

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

Jul 06, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHERYL C.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No: 1:19-CV-03128-FVS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 10, 19. This matter was submitted for consideration without oral argument. The Plaintiff is represented by Attorney D. James Tree. The Defendant is represented by Special Assistant United States Attorney Summer Stinson. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS, in part**, Plaintiff's Motion for Summary Judgment, ECF No. 10, and **DENIES** Defendant's Motion for Summary Judgment, ECF No. 19.

1 **JURISDICTION**

2 Plaintiff Sheryl C.<sup>1</sup> filed for supplemental security income benefits on July  
3 13, 2016, Tr. 90, alleging a disability onset date of July 1, 2016, Tr. 182, due to a  
4 right shoulder injury, depression, and arthritis, Tr. 214. Benefits were denied  
5 initially, Tr. 126-34, and upon reconsideration, Tr. 138-44. A hearing before  
6 Administrative Law Judge Stephanie Martz (“ALJ”) was conducted on February 1,  
7 2018. Tr. 43-64. Plaintiff was represented by counsel and testified at the hearing.  
8 *Id.* The ALJ also took testimony from vocational expert Becky Hill. *Id.* The ALJ  
9 denied benefits on June 13, 2018. Tr. 18-34. The Appeals Council denied review  
10 on April 11, 2019. Tr. 1-6. The matter is now before this court pursuant to 42  
11 U.S.C. §§ 405(g); 1383(c)(3).

12 **BACKGROUND**

13 The facts of the case are set forth in the administrative hearing and  
14 transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner.  
15 Only the most pertinent facts are summarized here.

16 Plaintiff was 43 years old as of the application date. Tr. 182. She received  
17 her GED and bookkeeping certificate in 1992. Tr. 215. Plaintiff’s work history  
18

19 \_\_\_\_\_  
20 <sup>1</sup>In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s  
21 first name and last initial, and, subsequently, Plaintiff’s first name only, throughout  
this decision.

1 includes the jobs of cashier and sorter. Tr. 197, 215. Plaintiff reported that she  
2 stopped working in October of 2010 due to her conditions. Tr. 214.

### 3 STANDARD OF REVIEW

4 A district court's review of a final decision of the Commissioner of Social  
5 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
6 limited; the Commissioner's decision will be disturbed "only if it is not supported  
7 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
8 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
9 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
10 (quotation and citation omitted). Stated differently, substantial evidence equates to  
11 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
12 citation omitted). In determining whether the standard has been satisfied, a  
13 reviewing court must consider the entire record as a whole rather than searching  
14 for supporting evidence in isolation. *Id.*

15 In reviewing a denial of benefits, a district court may not substitute its  
16 judgment for that of the Commissioner. If the evidence in the record "is  
17 susceptible to more than one rational interpretation, [the court] must uphold the  
18 ALJ's findings if they are supported by inferences reasonably drawn from the  
19 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district  
20 court "may not reverse an ALJ's decision on account of an error that is harmless."  
21 *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate  
nondisability determination." *Id.* at 1115 (quotation and citation omitted). The

1 party appealing the ALJ's decision generally bears the burden of establishing that  
2 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 3 **FIVE-STEP EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered "disabled" within  
5 the meaning of the Social Security Act. First, the claimant must be "unable to  
6 engage in any substantial gainful activity by reason of any medically determinable  
7 physical or mental impairment which can be expected to result in death or which  
8 has lasted or can be expected to last for a continuous period of not less than twelve  
9 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be  
10 "of such severity that he is not only unable to do his previous work[,] but cannot,  
11 considering his age, education, and work experience, engage in any other kind of  
12 substantial gainful work which exists in the national economy." 42 U.S.C. §  
13 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to  
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
16 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work  
17 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial  
18 gainful activity," the Commissioner must find that the claimant is not disabled. 20  
19 C.F.R. § 416.920(b).

20 If the claimant is not engaged in substantial gainful activity, the analysis  
21 proceeds to step two. At this step, the Commissioner considers the severity of the  
claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from

1 “any impairment or combination of impairments which significantly limits [his or  
2 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
3 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
4 this severity threshold, however, the Commissioner must find that the claimant is  
5 not disabled. 20 C.F.R. § 416.920(c).

6 At step three, the Commissioner compares the claimant’s impairment to  
7 severe impairments recognized by the Commissioner to be so severe as to preclude  
8 a person from engaging in substantial gainful activity. 20 C.F.R. §  
9 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
10 enumerated impairments, the Commissioner must find the claimant disabled and  
11 award benefits. 20 C.F.R. § 416.920(d).

