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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 YESENIA K.,

8 Plaintiff,

9 v.

10 ANDREW M. SAUL, Commissioner
of Social Security,

11 Defendant.
12

NO. 1:19-CV-3262-TOR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

13 BEFORE THE COURT are the parties' cross-motions for summary
14 judgment (ECF Nos. 13 and 15). Plaintiff is represented by D. James Tree.
15 Defendant is represented by Kathryn Miller. This matter was submitted for
16 consideration without oral argument. The Court has reviewed the administrative
17 record and the parties' completed briefing and is fully informed. For the reasons
18 discussed below, the Court **GRANTS** Plaintiff's motion and **DENIES** Defendant's
19 motion.
20

1 **JURISDICTION**

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

4 **STANDARD OF REVIEW**

5 A district court’s review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
7 limited: the Commissioner’s decision will be disturbed “only if it is not supported
8 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means
10 relevant evidence that “a reasonable mind might accept as adequate to support a
11 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently,
12 substantial evidence equates to “more than a mere scintilla[,] but less than a
13 preponderance.” *Id.* (quotation and citation omitted). In determining whether this
14 standard has been satisfied, a reviewing court must consider the entire record as a
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
18 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
19 rational interpretation, [the court] must uphold the ALJ’s findings if they are
20 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

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

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

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

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

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

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §
3 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

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

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
13 must also consider vocational factors such as the claimant's age, education and
14 work experience. *Id.* If the claimant is capable of adjusting to other work, the
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
16 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
17 analysis concludes with a finding that the claimant is disabled and is therefore
18 entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
2 capable of performing other work; and (2) such work “exists in significant
3 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
4 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 On March 4, 2017, Plaintiff filed an application for Title XVI supplemental
7 security income benefits, alleging a disability onset date of January 1, 2010. Tr.
8 169-77. The application was denied initially, Tr. 106-14, and on reconsideration,
9 Tr. 118-24. Plaintiff appeared at a hearing before an administrative law judge
10 (“ALJ”) on October 4, 2018. Tr. 38-67. On November 28, 2018, the ALJ denied
11 Plaintiff’s claim. Tr. 12-31.

12 At step one of the sequential evaluation analysis, the ALJ found Plaintiff had
13 not engaged in substantial gainful activity since March 4, 2017, the application
14 date. Tr. 17. At step two, the ALJ found Plaintiff had the following severe
15 impairments: PTSD, personality disorder, major depressive disorder, and mild
16 intellectual disability. *Id.* At step three, the ALJ found Plaintiff did not have an
17 impairment or combination of impairments that meets or medically equals the
18 severity of a listed impairment. Tr. 18. The ALJ then found Plaintiff had the RFC
19 to perform a full range of work at all exertional limits but with the following
20 nonexertional limitations:

1 [S]he can understand and remember 1-3 step instructions, standard work-like
2 procedures and regular work locations; has sufficient concentration,
3 persistence, or pace to complete simple, routine tasks in two-hour
4 increments for a normal workday and workweek with normal breaks; can
5 work at a regular but not fast production pace; should have only brief
6 superficial interactions with coworkers and the public; should not be
7 required to work as part of a team; is able to accept supervision; can adapt to
8 normal, routine changes in the workplace.

6 Tr. 20.

7 At step four, the ALJ found Plaintiff was not capable of performing past
8 relevant work. Tr. 25. At step five, the ALJ found that, considering Plaintiff's
9 age, education, work experience, RFC, and testimony from a vocational expert,
10 there were other jobs that existed in significant numbers in the national economy
11 that Plaintiff could perform, such as laundry laborer, industrial sweeper/cleaner,
12 and hand packager. Tr. 26. The ALJ concluded that Plaintiff was not under a
13 disability, as defined in the Social Security Act, from March 4, 2017, through
14 November 28, 2018, the date of the ALJ's decision. Tr. 27.

15 On September 10, 2019, the Appeals Council denied review, Tr. 1-6, making
16 the ALJ's decision the Commissioner's final decision for purposes of judicial
17 review. *See* 42 U.S.C. § 1383(c)(3).

18 ISSUES

19 Plaintiff seeks judicial review of the Commissioner's final decision denying
20 her supplemental security income benefits under Title XVI of the Social Security

1 Act. Plaintiff raises the following issues for this Court’s review:

- 2 1. Whether the ALJ properly weighed Plaintiff’s symptom testimony;
- 3 2. Whether the ALJ properly weighed the medical opinion evidence; and
- 4 3. Whether the ALJ properly evaluated the Listing of Impairments.

5 ECF No. 13 at 2.

6 DISCUSSION

7 A. Plaintiff’s Symptom Testimony

8 Plaintiff contends the ALJ failed to rely on clear and convincing reasons to
9 discredit her symptom testimony. ECF No. 13 at 17-21.

10 An ALJ engages in a two-step analysis to determine whether to discount a
11 claimant’s testimony regarding subjective symptoms. SSR 16-3p, 2016 WL
12 1119029, at *2. “First, the ALJ must determine whether there is ‘objective
13 medical evidence of an underlying impairment which could reasonably be
14 expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at
15 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The
16 claimant is not required to show that [the claimant’s] impairment ‘could reasonably
17 be expected to cause the severity of the symptom [the claimant] has alleged; [the
18 claimant] need only show that it could reasonably have caused some degree of the
19 symptom.’” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d
20 1028, 1035-36 (9th Cir. 2007)).

1 Second, “[i]f the claimant meets the first test and there is no evidence of
2 malingering, the ALJ can only reject the claimant’s testimony about the severity of
3 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
4 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
5 omitted). General findings are insufficient; rather, the ALJ must identify what
6 symptom claims are being discounted and what evidence undermines these claims.
7 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
8 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
9 explain why he or she discounted claimant’s symptom claims). “The clear and
10 convincing [evidence] standard is the most demanding required in Social Security
11 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
12 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

13 Factors to be considered in evaluating the intensity, persistence, and limiting
14 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
15 duration, frequency, and intensity of pain or other symptoms; (3) factors that
16 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
17 side effects of any medication an individual takes or has taken to alleviate pain or
18 other symptoms; (5) treatment, other than medication, an individual receives or has
19 received for relief of pain or other symptoms; (6) any measures other than
20 treatment an individual uses or has used to relieve pain or other symptoms; and (7)

1 any other factors concerning an individual's functional limitations and restrictions
2 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7-*8; 20
3 C.F.R. § 416.929(c). The ALJ is instructed to "consider all of the evidence in an
4 individual's record," "to determine how symptoms limit ability to perform work-
5 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

6 The ALJ found Plaintiff's impairments could reasonably be expected to
7 cause the alleged symptoms; however, Plaintiff's statements concerning the
8 intensity, persistence, and limiting effects of those symptoms were not entirely
9 consistent with the evidence. Tr. 21.

10 *1. Improvement with Treatment*

11 The ALJ found Plaintiff's symptom testimony was less reliable because it
12 was inconsistent with evidence that showed Plaintiff's symptoms improved when
13 she was compliant with treatment. Tr. 22-23. The effectiveness of treatment is a
14 relevant factor in determining the severity of a claimant's symptoms. 20 C.F.R. §
15 416.929(c)(3); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th
16 Cir. 2006) (determining that conditions effectively controlled with medication are
17 not disabling for purposes of determining eligibility for benefits); *Tommasetti v.*
18 *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response
19 to treatment can undermine a claimant's complaints of debilitating pain or other
20 severe limitations). Here, the ALJ noted that Plaintiff's mental health conditions

1 showed signs of improvement when she was compliant with medications and
2 attending counseling. Tr. 22; *see* Tr. 454 (May 18, 2017: Plaintiff’s mood
3 symptoms were well-controlled with medication); Tr. 590 (July 20, 2017:
4 Plaintiff’s mood disorder symptoms and nightmares resolved with medication); Tr.
5 627 (October 11, 2017: Plaintiff’s counselor reported Plaintiff was “making
6 tremendous progress” after six months of counseling). Plaintiff challenges the
7 ALJ’s conclusion by noting that Plaintiff reported excessive daytime sleepiness
8 with medication and that she continued to exhibit poor judgment. ECF No. 13 at
9 19 (citing Tr. 454-55, 586-87). However, the record indicates that Plaintiff’s
10 daytime fatigue “resolved completely” with a medication adjustment. Tr. 581.
11 Additionally, where evidence is subject to more than one rational interpretation,
12 the ALJ’s conclusion will be upheld. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th
13 Cir. 2005). The ALJ reasonably concluded that Plaintiff’s symptoms showed
14 improvement with treatment. Tr. 22. This finding is supported by substantial
15 evidence.

16 2. *Failure to Follow Treatment Recommendations*

17 The ALJ found Plaintiff’s symptom testimony was less reliable because
18 Plaintiff failed to comply with recommended treatment. Tr. 22-23. In order to
19 obtain benefits, a claimant generally must follow prescribed treatment if the
20 treatment is expected to restore the claimant’s ability to work. 20 C.F.R. §

1 416.930(a). “A claimant’s subjective symptom testimony may be undermined by
2 an unexplained, or inadequately explained, failure to . . . follow a prescribed course
3 of treatment.” *Trevizo v. Berryhill*, 871 F.3d 664, 679 (9th Cir. 2017) (internal
4 quotations and citations omitted). Failure to assert a reason for not following
5 treatment “can cast doubt on the sincerity of the claimant’s [symptom] testimony.”

6 *Id.*

7 Here, the ALJ noted that despite evidence of improvement with treatment,
8 Plaintiff discontinued her psychiatric medication and stopped attending counseling
9 against medical advice. Tr. 23; *see* Tr. 552 (January 23, 2018: Plaintiff reported
10 self-discontinuing prazosin one month ago and reported sleeping well without it);
11 Tr. 545 (February 27, 2018: Plaintiff did not appear for four doctor appointments
12 and reported she had “done fine” since discontinuing her medications); Tr. 543
13 (March 1, 2018: Plaintiff reported she had not taken her medications since her
14 January 22, 2018 overdose); Tr. 542 (April 2, 2018: Plaintiff withdrew from
15 therapy “because life is too stressful and she hasn’t taken her medication since she
16 overdosed anyway”). Plaintiff argues that she withdrew from treatment due to
17 medication side effects. ECF No. 13 at 19-20. However, as noted *supra*, the
18 record indicated Plaintiff’s excessive fatigue resolved with a medication
19 adjustment. Tr. 581. The ALJ reasonably concluded that Plaintiff’s withdrawal
20 from treatment along with her assertions that she was fine were inconsistent with

1 her symptom allegations. Tr. 23. This finding is supported by substantial
2 evidence.

3 *3. Lack of Supporting Evidence*

4 The ALJ found Plaintiff's symptom testimony was not supported by the
5 evidence. Tr. 23. An ALJ may not discredit a claimant's symptom testimony and
6 deny benefits solely because the degree of the symptoms alleged is not supported
7 by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
8 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991). However, the
9 objective medical evidence is a relevant factor, along with the medical source's
10 information about the claimant's pain or other symptoms, in determining the
11 severity of a claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at
12 857; 20 C.F.R. § 416.929(c)(2). Mental status examinations are objective
13 measures of an individual's mental health. *Buck v. Berryhill*, 869 F.3d 1040, 1049
14 (9th Cir. 2017). Here, the ALJ noted that Plaintiff frequently presented with
15 normal mood, affect, judgment, and insight on her mental status examinations. Tr.
16 23; *see* Tr. 710 (October 31, 2017: judgment and insight intact, mood normal,
17 affect appropriate); Tr. 717 (November 6, 2017: same); Tr. 723 (November 17,
18 2017: grossly oriented to person, place, and time; attention and concentration
19 mildly decreased); Tr. 732 (March 1, 2018: judgment and insight intact, mood
20 normal, affect appropriate); Tr. 736 (March 16, 2018: same); Tr. 745 (July 19,

1 2018: same). The ALJ reasonably concluded that this evidence was inconsistent
2 with Plaintiff's allegations of disabling mental health conditions. Tr. 23. This
3 finding is supported by substantial evidence.

4 The ALJ also found that Plaintiff's specific allegation of difficulty
5 interacting with authority figures was not supported by the evidence. Tr. 23. The
6 ALJ noted that Plaintiff reported that she "only [has] difficulty getting along with
7 authority figures who were strict." Tr. 23 (citing Tr. 214 (it varies on how strict
8 the authority is)). The ALJ considered evidence that Plaintiff was arrested in 2018
9 on an outstanding warrant after she "got mouthy and wouldn't shut up" when
10 interacting with police. Tr. 23 (citing Tr. 560). The ALJ concluded that Plaintiff's
11 alleged difficulty interacting with authority figures was not supported because
12 "[t]his was the only report of [Plaintiff] having difficulty interacting with law
13 enforcement during the period at issue." Tr. 23. The ALJ accounted for this
14 difficulty by limiting her RFC to brief superficial interactions with the public and
15 coworkers and restricting her from jobs involving teamwork. No error has been
16 shown.

17 4. *Work History*

18 The ALJ found Plaintiff's symptom testimony was less reliable in light of
19 Plaintiff's sporadic work history. Tr. 21. Evidence of a poor work history that
20 suggests a claimant is not motivated to work is a permissible reason to discredit a

1 claimant's testimony that she is unable to work. *Thomas*, 278 F.3d at 959; 20
2 C.F.R. § 416.929(c)(3). When considering a claimant's contention that he cannot
3 work because of his impairments, it is appropriate to consider whether the claimant
4 has not worked for reasons unrelated to his alleged disability. *See Tommasetti*, 533
5 F.3d at 1040; *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001) (sufficient
6 reasons for disregarding subjective testimony included stopping work for
7 nonmedical reasons). Here, the ALJ noted that Plaintiff had a sporadic work
8 history and left past work for reasons unrelated to disability. Tr. 21; *see* Tr. 179-80
9 (Plaintiff's earnings history); Tr. 201 (Plaintiff reported that her past work ended
10 because of her medical conditions and for other reasons); Tr. 823 (July 25, 2013:
11 Plaintiff reported that she could not maintain full-time work because she was
12 pregnant and there were no jobs in her town); Tr. 338 (Plaintiff did not become
13 sober until late 2016). The ALJ concluded that Plaintiff's poor employment
14 history before her alleged disability onset date was attributable to factors other than
15 disability. Tr. 21.

16 While it is true that benefits in this case would not be payable prior to
17 Plaintiff's filing date in March 2017, Plaintiff alleged that her conditions became
18 disabling on January 1, 2010. Tr. 15; *see* Tr. 169. The ALJ noted the difference
19 between these dates and considered the full record, specifically noting that
20 Plaintiff's alleged disability onset date was in 2010. Tr. 15. Accordingly, the

1 evidence cited by the ALJ from after Plaintiff's alleged onset date cannot provide
2 substantial evidence to support the ALJ's finding that Plaintiff had a sporadic work
3 history prior to her alleged onset date. The ALJ's observation that Plaintiff had a
4 sporadic work history during a period in which she alleged she was disabled, even
5 if benefits were not payable at the time, does not provide clear and convincing
6 reason to discredit her symptom testimony. However, the ALJ's other observation,
7 that Plaintiff attributed her inability to work to factors other than her impairments,
8 is supported by substantial evidence.

9 5. *Inconsistent Statements*

10 The ALJ found Plaintiff's symptom testimony was less reliable because the
11 evidence showed Plaintiff made inconsistent statements regarding her impairments.
12 Tr. 22. In evaluating a claimant's symptom claims, an ALJ may consider the
13 consistency of an individual's own statements made in connection with the
14 disability-review process with any other existing statements or conduct under other
15 circumstances. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). "A single
16 discrepancy fails, however, to justify the wholesale dismissal of a claimant's
17 testimony." *Popa v. Berryhill*, 872 F.3d 901, 906-07 (9th Cir. 2017). Here, the
18 ALJ noted that Plaintiff inconsistently reported the reason that she lost her job at
19 Ponderosa. Tr. 22; *compare* Tr. 48 (Plaintiff testified that she quit this job because
20 she was being sexually harassed) *with* Tr. 543 (Plaintiff told her counselor that she

1 lost this job because she was incarcerated for two days). The ALJ reasonably
2 concluded that these statements were inconsistent. Tr. 22. However, this single
3 inconsistency, neither of which attribute losing her job to a disability, is
4 insufficient to discredit Plaintiff's symptom allegations generally. *Popa*, 872 F.3d
5 at 906-07. This was not a clear and convincing reason to discredit Plaintiff's
6 symptom testimony.

7 6. *Situational Stressors*

8 The ALJ found Plaintiff's symptom testimony was less reliable because of
9 the number of situational stressors Plaintiff reported in the record. Tr. 22. If a
10 claimant suffers from limitations that are transient and result from situational
11 stressors, as opposed to resulting from a medical impairment, an ALJ may properly
12 consider this fact in discounting Plaintiff's symptom claims. *See Chesler v.*
13 *Colvin*, 649 F. App'x 631, 632 (9th Cir. 2016) (symptom testimony properly
14 rejected in part because "the record support[ed] the ALJ's conclusion that
15 [plaintiff's] mental health symptoms were situational"). An ALJ may reasonably
16 find a claimant's symptom testimony less credible where the evidence "squarely
17 support[s]" a finding that the claimant's limitations are attributable to situational
18 stressors rather than impairments. *Wright v. Colvin*, No. 13-CV-3068-TOR, 2014
19 WL 3729142, at *5 (E.D. Wash. July 25, 2014) ("Plaintiff testified that she would
20 likely be able to maintain full-time employment but for the 'overwhelming' stress

1 caused by caring for her family members”). However, “because mental health
2 conditions may presumably *cause* strained personal relations or other life stressors,
3 the Court is not inclined to opine that one has caused the other based only on the
4 fact that they occur simultaneously.” *Brendan J. G. v. Comm’r, Soc. Sec. Admin.*,
5 No. 6:17-CV-742-SI, 2018 WL 3090200, at *7 (D. Or. June 20, 2018) (emphasis in
6 original).

7 Here, the ALJ found that Plaintiff’s counseling notes largely documented
8 Plaintiff’s issues with interpersonal relationships and moving back and forth
9 between a boyfriend’s home and her mother’s home rather than documenting
10 reports of specific symptom complaints of depression and PTSD. Tr. 22; *see* Tr.
11 596 (June 22, 2017: Plaintiff’s therapy session focused on intimate relationship
12 addiction); Tr. 594 (June 27, 2017: Plaintiff’s therapy session focused on trauma
13 history and Plaintiff’s unstable housing); Tr. 574 (October 4, 2017: Plaintiff’s
14 therapy session focused on her relationship with her boyfriend); Tr. 568 (October
15 20, 2017: Plaintiff’s therapy session focused on her relationship with her boyfriend
16 and her unstable housing situation); Tr. 558 (January 19, 2018: Plaintiff’s therapy
17 session focused on her relationship with her boyfriend); Tr. 602 (January 22, 2018:
18 Plaintiff reported overdosing because her boyfriend kicked her out of his house).
19 Substantial evidence supports the existence of situational stressors in the record.
20 However, this record does not “squarely support” a finding that Plaintiff’s

1 limitations are attributable to those situational stressors instead of mental
2 impairments, as opposed to a finding that her impairments and situational stressors
3 are interrelated. Accordingly, this was not a clear and convincing reason to
4 discredit Plaintiff's symptom testimony.

5 7. *Daily Activities*

6 The ALJ found Plaintiff's symptom testimony was inconsistent with her
7 reported daily activities. Tr. 23-24. The ALJ may consider a claimant's activities
8 that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can
9 spend a substantial part of the day engaged in pursuits involving the performance
10 of exertional or non-exertional functions, the ALJ may find these activities
11 inconsistent with the reported disabling symptoms. *Fair v. Bowen*, 885 F.2d 597,
12 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. "While a claimant need not
13 vegetate in a dark room in order to be eligible for benefits, the ALJ may discount a
14 claimant's symptom claims when the claimant reports participation in everyday
15 activities indicating capacities that are transferable to a work setting" or when
16 activities "contradict claims of a totally debilitating impairment." *Molina*, 674
17 F.3d at 1112-13. Additionally, the ability to care for others without help has been
18 considered an activity that may undermine claims of totally disabling pain.
19 *Rollins*, 261 F.3d at 857. However, if the care activities are to serve as a basis for
20 the ALJ to discredit the Plaintiff's symptom claims, the record must identify the

1 nature, scope, and duration of the care involved and this care must be more than a
2 “one-off event.” *Trevizo*, 871 F.3d at 675-76.

3 Here, the ALJ noted that Plaintiff’s daily activities included caring for her
4 children part-time with assistance from her mother; spending time with family;
5 preparing food once for a Cinco de Mayo celebration; making jewelry, blankets,
6 and cakes in her spare time; driving and riding in cars; listening to music; going to
7 the movies when she could afford it; eating out once per week; shopping in stores
8 once per month; and performing household chores once per week. Tr. 23-24; *see*
9 Tr. 44-46, 51-55, 209-13, 348, 380, 485, 545, 584. The ALJ concluded that these
10 activities were inconsistent with Plaintiff’s alleged limitations and generally
11 suggested Plaintiff could perform simple work and tolerate superficial interactions
12 with others. Tr. 24. However, the ALJ failed to identify any specific limitation
13 that Plaintiff alleged which was inconsistent with such limited activities as
14 performing chores once per week, shopping once per month, or preparing food on
15 one occasion. *Id.* Additionally, the ALJ’s finding relies generally on the types of
16 limited personal activities that the Ninth Circuit has found are not inherently
17 inconsistent with disability when they do not consume a substantial portion of the
18 claimant’s day. *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (“This
19 court has repeatedly asserted that the mere fact that a plaintiff has carried on
20 certain daily activities, such as grocery shopping, driving a car, or limited walking

1 for exercise, does not in any way detract from her credibility as to her overall
2 disability.”). Moreover, the ALJ did not identify any specific childcare activity
3 that Plaintiff performed or explain how Plaintiff’s ability to care for her children
4 part-time and with her mother’s assistance supported a finding that Plaintiff could
5 perform full-time simple work in a competitive setting. Tr. 24; *see Trevizo*, 871
6 F.3d at 675-76. Plaintiff’s daily activities do not provide clear and convincing
7 reason, supported by substantial evidence, to discredit her symptom testimony.

8 8. *Harmless Error*

9 Defendant contends that any error the ALJ made in evaluating Plaintiff’s
10 symptom testimony is harmless. ECF No. 15 at 19-20. A district court “may not
11 reverse an ALJ’s decision on account of an error that is harmless.” *Molina*, 674
12 F.3d at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
13 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
14 An ALJ’s error in evaluating a claimant’s symptom testimony may be harmless
15 where the ALJ provides other reasons, supported by substantial evidence, to
16 discredit the claimant’s testimony. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533
17 F.3d 1155, 1162-63 (9th Cir. 2008). “[T]he relevant inquiry in this context ... is
18 whether the ALJ’s decision remains legally valid, despite such error.” *Id.* at 1162.
19 Here, although the ALJ provided some legally valid reasons to discredit Plaintiff’s
20 symptom testimony, many of the ALJ’s findings were not legally valid or

1 supported by substantial evidence. The ALJ's errors are so pervasive that this
2 Court cannot conclude that they were inconsequential to the ultimate nondisability
3 decision. *Molina*, 674 F.3d at 1115. Accordingly, the ALJ's errors are not
4 harmless and the ALJ is instructed to reconsider Plaintiff's symptom testimony on
5 remand.

6 **B. Medical Opinion Evidence**

7 Plaintiff challenges the ALJ's evaluation of the medical opinion of treating
8 therapist Debbie Miller, LMFT. ECF No. 13 at 10-17.

9 There are three types of physicians: "(1) those who treat the claimant
10 (treating physicians); (2) those who examine but do not treat the claimant
11 (examining physicians); and (3) those who neither examine nor treat the claimant
12 [but who review the claimant's file] (nonexamining [or reviewing] physicians)."
13 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
14 Generally, the opinion of a treating physician carries more weight than the opinion
15 of an examining physician, and the opinion of an examining physician carries more
16 weight than the opinion of a reviewing physician. *Id.* In addition, the
17 Commissioner's regulations give more weight to opinions that are explained than
18 to opinions that are not, and to the opinions of specialists on matters relating to
19 their area of expertise over the opinions of non-specialists. *Id.* (citations omitted).

20

1 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
2 reject it only by offering “clear and convincing reasons that are supported by
3 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
4 “However, the ALJ need not accept the opinion of any physician, including a
5 treating physician, if that opinion is brief, conclusory and inadequately supported
6 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
7 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
8 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
9 may only reject it by providing specific and legitimate reasons that are supported
10 by substantial evidence.” *Id.* (citing *Lester*, 81 F.3d at 830-831). The opinion of a
11 nonexamining physician may serve as substantial evidence if it is supported by
12 other independent evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1041
13 (9th Cir. 1995).

14 The opinion of an acceptable medical source such as a physician or
15 psychologist is different from that of a non-acceptable medical source. 20 C.F.R. §
16 416.927(f)(1).¹ A therapist is not an acceptable medical source. 20 C.F.R. §

17
18 ¹ Because Plaintiff’s application for benefits was filed on March 4, 2017, the
19 regulations governing claims filed before March 27, 2017 apply to this case. 20
20 C.F.R. § 416.325.

1 416.902(a). The ALJ is required to consider the opinions of non-acceptable
2 medical sources. 20 C.F.R. § 416.927(c). The factors used to weigh the opinion of
3 a non-acceptable medical source are the same as those used to weigh the opinion of
4 an acceptable medical source, although not every factor will apply in every case.
5 20 C.F.R. § 416.927(c)(1)-(6), (f)(1). The ALJ is only required to provide germane
6 reasons to reject the opinion of an “other source,” including that of a non-
7 acceptable medical source. *Popa*, 872 F.3d at 906 (citing *Molina*, 674 F.3d at
8 1111).

9 On February 1, 2018, Ms. Miller, Plaintiff’s treating therapist, opined
10 Plaintiff had moderate limitation in her ability to remember locations and work-
11 like procedures; moderate limitation in her ability to understand and remember
12 very short and simple instructions; marked limitation in her ability to understand
13 and remember detailed instructions; marked limitation in her ability to carry out
14 detailed instructions; moderate limitation in her ability to maintain attention and
15 concentration for extended periods; marked limitation in her ability to perform
16 activities within a schedule, maintain regular attendance and be punctual within
17 customary tolerances; moderate limitation in her ability to work in coordination
18 with or proximity to others without being distracted by them; moderate limitation
19 in her ability to make simple work-related decisions; moderate limitation in her
20 ability to complete a normal workday and workweek without interruptions from

1 psychologically based symptoms and to perform at a consistent pace without an
2 unreasonable number and length of rest periods; marked limitation in her ability to
3 accept instructions and respond appropriately to criticism of supervisors; moderate
4 limitation in her ability to get along with coworkers or peers without distracting
5 them or exhibiting behavioral extremes; moderate limitation in her ability to
6 respond appropriately to changes in the work setting; moderate limitation in her
7 ability to be aware of normal hazards and take appropriate precautions; severe
8 limitation in her ability to travel in unfamiliar places or use public transportation;
9 marked limitation in her ability to set realistic goals or make plans independently
10 of others; extreme limitation in her ability to understand, remember, or apply
11 information; moderate limitation in her ability to interact with others, moderate
12 limitation in her ability to concentrate, persist, or maintain pace; that Plaintiff met
13 the Paragraph C criteria; that Plaintiff was likely to be off-task less than 12% of a
14 full-time work schedule; and that Plaintiff would likely miss one day of work per
15 month. Tr. 619-22. The ALJ gave Ms. Miller's opinion little weight. Tr. 25.
16 Because Ms. Miller is a non-acceptable medical source, the ALJ was required to
17 provide germane reasons to discredit her opinion.² *Popa*, 872 F.3d at 906.

18
19 ² The Court notes that, in addition to assigning error to the ALJ's findings,
20 Plaintiff raises several reasons why she believes the ALJ should have given greater

1 First, the ALJ found Ms. Miller’s opinion was not sufficiently supported or
2 explained. Tr. 25. Failure to provide support or explanation is a germane reason
3 to discredit opinion of nonacceptable medical source. *Molina*, 674 F.3d at 1111-
4 12. Additionally, “[w]hile an opinion cannot be rejected merely for being
5 expressed as answers to a check-the-box questionnaire, ... the ALJ may
6 permissibly reject check-off reports that do not contain any explanation of the
7 bases of their conclusions.” *Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir. 2020)
8 (internal citations and quotations omitted). Here, the ALJ noted that Ms. Miller
9 did not provide any explanation for her opined limitations. Tr. 25; *see* Tr. 619-22.
10 This is a germane reason to discredit Ms. Miller’s opinion.

11 Second, the ALJ found Ms. Miller’s opinion was inconsistent with
12 Plaintiff’s record of improvement with treatment. Tr. 25. Inconsistency with the
13 medical evidence is a germane reason for rejecting other source testimony. *See*
14 _____
15 weight to Ms. Miller’s opinion. ECF No. 13 at 12-13. This Court’s review is
16 limited to the ALJ’s findings, and the Court “may neither reweigh the evidence nor
17 substitute its judgment for that of the Commissioner.” *Blacktongue v. Berryhill*,
18 229 F. Supp. 3d 1216, 1218 (W.D. Wash. 2017) (citing *Thomas*, 278 F.3d at 954).
19 Plaintiff’s arguments here amount to an invitation for this Court to reweigh the
20 evidence and are therefore not properly within the scope of review.

1 *Bayliss*, 427 F.3d at 1218; *Lewis v. Apfel*, 236 F.3d 503, 511-12 (9th Cir. 2001).

2 As discussed *supra*, the ALJ noted that the record demonstrated Plaintiff showed
3 improvement in some symptoms when she was compliant with treatment. Tr. 25;
4 *see* Tr. 454 (May 18, 2017: Plaintiff's mood symptoms were well-controlled with
5 medication); Tr. 590 (July 20, 2017: Plaintiff's mood disorder symptoms and
6 nightmares resolved with medication); Tr. 627 (October 11, 2017: Ms. Miller
7 reported Plaintiff was "making tremendous progress" after six months of
8 counseling). Plaintiff challenges the ALJ's finding by identifying other evidence
9 in the record that shows Plaintiff continued to struggle with mental health
10 symptoms. ECF No. 13 at 14-16. However, where evidence is subject to more
11 than one rational interpretation, the ALJ's conclusion will be upheld. *Burch*, 400
12 F.3d at 679. The ALJ reasonably concluded that the evidence showed evidence of
13 Plaintiff's improvement with treatment. Tr. 25. This is a germane reason to
14 discredit Ms. Miller's opinion.

15 Third, the ALJ found Ms. Miller's opinion was inconsistent with Plaintiff's
16 daily activities. Tr. 25. Inconsistency with a claimant's daily activities is a
17 germane reason to reject other source testimony. *Carmickle*, 533 F.3d at 1163-64;
18 *Lewis*, 236 F.3d at 512. As discussed *supra*, the ALJ discussed Plaintiff's daily
19 activities but failed to consider their limited nature. Tr. 23-24. Although the ALJ
20 concluded that Plaintiff's activities such as childcare, driving, shopping in stores,

1 and engaging in crafting activities were inconsistent with the limitations Ms. Miller
2 opined, the ALJ failed to explain how these limited activities were inconsistent
3 with the specific limitations Ms. Miller opined. Tr. 25. This finding is not
4 supported by substantial evidence. Because this case is remanded for other
5 reasons, the ALJ is instructed to also reconsider Ms. Miller's opinion on remand.

6 **C. Listing of Impairments**

7 Plaintiff contends the ALJ failed to properly assess the Listing of
8 Impairments. ECF No. 13 at 3-10.

9 At step three of the sequential evaluation process, the ALJ must determine if
10 a claimant's impairments meet or equal a listed impairment. 20 C.F.R. §
11 416.920(a)(4)(iii). The Listing of Impairments "describes each of the major body
12 systems impairments [which are considered] severe enough to prevent an
13 individual from doing any gainful activity, regardless of his or her age, education
14 or work experience." 20 C.F.R. § 416.925(a). To meet a listed impairment, a
15 claimant must establish that she meets each characteristic of a listed impairment
16 relevant to her claim. 20 C.F.R. § 416.925(d). If a claimant meets the listed
17 criteria for disability, she will be found to be disabled. 20 C.F.R.
18 § 416.920(a)(4)(iii). The claimant bears the burden of establishing she meets a
19 listing. *Burch*, 400 F.3d at 683. "An adjudicator's articulation of the reason(s)
20 why the individual is or is not disabled at a later step in the sequential evaluation

1 process will provide rationale that is sufficient for a subsequent reviewer or court
2 to determine the basis for the finding about medical equivalence at step 3.” SSR
3 17-2P, 2017 WL 3928306, at *4.

4 Here, the ALJ considered whether Plaintiff met the criteria for listings 12.04,
5 12.05, 12.06, 12.08, and 12.15. Tr. 18. The ALJ found that Plaintiff did not meet
6 either the Paragraph B or Paragraph C criteria for the listing of mental
7 impairments. Tr. 19. However, the ALJ’s consideration of the Listing of
8 Impairments is based on the ALJ’s evaluation of evidence that the ALJ has been
9 instructed to reconsider on remand. Accordingly, the ALJ is also instructed to
10 reconsider the Listing of Impairments on remand. The ALJ should consider
11 whether to take testimony from a medical expert on remand to assist in this
12 reconsideration.

13 CONCLUSION

14 Having reviewed the record and the ALJ’s findings, this Court concludes the
15 ALJ’s decision is not supported by substantial evidence and free of harmful legal
16 error. On remand, the Commissioner is instructed to reconsider Plaintiff’s
17 symptom testimony, the medical opinion evidence, consider taking testimony from
18 a medical expert, and conduct a new five step sequential evaluation process.

19 //

20 //

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

- 2 1. Plaintiff's Motion for Summary Judgment (ECF No. 13) is GRANTED.
- 3 2. Defendant's Motion for Summary Judgment (ECF No. 15) is DENIED.
- 4 3. The Court enter **JUDGMENT** in favor of Plaintiff REVERSING and
- 5 REMANDING the matter to the Commissioner of Social Security for
- 6 further proceedings consistent with this Order pursuant to sentence four
- 7 of 42 U.S.C. § 405(g).

8 The District Court Executive is directed to enter this Order, furnish copies to

9 counsel, and **close the file**.

10 **DATED** May 13, 2020.



12 *Thomas O. Rice*

13 THOMAS O. RICE

14 Chief United States District Judge

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