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

JEANETTE BARTLETT,  
Plaintiff,

v.

CAROLYN W. COLVIN, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,<sup>1/</sup>  
Defendant.

Case No. ED CV 12-1240 JCG

**MEMORANDUM OPINION AND  
ORDER**

Jeanette Bartlett (“Plaintiff”) challenges the Social Security Commissioner’s (“Defendant”) decision denying her application for disability benefits. Specifically, Plaintiff argues that the Administrative Law Judge (“ALJ”) failed to properly develop the record by not seeking treatment records from Drs. Sunil Arora, Bruce Ishibashi, and Luminita Andronescu. (Joint Stip. at 3-8, 15.) For the reasons discussed below, the Court agrees with Plaintiff.

A. The ALJ Failed to Fully and Fairly Develop the Record

“[T]he ALJ has a special duty to fully and fairly develop the record and to

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<sup>1/</sup> Carolyn W. Colvin is substituted as the proper defendant herein. *See* Fed. R. Civ. P. 25(d).

1 assure that the claimant’s interests are considered.” *Smolen v. Chater*, 80 F.3d 1273,  
2 1288 (9th Cir. 1996) (citing *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir.1983)). If  
3 the evidence is ambiguous or inadequate to permit a proper evaluation of a  
4 claimant’s impairments, the ALJ must also “conduct an appropriate inquiry” into  
5 that deficiency. *Id.* at 1288.

6 Here, good reason suggests that the evidence was inadequate.

7 For instance, in evaluating the medical record, the ALJ stated that the record  
8 does not show that Plaintiff “has received any further treatment for her complaints of  
9 left shoulder pain” since a September 8, 2009 examination. (AR at 58.) This  
10 conclusion, however, is based on an incomplete treating record. Two reports by the  
11 Orthopaedic Medical Group – one in October 2010, and one in January 2011 – thank  
12 Dr. Arora for referring Plaintiff. (AR at 226-29, 217-19.) Similarly, a November  
13 2010 MRI report lists Dr. Ishibashi as its referring physician. (AR at 214-15.) Both  
14 cues suggest that Drs. Arora and Ishibashi treated Plaintiff, and, yet, the ALJ failed  
15 to obtain records from either physician.

16 Moreover, the ALJ noted a nine-month evidentiary gap between Plaintiff’s  
17 December 2008 and September 2009 visits to the Arrowhead Regional Medical  
18 Center. (AR at 58; *see* AR at 205-210.) Though this gap certainly exists, its  
19 significance is undermined by evidence that Plaintiff was likely treated by Dr.  
20 Andronescu during that time. Again, as above, a July 13, 2009 MRI analysis listed  
21 Dr. Andronescu as its referring physician. (AR at 232-33.) Faced with evidence  
22 suggesting that the treating record was incomplete,<sup>2/</sup> the ALJ, once again, failed to  
23 make any inquiries.

24 Minimizing the significance of this error, Defendant asserts that the substance  
25 of these missing records would have likely “been detailed in the subsequent reports”  
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27 <sup>2/</sup> Remarkably, the ALJ even acknowledges Dr. Andronescu in his decision as  
28 one of Plaintiff’s treating physicians. (AR at 59.)

1 by the Orthopaedic Medical Group. (Joint Stip. at 11.) Perhaps, but that is neither  
2 certain nor relevant for resolution here.

3 The ALJ's assessment of Plaintiff's shoulder impairments relied heavily on  
4 the alleged lack of treating records substantiating that condition. At the same time,  
5 the ALJ had cause to believe the treating record was incomplete. For this simple  
6 reason, a finding of error is warranted. *See Brown v. Astrue*, 2008 WL 850203, at \*2  
7 (E.D. Cal. Mar. 28, 2008) (finding error where ALJ failed to obtain certain records,  
8 but then "explicitly relied" on that evidentiary gap in his analysis). Had these  
9 missing records been obtained, it is plausible that their contents might have  
10 persuaded the ALJ to reach another conclusion regarding Plaintiff's disability  
11 status.<sup>3/</sup>

12 Thus, for the reasons stated above, the Court determines that the ALJ failed to  
13 adequately develop the record. Accordingly, the Court finds that substantial  
14 evidence did not support the ALJ's decision. *See Mayes v. Massanari*, 276 F.3d  
15 453, 458-59 (9th Cir. 2001).

16 B. Remand is Warranted

17 With error established, this Court has discretion to remand or reverse and  
18 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no  
19 useful purpose would be served by further proceedings, or where the record has been  
20 fully developed, it is appropriate to exercise this discretion to direct an immediate  
21 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).  
22 But where there are outstanding issues that must be resolved before a determination  
23 can be made, or it is not clear from the record that the ALJ would be required to find  
24 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.

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26 <sup>3/</sup> This remains true even though, as Defendant asserts, the ALJ presented  
27 multiple reasons for his assessment of Plaintiff's credibility. (Joint Stip. at 13.)  
28 After all, the ALJ *also* relied on the absence of treating records in weighing the  
medical evidence. (*See AR at 58-60.*)

1 *See id.* at 594.

2 Here, the Court cannot determine disability based on the record before it.  
3 Therefore, on remand, the ALJ shall seek Plaintiff's treatment records, if there be  
4 any, from Drs. Sunil Arora, Bruce Ishibashi, and Luminita Andronescu.

5 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
6 **REVERSING** the decision of the Commissioner denying benefits and  
7 **REMANDING** the matter for further administrative action consistent with this  
8 decision.

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10 Dated: April 30, 2013

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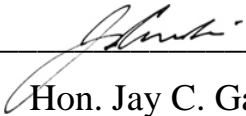
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Hon. Jay C. Gandhi  
United States Magistrate Judge