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

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10	Teena Lynne Murray,)	No. CIV 13-235-TUC-LAB
11	Plaintiff,)	ORDER
12	vs.)	
13	Carolyn W. Colvin, Acting Commissioner)	
14	of Social Security,)	
15	Defendant.)	

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17 Pending before the court is the Commissioner’s motion to remand filed on December 16,
18 2013. (Doc. 22)

19 The plaintiff filed this action for review of the final decision of the Commissioner for
20 Social Security pursuant to 42 U.S.C. § 405(g). (Doc. 1) In the pending motion, the
21 Commissioner moves that this court remand the action for further proceedings pursuant to
22 sentence four of 42 U.S.C. § 405(g). (Doc. 22)

23 The Magistrate Judge presides over this case pursuant to 28 U.S.C. § 636(c) having
24 received the written consent of both parties. *See* FED.R.CIV.P. 73; (Doc. 10)

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26 Discussion

27 On April 9, 2013, the plaintiff, Teena Lynne Murray, filed this action for review of the
28 final decision of the Commissioner for Social Security denying her claim to disability insurance

1 benefits. (Doc. 1) She filed her opening brief on October 15, 2013. (Doc. 18) Along with her
2 brief, she submitted additional evidence for the court's consideration. *Id.* Apparently, after her
3 claim was denied on February 19, 2010 by Administrative Law Judge (ALJ) Milan Dostal, she
4 filed a subsequent application for disability benefits, which was granted by a different ALJ.
5 (Doc. 18-1)

6 On December 16, 2013, the Commissioner filed the pending motion to remand the action
7 pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. 22) She concedes the Residual
8 Functional Capacity (RFC) assessment performed by ALJ Dostal was error. The subsequent
9 hypothetical given by the ALJ to the vocational expert was also error.

10 The Commissioner moves that this court remand the case to allow the ALJ to take
11 additional evidence, hold another hearing, reevaluate the claimant's RFC, and revisit his
12 decision that Murray can perform past work. (Doc. 22, p. 2)

13 Murray, however, opposes remand for further administrative proceedings because she
14 thinks the case should be remanded for payment of benefits. Murray believes the ALJ failed
15 to properly evaluate the opinion of the treating doctors and her own subjective testimony of
16 disability. (Doc. 26) If this evidence were credited as true, she argues, the case would be
17 remanded for payment of benefits, not for further proceedings. Moreover, she argues the
18 additional evidence that she submitted along with her opening brief further supports the opinion
19 of her treating doctors.

20 In general, if the court finds the decision of the ALJ denying benefits was error, the court
21 may remand for payment of benefits rather than for further proceedings, provided "the record
22 has been developed fully and further administrative proceedings would serve no useful
23 purpose." *Strauss v. Commissioner of the Social Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir.
24 2011). If, however, "enhancement of the record would be useful," the court may remand for
25 further administrative proceedings. *Id.*

26 Here, Murray argues the ALJ erred by discounting the opinion of her treating doctors and
27 her subjective testimony of disability. Murray supports her argument, however, with evidence
28 that postdates the decision of the ALJ. This evidence cannot be considered unless the action

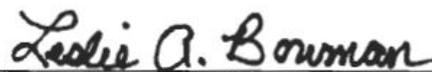
1 is remanded to allow the new evidence to be incorporated into the administrative record. *See*
2 42 U.S.C. § 405(g); *Liaga v. Astrue*, 2009 WL 2355762, 1 (C.D.Cal. 2009) (“[T]he Court
3 lacks jurisdiction to reverse the Commissioner’s decision based on evidence that is not part of
4 the administrative record.”). Accordingly, the court finds that “enhancement of the record
5 would be useful” and therefore “[r]emand for further administrative proceedings is appropriate.”
6 *See Strauss*, 635 F.3d at 1138. Accordingly,

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8 IT IS ORDERED that the Commissioner’s motion to remand filed on December 16, 2013
9 is GRANTED. (Doc. 22) The decision of the Commissioner is reversed and the case is
10 remanded to the Commissioner for further administrative proceedings pursuant to sentence four
11 of 42 U.S.C. § 405(g).

12 The Appeals Council will remand the matter to an Administrative Law Judge (ALJ) to
13 develop the record further and arrive at a new decision. The Appeals Council will direct the ALJ
14 to: give Plaintiff an opportunity for a hearing; obtain additional evidence relevant to the period
15 at issue; reevaluate the residual functional capacity; and determine whether Plaintiff can
16 perform her past relevant work.

17 The Commissioner’s reevaluation is limited to the petitioner’s claim to disability benefits
18 for the period between July 1, 2006 and February 19, 2010. The Clerk of the Court is instructed
19 to enter judgment accordingly and close this case.

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21 DATED this 10th day of June, 2014.

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24 Leslie A. Bowman
25 United States Magistrate Judge
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