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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Jill Ann Mons,

) No. CV-09-01687-PHX-NVW

10

Plaintiff,

) **ORDER**

11

vs.

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Michael J. Astrue, Commissioner of Social Security,

14

Defendant.

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Plaintiff Jill Ann Mons seeks review, pursuant to 42 U.S.C. § 405(g), of the administrative denial of her application for social security disability insurance benefits and supplemental security income. Because the ALJ’s decision was based on legal error, the Commissioner’s decision will be vacated and remanded for further administrative proceedings.

22

**I. Background**

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**A. Factual Evidence**

24

Ms. Mons was born August 19, 1970. (Tr. 132.) She graduated high school and has a bachelor’s degree in social work from Northern Arizona University. (Tr. 36, 38.) Her work history includes positions as a receptionist, waitress/hostess, and case aide to a non-profit organization. (Tr. 200.) Ms. Mons suffers from bipolar disorder, depression, panic disorder, and alcohol and marijuana dependence. She has been prescribed

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1 Depakote, a mood stabilizer, and Effexor, an anti-depressant, to treat her condition. (Tr.  
2 142.) Ms. Mons claims that the effects of her anxiety attacks, bipolar disorder and  
3 depression leave her unable to handle the stress of a job or concentrate on her job duties.  
4 (Tr. 137.) It is undisputed that Ms. Mons has not engaged in significant gainful  
5 employment since May 15, 2005, when she left her job as a waitress. (Tr. 37.) Ms. Mons  
6 stated that she lived alone, and that her daily activities consisted of cleaning her home,  
7 preparing simple meals, doing laundry, watering plants, shopping for groceries, watching  
8 television, attending church, walking to doctor's appointments, and spending time with  
9 her family. (Tr. 44-46, 190-195.)

10 Prior to her alleged disability onset date of May 15, 2005, Ms. Mons was  
11 hospitalized four times and sought treatment variously for paranoid delusions and  
12 hallucinations (Tr. 356, 358), manic episodes with psychosis (Tr. 344-55), anxiety and  
13 depression related to bipolar disorder and alcohol dependence (Tr. 441-49), and substance  
14 abuse of alcohol and marijuana. (Tr. 300-320.) After her alleged disability onset date,  
15 Ms. Mons sought treatment at Helping Associates in June 2005 for her bipolar disorder;  
16 she continued to receive ongoing counseling there through 2006 and 2007. (Tr. 370.) On  
17 September 20, 2007, Ms. Mons was hospitalized for fourteen days and treated for a manic  
18 episode. (Tr. 540-50.) Upon her release on October 8, 2007, Ms. Mons was admitted to a  
19 treatment center, Southwest Behavioral Health Services (Tr. 621), from which she  
20 voluntarily discharged herself on October 20, 2007. (Tr. 630.) Ms. Mons continued  
21 receiving counseling at Helping Associates for the remainder of 2007, 2008, and into  
22 2009. (Tr. 678.)

### 23 **B. Procedural History**

24 On December 15, 2006, Ms. Mons filed a Title II application for disability  
25 insurance benefits and a Title XVI application for supplemental security income. Ms.  
26 Mons alleged disability from bipolar disorder, panic disorder, and alcohol and marijuana  
27 dependence in early remission, with an onset date of May 15, 2005. Ms. Mons is insured  
28 through December 31, 2010, and must establish disability on or before that date to be

1 entitled to benefits.

2       The SSA denied Ms. Mons’s application initially on April 18, 2007, and again  
3 upon reconsideration on August 22, 2007. Ms. Mons had a hearing before an ALJ on  
4 April 16, 2008, which was attended by Ms. Mons, her attorney Eric Slepian, and  
5 vocational expert Ruth Van Fleet. The ALJ issued an unfavorable decision on June 17,  
6 2008. Ms. Mons filed a request for review of the ALJ’s decision on August 15, 2008. On  
7 June 15, 2009, the SSA Appeals Council denied her request and the ALJ’s decision  
8 became the final decision of the Social Security Commissioner. Pursuant to 42 U.S.C.  
9 §405(g), Ms. Mons sought judicial review of the ALJ’s decision in this Court on August  
10 14, 2009.

## 11 **II. Standard of Review**

12       The Court will uphold the Commissioner’s final decision if it is supported by  
13 substantial evidence and not based on legal error. *See* 42 U.S.C. § 405(g) (“findings of  
14 the Commissioner of Social Security as to any fact, if supported by substantial evidence,  
15 shall be conclusive”); *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). The  
16 substantial evidence standard requires the evidence to “be more than a mere scintilla but  
17 not necessarily a preponderance.” *Tomassetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.  
18 2008) (citations omitted). The Court must consider the “entire record as a whole and may  
19 not affirm simply by isolating a ‘specific quantum of supporting evidence.’” *Orn v.*  
20 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citations omitted).

21       The Court will also review only the issues raised by the party challenging the  
22 ALJ’s decision. *See Lewis v. Apfel*, 235 F.3d 503, 517 n.13 (9th Cir. 2001). The ALJ’s  
23 decision will be upheld where the “evidence is susceptible to more than one rational  
24 interpretation” and the ALJ’s decision is supported by one such rational interpretation.  
25 *Orn*, 495 F.3d at 630. The court will not reverse for harmless error, which exists “when it  
26 is clear from the record that ‘the ALJ’s error was inconsequential to the ultimate  
27 nondisability determination.’” *Tomassetti*, 533 F.3d at 1038.

## 28 **III. Analysis**

1 Social Security regulations define disability as “the inability to do any substantial  
2 gainful activity by reason of any medically determinable physical or mental impairment  
3 which can be expected to last for a continuous period of not less than 12 months.” 20  
4 C.F.R. § 404.1505(a). To determine whether a claimant is disabled, the ALJ conducts a  
5 five-step analysis as outlined in 20 C.F.R § 404.1520(a)(4).

6 At step one, the ALJ found that Ms. Mons was not engaged in substantial gainful  
7 activity. (Tr. 22.) At step two, the ALJ found that Ms. Mons had the following severe  
8 impairments: bipolar disorder, panic disorder, and alcohol and marijuana dependence in  
9 early remission (not material). (*Id.*) At step three, the ALJ found that Ms. Mons did not  
10 have an impairment or combination of impairments that met or medically equaled one of  
11 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §  
12 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926). Ms. Mons does not  
13 allege error with respect to the ALJ’s findings in steps one, two and three.

14 At the fourth step, the ALJ assessed Ms. Mons’s residual functional capacity and  
15 her ability to perform past relevant work. The ALJ found that while Ms. Mons was  
16 unable to perform any past relevant work (Tr. 28), she was able to perform a full range of  
17 work at all exertional levels, and short and simple tasks. He found she had moderate  
18 mental limitations in her ability to carry out detailed instructions, perform activities  
19 within a schedule, maintain regular attendance, be punctual within customary tolerance,  
20 interact appropriately with the general public, maintain socially appropriate behavior, and  
21 adhere to basic standards of neatness and cleanliness. (Tr. 24.) At the fifth step, the ALJ  
22 considered Ms. Mons’s age, education, work experience, and residual functional capacity;  
23 he found that she was not disabled as there were significant numbers of jobs in the  
24 national economy that she could perform, such as janitor, assembler, and car washer. (Tr.  
25 28.) Ms. Mons alleges error in the ALJ’s determination of her credibility, consideration  
26 of Carol Mons’s third party report, failure to ask the testifying vocational expert about  
27 conflicts between her testimony and the Dictionary of Occupational Titles, and weighing  
28 of the medical opinion evidence.

1           **A.     The ALJ Properly Evaluated Ms. Mons’s Credibility.**

2           The ALJ engages in a two-step analysis when evaluating a claimant’s testimony as  
3 to subjective pain or other symptoms. *See Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir.  
4 2009). The ALJ must first determine that “the claimant has presented objective medical  
5 evidence of an underlying impairment which could reasonably be expected to produce the  
6 pain or other symptoms alleged” and that the claimant is not malingering. *Id.* If the ALJ  
7 finds the claimant’s testimony is not credible, he must provide specific, clear and  
8 convincing reasons for so finding. *Id.* Further, if the ALJ’s “credibility finding is  
9 supported by substantial evidence in the record, [the reviewing court] may not engage in  
10 second-guessing.” *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

11           When evaluating the intensity and persistence of a claimant’s symptoms, the ALJ  
12 considers a broad range of factors in addition to the claimant’s own statements regarding  
13 the limitations caused by her symptoms. These factors include the claimant’s daily  
14 activities, effectiveness of any medication or treatment in controlling the symptoms,  
15 objective medical evidence of the symptoms, and statements by treating and non-treating  
16 sources about how a claimant’s symptoms affect her ability to work. *See* 20 C.F. R.  
17 §404.1529(c). With respect to daily activities, a claimant is not required to be “utterly  
18 incapacitated” to be found disabled. *See Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
19 1989). However, if a claimant is

