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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Irene Constance Munoz,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-18-00063-TUC-BPV

ORDER

15 Plaintiff Irene Munoz filed the instant action pursuant to 42 U.S.C. § 405(g) and 42
16 U.S.C. § 1383(c)(3) seeking review of the final decision of the Commissioner of Social
17 Security. The Magistrate Judge has jurisdiction over this matter pursuant to the parties'
18 consent under 28 U.S.C. § 636(c). (Doc. 16.) The matter is now fully briefed. (Docs. 18-
19 20.) For the following reasons, the Court affirms the decision of the Commissioner.

20 **I. PROCEDURAL HISTORY**

21 On November 11, 2014, Plaintiff filed a protective application for disability and
22 disability insurance benefits (Administrative Record ("AR") 171). Plaintiff alleged
23 disability as of January 6, 2010 due to post-traumatic stress disorder (PTSD), depression,
24 anxiety, aortic valve insufficiency, asthma, high blood pressure, and obesity. (AR 16.)
25 Plaintiff's application was initially denied on May 3, 2015 (AR 76-89), and upon
26 reconsideration on June 19, 2015 (AR 91-111).

27 After requesting a hearing, on March 8, 2017 Plaintiff testified before an
28 Administrative Law Judge ("ALJ") (AR 16). At the hearing, Plaintiff adjusted the alleged

1 onset date to July 15, 2011 (AR 51), and the ALJ admitted into the administrative record
2 additional, but untimely, medical evidence (AR 16). Nonetheless, the ALJ issued an
3 unfavorable decision on May 17, 2017. (AR 16-33.) The Appeals Counsel denied
4 Plaintiff's Request for Review on December 18, 2017 (AR 1-4), making the ALJ's decision
5 the Commissioner's final decision for the purposes of review.

6 Plaintiff filed the instant action on February 8, 2018. Plaintiff first claims that the
7 ALJ legally erred because she did not consider Plaintiff's mental impairments severe at
8 Step Two, and this error was not harmless because the subsequent Residual Functional
9 Capacity ("RFC") did not account for the limiting effects of Plaintiff's mental impairments.
10 (Doc. 19 at 12.) Plaintiff also argues that the ALJ did not properly analyze the opinions of
11 consultative physician Dr. Noelle Rohen, Ph.D and treating Nurse Practitioner Jennifer
12 Pierce. *Id.* at 21-25.

13 II. STANDARD OF REVIEW

14 The Court has the "power to enter, upon the pleadings and the transcript of the
15 record, a judgment affirming, modifying, or reversing the decision of the Commissioner of
16 Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g).
17 The factual findings of the Commissioner shall be conclusive so long as the findings are
18 based upon substantial evidence and there is no legal error. 42 U.S.C. §§ 405(g), 1383(c)(3);
19 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). Substantial evidence is "more
20 than a mere scintilla[,] but not necessarily a preponderance." *Tommasetti*, 533 F.3d at 1038
21 (quoting *Connett v. Barnhart*, 340 F.3d 871, 873 (9th Cir. 2003)). Further, substantial
22 evidence is "such relevant evidence as a reasonable mind might accept as adequate to
23 support a conclusion." *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Where "the
24 evidence can support either outcome, the court may not substitute its judgment for that of
25 the ALJ." *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing *Matney v. Sullivan*,
26 981 F.2d 1016, 1018 (9th Cir. 1992)). Moreover, the Commissioner, not the Court, is
27 charged with the duty to weigh the evidence, resolve material conflicts in the evidence, and
28 determine the case accordingly. *Matney*, 981 F.2d at 1019. However, the Commissioner's

1 decision “cannot be affirmed simply by isolating a specific quantum of supporting
2 evidence. . . . Rather, the Court must consider the record as a whole, weighing both
3 evidence that supports and evidence that detracts from the [Commissioner’s] conclusion.”
4 *Tackett*, 180 F.3d at 1098 (citation and quotation marks omitted).

5 If the district court determines that the ALJ committed legal error, it must then
6 consider whether the error was harmless. *Treichler v. Comm’r Soc. Sec.*, 775 F.3d 1090,
7 1099 (9th Cir. 2014). Harmless error occurs “when it is clear from the record the ALJ’s
8 error was inconsequential to the ultimate nondisability determination.” *Garcia v. Comm’r*
9 *Soc. Sec.*, 768 F.3d 925, 932 (9th Cir. 2014) (citation and quotation marks omitted).

10 **III. SUMMARY OF ALJ’S FINDINGS**

11 The burden of demonstrating disability lies with a claimant. *Valentine v. Comm’r of*
12 *Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). To do so, a claimant must show that
13 a physical or mental impairment precludes substantial gainful activity, and it is anticipated
14 that this impairment will either result in death or last continuously for at least a year. 42
15 U.S.C. § 423(d)(1).

16 An ALJ determines whether a claimant is disabled through a five-step sequential
17 evaluation. *See* 20 C.F.R. §§ 404.1520, 416.920. A claimant must establish: (1) she has not
18 performed substantial gainful activity since the alleged disability onset date (“Step One”);
19 (2) she has a severe impairment(s) (“Step Two”); and (3) her impairment(s) meets or equals
20 the listed impairment(s) (“Step Three”). *Id.* “If the claimant satisfies these three steps, then
21 the claimant is disabled and entitled to benefits. If the claimant has a severe impairment
22 that does not meet or equal the severity of one of the ailments listed[,]. . . the ALJ then
23 proceeds to Step Four, which requires the ALJ to determine the claimant’s [RFC].”
24 *Dominguez v. Colvin*, 808 F.3d 403, 405 (9th Cir. 2015). “After developing the RFC, the
25 ALJ must determine whether the claimant can perform past relevant work.” *Id.* Then, at
26 Step Five, “the government has the burden of showing that the claimant could perform
27 other work existing in significant numbers in the national economy given the claimant’s
28 RFC, age, education, and work experience.” *Id.*; 20 C.F.R. §§ 404.1520, 416.920.

1 In this case, at Step One, the ALJ found that Plaintiff had not engaged in substantial
2 gainful activity from July 5, 2011 until her last insured date of December 16, 2016. (AR
3 19.)

4 At Step Two, the ALJ determined that Plaintiff had severe physical impairments,
5 including: disease of the aortic valve; obesity; muscle, ligament, and facial disorder; and
6 asthma. *Id.* However, the ALJ found that Plaintiff's mental impairments were not severe.
7 *Id.*

8 Then, the ALJ decided at Step Three that the Plaintiff's impairments did not meet
9 or equal the listed impairments—either singularly or in combination. (AR 26.)

10 At Step Four, the ALJ stated that given the limiting effects of her ailments,
11 Plaintiff's RFC allowed work with a medium exertional level and some physical
12 limitations. (AR 26-27.) Based on this assessment, the ALJ concluded that Plaintiff could
13 perform past relevant work in food service or as a day care worker. (AR 32.)

14 The ALJ never reached Step Five. Rather, the ALJ determined Plaintiff was not
15 disabled at Step Four, and stated that in “comparing the claimant's [RFC] with the physical
16 and mental demands of this work, I find that the claimant was able to perform [past relevant
17 work] as generally performed [in the national economy].” *Id.*

18 **IV. PLAINTIFF'S BACKGROUND AND STATEMENTS ON THE RECORD**

19 Plaintiff was a 58-years old woman (AR 27) with a ninth-grade education (AR 51)
20 on the date of the Administrative Hearing. She stood 4'11” and weighed 196 pounds. (AR
21 51.) Plaintiff completed the ninth grade (AR 51), and previously worked as a day care
22 worker and food service provider (AR 32).

23 Plaintiff testified at the Administrative Hearing that she suffered from depression,
24 confusion, anxiety, panic attacks, and paranoia which prevented her from engaging in
25 work. (AR 51-58.) She also alleged various physical limitations, which are not the subject
26 of this appeal.¹ She was currently being treated for her mental symptoms with venlafaxine
27 and hydroxyzine. (AR 62, 339.) As a result of her mental impairments, Plaintiff stated she

28 ¹ Plaintiff raises no argument about the ALJ's determination about her physical
impairments or credibility.

1 had difficulty concentrating and had developed phobias that often prevented her from
2 leaving the house. (AR 53.)

3 Plaintiff's concentration difficulties allegedly manifested in the following ways.
4 Plaintiff claimed she could concentrate for about 15-20 minutes, but then would have to
5 retrace her steps and remind herself what she was doing. (AR 52-53.) In addition, Plaintiff
6 needed to keep a calendar and write reminders on sticky pads to try to recall daily events
7 and deadlines. (AR 54.) She was forgetful at home; leaving the stove on (AR 60) or putting
8 things away in unusual places (AR 54). Furthermore, she had stopped driving for the most
9 part, because she felt her forgetfulness made her a danger behind the wheel. (AR 54.) To
10 deal with her concentration issues, her family often helped her remember appointments and
11 drove her around. *Id.* Plaintiff also received assistance from her advocate, who helped keep
12 track of appointments *Id.* Finally, interpersonally she felt her lack of concentration
13 prevented her from carrying on conversations with others. (AR 52, 556-56.)

14 Plaintiff testified that her depression and paranoia were variable, she experienced
15 "more bad days than good," and the bad ones occurred around five to six days a month.
16 (AR 57-58.) During bad spells, she would isolate herself in her room and remain in her
17 pajamas. (AR 57.) Plaintiff's grandchildren were not permitted to bother her during these
18 depressive episodes because she had no desire to be around others. *Id.* When in a paranoid
19 state, Plaintiff explained that she missed family events and could not take her dog for a
20 walk. (AR 59.)

21 Plaintiff claimed her mental impairments also manifested in physical dysfunction.
22 After her daughter died from substance abuse in 2009 (AR 59), Plaintiff alleged she went
23 into a deep depression which caused her to gain approximately one hundred pounds (AR
24 51). Even back when Plaintiff was working, her phobias would cause her to feel like
25 passing out. (AR 51.) Often after intense therapy sessions, Plaintiff stated she suffered from
26 explosive diarrhea that her psychiatrist believed was triggered by emotional trauma. (AR
27 56.) In addition, Plaintiff told the ALJ that suffered so much fear and paranoia about the
28 upcoming Administrative Hearing that she broke out in hives. (AR 55.)

1 **V. VOCATIONAL EXPERT STATEMENTS**

2 At the Administrative Hearing, the ALJ presented several hypotheticals to the
3 Vocational Expert. The first two included no mental limitations; the third limited work to
4 simple, routine, repetitive tasks; and the fourth limited work to simple, routine repetitive
5 tasks with occasional contact with the public and coworkers. (AR 68-70.) The VE indicated
6 that a hypothetical person in the first two categories would be able to perform Plaintiff's
7 former work of food service supervisor and day care as generally performed. (AR 68-69.)
8 In contrast, the individual limited to routine tasks could not perform Plaintiff's past work
9 but could still work as a marker, hand packager, or garment sorter. (AR 70.) The same
10 work was still available for a person with the additional limitation of only occasional
11 contact with others, but the percentage of jobs would erode by fifty percent. *Id.* Regardless,
12 the VE noted that a person was unemployable if he or she was off task fifteen percent of
13 the time or absent from work two or more days a month. (AR 70-71.)

14 **VI. ALJ'S SEVERITY DETERMINATION**

15 When evaluating the degree to which Plaintiff's symptoms limit her ability to work,
16 the ALJ first considers (a) whether there is an impairment that would reasonably be
17 expected to cause the claimant's symptoms, and (b) the severity of claimant's ailments,
18 including intensity, persistence, and limiting effects of the alleged symptoms. 20 C.F.R. §§
19 404.1529, 416.929; Social Security Ruling ("SSR") 16-3p (Mar. 28, 2016). At Step Two,
20 for mental impairments an ALJ evaluates the degree of impairment in four areas:
21 understanding, remembering, or applying information; interacting socially; concentrating,
22 persisting, and maintaining pace; and self-adapting and managing. 20 C.F.R. §
23 404.1520a(c)(3) (2017). Degrees of impairment include: none, mild, moderate, marked,
24 and extreme. *Id.* Then, based on the degree of a claimant's limitation, the ALJ determines
25 the severity of the mental impairment. 20 C.F.R. §§ 404.1520a(d); 416.920(a)(4)(ii).

26 "[T]he step-two inquiry is a de minimis screening device to dispose of groundless
27 claims. . . . An impairment or combination of impairments can be found not severe only if
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1 the evidence establishes a slight abnormality that has no more than a minimal effect on an
2 individual's ability to work." *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996)
3 (internal citation and quotation marks omitted) (citing SSR 85-28. Despite the de minimis
4 screening measure, in general a finding of "none" to "mild" impairment will preclude a
5 determination that an impairment is severe, unless the record demonstrates "more than a
6 minimal limitation in [the claimant's] ability to do basic work activities." 20 C.F.R. §
7 404.1520a(d)(1) (citing 28 C.F.R. § 404.1522). "Work activities" signify the ability to: see,
8 hear, and speak; comprehend, perform, and remember easy instructions; use judgment;
9 respond appropriately; and handle changes in work routine. 20 C.F.R. §404.1522. A
10 finding that an impairment or combination of impairments is not severe at Step Two must
11 be supported by "clearly established medical evidence." *Webb v. Barnhart*, 433 F.3d 683,
12 687 (9th Cir. 2005) (quoting SSR 85-28); *see also Orr v. Astrue*, 2008 WL 344528 (D.
13 Ariz. Feb. 7, 2008) (if not clearly established through medical evidence, an ALJ must carry
14 out the five-step evaluation). Specifically, concentration difficulties do not severely limit
15 the ability to perform work activities unless there are abnormalities noted "by medically
16 acceptable clinical diagnostic techniques that can be observed *apart from an individual's*
17 *[alleged] symptoms.*" SSR 16-3p (emphasis added).

18 Plaintiff's claim alleges harmful legal error occurred during the ALJ's Step Two
19 severity determination. (Doc. 19 at 12.) This error caused a windfall, resulting in harmful
20 error in the RFC because the RFC did not include Plaintiff's mental limitations. *Id.*

21 The ALJ evaluated Plaintiff's mental symptoms as a whole, rather than under any
22 individual listing. Her severity analysis stated the following:

23 Other complaints and diagnoses appear in the treatment records periodically,
24 including . . . mental conditions. There is no objective medical evidence to
25 show these impairments are more than transient or they cause significant
26 vocational limitations.

27 As a threshold matter, I am cognizant of the substantial overlap in
28 symptomology between different mental impairments, as well as the
inherently subjective nature of mental diagnoses. Accordingly, the
claimant's psychological symptoms and their effect on her functioning have
been considered together, instead of separately, regardless of the diagnostic

1 label attached.
2 (AR 19.)

3 After finding Plaintiff's mental impairments were minimal, the ALJ analyzed
4 Plaintiff's degree of impairments according to the four areas of impairment necessary
5 under 20 C.F.R. § 404.1520a(c)(3). First, the ALJ determined that Plaintiff had no
6 limitations in understanding, remembering, or applying information. (AR 25.) In support,
7 the ALJ explained that Plaintiff was the primary caregiver for three grandchildren; she
8 ensured that the grandchildren were fed well, supervised, safe, and completed schoolwork.
9 *Id.* She taught them how to survive, limited computer usage, and oversaw medications. *Id.*
10 Further, she utilized a calendar and created lists to keep track of her day. *Id.* Moreover,
11 consultative examiner Dr. Noelle Rohen also found Plaintiff's understanding and memory
12 were grossly intact. *Id.* (citing AR 889). Plaintiff's ability to raise grandchildren full time,
13 her organizational skills, and her intact understanding and memory suggested Plaintiff was
14 capable of working. *Id.*

15 Second, the ALJ found only mild limitations in Plaintiff's social functioning. *Id.*
16 The ALJ determined Plaintiff's claim that she isolated herself from others contradicted her
17 admitted activities such as regular movies, meals, and overnights with friends; constant
18 company when leaving the home; as well as by the medical records which demonstrated
19 appropriate grooming and hygiene. *Id.*

20 Third, the ALJ concluded that the limitations on Plaintiff's concentration,
21 persistence, and pace (CPP) were merely mild, despite her claims to the contrary. *Id.* The
22 ALJ stated there was little concrete evidence of CPP limitations, and a lot of evidence that
23 Plaintiff's attention span was unimpaired. *Id.* (citing AR 1091, 1096, 1105, 1111, 1161).
24 Also, even when there were mild indications of attention difficulties, she was still able to
25 follow and participate in conversation *Id.* (citing AR 889). In addition, the ALJ observed
26 that although Plaintiff claimed her attention difficulties began after the death of her
27 daughter in 2009, she had not reported any memory problems until 2015. *Id.* (citing AR
28 641). This discrepancy suggested her CPP impairments were not as significant as Plaintiff

1 alleged.

2 Finally, the ALJ stated the evidence supported only mild limitations in Plaintiff's
3 ability to adapt or manage herself. *Id.* Plaintiff was actively participating in treatment for
4 her alleged anxiety and depression. *Id.* Also, Plaintiff's activities of daily living (cleaning,
5 caring for grandchildren and husband, going to social and family events) showed little
6 limitation, notwithstanding one documented instance where she was oblivious to burning
7 food. *Id.* Finally, even the consultative examiner found that Plaintiff could learn new skills,
8 which supported Plaintiff's ability to adapt. *Id.*

9 In addition to the four areas of evaluation, the ALJ's severity section discussed other
10 reasons why she found Plaintiff's symptoms of anxiety, depression, and PTSD posed no
11 more than minimal limitations on her ability to engage in work and undermined her alleged
12 symptoms. The ALJ suggested that because Plaintiff had adopted and cared for her
13 grandchildren—two of whom were adopted before her daughter's death—that this diminished
14 her allegations of mental impairment. (AR 21.) The ALJ mentioned that Plaintiff's
15 childcare duties were so significant that she received subsidies for them. (AR 23.) The ALJ
16 pointed to several activities which suggested Plaintiff was quite involved with her
17 grandchildren's lives, and suggested that Plaintiff's attempts to find full time child care
18 was evidence that her involvement in her grandchildren's lives was substantial. *Id.* She
19 was so involved, in fact, that in 2015 Plaintiff went to lunch and a movie just to get away
20 from the stressors of caring for three children. *Id.* In addition to familial activities, the ALJ
21 noted that Plaintiff went to dinners and movies with friends, walked in Sabino Canyon, and
22 entertained her husband's family for Thanksgiving. *Id.*

23 However, the ALJ did acknowledge that Plaintiff received counseling and
24 medication from three different providers for mental health needs, and her medications had
25 to be adjusted frequently. (AR 21.) She also conceded that Plaintiff's provider felt her
26 depression may have been undertreated in the past. (AR 22.) The ALJ admitted that
27 Plaintiff was approved for serious mental illness (SMI) services through Marana Health
28 Center in late 2014 (AR 21), and received a PTSD diagnoses and attended PTSD group

1 counseling (AR 22). But, the ALJ explained, despite any difficulties, these did not limit
2 her ability to work.

3 The Court finds that the ALJ's determination that Plaintiff's mental impairments
4 were not severe was substantially supported by the record. The ALJ referred to several
5 instances in the administrative record showing that Plaintiff's mental impairments did not
6 limit her ability to engage in work activities. The ALJ acknowledged that Plaintiff had been
7 on various medications for depression, received a diagnosis for PTSD, and obtained
8 services in the past. The ALJ also conceded that this could reasonably be expected to cause
9 Plaintiff's symptoms. But, the ALJ concluded that Plaintiff's impairment was largely based
10 on her subjective disclosure and there was little medical evidence in support. The ALJ cited
11 to instances in the medical record that showed Plaintiff's mental impairments had a
12 minimal impact on her ability to work. For instance, she was able to act as primary
13 caregiver for her grandchildren, and as many moms will attest, that alone is a full-time job.
14 In addition, she regularly interacted socially, was cooperative, and maintained proper
15 hygiene. Furthermore, she was able to handle increased stressors through therapy,
16 assistance from others, and self-reflection. Moreover, medical opinions revealed she was
17 able to follow and participate in conversations; her understanding and memory were
18 grossly intact; and she could handle her own benefits, learn new skills, and respond
19 appropriately. The ALJ showed that Plaintiff could understand and remember easy
20 instructions because she utilized reminder systems and oversaw her grandchildren's
21 medication schedules and homework. Finally, Plaintiff's concentration difficulties were
22 almost solely subjective, and the ALJ cited many instances wherein medical experts noted
23 her ability to concentrate, use good judgment, and carry on conversations. In short, the ALJ
24 did not err in finding Plaintiff's impairments were not severe. Finally, as explained below,
25 the validity of the ALJ's decision is not affected by her evaluation of Plaintiff's medical
26 examiners.

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1 **VII. ALJ’S ANALYSIS OF JENNIFER PIERCE’S OPINION**

2 In addition to the aforementioned analysis, at Step Two the ALJ evaluated the
3 opinion of treating practitioner Jennifer Pierce, DNP, PMHNP-BC. (AR 23, 1234-37.)
4 Plaintiff visited Ms. Pierce for psychiatric medication management every 2-3 months. (AR
5 1235.) Ms. Pierce’s 2016 medical impairments questionnaire stated that Plaintiff was likely
6 to suffer from a lifetime of recurrent symptoms. *Id.* In addition, Pierce found Plaintiff was
7 unable to travel to unfamiliar places or use public transportation. *Id.* Furthermore, Ms.
8 Pierce believed Plaintiff would be unable to complete a workday without interruptions
9 from her psychological symptoms, would be absent from work more than twice a month,
10 and would be unable to deal with normal work stress. *Id.* In sum, under the VE’s analysis,
11 Ms. Pierce’s evaluation of Plaintiff’s alleged ailments would preclude Plaintiff from all
12 work.

13 Nonetheless, the ALJ gave limited weight to Pierce’s opinion, stating it conflicted
14 with a separate note by Ms. Pierce. (AR 23.) In an appointment note from November 1,
15 2016, Ms. Pierce observed that Plaintiff was alert and exhibited a small improvement in
16 her level of anxiety and some improvement in depression. (AR 23; 1161-62.) Plaintiff also
17 demonstrated good judgment, normal attention, and appropriate grooming. (AR 23; 1161-
18 62.)

19 First, Plaintiff argues that the ALJ’s assessment of Ms. Pierce opinion did not
20 consider her evaluations as a whole, and finding Ms. Pierce’s determinations to be
21 inconsistent with her overall findings constituted a substitution of the ALJ’s medical
22 opinion. (Doc. 19 at 24.) Second, the ALJ should not have used treatment records as
23 support of Plaintiff’s ability to function, because Plaintiff was not being subjected to
24 additional stressors of employment when she was treated. *Id.*

25 “[I]n evaluating a claimant’s subjective complaints . . . , the adjudicator must give
26 full consideration to all of the available evidence, medical *and other*, that reflects on the
27 impairment and any attendant limitations of function.” *Smolen v. Chater*, 80 F.3d 1273,
28 1285 (9th Cir. 1996) (alterations and emphasis in original). Nurse practitioners are

1 considered other sources. *Gomez v. Chater*, 74 F.3d 967, 971 (9th Cir. 1996). An other
2 source cannot determine whether impairment exists; but may outline the severity of
3 Plaintiff's symptoms and the effect of such symptoms on functioning. SSR 06–03p.
4 “[Other sources] are not entitled to the same deference [as acceptable medical sources] . .
5 . . The ALJ may discount testimony from these ‘other sources’ if the ALJ ‘gives reasons
6 germane to each witness for doing so.’” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir.
7 2012) (quoting *Turner*, 613 F.3d 1224); see 20 C.F.R. § 404.1527. An ALJ provides not
8 merely germane, but clear and convincing reasons for rejecting a treating or examining
9 physician's opinion if such opinion is “conclusory, brief, and unsupported by the record as
10 a whole[] or by objective medical findings,” *Batson v. Commissioner*, 359 F.3d 1190, 1195
11 (9th Cir. 2004), or if there are significant discrepancies between the physician's opinion
12 and her clinical records, see *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

13 Contrary to Plaintiff's contention, the ALJ was permitted to give Ms. Pierce's
14 opinion less weight because it conflicted with her clinical records. See *Bayliss*, 427 F.3d at
15 1216. Although the ALJ discussed only one other evaluation, the ALJ was correct that
16 overall Ms. Pierce (and the Pathways service practitioner before her) found that Plaintiff
17 maintained proper hygiene; was cooperative and articulate; was generally in a good mood;
18 demonstrated fair judgment and insight; had grossly intact memory; and exhibited normal
19 intellectual functioning. (See AR 1091, 1095, 1099, 1102, 1105, 1108, 1141, 1161.) Even
20 in the midst of suffering from irritability and impaired attention, her memory was still
21 grossly intact, her insight and judgment were fair, she spoke articulately, and acted
22 cooperatively. (AR 1164.) This was not a substitution of the ALJ's medical opinion; the
23 ALJ merely recognized that as a whole, Ms. Pierce's observations differed from her
24 conclusions.

25 But, this was not the only reason the ALJ minimized Ms. Pierce's opinion.
26 Plaintiff's ability to go out to eat, see movies, visit with friends, and entertain extended
27 family undermined Ms. Pierce's conclusion that Plaintiff could not travel to new places. It
28 was reasonable for the ALJ to conclude that Ms. Pierce's assertions were not supported by

1 her overall observations of Plaintiff and Plaintiff's own concessions. The ALJ provided
2 germane reasons for discounting the opinion supported by substantial evidence, and
3 therefore no legal error occurred.

4 **VIII. ALJ'S ANALYSIS OF DR. NOELLE ROHEN, PH.D.'S OPINION**

5 At Step Two, the ALJ also considered a consultative psychological examination by
6 Dr. Noelle Rohen, Ph.D. (AR 23; 885-88.) The psychological report was based on Dr.
7 Rohen's clinical interview, a Mini Mental Status Examination (MMSE), and medical
8 records, but stated "[u]nless specifically noted, the following narrative represents
9 claimant's self-report." (AR 885.) Plaintiff reported to Dr. Noelle that she suffered from
10 long term depression and anxiety, which was exacerbated after her daughter's death. (AR
11 886.) She said she suffered paralyzing anxiety at work because she worked at the hospital
12 where her daughter passed away, but ultimately, she left this job because of a shoulder
13 injury. *Id.* Plaintiff also told Dr. Rohen she was agitated and paranoid around people who
14 were not family or close friends. (AR 886, 889.) Finally, she asserted that she had difficulty
15 concentrating; for instance, she misplaced her grandchildren's birth certificates, left items
16 on the stove to burn, and wrote appointments incorrectly in her calendar. (AR 886; 1167.)

17 Dr. Rohen independently observed that Plaintiff exhibited adequate hygiene,
18 maintained good eye contact, and acted pleasant and cooperative. (AR 887.) Her thinking
19 was coherent and memory adequate. *Id.* Dr. Rohen concluded that Plaintiff was capable of
20 learning new, simple tasks and handling benefit payments in her own interest. (AR 889-
21 90.)

22 Based on her observations, Dr. Rohen concluded that Plaintiff's score on the Mini
23 Mental Status Examination (23/30) could indicate cognitive problems but alternately could
24 have been due to poor focus or subpar effort on the exam. (AR 887.) Dr. Rohen speculated
25 that the lack of effort could have been intentional or perhaps was caused by Plaintiff's
26 "depressive amotivation in general." (AR 888.) Dr. Rohen expected chronic psychiatric
27 issues, and noted that Plaintiff was dealing with trauma and grief that *may* affect her ability
28 to work. *Id.* Furthermore, Dr. Rohen suggested plaintiff *may* be vulnerable. (AR 889.)

1 Despite the observations, Dr. Rohen found Plaintiff was still able to handle benefits in her
2 own behalf, could learn new simple tasks. (AR 888.)

3 The ALJ gave partial weight to Dr. Rohen's opinion. (AR 24.) The ALJ noted that
4 the opinion relied heavily on Plaintiff's subjective statements, which were inconsistent
5 with Plaintiff's reported daily activities in other parts of the record (i.e. caring for
6 grandchildren; attending school events; cleaning the home; reading; washing and sorting
7 clothes and dishes; eating and watching movies with friends; and walking in Sabino
8 Canyon). *Id.* Furthermore, the ALJ stated that the evaluation was simply a snapshot of
9 functioning at that moment, not a long-term assessment. *Id.* Moreover, there was no
10 objective evidence supporting her alleged memory loss. *Id.* Finally, the ALJ pointed out
11 that Dr. Rohen's opinion did not preclude Plaintiff from work, it merely suggested she may
12 have subpar persistence, be vulnerable, and be happier in employment that was less
13 demanding and more static. (AR 23-24; 889.)

14 An ALJ may reject a physician's opinion that has been contradicted by another
15 opinion by "providing 'specific and legitimate reasons' supported by substantial evidence
16 in the record." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Lester*, 81 F.3d
17 at 830). An ALJ provides sufficient reasoning for rejecting a physician's opinion "by
18 setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
19 stating [her] interpretation thereof, and making findings. . . . The ALJ must do more than
20 offer his conclusions. He must set forth his own interpretations and explain why they, rather
21 than the doctors', are correct." *Orn*, 495 F.3d at 632 (internal citation omitted).

22 Plaintiff argues that Dr. Rohen was called as a consultative examiner either to
23 resolve inconsistencies in the record or because the record as it was did not support a
24 determination. (Doc. 19 at 21.) Plaintiff claims the ALJ should have gathered more
25 information from Dr. Rohen or the other contradicting examiners, rather than simply
26 asserting that the opinion was inconsistent and a snapshot of Plaintiff's functioning. *Id.* at
27 21, 23-24.) Furthermore, the ALJ's basis for undermining Dr. Rohen's opinion because it
28 was a snapshot was irrational and insufficient. *Id.* at 21-22. Finally, the ALJ was not

1 permitted to rely on the fact that Dr. Rohen's opinion was highly dependent on Plaintiff's
2 subjective complaints. *Id.* at 22.

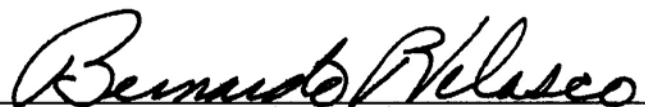
3 While Plaintiff claims that the ALJ needed to recall Dr. Rohen for clarification, it is
4 Plaintiff's burden to show disability, and the ALJ need only request a reexamination when
5 the report was ambiguous. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).
6 The ALJ did not find that the report ambiguous. In fact, even if the ALJ had incorporated
7 Dr. Rohen's limitations, the ALJ noted that the limitations conceded Plaintiff could
8 perform simple work. Furthermore, Dr. Rohen's opinion expressly noted which parts of
9 her opinion were based on Plaintiff's subjective complaints and which were based on
10 objective observation. These objective observations supported the ALJ's conclusion
11 Plaintiff's mental impairments were not as limiting as she asserted. The objective evidence
12 indicated Plaintiff took care of herself, was pleasant, and her thoughts and memory were
13 adequate. (AR 887.) Moreover, Dr. Rohen's objective evidence was not the only premise
14 for which the ALJ depended when determining the weight. Dr. Rohen's opinion was
15 contradicted by two other physicians, Jaine Foster-Valdez, Ph.D. and Raymond Novac,
16 Ph.D., each of whom found that Plaintiff did not suffer any more than mild, nonsevere
17 mental limitations. (AR 24.) Also, as explained earlier, her activities belied her claims that
18 she was incapable of working. In combination, the ALJ provided substantial, legitimate
19 reasons to reject Dr. Rohen's opinion.

20 In conclusion, Plaintiff has failed to demonstrate the ALJ committed legal error, or
21 that her decision was not substantially supported by the record.

22 Accordingly, **IT IS ORDERED:**

- 23
24 1. The Commissioner's decision denying benefits is **AFFIRMED**.
25 2. The Clerk of Court is directed to enter judgment accordingly.

26 Dated this 11th day of February, 2019.

27 

28 Bernardo P. Velasco
United States Magistrate Judge