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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KATHY D. HARRIS,)	NO. CV 08-1582-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
MICHAEL J. ASTRUE, COMMISSIONER)	AND ORDER OF REMAND
OF SOCIAL SECURITY ADMINISTRATION,)	
)	
)	
Defendant.)	
_____)	

Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
judgment are denied and this matter is remanded for further
administrative action consistent with this Opinion.

PROCEEDINGS

Plaintiff filed a complaint on March 10, 2008, seeking review
of the Commissioner's denial of benefits. The parties filed a consent
to proceed before a United States Magistrate Judge on April 17, 2008.
Plaintiff filed a motion for summary judgment on August 12, 2008.

1 Defendant filed a cross-motion for summary judgment on September 10,
2 2008. The Court has taken both motions under submission without oral
3 argument. See L.R. 7-15; "Order," filed March 14, 2008.

4
5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
6

7 Plaintiff asserts disability since August 1, 2004, based on,
8 inter alia, alleged anemia (Administrative Record ("A.R.") 33-248).
9 In an opinion dated April 27, 2005, Dr. J.R. Sturich, Plaintiff's
10 treating physician, opined Plaintiff "is unable to work due to her
11 dizziness and fatigue caused by severe anemia" (A.R. 180).

12
13 The Administrative Law Judge ("ALJ") found Plaintiff has "the
14 severe impairments of obesity and symptomatic anemia," but also found
15 Plaintiff is not disabled from work (A.R. 28-32). The Appeals Council
16 denied review (A.R. 3-5). Neither the ALJ nor the Appeals Council
17 mentioned Dr. Sturich's opinion (A.R. 3-5, 26-32).

18
19 **STANDARD OF REVIEW**
20

21 Under 42 U.S.C. section 405(g), this Court reviews the
22 Commissioner's decision to determine if: (1) the Commissioner's
23 findings are supported by substantial evidence; and (2) the
24 Commissioner used proper legal standards. See Swanson v. Secretary,
25 763 F.2d 1061, 1064 (9th Cir. 1985).

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1 Administration's obligation to set forth "specific, legitimate
2 reasons"). To the extent the Defendant now offers arguments why
3 Dr. Sturich's opinion may be incorrect, such arguments are not
4 cognizable by the Court. See Connett v. Barnhart, 340 F.3d 871, 874
5 (9th Cir. 2003) (district court cannot affirm on the basis of reasons
6 the ALJ failed to assert); Pinto v. Massanari, 249 F.3d 840, 847 (9th
7 Cir. 2001) (same).²

8
9 When a court reverses an administrative determination, "the
10 proper course, except in rare circumstances, is to remand to the
11 agency for additional investigation or explanation." INS v. Ventura,
12 537 U.S. 12, 16 (2002) (citations and quotations omitted). Remand is
13 proper where, as here, additional administrative proceedings could
14 remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d
15 599, 603 (9th Cir. 1989); see generally Kail v. Heckler, 722 F.2d
16 1496, 1497 (9th Cir. 1984).

17
18 The Ninth Circuit's decision in Harman v. Apfel, 211 F.3d 1172
19 (9th Cir.), cert. denied, 531 U.S. 1038 (2000) ("Harman") does not
20 compel a reversal rather than a remand of the present case. In
21 Harman, the Ninth Circuit stated that improperly rejected medical
22 opinion evidence should be credited and an immediate award of benefits
23 directed where "(1) the ALJ has failed to provide legally sufficient
24 reasons for rejecting such evidence, (2) there are no outstanding
25 issues that must be resolved before a determination of disability can
26 be made, and (3) it is clear from the record that the ALJ would be

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28 ² Contrary to Defendant's argument, the Court cannot
confidently conclude that the Administration's error was harmless.

1 required to find the claimant disabled were such evidence credited."
2 Harman at 1178 (citations and quotations omitted). Assuming,
3 arguendo, the Harman holding survives the Supreme Court's decision in
4 INS v. Ventura, 537 U.S. 12, 16 (2002),³ the Harman holding does not
5 direct reversal of the present case. Outstanding issues still must be
6 resolved before a determination of disability can be made.⁴ Further,
7 it is not clear from the record that the ALJ would be required to find
8 Plaintiff disabled for the entire claimed period of disability were
9 the opinion of Dr. Sturich credited.

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14 CONCLUSION

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16 ³ The Ninth Circuit has continued to apply Harman, despite
17 INS v. Ventura. See Benecke v. Barnhart, 379 F.3d 587, 595 (9th
18 Cir. 2004).

19 ⁴ To the extent the Administration impliedly believed Dr.
20 Sturich's brief opinion to be ambiguous or inadequately supported,
21 the Administration should recontact Dr. Sturich. See 20 C.F.R. §
22 404.1512(e) (the Administration "will seek additional evidence or
23 clarification from your medical source when the report from your
24 medical source contains a conflict or ambiguity that must be
25 resolved, the report does not contain all of the necessary
26 information, or does not appear to be based on medically acceptable
27 clinical and laboratory diagnostic techniques"; Smolen v. Chater,
28 80 F.3d 1273, 1288 (9th Cir. 1996) ("If the ALJ thought he needed
to know the basis of Dr. Hoeflich's opinions in order to evaluate
them, he had a duty to conduct an appropriate inquiry, for example,
by subpoenaing the physicians or submitting further questions to
them. He could also have continued the hearing to augment the
record") (citations omitted); see also Brown v. Heckler, 713 F.2d
441, 443 (9th Cir. 1983) ("the ALJ has a special duty to fully and
fairly develop the record and to assure that the claimant's
interests are considered").

1 For all of the foregoing reasons, Plaintiff's and Defendant's
2 motions for summary judgment are denied and this matter is remanded
3 for further administrative action consistent with this Opinion.

4
5 LET JUDGMENT BE ENTERED ACCORDINGLY.

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7 DATED: September 12, 2008.

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9 _____/S/_____
10 CHARLES F. EICK
11 UNITED STATES MAGISTRATE JUDGE
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