

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHAD C. GREEN,
Plaintiff,
v.
NANCY A. BERRYHILL¹, *Acting
Commissioner of Social Security*,
Defendant.

Case No. LA CV 16-3645 JCG
**MEMORANDUM OPINION AND
ORDER**

Chad C. Green (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) failed to discuss his mother’s administrative hearing testimony, and inadequately assessed her third-party function report. (*See* Joint Stip. at 34-36, 38-40.) The Court agrees with Plaintiff for the reasons discussed below.

¹ The Court **DIRECTS** the Clerk of Court to update the case caption to reflect Nancy A. Berryhill as the proper Defendant. *See* Fed. R. Civ. P. 25(d).

1 A. The ALJ Improperly Ignored Plaintiff’s Mother’s Testimony, and
2 Inadequately Assessed Her Third-Party Function Report

3 As a general matter, the ALJ may discount the testimony of lay witnesses only if
4 he or she provides specific “reasons that are germane to each witness.” *Dodrill v.*
5 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993); *accord Lewis v. Apfel*, 236 F.3d 503, 511
6 (9th Cir. 2001) (“Lay testimony as to a claimant’s symptoms is competent evidence
7 that an ALJ must take into account, unless he or she expressly determines to disregard
8 such testimony and gives reasons germane to each witness for doing so.”).

9 Here, first, the ALJ failed to acknowledge Plaintiff’s administrative hearing
10 testimony at all, let alone provide reasons for disregarding it.² (AR at 17, 42-47, 75-
11 86); *see Tobeler v. Colvin*, 749 F.3d 830, 833-34 (9th Cir. 2014) (“[L]ay witness
12 testimony as to a claimant’s symptoms or how an impairment affects ability to work is
13 competent evidence and therefore cannot be disregarded without comment”); *White v.*
14 *Colvin*, 585 F. App’x 425, 426 (9th Cir. 2014) (“ALJ . . . erred by failing to explain her
15 reasons for disregarding the lay witness testimony of [claimant’s] wife, . . . and by
16 failing to discuss it altogether.”).

17 Second, the ALJ’s one-line mention of Plaintiff’s mother’s third-party function
18 report is simply insufficient for appellate review. (AR at 17, 212-19); *Brown-Hunter*
19 *v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (federal courts “demand that the agency
20 set forth the reasoning behind its decisions in a way that allows for meaningful
21 review”); *Marsh v. Colvin*, 792 F.3d 1170, 1172 (9th Cir. 2015) (reviewing court may
22 only affirm agency action on grounds invoked by agency).

23
24
25 ² The Commissioner does not directly respond to Plaintiff’s argument that the ALJ failed to
26 address his mother’s administrative hearing testimony, and instead merely states that this omission
27 “does not take away from the ALJ’s consideration of Plaintiff’s mother’s function report.” (*See* Joint
28 Stip. at 37 n.8); *see Kinley v. Astrue*, 2013 WL 494122, at *3 (S.D. Ind. Feb. 8, 2013) (“The
Commissioner does not respond to this [aspect of claimant’s] argument, and it is unclear whether this
is a tacit admission by the Commissioner that the ALJ erred or whether it was an oversight. Either
way, the Commissioner has waived any response.”).

1 Thus, the ALJ improperly failed to discuss Plaintiff’s mother’s testimony, and
2 inadequately assessed her third party function report.

3 B. Remand is Warranted

4 With error established, this Court has discretion to remand or reverse and award
5 benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no useful
6 purpose would be served by further proceedings, or where the record has been fully
7 developed, it is appropriate to direct an immediate award of benefits. *Benecke v.*
8 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004). But where outstanding issues must be
9 resolved before a determination can be made, or where the record does not make clear
10 that proper evaluation of the evidence would require a disability finding, remand is
11 appropriate. *Id.* at 594.

12 Here, in light of Plaintiff’s severe impairments related to his head injury, and
13 high relevance of his mother’s testimony and third-party function report³, the Court
14 cannot confidently conclude that the error in ignoring the evidence was harmless. *See*
15 *Marsh*, 792 F.3d at 1173. On remand, the ALJ shall assess the testimony and third-
16 party function report, and either credit them, or provide germane reasons for any
17 rejected portion. *Dodrill*, 12 F.3d at 919; *Lewis*, 236 F.3d at 511.

18 Finally, the Court is mindful that “the touchstone for an award of benefits is the
19 existence of a disability, not the agency’s legal error.” *Brown-Hunter*, 806 F.3d at 495.
20 Because it is unclear, on this record, whether Plaintiff is in fact disabled, remand here
21 is on an “open record.” *Id.*; *Burrell v. Colvin*, 775 F.3d 1133, 1141-42 (9th Cir. 2014).
22 The parties may freely take up any issue raised in the Joint Stipulation, and any other
23 issues relevant to resolving Plaintiff’s claim of disability, before the ALJ. Either party
24 may address those points in the remanded, open proceeding.

25 ³ Plaintiff suffered traumatic brain injury from a car accident. (AR at 15, 64-65.) He was in a
26 coma for two weeks, received significant treatment, and had to move back in with his mother after
27 the accident. (*Id.* at 33-35, 42, 56, 64-65, 73-74, 212; Joint. Stip. at 35 (Commissioner concedes that
28 “Plaintiff experienced head trauma and had significant treatment related to the accident”) His
mother provided detailed testimony about his abilities at two administrative hearings. (AR at 42-47,
75-86.)

1 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
2 **REVERSING** the decision of the Commissioner denying benefits and **REMANDING**
3 the matter for further administrative action consistent with this decision.
4

5 DATED: September 6, 2017

6 
7 Hon. Jay C. Gandhi
8 United States Magistrate Judge

9 ***

10 **This Memorandum Opinion and Order is not intended for publication. Nor is it**
11 **intended to be included or submitted to any online service such as**
12 **Westlaw or Lexis.**

13 ***