UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

JUDITH ANNE PRICCO,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION,

Defendant.

No. CV 13-8713-PLA

MEMORANDUM OPINION AND ORDER

I.

PROCEEDINGS

Plaintiff filed this action on December 4, 2013, seeking review of the Commissioner's denial of her application for Disability Insurance Benefits. The parties filed Consents to proceed before the undersigned Magistrate Judge on January 6, 2014, and January 15, 2014. Pursuant to the Court's Order, the parties filed a Joint Stipulation on August 15, 2014, that addresses their positions concerning the disputed issues in the case. The Court has taken the Joint Stipulation under submission without oral argument.

II.

BACKGROUND

Plaintiff was born on March 11, 1966. [Administrative Record ("AR") at 31, 144.] She has at least a high school education and past relevant work experience as a bulk food packager. [AR at 30, 74.]

On August 18, 2010, plaintiff filed an application for a period of disability and Disability Insurance Benefits alleging that she has been unable to work since June 24, 2009. [AR at 24, 153.] After the application was denied initially, she filed a timely request for a hearing before an Administrative Law Judge ("ALJ"). [AR at 24, 85-86.] A hearing was held on January 18, 2012, at which time plaintiff appeared represented by her mother, Cheryl Pricco, a non-attorney representative [AR at 38-39],[1] and testified on her own behalf. [AR at 24, 38-39, 40-73.] Plaintiff's mother, and a vocational expert ("VE"), also testified. [AR at 24, 71-76.] On February 24, 2012, the ALJ issued a decision concluding that plaintiff was not under a disability from June 24, 2009, through the date of the decision. [AR at 24-32.] Plaintiff requested review of the ALJ's decision by the Appeals Council. [AR at 17-18.] On September 23, 2013, the Appeals Council denied review. [AR at 5-10.] This action followed.

III.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner's decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence or if it is based upon the application of improper legal standards. Berry v. Astrue, 622 F.3d 1228, 1231 (9th Cir. 2010).

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[1] Plaintiff takes issue with the ALJ's classification of plaintiff's mother as her non-attorney representative, asserting that she was "essentially unrepresented because the ALJ classifies [her mother] as a 'witness' and even goes as far as rejecting Cheryl Pricco's testimony." [JS at 4 n.2.] This issue has no bearing on the Court's decision.

"Substantial evidence means more than a mere scintilla, but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1159 (9th Cir. 2008) (internal quotation marks and citation omitted); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998) (same). When determining whether substantial evidence exists to support the Commissioner's decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001); see Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) ("[A] reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence.") (internal quotation marks and citation omitted). "Where evidence is susceptible to more than one rational interpretation, the ALJ's decision should be upheld." Ryan, 528 F.3d at 1198 (internal quotation marks and citation omitted); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) ("If the evidence can support either affirming or reversing the ALJ's conclusion, [the reviewing court] may not substitute [its] judgment for that of the ALJ.").

IV.

THE EVALUATION OF DISABILITY

Persons are "disabled" for purposes of receiving Social Security benefits if they are unable to engage in any substantial gainful activity owing to a physical or mental impairment that is expected to result in death or which has lasted or is expected to last for a continuous period of at least twelve months. 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

A. THE FIVE-STEP EVALUATION PROCESS

The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995), as amended April 9, 1996. In the first step, the Commissioner must

determine whether the claimant is currently engaged in substantial gainful activity; if so, the claimant is not disabled and the claim is denied. Id. If the claimant is not currently engaged in substantial gainful activity, the second step requires the Commissioner to determine whether the claimant has a "severe" impairment or combination of impairments significantly limiting her ability to do basic work activities; if not, a finding of nondisability is made and the claim is denied. Id. If the claimant has a "severe" impairment or combination of impairments, the third step requires the Commissioner to determine whether the impairment or combination of impairments meets or equals an impairment in the Listing of Impairments ("Listing") set forth at 20 C.F.R., pt. 404, subpt. P, app. 1; if so, disability is conclusively presumed and benefits are awarded. Id. If the claimant's impairment or combination of impairments does not meet or equal an impairment in the Listing, the fourth step requires the Commissioner to determine whether the claimant has sufficient "residual functional capacity" to perform her past work; if so, the claimant is not disabled and the claim is denied. Id. The claimant has the burden of proving that she is unable to perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a prima facie case of disability is established. The Commissioner then bears the burden of establishing that the claimant is not disabled, because she can perform other substantial gainful work available in the national economy. The determination of this issue comprises the fifth and final step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

B. THE ALJ'S APPLICATION OF THE FIVE-STEP PROCESS

In this case, at step one, the ALJ found that plaintiff had not engaged in substantial gainful activity since her alleged onset date, June 24, 2009.[2] [AR at 26.] At step two, the ALJ concluded that plaintiff has the severe impairment of depressive disorder, not otherwise specified. [Id.] At step three, the ALJ determined that plaintiff does not have an impairment or a combination of

[2] The ALJ concluded that plaintiff meets the insured status requirements of the Social Security Act through December 31, 2014. [AR at 26.]

impairments that meets or medically equals any of the impairments in the Listings.[3] [Id.] The ALJ further found that plaintiff retained the residual functional capacity ("RFC")[4] to perform a full range of work at all exertional levels, but with the following nonexertional limitations: plaintiff is limited to simple work, cannot have public contact, and can have occasional contact with peers and supervisors. [Id.] At step four, based on plaintiff's RFC and the VE's testimony, the ALJ concluded that plaintiff "is capable of performing past relevant work as a bulk food packager." [AR at 30.] Accordingly, the ALJ determined that plaintiff was not disabled at any time from June 24, 2009, through the date of the decision. [AR at 32.]

V.

THE ALJ'S DECISION

Plaintiff contends that the ALJ's RFC assessment is not supported by substantial evidence or free of legal error. [Joint Stipulation ("JS") at 4.] Specifically, plaintiff contends that the ALJ impermissibly rejected the opinions of her treating physicians in finding that plaintiff can perform simple work with no public contact and occasional contact with peers and supervisors. [JS at 4-15, 22-23.] As explained below, the Court agrees with plaintiff and remands the matter for further proceedings.

A. EVALUATION OF MEDICAL EVIDENCE

Plaintiff contends that the ALJ failed to provide specific and legitimate reasons for rejecting the June 28, 2010, report of treating psychiatrist, Thomas Curtis, M.D. [JS at 10-14], and the May 4, 2011, opinion of treating psychologist, Jim Grace, Ph.D. [JS at 6-7].

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[3] See 20 C.F.R. pt. 404, subpt. P, app. 1.

[4] RFC is what a claimant can still do despite existing exertional and nonexertional limitations. See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "Between steps three and four of the five-step evaluation, the ALJ must proceed to an intermediate step in which the ALJ assesses the claimant's residual functional capacity." Massachi v. Astrue, 486 F.3d 1149, 1151 n.2 (9th Cir. 2007).

"There are three types of medical opinions in social security cases: those from treating physicians, examining physicians, and non-examining physicians." Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 692 (9th Cir. 2009); see also 20 C.F.R. §§ 404.1502, 404.1527. "As a general rule, more weight should be given to the opinion of a treating source than to the opinion of doctors who do not treat the claimant." Lester, 81 F.3d at 830; Turner v. Comm'r of Soc. Sec., 613 F.3d 1217, 1222 (9th Cir. 2010). "The opinion of an examining physician is, in turn, entitled to greater weight than the opinion of a nonexamining physician." Lester, 81 F.3d at 830; Ryan, 528 F.3d at 1198.

"[T]he ALJ may only reject a treating or examining physician's uncontradicted medical opinion based on clear and convincing reasons." Carmickle, 533 F.3d at 1164 (internal quotation marks and citation omitted); Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006). "Where such an opinion is contradicted, however, it may be rejected for specific and legitimate reasons that are supported by substantial evidence in the record." Carmickle, 533 F.3d at 1164 (internal quotation marks and citation omitted); Ryan, 528 F.3d at 1198. The ALJ can meet the requisite specific and legitimate standard "by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." Reddick, 157 F.3d at 725. The ALJ "must set forth his own interpretations and explain why they, rather than the [treating or examining] doctors', are correct." Id.

1. Background and Opinions of Plaintiff's Treating Doctors

On June 24, 2009, plaintiff was hospitalized at Aurora Behavioral Hospital in Covina. [AR at 27, 265.] She was found to be immobilized, overwhelmed, and withdrawn. [AR at 265.] She was diagnosed with anxiety and situational depression. [Id.] Plaintiff was hospitalized for five days and, upon release, entered into an outpatient program. [Id.]

Plaintiff was again hospitalized in August 2009 for five days at the same facility, and this time she was diagnosed with PTSD. [AR at 27, 265-66.] Upon release, she re-entered the outpatient therapy program, attending in September and October 2009. [Id.]

Plaintiff treated with Dr. Curtis from September 29, 2009, through February 7, 2012, in connection with her worker's compensation claim. [AR at 215-58, 313-20.] On June 28, 2010, Dr. Curtis provided a "Primary Treating Physician's Evaluation and Permanent and Stationary Report with Psychological Test Results and with a Request for Authorization for Further Psychiatric Treatment." [AR at 224.] He reviewed plaintiff's work history, including the issues that led to her seeking care for her emotional symptoms, which included depression; anxiety; withdrawal; irritability; impatience; disturbed sleep; diminished self esteem; feelings of worthlessness, emptiness, inadequacy, and pessimism; dizziness; palpitations; and abdominal distress, especially whenever her workplace was mentioned or thought about. [AR at 225-27.] Dr. Curtis stated that although plaintiff appeared to make progress with the psychiatric and psychological treatment she received, her symptoms worsened and she was hospitalized for a second time in August 2009 when she heard that her employers wanted to meet with her. [AR at 227-28.] As part of his evaluation, Dr. Curtis completed a mental status examination in which he detailed the following symptoms: guarded presentation with visible depression; rambling, distressed speech; anxious thought process; depleted appearance due to depression; diminished cognitive functioning; distracted and defective in concentration, attention, and short-term memory; forgetful of recent conversations; attention drifts; and difficulty staying focused on one task. [AR at 231.] He opined that it "appeared most likely" that plaintiff's cognitive deficits were caused by "overwhelmed psychological coping mechanisms." [Id.] Dr. Curtis also noted that plaintiff was oriented to the day of the week and date; could not retain recollection for a few minutes of three simple items; could not accurately perform simple calculations; was not sufficiently able to accurately recall past serial U.S. presidents; and her capacity for psychological insight and good psychological judgment were essentially unimpaired. [AR at 231-32.]

