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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

SHANEEKA WALKER,)	Case No. ED CV 15-02577-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	ORDER OF REMAND
vs.)	
)	
NANCY A. BERRYHILL, ¹ Acting)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
)	
_____)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

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¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. §405(g).

1 After determining that Plaintiff had the severe impairments of mood
2 disorder, anxiety disorder, substance abuse, obesity, and degenerative
3 disc disease, (AR 22), the ALJ found that Plaintiff had the residual
4 functional capacity ("RFC")² to perform "light work"³ with the following
5 limitations:

6 [O]ccasional postural activities; no ladders,
7 scaffolds, or ropes; frequent, but not constant
8 fine and gross manipulation; avoid concentrated
9 exposure to vibration; no unprotected heights or
10 dangerous machinery; simple or complex, but well-
learned [tasks]; and superficial contact with
coworkers and the public.

11 (AR 24). The ALJ further determined that with these limitations
12 Plaintiff would not be capable of performing any of her past relevant
13 work, but that jobs existed in significant numbers in the national
14 economy that Plaintiff could perform, such as folder, bagger, and
15 garment sorter. (AR 31-32). The ALJ concluded that Plaintiff was not
16 disabled within the meaning of the Social Security Act. (AR 32).

17
18 On July 8, 2015, Plaintiff timely filed a request for the Appeals
19 Council to review the ALJ's decision. (AR 12-14). On October 23, 2015,
20 the Appeals Council denied the request for review, and the ALJ's

21 ² RFC is the most a claimant can still do despite existing
22 limitations. 20 C.F.R. § 404.1545(a)(1).

23 ³ "Light work involves lifting no more than 20 pounds at a time
24 with frequent lifting or carrying of objects weighing up to 10 pounds.
25 Even though the weight lifted may be very little, a job is in this
26 category when it requires a good deal of walking or standing, or when it
27 involves sitting most of the time with some pushing and pulling of arm
28 or leg controls. To be considered capable of performing a full or wide
range of light work, you must have the ability to do substantially all
of these activities. If someone can do light work, we determine that he
or she can also do sedentary work, unless there are additional limiting
factors such as loss of fine dexterity or inability to sit for long
periods of time." 20 C.F.R. § 404.1567(b).

1 decision became the final decision of the Commissioner. (AR 1-4). The
2 Court reviews the Commissioner's decision pursuant to 42 U.S.C. §
3 405(g).
4

5 **STANDARD OF REVIEW**
6

7 The Court reviews a final decision of the Commissioner to determine
8 if the decision is free of legal error and supported by substantial
9 evidence. Brewes v. Comm'r of Soc. Sec. Admin., 682 F.3d 1157, 1161
10 (9th Cir. 2012). "Substantial evidence" is more than a mere scintilla,
11 but less than a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009
12 (9th Cir. 2014). To determine whether substantial evidence supports a
13 finding, "a court must consider the record as a whole, weighing both
14 evidence that supports and evidence that detracts from the
15 [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035
16 (9th Cir. 2001) (internal quotations omitted). "If the evidence can
17 reasonably support either affirming or reversing the ALJ's conclusion,
18 [a court] may not substitute [its] judgment for that of the ALJ."
19 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).
20

21 **PLAINTIFF'S CONTENTIONS**
22

23 Plaintiff alleges that the ALJ improperly discounted the opinions
24 of (a) treating physician Geetha Puri, M.D., (b) examining physician
25 Ernest Bagner, M.D., and (c) examining psychologist Margaret Donohue,
26 Ph.D. (Joint Stip. at 4).
27
28

1 When a treating or examining physician's opinion is contradicted by
2 another doctor, it may only be rejected if the ALJ provides "specific
3 and legitimate" reasons supported by substantial evidence in the record.
4 Lester, 81 F.3d at 830-31 (citing Andrews v. Shalala, 53 F.3d 1035, 1043
5 (9th Cir. 1995)); see also Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194,
6 1198 (9th Cir. 2008); compare Lester, 81 F.3d at 830 (uncontradicted
7 treating or examining physician's opinion may be rejected only for
8 "clear and convincing" reasons). An "ALJ can meet this burden by
9 setting out a detailed and thorough summary of the facts and conflicting
10 clinical evidence, stating his interpretation thereof, and making
11 findings." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)
12 (internal quotation marks and citation omitted). "The ALJ must do more
13 than offer his conclusions. He must set forth his own interpretations
14 and explain why they, rather than the doctors', are correct." Embrey v.
15 Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988).

16
17 Dr. Puri treated Plaintiff from September 2013 through February
18 2015, diagnosed Plaintiff with a depressive and post traumatic stress
19 disorder, and prescribed prozac, seroquel, and risperdal. (AR 29-30;
20 see also AR 389-99, 415-21, 537-50, 619-22).

21
22 In a medical source statement dated August 7, 2014, Dr. Puri opined
23 that Plaintiff had "no useful ability to function" in the areas of
24 remembering work-like procedures; understanding and remembering both
25 very short/simple instructions and detailed instructions; carrying out
26 detailed instructions; maintaining regular attendance and being punctual
27 within customary, usually strict tolerances; sustaining an ordinary

1 routine without special supervision; working in coordination with or
2 proximity to others without being unduly distracted; completing a normal
3 workday and workweek without interruptions from psychologically-based
4 symptoms; performing at a consistent pace without an unreasonable number
5 and length of rest periods; accepting instructions and responding
6 appropriately to criticism from supervisors; getting along with co-
7 workers or peers without unduly distracting them or exhibiting
8 behavioral extremes; responding appropriately to changes in a routine
9 work setting; dealing with normal work stress and the stress of
10 semiskilled and skilled work; and setting realistic goals and making
11 plans independently of others. (Joint Stip. at 6; see also AR 418-19).
12 Dr. Puri also characterized Plaintiff as "unable to meet competitive
13 standards" in the areas of carrying out very short and simple
14 instructions; maintaining attention for two-hour segments; making simple
15 work-related decisions; asking simple questions or requesting
16 assistance; being aware of normal hazards and taking appropriate
17 precautions; maintaining socially appropriate behavior; traveling in
18 unfamiliar places; and using public transportation. (AR 418-19). Dr.
19 Puri also opined that Plaintiff had extreme functional difficulties in
20 maintaining concentration, persistence, or pace as well as marked
21 difficulties in maintaining social functioning. (AR 420). In addition,
22 Dr. Puri reported that Plaintiff's impairments on average would cause
23 her to be absent from work more than four days per month. (Id.). Dr.
24 Puri answered "no" to the question "[i]f your patient's impairments
25 include alcohol or substance abuse, do alcohol or substance abuse
26 contribute to any of your patient's limitations set forth [in the
27 medical source statement]." (AR 421).

28

1 In a medical source statement concerning drug and/or alcohol abuse
2 dated April 28, 2015, Dr. Puri concluded that Plaintiff was unable to
3 work on a sustained basis. (AR 624). Dr. Puri attributed Plaintiff's
4 inability to work "to [her] underlying medical conditions, which are
5 disabling on their own without consideration for any drug and/or alcohol
6 abuse." (Id.). Dr. Puri further opined that "[a]bsent any drug and/or
7 alcohol abuse, [Plaintiff] would still be unable to perform any work on
8 a sustained basis." (Id.).

9
10 The ALJ gave the following reasons for giving Dr. Puri's opinions
11 little weight:

12
13 [Dr. Puri] believes the claimant is disabled with
14 or without substance use. However, the progress
15 notes make little mention of the claimant's
16 substance use and do not even include a substance
17 use diagnosis despite other medical records and the
18 claimant's testimony indicating ongoing substance
19 use and inconsistent statements about the
20 claimant's last use. It appears Dr. Puri did not
21 appreciate the extent of the claimant's substance
22 use, as she gave virtually no attention [to] it.
23 Thus, the undersigned gives little weight to her
24 opinions.

25 (AR 29-30).⁴

26
27 ⁴ Defendant argues that the ALJ discounted Dr. Puri's opinion that
28 Plaintiff is disabled with or without substance abuse because (1) Dr.
29 Puri's treatment notes did not identify Plaintiff as having a substance
30 abuse problem; (2) Plaintiff was not honest with various doctors about
31 her use of drugs/alcohol and made inconsistent statements regarding her
32 substance use; and (3) Dr. Layton testified that Plaintiff's abilities
33 were impacted by her noncompliance with medical treatment and Plaintiff
34 was capable of performing well-learned simple and complex tasks and jobs
35 with superficial third-party contact. (Joint Stip. at 15). However,
36 the ALJ did not articulate the second and third reasons that Defendant
37 identifies and the Court perceives no basis for attributing the ALJ's
38 implicit reliance on these reasons in discounting Dr. Puri's opinion.
39 Therefore, the Court will not affirm the ALJ's decision to give little
40 (continued...)

1 The ALJ did not provide specific and legitimate reasons supported
2 by substantial evidence in the record for rejecting Dr. Puri's opinions.
3 First, while Dr. Puri did not include a substance use diagnosis and
4 treatment notes made "little mention of . . . substance use," (AR29-30),
5 other physicians similarly failed to diagnose a substance use disorder
6 or discuss substance use in their notes, and the ALJ did not equally
7 discount these opinions. Instead, for example, the ALJ gave "some
8 weight" to the opinions of Dr. Bagner even though Bagner - like Dr. Puri
9 - failed to diagnose Plaintiff with a substance use disorder. (AR 410-
10 14). Dr. Bagner's treatment notes also made little mention of substance
11 use, (compare AR 410-11 (report of Dr. Bagner indicating that Plaintiff
12 consumed one drink per week and denied a history of substance abuse)
13 with AR 395 (report of Dr. Puri noting no substance use)), and yet the
14 ALJ did not similarly discount Dr. Bagner's opinion. Nor did the ALJ
15 discount the opinion of the state agency consultant Dr. Alan Berkowitz
16 even though Berkowitz's notes report no evidence of substance abuse.
17 (AR 30 (assigning "some weight" to Dr. Berkowitz's opinion although
18 Berkowitz reports that "[t]here is no evidence of any substance abuse
19 disorder/DAA [Drug Addiction and/or Alcoholism⁵]" (quoting AR 98); see
20 also id. (assigning opinion of state agency psychological consultant
21 Brady Dalton, Psy.D., "some weight" although Dalton reported that
22 "[s]ubstance abuse is documented, but a DAA material determination is
23 not required") (quoting AR 116)). Because several physicians committed

24 ⁴ (...continued)
25 weight to Dr. Puri's opinion based on the second and third reasons
26 identified by Defendant. Cf. Pinto v. Massanari, 249 F.3d 840, 847-48
(9th Cir. 2001).

27 ⁵ See Program Operations Manual System, GN 0440.001 List of
28 Acronyms, Soc. Sec. Admin. (July 2, 2012),
<https://secure.ssa.gov/apps10/poms.nsf/lrx/0204440001>.

1 the same omissions that the ALJ relies on to discount Dr. Puri's
2 opinions, and the ALJ did not assign little weight to these opinions,
3 Dr. Puri's omissions are not a legitimate reason supported by
4 substantial evidence for discounting Dr. Puri's opinions.

5
6 Second, while Dr. Puri did not diagnose Plaintiff with a substance
7 use disorder, substance use alone is not sufficient to meet the criteria
8 for a substance use disorder diagnosis. See Diagnostic and Statistical
9 Manual of Mental Disorders, Fifth Edition ("DSM-5") (2013) (patient must
10 meet two or more of eleven criteria within a twelve-month period to
11 merit a substance use disorder diagnosis). Dr. Puri recognized that
12 Plaintiff "abuse[d]" substances. (AR 421) (answering "no" to the
13 question "[i]f your patient's impairments include alcohol or substance
14 abuse, do alcohol or substance abuse contribute to any of your patient's
15 limitations"). As Plaintiff's treating physician, it was Dr. Puri -
16 not the ALJ - who was charged with assessing whether Plaintiff met the
17 criteria for a substance use disorder. The ALJ was not entitled to
18 substitute his judgment for the clinical judgment of Dr. Puri.⁶

19
20
21 ⁶ An ALJ may not render his own medical opinion or substitute his
22 own diagnosis for that of the claimant's physician. See Tackett v.
23 Apfel, 180 F.3d 1094, 1102 (9th Cir. 1999); see also Day v. Weinberger,
24 522 F.2d 1154, 1156 (9th Cir. 1975) (hearing examiner erred by failing
25 to "set forth any specific reasons for rejecting the ... doctors'
26 uncontroverted conclusions" and instead making "his own exploration and
27 assessment as to claimant's physical condition" even though he "was not
28 qualified as a medical expert"); Gonzalez Perez v. Sec'y of Health &
Human Servs., 812 F.2d 747, 749 (1st Cir. 1987) (ALJ may not "substitute
his own layman's opinion for the findings and opinion of a physician");
Ferguson v. Schweiker, 765 F.2d 31, 37 (3d Cir. 1985) (ALJ may not
substitute his interpretation of laboratory reports for that of a
physician); McBrayer v. Sec'y of Health and Human Servs., 712 F.2d 795,
799 (2d Cir. 1983) (ALJ cannot arbitrarily substitute own judgment for
competent medical opinion).

1 Additionally, the ALJ relied on Dr. Puri's failure to diagnose
2 Plaintiff with a substance use disorder and the absence of (in the ALJ's
3 estimation) sufficient mention of Plaintiff's substance use in the
4 treatment notes in giving Dr. Puri's opinion little weight. While
5 conflicts between a physician's opinions and treatment notes may
6 constitute a legitimate reason for discounting a treating source's
7 opinions, Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001), here,
8 the ALJ did not identify any conflicts. Instead, the ALJ merely noted
9 the absence of a substance abuse diagnosis and purported insufficient
10 attention to substance use. These omissions were not in conflict with
11 Dr. Puri's opinions but rather were consistent with Dr. Puri's opinion
12 that Plaintiff's substance use did not play a role in her limitations.
13 The ALJ may have disagreed with Dr. Puri's opinion. However, the ALJ
14 was not entitled to substitute his judgment for that of Plaintiff's
15 treating psychiatrist. Cf. Tackett, 180 F.3d at 1102; Day, 522 F.2d at
16 1156. Instead, the ALJ was charged with identifying the necessary
17 conflicting evidence, stating his interpretations of this evidence,
18 explaining why his own interpretations of this evidence - rather than
19 Dr. Puri's - were correct, and making the required findings. Cf.
20 Magallanes, 881 F.2d at 751; Embrey, 849 F.2d at 421-22. The ALJ failed
21 to do so.

22
23 Third, while the ALJ challenged Dr. Puri's opinion that Plaintiff
24 is disabled with or without substance use, the ALJ did not explain with
25 the requisite specificity how Dr. Puri's failure to diagnose Plaintiff
26 with a substance use disorder or further document substance use
27 constituted reasons for discounting Dr. Puri's other opinions regarding
28 Plaintiff's functioning in various work-related areas. (AR 418-20

1 (opining that Plaintiff has "no useful ability to function" in sixteen
2 areas and is "unable to meet competitive standards in eight areas;
3 Plaintiff has extreme functional difficulties in maintaining
4 concentration, persistence, or pace and marked difficulties in
5 maintaining social functioning; and Plaintiff's impairments on average
6 would cause her to be absent from work more than four days per month)).
7 An "ALJ must do more than offer his conclusions. He must set forth his
8 own interpretations and explain why they, rather than the doctors', are
9 correct." Embrey, 849 F.2d at 421-22. The ALJ did not satisfy this
10 burden.

11
12 For these reasons, the ALJ failed to provide specific and
13 legitimate reasons supported by substantial evidence in the record for
14 giving "little weight" to Dr. Puri's opinions.

15
16 **B. Remand is Warranted**

17
18 The decision whether to remand for further proceedings or order an
19 immediate award of benefits is within the district court's discretion.
20 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
21 useful purpose would be served by further administrative proceedings or
22 where the record has been fully developed, it is appropriate to exercise
23 this discretion to direct an immediate award of benefits. Id. at 1179
24 ("[T]he decision of whether to remand for further proceedings turns upon
25 the likely utility of such proceedings."). Where, however, as here, the
26 circumstances suggest that further administrative review could remedy
27 the Commissioner's errors, remand is appropriate. McLeod v. Astrue, 640
28 F.3d 881, 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

1 The ALJ failed to provide specific and legitimate reasons,
2 supported by substantial evidence in the record, for discounting Dr.
3 Puri's opinions. Thus, remand is appropriate. Because outstanding
4 issues must be resolved before a determination of disability can be
5 made, cf. Varney v. Sec'y of HHS, 859 F.2d 1396, 1401 (9th Cir. 1988),
6 and "when the record as a whole creates serious doubt as to whether the
7 [Plaintiff] is, in fact, disabled within the meaning of the Social
8 Security Act," further administrative proceedings would serve a useful
9 purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th
10 Cir. 2014) (citations omitted).

11
12 The Court has not reached any other issue raised by Plaintiff
13 except insofar as to determine that reversal with a directive for the
14 immediate payment of benefits would not be appropriate at this time.

15
16 **ORDER**

17
18 For the foregoing reasons, the decision of the Commissioner is
19 reversed, and the Court remands the matter for further proceedings
20 pursuant to Sentence 4 of 42 U.S.C. § 405(g).

21
22 LET JUDGMENT BE ENTERED ACCORDINGLY.

23
24 DATED: January 27, 2017

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