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6 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

7  
8 KELLEY JOHNSON,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

12 Defendant.

NO. CV-12-3060-RHW

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT; DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

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14 Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 18  
15 and Defendant's Motion for Summary Judgment, ECF No. 20. The motions were  
16 heard without oral argument. Plaintiff is represented by D. James Tree. Defendant  
17 is represented by Assistant United States Attorney Pamela De Rusha and Special  
18 Assistant United States Attorney Gerald Hill.

19 **I. Jurisdiction**

20 On July 21, 2008, Plaintiff Kelley Johnson filed a Title II application for  
21 disability insurance benefits (DIB) and a Title XVI for supplemental security  
22 income (SSI). Plaintiff alleged she is disabled because of PTSD, depression, and  
23 anxiety. (Tr. 157-58.)

24 Her application was denied initially on September 24, 2008, and again  
25 denied on reconsideration on November 6, 2008. A timely request for a hearing  
26 was made. On June 15, 2010, Plaintiff appeared in Yakima, Washington before  
27 Administrative Law Judge (ALJ) Marie Palachuk, who appeared by video-  
28 conference from Spokane, Washington. Dr. Margaret Moore, medical expert, and

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1 Sharon Welter, vocational expert, also appeared at the hearing. Plaintiff was  
2 represented by attorney D. James Tree. At the hearing, Plaintiff amended the onset  
3 date to July 1, 2007.

4 The ALJ found that Plaintiff was not disabled since July 1, 2007. Plaintiff  
5 timely requested review by the Appeals Council, which was denied on February  
6 23, 2012. The Appeals Council's denial of review makes the ALJ's decision the  
7 final decision of the Commissioner. 42 U.S.C. §405(h). Plaintiff timely filed an  
8 appeal with the U.S. District Court for the Eastern District of Washington on April  
9 23, 2012. The instant matter is before the district court pursuant to 42 U.S.C. §  
10 405(g).

## 11 **II. Sequential Evaluation Process**

12 The Social Security Act defines disability as the "inability to engage in any  
13 substantial gainful activity by reason of any medically determinable physical or  
14 mental impairment which can be expected to result in death or which has lasted or  
15 can be expected to last for a continuous period of not less than twelve months."  
16 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be  
17 under a disability only if her impairments are of such severity that the claimant is  
18 not only unable to do her previous work, but cannot, considering claimant's age,  
19 education and work experiences, engage in any other substantial gainful work  
20 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

21 The Commissioner has established a five-step sequential evaluation process  
22 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a)(4),  
23 416.920; *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987).

24 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.  
25 §§ 404.1520(b), 416.920(b). Substantial gainful activity is work done for pay and  
26 requires compensation above the statutory minimum. 20 C.F.R. §§ 404.1574,  
27 416.972; *Keyes v. Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is  
28 engaged in substantial activity, benefits are denied. 20 C.F.R. §§ 404.1571,

1 416.920(b). If she is not, the ALJ proceeds to step two.

2 Step 2: Does the claimant have a medically-severe impairment or  
3 combination of impairments? 20 C.F.R. §§ 404.1520(c), 416.920(c). If the  
4 claimant does not have a severe impairment or combination of impairments, the  
5 disability claim is denied. A severe impairment is one that lasted or must be  
6 expected to last for at least 12 months and must be proven through objective  
7 medical evidence. 20 C.F.R. §§ 404.1508-09, 416.908-09. If the impairment is  
8 severe, the evaluation proceeds to the third step.

9 Step 3: Does the claimant's impairment meet or equal one of the listed  
10 impairments acknowledged by the Commissioner to be so severe as to preclude  
11 substantial gainful activity? 20 C.F.R. §§ 404.1520(d), 416.920(d); 20 C.F.R.  
12 § 404 Subpt. P. App. 1. If the impairment meets or equals one of the listed  
13 impairments, the claimant is conclusively presumed to be disabled. *Id.* If the  
14 impairment is not one conclusively presumed to be disabling, the evaluation  
15 proceeds to the fourth step.

16 Step 4: Does the impairment prevent the claimant from performing work she  
17 has performed in the past? 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant  
18 is able to perform her previous work, she is not disabled. *Id.* If the claimant  
19 cannot perform this work, the ALJ proceeds to the fifth and final step.

20 Step 5: Is the claimant able to perform other work in the national economy  
21 in view of her age, education, and work experience? 20 C.F.R. §§ 404.1520(f),  
22 416.920(f).

23 The initial burden of proof rests upon the claimant to establish a prima facie  
24 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098  
25 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or  
26 mental impairment prevents her from engaging in her previous occupation. *Id.* At  
27 step five, the burden shifts to the Commissioner to show that the claimant can  
28 perform other substantial gainful activity. *Id.*

1 **III. Standard of Review**

2 The Commissioner’s determination will be set aside only when the ALJ’s  
3 findings are based on legal error or are not supported by substantial evidence in  
4 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)  
5 (citing 42 .S.C. § 405(g)). Substantial evidence is “more than a mere scintilla,”  
6 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but “less than a preponderance.”  
7 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial  
8 evidence is “such relevant evidence as a reasonable mind might accept as adequate  
9 to support a conclusion.” *Richardson*, 402 U.S. at 401. The Court must uphold the  
10 ALJ’s denial of benefits if the evidence is susceptible to more than one rational  
11 interpretation, one of which supports the decision of the administrative law judge.  
12 *Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9<sup>th</sup> Cir. 2004). “If the  
13 evidence can support either outcome, the court may not substitute its judgment for  
14 that of the ALJ.” *Matney*, 981 F.2d at 1019.

15 A decision supported by substantial evidence will be set aside if the proper  
16 legal standards were not applied in weighing the evidence and making the  
17 decision. *Brawner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th  
18 Cir. 1988). An ALJ is allowed “inconsequential” errors as long as they are  
19 immaterial to the ultimate non-disability determination. *Stout v. Comm’r, Soc. Sec.*  
20 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

21 **IV. Statement of Facts**

22 The facts have been presented in the administrative transcript and the ALJ’s  
23 decision, and will only be summarized here.

24 At the time of the hearing, Plaintiff was 32 years old. She has two children,  
25 although her parents adopted her first son. She lived with the father of her first son  
26 for a time period, although during this time, he was physically and emotionally  
27 abusive. At one point, he threatened to kill Plaintiff. This caused her to go into  
28 hiding, living on the streets. She used various recreational drugs at this time when

1 they were available. In 2007, she became pregnant again after being raped. She  
2 stopped using drugs and has been clean since that time.

3 She has attempted to commit suicide three times. She was hospitalized for  
4 two of the attempts. Plaintiff has limited work experience, working at a cherry  
5 orchard, as a cashier, as a nursery school attendant, and a mold dresser, which was  
6 described by the vocational expert as breaking and cleaning the molds and waxing  
7 the inside of the molds. (Tr. 65.)

8 Plaintiff was in special education throughout her school years. She left  
9 school in 10<sup>th</sup> grade. She struggled with reading and math. She has not earned her  
10 GED. Plaintiff has suffered from depression from an early age and was diagnosed  
11 with ADHD in the fourth grade. Her ADHD was successfully treated with  
12 medication until she stopped taking the medication because her fellow classmates  
13 began teasing her. She testified that she has no hobbies or activities. She described  
14 her current state of mind:

15 I don't really care about nothing. I don't want to do anything. I'm just  
16 really wasting my life, Well, I read books to my son and do stuff that I  
17 have to do, you know, to take care of him. But I don't think if I didn't  
18 have him, I don't think I'd be like around.  
(Tr. 60.)

19 Upon further questioning, Plaintiff explained, "I don't know, I'm just here  
20 because I have to be. Because my son didn't ask to be here and it's my  
21 responsibility to raise him." (Tr. 60.)

## 22 **V. The ALJ's findings**

23 The ALJ found Plaintiff met the insured status requirements of the Social  
24 Security Act through December 31, 2007. (Tr. 23.)

25 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
26 activity since July 1, 2007, the amended alleged onset date. (Tr. 21.)

27 At step two, the ALJ found Plaintiff had the following severe impairments:  
28 attentional deficit hyperactivity disorder; affective disorder/depression; personality  
disorder, not otherwise specified; and polysubstance abuse/dependence in full,

1 sustained remission. (Tr. 24.)

2 At step three, the ALJ found Plaintiff did not have an impairment or  
3 combination of impairments that meets or medically equals one of the listed  
4 impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (Tr. 22.) The ALJ  
5 considered whether Plaintiff met the listing for 12.02, 12.04, 12.08, 12.09. (Tr.  
6 25.)

7 The ALJ found that Plaintiff has the residual functional capacity<sup>1</sup> to perform  
8 the full range of work at all exertional levels, but with the following nonexertional  
9 limitations: can maintain sufficient attention and concentration to understand,  
10 remember and follow simple instructions; and can maintain sufficient attention  
11 and concentration to perform routine tasks. She must work in a low stress job (one  
12 involving only occasional changes in the work setting). Her interaction with the  
13 public is limited to superficial and she should work primarily alone, and with only  
14 occasional supervision. (Tr. 26.)

