

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

Jun 15, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMANDA C.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY

Defendant.

No. 4:19-CV-05133-JTR

ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 18, 19. Attorney Chad Hatfield represents Amanda C. (Plaintiff); Special Assistant United States Attorney Ryan Lu represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 8. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

ORDER GRANTING IN PART PLAINTIFF'S MOTION . . . - 1

1 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
2 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
3 only if it is not supported by substantial evidence or if it is based on legal error.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
5 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
6 1098. Put another way, substantial evidence is such relevant evidence as a
7 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
8 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one
9 rational interpretation, the Court may not substitute its judgment for that of the
10 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
11 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the
12 administrative findings, or if conflicting evidence supports a finding of either
13 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*
14 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision
15 supported by substantial evidence will be set aside if the proper legal standards
16 were not applied in weighing the evidence and making the decision. *Brawner v.*
17 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

18 **SEQUENTIAL EVALUATION PROCESS**

19 The Commissioner has established a five-step sequential evaluation process
20 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
21 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through
22 four, the burden of proof rests upon the claimant to establish a prima facie case of
23 entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is
24 met once a claimant establishes that a physical or mental impairment prevents the
25 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),
26 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds
27 to step five, and the burden shifts to the Commissioner to show (1) the claimant
28 can make an adjustment to other work; and (2) the claimant can perform specific

1 jobs that exist in the national economy. *Batson v. Commissioner of Social Sec.*
2 *Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an
3 adjustment to other work in the national economy, the claimant will be found
4 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

5 **ADMINISTRATIVE DECISION**

6 On May 15, 2018, the ALJ issued a decision finding Plaintiff was not
7 disabled as defined in the Social Security Act.

8 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
9 activity since August 12, 2013.¹ Tr. 23.

10 At step two, the ALJ determined Plaintiff had the following severe
11 impairments: cervical spondylosis; and L5-S1 spondylosis and disc desiccation. *Id.*

12 At step three, the ALJ found Plaintiff did not have an impairment or
13 combination of impairments that met or medically equaled the severity of one of
14 the listed impairments. Tr. 24.

15 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
16 she could perform light exertion level work with the following limitations:

17 She must have a reasonable sit stand option up to five non-continuous
18 minutes per hour, which does not involve leaving the work station,
19 and does not require more than occasional climbing of ramps, stairs,
20 balancing, crouching, crawling, kneeling, or stooping. She must never
21 climb ladders, ropes, or scaffolds, and must avoid concentrated
22 exposure to extreme cold, with no exposure to hazards such as
23 unprotected heights, dangerous moving machinery, or commercial
24 driving. She can engage in the performance of more than simple,
25 routine tasks, as well as more complex tasks that do not involve the
degree of detail found in a managerial setting or that would be
required in jobs rated higher than semiskilled in nature. Further, she

26 ¹ The ALJ found there was no good cause to reopen a prior application that
27 was denied on August 11, 2013. The ALJ thus adjudicated the current claim from
28 August 12, 2013 forward. Tr. 21.

1 should not engage in tasks involving more than superficial interaction
2 with the general public.

3 Tr. 24-25.

4 At step four, the ALJ found Plaintiff was unable to perform her past relevant
5 work as a bus driver. Tr. 29.

6 At step five the ALJ found, considering Plaintiff's age, education, work
7 experience, and residual functional capacity, there were jobs that existed in
8 significant numbers in the national economy that Plaintiff could perform,
9 specifically identifying the representative occupations of housekeeping cleaner,
10 marking clerk, and food assembler. Tr. 29-30.

11 The ALJ thus concluded Plaintiff was not under a disability within the
12 meaning of the Social Security Act at any time from the alleged onset date through
13 the date of the decision. Tr. 31.

14 ISSUES

15 The question presented is whether substantial evidence supports the ALJ's
16 decision denying benefits and, if so, whether that decision is based on proper legal
17 standards.

18 Plaintiff contends the ALJ erred by (1) improperly rejecting medical
19 opinions; (2) failing to find mental impairments severe at step two; (3) failing to
20 find Plaintiff's impairments met or equaled a listing at step three; (4) improperly
21 rejecting Plaintiff's symptom testimony; and (5) conducting an inadequate analysis
22 at step five.

23 DISCUSSION

24 1. Treating ARNP Eleanor Walker

25 Plaintiff asserts the ALJ improperly rejected a number of medical opinions,
26 including that of Plaintiff's treating ARNP Eleanor Walker. ECF No. 18 at 13-14.²

27 ² The other opinion evidence will be addressed below in relation to the
28 severity of Plaintiff's mental health conditions.

1 An ALJ may discount the opinion of an “other source,” such as a nurse
2 practitioner, if she provides “reasons germane to each witness for doing so.”
3 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

4 In November 2017, Ms. Walker completed a medical statement for
5 WorkFirst, through the Department of Social and Health Services. Tr. 642-44. Ms.
6 Walker opined Plaintiff was unable to stand, walk or sit for more than two hours.
7 Tr. 642. She further noted Plaintiff was severely limited in lifting and carrying,
8 being unable to lift even two pounds. Tr. 643. She opined Plaintiff could only
9 participate in work activity for 1-10 hours per week. Tr. 642.

10 The ALJ gave this opinion little weight. Tr. 28. She reasoned that Ms.
11 Walker’s opinion that Plaintiff was unable to perform competitive employment
12 was outside of her medical expertise and unsupported by appropriate clinical
13 findings. *Id.* The ALJ further found the opinion inconsistent with Ms. Walker’s
14 own examination notes showing negative straight leg raises and was unsupported
15 by Plaintiff’s reported abilities with respect to household chores and errands. *Id.*

16 Plaintiff argues the ALJ’s analysis is insufficient, noting that Ms. Walker’s
17 opinion was on Plaintiff’s physical capabilities and not on the ultimate issue of
18 disability, and thus was within her area of expertise. ECF No. 18 at 13-14. She
19 further argues that the ALJ disregarded the clinical findings that are supportive of
20 Ms. Walker’s opinion, both in her own notes and in the record as a whole. *Id.*
21 Finally, she notes that the identified activities are not inconsistent with Ms.
22 Walker’s opinion, and thus do not undermine her conclusions. *Id.* Defendant
23 argues the ALJ reasonably found the opinion inconsistent with the record and the
24 clinical findings and emphasized that the ALJ owes no special consideration to
25 opinions on issues reserved to the Commissioner. ECF No. 19 at 14-15.

26 The Court finds the ALJ’s discussion is insufficient. Ms. Walker did not
27 comment on an issue reserved to the Commissioner; the ALJ’s statement that Ms.
28 Walker opined “that the claimant is unable to perform competitive employment” is

1 not an accurate summary. Ms. Walker opined on Plaintiff's physical limitations
2 stemming from her medical conditions, which is entirely within her area of
3 expertise as Plaintiff's medical provider.

4 The ALJ's rationale that Ms. Walker's opinion is inconsistent with her own
5 examination noting a negative straight leg raise test is not clearly germane to the
6 analysis. As the ALJ acknowledged, Ms. Walker's exam notes contain other
7 objective findings, including limited range of motion and tenderness. Tr. 646. Ms.
8 Walker also reviewed Plaintiff's most recent MRI and had a nearly two-year
9 treatment relationship with Plaintiff. Tr. 645, 838. Therefore, the ALJ's implication
10 that there was no medical basis for the opinion simply because the straight leg raise
11 test that day was negative is insufficient.

12 Finally, the ALJ failed to identify any activities that are actually inconsistent
13 with Ms. Walker's opinion. The ability to cook meals, grocery shop, and do some
14 minimal yard work is not inconsistent with the opinion that Plaintiff can lift very
15 limited amounts of weight or be on her feet for only a few hours per day.
16 Furthermore, Plaintiff testified that her children will help her with grocery
17 shopping, including lifting all of the heavy items. Tr. 73-74.

18 On remand, the ALJ will reevaluate the opinion of Plaintiff's medical
19 provider.

20 **2. Plaintiff's subjective statements**

21 Plaintiff contends the ALJ erred by improperly rejecting her subjective
22 statements. ECF No. 18 at 16-20.

23 It is the province of the ALJ to make credibility determinations. *Andrews v.*
24 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be
25 supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231
26 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying
27 medical impairment, the ALJ may not discredit testimony as to the severity of an
28 impairment merely because it is unsupported by medical evidence. *Reddick v.*

1 Chater, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of
2 malingering, the ALJ’s reasons for rejecting the claimant’s testimony must be
3 “specific, clear and convincing.” Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
4 1996); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1996). “General findings are
5 insufficient: rather the ALJ must identify what testimony is not credible and what
6 evidence undermines the claimant’s complaints.” Lester, 81 F.3d at 834; Dodrill v.
7 Shalala, 12 F.3d 915, 918 (9th Cir. 1993).

8 The ALJ concluded Plaintiff’s medically determinable impairments could
9 reasonably be expected to cause the alleged symptoms; however, Plaintiff’s
10 statements concerning the intensity, persistence and limiting effects of those
11 symptoms were not entirely consistent with the medical evidence and other
12 evidence in the record. Tr. 27. The ALJ found Plaintiff’s allegations to be
13 unsupported by the objective medical evidence, evidence of improvement with
14 treatment, and her activities, including work attempts throughout the relevant
15 period. Tr. 25-27.

16 Plaintiff argues the ALJ grossly mischaracterized the record and ignored
17 substantial evidence supporting Plaintiff’s testimony. ECF No. 18 at 16-20. She
18 further argues that none of the identified activities show any greater ability than
19 alleged by Plaintiff, and argues her work attempts were minimal and
20 accommodated. Id. Defendant argues the ALJ reasonably pointed to evidence of
21 improvement and inconsistent objective findings, and Plaintiff’s alternative
22 interpretation of the record is insufficient to demonstrate legal error. ECF No. 19 at
23 6-9.

24 The Court finds the ALJ failed to offer specific clear and convincing reasons
25 for discounting Plaintiff’s symptom allegations.

26 While a claimant’s daily activities may support an adverse credibility
27 finding if the activities contradict her other testimony, Orn v. Astrue, 495 F.3d 625,
28 639 (9th Cir. 2007), the mere fact that a claimant is capable of performing some

1 basic daily activities does not necessarily detract from her overall credibility.
2 Garrison v. Colvin, 759 F.3d 995, 1016 (9th Cir. 2014); Benecke v. Barnhart, 379
3 F.3d 587, 594 (9th Cir. 2004). The ALJ noted Plaintiff’s ability to engage in light
4 housework, grocery shop, cook meals, and do some minimal gardening as evidence
5 contrary to her reported limitations. Tr. 27. None of these activities are inconsistent
6 with Plaintiff’s reports that she is only able to lift very light weights and can only
7 be on her feet for short periods of time. She testified that her children accompany
8 her grocery shopping and do all the lifting. Tr. 73-74. Her children also help with
9 the more strenuous housework. Tr. 65, 614-15. She also testified that when she
10 does do chores, she will only work for a short time and then go lay down to relieve
11 back pain. Tr. 63. The Ninth Circuit has acknowledged “many home activities are
12 not easily transferable to what may be the more grueling environment of the
13 workplace, where it might be impossible to periodically rest or take medication.”
14 Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). While Plaintiff reported on her
15 function report in 2015 that she was able to go hiking, she stated it was “hit or
16 miss” and she was not asked and did not elaborate on how long or how often or
17 how strenuous or recent these hikes were. Tr. 355. This single entry does not
18 constitute substantial evidence of activities inconsistent with Plaintiff’s reported
19 symptoms. Notably, the Commissioner did not rely on the ALJ’s use of Plaintiff’s
20 activities in defending the decision. ECF No. 19 at 6-9.

21 An ALJ may consider the treatment an individual has received and the
22 effectiveness of that treatment in assessing a claimant’s allegations. Social Security
23 Ruling 16-3p. However, evidence of temporary relief or cycles of waxing and
24 waning symptoms does not demonstrate inconsistency with a claimant’s overall
25 allegations of limitations. While Plaintiff reported some improvement with
26 physical therapy, or relief of symptoms the day of treatments, the relief was not
27 sustained and she continued to report symptoms. See e.g., Tr. 753-54. Furthermore,
28 improvement in her neck pain did not equate to elimination of her back condition.

1 Because none of the ALJ's other reasons satisfy the clear and convincing
2 standard, a lack of support from the medical records alone is an insufficient basis.
3 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Furthermore, the Court notes
4 that the ALJ's discussion of the objective evidence does contain citations to
5 objective findings that appear to support Plaintiff's claims. Tr. 25-26 (noting
6 imaging showing moderate degenerative changes, moderately severe spondylosis,
7 and moderate to severe disc desiccation; reduced range of motion and strength
8 testing; and positive straight leg raise tests).

9 On remand, the ALJ will reevaluate Plaintiff's subjective allegations and
10 make specific clear and convincing findings regarding the reliability of those
11 reports.

12 **3. Step three**

13 Plaintiff argues the ALJ erred in making inadequate step three findings. ECF
14 No. 18 at 15-16. Specifically, she asserts the ALJ's discussion was conclusory and
15 incorrect with respect to Listing 1.04A.

16 At step three of the sequential evaluation process, the ALJ considers whether
17 one or more of the claimant's impairments meets or equals an impairment listed in
18 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 404.1520(a)(4)(iii). Each
19 Listing sets forth the "symptoms, signs, and laboratory findings" which must be
20 established for a claimant's impairment to meet the Listing. *Tackett v. Apfel*, 180
21 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a Listing, the
22 claimant is considered disabled without further inquiry. 20 C.F.R. § 404.1520(d).

23 Listing 1.04 concerns disorders of the spine, and is met when the evidence
24 shows:

25 compromise of a nerve root (including the cauda equina) or the spinal
26 cord. With:

27 A. Evidence of nerve root compression characterized by neuro-
28 anatomic distribution of pain, limitation of motion of the spine, motor

1 loss (atrophy with associated muscle weakness or muscle weakness)
2 accompanied by sensory or reflex loss and, if there is involvement of
3 the lower back, positive straight-leg raising test (sitting and supine);

4 20 C.F.R. Part 404, Subpart P, Appendix 1, §1.04A.

5 The ALJ found Plaintiff's conditions did not meet or equal any listed
6 impairment. Tr. 24. She stated: "Specifically, her cervical and lumbar spondylosis,
7 with disc desiccation, does not meet listing 1.04 because there is no evidence of:
8 (a) nerve-root compression, limited spinal motion, and motor loss accompanied by
9 sensory or reflex loss." Id. The ALJ offered no further explanation for her
10 conclusion.

11 The Court finds the ALJ's analysis is insufficient. Imaging shows
12 degenerative disc changes at L5-S1 abutting the S1 nerve roots. Tr. 756, 866-67.
13 The record contains evidence of associated neuro-anatomic distribution of pain in
14 Plaintiff's complaints throughout the relevant period of low back pain radiating
15 into the groin and legs. She has demonstrated limitations in the motion of her
16 spine, Tr. 622, 646, 746, 840, 856, along with muscle weakness and sensory and
17 reflex loss. Tr. 747, 829, 878. She has had positive straight-leg raising tests. Tr.
18 445, 840. It therefore appears on the record that each of the factors characterizing
19 nerve root compression are present.

20 Defendant does not address Plaintiff's assertion that each part of Listing
21 1.04A is met. Instead, Defendant focuses on the lack of evidence that Plaintiff's
22 impairments resulted in an inability to ambulate effectively. ECF No. 19 at 17-19.
23 However, the inability to ambulate effectively is only an element of Listing 1.04C.
24 Plaintiff does not argue that her impairments meet Listing 1.04C.

25 The ALJ's conclusory statement that the record does not contain evidence of
26 listing-level severity is not supported by substantial evidence. "An ALJ must
27 evaluate the relevant evidence before concluding that a claimant's impairments do
28 not meet or equal a listed impairment. A boilerplate finding is insufficient to

1 support a conclusion that a claimant’s impairment” does not meet or equal a listed
2 impairment. *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001).

3 Plaintiff encourages this Court to remand the claim for an immediate
4 calculation of benefits. However, the Court finds that further proceedings are
5 needed to properly evaluate whether the identified evidence reaches listing-level
6 severity, and if so, whether the durational requirement was met and what the
7 appropriate onset date of disability is. If necessary, the ALJ should call on a
8 medical expert to answer these questions.

9 **4. Mental impairments**

10 Plaintiff argues the ALJ erred in failing to find her mental impairments
11 severe at step two and in improperly rejecting medical evidence commenting on
12 her mental abilities. ECF No. 18 at 10-13, 14-15. Defendant argues that the ALJ
13 adequately discussed the minimal evidence regarding mental impairments and that
14 any error was harmless due to the RFC accounting for all recommended
15 limitations. ECF No. 19 at 10-13, 16-17.

16 The Court finds the ALJ did not err. The step-two analysis is “a de minimis
17 screening device used to dispose of groundless claims.” *Webb v. Barnhart*, 433
18 F.3d 683, 687 (9th Cir. 2005). An impairment is “not severe” if it does not
19 “significantly limit” the ability to conduct “basic work activities.” 20 C.F.R. §
20 404.1522(a). Basic work activities are “abilities and aptitudes necessary to do most
21 jobs.” 20 C.F.R. § 404.1522(b).

22 The ALJ reasonably noted that the record contained an unremarkable
23 consultative psychological exam and lacked any mental health treatment. Tr. 24.
24 She found the references to anxiety in the record to be a non-medically
25 determinable impairment as Plaintiff had not been diagnosed with the condition by
26 an appropriate clinician. *Id.*

27 Though the state agency reviewing doctors and the consultative examiner
28 identified depression/affective disorder as a diagnosis, they did not assess specific

1 limitations in excess of those included in the RFC. Tr. 115, 143, 616. Therefore,
2 even if the failure to list depression as severe was error, the error would be
3 harmless because step two was resolved in Plaintiff's favor, and Plaintiff fails to
4 identify any credited limitation associated with depression that was not considered
5 by the ALJ and incorporated into the RFC. *See Stout v. Comm'r of Soc. Sec.*
6 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *Burch v. Barnhart*, 400 F.3d 676,
7 682 (9th Cir. 2005). The ALJ's step two finding is legally sufficient.

8 However, on remand, the ALJ will reconsider all medical evidence and any
9 new evidence submitted and make new step two findings as warranted.

10 **5. Step five**

11 Plaintiff argues the above errors resulted in an inaccurate RFC and a
12 decision that is not supported by substantial evidence. ECF No. 18 at 20-21.
13 Considering the case is being remanded for the ALJ to correct other errors, the ALJ
14 shall also complete the five-step analysis and make a new step five determination
15 as necessary.

16 **CONCLUSION**

17 Plaintiff argues the ALJ's decision should be reversed and remanded for the
18 payment of benefits. The Court has the discretion to remand the case for additional
19 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292
20 (9th Cir. 1996). The Court may award benefits if the record is fully developed and
21 further administrative proceedings would serve no useful purpose. *Id.* Remand is
22 appropriate when additional administrative proceedings could remedy defects.
23 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court
24 finds that further development is necessary for a proper determination to be made.

25 The ALJ's RFC determination is not supported by substantial evidence in
26 this case and must be reevaluated. On remand, the ALJ shall reevaluate the medical
27 evidence and Plaintiff's subjective complaints and make new findings on each of
28

1 the five steps in the sequential process, taking into consideration any other
2 evidence or testimony relevant to Plaintiff's disability claim.

3 Accordingly, **IT IS ORDERED:**

4 1. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is
5 **GRANTED IN PART.**

6 2. Defendant's Motion for Summary Judgment, **ECF No. 19**, is
7 **DENIED.**

8 3. The matter is **REMANDED** to the Commissioner for additional
9 proceedings consistent with this Order.

10 4. An application for attorney fees may be filed by separate motion.

11 The District Court Executive is directed to file this Order and provide a copy
12 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and
13 the file shall be **CLOSED.**

14 **IT IS SO ORDERED.**

15 DATED June 15, 2020.



A handwritten signature in black ink, appearing to be "M" or "Rodgers".

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE