UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

ALICIA D. McINTURFF, Plaintiff, v. CAROLYN W. COLVIN, Acting Commissioner of Social Security Administration, Defendant.	NO: 1:14-CV-3001-TOR ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 18, 19. Plaintiff is represented by D. James Tree. Defendant is represented by Nicole A. Jabaily. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* at 1111. An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

FIVE-STEP SEQUENTIAL EVALUATION PROCESS

A claimant must satisfy two conditions to be considered "disabled" within the meaning of the Social Security Act. First, the claimant must be "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be "of such severity that he is not only unable to do his previous work[,] but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. § 1382c(a)(3)(B).

The Commissioner has established a five-step sequential analysis to determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)–(v). At step one, the Commissioner considers the claimant's work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in

"substantial gainful activity," the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(b).

If the claimant is not engaged in substantial gainful activities, the analysis proceeds to step two. At this step, the Commissioner considers the severity of the claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from "any impairment or combination of impairments which significantly limits [his or her] physical or mental ability to do basic work activities," the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy this severity threshold, however, the Commissioner must find that the claimant is not disabled. *Id.*

At step three, the Commissioner compares the claimant's impairment to several impairments recognized by the Commissioner to be so severe as to preclude a person from engaging in substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe as or more severe than one of the enumerated impairments, the Commissioner must find the claimant disabled and award benefits. 20 C.F.R. § 416.920(d).

If the severity of the claimant's impairment does meet or exceed the severity of the enumerated impairments, the Commissioner must pause to assess the claimant's "residual functional capacity." Residual functional capacity ("RFC"), defined generally as the claimant's ability to perform physical and mental work

activities on a sustained basis despite his or her limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

At step four, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing work that he or she has performed in the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education and work experience. *Id.* If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

The claimant bears the burden of proof at steps one through four above. *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616F.3d 1068, 1071 (9th Cir. 2010). If the analysis proceeds to step five, the burden shifts to the Commissioner to

establish that (1) the claimant is capable of performing other work; and (2) such work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

ALJ FINDINGS

Plaintiff filed an application for supplemental security income on May 24, 2010. Tr. 22, 139–46. Plaintiff's claim was denied initially and on reconsideration. Tr. 82–85, 89–90. Plaintiff requested a hearing before an ALJ which was held on June 6, 2012. Tr. 36–71. The ALJ rendered a decision denying Plaintiff supplemental security income on August 29, 2012. Tr. 22–31.

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since May 24, 2010, the application date. Tr. 24. At step two, the ALJ found that Plaintiff had the following severe impairment: degenerative disk disease with disk herniations. *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. Tr. 25.

The ALJ then concluded that Plaintiff's had the RFC to

> perform a less than full range of sedentary work as defined in 20 CFR 416.967(a). The claimant can lift and carry up to 10 pounds, stand and/or walk for 2 hours in an 8-hour workday, and sit in 1-hour increments up to 8 hours in an 8-hour workday. She can occasionally perform balancing, stooping, kneeling, crouching, and climbing of ramps and stairs but is limited to no climbing of ropes, ladders, or scaffolds and no crawling. The claimant should avoid work at unprotected heights or around dangerous moving machinery. She

> should further avoid exposure to extremes of temperature changes, extremes of cold or heat, and moderate exposure to vibration. She can remember, understand, and carry out simple and detailed, but not complex, tasks or instructions typical of occupations with a situational vocational preparation (SVP) of 1 or 2.

Tr. 25–26. The ALJ found, at step four, that Plaintiff was unable to perform any past relevant work. Tr. 29–30. At step five, the ALJ found that, considering Plaintiff's age, education, work experience, and RFC, there exist significant numbers of jobs in the national economy that Plaintiff could perform in representative occupations such as assembly and packaging. Tr. 30–31. On that basis, the ALJ concluded that Plaintiff was not disabled as defined in the Social Security Act. Tr. 31.

The Appeals Council denied Plaintiff's request for review on November 7, 2013, making the ALJ's decision the Commissioner's final decision for purposes of judicial review. Tr. 1–6; 20 C.F.R. §§ 404.981, 416.1484, 422.210.

ISSUES

Plaintiff essentially raises two issues for review. Plaintiff argues that the ALJ erred by rejecting Plaintiff's testimony based upon erroneous credibility findings. ECF No. 18 at 13–19. Plaintiff also argues that the ALJ erred by failing to consider or improperly rejecting four medical opinions. ECF No. 18 at 4–13.

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DISCUSSION

A. Plaintiff's Credibility

Plaintiff contends that the ALJ erred by rejecting Plaintiff's subjective complaints about the severity of impairments caused by her back pain. ECF No. 18 at 13. Plaintiff argues that the ALJ based her credibility determination upon "erroneous credibility findings," and that were Plaintiff's testimony credited, as Plaintiff contends it should have been, "it becomes clear that the claimant is incapable of working on a regular and continuing basis and thus is disabled according to the statutory definition." *Id.* at 13, 19.

In social security proceedings, a claimant must prove the existence of a physical or mental impairment with "medical evidence consisting of signs, symptoms, and laboratory findings." 20 C.F.R. §§ 416.908, 416.927. A claimant's statements about his or her symptoms alone will not suffice. 20 C.F.R. §§ 416.908, 416.927. Once an impairment has been proven to exist, an ALJ "may not reject a claimant's subjective complaints based solely on a lack of objective medical evidence to fully corroborate the alleged severity of pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the impairment "could reasonably be expected to produce [the] symptoms," the claimant may offer a subjective evaluation as to the severity of the impairment. *Id.* This rule

recognizes that the severity of a claimant's symptoms "cannot be objectively verified or measured." *Id.* at 347 (quotation and citation omitted).

However, an ALJ may conclude that the claimant's subjective assessment is unreliable, so long as the ALJ makes "a credibility determination with findings sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002); *see also Bunnell*, 947 F.2d at 345 ("[A]lthough an adjudicator may find the claimant's allegations of severity to be not credible, the adjudicator must specifically make findings which support this conclusion."). In making such a determination, the ALJ may consider, *inter alia*: (1) the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's testimony or between her testimony and her conduct; (3) the claimant's daily living activities; (4) the claimant's work record; and (5) testimony from physicians or third parties concerning the nature, severity, and effect of the claimant's condition. *Thomas*, 278 F.3d at 958. If there is no evidence of malingering, the ALJ's reasons for discrediting the claimant's testimony must be "specific, clear and convincing." *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (quotation and citation omitted). The ALJ "must specifically identify the testimony she or he finds not to be credible and must explain what evidence undermines the testimony." *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001).

Here, the ALJ found that the medical evidence confirmed the existence of degenerative disk disease and ongoing chronic pain. Tr. 26–27. The ALJ did not credit Plaintiff's testimony about the severity of her pain and its impact on her functional capacity. There is no evidence of malingering in this case, and therefore the Court must determine whether the ALJ provided clear and convincing reasons not to credit Plaintiff's testimony of the limiting effect of her chronic pain. *Chaudhry*, 688 F.3d at 672. The Court concludes that the ALJ did provide clear and convincing reasons.

First, the ALJ found that the while the objective medical evidence confirmed the presence of chronic pain, "the records contain no objective findings that corroborate [Plaintiff's] allegations of disabling functional limitations." Tr. 27. The ALJ noted that Plaintiff's physical examinations showed ongoing tenderness in the lumbar spine with pain on extension and flexion, but "no focal weakness or atrophy in the extremities, with normal reflexes throughout." Tr. 27, 285. The ALJ noted that in a December 2009 examination, Dr. Daniel Kwon found Plaintiff had a "mildly positive straight leg raise test, but not classic with radicular pain but rather just kind of radiating symptoms in the posterior thighs." Tr. 27, 285. Examinations in April and July 2011 showed negative straight leg testing and normal heel to toe walking. Tr. 27, 281, 282. Plaintiff's primary care physician,

Dr. Natalia Luera, consistently noted that Plaintiff had normal gait and station and was not in apparent distress. Tr. 27, 234, 235, 236, 237.

Indeed, the ALJ found that the medical records supported a conclusion that Plaintiff's pain was well managed by her medications. Tr. 27. An independent review of the record confirms the ALJ's finding that Plaintiff's physicians repeatedly noted that her medication was effective in controlling her pain level and keeping it stable. *E.g.*, Tr. 273, 281, 282 ("A combination of her medications does seem to control her medical problems, give her moderate relief of her pain itself, and give her the ability to function."). In both March and May 2011, Plaintiff told her treating physicians that the pain medication was working well. Tr. 27, 419 (May 2011), 465 (March 2011).[1]

[1] The ALJ also relied on Plaintiff's reported activities of camping, huckleberry and mushroom picking, attending a gardening club, and swimming that were inconsistent with someone claiming total disability. Tr. 28. Plaintiff contends this was in error because a claimant need not be "utterly incapacitated" to meet the definition of disabled. ECF No. 13 at 16 (quoting *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001)). But those activities, the ALJ found, were inconsistent with Plaintiff's level of claimed disability and consistent with the finding that her pain medications allow her to perform daily activities without significant pain.

"While subjective pain testimony cannot be rejected on the sole ground that it is not fully corroborated by objective medical evidence, the medical evidence is still a relevant factor in determining the severity of the claimant's pain and its disabling effects." *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Moreover, "[c]ontradiction in the medical record is a sufficient basis for rejecting the claimant's subjective testimony." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). The ALJ did not err by basing her credibility determination, in part, upon the objective medical evidence which did not support the debilitating pain Plaintiff subjectively claimed, but in fact contradicted it.

Second, the ALJ found Plaintiff's statements about her usage of pain medications were inconsistent with her drug screening. Tr. 28. Drug screenings of Plaintiff were negative for Oxycodone in January, February, and March 2012, as well as in December 2009 and March 2010. Tr. 252, 253, 432, 433, 434. While Plaintiff tested positive in April and May 2010 (Tr. 250, 251), the ALJ found the multiple negative tests suggested that "the claimant may have overstated her symptoms as they were not of such severity as to require the use of [her prescription] narcotics . . . ." Tr. 28. An ALJ may properly rely upon inconsistencies in a claimant's claimed limitations and a claimant's conduct. *Thomas*, 278 F.3d at 958–59. The ALJ found Plaintiff's failure to take her medications was inconsistent with her claimed level of pain. Such an inadequately

explained failure to follow a prescribed course of treatment "can cast doubt on the sincerity of the claimant's pain testimony." *Fair v. Brown*, 885 F.2d 597, 603 (9th Cir. 1989). The ALJ did not err in relying upon these inconsistencies in weighing Plaintiff's credibility.

The ALJ also found that Plaintiff's work history reflected a "pattern of marginal intermittent and part-time work . . . indicating that her impairments may not be the sole reason for her current inability to sustain full-time competitive employment, and that a lack of interest in working, unrelated to any medical condition, may account for her current lack of employment." Tr. 28. In support of this conclusion, the ALJ relied upon two sections of the record in which Plaintiff, first, requested a note from her physician stating that she could not work because of her pain and so she could take care of her daughter, Tr. 245, and, second, where Plaintiff reported it was hard for her to figure out how to work with a high-needs four-year-old child at home, Tr. 267. Plaintiff objects to the ALJ's conclusion because "[t]here is no evidence [Plaintiff] lied about her pain to stay home with her daughter but merely made her doctor aware of her situation." ECF No. 18 at 18.

The ALJ inferred from Plaintiff's sporadic work history—which she does not contest—and from Plaintiff's comments about wanting to stay home with her child, that her lack of employment was not due *solely* to Plaintiff's medical impairments. Despite Plaintiff's protestations, the ALJ's inference was not

unreasonable, and must therefore be upheld. *See, e.g.*, *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) ("[T]he Commissioner's findings are upheld if supported by inferences reasonably drawn from the record."); *Thomas*, 278 F.3d at 959 (stating an ALJ may consider both work history and inconsistent statements). The ALJ's credibility determination was based upon specific, clear, and convincing reasons sufficient for this Court to conclude that the determination was not arbitrary. *See Thomas*, 278 F.3d at 958–59. As such, the ALJ properly evaluated and rejected Plaintiff's testimony.

B. **Medical Opinions**

Plaintiff also contends the ALJ erred in rejecting the opinions of four medical providers. A treating physician's opinions are entitled to substantial weight in social security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir.2009). If a treating or examining physician's opinion is uncontradicted, an ALJ may reject it only by offering "clear and convincing reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). However, the ALJ need not accept a physician's opinion that is "brief, conclusory and inadequately supported by clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation omitted). An ALJ may also reject a treating physician's opinion which is "based to a large extent on a claimant's self-

reports that have been properly discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (internal and quotation and citation omitted).

1. Dr. Natalia Luera

Dr. Natalia Luera was Plaintiff's treating physician. Tr. 29. In July 2012, Dr. Luera opined that Plaintiff would need to lie down two or three times per day for forty-five to seventy-five minutes each time because of Plaintiff's chronic pain. Tr. 503. The ALJ gave little weight to this opinion because it was based on Plaintiff's subjective complaints made that same day. Tr. 29, 502 ("The patient states she must lie down 2–3 x per day for 45–75 minutes each session due to increased pain."). The ALJ discounted Plaintiff's subjective statements as incredible, and may properly assign little weight to Dr. Luera's opinion which is based upon Plaintiff's self-reporting. *Tommasetti*, 533 F.3d at 1041. The ALJ also assigned Dr. Luera's opinion little weight because it was inconsistent with her overall opinion. Tr. 29. Dr. Luera opined that Plaintiff's condition would not deteriorate from regular and continuous work, though Plaintiff may miss three days a month due to her medical condition. Tr. 504. As the ALJ noted, Dr. Luera provided no clinical support for the limitations listed. Tr. 29. The Court's independent review of the record confirms that the treatment notes make no mention of such a debilitating limitation. Contrary to Plaintiff's assertion, the ALJ did not reject Dr. Luera's opinion merely because Dr. Luera considered subjective

symptoms in her analysis. ECF No. 18 at 6. The ALJ accepted portions of the opinion, but rejected the portion that was both inconsistent with the record and founded only upon Plaintiff's subjective complaints.

The ALJ did not err in rejecting Dr. Luera's conclusory opinion that was inadequately supported by the record. *See Bray*, 554 F.3d at 1228.

2. Dr. Jennifer Lentz

The ALJ gave limited weight to the opinion of Dr. Jennifer Lentz that Plaintiff was only capable of sedentary work from one to ten hours per week. Tr. 29. The ALJ did not credit this opinion because it was entered upon a disability form that Dr. Lentz filled out alongside Plaintiff, indicating that Dr. Lentz may have been relying more on Plaintiff's subjective complaints than on objective clinical findings. Tr. 29, 206–08, 240. Plaintiff contends that Dr. Lentz's opinion is not based upon Plaintiff's subjective statements, but upon the MRI results. ECF No. 18 at 8.

Plaintiff's MRI and x-ray results confirm the ALJ's finding that Plaintiff suffered from degenerative disk disease. However, these results alone do not confirm the severity of Plaintiff's limitations. The ALJ agreed with Dr. Lentz in part and found that Plaintiff was limited to a sedentary RFC assessment. Tr. 29. But, the ALJ concluded that a more severe limitation was inconsistent with the medical record. Plaintiff has not pointed to any clinical findings or treatment notes

of Dr. Lentz that would indicate that Plaintiff was as severely limited in her functional capacity as indicated on the disability form. Thus, the ALJ did not err in assigning limited weight to an opinion unsupported by clinical evidence and which opinion appears to be based on Plaintiff's subjective complaints that have been discounted.

3. Dr. Daniel Kwon

Plaintiff asserts that the ALJ failed to consider the findings and opinions of Dr. Daniel Kwon. ECF No. 18 at 10. Specifically, Plaintiff argues that Dr. Kwon's opinions support Dr. Luera's and Dr. Lentz's opinions and that his finding of "chronic lumbalgia" should have been listed as a step two severe impairment. ECF No. 18 at 11. In reply, Plaintiff again contends the ALJ failed to discuss or weigh the medical findings and opinions of Dr. Kwon. ECF No. 22 at 4.

Defendant argues the ALJ did discuss Dr. Kwon's findings, that Plaintiff fails to show any limitations opined by Dr. Kwon that have not been incorporated into the ALJ's RFC assessment, and that "chronic lumbalgia" is another term for low back pain, so it is not properly listed as an impairment, but rather a symptom. ECF No. 19 at 16–17.

Dr. Kwon treated Plaintiff at the Water's Edge Pain Relief Institute. *See, e.g.*¸ Tr. 287. While the ALJ may not have cited Dr. Kwon by name, the ALJ discussed and cited to the reports of Dr. Kwon and others at Water's Edge by

reference to them in Exhibit 10F in the administrative record. Tr. 27–28. Plaintiff has not otherwise identified any opinion of Dr. Kwon that has not been addressed by the ALJ's RFC assessment.

Plaintiff's contention that "chronic lumbalgia" should have been considered an impairment at step two is likewise harmless. Lumbalgia is literally lumbar (lower back) pain. In this case, Plaintiff's chronic lower back pain is a symptom of her degenerative disk disease. It would not properly be considered a separate impairment at step-two. But, the ALJ properly considered Plaintiff's chronic pain as a symptom of her impairment while determining Plaintiff's RFC. Thus, no error has been shown on this record.

4. Paul Schneider, Ph.D.

Plaintiff contends that the ALJ also erred by failing to consider the opinion of Paul Schneider, Ph.D., who performed a psychological evaluation of Plaintiff in December 2010. ECF No. 18 at 12. Specifically, Plaintiff contends that the ALJ failed to consider that Dr. Schneider diagnosed her with a mood disorder in addition to chronic pain syndrome. *Id.*

Defendant counters that the ALJ did cite to Dr. Schneider's opinion and that Plaintiff has failed to show any harmful error. ECF No. 19 at 17–18.

Dr. Schneider's single report was included as part of Plaintiff's Water's Edge reports and treatment notes in Exhibit 10F (Tr. 266–70), and was cited twice

by the ALJ in his findings. Tr. 28. Dr. Schneider opined that Plaintiff suffered from "[m]ood disorder, not otherwise specified." Tr. 270. The ALJ did not specifically discuss these findings of Dr. Schneider's. While Plaintiff raised no challenge to the ALJ's step-two evaluation of her alleged mental impairments, the ALJ discussed, at step-two, Plaintiff's alleged mental impairments. Tr. 24. The ALJ found that although Plaintiff "alleged disability due to depression, treatment records show [Plaintiff] to receive no more than medication management from her primary care physician. She is not under the care of a mental health professional nor is she undergoing counseling services." *Id.* The ALJ gave significant weight to the opinion of Jeff Teal, Ph.D., who performed a consultative examination of Plaintiff, and concluded that her depressive symptoms would not significantly interfere with sustained full-time employment. Tr. 24, 214.

Plaintiff has not identified anything in Dr. Schneider's opinion—other than the mood disorder diagnosis—that the ALJ failed to discuss. The Court's review of Dr. Schneider's report confirms that the relevant, material evidence was adequately discussed by the ALJ at step two. Plaintiff has failed to show how the ALJ erred by not specifically discussing Dr. Schneider's report in more detail. As such, any error in not discussing Dr. Schneider's report is harmless.

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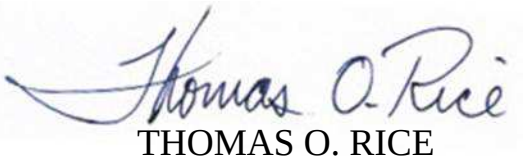
IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment (ECF No. 18) is **DENIED**.
2. Defendant's Motion for Summary Judgment (ECF No. 19) is **GRANTED**.

The District Court Executive is hereby directed to file this Order, enter Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

DATED December 30, 2014.



THOMAS O. RICE
United States District Judge