

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CORRISSA AURORA PEREZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social
Security,

Defendant.

CASE NO. CV 18-0330 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Corrissa Aurora Perez ("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 decision of the Commissioner

1 is REVERSED, and this case is REMANDED for further administrative
2 proceedings consistent with 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
20 Administrative Law Judge ("ALJ") conducts a five-step inquiry. 20
21 C.F.R. §§ 404.1520, 416.920. The 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 vocational expert ("VE") or by

1 reference to the Medical-Vocational Guidelines appearing in 20
2 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as "the
3 grids"). Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001).
4 When a claimant has both exertional (strength-related) and non-
5 exertional limitations, the Grids are inapplicable and the ALJ must
6 take the testimony of a 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 Plaintiff was awarded SSI benefits as a child starting March
14 25, 2008. (AR 76). Under § 1614(a)(3)(H) of the Social Security
15 Act, Plaintiff's disability status was reconsidered under adult
16 standards upon turning eighteen.¹ Step one of the five-step
17 sequential evaluation process is not used for redetermining
18 disability at age eighteen. 20 C.F.R. § 416.987(b). At step two,
19 the ALJ found that Plaintiff's learning disorder and borderline
20 intellectual functioning are severe impairments. (AR 22). At step
21 three, the ALJ determined that Plaintiff does not have an
22 impairment or combination of impairments that meet or medically
23 equal the severity of any of the listings enumerated in the
24 regulations. (AR 22-23).

25
26
27 _____
28 ¹ Plaintiff turned eighteen on July 21, 2013. (AR 22).

1 graphics software, guidance by counselors, and extra time to take
2 tests. (AR 46-47, 49, 51). Her parents need to help Plaintiff
3 open the emails sent by the College. (AR 50).

4
5 Plaintiff testified that she has trouble handling money. (AR
6 48). She has tried to learn how to order food and pay for things,
7 but it does not "sink in." (AR 48). She has problems even doing
8 simple chores at home without assistance. (AR 47, 49).

9
10 When assessing a claimant's credibility regarding subjective
11 pain or intensity of symptoms, the ALJ must engage in a two-step
12 analysis. Trevizo v. Berryhill, 874 F.3d 664, 678 (9th Cir. 2017).
13 First, the ALJ must determine if there is medical evidence of an
14 impairment that could reasonably produce the symptoms alleged.
15 Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014). "In this
16 analysis, the claimant is not required to show that her impairment
17 could reasonably be expected to cause the severity of the symptom
18 she has alleged; she need only show that it could reasonably have
19 caused some degree of the symptom." Id. (emphasis in original)
20 (citation omitted). "Nor must a claimant produce objective medical
21 evidence of the pain or fatigue itself, or the severity thereof."
22 Id. (citation omitted).

23
24 If the claimant satisfies this first step, and there is no
25 evidence of malingering, the ALJ must provide specific, clear and
26 convincing reasons for rejecting the claimant's testimony about
27 the symptom severity. Trevizo, 874 F.3d at 678 (citation omitted);
28 see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject the

1 claimant's testimony regarding the severity of her symptoms only
2 if he makes specific findings stating clear and convincing reasons
3 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883
4 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering
5 based on affirmative evidence thereof, he or she may only find an
6 applicant not credible by making specific findings as to
7 credibility and stating clear and convincing reasons for each.").
8 "This is not an easy requirement to meet: The clear and convincing
9 standard is the most demanding required in Social Security cases."
10 Garrison, 759 F.3d at 1015 (citation omitted).

11
12 In discrediting the claimant's subjective symptom testimony,
13 the ALJ may consider the following:

14
15 (1) ordinary techniques of credibility evaluation, such
16 as the claimant's reputation for lying, prior
17 inconsistent statements concerning the symptoms, and
18 other testimony by the claimant that appears less than
19 candid; (2) unexplained or inadequately explained
20 failure to seek treatment or to follow a prescribed
21 course of treatment; and (3) the claimant's daily
22 activities.

23
24 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation
25 omitted). Inconsistencies between a claimant's testimony and
26 conduct, or internal contradictions in the claimant's testimony,
27 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th
28 Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.

1 1997). In addition, the ALJ may consider the observations of
2 treating and examining physicians regarding, among other matters,
3 the functional restrictions caused by the claimant's symptoms.
4 Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at 1137. However,
5 it is improper for an ALJ to reject subjective testimony based
6 "solely" on its inconsistencies with the objective medical evidence
7 presented. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227
8 (9th Cir. 2009) (citation omitted).

9
10 Further, the ALJ must make a credibility determination with
11 findings that are "sufficiently specific to permit the court to
12 conclude that the ALJ did not arbitrarily discredit claimant's
13 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
14 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,
15 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not
16 credible must be sufficiently specific to allow a reviewing court
17 to conclude the adjudicator rejected the claimant's testimony on
18 permissible grounds and did not arbitrarily discredit a claimant's
19 testimony regarding pain.") (citation omitted). Although an ALJ's
20 interpretation of a claimant's testimony may not be the only
21 reasonable one, if it is supported by substantial evidence, "it is
22 not [the court's] role to second-guess it." Rollins v. Massanari,
23 261 F.3d 853, 857 (9th Cir. 2001).

24
25 The ALJ found that Plaintiff's "medically determinable
26 impairments could reasonably be expected to cause the alleged
27 symptoms," and the ALJ did not make a finding of malingering. (AR
28 26). Nevertheless, the ALJ concluded that Plaintiff's statements

1 were "not entirely credible." (AR 26). The ALJ found that
2 Plaintiff's "ability to take at least two classes per semester in
3 a college setting demonstrates an ability to perform simple
4 repetitive tasks in a work setting." (AR 25). "ALJs must be
5 especially cautious in concluding that daily activities are
6 inconsistent with [subjective symptom testimony], because
7 impairments that would unquestionably preclude work and all the
8 pressures of a workplace environment will often be consistent with
9 doing more than merely resting in bed all day." Garrison, 759 F.3d
10 at 1016. If a claimant's level of activity is inconsistent with
11 the claimant's asserted limitations, it has a bearing on
12 credibility. Id. "Though inconsistent daily activities may
13 provide a justification for rejecting symptom testimony, the mere
14 fact that a plaintiff has carried on certain daily activities does
15 not in any way detract from her credibility as to her overall
16 disability." Revels, 874 F.3d at 667 (citation and alterations
17 omitted); see Orn v. Astrue, 495 F.3d 625, 639 (9th Cir. 2007)
18 ("This court has repeatedly asserted that the mere fact that a
19 plaintiff has carried on certain daily activities does not in any
20 way detract from her credibility as to her overall disability.")
21 (citation and alterations omitted). Indeed, a claimant "does not
22 need to be utterly incapacitated in order to be disabled." Benecke
23 v. Barnhart, 379 F.3d 587, 594 (9th Cir. 2004) (citation omitted).

24
25 Here, the ALJ fails to account for the assistance Plaintiff
26 requires in order to attend college. Plaintiff is unable to drive
27 and, without someone accompanying her, often has problems taking
28 public transportation to school. (AR 45-46). She frequently gets

1 lost on campus and her parents need to help her open the emails
2 sent by the College. (AR 46, 49, 50).

3
4 The ALJ also relied improperly on Plaintiff's admission "that
5 she is doing very well in school, with mostly A's and B's, and only
6 sometimes C's in her graphic design classes." (AR 25). The College
7 provides Plaintiff with a dedicated note-taker, who also assists
8 Plaintiff open the graphics software required for in-class
9 learning, and Plaintiff is provided extra time to take tests.² (AR
10 46-47, 49, 51). "That [Plaintiff] could participate in some daily
11 activities does not contradict the evidence of otherwise severe
12 problems that [she] encountered in [her] daily life during the
13 relevant period." Diedrich v. Berryhill, 874 F.3d 634, 643 (9th
14 Cir. 2017). Further, the ALJ did not explain how Plaintiff's daily
15 college activities, with considerable accommodations and
16 assistance, are transferable to a work setting. The ALJ "must make
17 specific findings relating to the daily activities and their
18 transferability to conclude that a claimant's daily activities
19 warrant an adverse credibility determination." Orn, 495 F.3d at
20 639 (citation and alteration omitted). Here, the ALJ neither made
21 specific findings nor pointed to any record evidence to support
22 her conclusion that Plaintiff's college activities are
23 "transferable" to a work setting. See id.

24
25
26 ² The VE testified that someone who is not able to sustain work
27 activity independent of others would not be able to perform the
28 requirements of the factory helper, wall cleaner, or machine feeder
occupations. (AR 61-62).

1 The ALJ concluded that Plaintiff "indicated a higher level of
2 functioning than portrayed in her testimony on a consultative
3 examination, . . . [which] indicated that according to [Plaintiff]
4 was able to complete household chores, cook, run errands,
5 occasionally go to the movies, use the computer, and go to the
6 gym." (AR 25). However, Plaintiff did not testify that she was
7 unable to perform household chores. Instead, she stated that she
8 needs assistance to perform chores because she does not always
9 retain her parents' instructions. (AR 49).

10
11 Finally, the ALJ emphasized erroneously that Plaintiff "denied
12 any current depressive and anxiety symptoms, and stated she was
13 not receiving any mental health services." (AR 25). Plaintiff's
14 alleged disability is caused by her learning disability and
15 borderline intellectual functioning, not depression and anxiety.
16 Indeed, the ALJ acknowledged that the severity of Plaintiff's
17 learning disability and borderline intellectual functioning "is
18 established by the objective medical evidence." (AR 22).

19
20 In sum, the ALJ failed to provide clear and convincing
21 reasons, supported by substantial evidence, for rejecting
22 Plaintiff's subjective symptoms. The matter is remanded for
23 further proceedings. On remand, the ALJ shall reevaluate
24 Plaintiff's symptoms in accordance with the current version of the
25 agency's regulations and guidelines, taking account the full range
26 of medical evidence.

1 **B. The ALJ Did Not Provide Germane Reasons For Rejecting Lay**
2 **Testimony**

3
4 Multiple lay witnesses provided statements that were
5 supportive of and consistent with Plaintiff's testimony and her
6 allegations of significant limitations caused by her borderline
7 intellectual functioning and learning disability. Karolanne K.
8 Asmus-Kim, Ed.D., Plaintiff's high school special education
9 teacher, opined that Plaintiff has difficulty with self-help
10 abilities, abstract concepts, and conflict resolution. (AR 213).
11 Dr. Asmus-Kim concluded that Plaintiff "will need to have
12 assistance from others to live and manage daily tasks." (AR 213).
13 "Simple tasks such as cooking for herself, paying bills, keeping
14 employment, understanding right from wrong and several other daily
15 tasks will require assistance from others for [Plaintiff] to
16 maintain a good quality of life." (AR 213).

17
18 Mirriam H. Gottlieb, a disabilities specialist at Pierce
19 College, reported that Plaintiff has been provided with a dedicated
20 note-taker because she "has difficulty keeping up with lectures
21 due to her problems with processing speed and comprehension." (AR
22 212). Ms. Gottlieb further opined that Plaintiff is unable to take
23 more than two courses each semester because Plaintiff needs more
24 time to process information due to her lack of comprehension
25 skills. (AR 216).

26
27 Plaintiff's father, Manuel Perez, provided testimony at the
28 hearing. (AR 52-59). Perez testified that his daughter has been

1 unable to master basic safety skills, like not crossing the street
2 on a red light, because she has difficulty paying attention and
3 focusing. (AR 54). He testified that Plaintiff is unable to
4 perform household chores without supervision and instruction. (AR
5 56-59).

6
7 Plaintiff also provided statements from her brother and
8 mother. (AR 214-15). They stated that Plaintiff is unable to
9 complete simple tasks without reminders, supervision, and
10 assistance. (AR 214-15). Plaintiff has trouble controlling her
11 emotions and gets easily stressed. (AR 214-15).

12
13 "Lay testimony as to a claimant's symptoms is competent
14 evidence that an ALJ must take into account, unless he or she
15 expressly determines to disregard such testimony and gives reasons
16 germane to each witness for doing so." Lewis v. Apfel, 236 F.3d
17 503, 511 (9th Cir. 2001). "The fact that lay testimony and third-
18 party function reports may offer a different perspective than
19 medical records alone is precisely why such evidence is valuable
20 at a hearing." Diedrich, 874 F.3d at 640.

21
22 Here, the ALJ briefly summarized Dr. Asmus-Kim's and Ms.
23 Gottlieb's statements (AR 25), but failed to discuss the weight to
24 be afforded to them. Merely summarizing their letters does not
25 qualify as a "germane reason" for rejecting them.³ Further, the

26
27 ³ Defendant does not address the ALJ's failure to provide
28 germane reasons for rejecting Dr. Asmus-Kim's and Ms. Gottlieb's
statements. (Dkt. No. 22 at 6-8).

1 ALJ failed to acknowledge, discuss, or provide any reasoning for
2 apparently rejecting the testimony and statements by Plaintiff's
3 family members. To properly reject lay testimony, the ALJ is
4 required to provide reasons that are "germane to each witness."
5 Lewis, 236 F.3d at 511.

6
7 Defendant argues that Plaintiff's father's testimony
8 "conflicts with what Plaintiff told Dr. Shirokhi regarding her
9 ability to cook, do chores, and go out with friends and to the
10 gym." (Dkt. No. 22 at 7). However, the court is "constrained to
11 review the reasons the ALJ asserts." Connett v. Barnhart, 340 F.3d
12 871, 874 (9th Cir. 2003) (citing Sec. & Exch. Comm'n v. Chenery
13 Corp., 332 U.S. 194, 196 (1947)). The court "review[s] only the
14 reasons provided by the ALJ in the disability determination and
15 may not affirm the ALJ on a ground upon which he did not rely."
16 Garrison, 759 F.3d at 1010. Here, the ALJ did not provide any
17 reason for apparently rejecting Mr. Perez's testimony.

18
19 Defendant contends that the ALJ is not required "to discuss
20 every piece of evidence." (Dkt. No. 22 at 7). Even if this is
21 accurate, the ALJ is not permitted to reject all lay testimony
22 without expressly providing reasons "germane to each witness."
23 Lewis, 236 F.3d at 511. Finally, Defendant contends that the ALJ's
24 failure to "explain how the third-party testimony influenced the
25 outcome of the decision" is harmless error because it was
26 "inconsequential to the ultimate non-disability determination."
27 (Dkt. No. 22 at 9). To the contrary, because the ALJ erred in
28 rejecting Plaintiff's subjective statements, as discussed above,

1 the ALJ's apparent rejection of the lay testimony, which supported
2 Plaintiff's testimony, was not harmless error.

3
4 In sum, the ALJ failed to provide germane reasons, supported
5 by substantial evidence, for apparently rejecting lay testimony.
6 The matter is remanded for further proceedings.⁴ On remand, the
7 ALJ shall fully evaluate the lay witness testimony and may
8 disregard the lay statements only by providing reasons that are
9 germane to each witness.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 _____
25 ⁴ Plaintiff also argues that in assessing her RFC, the ALJ
26 failed to fully account for the limitations included in her
27 testimony and the lay witnesses' statements. (Dkt. No. 21 at 23-
28 25). However, it is unnecessary to reach Plaintiff's arguments on
this ground, as the matter is remanded for the alternative reasons
discussed at length in this Order. However, after reconsideration
of the Plaintiff's testimony and the lay witness statements, it
will likely be necessary for the ALJ to reconsider Plaintiff's RFC.

