

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

Jun 29, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MINERVA M.,

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 1:21-CV-03063-LRS

ORDER GRANTING, IN PART,  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 16, 22. This matter was submitted for consideration without oral argument. Plaintiff is represented by Attorney D. James Tree. Defendant is represented by Special Assistant United States Attorney Jeffrey E. Staples. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS, in part,** Plaintiff's Motion for Summary Judgment, ECF No. 16, **DENIES** Defendant's Motion for Summary Judgment, ECF No. 22, and **REMANDS** the case back to the Commissioner for additional proceedings.

ORDER - 1

## JURISDICTION

1  
2 Plaintiff Minerva M.<sup>1</sup> protectively filed an application for Supplemental  
3 Security Income (SSI) on June 10, 2014, Tr. 140, alleging an onset date of June 1,  
4 2014, Tr. 238, due to back pain/degenerative disc disease, leg pain, diabetes,  
5 hypertension, depression/anxiety, posttraumatic stress disorder (PTSD),  
6 agoraphobia, stomach cysts, bilateral foot neuropathy, and insomnia, Tr. 294.  
7 Plaintiff's application was denied initially, Tr. 147-50, and upon reconsideration,  
8 Tr. 164-66. A hearing before Administrative Law Judge Glen Meyers ("ALJ")  
9 was conducted on July 14, 2016. Tr. 31-90. Plaintiff was represented by an  
10 attorney and testified at the hearing. *Id.* The ALJ also took the testimony of  
11 vocational expert Ronnie Lenore. *Id.* The ALJ entered an unfavorable decision on  
12 May 10, 2017. Tr. 13-22. The Appeals Council denied review on June 8, 2018.  
13 Tr. 1-6. Therefore, the ALJ's May 10, 2017 decision became the final decision of  
14 the Commissioner.

15 Plaintiff requested judicial review of the ALJ's decision from this Court, and  
16 the case was remanded for additional proceedings. Tr. 748-67. The ALJ held a  
17 second hearing on January 5, 2021. Tr. 710-47. He took testimony from Plaintiff  
18 and vocational expert Jeffrey Tittelfitz. *Id.* The ALJ entered an unfavorable

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

1 decision on January 29, 2021. Tr. 687-703. The Appeals Council did not assume  
2 jurisdiction over the case pursuant to 20 C.F.R. § 416.1484(a). Therefore, the  
3 January 29, 2021 ALJ decision became the final decision of the Commissioner.  
4 The matter is now before this Court pursuant to 42 U.S.C. §§ 405(g); 1383(c).  
5 ECF No. 1.

## 6 **BACKGROUND**

7 The facts of the case are set forth in the administrative hearing and  
8 transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner.  
9 Only the most pertinent facts are summarized here.

10 Plaintiff was 40 years old at the date of application. Tr. 238. The highest  
11 grade Plaintiff completed was the eighth grade in 1990. Tr. 295. At application  
12 Plaintiff reported a work history that included production clerk, fruit sorter, retail  
13 clerk, and assistance secretary. Tr. 296. She stated that she stopped working on  
14 December 31, 2006 due to her impairments. Tr. 294.

## 15 **STANDARD OF REVIEW**

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

1 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and  
2 citation omitted). In determining whether the standard has been satisfied, a  
3 reviewing court must consider the entire record as a whole rather than searching  
4 for supporting evidence in isolation. *Id.*

5 In reviewing a denial of benefits, a district court may not substitute its  
6 judgment for that of the Commissioner. “The court will uphold the ALJ’s  
7 conclusion when the evidence is susceptible to more than one rational  
8 interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).  
9 Further, a district court will not reverse an ALJ’s decision on account of an error  
10 that is harmless. *Id.* An error is harmless where it is “inconsequential to the  
11 [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation  
12 omitted). The party appealing the ALJ’s decision generally bears the burden of  
13 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

#### 14 **FIVE-STEP EVALUATION PROCESS**

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

1 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
2 423(d)(2)(A).

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

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

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

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

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

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

1 The claimant bears the burden of proof at steps one through four. *Tackett v.*  
2 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,  
3 the burden shifts to the Commissioner to establish that (1) the claimant is capable  
4 of performing other work; and (2) such work “exists in significant numbers in the  
5 national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,  
6 389 (9th Cir. 2012).

### 7 ALJ’S FINDINGS

8 At step one, the ALJ found that Plaintiff has not engaged in substantial  
9 gainful activity since the date of application, June 10, 2014. Tr. 690. At step two,  
10 the ALJ found that Plaintiff has the following severe impairments: diabetes  
11 mellitus with peripheral neuropathy; obesity; sciatica status post remote lumbar  
12 fusion; depressive disorder; anxiety disorder; and PTSD. Tr. 690. At step three,  
13 the ALJ found that Plaintiff’s impairments or combinations of impairments do not  
14 meet or equal the severity of one of the listed impairments. Tr. 692.

15 The ALJ then found that Plaintiff has the RFC to perform sedentary work as  
16 defined in 20 C.F.R. § 416.967(a) with the following limitations:

17 occasional stooping; no crouching, crawling, kneeling, climbing ramps,  
18 stairs, ropes, ladders, or scaffolds; frequent reaching, handling, and  
19 fingering; capable of engaging in unskilled, repetitive, routine tasks in  
20 2-hour increments; no contact with the public; capable of working in  
proximity to but not in coordination with coworkers; capable of  
occasional contact with supervisors.

21 Tr. 694. The ALJ identified Plaintiff’s past relevant work as produce clerk and  
food sales clerk and found that she could not perform this past relevant work. Tr.

1 701. At step five, the ALJ found that considering Plaintiff's age, education, work  
2 experience, and RFC, there are other jobs that exist in significant numbers in the  
3 national economy that Plaintiff could perform, including final assembler,  
4 packager/sealer, and table worker. Tr. 702. On that basis, the ALJ concluded that  
5 Plaintiff was not under a disability, as defined in the Social Security Act, from the  
6 date of application, June 10, 2014, through the date of the decision. Tr. 703.

## 7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner's final decision denying  
9 her SSI under Title XVI. ECF No. 16. Plaintiff raises the following issues for this  
10 Court's review:

- 11 1. Whether the ALJ properly addressed the medical opinions in the record;
- 12 2. Whether the ALJ properly addressed Plaintiff's symptom statements; and
- 13 3. Whether the ALJ met his burden at step five.

## 14 DISCUSSION

### 15 1. Medical Source Opinions

16 Plaintiff argues that the ALJ failed to properly address the opinions from  
17 N.K. Marks, Ph.D., Gabrielle Mondragon, MSW, Portia Jones, M.D., and Kathleen  
18 Mayers, Ph.D. ECF No. 16 at 9-17.

19 There are three types of physicians: "(1) those who treat the claimant  
20 (treating physicians); (2) those who examine but do not treat the claimant  
21 (examining physicians); and (3) those who neither examine nor treat the claimant  
[but who review the claimant's file] (nonexamining [or reviewing] physicians)."



1 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted).  
2 Generally, a treating physician’s opinion carries more weight than an examining  
3 physician’s, and an examining physician’s opinion carries more weight than a  
4 reviewing physician’s. *Id.* If a treating or examining physician’s opinion is  
5 uncontradicted, the ALJ may reject it only by offering “clear and convincing  
6 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d  
7 1211, 1216 (9th Cir. 2005). Conversely, “[i]f a treating or examining doctor’s  
8 opinion is contradicted by another doctor’s opinion, an ALJ may reject it by  
9 providing specific and legitimate reasons that are supported by substantial  
10 evidence.” *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)).

11 **A. N.K. Marks, Ph.D.**

12 On August 27, 2018, Dr. Marks completed a psychodiagnostics evaluation  
13 at the request for Plaintiff’s case worker through the Department of social and  
14 Health Services. Tr. 1022-25. She diagnosed Plaintiff with generalized anxiety  
15 disorder, unspecified depressive disorder, and unspecified trauma- and stressor-  
16 related disorder. Tr. 1025. She provided the following summary:

17 Results indicate severe levels of anxiety and depression, in addition to  
18 some past trauma that may affect her ability to work until she has  
19 successfully completed therapy and other interventions. She should be  
able to participate in 10 hours of TANF services initially, and requires  
ongoing therapy to assists [sic] with her symptoms.

20 Tr. 1025.

21 The ALJ failed to discuss the opinion in his decision except that Dr. Marks  
found Plaintiff’s “prognosis was ‘good, with ongoing therapy. Her conditions are

1 very treatable' with the very type of treatment she was receiving at CMH." Tr.  
2 696. The ALJ never weighed the opinion or discussed the limitations Dr. Marks  
3 opined. Tr. 687-703. Federal Regulations state that "[r]egardless of its source, we  
4 will evaluate every medical opinion we receive." 20 C.F.R. § 416.927(c). Social  
5 Security Ruling (S.S.R.) 96-8p states that the residual functional capacity  
6 assessment "must always consider and address medical source opinions. If the  
7 RFC assessment conflicts with an opinion from a medical source, the adjudicator  
8 must explain why the opinion was not adopted." Therefore, the ALJ's failure to  
9 consider or discuss the opinion is an error.

10 Defendant argues that Dr. Marks' opinion was consistent with the RFC  
11 determination; therefore, the ALJ was not required to discuss the opinion. ECF  
12 No. 22 at 6-7. However, Dr. Marks stated that Plaintiff was limited to ten hours of  
13 TANF services per week. According to the multiple letters from Plaintiff's case  
14 worker, for adults to receive TANF public assistance, they are required to work,  
15 actively look for work, or get training to work for 32 to 40 hours per week, but  
16 these hours can be deferred or reduced. Tr. 971, 976, 981, 987, 993, 998, 1016,  
17 1030. Therefore, Dr. Marks opined that Plaintiff was limited to 10 hours a week of  
18 work-related activities. Tr. 1025. A limitation to 10 hours a week of work  
19 activity was not included in the RFC determination. Therefore, Defendant's  
20 argument is unsuccessful.

21 Not only did the ALJ fail to weigh Dr. Marks' opinion, but when he  
inaccurately represented the evaluation Dr. Marks performed in his decision,

1 demonstrating that he did not properly review the evidence. In making the RFC  
2 determination, the ALJ cited Dr. Marks' evaluation (Exhibit B19F/69-72) a total of  
3 six times. Tr. 694-701. First, the ALJ cited the evaluation in disregarding  
4 Plaintiff's symptom statements as supported for the following finding: "despite her  
5 alleged disabling mental impairments, the claimant exhibited normal mood/affect  
6 during appointments with normal mental status examinations; 'Alert and  
7 cooperative, normal affect, normal attention span and insight.'" Tr. 696 *citing*  
8 Exhibit B19F/71-72. However, Dr. Marks' mental status examination actually  
9 showed "anxious, depressed" affect and mood, partial orientation, poor overall  
10 fund of knowledge, abstract reasoning "somewhat concrete and literal," fair  
11 working memory, and "[o]verall problem solving and judgment appear to be intact  
12 however history suggests that in actual life situations, judgment is poor and  
13 problem solving is weak." Tr. 1024-25. Therefore, the normal findings referred to  
14 by the ALJ are not an accurate representation of the mental status exam.

15 Second, the ALJ cites Dr. Marks' evaluation when discussing Plaintiff's  
16 symptom statements as evidence that difficult relationships with others are not  
17 disability mental conditions: "In August 2018, examining physician N.K. Marks,  
18 Ph.D. opined the claimant's prognosis was 'good, with ongoing therapy. Her  
19 conditions are very treatable' with the very type of treatment she was receiving at  
20 CMH." Tr. 696 *citing* Exhibit B19F/72. This is the only accurate citation to the  
21 record in regards to the prognosis, but it overlooks the fact that Dr. Marks limited  
Plaintiff to only ten hours of work activity at the time of the opinion.

1 Third, when assigning little weight to Dr. Mayers' September 2016 opinion,  
2 the ALJ cites Dr. Marks' evaluation as support for the following statement: "she  
3 has friends and sees her friends when they visit her home. She care for and  
4 socializes with her children. She interact appropriately with treatment providers.  
5 She goes shopping in stores without reported difficulty." Tr. 699 *citing* Exhibit  
6 19F/71-72. Nothing in Dr. Marks' evaluation discusses Plaintiff's friends, caring  
7 for her children, or shopping in stores. When discussing daily activities, Dr. Marks  
8 states that Plaintiff "can take care of personal needs but it takes her extra time due  
9 to chronic pain. She has to sit down and rest between activities. Right now, she is  
10 on crutches and can't do very much." Tr. 1024. The mental status examine  
11 described Plaintiff as cooperative, but also noted that plaintiff had an anxious,  
12 depressed affect and mood. Tr. 1024.

13 Fourth, when assigning little weight to the opinions from MSW Mondragon,  
14 the ALJ cites Dr. Marks' evaluation as support for the statement that her opinion  
15 was "inconsistent with the claimant's admitted level and frequency of her activities  
16 of daily living." Tr. 699 *citing* Exhibit B19F/71. As discussed above, Dr. Marks'  
17 description of Plaintiff's daily activities is limited to "care of personal needs but it  
18 takes her extra time due to chronic pain. She has to sit down and rest between  
19 activities. Right now, she is on crutches and can't do very much." Tr. 1024.  
20 Therefore, this fails to support the ALJ's findings.

21 Fifth, when assigning little weight to the opinion of Dr. Jones, the ALJ cites  
Dr. Marks' evaluation as "evidence that shows the claimant's [sic] has consistent

1 activities of daily living.” Tr. 700 *citing* Exhibit B19F/71. Again, Dr. Marks’  
2 description of Plaintiff’s daily activities is limited to “care of personal needs but it  
3 takes her extra time due to chronic pain. She has to sit down and rest between  
4 activities. Right now, she is on crutches and can’t do very much.” Tr. 1024. This  
5 fails to support the ALJ’s finding.

6 Sixth, when giving little weight to Dr. Mayers’ August 2016 opinion, the  
7 ALJ cites Dr. Marks’ evaluation as evidence to support his finding that “the  
8 claimant has friends and sees her friends when they visit her home. She care for  
9 and socializes with her children. She attends appointments and interacts  
10 appropriately with treatment providers. She goes shopping in stores without  
11 reported difficulty.” Tr. 700-01 *citing* Exhibit B19F/71-72. Again, nothing in Dr.  
12 Marks’ evaluation discusses Plaintiff’s friends, caring for her children, or shopping  
13 in stores. When discussing daily activities, Dr. Marks states that Plaintiff “can take  
14 care of personal needs but it takes her extra time due to chronic pain. She has to sit  
15 down and rest between activities. Right now, she is on crutches and can’t do very  
16 much.” Tr. 1024. The mental status examine described Plaintiff as cooperative,  
17 but also noted that Plaintiff had an anxious, depressed affect and mood. Tr. 1024.  
18 Therefore, the ALJ’s citation to the evaluation fails to support his finding.

19 Thus, the ALJ erred in failing to assign weight to the opinion and failing to  
20 accurately represent the evidence from Dr. Marks when determining Plaintiff’s  
21 RFC.

1           **B. Remaining opinions**

2           Plaintiff also challenges the weight the ALJ assigned to the opinions of  
3 Gabrielle Mondragon, MSW, Portia Jones, M.D., and Kathleen Mayers, Ph.D.  
4 ECF No. 16 at 11-17.

5           This case is being remanded for the ALJ to properly address the opinion of  
6 Dr. Marks. *See supra*. Here, the ALJ failed to provide any weight to Dr. Marks’  
7 opinion, and he failed to accurately represent Dr. Marks’ evaluation when  
8 assigning little weight to the opinions of MSW Mondragon, Dr. Jones, and Dr.  
9 Mayers. The regulations require the ALJ to consider the factor of consistency  
10 when weighing a medical opinion. 20 C.F.R. § 416.927(c)(4) (“Generally, the  
11 more consistent a medical opinion is with the record as a whole, the more weight  
12 we will give to that medical opinion.”). Therefore, on remand, the ALJ will  
13 readdress the opinions of MSW Mondragon, Dr. Jones, and Dr. Mayers after  
14 properly addressing Dr. Marks’ opinion and evaluation.

