

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASSIE LEE MAY,

No. C-12-02735-DMR

Plaintiff(s),

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT**

v.

COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

Defendant(s).

Pursuant to 42 U.S.C. § 405(g), Plaintiff Cassie Lee May (“Plaintiff”) seeks review of her application for Supplemental Security Income (“SSI”) disability benefits. Defendant Social Security Commissioner (“Defendant” or “Commissioner”) denied her application after determining that Plaintiff was not disabled under Title XVI of the Social Security Act (“Act”), 42 U.S.C. § 1382c(a)(3)(A). Plaintiff now requests judicial review of the Commissioner’s decision pursuant to 42 U.S.C. § 405(g). Both parties filed motions for summary judgment. For the reasons stated below, the court grants Defendant’s motion and denies Plaintiff’s motion.

I. Procedural History

On January 14, 2010, Plaintiff protectively filed an application for SSI benefits under Title XVI of the Act, alleging disability beginning April 9, 2005. Administrative Record (“A.R.”) 56, 128-134. Plaintiff alleged disability based on social anxiety disorder. A.R. 145. The agency denied

1 Plaintiff's claim, and subsequently denied it again upon reconsideration. A.R. 58-63, 69-74. On
2 April 27, 2011, an administrative law judge (ALJ) held a hearing at which Plaintiff, represented by a
3 non-attorney claimant representative, testified along with a vocational expert. A.R. 29-55. On May
4 18, 2011, the ALJ issued a written decision that Plaintiff was not disabled and denied her claim.
5 A.R. 17-28. On March 24, 2012, the Appeals Council denied Plaintiff's request for review of the
6 ALJ's decision, making the ALJ's decision the Commissioner's final decision. A.R. 1-6. Plaintiff
7 then filed this action.

8 **II. Factual Background**

9 **A. Plaintiff's Background and Activities of Daily Living**

10 The record contains the following information. Plaintiff was born in April 1987. A.R. 32.
11 During the relevant time period, she was single and lived with her mother. A.R. 32-33. On a normal
12 day, Plaintiff woke around 11 a.m., watched television, used the computer, fed and cleaned up after
13 her and her mother's four dogs and three cats, and completed housework and chores, including
14 laundry, cleaning, vacuuming, and dishwashing. A.R. 19, 41, 155. Her mother left for work after
15 Plaintiff had breakfast and returned from work around midnight. A.R. 41-42. Plaintiff prepared her
16 own meals, and went grocery shopping with her mother but never by herself. A.R. 42. Plaintiff
17 went shopping a "couple of times per week" for "everyday items such as food and [toiletries]," and
18 was able to pay bills, count change, handle a savings account, and prepare money orders, but she had
19 never used a checkbook. A.R. 158. Plaintiff did not have any physical problems, problems with
20 personal care, or problems dressing, feeding, or bathing herself. A.R. 42, 49, 155-57. Her hobbies
21 included watching television, making artwork, and collecting costume jewelry. A.R. 159. She
22 sometimes went to antique shows with her mother to look at jewelry. A.R. 45-46. She visited her
23 grandmother at least once a month. A.R. 46. Plaintiff stated that she had no friends and did not chat
24 with anyone on the Internet. A.R. 45. She found it "difficult to talk to people and make any friends
25 or go places with a lot of people." A.R. 160. She was "afraid of people judging [her] and making a
26 mistake in public" and became "self conscience [sic] of [her] appearance in public." A.R. 161. She
27 did not drive because she was too nervous. A.R. 158. She did not go to church, the library, or any
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1 social gatherings or have other activities that would take her out of the house on a regular basis.

2 A.R. 46.

3 Plaintiff stated that she had never worked but had attempted to work by interviewing for jobs
4 a couple of years ago, but she “couldn’t speak up and [the interviews] didn’t go very well.” A.R. 34.
5 She had not looked for jobs since then because she gets too anxious and cannot communicate with
6 people. A.R. 34. She did not graduate from her regular high school because she “got anxious and . .
7 . overwhelmed and . . . didn’t want to go to school,” but was able to attend adult school and
8 complete her high school education around the same time she otherwise would have graduated.
9 A.R. 35-36. Plaintiff did not repeat any grades and did not attend special education classes. A.R.
10 36, 150. She had “no problems walking [or] paying attention” and could follow written and spoken
11 instructions well. A.R. 160. Plaintiff stated that she could “get along[] well with authority figures.”
12 A.R. 161. She “handle[d] stress ok” but would get “overwhelmed and have to remember to relax.”
13 A.R. 161. She “like[d] routine but [] can handle changes pretty well.” A.R. 161. Plaintiff stated
14 that she could perform a hypothetical job described by the ALJ that would require her to put items
15 into a box, work for the most part by herself, and occasionally interact with a boss. A.R. 42-43. But
16 she went on to explain to the ALJ that she would “probably miss a lot of work . . .because [she]
17 get[s] really anxious and sometimes [] just can’t get to work.” A.R. 43.

18 Because Plaintiff did not drive, she normally traveled with her mother. A.R. 39-40. She
19 took the school bus by herself during the last couple of years of high school. A.R. 40. Her mother
20 drove her to doctor visits and she had not taken the bus by herself to visit the doctor. A.R. 44. She
21 did not believe she could take the bus by herself to see her doctor because she gets “too anxious
22 around people.” A.R. 44. She testified that she was “not sure” why she was able to take the school
23 bus but not the bus to her doctor’s office. A.R. 45. Upon further questioning by her attorney,
24 Plaintiff agreed that one of the reasons may be because the school bus would have the same people
25 every day, whereas different people would ride a public bus. A.R. 47-48.

26 At the April 27, 2011 hearing, Plaintiff testified that she was taking Cymbalta and Buspar
27 every day, as prescribed by her then-treating psychiatrist Dr. Peña. She did not experience any side
28 effects from those medications, but had stopped taking Abilify because it made her restless and

1 jittery. A.R. 38. Plaintiff testified that the medications were a “little bit” helpful. A.R. 36-38.
2 Plaintiff had not been hospitalized nor had she visited the emergency room due to her condition.
3 A.R. 43.

4 **B. Plaintiff’s Relevant Medical History**

5 **I. Dr. Koida**

6 Plaintiff submitted a few general medical records, mostly concerning treatment for an
7 infected cyst on the back of her neck. A.R. 226-41. One visit note by Dr. David Minoru Koida,
8 M.D. references Plaintiff’s mental health. Dr. Koida’s October 9, 2008 record indicates that
9 Plaintiff complained of chest pains. The visit note reflects that Plaintiff had a history of chronic
10 depression and was taking Paxil. A.R. 227. Plaintiff reported two months of “dull daily chest pains
11 . . . [n]ot associated with anything” that got worse with “movement or inspiration.” A.R. 227. Dr.
12 Koida also noted that Plaintiff “stopped going [to her psychiatrist] since she didn’t feel a connection
13 to her psychiatrist.” A.R. 227. Dr. Koida recommended that Plaintiff continue to take Paxil and
14 stated that he thought “she would benefit from long term counseling.” Dr. Koida provided Plaintiff
15 with the phone number for the psychiatry department so that she could “establish with a new
16 counselor.” A.R. 228.

17 **ii. Dr. Kagan**

18 Plaintiff received treatment from Alice L. Kagan, M.D. A.R. 242-53. Plaintiff contacted Dr.
19 Kagan’s office on February 15, 2008 for a refill of her Paxil prescription. The medical assistant’s
20 notes state that Plaintiff had last visited the office on August 3, 2007. A.R. 249. On September 22,
21 2009, Plaintiff visited Dr. Kagan for medication management. A.R. 249. Dr. Kagan noted that
22 Plaintiff “report[s] she is having diff finding a job” and that she “[s]tays home most of the time.”
23 A.R. 249. The notes also state: “Doesn’t have transportation. Still with significant social phobia and
24 avoidance. She recognizes some problem. Feels meds help decrease her anxiety and depression
25 some.” A.R. 249. Plaintiff did not report any side effects with her medication. A.R. 249. Dr.
26 Kagan “offered group treatment and therapy” and Plaintiff “show[ed] only mild if any interest.”
27 A.R. 249. Dr. Kagan assessed Plaintiff as having “sevre [sic] social phobia, dysthymia and
28 avoidance.” A.R. 250. Dr. Kagan stated, “I believe she has a personality ds because of the extent of

1 her impairment. She agrees to contact CA dept of vocational rehab.” A.R. 250. There is no
2 evidence that Plaintiff contacted the state agency. Dr. Kagan also noted that Plaintiff declined
3 outpatient treatment initially because of “no transportation, little motivation.” A.R. 251.

4 There are no further medication management visits with Dr. Kagan, nor are there are records
5 of individual or group therapy sessions. Dr. Kagan attempted to reach Plaintiff on January 28, 2010,
6 but Plaintiff was not in. A.R. 252. On March 28, 2010, Plaintiff “called because she will be losing
7 her Kaiser insurance, and is concerned about her medications.” A.R. 252. Dr. Kagan advised
8 Plaintiff to continue taking Paxil as directed, offered to write a prescription for six months after
9 Plaintiff’s loss of insurance, and referred her to Sonoma County MH, Southwest Health Clinic for
10 follow-up. A.R. 252-53. There is no evidence that Plaintiff contacted the Sonoma County clinic.
11 There was a gap of approximately four months between Plaintiff’s treatment by Dr. Kagan and by
12 her subsequent treating psychiatrist, Dr. Peña. A.R. 39.

13 **iii. Dr. Zipperle**

14 On June 3, 2010, consultative examiner Marion-Isabel Zipperle, Ph.D., examined and
15 evaluated Plaintiff. A.R. 256-59. The “history of present illness” section of Dr. Zipperle’s report
16 noted that Plaintiff had suffered from social anxiety since she was a child, felt hopeless, helpless,
17 and mistrustful, and had self-confidence and low motivation. A.R. 256. Plaintiff told Dr. Zipperle
18 that she had received therapy since she was 12 years old, but that her insurance coverage had run out
19 and that she had to find coverage for herself in order to continue therapy. A.R. 256.¹ Under the
20 “Activities of Daily Living” subheading of the “Current Level of Functioning” section, Dr. Zipperle
21 indicated that Plaintiff could “participate in self-care and house work.” A.R. 257. Under
22 “Concentration, Persistence, and Pace,” Dr. Zipperle wrote that when Plaintiff “gets nervous it is
23 difficult for her to concentrate, but when she is not nervous it is easy to get things done.” A.R. 257.
24 Dr. Zipperle noted that Plaintiff’s “[g]rooming and hygiene were good.” A.R. 257. Dr. Zipperle
25 made an Axis I diagnosis of anxiety with agoraphobia and depression. The Axis II diagnosis was
26 schizoid personality disorder. Dr. Zipperle noted under Axis IV that Plaintiff had difficulty relating

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28 ¹ It does not appear that Plaintiff submitted any records of therapy sessions.

1 to the outer world, and difficulty dealing with life, occupation, and academic issues. Dr. Zipperle
2 gave Plaintiff a GAF score of 54. She opined that Plaintiff’s “[p]rognosis is poor due to her
3 inabilities to leave the house and for her to function on the outside of her home, difficulty with
4 feelings of depression and hopelessness, helplessness, self-confidence issues, losing interest in what
5 she used to like to do, low motivation, anxiety, mistrust of others, problems dealing with crowds,
6 and inability to make friends outside her family.” A.R. 258. Dr. Zipperle noted that Plaintiff was
7 “not in therapy at this time, but it would not solve her problems in 12 months.” A.R. 258.

8 Dr. Zipperle provided the following functional assessment: Plaintiff was capable of
9 managing her own funds; Plaintiff could do simple and repetitive tasks; Plaintiff “would have
10 difficulty dealing with supervisors and interacting with coworkers and the public”; Plaintiff “would
11 not need special or additional instructions to work, but her psychiatric issues would get in the way of
12 her regularly attending a workplace”; Plaintiff “would have difficulty performing and her psychiatric
13 issues would get in the way of her workweek and workday”; and Plaintiff “is impaired in dealing
14 with stress in the workplace.” A.R. 258-59.

15 **iv. Dr. Meenakshi**

16 On July 2, 2010, V. Meenakshi, M.D., a State agency psychological consultant, reviewed
17 Plaintiff’s medical records and completed a psychiatric review. A.R. 262-72. Dr. Meenakshi found
18 the following “B criteria” limitations²: (1) no restriction of activities of daily living; (2) “moderate”
19 difficulty in maintaining social functioning; (3) “moderate” difficulties in maintaining concentration,
20 persistence, or pace; and (4) “insufficient evidence” to determine whether Plaintiff had repeated
21 episodes of decompensation, each of extended duration. A.R. 270.

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26 ² “B criteria” refer to certain functional limitations that a claimant must demonstrate in order
27 to show that her impairment meets or equals one of a list of specific impairments described in 20 C.F.R.
28 Part 404, Subpart P, Appendix 1, which is Step Three of the five-step sequential evaluation process and
is described in greater detail below. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.06(B); 20 C.F.R. §§
404.1520, 416.920.

1 On July 7, 2010, Dr. Meenakshi assessed Plaintiff’s mental residual functional capacity
2 (“RFC”)³ and concluded that she could perform simple tasks with limited public contact. A.R. 272,
3 275. Dr. Meenakshi determined that Plaintiff was not significantly limited in the following abilities:
4 remembering locations and work-like procedures; understanding, remembering, and carrying out
5 very short and simple instructions; maintaining attention and concentration for an extended period;
6 performing scheduled activities; maintaining regular attendance; remaining punctual; sustaining an
7 ordinary routine without supervision; making simple work related decisions; completing a normal
8 work week; asking simple questions or requesting assistance; being aware of normal hazards and
9 taking appropriate precautions; traveling to unfamiliar places and using public transportation; and
10 setting realistic goals and independently making plans. A.R. 273-74.

11 Dr. Meenakshi concluded that Plaintiff was moderately limited in the following abilities:
12 understanding, remembering, and carrying out detailed instructions; working with or close to others
13 without being distracted; interacting appropriately with the general public; accepting instructions
14 and responding appropriately to criticism from supervisors; getting along with coworkers or peers;
15 and responding appropriately to changes in work setting. A.R. 273-74.

16 Dr. Meenakshi opined that Plaintiff “is looking for work” but had not “gone for enough
17 interviews because of lack of transportation and not her anxiety. A.R. 272.

18 **v. Dr. Bianchi**

19 On June 17, 2010, P. Bianchi, M.D., a State agency medical consultant, reviewed the medical
20 record. Dr. Bianchi determined that Plaintiff had no medically determinable physical impairment.
21 A.R. 261, 21.

22 **vi. Dr. Walk**

23 On August 25, 2010, State agency psychiatrist D. Walk, M.D., reviewed the medical record
24 and concluded that Dr. Zipperle’s June 3, 2010 conclusion “is not corroborated in other MER
25 [medical evidence of record] to the extent of Disability.” A.R. 282-83. Dr. Walk opined that
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27 ³ The evaluation process includes an assessment of a claimant’s RFC, which is “the most [a
28 claimant] can still do” despite physical and mental limitations caused by her impairments. 20 C.F.R.
§ 416.945.

1 Plaintiff was “essentially not in treatment and there is minimal documentation of agoraphobia.”

2 A.R. 283. Dr. Walk agreed with Dr. Meenakshi’s RFC. A.R. 283.

3 **vii. Dr. Peña**

4 Plaintiff saw Van Arthur Peña, Ph.D., M.D., from October 2010 to February 2011. A.R.
5 294-303. Dr. Peña’s October 30, 2010 treatment notes reflect Plaintiff’s complaint of social anxiety.
6 A.R. 294. His notes of this initial visit indicate that Plaintiff had a hard time talking to people, that
7 she was nervous in public, and that she stays at home. A.R. 294. She was uncomfortable outside the
8 home, but did not feel hopelessness or depression when in her home. A.R. 294. She had trouble
9 going to school, and it was difficult for her to answer questions in class. A.R. 294. She reported
10 some improvement in going out to restaurants, in that she could now eat, when before she could not.
11 A.R. 294. Additionally, Plaintiff said she took care of four dogs and three cats, watched television,
12 and did some housework. A.R. 295. Plaintiff was taking Paxil and claimed it helped her “forty to
13 fifty percent.” A.R. 295. Dr. Peña diagnosed Plaintiff with social anxiety disorder, noting that
14 Plaintiff’s mother apparently had also had the condition and gradually “outgrew it.” Dr. Peña added
15 Abilify to Plaintiff’s Paxil regimen. A.R. 295.

16 At her second visit on November 12, 2010, Dr. Peña wrote that Plaintiff was taking Abilify
17 and Paxil. A.R. 296. Plaintiff said she was uncomfortable talking with strangers but had more
18 energy and was a little bit better around people. A.R. 296. On December 27, 2010, Dr. Peña started
19 Plaintiff on Prozac and began reducing her Paxil use. A.R. 300.

20 On December 27, 2010, Dr. Peña completed a mental residual functional capacity
21 questionnaire. A.R. 289-300. He diagnosed Plaintiff with social anxiety and dependent personality
22 disorder. A.R. 289. Dr. Peña noted Plaintiff exhibited symptoms including “anhedonia or
23 pervasive loss of interest in almost all activities,” “decreased energy,” “psychomotor agitation or
24 retardation,” and “emotional withdrawal or isolation.” A.R. 290. Dr. Peña also noted that Plaintiff’s
25 medication caused “mild improvement in energy” and Plaintiff was “slightly less anxious around
26 other people.” A.R. 289. Plaintiff did not report any side effects from her treatment. A.R. 289. Dr.
27 Peña noted that her prognosis was “fair to good with ongoing medical and therapeutic counseling.”
28 A.R. 289.

1 Dr. Peña opined that Plaintiff had no ability to perform the following activities: maintaining
2 regular attendance and punctuality within customary, usually strict tolerances; sustaining an ordinary
3 routine without special supervision; working in coordination with or proximity to others without
4 being unduly distracted; accepting instructions and responding appropriately to criticism from
5 supervisors; getting along with co-workers or peers without unduly distracting them or exhibiting
6 behavioral extremes; dealing with normal work stress; interacting appropriately with the general
7 public; traveling to an unfamiliar place; and using public transportation. A.R. 291-92.

8 Dr. Peña wrote that Plaintiff “cannot function around others without excessive anxiety,
9 withdrawal” and “cannot work in occupation which requires contact with strangers, or at this point
10 nearly anyone other than her mother.” A.R. 291. Dr. Peña also noted that Plaintiff “has shown no
11 ability to be in presence of peers without distracting them because of her own emotional
12 discomfort.” A.R. 291.

13 Dr. Peña opined that Plaintiff was “very good” in the following areas: remembering work
14 like procedures; understanding, remembering, and carrying out very short and simple instructions;
15 understanding, remembering, and carrying out detailed instructions; maintaining attention for two
16 hours; asking simple questions or requesting assistance; being aware of normal hazards and taking
17 appropriate precautions; and adhering to basic standards of neatness and cleanliness. A.R. 291-92.

18 **C. Vocational Expert’s Testimony**

19 Vocational Expert (“VE”) Robert A. Rashke, M.A., testified at the hearing. A.R. 50-54. The
20 ALJ posed two hypotheticals to the VE. First, the ALJ asked for two representative examples of
21 jobs that could be performed by an individual with the same age, education, and background as
22 Plaintiff who did not have any exertional restrictions, “but from a nonexertional standpoint . . . [the
23 job]. . . is unskilled in nature, and does not involve interaction with the general public, and has only
24 limited interaction with co-workers and supervisors,” thus ruling out “tandem work that requires
25 coordinated work with another individual.” A.R. 51. The VE stated there were several light
26 cleaning jobs that would fit this criteria, including laboratory assistant; housekeeper; school janitor;
27 and industrial cleaner. A.R. 52. The VE testified that these types of jobs “are pretty much
28 unsupervised” and “there probably would be hardly any interactions with other people.” A.R. 53.

1 404, Subpt. P, App. 1 [the “Listings”] and meets the duration requirement, the ALJ will find
2 that the claimant is disabled.

3 4. At the fourth step, the ALJ considers an assessment of the claimant’s RFC and the claimant’s
4 past relevant work. If the claimant can still do his or her past relevant work, the ALJ will find
5 that the claimant is not disabled.

6 5. At the fifth and last step, the ALJ considers the assessment of the claimant’s RFC and age,
7 education, and work experience to see if the claimant can make an adjustment to other work. If
8 the claimant can make an adjustment to other work, the ALJ will find that the claimant is not
9 disabled. If the claimant cannot make an adjustment to other work, the ALJ will find that the
10 claimant is disabled.

11 20 C.F.R. § 416.920(a)(4); 20 C.F.R. §§ 404.1520; *Tackett*, 180 F.3d at 1098-99.

12 **IV. The May 18, 2011 ALJ Decision**

13 In the May 18, 2011 decision, the ALJ applied the five-step sequential evaluation to
14 determine whether Plaintiff was disabled. A.R. 14-28. At Step One, the ALJ found that Plaintiff
15 had not engaged in substantial gainful activity since the date of her SSI application. A.R. 19. At
16 Step Two, the ALJ found that the Plaintiff’s alleged anxiety disorder with social phobia was a severe
17 impairment. A.R. 19. At Step Three, the ALJ found that Plaintiff’s impairment did not meet or
18 equal a presumptively disabling impairment in the Listings. A.R. 19-20. The ALJ then found that
19 Plaintiff had an RFC that allowed her “to perform a full range of work at all exertional levels with
20 the following non-exertional limitations: [Plaintiff] should have no interaction with the public and
21 limited interaction with co-workers.” A.R. 20-21. At Step Four, the ALJ found that Plaintiff had
22 “no past relevant work to which she could return.” A.R. 23. At Step Five, the ALJ determined that
23 Plaintiff was not disabled because there were a significant number of jobs in the national economy
24 that Plaintiff could perform, considering her age, education, work experience, and RFC. A.R. 23-24.

25 **V. Issues Presented**

26 Plaintiff contends that the ALJ erred at Steps Three and Five of the sequential evaluation
27 process. Specifically, the court will consider the following issues:
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- 1 1. Whether the ALJ’s finding that the medical evidence did not establish the presence of a
2 listing-level impairment was supported by substantial evidence;
- 3 2. Whether the findings on RFC were supported by substantial evidence and whether the
4 ALJ properly gave more weight to non-examining physicians over the opinions of
5 examining physicians;
- 6 3. Whether the ALJ improperly discounted Plaintiff’s statements about symptoms and
7 limitations; and
- 8 4. Whether the ALJ improperly found that the Commissioner met his burden of showing
9 that Plaintiff can perform some other work that exists in “significant numbers” in the
10 national economy, taking into account her RFC age, education, and work experience.

11 **VI. Standard of Review**

12 The ALJ’s underlying determination “will be disturbed only if it is not supported by substantial
13 evidence or it is based on legal error.” *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)
14 (internal quotation marks omitted). “Substantial evidence” is evidence within the record that could
15 lead a reasonable mind to accept a conclusion regarding disability status. *See Richardson v. Perales*,
16 402 U.S. 389, 401 (1971). It is “more than a mere scintilla” but less than a preponderance. *Id.* If
17 the evidence reasonably could support two conclusions, the court “may not substitute its judgment
18 for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112 F.3d 1064,
19 1066 (9th Cir. 1997) (citation omitted). The ALJ is responsible for determining credibility and
20 resolving conflicts in medical testimony, resolving ambiguities, and drawing inferences logically
21 flowing from the evidence. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984); *Sample v.*
22 *Schweiker*, 694 F.2d 639, 642 (9th Cir.1982); *Vincent ex. rel. Vincent v. Heckler*, 739 F.2d 1393,
23 1394-95 (9th Cir. 1984). “Finally, the court will not reverse an ALJ’s decision for harmless error,
24 which exists when it is clear from the record that the ALJ’s error was inconsequential to the ultimate
25 nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (citations
26 and internal quotation marks omitted).

27 **VII. Discussion**

28 **A. Presence of a Listing-Level Impairment**

1 Plaintiff argues that the ALJ lacked substantial evidence to support a finding that the
2 medical evidence did not establish the presence of a listing-level impairment at Step Three of the
3 sequential evaluation process.

4 To evaluate disabilities based on mental illness, the agency considers documentation of
5 medically determined impairments, the degree of limitations such impairments cause in the
6 applicant’s ability to work, and whether the limitations have lasted or can be expected to last for at
7 least twelve months. 20 C.F.R., Pt. 404, Subpt. P, App. 1, § 12.00A. Mental impairments may be
8 evaluated under any one of nine separate categories. 20 C.F.R., Pt. 404, Subpt. P, App. 1, § 12.01.
9 The ALJ evaluated Plaintiff using 20 C.F.R., Pt. 404, Subpt. P, App. 1, §12.06, which addresses
10 anxiety related disorders. Section 12.06 first provides an introductory statement characterizing the
11 nature of the impairment, and Subpart A sets forth the criteria supporting the specific medical
12 diagnosis. 20 C.F.R., Pt. 404, Subpt. P, App. 1, § 12.06A.

13 Section 12.06A requires “medically documented findings” of at least one of several
14 symptoms, including “[a] persistent irrational fear of a specific object, activity, or situation which
15 results in a compelling desire to avoid the dreaded object, activity, or situation” 20 C.F.R. Pt.
16 404, Subpt. P, App. 1 § 12.06A (anxiety disorders). The ALJ appears to have accepted, without
17 discussion, that Plaintiff satisfied the requirements of Sections 12.06A. This finding is supported by
18 substantial record evidence, which documents Plaintiff’s nervousness and anxiety about socializing,
19 interacting with the public, driving, riding public transportation, and leaving her home.

20 The ALJ was then required to consider whether Plaintiff’s mental impairments meet at least
21 two of the four so-called “B criteria”: (1) marked restriction of activities of daily living; (2) marked
22 difficulties in maintaining social functioning; (3) marked difficulties in maintaining concentration,
23 persistence, or pace; or (4) repeated episodes of decompensation. 20 C.F.R. Pt. 404, Subpt. P, App.
24 1, § 12.06; *see also* 20 C.F.R. § 1520a; 20 C.F.R. § 416.920(a)(4)(iii).

25 Plaintiff argues that her impairment caused “marked” restriction of her activities of daily
26 living, not merely “mild” restriction, as the ALJ had found. Plaintiff also argues that she her
27 impairment caused “marked” rather than “moderate” difficulties in maintaining social functioning.

28 **I. Activities of Daily Living**

1 The regulations describe what constitutes “marked” restriction on the “activities of daily
2 living”:

3 Activities of daily living include adaptive activities such as cleaning, shopping, cooking,
4 taking public transportation, paying bills, maintaining a residence, caring appropriately for
5 your grooming and hygiene, using telephones and directories, and using a post office. In the
6 context of your overall situation, we assess the quality of these activities by their
7 independence, appropriateness, effectiveness, and sustainability. We will determine the
8 extent to which you are capable of initiating and participating in activities independent of
9 supervision or direction.

7 We do not define “marked” by a specific number of different activities of daily living in
8 which functioning is impaired, but by the nature and overall degree of interference with
9 function. For example, if you do a wide range of activities of daily living, we may still find
10 that you have a marked limitation in your daily activities if you have serious difficulty
11 performing them without direct supervision, or in a suitable manner, or on a consistent,
12 useful, routine basis, or without undue interruptions or distractions.

10 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.00(C)(1). The ALJ concluded that Plaintiff only had
11 “mild” restriction in her activities of daily living, and listed some activities she was and was not
12 capable of performing:

13 In activities of daily living, the claimant has mild restriction. For example, she has
14 transportation problems, does not drive because she is afraid to drive, and gets nervous
15 behind the wheel. [Citing Dr. Zipperle’s report.] The claimant can participate in self-care
16 and housework (*id.* at 4). She reported that she cares for four dogs and three cats, watches
17 television, and does some housework. [Citing Dr. Peña’s medical records.] The claimant
18 wrote that she prepares her breakfast, might go shopping with her mother, takes care of her
19 pets, and does some housecleaning. [Citing Plaintiff’s Function Report.]

18 A.R. 19-20. The evidence in the record shows that Plaintiff was capable of carrying out all activities
19 of daily living without restriction when in her home. The evidence also shows that Plaintiff faced
20 limitations in her ability to carry out daily activities outside the home, such as shopping or driving,
21 but that she was able to take the bus by herself to school. She was able to complete her high school
22 degree on time by attending the adult school, and did not require special education services. The
23 ALJ’s decision weighed the competing facts. A reasonable mind could conclude, based on the
24 record, that Plaintiff was mildly restricted in her activities of daily living. The ALJ’s determination
25 that Plaintiff impairment caused “mild” restrictions on her activities of daily living was thus
26 supported by substantial evidence.

27 **ii. Difficulties in Maintaining Social Functioning**

28

1 The regulations also describe what constitutes “marked” difficulties in maintaining social
2 functioning:

3 Social functioning refers to your capacity to interact independently, appropriately,
4 effectively, and on a sustained basis with other individuals. Social functioning includes the
5 ability to get along with others, such as family members, friends, neighbors, grocery clerks,
6 landlords, or bus drivers. You may demonstrate impaired social functioning by, for example,
7 a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal
8 relationships, or social isolation. You may exhibit strength in social functioning by such
9 things as your ability to initiate social contacts with others, communicate clearly with others,
10 or interact and actively participate in group activities. We also need to consider cooperative
11 behaviors, consideration for others, awareness of others' feelings, and social maturity. Social
12 functioning in work situations may involve interactions with the public, responding
13 appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers.

14 We do not define “marked” by a specific number of different behaviors in which social
15 functioning is impaired, but by the nature and overall degree of interference with function.
16 For example, if you are highly antagonistic, uncooperative, or hostile but are tolerated by
17 local storekeepers, we may nevertheless find that you have a marked limitation in social
18 functioning because that behavior is not acceptable in other social contexts.

19 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 12.00(C)(2).

20 The ALJ concluded that Plaintiff had “moderate” difficulties in maintaining social
21 functioning:

22 In social functioning, the claimant has moderate difficulties. For example, she reported
23 social anxiety since she was a child and problems with friendships. [Citing Dr. Zipperle’s
24 report.] She attended school and graduated from high school, but reported that she missed a
25 lot of school because of anxiety (*id.* at 4). The claimant wrote that she goes outside
26 occasionally. [Citing Plaintiff’s Function Report.] She wrote that she goes shopping a couple
27 of times a week in stores (*id.*). She explained that she had found that she gets along well
28 with authority figures (*id.* at 10). The claimant’s mother wrote that the claimant had trouble
talking to people, eating out, or being in large crowds. [Citing to Diana May’s Function
Report, A.R. 165.] The claimant testified that she took the bus to school during her last
couple of years of high school.

A.R. 20. Some evidence in the record shows that Plaintiff was able to interact with people, e.g. with
her grandmother, with her doctors, with authority figures, and with storekeepers and clerks and
others while on shopping trips for shoes, clothes, and groceries while in the presence of her mother.
Other evidence in the record points to Plaintiff’s isolation and difficulty in interacting independently
with the public, and her inability to function outside her home. On balance, as a reasonable mind
could agree with the conclusion reached by the the ALJ that Plaintiff’s difficulties in maintaining
social functioning were only “moderate,” the determination was supported by substantial evidence in
the record.

1 Accordingly, the court upholds the ALJ’s determination that Plaintiff’s impairments do not
2 meet or equal any impairments in the Listings.

3 **B. Evaluation of Medical Evidence Regarding Plaintiff’s RFC**

4 The ALJ determined that Plaintiff “has the residual functional capacity to perform a full
5 range of work at all exertional levels but with the following non-exertional limitations: The claimant
6 should have no interaction with the public and limited interaction with co-workers.” A.R. 21.
7 Plaintiff contends that the ALJ erred in determining Plaintiff’s RFC because the ALJ improperly
8 weighed the medical opinions of non-examining physicians over Plaintiff’s treating and examining
9 physicians.

10 When reviewing an ALJ’s medical opinion determinations, courts distinguish between three
11 types of physicians: those who treat the claimant (“treating physicians”); and two categories of
12 “nontreating physicians,” those who examine but do not treat the claimant (“examining physicians”)
13 and those who neither examine nor treat the claimant (“nonexamining physicians”). *See Lester v.*
14 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996). A treating physician’s opinion is entitled to more weight
15 than an examining physician’s opinion, and an examining physician’s opinion is entitled to more
16 weight than a nonexamining physician’s opinion. *Id.*

17 The ALJ is entitled to resolve conflicts in the medical evidence. *Sprague v. Bowen*, 812 F.2d
18 1226, 1230 (9th Cir. 1987). However, to reject the opinion of an uncontradicted treating or
19 examining physician, an ALJ must provide “clear and convincing reasons.” *Lester*, 81 F.3d at 830;
20 *see also* § 416.927(d)(2); SSR 96-2p, 1996 WL 374186. If another doctor contradicts a treating or
21 examining physician, the ALJ must provide “specific and legitimate reasons” supported by
22 substantial evidence to discount the treating or examining physician’s opinion. *Lester*, 81 F.3d at
23 830-31. The ALJ meets this burden “by setting out a detailed and thorough summary of the facts
24 and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Reddick*,
25 157 F.3d at 725. A nonexamining physician’s opinion alone cannot constitute substantial evidence
26 to reject the opinion of an examining or treating physician, *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4
27 (9th Cir. 1990), though it may be persuasive when supported by other factors. *See Tonapetyan v.*
28 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2002) (noting that opinion by “non-examining medical expert

1 . . . may constitute substantial evidence when it is consistent with other independent evidence in the
2 record”); *Magallanes*, 881 F.2d at 751-55 (upholding rejection of treating physician’s opinion given
3 contradictory laboratory test results, reports from examining physicians, and testimony from
4 claimant). An opinion more consistent with the record as a whole generally carries more
5 persuasiveness. *See* §416.927(d)(4).

6 The ALJ noted that Dr. Zipperle, an examining nontreating physician, determined that
7 Plaintiff “would have difficulty dealing with supervisors and interacting with coworkers and the
8 public.” A.R. 22. The ALJ gave “some weight” to Dr. Zipperle’s opinion, but noted that the
9 “evidence as a whole . . . supports that [Plaintiff] would have some limitations interacting with
10 others, but not to such an extreme extent. Motivation, as opposed to a severe impairment, seems to
11 be the controlling variable.” A.R. 22. The ALJ also noted that the assessment of one of Plaintiff’s
12 treating physicians, Dr. Peña, “would result in a finding of disability,” but the ALJ discounted Dr.
13 Peña’s assessment as being “not well supported by the record as a whole, and particularly not by his
14 limited treatment notes.” A.R. 22.

15 In discounting the opinions of these treating and examining physicians, the ALJ relied upon
16 statements and testimony regarding Plaintiff’s ability to perform many activities of daily living.
17 A.R. 21-23. The ALJ also commented upon the treatment notes from Dr. Kagan, another treating
18 physician, showing that Plaintiff did not follow up on Dr. Kagan’s recommendation to contact the
19 California Department of Vocational Rehabilitation, and initially declined Dr. Kagan’s
20 recommendation for outpatient treatment because of “no transportation, little motivation.” A.R. 22.
21 The ALJ also cited to the assessments of nonexamining physicians Drs. Bianchi, Meenakshi, and
22 Walk, which provided evidence that Plaintiff was able to perform simple tasks with limited public
23 contact. A.R. 22. The ALJ noted that Dr. Walk stated that Dr. Zipperle’s opinion regarding
24 Plaintiff’s “anxiety w/ Agorophobia [sic] and Depression and Personality Disorder and Adverse
25 MSS . . . is not corroborated in other MER [medical evidence of record] to the extent of Disability.”
26 A.R. 22 (citing A.R. 282). The ALJ also noted that Dr. Walk found that Plaintiff was “essentially
27 not in treatment and there is minimal documentation of Agorophobia [sic].” A.R. 22 (citing A.R.
28 282). The ALJ also noted that “[t]reatment records are relatively unremarkable and show very

1 limited treatment, especially considering that the claimant alleges that she has had a severe
2 impairment of social anxiety since early childhood. The record shows that she has refused
3 treatment, which was characterized by a treating source to be due to a lack of motivation and
4 transportation.” A.R. 23.

5 The record contains substantial evidence that could lead a reasonable mind to agree with the
6 ALJ’s conclusion that Dr. Zipperle’s single consultative evaluation and Dr. Pena’s opinions based
7 on a limited treatment record were not consistent with the medical record as a whole. Plaintiff’s
8 medical history is sparse. There are no records indicating attempts at group or individual therapy,
9 substantial medication regimens, records indicating problems at school, or other indicia of a person
10 suffering from a debilitating mental disability since early childhood. Plaintiff reported to Dr. Kagan
11 that her medications helped decrease her anxiety and depression some. Plaintiff reported to Dr. Peña
12 that she was taking Paxil and it was helping her forty to fifty percent. Dr. Peña noted that Plaintiff’s
13 prognosis was “fair to good with ongoing medical and therapeutic counseling.” A.R. 289.

14 The ALJ offered specific, legitimate reasons for discounting the opinions of Drs. Zipperle
15 and Peña. Since the evidence reasonably could support the ALJ’s conclusions, this court may not
16 substitute its judgment for that of the Commissioner, and must affirm this finding. Accordingly, the
17 ALJ did not err in weighing the medical evidence to determine Plaintiff’s RFC, and substantial
18 evidence supports the ALJ’s conclusions.

19 **C. Plaintiff’s Credibility**

20 The ALJ found that Plaintiff’s “medically determinable impairments could reasonably be
21 expected to cause the alleged symptoms; however, the claimant’s statements concerning the
22 intensity, persistence and limiting effects of these symptoms are not credible to the extent that they
23 are inconsistent with the above residual functional capacity assessment.” A.R. 23. Plaintiff argues
24 that the ALJ erred in discounting Plaintiff’s symptom reporting as not credible.

25 An ALJ is not “required to believe every allegation of disabling pain” or other nonexertional
26 impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.1989) (citing 42 U.S.C. § 423(d)(5) (A)).
27 Nevertheless, the ALJ’s credibility determinations “must be supported by specific, cogent reasons.”
28 *Reddick*, 157 F.3d at 722 (citation omitted). If an ALJ discredits a claimant’s subjective symptom

1 testimony, the ALJ must articulate specific reasons for doing so. *Greger v. Barnhart*, 464 F.3d 968,
2 972 (9th Cir. 2006).

3 In evaluating a claimant’s credibility, the ALJ cannot rely on general findings, but “must
4 specifically identify what testimony is credible and what evidence undermines the claimant’s
5 complaints.” *Id.* at 972 (quotations omitted). The ALJ may consider “ordinary techniques of
6 credibility evaluation,” including the claimant’s reputation for truthfulness and inconsistencies in
7 testimony, and may also consider a claimant’s daily activities, and “unexplained or inadequately
8 explained failure to seek treatment or to follow a prescribed course of treatment.” *Smolen v. Chater*,
9 80 F.3d 1273, 1284 (9th Cir. 1996). The determination of whether or not to accept a claimant’s
10 testimony regarding subjective symptoms requires a two-step analysis. 20 C.F.R. §§ 404.1529,
11 416.929; *Smolen*, 80 F.3d at 1281 (citations omitted). First, the ALJ must determine whether or not
12 there is a medically determinable impairment that reasonably could be expected to cause the
13 claimant's symptoms. 20 C.F.R. §§ 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a
14 claimant produces medical evidence of an underlying impairment, the ALJ may not discredit the
15 claimant’s testimony as to the severity of symptoms “based solely on a lack of objective medical
16 evidence to fully corroborate the alleged severity of” the symptoms. *Bunnell v. Sullivan*, 947 F.2d
17 341, 343, 346-47 (9th Cir. 1991) (en banc) (citations omitted). Absent affirmative evidence that the
18 claimant is malingering,⁵ the ALJ must provide specific “clear and convincing” reasons for rejecting
19 the claimant’s testimony. *Smolen*, 80 F.3d at 1283-84.

20 The Ninth Circuit has “long held that, in assessing a claimant’s credibility, the ALJ may
21 properly rely on “unexplained or inadequately explained failure to seek treatment or to follow a
22 prescribed course of treatment.” (quotations omitted). *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th
23 Cir. 2012). According to agency rules, “the individual’s statements may be less credible if the level
24 or frequency of treatment is inconsistent with the level of complaints, or if the medical reports or
25 records show that the individual is not following the treatment as prescribed and there are no good
26 reasons for this failure.” SSR 96-7p, 1996 WL 374186 at *7. Moreover, a claimant’s failure to

27

28 ⁵ The ALJ did not conclude that plaintiff was a malingerer.

1 assert a good reason for not seeking treatment, “or a finding by the ALJ that the proffered reason is
2 not believable, can cast doubt on the sincerity of the claimant’s pain testimony.” *Fair*, 885 F.2d at
3 603; *Molina*, 674 F.3d at 1113 (“Although Molina provided reasons for resisting treatment, there
4 was no medical evidence that Molina’s resistance was attributable to her mental impairment rather
5 than her own personal preference, and it was reasonable for the ALJ to conclude that the ‘level or
6 frequency of treatment [was] inconsistent with the level of complaints.’”).

7 As noted above, the ALJ gave several reasons for failing to credit fully plaintiff’s testimony.
8 Most notably, the ALJ stated that the “[t]reatment records are relatively unremarkable and show
9 very limited treatment, especially considering that the claimant alleges that she has had a severe
10 impairment of social anxiety since early childhood.” A.R. 23. The ALJ also noted that “[t]he record
11 shows that she has refused treatment, which was characterized by a treating source[] to be due to a
12 lack of motivation and transportation.” A.R. 23. The ALJ’s conclusion is supported by evidence in
13 the record showing that Plaintiff visited or called Dr. Kagan only a few times between 2008 and
14 2010, did not follow up on Dr. Kagan’s recommendations in part because of “low motivation,” and
15 did not state any reasons for not seeking the recommended treatments. Accordingly, the ALJ
16 provided clear and convincing reasons for rejecting plaintiff’s testimony.

17 **D. Existence of Jobs**

18 The claimant has the burden of proof at Steps One through Four of the sequential evaluation
19 process, and the Commissioner has the burden of proof at Step Five. *Bustamante*, 262 F.3d at 953-
20 54 (citing *Tackett*). If, at Step Four, the claimant meets his burden of establishing an inability to
21 perform past work, the Commissioner must show that the claimant can perform some other work that
22 exists in “significant numbers” in the national economy, taking into account the claimant’s residual
23 functional capacity, age, education, and work experience. *Tackett*, 180 F.3d at 1098, 1100; *Reddick*,
24 157 F.3d at 721; 20 C.F.R. §§ 404.1520(f)(1), 416.920(g)(1). The Commissioner may do so by the
25 testimony of a vocational expert or by reference to the Medical-Vocational Guidelines appearing in
26 20 C.F.R. Part 404, Subpart P, Appendix 2 (the “Grids”). *Osenbrock v. Apfel*, 240 F.3d 1157, 1162
27 (9th Cir. 2001) (citing *Tackett*). “When the grids do not completely describe the claimant’s abilities
28 and limitations, such as when the claimant has both exertional and nonexertional limitations . . . the

1 grids are inapplicable and the ALJ must take the testimony of a vocational expert.” *Moore v. Apfel*,
2 216 F.3d 864, 869 (9th Cir. 2000).

3 ALJs may rely on the Dictionary of Occupational Titles (“DOT”) and testimony from
4 vocational experts in making disability determinations. SSR 00-4p, 2000 WL 1898704 at *2. The
5 DOT is a reference guide in the form of a job catalog that contains standardized occupational
6 information about each job. An ALJ is to “rely primarily on the DOT . . . for information about the
7 requirements of work in the national economy.” *Id.* An ALJ may also call upon a VE to provide
8 occupational evidence through testimony at a disability benefits hearing. *Id.* As part of a disability
9 determination, an ALJ must address any conflicts between the VE’s testimony and information
10 contained in the DOT. *Id.* at *1. The ALJ has an “affirmative responsibility to ask about any
11 possible conflict between [the VE’s testimony about the requirements of a job] and information
12 provided in the DOT . . .” *Id.* at *4; *see also Massachi v. Astrue*, 486 F.3d 1149, 1150 (9th Cir.
13 2007) (SSR 00-4p obligates the ALJ to identify and elicit an explanation for any conflict between a
14 VE's testimony and the information in the DOT). To comply with SSR 00-4p, “the ALJ must first
15 determine whether a conflict exists. If it does, the ALJ must then determine whether the vocational
16 expert’s explanation for the conflict is reasonable and whether a basis exists for relying on the expert
17 rather than the [DOT].” *Massachi*, 486 F.3d at 1153. Failing to ask whether there is a conflict
18 between the VE’s testimony and the DOT is harmless error where there is no apparent conflict or
19 where the VE explained the reason for the deviation. *Id.* at 1154, n.19. If the ALJ does not comply
20 with SSR 00-4p, then a reviewing court “cannot determine whether substantial evidence supports the
21 ALJ’s step-five finding that [claimant] could perform other work.” *Id.* at 1154.

22 The ALJ asked the VE whether jobs existed in the national economy for an individual with
23 the claimant’s age, education, work experience, and RFC. The ALJ specified that the individual’s
24 nonexertional limitations required a job that “does not involve interaction with the general public,
25 and has only limited interaction with co-workers and supervisors.” The ALJ’s decision noted that
26 “[t]he vocational expert testified that given all of these factors the individual would be able to
27 perform the requirements of representative unskilled occupations such as: a lab equipment cleaner,
28 DOT number 381.687-022, a housekeeping cleaner, DOT number 323.687-014, and an industrial

1 cleaner, DOT number 381.687-018.” A.R. 24. The VE stated that collectively these representative
2 occupations number about 1.5 million in the national economy and five thousand in the local
3 economy. A.R. 24. The ALJ also stated, “Pursuant to SSR 00-4p, the vocational expert’s testimony
4 is consistent with the information contained in the *Dictionary of Occupational Titles*.” A.R. 24.


5 Plaintiff argues that the Commissioner failed to meet his burden of showing the existence of
6 significant numbers of jobs that Plaintiff could perform because these representative occupations did
7 not meet the requirements of having just limited contact with co-workers and no contact with the
8 public. However, nothing in the DOT descriptions of the above occupations show that these
9 occupations require contact with the public or more than limited interaction with co-workers.
10 Accordingly, the VE’s testimony that these types of cleaner jobs “are pretty much unsupervised” and
11 “there probably would be hardly any interactions with other people” was consistent with the
12 information contained in the DOT. The ALJ’s determination that Plaintiff can perform some other
13 work that exists in significant numbers in the national economy, taking into account her RFC, age,
14 education, and work experience, was supported by substantial evidence.

15 **VIII. Conclusion**

16 Based on the foregoing reasons, the court finds that the ALJ’s decision that Plaintiff was not
17 disabled was supported by substantial evidence in the record and in accordance with law.
18 Accordingly, the court grants Defendant’s motion for summary judgment and denies Plaintiff’s
19 motion for summary judgment.

20
21 IT IS SO ORDERED.

22
23 Dated: May 31, 2013

24 
25 _____
26 DONNA M. RYU
27 United States Magistrate Judge
28