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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Belia Hurtado Cruz,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-16-02048-PHX-JJT

ORDER

15 At issue is the denial of Plaintiff Belia Hurtado Cruz's Application for Disability
16 Insurance Benefits by the Social Security Administration ("SSA") under the Social
17 Security Act ("the Act"). Plaintiff filed a Complaint (Doc. 1) with this Court seeking
18 judicial review of that denial, and the Court now addresses Plaintiff's Opening Brief
19 (Doc. 27, "Pl.'s Br."), Defendant Social Security Administration Commissioner's
20 Opposition (Doc. 28, "Def.'s Br."), and Plaintiff's Reply (Doc. 29, "Reply"). The Court
21 has reviewed the briefs and Administrative Record (Doc. 23, R.) and now reverses the
22 Administrative Law Judge's decision (R. at 32-41) as upheld by the Appeals Council
23 (R. at 1-4).

24 **I. BACKGROUND**

25 Plaintiff filed her Application on December 5, 2011 (R. at 189-91), for a period of
26 disability originally beginning April 9, 2011, but later amended by Plaintiff to
27 September 1, 2011 (R. at 53-54, 189). Plaintiff's claim was denied initially on July 31,
28 2012 (R. at 113-16), and on reconsideration on February 26, 2013 (R. at 118-20).

1 Plaintiff then testified at a hearing held before an Administrative Law Judge (“ALJ”) on
2 December 17, 2014. (R. at 49-73.) On February 13, 2015, the ALJ denied Plaintiff’s
3 Application. (R. at 32-41.) On April 26, 2016, the Appeals Council upheld the ALJ’s
4 decision. (R. at 1-4.) The present appeal followed.

5 The Court has reviewed the medical evidence in its entirety and finds it
6 unnecessary to provide a complete summary here. The pertinent medical evidence will be
7 discussed in addressing the issues raised by the parties. In short, upon considering the
8 medical records and opinions, the ALJ found that Plaintiff has severe impairments of
9 diabetes mellitus, degenerative disc disease (“DDD”), osteoarthritis, cervical spondylosis,
10 fibromyalgia, left shoulder impingement, left lateral epicondylitis (“tennis elbow”), left
11 trigger thumb, right ankle posterior tibialis tendinitis, and obesity (R. at 34), but that
12 Plaintiff has the residual functional capacity (“RFC”) to perform skilled sedentary work
13 with some limitations, including her past work as a customer service representative, such
14 that Plaintiff is not disabled under the Act (R. at 40-41).

15 **II. LEGAL STANDARD**

16 In determining whether to reverse an ALJ’s decision, the district court reviews
17 only those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236
18 F.3d 503, 517 n.13 (9th Cir. 2001). The court may set aside the Commissioner’s
19 disability determination only if the determination is not supported by substantial evidence
20 or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial
21 evidence is more than a scintilla, but less than a preponderance; it is relevant evidence
22 that a reasonable person might accept as adequate to support a conclusion considering the
23 record as a whole. *Id.* To determine whether substantial evidence supports a decision, the
24 court must consider the record as a whole and may not affirm simply by isolating a
25 “specific quantum of supporting evidence.” *Id.* As a general rule, “[w]here the evidence
26 is susceptible to more than one rational interpretation, one of which supports the ALJ’s
27 decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954
28 (9th Cir. 2002) (citations omitted).

1 To determine whether a claimant is disabled for purposes of the Act, the ALJ
2 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
3 proof on the first four steps, but the burden shifts to the Commissioner at step five.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ
5 determines whether the claimant is presently engaging in substantial gainful activity.
6 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.*
7 At step two, the ALJ determines whether the claimant has a “severe” medically
8 determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the
9 claimant is not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether
10 the claimant’s impairment or combination of impairments meets or medically equals an
11 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R.
12 § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled. *Id.* If not,
13 the ALJ proceeds to step four. *Id.* At step four, the ALJ assesses the claimant’s RFC and
14 determines whether the claimant is still capable of performing past relevant work.
15 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends.
16 *Id.* If not, the ALJ proceeds to the fifth and final step, where he determines whether the
17 claimant can perform any other work in the national economy based on the claimant’s
18 RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the
19 claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

20 **III. ANALYSIS**

21 Plaintiff raises two principal arguments for the Court’s consideration: (1) the ALJ
22 erred in weighing the opinions of the treating physicians and the state agency non-
23 examining physicians; and (2) the ALJ erred in finding Plaintiff’s testimony less than
24 fully credible. (Pl.’s Br. at 9-25.)

25 **A. The ALJ Assigned Improper Weight to the Assessments of Plaintiff’s** 26 **Treating Physicians and the State Agency Physicians Considering the** 27 **Record as a Whole**

28 Plaintiff first argues the ALJ committed reversible error by assigning inadequate
weight to the assessment of two of Plaintiff’s medical care providers, Dr. Ehteshami and

1 Dr. Keller. (Pl.’s Br. at 9-22.) The Ninth Circuit has stated that an ALJ “may only reject a
2 treating or examining physician’s uncontradicted medical opinion based on ‘clear and
3 convincing reasons.’” *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1164 (9th Cir.
4 2008) (citing *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996)). “Where such an
5 opinion is contradicted, however, it may be rejected for specific and legitimate reasons
6 that are supported by substantial evidence in the record.” *Id.*

7 In this instance, the opinions of Plaintiff’s treating doctors were contradicted only
8 by the opinions of the non-examining state agency physicians, who themselves simply
9 relied on Plaintiff’s treatment records. The Court agrees with Plaintiff (Reply at 6) that it
10 would be difficult to consider the opinions of the non-examining state agency physicians,
11 standing alone, to be substantial evidence sufficient to contradict the treating physicians’
12 opinions. The medical opinions of Plaintiff’s treating physicians are largely consistent,
13 and thus the ALJ was required to provide clear and convincing reasons to reject them.
14 But the Court finds that the ALJ failed to provide adequate reasons to reject the treating
15 physicians’ opinions under either standard—clear and convincing or specific and
16 legitimate.

17 The ALJ’s reason, in its entirety, for rejecting the opinion evidence of
18 Dr. Ehteshami, Plaintiff’s treating orthopedic doctor, is that the opinions were
19 “conclusory, with no attached narrative and unsupported by objective evidence.” (R. at
20 39.) The record does not bear this out. Dr. Ehteshami treated Plaintiff’s multiple spinal
21 conditions from September 2011, when Plaintiff underwent spinal surgery in the form of
22 a two-level cervical discectomy and fusion, through at least mid-2013. He examined
23 Plaintiff’s physical condition regularly; treated her for cervical, thoracic and lumbar
24 spinal pain and associated symptoms as well as knee pain and carpal tunnel syndrome;
25 and referred Plaintiff to physical therapy, pain management, a rheumatologist for
26 fibromyalgia, and an arthritis specialist—all of which treatment Plaintiff sought. (R. at
27 410-16, 521-24, 826-46.) Dr. Ehteshami’s treatment notes were narrative and detailed—
28 not “conclusory”—and supported by cited objective evidence in the form of MRI and x-

1 ray images and physical examinations. (R. at 410-16, 521-24, 826-46.) As but one
2 example, on April 10, 2012, Dr. Ehteshami’s physical examination of Plaintiff revealed
3 that she had significant difficulty sitting and standing, and he noted her continued
4 problems including “the cervical spine with a significant degree of arthritis, her thoracic
5 spine, her lumbar spine, as well as continued radicular symptoms and neuropathy in her
6 hands and legs.” (R. at 522-23.) Viewed in the light of his extensive treatment notes, the
7 functional capacity form Dr. Ehteshami completed on August 5, 2013 (R. at 844-46) was
8 not conclusory, lacking in narrative, or unsupported by objective evidence, as the ALJ
9 states. *See Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014); *Orn*, 495 F.3d at 634.
10 Thus, the ALJ failed to provide sufficient reasons to reject Dr. Ehteshami’s medical
11 assessments of Plaintiff.

12 The same goes for the ALJ’s evaluation of the medical opinions of Plaintiff’s
13 primary care physician, Dr. Keller. The ALJ provided the same terse reasoning for
14 rejecting Dr. Keller’s opinions: “conclusory, with no attached narrative and unsupported
15 by objective evidence.” (R. at 40.) But, as with Dr. Ehteshami, the record reveals
16 Dr. Keller’s detailed treatment notes for Plaintiff over a course of years based on physical
17 examinations and other objective evidence. (R. at 432-34, 645-60, 822-25, 911-19, 994-
18 1003, 1026-30.) The functional capacity assessment Dr. Keller performed, when
19 informed by his extensive treatment of Plaintiff, was detailed, narrative, and supported by
20 objective evidence. *See Burrell*, 775 F.3d at 1140; *Orn*, 495 F.3d at 634. Thus, the ALJ
21 improperly rejected the assessments by Plaintiff’s treating physicians.

22 The ALJ based her finding that Plaintiff is not disabled on the opinions of two
23 state agency physicians who did not examine Plaintiff. Moreover, those opinions were
24 not supported by other medical assessments of Plaintiff in the record, including those of
25 Plaintiffs’ treating physicians discussed above. This too was error on the part of the ALJ.
26 *See Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1201-02 (9th Cir. 2007); *Lester v.*
27 *Chater*, 81 F.3d at 831. For these reasons alone, the Court must reverse the ALJ’s
28 decision.

1 **B. The ALJ Improperly Weighed Plaintiff’s Testimony**

2 Plaintiff also argues that the ALJ erred in her consideration of Plaintiff’s symptom
3 testimony (Pl.’s Br. at 19-25), and the Court agrees. An ALJ must provide “specific, clear
4 and convincing reasons for rejecting the claimant’s testimony regarding the severity of
5 the claimant’s symptoms.” *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th
6 Cir. 2014) (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). “In evaluating
7 the credibility of pain testimony after a claimant produces objective medical evidence of
8 an underlying impairment, an ALJ may not reject a claimant’s subjective complaints
9 based solely on a lack of medical evidence to fully corroborate the alleged severity of
10 pain.” *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). This is because “pain
11 testimony may establish greater limitations than can medical evidence alone.” *Id.* The
12 ALJ may properly consider that the medical record lacks evidence to support certain
13 symptom testimony, but that cannot form the sole basis for discounting the testimony. *Id.*
14 at 681.

15 In her evaluation of Plaintiff’s symptom testimony (R. at 37-38), the ALJ does
16 precisely what the Ninth Circuit has instructed not to do: concluded that the severity or
17 extent of Plaintiff’s reported symptoms is not supported by the ALJ’s reading of the
18 objective medical evidence. *See Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014).
19 The ALJ also discounted Plaintiff’s testimony of pain and other limitations by finding it
20 was inconsistent with her reports of daily activities. (R. at 39.) For example, she found
21 that Plaintiff’s ability to go to grocery store, visit her father, go to the car wash, or go to
22 doctor’s appointments was inconsistent with her pain symptoms, though the
23 inconsistency is not clear to the Court. Likewise, the ALJ’s other examples of
24 inconsistencies are unsupported or lack specificity. *See Zavalin v. Colvin*, 778 F.3d 842,
25 848 (9th Cir. 2014) (finding ALJ improperly relied on a claimant’s activities where there
26 was insufficient evidence as to the extent, manner or complexity of the activities). As a
27 result, the ALJ erred by failing to provide the requisite specific, clear and convincing
28 reasons for rejecting Plaintiff’s symptom testimony.

1 **C. The Credit-As-True Rule Applies**

2 Plaintiff asks that the Court apply the “credit-as-true” rule, which would result in
3 remand of Plaintiff’s case for payment of benefits rather than for further proceedings.
4 (Pl.’s Br. at 25-27.) The credit-as-true rule only applies in cases that raise “rare
5 circumstances” which permit the Court to depart from the ordinary remand rule under
6 which the case is remanded for additional investigation or explanation. *Treichler*, 775
7 F.3d at 1099-1102. These rare circumstances arise when three elements are present. First,
8 the ALJ must have failed to provide legally sufficient reasons for rejecting medical
9 evidence. *Id.* at 1100. Second, the record must be fully developed, there must be no
10 outstanding issues that must be resolved before a determination of disability can be made,
11 and the Court must find that further administrative proceedings would not be useful. *Id.* at
12 1101. Further proceedings are considered useful when there are conflicts and ambiguities
13 that must be resolved. *Id.* Third, if the above elements are met, the Court may “find[] the
14 relevant testimony credible as a matter of law . . . and then determine whether the record,
15 taken as a whole, leaves ‘not the slightest uncertainty as to the outcome of [the]
16 proceeding.’” *Id.* (citations omitted).

17 In this case, the credit-as-true rule applies. As the Court discussed above, the ALJ
18 failed to provide legally sufficient reasons for rejecting the opinions of Plaintiff’s treating
19 physicians—who identified limitations inconsistent with Plaintiff’s ability to perform
20 even sustained sedentary work—and Plaintiff’s symptom testimony. If this evidence is
21 properly credited, the Court sees no significant conflicts or ambiguities that are left for
22 the ALJ to resolve. Moreover, considering the record as a whole, including Plaintiff’s
23 testimony as to her physical limitations—which the Court credits as a matter of law—the
24 Court is left with no doubt that Plaintiff is disabled under the Act. *See Garrison*, 759 F.3d
25 at 1022-23; *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040-41 & n.12 (9th Cir. 2007).

26 **IV. CONCLUSION**

27 Plaintiff raises materially harmful error on the part of the ALJ, and, for the reasons
28 set forth above, the Court must reverse the SSA’s decision denying Plaintiff’s

1 Application for Disability Insurance Benefits under the Act and remand for a calculation
2 of benefits.

3 IT IS THEREFORE ORDERED reversing the February 13, 2015 decision of the
4 Administrative Law Judge, (R. at 32-41), as upheld by the Appeals Council on April 26,
5 2016, (R. at 1-4).

6 IT IS FURTHER ORDERED remanding this case to the Social Security
7 Administration for a calculation of benefits.

8 IT IS FURTHER ORDERED directing the Clerk to enter final judgment
9 consistent with this Order and close this case.

10 Dated this 17th day of April, 2018.

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14 Honorable John J. Tuchi
15 United States District Judge
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