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

16           Plaintiff argues that the ALJ erred in evaluating his symptom testimony.  
17 ECF No. 16 at 4-9.

18           It is generally the province of the ALJ to make determinations regarding the  
19 reliability of Plaintiff’s symptom statements, *Andrews v. Shalala*, 53 F.3d 1035,  
20 1039 (9th Cir. 1995), but the ALJ’s findings must be supported by specific cogent  
21 reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent  
affirmative evidence of malingering, the ALJ’s reasons for rejecting the claimant’s

1 testimony must be “specific, clear and convincing.” *Smolen v. Chater*, 80 F.3d  
2 1273, 1281 (9th Cir. 1996); *Lester*, 81 F.3d at 834.

3 The ALJ found Plaintiff’s “statements concerning the intensity, persistence,  
4 and limiting effects of these symptoms are not entirely consistent with the medical  
5 evidence and other evidence in the record for the reasons explained in this  
6 decision.” Tr. 695. The evaluation of a claimant’s symptom statements and their  
7 resulting limitations relies, in part, on the assessment of the medical evidence. *See*  
8 20 C.F.R. § 416.929(c); S.S.R. 16-3p. Therefore, in light of the case being  
9 remanded for the ALJ to readdress the medical opinions addressed above, a new  
10 assessment of Plaintiff’s subjective symptom statements will be necessary.

### 11 **3. Step Five**

12 Plaintiff argues that the ALJ failed to meet his burden at step five by asserting  
13 that the jobs identified by the vocational expert do not exist in substantial numbers.  
14 ECF No. 16 at 18-21. This case is being remanded for the ALJ to properly address  
15 the medical opinions in the record and Plaintiff’s symptom statements. This will  
16 require the ALJ to make a new RFC determination, which results in the need for a  
17 new step four determination and a new step five determination. Therefore, the ALJ  
18 will call a vocational expert to testify at any remand proceedings and allow Plaintiff  
19 the opportunity to cross-examine the vocational expert.

## 20 **CONCLUSION**

21 Plaintiff requests that the Court remand the case for an immediate award of  
benefits. ECF No. 16 at 21.

1 The decision whether to remand for further proceedings or reverse and  
2 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
3 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate  
4 where “no useful purpose would be served by further administrative proceedings,  
5 or where the record has been thoroughly developed,” *Varney v. Sec’y of Health &*  
6 *Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by  
7 remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280  
8 (9th Cir. 1990); *see also Garrison v. Chater*, 759 F.3d 995, 1021 (9th Cir. 2014)  
9 (noting that a district court may abuse its discretion not to remand for benefits  
10 when all of these conditions are met). This policy is based on the “need to  
11 expedite disability claims.” *Varney*, 859 F.2d at 1401. But where there are  
12 outstanding issues that must be resolved before a determination can be made, and it  
13 is not clear from the record that the ALJ would be required to find a claimant  
14 disabled if all the evidence were properly evaluated, remand is appropriate. *See*  
15 *Benecke*, 379 F.3d at 595-96; *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir.  
16 2000).

17 The Court finds that further administrative proceedings are appropriate. *See*  
18 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)  
19 (remand for benefits is not appropriate when further administrative proceedings  
20 would serve a useful purpose). Here, it is not clear that the ALJ would be required  
21 to find Plaintiff disabled if all the evidence were properly evaluated.



1 On remand, this case is to be assigned to a new ALJ. That ALJ must  
2 readdress the medical opinions discussed above, readdress Plaintiff's symptom  
3 statements, and make a new step five determine. In addition, the ALJ should  
4 supplement the record with any outstanding medical evidence and take testimony  
5 from a vocational expert at any remand proceedings.


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

7 1. Plaintiff's Motion for Summary Judgment, ECF No. 16, is **GRANTED**,  
8 **in part**, and the matter is **REMANDED** to the Commissioner for  
9 additional proceedings.

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

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

13 **DATED** June 29, 2022.

14   
15 \_\_\_\_\_  
16 LONNY R. SUKO  
17 Senior United States District Judge  
18  
19  
20  
21