

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 17, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEZARAY B.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY¹,

Defendant.

No. 1:19-CV-03120-JTR

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 14, 18. Attorney D. James Tree represents Dezaray B. (Plaintiff); Special Assistant United States Attorney Jacob Peter Phillips represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 5. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and

¹ Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. See Fed. R. Civ. P. 25(d).

1 **REMANDS** the matter to the Commissioner for additional proceedings pursuant to
2 42 U.S.C. § 405(g).

3 **JURISDICTION**

4 Plaintiff filed an application for Supplemental Security Income on
5 September 30, 2015, alleging disability since August 21, 2015, due to depression,
6 anxiety, insomnia, sciatic nerve pain, PTSD, and bipolar disorder. Tr. 69. The
7 application was denied initially and upon reconsideration. Tr. 98-106, 110-16.
8 Administrative Law Judge (ALJ) Laura Valente held a hearing on September 28,
9 2017, Tr. 38-67, and issued an unfavorable decision on April 18, 2018, Tr. 15-27.
10 Plaintiff requested review of the ALJ's decision from the Appeals Council. Tr.
11 167. The Appeals Council denied the request for review on April 2, 2019. Tr. 1-5.
12 The ALJ's April 2018 decision is the final decision of the Commissioner, which is
13 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
14 action for judicial review on May 29, 2019. ECF No. 1.

15 **STATEMENT OF FACTS**

16 Plaintiff was born in 1984 and was 31 years old as of the date she filed her
17 application. Tr. 22. She has a GED and some college course work and a limited
18 work history. Tr. 196, 574. Plaintiff had a traumatic childhood, involving the death
19 of her older sister, her father's death by drug overdose, and Plaintiff's placement in
20 foster care. Tr. 59, 406-07, 419. At the age of 18 Plaintiff returned to live with her
21 mother and began using drugs. Tr. 59-60, 572. She had a period of sobriety for
22 about five years in her 20s, but returned to methamphetamine and heroin use. Tr.
23 52. In late 2014 Plaintiff discovered her partner had been abusing her daughter; she
24 experienced a significant increase in her depression and anxiety in dealing with the
25 fall-out from the abuse, including his criminal trial. Tr. 414, 571, 829. In 2016
26 Plaintiff's children were removed from her custody and placed in foster care. Tr.
27 800. In May 2017 Plaintiff entered a 30-day detox and then transferred to a six-
28 month inpatient treatment facility. Tr. 676. Shortly before her disability hearing,

1 her middle child was returned to her custody and came to live with her in the
2 treatment home. Tr. 46, 1067.

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 interpretation 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). If substantial evidence supports the
18 administrative findings, or if conflicting evidence supports a finding of either
19 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
20 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
21 supported by substantial evidence will be set aside if the proper legal standards
22 were not applied in weighing the evidence and making the decision. *Brawner v.*
23 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

24 **SEQUENTIAL EVALUATION PROCESS**

25 The Commissioner has established a five-step sequential evaluation process
26 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
27 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of
28 proof rests upon the claimant to establish a prima facie case of entitlement to

1 disability benefits. Tackett, 180 F.3d at 1098-1099. This burden is met once a
2 claimant establishes that a physical or mental impairment prevents the claimant
3 from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant
4 cannot perform past relevant work, the ALJ proceeds to step five, and the burden
5 shifts to the Commissioner to show (1) the claimant can make an adjustment to
6 other work; and (2) the claimant can perform specific jobs that exist in the national
7 economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-
8 1194 (2004). If a claimant cannot make an adjustment to other work in the national
9 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

