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

LOLITA DENEANNE DAVIS,  
Plaintiff,

v.

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

CASE NO. CV 17-2558 SS

**MEMORANDUM DECISION AND ORDER**

**I.**

**INTRODUCTION**

Lolita Deneanne Davis ("Plaintiff") brings this action seeking to overturn the decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13). For the reasons stated below, the Court AFFIRMS the Commissioner's decision.

1 II.

2 PROCEDURAL HISTORY

3  
4 On March 28, 2013, Plaintiff filed an application for  
5 Supplemental Security Income ("SSI") pursuant to Title XVI of the  
6 Social Security Act alleging a disability onset date of February  
7 22, 2013.<sup>1</sup> (AR 214-22, 230-32). The Commissioner denied  
8 Plaintiff's applications initially and on reconsideration. (AR  
9 129-56). Thereafter, Plaintiff requested a hearing before an  
10 Administrative Law Judge ("ALJ") (AR 172-74), which took place on  
11 September 23, 2015 (AR 35-70). The ALJ issued an adverse decision  
12 on November 4, 2015, finding that Plaintiff was not disabled  
13 because there are jobs that exist in significant numbers in the  
14 national economy that she can perform. (AR 22-31). On January  
15 31, 2017, the Appeals Council denied Plaintiff's request for  
16 review. (AR 3-5). This action followed on April 3, 2017.

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<sup>1</sup> Plaintiff was previously found not disabled in a final decision dated  
24 February 21, 2013, based on a prior SSI application filed on July 11,  
25 2011. (AR 22, 114-25). "The principles of res judicata apply to  
26 administrative decisions . . . . The claimant, in order to overcome the  
27 presumption of continuing nondisability arising from the first  
28 administrative law judge's findings of nondisability, must prove 'changed  
circumstances' indicating a greater disability." Chavez v. Bowen, 844  
F.2d 691, 693 (9th Cir. 1988) (citation omitted). Here, the ALJ found  
that Plaintiff "has not [made] a showing of a changed circumstance  
material to the determination of disability." (AR 22).

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**III.**

**FACTUAL BACKGROUND**

Plaintiff was born on May 19, 1969. (AR 230). She was forty-six years old when she appeared before the ALJ on September 23, 2015. (AR 35). Plaintiff completed the eleventh grade and does not have a GED. (AR 41-42). She is not married and is homeless. (AR 40, 54). Plaintiff last worked in 2008 doing in-home support. (AR 42). She alleges disability due to: spinal injury, depression, insomnia and back injury. (AR 234).

**A. Plaintiff's Testimony**

Plaintiff testified that she is unable to work because of auditory hallucinations, insomnia, depression and back pain. (AR 42-46). She takes Norco for her back pain, Abilify and Zoloft for her mental health issues, and Trazadone for her insomnia, all of which provide some relief. (AR 47, 52-53). She denied any side effects from her medications. (AR 52-53). Plaintiff is homeless, carries her possessions in a backpack, uses Access Services to get around and is unable to walk more than a half block before needing to rest. (AR 41, 46, 54-56). She denied using drugs or alcohol. (AR 57).

1 **B. Treatment History**

2  
3 In September 2009, Plaintiff was the victim of a home invasion  
4 and was shot. (AR 309). A bullet fragment remains in her left  
5 hip. (AR 309).  
6

7 On April 9, 2012, Plaintiff presented to Salvador E. Lasala,  
8 M.D., complaining of depression, lack of motivation, poor energy,  
9 anxiety and insomnia. (AR 306). On examination, Plaintiff's  
10 appearance, behavior and speech were unremarkable. (AR 306). She  
11 had an appropriate affect, normal thought processes and abstract  
12 thinking, anxious and depressed mood, and poor insight, judgment  
13 and reality assessments. (AR 306). She denied suicidal or  
14 homicidal ideations. (AR 306). Dr. Lasala continued doxepin and  
15 Abilify,<sup>2</sup> finding that Plaintiff's medications were stabilizing and  
16 reducing her symptoms. (AR 306). On May 22, 2012, Plaintiff  
17 complained of depression and insomnia. (AR 303). On examination,  
18 her appearance, behavior, affect, thought, abstract thinking and  
19 speech were unremarkable and appropriate. (AR 303). Her mood was  
20 depressed and her insight, judgment and reality assessment were  
21 poor. (AR 303). Dr. Lasala increased her doxepin and Abilify  
22 dosages. (AR 303). During follow-up visits on July 13, October  
23 3, and December 18, 2012, mental status examinations were largely  
24 unremarkable: Plaintiff's appearance, behavior, thoughts and  
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26 <sup>2</sup> Sinequan (doxepin) is used to treat depression and anxiety.  
27 <[www.drugs.com/mtm/doxepin-sinequan.html](http://www.drugs.com/mtm/doxepin-sinequan.html)> (last visited Dec. 5, 2017).  
28 Abilify (aripiprazole) is an antipsychotic medication used to treat the  
symptoms of schizophrenia and bipolar disorder. <[www.drugs.com/abilify](http://www.drugs.com/abilify)>  
(last visited Dec. 5, 2017).

1 speech were normal. (AR 298, 299, 301). On February 12, 2013,  
2 Plaintiff complained of insomnia and increased anxiety and pain.  
3 (AR 297). A mental status examination was largely unremarkable.  
4 (AR 297). While Plaintiff exhibited an anxious mood and poor  
5 insight, judgment and reality assessment, her appearance, behavior,  
6 thoughts and speech were all normal. (AR 297). On April 9,  
7 Plaintiff admitted that she had improved mood and sleep. (AR 296).

8  
9 On July 29, 2013, Peter Bradley, Ph.D., a nonexamining state  
10 agency consultant, reviewed the medical record and concluded that  
11 Plaintiff has a mild restriction of activities of daily living and  
12 moderate difficulties in maintaining social functioning and in  
13 maintaining concentration, persistence or pace. (AR 134). Dr.  
14 Bradley opined that Plaintiff is moderately limited in the ability  
15 to understand, remember and carry out detailed instructions but  
16 can learn and remember basic work instructions and tasks of one or  
17 two steps. (AR 137-38). On January 27 and March 24, 2014, the  
18 state agency consultants recommended that the Agency order a  
19 psychological consultative examination to assess Plaintiff's  
20 mental status. (AR 145, 147).

21  
22 On February 14, 2013, Plaintiff began treating with Stanley  
23 H. Schwartz, M.D. (AR 276). She complained of severe hip and back  
24 pain related to a 2009 gunshot wound. (AR 276). She denied  
25 fatigue, weakness or sleep disorder. (AR 277). An x-ray confirmed  
26 that Plaintiff has a bullet fragment in her left thigh. (AR 280).  
27 At a routine follow-up on February 27, 2013, Plaintiff was well  
28 developed and nourished, in no acute distress. (AR 282). She was

1 diagnosed with pain in her lower back, left hip and left knee and  
2 prescribed baclofen, Norco and tramadol.<sup>3</sup> (AR 282-84). On April  
3 5, 2013, Plaintiff was alert and cooperative, with a normal mood  
4 and affect and normal attention span and concentration. (AR 286).

5  
6 On January 29, 2014, Plaintiff began treating with the Los  
7 Angeles County Department of Mental Health. (AR 309-13).  
8 Plaintiff complained of paranoia and insomnia, along with difficult  
9 interpersonal relationships with friends and family. (AR 309). A  
10 mental status examination was generally unremarkable. (AR 312).  
11 Plaintiff's appearance, motor activity, speech, orientation,  
12 intellectual functioning, memory, fund of knowledge, affect and  
13 thought content were all normal. (AR 312). She did exhibit a  
14 dysphoric, hopeless and anxious mood, impaired concentration,  
15 judgments and insight, and irrational ideations. (AR 312).  
16 Plaintiff was diagnosed with chronic PTSD and major depressive  
17 disorder with psychotic features and prescribed Abilify and  
18 Zoloft.<sup>4</sup> (AR 313, 318). On February 26, 2014, Plaintiff's  
19 appearance and thought process were unremarkable, but her speech  
20 and behavior were slow and she demonstrated impaired insight and  
21 paranoia. (AR 315). On April 23, 2014, Plaintiff reported feeling

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22 <sup>3</sup> Baclofen is a muscle relaxer used to treat muscle pain and stiffness.  
23 <[www.drugs.com/baclofen.html](http://www.drugs.com/baclofen.html)> (last visited Dec. 5, 2017). Norco is an  
24 opioid pain medication containing a combination of acetaminophen and  
hydrocodone and is used to relieve moderate to severe pain.  
25 <[www.drugs.com/norco.html](http://www.drugs.com/norco.html)> (last visited Dec. 5, 2017). Tramadol is a  
narcotic-like pain reliever used to treat moderate to severe pain.  
26 <[www.drugs.com/tramadol.html](http://www.drugs.com/tramadol.html)> (last visited Dec. 5, 2017).

27 <sup>4</sup> Zoloft (sertraline) is an antidepressant used to treat depression,  
panic disorder, anxiety disorder and PTSD. <[www.drugs.com/zoloft.html](http://www.drugs.com/zoloft.html)>  
28 (last visited Dec. 5, 2017).

1 better with her medications but still suffering from auditory  
2 hallucinations. (AR 314). She was casually dressed, properly  
3 groomed, well oriented to time, place, date and purpose, and  
4 exhibiting linear thoughts. (AR 314). Tehmina Usmani, M.D.,  
5 continued Abilify and increased the Zoloft dosage. (AR 314).

6  
7 April 24, 2014, Khushro Unwalla, M.D., a board-certified  
8 psychiatrist, reviewed some of the medical records and examined  
9 Plaintiff on behalf of the Commissioner. (AR 321-25). Plaintiff  
10 presented in a disheveled and unkempt state, using a cane to  
11 ambulate. (AR 321). She replied "I don't know" to most questions.  
12 (AR 321). She complained of depression, auditory hallucinations,  
13 paranoia and severe memory problems. (AR 322). Plaintiff denied  
14 alcohol or drug abuse and does not use tobacco. (AR 322). She  
15 reported "adequate" self-care skills of dressing, bathing, eating,  
16 toileting and safety precautions. (AR 323). Plaintiff manages  
17 her own money but cannot do any household chores, errands, shopping  
18 or cooking without assistance. (AR 323). On examination,  
19 Plaintiff's speech was slowed and soft, her mood described as  
20 depressive, her affect flat and blunted and her thought processes  
21 slowed. (AR 323). She denied suicidal ideation but claimed that  
22 people are following her. (AR 323). Plaintiff's cognition,  
23 orientation, memory, concentration, abstract thinking, fund of  
24 knowledge, insight and judgment were all deficient. (AR 323-24).  
25 Dr. Unwalla observed psychomotor slowing and problems processing  
26 information. (AR 323). He diagnosed major depressive disorder

1 with psychiatric features and rule out malingering.<sup>5</sup> (AR 324). He  
2 opined that Plaintiff has mild difficulties in maintaining social  
3 functioning, marked difficulties focusing and maintaining  
4 attention, and marked difficulties in concentration, persistence  
5 and pace. (AR 324). Dr. Unwalla concluded that Plaintiff has  
6 severe cognitive deficits and poor insight and opined that she has  
7 moderate limitations in all areas of mental functioning. (AR 324).  
8 He opined that Plaintiff's prognosis is guarded and that she is  
9 unable to handle funds on her own behalf. (AR 325).

10  
11 On May 21, 2014, David O. Hill, Ph.D., reviewed the medical  
12 file, including Dr. Unwalla's evaluation, and concluded that  
13 Plaintiff has a mild restriction of activities of daily living and  
14 moderate difficulties in maintaining social functioning and in  
15 maintaining concentration, persistence or pace. (AR 148-49). Dr.  
16 Hill found Plaintiff's allegations of depression and auditory  
17 hallucinations only partially credible because of inconsistencies  
18 in her self-reports and because medical records indicate that her  
19 symptoms improve when she is compliant with treatment. (AR 149-  
20 50). Dr. Hill opined that Plaintiff is moderately limited in the

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22 <sup>5</sup> A "rule-out" diagnosis "means here is good evidence that the patient  
23 meets the criteria for that diagnosis, and the doctor needs more  
24 information to rule it out." Cha Yang v. Comm'r of Soc. Sec. Admin.,  
25 488 F. App'x 203, 207 (9th Cir. 2012) (Ikuta, J., dissenting); see Hansen  
26 ex rel. J.H. v. Republic R-III Sch. Dist., 632 F.3d 1024, 1028 n.3 (8th  
27 Cir. 2011) ("A 'rule-out' diagnosis . . . means the patient meets some  
28 criteria for the disorder, but the doctor needs more information to rule  
it out and would not be comfortable diagnosing it at that time.");  
Lockhart v. Colvin, No. 14 CV 0121, 2015 WL 5834284, at \*4 (E.D. Cal.  
Oct. 1, 2015) ("A 'rule-out' notation means that the patient meets some  
criteria of the disorder but the doctor is unwilling to diagnose it and  
more information is needed.").



1 ability to understand, remember and carry out detailed instructions  
2 but can learn and remember basic work instructions and tasks of  
3 one or two steps. (AR 152-53). Dr. Hill further opined that  
4 because of her residual paranoia and occasion auditory  
5 hallucinations, Plaintiff's ability to deal with the public on a  
6 sustained basis is limited. (AR 153). Dr. Hill concluded that  
7 because Plaintiff's "mental limitations improve when she is  
8 compliant with treatment[,] . . . she would be able to perform  
9 simple, no-public work-like activity." (AR 150).

10  
11 On July 22, 2014, Plaintiff reported fair response to her  
12 medications. (AR 342). Her depression "comes and goes" but she  
13 still hears voices on occasion and is paranoid around people that  
14 she feels will harm her. (AR 342). On examination, her appearance,  
15 behavior, thoughts, speech and mood were normal. (AR 342). On  
16 September 17, Plaintiff reported continuing paranoia but  
17 acknowledged that her depression was improving and denied auditory  
18 hallucinations. (AR 341). On examination, her appearance,  
19 behavior, thoughts, speech and mood were normal. (AR 341).

20  
21 On January 14, 2015, Plaintiff reported doing "ok" with her  
22 medications. (AR 339). While paranoia is still present, her  
23 auditory hallucinations have decreased and her appetite has  
24 improved. (AR 339). On examination, her appearance, behavior,  
25 thought process, speech, affect and mood were normal. (AR 339).  
26 On February 12, Plaintiff reported that her medications were  
27 working. (AR 338). Her auditory hallucinations have decreased  
28 and her insomnia and appetite have improved but she still

1 experiences paranoia. (AR 338). On April 9, Plaintiff reported  
2 "doing a lot better." (AR 337). While she still feels paranoid,  
3 her depression is better and she experiences auditory  
4 hallucinations only three times a month. (AR 337). Her sleep and  
5 appetite are improved and she is able to socialize. (AR 337). On  
6 examination, Plaintiff was casually dressed and made good eye  
7 contact. (AR 337). She was oriented, calm and cooperative, with  
8 a linear thought process. (AR 337). She had a sad affect but her  
9 mood was "better" and she denied any suicidal or homicidal  
10 ideations. (AR 337).

#### 11 12 IV.

#### 13 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

14  
15 To qualify for disability benefits, a claimant must  
16 demonstrate a medically determinable physical or mental impairment  
17 that prevents the claimant from engaging in substantial gainful  
18 activity and that is expected to result in death or to last for a  
19 continuous period of at least twelve months. Reddick v. Chater,  
20 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).  
21 The impairment must render the claimant incapable of performing  
22 work previously performed or any other substantial gainful  
23 employment that exists in the national economy. Tackett v. Apfel,  
24 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
25 § 423(d)(2)(A)).  
26  
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1 To decide if a claimant is entitled to benefits, an ALJ  
2 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The  
3 steps are:

4  
5 (1) Is the claimant presently engaged in substantial gainful  
6 activity? If so, the claimant is found not disabled. If  
7 not, proceed to step two.

8 (2) Is the claimant's impairment severe? If not, the  
9 claimant is found not disabled. If so, proceed to step  
10 three.

11 (3) Does the claimant's impairment meet or equal one of the  
12 specific impairments described in 20 C.F.R. Part 404,  
13 Subpart P, Appendix 1? If so, the claimant is found  
14 disabled. If not, proceed to step four.

15 (4) Is the claimant capable of performing his past work? If  
16 so, the claimant is found not disabled. If not, proceed  
17 to step five.

18 (5) Is the claimant able to do any other work? If not, the  
19 claimant is found disabled. If so, the claimant is found  
20 not disabled.

21  
22 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
23 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-  
24 (g) (1), 416.920(b)-(g) (1).

25  
26 The claimant has the burden of proof at steps one through four  
27 and the Commissioner has the burden of proof at step five.  
28 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an

1 affirmative duty to assist the claimant in developing the record  
2 at every step of the inquiry. Id. at 954. If, at step four, the  
3 claimant meets his or her burden of establishing an inability to  
4 perform past work, the Commissioner must show that the claimant  
5 can perform some other work that exists in "significant numbers"  
6 in the national economy, taking into account the claimant's  
7 residual functional capacity ("RFC"), age, education, and work  
8 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at  
9 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner  
10 may do so by the testimony of a VE or by reference to the Medical-  
11 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
12 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,  
13 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
14 exertional (strength-related) and non-exertional limitations, the  
15 Grids are inapplicable and the ALJ must take the testimony of a  
16 vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th  
17 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.  
18 1988)).

19  
20 **V.**

21 **THE ALJ'S DECISION**

22  
23 The ALJ employed the five-step sequential evaluation process  
24 and concluded that Plaintiff was not disabled within the meaning  
25 of the Social Security Act. (AR 31). At step one, the ALJ found  
26 that Plaintiff has not engaged in substantial gainful activity  
27 since March 28, 2013, the application date. (AR 25). At step two,  
28 the ALJ found that Plaintiff's lumbar spine strain, left hip

1 bursitis, history of gunshot wound, obesity, depression, PTSD and  
2 anxiety are severe impairments. (AR 25). At step three, the ALJ  
3 determined that Plaintiff does not have an impairment or  
4 combination of impairments that meet or medically equal the  
5 severity of any of the listings enumerated in the regulations. (AR  
6 25-26).

7  
8 The ALJ then assessed Plaintiff's RFC and concluded that she  
9 can perform medium work, as defined in 20 C.F.R. § 416.967(c),<sup>6</sup>  
10 except:

11  
12 [Plaintiff can] sit for two hours out of an eight hour  
13 workday; stand/walk for six hours out of an eight hour  
14 workday, with the use of a knee brace and a cane to  
15 ambulate; push/pull within the weight limitations;  
16 occasionally climb ramps and stairs; occasionally climb  
17 ladders and scaffolds; and frequently balance, stoop,  
18 kneel, crouch, and crawl. [Plaintiff] is precluded from  
19 repetitive use of her left lower extremity.  
20 Additionally, [Plaintiff] is limited to non-public,  
21 simple, routine tasks.

22  
23 (AR 26-27). At step four, the ALJ found that Plaintiff is unable  
24 to perform any past relevant work. (AR 29). Based on Plaintiff's  
25 RFC, age, education, work experience and the VE's testimony, the

26 <sup>6</sup> "Medium work involves lifting no more than 50 pounds at a time with  
27 frequent lifting or carrying of objects weighing up to 25 pounds. If  
28 someone can do medium work, we determine that he or she can also do  
sedentary and light work." 20 C.F.R. § 416.967(c).

1 ALJ determined at step five that there are jobs that exist in  
2 significant numbers in the national economy that Plaintiff can  
3 perform, including industrial cleaner, kitchen helper and hand  
4 packager. (AR 30-31). Accordingly, the ALJ found that Plaintiff  
5 was not under a disability as defined by the Social Security Act  
6 since March 28, 2013, the date the application was filed. (AR 31).

7  
8 **VI.**

9 **STANDARD OF REVIEW**

10  
11 Under 42 U.S.C. § 405(g), a district court may review the  
12 Commissioner's decision to deny benefits. The court may set aside  
13 the Commissioner's decision when the ALJ's findings are based on  
14 legal error or are not supported by substantial evidence in the  
15 record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir.  
16 2014) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050,  
17 1052 (9th Cir. 2006)); Auckland v. Massanari, 257 F.3d 1033, 1035  
18 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v.  
19 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,  
20 885 F.2d 597, 601 (9th Cir. 1989)).

21  
22 "Substantial evidence is more than a scintilla, but less than  
23 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
24 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
25 evidence which a reasonable person might accept as adequate to  
26 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;  
27 Smolen, 80 F.3d at 1279). To determine whether substantial  
28 evidence supports a finding, the court must "consider the record

1 as a whole, weighing both evidence that supports and evidence that  
2 detracts from the [Commissioner's] conclusion.'" Auckland, 257  
3 F.3d at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
4 1993)). If the evidence can reasonably support either affirming  
5 or reversing that conclusion, the court may not substitute its  
6 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-  
7 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

8  
9 **VII.**

10 **DISCUSSION**

11  
12 Plaintiff contends that the ALJ impermissibly rejected the  
13 examining physician's opinion. (Dkt. No. 18 at 5-12).

14  
15 "To reject an uncontradicted opinion of a treating or  
16 examining doctor, an ALJ must state clear and convincing reasons  
17 that are supported by substantial evidence." Bayliss v. Barnhart,  
18 427 F.3d 1211, 1216 (9th Cir. 2005); see Lester v. Chater, 81 F.3d  
19 821, 830 (9th Cir. 1995), as amended (Apr. 9, 1996) ("As is the  
20 case with the opinion of a treating physician, the Commissioner  
21 must provide 'clear and convincing' reasons for rejecting the  
22 uncontradicted opinion of an examining physician."). "If a  
23 treating or examining doctor's opinion is contradicted by another  
24 doctor's opinion, an ALJ may only reject it by providing specific  
25 and legitimate reasons that are supported by substantial evidence."  
26 Bayliss, 427 F.3d at 1216; see Lester, 81 F.3d at 830-31 ("And like  
27 the opinion of a treating doctor, the opinion of an examining  
28 doctor, even if contradicted by another doctor, can only be

1 rejected for specific and legitimate reasons that are supported by  
2 substantial evidence in the record.”). Further, when weighing  
3 conflicting medical opinions, an ALJ may reject an opinion that is  
4 conclusory, brief, and unsupported by clinical findings. Bayliss,  
5 427 F.3d at 1216; Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th  
6 Cir. 2001).

7  
8 Dr. Unwalla, an examining physician, conducted a consultative  
9 examination on April 24, 2014. (AR 321-25). Plaintiff presented  
10 disheveled and unkempt, her speech slow and soft, with difficulty  
11 processing information. (AR 321, 323). She answered “I don’t  
12 know” to most questions. (AR 321). Dr. Unwalla opined that  
13 Plaintiff has marked difficulties focusing and maintaining  
14 attention and marked difficulties in concentration, persistence  
15 and pace. (AR 324). He concluded that Plaintiff has severe  
16 cognitive deficits and poor insight and that she has moderate  
17 limitations in all areas of mental functioning. (AR 324). Dr.  
18 Unwalla opined that Plaintiff’s prognosis was guarded and that she  
19 is unable to handle funds on her own behalf. (AR 325).

20  
21 The ALJ gave “little weight” to Dr. Unwalla’s opinion:

22  
23 I find this opinion to be unsupported by [Plaintiff’s]  
24 record as a whole. In other mental status examinations,  
25 [Plaintiff’s] appearance was unremarkable and she was  
26 able to recall details of her life and symptoms. At the  
27  
28



1 hearing, [Plaintiff] was able to adhere to proper decorum  
2 and testify on her own behalf.

3  
4 (AR 29).

5  
6 Plaintiff contends that the ALJ's finding is "broad and  
7 vague." (Dkt. No. 18 at 10). She argues that the ALJ does not  
8 specifically reference which "other mental status examinations"  
9 belie Dr. Unwalla's opinion. (Id.). To the contrary, the ALJ  
10 cited four different examinations where Plaintiff's appearance,  
11 behavior, thoughts and speech were largely unremarkable. (AR 28-  
12 29). On February 12, 2013, while Plaintiff exhibited an anxious  
13 mood and poor insight, her appearance, behavior, thoughts and  
14 speech were all normal. (AR 297). On April 9, 2013, Plaintiff  
15 acknowledged that she had improved mood and sleep. (AR 296). On  
16 January 29, 2014, Plaintiff's appearance, motor activity, speech,  
17 orientation, intellectual functioning, memory, fund of knowledge,  
18 affect and thought content were all normal. (AR 312). Finally,  
19 on April 9, 2015, Plaintiff reported "doing a lot better." (AR  
20 337). She was casually dressed, made good eye contact, had a  
21 linear thought process, and was oriented, calm and cooperative.  
22 (AR 337). Further, Plaintiff does not identify any examinations  
23 where she exhibited the disheveled and unkempt appearance and  
24 severe cognitive deficits that Dr. Unwalla observed. Indeed, even  
25 Dr. Unwalla suspected possible malingering. (AR 28, 324). Thus,  
26 the ALJ properly afforded Dr. Unwalla's opinion little weight  
27 because it was inconsistent with other evidence in the record. See  
28 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).

1 Plaintiff identifies multiple records indicating paranoid  
2 ideations, anxiety, auditory hallucinations, PTSD and depression.  
3 (Dkt. No. 18 at 10-11). Plaintiff appears to confuse conditions  
4 with disabilities. For example, a "person can be depressed,  
5 anxious, and obese yet still perform full-time work." Gentle v.  
6 Barnhart, 430 F.3d 865, 868 (7th Cir. 2005). As the Seventh Circuit  
7 explained: "[c]onditions must not be confused with disabilities.  
8 The social security disability benefits program is not concerned  
9 with health as such, but rather with ability to engage in full-  
10 time gainful employment." Id. (citation omitted); accord Cody v.  
11 Colvin, No. 16 CV 5664, 2017 WL 218802, at \*3 (W.D. Wash. Jan. 19,  
12 2017). Further, the records cited by Plaintiff do not necessarily  
13 support Dr. Unwalla's conclusion that Plaintiff has marked  
14 difficulties focusing and maintaining attention and marked  
15 difficulties in concentration, persistence and pace.

16  
17 The ALJ acknowledged that Plaintiff's depression, anxiety and  
18 PTSD were severe impairments. (AR 25). The ALJ found that  
19 Plaintiff's treatment, which was "limited to counseling and  
20 medications, . . . appeared to be effective since [Plaintiff]  
21 admitted in recent records that she was feeling better and had  
22 improved." (AR 28). The state agency consultant opined that  
23 Plaintiff has moderate difficulties in maintaining social  
24 functioning and in maintaining concentration, persistence or pace.  
25 (AR 148). Because Plaintiff was experiencing residual paranoia  
26 and occasional auditory hallucinations despite her medications,  
27 the state agency consultant limited Plaintiff to non-public,  
28 routine tasks. (AR 27, 29, 150, 153). The ALJ properly relied on

1 the state agency physician's opinion in rejecting Dr. Unwalla's  
2 opinion. (AR 29); see Andrews v. Shalala, 53 F.3d 1035, 1041 (9th  
3 Cir. 1995) (the ALJ may reject an examining physician's opinion in  
4 reliance on the report of a nonexamining advisor "when it is not  
5 contradicted by *all other evidence* in the record") (citation  
6 omitted) (emphasis in original); Social Security Ruling ("SSR")  
7 96-6p,<sup>7</sup> at \*2-3 (S.S.A. July 2, 1996) ("State agency medical and  
8 psychological consultants are highly qualified physicians and  
9 psychologists who are experts in the evaluation of the medical  
10 issues in disability claims under the Act. . . . In appropriate  
11 circumstances, opinions from State agency medical and psychological  
12 consultants and other program physicians and psychologists may be  
13 entitled to greater weight than the opinions of treating or  
14 examining sources.").

15  
16 Finally, Plaintiff contends that the ALJ's reliance on her  
17 decorum at the hearing to reject Dr. Unwalla's opinion amounts to  
18 "quintessential prohibited 'sit-and-squirm' jurisprudence that the  
19 Ninth Circuit has condemned." (Dkt. No. 18 at 11). Indeed, the  
20 Ninth Circuit prohibits "an ALJ who is not a medical expert [from]  
21 subjectively arriv[ing] at an index of traits which he expects the  
22 claimant to manifest at the hearing." Freeman v. Schweiker, 681  
23 F.2d 727, 731 (11th Cir. 1982); accord Perminster v. Heckler, 765  
24 F.2d 870, 872 (9th Cir. 1985) ("The ALJ's reliance on his personal

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25  
26 <sup>7</sup> Social Security Rulings (SSRs) "do not carry the 'force of law,' but  
27 they are binding on ALJs nonetheless." Bray, 554 F.3d at 1224. They  
28 "reflect the official interpretation of the [Agency] and are entitled to  
some deference as long as they are consistent with the Social Security  
Act and regulations." Id. (citation omitted).

1 observations of Perminter at the hearing has been condemned as 'sit  
2 and squirm' jurisprudence.") (citing Freeman, 681 F.2d at 731).  
3 Here, however, the ALJ is citing Plaintiff's decorum and ability  
4 to testify on her own behalf as one more piece of evidence  
5 contradicting Dr. Unwalla's opinion. Morgan v. Comm'r of Soc. Sec.  
6 Admin., 169 F.3d 595, 600 (9th Cir. 1999) ("The inclusion of the  
7 ALJ's personal observations does not render the decision  
8 improper.") (citation omitted). Plaintiff's decorum and ability  
9 to testify on her own behalf undermine Dr. Unwalla's opinion that  
10 Plaintiff has marked difficulties focusing and maintaining  
11 attention and marked difficulties in concentration, persistence  
12 and pace.

13  
14 In sum, the ALJ provided specific and legitimate reasons,  
15 supported by substantial evidence in the record, for giving Dr.  
16 Unwalla's opinion little weight. Accordingly, because substantial  
17 evidence supports the ALJ's assessment of Dr. Unwalla's opinion,  
18 no remand is required.

