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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Elizabeth Ann Perez,

No. CV10-01887-PHX-NVW

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Plaintiff,

**ORDER**

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vs.

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Michael J. Astrue, Commissioner of Social Security Administration,

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Defendant.

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Elizabeth Ann Perez seeks review under 42 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security (“the Commissioner”), which denied her disability insurance benefits and supplemental security income under sections 216(i), 223(d), and 1614(a)(3)(A) of the Social Security Act. Because the decision of the Administrative Law Judge (“ALJ”) is partially based on legal error, the Commissioner’s decision will be vacated and the matter remanded for further administrative proceedings.

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**I. Background**

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**A. Factual Background**

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Perez was born on November 23, 1971. She was 34 years old on the alleged disability onset date, February 15, 2006. She has been diagnosed with rheumatoid arthritis, degenerative disk disease, narrowing of the spine, and depression. In 2008, she had carpal tunnel surgery on each of her wrists. She has a high school education and

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1 most recently worked as a tax preparer. At the time of the administrative hearing, Perez  
2 weighed 290 pounds and was 5' 4" tall.

### 3 **B. Procedural History**

4 On September 1, 2006, Perez protectively applied for disability insurance benefits  
5 and supplemental security income. She alleged disability beginning February 15, 2006.  
6 Perez's claims were denied initially on April 19, 2007, and upon reconsideration on  
7 November 21, 2007. On January 7, 2008, Perez filed a written request for hearing. She  
8 appeared and testified at a hearing held on November 19, 2008, at which she was  
9 represented by counsel. The ALJ did not call a vocational expert to testify.

10 On February 27, 2009, the ALJ issued a decision that Perez is not disabled within  
11 the meaning of the Social Security Act. Subsequently, the Appeals Council denied  
12 Perez's request for review of the hearing decision. Therefore, the ALJ's decision became  
13 the Commissioner's final decision. On September 3, 2010, Perez sought review by this  
14 Court.

### 15 **II. Standard of Review**

16 The district court reviews only those issues raised by the party challenging the  
17 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9<sup>th</sup> Cir. 2001). The court  
18 may set aside the Commissioner's disability determination only if the determination is not  
19 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,  
20 630 (9<sup>th</sup> Cir. 2007). Substantial evidence is more than a scintilla, less than a  
21 preponderance, and relevant evidence that a reasonable person might accept as adequate  
22 to support a conclusion considering the record as a whole. *Id.* In determining whether  
23 substantial evidence supports a decision, the court must consider the record as a whole  
24 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*  
25 As a general rule, "[w]here the evidence is susceptible to more than one rational  
26 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be  
27 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir. 2002) (citations omitted).

1           If the ALJ’s decision is not supported by substantial evidence or suffers from legal  
2 error, the court has discretion to reverse and remand either for an award of benefits or for  
3 further administrative proceedings. *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir.  
4 1996); *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). “Remand for further  
5 proceedings is appropriate if enhancement of the record would be useful.” *Benecke v.*  
6 *Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004). “Conversely, where the record has been  
7 developed fully and further administrative proceedings would serve no useful purpose,  
8 the district court should remand for an immediate award of benefits.” *Id.* (citing *Smolen*,  
9 80 F.3d at 1292).

10           The ALJ is responsible for resolving conflicts in medical testimony, determining  
11 credibility, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
12 1995). In reviewing the ALJ’s reasoning, the court is “not deprived of [its] faculties for  
13 drawing specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v.*  
14 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989).

### 15 **III. Five-Step Sequential Evaluation Process**

16           To determine whether a claimant is disabled for purposes of the Social Security  
17 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). If the ALJ determines  
18 that the claimant is disabled or not disabled at any step, the ALJ does not continue to the  
19 next step. The claimant bears the burden of proof on the first four steps, but at step five,  
20 the burden shifts to the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.  
21 1999).

22           At the first step, the ALJ determines whether the claimant is engaging in  
23 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not  
24 disabled and the inquiry ends. *Id.* At the step two, the ALJ determines whether the  
25 claimant has a “severe” medically determinable physical or mental impairment.  
26 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step  
27 three, the ALJ considers whether the claimant’s impairment or combination of  
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1 impairments meet or equal an impairment listed in Appendix 1 to Subpart P of 20 C.F.R.  
2 Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled.  
3 *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the claimant's  
4 residual functional capacity and determines whether the claimant is still capable of  
5 performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not disabled  
6 and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he  
7 determines whether the claimant can perform any other work based on the claimant's  
8 residual functional capacity, age, education, and work experience. § 404.1520(a)(4)(v).  
9 If so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

#### 10 **IV. Analysis**

11 The ALJ found that Perez meets the insured status requirements of the Social  
12 Security Act through September 30, 2011, and, at step one, she has not engaged in  
13 substantial gainful activity since February 15, 2006. At step two, the ALJ found that  
14 Perez has the following severe impairments: rheumatoid arthritis, degenerative disk  
15 disease, narrowing of the spine, and depression. At step three, the ALJ found that Perez  
16 does not have an impairment or combination of impairments that meets or medically  
17 equals one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. Perez  
18 challenges the ALJ's residual functional capacity assessment at step four and his step five  
19 conclusion that there are jobs that exist in significant numbers in the national economy  
20 that Perez can perform.

#### 21 **A. The ALJ Did Not Err in Weighing Medical Source Evidence.**

##### 22 **1. Legal Standard**

23 In weighing medical source opinions in Social Security cases, the Ninth Circuit  
24 distinguishes among three types of physicians: (1) treating physicians, who actually treat  
25 the claimant; (2) examining physicians, who examine but do not treat the claimant; and  
26 (3) non-examining physicians, who neither treat nor examine the claimant. *Lester v.*  
27 *Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). Generally, more weight should be given to the  
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1 opinion of a treating physician than to the opinions of non-treating physicians. *Id.* A  
2 treating physician’s opinion is afforded great weight because such physicians are  
3 “employed to cure and [have] a greater opportunity to observe and know the patient as an  
4 individual.” *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9<sup>th</sup> Cir. 1987). Where a treating  
5 physician’s opinion is not contradicted by another physician, it may be rejected only for  
6 “clear and convincing” reasons, and where it is contradicted, it may not be rejected  
7 without “specific and legitimate reasons” supported by substantial evidence in the record.  
8 *Lester*, 81 F.3d at 830. Moreover, the Commissioner must give weight to the treating  
9 physician’s subjective judgments in addition to his clinical findings and interpretation of  
10 test results. *Id.* at 832-33.

11 Further, an examining physician’s opinion generally must be given greater weight  
12 than that of a non-examining physician. *Id.* at 830. As with a treating physician, there  
13 must be clear and convincing reasons for rejecting the uncontradicted opinion of an  
14 examining physician, and specific and legitimate reasons, supported by substantial  
15 evidence in the record, for rejecting an examining physician’s contradicted opinion. *Id.* at  
16 830-31.

17 The opinion of a non-examining physician is not itself substantial evidence that  
18 justifies the rejection of the opinion of either a treating physician or an examining  
19 physician. *Id.* at 831. “The opinions of non-treating or non-examining physicians may  
20 also serve as substantial evidence when the opinions are consistent with independent  
21 clinical findings or other evidence in the record.” *Thomas*, 278 F.3d at 957. Factors that  
22 an ALJ may consider when evaluating any medical opinion include “the amount of  
23 relevant evidence that supports the opinion and the quality of the explanation provided;  
24 the consistency of the medical opinion with the record as a whole; [and] the specialty of  
25 the physician providing the opinion.” *Orn*, 495 F.3d at 631.

26 Moreover, Social Security Rules expressly require a treating source’s opinion on  
27 an issue of a claimant’s impairment be given *controlling* weight if it is well-supported by  
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1 medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent  
2 with the other substantial evidence in the record. 20 C.F.R. § 404.1527(d)(2). If a  
3 treating source's opinion is not given controlling weight, the weight that it will be given is  
4 determined by length of the treatment relationship, frequency of examination, nature and  
5 extent of the treatment relationship, relevant evidence supporting the opinion, consistency  
6 with the record as a whole, the source's specialization, and other factors. *Id.*

7 Finding that a treating physician's opinion is not entitled to controlling weight  
8 does not mean that the opinion should be rejected:

9 [A] finding that a treating source medical opinion is not well-  
10 supported by medically acceptable clinical and laboratory diagnostic  
11 techniques or is inconsistent with the other substantial evidence in the case  
12 record means only that the opinion is not entitled to "controlling weight,"  
13 not that the opinion should be rejected. Treating source medical opinions  
14 are still entitled to deference and must be weighed using all of the factors  
15 provided in 20 C.F.R. §404.1527. . . . In many cases, a treating source's  
16 medical opinion will be entitled to the greatest weight and should be  
17 adopted, even if it does not meet the test for controlling weight.

18 *Orn*, 495 F.3d at 631-32 (quoting Social Security Ruling 96-2p). Where there is a  
19 conflict between the opinion of a treating physician and an examining physician, the ALJ  
20 may not reject the opinion of the treating physician without setting forth specific,  
21 legitimate reasons supported by substantial evidence in the record. *Id.* at 632.

## 22 **2. The ALJ Did Not Err in Weighing Treating Physician Dr. Holly** 23 **E. Rooney's Mental and Physical Assessments.**

24 Perez contends the ALJ erred by failing to consider Dr. Rooney's mental  
25 assessment and by rejecting Dr. Rooney's physical assessment. However, the ALJ was  
26 not required to consider Dr. Rooney's mental assessment and provided specific and  
27 legitimate reasons supported by substantial evidence for rejecting Dr. Rooney's  
28 contradicted physical assessment.

Dr. Rooney was Perez's primary care physician from May 16, 2007, through at  
least October 24, 2008. On September 7, 2007, Dr. Rooney completed a form titled  
"Medical Source Statement of Ability to Do Work Related Activities (Mental)." On the

1 form she indicated that Perez had no limitation in her ability to understand, remember,  
2 and carry out simple and detailed instructions, sustain an ordinary routine without special  
3 supervision, work and get along with others, make simple work related decisions, adhere  
4 to basic standards of neatness and cleanliness, and set realistic goals or make plans  
5 independently of others. The only category in which Dr. Rooney checked “markedly  
6 limited (poor or none)” was “the ability to complete a normal workday and workweek  
7 without interruptions from psychologically based symptoms and to perform at a  
8 consistent pace without an unreasonable number and length of rest periods.” She stated  
9 this conclusion was based on the following findings: “The multitude of physical  
10 symptoms & the depression hinder steady work pace & duration.” Under “additional  
11 comments,” Dr. Rooney wrote: “Depression definitely limits pt’s abilities but her  
12 physical diagnoses are the most dominantly disabling factors.”

13         The record does not show that Dr. Rooney provided mental health care for Perez,  
14 only physical health care. Therefore, Dr. Rooney is not a treating physician for mental  
15 health assessment. Further, even though Dr. Rooney stated Perez’s psychologically based  
16 symptoms would markedly limit her ability to complete a normal workday and  
17 workweek, she indicated that Perez’s depression was not as disabling as her physical  
18 diagnoses. Therefore, the ALJ did not err by failing to accept, reject, or discuss Dr.  
19 Rooney’s September 2007 assessment of Perez’s work-related mental limitations as Perez  
20 contends.

21         On October 24, 2008, Dr. Rooney completed a form titled “Medical Assessment of  
22 Ability to Do Work Related Physical Activities.” She checked boxes to indicate that  
23 Perez is able to occasionally lift and/or carry less than 10 pounds, stand and/or walk for  
24 less than 2 hours in an 8-hour work day, and sit less than 6 hours in an 8 hours in an  
25 8-hour workday. She also indicated that Perez could never climb, balance, stoop, kneel,  
26 crouch, or crawl and could use either hand occasionally for handling, fine manipulation,  
27 feeling, and reaching.

1           The ALJ stated he did not afford “any significant weight” to the opinion of Perez’s  
2 treating physician Dr. Rooney because her opinions appear “on a fill-in-the-blank form,”  
3 she “failed to cite any medical testing results or objective observations to support her  
4 conclusions as to the claimant’s residual functional capacity,” and her opinion conflicted  
5 with the substantial evidence of record that documented less severe limitations. These  
6 specific, legitimate reasons for giving Dr. Rooney’s physical assessment little weight are  
7 supported by substantial evidence, including Perez’s testimony that she is able to read,  
8 watch television, change her son’s diapers, dress her younger children, and go grocery  
9 shopping and that medication improved her rheumatoid arthritis symptoms.

10                   **3.     The ALJ Did Not Err by Failing to Provide Sufficient Reasons to**  
11                   **Reject Examining Psychologist Dr. Stephen Hirdes’ Assessment.**

12           Perez contends “[t]he ALJ erred by failing to provide sufficient reasons to reject  
13 the assessment of the examining psychologist.” She states that although the ALJ  
14 purported to give Dr. Hirdes’s assessment significant weight, he disregarded Dr. Hirdes’s  
15 determination that Perez had moderate limitations in nine areas.

16           On September 5, 2007, State agency psychologist Dr. Hirdes examined Perez. His  
17 assessment procedures included a mini-mental state exam, clinical interview, behavioral  
18 observations, and review of records. In addition to a narrative report, Dr. Hirdes  
19 completed a Medical Source Statement of Ability to Do Work Related Activities (Mental)  
20 in which he opined that she was “moderately limited (fair/limited but not precluded)” in  
21 the following abilities: maintain attention and concentration for extended periods;  
22 perform activities within a schedule, maintain regular attendance, and be punctual within  
23 customary tolerances; work in coordination with or proximity to others without being  
24 distracted by them; complete a normal workday and workweek without interruptions from  
25 psychologically based symptoms and to perform at a consistent pace without an  
26 unreasonable number and length of rest periods; interact appropriately with the general  
27 public; ask simple questions or request assistance; accept instructions and respond  
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1 appropriately to criticism from supervisors; get along with coworkers or peers without  
2 distracting them or exhibiting behavioral extremes; and set realistic goals or make plans  
3 independently of others. Dr. Hirdes did not assess Perez as being “markedly limited  
4 (poor or none)” in any area. In other words, Dr. Hirdes did not opine that Perez’s mental  
5 impairments precluded full-time work.

6 In his hearing decision, the ALJ stated:

7 The claimant saw Steven Hirdes, Ed.D., for a mental consultative  
8 examination. Dr. Hirdes opined that there were no indications of a formal  
9 thought disorder, delusions or hallucinations. Judgment and insight were  
10 deemed to be in the fair to good range. Informal assessment of intellectual  
11 functioning suggested the average range and the possibility of underlying  
12 learning disorder were also indicated. She was oriented to specific time,  
13 date and place as well as name, date of birth and age. The doctor further  
14 opined that the claimant had depressive disorder not otherwise specified  
15 with agitation (Exhibit 19F).

12 . . . .

13 Pursuant to 20 CFR § 404.1527, the undersigned assigns significant weight  
14 to these opinions, as they are well-supported by the medical evidence,  
15 including the claimant’s medical history and clinical and objective signs  
16 and findings as well as detailed treatment notes, which provides a  
17 reasonable basis for claimant’s chronic symptoms and resulting limitations.  
18 Moreover, the opinions are not inconsistent with other substantial evidence  
19 of record. In addition, these physicians are examining sources who are  
20 familiar with Social Security Rules and Regulations and legal standards set  
21 forth therein and best able to provide a superior analysis of the claimant’s  
22 impairments and resulting limitations.

19 The ALJ did not reject Dr. Hirdes’s mental assessment. He was not required to  
20 restate each of Dr. Hirdes’s opinions, especially his opinions that Perez had moderate  
21 limitations, but was not precluded from maintaining attention and concentration for  
22 extended periods; performing activities within a schedule, maintaining regular attendance,  
23 and being punctual within customary tolerances; etc.

24 **B. The ALJ Did Not Err in Evaluating Perez’s Credibility.**

25 In evaluating the credibility of a claimant’s testimony regarding subjective pain or  
26 other symptoms, the ALJ is required to engage in a two-step analysis: (1) determine  
27 whether the claimant presented objective medical evidence of an impairment that could  
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1 reasonably be expected to produce some degree of the pain or other symptoms alleged;  
2 and, if so with no evidence of malingering, (2) reject the claimant's testimony about the  
3 severity of the symptoms only by giving specific, clear, and convincing reasons for the  
4 rejection. *See Vasquez v. Astrue*, 572 F.3d 586, 591 (9<sup>th</sup> Cir. 2009). To support a lack of  
5 credibility finding, the ALJ is required to point to specific facts in the record that  
6 demonstrate that Perez is in less pain than she claims. *Id.* at 592.

7 To be found credible regarding subjective pain or fatigue, a claimant is not  
8 required to: (1) produce objective medical evidence of the pain or fatigue itself, or the  
9 severity thereof; (2) produce objective medical evidence of the causal relationship  
10 between the medically determinable impairment and the symptom; or (3) show that her  
11 impairment could reasonably be expected to cause the severity of the alleged symptom,  
12 only that it could reasonably have caused some degree of the symptom. *Smolen v.*  
13 *Chater*, 80 F.3d 1273, 1282 (9<sup>th</sup> Cir. 1996).

14 First, the ALJ found that Perez's medically determinable impairments could  
15 reasonably be expected to cause the alleged symptoms. The ALJ did not make a finding  
16 of malingering. Second, the ALJ found Perez's statements regarding the intensity,  
17 persistence, and limiting effects of the symptoms not credible to the extent they are  
18 inconsistent with the ALJ's residual functional capacity assessment.

19 Perez testified that she lived with her parents and her three children, who at the  
20 time were fourteen, three, and one years old. She said she was inactive because of pain  
21 from rheumatoid arthritis, which caused her to gain 70 pounds over the previous two  
22 years. She said she also had pain in her right ankle, both wrists, both hands, fingers, and  
23 lower back. She said she did not do any cooking, washing dishes, washing laundry,  
24 house cleaning, or exercising, but she did read, change her baby's diapers, and dress both  
25 of the younger children. She said that she usually went grocery shopping weekly and  
26 would spend about 30 minutes at the store. She testified that she used a motorized cart  
27 for shopping.

1           Perez described pain, stiffness, and swelling she experienced in both of her wrists  
2 and both of her ankles. She said she also felt a sharp, burning pain in her right ankle,  
3 lower back, both elbows, and both hands. She said that the pain was alleviated by laying  
4 down for 20 or 30 minutes and somewhat alleviated by medications. She said her pain  
5 was worse if she stands for more than 30 minutes. She said she could sit for 30 to 40  
6 minutes and then she needed to stand up. She further testified that in a typical 9:00 to  
7 5:00 day, she would spend about four and a half hours laying down.

8           Perez also testified that the carpal tunnel surgery had not helped her left hand at  
9 all, but her right hand was not as numb after the surgery. She said she continued to have  
10 arthritic pain in both hands. She said the epidurals did not help her back pain at all.

11           She also said she had depression and anxiety with panic. She said she did not  
12 leave her house anymore and did not see or talk on the telephone with friends. She said  
13 she was depressed and always cries, except around her children.

14           The ALJ provided specific, clear, and convincing reasons for rejecting Pimentel's  
15 subjective testimony. *See Vasquez*, 572 F.3d at 591. He also pointed to specific facts in  
16 the record that demonstrate that Perez is in less pain than she claims although some of his  
17 "facts" were incorrect. For example, he stated that Perez admitted at the hearing that the  
18 medications she takes help and he incorrectly described them as medications for  
19 rheumatoid arthritis, but her testimony did not identify which medications helped which  
20 condition. Also, the ALJ incorrectly said that Perez testified that the epidural injections  
21 helped with her back condition, and she said they did not help at all. Further, the ALJ  
22 said she testified that the carpal tunnel surgeries did not help, but in fact, she said that her  
23 right hand was not as numb after the surgery.

24           However, the ALJ correctly identified record evidence showing that in March  
25 2008 Perez had been satisfied with the relief provided by the carpal tunnel surgery on her  
26 right wrist, the methotrexate seemed to help her generalized arthritic symptoms such as  
27 stiffness and generalized pain, and she had received temporary relief from epidural  
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1 steroid injections. Five days after the January 2008 carpal tunnel surgery Perez had  
2 reported that she could tell a difference already, her fingers did not feel tingly, and the  
3 deep pain was better.

4 The ALJ also found Perez’s allegations regarding the severity of her depression  
5 lacked credibility. He stated specific, clear, and convincing reasons for his finding, such  
6 as she has not required inpatient psychiatric hospitalization, her course of treatment has  
7 generally been conservative, and her thought processes were normal despite her depressed  
8 mood.

9 **C. The ALJ Erred by Failing to Include a Function-by-Function**  
10 **Assessment in the Residual Functional Capacity Determination.**

11 A claimant’s residual functional capacity is “what an individual can still do despite  
12 his or her limitations.” Social Security Ruling 96-8p. The residual functional capacity  
13 assessment is “a function-by-function assessment based upon all of the relevant evidence  
14 of an individual’s ability to do work-related activities.” *Id.* “At step 4 of the sequential  
15 evaluation process, the [residual functional capacity] must not be expressed initially in  
16 terms of the exertional categories of “sedentary,” “light,” “medium,” “heavy,” and “very  
17 heavy” work because the first consideration at this step is whether the individual can do  
18 past relevant work as he or she actually performed it.” *Id.* At step five, the residual  
19 functional capacity

20 . . . must be expressed in terms of, or related to, the exertional categories  
21 when the adjudicator determines whether there is other work the individual  
22 can do. However, in order for an individual to do a full range of work at a  
23 given level, such as sedentary, the individual must be able to perform  
24 substantially all of the exertional and nonexertional functions required in  
25 work at that level. Therefore, **it is necessary to assess the individual’s**  
26 **capacity to perform each of these functions in order to decide which**  
27 **exertional level is appropriate** and whether the individual is capable of  
28 doing the full range of work contemplated by the exertional level.

*Id.* (emphasis added).

Here, the ALJ did not provide a function-by-function assessment. At step four, the  
ALJ found that Perez “has the residual functional capacity to perform light work . . .

1 except [she] is limited to simple, unskilled work.” If the ALJ had found that Perez had no  
2 exertional or nonexertional limitations, he would not have limited her to “light work” and  
3 “simple, unskilled work.” But his narrative discussion sheds no light on what, if any,  
4 function-by-function assessment he reached.

5 The hearing decision states that the ALJ found Perez’s testimony regarding the  
6 intensity, persistence, and limiting effects of her symptoms not credible. He also did not  
7 afford significant weight to her primary care physician’s opinion. Regarding physical  
8 limitations, the ALJ assigned significant weight to the opinions of two State agency  
9 examining physicians but did not explain how their assessments equated to “light work.”

10 The ALJ assigned significant weight to the opinion of Dr. Brent Layton, a State  
11 agency physician, who examined Perez on February 22, 2007, when she was 32 weeks  
12 pregnant. At the time, she reportedly weighed 254 pounds and was 5' 2½". He assessed  
13 Perez with obesity, pregnancy, positive rheumatoid factor without other evidence of  
14 rheumatoid arthritis, and posttraumatic degenerative changes to her ankles. He noted that  
15 she was able to dress and undress, get up from the chair, get on the examining table, walk,  
16 tandem walk, walk on her heels and toes, hop on each lower extremity, squat, rise from a  
17 squatting position, and bend over and touch her toes. With regard to work-related  
18 activities, Dr. Layton opined that Perez did not have “any problems with sitting, standing,  
19 walking, lifting, carrying, handling objects, hearing, speaking, or traveling.”

20 The ALJ also assigned significant weight to the opinion of Dr. Jamshid Mirzaei,  
21 another State physician, who examined Perez on October 27, 2007. He diagnosed Perez  
22 with ankle pain, rheumatoid arthritis with signs of active inflammatory changes in the  
23 small joints of the hands, and low back pain. Dr. Mirzaei opined that Perez would be able  
24 to stand and walk 6-8 hours in an 8-hour workday given frequent and routine breaks, lift  
25 and carry 25 pounds frequently and 50 pounds occasionally, and climb stairs frequently.

26 Regarding mental limitations, the ALJ assigned significant weight to three  
27 assessments by two State psychology consultants. He described Dr. Hirdes’ opinion  
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1 without mentioning the existence or absence of work-related mental limitations. Dr.  
2 Brady Dalton reviewed Perez's records on November 7, 2005, and on November 13,  
3 2007. He found moderate work-related limitations in a number of areas, but no marked  
4 limitations. He concluded that Perez appeared capable of performing "simple to semi-  
5 skilled work." That comment may be the basis for the ALJ's step four determination that  
6 Perez "is limited to simple, unskilled work."

7 At step five, the ALJ explained:

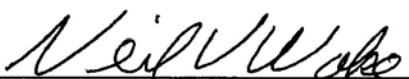
8 If the claimant had the residual functional capacity to perform the full range  
9 of light work, considering the claimant's age, education, and work  
10 experience, a finding of "not disabled" would be directed by Medical-  
11 Vocational Rule 202.21. However, the additional limitations have little or  
12 no effect on the occupational base of unskilled light work. A finding of  
13 "not disabled" is therefore appropriate under the framework of this rule.

14 Thus, the hearing decision states, in essence, Perez is capable of doing "simple,  
15 unskilled" "light" work, she has some unidentified limitations but they do not prevent her  
16 from performing some jobs involving "unskilled light work," and therefore she is not  
17 disabled under Social Security law.

18 Because the ALJ did not perform a function-by-function assessment, it is  
19 impossible to determine whether his conclusions at steps four and five are supported by  
20 substantial evidence and not based on legal error.

21 IT IS THEREFORE ORDERED that the final decision of the Commissioner of  
22 Social Security is VACATED and this case is REMANDED for further proceedings  
23 consistent with this opinion. The Clerk shall enter judgment accordingly and shall  
24 terminate this case.

25 DATED this 22<sup>nd</sup> day of August, 2011.

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Neil V. Wake  
United States District Judge