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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 VINCENT J. LEWIS,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social Security,

16 Defendant.
17

No. 2:14-cv-1227 DB

ORDER

18 This social security action was submitted to the court without oral argument for ruling on
19 plaintiff's motion for summary judgment.¹ Plaintiff argues that the ALJ failed to properly
20 evaluate medical opinion evidence and plaintiff's testimony. For the reasons explained below,
21 plaintiff's motion is granted, defendant's cross-motion is denied, the decision of the
22 Commissioner of Social Security ("Commissioner") is reversed, and the matter is remanded for
23 further proceedings consistent with this order.

24 PROCEDURAL BACKGROUND

25 In June of 2011, plaintiff filed an application for Supplemental Security Income ("SSI")
26 under Title XVI of the Social Security Act ("the Act") alleging disability beginning on January 8,
27

28 ¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 7 & 8.)

1 1998. (Transcript (“Tr.”) at 10, 143-51.) Plaintiff’s application was denied initially, (id. at 74-
2 83), and upon reconsideration. (Id. at 89-93.)

3 Thereafter, plaintiff requested a hearing which was held before an Administrative Law
4 Judge (“ALJ”) on July 31, 2012. (Id. at 25-50.) Plaintiff was represented by an attorney and
5 testified at the administrative hearing. (Id. at 25-26.) In a decision issued on September 7, 2012,
6 the ALJ found that plaintiff was not disabled. (Id. at 20.) The ALJ entered the following
7 findings:

8 1. The claimant has not engaged in substantial gainful activity
9 since June 29, 2011, the protectively filed application date (20 CFR
416.971 *et seq.*).

10 2. The claimant has the following severe impairments:
11 schizophrenia (20 CFR 416.920(c)).

12 3. The claimant does not have an impairment or combination of
13 impairments that meets or medically equals the severity of one of
the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1
(20 CFR 416.920(d), 416.925 and 416.926).

14 4. After careful consideration of the entire record, the undersigned
15 finds that the claimant has the residual functional capacity to
16 perform a full range of work at all exertional levels but with the
17 following nonexertional limitations: he can understand, remember
and carry out simple job tasks; he can maintain concentration,
18 persistence and pace for simple job task (sic) and can interact
appropriately with supervisors and co-workers but only
occasionally interact with the public.

19 5. The claimant has no past relevant work (20 CFR 416.965).

20 6. The claimant was born on January 24, 1990 and was 21 years
old, which is defined as a younger individual age 18-49, on the date
21 the application was filed (20 CFR 416.963).

22 7. The claimant has a limited education and is able to communicate
in English (20 CFR 416.964).

23 8. Transferability of job skills is not an issue because the claimant
24 does not have past relevant work (20 CFR 416.968).

25 9. Considering the claimant’s age, education, work experience,
and residual functional capacity, there are jobs that exist in
26 significant numbers in the national economy that the claimant can
perform (20 CFR 416.969 and 416.969(a)).

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10. The claimant has not been under a disability, as defined in the Social Security Act, since June 29, 2011, the date the application was filed (20 CFR 416.920(g)).

(Id. at 12-19.)

On March 18, 2014, the Appeals Council denied plaintiff's request for review of the ALJ's September 7, 2012 decision. (Id. at 1-3.) Plaintiff sought judicial review pursuant to 42 U.S.C. § 405(g) by filing the complaint in this action on May 19, 2014. (ECF No. 1.)

LEGAL STANDARD

"The district court reviews the Commissioner's final decision for substantial evidence, and the Commissioner's decision will be disturbed only if it is not supported by substantial evidence or is based on legal error." Hill v. Astrue, 698 F.3d 1153, 1158-59 (9th Cir. 2012). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997).

"[A] reviewing court must consider the entire record as a whole and may not affirm simply by isolating a 'specific quantum of supporting evidence.'" Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)). If, however, "the record considered as a whole can reasonably support either affirming or reversing the Commissioner's decision, we must affirm." McCartey v. Massanari, 298 F.3d 1072, 1075 (9th Cir. 2002).

A five-step evaluation process is used to determine whether a claimant is disabled. 20 C.F.R. § 404.1520; see also Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). The five-step process has been summarized as follows:

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

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

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1 Step three: Does the claimant's impairment or combination of
2 impairments meet or equal an impairment listed in 20 C.F.R., Pt.
3 404, Subpt. P, App. 1? If so, the claimant is automatically
4 determined disabled. If not, proceed to step four.

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

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

10 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

11 The claimant bears the burden of proof in the first four steps of the sequential evaluation
12 process. Bowen v. Yuckert, 482 U.S. 137, 146 n. 5 (1987). The Commissioner bears the burden
13 if the sequential evaluation process proceeds to step five. Id.; Tackett v. Apfel, 180 F.3d 1094,
14 1098 (9th Cir. 1999).

15 APPLICATION

16 In his pending motion plaintiff asserts the following two principal claims: (1) the ALJ's
17 treatment of the medical opinion evidence constituted error; and (2) the ALJ's treatment of
18 plaintiff's subjective testimony constituted error. (Pl.'s MSJ (ECF No. 16) at 12-22.²)

19 **I. Medical Opinion Evidence**

20 The weight to be given to medical opinions in Social Security disability cases depends in
21 part on whether the opinions are proffered by treating, examining, or nonexamining health
22 professionals. Lester, 81 F.3d at 830; Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989). "As a
23 general rule, more weight should be given to the opinion of a treating source than to the opinion
24 of doctors who do not treat the claimant" Lester, 81 F.3d at 830. This is so because a
25 treating doctor is employed to cure and has a greater opportunity to know and observe the patient
26 as an individual. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Bates v. Sullivan, 894
27 F.2d 1059, 1063 (9th Cir. 1990).

28 The uncontradicted opinion of a treating or examining physician may be rejected only for
clear and convincing reasons, while the opinion of a treating or examining physician that is

² Page number citations such as this one are to the page number reflected on the court's CM/ECF system and not to page numbers assigned by the parties.

1 controverted by another doctor may be rejected only for specific and legitimate reasons supported
2 by substantial evidence in the record. Lester, 81 F.3d at 830-31. “The opinion of a nonexamining
3 physician cannot by itself constitute substantial evidence that justifies the rejection of the opinion
4 of either an examining physician or a treating physician.” (Id. at 831.) Finally, although a
5 treating physician’s opinion is generally entitled to significant weight, “[t]he ALJ need not
6 accept the opinion of any physician, including a treating physician, if that opinion is brief,
7 conclusory, and inadequately supported by clinical findings.” Chaudhry v. Astrue, 688 F.3d 661,
8 671 (9th Cir. 2012) (quoting Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir.
9 2009)).

10 **A. Dr. Matthew Swenson**

11 Here, plaintiff first challenges the ALJ’s rejection of the opinion of Dr. Matthew
12 Swenson, plaintiff’s treating physician. (Pl.’s MSJ (ECF No. 16) at 13-16.) In this regard, on
13 June 23, 2011, Dr. Swenson opined that plaintiff “clearly meets criteria for schizophrenia,” and
14 that Dr. Swenson supported plaintiff’s “plans to file for SSI.” (Tr. at 371.) The ALJ rejected Dr.
15 Swenson’s opinion, noting that he failed to provide an opinion as to plaintiff’s functional abilities,
16 that the determination of disability is an issue reserved for the Commissioner, and that Dr.
17 Swenson’s opinion was contradicted by the stability achieved by plaintiff’s medical treatment and
18 by his daily activities. (Id. at 18.)

19 It is not clear that Dr. Swenson’s notation that he supported plaintiff’s application for
20 benefits was necessarily a reflection that Dr. Swenson believed plaintiff to be disabled.
21 Nonetheless, “[t]he administrative law judge is not bound by the uncontroverted opinions of the
22 claimant’s physicians on the ultimate issue of disability, but he cannot reject them without
23 presenting clear and convincing reasons for doing so.” Matthews v. Shalala, 10 F.3d 678, 680
24 (9th Cir. 1993) (quoting Montijo v. Sec’y of Health & Human Servs., 729 F.2d 599, 601 (9th Cir.
25 1984)); see also Lester, 81 F.3d at 830. In this regard, the court finds the ALJ’s reliance on Dr.
26 Swenson’s failure to provide an opinion as to plaintiff’s functional abilities to be a clear and
27 convincing reason for rejecting Dr. Swenson’s opinion.

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1 **B. Dr. Troy Ewing**

2 Plaintiff also challenges the ALJ's treatment of the opinion of Dr. Troy Ewing. (Pl.'s
3 MSJ (ECF No. 16) at 17.) Dr. Ewing examined plaintiff on December 13, 2010. (Tr. at 318.)
4 The ALJ recounted Dr. Ewing's examination and opinion, affording most of the opinion "great
5 weight." (Id. at 17.) However, the ALJ purported to afford only "good weight" to Dr. Ewing's
6 opinion that plaintiff was moderately to "notably" impaired in his ability to interact appropriately
7 with supervisors, co-workers and the public. (Id.)

8 In this regard, the ALJ stated:

9 The finding that the claimant is notably impaired in interacting
10 appropriately with supervisors, co-workers and the public is
11 challenged by the Sacramento County Mental Health record
12 showing the claimant always displaying his usual cooperative,
13 smiling manner, reporting and exhibiting no abnormalities of
14 thought, demeanor, or actions, as well as notes, and testimony
15 showing his rather ordinary interactions with friends and family,
16 living calmly with others. However, given a history of some social
17 problems, the undersigned concurs with the opinion that he faces
18 moderate limitations in social functioning, and provides for
19 occasional public contact in the residual functional capacity
20 established.

21 (Id.)

22 Interacting with caregivers, family and friends, however, is not the same as interacting
23 with supervisors and co-workers. Caregivers, family, and friends are much more likely to be
24 accommodating of plaintiff's limitations and to adjust their expectations and demands to those
25 limitations. And if those individuals are not accommodating, plaintiff could simply elect to avoid
26 them. Supervisors and co-workers are not similarly avoidable, are likely to have greater
27 expectations, and would require plaintiff to meet the demands of the work environment.

28 In this regard, the court finds that the ALJ failed to provide a specific and legitimate
reason for rejecting this portion of Dr. Ewing's opinion. See generally Garrison v. Colvin, 759
F.3d 995, 1017 (9th Cir. 2014) ("improved functioning while being treated and while limiting
environmental stressors does not always mean that a claimant can function effectively in a
workplace."); Bjornson v. Astrue, 671 F.3d 640, 647 (7th Cir. 2012) ("The critical differences
between activities of daily living and activities in a full-time job are that a person has more

1 flexibility in scheduling the former than the latter, can get help from other persons . . . and is not
2 held to a minimum standard of performance, as she would be by an employer.”).

3 Accordingly, plaintiff is entitled to summary judgment on her claim that the ALJ’s
4 treatment of the medical opinion of Dr. Ewing constituted error.³

5 **II. Plaintiff’s Testimony**

6 Plaintiff also argues that the ALJ’s treatment of plaintiff’s testimony constituted error.
7 (Pl.’s MSJ (ECF No. 16) at 20-22.) The Ninth Circuit has summarized the ALJ’s task with
8 respect to assessing a claimant’s credibility as follows:

9 To determine whether a claimant’s testimony regarding subjective
10 pain or symptoms is credible, an ALJ must engage in a two-step
11 analysis. First, the ALJ must determine whether the claimant has
12 presented objective medical evidence of an underlying impairment
13 which could reasonably be expected to produce the pain or other
14 symptoms alleged. The claimant, however, need not show that her
15 impairment could reasonably be expected to cause the severity of
16 the symptom she has alleged; she need only show that it could
17 reasonably have caused some degree of the symptom. Thus, the
18 ALJ may not reject subjective symptom testimony . . . simply
19 because there is no showing that the impairment can reasonably
20 produce the degree of symptom alleged.

21 Second, if the claimant meets this first test, and there is no evidence
22 of malingering, the ALJ can reject the claimant’s testimony about
23 the severity of her symptoms only by offering specific, clear and
24 convincing reasons for doing so

25 Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (citations and quotation marks
26 omitted). “The clear and convincing standard is the most demanding required in Social Security
27 cases.” Moore v. Commissioner of Social Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002). “At
28 the same time, the ALJ is not required to believe every allegation of disabling pain, or else
disability benefits would be available for the asking” Molina v. Astrue, 674 F.3d 1104, 1112
(9th Cir. 2012).

“The ALJ must specifically identify what testimony is credible and what testimony

³ Plaintiff also challenges the ALJ’s treatment of the opinions of two nonexamining physicians.
(Pl.’s MSJ (ECF No. 16) at 17-20.) However, in light of the ALJ’s error with respect to the
opinion of the examining physician, Dr. Ewing, the court need not address this issue. See
generally Willis v. Callahan, 979 F.Supp. 1299, 1306-07 (D. Or. 1997) (“The opinion of a non-
examining physician, by itself, is insufficient to constitute substantial evidence to reject the
opinion of a treating or examining physician.”).

1 undermines the claimant's complaints." Valentine v. Commissioner Social Sec. Admin., 574
2 F.3d 685, 693 (9th Cir. 2009) (quoting Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595,
3 599 (9th Cir. 1999)). In weighing a claimant's credibility, an ALJ may consider, among other
4 things, the "[claimant's] reputation for truthfulness, inconsistencies either in [claimant's]
5 testimony or between [her] testimony and [her] conduct, [claimant's] daily activities, [her] work
6 record, and testimony from physicians and third parties concerning the nature, severity, and effect
7 of the symptoms of which [claimant] complains." Thomas v. Barnhart, 278 F.3d 947, 958-59
8 (9th Cir. 2002) (modification in original) (quoting Light v. Soc. Sec. Admin., 119 F.3d 789, 792
9 (9th Cir. 1997)). If the ALJ's credibility finding is supported by substantial evidence in the
10 record, the court "may not engage in second-guessing." Id.

11 Here, the ALJ found that plaintiff's medically determinable impairments could reasonably
12 be expected to cause his alleged symptoms, but that plaintiff's statements concerning the
13 intensity, persistence and limiting effects of those symptoms were not credible to the extent they
14 were inconsistent with the ALJ's residual functional capacity determination. (Tr. at 15.) In this
15 regard, the ALJ stated:

16 Overall, the undersigned is persuaded that, with prescribed
17 treatment, the claimant's mental symptoms are controlled on
18 medications which would allow him to meet the basic mental
19 demands of unskilled work with limited public contact. As the
20 record hereafter reviewed will show, when on medications, his
21 mental status examinations are generally within normal limits, he is
pleasant, smiling, engaging, socially appropriate with speech clear,
good eye contact, euthymic to good mood, full affect, thought
processes and content –linear, with no paranoia, disorganization,
insight and judgment good (sic).

22 (Id.)

23 Plaintiff testified, however, that even while medicated he had difficulty "understanding
24 things," maintaining focus, following directions, and concentrating. (Id. at 29, 32.) Plaintiff also
25 testified that his medications made him "sleep a lot." (Id. at 42.) The ALJ's finding, quoted
26 above, that he found plaintiff's mental status examinations when medicated to be generally within
27 normal limits and plaintiff to be pleasant and engaging with clear speech, eye contact, linear
28 thought content and process, etc., does not address or discredit plaintiff's allegations that he had

1 difficulty with comprehension, understanding, following directions, etc. Nor does it recognize
2 that “improved functioning while being treated and while limiting environmental stressors does
3 not always mean that a claimant can function effectively in a workplace.” Garrison, 759 F.3d at
4 1017.

5 Moreover, plaintiff’s allegations are supported by substantial evidence in this record. In
6 this regard, testing revealed that plaintiff had “mild memory impairments,” “slight difficulty with
7 sustained attention and mental tracking,” and “overall borderline intellectual functioning.” (Id. at
8 321-22.) A Social Security Interviewer noted that plaintiff “seemed to have a hard time
9 understanding some of the basic concepts and questions,” but “tried his best to answer questions.”
10 (Id. at 167.)

11 Accordingly, the court finds that plaintiff is also entitled to summary judgment with
12 respect to his claim that the ALJ’s treatment of plaintiff’s subjective testimony constituted error.

13 CONCLUSION

14 With error established, the court has the discretion to remand or reverse and award
15 benefits. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989). A case may be remanded
16 under the “credit-as-true” rule for an award of benefits where:

17 (1) the record has been fully developed and further administrative
18 proceedings would serve no useful purpose; (2) the ALJ has failed
19 to provide legally sufficient reasons for rejecting evidence, whether
20 claimant testimony or medical opinion; and (3) if the improperly
discredited evidence were credited as true, the ALJ would be
required to find the claimant disabled on remand.

21 Garrison, 759 F.3d at 1020. Even where all the conditions for the “credit-as-true” rule are met,
22 the court retains “flexibility to remand for further proceedings when the record as a whole creates
23 serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social
24 Security Act.” Id. at 1021; see also Dominguez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
25 (“Unless the district court concludes that further administrative proceedings would serve no
26 useful purpose, it may not remand with a direction to provide benefits.”); Treichler v.
27 Commissioner of Social Sec. Admin., 775 F.3d 1090, 1105 (9th Cir. 2014) (“Where . . . an ALJ
28 makes a legal error, but the record is uncertain and ambiguous, the proper approach is to remand


1 the case to the agency.”).

2 Here, the court cannot find that further administrative proceedings would serve no useful
3 purpose. This matter will, therefore, be remanded for further proceedings.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff’s motion for summary judgment (ECF No. 16) is granted;
- 6 2. Defendant’s cross-motion for summary judgment (ECF No. 19) is denied;
- 7 3. The Commissioner’s decision is reversed; and
- 8 4. This matter is remanded for further proceedings consistent with this order.

9 Dated: March 9, 2017

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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