

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 06, 2018**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

REBECCA R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 1:17-CV-3200-FVS

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

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 10 and 11. This matter was submitted for consideration without oral argument. The plaintiff is represented by Attorney D. James Tree. The defendant is represented by Special Assistant United States Attorney Leisa A. Wolf. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 10, and **GRANTS** Defendant's Motion for Summary Judgment, ECF No. 11.

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

1 **JURISDICTION**

2 Plaintiff Rebecca R.<sup>1</sup> protectively filed for supplemental security income on  
3 January 2, 2014, alleging an onset date of September 30, 2013. Tr. 187. Benefits  
4 were denied initially, Tr. 88-96, and upon reconsideration, Tr. 97-103. Plaintiff  
5 appeared for a hearing before an administrative law judge (“ALJ”) on June 28,  
6 2016. Tr. 34-59. Plaintiff was represented by counsel and testified at the hearing.  
7 *Id.* The ALJ denied benefits, Tr. 17-33, and the Appeals Council denied review.  
8 Tr. 1. The matter is now before this court pursuant to 42 U.S.C. § 1383(c)(3).

9 **BACKGROUND**

10 The facts of the case are set forth in the administrative hearing and  
11 transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner.  
12 Only the most pertinent facts are summarized here.

13 Plaintiff was 24 years old at the time of the hearing. Tr. 40. She stopped  
14 going to school at sixth grade, and did not get her GED. Tr. 40. She resides with  
15 her parents, brother, and young son. Tr. 40-42. Plaintiff testified that she was  
16 kidnapped at age 13 and taken to Mexico for four years. Tr. 40. She reports that  
17 she has two older kids who live with their father. Tr. 44, 49. He “doesn’t allow”

18  
19 \_\_\_\_\_  
20 <sup>1</sup> In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first  
21 name and last initial, and, subsequently, Plaintiff’s first name only, throughout this  
decision.

1 her to see the kids. Tr. 44-45. Plaintiff testified that she worked as a cherry sorter  
2 in a warehouse for a week and a half, but stopped because she had anxiety being  
3 around people, and especially men. Tr. 42.

4 Plaintiff testified that she stays in her room all day, aside from going out to  
5 the living room for an hour or two. Tr. 45. She reported that she watches TV with  
6 her son, does not read, does not get on the computer, does not have social media  
7 accounts, does not take her son to the park or outside, does not exercise, and her  
8 dad drives her to medical appointments and the grocery store. Tr. 45-47. Plaintiff  
9 testified that she finds therapy helpful, and takes medication but still feels  
10 depressed and anxious. Tr. 48.

## 11 STANDARD OF REVIEW

12 A district court's review of a final decision of the Commissioner of Social  
13 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
14 limited; the Commissioner's decision will be disturbed "only if it is not supported  
15 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
16 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
17 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
18 (quotation and citation omitted). Stated differently, substantial evidence equates to  
19 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
20 citation omitted). In determining whether the standard has been satisfied, a

1 reviewing court must consider the entire record as a whole rather than searching  
2 for supporting evidence in isolation. *Id.*

3 In reviewing a denial of benefits, a district court may not substitute its  
4 judgment for that of the Commissioner. If the evidence in the record “is  
5 susceptible to more than one rational interpretation, [the court] must uphold the  
6 ALJ’s findings if they are supported by inferences reasonably drawn from the  
7 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district  
8 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
9 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate  
10 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The  
11 party appealing the ALJ’s decision generally bears the burden of establishing that  
12 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 13 **FIVE-STEP EVALUATION PROCESS**

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

1 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
2 1382c(a)(3)(B).

3 The Commissioner has established a five-step sequential analysis to  
4 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
5 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work  
6 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial  
7 gainful activity,” the Commissioner must find that the claimant is not disabled. 20  
8 C.F.R. § 416.920(b).

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

17 At step three, the Commissioner compares the claimant’s impairment to  
18 severe impairments recognized by the Commissioner to be so severe as to preclude  
19 a person from engaging in substantial gainful activity. 20 C.F.R. §  
20 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
21

1 enumerated impairments, the Commissioner must find the claimant disabled and  
2 award benefits. 20 C.F.R. § 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the  
4 severity of the enumerated impairments, the Commissioner must pause to assess  
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
6 defined generally as the claimant's ability to perform physical and mental work  
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
8 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

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

15 At step five, the Commissioner considers whether, in view of the claimant's  
16 RFC, the claimant is capable of performing other work in the national economy.  
17 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
18 must also consider vocational factors such as the claimant's age, education and  
19 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of  
20 adjusting to other work, the Commissioner must find that the claimant is not  
21 disabled. 20 C.F.R. § 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. § 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. § 416.960(c)(2); *Beltran v. Astrue*,  
8 700 F.3d 386, 389 (9th Cir. 2012).

### 9 **ALJ’S FINDINGS**

10 At step one, the ALJ found Plaintiff has not engaged in substantial gainful  
11 activity since January 2, 2014, the application date. Tr. 22. At step two, the ALJ  
12 found Plaintiff has the following severe impairments: major depressive disorder;  
13 post-traumatic stress disorder; and borderline personality disorder. Tr. 22. At step  
14 three, the ALJ found that Plaintiff does not have an impairment or combination of  
15 impairments that meets or medically equals the severity of a listed impairment. Tr.  
16 22. The ALJ then found that Plaintiff has the RFC

17 to perform a full range of work at all exertional levels but with the  
18 following nonexertional limitations: the claimant is able to understand,  
19 remember, and carry out simple routine tasks; she can have no contact  
20 with the general public and is unable to perform tandem tasks; she is  
21 able to have occasional, brief contact with coworkers; and she is able  
to work in a predictable workplace routine with minimal changes in the  
workplace.

1 Tr. 24. At step four, the ALJ found that Plaintiff has no past relevant work. Tr.  
2 28. At step five, the ALJ found that considering Plaintiff's age, education, work  
3 experience, and RFC, there are jobs that exist in significant numbers in the national  
4 economy that Plaintiff can perform, including: industrial cleaner, kitchen helper,  
5 and laundry worker. Tr. 28-29. On that basis, the ALJ concluded that Plaintiff has  
6 not been under a disability, as defined in the Social Security Act, since January 2,  
7 2014, the date the application was filed. Tr. 29.

## 8 ISSUES

9 Plaintiff seeks judicial review of the Commissioner's final decision denying  
10 her supplemental security income benefits under Title XVI of the Social Security  
11 Act. ECF No. 10. Plaintiff raises the following issues for this Court's review:

- 12 1. Whether the ALJ properly considered Plaintiff's symptom claims;
- 13 2. Whether the ALJ properly weighed the medical opinion evidence;
- 14 3. Whether the ALJ erred in considering Plaintiff's obesity; and
- 15 4. Whether the ALJ properly considered lay witness evidence.

## 16 DISCUSSION

### 17 A. Plaintiff's Symptom Claims

18 An ALJ engages in a two-step analysis when evaluating a claimant's  
19 testimony regarding subjective pain or symptoms. "First, the ALJ must determine  
20 whether there is objective medical evidence of an underlying impairment which  
21 could reasonably be expected to produce the pain or other symptoms alleged."



1 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not  
2 required to show that her impairment could reasonably be expected to cause the  
3 severity of the symptom she has alleged; she need only show that it could  
4 reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572  
5 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

6 Second, “[i]f the claimant meets the first test and there is no evidence of  
7 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
8 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
9 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal  
10 citations and quotations omitted). “General findings are insufficient; rather, the  
11 ALJ must identify what testimony is not credible and what evidence undermines  
12 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th  
13 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ  
14 must make a credibility determination with findings sufficiently specific to permit  
15 the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
16 testimony.”). “The clear and convincing [evidence] standard is the most  
17 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,  
18 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,  
19 924 (9th Cir. 2002)).

20 Here, the ALJ found Plaintiff’s medically determinable impairments could  
21 reasonably be expected to cause some of the alleged symptoms; however,

1 Plaintiff's "statements concerning the intensity, persistence and limiting effects of  
2 these symptoms are not entirely consistent with the medical evidence and other  
3 evidence in the record" for several reasons. Tr. 25.

4 *1. Daily Activities*

5 First, the ALJ noted that Plaintiff's "allegations of debilitating symptoms are  
6 generally inconsistent with her admitted activities." Tr. 25. Plaintiff correctly  
7 notes that a claimant need not be utterly incapacitated in order to be eligible for  
8 benefits. ECF No. 10 at 14 (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
9 1989)); *see also Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) ("the mere fact  
10 that a plaintiff has carried on certain activities . . . does not in any way detract from  
11 her credibility as to her overall disability."). Regardless, even where daily  
12 activities "suggest some difficulty functioning, they may be grounds for  
13 discrediting the [Plaintiff's] testimony to the extent that they contradict claims of a  
14 totally debilitating impairment." *Molina*, 674 F.3d at 1113.

15 Here, Plaintiff testified that she spends her day mostly isolated in her  
16 bedroom and sleeping; and she does some household chores and makes simple  
17 meals, although her mother prepares most meals. Tr. 24, 45-46. She also testified  
18 that she does not read, does not use the computer or a phone, does not take her son  
19 to the park or outside, does not have social media accounts, does not drive, and  
20 does not exercise. Tr. 46-48. Plaintiff testified that she spends about two hours a  
21 day with her son, and her brother and mother mostly take care of him. Tr. 53.

1 However, as noted by the ALJ, “[w]hile she testified that she provides little to no  
2 care for her son during the day, [Plaintiff’s] Function Report and her father’s Third  
3 Party Function Report indicate that she cares for her son, watches him, and takes  
4 care of his personal needs.” Tr. 25 (citing Tr. 215 (noting Plaintiff “feeds, bathes,  
5 and clothes” her son with “some help”), 223). Plaintiff argues the ALJ “ignored”  
6 that Plaintiff received some help from her family in caring for her son. ECF No.  
7 10 at 15. However, Plaintiff’s ability to care for children without help during any  
8 period may undermine claims of totally disabling symptoms. *See Rollins v.*  
9 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). It was reasonable for the ALJ to  
10 note that Plaintiff’s testimony that she provided only two hours of care for her son  
11 was inconsistent with her own reports, and the report of her father, that she was  
12 ultimately responsible for caring for her young son, including feeding, bathing, and  
13 dressing. *See* Tr. 215.

14 In addition, as noted by the ALJ, Plaintiff reported she has no difficulties  
15 tending to her own self-care, does housework including cleaning and laundry, gets  
16 on the computer to reapply for public benefits, reads, watches television, and  
17 socializes on a regular basis. Tr. 25, 215-18, 223-26, 314. Moreover, the ALJ  
18 specifically found that “[d]espite reporting that she isolates in her room for most of  
19 the day and is unable to be around other people due to her symptoms, the record  
20 demonstrates that she attends and is actively engaged in group therapy.” Tr. 25  
21 (citing, *e.g.*, Tr. 376). Plaintiff argues the activities cited by the ALJ, and her

1 ability to attend group therapy, are not inconsistent with her testimony. ECF No.  
2 10 at 15-16. However, regardless of whether the evidence could be viewed more  
3 favorably to Plaintiff, it was reasonable for the ALJ to conclude that “[w]hile her  
4 reported activities of daily living are not necessarily indicative of her ability to  
5 work, such evidence certainly shows that she is more functionally capable, than  
6 alleged.” Tr. 25; *Molina*, 674 F.3d at 1113 (Plaintiff’s activities may be grounds  
7 for discrediting Plaintiff’s testimony to the extent that they contradict claims of a  
8 totally debilitating impairment); *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.  
9 2005) (“where evidence is susceptible to more than one rational interpretation, it is  
10 the [Commissioner’s] conclusion that must be upheld.”). This was a clear and  
11 convincing reason to discredit Plaintiff’s symptom claims.

## 12 2. *Lack of Objective Medical Evidence*

13 Second, the ALJ found Plaintiff’s “allegations are generally inconsistent  
14 with treatment notes that suggest she is more functional than alleged,” including  
15 normal findings on mental status examination. Tr. 25. An ALJ may not discredit a  
16 claimant’s pain testimony and deny benefits solely because the degree of pain  
17 alleged is not supported by objective medical evidence. *Rollins*, 261 F.3d at 857;  
18 *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair*, 885 F.2d at 601.  
19 However, the medical evidence is a relevant factor in determining the severity of a  
20 claimant’s pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §  
21 404.1529(c)(2).

1 Here, the ALJ set out the medical evidence contradicting Plaintiff’s claims  
2 of disabling mental limitations,<sup>2</sup> including consistent mental status examinations  
3 indicating “she has an appropriate mood, is cooperative, her speech is normal, and  
4 she has good insight, judgment, and intellect.” Tr. 25 (citing Tr. 328, 332, 338,  
5 340, 359, 376, 378, 380, 384, 388, 390, 395, 400, 408, 411, 413, 418, 422, 424,  
6 428, 432, 434, 439, 442). The ALJ also noted that Plaintiff attends and is “actively  
7 engaged” in group therapy, and at her initial intake for mental health treatment in  
8 April 2013 she presented with normal affect, normal judgment, and normal  
9 attention span and concentration. Tr. 25 (citing Tr. 304-05). Plaintiff argues the

10  
11 \_\_\_\_\_  
12 <sup>2</sup> The ALJ additionally noted that Plaintiff “has also reported to some auditory  
13 hallucinations but these are generally unsupported by her treatment notes as a  
14 whole and she did not consistently report these symptoms to her treating or  
15 examining providers. Importantly no treatment provider has ever reported seeing  
16 [Plaintiff] respond to internal stimuli.” Tr. 25 (citing Tr. 315, 362). Plaintiff  
17 argues the ALJ erred in this reasoning because she told providers “she was only  
18 hearing voices sometimes,” and did not claim it was happening on a constant basis.  
19 ECF No. 10 at 17. However, regardless of whether Plaintiff consistently reported  
20 auditory hallucinations, the Court finds it was reasonable for the ALJ to find that  
21 Plaintiff’s reports of auditory hallucinations were also not supported by “the  
treatment notes as a whole.” *See Rollins*, 261 F.3d at 857; *Burch*, 400 F.3d at 679.

1 ALJ “failed to adequately consider positive findings that [Plaintiff] was tearful,  
2 depressed, anxious or worried, irritable or agitated, hand-wringing, and abasing.”  
3 ECF No. 10 at 16 (citing Tr. 283, 291, 296, 301, 326, 328, 359, 398, 400, 403, 418,  
4 428, 432-36, 442, 445). However, regardless of evidence that could be interpreted  
5 more favorably to the Plaintiff, the ALJ properly relied on evidence from the  
6 overall record, as cited extensively above, to support the finding that Plaintiff’s  
7 allegations of severe mental health symptoms, were inconsistent with the medical  
8 record, including mental status examination results. Tr. 25; *Burch*, 400 F.3d at 679  
9 (ALJ’s conclusion must be upheld where evidence is susceptible to more than one  
10 rational interpretation).

11 In addition, the ALJ found Plaintiff’s “allegations are generally inconsistent  
12 with the medical opinions that show that she has considerable work-related  
13 abilities despite her impairments,” including: the ability to perform simple and  
14 repetitive tasks, with limited contact with the general public; and the ability to  
15 work with a predictable workplace routine and minimal changes. Tr. 26-27, 67-69  
16 (Dr. Bruce Eather, reviewing state agency psychologist), 81-83 (Dr. John F.  
17 Robinson, reviewing state agency psychologist, 316-17 (Dr. Carina Bauer,  
18 examining psychologist). “If the ALJ finds that the claimant’s testimony as to the  
19 severity of her pain and impairments is unreliable, the ALJ must make a credibility  
20 determination . . . [t]he ALJ may consider testimony from physicians and third  
21

1 parties concerning the nature, severity and effect of the symptoms of which the  
2 claimant complains.” *See Thomas*, 278 F.3d at 958-59.

3 Based on the foregoing evidence, the ALJ reasonably concluded that the  
4 severity of Plaintiff’s alleged mental health limitations “are generally inconsistent  
5 with treatment notes that suggest she is more functional than alleged” and  
6 “inconsistent with the medical opinions that show [Plaintiff] has considerable  
7 work-related abilities despite her impairments.” Tr. 25-26. This lack of  
8 corroboration of Plaintiff’s claimed limitations by the medical evidence was a clear  
9 and convincing reason, supported by substantial evidence, for the ALJ to discount  
10 Plaintiff’s symptom claims.

### 11 3. *Failure to Seek Treatment*

12 Third, the ALJ noted that despite reporting to treating providers that she had  
13 symptoms of depression for a long time, “the record also indicates that she did not  
14 seek treatment until 2013.” Tr. 25. Unexplained, or inadequately explained,  
15 failure to seek treatment or follow a prescribed course of treatment may be the  
16 basis for an adverse credibility finding unless there is a showing of a good reason  
17 for the failure. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). However, an  
18 ALJ “will not find an individual’s symptoms inconsistent with the evidence in the  
19 record on this basis without considering possible reasons he or she may not comply  
20 with treatment or seek treatment consistent with the degree of his or her  
21 complaints.” Social Security Ruling (“SSR”) 16-3p at \*8-\*9 (March 16, 2016),

1 available at 2016 WL 1119029. Here, the ALJ specifically considered Plaintiff's  
2 "testimony that she lacked the resources to obtain treatment and that she was  
3 fearful of speaking with a counselor due to her reported hospitalization in 2012."  
4 Tr. 25, 51-52.

5 Plaintiff argues that her treatment record, or lack thereof, prior to her alleged  
6 onset date in 2013 is "largely irrelevant." ECF No. 10 at 17. However, while  
7 statement of disability made prior to the relevant adjudicatory period may be less  
8 relevant, the Court finds it was reasonable for the ALJ to discount Plaintiff's  
9 symptom claims because she did not seek any treatment until six months before her  
10 alleged onset date of disability. *See Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217,  
11 1224 (9th Cir. 2010) (statement of disability made outside the relevant time period  
12 may be disregarded). Moreover, Plaintiff contends that the ALJ failed to consider  
13 her report to a treating provider that her mother actively discouraged her from  
14 receiving mental health treatment. ECF No. 10 at 18 (citing Tr. 403). However, as  
15 this statement was made in the course of Plaintiff's treatment, it was arguably not a  
16 "barrier to treatment" as such, and the Court finds no error in the ALJ failing to  
17 consider this evidence as a possible justification for Plaintiff's failure to seek  
18 treatment prior to 2013.

19 Thus, the Court finds Plaintiff's failure to seek treatment for allegedly  
20 disabling mental health symptoms until 2013, six months prior to her alleged onset  
21 date of disability, was a clear and convincing reason to discount her symptom



1 claims. Moreover, even assuming, *arguendo*, that the ALJ erred in considering  
2 Plaintiff's failure to seek treatment as a reason to discount her symptom claims,  
3 any error is harmless because, as discussed herein, the ALJ's ultimate credibility  
4 finding was supported by substantial evidence. *See Carmickle v. Comm'r of Soc.*  
5 *Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

#### 6 4. *Improvement with Treatment*

7 Fourth, the ALJ noted that Plaintiff's "treatment record indicates that she  
8 responded positively to treatment in a short period." Tr. 26. Conditions  
9 effectively controlled with treatment are not disabling for purposes of determining  
10 eligibility for benefits. *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006  
11 (9th Cir. 2006); *see also Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir.  
12 2008) (a favorable response to treatment can undermine a claimant's complaints of  
13 debilitating pain or other severe limitations). In support of this finding, the ALJ  
14 noted that while Plaintiff was found to have "severe depression" in December  
15 2013, "by February 2014 she was noted to have only 'mild depression'." Tr. 26  
16 (citing Tr. 307, 327). Further, as noted by the ALJ, a "longitudinal review of her  
17 treatment record demonstrates that her medications are helping and her treatment  
18 has generally been effective." Tr. 26. The finding is supported by generally  
19 unremarkable psychiatric examination findings throughout the record, Plaintiff's  
20 denial of significant side effects or memory impairments, and her participation in  
21 group therapy where she was "observed repeatedly with a non-depressed mood"

1 and was fully engaged. Tr. 26 (citing Tr. 283, 291, 327-28, 359, 376, 377-79, 380,  
2 384-85, 388, 393-94, 397, 400, 439).

3 Plaintiff argues that it was error for the ALJ “to pick a few isolated instances  
4 of improvement,” and cites (1) a March 2016 record indicating Plaintiff reported  
5 thoughts of self-harm, (2) an April 2016 record noting Plaintiff felt she had  
6 improved but still had anxiety, and (3) multiple records, as discussed above, noting  
7 that Plaintiff presented as tearful at treatment visits. ECF No. 10 at 18 (citing Tr.  
8 380, 388-89). However, the ALJ specifically relied on the same treatment record  
9 in April 2016 as support for this reasoning, wherein Plaintiff reported that while  
10 she still had anxiety, she was feeling better overall and reported “a significant  
11 improvement.” Tr. 26 (citing Tr. 380). Moreover, the Court’s review of the  
12 treatment records cited by Plaintiff as evidence of her “tearful” presentation  
13 indicate that the treating provider contemporaneously noted Plaintiff was  
14 cooperative, maintained eye contact, had clear speech, and was dressed  
15 appropriately with appropriate affect. *See* ECF No. 10 at 18 (citing Tr. 296, 301,  
16 403, 416, 426, 432, 434, 445). Based on the foregoing evidence, and regardless of  
17 evidence that could be interpreted more favorably to Plaintiff, the Court finds that  
18 Plaintiff’s improvement with treatment across the longitudinal record was a clear  
19 and convincing reason, supported by substantial evidence, to discount Plaintiff’s  
20 severe symptom claims. *See Burch*, 400 F.3d at 679.

1                   5. *Inconsistencies*

2                   Fifth, the ALJ found Plaintiff’s “inconsistent statements to providers and  
3 during testimony further detract from the consistency of her allegations.” Tr. 26.  
4 In evaluating the severity of Plaintiff’s symptoms, the ALJ may consider  
5 inconsistencies in Plaintiff’s testimony, and between her testimony and her  
6 conduct. *See Thomas*, 278 F.3d at 958-59; *Tommasetti*, 533 F.3d at 1039 (prior  
7 inconsistent statements may be considered). Primarily, the ALJ supported this  
8 finding by noting that Plaintiff testified she was kidnapped by a family  
9 acquaintance who took her to Mexico, but she told a treating mental health  
10 provider that she ran away to Mexico, not that she was kidnapped. Tr. 26 (citing  
11 Tr. 40, 358). As noted by the ALJ, this individual was never prosecuted and has  
12 custody of Plaintiff’s children through a parenting plan from a Washington State  
13 family court. Tr. 26. Moreover, Plaintiff testified that she cannot be around men  
14 as a result of her alleged kidnapping, “but she met up with her ex-husband after  
15 returning from Mexico, dating him and eventually marrying him.” Tr. 26.

16                   Plaintiff argues the ALJ “failed to properly consider that [Plaintiff] was a  
17 13-year old child at the time of her trafficking,” and further asserts that marrying  
18 an abusive man was not inconsistent with her claimed difficulty being around men  
19 because she has borderline personality disorder, a disease characterized by  
20 impulsivity and unstable interpersonal relationships. ECF No. 10 at 18-19.  
21 However, regardless of sympathy for Plaintiff’s circumstances, it was reasonable

1 for the ALJ to rely on (1) Plaintiff's prior inconsistent statements to providers  
2 about how she ended up in Mexico, and (2) the inconsistency between Plaintiff's  
3 testimony that she was unable to be around men, and her marriage soon after  
4 returning from Mexico.<sup>3</sup> Tr. 26; *see Thomas*, 278 F.3d at 958-59. These  
5 inconsistencies between Plaintiff's testimony and her conduct, and her prior  
6 inconsistent statements, were clear and convincing reasons to discount Plaintiff's  
7 symptom claims.

8 The Court concludes that the ALJ provided clear and convincing reasons,  
9 supported by substantial evidence, for rejecting Plaintiff's symptom claims.

10  
11  
12 \_\_\_\_\_  
13 <sup>3</sup> Similarly, as noted by the ALJ, Plaintiff "admitted to lying to her ex-husband by  
14 stating she was sick in order to keep their relationship going." Tr. 26. Plaintiff  
15 argues "failed to recognize the context of these statements" because Plaintiff  
16 suffers from borderline personality disorder "which is characterized by 'frantic  
17 efforts' to avoid abandonment." ECF No. 10 at 20. However, in evaluating the  
18 credibility of symptom testimony, the ALJ may utilize ordinary techniques of  
19 credibility evaluation. *See also Smolen v. Chater*, 80 F.3d 1273, 1284 (9th  
20 Cir.1996). Thus, the Court finds it was reasonable for the ALJ to conclude that  
21 this "admission casts further doubt on [Plaintiff's] allegations of disabling  
impairments." Tr. 26.

1       **B. Medical Opinions**

2           There are three types of physicians: “(1) those who treat the claimant  
3 (treating physicians); (2) those who examine but do not treat the claimant  
4 (examining physicians); and (3) those who neither examine nor treat the claimant  
5 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”  
6 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted).  
7 Generally, a treating physician's opinion carries more weight than an examining  
8 physician's, and an examining physician's opinion carries more weight than a  
9 reviewing physician's. *Id.* If a treating or examining physician's opinion is  
10 uncontradicted, the ALJ may reject it only by offering “clear and convincing  
11 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d  
12 1211, 1216 (9th Cir. 2005). Conversely, “[i]f a treating or examining doctor's  
13 opinion is contradicted by another doctor's opinion, an ALJ may only reject it by  
14 providing specific and legitimate reasons that are supported by substantial  
15 evidence.” *Id.* (citing *Lester*, 81 F.3d at 830–831). “However, the ALJ need not  
16 accept the opinion of any physician, including a treating physician, if that opinion  
17 is brief, conclusory and inadequately supported by clinical findings.” *Bray*, 554  
18 F.3d at 1228 (quotation and citation omitted).

19           Plaintiff argues the ALJ erroneously considered the opinion of examining  
20 psychologist Carina Bauer, Psy.D. ECF No. 10 at 4-9. In March 2014, Dr. Bauer  
21 examined Plaintiff and found she was able to concentrate during the exam and did

1 not need to be redirected, had good hygiene, was friendly and engaging as the  
2 exam progressed despite being tearful at first, was fully oriented, was able to recall  
3 5 digits forward and 4 backward, was able to recall 3 out of 3 objects after five  
4 minute delay, and was able to follow a three-step command and spell “world”  
5 forward and backward. Tr. 26-27, 315-16. Dr. Bauer additionally noted that  
6 Plaintiff’s “issues are treatable and it is likely she can make a full recovery” with  
7 consistent treatment. Tr. 316.

8 Based on her examination findings, and her review of Plaintiff’s therapy  
9 notes and Function Report, Dr. Bauer opined that she is able to perform simple and  
10 repetitive tasks, manage detailed and complex tasks, accept instructions from  
11 supervisors, “seems able” to perform tasks without special instruction or additional  
12 instructions, and maintain regular attendance in the workplace. Tr. 316-17. Dr.  
13 Bauer also found that Plaintiff had mild impairment interacting with coworkers and  
14 the public, and mild impairment in managing stress at work. Tr. 317. The ALJ  
15 gave her opinion significant weight because “Dr. Bauer’s examination findings are  
16 consistent with her opinion and [Plaintiff’s] treatment record as a whole, which  
17 demonstrate improvement with therapy and medications.” Tr. 26-27.

18 Plaintiff contends that the ALJ erred by purporting to give significant weight  
19 to Dr. Bauer’s opinion but failing to properly incorporate several of her assessed  
20 limitations into the RFC. ECF No. 10 at 5-9. First, Dr. Bauer noted that Plaintiff  
21 “might benefit from receiving follow-up support to make sure she is managing the

1 activity or task well.” Tr. 317. The ALJ specifically found “the fact that [Plaintiff]  
2 might benefit under some circumstances does not necessarily eliminate imperfect  
3 vocational settings from the realm of her residual functional capacity.” Tr. 26 n.1  
4 (citing *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir.2009)).  
5 Plaintiff argues that this statement by Dr. Bauer was intended as a functional  
6 limitation, and the ALJ therefore “misinterpreted the purpose of Dr. Bauer’s  
7 workplace limitation, which should have been incorporated into the RFC.” ECF No.  
8 10 at 7-8. The Court disagrees. As an initial matter, while Dr. Bauer noted that  
9 Plaintiff “might benefit from receiving follow-up support,” she also specifically  
10 opined that Plaintiff “seems able to perform tasks without special instruction or  
11 additional instruction.” Tr. 317. Moreover, the language used by Dr. Bauer in  
12 suggesting Plaintiff “might benefit” from follow-up support indicates it was merely  
13 a recommendation. Thus, the Court finds the ALJ properly relied on *Valentine* to  
14 find this portion of Dr. Bauer’s opinion was merely a recommendation, as opposed  
15 to a functional limitation, and therefore need not be reflected in the assessed RFC.  
16 *See Valentine*, 574 F.3d at 691-92 (recommendations or suggestions from medical  
17 providers are not work-related limitations of function that need be reflected in the  
18 RFC); *see also Burch*, 400 F.3d at 679 (ALJ’s conclusion must be upheld where  
19 evidence is susceptible to more than one rational interpretation).

20 Second, Plaintiff argues the ALJ erred by providing “no reason not to fully  
21 credit Dr. Bauer’s findings, including (1) the “mild issue” that Plaintiff “reported

1 some difficulty with sleep, which might make it difficult for her to maintain a job  
2 with an early start time if she is having difficulty falling asleep and staying asleep at  
3 night”; and (2) Plaintiff’s self-reported “PTSD symptoms (easily overwhelmed and  
4 hypervigilance) may make it difficult for her to manage usual stress at work.” Tr.  
5 317. Plaintiff argues that “[i]f a person has trouble starting her work on time and has  
6 difficulty managing typical stress in a workplace, she is unlikely to be punctual and  
7 maintain attendance within these tolerances and so is disabled.” ECF No. 10 at 7.  
8 However, despite Dr. Bauer’s notes that it “might” be “difficult for her to maintain a  
9 job with an early start,” and “may” be difficult to manage usual stress at work, Dr.  
10 Bauer ultimately concluded (1) that Plaintiff appears able to maintain regular  
11 attendance in the workplace, and (2) Plaintiff has only “mild impairment” managing  
12 stress at work. Tr. 317. Thus, the ALJ “rationally rel[ied] on [these] specific  
13 imperatives regarding [Plaintiff’s] limitations” when evaluating Plaintiff’s RFC, as  
14 opposed to speculation that Plaintiff “might” have difficulties with a job that starts  
15 early, and “may” have difficulty managing workplace stress. ECF No. 11 at 9-10  
16 (citing *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015)).  
17 The ALJ did not err by declining to incorporate limitations based on difficulty  
18 managing stress, or maintain attendance, into the assessed RFC. *See Rounds*, 807  
19 F.3d at 1006 (“the ALJ is responsible for translating and incorporating clinical  
20 findings into a succinct RFC.”).



1           The Court finds the ALJ properly considered Dr. Bauer’s opinion. Moreover,  
2 the RFC, and the resulting hypothetical proposed to the vocational expert, contained  
3 the limitations reasonably identified by the ALJ and supported by substantial  
4 evidence in the record. *Bayliss*, 427 F.3d at 1217 (RFC determination will be  
5 affirmed if supported by substantial evidence).

### 6           **C. Obesity**

7           Plaintiff argues the ALJ “entirely failed to consider [Plaintiff’s] obesity in  
8 assessing whether she met or equaled a Listing and also in assessing her RFC.”  
9 ECF No. 10 at 12. SSR 02-1p “reminds adjudicators to consider [obesity’s] effects  
10 when evaluating disability,” and directs ALJs “to consider the effects of obesity  
11 not only under the listings but also when assessing a claim at other steps of the  
12 sequential evaluation process, including when assessing an individual’s [RFC].”  
13 SSR 02-1p at \*1 (September 12, 2002), *available at* 2002 WL 34686281.

14           However, as noted by Defendant, “Plaintiff has not alleged that obesity limits her  
15 ability to work nor does she allege any difficulties” from obesity. ECF No. 11 at  
16 11 (citing Tr. 206). In fact, the only evidence cited by Plaintiff to support her  
17 argument is a single treatment record noting Plaintiff’s weight in March 2016,  
18 without additional calculation of her BMI, or recorded observation as to Plaintiff’s  
19 alleged obesity. *See* Tr. 388. No provider found Plaintiff’s obesity was a severe  
20 impairment; nor does Plaintiff identify how her obesity, specifically, resulted in  
21 limitations beyond those in the assessed RFC.

1           When there is no evidence that a claimant’s obesity limits her functioning,  
2 there is no error when the ALJ does not consider obesity in the sequential  
3 evaluation process. *See Burch*, 400 F.3d at 681. In *Burch*, as in this case:

4           There was no evidence before the ALJ, and none in the record, which  
5 states that claimant’s obesity limits her functioning. Neither treatment  
6 notes nor any diagnoses addressed claimant’s limitations due to obesity.  
7 The medical record is silent as to whether and how claimant’s obesity  
might have exacerbated her condition. Moreover, claimant did not  
present any testimony or other evidence at her hearing that her obesity  
impaired her ability to work.

8 *Id.* at 683. Thus, as Plaintiff has not identified any functional limitations  
9 associated with her obesity that were not considered in determining her RFC, the  
10 Court finds no error in the ALJ’s consideration of obesity at step three, or at any  
11 subsequent steps in the sequential evaluation process. *Id.* at 684 (“there is no  
12 evidence in the record, of any functional limitations as a result of her obesity that  
13 the ALJ failed to consider. . . . [T]he ALJ properly considered [Plaintiff’s] obesity  
14 to the extent required based on the record.”).

15           **D. Lay Witness**

16           “In determining whether a claimant is disabled, an ALJ must consider lay  
17 witness testimony concerning a claimant’s ability to work.” *Stout v. Comm’r, Soc.*  
18 *Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006); *see also Dodrill v. Shalala*, 12  
19 F.3d 915, 918-19 (9th Cir. 1993) (“friends and family members in a position to  
20 observe a claimant’s symptoms and daily activities are competent to testify as to  
21

1 [his] condition.”). To discount evidence from lay witnesses, an ALJ must give  
2 reasons “germane” to each witness. *Dodrill*, 12 F.3d at 919.

3 Here, Plaintiff’s father, George Redick, completed a Third Party Function  
4 Report, in which he reported that Plaintiff does not interact well with others due to  
5 her anxiety and depression, and does not follow through on tasks. Tr. 27, 214.  
6 The ALJ gave his lay witness statement “some weight” because “his observations  
7 cannot outweigh the objective findings in the record. [Plaintiff’s] presentation at  
8 appointments as generally cooperative and demonstrating improvement, and her  
9 performance at the consultative examination [with Dr. Bauer] indicates she is able  
10 to follow through and complete tasks without issue.” Tr. 27. An ALJ may  
11 discount lay testimony if it conflicts with medical evidence. *Lewis*, 236 F.3d at  
12 511 (citing *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984)). Plaintiff  
13 argues this finding was made in error because “objective evidence of record  
14 primarily supports [Mr. Redick’s] testimony.” ECF No. 10 at 10-11. In support of  
15 this argument, Plaintiff cites Dr. Bauer’s observations that Plaintiff was initially  
16 withdrawn and tearful, had flat tone and blunt affect, was dysphoric, could not  
17 perform serial 7s, and had fair to poor judgment and insight. Tr. 314-16. Plaintiff  
18 also refers the Court to the same evidence cited in support of her unavailing  
19 argument regarding lack of corroboration of Plaintiff’s symptom claims by the  
20 overall medical record, including treating provider notes that Plaintiff was tearful,

1 depressed, anxious or worried, irritable or agitated, hand-wringing, and abasing.  
2 ECF No. 10 at 11.

3           However, as discussed *supra* with regard to Dr. Bauer’s opinion, and  
4 Plaintiff’s symptom claims, it was reasonable for the ALJ to find that the severity  
5 of Mr. Redick’s lay witness opinion was not supported by the overall record. For  
6 example, Dr. Bauer also found Plaintiff was friendly and able to concentrate during  
7 the examination and did not need to be redirected, was friendly and engaging as the  
8 exam progressed despite being tearful at first, was fully oriented, was able to recall  
9 5 digits forward and 4 backward and recall 3 out of 3 objects after a 5 minute  
10 delay, was able to follow a three step command, and was able to spell “world”  
11 forward and backward. Tr. 26-27, 314-16. Based on her examination and review  
12 of Plaintiff’s records, Dr. Bauer ultimately opined that Plaintiff was able to  
13 perform simple and repetitive tasks with only mild impairments interacting with  
14 others and managing stress. Tr. 316-17. Moreover, as noted by the ALJ earlier in  
15 the decision, objective mental status examinations throughout the record found  
16 Plaintiff “has an appropriate mood, is cooperative, her speech is normal, and she  
17 has good insight, judgment, and intellect.” Tr. 25 (citing Tr. 328, 332, 338, 340,  
18 359, 376, 378, 380, 384, 388, 390, 395, 400, 408, 411, 413, 418, 422, 424, 428,  
19 432, 434, 439, 442).

1 For all of these reasons, the Court finds the lack of support for Mr. Redick's  
2 lay witness testimony in the longitudinal medical record, including objective  
3 findings, was a germane reason to give his lay testimony "some" weight.

#### 4 CONCLUSION

5 A reviewing court should not substitute its assessment of the evidence for  
6 the ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must  
7 defer to an ALJ's assessment as long as it is supported by substantial evidence. 42  
8 U.S.C. § 405(g). As discussed in detail above, the ALJ provided clear and  
9 convincing reasons to discount Plaintiff's symptom claims, properly weighed the  
10 medical opinion evidence, properly considered Plaintiff's obesity, and did not err  
11 in considering the lay witness testimony. After review the court finds the ALJ's  
12 decision is supported by substantial evidence and free of harmful legal error.

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

14 1. Plaintiff's Motion for Summary Judgment, **ECF No. 10**, is **DENIED**.

15 2. Defendant's Motion for Summary Judgment, **ECF No. 11**, is

16 **GRANTED.**

17 The District Court Clerk is directed to enter this Order and provide copies to  
18 counsel. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

19 **DATED** December 6, 2018.

20 s/ Rosanna Malouf Peterson  
21 ROSANNA MALOUF PETERSON  
United States District Judge