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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 WILLIAM LEROY HICKS,

No. 2:15-cv-0978 AC

11 Plaintiff,

12 v.

ORDER

13 CAROLYN W. COLVIN, Acting
14 Commissioner of Social Security,

15 Defendant.
16

17 Petitioner seeks judicial review of a final decision of the Commissioner of Social Security
18 (“Commissioner”) denying his application for supplemental security income (“SSI”)¹ and
19 Disability Insurance Benefits (“DIB”)² under Title XVI of the Social Security Act (“the Act”), 42
20 U.S.C. § 1381-1383f. For the reasons that follow, plaintiff’s motion for summary judgment will
21 be granted and defendant’s cross-motion for summary judgment will be denied. The matter will
22 be remanded to the Commissioner for further proceedings.
23

24 ¹ SSI is paid to financially needy disabled persons. 42 U.S.C. § 1382(a); Washington State Dept.
25 of Social and Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 375 (2003) (Title
26 XVI of the Act, § 1381 et seq., is the Supplemental Security Income (SSI) scheme of benefits for
aged, blind, or disabled individuals, including children, whose income and assets fall below
specified levels).

27 ² DIB is paid to disabled persons who have contributed to the Disability Insurance Program, and
28 who suffer from a mental or physical disability. 42 U.S.C. § 423(a)(1); Bowen v. City of New
York, 476 U.S. 467, 470 (1986).

1 I. PROCEDURAL BACKGROUND

2 Plaintiff initially applied for SSI and DBI on September June 12, 2012, Administrative
3 Record³ (“AR”) 11, (ECF No. 12-3 at 12) (Decision)⁴ alleging his disability began on March 5,
4 2009. Id. The claims were initially denied on August 6, 2012, and on reconsideration on October
5 8, 2012. Id. Plaintiff then filed a request for hearing on October 25, 2012. 20 CFR 416.1429 et
6 seq. Id. Administrative Law Judge (“ALJ”) Mark C. Ramsey presided over a hearing on June 19,
7 2013 attended by plaintiff and plaintiff’s attorney. AR 11 (ECF No. 12-3 at 12).

8 On August 23, 2013, the ALJ found plaintiff “not disabled” under sections 216(i), 223(d)
9 (DBI benefits) and 1614(a)(3)(A) (SSI) of the Social Security Act. AR 23 (ECF 12-3 at 24).
10 Plaintiff requested review by the Appeals Council, which request was denied on March 6, 2015.
11 AR 1 (ECF No. 12-3 at 2-6). Plaintiff filed his Complaint in this court on May 6, 2015. ECF No.
12 1. The parties consented to the jurisdiction of the Magistrate Judge. ECF Nos. 7 (plaintiff) and 9
13 (defendant). The cross-motions for summary judgment based upon the Administrative Record
14 filed by the Commissioner have been fully briefed. ECF No. 18 (plaintiff’s summary judgment
15 motion filed December 16, 2015; ECF No. 27 (defendant’s cross-motion for summary judgment
16 filed July 6, 2016).

17 II. FACTUAL BACKGROUND

18 Plaintiff was born on September 10, 1972 and was 36 years old on the alleged onset date
19 of his disabilities and 40 years old on the date the application was filed. AR 21 (ECF No. 12-3 at
20 22). Plaintiff has at least a high school education and can communicate in English. Id.

21 III. LEGAL STANDARDS

22 The Commissioner’s decision that a plaintiff is not disabled will be upheld “if it is
23 supported by substantial evidence and if the Commissioner applied the correct legal standards.”
24 Howard ex rel. Wolff v Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003). “The findings of the
25 Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . .”. Andrews

26
27 ³ The Administrative Record, comprising 1,540 pages was filed in twenty-eight (28) parts and is
28 found at ECF No. ECF Nos. 12 and 13.

1 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) (quoting 42 U.S.C. § 406(g)).

2 Substantial evidence is “more than a mere scintilla [but] may be less than a
3 preponderance.” Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012). Substantial evidence
4 “means such relevant evidence as a reasonable mind might accept as adequate to support a
5 conclusion.” Richardson v. Perales, 402 U.S. 389, 401 (1971) (internal quotations omitted).
6 “While inferences from the record can constitute substantial evidence, only those ‘reasonably
7 drawn from the record’ will suffice.” Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006)
8 (citation omitted). Although this court cannot substitute its discretion for that of the
9 Commissioner, the court nonetheless must review the record as a whole, “weighing both the
10 evidence that supports and the evidence that detracts from the [Commissioner’s] conclusion.”
11 Desrosiers v. Secretary of HHS, 846 F.2d 573, 576 (9th Cir. 1988); Jones v. Heckler, 760 F.2d
12 993, 95 (9th Cir. 1985) (“The court must consider both evidence that supports and evidence that
13 detracts from the ALJ’s conclusion; it may not affirm simply by isolating a specific quantum of
14 supporting evidence.”)

15 “The ALJ is responsible for determining credibility, resolving conflicts in medical
16 testimony, and resolving ambiguities.” Edlund v. Massnari, 253 F.3d 1152, 1156 (9th Cir. 2001).
17 Where the evidence is susceptible to more than one rational interpretation, one of which supports
18 the ALJ’s decision, the ALJ’s conclusion must be upheld.” Thomas v. Barnhart, 278 F.3d 947,
19 954 (9th Cir. 2002). However, the court may review only the reasons stated by the ALJ in his
20 decision “and may not affirm the ALJ on a ground upon which he did not rely.” Orn v. Astrue,
21 495 F.3d 625, 630 (9th Cir. 2007); Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003) (“It was
22 error for the district court to affirm the ALJ’s credibility decision based on evidence that the ALJ
23 did not discuss”).

24 The court will not reverse the Commissioner’s decision if it is based on harmless error,
25 which exists only when it is “clear from the record that an ‘ALJ’s error was inconsequential to the
26 ultimate nondisability determination.”” Robbins v. SSA, 466 F.3d 880, 885 (9th Cir. 2005)
27 (quoting Stout v. Comm’r, 454 F.3d 1050-1056 (9th Cir. 2006)); see also Burch v. Barnhart, 400
28 F.3d 676, 679 (9th Cir. 2005).

1 IV. RELEVANT LAW

2 Disability Insurance Benefits and Supplemental Security Income are available for every
3 individual who is “disabled.” 42 U.S.C. §§ 423(d)(1)(A), 1382(a)(3)(A). The Commissioner
4 uses a five-step sequential evaluation process to determine whether an applicant is disabled and
5 entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); Barnhart v. Thomas, 540 U.S.
6 20, 24-25 (2003) (setting forth the “five-step sequential evaluation process to determine
7 disability” under Title II and Title XVI). The following summarizes the sequential evaluation
8 steps:

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

11 20 C.F.R. § 404.1520(a)(4)(i), (b).

12 Step two: Does the plaintiff have a “severe” impairment? If so,
13 proceed to step three. If not, the plaintiff is not disabled.

14 Id. §§ 404.1520(a)(4)(v), (g)

15 Step three: Does the plaintiff’s impairment or combination of
16 impairments meet or equal an impairment listed in 20 C.F.R. Pt.
17 404, Subpt. P, App.1? If so, plaintiff is disabled. If not, proceed to
18 step four.

19 Id. §§ 404.1520(a)(4)(iii), (d).

20 Step four: Does the plaintiff’s residual functional capacity make
21 him capable of performing his past work? If so, the plaintiff is not
22 disabled. If not, proceed to step five.

23 Id. §§ 404.1520(a)(4)(iv), (e), (f).

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

27 Id. §§ 404.1520(a)(4)(v), (g).

28 The plaintiff bears the burden of proof in the first four steps of the sequential evaluation
process. 20 C.F.R § 404.1512(a) (“In general, you have to prove to us that you are blind or
disabled”), 20 C.F.R. § 416.912(a) (same). However, “[a]t the fifth step of the sequential
analysis, the burden shifts to the Commissioner to demonstrate that the plaintiff is not disabled

1 and can engage in work that exists in significant numbers in the national economy.” Hill v.
2 Astrue, 698 F.3d 1153, 1162 (9th Cir. 2012).

3 V. THE ALJ’S FINDINGS

4 The ALJ made the following findings:

- 5 1. The claimant meets the insured status requirements of the Social
6 Security Act through December 31, 2013.
- 7 2. [Step One] The claimant has not engaged in substantial gainful activity
8 since March 5, 2009, the alleged onset date (20 CFR 404.1571 *et seq.*
9 and 416.971 *et seq.*). [...]
- 10 3. [Step Two] The claimant has the following severe impairments:
11 multilevel spondylosis and spinal stenosis, degenerative disc disease,
12 hip/joint osteoarthritis, depression, bipolar disorder and anxiety (20
13 CFR 404.1520(c) and 416.920(c)). [...]
- 14 4. [Step Three] The claimant does not have an impairment or combination
15 of impairments that meet or medically equals the severity of one of the
16 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR
17 404.1520(d), 404.1525, 414.1526, 416.920(d), 416.925 and 416.926).
18 [...]
- 19 5. [Residual Functional Capacity (“RFC”)] After careful consideration of
20 the entire record, the undersigned finds that the claimant has the
21 residual functional capacity to perform light work as defined in 20 CFR
22 404.1567(b) and 416.967(b) except simple, unskilled work with little
23 changes in the work routine and limited public contact. [...]
- 24 6. [Step Four] The plaintiff is unable to perform past relevant work (20
25 CFR 404.1565 and 416.965). [...]
- 26 7. [Step Five] The claimant plaintiff was born September 10, 1972 and
27 was 36 years old, which is defined as a younger individual age 18-49,
28 on the alleged disability onset date (20 CFR 404.1563 and 416.963).
8. [Step 5, continued] The claimant has at least a high school education
and is able to communicate in English (20 CFR 404.1564 and 416.964).
9. [Step 5, continued] Transferability of job skills is not material to the
determination of disability because using the Medical-Vocational Rules
as a framework supports a finding that the claimant is “not disabled,”
whether or not the claimant has transferable job skills (See SSR 82-41
and 20 CFR Part 404, Subpart P, Appendix 2).
10. [Step Five, continued] Considering the plaintiff’s age, education, work
experience, and residual functional capacity, there are jobs that exist in
significant numbers in the national economy that the plaintiff can
perform (20 CFR 404.1569, 404.1569(a), 416.969, and 416.969(a)).
[...]

AR 13-21 (ECF No. 12-3 at 14-22) (excerpted).

1 VI. ANALYSIS

2 Plaintiff's appeal is limited to the ALJ's assessment of his mental impairments and related
3 functional limitations. He contends that the ALJ erred by (1) failing to credit, in formulating the
4 RFC, opinion evidence which he purported to accord "substantial" and "great" weight; and (2)
5 failing to credit plaintiff's testimony and third party statements regarding the severity of his
6 symptoms and functional limitations.

7 A. The ALJ's Consideration Of Mental Health Opinion Evidence

8 1. The Evidence

9 The record before the ALJ did not include the opinion of a treating physician. The
10 following examining and reviewing sources provided assessments of plaintiff's mental
11 functioning:

12 a. Dr. Richard Hicks, M.D.

13 Dr. Hicks interviewed plaintiff on November 7, 2009. AR 411-14 (ECF No. 12-9 at 50-
14 53). He provided an Axis I diagnosis of Adjustment Disorder with Depressive Features, and
15 methamphetamine and alcohol abuse in remission. A speech impediment was noted. Dr. Hicks
16 assessed no work related restrictions with respect to mental impairments. AR 414 (ECF No.12-9
17 at 53).

18 b. Dr. Amy Eargle, Ph.D.

19 Dr. Eargle performed a psychological examination of plaintiff on June 10, 2011. AR 537
20 (ECF No. 12-10 at 85). The doctor noted that plaintiff had a speech impediment and spoke
21 slowly with long periods of silence. AR 540 (ECF No. 12-10 at 88). His affect was anxious and
22 his mood depressed. AR 541 (ECF No. 12-10 at 89). Dr. Eargle's diagnosis was mood disorder
23 NOS, back pain, and severe psychosocial stressors. AR 542 (ECF No. 12-10 at 90). She found
24 mild impairments in performance of complex and detailed tasks, interaction with supervisors,
25 coworkers and others, and no impairment in the performance of simple and repetitive tasks,
26 understanding, implementing and remembering instructions without special or additional
27 guidance, responding appropriately to typical and novel work situations, and responding
28 appropriately to situations involving urgency or safety. Id. Plaintiff's ability to complete a

1 normal workweek and to maintain regular attendance without interruption from a psychiatric
2 condition was mildly impaired, due both to mood symptoms and substance use. AR 543 (ECF
3 No. 12-10 at 91).

4 The ALJ gave “moderate” weight to this opinion overall. He rejected Dr. Eargle’s finding
5 of mild impairment in ability to maintain work schedules without interruption, as inconsistent
6 with evidence that plaintiff had held several jobs for long periods of time and had worked after
7 his alleged onset date. AR 18 (ECF No. 12-3 at 19).⁵

8 c. Dr. Ona Stiles, Ph.D.

9 Dr. Stiles performed a psychological examination of plaintiff on June 29, 2012 at the
10 request of the Agency. AR 1115 (ECF No. 13-1 at 49). The plaintiff was viewed as a reliable
11 historian, and he reported mental health symptoms of bipolar disorder and learning disability. Id.
12 Plaintiff reported that he continued to have mood swings on a daily basis, but with medication
13 (Depakote) they were in the moderate range. AR 1116 (ECF No. 13-1 at 50). Plaintiff professed
14 to be independent in activities of daily living including preparing meals, doing light household
15 chores, and making change at the store, and reportedly spent his days “going to Loaves and
16 Fishes to shower and eat lunch.” AR 1117 (ECF 13-1 at 51).

17 Plaintiff “presented in an anxious manner,” had some difficulty breathing, and
18 demonstrated a significant speech impairment. Id. His stuttering “worsened significantly with
19 anxiety.” AR 1118 (ECF 13-1 at 52). His attention, concentration and memory for recently
20 learned information was fair due to anxiety, and his ability for abstraction was fair to poor. Id.
21 His test results were average for perceptual reasoning, low average for processing speed and
22 borderline for verbal comprehension and working memory. Id. His memory impairments may
23 have been impacted by his high level of anxiety. AR 1119 (ECF No. 13-1 at 53). He showed
24 moderate difficulty with sustained attention and mental tracking. Id. Dr. Stiles diagnosed

25 ⁵ Plaintiff’s earning records showed his annual income to range between \$12,000 and \$19,000
26 through 2007, dropping to \$11,707 in 2008, to \$386.00 in 2009, the year of his accident, and
27 \$942.82 in 2010. AR 219-220 (ECF No. 12-6 at 20-21). Plaintiff’s stated date of disability onset
28 was March 5, 2009. In addition, plaintiff testified at the hearing that he last worked in 2010. AR
38 (ECF No. 12-3 at 39). The ALJ expressly found that plaintiff’s work activity after March 5,
2009 did not rise to the level of “substantial gainful activity.” AR 13 (ECF No. 12-3 at 14).

1 plaintiff with bipolar disorder, stuttering, learning disorder NOS, and anxiety disorder NOS
2 (possible panic disorder); assigned a Global Assessment of Functioning (GAF)⁶ score of 48; and
3 gave a prognosis of “fair with comprehensive treatment.” Id.

4 In her functional assessment Dr. Stiles found, based on her observations, significant
5 anxiety which was “likely to significantly impair everyday functioning.” AR 1120 (ECF 13-1 at
6 54). With regard to cognitive functioning she found plaintiff is “likely to have moderate
7 impairment in verbal comprehension and in retaining some new information,” and that “[h]is
8 significant level of anxiety may also impair his cognitive abilities.” Id. As to work related
9 abilities, Dr. Stiles found plaintiff could understand, remember and carry out simple instructions
10 but he had moderate difficulty maintaining attention and concentration for the duration of the
11 evaluation “due to stress,” and would be likely to have “moderate to significant difficulty
12 adapting to changes in routine work-related settings” and “moderate impairment in his ability to
13 interact with the public supervisors, and coworkers.” Id.

14 The ALJ stated that he gave Dr. Stiles’ opinion “substantial” weight because it was based
15 on multiple psychometric tests and an in-depth analysis of plaintiff’s psychiatric history. AR 17-
16 18 (ECF No. 12-3 at 18-19).

17 d. State Agency Reviewers

18 The ALJ considered the medical source statements of two non-examining psychological
19 consultants, S. Regan, M.D. and David E. Gross, M.D. In a report dated July 3, 2012, Dr. Regan
20 rated plaintiff’s primary affective disorder, secondary anxiety disorder, and co-occurring learning
21 disorder all as “severe.” He opined that plaintiff had mild restriction of daily activities, moderate
22 difficulties in maintaining social functioning, and moderate restrictions in maintaining

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24 ⁶ The Ninth Circuit has defined a GAF score as a “rough estimate” of an individual’s
25 psychological, social and occupational functioning, used to reflect the individual’s need for
26 treatment. Garrison v. Colvin, 759 F.3d 995, 1003 n.4 (9th Cir. 2014) (quoting Vargas v.
27 Lambert, 159 F.3d 1161, 1164 (9th Cir. 1998)). A GAF score of 41-50 describes “serious
28 symptoms” or “any serious impairment in social, occupational or social functioning,” while
scores of 51-60 describe “moderate symptoms.” Id. Because GAF scores “are typically assessed
in controlled, clinical sets that may differ from work environments in important respects,” they
are not determinative of disability. However, they are “a useful measurement” of functioning. Id.

1 concentration, persistence, or pace. AR 101 (ECF No. 12-4 at 35). Dr. Regan specifically found
2 that plaintiff was moderately limited in his ability to: maintain attention and concentration for
3 extended periods; complete a normal workday and workweek without interruptions from
4 psychologically based symptoms and to perform at a consistent pace without an unreasonable
5 number and length of rest periods; get along with coworkers or peers without distracting them or
6 exhibiting behavior extremes; maintain socially appropriate behavior and adhere to basic
7 standards of neatness and cleanliness; and respond appropriately to changes in the work setting.
8 It was also Dr. Regan's opinion that plaintiff was markedly impaired in his ability to: understand,
9 remember, and carry out detailed instructions; and interact with the public. AR 84-85 (ECF No.
10 12-4 at 18-19). Dr. Gross affirmed these findings on October 8, 2012. AR 126-129, 146-149
11 (ECF No. 12-4 at 60-63, 80-83).

12 The ALJ gave great weight to these reports, on grounds they were based on a thorough
13 review of the file and the reviewing doctors were "familiar with the Social Security
14 Administration's disability programs and their evidentiary requirements." AR 19-20 (ECF No.
15 12-3 at 20-21).

16 2. Discussion

17 The ALJ found, presumably based on the evidence of plaintiff's physical impairments,
18 that plaintiff has the residual functional capacity to perform light work. In light of plaintiff's
19 mental impairments, three limitations were added: the light work must be simple and unskilled
20 work; it must involve little (or few) changes to the work routine; and must involve only limited
21 public contact. AR 15 (ECF No. 12-3 at 22) et seq. Relying on the Medical-Vocational
22 Guidelines (commonly known as "the Grids") rather than vocational expert testimony, the ALJ
23 then found that such jobs exist in significant numbers in the economy. AR 21-23 (ECF No. ECF
24 No. 12-3 at 22-24).⁷ He therefore concluded that plaintiff is not disabled within the meaning of
25 the Act. AR 23 (ECF No. 12-3 at 24).

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28 ⁷ See Hoopai v. Astrue, 499 F.3d 1071 (9th Cir. 2007).

1 Plaintiff contends that the RFC fails to capture significant findings of Dr. Stiles and the
2 reviewing psychological consultants, whose opinions the ALJ purported to accord “substantial”
3 and “great” weight, respectively. The Commissioner argues that the limitations found by those
4 doctors are expressly and adequately accommodated by the RFC. The Commissioner is correct
5 that the limitations incorporated into the RFC respond directly to findings of Drs. Stiles, Regan
6 and Gross regarding plaintiff’s impaired abilities to follow detailed or complex instructions, adapt
7 to routine changes in the environment, and interact with the public. However, plaintiff is correct
8 that the RFC nonetheless fails to fully account for Dr. Stiles’ findings regarding the severe
9 impacts of stress on plaintiff’s functioning.

10 Social Security Ruling (“SSR”) 85-15 addresses the impact of work-related mental
11 limitations. It provides in relevant part as follows:

12 The basic mental demands of competitive, remunerative, unskilled
13 work include the abilities (*on a sustained basis*) to understand,
14 carry out, and remember simple instructions; to respond
15 appropriately to supervision, coworkers, and usual work situations;
16 and to deal with changes in a routine work setting. A substantial
17 loss of ability to meet *any* of these basic work-related activities
would severely limit the potential occupational base. This, in turn,
would justify a finding of disability because even favorable age,
education, or work experience will not offset such a severely
limited occupational base.

18 SSR 85-15 (emphases added). While SSRs do not carry the “force of law,” they are binding on
19 ALJs nonetheless. Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1224 (9th Cir. 2009).
20 The Ninth Circuit gives them deference so long as they do not produce “a result inconsistent with
21 the statute and regulations.” Bunnell v. Sullivan, 947 F.2d 341, 346 n.3 (9th Cir. 1991).

22 Although the RFC at issue here accounts for plaintiff’s functional inability to follow
23 detailed or complex instructions, to adapt easily to changes in the environment, and to interact
24 with the public, it does not account for Dr. Stiles’ finding that plaintiff’s anxiety is likely to also
25 impair his ability to interact with supervisors and coworkers. AR 1120 (ECF No. 13-1 at 54).
26 Without that ability, plaintiff cannot perform even light work. SSR 85-15.

27 Dr. Stiles’ opinion, which the ALJ found was entitled to significant weight, addressed
28 numerous ways in which plaintiff’s anxiety rendered him acutely susceptible to stress and

1 impaired in his psychological/behavioral functioning, cognitive functioning, and work-related
2 abilities. AR 1120 (ECF No. 13-1 at 54). SSR 85-15 requires special consideration of these
3 factors:

4 The reaction to the demands of work (stress) is highly
5 individualized, and mental illness is characterized by adverse
6 responses to seemingly trivial circumstances. The mentally
7 impaired may cease to function effectively when facing such
8 demands as getting to work regularly, having their performance
9 supervised, and remaining in the workplace for a full day. A person
may become panicked and develop palpitations, shortness of breath,
or feel faint while riding in an elevator . . . Thus, the mentally
impaired may have difficulty meeting the requirement of even so-
called “low stress” jobs.

10 Because response to the demands of work is highly individualized,
11 the skill level of a position is not necessarily related to the difficulty
12 an individual will have in meeting the demands of the job. . . . Any
impairment-related limitations created by an individual’s response
to demands of work, however, must be reflected in the RFC
assessment.

13 SSR 85-15.⁸

14 The Commissioner relies on Stubbs-Danielson v. Astrue, 539 F.3d 1169 (9th Cir. 2008)
15 for the proposition that merely “moderate” mental health impairments do not require a more
16 restrictive RFC. The court finds Stubbs-Danielson inapposite here. That case dealt with the
17 degree to which moderate limitations in pace were incorporated into the ALJ’s RFC. On the facts
18 of the case, the court found that the ALJ adequately captured the claimant’s pace limitations
19 because the RFC was consistent with the restrictions identified in the medical testimony. Stubbs-
20 Danielson, 539 F.3d at 1174. Here, in contrast, the ALJ failed to account for identified
21 limitations in plaintiff’s ability to handle the demands of unskilled work, particularly in the

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24 ⁸ Plaintiff also argues that the ALJ failed to consider the discrepancy between impairments found
25 by Drs. Stiles, Regan and Gross and the specific abilities necessary for unskilled work according
26 to the Program Operations Manual System (“POMS”) at DI25020.010B(3). POMS is the SSA’s
27 “internal agency document used by employees to process claims.” Carillo-Yeras v. Astrue, 671
28 F.3d 731, 735 (9th Cir. 2011). While the POMS may be entitled to respect where it persuasively
interprets an ambiguous regulation, it does not impose judicially-enforceable duties on the ALJ.
See id. Accordingly, the court finds no error in the ALJ’s failure to expressly consider the factors
identified by DI25020.010B(3).

1 context of interaction with supervisors and coworkers per Dr. Stiles.⁹

2 For the reasons explained above, the court concludes that the ALJ erred in failing to
3 capture the limitations found by medical sources he correctly found were entitled to “substantial”
4 and “great” weight.

5 B. The ALJ’s Credibility Determinations

6 1. Plaintiff’s Testimony

7 At the time of his testimony, Mr. Hicks was homeless and living in a tent. AR 36 (ECF
8 No. 12-3 at 37). He testified that he had lived in an apartment with his girlfriend three years
9 previously. At that time, he did not change bed linens; he put his laundry in the washer and dryer
10 but his girlfriend carried it to the laundry room; he didn’t vacuum, mop or clean the bathrooms,
11 AR 39-40 (ECF No. 12-3 at 40-41). Plaintiff prepared perhaps 3 meals per week, and did not
12 shop by himself. AR 40 (ECF No. 12-3 at 41).

13 Plaintiff testified that he attends church almost every Sunday. AR 40-41 (ECF No. 12-3 at
14 40-41). He goes out to a movie two to three times a year. AR 41 (ECF. No 12-3 at 40). He
15 walks for around ½ hour to 45 minutes for exercise and then he has to rest. Id. He has a single
16 male friend, who visits him at the campsite where he lives. Sometimes they take the bus or the
17 light rail to visit parks or go out to eat. AR 42 (ECF No. 12-3 at 42).

18 Because plaintiff’s physical impairments are not at issue here, the court omits summary of
19 plaintiff’s testimony about his physical pain, other than to note that this testimony is generally
20 consistent with plaintiff’s reports to the various doctors who examined him. He stated that he
21 doesn’t know if he could work an 8 hour day, as he usually lies down for about 5 hours during the
22 middle of each day. AR 54-55 (ECF No. 12-3 at 55-56).

23 Regarding his mental health, plaintiff testified that he experiences severe mood swings
24 that are a problem for him “every minute.” AR 56-57 (ECF No. 12-3 at 57-58). Medication
25 (Depakote) helps “to an extent,” but plaintiff experiences daily mood swings even on medication.

26 ⁹ The same analysis applies to the ALJ’s failure to account for plaintiff’s impaired ability to
27 complete a normal workday/work week without interruptions from psychologically-based
28 symptoms; get along with coworkers without distracting them or exhibiting behavior extremes;
etc. as found by Drs. Regan and Gross.

1 Id. Plaintiff's chronic physical pain makes it harder to control his mood. AR 57-58 (ECF No. 12-
2 3 at 58-59). The mood swings make it difficult to interact with other people. AR 59 (ECF No.
3 12-3 at 60). Plaintiff experiences anxiety "quite often," and experiences periodic panic attacks in
4 which he feels like the walls are closing in on him. AR 59-60 (ECF No. 12-3 at 60-61). The last
5 such panic attack sent him to the hospital. AR 59-61 (ECF No. 12-3 at 60-62). Alcohol and drug
6 abuse have been serious problems in the past, but plaintiff was currently sober. AR 45-46, 57
7 (ECF No. 12-3 at 46-47, 58).

8 Plaintiff testified that if he had a job that required little interaction with other people, such
9 as envelope stuffing, he would still have trouble and make frequent mistakes because he tends to
10 lose concentration frequently. AR 62 (ECF No. 12-3 at 63).

11 2. Third Party Witness Statements

12 Both plaintiff's mother and plaintiff's father provided third-party witness statements.
13 William Hicks, Sr. reports that his son can't stand long because of "constant bending to pick up
14 bottles and cans," AR 295 (ECF No. 12-7 at 66), earns barely enough to live from collecting
15 recyclables, stands only minutes at a time, and doesn't sleep well due to pain. AR 296 (ECF No.
16 12-7 at 67). He can prepare simple meals like sandwiches but eats from food lines more
17 regularly. AR 297 (ECF No. 12-7 at 68). He does clean his clothes but it is difficult for him
18 because of problems bending. Id. He can't walk for more than 20 minutes and then must rest.
19 AR 300 (ECF No. 12-7 at 71). He can use public transportation without assistance but he doesn't
20 drive. AR 298 (ECF No. 12-7 at 69). He shops occasionally at the dollar store using his
21 recycling money, but he can't pay his own bills or use a check book. Id. He showers and washes
22 clothes once a week and occasionally visits the community center and other locations, but with
23 his back problem it has been almost impossible for him to relax and enjoy life. AR 299 (ECF No.
24 12-7 at 70). It is hard for him to talk with others. AR 300 (ECF No. 12-7 at 71). He gets along
25 "average" with authority figures but he cannot handle stress or changes in routine at all. AR 301
26 (ECF No. 12-7 at 72).

27 Priscilla Hicks reported her son has intense pain, so has trouble sleeping and stays off his
28 feet as much as he can. AR 349-350 (ECF No. 12-7 at 120-121). He can see to his personal care.

1 AR 350 (ECF No. 12-7 at 121). He must be given notes and have alarms set to remind him to
2 take his medication. AR 351 (ECF No. 12-7 at 122). He can prepare sandwiches and soups but
3 does not do household chores. Id. He can walk up to 30 minutes before needing to rest, and can
4 use public transportation, but he doesn't drive. AR 352 (ECF No. 12-7 at 123). He can pay his
5 bills but does not do any banking. Id. He watches TV but not often, because he can't focus and
6 loses interest quickly. AR 353 (ECF No. 1207 at 124). He stays in touch with his family through
7 telephone calls and emails weekly. Id. He gets along with authority figures but does not handle
8 stress or changes in routine at all, and he often feels like someone is following him. AR 355
9 (ECF No. 12-7 at 126). In summary, she reports that he has a hard time remembering things he
10 has to do, is easily distracted, and can't stand for long periods of time or bend too far because of
11 pain. AR 356 (ECF No. 23-7 at 127).

12 3. The ALJ's Findings

13 The ALJ found that plaintiff's "statements concerning the intensity, persistence and
14 limiting effects of [his] symptoms are not entirely credible. . ." AR 20 (ECF No. 12-3 at 21).
15 First, the ALJ noted that plaintiff's activities of daily living are inconsistent with his complaints
16 of disabling symptoms. Second, the ALJ stated that plaintiff had experienced "other non-medical
17 problems" such as a romantic breakup in 2010, which suggested that at least "some" of plaintiff's
18 problems could be situational and not medical. Id. The ALJ found that both plaintiff's
19 statements and the third party statements were "not credible" overall "in light of the discrepancies
20 between [plaintiff's] assertions and the information contained in the documentary reports and the
21 reports of the treating and examining practitioners." Id. Finally, plaintiff's demeanor while
22 testifying at the hearing was also found to be "generally unpersuasive." Id.¹⁰

23 The ALJ provided additional grounds for discounting the third-party reports. First, the
24 ALJ stated that their accuracy was questionable because plaintiff's parents are not trained to make
25 exacting observations of medical signs and symptoms. Second, he stated that the third party
26 evidence "also likely reflects the claimant's symptomatological exaggerations." Id. Third, the

27 ¹⁰ The ALJ specifically noted that his observation about demeanor was not determinative of the
28 credibility determination. Id.

1 parents were likely biased by their relationship to plaintiff. Id. Finally and most importantly, the
2 ALJ stated without elaboration that the third party statements are not consistent with “the
3 opinions and observations by medical doctors in this case.” Id.

4 4. Discussion

5 Having found that plaintiff’s medically determinable impairments could reasonably be
6 expected to cause the alleged symptoms, AR 20 (ECF No. 12-3 at 21), the ALJ was required to
7 articulate “specific, clear, and convincing reasons” for rejecting plaintiff’s testimony about the
8 severity of his symptoms. Garrison v. Colvin, 759 F.3d 995, 1014-15 (9th Cir. 2014). The
9 decision here fails to satisfy that standard.

10 First, the ALJ’s decision fails the specificity and clarity standard because the court cannot
11 determine what parts of plaintiff’s testimony was rejected. Plaintiff testified about the severity
12 and limiting effects of his physical problems and subjective pain, and also about the severity and
13 limiting effects of his bipolar disorder and related mood swings and anxiety. It is impossible to
14 determine what specific testimony regarding symptoms was rejected, on what grounds. In
15 discussing the inconsistencies he perceived between plaintiff’s testimony and his activities of
16 daily living, the ALJ focused primarily on physical activities such as bending to pick up bottles
17 and cans. AR 20 (ECF No. 12-3 at 21). It appears, but is impossible to determine with
18 confidence, that the ALJ was primarily rejecting the plaintiff’s testimony regarding his physical
19 capacity to sustain any kind of work over an 8-hours day.

20 The ALJ also cites evidence that plaintiff “talks with others a couple times a week” and
21 “gets along well with authority figures” as inconsistent with his claims about the severity of his
22 symptoms. Id. The ALJ does not indicate how talking with other people a couple of times a
23 week is inconsistent with any of plaintiff’s testimony about his mental health symptoms,
24 including daily mood swings, anxiety, and panic attacks. No such inconsistency is apparent to the
25 undersigned. It is also far from obvious that plaintiff’s indication on a questionnaire that he gets
26 along well with authority figures, AR 311 (ECF No. 12-7 at 82) (cited by ALJ as Exhibit 9E20),¹¹

27 ¹¹ Question: “How well do you get along with authority figures? (For example, police, bosses,
28 landlords or teachers.)” Answer: “Well.” Id.

1 is inconsistent with any of his testimony about the severity of his anxiety and mood swings.

2 The ALJ's own speculation about the impact of plaintiff's 2010 break-up with his fiancé
3 on the severity of his symptoms is unsupported by any citation to the medical record, and is not
4 compelled by common sense. While changes in relationship status can and often do affect mood,
5 the ALJ does not explain why he thought situational factors were determinative of plaintiff's
6 "difficulties" at the time of the hearing in 2013.

7 As to both plaintiff's own testimony and the statements of his parents, the ALJ asserted
8 there was inconsistency with "information contained in the documentary reports and the reports
9 of the treating and examining practitioners." AR 20 (ECF No. 12-3 at 21). The ALJ does not,
10 however, identify any specific medical reports that conflict with specific portions of the testimony
11 or the third party reports. This is error. See Brown-Hunter v. Colvin, 798 F.3d 749, 755-56 (9th
12 Cir. 2015) (finding error where ALJ failed to specifically identify which of plaintiff's testimonial
13 statements he found to be non-credible, and made a conclusory finding of inconsistency with the
14 RFC).

15 The ALJ's other reasons for rejecting the parents' statements are generic: parents are
16 likely biased in favor of their children, and likely to endorse their children's exaggerated
17 subjective claims. The ALJ is required to provide specific reasons, germane to each witness, for
18 disregarding lay observation evidence. Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996).
19 The ALJ did not do so here. Moreover, the parents' lack of medical training is what makes them
20 lay witnesses, but it does not undermine their credibility as to what they have personally
21 observed. And as with plaintiff's testimony, the ALJ's assertion of inconsistency with the
22 medical record is not supported by citations to that record, or other specification that would
23 permit review of the asserted inconsistency.

24 For all these reasons, the ALJ erred in assessing the credibility of plaintiff and the third-
25 party statements.

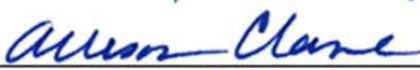
26 VII. CONCLUSION

27 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff's motion for summary judgment (ECF No. 18) is GRANTED;

2. The Commissioner's cross-motion for summary judgment (ECF No. 27) is DENIED;
3. This matter is remanded to the ALJ for further proceedings consistent with this order;
4. The Clerk of the Court shall enter judgment for plaintiff and close this case.

DATED: September 26, 2016


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE