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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHERRI LEE NORRIS,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

No. 2:17-cv-01861 CKD

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”). The parties have consented to Magistrate Judge jurisdiction to conduct all proceedings in the case, including the entry of final judgment. For the reasons discussed below, the court will grant plaintiff’s motion for summary judgment and deny the Commissioner’s cross-motion for summary judgment.

BACKGROUND

Plaintiff, born September 26, 1963, applied on July 24, 2013 for SSI, alleging disability beginning July 11, 2011. Administrative Transcript (“AT”) 21, 78-79. Plaintiff alleged she was unable to work due to anxiety, panic attacks, stress, depression, memory loss, and high blood

1 pressure. AT 78-79. In a decision dated June 15, 2016, the ALJ determined that plaintiff was not  
2 disabled.<sup>1</sup> AT 21-29. The ALJ made the following findings (citations to 20 C.F.R. omitted):

3 1. The claimant meets the insured status of the Social Security Act  
4 through December 31, 2016.

5 2. The claimant has not engaged in substantial gainful activity since  
6 July 11, 2011, the alleged onset date.

7 3. There are no medical signs or laboratory findings to substantiate  
8 the existence of a medically determinable impairment prior to July  
9 11, 2013.

10 4. The claimant has the following severe impairments from July 11,  
11 2013: depressive disorder and posttraumatic stress disorder.

12 5. The claimant does not have an impairment or combination of

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13 <sup>1</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
14 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to  
15 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in  
16 part, as an “inability to engage in any substantial gainful activity” due to “a medically  
17 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).  
18 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.  
19 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.  
20 137, 140-142, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

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

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

27 Step three: Does the claimant’s impairment or combination  
28 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.  
404, Subpt. P, App.1? If so, the claimant is automatically 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. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the  
burden if the sequential evaluation process proceeds to step five. Id.

1                   impairments that meets or medically equals the severity of one of the  
2                   listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.

3                   6. After careful consideration of the entire record, the undersigned  
4                   finds that the claimant has the residual functional capacity to perform  
5                   a full range of work at all exertional levels but with the following  
6                   nonexertional limitations: the claimant can perform jobs with no  
7                   more than occasional changes in the routine work setting; the  
8                   claimant requires routine, repetitive work in a stable environment;  
9                   the claimant can have no more than occasional interaction with  
10                  members of the public, coworkers and supervisors and the claimant  
11                  cannot be expected to engage in independent planning and goal  
12                  setting.

13                  7. The claimant is unable to perform any past relevant work.

14                  8. The claimant was born on September 26, 1963 and was 47 years  
15                  old, which is defined as an individual closely approaching advanced  
16                  age, on the alleged disability onset date.

17                  9. The claimant has a limited education and is able to communicate  
18                  in English.

19                  10. Transferability of job skills is not material to the determination  
20                  of disability because using the Medical-Vocational Rules as a  
21                  framework supports a finding that the claimant is ‘not disabled,’  
22                  whether or not the claimant has transferable job skills.

23                  11. Considering the claimant’s age, education, work experience, and  
24                  residual functional capacity, there are jobs that exist in significant  
25                  numbers in the national economy that the claimant can perform.

26                  AT 23-28.

27                  ISSUES PRESENTED

28                  Plaintiff argues that the ALJ committed the following error in finding plaintiff not  
29                  disabled: The ALJ erred in discounting plaintiff’s subjective symptom testimony.

30                  LEGAL STANDARDS

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

1 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is  
2 responsible for determining credibility, resolving conflicts in medical testimony, and resolving  
3 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).  
4 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one  
5 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

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

#### 15 ANALYSIS

16 The sole issue before the court is whether the ALJ committed prejudicial error in  
17 discounting plaintiff’s subjective symptoms.

18 The ALJ determines whether a disability applicant is credible, and the court defers to the  
19 ALJ’s discretion if the ALJ used the proper process and provided proper reasons. See, e.g.,  
20 Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1995). If credibility is critical, the ALJ must make an  
21 explicit credibility finding. Albalos v. Sullivan, 907 F.2d 871, 873-74 (9th Cir. 1990); Rashad v.  
22 Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990) (requiring explicit credibility finding to be  
23 supported by “a specific, cogent reason for the disbelief”).

24 In evaluating whether subjective complaints are credible, the ALJ should first consider  
25 objective medical evidence and then consider other factors. Bunnell v. Sullivan, 947 F.2d 341,  
26 344 (9th Cir. 1991) (en banc). If there is objective medical evidence of an impairment, the ALJ  
27 then may consider the nature of the symptoms alleged, including aggravating factors, medication,  
28 treatment and functional restrictions. See id. at 345-47. The ALJ also may consider: (1) the

1 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent  
2 testimony, (2) unexplained or inadequately explained failure to seek treatment or to follow a  
3 prescribed course of treatment, and (3) the applicant's daily activities. Smolen v. Chater, 80 F.3d  
4 1273, 1284 (9th Cir. 1996); see generally SSR 96-7P, 61 FR 34483-01; SSR 95-5P, 60 FR 55406-  
5 01; SSR 88-13. Work records, physician and third party testimony about nature, severity and  
6 effect of symptoms, and inconsistencies between testimony and conduct also may be relevant.  
7 Light v. Social Security Administration, 119 F.3d 789, 792 (9th Cir. 1997). A failure to seek  
8 treatment for an allegedly debilitating medical problem may be a valid consideration by the ALJ  
9 in determining whether the alleged associated pain is not a significant nonexertional impairment.  
10 See Flaten v. Secretary of HHS, 44 F.3d 1453, 1464 (9th Cir. 1995). The ALJ may rely, in part,  
11 on his or her own observations, see Quang Van Han v. Bowen, 882 F.2d 1453, 1458 (9th Cir.  
12 1989), which cannot substitute for medical diagnosis. Marcia v. Sullivan, 900 F.2d 172, 177 n.6  
13 (9th Cir. 1990). "Without affirmative evidence showing that the claimant is malingering, the  
14 Commissioner's reasons for rejecting the claimant's testimony must be clear and convincing."  
15 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).

16 Plaintiff asserts that the ALJ failed to provide sufficient reasons for discounting her  
17 subjective symptoms, citing Brown-Hunter v. Colvin, 806 F.3d 487, 494 (9th Cir. 2015) (ALJ's  
18 failure "to identify the testimony she found not credible" and "link that testimony to particular  
19 parts of the record supporting her non-credibility determination" was legal error). See also  
20 Treichler v. Comm'r of Soc. Sec., 775 F.3d 1090, 1102-1103 (9th Cir. 2014) (ALJ's failure to  
21 "specifically identify the testimony" he found not credible was error; boilerplate statement that  
22 symptoms were not credible to the extent they were inconsistent with the RFC was insufficient);  
23 Morsea v. Berryhill, 725 Fed. Appx. 463, 465 (9th Cir. Feb. 12, 2018) (unpublished) (ALJ "failed  
24 to identify the testimony from the claimant found not credible and explain what evidence  
25 undermined his testimony. Although the ALJ summarized claimant's testimony and also  
26 summarized the medical evidence in the record, the findings were general in nature, which is  
27 insufficient for an adverse credibility determination."), citing Treichler, 775 F.3d at 1102.

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1 The ALJ found plaintiff to have two severe impairments: depressive disorder and PTSD.  
2 AT 24. Assessing residual functional capacity, the ALJ summarized plaintiff’s testimony as  
3 follows:

4 The claimant testified that she lived with her son. The claimant  
5 stated that she suffered from panic attacks and depression. The  
6 claimant stated she was easily overwhelmed. The claimant reported  
she did not like to be around people.

7 AT 26.<sup>2</sup> The ALJ also summarized a function report completed by plaintiff in 2013 in which she  
8 “stated that she was able to care for her personal needs, prepare simple meals and perform  
9 household chores. The claimant reported that she was able to shop and drive.”<sup>3</sup> AT 26, citing AT  
10 253-261.

11 The ALJ found that plaintiff’s impairments could be reasonably expected to cause the  
12 alleged symptoms; “however, the claimant’s statements concerning the intensity, persistence and  
13 limiting effects of these symptoms are not entirely consistent with the medical evidence and other  
14 evidence in the record for the reasons explained in this decision.” AT 26.

15 The ALJ next summarized the objective medical evidence bearing on plaintiff’s mental  
16 limitations, including multiple normal mental status examinations in 2013, 2014, 2015, and 2016  
17 and a September 2013 Global Assessment Functioning score of 65-70.<sup>4</sup> AT 26-27; see AT 375-

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18 <sup>2</sup> At the May 2, 2016 hearing, plaintiff testified that she became panicked when she had to go  
19 somewhere such as the doctor’s or the grocery store; that she took medication in order to go  
20 places and “not run out”; had more “bad days” than “good days” in a month; and often felt  
21 overwhelmed. AT 43-44. She testified that her symptoms had improved with medication and  
22 therapy, but that she would have problems staying on the job site for a normal workweek due to  
mental issues. AT 46. She testified to periods of depression when she did not get out of bed, and  
stated that she became easily agitated and angry. AT 47-48.

23 <sup>3</sup> In her adult function report, plaintiff also indicated that she had anxiety that made it difficult to  
24 go places alone or engage in social activities; that she became easily agitated and upset; and that  
she experienced memory problems as a side effect of medication. AT 253-261.

25 <sup>4</sup> GAF is a scale reflecting the “psychological, social, and occupational functioning on a  
26 hypothetical continuum of mental health-illness.” Diagnostic and Statistical Manual of Mental  
27 Disorders at 34 (4th ed. 2000) (“DSM IV-TR”). A GAF of 61-70 indicates some mild symptoms  
28 (e.g., depressed mood and mild insomnia) or some difficulty in social, occupational, or school  
function (e.g., occasional truancy, or theft within the household), but generally functioning pretty  
well, has some meaningful interpersonal relationships. Id.

1 376, 491, 547, 553, 582, 588, 617, 665 (normal mental status exams). The ALJ gave great weight  
2 to the opinion of psychiatric consultative examiner Dr. Tim Canty, who examined plaintiff in  
3 September 2013 and concluded she should avoid highly stressful, fast-paced, or highly public  
4 work, but otherwise had no psychiatric work restrictions. AT 26-27; see AT 377. The ALJ  
5 accorded partial weight to a State agency opinion on reconsideration finding that plaintiff was  
6 able to perform simple work with limited public contact, AT 85; however, the ALJ further limited  
7 the RFC due to “some cognitive limits resulting from extensive past alcohol abuse.” AT 27.

8 The ALJ noted that plaintiff was treated for depression and prescribed medication in 2013;  
9 after a twelve-day hospital stay for depression in January 2014, plaintiff followed up with  
10 outpatient treatment and in March 2014 reported feeling stable on medication. AT 26; see AT  
11 541.

12 Following the above summary, the ALJ concluded that “[t]he claimant’s subjective  
13 complaints are not consistent with the medical evidence. The objective medical evidence does  
14 not support the alleged severity of the symptoms.” AT 27-28. However, “[a]n ALJ’s vague  
15 allegation that a claimant’s testimony is not consistent with the objective medical evidence,  
16 without any specific findings in support of that conclusion is insufficient[.]” Treichler, 775 F.3d  
17 at 1103 (internal quotations and citation omitted). “The ALJ must identify the testimony that was  
18 not credible, and specify what evidence undermines the claimant’s complaints.” Id., citing  
19 Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998) (internal quotations omitted). Here, the  
20 ALJ failed to specify which parts of plaintiff’s testimony he deemed not credible, or supply clear  
21 and convincing reasons for discounting it.

22 The Treichler court continued:

23 Nor is the error harmless. Because the ALJ set out his RFC and  
24 summarized the evidence supporting his determination, the  
25 government argues that we can reasonably infer that the ALJ rejected  
26 Treichler's testimony to the extent it conflicted with that medical  
27 evidence. But we cannot substitute our conclusions for the ALJ's, or  
28 speculate as to the grounds for the ALJ's conclusions. [Citation  
omitted.] Although the ALJ's analysis need not be extensive, the  
ALJ must provide some reasoning in order for us to meaningfully  
determine whether the ALJ's conclusions were supported by  
substantial evidence. [Citation omitted.] No such reasoning is  
present here.

1 775 F.3d at 1103; see also Brown-Hunter, 806 F.3d at 494 (where ALJ “never identified which  
2 testimony she found not credible, and never explained which evidence contradicted that  
3 testimony,” decision failed to meet ALJ’s responsibility to provide reasons for her adverse  
4 determination); Powers v. Colvin, No. 1:15-cv-00077 EPG (E.D. Cal., Order dated June 21, 2016)  
5 (reversing and remanding for reassessment of claimant’s credibility where ALJ failed to specify  
6 clear and convincing reasons to discount it).

7 Based on the foregoing, the court concludes that plaintiff is entitled to summary judgment.

## 8 CONCLUSION

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

12 (1) the record has been fully developed and further administrative  
13 proceedings would serve no useful purpose; (2) the ALJ has failed to  
14 provide legally sufficient reasons for rejecting evidence, whether  
15 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.

16 Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014). Even where all the conditions for the  
17 “credit-as-true” rule are met, the court retains “flexibility to remand for further proceedings when  
18 the record as a whole creates serious doubt as to whether the claimant is, in fact, disabled within  
19 the meaning of the Social Security Act.” Id. at 1021; see also Dominguez v. Colvin, 808 F.3d  
20 403, 407 (9th Cir. 2015) (“Unless the district court concludes that further administrative  
21 proceedings would serve no useful purpose, it may not remand with a direction to provide  
22 benefits.”); Treichler, 775 F.3d at 1105 (“Where . . . an ALJ makes a legal error, but the record is  
23 uncertain and ambiguous, the proper approach is to remand the case to the agency.”).

24 Here, the ALJ’s reasoning for discrediting plaintiff is not clearly articulated and does not  
25 support the ALJ’s conclusion. The court finds that remand for further administrative proceedings  
26 is necessary so that the credibility of plaintiff’s statements concerning the intensity, persistence,  
27 and limiting effects of her symptoms can be properly assessed. The ALJ shall amend his analysis  
28 of plaintiff’s credibility to include specific findings that include clear and convincing reasons for

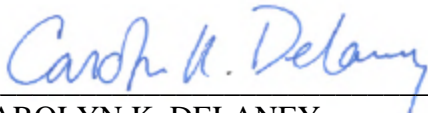


1 doing so, or shall adjust the decision to award benefits if upon further consideration the ALJ  
2 reconsiders his rejection of plaintiff's account of the severity and limiting effects of her  
3 symptoms.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion for summary judgment (ECF No. 15) is granted;
- 6 2. Defendant's cross-motion for summary judgment (ECF No. 16) is denied;
- 7 3. The Commissioner's decision is reversed;
- 8 4. This matter is remanded for further proceedings consistent with this order; and
- 9 5. The Clerk of the Court shall enter judgment for plaintiff and close this case.

10 Dated: January 10, 2019

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13 CAROLYN K. DELANEY  
14 UNITED STATES MAGISTRATE JUDGE

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