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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Michelle L. Ader,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-16-3854-PHX-DKD

**ORDER**

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16 Plaintiff Michelle L. Ader appeals from the denial of her application for benefits  
17 from the Social Security Administration. This Court has jurisdiction pursuant to 42  
18 U.S.C. § 405(g) and, with the parties' consent to Magistrate Judge jurisdiction, pursuant  
19 to 28 U.S.C. § 636(c). As detailed below, the Court concludes that the ALJ's decision  
20 contained legal errors and so a remand for an award of benefits is appropriate.

21 Time Frame. In this matter, the relevant time period is finite and begins on the  
22 alleged onset date of October 1, 2010, and ends when Ader's Title II disability insurance  
23 benefits ended on March 30, 2014.<sup>1</sup> (Tr. 39) As a result, Ader's burden is to show that  
24 she was disabled before March 30, 2014. *Tidwell v. Apfel*, 161 F.3d 599, 601 (9<sup>th</sup> Cir.  
25 1998); *Lombardo v. Schweiker*, 749 F.2d 565, 567 (9<sup>th</sup> Cir. 1984).

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27 <sup>1</sup> On appeal, Ader does not challenge the ALJ's conclusion that her benefits ended  
28 on March 30, 2014. (Tr. 39) This date—neither the end of the month or a quarter—is  
not explained in the record. (Tr. 61) However, because it is not dispositive to this Order,  
the Court will not require the Commissioner to supplement the record with an  
explanation.

1 **Standard of Review**

2 This court must affirm the ALJ's findings if they are supported by substantial  
3 evidence and are free from reversible error. *Marcia v. Sullivan*, 900 F.2d 172, 174 (9<sup>th</sup>  
4 Cir. 1990). Substantial evidence is more than a mere scintilla, but less than a  
5 preponderance; it is "such relevant evidence as a reasonable mind might accept as  
6 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). In  
7 determining whether substantial evidence supports the ALJ's decision, the court  
8 considers the record as a whole, weighing both the evidence that supports and that which  
9 detracts from the ALJ's conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9<sup>th</sup> Cir.  
10 1988). The ALJ is responsible for resolving conflicts, ambiguity, and determining  
11 credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995); *Magallanes v.*  
12 *Bowen*, 881 F.2d 747, 750 (9<sup>th</sup> Cir. 1989). Thus, the Court must affirm the ALJ's  
13 decision where the evidence considered in its entirety substantially supports it and the  
14 decision is free from reversible error. 42 U.S.C. § 405(g); *Hammock v. Bowen*, 879 F.2d  
15 498, 501 (9<sup>th</sup> Cir. 1989).

16 **Analysis**

17 Ader, proceeding *pro per*, raises several related challenges to the ALJ's decision.  
18 (Docs. 25, 30)

19 Psychological Consultative Evaluation. Ader was evaluated at the request of the  
20 State agency by Renee Behinfar, Psy.D. (Tr. 575-80) In her subsequent written report,  
21 Dr. Behinfar concluded that Ader had unspecified bipolar disorder and unspecified  
22 anxiety disorder. (Tr. 577) This conclusion is uncontroverted. (Tr. 37-47) In her  
23 opinion, the ALJ gave Dr. Behinfar's opinion "little weight." The relevant paragraph of  
24 ALJ decision states as follows:

25 Little weight is afforded to the opinion of the Consultative Examiner Renee  
26 Behinfar, Psy.D. who concluded the claimant would have cognitive  
27 limitations from her mental impairments. (8F) Specifically, the examiner  
28 concluded the claimant could understand simple instructions and would  
require greater than average time to adapt. (8F) The undersigned finds the  
opinion is inconsistent with and unsupported by the evidence. The claimant  
got married and had two children during the alleged disability period. She  
raises the two minor children in her household, drives independently, can

1 attend to personal care limited only by physical impairments, shops for  
2 groceries, can watch television without reported difficulty in understanding  
3 and following story/plot-lines, was cooperative during her examinations  
4 with consultative examiners and is not in any formal mental health  
5 treatment (See Exhibits 5E, 8F, 9F, 10F). Further, the claimant has never  
6 been hospitalized due to severe decline in mental health. The foregoing  
7 suggests a level of cognitive ability inconsistent with the opinion of Dr.  
8 Behinfar, accordingly, the opinion is afforded little weight.

9 (Tr. 41)

10 To assign little weight to Dr. Behinfar’s uncontroverted opinion, the ALJ needed  
11 to provide “‘clear and convincing’ reasons for doing so.” *Morgan v. Commissioner of*  
12 *Social Sec. Admin.*, 169 F.3d 595, 601 (9<sup>th</sup> Cir. 1999) (citations omitted). The Court has  
13 reviewed the relevant portions of the record and concludes that the ALJ has not provided  
14 clear and convincing reasons for rejecting Dr. Behinfar’s opinion.

15 The ALJ’s first series of justifications—Ader’s marital status and her ability to  
16 drive, shop, watch television, and cooperate with examiners—do not show that Ader can  
17 work and instead fall squarely into the category of daily activities that do “not in any way  
18 detract from her credibility as to her overall disability. One does not need to be ‘utterly  
19 incapacitated’ in order to be disabled.” *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9<sup>th</sup> Cir.  
20 2001). Accordingly, these explanations are not clear and convincing reasons to afford  
21 little weight to Dr. Behinfar’s opinion.

22 The ALJ also mentioned Ader’s ability to raise her two minor children as evidence  
23 that undermined Dr. Behinfar’s opinion. (Tr. 41) This is not a valid reason because it  
24 misstates the record: Ader’s uncontradicted testimony at the hearing was that her mother  
25 had moved into her house during the relevant time period to help Ader with her young  
26 children. (Tr. 66-67) Next, the ALJ mentioned that Ader was “not in any formal mental  
27 health treatment.” (Tr. 41) This is also incorrect: Ader established care with Southwest  
28 Behavioral Health in May 2012 at the request of her primary care physician who had  
been managing her medications for depression and anxiety and was concerned because  
she had been “experiencing severe symptoms of depression.” (Tr. 524) Ader continued  
to receive care from Southwest Behavioral Health until January 2014 when she changed

1 providers for insurance reasons. (Tr. 636) In other words, she spent the entire relevant  
2 time period on psychiatric medication and at least half of the relevant time period  
3 receiving formal mental health treatment. (Tr. 511-574; 625-636) Finally, the ALJ noted  
4 that Ader had “never been hospitalized due to severe decline in mental health.” (Tr. 41)  
5 This was an accurate statement for the relevant time period but the Court notes that Ader  
6 was hospitalized for depression as a teenager.<sup>2</sup> (Tr. 517)

7 In conclusion, the Court finds that the ALJ provided no legally sound reasons for  
8 providing little weight to Dr. Behinfar’s uncontroverted opinion that Ader had  
9 unspecified bipolar disorder and unspecified anxiety disorder.

10 Treating Physician. From February 2012 to December 2013, Ader was a patient at  
11 Integrated Medical Services Pain Management where she received regular treatment for  
12 neck pain and global pain. (Tr. 391-433) These records document an increase in Ader’s  
13 pain, her difficulty walking and balancing, and contain a diagnosis of fibromyalgia. (Tr.  
14 391, 423) In other words, these records address the same issues presented by Ader’s  
15 application for benefits.

16 Ader notes that the ALJ did not address these medical records in the decision but  
17 should have. (Doc. 25 at 28) The Court agrees. “In making any determination with  
18 respect to whether an individual is under a disability or continues to be under a disability,  
19 the Commissioner of Social Security shall consider all evidence available in such  
20 individual’s case record.” 42 U.S.C. § 423(d)(5)(B). The ALJ should have considered  
21 these records and the failure to do so constitutes legal error. *Dodrill v. Shalala*, 12 F.3d  
22 915, 919 (9<sup>th</sup> Cir. 1993) (citing 20 C.F.R. § 404.1513(e)(2)).

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27 <sup>2</sup> In response, the Commissioner also notes that Ader had enrolled in community  
28 college classes during the relevant time period and argues that this supports the ALJ’s  
decision. However, this evidence was not used by the ALJ to support the weight  
assigned to Dr. Behinfar’s opinion and, therefore, cannot be used to back-fill the ALJ’s  
conclusion.

1 **Remand**

2 The decision to remand a case for additional evidence or for an award of benefits  
3 is within the discretion of this court. *Swenson v. Sullivan*, 876 F.2d 683, 689 (9<sup>th</sup> Cir.  
4 1989). The court can remand a case with instructions to award benefits when

5 (1) the record has been fully developed and further administrative  
6 proceedings would serve no useful purpose; (2) the ALJ has failed to  
7 provide legally sufficient reasons for rejecting evidence, whether claimant  
8 testimony or medical opinion; and (3) if the improperly discredited  
evidence were credited as true, the ALJ would be required to find the  
claimant disabled on remand.

9 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9<sup>th</sup> Cir. 2014). Here, all three parts of this test  
10 have been met. First, the record was fully developed for the fixed time period at issue  
11 and further administrative proceedings would impermissibly allow the “ALJ to have a  
12 mulligan.” *Id.* at 1021. Second, as described above, the ALJ did not provide a sufficient  
13 explanation for rejecting the opinion of the consultative examiner or for failing to address  
14 the evidence in the record from her treating physician. Finally, if the ALJ had provided  
15 great weight to Dr. Behinfar’s opinion and had incorporated the information contained in  
16 the records from Integrated Medical Services Pain Management, the ALJ would have  
17 found that Ader was disabled.

18 **IT IS THEREFORE ORDERED** that Ader’s claim for disability is remanded to  
19 the Commissioner of the Social Security Administration for an award of benefits.

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

22 Dated this 7th day of December, 2017.

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26 David K. Duncan  
27 United States Magistrate Judge  
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