for proper evaluation
26 of the evidence.” *Mayer v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001) (citing
27 *Tonapetyan*, 242 F.3d at 1150).

1 Here, there was no ambiguity in the record, Dr. Murphy's treatment notes, the
2 record as a whole, and the objective evidence simply did not support Dr. Murphy's
3 opinion regarding plaintiff's limitations.

4 Moreover, even if the ALJ had had a duty to develop the record, "[t]he ALJ may
5 discharge [such duty] in several ways, including: subpoenaing the claimant's
6 physicians, submitting questions to the claimant's physicians, continuing the hearing,
7 or keeping the record open after the hearing to allow supplementation of the record."
8 *Tonapetyan*, 242 F.3d at 1150; *see also Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir.
9 1996). Here, the ALJ left the record open to allow plaintiff an opportunity to provide
10 additional medical records. (AR 22.)

11 The remaining contentions are all dependent on the adoption of Dr. Murphy's
12 limitations. Because the Court finds no error in the ALJ's rejection of those
13 limitations, remand also is not required with respect to Issue's Two and Three.

14
15 **CONCLUSION**

16 For the foregoing reasons, the judgement of the Commissioner is affirmed.

17 IT IS SO ORDERED.

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19 DATED: June 29, 2011

20 /S/ FREDERICK F. MUMM
21 FREDERICK F. MUMM
22 United States Magistrate Judge
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