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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Philana Andreason,
Plaintiff,

v.
Commissioner of Social Security
Administration,
Defendant.

No. CV-21-01051-PHX-MTL

ORDER

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Before the Court is Plaintiff Philana Andreason’s appeal of an Administrative Law Judge’s (“ALJ”) denial of her applications for Disability Insurance benefits and Supplemental Security Income benefits. Plaintiff filed a Complaint seeking judicial review of that denial. (Doc. 1.) The Court now addresses Andreason’s Opening Brief (Doc. 16, Pl. Br.), the Commissioner’s Response Brief and Countermotion for Remand (Doc. 20, Def. Br.), and the Plaintiff’s Reply (Doc. 21, Reply), as well as the Administrative Record (“R.”). For the reasons expressed herein, the Court reverses the ALJ’s decision and remands for additional proceedings.

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I. BACKGROUND

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Andreason filed an Application for Disability Insurance benefits and Supplemental Security Income benefits under Titles II and XVI of the Social Security Act on May 14, 2015, based on a disability beginning on April 14, 2014. (R. at 27.) The claims were denied initially on October 1, 2015, and upon reconsideration on February 6, 2016. (*Id.*) After this denial, Andreason testified at a hearing before the ALJ in November 2017. (R. at 45, 80–81,

1 118–19.) Following the hearing, the ALJ found Andreason was not disabled. (R. at 27–36.)
2 The Appeals Council denied Andreason’s request for review and she then appealed to a
3 court in this District. (R. at 1056–62.) On February 13, 2020, the court reversed the ALJ’s
4 decision and remanded the case for further proceedings. (R. at 1066–78.) On March 29,
5 2021, after the remand, a different ALJ denied Andreason’s claims. (R. at 967–93.) The
6 Appeal’s Council denied Andreason’s request for review and adopted the ALJ’s decision
7 as the agency’s final decision. (R. at 956–66.) Andreason now seeks judicial review under
8 42 U.S.C. § 405(g).

9 Upon reviewing the medical records and opinions, the ALJ evaluated Andreason’s
10 disability based on the following severe impairments: degenerative disc disease,
11 generalized osteoarthritis, major depressive disorder, and posttraumatic stress disorder. (R.
12 at 972.) The ALJ found that Andreason “does not have an impairment or combination of
13 impairments that meets or medically equals the severity of one of the listed impairments in
14 20 CFR Part 404, Subpart P, Appendix 1.” (R. at 973.) next, the ALJ calculated Plaintiff’s
15 residual functional capacity (“RFC”):

16 [Andreason] has the [RFC] to perform light work as defined in
17 20 CFR 404.1567(b) and 416.967(b) except the claimant can
18 lift and carry 20 pounds occasionally, 10 pounds frequently,
19 stand and walk for 6 hours in an 8 hour day, and sit for 6 hours
20 in an 8 hour day. The claimant can occasionally climb ramps
21 and stairs, but never climb ladders or scaffolds. The claimant
22 can occasionally balance, stoop, kneel, crouch and crawl. The
23 claimant must avoid concentrated exposure to extreme cold
24 and vibration. The claimant can follow simple instructions and
25 perform simple tasks with occasional contact with coworkers
26 and the public.

23 (R. at 975.) The ALJ found that Andreason can perform jobs that exist in the national
24 economy. (R. at 980–81.) Ultimately, the ALJ concluded that Andreason was not disabled
25 from the alleged disability onset date through the date of the decision. (R. at 791.)

26 **II. LEGAL STANDARD**

27 In determining whether to reverse an ALJ’s decision, the district court reviews only
28 those issues the parties raised in challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,

1 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner’s disability
2 determination only if it is not supported by substantial evidence or is based on legal error.
3 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The parties, however, agree that the ALJ
4 did not support his decision with substantial evidence. (Def. Br. at 14.) The Commissioner
5 concedes that there is reversible error regarding the ALJ’s evaluation of medical source
6 opinions and remand is appropriate to evaluate these opinions. (*Id.* at 2.) The only issue
7 that remains is whether to remand the case for additional investigation or for the calculation
8 of benefits.

9 **III. CREDIT-AS-TRUE ANALYSIS**

10 Andreason’s preferred remedy is for the Court to remand this case for immediate
11 computation of benefits under the “credit-as-true” rule. (Pl. Br. at 25.) This remedy is rare
12 and discretionary. *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir.
13 2014). The Court only applies the rule when three factors are met: (1) the ALJ must have
14 rejected evidence for legally insufficient reasons; (2) the record has to be fully developed
15 without any outstanding issues necessary to determine whether a claimant is disabled under
16 the social security regulations; and (3) the record must, with certainty, reflect that a remand
17 should result in a finding that the claimant is disabled. *Treichler*, 775 F.3d at 1100–01. In
18 the Ninth Circuit, even if the three factors are met, the law is unclear as to whether applying
19 the credit-as-true rule is mandatory or the Court has discretion to remand for further
20 proceedings. *Compare Vasquez v. Astrue*, 572 F.3d 586, 593–94 (9th Cir. 2009), and
21 *Garrison v. Colvin*, 759 F.3d 995, 1019–23 (9th Cir. 2014), with *Treichler*, 775 F.3d at
22 1099–02. Courts “frequently exercise[] [their] discretion to remand for further
23 proceedings, rather than benefits.” *Treichler*, 775 F.3d at 1102. Here, the Court agrees with
24 the Commissioner that applying the credit-as-true rule is not appropriate in this case.

25 The parties agree that the decision was legally insufficient, thus satisfying factor
26 one. *See Dominguez v. Colvin*, 808 F.3d 403, 408 (9th Cir. 2015), as amended (Feb. 5,
27 2016) (finding the first element is met where the issue is undisputed.) The other two factors
28 preclude remand for computation of benefits. First, the record contains outstanding issues

1 better resolved by an ALJ. Andreason asserts that the ALJ did not adequately evaluate the
2 medical opinions of Dr. Alpern, Mr. Chukwuemeka, and Dr. Coehlo that, if credited as
3 true, would require finding Andreason disabled. (Pl. Br. at 1–2, 14–20.) The Commissioner
4 agrees remand is appropriate because the ALJ improperly discounted one of Dr. Alpern’s
5 opinions but argues Mr. Chukwuemeka and Dr. Coehlo’s opinions conflict and require
6 further investigation. (Def. Br. at 15–16.) Regarding Dr. Alpern’s opinion, the parties agree
7 that the ALJ incorrectly stated that Dr. Alpern based his opinion that Andreason had
8 sedentary limitations and would miss three days of work a month on medication side
9 effects. (R. at 979–80, 1014.) Rather, the monthly absences are associated with “problems
10 with pain, mostly, dizziness, [and] fatigue[.]” (R. at 1014.) And as Andreason notes (Pl.
11 Br. at 20), the vocational expert testified that a person who would miss two to three days
12 of work would not sustain employment (R. at 66.) Even if Dr. Alpern’s opinion is credited
13 as true, further administrative proceedings would be useful and an ALJ would not be
14 required to find Andreason disabled because the record is not entirely consistent. The ALJ
15 would need to weigh other medical record evidence against Dr. Alpern’s opinion. For
16 example, both Dr. Hutchinson and Dr. Maloney opined that medical evidence did not
17 establish chronic fatigue and that Andreason was capable of working. (R. at 101–03,
18 111–12.) Dr. Maloney also opined that medical evidence did not support her alleged pain.
19 (R. at 121–23, 129–31.) The ALJ did not address these inconsistencies between the expert
20 opinions in his decision.

21 Regarding Mr. Chukwuemeka and Dr. Coehlo’s opinions, Andreason argues that
22 the ALJ did not provide specific reasons for rejecting the opinions. (Pl. Br. at 21–22.) The
23 Commissioner argues that even if the ALJ did not provide sufficient reasons for rejecting
24 the opinions, they conflict about Andreason’s mental limitations. (Def. Br. at 16.) The
25 Court agrees that the two opinions appear to conflict as to Andreason’s mental
26 impairments. Mr. Chukwuemeka opined that Andreason had a poor ability to function in a
27 work setting because of her physical limitations and mood disorders. (R. at 747.) Dr.
28 Coehlo opined that despite her limitations, Andreason was able to carry out simple

1 instructions, could remember work-related instructions and procedures, could work with
2 others, and could respond appropriately to changes in the work setting. (R. at 471–72.) The
3 ALJ reasoned that medical evidence in the record did not support Mr. Chukwuemeka’s
4 opinions. (R. at 979.) The ALJ also reasoned that it gave “some weight” to Dr. Coelho’s
5 opinions because it supports that Andreason’s limitations are largely physical and not
6 mental. (*Id.*) Crediting both of the opinions as true does not necessarily require finding a
7 disability because if even the ALJ gives them full weight, they appear to conflict. The ALJ
8 is better suited to evaluate the opinions and consider the medical record evidence on
9 remand to determine the severity of Andreason’s physical or mental limitations.

10 Further proceedings would also be useful to evaluate Andreason’s symptom
11 testimony. Andreason argues that crediting her symptom testimony as true requires finding
12 her disabled. (Reply at 9.) The Court disagrees. Even if Andreason’s subjective symptom
13 testimony is credited as true, the ALJ may find discrepancies with her testimony in
14 comparing it to other medical record evidence. For example, an emergency room report
15 shows that, while Andreason claimed her pain was so severe she could not stand up and
16 refused to do so, when medical staff were not looking, she stood up, changed her clothes,
17 and moved without difficulty. (R. at 1699.) Other medical record evidence shows that
18 Andreason complained of chronic neck pain, but medical examinations did not substantiate
19 her claims. (R. at 2043.) And as the Commissioner notes, Andreason appeared to have good
20 motor strength, a normal gait, and unremarkable neurological testing at several
21 examinations. (*See* R. at 457–58, 1269, 1527, 2033.)

22 Andreason’s arguments do not establish that crediting the medical opinions or
23 symptom testimony as true would require the ALJ to find her disabled. The Court finds
24 there are outstanding issues and ambiguity in the record that preclude applying the
25 credit-as-true rule. Thus, the Court remands this case for further administrative proceedings
26 to evaluate the record as necessary to determine Andreason’s disability status.

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IV. CONCLUSION


Accordingly,

IT IS ORDERED granting Defendant’s Countermotion to Remand (Doc. 20).

IT IS FURTHER ORDERED that the final decision of the Social Security Commissioner is vacated and this matter is remanded to the Social Security Administration for further proceedings consistent with the Order.

IT IS FINALLY ORDERED directing the Clerk to enter judgment accordingly and close this case.

Dated this 27th day of October, 2022.



Michael T. Liburdi
United States District Judge