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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
7

8 GARY WAYNE WRIGHT,

9 Plaintiff,

10 v.  
11

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

14 Defendant.  
15

No. 2:14-CV-0198-JTR

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

16 **BEFORE THE COURT** are cross-motions for summary judgment. ECF  
17 No. 15, 16. Attorney Dana Chris Madsen represents Gary Wayne Wright  
18 (Plaintiff); Special Assistant United States Attorney L. Jamala Edwards represents  
19 the Commissioner of Social Security (Defendant). The parties have consented to  
20 proceed before a magistrate judge. ECF No. 7, 8. After reviewing the  
21 administrative record and the briefs filed by the parties, the Court **GRANTS, in**  
22 **part,** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for  
23 Summary Judgment; and **REMANDS** the matter to the Commissioner for  
24 additional proceedings pursuant to 42 U.S.C. § 405(g).

25 **JURISDICTION**

26 Plaintiff filed an application for Supplemental Security Income (SSI) on  
27 December 14, 2008, alleging disability since January 1, 1981, due to borderline  
28 intellectual functioning, anxiety and anger. Tr. 253, 278. Plaintiff indicates he

1 stopped working because of his condition on January 1, 1988, Tr. 178, however,  
2 the SSI application date, December 14, 2008, is construed as Plaintiff's alleged  
3 onset date of disability because SSI is not payable prior to the month after the  
4 month in which an individual files an application for SSI. Tr. 19-20.

5 The SSI application was denied initially and upon reconsideration.  
6 Administrative Law Judge (ALJ) Caroline Siderius held an initial hearing on June  
7 1, 2010, Tr. 49-70, and issued an unfavorable decision on June 22, 2010, Tr. 155-  
8 166. On April 26, 2012, the Appeals Council granted Plaintiff's request for review  
9 and remanded the matter to the ALJ with instructions to evaluate the opinion of R.  
10 Renee Eisenhauer, Ph.D., and to address the presumption of continuing non-  
11 disability arising from the prior unfavorable hearing decision of August 12, 2008.  
12 Tr. 170-174.

13 ALJ Siderius held a new hearing on August 21, 2012, Tr. 71-95, and issued  
14 another unfavorable decision on November 2, 2012, Tr. 19-33. The Appeals  
15 Council denied review on April 23, 2014. Tr. 1-6. ALJ Siderius' November 2012  
16 decision became the final decision of the Commissioner, which is appealable to the  
17 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial  
18 review on June 17, 2014. ECF No. 1, 4.

### 19 **STATEMENT OF FACTS**

20 Plaintiff was born on January 23, 1958, and was 50 years old on the SSI  
21 application date, December 14, 2008. Tr. 274. Plaintiff completed high school,  
22 reportedly taking special education classes and needing to repeat the third and  
23 fourth grades. Tr. 55, 60, 419, 466. His "Disability Report" indicates he last  
24 worked as a desk assembler in 1988. Tr. 278-279. He has also reported janitorial  
25 work on an off-and-on basis since 1974. Tr. 87, 91, 319. In 1991, Plaintiff was  
26 convicted of sex offenses involving children. Tr. 509. He was incarcerated until  
27 1999 and is required to register as a sex offender. Tr. 509. While incarcerated,  
28 Plaintiff worked for six or seven months in the prison kitchen, a job that ended

1 when he was released in 1999. Tr. 419. He testified at the June 1, 2010  
2 administrative hearing that he last worked in 1999 doing various labor tasks at  
3 Nalley's Pickle Plant and performing production work putting CDs into sleeves.  
4 Tr. 53-54, 510. Plaintiff supports himself with public assistance. Tr. 64, 80-81.

5 At the June 1, 2010, administrative hearing, Plaintiff testified it was difficult  
6 for him to get a job because he lacks education, his mind wanders, and he has  
7 trouble staying focused. Tr. 59. At that time, Plaintiff indicated he was on  
8 medication for cholesterol and high blood pressure, but did not take medication for  
9 mental impairments. Tr. 56-57. He stated he had previously taken Prozac, but he  
10 discontinued use of that medication due to the side effects. Tr. 60. At the August  
11 21, 2012, administrative hearing, Plaintiff testified his anger and depression had  
12 gotten worse. Tr. 75-76. He indicated he had problems maintaining a job because  
13 of mind wandering, anger, anxiety, and not comprehending job duties. Tr. 81, 83-  
14 85. He was taking Vistaril for anxiety at the time of the August 21, 2012,  
15 administrative hearing. Tr. 85.

16 When asked about a typical day, Plaintiff stated on June 1, 2010, he sat  
17 around, watched TV and did word search puzzles. Tr. 57-58. On August 21, 2012,  
18 Plaintiff stated he watched TV five or six hours a day and continued to do word  
19 search puzzles. Tr. 78, 82. He indicated he was able to keep up with his  
20 housework, including laundry and dishes, and would go grocery shopping about  
21 once a week. Tr. 58, 62. Plaintiff testified he could walk three or four blocks  
22 before needing to sit. Tr. 62. Although his house had about 50 or 60 stairs, he  
23 stated he had difficulty climbing stairs. Tr. 62-63, 88-89. He reported no  
24 problems with sleep. Tr. 63, 79.

### 25 **STANDARD OF REVIEW**

26 The ALJ is responsible for determining credibility, resolving conflicts in  
27 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
28 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,

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

### 19 SEQUENTIAL EVALUATION PROCESS

20 The Commissioner has established a five-step sequential evaluation process  
21 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
22 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one  
23 through four, the burden of proof rests upon the claimant to establish a prima facie  
24 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This  
25 burden is met once a claimant establishes that a physical or mental impairment  
26 prevents him from engaging in his previous occupation. 20 C.F.R. §§  
27 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
28 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that

1 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist  
2 in the national economy which claimant can perform. *Batson v. Commissioner of*  
3 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make  
4 an adjustment to other work in the national economy, a finding of “disabled” is  
5 made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

### 6 ADMINISTRATIVE DECISION

7 The ALJ found Plaintiff had not engaged in substantial gainful activity since  
8 December 14, 2008, the application date. Tr. 22. At step two, the ALJ determined  
9 Plaintiff had the severe impairments of obesity, borderline intellectual  
10 functioning/cognitive impairment, depression, anxiety, and personality disorders.  
11 Tr. 22. At step three, the ALJ found Plaintiff did not have an impairment or  
12 combination of impairments that meets or medically equals the severity of one of  
13 the listed impairments. Tr. 24.

14 The ALJ assessed Plaintiff’s RFC and determined he could perform a  
15 restricted range of light exertion level work. Tr. 25. The ALJ found that Plaintiff  
16 could perform work that does not involve lifting or carrying more than 10 pounds  
17 frequently or more than 20 pounds occasionally; sitting for more than a total of 6  
18 hours during an 8-hour workday with normal breaks; standing and/or walking for  
19 more than a total of 6 hours during an 8-hour workday with normal breaks; more  
20 than 1 to 3-step tasks; any detailed work; more than ordinary production  
21 requirements; more than occasional contact with coworkers or the public; or any  
22 contact with children. Tr. 25-26.

23 At step four, the ALJ found Plaintiff had no past relevant work. Tr. 32. At  
24 step five, the ALJ determined that, considering Plaintiff’s age, education, work  
25 experience and RFC, and based on the testimony of the vocational expert, Plaintiff  
26 was capable of making a successful adjustment to other work that exists in  
27 significant numbers in the national economy, including the jobs of housekeeping  
28 cleaner and agricultural produce sorter. Tr. 33. The ALJ thus concluded Plaintiff

1 was not under a disability within the meaning of the Social Security Act at any  
2 time from December 14, 2008, the application date, through the date of the ALJ's  
3 decision, November 2, 2012. Tr. 33.

#### 4 **ISSUES**

5 The question presented is whether substantial evidence supports the ALJ's  
6 decision denying benefits and, if so, whether that decision is based on proper legal  
7 standards. Plaintiff contends the ALJ erred by (1) improperly discrediting his  
8 symptom claims; and (2) failing to properly consider and weigh the medical  
9 opinion evidence.

#### 10 **DISCUSSION**

##### 11 **A. Plaintiff's Credibility**

12 Plaintiff contends the ALJ erred by failing to provide valid reasons for  
13 rejecting his subjective complaints. ECF No. 14 at 8-13. The Court agrees.

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 because it is unsupported by medical evidence. *Reddick v. Chater*, 157  
20 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the  
21 ALJ's reasons for rejecting the claimant's testimony must be "specific, clear and  
22 convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v.*  
23 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient:  
24 rather the ALJ must identify what testimony is not credible and what evidence  
25 undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*,  
26 12 F.3d 915, 918 (9th Cir. 1993).

27 In this case, the ALJ found Plaintiff's medically determinable impairments  
28 could reasonably be expected to cause the alleged symptoms; however, Plaintiff's

1 statements concerning the intensity, persistence and limiting effects of the  
2 symptoms were not credible to the extent they were inconsistent with the ALJ's  
3 RFC determination. Tr. 27-28.