12 If the severity of the claimant’s impairment does not meet or exceed the  
13 severity of the enumerated impairments, the Commissioner must pause to assess  
14 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),  
15 defined generally as the claimant’s ability to perform physical and mental work  
16 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
17 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

18 At step four, the Commissioner considers whether, in view of the claimant’s  
19 RFC, the claimant is capable of performing work that he or she has performed in  
20 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
21 capable of performing past relevant work, the Commissioner must find that the

1 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
2 performing such work, the analysis proceeds to step five.

3 At step five, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing other work in the national economy.  
5 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
6 must also consider vocational factors such as the claimant's age, education and  
7 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of  
8 adjusting to other work, the Commissioner must find that the claimant is not  
9 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to  
10 other work, analysis concludes with a finding that the claimant is disabled and is  
11 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

12 The claimant bears the burden of proof at steps one through four. *Tackett v.*  
13 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,  
14 the burden shifts to the Commissioner to establish that (1) the claimant is capable  
15 of performing other work; and (2) such work "exists in significant numbers in the  
16 national economy." 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,  
17 389 (9th Cir. 2012).

### 18 **ALJ'S FINDINGS**

19 At step one, the ALJ found that Plaintiff has not engaged in substantial  
20 gainful activity since July 13, 2016, the application date. Tr. 21. At step two, the  
21 ALJ found that Plaintiff has the following severe impairments: obesity; right

1 shoulder impingement syndrome/tendinitis; affective disorder; and anxiety  
2 disorder. Tr. 21. At step three, the ALJ found that Plaintiff does not have an  
3 impairment or combination of impairments that meets or medically equals the  
4 severity of a listed impairment. Tr. 22. The ALJ then found that Plaintiff has the  
5 RFC to perform light work as defined in 20 C.F.R. § 416.967(b) with the following  
6 limitations:

7 the claimant can lift and/or carry 20 pounds occasionally and 10 pounds  
8 frequently; sit about 6 hours and stand and/or walk about 6 hours in an  
9 8-hour day with regular breaks; occasionally push/pull within these  
10 exertional limitations with her right dominant arm; otherwise she has  
11 no limits pushing or pulling; occasionally reach in all directions with  
12 her right dominant arm; frequently climb ramps and stairs; occasionally  
13 climb ladders, ropes or scaffolds; unlimited ability to balance and stoop;  
14 occasionally kneel, crouch, and crawl; avoid concentrated exposure to  
15 vibrations and hazards. She can understand, remember, and carry out  
16 simple and routine tasks, accept instructions from supervisors, have  
17 occasional superficial contact with the general public, and needs a  
18 routine and predictable work environment.

14 Tr. 24. At step four, the ALJ identified Plaintiff's past relevant work as cashier II  
15 and agricultural produce sorter and found that Plaintiff is unable to perform any  
16 past relevant work. Tr. 33. At step five, the ALJ found that considering Plaintiff's  
17 age, education, work experience, and RFC, there are other jobs that exist in  
18 significant numbers in the national economy that Plaintiff can perform, including  
19 scaling machine operator, laminating machine offbearer, and conveyer line bakery  
20 worker. Tr. 34. On that basis, the ALJ concluded that Plaintiff has not been under  
21 a disability, as defined in the Social Security Act, from July 13, 2016, through the

1 date of this decision. Tr. 34.

## 2 ISSUES

3 Plaintiff seeks judicial review of the Commissioner's final decision denying  
4 her supplemental security income benefits under Title XVI of the Social Security  
5 Act. ECF No. 10. Plaintiff raises the following issues for this Court's review:

- 6 1. Whether the ALJ properly considered lay witness statements;
- 7 2. Whether the ALJ properly considered Plaintiff's symptom claims;
- 8 3. Whether the ALJ properly considered the medical opinion evidence; and
- 9 4. Whether the ALJ erred at step five.

## 10 DISCUSSION

### 11 1. Lay Witness Statements

12 Plaintiff challenges the ALJ's treatment of statements from her friends and  
13 family regarding her limitations. ECF No. 10 at 19-20.

14 Lay witness testimony cannot establish the existence of medically  
15 determinable impairments. 20 C.F.R. §§ 416.913(a)(4), 416.921. But lay witness  
16 testimony is "competent evidence" as to "how an impairment affects [a claimant's]  
17 ability to work." *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050 (9th Cir.  
18 2006); 20 C.F.R. § 416.913(a)(4); *see also Dodrill v. Shalala*, 12 F.3d 915, 918-19  
19 (9th Cir. 1993). ("[F]riends and family members in a position to observe a  
20 claimant's symptoms and daily activities are competent to testify as to her  
21 condition."). "If the ALJ wishes to discount the testimony of the lay witnesses,



1 [she] must give reasons that are germane to each witness.” *Dodrill*, 12 F.3d at 919.

2 The record contains nine statements from Plaintiff’s friends and family.

3 There is a Third-Party Function report completed by Plaintiff’s mother from July  
4 27, 2016 and a letter from her mother. Tr. 226-33, 267. The record also includes a  
5 statement from a former co-worker, Tr. 265, a statement from a friend of 25 years,  
6 Tr. 266, statements from two of her childhood friends, Tr. 268-70, a statement  
7 from her sister, Tr. 271, and statements from her two daughters, Tr. 272-74.

8 The ALJ discounted these statements by finding they were “not consistent  
9 with the medical evidence.” Tr. 32. The ALJ then cited to evidence in the record  
10 demonstrating that Plaintiff had normal posture, gait, balance, thought process  
11 perception, insight and judgment. *Id.* However, nowhere in the ALJ decision did  
12 the ALJ discuss the witnesses with any specificity or discuss each statement with  
13 any specificity. Therefore, this is insufficient under *Dodrill*, 12 F.3d at 919 (“If the  
14 ALJ wishes to discount the testimony of the lay witnesses, [she] must give reasons  
15 that are germane to each witness.”). The case is remanded for the ALJ to properly  
16 address the lay witness statements by providing reasons germane to each witness.

## 17 **2. Plaintiff’s Symptom Statements**

18 Plaintiff challenges the ALJ’s treatment of Plaintiff’s symptom statements  
19 by arguing that her reasons for rejecting the evidence failed to meet the specific,  
20 clear and convincing standard. ECF No. 10 at 16-19.

21 An ALJ engages in a two-step analysis when evaluating a claimant’s

1 testimony regarding subjective pain or symptoms. “First, the ALJ must determine  
2 whether there is objective medical evidence of an underlying impairment which  
3 could reasonably be expected to produce the pain or other symptoms alleged.”

4 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not  
5 required to show that [her] impairment could reasonably be expected to cause the  
6 severity of the symptom [she] has alleged; [she] need only show that it could  
7 reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572  
8 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

9         Second, “[i]f the claimant meets the first test and there is no evidence of  
10 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
11 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
12 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal  
13 citations and quotations omitted). “General findings are insufficient; rather, the  
14 ALJ must identify what testimony is not credible and what evidence undermines  
15 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th  
16 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ  
17 must make a credibility determination with findings sufficiently specific to permit  
18 the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
19 testimony.”). “The clear and convincing [evidence] standard is the most  
20 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
21 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,

1 924 (9th Cir. 2002)).

2 Here, the ALJ found Plaintiff's medically determinable impairments could  
3 reasonably be expected to cause some of the alleged symptoms; however,  
4 Plaintiff's "statements concerning the intensity, persistence and limiting effects of  
5 these symptoms are not entirely consistent with the medical evidence and other  
6 evidence in the record for the reasons explained in this decision." Tr. 25.

7 Defendant points to evidence in the record that Plaintiff was malingering and  
8 argues that this relieves the ALJ from providing specific, clear and convincing  
9 reasons for rejecting Plaintiff's statements. ECF No. 19 at 4-5. To relieve the ALJ  
10 of the specific, clear and convincing standard, the record must contain "affirmative  
11 evidence that the claimant is malingering." *Carmickle v. Comm'r. Soc. Sec.*  
12 *Admin.*, 533 F.3d 1155, 1160 (9th Cir. 2008). In March of 2017, Dr. Cline  
13 completed a Psychological/Psychiatric Evaluation of Plaintiff for the Washington  
14 Department of Social and Health Services. Tr. 407-11. He provided the following  
15 statement:

16 Claimant completed a Rey at the outset of today's assessment. Her  
17 score of 12 indicates an average level of effort and cooperation with the  
18 task and decreases the likelihood that she is malingering at this time.  
19 However, due to some changes observed in her MSE performance she  
20 was also given a TOMM today. Her scores of 21 and 22 each respective  
21 trial do not provide evidence of non-malingering, and as it is the more  
robust of the two measure the results of this test will be preferred. To  
be considered evidence of non-malingering scores on the second or  
retention trial of the TOMM should fall between 45 and 50 and scores  
should evidence improvement across trial. This claimant's scores only  
improved by 1 point (2% overall) and fail to meet the primary scoring  
criterion by a wide margin. Thus, malingering is diagnosed today and

1 the following, though mainly take[n] from her previous assessment,  
2 should bet taken with great caution.

3 Tr. 407. Here, the ALJ addressed Dr. Cline’s diagnosis of malingering in the  
4 following statement: “I give great weight is given [sic] to another opinion from Dr.  
5 Cline. In March 2017, Dr. Cline opined that he was unable to accurately assess the  
6 claimant’s limitations due to malingering.” Tr. 31.

7 The Court is limited to reviewing the reasons the ALJ actually provided for  
8 rejecting Plaintiff’s symptom statements. *See Orn v. Astrue*, 495 F.3d 625, 630  
9 (9th Cir. 2007) (The Court will “review only the reasons provided by the ALJ in  
10 the disability determination and may not affirm the ALJ on a ground upon which  
11 he did not rely.”). Here, the ALJ limited her discussion of the evidence of  
12 malingering to the weight assigned to Dr. Cline’s opinions, and not in reference to  
13 Plaintiff’s symptom statements. Therefore, Defendant’s assertion is a *post hoc*  
14 rationalization, which will not be considered by this Court.

15 This Court will address the five specific reasons the ALJ provided for  
16 rejecting Plaintiff’s symptom statements: (1) Plaintiff’s daily activities are  
17 inconsistent with her complaints of disabling symptoms and limitations; (2)  
18 Plaintiff’s treatment for carpal tunnel syndrome is inconsistent with her reported  
19 lack of use of her shoulder; (3) Plaintiff did not pursue treatment for her shoulder  
20 throughout the period at issue; (4) Plaintiff’s ability to attend medical appointments  
21 is inconsistent with her reported difficulties leaving her home; and (5) objective

1 evidence does not support Plaintiff's allegations of disabling symptoms and  
2 limitations. Tr. 25-26.

3 The ALJ's first reason for rejecting Plaintiff's symptom statements, that her  
4 daily activities are inconsistent with her complaints, is not specific, clear and  
5 convincing. A claimant's daily activities may support an adverse credibility  
6 finding if (1) the claimant's activities contradict her other testimony, or (2) "the  
7 claimant is able to spend a substantial part of [her] day engaged in pursuits  
8 involving performance of physical functions that are transferable to a work  
9 setting." *Orn*, 495 F.3d at 639 (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
10 1989)). "The ALJ must make 'specific findings relating to [the daily] activities'  
11 and their transferability to conclude that a claimant's daily activities warrant an  
12 adverse credibility determination." *Id.* (quoting *Burch v. Barnhart*, 400 F.3d 676,  
13 681 (9th Cir. 2005)). A claimant need not be "utterly incapacitated" to be eligible  
14 for benefits. *Fair*, 885 F.2d at 603.

15 Here, the ALJ found that Plaintiff's activities of preparing her own meals,  
16 cleaning, mowing the lawn, getting along with family friends, and neighbors,  
17 watching television, and doing crosswords was inconsistent with her complaints of  
18 disabling symptoms and limitations. Tr. 25. However, the ALJ failed to provide  
19 any specific examples of how these activities are inconsistent with her reported  
20 symptoms and limitations. *Id.* Furthermore, the Ninth Circuit has cautioned ALJs  
21 about relying on the performance of typical daily activities as inconsistent with the

1 allegations of severe symptoms. *Garrison*, 759 F.3d at 1016. Here, Plaintiff's  
2 daily activities and their modified performance, including keeping her right arm  
3 close to her while performing these activities, does not undermine Plaintiff's  
4 symptom statements. Therefore, this reason fails to meet the specific, clear and  
5 convincing standard.

6 The ALJ's second reason for rejecting Plaintiff's symptom statements, that  
7 her treatment for carpal tunnel syndrome is inconsistent with her reported lack of  
8 use of her upper extremities, is not specific, clear and convincing. On December  
9 28, 2016, Plaintiff was assessed for bilateral carpal tunnel syndrome. Tr. 588-98.  
10 There is little treatment for carpal tunnel syndrome in the record. Plaintiff testified  
11 that the onset of the condition was prior to the alleged onset date for disability. Tr.  
12 55. An onset prior to the relevant period of an impairment caused by repetitive use  
13 of her upper extremities does not support the ALJ's conclusion that Plaintiff's use  
14 during the relevant period was more than she alleged. Therefore, this reason does  
15 not meet the specific, clear and convincing standard.

16 The ALJ's third reason for rejecting Plaintiff's symptom statements, that she  
17 failed to seek treatment for her shoulder impairment during the relevant period, is  
18 not supported by substantial evidence and is not specific, clear and convincing.  
19 Noncompliance with medical care or unexplained or inadequately explained  
20 reasons for failing to seek medical treatment cast doubt on a claimant's subjective  
21 complaints. 20 C.F.R. § 416.930; *Fair*, 885 F.2d at 603; *Macri v. Chater*, 93 F.3d

1 540, 544 (9th Cir. 1996) (finding the ALJ's decision to reject the claimant's  
2 subjective pain testimony was supported by the fact that claimant was not taking  
3 pain medication).

4 Here, the ALJ found that Plaintiff did not pursue treatment for her shoulder  
5 throughout the period at issue and cited to the entire medical records section of the  
6 administrative record. Tr. 26. However, the medical evidence shows that Plaintiff  
7 routinely sought treatment to help alleviate her shoulder pain. In July of 2015,  
8 Plaintiff began new medication to help control her pain. Tr. 365. In March of  
9 2016, Plaintiff's medications were increased to help control her pain. Tr. 346. In  
10 June of 2016, Dr. Foster stated that Plaintiff may consider physical therapy if she  
11 experienced no improvement with a change in medications. Tr. 329. However, the  
12 record shows that back in 2011, Dr. Scott stated that there was no further treatment  
13 beneficial for her chronic right shoulder pain. Tr. 389. On September 27, 2016,  
14 Plaintiff had a follow up on her right shoulder impairment. Tr. 599-603. On  
15 December 28, 2016, Plaintiff was seen for a follow up on her shoulder impairment,  
16 and was instructed to treat it with medications and rest. Tr. 588-98. On March 20,  
17 2017, an MRI of Plaintiff's shoulder was ordered. Tr. 524-32. At the hearing, she  
18 testified that Dr. Jackson ordered an MRI, but she was never contacted regarding  
19 having one done. Tr. 54-55. On June 21, 2017, Plaintiff was seen at a follow up  
20 for her shoulder pain. Tr. 504-13. Therefore, the ALJ's conclusion that Plaintiff  
21 did not seek treatment is not supported by substantial evidence. She consistently

1 sought treatment for the pain associated with her shoulder impairment.  
2 Additionally, the record reflects that no provider has stated that additional  
3 treatment would restore Plaintiff's functional ability. *See* S.S.R. 18-3p (before a  
4 claimant's application can be denied based on the finding that she failed to follow  
5 prescribed treatment, the record must reflect that treatment is expected to restore  
6 the claimant's ability to perform substantial gainful activity). Therefore, this  
7 reason fails to meet the specific, clear and convincing reason.

8         The ALJ's fourth reason for rejecting Plaintiff's symptom statements, that  
9 Plaintiff's ability to attend her medical appointments was inconsistent with her  
10 reported difficulties in leaving her house, is not supported by substantial evidence.  
11 Plaintiff testified at the hearing that "I barely leave my house, except for  
12 appointments," Tr. 50, and "I just don't want to go out, because I – when I do, I  
13 just want to get back in the house. I just can't make myself a lot of times get out  
14 there and go," Tr. 54. She even reported to her providers that she struggled to  
15 leave the house if leaving was not necessary. Tr. 447. Therefore, the ALJ's  
16 conclusion that her statements are inconsistent with her ability to attend treatment  
17 sessions is not supported by the record. Plaintiff did not report she was unable to  
18 leave the house. Her ability to attend medical appointments is consistent with the  
19 severity of symptoms she reported. Therefore, this reason is not supported by  
20 substantial evidence.

21         The ALJ's final reason for rejecting Plaintiff's symptom statements, that



1 they were inconsistent with the objective medical evidence, is not specific, clear  
2 and convincing. Objective medical evidence is a “relevant factor in determining  
3 the severity of the claimant’s pain and its disabling effects,” but it cannot serve as  
4 the only reason for rejecting a claimant’s credibility. *Rollins v. Massanari*, 261  
5 F.3d 853, 857 (9th Cir. 2001). Since the other two reasons the ALJ provided for  
6 rejecting Plaintiff’s symptom statements failed to meet the specific and legitimate  
7 standard, this reason alone is insufficient to support the ALJ’s determination.  
8 Therefore, the case is remanded for the ALJ to properly address Plaintiff symptom  
9 statements.

### 10 **3. Medical Opinions**

11 Plaintiff challenged the ALJ’s treatment of multiple medical opinions in the  
12 record. ECF No. 10 at 3-16. Since the case is being remanded for the ALJ to  
13 properly address lay witness statements and Plaintiff’s symptom statements, the  
14 ALJ will also readdress the medical opinions in the file and make a new RFC  
15 determination.

### 16 **4. Step Five**

17 Plaintiff challenges the ALJ’s step five determination by asserting that the  
18 ALJ failed to identify specific jobs in substantial numbers a person could do  
19 despite the RFC limitations identified. ECF No. 10 at 20-21.

20 At step five of the sequential evaluation analysis, the burden shifts to the  
21 Commissioner to prove that, based on the claimant's RFC, age, education, and past

1 work experience, she can do other work. *Bowen v. Yuckert*, 482 U.S. 137, 142  
2 (1987); 20 C.F.R. §§ 416.920(g), 416.960(c). The Commissioner may carry this  
3 burden by “eliciting the testimony of a vocational expert in response to a  
4 hypothetical that sets out all the limitations and restrictions of the claimant.”  
5 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The vocational expert  
6 may testify as to: (1) what jobs the claimant, given her RFC, would be able to do;  
7 and (2) the availability of such jobs in the national economy. *Tackett*, 180 F.3d at  
8 1101. If the claimant can perform jobs which exists in significant numbers either  
9 in the national economy, the claimant is not disabled. 42 U.S.C. § 1382c(a)(3)(b).  
10 The burden of establishing that there exists other work in “significant numbers”  
11 lies with the Commissioner. *Tackett*, 180 F.3d at 1099.

12 Here, the vocational expert testified that a hypothetical individual of  
13 Plaintiff’s age, education, work experience, and RFC could perform the  
14 requirements of representative jobs such as scaling machine operator (61,000 jobs  
15 in the national economy), laminating machine offbearer (150,000 jobs in the  
16 national economy), and conveyer line bakery worker (196,000 jobs in the national  
17 economy). Tr. 34, 62.

18 Plaintiff argues that the vocational expert did not provide the correct number  
19 of jobs for the occupations identified. ECF No. 10 at 20-21. However, the ALJ  
20 has been instructed to make a new RFC determination upon remand. *See supra*.  
21 Therefore, the ALJ will also call a vocational expert at the remand proceedings and

1 take testimony regarding step five and jobs available in the national economy.

## 2 CONCLUSION

3 The decision whether to remand for further proceedings or reverse and  
4 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
5 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate  
6 where “no useful purpose would be served by further administrative proceedings,  
7 or where the record has been thoroughly developed,” *Varney v. Sec’y of Health &*  
8 *Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by  
9 remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280  
10 (9th Cir. 1990); *see also Garrison*, 759 F.3d at 1021 (noting that a district court  
11 may abuse its discretion not to remand for benefits when all of these conditions are  
12 met). This policy is based on the “need to expedite disability claims.” *Varney*,  
13 859 F.2d at 1401. But where there are outstanding issues that must be resolved  
14 before a determination can be made, and it is not clear from the record that the ALJ  
15 would be required to find a claimant disabled if all the evidence were properly  
16 evaluated, remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96  
17 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

18 The Court finds that further administrative proceedings are appropriate. *See*  
19 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)  
20 (remand for benefits is not appropriate when further administrative proceedings  
21 would serve a useful purpose). Here, it is not clear from the record that the ALJ

1 would be required to find a claimant disabled if all the evidence were properly  
2 evaluated. Therefore, the Court remands this case for further proceedings  
3 consistent with this Order.

4 On remand, the ALJ should readdress the lay witness statements, readdress  
5 Plaintiff's symptom statements, reweigh the medical opinions, make a new RFC  
6 determination, and take testimony from a vocational expert in formulating any step  
7 five determination. In addition, the ALJ should supplement the record with any  
8 outstanding medical evidence.

9 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 10 1. Plaintiff's Motion for Summary Judgment, ECF No. 10, is **GRANTED**,  
11 **in part**, and the matter is remanded for further proceedings consistent  
12 with this Order.
- 13 2. Defendant's Motion for Summary Judgment, ECF No. 19 is **DENIED**.

14 The District Court Executive is hereby directed to enter this Order and  
15 provide copies to counsel, enter judgment in favor of the Plaintiff, and **CLOSE** the  
16 file.

17 DATED: July 6, 2020.



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21

A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the court seal.

Stanley A. Bastian  
United States District Judge