

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

Feb 05, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

<p>ELIZABETH A.,</p> <p>Plaintiff,</p> <p>v.</p> <p>ANDREW M. SAUL, COMMISSIONER OF SOCIAL SECURITY,</p> <p>Defendant.</p>
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No. 1:19-CV-03095-RHW

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING  
FOR FURTHER PROCEEDINGS**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 11 & 12. Plaintiff brings this action seeking judicial review of the Commissioner’s final decision denying her applications for Social Security Disability Insurance under Title II and Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. §§ 401-434, 1381-1383f. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS** Plaintiff’s Motion for Summary Judgment, **DENIES** Defendant’s Motion for Summary Judgment, and **REMANDS** the matter back to the Commissioner for additional

**ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR FURTHER PROCEEDINGS ~ 1**

1 proceedings.

## 2 **I. Jurisdiction**

3 Plaintiff filed applications for Social Security Disability Insurance and  
4 Supplemental Security Income on October 5, 2015. AR 75, 85. She alleged a  
5 disability onset date of October 5, 2015. AR 251, 258. Plaintiff's applications  
6 were initially denied on January 21, 2016, AR 121-28, and on reconsideration on  
7 May 23, 2016, AR 132-43.

8 Administrative Law Judge ("ALJ") Ilene Sloan held a hearing on October  
9 26, 2017 and heard testimony from Plaintiff and vocational expert Kimberly  
10 Mullinax. AR 42-74. On May 31, 2018, the ALJ issued a decision finding  
11 Plaintiff ineligible for disability benefits. AR 15-28. The Appeals Council denied  
12 Plaintiff's request for review on March 7, 2019. AR 1-5. Plaintiff sought judicial  
13 review by this Court on May 8, 2019. ECF No. 1. Accordingly, Plaintiff's claims  
14 are properly before this Court pursuant to 42 U.S.C. § 405(g).

## 15 **II. Sequential Evaluation Process**

16 The Social Security Act defines disability as the "inability to engage in any  
17 substantial gainful activity by reason of any medically determinable physical or  
18 mental impairment which can be expected to result in death or which has lasted or  
19 can be expected to last for a continuous period of not less than twelve months." 42  
20 U.S.C. § 423(d)(1)(A).



1 a mere scintilla but less than a preponderance; it is such relevant evidence as a  
2 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*  
3 *Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d  
4 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining  
5 whether the Commissioner’s findings are supported by substantial evidence, “a  
6 reviewing court must consider the entire record as a whole and may not affirm  
7 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
8 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
9 F.2d 498, 501 (9th Cir. 1989)).

10 In reviewing a denial of benefits, a district court may not substitute its  
11 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
12 1992). “The court will uphold the ALJ’s conclusion when the evidence is  
13 susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533  
14 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s  
15 decision on account of an error that is harmless. *Id.* An error is harmless where it  
16 is “inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.*  
17 (quotation and citation omitted). The burden of showing that an error is harmful  
18 generally falls upon the party appealing the ALJ’s decision. *Shinseki v. Sanders*,  
19 556 U.S. 396, 409-10 (2009).

1 **IV. Statement of Facts**

2 The facts of the case are set forth in detail in the transcript of proceedings  
3 and only briefly summarized here. Plaintiff was 32 years old at the alleged date of  
4 onset. AR 251. At application, Plaintiff alleged that the following conditions  
5 limited her ability to work: posttraumatic stress disorder (PTSD); bipolar disorder;  
6 anxiety; paranoia; depression; and visions. AR 295. The highest grade Plaintiff  
7 completed was the eighth grade. AR 296. At the time of application, Plaintiff  
8 stated that she had previously worked as a busser/waitress/hostess/ prep cook in a  
9 restaurant, a delivery driver at an auto store, and a pantry girl/dessert maker at a  
10 restaurant. AR 296. Plaintiff was working at the time of her application, but stated  
11 that she had made changes to her work activities as of December 31, 2014. AR  
12 295-96.

13 **V. The ALJ's Findings**

14 The ALJ determined that Plaintiff was not under a disability within the  
15 meaning of the Act from the alleged date of onset, October 5, 2015, through the  
16 date of the decision. AR 15-28.

17 **At step one**, the ALJ found that Plaintiff had not engaged in substantial  
18 gainful activity since her alleged date of onset. AR 17 (citing 20 C.F.R. §§  
19 404.1571, 416.971 *et seq.*).

20 **At step two**, the ALJ found that Plaintiff had the following severe

1 impairments: cannabis dependence and PTSD (citing 20 C.F.R. §§ 404.1520(c),  
2 416.920(c)). AR 18.

3 **At step three**, the ALJ found that Plaintiff did not have an impairment or  
4 combination of impairments that met or medically equaled the severity of one of  
5 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 18 (citing 20  
6 C.F.R. §§ 404.1520(d), 416.920(d)).

7 **At step four**, the ALJ found Plaintiff had the residual functional capacity  
8 (RFC) to perform a work at all exertional levels with the following nonexertional  
9 limitations:

10 She is able to understand, remember, and carry out simple, routine, and  
11 familiar (i.e. previously learned) complex tasks. She is also able to  
12 maintain regular attendance and complete a normal workday but will  
13 do so without customary tolerances. Socially, she cannot maintain  
14 contact with the general public, but she can accept supervision, and is  
15 able to work in a small group setting of less than twenty (20) workers.

14 AR 20-21. The ALJ identified Plaintiff's past relevant work as agricultural  
15 produce sorter, housekeeping cleaner, cook helper, parts clerk, dining room  
16 attendant, and informal waitress and found that she was unable to perform any of  
17 this past relevant work. AR 26.

18 **At step five**, the ALJ found that, in light of her age, education, work  
19 experience, and RFC, there were jobs that exist in significant numbers in the national  
20 economy that Plaintiff could perform, including the jobs of industrial cleaner,

1 kitchen helper, and laundry worker II. AR 26-27.

## 2 **VI. Issues for Review**

3 Plaintiff argues that the Commissioner's decision is not free of legal error  
4 and not supported by substantial evidence. Specifically, she argues that the ALJ  
5 erred by: (1) failing to make a proper step two determination; (2) failing to  
6 properly weigh the medical opinion evidence; and (3) failing to properly consider  
7 Plaintiff's symptom statements. ECF No. 11.

## 8 **VII. Discussion**

### 9 **A. Step Two**

10 Plaintiff challenges the ALJ's step two determination by asserting that she  
11 failed to properly consider Plaintiff's chronic obstructive pulmonary disease  
12 (COPD)/asthma, right knee disorder, chronic neck pain, carpal tunnel syndrome,  
13 digestive disorders, depression, and borderline personality disorder. ECF No. 11 at  
14 3-10.

15 Step two addresses whether the claimant has a severe impairment, or  
16 combination of impairments, that significantly limits the claimant's physical or  
17 mental ability to do basic work activities. 20 C.F.R. §§ 404.1520(a)(4)(ii),  
18 416.920(a)(4)(ii). To establish a severe impairment at step two, the claimant must  
19 first establish the existence of a medically determinable impairment by providing  
20 medical evidence consisting of signs, symptoms, and laboratory findings; the

1 claimant’s own statement of symptoms, a diagnosis, or a medical opinion is not  
2 sufficient to establish the existence of an impairment. 20 C.F.R. §§ 404.1521,  
3 416.921. “[O]nce a claimant has shown that [she] suffers from a medically  
4 determinable impairment, [she] next has the burden of proving that these  
5 impairments and their symptoms affect [her] ability to perform basic work  
6 activities.” *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001). At step  
7 two, the burden of proof is squarely on the Plaintiff to establish the existence of  
8 any medically determinable impairment(s) and that such impairments(s) are severe.  
9 *Tackett*, 180 F.3d at 1098-99 (In steps one through four, the burden of proof rests  
10 upon the claimant to establish a prima facie case of entitlement to disability  
11 benefits.).

12 The step-two analysis is “a de minimis screening device used to dispose of  
13 groundless claims.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). An  
14 impairment is “not severe” if it does not “significantly limit” the ability to conduct  
15 “basic work activities.” 20 C.F.R. §§ 404.1522(a), 416.922(a). Basic work  
16 activities are “abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§  
17 404.1522(b), 416.922(b).

18 The ALJ concluded that Plaintiff had no severe physical impairments. AR  
19 19. This is an error. Plaintiff provided evidence that she had medically  
20 determinable physical impairments and her reason for finding them not severe



1 were not supported by substantial evidence.

## 2 **1. COPD and Asthma**

3 The ALJ found that Plaintiff's COPD and asthma to be "non-severe" for two  
4 reasons: (1) "the claimant's pulmonary disease and asthma have remained well-  
5 controlled with medications and she has not sought or required on-going treatments  
6 for breathing difficulties;" and (2) "she did not list breathing problems as a barrier  
7 to employment on her initial application for disability benefits." AR 18-19.

8 The ALJ's first reason for finding Plaintiff's COPD and asthma as non-  
9 severe, that the impairments were well-controlled with medications and Plaintiff  
10 did not receive regular treatment for the impairments, is not an accurate reflection  
11 of the record. On October 18, 2015, Plaintiff went to the emergency room in acute  
12 respiratory distress. AR 495. She was diagnosed with bacterial pneumonia, acute  
13 respiratory distress/insufficiency, and upper respiratory infection. AR 498. On  
14 March 8, 2016, Plaintiff was treated in the emergency room for shortness of breath.  
15 AR 380, 387. She was diagnosed with bronchitis and pneumonia. AR 382. On  
16 March 15, 2016, Plaintiff complained that her inhalers were not working and she  
17 was feeling more short of breath. AR 408. She was diagnosed with COPD  
18 exacerbation with bronchitis. *Id.* On September 16, 2016, Plaintiff was treated by  
19 her primary care provider for a cough and diagnosed with a COPD exacerbation  
20 with bronchitis. AR 511. On December 12, 2016, Plaintiff was treated at the

1 emergency room for a cough and difficulty breathing. AR 488. She was  
2 diagnosed with asthma with acute exacerbation. AR 492. On December 14, 2016,  
3 Plaintiff was treated at the emergency room for a severe cough and was diagnosed  
4 with asthma with acute exacerbation. AR 484. The record demonstrates that  
5 Plaintiff required repeated intervention at the emergency room for her breathing  
6 despite her medications.

7 The ALJ's second reason for finding Plaintiff's COPD and asthma as non-  
8 severe, that she failed to allege it as a barrier to employment in her initial  
9 application, is an error. The ALJ is required to consider all evidence relevant to  
10 the disability claim, 20 C.F.R. §§ 404.1520b, 416.920b, and is required to consider  
11 the combined effect of all impairments, 20 C.F.R. §§ 404.1523, 416.923.  
12 Therefore, regardless of what Plaintiff alleged at the time of application, the ALJ is  
13 required to consider all the conditions supported in the evidence.

14 Therefore, the ALJ's determination that Plaintiff's COPD and asthma were  
15 not severe at step two is not supported by substantial evidence. The case is  
16 remanded for the ALJ to properly address Plaintiff's COPD and asthma at step  
17 two.

## 18 **2. Other Physical Impairments**

19 The ALJ found that Plaintiff's carpal tunnel syndrome and digestive  
20 disorders were not severe at step two. AR 18. Furthermore, the ALJ did not

1 address Plaintiff's chronic neck and right knee pain at step two. AR 18-19.

2 Here, the ALJ failed to find that Plaintiff had a severe physical impairment  
3 at step two. AR 18-19. In doing so, the RFC finding did not include any  
4 exertional, postural, or environmental limitations. AR 20-21. The ALJ is required  
5 to determine whether Plaintiff's impairments, or combination of impairment, are  
6 severe at step two. *Smolen v. Chater*, 80 F.3d 1273, 1289-90 (9th Cir. 1996); 20  
7 C.F.R. §§ 404.1523, 416.923. By failing to address Plaintiff's physical  
8 impairments, singularly or in combination, at step two, the ALJ erred. This error  
9 resulted in the RFC being devoid of any exertional, postural, or environmental  
10 limitations. Therefore, this error was not harmless, and the case is remanded for  
11 additional proceedings to include a new step two determination.

### 12 **3. Psychological Disorders**

13 The ALJ did find that Plaintiff had PTSD at step two, AR 18, and included  
14 psychological limitations in the RFC determination, AR 20-21, but the ALJ failed  
15 to address the other psychological impairments in the record. Plaintiff was also  
16 diagnosed with depression and borderline personality disorder. AR 370 (diagnosis  
17 of depression by Jay Toews, Ed.D.); AR 538 (diagnoses made by Jody Robinson,  
18 M.D.). The ALJ failed to discuss these impairments in her step two determination.  
19 AR 18-19. Therefore, as part of the new step two determination, the ALJ will  
20 address Plaintiff's depression and borderline personality disorder.

1           **B. Medical Opinion Evidence.**

2           Plaintiff challenges the weight the ALJ gave to the opinions of Kristal Mata,  
3 M.S., K. Scott Reinmuth, M.D., and Neil Anderson, LLCSW. ECF No. 11 at 10-  
4 17.

5           **1. Kristal Mata, M.S.**

6           On September 25, 2015, Ms. Mata completed a Workfirst form for the  
7 Washington Department of Social and Health Services (DSHS). AR 465-67. She  
8 listed Plaintiff’s diagnoses as PTSD, major depressive disorder, and cannabis  
9 dependence and opined that Plaintiff was limited to one to ten hours of work per  
10 week because she could not be around others for a long period of time. AR 465.  
11 She stated that Plaintiff’s condition was likely to remain limited as opined for nine  
12 months. AR 466.

13           The ALJ did not discuss Ms. Mata’s opinion. While Ms. Mata is not an  
14 acceptable medical source, *see* 20 C.F.R. §§ 404.1502(a), 416.902(a), the ALJ is  
15 still required to consider her opinion, *see* 20 C.F.R. §§ 404.1527(f), 416.927(f).  
16 “The RFC assessment must always consider and address medical source opinions.  
17 If the RFC assessment conflicts with an opinion from a medical source, the  
18 adjudicator must explain why the opinion was not adopted.” S.S.R. 96-8p. The  
19 ALJ’s failure to discuss the opinion was an error. Upon remand, the ALJ will  
20 address the opinion.

1           **2. K. Scott Reinmuth, M.D.**

2           Plaintiff challenges the weight the ALJ assigned to the opinion of Dr.  
3 Reinmuth. ECF No. 11 at 11-13.

4           The Ninth Circuit has distinguished between three classes of medical  
5 providers in defining the weight to be given to their opinions: (1) treating  
6 providers, those who actually treat the claimant; (2) examining providers, those  
7 who examine but do not treat the claimant; and (3) non-examining providers, those  
8 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830  
9 (9th Cir. 1996) (as amended). A treating provider’s opinion is given the most  
10 weight, followed by an examining provider, and finally a non-examining provider.  
11 *Id.* at 830-31. In the absence of a contrary opinion, a treating or examining  
12 provider’s opinion may not be rejected unless “clear and convincing” reasons are  
13 provided. *Id.* at 830. If a treating or examining provider’s opinion is contradicted,  
14 it may be discounted for “specific and legitimate reasons that are supported by  
15 substantial evidence in the record.” *Id.* at 830-31.

16           Dr. Reinmuth completed two statements in the record addressing Plaintiff’s  
17 functional abilities. The first was a letter allowing Plaintiff to keep her companion  
18 animal with her at all times on August 12, 2015. AR 450. The second was a  
19 Workfirst form for DSHS dated March 20, 2015. AR 451-53. Dr. Reinmuth stated  
20 that Plaintiff had PTSD and anxiety issues and “needs to avoid high stress

1 environments.” AR 451. He also stated that Plaintiff had chronic low back, neck,  
2 and wrist pain and “needs to avoid repetitive jobs, lifting [greater than] 10 lbs.” *Id.*  
3 He opined that Plaintiff was unable to participate in work activities “for now.” *Id.*  
4 When asked about Plaintiff’s limitations with lifting and carrying, Dr. Reinmuth  
5 opined that Plaintiff was limited to sedentary work, which was defined as “[a]ble  
6 to lift 10 pounds maximum and frequently lift or carry such articles as files and  
7 small tools. A sedentary job may require sitting, walking and standing for brief  
8 periods.” AR 452. He stated that Plaintiff was “currently unable to work due to  
9 vomiting [and abdominal] pain issues.” *Id.* He stated that Plaintiff’s limitations  
10 would persist for about three months and that Plaintiff required a referral to a  
11 surgeon for possible cholecystectomy, ongoing mental health treatment, and  
12 ongoing treatment for her spine and joint issues. *Id.*

13 The ALJ gave this opinion little weight for four reasons: (1) Dr. Reinmuth  
14 did not include a detailed rationale for the opined limitations; (2) he did not set  
15 forth vocationally specific set of mental limitations; (3) the opined limitations  
16 would only last for three months; and (4) it was unclear why he limited Plaintiff to  
17 sedentary work. AR 24-25. The parties agree that the ALJ was required to provide  
18 clear and convincing reasons to reject the opinion. ECF Nos. 11 at 11; 12 at 14.

19 Dr. Reinmuth’s opinion considers Plaintiff’s physical impairments, AR 451-  
20 53, which were excluded by the ALJ at step two. Since the case is remanded for

1 the ALJ to properly address Plaintiff’s physical impairments at step two, the ALJ  
2 will also readdress Dr. Reinmuth’s opinion.

3 **3. Neil Anderson, LLCSW**

4 On January 24, 2017, Mr. Anderson completed a Workfirst form for DSHS.  
5 AR 461-63. He listed Plaintiff’s diagnoses as PTSD and major depressive  
6 disorder. AR 461. He opined that Plaintiff’s impairments limited her ability to  
7 work, stating that she was “frequently triggered by stimuli in environment which  
8 exacerbate PTSD symptoms, social interaction difficulties due to PTSD  
9 symptoms.” *Id.* He was “unable to ascertain” the number of hours per week  
10 Plaintiff could perform work activities and any lifting and carrying restrictions.  
11 AR 461-62. He sated he was unable to determine how long Plaintiff’s limitations  
12 would persist because “PTSD can be treated, but it is unclear whether it will be a  
13 permanent condition.” AR 462.

14 The ALJ gave the opinion little weight because Mr. Anderson did not  
15 include specific functional limitations, Mr. Anderson did not include specific  
16 references to treatment or examination notes, and the opinion was inconsistent with  
17 the results of Dr. Toews’ evaluation. AR 25.

18 Mr. Anderson’s opinion considered Plaintiff’s depression, as well as her  
19 PTSD. AR 461. Since the case is being remanded for the ALJ to consider  
20 Plaintiff’s depression at step two and as part of the RFC determination, the ALJ

1 will also consider Mr. Anderson’s opinion anew.

2 **C. Plaintiff’s Symptom Statements**

3 Plaintiff challenges that ALJ’s determination that her symptom statements are  
4 unreliable. ECF No. 11 at 17-21.

5 An ALJ engages in a two-step analysis to determine whether a claimant’s  
6 testimony regarding subjective symptoms is reliable. *Tommasetti*, 533 F.3d at 1039.  
7 First, the claimant must produce objective medical evidence of an underlying  
8 impairment or impairments that could reasonably be expected to produce some  
9 degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold,  
10 and there is no affirmative evidence suggesting malingering, “the ALJ can reject the  
11 claimant’s testimony about the severity of her symptoms only by offering specific,  
12 clear and convincing reasons for doing so.” *Id.*

13 Here, the ALJ found that the medically determinable impairments could  
14 reasonably be expected to produce the symptoms Plaintiff alleged; however, the  
15 ALJ determined that Plaintiff’s “statements concerning the intensity, persistence  
16 and limiting effects of these symptoms are not entirely consistent with the medical  
17 evidence and other evidence in the record for the reasons explained in this  
18 decision” AR 21.

19 The evaluation of a claimant’s symptom statements and their resulting  
20 limitations relies, in part, on the assessment of the medical evidence. *See* 20



1 C.F.R. §§ 404.1529(c), 416.929(c); S.S.R. 16-3p. Therefore, in light of the case  
2 being remanded for the ALJ to properly address the medical evidence concerning  
3 Plaintiff's physical impairments and readdress the medical source opinions in the  
4 file, a new assessment of Plaintiff's subjective symptom statements will be  
5 necessary.

### 6 **VIII. Conclusion**

7 The decision whether to remand for further proceedings or reverse and  
8 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
9 888 F.2d 599, 603 (9th Cir. 1989). Reversing and awarding benefits is appropriate  
10 when (1) the record has been fully developed and further administrative  
11 proceedings would serve no useful purpose; (2) the ALJ has failed to provide  
12 legally sufficient reasons for rejecting evidence, whether claimant testimony or  
13 medical opinion; and (3) if the improperly discredited evidence were credited as  
14 true, the ALJ would be required to find the claimant disabled on remand, the Court  
15 remands for an award of benefits. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir.  
16 2017). But where there are outstanding issues that must be resolved before a  
17 determination can be made, and it is not clear from the record that the ALJ would  
18 be required to find a claimant disabled if all the evidence were properly evaluated,  
19 remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir.  
20 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

1 In this case, the ALJ must properly address the medical evidence supporting  
2 a severe medically determinable physical impairment and it is not clear from the  
3 record that the ALJ would be required to find Plaintiff disabled. Further  
4 proceedings are necessary for the ALJ to address Plaintiff's physical impairments  
5 at step two, readdress the medical opinions in the record, and readdress Plaintiff's  
6 symptom statements. Additionally, the ALJ will supplement the record with any  
7 outstanding evidence and call a vocational expert to testify at a remand hearing.

8 Accordingly, **IT IS ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **GRANTED**.

10 2. Defendant's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

11 3. This matter is **REMANDED** to the Commissioner for further proceedings  
12 consistent with this Order.

13 4. Judgment shall be entered in favor of **Plaintiff** and the file shall be  
14 **CLOSED**.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
16 Order, forward copies to counsel and **close the file**.

17 **DATED** February 5, 2021.

18 *s/ Robert H. Whaley*

19 ROBERT H. WHALEY

20 Senior United States District Judge