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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEBBORAH L. EVANS,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
  
Defendant.

NO: 2:14-CV-0231-TOR  
  
ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties’ cross-motions for summary judgment. ECF Nos. 22, 23. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties’ completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant’s motion and denies Plaintiff’s motion.

**JURISDICTION**

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

1 **STANDARD OF REVIEW**

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

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

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  
17 work activity. *Id.* § 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. *Id.*

19 § 416.920(b).  
20

1           If the claimant is not engaged in substantial gainful activities, the analysis  
2 proceeds to step two. At this step, the Commissioner considers the severity of the  
3 claimant’s impairment. *Id.* § 416.920(a)(4)(ii). If the claimant suffers from “any  
4 impairment or combination of impairments which significantly limits [his or her]  
5 physical or mental ability to do basic work activities,” the analysis proceeds to step  
6 three. *Id.* § 416.920(c). If the claimant’s impairment does not satisfy this severity  
7 threshold, however, the Commissioner must find that the claimant is not disabled.  
8 *Id.*

9           At step three, the Commissioner compares the claimant’s impairment to  
10 several impairments recognized by the Commissioner to be so severe as to  
11 preclude a person from engaging in substantial gainful activity. *Id.*  
12 § 416.920(a)(4)(iii). If the impairment is as severe as or more severe than one of  
13 the enumerated impairments the Commissioner must find the claimant disabled  
14 and award benefits. *Id.* § 416.920(d).

15           If the severity of the claimant’s impairment does meet or exceed the severity  
16 of the enumerated impairments, the Commissioner must pause to assess the  
17 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
18 defined generally as the claimant’s ability to perform physical and mental work  
19 activities on a sustained basis despite his or her limitations, *id.* § 416.945(a)(1), is  
20 relevant to both the fourth and fifth steps of the analysis.

1           At step four, the Commissioner considers whether, in view of the claimant's  
2 RFC, the claimant is capable of performing work that he or she has performed in  
3 the past ("past relevant work"). *Id.* § 416.920(a)(4)(iv). If the claimant is capable  
4 of performing past relevant work, the Commissioner must find that the claimant is  
5 not disabled. *Id.* § 416.920(f). If the claimant is incapable of performing such  
6 work, the analysis proceeds to step five.

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

15           The burden of proof is on the claimant at steps one through four. *Bray v.*  
16 *Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). If the analysis  
17 proceeds to step five, the burden shifts to the Commissioner to establish that (1) the  
18 claimant is capable of performing other work; and (2) such work "exists in  
19 significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran*  
20 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

1 **ALJ FINDINGS**

2 Plaintiff filed an application for supplemental security income, dated April  
3 25, 2012, alleging a disability onset date of April 29, 2010. Tr. 76-87. Plaintiff's  
4 claim was denied initially, Tr. 46-49, and upon reconsideration, Tr. 51-53.  
5 Plaintiff requested a hearing before an ALJ, Tr. 54, which was held on June 26,  
6 2013, Tr. 518-43. On August 2, 2013, the ALJ rendered a decision denying  
7 Plaintiff's claim. Tr. 9-24.

8 At step one, the ALJ found that Plaintiff had not engaged in substantial  
9 gainful activity since April 25, 2012, the application date. Tr. 14. At step two, the  
10 ALJ found that Plaintiff had the following severe impairments: chronic hepatitis C  
11 with cirrhosis; chronic obstructive pulmonary disease/asthma; fibromyalgia;  
12 degenerative disc disease and degenerative joint disease of the cervical and lumbar  
13 spine; and obesity. Tr. 14. At step three, the ALJ found that Plaintiff does not have  
14 an impairment or combination of impairments that meets or medically equals a  
15 listed impairment. Tr. 14. The ALJ then concluded that Plaintiff had the RFC

16 to perform light work as defined in 20 CFR 416.967(b). The claimant  
17 is not able to climb ladders, ropes, and scaffolds and she is able to  
18 occasionally climb stairs and ramps. She can frequently stoop, kneel,  
19 crouch, crawl, and balance. The claimant should avoid concentrated  
20 exposure to vibrations, respiratory irritants, hazards, and extreme cold.

Tr. 17. At step four, the ALJ found Plaintiff is capable of performing past relevant  
work as a deli clerk and that this work does not require the performance of work-

1 related activities precluded by Plaintiff's RFC. TR. 23. On that basis, the ALJ  
2 concluded that Plaintiff was not disabled as defined in the Social Security Act. Tr.  
3 23-24.

4 On May 22, 2014, the Appeals Council denied Plaintiff's request for review,  
5 Tr. 4-7, making the ALJ's decision the Commissioner's final decision for purposes  
6 of judicial review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.  
7 Plaintiff commenced this action on July 17, 2014. ECF No. 1. On October 3,  
8 2014, the Court granted the parties stipulated motion to remand the matter for the  
9 consideration of additional evidence. ECF Nos 9, 10. On February 13, 2015, the  
10 Appeals Council denied review. Tr. 3C-3D. On April 1, 2015, this Court granted  
11 the parties' stipulated motion to reopen the case. ECF No. 12.

## 12 ISSUES

13 Plaintiff seeks judicial review of the Commissioner's final decision denying  
14 her supplemental security income under Title XVI of the Social Security Act. ECF  
15 No. 22. Plaintiff raises the following two issues for this Court's review:

- 16 (1) Whether the ALJ properly discredited Plaintiff's symptom claims; and
- 17 (2) Whether the ALJ properly weighed the medical opinion evidence.

18 ECF No. 22 at 10. The Court evaluates each issue in turn.

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1 **DISCUSSION**

2 **A. Adverse Credibility Finding**

3 First, Plaintiff faults the ALJ for failing to provide specific findings with  
4 clear and convincing reasons for discrediting her symptom claims. *Id.* at 11-14.

5 An ALJ engages in a two-step analysis to determine whether a claimant’s  
6 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must  
7 determine whether there is objective medical evidence of an underlying  
8 impairment which could reasonably be expected to produce the pain or other  
9 symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).

10 “The claimant is not required to show that her impairment could reasonably be  
11 expected to cause the severity of the symptom she has alleged; she need only show  
12 that it could reasonably have caused some degree of the symptom.” *Vasquez v.*  
13 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

14 Second, “[i]f the claimant meets the first test and there is no evidence of  
15 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
16 the symptoms if she gives ‘specific, clear and convincing reasons’ for the  
17 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting  
18 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). “General findings are  
19 insufficient; rather, the ALJ must identify what testimony is not credible and what  
20 evidence undermines the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81



1 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir.  
2 2002) (“[T]he ALJ must make a credibility determination with findings sufficiently  
3 specific to permit the court to conclude that the ALJ did not arbitrarily discredit  
4 claimant’s testimony.”). “The clear and convincing [evidence] standard is the most  
5 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
6 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
7 924 (9th Cir. 2002)).

8 In making an adverse credibility determination, the ALJ may consider, *inter*  
9 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the  
10 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s  
11 daily living activities; (4) the claimant’s work record; and (5) testimony from  
12 physicians or third parties concerning the nature, severity, and effect of the  
13 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

14 This Court finds the ALJ provided several specific, clear, and convincing  
15 reasons for finding Plaintiff’s statements concerning the intensity, persistence, and  
16 limiting effects of her symptoms “not entirely credible.” Tr. 18.

17 First, the ALJ found Plaintiff had a poor work history. Tr. 18-19. Her past  
18 work performance cast into doubt whether Plaintiff’s unemployment was actually  
19 due to medical impairments:

20 The claimant asserted she has not worked since 2008 because she  
went on interferon treatment. However, her earnings record shows

1 poor earning prior to the alleged date of onset, which raises a question  
2 as to whether the claimant's continuing unemployment is actually due  
3 to medical impairments. The claimant did not work in 2005 or 2007  
4 and she only had earnings in the amount of \$402.00 and \$1729.00, in  
5 2006 and 2008, respectively, both under substantial gainful activity.  
6 The treatment records begin in January 2011, although she started  
7 interferon treatment in April 2010.

8 Tr. 18-19 (internal citations to the record omitted). Poor work history can provide  
9 a permissible reason to cast doubt on Plaintiff's purported reason for  
10 unemployment. *See Thomas*, 278 F.3d at 959.

