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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

PAULA LEOLA WILLIAMS,  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL SECURITY,  
  
Defendant.

Case No. 1:17-cv-00268-BAM  
  
**ORDER REGARDING PLAINTIFF’S  
SOCIAL SECURITY COMPLAINT**

**I. INTRODUCTION**

Plaintiff Paula Williams (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her applications for disability insurance benefits (“DIB”) and supplemental security income (“SSI”) pursuant to Titles II and XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Barbara A. McAuliffe.<sup>1</sup> Having carefully considered the parties’ briefs as well as the entire record in this case, the Court finds the decision of the Administrative Law Judge (“ALJ”) to be supported by substantial evidence in the record as a whole and based upon proper legal standards. Accordingly, this Court affirms the agency’s determination to deny benefits.

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<sup>1</sup> The parties consented to the jurisdiction of a United States Magistrate Judge Barbara A. McAuliffe. (Docs. 7, 8).

1 **II. BACKGROUND**

2 Plaintiff applied for benefits on April 9, 2014, alleging disability beginning June 21, 2013, due  
3 to back pain and mental health impairments. AR 199-211. Her application was denied initially and on  
4 reconsideration. AR 156-158. On June 30, 2016, a hearing was held before Administrative Law Judge  
5 (“ALJ”) John Heyer. AR 30-64. Plaintiff appeared and testified along with her attorney. AR 30. The  
6 ALJ also heard testimony from Susan Green, a vocational expert. AR 60.

7 Using the Social Security Administration’s five-step sequential evaluation process, the ALJ  
8 found that Plaintiff had not engaged in substantial gainful activity since June 21, 2013, the alleged onset  
9 date. AR 15. The ALJ identified: spinal abnormalities, Hepatitis C, obesity and affective disorder as  
10 severe impairments. AR 15. Nonetheless, the ALJ determined that the severity of Plaintiff’s  
11 impairments did not meet or medically equal the severity of any of the listed impairments. AR 16.

12 Based on his review of the entire record, the ALJ found that Plaintiff had the following residual  
13 functional capacity (RFC):

14 To perform light work except that she could lift 20 pounds; complete an eight-hour  
15 workday if given the option to alternate between sitting and standing in 30-minute  
16 increments; and [she] is limited to simple repetitive tasks.

17 AR 18.

18 Applying this RFC, the ALJ found that Plaintiff could not perform her past relevant work as a  
19 home attendant. AR 23. However, considering Plaintiff’s age (50 years old), high school education,  
20 and residual functional capacity, there are jobs that exist in significant numbers in the national economy  
21 that she can perform. AR 23. Following the ALJ’s decision dated August 16, 2016, the Appeals Council  
22 denied Plaintiff’s request for review, making the ALJ’s decision the Commissioner’s final determination  
23 for purposes of judicial review. AR 1-6. This appeal followed.

24 **III. LEGAL STANDARD**

25 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to determine if: (1)  
26 the Commissioner’s findings are supported by substantial evidence; and (2) the Commissioner used  
27 correct legal standards. *See Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008);  
28 *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence

1 as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402  
2 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see also Hoopai*, 499 F.3d at 1074.

### 3 **IV. DISCUSSION**<sup>2</sup>

4 Plaintiff offers a single argument in support of her claim that the Commissioner’s decision  
5 should be reversed. Plaintiff contends that the ALJ impermissibly rejected portions of the opinion of  
6 examining psychologist Nancy Nikkel, Ph. D without providing specific and legitimate reasons. (Doc.  
7 15 at 8). Plaintiff does not challenge the ALJ’s assessment of her physical impairments or her  
8 credibility.

#### 9 **1. Legal Standard**

10 The weight given to medical opinions depends in part on whether they are proffered by treating,  
11 examining, or non-examining professionals. *See Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).  
12 “As a general rule, more weight should be given to the opinion of a treating source than to the opinion  
13 of doctors who do not treat the claimant . . . .” *Lester*, 81 F.3d at 830. This is so because a treating doctor  
14 is employed to cure and has a greater opportunity to know and observe the patient as an individual.  
15 *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996); *Bates v. Sullivan*, 894 F.2d 1059, 1063 (9th Cir.  
16 1990). The uncontradicted opinion of a treating or examining physician may be rejected only for clear  
17 and convincing reasons, while the opinion of a treating or examining physician that is controverted by  
18 another doctor may be rejected only for specific and legitimate reasons supported by substantial  
19 evidence in the record. *Lester*, 81 F.3d at 830-31.

20 An ALJ may properly rely upon only selected portions of a medical opinion while rejecting other  
21 parts, *see, e.g., Magallanes v. Bowen*, 881 F.2d 747, 753 (9th Cir. 1989) (ALJ’s supported reliance on  
22 selected portions of conflicting opinion constitutes substantial evidence), however, such selective  
23 reliance must be consistent with the medical record as a whole. *See, e.g., Edlund v. Massanari*, 253 F.3d  
24 1152, 1159 (9th Cir. 2001) (ALJ cannot reject portion of medical report that is clearly reliable).  
25 Moreover, although “[a]n ALJ is not entitled to pick and choose through a physician’s opinion,” *Sklenar*  
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27 <sup>2</sup> The parties are advised that this Court has carefully reviewed and considered all of the briefs, including arguments,  
28 points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific argument or brief is not to be construed that the Court did not consider the argument or brief.

1 v. *Barnhart*, 195 F. Supp. 2d 696, 703 n.6 (W.D. Pa. 2002) (citations and quotation omitted), he may  
2 give specific and legitimate reasons for declining to adopt part of an opinion. *See Magallanes*, 881 F.2d  
3 at 755 (declining to adopt physician’s opinion about onset date). *See Ward-White v. Astrue*, No. 2:07-  
4 cv-1616 GGH, 2009 U.S. Dist. LEXIS 18088, 2009 WL 617814, at \*5 (E.D. Cal. Mar. 10, 2009).

5 **2. The Opinions of Plaintiff’s Examining Psychologists – Drs. Schmidt and Nikkel**

6 On September 13, 2014, Plaintiff attended a psychiatric consultative examination with Gil  
7 Schmidt, Psy. D. AR 442-49. Upon examination, Plaintiff stated that her mental health problems began  
8 at the age of 15, when she argued with her boyfriend and he shot her in the back. AR 443. She walked  
9 with a normal gait and did not appear in significant physical pain despite alleging daily back pain at a  
10 level 9 or 10. AR 442-43. Dr. Schmidt noted various inconsistencies in Plaintiff’s interview. For  
11 example, Dr. Schmidt noted that Plaintiff’s medical records from Kaiser Permanente did not corroborate  
12 Plaintiff’s report of taking Seroquel. AR 444. Dr. Schmidt also questioned the veracity of Plaintiff’s  
13 comments regarding accessing mental health services at the age of 15. Plaintiff “was defensive” when  
14 asked about recent alcohol use after disclosing that she regularly consumed alcohol and drugs since  
15 adolescence. AR 444-45. Likewise, she was “extremely defensive” in discussing her sleep patterns  
16 despite alleging “extreme difficulty with sleep” after being shot. AR 446. She “could not identify any  
17 specific theme” and “became baffled” when asked to describe the repetitive nightmares she alleged. AR  
18 446. Further, her report of hearing gunshots “appeared inconsistent with relevant professional  
19 literature.” AR 447. Dr. Schmidt reported that at the end of the interview, Plaintiff asked what benefits  
20 she would receive. AR 447.

21 Dr. Schmidt diagnosed malingering; rule/out alcohol dependence; rule out polysubstance  
22 dependence; nicotine dependence; personality disorder, features of narcissism; and GAF score of 71-  
23 80. AR 447-448. Dr. Schmidt opined that Plaintiff did not suffer from any functional mental health  
24 limitations. AR 448-449.

25 Six months later, on March 28, 2015, Plaintiff attended a second consultative examination with  
26 Nancy Nikkel, Ph.D. AR 450-455. Plaintiff demonstrated agitation during evaluation; loose thought  
27 processes; and irrelevant and suspicious speech content. AR 452. Plaintiff indicated hallucinations and  
28 delusions and her thought content was fixed upon the harm being done to her by others. AR 452.

1 Plaintiff's mood vacillated between angry and she banged her walker on the floor when she became  
2 agitated during the evaluation. AR 452. In intellectual functioning, Plaintiff demonstrated impaired  
3 immediate recall; impaired past memory; impaired fund of knowledge; difficulty performing  
4 calculations; impaired concentration; impaired abstract thinking; impaired insight and judgment; and an  
5 inability to differentiate appropriately. AR 453.

6 Dr. Nikkel diagnosed psychotic disorder and "sibling relational problems." AR 454. Dr. Nikkel  
7 stated that "it was not clear whether the claimant was exaggerating her symptoms. There were no  
8 inconsistencies throughout the evaluation." AR 454. She assessed Plaintiff's level of functioning as  
9 follows: 1) not capable of managing her own funds; 2) not capable of performing simple and repetitive  
10 tasks or detailed or complex tasks; 3) not capable of accepting instructions from supervisors, coworkers,  
11 and the public; 4) not capable of performing work activities on a consistent basis; 5) not capable of  
12 dealing with usual stress; 6) and poor ability to maintain attendance in the workplace and complete a  
13 normal workday. AR 454-455.

14 In weighing the opinions of Plaintiff's examining psychologists, the ALJ found as follows:

15 As for the medical opinion evidence, the undersigned gives some weight to the opinions  
16 of psychiatric consultative examiners Drs. Schmidt and Nikkel. While their opinions  
17 differ regarding Plaintiff's mental limitations, with Dr. Schmidt finding no limitations,  
18 and Dr. Nikkel finding extreme limitations, their opinions are general consistent with  
19 their respective medical findings and thorough examinations. During Dr. Schmidt's  
20 examination, he found evidence of malingering, which is somewhat consistent with what  
21 other treatment providers found, thus, his opinion that the claimant had no functional  
22 limitations is reasonable. Similarly, the claimant's presentation during Dr. Nikkel's  
23 examination is consistent with her ultimate findings. However, based on a review of the  
24 medical evidence as a whole, the undersigned ultimately finds that the claimant does  
25 have a severe mental impairment, but that it would not cause more than a limitation to  
26 simple repetitive tasks. This is based on some of the mental status examinations showing  
27 depressed mood and affect, as well as assigned GAF scores indicating moderate  
28 symptoms.

AR 22.

### 3. The ALJ Did Not Err in Weighing the Examining Opinions

The opinion of examining physician Dr. Nikkel was contradicted by the opinions of examining  
physician, Dr. Schmidt, and the state agency psychological consultants. Thus, the ALJ was required to  
provide specific and legitimate reasons to reject Dr. Nikkel's opinion. The ALJ did so.

1 First, the ALJ found that Dr. Nikkel’s opinion, while consistent with her own examination, was  
2 inconsistent with the “medical evidence as a whole.” AR 22. If supported by substantial evidence, this  
3 constitutes a valid reason for discounting the opinion of an examining physician. *See Batson v. Comm’r*  
4 *of Soc. Sec.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Dr. Nikkel opined that Plaintiff is markedly limited  
5 in all areas of functioning. As the ALJ found however, the record does not provide objective evidence  
6 supporting Dr. Nikkel’s extreme limitations.

7 For example, the ALJ noted that Plaintiff’s assigned GAF scores did not indicate more than  
8 moderate limitations. AR 22. Plaintiff received a GAF score of 51-60 in March 2014, and Dr. Schmidt  
9 assigned a GAF score of 71-80 in September 2014. AR 418. A GAF, or global assessment of  
10 functioning, is a report of a clinician’s judgment of the individual’s overall level of functioning that is  
11 used to plan treatment and to measure the impact of treatment as well as to predict its outcome. American  
12 Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* at 32 (4th ed., text  
13 revision) (DSM–IV–TR). A GAF score of 51-60 corresponds to moderate symptoms or moderate  
14 difficulty in social, occupational, or school functioning. *Id.* A GAF between 71 and 80 indicates a  
15 person with no more than a slight impairment in social, occupational, or school functioning (e.g.,  
16 temporary falling behind in schoolwork). *Id.* The ALJ reasonably recognized the discrepancy between  
17 the scores—reflecting at most moderate symptoms or impairment—and Dr. Nikkel’s opinion reflecting  
18 a far more serious level of impairment. AR 22.

19 The ALJ also noted that Plaintiff’s mental status examinations did not demonstrate the severe  
20 limitations found by Dr. Nikkel. AR 22. Indeed, throughout the record, there were numerous instances  
21 of normal mental status examinations, negative evaluations for depression, and an overall lack of  
22 treatment for Plaintiff’s mental health impairments. AR 19, 417-18, 527, 531, 542, 546, 552-53, 568,  
23 577-78, 585-86, 617-18. Such consistently mild to moderate findings fail to support Dr. Nikkel’s  
24 extreme opinion that Plaintiff is incapable of basic functioning. Thus, substantial evidence supports  
25 these reasons for rejecting Dr. Nikkel’s opinion. *See Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198  
26 (9th Cir. 2008). (even if the evidence is susceptible to more than one rational interpretation, the  
27 Commissioner’s decision must be upheld because substantial evidence supports it).  
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1           Second, in assessing Dr. Nikkel’s findings, the ALJ gave some weight to the opinions of the  
2 state agency psychological consultants, Drs. Brown and Dalton, who affirmed Dr. Schmidt’s opinion,  
3 and found that Plaintiff did not have any functional limitations or a severe mental impairment. AR 22,  
4 71, 105-06. Although the ALJ declined to fully credit the state agency physicians because there was at  
5 least some evidence in the record demonstrating that Plaintiff is “slightly” limited in her functioning,  
6 Dr. Nikkel’s opinion was properly rejected as an outlier. *See Andrews v. Shalala*, 53 F.3d 1035, 1041  
7 (9th Cir. 1995) (“Reports of the nonexamining advisor need not be discounted and may serve as  
8 substantial evidence when they are supported by other evidence in the record and are consistent with  
9 it”). Of the medical opinions addressing Plaintiff’s mental health functioning in the record, three out of  
10 four of those opinions found that Plaintiff had no limitations in her mental health functioning. AR 22.  
11 The ALJ legitimately concluded that Dr. Nikkel’s opinion was unsupported by the other evidence in the  
12 record and thus entitled to less weight.

13           Finally, the ALJ noted that the objective medical evidence, which included suspicions of  
14 malingering and a lack of treatment history, undermined Dr. Nikkel’s findings that Plaintiff could not  
15 complete “simple repetitive tasks.” AR 22. The ALJ found that the evidence of malingering opined by  
16 Dr. Schmidt was “somewhat consistent with what other treatment providers found.” AR 22. The ALJ  
17 found that Plaintiff exaggerated her symptoms and that although Dr. Nikkel “diagnosed [Plaintiff] with  
18 a psychotic disorder and ultimately found poor abilities [in] multiple areas of mental functioning;” “it  
19 was unclear to Dr. Nikkel whether [Plaintiff] was exaggerating her symptoms.” AR 20.

20           As pointed out by the ALJ, there was ample evidence in the record of malingering which suggests  
21 that Plaintiff may have misreported or exaggerated her symptoms in the examination with Dr. Nikkel.  
22 AR 20, 503. The ALJ noted that on February 20, 2015, when asked her desired outcome during a  
23 hospitalization for suicidal ideation Plaintiff stated that she wanted someone to “give [her] a piece of  
24 paper that says [she’s] unstable.” AR 20, 503. Other evidence noted by the ALJ includes the ALJ’s  
25 finding that Plaintiff used a walker that was not prescribed by any provider. AR 21. Plaintiff had a  
26 normal gait in Dr. Schmidt’s examination, but used a self-prescribed walker for Dr. Nikkel’s  
27 examination just six months later. AR 444-48. Dr. Schmidt also concluded that Plaintiff was  
28 “intentionally fabricating symptoms for possible secondary gain.” AR 20. This is substantial evidence

1 supporting the ALJ's decision to reject the more severe aspects of Dr. Nikkel's examination in light of  
2 Plaintiff's suggested malingering.

3 Overall, the ALJ weighed Dr. Nikkel's opinion against the findings of the other physicians and  
4 found that Dr. Nikkel's opinion regarding the severity of Plaintiff's limitations was overly restrictive  
5 given the other benign evidence in the record. Ultimately, it is the ALJ's province to synthesize the  
6 medical evidence. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007) ("When evaluating  
7 the medical opinions of treating and examining physicians, the ALJ has discretion to weigh the value of  
8 each of the various reports, to resolve conflicts in the reports, and to determine which reports to credit  
9 and which to reject."). Where, as here, the findings by Dr. Nikkel were contradicted by every other  
10 opinion in the record, the ALJ was required to do no more than provide specific and legitimate reasons  
11 for discounting that physician's opinion. *Lester*, 81 F.3d at 830-31. The ALJ did so here. Accordingly,  
12 reversal is not warranted.

13 **V. CONCLUSION**

14 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial  
15 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court  
16 **DENIES** Plaintiff's appeal from the administrative decision of the Commissioner of Social Security.

17 The Clerk of this Court is **DIRECTED** to enter judgment in favor of the Commissioner of Social  
18 Security, and against Plaintiff Paula Williams.

19  
20 IT IS SO ORDERED.

21 Dated: September 26, 2018

22 /s/ Barbara A. McAuliffe  
23 UNITED STATES MAGISTRATE JUDGE  
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