



1 On December 8, 2016, the ALJ issued a decision finding that plaintiff was not disabled  
2 under sections 216(i), 223(d), and 1614(a)(3)(A) of the Act.<sup>1</sup> *Id.* at 21-40. The ALJ made the  
3 following specific findings:

- 4 1. The claimant meets the insured status requirements of the Social Security Act through  
5 December 31, 2014.
- 6 2. The claimant has not engaged in substantial gainful activity since March 31, 2009, the  
7 alleged onset date (20 CFR 404.1571 *et seq.* and 416.971 *et seq.*).

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

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

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

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

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

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

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

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

1 3. The claimant has the following severe impairments: right and left carpal tunnel syndrome  
2 status post release surgeries; degenerative disc disease lumbar spine; degenerative changes  
3 of the scaphoid bone of right wrist; right and left shoulder impingement; depressive  
4 disorder; bipolar disorder; anxiety disorder; attention deficit disorder (ADD) (20 CFR  
5 404.1520(c) and 416.920(c)).

6 \* \* \*

7 4. The claimant does not have an impairment or combination of impairments that meets or  
8 medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart  
9 P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and  
10 416.926).

11 \* \* \*

12 5. After careful consideration of the entire record, the undersigned finds that the claimant has  
13 the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b)  
14 and 416.967(b) in that she can lift and carry twenty pounds occasionally and ten pounds  
15 frequently, sit for six hours of an eight hour day, and stand and walk for six hours of an  
16 eight hour day. She can only occasionally climb ladders, ropes and scaffolds and crawl;  
17 she can frequently climb ramps/stairs, balance, stoop, kneel, and crouch. She can  
18 occasionally overhead reach with both arms; she can frequently reach, handle, finger and  
19 feel with both hands/wrists/arms; and she can sustain concentration to perform unskilled  
20 tasks i.e. simple job instructions, with occasional public contact.

21 \* \* \*

22 6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and  
23 416.965).

24 \* \* \*

25 7. The claimant was born [in] 1964 and was 44 years old, which is defined as a younger  
26 individual age 18-49, on the alleged disability onset date. The claimant subsequently  
27 changed age category to closely approaching advanced age (20 CFR 404.1563 and  
28 416.963).

8. The claimant has at least a high school education and is able to communicate in English  
(20 CFR 404.1564 and 416.964).

9. Transferability of job skills is not material to the determination of disability because using  
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. Considering the claimant’s age, education, work experience, and residual functional  
capacity, there are jobs that exist in significant numbers in the national economy that the  
claimant can perform (20 CFR 404.1569, 404.1569(a), 416.969, and 416.969(a)).



1 two non-physician providers who treated plaintiff for back, shoulder, and neck issues; (5) failing  
2 to find that plaintiff met listing 12.03, 12.04, and 12.06; and (6) discrediting plaintiff's statements  
3 about the severity of her impairments. The court concludes that the ALJ failed to offer specific  
4 and legitimate reasons for discounting the opinion of Dr. Malek. This was reversible error and,  
5 consequently, the court finds it unnecessary to reach plaintiff's other arguments.

6 In her opinion, the ALJ made reference to both Dr. Malek's treatment notes and his  
7 assessment of plaintiff's ability to work. She found that:

8 Mental status examination findings of treating source physician of  
9 Dr. Malek generally showed the claimant presenting within normal  
10 limits. Orientation, judgment, insight, and memory were within  
11 normal. Hygiene/dress was appropriate, speech was of appropriate  
12 quantity, quality and organization of sentences but sometimes noted  
13 as with little rapid speed. She was cooperative, with attention,  
14 concentration, and thought content within normal limits (citations  
15 omitted). Occasionally and usually at times of life stressors, she was  
16 noted in moderate-marked distress, tearful, depressed, or anxious.  
Sometimes she appeared unkempt. Sometimes she had pressured or  
rapid speech (sad/anxious, upset regarding 25 year old son mental  
health needs); (living at shelter, cannot live with mother due to  
conflicts with her mother's boyfriend); (boyfriend in jail on  
domestic violence); (just testified against abusive ex-husband in  
prison for 17 years); (unkempt); (boyfriend in jail); (homeless, son  
very ill); (fear regarding mentally ill son and ex-husband in prison)

17 . . .

18 Treating source psychiatrist Dr. R. Malek opined in January 2015 on  
19 a Placer County Health and Human Services Department form that  
20 the claimant incapable of gainful employment due to severe mood  
21 swings, depression and anxiety. He stated she was incapable of  
22 working due to bipolar disorder, being depressed with general  
23 anxiety disorder. He indicated the probable duration of the  
24 incapacity was six months. He renewed this opinion for another six  
months in June 2015, September 2015 and January 2016. Little  
weight is accorded these opinions which essentially are finding the  
claimant disabled. By regulation, opinions that the claimant is  
"disabled" or "unable to work" are not entitled to any special  
significance, even when offered by a treating physician. The  
determination of disability is an issue reserved to the Commissioner,  
which it is the Commissioner's statutory responsibility to perform.

25 AR at 33-38 (internal citations omitted).

26 Here, the opinion of Dr. Malek as to the limitations caused by plaintiff's mental health  
27 issues was contradicted by non-examining physician Heather Barrons. *Id.* at 139. Thus, to reject  
28 his opinion, the ALJ was required to provide specific and legitimate reasons that were based on

1 substantial evidence in the record. *See Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).  
2 As noted above, the ALJ reasoned that Malek’s opinions should be rejected solely because they  
3 amounted to findings that plaintiff was disabled – a finding reserved to the Commissioner. This  
4 fact alone, however, was insufficient to justify the rejection. In *Matthews v. Shalala*, the Ninth  
5 Circuit stated that “the administrative law judge is not bound by the uncontroverted opinions of  
6 the claimant’s physicians on the ultimate issue of disability, but he cannot reject them without  
7 presenting clear and convincing reasons for doing so.” 10 F.3d 678, 680 (9th Cir. 1993); *see also*  
8 *Rodriguez v. Bowen*, 876 F.2d 759, 762 n.7 (9th Cir. 1989) (“We do not draw a distinction  
9 between a medical opinion as to a physical condition and a medical opinion on the ultimate issue  
10 of disability.”).

11 The court recognizes that, in the earlier portions of her opinion, the ALJ noted that Dr.  
12 Malek’s treatment findings indicated that plaintiff was generally “presenting within normal  
13 limits.” AR at 33. She also conceded, however, that “occasionally and usually at times of life  
14 stressors, she was noted in moderate-marked distress . . .” *Id.* The ALJ went on to cite various  
15 life events which caused plaintiff to present in distress, namely her son’s mental illness, her  
16 homelessness, and her interactions with men who had been accused and/or convicted of domestic  
17 abuse. *Id.* The court is troubled by the ALJ’s intimation that these stressors are “occasional.”  
18 The record indicates that, on February 8, 2016, plaintiff told her provider that her twenty-one year  
19 old son – who is bipolar, schizophrenic, and using methadone – had recently moved from living  
20 under a bridge to a local homeless shelter. *Id.* at 962. Plaintiff had vocalized her concerns about  
21 her son’s mental illness as far back as 2013 and there is no indication that her son’s mental health  
22 was improving. *Id.* at 652. Similarly, the mental pain caused by plaintiff’s interactions with  
23 abusive/violent men was also consistently and repeatedly relayed to her providers. *See, e.g., id.* at  
24 1003, 1007, and 1014. In any event, even if the court concluded that Dr. Malek’s conclusions as  
25 to plaintiff’s disability were inconsistent with his treatment notes, it could not affirm the ALJ’s  
26 decision on that basis insofar as she did not rely on that ground. *See Garrison v. Colvin*, 759 F.3d  
27 995, 1010 (9th Cir. 2014) (“We review only the reasons provided by the ALJ in the disability  
28 determination and may not affirm the ALJ on a ground upon which he did not rely.”).

