

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

Aug 08, 2018

UNITED STATES DISTRICT COURT SEAN F. McAVOY, CLERK

EASTERN DISTRICT OF WASHINGTON

SARAI C.,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:17-cv-05070-MKD

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

ECF Nos. 15, 16

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 16. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 15) and grants Defendant's motion (ECF No. 16).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

STANDARD OF REVIEW

1
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 the 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 **THREE-STEP EVALUATION PROCESS**

4 To qualify for disability benefits, a child under the age of eighteen must
5 have “a medically determinable physical or mental impairment, which results in
6 marked and severe functional limitations, and which can be expected to result in
7 death or which has lasted or can be expected to last for a continuous period of not
8 less than 12 months.” 42 U.S.C. § 1382c(a)(3)(C)(i). The Social Security
9 Administration has enacted a three step sequential analysis to determine whether a
10 child is eligible for supplemental security income benefits on the basis of a
11 disability. 20 C.F.R. § 416.924(a). First, the ALJ considers whether the child is
12 engaged in “substantial gainful activity.” 20 C.F.R. § 416.924(b). Second, the
13 ALJ considers whether the child has a “medically determinable impairment that is
14 severe,” which is defined as an impairment that causes “more than minimal
15 functional limitations.” 20 C.F.R. § 416.924(c). Finally, if the ALJ finds a severe
16 impairment, she must then consider whether the impairment “medically equals” or
17 “functionally equals” a disability listed in the regulatory “Listing of Impairments.”
18 20 C.F.R. § 416.924(c)-(d). An impairment is functionally equivalent to a listed
19 impairment if it results in extreme limitations in one area of functioning or marked
20 limitations in two areas. 20 C.F.R. § 416.926a(a). An impairment is a “marked

1 limitation” if it “seriously interferes with [a person’s] ability to independently
2 initiate, sustain, or complete activities.” 20 C.F.R. § 416.926a(e)(2)(i). By
3 contrast, an “extreme limitation” is defined as a limitation that “interferes very
4 seriously with [a person’s] ability to independently initiate, sustain, or complete
5 activities.” 20 C.F.R. § 416.926a(e)(3)(i).

6 In determining whether an impairment functionally equals a listing, the ALJ
7 assesses the child’s functioning in six domains in terms of her ability to: (1)
8 acquire and use information; (2) attend and complete tasks; (3) interact and relate
9 with others; (4) move about and manipulate objects; (5) care for oneself, and (6)
10 her general health and physical well-being. 20 C.F.R. § 416.926a(a)-(b). In order
11 to demonstrate functional equivalence under the Final Rules, the child must exhibit
12 a marked limitation in two of the domains, or an extreme limitation in one domain.
13 20 C.F.R. § 416.926a(e)(2)(i)

14 **ALJ’S FINDINGS**

15 Plaintiff’s grandmother protectively filed an application for Title XVI
16 supplemental security income benefits on November 13, 2012, alleging a disability
17 onset date of July 1, 2010. Tr. 167-75, 221. The application was denied initially,
18 Tr. 112-14, and on reconsideration, Tr. 118-20. Plaintiff and her grandmother
19 appeared at a hearing before an Administrative Law Judge (ALJ) on April 15,
20 2015. Tr. 43-85. On December 30, 2015, the ALJ denied Plaintiff’s claim. Tr.

1 22-37.

2 At step one, the ALJ found that Plaintiff has not engaged in substantial
3 gainful activity since November 13, 2012. Tr. 25. At step two, the ALJ found
4 Plaintiff has the following severe impairments: attention deficit-hyperactivity
5 disorder (ADHD); learning disorder; mood disorder, not otherwise specified; and
6 oppositional defiant disorder. *Id.* At step three, the ALJ found that Plaintiff does
7 not have an impairment or combination of impairments that meets or medically
8 equals a listed impairment and that claimant does not have an impairment or
9 combination of impairments that functionally equals the severity of the listings.
10 Tr. 26. Specifically, the ALJ found that Plaintiff had a less than marked limitation
11 in acquiring and using information, attending and completing tasks, and interacting
12 and relating with others, and no limitation in moving about and manipulating
13 objects, caring for herself, and her health and physical well-being. Tr. 31-36. The
14 ALJ concluded that Plaintiff was not disabled as defined in the Social Security Act
15 during the adjudicative period. Tr. 36.

16 On March 24, 2017, the Appeals Council denied review, Tr. 1-6, making the
17 Commissioner's decision final for purposes of judicial review. *See* 42 U.S.C.
18 1383(c)(3); 20 C.F.R. § 416.1481.

19 **STANDING AND CAPACITY**

20 Although neither party has addressed the issue of standing or capacity in this

1 case, the Court has an obligation to raise standing issues *sua sponte*. *Adarand*
2 *Constructors, Inc. v. Mineta*, 534 U.S. 103, 109 (2001). Federal Rule of Civil
3 Procedure 17(c) states that a minor or incompetent person may have a
4 representative when proceeding in a suit. This appointment of a representative or
5 guardian is at the discretion of the district court. *U.S. v. 30.64 Acres of Land, More*
6 *or Less, Situated in Klickitat Co., State of Wash.*, 795 F.2d 796, 804 (9th Cir.
7 1986).

8 Plaintiff filed a complaint with this Court on May 24, 2017. ECF No. 4. At
9 the time of filing the complaint, Plaintiff was six months shy of her eighteenth
10 birthday. *See* Tr. 167. Plaintiff and her mother signed the Application to Proceed
11 *In Forma Pauperis*. ECF No. 1. No representative was named in the suit on
12 behalf of Plaintiff, who was a minor at the time of filing. Defendant never raised
13 any defenses prior to or in her Answer concerning Plaintiff's status as a minor.
14 ECF No. 10. Plaintiff filed the Stipulated Motion for Scheduling Order under her
15 name. ECF No. 13. Plaintiff was eighteen at the time her Motion for Summary
16 Judgment was filed, and this was the first heading identifying the moving party in
17 the claim as Plaintiff's grandmother. ECF No. 15. Plaintiff has made no
18 subsequent filings under her name or the name of her grandmother.

19 Federal Rules of Civil Procedure 17(c) requires a court to take whatever
20 measures it deems proper to protect an incompetent person during litigation.

1 Although the court has broad discretion and need not appoint a guardian ad litem if
2 it determines the person is or can be otherwise adequately protected, it is under a
3 legal obligation to consider whether the person is adequately protected. *See*
4 *Roberts v. Ohio Casualty Insurance Co.*, 256 F.2d 35, 39 (5th Cir. 1958). The age
5 of majority is defined by the minor's domicile. FED. R. CIV. P. 17(b)(1). In
6 Washington, the age of majority is 18 years old. RCW 26.28.010. Here, Plaintiff
7 was aware of the suite, as she signed the Application to proceed *in forma pauperis*.
8 ECF No. 1. She reached the age a majority while the suite was pending and in the
9 months since attaining the age of majority, she never acted in any manner to stop
10 the progression of the suite. This in combination with Defendant's failure to object
11 to Plaintiff's standing or capacity leads the Court to allow the claim to proceed as
12 any issue of standing or capacity has been remedied by Plaintiff reaching the age
13 of majority. Therefore, the claim will continue and will do so under Plaintiff's
14 name.

15 **ISSUES**

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

- 19 1. Whether the ALJ properly weighed the medical opinion evidence;
- 20 2. Whether the ALJ properly weighed the testimony evidence; and

1 3. Whether the ALJ made a proper step three determination.

2 ECF No. 15 at 6.

3 **DISCUSSION**

4 **A. Opinion Evidence**

5 Plaintiff contends the ALJ erred by failing to weigh the opinion of Cecilia R.
6 Cooper, Ph.D. and by failing to provide any reason for rejecting the assessment of
7 Plaintiff's teacher. ECF No. 15 at 7-8.

8 When addressing medical source opinions, there are three types of
9 physicians (or psychiatrists): "(1) those who treat the claimant (treating
10 physicians); (2) those who examine but do not treat the claimant (examining
11 physicians); and (3) those who neither examine nor treat the claimant but who
12 review the claimant's file (nonexamining or reviewing physicians)." *Holohan v.*
13 *Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).

14 "Generally, a treating physician's opinion carries more weight than an examining
15 physician's, and an examining physician's opinion carries more weight than a
16 reviewing physician's." *Id.* "In addition, the regulations give more weight to
17 opinions that are explained than to those that are not, and to the opinions of
18 specialists concerning matters relating to their specialty over that of
19 nonspecialists." *Id.* (citations omitted).

20 If a treating or examining physician's opinion is uncontradicted, an ALJ may

1 reject it only by offering “clear and convincing reasons that are supported by
2 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
3 “However, the ALJ need not accept the opinion of any physician, including a
4 treating physician, if that opinion is brief, conclusory and inadequately supported
5 by clinical findings.” *Bray v. Comm. of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
6 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
7 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
8 may only reject it by providing specific and legitimate reasons that are supported
9 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
10 F.3d 821, 830-31 (9th Cir. 1995)).

11 **1. Cecilia R. Cooper, Ph.D.**

12 On October 8, 2013, Dr. Cooper completed a Psychological Evaluation of
13 Plaintiff and diagnosed her with ADHD combined type, specific learning disability
14 with impairment in written expression, specific learning disability with impairment
15 in mathematics, upbringing away from parents, and excoriation disorder by history.
16 Tr. 408-16. As part of the evaluation, Plaintiff’s grandmother completed the
17 Vinland-II test, which reflected low scores in domains of communication, daily
18 living skills, and socialization. Tr. 414.

19 The ALJ summarized Dr. Cooper’s evaluation, but did not prescribe it any
20 specific weight. Tr. 28. Plaintiff asserts that the ALJ erred by failing to state what

1 weight she gave to Dr. Cooper’s opinion. ECF No. 15 at 8. Defendant asserts that
2 Dr. Cooper’s evaluation fails to meet the definition of an opinion. ECF No. 16 at
3 4.

4 The Regulations define a medical opinion as “statements from acceptable
5 medical sources that reflect judgments about the nature and severity of your
6 impairment(s), including you symptoms, diagnosis and prognosis, what you can
7 still do despite impairment(s), and your physical or mental restrictions.” 20 C.F.R.
8 § 416.927(a)(1).¹ An acceptable medical source incudes a psychologist, such as
9 Dr. Cooper. 20 C.F.R. § 416.902(a)(2).² The ALJ is to consider evidence, which
10 may include medical opinions. 20 C.F.R. §416.924a(a).

11 Here, Dr. Cooper’s evaluation report includes a summary of Plaintiff’s
12

13 ¹ Prior to March 27, 2017, the definition of a medical source opinion was
14 “statements from physicians and psychologist or other acceptable medical sources
15 that reflect judgements about the nature and severity of your impairment(s),
16 including you symptoms, diagnosis and prognosis, what you can still do despite
17 impairment(s), and your physical or mental restrictions.” 20 C.F.R. §
18 416.927(a)(2) (2016).

19 ² Prior to March 27, 2017, the definition of an acceptable medical source was
20 located at 20 C.F.R. § 416.913.

1 reports, test results, a diagnosis, and a prognosis. Tr. 408-16. But the report fails
2 to reflect any judgment regarding the severity of the impairments, what plaintiff
3 can still do, or Plaintiff's physical or mental restrictions. Therefore, it is not a
4 medical source as recognized by the Regulations.

5 The Court does acknowledge that it is evidence from a medical source and
6 must be considered by the ALJ under 20 C.F.R. § 416.924a(a)(1)(iii). However,
7 the ALJ discussed the evaluation in her decision. Tr. 28. Therefore, the ALJ did
8 not error in not assigning it any particular weight to the evaluation.

9 **2. Plaintiff's Teacher**

10 At some point while the case was pending before the Agency, a Teacher
11 Questionnaire was completed. Tr. 252-59. The individual completing the
12 questionnaire indicated that Plaintiff had problems functioning in the domains of
13 acquiring and using information, attending and completing tasks, interacting and
14 relating with others, and caring for herself, and rated key activities in these
15 domains. Tr. 253-57. However, the form is unsigned and undated. Tr. 259.
16 Additionally, it never identifies Plaintiff by name, only as the noun "child," and it
17 never indicates Plaintiff's grade at the time the form was completed. Tr. 252-59.

18 The ALJ did not discuss the Teacher Questionnaire in her decision. Tr. 22-
19 37. Plaintiff asserts that omitting the responses on the form from consideration
20 was an error. ECF No. 15 at 8.

1 The ALJ is to consider evidence from teachers and other school personnel
2 when making a determination in a child's supplemental security income claim. 20
3 C.F.R. § 416.924a(a)(2)(iii). Social Security's Policy Manual states that it is no
4 longer necessary for the person completing a Teacher's Questionnaire to provide a
5 signature on the form. POMS DI 25205.030. However, it is still necessary to
6 obtain the name of the individual completing the Teacher's Questionnaire. *Id.*

7 Here, there is evidence that a teacher, or at least a school employee,
8 completed the form as it states that the individual spends five days a week with the
9 child in the subjects of math, science, reading, writing, and social studies. Tr. 252.
10 However, without more information, it is impossible to know who completed the
11 form and the period of time addressed by the form. Therefore, the ALJ was not
12 required to address the responses on the form specifically in her decision. *See*
13 *Howard v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003) (The ALJ need not
14 discuss every piece of evidence in the record); *see also Vincent v. Heckler*, 739
15 F.2d 1393, 1394-95 (9th Cir. 1984) (The ALJ is not required to discuss all
16 evidence presented to her, but she must explain why significant probative evidence
17 has been rejected.). In making a determination regarding severe impairments and
18 functional equivalency in a child's case, the ALJ is to consider how the child
19 functions in each domain in comparison to same-aged children without
20 impairments. 20 C.F.R. §§ 416.924b, 416.926a. Without a sufficient foundation

1 regarding the individual completing the form and the age of Plaintiff at the time the
2 form was completed, this form is not probative evidence. Therefore, the ALJ did
3 not error in not discussing the Teacher's Questionnaire.

4 **B. Testimony Evidence**

5 Plaintiff challenges the weight the ALJ provided to her statements and the
6 statements of her grandmother. ECF No. 15 at 8-12.

7 **1. Plaintiff's Symptom Testimony**

8 Plaintiff testified at the hearing regarding her difficulties in school and
9 attending counseling. Tr. 75-81. At the time of the hearing, Plaintiff was in the
10 ninth grade and was attending a high school. Tr. 75. Because Plaintiff was able to
11 testify and describe some of her difficulties in school, Plaintiff's testimony
12 qualifies as the testimony of a claimant. *See* S.S.R. 95-5p.

13 An ALJ engages in a two-step analysis to determine whether a claimant's
14 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
15 determine whether there is objective medical evidence of an underlying
16 impairment which could reasonably be expected to produce the pain or other
17 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
18 "The claimant is not required to show that her impairment could reasonably be
19 expected to cause the severity of the symptom she has alleged; she need only show
20 that it could reasonably have caused some degree of the symptom." *Vasquez v.*

1 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (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). “General findings are insufficient; rather, the
7 ALJ must identify what testimony is not credible and what evidence undermines
8 the claimant's complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *Thomas v.*
9 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ must make a credibility
10 determination with findings sufficiently specific to permit the court to conclude
11 that the ALJ did not arbitrarily discredit claimant’s testimony.”). “The clear and
12 convincing [evidence] standard is the most demanding required in Social Security
13 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
14 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

15 Here, the ALJ failed to address whether or not Plaintiff’s medically
16 determinable impairments could reasonably be expected to cause some of the
17 alleged symptoms. In the decision, the ALJ summarized the required two-step
18 process and failed to make any of the required findings. Instead, she concluded
19 that “the objective medical evidence does not document clinical findings of
20 abnormality that establish total disability under the Social Security Act or that

1 corroborate the degree of symptomatology and limitation the claimant and her
2 grandmother have alleged in support of her application.” Tr. 27. Therefore, the
3 ALJ erred. The pertinent question becomes whether or not that error is harmless.
4 *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (an error is
5 harmless when “it is clear from the record that the . . . error was inconsequential to
6 the ultimate nondisability determination”).

7 Here, Plaintiff testified that her difficulties in school stemmed from a larger
8 number of children and transportation issues that prevented her from seeing a tutor.
9 Tr. 75-81. Her testimony did not address her impairments or how these
10 impairments resulted in symptoms or limitations. Even in challenging the ALJ’s
11 treatment of the statements, Plaintiff fails to assert that any of her statements
12 implicated any of the domains. ECF No. 15 at 9-10. Therefore, the ALJ’s error in
13 addressing these statements is harmless.

14 **2. Lay Witness Testimony**

15 The ALJ also addressed the statements of Plaintiff’s grandmother throughout
16 the record and at the hearing. Tr. 27-28. Since Plaintiff was able to testify and
17 describe her difficulties in school, Plaintiff’s grandmother’s testimony qualifies as
18 the testimony of a lay witness and not the testimony of a claimant. *See S.S.R. 95-*
19 *5p* (“in the case of an individual under age 18 who is unable to adequately describe
20 his or her symptoms, the description of the symptom(s) given by the person who is

1 most familiar with the individual, such as a parent, other relative, or guardian, will
2 be accepted as a statement of the individual's symptoms.”). The testimony of lay
3 witnesses, including family members, about their observations of the claimant's
4 impairments must be considered by the ALJ. *Robbins v. Soc. Sec. Admin.*, 466
5 F.3d 880, 885 (9th Cir. 2006); *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir.
6 1996); *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). Family members
7 who see the claimant on a daily basis are competent to testify as to their
8 observations. *Regennitter v. Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1298
9 (9th Cir. 1999); *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). If the ALJ
10 chooses to reject or discount the testimony of lay witnesses, she must give reasons
11 that are germane to each witness. *Regennitter*, 166 F.3d at 1298; *Dodrill*, 12 F.3d
12 at 919.

13 Here, the ALJ gave no significant weight to the Third Party Function report
14 and testimony of Plaintiff's grandmother. Tr. 27-28, 30. First, the ALJ concluded
15 that the assertions by the grandmother were inconsistent with the objective medical
16 evidence. Tr. 27-28. Inconsistency with the medical evidence is a germane reason
17 to discount lay witness testimony. *See Bayliss*, 427 F.3d at 1218. The ALJ found
18 that Plaintiff's variable grades were due to her frequent absences and not a physical
19 or mental impairment. Tr. 27 (citing Tr. 553: Plaintiff's school psychologist's
20 findings that Plaintiff's variable grades were due to her attendance issues, with

1 Plaintiff missing 29.5 days in the fifth grade, 16 days in the sixth grade, 25 days in
2 the seventh grade, 23 days in the eighth grade, and more than 30 days in the ninth
3 grade; Plaintiff's behavior and study skills were usually marked as satisfactory
4 when she was in attendance.). Additionally, the ALJ cited to Plaintiff's
5 counselor's statement that her problems stemmed from her family situation rather
6 than any specific issue attributed to Plaintiff as an individual. Tr. 27. (citing Tr.
7 447).³ Here, the ALJ has provided germane reasons, supported by substantial
8 evidence.

9 Next, the ALJ concluded that Plaintiff's grandmother's statements were
10 inconsistent with Plaintiff's reported activities of daily living. Tr. 27-28.
11 Inconsistency with a claimant's daily activities is a germane reason to reject lay
12 testimony. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1163-64 (9th
13 Cir. 2008); *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001). Here, the ALJ
14 compared Plaintiff's statement that she cooks, does her laundry, puts away her
15 cloths, vacuums, and does the dishes to the grandmother's statement that Plaintiff
16 does not help around the house, specifically denying that Plaintiff assists with
17 washing or drying the dishes, vacuuming, or helping with the laundry. Tr. 28
18 (*comparing* Tr. 409 and Tr. 218). The ALJ is responsible for resolving

20 ³The ALJ cited Tr. 447, however, the relevant statement is located at Tr. 432-33.

1 inconsistencies and ambiguities in the record. *Andrews v. Shalala*, 53 F.3d 1035,
2 1039 (9th Cir. 1995). Here, the ALJ provided citations to the record demonstrating
3 the inconsistency between Plaintiff's statements to her medical provider and the
4 grandmother's reports upon application for benefits and concluded that the
5 grandmother's statement were unsupported. Tr. 28. This was a germane reason to
6 discount the grandmother's testimony.

7 Finally, the ALJ concluded that Plaintiff's grandmother's statements were
8 inconsistent with evidence that Plaintiff's impairments are controlled with
9 medications. Tr. 27-28. Generally, impairments that can be controlled effectively
10 with medication are not disabling impairments for the purposes of determining
11 eligibility for supplemental security income benefits. *Warre v. Comm'r of Soc.*
12 *Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). Here, the ALJ cited to evidence
13 in the record that Plaintiff's medication helped with her ADHD symptoms. Tr. 28
14 (citing Tr. 464, 466, 473). However, the citations the ALJ provided to the record
15 do not appear to support her determination. Nonetheless, considering the record as
16 a whole there is evidence that medication is helpful in treating Plaintiff's
17 symptoms. Tr. 472 (Plaintiff "reported doing good with meds and sleeping better
18 with increased with clonidine."); Tr. 484 (the grandmother reports that Plaintiff
19 behaves better when on her medication); Tr. 789 (Plaintiff reports "she feels that
20 everything is going good with the ADHD medication"); Tr. 491 (Plaintiff reports

1 that the medications continue to work well). As such, the ALJ's determination that
2 Plaintiff experienced a good response to her medication is supported by substantial
3 evidence, which was a germane reason to discount the grandmother's statements.

4 In conclusion, the ALJ provided legally sufficient reasons that were
5 supported by substantial evidence to discount the statements of Plaintiff's
6 grandmother.

7 **C. Step Three**

8 Plaintiff contends the ALJ erred by finding that Plaintiff's impairments did
9 not functionally equal any listing. ECF No. 15 at 12-20. Plaintiff asserts that she
10 had marked limitations in the domains of acquiring and using information,
11 attending and completing tasks, interacting and relating with others, and caring for
12 herself. *Id.* Plaintiff's argument essentially amounts to an alternative
13 interpretation of the evidence relying heavily on the Teacher Questionnaire which,
14 as discussed above, is not probative evidence. *Id.* (citing to the Teacher
15 Questionnaire eleven times).

16 In her decision, the ALJ discussed each domain separately and produced
17 multiple citations to objective testing, education records, and the grandmother's
18 statements. Tr. 31-36. Because the ALJ supported her conclusions concerning
19 Plaintiff's level of limitation with substantial evidence and provided a rational
20 interpretation of the record, the Court upholds the ALJ's decision. *See Revels v.*

1 *Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). Therefore, the ALJ did not error in
2 her conclusion that Plaintiff's impairments did not functionally equal any listing.

3 **CONCLUSION**

4 After review, the Court finds that the ALJ's decision is supported by
5 substantial evidence and free of harmful error. **IT IS ORDERED:**

- 6 1. Plaintiff's motion for summary judgment (ECF No. 15) is **DENIED**
7 2. Defendant's motion for summary judgment (ECF No. 16) is **GRANTED.**

8 The District Court Executive is directed to file this Order, enter
9 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**
10 **THE FILE.**

11 DATED this August 8, 2018.

12 *s/Mary K. Dimke*
13 MARY K. DIMKE
14 UNITED STATES MAGISTRATE JUDGE
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