15 At step four, the ALJ found Plaintiff was capable of performing past  
16 relevant work as a fruit harvest worker, cashier-checker, mold dresser, and sorter,  
17 agriculture produce. (Tr. 31.)

## 18 **VI. Issues for Review**

19 \_\_\_\_\_  
20 <sup>1</sup>“RFC is what an individual can still do despite his or her functional limitations  
21 and restrictions caused by his or her medically determinable physical or mental  
22 impairments. It is an administrative assessment of the extent to which an  
23 individual’s medically determinable impairment(s), including any related  
24 symptoms, such as pain, may cause physical or mental limitations or restrictions  
25 that may affect his or her capacity to perform work-related physical and mental  
26 activities. . . RFC is the individual’s maximum remaining ability to perform  
27 sustained work on a regular and continuing basis: i.e. 8 hours a day, for 5 days a  
28 week, or an equivalent work schedule. SSR96-6P.

1 Plaintiff presents the following issues with respect to the ALJ's findings:

2 1. Did the ALJ commit reversible error by finding contrary to her own VE's  
3 testimony that Dr. Moore's opinions equated to no work?

4 2. Did the ALJ commit reversible error by improperly rejecting Dr.  
5 Rodenberger's and Ms. Meck's opinion?

6 3. Did the ALJ commit reversible error by improperly rejecting Ms.  
7 Rapisarda's and Ms. Elsner's opinion?

8 4. Did the ALJ commit reversible error by making a negative credibility  
9 finding?

## 10 **VII. Discussion**

11 Plaintiff's first argument pertains to the testimony provided by Dr. Margaret  
12 Moore, a medical expert, and the testimony of Sharon Welter, a vocational expert.

13 At the hearing, Dr. Moore reviewed the B criteria. She concluded that her  
14 activities of daily living were only mildly limited. (Tr. 46.) She concluded that  
15 social functioning was moderately limited, and concentration, persistence and pace  
16 were also moderately limited. She then reviewed a mental medical source  
17 statement, and identified those items where she believed Plaintiff had a moderate  
18 or greater limitation: (1) the ability to carry out detailed instructions; (2) the ability  
19 to maintain attention and concentration for extended periods; (3) the ability to  
20 work in coordination with or proximity to others without being distracted by them;  
21 (4) the ability to interact appropriately with the general public; (5) the ability to  
22 accept instructions and respond appropriately to criticism from supervisors; (6) the  
23 ability to get along with co-workers or peers without distracting them or exhibiting  
24 behavioral extremes; (7) the ability to respond appropriately to changes in the  
25 work setting; and (8) the ability to set realistic goals or make plans independently.<sup>2</sup>

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26  
27 <sup>2</sup>The record is unclear which form Dr. Moore was reviewing, but both parties  
28 agree that the numbers identified by Dr. Moore correspond to the above-listed

1 At the hearing, Ms. Welter was questioned by the ALJ:

2 Okay. Ms. Welter, now I'm going to ask you to assume a  
3 hypothetical individual of the same age, education and work  
4 experience as the claimant. Looking at the regulatory categories we  
5 have a younger worker with limited education. This hypothetical  
6 individual would have no exertional limits but would have the  
7 following mental limitations—attention and concentration to  
8 understand, remember and follow simple instructions, that's based on  
9 the medical record and Dr. Moore's testimony today, problems with  
10 detailed instructions. The individual would also be able to perform  
11 routine tasks, but would be limited to interactions with the general  
12 public to only superficial, that—with Dr. Moore's—as well. And the  
13 individual would need to work primarily alone with only occasional  
14 supervision. Based on Dr. Moore's indication, it would be difficult to  
15 accept instruction and getting along with coworkers. Finally, the jobs  
16 have to be defined as a low stress job. And by that I define it as only  
17 occasional changes in a work setting since the work setting—changes  
18 in the setting would be difficult.

19 (Tr. 65.)

20 Ms. Welter, based on the limitations presented by the ALJ concluded that  
21 Plaintiff was capable of performing her past work as a cashier/checker, mold  
22 dresser, and sorter, agricultural produce. (Tr. 65.)

23 Plaintiff's counsel then questioned Ms. Welter. In doing so, he defined  
24 moderate limitations as a “significant interference with basic work-related  
25 activities.” (Tr. 66-67.) He then listed the eight categories identified by Dr. Moore  
26 and asked if it was more probable than not that a hypothetical person with these  
27 limitations would not be able to sustain employment. Ms. Welter replied, “It  
28 would be if moderate is defined as a significant interference, yes.” (Tr. 67.)

Based on Ms. Werner's testimony, if moderate limitations is defined as a  
significant interference with basic work-related activities, Plaintiff is disabled.  
However, the Court does not have to address this issue because the Court  
concludes the ALJ's credibility determination is not supported by the record.

At the hearing, Plaintiff testified that she is an isolated person and she does  
not like to leave her house. (Tr. 55.) She gets paranoid and only talks to her family

\_\_\_\_\_ limitations. See ECF No. 18 at 6; ECF No. 20 at 5-7.



1 and one friend. (Tr. 55.) She does not associate with anybody else. (Tr. 55.) She  
2 testified that she only leaves her house if her mom or dad will come pick her up,  
3 which takes place about once or twice a month. (Tr. 55.) Her sister will pick her up  
4 maybe once or twice a month to go grocery shopping. (Tr. 55.) And she goes to  
5 Rite Aid once or sometimes twice a month to get her medication. (Tr. 55.) She  
6 testified that Rite Aid is about a block away from her house. (Tr. 55.)

7 Plaintiff went on to explain that her inability to be around people is  
8 beginning to affect her child. (Tr. 56.) Her child attends speech therapy because he  
9 does not speak much because he does not leave the house. (Tr. 56.) She expressed  
10 remorse over this, and stated, “if I can, if I would be able to just go out there and  
11 be around other people and stuff, that I would do it. But it’s just too hard for me.”  
12 (Tr. 56.) She reports that if she goes shopping to Wal-Mart or Safeway, she needs  
13 to take an anxiety pill. (Tr. 56.)

14 Ms. Welter was asked by Plaintiff’s counsel if Plaintiff would be able to  
15 sustain employment if her testimony given at the hearing was accepted. (Tr. 66.)  
16 Ms. Welter replied, “Well, it appears that she does not leave her house unless  
17 accompanied to and with someone else. So I would assume that would mean she  
18 would miss a great deal of work, if not all work, so would not be able to be  
19 retained if that were the case.” (Tr. 66.)

20 In her order, the ALJ found that Plaintiff’s statements concerning the  
21 intensity, persistence and limiting effects of her symptoms were not credible. (Tr.  
22 27.) The ALJ relied on the following to make her assessment: (1) Plaintiff was not  
23 taking medication suggesting compliance problems; (2) Plaintiff failed to show for  
24 several counseling appointments suggesting she has contributed, at least in part, to  
25 her continuing condition; (3) secondary gain issues may be present because the  
26 description of her problems in the treatment notes suggest economic factors, and  
27 she also expressed having housing problems; and (4) Plaintiff can perform a full  
28 range of daily activities. (Tr. 27-28.)

1 An ALJ's assessment of a claimant's credibility is entitled to "great weight."  
2 *Anderson v. Sullivan*, 914 F.2d 1121, 1124 (9<sup>th</sup> Cir.1990). When there is no  
3 evidence of malingering, the ALJ must give "specific, clear and convincing  
4 reasons" for rejecting a claimant's subjective symptom testimony. *Molina v.*  
5 *Astrue*, 674 F.3d 1104, 1112 (9<sup>th</sup> Cir. 2012) (citation omitted). If the ALJ's  
6 credibility finding is supported by substantial evidence in the record, the  
7 reviewing court "may not engage in second-guessing." *Thomas v. Barnhart*, 278  
8 F.3d 947, 959 (9<sup>th</sup> Cir. 2002).

9 In recognition of the fact that an individual's symptoms can sometimes  
10 suggest a greater level of severity of impairment than can be shown by the  
11 objective medical evidence alone, 20 CFR 404.1529(c) and 416.929(c) describe  
12 the kinds of evidence, including the factors below, that the ALJ must consider in  
13 addition to the objective medical evidence when assessing the credibility of an  
14 individual's statements:

15 1. The individual's daily activities; 2. The location, duration,  
16 frequency, and intensity of the individual's pain or other symptoms;  
17 3. Factors that precipitate and aggravate the symptoms; 4. The type,  
18 dosage, effectiveness, and side effects of any medication the  
19 individual takes or has taken to alleviate pain or other symptoms; 5.  
20 Treatment, other than medication, the individual receives or has  
21 received for relief of pain or other symptoms; 6. Any measures other  
22 than treatment the individual uses or has used to relieve pain or other  
23 symptoms (*e.g.*, lying flat on his or her back, standing for 15 to 20  
24 minutes every hour, or sleeping on a board); and 7. Any other factors  
25 concerning the individual's functional limitations and restrictions due  
26 to pain or other symptoms.  
27 SSR 96-7P, 1996 WL 374186.

28 Here, the ALJ's credibility determination is not supported by the record  
under the clear-and-convincing standard. There is nothing in the record to suggest  
that her treatment providers believed that she was malingering, or they disbelieved  
that she had significant trust issues, or that her inability to go outside the house

1 without supervision was not true.<sup>3</sup> Instead, the record shows that Plaintiff was  
2 receiving extensive counseling—sessions that lasted 90-120 minutes, which Dr.  
3 Moore found “astounding.” (Tr. 49.) The ALJ focused on the treatment notes that  
4 indicated that Plaintiff’s mood was stable and that she was making good progress,  
5 but failed to acknowledge Plaintiff’s sleep problems due to nightmares, her  
6 inability to trust individuals, the fact that she is easily overwhelmed, her inability  
7 to be around men, and her inability to leave her home without being accompanied  
8 by her family members, that are present in these same treatment notes. For  
9 instance, in October, 2009, while Ms. Mack indicated that Plaintiff’s mood was  
10 stable, at the same time Plaintiff reported that she was doing worse than before  
11 and she was having difficulty concentrating, as well as having obsessions and  
12 fears. (Tr. 398.) She reported that her irritability and fears are keeping her from  
13 socializing or being around friends. She also indicated that her relationship with  
14 her sister was deteriorating. (Tr. 398.) This does not reflect a person who is  
15 making good progress. Similarly, in November, 2009, although Plaintiff indicated  
16 she was doing better, Ms. Mack concluded that Plaintiff endorsed depression,  
17 anxiety, irritability, difficulty concentrating, obsessions and phobias, even though  
18 she described Plaintiff’s mood as stable. (Tr. 402). At that session, Plaintiff asked  
19 to have her medication increased. (Tr. 402).

19 The ALJ suggested that there may be compliance problems since in May,  
20 2008, Plaintiff was not taking any medications. The ALJ chose to focus on only  
21 one piece of the puzzle, however. In April, 2008, Plaintiff met with Sandra Elsner  
22 for a counseling session, and asked for a medication management appointment  
23 because she felt her depression was getting worse. Rather than impeding her

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25 <sup>3</sup>On April 29, 2008, Sandra Elsner indicated that Plaintiff reported her moods  
26 were low and she did not want to leave the house. Plaintiff was concerned that her  
27 depression was getting worse. (Tr. 281). There is nothing in the treatment notes  
28 that suggest Ms. Elsner did not believe Plaintiff.

1 treatment, as the ALJ suggests, Plaintiff was actively seeking medication to deal  
2 with her mental health issues. Additionally, due to ulcerative colitis, there was a  
3 period of time where she was unable to take her psych meds because she was  
4 vomiting. *See* Tr. 354; *see also* Tr. 390 (indicating that she was not taking her  
5 medications because she is still having bouts of nausea and vomiting and is unable  
6 to keep most of her medications down.). Also, at the hearing, which was  
7 conducted in 2010, Plaintiff reported that she was taking Lamotrigin, Seroquel,  
8 Welbutrin, Prozosin, and Larazepam. (Tr. 53.) The record shows that since May,  
9 2008, Plaintiff was taking her psych medication, except for when they were  
10 making her sick. The ALJ's conclusion that Plaintiff had compliance problems is  
11 not supported by the record.

12 The ALJ also cited the fact that she failed to show for several counseling  
13 appointments, citing Exhibit 4F. But, a close look at the record shows that the two  
14 incidents of no-show cited by the ALJ occurred in 2005.<sup>4</sup> On the other hand, the  
15 record indicates numerous monthly sessions taking place between 2007 and 2009.  
16 The Court was able to find one no-show in December 12, 2007, in which Plaintiff  
17 cancelled because she was not feeling well and because of the weather, but the  
18 record also shows that she made up this appointment on December 30, 2007. (Tr.  
19 278, 280.) At the hearing, Plaintiff reported that she was seeing Sandra Elsner for  
20 mental health counseling and Kathy Mack for medication management, each once  
21 a month. (Tr. 54.) The record reflects that she regularly attends monthly  
22 appointments. She testified that she has not missed that many, but if she did, it was  
23 not intentional because she likes to go as the sessions permit her to get her feelings

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24 <sup>4</sup>On January 26, 2005, a note written by Leticia Chavez stated that Plaintiff did  
25 not show for intake appointment. (Tr. 296). However, the record shows that she  
26 underwent a 90 minute intake appointment on February 14, 2005. The other  
27 notation cited by the ALJ indicated that the case was closed because Plaintiff did  
28 not show after the intake. (Tr. 293.)

1 out. (Tr. 58.) The ALJ's conclusion that Plaintiff was contributing to her  
2 continuing condition is not supported by the record.

3 Finally, the ALJ suggested that secondary gain issues may be present  
4 because according to treatment notes, the description of Plaintiff's problems  
5 included economic factors and she also expressed housing problems. (Tr. 28.)  
6 Such descriptions consisted of either check boxes that listed various problems, or  
7 a list of various categories for Axis IV. For instance, on a Central WA Comp  
8 Mental Health Treatment Plain, Axis IV categories listed: 1. Problems with  
9 primary support group; 2. Other psycho-social and environmental problems; 3.  
10 Problems related to social environment; 4. Economic problems; and 5. Educational  
11 problems. (Tr. 369.)<sup>5</sup> Without more description of the economic problems, it was  
12 unreasonable for the ALJ to assume these notations suggested secondary gain.

13 Also, the housing problem referred to by the ALJ was not due to economic  
14 concerns. Rather, at a treatment session, Plaintiff expressed concerns because she  
15 was suspicious of a neighbor's possible drug activity, as there was constant traffic  
16 in and out. (Tr. 388.) Ms. Elsner helped Plaintiff make a report to CPS during the  
17 session because Plaintiff was concerned about a young child living in that  
18 apartment. (Tr. 388.) As a result of Plaintiff's discomfort, she had been living with  
19 her sister. (Tr. 388.) This "housing problem" does not support the ALJ's  
20 conclusion that Plaintiff is not credible because of secondary gain issues.

21 Here, the ALJ's adverse credibility decision was not harmless. *See Batson*  
22 *v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195–97 (9th Cir.2004) (applying  
23 harmless error standard where one of the ALJ's several reasons supporting an  
24 adverse credibility finding was held invalid). As set forth above, there is no basis  
25 in the record to discredit Plaintiff's testimony that she is socially isolated and does

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26 <sup>5</sup>See also Tr. 372 (11/24/2008 Central WA Comprehensive Mental Health-  
27 listing of the same Axis 4 DSM descriptions); Tr. 381 (2/17/2009, same); Tr. 386  
28 (3/30/2009, same); Tr. 391 (5/14/2009, same).

1 not leave the house, except if she is accompanied by her family. Based on Ms.  
2 Werner's testimony, it is clear that Plaintiff is not employable, and therefore, the  
3 ALJ committed clear error in concluding she is not disabled.

4 Remand for further administrative proceedings is appropriate if  
5 enhancement of the record would be useful. *See Harman v. Apfel*, 211 F.3d 1172,  
6 1178 (9<sup>th</sup> Cir. 2000). Conversely, where the record has been developed fully and  
7 further administrative proceedings would serve no useful purpose, the district  
8 court should remand for an immediate award of benefits. *Benecke*, 379 F.3d at  
9 587. As the *Benecke* court instructed: the district court should credit evidence that  
10 was rejected during the administrative process and remand for an immediate award  
11 of benefits if (1) the ALJ failed to provide legally sufficient reasons for rejecting  
12 the evidence; (2) there are no outstanding issues that must be resolved before a  
13 determination of disability can be made; and (3) it is clear from the record that the  
14 ALJ would be required to find the claimant disabled were such evidence credited.  
15 *Id.*

16 Because Ms. Werner testified that if Plaintiff's testimony was to be  
17 believed, she would not be employable, and because the ALJ erred in discrediting  
18 Plaintiff's testimony, it is clear from the record that the ALJ would be required to  
19 find Plaintiff disabled if her testimony was properly credited. As such, remand for  
20 an immediate award of benefits is appropriate.

21 Accordingly, **IT IS HEREBY ORDERED:**

- 22 1. Plaintiff's Motion for Summary Judgment, ECF No. 18, is **GRANTED**.
- 23 2. Defendant's Motion for Summary Judgment, ECF No. 20, is **DENIED**.
- 24 3. The decision of the Commissioner denying benefits is **reversed** and the  
25 case is **remanded** to the ALJ for an immediate award of benefits.

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