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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11 MELODY R. ADAMS,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting,  
15 Commissioner of Social Security,<sup>1</sup>

16 Defendant.

Case No. 13-cv-00044 NC

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

Re: Dkt. No. 23

17  
18 Plaintiff Melody Adams seeks judicial review of the Commissioner of Social  
19 Security's final decision denying Adams's claim for disability insurance benefits and  
20 supplemental security income. The single issue on review is whether substantial evidence  
21 supports the Administrative Law Judge's ("ALJ") adverse credibility determination of  
22 Adams's subjective symptom testimony in assessing her residual functional capacity. The  
23 Court finds that the ALJ properly considered and explained several reasons for discounting  
24 Adams's credibility regarding her subjective symptoms and substantial evidence supports  
25 his assessment. Accordingly, the Court DENIES Adams's motion for summary judgment.  
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28 <sup>1</sup> Carolyn W. Colvin, Acting Commissioner of Social Security, is substituted for her predecessor,  
Michael J. Astrue, Commissioner of Social Security, pursuant to Fed. R. App. 43(c)(2).  
Case No. 13-cv-00044 NC  
ORDER RE: MOTION FOR  
SUMMARY JUDGMENT

## I. BACKGROUND

### A. Agency Review

On August 2004, Adams filed an application for supplemental security income, alleging disability since May 15, 2003, due to spine and shoulder injuries. (AR 162-65, 188.) The Social Security Administration (“SSA”) denied Adams’s claim because she had not worked long enough under Social Security to qualify for benefits. (AR 138.) The SSA therefore did not make a determination as to whether she was disabled under its rules. *Id.*

On October 11, 2007, Adams filed a second application for supplemental security income, alleging disability since January 1, 2003, due to spine and shoulder injuries, depression, and anxiety. (AR 68, 166-72.) On March 20, 2008, the SSA determined that her condition was not severe enough to prevent her from working. (AR 68-73.) The SSA stated that although the records show that she experienced discomfort in her back and shoulders, “the medical evidence shows that [she is] able to walk and move about in a satisfactory manner” and there was “no indication of loss of control or muscle wasting in [her] arms and legs due to nerve damage as a result of [her] back and shoulder condition.” (AR 68-69.) The SSA further noted that although she was “at times depressed and anxious, [the] records show that [she is] able to think, communicate and act in [her] own interest[,]” “adjust to ordinary emotional stresses,” “get along with supervisors and co-workers,” and “remember and follow basic instructions.” (AR 69.) Although the SSA concluded that she was unable to return to her past occupation and was “precluded from work requiring public contact[,]” she was able to perform other work and thus was not disabled. *Id.*

On May 29, 2008, Adams requested reconsideration of her application, alleging spine and shoulder injuries, vision problems, joint stiffness, headaches, fibroid tumors, anxiety, and depression. (AR 74-78.) Adams did not submit additional evidence to support her claim. (AR 75.) On July 17, 2008, the SSA notified Adams that it had reviewed her claim and found that its March 20, 2008, decision was correct. (AR 78-82.) Citing the same reasons from its March 20, 2008, decision, the SSA again concluded that Adams’s physical and mental condition did not significantly restrict her from working. (AR 78-79.)

1 **B. Administrative Review**

2 On September 10, 2008, Adams requested an administrative hearing regarding the  
3 SSA's May 29, 2008, decision. (AR 83-86.) At a hearing before ALJ Michael Blume on  
4 October 13, 2009, Adams testified about her neck and back pain. (AR 29-46.) Medical  
5 expert Anthony Frances and vocational expert Jeff Clark also testified. (AR 46-64.)

6 In his decision dated January 29, 2010, the ALJ analyzed Adams's claims under the  
7 five-step evaluation process for determining disability under 20 C.F.R. § 416.920 and  
8 concluded that Adams was not disabled. (AR 13-28.) The ALJ found that Adams was not  
9 currently engaged in substantial gainful activity (step one). (AR 15.) The ALJ determined  
10 that Adams had medically severe impairments, including a history of uterine fibroids,  
11 minimal degenerative changes of the lumbar spine, arthritis of the thoracic spine,  
12 degenerative disc disease and spondylosis of the cervical spine, depressive disorder, pain  
13 disorder with psychological factors affecting general medical condition, and polysubstance  
14 abuse (step two). (AR 15-16.) The ALJ found that Adams did not have an impairment or  
15 combination of impairments that met or equaled a listed impairment under 20 C.F.R. pt.  
16 404, subpt. P, app. 1 ("Listed Impairments"), and that she was unable to perform her past  
17 relevant work (steps three and four). (AR 18-19.) The ALJ concluded that Adams had the  
18 residual functional capacity ("RFC") to "perform light work as defined in 20 C.F.R.  
19 [§] 416.967(b)" and could "understand, remember and carry out simple instructions with  
20 limited contact with the general public"<sup>2</sup> (step five). (AR 19.)

21 In evaluating Adams's RFC, the ALJ also considered Adams's subjective symptom  
22 testimony – namely, that Adams felt she was unable to work due to the severity of her neck  
23 and back pain, inability to turn her neck, left-sided numbness, and depression. (AR 23.)  
24

25 <sup>2</sup> Regarding the specific limitations imposed by Adams's mental impairments, the ALJ relied on  
26 Disability Determination Services psychiatric consultant Dr. Kelly Loomis's opinion. (AR 22.)  
27 Based on Dr. Loomis's opinion, the ALJ concluded that Adams was "*moderately* limited in the  
28 ability to understand, remember and carry out detailed instructions; *moderately* limited in the ability  
to interact appropriately with the general public; but that she was able to understand, remember and  
carry out one and two-step instructions, maintain concentration, persistence and pace throughout a  
normal workday and workweek, and interact appropriately with coworkers and supervisors." (AR  
22, 359, 364-66.) (emphasis added).

1 After evaluating Adams’s testimony and the entire case record, the ALJ determined that  
2 “the claimant’s medically determinable impairments could reasonably be expected to cause  
3 some of the alleged symptoms; however, the claimant’s statements concerning the  
4 intensity, persistence and limiting effects of these symptoms are not credible to the extent  
5 they are inconsistent with the above RFC assessment.” *Id.* The ALJ detailed five specific  
6 reasons why he found Adams not credible: (1) she appeared to “overstate her symptoms  
7 and limitations”; (2) she had “drug seeking behavior”; (3) she “fail[ed] to follow prescribed  
8 treatment”; (4) she “did not work even before she allegedly became significantly  
9 impaired”; and (5) she has a criminal record “showing a propensity for a disregard for  
10 societal norms.” (AR 24-26.) Although the ALJ found that Adams would be unable to  
11 return to her past work as an in-home health attendant, he accepted the vocational expert’s  
12 testimony that, given her limitations, she would be able to perform the occupation of a  
13 “Surveillance System Monitor.” (AR 26-27.) The ALJ ultimately concluded that a finding  
14 of “not disabled” was appropriate because “considering the claimant’s age, education, work  
15 experience, and RFC, the claimant is capable of making a successful adjustment to other  
16 work that exists in significant numbers in the national economy.” (AR 28.)

17 In February 2010, Adams requested that the Appeals Council review the ALJ’s  
18 decision. (AR 7-8.) In March 2010, the Appeals Council denied Adams’s request for  
19 review. (AR 1-3.)

### 20 **1. Adams’s First Appeal to the District Court**

21 In May 2010, Adams filed an appeal from the commissioner’s final determination.  
22 Case No. 10-cv-02008 DMR, Dkt. No. 1. In November 2010, Adams moved for summary  
23 judgment on the grounds that the requirements of a Surveillance System Monitor, as  
24 described in the Dictionary of Occupational Titles (“DOT”),<sup>3</sup> conflicted with the ALJ’s  
25 determination of her RFC. *Id.* at Dkt. No. 21. The Court found that (1) there were  
26 conflicts between the vocational expert’s testimony and the DOT; and (2) the ALJ erred by  
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28 <sup>3</sup> The DOT is a reference guide that contains occupational information about various jobs. *Id.* at  
Dkt. No. 23 at 2.

1 not inquiring into whether the vocational expert's testimony conflicted with the DOT and  
2 by not providing an explanation for the deviation from the DOT. *Id.* at Dkt. No. 23 at 8-9.  
3 Adams did not challenge and the Court did not address the ALJ's credibility findings  
4 regarding Adams's subjective pain and symptom testimony. *Id.* at Dkt. Nos. 21, 23 at 1-11.  
5 The Court granted Adams's motion for summary judgment and remanded in May 2011. *Id.*  
6 at Dkt. No. 23 at 11. In June 2011, the Appeals Council implemented the Court's order and  
7 remanded the case for a new hearing. (AR 595.)

## 8 **2. Adams's Testimony at the July 26, 2012, Hearing**

9 In July 2012, Adams testified at a hearing before ALJ Michael Blume about her  
10 back, neck, and teeth pain, medication use, doctor-recommended treatment, and drug use.  
11 (AR 524-35.) Medical expert S. Meldrin Dorinson and vocational expert Mary Ciddio also  
12 testified. (AR 535-48.)

13 Adams is a fifty-three year old woman who last worked as an in-home health care  
14 provider in 2006. (AR 525, 888.) She quit her job because of neck and back pain. (AR  
15 525-26.) At the time of the hearing, Adams testified that she still has "significant pains" in  
16 her back and neck. (AR 527, 536.) Sometimes her legs feel numb and her arms and hands  
17 "lock up" to where she cannot "write or pick up anything." (AR 525, 536.) Since the first  
18 hearing in 2009, she is having "more difficulties" because she is losing her teeth, which is  
19 causing toothaches and headaches. (AR 527.) She is in constant pain and cannot sleep at  
20 night because of her teeth. (AR 531.) Adams is not getting dental care because she does  
21 not have medical insurance. (AR 528-29.)

22 Adams takes a variety of medication. (AR 527-28.) She takes antibiotics for her  
23 teeth, antidepressants, high blood pressure medication, and cholesterol medication. *Id.* To  
24 address her pain, Adams takes methadone and another medication, which cause her to be  
25 "tired all of the time" and "not to be able to do anything." (AR 527, 533.) Adams testified  
26 that she lies down "[a]ll -- mostly all day. Well, I'm going to say all day, but let's say 12  
27 hours out of the day, I'm laying." (AR 533.) She estimates that she would be able to be up  
28 for an "hour or so" before having to lie back down. *Id.*

1           Regarding care other than medication, Adams testified that “[t]hey wanted to give me  
2 surgery.” (AR 529.) When asked who had recommended surgery, Adams claims that  
3 consultative orthopedist Dr. Norman Livermore said that she could have surgery or do  
4 physical therapy. (AR 529-30.) She later acknowledged that Dr. Livermore ultimately  
5 concluded that she did not need surgery and had recommended therapy. *Id.* Since  
6 Dr. Livermore’s recommendation, Adams has not had any treatment for her neck besides  
7 taking pain medications. (AR 530.)

8           The ALJ also inquired about Adams’s drug use, and she testified that she had not  
9 taken street drugs for at least two years. (AR 529.) When asked about the positive  
10 toxicology screening for cocaine in 2011, she said that she did not know why it was positive  
11 because she had not used cocaine. *Id.* Later in her testimony, however, Adams provided a  
12 different answer: that she did have a small relapse and could have been mistaken about the  
13 two years. (AR 534-35.) Prior to the relapse, Adams estimates that she had been drug free  
14 “[s]ince 2009. Yeah, [since] 2008. I think since I last seen him, seen doctor -- seeing the  
15 judge.” (AR 535.)

### 16           **3. The ALJ’s Findings**

17           On September 24, 2012, the ALJ issued his decision, conducting the five-step  
18 disability evaluation. (AR 495-507.) At step one, the ALJ found that Adams was not  
19 currently engaged in substantial gainful activity. (AR 499.) For steps two through four, the  
20 ALJ adopted his findings from his January 29, 2010, decision for the time period of October  
21 11, 2007, through September 21, 2010. (AR 499-500.) At step five, the ALJ noted that, as  
22 indicated in the May 2011 Court order, “there is some question as to whether the claimant  
23 could actually satisfy the requirements of [a Surveillance System Monitor].” (AR 500.) He  
24 further noted that the vocational expert at the July 2012 hearing stated that there were no  
25 positions available for an individual with Adams’s limitations. *Id.* Thus, the ALJ  
26 concluded that Adams was disabled from October 2007 through September 21, 2010. (AR  
27 501.)

1 The ALJ then conducted a seven-step disability analysis to determine whether  
2 Adams's disability continued from September 22, 2010, through the date of his decision.  
3 (AR 501-07.); *see* 20 C.F.R. § 416.994. On September 22, 2010, consultative clinical  
4 psychologist Dr. Ute Kollath had conducted a psychological evaluation of Adams. (AR  
5 887-93.) The ALJ summarized, and found persuasive, Dr. Kollath's findings:

6 [Adams] had *mildly* impaired ability to follow complex/detailed instructions;  
7 to maintain adequate pace or persistence to perform complex tasks; to maintain  
8 adequate attention/concentration; and *no* limitations in the ability to follow  
9 simple instructions; to maintain adequate pace or persistence to perform one-  
10 or two-step simple repetitive tasks; to adapt to changes in job routine; to  
withstand the stress of a routine workday; to interact appropriately with  
coworkers, supervisors, and the public on a regular basis; and to adapt to  
changes, hazards, or stressors in a workplace setting.

11 (AR 501, 891-92.) The ALJ also noted that Dr. Kollath diagnosed Adams's crack cocaine  
12 dependence as being in full remission. (AR 501.) Based on these findings, the ALJ found  
13 that Adams's "moderately" impaired mental limitations from the last diagnosis had  
14 improved to "mildly" or "not" impaired as of September 22, 2010. (AR 501-02.) "Because  
15 [Adams's] medically determinable mental impairment causes no more than 'mild' limitation  
16 . . . it is nonsevere" and did not meet or medically equal the severity of one of the Listed  
17 Impairments. *Id.* "Thus her current impairments are the same as those present from  
18 October 11, 2007, through September 21, 2010, with the exception of her mental  
19 impairment." (AR 501.) Because the ALJ found that Adams did not have a "severe mental  
20 impairment" and had not developed any new impairment since September 22, 2010, he  
21 concluded that "medical improvement" had occurred. (AR 502.)

22 The ALJ further found that Adams's medical improvement related to and increased  
23 her RFC. (AR 501-02.) The ALJ concluded that Adams had the RFC "to perform the full  
24 range of light work as defined in 20 C.F.R. [§] 416.967(b) involving nonpublic simple  
25 repetitive tasks." (AR 502-06.) In making this determination, the ALJ found that Adams's  
26 medical impairments could be expected to produce the alleged pain symptoms given the  
27 medical evidence in the record. (AR 504.) The ALJ determined, however, that Adams's  
28 statements concerning the intensity, persistence, and limiting effects of these symptoms

1 were not credible beginning September 22, 2010. *Id.* Finally, the ALJ relied on a  
2 vocational expert who testified that there were a significant number of jobs in the national  
3 economy that Adams could perform. (AR 505-06.) The ALJ concluded that Adams’s  
4 disability ended on September 22, 2010. (AR 506.)

5 Adams did not seek review of the ALJ’s September 2012 decision before the Appeals  
6 Council and it therefore became the final decision of the Commissioner. In January 2013,  
7 Adams filed a complaint in this Court for review of the ALJ’s final decision under 42  
8 U.S.C. §§ 405(g) and 1383(c). Dkt. No. 1. All parties have consented to the jurisdiction of  
9 a United States magistrate judge under 28 U.S.C. § 636(c). Dkt. Nos. 10, 19.

## 10 **II. STANDARD OF REVIEW**

11 A district court has the “power to enter, upon the pleadings and transcript of the  
12 record, a judgment affirming, modifying, or reversing the [final] decision of the  
13 Commissioner of Social Security, with or without remanding the case for a rehearing.” 42  
14 U.S.C. § 405(g). “When the Appeals Council denies a request for review, . . . the ALJ’s  
15 decision becomes the final decision of the Commissioner.” *Taylor v. Comm’r of Soc. Sec. Admin.*,  
16 659 F.3d 1228, 1231 (9th Cir. 2011). The decision of the Commissioner should  
17 only be disturbed if it is not supported by substantial evidence or it is based on legal error.  
18 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (internal citation and quotation  
19 omitted). “Substantial evidence is more than a mere scintilla but less than a  
20 preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (internal  
21 citation and quotation omitted). It is evidence that a reasonable mind would accept as  
22 adequate to support the conclusion. *Burch*, 400 F.3d at 679. “Where evidence is  
23 susceptible to more than one rational interpretation, the ALJ’s decision should be upheld.”  
24 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (internal citation and  
25 quotation omitted).

## 26 **III. DISCUSSION**

27 Adams’s challenge to the ALJ’s decision on appeal is limited to the ALJ’s adverse  
28 credibility determination of Adams’s subjective symptom testimony in assessing her RFC



1 under step seven of the seven-step continued disability analysis. *See* 20 C.F.R. § 416.994.

2 Disability claims are initially evaluated using a five-step sequential analysis. 20  
3 C.F.R. § 416.920. At step one, the ALJ determines whether a claimant is currently engaged  
4 in substantial gainful activity. *Id.*; *Burch*, 400 F.3d at 679. At step two, the ALJ evaluates  
5 whether the claimant has a medically severe impairment or combination of impairments. *Id.*  
6 At step three, the ALJ considers whether the impairment or combination of impairments  
7 meets or equals any of the Listed Impairments under 20 C.F.R. pt. 404, subpt. P, app. 1. *Id.*  
8 At step four, the ALJ assesses whether the claimant is capable of performing her past  
9 relevant work. *Id.* At step five, the ALJ examines whether the claimant has the RFC to  
10 perform any other substantial gainful activity in the national economy. *Id.* If the ALJ  
11 reaches step five and determines that the claimant has the RFC to perform other gainful  
12 activity, the claimant is not disabled. *Id.*

13 To determine whether a claimant continues to be disabled, an ALJ must follow a  
14 seven-step sequential evaluation. 20 C.F.R. § 416.994. At step one, the ALJ considers  
15 whether the impairment or combination of impairments meets or equals any of the Listed  
16 Impairments under 20 C.F.R. pt. 404, subpt. P, app. 1. *Id.* At step two, the ALJ assesses  
17 whether there has been medical improvement, such as any decrease in the medical severity  
18 of the impairment(s). *Id.* At step three, the ALJ considers whether the improvement is  
19 related to the claimant's ability to work and whether the claimant's RFC has increased. *Id.*  
20 At step four, if the ALJ found no medical improvement (step two), or that the improvement  
21 was not related to the claimant's ability to work (step three), the ALJ determines whether an  
22 exception to medical improvement applies. *Id.* At step five, the ALJ will determine  
23 whether the claimant's impairments in combination are severe. *Id.* At step six, the ALJ  
24 assesses the claimant's RFC based on the current impairment(s) and whether the claimant is  
25 capable of performing her past relevant work. *Id.* At step seven, the ALJ examines whether  
26 the claimant has the RFC to perform any other work. *Id.* If the ALJ reaches step seven and  
27 finds that the claimant has the RFC to perform other work, the claimant's disability has  
28 ended. *Id.*

1 A claimant's RFC is what she can still do despite her physical, mental, and other  
2 limitations. *See Mayes v. Massanari*, 276 F.3d 453, 460 (9th Cir. 2001); *see also* 20 C.F.R.  
3 pt. 404, subpt. P, app. 2, § 200.00(c). In determining a claimant's RFC, the ALJ "must take  
4 into account the claimant's testimony regarding his capability, [and] the ALJ must assess  
5 that testimony in conjunction with the medical evidence." *Chaudhry v. Astrue*, 688 F.3d  
6 661, 670 (9th Cir. 2012). Part of this testimony assessment is evaluating the claimant's  
7 credibility regarding subjective pain, as pain can have "severe debilitating effects" to the  
8 point of disabling a person. *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir. 1995)  
9 (internal quotation omitted); *see also* 20 C.F.R. § 404.1545(e). First, the ALJ must  
10 determine whether there is "objective medical evidence of an underlying impairment which  
11 could reasonably be expected to produce the pain or other symptoms alleged." *Vasquez v.*  
12 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal citation and quotation omitted). Second,  
13 if the claimant meets the first prong and there is no affirmative evidence of malingering, the  
14 ALJ must give "clear and convincing reasons" why the claimant's testimony of pain is not  
15 credible. *Burch*, 400 F.3d at 680. The ALJ may consider the claimant's reputation for  
16 truthfulness, testimony from physicians and third parties concerning the nature, severity,  
17 and effect of the pain, and inconsistencies either in her testimony or between her testimony  
18 and her conduct. *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (citations  
19 omitted). When substantial evidence supports an ALJ's specific findings regarding a  
20 claimant's credibility, a court may not second-guess that decision. *Thomas*, 278 F.3d at  
21 959.

22 In this case, the ALJ concluded that Adams had the RFC "to perform the full range of  
23 light work as defined in 20 C.F.R. [§] 416.967(b) involving nonpublic simple repetitive  
24 tasks[,] of which there were a significant number of jobs in the national economy. (AR  
25 502-06.) The ALJ found that the severity of Adams's claimed impairments could  
26 reasonably be expected to produce the alleged symptoms, but found that Adams's  
27 statements "concerning the intensity, persistence and limiting effects of these symptoms  
28 [were] not credible beginning September 22, 2010, to the extent that they are inconsistent

1 with the residual functional capacity assessment.” (AR 504-05.) In determining that  
2 Adams’s statements about the severity of her symptoms were not credible, the ALJ  
3 articulated the following reasons: (1) the objective medical findings; (2) that Dr. Livermore  
4 recommended conservative treatment; (3) that no doctor had offered surgery or epidural  
5 steroid injections; (4) the lack of evidence of emergency room visits for neck or back pain;  
6 (5) Adams’s failure to follow her prescribed treatment; (6) her inconsistent statements  
7 regarding drug use; and (7) her exaggerated statements regarding vision and hearing loss.  
8 (AR 505.) The ALJ stated that these reasons indicated that “[w]hile [Adams] may have  
9 some pain, it appears that she exaggerates her limitations . . . .” *Id.* The Court finds that the  
10 ALJ provided clear and convincing reasons for his adverse credibility determination  
11 regarding Adams’s testimony about the severity of her pain, which are supported by  
12 substantial evidence in the record.

13 First, the ALJ found that Adams’s subjective symptoms lacked substantial support in  
14 the objective medical record. *Id.* The ALJ noted that there were few, if any, objective  
15 clinical findings documented in primary care physician Dr. Micaela Godzich’s treatment  
16 notes. (AR 503, 505, 955-67.) The ALJ also noted that the September 2010 cervical spine  
17 MRI showed no significant interval change in Adams’s degenerative disc disease since the  
18 prior study. (AR 505, 968-69.) The ALJ found that, despite Adams’s claims of debilitating  
19 pain, consultative family physician Dr. Alberto Carandang’s internal medicine report  
20 revealed well-developed musculature with no atrophy and normal neurologic examination.  
21 (AR 505, 893-95.) The ALJ cited to Dr. Livermore’s February 2011 assessment, which  
22 found no signs of cervical myelopathy or other nerve root entrapment syndrome and no  
23 etiology to explain the right arm and leg numbness. (AR 505, 992.)

24 Although the record indicates that Dr. Livermore also found cervical degenerative  
25 disc disease with mechanical neck pain, and mechanical low back pain and spasm, he  
26 ultimately recommended that Adams be “treated conservatively” for her back and neck  
27 pain, as the ALJ noted. *Id.* This “conservative treatment” included “medications of  
28 reasonable nature, physical therapy, acupuncture, Pilates, and other physical modalities to

1 improve the function of her muscles and the limberness of her spine.” *Id.* Evidence of  
2 conservative treatment suggests a lower level of pain. *See Johnson*, 60 F.3d at 1434. A  
3 discrepancy between a claimant’s allegations of pain and evidence of conservative treatment  
4 by doctors therefore undermines a claimant’s credibility. *Parra v. Astrue*, 481 F.3d 742,  
5 750-51 (9th Cir. 2007).

6 The ALJ also relied on the fact that no doctor had ever offered surgery or epidural  
7 steroid injections. (AR 505.) In making a credibility assessment, an ALJ may properly  
8 consider whether the claimant has undergone any treatment, other than medication, for the  
9 pain. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007); *Bunnell v. Sullivan*,  
10 947 F.2d 341, 346 (9th Cir. 1991). The record shows that Adams told both Dr. Carandang  
11 and Dr. Livermore that another doctor had advised her to have an operation for her spinal  
12 stenosis. (AR 893, 991.) At the July 2012 hearing, the ALJ inquired about Adams’s neck  
13 care and she testified as follows:

14 Adams: They wanted to give me surgery, but because I don’t have any  
15 medical, the --

16 ALJ: Who recommended surgery?

17 Adams: My Dr. Livermore -- I went to see a doctor called Dr. Livermore. At  
18 the time he said I could have the surgery, or I could have the therapy. He said  
19 if I had the surgery, it’s not in record, it’s not a guarantee that the surgery  
20 would correct the problem, so he said that being that I was having all of these  
21 other things and if they were giving me so much stuff that he prefers that I  
22 have the therapy. Okay. But he said that if I needed -- they -- wasn’t likely, I  
23 would eventually need to have some surgery again.

24 ALJ: Yeah. Yeah. The way I read his report, he recommended you not [have]  
25 surgery.

26 Adams: Right.

27 ALJ: Have you --

28 Adams: He recommended I have the therapy.

(AR 529-30.) Although Adams initially claimed that Dr. Livermore had recommended  
surgery, she later acknowledged that he had actually recommended therapy. (AR 529-30,  
992.) The record also shows that Adams has not had any treatment for her neck besides  
taking pain medications in the relevant time period. (AR 530.) Thus, as the ALJ noted,  
there is no evidence in the record of a physician offering Adams surgery or epidural steroid

1 injections. (AR 505, 887-1000.) In addition, the ALJ noted that Adams has never been to  
2 the emergency room for neck or back pain. (AR 505.) The record does not contain any  
3 evidence to the contrary. (AR 887-1000.)

4 Second, the ALJ found that inconsistencies between Adams's statements and conduct  
5 undermined her credibility regarding her subjective symptom testimony. (AR 505.) One  
6 such inconsistency that the ALJ relied on in his credibility assessment was Adams's failure  
7 to follow her prescribed treatment. *Id.* "[I]f a claimant complains about disabling pain but  
8 fails to seek treatment, or fails to follow prescribed treatment, for the pain, an ALJ may use  
9 such failure as a basis for finding the complaint unjustified or exaggerated." *Orn v. Astrue*,  
10 495 F.3d 625, 638 (9th Cir. 2007). The record shows that, in August 2010, Dr. Godzich  
11 reduced Adams's prescribed methadone from three times a day to daily, as needed use,  
12 when Adams reported that she did not use it consistently every day and it was not showing  
13 up in her toxicology screenings. (AR 962.) In November 2010, Dr. Godzich again noted  
14 that toxicology screenings were often negative for methadone. (AR 964.) Dr. Godzich  
15 prescribed Adams methadone but told her that it needed to start showing up in her urine. *Id.*  
16 In January 2011, the toxicology screening was negative for methadone, but positive for  
17 cocaine. (AR 978.) In March 2011, the toxicology screening was again negative for  
18 methadone. (AR 981.) Dr. Godzich noted that Adams wanted to resume taking methadone,  
19 but that Dr. Godzich would only be comfortable prescribing it if Adams was able to submit  
20 six months of normal toxicology screens that did not demonstrate any evidence of substance  
21 abuse. (AR 966.) In May 2011, the toxicology screening was negative for methadone.  
22 (AR 983.) In June 2011, Dr. Godzich prescribed Adams methadone. (AR 960.) In July  
23 2011, the toxicology screening was positive for methadone, but in September 2011, the  
24 toxicology screening was again negative for methadone. (AR 987, 893.)

25 Additionally, the ALJ relied on Adams's inconsistent statements regarding substance  
26 abuse. An ALJ can use inconsistent statements about drug use to infer dishonesty in a  
27 claimant's other statements. *Thomas*, 278 F.3d at 959. As the ALJ notes, in September  
28 2010, Adams denied any history of cocaine or methamphetamine use to Dr. Carandang, but

1 a January 2011 toxicology screening was positive for cocaine. (AR 505, 894, 978.)  
2 (Dr. Carandang's notes regarding Adams's "social history" include: "She smoked marijuana  
3 for 20 years and she is still doing it. She denies any cocaine or methamphetamine."). In  
4 addition, the record shows that Adams denied a history of drug use on a medical  
5 questionnaire for Dr. Livermore in January 2011. (AR 997.) Thus, Adams's statements to  
6 her various doctors about her drug use were inconsistent.

7 At the July 2012 hearing, Adams provided inconsistent testimony about her drug use:

8 ALJ: Okay. Are you using any street drugs?

9 Adams: No more street drugs.

10 ALJ: When did you stop?

11 Adams: Oh my God, at least two years ago. And I only stopped then, your  
12 honor, to be honest with you, only stopped then because of all of the other  
13 drugs, the medications that I was on, the street drugs was doing no good.

14 ALJ: Okay. So two years ago would be sometime in 2010?

15 Adams: Right.

16 ALJ: Okay. There was a positive test for cocaine in 2011.

17 Adams: I don't know why, but I haven't used, your honor, and that's a promise  
18 to God that I haven't.

19 (AR 529.) Adams was also examined by her own attorney:

20 Atty: [Y]ou had been substance abuse free for a while, but you had some small  
21 relapse around that time in March 2011?

22 Adams: Exactly.

23 Atty: Have you had any other since then?

24 Adams: Never. Never. Never touched the stuff again in my life . . . I said two  
25 years, it could have mistaken, it could have been around that time. But the  
26 reason why I was then is because of my tooth at that time, my tooth was  
27 hurting, my tooth was starting to hurt me so bad that I thought maybe that  
28 would help, because I was still taking medications, but then I found out that  
that was making it worse as well.

(AR 534-35.) Thus, while Adams initially told the ALJ that she did not know why the  
toxicology screening was positive and denied using cocaine, she provided a different  
response to her attorney at the same hearing.

Finally, the ALJ found that Adams's inconsistent statements regarding her vision and  
hearing difficulties undermined her credibility regarding her subjective symptom testimony

1 because “she told Dr. Carandang that she had been having vision difficulties for one year  
2 and hearing loss for 20 years . . . but an ophthalmological examination in November 2010  
3 shows best possible correction as 20/25 bilaterally . . . and there were no observable  
4 auditory difficulties at the hearing or at any medical examination.” (AR 505.) The record  
5 shows that Adams told Dr. Carandang about her vision problems in September 2010 and he  
6 found her vision to be 20/100 bilaterally without glasses. (AR 894-95.) In November 2010,  
7 Adams had an ophthalmological exam that found her vision to be 20/80 and 20/60 with best  
8 possible correction at 20/25. (AR 911.) In December 2010, state agency medical consultant  
9 Dr. F. Kalmar found that although Adams had some decreased vision, her visual limits did  
10 not meet the disability listing levels. (AR 917, 919.) The record also shows that  
11 Dr. Kalmar did not find any established hearing limitations. (AR 918.) There is no other  
12 evidence in the record of a hearing examination finding hearing loss or any doctor having  
13 trouble communicating with Adams. (AR 887-1000.)

14 Despite these findings, Adams argues that “the ALJ decision is void of any sufficient  
15 rationale at all as to why the ALJ ignored and disregards Ms. Adams’ testimony.” Dkt. No.  
16 23 at 6-7. Adams appears to assert three main reasons why the ALJ did not properly  
17 conduct her credibility determination: the ALJ (1) was not sufficiently specific;  
18 (2) improperly based his credibility determination on the lack of objective medical  
19 evidence; and (3) improperly considered Adams’s daily activities. *Id.* at 6-8, 10. The Court  
20 finds that these arguments lack merit.

21 Regarding the first and second assertions, the ALJ listed several specific reasons why  
22 Adams was not credible and cited to supporting evidence from the record. (AR 505.) The  
23 lack of objective medical evidence was just one factor out of the several discussed. When  
24 evaluating a claimant’s credibility regarding pain, “an ALJ may not reject a claimant’s  
25 subjective complaints based *solely* on a lack of medical evidence to fully corroborate the  
26 alleged severity of pain.” *Burch*, 400 F.3d at 680 (emphasis added). Here, the ALJ’s  
27 decision was not based “solely” on the lack of objective medical evidence. Instead, the ALJ  
28 provided other reasons as to why he discounted Adams’s testimony about the severity of her

1 pain, which are supported by substantial evidence in the record.

2 Adams's third argument is that the ALJ improperly assessed her daily activities by not  
3 considering "the differences between Ms. Adams' daily activities and her ability to work  
4 eight hours a day, five days a week" and ignoring "*how* Ms. Adams performs her activities .  
5 . . ." Dkt. No. 23 at 10. In assessing Adams's credibility, however, the ALJ did not rely on  
6 or even discuss Adams's daily activities. Thus, the ALJ did not improperly consider  
7 Adams's daily activities compared to her ability to work.

8 After reviewing the record, the ALJ made specific findings regarding Adams's  
9 credibility as it related to her subjective symptom testimony, which are supported by  
10 substantial evidence. Accordingly, the Court does not second-guess the ALJ's decision.

#### 11 IV. CONCLUSION

12 After considering Adams's testimony and the record, substantial evidence supports  
13 the ALJ's assessment of Adams's credibility regarding her subjective symptom testimony.  
14 Accordingly, Adams's motion for summary judgment is DENIED and the final decision of  
15 the Commissioner is AFFIRMED. 42 U.S.C. § 405(g).

16 IT IS SO ORDERED.

17 Date: March 31, 2014

18   
Nathanael M. Cousins  
United States Magistrate Judge