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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Ronald Wade Medley,  
10 Plaintiff,

No. CV-16-04060-PHX-DLR

**ORDER**

11 v.

12 Commissioner of Social Security  
13 Administration,  
14 Defendant.

15  
16 The Social Security Administration (SSA) awarded Plaintiff disability benefits in  
17 March 2010, finding a disability onset date of December 18, 2008. (A.R. 22.) In June  
18 2012, the SSA conducted a continuing disability review (CDR) and determined that  
19 Plaintiff showed medical improvement sufficient to return to work as of June 1, 2012.  
20 (*Id.* at 118.) Plaintiff appealed this determination, appearing in front of a Disability  
21 Hearing Officer (DHO), who affirmed the state agency findings of medical improvement.  
22 (*Id.* at 134, 145.) Plaintiff then requested a hearing before an Administrative Law Judge  
23 (ALJ). (*Id.* at 152.)

24 On May 7, 2015, Plaintiff and a vocational expert (VE) testified at a hearing  
25 before an ALJ. (*Id.* at 65-115.) On November 30, 2015, the ALJ issued a decision  
26 consistent with the opinions of the state agency and the DHO, finding that Plaintiff's  
27 disability ended within the meaning of the SSA on June 1, 2012. (*Id.* at 37.) Thereafter,  
28 Plaintiff requested review of the ALJ's decision by the Appeals Council. (*Id.* at 17-18.)

1 The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the  
2 Commissioner's final decision. (*Id.* at 1-6.)

3 On November 11, 2016, Plaintiff sought review by this Court. (Doc. 1.) After  
4 receipt of the administrative record (Doc. 12), the parties fully briefed the issues for  
5 review (Docs. 18, 22, 25). For reasons stated below, the Court finds that Commissioner's  
6 decision must be reversed and the case remanded for an award of benefits.

### 7 **BACKGROUND**

8 To determine whether a claimant's disability is continuing or has ceased, ALJs are  
9 required to follow the eight-step CDR process.<sup>1</sup> *See* 20 C.F.R. § 404.1594(f).

10 At step one, the ALJ determines whether the claimant is engaged in substantial  
11 gainful activity. § 404.1594(f)(1). If the claimant has engaged in substantial gainful  
12 activity, the claimant's disability is deemed to have ceased and benefits are terminated.  
13 If, however, the claimant is not engaging in substantial gainful activity, the analysis  
14 proceeds to step two, where the ALJ analyzes whether the claimant's impairment meets  
15 or equals an impairment set out in the Listing of Impairments found in 20 C.F.R. Part  
16 404, Subpart P, Appendix 1. § 404.1594(f)(2). If a Listing is met, the evaluation stops  
17 and the claimant continues to be disabled. If not, the analysis proceeds to step three.

18 At step three, the ALJ evaluates whether medical improvement has occurred since  
19 the original determination of disability. § 404.1594(f)(3). If medical improvement  
20 resulted in a decrease in the medical severity of the claimant's impairments, the analysis  
21 proceeds to the next step. If there has been no decrease in medical severity, there has  
22 been no medical improvement and the analysis skips to step five.

23 At step four, the ALJ determines whether the medical improvement is related to  
24 the claimant's ability to work. § 404.1594(f)(4). Medical improvement is related to the

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26 <sup>1</sup> A similar sequential analysis is used to determine whether a claimant's  
27 entitlement to supplemental security income (SSI) has ceased. The SSI CDR follows a  
28 seven-step review process, which corresponds with steps two through eight of the eight-  
step CDR for disability benefits. *Compare* 20 C.F.R. § 404.1594(f)(1)-(8), *with* §  
416.994(b)(5)(i)-(vii). The SSI CDR differs only in that it does not consider whether the  
claimant has performed substantial gainful activity.

1 ability to work if it results in an increase in the claimant's capacity to perform basic work  
2 activities. If the improvement is related, the analysis skips to step six. If the  
3 improvement is not related, the analysis proceeds to step five.

4 Step five applies where there has been no medical improvement or improvement  
5 that is unrelated to the claimant's ability to work. § 404.1594(f)(3), (4). If there has been  
6 medical improvement unrelated to the claimant's ability to work, the ALJ analyzes  
7 whether any exceptions apply. § 404.1594(f)(5). If no exception applies, the ALJ must  
8 find the claimant to be disabled. If certain exceptions apply, the analysis advances to step  
9 six. If certain other exceptions apply, the ALJ must find that the claimant's disability has  
10 ended.

11 At step six, the ALJ evaluates whether the claimant's impairments are sufficiently  
12 severe to limit his physical or mental abilities to do basic work activities. §  
13 404.1594(f)(6). If the impairments are not sufficiently severe, the claimant is no longer  
14 disabled. Otherwise, the analysis proceeds to step seven, where the ALJ assesses the  
15 claimant's current residual functioning capacity (RFC) to determine whether he can  
16 perform past relevant work. § 404.1594(f)(7). If the claimant has the capacity to perform  
17 past relevant work, the claimant is no longer disabled. If not, the analysis proceeds to  
18 step eight, where the ALJ determines whether the claimant can perform any other  
19 substantial gainful activity. § 404.1594(f)(8). If so, the claimant is no longer disabled. If  
20 not, the claimant's disability continues.

21 Here, the ALJ found at step one that Plaintiff had not engaged in substantial  
22 gainful activity since June 1, 2012. (A.R. 24.) At step two, the ALJ determined that  
23 Plaintiff's impairments do not meet or equal the severity of one of the listed impairments  
24 in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. (*Id.* at 27-29.) At step three, the ALJ  
25 determined that Plaintiff experienced medical improvement as of June 1, 2012. (*Id.* at  
26 29.) At step four, the ALJ found Plaintiff's medical improvement was related to his  
27 ability to work because it resulted in an increase in his RFC. (*Id.* at 30.) Because the  
28 ALJ found that the improvement related to Plaintiff's ability to work, she proceeded to

1 step six and determined that Plaintiff’s impairments, in combination, were severe. (*Id.*)

2 At step seven, the ALJ found that Plaintiff:

3 has had the [RFC] to perform light work . . . except no  
4 climbing of ladders, ropes or scaffolds; [he should] avoid  
5 concentrated exposure to extreme cold and hazards such as  
6 unprotected heights. [He] is also limited to occasional  
7 climbing of ramps and stairs, kneeling, crouching and  
8 crawling.

9 (*Id.* at 30-35.) The ALJ also found that Plaintiff is incapable of performing his past  
10 relevant work. (*Id.* at 35-36.) At step eight, however, after considering Plaintiff’s age,  
11 education, work experience, and RFC, the ALJ concluded that there are jobs that exist in  
12 significant numbers in the national economy that Plaintiff can perform. (*Id.* at 36.)  
13 Accordingly, the ALJ concluded Plaintiff was no longer disabled.

### 14 STANDARD OF REVIEW

15 It is not the district court’s role to review the ALJ’s decision de novo or otherwise  
16 determine whether the claimant is disabled. Rather, the court is limited to reviewing the  
17 ALJ’s decision to determine whether it “contains legal error or is not supported by  
18 substantial evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial  
19 evidence is more than a scintilla but less than a preponderance, and “such relevant  
20 evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.*  
21 “Where evidence is susceptible to more than one rational interpretation, the ALJ’s  
22 decision should be upheld.” *Id.* The court, however, “must consider the entire record as  
23 a whole and may not affirm simply by isolating a ‘specific quantum of supporting  
24 evidence.’” *Id.* Nor may the court “affirm the ALJ on a ground upon which he did not  
25 rely.” *Id.*

26 In determining whether the ALJ committed legal error, the district court is bound  
27 to apply the legal standards imposed by the law of this Circuit. This includes the  
28 requirement that, even when contradicted by another physician, if “the ALJ wishes to  
disregard the opinion of the treating physician, he or she must make findings setting forth  
specific, legitimate reasons for doing so that are based on substantial evidence in the  
record.” *Id.* at 632.

1 **DISCUSSION**

2 Plaintiff argues that it was impossible for the ALJ to properly compare his prior  
3 disability with his current condition because the ALJ failed to obtain the medical records  
4 used to make the SSA’s initial disability determination. (Doc. 19 at 14-15.) Plaintiff  
5 argues that a remand for award of benefits is appropriate, however, because, even  
6 assuming that the ALJ properly developed the record during the CDR process, the ALJ  
7 improperly rejected his treating physicians’ medical opinions when formulating his RFC.  
8 (*Id.* at 16-17.) Having reviewed the record and the parties’ briefs, the Court concludes  
9 that the ALJ erred in rejecting the opinions of Plaintiff’s treating physicians, and that the  
10 ALJ would have been compelled to find Plaintiff disabled had she credited these  
11 opinions. Because this conclusion is dispositive, the Court does not reach Plaintiff’s  
12 alternative assignments of error.

13 **I. The ALJ Erred in Rejecting the Opinions of Plaintiff’s Treating Physicians**

14 In weighing medical source opinions, the Ninth Circuit distinguishes among three  
15 types of physicians: (1) treating physicians, who actually treat the claimant; (2)  
16 examining physicians, who examine but do not treat the claimant; and (3) non-examining  
17 physicians, who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821,  
18 830 (9th Cir. 1995). More weight generally should be given to the opinion of a treating  
19 physician than to the opinions of non-treating physicians because treating physicians are  
20 “employed to cure and [have] a greater opportunity to observe and know the patient as an  
21 individual.” *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987). However, a  
22 treating physician’s opinion is entitled to controlling weight only if the opinion is well-  
23 supported by medically acceptable diagnostic techniques and is not inconsistent with  
24 other substantial evidence in the case record. §§ 404.1527(c)(2), 416.927(c)(2). Where a  
25 treating physician’s opinion is contradicted, it may only be rejected with “specific and  
26 legitimate reasons” supported by substantial evidence in the record. *Lester*, 81 F.3d at  
27 830. “The ALJ can meet this burden by setting out a detailed and thorough summary of  
28 the facts and conflicting clinical evidence, stating [her] interpretation thereof, and making

1 findings.” *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988).

2 Dr. Kahlon, Plaintiff’s treating specialist, opined that Plaintiff could: (1) lift and  
3 carry less than ten pounds, (2) stand and/or walk less than 2 hours in an 8-hour workday,  
4 and (3) sit less than 6 hours in an 8-hour workday. (A.R. 691-93.) Dr. Kahlon also  
5 opined that Plaintiff needed to alternate positions every 15 minutes and that it was  
6 medically necessary for Plaintiff to use an assistive device on all terrains. (*Id.*)  
7 Similarly, Dr. Manzanares, Plaintiff’s primary care physician, opined that Plaintiff could:  
8 (1) lift and carry less than ten pounds, (2) stand and/or walk less than 2 hours in an 8-  
9 hour workday, and (3) sit less than 6 hours in an 8-hour workday. (*Id.* at 688-90.)

10 Because Dr. Kahlon’s and Dr. Manzanares’ opinions were contradicted by a state  
11 agency medical consultant (*Id.* at 475-82), the ALJ was required to provide specific and  
12 legitimate reasons, supported by substantial evidence in the record, for rejecting them.  
13 The ALJ assigned “no weight” to Dr. Kahlon’s and Dr. Manzanares’ opinions,  
14 concluding that they were inconsistent with “correlating medical evidence” and  
15 Plaintiff’s reported daily activities. (*Id.* at 34.) Neither of these reasons is sufficient.

16 First, the ALJ failed to cite a single medical record contradicting the opinions of  
17 Plaintiff’s treating physicians. Instead, the ALJ summarily concluded that the medical  
18 records point towards an adverse conclusion, making no effort to identify specific records  
19 supporting her finding or relate those records to any of the specific medical opinions she  
20 rejected. To say that medical opinions are not consistent with the longitudinal records  
21 without offering further explanation does not achieve the level of specificity required.  
22 *Embrey*, 849 F.2d at 421 (“The ALJ must do more than offer his conclusion.”).

23 Second, the ALJ’s conclusion that the treating physicians’ opinions are  
24 inconsistent with Plaintiff’s reported daily activities is not supported by substantial  
25 evidence in the record. The ALJ found that:

26 [Plaintiff] reported that he is able to watch television, watch  
27 his three-year old nephew, read, shop at a convenience store  
28 which he walks to and operate a motor vehicle on a regular  
basis, which requires a significant level of sitting, arising  
from a seated position, and the use of hand and foot controls,

1 as well as sustained concentration and multi-step decision  
2 making. All of the above activities suggest a greater degree of  
functional capability than claimed.

3 (A.R. 31-32.) But this description mischaracterizes the record.

4 For example, the ALJ noted that Plaintiff regularly watches television and reads,  
5 but ignores that he testified, consistent with his physicians' opinions, that when doing  
6 these activities he must alternate between sitting and standing every 15-20 minutes. (*Id.*  
7 at 96-97.) Likewise, although Plaintiff testified that, "I go to my sister's. I have a  
8 nephew that we keep an eye on," he later clarified, "I'm just saying he's around . . . But I  
9 would never, I can't, [] watch him . . . like a baby sitter." (*Id.* at 96.) Plaintiff testified  
10 that he brought up the subject only to explain that "[his nephew]'s there . . . so it's kind of  
11 like he's a factor in our lives." (*Id.*) The ALJ also found that Plaintiff operates a car on  
12 a regular basis, but ignored that Plaintiff testified he drives "like once a month," "not  
13 very far," and only when he is unable to arrange an alternative mode of transportation.  
14 (*Id.* at 98.) More egregiously, the ALJ found that Plaintiff reported walking to a local  
15 convenience store when the record reveals no such testimony. Rather, Plaintiff testified  
16 that he drove to the convenience store and that even with the assistance of his cane he  
17 was unable to walk without issue. (*Id.* at 98-100.) In short, an examination of the  
18 testimony shows that the ALJ erred in characterizing Plaintiff's statements to reach her  
19 conclusion. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (finding that the ALJ  
20 erred when mischaracterizing statements and documents contained in the record to reach  
21 the conclusion that plaintiff had exaggerated her symptoms).

22 Moreover, the ALJ failed to explain how activities such as reading, watching  
23 television, watching his three-year old nephew, and driving short distances are  
24 inconsistent with any of the limitations assessed by the treating physicians. *See Zavalin*  
25 *v. Colvin*, 778 F.3d 842, 848 (9th Cir. 2015) (rejecting ALJ reliance on the claimant's  
26 activities where there was no indication of the extent, manner, or complexity of those  
27 activities). For these reasons, the Court concludes that the ALJ erred in discrediting the  
28 opinions of Plaintiff's treating physicians.

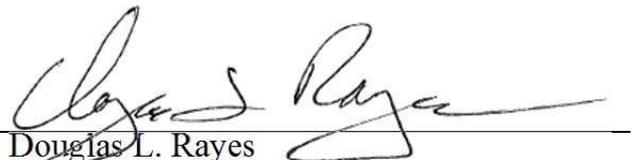
1 **II. Remedy**

2 Having determined that the ALJ committed reversible error, the Court has  
3 discretion to remand the case for further development of the record, or to credit the  
4 improperly rejected evidence as true and remand for an award benefits. *Reddick*, 157  
5 F.3d at 728. In deciding whether to remand for an award of benefits, the Court considers  
6 whether: (1) the ALJ failed to provide legally sufficient reasons for rejecting evidence,  
7 (2) the record has been fully developed and further proceedings would serve no useful  
8 purpose, and (3) it is clear from the record that the ALJ would be required to find the  
9 claimant disabled were such evidence credited. *Triechler v. Comm'r of Soc. Sec.*, 775  
10 F.3d 1090, 1100-01 (9th Cir. 2014). All three conditions of the credit-as-true-rule are  
11 met here.

12 First, for the foregoing reasons, the Court finds that the ALJ's decision to reject  
13 Plaintiff's treating physicians' opinions is neither free of legal error nor supported by  
14 substantial evidence. Second, further proceedings would not serve a useful purpose  
15 because the ALJ's error was not due to a failure to develop the record. Finally, during  
16 the hearing, the VE testified that someone with the limitations assessed by Plaintiff's  
17 treating physicians would be unable to perform Plaintiff's past relevant work or other  
18 work. (A.R. 108.) Accordingly, if the treating physicians' opinions were credited as  
19 true, the ALJ would be required to find Plaintiff continually disabled. The Court  
20 therefore exercises its discretion to remand for an award of benefits.

21 **IT IS ORDERED** that the final decision of the Commissioner of Social Security  
22 is **REVERSED** and the case **REMANDED** for an award of benefits. The Clerk shall  
23 enter judgment accordingly and terminate the case.

24 Dated this 23rd day of October, 2017.

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27   
28 Douglas L. Rayes  
United States District Judge