

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRISTINA CARRENO MARTIN,	)	Case No. CV-13-5653-PJW
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION AND ORDER
	)	
CAROLYN W. COLVIN, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her application for Disability Insurance Benefits ("DIB"). She claims that the Administrative Law Judge ("ALJ") erred when she rejected the treating doctors' opinions and when she found that Plaintiff was not credible. For the reasons explained below, the Court finds that the ALJ erred and remands the case to the Agency for further proceedings.

II. SUMMARY OF FACTS AND PROCEEDINGS

In May 2009, Plaintiff applied for DIB, alleging that she had been unable to work since January 2009, due to various

1 physical and psychological/emotional impairments, including  
2 bipolar disorder, depression, anxiety, headaches, fibromyalgia,  
3 sleep apnea, and knee, back, and shoulder pain. (Administrative  
4 Record ("AR") 107-08, 124.) The Agency denied the applications  
5 initially and on reconsideration. Plaintiff then requested and  
6 was granted a hearing before an ALJ. (AR 94-99.) On August 22,  
7 2011, she appeared with counsel and testified at the hearing.  
8 (AR 58-77.) The ALJ subsequently issued a decision denying  
9 benefits. (AR 23-30.) Plaintiff appealed to the Appeals  
10 Council, which denied review. (AR 1-3.) She then commenced  
11 this action.

### 12 III. ANALYSIS

#### 13 A. The ALJ's Rejection of the Treating Doctors' Opinions

14 The ALJ rejected the opinions of Plaintiff's treating  
15 doctors and adopted, instead, the opinions of the reviewing  
16 doctors. Plaintiff claims that the ALJ erred in doing so. For  
17 the following reasons, the Court concludes that, at least with  
18 regard to Plaintiff's treating psychiatrist, the ALJ erred and  
19 remand is required for further consideration.

20 ALJs are tasked with resolving conflicts in the medical  
21 evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.  
22 1995). Generally speaking, three types of doctors supply that  
23 evidence: treating doctors, examining doctors, and reviewing  
24 doctors. All things being equal, treating doctors' opinions are  
25 entitled to the greatest weight because treating doctors are  
26 hired to cure and have more opportunity to know and observe the  
27 patient. *Id.* at 1041; see also 20 C.F.R. 404.1527(c)(2)  
28 ("Generally, we give more weight to opinions from your treating

1 sources, since these sources are likely to be the medical  
2 professionals most able to provide a detailed, longitudinal  
3 picture of your medical impairment(s) and may bring a unique  
4 perspective to the medical evidence that cannot be obtained from  
5 the objective medical findings alone or from reports of  
6 individual examinations"). Examining doctors are next on the  
7 list, followed by reviewing doctors. See *Lester v. Chater*, 81  
8 F.3d 821, 830-31 (9th Cir. 1995). ALJs, however, are not  
9 required to merely accept the opinion of a treating doctor and,  
10 where contradicted, may reject it for specific and legitimate  
11 reasons that are supported by substantial evidence in the  
12 record. *Id.* at 830. On the other hand, where the treating  
13 doctor's opinion is uncontradicted, the ALJ can only reject it  
14 for clear and convincing reasons. *Id.*

15 i. Dr. Ruths

16 In January 2009, after experiencing acute depression and  
17 feeling suicidal, Plaintiff checked herself into a local  
18 hospital for treatment. (AR 175-83.) She was treated by  
19 psychiatrist Steven M. Ruths, who diagnosed her with bipolar  
20 disorder and treated her with drugs and therapy. (AR 175-83.)  
21 After five days, she was discharged to an aftercare facility for  
22 another week. (AR 176-77.)

23 From February 2009 to June 2009, Dr. Ruths saw Plaintiff on  
24 a monthly and sometimes twice monthly basis. (AR 261-85, 386-  
25 417.) During these appointments, he questioned her about how  
26 she was doing and determined what medications she should be  
27 taking in order to treat her symptoms. (AR 261-85, 386-417.)

1 In June 2009, Dr. Ruths filled out a "Mental Disorder  
2 Questionnaire Form," summarizing Plaintiff's condition and  
3 prognosis. (AR 200-04.) In a nutshell, he found that Plaintiff  
4 was doing fairly well. Her mental status was within normal  
5 limits except for her concentration, which was impaired, and her  
6 ability to adapt to work or work-like situations, which was  
7 mildly impaired. (AR 203.)

8 Dr. Ruths continued to treat Plaintiff from June 2009 until  
9 July 2011. In August 2011, he filled out another form, again  
10 summarizing Plaintiff's condition, but this time he reported  
11 that she was not doing so well. (AR 418-22.) He explained that  
12 Plaintiff had limited functioning and was not capable of working  
13 due to her psychological ailments and the symptoms that they  
14 caused. (AR 418-22.)

15 The ALJ accepted Dr. Ruths' 2009 report and rejected the  
16 2011 one. (AR 26-27.) He found that Dr. Ruths' treatment notes  
17 did not support his 2011 findings because they did not show  
18 "symptoms or complaints supporting such a restrictive residual  
19 functional capacity." (AR 27.) Plaintiff contends that the ALJ  
20 erred in rejecting Dr. Ruths' 2011 report. The Agency  
21 disagrees. For the following reasons, the Court sides with  
22 Plaintiff.

23 The threshold issue in resolving this conflict is whether  
24 Dr. Ruths' 2011 opinion was contradicted or not. If it was, the  
25 ALJ only had to provide specific and legitimate reasons for  
26 rejecting it. If not, she was required to provide clear and  
27 convincing reasons.

1 In July 2009, reviewing psychologist Preston Davis reviewed  
2 Dr. Ruths' records and his June 2009 opinion and concluded that,  
3 based on that opinion, by January 2010, Plaintiff would return  
4 to her pre-January 2009 level and be able to work. (AR 224.)  
5 Thus, Dr. Davis' July 2009 opinion was consistent with Dr.  
6 Ruths' June 2009 opinion.

7 The opinion at issue here, however, is Dr. Ruths' August  
8 2011 opinion. It does not appear that any doctor ever reviewed  
9 it or any of Dr. Ruths' records after July 2009. Nor did any  
10 psychiatrist or psychologist, other than Dr. Ruths, weigh in on  
11 Plaintiff's condition after July 2009. To the extent that  
12 Plaintiff's primary care physician offered opinions regarding  
13 Plaintiff's psychiatric condition, it would appear that these  
14 opinions were consistent with Dr. Ruths' opinion.

15 Thus, Dr. Ruths' August 2011 opinion is uncontradicted.  
16 That being the case, in order to uphold the ALJ's rejection of  
17 it, the Court must find that the ALJ's reason for rejecting it  
18 is clear and convincing and supported by substantial evidence in  
19 the record. See *Lester*, 81 F.3d at 830. As the Agency points  
20 out, under this standard, the Court would have to be convinced  
21 that it was highly probable or reasonably certain that the ALJ  
22 was right in order to affirm. (Joint Stip. at 14, citing  
23 *Moncada-Vega v. Holder*, 718 F.3d 1075, 1083 n.5 (9th Cir.  
24 2013)).

25 The medical charts from Dr. Ruths' office visits with  
26 Plaintiff are included in the record. (AR 262-85, 386-417.)  
27 They consist of pre-printed, medical chart forms that contain  
28 lines for the doctor to fill in the patient's "interval history

1 (signs, symptoms, compliance)" followed by 65 boxes the doctor  
2 can check to record various "pertinent abnormalities."  
3 Comparing the chart notes from Plaintiff's visits before the  
4 June 2009 report--in which Dr. Ruths concluded that Plaintiff  
5 was doing fairly well--with the chart notes following the June  
6 2009 report and preceding the August 2011 report--in which Dr.  
7 Ruths opined that Plaintiff was seriously impaired--it is  
8 difficult to discern a measurable difference that would support  
9 such a drastic change in Dr. Ruths' opinions. For example, Dr.  
10 Ruths found in 2009 that Plaintiff's intellectual functioning/  
11 sensorium was within normal limits. (AR 201.) In 2011, he  
12 found that Plaintiff exhibited signs and symptoms of  
13 incoherence. (AR 419.) But there is nothing in Dr. Ruths'  
14 treatment notes after June 2009 that suggests that Plaintiff was  
15 incoherent or that her coherence had changed between January  
16 2009 and August 2011. Dr. Ruths never checked any of the boxes  
17 on the pre-printed form to indicate that Plaintiff was  
18 incoherent. (AR 386-409.) Nor did he record in his notes on  
19 the form that she was. (AR 386-409.) In fact, the notes,  
20 though cryptic, suggest that Plaintiff was completely coherent  
21 and able to communicate with him at all times throughout the  
22 treatment period. (AR 386-409.)

23 As another example, in the 2011 form, Dr. Ruths reported  
24 that Plaintiff's medications caused "mild sedation." (AR 418.)  
25 Yet, he never noted this in any of his chart notes. To the  
26 contrary, when he made a notation regarding side effects, he  
27 consistently reported that there were none. (AR 386-409.)

1 These inconsistencies seem to support the ALJ's finding that Dr.  
2 Ruths' records did not support his August 2011 opinion.

3 But the Court cannot so easily dissect the other entries  
4 made by Dr. Ruths in the 2011 report. For example, he noted  
5 that Plaintiff exhibited "apprehensive expectation." (AR 419.)  
6 Whatever this term means, it could be consistent with his view  
7 as noted in the treatment notes that she often experienced  
8 anxiety. Or maybe it refers to something totally different.  
9 The same problem exists for Dr. Ruths' observation that  
10 Plaintiff suffered from decreased energy, feelings of guilt or  
11 worthlessness, memory impairment, etc. (AR 419.) These changes  
12 could be due to changes in Plaintiff's condition or could be the  
13 result of Dr. Ruths using a different form in 2011 than he did  
14 in 2009. It is also possible that Dr. Ruths was simply mistaken  
15 in his evaluation. The Court cannot divine the answer by  
16 examining the record. One of the reasons for this difficulty is  
17 that none of the other doctors reviewed Dr. Ruths' treatment  
18 notes after July 2009 or his 2011 report. And it is difficult  
19 for the Court on its own to compare the records and the 2011  
20 report and come to a firm conclusion that they are inconsistent.

21 Though the Court might be inclined to affirm the ALJ's  
22 decision under a more relaxed standard, it cannot under the  
23 heightened standard applicable here, i.e., the clear and  
24 convincing standard. It is not clear to the Court that Dr.  
25 Ruths' 2011 opinion is unsupported by his treatment notes nor is  
26 the Court convinced that the ALJ's summary rejection of the 2011  
27 opinion is supported by substantial evidence in the record.  
28 Further, in the absence of Dr. Ruths' opinion, there is no

1 medical opinion regarding Plaintiff's psychological condition  
2 after June 2009, despite the fact that the ALJ's decision was  
3 issued in September 2011 and Plaintiff experienced what can be  
4 fairly characterized as some horrific events after June 2009.<sup>1</sup>

5 For these reasons, the ALJ's decision to reject Dr. Ruths'  
6 August 2011 opinion is remanded to the Agency for further  
7 consideration. On remand, the ALJ is free to consult with other  
8 doctors to review the medical records or to examine the  
9 Plaintiff and offer opinions as to the validity of Dr. Ruths'  
10 opinion as well as to Plaintiff's mental capabilities. The ALJ  
11 may also re-contact Dr. Ruths if she feels that that is  
12 warranted.

13 ii. Therapist Matzke

14 Plaintiff contends that the ALJ also improperly rejected  
15 therapist Tamara Matzke's opinion. Using the same form that Dr.  
16 Ruths used in August 2011 to set forth his opinion, Ms. Matzke  
17 reported in August 2011 that Plaintiff was even more severely  
18 impaired than did Dr. Ruths. (AR 423-27.) The ALJ rejected Ms.

---

19  
20 <sup>1</sup> The record reflects that Plaintiff experienced continual  
21 ups and downs throughout the course of her treatment with Dr.  
22 Ruths. In 2010, she learned that her husband had fathered their  
23 daughter's child. (AR 68-69, 71-72.) She reported this to Dr.  
24 Ruths and told him that she was "blown away" by the news. (AR  
25 268.) Yet, less than a month later, Plaintiff reported to Dr.  
26 Ruths that "things are going pretty well." (AR 265.)  
27 Plaintiff's husband was sent to prison and her daughter ran  
28 away. (AR 264.) Plaintiff's reaction as recorded by Dr. Ruths  
was that her home was now calm and that she was relieved. (AR  
264, 395.) Plaintiff later lost her home to foreclosure and  
became homeless along with her three children. (AR 390-91.)  
But six months later, in April 2011, she told Dr. Ruths that she  
had found a job and that things were improving. (AR 388.)



1 Matzke's opinion because her treatment notes did not "show  
2 symptoms or complaints supporting such a restrictive residual  
3 functional capacity." (AR 27.)

4 Because Ms. Matzke is a therapist, the ALJ needed only  
5 germane reasons to discount her opinion. See *Molina v. Astrue*,  
6 674 F.3d 1104, 1111 (9th Cir. 2012). The fact that Ms. Matzke's  
7 treatment notes did not support her opinion was sufficient under  
8 this standard. See, e.g., *Thomas v. Barnhart*, 278 F.3d 947, 957  
9 (9th Cir. 2002) (upholding ALJ's rejection of doctor's opinion  
10 because it was not supported by doctor's treatment notes). A  
11 review of the record supports the ALJ's finding that Ms.  
12 Matzke's records did not support her dire view. Ms. Matzke  
13 reportedly treated Plaintiff on a weekly/bi-monthly basis  
14 between January 2010 and August 2011, though she pointed out  
15 that the treatment had been sporadic. (AR 423.) Yet the  
16 treatment notes that she provided were only five pages long and  
17 appear to have been prepared in connection with just three  
18 appointments. (AR 434-38.) Further, they are comprised almost  
19 entirely of summaries of what Plaintiff told Ms. Matzke was  
20 going on in her life at the time of her appointment, including  
21 her husband's involvement with their daughter and Plaintiff's  
22 attempts to find a new place to live. (AR 434-38.) For this  
23 reason, the ALJ's rejection of Ms. Matzke's opinion will not be  
24 disturbed.

25 iii. Dr. Beamer

26 Dr. Thomas L. Beamer was Plaintiff's primary care physician  
27 for 16 years. He submitted a residual functional capacity  
28 questionnaire form on which he opined that Plaintiff could sit

1 for only 20 minutes, stand for ten, and walk for one block. (AR  
2 428-32.) He also reported that Plaintiff suffered from  
3 fibromyalgia. (AR 428.) The ALJ rejected Dr. Beamer's findings  
4 because they were not supported by his treatment notes. (AR  
5 29.) He pointed out, for example, that Dr. Beamer repeatedly  
6 noted that Plaintiff was doing well and that he wanted to reduce  
7 her pain medications, citing to Dr. Beamer's notes. (AR 29.)  
8 He also noted that, though Dr. Beamer reported that Plaintiff  
9 exhibited multiple tender spots, supporting a diagnosis of  
10 fibromyalgia, Dr. Beamer's treatment notes never mentioned this  
11 fact. (AR 29.)

12 The record supports the ALJ's findings with regard to Dr.  
13 Beamer (AR 225, 295-96) and, therefore, her rejection of Dr.  
14 Beamer's opinion will be upheld. See *Thomas*, 278 F.3d at 957.

#### 15 B. The Credibility Determination

16 Plaintiff testified at the hearing that her physical and  
17 psychological maladies prevented her from maintaining a job.  
18 (AR 61-75.) The ALJ rejected this testimony to the extent that  
19 it was inconsistent with his finding that Plaintiff could  
20 perform light work because it was not supported by the medical  
21 record. (AR 29.) Plaintiff argues that the ALJ erred in doing  
22 so. For the following reasons, the Court concludes that remand  
23 for further consideration is warranted on this issue.

24 ALJs are tasked with judging the credibility of witnesses,  
25 including the claimants. In making credibility determinations,  
26 they may employ ordinary credibility evaluation techniques.  
27 *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). Where,  
28 however, a claimant has produced objective medical evidence of

1 an impairment which could reasonably be expected to produce the  
2 alleged symptoms and there is no evidence of malingering, the  
3 ALJ can only reject the testimony for specific, clear, and  
4 convincing reasons, *id.* at 1283-84, that are supported by  
5 substantial evidence in the record. *Thomas*, 278 F.3d at 959.

6 The ALJ found that Plaintiff was not credible, in part,  
7 because she testified that she suffered from side effects from  
8 her medications, including Lyrica (AR 65), and the record did  
9 not reflect any complaints of significant side effects. (AR  
10 29.) The record supports this finding. Plaintiff was on Lyrica  
11 when she was being treated by Dr. Beamer and he regularly noted  
12 that she did not suffer from any significant side effects from  
13 the medication. (AR 225, 226, 286.) Plaintiff testified at  
14 trial that she did. (AR 65.) Thus, the ALJ was at liberty to  
15 question her testimony on that ground.

16 The ALJ also questioned Plaintiff's testimony because she  
17 found that Plaintiff's claims about the severity of her  
18 psychological problems were inconsistent with the medical  
19 records. (AR 29.) The ALJ noted that, though Plaintiff  
20 suffered from severe emotional problems in January 2009, when  
21 she checked herself into a hospital, those problems were caused  
22 by family issues and work stress and subsided over time. (AR  
23 29.) The ALJ pointed out that subsequent treatment notes  
24 indicated that Plaintiff had had a good response to medication  
25 and her doctors were optimistic about her prognosis, citing Dr.  
26 Ruths' June 2009 opinion and Dr. Beamer's chart notes. (AR 29.)

27 In doing so, the ALJ ignored Dr. Ruths' 2011 report that  
28 Plaintiff was not doing well. As explained above, the Court has

1 remanded the case back to the ALJ to reconsider this assessment  
2 as well as Dr. Ruths' records after June 2009. For this same  
3 reason, the Court concludes that the ALJ should reexamine the  
4 credibility issue in this new light.<sup>2</sup>

5 IV. CONCLUSION

6 For these reasons, the ALJ's decision is reversed and the  
7 case is remanded to the Agency for further proceedings  
8 consistent with this Memorandum Opinion and Order.<sup>3</sup>

9 IT IS SO ORDERED.

10 DATED: August 29, 2014



11  
12  
13 

---

PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

14 S:\PJW\Cases-Social Security\GARNER 3159\Memorandum Opinion and Order.docx

15  
16 <sup>2</sup> Though the Court has concluded that the ALJ was justified  
17 in questioning Plaintiff's testimony based on the fact that she  
18 claimed that she suffered from side effects from her  
19 medications, which was not supported by the record, it is not  
20 clear that the ALJ would have rejected Plaintiff's testimony on  
21 that ground alone. As such, remand is warranted. See *Carmickle*  
22 *v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)  
23 (holding error by ALJ in credibility determination is harmless  
"[s]o long as there remains substantial evidence supporting the  
ALJ's conclusions on . . . credibility and the error does not  
negate the validity of the ALJ's ultimate credibility  
conclusion.").

24 <sup>3</sup> Plaintiff has requested that the Court remand the case to  
25 the Agency for an award of benefits. The Court recognizes that  
26 it has the authority to do so but finds that this case does not  
27 merit this relief. First, there are questions as to the  
28 validity of Dr. Ruths' conclusion that Plaintiff's mental/  
emotional problems greatly limit her ability to function.  
Second, the issue of Plaintiff's credibility is in doubt and  
must be developed further on remand.