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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTINA HELEN HERNANDEZ,
Plaintiff,
v.
KILOLO KIJAKAZI,
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. 1:22-cv-01096-HBK
ORDER GRANTING PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT, DENYING
DEFENDANT’S CROSS-MOTION FOR
SUMMARY JUDGMENT, AND
REMANDING CASE TO COMMISSIONER
OF SOCIAL SECURITY ¹
(Doc. Nos. 20, 22)

Christina Helen Hernandez (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for supplemental security income under the Social Security Act. (Doc. No. 1). The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument. (Doc. Nos. 20, 22). For the reasons stated, the Court grants Plaintiff’s motion for summary judgment, denies Defendant’s motion for summary judgment, and orders this matter remanded to the Commissioner of Social Security for further administrative proceedings.

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¹ Both parties have consented to the jurisdiction of a magistrate judge in accordance with 28 U.S.C. §636(c)(1). (Doc. No. 14).

1 **I. JURISDICTION**

2 Plaintiff filed for supplemental security income on July 14, 2020, alleging a disability
3 onset date of January 7, 2017. (AR 181-90). Benefits were denied initially (AR 69-81, 101-05)
4 and upon reconsideration (AR 83-99, 115-20). A telephonic hearing was conducted before an
5 Administrative Law Judge (“ALJ”) on June 24, 2021. (AR 32-68). Plaintiff was represented by
6 counsel and testified at the hearing. (*Id.*). On July 26, 2021, the ALJ issued an unfavorable
7 decision (AR 13-31), and on June 24, 2022, the Appeals Council denied review. (AR 1-7). The
8 matter is now before this Court pursuant to 42 U.S.C. § 1383(c)(3).

9 **II. BACKGROUND**

10 The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s
11 decision, and the briefs of Plaintiff and Commissioner. Only the most pertinent facts are
12 summarized here.

13 Plaintiff was 49 years old at the time of the hearing. (*See* AR 41). She completed eighth
14 grade. (AR 41). She lives alone. (AR 58). Plaintiff has work history as a home health aide and
15 babysitter. (AR 44-47, 63). Plaintiff testified she stopped working after she witnessed her son
16 shot and killed by the police department. (AR 48). She reported she can stand for five to ten
17 minutes, walk for five minutes without a problem, and sit for ten minutes before she gets fidgety
18 and her bones hurt. (AR 43-44). Plaintiff testified that her anxiety and panic attacks intensified
19 after her son was killed, and her panic attacks make her feel like she will pass out, her heart
20 palpitates strongly, she gets clammy and sweaty, and she feels like she is going to die of a heart
21 attack. (AR 53-56). She reported having at least ten panic attacks in six months, and went to the
22 hospital five times in that time frame. (AR 55). Plaintiff was diagnosed with post-traumatic
23 stress disorder after her son died, and she testified it makes her very emotional, triggered by
24 music and certain types of food, and causes difficulty sleeping. (AR 56-57). She reported
25 difficulty with her memory, concentration, and focus. (AR 59-60).

26 **III. STANDARD OF REVIEW**

27 A district court’s review of a final decision of the Commissioner of Social Security is
28 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the

1 Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or
2 is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial
3 evidence” means “relevant evidence that a reasonable mind might accept as adequate to support a
4 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence
5 equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and
6 citation omitted). In determining whether the standard has been satisfied, a reviewing court must
7 consider the entire record as a whole rather than searching for supporting evidence in isolation.

8 *Id.*

9 In reviewing a denial of benefits, a district court may not substitute its judgment for that of
10 the Commissioner. “The court will uphold the ALJ’s conclusion when the evidence is susceptible
11 to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.
12 2008). Further, a district court will not reverse an ALJ’s decision on account of an error that is
13 harmless. *Id.* An error is harmless where it is “inconsequential to the [ALJ’s] ultimate
14 nondisability determination.” *Id.* (quotation and citation omitted). The party appealing the ALJ’s
15 decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556
16 U.S. 396, 409-10 (2009).

17 **IV. FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

18 A claimant must satisfy two conditions to be considered “disabled” within the meaning of
19 the Social Security Act. First, the claimant must be “unable to engage in any substantial gainful
20 activity by reason of any medically determinable physical or mental impairment which can be
21 expected to result in death or which has lasted or can be expected to last for a continuous period
22 of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment
23 must be “of such severity that he is not only unable to do his previous work[,] but cannot,
24 considering his age, education, and work experience, engage in any other kind of substantial
25 gainful work which exists in the national economy.” 42 U.S.C. § 1382c(a)(3)(B).

26 The Commissioner has established a five-step sequential analysis to determine whether a
27 claimant satisfies the above criteria. See 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the
28 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the

1 claimant is engaged in “substantial gainful activity,” the Commissioner must find that the
2 claimant is not disabled. 20 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step
4 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20
5 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of
6 impairments which significantly limits [his or her] physical or mental ability to do basic work
7 activities,” the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s
8 impairment does not satisfy this severity threshold, however, the Commissioner must find that the
9 claimant is not disabled. 20 C.F.R. § 416.920(c).

10 At step three, the Commissioner compares the claimant’s impairment to severe
11 impairments recognized by the Commissioner to be so severe as to preclude a person from
12 engaging in substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as
13 severe or more severe than one of the enumerated impairments, the Commissioner must find the
14 claimant disabled and award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant’s impairment does not meet or exceed the severity of the
16 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual
17 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s
18 ability to perform physical and mental work activities on a sustained basis despite his or her
19 limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

20 At step four, the Commissioner considers whether, in view of the claimant’s RFC, the
21 claimant is capable of performing work that he or she has performed in the past (past relevant
22 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant
23 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If
24 the claimant is incapable of performing such work, the analysis proceeds to step five.

25 At step five, the Commissioner considers whether, in view of the claimant’s RFC, the
26 claimant is capable of performing other work in the national economy. 20 C.F.R. §
27 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational
28 factors such as the claimant’s age, education, and past work experience. 20 C.F.R. §

1 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must
2 find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of
3 adjusting to other work, analysis concludes with a finding that the claimant is disabled and is
4 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

5 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,
6 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the
7 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such
8 work “exists in significant numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran*
9 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

10 V. ALJ’S FINDINGS

11 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity
12 since July 14, 2020, the application date. (AR 18). At step two, the ALJ found that Plaintiff has
13 the following severe impairments: anxiety, panic disorder, obsessive compulsive disorder, and
14 post-traumatic stress disorder. (AR 18). At step three, the ALJ found that Plaintiff does not have
15 an impairment or combination of impairments that meets or medically equals the severity of a
16 listed impairment. (AR 20). The ALJ then found that Plaintiff has the RFC to

17 perform a full range of work at all exertional levels but with the
18 following nonexertional limitations: the claimant is able to
19 understand, remember, and carry out short and simple instructions in
20 performing unskilled work as defined by the Dictionary of
21 Occupational Titles, while maintaining sufficient attention,
22 concentration, persistence, and pace to perform such work within all
23 requirements of time, quality, and quantity, except would be off task
24 up to 5% of the workday due to distractions from psychiatric
25 symptoms; is able to perform work requiring incidental interaction
26 with the general public, defined as such interaction as she would have
27 if emptying trash cans in an area to which the public would have
28 access; and is able to interact occasionally with supervisors and
coworkers, but the majority of her work (defined as 90%) must
involve work with things and not people.

(AR 22).

26 At step four, the ALJ found that Plaintiff is unable to perform any past relevant work.
27 (AR 25). At step five, the ALJ found that considering Plaintiff’s age, education, work
28 experience, and RFC, there are jobs that exist in significant numbers in the national economy that

1 Plaintiff can perform, including: small parts assembler, laundry worker, and document preparer.
2 (AR 26). On that basis, the ALJ concluded that Plaintiff has not been under a disability, as
3 defined in the Social Security Act, since July 14, 2020, the date the application was filed. (AR
4 27).

5 VI. ISSUES

6 Plaintiff seeks judicial review of the Commissioner’s final decision denying her
7 supplemental security income benefits under Title XVI of the Social Security Act. (Doc. No. 1).
8 Plaintiff identifies the following issue for this Court’s review: whether the ALJ properly
9 considered Plaintiff’s subjective complaints, and therefore incorporated all of Plaintiff’s work-
10 related limitations into the RFC consistent with the nature and intensity of Plaintiff’s limitations.
11 (Doc. No. 20 at 13-21).

12 VII. DISCUSSION

13 A claimant’s RFC is “the most [the claimant] can still do despite [his or her] limitations.”
14 20 C.F.R. § 404.1545(a); 20 C.F.R. § 416.945(a). The RFC assessment is an administrative
15 finding based on all relevant evidence in the record, not just medical evidence. *Bayliss v.*
16 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). In determining the RFC, the ALJ must consider
17 all limitations, severe and non-severe, that are credible and supported by substantial evidence in
18 the record. (*Id.*) (RFC determination will be affirmed if supported by substantial evidence).
19 However, an ALJ’s RFC findings need only be consistent with relevant assessed limitations and
20 not identical to them. *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010).
21 Ultimately, a claimant’s RFC is a matter for the ALJ to determine. *See Vertigan v. Halter*, 260
22 F.3d 1044, 1049 (9th Cir. 2001) (“It is clear that it is the responsibility of the ALJ ... to determine
23 residual functional capacity.”).

24 Plaintiff argues the ALJ erred in assessing her RFC because he failed to offer clear and
25 convincing reasons for rejecting her subjective complaints. (Doc. No. 20 at 20-21). An ALJ
26 engages in a two-step analysis when evaluating a claimant’s testimony regarding subjective pain
27 or symptoms. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). The ALJ first
28 must determine whether there is “objective medical evidence of an underlying impairment which

1 could reasonably be expected to produce the pain or other symptoms alleged.” *Id.* (internal
2 quotation marks omitted). “The claimant is not required to show that his impairment could
3 reasonably be expected to cause the severity of the symptom he has alleged; he need only show
4 that it could reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d
5 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

6 Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the
7 ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ]
8 gives ‘specific, clear and convincing reasons’ for the rejection.” *Ghanim v. Colvin*, 763 F.3d
9 1154, 1163 (9th Cir. 2014) (internal citations and quotations omitted). “General findings are
10 insufficient; rather, the ALJ must identify what testimony is not credible and what evidence
11 undermines the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.
12 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ must make a
13 credibility determination with findings sufficiently specific to permit the court to conclude that
14 the ALJ did not arbitrarily discredit claimant’s testimony.”). “The clear and convincing
15 [evidence] standard is the most demanding required in Social Security cases.” *Garrison v.*
16 *Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278
17 F.3d 920, 924 (9th Cir. 2002)).

18 Here, the ALJ found that Plaintiff’s medically determinable impairments could reasonably
19 be expected to cause some of the alleged symptoms; however, Plaintiff’s “statements concerning
20 the intensity, persistence, and limiting effects of these symptoms are not entirely consistent with
21 the medical evidence and other evidence in the record” for several reasons.² (AR 23). First, the
22 ALJ found Plaintiff’s “allegations are inconsistent with the medical evidence because the
23 claimant responded positively to mental health treatment.” (AR 23). Plaintiff argues this was not
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25 ² In addition to the arguments addressed below, the ALJ found that “[c]onsidering any side effects from
26 the claimant’s medications, the claimant did not present consistent evidence that she suffers from chronic,
27 significantly limiting side effects from the medications set forth in the record.” (AR 23). Plaintiff argues
28 the ALJ failed to identify any actual inconsistency in Plaintiff’s statements regarding side effects from
medications (Doc. No. 20 at 16-18), and in response the “Commissioner acknowledge[d] that substantial
evidence does not support the ALJ’s discounting of symptoms based on side effects.” (Doc. No. 22 at 11
n.6).

1 a specific, clear, and convincing reason to reject her pain and symptom testimony. (Doc. No. 20
2 at 14-16). The Court agrees.

3 A favorable response to treatment can undermine a claimant's complaints of debilitating
4 pain or other severe limitations. *See Tommasetti*, 533 F.3d at 1040; *Warre v. Comm'r of Soc. Sec.*
5 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (Conditions effectively controlled with medication
6 are not disabling for purposes of determining eligibility for benefits). In support of this finding,
7 the ALJ generally noted that Plaintiff's "medication regimen" included mood-stabilizing
8 medications Paxil and Buspar, and anxiolytic medication Antrax; and cited seven treatment notes
9 between January 8, 2020 and July 7, 2021 with mental status examination findings of full
10 orientation, normal attention and perception, normal speech, cooperative behavior, normal
11 thought content, normal memory, and normal judgment and insight. (AR 23). As Plaintiff notes,
12 however, these same mental status examinations included findings of nervousness, anxious
13 demeanor, poor appearance, depression, anxious and worried mood, depressive cognitions,
14 ruminations in thought content, and preoccupations. (AR 476-77, 1518 (noting trauma symptoms
15 and panic symptoms as part of behavioral health symptom review), 1666 ("not feeling well but
16 trying"), 1683-84 (noting same rating of moderate depression and anxiety as compared to her
17 previous rating), 1696, 1704, 1751 (no mental status examination performed at cardiac treatment
18 visit, physical examination found oriented and appropriate mood).

19 And while the ALJ cites these objective findings in the record as support for her finding
20 that Plaintiff "responded positively" to mental health treatment,³ she fails to identify or explain
21 how any specific instance of "improvement" undermines Plaintiff's claimed limitations nor does
22 she cite to evidence in the record observing specific improvement in Plaintiff's symptoms due to
23 medication. *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015) (noting the ALJ did not
24 specifically identify any inconsistencies between the claimant's testimony and the record; rather,

25 ³ Defendant argues the ALJ noted Plaintiff's symptom claims were inconsistent with the objective medical
26 evidence. (Doc. No. 22 at 8). However, the Court is not permitted to consider any alleged inconsistency
27 with objective evidence because it was not specifically offered by the ALJ in the decision as reasons to
28 discount Plaintiff's symptom claims. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1226 (9th Cir.
2009) (the Court "review[s] the ALJ's decision based on the reasoning and factual findings offered by the
ALJ—not *post hoc* rationalizations that attempt to intuit what the adjudicator may have been thinking.”).

1 “she simply stated her non-credibility conclusion and then summarized the medical evidence
2 supporting her RFC determination.”); *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
3 2001) (in considering Plaintiff’s symptom claims, “the ALJ must specifically identify the
4 statements he or she finds not to be credible and must explain what evidence undermines the
5 testimony”). Here, the treatment notes cited by the ALJ do not indicate that Plaintiff was
6 prescribed mental health medications; and an independent review of the record indicates that
7 Plaintiff repeatedly declined to take anxiety medication, and she testified that she no longer takes
8 anxiety medication because it caused a panic attack and she had to go to the hospital. (AR 57,
9 480, 1519 (reporting she discontinued psychotropic medication because it made her feel more
10 anxious), 1521 (plaintiff tried “medication therapy which was ineffective”), 1669, 1685, 1697-98
11 (“she changed her mind on psychotropic medications and does not want to consult with tele psych
12 provider at this time”), 1706, 1751-52). For all of these reasons, the ALJ’s rejection of Plaintiff’s
13 symptom claims due to alleged “positive response” to mental health treatment, including
14 medication, was not clear, convincing, and supported by substantial evidence.

15 Second, the ALJ noted that Plaintiff “reported and testified to a significant range of
16 activities.” (AR 24). The ALJ may consider a claimant's activities that undermine reported
17 symptoms. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). However, the Ninth Circuit
18 has “repeatedly warned that ALJs must be especially cautious in concluding that daily activities
19 are inconsistent with testimony about pain, because impairments that would unquestionably
20 preclude work and all the pressures of a workplace environment will often be consistent with
21 doing more than merely resting in bed all day.” *Garrison*, 759 F.3d at 1016; *Vertigan v. Halter*,
22 260 F.3d 1044, 1050 (9th Cir. 2001) (“This court has repeatedly asserted that the mere fact that a
23 plaintiff has carried on certain daily activities, such as grocery shopping, driving a car, or limited
24 walking for exercise, does not in any way detract from her [testimony] as to her overall
25 disability.”). In support of this finding, the ALJ noted Plaintiff “did not identify needing
26 assistance to feed herself or use the toilet,” and was able to maintain relationships with her
27 children and “get along with family, neighbors, friends,” and authority figures. (AR 24). As to
28 these activities, however, the ALJ did not identify any specific testimony that she found not to be

1 credible, nor did the ALJ offer explanations for why the cited evidence of Plaintiff's ability to
2 feed herself, use the toilet, or socialize with family members undermines her symptom claims,
3 particularly as to her difficulties with anxiety and ongoing panic attacks. *See Holohan*, 246 F.3d
4 at 1208. Moreover, Plaintiff reported that she does not take care of her grandchildren anymore
5 because she didn't want to scare them, her daughters do her grocery shopping because she is
6 scared she will have a panic attack, and she is only around family "a short while and then [she
7 wants] to come home right away." (Doc. No. 20 at 19-20 (citing AR 229); AR 58, 61. Thus,
8 substantial evidence does not support the ALJ's reasoning on this issue.

9 The ALJ additionally found that Plaintiff reported trouble completing tasks but was able
10 to dress, bathe, care for her hair, live alone, prepare simple foods, wash laundry once a week, take
11 out the trash, sweep, and shop in stores; and Plaintiff reported "having the necessary focus,
12 despite her impairments, to pay bills, count change, handle a savings account, use a checkbook or
13 money order, watch television, and play games on her phone. (AR 24). However, the ALJ cited
14 no evidence suggesting that these limited activities were performed by Plaintiff in a manner
15 transferable to a work setting, nor did the ALJ describe activities that contradict her reported
16 symptom claims of anxiety and panic attacks. *Orn v. Astrue*, 495 F.3d 625 (9th Cir. 2007). For
17 all of these reasons, the ALJ's finding that Plaintiff's daily activities were inconsistent with her
18 claimed limitations was not a clear and convincing reason, supported by substantial evidence, to
19 discount her symptom claims.

20 Based on the foregoing, the Court concludes that the ALJ did not provide clear and
21 convincing reasons, supported by substantial evidence, for rejecting Plaintiff's alleged
22 impairments. On remand, the ALJ must reconsider Plaintiff's symptom claims and reassess the
23 RFC.

24 **B. Remedy**

25 Plaintiff contends that the proper remedy in this case is a remand for further
26 administrative proceedings. *See Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-
27 04 (9th Cir. 2014) (remand for benefits is not appropriate when further administrative
28 proceedings would serve a useful purpose). The Court agrees. Here, the ALJ improperly

1 considered Plaintiff's symptom claims, which calls into question whether the assessed RFC, and
2 resulting hypothetical propounded to the vocational expert, are supported by substantial evidence.
3 "Where," as here, "there is conflicting evidence, and not all essential factual issues have been
4 resolved, a remand for an award of benefits is inappropriate." *Treichler*, 775 F.3d at 1101. On
5 remand, the ALJ should reevaluate Plaintiff's symptom claims. The ALJ should also conduct a
6 new sequential analysis, reassess Plaintiff's RFC and, if necessary, take additional testimony from
7 a vocational expert to include all the limitations credited by the ALJ.

8 Accordingly, it is **ORDERED**:

- 9 1. Plaintiff's Motion for Summary Judgment (Doc. No. 20) is GRANTED.
- 10 2. Defendant's Cross-Motion for Summary Judgment (Doc. No. 22) is DENIED.
- 11 3. Pursuant to sentence four of 42 U.S.C. § 405(g), the Court REVERSES the
12 Commissioner's decision and REMANDS this case back to the Commissioner of
13 Social Security for further proceedings consistent with this Order.
- 14 4. An application for attorney fees may be filed by separate motion within thirty (30)
15 days.
- 16 5. The Clerk shall enter judgment in favor of Plaintiff, terminate any motions and
17 deadlines, and close this case.

18
19 Dated: December 28, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE