

1 **STATEMENT OF FACTS**

2 The facts have been presented in the administrative transcript, the ALJ's
3 decision, the Plaintiff's and Defendant's briefs, and will only be summarized here. At
4 the time of her application for SSI benefits, Plaintiff was 22 years old, and at the time
5 of the administrative hearing, she was 25 years old. She has a high school education,
6 but no past relevant work experience.

7
8 **STANDARD OF REVIEW**

9 "The [Commissioner's] determination that a claimant is not disabled will be
10 upheld if the findings of fact are supported by substantial evidence...." *Delgado v.*
11 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983). Substantial evidence is more than a mere
12 scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less
13 than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
14 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576 (9th Cir.
15 1988). "It means such relevant evidence as a reasonable mind might accept as
16 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401, 91
17 S.Ct. 1420 (1971). "[S]uch inferences and conclusions as the [Commissioner] may
18 reasonably draw from the evidence" will also be upheld. *Beane v. Richardson*, 457
19 F.2d 758, 759 (9th Cir. 1972); *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
20 On review, the court considers the record as a whole, not just the evidence supporting
21 the decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
22 1989); *Thompson v. Schweiker*, 665 F.2d 936, 939 (9th Cir. 1982).

23 It is the role of the trier of fact, not this court to resolve conflicts in evidence.
24 *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
25 interpretation, the court must uphold the decision of the ALJ. *Allen v. Heckler*, 749
26 F.2d 577, 579 (9th Cir. 1984).

27 A decision supported by substantial evidence will still be set aside if the proper
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1 legal standards were not applied in weighing the evidence and making the decision.
2 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir.
3 1987).

5 ISSUES

6 Plaintiff argues the ALJ erred in: 1) not providing specific, clear and
7 convincing reasons for discrediting Plaintiff's testimony regarding her symptoms and
8 limitations; 2) failing to provide adequate reasons for rejecting the opinions of
9 examining medical sources; 3) failing to find the Plaintiff's severe mental health
10 impairments meet or equal a listed impairment; and 4) failing to provide adequate
11 reasons for rejecting the lay witness statement of Plaintiff's mother.

13 DISCUSSION

14 SEQUENTIAL EVALUATION PROCESS

15 The Social Security Act defines "disability" as the "inability to engage in any
16 substantial gainful activity by reason of any medically determinable physical or
17 mental impairment which can be expected to result in death or which has lasted or can
18 be expected to last for a continuous period of not less than twelve months." 42
19 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be determined
20 to be under a disability only if her impairments are of such severity that the claimant
21 is not only unable to do her previous work but cannot, considering her age, education
22 and work experiences, engage in any other substantial gainful work which exists in
23 the national economy. *Id.*

24 The Commissioner has established a five-step sequential evaluation process for
25 determining whether a person is disabled. 20 C.F.R. § 416.920; *Bowen v. Yuckert*,
26 482 U.S. 137, 140-42, 107 S.Ct. 2287 (1987). Step one determines if she is engaged
27 in substantial gainful activities. If she is, benefits are denied. 20 C.F.R. §
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1 416.920(a)(4)(I). If she is not, the decision-maker proceeds to step two, which
2 determines whether the claimant has a medically severe impairment or combination
3 of impairments. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant does not have a severe
4 impairment or combination of impairments, the disability claim is denied. If the
5 impairment is severe, the evaluation proceeds to the third step, which compares the
6 claimant's impairment with a number of listed impairments acknowledged by the
7 Commissioner to be so severe as to preclude substantial gainful activity. 20 C.F.R.
8 § 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpart P, App. 1. If the impairment meets or
9 equals one of the listed impairments, the claimant is conclusively presumed to be
10 disabled. If the impairment is not one conclusively presumed to be disabling, the
11 evaluation proceeds to the fourth step which determines whether the impairment
12 prevents the claimant from performing work she has performed in the past. If the
13 claimant is able to perform her previous work, she is not disabled. 20 C.F.R. §
14 416.920(a)(4)(iv). If the claimant cannot perform this work, the fifth and final step
15 in the process determines whether she is able to perform other work in the national
16 economy in view of her age, education and work experience. 20 C.F.R. §
17 416.920(a)(4)(v).

18 The initial burden of proof rests upon the claimant to establish a prima facie
19 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
20 Cir. 1971). The initial burden is met once a claimant establishes that a physical or
21 mental impairment prevents her from engaging in her previous occupation. The
22 burden then shifts to the Commissioner to show (1) that the claimant can perform
23 other substantial gainful activity and (2) that a "significant number of jobs exist in the
24 national economy" which claimant can perform. *Kail v. Heckler*, 722 F.2d 1496,
25 1498 (9th Cir. 1984).

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1 **ALJ'S FINDINGS**

2 The ALJ found the following: 1) Plaintiff has “severe” medical impairments,
3 those being: depression, social phobia and migraines; 2) Plaintiff’s impairments do
4 not meet or equal any of the impairments listed in 20 C.F.R. § 404 Subpart P, App.
5 1; 3) Plaintiff has the residual functional capacity (RFC) to perform a full range of
6 work at all exertional levels, but with the following non-exertional limitations: she
7 can do simple routine work with occasional contact with supervisors and coworkers,
8 but no teamwork or collaboration, and no public contact; and 4) Plaintiff’s RFC
9 allows her to perform jobs existing in significant numbers in the national economy,
10 including machine packer, assembler, and inspector/hand packer. Accordingly, the
11 ALJ concluded the Plaintiff is not disabled.

12
13 **MEDICAL OPINIONS**

14 It is settled law in the Ninth Circuit that in a disability proceeding, the opinion
15 of a licensed treating or examining physician or psychologist is given special weight
16 because of his/her familiarity with the claimant and his/her condition. If the treating
17 or examining physician's or psychologist’s opinion is not contradicted, it can be
18 rejected only for clear and convincing reasons. *Reddick v. Chater*, 157 F.3d 715, 725
19 (9th Cir. 1998); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). If contradicted, the
20 ALJ may reject the opinion if specific, legitimate reasons that are supported by
21 substantial evidence are given. *Id.* “[W]hen evaluating conflicting medical opinions,
22 an ALJ need not accept the opinion of a doctor if that opinion is brief, conclusory,
23 and inadequately supported by clinical findings.” *Bayliss v. Barnhart*, 427 F.3d 1211,
24 1216 (9th Cir. 2005). . The opinion of a non-examining medical advisor/expert need
25 not be discounted and may serve as substantial evidence when it is supported by other
26 evidence in the record and consistent with the other evidence. *Andrews v. Shalala*,
27 53 F.3d 1035, 1041 (9th Cir. 1995).

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1 Nurse practitioners, physicians' assistants, and therapists (physical and mental
2 health) are not "acceptable medical sources" for the purpose of establishing if a
3 claimant has a medically determinable impairment. 20 C.F.R. § 416.913(a). Their
4 opinions are, however, relevant to show the severity of an impairment and how it
5 affects a claimant's ability to work. 20 C.F.R. § 416.913(d). In order to discount the
6 opinion of a non-acceptable medical source, the ALJ must offer germane reasons for
7 doing so. *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010).

8 The ALJ gave "great weight" to the opinions of the non-examining State
9 agency consultants. (AR at p. 22). Although they opined that Plaintiff is limited to
10 occasional public/coworker interaction, the ALJ determined that in light of Plaintiff's
11 anxiety and depression, she should have no public contact, be limited to occasional
12 contact with supervisors, and should avoid work involving teamwork or
13 collaboration. (*Id.*).

14 Kordell N. Kennemer, Psy. D., reviewed the record in conjunction with the
15 initial denial of Plaintiff's claim. He offered his opinion regarding Plaintiff's mental
16 RFC on October 23, 2014, after reviewing records from May 2014 through October
17 2014. It is not apparent whether any of that evidence included a formal psychological
18 or psychiatric examination. (AR at pp. 97-98; 101-103).

19 Jan L. Lewis, Ph.D., reviewed the record in conjunction with the
20 reconsideration denial of Plaintiff's claim. She offered her opinion regarding
21 Plaintiff's mental RFC on April 8, 2015, after reviewing additional evidence from
22 December 2014 through March 2015. (AR at pp. 107-109; 113-15). This additional
23 evidence included records from Central Washington Comprehensive Mental Health
24 (CWCMH) dated March 3-4, 2015, and an opinion from Carol Jurs, M.A., of
25 CWCMH dated January 27, 2015. Dr. Lewis determined this opinion, from a non-
26 acceptable medical source, was not supported by other medical evidence in the file.
27 (AR at p. 113).

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1 While Dr. Lewis appears to have reviewed the December 3, 2014 diagnoses by
2 Daniel McCabe, M.D., and some of the results of the mental status exam he
3 conducted as part of his psychiatric evaluation of the Plaintiff (AR at p. 110), she did
4 not refer specifically to Dr. McCabe nor address the limitations opined by him at that
5 time. Dr. Lewis did not weigh Dr. McCabe's opinion like she weighed the opinion
6 of Carol Jurs.

7 Based on his clinical interview and mental status examination of the Plaintiff,
8 Dr. McCabe found the following mental health symptoms affected Plaintiff's ability
9 to work: social anxiety, daily, severe; symptoms of depression including anhedonia,
10 poor concentration, self-persecutory thoughts, daily, moderate; chronic suicidal
11 thoughts, daily, moderate; and self-injurious behaviors, daily, moderate. (AR at p.
12 357). He noted that Plaintiff engages in chronic picking at her breasts or legs and
13 that she had "a large unhealing wound on her face which is apparently also from
14 chronic picking." (*Id.*). Dr. McCabe diagnosed the Plaintiff with social phobia and
15 major depressive disorder, recurrent and moderate. (AR at p. 358). He opined that
16 Plaintiff had a "[s]evere to moderate impairment in social and occupational
17 functioning" with a "marked" limitation in her ability to perform activities within a
18 schedule, maintain regular attendance, and be punctual within customary tolerances
19 without special supervision; a "marked" limitation in her ability to adapt to changes
20 in a routine work setting; a "severe" limitation in her abilities to ask simple questions
21 or request assistance and communicate and perform effectively in a work setting; a
22 "marked" limitation in her ability to maintain appropriate behavior in a work setting;
23 and a "marked" limitation her ability to complete a normal work day and work week
24 without interruptions from psychologically based symptoms. (*Id.*).

25 Dr. McCabe's prognosis was that Plaintiff would be impaired for 18 months
26 with available treatment and that vocational training or services would minimize or
27 eliminate barriers to employment. (AR at p. 358). He opined that Plaintiff would
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1 benefit from psychiatric evaluation and treatment and although she had some trial
2 runs with antidepressants, he thought she had likely not engaged in full psychiatric
3 treatment because of her social anxiety. (*Id.*). He further opined that Plaintiff would
4 benefit from individual counseling with cognitive behavioral therapy to work on
5 techniques to deal with her social anxiety. (*Id.*).

6 In January 2015, Plaintiff began a course of treatment and counseling with
7 CWCMH that would last for the better part of two years. Her initial assessment on
8 January 26-27, 2015 at CWCMH was by Carol Jurs, M.A., a licensed mental health
9 counselor (LMHC). Jurs opined that a vocational assessment was not appropriate at
10 this time as the Plaintiff was “not prepared to be in the workforce,” noting Plaintiff
11 could not “handle stress at this point” as evidenced by her having a job at a fast food
12 restaurant which lasted a mere two days. (AR at p. 374). Jurs diagnosed the Plaintiff
13 with Dysthymic Disorder and Major Depressive Disorder. (AR at p. 373).

14 While Plaintiff missed a couple of appointments at CWCMH after her initial
15 assessment, she started therapy on March 19, 2015 and was seen on a regular basis
16 there until October 2016.

17 Dr. McCabe conducted a second psychiatric evaluation of the Plaintiff on
18 October 18, 2016. Plaintiff told him that things remained largely unchanged for her
19 and that she had multiple unhealed wounds on her chest. Dr. McCabe observed that
20 there were “noticeable wounds” on the Plaintiff’s face. (AR at p. 382). Plaintiff
21 indicated her sessions at CWCMH were “helpful” and that they were “working on
22 exposing her to more social situations.” According to Dr. McCabe’s evaluation:

23 [Plaintiff’s] proud to report that she can now sit outside on
24 her porch for up to 10 to 20 minutes a day, and even converses
25 with the neighbors. She’d like to keep working on improving
26 her social interaction; perhaps getting a volunteer position at a
27 shelter and walking dogs, and hopes to eventually have a job.
28 She feels that the biggest impediment to this is the lack of
motivation, feeling tired all the time, and being anxious
about being out in public.

(AR at p. 383).

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1 Dr. McCabe’s diagnosis was major depressive disorder, recurrent and
2 moderate; social anxiety disorder; and Cluster A and Cluster C personality traits.¹
3 (AR at p. 383). He indicated that mental health symptoms affecting Plaintiff’s ability
4 to work included: social anxiety, daily and severe; symptoms of depression including
5 anhedonia, poor concentration, self persecutory thoughts, daily and moderate; self
6 injurious behaviors, daily and moderate. (AR at p. 383).

7 This time around, Dr. McCabe opined that Plaintiff had a “severe” limitation
8 in her ability to perform activities within a schedule, maintain regular attendance, and
9 be punctual within customary tolerances without special supervision; a “severe”
10 limitation in her ability to adapt to changes in a routine work setting; a “marked”
11 limitation in her abilities to ask simple questions or request assistance and
12 communicate and perform effectively in a work setting; a “severe” limitation in her
13 ability to maintain appropriate behavior in a work setting; and a “severe” limitation
14 her ability to complete a normal work day and work week without interruptions from
15 psychologically based symptoms. (AR at p. 384). Notwithstanding the counseling
16 Plaintiff had received at CWCMH in the interim, Dr. McCabe believed Plaintiff’s
17 limitations had increased in four areas and diminished in two of these areas, although
18 only slightly from “severe” to “marked.” Dr. McCabe estimated Plaintiff would be
19 would be impaired for 18 months with available treatment, but this time opined that
20 vocational training or services would not minimize or eliminate barriers to
21 employment. (*Id.*). According to the doctor:

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23 ¹ Cluster A personality disorders are characterized by odd, eccentric
24 thinking or behavior. Cluster C personality disorders are characterized by
25 anxious, fearful thinking or behavior. [https://www.mayoclinic.org/
26 diseases-conditions/personality-disorders/symptoms-causes/syc-20354463.](https://www.mayoclinic.org/diseases-conditions/personality-disorders/symptoms-causes/syc-20354463)
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1 This woman is receiving psychological counseling that
2 sounds behaviorally oriented to help expose her to situations
3 in which she has to cope with her social anxiety. I believe
4 this is an appropriate treatment. She is also receiving
5 medication treatment for her symptoms, which I believe
6 is appropriate as well. This woman with her social anxiety
7 is going to move at her own pace. She feels that she's
8 making progress in terms of being able to sit outside on
9 her front porch for 10 minutes a day, does have the goal
10 of wanting to continue to increase social exposure, and
11 she's going to need to move at her own speed with that.
12 She is not at the point where vocational training would
13 be helpful as she would not be able to tolerate that level of
14 social interaction. So I believe ongoing behavioral treatment
15 is necessary.

9 (*Id.*).

10 Unfortunately, Plaintiff did not continue with behavioral therapy at CWCMH
11 after November 2016, as noted by the ALJ in his decision. (AR at p. 20). At the
12 April 2017 hearing, Plaintiff testified she had not been attending counseling recently
13 “because of the snow and because of my depression.” (AR at p. 76). She noted the
14 closest counseling available was 10 to 20 miles away from where she lived and
15 indicated she was trying to get in to counseling again. (AR at pp. 76-77).

16 The ALJ gave little weight to Dr. McCabe’s opinions for the following reasons:

17 They are based primarily on the claimant’s self-report of
18 symptoms and limitations, which are not consistent with
19 the treatment record. For example, she told Dr. McCabe
20 in October 2016 that she had been down for the last few
21 months with depression, with only an occasional good
22 day. [Citation omitted]. However, in November 2016, she
23 reported most of her days were okay, with a few bad days.
24 [Citation omitted]. The claimant indicated to Dr. McCabe
25 she had progressed only to the point she could sit outside
26 for 10 to 20 minutes. However, records reflect that she was
27 able to attend a sewing class, spend time swimming at a park,
28 improve her depression by singing and listening to music,
volunteer at a cat rescue operation, and enroll in vocational
rehabilitation services. [Citation omitted]. As noted above,
mental health records reflect good response to treatment
when compliant. [Citation omitted].

(AR at p. 21).

16 Clinical interviews and mental status examinations are objective measures that
17 cannot be discounted as a “self-report.” *Buck v. Berrryhill*, 869 F.3d 1040, 1049 (9th
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1 Cir. 2017). According to the Ninth Circuit in *Buck*:

2 Psychiatric evaluations may appear subjective, especially
3 compared to evaluation in other medical fields. Diagnoses
4 will always depend in part on the patient’s self-report, as
5 well as the clinician’s observations of the patient. But such
6 is the nature of psychiatry. . . . Thus, the rule allowing an
7 ALJ to reject opinions based on self-reports does not apply
8 in the same manner to opinions regarding mental illness.

9 Dr. McCabe’s partial reliance on Plaintiff’s self-reported symptoms is not a
10 reason to reject the doctor’s opinions, especially in light of the fact that the non-
11 examining psychologist to whose opinion the ALJ gave great weight (Dr. Lewis), did
12 not weigh Dr. McCabe’s opinion and provide any reasons for discounting it.

13 Dr. McCabe was obviously aware of Plaintiff’s treatment with medication and
14 notwithstanding that, offered the opinion that she “was not at the point where
15 vocational training would be helpful as she would not be able to tolerate that level of
16 social interaction.” Around the same time as Plaintiff was evaluated by Dr. McCabe
17 in October 2016, she was seen by psychiatrist Gregory Sawyer, M.D., at CWCMH for
18 “medication management.” She reported “significantly more difficulty with her
19 depression” and requested an increase in her antidepressant medication. (AR at p.
20 428). Dr. Sawyer stated his “impression of this somewhat child-like patient is that
21 she is not psychologically minded and will probably not benefit from other than
22 medication,” but “[o]n the other hand, chasing her with medication is likely to be at
23 least partly futile.” (AR at p. 431). Dr. Sawyer thought it was possible to alleviate
24 some of her depression, but not all of it “since some of it appears to be almost
25 characterological in nature.” (AR at p. 432).

26 The ALJ noted certain some instances from March 2015, January 2016, May
27 2016, and July 2016, when Plaintiff had a good response to medication. (AR at p.
28 20). Indeed, Plaintiff even testified that things are better with medication and while
29 there are still bad days, “it’s a little better.” (AR at p. 75). Nevertheless, this is not
30 a legitimate reason to discount the October 2016 opinions of Drs. McCabe and

1 Sawyer who no doubt were well-acquainted with Plaintiff's medication treatment
2 history.

3 The record shows that while Plaintiff started/attempted certain activities
4 pointed out by the ALJ, she did not sustain or follow through on them. Records from
5 CWCMH indicate "[t]he sewing and crocheting has not been realized since
6 [Plaintiff's] first involvement." (AR at p. 481). While Plaintiff in May 2016 told her
7 therapist at CWCMH that she had volunteered a "few times" at a cat shelter, she also
8 stated there was no "set schedule yet" and there is no subsequent reference in the
9 record showing Plaintiff's continued involvement at the shelter. (AR at p. 453).
10 While there are references in the record to Plaintiff applying for vocational services
11 in the spring/summer of 2016, there is nothing in the record showing that she
12 followed through with this and actually participated in such services. Indeed, Dr.
13 McCabe's October 2016 assessment that Plaintiff was "not at the point where
14 vocational training would be helpful as she would not be able to tolerate that level of
15 social interaction" clearly suggests she did not participate in vocational services. The
16 record indicates Plaintiff went swimming at a park only one time with her mother and
17 brother. (AR at p. 477). The limited extent of these activities is not enough to
18 undermine the opinion of Dr. McCabe regarding Plaintiff's difficulty with social
19 interaction. It is not a legitimate reason to discount that opinion.

20 Jessica Webb, a registered nurse practitioner with CWCMH, was responsible
21 for Plaintiff's medication management during 2015 and part of 2016. (AR at pp. 447-
22 51; 464-68; 485-89; 495-99). In December 2015, she completed a "Mental Source
23 Statement" in which she indicated Plaintiff was "severely limited" in all areas of
24 cognitive and social functioning, and extremely limited in maintaining social
25 functioning, concentration, persistence and pace, such that she would be off-task over
26 30% of the time during a 40 hour work-week and would likely miss four or more days
27 of work per month. (AR at pp. 379-81). The ALJ gave little weight to Webb's
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1 opinion, finding it was not supported by the objective medical evidence of the record
2 and that no findings or observations were provided to support the stated limitations.
3 (AR at p. 22). Webb’s opinion is, however, supported by the objective medical
4 evidence of record including Dr. McCabe’s clinical findings and Webb’s own
5 findings and observations as set forth in her CWCMH medication management
6 records. (AR at pp. 447-51; 464-68; 485-89; 495-99). The ALJ did not provide a
7 “germane” reason for discounting Webb’s opinion.²

8
9 **TESTIMONY RE SYMPTOMS AND LIMITATIONS**

10 Where, as here, the Plaintiff has produced objective medical evidence of an
11 underlying impairment that could reasonably give rise to some degree of the
12 symptoms alleged, and there is no affirmative evidence of malingering, the ALJ’s
13 reasons for rejecting the Plaintiff’s testimony must be clear and convincing. *Burrell*
14 *v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014); *Garrison v. Colvin*, 759 F.3d 95, 1014
15 (9th Cir. 2014). If an ALJ finds a claimant’s subjective assessment unreliable, “the
16 ALJ must make a credibility determination with findings sufficiently specific to
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19 ² Plaintiff acknowledges that Brittany Fallon, a nurse practitioner, opined
20 primarily regarding Plaintiff’s physical limitations, but indicated in August 2015
21 that Plaintiff would miss work due to mental health reasons. (AR at pp. 378). The
22 ALJ gave Fallon’s opinion little weight because no findings were provided to
23 support it. (AR at p. 22). Nonetheless, Fallon’s assessment is consistent with that
24 of Dr. McCabe and ARNP Webb, and her own observations of the Plaintiff (AR at
25 pp. 364-67; 508-16).
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1 permit [a reviewing] court to conclude that the ALJ did not arbitrarily discredit [the]
2 claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002).
3 Among other things, the ALJ may consider: 1) the claimant's reputation for
4 truthfulness; 2) inconsistencies in the claimant's testimony or between her testimony
5 and her conduct; 3) the claimant's daily living activities; 4) the claimant's work
6 record; and 5) testimony from physicians or third parties concerning the nature,
7 severity, and effect of claimant's condition. *Id.*

8 Plaintiff's testimony about her symptoms and limitations is consistent with the
9 opinions of Dr. McCabe and ARNP Webb regarding her symptoms and limitations.
10 Because Plaintiff's limited activities are not a legitimate reason to discount the
11 opinions of Dr. McCabe and ARNP Webb, they are also not a clear and convincing
12 reason to discount Plaintiff's testimony. That Plaintiff told Dr. McCabe
13 in October 2016 she had been down for the last few months with depression, with
14 only an occasional good day, while in November 2016, she reported most of her days
15 were okay, with a few bad days, is not manifestly inconsistent such as to constitute
16 a clear and convincing reason for discounting Plaintiff's testimony.

17 The ALJ found Plaintiff's treatment had been "sporadic," noting she underwent
18 a mental health assessment in March 2014, but was discharged for failure to attend
19 further sessions. (AR at pp. 19-20). In December 2014, Plaintiff acknowledged to
20 Dr. McCabe that she had tried counseling, but felt she was not ready for it. (AR at
21 p. 356). Dr. McCabe opined that Plaintiff likely had not engaged in psychiatric
22 treatment fully because of her social anxiety. (AR at p. 358). As noted above, in
23 January 2015, Plaintiff commenced a regular course of treatment with CWCMH that
24 lasted until November 2016. The ALJ pointed out that Plaintiff was discharged from
25 CWCMH in January 2017 after failing to respond to a closing letter (AR at p. 20), but
26 at her hearing, Plaintiff explained that inclement weather, her depression, and her
27 distance from the CWCMH counseling center had created impediments for her,

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1 although she was trying to resume counseling there. (AR at pp. 76-77). Overall, it
2 is not clear that Plaintiff’s treatment has been “sporadic,” but to the extent it has,
3 there are valid reasons for it and therefore, it is not a clear and convincing reason for
4 discounting Plaintiff’s testimony.

5
6 **REMAND**

7 Social security cases are subject to the ordinary remand rule which is that when
8 “the record before the agency does not support the agency action, . . . the agency has
9 not considered all the relevant factors, or . . . the reviewing court simply cannot
10 evaluate the challenged agency action on the basis of the record before it, the proper
11 course, except in rare circumstances, is to remand to the agency for additional
12 investigation or explanation.” *Treichler v. Commissioner of Social Security*
13 *Administration*, 775 F.3d 1090, 1099 (9th Cir. 2014), quoting *Fla. Power & Light Co.*
14 *v. Lorion*, 470 U.S. 729, 744, 105 S.Ct. 1598 (1985).

15 In “rare circumstances,” the court may reverse and remand for an immediate
16 award of benefits instead of for additional proceedings. *Id.*, citing 42 U.S.C. §405(g).
17 Three elements must be satisfied in order to justify such a remand. The first element
18 is whether the “ALJ has failed to provide legally sufficient reasons for rejecting
19 evidence, whether claimant testimony or medical opinion.” *Id.* at 1100, quoting
20 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). If the ALJ has so erred, the
21 second element is whether there are “outstanding issues that must be resolved before
22 a determination of disability can be made,” and whether further administrative
23 proceedings would be useful. *Id.* at 1101, quoting *Moisa v. Barnhart*, 367 F.3d 882,
24 887 (9th Cir. 2004). “Where there is conflicting evidence, and not all essential factual
25 issues have been resolved, a remand for an award of benefits is inappropriate.” *Id.*
26 Finally, if it is concluded that no outstanding issues remain and further proceedings
27 would not be useful, the court may find the relevant testimony credible as a matter of
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1 law and then determine whether the record, taken as a whole, leaves “not the slightest
2 uncertainty as to the outcome of [the] proceedings.” *Id.*, quoting *NLRB v. Wyman-*
3 *Gordon Co.*, 394 U.S. 759, 766 n. 6 (1969). Where all three elements are satisfied-
4 ALJ has failed to provide legally sufficient reasons for rejecting evidence, there are
5 no outstanding issues that must be resolved, and there is no question the claimant is
6 disabled- the court has discretion to depart from the ordinary remand rule and remand
7 for an immediate award of benefits. *Id.* But even when those “rare circumstances”
8 exist, “[t]he decision whether to remand a case for additional evidence or simply to
9 award benefits is in [the court’s] discretion.” *Id.* at 1102, quoting *Swenson v.*
10 *Sullivan*, 876 F.2d 683, 689 (9th Cir. 1989).

11 Here, the ALJ failed to offer legally sufficient reasons for rejecting the
12 opinions of Dr. McCabe and ARNP Webb. The ALJ also provided insufficient
13 reasons for rejecting Plaintiff’s allegations concerning her symptoms and resulting
14 limitations. There are no outstanding issues to resolve and further administrative
15 proceedings would not be useful.³ The VE testified that an individual would be
16 incapable of sustaining competitive work if she was off task 20 percent of the
17 workday and/or missed two or more days of work per week. (AR at pp. 91-92).
18 These limitations are consistent with the limitations opined by Dr. McCabe and
19

20 ³ It is not necessary to address Plaintiff’s contention that she suffers from an
21 impairment which meets or equal a listed impairment. Nor is it necessary to
22 address Plaintiff’s contention that the ALJ did not provide adequate reasons to
23 discount statements from Plaintiff’s mother (AR at p. 22), other than to note those
24 statements are consistent with the limitations opined by Dr. McCabe and ARNP
25 Webb, and with the Plaintiff’s testimony regarding her limitations.
26
27
28

**ORDER GRANTING PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT- 16**

1 ARNP Webb. The record taken as a whole leaves no doubt that as of April 1, 2014,
2 the Plaintiff was disabled for continuous period of at least 12 months.

3 The court would normally be reluctant to award SSI benefits to such a young
4 person (age 25 at the time of the 2017 hearing) who has no past relevant work history
5 and has barely attempted any type of work. The record, however, bears out that, at
6 least through June 1, 2017, this Plaintiff was suffering from seriously debilitating
7 social anxiety and depression that precluded her from performing any substantial
8 gainful activity. The court hopes that Plaintiff resumed treatment in 2017 or
9 thereafter with the goal of managing her mental health conditions well enough to
10 allow her to engage in some type of substantial gainful activity.

11
12 **CONCLUSION**

13 Plaintiff's Motion For Summary Judgment (ECF No. 13) is **GRANTED** and
14 Defendant's Motion For Summary Judgment (ECF No. 17) is **DENIED**. The
15 Commissioner's decision is **REVERSED**.

16 Pursuant to sentence four of 42 U.S.C. §405(g), this matter is **REMANDED**
17 for payment of Title XVI SSI benefits to the Plaintiff.

18 **IT IS SO ORDERED.** The District Executive shall enter judgment
19 accordingly, forward copies of the judgment and this order to counsel of record, and
20 close this file.

21 **DATED** this 26th day of June, 2019.

22
23 *s/Lonny R. Suko*

24 _____
25 LONNY R. SUKO
26 Senior United States District Judge
27
28

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT- 17**