



1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 ANGEL KELLY-HERMON,
12 Plaintiff,

13 vs.

14 MICHAEL J. ASTRUE,
15 Commissioner of Social Security,
16 Defendant.

) Case No. CV 08-4430 RNB

) ORDER REVERSING DECISION OF
) COMMISSIONER AND REMANDING
) FOR FURTHER ADMINISTRATIVE
) PROCEEDINGS

17
18 The Court now rules as follows with respect to the two disputed issues listed
19 in the Joint Stipulation.¹

20 With respect to Disputed Issue No. 1, the Court finds that the finding by
21 Administrative Law Judge (“ALJ”) that plaintiff did not have an impairment that met
22 Listing 1.08 (see AR 15) was too cursory for the Court to conclude that the ALJ did
23 not err in the respects argued by plaintiff (see Jt Stip at 4-6, 10-11). Accordingly, the
24

25 ¹ As the Court advised the parties in its Case Management Order, the
26 decision in this case is being made on the basis of the pleadings, the Administrative
27 Record (“AR”), and the Joint Stipulation (“Jt Stip”) filed by the parties. In accordance
28 with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined
which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 Court is unable to affirm the ALJ's listings determination. See Barbato v.
2 Commissioner of Social Sec. Admin., 923 F. Supp. 1273, 1276 n.2 (C.D. Cal. 1996)
3 (“If the decision on its face does not adequately explain how a conclusion was
4 reached, that alone is grounds for a remand.”).

5 With respect to Disputed Issue No. 2, the Court is unable to affirm the ALJ's
6 vocational determination at Step Four of the Commissioner's sequential evaluation
7 process for the reasons argued by plaintiff (see Jt Stip at 12-13, 14). Contrary to the
8 ALJ's statement, the residual functional capacity (“RFC”) conclusions reached by the
9 state agency physician were not “consistent with the conclusions reached in this
10 decision.” (See AR 18). The state agency physician opined that plaintiff had reaching
11 and handling limitations, as well as fingering limitations. (See AR 145). Yet, the ALJ
12 only included fingering limitations in her RFC assessment. (See AR 15). Thus, as
13 plaintiff points out, the Court does not know whether the ALJ intended to reject the
14 state agency physician's opinion that plaintiff had reaching and handling limitations,
15 or whether the ALJ's failure to include those limitations in her RFC assessment was
16 an oversight.

17 As to the issue of the appropriate relief, the law is well established that the
18 decision whether to remand for further proceedings or simply to award benefits is
19 within the discretion of the Court. See, e.g., Salvador v. Sullivan, 917 F.2d 13, 15
20 (9th Cir. 1990); McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989); Lewin v.
21 Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). Remand is warranted where additional
22 administrative proceedings could remedy defects in the decision. See, e.g., Kail v.
23 Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984); Lewin, 654 F.2d at 635. Remand for
24 the payment of benefits is appropriate where no useful purpose would be served by
25 further administrative proceedings, Kornock v. Harris, 648 F.2d 525, 527 (9th Cir.
26 1980); where the record has been fully developed, Hoffman v. Heckler, 785 F.2d
27 1423, 1425 (9th Cir. 1986); or where remand would unnecessarily delay the receipt
28 of benefits, Bilby v. Schweiker, 762 F.2d 716, 719 (9th Cir. 1985). The Court has

1 concluded that this is not an instance where no useful purpose would be served by
2 further administrative proceedings; rather, additional administrative proceedings still
3 could remedy the defects in the ALJ's decision. Indeed, plaintiff does not contend
4 otherwise. (See Jt Stip at 11 ("A remand is appropriate in this case for the ALJ to re-
5 determine whether Ms. Kelly-Hermon met listing 1.08 up until the time she completed
6 her physical therapy."), 14 ("A remand is necessary for the ALJ to correct his
7 mistake.")).

8
9 **ORDER**

10 Accordingly, pursuant to sentence four of 42 U.S.C. § 405(g), IT IS HEREBY
11 ORDERED that Judgment be entered reversing the decision of the Commissioner of
12 Social Security and remanding this matter for further administrative proceedings.²

13
14 DATED: February 27, 2009



15
16 _____
17 ROBERT N. BLOCK
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27

28 ² The Court is not limiting the scope of the remand.