

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

Jan 24, 2024

SEAN F. MCAVOY, CLERK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELINDA N. C.,¹

Plaintiff,

v.

MARTIN O'MALLEY,
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

NO: 2:22-CV-00058-LRS

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

BEFORE THE COURT are the parties' cross-motions for summary judgment.
ECF Nos. 10, 11. This matter was submitted for consideration without oral

¹The court identifies a plaintiff in a social security case only by the first name and last initial in order to protect privacy. See Local Civil Rule 5.2(c).

²Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Rules of Civil Procedure, Martin O'Malley is substituted for Kilolo Kijakazi as the Defendant in this suit.

1 argument. Plaintiff is represented by attorney Christopher H. Dellert. Defendant is
2 represented by Special Assistant United States Attorney Justin L. Martin. The
3 Court, having reviewed the administrative record and the parties' briefing, is fully
4 informed. For the reasons discussed below, Plaintiff's Motion, ECF No. 10, is
5 denied and Defendant's Motion, ECF No. 11, is granted.

6 **JURISDICTION**

7 Plaintiff Melinda N. C. (Plaintiff), filed for supplemental security income
8 (SSI) on June 20, 2018, and alleged an onset date of February 15, 2017.³ Tr. 188-
9 204. Benefits were denied initially, Tr. 104-112, and upon reconsideration, Tr. 114-
10 24. Plaintiff appeared at a hearing before an administrative law judge (ALJ) on
11 September 15, 2021. Tr. 53-76. On October 25, 2021, the ALJ issued an
12 unfavorable decision, Tr. 12-30, and on February 3, 2022, the Appeals Council
13 denied review. Tr. 1-6. The matter is now before this Court pursuant to 42 U.S.C. §
14 1383(c)(3).

15 **BACKGROUND**

16 The facts of the case are set forth in the administrative hearing and transcripts,
17 the ALJ's decision, and the briefs of Plaintiff and the Commissioner, and are
18 therefore only summarized here.

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³ The alleged onset date was amended to the filing date at the hearing. Tr. 57.

1 Plaintiff was 32 years old at the time of the hearing. Tr. 57. She graduated
2 from high school. Tr. 58. She has work experience as a process server, grocery
3 store courtesy clerk, and day care worker. Tr. 69-71. Plaintiff testified that she
4 cannot work due to chronic fatigue, pain, and moodiness. Tr. 59. She has shortness
5 of breath from sarcoidosis in her lungs. Tr. 59. She has fibromyalgia pain in her
6 back, hips, knees, ankles, shoulders, and chest. Tr. 59-60. She gets headaches and
7 has carpal tunnel syndrome. Tr. 60.

8 STANDARD OF REVIEW

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

20 In reviewing a denial of benefits, a district court may not substitute its
21 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156

1 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
4 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an ALJ’s
5 decision on account of an error that is harmless.” *Id.* An error is harmless “where it
6 is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115
7 (quotation and citation omitted). The party appealing the ALJ’s decision generally
8 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.
9 396, 409-10 (2009).

10 **FIVE-STEP EVALUATION PROCESS**

11 A claimant must satisfy two conditions to be considered “disabled” within the
12 meaning of the Social Security Act. First, the claimant must be “unable to engage in
13 any 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.” 42
16 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be “of such
17 severity that he is not only unable to do his previous work[,] but cannot, considering
18 his age, education, and work experience, engage in any other kind of substantial
19 gainful work which exists in the national economy.” 42 U.S.C. § 1382c(a)(3)(B).

20 The Commissioner has established a five-step sequential analysis to determine
21 whether a claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v).

1 At step one, the Commissioner considers the claimant’s work activity. 20 C.F.R. §
2 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
7 “any impairment or combination of impairments which significantly limits [his or
8 her] physical or mental ability to do basic work activities,” the analysis proceeds to
9 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
10 this severity threshold, however, the Commissioner must find that the claimant is not
11 disabled. 20 C.F.R. § 416.920(c).

12 At step three, the Commissioner compares the claimant’s impairment to
13 severe impairments recognized by the Commissioner to be so severe as to preclude a
14 person from engaging in substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii).
15 If the impairment is as severe or more severe than one of the enumerated
16 impairments, the Commissioner must find the claimant disabled and award benefits.
17 20 C.F.R. § 416.920(d).

18 If the severity of the claimant’s impairment does not meet or exceed the
19 severity of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (RFC),
21 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
2 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in the
5 past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable
6 of performing past relevant work, the Commissioner must find that the claimant is
7 not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing
8 such work, the analysis proceeds to step five.

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

18 The claimant bears the burden of proof at steps one through four above.
19 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
20 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
21 capable of performing other work; and (2) such work "exists in significant numbers

1 in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d
2 386, 389 (9th Cir. 2012).

3 **ALJ’S FINDINGS**

4 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
5 activity since June 20, 2018, the application date. Tr. 17. At step two, the ALJ
6 found that Plaintiff has the following severe impairments: fibromyalgia, sarcoidosis,
7 and obesity. Tr. 17. At step three, the ALJ found that does not have an impairment
8 or combination of impairments that meets or medically equals the severity of a listed
9 impairment. Tr. 19.

10 The ALJ then found that Plaintiff has the residual functional capacity to
11 perform light work with the following additional limitations:

12 She can never crawl or climb ladders, ropes, or scaffolds. She can
13 occasionally balance, stoop, kneel, crouch, or climb stairs. She can
14 frequently handle and finger objects bilaterally. She must avoid
15 unprotected heights. She cannot be exposed to more than occasional
16 occurrence of pulmonary irritants such as smoke and dust in excess of
17 an office setting. She is limited to performing simple, routine tasks
18 with a Specific Vocational Preparation (SVP) of 2 or less.

16 Tr. 20.

17 At step four, the ALJ found that Plaintiff is unable to perform any past
18 relevant work. Tr. 25. At step five, after considering the testimony of a vocational
19 expert and Plaintiff’s age, education, work experience, and residual functional
20 capacity, the ALJ found that there are jobs that exist in significant numbers in the
21 national economy that Plaintiff can perform such as marker, cashier, and router. Tr.

1 26-27. Thus, the ALJ found Plaintiff has not been under a disability as defined in
2 the Social Security Act since June 20, 2018, the date the application was filed. Tr.
3 26.

4 **ISSUES**

5 Plaintiff seeks judicial review of the Commissioner's final decision denying
6 supplemental security income under Title XVI of the Social Security Act. ECF No.
7 10. Plaintiff raises the following issues for review:

- 8 1. Whether the ALJ properly evaluated Plaintiff's severe impairments;
- 9 2. Whether the ALJ properly evaluated Plaintiff's symptom testimony;
- 10 3. Whether the ALJ properly evaluated the medical opinions; and
- 11 4. Whether the ALJ the RFC finding and hypothetical to the vocational
12 expert included all of Plaintiff's limitations.

13 ECF No. 10.

14 **DISCUSSION**

15 **A. Step Two**

16 Plaintiff contends the ALJ should have included chronic pain disorder,
17 migraines, and depression/mood disorder as severe impairments. ECF No. 10 at 5.
18 At step two of the sequential process, the ALJ must determine whether there is a
19 medically determinable impairment established by objective medical evidence from
20 an acceptable medical source. 20 C.F.R. § 416.921. A statement of symptoms, a
21 diagnosis, or a medical opinion does not establish the existence of an impairment.

1 *Id.* After a medically determinable impairment is established, the ALJ must
2 determine whether the impairment is “severe;” i.e., one that significantly limits his
3 or her physical or mental ability to do basic work activities. 20 C.F.R. § 416.920(c).
4 However, the fact that a medically determinable condition exists does not
5 automatically mean the symptoms are “severe” or “disabling” as defined by the
6 Social Security regulations. *See e.g., Edlund v. Massanari*, 253 F.3d 1152, 1159-60
7 (9th Cir. 2001); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Key v. Heckler*,
8 754 F.2d 1545, 1549-50 (9th Cir. 1985).

9 Step two is not meant to identify the impairments that should be considered
10 when determining the RFC. *Buck v. Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir.
11 2017). In fact, “[i]n assessing RFC, the adjudicator must consider limitations and
12 restrictions imposed by all of an individual's impairments, even those that are not
13 ‘severe.’” Social Security Ruling (S.S.R.) 96-8p, 1996 WL 374184, at *5 (July 2,
14 1996). Thus, the ALJ must consider the effect of all impairments, including
15 medically determinable but non-severe impairments, in evaluating the RFC. 20
16 C.F.R. § 416.945(a)(2).

17 *1. Chronic Pain Disorder*
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1 Plaintiff contends the ALJ failed to discuss probative evidence of chronic pain
2 disorder⁴ at step two. ECF No. 10 at 5-6. The ALJ need not discuss all evidence
3 presented but must explain why significant probative evidence has been rejected.
4 *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). As Plaintiff observes,
5 the ALJ did not specifically discuss chronic pain disorder. Tr. 17-18.

6 Plaintiff cites records noting pain symptoms or chronic pain. ECF No. 10 at
7 5-6 (citing Tr. 545, 577, 717, 1057-58, 1634, 1687, 1741). As noted above, a
8 medically determinable impairment must be established by objective medical
9 evidence and may not be based on a statement of symptoms, a diagnosis, or a

10
11 ⁴In the DSM-IV, pain disorder was a recognized mental disorder and a subcategory
12 of somatoform disorders. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL
13 DISORDERS, 4th Ed. at 445. The DSM-V, published in 2013, includes pain disorder
14 within a new diagnostic criterion called “somatic symptom and related disorders.”
15 The common feature of this disorder category is that individuals have “somatic
16 symptoms associated with significant distress and impairment.” DIAGNOSTIC AND
17 STATISTICAL MANUAL OF MENTAL DISORDERS, 5th Ed. at 445. The introduction
18 indicates that the description of the diagnosis is to be made “on the basis of positive
19 symptoms and signs (distressing somatic symptoms plus abnormal thoughts,
20 feelings, and behaviors in response to these symptoms) rather than the absence of a
21 medical explanation for somatic complaints. *Id.*

1 medical opinion. 20 C.F.R. § 416.921. There is no indication that chronic pain
2 disorder is a medically determinable impairment independent of Plaintiff's other
3 impairments. The cited records include diagnoses of sarcoidosis, fibromyalgia,
4 depression, mood disorder, and notations of pain or chronic pain. *See e.g.*, Tr. 577,
5 717, 1057-58, 1634, 1687. It is noted that Dr. Byrd mentioned "diffuse somatic
6 complaints" in October 2019, but did not make any specific findings. Tr. 545.
7 Plaintiff points to no records establishing chronic pain disorder as an independent
8 medically determinable impairment.

9 Furthermore, even if chronic pain disorder should have been a medically
10 determinable impairment in this case, there is no indication of any functional
11 limitations related to chronic pain disorder which were not addressed by the ALJ
12 with respect to other conditions. Plaintiff argues "[t]he nature of these impairments
13 [pain] would cause her to be off-task, memory losses and absences from work."
14 ECF No. 10 at 6 (citing Tr. 282, 1282, 1456-57). However, the records cited by
15 Plaintiff do not support such limitations. Page 282 of the transcript is Plaintiff's pre-
16 hearing brief and not evidence of the claimed limitations. Page 1282 of the
17 transcript is an office visit record primarily discussing Plaintiff's history of obesity
18 and not mentioning pain, concentration, memory loss, or absence from work. Pages
19 1456-57 are the results of Plaintiff's patient health questionnaire (PHQ) for
20 November 16, 2020, which is a self-report of symptoms of depression and not
21 evidence of functional limitations. The record does not reasonably support a finding

1 that chronic pain disorder is a severe impairment and the ALJ did not err by not
2 addressing it.

3 *2. Headaches*

4 Plaintiff argues the ALJ erred by finding Plaintiff's migraine headaches are
5 not a severe impairment. ECF No. 10 at 6. The ALJ found that Plaintiff's
6 migraine/headaches were "a long-term issue for which the claimant has had
7 relatively limited treatment during the period at issue." Tr. 17. The ALJ concluded
8 the medical evidence does not indicate that Plaintiff's headaches resulted in more
9 than minimal functional limitations for a continuous 12-month period and concluded
10 they are non-severe. Tr. 17.

11 Plaintiff argues the ALJ's rationale was that Plaintiff "did not receive
12 treatment," ECF No. 10 at 6, which is inaccurate. Plaintiff cites records from
13 February 2020 and September 2020, both of which indicate that Plaintiff reported
14 having had migraines since her teens, which reasonably suggests, as the ALJ found,
15 that headaches are a long-term issue predating the relevant period. Tr. 17, 1866,
16 1910. Furthermore, Plaintiff does not address the ALJ's finding that the record does
17 not reflect that Plaintiff's headaches meet the duration requirement. The regulations
18 provide that "[u]nless your impairment is expected to result in death, it must have
19 lasted or must be expected to last for a continuous period of at least 12 months. We
20 call this the duration requirement." 20 C.F.R. § 416.909. Plaintiff has not
21 established that her headaches created a significant work-related impairment of

1 sufficient duration. As a result, the ALJ reasonably found that Plaintiff's headaches
2 are not a severe impairment.

3 *3. Depression/Mood Disorder*

4 Plaintiff argues the ALJ should have found her depression/mood disorder is a
5 severe impairment. ECF No. 10 at 7-8. The ALJ found Plaintiff's depression is
6 medically determinable but not severe. Tr. 18-19. The ALJ reviewed evidence that
7 Plaintiff's mood disorder has often been described by her treating psychiatrist, Dr.
8 Mahler, as stable. Tr. 18, 941, 948, 1059, 1374, 1533. Plaintiff reported
9 improvement with psychotropic medication. Tr. 18, 457, 932, 941, 946, 963, 965,
10 975, 1305, 1315. The ALJ noted that reports of increased mental symptoms have
11 typically been attributed to situational stressors. Tr. 18, 1003, 1044, 1046, 1296-97.
12 The ALJ also observed that Plaintiff has repeatedly declined recommendations of
13 psychotherapy. Tr. 18, 457, 1215, 1373, 1417, 1437, 1522. Mental status exams
14 have typically been unremarkable. Tr. 18, 353-54, 361, 456, 465, 946-47, 963,
15 1030, 1044, 1058, 1131, 1174, 1239, 1254, 1296, 1304, 1380, 1548, 1762. The ALJ
16 noted that in June 2021, Dr. Mahler found Plaintiff had good working memory,
17 answered questions linearly, showed insight into her problems, and was making
18 good progress. Tr. 18, 1255-56. The ALJ also considered the "paragraph B" criteria
19 and found no more than mild limitations in any functional area. Tr. 18-19. Thus,
20 the ALJ found Plaintiff's depression is non-severe.

1 Plaintiff disagrees with the ALJ's interpretation of the record and cites records
2 from Dr. Mahler related to his diagnosis of mood disorder and Plaintiff's reported
3 symptoms. ECF No. 10 at 7-8, 15-16, 19 (citing Tr. 545, 577, 1044-46, 1057, 1059,
4 1214). As noted *supra*, the fact that a medically determinable condition exists does
5 not automatically mean the symptoms are "severe" or "disabling" as defined by
6 Social Security regulations. *See, e.g., Edlund*, 253 F.3d at 1159-60; *see also Key*,
7 754 F.2d at 1549-50 ("[t]he mere diagnosis of an impairment [] is not sufficient to
8 sustain a finding of disability."). While Plaintiff contends the ALJ's consideration
9 of the mental health records was "selective," it is Plaintiff who relies on one record
10 to demonstrate that her mental impairments were not stable. ECF No. 10 at 15-16
11 (citing Tr. 1046-48); ECF No. 12 at 11. As noted above, there are multiple
12 notations over the longitudinal record from Plaintiff's treating psychiatrist indicating
13 that her mental health was stable. Tr. 18 (citing e.g., Tr. 941, 948, 1059, 1374,
14 1533). Plaintiff argues her mental health symptoms "waxed and waned," but does
15 not so demonstrate with citations to the longitudinal record. ECF No. 10 at 16.
16 Plaintiff also incorrectly argues that normal mental status exams have "no bearing"
17 regarding mood disorder or depression. ECF No. 12 at 11. Mental status
18 examinations are objective measures of an individual's mental health. *Buck*, 869
19 F.3d at 1049. The ALJ reasonably relied on substantial evidence to find depression
20 medically determinable but not severe at step two. *See Burch v. Barnhart*, 400 F.3d
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1 676, 679 (2005) (ALJ’s finding upheld when evidence is susceptible to more than
2 one rational interpretation).

3 Moreover, even if the ALJ’s finding was improper, Plaintiff does not identify
4 how depression symptoms resulted in limitations beyond those in the RFC
5 finding. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (holding that ALJ’s
6 failure to list a severe impairment at step two was harmless where ALJ considered
7 limitations caused by the condition at step four); see also *Molina*, 674 F.3d at 1115
8 (error is harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability
9 determination). The ALJ considered the impact of pain on Plaintiff’s mental
10 functioning in evaluating Plaintiff’s residual functional capacity. Tr. 20-23. The
11 RFC includes a limitation to simple, routine tasks which reasonably accounts for any
12 impairment in the ability to concentrate, persist, or maintain pace. Tr. 20, 23.
13 Plaintiff does not acknowledge that the ALJ included mental limitations in the RFC,
14 has not established any greater limitation, and has not otherwise shown that the ALJ
15 erred.

16 **B. Symptom Testimony**

17 Plaintiff contends the ALJ improperly considered her symptom testimony.
18 ECF No. 10 at 14-17. An ALJ engages in a two-step analysis to determine whether
19 a claimant’s testimony regarding subjective pain or symptoms is credible. “First, the
20 ALJ must determine whether there is objective medical evidence of an underlying
21 impairment which could reasonably be expected to produce the pain or other

1 symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).

2 Second, “[i]f the claimant meets the first test and there is no evidence of
3 malingering, the ALJ can only reject the claimant’s testimony about the severity of
4 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
5 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
6 citations and quotations omitted).

7 Although Plaintiff argues the ALJ’s discussion “was simply a summary of the
8 treatment record,” ECF No. 10 at 15, the ALJ gave three reasons for finding
9 Plaintiff’s functioning is not as limited as alleged. Tr. 21-22. Plaintiff also asserts
10 the ALJ “did not specifically find Plaintiff’s allegations to be undermined by any of
11 these elements.” ECF No. 12 at 11. However, the ALJ specifically linked these
12 reasons to the limitations alleged. Tr. 22.

13 First, the ALJ found Plaintiff’s reports of daily activities to her providers are
14 inconsistent with more robust activities than alleged in her function report. Tr. 20-
15 21. It is reasonable for an ALJ to consider a claimant’s activities which undermine
16 claims of totally disabling pain in assessing a claimant’s symptom complaints. *See*
17 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ observed that
18 Plaintiff reported her day-to-day activities included taking care of children, going to
19 the beach, camping, hanging with family, and not working (Tr. 352, 360); she takes
20 care of her three-year-old child (Tr. 419); and she is independent in all activities of
21 daily living (Tr. 541). Tr. 20-21.

1 The ALJ further noted that Plaintiff variously reported that she was “carrying
2 much of the burden for caring for family and extended family” (Tr. 426); she was
3 “feeling overwhelmed with care obligations” (Tr. 1238); she had “a lot of
4 obligations in her home” (Tr. 1173); “[a] lot is expected of her, and she does not get
5 a lot of help around the house” (Tr. 1003); she was “doing pretty much everything
6 around the house,” (Tr. 1380); she was “overburdened by responsibilities at home”
7 (Tr. 1057); and she was taking care of many family issues and family medical issues
8 (Tr. 1254). The ALJ found her care for her family and home was inconsistent with
9 her function report suggesting that her parents, with whom she lived, were helping
10 her with activities of daily living like childcare, preparation of meals, chores, and
11 shopping. Tr. 21, 228-35. It was reasonable for the ALJ to find an inconsistency
12 between Plaintiff’s reported activities and her allegations. *See Social Security*
13 *Ruling 16-3p, 2017 WL 5180304, at *5 (effective October 25, 2017)* (“The ALJ
14 evaluates a claimant’s statements for their consistency, both internally and with
15 other information in the case record.”). Plaintiff does not address the inconsistency
16 or her daily activities. ECF No. 12 at 6. The ALJ’s finding is supported by
17 substantial evidence.

18 Second, the ALJ found the objective evidence is not consistent with disabling
19 limitations. Tr. 21. Contradiction with the medical record is a sufficient basis for
20 rejecting the claimant’s subjective testimony. *Carmickle v. Comm’r of Soc. Sec.*
21 *Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *Johnson v. Shalala*, 60 F.3d 1428,

1 1434 (9th Cir.1995). While subjective pain testimony may not be rejected solely
2 because it is not corroborated by objective medical findings, the medical evidence is
3 a relevant factor in determining the severity of a claimant’s pain and its disabling
4 effects. *Rollins*, 261 F.3d at 857.

5 The ALJ reviewed the records regarding sarcoidosis, noting that in November
6 2018, she had not been seen by pulmonology for three years. Tr. 21, 463. Later that
7 month she established care with a pulmonologist, Dr. Malik, whose physical exam
8 revealed no abnormal findings. Tr. 423. He noted that her symptoms had been
9 present for many years (i.e., before the alleged onset date) and were nonprogressive.
10 Tr. 424. In December 2018, Dr. Malik indicated that Plaintiff’s sarcoidosis was in a
11 dormant state and she could be seen on an as-needed basis. Tr. 443. In May 2019,
12 Plaintiff experienced severe abdominal pain and imaging revealed splenic infarct
13 which was attributed to her sarcoidosis. Tr. 22, 770, 781, 1145. In June 2019,
14 Plaintiff was again seen in the ER for abdominal pain, but imaging showed the
15 infarcted area was stable and no pathology was found to explain Plaintiff’s
16 symptoms. Tr. 22, 635. By August 2019, her pain had improved and bleeding had
17 stopped. Tr. 22, 1121.

18 In January 2020, Plaintiff’s only complaint during an annual exam was right
19 ear pain. Tr. 21, 1029. Exam findings were normal and she was found to be a
20 “healthy overweight woman.” Tr. 1030. Despite a BMI in the range of obesity,
21 Plaintiff typically demonstrated normal range of motion and gait. Tr. 22 (citing e.g.,

1 Tr. 739, 1124, 1144, 1189, 1390). A cardiac workup for chest pain in November
2 2020 was unrevealing, Tr. 1460, 1470, and a cardiac MRI in February 2021 showed
3 no evidence of cardiac sarcoidosis. Tr. 22, 1663. The ALJ also noted numerous
4 exam findings indicating positive tender points for fibromyalgia, but no overt
5 evidence of active synovitis. Tr. 22 (citing Tr. 350, 358, 578, 718, 739, 1635, 1660,
6 1688, 1742, 1790, 1893, 1938-39). The ALJ reasonably concluded that the
7 longitudinal medical record is not consistent with the level of limitation alleged. Tr.
8 22. The existence of a legally supportable alternative resolution of the evidence
9 does not provide a sufficient basis for reversing an ALJ's decision that is supported
10 by substantial evidence. *Sprague v. Bowen*, 812 F.2d 1226, 1229 (9th Cir.1987).

11 Third, the ALJ found Plaintiff's treatment improved her symptoms. Tr. 22.
12 The effectiveness of treatment is a relevant factor in determining the severity of a
13 claimant's symptoms. 20 C.F.R. § 416.929(c)(3); *Tommasetti v. Astrue*, 533 F.3d
14 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response to treatment can
15 undermine a claimant's complaints of debilitating pain or other severe limitations).

16 Plaintiff often reported to her rheumatologist Dr. Byrd that Lyrica and other
17 medications were helpful. Tr. 22 (citing e.g., Tr. 661, 1789, 1824, 315, 361).
18 Plaintiff argues that citing improvement with medication means the ALJ selectively
19 considered the record and suggests the ALJ ignored findings of pain, fatigue, and
20 fibromyalgia. ECF No. 12 at 11 (citing Tr. 443, 545, 577, 717, 1634, 1660, 1687,
21 1741, 1789, 1824, 1892, 1938). Plaintiff also argues the ALJ failed to consider

1 records demonstrating chronic pain from fibromyalgia. ECF No. 12 at 11 (citing Tr.
2 546, 578, 718, 1635, 1742, 1939. To the contrary, the ALJ specifically noted many
3 of these records and included limitations in the RFC accounting for pain and
4 physical limitations from fibromyalgia and other impairments. Tr. 20-22 (citing e.g.,
5 Tr. 577/9F62, 717/9F202, 1634/12F58, 1660/12F83, 1687/12F111, 1741/12F165.).
6 Nonetheless, improvement with medication is a reasonable consideration.
7 Furthermore, even if this reasoning is not particularly well-supported or convincing,
8 the ALJ provided other clear and convincing reasons supported by substantial
9 evidence. Any error would therefore be harmless. *See Carmickle*, 533 F.3d at 1162-
10 63.

11 **C. Medical Opinions**

12 Plaintiff argues the ALJ failed to properly evaluate the opinions of John
13 Mahler, M.D., and James C. Byrd., M.D. Ph.D. ECF No. 10 at 8-14.

14 For claims filed on or after March 27, 2017, the regulations provide that the
15 ALJ will no longer “give any specific evidentiary weight...to any medical
16 opinion(s)...” *Revisions to Rules Regarding the Evaluation of Medical Evidence*,
17 2017 WL 168819, 82 Fed. Reg. 5867-88 (Jan. 18, 2017); 20 C.F.R. § 416.920c.
18 Instead, an ALJ must consider and evaluate the persuasiveness of all medical
19 opinions or prior administrative medical findings from medical sources. 20 C.F.R. §
20 416.920c(a) and (b). Supportability and consistency are the most important factors
21 in evaluating the persuasiveness of medical opinions and prior administrative

1 findings, and therefore the ALJ is required to explain how both factors were
2 considered. 20 C.F.R. § 416.920c(b)(2). The ALJ may, but is not required, to
3 explain how other factors were considered. 20 C.F.R. § 416.20c(b)(2); *see* 20
4 C.F.R. § 416.920c(c)(1)-(5).

5 *1. John Mahler, M.D.*

6 Plaintiff argues the ALJ erred by failing to discuss “multiple opinions” of
7 Dr. Mahler, a psychiatrist. ECF No. 10 at 9. Defendant argues that statements in
8 Dr. Mahler’s treatment notes do not qualify as medical opinions and the ALJ was
9 not obliged to analyze them as such. ECF No. 11 at 10.

10 For claims filed after March 27, 2017, a medical opinion is a statement from
11 a medical source about what you can still do despite your impairments and whether
12 you have impairment-related limitations or restrictions in the ability to perform the
13 physical, mental, environmental, or other demands of work activities. 20 C.F.R. §
14 416.913(a)(2).

15 Plaintiff argues the following records from Dr. Mahler constitute medical
16 opinions which should have been specifically discussed by the ALJ:

- 17
- December 2018: “Mood disorder with depressive features due to
18 medical condition. I don’t think patient meets the criteria for major
19 depressive disorder DSM-V diagnoses. Having said that, the impact
20 of patient’s physical illnesses on her mental functioning is significant,
and warrants consideration and attention. She has responded well to
[medication] and reports benefit from ongoing medications.” Tr. 429.
 - May 2019: “Mood disorder is an established problem that is not
21 stable. [Plaintiff] continues to struggle with mood and anxiety
symptoms. She reports today additional symptoms, including more

1 about family history of depression including suicide attempts. I think
2 that the connection between her chronic pain and her mood remains,
3 in that I have not diagnosed a major depressive disorder. Her mental
4 health symptoms are real and the focus of treatment, but there is a
5 clear chronic condition that symptoms stem from and are closely tied
6 to. She should understand that other providers may disagree.” Tr.
7 1214-15.

- 8 • November 2019: “[P]atient reports the following: She is back on
9 Namenda for fibromyalgia, and scheduled with neurology in 12/11 for
10 headache management. Ongoing pain and headaches. Returned
11 stabbing, severe pain in chest intermittently. Her father locked away
12 weapons so she doesn’t have access to means. Some intermittent
13 suicidal thoughts with Namenda, less severe than before. Still
14 overburdened by responsibilities at home. Trying to maintain positive
15 outlook. C/o mood swings and increased anger, short burst, yelling,
16 frustration. Despair about age, lack of independence from her parents,
17 not being married.” Tr. 1057.
- 18 • June 2020: “Mood disorder with depressive features due to medical
19 condition is an established problem that is relatively stable on
20 combination of SSRI and atypical buspirone. She tolerates these
21 medications well. Trial off of medications did not go well at all, with
increased emotional distress and dysregulation. I recommend she
continue current doses of these medications. Pain syndromes continue
to limit function. She continues to be a good support to her family
and extended family. I see consistent signs of good connection with
her daughter.” Tr. 941.
- September 2020: “Mood disorder, nicotine dependence and
fibromyalgia are established problems. Mood disorder relatively
stable, though ongoing agitation and irritability. This symptom is not
consistent with what would be seen with a bipolar disorder. I still
think chewing tobacco cessation has played a role, as the chewing
tobacco helped her deal with anxiety and emotion for a long time, and
now she has not replaced that with a more health coping strategy yet.
I am glad she stopped, and I think that over time will find more
healthy alternatives. Fibromyalgia remains an important factor and a
state of constant fatigue and pain with [sic] certainly make it more
difficult to be patient and calm in all settings. I encouraged avoiding
the negative bias and black-and-white thinking, instead recognizing

1 that experiencing emotion is not a negative thing, and trying to take a
2 more nuanced approach to her experiences.” Tr. 1533.

3 Plaintiff also cites “Patient Reported Data” which is clearly not opinion evidence.
4 Tr. 1048. ECF No. 10 at 9; ECF No. 12 at 5-6.

5 None of these records reasonably constitutes a medical opinion within the
6 meaning of the regulations. Dr. Mahler’s statements that the impact on mental
7 functioning “is significant,” her mental symptoms “are real,” and pain “continues
8 to limit function” fall into the category of “other medical evidence” which includes
9 judgments about the nature and severity of the impairments, medical history,
10 clinical findings, diagnosis, treatment prescribed and response, or prognosis. 20
11 C.F.R. § 416.913(3). Certainly, none of these records indicate what Plaintiff “can
12 do despite [her] impairments,” nor do they address “impairment-related limitations
13 or restrictions” in the ability to perform specific physical, mental, environmental,
14 or other demands of work activities. 20 C.F.R. § 416.913(2). As a result, the ALJ
15 was not required to consider Dr. Mahler’s treatment records as medical opinion
16 evidence.⁵

17 2. *James C. Byrd, M.D., Ph.D.*

18
19
20 ⁵ It is noted that the ALJ discussed Dr. Mahler’s records in detail in evaluating
21 Plaintiff’s mental impairments. Tr. 18-22.

1 Dr. Byrd completed DSHS WorkFirst medical or disability documentation
2 forms in December 2017, July 2018, and November 2018. Tr. 319-21, 323-25, 370-
3 72. In December 2017, he indicated that Plaintiff was unable to participate in work
4 and was “severely limited,” defined as unable to lift at least 2 pounds or unable to
5 stand or walk. Tr. 323-25. In July 2018, he opined that Plaintiff was unable to
6 participate in work and was limited to sedentary work, defined as able to lift 10
7 pounds maximum and frequently lift or carry articles like files and small tools and
8 able to sit, walk, and stand for brief periods. Tr. 319-21. In November 2018, Dr.
9 Byrd indicated that Plaintiff “can’t participate in meaningful employment” and again
10 opined that Plaintiff was severely limited and unable to lift 2 pounds or unable to
11 stand or walk. Tr. 370-72.

12 The ALJ found Dr. Byrd’s opinions are not persuasive. Tr. 24. First, with
13 regard to supportability, the ALJ found that the opinions are not supported by any
14 explanation or references to objective medical findings. Tr. 24. The regulations
15 provide that the more relevant the objective medical evidence and supporting
16 explanations provided by a medical source to support his or her opinion, the more
17 persuasive the medical opinion will be. 20 C.F.R. § 416.920c(c)(1)-(2). Indeed, Dr.
18 Byrd’s opinions contained very little explanation and virtually no objective findings.
19 Tr. 319-21, 323-25, 370-72. He mentioned pain due to fibromyalgia and listed
20 medications and treatment, but otherwise did not explain his conclusions. Tr. 319-
21

1 20, 324, 370-71. The ALJ's finding regarding supportability is supported by
2 substantial evidence.

3 Second, with regard to consistency, the ALJ found that Dr. Byrd's opinions
4 are not consistent with the record as a whole. Tr. 24. The regulations provide that
5 the more consistent a medical opinion is with the evidence from other medical
6 sources and nonmedical sources in the claim, the more persuasive the medical
7 opinion will be. 20 C.F.R. § 416.920c(c)(1)-(2). The ALJ observed that Plaintiff's
8 activities indicate that she is more functional than opined by Dr. Byrd, such as doing
9 a lot at home, taking care of her child, and helping family. Tr. 24 (citing Tr. 360,
10 426, 641, 1003, 1057, 1173, 1238, 1254, 1380). The ALJ further found the objective
11 evidence is not consistent with Dr. Byrd's opinion, as discussed *supra*. Tr. 24
12 (citing Tr. 424, 443, 739, 1030, 1124, 1189, 1390). Lastly, the ALJ found that
13 Plaintiff often reported medication for her fibromyalgia symptoms have been
14 helpful. Tr. 24 (citing Tr. 1660, 1789, 1824, 1892, 1938).

15 Plaintiff argues the ALJ "cherry picked" evidence and ignored evidence that
16 her symptoms waxed and waned. ECF No. 10 at 11-12. Plaintiff's citations to the
17 record do not demonstrate that the ALJ ignored evidence of varying symptoms. In
18 fact, the ALJ cited many of the same records cited by Plaintiff. *See e.g.*, Tr.
19 577/9F62, 717/9F202, 1634/12F58, 1660/12F83, 1687/12F111, 1741/12F165. The
20 ALJ considered the opinion of Dr. Byrd based on the record as a whole, not just on
21 notations of active fibromyalgia, depression, and tender points cited by Plaintiff. Tr.

1 24; ECF No. 10 at 11-13. Plaintiff also cites a December 2018 oxygen saturation
2 reading and January 2019 spirometry test reading and suggests the ALJ's findings
3 regarding Plaintiff's sarcoidosis were not supported. ECF No. 10 at 13. However,
4 Plaintiff does not address the ALJ's findings regarding sarcoidosis discussed *supra*,
5 nor point to any findings in Dr. Byrd's opinions which contradict those findings.
6 The ALJ's findings regarding consistency with the record are supported by
7 substantial evidence.

8 Third, the ALJ found that Dr. Byrd's opinions contain statements about the
9 ultimate issue of disability which is reserved to the Commissioner. As such, the ALJ
10 found they are not valuable or persuasive. Tr. 24. The regulations provide that
11 statements that a claimant is or is not disabled, able to work, or able to perform
12 regular or continuing work are statements on issues reserved to the Commissioner
13 and are neither inherently valuable or persuasive. 20 C.F.R. 1520b(c)(3). To the
14 extent Dr. Byrd's opinions are opinions that Plaintiff cannot work, the ALJ's finding
15 is reasonable and supported by substantial evidence.

16 **D. RFC and Hypothetical**

17 Plaintiff argues the ALJ erred at step five because the vocational expert's
18 opinion was based on an incomplete hypothetical. ECF No. 10 at 17-18. The ALJ's
19 hypothetical must be based on findings supported by substantial evidence in the
20 record which reflect all of a claimant's limitations. *Osenbrook v. Apfel*, 240 F.3d
21 1157, 1165 (9th Cir. 2001). The hypothetical should be "accurate, detailed, and

1 supported by the medical record.” *Tackett v. Apfel*, 180 F.3d 1094, 1101 (9th Cir.
2 1999). The ALJ is not bound to accept as true the restrictions presented in a
3 hypothetical question propounded by a claimant’s counsel. *Osenbrook*, 240 F.3d at
4 1164; *Magallanes v. Bowen*, 881 F.2d 747, 756-57 (9th Cir. 1989); *Martinez v.*
5 *Heckler*, 807 F.2d 771, 773 (9th Cir. 1986). The ALJ is free to accept or reject these
6 restrictions as long as they are supported by substantial evidence, even when there is
7 conflicting medical evidence. *Magallanes*, 881 F.2d at *id.*

8 Plaintiff’s argument assumes the ALJ erred in considering Plaintiff’s
9 allegations and the medical opinion evidence. The ALJ’s reasons for rejecting the
10 opinions of Dr. Byrd were legally sufficient and supported by substantial evidence,
11 discussed *supra*. The ALJ therefore properly excluded limitations assessed by Dr.
12 Byrd from the RFC and hypothetical to the vocational expert. The hypothetical
13 contained the limitations the ALJ found credible and supported by substantial
14 evidence in the record. The ALJ’s reliance on testimony the VE gave in response to
15 the hypothetical was therefore proper. *See id.*; *Bayliss v. Barnhart*, 427 F. 3d 1211,
16 1217-18 (9th Cir. 2005).

17 CONCLUSION

18 Having reviewed the record and the ALJ’s findings, this Court concludes the
19 ALJ’s decision is supported by substantial evidence and free of harmful legal error.


20 Accordingly,

21 1. Plaintiff’s Motion for Summary Judgment, ECF No. 10, is DENIED.

1 2. Defendant's Motion for Summary Judgment, ECF No. 11, is GRANTED.

2 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
3 and provide copies to counsel. Judgment shall be entered for Defendant and the file
4 shall be **CLOSED.**

5 **DATED** January 24, 2024.

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8 LONNY R. SUKO
9 Senior United States District Judge
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