

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANNA WILBERG,

Plaintiff, No. CIV S-07-0591 DAD

V.

MICHAEL J. ASTRUE,
Commissioner of Social Security,¹

ORDER

Defendant.

This social security action was submitted to the court, without oral argument, for ruling on plaintiff's motion for judgment on the pleadings and defendant's cross-motion for summary judgment. For the reasons explained below, plaintiff's motion is granted, the decision of the Commissioner of Social Security (Commissioner) is reversed, and the matter is remanded with the direction to award benefits.

PROCEDURAL BACKGROUND

Plaintiff Danna Wilberg first applied for Disability Insurance Benefits under Title II of the Social Security Act (Act) on October 8, 1999, alleging onset of disability on October 7,

¹ On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. Mr. Astrue is substituted as defendant in this suit pursuant to 42 U.S.C. § 405(g) and Fed. R. Civ. P. 25(d)(1).

1 1998. (Transcript (Tr.) at 82-84.) The application was denied initially in January 2000 and upon
2 reconsideration in March 2000. (Tr. at 71-81.) Plaintiff filed a new application on August 30,
3 2000, again alleging onset of disability on October 7, 1998. (Tr. at 151-53.) The application was
4 denied initially in February 2001 and upon reconsideration in May 2001. (Tr. at 136-46.)
5 Pursuant to plaintiff's request, a hearing was held before an administrative law judge (ALJ) on
6 April 9, 2002. (Tr. at 147-48, 530-56). Plaintiff was represented by counsel and testified at the
7 hearing. (Tr. at 530-56.) In a partially favorable decision issued on May 29, 2002, ALJ Antonio
8 Acevedo-Torres determined that plaintiff had been disabled since March 28, 2002, but was not
9 disabled prior to that date. (Tr. at 53-64.) Plaintiff requested review of the decision regarding
10 the onset of disability date. (Tr. at 47-49.)

11 On September 25, 2004, the Appeals Council affirmed the ALJ's decision with
12 respect to the favorable period but vacated it with respect to the period before March 28, 2002.
13 (Tr. at 395-98.) On remand, the ALJ was required to (1) obtain additional evidence concerning
14 plaintiff's impairments in order to complete the administrative record; (2) reconsider plaintiff's
15 residual functional capacity during the period at issue, provide a rationale for and cite evidence
16 supporting the assessed limitations, and explain the weight given to the medical opinions; and (3)
17 obtain evidence, if necessary, from a vocational expert regarding the effect of the assessed
18 limitations on plaintiff's occupational base. (Tr. at 397.) The ALJ was required to offer plaintiff
19 a further hearing and to issue a new decision for the period before March 28, 2002. (Tr. at 398.)

20 On remand from the Appeals Council, the ALJ issued a supplemental notice of
21 hearing on August 4, 2005. (Tr. at 31-34) Plaintiff was again represented by counsel and
22 testified at the hearing conducted on September 12, 2005. (Tr. at 557-72). In a decision issued
23 on November 17, 2005, the ALJ again determined that plaintiff was not disabled prior to March
24 28, 2002. (Tr. at 16-30.) The ALJ entered the following findings:

25 1. The claimant meets the nondisability requirements
26 for a period of disability and Disability Insurance
Benefits set forth in Section 216(i) of the Social

1 Security Act and is insured for benefits through the
2 date of this decision.

3

4 2. The claimant has not engaged in substantial gainful
5 activity since the alleged onset of disability.

6 3. The claimant's fibromyalgia, chronic neck and low
7 back pain, and degenerative changes of the cervical
8 and lumbar spine were considered "severe" based
9 on the requirements in the Regulations 20 CFR §
10 404.1520(c).

11 4. These medically determinable impairments did not
12 meet or medically equal one of the listed
13 impairments in Appendix 1, Subpart P, Regulation
14 No. 4 prior to March 28, 2002.

15 5. The undersigned finds the claimant's allegations
16 regarding her limitations are not totally credible for
17 the reasons set forth in the body of the decision
18 prior to March 28, 2002.

19 6. The claimant had the following residual functional
20 capacity prior to March 28, 2002: lift 10 pounds
21 occasionally and less than 10 pounds frequently,
22 walk/stand two hours, sit six hours, and
23 occasionally perform postural activities, and she had
24 no mental, visual, communicative, manipulative, or
25 environmental limitations.

26 7. The claimant was unable to perform any of her past
relevant work prior to March 28, 2002 (20 CFR §
404.1565).

8. The claimant was a "younger individual" prior to
March 28, 2002 (20 CFR § 404.1563).

9. The claimant had a "high school (or high school
equivalent) education" (20 CFR § 404.1564).

10. The claimant had no transferable skills from any
past relevant work and/or transferability of skills
was not an issue in this case prior to March 28,
2002 (20 CFR § 404.1568).

11. The claimant had the residual functional capacity to
perform the full range of sedentary work prior to
March 28, 2002 (20 CFR § 404.1567).

12. Based on an exertional capacity for sedentary work,
and the claimant's age, education, and work

experience, a finding of “not disabled” is directed by Medical-Vocational Rules 201.21 and 201.22 prior to March 28, 2002.

13. The claimant was not under a “disability” as defined in the Social Security Act, at any time prior to March 28, 2002 (20 CFR § 404.1520(g)).

(Tr. at 29-30.)

On December 7, 2005, plaintiff requested review of the ALJ's second decision.

(Tr. at 13-15.) The Appeals Council denied the request for review on January 23, 2007. (Tr. at 7-9.) Plaintiff then sought judicial review pursuant to 42 U.S.C. § 405(g) by filing the complaint in this action on March 27, 2007.

LEGAL STANDARD

The Commissioner's decision that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence and the proper legal standards were applied. Schneider v. Comm'r of the Soc. Sec. Admin., 223 F.3d 968, 973 (9th Cir. 2000); Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999). The findings of the Commissioner as to any fact, if supported by substantial evidence, are conclusive. See Miller v. Heckler, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Morgan, 169 F.3d at 599; Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)).

A reviewing court must consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the ALJ's conclusion. See Jones, 760 F.2d at 995. The court may not affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative findings, or if there is conflicting evidence supporting a finding of either disability or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an

1 improper legal standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d
2 1335, 1338 (9th Cir. 1988).

3 In determining whether or not a claimant is disabled, the ALJ should apply the
4 five-step sequential evaluation process established under the Social Security regulations. Title 20
5 of the Code of Federal Regulations, Section 404.1520, sets forth the test used to assess disability.
6 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). This five-step process can be summarized
7 as follows:

8 Step one: Is the claimant engaging in substantial gainful activity?
9 If so, the claimant is found not disabled. If not, proceed to step
two.

10 Step two: Does the claimant have a “severe” impairment? If so,
11 proceed to step three. If not, then a finding of not disabled is
appropriate.

12 Step three: Does the claimant’s impairment or combination of
13 impairments meet or equal an impairment listed in 20 C.F.R., Pt.
404, Subpt. P, App. 1? If so, the claimant is conclusively
presumed disabled. If not, proceed to step four.

14 Step four: Is the claimant capable of performing his past work? If
15 so, the claimant is not disabled. If not, proceed to step five.

16 Step five: Does the claimant have the residual functional capacity
17 to perform any other work? If so, the claimant is not disabled. If
not, the claimant is disabled.

18 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995). The claimant bears the burden of proof in
19 the first four steps of the sequential evaluation process. Yuckert, 482 U.S. at 146 n.5. The
20 Commissioner bears the burden if the sequential evaluation process proceeds to step five. Id.;
21 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

22 **APPLICATION**

23 Plaintiff argues that the ALJ failed to follow the treating physician rule when he
24 determined her residual functional capacity (RFC), both physical and psychiatric, prior to March
25 28, 2002. Plaintiff contends that the ALJ erred by giving only minimal weight to the opinion of
26 treating physician Jay Hendrickson, M.D., and no weight to the opinion of treating physician

1 Mark Yankauer, M.F.T. Plaintiff's argument concerning the ALJ's assignment of weight to the
2 opinions of treating medical professionals in determining physical and psychiatric RFC is
3 addressed below.²

4 A claimant's RFC is "the most [the claimant] can still do despite [his or her]
5 limitations." 20 C.F.R. § 404.1545(a). The assessment of a claimant's RFC must be "based on
6 all the relevant evidence in [the claimant's] case record." Id. See also Mayes v. Massanari, 276
7 F.3d 453, 460 (9th Cir. 2001). When a claimant requests an administrative hearing, it is the duty
8 of the ALJ to determine the claimant's RFC from the record. 20 C.F.R. § 404.1546(c). It is "the
9 responsibility of the ALJ, not the claimant's physician, to determine residual functional
10 capacity," and the ALJ's findings of RFC need not correspond precisely to any physician's
11 findings. Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001). The claimant bears the
12 burden of proof of establishing RFC. Yuckert, 482 U.S. at 146 n.5.

13 Here, the ALJ determined that plaintiff's fibromyalgia, chronic neck and low back
14 pain, and degenerative changes of the cervical and lumbar spine were severe impairments both
15 prior to and after March 28, 2002. (Tr. at 29, 62.) He found that plaintiff had the physical
16 residual functional capacity, both before and after March 28, 2002, to sit for six hours, walk
17 and/or stand for two hours, perform postural activities occasionally, lift 10 pounds occasionally,
18 and lift less than 10 pounds frequently. (Tr. at 30, 62.) The ALJ found that plaintiff had no
19 mental, visual, manipulative, communicative, or environmental limitations, either before or after
20 March 28, 2002. (Id.) On the basis of these findings, he determined that plaintiff could perform
21 the full range of sedentary work but could not perform her past relevant work as a store
22 demonstrator, either before or after March 28, 2002. (Id.) The ALJ found that plaintiff had a

23 ² The undersigned notes, however, that this case is before the court only with regard to
24 the ALJ's second decision that plaintiff was not disabled prior to March 28, 2002. The ALJ's
25 initial decision that plaintiff was disabled on March 28, 2002 was affirmed by the Appeals
26 Council, was not before the ALJ on remand, and is not at issue in this court. The undersigned
also notes that no medically significant event occurred on March 28, 2002. Rather, on that date,
plaintiff attained the age of 50.

1 high school education but no acquired work skills transferable to skilled or semi-skilled work
2 activities. (Id.) In each decision, the ALJ applied Rules 201.21 and 201.22 of the Medical-
3 Vocational Guidelines to find plaintiff not disabled prior to March 28, 2002, when she was “a
4 younger individual.” (Id.) In his first decision, the ALJ applied Rule 202.14 to find plaintiff
5 disabled on March 28, 2002, when she became a person “closely approaching advanced age.”
6 (Tr. at 64.)

7 Rules 201.21 and 201.22 are included in a table of rules applicable to claimants
8 whose RFC limits them to sedentary work. Pt. 404, Subpt. P, App. 2, Table 1. Rule 201.21 is
9 intended for use where the claimant is a person aged 45-49 whose education level is high school
10 graduate or more and whose previous work experience is skilled or semiskilled, with no
11 transferable skills. Rule 201.22 is intended for use where the claimant fits the description
12 contained in Rule 202.21 but has transferable skills. Both rules dictate a finding of not disabled.
13 Rule 201.14, on the other hand, dictates a finding of disabled for a claimant aged 50 to 54 whose
14 education level is high school graduate or more and whose previous work experience is skilled or
15 semiskilled, with no transferable skills. All three rules apply only

16 [w]here the findings of fact made with respect to a particular
17 individual’s vocational factors and residual functional capacity
18 coincide with all of the criteria of a particular rule However,
19 each of these findings of fact is subject to rebuttal and the
20 individual may present evidence to refute such findings. Where
21 any one of the findings of fact does not coincide with the
22 corresponding criterion of a rule, the rule does not apply in that
23 particular case and, accordingly, does not direct a conclusion of
24 disabled or not disabled. In any instance where a rule does not
25 apply, full consideration must be given to all of the relevant facts
26 of the case in accordance with the definitions and discussions of
each factor in the appropriate sections of the regulations.

23 Pt. 404, Subpt. P, App. 2, § 200.00(a). “Since the rules are predicated on an individual’s having
24 an impairment which manifests itself by limitations in meeting the strength requirements of jobs,
25 they may not be fully applicable where the nature of an individual’s impairment does not result in
26 such limitations, e.g., certain mental, sensory, or skin impairments.” Id. at § 200.00(e). In

1 addition, a decision of disabled may be appropriate for some individuals age 45-49 who do not
2 have the ability to perform a full range of sedentary work. Id. at § 200.00(h)(3).

3 Under the Commissioner's regulations, the physical exertion requirements for
4 sedentary work are as follows:

5 Sedentary work involves lifting no more than 10 pounds at a time
6 and occasionally lifting or carrying articles like docket files,
7 ledgers, and small tools. Although a sedentary job is defined as
8 one which involves sitting, a certain amount of walking and
standing is often necessary in carrying out job duties. Jobs are
sedentary if walking and standing are required occasionally and
other sedentary criteria are met.

9 20 C.F.R. § 404.1567(a). See Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001).

10 “‘Occasionally’ means occurring from very little up to one-third of the time.” SSR 83-10, 1983
11 WL 31251, at *5 (Nov. 30, 1982). Thus, for purposes of sedentary work, “periods of standing or
12 walking should generally total no more than about 2 hours of an 8-hour workday, and sitting
13 would generally total approximately 6 hours of an 8-hour workday.” Id.

14 In determining a claimant’s RFC, it is well established that the weight to be given
15 to medical opinions depends in part on whether they are proffered by treating, examining, or
16 non-examining professionals. Lester, 81 F.3d at 830. “As a general rule, more weight should be
17 given to the opinion of a treating source than to the opinion of doctors who do not treat the
18 claimant.” Id. This is so because a treating doctor is employed to cure and has a greater
19 opportunity to know and observe the patient as an individual. Id.; Smolen v. Chater, 80 F.3d
20 1273, 1285 (9th Cir. 1996); Bates v. Sullivan, 894 F.2d 1059, 1063 (9th Cir. 1990). The ALJ
21 need not give weight to conclusory opinions supported by minimal clinical findings. Meanel v.
22 Apfel, 172 F.3d 1111, 1113-14 (9th Cir. 1999); Magallanes v. Bowen, 881 F.2d 747, 751 (9th
23 Cir. 1989).

24 “At least where the treating doctor’s opinion is not contradicted by another doctor,
25 it may be rejected only for ‘clear and convincing’ reasons.” Lester, 81 F.3d at 830 (quoting
26 Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991)). “Even if the treating doctor’s opinion

1 is contradicted by another doctor, the Commissioner may not reject this opinion without
2 providing ‘specific and legitimate reasons’ supported by substantial evidence in the record for so
3 doing.” Lester, 81 F.3d at 830 (quoting Murray v. Heckler, 722 F.2d 499, 502 (9th Cir. 1983)).
4 If a treating professional’s opinion is contradicted by an examining professional’s opinion that is
5 supported by different, independent clinical findings, the ALJ may resolve the conflict. Andrews
6 v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes, 881 F.2d at 751). The opinion
7 of a non-examining professional, without other evidence, is an insufficient basis for rejecting the
8 opinion of either a treating or examining professional. Lester, 81 F.3d at 831.

9 In the present case, plaintiff was gainfully employed until October 7, 1998, when
10 she was injured in an automobile accident.³ Treating medical professionals have included Hayne
11 Kelada, M.D., who was the family’s doctor at the time of the accident; Ron Martin, D.C., who
12 began treating plaintiff on October 24, 1998; an acupuncturist who treated plaintiff in 1999;
13 Allen Hassan, M.D., an orthopedic and neurologic specialist who began treating plaintiff on
14 January 27, 2000; Jay Hendrickson, M.D. a pain management specialist who began treating
15 plaintiff on December 7, 2000; and Mark Yankauer, M.F.T., a therapist who began treating
16 plaintiff in May 2001, saw her weekly for about six months, and saw her every two weeks
17 thereafter for at least six months. (See Pl.’s Mot. for J. on Pleadings, at 2-23.)

18 Examining physicians have included David Seminar, M.D., a neurologic specialist
19 who examined plaintiff on November 23, 1998; Neil Wood, M.D., a board-certified internist who
20 evaluated plaintiff on June 2, 1999 and October 27, 1999; Rajiv S. Pathak, M.D., who conducted
21 an internal medicine evaluation as a consultative examiner for the Social Security Administration
22 on December 29, 1999; Christopher Molitor, M.D., who examined plaintiff on January 12, 2000;

23
24 ³ Plaintiff had stopped her minivan to make a left turn when a utility van ran into the rear
25 of her vehicle at 45 to 50 miles per hour, causing her vehicle to spin around and flip over on the
26 passenger side. Plaintiff hit her chest on the steering wheel, and her left shoulder struck the door.
She was seen in an emergency room and has been treated by numerous doctors since then. (See
Pl.’s Mot. for J. on Pleadings, at 2-23.)

1 Pierre Dreyfus, M.D. a board-certified neurologist who examined plaintiff on October 24, 2000;
2 Daniel Powers, M.D., who reviewed various imaging studies on November 15, 2000; Michael J.
3 Sloan, D.C., who evaluated plaintiff on January 8, 2001, at the request of plaintiff's treating
4 chiropractor; R. Singleton, M.D., and S. Mackay, Ph.D., who evaluated plaintiff at the Stanford
5 Pain Management Center in September 2004 and issued a report; Steve McIntire, M.D., who
6 conducted an orthopedic evaluation as a consultative examiner for the Social Security
7 Administration on June 16, 2005; and Mandeep Behniwal, M.D., who conducted a
8 comprehensive psychiatric examination as a consultative examiner for the Social Security
9 Administration on June 18, 2005. (Id.)

10 Plaintiff challenges the ALJ's treatment of the opinions of treating physician Dr.
11 Hendrickson, which he stated in a Medical Assessment of Physical Ability to Do Work Related
12 Activities form dated March 16, 2001. (Tr. at 23-24, 374-76.) Dr. Hendrickson found plaintiff
13 limited to lifting or carrying five pounds at any one time, standing or walking three hours in an
14 eight-hour day, and sitting three hours in an eight-hour day. (Tr. at 374.) Dr. Hendrickson also
15 found significant postural limitations arising from plaintiff's chronic myofascial pain and opined
16 that she should never climb, balance, stoop, crouch, kneel, crawl, or bend and that she should
17 perform the physical functions of reaching, handling, feeling, pushing, and pulling only
18 occasionally. (Tr. at 375.) Dr. Hendrickson found no limitations on plaintiff's abilities to see,
19 hear, and speak, no impairment of her abilities to perform simple or firm grasping or fine
20 manipulation, and no environmental restrictions. (Tr. at 375-76.) Plaintiff argues that the
21 restrictions found by Dr. Hendrickson, under the Commissioner's own regulations, establish an
22 RFC to perform less than sedentary work.

23 Plaintiff also challenges the ALJ's treatment of the opinions of treating therapist
24 Mark Yankauer, which he stated in a Mental Functional Capacity form dated April 5, 2002 and
25 in a Psychiatric Review Technique form dated April 26, 2002. (Tr. at 26, 427-28, 429-37.) In
26 the mental functional capacity form Mr. Yankauer indicates that plaintiff would often have

1 difficulty maintaining attention and concentration and being able to function independently;
2 would have slight problems following work rules, using judgment, interacting with supervisors,
3 and dealing with work stresses; would often have problems understanding, remembering and
4 carrying out complex job instructions, as well as detailed but not complex job instructions; would
5 have a slight difficulty in understanding, remembering and carrying out simple job instructions;
6 and would have a slight difficulty in behaving in an emotionally stable manner and relating
7 predictably in social situations. (Tr. at 427-28.) The psychiatric review technique form reflects
8 depressive syndrome characterized by, among other symptoms, difficulty concentrating or
9 thinking. (Tr. at 432.) Mr. Yankauer found that the following functional limitations exist as a
10 result of plaintiff's affective disorder: restriction of activities of daily living, to a marked degree;
11 difficulties in maintaining social function, to a marked degree; and deficiencies of concentration,
12 persistence, or pace, that would often result in failure to complete tasks in a timely manner. (Tr.
13 at 436.) Plaintiff argues that the ALJ should have credited Mr. Yankauer's assessments and that
14 those assessments establish her disability.

15 In the administrative decision at issue, the ALJ states that only minimal weight
16 can be given to Dr. Hendrickson's medical source statement because the doctor's records do not
17 contain clinical or diagnostic findings to support his assessment, he did not refer plaintiff to a
18 specialist, he did not refer plaintiff to a pain clinic, he did not hospitalize plaintiff, he did not
19 administer pain injections, he supported his clinical findings with a reference to chronic
20 myofascial pain but did not cite specific clinical findings based on examinations, his
21 determination is inconsistent with the agency doctors' determinations, the functional limitations
22 reported in his assessment are not supported by the reports of other examining physicians, his
23 assessment is not supported by diagnostic studies of plaintiff's lumbar spine, and his assessment
24 is inconsistent with the functional assessment of Dr. Pathak. (Tr. at 23, 27.)

25 In his evaluation of the evidence, the ALJ refers to the records of plaintiff's
26 therapist, and notes that Mr. Yankauer had treated plaintiff for at least a year "for major

1 depression and a pain disorder, and GAF was consistently rated in the 60's." However, the ALJ
2 then focuses exclusively on those aspects of the therapist's findings that do not support plaintiff's
3 allegations of disability. The ALJ describes Mr. Yankauer's April 2002 mental medical source
4 statement as indicating that plaintiff "had unlimited/very good to fair ability in making
5 occupational adjustments, performance adjustments, and personal-social adjustments," entirely
6 omitting the therapist's indications of marked difficulties in the areas of concentration, memory,
7 understanding and judgment. (Tr. at 24 (citing Exhibit 21F⁴)).) The ALJ also uses the positive
8 aspects of Mr. Yankauer's assessment to discount plaintiff's subjective complaints of mental
9 impairments:

10 First, the undersigned finds [the claimant's] mental complaints
11 were not credible prior to March 28, 2002 because the mental MSS
12 [medical source statement] completed by Mr. Yankauer establishes
13 the claimant did not have a poor or no ability to make
14 occupational, performance, or personal-social adjustments (Exhibit
15 21F); there was no evidence of treatment, except with medication,
16 prior to her treatment with Mr. Yankauer; and there was no
17 evidence of any treatment by a psychiatrist or psychologist. Next,
18 she had not been hospitalized; there was no evidence of any
19 emergency room treatment; and no examining or treating physician
20 indicated that she was disabled due to any mental condition or that
21 she had any functional mental limitations. Dr. Hendrickson did not
22 identify any mental limitations in his medical assessment (Exhibit
23 16F); Dr. Pathak's CE [consultative examination] did not identify
24 any functional mental limitations (Exhibit 7F); Dr. Hassan's initial
25 evaluation in January 2000, which included a limited mental status
26 examination, led to him indicate [sic] that there was some
difficulty with abstract reasoning on proverb interpretation and
probably difficulty with concentration and that her judgment,
orientation, memory, attention span, and concentration were good
to very good, which do not support her mental complaints as
alleged (Exhibit 10F, p 11); there was no evidence of any crisis
center contacts; there was no evidence of any group therapy; and
there was no evidence or testimony that she has sought help for her
mental complaints from United Way or church organizations.

Hence, the undersigned finds that while she has been treated for
depression and post traumatic stress syndrome on a limited basis,

⁴ Exhibit 21F contain medical records from Marshall Hospital in 2001. (Tr. at 447-92.)
Exhibit 20F contains Mark Yankauer's medical records from May 16, 2001 to May 15, 2002.
(Tr. at 425-46.)

1 the overall record and her testimony fail to establish that she has a
2 severe mental impairment. As a result, her residual functional
3 capacity is not eroded by any of her mental complaints prior to
4 March 28, 2002.

5 (Tr. at 26.) On these findings, the ALJ concluded, as he had in his first decision, that the non-
6 treating, non-examining state agency physicians' form assessments in February and May 2001
7 "were the most reliable in establishing [the claimant's] residual functional capacity and were well
8 supported by the overall record." (Tr. at 28.) Relying on the state agency physicians' opinions
9 and rejecting the opinions of Mr. Yankauer, the ALJ found that plaintiff had no mental
10 impairments that were severe and, indeed, that plaintiff has no mental limitations at all. (Tr. at
11 29-30.)

12 Plaintiff offers a detailed analysis of the ALJ's reasons for rejecting the treating
13 physician's opinion of plaintiff's physical RFC and urges the court to find that Dr. Hendrickson's
14 assessment is entitled to special weight, is not contradicted by other evidence in the record, and
15 requires that plaintiff be found disabled. (Pl.'s Mot. for J. on the Pleadings at 24-29.) While
16 plaintiff takes a less exhaustive approach to the analysis of the ALJ's reasons for rejecting the
17 treating therapist's assessment of plaintiff's mental RFC, plaintiff cites portions of the record that
18 demonstrate the flaws in the ALJ's analysis of plaintiff's psychiatric residual functional capacity
19 and urges the court to find that the therapist's assessment is also entitled to special weight and
20 establishes disability, either under Listed Impairment 12.04, Affective Disorders, or by
21 demonstrating that plaintiff lacks the RFC to perform sedentary work. (Id. at 30-35.)

22 The court finds that the ALJ's stated reasons for giving little weight to Dr.
23 Hendrickson's opinion are inadequate. The record shows that Dr. Hendrickson's March 16, 2001
24 medical assessment of plaintiff's physical ability to do work related activities is in fact supported
25 by his records. Dr. Hendrickson prepared a detailed report of his initial pain management
26 consultation with plaintiff on December 7, 2000, when he saw her on referral from her family
physician. (Tr. at 361-65.) Dr. Hendrickson noted "a very complicated and complex history of

1 multiple sites of pain" and multiple trigger point injections by Dr. Wood in the past. (Tr. at 361.)
2 He also noted plaintiff's history of Guillan-Barre syndrome and fibromyalgia. (Tr. at 362.)
3 Plaintiff's chief complaint at the time of her initial consultation with Dr. Hendrickson concerned
4 cervical neck pain, and, at her request, he focused on the cervical region. (Tr. at 361, 365.)
5 Plaintiff reported that her neck pain was exacerbated by turning her head, looking up or down,
6 and riding in vehicles. (*Id.*) Dr. Hendrickson reviewed imaging studies of plaintiff's cervical
7 spine dated December 23, 1998 and May 12, 2000, and performed his own examination of
8 plaintiff. (Tr. at 363-64.) He found loss of motion of greater than 50% in all planes for the
9 cervical spine. (Tr. at 364.) He diagnosed cervical degenerative disk disease and set a primary
10 goal of increasing function and a secondary goal of decreasing pain. (Tr. at 365.) This report
11 contains clinical and diagnostic findings that support Dr. Hendrickson's diagnosis and goals.

12 Dr. Hendrickson then began treating plaintiff and had seen her two more times
13 before he completed the functional assessment form on March 16, 2001. When he saw plaintiff
14 on January 4, 2001, he noted that her pain had increased despite the use of lidoderm patches, and
15 she had been unable to increase any activities of daily living, such as vacuuming, laundry,
16 cleaning, and washing dishes. He diagnosed cervical degenerative disk disease and myofascial
17 pain syndrome, and scheduled trigger point injections. (Tr. at 359-60.) When he saw plaintiff on
18 January 25, 2001, he noted that her pain had been increased by the H-wave treatment, and she
19 had not increased any activities of daily living. He administered trigger point injections on that
20 date and instructed plaintiff to continue with chiropractic care for eight weeks. (Tr. at 357-58.)
21 Dr. Hendrickson saw plaintiff on March 22, 2001, less than a week after he completed the
22 functional assessment form. He recorded that her chief complaints on that date were of neck
23 pain, shoulder pain, and headaches. He noted that she had been unable to increase her activities
24 of daily living and that her fibromyalgia was a factor. (Tr. at 355-56.)

25 Dr. Hendrickson continued to treat plaintiff during the time period at issue in this
26 case. (Tr. at 493-503.) His diagnoses remained the same, and plaintiff continued to complain of

1 neck pain and difficulty sleeping due to pain. On May 31, 2001, plaintiff, whose medications
2 then included Vicodin, Cafergot, Ambien, Soma, and Effexor, reported that her pain had
3 decreased, but her overall activity and activities of daily living had not increased since the last
4 visit. (Tr. at 503.) On August 23, 2001, plaintiff, whose medications then included Cafergot,
5 Ambien, and Prozac, reported that her pain had increased and her overall activity and activities of
6 daily living had not increased from the last visit. Dr. Hendrickson noted that the only option left
7 was medical management, and that he planned to search for a medication that worked beginning
8 with Ultram. (Tr. at 501.) On September 18, 2001, plaintiff, whose medications then included
9 Cafergot, Vicodin, Prozac, and Ultram, reported that her pain had not changed and her overall
10 activity and activities of daily living had not increased from the last visit. She complained of
11 headaches and a feeling of being “drunk.” Dr. Hendrickson discontinued the Ultram and
12 prescribed Oxycontin. (Tr. at 499.) On November 29, 2001, plaintiff, whose medications then
13 included Cafergot, Prozac, Oxycontin, Ambien, and Prevacid, reported neck, shoulder, and chest
14 pain. She reported that her pain had decreased but was still interfering with sleep. Her overall
15 activity had increased, but her activities of daily living had not increased from the last visit. Dr.
16 Hendrickson continued Oxycontin at the same dose. (Tr. at 497.) On January 23, 2002, plaintiff,
17 whose medications then included Cafergot, Prozac, Ambien, Reglan, Oxycontin, and Soma,
18 reported that her pain had increased and was still interfering with sleep. Her overall activity had
19 increased, however, and for the first time her activities of daily living had also increased from the
20 last visit. Dr. Hendrickson found plaintiff stable on the current medications and instructed her to
21 continue home strengthening exercises and heat therapy. (Tr. at 495.) On March 21, 2002, six
22 days prior to her 50th birthday, plaintiff reported that her pain had increased and was still
23 interfering with sleep. Her overall activity and her activities of daily living had both increased
24 from the last visit. However, the Oxycontin was no longer working well for her and upset her
25 stomach. Dr. Hendrickson discontinued the Oxycontin and prescribed Methadone. (Tr. at 493.)

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1 Dr. Hendrickson's records prior to and near the time of his March 16, 2001
2 functional assessment of plaintiff's physical ability to do work related activities, reflected that
3 she was unable to lift or carry more than five pounds at a time, unable to sit more than three
4 hours in an eight-hour day, and unable to stand or walk more than three hours in an eight-hour
5 day, with significant postural limitations precluding climbing, balancing, stooping, crouching,
6 kneeling, crawling, and bending, and only occasional reaching, handling, feeling, pushing, and
7 pulling. His records for the remainder of the time period at issue do not reflect that plaintiff's
8 physical ability to do work related activities improved. The undersigned finds that the ALJ erred
9 in giving minimal weight to Dr. Hendrickson's opinions on the ground that the medical source
10 statement was not supported by the doctor's records.

11 The ALJ also asserted that Dr. Hendrickson "indicated chronic myofascial pain,
12 not any specific clinical findings based upon examinations" and that Dr. Hendrickson's
13 assessment was not supported by the diagnostic studies of her lumbar spine. (Tr. at 23-24.) With
14 regard to the latter, the ALJ cited a lumbar spine series completed on September 21, 1999,
15 showing no evidence of acute fracture, subluxation, or compromise of the intervertebral disc
16 spaces or neural foramina. (Tr. at 24 (citing Ex. 3F at 8 [tr. at 264].) The ALJ also cited reports
17 by Drs. Molitor, Hassan, and Powers without citing specific pages or explaining the significance
18 of his citations. (Tr. at 24 (citing Exs. 9F-10F & 12F [tr. at 307-09, 310-20, 325-40].) The
19 reports cited by the ALJ instead appear to support Dr. Hendrickson's assessment. After
20 performing an MRI of the lumbar spine on May 3, 2000, Dr. Powers noted in his report that "the
21 magnetic resonance imaging examination of the lumbar spine is primarily an anatomic study,"
22 not a test of nerve physiology, and that physiologic/pain consequences "would have to be
23 determined by the patient's complaints, physical findings and other physiologic tests available."
24 (Tr. at 338.) On May 11, 2000, Dr. Hassan reviewed the MRI performed by Dr. Powers and saw
25 "evidence of a disruption of the annulus fibrosum at L3-4-5, which would be related to an acute
26 ////

1 injury" and opined that "[t]he pain the patient presently describes is most likely secondary to that
2 injury." (Tr. at 311.)

3 In addition, plaintiff argues persuasively that it was not appropriate for the ALJ to
4 expect evidence of plaintiff's chronic myofascial pain in the form of specific clinical findings
5 based on examination or in the form of diagnostic studies of the lumbar spine. Prior to Dr.
6 Hendrickson's diagnosis of myofascial pain, a diagnosis of fibromyalgia had been made by many
7 other treating and examining physicians, including Dr. Pathak, one of the Social Security
8 Administration's consultative examiners. (See tr. at 297.) In his report dated December 29,
9 1999, Dr. Pathak stated that plaintiff had a history consistent with fibromyalgia and, upon
10 examination, he found her to have generalized weakness and diffuse muscle tenderness
11 consistent with fibromyalgia. (Id.) On January 12, 2000, orthopedist Dr. Molitor noted that
12 chronic pain such as that described by plaintiff is not uncommon after an accident and could be
13 related to fibromyalgia. (Tr. at 309.) On January 27, 2000, treating physician Dr. Hassan wrote
14 that "this kind of accident with the daughter in the car would leave a patient with a tremendous
15 amount of stress, depression and anxiety over time" and would worsen the condition of neck,
16 mid-back and low-back pain. (Tr. at 320.) Dr. Hassan stated further that "fibromyalgia does
17 worsen with both psychological stress and auto accidents." (Id.) Dr. Hendrickson noted this
18 history of fibromyalgia on his first examination of plaintiff, included myofascial pain syndrome
19 in his diagnosis on plaintiff's second visit and scheduled trigger point injections, included
20 "myofascial pain syndrome/fibromyalgia" in his diagnoses at the third and fourth visits, and
21 administered trigger point injections at the third visit. (Tr. at 362, 359, 357, 355.)

22 As consultative examiner Dr. Pathak observed, "[t]here are no laboratory tests
23 which confirm the diagnosis of fibromyalgia," and functional assessment in such cases is
24 difficult "because typically [patients] do not have any findings on examination." (Tr. at 297-98.)
25 Fibromyalgia is a physical disease, Jordan v. Northrop Grumman Corp. Welfare Benefit Plan,
26 370 F.3d 869, 873 (9th Cir. 2004), and its "[c]ommon symptoms . . . include chronic pain

1 throughout the body, multiple tender points, fatigue, stiffness, and a pattern of sleep disturbance
2 that can exacerbate the cycle of pain and fatigue associated with this disease," Benecke v.
3 Barnhart, 379 F.3d 587, 589-90 (9th Cir. 2004). Fibromyalgia is diagnosed entirely on the basis
4 of a patient's subjective reports of pain and other symptoms, and, although there is a generally
5 agreed-upon set of diagnostic criteria, there are no laboratory tests that will confirm the
6 diagnosis. Benecke, 379 F.3d at 589-90; Jordan, 370 F.3d at 872; Rollins v. Massanari, 261 F.3d
7 853, 855 (9th Cir. 2001).

8 At plaintiff's initial consultation with Dr. Hendrickson, she had reported pain
9 radiating from her neck to her head, left shoulder, upper back, ears, and eyes. (Tr. at 361.) Dr.
10 Hendrickson had reviewed her history, found her positive for PTSD, and noted bilateral
11 myofascial trapezius tenderness and dysfunction. (Tr. at 363, 365.) On subsequent visits,
12 plaintiff regularly reported difficulty sleeping due to pain, and Dr. Hendrickson regularly noted
13 tender points. (Tr. at 359, 357, 355.) The undersigned finds that the ALJ's criticism of Dr.
14 Hendrickson's indication of chronic myofascial pain without "specific clinical findings" and
15 without support from diagnostic studies of her lumbar spine fails to provide a valid reason to give
16 little weight to the treating physician's functional assessment.

17 The ALJ also gave little weight to Dr. Hendrickson's opinion on the grounds that
18 Dr. Hendrickson did not refer plaintiff to specialists or to a pain clinic. Dr. Hendrickson is a
19 specialist in pain management, and he practices in a pain clinic.⁵ When Dr. Hendrickson began
20 to treat plaintiff in December 2000, plaintiff had been examined or treated by specialists in
21 neurology (Dr. Seminar, tr. at 279, Dr. Hassan, tr. at 314), acupuncture (tr. at 269), chiropractics
22 (D.C. Martin, tr. at 266, D.C. Sloan, tr. at 386), rheumatology (Dr. Woods, tr. at 292),
23 orthopedics (Dr. Molitor, tr. at 307, Dr. Hassan, tr. at 314), sports medicine (Dr. Hassan, tr. at
24

25 ⁵ Dr. Hendrickson's letterhead indicates that he is a Fellowship Trained Pain
26 Management Specialist and practices medicine at El Dorado Hills Pain Management Physicians.
(Tr. at 361.)

1 314), pulmonology (Dr. Massey, tr. at 469), pain management (Drs. Singleton and Mackay, tr. at
2 527), and mental health (M.F.T. Yankauer, tr. at 427). The ALJ did not suggest any referral that
3 Dr. Hendrickson should have made. The asserted failure to refer plaintiff to specialists or to a
4 pain clinic was also not a valid reason to give little weight to the treating physician's functional
5 assessment.

6 The ALJ also stated that Dr. Hendrickson did not hospitalize plaintiff and did not
7 administer any pain injections. The record does not indicate any reason for Dr. Hendrickson to
8 hospitalize plaintiff,⁶ and Dr. Hendrickson did in fact administer trigger point injections. (Tr. at
9 357-65.) Thus, these two reasons given by the ALJ fail to justify his decision to give little weight
10 to the treating physician's functional assessment.

11 Finally, the undersigned is unpersuaded by the ALJ's conclusory contentions that
12 "the reports from other examining physicians do not support [Dr. Hendrickson's] functional
13 limitations" and that Dr. Hendrickson's functional assessment is inconsistent with examining
14 physician Dr. Pathak's assessment and the determinations of three agency doctors. (Tr. at 23-
15 24.)

16 The ALJ's reference to "other examining physicians" is unexplained and is not
17 supported by citations to exhibits. Plaintiff suggests that the examining physician most likely to
18 express an opinion contrary to Dr. Hendrickson's was Pierre M. Dreyfus, M.D., the board-
19 certified neurologist who served as independent medical examiner for the defense in plaintiff's
20 civil suit arising from the motor vehicle accident. Dr. Dreyfus saw and evaluated plaintiff on
21 September 27, 2000. (Tr. at 341.) In his October 24, 2000 report, he concluded that plaintiff
22 "has been disabled since the motor vehicle accident of 10/7/98 and has not been able to work."
23 (Tr. at 354.) He diagnosed musculoligamentous strain of the cervical, thoracic, and lumbosacral
24 spine; fibromyalgia; and post-traumatic stress syndrome and depression. (Tr. at 352.) Dr.

25
26 ⁶ Plaintiff was seen in a hospital after the accident in 1998, and she was hospitalized
three years later for surgery to remove implants ruptured by the accident. (Tr. at 407-24, 525.)

1 Dreyfus noted that plaintiff had been diagnosed as having fibromyalgia eight years previously,
2 and he opined that the diagnosis was correct. (Id.) He observed that the condition of
3 fibromyalgia is confusing and often misunderstood, consists of generalized muscular pain and
4 fatigue, and is characterized by pain as the most prominent symptom, with a worsening of
5 symptoms following stressful situations such as motor vehicle accidents. (Tr. at 352-53.) Upon
6 examination, he found pain and tenderness in plaintiff's cervical and lumbosacral spine. His
7 medical opinion was that plaintiff's prognosis was guarded, in view of the fact that she had been
8 suffering from fibromyalgia, depression and a sleep disorder for several years. (Tr. at 353-54.)
9 In contrast to this guarded prognosis two years after plaintiff's motor vehicle accident, Dr.
10 Dreyfus observed that, under normal circumstances, an individual who receives appropriate
11 treatment after a motor vehicle accident should be able to return to work two years later. (Tr. at
12 354.) The report of this examining physician plainly supports the functional limitations found by
13 Dr. Hendrickson.

14 Nor does the court find Dr. Pathak's assessment inconsistent with Dr.
15 Hendrickson's. Dr. Pathak completed an internal medicine evaluation and examination of
16 plaintiff on December 29, 1999. (Tr. at 294-98.) Dr. Pathak confirmed plaintiff's diagnosis of
17 fibromyalgia and her symptoms of generalized weakness and diffuse muscle tenderness. (Tr. at
18 297.) He noted that functional assessment is such a patient is very difficult and that in such a
19 case it is appropriate to take into consideration subjective symptoms. (Tr. at 298.) However,
20 "[b]ased on physical findings alone," Dr. Pathak found that plaintiff could sit for about 6 hours in
21 an 8-hour day, stand and/or walk for 6 hours in an 8-hour day, lift 10 pounds on a frequent basis,
22 and lift up to 25 pounds occasionally, but had poor vision in the left eye. (Id.) Dr. Pathak
23 explained in a deposition, taken in plaintiff's civil suit, that he described plaintiff's pain in his
24 report but did not take it into consideration when assessing her functional capacity in accordance
25 with the instructions of the Social Security Administration. (Tr. at 223.) He testified that since
26 plaintiff's symptoms are primarily of pain, her limitations depend on her tolerance of or response

1 to pain. (Tr. at 222.) When plaintiff's response to pain, which was recorded regularly by Dr.
2 Hendrickson during the time period at issue, is factored into Dr. Pathak's assessment based on
3 physical findings alone, it appears that plaintiff cannot sit for 6 hours in an 8-hour day, stand
4 and/or walk for 6 hours in an 8-hour day, lift 10 pounds on a frequent basis, or lift up to 25
5 pounds occasionally. Dr. Pathak's assessment based on physical findings alone does not provide
6 a legitimate basis for rejecting the treating physician's assessment of plaintiff's RFC with her
7 pain being taken into consideration..

The ALJ cited three determinations by agency doctors. (Tr. at 23, citing Exs. 8F [tr. at 299-305⁷], 15F [tr. at 366-72⁸] & 17F [tr. at 377-84].) The record contains only one complete determination, and that is dated May 3, 2001 and signed by Richard Sun, M.D. (Tr. at 384.) Therein, Dr. Sun indicated that plaintiff's primary diagnosis is fibromyalgia with a secondary diagnosis of "back strains." (Tr. at 377.) He acknowledged records documenting fibromyalgia from 1999 up to the date of his assessment. (Tr. at 378-79.) He assessed plaintiff as able to lift and carry up to 10 pounds occasionally and less than 10 pounds frequently, able to stand and/or walk at least 2 hours per day, able to sit for about 6 hours per day, and unlimited in the ability to push and/or pull. (Tr. at 378.) Dr. Sun dismissed plaintiff's symptoms as not fully credible because her "pains are far out of proportion with objective findings" and "[t]here is no reasonable chance that a person with the minimal physical findings, including normal neurologic exams (like the claimant) is incapable of 'sed' [sedentary] work." (Tr. at 382-83 (emphasis in original).) Dr. Sun failed to recognize that fibromyalgia is diagnosed entirely on the basis of a

⁷ Exhibit 8F is a form that contains eight pages. The eighth page of the form, which should be page 306 of the transcript, is missing or out of order. No page 306 appears between pages 305 and 307. In the absence of a page that bears a date and signature, this exhibit is given no evidentiary weight by the court.

⁸ Exhibit 15F is a form that contains eight pages. The eighth page of the form, which should be page 373 of the transcript, is missing or out of order. No page 373 appears between pages 372 and 374. Instead, a duplicate of page 273 has been inserted in place of page 373. In the absence of a page that bears a date and signature, this exhibit is likewise given no evidentiary weight by the court.

1 patient's subjective reports of pain and related symptoms. Without having treated or examined
2 plaintiff, he dismissed her subjective complaints without the support of independent clinical
3 findings or a record of malingering. The agency doctor's assessment does not provide a
4 legitimate basis for giving little weight to the treating physician's opinions about plaintiff's RFC
5 during the period of time at issue.

6 The record does not reflect that Dr. Hendrickson's opinion with respect to
7 plaintiff's RFC prior to March 28, 2002 is contradicted by the opinion of any other treating
8 physician. To the extent that Dr. Hendrickson's opinion varies from that of any examining
9 physician, the variation appears to arise from the examining physician's failure to consider the
10 nature of fibromyalgia and plaintiff's subjective complaints of pain in determining RFC. No
11 examining physician's opinion contradicts Dr. Hendrickson's opinion on the basis of different,
12 independent clinical findings, such that the ALJ would have been entitled to resolve the conflict.
13 Accordingly, the treating physician's opinion should be given greater weight than the opinions of
14 the examining physicians' opinions. Although the agency physician's opinions are inconsistent
15 with Dr. Hendrickson's, those opinions should be given no weight because they are not
16 supported by other evidence.

17 Under the standards applicable to medical opinions, the opinion of Dr.
18 Hendrickson may be rejected only for clear and convincing reasons. For the reasons discussed
19 above, the court finds that the ALJ's reasons for rejecting Dr. Hendrickson's assessment fall far
20 short of being clear and convincing. Although the ALJ provided numerous reasons for rejecting
21 Dr. Hendrickson's assessment, those reasons are not legitimate nor are they supported by
22 substantial evidence in the record. Accordingly, the ALJ improperly rejected the opinion of
23 treating physician Dr. Hendrickson with respect to plaintiff's RFC prior to March 28, 2002.
24 When the treating physician's assessment is properly credited, it demonstrates that plaintiff was
25 unable to perform sedentary work from the time of her accident on October 7, 1998 through
26 March 28, 2002.

1 The ALJ also improperly rejected the opinion of therapist Mark Yankauer after
2 acknowledging that he treated plaintiff for major depression and a pain disorder for over a year
3 during the relevant time period. (Tr. at 24.) The ALJ found plaintiff's mental complaints not
4 credible during the time prior to March 28, 2002 because Mr. Yankauer did not find that plaintiff
5 had "poor or no ability" to make occupational, performance, or personal-social adjustments. (Tr.
6 at 26.) However, the form completed by Mr. Yankauer defines "poor or none" as meaning "no
7 useful ability to function" in the category, (tr. at 427) and the Commissioner has cited no
8 authority for the proposition that a claimant is required to have no useful ability in a particular
9 category in order to demonstrate the existence of credible mental complaints. The ALJ also
10 found plaintiff's mental complaints not credible because there was "no evidence of treatment,
11 except with medication, prior to her treatment with Mr. Yankauer," there was "no evidence of
12 any treatment by a psychiatrist or psychologist," and "there was no evidence of any emergency
13 room treatment." (Tr. at 26.) Mr. Yankauer's records reflect that plaintiff received outpatient
14 therapy from Bill Blazek, M.F.T., from November 2000 to January 2001, prior to commencing
15 treatment with Mr. Yankauer in May 2001. (Tr. at 439, 441, 443.) It is true that there is no
16 evidence in the record of plaintiff's treatment by a psychiatrist or psychologist or of
17 hospitalization or emergency room treatment. However, the Commissioner again cites no
18 requirement that mental health care be obtained from a psychiatrist or psychologist or that a
19 person be hospitalized or receive emergency room treatment in order to establish the existence of
20 a mental impairment. The ALJ also found plaintiff's mental complaints not credible because "no
21 examining or treating physician indicated that she was disabled due to any mental condition or
22 that she had any functional mental limitations." (Tr. at 26) However, the record reflects that Dr.
23 Hendrickson and other treating and examining physicians noted that plaintiff suffered from
24 stress, anxiety, depression, and PTSD, as well as the interplay between those conditions and
25 fibromyalgia. (Tr. at 307-09, 314-20, 341-54, 361-65, 426-46, 527-29, 512-18.)

26 | //

When the opinions of Dr. Hendrickson and Mr. Yankauer are properly credited, there is substantial evidence that plaintiff's physical and mental RFC did not permit her to perform a full range of work at the sedentary exertional level from October 7, 1998 to March 28, 2002, the date as of which the ALJ previously found plaintiff disabled.

CONCLUSION

The undersigned finds that the ALJ's RFC determination for the period prior to March 28, 2002 is not supported by substantial evidence in the record. The medical opinions of treating medical professionals demonstrate that plaintiff did not have the RFC to perform a full range of sedentary work between October 7, 1998 and March 28, 2002. If the medical opinions are properly credited, the record demonstrates that plaintiff should have been found disabled for the period prior to March 28, 2002.

The decision whether to remand a case for additional evidence or to simply award benefits is within the discretion of the court. Ghokassian v. Shalala, 41 F.3d 1300, 1304 (9th Cir. 1994); Pitzer v. Sullivan, 908 F.2d 502, 506 (9th Cir. 1990). The Ninth Circuit has stated that, “[g]enerally, we direct the award of benefits in cases where no useful purpose would be served by further administrative proceedings, or where the record has been thoroughly developed.” Ghokassian, 41 F.3d at 1304 (citing Varney v. Sec'y of Health & Human Servs., 859 F.2d 1396, 1399 (9th Cir. 1988)). This rule recognizes the importance of expediting disability claims. Holohan v. Massanari, 246 F.3d 1195, 1210 (9th Cir. 2001); Ghokassian, 41 F.3d at 1304; Varney, 859 F.2d at 1401.

Plaintiff's disability application was filed on August 30, 2000, more than eight years ago. The record has been adequately developed and establishes that plaintiff was disabled during the period of time at issue. No useful purpose would be served by further administrative proceedings. This matter will therefore be remanded with the direction to award benefits for the period from October 7, 1998, to March 28, 2002, the date on which plaintiff was previously determined to be disabled. See *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 925 (9th

1 Cir. 2002) (remanding for payment of benefits where the ALJ improperly rejected the testimony
2 of the plaintiff's examining physicians); Ghokassian, 41 F.3d at 1304 (awarding benefits where
3 the ALJ "improperly discounted the opinion of the treating physician").

4 Accordingly, IT IS ORDERED that:

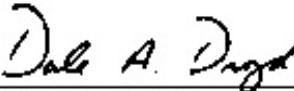
5 1. Plaintiff's August 21, 2007 motion for judgment on the pleadings (Doc. No.
6 12) is granted;

7 2. Defendant's September 21, 2007 cross-motion for summary judgment (Doc.
8 No. 13) is denied;

9 3. The decision of the Commissioner of Social Security is reversed; and

10 4. This case is remanded with the direction to award benefits for disability from
11 October 7, 1998 to March 28, 2002.

12 DATED: April 20, 2009.

13
14 
15 DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

17 DAD:kw
18 Ddad1/orders.socsec/wilberg0591.order