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

LINDA WOLFE,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of the Social
Security Administration,

Defendant.

) NO. EDCV 09-1187 SS
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) **MEMORANDUM DECISION AND ORDER**
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INTRODUCTION

Plaintiff Linda Wolfe ("Plaintiff") brings this action seeking to reverse the decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") for denying her application for Social Security Disability Insurance ("SSDI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the decision of the Agency is REVERSED and REMANDED for further proceedings.

1 **PROCEDURAL HISTORY**

2
3 Plaintiff filed an application for SSDI benefits on February 14,
4 2006 (Administrative Record ("AR") 58-62). She alleged a disability
5 onset date of October 1, 2003, (AR 58), due to degenerative disc
6 disease, anxiety, depression, and high blood pressure. (AR 75).
7

8 The Agency denied Plaintiff's claim for SSDI benefits initially on
9 August 14, 2006. (AR 33-37). This denial was upheld upon
10 reconsideration. (AR 43-47). Plaintiff then requested a hearing, (AR
11 5), which was held before Administrative Law Judge ("ALJ") F. Keith
12 Varni. (AR 18-30). On January 28, 2008, the ALJ conducted a hearing
13 to review Plaintiff's claim. (Id.). The Plaintiff appeared with
14 counsel and testified. (Id.). Plaintiff's husband, Wayne Wolfe, also
15 appeared and testified. (AR 27-28).
16

17 The ALJ issued an undated decision denying benefits. (AR 6-8).
18 Plaintiff sought review of the ALJ's decision before the Appeals
19 Council, which denied her request on May 5, 2009. (AR 1-3). The ALJ's
20 decision therefore became the final decision of the Commissioner.
21 (Id.). Plaintiff commenced the instant action on August 4, 2009.
22 Pursuant to the Court's Case Management Order, the parties filed a Joint
23 Stipulation ("Jt. Stip.") on March 30, 2010.

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1 404, Subpart P, Appendix 1? If so, the claimant is
2 found disabled. If not, proceed to step four.

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

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

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

12
13 The claimant has the burden of proof at steps one through four, and
14 the Commissioner has the burden of proof at step five. Bustamante, 262
15 F.3d at 953-54. If, at step four, the claimant meets his burden of
16 establishing an inability to perform the past work, the Commissioner
17 must show that the claimant can perform some other work that exists in
18 "significant numbers" in the national economy, taking into account the
19 claimant's residual functional capacity ("RFC"),² age, education and
20 work experience. Tackett, 180 F.3d at 1100; 20 C.F.R. § 416.920(g)(1).
21 The Commissioner may do so by the testimony of a vocational expert or
22 by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R.
23 Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").
24 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a
25 claimant has both exertional (strength-related) and nonexertional

26 _____
27 ² Residual functional capacity is "the most [one] can still do
28 despite [his] limitations" and represents an assessment "based on all
the relevant evidence." 20 C.F.R. § 416.945(a).

1 limitations, the Grids are inapplicable and the ALJ must take the
2 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864, 869
3 (9th Cir. 2000).

4 **THE ALJ'S DECISION**

5
6 The ALJ employed the five-step sequential evaluation process and
7 concluded that Plaintiff was not disabled within the meaning of the
8 Social Security Act. (AR 17). At the first step, the ALJ asserted that
9 Plaintiff had not engaged in substantial gainful activity since October
10 1, 2003. (AR 11). Although the ALJ noted that the "claimant has, at
11 all times, been capable of performing substantial gainful activity."
12 (Id.).

13
14 At step two, the ALJ found that Plaintiff had severe impairment of
15 the musculoskeletal system. (AR 11). However, he specifically found
16 Plaintiff's depressive disorder to be non-severe because it did not
17 cause more than minimal limitation in the Plaintiff's ability to perform
18 basic mental work. (Id.). In making this finding, the ALJ considered
19 the four broad functional areas set out in the disability regulations
20 for evaluating mental disorders and in section 12.00C of the Listing of
21 Impairments (20 CFR, Part 404, Subpart P, Appendix 1). (Id.).

22
23 At step three, the ALJ concluded that Plaintiff did "not have an
24 impairment or combination of impairments that [met] or medically
25 equal[ed] one of the listed impairments in 20 CFR Part 404, Subpart P,
26 Appendix 1." (AR 11).

1 At step four, the ALJ concluded that based on the entire record,
2 Plaintiff had the RFC to perform medium work. (AR 12). Specifically,
3 he found that Plaintiff could lift fifty pounds occasionally, and
4 twenty-five pounds frequently. (Id.). Plaintiff could stand, walk, and
5 sit for six hours out of the eight-hour work day. (Id.). He found that
6 Plaintiff should not climb ladders, ropes, or scaffolds, and should
7 avoid concentrated exposure to extreme cold and vibration. (Id.). He
8 also noted that Plaintiff had no other limitations affecting her ability
9 to work. (Id.).

10
11 Finally, at step five, the ALJ concluded that, Plaintiff was
12 capable of performing past relevant work as "a hair dresser or as a
13 sales person in the paint department at Home Depot." (AR 17). The ALJ
14 explained that this type of work did not require the performance of
15 work-related activities precluded by Plaintiff's RFC. (Id.).
16 Accordingly, the ALJ found that Plaintiff was not disabled, as defined
17 in the Social Security Act, at any time through the date of the
18 decision. (Id.).

19 20 **STANDARD OF REVIEW**

21
22 Under 42 U.S.C. § 405(g), a district court may review the
23 Commissioner's decision to deny benefits. The court may set aside the
24 Commissioner's decision when the ALJ's findings are based on legal error
25 or are not supported by substantial evidence in the record as a whole.
26 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
27 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

1 The Court agrees with Plaintiff's argument one, three, four and
2 five. For the reasons discussed below, the Court finds that the ALJ's
3 decision should be reversed and this action remanded for further
4 proceedings.

5
6 **A. The ALJ Failed To Properly Consider Plaintiff's Obesity**

7
8 Plaintiff argues that the ALJ failed to provide a proper factual
9 analysis that addressed the effect of Plaintiff's obesity in combination
10 with Plaintiff's other impairments. (Jt. Stip. at 5). The Court
11 agrees.

12
13 Obesity is no longer a listed impairment, nor was it at the time
14 of the ALJ's decision. See Revised Medical Criteria for Determination
15 of a Disability, Endocrine System and Related Criteria, 64 F.R. 46122
16 (1999) (effective October 25, 1999) ("We are deleting listing 9.09,
17 "Obesity," from appendix 1, subpart P of part 404, the "Listing of
18 Impairments" (the listings)."). However, an ALJ must still determine
19 the effect of obesity upon a claimant's other impairments and its effect
20 on her ability to work and general health. Celaya v. Halter, 332 F.3d
21 1177, 1182 (9th Cir. 2003). Social Security Ruling 02-01p³ states that
22 adjudicators must consider obesity in all steps of the sequential
23 evaluation process and in combination with other impairments.

24
25 _____
26 ³ Social Security Ruling 02-1p, Evaluation of Obesity, was
27 published in the Federal Register on September 12, 2002. That ruling
28 superseded the Commissioner's previous ruling regarding the evaluation
of obesity, Social Security Ruling 00-3p, first published on May 15,
2000.

1 On February 6, 2003, Plaintiff was referred to an orthopedic
2 surgeon, Ronny G. Ghazal, M.D., ("Dr. Ghazal") at Arrowhead
3 Orthopaedics. (AR 129). After examining Plaintiff, Dr. Ghazal, opined
4 that Plaintiff needed physical therapy, as well as a weight loss
5 program. (AR 137). Plaintiff's main treating physician, Steven Wilson,
6 M.D., ("Dr. Wilson") noted several times between 2005 and 2007 that
7 Plaintiff needed to exercise and diet. (AR 237, 235, 290, 311).

8
9 Dr. Nicholas Lin, an internal medicine doctor, from the Alto
10 Medical Group examined Plaintiff on July 28, 2006. (AR 184-89). Dr.
11 Lin noted that Plaintiff was 200 pounds with a height of 62 inches. (AR
12 186). He also noted that Plaintiff was able to "perform tandem gait
13 [but] with slight difficulty due to her being overweight." (AR 188).

14
15 On June 15, 2007, after Plaintiff's vital signs were taken at
16 Beaver Medical Group, it was noted that Plaintiff weighed 194 pounds
17 with a height of 62 inches indicating she was a "mildly obese" female.
18 (AR 301). On June 27, 2007, Plaintiff was seen at Beaver Medical Group
19 by David B. Martin, M.D., ("Dr. Martin"). (AR 299). After examining
20 Plaintiff, Dr. Martin concluded that Plaintiff was "obese in the mid
21 section with a waist size of probably close to 40 inches." (Id.). Dr.
22 Martin recommended that Plaintiff lose weight and exercise. (Id.).

23
24 The record contained several references or inferences to
25 Plaintiff's obesity. (AR 137, 164, 200, 237, 244, 290, 299, 301, 311).
26 She was consistently advised by medical providers to modify her
27 lifestyle and lose weight. (AR 137, 164, 237, 238, 244, 290, 290, 311).

1 Notwithstanding this evidence of obesity, the ALJ did not analyze the
2 effect of Plaintiff's obesity on Plaintiff's other impairments. (AR 9-
3 17). This omission was error. Celaya, 332 F.3d at 1182; see also Orn
4 v. Astrue, 495 F.3d 625, 636-7 (9th Cir. 2007) (discussing proper way for
5 ALJ to consider obesity); Barrett v. Barnhart, 355 F.3d 1065, 1068-69
6 (7th Cir. 2004) (ALJ erred in not considering effect of Plaintiff's
7 obesity on claimant's arthritis); Clifford v. Apfel, 227 F.3d 863, 873
8 (7th Cir. 2000) (evidence of obesity required ALJ to consider weight
9 issue with the aggregate effect of claimant's other impairments).
10 Because the ALJ is required to adequately explain his evaluation and the
11 combined effect of a claimant's impairments, the ALJ's passing reference
12 of Plaintiff's obesity falls far short of weighing the effect of that
13 obesity on Plaintiff's severe impairment of the musculoskeletal system.
14 Barrett, 355 F.3d 1068-69).

15
16 On remand, the ALJ must consider the effect of obesity upon a
17 Plaintiff's other impairments and its effect on her ability to work and
18 general health.

19
20 **B. The ALJ Failed To Properly Consider The Actual Mental And Physical**
21 **Demands Of Plaintiff's Past Work As A Hair Dresser And Sales**
22 **Person**

23
24 Plaintiff argues that the ALJ failed to properly consider the
25 actual mental and physical demands of Plaintiff's past work as a hair
26 dresser and sales person in finding that Plaintiff could perform her
27 past relevant work. (Jt. Stip. at 13-15, 17-18). The Court agrees.

1 Although the claimant has the burden of proof at step four, the
2 ALJ still has the duty to make the requisite factual findings to support
3 his conclusion. Pinto v. Massanari, 249 F.3d 840, 844 (9th Cir. 2001).
4 He must make specific findings as to the claimant's RFC, the physical
5 and mental demands of the past relevant work, and the relation of the
6 RFC to the past work. Id. (citing SSR 82-62). The ALJ can meet this
7 burden by comparing physical and mental demands of the past relevant
8 work with the Plaintiff's actual RFC. Id. at 845.

9
10 Here, the ALJ did not discuss the demands of Plaintiff's work as
11 a hairdresser or sales person in the paint department at Home Depot
12 other than to assert that he "s[aw] no reason why the claimant cannot
13 return to all of her past relevant work, and perform it as actually and
14 generally performed." (AR 17). The ALJ did not address whether
15 Plaintiff's past relevant work was "medium" work. (AR 9-17). There is
16 no indication what evidence, if any, supported that conclusion, as the
17 ALJ did not cite any evidence of record or a reliable source of
18 vocational data. (Id.).

19
20 At a minimum, the ALJ's decision violated the Commissioner's own
21 policy directive:

22
23 Evaluation [at step four] requires careful consideration
24 of the interaction [between] the limiting effects of the
25 person's impairments(s) and the physical and mental demands
26 of [] her past relevant work]...[] The decision as to whether
27 the claimant retains the functional capacity to perform past
28

1 work which has current relevance has far-reaching
2 implications and must be developed and explained fully in the
3 disability decision...[E]very effort must be made to secure
4 evidence that resolves the issue as clearly and explicitly as
5 circumstances permit.

6
7 Adequate documentation of past work includes factual
8 information about those work demands which have a bearing on
9 the medically established limitations. Detailed information
10 about strength, endurance, manipulative ability, mental
11 demands, and other job requirements must be obtained as
12 appropriate. This information will be derived from a
13 detailed description of the work obtained from the claimant,
14 employer, or other informed source.

15
16 SSR 82-62.

17
18 In order to obtain an adequate evidentiary basis for a finding as
19 to the physical and mental demands of Plaintiff's past work, the ALJ may
20 also choose to consult the Dictionary of Occupational Titles or seek
21 help from a vocational expert. He did neither here. In sum, the ALJ
22 failed to support his step-four analysis with substantial evidence and
23 erred by not making any factual findings required to support the
24 conclusion that Plaintiff was physically and mentally capable of meeting
25 the demands of her past relevant work as required by SSR 82-62. See
26 Pinto, 249 F.3d at 847.

1 C. The ALJ Failed To Properly Comply With SSR 96-7p Regarding The
2 Type, Dosage, Effectiveness, And Side Effects Of Medications

3
4 Plaintiff argues that the ALJ failed to evaluate the dosage,
5 effectiveness, and side effects of Plaintiff's pain medications. (Jt.
6 Stip. at 19). The Court agrees.

7
8 When the ALJ is evaluating Plaintiff's limitations, he must
9 consider the side effects of medication. (SSR 96-7p). Social Security
10 Ruling 96-7p specifically requires consideration of the "type, dosage,
11 effectiveness, and side effects of any medication the individual takes
12 or has taken to alleviate pain or other symptoms." 20 C.F.R. §
13 404.1529(c)(3)(iv); 416.929(c)(3)(iv). The Ninth Circuit has observed
14 that an ALJ must "consider all factors that might have a significant
15 impact on an individual's ability to work." Erickson v. Shalala, 9 F.3d
16 813, 817 (9th Cir. 1993) (citing Varney v. Secretary of HHS, 846 F.2d
17 581, 585 (9th Cir.), relief modified, 859 F.2d 1396 (1988)). Such
18 factors "may include side effects of medications as well as subjective
19 evidence of pain." Erickson, 9 F.3d at 818.

20
21 There is substantial evidence in the record documenting that
22 Plaintiff experienced side effects from her medications. (AR 2-25, 75,
23 80, 237, 239, 311). Specifically, Plaintiff indicated that she had
24 problems with sleepiness, fatigue, and being able to concentrate. (AR
25 25, 75, 80). Evidence in the record also supports Plaintiff's assertion
26 that she suffered work-impairing side effects from her medications. (AR
27 75). She stated that while working at Home Depot, her pain medication
28

1 made her "drowsy" and she would "fall asleep." (Id.). Plaintiff stated
2 that she was fired from her job at Home Depot because she would become
3 drowsy and fall asleep due to her pain medication. (Id.).
4

5 In May 2005, Plaintiff complained that her medication made her
6 "sleepy all the time." (AR 239). On July 18, 2005, Dr. Wilson noted
7 that "[Plaintiff] has had worsening pain, probably due to the fact that
8 she has been working, resulting in needing more pain med[ication]. This
9 increasing dosage has caused some daytime sleepiness and made it
10 difficult for her to function on an 8-[hour] job." (AR 237). On
11 January 15, 2007, Plaintiff complained of fatigue. (AR 311). In
12 response, Dr. Wilson decreased her Duragesic medication to reduce her
13 fatigue. (Id.). On June 27, 2007, Dr. Martin noted that Plaintiff
14 tired easily. (AR 298).
15

16 During the hearing, Plaintiff testified that her impairments
17 affected her ability to concentrate. (AR 24-25). She also testified
18 that she experienced fatigue while doing household activities. (Id.).
19 She explained that she needed to lay down a lot, and "spread things out
20 throughout the week" to take care of her home. (Id.).
21

22 The reporting of Plaintiff's symptoms would be consistent with the
23 quantity and type of medications Plaintiff was taking. During the
24 relevant time period, Plaintiff sought treatment at various times for
25 back pain, stress, anxiety, depression, allergies, panic attacks,
26 headaches, leg cramps, hypertension, sleeplessness, restless legs, high
27 blood sugar, and cholesterol. (AR 126-312). Over the course of
28

1 treatment, Plaintiff was prescribed various combinations and dosages of
2 medication; and at the time of the hearing, Plaintiff testified that she
3 was taking multiple medications at a time, including Gabapentin,
4 Effexor, Fentanyl, Plavix, Buspirone, Diovan, Indomethacin, and
5 Duragesic Patch. (AR 23-24). There is further evidence to show that
6 Plaintiff was also prescribed or given Vicodin, Paxil, Vytorin, BuSpar,
7 Klonopin, Hydrochlorothiazide, Titrade, Zoloft, Clonazepam, Cymbalta,
8 Allegra, Neurontin, and Lorazepam. (AR 126-312).

9
10 In his decision, the ALJ briefly acknowledged Plaintiff's
11 complaints regarding the side effects of her medications, but did not
12 expressly consider the impact of these side effects on Plaintiff's
13 ability to work. (AR 14, 16). While there is substantial evidence in
14 the record, both from Plaintiff's statements that she made in the
15 administrative proceedings, to complaints she made to her doctors, that
16 she had serious side effects from medications, her statements were not
17 considered by the ALJ. (AR 9-17). Yet, an analysis of medication side
18 effects is required both by the Commissioner's own regulations and by
19 controlling Ninth Circuit law. (See 20 C.F.R. §§ 404.1529(c)(3),
20 416.929(c)(2008); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir.
21 1991); Erickson, 9 F.3d at 818 ("The ALJ must consider all factors that
22 might have a 'significant impact on an individual's ability to work
23 [,]' " including medication side effects). As the record contains
24 substantial evidence that Plaintiff was prescribed various combinations
25 and dosages of medications, for lengthy periods of time, that would
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1 likely cause significant side effects, it was error for the ALJ not to
2 expressly consider those side effects in his evaluation of Plaintiff's
3 disability claim.

4
5 On remand, the ALJ must expressly consider the impact of
6 Plaintiff's medications on her ability to work. If necessary, the ALJ
7 should utilize a medical expert to testify about the effect of
8 Plaintiff's medications on her ability to work.

9
10 **D. The ALJ Failed To Provide Clear And Convincing Reasons For**
11 **Rejecting Plaintiff's Subjective Pain Testimony**

12
13 Plaintiff claims that the ALJ failed to properly consider
14 Plaintiff's subjective complaints by "dismissing the longitudinal
15 history that establish[ed] Plaintiff's multiple attempts at seeking
16 treatment in an effort to obtain relief from her symptoms." (Jt. Stip.
17 at 27). The Court agrees.

18
19 The ALJ did not properly evaluate relevant factors in the
20 credibility analysis of Plaintiff, including Plaintiff's repeated
21 attempts to get relief from pain and the drugs she was prescribed for
22 same. Carpenter v. Astrue, 537 F.3d 1264, 1268 (10th Cir. 2008) (ALJ
23 should address the plaintiff's repeated attempts to find pain relief and
24 drugs prescribed for pain relief before rejecting plaintiff's pain
25 testimony). Plaintiff's medical records show that Plaintiff
26 continuously pursued relief for pain, without any doctor disbelieving
27 her claims of pain or questioning her credibility. (AR 126-312).

1 Beginning in October 2002, Plaintiff continually sought treatment from
2 Dr. Rains for pain related to her back. (AR 126-35). During that time,
3 Dr. Rains prescribed Vicodin, Robaxin, Voltaren, and Nortriptyline to
4 help alleviate Plaintiff's pain. (Id.). Dr. Rains also referred
5 Plaintiff to Dr. Ghazal, an orthopedic surgeon. (AR 129). On February
6 2, 2003, Dr. Ghazal diagnosed Plaintiff with "degenerative disc disease
7 of L5-S1," and noted that Plaintiff would benefit from "anti-
8 inflammatory medications and [] from epidural steroid injections." (AR
9 137). Between February 24, 2003 to April 24, 2003, Plaintiff was
10 treated by Dr. Lowell Reynolds, Medical Director for Pain Management at
11 Loma Linda University Health Care for her lower back pain. (AR 151-56).
12 It was noted on Plaintiff's Initial Pain Management Evaluation that she
13 had previously been treated with various non-steroidal anti-inflammatory
14 drugs ("NSAID"), as well as physical therapy. (AR 152). Plaintiff
15 indicated that the NSAID's did not help, and that the physical therapy
16 was overall helpful, but "the relief was negated when she returned to
17 work." (Id.). Dr. Reynolds recommended Plaintiff be treated with
18 epidural steroid injections, and Plaintiff consented to the procedure.
19 (AR 156).

20
21 After Plaintiff requested a re-evaluation for treatment options of
22 her chronic back pain, she was seen by John C. Steinman, D.O., FAOAO,
23 ("Dr. Steinman"). (AR 168). On October 14, 2003, after evaluating
24 Plaintiff, Dr. Steinmann discussed the different available alternatives
25 for her care, he specifically recommended that Plaintiff exercise and
26 modify her activities. (AR 164).

1 Plaintiff's medical records also confirmed that she repeatedly
2 sought treatment at In Your Best Interest Medical Clinic, Inc., with Dr.
3 Wilson, between February 20, 2003 to March 8, 2007. (AR 220-269, 308-
4 312). During that time, Plaintiff's chief complaint was chronic pain
5 related to her back. (Id.). Dr. Wilson prescribed her various
6 combinations and dosages of medication, and over the course of time,
7 continually changed the combinations and dosages of Plaintiff's
8 medications to alleviate her pain. (Id.). Plaintiff's pain medications
9 included Vicodin, a Duragesic patch, and Neurontin. (AR 265-69).
10 Between June 15, 2007 and October 29, 2007, Plaintiff sought treatment
11 at Beaver Medical Group by David B. Martin, M.D., ("Dr. Martin"). (AR
12 287-304). After examining Plaintiff, Dr. Martin recommended that
13 Plaintiff lose weight and exercise, adjusted her pain medications, and
14 gave her a mental health referral. (AR 299).

15
16 Plaintiff repeatedly and often sought treatment for her pain
17 symptoms since October 2002. (AR 128, 131, 133, 134, 145-50, 151-56,
18 231-32, 237-240, 266, 268, 304). There is substantial evidence in
19 Plaintiff's records to show that she was treated by at least five
20 different doctors in the course of five years to seek treatment in an
21 attempt to alleviate her pain related to her back or leg. (AR 220-269,
22 308-312). As demonstrated above, Plaintiff tried different treatments,
23 including physical therapy, epidural injections, a Depo-medro injection,
24 a pain management evaluation, an orthopedic evaluation, diet, exercise,
25 and many different combinations and dosages of prescription medication.
26 (Id.).

1 The Social Security Ruling makes it clear that a longitudinal
2 medical record of the course of symptoms over time, or of any treatment
3 and its success or failure, is important information. SSR 96-7p.
4

5 In general, a longitudinal medical record demonstrating
6 an individual's attempts to seek medical treatment for
7 symptoms and to follow that treatment once prescribed lends
8 support to the allegations of symptoms for purposes of judging
9 the credibility of the individual's statement. (Id.).
10 Persistent attempts by the individual to obtain relief of pain
11 or other symptoms, such as by increasing medications, trials
12 of a variety of treatment modalities in an attempt to find one
13 that works or that does not have side effects, referrals to
14 specialists, or changing treatment sources may be a strong
15 indication that the symptoms are a source of distress to an
16 individual and generally lend support to an individual's
17 allegations of intense and persistent symptoms.
18

19 SSR 96-7p. Thus, it was error for the ALJ not to expressly consider
20 Plaintiff's persistent attempts to find relief from her pain, her
21 willingness to try various treatments for her pain, and her frequent
22 contact with physicians concerning her pain-related complaints, the case
23 must be remanded to remedy this defect.
24

25 On remand, the ALJ must expressly consider these relevant factors
26 in assessing Plaintiff's subjective complaints.
27
28

1 **E. Remand Is Required to Remedy Defects in the ALJ's Decision**

2
3 Remand for further proceedings is appropriate where additional
4 proceedings could remedy defects in the Commissioner's decision. See
5 Harman v. Apfel, 211 F.3d 1172, 1179 (9th Cir.), cert. denied, 531 U.S.
6 1038, 121 S. Ct. 628, 148 L. Ed. 2d 537 (2000); Kail v. Heckler, 722
7 F.2d 1496, 1497 (9th Cir. 1984).

8
9 **CONCLUSION**

10
11 Consistent with the foregoing, IT IS ORDERED that judgment be
12 entered REVERSING the decision of the Commissioner and REMANDING this
13 matter for further proceedings consistent with this decision. IT IS
14 FURTHER ORDERED that the Clerk of the Court serve copies of this Order
15 and the Judgment on counsel for both parties.

16 DATED: April 12, 2010

17
18 /s/ _____
19 SUZANNE H. SEGAL
20 UNITED STATES MAGISTRATE JUDGE
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