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5 UNITED STATES DISTRICT COURT
6 CENTRAL DISTRICT OF CALIFORNIA
7 WESTERN DIVISION
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9 ADRIENNE L. DIXON,) Case No. CV 12-3491-MLG
10 Plaintiff,) MEMORANDUM OPINION AND ORDER
11 v.)
12 MICHAEL J. ASTRUE,)
13 Commissioner of the)
14 Social Security)
15 Administration,)
Defendant.)

16
17 Plaintiff Adrienne Dixon seeks judicial review of the
18 Commissioner's final decision denying her application for disability
19 insurance benefits ("DIB") and Supplemental Security Income ("SSI")
20 benefits. For the reasons stated below, the decision of the Commissioner
21 is reversed, and the matter is remanded for further proceedings
22 consistent with this opinion.

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24 **I. Background**

25 Plaintiff was born on January 14, 1973, and was 36 years old at the
26 time she filed her application for benefits. (Administrative Record
27 ("AR") at 179.) She has a high school education and has relevant work
28 experience as a special education assistant, customer service

1 left foot and ankle, which makes it difficult for her to sit or stand
2 for more than 30 to 45 minutes; she has had surgery twice on her left
3 shoulder and still has constant pain; she has fibroid tumors which cause
4 her to bleed 25 days per month; she was hospitalized twice for pulmonary
5 embolisms which made it difficult for her to breathe; and she has
6 anxiety attacks approximately once or twice per week for which she is
7 taking anti-anxiety medication. (AR at 60-80.)

8 The ALJ found that Plaintiff's medical impairments could reasonably
9 be expected to produce the alleged symptoms. (AR at 30.) The ALJ was
10 therefore required to provide specific, clear and convincing reasons for
11 rejecting Plaintiff's subjective allegations of pain and functional
12 limitations. The ALJ provided the following reasons for finding
13 Plaintiff's testimony not fully credible:

14 Finally, I do not fully credit the testimony and allegations
15 of the claimant. As discussed above, the record reveals that
16 the claimant's impairments are not as severe as she alleges.
17 Indeed, although the claimant testified that she periodically
18 uses a cane, the record provides no indication that such a
19 cane is necessary for ambulation. Furthermore, although the
20 claimant testified that she is undergoing treatment for her
21 anxiety, she did not provide any evidence of this treatment.

22 (AR at 32.)

23 The reasons put forth by the ALJ for discrediting Plaintiff's
24 testimony are not supported by substantial evidence in the record.
25 First, the ALJ's finding that there is no objective medical evidence
26 corroborating Plaintiff's subjective pain testimony is not, without
27 more, a sufficient reason for discrediting Plaintiff. See *Burch v.*
28 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (noting that "lack of

1 medical evidence cannot form the sole basis for discounting pain
2 testimony"). Although "the medical evidence is a relevant factor in
3 determining the severity of the claimant's pain and its disabling
4 effects," once a claimant produces objective medical evidence of an
5 underlying impairment, an ALJ "may not reject a claimant's subjective
6 complaints based solely on lack of objective medical evidence to fully
7 corroborate the alleged severity of pain." *Rollins v. Massanari*, 261
8 F.3d 853, 856-57 (9th Cir. 2001).

9 The other reasons given by the ALJ for discrediting Plaintiff's
10 subjective symptom testimony are also not supported by substantial
11 evidence in the record. Claimant testified that she uses a cane
12 approximately four to six times per month when her left ankle swells to
13 avoid putting weight and pressure on the ankle. (AR at 79-80.) It is
14 unclear how the mere fact that Plaintiff chooses to occasionally use a
15 cane undermines her credibility. There is certainly no medical
16 requirement that a cane must be prescribed by a doctor nor is there any
17 mention in the medical records that Plaintiff's physicians believed that
18 the use of a cane was unnecessary or deleterious. (AR at 1-6.) Contrary
19 to the Commissioner's contention (Joint Stip. at 14), the fact that she
20 did not happen to use a cane on the dates of her physical examinations
21 is not necessarily inconsistent with her claims of needing to use a cane
22 only periodically when her ankle swelled.

23 In addition, there is evidence in the record that Plaintiff is
24 being treated for her anxiety. Plaintiff was prescribed Lorazepam² for
25 her anxiety. (AR at 439-40, 449, 452-53, 461, 465, 477-78, 480-81.) As
26 for the ALJ's statement that there was no evidence that Plaintiff was

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28 ² Lorazepam, the generic form of Ativan, is a benzodiazepine used
to relieve anxiety. <www.nlm.nih.gov.>

1 seeing a psychologist or therapist for her anxiety, Plaintiff testified
2 that she had been trying to obtain therapy from her providers at Kaiser
3 but that they would not accept Medi-Cal for therapy. (AR at 70.) She
4 further testified that they were referring her to someone else, who
5 might accept Medi-Cal for therapy services. (Id.) Thus, it is clear from
6 reading Plaintiff's comments in context that there is no real
7 discrepancy between her testimony and the medical records.

8 In support of the argument that the ALJ properly addressed
9 Plaintiff's subjective complaints, the Commissioner points to other
10 evidence in the record which allegedly discredits Plaintiff's
11 statements. The Commissioner argues that the ALJ "noted that Plaintiff
12 was not entirely compliant with her diabetes treatment regimen." (Joint
13 Stip. at 14, citing AR at 27.) Contrary to the Commissioner's
14 contention, the ALJ did not explicitly state that Plaintiff was
15 noncompliant with her diabetes treatment but that her "diabetes had been
16 characterized as 'uncontrolled' on several occasions." (AR at 27.) It is
17 unclear from this reference whether Plaintiff's diabetes was considered
18 "uncontrolled" based upon her non-compliance with her medication.
19 However, even assuming that this would be a sufficient reason for the
20 ALJ to reject Plaintiff's subjective complaints, the ALJ did not clearly
21 and explicitly rely on Plaintiff's alleged non-compliance in support of
22 her credibility determination. It would be error for this Court to
23 affirm the ALJ's decision based upon reasons that the ALJ did not
24 discuss. *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003).

25 In sum, the reasons given by the ALJ were not supported by
26 substantial evidence in the record and were therefore insufficient to
27 reject Plaintiff's testimony regarding her symptoms and related
28 limitations.

1 **IV. Conclusion**

2 The decision whether to remand for further proceedings is within
3 this Court's discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th
4 Cir. 2000). Where no useful purpose would be served by further
5 administrative proceedings, or where the record has been fully
6 developed, it is appropriate to exercise this discretion to direct an
7 immediate award of benefits. *Id.* at 1179 ("[T]he decision of whether to
8 remand for further proceedings turns upon the likely utility of such
9 proceedings."); *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).
10 However, where there are outstanding issues that must be resolved before
11 a determination of disability can be made, and it is not clear from the
12 record that the ALJ would be required to find the claimant disabled if
13 all the evidence were properly evaluated, remand is appropriate.
14 *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir. 2003); *see also*
15 *Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003) (remanding case
16 for reconsideration of credibility determination).

17 Here, the ALJ failed to explain with sufficient specificity the
18 basis for her determination that Plaintiff was not fully credible
19 regarding the intensity, persistence, and limiting effects of her
20 symptoms. A more complete analysis is required. Accordingly, the case is
21 remanded for further proceedings consistent with this opinion and order.

22 DATED: October 19, 2012



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Marc L. Goldman
United States Magistrate Judge