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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARGARET WALTON,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-02487-CKD

ORDER

Plaintiff Margaret Walton seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI, respectively, of the Social Security Act (“Act”).¹ In her motion for summary judgment, plaintiff principally argues that the decision of the administrative law judge (“ALJ”) is based upon legal error and is not supported by substantial evidence in the record. (See ECF No. 21.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 24.)

After carefully considering the record and the parties’ briefing, the court DENIES plaintiff’s motion for summary judgment, GRANTS the Commissioner’s cross-motion for

¹ The parties have consented to magistrate judge jurisdiction. ECF Nos. 7 & 8.

1 summary judgment, and AFFIRMS the Commissioner’s final decision.

2 I. BACKGROUND

3 Plaintiff was born on December 13, 1968 and last worked in 2006 or 2007 as a residential
4 counselor.² (Administrative Transcript (“AT”) 86, 462, 464.) On December 16, 2011, plaintiff
5 applied for DIB and SSI, alleging that her disability began on October 16, 2006. (AT 14, 86–89.)
6 Plaintiff claimed that she was disabled due to back injury, degenerative disc disease, and anemia.
7 (AT 98.) After plaintiff’s application was denied initially and on reconsideration, an ALJ
8 conducted a hearing on December 1, 2014. (AT 458–505.) The ALJ subsequently issued a
9 decision dated March 5, 2015, determining that plaintiff had not been under a disability, as
10 defined in the Act, from October 16, 2006, through the date of the ALJ’s decision. (AT 14–25.)
11 The ALJ’s decision became the final decision of the Commissioner when the Appeals Council
12 denied plaintiff’s request for review on August 18, 2016. (AT 7–9.) Plaintiff subsequently filed
13 this action to obtain judicial review of the Commissioner’s final decision. (ECF No. 1.)

14 II. ISSUES PRESENTED

15 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly rejected
16 the opinion of Miguel Lizarraga, M.D. and (2) whether the ALJ improperly discounted plaintiff’s
17 credibility.

18 III. LEGAL STANDARD

19 The court reviews the Commissioner’s decision to determine whether (1) it is based on
20 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
21 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
22 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
23 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
24 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
25 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is

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 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
2 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
3 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
4 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

5 “[A] reviewing court, in dealing with a determination or judgment which an
6 administrative agency alone is authorized to make, must judge the propriety of such action solely
7 by the grounds invoked by the agency.” Sec. & Exch. Comm’n v. Chenery Corp., 332 U.S. 194,
8 196 (1947). At the same time, in the context of Social Security appeals, “[a]s a reviewing court,
9 we are not deprived of our faculties for drawing specific and legitimate inferences from the ALJ’s
10 opinion. It is proper for us to read the . . . opinion, and draw inferences . . . if those inferences are
11 there to be drawn.” Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989).

12 IV. DISCUSSION

13 A. Summary of the ALJ’s Findings

14 The ALJ evaluated plaintiff’s entitlement to DIB and SSI pursuant to the Commissioner’s
15 standard five-step analytical framework.³ Preliminarily, the ALJ determined that plaintiff met the

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

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

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

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

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

1 insured status requirements of the Act through December 16, 2011. (AT 16.) At step one, the
2 ALJ concluded that plaintiff has not engaged in substantial gainful activity since October 16,
3 2006, the alleged onset date. (Id.) At step two, the ALJ found that plaintiff “has the following
4 severe impairments: lumbar degenerative disc disease, morbid obesity, left knee degenerative
5 joint disease, pain disorder, depressive disorder NOS, and generalized anxiety disorder.” (Id.)
6 However, at step three the ALJ concluded that plaintiff “does not have an impairment or
7 combination of impairments that meets or medically equals the severity of one of the listed
8 impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (AT 18.)

9 Before proceeding to step four, the ALJ assessed plaintiff’s residual functional capacity
10 (“RFC”), finding that plaintiff could “perform sedentary work as defined in 20 CFR §
11 404.1567(a) and 416.967(b),” except that plaintiff:

12 [can] lift/carry 10 pounds occasionally and frequently and
13 stand/walk two hours in an eight-hour workday. The claimant is
14 not able to operate foot control with left foot and the claimant
15 should have the freedom to use a cane if she is required to walk
more than 50 feet. Mentally, the claimant could perform simple
routine tasks with a job not requiring significant judgment and the
claimant is able to adapt to a routine environment.

16 (AT 19.) At step four, the ALJ determined that plaintiff is unable to perform any past relevant
17 work. (AT 24.) However, at step five, the ALJ found that, in light of plaintiff’s age, education,
18 work experience, RFC, and the vocational expert’s testimony, there were jobs that existed in
19 significant numbers in the national economy that plaintiff could have performed. (Id.) Thus, the
20 ALJ concluded that plaintiff had not been under a disability, as defined in the Act, from October
21 16, 2006, the alleged onset date, through March 5, 2015, the date of the ALJ’s decision. (AT 25.)

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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.

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

2 1. *Whether the ALJ improperly rejected the opinion of Miguel Lizarraga,*
3 *M.D.*

4 The weight given to medical opinions depends in part on whether they are proffered by
5 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,
6 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,
7 a treating physician's opinion carries more weight than an examining physician's opinion, and an
8 examining physician's opinion carries more weight than a non-examining physician's opinion.
9 Holohan, 246 F.3d at 1202.

10 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
11 considering its source, the court considers whether (1) there are contradictory opinions in the
12 record; and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted
13 opinion of a treating or examining medical professional only for "clear and convincing" reasons.
14 Lester, 81 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining
15 professional may be rejected for "specific and legitimate" reasons. Id. at 830. While a treating
16 professional's opinion generally is accorded superior weight, if it is contradicted by a supported
17 examining professional's opinion (supported by different independent clinical findings), the ALJ
18 may resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing
19 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to
20 weigh the contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁴ except that the ALJ
21 in any event need not give it any weight if it is conclusory and supported by minimal clinical
22 findings. Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory,
23 minimally supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a
24 non-examining professional, by itself, is insufficient to reject the opinion of a treating or
25 examining professional. Lester, 81 F.3d at 831.

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

1 In reaching the RFC determination, the ALJ discussed, and weighed, six different medical
2 opinions in the record, including a March 24, 2014 opinion from treating physician Dr. Lizarraga,
3 which the ALJ gave little weight. (AT 22–24.) Plaintiff argues that the ALJ failed to provide
4 specific and legitimate reasons, supported by substantial evidence, for rejecting Dr. Lizarraga’s
5 opinion. (ECF No. 12 at 14–20.) The ALJ discussed this opinion and thoroughly explained his
6 reasoning:

7 On March 24, 2014, a physical assessment completed by Dr.
8 Miguel [Lizarraga]⁵ indicated that the claimant[’s] emotional
9 factors contribute to the severity of her impairments and the
10 claimant is incapable of even performing low stress jobs. The
11 claimant could sit, stand/walk less than two hours, lift/carry less
12 than 10 pounds occasionally, should rarely look down and
occasionally turn her head, look up, and hold her head in a static
position. The claimant should rarely climb stairs, should never
twist, stoop, crouch, climb ladders, must elevate her legs to chest
level 20% of the workday, and would miss work more than four
days per month [AT 432–36].

13 The undersigned gives little weight to Dr. [Lizarraga]’s assessments
14 because he actually does not include any opinions regarding any
15 specific and measurable functional limits. The claimant testified
16 that she sat all day, the day before the hearing, except for 30
17 minutes lying in the bed [AT 472]. Dr. [Lizarraga]’s opinions are
not consistent with his earlier opinions indicating that the claimant
did not have any mental impairments and the claimant had no
neurological abnormalities, no motor function disorganization, and
no atrophy [AT 299–301].

18 He stated she had limits on the use of her hands; that she must
19 elevate her feet; and said she has a personality disorder. Those
20 opinions are completely unsupported by other substantial evidence
21 in the record. His treatment notes never say anything about any of
those limits. He never recommended that she elevate her feet and
she never indicated to him that she does so.

22 He wrote that she could sit for no more than a total of two hours
23 each day. Again that is completely unsupported. In fact, the
claimant testified that, except for lying down for 30 minutes on the
day before the hearing, she sat virtually all of her waking hours.

24 Dr. [Lizarraga]’s opinions are completely unsupported by the
25 medical evidence as a whole and inconsistent with the medical
opinions of Dr. [David] and Dr. Tambellini.

26 (AT 23–24.)

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28 ⁵ Dr. Lizarraga is mistakenly referred to as Dr. Lizainga in the ALJ’s decision.

1 The ALJ’s conclusions are supported by substantial evidence in the record. First, the ALJ
2 appropriately concluded that there is no basis in the record to support Dr. Lizarraga’s opined
3 limitations that plaintiff must elevate her legs to chest level 20% of the day and that she is limited
4 in the use of her hands. (AT 23.) It is undisputed that aside from this 2014 opinion the record is
5 devoid of any reference to plaintiff’s need to elevate her legs to chest level. Plaintiff argues,
6 however, that the record supports Dr. Lizarraga’s manipulative limitations. (ECF No. 12 at 18.)
7 Still, while the record contains a few subjective complaints of arm pain (AT 146, 149, 156, 353)
8 and one subjective complaint of numbness in her fingers (AT 226), the record only contains one
9 objective finding related to either issue. In a treatment note from July 29, 2013, Olena Hays, PA-
10 C lists “radial nerve compression (L) arm” as an objective finding. (AT 361.) However, there is
11 no measurable objective evidence in the record to support plaintiff’s alleged manipulative
12 limitations.

13 Indeed, as the ALJ documented, “[t]here was no medical evidence in the record indicating
14 that the claimant had bilateral nerve damage in her arms and her EMG/NCV was normal.” (AT
15 22.) The EMG/NCV only measured plaintiff’s right lower extremity. (AT 221–23). Yet, it
16 follows that if she had a serious issue with her upper extremities, then the record would include
17 some findings based upon measurable objectives, rather than only scant subjective complaints and
18 a single conclusory finding. Thus, the ALJ reasonably concluded that Dr. Lizarraga’s opined
19 limitations are not supported by the record.

20 Second, the ALJ reasonably concluded that Dr. Lizarraga did “not include any opinions
21 regarding any specific and measurable functional limits.” (AT 23.) While the wording may not
22 be optimally precise, this conclusion apparently points out the unsupported and conclusory nature
23 of Dr. Lizarraga’s opinion, especially in light of the ALJ’s other conclusions that the opinion is
24 unsupported by the medical evidence as a whole, and that certain of the opined limitations have
25 no basis in the record. (AT 23–24.). See Magallanes, 881 F.2d 747 at 755 (9th Cir. 1989) (a
26 reviewing court is “not deprived of [its] faculties for drawing specific and legitimate inferences
27 from the ALJ’s opinion”).

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1 This conclusion is supported by the record. Dr. Lizarraga’s 2014 opinion is contained on
2 a fill-in-the-blank and check-box form. (See AT 432–36.) Aside from listing “paralumbar
3 tenderness” in the blank under “identify the clinical findings and objective signs,” the opinion
4 lacks any specific and measurable objective findings to support the conclusory limitations it
5 includes. (See Id.) Moreover, the opinion does not include any detailed discussion of plaintiff’s
6 medical condition or the relationship between her condition and the opined limitations. (See Id.)

7 Third, the ALJ’s statements interpreting plaintiff’s testimony—that she “sat all day, the
8 day before the hearing, except for 30 minutes lying in the bed” and that “except for lying down
9 for 30 minutes on the day before the hearing, she sat virtually all of her waking hours” (AT 23)—
10 were reasonable and supported by the record. At the hearing, Ms. Walton testified that she spent
11 the day before the hearing “[u]p and down sitting on the couch, and then laying in the bed” but
12 that she only spent “[a]bout 30 minutes” in bed. (AT 472.) She also testified that she spent about
13 40 minutes doing laundry. (AT 473, 480.) However, when doing laundry, she “put the load in
14 and came back and sat down” (AT 473) and then she sat down while folding the clothes (AT
15 480). Therefore, the ALJ reasonably concluded that this admitted activity undermines Dr.
16 Lizarraga’s opinion that she could sit for no more than a total of two hours each day. (AT 23.)

17 Fourth, the ALJ accurately pointed out that Dr. Lizarraga’s 2014 opinion was inconsistent
18 with both his prior 2012 opinion, and the opinions of state agency medical consultants Dr. David
19 and Dr. Tambellini, which the ALJ gave significant weight. (AT 23–24; Compare AT 432–36
20 with AT 299–301, 303–05, 332–34.) While plaintiff argues, for various reasons, that these other
21 opinions are not as relevant as Dr. Lizarraga’s 2014 opinion (ECF No. 21 at 16–17, 19–20), the
22 inconsistencies are apparent. Furthermore, these inconsistencies were an appropriate
23 consideration for the ALJ since the ALJ’s determination here did not rest solely on the opinions
24 of the non-examining physicians. See Lester, 81 F.3d at 831.

25 Therefore, the court finds that the ALJ provided several specific and legitimate reasons,
26 supported by substantial evidence in the record, for rejecting Dr. Lizarraga’s opinion.

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1 2. *Whether the ALJ improperly discounted plaintiff's credibility*

2 In Lingenfelter v. Astrue, 504 F.3d 1028 (9th Cir. 2007), the Ninth Circuit Court of
3 Appeals summarized the ALJ's task with respect to assessing a claimant's credibility:

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

16 Second, if the claimant meets this first test, and there is no evidence
17 of malingering, the ALJ can reject the claimant's testimony about
18 the severity of her symptoms only by offering specific, clear and
19 convincing reasons for doing so. . . .

20 Lingenfelter, 504 F.3d at 1035-36 (citations and quotation marks omitted). "At the same time, the
21 ALJ is not required to believe every allegation of disabling pain, or else disability benefits would
22 be available for the asking. . . ." Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).

23 "The ALJ must specifically identify what testimony is credible and what testimony
24 undermines the claimant's complaints." Valentine v. Comm'r of Soc. Sec. Admin., 574 F.3d 685,
25 693 (9th Cir. 2009) (quoting Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.
26 1999)). In weighing a claimant's credibility, an ALJ may consider, among other things, the
27 "[claimant's] reputation for truthfulness, inconsistencies either in [claimant's] testimony or
28 between [her] testimony and [her] conduct, [claimant's] daily activities, [her] work record, and
testimony from physicians and third parties concerning the nature, severity, and effect of the
symptoms of which [claimant] complains." Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.
2002) (modification in original) (quoting Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.
1997)). If the ALJ's credibility finding is supported by substantial evidence in the record, the
court "may not engage in second-guessing." Id. at 959.

 As an initial matter, the court notes that the ALJ did not entirely discredit plaintiff's
allegations of limitations due to her lumbar degenerative disc disease, morbid obesity, left knee

1 degenerative joint disease, pain disorder, depressive disorder, and generalized anxiety disorder.
2 Indeed, the ALJ limited plaintiff to sedentary work, with additional physical and mental
3 limitations. (AT 19.) Nevertheless, to the extent that the ALJ discounted plaintiff's testimony
4 regarding her symptoms and functional limitations, the ALJ provided several specific, clear, and
5 convincing reasons for doing so.

6 **i. Objective medical evidence**

7 "[A]fter a claimant produces objective medical evidence of an underlying impairment, an
8 ALJ may not reject a claimant's subjective complaints based solely on a lack of medical evidence
9 to fully corroborate the alleged severity of pain." Burch v. Barnhart, 400 F.3d 676, 680 (9th Cir.
10 2005) (citing Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991)). Although lack of medical
11 evidence cannot form the sole basis for discounting plaintiff's subjective symptom testimony, it is
12 nevertheless a relevant factor for the ALJ to consider. Burch, 400 F.3d at 681.

13 Here, the ALJ observed that the objective medical evidence did not support plaintiff's
14 complaints of "nerve damage" and an inability to manipulate objects:

15 At the hearing, the claimant was asked why she could not perform a
16 sedentary assembly job. She considered her response for a time
17 before saying she has "nerve damage" which sends "shooting pain"
18 into her arms. The claimant indicated that when she "grabs stuff"
19 she is barely able to maintain her grasp on the object.

20 That response tends to detract from the reliability of her testimony.
21 She had never mentioned any such problem to any medical source.
22 If she had such a problem, she would have done so. Since she did
23 not, this tends to show her symptoms are not as severe as she
24 described.

25 (AT 20.)

26 This conclusion is supported by the record. As explained above, there are no measurable
27 objective findings in the record to support plaintiff's subject complaints regarding "nerve
28 damage" and an inability to manipulate or grasp objects. Moreover, while plaintiff did
subjectively complain of pain in her arm on a few occasions, most of those complaints were made
while applying for disability, rather than to a treating source. (AT 146, 149, 156.) Indeed, she
only once reported to a treating source complaints of arm pain (AT 353), and on one other
occasion reported that she had "some" numbness in her fingers (AT 226). Nowhere in the record

1 did plaintiff complain to a treating source that she was barely able to maintain her grasp on
2 objects.

3 The ALJ also observed that:

4 The claimant's physical condition also appears to be well
5 controlled. The claimant has not sought specialized dietary and
6 neurological care; although she is obese, the record did not show
7 that her obesity caused significant bony abnormality or other
8 findings that would satisfy the severity contemplated in the
9 musculoskeletal or neurological disorders.

10 [. . .]

11 In November, 2011, her examination showed no lumbar tenderness
12 or spasms and no neurological deficits [AT 294]. In May 2012, a
13 musculoskeletal assessment completed by treating physician Dr.
14 Miguel [Lizarraga] indicated that the claimant had no neurological
15 abnormalities, no motor function disorganization, and no atrophy
16 [AT 300–01]. In July 2013, the claimant's examination revealed
17 normal gait and normal motor movement [AT 329]. In September
18 2013, the claimant's musculoskeletal examination showed no joint
19 pain, deformity or weakness, and had full range of motion [AT 396,
20 403].

21 (AT 21.) These observations are supported by the record. (See AT 294, 300–01, 329, 396, 403.)

22 Thus, they were appropriate for the ALJ to consider when discounting plaintiff's credibility.

23 Further, the ALJ pointed out that while plaintiff testified that she has been using a cane for
24 six years, "an orthopedic report completed by Dr. Elvert Nelson on February 8, 2010 showed that
25 the claimant could walk several block and did not use a cane or crutch for ambulation. [AT 231]
26 This detracts from the reliability of her testimony." (AT 21.) While plaintiff points to other
27 evidence in the record showing that plaintiff did use a cane (ECF No. 21 at 22), it remains that
28 Dr. Nelson determined that she did not need one (AT 231). The ALJ reasonably resolved any
ambiguity and determined that these discrepancies weighed against plaintiff's credibility.

Moreover, the ALJ accurately noted that plaintiff has not had a panic attack since October
2011 (AT 470), and that her mental examinations were within normal limits (AT 244, 255, 262,
294, 318), all of which undermines her complaints of disabling mental impairment. (AT 24)

26 ii. Failure to seek or consistently seek treatment

27 Failure to seek consistent treatment is a proper consideration when evaluating credibility.
28 See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005). "We have long held that, in assessing

1 a claimant's credibility, the ALJ may properly rely on unexplained or inadequately explained
2 failure to seek treatment or to follow a prescribed course of treatment. . . . Moreover, a claimant's
3 failure to assert a good reason for not seeking treatment, or a finding by the ALJ that the proffered
4 reason is not believable, can cast doubt on the sincerity of the claimant's pain testimony."

5 Molina, 674 F.3d at 1113-14 (citation and quotation marks omitted).

6 The ALJ observed that as of October 2014, plaintiff had "only had two psychotherapy
7 appointments and the record does not show that the claimant continued psychotherapy sessions."
8 (AT 21.) This is supported by the record and plaintiff's testimony. (AT 437, 489.) Such failure
9 to seek treatment, without explanation, belies any assertion that her mental impairments were
10 truly disabling.

11 Regarding plaintiff's physical impairments, the ALJ observed that "[t]he record showed
12 that the claimant attended physical therapy; however the claimant reported that she could not start
13 the functional restoration program (pain clinic) due to childcare problems" in September of 2009.
14 (AT 21.) This is an accurate account of the record. (AT 243.) Moreover, the record does not
15 demonstrate any further efforts by plaintiff to start the functional restoration program at any point
16 after September 2009.

17 The ALJ also pointed out that "progress notes did not show that the claimant continued
18 going to physical therapy and there was no evidence [of] lumbar fusion or any other surgeries, no
19 left knee surgeries, and no blood transfusions." (AT 22.) This too is supported by the record.
20 While plaintiff was sent to physical therapy for her back and knee difficulties, she did not
21 continue the treatments, claiming that it did not help. (See AT 469.) While plaintiff argues that
22 this allegedly ineffective physical therapy supports her subjective allegations (ECF No. 21 at 24),
23 the ALJ reasonably interpreted this evidence differently, concluding that plaintiff's choice to not
24 continue with physical therapy undermined her complaints of disabling pain.

25 **iii. Conservative treatment**

26 Plaintiff's relatively conservative treatment was also a proper consideration. See
27 Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008) (reasoning that a favorable
28 response to conservative treatment undermines complaints of disabling symptoms); Parra v.

1 Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (“We have previously indicated that evidence of
2 conservative treatment is sufficient to discount a claimant’s testimony regarding severity of an
3 impairment”); Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989).

4 The ALJ relied on plaintiff’s relatively conservative treatment—two lone psychotherapy
5 visits, limited physical therapy and chiropractic care, pain medication, use of a knee brace, and no
6 surgery (AT 283–84, 337, 414, 437, 469–70, 489)—as another proper reason to discredit her
7 credibility. (AT 20–23.)

8 **iv. Condition can be controlled with medication**

9 A condition that can be controlled or corrected by medication is not disabling for purposes
10 of determining eligibility for benefits under the Act. See Warre v. Comm’r of Soc. Sec. Admin.,
11 439 F.3d 1001, 1006 (9th Cir. 2006); Montijo v. Sec’y of Health & Human Servs., 729 F.2d 599,
12 600 (9th Cir. 1984); Odle v. Heckler, 707 F.2d 439, 440 (9th Cir. 1983).

13 The ALJ also determined that plaintiff’s physical conditions appeared to be well
14 controlled. Specifically, the ALJ observed:

15 The claimant reported that pain medication controlled her left side
16 back pain [AT 337]. Progress notes showed that in 2014, her
17 examinations were within normal limits, except for some lumbar
18 pain with motion, mild left knee tenderness, and mild crepitus but
19 no loss of mobility or instability [AT 337, 340, 348–51, 354, 363,
20 439]. Progress notes also documented that the claimant is using a
21 knee brace and taking non-steroidal anti-inflammatory medications
22 [AT 439]. The claimant also reported that the knee brace was
23 helping her [414].

24 (At 21.)

25 While plaintiff would have the court rely on other evidence in the record of plaintiff’s
26 subject complaints of pain, the ALJ appropriately relied on the above-detailed evidence in the
27 record. (See AT 337, 340, 348–51, 354, 363, 414, 439.) Notably, on August 20, 2014, plaintiff
28 told her treating provider that “norco TID daily controls left sided low back pain.” (AT 337.) As
such, the ALJ reasonably concluded that the record demonstrates that plaintiff’s condition is
controlled by medication, which thereby discounts her subjective complaints of disabling pain.

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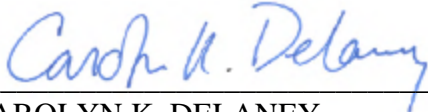
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For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (ECF No. 21) is DENIED.
2. The Commissioner's cross-motion for summary judgment (ECF No. 24) is GRANTED.
3. The final decision of the Commissioner is AFFIRMED, and judgment is entered for the Commissioner.
4. The Clerk of Court shall close this case.

Dated: March 15, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

14/ss.16-2487.walton.MSJ