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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

MELANIE A. MOORE,)	Case No. CV 16-03704-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
v.)	ORDER OF REMAND
)	
NANCY A. BERRYHILL, ¹)	
Acting Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	
_____)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter be remanded for further administrative action consistent with this Opinion.

PROCEEDINGS

On May 26, 2016, Plaintiff filed a Complaint seeking review of the denial of her applications for Disability Insurance Benefits and

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration and is substituted in for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. § 205(g).

1 Supplemental Security Income. (Docket Entry No. 1). The parties have
2 consented to proceed before the undersigned United States Magistrate
3 Judge. (Docket Entry Nos. 11-12). On October 25, 2016, Defendant filed
4 an Answer along with the Administrative Record ("AR"). (Docket Entry
5 Nos. 15-16). The parties filed a Joint Stipulation ("Joint Stip.") on
6 October 4, 2017, setting forth their respective positions regarding
7 Plaintiff's claim. (Docket Entry No. 28).

8
9 The Court has taken this matter under submission without oral
10 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures in Social
11 Security Appeal," filed June 1, 2016 (Docket Entry No. 9).

12
13 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
14

15 On December 3, 2012, Plaintiff, formerly employed as a certified
16 nurse assistant and sales associate (see AR 176-79), filed applications
17 for Disability Insurance Income and Supplemental Security Income, both
18 alleging a disability since January 1, 2010. (See AR 140-48). On July
19 3, 2014, the Administrative Law Judge ("ALJ"), Edward Graham, heard
20 testimony from Plaintiff (represented by counsel) and vocational expert
21 Howard Goldfarb. (See AR 44-55). On July 25, 2014, the ALJ issued a
22 decision denying Plaintiff's applications. (See AR 24-31). After
23 determining that Plaintiff had severe impairments -- seizure disorder,
24 anemia, mood disorder and cognitive disorder (AR 26) -- but did not have
25 an impairment or combination of impairments that met or medically
26 equaled the severity of one of the Listed Impairments (AR 26-28), the
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1 ALJ found that Plaintiff had the residual functional capacity ("RFC")²
2 to perform a full range of work at all exertional levels with the
3 following limitations: cannot work at heights or with moving machinery;
4 can understand and remember tasks; can sustain concentration and
5 persistence; can socially interact with the general public, co-workers
6 and supervisors; and can adapt to workplace changes frequently enough to
7 perform unskilled, low-stress jobs that require simple instructions.
8 (AR 28-29). The ALJ then determined that Plaintiff was not able to
9 perform any past relevant work (AR 29-30), but that Plaintiff could
10 perform jobs existing in significant numbers in the national economy,
11 and was therefore not disabled within the meaning of the Social Security
12 Act. (AR 30-31).

13
14 Plaintiff requested that the Appeals Council review the ALJ's
15 Decision. (See AR 19-20). The request was denied on April 1, 2016.
16 (See AR 1-5). The ALJ's Decision then became the final decision of the
17 Commissioner, allowing this Court to review the decision. See 42 U.S.C.
18 §§ 405(g), 1383(c).

19
20 **PLAINTIFF'S CONTENTIONS**

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22 Plaintiff alleges that the ALJ erred in failing to properly
23 evaluate the opinion of consultative psychological examiner, Dr.
24 Chehrazi. (See Joint Stip. at 4-9, 14-15).

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² A Residual Functional Capacity is what a claimant can still do despite existing exertional and nonexertional limitations. See 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 DISCUSSION

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3 After consideration of the record as a whole, the Court finds that
4 Plaintiff's claim of error warrants a remand for further consideration.

5
6 **A. The ALJ Did Not Properly Reject the Opinion of Examining
7 Psychologist, Avazeh Chehrazi, Ph.D**

8 Plaintiff asserts that the ALJ failed to provide any reasons, or
9 even specific and legitimate reasons, for rejecting the opinion of
10 examining psychologist, Dr. Chehrazi. (See Joint Stip. at 4-9, 14-15).
11 Defendant asserts that the ALJ properly evaluated the opinion of Dr.
12 Chehrazi. (See Joint Stip. at 8-11).

13
14 An ALJ must take into account all medical opinions of record. 20
15 C.F.R. §§ 404.1527(b), 416.927(b). "Generally, a treating physician's
16 opinion carries more weight than an examining physician's, and an
17 examining physician's opinion carries more weight than a reviewing
18 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.
19 2001); see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).

20
21 If a treating or examining doctor's opinion is not contradicted by
22 another doctor, the ALJ can reject the opinion only for "clear and
23 convincing reasons." Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d
24 1155, 1164 (9th Cir. 2008); Lester v. Chater, 81 F.3d at 830-31. If the
25 treating or examining doctor's opinion is contradicted by another
26 doctor, the ALJ must provide "specific and legitimate reasons" for
27 rejecting the opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.
28 2007); Lester v. Chater, supra.

1 On July 23, 2013, Avazeh Chehrazi, Ph.D (a clinical psychologist)
2 prepared a report following a complete psychological evaluation of
3 Plaintiff. (See AR 252-57). Based on Plaintiff's complaints/statements
4 (see AR 252-54), a review of Plaintiff's medical records and Plaintiff's
5 medical and social history (see AR 253), and the results of a mental
6 status examination and tests (Trail Making Test, Parts A and B; Wechsler
7 Adult Intelligence Scale; Wechsler's Memory Scale) (see AR 254-25), Dr.
8 Chehrazi diagnosed Plaintiff, inter alia, with mood disorder (due to a
9 general medical condition), cognitive disorder, NOS, and probable
10 borderline intellectual functioning, and assessed a current Global
11 Assessment Functioning Score of 60. Dr. Chehrazi opined that Plaintiff
12 had the following psychological limitations: Plaintiff would have no
13 difficulties in understanding, remembering and carrying out short,
14 simplistic instructions and in responding to change in a normal
15 workplace setting; and Plaintiff would have moderate difficulties in
16 understanding, remembering and carrying out detailed and complex
17 instructions, in making simplistic work-related decisions without
18 special supervision, in complying with job rules such as safety and
19 attendance, in maintaining persistence and pace in a normal workplace
20 setting, and in interacting appropriately with supervisors, co-workers
21 and peers on a consistent basis. (AR 252-57).

22
23 After extensively summarizing Dr. Chehrazi's report, including Dr.
24 Chehrazi's opinion (see AR 29), the ALJ stated, "The undersigned has
25 considered this opinion and gives it great weight as it is consistent
26 with the tests conducted, the treating notes, and the entire record as
27 a whole as discussed herein." (Id.).

1 Although the ALJ claimed to give "great weight" to Dr. Chehrazi's
2 opinion, the ALJ appears not to have taken Dr. Chehrazi's opinion - that
3 Plaintiff would have moderate difficulties in complying with job rules,
4 such as attendance and safety, in maintaining persistence and pace in a
5 normal workplace setting, and in interacting appropriately with
6 supervisors, co-workers and peers on a consistent basis - into account
7 when determining Plaintiff's RFC. (AR 28, 256-57). See Richardson v.
8 Colvin, 2016 WL 4487823, *5 (C.D. Cal. Aug. 23, 2016) (ALJ erred in
9 accepting an examining physician's opinion that the claimant had a
10 moderate limitation in the ability to respond appropriately to usual
11 work situations and changes in a routine work setting but not
12 incorporating that limitation into the RFC); Gentry v. Colvin, 2013 WL
13 6185170, *14-*16 (E.D. Cal. Nov. 26, 2013)(ALJ erred in crediting an
14 examining physician's opinion that the claimant had a moderate
15 limitation in the ability to interact appropriately with co-workers and
16 supervisors but failing to include such limitation in the RFC or in a
17 hypothetical question to the vocational expert). Respondent correctly
18 points out that the ALJ properly considered Dr. Chehrazi's opinion
19 concerning Plaintiff's moderate difficulties in concentration,
20 persistence and pace when determining the severity of Plaintiff's mental
21 impairments (step 2) and Plaintiff's RFC, specifically, unskilled, low-
22 stress work requiring simple instructions (step 3) (see Joint Stip. at
23 10-14, citing inter alia Stubbs-Danielson v. Astrue, 539 F.3d 1169,
24 1174 (9th Cir. 2008) and Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir.
25 2007)). However, the ALJ did not provide any reasons, much less
26 "specific and legitimate" reasons or "clear and convincing" reasons, for
27 rejecting Dr. Chehrazi's opinion regarding Plaintiff's moderate
28 limitations in complying with job rules such as attendance and safety

1 and in interacting appropriately with supervisors, co-workers and peers
2 on a consistent basis in determining Plaintiff's RFC.

3
4 **B. Remand Is Warranted**

5
6 The decision whether to remand for further proceedings or order an
7 immediate award of benefits is within the district court's discretion.
8 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
9 useful purpose would be served by further administrative proceedings, or
10 where the record has been fully developed, it is appropriate to exercise
11 this discretion to direct an immediate award of benefits. Id. at 1179
12 ("[T]he decision of whether to remand for further proceedings turns upon
13 the likely utility of such proceedings."). However, where, as here, the
14 circumstances of the case suggest that further administrative review
15 could remedy the Commissioner's errors, remand is appropriate. McLeod
16 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, 211 F.3d
17 at 1179-81.

18
19 A remand is appropriate where, as here, the ALJ finds a physician's
20 opinion credible but then fails to include or address material aspects
21 of that opinion in the FRC determination. See Bagby v. Commissioner,
22 606 Fed. Appx, 888, 890 (9th Cir. 2015). Because outstanding issues
23 must be resolved before a determination of disability can be made, and
24 "when the record as a whole creates serious doubt as to whether the
25 [Plaintiff] is, in fact, disabled within the meaning of the Social
26 Security Act," further administrative proceedings would serve a useful
27 purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th
28 Cir. 2014)(citations omitted).

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ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: October 19, 2017

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE