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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

AMY RAE ENGLERT,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

Case No. CV 14-8323-DFM  
MEMORANDUM OPINION AND  
ORDER

Plaintiff Amy Rae Englert appeals from the Commissioner’s denial of her request for review regarding the ALJ’s determination of her alleged onset date. Because the ALJ failed to fully develop the record regarding Plaintiff’s alleged onset date, as discussed in detail below, the Commissioner’s decision is reversed and the matter is remanded for further proceedings consistent with this opinion.

**I.**

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed her applications for Supplemental Security Income and Disability Insurance benefits on June 29, 2011, alleging disability due to congestive heart failure. Administrative Record (“AR”) 121-23. In her

1 application, Plaintiff indicated that the onset date of her disability was March  
2 15, 2011. AR 121. On April 24, 2013, the ALJ issued a fully favorable  
3 decision, finding that Plaintiff was disabled from the alleged onset date  
4 through the date of the decision. AR 12-17.

5 Plaintiff disagreed with the ALJ's alleged onset date and sought review  
6 from the Appeals Council, contending that her alleged onset date was March  
7 30, 2008, rather than March 15, 2011. AR 6-7, 190. The Appeals Council  
8 denied Plaintiff's request for review. AR 1-5. This action followed.

## 9 II.

### 10 ISSUE PRESENTED

11 The parties dispute whether the ALJ erred in determining Plaintiff's  
12 alleged onset date of disability. See Joint Stipulation ("JS") at 3.

## 13 III.

### 14 DISCUSSION

15 Plaintiff argues that the ALJ erred in concluding that her alleged onset  
16 date was March 15, 2011. Plaintiff contends that conflicting information in the  
17 record regarding the date of onset of disability triggered the ALJ's duty to  
18 further develop the record. JS at 3-5.

19 The ALJ has a "special duty to fully and fairly develop the record and to  
20 assure that the claimant's interests are considered . . . even when the claimant  
21 is represented by counsel." Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir.  
22 2003) (quoting Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)); see also  
23 Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001). This duty is  
24 triggered "when there is ambiguous evidence or when the record is inadequate  
25 to allow for proper evaluation of the evidence." Mayes v. Massanari, 276 F.3d  
26 453, 459-60 (9th Cir. 2001); see also Tonapetyan, 242 F.3d at 1150  
27 ("Ambiguous evidence . . . triggers the ALJ's duty to 'conduct an appropriate  
28 inquiry.'" (quoting Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996))).

1 Here, there was conflicting evidence in the record regarding Plaintiff's  
2 alleged onset date, which triggered the ALJ's duty to further develop the  
3 record. For example, Plaintiff's application for disability insurance benefits  
4 states that she was unable to work as of March 15, 2011, yet later states that  
5 she last worked in 2008. Compare AR 121 with 122, 123 ("Estimated initial  
6 date of illness. I filed for and used all available state disability benefits in  
7 2008."). Plaintiff later filed a disability report in which she stated that she  
8 stopped working on February 2, 2008, and that her condition became severe  
9 enough to keep her from working on March 30, 2008. AR 164. During the  
10 administrative hearing, the ALJ stated that Plaintiff was claiming disability  
11 beginning March 15, 2011. AR 48. However, later in the administrative  
12 hearing, Plaintiff's counsel stated that "[i]t's our contention that she meets  
13 listing 4.02(a) and (b) (3) for all relevant periods. Since 2008, she's had  
14 injection fraction below 30. We have as low as 13 percent. We have 20 to 25,  
15 and the treating doctor says now that it's at 18 percent." AR 52 (emphasis  
16 added).

17 Moreover, the medical records also indicate that Plaintiff was receiving  
18 treatment for congestive heart failure before March 15, 2011. For instance,  
19 Plaintiff's treatment records dated September 5, 2010 reflect "a past medical  
20 history significant for cardiomyopathy, that happened several years ago after  
21 she went into cardiac arrest. Since then, she has been treated for congestive  
22 heart failure." AR 194. These medical records, which indicate that Plaintiff  
23 was having ongoing treatment for a history of congestive heart failure, provide  
24 support for Plaintiff's contention that her alleged onset date was before 2011.  
25 In addition, some of the medical evidence upon which the ALJ relied in  
26 determining that Plaintiff was disabled dated from September 2010. See AR 15  
27 (citing 191-95, 196-239, 293-310, 341-45, 346-51 (noting that Plaintiff had a  
28 history of congestive heart failure)).

1 Accordingly, this record should have alerted the ALJ to the need to  
2 conduct an “appropriate inquiry” to determine Plaintiff’s actual disability  
3 onset date. See Tonapetyan, 242 F.3d at 1150; see also Stephens v. Colvin, No.  
4 12-8041, 2013 WL 2456682, at \*3 (C.D. Cal. June 5, 2013) (remanding for  
5 further proceedings where “there was conflicting evidence in the record  
6 regarding when Plaintiff’s disability began”). The ALJ, however, failed to  
7 develop the record in this regard.<sup>1</sup>

8 IV.  
9 CONCLUSION

10 For the reasons stated above, the decision of the Social Security  
11 Commissioner is reversed and the matter is remanded for further proceedings  
12 consistent with this opinion.

13  
14 Dated: June 2, 2015



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16 DOUGLAS F. McCORMICK  
17 United States Magistrate Judge  
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21 <sup>1</sup> The Commissioner cites an oft-quoted decision for the proposition that  
22 advocates for disability claimants should not be “potted plants” during  
23 administrative hearings. JS at 6 (citing Solorzano v. Astrue, No. 11-369, 2012  
24 WL 84527, at \*6 (C.D. Cal. Jan. 10, 2012)). That line, however, involves a  
25 much different context, as counsel there failed to identify during the hearing  
26 what plaintiff later argued were “apparent conflicts” between the DOT and a  
27 vocational expert’s testimony. Solorzano, 2012 WL 84527, at \*6. Here, by  
28 contrast, counsel’s failure to say anything about the date issue is saved by the  
ALJ’s duty to develop the record when such an ambiguity is evident.  
Nonetheless, the Court is frustrated with counsel’s failure, a failure that has  
now necessitated an appeal to this Court and a remand for further proceedings.