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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MERI NUHBEGOVICH,
Plaintiff,
v.
CAROLYN W. COLVIN,
Commissioner of Social Security,
Defendant.

NO. CV 14-2285 AGR

MEMORANDUM OPINION AND
ORDER

Plaintiff Meri Nuhbegovich filed this action on April 1, 2014. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge. (Dkt. Nos. 9, 10.) On November 6, 2014, the parties filed a Joint Stipulation (“JS”) that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

1 I.

2 **PROCEDURAL BACKGROUND**

3 On August 1, 2011, Nuhbegovich filed an application for disability
4 insurance benefits and alleged an onset date of March 14, 2011.¹ AR 20, 86, 93.
5 The application was denied. AR 20, 51. Nuhbegovich requested a hearing
6 before an Administrative Law Judge (“ALJ”). AR 57. On July 12, 2012, the ALJ
7 conducted a hearing at which Nuhbegovich testified. AR 31-44. The ALJ left the
8 record open for a psychiatric evaluation and the submission of additional medical
9 evidence. AR 42. The psychiatric evaluation was performed on August 25, 2012.
10 AR 235-43. On September 24, 2012, the ALJ issued a decision denying benefits.
11 AR 17-27. On January 28, 2014, the Appeals Council denied the request for
12 review. AR 1-5. This action followed.

13 II.

14 **STANDARD OF REVIEW**

15 Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s
16 decision to deny benefits. The decision will be disturbed only if it is not supported
17 by substantial evidence, or if it is based upon the application of improper legal
18 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam);
19 *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

20 “Substantial evidence” means “more than a mere scintilla but less than a
21 preponderance – it is such relevant evidence that a reasonable mind might
22 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In
23 determining whether substantial evidence exists to support the Commissioner’s
24 decision, the court examines the administrative record as a whole, considering
25 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the
26 evidence is susceptible to more than one rational interpretation, the court must

27 ¹ Nuhbegovich testified that her onset date was actually July 4, 2011,
28 when her mother was killed in an accident. Administrative Record (“AR”) 39-40.

1 defer to the Commissioner's decision. *Moncada*, 60 F.3d at 523.

2 III.

3 **DISCUSSION**

4 **A. Disability**

5 A person qualifies as disabled, and thereby eligible for such benefits, "only
6 if his physical or mental impairment or impairments are of such severity that he is
7 not only unable to do his previous work but cannot, considering his age,
8 education, and work experience, engage in any other kind of substantial gainful
9 work which exists in the national economy." *Barnhart v. Thomas*, 540 U.S. 20,
10 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

11 **B. The ALJ's Findings**

12 The ALJ found that Nuhbegovich meets the insured status requirements
13 through December 31, 2015. AR 22.

14 Following the five-step sequential analysis applicable to disability
15 determinations, *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006),² the
16 ALJ found that Nuhbegovich had the severe impairment of major depression. AR
17 22. She had the residual functional capacity ("RFC") to perform a full range of
18 work at all exertional levels and could understand, remember and carry out
19 simple and complex instructions; interact with supervisors, coworkers and the
20 public; maintain concentration, attention, persistence and pace; adapt to stresses
21 common to a normal work environment; maintain regular attendance in the work
22 place and perform work on a consistent basis; and perform work activities without
23 special or additional supervision. AR 23. She could perform past relevant work
24 as an office manager. AR 27.

25
26 ² The five-step sequential analysis examines whether the claimant
27 engaged in substantial gainful activity, whether the claimant's impairment is
28 severe, whether the impairment meets or equals a listed impairment, whether the
claimant is able to do his or her past relevant work, and whether the claimant is
able to do any other work. *Lounsbury*, 468 F.3d at 1114.

1 **C. RFC Determination**

2 The ALJ gave controlling weight to Nuhbegovich’s treating psychiatrist, Dr.
3 Moeller. AR 25. On July 19, 2012, approximately one year after Nuhbegovich’s
4 mother died in a tragic accident, Dr. Moeller opined that she did not have
5 limitations in her ability to understand and remember simple instructions, and had
6 mild limitations in her ability to carry out simple instructions; make judgments on
7 simple work-related decisions; understand, remember and carry out complex
8 instructions; and make judgments on complex work-related decisions. AR 25,
9 216-18. Nuhbegovich’s ability to interact appropriately with supervisors, co-
10 workers and the public, as well as her ability to respond to changes in routine,
11 would not be affected by her impairment. AR 217.

12 Nuhbegovich contends the ALJ failed to articulate legally sufficient reasons
13 for rejecting the opinions of Dr. Maxwell, a treating psychologist, and Dr.
14 Chamberlain, an examining physician.

15 1. Dr. Maxwell

16 An opinion of a treating physician is given more weight than the opinion of
17 non-treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). To
18 reject an uncontradicted opinion of a medically acceptable treating source, an
19 ALJ must state clear and convincing reasons that are supported by substantial
20 evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). When a
21 treating physician’s opinion is contradicted by another doctor, “the ALJ may not
22 reject this opinion without providing specific and legitimate reasons supported by
23 substantial evidence in the record. This can be done by setting out a detailed
24 and thorough summary of the facts and conflicting clinical evidence, stating his
25 interpretation thereof, and making findings.” *Orn*, 495 F.3d at 632 (citations and
26 quotation marks omitted). “When there is conflicting medical evidence, the
27 Secretary must determine credibility and resolve the conflict.” *Thomas v.*
28 *Barnhart*, 278 F.3d 947, 956-57 (9th Cir. 2002).

1 Dr. Maxwell completed a mental disorder questionnaire on September 6,
2 2011, approximately two months after the accident and seven weeks after the
3 beginning of treatment. AR 200-05. Nuhbegovich's general appearance was
4 presentable but her posture was hunched over and "drawn inwards." AR 24, 200.
5 She appeared to be in a fog" and dabbed tears away during therapy sessions.
6 She cannot go to the corner where her mother was hit by a car or go upstairs at
7 home because she would be able to see the corner from her window. She
8 complained of depression and posttraumatic stress disorder. AR 24, 200. Her
9 general attitude was tearful, frightened, yet hostile. AR 24, 202. She had
10 perceptual or thinking disturbance, impaired judgment due to shock and traumatic
11 loss, difficulty sleeping, poor concentration and paranoid ideation. AR 24, 203.
12 She occasionally got assistance from neighbors and friends with shopping and
13 cooking. AR 24, 203. She could not successfully look for a job because of her
14 mental condition. AR 24, 203. "Patient is all consumed in mother's death and
15 resulting depression and anxiety are extremely overwhelming." AR 203.
16 Nuhbegovich stated she had poor memory and concentration. AR 24, 204. Dr.
17 Maxwell diagnosed Nuhbegovich with major depression and anticipated that
18 significant change was likely to occur between 9 and 12 months. AR 25, 205.

19 The ALJ gave "less weight" to Dr. Maxwell's opinions because she had
20 treated Nuhbegovich for only two months, which was right after the traumatic loss
21 of her mother. AR 25; see *Orn*, 495 F.3d at 631 (ALJ may consider treating
22 physician's length of treatment). Moreover, Dr. Maxwell herself anticipated
23 significant change between 9 and 12 months with medication and therapy. AR
24 25, 205.

25 Nuhbegovich argues that she submitted to the Appeals Council Dr.
26 Maxwell's summary of her medical records for the period July 19, 2011 through
27 November 30, 2012. AR 246-51. Given that the Appeals Council considered the
28 new evidence, this court also considers it. AR 5; see *Brewes v. Comm'r*, 682

1 F.3d 1157, 1163 (9th Cir. 2012) (“when the Appeals Council considers new
2 evidence in deciding whether to review a decision of the ALJ, that evidence
3 becomes part of the administrative record, which the district court must consider
4 when reviewing the Commissioner’s final decision for substantial evidence”).

5 Dr. Maxwell’s summary cover the treatment period already addressed in
6 the September 6, 2011 mental disorder questionnaire. AR 247-49. Nuhbegovich
7 had five additional treatment sessions in September-October 2011. AR 249-50.
8 On September 12, Nuhbegovich was still in the anger stage. She and Dr.
9 Maxwell developed a plan to network through temporary agencies and get a job.
10 AR 249. Nuhbegovich discussed the difficulty of finding a job “in this economy”
11 because of “her age” and the fact that she had not worked full time since 2008.
12 *Id.* In subsequent therapy sessions, Nuhbegovich reported trying to get a job but
13 feeling disconnected from the work environment. She felt her cognitive
14 functioning was altered due to her mother’s death. *Id.* On October 11, 2011,
15 Nuhbegovich reported she was doing better. AR 250.

16 In July 2012, Nuhbegovich called Dr. Maxwell shortly after the one-year
17 anniversary of her mother’s death. She reported that she was not approved for
18 disability and asked Dr. Maxwell to fill out paperwork. Dr. Maxwell responded
19 that she had not seen Nuhbegovich in eight months. Nuhbegovich scheduled an
20 appointment on September 13, 2012. Nuhbegovich reported that she had been
21 doing a bit better but did not have the cognitive functioning she had before her
22 mother’s death. She was concerned about the status of her case against the
23 driver who hit her mother, disappointed in the denial of her disability claim, and
24 concerned about her unemployment, coping skills and relationship with her
25 sister.³ *Id.* Dr. Maxwell provided information to Nuhbegovich’s attorney. As of
26

27 ³ Nuhbegovich’s sister was left in charge of her mother’s money. AR 248.
28 In September 2011, Nuhbegovich was frustrated at having to ask her sister for
her mother’s money. AR 249. In September 2012, however, Nuhbegovich

1 December 20, 2012 (the date of Dr. Maxwell's letter to the attorney),
2 Nuhbegovich had not scheduled any further appointments. AR 251.

3 The ALJ's reasons for giving less weight to Dr. Maxwell's opinions remain
4 valid and supported by substantial evidence when taking into account Dr.
5 Maxwell's summary. The treatment length in September 2012 was even shorter
6 (one visit) for the purpose of obtaining Dr. Maxwell's opinions for her disability
7 claim. Moreover, the summary was based on Nuhbegovich's self reporting.

8 2. Dr. Chamberlain

9 An examining physician's opinion constitutes substantial evidence when it
10 is based on independent clinical findings. *Orn*, 495 F.3d at 631. When, as here,
11 an examining physician's opinion is contradicted, "it may be rejected for 'specific
12 and legitimate reasons that are supported by substantial evidence in the record.'"
13 *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008)
14 (citation omitted).

15 The ALJ gave little weight to Dr. Chamberlain's opinion because it was
16 inconsistent with the record as a whole and with Dr. Moeller's treating opinion,
17 and was based on only one visit. AR 25.

18 Dr. Chamberlain examined Nuhbegovich on August 25, 2012. AR 235.
19 During the mental status examination, Nuhbegovich had coherent and organized
20 thought processes and content. AR 25, 237-38. She appeared to be of above
21 average intelligence. AR 238. She was alert and had normal speech. AR 25,
22 238. She was tearful and had a depressed mood and restricted affect. AR 25,
23 238. She could perform serial threes from 20 but could not perform serial 7s
24 from 100. AR 25, 238. Her insight and judgment were intact. AR 239. Dr.
25 Chamberlain diagnosed major depressive disorder, recurrent severe without
26 psychotic features, with a Global Assessment of Functioning ("GAF") score of

27 _____
28 reported "she can come back to therapy because she is getting money from her
sister." AR 250.

1 45.⁴ AR 25, 239.

2 Dr. Chamberlain opined that Nuhbegovich had a mild impairment in her
3 ability to understand, remember, and carry out simple one or two-step job
4 instructions; associate with day-to-day work activity, including attendance and
5 safety; accept instructions from supervisors; maintain regular attendance and
6 perform work activities on a consistent basis; and perform work activities without
7 special or additional supervision. AR 25, 240. She was moderately impaired in
8 her ability to do detailed and complex instructions, and maintain concentration,
9 attention, persistence and pace. AR 25, 240. She was markedly impaired in her
10 ability to relate and interact with co-workers and the public due to her irritability.
11 AR 25, 240.

12 The ALJ's finding that Dr. Chamberlain's opinion was inconsistent with the
13 record as a whole is supported by substantial evidence. AR 25. Treatment notes
14 show that medication helped Nuhbegovich's symptoms and that she made
15 progress with treatment. AR 24, 185-86, 188, 225, 229, 250. Although
16 Nuhbegovich reported isolating herself, she spent time with family and friends.
17 AR 26, 135-36, 203, 237. She told Dr. Moeller in January 2012 that she was
18 going with her sister and brother-in-law to Hawaii. AR 232. The record shows no
19 psychiatric hospitalizations. AR 200, 236. Nuhbegovich actively looked for work
20 and went on interviews. AR 249. An ALJ can properly rely on the opinions of a
21 treating psychiatrist to reject the opinion of an examining physician. The ALJ
22 articulated specific and legitimate reasons supported by substantial evidence in
23 the record for discounting Dr. Chamberlain's opinion.

24 Nuhbegovich contends that if the ALJ properly gave controlling weight to
25 Dr. Moeller's opinions, the ALJ erred in not having a vocational expert testify as to

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27 ⁴ A GAF score of 45 indicates serious symptoms or serious impairment in
28 social, occupational, or school functioning. See American Psychiatric
Association, Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed.
Text Revision 2000).

1 whether the limitations in her RFC would prevent her from performing past
2 relevant work at step four of the sequential analysis. Nuhbegovich relies primarily
3 on *Hutton v. Astrue*, 491 Fed. Appx. 850 (9th Cir. 2012). In *Hutton*, the ALJ
4 determined at step two that the claimant had mild limitations in concentration,
5 persistence of pace, and that the claimant's PTSD was non-severe. At step four,
6 however, the ALJ excluded the claimant's PTSD from consideration, including the
7 finding of mild limitations. *Id.* at 851. The Ninth Circuit reversed and found that
8 the ALJ erred in disregarding his own finding of mild limitations. *Id.* at 850-51.

9 In this case, the ALJ did not disregard his prior findings regarding
10 Nuhbegovich's mental limitations at step four of the sequential analysis. "At step
11 four of the sequential analysis, the claimant has the burden to prove that [s]he
12 cannot perform his prior relevant work 'either as actually performed or as
13 generally performed in the national economy.'" *Carmickle*, 533 F.3d at 1166
14 (citation omitted). "Although the burden of proof lies with the claimant at step
15 four, the ALJ still has a duty to make the requisite factual findings to support his
16 conclusion." *Pinto v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001). "This is done
17 by looking at the 'residual functional capacity and the physical and mental
18 demands' of the claimant's past relevant work." *Id.* at 844-45. When an ALJ
19 relies on the DOT for a job description of a claimant's past relevant work, the ALJ
20 must "definitively explain" any deviation between the Dictionary of Occupational
21 Titles ("DOT") and the claimant's noted limitations. *Id.* at 847. Nuhbegovich has
22 not identified any error by the ALJ.

23 **D. Credibility**

24 Nuhbegovich contends the ALJ erred in discounting her subjective
25 symptom testimony.

26 "To determine whether a claimant's testimony regarding subjective pain or
27 symptoms is credible, an ALJ must engage in a two-step analysis." *Lingenfelter*
28 *v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). At step one, "the ALJ must

1 determine whether the claimant has presented objective medical evidence of an
2 underlying impairment ‘which could reasonably be expected to produce the pain
3 or other symptoms alleged.’” *Id.* (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344
4 (9th Cir. 1991) (en banc)).

5 “Second, if the claimant meets this first test, and there is no evidence of
6 malingering, the ALJ can reject the claimant’s testimony about the severity of her
7 symptoms only by offering specific, clear and convincing reasons for doing so.”
8 *Lingenfelter*, 504 F.3d at 1036 (citation and quotation marks omitted). “In making
9 a credibility determination, the ALJ ‘must specifically identify what testimony is
10 credible and what testimony undermines the claimant’s complaints[.]’” *Greger v.*
11 *Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (citation omitted).

12 In weighing credibility, the ALJ may consider factors including: the nature,
13 location, onset, duration, frequency, radiation, and intensity of any pain;
14 precipitating and aggravating factors (e.g., movement, activity, environmental
15 conditions); type, dosage, effectiveness, and adverse side effects of any pain
16 medication; treatment, other than medication, for relief of pain; functional
17 restrictions; the claimant’s daily activities; and “ordinary techniques of credibility
18 evaluation.” *Bunnell*, 947 F.2d at 346 (citing Social Security Ruling 88-13)
19 (quotation marks omitted).⁵ The ALJ may consider: (a) inconsistencies or
20 discrepancies in a claimant’s statements; (b) inconsistencies between a
21 claimant’s statements and activities; (c) exaggerated complaints; and (d) an
22 unexplained failure to seek treatment. *Thomas*, 278 F.3d at 958-59.

23 The ALJ found that Nuhbegovich’s medically determinable impairment
24 could reasonably be expected to cause the alleged symptoms, but her
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26 ⁵ Social Security rulings do not have the force of law. Nevertheless, they
27 “constitute Social Security Administration interpretations of the statute it
28 administers and of its own regulations,” and are given deference “unless they are
plainly erroneous or inconsistent with the Act or regulations.” *Han v. Bowen*, 882
F.2d 1453, 1457 (9th Cir. 1989).

1 statements concerning the intensity, persistence and limiting effects of her
2 symptoms were not credible to the extent they were inconsistent with the RFC.
3 AR 24. The ALJ relied on three reasons: (1) the objective evidence did not
4 support the degree of Nuhbegovich's allegations; (2) her activities of daily living
5 were not consistent with the alleged degree of pain and impairment; and (3)
6 Nuhbegovich stopped working because she was laid off and continued to look for
7 work after the onset date. AR 26.

8 1. Objective Evidence

9 Although lack of objective medical evidence supporting the degree of
10 limitation "cannot form the sole basis for discounting pain testimony," it is a factor
11 that an ALJ may consider in assessing credibility. *Burch v. Barnhart*, 400 F.3d
12 676, 681 (9th Cir. 2005). The ALJ found that Nuhbegovich's subjective
13 complaints and alleged limitations were out of proportion to the objective clinical
14 findings and observed functional restrictions. AR 26. As discussed above, the
15 ALJ's findings are supported by substantial evidence. The ALJ found no
16 evidence that Nuhbegovich's medication side effects were so severe that she
17 required medication changes. The ALJ found no evidence that Nuhbegovich had
18 any physical impairments that would limit her physical functioning. *Id.*

19 2. Activities of Daily Living

20 An ALJ may consider a claimant's daily activities when weighing credibility.
21 *Bunnell*, 947 F.2d at 346. The ALJ found that Nuhbegovich's activities of daily
22 living supported the RFC. AR 26. The ALJ noted that in March 2011,
23 Nuhbegovich was the primary care giver for her mother until she died in July
24 2011. AR 26, 168. Nuhbegovich lives alone and is able to manage her personal
25 care without assistance, drive a car, grocery shop, manage finances and perform
26 household chores. AR 26, 237. She has a fair relationship with family and
27 friends. AR 26, 131-34, 237. When the evidence is susceptible to more than one
28 rational interpretation, the court must defer to the Commissioner's decision.

1 *Moncada*, 60 F.3d at 523.

2 3. Ability to Work

3 The ALJ noted that Nuhbegovich stopped working because she was laid
4 off and not because of a disabling impairment. AR 26, 180. An ALJ may
5 consider the reason that a claimant stopped working. See *Bruton v. Massanari*,
6 268 F.3d 824, 826 (9th Cir. 2001). Nuhbegovich argues that she testified that her
7 disability actually began on July 4, 2011, when her mother died, not on the
8 alleged onset date of March 14, 2011. Therefore, she contends, any discussion
9 of her work prior to July 4, 2011 is irrelevant. However, Nuhbegovich looked for
10 work after she was laid off and after the onset date. AR 26, 168, 249. The ALJ
11 relied on this evidence to infer that Nuhbegovich believed she was able to work.
12 AR 26. The ALJ's finding is supported by substantial evidence.

13 When, as here, "the ALJ's credibility finding is supported by substantial
14 evidence in the record, we may not engage in second-guessing." *Thomas*, 278
15 F.3d at 959 (citing *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600
16 (9th Cir. 1999)). The ALJ did not err in his credibility assessment.

17 **IV.**

18 **ORDER**

19 IT IS HEREBY ORDERED that the decision of the Commissioner is
20 affirmed.

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

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24
25 DATED: December 29, 2014

26 
27 ALICIA G. ROSENBERG
28 United States Magistrate Judge