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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICIA CAMPBELL,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of the Social
Security Administration,
Defendant.

Case No. CV 14-8246 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Patricia Campbell ("Plaintiff") seeks review of the final decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying her application for Title XVI Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge.

\\

1 For the reasons stated below, the decision of the Commissioner is
2 REVERSED and REMANDED for further administrative proceedings
3 consistent with this decision.

4
5 **II.**

6 **PROCEDURAL HISTORY**

7
8 On February 3, 2011, Plaintiff filed an application for
9 Supplemental Security Income, claiming that she became disabled
10 on April 11, 2005. (Administrative Record ("AR") 125-131, 162).
11 Plaintiff based her alleged disability on head, neck and back
12 injuries, bilateral carpal tunnel syndrome, seizures, loss of her
13 sense of smell, arthritis of the hip and tailbone, and
14 "equilibrium balance is off." (AR 162). The Agency denied
15 Plaintiff's application on April 15, 2011 (AR 83) and upon
16 reconsideration on November 22, 2011. (AR 92).

17
18 Plaintiff requested a hearing, which was held before
19 Administrative Law Judge ("ALJ") Dale A. Garwal on January 4,
20 2013 (the "ALJ Hearing"). (AR 58-80). Vocational expert ("VE")
21 Gail Maron also testified. (AR 58, 76-79). On February 1,
22 2013, the ALJ issued an unfavorable decision. (AR 25-37).
23 Plaintiff sought review before the Appeals Council (AR 20-21),
24 which the Council denied on September 9, 2014. (AR 1-4). The
25 ALJ's determination thus became the final decision of the
26 Commissioner. (AR 1). Plaintiff filed the instant action on
27 November 5, 2014. (Dkt. No. 3).

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1 III.

2 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

3
4 To qualify for disability benefits, a claimant must
5 demonstrate a medically determinable physical or mental
6 impairment that prevents her from engaging in substantial gainful
7 activity and that is expected to result in death or to last for a
8 continuous period of at least twelve months. Reddick v. Chater,
9 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. §
10 423(d)(1)(A)). The impairment must render the claimant incapable
11 of performing the work she previously performed and incapable of
12 performing any other substantial gainful employment that exists
13 in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098
14 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

15
16 To decide if a claimant is entitled to benefits, an ALJ
17 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920.
18 The steps are:

- 19
20 (1) Is the claimant presently engaged in substantial
21 gainful activity? If so, the claimant is found
22 not disabled. If not, proceed to step two.
- 23 (2) Is the claimant's impairment severe? If not, the
24 claimant is found not disabled. If so, proceed
25 to step three.
- 26 (3) Does the claimant's impairment meet or equal one
27 of the specific impairments described in 20
28 C.F.R. Part 404, Subpart P, Appendix 1? If so,

1 the claimant is found disabled. If not, proceed
2 to step four.

3 (4) Is the claimant capable of performing his past
4 work? If so, the claimant is found not disabled.
5 If not, proceed to step five.

6 (5) Is the claimant able to do any other work? If
7 not, the claimant is found disabled. If so, the
8 claimant is found not disabled.

9

10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
11 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20
12 C.F.R. §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

13

14 The claimant has the burden of proof at steps one through
15 four, and the Commissioner has the burden of proof at step five.
16 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
17 affirmative duty to assist the claimant in developing the record
18 at every step of the inquiry. Id. at 954. If, at step four, the
19 claimant meets her burden of establishing an inability to perform
20 past work, the Commissioner must show that the claimant can
21 perform some other work that exists in "significant numbers" in
22 the national economy, taking into account the claimant's residual
23 functional capacity ("RFC"), age, education, and work experience.
24 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20
25 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do
26 so by the testimony of a vocational expert ("VE") or by reference
27 to the Medical-Vocational Guidelines appearing in 20 C.F.R. Part
28 404, Subpart P, Appendix 2 (commonly known as "the Grids").

1 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a
2 claimant has both exertional (strength-related) and non-
3 exertional limitations, the Grids are inapplicable and the ALJ
4 must take VE testimony. Moore v. Apfel, 216 F.3d 864, 869 (9th
5 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th
6 Cir. 1988)).

7
8 **IV.**

9 **THE ALJ'S DECISION**

10
11 The ALJ employed the five-step sequential evaluation
12 process. At step one, the ALJ found that Plaintiff had not
13 engaged in substantial gainful employment since her SSI
14 application date of January 26, 2011.¹ (AR 30). At step two,
15 the ALJ found that Plaintiff had the severe physical impairments
16 of cervical disc bulges at two levels of the cervical spine and
17 one level of the lumbar spine, a stable bilateral old pars defect
18 at L5-S1, a history of bilateral carpal syndrome, and a history
19 of seizure disorder. (Id.). The ALJ noted that a CT scan of the
20 brain showed a lacunar infarct in the right basal ganglia and
21 mild periventricular small vessel ischemic changes, but concluded

22 _____
23 ¹ Plaintiff's alleged disability onset date is at issue in this
24 case. (See Plaintiff's Memorandum in Support of Relief Requested
25 in Plaintiff's Complaint (the "MSC"), Dkt. No. 13, at 6-7;
26 Defendant's Memorandum in Support of Answer ("Defendant's Memo"),
27 Dkt. No. 14, at 4). The ALJ did not refer to a disability onset
28 date in his decision. The ALJ used Plaintiff's SSI application
date to establish the date that Plaintiff ceased substantial
gainful activity and to determine which medical evidence was
probative. (AR 30). In her SSI application, Plaintiff listed
her last date of employment as April 2005, although she worked at
a state fair for eleven days in 2008. (AR 163).

1 that there were no "acute intracranial abnormalities." (AR 31).
2 The ALJ also noted that an examining psychologist and a non-
3 examining psychiatrist both diagnosed depressive disorder (id.),
4 but found any related mental impairment nonsevere. (AR 32).

5
6 At step three, the ALJ found that Plaintiff did not have an
7 impairment or combination of impairments that met or medically
8 equaled the severity of an impairment listed in 20 C.F.R. Part
9 404, Subpart P, Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925,
10 416.926). (AR 33). The ALJ found that "[n]o treating or
11 consulting physician concluded that any of [Plaintiff's] alleged
12 impairments met or equaled listing level severity." (Id.). The
13 ALJ also found that "[n]o physician imposed multiple marked
14 functional limitations on [Plaintiff]," and termed all of the
15 objective medical evidence of record "mild." (Id.). The ALJ
16 then found that Plaintiff had the following RFC:

17
18 [Plaintiff] has the residual functional capacity to
19 perform light work as defined in 20 CFR 416.967(b)
20 except [Plaintiff] is limited to occasional bending
21 and stooping. She can lift or carry 20 pounds
22 occasionally and 10 pounds frequently. She can sit,
23 stand, or walk up to 6 hours in an 8-hour workday.

24
25 (Id.).

26
27 In making this finding, the ALJ indicated that he had
28 considered all of Plaintiff's symptoms and their consistency with

1 the objective medical and other evidence, as required by 20
2 C.F.R. § 416.929 and Social Security Rulings ("SSRs") 96-4p and
3 96-7p. (Id.). The ALJ also considered opinion evidence as
4 required by 20 C.F.R. 416.927 and SSRs 96-2p, 96-5p, 96-6p and
5 06-3p. (Id.). Although the ALJ found that Plaintiff's
6 impairments could reasonably be expected to produce her pain and
7 other symptoms, he concluded that Plaintiff's testimony was not
8 credible to the extent that she alleged an inability to work.
9 (Id.).
10

11 At step four, the ALJ found that Plaintiff was capable of
12 performing her past relevant work as a clerk/cashier, which the
13 ALJ found "light, semiskilled work." (AR 35). However, "[i]n
14 the alternative" the ALJ provided a step-five analysis, and found
15 that based on Plaintiff's age, educational background, work
16 experience and RFC, she could perform a number of other jobs
17 available in significant numbers in the national economy. (Id.).
18 The ALJ opined that Plaintiff's limitations did not permit her to
19 perform the full range of "light," unskilled jobs. (AR 36).
20 However, based on the vocational expert's testimony, the ALJ
21 concluded that Plaintiff could perform the requirements of
22 "representative" occupations requiring light work, such as a
23 marker or an office helper. (AR 34). The ALJ also concluded
24 that Plaintiff could perform one sedentary job, as a cashier in a
25 check cashing agency. (AR 34, 78). Accordingly, the ALJ found
26 that Plaintiff was not disabled. (AR 36).

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28 \\

1 V.

2 STANDARD OF REVIEW

3
4 Under 42 U.S.C. § 405(g), a district court may review the
5 Commissioner's decision to deny benefits. The court may set the
6 decision aside when the ALJ's findings are based on legal error
7 or are not supported by substantial evidence in the record as a
8 whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)
9 (citing Tackett, 180 F.3d at 1097). "Substantial evidence is
10 more than a scintilla, but less than a preponderance." Reddick,
11 157 F.3d at 720 (citing Jamerson v. Chater, 112 F.3d 1064, 1066
12 (9th Cir. 1997)). It is "relevant evidence which a reasonable
13 person might accept as adequate to support a conclusion." Id.
14 (citing Jamerson, 112 F.3d at 1066; Smolen v. Chater, 80 F.3d
15 1273, 1279 (9th Cir. 1997)).

16
17 To determine whether substantial evidence supports a
18 finding, the court must "'consider the record as a whole,
19 weighing both evidence that supports and evidence that detracts
20 from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at
21 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
22 1993)). If the evidence can reasonably support either affirming
23 or reversing that conclusion, the court may not substitute its
24 judgment for the Commissioner's. Reddick, 157 F.3d at 720-21
25 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

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1 VI.

2 DISCUSSION

3
4 Plaintiff asserts that the ALJ "derogated his duties to
5 [Plaintiff] by failing to review all pertinent evidence and by
6 not procuring clarification" from Plaintiff's treating physician.
7 (Plaintiff's Memorandum in Support of Relief Requested in
8 Plaintiff's Complaint (the "MSC"), Dkt. No. 13, at 6). Plaintiff
9 claims that "[i]t is unclear whether [Plaintiff] actually amended
10 her alleged onset date" during the ALJ Hearing, from April 11,
11 2005, as listed on her SSI application, to January 26, 2011, the
12 date that an Agency interviewer began preparing Plaintiff's
13 application. (Id.). Regardless of which onset date applies,
14 however, Plaintiff asserts that the ALJ was obligated to consider
15 medical evidence from Plaintiff's treating physician and a
16 consultative examining physician that predated Plaintiff's
17 application date. (MSC at 6-7). Because the residual functional
18 capacity adopted by the ALJ failed to account for limitations
19 assessed by these physicians, Plaintiff contends that the RFC did
20 not properly reflect Plaintiff's true capabilities. (MSC 7-8).

21
22 Plaintiff also asserts that the ALJ failed to provide "clear
23 and convincing reasons" for rejecting the credibility of
24 Plaintiff's testimony about the severity of her symptoms. For
25 the following reasons, the Court agrees with Plaintiff's
26 contentions. Therefore, the ALJ's decision must be reversed and
27 this action remanded for further proceedings.

28 \\

1 **A. The ALJ Failed To Consider And Properly Credit Objective**
2 **Medical Evidence From Treating And Examining Physicians When**
3 **Assessing Plaintiff's Residual Functional Capacity**
4

5 Social Security regulations require the ALJ to consider all
6 relevant medical evidence when determining whether a claimant is
7 disabled. 20 C.F.R. §§ 404.1520b, 416.927(c). "Because treating
8 physicians are employed to cure and thus have a greater
9 opportunity to know and observe the patient as an individual,
10 their opinions are given greater weight than the opinions of
11 other physicians." Smolen, 80 F.3d at 1285. "Therefore, an ALJ
12 may not reject treating physicians' opinions unless he makes
13 findings setting forth specific, legitimate reasons for doing so
14 that are based on substantial evidence in the record." Id.
15 (internal quotation marks and citation omitted). "Generally, a
16 treating physician's opinion carries more weight than an
17 examining physician's, and an examining physician's opinion
18 carries more weight than a reviewing physician's." Holohan v.
19 Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001). However, "like
20 the opinion of a treating doctor, the opinion of an examining
21 doctor, even if contradicted by another doctor, can only be
22 rejected for specific and legitimate reasons that are supported
23 by substantial evidence in the record." Lester v. Chater, 81
24 F.3d 821, 830-31 (9th Cir. 1995), as amended (Apr. 9, 1996)
25 (citation omitted).

26
27 As a threshold matter, the Commissioner contends that during
28 the ALJ Hearing, Plaintiff, acting through counsel, amended her

1 alleged disability onset date to January 26, 2011, the same date
2 that she filed her SSI application. (Defendant's Memorandum in
3 Support of Answer ("Defendant's Memo"), Dkt. No. 14, at 4).
4 Therefore, the Commissioner asserts, the July 14, 2007 assessment
5 of examining orthopedist Robyn Sato, D.O., which limited
6 Plaintiff to sedentary work, is "simply irrelevant." (Id.; see
7 also AR 284-88). The Court disagrees.

8
9 Although Plaintiff's counsel proposed to amend the alleged
10 disability onset date during the ALJ Hearing, the ALJ never
11 affirmatively granted this request. (See AR 60-61). Moreover,
12 the ALJ did not identify any alleged disability onset date in his
13 decision. To the contrary, the ALJ specified that "[m]any of the
14 medical records predate the period at issue and are of no
15 probative weight because they do not concern [Plaintiff's]
16 medical condition since January 26, 2011, her application date."
17 (AR 30 (emphasis added)). Because the ALJ did not resolve the
18 matter of Plaintiff's disability onset date during the ALJ
19 Hearing and did not address this question at all in his decision,
20 the Court cannot determine the precise period that the ALJ
21 considered to be "at issue."

22
23 Moreover, even assuming, arguendo, that Plaintiff amended
24 her alleged onset date to January 26, 2011, medical evidence of
25 record predating that period is not automatically irrelevant in
26 determining whether Plaintiff was disabled. See 20 C.F.R.
27 § 416.927(c) ("Regardless of its source, we will evaluate every
28 medical opinion we receive."); Carmickle v. Comm'r, Soc. Sec.

1 Admin., 533 F.3d 1155, 1165 (9th Cir. 2008) (citation
2 omitted)(medical opinions that predate onset date may be
3 relevant); Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)
4 (evidence predating alleged onset date relevant for showing that
5 condition worsened over time). Further, to the extent the lack
6 of clarity regarding the alleged onset date also resulted in an
7 ambiguous medical record, the ALJ was obligated to supplement the
8 record with additional evidence. See Webb v. Barnhart, 433 F.3d
9 683, 687 (9th Cir. 2005). Here, such evidence was readily
10 available among treatment records that the ALJ declined to
11 consider.

12
13 Plaintiff has alleged, inter alia, head, neck, and back
14 injuries, seizures, difficulties maintaining balance and carpal
15 tunnel syndrome. (AR 162). In her 2007 examination, Dr. Sato
16 diagnosed head, neck, and low back pain and carpal tunnel
17 syndrome. (AR 287). She observed that Plaintiff had a "wide-
18 based" gait, swayed while walking, had difficulty walking on her
19 heels and toes, and had difficulty getting on and off the
20 examination table. (AR 285-86). Dr. Sato noted Plaintiff's
21 account of sustaining a head injury when a heavy object fell on
22 her at the thrift store where she previously worked. (AR 285).
23 Plaintiff also had a "somewhat limited" range of motion in her
24 cervical region, some diffuse hyperreflexias, and a questionable
25 Hoffman's reflex on the right side. (AR 287).

26
27 Dr. Sato concluded that Plaintiff could stand or walk for
28 less than two hours in an eight-hour work day and could sit for

1 less than six hours, with a need for frequent position changes.
2 (AR 287). Plaintiff did not need an assistive device to walk,
3 but could lift and carry no more than ten pounds frequently or
4 occasionally. (AR 288). Plaintiff was limited in bending,
5 stooping or crouching. (Id.). Dr. Sato's assessment thus
6 limited Plaintiff to work that the Agency classifies as
7 "sedentary." See 20 C.F.R. § 404.967(a) (sedentary work
8 "involves lifting no more than 10 pounds at a time. . . .
9 Although a sedentary job is defined as one which involves
10 sitting, a certain amount of walking and standing is often
11 necessary in carrying out job duties. Jobs are sedentary if
12 walking and standing are required occasionally and other
13 sedentary criteria are met.").

14
15 Dr. Sato's assessment of Plaintiff's functional limitations
16 contradicts the residual functional capacity adopted by the ALJ,
17 who found Plaintiff capable of "light" work that requires
18 sitting, standing and walking for up to six hours of an eight-
19 hour day and capable of carrying twenty pounds occasionally. (AR
20 33; see also 20 C.F.R. § 404.967(b)). The ALJ's decision makes
21 no mention of Dr. Sato's report and, accordingly, the ALJ did not
22 provide specific and legitimate reasons for rejecting these
23 opinions in favor of contradictory reports from other physicians.
24 Therefore, remand is necessary in order to consider the
25 functional limitations assessed by this physician.

26
27 The ALJ's selective citation of medical records predating
28 Plaintiff's SSI application date also weakens his assertion that

1 such records should be discounted. (See AR 30-31). Of relevance
2 here, the ALJ noted the existence of several treatment records
3 from Plaintiff's primary care physician, Carlos O'Bryan, M.D.,²
4 dated from July 1, 2010 to October 21, 2010. (AR 31, 317-22,
5 324-25, 328-32). Although the ALJ opined that Plaintiff's
6 physicians made "few medical findings" during this period (AR
7 31), Dr. O'Bryan made a number of findings that are directly
8 relevant to Plaintiff's allegations.

9
10 For example, On July 1, 2010, Dr. O'Bryan diagnosed chronic
11 low back pain and prescribed Soma.³ (AR 321). On July 22, 2010,
12 Dr. O'Bryan added prescriptions for Neurontin, an anti-seizure
13 medication, and chlorthalidone.⁴ On August 10, 2010, Dr. O'Bryan
14 diagnosed Plaintiff with ataxia and ordered an MRI and a
15 neurological consultation.⁵ (AR 332). On August 19, 2010, Dr.

16 ² The ALJ attributed these records to Ventura County Medical
17 Center without naming Dr. O'Bryan, a physician in that facility's
18 Family Care Center. Elsewhere in his decision, the ALJ
19 identified Dr. O'Bryan as "Dr. Bryan," as did Plaintiff's MSC and
20 Reply (Dkt. No. 15).

21 ³ Soma, a brand-name version of carisoprodol, is a muscle
22 relaxant prescribed to relieve pain and discomfort from sprains,
23 strains and other muscle injuries. See MEDLINEPLUS,
24 <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682578.html> (last
25 visited June 26, 2015).

26 ⁴ Neurontin, a brand-name version of gabapentin, is in a class of
27 medications called anticonvulsants. Chlorthalidone is a "water
28 pill" used to treat high blood pressure and fluid retention. See
MEDLINEPLUS, <http://www.nlm.nih.gov/medlineplus/druginformation.html>
and enter drug name (last visited June 26, 2015).

⁵ "Ataxia often occurs when parts of the nervous system that
control movement are damaged. People with ataxia experience a
failure of muscle control in their arms and legs, resulting in a
lack of balance and coordination or a disturbance of gait." See
Ataxia Information Page, National Institute of Neurological
Disorders and Stroke website, [http://www.ninds.nih.gov/
disorders/ataxia/ataxia.htm](http://www.ninds.nih.gov/disorders/ataxia/ataxia.htm) (last visited June 24, 2015).

1 O'Bryan ordered further tests for Plaintiff's ataxia and ordered
2 a brain MRI and additional tests to try to establish a basis for
3 it. (AR 319). Dr. O'Bryan also observed Plaintiff's "stiff,"
4 "wide-based" and antalgic gait. (Id.). These diagnoses and
5 prescriptions provide relevant evidence of Plaintiff's alleged
6 back pain, seizures, and balance problems. (See AR 162).

7
8 The ALJ could not discount this physician's opinions without
9 providing specific and legitimate reasons for doing so. Smolen,
10 80 F.3d at 1285. However, the ALJ stated that "[t]here are no
11 treatment records from Dr. Bryan [sic] in the record," and that
12 this physician's findings were limited to a single form
13 questionnaire "on which he checked a few boxes and did not
14 discuss clinical findings." (AR 35). These statements, however,
15 are contradicted by the record. Furthermore, the questionnaire,
16 dated June 29, 2011, limited Plaintiff to sedentary work. (See
17 AR 383). The ALJ discredited this assessment because the
18 questionnaire was "unsupported medical [sic] and conflicted with
19 the other functional capacity assessments in the record." (AR
20 35).

21
22 This finding was inaccurate both because Dr. O'Bryan's
23 treatment reports appear in the record and because his functional
24 capacity assessment, which limited Plaintiff to standing or
25 walking for no more than two hours in an eight-hour day, was
26 largely identical to Dr. Sato's assessment.⁶ (Compare AR 287-88

27 _____
28 ⁶ In fact, Dr. O'Bryan's assessment was more restrictive than Dr.
Sato's in that it limited Plaintiff to no more than two hours of

1 with AR 383). Dr. O'Bryan's treatment records therefore contain
2 medical evidence relevant to establishing the bases for
3 Plaintiff's allegations. The ALJ was required to evaluate these
4 assessments and, to the extent they were contradicted by other
5 evidence of record, to provide specific and legitimate reasons
6 for rejecting them. Remand is necessary so that Plaintiff's
7 allegations may be evaluated on the basis of the complete range
8 of medical evidence in this case, and in order to resolve the
9 discrepancies between the adopted RFC and the functional
10 assessments of Drs. Sato and O'Bryan.

11
12 The ALJ also cited an April 11, 2010, consultative
13 examination by Shahrzad Sodagar-Marvasti, M.D. According to the
14 ALJ, Plaintiff told Dr. Sodagar-Marvasti that she suffered from a
15 seizure disorder but "had experienced only one seizure and that
16 the seizure had occurred a year prior to the evaluation." (AR
17 31, 312). This statement overlooks Dr. Sodagar-Marvasti's entire
18 treatment record, which noted that Plaintiff "had a seizure a
19 year ago," but did not state that Plaintiff claimed to have

20
21 sitting at a time and found that Plaintiff would be likely to
22 miss more than four days of work per month due to her
23 impairments. (Id.). The VE identified only one sedentary job
24 Plaintiff could allegedly perform given the residual functional
25 capacity that the ALJ adopted. (AR 78). However, this job, as a
26 cashier in a check cashing agency, also required sitting for six
27 out of eight hours, a capability beyond the functional capacity
28 Dr. O'Bryan assessed. (Compare AR 78 with AR 383). In addition,
the VE opined that only 500 such positions exist in California
and 10,000 nationwide. (AR 78). On remand, the ALJ must assess
the availability of alternative work consistent with a revised
RFC and also determine whether such jobs exist in "significant"
numbers in the national economy. See Tackett, 180 F.3d at 1101.

1 suffered only one seizure.⁷ (See AR 312). The ALJ also stated
2 that Plaintiff "admitted" that her cane had not been prescribed
3 by a doctor. (AR 31).⁸ (See AR 313). However, this statement
4 is contradicted by an October 15, 2010 treatment record of
5 neurologist Kofi Kessey, M.D., who noted that Plaintiff "requires
6 an assistive device" and used a walker. (AR 327). To the extent
7 that the ALJ relied on Dr. Sodagar-Marvasti's examination records
8 to show that Plaintiff did not have a disabling ambulation
9 problem or a seizure disorder, on remand the ALJ should consider
10 Dr. Kessey's records and all other medical evidence on this
11 issue.

12
13 Finally, the ALJ notes non-examining medical consultant Lucy
14 Sauer, M.D.'s conclusion that Plaintiff's medical records do not
15 including treatment for a seizure disorder. (AR 31, 349). Dr.
16 Sauer's conclusion is, however, contradicted by the evidence of
17 record. On April 16, 2009, Plaintiff was treated for seizure at
18 Santa Paula Hospital. (AR 298-301). On July 22, 2010, Dr.
19 O'Bryan prescribed Neurontin, an anti-seizure medication. (AR
20 320). Plaintiff also suffered a lacunar infarct of the right
21 basal ganglia and small vessel ischemic changes.⁹ (AR 353). All
22

23 ⁷ At the ALJ Hearing, Plaintiff testified that she had had three
24 seizures, beginning approximately three years earlier. (AR 68).

25 ⁸ At the ALJ Hearing, Plaintiff testified that her cane was
26 prescribed but she could not afford to purchase one. (AR 69).
Therefore, "one was given to me." (Id.).

27 ⁹ A lacunar infarct is an area of dead brain tissue caused by the
28 occlusion of small blood vessels and indicative of stroke. See
National Institute of Neurological Disorders and Stroke website,
http://www.ninds.nih.gov/disorders/stroke/detail_stroke.htm (last
visited June 26, 2015).

1 of these objective findings are evidence of treatment for a
2 seizure disorder or of a potential cause for such a disorder.
3 "When a nontreating physician's opinion contradicts that of the
4 treating physician -- but is not based on independent clinical
5 findings, or rests on clinical findings also considered by the
6 treating physician -- the opinion of the treating physician may
7 be rejected only if the ALJ gives 'specific, legitimate reasons
8 for doing so that are based on substantial evidence in the
9 record.'" Morgan v. Comm'r, 169 F.3d 595, 600 (9th Cir. 1999)
10 (quoting Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995).
11 Accordingly, to the extent that Dr. Sauer's assessment is
12 contradicted by substantial medical evidence of record, remand is
13 necessary for further consideration of this evidence.

14
15 **B. The ALJ Did Not Provide Clear And Convincing Reasons To**
16 **Reject Plaintiff's Subjective Testimony And Credibility**

17
18 Plaintiff contends that the ALJ did not provide any specific
19 reason for finding Plaintiff less than fully credible. (MSC at
20 2). Although the ALJ arguably provided two such reasons, the
21 Court cannot conclude that the ALJ provided clear and convincing
22 evidence for discounting Plaintiff's subjective evidence.

23
24 When assessing a claimant's credibility, the ALJ must engage
25 in a two-step analysis. Molina v. Astrue, 674 F.3d 1104, 1112
26 (9th Cir. 2012). First, the ALJ must determine if there is
27 medical evidence of an impairment that could reasonably produce
28 the symptoms alleged. (Id.). If the claimant meets this

1 threshold and there is no affirmative evidence of malingering,
2 "the ALJ can reject the claimant's testimony about the severity
3 of her symptoms only by offering specific, clear and convincing
4 reasons for doing so." Tommasetti v. Astrue, 533 F.3d 1035, 1039
5 (9th Cir. 2008). The ALJ may use "ordinary techniques of
6 credibility evaluation" during this inquiry. Smolen, 80 F.3d at
7 1284. The ALJ may also consider any inconsistencies in the
8 claimant's conduct and any inadequately explained or unexplained
9 failure to pursue or follow treatment. Tommasetti, 533 F.3d at
10 1039. Additionally, the ALJ may use evidence of the claimant's
11 ability to perform daily activities that are transferrable to the
12 workplace to discredit her testimony about an inability to work.
13 Morgan, 169 F.3d at 600.

14
15 Here, because the ALJ failed to consider substantial medical
16 evidence of record, the Court cannot conclude that the ALJ
17 satisfied the first step of this two-step analysis. Moreover,
18 even assuming, arguendo, that the ALJ based his conclusions
19 regarding Plaintiff's medically determinable impairments on all
20 of the available medical evidence, the ALJ failed to provide
21 clear and convincing reasons for his conclusion that Plaintiff's
22 testimony "was generally credible, but not to the extent she
23 alleged an inability to perform any work." (AR 33).

24
25 The ALJ noted that Plaintiff was no longer taking any pain
26 medication, but did not describe how this contradicted the
27 medical evidence of record, which included a series of alleged
28 disabilities that were unrelated to excessive pain. (See AR 34).

1 The ALJ also observed that Plaintiff "has not had surgery and no
2 surgery has been advised," but did not discuss what kind of
3 surgery might have been relevant to Plaintiff's alleged
4 impairments. (See id.). The ALJ then listed several of
5 Plaintiff's subjective claims without assessing their
6 credibility. (Id.). These included Plaintiff's contentions that
7 she needed assistance to get dressed, performed few household
8 chores, ceased driving, went nowhere alone, used a cane daily,
9 fell frequently and could lift "less than a gallon of milk in
10 weight." (Id.). These claims, which the ALJ did not challenge,
11 tend to substantiate Plaintiff's alleged physical impairments
12 rather than calling them into question. (See id.). In sum, the
13 ALJ did not provide "clear and convincing evidence" for
14 discounting Plaintiff's claims.

15
16 In a disability benefits case, "[r]emand for further
17 administrative proceedings is appropriate if enhancement of the
18 record would be useful." Benecke v. Barnhart, 379 F.3d 587, 593
19 (9th Cir. 2004). In contrast, "remand for an immediate award of
20 benefits [is appropriate] if (1) the ALJ failed to provide
21 legally sufficient reasons for rejecting the evidence; (2) there
22 are no outstanding issues that must be resolved before a
23 determination of disability can be made; and (3) it is clear from
24 the record that the ALJ would be required to find the claimant
25 disabled were such evidence credited." Id. (citing Harman v.
26 Apfel, 211 F.3d 1172, 1178 (9th Cir. 2000)).

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1 Here, the record does not establish that all issues in this
2 action have been resolved or that the ALJ would be required to
3 find Plaintiff disabled if the treating and examining physicians'
4 opinions were credited. Therefore, this action must be remanded
5 for further proceedings. On remand, the ALJ must develop the
6 record further to determine whether the treating and examining
7 physicians' opinions, if credited, would establish a disability.
8 If the ALJ discounts the opinions of treating and examining
9 physicians, he must provide specific and legitimate reasons for
10 doing so, supported by substantial evidence in the record as a
11 whole. Aukland, 257 F.3d at 1037. To the extent that the ALJ
12 asserts that Plaintiff's subjective testimony regarding the
13 severity of her symptoms lacks credibility, he must also provide
14 clear and convincing evidence for rejecting her stated
15 limitations. Tommasetti, 533 F.3d at 1039.

16
17 **VII.**

18 **CONCLUSION**

19
20 Accordingly, IT IS ORDERED that judgment be entered
21 REVERSING the decision of the Commissioner and REMANDING this

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1 matter for further proceedings consistent with this decision. IT
2 IS FURTHER ORDERED that the Clerk of the Court serve copies of
3 this Order and the Judgment on counsel for both parties.
4

5 DATED: July 1, 2015
6

7 /s/ _____
SUZANNE H. SEGAL
8 UNITED STATES MAGISTRATE JUDGE
9

10 NOTICE

11 THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS/NEXIS,
12 WESTLAW OR ANY OTHER LEGAL DATABASE.
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