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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELYSE MARIE MYERS,  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
Defendant.

No. 2:17-cv-2582-KJN

ORDER

Plaintiff Elyse Myers 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”).<sup>1</sup> Plaintiff filed a motion for summary judgment, which the Commissioner opposed by filing a cross-motion for summary judgment. (ECF Nos. 15, 21.) Thereafter, plaintiff filed a reply brief. (ECF No. 24.)

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

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<sup>1</sup> This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and all parties consented to proceed before a United States Magistrate Judge for all purposes pursuant to 28 U.S.C. § 636(c). (ECF Nos. 6, 8.)

1 summary judgment, and REMANDS the action for further administrative proceedings.

2 I. BACKGROUND

3 Plaintiff was born on October 10, 1954; has completed two years of college; and  
4 previously worked as a bookkeeper and personal scheduler.<sup>2</sup> (Administrative Transcript (“AT”)  
5 27, 38-39, 204.) Plaintiff applied for both DIB and SSI, alleging that her disability began on May  
6 7, 2014. (AT 20.) After plaintiff’s application was denied initially and on reconsideration, an  
7 ALJ conducted a hearing on May 24, 2016. (AT 33-73.) The ALJ subsequently issued a decision  
8 dated October 7, 2016, determining that plaintiff had not been under a disability as defined in the  
9 Act, from May 7, 2014, plaintiff’s alleged disability onset date, through the date of the ALJ’s  
10 decision. (AT 20-28.) The ALJ’s decision became the final decision of the Commissioner when  
11 the Appeals Council denied plaintiff’s request for review on November 1, 2017. (AT 1–6.)  
12 Plaintiff subsequently filed this action on December 11, 2017, to obtain judicial review of the  
13 Commissioner’s final decision. (ECF No. 1.)

14 II. ISSUES PRESENTED

15 On appeal, plaintiff raises the following issues: (1) whether the ALJ improperly  
16 discounted plaintiff’s subjective complaints; (2) whether the ALJ failed to properly analyze  
17 plaintiff’s reflex sympathetic dystrophy under Social Security Ruling 03-2p; (3) whether the RFC  
18 is inadequately supported; (4) whether the ALJ improperly discounted lay opinion evidence; and  
19 (5) whether the ALJ’s step four finding is inadequately supported.

20 III. LEGAL STANDARD

21 The court reviews the Commissioner’s decision to determine whether (1) it is based on  
22 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record  
23 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial  
24 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340

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26 <sup>2</sup> 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 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable  
2 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th  
3 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is  
4 responsible for determining credibility, resolving conflicts in medical testimony, and resolving  
5 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The  
6 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational  
7 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

#### 8 IV. DISCUSSION

##### 9 A. Summary of the ALJ’s Findings

10 The ALJ evaluated plaintiff’s entitlement to DIB and SSI pursuant to the Commissioner’s  
11 standard five-step analytical framework.<sup>3</sup> As an initial matter, the ALJ found that plaintiff met

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12 <sup>3</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the Social  
13 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled  
14 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as  
15 an “inability to engage in any substantial gainful activity” due to “a medically determinable  
16 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel  
17 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-  
42 (1987). The following summarizes the sequential evaluation:

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

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

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

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

27 Step five: Does the claimant have the residual functional capacity to perform any  
28 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).

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1 the insured status requirements for DIB through December 31, 2017. (AT 22.) At step one, the  
2 ALJ concluded that plaintiff had not engaged in substantial gainful activity since May 7, 2014,  
3 the alleged onset date. (Id.) At step two, the ALJ found that plaintiff had the following severe  
4 impairments: reflex sympathetic dystrophy syndrome; osteoarthritis lumbar spine; bilateral  
5 shoulder osteoarthritis with right shoulder impingement syndrome; and degenerative joint disease  
6 bilateral hips. (Id.) However, at step three, the ALJ concluded that plaintiff did not have an  
7 impairment or combination of impairments that met or medically equaled the severity of one of  
8 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AT 23.)

9 Before proceeding to step four, the ALJ assessed plaintiff’s residual functional capacity  
10 (“RFC”) as follows:

11 After careful consideration of the entire record, I find that the  
12 claimant has the residual functional capacity to perform light work  
13 as defined in 20 CFR 404.1567(b) and 416.967(b) except the  
14 claimant can lift, carry, push, and pull 10 pounds frequently and 20  
15 pounds less than occasionally, but not precluded. She can  
16 occasionally climb ramps and stairs, balance, stoop, kneel, crouch,  
17 and crawl. The claimant cannot climb ladders, ropes, or scaffolds,  
18 and she cannot be exposed to moving mechanical parts or  
19 unprotected heights. The claimant can sit for six hours in an eight-  
20 hour workday, she can stand and walk for six hours in an eight-hour  
21 workday, and she must alternate for 10 minutes after every one half  
22 hour remaining on task. The claimant must use a cane or other  
23 assistive device as needed when ambulating.

19 (AT 24.) At step four, the ALJ determined, based on a vocational expert’s testimony, that  
20 plaintiff was capable of performing past relevant work as a bookkeeper and a personal scheduler.

21 (AT 27.) Thus, the ALJ concluded that plaintiff had not been disabled from May 7, 2014, her  
22 alleged disability onset date, through October 7, 2016, the date of the ALJ’s decision. (Id.)

23 B. Plaintiff’s Substantive Challenges to the Commissioner’s Determinations

24 Most of the specific issues raised by plaintiff have a common theme—whether the record  
25 was adequate or sufficiently developed to assess plaintiff’s credibility and her RFC. See

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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 Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (“The ALJ in a social security case  
2 has an independent duty to fully and fairly develop the record and to assure that the claimant’s  
3 interests are considered... This duty extends to the represented as well as to the unrepresented  
4 claimant.”).

5 In this case, the ALJ found that plaintiff had the severe impairment of reflex sympathetic  
6 dystrophy syndrome (“RSDS”). According to the Commissioner:

7 RSDS is a chronic pain syndrome arising most often from trauma to  
8 an extremity, with complaints of intense pain and initial findings of  
9 autonomic dysfunction. It is expected in RSDS that the intensity and  
duration of symptoms will exceed the severity of the precipitating  
injury.

10 The Ruling instructs agency decision makers that RSDS is a  
11 medically determinable impairment that may support the allowance  
12 of a disability claim. The added impact of chronic pain and  
13 medication effects must be carefully considered. Locating evidence  
of the applicant’s condition and functioning before and after  
diagnosis, from medical and lay sources, is essential to determining  
credibility.

14 SSR 03-2p. Despite this guidance, and the fact that plaintiff received a spinal cord stimulator  
15 implant, injections, and physical therapy for treatment, the ALJ decided plaintiff’s case without  
16 any opinion from a treating source or a consultative examiner. Additionally, although the ALJ  
17 partially relied on the opinions of non-examining state agency physicians, those providers only  
18 reviewed plaintiff’s treatment records from 2014, and none of the treatment records from 2015-  
19 2016. Given the complexity of the credibility determination in RSDS cases, as well as the  
20 ambiguous treatment records in this case, the court finds that additional record development is  
21 necessary to render a decision based on substantial evidence.

22 As such, the court remands the action for a consultative examination by an appropriate  
23 specialist with full access to plaintiff’s prior medical records.<sup>4</sup> The ALJ is also free to develop  
24 the record in other respects, as appropriate. Once the record is properly developed, the ALJ will  
25 have an opportunity to reconsider her analysis as to plaintiff’s credibility and the RFC, if

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27 <sup>4</sup> The court does not hold that a consultative examination is required in every RSDS case.  
28 However, under the specific circumstances of this case, where the record evidence is ambiguous  
and the state agency physicians only reviewed a small portion of the medical records, a  
consultative examination is warranted.


1 necessary. Importantly, the court expresses no opinion regarding how the evidence should  
2 ultimately be weighed, and any ambiguities or inconsistencies resolved, on remand, provided that  
3 the ALJ's decision is based on proper legal standards and supported by substantial evidence in the  
4 record as a whole.

5 V. CONCLUSION

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motion for summary judgment (ECF No. 15) is GRANTED IN PART.
- 8 2. The Commissioner's cross-motion for summary judgment (ECF No. 21) is  
9 DENIED.
- 10 3. The Commissioner's final decision is REVERSED and the action is REMANDED  
11 for further administrative proceedings consistent with this order pursuant to  
12 sentence four of 42 U.S.C. § 405(g).
- 13 4. The Clerk of Court shall close this case.

14 Dated: December 20, 2018

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17 KENDALL J. NEWMAN  
18 UNITED STATES MAGISTRATE JUDGE  
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