10 “A finding of ‘disabled’ under the five-step inquiry does not automatically
11 qualify a claimant for disability benefits.” *Parra v. Astrue*, 481 F.3d 742, 746 (9th
12 Cir. 2007) (citing *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001)).
13 When there is medical evidence of drug or alcohol addiction (DAA), the ALJ must
14 determine whether the drug or alcohol addiction is a material factor contributing to
15 the disability. 20 C.F.R. § 416.935(a). In order to determine whether DAA is a
16 material factor contributing to the disability, the ALJ must evaluate which of the
17 current physical and mental limitations would remain if the claimant stopped using
18 drugs or alcohol, then determine whether any or all of the remaining limitations
19 would be disabling. 20 C.F.R. § 416.935(b)(2). If the remaining limitations would
20 not be disabling, DAA is a material contributing factor to the determination of
21 disability. *Id.* If the remaining limitations would be disabling, the claimant is
22 disabled independent of the DAA and the addiction is not a material contributing
23 factor to disability. *Id.* Plaintiff has the burden of showing that DAA is not a
24 material contributing factor to disability. See *Parra*, 481 F.3d at 748.

25 **ADMINISTRATIVE DECISION**

26 On April 18, 2018, the ALJ issued a decision finding Plaintiff was not
27 disabled as defined in the Social Security Act, due to the materiality of substance
28 abuse. Tr. 15-27.

1 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
2 activity since the application date. Tr. 17.

3 At step two, the ALJ determined Plaintiff had the following severe
4 impairments: low back disorder, opioid abuse, major depressive disorder, and
5 anxiety disorder. Id.

6 At step three, the ALJ found Plaintiff did not have an impairment or
7 combination of impairments that met or medically equaled the severity of one of
8 the listed impairments. Tr. 18-19.

9 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
10 she could perform a range of medium work, with the following limitations:

11 The claimant can perform all postural activities on a frequent basis,
12 except stooping, kneeling, crouching, and crawling are limited to an
13 occasional basis. She can perform simple, routine tasks in two hour
14 increments and she can maintain concentration, persistence, and pace
15 for six hours in an eight hour work day. She can work in the same
16 room as the public, but she can have only superficial, occasional
17 contact. She is further limited to working in the same room as co-
18 workers, but not in coordination. The claimant can handle simple,
19 routine changes. She is limited to occasional interaction with
supervisors. The claimant will likely be absent from work three days
per month.

20 Tr. 19.

21 At step four, the ALJ found Plaintiff was unable to perform her past relevant
22 work as a cashier or counter attendant. Tr. 22

23 At step five, the ALJ found that, considering Plaintiff's age, education, work
24 experience and residual functional capacity, there were no jobs that existed in
25 significant numbers in the national economy that Plaintiff could perform. Tr. 22-
26 23.

27 Because of Plaintiff's substance abuse, the ALJ further considered her
28 abilities if she were to stop using drugs. Tr. 23. The ALJ found Plaintiff's

1 remaining impairment would continue to be severe, but would not meet or
2 medically equal a listing. Tr. 23.

3 The ALJ found, if Plaintiff stopped the substance abuse, she would retain the
4 same physical capabilities, but would have the following additional limitations:

5 The claimant has sufficient concentration for complex and detailed
6 tasks in two hour increments with usual and customary breaks in an
7 eight hour work day. She can work in the same room as the public, but
8 she can have only superficial contact. She is further limited to
9 working in the same room as co-workers, but not in coordination. The
10 claimant can handle simple, routine changes. She is limited to
occasional interaction with supervisors.

11 Tr. 24.

12 The ALJ found Plaintiff would continue to be unable to perform her past
13 relevant work even if she stopped the substance abuse. Tr. 26.

14 The ALJ finally found that, considering Plaintiff’s age, education, work
15 experience, and residual functional capacity if she stopped using drugs, there
16 would be jobs that existed in significant numbers in the national economy that she
17 was capable of performing, specifically identifying the representative occupations
18 of cleaner/housekeeper, production assembler, and outside deliverer. Tr. 26.

19 The ALJ thus concluded Plaintiff’s substance use disorder was a
20 contributing factor material to the determination of disability, and thus Plaintiff
21 was not under a disability within the meaning of the Social Security Act at any
22 time from the date the application was filed through the date of the decision. Tr.
23 26-27.

24 **ISSUES**

25 The question presented is whether substantial evidence supports the ALJ’s
26 decision denying benefits and, if so, whether that decision is based on proper legal
27 standards.
28

1 Plaintiff contends the ALJ erred by (1) improperly finding substance abuse
2 to be material to the finding of disability; (2) improperly assessing medical opinion
3 evidence; (3) improperly rejecting Plaintiff’s symptom testimony; and (4) failing to
4 develop the record.

5 **DISCUSSION**

6 **1. Materiality of substance abuse**

7 Plaintiff argues the ALJ improperly found substance abuse to be material to
8 the finding of disability. ECF No. 14 at 9-12. Specifically, she argues the ALJ
9 failed to point to sufficient evidence demonstrating Plaintiff’s co-occurring mental
10 impairments are not disabling in the absence of substance abuse. *Id.* Defendant
11 argues that substantial evidence supports the ALJ’s finding that substance abuse
12 was material, specifically pointing to a period of sobriety to make reasonable
13 judgments about Plaintiff’s abilities when not abusing substances. ECF No. 18 at
14 3-7.

15 The Social Security Act bars payment of benefits when drug abuse or
16 alcoholism (DAA) is a contributing factor material to a disability claim. 42 U.S.C.
17 §§ 423(d)(2)(C) & 1382(a)(3)(J); *Bustamante v. Massanari*, 262 F.3d 949 (9th Cir.
18 2001). If there is evidence from an acceptable medical source that Plaintiff has a
19 substance abuse disorder and the claimant succeeds in proving disability, the
20 Commissioner must determine whether DAA is material to the determination of
21 disability. 20 C.F.R. § 416.935; SSR 13-2p (Feb. 20, 2013), available at 2013 WL
22 621536. That is, the ALJ must perform the sequential evaluation process a second
23 time, separating out the impact of the claimant’s DAA, to determine if she would
24 still be found disabled if she stopped using drugs or alcohol. *Bustamante*, 262 F.3d
25 at 955. DAA is a materially contributing factor if the claimant would not meet the
26 SSA’s definition of disability if the claimant were not using drugs or alcohol. 20
27 C.F.R. § 416.935(b).

1 To determine the materiality of DAA, the ALJ will “[1] evaluate which of
2 [the claimant’s] current physical and mental limitations . . . would remain if [the
3 claimant] stopped using drugs or alcohol and then [2] determine whether any or all
4 of [the claimant’s] remaining limitations would be disabling.” *Ingram v. Barnhart*,
5 72 Fed. Appx. 631, 634 (9th Cir. 2003) (citing 20 C.F.R. § 416.935(b)(2)).

6 Plaintiff has a lengthy history of substance abuse, and readily admitted to her
7 extensive heroin and methamphetamine abuse throughout much of the relevant
8 period. Tr. 50-51, 457, 603-06, 725, 772. In May 2017, Plaintiff entered a 30-day
9 detoxification program, and then transferred to a residential facility for a planned
10 six-month stay for further substance abuse treatment. Tr. 676, 923. She continued
11 to reside at the facility as of her hearing in September 2017, and was maintaining
12 her sobriety. Tr. 57-58. The ALJ found the evidence from Plaintiff’s period of
13 sobriety supported a finding that her condition improved in the absence of
14 substance abuse to the point of being capable of working. Tr. 24-26.

15 Social Security Ruling 13-2p(7) addresses situations where a claimant’s co-
16 occurring mental disorders improve in the absence of DAA:

17 b. To support a finding that DAA is material, we must have evidence
18 in the case record that establishes that a claimant with a co-occurring
19 mental disorder(s) would not be disabled in the absence of DAA.
20 Unlike cases involving physical impairments, we do not permit
21 adjudicators to rely exclusively on medical expertise and the nature of
22 a claimant's mental disorder.

22 . . .
23 d. We will find that DAA is not material to the determination of
24 disability and allow the claim if the record is fully developed and the
25 evidence does not establish that the claimant's co-occurring mental
26 disorder(s) would improve to the point of nondisability in the absence
27 of DAA.
28

1 SSR 13-2p(7). The Ruling goes on to discuss the assessment of periods of
2 abstinence in DAA cases in the presence of co-occurring mental impairments. It
3 provides in pertinent part:

4 i. Improvement in a co-occurring mental disorder in a highly
5 structured treatment setting, such as a hospital or substance abuse
6 rehabilitation center, may be due at least in part to treatment for the
7 co-occurring mental disorder, not (or not entirely) the cessation of
8 substance use. We may find that DAA is not material depending on
9 the extent to which the treatment for the co-occurring mental disorder
10 improves the claimant's signs and symptoms. If the evidence in the
11 case record does not demonstrate the separate effects of the treatment
12 for DAA and for the co-occurring mental disorder(s), we will find
13 that DAA is not material, as we explain in Question 7.

14 ii. A co-occurring mental disorder may appear to improve because of
15 the structure and support provided in a highly structured treatment
16 setting. As for any mental disorder, we may find that a claimant's co-
17 occurring mental disorder(s) is still disabling even if increased support
18 or a highly structured setting reduce the overt symptoms and signs of
19 the disorder.

20 iii. Given the foregoing principles, a single hospitalization or other
21 inpatient intervention is not sufficient to establish that DAA is
22 material when there is evidence that a claimant has a disabling co-
23 occurring mental disorder(s). We need evidence from outside of such
24 highly structured treatment settings demonstrating that the claimant's
25 co-occurring mental disorder(s) has improved, or would improve, with
26 abstinence

27 SSR 13-2p(9).

28 The Court finds the ALJ's finding of improvement to the point of non-
disability in the absence of DAA is not supported by substantial evidence. All of
the records of improvement the ALJ cited to were from a period of time when
Plaintiff was still residing in the highly structured setting of her residential
treatment facility. In July, for example, Plaintiff had reached the point where she

1 was allowed five weekly passes from the facility in order to attend NA meetings
2 and church, but still had to be accompanied by someone else. Tr. 675. By
3 September, her son was returned to her custody, but was living with her in the
4 facility. Tr. 46. The records document that Plaintiff was continuing to attend
5 therapy and medication management, and was dealing with emotions around her
6 daughter's abuse and her own trauma. Tr. 669, 674. Under SSR 13-2p, evidence
7 from outside such a structured setting is needed to indicate improvement to the
8 point of non-disability.

9 On remand, the ALJ will re-evaluate the materiality of DAA and take into
10 consideration any additional evidence that Plaintiff may submit.

11 **2. Plaintiff's subjective statements**

12 Plaintiff contends the ALJ erred by improperly rejecting her subjective
13 complaints. ECF No. 14 at 19-20.

14 It is the province of the ALJ to make credibility determinations. *Andrews v.*
15 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be
16 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
17 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
18 medical impairment, the ALJ may not discredit testimony as to the severity of an
19 impairment merely because it is unsupported by medical evidence. *Reddick v.*
20 *Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of
21 malingering, the ALJ's reasons for rejecting the claimant's testimony must be
22 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
23 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are
24 insufficient: rather the ALJ must identify what testimony is not credible and what
25 evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
26 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

27 The ALJ concluded Plaintiff's medically determinable impairments could
28 reasonably be expected to cause the alleged symptoms; however, Plaintiff's

1 statements concerning the intensity, persistence and limiting effects of those
2 symptoms were not entirely consistent with the medical evidence and other
3 evidence in the record. Tr. 25. Specifically, the ALJ found there was no evidence
4 of treatment in the record to corroborate Plaintiff's testimony that her anxiety had
5 worsened since achieving sobriety. Id. The ALJ also noted largely normal physical
6 findings and conservative treatment for her back pain. Id.

