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

8  
9 Vicky Belmonte,

10 Plaintiff,

11 v.

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

14 Defendant.

No. CV-13-01937-PHX-DGC

**ORDER**

15 Plaintiff Vicky Belmonte seeks review under 42 U.S.C. § 405(g) of the final  
16 decision of the Commissioner of Social Security (“the Commissioner”), which denied her  
17 disability insurance benefits and supplemental security income under sections 216(i),  
18 223(d), and 1614(a)(3)(A) of the Social Security Act. Because the decision of the  
19 Administrative Law Judge (“ALJ”) is supported by substantial evidence and is not based  
20 on legal error, the Commissioner’s decision will be affirmed.

21 **I. Background.**

22 Plaintiff was born in March 1984. Plaintiff has an eighth grade education and has  
23 no past relevant work experience. On August 11, 2009, Plaintiff protectively filed a Title  
24 XVI application for supplemental insurance income. On August 21, 2009, Plaintiff filed  
25 a Title II application for disability insurance benefits. In both applications, Plaintiff  
26 alleged disability beginning July 31, 2007. On November 22, 2011, she appeared with  
27 her attorney and testified at a hearing before the ALJ. Plaintiff’s request to amend the  
28 alleged onset date to August 11, 2009 was granted. On November 30, 2011, the ALJ

1 issued a decision that Plaintiff was not disabled within the meaning of the Social Security  
2 Act. The Appeals Council denied Plaintiff's request for review of the hearing decision,  
3 making the ALJ's decision the Commissioner's final decision.

## 4 **II. Legal Standard.**

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

17 Harmless error principles apply in the Social Security Act context. *Molina v.*  
18 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains  
19 substantial evidence supporting the ALJ's decision and the error does not affect the  
20 ultimate nondisability determination. *Id.* The claimant usually bears the burden of  
21 showing that an error is harmful. *Id.* at 1111.

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

23 To determine whether a claimant is disabled for purposes of the Social Security  
24 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears  
25 the burden of proof on the first four steps, but at step five, the burden shifts to the  
26 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

27 At the first step, the ALJ determines whether the claimant is engaging in  
28 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not

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

14 At step one, the ALJ found that Plaintiff meets the insured status requirements of  
15 the Social Security Act through December 31, 2014, and that she has not engaged in  
16 substantial gainful activity since August 11, 2009. At step two, the ALJ found that  
17 Plaintiff has the following severe impairments: epilepsy and migraine headaches. At step  
18 three, the ALJ determined that Plaintiff does not have an impairment or combination of  
19 impairments that meets or medically equals an impairment listed in Appendix 1 to  
20 Subpart P of 20 C.F.R. Pt. 404. At step four, the ALJ found that Plaintiff has the RFC to  
21 perform:

22 [A] range of medium work as defined in 20 C.F.R.  
23 404.1567(c) and 416.967(c) and SSR 83-10 specifically as  
24 follows: the claimant can lift and/or carry 50 pounds  
25 occasionally and 25 pounds frequently; she can stand and/or  
26 walk for six hours out of an eight-hour workday with regular  
27 breaks; she can sit for six hours out of an eight-hour workday  
28 with regular breaks; she is unlimited with respect to pushing  
and/or pulling, other than as indicated for lifting and/or  
carrying; she should not work around heights or moving  
machinery; she should not drive.

1 The ALJ further found that Plaintiff has no past relevant work. At step five, the ALJ  
2 concluded that, considering Plaintiff’s age, education, work experience, and RFC, there  
3 are jobs that exist in significant numbers in the national economy that Plaintiff could  
4 perform.

5 **IV. Analysis.**

6 Plaintiff argues the ALJ’s decision is defective for four reasons: (1) the ALJ  
7 erroneously weighed medical source evidence, (2) the ALJ improperly evaluated  
8 Plaintiff’s credibility and discounted her subjective testimony, (3) the ALJ improperly  
9 evaluated third-party testimony, and (4) the ALJ improperly applied the medical-  
10 vocational rules. The Court will address each argument below.

11 **A. Weighing of Medical Source Evidence.**

12 Plaintiff argues that the ALJ improperly weighed the medical opinions of the  
13 following medical sources: treating neurologist Steve S. Chung, M.D. (Doc. 14 at 14-16),  
14 treating neurologist Justin X. Mussomeli, M.D. (*id.* at 16-17), and consultative examiners  
15 Omer Ahmed, M.D. and Jacqueline Farwell, M.D. (*id.*, 12, 18). The Court will address  
16 the ALJ’s treatment of each opinion below.

17 **1. Legal Standard.**

18 The Ninth Circuit distinguishes between the opinions of treating physicians,  
19 examining physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821,  
20 830 (9th Cir. 1995). Generally, an ALJ should give greatest weight to a treating  
21 physician’s opinion and more weight to the opinion of an examining physician than to  
22 one of a non-examining physician. *See Andrews v. Shalala*, 53 F.3d 1035, 1040-41 (9th  
23 Cir. 1995); *see also* 20 C.F.R. § 404.1527(c)(2)-(6) (listing factors to be considered when  
24 evaluating opinion evidence, including length of examining or treating relationship,  
25 frequency of examination, consistency with the record, and support from objective  
26 evidence). If it is not contradicted by another doctor’s opinion, the opinion of a treating  
27 or examining physician can be rejected only for “clear and convincing” reasons. *Lester*,  
28 81 F.3d at 830 (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). A

1 contradicted opinion of a treating or examining physician “can only be rejected for  
2 specific and legitimate reasons that are supported by substantial evidence in the record.”  
3 *Lester*, 81 F.3d at 830-31 (citing *Andrews*, 53 F.3d at 1043).

4 An ALJ can meet the “specific and legitimate reasons” standard “by setting out a  
5 detailed and thorough summary of the facts and conflicting clinical evidence, stating his  
6 interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th  
7 Cir. 1986). But “[t]he ALJ must do more than offer [her] conclusions. [She] must set  
8 forth [her] own interpretations and explain why they, rather than the doctors’, are  
9 correct.” *Embrey*, 849 F.2d at 421-22. The Commissioner is responsible for determining  
10 whether a claimant meets the statutory definition of disability and does not give  
11 significance to a statement by a medical source that the claimant is “disabled” or “unable  
12 to work.” 20 C.F.R. § 416.927(d).

## 13 **2. Steve S. Chung, M.D.**

14 Plaintiff’s treating neurologist, Steve S. Chung, M.D., completed a check-the-box  
15 form in February 2011 offering the following opinions: Plaintiff’s seizures and headaches  
16 limit her ability to perform work-related activities; Plaintiff would experience seizures  
17 lasting 0-5 minutes approximately 4-5 times per week; Plaintiff’s symptoms were  
18 increased by stress and sleep deprivation; Plaintiff had total restrictions as to unprotected  
19 heights, being around moving machinery, exposure to marked changes in temperature or  
20 humidity, and driving automotive equipment; and Plaintiff had moderate restrictions as to  
21 exposure to dust, fumes, and gases. A.R. 405-06. The ALJ accorded Dr. Chung’s  
22 opinion limited weight. A.R. 20.

23 Dr. Chung’s opinion was contradicted by the opinion of consultative examiners  
24 Omer Ahmed, M.D. and Jacqueline Farwell, M.D. A.R. 305-12, 327-33. Both  
25 physicians opined that Plaintiff had greater abilities than those identified in Dr. Chung’s  
26 opinion. The ALJ could, therefore, discount Dr. Chung’s opinion for specific and  
27 legitimate reasons supported by substantial evidence. *Lester*, 81 F.3d at 830-31.

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1           The ALJ provided three reasons for declining to give Dr. Chung's opinion  
2 controlling weight. First, the ALJ asserted that Dr. Chung's opinion was too vague to be  
3 useful and failed to specify limitations. A.R. 20. This is a legitimate reason for  
4 according Dr. Chung's opinion reduced weight. *See Bray v. Comm'r of Soc. Sec. Admin.*,  
5 554 F.3d 1219, 1228 (9th Cir. 2009) (stating that an ALJ need not accept the opinion of  
6 any physician, including a treating physician, if that opinion is brief, conclusory, and  
7 inadequately supported by clinical findings); 20 C.F.R. § 404.1527(c)(3) ("The more a  
8 medical source presents relevant evidence to support an opinion, particularly medical  
9 signs and laboratory findings, the more weight we will give that opinion. The better an  
10 explanation a source provides for an opinion, the more weight we will give that  
11 opinion."). Because Dr. Chung's opinion states that Plaintiff's seizures are of short  
12 duration and can be decreased with medication, it is not clear whether and to what extent  
13 Plaintiff would have work-related restrictions.

14           Second, the ALJ asserted that the limitations included in Dr. Chung's opinion  
15 were never mentioned in his numerous treatment records. A.R. 20. It does not appear  
16 that any of Dr. Chung's treatment notes recommend that Plaintiff take anything more  
17 than standard seizure precautions, such as avoiding driving, unprotected heights, and  
18 machinery. Dr. Chung's medical opinion stating that Plaintiff has severe work-related  
19 restrictions is therefore anomalous. The ALJ also observed that Dr. Chung's medical  
20 notes indicate that Plaintiff's symptoms could be controlled with medication and other  
21 forms of treatment. *See Warre ex rel. E.T. IV v. Comm'r Soc. Sec. Admin.*, 439 F.3d  
22 1001, 1006 (9th Cir. 2006) ("Impairments that can be controlled effectively with  
23 medication are not disabling."). For example, Dr. Chung noted that Plaintiff's condition  
24 improved when she was medicated and that she had no seizures for a 45-day period.  
25 A.R. 282-86. In addition, after Plaintiff underwent surgery to implant a vagal nerve  
26 stimulator ("VNS"), Plaintiff reported that she was usually able to stop her seizures at the  
27 onset with her VNS. A.R. 381-83. Incongruity between a doctor's medical opinion and  
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1 treatment records or notes is a specific and legitimate reason to discount a doctor's  
2 opinion. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).

3 Third, the ALJ asserted that the limitations included in Dr. Chung's opinion are  
4 not supported by any objective testing or reasoning. A.R. 20. The clinical and objective  
5 tests analyzed by Dr. Farwell, including long-term EEG monitoring and 2008 and 2009  
6 studies by the Barrow Neurological Institute, suggested far less restrictive limitations  
7 than those contained in Dr. Chung's opinion. A.R. 312. In addition, Plaintiff had a  
8 normal MRI and an EMU that showed rare multifocal and bitemporal epileptiform  
9 discharges with no focal slowing at a 2011 clinical study performed at the Barrow  
10 Neurology Clinic. A.R. 417. The Court concludes that this was a valid reason to  
11 discount Dr. Chung's opinion.

12 Plaintiff argues the ALJ improperly discounted Dr. Chung's opinion by relying on  
13 treatment notes indicating that Plaintiff's condition improved with medication. Doc. 14  
14 at 15. Plaintiff asserts that the limitations included in Dr. Chung's opinion took account  
15 of the improvement she experienced as a result of treatment. *Id.* at 16. The Court cannot  
16 agree. Dr. Chung opined that Plaintiff suffered from epileptic seizures four to five times  
17 per week. The improvements reported by Plaintiff when she followed the treatment plans  
18 prescribed by Dr. Chung are not consistent with the severe restrictions in his opinion.

19 The ALJ relied on specific, legitimate, and permissible reasons to discount Dr.  
20 Chung's opinion, and those reasons are supported by substantial evidence. The Court  
21 concludes that the ALJ did not commit legal error.

### 22 **3. Justin X. Mussomeli, M.D.**

23 Plaintiff's treating neurologist, Justin X. Mussomeli, M.D., completed a check-  
24 the-box form in January 2010 offering the following opinions: Plaintiff's seizures limit  
25 her ability to perform work-related activities; Plaintiff would experience daily seizures;  
26 Plaintiff had total restrictions as to unprotected heights, being around moving machinery,  
27 exposure to marked changes in temperature or humidity, driving automotive equipment,  
28

1 and exposure to dust, fumes, and gases. A.R. 412-13. The ALJ accorded Dr.  
2 Mussomeli's opinion limited weight. A.R. 20.

3 Dr. Mussomeli's opinion was contradicted by the opinion of consultative  
4 examiners, Drs. Ahmed and Farwell. A.R. 305-12, 327-33. Both physicians opined that  
5 Plaintiff had greater abilities than those identified in Dr. Mussomeli's opinion. The ALJ  
6 could, therefore, discount Dr. Mussomeli's opinion for specific and legitimate reasons  
7 supported by substantial evidence. *Lester*, 81 F.3d at 830-31.

8 The ALJ provided the same three reasons for declining to give Dr. Mussomeli's  
9 opinion controlling weight as were provided to discount Dr. Chung's opinion above.  
10 First, the ALJ asserted that Dr. Mussomeli's opinion was too vague to be useful and  
11 failed to specify limitations. *See Bray*, 554 F.3d at 1228. Dr. Mussomeli's opinion  
12 provided the ALJ with very little information. The opinion states that Plaintiff has daily  
13 seizures without disclosing the intensity or duration of the seizures. It also states that  
14 Plaintiff should be totally restricted from unprotected heights, being around moving  
15 machinery, exposure to marked changes in temperature and/or humidity, driving  
16 automotive equipment, and exposure to dust, fumes, and gases, but it qualifies the  
17 statement by adding that Plaintiff "cannot do any [of the activities] while having a  
18 seizure." A.R. 413. Without more, it is unclear how these restrictions should figure into  
19 the RFC, and they are not obviously inconsistent with the RFC above.

20 Second, the ALJ asserted that the limitations included in Dr. Mussomeli's opinion  
21 were never mentioned in his numerous treatment records. In making this assertion, the  
22 ALJ relied on the fact that Dr. Mussomeli's treatment notes indicate that Plaintiff had  
23 relatively common and non-severe symptoms of epilepsy that could be improved with  
24 treatment. For example, in May 2009, Dr. Mussomeli noted that Plaintiff's seizures were  
25 "under much better control" and that she could work so long as she was not driving or  
26 exposed to unprotected heights. A.R. 352-53. In August 2009, Dr. Mussomeli wrote that  
27 Plaintiff was only having one seizure per month. A.R. 350-51. In October 2009, months  
28 after Plaintiff's alleged disability onset date, Dr. Mussomeli noted that Plaintiff was

1 “doing quite well from a seizure perspective” and that she had not had a seizure while  
2 observing her current medication regime. A.R. 348-49. These treatment notes do not  
3 support the restrictive limitations included in Dr. Mussomeli’s medical opinion. As  
4 mentioned above, incongruity between a doctor’s medical opinion and treatment records  
5 or notes is a specific and legitimate reason to discount a doctor’s opinion.  
6 *Tommasetti*, 533 F.3d at 1041.

7 Third, the ALJ asserted that the limitations included in Dr. Mussomeli’s opinion  
8 are not supported by any objective testing or reasoning. A.R. 20. In addition, to the  
9 evidence identified above, Dr. Mussomeli’s own treatment notes provide a different  
10 explanation for Plaintiff’s seizures – Plaintiff failed to follow her prescribed course of  
11 treatment on a number of occasions. For example, in April 2009, Dr. Mussomeli noted  
12 that Plaintiff had 2-3 seizures per week, but he also noted that she was not using her  
13 medication. A.R. 353-54. At the hearing, Plaintiff testified that she stopped taking her  
14 medications in July 2008 because she did not believe they were working. A.R. 39. In  
15 addition, Plaintiff’s medication blood levels were too low at several visits, including a  
16 visit in April 2009 (A.R. 353-54), two visits in January 2010 (A.R. 320-22), and a visit in  
17 March 2010 (A.R. 319), suggesting that she had been noncompliant with her medication  
18 regime. The Court concludes that this was a legitimate reason supported by substantial  
19 evidence to discount Dr. Mussomeli’s opinion.

20 Plaintiff argues that the ALJ improperly discounted Dr. Mussomeli’s opinion by  
21 relying on treatment notes indicating that Plaintiff’s condition improved with medication.  
22 Doc. 14 at 15. Plaintiff asserts that the limitations included in Dr. Mussomeli’s opinion  
23 took account of the improvement she experienced as a result of treatment. *Id.* at 16. As  
24 with the opinion provided by Dr. Chung, the Court cannot agree. Dr. Mussomeli opined  
25 that Plaintiff would experience such seizures on a daily basis. The improvements  
26 reported by Plaintiff when she followed the treatment plans prescribed by Dr. Mussomeli  
27 are not consistent with the severe restrictions in Dr. Mussomeli’s opinion.

1 The ALJ relied on specific, legitimate, and permissible reasons to discount Dr.  
2 Mussomeli's opinion, and those reasons are supported by substantial evidence. The  
3 Court concludes that the ALJ did not commit legal error.

4 **4. Consultative Examiners Omer Ahmed, M.D. and Jacqueline**  
5 **Farwell, M.D.**

6 Plaintiff argues that the ALJ committed legal error by according the opinions of  
7 Drs. Ahmed and Farwell great weight because they are non-treating, non-examining  
8 physicians. Doc. 14 at 12, 18. Relying on the evidence outlined above, the ALJ provided  
9 specific and legitimate reasons, drawn from the medical record, to justify the decision to  
10 credit the opinions of Drs. Ahmed and Farwell over the opinions of Plaintiff's treating  
11 physicians. Because the opinions of Drs. Ahmed and Farwell were supported by  
12 independent clinical findings, they constitute substantial evidence. *Thomas*, 278 F.3d at  
13 957 ("The opinions of non-treating or non-examining physicians may also serve as  
14 substantial evidence when the opinions are consistent with independent clinical findings  
15 or other evidence in the record.") (citation omitted). The Court concludes that the ALJ's  
16 decision to credit the opinions of Drs. Ahmed and Farwell was not legal error.

17 **5. Dr. Chung's October 2013 Letter.**

18 In October 2013, Dr. Chung sent a letter to the Appeals Council in which he  
19 reported that he was Plaintiff's treating neurologist and that Plaintiff "is unable to work  
20 due to her lifelong medical condition." A.R. 549. Plaintiff asserts that the Commissioner  
21 failed to adequately consider the letter (Doc. 14 at 18), but the Court can find no basis for  
22 this assertion. Dr. Chung's letter contains no new evidence of disability; instead, it  
23 merely expresses Dr. Chung's opinion on the ultimate issue of disability. The record  
24 discloses that the Appeals Council considered Dr. Chung's letter but did not find that it  
25 provided a basis for overturning the ALJ's decision. A.R. 2, 5. The Court concludes that  
26 the Appeals Council did not commit error because Dr. Chung's letter was not entitled to  
27 any deference. *See McLeod v. Astrue*, 640 F.3d 881, 884 (9th Cir. 2011) ("Although a  
28 treating physician's opinion is generally afforded the greatest weight in disability cases, it

1 is not binding on an ALJ with respect to the existence of an impairment or the ultimate  
2 issue of disability.”).

3 **B. The ALJ Did Not Err in Evaluating Plaintiff’s Credibility.**

4 In evaluating the credibility of a claimant’s testimony regarding subjective pain or  
5 other symptoms, the ALJ is required to engage in a two-step analysis: (1) determine  
6 whether the claimant presented objective medical evidence of an impairment that could  
7 reasonably be expected to produce some degree of the pain or other symptoms alleged;  
8 and, if so with no evidence of malingering, (2) reject the claimant’s testimony about the  
9 severity of the symptoms only by giving specific, clear, and convincing reasons for the  
10 rejection. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

11 First, the ALJ found that Plaintiff’s medically determinable impairments could  
12 reasonably be expected to cause the alleged symptoms. Second, the ALJ found  
13 Plaintiff’s statements regarding the intensity, persistence, and limiting effects of the  
14 symptoms not credible to the extent they are inconsistent with the ALJ’s RFC  
15 assessment. In other words, the ALJ found Plaintiff’s statements not credible to the  
16 extent she claims she is unable to perform in a competitive work environment.

17 At the hearing, Plaintiff testified that, even with treatment and a VNS stimulator,  
18 she experiences mild, unpredictable seizures about four to five times per week. She  
19 stated that, while experiencing these mild seizures, she wears a blank stare and shakes.  
20 She testified that she requires one or two hours of rest to recover from a mild seizure.  
21 She also testified that she experiences grand mal seizures once or twice a month in which  
22 she bites her tongue, foams at the mouth, and drops to the ground in convulsions.  
23 Plaintiff testified that her neurologist insists only on standard restrictions for a person  
24 with epilepsy (i.e. no driving). Plaintiff stated that, because of her seizures, she was laid  
25 off from her job as a day care aid, she cannot cook for fear of burning herself, and she  
26 cannot shower without supervision. Plaintiff also stated that she experiences daily  
27 headaches that require her to lie down and recover in a dark room for an hour or two.

1           The ALJ gave the following reasons for finding Plaintiff’s testimony not fully  
2 credible: (1) the objective evidence of record does not support her allegations regarding  
3 the severity of her symptoms and limitations, (2) Plaintiff received routine conservative  
4 treatment for her impairments. A.R. 18.

5           In support of the first given reason, the ALJ cited the following medical evidence:  
6 a September 2007 MRI of Plaintiff’s brain was negative, with the exception of a small  
7 polyp versus cyst within the right maxillary sinus (A.R. 241); Plaintiff underwent  
8 neurological assessments, which diagnosed migraines and epilepsy “under excellent  
9 control” with medications (A.R. 244); in August 2009, laboratory studies and a  
10 neurological examination were both normal and a CT of the brain came back negative  
11 (A.R. 375-76); a follow-up in October 2009 disclosed that Plaintiff was “doing quite well  
12 from a seizure perspective” apart from the fact that she was not following her  
13 recommended dosages (A.R. 348); an April 2010 neurological consultative examination  
14 performed by Dr. Ahmed disclosed that Plaintiff had seizure disorder with no physical  
15 abnormalities and that her only limitations would relate to sitting, standing, walking,  
16 lifting, and working around heights or moving machinery (A.R. 327-33); consultative  
17 examiner Dr. Farwell diagnosed Plaintiff with tonic-clonic seizures and partial complex  
18 seizures, opined that Plaintiff’s seizures were not frequent enough to meet a seizure  
19 listing, and stated that no exertional limitations were warranted apart from standard  
20 seizure precautions (A.R. 312).

21           In support of the second reason, the ALJ noted that there was no evidence from  
22 their treatment notes suggesting that Dr. Chung or Dr. Mussomeli placed limitations on  
23 Plaintiff that resembled the limitations to which she testified. A.R. 20. As described  
24 above, the treatment notes suggest that Plaintiff had standard seizure-related restrictions  
25 placed on her and that her symptoms could generally be managed when she took  
26 anticonvulsive medications as prescribed. *Id.*

1 Plaintiff argues that the ALJ improperly discounted Plaintiff's claims because he  
2 relied on SSR 87-6 to determine that her subjective complaints were less than fully  
3 credible (A.R. 20). Doc. 14 at 19. SSR 87-6 contains the following policy statement:

4 As a result of a modern treatment which is widely available,  
5 only a small percentage of epileptics, who are under  
6 appropriate treatment, are precluded from engaging in  
7 substantial gainful activity. Situations where seizures are not  
8 under good control are usually due to the individual's  
9 noncompliance with the prescribed treatment rather than the  
10 ineffectiveness of the treatment itself. Noncompliance is  
11 usually manifested by failure to continue ongoing medical  
12 care and to take medication at the prescribed dosage and  
13 frequency. Determination of blood levels of anticonvulsive  
14 drugs may serve to indicate whether the prescribed  
15 medication is being taken.

16 Plaintiff asserts that SSR 87-6 creates a rebuttable presumption that seizures can be  
17 controlled by medication and that that presumption was rebutted in this case. Doc. 14 at  
18 20. The Court agrees that SSR 87-6 creates the rebuttable presumption identified by  
19 Plaintiff. The Court finds, however, that substantial evidence supports the ALJ's  
20 assertions that "medical evidence indicates that the claimant's condition is controllable  
21 with proper medical treatment" and "the record indicates, on several occasions, that Ms.  
22 Belmonte has been non compliant (sic) with her medications." A.R. 21. As discussed  
23 above, the ALJ identified a handful of occasions in which Plaintiff reported (or blood  
24 tests disclosed) that she had not been compliant with her medications.

25 **C. The ALJ Did Not Err in Evaluating Third-Party Credibility.**

26 Plaintiff's mother, Margarita Belmonte, submitted statements in support of  
27 Plaintiff's disability claim. A.R. 153-60, 173. Another relative, Maribel Belmonte, also  
28 submitted a statement in support of Plaintiff's claim. A.R. 224. The statements largely  
echoed the limitations to which Plaintiff testified.

Plaintiff argues that the ALJ improperly concluded that her relatives' statements  
were biased. Doc. 14 at 23. She asserts that the ALJ's conclusion is inappropriate

1 because he did not identify reasons to suspect improper bias on the part of Margarita and  
2 Maribel Belmonte. *Id.* The Court agrees that the ALJ provided no reason to justify his  
3 conclusion that the lay witnesses were biased and unreliable. This error is harmless,  
4 however, because the ALJ gave another reason to discount the witnesses' statements that  
5 is germane to both witnesses – the lay witnesses' statements conflict with objective  
6 medical evidence and the opinions of Drs. Ahmed and Farwell. *Dodrill v. Shalala*, 12  
7 F.3d 915, 919 (9th Cir. 1993) (instructing that an ALJ may discount lay witness  
8 testimony so long as the ALJ gives reasons germane to the witness). The statements'  
9 conflict with objective medical evidence and medical opinions justified discounting the  
10 lay witness statements.

11 **D. The ALJ Did Not Err in Relying on the Medical Vocational Guidelines.**

12 “At step five, the ALJ can call upon a vocational expert to testify as to: (1) what  
13 jobs the claimant, given his or her residual functional capacity, would be able to do; and  
14 (2) the availability of such jobs in the national economy.” *Tackett v. Apfel*, 180 F.3d  
15 1094, 1101 (9th Cir. 1999). But an ALJ must not always utilize a vocational expert. In  
16 some cases, the ALJ may rely on Medical-Vocational guidelines, or “grids,” which are “a  
17 matrix system for handling claims that involve substantially uniform levels of  
18 impairment.” *Id.* at 1101 (citing 20 C.F.R. pt. 404, subpt. P, app. 2). “The Guidelines  
19 present, in *table form*, a short-hand method for determining the availability and numbers  
20 of suitable jobs for a claimant.” *Id.* (emphasis in original). “The Commissioner’s need  
21 for efficiency justifies use of the grids at step five where they *completely and accurately*  
22 represent a claimant’s limitation.” *Tackett*, 180 F.3d at 1101 (emphasis in original). This  
23 means that a claimant “must be able to perform the *full range* of jobs in a given category,  
24 i.e., sedentary work, light work, or medium work.” *Id.* (emphasis in original). The  
25 *Tackett* court noted that “significant non-exertional impairments . . . may make reliance  
26 on the [Guidelines] inappropriate,” and that “pain can be a non-exertional limitation.” *Id.*  
27 at 1101-02 (citing *Derosiers v. Sec’y of Health & Human Servs.*, 846 F.2d 573, 577 (9th  
28 Cir. 1988)).

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In this case the ALJ relied exclusively on the grids to determine that Plaintiff was not disabled. Plaintiff argues that exclusive reliance on the grids was inappropriate because she has a combination of exertional and non-exertional limitations due to her epilepsy. Doc. 14 at 24-25. Plaintiff's argument misses the mark. So long as Plaintiff can perform the full range of jobs in a given category, the ALJ may rely exclusively on the grids, even if Plaintiff has non-exertional limitations. *Tackett*, 180 F.3d at 1101. Plaintiff has not explained what non-exertional limitations prevent the ALJ from relying on the grids or why the Court should conclude that Plaintiff's limitations prevent her from performing the full range of jobs in any given category. The Court concludes that the ALJ properly utilized the grids to determine that Plaintiff was not disabled.

**IT IS ORDERED** that the final decision of the Commissioner of Social Security is **affirmed**. The Clerk shall enter judgment accordingly and shall terminate this case.

Dated this 26th day of August, 2014.



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David G. Campbell  
United States District Judge