20           able to perform household chores and other activities that involve many of the  
21 same physical tasks as a particular type of job, it would not be farfetched for an  
22 ALJ to conclude that [a claimant’s] pain does not prevent [the claimant] from  
working...a specific finding as to this fact may be sufficient to discredit an  
allegation of disabling excess pain. (*Id.*)

23 Further, “[w]hile subjective pain testimony cannot be rejected on the sole ground that it is  
24 not fully corroborated by objective medical evidence, the medical evidence is still a  
25 relevant factor in determining the severity of the claimant’s pain and its disabling  
26 effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

27           **1.     Ms. Mons’s hearing testimony**

28           At the hearing, Ms. Mons stated that she left her most recent job because she was

1 “stressed out,” was “lashing out at [her] customers and [her coworkers],” and “wasn’t  
2 getting along with most of the people [she] worked with.” (Tr. 37.) She reported that her  
3 manic episodes interfered with her previous receptionist job and ultimately caused her  
4 dismissal from that position. (*Id.*) Ms. Mons stated that she could not work because she  
5 was having problems with her hygiene, was depressed, and needed to take naps most  
6 days. (Tr. 44.) She claimed to have the following symptoms of depression: negativity,  
7 being overwhelmed, irritability, weight gain, sleeping, isolation, and difficulty with  
8 memory and concentration. (Tr. 50-51.) She described her representative daily activities  
9 as getting up, having coffee and cigarettes, walking to doctor’s appointments, spending  
10 time with her parents, napping, eating, watching television, going grocery shopping, and  
11 doing laundry. (Tr. 44-45.) Ms. Mons noted that there have been times when she  
12 neglects chores and does not leave the house. (Tr. 51.) She also detailed her history of  
13 marijuana and alcohol use and dependence. (Tr. 37-44.)

## 14 **2. The ALJ’s credibility findings**

15 The ALJ considered the evidence and found that while Ms. Mons had produced  
16 objective medical evidence of an impairment which could reasonably produce her alleged  
17 symptoms, her “statements concerning the intensity, persistence and limiting effects of  
18 [her] symptoms are not credible to the extent they are inconsistent with the residual  
19 functional capacity assessment for the reasons explained below.” (Tr. 25.) The ALJ went  
20 on to give specific reasons based on the evidence in record for discounting Ms. Mons’s  
21 credibility. First, he found that Ms. Mons’s statements were inconsistent with much of  
22 the objective medical evidence presented. The ALJ credited progress notes from Ms.  
23 Mons’s treatment at Helping Associates indicating that she had been “compliant with  
24 medication and appeared stable over a significant period of time.” (*Id.*) The ALJ noted  
25 that after her discharge from Southwest Behavioral Health Services for voluntary alcohol  
26 detoxification, Ms. Mons “continued on psychiatric medications as prescribed” and was  
27 “free of withdrawal symptoms and alert and oriented...with good grooming and  
28 hygiene...[h]er insight and judgment were intact.” (*Id.*) The ALJ also credited

1 psychiatric progress notes throughout 2006 which reported Ms. Mons's mood and  
2 symptoms as "stable," "doing well," "decreased anxiety," "no symptoms of psychosis,"  
3 unremarkable appearance, good hygiene, eye contact, insight judgment, concentration,  
4 affect, perception, and memory. (Tr. 25-26.)

5 The ALJ then considered objective medical evidence stemming from Ms. Mons's  
6 consultative evaluation with psychologist Dr. Geary, in which Dr. Geary reported Ms.  
7 Mons's "cognition was grossly intact," she was "independent in all activities," she  
8 "appeared depressed although her mood seemed stable[,] and there was no evidence of  
9 mood swings or acute bipolar symptoms." (Tr. 26.) Dr. Geary also found that Ms. Mons  
10 was moderately limited in certain areas, including her capacity to "carry out detailed and  
11 complex job instructions, maintain regular attendance, complete a normal work week  
12 without interruption from psychological symptoms, persistently deal with the public, and  
13 adhere to basic standards of neatness and cleanliness." (*Id.*) Although Ms. Mons had  
14 reported some stress, anxiety, and specific phobias, Dr. Geary believed Ms. Mons's  
15 symptoms would improve if she refrained from using drugs and alcohol. (*Id.*)

16 Further, the ALJ noted that Ms. Mons's prognosis after inpatient treatment for  
17 bipolar disorder and mania was "fair, [depending] on 'compliance with her current  
18 treatment plan and social support.'" (Tr. 26.) He also noted that during her  
19 hospitalization, Ms. Mons was "placed 'back on'" certain of her medications. (*Id.*)  
20 Progress notes chronicling Ms. Mons's treatment through the end of 2007 and into 2008  
21 stated Ms. Mons "had periods of sadness," but that her appearance, eye contact, and  
22 cooperation were good, her speech normal, affect appropriate, and insight fair; she was  
23 also oriented to person, place, time, and circumstances, compliant with medication, and  
24 "appeared to be responsive and functioning within normal limits." (*Id.*) Nonetheless,  
25 nurse practitioner Judy Johnson gave her opinion in a medical assessment that Ms. Mons  
26 was disabled and had a restrictive mental residual functional capacity (*id.*), and therapist  
27 Denise Carr gave the opinion that Ms. Mons was disabled by her bipolar disorder and had  
28 restrictive mental limitations. (Tr. 26.) The ALJ stated that he did not give controlling

1 weight to either Ms. Johnson or Ms. Carr’s conclusions as they were inconsistent with the  
2 progress notes and because neither Ms. Johnson nor Ms. Carr was a qualified  
3 psychologist or psychiatrist. (Tr. 26-27.)

4 After considering the objective medical evidence, the ALJ went on to weigh other  
5 factors in his credibility determination. He noted that Ms. Mons had “acknowledged  
6 longstanding difficulties with alcohol and marijuana...[and] acknowledged alcohol use the  
7 week prior to the hearing, and in or around December 2007.” (Tr. 27.) The ALJ also  
8 noted that he found Ms. Mons to be “circumspect about her drinking and the use of  
9 marijuana.” (*Id.*) The ALJ also credited evidence that treatment was generally successful  
10 in controlling Ms. Mons’s symptoms, weighing against the credibility of her testimony  
11 regarding the “severity and functional consequences of her symptoms.” (*Id.*) Finally, the  
12 ALJ factored in evidence regarding Ms. Mons’s functioning in her daily activities in his  
13 credibility assessment and found that Ms. Mons’s “self-described daily activities are not  
14 that limited to the extent one would expect, given the complaints of disabling symptoms  
15 and limitations.” (*Id.*)

16 The ALJ thus did not rely solely on the fact that Ms. Mons’s reported daily  
17 activities were inconsistent with her disability, nor did he justify his credibility  
18 determination on the lack of full and objective medical corroboration for Ms. Mons’s  
19 symptoms alone. Rather, his determination was based on an overall assessment of several  
20 factors collectively. *See Thomas*, 278 F.3d at 958-59 (noting ALJ may consider several  
21 different factors when weighing claimant’s credibility). Because the ALJ provided  
22 specific, clear, and convincing reasons for discounting Ms. Mons’s statements regarding  
23 the severity and impact of her symptoms, including objective medical reports, the extent  
24 of and independence in daily activities, her drug and alcohol use and circumspection at  
25 the hearing with regard thereto, and the effectiveness of treatment in controlling her  
26 symptoms, there was no error in the ALJ’s credibility determination.

27 **B. The ALJ Properly Weighed Carol Mons’s Third Party Report.**

28 On January 24, 2007, Carol Mons, Ms. Mons’s mother, completed a third party



1 function report detailing her observations regarding her daughter's daily life activities and  
2 the limiting impact of Ms. Mons's impairment. (Tr. 180-87.) Ms. Mons alleges that the  
3 ALJ erred by rejecting, without reason, Carol Mons's third party report. Under 20 C.F.R.  
4 § 404.1513(e)(2), "observations by nonmedical sources about how impairments affect a  
5 claimant's ability to work" will be considered in assessing a disability claim. *See Smolen*,  
6 80 F.3d at 1288. Friends and family "in a position to observe a claimant's symptoms and  
7 daily activities are competent to testify as to [the claimant's] condition." *Dodrill v.*  
8 *Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). An ALJ must "give reasons that are  
9 germane to each witness" in order to discount the testimony of a lay witness. *Id.* at 919.