7 As this claim is being remanded for further consideration of the materiality
8 of substance abuse, the ALJ will reassess Plaintiff's subjective complaints, and
9 make specific findings regarding the reliability of her allegations. The Court notes
10 the ALJ's summary of Plaintiff's allegations largely drew from statements made
11 when Plaintiff was still abusing drugs. Tr. 25 (citing exhibit 4E, completed in
12 December 2015, in this record at Tr. 202-09). On remand, the ALJ should clarify
13 which portions of Plaintiff's statements and testimony are accepted or rejected.

14 **3. Opinion evidence**

15 Plaintiff argues the ALJ erred in evaluating the medical opinion evidence by
16 improperly rejecting the opinions from Dr. Sawyer and Ms. Mondragon. ECF No.
17 14 at 13-19.

18 a. Dr. Sawyer

19 When an examining physician's opinion is contradicted by another
20 physician, the ALJ must offer "specific and legitimate" reasons to reject the
21 opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). The specific and
22 legitimate standard can be met by the ALJ setting out a detailed and thorough
23 summary of the facts and conflicting clinical evidence, stating her interpretation
24 thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
25 1989).

26 In January 2016, Plaintiff attended a consultative psychological exam with
27 Dr. Greg Sawyer. Tr. 570-79. Dr. Sawyer diagnosed Plaintiff with PTSD, major
28 depressive disorder, history of bipolar disorder, and traits of borderline personality

1 disorder. Tr. 577. He opined Plaintiff would not have difficulty with simple routine
2 tasks, accepting instruction, and performing work activities on a consistent basis.
3 Tr. 578. He found she would have difficulty with detailed and complex tasks,
4 carrying out complex and 1-2 step instructions, maintaining effective social
5 interactions, sustaining concentration and persistence, maintaining regular
6 attendance, and dealing with usual stress in the workplace. Tr. 578-79.

7 The ALJ gave this opinion some weight, but noted that Dr. Sawyer failed to
8 mention the effects of Plaintiff's substance abuse on her functioning, and noted
9 that Plaintiff had provided incorrect evidence to Dr. Sawyer regarding her ongoing
10 substance abuse. Tr. 21. Nevertheless, the ALJ incorporated cognitive, social, and
11 adaptive limitations into the RFC evaluating Plaintiff's abilities when using
12 substances. Tr. 21-22.

13 Plaintiff argues Dr. Sawyer's assessed limitations were based on his
14 objective assessment and the fact that he did not separately assess the impact of
15 substance use was not a specific and legitimate reason to discount his opinion. ECF
16 No. 14 at 15. She further argues that the ALJ was incorrect about Dr. Sawyer not
17 addressing substance use and Plaintiff providing incorrect information about
18 sobriety. Id. at 15-17. Defendant argues the ALJ reasonably translated Dr.
19 Sawyer's opinion into functional limitations that were disabling when considering
20 the impact of substance abuse, and that the ALJ's reading of the record was
21 supported by substantial evidence. ECF No. 18 at 7-11.

22 The Court finds no error. The ALJ reasonably found Dr. Sawyer's opinion to
23 be premised to some extent on incorrect information from Plaintiff regarding her
24 sobriety. *Chaudhry v. Astrue*. 688 F.3d 661, 671 (9th Cir. 2012). Furthermore, Dr.
25 Sawyer assessed disabling limitations during a period of time when Plaintiff was
26 continuing to use drugs; the ALJ found Plaintiff to be unable to work full time
27 when using drugs. Plaintiff has advanced no explanation as to how Dr. Sawyer's
28

1 opinion would reflect her abilities when sober. The ALJ did not err in her analysis
2 of Dr. Sawyer's opinion.

3 b. Ms. Mondragon

4 An ALJ may discount the opinion of an "other source," such as a nurse
5 practitioner, if she provides "reasons germane to each witness for doing so."
6 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

7 Plaintiff's treating social worker, Gabriela Mondragon, completed a Work
8 First form for the Department of Social and Health Services in October 2015. Tr.
9 398-401. She noted Plaintiff's diagnoses to include bipolar disorder, PTSD, and
10 severe opioid use. Tr. 398. She opined Plaintiff was limited to 1-10 hours per week
11 of work-related activity, and would have difficulty with concentration and
12 interactions with others. *Id.*

13 The ALJ gave this opinion some weight for the period when Plaintiff was
14 using substances, however she noted that the opinion failed to account for the
15 effects of Plaintiff's substance use and how the use played into her other mental
16 health issues. Tr. 21.

17 Plaintiff argues the ALJ was wrong to find the opinion did not account for
18 how substance use contributed to Plaintiff's other mental health issues, and argues
19 that the disabling limitations were specifically linked to psychiatric limitations
20 alone. ECF No. 14 at 17-19. Defendant argues the ALJ reasonably accounted for
21 the opinion in formulating the RFC with substance use, and to the extent the ALJ
22 rejected it, gave a germane reason. ECF No. 18 at 11-14. Defendant further argues
23 the opinion does not clearly comment only on limitations related to mental health,
24 as Ms. Mondragon noted one of Plaintiff's diagnoses to be severe opioid abuse. *Id.*

25 The Court finds no harmful error. As with Dr. Sawyer's opinion, the
26 opinion from Ms. Mondragon was offered during a period when Plaintiff was
27 engaged in extensive substance abuse. Though the RFC formulated by the ALJ was
28 not as limiting as the opinion offered by Ms. Mondragon, any omission of greater

1 limitations was harmless, as the ALJ found Plaintiff unable to work when
2 considering the impact of substances. Plaintiff's argument that Ms. Mondragon's
3 opinion only reflects limitations stemming from mental health impairments is not
4 supported by the record.

5 **4. Development of the record**

6 Plaintiff argues that the ALJ erred in failing to adequately develop the record
7 with respect to Plaintiff's RFC when not using substances. ECF No. 14 at 20-21.
8 Plaintiff argues the ALJ should have obtained an updated psychological evaluation
9 once Plaintiff had achieved sobriety. *Id.* Defendant argues the record was
10 unambiguous and the ALJ had no further duty to develop the record. ECF No. 18
11 at 17-18.

12 The obligation to develop the record "is triggered only when there is
13 ambiguous evidence or when the record is inadequate to allow for proper
14 evaluation of the evidence." *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir.
15 2001). As this claim is being remanded for further proceedings, the ALJ will
16 reassess, based on the updated record, whether any additional evidence is needed
17 to make an evaluation of disability and the materiality of substance use.

18 **CONCLUSION**

19 Plaintiff argues the decision should be reversed and remanded for the
20 payment of benefits. The Court has the discretion to remand the case for additional
21 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292
22 (9th Cir. 1996). The Court may award benefits if the record is fully developed and
23 further administrative proceedings would serve no useful purpose. *Id.* Remand is
24 appropriate when additional administrative proceedings could remedy defects.
25 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court
26 finds that further development is necessary for a proper determination to be made.

27 The ALJ's decision is not supported by substantial evidence. On remand, the
28 ALJ shall reevaluate the materiality of substance abuse, and in so doing reassess

1 Plaintiff's subjective complaints and make findings on each of the five steps of the
2 sequential evaluation process, obtaining supplemental testimony from a vocational
3 expert as needed, and taking into consideration any other evidence or testimony
4 relevant to Plaintiff's disability claim.

5 Accordingly, **IT IS ORDERED:**

6 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is
7 **GRANTED IN PART.**

8 2. Defendant's Motion for Summary Judgment, **ECF No. 18**, is
9 **DENIED.**

10 3. The matter is **REMANDED** to the Commissioner for additional
11 proceedings consistent with this Order.

12 4. An application for attorney fees may be filed by separate motion.

13 The District Court Executive is directed to file this Order and provide a copy
14 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and
15 the file shall be **CLOSED.**

16 **IT IS SO ORDERED.**

17 DATED July 17, 2020.



21
22
23
24
25
26
27
28

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

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE