

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

Jul 24, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATASHA J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO. 1:19-CV-03284-SAB

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT;
DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Plaintiff's Motion for Summary Judgment, ECF No. 11, and Defendant's Motion for Summary Judgment, ECF No. 12. The motions were considered without oral argument. Plaintiff is represented D. James Tree; Defendant is represented by Assistant United States Attorney Timothy Durkin and Special Assistant United States Attorney David J. Burdett.

Jurisdiction

On March 30, 2012, Plaintiff filed an application for Title XVI supplemental security income. Plaintiff initially alleged a disability beginning on September 30, 2011.

Plaintiff's application was denied initially on July 19, 2012 and on

ORDER RE: CROSS-MOTIONS FOR SUMMARY JUDGMENT * 1

1 reconsideration on October 11, 2012. On November 21, 2012, Plaintiff filed a
2 written request for a hearing. On July 1, 2014, Plaintiff appeared and testified at a
3 hearing at which she participated in Yakima, Washington, before an ALJ. Plaintiff
4 was represented by her attorney, Mr. Tree. Kimberly Mullinax, an impartial
5 vocational expert, provided testimony. The ALJ issued a decision on October 31,
6 2014, finding that Plaintiff was not disabled. In May 2017, the Court reversed and
7 remanded the ALJ's decision for further proceedings on the parties' stipulated
8 motion. *See Natasha D. v. Comm'r of Soc. Sec.*, No. 1:16-CV-03150-RHW, ECF
9 No. 18.

10 A second hearing was held on August 22, 2019. Plaintiff appeared and
11 testified at a hearing in Yakima, Washington, before an ALJ who appeared from
12 Seattle, Washington. Jeffrey F. Tittelfitz, an impartial vocational expert, also
13 appeared at the hearing. Plaintiff was represented by her attorney, Mr. Tree. On
14 September 5, 2019, the ALJ issued a decision finding that Plaintiff was not
15 disabled and denied her request for relief.

16 Plaintiff filed a timely appeal with the United States District Court for the
17 Eastern District of Washington on December 9, 2019. The matter is before this
18 Court under 42 U.S.C. § 405(g).

19 **Sequential Evaluation Process**

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

1 The Commissioner has established a five-step sequential evaluation process
2 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
3 *Yuckert*, 482 U.S. 137, 140-42 (1987). The steps are as follows:

4 **Step One:** Is the claimant engaged in substantial gainful activities? 20
5 C.F.R. § 404.1520(b). Substantial gainful activity is work done for pay and
6 requires compensation above the statutory minimum. *Id.*; *Keyes v. Sullivan*, 894
7 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity,
8 benefits are denied. 20 C.F.R. § 404.1520(b). If she is not, the ALJ proceeds to
9 step two.

10 **Step Two:** Does the claimant have a medically severe impairment or
11 combination of impairments? 20 C.F.R. § 404.1520(c). If the claimant does not
12 have a severe impairment or combination of impairments, the disability claim is
13 denied. A severe impairment is one that lasted or must be expected to last for at
14 least 12 months and must be proven through objective medical evidence. 20 C.F.R.
15 § 404.1509. If the impairment is severe, the evaluation proceeds to the third step.

16 **Step Three:** Does the claimant's impairment meet or equal one of the listed
17 impairments acknowledged by the Commissioner to be so severe as to preclude
18 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R. § 404 Subpt. P.
19 App. 1. If the impairment meets or equals one of the listed impairments, the
20 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
21 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

22 Before considering Step 4, the ALJ must first determine the claimant's
23 residual functional capacity. 20 C.F.R. § 404.1520(e). An individual's residual
24 functional capacity is her ability to do physical and mental work activities on a
25 sustained basis despite limitations from his impairments.

26 **Step Four:** Does the impairment prevent the claimant from performing work
27 he has performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to
28

1 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform
2 this work, the evaluation proceeds to the fifth and final step.

3 **Step Five:** Is the claimant able to perform other work in the national
4 economy in view of her age, education, and work experience? 20 C.F.R.
5 § 404.1520(g).

6 The initial burden of proof rests upon the claimant to establish a prima facie
7 case of entitlement to disability benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th
8 Cir. 1999). This burden is met once a claimant establishes that a physical or mental
9 impairment prevents her from engaging in his previous occupation. *Id.* At step five,
10 the burden shifts to the Commissioner to show that the claimant can perform other
11 substantial gainful activity. *Id.*

12 **Standard of Review**

13 The Commissioner's determination will be set aside only when the ALJ's
14 findings are based on legal error or are not supported by substantial evidence in the
15 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing
16 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
17 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
18 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial
19 evidence is "such relevant evidence as a reasonable mind might accept as adequate
20 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
21 ALJ's denial of benefits if the evidence is susceptible to more than one rational
22 interpretation, one of which supports the decision of the administrative law judge.
23 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). The Court reviews the
24 entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). "If the evidence
25 can support either outcome, the court may not substitute its judgment for that of the
26 ALJ." *Matney*, 981 F.2d at 1019.

27 A decision supported by substantial evidence will be set aside if the proper
28 legal standards were not applied in weighing the evidence and making the decision.

1 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).
2 An ALJ is allowed “inconsequential” errors as long as they are immaterial to the
3 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d
4 1050, 1055 (9th Cir. 2006).

5 **Statement of Facts**

6 The facts have been presented in the administrative transcript, the ALJ’s
7 decisions, and the briefs to this Court. Accordingly, only the most relevant facts
8 are summarized here. At the time of her application, Plaintiff was 36 years old. She
9 completed high school and training as a certified nursing assistant. She has worked
10 as a cashier and supervisor at Goodwill. She is a mother of three, who were ages
11 13, 10, and 8 at the time of the 2019 hearing. She earned a bachelor’s degree in
12 environmental science in June 2018. She has applied for about 20 jobs since
13 earning her degree and had one interview. She ultimately could not take the job
14 because she could not do the required 3-4 days of camping. Plaintiff is willing to
15 work but needs accommodations that employers have been unable or unwilling to
16 provide.

17 Plaintiff suffers from chronic pain due to postherpetic neuralgia after a bout
18 of shingles in September 2011. This causes Plaintiff to feel constant burning pain
19 in her upper right back, right shoulder, and right arm. She also has significant
20 weakness and numbness in her right arm that makes it difficult to use her arm.
21 Plaintiff’s right shoulder function is further impaired due to a labral tear from
22 several falls despite surgical attempts to repair the tear. Plaintiff has also been
23 diagnosed with rheumatoid arthritis, which results in knee, hip, and shoulder pain
24 and prevents her from sitting or standing for longer than 30 minutes.

25 Plaintiff also suffers from myoclonic tremors, which vary in intensity and
26 are exacerbated by stress. Plaintiff has also been diagnosed with major depressive
27 order and posttraumatic stress disorder, which impairs her ability to concentrate
28 and make decisions. She has consistently attended mental health therapy since at

1 least 2011.

2 **The ALJ's Findings**

3 The ALJ issued an opinion affirming denial of benefits. The ALJ concluded
4 Plaintiff was not disabled and could perform work that exists in significant
5 numbers in the national economy.

6 At **step one**, the ALJ found that Plaintiff has not engaged in substantial
7 gainful activity since March 30, 2012, the alleged disability onset date. AR 636.

8 At **step two**, the ALJ found that Plaintiff had the following severe
9 impairments: obesity, obstructive sleep apnea, right shoulder rheumatoid arthritis,
10 right upper extremity post herpetic neuralgia, depressive disorder, anxiety disorder,
11 posttraumatic stress disorder, and tremor disorder. AR 636-37.

12 At **step three**, the ALJ found that Plaintiff did not have an impairment or a
13 combination of impairments that meets or medically equals any Listing. AR 637.

14 The ALJ concluded that Plaintiff had a residual function capacity to
15 perform:

16 sedentary work as defined in 20 C.F.R. 416.967(a) except she is
17 capable of engaging [in] unskilled, repetitive, routine tasks in two
18 hour increments; no overhead reaching; occasional reaching at or
19 below shoulder level with full arm extension; frequent reaching a or
20 below shoulder level with partial arm extension; occasional handling;
21 frequent fingering; occasional stooping and crouching; no crawling,
22 kneeling, or climbing ramps, stairs, ropes, ladders, or scaffolds; she
23 would [be] 5% less productive than the average worker in the
24 workplace; and she would be absent from work one time per month.

25 AR 638.

26 At **step four**, the ALJ found that Plaintiff was unable to perform any past
27 relevant work. AR 646.

28 At **step five**, the ALJ found that given Plaintiff's age, education, work
experience, and residual functional capacity, there are jobs that exist in significant
numbers in the national economy that she can perform. AR 646. The ALJ
concluded that Plaintiff's ability to perform work-related activity was limited, but

1 that those limitations were adequately accommodated by the residual function
2 capacity. AR 646. Accordingly, the ALJ concluded that there were jobs that exist
3 in significant numbers in the national economy that Plaintiff can perform,
4 including a telephone sales clerk, document prepare, and final assembler. AR 646-
5 47.

6 **Issues for Review**

- 7 1. Did the ALJ err by improperly evaluating the medical opinion evidence?
- 8 2. Did the ALJ err by improperly rejecting Plaintiff's symptom testimony for
9 reasons that are not specific, clear, and convincing?

10 **Discussion**

- 11 1. Did the ALJ err by improperly evaluating the medical opinion evidence?

12 Plaintiff argues that the ALJ erred by discounting the medical opinions of
13 Plaintiff's treating providers, Mara Fusfield, ARNP, and Dr. Clint Thompson, and
14 the Social Security Administration's consultative examiner, Dr. Mary C. Pellicer.
15 The Commissioner argues that the ALJ properly evaluated and weighted the medical
16 opinion evidence before it.

17 "Generally, a treating physician's opinion carries more weight than an
18 examining physician's, and an examining physician's opinion carries more weight
19 than a reviewing physician's." *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th
20 Cir. 2001). Medical opinions of treating physicians are accorded special weight
21 because these physicians are in a unique position to know claimants as individuals,
22 and because the continuity of their dealing with claimants enhances their ability to
23 assess claimants' problems. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
24 1988).

25 In the absence of a contrary opinion, a treating physician's opinion may not
26 be rejected unless "clear and convincing" reasons are provided. *Lester v. Chater*,
27 81 F.3d 821, 830 (9th Cir. 1995). If a treating physician's opinion is contradicted,
28 it may be discounted only for "specific and legitimate reasons" supported by

1 substantial evidence in the record.” *Id.* at 830 (quoting *Murray v. Heckler*, 722
2 F.2d 499, 502 (9th Cir. 1983)). An ALJ may also disregard medical opinion if it is
3 brief, conclusory, and inadequately supported by clinical findings. *Britton v.*
4 *Colvin*, 787 F.3d 1011, 1012 (9th Cir. 2015) (*per curiam*). The ALJ can meet this
5 burden by setting out a detailed and thorough summary of the facts and conflicting
6 clinical evidence, stating his interpretation thereof, and making findings.”
7 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). “The ALJ must do more
8 than state conclusions. He must set forth his own interpretations and explain why
9 they, rather than the doctors’, are correct.” *Garrison v. Colvin*, 759 F.3d 995, 1012
10 (9th Cir. 2014).

11 Only licensed physicians and certain other qualified specialists are
12 considered acceptable medical sources. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th
13 Cir. 2012); 20 C.F.R. § 404.1513(a). For instance, nurse practitioners, physician
14 assistants, and mental health therapists are not considered acceptable medical
15 sources and are not afforded the same deference as acceptable medical sources.
16 *Dale v. Colvin*, 823 F.3d 941, 943 (9th Cir. 2016). However, they may be used to
17 show the severity of a claimant’s symptoms and how those impairments effect a
18 claimant’s ability to work. *See* 20 C.F.R. § 416.927(f)(1). An ALJ may discount
19 the opinion of an “other source”—like a nurse practitioner—if he provides
20 “reasons germane to each witness for doing so.” *Popa v. Berryhill*, 872 F.3d 901,
21 906 (9th Cir. 2017). Under certain circumstances, the opinion of a treating provider
22 who is not an acceptable medical source may be given greater weight than the
23 opinion of a treating provider who is an acceptable medical source, but only if that
24 provider has seen the claimant more often, has provided better supporting evidence
25 and a better explanation for the opinion, and the opinion is more consistent with
26 the evidence as a whole. *Revels v. Berryhill*, 874 F.3d 648, 655 (9th Cir. 2017); 20
27 C.F.R. § 404.1527(f)(1).

28 //

1 a. *Examining Physician Dr. Mary C. Pellicer*

2 The ALJ gave partial weight to Dr. Pellicer's opinions. AR 643. Dr. Pellicer
3 reviewed Plaintiff's medical records and conducted a physical examination on
4 behalf of the Social Security Administrator on June 12, 2012. Dr. Pellicer
5 diagnosed Plaintiff with chronic right back and arm pain and decreased range of
6 motion secondary to postherpetic neuralgia, rheumatoid arthritis, right anterior
7 shoulder derangement, and depression. AR 267. She also concluded that, because
8 of these limitations, Plaintiff required more frequent breaks. *Id.* Finally, Dr.
9 Pellicer found that Plaintiff can lift or carry less than ten pounds occasionally and
10 that, due to her chronic right arm pain, she can manipulate her right arm only
11 occasionally, up to one-third of the time. *Id.* The ALJ concluded that Dr. Pellicer's
12 opinion "seems to overstate the claimant's limitations" because she had 4/5
13 strength of the upper right extremity, was able to open a jar, could pick up coins on
14 a flat surface, and could walk up to half a mile. AR 643. However, the ALJ does
15 not note that Dr. Pellicer also opined that Plaintiff could only occasionally
16 manipulate with her right arm due to chronic pain, and that she required frequent
17 breaks from sitting and standing due to her rheumatoid arthritis. AR 267. Despite
18 this opinion, the ALJ found that Plaintiff was limited to frequent reaching at or
19 below shoulder level with partial arm extension and frequent fingering. AR 643.

20 The ALJ failed to explain their evaluation that Dr. Pellicer's opinion as an
21 examining physician overstated Plaintiff's limitations. Instead, the ALJ came up
22 with its own conclusion without explaining why its interpretation was right and
23 why Dr. Pellicer's opinion was wrong. *See Garrison*, 759 F.3d at 1012.
24 Furthermore, the ALJ failed to point to evidence that conflicted with Dr. Pellicer's
25 opinion. *See Britton*, 787 F.3d at 1112; *Magallanes*, 881 F.2d at 751. Accordingly,
26 the ALJ erred in evaluating the medical opinion of Dr. Pellicer.

27 //

28 //

1 b. *Treating Provider Mara Fusfield, ARNP*

2 Plaintiff also argues that the ALJ improperly evaluated the medical opinion
3 of her primary care provider, Mara Fusfield, ARNP. ARNP Fusfield has treated
4 Plaintiff since at least 2011, and repeatedly opined that Plaintiff's impairments
5 resulted in significant functional limitations. AR 287-89, 310-11, 404-08, 593-96,
6 1212-13, 1225-27. Indeed, ARNP Fusfield repeatedly noted that Plaintiff's right
7 arm pain, rheumatoid arthritis, and tremors and myoclonic jerking prevented her
8 from working. The ALJ gave "moderate weight" to these opinions, reasoning that
9 ARNP Fusfield's opinions suggested "she did not seem to believe [Plaintiff] was
10 unable to work, just that it would be inconvenient and or overwhelming since she
11 was busy with school and her children." AR 643.

