

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**

TRACEY M. CLARK,
Plaintiff,
v.
CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

) Case No. ED CV 13-0557 JCG

) **MEMORANDUM OPINION AND
ORDER**

Tracey M. Clark (“Plaintiff”) challenges the Social Security Commissioner’s decision denying her application for disability benefits. Specifically, Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly rejected the opinion of her examining physician. (Joint Stip. at 9-12.) The Court agrees with Plaintiff for the reasons stated below.

A. The ALJ Failed to Provide Specific and Legitimate Reasons for Rejecting Dr. Robert F. Steinberg’s Examining Opinion

An ALJ may reject the controverted opinion of an examining physician only for “specific and legitimate reasons that are supported by substantial evidence.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008)

1 (quoting *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)).

2 Here, the ALJ provided one reason for rejecting Dr. Steinberg’s opinion. The
3 Court addresses, and rejects, it below.

4 The ALJ improperly rejected Dr. Steinberg’s opinion as internally
5 inconsistent. (*See* Administrative Record (“AR”) at 30.) In particular, Dr. Steinberg
6 opined that Plaintiff “could not stand or walk for any significant time on a sustained
7 basis,” even though she “had not been walking with any aids during the physical
8 exam.” (*Id.* at 31.) However, the Court does not find any inconsistency here. Dr.
9 Steinberg restricted Plaintiff as he did because Plaintiff moved “slowly due to pain,”
10 “[h]er pain occurs on a daily basis, and movement and positioning will affect the
11 pain.” (*Id.* at 1085, 1090.) An ambulative device would not necessarily alleviate
12 Plaintiff’s pain and, moreover, none of Plaintiff’s physicians suggest that it would.
13 It is thus inappropriate for the ALJ to make such an assumption. (*See generally* AR;
14 *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975) (ALJ may not make his
15 own medical assessment beyond that demonstrated by the record).) Accordingly,
16 there is no inconsistency in Dr. Steinberg’s opinion.^{1/}

17 For the reasons stated above, the Court determines that the ALJ improperly
18 discredited the opinion of Plaintiff’s examining physician. The Court thus
19 determines that the ALJ’s decision is not supported by substantial evidence. *Mayer*
20 *v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001).

21
22 ^{1/} The Commissioner also argues that the ALJ rejected Dr. Steinberg’s opinion
23 as inconsistent with the treatment records. (Joint Stip. at 22.) However, the Court’s
24 review is limited to the reasons *actually cited* by the ALJ in his decision. *See Orn v.*
25 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (“We review only the reasons provided by
26 the ALJ in the disability determination and may not affirm the ALJ on a ground
27 upon which he did not rely.”). Because, the ALJ did *not* put forth any such
28 argument in his decision, the Court may not consider it here. (*See generally* AR at
26-33.)

