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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SANDRA RAYMOND, on behalf of  
A.B.R., a minor child,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
Commissioner of the Social Security  
Administration,  
Defendant.

No. 1:16-cv-3056-SAB

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 13 (Plaintiff) and 14 (Defendant). The Court also considered Plaintiff’s reply, ECF No. 15, and the administrative record as a whole, ECF No. 9. No oral argument was held on the matter. For the reasons below, the Court **GRANTS** Plaintiff’s motion for summary judgment, **DENIES** Defendant’s motion for summary judgment, **REVERSES** the ALJ, and **REMANDS** the case for an award of benefits.

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**ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY . . . ^ 1**

1 **JURISDICTION**

2 On August 9, 2012, Plaintiff filed an application for disabled child  
3 supplemental security income (SSIDC, 42 U.S.C. § 1383(c)(3)) on behalf of her  
4 minor child, ABR. Plaintiff alleges an onset date of October 29, 2001.

5 A hearing was held on the matter before an Administrative Law Judge  
6 (“ALJ”) in Seattle, Washington on September 11, 2014. On November 21, 2014,  
7 the ALJ issued an opinion concluding that ABR had severe impairments including  
8 attention deficit hyperactivity disorder (“ADHD”), oppositional defiant disorder  
9 (“ODD”), and autism, but that none of these impairments met the qualifications of  
10 a listing. The Appeals Council denied review, causing the ALJ’s opinion to  
11 become the final decision of the Commissioner of the Social Security  
12 Administration. Plaintiff filed a timely appeal with the United States District Court  
13 for the Eastern District of Washington on April 18, 2016. The matter is before this  
14 Court under 42 U.S.C. § 405(g).

15  
16 **SEQUENTIAL EVALUATION PROCESS**

17 The Social Security Administration uses a three step sequential process to  
18 determine whether a child is disabled for purposes of collecting SSIDC. First, an  
19 ALJ determines whether the child is engaged in significant gainful activity. The  
20 ALJ found here that ABR was not engaged in such activity. Next, the ALJ  
21 determines whether the child has severe impairments, and here, the ALJ concluded  
22 that ABR suffers from ADHD, ODD, and autism. Finally, the ALJ concludes  
23 whether the child’s impairments meet the requirements of the available listings.  
24 See 20 C.F.R. §§ 416.924(d) & 416.926(a); SSR 09-2p. Here, the ALJ concluded  
25 that ABR did not meet a listing.

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1 with autism at age nine. She carries generally good grades, though she still  
2 exhibits symptoms.

3 ABR began middle school at Grandview School District in February 2007,  
4 while continuing to receive occupational therapy and behavioral therapy. By May  
5 2007 her teacher gave her the highest rating in 3 diagnostic criteria for Inattention  
6 under the DSM-IV. ABR's mother gave her the highest rating in 6 inattention  
7 criteria and 7 hyperactivity/impulsivity criteria.

8 From January 2010 to May 2010, ABR periodically visited Dr. Moataz El  
9 Refaie for appointments; she displayed instances of hyperactivity, anger, violence,  
10 and bed-wetting, though she demonstrated some improvement. She was assigned a  
11 GAF score of 50. She was reevaluated in May 2010 by Dr. Patrick Walsh, who  
12 found she did well academically, but could lose focus if not taking medication.

13 When school let out and the family moved to a new house in the summer of  
14 2010, ABR apparently lost some progress: she began suffering meltdowns and  
15 became combative, though the situation improved by September when she began  
16 school again. Through April 2011 there was little change (or even slight  
17 improvements) in her behavior, though her GAF score did not change.

18 ABR was diagnosed with autism in May 2011 at age nine by Dr. Diane  
19 Liebe. Around the same time, ABR's mother rated her high for aggressiveness,  
20 anxiety/depression, thought problems, attention problems, and rule-breaking.  
21 Dr. Liebe rated ABR in the "autism" range for communication and reciprocal  
22 social interactions, eventually qualify for seven out of twelve diagnostic criteria.

23 A behavioral therapist, Terry Allen, who had worked with ABR since the  
24 age of two, evaluated ABR's mental health through December 1, 2011. He  
25 assigned a GAF score of 45-50. In domain one, Allen found ABR had an impaired  
26 ability to comprehend and apply knowledge, and that she was markedly impaired  
27 in her ability to decipher and use social information. In domain two, he found that  
28 ABR can only focus on tasks when medicated. In domain three, he concluded

1 ABR had a markedly impaired ability to navigate social situations. In domain five,  
2 he pointed out that ABR has limited hygienic functioning.

3 Dr. El Refaie was replaced by Dr. George Petzinger in August 2012, and  
4 Heather Judkins, a school counselor, filed out a report in September 2012. ABR  
5 suffered a relapse in some behavioral categories. Her GAF score dropped to 45 by  
6 April 2013.

7 A neighbor, Virginia Chandler, filled a report as well, rating ABR as  
8 marked in domains one and three, and extreme in two, four, five, and six. Dr.  
9 Petzinger evaluated ABR's situation in May 2013. He found marked limitations in  
10 domain three, and found marked limitations in domains two and five without  
11 adequate adult support.

### 12 13 **ISSUES FOR REVIEW**

14 The parties state the issues for review in this case as follows:

15 1. Whether the ALJ provided clear and convincing reasons for discrediting  
16 the claimant;

17 2. Whether the ALJ properly considered medical opinions;

18 3. Whether the ALJ properly considered the opinion of Virginia Chandler;  
19 and

20 4. Whether the ALJ properly concluded Plaintiff is not disabled under the  
21 functional equivalence domains.

### 22 23 **DISCUSSION**

24 1. Whether the ALJ Provided Clear and Convincing Reasons for  
25 Discrediting the Claimant. Where medical information is presented through  
26 testimony,

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1 The ALJ conducts a two-step analysis to assess subjective testimony  
2 where, under step one, the claimant must produce objective medical  
3 evidence of an underlying impairment or impairments that could  
4 reasonably be expected to produce some degree of symptom. If the  
5 claimant meets this threshold and there is no affirmative evidence of  
6 malingering, the ALJ can reject the claimant's testimony about the  
7 severity of her symptoms only by offering specific, clear and  
8 convincing reasons for doing so.

9  
10 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008) (internal quotations  
11 removed). The Plaintiff herself, ABR, did not testify, and instead presented  
12 testimony, evidence, and medical records from various medical professionals,  
13 school personnel, and lay witnesses.

14 The ALJ relied heavily on Dr. Grossman's testimony in reaching the  
15 decision on appeal here, and placed minor weight on a treating medical  
16 professional, and ignored the opinions of two treating physicians and a lay  
17 witness. As discussed below in section two, this structuring of the record was legal  
18 error, and when properly considered, Dr. Grossman's opinion is left without  
19 substantial evidence in the record as support. The proper opinions of the other  
20 witnesses makes the case clearer: ABR's good grades at school only dispel  
21 consideration of one domain for a disability determination (domain one); her  
22 social abilities are limited; and no sufficiently specific, clear, or convincing  
23 reasons are left.

24  
25 2. Whether the ALJ Properly Considered Medical Opinions. A treating  
26 doctor's opinion is owed more weight than that of an examining doctor, and an  
27 examining doctor is owed more weight than a non-examining doctor. Garrison v.  
28 Colvin, 759 F.3d 995, 1012 (9th Cir. 2014). The contradicted opinion of a treating

1 doctor may only be rejected when the decision below describes “specific and  
2 legitimate reasons that are supported by substantial evidence.” *Ryan v. Comm’r of*  
3 *Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008).

4 Dr. El Refaei and Dr. Liebe are treating physicians, and Defendant concedes  
5 that the “decision did not specifically mention” their opinions. It is true that the  
6 commissioner’s decision does not need to “discuss every piece of evidence,”  
7 *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003), but the  
8 failure to account for treating physician opinion is serious, especially when they  
9 contain more than mere GAF score assessments. As Plaintiff points out, the  
10 opinions of these doctors form the bulk of the medical record for several years of  
11 Plaintiff’s life.

12 By refusing to consider treating physicians, the ALJ necessarily refused to  
13 conduct a credibility evaluation, which is identical to the absence of specific  
14 evidence upholding the ALJ’s decision. *Winans v. Bowen*, 853 F.2d 643, 647 (9th  
15 Cir. 1988). This is clear, and potentially reversible, error. *Varney v. Sec’y of Health*  
16 *& Human Servs.*, 859 F.2d 1396, 1400 (9th Cir. 1988) (“[T]he ALJ erred by not  
17 giving specific reasons for disregarding the opinion of a treating physician.”). By  
18 refusing to consider the opinion of these physicians, the ALJ also excluded a large  
19 part of the proper medical record. Because these records provide evidence of the  
20 issues at contest for a determination of disability, the error was harmful. *Reddick v.*  
21 *Chater*, 157 F.3d 715, 725 (9th Cir. 1998).

22 The question becomes, then, whether the administrative record, which  
23 should properly contain the opinions of Dr. El Refaei and Dr. Liebe, allows for a  
24 finding of disability. If the record is incomplete and non-dispositive, remand for  
25 further proceedings is appropriate. *Cotton v. Bowen*, 199 F.2d 1403, 1409 (9th Cir.  
26 1986). If the properly-constituted record allows a dispositive finding of disability,  
27 the proper course is to either affirm the ALJ’s opinion if Plaintiff is not disabled,  
28

1 or reverse the ALJ and order the payment of benefits if Plaintiff is disabled.  
2 Gallant v. Heckler, 753 F.2d 1450, 1457 (9th Cir. 1984).

3       Once the opinions of Dr. Liebe, Dr. El Refaei, and Ms. Chandler are  
4 properly reviewed, the bulk of the record shifts considerably. There is more, and  
5 heavier, evidence weighing against the findings of non-examining consultants  
6 Dr. Grossman, Dr. Fitterer, Dr. Makari, and Dr. Borton, such that “substantial  
7 evidence” in the record no longer supports his finding against disability. In  
8 particular, once the full record is properly balanced, the testimony of Dr. Petzinger  
9 and Terri Allen are properly accorded greater weight and credibility. Though  
10 “appropriate circumstances,” SSR 96-6p, can allow non-examining state  
11 consultants to outweigh the opinion of multiple treating physicians, these  
12 circumstances as described by the Social Security Administration are not present  
13 here. See *id.*, 1996 WL 374180, at \*3 (non-examining consultant’s opinion may be  
14 credited more than treating physician if the “consultant's opinion is based on a  
15 review of a complete case record that includes a medical report from a specialist in  
16 the individual's particular impairment which provides more detailed and  
17 comprehensive information than what was available to the individual's treating  
18 source”).

19       Dr. Petzinger’s opinion is largely consistent with the properly considered  
20 record. He reports on and corroborates a long history of ABR’s strife within her  
21 family, near-constant struggles in the morning and evening, and trouble at school.  
22 The Court is particularly concerned over the conclusion that a child’s academic  
23 performance is outcome determinative to a disability finding. The ability to thrive  
24 in society depends on much more than the rote collection on facts; ABR has  
25 presented difficulty with synthesizing and applying facts to her everyday life. TR  
26 391. The fact that ABR has some number of friends doesn’t erase the  
27 overwhelming conclusion of most people associated with her life that she has  
28 marked trouble connecting with others.



1 Dr. Petzinger found a marked impairment in domain 2 when ABR does not  
2 have significant adult support. He also found a marked impairment in relating with  
3 others, domain three. He found a marked impairment in domain five, self-care.  
4 The weight of the evidentiary record supports these conclusions.

5 The ALJ also accorded little weight to the opinion of Terri Allen, a treating  
6 medical professional, for the stated “germane reason” that her opinion went  
7 against the weight of the evidence. However, as discussed above, the record  
8 radically changes when the improperly excluded evidence of Ms. Chandler,  
9 Dr. Liebe, and Dr. El Refaei are included. Indeed, Allen’s opinion becomes the  
10 guiding paradigm for this case. Allen is familiar with ABR, and has treated her for  
11 years. Allen confirms that ABR still requires help with hygiene, resists her  
12 mother’s commands, and has trouble forming social connections at school. These  
13 tendencies are well-supported by the record. Allen found ABR suffers from a  
14 marked impairment in her ability to navigate social situations, domain three. Allen  
15 also concluded that ABR has a marked inability to decipher and use social  
16 information, and a marked inability in domain five, self-care. As described below,  
17 once all of the proper medical information is considered and the medical evidence  
18 is properly weighed, the Court must conclude that ABR is disabled for purposes of  
19 Social Security benefits.

20  
21 3. Whether the ALJ Properly Considered the Opinion of Virginia Chandler.  
22 A lay witness’ testimony must be considered unless the ALJ “expressly determines  
23 to disregard such testimony and gives reasons germane to each witness for doing  
24 do.” *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). Such an error is harmless if  
25 no reasonable ALJ could reach a different disability determination after crediting  
26 the testimony of the lay witness as true. *Stout v. Comm’r Soc. Sec. Admin.*, 454  
27 F.3d 1050, 1056 (9th Cir. 2006).

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1 The ALJ's opinion does not discuss Ms. Chandler's testimony at all, and by  
2 default cannot present germane reasoning for ignoring it. It is not enough that Ms.  
3 Chandler's testimony only regarded symptoms, *Molina v. Astrue*, 674 F.3d 1104,  
4 1115 (9th Cir. 2012), because a lay witness can provide helpful evidence on  
5 "severity and functioning." SSR 06-3p. Thus it was error not to consider the  
6 opinion.

7 A reasonable ALJ could find Plaintiff disabled if Ms. Chandler's opinion  
8 was credited. Ms. Chandler made detailed assessments of Plaintiff's limitations  
9 and the severity of those limitations, basing them off of the domain system used to  
10 determine disability for autistic minors. Thus, the error was not harmless, and Ms.  
11 Chandler's opinion must be credited.

12  
13 4. Whether the ALJ properly concluded Plaintiff is not disabled under the  
14 functional equivalence domains. When determining whether a minor's autism-  
15 related impairments meets the equivalent of a listing, six domains are considered:  
16 (1) acquiring and using information; (2) attending to and completing tasks; (3)  
17 interacting and relating with others; (4) moving about and manipulating objects;  
18 (5) caring for him- or herself; and (6) health and physical wellbeing. 20 C.F.R.  
19 § 416.9292a. For a listing to be met, the minor must suffer from a marked  
20 limitation in two domains, or an extreme limitation in one domain.

21 The Court now reviews the contested domains (two, three, and five) with  
22 the proper opinions credited. In domain two, the Court concludes that it was error  
23 not to find a marked limitation. ABR is unable to dress or do homework without  
24 guidance, TR 183, and frequently refuses to interact with tasks and the world at  
25 all, TR 28, 287-89. She is incapable of taking medication alone. The weight of  
26 evidence indicates that ABR's limitations interfere with her ability to complete  
27 basic tasks. 20 C.F.R. § 416.92a(h).

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1 The conclusion that ABR does not have a marked limitation in domain three  
2 is error. The third evaluates a minor's ability to create and manage emotional  
3 connections, work with others, withstand criticism, and respect the possessions  
4 and boundaries of others. 20 C.F.R. § 416.926a(i). Though ABR has a few close  
5 friends, the bulk of evidence indicates she struggles in everyday conversation and  
6 social interaction. Low GAF scores in the 40s and 50s, while not dispositive, are  
7 indicative, and provide a quantitative assessment of her lack of reciprocal social  
8 interaction, her difficulty in communicating, her avoidant and dismissive nature,  
9 inability to withstand criticism, her demonstrated lack of respect of physical  
10 boundaries as evidenced by striking and hitting others, and problems with  
11 interpreting facial expressions. TR 48-49, 169, 215, 264, 391, 394, 407, 428-29.

12 Finally, it was error to conclude that ABR was not marked limited in  
13 domain five. This domain evaluates a child's ability to maintain regular emotional  
14 and physical states, take care of his or her own needs and wants, deal with stress,  
15 and care for him- or herself. The record is abundantly and particularly clear that  
16 ABR has at least a marked, and possibly an extreme, limitation in this domain.  
17 Unlike most children her age, ABR is unable to bathe and dress herself, or even  
18 eat, without supervision. She frequently suffers from enuresis, and demonstrates  
19 extreme behavior when her regular patterns are disrupted. TR 183, 287-89, 296-  
20 97, 388, 410-11.

## 21 22 **CONCLUSION**

23 The ALJ did not properly consider the opinions of two treating physicians, a  
24 treating medical professional, and a lay witness. Once these excluded opinions are  
25 incorporated into the evidentiary record, it becomes clear that there was legal error  
26 in determining Plaintiff is not disabled. Because ABR suffers from marked  
27 limitations in domains two, three, and five, she is disabled under 20 C.F.R.  
28 § 416.9292a, and shall be awarded SSIC benefits.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 13, is **GRANTED**.

3 2. Defendant's Motion for Summary Judgment, ECF No. 14, is **DENIED**.

4 3. The decision of the Commissioner denying benefits is **REVERSED** and  
5 the case is **REMANDED** for a determination of benefits.

6 4. The District Court Executive is directed to **ENTER** a judgment in favor  
7 of Plaintiff.

8 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
9 file this Order, provide copies to counsel, and **CLOSE** the file.

10 **DATED** this 27th day of January, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the court seal.

16 Stanley A. Bastian  
17 United States District Judge  
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