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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRYL EDWIN LANG,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

No. 2:15-cv-0624-CKD

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Child’s Insurance Benefits (“CIB”) under Title II of the Social Security Act (“Act”). For the reasons discussed below, the court will grant plaintiff’s motion for remand and deny the Commissioner’s cross-motion for summary judgment.

I. Background

Plaintiff, born May 15, 1963, applied on July 26, 2011 for CIB, alleging disability beginning April 30, 1985.¹ Administrative Transcript (“AT”) 17, 19, 23. Plaintiff alleged he was unable to work due to a learning disability, emotional issues, liver problems, and hepatitis C. AT

¹ To be eligible for CIB, plaintiff had to establish that he had a disability before turning 22. 20 C.F.R. § 404.350(a). Plaintiff turned 22 on May 14, 1985, two weeks after his alleged onset date. AT 23.

1 168. In a decision dated May 23, 2013, the ALJ determined that plaintiff had not been under a
2 disability prior to May 14, 1985, the date on which he attained age 22. AT 17-23. The ALJ
3 made the following findings (citations to 20 C.F.R. omitted):

- 4 1. Born on May 15, 1963, the claimant had not attained age 22 as of April 30,
5 1985, the alleged onset date.
- 6 2. The claimant has not engaged in substantial gainful activity since April 30,
7 1985, the alleged onset date.
- 8 3. Prior to the date the claimant attained age 22, there were no medical signs or
9 laboratory findings to substantiate the existence of a medically determinable
impairment.
- 10 4. The claimant has not been under a disability, as defined in the Social Security
11 Act, at any time prior to May 14, 1985, the date he attained age 22.

12 AT 19-23.

13 II. Issues Presented

14 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
15 disabled prior to age 22: (1) improperly determined that the record contained no medical signs or
16 laboratory findings to substantiate a finding that plaintiff had a medically determinable
17 impairment prior to the date on which he attained age 22; (2) improperly considered and weighed
18 the medical opinion evidence in the record; and (3) failed to obtain the testimony of a medical
19 expert regarding whether plaintiff's impairments rendered him disabled prior to age 22.

20 III. Legal Standards

21 The court reviews the Commissioner's decision to determine whether (1) it is based on
22 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
23 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
24 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
25 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable
26 mind might accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th
27 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). "The ALJ is
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1 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
2 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
3 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
4 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

5 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
6 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ’s
7 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
8 affirm the ALJ’s decision simply by isolating a specific quantum of supporting evidence. Id.; see
9 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
10 administrative findings, or if there is conflicting evidence supporting a finding of either disability
11 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
12 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
13 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

14 IV. Analysis

15 A. *The ALJ Erred in Determining that the Record Contained no Signs or Laboratory* 16 *Findings to Substantiate the Existence of a Medically Determinable Impairment Prior* 17 *to the Date on Which Plaintiff Attained Age 22*

18 First, plaintiff argues that the ALJ erred by determining that there was no evidence in the
19 record that plaintiff had a medically determinable impairment prior to the date on which he turned
20 age 22 because substantial evidence from the record did not support this finding. More
21 specifically, plaintiff asserts that the mental examination results obtained by Dr. Bowerman as a
22 part of her consultative examination show that plaintiff has a full scale IQ score of 68, AT 224,
23 which places him in the “extremely low” range of mental functioning and indicates that plaintiff’s
24 mental impairment was present prior to age 22. Plaintiff also argues that there is evidence in the
25 record that plaintiff attended special education classes during his time in school, got below
26 average grades, and dropped out of high school due to his learning disability, all of which indicate
27 that plaintiff’s mental impairment manifested itself before he turned 22.

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1 With regard to the IQ score results, plaintiff acknowledges that they were obtained in
2 December 2012, when plaintiff was 49 years old and roughly 27 years after he reached age 22,
3 but asserts that this temporal distance between the relevant period and the examination does not
4 undermine the probative value of the results because it is generally accepted that a person's IQ
5 score remains fairly constant throughout his or her life. In support of this assertion, plaintiff cites
6 to a number of cases wherein various federal courts have determined that there is a rebuttable
7 presumption that IQ scores attained through testing administered during adulthood are equally
8 applicable to a claimant's childhood intellectual functioning because such scores remain
9 relatively stable over a person's lifetime. Plaintiff insists that the court adopt this rebuttable
10 presumption and apply it to the facts of this case to show that plaintiff's mental impairment
11 manifested itself prior to age 22.

12 The Ninth Circuit Court of Appeals has not addressed the rebuttable presumption that
13 plaintiff urges, but a number of other circuits have addressed the issue and have held that such a
14 presumption exists. See, e.g., Hodges v. Barnhart, 276 F.3d 1265, 1268-69 (11th Cir. 2001) (IQ
15 scores obtained after age 22 "create a rebuttable presumption of a fairly constant IQ throughout
16 life"); Muncy v. Apfel, 247 F.3d 728, 734 (8th Cir. 2001) ("[A] person's IQ is presumed to
17 remain stable over time in the absence of any evidence of a change in a claimant's intellectual
18 functioning."); Luckey v. U.S. Dept. Of Health and Human Services, 890 F.2d 666, 668 (4th Cir.
19 1989); Guzman v. Bowen, 801 F.2d 273, 275 (7th Cir. 1986) (holding that a claimant's IQ score
20 relates back and does not just reflect their intellectual functioning at the time the test is
21 performed). Furthermore, a large number of district courts within the Ninth Circuit have applied
22 the rebuttable presumption regarding onset of mental limitations prior to age 22. See, e.g., Vieira
23 v. Colvin, 2013 WL 1195287, at *6-*7 (E.D. Cal. Mar. 22, 2013) (collecting cases and adopting
24 presumption that a claimant's IQ score remains fairly constant throughout his or her life); Flores
25 v. Astrue, 2013 WL 146190, at *4-*5 (C.D. Cal. Jan.11, 2013) (unpublished) (same); Woods v.
26 Astrue, 2012 WL 761720, at *3-*4 (E.D. Cal. Mar. 7, 2012) (adopting rebuttable presumption
27 and finding that "[a]bsent some evidence of a change in cognitive ability or some other persuasive
28 information to account for a change in condition relating to the plaintiff's ability prior to age 22

1 and the date of the IQ testing, there appears to be no factual basis for concluding that the IQ
2 inexplicably dropped after age 22”); Forsythe v. Astrue, 2012 WL 217751, at *7-*9 (E.D. Cal.
3 Jan. 24, 2012) (unpublished) (collecting cases and adopting presumption); Schuler v. Astrue,
4 2010 WL 1443892, at *6 (C.D. Cal. Apr.7, 2010) (unpublished) (“a valid qualifying IQ score
5 obtained by the claimant after the age of 22 creates a rebuttable presumption that the claimant’s
6 mental retardation began prior to the age of 22, as it is presumed that IQ scores remain relatively
7 constant during a person’s lifetime.”); Jackson v. Astrue, 2008 WL 5210668, at *6-*7 (C.D. Cal.
8 Dec.11, 2008) (unpublished) (“several circuits have held that valid IQ tests create a rebuttable
9 presumption of a fairly constant IQ throughout a claimant’s life . . . The Court finds the reasoning
10 of the Seventh, Eighth, and Eleventh Circuits to be persuasive.”). But see Clark v. Astrue, 2012
11 WL 423635, at *5-*6 (E.D. Cal. Feb.8, 2012) (unpublished) (declining to adopt rebuttable
12 presumption, “especially in a situation where there are glaring discrepancies in the IQ scores in
13 the first place”); Rhein v. Astrue, 2010 WL 4877796, at *8 (E.D. Cal. Nov. 23, 2010) (declining
14 to adopt rebuttable presumption with regard to determining whether the claimant’s mental
15 impairment met or equaled listing-level severity because it would have removed the claimant’s
16 burden at step three).

17 The court finds those cases adopting the rebuttable presumption test persuasive and, given
18 the circumstances presented by this action, finds it appropriate to apply that presumption to
19 plaintiff’s IQ score here.² The record does not contain any IQ scores or other test results
20 regarding mental functioning that appear to conflict with the results of Dr. Bowerman’s
21 examination. Furthermore, there exists evidence in the record indicating that plaintiff had sub-
22 average intellectual functioning prior to age 22, such as evidence showing that he attended special
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24 ² The ALJ discounted Dr. Bowerman’s opinion regarding the functional impact of plaintiff’s
25 mental impairments. AT 22. However, he did not contest the validity the objective medical
26 results obtained from the psychological testing she conducted on plaintiff as part of her
27 examination, including the IQ score results. For the reasons discussed in further detail below, the
28 ALJ’s reasons for discounting Dr. Bowerman’s opinion were in error. Nevertheless, even had the
ALJ properly discounted Dr. Bowerman’s opinion, such a determination would not have
undermined the validity of plaintiff’s IQ score results, nor rebutted the general presumption that
plaintiff’s IQ score reflected his intellectual functioning prior to age 22.

1 education classes throughout his entire educational career and dropped out of high school due to
2 intellectual difficulties, AT 22, 39-40, 43, 242-45, and no evidence suggesting that plaintiff
3 sustained a traumatic brain injury or other injury after age 22 that would likely impair his
4 intellectual capabilities. Accordingly, applying the rebuttable presumption analysis, the next
5 question is whether the presumption arising from plaintiff's valid IQ scores is rebutted by the
6 evidence in the record; that is, whether substantial evidence in the record shows that the onset of
7 plaintiff's impairment was actually after age 22. See, e.g., Woods, 2012 WL 761720 at *3-*4.

8 The Commissioner argues that the evidence in the record showing that plaintiff abused
9 alcohol and methamphetamine as an adult gives rise to a reasonable inference that such lifestyle
10 choices negatively impacted his intellectual functioning after age 22. However, the ALJ did not
11 provide this reasoning in support of his determination, and the court cannot consider the
12 Commissioner's post hoc rationalizations. This court reviews the adequacy of the reasons
13 specified by the ALJ, not the post hoc rationalizations of the agency. See Bunnell v. Sullivan,
14 947 F.2d 341, 345-46 (9th Cir. 1991); see also Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir.
15 2003) (court is constrained to review the reasons the ALJ asserts). Moreover, the
16 Commissioner's argument regarding the impact of plaintiff's substance abuse amounts to little
17 more than speculation as the Commissioner fails to point to anything in the record indicating that
18 such activities caused plaintiff's intellectual functioning to materially diminish after he reached
19 the age of 22. Accordingly, the Commissioner fails to rebut the presumption that plaintiff's IQ
20 score indicating "extremely low" intellectual functioning was indicative of plaintiff's mental
21 capabilities prior to age 22.

22 Under 20 C.F.R. § 404.1508, "[a] physical or mental impairment must be established by
23 medical evidence consisting of signs, symptoms, and laboratory findings." Because it is
24 presumed that plaintiff's extremely low adult full scale IQ score indicates a severe mental
25 impairment and is probative of his intellectual capacity prior to age 22, the ALJ erred in finding

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1 that the record contained no medical signs or findings showing that plaintiff had medically
2 determinable impairment prior to age 22.³

3 Plaintiff also argues that the ALJ's determination that plaintiff did not have any medically
4 determinable impairments prior to age 22 was erroneous because it was inconsistent with the
5 ALJ's own finding that plaintiff had moderate difficulties with regard to concentration,
6 persistence, or pace, which indicated that plaintiff at least had a medically determinable
7 impairment. AT 20. The court agrees. Under the relevant regulations, an ALJ is required to
8 address the degree of functional limitation resulting from a mental impairment only if it is
9 determined that there are "pertinent symptoms, signs, and laboratory findings" showing that the
10 claimant has a medically determinable mental impairment. 20 C.F.R. § 404.1520a(b) ("[W]e
11 must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether
12 you have a medically determinable mental impairment(s). . . . We must then rate the degree of
13 functional limitation resulting from the impairment(s) . . ."). Here the ALJ found that plaintiff
14 had moderate difficulties with regard to concentration, persistence, or pace, AT 20, but ultimately
15 determined that "there were no medical signs or laboratory findings to substantiate the existence
16 of a medically determinable impairment" prior to the date on which plaintiff reached age 22, AT
17 19. By finding that plaintiff had a moderate limitation in at least one area of mental functioning,
18 the ALJ necessarily had to first find that plaintiff had a medically determinable mental
19 impairment. See 20 C.F.R. § 404.1520a(b). However, the ALJ found just the opposite in
20 determining whether plaintiff had a medically determinable impairment of any kind prior to age
21 22. AT 19. Therefore, the ALJ's conclusion that plaintiff had not been disabled prior to age 22
22 because he had no medically determinable impairments despite his finding that plaintiff had

23 ³ In addition, while they are not medical signs or laboratory findings, the court also finds that the
24 evidence in the record indicating that plaintiff attended special education classes and dropped out
25 of high school prior to graduation due to learning difficulties provides further support for a
26 finding that plaintiff suffered from a medically determinable mental impairment prior to age 22.
27 See Pedro v. Astrue, 849 F. Supp. 2d 1006, 1011 (D. Or. 2011) (quoting Campbell v. Astrue,
28 2011 WL 444783, *17 (E.D. Cal. Feb. 8, 2011)) ("A claimant may use circumstantial evidence to
demonstrate adaptive functioning deficits, such as 'attendance in special education classes,
dropping out of high school prior to graduation, difficulties in reading, writing or math, and low
skilled work history.'").

1 mental limitations was internally inconsistent, and therefore erroneous.⁴

2 In sum, the ALJ's determination that there were no medical signs or laboratory findings to
3 substantiate the existence of a medically determinable impairment prior to the date on which
4 plaintiff turned age 22 was not supported by substantial evidence from the record and was
5 internally inconsistent with the ALJ's own findings regarding plaintiff's mental limitations.
6 Accordingly, the ALJ committed prejudicial error in making such a determination.

7 B. *The ALJ Committed Further Error in Assigning "Reduced Weight" to Dr.*

8 *Bowerman's Opinion and "Significant Weight" to the Opinions of the State Agency*
9 *Reviewing Physicians*

10 Plaintiff asserts that the ALJ committed further error in his consideration of the medical
11 evidence in the record. Specifically, he argues that the ALJ failed to give clear and convincing
12 reasons for discounting Dr. Bowerman's uncontroverted examining opinion and failed to provide
13 substantial evidence in support of his assignment of greater weight to the opinions of the two non-
14 examining physicians in the record.

15 The weight given to medical opinions depends in part on whether they are proffered by
16 treating, examining, or non-examining professionals. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
17 1995). Ordinarily, more weight is given to the opinion of a treating professional, who has a
18 greater opportunity to know and observe the patient as an individual. Id.; Smolen v. Chater, 80
19 F.3d 1273, 1285 (9th Cir. 1996).

20 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
21 considering its source, the court considers whether (1) contradictory opinions are in the record,
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23 ⁴ The ALJ did not specify in his decision whether he determined that plaintiff's moderate
24 limitation with regard to concentration, persistence, or pace was with respect to his mental
25 functioning at the time of the hearing, or with respect to his functioning during the relevant
26 period, i.e., prior to age 22. Nevertheless, the ALJ's determination that plaintiff did not have a
27 medically determinable impairment prior to age 22 would still have been erroneous in light of the
28 ALJ's findings regarding plaintiff's mental limitations even if the ALJ intended those limitations
to reflect plaintiff's mental functioning at the time of the hearing because the un rebutted
presumption that plaintiff's adult IQ scores reflected his mental capabilities over the course of his
lifetime indicates that the mental limitations the ALJ found plaintiff to have as an adult would
relate back to plaintiff's childhood mental functioning.

1 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
2 treating or examining medical professional only for “clear and convincing” reasons. Lester, 81
3 F.3d at 831. In contrast, a contradicted opinion of a treating or examining professional may be
4 rejected for “specific and legitimate” reasons that are supported by substantial evidence. Id. at
5 830. While a treating professional’s opinion generally is accorded superior weight, if it is
6 contradicted by a supported examining professional’s opinion (e.g., supported by different
7 independent clinical findings), the ALJ may resolve the conflict. Andrews v. Shalala, 53 F.3d
8 1035, 1041 (9th Cir. 1995) (citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). In
9 any event, the ALJ need not give weight to conclusory opinions supported by minimal clinical
10 findings. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir.1999) (treating physician’s conclusory,
11 minimally supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a
12 non-examining professional, without other evidence, is insufficient to reject the opinion of a
13 treating or examining professional. Lester, 81 F.3d at 831.

14 Here, the ALJ gave “reduced weight” to the consultative examining opinion of Dr.
15 Bowerman for the following reasons:

16 Dr. Bowerman’s opinion is given reduced weight as it is based on a single
17 examination of the claimant and there are internal inconsistencies between the
18 findings upon examination, the diagnoses and the residual functional capacity
19 determined to be appropriate for the claimant. Dr. Bowerman found marked
20 impairment in the claimant’s memory yet he was able to report all relevant social,
21 educational, legal, and medical history from memory. Similarly, Dr. Bowerman
22 found marked impairment in the claimant’s attention and concentration yet also
23 observed the claimant’s attention and concentration were within normal limits.
Further, due to a lack of medical records showing treatment, it is difficult to
ascertain the degree of impairment. Finally, despite the claimant’s allegations of
childhood disability, the claimant’s medical records don’t begin until well after the
age of 22 in 1985.

24 AT 22. Plaintiff argues that these reasons were not clear and convincing reasons for discounting
25 Dr. Bowerman’s opinion supported by substantial evidence. The Commissioner appears to
26 concede that Dr. Bowerman’s was uncontroverted, thus requiring the ALJ to meet the more
27 stringent “clear and convincing” standard in order to properly support his determination. She
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1 asserts, however, that this standard was met. For the reasons discussed below, the court finds
2 plaintiff's argument persuasive. The ALJ erred in considering Dr. Bowerman's opinion.

3 First, the ALJ improperly discounted Dr. Bowerman's opinion because it was based on a
4 single examination of plaintiff. While examination frequency is a proper consideration when
5 weighing medical opinion evidence, see 20 C.F.R. § 404.1527(c)(2)(i), substantial evidence does
6 not support the ALJ's decision to discount Dr. Bowerman's opinion under the circumstances
7 presented in this case. Dr. Bowerman was the only physician in the record to conduct objective
8 psychological testing on plaintiff and provide an opinion based on a full mental examination. AT
9 221-32. Neither of the state agency reviewing physicians to whom the ALJ gave greater weight
10 examined plaintiff and none of plaintiff's treating physicians provided opinions regarding
11 plaintiff's mental functioning based on an examination.

12 The ALJ also erred in his reasoning that Dr. Bowerman's opinion that plaintiff had a
13 marked impairment regarding memory conflicted with her examination notes indicating that
14 plaintiff was able to report all relevant social, educational, legal, and medical history from
15 memory. Dr. Bowerman's examination notes provide that plaintiff stated during the examination
16 "that he has no medical conditions," but that the "records that arrived after his appointment
17 [demonstrated] that [plaintiff] has hepatitis C and liver problems." AT 221. This is contrary to
18 the ALJ's assertion that Dr. Bowerman's notes show that plaintiff had a good memory regarding
19 his medical history. Furthermore, Dr. Bowerman's notes also reveal that plaintiff obtained scores
20 in the "extremely low" range with regard to all areas of memory after undergoing a battery of
21 objective memory tests. AT 225. In short, the record does not contain substantial evidence to
22 support the ALJ's reasoning that Dr. Bowerman's examination notes were inconsistent with her
23 opinion regarding plaintiff's memory.

24 Similarly, substantial evidence does not support the ALJ's finding that Dr. Bowerman's
25 opinion that plaintiff had a marked impairment in the areas of attention and concentration was
26 undermined by her observation that plaintiff's attention and concentration were within normal
27 limits. Dr. Bowerman noted that plaintiff's "concentration and task persistence were good," but
28 made that observation with regard to validity of the psychological test results plaintiff obtained

1 and in support of her determination that plaintiff's results were an accurate reflection of his
2 mental functioning. AT 223. Contrary to the ALJ's reasoning, this observation did not conflict
3 with her opinion that plaintiff was markedly impaired in "[h]is ability to *maintain* concentration,
4 attention and for pacing and tracking," AT 227 (emphasis added), and Dr. Bowerman does not
5 indicate elsewhere in her examination notes that plaintiff was capable of concentrating on a
6 sustained basis.

7 Finally, the ALJ's last stated reason for discounting Dr. Bowerman's opinion, that
8 plaintiff's medical records don't begin until well after he turned age 22, was also not a clear and
9 convincing reason under the circumstances presented here. As discussed above, the full scale IQ
10 score Dr. Bowerman obtained indicated that plaintiff had "extremely low" intellectual functioning
11 and there is a presumption that that score had been consistent throughout plaintiff's life, including
12 before he reached the age of 22. Accordingly, the fact that plaintiff's medical records in the
13 record addressing his intellectual functioning were not obtained until plaintiff was well into
14 adulthood was not a clear and convincing reason for assigning reduced weight to Dr. Bowerman's
15 opinion.

16 Plaintiff also correctly argues that the ALJ erred in assigning greater weight to the
17 opinions of the state agency non-examining physicians who opined that there was insufficient
18 medical evidence in the record from the relevant period to establish childhood disability on the
19 basis that they were consistent with the record as a whole. First, these opinions were developed
20 before Dr. Bowerman conducted the psychological testing that indicated that plaintiff's
21 intellectual functioning was in the extremely low range. Neither of the non-examining physicians
22 had an opportunity to review Dr. Bowerman's objective clinical findings despite the fact that they
23 were presumptively probative of plaintiff's intellectual functioning during the relevant period.
24 Outside of Dr. Bowerman's uncontroverted opinion, none of the other clinical evidence in the
25 record provides findings pertinent to plaintiff's mental functioning during the relevant period.
26 The reviewing physicians acknowledged this fact by noting in their opinions that there was no
27 medical evidence in the record they reviewed that was relevant to the time period at issue. AT
28 54-67. While their earlier opinions may have been reasonable based on the evidence available to

1 them at the time, the results regarding plaintiff's mental functioning obtained from Dr.
2 Bowerman's examination constituted new and material evidence signifying that plaintiff was
3 more functionally limited during the relevant period than what the record had previously
4 indicated. Because the non-examining physicians did not review this new and material evidence,
5 it was error for the ALJ to rely on their opinions to support his determination that there was no
6 medical evidence in the record that plaintiff had a medically determinable impairment prior to age
7 22.

8 *C. The ALJ's Errors Warrant Remand for Further Administrative Proceedings*

9 Plaintiff argues that the ALJ's errors warrant remand for further administrative
10 proceedings pursuant to sentence four of 42 U.S.C. § 405(g). The court agrees.

11 When the court finds that the ALJ committed prejudicial error, it has the discretion to
12 remand or reverse and award benefits. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989).
13 Generally, if the court finds that the ALJ's decision was erroneous or not supported by substantial
14 evidence, the court must follow the "ordinary remand rule," meaning that "the proper course,
15 except in rare circumstances, is to remand to the agency for additional investigation or
16 explanation." Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1099 (9th Cir. 2014). A
17 remand for an award of benefits is inappropriate where the record has not been fully developed or
18 there is a need to resolve conflicts, ambiguities, or other outstanding issues. Id. at 1101.

19 Here, the ALJ erroneously found plaintiff not disabled prior to age 22 based on a wrongful
20 determination that there were no medical signs or laboratory findings in the record to substantiate
21 the existence of a medically determinable impairment. While the ALJ also briefly discussed
22 whether plaintiff's mental impairments met or equaled the requirements of Listing 12.05, finding
23 that they did not, he did not continue on with his analysis to the subsequent steps of the sequential
24 analysis. Accordingly, given that there is medical evidence in the record presumed to accurately
25 reflect plaintiff's mental functioning during the relevant period, i.e., plaintiff's valid full scale IQ
26 score, remand is warranted in order for the ALJ to properly consider what, if any, functional
27 limitations stemmed from this presumed level of mental functioning during the relevant period.
28 Furthermore, further administrative proceedings are warranted to allow the ALJ an opportunity to

1 properly consider and weigh Dr. Bowerman’s opinion regarding plaintiff’s mental functional
2 limitations in light of the presumption that the psychological test results obtained through her
3 examination of plaintiff relate back to plaintiff’s mental functioning during the relevant period.

4 On remand, the ALJ should consider the functional impact of plaintiff’s presumed level of
5 mental functioning during the relevant period in light of the record as a whole. Furthermore, the
6 ALJ should reconsider Dr. Bowerman’s examining opinion in light of the presumption that
7 plaintiff’s full scale IQ score accurately reflected plaintiff’s intellectual abilities during the
8 relevant period, and, if he chooses not to rely on that opinion, should provide clear and
9 convincing reasons for discounting it, or, if the ALJ chooses to further develop the record and
10 there exists conflicting opinion evidence, specific and legitimate reasons. The ALJ is free to
11 develop the record in other ways, as needed.

12 Importantly, the court expresses no opinion regarding how the evidence should ultimately
13 be weighed, and any ambiguities or inconsistencies resolved, on remand. The court also does not
14 instruct the ALJ to credit any particular opinion or testimony, including the opinion of Dr.
15 Bowerman. The ALJ may ultimately find that plaintiff was disabled prior to age 22, or may find
16 the evidence in the record insufficient to show that plaintiff was disabled at any time during that
17 period—provided that the ALJ’s determination complies with applicable legal standards and is
18 supported by substantial evidence in the record as a whole.

19 *D. Other Issues*

20 Plaintiff also argues that the ALJ committed further prejudicial error because he did not
21 obtain the testimony of a medical expert regarding whether plaintiff’s impairments began prior to
22 age 22. Given that remand is warranted for the reasons discussed above, the court declines to
23 address this additional issue at this time. On remand, the ALJ will have an opportunity to
24 reconsider the evidence in the record, and to further develop the record, if necessary, in light of
25 the presumption that plaintiff’s full scale IQ score and other objective intellectual functioning test
26 results in the record relate back to his intellectual functioning during the relevant period. In doing
27 so, the ALJ may find it helpful, or possibly even necessary, to obtain testimony from a medical
28 expert to assist him in properly determining whether plaintiff suffered a mental impairment prior

1 to age 22 that rendered him disabled within the meaning of the Act. Accordingly, at this juncture,
2 the court will leave it to the ALJ's discretion to determine whether to call a medical expert to
3 testify as to this topic on remand.

4 V. CONCLUSION


5 For the reasons stated herein, this matter will be remanded under sentence four of 42
6 U.S.C. § 405(g) for further development of the record and for further findings addressing the
7 deficiencies noted above. Accordingly, IT IS HEREBY ORDERED that:

8 1. Plaintiff's motion for summary judgment (ECF No. 13) is granted for purposes of
9 further development and reconsideration of the record consistent with the court's directions set
10 forth above;

11 2. The Commissioner's cross-motion for summary judgment (ECF No. 14) is denied; and,

12 3. This matter is remanded for further proceedings consistent with this order.

13 Dated: February 10, 2016

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15 _____
16 CAROLYN K. DELANEY
17 UNITED STATES MAGISTRATE JUDGE

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