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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ABIGAIL P. DITTMAR,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:15-cv-1630 DB

ORDER

This social security action was submitted to the court without oral argument for ruling on plaintiff’s motion for summary judgment.¹ Plaintiff argues that the ALJ’s treatment of the medical opinion evidence constituted error. For the reasons explained below, plaintiff’s motion is granted, defendant’s cross-motion is denied, the decision of the Commissioner of Social Security (“Commissioner”) is reversed, and the matter is remanded for further proceedings consistent with this order.

PROCEDURAL BACKGROUND

In January of 2012, plaintiff filed an application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“the Act”) alleging disability beginning in

¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 4 & 9.)

1 July of 2009. (Transcript (“Tr.”) at 19, 192-200.) Plaintiff’s application was denied initially, (id.
2 at 120-24), and upon reconsideration. (Id. at 133-37.)

3 Thereafter, plaintiff requested a hearing which was held before an Administrative Law
4 Judge (“ALJ”) on October 8, 2013. (Id. at 35-89.) Plaintiff was represented by an attorney and
5 testified at the administrative hearing. (Id. at 35-36.) In a decision issued on January 24, 2014,
6 the ALJ found that plaintiff was not disabled. (Id. at 29.) The ALJ entered the following
7 findings:

8 1. The claimant has not engaged in substantial gainful activity
9 since January 19, 2012, the application date (20 CFR 416.971 *et*
seq.).

10 2. The claimant has the following severe impairments: diabetes
11 mellitus, mood disorder NOS, anxiety/panic disorder, and
depressive disorder (20 CFR 416.920(c)).

12 3. The claimant does not have an impairment or combination of
13 impairments that meets or medically equals the severity of one of
the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1
14 (20 CFR 416.920(d), 416.925 and 416.926).

15 4. After careful consideration of the entire record, the undersigned
16 finds that the claimant has the residual functional capacity to
perform light work as defined in 20 CFR 416.967(b) except she
17 could occasionally climb ramps and stairs, balance, knee (sic),
stoop, crouch, and crawl, and should avoid climbing ladders, ropes
18 or scaffolds. Mentally, she could perform simple routine tasks with
no public contact and occasionally interact with co-workers and
supervisors.

19 5. The claimant is unable to perform any past relevant work (20
20 CFR 416.965).

21 6. The claimant was born on June 3, 1971 and was 40 years old,
which is defined as a younger individual age 18-49, on the date the
22 application was filed (20 CFR 416.963).

23 7. The claimant has at least a high school education and is able to
communicate in English (20 CFR 416.964).

24 8. Transferability of job skills is not material to the determination
25 of disability because using the Medical-Vocational Rules as a
framework supports a finding that the claimant is “not disabled”
26 whether or not the claimant has transferable job skills (See SSR 82-
41 and 20 CFR Part 404, Subpart P, Appendix 2).

27 9. Considering the claimant’s age, education, work experience,
28 and residual functional capacity, there are jobs that exist in
significant numbers in the national economy that the claimant can

1 perform (20 CFR 416.969 and 416.969(a)).

2 10. The claimant has not been under a disability, as defined in the
3 Social Security Act, since January 19, 2012, the date the application
4 was filed (20 CFR 416.920(g)).

5 (Id. at 21-29.)

6 On May 29, 2015, the Appeals Council denied plaintiff's request for review of the ALJ's
7 January 24, 2014 decision. (Id. at 9-11.) Plaintiff sought judicial review pursuant to 42 U.S.C. §
8 405(g) by filing the complaint in this action on July 30, 2015. (ECF No. 1.)

9 LEGAL STANDARD

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

16 "[A] reviewing court must consider the entire record as a whole and may not affirm
17 simply by isolating a 'specific quantum of supporting evidence.'" Robbins v. Soc. Sec. Admin.,
18 466 F.3d 880, 882 (9th Cir. 2006) (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.
19 1989)). If, however, "the record considered as a whole can reasonably support either affirming or
20 reversing the Commissioner's decision, we must affirm." McCarty v. Massanari, 298 F.3d
21 1072, 1075 (9th Cir. 2002).

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

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

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

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

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

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

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

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

15 APPLICATION

16 In her pending motion plaintiff asserts that the ALJ's treatment of the medical opinion
17 offered by plaintiff's treating physician, Dr. Shawn Goodall, constituted error. (Pl.'s MSJ (ECF
18 No. 16) at 3-8.²)

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

27 The uncontradicted opinion of a treating or examining physician may be rejected only for
28 clear and convincing reasons, while the opinion of a treating or examining physician that is
controverted by another doctor may be rejected only for specific and legitimate reasons supported

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

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

9 Here, on September 6, 2011, Dr. Goodall completed a Welfare-to-Work Exemption
10 Request form. (Tr. at 288-89.) Therein, Dr. Goodall opined that plaintiff was unable to work
11 full-time or work with reduced hours. (Id. at 288.) Dr. Goodall stated that plaintiff had “physical
12 manifestations on her left upper & lower extremities from her stroke in 2009,” which resulted in
13 “balance issues, strength for lifting/pushing/pulling from her stroke.” (Id. at 289.) The ALJ’s
14 decision discussed Dr. Goodall’s opinion and afforded it “little weight.” (Id. at 27.) The ALJ
15 supported that determination by finding that “the claimant reported medication helped her
16 neuropathic pain.” (Id.)

17 The ALJ’s citation in support of this finding, is a treatment note dated April 8, 2011—
18 almost seven months prior to the time Dr. Goodall rendered his September 6, 2011 opinion. (Id.
19 at 316.) Moreover, treatment notes from before and after the April 8, 2011 treatment note reflect
20 that plaintiff suffered from weakness and pain on her left side. (Id. at 304,
21 319.)

22 The ALJ also rejected Dr. Goodall’s opinion by stating that “the treating source medical
23 opinions are not binding on the undersigned according to 20 CFR 416.904.” (Tr. at 27.) 20 CFR
24 416.904 provides as follows:

25 A decision by any nongovernmental agency or any other
26 governmental agency about whether you are disabled or blind is
27 based on its rules and is not our decision about whether you are
28 disabled or blind. We must make a disability or blindness
determination based on social security law. Therefore, a
determination made by another agency that you are disabled or
blind is not binding on us.

1 That Dr. Goodall’s opinion was not binding, however, is simply a statement of the law.
2 See Clifford v. Apfel, 227 F.3d 863, 874 (7th Cir. 2000) (“the ALJ is not bound by findings made
3 by either a governmental or nongovernmental agency concerning whether the claimant is
4 disabled”). The ALJ was nonetheless required to consider Dr. Goodall’s opinion. See Garrison
5 v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting Reddick v. Chater, 157 F.3d 715, 725 (9th
6 Cir. 1998)) (“In disability benefits cases . . . physicians may render medical, clinical opinions, or
7 they may render opinions on the ultimate issue of disability—the claimant’s ability to perform
8 work.”); Orn v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (“If a treating physician’s opinion is
9 well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not
10 inconsistent with the other substantial evidence in the case record, it will be given controlling
11 weight.”); McCartey v. Massanari, 298 F.3d 1072, 1076 (9th Cir. 2002) (“ALJ must consider the
12 VA’s finding in reaching his decision”).

13 For the reasons stated above, the court finds that the ALJ failed to offer specific and
14 legitimate, let alone clear and convincing, reasons supported by substantial evidence in the record
15 for rejecting Dr. Goodall’s opinion. Accordingly, plaintiff is entitled to summary judgment on
16 her claim that the ALJ’s treatment of the medical opinion of Dr. Goodall constituted error.

17 CONCLUSION

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

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

25 Garrison, 759 F.3d at 1020. Even where all the conditions for the “credit-as-true” rule are met,
26 the court retains “flexibility to remand for further proceedings when the record as a whole creates
27 serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social
28 Security Act.” Id. at 1021; see also Dominguez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)


1 (“Unless the district court concludes that further administrative proceedings would serve no
2 useful purpose, it may not remand with a direction to provide benefits.”); Treichler v.
3 Commissioner of Social Sec. Admin., 775 F.3d 1090, 1105 (9th Cir. 2014) (“Where . . . an ALJ
4 makes a legal error, but the record is uncertain and ambiguous, the proper approach is to remand
5 the case to the agency.”).

6 Here, having reviewed the record, the court cannot find that further administrative
7 proceedings would serve no useful purpose.³ This matter will, therefore, be remanded for further
8 proceedings.

9 Accordingly, IT IS HEREBY ORDERED that:

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

14 Dated: March 7, 2017

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17 DEBORAH BARNES
18 UNITED STATES MAGISTRATE JUDGE
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28 ³ In this regard, the court notes that, although the ALJ’s treatment of Dr. Goodall’s opinion constituted error, the ALJ also found plaintiff to be “not entirely credible.” (Tr. at 25.)