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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Joni Diane Stringer,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-00387-TUC-JCH

ORDER

15 Plaintiff Joni Diane Stringer brought this action under 42 U.S.C. §§ 405(g) and
16 1383(c)(3), seeking judicial review of a final decision by the Commissioner of Social
17 Security ("Commissioner"). Doc. 1. This matter was referred to United States Magistrate
18 Judge Lynette C. Kimmins for Report and Recommendation ("R&R"). Doc. 14. On
19 December 18, 2023, Judge Kimmins issued her R&R finding the Administrative Law
20 Judge ("ALJ") did not err and recommending this Court affirm the Commissioner's
21 decision. Doc. 26 at 12. Plaintiff objects to the R&R. Doc. 27. The Court will overrule
22 Plaintiff's objections, adopt the R&R in full, and affirm the Commissioner's decision.

23 **I. FACTUAL AND PROCEDURAL HISTORY**

24 In February 2019, Plaintiff filed her initial application for Title II Disability
25 Insurance Benefits, alleging disability beginning June 1, 2017. *See* Administrative Record
26 ("AR") 316–25. Plaintiff's application was denied upon initial review and on
27 reconsideration. AR 105–31. On September 2, 2020, ALJ Kelly Walls found Plaintiff not
28 disabled because she could perform past relevant work. AR 132–47. On February 8, 2021,

1 the Appeals Council vacated the ALJ's decision and remanded the case to the ALJ to
2 resolve conflicts between vocational expert evidence and the Dictionary of Occupational
3 Titles. AR 152–55. On December 22, 2021, the ALJ again found Plaintiff not disabled
4 because she could perform past relevant work and concluded that Plaintiff was not disabled
5 pursuant to the Social Security Act. AR 23–35.

6 To be found disabled and qualified for Disability Insurance Benefits or
7 Supplemental Security Income, a claimant must be unable "to engage in any substantial
8 gainful activity by reason of any medically determinable physical or mental impairment
9 which can be expected to result in death or which has lasted or can be expected to last for
10 a continuous period of not less than 12 months." 42 U.S.C. §§ 423(d)(1)(a) &
11 1382(a)(3)(A). The same five-step sequential evaluation governs eligibility for benefits
12 under both programs. *See* 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76;
13 *Bowen v. Yuckert*, 482 U.S. 137, 140–142 (1987). The five-step process requires the
14 claimant to show (1) she has not worked since the alleged disability onset date, (2) she has
15 a severe physical or mental impairment, and (3) the impairment meets or equals a listed
16 impairment, or (4) her residual functional capacity ("RFC") precludes her from doing her
17 past work. If at any step the Commissioner determines that a claimant is or is not disabled,
18 the inquiry ends. If the claimant satisfies her burden through step four, the burden shifts to
19 the Commissioner to show at step five that the claimant has the RFC to perform other work
20 that exists in substantial numbers in the national economy. *Lester v. Chater*, 81 F.3d 821,
21 828 n. 5 (9th Cir. 1995); *see also Bowen*, 482 U.S. at 146 n. 5 (describing shifting burden
22 at step five).

23 In this case, the ALJ found at step one that Plaintiff had not engaged in substantial
24 gainful activity during the relevant period. AR 26. At step two, the ALJ found Plaintiff had
25 "severe"¹ impairments including COPD, asthma, obesity, adjustment disorder with
26 depressed mood and insomnia, and major depressive disorder. AR 26. At step three, the
27 ALJ found that Plaintiff's impairments did not meet or medically equal the severity of one

28 ¹ An "impairment or combination of impairments" is "severe" if it "significantly limits
[the] physical or mental ability to do basic work activities." 20 C.F.R. § 404.1520(c).

1 of the impairments listed in 20 C.F.R., Part 404, Subpart P, Appendix 1. AR 26–29.
2 Between steps three and four, the ALJ determined Plaintiff had the Residual Functional
3 Capacity² ("RFC") to perform medium work as defined in 20 CFR 404.1567(c), with
4 postural limitations, restricted exposure to concentrated environmental factors (dust,
5 fumes, gases, odors, and chemicals), and with limited decision-making and social
6 interaction in the workplace. AR 29. At step four, the ALJ found Plaintiff could perform
7 past relevant work as a laundry attendant and that such work does not require activities
8 precluded by Plaintiff's RFC. AR 34. Accordingly, the ALJ concluded Plaintiff was not
9 disabled since June 1, 2017, the date she filed her application. AR 34. Plaintiff requested
10 review before the Appeals Council, which was denied on July 6, 2022, thereby making the
11 ALJ's decision the Commissioner's final decision. AR 1–7. Thereafter, Plaintiff timely filed
12 the instant action. Doc. 1. Plaintiff argues the ALJ erred by (1) improperly rejecting opinion
13 evidence by Dr. Peter Hauser, MD ("Dr. Hauser") and (2) failing to provide clear and
14 convincing reasons for rejecting Plaintiff's symptom testimony. Doc. 20.

15 Judge Kimmins issued an R&R finding that the ALJ did not err in rejecting opinion
16 evidence by Dr. Peter Hauser, MD ("Dr. Hauser") or rejecting Plaintiff's symptom
17 testimony. *See* Doc. 26. Plaintiff objects.³ Doc. 27. Plaintiff first objects to Judge
18 Kimmins's recommended finding that the ALJ adequately addressed "supportability" with
19 respect to the medical opinions of Dr. Hauser. Doc. 27 at 2–3. Second, Plaintiff objects to
20 the recommendation that any failure by the ALJ to explicitly address both the supportability
21 and consistency of Dr. Hauser's opinions was harmless error. Doc. 27 at 3–6. Third,
22 Plaintiff objects to the recommendation that the ALJ provided clear and convincing reasons
23 for discounting symptom testimony that Plaintiff's Major Depressive Disorder produces

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25 ² "Between steps three and four of the five-step evaluation, the ALJ must proceed to an
26 intermediate step in which the ALJ assesses the claimant's residual functional capacity." *Massachi*
27 *v. Astrue*, 486 F.3d 1149, 1151 n.2 (9th Cir. 2007). A plaintiff's residual functional capacity is
28 what they can do despite existing exertional and nonexertional limitations. *Cooper v. Sullivan*, 880
F.2d 1152, 1155–56 n.5–7 (9th Cir. 1989).

³ Plaintiff did not object to the R&R's factual and procedural summary, or the standard of review
(*see* Doc. 27), therefore the Court adopts those portions in full. Doc. 26 at 1–3.

1 disabling restrictions. Doc. 27 at 7–9. Plaintiff requests this Court sustain Plaintiff's
2 objections, decline to adopt the R&R, and remand the matter for further administrative
3 proceedings including a de novo hearing and a new decision. Doc. 27 at 9.

4 **II. STANDARD OF REVIEW**

5 **A. Review of the Report and Recommendation**

6 In reviewing a Magistrate Judge's R&R, "[a] judge of the court shall make a de novo
7 determination of those portions of the report ... to which objection is made." 28 U.S.C. §
8 636(b)(1); *see also* Fed. R. Civ. P. 72(b); *United States v. Remsing*, 874 F.2d 614, 617 (9th
9 Cir. 1989).

10 **B. Review of the ALJ's Decision**

11 An ALJ's decision may be reversed only when it is unsupported by substantial
12 evidence or constitutes harmful legal error. *Aukland v. Massanari*, 257 F.3d 1033, 1035
13 (9th Cir. 2001). "Substantial evidence means more than a mere scintilla, but less than a
14 preponderance, i.e., such relevant evidence as a reasonable mind might accept as adequate
15 to support a conclusion." *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)
16 (internal quotation and citation omitted). "Under the substantial-evidence standard, a court
17 looks to an existing administrative record and asks whether it contains 'sufficien[t]
18 evidence' to support the agency's factual determinations." *Biestek v. Berryhill*, 139 S. Ct.
19 1148, 1154 (2019) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

20 While the Court is required to examine the record as a whole, it may neither reweigh
21 the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*,
22 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
23 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

24 **III. ANALYSIS**

25 **A. Supportability**

26 Plaintiff argues the ALJ did not address supportability in rejecting opinion evidence
27 from Dr. Hauser and Judge Kimmins's recommendation finding otherwise should be
28 rejected. While the Court conducted a de novo review of the entire Administrative Record,

1 Plaintiff did not object to the accuracy of Judge Kimmins's factual summary of Dr. Hauser's
2 treatment, notes, and conclusions (Doc. 26 at 4:12–6:3), therefore the Court adopts those
3 portions of the R&R in full and will not rehearse those facts here. Notably, the ALJ found
4 several of Dr. Hauser's assertions of "marked limitations" lacked support, which negatively
5 affected the persuasiveness of Dr. Hauser's opinion. *See* AR 33.

6 ALJs are to consider both supportability⁴ and consistency⁵ when evaluating the
7 persuasiveness of a medical opinion. 20 C.F.R. § 404.1520c(b)(2) (supportability and
8 consistency are "the most important factors" for persuasiveness of a medical opinion).
9 ALJs are required to explain how they "considered the supportability and consistency
10 factors for a medical source's medical opinions..." 20 C.F.R. § 404.1520c(b)(2). "[A]n ALJ
11 cannot reject an examining or treating doctor's opinion as unsupported or inconsistent
12 without providing an explanation supported by substantial evidence." *Woods v. Kijakazi*,
13 32 F.4th 785, 792 (9th Cir. 2022).

14 The Court agrees with the Magistrate Judge's finding that the ALJ adequately
15 addressed supportability in the decision: "There is insufficient evidence to *support* [Dr.
16 Hauser's] assertion that [Plaintiff] has marked limitations in social functioning, adaptation
17 and self-care, or concentration, persistence and pace." AR 33 (emphasis added). The ALJ
18 first listed several statements from Dr. Hauser's September 18, 2020, opinion before
19 finding his opinion only partially persuasive. AR 33. The ALJ articulates the reason for
20 this determination as discrepancies between Dr. Hauser's opinion and Dr. Hauser's medical
21 records. *See* AR 30–33. The ALJ reasoned that Dr. Hauser's records contained insufficient
22 or contradictory evidence to support the opinion that Plaintiff has "marked limitations" in
23 three domains of mental functioning. AR 33. The ALJ then notes that Dr. Hauser's records⁶

24 ⁴ Supportability refers to the connection between (1) objective medical evidence and
25 supporting explanations and (2) the resulting medical opinions. *See* 20 C.F.R. §
26 404.1520c(c)(1). It is an "internal check" on whether a doctor's opinions are supported by
27 that doctor's medical records. *See* Doc. 27 at 2 n.1.

28 ⁵ Consistency refers to the connection between (1) the medical opinion and (2) other
29 medical and nonmedical sources from the claim. *See* 20 C.F.R. § 404.1520c(c)(2). In other
30 words, it is an "external check" on whether a particular doctor's opinion is consistent with
31 evidence from other sources in the claim record. *See* Doc. 27 at 2 n.1.

⁶ While the ALJ only cites to Dr. Hauser's records once in the paragraph discussing
32 supportability, the ALJ also refers to discussions "above in the body of [the ALJ's]

1 detailing Plaintiff's medication compliance, intellectual functioning, and motivation are in
2 contradiction with Dr. Hauser's September 2020 opinion. AR 33. The ALJ considered the
3 supportability of Dr. Hauser's opinion, articulated the reasons for finding the opinion only
4 partially persuasive, and supported those reasons with substantial evidence from the
5 Administrative Record. Thus, the ALJ adequately addressed the supportability of Dr.
6 Hauser's medical opinion. The Court will overrule Plaintiff's objections and fully adopt the
7 Magistrate Judge's recommendation on this point.

8 **B. Harmless Error**

9 Plaintiff alleges that any legal error is grounds to set aside an ALJ's determination.
10 *See* Doc. 25 at 5. But the Court "may not reverse an ALJ's decision on account of an error
11 that is harmless." *Molina v. Astrue*, 674 F.3d 1004, 1111 (9th Cir 2012), *superseded by*
12 *regulation on other grounds*. "An error is harmless if it is inconsequential to the ultimate
13 nondisability determination[.]" *Treichler v. Comm'r of Soc., Sec. Admin.*, 775 F.3d 1090,
14 1099 (9th Cir. 2015) (internal quotation and citation omitted). Put differently, "an error is
15 harmless so long as there remains substantial evidence supporting the ALJ's decision and
16 the error does not negate the validity of the ALJ's ultimate conclusion." *Molina*, 674 F.3d
17 at 1115 (internal quotation marks and citations omitted).

18 Even if the ALJ had not adequately addressed supportability, it would be harmless
19 error because the persuasiveness determination was supported by substantial evidence. The
20 regulations state ALJs must address both supportability and consistency when explaining
21 the persuasiveness of a medical opinion. 20 C.F.R. § 404.1520c(b)(2) (An ALJ "will
22 explain" how it considers supportability and consistency, versus other statutory factors that
23 ALJs simply "may, but are not required to, explain."). But 82 Fed. Reg. at 5854 states "[a]
24 medical opinion without supporting evidence, or one that is inconsistent with evidence
25 from other sources, will not be persuasive regardless of who made the medical opinion."

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27 decision"—discussions that thoroughly cite to Dr. Hauser's records. *See* AR 30–33. Thus,
28 the Court will infer that the ALJ was referring to Dr. Hauser's records to evaluate the
supportability of Dr. Hauser's opinion. *See Magallanes v. Bowen*, 881 F.2d 747, 755 (9th
Cir. 1989) (proper for a reviewing court to draw "specific and legitimate inferences from
the ALJ's opinion").

1 Similarly, in *Woods*, the Court of Appeals upheld an ALJ's rejection of a medical opinion
2 that only addressed consistency, stating "the decision to discredit any medical opinion,
3 must simply be supported by substantial evidence." 32 F.4th at 787. Other courts have
4 inferred from the *Woods* decision that an ALJ addressing only supportability or consistency
5 is harmless error, so long as there is substantial evidence to support the finding. *See Joseph*
6 *F. v. Kijakazi*, No. ED CV-22-050-DFM, 2022 WL 17903079, at *7 (C.D. Cal. Oct. 11,
7 2022) (collecting cases), *appeal dismissed sub nom. Fields v. Kijakazi*, No. 22-56187, 2023
8 WL 2572464 (9th Cir. Jan. 26, 2023). The Court agrees with this implication⁷ and finds
9 that even if the ALJ failed to address supportability, the error is harmless because the ALJ
10 adequately addressed consistency.

11 Following Plaintiff's argument would require a longer path to the same outcome. If
12 the ALJ finds persuasiveness already partially or fully failed based on one factor, remand
13 to address the other factor would not reverse that persuasiveness finding. This is the very
14 sort of error that is "inconsequential to the ultimate nondisability determination." The Court
15 will overrule Plaintiff's objections and fully adopt the Magistrate Judge's explanation on
16 this point.

17 **C. Discounting Major Depressive Disorder Symptom Testimony**

18 In evaluating symptom testimony, the ALJ must engage in a two-step analysis. First,
19 the ALJ must determine whether the claimant presented objective medical evidence of an
20 impairment that could reasonably be expected to produce the symptoms alleged. *See* 20
21 C.F.R. §§ 404.1529 & 416.929. If the claimant has presented such evidence, the ALJ
22 proceeds to consider "all of the available evidence, including [the claimant's] history, the
23 signs and laboratory findings, and statements from [the claimant]," her doctors, and other
24 persons to determine the persistence and intensity of these symptoms. *See* 20 C.F.R. §
25 404.1529(c)(1). If there is no evidence of malingering, the ALJ may reject the claimant's

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27 ⁷ Plaintiff objects to any recommendation by the Magistrate Judge that the District Court
28 find the Court of Appeals in *Woods* held "that the ALJ is only required to address one
factor or the other ... [or] that substantial evidence trumps the need to comply with the
regulations." Doc. 27 at 5. The Magistrate Judge made no such recommendation, and the
Court makes no such finding.

1 symptom testimony only by giving specific, clear, and convincing reasons that are
2 supported by substantial evidence. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).
3 In other words, "[t]he ALJ must specify what testimony is not credible and identify the
4 evidence that undermines the claimant's complaints – general findings are insufficient."
5 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005) (internal citation and quotation
6 omitted); *see Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (finding insufficient
7 the ALJ's "boilerplate statement" that the claimant's symptom testimony was "not entirely
8 consistent with the objective medical evidence").

9 Here, the ALJ found Plaintiff's medically determinable impairments could
10 reasonably be expected to cause her alleged symptoms, but concluded Plaintiff's
11 "statements concerning the intensity, persistence and limiting effects of these symptoms
12 are not entirely consistent with the medical evidence and other evidence in the record for
13 the reasons explained in this decision." AR 30. Plaintiff objects to the ALJ's conclusions
14 related to Plaintiff's mental health symptom testimony. Plaintiff argues that "the ALJ does
15 not point to genuine inconsistencies; rather, she suggests character deficits and implies that
16 Plaintiff's condition is her own fault." Doc. 20 at 18. Plaintiff alleges the ALJ failed to
17 address Plaintiff's testimony "that she is unable to tolerate being around people" and instead
18 improperly chastised Plaintiff for not following her prescribed medication regimen. Doc.
19 25 at 7–8. Further, Plaintiff objects to the Magistrate Judge's recommended finding that
20 "the ALJ's discussion about why Plaintiff ceased working and the fact that she continued
21 to look for work were clear and convincing reasons for the ALJ to discount [Plaintiff's]
22 testimony." Doc. 27 at 7.

23 Plaintiff did not object to the accuracy of the Magistrate Judge's summary of the
24 Administrative Record on this issue. *See generally* Doc. 27 at 7–9. Though the Court
25 conducted a de novo review of the Administrative Record, the Court will adopt those
26 summary portions of the R&R in full (Doc. 26 at 8:24–11:2, 11:4–15) and will not restate
27 a summary here.

28 The ALJ discounted Plaintiff's symptom testimony and, in support, cited the

1 objective medical evidence and other evidence from the Administrative Record. AR 30–
2 32; *see also* AR 28. While an ALJ may not discount a claimant's symptom testimony solely
3 because a claimant's symptoms are not substantiated by the medical evidence, the medical
4 evidence is a relevant consideration in evaluating the claimant's symptoms. SSR 16-3p;
5 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. §
6 404.1529(c)(2)).

7 In discounting Plaintiff's symptom testimony, the ALJ cited not only Plaintiff's
8 mental health treatment records, but also statements from Plaintiff that she stopped working
9 to care for her elderly parents, rather than due to disability (AR 527, 603); she continued
10 to seek and engage in work and volunteer activities (AR 503, 575, 670, 674, 715); and she
11 was able to interact with friends and neighbors (AR 95–96, 500, 605, 633, 674), go to
12 church (AR 96–97, 747), and go shopping (AR 95–96)—all during the relevant assessment
13 period where Plaintiff alleged she was "unable to tolerate being around people." Doc. 25
14 at 7–8; *see also* AR 49–53. The ALJ further noted Plaintiff interacted appropriately with
15 medical personnel of record, as well as with the ALJ at the hearing. AR 28. These citations
16 to the Administrative Record are substantial evidence, clearly and convincingly articulated
17 by the ALJ as the reasons for discounting Plaintiff's symptom testimony. The Court will
18 overrule Plaintiff's objections and fully adopt the Magistrate Judge's recommendation on
19 this point.

20 **IV. ORDER**

21 **IT IS ORDERED OVERRULING** Plaintiff's Objections to the Report and
22 Recommendation (Doc. 27).

23 **IT IS FURTHER ORDERED ADOPTING IN FULL** the Report and
24 Recommendation, (Doc. 26), and **AFFIRMING** the decision of the Commissioner.

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IT IS FURTHER ORDERED DIRECTING the Clerk of the Court to enter judgment accordingly and close this case.

Dated this 28th day of March, 2024.



John C. Hinderaker
United States District Judge