

1 WO
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Gwendolyn Trembulak,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin, Acting Commissioner
13 of Social Security,

14 Defendant.
15

No. CV-12-02420-PHX-JAT

ORDER

16 Pending before the Court is Plaintiff's appeal from the Administrative Law
17 Judge's ("ALJ") denial of Plaintiff's Title II application for disability insurance benefits.

18 **I. PROCEDURAL BACKGROUND**

19 On June 3, 2010, Plaintiff Gwendolyn Trembulak filed a Title II application for a
20 period of disability and disability insurance benefits with the Commissioner of the Social
21 Security Administration ("the Commissioner"), alleging that her disability began on
22 September 1, 2005. (Administrative Record ("AR") 23). The Commissioner initially
23 denied Plaintiff's claim on September 22, 2010, and again denied it upon reconsideration
24 on March 16, 2011. (*Id.*).

25 Following the denials, on March 22, 2011, Plaintiff filed a written request for a
26 hearing with an Administrative Law Judge ("ALJ"). (*Id.*). Plaintiff appeared and
27 testified before the ALJ on April 16, 2012. (*Id.*). At the hearing, Plaintiff moved to
28 amend the alleged onset date to December 20, 2005; the ALJ granted the motion. (*Id.*).

1 On June 20, 2012, the ALJ issued a decision finding that Plaintiff was last insured
2 through June 30, 2009 (hereinafter “the date last insured”) and that, during the relevant
3 time period, Plaintiff suffered from five medically determinable impairments: (1)
4 cerebrovascular disease; (2) status post respiratory failure secondary to methicillin-
5 resistant staphylococcus aureus (MRSA) pneumonia; (3) low back pain; (4) hypertension;
6 and (5) depression. (AR 23, 25). However, the ALJ found that Plaintiff did not have a
7 “severe” impairment or combination of impairments because, through the date last
8 insured, Plaintiff’s impairments, either individually or in combination, did not
9 significantly limit Plaintiff’s ability to perform basic work-related activities for 12
10 consecutive months. (AR 26). Consequently, the ALJ found that Plaintiff was not
11 disabled under the Social Security Act. (AR 29).

12 Following the ALJ’s denial of Plaintiff’s claim, Plaintiff requested review of the
13 ALJ’s decision with the Appeals Council, Office of Hearings and Appeals, Social
14 Security Administration. (AR 8). On September 13, 2012, the Appeals Council denied
15 Plaintiff’s request for review. (AR 1). The Appeals Council adopted the ALJ’s decision
16 as the final decision of the Commissioner. (*Id.*).

17 On November 12, 2012, Plaintiff filed her Complaint with this Court for judicial
18 review of the Commissioner’s decision denying her claim, which is the subject of this
19 appeal. (Doc. 1). Plaintiff has filed an opening brief (the “Brief”) seeking judicial
20 review of the ALJ’s denial of her claim. (Doc. 15). In the Brief, Plaintiff argues that the
21 Court should overturn the ALJ’s decision and remand the case with instructions to award
22 benefits because the ALJ’s decision contains legal error as it lacks citations to specific
23 and legitimate evidence to support the ALJ’s conclusions and because the ALJ’s
24 conclusions are not supported by substantial evidence of record. (*Id.* at 2, 22).

25 **II. LEGAL STANDARD**

26 The Commissioner’s decision to deny benefits will be overturned “only if it is not
27 supported by substantial evidence or is based on legal error.” *Magallanes v. Bowen*, 881
28 F.2d 747, 750 (9th Cir. 1989) (internal quotation omitted). Substantial evidence is more

1 than a mere scintilla, but less than a preponderance. *Reddick v. Charter*, 157 F.3d 715,
2 720 (9th Cir. 1998). It is such relevant evidence as a reasonable mind might accept as
3 adequate to support a conclusion. *Id.*

4 “The inquiry here is whether the record, read as a whole, yields such evidence as
5 would allow a reasonable mind to accept the conclusions reached by the ALJ.” *Gallant*
6 *v. Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984) (citation omitted). In determining
7 whether there is substantial evidence to support a decision, this Court considers the
8 record as a whole, weighing both the evidence that supports the ALJ’s conclusions and
9 the evidence that detracts from the ALJ’s conclusions. *Reddick*, 157 F.3d at 720. “Where
10 evidence is susceptible of more than one rational interpretation, it is the ALJ’s conclusion
11 which must be upheld; and in reaching his findings, the ALJ is entitled to draw inferences
12 logically flowing from the evidence.” *Gallant*, 753 F.2d at 1453 (citations omitted). If
13 there is sufficient evidence to support the Commissioner’s determination, the Court
14 cannot substitute its own determination. *See Young v. Sullivan*, 911 F.2d 180, 184 (9th
15 Cir. 1990). Additionally, the administrative law judge is responsible for resolving
16 conflicts in medical testimony, determining credibility, and resolving ambiguities. *See*
17 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Thus, if on the whole record
18 before this Court, substantial evidence supports the Commissioner’s decision, this Court
19 must affirm it. *See Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989); *see also* 42
20 U.S.C. § 405(g).

21 **A. Definition of Disability**

22 To qualify for disability benefits under the Social Security Act, a claimant must
23 show, among other things, that he is “under a disability.” 42 U.S.C. § 423(a)(1)(E). “The
24 mere existence of an impairment is insufficient proof of a disability.” *Matthews v.*
25 *Shalala*, 10 F.3d 678, 680 (9th Cir. 1993) (citing *Sample v. Schweiker*, 694 F.2d 639,
26 642–43 (9th Cir. 1982)). Disability has “a severity and durational requirement for
27 recognition under the [Social Security] Act that accords with the remedial purpose of the
28 Act.” *Flaten v. Sec’y of Health & Human Svcs.*, 44 F.3d 1453, 1459 (9th Cir. 1995).

1 The Social Security Act defines “disability” as the “inability to engage in any
2 substantial gainful activity by reason of any medically determinable physical or mental
3 impairment which can be expected to result in death or which has lasted or can be
4 expected to last for a continuous period of not less than 12 months.” 42 U.S.C.
5 § 423(d)(1)(A) (2012). A person is “under a disability only if his physical or mental
6 impairment or impairments are of such severity that he is not only unable to do his
7 previous work but cannot, considering his age, education, and work experience, engage in
8 any other kind of substantial gainful work which exists in the national economy.” *Id.* at
9 § 423(d)(2)(A).

10 “A claimant bears the burden of proving that an impairment is disabling.”
11 *Matthews*, 10 F.3d at 680 (quoting *Miller v. Heckler*, 770 F.2d 845, 849 (9th Cir. 1985)).
12 Thus, “[t]he applicant must show that [s]he is precluded from engaging in not only h[er]
13 ‘previous work,’ but also from performing ‘any other kind of substantial gainful work’
14 due to such impairment.” *Id.* (quoting 42 U.S.C. § 423(d)(2)(A)).

15 **B. Five-Step Evaluation Process**

16 The Social Security regulations set forth a five-step sequential process for
17 evaluating disability claims. 20 C.F.R. § 404.1520; *see also Reddick v. Chater*, 157 F.3d
18 715, 721 (9th Cir. 1998) (describing the sequential process). A finding of “not disabled”
19 at any step in the sequential process will end the ALJ’s inquiry. 20 C.F.R.
20 § 404.1520(a)(4). The claimant bears the burden of proof at the first four steps, but the
21 burden shifts to the ALJ at the final step. *Reddick*, 157 F.3d at 721.

22 The five steps are as follows:

23 1. First, the ALJ determines whether the claimant is “doing substantial gainful
24 activity.” 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled.

25 2. If the claimant is not gainfully employed, the ALJ next determines whether
26 the claimant has a “severe medically determinable physical or mental impairment.” 20
27 C.F.R. § 404.1520(a)(4)(ii). A severe impairment is one that “significantly limits [the
28 claimant’s] physical or mental ability to do basic work activities.” *Id.* at § 404.1520(c).

1 Basic work activities means the “abilities and aptitudes to do most jobs.” *Id.* at
2 § 404.1521(b). Further, the impairment must either be expected “to result in death” or
3 “to last for a continuous period of twelve months.” *Id.* at § 404.1509 (incorporated by
4 reference in 20 C.F.R. § 404.1520(a)(4)(ii)). The “step-two inquiry is a de minimis
5 screening device to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290
6 (9th Cir. 1996).

7 3. Having found a severe impairment, the ALJ next determines whether the
8 impairment “meets or equals” one of the impairments specifically listed in the
9 regulations. *Id.* at § 404.1520(a) (4)(iii). If so, the claimant is found disabled without
10 considering the claimant’s age, education, and work experience. *Id.* at § 404.1520(d).

11 4. At step four, the ALJ determines whether, despite the impairments, the
12 claimant can still perform “past relevant work.” *Id.* at § 404.1520(a)(4)(iv). To make
13 this determination, the ALJ compares its “residual functional capacity assessment . . .
14 with the physical and mental demands of [the claimant’s] past relevant work.” *Id.* at
15 § 404.1520(f). If the claimant can still perform the kind of work the claimant previously
16 did, the claimant is not disabled. Otherwise, the ALJ proceeds to the final step.

17 5. At the final step, the ALJ determines whether the claimant “can make an
18 adjustment to other work” that exists in the national economy. *Id.* at § 404.1520(a)(4)(v).
19 In making this determination, the ALJ considers the claimant’s residual functional
20 capacity, together with vocational factors (age, education, and work experience). *Id.* at
21 § 404.1520(g)(1). If the claimant can make an adjustment to other work, then he is not
22 disabled. If the claimant cannot perform other work, he will be found disabled. As
23 previously noted, the ALJ has the burden of proving the claimant can perform other
24 substantial gainful work that exists in the national economy. *Reddick*, 157 F.3d at 721.

25 In this case, the ALJ found that Plaintiff: (1) had satisfied the first step by not
26 engaging in substantial gainful activity during the period between her amended onset date
27 and her date of last insured (December 20, 2005 through June 30, 2009) (AR 25); but (2)
28 failed to satisfy the second step by failing to show that she suffered from severe

1 medically determinable impairments¹ during the relevant time (*id.*). Thus, at step two,
2 the ALJ found that Plaintiff was not disabled as defined in the Social Security Act. (AR
3 30).

4 **III. ANALYSIS**

5 Plaintiff makes four arguments for why the Court should overturn the ALJ's
6 decision. Specifically, Plaintiff argues that the ALJ committed procedural error by (1)
7 failing to set forth specific and legitimate reasons for rejecting the medical opinion of the
8 treating physician (Doc. 15 at 14–16), (2) failing to set forth specific, clear, and
9 convincing reasons for rejecting Plaintiff's symptom testimony (*id.* at 16–20), and (3)
10 failing to set forth reasons germane to Plaintiff's husband for rejecting Mr. Trembulak's
11 testimony as to Plaintiff's symptoms (*id.* at 20–21). Additionally, Plaintiff argues that the
12 ALJ erred by (4) failing to cite substantial evidence of record to support that Plaintiff
13 does not suffer a "severe" medical impairment or combination of medical impairments.
14 (*Id.* at 12–14). The Court will address each of Plaintiff's arguments in turn.

15 **A. Whether the ALJ Properly Gave Little Weight to the Medical Opinion** 16 **of Plaintiff's Treating Physician**

17 **1. Legal Standard**

18 "The ALJ is responsible for resolving conflicts in the medical record." *Carmickle*
19 *v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). Such conflicts may
20 arise between a treating physician's medical opinion and other evidence in the claimant's
21 record. The Ninth Circuit has held that a treating physician's opinion is usually entitled
22 to "substantial weight." *Bray v. Comm'r, Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th
23 Cir. 2009) (quoting *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). A treating
24 physician's opinion is given controlling weight when it is "well-supported by medically

25
26 ¹ The ALJ found that Plaintiff suffered from five medically determinable
27 impairments: (1) cerebrovascular disease; (2) status post respiratory failure secondary to
28 methicillin-resistant staphylococcus aureus (MRSA) pneumonia; (3) low back pain; (4)
hypertension; and (5) depression. (AR 23, 25). However, the ALJ further found that
these impairments (individually or in combination) were not severe because they did not
significantly limit Plaintiff's ability to perform basic work-related activities for 12
consecutive months. (AR 26).

1 accepted clinical and laboratory diagnostic techniques and is not inconsistent with the
2 other substantial evidence in [the claimant's] case record." 20 C.F.R. § 404.1527(c)(2);
3 *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007); *see also* SSR 96–2p, 1996 WL 374188,
4 at *1 (July 2, 1996). To determine whether a medical opinion is well-supported "is a
5 judgment that adjudicators must make based on the extent to which the opinion is
6 supported by medically acceptable clinical and laboratory techniques."² SSR 96–2p, 1996
7 WL 374188, at *2.

8 The ALJ is not required to accept medical opinions that are conclusory and
9 unsubstantiated by medical documentation. *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th
10 Cir. 1995). Even if a treating physician's medical opinion is not well supported, the
11 opinion should not be entirely rejected, but instead it is not entitled to "controlling
12 weight." SSR 96–2p, 1996 WL 374188, at *4. When a treating physician's opinion is
13 not well-supported and, as a result, is not given controlling weight, the ALJ applies
14 several other factors to determine the weight given to the treating physician's opinion.
15 These factors include: the length and the treatment relationship, the frequency of
16 examination, the nature and extent of the treatment relationship, the evidence presented to
17 support the physician's opinion, and whether the physician's opinion is related to his or
18 her specialty. 20 C.F.R. §§ 416.927(c)(2)(i), (c)(2)(ii), (c)(3)-(c)(6).

19 Moreover,

20 Where the treating doctor's opinion is not contradicted by
21 another doctor, it may be rejected only for "clear and
22 convincing" reasons supported by substantial evidence in the
23 record. [*Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995)
24 (as amended)] (internal quotation marks omitted). Even if the
25 treating doctor's opinion is contradicted by another doctor,
26 the ALJ may not reject this opinion without providing
"specific and legitimate reasons" supported by substantial
evidence in the record. *Id.* at 830 (quoting *Murray v.*
Heckler, 722 F.2d 499, 502 (9th Cir. 1983)). This can be done
by setting out a detailed and thorough summary of the facts
and conflicting clinical evidence, stating his interpretation

27 ² Examples of laboratory diagnostic techniques are given in 20 C.F.R. § 404.1528
28 and include, "chemical test, electrophysiological studies (electrocardiogram,
electroencephalogram, etc.), roentgenological studies (X-rays) and psychological tests."
20 C.F.R. § 404.1528.

1 thereof, and making findings. *Magallanes* [*v. Bowen*, 881
2 F.2d 747, 751 (9th Cir. 1989).] The ALJ must do more than
3 offer his conclusions. He must set forth his own
4 interpretations and explain why they, rather than the doctors',
5 are correct. *Embrey v. Bowen*, 849 F.2d 418, 421–22 (9th
6 Cir. 1988).

7 *Orn*, 495 F.3d at 632 (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998));
8 *accord Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Lester*, 81 F.3d at 830–
9 31.

10 2. Discussion

11 Plaintiff argues that the ALJ rejected the treating physician's (Dr. William's)
12 opinion without setting forth specific and legitimate reasons. (Doc. 15 at 14–16).
13 Specifically, Plaintiff argues that “the only reason proffered by the ALJ for giving the
14 treating physician ‘little weight’ is alleged ‘limited medical records’ prior to the date of
15 last insured. (Doc. 15 at 15 (quoting AR 27)). Contrary to Plaintiff's selected quotations
16 from the ALJ's decision, the ALJ actually determined that Dr. William's opinions did not
17 need to be given controlling weight because they were not well-supported by the medical
18 records in evidence:

19 On [February 27],³ 2006, Dr. Williams opined that [Plaintiff]
20 had been incapable of even minimum activity since
21 December 2005 ([AR 302]). Years later, on March 15, 2012,
22 Dr. Williams opined that the claimant had experienced
23 moderate to severe psychiatric limitations since December
24 2005 ([AR 428–29]). However, *the limited medical records*
25 *available* from December 20, 2005 through the date last
26 insured *do not support this degree of limitation*. Accordingly,
27 the undersigned gives little weight to these assessments.

28 (AR 27) (emphasis added).

 Initially, the Court notes that both of Dr. William's opinions regarding the severity
of Plaintiff's impairments consist of short (one page and two pages, respectively)
questionnaires wherein Dr. Williams expressed his medical assessment of Plaintiff by

³ The ALJ's decision erroneously states the date of Dr. William's original opinion as July 20, 2006, but cites to the correct page of the medical records which reflects the actual February 27, 2006 date.

1 checking boxes and answering brief questions. (AR 302, 428–29). Conclusory opinions
2 “in the form of a check-list” lack “substantive medical findings” and, as a result, do not
3 provide objective medical evidence to support the treating physician’s conclusion. *See*
4 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004) (finding the
5 ALJ properly gave minimal weight to treating physician’s opinion partly because it was
6 unsupported by objective medical evidence). The remainder of Dr. Williams’ records
7 consists of copies of Dr. Williams’ medical notes taken during Plaintiff’s office visits.
8 These records do not support Dr. Williams’ opinions as indicated in the questionnaires in
9 the record.⁴ As a result, there was substantial evidence to support the ALJ’s
10 determination that Dr. Williams’ opinions were not supported by objective medical
11 evidence.

13 ⁴ *See* AR 307–08 (1/30/06 (less than one month post-hospitalization), noting that
14 Plaintiff is “seeing a psychiatrist [and] neurologist,” reports memory loss and
15 “significant” depression, and will “talk to psych and neuro about SSI” (presumably an
16 abbreviation for Social Security Insurance)); AR 305–06 (2/13/06, “complains of flu-like
17 symptoms,” and no impairments referenced or noted); AR 303–04 (2/27/06, noting
18 psychiatric “delusions” and “hallucinations,” but specifically noting that they occurred
19 during Plaintiff’s earlier hospital stay (as opposed to occurring on an ongoing basis); “leg
20 pain about the same, seen by Dr. Rhinehart; . . . reviewed to . . . psych; reviewed chart,
21 depressed back to 3/1/06 [sic?]; needs disability papers filled out and in by 3/10/06, doing
22 today, need copies”); AR 300–01 (5/18/06, “feels . . . a little better, but does awful when
23 upset; not getting disability from S.S. yet, did get short-term from Lowe’s”); AR 298–99
24 (7/20/06, noting “normal” psych functions; “doing housecleaning; taking care of kids”);
25 AR 296–97 (9/27/06, Plaintiff complaining only of recurrent surface skin condition and
26 gastro-intestinal issues); AR 294–95 (11/01/06, “good days and bad, more bad days
27 lately; lots of headaches; chest pain”); AR 292–93 (12/19/06, “exposed to grandchild,
28 fever x3 days; back pain; sinusitis; bronchitis”); AR 290–91 (“got really sick last week—
still spiking fevers at night; daughter was mean—stole [illegible] car; marital strife;
chronic back pain; depression/marital strife”); AR 288–89 (2/15/07, “fever/chills/ear
ache/congestion mostly in head; teeth rotting/falling out on soft diet; sinusitis now
resolved”); AR 286–87 (3/29/07, “is decreasing tobacco by using chewing (bubble gum);
husband and her have come to argument; chronic [lower back pain]; cognitive deficits;
needs letter can’t work); AR 284–85 (4/24/07, back pain started “on way back from
California; feeling like UTI”); AR 282–83 (6/26/07, “mom just had knee replacement;
travelling back and forth to California”); AR 280–81 (7/19/07, “swollen/sore . . . side of
mouth—had several teeth extracted; stomach upset”); AR 278–79 (8/16/07, “lots of tooth
pain; bruising on face from surgery; facial pain”); AR 276–77 (9/13/07, “2-3 days since
return from California, 2 other people sick at home as well, dizzy hands shaky, ache all
over”); AR 272–74 (1/17/08, “late EFF-cerebrovasc disease, cognitive deficits back pain-
lumbar, lumbago,” but no mention of severity or effect on Plaintiff); AR 270–71
(4/07/08, no assessment, but reports subjective “runny nose . . . back pain flared last
month on etodalac, stopped it and went back on diclofenac, back pain really improved . . .
is applying for SS disability, meeting some roadblocks, just wants refills today”).

1 Nonetheless, the ALJ continued (AR 27–29) with several paragraphs setting forth
2 specific and detailed inconsistencies and discrepancies between Dr. Williams’ extreme
3 opinions⁵ and the medical evidence in record with regard to each of the five medically
4 determinable impairments. First, the ALJ explained that the “[m]edical records from that
5 time repeatedly indicate that [Plaintiff]’s hypertension was well controlled on medication
6 ([AR 279–90]).” (AR 27). Second, the ALJ reviewed Plaintiff’s lower back pain and
7 determined that there is “no evidence that healthcare providers have recommended
8 surgery or anything other than conservative treatments for [Plaintiff]’s lower back pain”
9 (AR 27–28); that Plaintiff reported to Dr. Williams “that she was traveling back and
10 forth from Arizona to California” to render assistance to her ailing mother,” but did not
11 report experiencing exacerbations in pain (AR 28 (citing AR 282)); and that “the ability
12 to render assistance to her mother is inconsistent with her allegation of [disabling back-
13 pain] during the same period” (AR 28).

14 Third and fourth, with regard to cognitive deficits and memory loss related to
15 cerebrovascular disease and status post respiratory failure secondary to methicillin-
16 resistant staphylococcus aureus (MRSA) pneumonia, the ALJ noted that the medical
17 records did, indeed, “document [Plaintiff]’s reports of cognitive deficits and memory
18 loss⁶ ([272–304]).” (AR 28). However, the ALJ also noted that this documentation
19 reflects only Plaintiff’s reported complaints and “do[es] not detail any specific cognitive
20 deficits [Dr. Williams] noted.” (AR 28). Dr. Williams’ restatements of Plaintiff’s
21 subjective complaints are not enough to support finding a severe impairment. *Ukolov v.*

22
23 ⁵ On February 27, 2006, Dr. Williams checked the boxes of a questionnaire
24 indicating that since Plaintiff’s December 2005 hospitalization, she had suffered from the
25 most-severe physical and mental impairments such that she was “incapable of minimum
26 activity” and had significantly lost “psychological, personal, and social adjustment.” (AR
27 302). On March 15, 2012, Dr. Williams checked the boxes of a questionnaire indicating
28 that since Plaintiff’s December 2005 hospitalization, she had suffered from nearly the
most-severe physical and mental impairments to such a degree that during an 8-hour
workday, she can sit, stand or walk less than two hours, lift and carry less than ten
pounds, and must lie down for 20 hours a day due to fatigue and pain. (AR 428–29, 32–
33).

⁶ “For example, in July 2006, [Plaintiff] reported that she wrote notes for herself to
help her remember things ([AR 298]).” (AR 28).

1 *Barnhart*, 420 F.3d 1002, 1005–06 (9th Cir. 2005) (establishing the existence of a
2 medically determinable impairment requires both objective medical evidence and
3 subjective symptoms; a treating physician’s restatements of a patient’s own “perception
4 or description” of her problems, alone, are insufficient). Further, the ALJ noted that the
5 medical records contain no objective medical evidence supporting Dr. Williams’
6 restatements of Plaintiff’s subjective complaints: “[t]here is no evidence that [Plaintiff]
7 had undergone psychiatric or neurological testing to assess her cognitive deficits status
8 post respiratory failure.” (AR 28). Indeed, as the ALJ noted, the only objective medical
9 examinations⁷ that Plaintiff underwent during the relevant time period occurred in
10 January 2006 and Dr. Sciara (Plaintiff’s discharging physician during her hospitalization)
11 determined that Plaintiff’s “confusion status post respiratory failure . . . was related to the
12 steroid medication she took during her hospitalization rather than an underlying medical
13 condition.” (AR 28 (citing AR 379)). Lastly, the ALJ observed that the severity of
14 Plaintiff’s memory and cognitive deficits opined by Dr. Williams is inconsistent with
15 Plaintiff’s testimony that she twice travelled to California to care for her mother and
16 cared for her three young grandchildren, “activities which require good cognitive
17 function and memory.” (AR 28).

18 Fifth, with regard to depression, the ALJ acknowledged that “Dr. Williams treated
19 [Plaintiff’s] depression with medication, and he advised [Plaintiff] to seek counseling.”
20 (AR 28 (citing AR 279, 301)). However, the ALJ also notes that there is no evidence in
21 the record suggesting that Plaintiff “had received or sought counseling or any other
22 specialized mental health services.” (AR 28). Indeed, during an office visit, Dr.
23 Williams noted that Plaintiff had admitted that she had not sought counseling despite his
24 referral to “value options.” (AR 298). The ALJ contrasted this lack of evidence with
25 Plaintiff’s testimony “that she was capable of a variety of activities from December 20,
26 2005 through the date of last insured,” including two long trips to California to care for

27
28 ⁷ Dr. Sciara’s January 4, 2006 hospital discharge summary states that Plaintiff
“was seen by psychiatry and neurology. She had an MRI and CT of head, and an EEG,
which were all negative for medical causes of confusion.” (AR 379).

1 her mother and caring for her three young grandchildren. (AR 28).

2 As a result, the Court finds that there is substantial evidence in the record to
3 support the ALJ’s determination that Dr. Williams’ opinion was not well-supported by
4 objective medical evidence. Accordingly, the ALJ did not commit legal error by giving
5 Dr. Williams’ opinions “little weight” rather than controlling weight.

6 Additionally (and alternatively), Plaintiff appears to argue that the ALJ, in fact,
7 rejected Dr. Williams’ opinions rather than merely giving them “little weight.” (Doc. 15
8 at 15 (“At a minimum, the ALJ was required to set forth specific and legitimate reasons
9 for rejecting the opinion of Dr. Williams, which she did not do.”)). Assuming, *in*
10 *arguendo*, that the ALJ in fact rejected Dr. Williams’ opinions, the Court finds that the
11 ALJ did not err. The ALJ set forth a detailed and thorough summary of the facts and
12 conflicting clinical evidence and stated his interpretation thereof. (AR 27–29). Further,
13 the ALJ explained why his interpretations, rather than those of Dr. Williams, were
14 correct. (*Id.*). Therefore, the Court finds that the ALJ provided specific and legitimate
15 reasons supported by substantial evidence in record to reject Dr. Williams’ check-box
16 assessment. Further, the Court finds these reasons are clear and convincing.
17 Accordingly, the ALJ did not commit legal error on this issue.

18 **B. Whether the ALJ Properly Discredited Plaintiff’s Symptom Testimony**

19 **1. Legal Standard**

20 There continues to be debate as to the standard of review applied by a district
21 court when an ALJ rejects a claimant’s subjective testimony regarding his symptoms:
22 should the Court require the ALJ to make specific findings supported by the record or to
23 provide clear and convincing reasons to explain his credibility determination? There is
24 Ninth Circuit Court of Appeals authority supporting either standard. Previously, this
25 Court, following several recent decisions by panels of the Ninth Circuit Court of
26 Appeals,⁸ only required an ALJ to provide clear and convincing reasons to discredit a
27

28 ⁸ Various panels of the Ninth Circuit Court of Appeals have held that unless there is affirmative evidence of malingering, the ALJ must articulate “clear and convincing”

1 claimant’s subjective symptom testimony. *See, e.g., Johnston v. Astrue*, No. CV-11-
2 8121-PHX-JAT, 2012 WL 3108838, at *9 (D. Ariz. July 31, 2012) (citing *Carmickle v.*
3 *Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1160 (9th Cir. 2008) (quoting *Lingenfelter v.*
4 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). Later, when directly confronted with a
5 choice between requiring an ALJ to support his credibility evaluation with “specific
6 findings supported by the record” or “clear and convincing reasons,” this Court held that,
7 “to the extent there is actually any principled distinction between the two standards, the
8 ALJ must make specific findings supported by the record to explain his credibility
9 evaluation.” *Savage v. Astrue*, No. CV-11-02103-PHX-JAT, 2013 WL 551461, at *7 n.1
10 (D. Ariz. Feb. 13, 2013). In so holding, this Court adopted a well-reasoned opinion of the
11 Central District Court of California, *Ballard v. Apfel*, No. CV 99-2195-AJW, 2000 WL
12 1899797, at *2 (C.D. Cal. Dec. 19, 2000), to explain and resolve apparent confusion in
13 the Ninth Circuit Court of Appeals’ precedent on this issue. Specifically, in *Bunnell v.*
14 *Sullivan*, sitting *en banc*, the Ninth Circuit Court of Appeals held that an ALJ must
15 “specifically make findings which support [his] conclusion. These findings, properly
16 supported by the record, must be sufficiently specific to allow a reviewing court to
17 conclude the adjudicator rejected the testimony on permissible grounds and did not
18 arbitrarily discredit a claimant’s testimony regarding pain.” 947 F.2d 341, 345–46 (9th
19 Cir. 1991) (*en banc*) (internal citation and quotation omitted). Reasoning that to the
20 extent there is actually a conflict between the two standards, an *en banc* decision
21 necessarily controls over a panel decision, this Court determined that it must adhere to
22 *Bunnell*’s “specific findings supported by the record” standard. *See Savage*, 2013 WL
23 551461, at *7 n.1.

24
25 reasons for rejecting subjective complaints. *See, e.g., Carmickle v. Comm’r, Soc. Sec.*
26 *Admin.*, 533 F.3d 1155, 1160 (9th Cir. 2008); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036
27 (9th Cir. 2007); *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999);
28 *Regennitter v. Comm’r Soc. Sec. Admin.*, 166 F.3d 1294, 1296 (9th Cir. 1999); *Reddick v.*
Chater, 157 F.3d 715, 722 (9th Cir. 1998); *Light v. Comm’r Soc. Sec. Admin.*, 119 F.3d
789, 792 (9th Cir. 1997); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Smolen v.*
Chater, 80 F.3d 1273, 1284 (9th Cir. 1996); *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th
Cir. 1995); *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

1 However, upon further reflection, and as this Court alluded to in *Savage*, the
2 choice between the two standards appears to be semantic rather than practical. Literally,
3 “clear and convincing” describes the strength of an ALJ’s reasons for making his
4 decision while “specific findings” describes an ALJ’s factual conclusions upon review of
5 the evidence in record. Reasons and findings are not synonymous, but it is difficult to
6 envision how a reason could be clear and convincing in the absence of specific findings
7 supported by the record. A reason, however, might consist of more than just specific
8 findings; it might also include qualities such as logic, common sense, and experience.
9 Conversely, it is simple to imagine specific findings supported by the record that are too
10 trivial or arbitrary to constitute a clear and convincing reason. When not trivial or
11 arbitrary, however, specific findings that are supported by the record may crystalize into
12 a clear and convincing reason. Thus, despite some literal difference, in practice, reasons
13 and findings are so intertwined that attempting to detect one while ignoring the other is
14 merely an exercise in semantics.

15 *Bunnell*, itself, appears to acknowledge the need for a Court to review both the
16 ALJ’s findings and reasons: the ALJ’s “specific findings supported by the record” must
17 be significant enough that a reviewing court can conclude that the ALJ “did not
18 *arbitrarily* discredit a claimant’s testimony regarding pain.” 947 F.2d at 346 (emphasis
19 added). By including an evaluation for arbitrariness, *Bunnell* requires the ALJ to provide
20 both specific factual findings supported by the record and reasons. *Bunnell*, however,
21 does not define what standard a court should use to determine the arbitrariness of an
22 ALJ’s stated reasons. *See* 947 F.2d at 341. Consequently, subsequent panel decisions of
23 the Ninth Circuit Court of Appeals do not contradict or attempt to overturn *Bunnell* if
24 they merely elaborate on what constitutes a non-arbitrary reason. For that reason, in
25 addition to applying *Bunnell*, this Court will also apply the subsequent cases that
26 elaborate that an ALJ “may only find an applicant not credible by making specific
27 findings as to credibility and stating clear and convincing reasons for each.” *Robbins v.*
28 *Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (emphasis added); *see Smolen v.*

1 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996) (“the ALJ can reject the claimant’s testimony
2 about the severity of her symptoms only by offering specific, clear and convincing
3 reasons for doing so”); *see Lingenfelter*, 504 F.3d at 1036 (quoting *Robbins* and *Smolen*).

4 Accordingly, the following appears to be a fair summary of the standard of review
5 the Court should apply when evaluating an ALJ’s credibility evaluation of a claimant’s
6 subjective symptom testimony:

7 An ALJ must engage in a two-step analysis to determine whether a claimant’s
8 testimony regarding subjective pain or symptoms is credible. *Lingenfelter*, 504 F.3d at
9 1035–36. First, as a threshold matter, “the ALJ must determine whether the claimant has
10 presented objective medical evidence of an underlying impairment ‘which could
11 reasonably be expected to produce the pain or other symptoms alleged.’ ” *Id.* at 1036
12 (quoting *Bunnell*, 947 F.2d at 344). The claimant is not required to show objective
13 medical evidence of the pain itself or of a causal relationship between the impairment and
14 the symptom. *Smolen*, 80 F.3d 1273, 1282 (9th Cir. 1996). Instead, the claimant must
15 only show that an objectively verifiable impairment “could reasonably be expected” to
16 produce the claimed pain. *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen*, 80 F.3d at
17 1282); *see also* SSR 96–7p at 2; *Carmickle*, 533 F.3d at 1160–61 (“reasonable inference,
18 not a medically proven phenomenon”). If the claimant fails this threshold test, then the
19 ALJ may reject the claimant’s subjective complaints. *See, Smolen*, 80 F.3d at 1281
20 (citing *Cotton v. Bowen*, 799 F.2d 1403 (9th Cir. 1986) (reaffirmed in *Bunnell*, 947 F.2d
21 341))

22 Second, if the claimant meets the first test, then the ALJ “ ‘may not discredit a
23 claimant’s testimony of pain and deny disability benefits solely because the degree of
24 pain alleged by the claimant is not supported by objective medical evidence.’ ” *Orteza v.*
25 *Shalala*, 50 F.3d 748, 749–750 (9th Cir. 1995) (quoting *Bunnell*, 947 F.2d at 346–47).
26 Rather, “unless an ALJ makes a finding of malingering based on affirmative evidence
27 thereof,” the ALJ may only find the claimant not credible by making specific findings
28 supported by the record that provide clear and convincing reasons to explain his

1 credibility evaluation. *Robbins*, 466 F.3d at 883 (citing *Smolen*, 80 F.3d at 1283–84
2 (“Once a claimant meets [step one] and there is no affirmative evidence suggesting she is
3 malingering, the ALJ may reject the claimant’s testimony regarding the severity of her
4 symptoms only if he makes specific findings stating clear and convincing reasons for
5 doing so.”)); *see also, e.g., Lingenfelter*, 504 F.3d at 1036 (if the ALJ has found no
6 evidence of malingering, then the ALJ may reject the claimant’s testimony “only by
7 offering specific, clear and convincing reasons for doing so”).

8 **2. Discussion**

9 Plaintiff argues (Doc. 15 at 16–20) that the ALJ erred in finding that claimant’s
10 subjective complaints about her pain were not fully credible. Specifically, Plaintiff
11 argues that the ALJ’s credibility analysis is “minimal,” “circular,” and does not set forth
12 “specific, clear and convincing reasons.” (*Id.* at 16–17 (quoting *Smolen*, 80 F.3d at
13 1282)). Plaintiff further argues that the ALJ did “not explain how the medical evidence is
14 inconsistent with reported limitations of pain, fatigue, and memory impairment.” (Doc.
15 15 at 17). Plaintiff also argues that, upon reviewing the ALJ’s written decision, the Court
16 can “not know if, or why, the ALJ rejected Plaintiff’s testimony regarding her fatigue,
17 chest pain, dizziness, headaches, shortness of breath, and need to rest and take naps. (*Id.*
18 at 18).

19 Initially, the Court notes that there appears to be some confusion as to which of
20 Plaintiff’s subjective symptoms the ALJ was required to consider. The ALJ is required to
21 consider only where “the claimant’s medically determinable impairments could have
22 been reasonably expected to produce the alleged symptoms.” *Lingenfelter*, 504 F.3d at
23 1035–36. Here, the ALJ initially found that Plaintiff suffered from five medically
24 determinable impairments: (1) cerebrovascular disease; (2) status post respiratory failure
25 secondary to methicillin-resistant staphylococcus aureus (MRSA) pneumonia; (3) low
26 back pain; (4) hypertension; and (5) depression. (AR 23, 25). Therefore, the ALJ was
27 not required to consider (or evaluate the credibility of) Plaintiff’s subjective symptom
28 testimony related to various other impairments (such as generalized “cognitive

1 dysfunction”).⁹ Consequently, to the extent that Plaintiff relies on subjective symptom
2 testimony not related to the five medically-determinable impairments found by the ALJ
3 (see Doc. 15 at 16–20), Plaintiff’s reliance is misplaced.

4 Here, at the second step of the analysis, the ALJ evaluated the intensity,
5 persistence, and limiting effects of Plaintiff’s symptoms to determine the extent to which
6 they limit Plaintiff’s functioning. (AR 27); see *Lingenfelter*, 504 F.3d at 1036. In
7 performing this second step, the ALJ evaluated Plaintiff’s credibility wherever Plaintiff’s
8 statements about the intensity, persistence, and limiting effects of her symptoms were not
9 substantiated by objective medical evidence. (*Id.*). After apparently finding no
10 affirmative evidence of malingering, the ALJ concluded that, when considering the entire
11 case record, Plaintiff’s subjective complaints were not credible to the extent her
12 statements claimed that she suffered from a severe impairment or combination of
13 impairments. (*Id.*).

14 While an ALJ may not reject a claimant’s subjective complaints based solely on
15 lack of objective medical evidence to fully corroborate the alleged symptoms, see *Rollins*
16 *v. Massanari*, 261 F.3d 853, 856–57 (9th Cir. 2001); *Fair*, 885 F.2d 597, 602 (9th Cir.
17 1989), the lack of objective medical evidence supporting the claimant’s claims may
18 support the ALJ’s finding that the claimant is not credible. See *Batson v. Comm’r of the*
19 *Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2003). Factors that the adjudicator may
20 consider when making such credibility determinations include the nature, location, onset,
21 duration, frequency, radiation, and intensity of any pain, precipitating and aggravating
22 factors (e.g., movement, activity, environmental conditions), type, dosage, effectiveness,
23 and adverse side-effects of any pain medication, treatment, other than medication, for
24 relief of pain, functional restrictions, and the claimant’s daily activities. *Bunnell*, 947

25
26 ⁹ The ALJ also explicitly noted that some of Plaintiff’s subjective symptom
27 testimony pertained to “recent worsening lower back pain and depression . . .
28 constipation, irritable bowel syndrome, and frequent headaches. However, these
developments occurred subsequent to June 30, 2009, the date last insured. Therefore,
such developments are not material to [Plaintiff’s] Title II claim for disability benefits.”
(AR 29).

1 F.2d 341, 346 (9th Cir. 1991) (en banc) (citing SSR 88–13, 1988 WL 236011 (July 20,
2 1988)). “Although an ALJ ‘cannot be required to believe every allegation of disabling
3 pain,’ the ALJ cannot reject testimony of pain without making findings sufficiently
4 specific to permit the reviewing court to conclude that the ALJ did not arbitrarily
5 discredit the claimant’s testimony.” *Orteza*, 50 F.3d at 750 (quoting *Bunnell*, 947 F.2d at
6 345-46 and *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

7 “[I]f the claimant engages in numerous daily activities involving skills that could
8 be transferred to the workplace, an adjudicator may discredit the claimant’s allegations
9 upon making specific findings relating to the claimant’s daily activities.” *Id.* (citing
10 *Fair*, 885 F.2d at 603. “An adjudicator may also use ‘ordinary techniques of credibility
11 evaluation’ to test a claimant’s credibility.” *Id.* (internal citation omitted). “So long as
12 the adjudicator makes specific findings that are supported by the record, the adjudicator
13 may discredit the claimant’s allegations based on inconsistencies in the testimony or on
14 relevant character evidence.” *Id.*

15 In this case, the ALJ relied not only on the objective medical evidence in finding
16 that Plaintiff’s subjective complaints were not fully credible, he also relied on Plaintiff’s
17 daily activities and inconsistencies in Plaintiff’s testimony. With regard to Plaintiff’s
18 hypertension, Plaintiff has not articulated what, if any, of her subjective symptom
19 testimony the ALJ failed to attribute to her hypertension. Moreover, the ALJ specifically
20 explained that the “[m]edical records from that time repeatedly indicate that [Plaintiff]’s
21 hypertension was well controlled on medication ([AR 279–90]).” (AR 27).

22 With regard to Plaintiff’s lower back pain, the ALJ found that the objective
23 medical evidence provided “no evidence that healthcare providers have recommended
24 surgery or anything other than conservative treatments for [Plaintiff]’s lower back pain.”
25 (AR 27–28). Plaintiff argues that “simply because [Plaintiff]’s symptoms are not
26 amenable to surgical treatment, does not mean she is a non-credible individual.” (Doc.
27 15 at 19). This argument, however, misses the point. Here, the ALJ is merely
28 commenting on the lack of objective medical evidence, such as recommending more

1 serious treatments (or x-rays, MRIs, etc.), to corroborate Plaintiff’s subjective complaints
2 of lower back pain. Additionally, the ALJ noted that despite Plaintiff’s claim that lower
3 back pain caused her severe limitations,¹⁰ she twice traveled from Arizona to California
4 to care for her ailing mother without contemporaneously reporting exacerbated pain or
5 limitations. (AR 28). Further, the ALJ contrasted Plaintiff’s claimed limitations with her
6 self-reported ability to care for her ailing mother (for multiple months) as her mother
7 recovered from knee surgery. (*Id.*).

8 With regard to Plaintiff’s depression, the ALJ noted that there was no objective
9 medical evidence of depression, aside from Dr. Williams’ prescriptions of medication
10 and advice that Plaintiff seek counseling. (*Id.*). Despite Dr. William’s advice, the ALJ
11 found there was “no evidence that [Plaintiff] had received or sought counseling or any
12 other mental health services.” (*Id.*). Moreover, the ALJ specifically contrasted Plaintiff’s
13 claimed limitations (such as memory-loss cognitive deficits, and confusion) with her and
14 her husband’s reports of her daily activities that the ALJ found require good cognitive
15 function and memory: taking care of her three grandchildren, performing numerous
16 household tasks, and caring for her ailing grandmother. (AR 28–29).

17 With regard to cerebrovascular disease and status post respiratory failure,
18 Plaintiff’s subjective symptom testimony appears to allege various cognitive deficits.
19 (*See* Doc. 25 at 3–4). The ALJ specifically explained, however, that the objective
20 medical evidence in the record demonstrated that Plaintiff’s “confusion status post
21 respiratory failure” was “related to the steroid medication she took during her
22 hospitalization rather than an underlying medical condition” (and thus was temporary).
23 (AR 28). Moreover, the ALJ noted that Plaintiff’s treating physician, Dr. Williams, did
24 not note any specific cognitive deficits but rather only Plaintiff’s reported complaints.
25 (*Id.*). Nonetheless, Plaintiff contends that the objective medical evidence supports her

26
27 ¹⁰ Plaintiff testified that during the relevant time period, her back pain was so
28 severe that she could not stand for more than 20 minutes, sit for more than one hour, or
lift more than a gallon of milk. (AR 27). Additionally, Plaintiff claimed to require three
to four hours of naps per day. (*Id.*).

1 subjective symptom testimony because EEG evidence demonstrates “diffuse cerebral
2 disturbance.” (Doc. 15 at 13 (referring to a December 30, 2005 EEG taken during her
3 hospital admission, AR 384)). As the ALJ alluded to (AR 28), however, later
4 neurological testing was normal (AR 379) and the hospital doctors concluded that any
5 confusion was caused by Plaintiff’s current course of steroids, not an underlying medical
6 condition. (AR 379). Moreover, the ALJ specifically contrasted Plaintiff’s claimed
7 limitations (such as memory-loss, cognitive deficits, and confusion) with her and her
8 husband’s reports of her daily activities that the ALJ found require good cognitive
9 function and memory: taking care of her three grandchildren, performing numerous
10 household tasks, and caring for her ailing grandmother. (AR 28–29).

11 Further, in accordance with the factors to consider under SSR 88–13, the ALJ
12 generally considered evidence of daily activities. (AR 28–29). Such consideration is not
13 improper. *See Fair*, 885 F.2d at 603 (“More realistically, if, despite his claims of pain, a
14 claimant is able to perform household chores and other activities that involve many of the
15 same physical tasks as a particular type of job, it would not be farfetched for an ALJ to
16 conclude that the claimant’s pain does not prevent the claimant from working”). The
17 ALJ took into account Plaintiff’s daily activities of bathing her grandchildren, taking
18 them to school and generally caring for them, preparing meals, mopping, washing
19 clothes, shopping for groceries, travelling independently, and driving a car in determining
20 that Plaintiff’s subjective complaints were not fully credible. (AR. 28–29). Moreover,
21 the ALJ specifically noted that because these admissions related to Plaintiff’s current
22 state and Plaintiff has reported worsening subjective symptoms, “it is likely that she was
23 at least this functional if not more so from December 20, 2005 through [June 30, 2009]”.
24 (AR 29).

25 In sum, the ALJ relied on several factors when determining that Plaintiff could
26 perform certain work, including contradictory or inconsistent objective medical evidence,
27 Plaintiff’s daily activities, and inconsistencies in Plaintiff’s testimony.

28 Based on foregoing, the ALJ’s credibility finding was a “reasonable

1 interpretation” of the evidence. Moreover, the ALJ made specific findings supported by
2 the record that provide clear and convincing reasons to explain his credibility evaluation.
3 Consequently, “it is not [the Court’s] role to second-guess it.” *Rollins*, 261 F.3d at 857
4 (citing *Fair*, 885 F.2d at 604). Accordingly, the ALJ did not err in discounting Plaintiff’s
5 subjective complaints.

6 **C. Whether the ALJ Properly Discredited Mr. Trembulak’s Testimony as**
7 **to Plaintiff’s Symptoms**

8 **1. Legal Standard**

9 In determining whether a claimant is disabled, an ALJ must consider lay witness
10 testimony regarding the claimant’s inability to work. *Bruce v. Astrue*, 557 F.3d 1113,
11 1115 (9th Cir. 2009) (citing *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th
12 Cir. 2006)); *see also* 20 C.F.R. § 404.1513(d). An ALJ cannot disregard lay witness
13 testimony without comment, *Bruce*, 557 F.3d at 1115 (citing *Nguyen v. Chater*, 100 F.3d
14 1462, 1467 (9th Cir. 1996)), but may do so only upon providing specific reasons that are
15 “germane to each witness.” *Id.* (quoting *Nyugen*, 100 F.3d at 1467); *Stout*, 454 F.3d at
16 1054. When an ALJ errs in failing “to properly discuss competent lay testimony
17 favorable to the claimant, a reviewing court cannot consider the error harmless unless it
18 can confidently conclude that no reasonable ALJ, when fully crediting the testimony,
19 could have reached a different disability determination.” *Stout*, 454 F.3d at 1056.

20 **2. Discussion**

21 Plaintiff argues that her husband, Mr. Trembulak, provided competent evidence (a
22 third-party function report form (AR 216–23)) of Plaintiff’s symptoms and their
23 impairing effects, but that the ALJ rejected the report “with general findings.” (Doc. 15
24 at 20–21). In fact, the ALJ provided specific and germane reasons for not “fully
25 credit[ing] the allegations of . . . Mr. Trembulak, to the extent that . . . Mr. Trembulak
26 allege[s Plaintiff] to have been disabled prior to the date last insured.” (AR 29). The
27 ALJ explained that Mr. Trembulak’s allegations were inconsistent with the medical
28 evidence in record, Plaintiff’s limited attempts to seek treatment during the relevant

1 time,¹¹ and Plaintiff's admission "that she was able to care for her household and take
2 responsibility for her three grandchildren during that time." (*Id.*). Even more
3 specifically, the ALJ explained that although Mr. Trembulak's assessment indicates that
4 Plaintiff "has some memory problems," Mr. Trembulak admits that Plaintiff

5 is able to bathe her grandchildren, take them to school, and
6 generally care for them. [Mr. Trembulak] also admit[s] that
7 [Plaintiff] is able to prepare meals, mop, wash clothes, and
8 shop for groceries. [Mr. Trembulak] further admit[s] that
9 [Plaintiff] is able to travel independently and drive a car.
10 Although these admissions relate to [Plaintiff]'s current
11 mental state, and not the period under consideration, because
12 [Plaintiff] reports increasing mental difficulties over the years
13 ([AR 240]), it is likely that she was at least that functional, if
14 not more so from December 20, 2005 through the date of last
15 insured.

16 (AR 28–29). The Court finds that the ALJ's articulated reasons for partially discrediting
17 Mr. Trembulak's report are both specific and germane to Mr. Trembulak's report.
18 Accordingly, the ALJ did not commit legal error on this issue.

19 **D. Whether Substantial Evidence of Record Supports the ALJ's**
20 **Conclusion that Plaintiff did not have Severe Impairments**

21 Plaintiff appears to argue that the ALJ erred at Step Two in finding that Plaintiff's
22 depression and cognitive deficits were not severe. (*See* Doc. 15 at 12–14). Rather than
23 articulate the ALJ's alleged error with any specificity, Plaintiff generically claims that the
24 ALJ failed to cite substantial evidence of record to support the ALJ's findings. (*Id.*).

25 As discussed above, the ALJ's conclusion that Plaintiff's medically determinable
26 *physical* impairments¹² were not severe is supported by substantial evidence. With
27 regard to Plaintiff's depression and alleged cognitive deficits¹³ (medically determinable
28 *mental* impairments), in addition to the five-step sequential evaluation discussed above,

29 ¹¹ The ALJ reasoned that limited seeking of treatment "suggests that [Plaintiff]'s
30 conditions were not severe enough to compel her to seek regular treatment." (AR 29).

31 ¹² (1) cerebrovascular disease; (2) status post respiratory failure secondary to
32 methicillin-resistant staphylococcus aureus (MRSA) pneumonia; (3) low back pain; (4)
33 hypertension. (AR 23, 25).

34 ¹³ Plaintiff appears to attribute her cognitive deficits to both depression and
35 cerebrovascular disease status post respiratory failure.

1 when evaluating the severity of mental impairments for adults, the ALJ is required to
2 assess the functional limitations of the claimant in relation to four broad categories: daily
3 living, social functioning, concentration, persistence, or pace, and episodes of
4 decompensation. 20 CFR § 404.1520a. When rating the categories of daily living, social
5 functions, and concentration, persistence, or pace, the ALJ is to use a five point scale of
6 none, mild, moderate, marked, and extreme. *Id.* When rating decompensation, the ALJ
7 is to use a four point scale of none, one or two, three, or four or more. *Id.* After rating
8 the degree of functional limitation, the ALJ determines the severity of the mental
9 impairments. If the ALJ finds that there are severe mental impairments that do not meet
10 or are equivalent in severity to any listing, the ALJ then assesses the claimant’s residual
11 functional capacity. *Id.*

12 In this case, the ALJ found that Plaintiff has (1) no limitation in daily living; (2)
13 no limitation in social functioning; (3) mild limitation in concentration persistence or
14 pace, and (4) no episodes of decompensation. (AR 29). The ALJ explained the basis for
15 these conclusions with specific reference to Plaintiff’s medical records, Plaintiff’s
16 testimony, and the testimony of Plaintiff’s husband. (AR 27–29). The ALJ noted that,
17 with regard to Plaintiff’s depression and cognitive deficits, “[t]he medical record
18 providers [sic] little evidence of limitations in these areas of functioning.” (AR 28).
19 Additionally, the ALJ noted that “[t]here is no evidence that the claimant had undergone
20 psychiatric or neurological testing to assess her cognitive deficits.” (*Id.*). In her Reply,
21 Plaintiff challenges these assertions and argues that “[c]ognitive loss . . . is supported by
22 medical evidence including encephalopathy, EEG demonstrating diffuse cerebral
23 disturbance, and known side effects of prescribed steroids.” (Doc. 25 at 3–4 (citing AR
24 381–85, 88–90)). The medical records Plaintiff cites, however, were created during
25 Plaintiff’s December 2005 hospitalization, do not diagnose any long-term cognitive
26 deficits, and verify that the EEG showed no signs of significant cognitive deficits. (AR
27 381–85, 88–90). Moreover, as the ALJ explicitly noted (AR 28), Dr. Sciara’s January 4,
28 2006 hospital discharge summary reviewed Plaintiff’s December 2005 hospitalization

1 records and states that Plaintiff “was seen by psychiatry and neurology. She had an MRI
2 and CT of [her] head, and an EEG, which were all negative for medical causes of
3 confusion.” (AR 379). Indeed, at that time, Dr. Sciara determined that Plaintiff’s
4 “confusion status post respiratory failure . . . was related to the steroid medication she
5 took during her hospitalization rather than an underlying medical condition.” (AR 379).

6 The ALJ also relied on medical records related to Plaintiff’s treatment under Dr.
7 Williams. (AR 28–29).¹⁴ Moreover, the ALJ relied on descriptions of Plaintiff’s abilities
8 and limitations provided by Plaintiff and her husband, Mr. Trembulak. (AR 28–29
9 (citing AR 216–23, 32–39)). As a result, the ALJ found that Plaintiff’s “depression and
10 cognitive deficits” “cause no more than ‘mild’ limitation in any of the first three
11 functional area and ‘no’ episodes of decompensation which have been of extended
12 duration in the fourth area. (AR 28–29). Consequently, the ALJ found Plaintiff’s alleged
13 mental impairments caused no more than minimal limitations in the Plaintiff’s ability to
14 perform basic mental work activities and, therefore, are not severe. (AR 29).

15 In sum, the ALJ’s conclusion that Plaintiff’s depression and alleged cognitive
16 deficits did not cause more than minimal limitations in her ability to perform basic mental
17 work is supported by the record. (*See* Doc. 19 at 12–16 (citing to evidence in the Record
18 supporting ALJ’s determination)); *Molina v. Astrue*, 674 F.3d 1104, 1119 (9th Cir. 2012)
19 (finding that, even if ALJ fails to give appropriate reasons for his decision, if the record
20 supports his ultimate conclusion, the ALJ’s failure to properly explain that conclusion is
21 harmless error).

22 Moreover, as discussed above, there is substantial evidence of record supporting
23 the ALJ’s decision that Plaintiff is not disabled. *Batson*, 359 F.3d at 1193 (“[T]he
24 Commissioner’s findings are upheld if supported by inferences reasonably drawn from

25
26 ¹⁴ In her Reply, Plaintiff argues that the medical records demonstrate that
27 “[c]ognitive loss is also related to chronic pain, depression, and right hemiplegia” and
28 that her memory worsens with stress. (Doc. 25 at 4 (citing AR 292–97, 300–01, 307–
08)). The cited medical records, however, only evidence Plaintiff’s own subjective
reporting of symptoms (which the ALJ reasonably discredited, as explained above) and
do not provide any medical opinion of Dr. Williams.

1 the record, and if evidence exists to support more than one rational interpretation, we
2 must defer to the Commissioner's decision." (internal citations omitted).

3 **IV. CONCLUSION**

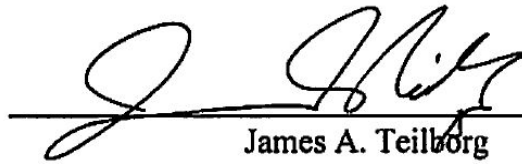
4 Accordingly, the ALJ did not err in finding that Plaintiff was not disabled within
5 the meaning the Social Security Act.

6 Based on the foregoing,

7 **IT IS ORDERED** that the decision of the Administrative Law Judge is
8 **AFFIRMED**.

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
10 accordingly. The judgment will serve as the mandate of this Court.

11
12 Dated this 10th day of February, 2014.

13
14
15
16 
17 _____
18 James A. Teilborg
19 Senior United States District Judge
20
21
22
23
24
25
26
27
28