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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VIRGINIA MILLER BURNETT,  
Plaintiff,

v.

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security  
Administration,  
Defendant.

Case No. ED CV 13-2223-SP

MEMORANDUM OPINION AND  
ORDER

**I.**

**INTRODUCTION**

On December 4, 2013, plaintiff Virginia Miller Burnett filed a complaint against the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of a period of disability and disability insurance benefits (“DIB”). Both plaintiff and defendant have consented to proceed for all purposes before the assigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). The court deems the matter suitable for adjudication without oral argument.

1 Plaintiff presents two issues for decision: (1) whether substantial evidence  
2 supports the residual functional capacity (“RFC”) assessment by the administrative  
3 law judge (“ALJ”); and (2) whether the ALJ properly considered plaintiff’s  
4 credibility. Plaintiff’s Memorandum in Support of Complaint (“P. Mem.”) at 3-  
5 11; Memorandum in Support of Defendant’s Answer (“D. Mem.”) at 3-9.

6 Having carefully studied the parties’ moving papers, the Administrative  
7 Record (“AR”), and the decision of the ALJ, the court concludes that, as detailed  
8 herein, substantial evidence does not support the ALJ’s RFC assessment and the  
9 ALJ failed to provide clear and convincing reasons for discounting plaintiff’s  
10 credibility. The court therefore remands this matter to the Commissioner in  
11 accordance with the principles and instructions enunciated in this Memorandum  
12 Opinion and Order.

## 13 II.

### 14 **FACTUAL AND PROCEDURAL BACKGROUND**

15 Plaintiff, who was forty-three years old on her alleged onset of disability  
16 date, has a GED. AR at 35, 72-73. Plaintiff has past relevant work as a home  
17 attendant. *Id.* at 61.

18 On February 22, 2011, plaintiff protectively filed an application for a period  
19 of disability and DIB due to breast cancer, a blood disorder, blurred vision in the  
20 left eye, diabetes, high blood pressure, poor circulation in the right leg, an inability  
21 to lift with the left arm, and anxiety. *Id.* at 72. The Commissioner denied  
22 plaintiff’s application initially and upon reconsideration, after which she filed a  
23 request for a hearing. *Id.* at 85-88, 96-100, 102.

24 On June 28, 2012, plaintiff, represented by counsel, appeared and testified  
25 at a hearing before the ALJ. *Id.* at 26-71. The ALJ also heard testimony from a  
26 vocational expert. *Id.* at 60-66. On August 30, 2012, the ALJ denied plaintiff’s  
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1 claim for benefits. *Id.* at 12-20. Plaintiff filed a timely request for review of the  
2 decision, which the Appeals Council denied. *Id.* at 1-3, 7.

3 Applying the well-known five-step sequential evaluation process, the ALJ  
4 found, at step one, that plaintiff had not engaged in substantial gainful activity  
5 from October 31, 2002, the alleged onset of disability, through June 30, 2008, the  
6 date last insured. *Id.* at 14.

7 At step two, the ALJ found that plaintiff suffered from the severe  
8 impairments of diabetes and left distal fibula fracture. *Id.*

9 At step three, the ALJ found that plaintiff's impairments, whether  
10 individually or in combination, did not meet or medically equal one of the listed  
11 impairments set forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the  
12 "Listings"). *Id.* at 16.

13 The ALJ then assessed plaintiff's RFC,<sup>1</sup> and determined that she had the  
14 RFC to perform light work, with the limitations that plaintiff could: lift/carry  
15 twenty pounds occasionally and ten pounds frequently; stand/walk for six hours in  
16 an eight-hour work day with regular breaks; sit for six hours in an eight-hour work  
17 day with regular breaks; and occasionally climb ramps and stairs. *Id.* The ALJ  
18 precluded plaintiff from climbing ladders, ropes, or scaffolds. *Id.*

19 The ALJ found, at step four, that plaintiff was unable to perform her past  
20 relevant work as a home attendant. *Id.* at 18.

