IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

NICOLE LARSON,

Plaintiff, No 6:13-cv-01096-ST

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant. ORDER

HERNÁNDEZ, District Judge:

Magistrate Judge Stewart issued a Findings and Recommendation [21] on February 17, 2015, in which she recommends that this Court reverse the Commissioner's decision to deny Disability Insurance Benefits to Plaintiff Nicole Larson and remand the case for an award of benefits. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Defendant filed timely objections to the Magistrate Judge's Findings & Recommendation. When any party objects to any portion of the Magistrate Judge's Findings &

Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Defendant raises the following objections to the Findings and Recommendation: (1) Judge Stewart exceeded the scope of judicial review; (2) Judge Stewart relied on an improper standard for evaluating the medical opinions; and (3) awarding benefits is not appropriate, even if the ALJ committed harmful error.

I have carefully considered Defendant's objections. I adopt Judge Stewart's Findings and Recommendation, except that I remand the case for further proceedings and I clarify the proper standard of review for the medical opinions of Dr. Torguson and Dr. Phillips. I have also reviewed the pertinent portions of the record *de novo* and find no other errors in the Magistrate Judge's Findings & Recommendation.

I agree with Judge Stewart's finding that the new medical evidence, Dr. Lippincott's report and diagnosis, deprived the ALJ's decision of substantial evidence. However, I believe that further proceedings would be useful. See Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1101 (9th Cir. 2014) ("Administrative proceedings are generally useful where the record has not been fully developed, there is a need to resolve conflicts and ambiguities, or the presentation of further evidence ... may well prove enlightening in light of the passage of time.") (internal quotations and citations omitted). I remand the case for the ALJ to conduct a new hearing, further develop the record, include Dr. Lippincott's diagnosis, and issue a new decision.

As to the proper standard of review for the medical opinions of Dr. Torguson and Dr. Phillips, Defendant correctly argues that the ALJ was required to provide "specific and legitimate" reasons for rejecting their opinions, not "clear and convincing" reasons. Dr.

Torguson and Dr. Phillips are treating physicians. The opinions of treating physicians should be given more weight than the opinions of physicians who do not treat the claimant. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007) (citing Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended)). Where the treating physician's opinion is not contradicted by another physician, it may be rejected only for "clear and convincing" reasons supported by substantial evidence in the record. Id. (internal quotation marks omitted). Here, however, Dr. Torguson's and Dr. Phillips' opinions were contradicted by other physicians in the record. In such a situation, the ALJ was required to provide "specific and legitimate reasons" supported by substantial evidence in the record in order to reject the treating physicians' opinions. Lester, 81 F.3d at 830.

CONCLUSION

The Court adopts in part and does not adopt in part Magistrate Judge Stewart's Findings & Recommendation [21]. Accordingly, the Commissioner's final decision is reversed and remanded for further administrative proceedings.

IT IS SO ORDERED.

DATED this 28 day of April, 2015.

Marco Hernandez

MARCO A. HERNANDEZ
United States District Judge