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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 GABRIEL A. R.,¹

12 Plaintiff,

13 v.

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15 NANCY A. BERRYHILL, Acting
16 Commissioner of Social Security,

17 Defendant.

) Case No. 2:18-cv-05421-JDE

) MEMORANDUM OPINION AND
) ORDER

18
19 Plaintiff Gabriel A. R. (“Plaintiff”) filed a Complaint on June 18, 2018,
20 seeking review of the Commissioner’s denial of his application for
21 supplemental security income (“SSI”). On February 26, 2019, the parties filed
22 a Joint Submission (“Jt. Stip.”) regarding the issues in dispute. The matter now
23 is ready for decision.
24

25 ¹ Plaintiff’s name has been partially redacted in accordance with Fed. R. Civ.
26 P. 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration
27 and Case Management of the Judicial Conference of the United States.
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1 I.

2 BACKGROUND

3 Plaintiff filed an application for SSI on September 11, 2014, alleging
4 disability commencing on March 24, 2012. Administrative Record (“AR”).
5 After his applications were denied initially and on reconsideration (AR 140-44,
6 150-55), Plaintiff requested an administrative hearing (AR 158-60), which was
7 held on December 9, 2016. AR 38-73. Plaintiff, represented by an attorney,
8 appeared and testified before an Administrative Law Judge (“ALJ”).

9 On March 10, 2017, the ALJ issued a written decision finding Plaintiff
10 was not disabled. AR 12-30. The ALJ found Plaintiff had not engaged in
11 substantial gainful employment since August 7, 2014 and suffered from the
12 severe impairments of: status post head trauma with seizure disorder and
13 memory loss; affective disorder; and alcohol abuse in remission. AR 17. The
14 ALJ found Plaintiff did not have an impairment or combination of
15 impairments that met or medically equaled a listed impairment. AR 17. The
16 ALJ also found Plaintiff had the residual functional capacity (“RFC”) to
17 perform the demands of light work as defined in 20 C.F.R. § 416.967(b) except:

18 [N]o climbing ladders, ropes scaffolds; no work with moving
19 machinery or exposure to unprotected heights; work is limited to
20 simple, routine, and repetitive tasks; employed in a low stress job,
21 defined as having only occasional decision making or judgment
22 required and only occasional changes in the work setting; and only
23 occasional interaction with the public, coworkers, and supervisors.

24 AR 18-19.

25 The ALJ determined Plaintiff could not perform his past relevant work
26 as a debt collector. AR 22. However, the ALJ determined Plaintiff could
27 perform other jobs existing in significant numbers in the national economy.
28 AR 22. Considering Plaintiff’s age, education, work experience, RFC, and the

1 Vocational Expert’s (“VE”) testimony, the ALJ concluded Plaintiff could
2 perform the jobs of a laundry worker, assembler, and marker retailer. AR 23.
3 Accordingly, the ALJ concluded Plaintiff was not under a “disability,” as
4 defined in the Social Security Act, from August 7, 2014 through the date of the
5 ALJ’s decision. AR 25.

6 On April 18, 2018, the Appeals Council denied Plaintiff’s request for
7 review, making the ALJ’s decision the Commissioner’s final decision. AR 1-6.
8 This action followed.

9 II.

10 LEGAL STANDARDS

11 A. Standard of Review

12 Under 42 U.S.C. § 405(g), a district court may review the
13 Commissioner’s decision to deny benefits. The ALJ’s findings and decision
14 should be upheld if they are free from legal error and supported by substantial
15 evidence based on the record as a whole. Brown-Hunter v. Colvin, 806 F.3d
16 487, 492 (9th Cir. 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th
17 Cir. 2007). Substantial evidence means such relevant evidence as a reasonable
18 person might accept as adequate to support a conclusion. Lingenfelter v.
19 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less
20 than a preponderance. Id. To determine whether substantial evidence supports
21 a finding, the reviewing court “must review the administrative record as a
22 whole, weighing both the evidence that supports and the evidence that detracts
23 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720
24 (9th Cir. 1998). “If the evidence can reasonably support either affirming or
25 reversing,” the reviewing court “may not substitute its judgment” for that of
26 the Commissioner. Id. at 720-21; see also Molina v. Astrue, 674 F.3d 1104,
27 1111 (9th Cir. 2012) (“Even when the evidence is susceptible to more than one
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1 rational interpretation, [the court] must uphold the ALJ’s findings if they are
2 supported by inferences reasonably drawn from the record.”).

3 Lastly, even if an ALJ errs, the decision will be affirmed where such
4 error is harmless (Molina, 674 F.3d at 1115), that is, if it is “inconsequential to
5 the ultimate nondisability determination,” or if “the agency’s path may
6 reasonably be discerned, even if the agency explains its decision with less than
7 ideal clarity.” Brown-Hunter, 806 F.3d at 492 (citation omitted).

8 **B. Standard for Determining Disability Benefits**

9 When the claimant’s case has proceeded to consideration by an ALJ, the
10 ALJ conducts a five-step sequential evaluation to determine at each step if the
11 claimant is or is not disabled. See Molina, 674 F.3d at 1110.

12 First, the ALJ considers whether the claimant currently works at a job
13 that meets the criteria for “substantial gainful activity.” Id. If not, the ALJ
14 proceeds to a second step to determine whether the claimant has a “severe”
15 medically determinable physical or mental impairment or combination of
16 impairments that has lasted for more than twelve months. Id. If so, the ALJ
17 proceeds to a third step to determine whether the claimant’s impairments
18 render the claimant disabled because they “meet or equal” any of the “listed
19 impairments” set forth in the Social Security regulations at 20 C.F.R. Part 404,
20 Subpart P, Appendix 1. See Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d
21 996, 1001 (9th Cir. 2015). If the claimant’s impairments do not meet or equal a
22 “listed impairment,” before proceeding to the fourth step the ALJ assesses the
23 claimant’s RFC, that is, what the claimant can do on a sustained basis despite
24 the limitations from his impairments. See 20 C.F.R. §§ 404.1520(a)(4),
25 416.920(a)(4); Social Security Ruling (“SSR”) 96-8p.

26 After determining the claimant’s RFC, the ALJ proceeds to the fourth
27 step and determines whether the claimant has the RFC to perform his past
28 relevant work, either as he “actually” performed it when he worked in the past,

1 or as that same job is “generally” performed in the national economy. See
2 Stacy v. Colvin, 825 F.3d 563, 569 (9th Cir. 2016).

3 If the claimant cannot perform his past relevant work, the ALJ proceeds
4 to a fifth and final step to determine whether there is any other work, in light of
5 the claimant’s RFC, age, education, and work experience, that the claimant
6 can perform and that exists in “significant numbers” in either the national or
7 regional economies. See Tackett v. Apfel, 180 F.3d 1094, 1100-01 (9th Cir.
8 1999). If the claimant can do other work, he is not disabled; but if the claimant
9 cannot do other work and meets the duration requirement, the claimant is
10 disabled. See Id. at 1099.

11 The claimant generally bears the burden at each of steps one through
12 four to show he is disabled, or he meets the requirements to proceed to the
13 next step; and the claimant bears the ultimate burden to show he is disabled.
14 See, e.g., Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d 1428, 1432
15 (9th Cir. 1995). However, at Step Five, the ALJ has a “limited” burden of
16 production to identify representative jobs that the claimant can perform and
17 that exist in “significant” numbers in the economy. See Hill v. Astrue, 698
18 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.

19 III.

20 DISCUSSION

21 The parties present three disputed issues (Jt. Stip. at 4):

22 Issue No. 1: Whether the ALJ properly considered the statements of
23 “other” sources;

24 Issue No. 2: Whether the ALJ properly considered the opinions of the
25 State Agency psychologists; and

26 Issue No. 3: Whether the ALJ properly evaluated the treating
27 psychiatrist’s opinions.

1 **A. Third-Party Report**

2 Plaintiff argues that the ALJ failed to cite germane reasons for rejecting a
3 third-party report prepared by Plaintiff’s “longstanding case manager,” Diane
4 Perez, MHA (“Ms. Perez”) from the Ventura County Behavioral Health
5 Center. Jt. Stip. at 5-7. The Court finds the ALJ did not provide a germane
6 reason for rejecting the third-party report.

7 1. Applicable Law

8 “In determining whether a claimant is disabled, an ALJ must consider
9 lay witness testimony concerning a claimant’s ability to work.” Bruce v. Astrue,
10 557 F.3d 1113, 1115 (9th Cir. 2009) (quoting Stout v. Comm’r Soc. Sec.
11 Admin., 454 F.3d 1050, 1053 (9th Cir. 2006)); see also 20 C.F.R. § 416.913(d)
12 (statements from spouses, parents, other relatives, friends, and others can be
13 used to show severity of impairments and effect on ability to work). Such
14 testimony “cannot be disregarded without comment.” Bruce, 557 F.3d at 1115
15 (quoting Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996)); Robbins v.
16 Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006) (“[T]he ALJ is required to
17 account for all lay witness testimony in the discussion of his or her findings.”).
18 Under the regulations, a case manager’s testimony constitutes as lay witness
19 testimony from an “other source,” as a case manager is not an “acceptable
20 medical source.” See 20 C.F.R. § 416.913(a); Nevarez v. Astrue, 2012 WL
21 2150146, at *1 (C.D. Cal. June 12, 2012). When rejecting such testimony, an
22 ALJ must give specific reasons germane for discounting the testimony.
23 Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009).

24 2. Analysis

25 In her third-party report, on March 15, 2016, Ms. Perez opined upon
26 Plaintiff’s physical and mental limitations in response to the limitations set
27 forth by consultative neurologist, Robert A. Moore, M.D (“Dr. Moore”). AR
28 940-41. Specifically, Ms. Perez stated: Plaintiff’s weakness in his arms causes

1 him to drop items; he stumbles when walking; he is forgetful and has loss of
2 memory; he has daily “jolts” in his brain; his seizures last several minutes,
3 which requires a long period of time for recovery; he is closely monitored by
4 his family virtually at all times; he is easily distracted; and he has difficulty
5 focusing when there is chaos around him. AR 940-41. Ms. Perez refuted Dr.
6 Moore’s opinions that Plaintiff: could stand/walk for up to six hours per
7 workday; was restricted in the use of his upper extremities; and would not need
8 any rest breaks due to his symptoms. AR 940.

9 The ALJ rejected Ms. Perez’s opinions by stating solely, “The
10 undersigned does not credit the statements at 19F from [Ms. Perez], as she is
11 not an acceptable medical source or a medical professional qualified to make
12 opinions as to [Plaintiff’s] functional capacities. AR 21.

13 Plaintiff argues the ALJ failed to provide any germane reasons for
14 “rejecting” Ms. Perez’s lay observations. Jt. Stip. at 7. The Commissioner
15 counters “the ALJ properly rejected Ms. Perez’s undated non-medical
16 opinions not only because she was not an ‘acceptable medical source,’ but also
17 because: (1) her opinions were contradicted by those of consultative examiners
18 who were qualified medical professionals; (2) the qualified medical
19 professionals specialize in neurology and psychiatry (relevant areas of
20 specialization; and (3) their opinions were well supported by medical signs on
21 examination and laboratory findings and the record as a whole.” Jt. Stip. at 7-
22 8. The Commissioner adds, “Although the ALJ’s assessment was not explicit,
23 the Court may draw logical inferences from the ALJ’s reasons for giving
24 greater weight to medical opinions that were inconsistent with Ms. Perez’s
25 statements. Jt. Stip. at 8 n.3.

26 Here, the ALJ improperly rejected the third-party testimony. First,
27 although Ms. Perez’s testimony is not testimony from an “acceptable medical
28 source,” the ALJ is still required to give specific, germane reasons for rejecting

1 such evidence. See Valentine, 574 F.3d at 694; Nevarez, 2012 WL 2150146, at
2 *1. The ALJ did not offer a specific reason germane by rejecting Ms. Perez’s
3 opinion solely because she was not “an acceptable medical source or a medical
4 professional qualified to make opinions as to [Plaintiff’s] functional
5 capacities.” The Commissioner concedes the ALJ did not “explicitly” reject
6 Ms. Perez’s opinions based on any other reasoning, and the Court cannot
7 consider reasoning for rejecting Ms. Perez’s testimony that the ALJ never
8 gave. See Bray v. Comm’r of Soc. Sec., 554 F.3d 1219, 1225 (9th Cir. 2009)
9 (“long-standing principles of administrative law require us to review the ALJ’s
10 decision based on the reasoning and factual findings offered by the ALJ—not
11 post hoc rationalizations that attempt to intuit what the adjudicator may have
12 been thinking”); see also SEC v. Chenery Corp., 332 U.S. 194, 196 (1947).

13 Second, the Court cannot conclude that the ALJ’s error was harmless.
14 The ALJ’s decision lacks any “meaningful explanation” based on specific
15 evidence in the record for rejecting the third-party testimony. See, e.g., Brown-
16 Hunter, 806 F.3d at 492 (ALJ’s failure adequately to specify reasons for
17 discrediting testimony “will usually not be harmless”). As Plaintiff’s case
18 manager, Ms. Perez can and did provide information that is relevant in
19 assessing Plaintiff’s functional limitations. Because of the significant functional
20 limitations reflected in the third-party testimony, at least based on the current
21 record, the Court is unable to conclude that a reasonable ALJ could not have
22 reached a different disability determination were those limitations credited.
23 Stout, 454 F.3d at 1055-56. As a result, the Court cannot find the error to be
24 harmless.

25 **B. Remand is appropriate.**

26 The decision whether to remand for further proceedings is within this
27 Court’s discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000)
28 (as amended). Where no useful purpose would be served by further

1 administrative proceedings, or where the record has been fully developed, it is
2 appropriate to exercise this discretion to direct an immediate award of benefits.
3 See Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004); Harman, 211 F.3d
4 at 1179 (noting that “the decision of whether to remand for further proceedings
5 turns upon the likely utility of such proceedings”). A remand for further
6 proceedings is appropriate where outstanding issues must be resolved before a
7 determination of disability can be made and it is not clear from the record that
8 the ALJ would be required to find the claimant disabled and award disability
9 benefits. See Bunnell v. Barnhart, 336 F.3d 1112, 1115-16 (9th Cir. 2003).

10 Here, the Court concludes that remand for further proceedings is
11 warranted. Because the Court has directed the ALJ to reconsider the third-
12 party testimony of Ms. Perez on remand, and because that reconsideration
13 could alter the ALJ’s findings challenged in Issue Nos. 2 and 3 herein, the
14 Court does not reach Issue Nos. 2 and 3. On remand, because it is unclear on
15 the current record whether Plaintiff is in fact disabled, remand here is on an
16 “open record.” See Brown-Hunter, 806 F.3d at 495; Bunnell, 336 F.3d at 1115-
17 16. The parties may freely take up the remaining issues in the Joint Stipulation,
18 and any other issues relevant to resolving Plaintiff’s claim of disability, before
19 the ALJ.

20 Accordingly, on remand, the ALJ shall reassess Plaintiff’s subjective
21 complaints in conjunction with the third-party statements, reassess Plaintiff’s
22 RFC, if appropriate, in light of the revisited analysis of the third-party
23 testimony, and thereafter proceed through the remaining steps of the disability
24 analysis to determine what work, if any, Plaintiff can perform that exists in
25 significant numbers. The Court also notes on remand that if rejecting the State
26 Agency physicians’ opinions regarding Plaintiff’s mental limitations, the ALJ
27 should do so expressly. See Lewin v. Schweiker, 654 F.2d 631, 634-35 (9th
28 Cir. 1981); Finn v. Astrue, 2013 WL 501661, at *4-5 (C.D. Cal. Feb. 7, 2013)

1 (finding the ALJ's reasons given for rejecting the State Agency physician's
2 opinions were legally insufficient).

3 **IV.**

4 **ORDER**

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

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11 Dated: March 27, 2019

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14 JOHN D. EARLY
15 United States Magistrate Judge
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