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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOYCE E. WALTERS,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner  
of Social Security,

Defendant.

) 1:09cv0077 DLB

) ORDER REGARDING PLAINTIFF'S  
) SOCIAL SECURITY COMPLAINT

**BACKGROUND**

Plaintiff Joyce E. Walters (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for supplemental security income (“SSI”) pursuant to Title XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable Dennis L. Beck, United States Magistrate Judge.<sup>1</sup>

**FACTS AND PRIOR PROCEEDINGS<sup>2</sup>**

On February 18, 2005, Plaintiff protectively filed an application for SSI. AR 106, 107-09. She alleged disability since January 6, 2005, due to pain in the lower neck and top of spine

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<sup>1</sup>The parties consented to the jurisdiction of the Magistrate Judge for all purposes.

<sup>2</sup> References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 and a blood clot in the left leg. AR 107-09, 110-16. After Plaintiff's application was denied  
2 initially and on reconsideration, she requested a hearing before an Administrative Law Judge  
3 ("ALJ"). AR 60-67, 69-74, 75. On June 29, 2007, ALJ Eve B. Godfrey held a hearing. AR 27-  
4 59. ALJ Godfrey denied benefits on August 27, 2007. AR 16-26. The Appeals Council denied  
5 review on October 29, 2008. AR 5-8.

#### 6 Hearing Testimony

7 ALJ Godfrey held a hearing on June 29, 2007, in Bakersfield, California. AR 27-59.  
8 Plaintiff appeared with her non-attorney representative, Diana Wade. John Kilcher, a vocational  
9 expert, and Dr. Justin Renaudin, a medical expert, also appeared and testified. AR 29.

10 Plaintiff was 41 at the time of the hearing. She has a 9th grade education. AR 31. She  
11 last worked in January 2005 doing in home services. Before that, she worked as a housekeeper  
12 and a cashier. AR 32.

13 After the date of alleged disability, Plaintiff had back and neck surgery. AR 32-33. She  
14 had neck surgery in August 2005, but did not really have a good result from it. The surgery made  
15 her lower back "hurt real bad" and pinched off a nerve, but improved some of her neck problems.  
16 She had a second surgery in October 2006. The surgery unpinched the nerve, but she gets muscle  
17 spasms in her leg if she sits or stands too long. They said that it will get better. AR 33. The  
18 muscle spasms just happen in her left leg two or three times a day. It is her whole leg, from the  
19 back of her buttocks to her foot. It usually happens when she sits for more than an hour, but  
20 occasionally it can happen after 20 minutes. AR 33-34.

21 Plaintiff feels she cannot work because she is not able to sit for very long. She takes a lot  
22 of painkillers and spends most of her time in bed. She gets up in the morning for a few minutes  
23 and then usually goes back to bed for a couple hours. If it is a good day, she gets up and does the  
24 dishes or starts them and her boyfriend finishes them. When she hurts, she gets "real mad." AR  
25 34-35.

26 Plaintiff takes Norcos, Somas, Robaxin and Lyrica. The Norco is 10 vicodin, 325  
27 milligrams acetaminophen. She takes three a day. She tries to take the Soma in the evening.  
28 She tries not to take them in the day because they knock her out cold and she has to take care of

1 her 14-year-old son. She lives with her son and her boyfriend. Her boyfriend is the father of her  
2 son. AR 35-36. She takes Robaxin when she cannot take the Soma. It is a light, lower dosage  
3 and has less effect. She sometimes takes them three times a day. She takes Lyrica if she can  
4 afford it. AR 36.

5 Plaintiff testified that she does not take care of her 14-year-old son. His dad “takes care  
6 of him mostly.” She helps out. She starts the dishes or the laundry. Her son takes care of  
7 himself now. She disciplines and supports him. She does not help him with his homework. His  
8 father is self-employed, doing maintenance and yard work. He does not have a company or  
9 employees. He does not work full time. AR 37.

10 Plaintiff does not drive. She never has. She smokes about half a pack a day. She is 5'5"  
11 and weights about 186. AR 37.

12 Plaintiff testified that she left a hospital when she was complaining of abdominal and  
13 urinary problems without getting a certain procedure. She said she might have had kidney stones  
14 that day and could not handle just sitting there and went home. She thought she went back the  
15 next day. She has been to the hospital many times for kidney stones. AR 38.

16 Plaintiff testified that she was never sent to vocational rehabilitation counseling or  
17 training of any nature. She did not have job training. She went to a parenting class at College  
18 Health to deal with her son because he has ADHD. She went to the doctor and got a note saying  
19 that she could not make it to class so it was an excused absence. AR 39-40.

20 In response to questions from her representative, Plaintiff testified that she has cramping  
21 in her legs and numbness in the left leg. Before she had her neck surgery, she was complaining  
22 of very bad headaches. The headaches were getting better after the neck surgery, but they got  
23 worse after she had her lower back surgery. The doctor said it was probably from the nerves in  
24 there. He wanted to give her some kind of shots, where they put three in your neck. She wanted  
25 to wait and they changed her doctor to Tim Mensi. The doctor said her leg takes a while to heal.  
26 It has gotten a little bit better in the last few months. She can sit for a little bit longer. She still  
27 spends a lot of time in bed, probably 16 hours a day. AR 41. While in bed, she sleeps, lies there,  
28 and tosses and turns. She does not “really have much problem sleeping.” AR 41.

1 Plaintiff steadily has been gaining weight. She believed it was from inactivity. She  
2 thought gaining weight also was side effect from Lyrica. She spends a lot of time in bed and was  
3 sure that had something to do with it. There is not really any type of activity that she does for  
4 enjoyment. AR 42.

5 In response to additional questions from the ALJ, Plaintiff testified that her son is not on  
6 benefits. He takes medication that she has to monitor. She makes sure that he takes it. AR 43.

7 Medical expert, Dr. Renaudin, also responded to questions from the ALJ. Dr. Renaudin  
8 testified that he had the opportunity to review all of Plaintiff's records. In his opinion, she did  
9 not meet or equal a listing. Dr. Renaudin thought she had two significant problems in the last  
10 couple of years. She had cervical spondylosis operated on in August of '05 and she had an  
11 anterior cervical disc infusion. She had a large lumbar disc on the left at L5-S1 operated on in  
12 October of '06. She also has electrical evidence of mild bilateral or carpal tunnel syndrome. She  
13 has headaches of an unclear genesis. AR 44.

14 It appeared to Dr. Renaudin that Plaintiff had a successful result from the neck issue. She  
15 still had some residual from the lumbar surgery, but it was quite a large disc. Dr. Renaudin  
16 thought that she could continue to improve, but it was unsettling that the leg cramping and  
17 spasms had been going on for seven, almost eight months. He would not rule out that they would  
18 improve. Looking at the records, this was the kind of lumbar disc where clearly she needed  
19 surgery. It customarily does reasonably well at a 80 percent confidence level. He thought it was  
20 unsettling that she still had the spasms, but he did not think that it necessarily was going to be  
21 permanent. AR 45.

22 Dr. Renaudin testified that in the two years and four months since February '05, there was  
23 no 12 month period when she was restricted to less than sedentary work. She had two significant  
24 surgeries, but he did not think that she would be restricted to less than sedentary for 12 months.  
25 AR 45-46. He thought she would be able to do light work. Based on the most recent RFC  
26 evaluation, she could stand up to six hours a day and/or walk up to six hours. AR 46. She was  
27 just examined 30, 40 days ago. AR 47.

1 Dr. Renaudin also answered questions from Plaintiff's representative. Dr. Renaudin  
2 testified that it was unsettling that the cramping had gone on for six, seven months post op  
3 speaking from the standpoint of a surgeon having done the procedure. He did not feel that it  
4 meant "incontestably that she's doomed to having spasms for the rest of her life." AR 47. It was  
5 something that does not happen often, but happens occasionally. AR 47. Assuming Plaintiff's  
6 testimony was credible and she was having cramping and spasms, it would have some restriction  
7 on her ability to sit. AR 47. It would require getting up periodically or taking muscle relaxants.  
8 AR 47-48. During an eight-hour day, she would have to get up every hour for approximately five  
9 to ten minutes. AR 48.

10 Dr. Renaudin testified that the muscle relaxers that Plaintiff takes can cause the type of  
11 sedation that she describes. AR 48-49. He would recommend the Robaxin. He thought that her  
12 treating physician's opinion was accurate when he gave it. AR 50.

13 In response to additional questions from the ALJ, Dr. Renaudin testified that Dr. Mensi  
14 listed bilateral occipital nerve block scheduled to rule out occipital neuralgia. Dr. Renaudin  
15 indicated that what he was saying is if one injects the occipital nerves and gets relief of the pain,  
16 maybe occipital neuralgia is the correct diagnosis. AR 51. Plaintiff testified it was never done.  
17 AR 51. Dr. Renaudin also reported that there was no functional significance to the absence of a  
18 left ankle jerk. AR 52.

19 The VE, John Kilcher, also testified. He categorized Plaintiff's past relevant work as a  
20 housekeeper, DOT code 301.474-010, as medium level, semi-skilled, SVP of 3. AR 52-53. Her  
21 work as a maid, DOT code 323.687-014, was classified as light, unskilled, SVP of 2. Her job as  
22 a Cashier II, DOT code 211.461-010, also was classified at light, unskilled, SVP of 2. AR 53.

23 For the first hypothetical, the ALJ asked the VE to assume an individual who could sit for  
24 up to 20 minutes at a time, stand for 15 minutes at a time, walk for a quarter mile and when the  
25 person changes positions, for walking, has to be three minutes. The individual also needs a  
26 position in which she can change, including standing and walking, and take an unscheduled  
27 break. The VE testified that this individual would not be able to do any of the past relevant work  
28 or any other work. AR 53.

1 For the second hypothetical, the ALJ asked the VE to assume a person who could sit two  
2 hours at a time, stand up to two hours at a time, walk one hour at a time, sit for a total of six out  
3 of eight hours, stand for between four and five hours out of eight, walk four out of eight, walk  
4 1/4 to 1/2 mile, and only use the left foot frequently. This person occasionally could climb, but  
5 frequently could do other postural activities, occasionally could be exposed to unprotected  
6 heights and vibrations, could frequently be exposed to moving mechanical parts, and could  
7 continuously be exposed to humidity and wetness. AR 54. The VE testified that these  
8 restrictions would rule out past work, but there would be a little bit less than a full range of light  
9 work available. There would be jobs as a Small Products Assembler, DOT code 706.684-022,  
10 which is light, unskilled, SVP of 2. Taking into consideration the total time to sit and stand, the  
11 VE reduced the number of jobs, with approximately 70,000 jobs in the U.S. economy. AR 54-  
12 55. The VE also testified that there would be jobs as Hand Packagers. An example would be  
13 Nut and Bolt Packer, DOT code 929.587-010, which is light, unskilled, SVP of 2. By reducing  
14 it, there would be approximately 145,000 jobs in the U.S. economy. AR 55.

15 For the third hypothetical, the individual could sit for six out of eight hours in a day.  
16 After an hour, the individual would need to be able to get up, stretch and walk around for no  
17 more than five minutes. The individual would be able to stand and walk four out of eight hours,  
18 but only 30 minutes. The VE testified that this individual could not do any of the past relevant  
19 jobs, but there would be other jobs. The jobs that the VE had given for the previous hypothetical  
20 would be appropriate, but the VE would reduce them a "little more." AR 55.

21 The VE also testified that there would be sedentary jobs classified as assemblers. For  
22 example, there would be a Final Assembler, DOT code 713.687-018, which is classified as  
23 sedentary, unskilled, SVP of 2. There would be approximately 500,000 jobs in the U.S.  
24 economy. There would be jobs classified as Production Inspectors. An example would be a  
25 Table Worker, DOT code 739.687-182, which is sedentary, unskilled, SVP of 2. There would be  
26 approximately 200,000 jobs nationally. The VE's testimony was consistent with the DOT. AR  
27 56.  
28

1 In response to questions from Plaintiff's representative, the VE testified that if the person  
2 in hypothetical three would have to move around up to 10 minutes it would be "kind of iffy" if  
3 the person could do the two sedentary jobs. AR 56. The VE explained that normally with those  
4 type of jobs you don't have to be seated all the time. In the assembler's job, after you get things  
5 assembled you usually move around and take them to another location, so it would give you the  
6 latitude to do that. AR 56-57.

7 The VE indicated that these are unskilled jobs and are not high requirements for  
8 precision. In assembly jobs, you have to work at a sustained pace. If the person could not  
9 maintain expected production, then the person would be excluded. The VE indicated that any  
10 time a person cannot keep up the standards of the company, then they would look on that  
11 unfavorably. AR 57. The VE testified that he uses one day a month as the employer tolerance  
12 for absenteeism per month for unskilled, non-professional work. AR 58. More than one day a  
13 month, the employee would not last very long. AR 58.

#### 14 Medical Record

15 X-rays of the cervical spine taken on November 9, 2004, revealed marked narrowing of  
16 the right C2-3, 3-4 and 5-6 intervertebral foramina and moderate narrowing of the right C4-5  
17 intervertebral foramen. There was decreased flexion in the mid cervical spine. AR 204.

18 A January 13, 2005, MRI scan of the cervical spine showed straightening of the normal  
19 cervical lordosis and sclerosis in the facet joints on the left side at C4-5, mild-to-moderate  
20 bilateral foraminal stenosis at C5-6 and left sided foraminal stenosis at C4-5, mild canal stenosis  
21 with no cord compression and bilateral foraminal stenosis at C6-7. AR 202.

22 On January 31, 2005, Plaintiff saw Robert Cross, PA-C, for complaints of hand and arm  
23 pain. On examination, she had 4/5 strength in her upper extremities. She was referred for a  
24 neurosurgery consult and prescribed Norco for pain. AR 197.

25 On February 14, 2005, Plaintiff saw PA Cross for complaints of posterior C-spine pain  
26 radiating to the right side of her shoulder, lateral neck and chest. She denied any weakness. On  
27 examination, she had 4/5 strength in the upper extremities, with decreased range of motion  
28 secondary to pain in the C-spine. PA Cross assessed her with cervical spine foraminal stenosis,

1 as seen on CT, posterior cervical spine pain and right upper anterior shoulder pain (burning).  
2 She was given a trial of nortriptyline, a Medrol Dose Pak X1, and directed to continue taking  
3 Norco and soma. She was referred to a pain specialist. AR 196.

4 On February 23, 2005, O. Leramo, M.D., completed a neurological consultation at the  
5 request of Dr. Nadler. Cervical examination revealed pain on extension of the neck and  
6 tenderness to palpation of the cervical muscles. On neurological examination, she was alert and  
7 fully oriented. Her gait was normal. A sensory examination revealed hyperesthesia bilaterally at  
8 C7-8 dermatomes. Her motor function was normal and reflexes were symmetrical. Dr. Leramo  
9 diagnosed chronic post-traumatic neck pain, C4-5, C5-6 and C6-7 bilateral foraminal stenosis,  
10 bilateral C7-8 radiculopathies and probable mechanical neck pain. AR 218. He recommended a  
11 cervical spine myelogram with CT, an EMG and nerve conduction studies of the upper  
12 extremities and a trial of Motrin. Plaintiff was advised to avoid any heavy lifting, repetitive  
13 bending and twisting of the neck. AR 218.

14 On March 22, 2005, Plaintiff saw PA Cross for ongoing neck pain, nausea and headache.  
15 She reported dropping common items with her right hand and having C-spine pain down to her  
16 right arm and hand. Plaintiff reported getting a fair amount of relief from cervical traction and  
17 using Norco to control pain. On examination, she had good range of motion of her head and  
18 neck with no tremors. She was able to move bilateral upper extremities with 4/5 strength slightly  
19 decreased in her right hand and arm. She had pain on palpation over the right trapezius area.  
20 She was assessed with cervical spine foraminal stenosis, posterior cervical spine pain,  
21 gastroesophageal reflux disease, nausea, vomiting and viral gastritis. She was to continue  
22 cervical spine traction and Norco. She was directed to avoid lifting and carrying firewood. Jack  
23 Nadler, M.D., signed the treatment notes. AR 194.

24 A CT Scan of the cervical spine on April 7, 2005, revealed straightening of normal  
25 cervical adenosis, disc protrusion at C6-7 resulting in mild canal stenosis with no definite cord  
26 compression and mild bilateral foraminal stenosis, mild right-sided foraminal stenosis at C2-3  
27 and C5-6, and mild bilateral foraminal stenosis at C4-5. AR 201.



1 Plaintiff underwent an electrodiagnostic study of both arms on April 8, 2005. The study  
2 revealed evidence of mild bilateral carpal tunnel syndrome affecting sensory components. There  
3 was a single CRD in the right paraspinal muscle, suggestive of right root irritation, but its clinical  
4 significance was questionable. There was no sign of active/chronic denervation, plexopathy,  
5 clear radiculopathy or polyneuropathy of the arms. AR 301-02.

6 On April 12, 2005, Plaintiff sought treatment from the Rural Health Clinic for kidney  
7 stones. Plaintiff left the clinic, did not get the planned IVP done, and did not return to the clinic.  
8 An attempt to call the Plaintiff revealed the wrong phone number. AR 314.

9 On May 20, 2005, Plaintiff reported missing school–job training. She was given a note  
10 for school. AR 316.

11 On June 22, 2005, Plaintiff complained of continued neck pain. AR 298.

12 On July 15, 2005, state agency medical consultant Lavanya Bobba, M.D., completed a  
13 Physical Residual Functional Capacity Assessment form. Dr. Bobba opined that Plaintiff could  
14 lift and/or carry 20 pounds occasionally, 10 pounds frequently, could stand and/or walk about 6  
15 hours in an 8-hour workday, could sit about 6 hours in an 8-hour workday and could push and/or  
16 pull without limitation. AR 206. She frequently could climb, balance, stoop, kneel and crouch.  
17 She occasionally could crawl. AR 207. She should avoid frequent above shoulder level work  
18 and her right upper extremity handling could be done at light exertional level activities. AR 208.  
19 She had no visual, communicative or environmental limitations. AR 208-09.

20 On August 9, 2005, Plaintiff complained of continued neck pain radiating down her  
21 bilateral upper extremities. AR 296.

22 On August 10, 2005, Plaintiff underwent an anterior cervical discectomy and fusion at  
23 C4-5, C5-6 and C6-C7. AR 286. She also had excision of an intervertebral disc, a bone graft  
24 and insertion of an interbody spinal fusion device. AR 227, 286.

25 On August 16, 2005, Plaintiff requested an early refill of Norco because of pain. She was  
26 not counting how many she was taking. PA Cross told her to go to neurosurgery if she was in  
27 pain from surgery and instructed her to take medications exactly as prescribed. AR 317.

1 On August 22, 2005, Plaintiff reported upper back, neck and arm pain. She was  
2 prescribed Vicodin and Motrin. AR 285.

3 On August 29, 2005, Plaintiff reported that her headaches had resolved since having  
4 surgery. She had some upper bicep and right forearm discomfort and pain. She also complained  
5 of muscle spasms in her upper back where the collar rests. PA Cross noted this was common.  
6 Plaintiff was status post anterior cervical discectomy and fusion. She was advised no bending,  
7 lifting, twisting or jumping, no activities, no turning the neck and no driving. PA Cross indicated  
8 that he filled out her Department of Social Services disability form for three months of disability.  
9 Dr. Nadler signed the treatment notes. AR 318.

10 That same day, PA Cross completed a Short-Form Evaluation for Musculoskeletal  
11 Impairments. Plaintiff's diagnoses included c-spine degenerative disk disease, c-spine pain and  
12 muscle spasms. She had 100° flexion, 30° extension, and 30° right and left lateral range of  
13 motion in her spine. PA Cross opined that her condition was temporary for another 3 months.  
14 AR 254.

15 X-rays of the cervical spine taken on September 13, 2005, showed status post interbody  
16 fusion. AR 284.

17 On September 19, 2005, Plaintiff complained of continued left arm pain and cramps, but  
18 was improving every day. AR 283. She was to wean off the c-collar and decrease Norco. AR  
19 283.

20 On October 14, 2005, Plaintiff complained of left lower extremity cramps, which were  
21 improving. AR 322.

22 On November 29, 2005, Plaintiff was "doing well," but complained of spasms to her  
23 neck. Her headaches had gone away. She was to continue physical therapy, along with taking  
24 Motrin and Robaxin. AR 281.

25 X-rays of the lumbar spine taken on January 11, 2006, showed marked straightening of  
26 lumbar lordosis, without other significant findings. AR 334.

27 On January 10, 2006, Plaintiff complained of lower back pain. She was assessed with  
28 degenerative disk disease of the lower spine and facet arthropathy. AR 324.

1 On February 10, 2006, Plaintiff again complained of lower spine pain and muscle spasms.  
2 AR 326. She reported her left foot causing her to trip. She denied any neck or arm pain, having  
3 resolved since her ACDF. On examination, she had tenderness to palpation over the L-S spine.  
4 She had 4/5 strength in her bilateral lower extremities and her range of motion was good. PA  
5 Cross assessed her with lumbar spine pain, muscles spasms and lumbar spine degenerative  
6 discogenic disease. He ordered an MRI of the L-spine and prescribed SOMA for muscle spasms.  
7 She was directed to avoid bending, lifting, twisting, jumping or impact activities. Dr. Nadler  
8 signed the treatment notes. AR 327.

9 A MRI scan of the lumbar spine taken on March 6, 2006, showed a large left-sided disc  
10 protrusion at L5-S1 resulting in moderate to severe left-sided foraminal stenosis and indentation  
11 upon the left S1 nerve root and mild to moderate canal stenosis. It also revealed mild canal  
12 stenosis and bilateral foraminal stenosis at L4-L5. AR 263.

13 On March 15, 2006, Plaintiff complained of the same left leg pain. She had no new  
14 problems. AR 328. PA Cross directed her to stop or decrease smoking. AR 328.

15 On March 29, 2006, Plaintiff was continuing to improve. AR 280.

16 On May 5, 2006, Plaintiff complained of left leg pain since a fall. AR 330.

17 On May 17, 2006, Plaintiff saw Dr. Leramo for low back pain radiating to the left leg,  
18 accompanied by numbness and weakness. She reported falling backwards while moving some  
19 wood in April 2006. AR 273. Sensory examination revealed hyperesthesia, left L5-S1  
20 dermatome. She had grade 5 motor function. Spinal examination revealed tenderness to  
21 palpation in the lumbosacral region. Left ankle jerk was absent. Dr. Leramo diagnosed post-  
22 traumatic low back pain, L5-S1 disk herniation, left side, and left L5-S1 radiculopathies. He  
23 recommended lumbar x-rays, EMG and nerve conduction studies of the lower extremities, a new  
24 MRI and prescribed Lyrica. AR 274. He opined that Plaintiff would eventually require surgery,  
25 consisting of L5 laminectomy and L5-S1 left microdiscectomy. AR 275.

26 An electrodiagnostic study of both legs completed on July 18, 2006, revealed normal  
27 findings, although she had absent left ankle jerk. AR 346.

1 An x-ray of the lumbar spine taken on July 26, 2006, revealed slight narrowing of L5-S1  
2 intervertebral space. There was no evidence of abnormal motion. AR 364.

3 On October 4, 2006, Plaintiff complained to Dr. Leramo of continued lower back pain  
4 with left leg pain. AR 351.

5 An x-ray taken October 6, 2006, showed an L5-S1 herniated disc. AR 365.

6 On October 6, 2006, Plaintiff underwent an L5 laminectomy, and left L5-S1  
7 microdiskectomy and decompression of the dura and the S1 nerve root and bilateral  
8 osteophytectomies and proximal foraminotomies. AR 352-53.

9 On October 18, 2006, Plaintiff felt like she was improving. AR 355.

10 On December 18, 2006, Plaintiff saw Jan Mensink, M.D. Although Plaintiff's leg and  
11 lumbar pain had resolved, she complained of occipital headaches and bilateral hand numbness.  
12 On examination, she had marked tenderness over the occipital nerves bilaterally and muscle  
13 spasm in the paravertebral cervical spine muscles. She had moderately good range of the  
14 cervical spine.

15 Dr. Mensink diagnosed occipital neuralgia and cervical radicular symptoms. Physical therapy  
16 and occipital nerve blocks were recommended. She was prescribed Valium and Darvocet. AR  
17 356.

18 On December 29, 2006, Plaintiff reported that she was doing better. AR 333.

19 An electrodiagnostic study of both arms completed on February 14, 2007, revealed  
20 abnormal findings. There was evidence of bilateral carpal tunnel syndrome, which was mild in  
21 degree bilaterally, right more than left. AR 358-62.

22 On February 14, 2007, Plaintiff saw Dr. Mensink and complained of continued headache,  
23 neck pain and left hand numbness. Plaintiff noted that when she stopped Lyrica, her headaches  
24 started. On examination, Plaintiff had very sharp palpable tenderness of the occipital nerves, left  
25 greater than right, with marked point tenderness of the occipital nerve insertions in the inner  
26 scalp. She had some mild muscle spasms of the cervical muscles and good neck range of  
27 motion. Dr. Mensink diagnosed occipital neuralgia headaches and bilateral carpal tunnel.  
28

1 Plaintiff was to restart Lyrica and schedule occipital nerve blocks. She was given a prescription  
2 for Norco. AR 357.

3 On March 28, 2007, Dr. Mensink completed a Lumbar and Cervical Spine Residual  
4 Functional Capacity Questionnaire. Dr. Mensink diagnosed Plaintiff with occipital neuralgia,  
5 bilateral carpal tunnel syndrome and status post lumbar laminectomy. Her prognosis was  
6 moderate. Plaintiff had chronic pain/paresthesia, with tenderness, muscle spasm and impaired  
7 sleep. Dr. Mensink noted Plaintiff's left ankle jerk was absent. Dr. Mensink opined that  
8 Plaintiff had significant limitation of motion and severe headache pain associated with  
9 impairment of the cervical spine. She had bilateral occipital neuralgia and was scheduled for  
10 nerve blocks. AR 257-58.

11 Dr. Mensink reported that Plaintiff had approximately 2-3 headaches per week, lasting 2-  
12 3 days at a time. Her impairments lasted or could be expected to last at least twelve months. She  
13 was not a malingerer, but emotional factors contributed to the severity of her symptoms and  
14 functional limitations. Dr. Mensink further opined that Plaintiff was incapable of even "low  
15 stress" jobs because of severe headaches. In a competitive work situation, Plaintiff could walk  
16 1/4 mile without rest or severe pain. She could sit for 20 minutes and stand for 15 minutes at one  
17 time. It was unknown how long she could sit and stand/walk total in an 8-hour working day.  
18 She would need to include periods of walking during an 8-hour day. AR 260. She would need a  
19 job that permitted shifting position at will and would need to take unscheduled breaks. Dr.  
20 Mensink did not know how often this would happen, but noted that Plaintiff spends most of her  
21 time lying down. AR 261. Plaintiff likely would be absent from work more than four days per  
22 month. Dr. Mensink did not think Plaintiff could work in a job that would require 8 hours a day,  
23 5 days a week with regular breaks and a one hour lunch. AR 262.

24 On May 18, 2007, Jonathan M. Gurdin, M.D., completed a consultative orthopedic  
25 evaluation. Plaintiff complained of left leg pain and neck pain with headaches. On physical  
26 examination, Plaintiff appeared to show a somewhat exaggerated pain response. AR 338. She  
27 walked with a left-sided antalgic limp, "which may have been somewhat exaggerated." AR 339.  
28 She was able to walk on the toes and heel of the right leg, but was unwilling to attempt on the left

1 leg due to left thigh pain. She showed somewhat poor balance while walking heel-to-toe. She  
2 had no difficulty getting on and off the examining table or lying down or sitting up. Plaintiff  
3 complained of pain in the posterior aspect of the left thigh with range of motion testing of the  
4 back. She complained of pain with muscle strength testing of flexion about the left knee and  
5 gave a poor effort to cooperate. AR 339. Her left leg strength was otherwise intact and rated at  
6 5/5.

7 Dr. Gurdin diagnosed Plaintiff with cervical disc disease with one prior surgery, lumbar  
8 disc disease with a recent surgery and mild obesity. Plaintiff appeared to be mildly stiff and sore  
9 in the lumbar area. Dr. Gurdin noted there had been improvement in her neck complaints with  
10 the cervical surgery and he would expect further improvement with ongoing treatment. Dr.  
11 Gurdin opined that Plaintiff could probably be on her feet for 1 ½ to 2 hours at a time and for 4  
12 or 5 hours out of 8 hours being limited by the pain in the left thigh. She appeared capable of  
13 sitting for 1½ to 2 hours at a time and for 5 or 6 hours out of 8 hours. She probably could lift 15  
14 to 20 pounds occasionally, 10 pounds frequently. AR 340.

15 Dr. Gurdin also completed a partial Medical Source Statement of Ability to Do Work-  
16 Related Activities (Physical) form. He opined that Plaintiff could sit 2 hours at one time, stand 2  
17 hours at one time and walk 1 hour at one time. She could sit 6 hours, stand 4 or 5 hours and walk  
18 4 hours in an 8 hour work day. AR 341. She could use her hands continuously for reaching,  
19 handling, fingering, feeling, and pushing/pulling. She could use her right foot continuously and  
20 her left foot frequently to operate foot controls. AR 342. She occasionally could climb stairs,  
21 ramps, ladders or scaffolds. She frequently could balance, stoop, kneel, crouch and crawl. AR  
22 343. She occasionally could tolerate exposure to unprotected heights and vibrations. She  
23 frequently could tolerate moving mechanical parts and continuously tolerate humidity and  
24 wetness. AR 344.

25 On August 29, 2007, Plaintiff sought treatment from Christine Cormack, N.P., for foot  
26 pain. AR 394-45. An x-ray showed a healing fracture of proximal shaft of left fourth toe. AR  
27 377, 395. A subsequent x-ray on October 9, 2007, showed considerable healing. AR 375.

1 On October 18, 2007, Plaintiff sought treatment from Stacie Bohn, N.P., for complaints  
2 of a urinary tract infection and low back pain. She was referred to a podiatrist for evaluation of  
3 her old metatarsal fracture. AR 392-93.

4 On January 18, 2008, Plaintiff sought emergency treatment for back pain radiating to her  
5 lower left leg. AR 372-73.

6 On January 20, 2008, Plaintiff sought emergency treatment for pain in her left foot. AR  
7 367-68. X-rays were unremarkable. AR 369.

8 On February 6, 2008, Plaintiff complained of increased pain radiating down her left leg  
9 with weakness. Treatment notes reflected that she had 90% improvement of her symptoms  
10 following the October 2006 lumbar procedure. AR 383.

11 An x-ray of the lumbar spine taken on February 19, 2008, was unremarkable. AR 385.  
12 An MRI of the lumbar spine showed post laminectomy residuals at L5-S1. She had L5-S1  
13 posterior disc bulge/osteophyte with superimposed residual or recurrent disc protrusion, left  
14 posterior paramedian, encroaching on the lateral recess along with considerable scar posterior to  
15 this region. It was noted that these findings might affect the descending left S1 nerve root. The  
16 MRI also revealed bilateral neural foraminal stenosis at L5-S1, mild on the right, but moderate to  
17 severe on the left most likely affecting the exiting L5 nerve root. AR 386-87.

18 Plaintiff again complained of left leg pain on March 4, 2008. She had a mildly antalgic  
19 gait. She was noted to be taking Lyrica, Vicodin, ibuprofen and temazepam. AR 384.

#### 20 ALJ's Findings

21 The ALJ found that Plaintiff had not engaged in substantial gainful activity. AR 21. She  
22 had the severe impairments of status post anterior cervical discectomy and fusion on August 10,  
23 2005, and status post lumbar laminectomy and discectomy on October 6, 2006. AR 21-22. She  
24 retained the residual functional capacity ("RFC") to perform the full range of sedentary work.  
25 AR 22. She could stand and/or walk four hours in an eight-hour workday in thirty minute  
26 increments and sit for six hours in an eight-hour workday in one hour increments with the need to  
27 stand (stretch, move) for up to five minutes. AR 22. She could not perform any past relevant  
28

1 work, but there were jobs that existed in significant numbers in the national economy that she  
2 could perform. AR 25.

### 3 SCOPE OF REVIEW

4 Congress has provided a limited scope of judicial review of the Commissioner's decision  
5 to deny benefits under the Act. In reviewing findings of fact with respect to such determinations,  
6 the Court must determine whether the decision of the Commissioner is supported by substantial  
7 evidence. [42 U.S.C. 405\(g\)](#). Substantial evidence means "more than a mere scintilla,"  
8 [Richardson v. Perales, 402 U.S. 389, 402 \(1971\)](#), but less than a preponderance. [Sorenson v.](#)  
9 [Weinberger, 514 F.2d 1112, 1119, n. 10 \(9th Cir. 1975\)](#). It is "such relevant evidence as a  
10 reasonable mind might accept as adequate to support a conclusion." [Richardson, 402 U.S. at](#)  
11 [401](#). The record as a whole must be considered, weighing both the evidence that supports and  
12 the evidence that detracts from the Commissioner's conclusion. [Jones v. Heckler, 760 F.2d 993,](#)  
13 [995 \(9th Cir. 1985\)](#). In weighing the evidence and making findings, the Commissioner must  
14 apply the proper legal standards. See, e.g., [Burkhart v. Bowen, 856 F.2d 1335, 1338 \(9th Cir.](#)  
15 [1988\)](#). This Court must uphold the Commissioner's determination that the claimant is not  
16 disabled if the Commissioner applied the proper legal standards, and if the Commissioner's  
17 findings are supported by substantial evidence. See [Sanchez v. Sec'y of Health and Human Serv.,](#)  
18 [812 F.2d 509, 510 \(9th Cir. 1987\)](#).

### 19 REVIEW

20 In order to qualify for benefits, a claimant must establish that she is unable to engage in  
21 substantial gainful activity due to a medically determinable physical or mental impairment which  
22 has lasted or can be expected to last for a continuous period of not less than 12 months. [42](#)  
23 [U.S.C. § 1382c\(a\)\(3\)\(A\)](#). A claimant must show that she has a physical or mental impairment of  
24 such severity that she is not only unable to do her previous work, but cannot, considering her age,  
25 education, and work experience, engage in any other kind of substantial gainful work which  
26 exists in the national economy. [Quang Van Han v. Bowen, 882 F.2d 1453, 1456 \(9th Cir. 1989\)](#).  
27 The burden is on the claimant to establish disability. [Terry v. Sullivan, 903 F.2d 1273, 1275 \(9th](#)  
28 [Cir. 1990\)](#).



1 In an effort to achieve uniformity of decisions, the Commissioner has promulgated  
2 regulations which contain, inter alia, a five-step sequential disability evaluation process. [20](#)  
3 [C.F.R. §§ 404.1520\(a\)-\(g\), 416.920\(a\)-\(g\)](#). Applying this process in this case, the ALJ found that  
4 Plaintiff: (1) had not engaged in substantial gainful activity since the alleged onset of her  
5 disability; (2) has an impairment or a combination of impairments that is considered “severe”  
6 (status post anterior cervical diskectomy and fusion on August 10, 2005, and status post lumbar  
7 laminectomy and diskectomy on October 6, 2006) based on the requirements in the Regulations  
8 ([20 CFR §§ 416.920\(b\)](#)); (3) does not have an impairment or combination of impairments which  
9 meets or equals one of the impairments set forth in Appendix 1, Subpart P, Regulations No. 4;  
10 (4) cannot perform any past relevant work; but (5) jobs exist in significant numbers in the  
11 national economy that she can perform. AR 21-26.

12 Here, Plaintiff argues that the ALJ (1) failed to properly evaluate the opinion of her  
13 treating physician, Dr. Mensink; and (2) failed to properly evaluate Plaintiff’s testimony.

#### 14 **DISCUSSION**

##### 15 A. Treating Physician

16 Plaintiff contends that the ALJ should have afforded the greatest weight to the opinion of  
17 her treating physician, Dr. Mensink. The opinions of treating doctors should be given more  
18 weight than the opinions of doctors who do not treat the claimant. [Reddick v. Chater, 157 F.3d](#)  
19 [715, 725 \(9th Cir.1998\)](#); [Lester v. Chater, 81 F.3d 821, 830 \(9th Cir.1995\)](#). Where the treating  
20 doctor’s opinion is not contradicted by another doctor, it may be rejected only for “clear and  
21 convincing” reasons supported by substantial evidence in the record. [Lester, 81 F.3d at 830](#).  
22 Even if the treating doctor’s opinion is contradicted by another doctor, the ALJ may not reject  
23 this opinion without providing “specific and legitimate reasons” supported by substantial  
24 evidence in the record. [Id.](#) (quoting [Murray v. Heckler, 722 F.2d 499, 502 \(9th Cir.1983\)](#)). This  
25 can be done by setting out a detailed and thorough summary of the facts and conflicting clinical  
26 evidence, stating his interpretation thereof, and making findings. [Magallanes v. Bowen, 881](#)  
27 [F.2d 747, 751 \(9th Cir.1989\)](#). The ALJ must do more than offer his conclusions. He must set  
28 forth his own interpretations and explain why they, rather than the doctors’, are correct. [Embrey](#)

1 [v. Bowen, 849 F.2d 418, 421-22 \(9th Cir.1988\)](#). Therefore, a treating physician’s opinion must  
2 be given controlling weight if it is well-supported and not inconsistent with the other substantial  
3 evidence in the record. [Lingenfelter v. Astrue, 504 F.3d 1028, 1038 n. 10 \(9th Cir. 2007\)](#).

4 As the ALJ found that the opinions of the State agency medical consultants were  
5 generally consistent with the objective evidence of record, the ALJ could not reject Dr.  
6 Mensink’s opinion without providing “specific and legitimate reasons” supported by substantial  
7 evidence in the record. [Lester, 81 F.3d at 830](#). Here, the ALJ rejected Dr. Mensink’s opinion,  
8 stating it was not well supported by medically acceptable clinical and laboratory diagnostic  
9 techniques and was not supported by other substantial evidence of record. AR 24. In rejecting  
10 Dr. Mensink’s opinion, however, the ALJ failed to provide a detailed and thorough summary of  
11 the facts and the conflicting clinical evidence. The ALJ proffered only conclusions and failed to  
12 discuss or identify findings or treatment records from Dr. Mensink. In the decision, the ALJ  
13 cited only a lone progress note from Dr. Mensink dated December 18, 2006. AR 21. While the  
14 ALJ stated that Dr. Mensink’s opinion was not supported by the records of the claimant’s other  
15 treating and consulting sources, the ALJ does not identify those sources or their findings. AR 24.  
16 As such, the ALJ’s failure to adequately explain the rejection of Dr. Mensink’s opinion in favor  
17 of the State agency consultants is error.

18 B. Credibility

19 Plaintiff also contends that the ALJ improperly evaluated her testimony. The ALJ is  
20 required to make specific findings assessing the credibility of Plaintiff’s subjective complaints.  
21 [Ceguerra v. Sec’y of Health & Human Servs., 933 F.2d 735, 738 \(9th Cir. 1991\)](#). “An ALJ is not  
22 ‘required to believe every allegation of disabling pain’ or other non-exertional impairment.” [Orn](#)  
23 [v. Astrue, 495 F.3d 625, 635 \(9th Cir. 2007\)](#) (citation omitted). In rejecting the complainant’s  
24 testimony, “[g]eneral findings are insufficient; rather, the ALJ must identify what testimony is  
25 not credible and what evidence undermines the claimant’s complaints.” [Lester, 81 F.3d at 834](#).

26 Pursuant to Ninth Circuit law, if the ALJ finds that the claimant’s testimony as to the  
27 severity of her pain and impairments is unreliable, the ALJ must make a credibility determination  
28 with findings sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily

1 discredit claimant's testimony. [Thomas v. Barnhart, 278 F.3d 947, 958 \(9th Cir. 2002\)](#). "The  
2 ALJ may consider at least the following factors when weighing the claimant's credibility:  
3 '[claimant's] reputation for truthfulness, inconsistencies either in [claimant's] testimony or  
4 between [her] testimony and [her] conduct, [claimant's] daily activities, [her] work record, and  
5 testimony from physicians and third parties concerning the nature, severity, and effect of the  
6 symptoms of which [claimant] complains." *Id.* (citing [Light v. Soc. Sec. Admin., 119 F.3d 789,  
7 792 \(9th Cir. 1997\)](#)). "If the ALJ's credibility finding is supported by substantial evidence in the  
8 record, we may not engage in second-guessing." *Id.*

9 In this case, the ALJ provided multiple reasons for finding that Plaintiff's statements were  
10 not entirely credible. As discussed below, however, the ALJ's reasons were not legitimate or  
11 supported by substantial evidence.

12 First, the ALJ indicated that although Plaintiff's cash earnings did not rise to the level of  
13 substantial gainful activity, they were inconsistent with the finding that she was experiencing any  
14 significant work related limitations. AR 24. The ALJ does not identify the record evidence  
15 supporting this determination or how Plaintiff's statements regarding her disability were  
16 inconsistent. Plaintiff testified that she last worked in early January 2005, which is not  
17 inconsistent with her assertion of disability since January 6, 2005. AR 32.

18 Second, the ALJ discounted Plaintiff's testimony because the objective medical evidence  
19 did not show "pathology reasonably likely to cause the debilitating symptoms alleged." AR 24.  
20 Once a claimant produces medical evidence of an underlying impairment likely to cause the  
21 alleged pain, the ALJ may not discredit the allegations of the severity of the pain solely because  
22 the evidence does not support plaintiff's statements. [Lester, 81 F.3d at 834](#) (citing [Bunnell v.  
23 Sullivan, 947 F.2d 341, 343 \(9th Cir. 1991\)\(en banc\)](#)). In this instance, the ALJ does not identify  
24 the alleged symptoms. At the hearing, Plaintiff testified that she gets muscle spasms, cramping  
25 and numbness in her left leg and has headaches. AR 33, 41. With regard to Plaintiff's left leg  
26 complaints, the medical record contains a February 2008 MRI of the lumbar spine, which showed  
27 an L5-S1 posterior disc bulge/osteophyte with superimposed residual or recurrent disc protrusion,  
28 left posterior paramedian, encroaching on the lateral recess along with considerable scar posterior

1 to this region. It was noted that these findings might affect the descending left S1 nerve root.  
2 The MRI also revealed bilateral neural foraminal stenosis at L5-S1, mild on the right, but  
3 moderate to severe on the left most likely affecting the exiting L5 nerve root. AR 386-87.

4 As to Plaintiff's headaches, Dr. Mensink diagnosed Plaintiff with occipital neuralgia in  
5 December 2006 following complaints of headaches. AR 356. An examination on February 14,  
6 2007, revealed very sharp palpable tenderness of the occipital nerves, left greater than right, with  
7 marked point tenderness of the occipital nerve insertions in the inner scalp. AR 357.  
8 Accordingly, the ALJ's indication that the objective medical evidence did not show pathology  
9 likely to cause the symptoms is not legitimate.

10 The third reason proffered by the ALJ to reject Plaintiff's testimony was that her  
11 treatment had been routine or conservative in nature. AR 24. Evidence of "conservative  
12 treatment," such as a claimant's use of only over-the-counter pain medication, is sufficient to  
13 discount a claimant's  
14 testimony regarding severity of an impairment. [Parra v. Astrue, 481 F.3d 742, 750 \(9th Cir. 2007\)](#).  
15 In this case, the ALJ does not identify the conservative treatment at issue. At a  
16 minimum, however, the record reflects that Plaintiff twice underwent surgery. AR 227, 286,  
17 352-53.

18 Insofar as the Commissioner argues that the ALJ properly considered that Plaintiff's  
19 treatment after surgery had been conservative, the Court is constrained to review the reasons the  
20 ALJ asserts and cannot affirm on a ground not invoked by the Commissioner. [Stout v. Comm'r,](#)  
21 [454 F.3d 1050, 1054 \(9th Cir. 2006\)](#); *see also* [Barbato v. Comm'r of Soc. Sec. Admin., 923](#)  
22 [F.Supp. 1273, 1276, n. 2 \(C.D.Cal. 1996\)](#) (court may not accept post hoc explanations). In this  
23 instance, the ALJ did not indicate that the analysis was limited to the period after surgery or even  
24 whether Plaintiff's surgeries were considered conservative treatment.

25 Fourth, the ALJ stated that the record reflects some gaps in treatment. AR 24. An ALJ is  
26 permitted to consider lack of consistent medical treatment in assessing credibility. [Burch v.](#)  
27 [Barnhart, 400 F.3d 676, 681 \(9th Cir. 2005\)](#). However, the ALJ merely asserts a conclusion and  
28 does not elaborate or identify the "gaps" in treatment. The record reflects only brief, intermittent

1 breaks in treatment. Occasional symptom-free periods are not necessarily inconsistent with  
2 disability. [Lester, 81 F.3d at 833](#).

3 Fifth, the ALJ stated that Plaintiff is not taking medications of a type and dosage  
4 consistent with her allegations. AR 24. Sixth, the ALJ reported that the record does not indicate  
5 that the claimant suffers from debilitating side effects from her medication. AR 24. In assessing  
6 credibility, an ALJ may consider the type, dosage, effectiveness, and adverse side effects of any  
7 pain medication. Social Security Ruling (“SSR”) 96-7p. In this instance, the ALJ’s statements  
8 are again conclusions without elaboration or citation to the record. The record reflects that  
9 Plaintiff was not only taking pain medication, but that Dr. Renaudin testified that the muscle  
10 relaxers that Plaintiff takes can cause the type of sedation that she described. AR 35-36, 48-49.

11 Seventh, the ALJ discounted Plaintiff’s credibility because no treating or examining  
12 physician opined that Plaintiff was totally and permanently disabled from all work. AR 24. As a  
13 practical matter, the determination of whether Plaintiff is disabled is an issue reserved to the  
14 Commissioner. [20 C.F.R. § 416.927\(e\)](#). Further, the ALJ appears to overlook Dr. Mensink’s  
15 opinion, rendered in March 2007, that Plaintiff could not work in a job that would require 8  
16 hours a day, 5 days a week with regular breaks and a one hour lunch. AR 262.

17 Eighth, the ALJ discounted Plaintiff’s credibility because the record showed she was not  
18 following prescribed treatment. AR 24. A claimant’s failure to seek or follow prescribed  
19 treatment is a proper basis for finding her allegations of disabling pain and other symptoms not  
20 credible. [Bruton v. Massanari, 268 F.3d 824, 828 \(9th Cir. 2001\)](#). In this case, however, the  
21 ALJ does not identify the prescribed treatment at issue. The Commissioner attempts to elaborate  
22 on the ALJ’s decision, stating that Plaintiff refused injection therapy. Opposition, p. 8; AR 41.  
23 The Commissioner’s record citation demonstrates only that Plaintiff elected to wait and see  
24 regarding the injections and then they changed her doctor. AR 41. This is not an outright refusal  
25 to follow prescribed treatment.

26 Ninth, the ALJ noted that Plaintiff was still smoking tobacco despite her illness. AR 24.  
27 This is not a valid reason to reject Plaintiff’s credibility given that she is complaining of issues  
28 unrelated to her tobacco use. *See, e.g., Shramek v. Apfel, 226 F.3d 809, 812-13 (7th Cir. 2000)*

1 (overturning ALJ's adverse credibility assessment for claimant's purported failure to comply with  
2 the prescribed medical treatment for failing to quit smoking without a finding that claimant's  
3 ability to work would be restored if she quit smoking).

4 Tenth, the ALJ discounted Plaintiff's credibility because she was able to participate in the  
5 administrative hearing and respond to the questioning without any apparent difficulties. AR 24.  
6 Although it would not have been an error for the ALJ to base the decision partially on  
7 observations made of Plaintiff at the hearing, the ALJ has not identified other evidence  
8 supporting a determination that she is capable of performing other work. See [Drouin v. Sullivan,](#)  
9 [966 F.2d 1255, 1258-59 \(9th Cir. 1992\)](#) (ALJ's observations during the hearing, along with other  
10 evidence, constitutes substantial evidence); [Nyman v. Heckler, 779 F.2d 528, 531 \(9th Cir.1986\)](#)  
11 (ALJ's personal observations did not render decision improper where other evidence supported  
12 determination); [Permitter v. Heckler, 765 F.2d 870, 872 \(9th Cir.1985\)](#) (denial of benefits cannot  
13 be based solely on the ALJ's observation of a claimant).

14 As the eleventh and final reason for discounting the Plaintiff's testimony, the ALJ cited  
15 Plaintiff's daily activities. If a claimant is able to spend a substantial part of her day engaged in  
16 pursuits involving the performance of physical functions that are transferable to a work setting, a  
17 specific finding as to this fact may be sufficient to discredit a claimant's allegations. [Morgan v.](#)  
18 [Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 \(9th Cir. 1999\)](#). However, the ALJ must make  
19 "specific findings relating to [the daily] activities" and their transferability to conclude that a  
20 claimant's daily activities warrant an adverse credibility determination. [Orn, 495 F.3d at 639](#)  
21 [\(citing Burch, 400 F.3d at 681\)](#). In this instance, the ALJ did not make any findings of  
22 transferability. The ALJ merely noted Plaintiff's statement that she can take care of her personal  
23 hygiene with help, does light housekeeping chores, does dishes with help and does some  
24 walking. AR 22.

25 The Commissioner argues that there is evidence in the record that Plaintiff was  
26 malingering and this would be a sufficient reason to reject Plaintiff's complaints. Opposition, p.  
27 9. Affirmative evidence of malingering will support an adverse credibility finding. See [Robbins](#)  
28 [v. Soc. Sec. Admin., 466 F.3d 880, 883 \(9th Cir. 2006\)](#). Here, however, the ALJ does not cite any

1 affirmative evidence of malingering when discounting Plaintiff’s credibility. Again, the Court  
2 may not accept post hoc explanations. [Barbato, 923 F.Supp. at 1276, n. 2.](#)

3 C. Remand

4 Plaintiff seeks a reversal and award of benefits. Alternatively, Plaintiff requests  
5 correction of legal errors. [Section 405\(g\) of Title 42 of the United States Code](#) provides: “[t]he  
6 court shall have the power to enter, upon the pleadings and transcript of the record, a judgment  
7 affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or  
8 without remanding the cause for a rehearing.” In social security cases, the decision to remand to  
9 the Commissioner for further proceedings or simply to award benefits is within the discretion of  
10 the court. [McAllister v. Sullivan, 888 F.2d 599, 603 \(9th Cir. 1989\)](#). “If additional proceedings  
11 can remedy defects in the original administrative proceedings, a social security case should be  
12 remanded. Where, however, a rehearing would simply delay receipt of benefits, reversal and an  
13 award of benefits is appropriate.” *Id.* (citation omitted); *see also Varney v. Sec’y of Health &*  
14 [Human Servs., 859 F.2d 1396, 1399 \(9th Cir.1988\)](#) (“Generally, we direct the award of benefits  
15 in cases where no useful purpose would be served by further administrative proceedings, or  
16 where the record has been thoroughly developed.”).

17 The Court has determined that the ALJ erred in the evaluation of the medical opinions,  
18 including that of Plaintiff’s treating physician. The ALJ also erred in the evaluation of Plaintiff’s  
19 credibility. The Court finds that these errors can be corrected with further proceedings. On  
20 remand, the ALJ should provide a detailed and thorough summary of the facts and the conflicting  
21 clinical evidence with citations to the medical record. The ALJ also should adequately explain  
22 the weight afforded to the medical evidence and opinions, including the opinion of Plaintiff’s  
23 treating physician, Dr. Mensink. Additionally, the ALJ should make specific findings as to  
24 Plaintiff’s credibility supported by the record.

25 **CONCLUSION**

26 Based on the foregoing, the Court finds that the ALJ’s decision is not supported by  
27 substantial evidence and is therefore REVERSED and the case is REMANDED to the ALJ for  
28 further proceedings consistent with this opinion. The Clerk of this Court is DIRECTED to enter

1 judgment in favor of Plaintiff Joyce E. Walters and against Defendant Michael J. Astrue,  
2 Commissioner of Social Security.

3 IT IS SO ORDERED.

4 **Dated: May 10, 2010**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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