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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ROBERT M. NAKAGAWA,

Plaintiff,

v.

NANCY A. BERRYHILL,¹ Acting
Commissioner of Social Security,

Defendant.

Case No.: CV 16-05512-JDE

MEMORANDUM OPINION AND
ORDER

Plaintiff Robert M. Nakagawa (“Plaintiff”) filed a Complaint on July 23, 2016, seeking review of the Commissioner’s denial of his application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). The parties filed consents to proceed before the undersigned Magistrate Judge. In accordance with the Court’s Order Re: Procedures in Social Security Appeal, the parties filed a Joint Stipulation (“Jt. Stip.”) on June 20, 2017, addressing their respective positions. The Court has taken the Joint

¹ Nancy A. Berryhill, now the Acting Commissioner of Social Security (“Defendant” or “Commissioner”), is substituted in as defendant. See 42 U.S.C. § 405(g).

1 Stipulation under submission without oral argument and as such, this matter
2 now is ready for decision.

3 I.

4 BACKGROUND

5 On January 3, 2014, Plaintiff applied for DIB and SSI, alleging disability
6 beginning December 26, 2012. (Administrative Record [“AR”] 182-93.) After
7 his application was denied initially (AR 107-12), Plaintiff requested an
8 administrative hearing, which was held on March 16, 2016. (AR 43-78, 115-
9 17.) Plaintiff, represented by counsel, appeared and testified at the hearing
10 before an Administrative Law Judge (“ALJ”). (AR 43-78.)

11 On March 28, 2016, the ALJ issued a partially favorable decision. (AR
12 18-31.) The ALJ found that Plaintiff had not engaged in substantial gainful
13 activity since the alleged onset date. (AR 24.) The ALJ determined that prior
14 to November 1, 2014, Plaintiff had the following medically determinable
15 impairments: history of hepatitis A and C; diabetes; history of hernia, status
16 post remote surgical intervention; history of substance abuse; and history of
17 depression. The ALJ, however, also found that none of these impairments or
18 combination of impairments significantly limited the ability to perform basic
19 work-related activities for 12 consecutive months, and therefore, Plaintiff did
20 not have a severe impairment or combination of impairments prior to
21 November 1, 2014. (AR 25-28.)

22 The ALJ additionally determined that, beginning on November 1, 2014,
23 Plaintiff had the following severe impairment: renal cell carcinoma. (AR 28.)
24 The ALJ found that Plaintiff did not have an impairment or combination of
25 impairments that met or medically equaled a listed impairment. (AR 29.) The
26 ALJ found that, since November 1, 2014, Plaintiff had the residual functional
27 capacity (“RFC”) to perform light work, with the following limitations.
28 Plaintiff could: (1) lift and carry 10 pounds frequently and 20 pounds

1 occasionally; (2) sit for four hours cumulatively in an eight-hour period; (3)
2 stand and walk for four hours cumulatively in an eight-hour period with
3 frequent breaks; and (4) could occasionally bend. (AR 29.) The ALJ further
4 found that, since November 1, 2014, Plaintiff was unable to perform any past
5 relevant work (AR 29), and considering his age, education, work experience,
6 and RFC, there were no jobs that existed in significant numbers in the national
7 economy that Plaintiff could perform. (AR 30.) The ALJ concluded that
8 Plaintiff was not disabled prior to November 1, 2014, but became disabled on
9 that date and has continued to be disabled through the date of the decision.

10 (Id.)

11 Plaintiff filed a request with the Appeals Council for review of the ALJ's
12 decision. (AR 15-17.) On May 27, 2016, the Appeals Council denied Plaintiff's
13 request for review, making the ALJ's decision the Commissioner's final
14 decision. (AR 1-4.) This action followed.

15 II.

16 STANDARD OF REVIEW

17 Under 42 U.S.C. § 405(g), a district court may review the
18 Commissioner's decision to deny benefits. The ALJ's findings and decision
19 should be upheld if they are free from legal error and supported by substantial
20 evidence based on the record as a whole. Brown-Hunter v. Colvin, 806 F.3d
21 487, 492 (9th Cir. 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th
22 Cir. 2007). Substantial evidence means such relevant evidence as a reasonable
23 person might accept as adequate to support a conclusion. Lingenfelter v.
24 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less
25 than a preponderance. Id. To determine whether substantial evidence supports
26 a finding, the reviewing court "must review the administrative record as a
27 whole, weighing both the evidence that supports and the evidence that detracts
28 from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720

1 (9th Cir. 1998). “If the evidence can reasonably support either affirming or
2 reversing,” the reviewing court “may not substitute its judgment” for that of
3 the Commissioner. Id. at 720-21; see also Molina v. Astrue, 674 F.3d 1104,
4 1111 (9th Cir. 2012) (“Even when the evidence is susceptible to more than one
5 rational interpretation, [the court] must uphold the ALJ’s findings if they are
6 supported by inferences reasonably drawn from the record.”). However, a
7 court may review only the reasons stated by the ALJ in his decision “and may
8 not affirm the ALJ on a ground upon which he did not rely.” Orn v. Astrue,
9 495 F.3d 625, 630 (9th Cir. 2007).

10 Lastly, even when the ALJ commits legal error, the Court upholds the
11 decision where that error is harmless. Molina, 674 F.3d at 1115. An error is
12 harmless if it is “inconsequential to the ultimate nondisability determination,”
13 or if “the agency’s path may reasonably be discerned, even if the agency
14 explains its decision with less than ideal clarity.” Brown-Hunter, 806 F.3d at
15 492 (citation omitted).

16 III.

17 DISCUSSION

18 Plaintiff contends that the ALJ failed to properly consider the medical
19 evidence in finding that he did not suffer from a medically determinable severe
20 impairment prior to November 1, 2014. (See Jt. Stip. at 3.)

21 At step two of the sequential evaluation process, the ALJ determines
22 whether the claimant has any severe, medically determinable impairment or
23 combination of impairments that meets the durational requirement. See 20
24 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); see also Smolen v. Chater, 80 F.3d
25 1273, 1289-90 (9th Cir. 1996). In assessing severity, the ALJ must determine
26 whether the claimant’s medically determinable impairment or combinations of
27 impairments significantly limits his ability to do basic work activities. See
28 Webb v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005). Step two is a “de

1 minimis screening device to dispose of groundless claims.” Smolen, 80 F.3d at
2 1290. A medically determinable impairment or combination of impairments
3 may be found “not severe *only if* the evidence establishes a slight abnormality
4 that has no more than a minimal effect on an individual’s ability to work.”
5 Webb, 433 F.3d at 686 (quoting Smolen, 80 F.3d at 1290). The ALJ “may find
6 that a claimant lacks a medically severe impairment or combination of
7 impairments only when [that] conclusion is ‘clearly established by medical
8 evidence.’” Id. at 687 (citation omitted).

9 Here, the ALJ found that Plaintiff had a severe impairment beginning on
10 November 1, 2014, but did not have a severe impairment or combination of
11 impairments prior to that date. (AR 28.) Although the ALJ acknowledged that
12 Plaintiff had medically determinable impairments prior to November 1,
13 2014—history of hepatitis A and C; diabetes; history of hernia, status post
14 remote surgical intervention; history of substance abuse; and history of
15 depression—the ALJ found that Plaintiff did not have an impairment or
16 combination of impairments that significantly limited his ability to perform
17 basic work-related activities for 12 consecutive months. (AR 25-28.) As
18 explained below, the Court concludes that the ALJ erred in finding that
19 Plaintiff’s mental impairment was not severe.

20 **A. The ALJ erred by finding Plaintiff’s mental impairment was not**
21 **severe at step two.**

22 The ALJ found that Plaintiff had medically determinable mental
23 impairments, but that those impairments were not severe. The ALJ found that
24 Plaintiff had no more than mild limitation in any of the first three broad
25 functional areas used to determine severity and no episodes of decompensation
26 that have been of extended duration in the fourth area: activities of daily living;
27 social functioning; concentration, persistence, or pace; and episodes of
28 decompensation. (AR 27-28.) As to Plaintiff’s depression, the ALJ concluded

1 that it was stabilized when he was compliant with medication and that he
2 mostly functioned well when he was in a stable living environment. (AR 26-
3 27.) With respect to Plaintiff's substance abuse, the ALJ concluded that there
4 was no evidence that his drug usage was ever assessed in terms of what bearing
5 it had on his mental health treatment, and it was immaterial. (AR 27.)

6 Plaintiff contends that the ALJ's finding of no severe mental impairment
7 was erroneous because he lacked an evidentiary basis for rejecting the opinions
8 of state agency physicians Dr. Jay Rankin and Dr. Jon Etienne Mourot. (See
9 Jt. Stip. at 8.)

10 Dr. Rankin concluded that Plaintiff had an affective disorder, and
11 described mild restrictions in activities of daily living, and moderate difficulties
12 in maintaining social functioning and maintaining concentration, persistence,
13 or pace. (AR 86.) Dr. Mourot concluded that Plaintiff had sustained
14 concentration and persistence limitations. In particular, Dr. Mourot found that
15 Plaintiff was moderately limited in his ability to carry out detailed instructions
16 and ability to maintain attention and concentration for extended periods. (AR
17 89.) Dr. Mourot also found that Plaintiff had social interaction limitations. Dr.
18 Mourot concluded that Plaintiff was moderately limited in his ability to
19 interact appropriately with the general public and ability to accept instructions
20 and respond appropriately to criticism from supervisors. (AR 90.) Dr. Mourot
21 concluded that Plaintiff had the capacity for work where interpersonal contact
22 was incidental to work performed; complexity of tasks was learned and
23 performed by rote, few variables, little judgment; and supervision required was
24 simple, direct, and concrete. (AR 90.)

25 Although the ALJ acknowledged that a consultative examining
26 psychiatric source and non-examining physicians assigned mild to moderate
27 limitations with regard to Plaintiff's depressive disorder, he nevertheless found
28 that Plaintiff's treatment record was incompatible with any limitations that

1 would last for a 12-month period. (AR 28.) As explained, he also concluded
2 that Plaintiff's history of substance abuse was immaterial. (AR 27.) The ALJ
3 gave no weight to the opinion of Dr. Rankin that Plaintiff had moderate levels
4 of impairment in concentration, persistence, or pace and in social function
5 because it was "inconsistent with mental status examinations showing
6 improvement with treatment and the source did not examine the claimant or
7 have the benefit of the expanded record prior to the established onset date."
8 For the same reasons, the ALJ gave no weight to the opinions of Dr. Mourot
9 finding moderate limitations in functioning. (Id.) These findings are not
10 supported by the record.

11 First, the ALJ rejected Dr. Rankin and Dr. Mourot's opinions because
12 they were inconsistent with the examinations showing improvement with
13 treatment. However, the ALJ does not cite to any evidence in the medical
14 record demonstrating that Plaintiff's mental status examinations showed
15 improvement with treatment and the only record cited by the ALJ in support
16 of her finding that Plaintiff did well when he was compliant with his
17 medication was from outside the relevant time frame. In particular, the ALJ
18 referred to a May 6, 2015 psychiatric evaluation after Plaintiff was placed on a
19 Cal. Welf. & Inst. Code § 5150 hold as a danger to self. The evaluation noted
20 that Plaintiff "used to be on Abilify and Seroquel," although there was no
21 finding that discontinuing these medications was the cause of Plaintiff's
22 symptoms. (AR 621-22.) At that time, Plaintiff was described as hopeless,
23 helpless, depressed, and suicidal, and was diagnosed with paranoid
24 schizophrenia with acute exacerbation. (Id.) When the treating physician
25 evaluated Plaintiff at admission, he concluded that Plaintiff would need to be
26 hospitalized four to six days. (AR 622.)

27 Plaintiff's medical records prior to November 1, 2014 does not appear to
28 reflect any connection between Plaintiff's medication compliance and mental

1 health. When read as a whole, the treatment notes do not undermine Drs.
2 Rankin and Mourot’s opinions. See Ghanim v. Colvin, 763 F.3d 1154, 1164
3 (9th Cir. 2014). The medical records consistently reveal that, despite some
4 occasional periods of improvement, Plaintiff continued to suffer from mental
5 health issues. Id.

6 The ALJ also rejected Drs. Rankin and Mourot’s opinions on the
7 grounds that they “did not examine the claimant or have the benefit of the
8 expanded record prior to the established onset date.” (AR 28.) Again,
9 however, the ALJ did not cite to any medical evidence contradicting their
10 findings, and a review of Plaintiff’s medical records reflects a long history of
11 mental health treatment for depression, and that Plaintiff’s treating physicians’
12 opinions were consistent with the state agency physicians’ findings. Plaintiff
13 has been repeatedly diagnosed with a major depressive disorder with and
14 without psychotic features. (See, e.g., AR 380, 384, 389, 419, 561-62.) For
15 example, in March 2013, Plaintiff was admitted to the Kedren Community
16 Mental Health Center for treatment, after the USC Medical Center Emergency
17 Department placed a 5150 hold on Plaintiff because he was exhibiting suicidal
18 thoughts. (AR 299-301, 430-34.) Dr. Anahit Matevosyan noted that, at
19 admission, Plaintiff was depressed, unkempt, disheveled with poor activities of
20 daily living, and had used drugs the day before his hospitalization. (AR 431.)
21 Plaintiff was discharged more than a month later, after being diagnosed with a
22 major depressive disorder, recurrent, severe, without psychotic features and
23 polysubstance dependence, in early, full remission. (AR 433.) At that time, his
24 response to treatment was listed as “fair.” (Id.) In May 2013, Plaintiff again
25 was diagnosed with a major depressive disorder without psychotic features.
26 (AR 384, 389.) At that time, his mood was described as hopeless and anxious;
27 he exhibited paranoid delusions; his speech was slowed; his memory was
28 impaired; and he exercised poor impulse control. (AR 383.) Plaintiff’s treating

1 physician noted that Plaintiff's depression caused difficulty with daily
2 activities, isolation, maintaining housing, and working. (AR 380, 384.)
3 Plaintiff's hopelessness and fear of people caused problems with others in the
4 community. (AR 380.) He also noted that Plaintiff had poor judgment, was
5 easily persuaded, could not handle stress and boredom, and suffered from
6 anger issues. (AR 384.) His physician expressly noted that substance abuse was
7 a precipitating factor that caused Plaintiff's symptoms to manifest. (AR 381.)
8 Although the treating physician noted several medications Plaintiff was taking,
9 the physician did not indicate that non-compliance was an issue. (Id.)
10 Plaintiff's progress notes following the May 2013 assessment indicated that
11 Plaintiff continued to suffer from feelings of hopelessness, stress, and
12 depression (AR 419 (progress note dated 6/13/13) 421 (progress note dated
13 5/23/13)), difficulty interacting with others (AR 420 (progress note dated
14 5/31/13)), disorganized thoughts and poor impulse control (AR 426 (progress
15 note dated 5/15/13)), and poor concentration and insight (AR 428 (progress
16 note dated 5/6/13)).

17 Plaintiff's mental health treatment continued into 2014. In May 2014,
18 Plaintiff again was diagnosed with a major depressive disorder, recurrent,
19 moderate. (AR 559, 561.) Although he was medication compliant at that time,
20 he still noted difficulty with focus and concentration. (Id.) Dr. Alonso Martin
21 Del Campo found that Plaintiff had poor eye contact, insight, and judgment;
22 his affect was constricted; and his symptoms were under "moderately good
23 control" with the current medications. (AR 560-61.) In July 2014, Plaintiff
24 reported feeling angry and paranoid. (AR 562-63.) He indicated that other
25 people triggered his episodes of anger. (AR 562.) Dr. Martin Del Campo
26 indicated that Plaintiff's insight and judgment remained poor and his thought
27 processes were tangential. He diagnosed Plaintiff with a major depressive
28 disorder, recurrent, moderate with psychotic features. (AR 563.) The progress

1 notes reflected that Plaintiff demonstrated a clear understanding and
2 willingness to take his medication. (Id.) Later in the month, Plaintiff reported
3 that his medication was not helping his symptoms and caused him to feel
4 detached with cloudy thinking. (AR 564.) In October 2014, Plaintiff's progress
5 notes reflected improvement with a new medication, but that he continued to
6 suffer from mood swings, and his insight and judgment remained poor. (AR
7 568-69.)

8 In sum, the ALJ's severity determination is not supported by substantial
9 evidence. The medical evidence did not clearly establish the absence of a
10 medically determinable, severe mental impairment, or combination of
11 impairments. See Webb, 433 F.3d at 687. An ALJ may not selectively cite to
12 only those portions of the medical record favorable to a decision and ignore
13 less favorable evidence. See, e.g., Ghanim v. Colvin, 763 F.3d 1154, 1164 (9th
14 Cir. 2014). In this case, the ALJ erred by applying an overly stringent legal
15 standard to find that Plaintiff had no medically determinable, severe
16 impairment, or combination of impairments.

17 **B. The ALJ did not err in rejecting the opinions of Dr. Alexandre and**
18 **Dr. Sauer.**

19 As explained, the ALJ found that prior to November 1, 2014, Plaintiff
20 had the following medically determinable physical impairments: history of
21 hepatitis A and C; diabetes; and history of hernia, status post remote surgical
22 intervention, but that these impairments or combination of impairments did
23 not significantly limit Plaintiff's ability to perform basic work-related activities.
24 (AR 25.) In reaching this decision, the ALJ reasoned that although Plaintiff's
25 medically determinable impairments could have been reasonably expected to
26 produce the alleged symptoms, Plaintiff's statements concerning the intensity,
27 persistence and limiting effects of the alleged symptoms were not entirely
28 credible. (AR 26.) In addition, the ALJ noted that, prior to the onset date,

1 physical examinations showed that Plaintiff had good diabetic control, good
2 motor strength, walked normally, use his upper extremities without
3 impairment, had no manipulative impairment, and no evidence of an ankle
4 impairment or foot deformity. Plaintiff's diabetes and hypertension were
5 controlled with medication. The ALJ also found that Plaintiff had a history of
6 hepatitis A and C and history of hernia with surgical intervention, but the
7 hepatitis A resolved and although he needed to undergo treatment for hepatitis
8 C, he was not experiencing any symptoms associated with it. (AR 26.) The
9 ALJ noted that the medical records reflected that his history of hernia repair
10 went back to 1980 and he had since worked at the medium to heavy exertional
11 level. (Id.) He rejected the opinions of treating physician Dr. Lucien
12 Alexandre, who concluded that Plaintiff was temporarily unemployable,
13 because they were inconsistent and there was no credible correlation from the
14 surrounding and overall record, and the opinions of state agency physician Dr.
15 Lucy Sauer because her findings and opinions in favor of a range of medium
16 work were not supported by the record. (AR 28.)

17 Plaintiff contends that the ALJ erred in giving no weight to the opinions
18 of Dr. Alexandre and Dr. Sauer. Defendant, in turn, contends that the ALJ's
19 conclusions were supported by substantial evidence and free from reversible
20 legal error. As explained below, the ALJ did not err in rejecting these opinions.

21 A treating physician's opinions are entitled to greater weight because a
22 treating physician is employed to cure and has a greater opportunity to know
23 and observe the patient as an individual. See Magallanes v. Bowen, 881 F.2d
24 747, 751 (9th Cir.1989). "The treating physician's opinion is not, however,
25 necessarily conclusive as to either a physical condition or the ultimate issue of
26 disability." Id. "The ALJ may disregard the treating physician's opinion
27 whether or not that opinion is contradicted." Id. For instance, "[t]he ALJ need
28 not accept the opinion of any physician . . . if that opinion is brief, conclusory,

1 and inadequately supported by clinical findings.” Bray v. Comm’r of Soc. Sec.
2 Admin., 554 F.3d 1219, 1228 (9th Cir. 2009); Tonapetyan v. Halter, 242 F.3d
3 1144, 1149 (9th Cir. 2001). To reject the uncontradicted opinion of a treating
4 physician, the ALJ must provide “clear and convincing reasons that are
5 supported by substantial evidence.” Bayliss v. Barhnart, 427 F.3d 1211, 1216
6 (9th Cir. 2005). Where, as here, the treating physician’s opinion is
7 controverted, the “ALJ may only reject it by providing specific and legitimate
8 reasons that are supported by substantial evidence.” Id.

9 i. Dr. Alexandre

10 In February and May 2013, Dr. Alexandre completed disability
11 assessments, finding that Plaintiff was temporarily disabled and unemployable,
12 meaning “*less than 12 months.*” (AR 478; see also AR 473, 483.) Dr. Alexandre
13 completed Referral for Physical Health Disability Assessment Services Forms,
14 indicating that Plaintiff had a history of hypertension, major depression,
15 diabetes, hepatitis B and C, a hernia, which required surgical intervention in
16 1983, tobacco use, and wore glasses. (AR 474-75, 484-85.) He indicated that
17 Plaintiff currently suffered from an inguinal hernia, a major depressive
18 disorder, hepatitis C, diabetes, and hypertension. (AR 473, 483, 486.) In the
19 February 2013 assessment, Dr. Alexandre noted that Plaintiff was not stable
20 and needed to pursue a “surgical solution,” presumably for his hernia,
21 although it is not specified. (AR 487.) On the May 2013 disability form, Dr.
22 Alexandre indicated that Plaintiff was temporarily unemployable and listed
23 inguinal hernia, diabetes, and major depressive disorder/psychosis. (AR 473.)
24 An additional assessment form, completed by Dr. Alexandre’s colleague in
25 September 2013, indicated that Plaintiff could only perform sedentary work
26 because of an inguinal hernia. (AR 457.) The physician noted that Plaintiff had
27 surgery for the hernia in the 1980s, but it failed. He noted bilateral wheezing
28 and a “tender [illegible] mass.” (AR 460-61.)

1 The ALJ rejected these opinions because they were inconsistent and
2 there was no credible correlation from the surrounding overall record. (AR 28.)

3 An ALJ is permitted to reject a treating physician's opinion that is
4 unsupported by the record as a whole. Batson v. Comm'r of the Soc. Sec.
5 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); see also Shavin v. Comm'r of
6 Soc. Sec. Admin., 488 F. App'x 223, 224 (9th Cir. 2012) (ALJ may reject
7 physician's opinion by "noting legitimate inconsistencies and ambiguities in
8 the doctor's analysis or conflicting lab test results, reports, or testimony"
9 (internal citation omitted)). Although Dr. Alexandre and his colleague noted
10 several diagnoses, it appears their ultimate disability conclusions were based
11 on their assessment that Plaintiff continued to suffer from complications from
12 the hernia, as this was the only condition listed on all three assessments. (See
13 AR 457, 473, 483.) Even assuming that the hernia was the basis for the
14 conclusion, their findings were inconsistent. Dr. Alexandre's progress note
15 from February 2013 made no reference to a hernia, but then he indicated in his
16 February 2013 assessment that Plaintiff was unstable and needed to pursue a
17 surgical solution. (AR 482, 487.) He did not clarify why surgery was necessary
18 or explain the nature of any "surgical solution." Nor did he reconcile his
19 "temporary" disability assessment with the need for surgical intervention. The
20 September 2013 assessment noted that Plaintiff had a failed hernia surgery in
21 1982, and Plaintiff presented with a tender mass and wheezing. (AR 460.)
22 Nevertheless, the treating physician concluded that Plaintiff could perform
23 sedentary work and was not eligible for Social Security benefits. (AR 457.)

24 Further, even assuming that these physicians' conclusions were not
25 inconsistent, the overall medical record did not support their disability
26 assessments. In this case, the other medical records from 2013 do not reflect
27 any ongoing issues with respect to a hernia. Indeed, Plaintiff did not even list
28 the hernia as a medical condition limiting his ability to work. (AR 41, 209.)

1 Plaintiff's progress notes from the Wesley Health Centers, dated January 2,
2 2013, February 25, 2013, June 10, 2013, September 16, 2013, and November
3 27, 2013 all list a number of chronic issues, but none mention continuing
4 problems from the hernia. (AR 450, 456, 464, 479, 489.) By July 2014, Plaintiff
5 was jogging almost daily. (AR 580.) At that time, his physical examination did
6 not reveal any masses, tenderness, or limitations caused by a hernia. (AR 580-
7 81.) In October 2014, Plaintiff's treating physician found no tenderness or
8 masses in the abdominal area. (AR 591.) The overall medical records merely
9 reflect that Plaintiff had surgery for the hernia in either the 1980s or 1990s, and
10 do not show any limitations associated with the hernia or resulting surgery.
11 (See, e.g., 450, 456, 464, 479, 489, 556, 572, 580.)

12 In sum, the Court finds that the ALJ did not err in rejecting Dr.
13 Alexandre's opinion.

14 ii. Dr. Sauer

15 On August 14, 2014, state agency physician Dr. Sauer found that
16 Plaintiff had the following medically determinable impairments: diabetes,
17 hypertension, and hepatitis C. Dr. Sauer further noted that the medical records
18 showed a left inguinal hernia and mental impairments. (AR 88.) Dr. Sauer
19 concluded that Plaintiff could occasionally lift and/or carry 50 pounds;
20 frequently lift and/or carry 25 pounds; stand and/or walk about six hours in
21 an eight-hour workday; sit for about six hours in an eight-hour workday;
22 perform unlimited pushing and/or pulling, other than as noted for lifting and
23 carrying; and did not have any postural, manipulative, visual, communicative,
24 or environmental limitations. (AR 88.)

25 Again, the medical records do not support these functional limitations.
26 Other than Dr. Sauer's and Dr. Alexandre's (and his colleague's) conclusory
27 opinions, Plaintiff has not cited to any evidence in his medical record
28 demonstrating any significant work-related limitations based on his physical

1 impairments. As explained, except for the disability assessments prepared by
2 Dr. Alexandre’s clinic, Plaintiff’s medical records do not reflect any ongoing
3 issues with respect to the hernia repaired years earlier. Similarly, the medical
4 records do not reflect any ongoing issues with respect to Plaintiff’s other
5 impairments. It is undisputed that Plaintiff had diabetes and hepatitis A and C.
6 “But mere diagnosis of an impairment—or even treatment for it—is
7 insufficient to establish severity at step two, especially when the *objective*
8 medical evidence in the record fails to show any *work-related limitations*
9 connected to the impairment.” Townsend v. Colvin, 2015 WL 6673677, at *3
10 (C.D. Cal. Oct. 30, 2015); see also Harvey v. Colvin, 2013 WL 3899282, at *5
11 (C.D. Cal. July 29, 2013) (citing Matthews v. Shalala, 10 F.3d 678, 680 (9th
12 Cir. 1993)). There was no medical evidence in the record that supports Dr.
13 Sauer’s functional limitations. As the ALJ noted, Plaintiff’s diabetes and
14 hypertension were under control with medication and diet modifications (see,
15 e.g., AR 50, 450, 466, 468-69, 480, 490, 514, 516, 534, 580, 582) and his
16 hepatitis A had completely resolved (see AR 48, 590-91). With respect to
17 Plaintiff’s allegation that the hepatitis C caused fatigue, although the record
18 contains a few sporadic reports of fatigue, Plaintiff has not met his burden of
19 showing how this intermittent symptom prevented him from performing work-
20 related functions for a 12-month period. (See AR 328 (assessment dated
21 2/12/12, indicating that hepatitis C undetectable, no need to treat), 469
22 (progress note dated 5/13/13, indicating Plaintiff was negative for increased
23 fatigue), 502 (progress note dated 7/18/12, noting fatigue), 580 (progress note
24 dated 7/18/14, indicating that Plaintiff reported intermittent fatigue, but
25 thought it was stress-related), 590-91 (progress note dated 10/3/14 for hepatitis
26 C, noting that Plaintiff did not appear acutely ill, no nausea or abdominal pain,
27 well nourished, no fever or yellowish skin or eyes, no fatigue, and declined a
28 liver biopsy). The examining medical expert testified at the administrative

1 hearing that, although Plaintiff had the antibody for hepatitis C, it had not
2 affected him yet, and it should clear up with the antiviral. (AR 49.)

3 The Court finds that the ALJ did not err in rejecting Dr. Sauer's opinion.

4 **C. Remand is appropriate.**

5 The decision whether to remand for further proceedings is within this
6 Court's discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000)
7 (as amended). Where no useful purpose would be served by further
8 administrative proceedings, or where the record has been fully developed, it is
9 appropriate to exercise this discretion to direct an immediate award of benefits.
10 See Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004); Harman, 211 F.3d
11 at 1179 (noting that "the decision of whether to remand for further proceedings
12 turns upon the likely utility of such proceedings").

13 Here, the proper remedy is reversal and remand for further
14 administrative proceedings. On remand, the Commissioner shall direct the
15 ALJ to (1) conduct a supplemental hearing and fully develop the record; (2)
16 reevaluate Plaintiff's medically determinable impairments at step two and
17 continue the sequential evaluation process; and (3) reconsider whether Plaintiff
18 was disabled prior to November 1, 2014.

19 **IV.**

20 **ORDER**

21 Pursuant to sentence four of 42 U.S.C. § 405(g), IT THEREFORE IS
22 ORDERED that Judgment be entered reversing the decision of the
23 Commissioner of Social Security and remanding this matter for further
24 administrative proceedings consistent with this Order.

25 Dated: July 28, 2017

26 
27 JOHN D. EARLY
28 United States Magistrate Judge