

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

GEORGIA ABRAHAM,)	Case No. ED CV 13-0878-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her application for Supplemental Security Income ("SSI"). She claims that the Administrative Law Judge ("ALJ") erred when he failed to consider the opinion of an examining psychiatrist and when he discounted Plaintiff's testimony and the testimony of her husband and daughter. For the reasons explained below, the Court concludes that the ALJ erred and remands the case to the Agency for further proceedings.

II. SUMMARY OF PROCEEDINGS

In November 2008, Plaintiff applied for SSI, alleging that she had been disabled since August 2006, due to bipolar disorder,

1 depression, anxiety, and obsessive-compulsive disorder. (Administra-
2 tive Record ("AR") 124, 125, 579-82.) Her application was denied
3 initially and on reconsideration and she requested and was granted a
4 hearing before an ALJ. In June 2010, she appeared with counsel and
5 testified at the hearing. (AR 24-57.) In August 2010, the ALJ issued
6 a decision denying benefits. (AR 7-20.) She then sought review by
7 the Appeals Counsel, but her request was denied. Thereafter, she
8 commenced an action in this court.

9 In 2012, the Court remanded the case to the Agency to allow it to
10 reconsider the opinion of examining psychiatrist Ernest Bagner. On
11 remand, a different ALJ held a hearing in January 2013 and issued a
12 decision, also concluding that Plaintiff was not disabled. (AR 376-
13 415, 470-85.) Plaintiff appealed to the Appeals Council, which again
14 denied review. She then filed a second action in this court. The
15 parties subsequently stipulated to a remand because the Agency was
16 unable to find the transcript from the January 2013 administrative
17 hearing. (AR 468.)

18 On February 12, 2014, a third ALJ held a third hearing. (AR 333-
19 75.) On March 27, 2014, he issued a decision denying benefits. (AR
20 313-26.) Plaintiff appealed to the Appeals Council, which denied
21 review. Thereafter, she filed the instant action.

22 III. ANALYSIS

23 A. The ALJ's Finding that Plaintiff was not Credible

24 In December 2008, Plaintiff filled out a form in which she
25 explained that she suffered from crippling anxiety and fearfulness
26 around people, would often forget what she was doing, and did not like
27 to go far from home. (AR 140, 144, 146.) She also reported that she
28 was able to get her kids up, make breakfast for them, take them to

1 school, do chores around the house (including laundry, washing floors,
2 and cleaning the tub), walk outside, drive, handle money, and go to
3 therapy once a week. (AR 139, 141-43, 145.) She did not report any
4 physical limitations on the form.

5 At the February 2014 administrative hearing, Plaintiff testified
6 that she could not work because her medication made her sleepy, being
7 around people made her anxious, and she suffered from bipolar
8 episodes. (AR 348-49.) She also testified that she could not do a
9 lot of lifting because of her back and that she was no longer able to
10 help as much with her children or in cleaning the house as she had
11 three or four years before. (AR 350-51.) She explained that on "bad"
12 days she would be so depressed she did not go out or do anything. (AR
13 352-53.)

14 The ALJ discounted this testimony because he believed it was
15 inconsistent with the objective medical evidence and because
16 Plaintiff's daily activities suggested that she could work. (AR 321.)
17 For the following reasons, the Court concludes that the ALJ erred.

18 ALJs are tasked with judging a claimant's credibility. *Andrews*
19 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). In doing so, they can
20 rely on ordinary credibility techniques. *Smolen v. Chater*, 80 F.3d
21 1273, 1284 (9th Cir. 1996). Where there is no evidence of
22 malingering, however, ALJs can only reject a claimant's testimony for
23 specific, clear, and convincing reasons that are supported by
24 substantial evidence in the record. *Garrison v. Colvin*, 759 F.3d 995,
25 1014-15 (9th Cir. 2014).

26 The ALJ found that Plaintiff's testimony was "inconsistent with
27 the objective medical evidence." (AR 321.) Although this is a valid
28 reason for questioning a claimant's testimony, see *Rollins v. Massa-*

1 *nari*, 261 F.3d 853, 857 (9th Cir. 2001), the ALJ failed to explain
2 what testimony he was referring to and how it was undermined by the
3 objective medical evidence. Nor did his analysis of the medical
4 evidence that followed suffice. As such, this reason is rejected.
5 See *Brown-Hunter v. Colvin*, ___ F.3d ___, 2015 WL 4620123 (9th Cir.,
6 Aug. 4, 2015) (reversing ALJ's credibility finding because ALJ failed
7 to explain what testimony was undermined by what evidence and ALJ's
8 discussion of the medical evidence that followed was not a substitute
9 for that analysis).

10 The ALJ's second reason for questioning Plaintiff's claims of
11 disabling impairment was that she could perform a number of daily
12 activities despite her professed limitations such as cooking, doing
13 laundry, driving, walking her children to school, and attending
14 church. (AR 321.) The ALJ found that the physical and mental
15 requirements needed to perform these activities "replicated those
16 necessary for obtaining and maintaining employment." (AR 321.)

17 The Court disagrees. The activities as described by Plaintiff do
18 not support the ALJ's finding that they are transferable to a work
19 setting, nor do they establish that she spends a "substantial" part of
20 her day engaged in transferable skills. See *Orn v. Astrue*, 495 F.3d
21 625, 639 (9th Cir. 2007). At the 2014 hearing, Plaintiff testified
22 that she could not work at a job for eight hours a day because her
23 medication made her too tired. (AR 350.) She also testified that she
24 did little more than oversee her children when they got ready for
25 school and that they cleaned up after themselves. (AR 351.) She
26 further testified that she did not go shopping on "bad" days and that
27 she would typically go to get groceries at "4:00 in the morning," when
28 no one else was around. (AR 352-53.) The ALJ did not account for

1 these comments in finding that Plaintiff's daily activities would
2 permit her to maintain regular employment.

3 Because the ALJ's credibility finding is not backed by specific
4 and legitimate reasons that are supported by substantial evidence in
5 the record, it is reversed. On remand, the ALJ should take another
6 look at the credibility issue.¹

7 B. The Lay Witness Testimony

8 1. The Husband's Testimony

9 Plaintiff contends that the ALJ also erred in failing to properly
10 consider her husband's testimony. At the first administrative hearing
11 in June 2010, he testified that Plaintiff could not work because she
12 was depressed, could not stay focused, was afraid to drive, did not
13 sleep well at night, and was unable to leave the house due to her
14 anxiety. (AR 47-48, 50-51, 52.) The ALJ failed to address this
15 testimony. This was error. See *Stout v. Commissioner, Soc. Sec.*
16 *Admin.*, 454 F.3d 1050, 1053-54 (9th Cir. 2006) (holding ALJ's failure
17 to address lay witness testimony is error). Moreover, it is not clear
18 whether a reasonable ALJ would have found Plaintiff disabled after
19 fully crediting the husband's testimony. Thus, the Court concludes

20
21 ¹ Plaintiff asks the Court to credit her testimony as true and
22 order the Agency to award benefits. (Joint Stip. at 32.) The Court
23 recognizes that it has the power to do so and is aware that the case
24 has already been remanded twice--once by the Court and once by
25 stipulation of the parties. Nevertheless, it is not clear from the
26 record whether Plaintiff is disabled and, therefore, entitled to
27 benefits. See *Garrison*, 759 F.3d at 1020 (noting district court can
28 only remand for benefits when record has been fully developed, further
proceedings would serve no purpose, and ALJ would be required to find
claimant disabled on remand). Though the Court has overruled the
ALJ's credibility finding, it has not concluded that Plaintiff is
credible. Rather, it has concluded that the ALJ did not cite
sufficient reasons for rejecting Plaintiff's testimony and must take
another look at the issue on remand.

1 that the error is not harmless. See, e.g., *Stout*, 454 F.3d at 1053-54
2 (holding failure to consider lay testimony not harmless unless it is
3 clear that testimony would not impact disability decision). On
4 remand, the ALJ should consider the husband's testimony.

5 2. The Daughter's Testimony

6 Plaintiff's daughter completed a questionnaire in December 2008
7 in which she reported that Plaintiff was able to look after the
8 children, cook, and clean, but was not able to work or go to school.
9 (AR 131-32.) She also reported that Plaintiff would sometimes yell at
10 people around her and was afraid to travel long distances. (AR 137.)
11 The ALJ rejected this testimony based on the fact that the daughter
12 was not a medical professional, she was biased due to her relationship
13 with Plaintiff, and her statements were not supported by the medical
14 evidence. (AR 321.) This last reason for discounting the testimony
15 was a valid one, see *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th
16 Cir. 2005), and is supported by some of the medical evidence. As
17 such, the ALJ did not err here. Further, assuming that the ALJ had
18 erred in discounting the daughter's testimony, any error was harmless
19 in that, even if the daughter's statements were fully credited, no
20 reasonable ALJ would have found Plaintiff disabled based on the
21 daughter's general observations about Plaintiff's condition and her
22 lay opinion that Plaintiff could not work as a result of her
23 impairments.² *Stout*, 454 F.3d at 1053-54.

24
25
26 ² The ALJ should not have presumed bias based on the fact that
27 Plaintiff and her daughter were related. *Regennitter v. Comm'r Soc.*
28 *Sec.*, 166 F.3d 1294, 1298 (9th Cir. 1999). Nor should he have
dismissed the daughter's testimony in toto because she was not a
medical professional. See *Smith v. Bowen*, 849 F.2d 1222, 1226 (9th
Cir. 1988).

1 C. The Examining Opinion

2 Plaintiff contends that the ALJ erred by failing to properly
3 consider the 2010 opinion of examining psychiatrist Ernest Bagner.
4 Dr. Bagner opined that Plaintiff would have moderate-to-marked
5 limitations in completing a normal work week. (Joint Stip. at 6-19;
6 AR 275.) Plaintiff notes that the Court previously remanded the case
7 to the Agency on this issue and maintains that Dr. Bagner's opinion
8 has yet to be properly considered by the Agency. (Joint Stip. at 7.)
9 For the reasons set forth below, this issue is remanded for further
10 consideration contingent on the ALJ's finding regarding Plaintiff's
11 credibility.

12 The ALJ discounted Dr. Bagner's opinion because: (1) he had not
13 reviewed all the records; (2) his opinion was based on a single
14 examination, and (3) his opinion was based in large measure on
15 Plaintiff's subjective complaints, which the ALJ discounted. (AR 323-
16 24.) For the reasons explained above, however, the Court is remanding
17 the credibility issue to the ALJ for further consideration. Should
18 the ALJ determine that Plaintiff is credible, he will need to reassess
19 the medical evidence and determine whether the remaining reasons are
20 enough to warrant discounting Dr. Bagner's opinion. If not, he need
21 not do so.³

22
23 ³ ALJs may reject a treating doctor's opinion that is based on
24 the incredible claims of the claimant. *Batson v. Comm'r Soc.*
25 *Security*, 359 F.3d 1190, 1195 (9th Cir. 2004). A doctor's opinion is
26 also subject to attack where the doctor failed to review objective
27 medical data and reports from other doctors. *Bayliss*, 427 F.2d at
28 1217. The fact that a doctor only saw a claimant once, however, is
generally not a sufficient reason to question the doctor's opinion--
particularly where, as here, the ALJ relied on a doctor who never
examined the claimant--though it can play a role in the ALJ's
analysis. See *Kezeli v. Astrue*, 2012 WL 5929929, at *3 (C.D. Cal.
Nov. 26, 2012).

1 IV. CONCLUSION

2 For these reasons, the ALJ's decision is reversed and the case is
3 remanded to the Agency for further proceedings consistent with this
4 Memorandum Opinion and Order.

5 IT IS SO ORDERED.

6 DATED: August 11, 2015.

A rectangular area with an orange background containing a handwritten signature in black ink. The signature appears to be 'Patrick J. Walsh'.

7
8 PATRICK J. WALSH
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27