

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
EASTERN DISTRICT OF CALIFORNIA**

BETTY JEAN PARKER,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

**Case No. 1:16-cv-00176-EPG
FINAL JUDGMENT AND ORDER
REGARDING PLAINTIFF’S SOCIAL
SECURITY COMPLAINT**

This matter is before the Court on Plaintiff’s complaint for judicial review of an unfavorable decision of the Commissioner of the Social Security Administration regarding his applications for supplemental security income and disability insurance benefits. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c) with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 7, 8.)

At the hearing on August 21, 2017, the Court heard from the parties and, having reviewed the record, administrative transcript, the briefs of the parties, and the applicable law, finds as follows:

For the reasons announced by the Court on the record at the conclusion of the parties’ oral argument on August 21, 2017, the Court finds that the decision of the Commissioner of Social Security should be reversed and the case should be remanded for further proceedings.

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

The Administrative Law Judge (“ALJ”) erred by failing to consider the testimony of testimony of the claimant’s sister, Lara Robinson. In reaching his decision, the ALJ discredited the testimony of the claimant partly due to her “use of ‘medical’ marijuana against medical advice” and because “the claimant is not a consistent or reliable historian.” AR 23-24. Ms. Robinson submitted a detailed third-party function report. AR 250-257. This testimony could have assisted the ALJ in assessing the claimant’s credibility regarding her description of her limitations due to her impairments.

Because the Court cannot confidently conclude that no reasonable ALJ, when fully crediting the testimony, would have reached a different disability determination, the ALJ’s error was not harmless. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1056 (9th Cir. 2006) (“[W]here the ALJ’s error lies in a failure to properly discuss competent lay testimony favorable to the claimant, a reviewing court cannot consider the error harmless unless it can confidently conclude that no reasonable ALJ, when fully crediting the testimony, could have reached a different disability determination.”).

On remand, the ALJ shall address the third-party function report of Lara Robinson and consider whether the residual functioning capacity finding should be modified.

Accordingly, the Court GRANTS Plaintiff’s appeal from the administrative decision of the Commissioner of Social Security and the case is remanded to the Social Security Administration. The Clerk of the Court is DIRECTED to enter judgment in favor of Plaintiff and against Defendant Nancy A. Berryhill, Acting Commissioner of Social Security.

IT IS SO ORDERED.

Dated: August 21, 2017

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE