IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

SAMUEL IRA DOWELL, Plaintiff, v. **NANCY A. BERRYHILL**, Commissioner of Social Security,[1] Defendant.	Case No. 3:16-cv-614-SI **OPINION AND ORDER**

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Michael H. Simon, District Judge.

Samuel Dowell ("Plaintiff") seeks judicial review of the final decision of the Commissioner of the Social Security Administration ("Commissioner") denying his applications

[1] Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Commissioner Carolyn W. Colvin as the defendant in this suit.

for disability insurance benefits ("DIB") and supplemental security income ("SSI") under Titles II and XVI of the Social Security Act. For the reasons discussed below, the Commissioner's decision is reversed and remanded for the immediate calculation of an award of benefits.

STANDARD OF REVIEW

The district court must affirm the Commissioner's decision if it is based on the proper legal standards and the findings are supported by substantial evidence. 42 U.S.C. § 405(g); see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). "Substantial evidence" means "more than a mere scintilla but less than a preponderance." *Bray v. Comm'r* Soc. Sec. Admin., 554 F.3d 1219, 1222 (9th Cir. 2009) (quoting Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)). It means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. (quoting Andrews, 53 F.3d at 1039).

Where the evidence is susceptible to more than one rational interpretation, the Commissioner's conclusion must be upheld. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). Variable interpretations of the evidence are insignificant if the Commissioner's interpretation is a rational reading of the record, and this Court may not substitute its judgment for that of the Commissioner. *See Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). "[A] reviewing court must consider the entire record as a whole and may not affirm simply by isolating a specific quantum of supporting evidence." Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007) (quoting Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (quotation marks omitted)). A reviewing court, however, may not affirm the Commissioner on a ground upon which the Commissioner did not rely. Id.; see also Bray, 554 F.3d at 1226.

BACKGROUND

A. Plaintiff's Application

Plaintiff was born in March, 1985. AR 380. He speaks English and earned his GED after completing the 11th grade. AR 244, 383. He has past work experience as a gas station attendant, a store stocker, and as a roofer. Id.

Plaintiff filed for a period of disability and disability insurance benefits on August 14, 2012, alleging disability as of June 26, 2009, due to mental impairments. AR 243. Plaintiff's applications were denied initially and upon reconsideration, and he requested a hearing before an ALJ. AR 235-38. An administrative hearing was held before ALJ Rudolph Murgo on October 24, 2014. AR 36. On November 7, 2014, ALJ Murgo issued a written decision denying Plaintiff's applications. AR 14-30. The Appeals Council denied Plaintiff's subsequent request for review on February 17, 2016, making the ALJ's decision final. AR 1-4. This appeal followed.

B. The Sequential Analysis

A claimant is disabled if he or she is unable to "engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months[.]" 42 U.S.C. § 423(d)(1)(A). "Social Security Regulations set out a five-step sequential process for determining whether an applicant is disabled within the meaning of the Social Security Act." *Keyser v. Comm'r Soc. Sec. Admin.,* 648 F.3d 721, 724 (9th Cir. 2011); see also 20 C.F.R. § 404.1520 (DIB); 20 C.F.R. § 416.920 (SSI); Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Each step is potentially dispositive. 20 C.F.R. §§ 404.1520(a)(4); 416.920(a)(4). The five-step sequential process asks the following series of questions:

1. Is the claimant performing "substantial gainful activity?" 20 C.F.R. §§ 404.1520(a)(4)(i); 416.920(a)(4)(i). This activity is work involving significant mental or physical duties done or intended to be done for pay

or profit. 20 C.F.R. §§ 404.1510; 416.910. If the claimant is performing such work, she is not disabled within the meaning of the Act. 20 C.F.R. §§ 404.1520(a)(4)(i); 416.920(a)(4)(i). If the claimant is not performing substantial gainful activity, the analysis proceeds to step two.

2. Is the claimant's impairment "severe" under the Commissioner's regulations? 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). Unless expected to result in death, an impairment is "severe" if it significantly limits the claimant's physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1521(a); 416.921(a). This impairment must have lasted or must be expected to last for a continuous period of at least 12 months. 20 C.F.R. §§ 404.1509; 416.909. If the claimant does not have a severe impairment, the analysis ends. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the claimant has a severe impairment, the analysis proceeds to step three.

