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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Candiece Shields,
Plaintiff,

vs.

Michael J. Astrue, Commissioner of Social
Security Administration,
Defendant.

No. CV-09-1973-PHX-FJM

ORDER

Plaintiff filed an application for disability insurance benefits and supplemental security income benefits on November 4, 2003 and June 27, 2005, respectively, based upon a disability onset date of October 1, 2002. The claims were denied initially and upon reconsideration. Following a hearing on January 16, 2007, the administrative law judge (“ALJ”) issued a decision finding that plaintiff was not disabled within the meaning of the Social Security Act, and denying benefits. That decision became the final decision of the Commissioner when the Appeals Council denied plaintiff’s request for review. Plaintiff then filed this action for judicial review pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3). We have before us plaintiff’s opening brief (doc. 20), defendant’s answering brief (doc 21), and plaintiff’s reply brief (doc. 27).

I

A district court may set aside a denial of benefits “only if it is not supported by

1 substantial evidence or if it is based on legal error.” Thomas v. Barnhart, 278 F.3d 947, 954
2 (9th Cir. 2002). Substantial evidence is “relevant evidence which, considering the record as
3 a whole, a reasonable person might accept as adequate to support a conclusion. Where the
4 evidence is susceptible to more than one rational interpretation, one of which supports the
5 ALJ’s decision, the ALJ’s conclusion must be upheld.” Id. (citation omitted).

6 The ALJ found that plaintiff had severe impairments when considered in combination,
7 including fibromyalgia, chronic muscle spasms, fatigue, cramps, obesity, recurrent major
8 depression, an adjustment disorder with mixed emotional features, an anxiety disorder with
9 panic attacks, a borderline personality disorder with mixed emotional features, and a history
10 of alcohol abuse in remission. Tr. 29. The ALJ concluded that plaintiff has the residual
11 functional capacity to perform unskilled light work with postural restrictions that prohibit
12 crawling, crouching, climbing, squatting, or kneeling, and no use of her lower extremities for
13 pushing or pulling, no use of her upper extremities for work above the shoulder level, and
14 no requirement that she interact with the public. Tr. 29. The ALJ further found that plaintiff
15 cannot return to her past relevant work as concierge, marketing director, or sales person, but
16 that she can perform other jobs existing in significant numbers in the national economy,
17 including light janitor, housekeeper, and dishwasher. Tr. 33-34. Accordingly, the ALJ
18 concluded that plaintiff is not disabled within the meaning of the Social Security Act. Tr. 34.

19 Plaintiff challenges the ALJ’s decision, arguing that he improperly discredited her
20 subjective complaints of disabling limitations, and improperly discounted the opinions of her
21 treating physicians, Drs. Silverman and Treat. Plaintiff urges that we remand for an award
22 of benefits.

23 II

24 Plaintiff first argues that the ALJ erred in discounting her subjective complaints of
25 disabling limitations. Unless there is affirmative evidence showing that the claimant is
26 malingering, the ALJ may reject the claimant’s testimony only “by making specific findings
27 as to credibility and stating clear and convincing reasons for each.” Robbins v. Soc. Sec.
28 Admin., 466 F.3d 880, 883 (9th Cir. 2006). General findings are not sufficient. Instead, the

1 ALJ must “identify what testimony is not credible and what evidence undermines the
2 claimant’s complaints.” Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998).

3 Plaintiff testified that she could not work because of exhaustion, anxiety, depression,
4 and pain from fibromyalgia. Tr. 832. She testified that because of her anxiety she is unable
5 to leave the house twice a week on average. Tr. 833-34. She testified that when she runs out
6 of medication she becomes suicidal and hurts herself. Tr. 834-35.

7 The ALJ broadly concluded that plaintiff’s allegations of disabling symptoms “are not
8 supported by her statements concerning her activities of daily living or by the medical
9 evidence considered as a whole.” Tr. 30. However, the ALJ did not discuss plaintiff’s daily
10 activities in his decision, or specify how those activities are incompatible with her subjective
11 testimony. While the record shows that, among other things, plaintiff reported to her
12 psychiatrist that she was setting up her own small antiques business and that she volunteered
13 at an animal rescue center, Tr. 310, 344, 348, we are constrained to review the ALJ’s
14 decision based on the reasoning and factual findings offered by the ALJ. Bray v. Comm’r
15 of Soc. Sec. Admin., 554 F.3d 1219, 1225 (9th Cir. 2009).

16 The ALJ also failed to specify what medical evidence was contrary to plaintiff’s
17 symptom testimony. The ALJ stated that “the medical evidence shows the claimant has
18 exaggerated her pain and other symptoms,” Tr. 30, but there is no specific reference to the
19 record to support this statement. The record indicates that at least one state reviewing
20 physician concluded that plaintiff’s reported symptoms were not fully credible, Tr. 321, but
21 without the ALJ’s express reference to this opinion, it cannot serve to support the ALJ’s
22 credibility determination. The ALJ’s failure to support the rejection of plaintiff’s subjective
23 symptoms with specific findings warrants remand.

24 III

25 Plaintiff also contends that the ALJ erred in rejecting the opinions of treating
26 physicians Gary Silverman, a rheumatologist who treated plaintiff for fibromyalgia and
27 opined that plaintiff is unable to work, with a poor prognosis, Tr. 430, 632-34, 679-80, and
28 Dane Treat, a primary care physician who treated plaintiff for fibromyalgia and depression

1 and assessed exertional limitations that would preclude full-time work. Tr. 676-78.

2 An ALJ must provide clear and convincing reasons for rejecting an uncontradicted
3 opinion of a treating physician. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Even if
4 contradicted by another medical source, the Commissioner can only reject a treating
5 physician’s opinion by articulating “specific and legitimate reasons supported by substantial
6 evidence in the record.” Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).

7 Here, Drs. Silverman and Treat’s opinions are inconsistent with the opinion of the
8 state agency examining and reviewing physicians Malcolm McPhee, Tr. 246-48, and Barton
9 Butterbaugh, Tr. 447-48, who both opined that plaintiff’s functional limitations do not
10 preclude full-time work. Thus, the ALJ was required to provide specific, legitimate reasons
11 supported by substantial evidence in the record before rejecting Drs. Silverman and Treat’s
12 opinions. See Lester, 81 F.3d at 830. The only reason the ALJ offered for rejecting the
13 treating physicians’ opinions was because “they appear to be mere adoptions of the
14 claimant’s subjective allegations.” Tr. 33. This, by itself, is insufficient to reject the
15 opinions, particularly given our conclusion that the ALJ’s credibility assessment is not
16 sufficiently supported by specific findings.

17 The ALJ also broadly stated that “[m]ost treating and examining sources have
18 determined that the claimant could either perform unskilled light or medium work with
19 restrictions.” Tr. 31. But without an express reference to the record, this does not constitute
20 a specific, legitimate reason to reject the treating physicians’ assessments.

21 We hold that the ALJ failed to provide adequate reasons for rejecting the treating
22 physicians’ opinions. Because the record may contain evidence to provide the requisite
23 specific and legitimate reasons to support the ALJ’s determinations, a remand for further
24 proceedings is required before a disability determination can be made.

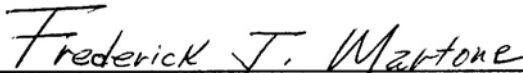
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IV

IT IS ORDERED REVERSING the decision of the ALJ, and **REMANDING** this case pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further consideration in accordance with this order. The clerk shall enter final judgment.

DATED this 2nd day of March, 2011.



Frederick J. Martone
United States District Judge