12 Because ARNP Fusfield is not a medical doctor and is instead a nurse
13 practitioner, the ALJ need only give a "germane" reason for discounting her
14 medical opinion. *Popa*, 872 F.3d at 906. In support of this conclusion, the ALJ
15 points to a single statement made by ARNP Fusfield in response to a request from
16 the Kittitas County Department of Social and Health Services wherein she stated
17 that Plaintiff could not work because of various upper extremity limitations,
18 longstanding mental health problems, tremors and jerks, and because of her
19 enrollment in school. AR 592-594. Taken in full context of this opinion and ARNP
20 Fusfield's other opinions, Plaintiff's enrollment in school was mentioned because
21 the stress worsened her tremors and myoclonic jerks, but that her upper arm and
22 depression limitations would outlast her enrollment. The ALJ seems to have
23 ignored the majority of ARNP Fusfield's opinions in order to conclude that
24 Plaintiff could work now that her school program is completed. Indeed, the ALJ's
25 conclusion ignores the fact that ARNP Fusfield is Plaintiff's primary care provider,
26 having treated her since at least 2011, has consistently opined that Plaintiff's
27 ability to work is limited because of her impairments, and has given opinions that
28 are consistent with the record as a whole. *See Revels*, 874 F.3d at 655; 20 C.F.R.

1 § 404.1527(f)(1). Accordingly, the ALJ erred by improperly evaluating the medical
2 opinions of ARNP Fusfield.

3 *c. Treating Physician Dr. Clint Thompson*

4 Plaintiff also argues that the ALJ improperly evaluated the medical opinions
5 of Dr. Clint Thompson, who in 2019 indicated that she was limited by postherpetic
6 neuralgia, chronic right upper back and arm pain, arthritis, PTSD, anxiety, and
7 “psuedoseizures.” AR 1248. He opined that she was limited to working between
8 eleven and twenty hours per week due to her impairments. *Id.* In particular, he
9 noted Plaintiff experience pain with movement of her upper spine, was unable to
10 sit or stand for long periods of time, and experienced stress-induced
11 pseudoseizures or myoclonic jerks. *Id.* It was Dr. Thompson’s opinion that
12 Plaintiff should be limited to sedentary work. *Id.*

13 The ALJ gave Dr. Thompson’s opinion “some weight,” reasoning that his
14 examination of Plaintiff was “unremarkable” and that she was not in acute distress,
15 had unlabored breathing, and was not tender. *See* AR 644. The ALJ concluded that
16 the residual functional capacity would enable Plaintiff to work full-time contrary to
17 Dr. Thompson’s opinion that she be limited to part-time sedentary work. *See* AR
18 1248, 1334. The ALJ did not give clear and convincing reasons to discount Dr.
19 Thompson’s medical opinions. There does not appear to be any real conflict in the
20 evidence in the record, and the ALJ did not provide a sufficient reason to reach
21 their own contrary opinion. Therefore, the ALJ erred in evaluating the medical
22 opinions of Mr. Thompson.

23 2. Did the ALJ Err by Improperly Rejecting Plaintiff’s Symptom Testimony for
24 Reasons that are not Specific, Clear, and Convincing?

25 Plaintiff argues that the ALJ improperly rejected her symptom testimony
26 without providing specific, clear, and convincing reasons. The Commissioner
27 argues that the ALJ properly rejected Plaintiff’s testimony that her limitations were
28 disabling because she was able to attend school, obtain a bachelor’s degree, care

1 for her children, and perform household chores. The ALJ noted that Plaintiff did
2 have some physical limitations, but that the limitations were fully compensated by
3 a limitation to sedentary exertion and limitations on posture and manipulation. AR
4 639-40.

5 The ALJ is responsible for making credibility determinations. *Lingenfelter v.*
6 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). Once a claimant has produced
7 evidence of an impairment, the ALJ may not discredit testimony regarding
8 symptoms simply by asserting that they are unsupported by objective evidence.
9 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Rather, the ALJ must
10 provide specific, cogent reasons to find that the claimant is not credible. *Greger v.*
11 *Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (citing *Rashad v. Sullivan*, 903 F.2d
12 1229, 1231 (9th Cir. 1990)). Furthermore, an ALJ may not reject a claimant's
13 symptom testimony simply because it is not fully corroborated by objective
14 medical evidence; rather, the ALJ must rely either on reasons unrelated to the
15 subjective testimony—such as a reputation for dishonesty—or conflicts between
16 the plaintiff's testimony and her own conduct, or internal contradictions in her
17 testimony. *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). If the
18 ALJ's credibility finding is supported by substantial evidence in the record, the
19 Court may not engage in second-guessing. *Thomas v. Barnhart*, 278 F.3d 947, 959
20 (9th Cir. 2002). The Court will affirm the ALJ's reasoning so long as it is clear and
21 convincing. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

22 In recognition of the fact that an individual's symptoms can sometimes
23 suggest a greater level of severity of impairment than can be shown by the
24 objective medical evidence alone, 20 C.F.R. §§ 404.1529(c) and 416.929(c)
25 describe the kinds of evidence, including the factors below, that the ALJ must
26 consider in addition to the objective medical evidence when assessing the
27 credibility of an individual's statements:
28

1 1. Daily activities; 2. The location, duration, frequency, and intensity
2 of pain or other symptoms; 3. Factors that precipitate and aggravate the
3 symptoms; 4. The type, dosage, effectiveness, and side effects of any
4 medication an individual takes or has taken to alleviate pain or other
5 symptoms; 5. Treatment, other than medication, an individual receives
6 or has received for relief of pain or other symptoms; 6. Any measures
7 other than treatment an individual uses or has used to relieve pain or
8 other symptoms (e.g., lying flat on his or her back, standing for 15 to
9 20 minutes every hour, or sleeping on a board); and 7. Any other factors
10 concerning an individual's functional limitations and restrictions due to
11 pain or other symptoms.

12 SSR 16-3P, 2017 WL 5180304. Daily activities may be grounds for an
13 adverse credibility finding if (1) Plaintiff's activities contradict her other
14 testimony, or (2) Plaintiff "is able to spend a substantial part of [her] day engaged
15 in pursuits involving the performance of physical functions that are transferable to
16 a work setting." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v.*
17 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). However, "[t]he Social Security Act
18 does not require that claimants be utterly incapacitated to be eligible for benefits."
19 *Fair*, 885 F.2d at 603. Recognizing that "disability claimants should not be
20 penalized for attempting to lead normal lives in the face of their limitations," the
21 Ninth Circuit has held that "[o]nly if [a claimant's] level of activity were
22 inconsistent with [her] claimed limitations would those activities have any bearing
23 on [her] credibility." *Reddick*, 157 F.3d at 722.

24 Having reviewed the ALJ's opinion, the Court finds that the ALJ improperly
25 evaluated Plaintiff's credibility and discounted her subjective testimony about her
26 symptoms without providing specific and clear reasoning or pointing to substantial
27 evidence contradicting Plaintiff's testimony. After detailing a limited recount of
28 Plaintiff's medical history and symptom testimony, the ALJ states that Plaintiff
was "mostly overwhelmed rather than disabled," pointing to the fact that she
earned a bachelor's degree, raised her children, and actively sought work after
graduation. AR 645. However, a review of the record shows Plaintiff's daily

1 activity demonstrates her attempts to live a normal life despite her impairments.
2 *Reddick*, 157 F.3d at 722. Plaintiff should not be punished for attempting to “live a
3 normal life” and maintain some amount of normalcy for her children in the face of
4 her limitations. *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014). Indeed, the
5 ALJ does not clearly and convincingly state why Plaintiff’s subjective testimony
6 about her symptoms should be discounted and instead cherry picks from a vast
7 medical record to find instances of “good” days to opine that Plaintiff is not
8 disabled. The ALJ should have considered Plaintiff’s testimony about her
9 symptoms as a whole rather than taking single statements out of context as
10 representative of Plaintiff’s actual capacities.

11 Furthermore, although there is evidence in the record that Plaintiff applied to
12 at least twenty jobs after getting her degree, there is also evidence in the record that
13 of all those applications, Plaintiff only had one interview, and she had to turn down
14 that job because she could not perform all of that job’s duties as required because
15 of her documented limitations. The fact that Plaintiff did in fact seek gainful
16 employment should not be held against her and should not be grounds for
17 disbelieving her subjective testimony about her symptoms. *See Reddick*, 157 F.3d
18 at 722 (an applicant for Social Security should not be penalized for attempting to
19 lead a normal live in spite of their limitations). Indeed, contrary to the
20 Commissioner’s arguments in briefing, Plaintiff was not holding herself out as
21 available for full-time work as that term is defined in the regulations; she was
22 holding herself out as available for work with accommodations for her limitations,
23 and has been unable to find a job willing to do so.

24 Considered as a whole, the reasons provided by the ALJ for discrediting
25 Plaintiff’s testimony about her symptoms and limitations are not substantial.
26 Accordingly, the Court finds that the ALJ improperly evaluated Plaintiff’s
27 credibility and improperly gave her testimony limited weight.

28 //

Conclusion

1
2 Plaintiff is entitled to summary judgment in her favor because the ALJ erred
3 in giving her testimony inadequate weight and by giving the medical opinions of
4 treating and examining medical providers inadequate weight. Defendant is not
5 entitled to summary judgment.

6 The Court finally considers whether this case should be remanded for further
7 administrative proceedings or for award of benefits. *Garrison*, 759 F.3d at 1021-
8 22. Court notes that Plaintiff has already appealed a decision to the federal courts,
9 been awarded a reversal and remand for further proceedings, only to end up back
10 before the federal court once more. *See Benecke v. Barnhart*, 379 F.3d 587, 595
11 (9th Cir. 2004) (“Allowing the Commissioner to decide the issue again would
12 create an unfair ‘heads we in; tails, let’s play again’ system of disability benefits
13 adjudication.”). There is no need to further develop the record, as the record as it
14 currently stands is nearly 1,500 pages long, and further administrative proceedings
15 would not be helpful. As detailed above, the ALJ failed to provide legally
16 sufficient reasons to reject Plaintiff’s testimony and the opinions of her treating
17 and examining medical providers. Finally, if the improperly discredited evidence
18 were credited as true, the ALJ would be required to find Plaintiff disabled on
19 remand.

20 Because Plaintiff satisfies all three parts of the credit-as-true analysis and
21 flexibility does not counsel remand for further proceedings, the case is remanded
22 for award of benefits. Even if some of Plaintiff’s symptoms “have occasionally
23 abated for brief periods of time” during periods of treatment and minimized
24 environmental stressors, the Court “like her numerous medical caretakers” see no
25 reason to doubt that she has been incapable of full-time work since September 30,
26 2011. *Garrison*, 759 F.3d at 1023.

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

28 1. Plaintiff’s Motion for Summary Judgment, ECF No. 11, is **GRANTED**.

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

2 3. The decision of the Commissioner is **reversed** and **remanded** for reward
3 of benefits.

4 4. The District Court Executive is directed to enter judgment in favor of
5 Plaintiff and against Defendant.

6 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
7 file this Order, provide copies to counsel, and **close** the file.

8 **DATED** this 24th day of July 2020.



12
13

A handwritten signature in blue ink that reads "Stanley A. Bastian".

14 Stanley A. Bastian
15 United States District Judge
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