21 At step five, the ALJ found that there were jobs that existed in significant  
22 numbers in the national economy that plaintiff could have performed, including  
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24 <sup>1</sup> Residual functional capacity is what a claimant can do despite existing  
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152,  
26 1155-56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step  
27 evaluation, the ALJ must proceed to an intermediate step in which the ALJ  
28 assesses the claimant's residual functional capacity." *Massachi v. Astrue*, 486  
F.3d 1149, 1151 n.2 (9th Cir. 2007).

1 cleaner, photo copy machine operator, and Mexican food maker. *Id.* at 19.  
2 Consequently, the ALJ concluded that, for the relevant period, plaintiff did not  
3 suffer from a disability as defined by the Social Security Act. *Id.* at 20.

4 The ALJ's decision stands as the final decision of the Commissioner.

### 5 III.

#### 6 STANDARD OF REVIEW

7 This court is empowered to review decisions by the Commissioner to deny  
8 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
9 Administration must be upheld if they are free of legal error and supported by  
10 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
11 (as amended). But if the court determines that the ALJ's findings are based on  
12 legal error or are not supported by substantial evidence in the record, the court  
13 may reject the findings and set aside the decision to deny benefits. *Aukland v.*  
14 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
15 1144, 1147 (9th Cir. 2001).

16 "Substantial evidence is more than a mere scintilla, but less than a  
17 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
18 "relevant evidence which a reasonable person might accept as adequate to support  
19 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
20 F.3d at 459. To determine whether substantial evidence supports the ALJ's  
21 finding, the reviewing court must review the administrative record as a whole,  
22 "weighing both the evidence that supports and the evidence that detracts from the  
23 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be  
24 affirmed simply by isolating a specific quantum of supporting evidence."  
25 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
26 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
27 the ALJ's decision, the reviewing court "may not substitute its judgment for that  
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1 of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
2 1992)).

#### 3 IV.

### 4 DISCUSSION

#### 5 A. The ALJ’s RFC Determination Was Not Supported by Substantial 6 Evidence

7 Plaintiff argues that the ALJ’s RFC determination was not supported by  
8 substantial evidence. P. Mem. at 3-8. Specifically, plaintiff contends that the ALJ  
9 erred at step two when, contrary to the medical evidence, he found that plaintiff’s  
10 anemia and migraines were not severe. Plaintiff also contends the ALJ improperly  
11 found that her diabetes were under control. Plaintiff maintains that the medical  
12 evidence of each of these impairments supports additional limitations.

13 Defendant argues that any error the ALJ may have committed at step two is  
14 harmless because the ALJ found plaintiff suffered from other severe impairments.  
15 *See Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005) (any error by ALJ at step  
16 two was harmless because the step was resolved in plaintiff’s favor). But plaintiff  
17 is really contending that the ALJ’s step two error led to an error in assessing  
18 plaintiff’s RFC – that the ALJ’s failure to properly evaluate her anemia and  
19 migraines resulted in a less restrictive RFC than warranted. If so, any step two  
20 error was not harmless.

#### 21 1. Step Two

22 At step two, the Commissioner considers the severity of the claimant’s  
23 impairment. 20 C.F.R. § 404.1520(a)(4)(ii). “[T]he step-two inquiry is a de  
24 minimis screening device to dispose of groundless claims.” *Smolen v. Chater*, 80  
25 F.3d 1273, 1290 (9th Cir. 1996).

26 Here, the ALJ determined that plaintiff had the severe impairments of  
27 diabetes and left distal fibula fracture, but specifically found that plaintiff’s  
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1 anemia and migraines were not severe. AR at 14-15. The ALJ concluded that  
2 plaintiff's anemia was not severe because although she required a transfusion in  
3 March 2002, she did not have recurrent problems with anemia. *Id.* at 14. As for  
4 plaintiff's migraines, the ALJ noted that her head CT scan revealed unremarkable  
5 findings and her doctor opined that her headaches were rebound analgesic  
6 headaches that would reduce after stopping her medications. *Id.* at 14-15. As  
7 such, the ALJ concluded that plaintiff's anemia and migraines would have no  
8 more than a minimal effect on her ability to work and were not severe. *Id.*

9 **a. Anemia**

10 Plaintiff contends that the medical evidence shows that she suffered from  
11 anemia from at least March 2002 through March 2005, that she required two blood  
12 transfusions as a result of her condition, and the anemia caused fatigue. P. Mem.  
13 at 3-4.

14 The medical records show that in March 2002, plaintiff entered the  
15 emergency room complaining of an "altered level of consciousness." AR at 327-  
16 28. Blood tests revealed that plaintiff suffered from profound anemia and required  
17 a blood transfusion. *Id.* at 351. Plaintiff's blood test results throughout 2002  
18 indicate that plaintiff continued to suffer from anemia but plaintiff did not  
19 complain of any anemia-related symptoms such as fatigue. *See, e.g., id.* at 353-63.  
20 In January 2003, plaintiff was admitted to the hospital after suffering from bloody  
21 diarrhea for three to four days. *See id.* at 368-72. The hospital conducted a blood  
22 test and noted that plaintiff had low hemoglobin. *Id.* at 371. Dr. Dennis Nagel  
23 opined that the bloody diarrhea may be a contributing factor to plaintiff's anemia  
24 and ordered a blood transfusion. *Id.* at 371-72. Plaintiff's hemoglobin and  
25 hematocrit levels were still slightly low in June 2003, but by July 2004, her blood  
26 tests indicated normal hemoglobin and hematocrit levels. *Id.* at 299. Subsequent  
27 blood tests in November 2004, March 2005, and February 2007 also reflected

1 normal hemoglobin and hematocrit levels. *Id.* at 258, 279, 293. Plaintiff argues  
2 that she was still anemic on March 23, 2005, but the record shows that her  
3 hematocrit levels were normal and her hemoglobin levels were only a tenth of a  
4 gram/dl below normal. *See id.* at 281. And two days later, both plaintiff's  
5 hemoglobin and hematocrit levels were in the normal range. *See id.* at 279.

6 The record here plainly reflects that plaintiff suffered from anemia from at  
7 least March 2002 through June 2003. But whether plaintiff's symptoms had more  
8 than a minimal effect on her ability to work is not as clear. *See Webb v. Barnhart*,  
9 433 F.3d 683, 686 (9th Cir. 2005) ("An impairment is not severe if it is merely a  
10 slightly abnormality (or combination of abnormalities) that has no more than a  
11 minimal effect on the ability to do basic work activities.") (internal citation and  
12 quotations omitted). In March 2002, plaintiff was suffering from lethargy related  
13 to anemia and received a blood transfusion. AR at 327-28, 351. But although the  
14 blood test results from March 2002 through June 2003 indicated plaintiff suffered  
15 from anemia, none of plaintiff's post-March 2002 medical records document her  
16 complaining of fatigue. *See, e.g., id.* at 353-63. Indeed, plaintiff sought treatment  
17 on numerous occasions for other ailments but did not complain of symptoms  
18 relating to her anemia. *See id.* And subsequent complaints of fatigue appeared to  
19 be related to her diabetes. *See, e.g., id.* at 225-26.

20 In sum, there is evidence cutting both ways with respect to plaintiff's  
21 anemia, including evidence that supports the ALJ's determination that plaintiff's  
22 anemia had only a minimal effect on her ability to work. As such, the court will  
23 not substitute its judgment for that of the ALJ.

24 **b. Migraines**

25 Plaintiff contends that the medical evidence does not support the ALJ's  
26 finding that her migraines were caused by her medication usage, and that the  
27 ALJ's reliance on an CT scan was improper. P. Mem. at 4-6.

1           The records show that plaintiff had continuously complained of migraine  
2 headaches throughout the alleged period of disability. *See, e.g.*, AR at 228-29,  
3 357, 365. She treated the headaches with Stadol, a narcotic, and Fioricet, a  
4 barbituate. *See id.* at 352. In addition to Stadol and Fioricet, plaintiff was taking  
5 numerous other medications, including three benzodiazepines. *See id.* at 366-67.  
6 In March 2002, Dr. David M. Quam discussed with plaintiff the inadvisability of  
7 using narcotics treat chronic headaches. *See id.* at 351. In November 2002, Dr.  
8 Francisco Torres, a neurologist examined plaintiff after she complained of having  
9 migraines at least twice a week. *See id.* at 366. Dr. Torres reviewed a CT scan  
10 performed earlier in the year and noted that it was negative. *See id.* at 367. Dr.  
11 Torres explained to plaintiff that he believed she had rebound analgesic headaches  
12 and that by stopping her medications her headache problem would improve. *See*  
13 *id.* He further explained that he did not guarantee she would be pain free, only  
14 that her headaches would probably decrease in frequency and intensity. *See id.*  
15 Plaintiff's treating physician continued to prescribe plaintiff Stadol during the  
16 insured period. *See, e.g., id.* at 229, 231, 377.

17           Plaintiff argues that the lack of findings in the CT scan is insignificant. The  
18 court agrees. Although a CT scan may reveal certain causes of headaches, it is not  
19 used to diagnose migraine headaches.

20           As for Dr. Torres's opinion that plaintiff's headaches would decrease should  
21 plaintiff stop her medications, that opinion does not support the ALJ's finding that  
22 plaintiff's migraines were not severe. Although plaintiff did not comply with Dr.  
23 Quam's and Dr. Torres's recommended treatment plan, even assuming plaintiff  
24 had ceased the use of medications such as Stadol, she likely would have continued  
25 to experience migraines. Dr. Torres opined that plaintiff's headaches would  
26 probably decrease in frequency and intensity, but would not cease completely. *Id.*  
27 at 367. The ALJ appears to have interpreted Dr. Torres's opinion as meaning that  
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1 plaintiff's migraines would be effectively controlled, but the evidence does not  
2 support that conclusion. As such, the ALJ improperly concluded that plaintiff's  
3 migraines were not a severe impairment.

4 Accordingly, the ALJ erred in part at step two. His finding that plaintiff's  
5 anemia was not a severe impairment was supported by substantial evidence, but  
6 his finding that plaintiff's migraines were not severe was not similarly supported.

7 Plaintiff testified that she cannot function when she has migraines, that she  
8 had them two to three times a month, and that they could last a week or more. *Id.*  
9 at 43, 56. Having found her migraines not to be a severe impairment, the ALJ  
10 appears to have also found plaintiff's migraines had no effect on her RFC. *See*  
11 Social Security Ruling ("SSR") 96-8p ("In assessing RFC, the adjudicator must  
12 consider limitations and restrictions imposed by all of an individual's  
13 impairments, even those that are not 'severe.'").<sup>2</sup> Although the ALJ stated he  
14 took plaintiff's nonsevere impairments into account, in assessing plaintiff's RFC  
15 he neither discussed plaintiff's migraines nor factored missed work time into  
16 plaintiff's RFC. AR at 16-18. As such, plaintiff's RFC was inconsistent with the  
17 substantial evidence of plaintiff's severe migraine impairment.

## 18 **2. Diabetes**

19 Plaintiff argues that in reaching her RFC determination, the ALJ also failed  
20 to consider the effect her diabetes had on her, in particular the fatigue, because the  
21 ALJ incorrectly found that her diabetes was controlled. P. Mem. 6-7.

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24 <sup>2</sup> "The Commissioner issues Social Security Rulings to clarify the Act's  
25 implementing regulations and the agency's policies. SSRs are binding on all  
26 components of the SSA. SSRs do not have the force of law. However, because  
27 they represent the Commissioner's interpretation of the agency's regulations, we  
28 give them some deference. We will not defer to SSRs if they are inconsistent with  
the statute or regulations." *Holohan v. Massanari*, 246 F.3d 1195, 1203 n.1 (9th  
Cir. 2001) (internal citations omitted).

1 In making his RFC determination, the ALJ considered the limitations  
2 caused by plaintiff's diabetes. *See* AR at 17-18. The ALJ found that there was no  
3 evidence that plaintiff suffered from any end organ damage, neuropathy, acidosis,  
4 or diabetes-related visual impairment. *Id.* at 17. The ALJ noted that plaintiff  
5 reported feeling fatigued due to her condition, but plaintiff's diabetes was under  
6 control after a few episodes of uncontrolled glucose levels in early 2005. *See id.*  
7 at 17-18. In other words, the ALJ found fatigue was not a limitation because  
8 plaintiff's diabetes was controlled.

9 Diagnosed with diabetes in late 2004, the record reflects that from 2005-  
10 2007 plaintiff had elevated glucose and A1C percent levels, indicating that her  
11 diabetes was poorly controlled.<sup>3</sup> *See id.* at 383. For example, in March 2005,  
12 plaintiff had a fasting glucose level of 600 and was diagnosed with diabetic  
13 ketoacidosis. *Id.* at 385. In November 2006, plaintiff's blood glucose level was  
14 324. *See id.* at 264. And in February 2007, plaintiff had a fasting glucose level of  
15 246. *See id.* at 258. These numbers do not support the ALJ's finding that  
16 plaintiff's diabetes was under control after a "few episodes of uncontrolled  
17 glucose levels" "within the first few months of being diagnosed." *Id.* at 18. As  
18 such, the ALJ's conclusion that plaintiff's diabetes was under control and thus she  
19 was not fatigued is not supported by substantial evidence.

20 Accordingly, the ALJ's RFC determination is not supported by substantial  
21 evidence. The ALJ failed to properly consider the evidence of plaintiff's  
22 migraines and the effects of her diabetes.

23 **B. The ALJ Failed to Properly Consider Plaintiff's Credibility**

24 Plaintiff argues that the ALJ discounted her credibility without providing  
25 clear and convincing reasons supported by substantial evidence. P. Mem. at 8-11.

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27 <sup>3</sup> A fasting glucose level of 126 or above or a A1C percentage of 6.5 and  
28 above indicate diabetes. *See* <http://diabetes.niddk.nih.gov/dm/pubs/diagnosis/#3>.

1 Specifically, the ALJ only cited one reason for finding plaintiff less credible,  
2 which was that her limitations were not supported by objective medical evidence.  
3 *Id.* at 10. Plaintiff contends that this reason, by itself, is insufficient. *Id.* at 10-11.

4 The ALJ must make specific credibility findings, supported by the record.  
5 SSR 96-7p. To determine whether testimony concerning symptoms is credible, the  
6 ALJ engages in a two-step analysis. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-  
7 36 (9th Cir. 2007). First, the ALJ must determine whether a claimant produced  
8 objective medical evidence of an underlying impairment ““which could reasonably  
9 be expected to produce the pain or other symptoms alleged.”” *Id.* at 1036 (quoting  
10 *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). Second, if there  
11 is no evidence of malingering, an “ALJ can reject the claimant’s testimony about  
12 the severity of her symptoms only by offering specific, clear and convincing  
13 reasons for doing so.” *Smolen*, 80 F.3d at 1281; *Benton v. Barnhart*, 331 F.3d  
14 1030, 1040 (9th Cir. 2003). The ALJ may consider several factors in weighing a  
15 claimant’s credibility, including: (1) ordinary techniques of credibility evaluation  
16 such as a claimant’s reputation for lying; (2) the failure to seek treatment or follow  
17 a prescribed course of treatment; and (3) a claimant’s daily activities. *Tommasetti*  
18 *v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell*, 947 F.2d at 346-47.

19 At the first step, the ALJ found that plaintiff’s medically determinable  
20 impairments could reasonably be expected to cause the symptoms alleged. AR at  
21 17. At the second step, because the ALJ did not find any evidence of malingering,  
22 the ALJ was required to provide clear and convincing reasons for discounting  
23 plaintiff’s credibility. Here, the ALJ discounted plaintiff’s credibility because  
24 there was no objective evidence from the alleged period of disability to support  
25 plaintiff’s purported limitations. *Id.*

26 The lack of objective medical evidence to support allegations of limitations  
27 is a factor that may be considered when evaluating credibility, but it is insufficient  
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1 by itself. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (lack of  
2 corroborative objective medicine may be one factor in evaluating credibility);  
3 *Bunnell*, 947 F.2d at 345 (an ALJ “may not reject a claimant’s subjective  
4 complaints based solely on a lack of objective medical evidence to fully  
5 corroborate the alleged severity of pain”). Here, the ALJ only cited lack of  
6 objective medical evidence and as such his reasoning is insufficient.

7 Moreover, it is unclear how the objective medical evidence did not support  
8 plaintiff’s alleged limitations. The record contains instances of plaintiff  
9 complaining about fatigue related to her diabetes, as well as a diagnosis of  
10 diabetes ketoacidosis. *See* AR at 224-26, 385. Similarly, the record contains  
11 multiple complaints about her migraine headaches and throbbing pain.<sup>4</sup> *See, e.g.,*  
12 *id.* at 229, 363.

13 Accordingly, the ALJ failed to cite clear and convincing reasons supported  
14 by substantial evidence to find plaintiff less credible.

15 **V.**

16 **REMAND IS APPROPRIATE**

17 The decision whether to remand for further proceedings or reverse and  
18 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
19 888 F.2d 599, 603 (9th Cir. 1989). It is appropriate for the court to exercise this  
20 discretion to direct an immediate award of benefits where: “(1) the record has been  
21 fully developed and further administrative proceedings would serve no useful  
22 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting  
23 evidence, whether claimant testimony or medical opinions; and (3) if the  
24 improperly discredited evidence were credited as true, the ALJ would be required  
25 to find the claimant disabled on remand.” *Garrison v. Colvin*, 759 F.3d 995, 1020

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27 <sup>4</sup> There was evidence of non-compliance with a treatment plan with respect to  
28 both the migraine headaches and diabetes, but the ALJ cited neither as a reason for  
discounting plaintiff’s credibility.

1 (9th Cir. 2014) (setting forth three-part credit-as-true standard for remanding with  
2 instructions to calculate and award benefits). But where there are outstanding  
3 issues that must be resolved before a determination can be made, or it is not clear  
4 from the record that the ALJ would be required to find a plaintiff disabled if all the  
5 evidence were properly evaluated, remand for further proceedings is appropriate.  
6 *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*,  
7 211 F.3d 1172, 1179-80 (9th Cir. 2000). In addition, the court must “remand for  
8 further proceedings when, even though all conditions of the credit-as-true rule are  
9 satisfied, an evaluation of the record as a whole creates serious doubt that a  
10 claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021.

11 Here, the ALJ failed to properly evaluate the medical evidence regarding  
12 plaintiff’s migraine headaches at step two, failed consider plaintiff’s limitations  
13 arising from her migraines and diabetes in his RFC determination, and failed to  
14 provide clear and convincing reasons for finding plaintiff less credible. Remand is  
15 required to fully develop the record in these respects, and with respect to the effect  
16 a revised RFC may have on plaintiff’s ability to work. In particular, although the  
17 vocational expert here opined that there was work for a person with the RFC  
18 assessed by the ALJ, and that a person with the limitations posed by plaintiff’s  
19 attorney would not be able to work (*see* AR at 62-66), whether plaintiff’s RFC  
20 would conform with those limitations if the evidence of plaintiff’s migraines and  
21 diabetes fatigue were properly considered is unclear.

22 On remand, the ALJ shall reconsider the evidence concerning plaintiff’s  
23 migraines and diabetes and incorporate any limitations into his RFC  
24 determination. The ALJ shall also reconsider plaintiff’s credibility in light of all  
25 the evidence in the record. The ALJ shall assess plaintiff’s RFC and proceed  
26 through steps four and five to determine what work, if any, plaintiff is capable of  
27 performing.

1 VI.

2 CONCLUSION

3 IT IS THEREFORE ORDERED that Judgment shall be entered  
4 REVERSING the decision of the Commissioner denying benefits, and  
5 REMANDING the matter to the Commissioner for further administrative action  
6 consistent with this decision.

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8 DATED: December 29, 2014



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10 SHERI PYM  
United States Magistrate Judge

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