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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LORI SHIPMAN,

Plaintiff,

v.

NANCY A. BERRYHILL  
(PREVIOUSLY COLVIN),  
Acting Commissioner of Social  
Security,<sup>1</sup>

Defendant.

No. 2:16-cv-114-RHW

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING  
FOR FURTHER PROCEEDINGS**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 17 & 18. Plaintiff Lori Shipman brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s final decision, which denied her application for Disability Insurance Benefits under Title II of the Social Security Act, 42 U.S.C §§ 401-434. After reviewing the administrative record and

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<sup>1</sup> Nancy A. Berryhill became the Acting Commissioner of Social Security on January 20, 2017. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Carolyn W. Colvin as the defendant in this suit. No further action need be taken to continue this suit. 42 U.S.C. § 405(g).

1 briefs filed by the parties, the Court is now fully informed. For the reasons set forth  
2 below, the Court **GRANTS** Plaintiff’s Motion for Summary Judgment and  
3 **REMANDS** for further proceedings.

4 **I. Jurisdiction**

5 Ms. Shipman filed an application for Disability Insurance Benefits under  
6 Title II of the Social Security Act on May 29, 2012. AR 192-93. Her alleged onset  
7 date was March 1, 2010, AR 192, but the relevant period for this claim began May  
8 18, 2011.<sup>2</sup> AR 18. Her application was initially denied on September 11, 2012,  
9 AR 130-32, and on reconsideration on December 7, 2012, AR 135-36.

10 A hearing with Administrative Law Judge (“ALJ”) R.J. Payne occurred on  
11 June 12, 2014. AR 35-74. On August 5, 2014, ALJ Payne issued a decision finding  
12 Ms. Shipman ineligible for disability benefits under Title II. AR 18-29. The  
13 Appeals Council denied Ms. Shipman’s request for review on February 5, 2016.  
14 AR 1-5.

15 Ms. Shipman timely filed the present action challenging the denial of  
16 benefits on April 7, 2016. ECF No. 5. Accordingly, Ms. Shipman’s claims are  
17 properly before this Court pursuant to 42 U.S.C. § 405(g).

18  
19 <sup>2</sup> Ms. Shipman previously filed an application on October 28, 2010, which was  
20 denied initially on February 23, 2011, and on reconsideration May 17, 2011.  
AR 18. The ALJ determined that there was no good cause to reopen this earlier  
application, a finding which was not challenged by Ms. Shipman in this case,  
thus the Court accepts the findings of the ALJ and determines the relevant  
period for this claim began May 18, 2011. *Id.*

## II. Sequential Evaluation Process

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

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Social Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

Step one inquires whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful activity is defined as significant physical or mental activities done or usually done for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in

1 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§  
2 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

3 Step two asks whether the claimant has a severe impairment, or combination  
4 of impairments, that significantly limits the claimant's physical or mental ability to  
5 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe  
6 impairment is one that has lasted or is expected to last for at least twelve months,  
7 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &  
8 416.908-09. If the claimant does not have a severe impairment, or combination of  
9 impairments, the disability claim is denied, and no further evaluative steps are  
10 required. Otherwise, the evaluation proceeds to the third step.

11 Step three involves a determination of whether any of the claimant's severe  
12 impairments "meets or equals" one of the listed impairments acknowledged by the  
13 Commissioner to be sufficiently severe as to preclude substantial gainful activity.  
14 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;  
15 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or  
16 equals one of the listed impairments, the claimant is *per se* disabled and qualifies  
17 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to  
18 the fourth step.

19 Step four examines whether the claimant's residual functional capacity  
20 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)

1 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant  
2 is not entitled to disability benefits and the inquiry ends. *Id.*

3 Step five shifts the burden to the Commissioner to prove that the claimant is  
4 able to perform other work in the national economy, taking into account the  
5 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),  
6 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this  
7 burden, the Commissioner must establish that (1) the claimant is capable of  
8 performing other work; and (2) such work exists in "significant numbers in the  
9 national economy." 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,  
10 676 F.3d 1203, 1206 (9th Cir. 2012).

### 11 III. Standard of Review

12 A district court's review of a final decision of the Commissioner is governed  
13 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the  
14 Commissioner's decision will be disturbed "only if it is not supported by  
15 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1144,  
16 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means "more than  
17 a mere scintilla but less than a preponderance; it is such relevant evidence as a  
18 reasonable mind might accept as adequate to support a conclusion." *Sandgathe v.*  
19 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d  
20 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining

1 whether the Commissioner’s findings are supported by substantial evidence, “a  
2 reviewing court must consider the entire record as a whole and may not affirm  
3 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
4 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
5 F.2d 498, 501 (9th Cir. 1989)).

6 In reviewing a denial of benefits, a district court may not substitute its  
7 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
8 1992). If the evidence in the record “is susceptible to more than one rational  
9 interpretation, [the court] must uphold the ALJ's findings if they are supported by  
10 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,  
11 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir.  
12 2002) (if the “evidence is susceptible to more than one rational interpretation, one  
13 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,  
14 a district court “may not reverse an ALJ's decision on account of an error that is  
15 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is  
16 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.  
17 The burden of showing that an error is harmful generally falls upon the party  
18 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

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1 **IV. Statement of Facts**

2 The facts of the case are set forth in detail in the transcript of proceedings,  
3 and only briefly summarized here. Ms. Shipman was 59 years old at the time of  
4 her hearing. AR 25. She has at least a high school education and previously  
5 worked as a cashier. *Id.* Ms. Shipman has alleged numerous mental and physical  
6 impairments, including a heart murmur, irregular heartbeat, lipoma tumors in her  
7 back and knees, diabetes, lumbar degenerative disease, arthritis, asthma, obesity,  
8 bilateral hip degenerative disease, and depression. AR 18-29.

9 **V. The ALJ's Findings**

10 The ALJ determined that Ms. Shipman was not under a disability within the  
11 meaning of the Act from May 18, 2011, through the date of the decision. AR 29.

12 **At step one**, the ALJ found that Ms. Shipman had not engaged in substantial  
13 gainful activity since May 18, 2011 (citing 20 C.F.R. § 404.1571 *et seq.*). AR 20.

14 **At step two**, the ALJ found Ms. Shipman had the following severe  
15 impairments: lumbar degenerative disc disease, bilateral hip degenerative arthritis,  
16 asthma, and obesity (citing 20 C.F.R. § 404.1520(c)). AR 20.

17 **At step three**, the ALJ found that Ms. Shipman did not have an impairment  
18 or combination of impairments that meets or medically equals the severity of one  
19 of the listed impairments in 20 C.F.R. §§ 404, Subpt. P, App. 1. AR 683-84.

1 At **step four**, the ALJ found Ms. Shipman had the following residual  
2 function capacity: She can “perform light work as defined in 20 CFR 404.1567(b)  
3 except that [she] can lift and/or carry 20 pounds occasionally and 10 pounds  
4 frequently, stand/walk two hours at a time for a total of six hours in an eight-hour  
5 workday, and sit two hours at a time for a total of six hours in an eight-hour  
6 workday. [Ms. Shipman] is limited to occasional postural activities with the  
7 exception of frequent balancing and no climbing of ladders, ropes, or scaffolds.  
8 [She] should avoid concentrated exposure to extreme cold, extreme heat,  
9 pulmonary irritants (due to asthma), and hazards such as unprotected heights and  
10 heavy machinery (due to the effects of Hydrocodone for back pain).” AR 24-25.

11 The ALJ then determined that Ms. Shipman is capable of performing her  
12 past relevant work as a cashier as actually and generally performed. AR 29.

13 The ALJ did not progress to **step five** for alternative findings.

## 14 VI. Issues for Review

15 Ms. Shipman argues that the Commissioner’s decision is not free of legal  
16 error and not supported by substantial evidence. Specifically, she argues the ALJ  
17 erred by: (1) making a finding at step four that is contrary to law and not supported  
18 by substantial evidence; (2) finding Ms. Shipman’s mental impairments non-severe  
19 at step two and failing to account for limitations stemming from them in the  
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1 residual functional capacity finding; and (3) failing to account for Ms. Shipman’s  
2 work history in the assessment of her credibility. ECF No. 17 at 4.

## 3 **VII. Discussion**

### 4 **A. Ms. Shipman was able to perform her past relevant work as it is** 5 **generally performed.**

6 The ALJ found at step four that Ms. Shipman was able to perform her past  
7 work as a cashier, specifically Cashier II, classified as light duty unskilled work.  
8 AR 29. ALJ Payne made the finding that Ms. Shipman could perform this work as  
9 actually and generally performed. *Id.* The ALJ compared the description of the job  
10 as Ms. Shipman gave it, as well as the description as it is performed in the national  
11 economy to support this determination. *Id.* Further, the ALJ was influenced by the  
12 state agency evaluation that found Ms. Shipman able to perform her past relevant  
13 work. AR 120.

14 While the burden at step four still lies with Ms. Shipman to demonstrate that  
15 she cannot perform past relevant work, the ALJ still must “make the requisite  
16 factual findings” to support the conclusion. *Pinto v. Massanari*, 249 F.3d 840, 844  
17 (9th Cir. 2001). To do so, the ALJ must compare the residual functional capacity  
18 and the physical and mental demands of the past relevant work. *Id.* at 845; 20  
19 C.F.R. § 404.1520(f). ALJs may use the “actually performed test” or the “generally  
20 performed” test. *Stacy v. Colvin*, 825 F.3d 563, 569 (9th Cir, 2016). Although

1 brief, it appears the ALJ considered both how Ms. Shipman’s prior work was  
2 actually and generally performed.

3 The ALJ based the determination of how Ms. Shipman’s job was actually  
4 performed on her description of the job. ALJ Payne noted Ms. Shipman’s  
5 “description of this job is consistent with the requirement of light level work.” AR  
6 29. This alone, however, should not have ended the inquiry because her residual  
7 functional capacity included limitations beyond simply light work. Specifically,  
8 her residual functional capacity requires Ms. Shipman to “sit two hours at a time  
9 for a total of six hours in an eight-day workday.”<sup>3</sup> AR 24.

10 The ALJ relied on Ms. Shipman’s self-reporting to determine how her job  
11 was actually performed. In her disability report dated June 28, 2012, Ms. Shipman  
12 described her prior job as a cashier with LQW Traders as requiring walking and  
13 standing for eight hours and sitting for zero hours. AR 249. This cannot account  
14 for at least two hours per day of sitting required by her residual functional capacity.  
15 Thus, the Court finds that the ALJ erred as to determining that Ms. Shipman was  
16 able to perform her past relevant work as it was actually performed; however, this  
17 is only reversible error if the ALJ also erred in determining that Ms. Shipman is  
18 able to do her past relevant work as it is generally performed. *See Pinto*, 249 F.3d

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<sup>3</sup> This also does not include any qualifications for mental limitations that  
may affect the actual ability to perform this job, which was in error that is  
detailed later in this order.

1 at 845 (“We have never required explicit findings at step four regarding a  
2 claimant’s past relevant work both as generally performed *and* as actually  
3 performed.” (emphasis in original)).

4 The generally performed test is designed for situations in which the  
5 claimant’s past job was more demanding than industry standards. *Stacy*, 825 F.3d  
6 at 569. “The best source for how a job is generally performed is usually the  
7 Dictionary of Occupational Titles” (“DOT”). *Pinto*, 249 F.3d at 845. The ALJ  
8 refers to the description in the DOT which does not facially require or preclude  
9 periods of sitting. AR 29. The ALJ did not call a vocational expert to discuss any  
10 variations from the description in the DOT.

11 The ALJ did not rely solely on the DOT description in making this  
12 determination. ALJ Payne also cites to the finding by a state agency official that  
13 Ms. Shipman was capable of performing the DOT Title of Cashier II as “generally  
14 performed in the nationally economy.” AR 120. While the ALJ would have been  
15 better able to demonstrate their findings by calling a vocational expert, this state  
16 agency finding is additional evidence in the record that supports the determination.  
17 While Ms. Shipman’s job could not actually be performed under the restrictions set  
18 forth in her residual functional capacity, the DOT description and the record  
19 support the ALJ’s finding that it may generally performed as such. This is the  
20 purpose for having two separate tests. *See Stacy*, 825 F.3d at 569.

1           Nevertheless, even if Ms. Shipman could perform her past relevant work as  
2 generally performed based on the residual functional capacity assessed to her, the  
3 record demonstrates error in the calculation of her residual functional capacity. Ms.  
4 Shipman’s documented mental impairments were not properly considered by the  
5 ALJ, which resulted in reversible error.

6           **B. The ALJ erred at failing to determine Ms. Shipman’s mental**  
7           **impairments were severe at step two and this error was not harmless**  
8           **because they were not accounted for in the residual functional capacity.**

9           At step two in the five-step sequential evaluation for Social Security cases,  
10 the ALJ must determine whether a claimant has a medically severe impairment or  
11 combination of impairments. An impairment is found to be not severe “when  
12 medical evidence establishes only a slight abnormality or a combination of slight  
13 abnormalities which would have no more than a minimal effect on an individual’s  
14 ability to work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (quoting  
15 SSR 85-28). Step two is generally “a de minimis screening device [used] to  
16 dispose of groundless claims,” and the ALJ is permitted to find a claimant lacks a  
17 medically severe impairment only when the conclusion is clearly established by the  
18 record. *Webb v. Barnhart*, 433 F. 683, 687 (9th Cir. 2005) (quoting *Smolen v.*  
19 *Chater*, 80 F.3d 1273, 1290 (9th Cir.1996)).

1 Under step 2, an impairment is not severe if it does not significantly limit a  
2 claimant's ability to perform basic work activities. *Edlund v. Massanari*, 253 F.3d  
3 1152, 1159 (9th Cir. 2001) (citing 20 C.F.R. § 404.1521(a)(b)). These include,  
4 among others, the ability to respond appropriately to supervision, co-workers, and  
5 usual work situations. *Id.* (citing 20 C.F.R. § 404.1521(b)(5)).

6 The ALJ found Ms. Shipman's depression to be non-severe. AR 23. The  
7 ALJ relied in large part on a state disability determination that found Ms.  
8 Shipman's affective disorder (described by the ALJ as depression) to be non-  
9 severe and caused only mild restrictions. AR 116. In addition, the ALJ based the  
10 findings on a lack of consistent treatment for mental health symptoms, a lack of  
11 significant limitations detailed in the record, and mental status examinations within  
12 normal limits. AR 23.

13 The ALJ did not consider at step two the opinion of Dr. Jay Toews, Ed.D.,  
14 an examining psychologist who consulted with Ms. Shipman on January 31, 2011.  
15 The ALJ did give "little to some weight" to the opinion at step four. AR 28. The  
16 ALJ reasoned that because Dr. Toews's evaluation occurred prior to the relevant  
17 period, it may not adequately reflect Ms. Shipman's mental functioning during that  
18 period. *Id.* This is a reasonable interpretation.

19 A state agency determination in February 2011 found Ms. Shipman to have  
20 moderate difficulties in maintaining concentration, persistence, or pace at all. AR

1 79. Moderate limitations should be accounted for in the residual functional  
2 capacity, so even if this was incorrectly omitted at step two, it would not be  
3 harmless if it wasn't accounted for in the residual functional capacity  
4 determination. *See Lewis*, 498 F.3d at 310. These moderate limitations, however,  
5 were found also outside the relevant time period. AR 79, 90-91. Later evaluations  
6 that occurred within the relevant time period resulted in findings of only mild  
7 limitations. AR 104, 116.

8 While some pieces of the record show an improvement during the relevant  
9 time period, there are several parts of the record that shows contrary information,  
10 and the ALJ does not address this.

11 The ALJ broadly states that Ms. Shipman's mental status examinations were  
12 within normal limits, but this is contradicted by the record. Just days prior to the  
13 relevant period, Ms. Shipman was seen at Community Health Association of  
14 Spokane ("CHAS"), and she was recorded as having "moderately severe  
15 depression." AR 398. Likewise, in her physical exam, her level of distress was  
16 noted as anxious and her overall appearance as depressed. *Id.* On August 30, 2011,  
17 Ms. Shipman was seen by Dr. Robert H. Laugen, M.D., who noted she was  
18 "positive for spells of depression." AR 376. At another visit to CHAS on January  
19 23, 2012, the provider noted that Ms. Shipman was having trouble with side effects  
20 of her anti-depressant and that she had a "meltdown" in Walmart. AR 411. At this

1 visit, she was diagnosed as “having worsened depression/anxiety” and prescribed a  
2 new anti-depressant. AR 413. Subsequent visits show that she resumed Zoloft,  
3 despite her previous concerns of side effects. AR 415. While some parts of the  
4 record do show normal affect, AR 435, the ALJ appears to have ignored the  
5 records within the relevant time period that do show Ms. Shipman’s depression as  
6 a legitimate impairment. This was in error.

7         The ALJ also relied on Ms. Shipman’s own statements regarding her mental  
8 limitations, despite otherwise finding her subjective statements not credible. AR  
9 28. However, the Function Report on which the ALJ relied actually shows further  
10 mental limitations that were not addressed. AR 259. While Ms. Shipman did not  
11 self-identify problems with memory, understanding, following directions, or  
12 getting along with others, she did report problems with completing tasks and  
13 concentration, which support the earlier state agency findings of moderate  
14 limitations in concentration, persistence, and pace. AR 79, 90-91, 259. An ALJ  
15 may not “cherry pick” from a record to support the conclusion, but rather must  
16 account for the context of the whole record. *See Reddick v. Chater*, 157 F.3d 715,  
17 722-23 (9th Cir. 1998).

18         In addition, the ALJ did not fully evaluate Ms. Shipman’s depression  
19 because of her lack of consistent treatment. While Ms. Shipman did not  
20 consistently take her medication, the record supports her contention that she had

1 financial constraints that prevented her from doing so. AR 415-17, 481, 489.  
2 Conditions should not be dismissed for failure to follow treatment because of the  
3 inability to afford it. *See Gamble v. Chater*, 68 F.3d 319, 322 (9th Cir. 1995);  
4 *Smolen*, 90 F.2d at 1284 (While both cases found lack of ability to afford treatment  
5 was not a valid reason to reject a claimant's credibility, the logic remains the same  
6 here).

7 Because Ms. Shipman was found to have at least one severe impairment, this  
8 case was not resolved at step two. Ms. Shipman does not assign error to the ALJ's  
9 finding at step three. Thus, any error in the ALJ's finding at step two is harmless, if  
10 all impairments, severe and non-severe, were considered in the determination Ms.  
11 Shipman's residual functional capacity. *See Lewis v. Astrue*, 498 F.3d 909, 910  
12 (9th Cir. 2007) (holding that a failure to consider an impairment in step two is  
13 harmless error where the ALJ includes the limitations of that impairment in the  
14 determination of the residual functional capacity). The record demonstrates this  
15 was not done.

16 The Court finds that the ALJ improperly failed to properly account Ms.  
17 Shipman's mental limitations in her residual functional capacity, and any error by  
18 failing to consider these limitations severe at step two was not harmless. Remand is  
19 appropriate.



1       **C. The ALJ did not err with regard to Ms. Shipman’s credibility**  
2       **determination.**

3       An ALJ engages in a two-step analysis to determine whether a claimant’s  
4 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533  
5 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective  
6 medical evidence of an underlying impairment or impairments that could  
7 reasonably be expected to produce some degree of the symptoms alleged. *Id.*  
8 Second, if the claimant meets this threshold, and there is no affirmative evidence  
9 suggesting malingering, “the ALJ can reject the claimant’s testimony about the  
10 severity of [his] symptoms only by offering specific, clear, and convincing reasons  
11 for doing so.” *Id.*

12       In weighing a claimant's credibility, the ALJ may consider many factors,  
13 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's  
14 reputation for lying, prior inconsistent statements concerning the symptoms, and  
15 other testimony by the claimant that appears less than candid; (2) unexplained or  
16 inadequately explained failure to seek treatment or to follow a prescribed course of  
17 treatment; and (3) the claimant's daily activities.” *Smolen*, 80 F.3d at 1284. When  
18 evidence reasonably supports either confirming or reversing the ALJ's decision, the  
19 Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180  
20 F.3d 1094, 1098 (9th Cir.1999). “General findings are insufficient: rather the ALJ

1 must identify what testimony is not credible and what evidence undermines the  
2 claimant's complaints." *Lester*, 81 F.3d at 834.

3 While work history may be one factor for an ALJ to consider in a credibility  
4 determination, ALJ Payne provided multiple, valid reasons that are supported by  
5 the record for a negative credibility determination. The ALJ detailed that the record  
6 contained generally "unremarkable" findings that did not support the level of her  
7 claimed impairment, including physical examinations and x-rays. AR 26. Further,  
8 the ALJ cited to only conservative treatment, including no recommendation of  
9 surgery. *See Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative  
10 treatment can be sufficient to discount testimony regarding severity of an  
11 impairment).

12 Significantly, as ALJ Payne noted "no treating or examining physician has  
13 ever reported any disabling limitations due to the claimant's various physical  
14 impairments." AR 26. This is not a finding that Ms. Shipman challenges. Rather,  
15 she alleges that her strong work history should have been considered in this  
16 determination. The Court finds no authority for this to be reversible error,  
17 particularly in the Ninth Circuit. The ALJ's credibility determination is legally  
18 sufficient and supported by the record.

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1       **D. Remedy**

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

9             On remand, the ALJ will re-evaluate the effect of Ms. Shipman’s mental  
10 limitations in calculating her residual functional capacity. The resulting residual  
11 functional capacity shall be matched against her past relevant work experience,  
12 consulting a vocational expert if needed, and if it is found Ms. Shipman cannot  
13 perform her past relevant work, taking into account all limitations in her residual  
14 functional capacity, the ALJ will proceed to step five.

15   **VIII. Conclusion**

16             Having reviewed the record and the ALJ’s findings, the Court finds the  
17 ALJ’s decision is not supported by substantial evidence or free of legal error.

18 Accordingly, **IT IS ORDERED:**

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1. Plaintiff’s Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.

2. Defendant’s Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.

3. The District Court Executive is directed to enter judgment in favor of Plaintiff.

4. This matter is **REMANDED** to the Commissioner for further proceedings consistent with this Order.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order, forward copies to counsel and **close the file**.

**DATED** this 13th day of February, 2017.

*s/Robert H. Whaley*  
**ROBERT H. WHALEY**  
Senior United States District Judge