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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

DONNA SUE ATKINSON,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

} Case No. EDCV 14-02337 (GJS)
} MEMORANDUM OPINION AND
} ORDER

I. PROCEEDINGS

Plaintiff Donna Sue Atkinson (“Plaintiff”) filed a complaint seeking review of the Commissioner’s denial of her application for Disability Insurance Benefits (“DIB”). The parties filed consents to proceed before the undersigned United States Magistrate Judge, and a Joint Stipulation addressing disputed issues in the case. The Court has taken the Joint Stipulation under submission without oral argument.

II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISIONS

Plaintiff first applied for DIB on February 1, 2010, alleging disability since

1 March 9, 2009. (Administrative Record (“AR”) 112-15). Following the denial of
2 her application initially and on reconsideration, Administrative Law Michael D.
3 Radensky (“ALJ”) held a hearing at Plaintiff’s request. (AR 25-53). On
4 November 17, 2011, the ALJ issued a decision applying the five-step sequential
5 evaluation process to find Plaintiff not disabled. (AR 8-20); *see* 20 C.F.R. §
6 404.1520(b)-(g)(1).¹ The Appeals Council denied Plaintiff’s request for review on
7 June 7, 2013. (AR 1-3).

8 Thereafter, Plaintiff appealed to the United States District Court (Case No.
9 CV 5:13-cv-01361-AN). (AR 693-94). On March 3, 2014, the Court approved the
10 parties’ Joint Stipulation to Voluntary Remand Pursuant to Sentence Six of Title
11 42, United States Code, Section 405(g), and remanded the case for further
12 proceedings. (AR 694-98). The Appeals Council then vacated the final decision
13 of the Commissioner and remanded the case to the ALJ. (AR 699-703). Because
14 significant portions of the psychological expert’s testimony at the administrative
15 hearing were not transcribed, the Appeals Council ordered the ALJ to conduct a
16 new hearing, complete the steps of the sequential evaluation process as necessary,
17 and issue a new decision. (AR 701-02).

18 On July 21, 2014, Plaintiff appeared and testified at a hearing with the
19 assistance of counsel. (AR 617-43). On August 1, 2014, the ALJ issued a decision

20 ¹ To decide if a claimant is entitled to benefits, an ALJ conducts a five-step
21 inquiry. 20 C.F.R. § 404.1520. The steps are as follows: (1) Is the claimant
22 presently engaged in substantial gainful activity? If so, the claimant is found not
23 disabled. If not, proceed to step two; (2) Is the claimant’s impairment severe? If
24 not, the claimant is found not disabled. If so, proceed to step three; (3) Does the
25 claimant’s impairment meet or equal the requirements of any impairment listed at
26 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found disabled.
27 If not, proceed to step four; (4) Is the claimant capable of performing her past
28 work? If so, the claimant is found not disabled. If not, proceed to step five; (5) Is
the claimant able to do any other work? If not, the claimant is found disabled. If
so, the claimant is found not disabled. 20 C.F.R. § 404.1520(b)-(g)(1).

1 (“Decision #2”) denying benefits to Plaintiff. (AR 596-609). The ALJ determined
2 that Plaintiff had the following severe impairments: morbid obesity; right shoulder
3 impairment; and mood disorder. (AR 598). The ALJ found that Plaintiff’s
4 conditions did not meet or equal any of the impairments listed in Appendix 1 of the
5 regulations. (AR 599). The ALJ concluded that Plaintiff retained the residual
6 functional capacity (“RFC”) to perform light work (20 C.F.R. § 404.1567(b)),
7 except that Plaintiff was limited as follows: occasional postural activities (i.e.,
8 climbing, balancing, stooping, bending, kneeling, crouching, and crawling); no
9 climbing ladders, ropes or scaffolds; no work at unprotected heights or on
10 dangerous machinery; and no repetitive and/or prolonged overhead work,
11 bilaterally. (AR 600). The ALJ also found that Plaintiff was limited to non-
12 complex tasks, is unable to perform tasks requiring hypervigilance, public contact,
13 or significant teamwork, and cannot be responsible for the safety of others. (AR
14 600). The ALJ determined that Plaintiff is unable to perform her past relevant
15 work, but is capable of making a successful adjustment to other work that exists in
16 significant numbers in the economy. (AR 607-08). Therefore, the ALJ concluded
17 that Plaintiff was not disabled at any time from Plaintiff’s alleged onset date
18 through her date last insured of December 31, 2013. (AR 609).

19 On October 15, 2014, Plaintiff filed a complaint before this Court seeking
20 review of Decision #2. Plaintiff raises the following arguments: (1) the ALJ failed
21 to properly consider the relevant medical evidence; and (2) the ALJ failed to
22 provide adequate reasons for discrediting the subjective complaints of Plaintiff and
23 the testimony of Plaintiff’s husband. (Joint Stipulation (“Joint Stip.”) at 5-11, 16-
24 20). The Commissioner asserts that Decision #2 should be affirmed. 11-16, 20-
25 26).

26 III. STANDARD OF REVIEW

27 Under 42 U.S.C. § 405(g), the Court reviews the Administration’s decision
28 to determine if: (1) the Administration’s findings are supported by substantial

1 evidence; and (2) the Administration used correct legal standards. *See Carmickle*
2 *v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
3 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
4 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
5 *Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L.Ed.2d 842 (1971) (citation and
6 quotations omitted); *see also Hoopai*, 499 F.3d at 1074.

7 **IV. DISCUSSION**

8 **A. Plaintiff’s Medical Records**

9 Plaintiff contends, *inter alia*, that the ALJ erred in failing to explain why the
10 RFC assessment omitted findings of the consultative examining psychiatrist,
11 Ijeoma Ijeaku, M.D. (Joint Stip. at 10-11). As discussed below, the Court agrees.

12 Dr. Ijeaku conducted a complete psychiatric evaluation of Plaintiff in
13 December 2013. (AR 878-83). Dr. Ijeaku diagnosed Plaintiff with depressive
14 disorder, not otherwise specified, rule out major depressive disorder without
15 psychotic features. (AR 882). Dr. Ijeaku assessed Plaintiff as “moderately
16 impaired” in the following functions: understanding, remembering, and carrying
17 out detailed instructions; performing activities within a schedule and maintaining
18 regular attendance; completing a normal workday/workweek without interruptions
19 from psychiatric based symptoms; and responding appropriately to changes in a
20 work setting. (AR 882). Dr. Ijeaku also assessed Plaintiff as “mildly impaired” in
21 the ability to carry out simple instructions and maintain concentration, attendance,
22 and persistence. (AR 882).

23 In Decision #2, the ALJ gave Dr. Ijeaku’s opinion “great weight,” finding
24 that it was consistent with the medical evidence as a whole. (AR 606). However,
25 the ALJ’s RFC did not account for Dr. Ijeaku’s opinion that Plaintiff has moderate
26 limitations in performing activities within a schedule, maintaining attendance and
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1 completing a normal workday/workweek.² (AR 600). Plaintiff contends that the
2 ALJ erred by failing to offer any explanation as to why these limitations were
3 omitted from the RFC.

4 A claimant's RFC is the most a claimant can still do despite her limitations.
5 *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. §
6 404.1545(a)); Social Security Ruling ("SSR") 96-8p (an RFC assessment is
7 ordinarily the "maximum remaining ability to do sustained work activities in an
8 ordinary work setting on a regular and continuing basis," meaning "8 hours a day,
9 for 5 days a week, or an equivalent work schedule"). In assessing a claimant's
10 RFC, the ALJ must consider all of the relevant evidence in the record. *See* 20
11 C.F.R. § 404.1545(a)(2), (3). If an RFC assessment conflicts with an opinion from
12 a medical source, the ALJ "must explain why the opinion was not adopted." SSR
13 96-8p; *see also Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984)
14 (explaining that an ALJ is not required to discuss all the evidence presented, but
15 must explain the rejection of uncontroverted medical evidence, as well as
16 significant probative evidence).

17 Here, although the ALJ purportedly gave great weight to Dr. Ijeaku's
18 opinion, the ALJ erred by failing to explain why he did not include in the RFC
19 assessment Dr. Ijeaku's findings that Plaintiff has moderate limitations in the
20 ability to perform activities within a schedule, maintain regular attendance, and
21 complete a normal workday and workweek without interruption from
22 psychologically-based symptoms. *See* SSR 96-8p; *see also Vincent*, 739 F.2d at
23 1394-95. Moreover, the opinion of an examining doctor, such as Dr. Ijeaku, "can
24 be rejected only for specific and legitimate reasons that are supported by

25 ² In assessing Plaintiff's mentally-related functional limitations, the ALJ
26 found that Plaintiff was capable of non-complex tasks, but Plaintiff could not be
27 responsible for the safety of others, and was not capable performing tasks requiring
28 hypervigilance, public contact, or significant teamwork. (AR 600).

1 substantial evidence in the record.” *Regennitter v. Comm’r of Soc. Sec. Admin.*,
2 166 F.3d 1294, 1298-99 (9th Cir. 1999) (citing *Lester v. Chater*, 81 F.3d 821, 830
3 (9th Cir. 1995). Here, the ALJ erred by failing to provide any reasons for rejecting
4 Dr. Ijeaku’s opinion.

5 In response, the Commissioner contends that the ALJ’s RFC accounted for
6 all of the limitations assessed by Dr. Ijeaku. (Joint Stip. at 15-16). Specifically,
7 the Commissioner argues that “Plaintiff’s mild to moderate mental limitations were
8 adequately captured by a restriction to non-complex tasks (i.e. simple, repetitive
9 tasks). . .” (Joint Stip. at 15); *see Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174
10 (9th Cir. 2008) (finding that a claimant’s RFC for “simple, routine, repetitive
11 sedentary work” adequately accounted for the claimant’s limitations to “simple
12 tasks” and work at a slow pace). The Commissioner’s argument is not persuasive.
13 Although the ALJ’s RFC restriction for non-complex tasks may encompass the
14 concentration, persistence, and pace limitations assessed by Dr. Ijeaku, *Stubbs-*
15 *Danielson*, 539 F.3d at 1174, the RFC does not sufficiently account for Plaintiff’s
16 moderate limitations in performing activities within a schedule, maintaining
17 regular attendance in the workplace, or completing a normal workday and
18 workweek without interruption. *See, e.g., Morinskey v. Astrue*, 458 Fed. Appx.
19 640, 641 (9th Cir. 2011) (finding ALJ erred by failing to analyze or make findings
20 setting forth specific, legitimate reasons for rejecting the examining consultant’s
21 opinion that the claimant was moderately impaired in the ability to maintain
22 regular attendance, sustain an ordinary routine, and complete a normal work day or
23 workweek without interruption from his bi-polar disorder); *Padilla v. Colvin*, No.
24 ED CV 14-1843-PLA, 2015 WL 3849128, at *5-6 (C.D. Cal. June 22, 2015)
25 (“despite the ALJ’s assertion that he afforded [the examining psychiatrist’s]
26 opinion significant weight . . . , the ALJ failed to explain why he apparently
27 rejected and did not include in the RFC determination [the examining
28 psychiatrist’s] moderate limitations in the ability to perform work activities on a

1 consistent basis without special or additional supervision, and to complete a
2 normal workday or work week due to her mental condition”); *Gloria v. Astrue*, No.
3 C08-5714RJB-KLS, 2009 WL 1763301, at *14 (W.D. Wash. June 19, 2009).

4 The Commissioner further notes that “moderate” limitations in various areas
5 of functioning, such as in the ability to maintain regular attendance or to complete
6 a normal workday and workweek without interruption from mental symptoms, are
7 not per se disabling. (Joint Stip. at 15-16 (citing Hearings Appeals and Litigation
8 Manual I-2-5-20)). While Dr. Ijeaku’s findings of moderate limitations do not
9 necessarily indicate that Plaintiff is disabled, the ALJ’s RFC assessment did not
10 adequately reflect all of the limitations that were identified by Dr. Ijeaku. Because
11 the ALJ did not offer any specific explanation as to why he implicitly rejected
12 some of Dr. Ijeaku’s findings, the ALJ’s RFC assessment is not supported by
13 substantial evidence. *See Vincent*, 739 F.2d at 1394-95; *see also Regennitter*, 166
14 F.3d at 1298-99.

15 CONCLUSION AND ORDER

16 The decision whether to remand for further proceedings or order an
17 immediate award of benefits is within the district court’s discretion. *Harman v.*
18 *Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be
19 served by further administrative proceedings, or where the record has been fully
20 developed, it is appropriate to exercise this discretion to direct an immediate award
21 of benefits. *Id.* at 1179 (“the decision of whether to remand for further proceedings
22 turns upon the likely utility of such proceedings”). But when there are outstanding
23 issues that must be resolved before a determination of disability can be made, and
24 it is not clear from the record the ALJ would be required to find the claimant
25 disabled if all the evidence were properly evaluated, remand is appropriate. *Id.*

26 The Court finds that remand is appropriate because the circumstances of this
27 case suggest that further administrative review could remedy the ALJ’s errors. *See*
28 *INS v. Ventura*, 537 U.S. 12, 16, 123 S. Ct. 353 (2002) (upon reversal of an

1 administrative determination, the proper course is remand for additional agency
2 investigation or explanation, “except in rare circumstances”); *Harman*, 211 F.3d at
3 1180-81.

4 IT IS THEREFORE ORDERED that Judgment be entered reversing the
5 Commissioner’s decision and remanding this matter for further administrative
6 proceedings consistent with this Memorandum Opinion and Order.³

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8 DATED: October 05, 2015



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10 GAIL J. STANDISH
11 UNITED STATES MAGISTRATE JUDGE
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26 ³ The Court has not reached any other issue raised by Plaintiff except insofar
27 as to determine that reversal with a directive for the immediate payment of benefits
28 would not be appropriate at this time.