11 Second, the ALJ found the objective medical evidence did not support the  
12 degree of limitations alleged by Plaintiff. Tr. 19. The ALJ set out, in detail, the  
13 medical evidence regarding Plaintiff's impairments, and ultimately concluded that  
14 her allegations were inconsistent with the medical evidence. Tr. 19-21. The ALJ  
15 specifically discussed medical evidence contradicting Plaintiff's allegations of  
16 back pain, pain in her fingers, swollen hands, abdominal pain, muscle weakness in  
17 the knees, and fatigue. Tr. 19-21. For instance, although Plaintiff complained of  
18 sharp pains in her lower back, the ALJ noted that examinations in June and August  
19 2012 showed Plaintiff "had only mild tenderness in the low back, no swelling, and  
20 a negative straight leg raise." Tr. 19-20. Further, although Plaintiff complained of  
debilitating pain, the ALJ noted that in April and May 2012, around the time of her  
application, medical visits "yielded a relatively normal examinations, with only  
some abdominal tenderness and enlarged spleen and liver." Tr. 19.

1           Such inconsistencies between Plaintiff’s alleged limitations and medical  
2 evidence provided a permissible reason for discounting Plaintiff’s credibility. *See*  
3 *Thomas*, 278 F.3d at 958-59 (“If the ALJ finds that the claimant’s testimony as to  
4 the severity of her pain and impairments is unreliable, the ALJ must make a  
5 credibility determination ... [t]he ALJ may consider ... testimony from physicians  
6 and third parties concerning the nature, severity and effect of the symptoms of  
7 which the claimant complains.”) (internal citations and modifications omitted);  
8 *see also Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (“While  
9 subjective pain testimony cannot be rejected on the sole ground that it is not fully  
10 corroborated by objective medical evidence, the medical evidence is still a relevant  
11 factor in determining the severity of the claimant’s pain and its disabling effects.”).

12           Third, the ALJ found Plaintiff’s testimony that her daily activities are fairly  
13 limited was contradicted by statements in function reports submitted by Plaintiff  
14 and her husband. Tr. 21. The ALJ noted

15           on the function report, completed by the claimant on June 7, 2012, the  
16 statements suggest that claimant’s activities of daily living are not as  
17 limited as she reported in her testimony. She said she feeds, grooms,  
18 and lets the animals outside. She is able to clean (without specifying  
19 an[y] limitations), she folds laundry, and rarely irons. She said she  
20 prepares meals daily, but not several courses and she needs help with  
prep work. She gets out daily, either by car or to let the dogs out. She  
grocery shops. She goes to church every week and she regularly visits  
friends.

1 Tr. 21-22 (citations to record omitted). Because the ALJ may employ “ordinary  
2 techniques of credibility evaluation, such as the claimant’s reputation for lying ...  
3 and other testimony by the claimant that appears less than candid” when assessing  
4 the Plaintiff’s credibility, *Tommasetti v. Astrue*, 533 F.3d at 1035, 1039 (9<sup>th</sup> Cir.  
5 2008), the ALJ did not err when she found inconsistencies between Plaintiff’s  
6 testimony and her function report statements. *See Molina*, 674 F.3d at 1112  
7 (“[T]he ALJ may consider inconsistencies either in the claimant’s testimony or  
8 between the testimony and the claimant’s conduct.”).

9       Regarding the third party function report completed by Plaintiff’s husband,  
10 the ALJ noted

11           His statements are contrary to the claimant’s allegations at the hearing  
12 of doing very few activities of daily living. He asserted the claimant  
13 is able to do most housework (no yard work), helps groom the  
14 animals, she does most of the cooking but needs some help with prep  
work, she grocery shops, and visits with friends. Some weight was  
given to these statements, as these statements indicate the claimant is  
not as limited as she stated in her testimony.

15 Tr. 22 (citations to record omitted). An ALJ may support her adverse credibility  
16 finding by citing to general inconsistencies in the record. *Id*; *see Thomas*, 278 F.3d  
17 at 958-59; *Lewis v. Apfel*, 236 F.3d 503, 511 (9<sup>th</sup> Cir. 2001) (explaining lay  
18 testimony is competent evidence that an ALJ must take into account). Moreover,  
19 in assessing a claimant’s credibility, an ALJ may consider her daily activities. *See*  
20 *Molina*, 674 F.3d at 1113 (“Even where those activities suggest some difficulty

1 functioning, they may be ground for discrediting the claimant’s testimony to the  
2 extent that they contradict claims of a totally debilitating impairment.”).

3         The ALJ also noted that Plaintiff’s daily activities “cannot be objectively  
4 verified with any reasonable degree of certainty” and that “it is difficult to attribute  
5 that degree of limitation to the claimant’s medical condition.” Tr. 21. Plaintiff  
6 rightfully faults the ALJ for relying on an unknown standard. ECF No. 22 at 12.  
7 Nonetheless, in light of all the other permissible reasons the ALJ provided for  
8 discrediting Plaintiff’s testimony, this Court does not find the ALJ has committed  
9 reversible error. *See Molina*, 674 F.3d at 1115 (“[S]everal of our cases have held  
10 that an ALJ’s error was harmless where the ALJ provided one or more invalid  
11 reasons for disbelieving a claimant’s testimony, but also provided valid reasons  
12 that were supported by the record.” (citations omitted)); *see also Batson v. Comm’r*  
13 *of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that any error  
14 the ALJ committed in asserting one impermissible reason for claimant’s lack of  
15 credibility did not negate the validity of the ALJ’s ultimate conclusion that the  
16 claimant’s testimony was not credible). In sum, despite Plaintiff’s arguments to  
17 the contrary, the ALJ provided several specific, clear, and convincing reasons for  
18 rejecting Plaintiff’s testimony. *See Ghanim*, 763 F.3d at 1163.

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1           **B. Medical Opinion Evidence**

2           Next, Plaintiff faults the ALJ for discounting the opinions of Dr. Mullen and  
3 Dr. Lind. ECF No. 22 at 14-16.

4           There are three types of physicians: “(1) those who treat the claimant  
5 (treating physicians); (2) those who examine but do not treat the claimant  
6 (examining physicians); and (3) those who neither examine nor treat the claimant  
7 but who review the claimant’s file (nonexamining or reviewing physicians).”  
8 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).  
9 “Generally, a treating physician’s opinion carries more weight than an examining  
10 physician’s, and an examining physician’s opinion carries more weight than a  
11 reviewing physician’s.” *Id.* “In addition, the regulations give more weight to  
12 opinions that are explained than to those that are not, and to the opinions of  
13 specialists concerning matters relating to their specialty over that of  
14 nonspecialists.” *Id.* (citations omitted).

15           If a treating or examining physician’s opinion is uncontradicted, an ALJ may  
16 reject it only by offering “clear and convincing reasons that are supported by  
17 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
18 “However, the ALJ need not accept the opinion of any physician, including a  
19 treating physician, if that opinion is brief, conclusory and inadequately supported

1 by clinical findings.” *Bray*, 554 F.3d at 1228 (internal quotation marks and  
2 brackets omitted).

3 Plaintiff contends a May 9, 2012 DSHS physical evaluation report signed by  
4 Dr. Mullen (Tr. 184-85) indicates that Plaintiff was limited to two pounds of lifting  
5 and would be unable to perform even sedentary work. ECF No. 22 at 5, 15.

6 Plaintiff contends the ALJ afforded little weight to this treating physician’s  
7 evaluation because it was based on Plaintiff’s subjective complaints. Plaintiff is  
8 only partially correct. The ALJ correctly identified this report as belonging to  
9 Joseph Petersen, ARNP. Tr. 22.<sup>1</sup> The ALJ observed that Mr. Petersen disclaimed  
10 conducting a physical capacity evaluation and that the evaluation contained mostly  
11 the Plaintiff’s subjective complaints. *Id.* Moreover, the ALJ observed that the  
12 accompanying treatment notes do not support Plaintiff’s claimed restrictions. *Id.*

13 Mr. Petersen is a nurse practitioner and as such is considered an “other  
14 source.” 20 C.F.R. § 416.913(d). Because Mr. Petersen is an “other source” whose  
15 opinions about the nature and severity of Plaintiff’s impairments are not entitled to  
16 controlling weight, the ALJ need only have provided “germane reasons” for  
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19 <sup>1</sup> The evaluation report shows that no physical evaluation was performed and Dr.  
20 Mullen merely cosigned the form as Mr. Petersen’s supervisor. *See* Tr. 185.

1 rejecting his opinions. SSR 06-03p, 2006 WL 2329939 at \* 2; *Molina*, 674 F.3d at  
2 1111.

3 Because an ALJ is not required to accept a medical opinion that is “largely  
4 based” on a claimant’s non-credible self-reports, *Tommasetti*, 533 F.3d at 1041,  
5 and because an ALJ may discount a medical opinion if there are inconsistencies  
6 between the opinion and the provider’s treatment notes, *see Bayliss*, 427 F.3d at  
7 1216, the Court finds the ALJ provided germane reasons for affording Mr.  
8 Petersen’s opinion limited weight.

