

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

Oct 15, 2018

SEAN F. MCAVOY, CLERK

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TERESA F.,  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
Defendant.

No. 4:17-CV-05186-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. 12 & 14. Plaintiff 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 Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C § 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS** Plaintiff's Motion for Summary Judgment in part and remands for additional proceedings consistent with this order.

1 **I. Jurisdiction**

2 Plaintiff filed her application for Supplemental Security Income on August  
3 5, 2013. AR 16, 650. Her alleged onset date of disability is August 5, 2013. AR 16.  
4 Plaintiff’s applications were initially denied on December 17, 2013, AR 30-33, and  
5 on reconsideration on March 7, 2014, AR 35-36.

6 A hearing with Administrative Law Judge (“ALJ”) Timothy Mangrum  
7 occurred on December 17, 2015. AR 647-70. On August 5, 2016, the ALJ issued a  
8 decision finding Plaintiff ineligible for disability benefits. AR 16-26. The Appeals  
9 Council denied Plaintiff’s request for review on September 19, 2017, AR 7-9,  
10 making the ALJ’s ruling the “final decision” of the Commissioner.

11 Plaintiff timely filed the present action challenging the denial of benefits, on  
12 November 15, 2017. ECF No. 3. Accordingly, Plaintiff’s claims are properly  
13 before this Court pursuant to 42 U.S.C. § 405(g).

14 **II. Sequential Evaluation Process**

15 The Social Security Act defines disability as the “inability to engage in any  
16 substantial gainful activity by reason of any medically determinable physical or  
17 mental impairment which can be expected to result in death or which has lasted or  
18 can be expected to last for a continuous period of not less than twelve months.” 42  
19 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be  
20 under a disability only if the claimant’s impairments are of such severity that the

1 claimant is not only unable to do his previous work, but cannot, considering  
2 claimant's age, education, and work experience, engage in any other substantial  
3 gainful work that exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

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

8 Step one inquires whether the claimant is presently engaged in “substantial  
9 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful  
10 activity is defined as significant physical or mental activities done or usually done  
11 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in  
12 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§  
13 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

14 Step two asks whether the claimant has a severe impairment, or combination  
15 of impairments, that significantly limits the claimant’s physical or mental ability to  
16 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe  
17 impairment is one that has lasted or is expected to last for at least twelve months,  
18 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &  
19 416.908-09. If the claimant does not have a severe impairment, or combination of

1 impairments, the disability claim is denied, and no further evaluative steps are  
2 required. Otherwise, the evaluation proceeds to the third step.

3 Step three involves a determination of whether any of the claimant's severe  
4 impairments "meets or equals" one of the listed impairments acknowledged by the  
5 Commissioner to be sufficiently severe as to preclude substantial gainful activity.  
6 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;  
7 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or  
8 equals one of the listed impairments, the claimant is *per se* disabled and qualifies  
9 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to the  
10 fourth step.

11 Step four examines whether the claimant's residual functional capacity  
12 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f) &  
13 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant is  
14 not entitled to disability benefits and the inquiry ends. *Id.*

15 Step five shifts the burden to the Commissioner to prove that the claimant is  
16 able to perform other work in the national economy, taking into account the  
17 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),  
18 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this  
19 burden, the Commissioner must establish that (1) the claimant is capable of  
20 performing other work; and (2) such work exists in "significant numbers in the

1 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,  
2 676 F.3d 1203, 1206 (9th Cir. 2012).

### 3 III. Standard of Review

4 A district court's review of a final decision of the Commissioner is governed  
5 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the  
6 Commissioner's decision will be disturbed “only if it is not supported by  
7 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,  
8 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than a  
9 mere scintilla but less than a preponderance; it is such relevant evidence as a  
10 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*  
11 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d  
12 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining  
13 whether the Commissioner’s findings are supported by substantial evidence, “a  
14 reviewing court must consider the entire record as a whole and may not affirm  
15 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
16 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
17 F.2d 498, 501 (9th Cir. 1989)).

18 In reviewing a denial of benefits, a district court may not substitute its  
19 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
20 1992). If the evidence in the record “is susceptible to more than one rational

1 interpretation, [the court] must uphold the ALJ's findings if they are supported by  
2 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,  
3 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir.  
4 2002) (if the “evidence is susceptible to more than one rational interpretation, one  
5 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,  
6 a district court “may not reverse an ALJ's decision on account of an error that is  
7 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is  
8 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.  
9 The burden of showing that an error is harmful generally falls upon the party  
10 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

#### 11 **IV. Statement of Facts**

12 The facts of the case are set forth in detail in the transcript of proceedings  
13 and only briefly summarized here. Plaintiff was 30 years old at the alleged date of  
14 onset. AR 25, 46. She has a limited education through ninth grade and she is able  
15 to communicate in English. AR 25, 81-82, 246. Plaintiff has no past relevant work.  
16 AR 25.

#### 17 **V. The ALJ’s Findings**

18 The ALJ determined that Plaintiff was not under a disability within the  
19 meaning of the Act from August 5, 2013, through the date of the ALJ’s decision.  
20 AR 16, 26.

1           **At step one**, the ALJ found that Plaintiff had not engaged in substantial  
2 gainful activity since August 5, 2013 (citing 20 C.F.R. § 416.971 *et seq.*). AR 18.

3           **At step two**, the ALJ found Plaintiff had the following severe impairments:  
4 back impairment; obesity; and personality disorder (citing 20 C.F.R. § 416.920(c)).  
5 AR 18.

6           **At step three**, the ALJ found that Plaintiff did not have an impairment or  
7 combination of impairments that meets or medically equals the severity of one of  
8 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 19.

9           **At step four**, the ALJ found Plaintiff had the residual functional capacity to  
10 perform light work, except: she can only occasionally climb ladders and stairs; she  
11 can occasionally kneel, crouch, and crawl; she should avoid concentrated exposure  
12 to vibration, fumes, odors, dust, gases, and hazardous conditions; she is limited to  
13 tasks that she can learn in 30 days or less; she is limited to jobs that require simple,  
14 work-related decisions and with few workplace changes; she can have only  
15 occasional contact with the public and coworkers; and she would have breaks in  
16 concentration and attention, therefore production would decrease, this would  
17 happen up to 5% of the shift. AR 20.

18           The ALJ found that Plaintiff has no past relevant work. AR 25.

19           **At step five**, the ALJ found, in light of her age, education, work experience,  
20 and residual functional capacity, there are additional jobs that exist in significant

1 numbers in the national economy that Plaintiff can perform. AR 25-26. These  
2 include assembler, housekeeper, and agricultural produce sorter. AR 26.

## 3 **VI. Issues for Review**

4 Plaintiff argues that the Commissioner's decision is not free of legal error  
5 and not supported by substantial evidence. Specifically, she argues the ALJ erred  
6 by: (1) failing to consider whether Plaintiff's functioning meets listing 12.05C (2)  
7 improperly discrediting Plaintiff's subjective complaint testimony; and (3)  
8 improperly evaluating the medical opinion evidence.

## 9 **VII. Discussion**

### 10 **A. The ALJ Erred by Failing to Evaluate Listing 12.05C.**

#### 11 **a. Legal Standard.**

12 Plaintiff argues that she is presumptively disabled at step three because she  
13 meets or exceeds the criteria of Listing 12.05C.

14 A claimant is presumptively disabled and entitled to benefits if he or she  
15 meets or equals a listed impairment. To meet a listed impairment, a disability  
16 claimant must establish that his condition satisfies each element of the listed  
17 impairment in question. *See Sullivan v. Zebley*, 493 U.S. 521, 530 (1990); *Tackett*  
18 *v. Apfel*, 180 F.3d 1094, 1099 (9th Cir.1999). To equal a listed impairment, a  
19 claimant must establish symptoms, signs, and laboratory findings at least equal in  
20



1 severity and duration to each element of the most similar listed impairment.

2 *Tackett*, 180 F.3d at 1099-1100 (quoting 20 C.F.R. 404.1526).

3       The structure of Listing 12.05 is “unique” in that it “allows a claimant to be  
4 found per se disabled without having to demonstrate a disabling, or even severe,  
5 level of mental functioning impairment,” which sometimes leads to “curious  
6 result[s].” *Abel v. Colvin*, 2014 WL 868821, at \*4 (W.D. Wash. 2014) (internal  
7 citation and quotation marks omitted). “The structure of the listing for intellectual  
8 disability (12.05) is different from that of the other mental disorders listings.

9 Listing 12.05 contains an introductory paragraph with the diagnostic description  
10 for intellectual disability. It also contains four sets of criteria (paragraphs A  
11 through D). If [a claimant’s] impairment satisfies the diagnostic description in the  
12 introductory paragraph and any one of the four sets of criteria, we will find that  
13 [the claimant’s] impairment meets the listing.” 20 C.F.R. Pt. 404, Subpt. P, App. 1.

14       Thus, a claimant must meet the standard set forth in the introductory  
15 paragraph and at least one of the four listed criteria. *Id.* Listing 12.05 reads, in  
16 relevant part:

17       Intellectual disability refers to significantly subaverage general  
18 intellectual functioning with deficits in adaptive functioning initially  
19 manifested during the developmental period; i.e., the evidence  
20 demonstrates or supports onset of the impairment before age 22.  
The required level of severity for this disorder is met when the  
requirements in A, B, C, or D, are satisfied . . .

1 C. A valid verbal, performance, or full IQ of 60 through 70 and a  
2 physical or other mental impairment imposing an additional and  
significant work-related limitation of function.

3 In sum, in order to be considered presumptively disabled under Listing  
4 12.05C based on “intellectual disability,” a claimant must present evidence of: (1)  
5 “significantly subaverage general intellectual functioning with deficits in adaptive  
6 functioning” which initially manifested before the age of 22 (i.e., “during the  
7 developmental period”); (2) a “valid verbal, performance, or full scale IQ of 60  
8 through 70;” and (3) “a physical or other mental impairment imposing an  
9 additional and significant work-related limitation of function” is required for  
10 Listing 12.05C. 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.05C; *see Kennedy*  
11 *v. Colvin*, 738 F.3d 1172, 1174 (9th Cir.2013).

12 It is important to note that, at step three of the sequential evaluation process,  
13 it is still the claimant's burden to prove that her impairment meets or equals one of  
14 the impairments listed in 20 C.F.R. § 404, Subpart P. *Oviatt v. Com'r of Soc. Sec.*  
15 *Admin.*, 303 F. App'x 519, 523 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d 1071,  
16 1074–75 (9th Cir.2007); *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir.2005).

17 **b. IQ Score Validity.**

18 The primary element of the listings at issue is whether or not Plaintiff  
19 provided a valid IQ score meeting the requirements Listing 12.05C. As noted  
20 above, a finding of disability under Listing 12.05C requires a valid verbal,

1 performance, or full IQ of 60 through 70. 20 C.F.R. Pt 404, Subpt. P, App. 1,  
2 Listing 12.05.

3         The Ninth Circuit directs that an ALJ can decide that an IQ score is invalid.  
4 *Thresher v. Astrue*, 283 F. App'x 473, 475 (9th Cir. 2008). In *Thresher*, the Ninth  
5 Circuit stated that the “regulations’ inclusion of the word ‘valid’ in Listing  
6 12.05(C) makes the ALJ’s authority clear.” *Id.* Thus, an IQ score may be rejected  
7 as an invalid score by an ALJ. However, the Ninth Circuit also noted that it had  
8 “never decided what information is appropriately looked to in deciding validity,”  
9 but that other circuit courts have said that a score can be questioned on the basis of  
10 “other evidence,” but without explaining “exactly how other evidence impacts the  
11 validity of the score itself,” and that other courts require “some empirical link  
12 between the evidence and the score.” *Id.* at 475 n. 6 (citations omitted). “*Thresher*  
13 left that issue unresolved, but it suggests, at a minimum, that an ALJ should not  
14 find that ‘other evidence’ renders an IQ invalid without explaining how that  
15 evidence impacts the validity of the score.” *Gomez v. Astrue*, 695 F. Supp. 2d  
16 1049, 1057 (C.D. Cal. 2010). Decisions from other courts indicate that the ALJ  
17 may rely on external evidence of a score's invalidity, such as improper testing  
18 conditions or a claimant's participation in activities inconsistent with the IQ score.  
19 *Jones v. Colvin*, 149 F. Supp. 3d 1251, 1258 (D. Or. 2016). The ALJ has  
20 responsibility to “determine credibility, resolve conflicts in the testimony, and

1 resolve ambiguities in the record.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775  
2 F.3d 1090, 1098 (9th Cir. 2014) (citing 42 U.S.C. § 405(b); *Andrews v. Shalala*, 53  
3 F.3d 1035, 1039 (9th Cir.1995)).

4 In December 2013, Plaintiff’s IQ testing yielded a Full Scale IQ of 72 and a  
5 verbal performance score of 70. AR 237. However, Dr. Page, who administered the  
6 test, professed doubts in the reliability of the test results. AR 232-40. Specifically,  
7 Dr. Page stated that Plaintiff’s performance on the tests was “somewhat  
8 unconvincing in many respects,” leading him to “strongly suspect that she was  
9 underperforming relative to her potentials.” AR 233. Dr. Page further declared that  
10 he found “some inconsistencies in the test scores between subtests which measured  
11 similar elements,” and Plaintiff’s “performance on some subtests was extremely  
12 low relative to [Dr. Page’s] extensive experience with other patients with these  
13 instruments.” *Id.* Dr. Page remarked that his “sustained observation of [Plaintiff]  
14 during the many subtests led me to doubt the legitimacy of her related effort, solely  
15 on the basis of clinical impression.” AR 236. With regard to the IQ testing in  
16 particular, Dr. Page found it “difficult to dispel the doubt raised by this woman’s  
17 interview presentation and performance on memory testing.” AR 238. Dr. Page  
18 concluded that his “clinical impression is one of under measurement of underlying  
19 potentials.” AR 233.

1 Plaintiff contends that she received a verbal IQ score of 70, just meeting the  
2 IQ score requirement of Listing 12.05C, and should be found disabled at step three  
3 of the sequential evaluation process. Defendant argues that Dr. Page's statements  
4 make it clear that Plaintiff did not receive a *valid* IQ score within the required  
5 range as mandated by Listing 12.05C.

6 It is clear that the record contains a verbal IQ score within the required range  
7 for Listing 12.05C, and it is also clear that the doctor who administered the IQ test  
8 expressed doubts about the validity of the results. However, what both parties  
9 request is that the Court review and interpret Plaintiff's medical records in the first  
10 instance to determine whether or not the Plaintiff meets Listing 12.05C, rather than  
11 review the ALJ's analysis as contemplated by the statutory and regulatory  
12 framework. The ALJ is better suited than this Court to determine in the first  
13 instance the validity of IQ scores in the medical record, especially when the  
14 administering doctor expresses concerns and doubts regarding Plaintiff's efforts, as  
15 well as the symptoms and history related to Plaintiff's intellectual functioning with  
16 deficits in adaptive functioning as required by Listing 12.05. Faced with similarly  
17 deficient analysis by ALJs, courts have remanded for further administrative  
18 proceedings because the ALJ "is in a better position to evaluate the medical  
19 evidence" than a district court. *Santiago v. Barnhart*, 278 F. Supp. 2d 1049, 1058  
20 (N.D. Cal. 2003); *see also, e.g., Galaspi-Bey v. Barnhart*, No. C-01-01770-BZ,

1 2002 WL 31928500, at \*3 (N.D. Cal. Dec. 23, 2002). The Court finds that remand  
2 is appropriate on this issue. On remand, the ALJ will specifically consider and  
3 discuss whether Plaintiff's impairments meet or equal Listing 12.05C.

4 **B. The ALJ did not err in finding Plaintiff's subjective complaints not**  
5 **entirely credible.**

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

15 In weighing a claimant's credibility, the ALJ may consider many factors,  
16 including, "(1) ordinary techniques of credibility evaluation, such as the claimant's  
17 reputation for lying, prior inconsistent statements concerning the symptoms, and  
18 other testimony by the claimant that appears less than candid; (2) unexplained or  
19 inadequately explained failure to seek treatment or to follow a prescribed course of  
20 treatment; and (3) the claimant's daily activities." *Smolen*, 80 F.3d at 1284. When

1 evidence reasonably supports either confirming or reversing the ALJ's decision, the  
2 Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180  
3 F.3d 1094, 1098 (9th Cir.1999). Here, the ALJ found that the medically  
4 determinable impairments could reasonably be expected to produce the symptoms  
5 Plaintiff alleges; however, the ALJ determined that Plaintiff's statements of  
6 intensity, persistence, and limiting effects of the symptoms were not entirely  
7 credible. AR 21. The ALJ provided multiple clear and convincing reasons for  
8 discrediting Plaintiff's subjective complaint testimony. AR 20-23.

9 In this case, the ALJ found evidence of malingering. AR 23. This is  
10 supported by the record. *See Benton ex. el. Benton v. Barnhart*, 331 F.3d 1030,  
11 1040 (9th Cir.2003) (finding of affirmative evidence of malingering will support a  
12 rejection of a claimant's testimony). The ALJ noted that Dr. Page, who examined  
13 Plaintiff and administered mental evaluation tests, determined that Plaintiff was  
14 deliberately underperforming and exaggerating her symptoms rather than  
15 expressing genuine complaints. AR 23, 231-40. Dr. Page stated that Plaintiff's  
16 affect was not particularly compelling and he questioned the veracity of Plaintiff's  
17 reports. AR 23, 232. In addition, Dr. Page stated that Plaintiff's performance on the  
18 tests was "somewhat unconvincing in many respects," leading him to "strongly  
19 suspect that she was underperforming relative to her potentials." AR 233. Dr. Page  
20 further declared that he found "some inconsistencies in the test scores between

1 subtests which measured similar elements,” and Plaintiff’s “performance on some  
2 subtests was extremely low relative to [Dr. Page’s] extensive experience with other  
3 patients with these instruments.” *Id.* Indeed, Dr. Page declared that on one test  
4 Plaintiff missed almost half of the items, which is the lowest score he had ever  
5 seen, even with patients with severe dementia. *Id.* Dr. Page remarked that his  
6 “sustained observation of [Plaintiff] during the many subtests led [him] to doubt  
7 the legitimacy of her related effort, solely on the basis of clinical impression.” AR  
8 236. With regard to the IQ testing in particular, Dr. Page found it “difficult to  
9 dispel the doubt raised by this woman’s interview presentation and performance on  
10 memory testing.” AR 238. He also noted that Plaintiff became increasingly aware  
11 of time pressures toward the end of the examination because she anticipated her  
12 four children returning home from school, and in her haste, her test scores  
13 improved. AR 233-34. Dr. Page concluded that his “clinical impression is one of  
14 under measurement of underlying potentials.” AR 233.

15       In addition to malingering, the ALJ provided multiple clear and convincing  
16 reasons to discount Plaintiff’s credibility that are supported by the record. AR 21-  
17 23. The ALJ found Plaintiff’s allegations of disabling limitations are belied by her  
18 daily activities. AR 23. Activities inconsistent with the alleged symptoms are  
19 proper grounds for questioning the credibility of an individual’s subjective  
20 allegations. *Molina*, 674 F.3d at 1113 (“[e]ven where those activities suggest some



1 difficulty functioning, they may be grounds for discrediting the claimant's  
2 testimony to the extent that they contradict claims of a totally debilitating  
3 impairment"). Specifically, the ALJ noted that despite allegations of completely  
4 debilitating limitations, Plaintiff takes care of her four children every day, two of  
5 which are too young for school and Plaintiff stays home with them during the day.  
6 AR 23. The ALJ further noted with regard to Plaintiff's children that she arises at  
7 6:00AM most weekdays to bathe and prepare the two older children for school and  
8 does most of the childcare without assistance as she reported that her husband is  
9 disabled. *Id.* The ALJ reasonably found that Plaintiff's daily activities contradict  
10 her allegations of total disability.

11       The ALJ also found that Plaintiff's allegations of complete disability are not  
12 supported by the objective medical evidence and contradicted by the medical  
13 findings in the record. AR 21-22. An ALJ may discount a claimant's subjective  
14 symptom testimony that is contradicted by medical evidence. *Carmickle v.*  
15 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Inconsistency  
16 between a claimant's allegations and relevant medical evidence is a legally  
17 sufficient reason to reject a claimant's subjective testimony. *Tonapetyan v. Halter*,  
18 242 F.3d 1144, 1148 (9th Cir. 2001). There are minimal objective findings in the  
19 record to support Plaintiff's claims of physical limitations. Indeed, other than  
20 reports of shoulder pain after lifting a couch and arm pain after falling, the record

1 reflects almost no specific complaints of back pain at all. See, AR 21. The record is  
2 replete with unremarkable medical imaging, no or only mild abnormalities, normal  
3 reflexes and strength, normal gait, normal sensation, negative straight leg raise  
4 tests, and no neurological deficits. *See, e.g.*, AR 21-22, 203, 206, 209, 246-48, 406,  
5 418-19, 443. The record reflects almost no treatment was sought for Plaintiff's  
6 alleged mental health impairments other than three visits with mental health  
7 providers in April to June 2014. AR 22. A claimant's statements may be less  
8 credible when treatment is inconsistent with the level of complaints or a claimant is  
9 not following treatment prescribed without good reason. *Molina*, 674 F.3d at 1114.  
10 "Unexplained, or inadequately explained, failure to seek treatment . . . can cast  
11 doubt on the sincerity of [a] claimant's [] testimony." *Fair v. Bowen*, 885 F.2d 597,  
12 603 (9th Cir. 1989).

13       When the ALJ presents a reasonable interpretation that is supported by the  
14 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d at 857.  
15 The Court "must uphold the ALJ's findings if they are supported by inferences  
16 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*  
17 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
18 rational interpretation, one of which supports the ALJ's decision, the conclusion  
19 must be upheld"). The Court does not find the ALJ erred when discounting

1 Plaintiff's credibility because the ALJ properly provided multiple clear and  
2 convincing reasons for doing so.

3 **C. The ALJ properly weighed the medical opinion evidence.**

4 **a. Legal Standard.**

5 The Ninth Circuit has distinguished between three classes of medical  
6 providers in defining the weight to be given to their opinions: (1) treating  
7 providers, those who actually treat the claimant; (2) examining providers, those  
8 who examine but do not treat the claimant; and (3) non-examining providers, those  
9 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th  
10 Cir. 1996) (as amended).

11 A treating provider's opinion is given the most weight, followed by an  
12 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the  
13 absence of a contrary opinion, a treating or examining provider's opinion may not  
14 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a  
15 treating or examining provider's opinion is contradicted, it may only be discounted  
16 for "specific and legitimate reasons that are supported by substantial evidence in  
17 the record." *Id.* at 830-31.

18 The ALJ may meet the specific and legitimate standard by "setting out a  
19 detailed and thorough summary of the facts and conflicting clinical evidence,  
20 stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881

1 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating  
2 provider’s opinion on a psychological impairment, the ALJ must offer more than  
3 his or his own conclusions and explain why he or she, as opposed to the provider,  
4 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

5 **b. Ronald Page, Ph.D.**

6 Dr. Page is an examining doctor who completed a psychological evaluation  
7 in December 2013. AR 25, 231-40. Dr. Page opined that he suspects that Plaintiff  
8 “would fatigue the expectations of employers with medical complaints,  
9 absenteeism, and possibly even obstructive under-performance.” AR 240. Dr. Page  
10 also opined that he “do[es] not believe that [Plaintiff’s] cognitive and memory  
11 issues would preclude employment in some capacity.” *Id.*

12 The ALJ assigned little weight to Dr. Page’s opinion for multiple valid  
13 reasons. AR 25. The ALJ noted that this is not actually a medical opinion as it does  
14 not provide specific vocational restrictions or an assessment of Plaintiffs abilities  
15 or limitations. AR 25. The regulations define “medical opinions” as “statements  
16 from physicians and psychologists or other acceptable medical sources that reflect  
17 judgments about the nature and severity of [a claimant’s] impairments(s), including  
18 [her] symptoms, diagnosis and prognosis, what [she] can still do despite  
19 impairments(s), and [her] physical or mental restrictions.” 20 C.F.R. §  
20 416.927(a)(1). Dr. Page’s statements regarding Plaintiff’s willingness to work and

1 her possibly fatiguing employers with her complaints contains no mention of a  
2 specific severity, Plaintiff's prognosis, or what Plaintiff can still do despite her  
3 impairments. Additionally, the ALJ assigned little weight to this opinion because it  
4 is conclusory and too speculative to be of significant probative value. AR 25. [A]n  
5 ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory, and  
6 inadequately supported by clinical findings." *Bayliss*, 427 F.3d at 1216. It has  
7 already been repeatedly noted that Dr. Page doubted the results of the tests  
8 performed and Plaintiff's presentation, leaving nothing else on which Dr. Page  
9 could rest his opinion.

10 When the ALJ presents a reasonable interpretation that is supported by the  
11 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
12 857. The Court "must uphold the ALJ's findings if they are supported by inferences  
13 reasonably drawn from the record." *Molina*, 674 F.3d 1104, 1111; *see also*  
14 *Thomas*, 278 F.3d 947, 954 (if the "evidence is susceptible to more than one  
15 rational interpretation, one of which supports the ALJ's decision, the conclusion  
16 must be upheld"). Thus, the Court finds the ALJ did not err in his consideration of  
17 Dr. Page's opinion.

18 **c. John Fackenthall, D.O.**

19 Dr. Fackenthall is an examining doctor who completed a physical evaluation  
20 in December 2013. AR 244-48. Dr. Fackenthall opined that Plaintiff could do light

1 work, she could bend and stoop for one-third of the day, and she should be in a  
2 light-stress environment due to her seizures. AR 248.

3 The ALJ did not completely reject Dr. Fackenthall’s opinion, but rather  
4 afforded significant weight to much of the opinion and the opinion that Plaintiff  
5 can perform light work, but assigned less weight to the postural restrictions  
6 opinion, and did not accept the mention of “low stress” work. AR 24. Plaintiff  
7 contends that the ALJ erred in rejecting the postural restrictions opined to. ECF  
8 No. 12 at 11. However, as noted above, the ALJ did not completely reject this  
9 portion of Dr. Fackenthall’s opinion but assigned it less than significant weight.  
10 AR 24. The ALJ afforded less weight to this portion of the opinion because Dr.  
11 Rubio’s opinion reflects a more accurate picture of Plaintiff’s function as it is  
12 consistent with the longitudinal medical records. *Id.* An ALJ may reject a doctor’s  
13 opinion when it is inconsistent with other evidence in the record. *See Morgan*, 169  
14 F.3d 595, 602-603. The ALJ’s decision is supported by the record, which is replete  
15 with unremarkable medical imaging, no or only mild abnormalities, normal  
16 reflexes and strength, normal gait, normal sensation, negative straight leg raise  
17 tests, and no neurological deficits. *See, e.g.*, AR 21-22, 203, 206, 209, 246-48, 406,  
18 418-19, 443.

19 When the ALJ presents a reasonable interpretation that is supported by the  
20 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,

1 857. The Court “must uphold the ALJ's findings if they are supported by inferences  
2 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
3 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
4 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
5 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of  
6 Dr. Fackenthall’s opinion.

#### 7 **D. Remedy.**

8 The Court has the discretion to remand the case for additional evidence and  
9 findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award  
10 benefits if the record is fully developed and further administrative proceedings  
11 would serve no useful purpose. *Id.* Remand is appropriate when additional  
12 administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d  
13 759, 763 (9th Cir. 1989). In this case, the Court finds that further proceedings are  
14 necessary for a proper determination to be made. *Taylor v. Comm’r of Soc. Sec.*  
15 *Admin.*, 659 F.3d 1228, 1235 (9th Cir. 2011) (“Remand for further proceedings is  
16 appropriate where there are outstanding issues that must be resolved before a  
17 disability determination can be made, and it is not clear from the record that the  
18 ALJ would be required to find the claimant disabled if all the evidence were  
19 properly evaluated.”). Further, Plaintiff’s request for an immediate award of  
20 benefits is denied as further proceedings are necessary to develop the record.

1 On remand, the ALJ will issue a new decision that is consistent with the  
2 applicable law set forth in this Order. The ALJ will, specifically consider and  
3 discuss whether Plaintiff's impairments meet or equal Listing 12.05C.

#### 4 **VIII. Conclusion**

5 Having reviewed the record and the ALJ's findings, the Court finds the  
6 ALJ's decision is not supported by substantial evidence and contains legal error.

7 Accordingly, **IT IS ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **GRANTED**  
9 **in part.**

10 2. Defendant's Motion for Summary Judgment, **ECF No. 14**, is **DENIED.**

11 3. The District Court Executive is directed to enter judgment in favor of  
12 Plaintiff and against Defendant.

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

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

17 **DATED** this 15th day of October, 2018.

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