4 The ALJ first found that inconsistencies between Plaintiff's statements and  
5 the evidence of record undermined his credibility. Tr. 27. Inconsistencies in a  
6 disability claimant's testimony support a decision by the ALJ that a claimant lacks  
7 credibility. *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1986); *Molina v.*  
8 *Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) ("Even where those activities suggest  
9 some difficulty functioning, they may be grounds for discrediting the claimant's  
10 testimony to the extent that they contradict claims of a totally debilitating  
11 impairment.").

12 The ALJ determined Plaintiff's "admission that he could concentrate to  
13 watch television and do word search puzzles undermines his claim he could not  
14 work because his mind wanders and he lacks the ability to focus." Tr. 27. The  
15 ALJ also noted Plaintiff's testimony that he could read the newspaper, perform  
16 simple math, and count change was inconsistent with his allegations of  
17 concentration deficits. Tr. 27. Finally, the ALJ found Plaintiff's October 2008  
18 "admission" that he has problems working as a result of being lazy<sup>1</sup> and September  
19 2011 statement that he wished to get training to work were inconsistent with his  
20 assertion of the presence of disabling physical or mental impairments. Tr. 28.

21 It is well-settled that a claimant need not "vegetate in a dark room" to be  
22 found disabled. *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987). Plaintiff's  
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24 <sup>1</sup>This report predates the relevant time period in this matter. Evidence from  
25 outside of the relevant time period can be deemed useful as background  
26 information; however, it is irrelevant to the extent that it does not address  
27 claimant's medical status during the relevant period at issue in this action. *See*  
28 *Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir. 1989).

1 report that he watches TV, performs word search puzzles, is able to read the  
2 newspaper and can perform simple math and indication he would like training in  
3 order to work are not necessarily inconsistent with his description of functional  
4 limitations. The ALJ's assertion that these reports demonstrate inconsistencies  
5 with Plaintiff's allegations of disabling limitations is unfounded.

6 The ALJ next held that Plaintiff's "active lifestyle" establishes he has the  
7 capacity to perform work not inconsistent with the ALJ's RFC determination. Tr.  
8 27. Daily activities may be grounds for an adverse credibility finding if a claimant  
9 is able to spend a substantial part of his day engaged in pursuits involving the  
10 performance of physical functions that are transferable to a work setting. *Orn v.*  
11 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

12 The ALJ cites to record evidence demonstrating Plaintiff is able to do  
13 laundry, prepare meals and shop; spends his time walking around, doing odd jobs,  
14 and helping his mother and her neighbors; assists his mother with her oxygen and  
15 caring for her dog; is able to do laundry, prepare meals, wash dishes, and maintain  
16 his personal finances; rides his bicycle and listens to the radio; lives by himself and  
17 spends time at his mother's house helping with chores and taking her to visit  
18 friends; goes to his mother's house to help her with chores and walks the dog; is  
19 able to wash dishes and vacuum daily and do the laundry about once a week; is  
20 able to cook from scratch and cook on a hibachi; is able to manage his own funds;  
21 lives alone and spends time watching TV and doing word search puzzles; is able to  
22 do the laundry and prepare simple meals; and retains the ability to visit his mother  
23 and socialize with her neighbors. Tr. 26-27.

24 While it was not improper for the ALJ to consider Plaintiff's level of activity  
25 in this case when assessing his credibility, the Ninth Circuit has held that one does  
26 not need to be "utterly incapacitated" to be disabled. *Fair v. Bowen*, 885 F.2d 597,  
27 603 (9th Cir. 1989) ("claimant's ability to engage in activities that were sporadic  
28 and punctuated with rest, such as housework, occasional weekend trips, and some



1 exercise, do not support a finding that he can engage in regular work activities”).  
2 Plaintiff’s reported daily activities are not necessarily inconsistent with his  
3 description of limitations, and there is no evidence of record which shows that  
4 Plaintiff is able to spend a substantial part of his day engaged in the performance of  
5 work related functions. Moreover, Plaintiff has consistently indicated he lives  
6 alone, helps his mother, is able to do household chores and spends time watching  
7 TV and doing word puzzles. The Court finds Plaintiff’s consistency with reporting  
8 these daily activities actually supports his credibility in this case.

9         The ALJ also indicated the record reflected noncompliance issues. Tr. 27.  
10 Noncompliance with medical care or unexplained or inadequately explained  
11 reasons for failing to seek medical treatment cast doubt on a claimant’s subjective  
12 complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.2d at 603. The  
13 ALJ noted the record fails to show Plaintiff has sought or required significant  
14 forms of treatment; Plaintiff has failed to comply with treatment by repeated no-  
15 shows for mental health counseling; and Plaintiff’s irregular use of Prozac is  
16 inconsistent with his allegations of disabling symptoms. Tr. 27. The ALJ stated  
17 Plaintiff’s limited use of Prozac suggested his symptoms of depression have been  
18 controlled and Plaintiff has admitted his anxiety has been controlled without the  
19 use of Vistaril. Tr. 27.

20         The Ninth Circuit has held that a lack of mental health treatment is a  
21 questionable basis on which to reject a claim of a mental impairment. *Nguyen v.*  
22 *Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (finding “it is a questionable practice  
23 to chastise one with a mental impairment for the exercise of poor judgment in  
24 seeking rehabilitation”) (citation and inner quotation marks omitted). Furthermore,  
25 pursuant to SSR 96-7, an ALJ must not draw an adverse inference from a  
26 claimant’s failure to seek or pursue treatment “without first considering any  
27 explanations that the individual may provide, or other information in the case  
28 record, that may explain infrequent or irregular medical visits or failure to seek

1 medical treatment.” SSR 96-7; *see also Dean v. Astrue*, 2009 WL 2241333 (E.D.  
2 Wash. 2009) (noting “the SSR regulations direct the ALJ to question a claimant at  
3 the administrative hearing to determine whether there are good reasons for not  
4 pursuing medical treatment in a consistent manner”). Here, the ALJ sought no  
5 explanation for Plaintiff’s lack of significant mental health treatment.

6 The effectiveness of medication in alleviating pain and other symptoms is a  
7 relevant factor to consider in evaluating the severity of a claimant’s symptoms. 20  
8 C.F.R. § 416.929(c)(3). However, as noted by Plaintiff, the record shows that  
9 Plaintiff had difficulty tolerating the side effects of the mental health medication,  
10 Tr. 60, 419, and the ALJ’s implication that Plaintiff’s condition stabilized with  
11 medication is belied by the record, Tr. 370 (stating Prozac was only “somewhat”  
12 effective). ECF No. 15 at 13. In this case, the issue of medication effectiveness is  
13 unresolved.

14 Lastly, the ALJ indicated the objective medical evidence of record does not  
15 support Plaintiff’s disability assertions. Tr. 28. A lack of supporting objective  
16 medical evidence is a factor which may be considered in evaluating a claimant’s  
17 credibility, provided it is not the sole factor. *Bunnell v. Sullivan*, 347 F.2d 341,  
18 345 (9th Cir. 1991). Here, as noted by Plaintiff, ECF No. 17 at 2-4, every mental  
19 health care professional of record has indicated Plaintiff has mental limitations  
20 which adversely affect his ability to perform work related activities. *See infra*.  
21 Plaintiff’s allegations of functional limitations are not unsubstantiated by the  
22 objective evidence of record.

23 The ALJ is responsible for reviewing the evidence and resolving conflicts or  
24 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
25 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in  
26 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in  
27 determining whether the ALJ’s decision is supported by substantial evidence and  
28 may not substitute its own judgment for that of the ALJ even if it might justifiably

1 have reached a different result upon de novo review. 42 U.S.C. § 405(g).  
2 Nevertheless, based on the foregoing, the Court concludes that the rationale  
3 provided by the ALJ for discrediting Plaintiff is not clear and convincing. The  
4 Court thus finds that a remand for a proper credibility determination is necessary in  
5 this case.

6 **B. Medical Opinion Evidence**

7 Plaintiff contends the ALJ also erred by failing to properly consider and  
8 weigh the medical opinion evidence. ECF No. 15 at 15-18. Plaintiff argues the  
9 ALJ failed to properly consider the October 2008 and September 2009 opinions of  
10 Kayleen Islam-Zwart, Ph.D., and improperly afforded “no significant weight” to  
11 the opinions of R. Renee Eisenhauer, Ph.D., and W. Scott Mabee, Ph.D. *Id.*

12 On October 3, 2008,<sup>2</sup> Dr. Islam-Zwart examined Plaintiff and completed a  
13 Psychological/Psychiatric Evaluation form. Tr. 358-365. Dr. Islam-Zwart  
14 assessed moderate, marked and severe functional limitations, Tr. 360, and  
15 indicated Plaintiff continued to exhibit cognitive difficulties, Tr. 363. Dr. Islam-  
16 Zwart indicated Plaintiff’s interpersonal presentation and cognitive impairments  
17 caused Plaintiff to be unable to work in a regular manner and opined “it is highly  
18 improbable he would be able to [work] at any point in the future.” Tr. 365. The  
19 ALJ afforded Dr. Islam-Zwart’s October 3, 2008 opinion “no significant weight.”  
20 Tr. 31.

21 Dr. Islam-Zwart performed another evaluation of Plaintiff on September 18,  
22 2009. Tr. 418-428. Dr. Islam-Zwart again assessed moderate, marked and severe  
23 functional limitations, Tr. 426, and noted Plaintiff continued “to present as odd and  
24 socially and cognitively impaired,” Tr. 421. Dr. Islam-Zwart opined that Plaintiff  
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26 <sup>2</sup>This report predates the relevant time period in this matter. As indicated  
27 above, evidence from outside the relevant time period is of limited relevance. *See*  
28 *Fair v. Bowen*, 885 F.2d at 600.

1 “continues to be unable to work in a regular and sustained fashion and his  
2 prognosis for future change is poor.” Tr. 421. The ALJ also afforded this opinion  
3 “no significant weight.” Tr. 31.

4 On October 28, 2008, R. Renee Eisenhauer, Ph.D., approved Plaintiff’s  
5 claim for public assistance based on Section 12.08 (personality disorders). Tr. 417.  
6 The ALJ afforded Dr. Eisenhauer’s report “no significant weight” because it was  
7 based on Dr. Islam-Zwart’s rejected assessments. Tr. 31.

8 W. Scott Mabee, Ph.D., completed Psychological/Psychiatric Evaluation  
9 forms on January 27, 2011, Tr. 466-470, and December 6, 2011, Tr. 518-525. Dr.  
10 Mabee assessed several moderate and marked functional limitations but opined  
11 that Plaintiff was capable of understanding and carrying out simple, repetitive  
12 instructions and completing simple tasks if closely supervised. Tr. 468-469, 519.  
13 The ALJ assigned “no significant weight” to Dr. Mabee’s assessed limitations, but  
14 gave “some weight” to his opinion that Plaintiff could understand and carry out  
15 simple instructions, concentrate for short periods and work best in positions that  
16 have minimal contact with others. Tr. 31-32.

17 As determined above, in light of the ALJ’s erroneous credibility  
18 determination, this matter will be remanded for additional proceedings. On  
19 remand, the ALJ shall reconsider Plaintiff’s statements and testimony. The ALJ  
20 shall additionally reassess Plaintiff’s RFC, taking into consideration the medical  
21 opinions of Dr. Islam-Zwart, Tr. 358-365, 418-428, the October 28, 2008 report of  
22 Dr. Eisenhauer, Tr. 417, the Psychological/Psychiatric Evaluation forms completed  
23 by Dr. Mabee on January 27, 2011, Tr. 466-470, and December 6, 2011, Tr. 518-  
24 525, and all other medical evidence of record relevant to Plaintiff’s claim for  
25 disability benefits. In addition, the ALJ shall direct Plaintiff to undergo a new  
26 consultative psychological examination. If warranted, the ALJ shall elicit the  
27 testimony of a medical expert to assist the ALJ in formulating a new RFC  
28 determination. The ALJ shall present the new RFC assessment to a vocational

1 expert to help determine whether Plaintiff is capable of performing any work  
2 existing in sufficient numbers in the national economy.

### 3 **CONCLUSION**

4 Plaintiff argues the ALJ's decision should be reversed and remanded for an  
5 immediate award benefits. The Court has the discretion to remand the case for  
6 additional evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292.  
7 The Court may award benefits if the record is fully developed and further  
8 administrative proceedings would serve no useful purpose. *Id.* Remand is  
9 appropriate when additional administrative proceedings could remedy defects.  
10 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
11 finds that further development is necessary for a proper determination to be made.

12 On remand, the ALJ shall reexamine Plaintiff's statements and testimony  
13 and reassess Plaintiff's RFC, taking into consideration the opinions of Drs. Islam-  
14 Zwart, Eisenhower, and Mabee, and all other medical evidence of record relevant to  
15 Plaintiff's claim for disability benefits. The ALJ shall develop the record further  
16 by requiring Plaintiff to undergo a new consultative psychological examination  
17 prior to a new administrative hearing and, if warranted, by eliciting the testimony  
18 of a medical expert to assist the ALJ in formulating a new RFC determination.  
19 The ALJ shall obtain supplemental testimony from a vocational expert and take  
20 into consideration any other evidence or testimony relevant to Plaintiff's disability  
21 claim.

22 Accordingly, **IT IS ORDERED:**

23 1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is  
24 **GRANTED, in part.**

25 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is  
26 **DENIED.**

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

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

2           The District Court Executive is directed to file this Order and provide copies  
3 to counsel. **Judgment shall be entered in favor of Plaintiff**, and the file shall be  
4 **CLOSED.**

5           DATED May 18, 2015.



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

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JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE