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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 ALONZO P. BARELA,

9 Plaintiff,

10 v.

11  
12 CAROLYN W. COLVIN,  
13 Commissioner of Social Security,

14 Defendant.

No. CV-14-03054-JTR

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

15  
16 BEFORE THE COURT are cross-Motions for Summary Judgment. ECF  
17 Nos. 14, 16. Attorney D. James Tree represents Plaintiff, and Special Assistant  
18 United States Attorney Leisa A. Wolf represents the Commissioner of Social  
19 Security (Defendant). The parties have consented to proceed before a magistrate  
20 judge. ECF No. 8. After reviewing the administrative record and the briefs filed  
21 by the parties, the court **GRANTS** Plaintiff's Motion for Summary Judgment and  
22 **DENIES** Defendant's Motion for Summary Judgment.

23 **JURISDICTION**

24 On February 10, 2010, Plaintiff filed a Title XVI application for  
25 supplemental security income. Tr. 15; 144. Plaintiff alleged an onset date of  
26 November 1, 2009. Tr. 15; 144. Plaintiff reported that he was unable to work due  
27 to meningitis, West Nile Virus, numbness in both hands, and migraine headaches.  
28 Tr. 161. The claims were denied initially and on reconsideration, and Plaintiff

1 requested an administrative hearing. Tr. 15; 82-111.

2 On July 11, 2012, Seattle Administrative Law Judge Larry Kennedy  
3 presided over a hearing at which vocational expert Mark Harrington, and Plaintiff,  
4 who was represented by counsel, testified. Tr. 34-77. On October 24, 2012, the  
5 ALJ issued a decision finding Plaintiff not disabled. Tr. 15-28. The Appeals  
6 Council declined review. Tr. 12-14. The instant matter is before this court  
7 pursuant to 42 U.S.C. § 405(g).

### 8 **STATEMENT OF FACTS**

9 The facts have been presented in the administrative hearing transcript, the  
10 ALJ's decision, and the briefs of the parties and thus, they are only briefly  
11 summarized here. At the time of the hearing, Plaintiff was a few days away from  
12 turning 41 years old. Tr. 42. He had completed the eleventh grade. Tr. 42-43.  
13 Plaintiff lived with his parents, who are both in poor health. Tr. 43-44. Plaintiff  
14 has two children in their twenties, a thirteen year old and a five year old. Tr. 45-  
15 46. Plaintiff said he tries to see his youngest child every other weekend. Tr. 46.

16 Plaintiff cleans the house, does the dishes, mops, vacuums, dusts, and does  
17 yard work when he is feeling up to it. Tr. 47. He and his father trade off preparing  
18 meals. Tr. 47.

19 Plaintiff's past jobs include working as a line cook at a restaurant, as a fast  
20 food sandwich maker, and working in the kitchen of a retirement home. Tr. 49-50.

21 Plaintiff said he cannot work due to neck and back pain that he attributes to  
22 bullet fragments that are lodged in his neck. Tr. 50-51. Several years earlier,  
23 Plaintiff attempted to commit suicide with a handgun. Tr. 51-52; 54. Plaintiff  
24 estimated he has attempted suicide thirteen times. Tr. 54. He explained that he  
25 had difficulty finding mental health treatment due to his lack of money and health  
26 insurance. Tr. 56.

27 On September 15, 2009, Plaintiff was admitted to the hospital with acute  
28 meningitis and encephalitis. Tr. 334. Plaintiff testified that after that episode, his

1 neck pain has increased, and he experiences numbness and sometimes paralysis in  
2 his left hand and right leg. Tr. 52; 62-63.

### 3 **STANDARD OF REVIEW**

4 The ALJ is responsible for determining credibility, resolving conflicts in  
5 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
6 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
7 deference to a reasonable construction of the applicable statutes. *McNatt v. Apfel*,  
8 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
9 only if it is not supported by substantial evidence or if it is based on legal error.  
10 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
11 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
12 1098. Put another way, substantial evidence is such relevant evidence as a  
13 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
14 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
15 rational interpretation, the court may not substitute its judgment for that of the  
16 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
17 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by  
18 substantial evidence will still be set aside if the proper legal standards were not  
19 applied in weighing the evidence and making the decision. *Brawner v. Secretary*  
20 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial  
21 evidence supports the administrative findings, or if conflicting evidence supports a  
22 finding of either disability or non-disability, the ALJ's determination is conclusive.  
23 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

### 24 **SEQUENTIAL PROCESS**

25 The Commissioner has established a five-step sequential evaluation process  
26 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
27 416.920(a); see *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one  
28 through four, the burden of proof rests upon the claimant to establish a prima facie

1 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This  
2 burden is met once a claimant establishes that a physical or mental impairment  
3 prevents him from engaging in his previous occupation. 20 C.F.R. §§  
4 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
5 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that  
6 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist  
7 in the national economy which claimant can perform. *Batson v. Commissioner of*  
8 *Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004). If a claimant cannot make an  
9 adjustment to other work in the national economy, a finding of “disabled” is made.  
10 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

#### 11 **ALJ’S FINDINGS**

12 At step one of the sequential evaluation process, the ALJ found Plaintiff has  
13 not engaged in substantial gainful activity since February 10, 2010, the alleged  
14 onset date. Tr. 17. At step two, the ALJ found Plaintiff suffered from the severe  
15 impairments of obesity, lumbar spine degenerative disc disorder, myalgia status  
16 post viral encephalus/meningitis, chronic cervicgia, headaches, drug and alcohol  
17 addiction/use disorder, major depressive disorder, anxiety disorder, and borderline  
18 personality disorder. Tr. 17. At step three, the ALJ found Plaintiff’s impairments,  
19 alone or in combination, do not meet or medically equal the severity of one of the  
20 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §  
21 416.920(d), 416.925 and 416.926). Tr. 18. At step four, the ALJ found Plaintiff is  
22 incapable of performing past relevant work. Tr. 27. The ALJ determined that  
23 considering Plaintiff’s age, education, work experience and residual functional  
24 capacity, unskilled, sedentary jobs exist in significant numbers that Plaintiff can  
25 perform, such as table worker, gauger, and circuit board screener. Tr. 28. As a  
26 result, the ALJ concluded that Plaintiff has not been disabled within the meaning  
27 of the Social Security Act at any time from the date the application was filed  
28 through the date of the decision. Tr. 28.

1 **ISSUES**

2 Plaintiff contends that the ALJ erred in determining Plaintiff lacked  
3 credibility and in weighing the medical evidence. ECF No. 14 at 8-21.

4 **A. Credibility**

5 Plaintiff argues that the ALJ erred by finding Plaintiff was not credible. Tr.  
6 20-21. Plaintiff challenged several of the reasons the ALJ relied upon in finding  
7 Plaintiff lacked credibility.

8 The ALJ is responsible for determining credibility. *Andrews*, 53 F.3d at  
9 1039. Unless affirmative evidence exists indicating that the claimant is  
10 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear  
11 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). The ALJ's  
12 findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903  
13 F.2d 1229, 1231 (9th Cir. 1990). "General findings are insufficient; rather, the  
14 ALJ must identify what testimony is not credible and what evidence undermines  
15 the claimant's complaints." *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir. 1998),  
16 quoting *Lester*, 81 F.3d at 834. If objective medical evidence exists of an  
17 underlying impairment, the ALJ may not discredit a claimant's testimony as to the  
18 severity of symptoms merely because they are unsupported by objective medical  
19 evidence. *See Bunnell v. Sullivan*, 947 F.2d 341, 347-48 (9th Cir. 1991).

20 The ALJ relied upon several reasons in finding Plaintiff lacked credibility.  
21 Because the ALJ's credibility analysis is fatally flawed as explained below,  
22 remand is required for a new analysis.

23 First, the record does not support the ALJ's conclusion that Plaintiff  
24 provided inconsistent reporting about his mental state. For example, the ALJ  
25 found that Plaintiff provided inconsistent reporting related to mental impairments.  
26 Tr. 22.

27 The ALJ asserted that Plaintiff "denied any mental problems in October  
28 2010," and cited two SSA forms – a Function Report and a Disability Report

1 Appeal – completed by Plaintiff. Tr. 22. However, both reports are consistent  
2 with Plaintiff’s alleged limitations. In the Function Report, completed October 20,  
3 2010, Plaintiff indicated he had trouble with his memory, he has problems paying  
4 attention, he is easily distracted, and he has trouble following instructions. Tr. 173.  
5 The Disability Report Appeal form, completed March 3, 2011, indicates Plaintiff’s  
6 condition was “gradually worsening,” his stress had increased, he was unable to  
7 sleep well and was paranoid and scared to leave his house, he was emotionally  
8 unstable and suffered from depression. Tr. 198-99. Both reports are consistent  
9 with Plaintiff’s reports of mental limitations. Contrary to the ALJ’s conclusions,  
10 these characterizations all implicate problems with mental functioning, and do not  
11 provide evidence of inconsistent reporting. The ALJ’s conclusion is not supported  
12 by the record.<sup>1</sup>

13 Next, the ALJ found that although Plaintiff described himself as bedridden  
14 due to pain and other symptoms, this was inconsistent with his testimony that he  
15 cared for his ill father and his mother, who needed substantial help. Tr. 22. The  
16 record does not support the ALJ’s conclusion. Plaintiff testified that he lived with  
17 his parents, who were both in poor health. Tr. 44-45. Specifically, he testified that  
18 his mother suffered from rheumatoid arthritis, and he tried “to help her with  
19 somewhat of that.” Tr. 44. Plaintiff said that his mother was “pretty much  
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21 <sup>1</sup>Moreover, the ALJ fails to acknowledge that symptoms related to mental  
22 impairment can wax and wane, and often deteriorate over time. The evaluation of  
23 a mental impairment is often more complicated than the evaluation of a claimed  
24 physical impairment. *Andler v. Chater*, 100 F.3d 1389, 1393 (8th Cir. 1996).  
25 Evidence of symptom-free periods, which may negate the finding of a physical  
26 disability, does not compel a finding that disability based on a mental disorder has  
27 ceased. *Id.* Mental illness can be extremely difficult to predict, and remissions are  
28 of "uncertain duration and marked by the impending possibility of relapse." *Id.*

1 bedridden,” and she had an electric chair that moved her up and down the stairs.  
2 Tr. 44. When the ALJ asked Plaintiff if he was “doing a lot of the help around this  
3 house for them,” Plaintiff responded that he helped “the days that I can because  
4 there are days where I am pretty much bed ridden [sic] and I can’t get out of bed  
5 myself.” Tr. 45. Plaintiff also noted that his mother had a caregiver, but the  
6 caregiver did not show up consistently. Tr. 45.

7 Plaintiff’s testimony explicitly indicated that he cared for his parents when  
8 he was physically able to help, but he did not feel well enough every day to  
9 provide assistance. The ALJ’s characterization that Plaintiff’s reported limitations  
10 were inconsistent with his assistance to his parents is not supported by the record.

11 Also, the ALJ found that “the fact [Plaintiff] believed he could take primary  
12 custody in caring for a very young child runs contrary to the allegations about the  
13 severity of his overall impairment.” Tr. 22. The record contains scant reference to  
14 Plaintiff’s attempts related to custody of his young child. When the ALJ asked  
15 Plaintiff if he saw his youngest child, Plaintiff responded, “I don’t know – I see my  
16 youngest but I was supposed to be granted custody and some – I don’t know what  
17 happened.” Tr. 46. From this exchange, it is unclear if Plaintiff sought full  
18 custody, or simply an increase in the time he spent with his child.

19 Moreover, as Plaintiff points out, when analyzing mental disorders, an ALJ  
20 “must take into account evidence indicating that the claimant’s true functional  
21 ability may be substantially less than the claimant asserts or wishes.” *Hutsell v.*  
22 *Massanari*, 259 F.3d 707, 711 (8th Cir. 2001) (quoting *Parsons v. Heckler*, 739  
23 F.2d 1334, 1341 (8th Cir. 1984)). As such, Plaintiff’s beliefs about his abilities are  
24 not indicative of his actual ability to function, and the ALJ is directed to consider  
25 this factor when determining residual functional capacity. The ALJ’s  
26 characterization of Plaintiff’s desire to increase his custodial time with his child as  
27 inconsistent with the severity of his alleged impairments is not supported by the  
28 record.

1 Also in determining Plaintiff had little credibility, the ALJ found that “the  
2 objective evidence is disproportionate to the claimant’s allegation that his  
3 impairments prevent him from working in any type of job.” Tr. 23. The ALJ cited  
4 Plaintiff’s “lower back radiological image showed a small protrusion and mild  
5 bulging,” and his head CT scan was negative. Tr. 23. Plaintiff contends that his  
6 severe obesity impairment added stress and pain to what might otherwise appear to  
7 be a mild impairment. ECF No. 14 at 12-13.

8 As Plaintiff points out, “the combined effects of obesity with other  
9 impairments may be greater than might be expected without obesity.” SSR 02-  
10 01p. In this case, when determining that the objective evidence did not support the  
11 severity of symptoms alleged by Plaintiff, it is not obvious to the Court that the  
12 ALJ considered whether Plaintiff’s obesity contributed to the severity of his  
13 complaints, and he should do so on remand.

14 Next, the ALJ discounted Plaintiff’s pain related to the bullet fragments  
15 embedded in his neck and back on the basis that in September 2009, Plaintiff did  
16 not report his condition worsened when he was admitted into the hospital, and the  
17 record lacked objective evidence of worsening or “a traumatic incident that would  
18 explain such worsening.” Tr. 23.

19 On September 15, 2009, Plaintiff was admitted to the hospital with acute  
20 meningitis and encephalitis. Tr. 334. The admission chart note indicates that  
21 Plaintiff denied “neck pain.” Tr. 324. The chart note also indicated Plaintiff was  
22 in an “altered mental state” and had a high fever. Tr. 324. Plaintiff’s brief  
23 response, in an altered mental state, is not sufficient evidence to establish  
24 Plaintiff’s neck pain resolved. Moreover, on March 18, 2010, Plaintiff reported to  
25 Venugopal Bellum, M.D., that the pain in his neck and back had been aggravated  
26 since his bout of encephalitis. Tr. 439.

27 An “ALJ cannot arbitrarily substitute his own judgment for competent  
28 medical opinion.” *McBrayer v. Secretary of Health and Human Servs.*, 712 F.2d



1 795, 799 (2d Cir. 1983). In this case, the ALJ should obtain testimony from an  
2 independent medical expert, that should include an opinion regarding whether the  
3 record contains reliable evidence of deterioration in Plaintiff's condition, and  
4 whether severe meningitis and encephalitis precipitated, accelerated, or was related  
5 to a deterioration in Plaintiff's condition.

6 Next, the ALJ found Plaintiff was not credible because his ill parents needed  
7 him to care for them at home, and thus he "lives in a situation where he may not  
8 have the opportunity to work because of his ailing parents." Tr. 23. This reason is  
9 not clear and convincing, nor is it supported by the record. While Plaintiff may  
10 have informed his parents' medical providers that he is the primary caregiver, he  
11 could have done so for a number of reasons and his assertion does not establish  
12 that Plaintiff is unable to leave his parents to work full-time. Significantly, the  
13 ALJ ignored Plaintiff's testimony that his mother had an assigned caregiver, but  
14 that caregiver was unreliable and Plaintiff was attempting to remedy the situation.  
15 Tr. 45. As such, the ALJ's reliance upon Plaintiff's parents' health was not a valid  
16 reason to discount his credibility.

17 Finally, the ALJ cited Plaintiff's minimal earnings and spotty work history  
18 as evidence he has no desire to work. Tr. 23. A plaintiff's "spotty" work history,  
19 with years of unemployment between jobs, is a valid credibility consideration and  
20 can indicate an unwillingness to work. *Thomas v. Barnhart*, 278 F.3d 947, 959  
21 (9th Cir. 2002). Plaintiff alleges that the ALJ ignored Plaintiff's barriers to  
22 employment, including his on-going struggle with mental health and substance  
23 abuse. ECF No. 14 at 15. In this determination, the ALJ did not address how  
24 Plaintiff's mental health issues and substance abuse, or the totality of the  
25 circumstances, affected his work history. On remand, the ALJ should include  
26 these factors in the credibility analysis.

27 Because the ALJ's credibility analysis contains several errors, remand for a  
28 new credibility analysis is necessary.

1 **B. Venugopal Bellum, M.D.**

2 Plaintiff argues that the ALJ erred in weighing the opinion of Plaintiff's  
3 treating physician Venugopal Bellum, M.D. ECF No. 14 at 18-20. Specifically,  
4 Plaintiff argues that the ALJ's reasons for giving little weight to Dr. Bellum's  
5 opinion are not supported by the record.

6 Because treating physicians are employed to cure and thus have a greater  
7 opportunity to know and observe the patient as an individual, their opinions are  
8 given greater weight than the opinions of other physicians. *Smolen v. Chater*, 80  
9 F.3d 1273, 1285 (9th Cir. 1996); *Sprague*, 812 F.2d at 1230. An ALJ may not  
10 reject a treating physician's opinion without providing findings that set forth  
11 "specific, legitimate reasons" based upon "substantial evidence in the record."  
12 *Smolen*, 80 F.3d at 1285; *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).  
13 If the treating physician opinion is uncontroverted, the ALJ's reasons for rejecting  
14 the opinion must be "clear and convincing." *Smolen*, 80 F.3d at 1285.

15 On October 27, 2009, Dr. Bellum completed a Physical Evaluation check-  
16 box form. Tr. 643-46. Dr. Bellum listed Plaintiff's diagnoses as headaches and  
17 myalgia, and he opined that both conditions caused mild to moderate limitations of  
18 work activities. Tr. 645. Dr. Bellum concluded Plaintiff's overall work level was  
19 limited to light work. Tr. 645.

20 On March 18, 2010, Dr. Bellum completed a Physical Evaluation check-box  
21 form. Tr. 662-65. Dr. Bellum listed Plaintiff's diagnoses as chronic cervicalgia  
22 and neuropathy, and he opined that cervicalgia caused marked to severe limitations  
23 of work activities. Tr. 664. Dr. Bellum concluded Plaintiff's overall work level  
24 was "severely limited." Tr. 664.

25 On June 8, 2010, Dr. Bellum completed a Physical Evaluation check-box  
26 form.<sup>2</sup> Tr. 470-72. In this form, Dr. Bellum indicated Plaintiff's diagnoses were  
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28 <sup>2</sup>The form appears to be missing the first page.

1 chronic cervicalgia and chronic low back pain, and he opined the cervicalgia  
2 caused marked limitations of work activities. Tr. 471. Dr. Bellum concluded  
3 Plaintiff's overall work level was "severely limited." Tr. 471.

4 Dr. Bellum completed two check-box forms from DSHS related to  
5 Plaintiff's application for general assistance. Tr. 466-69. In the form completed  
6 May 4, 2010, Dr. Bellum opined Plaintiff's work function was impaired, his  
7 condition was stable and in a work day he could (1) stand two-to-three hours; (2)  
8 sit two-to-three hours; (3) lift 10 pounds occasionally; and (4) lift five-to-seven  
9 pounds frequently. Tr. 468. In the form completed on November 11, 2010, Dr.  
10 Bellum opined Plaintiff's work function was impaired, his condition was  
11 deteriorating, and in a work day he could (1) stand two hours; (2) sit two hours; (3)  
12 lift 10 pounds occasionally; and (4) lift five pounds frequently. Tr. 468.

13 The ALJ gave Dr. Bellum's opinions little weight because "he gave widely  
14 fluctuating limitations without clear explanations for oscillations between light  
15 [work] and severely limited. The non-linear pattern is not consistent with general  
16 worsening over time, as the claimant contends." Tr. 25. Also, the ALJ found that  
17 Dr. Bellum's opinions were inconsistent with the weight Plaintiff reported he could  
18 lift, and with the activities Plaintiff acknowledged to the doctor including moving  
19 furniture, climbing stairs and acting as primary caregiver for parents. Tr. 26.  
20 Finally, the ALJ found that Dr. Bellum's assessments were internally inconsistent  
21 with his treatment notes. Tr. 26.

22 First, Plaintiff argues that the record does not support ALJ's characterization  
23 of Dr. Bellum's assessments as "widely fluctuating" and as "non-linear" and, thus,  
24 inconsistent with Plaintiff's allegation his condition was deteriorating. ECF No. 14  
25 at 18-19. An ALJ may discredit physicians' opinions that are conclusory, brief,  
26 and unsupported by the record as a whole, or by objective medical findings.  
27 *Batson*, 359 F.3d at 1195. In this case, the ALJ's observation that the check-box  
28 forms provided no explanation about Plaintiff's worsening symptoms is supported

1 by the record. The forms require minimal information and Dr. Bellum provided  
2 scant notations about Plaintiff's condition. However, the record does not support  
3 the ALJ's characterization that Dr. Bellum's opinions widely fluctuated and  
4 contradicted a deterioration of Plaintiff's condition. Instead, the sequence of the  
5 Physical Evaluations reveal a steady decline in Plaintiff's condition, most  
6 obviously by the increase in the severity of the limitations caused by his condition,  
7 and by the decline in Plaintiff's assessed overall work level.

8 Second, Plaintiff argues that the record does not support the ALJ's findings  
9 that Plaintiff's activities contradicted Dr. Bellum's assessment of Plaintiff's  
10 abilities. ECF No. 14 at 19. A physician's opinion may be discounted where it is  
11 inconsistent with a claimant's level of functioning. *Rollins v. Massanari*, 261 F.3d  
12 853, 856 (9th Cir. 2001). Plaintiff explains that Dr. Bellum's assessment was  
13 related to Plaintiff's ability to sustain full-time employment, and his ability to help  
14 his mother sporadically does not equate with the ability to work in a competitive  
15 work environment. ECF No. 14 at 19.

16 The ALJ relied in part upon Plaintiff's function report, dated October 20,  
17 2010, in which Plaintiff asserted he could lift up to 15 pounds, and "it hurts if it's  
18 heavy." Tr. 26; 173. Plaintiff does not elaborate on how long, or how often he is  
19 able to lift 15 pounds. Also, Plaintiff indicated that bending too much hurts his  
20 lower back; standing too long hurts his neck and lower back; and kneeling hurts his  
21 neck. Tr. 173. He said he can walk five to 15 minutes, and then must rest for  
22 between 15 to 30 minutes before he can walk again. Tr. 173. It is not apparent  
23 that these assertions by Plaintiff contradict Dr. Bellum's assessment of his ability  
24 to work a full time job.

25 Additionally, the ALJ concluded that Dr. Bellum's treatment note from June,  
26 2010, contradicted his assessment of Plaintiff's abilities, stating that nothing in the  
27 treatment note "described a person who had a complete inability to walk." Tr. 26.  
28 In that treatment note, Dr. Bellum notes that Plaintiff reported his chronic low back

1 pain had been aggravated for several weeks. Tr. 436. The Physical Evaluation  
2 form completed in June 2010, by Dr. Bellum concluded Plaintiff's overall work  
3 level was "severely limited," which is defined on the form as "unable to lift at least  
4 two pounds or unable to stand and/or walk." Tr. 471. The ALJ's conclusion that  
5 an assessment of Plaintiff's overall work ability as "severely limited," equates with  
6 a "complete inability to walk" is not supported in law or fact. While the check-box  
7 form is abbreviated, the purpose is to provide an assessment of Plaintiff's ability to  
8 sustain full time work. It is less than clear that a "severely limited" rating means  
9 the patient is entirely unable to stand or walk for any amount of time, as interpreted  
10 by the ALJ in this opinion.

11 The ALJ's reasons for discounting Dr. Bellum's opinion were not specific,  
12 legitimate and based upon substantial evidence in the record. On remand, the ALJ  
13 will reconsider Dr. Bellum's opinions and provide a new analysis.

#### 14 **C. Mental Limitations**

15 Plaintiff contends that the ALJ erred by failing to include in the RFC, mental  
16 health limitations assessed by three doctors, including Aaron R. Burdge, Ph.D.,  
17 Phillip Rodenberger, M.D., and Christopher J. Clark, M.Ed. ECF No. 14 at 20.  
18 Plaintiff's argument is abbreviated and fails to identify with specificity the  
19 limitations he alleges were improperly omitted from his RFC. Instead, Plaintiff's  
20 entire argument on this issue is limited to the assertion that the opinions from the  
21 three medical providers "all support a finding of disabled based on mental health  
22 concerns" and "the ALJ failed to include many limitations as set forth, supra,  
23 relating to [Plaintiff's] mental health problems in the RFC." ECF No. 14 at 20-21.  
24 Plaintiff cites to three exhibits, one of which is 180 pages long, but fails to identify  
25 particular findings within those exhibits. The court ordinarily will not consider  
26 matters on appeal that are not specifically and distinctly argued in an appellant's  
27 opening brief. See *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1161  
28 n.2 (9th Cir. 2008). The Ninth Circuit has repeatedly admonished that the court

1 will not "manufacture arguments for an appellant" and, therefore, will not consider  
2 claims that were not actually argued in appellant's opening brief. *Greenwood v.*  
3 *Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994). Because Plaintiff failed to  
4 provide adequate briefing, the court is unable to consider this issue.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the court concludes the  
7 ALJ's decision is based on legal error, and requires remand. On remand, the ALJ  
8 is directed to perform a new analysis related to Plaintiff's credibility and a new  
9 analysis related to Dr. Bellum's opinion. The decision is therefore REVERSED  
10 and the case is REMANDED for further proceedings consistent with this opinion.  
11 Accordingly,

12 **IT IS ORDERED:**

- 13 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is  
14 **GRANTED**.  
15 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is  
16 **DENIED**.  
17 3. An application for attorney fees may be filed by separate motion.

18 The District Court Executive is directed to file this Order and provide a copy  
19 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff, and  
20 the file shall be CLOSED.

21 DATED January 13, 2015.

A handwritten signature in black ink, appearing to be "M" or "Rodgers".

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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE