

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUAFOW SAECHAO

No. 2:14-cv-2886-KJN

Plaintiff,

V.

ORDER

CAROLYN W. COLVIN,
Acting Commissioner of
Social Security,

Defendant.

18 Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security
19 (“Commissioner”) denying plaintiff’s applications for Disability Insurance Benefits (“DIB”) and
20 Supplemental Security Income (“SSI”) under Titles II and XVI, respectively, of the Social
21 Security Act (“Act”).¹ In her motion for summary judgment, plaintiff principally contends that
22 the Commissioner erred by finding that plaintiff was not disabled from January 25, 2011, through
23 the date of the final administrative decision. (ECF No. 14.) The Commissioner filed an
24 opposition to plaintiff’s motion and a cross-motion for summary judgment. (ECF No. 17.)
25 Plaintiff filed a reply to defendant’s cross-motion for summary judgement. (ECF No. 18.)

¹ This action was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 9, 10.)

1 For the reasons that follow, the court GRANTS IN PART plaintiff's motion for summary
2 judgment, DENIES the Commissioner's cross-motion for summary judgment, and remands the
3 case for further proceedings under sentence four of 42 U.S.C. § 405(g).

4 I. BACKGROUND

5 Plaintiff was born on May 8, 1962, has no formal education, and primarily communicates
6 in Mien with little to no ability to communicate in English. (Administrative Transcript ("AT")
7 182, 186-87.)² She previously worked as a home attendant/care provider, fruit cutter/food service
8 worker and laundry sorter. (AT 21, 188.) On July 21, 2011, plaintiff applied for DIB and SSI,
9 alleging that her disability began on January 25, 2011, at the age of 46. (AT 60.) Plaintiff alleged
10 that she was disabled primarily due to complications arising from hearing voices, anxiety,
11 depression, and hallucinations. (*Id.*) After plaintiff's applications were denied initially and on
12 reconsideration, plaintiff requested a hearing before an administrative law judge ("ALJ"), which
13 took place on April 4, 2013, and at which plaintiff, using an interpreter and represented by an
14 attorney, as well as a vocational expert testified. (AT 11.) The ALJ issued a decision dated June
15 24, 2013, determining that plaintiff had not been under a disability, as defined in the Act, between
16 January 25, 2011, and the date of that decision. (AT 11-21.) The ALJ's decision became the
17 final decision of the Commissioner when the Appeals Council denied plaintiff's request for
18 review on October 14, 2014. (AT 1-6.) Plaintiff then filed this action in federal district court on
19 December 11, 2014, to obtain judicial review of the Commissioner's final decision. (ECF No. 2.)

20 II. ISSUES PRESENTED

21 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly rejected
22 the opinions of consultative examining psychologists Drs. Ewing and Stiles; and (2) whether the
23 ALJ improperly rejected the opinion of plaintiff's treating physician Dr. Marzano.

24 ///

25
26 ² Because the parties are familiar with the factual background of this case, including plaintiff's
27 medical and mental health history, the court does not exhaustively relate those facts in this order.
28 The facts related to plaintiff's impairments and treatment will be addressed insofar as they are
relevant to the issues presented by the parties' respective motions.

1 III. LEGAL STANDARD

2 The court reviews the Commissioner's decision to determine whether (1) it is based on
3 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
4 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
5 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
6 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable
7 mind might accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th
8 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). "The ALJ is
9 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
10 ambiguities." Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). "The
11 court will uphold the ALJ's conclusion when the evidence is susceptible to more than one rational
12 interpretation." Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008). However, the court
13 may only consider the reasons given by the ALJ for his decision and "may not affirm the ALJ on
14 a ground upon which he did not rely." Orn, 495 F.3d at 630.

15 IV. DISCUSSION

16 A. Summary of the ALJ's Findings

17 The ALJ evaluated plaintiff's entitlement to DIB and SSI pursuant to the Commissioner's
18 standard five-step analytical framework.³ As an initial matter, the ALJ found that plaintiff

19 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
20 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
21 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
22 an "inability to engage in any substantial gainful activity" due to "a medically determinable
23 physical or mental impairment. . . ." 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
24 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
25 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
26 42 (1987). The following summarizes the sequential evaluation:

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

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

31 Step three: Does the claimant's impairment or combination of impairments meet or

1 remained insured for purposes of DIB through June 30, 2012. (AT 13.) At the first step, the ALJ
2 concluded that plaintiff had not engaged in substantial gainful activity since January 25, 2011, the
3 alleged onset date. (*Id.*) At step two, the ALJ found that plaintiff had the following severe
4 impairment: a major depressive disorder. (*Id.*) However, at step three, the ALJ determined that
5 plaintiff did not have an impairment or combination of impairments that met or medically equaled
6 the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 14-15.)

7 Before proceeding to step four, the ALJ assessed plaintiff's residual functional capacity
8 ("RFC") as follows:

9 After careful consideration of the entire record, the undersigned
10 finds that the claimant has the residual functional capacity to
11 perform a range of medium level work activity pursuant to 20 CFR
12 404.1567(c) and 416.967(c), except she can lift and carry 50 pounds
13 occasionally, 25 pounds frequently, sit for six hours in an eight-
hour workday and stand/walk for six hours in an eight-hour
workday. The claimant can perform simple repetitive tasks with
occasional interaction with supervisors and coworkers and with few
changes in the workplace.

14 (AT 15.)

15 At step four, the ALJ determined that plaintiff was capable of performing past relevant
16 work as a laundry sorter and fruit cutter. (AT 20.) Thus, the ALJ concluded that plaintiff had not
17 been under a disability, as defined in the Act, from January 25, 2011, through the date of the
18 ALJ's decision. (AT 21.)

19
20 equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the
21 claimant is automatically determined disabled. If not, proceed to step four.

22 Step four: Is the claimant capable of performing her past relevant work? If so, the
23 claimant is not disabled. If not, proceed to step five.

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

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

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. *Id.*

B. Plaintiff's Substantive Challenges to the Commissioner's Determinations

1. The legal standard for evaluating medical opinions.

The weight given to medical opinions depends in part on whether they are proffered by treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195, 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking, a treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion carries more weight than a non-examining physician's opinion. Holohan, 246 F.3d at 1202.

To evaluate whether an ALJ properly rejected a medical opinion, in addition to considering its source, the court considers whether (1) contradictory opinions are in the record; and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a treating or examining medical professional only for “clear and convincing” reasons. Lester, 81 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be rejected for “specific and legitimate” reasons. Id. at 830.

While a treating professional's opinion generally is accorded superior weight, if it is contradicted by a supported examining professional's opinion (supported by different independent clinical findings), the ALJ may resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁴ except that the ALJ in any event need not give it any weight if it is conclusory and supported by minimal clinical findings. Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-examining professional, by itself, is insufficient to reject the opinion of a treating or examining professional. Lester, 81 F.3d at 831.

||||

⁴ The factors include: (1) length of the treatment relationship; (2) frequency of examination; (3) nature and extent of the treatment relationship; (4) supportability of diagnosis; (5) consistency; and (6) specialization. 20 C.F.R. § 404.1527.

1 Here, the ALJ discussed three medical opinions regarding plaintiff's limitations based on
2 her mental impairments⁵ and rejected all of them at least in part: two opinions by examining
3 psychologists Drs. Ewing and Stiles, and one opinion by Dr. Marzano, plaintiff's treating
4 physician. (AT 16-20.)

5 2. *Whether the ALJ erred by rejecting the opinions of examining psychologists Drs.*
6 *Ewing and Stiles.*

7 Dr. Ewing's opinion was based on an examination of plaintiff on October 24, 2011,
8 performed at the request of the Commissioner. (AT 373.) On that date, Dr. Ewing reviewed
9 plaintiff's medical records and had the assistance of an interpreter. (*Id.*) Dr. Ewing diagnosed
10 plaintiff as having "major depressive disorder, recurrent, severe with psychotic features." (*Id.*)
11 Dr. Ewing opined that plaintiff was able to adequately perform one or two step simple repetitive
12 tasks, but may not be able to adequately perform complex tasks due to her "concentration,
13 memory and attention deficits." (AT 377.) Dr. Ewing determined that plaintiff's ability to accept
14 instructions from supervisors, interact with co-workers and the public, handle normal work
15 related stress, and maintain regular attendance in the workplace was poor to fair. (*Id.*) Dr. Ewing
16 stated that plaintiff had a poor ability to maintain regular attendance in the workplace based on
17 her daily and chronic psychiatric symptoms. (*Id.*) Finally, Dr. Ewing opined that plaintiff "is not
18 able to perform work activities on a consistent basis without special or additional instruction as
19 there are some attention, memory and concentration difficulties that are noted at this time." (*Id.*)

20 Nearly nine months after Dr. Ewing's opinion, on July 16, 2012, Dr. Stiles examined the
21 plaintiff at the request of the Commissioner and issued an opinion. (AT 394.) Dr. Stiles had the
22 services of an interpreter and reviewed plaintiff's medical records. (AT 394-96.) Dr. Stiles
23 diagnosed plaintiff with "major depression, severe with psychotic symptoms." (AT 398.) Dr.
24 Stiles opined that plaintiff could perform one or two step simple repetitive tasks, but was unable
25 to perform complex tasks because of her intellectual impairments. (*Id.*) Dr. Stiles further opined
26 that plaintiff had a fair ability to accept instructions from supervisors and interact with coworkers
27

28 ⁵ On appeal, plaintiff does not challenge the physical capacity portion of the ALJ's RFC.

1 and the public. (Id.) Dr. Stiles opined that plaintiff had a fair to poor ability to maintain regular
2 attendance in the workplace, or complete a normal workday or workweek without interruptions
3 from a psychiatric condition. (Id.) Dr. Stiles opined that plaintiff had a poor ability to handle
4 normal work related stress from a competitive work environment. (Id.) Finally, Dr. Stiles opined
5 that plaintiff was not able to perform work activities on a consistent basis without special or
6 additional instruction because of her intellectual impairments. (Id.)

7 For the reasons discussed below, the ALJ failed to provide specific and legitimate reasons
8 for discounting these opinions.⁶

9 The ALJ discounted the opinions' clinical findings that plaintiff had impairments to
10 attention and concentration because such findings were "possibly due to language barrier." (AT
11 17.) However, both consultative examiners had the assistance of an interpreter. Even though Dr.
12 Stiles noted that the section of her exam dealing with proverbs "does not translate," that simply
13 demonstrates that Dr. Stiles was able to note that linguistic barriers interfered with a specific
14 portion of the exam. (AT 373-78.) Given the complete absence of any other references to
15 linguistic difficulties in the opinion, there is simply no basis for asserting that a language barrier
16 affected the clinical findings regarding attention or concentration.⁷ (AT 394-99.) Such
17 speculation is not supported by the record and does not provide a specific and legitimate reason to
18 discount the examining physicians' opinions. Lester, 81 F.3d at 830-31.

19

20 ⁶ There are contradictory opinions in the record. For example, Dr. Mateus's nonexamining
21 opinion states that plaintiff "should be able to sustain at least simple tasks with minimal contact
22 with people within her physical tolerance," thus contradicting the more severe opinions of Drs.
23 Ewing and Stiles. (AT 92.) Therefore, the appropriate standard is whether the ALJ provided
24 "specific and legitimate reasons" for discounting the examiners' opinions. Lester, 81 F.3d at 830-
25 31.

26 ⁷ There is equally no basis for Dr. Funkenstein's similar speculation that he "suspect[ed] that [Dr.
27 Ewing] ha[d] little understanding of the cross-cultural issues of a Laotian immigrant." (AT 65.)
28 Dr. Ewing had the assistance of an interpreter and specifically noted that he was unable to assess
plaintiff's ability to understand proverbs due to cultural differences. (AT 373, 376.) Dr. Ewing
did not indicate cultural difficulties regarding any other portion of the exam. (AT 373-78.) In
any event, the record gives no indication that Dr. Funkenstein was appropriately qualified to
render an opinion regarding the impact of "cross-cultural issues," particularly given that he had
not even personally examined plaintiff.

1 The ALJ also discounted the opinions as “based primarily” on plaintiff’s subjective and
2 self-reported psychotic symptoms, such as auditory hallucinations, which the ALJ found not
3 credible. (AT 373, 394). However, irrespective of the credibility of plaintiff’s auditory
4 hallucinations, Drs. Ewing and Stiles specifically based their assessed limitations on their clinical
5 findings regarding plaintiff’s attention, concentration, and memory. (AT 377, 398.) Furthermore,
6 both doctors explicitly stated that their respective opinions were “[b]ased on the results of the
7 requested mental status exam and clinical interview, including personal history and
8 accompanying documents....” (Id.) Therefore the ALJ’s finding that these opinions were “based
9 primarily” on plaintiff’s subjective reporting of hallucinations or other psychotic symptoms is not
10 supported by the record, and does not constitute a specific and legitimate reason for discounting
11 the consultative examiners’ opinions. (AT 17-19.)

12 The ALJ further alluded to an inconsistency between plaintiff’s daily activities and the
13 opinions of Drs. Ewing and Stiles. (AT 19.) However, the mental limitations assessed by Drs.
14 Ewing and Stiles are not obviously inconsistent with plaintiff being independent in basic activities
15 of daily living, not requiring assistance in preparing meals, being able to make change at the
16 store, and spending the day walking. (AT 19, 375, 396). Without further explanation by the ALJ,
17 conclusions at this level of generality simply cannot constitute a specific and legitimate reason for
18 discounting the consultative examiners’ opinions.

19 The ALJ also appears to rely on his finding of an inconsistency between the assessed
20 mental limitations and plaintiff’s treatment recommendations. (AT 20.) The ALJ references two
21 specific treatment recommendations: Dr. Nguyen’s recommendation that the plaintiff start a mild
22 exercise plan (AT 470) and the Wellness and Recovery Center’s (“WRC”) Annual Service Plan,
23 which recommended that plaintiff attend a WRC support group. (AT 484.) However, Dr.
24 Nguyen is not a psychiatrist or psychologist, and his recommendations were issued to help
25 plaintiff treat her physical impairments. Furthermore, the WRC’s recommendation was based on
26 an explicit finding that plaintiff’s ability to socialize was impaired and was intended to help build
27 plaintiff’s social skills in a highly structured environment. (AT 484.) The ALJ does not
28 articulate how those treatment recommendations were inconsistent with the mental limitations

1 assessed by the consultative examiners.

2 Therefore, the court concludes that the ALJ has not provided specific and legitimate
3 reasons to discount the opinions of the consultative examiners. Remand for further consideration
4 of those opinions is warranted.⁸

5 **3. *Other Issues***

6 Plaintiff contends that the ALJ also erred by discounting the opinion of Dr. Marzano,
7 plaintiff's treating physician. At least at an initial glance, Dr. Marzano's opinion appears to be a
8 checklist with minimal clinical findings or medical rationale in support of its conclusions. (AT
9 434-36.) Furthermore, Dr. Marzano's treatment records are very sparse. (AT 482-98.)
10 Nevertheless, because the court concludes that remand is necessary to further consider the
11 opinions of the consultative examiners, the ALJ will have an opportunity to reconsider Dr.
12 Marzano's opinion, if appropriate, and explain the ultimate weight accorded to that opinion.

13 **4. *Instructions on remand***

14 On remand, the ALJ shall further consider the opinions of the consultative examiners.
15 The ALJ is also free to develop the record in other ways, as needed. Importantly, the court
16 expresses no opinion regarding how the evidence should ultimately be weighed, and any
17 ambiguities or inconsistencies resolved, on remand. The court also does not instruct the ALJ to
18 credit any particular opinion or testimony. Nevertheless, the ALJ's decision shall comply with
19 applicable legal standards and be supported by substantial evidence in the record as a whole.

20 **V. CONCLUSION**

21 For the foregoing reasons, IT IS HEREBY ORDERED that:

22 1. Plaintiff's motion for summary judgment (ECF No. 14) is GRANTED IN PART.
23 2. The Commissioner's cross-motion for summary judgment (ECF No. 17) is
24 DENIED.

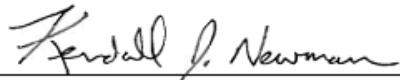
25 ⁸ The only relief requested by the plaintiff in her motion for summary judgment is a remand for
26 further proceedings. (ECF No. 14 at 6, 25.) Plaintiff again confirmed as much in her reply brief,
27 stating "plaintiff seeks one outcome through this action: remand for further proceedings...."
28 (ECF No. 18 at 1-2.) Therefore, the court need not, and does not, consider whether plaintiff is
entitled to a remand for payment of benefits.

1 3. The Commissioner's final decision is REVERSED and the action is REMANDED
2 for further proceedings consistent with this order pursuant to sentence four of 42 U.S.C. § 405(g).

3 4. Judgment is entered for plaintiff.

4 IT IS SO ORDERED.

5 Dated: February 9, 2016

6 
7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28