10         Contrary to Ms. Mons's allegations, the ALJ did not reject Carol Mons's report or  
11 improperly discount her testimony. Rather, the ALJ discussed Carol Mons's report and  
12 noted several of her observations made therein: that her daughter usually spent one day a  
13 week at her home, shopped, went to church on a regular basis, watched television,  
14 prepared simple meals, did light household chores and laundry, went out daily, used  
15 public transportation, drove a car, walked, rode a bicycle, and handled her finances. (Tr.  
16 25.) Further, the ALJ noted Carol Mons's statements in the report that her daughter spent  
17 time with others, had no difficulty getting along with others, took notes for reminders,  
18 was able to follow instructions, but did not do well with changes in routine or stress. (*Id.*)  
19 Rather than finding that the ALJ implicitly rejected Carol Mons's report by denying Ms.  
20 Mons's disability claim, it can be inferred that the ALJ credited her report by finding that  
21 Ms. Mons's "medically determinable impairments could reasonably be expected to  
22 produce the alleged symptoms" (*id.*) and that Ms. Mons's daily activities belied a claim of  
23 severe functional impairment. (Tr. 27.)

24         The ALJ went on to find that "the claimant's statements concerning the intensity,  
25 persistence and limiting effects of these symptoms are not credible to the extent they are  
26 inconsistent with the residual functional capacity assessment...." (*Id.*) The testimony  
27 rejected here by the ALJ concerned statements made by Ms. Mons herself regarding the  
28 severity of her symptoms; the ALJ does not reject Carol Mons's testimony. The

1 statements made by Carol Mons were consistent with the ALJ's findings that while Ms.  
2 Mons's impairment caused anxiety and stress that limited her in some ways, she was still  
3 able to complete many daily life activities.

4 Even if it could be inferred that the ALJ discounted portions of Carol Mons's  
5 report regarding the intensity of Ms. Mons's symptoms, the ALJ gave sufficient reasons  
6 for disbelieving the purported intensity of Ms. Mons's limitations. The ALJ explained  
7 that he found the claim that Ms. Mons could not engage in any substantial gainful activity  
8 as a result of her bipolar disorder and panic disorder lacking credibility, given the extent  
9 to which she could carry on daily life activities. (Tr. 27.) This statement is a sufficiently  
10 germane reason to discount Carol Mons's report as well, since her report detailed the  
11 extent of her daughter's daily activities. *See Lewis*, 236 F.3d at 512 (finding ALJ's  
12 observation that claimant's daily activities were inconsistent with family reports  
13 regarding severity of claimant's symptoms sufficiently germane to reject family testimony  
14 even though ALJ "did not clearly link his determination to those reasons"). The ALJ thus  
15 properly weighed Carol Mons's third party report.

16 **C. The ALJ's Failure to Ask Testifying Vocational Expert, Ms. Ruth Van**  
17 **Fleet, Whether Her Testimony Conflicted with the Dictionary of**  
18 **Occupational Titles was Harmless Error Since There Was No Conflict.**

19 Ms. Mons alleges that the ALJ failed to identify and resolve conflicts between the  
20 Dictionary of Occupational Titles ("DOT") and the occupational evidence provided by  
21 Ms. Ruth Van Fleet. Under SSR 00-4p, an ALJ may not "rely on the testimony of a  
22 vocational expert regarding the requirements of a particular job without first inquiring  
23 whether the expert's testimony conflicts with the [DOT]." *Massachi v. Astrue*, 486 F.3d  
24 1149 (9th Cir. 2007). However, failing to inquire whether a vocational expert's testimony  
25 conflicted with the DOT is merely harmless error if there was no actual conflict. *Id.* at  
26 1154, n.19.

27 At Ms. Mons's hearing, the ALJ asked Ms. Van Fleet to assume an individual of  
28 Ms. Mons's age, education, and work background, and assume that this individual was

1 moderately limited in four mental health categories.<sup>1</sup> (Tr. 52.) Ms. Van Fleet testified  
2 that an individual so limited would not be able to perform Ms. Mons's past work.  
3 However, she noted that there existed jobs in the national economy which such an  
4 individual could perform, such as "janitor," "something in production assembly," and  
5 "car vehicle washer." (Tr. 53-54.) Ms. Van Fleet provided the DOT numbers for these  
6 three positions upon Ms. Mons's attorney's request, but the ALJ did not ask Ms. Van  
7 Fleet whether her testimony conflicted with the DOT.

8 Ms. Mons has raised no conflict between Ms. Van Fleet's testimony and the DOT.  
9 She does not identify any inconsistency between requirements for the positions Ms. Van  
10 Fleet identified and the requirements for these positions listed in the DOT. Rather, Ms.  
11 Mons's complaint here seems to be more accurately characterized as disputing the ALJ's  
12 acceptance of some medical source opinions over others. Since there was no conflict  
13 between Ms. Van Fleet's testimony and the DOT, the ALJ's failure to ask Ms. Van Fleet  
14 whether her testimony was consistent with the DOT was inconsequential to his ultimate  
15 determination that Ms. Mons was not disabled. Accordingly, this error was harmless.  
16 *See Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir. 2006).

17 **D. The ALJ Failed to Properly Weigh the Medical Opinion Evidence.**

18 Ms. Mons alleges that the ALJ did not properly weigh the various medical source  
19 opinions in the record. When presented with conflicting medical opinions, the ALJ must  
20 make credibility determinations and resolve any conflicts. *See Benton v. Barnhart*, 331  
21 F.3d 1030, 1040 (9th Cir. 2003). Medical opinions in the record can be from "acceptable  
22 medical sources," such as licensed physicians, licensed psychologists, or certified  
23 psychologists, or "other sources," such as nurse practitioners or therapists. *See* 20 C.F.R.  
24 §404.1513. The Ninth Circuit also distinguishes between treating physicians, examining  
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26 <sup>1</sup>The four categories of moderate limitation are ability to: carry out detailed instructions;  
27 perform activities with a schedule, maintain regular attendance and be punctual within  
28 customary tolerances; interact appropriately with the general public or to maintain socially  
appropriate behavior; and to adhere to basic standards of neatness and cleanliness. (Tr. 52).

1 physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821, 830 (9th  
2 Cir. 1995). Generally, the opinion of a treating physician is entitled to greater weight  
3 than the opinion of a non-treating physician, and the opinion of an examining physician is  
4 entitled to greater weight than the opinion of a non-examining physician. *Id.*

5 As explained in SSR 06-03p, “only ‘acceptable medical sources’ can be considered  
6 treating sources...whose opinions may be entitled to controlling weight.” 2006 WL  
7 2329939, at \*2. “Other sources” can give evidence of the severity of a claimant’s  
8 impairment and how her impairment affects her ability to function, *id.*, and their opinions  
9 as to how an impairment affects a claimant’s ability to work should be considered by an  
10 ALJ as part of the record as a whole. *See Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th  
11 Cir. 1996). The weight given to the “other source” opinions should be evaluated using  
12 factors such as the length, nature, and extent of the treatment relationship, the frequency  
13 of examination, relevant evidence supporting the opinion, the consistency of the opinion  
14 with the whole record, the source’s medical specialization, and other factors. *See SSR*  
15 *03-06*, at \*4.

16 An ALJ is entitled to give more weight to the opinions of acceptable medical  
17 sources than to the opinions of other sources. *See Gomez v. Chater*, 74 F.3d 967, 970-71  
18 (9th Cir. 1996). However, an ALJ may also “give more weight to the opinion of a  
19 medical source who is not an acceptable medical source if he or she has seen the  
20 individual more often than the treating source and has provided better supporting  
21 evidence and a better explanation for his or her opinion.” SSR 03-06, at \*5.

22 Accordingly, an ALJ must give specific, germane reasons, supported by the record, for  
23 rejecting an “other source” opinion. *See Lewis*, 236 F.3d at 511.

#### 24 **1. Ms. Denice Carr and Ms. Judy Johnson**

25 Ms. Denice Carr is a therapist and an “other source” who treated Ms. Mons at  
26 Helping Associates. The record contains her treatment progress notes and a medical  
27 source statement she completed giving her opinion regarding Ms. Mons’s ability to do  
28 work-related activities. In her treatment progress notes, Ms. Carr repeatedly assessed Ms.

1 Mons as having fair insight, good appearance, eye contact, speech, cooperation, attention  
2 and concentration, normal speech, appropriate mood and affect, and being oriented to  
3 person, place, time, and circumstances. (Tr. 584, 586, 594.) On one occasion, she  
4 assessed Ms. Mons's mood as sad and depressed, and her insight as poor (Tr. 596); her  
5 impression and prognosis from that session noted that Ms. Mons "appeared responsive"  
6 and continued "to be sad on an almost daily basis." (*Id.*) Ms. Carr noted during another  
7 session that Ms. Mons "appeared responsive" and continued having "anxiety symptoms  
8 as related to past events." (Tr. 585.) At other sessions, Ms. Carr stated her  
9 "impression/prognosis" that Ms. Mons "appeared responsive and functioning" within  
10 normal limits. (Tr. 587, 595.)

11 In her medical source statement, Ms. Carr gave the opinion that Ms. Mons had  
12 restrictive mental limitations in most categories and was disabled due to bipolar disorder.  
13 She noted that Ms. Mons had poor coping skills, could be easily distracted, feared change,  
14 and became nervous easily. (Tr. 288-92.) Although she assessed Ms. Mons as markedly  
15 limited in many areas, Ms. Carr noted that when Ms. Mons was on medication, she could  
16 remember short and simple instructions, maintain concentration, sustain an ordinary  
17 routine, and have good social interactions. (*Id.*)

18 Ms. Judy Johnson is a nurse practitioner and "other source" who completed a  
19 medical assessment of Ms. Mons's ability to perform work related activities. In her  
20 assessment, Ms. Johnson noted her opinion that Ms. Mons was disabled and had a  
21 restrictive mental residual functional capacity. (Tr. 603-04.) While her opinion may have  
22 been based on ongoing treatment of Ms. Mons, in the assessment itself Ms. Johnson  
23 simply circled the rating terms of Ms. Mons's functionality in various areas. She did not  
24 elaborate or provide more evidence as to how or why she reached these conclusions. (*Id.*)

25 Contrary to Ms. Mons's complaint, the ALJ did state and consider the opinions of  
26 Ms. Carr and Ms. Johnson in his decision. (Tr. 26, 27.) Ultimately, though, the ALJ  
27 chose not to give these opinions controlling weight because neither Ms. Carr nor Ms.  
28 Johnson was a "qualified psychologist or psychiatrist" and their assessment opinions were

1 “not consistent with the progress notes” detailing Ms. Mons’s condition. (Tr. 26.) The  
2 ALJ cited substantial evidence in the record, including the inconsistency of Ms. Carr and  
3 Ms. Johnson’s assessments with Dr. Geary and Dr. Tangeman’s assessments, Ms. Carr’s  
4 progress notes, and Ms. Mons’s daily activities, as well as Ms. Carr and Ms. Johnson’s  
5 “other source” status, for discounting their opinions. These reasons are sufficiently  
6 specific and germane to justify the ALJ’s decision to not give controlling weight to Ms.  
7 Carr and Ms. Johnson’s opinions. Although Ms. Carr and Ms. Johnson treated Ms. Mons  
8 and had a longer relationship with her than either Dr. Geary or Dr. Tangeman, a rational  
9 interpretation of the evidence as a whole supports the ALJ’s ultimate determination to  
10 accord controlling evidentiary weight to Dr. Geary and Dr. Tangeman’s opinions.

## 11 **2. Dr. Brent Geary and Dr. Paul Tangeman**

12 As a licensed psychologist, Dr. Brent Geary is an “acceptable medical source.”  
13 Dr. Geary examined and evaluated Ms. Mons in March 2007, and submitted a detailed  
14 report explaining his medical opinions regarding Ms. Mons’s residual functional capacity.  
15 (Tr. 455-65.) He diagnosed Ms. Mons with bipolar I disorder, panic disorder, and alcohol  
16 and marijuana abuse in remission. (Tr. 458.) He explained the results of tests he  
17 administered to measure Ms. Mons’s short-term recall, judgment, and ability to perform  
18 calculations. (Tr. 456.) Dr. Geary also stated his opinion that Ms. Mons was moderately  
19 limited in

20 her capacity to carry out detailed and complex job instructions, maintain regular  
21 attendance, complete a normal work week without interruption from psychological  
22 symptoms, persistently deal with the public, and adhere to basic standards of  
neatness and cleanliness. (Tr. 459.)

23 He noted that his prognosis was “guarded” but would likely “improve substantially” if  
24 Ms. Mons “maintain[ed] abstinence from alcohol and other drugs.” (*Id.*) The ALJ gave  
25 Dr. Geary’s opinion controlling weight, finding it to be “well supported by objective  
26 findings” and “not inconsistent with the other substantial evidence.” (Tr. 26.)

27 Dr. Paul Tangeman is a state agency psychologist who reviewed Ms. Mons’s  
28 record and issued a mental residual functional capacity assessment did not treat or

1 examine her. (Tr. 467-84.) In his assessment, Dr. Tangeman found Ms. Mons was not  
2 significantly limited in most areas; he also found that she was capable of performing short  
3 and simple tasks. (Tr. 467-68.) Dr. Tangeman stated that Ms. Mons was moderately  
4 limited in her ability to carry out detailed instructions, perform activities within a  
5 schedule, maintain regular attendance, be punctual within customary tolerances, interact  
6 appropriately with the general public, maintain socially appropriate behavior, and adhere  
7 to basic standards of neatness and cleanliness. (*Id.*) He elaborated that Ms. Mons  
8 displayed “adequate residual ability to sustain basic work tasks that are not fast paced or  
9 socially demanding” and “appear[ed] stable over a significant period of time.” (Tr. 469.)  
10 He further noted that Ms. Mons appeared depressed and had some anxiety and specific  
11 phobias, but “she was independent in all daily activities,” and there was “no evidence of  
12 mood swings or acute bipolar symptoms.” (*Id.*) He also stated his opinion that the  
13 medial source statement “provided by an unqualified psychological source is not  
14 consistent with the progress notes.” (*Id.*) The ALJ accorded evidentiary weight to Dr.  
15 Tangeman’s assessment because as the state agency reviewing physician he had  
16 “expertise in the evaluation of medical issues in disability claims under the [Social  
17 Security Act].” (Tr. 27.)

18         The ALJ’s decision to assign controlling weight to Dr. Geary and Tangeman’s  
19 opinions was supported by substantial evidence in the record. The ALJ credited their  
20 expertise and status as licensed psychologists and “acceptable medical sources” under the  
21 regulations; he also found their opinions to be more consistent with the progress notes  
22 regarding Ms. Mons’s condition and the extent of her daily activities reported by both Ms.  
23 Mons and her mother than the other medical source opinions. Accordingly, there was no  
24 error in the ALJ’s weighing of these medical opinions.

25                   **3.         Dr. Marc Walter**

26                 Dr. Marc Walter, a licensed psychologist and “acceptable medical source,”  
27 evaluated Ms. Mons on April 22, 2008. (Tr. 653.) His assessment of Ms. Mons’s ability  
28 to perform work-related activities was submitted into evidence as a post-hearing

1 development. (Tr. 642.) Dr. Walter interviewed Ms. Mons and stated that in the  
2 interview, Ms. Mons “describe[d] many psychotic symptoms as well as high levels of  
3 depression, anxiety, paranoid ideation, emotional hypersensitivity, and physical problems  
4 as well as obsessions.” (Tr. 647.) Dr. Walter also administered an MMPI test, which  
5 “generated an extremely elevated scale.” (*Id.*) He noted that it was his “impression that  
6 to some degree [Ms. Mons’s] profile is a ‘cry for help.’” (*Id.*) Dr. Walter diagnosed Ms.  
7 Mons with bipolar I disorder, anxiety disorder, and probable obsessive compulsive  
8 disorder, and found that she had periodic severe manic episodes in spite of her treatment.  
9 He found she had “marked restriction” in activities of daily living, maintaining social  
10 functioning, concentration, persistence, and pace, and that she had “repeated episodes of  
11 decompensation, each of extended duration.” (*Id.*)

12         The ALJ did not make any reference to Dr. Walter’s opinion in his decision. Dr.  
13 Walter’s opinion constituted relevant medical evidence and should have been considered.  
14 Failure to consider all of the relevant medical source opinion evidence is clear error. 20  
15 C.F.R. §404.1527(d) (“Regardless of its source, we will evaluate every medical opinion  
16 we receive.”); *see also Smolen*, 80 F.3d at 1286 (finding error where ALJ’s decision did  
17 not discuss relevant medical source opinions). As consideration of additional medical  
18 source opinion evidence could have impacted the ultimate disability determination, this  
19 error is not harmless. *See Tomassetti*, 533 F.3d at 1038. Accordingly, the ALJ’s decision  
20 will be vacated and remanded for further proceedings.

21         Nothing in this order suggests that Dr. Walter’s opinion need be credited as against  
22 the extensive contrary evidence surveyed by the ALJ. However, it must be considered.  
23 Indeed, it may have been considered already, but the silence of the record on whether it  
24 was considered requires remand to assure that it is.

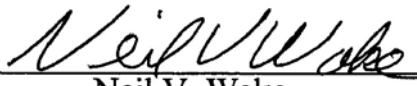
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IT IS ORDERED that the Clerk enter judgment vacating the final decision of the Commissioner of Social Security and remanding this case to the Commissioner for further proceedings as directed in this order. The Clerk shall terminate this action.

DATED this 22<sup>nd</sup> day of October, 2010.

  
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Neil V. Wake  
United States District Judge