Dr. Curtis administered various and numerous psychological tests. [AR at 232-36.] The results of the Beck Anxiety Inventory revealed a severe level of anxiety; the results of the Beck Hopelessness Scale revealed a moderate level of hopelessness; the results of the Minnesota Multiphasic Personality Inventory revealed a valid profile for depression; and the results of the Multiscore Depression Inventory revealed severe depression. [AR at 234-36.] Dr. Curtis

concluded that plaintiff's psychological test results "confirmed residual abnormal levels of anxiety, hopelessness and depression with low energy, cognitive impairment, guilt, low self-esteem, social introversion, pessimism and a sad mood." [AR at 237.] He diagnosed her with Depressive Disorder, Not Otherwise Specified, with anxiety, post-traumatic reaction and psychiatric episodes of dissociation with amnesia, and assessed a Global Assessment of Functioning Score of 45. [AR at 237-38.][5] He concluded that plaintiff was temporarily totally disabled on an emotional basis from her last day of work on June 23, 2009, to the date of his report and continuing until her condition becomes more stabilized "in the near future." [AR at 241.] He opined that there may be some further slow change in a positive direction, but that it would not be expected that "further substantial recovery or deterioration would be anticipated in the next year beyond the estimate of permanent emotional impairment set forth below [in his report,] assuming the provision of continuing supportive psychotherapy on an as-needed basis." [Id.]. He found no fiscal incentives or malingering for secondary gain. [Id.] He indicated that plaintiff suffered from a moderate impairment in activities of daily living and concentration, persistence and pace; and a marked limitation in social functioning and adaptation (deterioration or decompensation in complex work-like settings). [AR at 242.]

On December 1, 2010, Dr. Grace, a psychologist with the California Counseling Center, wrote a six-page letter describing plaintiff's condition at that time, detailing her work history and the factors that eventually led to her leaving her job and subsequent hospitalizations. [AR at 263-68.] After the second hospitalization, plaintiff started seeing Dr. Grace, receiving treatment three to four times per month in relation to her worker's compensation action.[6] [AR at 266.] Dr. Grace

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[5] A Global Assessment of Functioning ("GAF") score is the clinician's judgment of the individual's overall level of functioning. It is rated with respect only to psychological, social, and occupational functioning, without regard to impairments in functioning due to physical or environmental limitations. See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders ("DSM-IV"), at 32 (4th ed. 2000). A GAF score in the range of 41-50 indicates serious symptoms or any serious impairment in social, occupational, or school functioning (e.g., unable to keep a job). DSM-IV, at 34.

[6] There was testimony from plaintiff's mother that Dr. Grace was plaintiff's doctor even (continued...)

stated that plaintiff was making "steady progress toward recovery in practically all her regular" activities of daily living; her PTSD symptoms had "greatly lessened"; she practices her cognitive behavioral therapy; she is improving her assertiveness in relating with others, including family members; she enjoys supporting her fifteen-year-old daughter in school and dancing; she still has difficulty with work-related involvement or material and her PTSD symptoms are triggered by work-related discussions or situations, i.e., her symptoms are "situational & work related"; and the "influence stemming from her work-related stress would have to be deemed minimal in impact," on her interpersonal interactions outside of work. [AR at 267.]

On May 4, 2011, Dr. Grace wrote a one-page letter stating that he had been treating plaintiff regularly since September 2, 2009, pursuant to her traumatic experience at work. [AR at 269.] He also noted that although plaintiff had made some gains in terms of daily functioning, she "continues to show symptoms of depression, anxiety, withdrawal, poor concentration, immobilization & low motivation." [Id.] She still needs "the assistance of a medication regimen," taking Prozac and Wellbutrin, and "the lack of closure to her Work. Comp. case has not assisted her progress." [Id.] Dr. Grace found plaintiff "to be temporarily disabled & unable to proceed with her life & gainful employment." [Id.] Dr. Grace treated plaintiff from September 2009 through January 2012. [AR at 263-69, 322-431.]

2. The ALJ Failed to Provide Specific and Legitimate Reasons for Rejecting the Opinions of Dr. Curtis

The ALJ gave limited weight to the opinions of Dr. Curtis because (1) his "extremely restrictive limitations" are not supported by the evidence; (2) there is no evidence that plaintiff "requires around-the-clock in-home support services because of her mental impairment; and (3) Dr. Curtis' opinion is "contradicted by Dr. Grace's December 2010 letter stating that the claimant

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[6](...continued)
before the worker's compensation action was initiated. [AR at 53 ("Dr. Grace was her doctor before the workman's comp attorney . . . [and] Dr. Grace stayed on board because it wasn't advisable to switch her from that doctor.").]

had varied activities of daily living and that the claimant's post-traumatic stress disorder symptoms had greatly lessened." [AR at 29.] The Court finds that these reasons are not specific and legitimate or supported by substantial evidence.

a. Dr. Curtis' Opinions Are Supported by the Evidence

Plaintiff was hospitalized twice in 2009 for five days each time. [AR at 265.] In June 2010, Dr. Curtis, plaintiff's treating psychiatrist from September 29, 2009, through February 7, 2012 [AR at 217-23, 313-20], administered an extensive battery of psychological tests. [AR at 215-58.] In fact, Dr. Curtis is the only physician of record to administer such tests.[7]

Additionally, Dr. Curtis' report and findings are consistent with his own treatment notes. For instance, in December 2009, Dr. Curtis reported that plaintiff had visible anxiety and depressed expressions [AR at 27 (citing AR at 222)], and in March 2010, Dr. Curtis noted emotional withdrawal and visible anxiety [AR at 28 (citing AR at 220)]. Other treatment records later submitted to the Appeals Council and, therefore, not before the ALJ, show that Dr. Curtis made similar observations on various dates between June 2010 and February 2012. [See, e.g., AR at 315 (February 7, 2012: emotional withdrawal, visible anxiety), 316 (August 1, 2011: visible anxiety, depressed expressions), 317 (April[8] 26, 2011: emotional withdrawal, visible anxiety, depressed expressions), 318 (November 16, 2010: emotional withdrawal, visible anxiety), 319 (April[9] 2, 2010: emotional withdrawal, visible anxiety), 320 (June 29, 2010: emotional withdrawal, visible anxiety).] In June 2010, Dr. Curtis completed his permanent and stationary report, including the results of numerous psychological tests. [AR at 224-58.] Dr. Curtis diagnosed

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[7] Dr. Bagner, the consulting examiner to whom the ALJ assigned "some weight," relied only on his review of Dr. Curtis' report and his own March 14, 2011, mental status examination of plaintiff. [AR at 280-83.]

[8] Although somewhat unclear, the date on this note appears to be 4/26/11. [AR at 317.]

[9] Although somewhat unclear, the date on this note appears to be 4/2/10. [AR at 319.]

plaintiff with depressive disorder, not otherwise specified, and assessed a GAF score of 45,[10] finding she had moderate limitations in maintaining concentration, persistence, or pace, and a marked limitation in adaptation. [Id.] Based on his extensive testing, Dr. Curtis found plaintiff temporarily totally disabled on an emotional basis from her last day of work on or about June 23, 2009, to the time of his evaluation and continuing until her condition becomes more stabilized. [AR at 241.]

Accordingly, Dr. Curtis' findings are supported by the evidence and this was not a specific and legitimate reason for discounting Dr. Curtis' opinion.

b. Around-the-Clock In-Home Support

The ALJ also rejected Dr. Curtis' opinion because there was no evidence that plaintiff needed "around-the-clock" in-home support services. [AR at 29.] However, Dr. Curtis does not suggest that such services were warranted. Nor are such services required for a finding of disability. Moreover, the Ninth Circuit has made it clear that a claimant need not be "utterly incapacitated to be eligible for benefits . . . ." Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (internal citations omitted).

Accordingly, this was not a specific and legitimate reason for discounting Dr. Curtis' opinion.

c. Dr. Curtis' Opinions are Consistent with Dr. Grace's 2010 Letter and Plaintiff's Alleged Daily Activities

The ALJ rejected Dr. Curtis' opinion because it was contradicted by Dr. Grace's December 2010 letter, which indicated that plaintiff engaged in varied activities of daily living and that her post-traumatic stress disorder symptoms had greatly lessened. [AR at 29.]

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[10] The ALJ used the difference between Dr. Curtis' GAF assessment of 45 and Dr. Bagner's GAF assessment of 60 as evidence supporting the ALJ's finding that Dr. Curtis' opinion was not supported by the evidence. Because the Court finds that other sufficient evidence supported Dr. Curtis' opinions, the Court declines to consider the implication, if any, of the difference between these GAF scores.

As will be discussed in more detail below [see supra, Part V.A.3.a], the Court finds that the ALJ improperly characterized Dr. Grace's December 2010 letter, as well as plaintiff's ability to perform her activities of daily living as contrasted with her continued symptoms when faced with work-like situations or thoughts.

This reason for rejecting Dr. Curtis' opinion, therefore, fails based on that reasoning. It was not a specific and legitimate reason for discounting Dr. Curtis' opinion.

3. The ALJ Failed to Provide Specific and Legitimate Reasons for Rejecting the May 2011 Opinions of Dr. Grace

The ALJ gave "significant weight" to the December 2010 opinion of Dr. Grace, "because he provided a detailed description of the claimant's symptoms." [Id.] He gave "limited weight" to Dr. Grace's May 2011 letter because (1) "it is not consistent with the overall record, including the claimant's testimony and the testimony of the claimant's mother," and (2) the ALJ found it troubling that Dr. Grace reported "fairly good functioning in December 2010," and "poor functioning in May 2011 without providing any reason for the change." [AR at 29.]

a. Dr. Grace's May 2011 Letter Is Consistent with the Overall Record

A review of the record shows that Dr. Grace's May 2011 opinion was not "inconsistent with the overall record." In fact, given the evidence of record, that opinion appears to be entirely consistent with Dr. Curtis' findings and, contrary to the ALJ's finding, not inconsistent with Dr. Grace's December 2010 findings.

Dr. Grace's earlier December 2010 report indicated that plaintiff had steadily improved with regard to her regular activities of daily living, and that she had also improved her assertiveness in dealing with others. However, contrary to the ALJ's assertion that Dr. Grace, in his 2010 report, "specifically stated that any influence stemming from [plaintiff's] work-related stress would have to be deemed minimal in impact" [AR at 28], read in context, what Dr. Grace actually stated was that plaintiff's "*deeply* stressed behavior" is "situational & work related," that "[e]ven discussion of treatment at work or returning to work site bring[s] a reaction," but that this reaction did not appear

to carry over into her interactions "*outside of work related situations*," to affect her interpersonal interactions with others, including her family. [AR at 267 (emphases added.] Dr. Grace then concluded that "[a]ny influence [*on plaintiff's family interactions*] from [plaintiff's] work-related stress would have to be deemed minimal in impact." [Id.] This statement is significantly different from the ALJ's suggestion that Dr. Grace opined that plaintiff's work-related stress generally has minimal impact or influence on her life.

Moreover, notwithstanding any improvement in her activities of daily living, Dr. Grace's December 2010 report also noted plaintiff's "difficulty with work related . . . involvements or material," and reported that plaintiff was still experiencing "panic, shaking, palpitations, vomiting, etc." when confronted with work-related situations. [Id.] He stated that when admitted to Aurora Behavioral Hospital in June 2009, plaintiff was "immobilized, overwhelmed & withdrawn," and was diagnosed with anxiety and situational depression. [AR at 265.] Her symptoms when hospitalized in August 2009 for a second time were "mainly depressive in nature and were similar to [the] June episode." [Id.] Dr. Grace's May 2011 letter is consistent with these statements in that it reflects that plaintiff still experiences symptoms of depression, anxiety, withdrawal, poor concentration, immobilization, and low motivation. [AR at 269.] Additionally, as discussed in more detail below, Dr. Grace's own treatment notes between January and May 2011 are consistent with these findings. [See discussion supra Part V.A.3.b.]

Nor are Dr. Grace's opinions inconsistent with plaintiff's or her mother's testimony. Plaintiff reported that she was able to drive her daughter to school, go to her daughter's performances, do some light chores, assist with cleaning, do some gardening, play with her dogs, and shop [AR at 29 (citing AR at 176-83, 263-69)], and Dr. Grace indicated plaintiff had made progress with regard to her regular activities of daily living in his December 2010 report [AR at 266], as well as in his May 2011 report, which also indicated plaintiff had made some gains "in terms of daily functioning." [AR at 269.] In fact, Dr. Grace's December 2010 and May 2011 reports, and Dr. Curtis' June 2010 report, all portray plaintiff as a person who, although she suffers from PTSD,

depression, and anxiety, is generally capable of performing her activities of daily living but suffers a severe increase of symptoms when confronted with *work-related situations or stresses.*[11]

Based on the foregoing, this too was not a specific and legitimate reason, supported by substantial evidence of record, for discounting the opinions of Dr. Grace.

b. Dr. Grace's Treatment Notes Provide Evidence of Plaintiff's Functioning Between December 2010 and May 2011

The ALJ states that it is "troubling" that Dr. Grace's December 2010 report shows "fairly good" functioning, but that the May 2011 report reflects "poor functioning," without providing any reason for the change. [AR at 29.]

Preliminarily, for the reasons discussed above, the Court does not agree that the December 2010 report shows "fairly good" functioning overall, or that these two reports actually show a significant difference in functioning. Although Dr. Grace's December 2010 report certainly is more detailed than his later report, both reflect Dr. Grace's opinion, as discussed above, that plaintiff experiences mental health symptoms when confronted with work-related stresses, yet had otherwise been making improvement in her daily living functions. Moreover, various treatment notes from Dr. Grace, submitted to the Appeals Council and made part of the record,[12] provide

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[11] With regard to her subjective symptoms, plaintiff testified that she could sleep all day and stay isolated, and has a hard time completing simple things. [AR at 67, 70.] Her mother testified that plaintiff is a completely different person, does not even have enough confidence anymore to answer the phone, and has no friends and no social life. [AR at 71.] While these statements may have some relevance with respect to plaintiff's and her mother's credibility when contrasted with plaintiff's activities of daily living, neither Dr. Grace nor Dr. Curtis found marked impact on plaintiff's daily activities from her work-related PTSD. Moreover, the ALJ found that plaintiff's "credibility is poor," without ever specifically stating what complaints he found to be less than credible. The ALJ at least implicitly appeared to discount plaintiff's subjective complaints such as her desire to be isolated or to sleep all day, while accepting her statements regarding her activities of daily living. [AR at 29.]

[12] When the Appeals Council "considers new evidence in deciding whether to review a decision of the ALJ, that evidence becomes part of the administrative record, which the district court must consider when reviewing the Commissioner's final decision for substantial evidence." Brewes v. Comm'r of Soc. Sec. Admin., 682 F.3d 1157, 1163 (9th Cir. 2012). When the Appeals (continued...)

evidence that between January and June 2011, plaintiff was continuing to experience subjective symptoms. [See, e.g., AR at 337 (June 13, 2011: back on Prozac and Wellbutrin; wants to put her life back together; wants to get over depression; fearful of doing wrong; wants to get back to being more confident and more able to enjoy things); AR at 338 (May 9, 2011: Dr. Grace's mental status examination on that date showed that plaintiff was still depressed, anxious, having difficulty concentrating on steps to take, and co-dependent, although she was having a positive response to cognitive behavioral therapies); AR at 341 (April 27, 2011: "good days & bad days;" "while focus is on satisfying activities doing OK but when down time or no focus frequent crying;" difficulty getting things done; hard to get involved; "[s]till not back to desired state")]; AR at 342 (March 15, 2011: "on [a] Recov scale 1-10 I'm a 0/10"; "[L]ife up in the air a lot"; "Little stuff annoying me"); AR at 344 (March 28, 2011: "Have felt more relief at stating my case at hearing"; "felt good re the way I said my piece"); AR at 349 (January 13, 2011: still having some negative feelings; lack of motivation).]

The Commissioner argues that these same records submitted to the Appeals Council "actually support the ALJ's decision," because they show that plaintiff "had an upcoming job interview, was walking her dogs every other day, was re-doing her house, and had limitations on finding a job because of her dogs but was nonetheless exploring different job possibilities. (JS at 20 (citing AR at 338, 342, 345, 348, 349). The Court does not agree with this characterization, especially given the records discussed above that show continuing symptoms. In fact, the records cited by defendant to support this proposition actually show that many of these notes were not a reflection of an increase in plaintiff's functioning, but were things that were being explored between Dr. Grace and plaintiff as "where to go from here" goals or action items. For instance, on May 9, 2011, possible goals suggested during the treatment session were to explore Citrus College or Cal Poly for courses as a vet assistant or park ranger. [AR at 338.] This same note, written after Dr. Grace's second letter, also indicated that Dr. Grace's mental status examination

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[12](...continued)
Council declines review, the ALJ's decision becomes the final decision of the Commissioner, and the district court reviews that decision for substantial evidence based on the record as a whole. Id. at 1161-62.

of that date found plaintiff still depressed, anxious, having difficulty concentrating on the steps to take, and co-dependent. [Id.] On March 28, 2011, although plaintiff reported no developments on the job front because of her dogs, she also described herself as a 0 on a recovery scale of 1-10, frustrated, depressed and anxious. [AR at 342.] A February 7, 2011, note only cryptically reports: "Redoing house" with no further explanation. [AR at 345.] That note, along with the January 10, 2011, note, reflects that plaintiff may have had a job interview in Long Beach for a sales position, although the Court finds no further mention of that interview in the record. [AR at 345, 348.] Finally, walking her dog every other day was also just a "what's next" goal for plaintiff in a January 3, 2011, note. [AR at 349.]

Based on the foregoing, this was not a specific and legitimate reason, supported by substantial evidence of record, for discounting the May 2011 opinion of Dr. Grace.

4. The ALJ Failed to Provide Adequate Explanation for the Controlling Weight Given to the Opinions of the Consulting Examiner and the Non-Examining Psychologist

If a treating physician's opinion is not giving controlling weight because it is not well supported or because it is inconsistent with other substantial evidence in the record, the ALJ is instructed to consider the factors listed in 20 C.F.R. § 404.1527(c)(2)-(6) in determining what weight to accord the opinion of the treating physician. 20 C.F.R. § 404.1527(c). Those factors include the "[l]ength of the treatment relationship and the frequency of examination" by the treating physician; and the "nature and extent of the treatment relationship" between the patient and the treating physician. Id. § 404.1527(c)(2)(i)-(ii). When an examining physician provides independent clinical findings that differ from the findings of the treating physician, such findings are substantial evidence. Tonapetyen v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001); Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007) (when an examining physician provides independent clinical findings that differ from the findings of the treating physician, such findings are substantial evidence). "The opinion of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion of . . . a treating physician." Lester, 81 F.3d at 831; see Pitzer v. Sullivan, 908 F.2d 502, 506 n.4 (9th Cir. 1990) (finding that the nonexamining

physician's opinion "with nothing more" did not constitute substantial evidence). However, "[w]here the opinion of the claimant's treating physician is contradicted, and the opinion of a nontreating source is based on independent clinical findings that differ from those of the treating physician, the opinion of the nontreating source may itself be substantial evidence." Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). Independent clinical findings include "(1) diagnoses that differ from those offered by another physician and that are supported by substantial evidence, or (2) findings based on objective medical tests that the treating physician has not herself considered." Orn, 495 F.3d at 632 (internal citations omitted).

Here, the ALJ gave "some weight" to the March 14, 2011, opinion of Ernest Bagner, M.D., the psychiatric consultative examiner, and to the April 6, 2011, report of Deborah Hartley, Ph.D., the State agency reviewing psychologist. [AR at 29, 280-83, 286-99, 300-02.]

On March 14, 2011, Dr. Bagner found plaintiff presented as fully oriented, with a depressed mood, intact and coherent speech, tight thought processes, of average intelligence, with normal reality contact, and no suicidal or homicidal ideation. [AR at 281-82.] Plaintiff reported to Dr. Bagner that she bathed and dressed herself, did household chores, and drove herself. [AR at 281.] Dr. Bagner performed a mental status examination and diagnosed depressive disorder, not otherwise specified, and assessed a GAF score of 60, finding no more than mild or moderate limitations. [AR at 282-83.]

After reviewing Dr. Bagner's March 2011 report, and limited portions of Dr. Curtis' June 2010 report, Dr. Hartley in her April 6, 2011, report found that plaintiff had mild limitations in activities of daily living, moderate limitations in maintaining social functioning and concentration, persistence, and pace, and no episodes of decompensation of extended duration. [AR at 296.] Dr. Hartley concluded that plaintiff could perform simple tasks with routine supervision, relate to supervisors and peers on a superficial work basis, could not relate to the general public, and could adapt to a work situation. [AR at 302.]

Both Dr. Bagner and Dr. Hartley agreed that plaintiff could perform simple work, which the ALJ found was consistent with the overall evidence, and which he incorporated into plaintiff's RFC. [AR at 29, 283, 302.]

In this case, both Dr. Curtis and Dr. Grace had long-term treating relationships with plaintiff. The Commissioner's regulations provide that more weight is given to longitudinal opinion evidence. 20 C.F.R. § 404.1527(c)(2). Moreover, as previously discussed, Dr. Curtis is the only source to conduct an extensive battery of psychological examinations. See 20 C.F.R. § 404.1527(c)(3) (ALJ gives more weight to opinions based on objective evidence, such as test results). Although Dr. Bagner reviewed Dr. Curtis' report and conducted a single mental status examination himself, he did not administer any other objective psychological tests.[13] As such, especially in contrast to the long-term nature of the treatment relationship between plaintiff and Drs. Curtis and Grace, Dr. Bagner's mental status examination was little more than a "snapshot" assessment of plaintiff's condition at the point in time she presented to Dr. Bagner.

With respect to Dr. Hartley's April 2011 findings, Dr. Hartley recites the history of plaintiff's emotional symptoms from Dr. Curtis' June 2010 report, and the findings from Dr. Curtis' mental status examination of the same date, including his assessed GAF score of 45. [AR at 302 (citing AR at 225-28, 230-32).] Dr. Hartley makes no mention of the many psychological assessments administered by Dr. Curtis or the results of those assessments. [Id.] Nor does she make any mention of Dr. Grace's report or treatment notes. [Id.] Apparently, therefore, Dr. Hartley's findings rested primarily on Dr. Bagner's March 2011 consultative examination findings.

Under these circumstances, the reasons provided by the ALJ for giving little weight to the opinions of Dr. Curtis and Dr. Grace are not legally sufficient and/or supported by substantial evidence. Even assuming the opinion of Dr. Bagner, based in part as it was on his mental status examination, constituted "substantial evidence," the Social Security regulations still require

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[13] A mental status examination includes both objective observations of the clinician, as well as subjective descriptions given by the patient. Thus, Dr. Bagner's mental status examination of plaintiff included, in addition to plaintiff's own statements concerning her mood and other psychiatric symptoms, Dr. Bagner's own observations regarding plaintiff's appearance, behavior, affect, alertness, and thought processes, as well as assessments he conducted concerning plaintiff's memory, concentration, fund of knowledge, insight and judgment, and abstractions and judgment. [AR at 281-83.] See Bass v. Colvin, 2014 WL 1330083, at *4 (C.D. Cal. Apr. 3, 2014), citing Clester v. Apfel, 70 F. Supp. 2d 985, 990 (S.D. Iowa 1999) (results of mental status examination provide basis for diagnostic impression of psychiatric disorder, just as results of physical examination provide basis for diagnosis of physical illness or injury).

deference to the treating physicians' opinions. See 20 C.F.R. § 404.1527; Soc. Sec. Ruling ("SSR") 96-2p,[14] 1996 WL 374188, at *1 ("A finding that a treating source's medical opinion is not entitled to controlling weight does not mean that the opinion is rejected."); Orn, 495 F.3d at 633 ("Even if [the examining physician's] opinion were 'substantial evidence,' § 404.1527 still requires deference to the treating physicians' opinions").

Under the factors set forth in § 404.1527, the treating relationship that Dr. Curtis and Dr. Grace had with plaintiff provides a "unique perspective" on plaintiff's condition. See 20 C.F.R. § 404.1527(c)(2); Orn, 495 F.3d at 633. Specifically, the nature and extent of those doctors' relationship with plaintiff adds significant weight to their opinions. See 20 C.F.R. § 404.1527(c)(2)(i)-(ii); Orn, 495 F.3d at 633. Here, both doctors maintained an ongoing treating relationship with plaintiff over an approximately two and one-half year period, and their opinions are consistent with each other. Moreover, when viewed in their entirety, both doctors provided ample support for their opinions regarding plaintiff's physical limitations. The ALJ failed to explain how the opinions of plaintiff's treating physicians, based on examinations of plaintiff on numerous occasions over more than two years, is less persuasive than the opinions of the examining physician, whose opinion is based on a one-time examination of plaintiff at a single point in time, and the non-examining psychologist, who primarily based her opinion on the findings of the consulting examiner.

In sum, considering the evidence as a whole, including the evidence submitted to the Appeals Council and made part of the administrative record, the ALJ failed to provide specific and legitimate reasons for rejecting the opinions of plaintiff's treating physicians. As a result, the ALJ's RFC assessment is not supported by substantial evidence and remand is required.

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[14] "The Commissioner issues [SSRs] to clarify the Act's implementing regulations and the agency's policies. SSRs are binding on all components of the [Social Security Administration]. SSRs do not have the force of law. However, because they represent the Commissioner's interpretation of the agency's regulations, we give them some deference. We will not defer to SSRs if they are inconsistent with the statute or regulations." Holohan v. Massanari, 246 F.3d 1195, 1202 n.1 (9th Cir. 2001) (internal citations omitted).

VI.

REMAND FOR FURTHER PROCEEDINGS

The Court has discretion to remand or reverse and award benefits. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989). Where (1) the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand, it is appropriate to exercise this discretion to direct an immediate award of benefits. Garrison v. Colvin, __ F.3d __, 2014 WL 3397218, at *20 (9th Cir. July 14, 2014) (setting forth the three-part credit-as-true standard for exercising the Court's discretion to remand with instructions to calculate and award benefits); see also Lingenfelter v. Astrue, 504 F.3d 1028, 1041 (9th Cir. 2007); Benecke v. Barnhart, 379 F.3d 587, 595-96 (9th Cir. 2004). Where there are outstanding issues that must be resolved before a determination can be made, and it is not clear from the record that the ALJ would be required to find plaintiff disabled if all the evidence were properly evaluated, remand is appropriate. See Benecke, 379 F.3d at 593-96; see also Connett v. Barnhart, 340 F.3d 871 (9th Cir. 2003) (cautioning that the credit-as-true rule may not be dispositive of the remand question in all cases, even where all three conditions are met). In Garrison, the Ninth Circuit, noting that it had never exercised the flexibility set forth in Connett in a published decision, clarified that the nature of the flexibility described in Connett is "properly understood as requiring courts to remand for further proceedings when, even though all conditions of the credit-as-true rule are satisfied, an evaluation of the record as a whole creates serious doubt that a claimant is, in fact, disabled." Garrison, 2014 WL 3397218, at *21.

In this case, as discussed above, because there was additional evidence submitted to the Appeals Council after the ALJ's decision, and because the VE may need to consider plaintiff's limitations in light of the opinions of her treating physicians, it is not clear that if the improperly discredited evidence were credited as true, the ALJ would be required to find plaintiff disabled on remand. Thus, the Court finds that there are outstanding issues that must be resolved before a final determination can be made.

In an effort to expedite these proceedings and to avoid any confusion or misunderstanding as to what the Court intends, the Court will set forth the scope of the remand proceedings. First, the ALJ on remand must reconsider the opinions of Dr. Curtis and Dr. Grace, including the additional documents submitted to the Appeals Council. In assessing the medical opinion evidence of these doctors, or any other physicians, the ALJ must explain the weight afforded to each opinion and provide legally adequate reasons for any portion of the opinions that the ALJ rejects. Next, if the ALJ again determines that the opinions of Dr. Curtis and Dr. Grace are entitled to less weight than the opinion of the examining physician, whose opinion is based on a one-time examination of plaintiff at a single point in time, and the non-examining psychologist, who primarily based her opinion on the findings of the consulting examiner, the ALJ should provide legally sufficient explanations for this finding. If necessary, the ALJ shall reassess plaintiff's RFC, and determine, at step four, with the assistance of a VE if necessary, whether plaintiff is capable of performing her past relevant work. If she is not so capable, then the ALJ should proceed to step five.

VII.

CONCLUSION

IT IS HEREBY ORDERED that: (1) plaintiff's request for remand is **granted**; (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant for further proceedings consistent with this Memorandum Opinion.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment herein on all parties or their counsel.

This Memorandum Opinion and Order is not intended for publication, nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

DATED: September 16, 2014

PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE