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

SEDA HOVHANNISYAN,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social  
Security,  
  
Defendant.

CASE NO. CV 17-2743 SS

**MEMORANDUM DECISION AND ORDER**

**I.**

**INTRODUCTION**

Seda Hovhannisyan ("Plaintiff") seeks review of the final decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying her application for social security benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 10, 12, 13). For the reasons stated below, the decision of the Commissioner is REVERSED and this case

1 is REMANDED for further administrative proceedings consistent with  
2 this decision.

3  
4 **II.**

5 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

6  
7 To qualify for disability benefits, a claimant must  
8 demonstrate a medically determinable physical or mental impairment  
9 that prevents the claimant from engaging in substantial gainful  
10 activity and that is expected to result in death or to last for a  
11 continuous period of at least twelve months. Reddick v. Chater,  
12 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).  
13 The impairment must render the claimant incapable of performing  
14 work previously performed or any other substantial gainful  
15 employment that exists in the national economy. Tackett v. Apfel,  
16 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
17 § 423(d)(2)(A)).

18  
19 To decide if a claimant is entitled to benefits, an ALJ  
20 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The  
21 steps are:

- 22
- 23 (1) Is the claimant presently engaged in substantial gainful  
24 activity? If so, the claimant is found not disabled. If  
25 not, proceed to step two.
  - 26 (2) Is the claimant's impairment severe? If not, the  
27 claimant is found not disabled. If so, proceed to step  
28 three.

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

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

8 (5) Is the claimant able to do any other work? If not, the  
9 claimant is found disabled. If so, the claimant is found  
10 not disabled.

11  
12 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
13 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-  
14 (g)(1), 416.920(b)-(g)(1).

15  
16 The claimant has the burden of proof at steps one through four  
17 and the Commissioner has the burden of proof at step five.  
18 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
19 affirmative duty to assist the claimant in developing the record  
20 at every step of the inquiry. Id. at 954. If, at step four, the  
21 claimant meets his or her burden of establishing an inability to  
22 perform past work, the Commissioner must show that the claimant  
23 can perform some other work that exists in "significant numbers"  
24 in the national economy, taking into account the claimant's  
25 residual functional capacity ("RFC"), age, education, and work  
26 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at  
27 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner  
28 may do so by the testimony of a VE or by reference to the Medical-

1 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
2 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,  
3 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
4 exertional (strength-related) and non-exertional limitations, the  
5 Grids are inapplicable and the ALJ must take the testimony of a  
6 vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th  
7 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.  
8 1988)).

9  
10 **III.**

11 **THE ALJ'S DECISION**

12  
13 The ALJ employed the five-step sequential evaluation process  
14 in evaluating Plaintiff's case. At step one, the ALJ found that  
15 Plaintiff has not engaged in substantial gainful activity since  
16 January 30, 2013, the application date. (AR 20). At step two,  
17 the ALJ found that Plaintiff's headaches, hypertension,  
18 degenerative changes in the lumbar and thoracic spine, pituitary  
19 macroadenoma, status post removal surgery and obesity are severe  
20 impairments. (AR 20). At step three, the ALJ determined that  
21 Plaintiff does not have an impairment or combination of impairments  
22 that meet or medically equal the severity of any of the listings  
23 enumerated in the regulations. (AR 21-22).

24  
25 The ALJ then assessed Plaintiff's RFC and concluded that she  
26 can perform a full range of medium work, as defined in 20 C.F.R.  
27  
28

1 § 416.967(c).<sup>1</sup> (AR 22). At step four, the ALJ found that Plaintiff  
2 was unable to perform any past relevant work. (AR 26-27).  
3 Utilizing the grids and considering Plaintiff's age, education,  
4 work experience and RFC, the ALJ determined at step five that there  
5 are jobs that exist in significant numbers in the national economy  
6 that Plaintiff can perform. (AR 27). Accordingly, the ALJ found  
7 that Plaintiff was not under a disability as defined by the Social  
8 Security Act since January 30, 2013, the date the application was  
9 filed. (AR 27-28).

10  
11 **IV.**

12 **STANDARD OF REVIEW**

13  
14 Under 42 U.S.C. § 405(g), a district court may review the  
15 Commissioner's decision to deny benefits. "[The] court may set  
16 aside the Commissioner's denial of benefits when the ALJ's findings  
17 are based on legal error or are not supported by substantial  
18 evidence in the record as a whole." Aukland v. Massanari, 257 F.3d  
19 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); see  
20 also Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing  
21 Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

22  
23 "Substantial evidence is more than a scintilla, but less than  
24 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
25 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant

26 <sup>1</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 evidence which a reasonable person might accept as adequate to  
2 support a conclusion.” (Id.). To determine whether substantial  
3 evidence supports a finding, the court must “ ‘consider the record  
4 as a whole, weighing both evidence that supports and evidence that  
5 detracts from the [Commissioner’s] conclusion.’ ” Aukland, 257  
6 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
7 1993)). If the evidence can reasonably support either affirming  
8 or reversing that conclusion, the court may not substitute its  
9 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-  
10 21 (citing Flaten v. Sec’y of Health & Human Servs., 44 F.3d 1453,  
11 1457 (9th Cir. 1995)).

12  
13 **V.**

14 **DISCUSSION**

15  
16 **A. The ALJ Failed To Properly Weigh The Treating Physician’s**  
17 **Opinion**

18  
19 An ALJ must afford the greatest weight to the opinion of the  
20 claimant’s treating physician. The opinions of treating physicians  
21 are entitled to special weight because the treating physician is  
22 hired to cure and has a better opportunity to know and observe the  
23 claimant as an individual. Connett v. Barnhart, 340 F.3d 871, 874  
24 (9th Cir. 2003); Thomas v. Barnhart, 278 F.3d 947, 956-57 (9th Cir.  
25 2002); Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989).  
26 Where the treating doctor’s opinion is not contradicted by another  
27 doctor, it may be rejected only for “clear and convincing” reasons.  
28 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended).

1 Even if the treating physician's opinion is contradicted by another  
2 doctor, the ALJ may not reject this opinion without providing  
3 specific, legitimate reasons, supported by substantial evidence in  
4 the record. Id. at 830-31; see Orn v. Astrue, 495 F.3d 625, 632  
5 (9th Cir. 2007); Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198  
6 (9th Cir. 2008). "If a treating physician's opinion is not given  
7 'controlling weight' because it is not 'well-supported' or because  
8 it is inconsistent with other substantial evidence in the record,"  
9 the ALJ shall consider "specified factors in determining the weight  
10 it will be given[, including] . . . the length of the treatment  
11 relationship and the frequency of examination by the treating  
12 physician[ ] and the nature and extent of the treatment  
13 relationship between the patient and the treating physician." Orn,  
14 495 F.3d at 631 (citation omitted); see 20 C.F.R. §§ 404.1527(d) (2)  
15 (listing factors to consider), 416.927(d) (2) (same).

16  
17 On June 10, 2015, Vagharshak M. Pillosyan, M.D., Plaintiff's  
18 treating physician, completed a physical RFC questionnaire. (AR  
19 307-10). He opined that Plaintiff was limited to lifting or  
20 carrying less than ten pounds frequently and ten pounds  
21 occasionally, walking and standing less than two hours in an eight-  
22 hour workday with occasional use of a walker, and sitting less than  
23 one hour in an eight-hour day. (AR 308). Dr. Pillosyan further  
24 opined that Plaintiff can occasionally balance but never perform  
25 other postural activities, occasionally reach, handle and finger  
26 because of numbness of the fingers bilaterally, and is visually  
27 limited due to loss of half the right visual field. (AR 309).  
28 Finally, Dr. Pillosyan opined that Plaintiff has an inability to

1 tolerate noise, dust, vibration, extreme humidity and dryness,  
2 odors, claustrophobia and heights. (AR 309).

3  
4 The ALJ gave Dr. Pillosyan's opinion "little weight," finding  
5 it "unsupported by and inconsistent with [Plaintiff's] objective  
6 medical findings and her testimony." (AR 26). The ALJ also  
7 rejected Dr. Pillosyan's opinion because "he did not make such  
8 limited findings until June 2015, suggesting [Plaintiff's]  
9 application for disability benefits and approaching hearing date  
10 prompted his opinion." (AR 26). The ALJ's analysis is not  
11 supported by substantial evidence.

12  
13 First, the ALJ's discussion of the treating doctor's opinions  
14 fails to provide sufficient analysis. The ALJ's analysis lacks  
15 sufficiently specific reasoning to allow a reviewing court to  
16 conclude that the ALJ rejected the treating physician's opinion  
17 for legitimate reasons supported by substantial evidence.  
18 Furthermore, the ALJ does not explain how Dr. Pillosyan's opinion  
19 is inconsistent with Plaintiff's testimony.

20  
21 Second, the ALJ's discussion of the medical evidence overlooks  
22 important points. The ALJ contends that Dr. Pillosyan's records  
23 do not show any limitation in reaching and fingering. (AR 26).  
24 To the contrary, on January 3, 2014, Dr. Pillosyan found Plaintiff  
25 positive for numbness of the extremities mainly distally and  
26 positive for painful shoulders, elbows, wrists, hands and fingers.  
27 (AR 299-300). These findings persisted during subsequent  
28 examinations in January, February and May 2014 and into 2015. (AR



1 297, 298, 295, 291, 292, 288, 289). The ALJ also asserts that Dr.  
2 Pillosyan's records do not indicate any visual limitations. (AR  
3 26). However, on January 3, 2014, Dr. Pillosyan diagnosed mild  
4 ptosis and cataract of right eye. (AR 300). On January 6, 2014,  
5 Dr. Pillosyan confirmed decreased vision in Plaintiff's right eye.  
6 (AR 297). On May 28, 2014, Plaintiff reported blurry vision and  
7 an inability to see the upper outer quadrante of the right visual  
8 field, which continued into 2015. (AR 291, 289, 286, 283). On  
9 January 21, 2015, Dr. Pillosyan diagnosed progressive right eye  
10 blindness. (AR 290). On May 8, 2015, Dr. Pillosyan found right  
11 sided visual field defect, laterally. (AR 281). These findings  
12 contradict the statement regarding a lack of visual limitations.

13  
14 Further, Dr. Pillosyan performed multiple examinations that  
15 supported the physical limitations described in his June 2015  
16 opinion. In January and February 2014, Plaintiff had joint and  
17 muscle pain and stiffness, limited range of motion in her shoulders  
18 and neck and limited strength in all extremities. (AR 294-300).  
19 In May 2014, Plaintiff reported severe, excruciating back and  
20 shoulder pain with reduced range of motion. (AR 291). In January  
21 and March 2015, Plaintiff used a cane to ambulate and reported an  
22 unstable gait with occasional falls. (AR 286, 289). On  
23 examination, Dr. Pillosyan found mild kyphosis, moderate to severe  
24 tenderness to palpation of spinous processes, muscle spasms in the  
25 upper back, decreased strength in lower extremities, weakness in  
26 upper extremities, tenderness to palpation and reduced range of  
27 motion of the right shoulder, tenderness and swelling of the right  
28 AC joint, increased pain upon supination of the right forearm,

1 severe tenderness of the lumbar/sacral region with muscular spasm  
2 and significant reduced range of motion, and an unstable gait with  
3 the fear of falling secondary to pain and weakness of the lower  
4 extremities. (AR 286-87, 289-90). In May 2015, Plaintiff reported  
5 edema of both legs with palpitations. (AR 280). On examination,  
6 Dr. Pillosyan found a mildly stiff neck, edema and tenderness of  
7 both legs, decreased muscle strength, unstable gait, decreased  
8 sensation to pain and touch on a distribution of the L4-L5 nerve  
9 and over the posterolateral aspect of the right leg, and kyphosis  
10 of the thoracic spine. (AR 281).

11  
12 Third, the ALJ erred in rejecting Dr. Pillosyan's opinion in  
13 favor of the nontreating, State Agency physicians' opinions. The  
14 ALJ must give specific and legitimate reasons for rejecting a  
15 treating physician's opinion in favor of a nontreating physician's  
16 contradictory opinion. Orn, 495 F.3d at 632; Lester, 81 F.3d at  
17 830-31. The State Agency physicians opined that Plaintiff was  
18 capable of lifting or carrying fifty pounds occasionally and  
19 twenty-five pounds frequently; standing, walking and sitting six  
20 hours in an eight-hour workday; and performing postural activities  
21 frequently. (AR 59-68, 70-79). The ALJ gave "considerable weight"  
22 to the State Agency determinations because "they are overall  
23 consistent with and supported by the substantial medical evidence  
24 of record and [Plaintiff's] activities of daily living." (AR 26).  
25 The ALJ does not, however, identify what "substantial medical  
26 evidence of record" or "activities of daily living" indicate that  
27 Plaintiff is capable of medium work. Further, the State Agency  
28 physicians submitted their opinions in June and December 2013 and

1 did not have the opportunity to review substantial medical evidence  
2 submitted after those dates. Not only did they not have the  
3 opportunity to review Dr. Pillosyan's medical records, including  
4 his examinations, but they also were unaware that Plaintiff was  
5 diagnosed with a pituitary tumor in January 2014 and that June 2014  
6 and June 2015 x-rays indicated chronic, degenerative changes along  
7 the lumbar, thoracic and cervical spine. (AR 247-58, 269-79, 311-  
8 14).

9  
10 Finally, the ALJ's contention that Dr. Pillosyan's opinion  
11 was prompted by Plaintiff's disability application (AR 26) is  
12 legally insufficient. In Saelee v. Chater, 94 F.3d 520, 522 (9th  
13 Cir. 1996), as amended (Aug. 12, 1996), the Ninth Circuit ruled  
14 that the ALJ could reject a physician's statement where "it was  
15 obtained solely for the purposes of the administrative hearing,  
16 varied from [that physician's] own treatment notes, and was worded  
17 ambiguously." Here, however, Dr. Pillosyan's opinion was not  
18 ambiguous and, as discussed above, was consistent with his  
19 treatment notes.

20  
21 In sum, the ALJ did not provide specific and legitimate  
22 reasons for rejecting Dr. Pillosyan's opinion. On remand, the ALJ  
23 shall reevaluate Dr. Pillosyan's opinion. If the ALJ finds  
24 appropriate reasons for not giving the opinion controlling weight,  
25 the ALJ may not reject the opinion without providing specific and  
26 legitimate reasons supported by substantial evidence in the record.

1 **B. The ALJ's Use Of The Grids Was Improper**

2  
3 The ALJ relied on the medical vocational grids to determine  
4 that there were jobs in the national economy that Plaintiff is  
5 capable of performing. (AR 27). However, "[i]f a claimant has an  
6 impairment that limits his or her ability to work without directly  
7 affecting his or her strength, the claimant is said to have  
8 nonexertional (not strength-related) limitations that are not  
9 covered by the grids." Penny, 2 F.3d at 958. Thus, "the grids  
10 are inapplicable when a claimant's non-exertional limitations are  
11 sufficiently severe so as to significantly limit the range of work  
12 permitted by the claimant's exertional limitations." Hoopai v.  
13 Astrue, 499 F.3d 1071, 1075 (9th Cir. 2007) (citation and  
14 alterations omitted).

15  
16 Here, Plaintiff's nonexertional limitations are sufficiently  
17 severe such that they limit her abilities in ways not contemplated  
18 by the grids. As discussed above, the record reveals sufficient  
19 nonexertional impairments (pain and reduced vision) that precluded  
20 the ALJ's sole reliance on the grids. Tackett, 180 F.3d at 1101-  
21 02 (ruling that significant nonexertional impairments, such as poor  
22 vision, pain and inability to tolerate dust or gases, may make  
23 reliance on the grids inappropriate). Because the grids do not  
24 accurately and completely represent Plaintiff's limitations, the  
25 ALJ improperly relied on them when he determined that Plaintiff  
26 was "not disabled" at step-five of the sequential evaluation  
27 process. Plaintiff suffers from sufficiently severe nonexertional  
28 limitations, including pain and poor vision, to make the grids

