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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

NICHOLE C. K.¹,
Plaintiff,
v.
ANDREW M. SAUL, Commissioner
of Social Security,
Defendant.

Case No. CV 19-08783-AS

MEMORANDUM OPINION

For the reasons discussed below, IT IS HEREBY ORDERED that, pursuant to Sentence Four of 42 U.S.C. § 405(g), this matter is remanded for further administrative action consistent with this Opinion.

¹ Plaintiff's name is partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **Proceedings**

2 On October 12, 2019, Plaintiff filed a Complaint seeking
3 review of the denial of her application for supplemental security
4 income ("SSI") by the Commissioner of Social Security
5 ("Commissioner" or "Agency"). (Dkt. No. 1). The parties have
6 consented to proceed before the undersigned United States
7 Magistrate Judge. (Dkt. Nos. 13, 22, 23). On March 30, 2020,
8 Defendant filed an Answer along with the Administrative Record
9 ("AR"). (Dkt. Nos. 20, 21). The parties filed a Joint Stipulation
10 ("Joint Stip.") on September 11, 2020, setting forth their
11 respective positions regarding Plaintiff's claims. (Dkt. No. 32).
12

13
14 The Court has taken this matter under submission without oral
15 argument. See C.D. Cal. C. R. 7-15.
16

17 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

18
19 On February 18, 2015, Plaintiff filed an application for SSI,
20 alleging a disability onset date of January 2, 2010. (AR 271).
21 The Commissioner denied Plaintiff's application initially and on
22 reconsideration. (AR 182-191). On May 7, 2018, Plaintiff,
23 represented by counsel, testified at a hearing before
24 Administrative Law Judge ("ALJ") Kyle Andeer. (AR 80-110). The
25 ALJ also heard testimony from Kelly Bartlett, a vocational expert
26 ("VE"). (AR 106-108). On July 30, 2018, the ALJ issued a decision
27 denying Plaintiff's application. (AR 17-32).
28

1 Applying the five-step sequential process, the ALJ found at
2 step one that Plaintiff has not engaged in substantial gainful
3 activity since February 18, 2015, the application date. (AR 22).
4 At step two, the ALJ found that Plaintiff had the following severe
5 impairments: affective disorder and substance abuse disorder.²
6 (Id.). At step three, the ALJ determined that Plaintiff does not
7 have an impairment or combination of impairments that meet or
8 medically equal the severity of any of the listings enumerated in
9 the regulations.³ (AR 23-24).

10
11 The ALJ then assessed Plaintiff's residual functional capacity
12 ("RFC")⁴ and concluded that she has the capacity to perform less
13 than the full range of work at all exertional levels but with the
14 following non-exertional limitations: "no ladders, ropes, or
15 scaffolds; unskilled simple, routine, repetitive tasks; low stress
16 job environment, defined as only occasional decision making or
17 judgment required; only occasional changes in the work setting;
18 only occasional or less interaction with the public; and only
19 occasional interaction with coworkers and supervisors." (AR 25).

20
21 _____
22 ² The ALJ found that Plaintiff's obesity did not
23 significantly limit her ability to perform basic work activities
and was therefore not a severe medically determinable impairment.
(AR 22-23).

24 ³ Specifically, the ALJ considered whether Plaintiff meets
25 the criteria of Listing 12.04 (depressive and bipolar related
26 disorders) and 12.06 (anxiety and obsessive-compulsive disorders).
(AR 23).

27 ⁴ A Residual Functional Capacity ("RFC") is what a claimant
28 can still do despite existing exertional and nonexertional
limitations. See 20 C.F.R. § 404.1545(a)(1).

1 At step four, the ALJ found that Plaintiff does not have any
2 past relevant work. (AR 30). Based on Plaintiff's RFC, age,
3 education, work experience, and the VE's testimony, the ALJ
4 determined at step five that there are jobs that exist in
5 significant numbers in the national economy that Plaintiff can
6 perform, including laundry worker II, night cleaner, and laborer,
7 stores. (AR 30-31). Accordingly, the ALJ found that Plaintiff
8 has not been under a disability, as defined in the Social Security
9 Act, since February 18, 2015, the application date. (AR 31).

10
11 On June 13, 2019, the Appeals Council denied Plaintiff's
12 request for review. (AR 6-10). Plaintiff now seeks judicial
13 review of the ALJ's decision, which stands as the final decision
14 of the Commissioner. 42 U.S.C. §§ 405(g), 1383(c).

15 16 **STANDARD OF REVIEW**

17
18 This Court reviews the Administration's decision to determine
19 if it is free of legal error and supported by substantial evidence.
20 See Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012).
21 "Substantial evidence" is more than a mere scintilla, but less than
22 a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
23 2014). To determine whether substantial evidence supports a
24 finding, "a court must consider the record as a whole, weighing
25 both evidence that supports and evidence that detracts from the
26 [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033,
27 1035 (9th Cir. 2001) (internal quotation omitted). As a result,
28 "[i]f the evidence can support either affirming or reversing the

1 ALJ's conclusion, [a court] may not substitute [its] judgment for
2 that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882
3 (9th Cir. 2006).

4 5 **DISCUSSION**

6
7 Plaintiff's sole claim is that the ALJ improperly rejected
8 treating physician Dr. Burdick's opinion that Plaintiff was unable
9 to perform activities within a schedule, maintain regular
10 attendance, and complete a normal workday and workweek without
11 interruptions from psychologically-based symptoms. (Joint Stip.
12 at 13, 37). After consideration of the parties' arguments and the
13 record as a whole, the Court finds that Plaintiff's claim warrants
14 a remand for further consideration.

15 16 **A. Legal Standard for ALJ's Assessment of Medical Opinions**

17
18 An ALJ must take into account all medical opinions of record.
19 20 C.F.R. § 404.1527(b).⁵ "Generally, a treating physician's
20 opinion carries more weight than an examining physician's, and an
21 examining physician's opinion carries more weight than a reviewing
22

23 ⁵ Since Plaintiff filed her application before March 27,
24 2017, 20 C.F.R. § 404.1527 applies. For an application filed on
25 or after March 27, 2017, 20 C.F.R. § 404.1520c would apply. 20
26 C.F.R. § 404.1520c changed how the Social Security Administration
27 considers medical opinions and prior administrative medical
28 findings, eliminated the use of the term "treating source," and
eliminated deference to treating source medical opinions. See 20
C.F.R. § 404.1520c(a); Danny L. R. v. Saul, 2020 WL 264583, at *3
n.5 (C.D. Cal. Jan. 17, 2020); see also 81 Fed. Reg. 62560, at
62573-74 (Sept. 9, 2016).

1 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.
2 2001); see also Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir.
3 1995). The medical opinion of a treating physician is given
4 "controlling weight" so long as it "is well-supported by medically
5 acceptable clinical and laboratory diagnostic techniques and is
6 not inconsistent with the other substantial evidence in [the
7 claimant's] case record." 20 C.F.R. § 404.1527(c)(2). "When a
8 treating doctor's opinion is not controlling, it is weighted
9 according to factors such as the length of the treatment
10 relationship and the frequency of examination, the nature and
11 extent of the treatment relationship, supportability, and
12 consistency of the record." Revels v. Berryhill, 874 F.3d 648,
13 654 (9th Cir. 2017); see also 20 C.F.R. § 404.1527(c)(2)-(6).

14
15 If a treating or examining doctor's opinion is not
16 contradicted by another doctor, the ALJ can reject the opinion only
17 for "clear and convincing reasons." Carmickle v. Comm'r, SSA, 533
18 F.3d 1155, 1164 (9th Cir. 2008); Lester, 81 F.3d at 830. If the
19 treating or examining doctor's opinion is contradicted by another
20 doctor, the ALJ must provide "specific and legitimate reasons" that
21 are supported by substantial evidence in the record for rejecting
22 the opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007);
23 Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998). "The ALJ
24 can meet this burden by setting out a detailed and thorough summary
25 of the facts and conflicting clinical evidence, stating his
26 interpretation thereof, and making findings." Trevizo v.
27 Berryhill, 871 F.3d 664, 675 (9th Cir. 2017) (citation omitted).

1 **B. ALJ's Assessment of Dr. Burdick's Opinion**

2
3 **1. Dr. Burdick's Opinion**

4
5 Dr. Adam Burdick, a psychiatrist at Ventura County Behavioral
6 Health, treated Plaintiff regularly from 2014 to 2018. (See AR
7 473, 528, 531, 550, 560, 569). On August 13, 2015, Dr. Burdick
8 completed a Short-Form Evaluation for Mental Disorders, where he
9 indicated that Plaintiff had been diagnosed with major depressive
10 disorder, recurrent. (AR 351). As part of this evaluation, he
11 completed a Mental Status Examination of Plaintiff. Upon
12 examination, Dr. Burdick found that Plaintiff was disheveled,
13 appeared guarded, and avoided eye contact, but her motor activity
14 was normal. (Id.). Her concentration was impaired but her memory
15 was normal. (Id.). Dr. Burdick indicated that Plaintiff "has
16 difficulty concentrating due to racing thoughts, depression and
17 anxiety." (AR 352). Dr. Burdick found that Plaintiff was depressed
18 and anxious with a flat affect, and she reported feeling depressed
19 and scared. (Id.). She had severely impaired judgment and passive
20 and fleeting suicidal thoughts, but she denied any plan or intent.
21 (Id.). She had not used drugs or alcohol since 2013. (Id.).
22

