

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NICOLE S BLOCK,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. [4:16-cv-02381-KAW](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT; ORDER GRANTING
DEFENDANT'S MOTION FOR
REMAND**

Re: Dkt. Nos. 17 & 22

Plaintiff Nicole S. Block seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, and the remand of this case for payment of benefits, or, in the alternative, for further proceedings. (Pl.'s Mot., Dkt. No. 17.) In responding to Plaintiff's motion for summary judgment, the Government moved for remand for further proceedings. (Def.'s Mot., Dkt. No. 22.) Thus, the only dispute between the parties is whether the case should be remanded for the payment of benefits or for further proceedings.

Having considered the papers filed by the parties, and for the reasons set forth below, the Court GRANTS Plaintiff's motion for summary judgment, and GRANTS IN PART AND DENIES IN PART Defendant's motion for remand, and remands the case for an immediate award of benefits.

I. BACKGROUND

Plaintiff Nicole Block is a 51 year-old homeless woman, who currently resides in the East Bay Area of Northern California. AR 633, 635. She has a Bachelor of Arts from the University of California at San Diego. AR 634. Plaintiff previously worked as a cashier and a typist to pay for college, and after graduation she worked as a legal assistant for various law firms. *Id.* Her most recent job was as a legal assistant at a firm in San Francisco, but she was terminated in 2010 due

1 to interpersonal issues unrelated to her performance. *Id.* After her termination, however, Plaintiff
2 experienced financial difficulties that resulted in the loss of her home and homelessness. AR 635.

3 Plaintiff's psychological symptoms worsened after she stopped working in 2010. AR 633-
4 641. After losing the insurance associated with her last job, Plaintiff struggled to obtain regular
5 care, but sporadic care showed that she suffered from psychiatric symptoms. AR 449-451. Dr.
6 Mark Swoiskin, M.D., her primary care treating source psychiatrist between 2009 and 2011, noted
7 that Plaintiff had symptoms of depressed mood, decreased energy, appetite fluctuation, low
8 frustration tolerance, irritability and interpersonal problems, despite her being on medication for
9 her symptoms. AR 446-451. On August 2, 2010, Dr. Swoiskin supported Plaintiff's application for
10 state disability benefits. AR 757. At the time, Dr. Swoiskin believed that Plaintiff might be able to
11 return to work in eight months. *Id.*

12 Eight months after she initially received state disability, primary care physician Dr.
13 Marilyn Kutzscher M.D. agreed to an extension of her disability for another three months, to June
14 2011, to allow the claimant additional time to recover from her depression. AR 778-779. Records
15 from Dr. Kutzscher show symptoms, including fatigue, difficulty focusing, and difficulty staying
16 organized. AR 779, 782. Dr. Kutzscher noted that Plaintiff was "having a hard time" and was
17 "unable to get out of bed." *See ids.* Plaintiff stopped receiving disability benefits in August 2011,
18 because her state coverage ended. AR 782. In her final appointment with Dr. Kutzcher, Plaintiff
19 was still suffering symptoms of depression that were further complicated by financial and
20 interpersonal issues. AR 782-785. In her last note, Dr. Kutzscher wrote, "I recommend that she
21 stay off work if possible." AR 784. When Plaintiff attempted to return to regular care in late 2013
22 at the Marin City Health and Wellness Center, she described many of the same symptoms of
23 depression and anxiety to Dr. Blomquist. AR 473-480. Although she was prescribed medication at
24 this time, she was unable to maintain regular treatment. AR 635.

25 In February and December of 2014, Plaintiff was seen by two consultative examiners who
26 both agreed that she continued to suffer from very serious emotional and mental health problems.
27 AR 467-470, 633-641. In both appointments, she described paranoid delusions, anger outbursts,
28 sadness, crying, insomnia, feelings of hopelessness and worthlessness, worrying, hypervigilance

1 and suicidal ideation. AR 467, 639-640. Plaintiff also described a recent suicide attempt to both
2 examiners. AR 467, 635. Both examiners believed her to be suffering from psychosis. AR 469,
3 639. Jennifer Forman, Ph.D assessed moderate impairments in Plaintiff's ability to withstand the
4 stress of an 8-hour workday; adapt to changes, hazards or stressors in the workplace setting and
5 maintain adequate pace or persistence to perform complex tasks. AR 469. She also opined that
6 Plaintiff could only work three to five hours per day even when restricted to low stress simple
7 tasks. *Id.* Lesleigh Franklin, Ph.D's assessment of Plaintiff's functional capacity is more
8 restrictive. *Cf.* AR 469, 641. For instance, although both examiners noted that she exhibited
9 depressed mood, tearfulness and crying during her examinations, Dr. Forman only assessed mild
10 to moderate impairments while Dr. Franklin opined that such psychological symptoms would
11 markedly interfere with her work performance "because if she started having trouble, she would
12 be likely to cause a scene or leave." AR 468-469, 636, 640, 641. Dr. Franklin further opined that,
13 due to her psychological symptoms, Plaintiff would have marked difficulties: following a regular
14 schedule or getting to work on time; getting along and working with others, accepting instructions
15 and responding appropriately to criticism from supervisors; responding appropriately to changes in
16 a routine work setting and dealing with normal work stressors; and completing a normal workday
17 and workweek without interruptions from psychologically based symptoms. AR 640-641.

18 On November 24, 2013, Plaintiff filed an application for Title II disability benefits,
19 alleging disability beginning on July 27, 2010. AR 213. The Social Security Administration
20 ("SSA") denied Plaintiff's applications initially and on reconsideration. AR 136, 139.

21 On August 4, 2014, Plaintiff requested an administrative hearing, which was held on
22 January 8, 2015, with Administrative Law Judge ("ALJ") Richard P. Laverdure presiding. AR
23 145, 171. A supplemental hearing was held on July 23, 2015. AR 184. On November 4, 2015, the
24 ALJ issued a partially favorable decision with a disability onset date of December 1, 2014. AR 38.

25 On April 1, 2016, Plaintiff's request for review was denied by the Appeals Council,
26 rendering the ALJ's decision final. AR 1-6. Plaintiff now seeks judicial review of the final
27 decision.

28 On March 10, 2017, Plaintiff filed her motion for summary judgment. (Pl.'s Mot., Dkt.

1 No. 17.) On June 20, 2017, Defendant filed its response to Plaintiff’s motion for summary
2 judgment and a motion to remand the case for further administrative proceedings. (Def.’s Mot.,
3 Dkt. No. 22.) Plaintiff filed a reply on September 5, 2017. (Pl.’s Reply, Dkt. No. 27.)

4 **II. LEGAL STANDARD**

5 A court may reverse the Commissioner’s denial of disability benefits only when the
6 Commissioner's findings are 1) based on legal error or 2) are not supported by substantial
7 evidence in the record as a whole. 42 U.S.C. § 405(g); *Tackett v. Apfel*, 180 F.3d 1094, 1097
8 (9th Cir. 1999). Substantial evidence is “more than a mere scintilla but less than a
9 preponderance”; it is “such relevant evidence as a reasonable mind might accept as adequate to
10 support a conclusion.” *Id.* at 1098; *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996). In
11 determining whether the Commissioner's findings are supported by substantial evidence, the
12 Court must consider the evidence as a whole, weighing both the evidence that supports and the
13 evidence that detracts from the Commissioner's conclusion. *Id.* “Where evidence is susceptible
14 to more than one rational interpretation, the ALJ's decision should be upheld.” *Ryan v. Comm'r*
15 *of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008).

16 Under Social Security Administration (“SSA”) regulations, disability claims are evaluated
17 according to a five-step sequential evaluation. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir.
18 1998). At step one, the Commissioner determines whether a claimant is currently engaged in
19 substantial gainful activity. *Id.* If so, the claimant is not disabled. 20 C.F.R. § 404.1520(b). At
20 step two, the Commissioner determines whether the claimant has a “medically severe impairment
21 or combination of impairments,” as defined in 20 C.F.R. § 404.1520(c). *Reddick*, 157 F.3d 715 at
22 721. If the answer is no, the claimant is not disabled. *Id.* If the answer is yes, the Commissioner
23 proceeds to step three, and determines whether the impairment meets or equals a listed impairment
24 under 20 C.F.R. § 404, Subpart P, Appendix 1. 20 C.F.R. § 404.1520(d). If this requirement is
25 met, the claimant is disabled. *Reddick*, 157 F.3d 715 at 721.

26 If a claimant does not have a condition which meets or equals a listed impairment, the
27 fourth step in the sequential evaluation process is to determine the claimant's residual functional
28 capacity (“RFC”) or what work, if any, the claimant is capable of performing on a sustained basis,

1 despite the claimant's impairment or impairments. 20 C.F.R. § 404.1520(e). If the claimant can
2 perform such work, he is not disabled. 20 C.F.R. § 404.1520(f). RFC is the application of a legal
3 standard to the medical facts concerning the claimant's physical capacity. 20 C.F.R. § 404.1545(a).
4 If the claimant meets the burden of establishing an inability to perform prior work, the
5 Commissioner must show, at step five, that the claimant can perform other substantial gainful
6 work that exists in the national economy. *Reddick*, 157 F.3d 715 at 721. The claimant bears the
7 burden of proof in steps one through four. *Bustamante v. Massanari*, 262 F.3d 949, 953-954 (9th
8 Cir. 2001). The burden shifts to the Commissioner in step five. *Id.* at 954.

9 III. THE ALJ'S DECISION

10 The ALJ concluded that Plaintiff was not disabled prior to December 1, 2014, but became
11 disabled on that date and has continued to be disabled through the date of the decision, November
12 4, 2015. AR 38. At step one the ALJ concluded that Plaintiff had not engaged in substantial
13 gainful activity since July 27, 2010. AR 23. At step two, the ALJ concluded that Plaintiff had the
14 following severe impairments: an affective mood disorder; an anxiety disorder; methamphetamine
15 abuse in self-reported remission in early 2014; a personality disorder; marijuana abuse;
16 degenerative disc disease of the cervical spine; and a history of a seizure disorder. *Id.* At step
17 three, prior to December 1, 2014, the ALJ concluded that Plaintiff's substance abuse resulted in an
18 impairment or combination of impairments that met or medically equaled a listed impairment in
19 20 C.F.R. § 404, Subpart P, Appendix 1. AR 24. Before considering step four, the ALJ
20 determined that Plaintiff, had Plaintiff not been using substances continuously or intermittently,
21 she would have had the residual functional capacity to perform a medium work, as defined in 20
22 C.F.R. § 404.1567(c), with seizure precautions, such as no climbing ladders, ropes, or scaffolding
23 and no unprotected heights. AR 27. Plaintiff retained the mental abilities and aptitudes necessary
24 to engage in simple, repetitive tasks with no interaction with the public. AR 27-28. At step four,
25 the ALJ concluded that Plaintiff was unable to perform any past relevant work. AR 35. Lastly, at
26 step five, the ALJ concluded that, prior to December 1, 2014, if Plaintiff had not abused
27 substances, there were jobs that existed in significant numbers in the national economy that she
28 could perform and so she was not disabled for the purpose of the Social Security Act. AR 36.

1 Plaintiff, however, was disabled from December 1, 2014 through the date of the decision. AR 36-
2 38.

3 IV. DISCUSSION

4 The parties agree that Plaintiff's case should be remanded. Thus, the Court need only
5 resolve whether remand is appropriate for further proceedings or for the immediate award of
6 benefits from the alleged onset date through November 30, 2014.¹

7 Plaintiff appeals the partially favorable decision, and argues that the ALJ erred in: 1)
8 determining the onset date; 2) in evaluating the medical evidence; and 3) in finding that Plaintiff's
9 use of stimulants was material. (Pl.'s Mot. at 1.)

10 A. The ALJ erred by rejecting the opinions of Plaintiff's treating and examining 11 sources without clear and convincing or specific and legitimate reasons.

12 The ALJ found that "a preponderance of the evidence does not support a finding of
13 disability prior to December 2014, primarily because of substance abuse but as well because of
14 relatively benign medical findings." AR 29. Plaintiff contends that this assessment is not
15 consistent with the contemporaneous records from this time period. (Pl.'s Mot. at 9.)

16 The opinions of treating medical sources may be rejected only for clear and convincing
17 reasons if not contradicted by another doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).
18 Where the record contains conflicting medical evidence, the ALJ must make a credibility
19 determination and resolve the conflict. *Chaudhry v. Astrue*, 688 F.3d 661, 671 (9th Cir. 2012)
20 (quoting *Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003)). "If a treating or examining
21 doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by
22 providing specific and legitimate reasons that are supported by substantial evidence..." *Bayliss v.*
23 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). "The ALJ need not accept the opinion of any
24 physician, including a treating physician, if that opinion is brief, conclusory, and inadequately
25 supported by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th

26
27 ¹ While the Government seeks remand for further proceedings for the entire period, the appeal
28 concerns only the ALJ's determination that Plaintiff was not disabled between July 27, 2010 and
November 30, 2014. AR 15. Thus, the Court declines to potentially disrupt Plaintiff's benefits by
ordering further proceedings regarding her disability status from December 1, 2014 going forward.

1 Cir. 2009) (citations omitted).

2 **i. Treating medical sources**

3 Plaintiff argues that the ALJ erred in weighing the evidence of Plaintiff’s treating medical
4 sources. (Pl.’s Mot. at 9-14.) Specifically, Plaintiff claims the ALJ ignored the medical opinions
5 of her treating physicians Drs. Swoiskin, Kutzscher, and Blomquist. *Id.* In the motion to remand,
6 Defendant did not address argument, and instead opted to focus on evidence from 2014. (Def.’s
7 Mot. at 3.) While the Court may grant Plaintiff’s motion on the grounds that Defendant did not
8 oppose Plaintiff’s motion in this regard, the undersigned will still address the medical opinions
9 below.

10 In evaluating medical evidence from different physicians, the Ninth Circuit distinguishes
11 between the opinions of three types of physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
12 1995). The three categories are as follows: (1) those who treat the claimant (treating physicians);
13 (2) those who examine but do not treat the claimant (examining physicians); and (3) those who
14 neither examine nor treat the claimant (nonexamining physicians). *Id.* at 830. Generally, more
15 weight should be given to the opinion of the treating physician than to the opinion of doctors who
16 do not treat the claimant. *Id.* The opinions of treating medical sources may be rejected only for
17 clear and convincing reasons if not contradicted by another doctor and, if contradicted, only for
18 specific, legitimate reasons supported by substantial evidence. *Id.*

19 Generally, the ALJ’s failure to provide adequate reasons for rejecting the medical opinions
20 requires that they be accepted as true. *Lester*, 81 F.3d at 834 (citing *Hammock v. Bowen*, 879 F.2d
21 498, 502 (9th Cir. 1989)); *Pierce v. Astrue*, 382 F. App’x 618, 619-20 (9th Cir. 2010)(reversed
22 district court order affirming ALJ’s decision that provided no explanation for why he rejected an
23 examining physician’s findings). A claimant’s treating physicians are entitled to special
24 consideration. *Delegans v. Colvin*, 584 F. App’x 328, 331 (9th Cir. 2014) (citing *Orn v. Astrue*,
25 495 F.3d 625, 631-33 (9th Cir. 2007).

26 Here, the ALJ discounted the opinions of Drs. Swoiskin and Kutzscher on the grounds that
27 state disability does not equate to disability as defined by the Social Security Act, and “the
28 contemporaneous record entirely failed to support a disabling impairment.” AR. 29. The ALJ

1 further provides that there was no indication of hospitalization while Plaintiff was being treated by
2 Dr. Swoiskin, even though she was “actively using psychoactive substances during that time.” *Id.*
3 Hospitalizations, however, are not required to prove disability, and to believe otherwise is
4 offensive. Moreover, Plaintiff testified that she occasionally used stimulants while in the care of
5 Dr. Swoiskin, but she also testified that she openly discussed this use with her doctor and nothing
6 in the evidence refutes this testimony nor diminishes her credibility as to the veracity of her
7 statements. AR 79. As discussed below, there was never a diagnosis of Drug Addiction and
8 Alcoholism (“DAA”) prior to the onset date determined by the ALJ. *See* discussion *infra* Part
9 IV.B. Since Dr. Swoiskin noted Plaintiff’s reported substance use in his records, the ALJ had no
10 specific or legitimate reason to discount his opinion due to a lack of diagnosis. *See* AR 29 (“it is
11 impossible to tell whether Dr. Swoiskin even considered substance use in formulating his opinion
12 that the claimant was ‘disabled’ ...”). The lack of diagnosis means that Dr. Swoiskin did not
13 diagnose Plaintiff with DDA.

14 Similarly, Dr. Kutzscher’s treatment notes support a finding that Plaintiff was impaired by
15 major depression. AR 773. Records from office visits show that Plaintiff’s symptoms included
16 fatigue, difficulty focusing, and difficulty staying organized. AR 779, 782. Dr. Kutzscher noted
17 that Plaintiff was “having a hard time” and was “unable to get out of bed.” *Id.* In short, Dr.
18 Kutzscher’s notes indicate a belief that Plaintiff’s mental health conditions warranted her disability
19 status, as she supported extensions in March and August of 2011. AR 777, 784.

20 On October 1, 2013, Plaintiff sought medical care at the Marin City Health and Wellness
21 Center (“MCHW”), and began seeing Carriane Blomquist, D.O. Dr. Blomquist diagnosed
22 Plaintiff with depression and epilepsy, and noted that Plaintiff was alert and oriented. AR 479-480.
23 Plaintiff continued to experience psychiatric symptoms, including anxiety, low stress tolerance,
24 and tearfulness throughout her treatment at MCHW, and Dr. Blomquist prescribed clonazepam
25 and Adderall in addition to the carbamazepine. AR 475-480. These notes pre-dated the February
26 2014 visit in which a nurse practitioner suspected that Plaintiff’s sores could be caused by
27 methamphetamine use. AR 474. The ALJ essentially ignored Dr. Blomquist’s diagnosis that
28 Plaintiff had depression, and instead decided that the nurse’s suspicion, without other evidence.

1 AR 30. This was improper, and was not a specific and legitimate reason supported by substantial
2 evidence for discounting Dr. Blomquist’s medical opinion.

3 In light of the foregoing, the ALJ did not provide specific and legitimate reasons for
4 discounting the opinions of treating physicians Drs. Swoiskin, Kutzscher, and Blomquist, because
5 contemporaneous medical records support a finding of disability, which requires that their medical
6 opinions be credited as true.

7 **ii. Examining medical sources**

8 Plaintiff argues that the ALJ implicitly rejected the medical opinion of consultative
9 medical source Dr. Forman by choosing an onset date months after the exam suggested otherwise.
10 (Pl.’s Mot. at 14.) In fact, the ALJ accorded substantial weight to Dr. Forman’s opinion that
11 Plaintiff had a psychotic disorder not otherwise specified and a mood disorder not otherwise
12 specified, because Dr. Forman’s opinion was supported by her findings on evaluation and is
13 consistent with contemporaneous medical evidence. AR 31.

14 On February 13, 2014, Dr. Forman performed a consultative psychological evaluation of
15 Plaintiff. AR 467-470. Dr. Forman diagnosed Plaintiff with a psychotic disorder NOS and a mood
16 disorder NOS. AR 469. Dr. Forman ruled out bipolar disorder, ADHD, and delusional disorder-
17 paranoid type. *Id.* Dr. Forman opined that Plaintiff could work only three to five hours per day
18 doing low stress simple tasks. AR 469. Dr. Forman further observed symptoms, including crying,
19 depressed mood, suicidal ideation, and insomnia, all of which are consistent with those Plaintiff
20 had reported to Drs. Swoiskin and Kutzscher, as well as the future reports of Drs. Jeffery Seal and
21 Ted Aames. *See* AR 468. Dr. Forman determined the claimant was impaired in her ability to
22 withstand the stress of an eight hour workday and adapt to changes, hazards or stressors in the
23 workplace setting due to her symptoms. AR 469. While the ALJ was correct in finding that Dr.
24 Forman’s findings are consistent with the evidence as a whole in this case, he erred in finding that
25 this evidence leads to the conclusion that Plaintiff was not disabled. *See* AR 30-31. Indeed, Dr.
26 Forman’s report, properly given the substantial weight afforded by the ALJ, supports the
27 conclusion that the claimant was disabled as of the date of evaluation, February 13, 2014, which
28 predates the ALJ’s chosen onset date of December 1, 2014.

1 In light of the foregoing, the undersigned finds it appropriate to credit the opinions of the
2 treating medical sources as true, and that Plaintiff was disabled as of the date of her consultative
3 evaluation. As a result, the undersigned finds that Plaintiff’s impairments were not caused by
4 substance abuse.

5 **B. The ALJ erred in finding that Plaintiff’s use of stimulants was material.**

6 Plaintiff argues that the ALJ erred in finding that her use of stimulants was material to the
7 disability determination from the alleged onset date through November 30, 2014 (“the relevant
8 time period”). (Pl.’s Mot. at 15.) A claimant is not eligible for disability benefits if alcohol or
9 drug addiction is a “contributing factor material to” the disability determination. 42 U.S.C. §
10 423(d)(2)(C); 20 C.F.R. § 404.1535 (describing how the agency assesses materiality of drugs and
11 alcohol); Social Security Ruling (SSR) 13-2p. Here, the ALJ provided that Plaintiff’s substance
12 use was the primary reason for his choosing a later onset date than the date alleged. AR 29.

13 SSR 13-2p § (8)(b)(i) requires “objective medical evidence — that is signs, symptoms and
14 laboratory findings—from an acceptable medical source” to support a finding of Drug Addiction
15 and Alcoholism (“DAA”). DAA can be established without physical signs or laboratory findings
16 if there are “clinical findings reported by a psychiatrist, psychologist or other appropriate medical
17 source based on examination of the claimant.” *Id.* Self-reported drug use and other “evidence that
18 shows only that the claimant uses drugs and alcohol does not, in itself, establish the existence of a
19 medically determinable substance use disorder” because “they are not objective medical evidence
20 provided by an acceptable medical source.” SSR 13-2p (8)(b)(ii). 13-2p provides that “even when
21 we have objective medical evidence, we must also have evidence that establishes a maladaptive
22 pattern of substance use and the other requirements for the diagnosis of a Substance Use
23 Disorder(s) in the DSM. This evidence must come from an acceptable medical source.” *Id.*

24 Here, Plaintiff was never diagnosed with a substance use disorder by any of her treating
25 physicians during the relevant time period. *See* discussion *supra* Part IV.A.i. Most of the ALJ
26 substance use evidence came from the Plaintiff’s notation to treatment providers and her own
27 testimony at the hearing. AR 79, 633-651, 657-666, 677-704. In emphasizing Plaintiff’s substance
28 use, the ALJ consistently noted the absence of any mention of substance use. For example, in

1 regards to Dr. Swoislin, he states that “it is impossible to tell whether Dr. Swoislin even
2 considered substance abuse.” AR 29. Similarly, regarding Dr. Forman, the ALJ provides that “the
3 claimant denied a history of substance abuse.” AR 29. The only evidence the ALJ points to during
4 the relevant time period is an unconfirmed suspicion from a nurse practitioner at MCHW in
5 February 2014. AR 30. While the suspicion was recorded, the nurse also noted that Plaintiff was
6 not tested for drug use, there was no diagnosis of a substance use disorder, and this suspicion was
7 not discussed with Plaintiff. AR 474.

8 Notwithstanding, even if Plaintiff had been using stimulants, no maladaptive pattern of use
9 was observed and no diagnosis of a substance use disorder was given prior to December 1, 2014.
10 *See* SSR 13-2p(8)(b)(ii). A suspicion and claimant testimony alone cannot establish DAA or
11 materiality. SSR 13-2p(8)(b)(ii) (self-reported drug or alcohol use is not sufficient to establish a
12 Substance Use Disorder); AR 34. In the absence of medical evidence and evidence of a
13 maladaptive pattern of use, the ALJ failed to establish that Plaintiff had DDA during the relevant
14 time period.

15 Plaintiff further argues that the ALJ erred by finding that DDA was material to the
16 disability determination. (Pl.’s Mot. at 16.) The Court agrees. The ALJ relied on Dr. Michael
17 Lace’s opinion in support of finding materiality, but the medical records that Dr. Lace relied on
18 were reports written after the relevant time period. AR 674. Indeed, Lesleigh Franklin, Ph.D
19 evaluated Plaintiff on December 5, 2014. AR 633-641. Therein, Dr. Franklin noted that Plaintiff
20 reported that she had used drugs, but noted that Plaintiff “insisted that she was not drug
21 dependent” and last reported using methamphetamine one week ago. AR 634. Dr. Franklin’s
22 diagnostic impression is that Plaintiff has moderate amphetamine use disorder, but she opined that
23 the “substance abuse appears to be a byproduct of her mental health problems.” AR 639.
24 Similarly, Ted Aames, Ph.D, who first saw Plaintiff on December 23, 2014, also noted that
25 Plaintiff used amphetamines. AR 652.² Dr. Aames also opined that Plaintiff’s impairments were

26 _____
27 ² The Court notes that Dr. Aames’s report appears to be erroneously dated “1/26/14” instead of
28 “1/26/15” given that Dr. Aames notes show that he began seeing Plaintiff on December 23, 2014.
AR 652. Indeed, the letter from Drs. Seal and Aames’s, dated July 23, 2015, confirms that the
initial intake appointment occurred on January 14, 2015.

1 not caused by amphetamine use. AR 663. As stated above, however, all of the medical evidence
2 cited was post-December 1, 2014, the period in which the ALJ found Plaintiff to be disabled.
3 Thus, the ALJ erred in his finding of DDA during the period from July 27, 2010 to November 30,
4 2014, and that DDA was material based on Dr. Lace's medical opinion.

5 Accordingly, Plaintiff's actual disability onset date was July 27, 2010. The record for the
6 earlier time period is complete, and no further administrative proceedings are required.

7 **V. CONCLUSION**

8 For the reasons explained above, Plaintiff's motion for summary judgment is GRANTED,
9 and the Government's motion to remand is GRANTED IN PART AND DENIED IN PART, and
10 this action is REMANDED to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g),
11 for an immediate award of back benefits for the period of July 27, 2010 through November 30,
12 2014.

13 IT IS SO ORDERED.

14 Dated: September 22, 2017

15 
16 KANDIS A. WESTMORE
17 United States Magistrate Judge