9 Next, Plaintiff challenges the little weight given to Dr. Lind’s opinion. ECF  
10 No. 22 at 15. Plaintiff only disputes that the ALJ discounted the opinion because it  
11 predated the claimed onset of disability by more than one year. *Id.* But, the ALJ  
12 found more fundamental problems with Dr. Lind’s opinions that go unchallenged.

13 Dr. Lind conducted evaluations in 2010 and 2011. In 2010, Dr. Lind filled  
14 out a Department of Social & Health Services (“DSHS”) check-box form. Tr. 436-  
15 39. Assessing Plaintiff’s overall work level, he checked a box indicating that  
16 Plaintiff was “severely limited,” meaning she was “unable to lift at least 2 pounds  
17 or unable to stand and/or walk.” Tr. 438. He also checked a box indicating  
18 Plaintiff’s chronic hepatitis C diagnosis caused a “marked” limitation, meaning a  
19 “[v]ery significant interference with the ability to perform one or more basic work-  
20 related activities.” Tr. 438.



1 In 2011, Dr. Lind filled out another DSHS check-box form in which he  
2 checked a box indicating Plaintiff is “work function impaired.” Tr. 440-41. He  
3 also indicated that Plaintiff can only stand for 1-2 hours and sit for 1-2 hours in an  
4 8 hour work day, lift 10-15 pounds occasionally and lift 5 pounds frequently. Tr.  
5 440. Additionally, he indicated that Plaintiff did not have any postural, gross or  
6 fine motor, or environmental restrictions. Tr. 441.

7 The ALJ discounted Dr. Lind’s 2010 and 2011 opinions because there were  
8 no contemporaneous treatment notes to support the check-box opinions and the  
9 treatments notes that are available do not support such significant limitations. The  
10 ALJ found:

11 The earliest treatment of record from Dr. Lind (and in the case record  
12 overall) is January 11, 2011, and the objective evidence reported in  
13 this note shows a normal examination, except as mild lower left  
14 quadrant tenderness. Although the claimant started receiving  
15 interferon treatment in April 2010, there are no treatment notes dating  
16 that far back. Therefore, the limitations reported by Dr. Lind in June  
17 2010, cannot be objectively verified; however, the treatment notes  
18 available do not support such significant limitations and the claimant  
19 was on interferon from January 2011 to April 2011 and the treatment  
20 notes for the period of time do not suggest limitations more limiting  
than the light residual functional capacity given above ...  
Furthermore, the opinion given on July 5, 2011, is also not supported  
by treatment notes. On June 2, 2011, a treatment note by Dr. Lind  
only [indicated] abdominal tenderness, moderate epigastric  
tenderness, and an enlarged spleen, otherwise the examination was  
normal.

Tr. 23 (citations to record omitted). Inconsistencies between a doctor’s opinion  
and his own reports can provide a specific and legitimate reason for rejecting even

1 a treating doctor's opinion. *See Bayliss*, 427 F.3d at 1216 (finding a discrepancy  
2 between a doctor's opinion and his other recorded observations and opinions  
3 provides a clear and convincing reason for not relying on that doctor's opinion).

4 The ALJ also discounted Dr. Lind's 2010 and 2011 opinions because they  
5 predate Plaintiff's application. The ALJ found:

6 Moreover, this is a Title XVI application only. Although the claimant  
7 alleged an onset back to April 2010, the relevant period is from the  
8 application date and the June 24, 2010 opinion is more than one year  
9 prior to application date.

10 Tr. 23 (citations to record omitted). In making a determination whether a claimant  
11 is disabled, an ALJ must "develop [the claimant's] complete medical history for *at*  
12 *least the 12 months preceding the month in which you file your application* unless  
13 there is a reason to believe that development of an earlier period is necessary..."  
14 20 C.F.R. § 416.912(d) (emphasis added). To the extent that ALJ erred in rejecting  
15 an opinion made more than one year prior to the application date, it was harmless  
16 error. *See Tommasetti*, 533 F.3d at 1038 (holding that for an error to be harmless it  
17 must be "clear from the record that the ALJ's error was inconsequential to the  
18 ultimate nondisability determination"). Because the ALJ provided the specific and  
19 legitimate reasons discussed above for affording Dr. Lind's opinion little weight, it  
20 is clear from the record that any error was inconsequential to the ALJ's ultimate  
determination.

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

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 22) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 23) is

4 **GRANTED.**

5 The District Court Executive is hereby directed to file this Order, enter  
6 **Judgment for Defendant**, provide copies to counsel, and **CLOSE** the file.

7 **DATED** February 23, 2016.



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*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge