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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOAN DANIELS,)	NO. CV 11-3880-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 May 13, 2011, seeking review of
the Commissioner's denial of disability benefits. The parties filed a
consent to proceed before a United States Magistrate Judge on
June 9, 2011. Plaintiff filed a motion for summary judgment on

1 October 11, 2011. Defendant filed a cross-motion for summary judgment
2 on December 12, 2011. The Court has taken both motions under
3 submission without oral argument. See L.R. 7-15; "Order," filed
4 May 17, 2011.

5
6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
7

8 Plaintiff asserts disability since November 7, 2001, based on
9 alleged depression, pain, and spinal impairments following a work-
10 related injury (Administrative Record ("A.R.") 116, 142-44, 158-59).
11 Medical records show that Plaintiff received treatment from Dr. Jon
12 Greenfield, a workers compensation physician and orthopedic surgeon,
13 from February 4, 2002 through at least May 12, 2005 (A.R. 192-202,
14 250-263, 266-74, 278-297). Dr. Greenfield diagnosed Plaintiff at
15 various times with cervical disc disease and chronic neck and back
16 pain (A.R. 250, 278).¹ Dr. Greenfield regarded Plaintiff's orthopedic
17 problems as so limiting as to preclude Plaintiff from returning to her
18 previous work (A.R. 250-58, 260).

19
20 In 2007, the Administrative Law Judge ("ALJ") deemed Plaintiff
21 not disabled and denied benefits (A.R. 103-10). The ALJ found that
22 Plaintiff suffered from severe chronic neck and back pain, but
23

24 ¹ A February 9, 2002 MRI of Plaintiff's cervical spine
25 showed "significant" disc disease in the cervical spine,
26 "significant" right-side foraminal narrowing at C4-C5 with "some
27 mild flattening of the cord and stenosis," disc bulge at C5-C6,
28 and left paracentral disc bulge at C6-C7 with "mild" left-sided
foraminal narrowing (A.R. 242-43). A March 4, 2002 needle
electromyography study showed no evidence of radiculopathy (A.R.
244-46). An August 19, 2005 x-ray of Plaintiff's lumbar spine
showed "mild" disc degeneration at L4-L5 and facet joint
arthritis at L5-S1 (A.R. 219).

1 retained the residual functional capacity to perform a full range of
2 sedentary work (A.R. 105-09). Applying the Grids (Medical Vocational
3 Rule 201.28), the ALJ concluded that there existed jobs that Plaintiff
4 could perform (A.R. 109).

5
6 In 2008, the Appeals Council remanded the case to the ALJ (A.R.
7 137-39). The Appeals Council stated, inter alia, that the ALJ's
8 decision did not contain an adequate evaluation of Dr. Greenfield's
9 treating source opinion that Plaintiff "should not look up, down, or
10 to the right or left for prolonged periods of time," and "could work
11 above shoulder height for only ten minutes every hour and at shoulder
12 height only twenty minutes every hour" (A.R. 137-38 (referencing Dr.
13 Greenfield's June 25, 2002 "Final Permanent and Stationary Report" at
14 A.R. 201); see also A.R. 261 (Dr. Greenfield's April 25, 2003 report
15 noting similar limitations)).²

16
17 On remand, the ALJ acknowledged that the Appeals Council had
18 directed the ALJ to give "further consideration to treating source
19 opinions" (A.R. 24). Nevertheless, the ALJ again denied benefits
20

21 ² State agency physician, Dr. Chien, reviewed Plaintiff's
22 treatment records and completed a Physical Residual Functional
23 Capacity Assessment form dated September 7, 2005 (A.R. 222-31).
24 Dr. Chien diagnosed Plaintiff with chronic cervical and
25 lumbosacral strain (A.R. 222). While Dr. Chien checked boxes
26 indicating that Plaintiff could perform the physical demands of
27 medium work (A.R. 223), Dr. Chien opined that Plaintiff should
28 "avoid repetitive above shoulder level reaching" (A.R. 225).
Consultative internal medicine examiner, Dr. Sourehnissani,
earlier had examined Plaintiff and provided a report dated
August 19, 2005 (A.R. 213-18). Dr. Sourehnissani, who did not
review any of Plaintiff's medical records, opined that Plaintiff
could perform medium work with no limitations (A.R. 217).

1 without expressly addressing Dr. Greenfield's opinions regarding
2 Plaintiff's work limitations (A.R. 24-33).³ This time, however, the
3 Appeals Council denied review (A.R. 13-15).

4
5 **STANDARD OF REVIEW**
6

7 Under 42 U.S.C. section 405(g), this Court reviews the
8 Administration's decision to determine if: (1) the Administration's
9 findings are supported by substantial evidence; and (2) the
10 Administration used correct legal standards. See Carmickle v.
11 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
12 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
13 relevant evidence as a reasonable mind might accept as adequate to
14 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
15 (1971) (citation and quotations omitted); see Widmark v. Barnhart,
16 454 F.3d 1063, 1067 (9th Cir. 2006).

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21 ³ Specifically, the ALJ found Plaintiff suffered from
22 severe degenerative disc disease of the cervical spine and
23 adjustment disorder with mixed anxiety and depressed mood (A.R.
24 27). The ALJ found Plaintiff capable of performing light work
25 with no physical limitations, and adopted testimony of a
26 vocational expert suggesting that Plaintiff could perform
27 particular jobs (A.R. 28-33). In so doing, the ALJ did not
28 explain the weight given to the medical source opinions
concerning Plaintiff's physical ailments (Id.). The ALJ
acknowledged Dr. Greenfield's "progress reports" while finding
Plaintiff's impairments "severe," but never mentioned Dr.
Greenfield's specific opinions regarding work limitations (A.R.
27-33).

DISCUSSION

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3 Plaintiff argues, inter alia, that the ALJ failed adequately to
4 consider how Plaintiff's spine impairment may have affected her
5 residual functional capacity. The Court agrees that the ALJ should
6 have accounted for Dr. Greenfield's specific opinions regarding
7 Plaintiff's work limitations.
8

9 A treating physician's conclusions "must be given substantial
10 weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see
11 Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must
12 give sufficient weight to the subjective aspects of a doctor's opinion
13 . . . This is especially true when the opinion is that of a treating
14 physician") (citation omitted); see also Orn v. Astrue, 495 F.3d 625,
15 631-33 (9th Cir. 2007) (discussing deference owed to treating
16 physician opinions); see generally 20 C.F.R. §§ 404.1527(d)(2),
17 416.927(d)(2). Even where the treating physician's opinions are
18 contradicted,⁴ "if the ALJ wishes to disregard the opinion[s] of the
19 treating physician he . . . must make findings setting forth specific,
20 legitimate reasons for doing so that are based on substantial evidence
21 in the record." Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987)
22 (citation, quotations and brackets omitted); see Rodriguez v. Bowen,
23 876 F.2d at 762 ("The ALJ may disregard the treating physician's
24 opinion, but only by setting forth specific, legitimate reasons for
25 doing so, and this decision must itself be based on substantial
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27 ⁴ Rejection of an uncontradicted opinion of a treating
28 physician requires a statement of "clear and convincing" reasons.
Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Gallant v.
Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984).

1 evidence") (citation and quotations omitted). Here, the ALJ's failure
2 to acknowledge Dr. Greenfield's specific opinions was in error. See
3 Lingenfelter v. Astrue, 504 F.3d 1028, 1045 (9th Cir. 2007) ("The
4 decision of an ALJ fails. . . when the ALJ completely ignores or
5 neglects to mention a treating physician's medical opinion that is
6 relevant to the medical evidence being discussed.") (citations
7 omitted); Carter v. Astrue, 308 Fed. App'x 75, 76 (9th Cir. Jan. 8,
8 2009) (ALJ's failure to mention treating physician's findings was
9 erroneous in light of the ALJ's obligation to explain why significant
10 probative evidence has been rejected) (citations omitted).⁵

11
12 The ALJ's error in failing to account for Dr. Greenfield's
13 specific opinions may have been material. The vocational expert did
14 not offer an opinion concerning whether the upper extremity
15 limitations Dr. Greenfield found would affect Plaintiff's ability to
16 perform the jobs the vocational expert identified. See A.R. 547-50
17 (vocational expert testifying in response to hypothetical concerning
18 person suffering only mental limitations). Because the circumstances
19 of this case suggest that further administrative review is needed to
20 determine whether the ALJ's failure properly to consider Dr.
21 Greenfield's opinions prejudiced Plaintiff, remand is appropriate.
22 See McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); see also INS
23 v. Ventura, 537 U.S. 12, 16 (2002) (When a court reverses an
24 administrative determination, "the proper course, except in rare
25 circumstances, is to remand to the agency for additional investigation

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27 ⁵ The Court may cite unpublished Ninth Circuit opinions
28 issued on or after January 1, 2007. See U.S. Ct. App. 9th Cir.
Rule 36-3(b); Fed. R. App. P. 32.1(a).

1 or explanation.") (citations and quotations omitted). Remand is
2 proper where, as here, additional administrative proceedings could
3 remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d
4 599, 603 (9th Cir. 1989); see generally Kail v. Heckler, 722 F.2d
5 1496, 1497 (9th Cir. 1984).⁶

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17 ⁶ The Ninth Circuit's decision in Harman v. Apfel, 211
18 F.3d 1172 (9th Cir.), cert. denied, 531 U.S. 1038 (2000)
19 ("Harman") does not compel a reversal rather than a remand of the
20 present case. In Harman, the Ninth Circuit stated that
21 improperly rejected medical opinion evidence should be credited
22 and an immediate award of benefits directed where "(1) the ALJ
23 has failed to provide legally sufficient reasons for rejecting
24 such evidence, (2) there are no outstanding issues that must be
25 resolved before a determination of disability can be made, and
26 (3) it is clear from the record that the ALJ would be required to
27 find the claimant disabled were such evidence credited." Harman
28 at 1178 (citations and quotations omitted). Assuming, arguendo,
the Harman holding survives the Supreme Court's decision in INS
v. Ventura, 537 U.S. at 16, the Harman holding does not direct
reversal of the present case. It is not clear that the ALJ would
be required to find Plaintiff disabled for the entire period of
claimed disability, even if Dr. Greenfield's opinions were fully
credited. As noted above, there is no vocational expert evidence
concerning whether there exists work that could be performed by a
person having the limitations Dr. Greenfield found to exist.

1 **CONCLUSION**

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3 For all of the foregoing reasons,⁷ Plaintiff's and Defendant's
4 motions for summary judgment are denied and this matter is remanded
5 for further administrative action consistent with this Opinion.
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7 LET JUDGMENT BE ENTERED ACCORDINGLY.
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9 DATED: December 14, 2011.
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12 _____/S/_____
13 CHARLES F. EICK
14 UNITED STATES MAGISTRATE JUDGE
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27 ⁷ The Court has not reached any other issue raised by
28 Plaintiff except insofar as to determine that reversal with a
directive for the payment of benefits would not be appropriate at
this time.