3. Does the claimant's severe impairment "meet or equal" one or more of the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, then the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment does not meet or equal one or more of the listed impairments, the analysis proceeds beyond step three. At that point, the ALJ must evaluate medical and other relevant evidence to assess and determine the claimant's "residual functional capacity" ("RFC"). This is an assessment of work-related activities that the claimant may still perform on a regular and continuing basis, despite any limitations imposed by his or her impairments. 20 C.F.R. §§ 404.1520(e); 404.1545(b)-(c); 416.920(e); 416.945(b)-(c). After the ALJ determines the claimant's RFC, the analysis proceeds to step four.

4. Can the claimant perform his or her "past relevant work" with this RFC assessment? If so, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv). If the claimant cannot perform his or her past relevant work, the analysis proceeds to step five.

5. Considering the claimant's RFC and age, education, and work experience, is the claimant able to make an adjustment to other work that exists in significant numbers in the national economy? If so, then the claimant is not disabled. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v); 404.1560(c); 416.960(c). If the claimant cannot perform such work, he or she is disabled. Id.

See also Bustamante v. Massanari, 262 F.3d 949, 954 (9th Cir. 2001).

The claimant bears the burden of proof at steps one through four. Id. at 953; see also Tackett v. Apfel, 180 F.3d 1094, 1100 (9th Cir. 1999); Yuckert, 482 U.S. at 140-41. The Commissioner bears the burden of proof at step five. Tackett, 180 F.3d at 1100. At step five, the Commissioner must show that the claimant can perform other work that exists in significant numbers in the national economy, "taking into consideration the claimant's residual functional capacity, age, education, and work experience." Id.; see also 20 C.F.R. §§ 404.1566; 416.966 (describing "work which exists in the national economy"). If the Commissioner fails to meet this burden, the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). If, however, the Commissioner proves that the claimant is able to perform other work existing in significant numbers in the national economy, the claimant is not disabled. Bustamante, 262 F.3d at 953-54; Tackett, 180 F.3d at 1099.

C. The ALJ's Decision

After finding that Plaintiff met the insured status requirements of the Social Security Act through December 31, 2013, the ALJ performed the sequential analysis. AR 16. At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful activity since his alleged onset date of June 26, 2009. Id. At step two, the ALJ found Plaintiff suffered from the severe impairments of affective disorder, anxiety disorder, and personality disorder. Id. At step three, the ALJ found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR 17.

The ALJ proceeded to assess Plaintiff's RFC and determined that Plaintiff can perform a full range of work with the following limitations: he can perform simple, repetitive tasks consistent with specific vocational preparation ("SVP") one or two work; and he can have superficial public and superficial coworker contact with no teamwork. AR 18. At step four, the

ALJ found that Plaintiff was capable of performing his past relevant work as a stocker selector. AR 29. Accordingly, the ALJ concluded that Plaintiff was not disabled. AR 30.

DISCUSSION

Plaintiff argues that the ALJ erred by (A) rejecting the medical opinion of examining psychologist Roderick Calkins, Ph.D.; and (B) improperly evaluating Plaintiff's subjective symptom testimony.

A. Medical Opinion Evidence

Plaintiff first argues that the ALJ erroneously rejected the opinion of examining psychologist Dr. Calkins. The ALJ is responsible for resolving conflicts in the medical record, including conflicts among physicians' opinions. Carmickle *v. Comm'r*, 533 F.3d 1155, 1164 (9th Cir. 2008). The Ninth Circuit distinguishes between the opinions of three types of physicians: treating physicians, examining physicians, and non-examining physicians. Generally, "a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001). If a treating physician's opinion is supported by medically acceptable techniques and is not inconsistent with other substantial evidence in the record, the treating physician's opinion is given controlling weight. Id.; see also 20 C.F.R. § 404.1527(d)(2). A treating doctor's opinion that is not contradicted by the opinion of another physician can be rejected only for "clear and convincing" reasons. Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008). If a treating doctor's opinion is contradicted by the opinion of another physician, the ALJ must provide "specific and legitimate reasons" for discrediting the treating doctor's opinion. Id.

In addition, the ALJ generally must accord greater weight to the opinion of an examining physician than that of a non-examining physician. Orn, 495 F.3d at 631. As is the case with the

opinion of a treating physician, the ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of an examining physician. Pitzer v. Sullivan, 908 F.2d 502, 506 (9th Cir. 1990). If the opinion of an examining physician is contradicted by another physician's opinion, the ALJ must provide "specific, legitimate reasons" for discrediting the examining physician's opinion. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). An ALJ may reject an examining, non-treating physician's opinion "in favor of a nonexamining, nontreating physician when he gives specific, legitimate reasons for doing so, and those reasons are supported by substantial record evidence." Roberts v. Shalala, 66 F.3d 179, 184 (9th Cir. 1995), as amended (Oct. 23, 1995).

Specific, legitimate reasons for rejecting a physician's opinion may include its reliance on a claimant's discredited subjective complaints, inconsistency with medical records, inconsistency with a claimant's testimony, and inconsistency with a claimant's daily activities. Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008); Andrews, 53 F.3d at 1042-43. An ALJ effectively rejects an opinion when he or she ignores it. Smolen v. Chater, 80 F.3d 1273, 1286 (9th Cir. 1996).

Dr. Calkins performed a psychological evaluation of Plaintiff on November 12, 2012. AR 381-86. Dr. Calkins observed depressed mood, flat affect, and lowered energy. AR 386. He found that Plaintiff has odd beliefs that might offend co-workers on a job site and therefore "might benefit from some training regarding expected behavior in the workplace." AR 386. Dr. Calkins opined that Plaintiff could perform simple work, but noted that Plaintiff "has not been successful in holding any job for long in the past, however, and likely will need some assistance attaining and retaining employment." Id. He diagnosed dysthymic disorder and personality disorder, noting little evidence of anxiety during the evaluation. AR 385-86.

The ALJ gave some weight to Dr. Calkins's opinion but rejected his finding that Plaintiff would need assistance "attaining and retaining employment." AR 25. As an initial matter, the ALJ credited opinions of non-examining State Agency physicians Thomas Clifford, Ph.D., and Dorothy Anderson, Ph.D., who reviewed the medical record and did not find that Plaintiff would need assistance attaining and retaining employment. AR 24, 87-108. The ALJ was therefore required to provide specific, legitimate reasons for rejecting the controverted portion of Dr. Calkins's opinion. Lester, 81 F.3d at 830.

As a first reason for rejecting Dr. Calkins's opinion, the ALJ noted that it was largely based on Plaintiff's subjective reports. AR 25. Although the ALJ is entitled to reject a physician's opinion that is primarily based on a claimant's subjective reports when the claimant is properly found not credible, Dr. Calkins based this portion of his opinion not on Plaintiff's subjective complaints, but on his employment history. AR 386 (written summary from Dr. Calkins noting that his opinion was based on the fact that Plaintiff was not "successful in holding any job for long in the past"). Plaintiff alleged disability beginning in 2009, and although he was consistently employed before 2009, the record confirms that he has not been successful in holding a job since his alleged onset date. See AR 25, 220, 231. Dr. Calkins's opinion thus was supported by the objective evidence in the record, not merely Plaintiff's subjective reports.[2]

The Commissioner argues that the ALJ was nevertheless entitled to reject Dr. Calkins's conclusion because it was based on "non-medical factors," namely, Plaintiff's arrest record. It is apparent from an examination of the entire record, however, that Plaintiff's legal history is inextricably related to his mental impairments. See AR 381-86. Thus, Dr. Calkins's reliance on evidence that Plaintiff has had difficulty in holding a job since his alleged onset date does not

[2] Further, as discussed below, the ALJ did not provide legally sufficient reasons for rejecting Plaintiff's subjective symptom testimony.

constitute reliance on "non-medical factors." *Sanchez v. Sec'y of Health*, 812 F.2d 509, 511 (9th Cir. 1987) (ALJ may reject a treating doctor's opinion because it relied on "non-medical factors" such as the claimant's age and lack of formal education). As noted above, Dr. Calkins also based his opinion on his personal observations of flat affect, depressed mood, and low energy. AR 386. On this record, the ALJ's rejection of Dr. Calkins's opinion was not supported by substantial evidence in the record. The ALJ thus erred in rejecting Dr. Calkins's opinion that Plaintiff would require assistance attaining and retaining employment.

B. Plaintiff's Testimony

Plaintiff also argues that the ALJ improperly evaluated his subjective symptom testimony. There is a two-step process for evaluating a claimant's testimony about the severity and limiting effect of the claimant's symptoms. Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009). "First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other symptoms alleged.'" Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). When doing so, "the claimant need not show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom." Smolen, 80 F.3d at 1282.

"Second, if the claimant meets this first test, and there is no evidence of malingering, 'the ALJ can reject the claimant's testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.'" Lingenfelter, 504 F.3d at 1036 (quoting Smolen, 80 F.3d at 1281). It is "not sufficient for the ALJ to make only general findings; he must state which pain testimony is not credible and what evidence suggests the complaints are not

credible." Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993). Those reasons must be "sufficiently specific to permit the reviewing court to conclude that the ALJ did not arbitrarily discredit the claimant's testimony." Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995) (citing Bunnell, 947 F.2d at 345-46).

Effective March 16, 2016, the Commissioner superseded Social Security Rule ("SSR") 96-7p governing the assessment of a claimant's "credibility" and replaced it with a new rule, SSR 16-3p. See SSR 16-3p, available at 2016 WL 1119029. SSR 16-3p eliminates the reference to "credibility," clarifies that "subjective symptom evaluation is not an examination of an individual's character," and requires the ALJ to consider of all of the evidence in an individual's record when evaluating the intensity and persistence of symptoms. Id. at *1-2. The Commissioner recommends that the ALJ examine "the entire case record, including the objective medical evidence; an individual's statements about the intensity, persistence, and limiting effects of symptoms; statements and other information provided by medical sources and other persons; and any other relevant evidence in the individual's case record." Id. at *4. The Commissioner recommends assessing: (1) the claimant's statements made to the Commissioner, medical providers, and others regarding the claimant's location, frequency and duration of symptoms, the impact of the symptoms on daily living activities, factors that precipitate and aggravate symptoms, medications and treatments used, and other methods used to alleviate symptoms; (2) medical source opinions, statements, and medical reports regarding the claimant's history, treatment, responses to treatment, prior work record, efforts to work, daily activities, and other information concerning the intensity, persistence, and limiting effects of an individual's symptoms; and (3) non-medical source statements, considering how consistent those statements

are with the claimant's statements about his or her symptoms and other evidence in the file. See id. at *6-7.

The ALJ's credibility decision may be upheld overall even if not all of the ALJ's reasons for rejecting the claimant's testimony are upheld. See Batson, 359 F.3d at 1197. The ALJ may not, however, make a negative credibility finding "solely because" the claimant's symptom testimony "is not substantiated affirmatively by objective medical evidence." Robbins, 466 F.3d at 883.

At the administrative hearing, Plaintiff testified that he could not work in high-stress environments due to anxiety and depression and that he has difficulty concentrating and dealing with authority figures. AR 18-19, 52-53, 56. Plaintiff stated that he hallucinates, experiences "blackout episodes," and dissociative events. AR 18-55-56.

In his written decision, the ALJ considered but rejected Plaintiff's testimony to the extent that it conflicted with the RFC, following the two-step process articulated by the Ninth Circuit. AR 19-28; Vasquez, 572 F.3d at 591. As a first reason for rejecting Plaintiff's testimony, the ALJ noted that Plaintiff's activities of daily living contradicted his testimony regarding his debilitating mental symptoms and ability to concentrate. AR 28. An ALJ may discount a claimant's testimony if it is inconsistent with the claimant's daily activities. Molina v. Astrue, 674 F.3d 1104, 1112-13 (9th Cir. 2012). For example, Plaintiff appeared to spend most of his time reading novels while in jail, worked in a kitchen, and lived in a dormitory with other inmates. AR 20, 28, 50. After he was released from jail, Plaintiff attended college part-time, volunteered at Sisters of the Road Café, and spent his free time dancing and socializing with a friend. AR 20, 361. The ALJ found that these activities conflicted with Plaintiff's allegations of disabling mental limitations. As Plaintiff expressed in his testimony, however, he only had

symptoms around people he found "ignorant," and did not deny all social interaction. AR 55, 257. Further, the fact that Plaintiff lived in a dormitory with other inmates not by his own choice is not a clear and convincing reason to reject his testimony. Finally, Plaintiff only attended college part-time; his ability to attend classes some of the time does not contradict his testimony of severe mental impairments.

Second, the ALJ noted that Plaintiff's description of his hallucinations was vague. AR 28. This was not a valid reason for rejecting Plaintiff's testimony. Multiple providers diagnosed Plaintiff with dissociative disorder and schizotypal personality disorder, and his symptoms have been consistent throughout the record. See AR 350, 354, 382, 439, 590. The fact that Plaintiff was not able to provide a clear description of his hallucinations does not, on this record, undermine his testimony.

Third, the ALJ noted that Plaintiff's primary barrier to employment was not his alleged disability, but rather his criminal offense record. AR 28. The ALJ may reject the testimony of a claimant that stopped work for reasons other than their alleged symptoms and limitations. Bruton v. Massanari, 268 F.3d 824, 828 (9th Cir. 2001). At the hearing, Plaintiff admitted that he stopped working at his last job as a roofer because he was arrested and incarcerated. AR 28, 45. Similarly, Plaintiff stopped attending college because he was arrested on criminal charges. AR 28, 43. As discussed above, however, Plaintiff's criminal history is linked to his history of mental health symptoms and limitations. Thus, the fact that Plaintiff's criminal record interfered with his ability to work was not a clear and convincing reason to reject his testimony.

Fourth, the ALJ found that Plaintiff was not credible because he did not accept responsibility for his crimes and violated his parole by drinking and watching pornography. AR 27. As the Commissioner's regulations clarify, "subjective symptom evaluation is not an

examination of an individual's character." SSR 16-3p, available at 2016 WL 1119029. Again, it is apparent on this record that Plaintiff's behaviors and attitudes towards his crimes are symptoms of his mental health disorders. On this record, Plaintiff's behaviors and attitudes support, rather than undermine, his testimony that his mental symptoms are too severe for him to be able to maintain substantial gainful employment.

The ALJ also found that Plaintiff's testimony was not supported by the objective medical evidence. Lack of objective medical support can support a finding that a claimant is not credible but does not provide an independently sufficient reason for rejecting a claimant's testimony. Because no other clear and convincing reasons were present to support the ALJ's analysis of Plaintiff's testimony, lack of objective findings does not support the ALJ's credibility determination. In sum, the ALJ's rejection of Plaintiff's testimony was error.

C. Remand

Within the Court's discretion under 42 U.S.C. § 405(g) is the "decision whether to remand for further proceedings or for an award of benefits." Holohan, 246 F.3d at 1210 (citation omitted). Although a court should generally remand to the agency for additional investigation or explanation, a court has discretion to remand for immediate payment of benefits. Treichler v. *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099-1100 (9th Cir. 2014). The issue turns on the utility of further proceedings. A remand for an award of benefits is appropriate when no useful purpose would be served by further administrative proceedings or when the record has been fully developed and the evidence is insufficient to support the Commissioner's decision. Id. at 1100. A court may not award benefits punitively and must conduct a "credit-as-true" analysis on evidence that has been improperly rejected by the ALJ to determine if a claimant is disabled under the Act. Strauss v. Comm'r of Soc. Sec. Admin., 635 F.3d 1135, 1138 (9th Cir. 2011).

In the Ninth Circuit, the "credit-as-true" doctrine is "settled" and binding on this Court. Garrison v. Colvin, 759 F.3d 995, 999 (9th Cir. 2014). The United States Court of Appeals for the Ninth Circuit articulates the rule as follows:

> The district court must first determine that the ALJ made a legal error, such as failing to provide legally sufficient reasons for rejecting evidence. If the court finds such an error, it must next review the record as a whole and determine whether it is fully developed, is free from conflicts and ambiguities, and all essential factual matters have been resolved. In conducting this review, the district court must consider whether there are inconsistencies between the claimant's testimony and the medical evidence in the record, or whether the government has pointed to evidence in the record that the ALJ overlooked and explained how that evidence casts into serious doubt the claimant's claim to be disabled. Unless the district court concludes that further administrative proceedings would serve no useful purpose, it may not remand with a direction to provide benefits.
>
> If the district court does determine that the record has been fully developed and there are no outstanding issues left to be resolved, the district court must next consider whether the ALJ would be required to find the claimant disabled on remand if the improperly discredited evidence were credited as true. Said otherwise, the district court must consider the testimony or opinion that the ALJ improperly rejected, in the context of the otherwise undisputed record, and determine whether the ALJ would necessarily have to conclude that the claimant were disabled if that testimony or opinion were deemed true. If so, the district court may exercise its discretion to remand the case for an award of benefits. A district court is generally not required to exercise such discretion, however. District courts retain flexibility in determining the appropriate remedy and a reviewing court is not required to credit claimants' allegations regarding the extent of their impairments as true merely because the ALJ made a legal error in discrediting their testimony.

Dominguez v. Colvin, 808 F.3d 403, 407-08 (9th Cir. 2015) (internal citations and quotation marks omitted).

No outstanding issues remain to be decided in this case before a finding of disability can be made. The ALJ failed to provide legally sufficient reasons for rejecting Plaintiff's testimony

or the medical opinion of Dr. Calkins. When the erroneously rejected evidence is credited as true, it is clear that the ALJ would be required to find Plaintiff disabled. Remand for the immediate payment of benefits is therefore appropriate.

CONCLUSION

For the reasons articulated above, the ALJ's decision is reversed and remanded for the immediate payment of benefits.

IT IS SO ORDERED.

DATED this 3rd day of April, 2017.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge