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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

LANISHA DALANEY,)	Case No. CV 16-05466-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 January 12, 2017, 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 January 3, 2017, Defendant filed
4 an Answer along with the Administrative Record ("AR"). (Docket Entry
5 Nos. 17-18). The parties filed a Joint Stipulation ("Joint Stip.") on
6 January 18, 2018, setting forth their respective positions regarding
7 Plaintiff's claims. (Docket Entry No. 36).

8
9 The Court has taken this matter under submission without oral
10 argument. See C.D. Cal. L.R. 7-15.

11
12 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

13
14 On May 31, 2013, Plaintiff, formerly employed in dental offices
15 (see AR 259-60, 437-39), filed applications for Disability Insurance
16 Benefits and Supplemental Security Income, both alleging a disability
17 since June 27, 2012. (See AR 368-77). The Commissioner denied
18 Plaintiff's applications initially and on reconsideration. (AR 297,
19 308). On November 10, 2014, the Administrative Law Judge ["ALJ"], James
20 Moser, heard testimony from Plaintiff (represented by counsel), medical
21 expert Harvey Alpern, and vocational expert Sandra Trost. (See AR 257-
22 75).

23
24 On December 5, 2014, the ALJ issued a decision denying Plaintiff's
25 applications. (See AR 229-35). Applying the five-step sequential
26 process, the ALJ found at step one that Plaintiff had not engaged in
27 substantial gainful activity since June 27, 2012, the alleged onset
28 date. (AR 231). At step two, the ALJ found that Plaintiff had a severe

1 impairment -- seizure disorder (AR 231).² At step three, the ALJ
2 determined that Plaintiff did not have an impairment or combination of
3 impairments that meet or medically equal the severity of any of the
4 listings enumerated in the regulations. (AR 232-33). A

5
6 The ALJ then assessed Plaintiff's residual functional capacity
7 ("RFC")³ and concluded that she could perform a narrowed range of light
8 work⁴ with the following limitations: can lift and/or carry up to 10
9 pounds frequently and up to 20 pounds occasionally; can stand and/or
10 walk for 6 hours out of an 8-hour workday; can sit for 6 hours out of 8-
11 hour workday; can occasionally do postural activities; cannot climb
12 ropes, ladders, or scaffolds; cannot work at unprotected heights or near
13 dangerous equipment; and must avoid concentrated exposure to pulmonary
14 irritants. (AR 233-35).

15
16 At step four, the ALJ, relying on the vocational expert's hearing
17 testimony, found that Plaintiff was capable of performing her past
18 relevant work as a medical receptionist as that job was generally
19

20 ² The ALJ found that Plaintiff's other impairments -- asthma,
21 non-obstructing pulmonary embolism, sickle cell trait, obesity,
22 hypertension, compression fracture at T7, and sinusitis -- were non-
severe. (AR 231-32).

23 ³ A Residual Functional Capacity is what a claimant can still do
24 despite existing exertional and nonexertional limitations. See 20
C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

25 ⁴ "Light work involves lifting no more than 20 pounds at a time
26 with frequent lifting or carrying of objects weighing up to 10 pounds.
27 Even though the weight lifted may be very little, a job is in this
28 category when it requires a good deal of walking or standing, or when it
involves sitting most of the time with some pushing and pulling of arm
or leg controls." 20 C.F.R. §§ 404.1567(b), 416.967(b).

1 performed. (AR 235). The ALJ therefore concluded that Plaintiff was
2 not disabled within the meaning of the Social Security Act. (AR 235).

3
4 The Appeals Council denied Plaintiff's request for review on May
5 20, 2016. (See AR 3-8, 205-06). Plaintiff now seeks judicial review of
6 the ALJ's decision which stands as the final decision of the
7 Commissioner. See 42 U.S.C. §§ 405(g), 1383(c).

8
9 **STANDARD OF REVIEW**

10
11 This Court reviews the Administration's decision to determine if
12 it is free of legal error and supported by substantial evidence. See
13 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
14 evidence" is more than a mere scintilla, but less than a preponderance.
15 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
16 whether substantial evidence supports a finding, "a court must consider
17 the record as a whole, weighing both evidence that supports and evidence
18 that detracts from the [Commissioner's] conclusion." Aukland v.
19 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation
20 omitted). As a result, "[i]f the evidence can support either affirming
21 or reversing the ALJ's conclusion, [a court] may not substitute [its]
22 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
23 880, 882 (9th Cir. 2006).

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3 **PLAINTIFF'S CONTENTIONS**

4 Plaintiff alleges that the ALJ erred in finding that: (1) Plaintiff
5 did not meet Listed Impairment 11.02(A); (2) Plaintiff could perform her
6 past relevant work as generally performed; (3) Plaintiff could perform
7 her past relevant work, based on her seizures; and (4) Plaintiff could
8 perform her past relevant work, based on her inability to sit 6 hours
9 out of an 8-hour workday. (See Joint Stip. at 4-6, 8-14, 17-23, 26-27).

10 **DISCUSSION**

11
12 After consideration of the record as a whole, the Court finds that
13 Plaintiff's second claim of error warrants a remand for further
14 consideration.

15
16 **A. The ALJ Erred in Finding that Plaintiff Could Perform her**
17 **Past Relevant Work as Generally Performed**

18 Plaintiff asserts that the ALJ erred in finding that Plaintiff
19 could perform her past relevant work as generally performed. (See Joint
20 Stip. at 12-14, 17-19). Defendant asserts that the ALJ properly found
21 that Plaintiff could perform her past relevant work as generally
22 performed, and, alternatively, that any error by the ALJ in finding that
23 Plaintiff could perform her past relevant work was harmless. (See Joint
24 Stip. at 14-16).

25
26 Plaintiff submitted a Work History Report, stating that she worked
27 as a registered dental assistant in one dental office from March 2000
28 to June 2002 and in another dental office from January 2009 to June

1 2012. In both jobs, she answered the telephone, made appointments, ran
2 errands, and did billing when she worked at the front desk, and she
3 assisted the dentist, took X-rays, cleaned rooms and instruments, took
4 impressions, poured study models, and did whitenings when she worked in
5 the back office. Both jobs required her to walk and stand for 8 hours
6 a day, sit for 1 hour a day, climb for 30 minutes a day, stoop for 1 to
7 2 hours a day, kneel and crouch for 1 hour a day, handle/grab/grasp
8 objects for 3 to 4 hours a day, and to write/type/handle small objects
9 for 8 hours a day. At both jobs she lifted 50 pounds maximum, and
10 lifted 25 pounds frequently (1/3 to 2/3 of the workday). At both jobs
11 she supervised two people. (See AR 437-39).
12

13 At the administrative hearing, Plaintiff testified she last worked
14 as a dental assistant on June 27, 2012. Her responsibilities included
15 telephone calls, greeting patients, filing, insurance, billing,
16 instruments, cleaning, seating, "running cases to the labs and back,"
17 "runs to the bank," "runs to get lunch," and pretty much acting like an
18 office manager. (See AR 259-60).
19

20 The ALJ asked the vocational expert to describe Plaintiff's past
21 relevant work. The vocational expert initially identified Plaintiff's
22 past relevant work as a dental assistant (Dictionary of Occupational
23 Titles ["DOT"] 079.361-018, light work, SVP 6), but after noting that
24 Plaintiff's testimony about doing front office work rendered her dental
25 assistant work a "multitask job" or a "combined job," the vocational
26 expert testified that Plaintiff's past relevant work was as a medical
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1 receptionist (DOT 237.367-038, sedentary work, SVP 4)⁵. The vocational
2 expert testified that, based on the medical expert's residual functional
3 capacity assessment (lifting 20 pounds occasionally and 10 pounds
4 frequently; standing and walking 6 out of 8 hours; occasional posturals;
5 and no ropes, ladders, heights, dangerous heights, concentrated noxious
6

7
8 ⁵ DOT 237.367-038 describes the duties of Receptionist as
9 follows:

10 Receives callers at establishment, determines nature of
11 business, and directs callers to destination: Obtains caller's
12 name and arranges for appointment with person called upon.
13 Directs caller to destination and records name, time of call,
14 nature of business, and person called upon. May operate PBX
15 telephone console to receive incoming messages. May type
16 memos, correspondence, reports and other documents. May work
17 in office of medical practitioner or in other health care
18 facility and be designated Outpatient Receptionst (medical
19 ser.) or Receptionist, Doctor's Office (medical ser.). May
20 issue visitor's pass when required. May may future
21 appointments and answer inquiries [INFORMATION CLERK
22 (clerical) 237.367-022]. May perform a variety of clerical
23 duties [ADMINISTRATIVE CLERK (clerical) 219.362-010] and other
24 duties pertinent to type of establishment. May collect and
25 distribute mail and messages.

26 DOT 237.367-038, 1991 WL 672192.

27 The Receptionist occupation involves the following strength:

28 Sedentary Work - Exerting up to 10 pounds of force occasionally
(Occasionally: activity or condition exists up to 1/3 of the
time) and/or negligible amount of force frequently
(Frequently: activity or condition exists from 1/3 to 2/3 of
the time) to lift, carry, push, pull, or otherwise move
objects, including the human body. Sedentary work involves
sitting most of the time, but may involve walking or standing
for brief periods of time. Jobs are sedentary is walking and
standing are required only occasionally and all other
sedentary criteria are met.

29 Id.; see also 20 C.F.R. §§ 404.1567(a), 416.967(a) ("Sedentary work
30 involves lifting no more than 10 pounds at a time and occasionally
31 lifting or carrying articles like docket files, ledgers, and small
32 tools. Although a sedentary job is defined as one which involves
33 sitting, a certain amount of walking and standing is often necessary in
34 carrying out job duties. Jobs are sedentary if walking and standing are
35 required occasionally and other sedentary criteria are met.").

1 fumes, dusts, irritants and odors, see AR 269-70), Plaintiff could
2 return to her past relevant work. (See AR 270-72).

3
4 The ALJ addressed whether Plaintiff was able to perform her past
5 relevant work as follows:

6
7 The claimant has past relevant work as a medical
8 receptionist. [¶] The vocational expert testified the
9 position of medical receptionist (DOT 237.367-038) is semi-
10 skilled (SVP 4) and performed at the sedentary exertional
11 level. The vocational expert further testified that,
12 considering the residual functional capacity assigned herein,
13 the claimant can perform her past relevant work as a medical
14 receptionist. [¶] The undersigned accepts the testimony of
15 the vocational expert, and therefore finds the claimant can
16 perform her past relevant work as a medical receptionist. [¶]
17 In comparing the claimant's residual functional capacity with
18 the physical and mental demands of this work, the undersigned
19 finds that the claimant is able to perform it as generally
20 performed.

21 (AR 235).

22
23 At step four, the claimant bears the burden of demonstrating that
24 he or she can no longer perform his or her past relevant work. 20
25 C.F.R. §§ 404.1512(a), 404.1520(f), 416.912(a), 416.920(f); Barnhart v.
26 Thomas, 540 U.S. 20, 25 (2003); Matthews v. Shalala, 10 F.3d 678, 681
27 (9th Cir. 1993); see also Tacket v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
28 1999) ("The burden of proof is on the claimant as to steps one to four.")

1 A claimant has the ability to return to previous work if he or she
2 can perform the "actual functional demands and job duties of a
3 particular past relevant job" or "[t]he functional demands and job
4 duties of the [past] occupation as generally required by employers
5 throughout the national economy.'" Pinto v. Massanari, 249 F.3d 840, 845
6 (9th Cir. 2001)(quoting Social Security Ruling 82-61). "This requires
7 specific findings as to the claimant's residual functional capacity, the
8 physical and mental demands of the past relevant work, and the relation
9 of the residual functional capacity to the past work." Id. (citing SSR
10 82-62).

11
12 " [T]he best source for how a job is generally performed is usually
13 the [DOT]." Pinto, supra (citing Johnson v. Shalala, 60 F.3d 1428, 1435
14 (9th Cir. 1995), 20 C.F.R. §§ 404.1566(d), 416.1566(d), and SSR 82-61).
15 "[C]omposite jobs have significant elements of two or more occupations
16 and, as such, have no counterpart in the DOT." SSR 82-61. Moreover,
17 the ALJ may not use a job's least demanding function when identifying
18 a claimant's past relevant work. See Valencia v. Heckler, 751 F.2d
19 1081, 1087 (9th Cir. 1985)("Every occupation consists of a myriad of
20 tasks, each involving different degrees of physical exertion. To
21 classify an applicant's past relevant work according to the least
22 demanding function of the claimant's past occupations is contrary to the
23 letter and spirit of the Social Security Act.").

24
25
26 Here, the ALJ erred in finding that Plaintiff could perform her
27 past relevant work -- a composite job -- as generally performed. See
28

1 Cook v. Colvin, 2015 WL 162953, *7 (C.D. Cal. Jan. 13, 2015) ("When a job
2 is 'composite'--that is, it has significant elements of two or more
3 occupations therefore has no counterpart in the the DOT--the ALJ
4 considers only whether the claimant can perform his past relevant work
5 as actually performed.") (citing Program Operations Manual System (POMS)
6 D I 2 5 0 0 5 . 0 2 0 (B) , a v a i l a b l e a t
7 <http://policy.ssa.gov/poms.nsf/lnx/0425005020Z>); LePage v. Berryhill,
8 2017 WL 4539272, *2 (E.D. Cal. Oct. 11, 2017) ("[B]ecause the job at
9 issue was a composite job, the ALJ was precluded from finding that
10 plaintiff could perform the position as it was generally performed in
11 the national economy.").

12
13
14 Moreover, the ALJ erred in classifying Plaintiff's past relevant
15 work according to the least demanding function, namely, the front desk
16 reception work (i.e., answering phones, making appointments, collecting
17 payments, running errands, billing, see AR 260, 438-39). See Valencia
18 v. Heckler, 751 F.2d at 1086-87 (the ALJ erred by classifying the
19 claimant's past work as a tomato sorter requiring light work, when the
20 claimant's past work as a kitchen helper and agricultural worker were
21 classified as medium work and required significant manual labor
22 including lifting heavy machinery and farm field work); Carmickle v.
23 Commissioner, Soc. Sec. Admin., 533 F.3d 1155 (9th Cir. 2007) (the ALJ
24 erred by classifying the claimant's past carpentry work as purely
25 supervisory requiring no manual labor when the claimant's job involved
26 remodeling houses as well as supervising a crew of other carpenters).
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1 Defendant contends that Plaintiff's argument concerning the "least
2 demanding function" is foreclosed by Stacy v. Colvin, 825 F.3d 563 (9th
3 Cir. 2016). (See Joint Stip. at 15). In Stacy, the Ninth Circuit
4 stated, "We hold that *Valencia* and its progeny do not apply in cases
5 such as this one where (1) the 'least demanding function' is a task that
6 the claimant actually performed most of the time; and (2) the DOT
7 defines the claimant's past job as requiring only that least demanding
8 function." Id. at 570.

9
10 Defendant asserts that "Plaintiff performed office management tasks
11 relating to the medical receptionist aspect of her job most of the time,
12 and less frequently performed the dental assistant tasks." (Joint Stip.
13 at 15, citing AR 270-72 [the vocational expert testified that Plaintiff
14 "described she was doing the front office" "[a] good part of the
15 time."]). However, the evidence in the record simply does not support
16 the assertion that Plaintiff spent more time working front office tasks
17 than she did working dental assistant tasks. (See AR 259-60, 438-39).
18 Therefore, Stacy is not applicable to this case.

19
20 Defendant alternatively contends that any error by the ALJ in
21 finding that Plaintiff could return to her past relevant work was
22 harmless because "the vocational expert also identified other sedentary
23 occupations that Plaintiff could perform such as addresser, document
24 preparer or order clerk, food beverage." (Joint Stip. at 16, citing AR
25 274 [the vocational expert testified that besides the medical
26 receptionist job, Plaintiff could also perform the following jobs:
27
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1 addresser (DOT 209.587-010, sedentary, SVP 2, 1,000 local jobs, 8,047
2 national jobs); document preparer (DOT 249.587-018, sedentary, SVP 2,
3 1,457 local jobs, 45,076 national jobs); and order clerk, food beverage
4 (DOT 209.567-014)].

5
6 Since the ALJ did not discuss or adopt the vocational expert's
7 testimony regarding these other jobs, the Court is not able to find that
8 the ALJ's error is harmless. See Tommasetti v. Astrue, 533 F.3d 1035,
9 1038 (9th Cir. 2008)(An ALJ's error is harmless "when it is clear from
10 the record . . . that it was 'inconsequential to the ultimate
11 nondisability determination.'")(citation omitted); see also Carmickle
12 v. Commissioner, 533 F.3d 1155, 1162 (9th Cir. 2008)("[T]he relevant
13 inquiry in this context is not whether the ALJ would have made a
14 different decision absent any error, . . ., it is whether the ALJ's
15 decision remains legally valid, despite such error.").

16
17
18 **B. Remand Is Warranted**

19
20 The decision whether to remand for further proceedings or order an
21 immediate award of benefits is within the district court's discretion.
22 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
23 useful purpose would be served by further administrative proceedings,
24 or where the record has been fully developed, it is appropriate to
25 exercise this discretion to direct an immediate award of benefits. Id.
26 at 1179 ("[T]he decision of whether to remand for further proceedings
27 turns upon the likely utility of such proceedings."). However, where,
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1 as here, the circumstances of the case suggest that further
2 administrative review could remedy the Commissioner's errors, remand is
3 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
4 Harman v. Apfel, supra, 211 F.3d at 1179-81.

5
6 Since the ALJ failed to properly find that Plaintiff could perform
7 her past relevant work, remand is appropriate. Because outstanding
8 issues must be resolved before a determination of disability can be
9 made, and "when the record as a whole creates serious doubt as to
10 whether the [Plaintiff] is, in fact, disabled within the meaning of the
11 Social Security Act," further administrative proceedings would serve a
12 useful purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133,
13 1141 (9th Cir. 2014)(citations omitted).⁶

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22 ⁶ The Court has not reached any other issue raised by Plaintiff
23 except to determine that reversal with a directive for the immediate
24 payment of benefits would not be appropriate at this time.
25 "[E]valuation of the record as a whole creates serious doubt that
26 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,
27 1021 (2014). Accordingly, the Court declines to rule on Plaintiff's
28 claims regarding the ALJ's errors in finding that (1) Plaintiff did not
meet Listed Impairment 11.02(A) (see Joint Stip. at 4-6, 8-11), (2)
Plaintiff could perform her past relevant work, based on her seizures
(see Joint Stip. at 19-21), and (3) Plaintiff could perform her past
relevant work, based on her inability to sit 6 hours out of an 8-hour
workday (see Joint Stip. at 22-23, 26-27). Because this matter is being
remanded for further consideration, these issues should also be
considered on remand.

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: February 26, 2018

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE