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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

RHONDA KAY CHANDLER,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 1:16-cv-03096-MKD

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

ECF Nos. 14, 26

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 14, 26. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 14) and grants Defendant's motion (ECF No. 26).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

1 **JURISDICTION**

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

4 **STANDARD OF REVIEW**

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

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

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

6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
13 impairment must be “of such severity that he is not only unable to do his previous
14 work[,] but cannot, considering his age, education, and work experience, engage in
15 any other kind of substantial gainful work which exists in the national economy.”
16 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 §§ 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R.
3 §§ 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activity, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
12 §§ 404.1520(c); 416.920(c).

13 At step three, the Commissioner compares the claimant’s impairment to
14 severe impairments recognized by the Commissioner to be so severe as to preclude
15 a person from engaging in substantial gainful activity. 20 C.F.R. §§
16 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
17 severe than one of the enumerated impairments, the Commissioner must find the
18 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

19 If the severity of the claimant’s impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
2 defined generally as the claimant’s ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
4 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
5 analysis.

6 At step four, the Commissioner considers whether, in view of the claimant’s
7 RFC, the claimant is capable of performing work that he or she has performed in
8 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
9 If the claimant is capable of performing past relevant work, the Commissioner
10 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
11 If the claimant is incapable of performing such work, the analysis proceeds to step
12 five.

13 At step five, the Commissioner considers whether, in view of the claimant’s
14 RFC, the claimant is capable of performing other work in the national economy.
15 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
16 the Commissioner must also consider vocational factors such as the claimant’s age,
17 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
18 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R.
20 §§ 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to

1 other work, analysis concludes with a finding that the claimant is disabled and is
2 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
6 capable of performing other work; and (2) such work “exists in significant
7 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2);
8 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

9 **ALJ’S FINDINGS**

10 Plaintiff applied for Title II disability insurance benefits and Title XVI
11 supplemental security income benefits on July 13, 2010, alleging a disability onset
12 date of December 1, 2009. Tr. 213-23. The applications were denied initially,
13 Tr. 100-01, and on reconsideration, Tr. 102-03. Plaintiff appeared at a hearing
14 before an Administrative Law Judge (ALJ) on September 7, 2012. Tr. 35-99. On
15 December 11, 2012, the ALJ denied Plaintiff’s claim. Tr. 14-34. On June 19,
16 2014, the Appeals Council denied review, Tr. 1-6, making the Commissioner’s
17 decision final for purposes of judicial review. *See* 42 U.S.C. 1383(c)(3); 20 C.F.R.
18 §§ 416.1481, 422.210. On May 22, 2015, the District Court remanded the ALJ’s
19 decision concluding “there were multiple errors in the prior decision, including
20 failure to address Listing 12.05C, failure to include borderline intellectual

1 functioning as a severe impairment, problems in some of the analysis of the
2 claimant's statements, and problems in some of the opinion analysis." Tr. 557
3 (citing Tr. 698-722). Plaintiff appeared at a second hearing before the ALJ on
4 March 2, 2016. Tr. 647-62. The ALJ denied Plaintiff's claim for a second time on
5 March 22, 2016. Tr. 554-78.

6 First, the ALJ found that Plaintiff met the insured status requirement of the
7 Social Security Act through December 31, 2013. Tr. 560. At step one, the ALJ
8 found that Plaintiff has not engaged in substantial gainful activity since December
9 1, 2009. Tr. 560. At step two, the ALJ found Plaintiff has the following severe
10 impairments: degenerative disc disease of the spine, affective disorder, anxiety
11 disorder, substance abuse disorder, and intellectual disability. Tr. 560. At step
12 three, the ALJ found that Plaintiff does not have an impairment or combination of
13 impairments that meets or medically equals a listed impairment. Tr. 561. The ALJ
14 then concluded that Plaintiff has the RFC to perform light work, with the following
15 non-exertional limitations:

16 The claimant can lift and/or carry twenty pounds occasionally and ten
17 pounds frequently, can stand and/or walk, and sit for about six hours in an
18 eight-hour day with usual breaks, and can push, and/or pull without
19 limitation other than within the lift/carry limitations. She has no postural or
20 environmental limitations. The claimant can perform simple, routine tasks
and follow short, simple instructions doing work that needs little or no
judgment. She can perform simple duties that can be learned on the job in a
short period of less than 30 days. The claimant can respond appropriately to
supervisors and coworkers, and can deal with occasional changes in the

1 workplace environment. She can have occasional exposure to or interaction
2 with the general public.

3 Tr. 564. At step four, the ALJ found that Plaintiff is unable to perform any past
4 relevant work. Tr. 570. The ALJ found at step five that there are other jobs that
5 exists in significant numbers in the national economy that Plaintiff could perform
6 within her assessed RFC, such as production assembler, electronics worker, and
7 agricultural produce sorter. Tr. 571. On that basis, the ALJ concluded that
8 Plaintiff was not disabled as defined in the Social Security Act during the
9 adjudicative period. Tr. 572.

10 **ISSUES**

11 Plaintiff seeks judicial review of the Commissioner's final decision denying
12 her disability insurance benefits under Title II and supplemental security income
13 benefits under Title XVI of the Social Security Act. ECF No. 14. Plaintiff raises
14 the following issues for this Court's review:

- 15 1. Whether the ALJ properly found that Plaintiff's impairments do not meet
16 a listing impairment at Step Three;
- 17 2. Whether the ALJ properly discredited Plaintiff's symptom claims; and
- 18 3. Whether the ALJ properly weighed the medical opinion evidence.

19 ECF No. 14 at 1.

1 **DISCUSSION**

2 **A. Step Three**

3 Plaintiff argues the ALJ erred by improperly finding that Plaintiff did not
4 meet the requirements of Listing 12.05C—Intellectual Disability. ECF No. 14 at
5 4-9.

6 At step three, the ALJ must determine if a claimant’s impairments meet or
7 equal a listed impairment. 20 C.F.R. § 404.1520(a)(4)(iii). The Listing of
8 Impairments “describes each of the major body systems impairments [which are
9 considered] severe enough to prevent an individual from doing any gainful
10 activity, regardless of his or her age, education or work experience.” 20 C.F.R.
11 § 404.1525. To meet a listed impairment, a claimant must establish that she meets
12 each characteristic of a listed impairment relevant to her claim. 20 C.F.R.
13 § 404.1525(d). The claimant bears the burden of establishing she meets a listing.
14 *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). If a claimant meets the
15 listed criteria for disability, she will be found to be disabled. 20 C.F.R.
16 §§ 404.1520(a)(4)(iii).

17 In the introductory paragraph to Listing 12.05, intellectual disability is
18 defined as “significantly subaverage general intellectual function with deficits in
19 adaptive function initially manifested during the developmental period; i.e., the
20 evidence demonstrates or supports onset of the impairment before age 22.” 20

1 C.F.R. Pt. 404. Subpt. P, App. 1. To satisfy Listing 12.05C, a claimant must
2 demonstrate (1) a valid verbal, performance, or full scale IQ of 60 through 70; (2)
3 deficits in adaptive functioning which manifested prior to age 22; and (3) a
4 physical or mental impairment imposing an additional and significant work-related
5 limitation of function. 20 C.F.R. Pt. 404. Subpt. P, App. 1 § 12.05(C). Deficits in
6 adaptive functioning are shown by “significant limitations in at least two of the
7 following skill areas: communication, self-care, home living, social/interpersonal
8 skills, use of community resources, self-direction, functional academic skills,
9 work, leisure, health, and safety[.]” Diagnostic and Statistical Manual of Mental
10 Disorders (5th ed.) (DSM-V).¹

11 _____
12 ¹ Plaintiff complains that the ALJ conflates Listing 12.05C and 12.05D by
13 employing the definition of deficits in adaptive functioning detailed here. ECF No.
14 14 at 9. The Court finds this argument to be without merit. First, the requirements
15 of 12.05D are distinct from those listed above. *See* 20 C.F.R. Pt. 404. Subpt. P,
16 App. 1 § 12.05(D) (“A Valid verbal, performance, or full-scale IQ of 60 through
17 70, resulting in at least two of the following: 1. Marked restriction of activities of
18 daily living; or 2. Marked difficulties in maintaining social functioning; or 3.
19 Marked difficulties in maintain concentration, persistence, or pace; or 4. Repeated
20 episodes of decompensation, each of extend duration.”). Conversely, the definition

1 First, the ALJ found that Plaintiff did not demonstrate deficits in adaptive
2 functioning that manifested prior to age 22 because her history is inconsistent with
3 such a finding. Tr. 563. Specifically, the ALJ cited that Plaintiff was never in
4 special education, she denied ever being diagnosed with a learning disability, and
5 Plaintiff got good grades in school until she dropped out in the eighth grade due to
6 pregnancy. Tr. 530. The ALJ also considered that Plaintiff is able to care for
7 herself, she raised three children on her own, she worked as a waitress and as a
8 CNA for years to support herself and her children, she drives herself to work and
9 appointments, she can cook, clean, attend appointments, and communicate without
10 difficulty. Tr. 563.

11 In contrast, Plaintiff cites evidence that Plaintiff has difficulty with math,
12 reading comprehension, and concentration. ECF No. 14 (citing Tr. 40, 65, 82, 249,
13 518, 529, 535, 657). Plaintiff also cites evidence that she only finished school
14 through the seventh grade, Tr. 651, and failed to obtain her GED despite several
15 attempts, Tr. 530. ECF No. 14 at 6. Plaintiff argues that substantial evidence
16

17 cited by the ALJ only requires significant limitations in much broader categories.
18 Furthermore, even if the ALJ erred in citing DSM-V to define deficits in adaptive
19 functioning, any error was harmless as the ALJ properly discounted Plaintiff's
20 qualifying IQ scores.

1 supports a finding that Plaintiff had deficits in adaptive functioning which
2 manifested before age 22.² ECF No. 14 at 6. However, the question for this court
3 is whether substantial evidence supports the ALJ's finding. *Hill*, 698 F.3d at 1158.
4 The Court finds that it does. The evidence Plaintiff offers showing low academic
5 achievement does not undermine the ALJ's conclusion.

6 Next, the ALJ considered Plaintiff's IQ testing, and found that she does not
7 have a valid verbal, performance, or cumulative IQ score of 70 or below. Tr. 563-
8 64 ("Although the record includes low composite scores from psychological
9 testing, there are reasons to doubt the veracity of these scores."). Plaintiff has two
10 scores that are 70 or below, however, the ALJ discounted both as invalid. First,
11 Dr. Dougherty found that Plaintiff had a full-scale IQ score of 70 based on Wide

12 _____
13 ² Plaintiff argues that the ALJ was required to find that Plaintiff had deficits in
14 adaptive functioning before age 22 because of the prior district court opinion,
15 which cited law that if a Plaintiff is found to have valid IQ scores under Listing
16 12.05C, they are presumed to have had a similar IQ before age 22. ECF No. 14 at
17 7. As is evident from the prior court's opinion, such a finding is predicated on the
18 ALJ finding that Plaintiff has *valid* qualifying IQ scores. *See* Tr. 718-20.
19 However, the ALJ properly discounted Plaintiff's IQ scores, making any
20 assumption about their applicability before age 22 irrelevant.

1 Range Achievement Test 4. Tr. 533. The ALJ discounted this opinion because Dr.
2 Dougherty indicated that though apparently valid, the results “may indicate a lower
3 level of function than normal given [Plaintiff’s] cold and anxiety.” Tr. 563 (citing
4 Tr. 532). Dr. Dougherty also noted that while Plaintiff was not clearly malingering
5 during testing, there were significant discrepancies in her self-reports; he went on
6 to question “how honest or accurate in her reporting she might have been.”
7 Tr. 536. Dr. Dougherty noted certain discrepancies between her self-reports at her
8 previous evaluation and the present evaluation, such as “[s]he reported that (sic)
9 the time of the first evaluation that her mother emotionally neglected her. She said
10 that she saw her mother abused physically frequently, contrary to her present
11 report.” Tr. 531. Next, Dr. Dougherty noted “[h]er reports regarding drinking and
12 treatment were mildly different from those she gave me at this time, she reported,
13 for example, that she lost her husband because of her drinking. She also reported
14 seeing her mother abused a lot by boyfriends, contrary to her present report.”
15 Tr. 531. In another example, Dr. Dougherty noted “in my previous evaluation that
16 her records indicated that she had a satisfying relationship with a male for 26 years,
17 contrary to her more recent reports.” *Id.* Finally, “[h]er reports of her employment
18 were also somewhat different from those during this evaluation.” *Id.* Such
19 discrepancies as well and Dr. Dougherty’s opinion that Plaintiff’s testing
20

1 demonstrated a lower level of functioning that she actually had provide substantial
2 evidence for the ALJ to discount the assessed IQ score.

3 Dr. Toews assessed Plaintiff as having a verbal comprehension score of 70
4 on October 11, 2015. Tr. 865. The ALJ rejected the validity of this test. Tr. 564.
5 The ALJ discounted the assessed score because Dr. Toews noted that Plaintiff's
6 verbal comprehension score was inconsistent with his observations at the
7 examination. Tr. 564 (citing Tr. 859 ("Verbal Comprehension and Perceptual
8 Reasoning scores are inconsistent with her conversational vocabulary, alertness to
9 the parking lot sign,³ and nonverbal abilities are more like ... in the low average
10 range.")). Furthermore, despite Plaintiff's assessed IQ scores, Dr. Toews indicated
11 that Plaintiff has no significant cognitive barrier to employment. Tr. 564 (citing
12 Tr. 860 ("There is no significant cognitive barrier to employability. ... She had no
13 difficulty comprehending test instructions or test items.")). Dr. Toews also noted
14 inconsistencies in Plaintiff's self-reported history. Tr. 860 ("[Plaintiff] presents
15 with a variable and inconsistent history."). He also noted inconsistencies in her

16 _____
17 ³ Dr. Towes explained this comment: "Her DDS appointment letter indicated there
18 was 4 hours free parking across the street. She informed the examiners there is a
19 sign behind tree branches indicating only 2 hours of free parking. She stated she
20 would need a break to move her vehicle."

1 reports to Dr. Dougherty and himself in how Plaintiff's mother died, and in her
2 personal relationships include whether or not she had been married. Tr. 565; Tr.
3 856. The ALJ's finding that the IQ scores assessed by Dr. Toews are not valid is
4 supported by substantial evidence.

5 Plaintiff asserts that the ALJ relied on the opinion of Dr. Toews in finding
6 Plaintiff did not meet Listing 12.05C "without ever evaluating or assigning weight
7 to that opinion." ECF No. 14 at 11 (citing Tr. 568-70). This assertion appears to
8 lack a basis in fact. An incantation that a physician's report is rejected is not
9 required; the court may draw reasonable inferences from the ALJ's discussion of a
10 particular physician's report. *See Magallenes v. Bowen*, 881 F.2d 747, 755 (9th
11 Cir. 1989). The ALJ substantively evaluated Dr. Toews' opinion before
12 discounting Plaintiff's IQ scores. Tr. 564. The ALJ found that Plaintiff's scores
13 were inconsistent with themselves, and inconsistent with Dr. Towes' observations
14 of Plaintiff. *Id.* Plaintiff concedes "there is considerable evidence that the
15 psychological evaluations performed by Dr. Toews are highly unreliable." ECF
16 No. 14 at 11 (citing Tr. 180-212). While the ALJ did not specifically assign
17 weight to Dr. Toews opinion, it is clear from the ALJ's discussion that the ALJ
18 discounted the IQ scores present in the opinion. Any error in not specifically
19 stating the weight afforded to Dr. Toews' opinion is harmless error as the ALJ's
20 substantive outcome would have been identical. *Molina*, 674 F.3d at 1115 (An

1 error is harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability
2 determination.”) (internal quotations and citation omitted). A district court “may
3 not reverse an ALJ’s decision on account of an error that is harmless.” *Id.* The
4 party appealing the ALJ’s decision generally bears the burden of establishing that
5 it was harmed. *Shinseki*, 556 U.S. at 409-10.⁴

6 **B. Medical Opinion Evidence**

7 Plaintiff faults the ALJ for discounting the medical opinions of Rachel
8 Worley NP-C, and Wing Chau, M.D. ECF No. 14 at 12-16.

9 There are three types of physicians: “(1) those who treat the claimant
10 (treating physicians); (2) those who examine but do not treat the claimant

11 _____
12 ⁴ Plaintiff also challenged that the ALJ did not specifically rule on Plaintiff’s
13 counsel’s request that “Dr. Toews’ report be stricken from the record.” ECF No.
14 14 at 11. The Court does not find Plaintiff’s underlying reasoning as to why Dr.
15 Toews’ opinion should be excluded to be specific to this particular opinion or
16 generally persuasive. The Court notes that despite making such a request, Plaintiff
17 invokes Dr. Toews’ opinion for the assessed IQ scores. ECF No. 14 at 10. For
18 these reasons, the Court is not persuaded that Plaintiff was prejudiced by the ALJ’s
19 supposed failure to rule on Plaintiff’s counsel’s request that Dr. Toews’ report be
20 stricken.

1 (examining physicians); and (3) those who neither examine nor treat the claimant
2 but who review the claimant's file (nonexamining or reviewing physicians).”
3 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).
4 “Generally, a treating physician’s opinion carries more weight than an examining
5 physician’s, and an examining physician’s opinion carries more weight than a
6 reviewing physician’s.” *Id.* “In addition, the regulations give more weight to
7 opinions that are explained than to those that are not, and to the opinions of
8 specialists concerning matters relating to their specialty over that of
9 nonspecialists.” *Id.* (citations omitted).

10 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
11 reject it only by offering “clear and convincing reasons that are supported by
12 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
13 “However, the ALJ need not accept the opinion of any physician, including a
14 treating physician, if that opinion is brief, conclusory and inadequately supported
15 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
16 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
17 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
18 may only reject it by providing specific and legitimate reasons that are supported
19 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
20 F.3d 821, 830-31 (9th Cir. 1995).

1 1. Ms. Worley

2 Rachel Worley, NP-C, a treating provider, completed a medical report on
3 August 23, 2012. Tr. 449-50. She stated that Plaintiff's diagnoses were glaucoma,
4 chronic low back pain, chronic gluteal pain, SI joint sprain, and trochanteric
5 bursitis. Tr. 449. Ms. Worley opined that Plaintiff would need to lie down 1-2
6 times a day due to pain. *Id.* She further opined that Plaintiff would miss one day
7 of work a month due to medical impairments, noting that "[t]his is more likely to
8 occur with work including high activity and lifting." Tr. 450. The ALJ assigned
9 the opinion "little weight." Tr. 569. Ms. Worley is an "other source" under the
10 regulations. 20 C.F.R. § 416.913(d). Thus, the ALJ was required to cite germane
11 reasons for rejecting the opinion. *See Dodrill*, 12 F.3d at 919.

12 First, the ALJ afforded Ms. Worley's opinion little weight because she "did
13 not provide any clinical findings or objective evidence supporting her limitations."
14 Tr. 569. A medical opinion may be rejected by the ALJ if it is conclusory,
15 contains inconsistencies, or is inadequately supported. *Bray*, 554 F.3d at 1228;
16 *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). The opinion does not
17 include any examination findings. *See* Tr. 449-50. The only evidence she cites is
18 an MRI and an x-ray of Plaintiff's hip, and an MRI of Plaintiff's lumbar spine all
19 within normal limits. Tr. 449. Otherwise, there is no support for her opinion as
20 her written findings are entirely devoid of observations and evidence. *See* Tr. 449-

1 50. Such a lack of support is a germane reason for the ALJ to afford Ms. Worley's
2 opinion "little weight."

3 Next, the ALJ discounted Ms. Worley's opinion because she relied on the
4 Plaintiff's subjective symptom complaints. Tr. 569. A physician's opinion may be
5 rejected if it is based on a claimant's subjective complaints which were properly
6 discounted. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Morgan v.*
7 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999); *Fair v. Bowen*,
8 885 F.2d 597, 604 (9th Cir. 1989). The ALJ noted that Ms. Worley diagnosed
9 Plaintiff with chronic low back pain and gluteal pain. Tr. 569 (citing Tr. 449).
10 However, as discussed *supra*, Ms. Worley did not cite any objective evidence to
11 support such diagnoses. *See* Tr. 449-50. Therefore, the ALJ reasonably concluded
12 that Ms. Worley relied on Plaintiff's symptom complaints in forming those
13 diagnoses. Tr. 569. However, as will be discussed *infra*, the ALJ properly
14 discounted Plaintiff's symptom testimony. Therefore, to the extent that Ms.
15 Worley relied on Plaintiff's symptom testimony in forming her medical opinion,
16 such reliance is a germane reason to discount her opinion.

17 Next, the ALJ discounted Ms. Worley's opinion because "under Agency
18 guidelines, pain is not a diagnosis but a symptom." Tr. 569. Two of Ms. Worley's
19 five diagnoses are for chronic right gluteal pain and chronic low back pain. Tr.
20 449. However, per Social Security regulations, pain is a symptom because it is a

1 Plaintiff's "own description of [their] physical or mental impairment." 20 CFR
2 §416.928(a). This reason is not itself a germane reason to discount Ms. Worley's
3 entire medical opinion, however, it does help contextualize her opinion regarding
4 Plaintiff's pain.

5 Finally, the ALJ found that Ms. Worley's opinion is "inconsistent with the
6 effectiveness of conservative treatment for the [Plaintiff's] complaints of pain,"
7 and "the inconsistent reports of physical problems and minimal physical
8 examination findings." Tr. 569. An ALJ may discredit treating physicians'
9 opinions that are unsupported by the record as a whole or by objective medical
10 findings. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.
11 2004). As will be discussed in detail *infra*, the ALJ's finding that Plaintiff's pain
12 complaints are incompatible with the objective evidence in the record, including
13 evidence of the effectiveness of conservative treatment, is supported by substantial
14 evidence. This is a germane reason for the ALJ to discount Ms. Worley's opinion.

15 2. *Dr. Chau*

16 Dr. Chau examined Plaintiff on October 13, 2015. Tr. 878-86. He provided
17 a narrative report of his examination and findings as well as check-box medical
18 source statement dated the same day. *Id.* In his narrative statement, Dr. Chau
19 opined that Plaintiff is capable of full-time work at the medium exertion level.
20 Tr. 880. Dr. Chau further opined that Plaintiff's "only restriction would be avoid

1 excessive twisting activities at the waist.” Tr. 880. Despite this note, Dr. Chau’s
2 medical source statement opined that Plaintiff can never climb ladders or scaffolds,
3 crouch, or crawl and occasionally climb stairs and ramps, stoop and kneel.
4 Tr. 884. The ALJ gave “significant weight to Dr. Chau’s examination and
5 treatment record, and the narrative statement that Plaintiff is capable of full-time
6 work at the medium exertional level.” *Id.* The ALJ declined to adopt Dr. Chau’s
7 opined limitation that Plaintiff must avoid twisting. *Id.* The ALJ assigned “less
8 weight” to Dr. Chau’s check-box medical source statement. *Id.* Because Dr.
9 Chau’s opinion was contradicted by Dr. Platter and Dr. Stanley (Tr. 339-346, Tr.
10 443), the ALJ was required to provide specific and legitimate reasons for rejecting
11 Dr. Chau’s opinion. *Bayliss*, 427 F.3d at 1216.

12 First, the ALJ discounted Dr. Chau’s medical source statement because it is
13 inconsistent with his examination findings as reported in the narrative source
14 statement. Tr. 568. A physician’s opinion may be rejected if it is unsupported by
15 the physician’s treatment notes. *See Connett v. Barnhart*, 340 F.3d 871, 875 (9th
16 Cir. 2003) (affirming ALJ’s rejection of physician’s opinion as unsupported by
17 physician’s treatment notes). A medical opinion may be rejected by the ALJ if it
18 contains inconsistencies. *Bray*, 554 F.3d at 1228. Dr. Chau’s examination notes
19 indicate results mostly within normal limits. *See* Tr. 878-80. Dr. Chau described
20 Plaintiff as “in no distress” and noted that she “was ambulatory without assistive

1 device” and “able to be up on the toes and heels.” Tr. 878-78. Dr. Chau assessed
2 that Plaintiff could work full time at a full range of medium work, and that “[h]er
3 only restriction would be to avoid excessive twisting activities at the waist.”
4 Tr. 880. Despite these benign examination findings, Dr. Chau’s medical source
5 statement imposed much greater restrictions, such as Plaintiff can never climb
6 ladders or scaffolds, crouch, or crawl and occasionally climb stairs and ramps,
7 stoop and kneel. Tr. 884. These restrictions are not supported by the examination
8 notes. In fact, they contradict the examination note that Plaintiff’s only restriction
9 would be to avoid excessive twisting. Dr. Chau’s medical source statement further
10 opined that Plaintiff would be limited to occasional overhead reaching in both the
11 right and left hands. Tr. 883. This is contradicted by the examination findings
12 which indicate “[s]houlder abduction to 180 degrees bilaterally” and that Plaintiff
13 “was with negative Tinel’s testing of the wrists and elbows.” Tr. 879. Dr. Chau’s
14 medical source statement is inconsistent with his treatment notes. These
15 inconsistencies are a specific and legitimate reason to reject Dr. Chau’s opinion.

16 Next, the ALJ afforded Dr. Chau’s opinion less weight because it is
17 inconsistent with Plaintiff’s treatment record. Tr. 568. As discussed *supra* and
18 *infra*, an ALJ may discredit treating physicians’ opinions that are unsupported by
19 the record as a whole or by objective medical findings. *Batson*, 359 F.3d at 1195.
20 Here, the medical record does not support the extreme limitations that Dr. Chau

1 opined in his medical source statement. In fact, very little objective evidence
2 supports that Plaintiff has limitations on her ability to work. Plaintiff's pain
3 complaints are undercut by the objective medical evidence. Tr. 566 (citing Tr.
4 292; Tr. 439). For instance, Dr. Galloway examined Plaintiff and noted that she
5 described an increase in pain in December 2009, however, did not allege any
6 precipitating cause. Tr. 292. Dr. Galloway did not note any unusual test results,
7 described Plaintiff as being in "good general health[.]" and only prescribed
8 physical therapy to help Plaintiff manage her pain." *Id.* In another instance, an
9 examining physical therapist noted that Plaintiff self-reported that "she's had an
10 MRI, X-rays, and a CT scan and nothing shows up revealing the cause of the
11 pain." Tr. 439. Providers regularly found that Plaintiff appeared in no acute
12 distress or described Plaintiff as "well-appearing[.]" Tr. 566 (citing e.g., Tr. 357;
13 Tr. 368; Tr. 371; Tr. 373; Tr. 374; Tr. 383; Tr. 387; Tr. 388; Tr. 392; Tr. 399; Tr.
14 401; Tr. 402; Tr. 478; Tr. 483; Tr. 485; Tr. 490; Tr. 878; Tr. 893). While not
15 evidence that Plaintiff was not experiencing pain, it is reasonable for the ALJ to
16 note that providers often observed Plaintiff as not exhibiting external signs of pain
17 or discomfort given that Plaintiff's primary alleged limitation is pain. Such notes
18 from providers cast doubt on Plaintiff's allegations that her pain was debilitating.
19 Inconsistency with objective medical evidence provides a specific and legitimate
20 reason to discount Dr. Chau's opinion.

1 **C. Adverse Credibility Finding**

2 Plaintiff faults the ALJ for failing to provide specific findings with clear and
3 convincing reasons for discrediting her symptom claims. ECF No. 14 at 14-20.

4 An ALJ engages in a two-step analysis to determine whether a claimant’s
5 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must
6 determine whether there is objective medical evidence of an underlying
7 impairment which could reasonably be expected to produce the pain or other
8 symptom alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).

9 “The claimant is not required to show that her impairment could reasonably be
10 expected to cause the severity of the symptom she has alleged; she need only show
11 that it could reasonably have caused some degree of the symptom.” *Vasquez v.*
12 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

13 Second, “[i]f the claimant meets the first test and there is no evidence of
14 malingering, the ALJ can only reject the claimant’s testimony about the severity of
15 the symptoms if she gives ‘specific, clear and convincing reasons’ for the
16 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
17 citations and quotations omitted). “General findings are insufficient; rather, the
18 ALJ must identify what testimony is not credible and what evidence undermines
19 the claimant’s complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *Thomas*, 278 F.3d
20 at 958 (“[T]he ALJ must make a credibility determination with findings

1 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
2 discredit claimant’s testimony.”). “The clear and convincing [evidence] standard
3 is the most demanding required in Social Security cases.” *Garrison v. Colvin*, 759
4 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278
5 F.3d 920, 924 (9th Cir. 2002)).

6 In making an adverse credibility determination, the ALJ may consider, *inter*
7 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
8 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s
9 daily living activities; (4) the claimant’s work record; and (5) testimony from
10 physicians or third parties concerning the nature, severity, and effect of the
11 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

12 This Court finds the ALJ provided specific, clear, and convincing reasons
13 for finding that Plaintiff’s statements concerning the intensity, persistence, and
14 limiting effects of her symptoms “not entirely consistent with the evidence[.]”
15 Tr. 565.

16 *1. Exaggeration*

17 First, the ALJ found that Plaintiff’s symptom testimony was not credible
18 because “there is evidence in the record that Plaintiff exaggerates her symptoms.”
19 Tr. 565. In making a credibility determination, the ALJ may consider “ordinary
20 techniques of credibility evaluation, such as the claimant’s reputation for lying,

1 prior inconsistent statements ... and other testimony by the claimant that appears
2 less than candid.” *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). Dr.
3 Dougherty noted that “[t]hough she was not clearly malingering, I would note
4 some discrepancies between her past and present reports[.]” Tr. 533-34.
5 Specifically, Dr. Dougherty went on to include “rule out symptom exaggeration”
6 as one of Plaintiff’s diagnoses. Tr. 535.

7 Plaintiff contends that the ALJ erred in finding that Plaintiff exaggerated her
8 symptoms because he relied on Dr. Toews without properly evaluating that
9 opinion. ECF No. 14 at 17. However, as analyzed *supra*, that ALJ appropriately
10 evaluated Dr. Toews’ opinion and the ALJ may rely on it. Next, Plaintiff cites
11 evidence she contends undermines the ALJ’s finding that “no treating provider
12 ever indicated that [Plaintiff] exaggerates her symptoms, and the medical expert
13 testified that her pain complaints are credible.” ECF No. 14 at 17 (citing Tr. 52-
14 54). It is the role of the ALJ to resolve conflicts and ambiguity in the evidence.
15 *See Morgan*, 169 F.3d at 599-600; *see also Sprague v. Bowen*, 812 F.2d 1226,
16 1229-30 (9th Cir. 1987). It is the role of the trier of fact, not this court, to resolve
17 conflicts in evidence. *Richardson v. Perales*, 402 U.S. 389, 400 (1971). The court
18 has a limited role in determining whether the ALJ’s decision is supported by
19 substantial evidence and may not substitute its own judgment for that of the ALJ,
20 even if it might justifiably have reached a different result upon de novo review. 42

1 U.S.C. § 405(g). This Court finds that the ALJ’s decision is supported by
2 substantial evidence.

3 *2. Inconsistent Statements*

4 The ALJ also discounted Plaintiff’s symptom testimony because she made
5 inconsistent statements to providers regarding her history and impairments.

6 Tr. 565. An ALJ may consider inconsistencies in a claimant’s testimony or
7 between the claimant’s testimony and conduct in weighing the claimant’s

8 credibility. *Thomas*, 278 F.3d at 958-59. Dr. Dougherty noted “the discrepancy
9 between her present levels of memory and intellectual function and her reports of
10 no significant memory difficulties, as below, and good academic functioning.”

11 Tr. 533-34. Dr. Toews noted that Plaintiff was a “poor historian, giving
12 information that is inconsistent with previous reported history, and is vague.”

13 Tr. 855. Of note, Plaintiff’s allegedly disabling condition changed over time: in
14 October 2012, Plaintiff’s chief complaints were pain in her lower back and hips

15 with notations of depression and anxiety; whereas, in October 2015, Plaintiff’s
16 chief complaint was glaucoma but she did not include leg or back pain as an

17 impairment. Tr. 566 (citing Tr. 528, Tr. 855). These inconsistencies over time
18 cast doubt on the veracity of Plaintiff’s complaints, and provide a clear and

19 convincing reason for the ALJ to discount Plaintiff’s symptom testimony.
20

1 Plaintiff argues that the ALJ should have interpreted the evidence from Dr.
2 Dougherty differently. ECF No. 14 at 17. Specifically, Plaintiff argues that the
3 testimonial discrepancies Dr. Dougherty identified indicate more serious
4 limitations because it shows that Plaintiff “does not fully understand the extent of
5 her limitations, which is consistent with the finding of cognitive impairment.” *Id.*
6 As discussed *supra*, it is the ALJ’s job to resolve conflicts in evidence.
7 *Richardson*, 402 U.S. at 400. Simply because Plaintiff prefers a different
8 interpretation of evidence does not indicate that the ALJ erred where the ALJ’s
9 opinion is supported by substantial evidence.

10 *3. Daily Activities*

11 The ALJ found that Plaintiff’s “activities throughout the relevant period are
12 inconsistent with her allegations of severely limiting symptoms.” Tr. 566. It is
13 reasonable for an ALJ to consider a claimant’s activities which undermine claims
14 of totally disabling pain in making the credibility determination. *See Rollins v.*
15 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Notwithstanding, it is well-
16 established that a claimant need not “vegetate in a dark room” in order to be
17 deemed eligible for benefits. *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987).
18 However, if a claimant is able to spend a substantial part of her day engaged in
19 pursuits involving the performance of physical functions that are transferable to a
20 work setting, a specific finding as to this fact may be sufficient to discredit an

1 allegation of disabling excess pain. *Fair*, 885 F.2d at 603. “Even where
2 [Plaintiff’s daily] activities suggest some difficulty functioning, they may be
3 grounds for discrediting the claimant’s testimony to the extent that they contradict
4 claims of a totally debilitating impairment.” *Molina*, 674 F.3d at 1113.

5 Here, the ALJ noted that Plaintiff is able to drive herself, go outside on her
6 own, and attend appointments on her own. Tr. 566 (citing Tr. 857). This is
7 inconsistent with Plaintiff’s allegations that she is severely limited in her ability to
8 get out on her own. Furthermore, Plaintiff is able to care for herself by performing
9 all of her own personal care, cooking for herself, and cleaning around the house.

10 Tr. 566 (citing Tr. 857). Despite these notations, the ALJ did not provide more
11 support for the finding that Plaintiff’s activities of daily living undercut her alleged
12 disabling symptoms than the prior order did. *Compare* Tr. 566 with Tr. 26. The
13 district court previously determined that the ALJ’s reasoning was not supported by
14 substantial evidence and therefore could not be relied upon in discounting
15 Plaintiff’s credibility. Tr. 711-12. Seeing as the ALJ did not significantly change
16 his approach to analyzing Plaintiff’s daily living activities, this Court defers to the
17 prior court’s finding that the ALJ’s reasoning was not supported by substantial
18 evidence. However, such an error is harmless, as the ALJ supplied five other
19 specific, clear and convincing reasons to discount Plaintiff’s symptom testimony.

20 *Molina*, 674 F.3d at 1111.

1 4. *Objective Medical Evidence*

2 The ALJ also found that Plaintiff's symptom testimony was less than
3 credible because it was inconsistent with the objective medical evidence. ECF No.
4 566. An ALJ may not discredit a claimant's pain testimony and deny benefits
5 solely because the degree of pain alleged is not supported by objective medical
6 evidence. *Rollins*, 261 F.3d at 857; *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th
7 Cir. 1991); *Fair*, 885 F.2d at 601. However, the medical evidence is a relevant
8 factor in determining the severity of a claimant's pain and its disabling effects.
9 *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2); *see also*
10 S.S.R. 96-7p.⁵ Minimal objective evidence is a factor which may be relied upon in
11 discrediting a claimant's testimony, although it may not be the only factor. *See*
12 *Burch*, 400 F.3d at 680. First, the ALJ noted that Plaintiff's "allegations of
13 severely limiting eye symptoms are inconsistent with her treatment records."
14 Tr. 566. In September 2015, Plaintiff's treating eye physician noted that Plaintiff

15 _____
16 ⁵ S.S.R. 96-7p was superseded by S.S.R. 16-3p effective March 16, 2016. The new
17 ruling also provides that the consistency of a claimant's statements with objective
18 medical evidence and other evidence is a factor in evaluating a claimant's
19 symptoms. S.S.R. 16-3p at *6. Nonetheless, S.S.R. 16-3p was not effective at the
20 time of the ALJ's decision and therefore does not apply in this case.

1 had “mild stage glaucoma[;]” and continued on to note that her eye condition
2 would not interfere with full-time employment. Tr. 853-54. This is inconsistent
3 with Plaintiff’s allegation in October 2015 that glaucoma was her primary
4 impairment preventing her from work. Tr. 855.

5 Plaintiff’s pain complaints are also undercut by the objective medical
6 evidence. Examining and treating physicians repeatedly noted that Plaintiff had
7 relatively mild physical limitations. During an initial evaluation, physical therapist
8 Leonard Galloway noted that Plaintiff’s “gait is unremarkable.” Tr. 566 (citing Tr.
9 292). Another physical therapist noted that Plaintiff had 5/5 strength in her lower
10 extremities. Tr. 566 (citing Tr. 439). During a consultative examination, Dr. Chau
11 noted that Plaintiff “demonstrated at least 4+/5 strength in her joints, negative
12 straight leg raise testing, normal inspection of her knees and wrists, and only
13 mildly painful to palpitation of the right SI joint.” Tr. 566 (citing Tr. 879). Such
14 benign findings in the objective medical evidence undercut Plaintiff’s allegations
15 of disabling pain and provide a clear and convincing reason for the ALJ to discount
16 Plaintiff’s symptom testimony.

17 The ALJ also noted that providers regularly found that Plaintiff appeared in
18 no acute distress or described Plaintiff as “well-appearing[.]” Tr. 566 (citing e.g.,
19 Tr. 357 (Plaintiff “appears to be in no distress.”); Tr. 358 (Plaintiff is “in no acute
20 distress.”); Tr. 368 (“middle-aged woman in no acute distress.”); Tr. 371 (“middle-

1 aged woman in no acute distress.”); Tr. 373 (“female in no acute distress.”); Tr.
2 374 (“pain 0/10”); Tr. 383 (“Well-appearing, [no acute distress]”); Tr. 387 (“Well
3 appearing female. [No acute distress]. Comfortable.”); Tr. 388 (“woman in no
4 acute distress.”); Tr. 392 (“Well-appearing, [no acute distress].”); Tr. 399 (“Well-
5 appearing [no acute distress].”); Tr. 401 (“Well-appearing, [no acute distress].”);
6 Tr. 402 (“Well-appearing, [no acute distress].”); Tr. 478 (“female in no acute
7 distress.”); Tr. 483 (Plaintiff is in “[no acute distress]”); Tr. 485 (Plaintiff is in “[no
8 acute distress]”); Tr. 490 (“female in no acute distress.”); Tr. 878 (“female in no
9 distress.”); Tr. 893 (Plaintiff is in “[no acute distress]”). The ALJ reasonably
10 concluded that the medical record did not support Plaintiff’s symptom complaints.

11 *5. Improvement with Treatment*

12 Next, the ALJ discounted Plaintiff’s symptom testimony because she
13 improved with treatment. Tr. 566. Impairments that can be controlled effectively
14 with medication are not disabling for the purpose of determining eligibility for SSI
15 benefits. *See, e.g., Odle v. Heckler*, 707 F.2d 439, 440 (9th Cir. 1983) (affirming a
16 denial of benefits and noting that the claimant's impairments were responsive to
17 medication); *Warre v. Comm’r of Social Sec. Admin.*, 439 F.3d 1001, 1006 (9th
18 Cir. 2006). Here, Plaintiff reported improvement of her physical symptoms after
19 physical therapy. Tr. 566 (citing Tr. 296) (After about a month of physical therapy
20 treatment, “[Patient] reports that she has made good progress since starting PT

1 treatments. She says that her function has improved and her pain has decreased.”).

2 Plaintiff reported that after about a month of physical therapy, she was able to

3 stand/walk for about 90 minutes, when she could only do so for about 30 minutes

4 before therapy. Tr. 296. Plaintiff also stopped taking pain medications as a result

5 of physical therapy. *Id.* Objectively, Plaintiff’s physical therapist noted Plaintiff

6 “has made good improvement with decrease in pain and increase in function.” *Id.*

7 Plaintiff’s physical therapist also noted that “[Patient] has room for further

8 progress and would benefit from cont’d PT treatments, however, [Patient’s]

9 insurance allows only 12 treatments per year.” *Id.* If there is a good reason that

10 Plaintiff is unable to obtain treatment, the ALJ may not appropriately reject

11 Plaintiff’s symptom testimony based on lack of treatment. *Smolen*, 80 F.3d at

12 1284 (“Where a claimant provides evidence of a good reason for not taking

13 medication for her symptoms, her symptom testimony cannot be rejected for not

14 doing so.”). Despite this, the ALJ noted that Plaintiff “is independent with a home

15 exercise program.” Tr. 296. Given that the physical therapist noted that Plaintiff is

16 independent with a home exercise program, and the significant improvement that

17 Plaintiff made even with incomplete treatment, the ALJ’s finding that Plaintiff’s

18 symptom testimony was not credible because of improvement with physical

19 therapy is supported by substantial evidence.

20

1 6. *Lack of Treatment*

2 The ALJ found that “[t]he notations in the claimant’s treatment notes of
3 normal psychiatric observations are inconsistent with the allegations of severely
4 limiting mental health symptoms.” Tr. 566. Medical treatment received to relieve
5 pain or other symptoms is a relevant factor in evaluating pain testimony. 20 C.F.R.
6 §§ 416.929(c)(3)(iv), (v)(2016).⁶ The ALJ is permitted to consider the claimant’s
7 lack of treatment in making a credibility determination. *Burch*, 400 F.3d at 681.
8 Plaintiff received very little mental health treatment. Plaintiff reported to Dr.
9 Dougherty in October 2012 that she had never been involved in counseling.
10 Tr. 529. From the record, it appears that she only had one mental health
11 appointment between 2012 and 2015. Tr. 567 (citing Tr. 892-97). At that
12 appointment, Plaintiff complained of serious mental health symptoms, such as
13 depression, panic attacks, and difficulty trusting new people. Tr. 567 (citing
14 Tr. 894). However, the ALJ discounted the symptoms alleged at this appointment
15 because Plaintiff described needing documentation for her disability application.

16 _____
17 ⁶ The regulation was revised effective March 26, 2017. Revisions to Rules
18 Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844-01 (January 18,
19 2017). Since the revision was not effective at the time of the ALJ’s decision, it
20 does not apply to this case.

1 *Id.* The ALJ also noted that the timing of this appointment, less than a month
2 before the hearing with the ALJ, suggests treatment was motivated by disability
3 benefits rather than mental health treatment. *See* Tr. 567.

4 Claimant alleges that she did not seek mental health treatment in part
5 because she is distrustful of new people, a symptom of her mental health condition.
6 ECF No. 14 at 20. Where the evidence suggests lack of mental health treatment is
7 part of a claimant's mental health condition, it may be inappropriate to consider a
8 claimant's lack of mental health treatment as evidence of a lack of credibility. *See*
9 *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). However, when there is
10 no evidence suggesting a failure to seek treatment is attributable to a mental
11 impairment rather than personal preference, it is reasonable for the ALJ to
12 conclude that the level or frequency of treatment is inconsistent with the level of
13 complaints. *Molina*, 674 F.3d at 1113-1114. Simply because a Plaintiff makes an
14 assertion that lack of treatment is the result of her mental health condition does not
15 require the ALJ to credit such an assertion if an alternative finding is supported by
16 substantial evidence. Here, the ALJ cited numerous reasons to reject Plaintiff's
17 claim that she did not seek treatment because of her mental health condition.
18 Plaintiff only sought treatment once, a month before the ALJ hearing, she
19 mentioned at the appointment that she needed treatment as part of her social
20 security disability application. Tr. 567. Moreover, Plaintiff's alleged mental

1 health symptoms did not stop her from seeking regular treatment for her other
2 conditions, *see, e.g.*, Tr. 451-508, and Plaintiff did not seek follow-up treatment,
3 despite recommendations to do so. Substantial evidence supports the ALJ's
4 finding that Plaintiff's lack of mental health treatment was not a result of her
5 mental health condition, and instead cast doubt on the sincerity of her alleged
6 mental health condition.

7 **CONCLUSION**

8 After review, the Court finds that the ALJ's decision is supported by
9 substantial evidence and free of harmful legal error.

10 **IT IS ORDERED:**

- 11 1. Plaintiff's motion for summary judgment (ECF No. 14) is **DENIED**.
12 2. Defendant's motion for summary judgment (ECF No. 26) is **GRANTED**.

13 The District Court Executive is directed to file this Order, enter
14 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**
15 **THE FILE**.

16 DATED August 21, 2017.

17 *s/Mary K. Dimke*
18 MARY K. DIMKE
19 UNITED STATES MAGISTRATE JUDGE
20