

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

Dec 29, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLIE L.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 4:22-cv-3005-EFS

**ORDER GRANTING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION,
DENYING DEFENDANT'S
SUMMARY-JUDGMENT MOTION,
AND REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff Kellie L. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the record lacks substantial evidence to support the ALJ's medium-work residual functional capacity (RFC), this matter is remanded for further proceedings.

I. Five-Step Disability Determination

A five-step evaluation determines whether a claimant is disabled. Step one assesses whether the claimant is engaged in substantial gainful activity.² Step two

¹ For privacy reasons, Plaintiff is referred to by first name and last initial, as claimant, or as Plaintiff. *See* LCivR 5.2(c).

² 20 C.F.R. § 416.920(a)(4)(i), (b).

1 assesses whether the claimant has a medically severe impairment or combination
2 of impairments that significantly limit the claimant's physical or mental ability to
3 do basic work activities.³ Step three compares the claimant's impairment or
4 combination of impairments to several recognized by the Commissioner to be so
5 severe as to preclude substantial gainful activity.⁴ Step four assesses whether an
6 impairment prevents the claimant from performing work she performed in the past
7 by determining the claimant's residual functional capacity (RFC).⁵ Step five
8 assesses whether the claimant can perform other substantial gainful work—work
9 that exists in significant numbers in the national economy—considering the
10 claimant's RFC, age, education, and work experience.⁶

11 II. Background

12 In 2019, when Plaintiff was 57, she filed a Title 16 application⁷ alleging
13 disability because of chronic pain in her joints, fibromyalgia, chronic migraines,
14 agoraphobia, panic attacks, posttraumatic stress disorder (PTSD), anxiety attacks,

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16 ³ 20 C.F.R. § 416.920(a)(4)(ii), (c).

17 ⁴ *Id.* § 416.920(a)(4)(iii), (d).

18 ⁵ *Id.* §, 416.920(a)(4)(iv).

19 ⁶ *Id.* § 416.920(a)(4)(v), (g).

20 ⁷ Plaintiff previously filed Title 2 and 16 disability applications in February 2016.

21 The prior applications were denied, with the ALJ's denial upheld by the district
22 court. AR 75–96; EDWA Case No. 1:19-cv-3091-FVS.

1 and sciatic pain.⁸ After the agency denied her application initially and on
2 reconsideration, Plaintiff requested a hearing before an ALJ.⁹

3 In December 2020, ALJ Glenn Meyers held a telephonic hearing, during
4 which Plaintiff and a vocational expert testified.¹⁰ Plaintiff testified that she cries
5 often, gets nervous around people, and has such bad anxiety that she puts on
6 glasses and a hat to walk to the mailbox and she goes grocery shopping at times
7 that she believes less people will be present.¹¹ She believes she began experiencing
8 her mental-health symptoms after her mom died, and she experiences
9 hallucinations at night in which she sees her mom or other dead family members.¹²
10 Plaintiff reported a short attention span that does not allow her to watch a 2-hour
11 movie without taking breaks, that she has been taking opiate-based pain
12 medications for a long time, and that working fulltime would hurt her back.¹³

13 After the hearing, the ALJ denied Plaintiff's disability application.¹⁴ As to
14 the sequential disability analysis, the ALJ found:

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16 _____
17 ⁸ AR 209–14, 254.

18 ⁹ AR 131–55.

19 ¹⁰ AR 38–74.

20 ¹¹ AR 57, 59, 68.

21 ¹² AR 58–59.

22 ¹³ AR 50–51, 62, 64.

23 ¹⁴ AR–33.

- 1 • Step one: Plaintiff had not engaged in substantial gainful activity
2 since May 20, 2019, the application date.
- 3 • Step two: Plaintiff had the following medically determinable severe
4 impairments: degenerative disc disease (DDD; lumbar and cervical),
5 depressive disorder, anxiety disorder, personality disorder, and PTSD.
- 6 • Step three: Plaintiff did not have an impairment or combination of
7 impairments that met or medically equaled the severity of one of the
8 listed impairments.
- 9 • RFC: Plaintiff had the RFC to perform medium work with the
10 following limitations:

11 she can frequently balance, stoop, kneel, and crouch; she can
12 never crawl or climb; she must avoid concentrated exposure
13 to hazards and vibration; she can perform simple routine
14 tasks and follow short simple instructions; she can do work
15 that needs little or no judgment; she can perform simple
16 duties that can be learned on the job in a short period; she
17 requires a work environment that is predictable and with
few setting changes; she can work in proximity to coworkers
but not in a cooperative or team effort; she requires a work
environment that has no more than superficial interactions
with coworkers; she requires a work environment without
public contact; and requires a work environ[ment] with
occasional supervisor contact.

- 18 • Step four: Plaintiff was not capable of performing past relevant work.
- 19 • Step five: considering Plaintiff's RFC, age, education, and work
20 history, Plaintiff could perform work that existed in significant
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1 numbers in the national economy, such as janitor, laundry worker,
2 and hand packager.¹⁵

3 In reaching his decision, the ALJ found the examining opinions of Kent
4 Reade, Ph.D., and Patrick Metoyer, Ph.D., unpersuasive, and the reviewing
5 opinions of JD Fitterer, M.D., and Howard Platter, M.D., unpersuasive.¹⁶ The ALJ
6 also mentioned that he found Gary Nelson, Ph.D.'s examining opinion
7 unpersuasive but in discussing Dr. Nelson's opinion mistakenly referred to
8 Dr. Fitterer and Dr. Platter instead of Dr. Nelson.¹⁷ The ALJ also mentioned a
9 largely blank Physical Functional Evaluation form that was not completed by
10 treating provider Angela Bosma, PA-C.¹⁸ And the ALJ found Plaintiff's medically
11 determinable impairments could reasonably be expected to cause some of the
12 alleged symptoms, but her statements concerning the intensity, persistence, and
13 limiting effects of those symptoms were not consistent with the medical evidence
14 and other evidence.¹⁹

15 ¹⁵ AR 15–29.

16 ¹⁶ AR 25–26.

17 ¹⁷ AR 25.

18 ¹⁸ AR 26–27, 637–39.

19 ¹⁹ AR 20–25.

1 Plaintiff requested review of the ALJ's decision by the Appeals Council,
2 which denied review.²⁰ Plaintiff timely appealed to the Court.

3 III. Standard of Review

4 A district court's review of the Commissioner's final decision is limited.²¹ The
5 Commissioner's decision is set aside "only if it is not supported by substantial
6 evidence or is based on legal error."²² Substantial evidence is "more than a mere
7 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
8 mind might accept as adequate to support a conclusion."²³ Because it is the role of
9 the ALJ to weigh conflicting evidence, the Court upholds the ALJ's findings "if they
10 are supported by inferences reasonably drawn from the record."²⁴ Further, the
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12 ²⁰ AR 1–6.

13 ²¹ 42 U.S.C. § 405(g).

14 ²² *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

15 ²³ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

16 ²⁴ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). *See also Lingenfelter v.*
17 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire
18 record as a whole, weighing both the evidence that supports and the evidence that
19 detracts from the Commissioner's conclusion," not simply the evidence cited by the
20 ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998)
21 ("An ALJ's failure to cite specific evidence does not indicate that such evidence was
22 not considered[.]").
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1 Court may not reverse an ALJ decision due to a harmless error—one that “is
2 inconsequential to the ultimate nondisability determination.”²⁵

3 **IV. Analysis**

4 **A. *Chavez’s* presumption of continuing nondisability does not apply.**

5 The Commissioner argues that the prior unfavorable ALJ decision from 2018
6 creates a presumption of continuing non-disability that supports ALJ Meyer’s at-
7 issue RFC, particularly as to the medium-work limitation. However, ALJ Meyers
8 stated and found:

9 The prior unfavorable May 29, 2018 decision creates a presumption of
10 continuing non-disability (*Chavez v. Bowen*, 844 F.2d 691 (9th Cir.
11 1988); Acquiescence Ruling 97–499). I find that the presumption is
12 rebutted because the mental regulations have changed.

11 The ALJ then analyzed anew Plaintiff’s mental *and* physical impairments.

12 The presumption of continuing nondisability was rebutted as to all aspects of
13 the prior RFC, including the medium-work assessment. Therefore, given the ALJ’s
14 broad rebutted-presumption finding and new analysis as to all of Plaintiff’s
15 impairments, the Court may not limit the ALJ’s finding such that the presumption
16 was rebutted to only the nonexertional-RFC limitations, as the Commissioner
17 proposes.

18 **B. The medium-work RFC is not supported by substantial evidence.**

19 Plaintiff argues the medium-work RFC is not supported by substantial
20 evidence because the ALJ committed error when analyzing the physical medical
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22 ²⁵ *Molina*, 674 F.3d at 1115 (cleaned up).

1 opinions and by failing to develop the record. The Court agrees—the medium-work
2 RFC is not supported by substantial evidence.

3 1. Dr. Fitterer and Dr. Platter

4 The only completed medical opinions pertaining to Plaintiff's physical
5 functioning were reviewing opinions by Dr. Fitterer and Dr. Platter. In 2019, on
6 the initial Disability Determination Explanation, Dr. Fitterer found that Plaintiff
7 had severe DDD (disorders of the back, discogenic and degenerative) and obesity.²⁶
8 Dr. Fitterer also stated:

9 The current medical evidence is inadequate to assess the current
10 nature and severity of claimant's impairments. Claimant failed to
11 attend consultative exams despite the assistance of counsel. The
12 evidence is insufficient due to lack of cooperation. These findings
13 complete the medical portion of the disability determination.²⁷

14 Dr. Fitterer stated that a physical consultative examination (CE) was required.²⁸

15 ²⁶ AR 111.

16 ²⁷ AR 111. *See also* Program Operations Manual System (POMS) DI 23007.015
17 (When assessing the RFC, the consultant is to “[o]nly impose limitations supported
18 by the evidence in the file. When the evidence does not support any limitations, do
19 not assess any. The consultant must indicate in the RFC that the evidence in the
20 file is insufficient to rate limitations on a particular impairment, symptoms, or
21 alleged limitations because the evidence necessary for a full medical evaluation is
22 not available.”).

23 ²⁸ AR 109.

1 The initial Disability Determination Explanation also summarized the
2 contacts between the agency and Plaintiff as to scheduling and attending the
3 previously scheduled CEs.²⁹ This summary indicated that an agency representative
4 spoke with Plaintiff about the CE process and later confirmed that Plaintiff would
5 attend the CE and did not need a ride.³⁰ When the agency called to again confirm
6 the CE, Plaintiff said she “was ill and unable to attend the exam” and requested
7 that the CE be rescheduled.³¹ Later Plaintiff confirmed she would attend the
8 rescheduled CE on August 1, 2019, but on the day of the CE, she called the agency
9 and reported that “her anxiety was too high to attend the exam.”³² The agency
10 noted, “Unfortunately, this is the second broken exam and insufficient reason to
11 reschedule.”³³

12 Following issuance of Dr. Fitterer’s opinion, and before Dr. Platter reviewed
13 the record, another CE was scheduled for December 5, 2019. The record reflects
14 that Plaintiff was a “no show” for that CE.³⁴

17 ²⁹ AR 110.

18 ³⁰ AR 110.

19 ³¹ AR 110.

20 ³² AR 110, 309.

21 ³³ AR 110.

22 ³⁴ AR 357.

1 In January 2020, on the reconsideration Disability Determination
2 Explanation (referred to as “Reconsideration Explanation”), Dr. Platter agreed that
3 Plaintiff had severe physical impairments of DDD and obesity and that the
4 evidence as to Plaintiff’s physical impairments was not sufficient to support a
5 decision on the disability claim.³⁵ This insufficiency of the evidence was due in part
6 to Plaintiff forgetting to attend the physical CE (PCE) scheduled and confirmed for
7 December 5. The Reconsideration Explanation stated that this excuse was “[n]ot
8 considered good cause for reschedule since confirmation was provided.”³⁶ The
9 Analysis section of the Reconsideration Explanation repeats that Plaintiff:

10 was scheduled to attend a PCE, confirmed by rep that clmt would
11 attend exam and then failed PCE stating she forgot, not good cause
12 for reschedule of physical exam. Overall evidence in file insufficient
based on inability to assess physical impairments and how they
impact her functioning.³⁷

13 The Reconsideration Explanation also mentions that Plaintiff drove herself to her
14 psychological CE with Dr. Metoyer on January 20, 2020.³⁸

15 These were the only medical statements pertaining to Plaintiff’s physical
16 functioning. Although the record contains a Physical Functional Evaluation form
17 with the name and contact information for Plaintiff’s primary care provider,
18

19 ³⁵ AR 121, 123.

20 ³⁶ AR 121–22.

21 ³⁷ AR 122–23.

22 ³⁸ AR 122.

1 PA-C Bosma, this form is otherwise blank.³⁹

2 2. Analysis as to Medium-Work RFC

3 Like Dr. Fitterer and Dr. Platter, the ALJ found that Plaintiff had a severe
4 impairment of DDD (lumbar and cervical).⁴⁰ However, the ALJ found unpersuasive
5 Dr. Fitterer's and Dr. Platter's opinions that a determination could not be made as
6 to Plaintiff's physical functioning because 1) the doctors did not have an
7 opportunity to examine Plaintiff or review the updated record, and 2):

8 there is sufficient evidence to evaluate the claim to include, for
9 example, largely normal findings on physical examinations such as a
10 full range of motion in her musculoskeletal system, a normal
11 unremarkable back, and a normal gait; the claimant's generally
12 benign presentation; and evidence that treatment has been effective
13 or does not cause unpleasant side effects.⁴¹

14 The ALJ then interpreted the medical evidence as permitting Plaintiff to perform
15 medium work with postural limitations.⁴²

16 ³⁹ The ALJ stated, "In June 2020, Angela Bosma, M.D., a treating provider, signed
17 a physical function evaluation. However, the submitted form was not completed,
18 and it did not otherwise identify any limitations." AR 26. This form, however, does
19 not contain PA-C Bosma's signature but rather simply contains basic contact
20 information.

21 ⁴⁰ AR 18.

22 ⁴¹ AR 25.

23 ⁴² AR 19.

1 Plaintiff argues that because there was no medical opinion indicating she
2 had the functional ability to perform medium work, the ALJ was “playing doctor”
3 by crafting an RFC based simply on interpreting raw medical data rather than
4 assessing whether opined medical limitations were supported by the record.⁴³

5 It is the ALJ’s responsibility to translate and incorporate “clinical findings
6 into a succinct RFC.”⁴⁴ The regulation regarding an RFC determination provides:

7 We will assess your residual functional capacity based on all of the
8 relevant medical and other evidence. In general, you are responsible
9 for providing the evidence we will use to make a finding about your
10 residual functional capacity. However, before we make a
11 determination that you are not disabled, we are responsible for
12 developing your complete medical history, including arranging for a
13 consultative examination(s) if necessary, and making every
14 reasonable effort to help you get medical reports from your own
15 medical sources. We will consider any statements about what you can
16 still do that have been provided by medical sources, whether or not
17 they are based on formal medical examinations. We will also consider
18 descriptions and observations of your limitations from your

14 ⁴³ ECF No. 11 (relying on *Padilla v. Astrue*, 541 F. Supp. 2d 1102, 1106 (C.D. Cal.
15 2008)).

16 ⁴⁴ *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1005–06 (9th Cir. 2015)
17 (analyzing whether the ALJ properly incorporated specific “imperatives” about the
18 claimant’s limitations rather than mere recommendations); *Stubbs-Danielson v.*
19 *Astrue*, 539 F.3d 1169, 1174–75 (9th Cir. 2008) (discussing whether the ALJ
20 properly incorporated the limited identified by the physicians); *see also* Social Sec.
21 Rlg. (SSR) 96-8p: Policy Interpretation Ruling Titles II and XVI: Assessing RFC in
22 Initial Claims.

1 impairment(s), including limitations that result from your symptoms,
2 such as pain, provided by you, your family, neighbors, friends, or other
 persons.⁴⁵

3 Per this regulation, an ALJ is not only permitted to, but is required to, consider
4 information contained in medical records—beyond the medical opinions
5 themselves—when crafting a claimant’s RFC. Part of that process includes
6 considering medical-source statements about what a claimant can do, but the
7 regulation does not specify that a medical-source statement is always required.
8 Nonetheless, the regulation requires the agency to develop the claimant’s
9 “complete medical history” and to make “every reasonable effort to help . . . get
10 medical reports from [claimant’s] medical sources” before the ALJ determines that
11 a claimant is not disabled.⁴⁶

12 Here, two medical sources opined that the medical record was not sufficient
13 to opine as to Plaintiff’s exertional functional abilities. The agency did schedule
14 three physical CEs and communicated with Plaintiff about these CEs. Yet, Plaintiff
15 was unable to attend one because she was ill, another because her anxiety was too
16 high, and the last because she forgot about it.

18 ⁴⁵ 20 C.F.R. § 416.945(a)(3) (internal citations omitted). *See also* SSR 16-3p (“We
19 consider the individual’s symptoms when determining his or her residual
20 functional capacity and the extent to which the individual’s impairment-related
21 symptoms are consistent with the evidence in the record.”).

22 ⁴⁶ 20 C.F.R. § 416.945(a)(3).
23

1 The regulations provide that if a claimant does not have a good reason for
2 failing to take part in a CE, that the Commissioner may find that the claimant is
3 not disabled.⁴⁷ The regulations and the POMS identify some “good reason”
4 examples, including illness and mental limitations.⁴⁸ Here, the ALJ did not
5 mention that physical CEs were scheduled or that Plaintiff did not appear for the
6 physical CEs; therefore, the ALJ did not discuss whether Plaintiff had good cause
7 for failure to appear and, resultantly, the ALJ did not deny disability on the basis
8 for failure to appear at the CEs. Instead, the ALJ proceeded with the sequential
9 evaluation, as permitted by POMS DI 23007.015.⁴⁹

10 However, there is no indication in the record that the agency followed up to
11 obtain PA-C Bosma’s medical opinion, as is required by 20 C.F.R. § 416.945(a)(3)’s
12 directive that steps be taken by the agency to obtain medical-source statements
13 from a treating provider. Before concluding that Plaintiff was not disabled, the
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16 ⁴⁷ 20 C.F.R. § 416.918(a).

17 ⁴⁸ 20 C.F.R. § 416.918(b); POMS DI 23007.001.

18 ⁴⁹ POMS DI 23007.015 (When the agency has “made reasonable, but unsuccessful
19 effort to obtain the claimant’s cooperation to comply with a request for evidence or
20 action, or to confirm or attend a consultative examination (CE) appointment, make
21 a determination based on the evidence in file using the sequential evaluation
22 process.”).

1 agency should have followed up with obtaining a completed Physical Functional
2 Evaluation from PA-C Bosma.⁵⁰

3 This record therefore lacks any medical-source statement as to Plaintiff's
4 lifting, standing, sitting, walking, and postural abilities. Yet, notwithstanding the
5 lack of a medical-source statement offering such, the ALJ found that Plaintiff, who
6 was 57-years old or older during the relevant period, could perform medium work,
7 i.e., lift no more than 50 pounds at a time with frequent lifting or carrying of
8 objects weighing up to 25 pounds and standing or walking, off and on, for a total of
9 about 6 hours each workday, as well as frequent balancing, stooping, kneeling, and
10 crouching.⁵¹ The ALJ based this finding on the underlying medical records which
11 generally noted full range of motion and normal gait. But when reviewing the
12 medical records, both Dr. Fitterer and Dr. Platter found the record insufficient to

14 ⁵⁰ Before assessing that there is insufficient medical evidence, the Commissioner is
15 to make an initial request for medical records from the claimant's own medical
16 sources and to make a follow-up request within a certain number of days after the
17 initial request "if we do not receive the evidence." POMS DI 22505.001; *see also*
18 *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003) (The "affirmative
19 responsibility to develop the record" is necessary to ensure that the ALJ's decision
20 is based on substantial evidence.); POMS DI 22505.035 (recognizing that the duty
21 to develop the record applies at all levels of adjudication).

22 ⁵¹ 20 C.F.R. § 416.967(c); SSR 83-10.

1 allow a determination as to Plaintiff's functional abilities. After all, those same
2 records also showed that Plaintiff had a severe impairment of DDD of the lumbar
3 and cervical back, was obese, received an injection for neck pain, and was regularly
4 prescribed medication for back pain and spasms.⁵²

5 The ALJ fails to adequately explain how he—and not the physicians—were
6 able to determine from the medical records that Plaintiff could perform medium
7 work. Without an adequate bridge between the medical records and the medium-
8 work RFC, the ALJ's medium-work RFC is based on speculative inferences rather
9 than substantial evidence.⁵³ And the ALJ's unsupported finding that Plaintiff could
10 perform medium work consequentially impacted the nondisability decision
11 because, if Plaintiff is limited to light work, she will be considered disabled given
12 her Advanced Age category.⁵⁴

13 As remand is necessary on this basis, the Court need not analyze Plaintiff's
14 remaining claims.

17 ⁵² See, e.g., AR 745 (Apr. 2020: Toradol injection for neck pain), AR 358–520, 649–
18 781 (records relating to prescribed opiates for back pain).

19 ⁵³ See *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975) (requiring the ALJ to
20 consider both the evidence that supports and the evidence that detracts from a
21 medical opinion).

22 ⁵⁴ 20 C.F.R. Pt. 404, Subpt. P, App. 2, Medical-Vocational Rule 202.06 (light work).
23

1 **C. Remand is required for further proceedings.**

2 Plaintiff argues that remand for benefits is justified.⁵⁵ However, further
3 administrative proceedings are needed to fully develop the record.⁵⁶ On remand, in
4 additional to requesting a functional evaluation from PA-C Bosma, the ALJ is to
5 order physical and psychological CEs, as it has been more than 2 years since the
6 last psychological CE and there is no physical CE. The consultative examiners
7 must be given sufficient medical records to allow for a longitudinal perspective
8 since May 20, 2019.⁵⁷ If Plaintiff fails to attend one or both examinations, the ALJ
9 is to address whether Plaintiff had good cause for failing to attend. If Plaintiff
10 again fails to attend a physical CE and no opinion is submitted by PA-C Bosma, the
11 ALJ is encouraged to call a medical expert to offer an opinion as to Plaintiff's
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14 ⁵⁵ Plaintiff argued that benefits should be awarded because Dr. Metoyer's opined
15 nonexertional limitations preclude gainful employment. However, even if the ALJ
16 erred when analyzing Dr. Metoyer's opinion, the Court finds that the conflicting
17 medical evidence relating to Plaintiff's mental health does not clearly establish
18 disabling nonexertional limitations permitting the Court to award benefits at this
19 time. Therefore, the ALJ must reassess Plaintiff's nonexertional limitations.

20 ⁵⁶ See *Leon v. Berryhill*, 800 F.3d 1041, 1045 (9th Cir. 2017); *Garrison v. Colvin*,
21 759 F.3d 995, 1020 (9th Cir. 2014).

22 ⁵⁷ The record must clearly identify what medical records the examiner reviewed.
23

1 functional abilities. The ALJ is to then reconsider the medical evidence, Plaintiff's
2 symptom reports, and reevaluate the sequential process.

3 **V. Conclusion**

4 Plaintiff establishes the ALJ consequentially erred. The ALJ is to develop
5 the record and reevaluate—with meaningful articulation and evidentiary
6 support—the sequential process.

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

- 8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is
9 **GRANTED.**
- 10 2. The Commissioner's Motion for Summary Judgment, **ECF No. 16**, is
11 **DENIED.**
- 12 3. The Clerk's Office shall enter **JUDGMENT** in favor of **Plaintiff**.
- 13 4. This matter is **REVERSED and REMANDED to the**
14 **Commissioner of Social Security for further proceedings**
15 **pursuant to sentence four of 42 U.S.C. § 405(g).**
- 16 5. The case shall be **CLOSED.**

17 **IT IS SO ORDERED.** The Clerk's Office is directed to file this order and
18 provide copies to all counsel.

19 **DATED** this 29th day of December 2022.

20 _____
21 s/Edward F. Shea
22 EDWARD F. SHEA
23 Senior United States District Judge