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

10 Plaintiff,

11 v.

12 Nancy A. Berryhill, Acting Commissioner
13 of Social Security Administration,

14 Defendant.
15

No. CV18-0532-PHX-DGC

ORDER

16 Pro se Plaintiff L.D. Meabon seeks review under 42 U.S.C. § 405(g) of the final
17 decision of the Commissioner of Social Security (“the Commissioner”), which denied her
18 disability insurance benefits and supplemental security income under sections 216(i),
19 223(d), and 1614(a)(3)(A) of the Social Security Act. For the following reasons, the Court
20 will vacate the Commissioner’s decision and remand the matter for further administrative
21 proceedings.

22 **I. Background.**

23 Plaintiff is a 43 year-old woman with a high-school education and an Associate of
24 Arts degree in television broadcasting. A.R. 78. Plaintiff previously worked as a human
25 resources manager and personal assistant. A.R. 85-85. Plaintiff applied for disability
26 benefits on January 9, 2014, alleging disability beginning October 31, 2013. A.R. 169. On
27 June 14, 2016, Plaintiff and a vocational expert (“VE”) appeared and testified at a hearing
28 before the ALJ. A.R. 52-119. On April 7, 2017, Plaintiff, a VE, and a medical expert

1 (“ME”) appeared before the ALJ at a supplemental hearing. A.R. 120-66. On
2 May 23, 2017, the ALJ issued a partially favorable decision, finding Plaintiff disabled
3 within the meaning of the Social Security Act from October 31, 2013 through
4 November 30, 2014. A.R. 26-42. But the ALJ found that Plaintiff’s disability ceased as
5 of December 1, 2014, based on medical improvement. A.R. 31. The ALJ’s decision
6 became the Commissioner’s final decision when the Appeals Council denied Plaintiff’s
7 request for review on February 7, 2018. A.R. 1-4.

8 **II. Legal Standard.**

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

22 **III. The ALJ’s Sequential Evaluation Process.**

23 **A. Disability Determination.**

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

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

14 At step one, the ALJ found that Plaintiff met the insured status requirements of the
15 Social Security Act through December 31, 2013, and that she had not engaged in
16 substantial gainful activity since October 31, 2013. A.R. 35. At step two, the ALJ found
17 that Plaintiff had the following severe impairments from October 31, 2013 through
18 November 30, 2014: schizophrenia spectrum and other psychotic disorders. *Id.* At step
19 three, the ALJ determined that Plaintiff did have an impairment or combination of
20 impairments that meets or medically equals a listed impairment, and that Plaintiff’s
21 substance use disorder was not a contributing factor material to the determination of her
22 disability. A.R. 36.

23 **B. Continuation of Disability.**

24 The ALJ found that Plaintiff was able to function without a considerable impairment
25 as of December 1, 2014, due to medical improvement. A.R. 38. Once an ALJ finds a
26 claimant disabled, the ALJ follows an eight-step sequential evaluation process to determine
27 whether a claimant’s disability continues through the date of the decision. *See* 20 C.F.R.
28 § 404.1594(f)(1)-(8). The ALJ determines whether: (1) the claimant is engaging in

1 substantial gainful activity, (2) the claimant has an impairment or combination of
2 impairments which meets or medically equals the severity of a listed impairment,
3 (3) medical improvement has occurred, (4) medical improvement is related to ability to
4 work, (5) an exception to medical improvement applies, and whether (6) all the claimant's
5 current combined impairments are severe. Then the ALJ assesses (7) the claimant's RFC
6 based on current impairments and determines whether she can perform past relevant work,
7 and (8) whether the claimant can perform other work that is suitable for her RFC, age,
8 education, and work experience. *Id.*

9 The ALJ followed this sequential process and found, at step one, that Plaintiff had
10 not engaged in substantial gainful activity since she became disabled on October 31, 2013.
11 A.R. 35. At step two, the ALJ found Plaintiff had the following severe impairments
12 beginning December 1, 2014: schizophrenia spectrum, other psychotic disorders, and a
13 substance addiction disorder. A.R. 36. At step three, the ALJ found medical improvement
14 as of December 1, 2014. A.R. 38. At step four, the ALJ found that the medical
15 improvement was related to Plaintiff's ability to work. *Id.* The ALJ did not address step
16 five given his findings at steps three and four that Plaintiff's medical condition had
17 improved and the improvement was related to ability to work. *See* 20 C.F.R.
18 § 404.1594(f)(5). At step six, the ALJ found that beginning December 1, 2014, Plaintiff
19 had no current, severe combined impairments. A.R. 37. Under steps seven and eight, the
20 ALJ determined that Plaintiff could not perform past relevant work (A.R. 40), but that she
21 could perform a full range of work at all exertional levels that exists in the national
22 economy, with the following non-exertional limitations. Plaintiff is limited to simple,
23 repetitive tasks, but cannot perform such tasks in a fast-paced production environment; she
24 is limited to only occasional interactions with co-workers and supervisors, and only brief,
25 intermittent and superficial public contact; she can concentrate in two hour blocks of time
26 throughout an 8-hour workday, with two 10 to 15 minute breaks, and a 30 to 60 minute
27 lunch period (A.R. 38-40). The ALJ determined that Plaintiff had an RFC to work as a
28 laundry worker, domestic maid, and industrial cleaner or night janitor. A.R. 41.

1 **IV. Discussion.**

2 Although her arguments are not entirely clear, Plaintiff seems to state three reasons
3 why the ALJ's decision is defective: (1) Plaintiff was diagnosed by her psychiatrist on
4 May 13, 2016 with depersonalization disorder, after the date that the ALJ found medical
5 improvement (Doc. 11 at 3); (2) the ALJ's finding of medical improvement is incorrect
6 because Plaintiff continued to experience delusions after December 1, 2014 (*id.*); and
7 (3) various mental health issues continue to prevent her from working (*id.* at 10).¹

8 **A. Medical Improvement.**

9 The Court reads Plaintiff's arguments as challenging the ALJ's interpretation of the
10 medical evidence and disputing that substantial evidence supports the ALJ's decision.
11 Plaintiff specifically challenges the ALJ's crediting of the testimony by the ME, Dr.
12 Kivowitz, finding medical improvement. Doc. 11 at 3; A.R. 1213.

13 **1. Legal Standard.**

14 The Commissioner bears the burden of establishing that a claimant has experienced
15 medical improvement that would allow her to engage in substantial gainful activity.
16 *Murray v. Heckler*, 722 F.2d 499, 500 (9th Cir. 1983). A court may set aside the ALJ's
17 decision only when it is unsupported by substantial evidence or the decision is premised
18 on legal error. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005).

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22 ¹ Plaintiff generally asserts that she "was discriminated against due to being a
23 medical marijuana patient and [because of her] age and . . . looks." Doc. 11 at 1. But
24 Plaintiff does not elaborate on how that alleged discrimination affected the ALJ's decision.
Plaintiff does not appear to challenge the ALJ's finding that she is not significantly limited
by her alleged vision and back disorders. *See* Docs. 11, 16; A.R. 37.

25 Plaintiff also seems to deny that she has substance abuse issues. Doc. 11 at 9. But
26 at the hearing, the parties agreed that Plaintiff had struggled with substance abuse.
A.R. 130. And the record shows that Plaintiff uses marijuana. In any event, the ALJ found
27 that Plaintiff's substance abuse was not material to his determination of disability. A.R. 36.
Thus, the ALJ's interpretation of the evidence with respect to Plaintiff's substance use was
28 not unfavorable to Plaintiff's ultimate disability determination.

1 **2. Dr. Kivowitz.**

2 Dr. Kivowitz, the non-examining ME, testified at the first hearing about Plaintiff's
3 impairments. A.R. 127-35. He found no evidence of symptom exaggeration by Plaintiff
4 and testified to the following diagnoses: poly-substance abuse, psychotic disorder, bipolar
5 disorder, and occasional diagnoses of anxiety disorder, excessive compulsive disorder, and
6 depersonalization disorder. A.R. 128-31. Dr. Kivowitz concluded that Plaintiff had
7 psychotic episodes in 2013 and 2014 and "marginal functional existence" after November
8 2014. A.R. 132. He found that Plaintiff had improved after November 2014, but he did
9 not cite a cause of improvement. *Id.*; A.R. 134-35. He testified that Plaintiff's
10 hallucinations and other disorders did not end in November 2014, only that she had an
11 improvement in functioning and was able to better manage her disorders. A.R. 134-35.
12 He testified that Plaintiff's impairments would have been severe even if she had not abused
13 substances. A.R. 132.

14 **3. ALJ's Opinion.**

15 The ALJ's finding of gradual medical improvement beginning December 1, 2014
16 was based on the ME's testimony, which he gave great weight. A.R. 36, 38. The ALJ also
17 cited: (1) notes by a licensed clinical social worker, Cynthia Loperccio, who Plaintiff saw
18 in December 2014, indicating that Plaintiff's judgment was seriously impaired and that her
19 ability to function was moderately impaired (A.R. 890-92); (2) Loperccio's notes from
20 January 2015, reporting that Plaintiff planned to resume her personal assistant job, begin
21 dieting and exercising, and join a gym (A.R. 895); (3) Plaintiff's mental health provider's
22 recommended termination of counseling services in May 2015 (A.R. 938); and
23 (4) Plaintiff's reported termination of all prescription medications from November 2015 to
24 May 2016 (A.R. 944). With respect to Plaintiff's diagnosis of depersonalization disorder
25 in May 2016, the ALJ stated:

26 In any event, even though the evidence provided on May 13, 2016, does not
27 support a finding of disability, the undersigned observes that even if it did,
28 the record indicates it would represent a new period of which an application
for benefits would need to be submitted.

1 A.R. 40.

2 **4. Analysis.**

3 For four reasons, substantial evidence does not support the ALJ's interpretation of
4 the medical evidence and his finding of medical improvement beginning December 1,
5 2014.

6 First, the finding relies in large part on the ME's opinion, but the ME offered no
7 explanation of the source or cause of Plaintiff's improvement in December 2014, nor how
8 the improvement allowed her to better manage her conditions. The ME conceded that
9 Plaintiff's disorders did not improve and that her hallucinations did not end, but he
10 nonetheless opined that Plaintiff was able to better manager her conditions. Dr. Kivowitz
11 offered no specifics about how this improvement affected Plaintiff's cognitive, physical,
12 and social wellbeing and functioning capacities. The doctor's unexplained opinion is
13 especially unreliable given the severity of Plaintiff's psychotic episodes in 2013 through
14 November 2014. Plaintiff was hospitalized five times in a three-month span in 2013 and
15 was hospitalized in 2014. A.R. 1237. She suffered from lapses in memory, sometimes for
16 days at a time, and would feel like spirits were jumping in and out of her body. *Id.* During
17 one of her psychotic episodes, Plaintiff was found walking down the street naked, but she
18 did not recall the event. *Id.* She suffered from auditory hallucinations and religious and
19 paranoid delusions, and walked into traffic. A.R. 1003. During another documented
20 episode, Plaintiff lifted her skirt in a courthouse and spread vaginal fluid on the walls, but
21 she did not recall the event. A.R. 1018; 1205-06. The ME's opinion offers no explanation
22 of how an individual with such serious conditions could suddenly better manage them. The
23 ALJ notes compliance with prescribed treatment and medications, but, looking at the same
24 record, the ME did not testify that Plaintiff's alleged improvement was due to successful
25 treatment or medication.

26 Second, the ALJ's other stated reasons for finding medical improvement are
27 unsupported by the record. The ALJ cites Plaintiff's comments to licensed social worker,
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1 Lopercio, stating that she intends to diet and exercise and may join a gym.² But the ALJ
2 does not explain how Plaintiff's statements of intentions are inconsistent with her ongoing
3 disorders and their disabling effects. *See* A.R. 36-37. When viewed in the record as a
4 whole, Plaintiff's comments do not indicate improvement. Lopercio's assessments during
5 this time included the following.

6 [Patient] appears nervous and not as expressive this week; however, thought
7 process is less tangential and confused. Mood is anxious, frustrated. . . .
8 [Patient's] presentation becomes agitated/aroused when recalling memories,
9 and speech becomes pressured. . . . [T]here is evidence to suggest PTSD,
10 including persistent anxiety and hyper-arousal when recalling traumatic
11 memories . . . symptoms indicate mania, including . . . grandiosity.

11 A.R. 1007 (September 19, 2014).

12 [Patient] exhibits hyper-religi[os]ity today, insisting that recent break was
13 "inspired by God." [Patient] is resistant to Bipolar diagnosis, and becomes
14 agitated [She] also exhibits expansive mood, grandiosity and flight of
15 ideas. . . . [S]ymptoms indicate [bipolar]. . . . [Patient's] judgment and
16 functioning is significantly impaired by mood/thought disturbance.

15 A.R. 1013 (October 10, 2014); A.R. 1016 (October 10, 2014).

16 [Patient] is agitated today . . . thoughts and speech are tangential, pressured;
17 flight of ideas and paranoia are continued features. These symptoms appear
18 consistent with the criteria for a hypomanic episode. . . . [Patient's] judgment
19 and insight are impaired by delusions of grandeur and hyperreligi[os]ity. . . .
20 [Patient] is not sleeping well, and exhibits a great deal of anger[.]

20 A.R. 1025 (November 14, 2014); A.R. 1028 (November 21, 2014).

21 [Patient] continues in therapy for treatment of Bipolar DO, which is
22 evidenced today in delusional thought and pressured speech. . . . [J]udgment
23 is seriously impaired, overall function is moderately impaired by paranoid
24 delusions. . . . [Patient] is agitated, mood is expansive; speech is pressured

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26 ² The ALJ's opinion also notes that Plaintiff was "enjoying the d[isp]osable income
27 her personal assistant job provided her" (A.R. 38), but the Court finds no support for this
28 assertion in the ALJ's record citations. In any event, as discussed below, Plaintiff's
employment in May 2015 does not constitute substantial evidence supporting a finding of
medical improvement in December 2014.

1 and tangential; and she exhibits paranoia, flight of ideas and delusional
2 thought.

3 A.R. 1030-31 (December 12, 2014)

4 [T]herapist notes increased anxiety and manic symptomology in [patient's]
5 presentation. [Patient's] speech is pressured and thoughts are tangential as
6 she shares about Strawman theory and other flight of ideas. . . . [Patient] is
7 strongly manic today. She exhibits pressured, tangential speech, flight of
8 ideas and paranoid delusions. Reports sleep disturbance and anxiety; mood
9 is angry. [Patient] has been without medications for three days, and exhibits
10 both PTSD and Bipolar symptoms.

11 A.R. 1039-40 (January 9, 2015).

12 [Patient's] mood is slightly elevated, affect is expansive today. Thoughts are
13 organized but grandiose. Speech is pressured She is not as strongly
14 paranoid today but still articulates some mistrust of institutions She is
15 encouraged to continue medications and meditation. She appears healthier
16 than at any time since treatment began.

17 A.R. 1049 (February 20, 2015).

18 [Patient] begins to rant about judge's "complicity" and the miscarriage of
19 justice in her case [Patient's] mood and affect are expansive; thoughts
20 are grandiose, tangential; speech is pressured. . . . [Patient's] mood is labile,
21 affect is agitated Based on her presentation today, therapist is concerned
22 that [patient] may have stopped taking her prescribed medication.

23 A.R. 1051-52 (March 12, 2015); A.R. 1058-59 (March 26, 2015).

24 It is true that some of Lopercio's notes indicate moments of progress by Plaintiff
25 during individual treatment visits. But Lopercio's consistent assessment of Plaintiff does
26 not support medical improvement on December 1, 2014. The ALJ's citation to isolated
27 comments by Plaintiff without considering the record as a whole amounts to "improper
28 cherry-pick[ing]." *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014); *see also*
Diedrich v. Berryhill, 874 F.3d 634, 642 (9th Cir. 2017).

1 Third, the objective medical evidence contradicts rather than supports the ALJ's
2 interpretation of the record. During the hearing, the ME testified that a score of 50 or below
3 on the test of Global Assessment of Functioning ("GAF") is a "serious" negative score for
4 measuring a patient's progress, and he cited those scores in explaining his conclusion about
5 Plaintiff's diagnoses. A.R. 131-32; *see also Pate-Fires v. Astrue*, 564 F.3d 935, 937 n.1
6 (8th Cir. 2009) (defining "GAF"). During the months before and after December 1, 2014,
7 Plaintiff consistently scored at or near 50, with no marked improvement beginning in
8 December 2014. Out of the therapist's stated goal of a score of 65, the record reveals the
9 following scores for Plaintiff: 50 in September 2014 (A.R. 1004-07); 50, 50, and 55 in
10 October 2014 (A.R. 1013-19); 55 and 53 in November 2014 (A.R. 1025-28); 50 and 50 in
11 December 2014 (A.R. 1031-34); 59, 48, and 48 in January 2015 (A.R. 1037-43); 55 and
12 55 in February 2015 (A.R. 1046-49); and 55 and 50 in March 2015 (A.R. 1052-59). Out
13 of 15 scores in 7 months, Plaintiff received 8 scores that were at or below 50, with more
14 than half of those occurring during or after December 2014.

15 Finally, the ALJ cites Plaintiff's mental health provider's recommendation in May
16 2015 that she terminate counseling services, the actual termination of counseling in August
17 2015, Plaintiff's part-time employment in May 2015, and Plaintiff's reported termination
18 of all prescription medications from November 2015 to May 2016. A.R. 37-38. But the
19 ALJ did not find medical improvement in May, August, or November. Although evidence
20 of improvement that occurs after the date of medical improvement might constitute support
21 for such a finding, the evidence cited by the ALJ is five, eight, and eleven months after
22 December 1, 2014.

23 Viewing the record as a whole, the Court cannot find that the ALJ's improvement
24 date of December 1, 2014, is supported by substantial evidence. As a result, the Court
25 must vacate the ALJ's decision.

26 **V. Scope of Remand.**

27 Plaintiff asks the Court to remand for an award of benefits. Doc. 11 at 10. "When
28 the ALJ denies benefits and the court finds error, the court ordinarily must remand to the

1 agency for further proceedings before directing an award of benefits.” *Leon v. Berryhill*,
2 880 F.3d 1041, 1045 (9th Cir. 2017). Under a “rare exception” to this rule, the Court may
3 remand for an immediate award of benefits after conducting a three-part inquiry:

4 The three-part analysis . . . is known as the “credit-as-true” rule. First, we
5 ask whether the ALJ failed to provide legally sufficient reasons for rejecting
6 evidence, whether claimant testimony or medical opinion. Next, we
7 determine whether there are outstanding issues that must be resolved before
8 a disability determination can be made, and whether further administrative
9 proceedings would be useful. When these first two conditions are satisfied,
10 we then credit the discredited testimony as true for the purpose of
11 determining whether, on the record taken as a whole, there is no doubt as to
12 disability.

13 *Id.* (internal quotation marks and citations omitted). *Leon* emphasized that the Court has
14 discretion to remand for further proceedings even if it reaches the third step in the process.

15 *Id.* “Where an ALJ makes a legal error, but the record is uncertain and ambiguous, the
16 proper approach is to remand the case to the agency.” *Id.* (quotation marks omitted).

17 At step one, the Court concludes that the ALJ failed to provide sufficient reasons
18 for finding that Plaintiff’s disability ended on December 1, 2014, due to medical
19 improvement. Applying step two, the Court concludes that outstanding issues exist
20 regarding the proper interpretation of the medical evidence, the weighing of the ME’s
21 opinion, and when, if ever, Plaintiff’s disability ended due to medical improvement. Based
22 on the record, the Court cannot conclude that Plaintiff’s disability continues through the
23 present, and further proceedings would therefore be useful. The Court will remand for
24 such proceedings.³

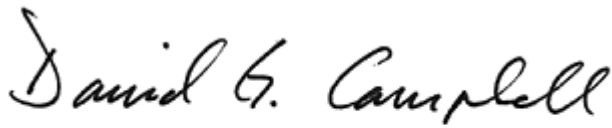
25 **IT IS ORDERED** that the final decision of the Commissioner of Social Security is
26 **vacated**, and this case is **remanded** for further proceedings consistent with this opinion.

27 ³ Plaintiff also argues that the ALJ’s decision is incorrect because she was diagnosed
28 with depersonalization disorder on May 13, 2016, after the alleged date of medical
improvement on December 1, 2014. The Court notes that the ALJ will need to consider
the whole record after November 2014 to determine whether and when Plaintiff’s disability
ended. But the Court disagrees with Plaintiff’s contention that her single diagnosis in May
2016 is insufficient to establish disability from November 2014 to the present.

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The Clerk shall enter judgment accordingly and **terminate** this case.

Dated this 17th day of December, 2018.



David G. Campbell
Senior United States District Judge