

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3
4 DESIREE MCDUGAL, for WALTER
JASON INMAN (deceased),

5 Plaintiff,

6 v.

7 COMMISSIONER OF SOCIAL
8 SECURITY,

9 Defendant.

Case No. 1:16-cv-00962-EPG

FINAL JUDGMENT AND ORDER
REGARDING PLAINTIFF'S SOCIAL
SECURITY COMPLAINT

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

15 At the hearing on November 9, 2017, the Court heard from the parties and, having
16 reviewed the record, administrative transcript, the briefs of the parties, and the applicable law,
17 finds as follows:

18 For the reasons announced by the Court on the record at the conclusion of the parties' oral
19 argument on November 9, 2017, the Court finds that the decision of the Commissioner of Social
20 Security should be reversed and the case should be remanded for award of benefits.

21 Plaintiff Desiree McDougal brings this Complaint for review of a final decision of the
22 Commissioner of Social Security on behalf of her deceased brother Walter Jason Inman, who
23 committed suicide on October 5, 2015. Shortly after her brother's death, Ms. McDougal filed for
24 substitution of party upon death of claimant and testified in support of his claim at the
25 administrative hearing on December 9, 2015.

26 The ALJ issued a decision denying Inman's application for disability insurance benefits
27 and supplemental security income on January 27, 2016. At step two of the five step disability
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1 analysis, the ALJ found severe impairments of “hemorrhoids; plantar fasciitis secondary to a pes
2 plano valgus deformity; bilateral knee degenerative joint disease, and patellar spur and patellar
3 tendinosis; quadriceps enthesopathy; chronic constipation; and major depressive disorder.” AR
4 20. Based on Inman’s impairments, the ALJ issued a residual functional capacity (“RFC”) assessment finding Inman could “lift and carry 50 pounds occasionally and 25 pounds frequently,
5 and stand, sit, and walk up to 6 hours in an 8-hour workday. He was capable of performing simple
6 repetitive routine tasks, with limited public contact.” AR 22. At step five, a vocational expert
7 testified at the administrative hearing that there were jobs in significant numbers in the national
8 economy for someone with Inman’s RFC, and therefore, he was not disabled. AR 26.

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10 Regarding the testimony of Ms. McDougal, the ALJ stated:

11 Ms. McDougal is partially credible. The objective medical evidence shows the
12 claimant weighed 184 pounds in January 2008, and 176 in March 2015. This not a
13 significant weight change. Ms. McDougal had testified his hemorrhoid problem
14 had caused considerable weight loss (Exhibits 2F, p. 5; 11F, p.2). In addition, the
15 evidence does not support the extreme exertional and postural limitations asserted
16 by Ms. McDougal. The claimant was [caring] for his terminally ill father, which
17 would have been both physically and emotionally demanding.

18 AR 26.

19 The ALJ failed to provide a relevant reason for discounting Ms. McDougal’s testimony.¹
20 See *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006) (“Consequently, ‘[i]f
21 the ALJ wishes to discount the testimony of lay witnesses, he must give reasons that are germane
22 to each witness.’” [*Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993)]; [*Lewis v. Apfel*, 236
23 F.3d 503, 511(9th Cir. 2001)]”).

24 The first purported discrepancy regarding Inman’s actual weight was not pertinent to Ms.
25 McDougal’s credibility. Ms. McDougal merely gave her estimates as to her brother’s weight at
26 different points in time, which were roughly accurate. AR 39 (“Yes, he’s lost weight in the last
27 four years [2011-2015]; he used to weigh about 190”). Furthermore, her testimony was
28 ultimately correct as to her main point -- that her brother had lost weight prior to his death.

¹ In fact, the reasoning set forth for the credibility finding by the ALJ is so lacking of any rational basis that it creates the suggestion that the reasoning was manufactured in order to reach a preferred legal conclusion. This was very troubling to the undersigned judge.

1 Moreover, the ALJ presented no evidence that Ms. McDougal was incorrect given that the last
2 recorded weight of claimant was many months before his death, and Ms. McDougal testified that
3 he lost weight during that time period.

4 Likewise, the ALJ's asserted basis --that Inman caring for his terminally ill father would
5 have been physically and emotionally demanding—is actually contrary to the record. Notably,
6 the ALJ does not provide any evidence in support of her claim that the Claimant cared for his
7 terminally ill father. In fact, the statement is inconsistent with Ms. McDougal's testimony, who
8 very clearly testified that Inman did not provide care for their father because Inman was having
9 great difficulty taking care of himself.²

10 Last, the ALJ stated (without citation to the record) that “the evidence does not support
11 the extreme exertional and postural limitations asserted by Ms. McDougal.” At oral argument,
12 the Commissioner argued that no medical source opinion opined that Inman would need to take
13 unscheduled restroom breaks for hours at a time and there was support that Inman would be able
14 to stand, sit, and walk up to 6 hours in an 8-hour workday.

15 The medical evidence in the record supported Ms. McDougal's testimony. There is no
16 dispute that Inman actually suffered from severe constipation issues. In fact, the ALJ agreed,
17 finding “chronic constipation” as a severe impairment significantly limiting Inman's ability to
18 perform basic work activities. Ms. McDougal testified that, due to his bowel condition, her
19 brother would need to use the restroom once or twice a day for a long period of time (2-3 hours).
20 AR 58. When he used the restroom, her brother would need assistance cleaning himself as a
21 result of diarrhea and bleeding during his bowel movements.

22 The ALJ did not cite to any contradictory medical evidence regarding the durational
23 limitation. There was no medical opinion in the record that considered or evaluated the possible
24 duration of Inman's bowel movements, and no medical provider performed this type of
25 examination or evaluation. In the absence of medical evidence, support for the durational

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27 ² AR 44 (“He wanted to be there for my dad for the last – and not be there in the way of, like, helping him,
28 but being by his side... I had to bring in someone from the [Veterans' Administration] to help me out because I could
not rely on my brother doing – not that he didn't want to help, he would just be so depressed about himself on top of
everything else that he might not get out of bed for a few days.”).

1 limitation could have only come from the relevant testimony. Because the ALJ did not provide
2 germane reasons for discrediting Ms. McDougal, her testimony is credited as true.³

3 For these reasons and those stated on the record during argument, the Court finds that the
4 decision of the Commissioner of Social Security should be reversed and the case should be
5 remanded for award of benefits. *See Garrison v. Colvin*, 759 F. 3d 995, 1021-22 (9th Cir. 2014)
6 (providing that remand for award of benefits is appropriate where there is no need to further
7 develop the record, the ALJ failed to provide legally sufficient reasons for rejecting evidence, the
8 ALJ would have to find disability if the improperly discredited evidence were credited as true,
9 and record afforded no reason to doubt that claimant was disabled).

10 Here, when the discredited evidence is credited as true, jobs would not exist in significant
11 numbers in the national economy that Inman could perform. AR 67 (“Q: Okay. Hypothetical #3.
12 Due to the need to take unscheduled breaks at will, if we were to add that this person will be
13 working off take 10% of the workday to the previous hypotheticals would there be any work? A:
14 No work, Your Honor.”).

15 Accordingly, the Court GRANTS Plaintiff’s appeal from the administrative decision of the
16 Commissioner of Social Security and the case is remanded to the Social Security Administration
17 for calculation and award of benefits. The Clerk of the Court is DIRECTED to enter judgment in
18 favor of Plaintiff and against Defendant Commissioner of Social Security.

19 IT IS SO ORDERED.
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21 Dated: November 13, 2017

22 /s/ Eric P. Gray
23 UNITED STATES MAGISTRATE JUDGE
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28 ³ *See Page v. Comm’r of Soc. Sec. Admin.*, 304 F. App’x 520, 522 (9th Cir. 2008).