23 Dr. Burdick opined that Plaintiff's prognosis was guarded and
24 unlikely to improve in 12 months. (AR 353). He indicated that
25 her symptoms included "depressed mood, passive suicidal ideation,
26 feelings of worthlessness, anhedonia, loss of energy, restricting
27 activities and isolation, anxiety, and difficulty concentrating
28 and focusing." (Id.). He reported that since 2008, Plaintiff has

1 "demonstrated repeated episodes of decomposition." (Id.). Dr.
2 Burdick concluded that Plaintiff's mental health symptoms cause
3 "significant impairments in her activities of daily living, social
4 functioning, focus and concentration" and these impairments
5 "continue to have a direct effect on her ability to acquire
6 employment and maintain housing." (Id.).
7

8 Finally, Dr. Burdick completed a medical source statement,
9 where he opined that Plaintiff's ability to perform or sustain the
10 following activities was "poor": understand, remember, and carry
11 out complex instructions; maintain concentration, attention, and
12 persistence; perform activities within a schedule and maintain
13 regular attendance; complete a normal workday and workweek without
14 interruptions from psychologically-based symptoms; and respond
15 appropriately to changes in a work setting. (Id.). Dr. Burdick
16 further opined that Plaintiff's ability to understand, remember,
17 and carry out simple instructions was "fair." (Id.).
18

19 **2. ALJ's Findings**

20
21 The ALJ gave partial weight to Dr. Burdick's opinion, finding
22 that "some of the cognitive and adaptive limitations are
23 inconsistent with the objective findings and [Plaintiff's]
24 activities" and that "the evidence of her activities and mental
25 status findings indicate a higher level of functioning" than Dr.
26 Burdick assessed. (AR 29-30). Although not specifically
27 identified by the ALJ as a basis for rejecting the opinion, Dr.
28 Burdick's assessments that Plaintiff was limited in performing

1 activities within a schedule, maintaining regular attendance, and
2 completing a normal workday and workweek were contradicted by the
3 opinions of the state agency reviewing physicians and consultative
4 examiner. (See id.). Thus, the ALJ was required to state specific
5 and legitimate reasons, supported by substantial evidence, for
6 rejecting Dr. Burdick's opinion. See Trevizo, 871 F.3d at 675.

7
8 **a. Objective Medical Evidence**

9
10 Plaintiff contends that the ALJ erred by finding that Dr.
11 Burdick's opinion was inconsistent with the objective medical
12 evidence. (Joint Stip. at 13-18). Inconsistency with the
13 objective medical evidence is a specific and legitimate reason for
14 discounting a treating physician's opinion. See Batson v. Comm'r
15 of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Tommasetti
16 v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008). Here, the ALJ's
17 finding that Dr. Burdick's opinion conflicted with the objective
18 medical evidence is not supported by substantial evidence.

19
20 As an initial matter, Plaintiff argues that the ALJ did not
21 sufficiently specify in the opinion what objective medical evidence
22 was inconsistent with Dr. Burdick's opinion. (Joint Stip. at 18).
23 Although it is not entirely clear what objective medical evidence
24 the ALJ found conflicted with Dr. Burdick's opinion, the ALJ
25 discussed medical evidence about Plaintiff's affective disorder
26 elsewhere in his opinion. See Molina v. Astrue, 674 F.3d 1104,
27 1121 (9th Cir. 2012) (even if an ALJ explains his decision "with
28 less than ideal clarity," a court must uphold it if the ALJ's "path

1 may be reasonably discerned") (citations omitted). The ALJ
2 acknowledged that Plaintiff complained of various symptoms in her
3 treatment notes, but he found that her "examinations overall
4 include normal and unremarkable mental status findings, except for
5 several occasions where she underwent inpatient psychiatric care."
6 (AR 27). He indicated that she was "regularly observed to present
7 for appointments with good grooming and hygiene, as well as good
8 eye contact"; she was consistently observed as pleasant and
9 cooperative"; her memory was "regularly described as being intact";
10 and she was "oriented, alert and in no distress." (AR 26-27, 30).
11 He further noted that she communicated concerns with her providers
12 and generally attended appointments as scheduled. (Id.). Finally,
13 he found that Plaintiff reported feeling better with treatment and
14 abstinence from substances, and her symptoms and functioning
15 improved upon being discharged from inpatient care. (Id.). In
16 support of these contentions, the ALJ cited to various treatment
17 notes and mental status examinations from 2011 to 2018. (See id.).
18

19 First, the ALJ's characterization of Plaintiff's mental status
20 examinations as "normal" and "unremarkable" is not supported by
21 substantial evidence. As the ALJ recognized, Plaintiff's mental
22 status examinations overall indicated she was well-groomed and
23 dressed, cooperative, alert and oriented, with linear thinking and
24 intact memory and concentration. (See, e.g., AR 528, 535, 550,
25 560, 569, 580). Indeed, many mental status examinations indicated
26 she had a euthymic mood, an appropriate affect, fair insight and
27 judgment, and no suicidal ideation. (See, e.g., AR 531, 538, 553,
28 557, 580). But these mental status examinations must be viewed in

1 the context of Plaintiff's overall medical record, which also
2 contains numerous mental status examinations observing that her
3 mood was depressed, anxious, and irritable (see AR 492, 505, 529,
4 535, 541, 546, 550, 557, 560, 569, 601); her affect was depressed,
5 blunted, and mildly reactive (see AR 498, 506, 541, 550, 557, 601);
6 her insight and judgment were fair to poor (see AR 529, 531, 535,
7 538, 541, 546, 550, 553, 557, 560, 589, 601); and she had suicidal
8 ideation (see AR 505, 535).⁶ Plaintiff's treatment notes further
9 reflect that she experienced depressive moods and affect, suicidal
10 ideation, paranoia, and insomnia and poor sleep at various times
11 from 2015 to 2018. (See AR 531-532, 541, 550, 561, 574, 588, 591).
12

13 Thus, even though Plaintiff experienced periods with "normal"
14 mental status examinations, her cumulative medical record reflects
15 positive mental status examinations and findings that support Dr.
16 Burdick's assessed limitations. See Garrison, 759 F.3d at 1017
17 (regarding mental health issues, "[c]ycles of improvement and
18 debilitating symptoms are a common occurrence, and in such
19 circumstances it is error for an ALJ to pick out a few isolated
20 instances of improvement over a period of months or years and to
21 treat them as a basis for concluding a claimant is capable of
22 working"); Holohan, 246 F.3d at 1205 ("[The treating physician's]
23

24 ⁶ The ALJ also cited to mental status examinations prior to
25 the relevant period, which appear to reflect that Plaintiff was
26 largely stable and doing well. (AR 27, 369, 408, 454, 466, 488).
27 These mental status examinations, however, are closely preceded
28 and followed by examinations and treatment notes that observed
Plaintiff with a depressed mood, a blunt or bland affect, psychotic
symptoms, mood lability, and suicidal ideation. (See AR 410, 418,
442, 444, 448, 460, 470, 473).

1 statements must be read in context of the overall diagnostic
2 picture he draws. That a person who suffers from severe panic
3 attacks, anxiety, and depression makes some improvement does not
4 mean that the person's impairments no longer seriously affect her
5 ability to function in a workplace.").

6
7 Second, the ALJ's finding that Plaintiff "reported feeling
8 better with treatment" is not supported by substantial evidence.
9 The ALJ referenced Plaintiff's inpatient psychiatric care as an
10 example of how her symptoms resolved with treatment. (AR 26-27).
11 Plaintiff sought inpatient care for suicidal thoughts in 2012 and
12 2013, before the relevant period, after which she reported feeling
13 better. (AR 422, 515-22). But inpatient care did not effectively
14 control her symptoms. She continued to report depressive symptoms,
15 irritability, anxiety, and suicidal ideation from 2012 through
16 2018, even while taking medication. (See, e.g., AR 424, 459, 470,
17 473, 505-06, 528, 531-32, 535, 550, 592). The ALJ also pointed to
18 treatment notes in 2016 and 2017 where Plaintiff reported feeling
19 "fine," "alright," and "not really depressed" as evidence that
20 Plaintiff improved with treatment. (AR 27, 531, 538, 557). But
21 these reports lose significance when viewed in the context of the
22 entire treatment note. For example, Dr. Burdick increased
23 Plaintiff's dose of Celexa for depression despite her reporting
24 that she felt "alright" in May 2017, and at the same time Plaintiff
25 reported feeling "fine" in September 2017, she also reported
26 experiencing suicidal thoughts in the preceding weeks. (AR 531-
27 32, 538-39).

1 Rather, Plaintiff's medical record reflects that she was
2 diagnosed with major depressive disorder, recurrent, moderate to
3 severe, which required consistent psychiatric treatment through
4 Plaintiff's date last insured. (See, e.g., AR 530, 536, 547, 561,
5 570, 581, 591, 603). Although Plaintiff experienced some periods
6 of improvement and stability while on medication, Dr. Burdick
7 frequently changed or increased the dose of her depression and
8 anxiety medications, including Wellbutrin, Celexa, Topamax, and
9 Abilify, due to fluctuations in her symptoms and mood throughout
10 the relevant period. (See, e.g., AR 536, 539, 547, 551, 570, 574,
11 581). Therefore, the Court cannot find that Plaintiff's treatment
12 history is substantial evidence that contradicts Dr. Burdick's
13 opined assessments. See Garrison, 759 F.3d at 1017; see also
14 Lambert v. Berryhill, 2017 WL 2294281, at *5-6 (C.D. Cal. May 24,
15 2017) (ALJ erred by "isolating and taking out of context a small
16 quantum of evidence of partial improvement in plaintiff's
17 depression to discredit" the treating physician's opinion).

18
19 Finally, to the extent that the ALJ relied on Plaintiff's
20 ability to communicate complaints to her providers, manage her
21 sobriety, and attend appointments as objective medical evidence
22 that was inconsistent with Dr. Burdick's opinion, these reasons
23 fail. Plaintiff should not be penalized for communicating with
24 providers about her mental health or trying to manage her sobriety,
25 and the ALJ does not explain how doing so had any bearing on her
26 ability to perform activities within a schedule and maintain
27 regular attendance or complete a normal workday and workweek
28 without interruption from psychologically-based symptoms. (See AR

1 26-27, 30). Moreover, Plaintiff had more difficulty timely
2 attending medical appointments than the ALJ indicated. Plaintiff
3 either did not show up entirely to appointments, showed up late,
4 or called to cancel on the same day as her appointment on several
5 occasions during the relevant period, and she did not see Dr.
6 Burdick for approximately eight months when she left the state
7 seemingly without telling her providers. (AR 529, 544, 560, 563,
8 565, 567-68, 575). Thus, Plaintiff's attempts to manage her
9 treatment and appointments do not undermine Dr. Burdick's
10 assessments about Plaintiff's limitations.

11
12 Accordingly, the ALJ's finding that the objective medical
13 evidence was inconsistent with Dr. Burdick's opinion was not
14 supported by substantial evidence.

15
16 **b. Activities of Daily Living**

17
18 Plaintiff further contends that the ALJ erred by finding that
19 Dr. Burdick's assessments were inconsistent with Plaintiff's
20 activities of daily living. (Joint Stip. at 19-24). An
21 inconsistency between a treating physician's opinion and a
22 claimant's daily activities is a specific and legitimate reason to
23 discount the treating physician's opinion. See Ghanim v. Colvin,
24 763 F.3d 1154, 1162 (9th Cir. 2014). Specifically, the ALJ found
25 that Plaintiff's activities of daily living that reflect a "higher
26 level of functioning" than assessed by Dr. Burdick include
27 remaining independent in her care, caring for her young child,
28 managing treatment, managing appointments, complying with program

1 and court requirements, seeking out and obtaining employment,
2 communicating with providers and others, and participating in
3 groups and other programs. (AR 29-30). He also indicated that
4 she was able to manage her sobriety and seek treatment when she
5 did relapse. (AR 30).

6
7 Here, the ALJ erred by failing to explain anywhere in his
8 opinion how the daily activities he identified contradict Dr.
9 Burdick's limitations that Plaintiff cannot perform within a
10 schedule, maintain regular attendance, and complete a normal
11 workday and workweek without interruption. See Popa v. Berryhill,
12 872 F.3d 901, 906 (9th Cir. 2017) (ALJ erred when he failed to
13 explain why the claimant's daily activities were inconsistent with
14 the doctor's opinion). Nevertheless, a review of Plaintiff's
15 activities of daily living and the context in which they were
16 performed demonstrates that the ALJ's finding is not supported by
17 substantial evidence.

18
19 In her Function Report, Plaintiff reported showering and
20 dressing herself and her young son daily, cleaning and doing
21 laundry, going to the store once a week, using public
22 transportation, and managing some of her finances while living in
23 a shelter. (AR 305-07). Plaintiff, however, relied on the shelter
24 for her meals and reminders about chores, and she received
25 childcare help from the shelter and her mother. (AR 93-95, 101,
26 305-06, 538). Plaintiff reported spending most days in her room
27 and having a difficult time getting out of bed when her depression
28 worsens. (AR 99-100, 304). She attended shelter classes and

1 worked part-time in a shelter thrift shop at certain points during
2 the relevant period, but she left the shelter where she lived when
3 she completed the Function Report because she had "difficulty with
4 the structure of the center and began to feel overwhelmed by the
5 demands of the program." (AR 305, 503, 538, 550, 553, 558, 577-
6 78, 611). Although she occasionally sought out employment and
7 worked full-time, she reported that she was fired from a job after
8 two weeks because she got into an argument with her boss and she
9 quit another job after less than two months because "she felt
10 overwhelmed physically and mentally." (AR 310, 550, 588, 590,
11 531). Finally, as discussed above, Plaintiff was able to
12 communicate with providers and generally manage her sobriety, but
13 she did not always timely attend appointments and required
14 reminders from the shelter about taking her medications. (AR 306,
15 529, 544, 563, 565, 567-68, 575, 600).

16
17 The fact that Plaintiff was able to perform some daily
18 activities is not necessarily inconsistent with her inability to
19 perform a work schedule and maintain regular attendance or complete
20 a normal workday and workweek without interruptions. See Vertigan
21 v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) ("This court has
22 repeatedly asserted that the mere fact that a plaintiff has carried
23 on certain daily activities, such as grocery shopping, driving a
24 car, or limited walking for exercise, does not in any way detract
25 from her credibility as to her overall disability. One does not
26 need to be 'utterly incapacitated' in order to be disabled.")
27 (quoting Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)). This
28 is particularly the case given that Plaintiff performed many of

1 the daily activities identified by the ALJ while living in a shelter
2 that encouraged a routine and outside of the demands of full-time
3 work. (See AR 310). When Plaintiff did try to perform daily
4 activities within a regular routine outside of the shelter, such
5 as working full-time, she reported becoming overwhelmed. See
6 Bjornson v. Astrue, 671 F.3d 640, 647 (7th Cir. 2012) ("The critical
7 differences between activities of daily living and activities in a
8 full-time job are that a person has more flexibility in scheduling
9 the former than the latter, can get help from other persons . . .
10 , and is not held to a minimum standard of performance, as she
11 would be by an employer.") (cited with approval in Garrison, 759
12 F.3d at 1016). Therefore, the ALJ's finding that Plaintiff's
13 activities of daily living were inconsistent with Dr. Burdick's
14 opined limitations was not supported by substantial evidence.

15
16 **C. Remand Is Warranted**

17
18 The decision whether to remand for further proceedings or
19 order an immediate award of benefits is within the district court's
20 discretion. See Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.
21 2000). Where no useful purpose would be served by further
22 administrative proceedings, or where the record has been fully
23 developed, it is appropriate to exercise this discretion to direct
24 an immediate award of benefits. Id. at 1179 ("[T]he decision of
25 whether to remand for further proceedings turns upon the likely
26 utility of such proceedings."). However, where, as here, the
27 circumstances of the case suggest that further administrative
28 review could remedy the Commissioner's errors, remand is

1 appropriate. See McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir.
2 2011); Harman, 211 F.3d at 1179-81.

3
4 Since the ALJ failed to properly assess Dr. Burdick's opinion
5 as a treating source, remand is appropriate. Because outstanding
6 issues must be resolved before a determination of disability can
7 be made, and "when the record as a whole creates serious doubt as
8 to whether the [Plaintiff] is, in fact, disabled within the meaning
9 of the Social Security Act," further administrative proceedings
10 would serve a useful purpose and remedy defects. Burrell v. Colvin,
11 775 F.3d 1133, 1141 (9th Cir. 2014) (citations omitted).

12
13 **CONCLUSION**

14
15 For the foregoing reasons, the decision of the Commissioner
16 is reversed, and the matter is remanded for further proceedings
17 pursuant to Sentence 4 of 42 U.S.C. § 405(g).

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19
20
21 Dated: January 14, 2021

22
23 _____/s/_____
24 ALKA SAGAR
25 UNITED STATES MAGISTRATE JUDGE
26
27
28