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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MANDIE ANN FERGUSON,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. [4:16-cv-05995-KAW](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. Nos. 20, 21

Plaintiff Mandie Ann Ferguson 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.

Pending before the Court is Plaintiff’s motion for summary judgment and Defendant’s cross-motion for summary judgment. Having considered the papers filed by the parties, and for the reasons set forth below, the Court DENIES Plaintiff’s motion for summary judgment, and GRANTS Defendant’s cross-motion for summary judgment.

I. BACKGROUND

On October 29, 2012, Plaintiff Mandie Ann Ferguson filed concurrent applications for Title II Disability Insurance (“DI”) Benefits and Title XVI Supplemental Security Income (“SSI”) Benefits. Administrative Record (“AR”) 12, 185-97. Plaintiff’s applications allege a disability onset date of March 14, 2012. AR 185, 211. Plaintiff’s claims were initially denied on May 9, 2013, and Plaintiff’s Request for Reconsideration was denied on November 6, 2013. AR 12, 128-29, 137. A hearing was held before Administrative Law Judge Maxine R. Benmour on October 29, 2014. AR 12-22.

Plaintiff is thirty-one years old and lives with her mother. AR 16, 45. Plaintiff has not

1 been engaged in substantial gainful activity since May 14, 2012. AR 211.

2 Plaintiff received treatment for mental impairments, primarily anxiety and panic disorder.
3 AR 319, 328. Plaintiff was treated by Alex W-H Liao, MD, Ph.D, who, in May 2012, assigned
4 her a Global Assessment of Functioning (“GAF”) score of 55, indicating that she experienced
5 moderate limitations. AR 308-13. In August 2012, Dr. Liao opined that Plaintiff could not return
6 to work due to panic attacks and that he would extend her short-term disability insurance, and
7 assigned her a GAF of 51 (moderate limitations). AR 304, 307.

8 Other than two brief hospitalizations—four days in June 2013 and one day in January
9 2014— Plaintiff’s mental status examinations were generally unremarkable. *See* AR 342, 457-58,
10 552-53, 608. For example, in July 2013, shortly after her first hospitalization, examining
11 psychologist, Adeline Boye, Ph.D., observed that Plaintiff had a tearful and anxious mood, but
12 pleasant and cooperative demeanor, intact recent and remote memory, a logical thought process,
13 goal-directed thought content, normal attention and concentration, and fair insight and judgment.
14 AR 552. Dr. Boye assessed Plaintiff with a GAF of 51-60, indicating only moderate symptoms.
15 AR 552-53. When Plaintiff presented for mental health treatment in February 2014, subsequent to
16 her second hospitalization, treating physician Jen-Hsiung Wang, M.D., similarly reported normal
17 findings, including that Plaintiff had a cooperative attitude, appropriate affect, intact memory,
18 logical thought process, and her attention was gained. AR 457. Dr. Wang assessed Plaintiff with a
19 GAF of 80, indicating transient and normal reactions to stressful situations. AR 458. On April 25,
20 2014, Dr. Wang assigned Plaintiff a GAF of 62, indicating mild symptoms. AR 449.

21 In February 2014, Plaintiff’s treating physician Amelia Valdez, M.D., completed a medical
22 source statement where she opined that Plaintiff had an “unlimited” ability to understand,
23 remember, and carry out simple instructions; a “good” ability for complex instructions and
24 maintaining concentration, persistence, and pace; and a “fair” ability to perform activities within a
25 schedule and maintain regular attendance, complete a normal workday and workweek, and
26 respond appropriately to changes in a work setting. AR 318.

27 In April 2013, consultative examiner Alex Kettner, Psy.D., examined Plaintiff at the
28 request of the Disability Determination Service. AR 335-38. Plaintiff reported that she was not

1 currently taking medication or receiving mental health treatment. AR 335. Dr. Kettner found that
2 Plaintiff had a mildly depressed mood, but maintained good eye contact, cooperated, and appeared
3 to have intact insight and judgment. AR 336. Upon psychological testing, Dr. Kettner opined that
4 Plaintiff's verbal and memory scores were within the average range. AR 336. Dr. Kettner assessed
5 Plaintiff with a GAF of 60, indicating only moderate symptoms. AR 337. Dr. Kettner concluded
6 that Plaintiff had only mild anxiety and depression, and no gross impairment in cognitive
7 functioning. AR 337. Dr. Kettner assessed Plaintiff with "no" impairment in the ability to follow
8 and remember simple instructions, and a "mild" impairment in all other areas, including the ability
9 to maintain adequate persistence or pace, maintain adequate concentration and attention, adapt to
10 changes in job routine, and interact appropriately with supervisors, co-workers, and the public. AR
11 337-38.

12 In May 2013, State agency psychiatrist L. Colsky, M.D., reviewed the record and opined
13 that Plaintiff could perform simple, repetitive tasks and maintain socially appropriate behavior
14 with supervisors and coworkers, but might have difficulty with public interaction. AR 75-76. In
15 September 2013, State agency psychologist Helen Patterson, Ph.D., essentially agreed with Dr.
16 Colsky's opinion, except she concluded that Plaintiff could respond appropriately to the general
17 public. AR 106-07.

18 In August 2014, Susan Skolek, Psy.D., completed a medical source statement, indicating
19 that she had only treated Plaintiff seven times in the past three months. AR 422. Dr. Skolek opined
20 that Plaintiff had a GAF of 41 and disabling work-related mental limitations, but provided no
21 treatment notes to support her assessment. AR 422-26.

22 In an April 9, 2015 decision, the ALJ found that Plaintiff was not disabled. AR 12-22.
23 On June 3, 2015, Plaintiff requested that the Appeals Council review the ALJ's decision. AR 6-
24 8. The ALJ's decision became the final decision of the Commissioner when the Appeals
25 Council denied review on August 16, 2016. AR 1-4. Plaintiff now seeks judicial review of the
26 Commissioner's decision pursuant to 42 U.S.C. § 405(g).

27 On February 28, 2017, Plaintiff filed her motion for summary judgment. (Pl.'s Mot.,
28 Dkt. No. 20.). On March 28, 2017, Defendant filed its opposition and cross-motion for

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summary judgment. (Def.’s Opp’n, Dkt. No. 21.) Plaintiff did not file a reply, so the motions are fully briefed.

II. LEGAL STANDARD

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

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

If a claimant does not have a condition which meets or equals a listed impairment, the fourth step in the sequential evaluation process is to determine the claimant's residual functional capacity (“RFC”) or what work, if any, the claimant is capable of performing on a sustained basis, despite the claimant’s impairment or impairments. 20 C.F.R. § 404.1520(e). If the claimant can

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

8 III. THE ALJ'S DECISION

9 As an initial matter, the ALJ found that Plaintiff met the insured status requirements of the
10 Social Security Act through December 31, 2016. AR 14. The ALJ found at step one that Plaintiff
11 had not engaged in substantial gainful activity since March 14, 2012, the alleged onset date. AR
12 14. At step two, the ALJ found that Plaintiff had the following severe impairments: obsessive-
13 compulsive disorder ("OCD"), panic disorder with agoraphobia, Asperger's disorder, and bipolar
14 disorder. AR 14. At step three, the ALJ concluded that Plaintiff did not have an impairment or
15 combination of impairments that met or medically equaled a listed impairment in 20 C.F.R. § 404,
16 Subpart P, Appendix 1. AR 15. Before considering step four, the ALJ determined that Plaintiff
17 has the residual functional capacity to perform a full range of work at all exertional levels, but
18 with the following nonexertional limitations: limited to simple, repetitive tasks with occasional
19 contact with the public. AR 17. At step four, the ALJ concluded that Plaintiff was unable to
20 perform any past relevant work. AR 20. Lastly, at step five, the ALJ concluded that there were
21 jobs that exist in significant numbers in the national economy that Plaintiff could perform and so
22 she was not disabled for the purpose of the Social Security Act. AR 20-21.

23 IV. DISCUSSION

24 Plaintiff makes a single argument in her motion for summary judgment: that the ALJ
25 rejected Dr. Skolek's opinion without providing specific and legitimate reasons supported by
26 medical evidence. (Pl.'s Mot. at 5, 10.)

27 The opinions of treating medical sources may be rejected only for clear and convincing
28 reasons if not contradicted by another doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).

1 Where the record contains conflicting medical evidence, the ALJ must make a credibility
2 determination and resolve the conflict. *Chaudhry v. Astrue*, 688 F.3d 661, 671 (9th Cir. 2012)
3 (quoting *Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003)). “If a treating or examining
4 doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by
5 providing specific and legitimate reasons that are supported by substantial evidence....” *Bayliss v.*
6 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “The ALJ need not accept the opinion of any
7 physician, including a treating physician, if that opinion is brief, conclusory, and inadequately
8 supported by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th
9 Cir. 2009) (citations omitted).

10 Plaintiff contends that the ALJ discounted Susan Skolek, Psy.D.’s treating opinion without
11 providing specific reasons supported by substantial evidence in the record. (Pl.’s Mot. at 5, 9-10.)
12 In opposition, Defendant argues that “the ALJ properly found that Dr. Skolek’s three month-long
13 treatment of Plaintiff was not long enough to give the doctor the benefit of a longitudinal picture
14 of Plaintiff’s impairments (AR 19).” (Def.’s Opp’n at 4.) The Court notes that the ALJ does not
15 generally dispute Dr. Skolek’s diagnoses of Plaintiff’s conditions. Rather, the ALJ disagrees with
16 Dr. Skolek’s opinion that Plaintiff’s mental residual functional capacity is so limited that she
17 would be absent more than three days per month, as well as the validity of the assigned GAF score
18 of 41. AR 19.

19 The ALJ specifically stated that she afforded limited weight to Dr. Skolek’s mental
20 residual functional capacity questionnaire, because “she had seen claimant for only a total of seven
21 visits at the time she completed the form,” and that the “[t]reatment notes do not support a GAF of
22 41 [] or that claimant would be absent from work more than three times per month.” AR 19, 422-
23 26. “[W]hen evaluating conflicting medical opinions, an ALJ need not accept the opinion of a
24 doctor if that opinion is brief, conclusory, and inadequately supported by clinical findings.”
25 *Bayliss*, 427 F.3d at 1216 (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)).
26 Indeed, the ALJ gave Dr. Skolek’s opinion limited weight, because she failed to establish a basis
27 for her opinion and provided no treatment notes. Not only did Dr. Skolek fail to cite to any of her
28 specific treatment notes, the administrative record appears to be conspicuously devoid of any

1 treatment notes from Dr. Skolek, and Plaintiff does not cite to any. Moreover, Dr. Skolek first
2 treated Plaintiff on March 21, 2014, and saw her seven times between that date and August 28,
3 2014, the date Dr. Skolek filled out the questionnaire. AR 422. During that time period, Dr.
4 Skolek stated that both her current and highest GAF scores were 41. *Id.* Plaintiff's treating
5 physician Dr. Wang, however, also saw Plaintiff with some regularity while she was seeking
6 treatment from Dr. Skolek, and assigned Plaintiff a GAF of 62 on April 25, 2014. AR 449.
7 Furthermore, Dr. Skolek does not provide any medical evidence to support her position that
8 Plaintiff would be absent from work more than three times per month. AR 19. This level of
9 severity is contradicted by Plaintiff's treating source Dr. Liao, who, on May 3, 2012, reported that
10 Plaintiff's mental status examination was within normal limits, and assigned a GAF of 55,
11 indicating that she experienced only moderate limitations. AR 312-13. Thus, the ALJ's finding
12 that Dr. Skolek's opinion regarding Plaintiff's limitations was inconsistent with the overall
13 treatment records was based on a reasonable interpretation of the record. *See Ryan v. Comm'r of*
14 *Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) ("Where evidence is susceptible to more than one
15 rational interpretation, the ALJ's decision should be upheld.")

16 Plaintiff further argues that the ALJ erred in discounting Dr. Skolek's opinion on the
17 grounds that she only saw Plaintiff on seven visits prior to completing the form. (Pl.'s Mot. at 8.)
18 Instead, Plaintiff contends that this directly contradicts the fact that the ALJ adopted the State
19 agency physician's opinion, who never examined Plaintiff and did not have the benefit of
20 reviewing medical records after April 2013. *Id.* at 8-9. While it is true that the ALJ appears to have
21 given greater weight to Dr. Colsky, the non-examining physician, the ALJ did so because the
22 opinion was supported by objective medical evidence. AR 18. Indeed, the ALJ clearly explained
23 how the statements from Plaintiff's treating physicians supported Dr. Colsky's opinion. *Id.*
24 Regardless, there is also no indication that Dr. Skolek had the benefit of reviewing any medical
25 records in connection with her opinion regarding Plaintiff's mental RFC, as she did not cite to any
26 such evidence in support of her opinion regarding Plaintiff's mental residual functional capacity.
27 *See* AR 422-426.

28 Accordingly, the ALJ had sufficient evidence to give limited weight to Dr. Skolek's

1 opinion, because it was not supported by any treatment notes or other substantial medical evidence
2 in the record.

3 **V. CONCLUSION**

4 For the reasons set forth above, Plaintiff's motion for summary judgment is DENIED,
5 Defendant's cross-motion for summary judgment is GRANTED.

6 IT IS SO ORDERED.

7 Dated: March 12, 2018

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KANDIS A. WESTMORE
9 United States Magistrate Judge

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