

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

Jan 24, 2018

SEAN F. MCAVOY, CLERK

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

NATASHA LYNN BARNES,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:16-cv-00402-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 16, 17

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 16, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 16) and grants Defendant's motion (ECF No. 17).

ORDER - 1

1 **JURISDICTION**

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

3 **STANDARD OF REVIEW**

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

15 In reviewing a denial of benefits, a district court may not substitute its
16 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
17 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
18 rational interpretation, [the court] must uphold the ALJ’s findings if they are
19 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
20 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an

1 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
2 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
3 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
4 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
5 *Sanders*, 556 U.S. 396, 409-10 (2009).

6 **FIVE-STEP EVALUATION PROCESS**

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

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

1 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
2 C.F.R. § 416.920(b).

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

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

17 If the severity of the claimant’s impairment does not meet or exceed the
18 severity of the enumerated impairments, the Commissioner must pause to assess
19 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
2 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

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

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

18 The claimant bears the burden of proof at steps one through four above.
19 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
20 step five, the burden shifts to the Commissioner to establish that (1) the claimant is

1 capable of performing other work; and (2) such work “exists in significant
2 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
3 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 Plaintiff applied for supplemental security income benefits on March 6,
6 2013, alleging a disability onset date of April 19, 2010. Tr. 140-45. Benefits were
7 denied initially, Tr. 97-100, and upon reconsideration. Tr. 104-07. Plaintiff
8 appeared for a hearing before an administrative law judge (ALJ) on May 19, 2015.
9 Tr. 34-71. On June 11, 2015, the ALJ denied Plaintiff’s claim. Tr. 14-29.

10 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
11 activity since March 6, 2013. Tr. 19. At step two, the ALJ found Plaintiff has the
12 following severe impairments: borderline intellectual functioning; somatoform
13 disorder; affective disorder; and personality disorder. Tr. 19. At step three, the
14 ALJ found that Plaintiff does not have an impairment or combination of
15 impairments that meets or medically equals the severity of a listed impairment. Tr.
16 21. The ALJ then concluded that Plaintiff has the RFC

17 to perform a full range of light work as defined in 20 CFR 416.967(b),
18 except she can have no concentrated exposure to unprotected heights or
19 moving mechanical parts; she may only perform simple, repetitive, and
20 routine tasks with a reasoning level of two or less; she may only perform
simple decision-making; and she may not have any contact with the public.

1 Tr. 22. At step four, the ALJ found Plaintiff had no past relevant work. Tr. 25. At
2 step five, the ALJ found that considering Plaintiff's age, education, work
3 experience, and RFC, there are other jobs that exist in significant numbers in the
4 national economy that the Plaintiff can perform such as housekeeping, agricultural
5 produce sorter, and cafeteria attendant. Tr. 25. The ALJ concluded Plaintiff has
6 not been under a disability, as defined in the Social Security Act, since March 6,
7 2013, the date the application was filed, through the date of the decision. Tr. 26.

8 On September 21, 2016, the Appeals Counsel denied review, Tr. 1-6,
9 making the ALJ's decision the Commissioner's final decision for purposes of
10 judicial review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

11 ISSUES

12 Plaintiff seeks judicial review of the Commissioner's final decision denying
13 her supplemental security income benefits under Title XVI of the Social Security
14 Act. ECF No. 14. Plaintiff raises the following issues for this Court's review:

- 15 1. Whether the ALJ properly weighed Plaintiff's symptom claims;
- 16 2. Whether the ALJ properly weighed the medical opinion evidence; and
- 17 3. Whether the ALJ properly concluded Plaintiff's impairments did not meet a

18 Listing.

19 ECF No. 16 at 9-15.

1 **DISCUSSION**

2 **A. Plaintiff’s Symptom Claims**

3 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
4 convincing in “discrediting [Plaintiff’s] symptoms claims” arising from her mental
5 impairments.¹ ECF No. 16 at 9-13.

6 An ALJ engages in a two-step analysis to determine whether a claimant’s
7 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must

8
9 ¹ Plaintiff’s arguments regarding the ALJ’s treatment of Plaintiff’s testimony
10 center on the ALJ’s decision regarding the extent of her symptoms arising from her
11 mental impairments. ECF No. 16 at 10. Plaintiff does not appear to contest the
12 ALJ’s treatment of her testimony regarding the extent of her pain and symptoms
13 caused by her non-severe physical impairments. *See* Tr. 23. Accordingly, the
14 Court does not address this aspect of the ALJ’s decision. *See Carmickle v.*
15 *Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (the court
16 need not address an issue where the claimant “failed to argue [the] issue with any
17 specificity in [his or her] briefing.”). Nevertheless, a review of the ALJ’s
18 reasoning and the rest of the record shows that the ALJ’s reasoning in support of
19 his decision according “some credit” to Plaintiff’s pain and symptom testimony
20 concerning her physical impairments is supported by clear and convincing reasons.

1 determine whether there is objective medical evidence of an underlying
2 impairment which could reasonably be expected to produce the pain or other
3 symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
4 “The claimant is not required to show that [her] impairment could reasonably be
5 expected to cause the severity of the symptom [she] has alleged; [she] need only
6 show that it could reasonably have caused some degree of the symptom.” *Vasquez*
7 *v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

8 Second, “[i]f the claimant meets the first test and there is no evidence of
9 malingering, the ALJ can only reject the claimant’s testimony about the severity of
10 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
11 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
12 citations and quotations omitted). “General findings are insufficient; rather, the
13 ALJ must identify what testimony is not credible and what evidence undermines
14 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
15 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ
16 must make a credibility determination with findings sufficiently specific to permit
17 the court to conclude that the ALJ did not arbitrarily discredit claimant’s
18 testimony.”). “The clear and convincing [evidence] standard is the most
19 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,

1 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
2 924 (9th Cir. 2002)).

3 In making an adverse credibility determination, the ALJ may consider, *inter*
4 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
5 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s
6 daily living activities; (4) the claimant’s work record; and (5) testimony from
7 physicians or third parties concerning the nature, severity, and effect of the
8 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

9 The ALJ concluded Plaintiff’s medically determinable impairments could
10 reasonably be expected to cause the alleged symptoms, but that Plaintiff’s
11 statements concerning the intensity, persistence and limiting effects of these
12 symptoms were “not entirely credible.” Tr. 23. With regard to her mental
13 limitations, the ALJ “largely credit[ted]” Plaintiff’s testimony finding that it
14 “generally undermines her claim of total disability.” Tr. 23. Plaintiff disagrees
15 with this conclusion. This Court finds the ALJ provided specific, clear, and
16 convincing reasons for rejecting Plaintiff’s claim of symptoms of disabling
17 severity.

18 *1. Activities of Daily Living*

19 The ALJ found that Plaintiff’s daily activities were inconsistent with any
20 disabling limitations. Tr. 23. It is well-settled that a claimant need not be utterly

1 incapacitated in order to be eligible for benefits. *Fair v. Bowen*, 885 F.2d 597, 603
2 (9th Cir. 1989); *see also Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (“the
3 mere fact that a plaintiff has carried on certain activities ... does not in any way
4 detract from her credibility as to her overall disability.”). However, as in this case,
5 even where activities “suggest some difficulty functioning, they may be grounds
6 for discrediting the [Plaintiff’s] testimony to the extent that they contradict claims
7 of a totally debilitating impairment.” *Molina*, 674 F.3d at 1113; *see also Burch v.*
8 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005) (ALJ properly considered claimant’s
9 ability to care for her own needs, cook, clean, shop, interact with her nephew and
10 boyfriend, and manage her finances and those of her nephew in the credibility
11 analysis); *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir.
12 1999) (ALJ’s determination regarding claimant’s ability to “fix meals, do laundry,
13 work in the yard, and occasionally care for his friend’s child” was a specific
14 finding sufficient to discredit the claimant’s credibility). Here, the ALJ referred to
15 several activities of Plaintiff’s daily living activities which he characterized as
16 “very high-functioning” and found supported her testimony but undermined her
17 claim of total disability. Tr. 23. These activities included being the primary
18 caregiver for her baby, performing “all the cleaning and household chores for
19 herself and boyfriend” (whom she lived with for over three years), and being able
20 “to use the bus[,] etc.” *Id.*; *see also* Tr. 21 (noting Plaintiff graduated from high

1 school, lives independently, is capable of bathing, dressing and toileting, and
2 would spend up to 3 or 4 hours every two days performing chores). Plaintiff
3 contends her failure to perform these activities with success illustrates her
4 limitations rather than a conflict in the record. ECF No. 16 at 10-12. For example,
5 Plaintiff notes her mother helped care for the baby and took custody of the baby a
6 few months before her first birthday. *Id.*; *see also* Tr. 45-46.

7 The ALJ’s findings regarding Plaintiff’s activity level is consistent with
8 Plaintiff’s testimony and the remainder of the record, and therefore, substantial
9 evidence supports the ALJ’s finding that daily activities are inconsistent with
10 allegations of disabling symptoms and limitations. To be sure, the record contains
11 some contrary evidence. However, it is the function of the ALJ to resolve any
12 ambiguities, and the Court finds the ALJ’s assessment to be reasonable and
13 supported by substantial evidence. *See Rollins v. Massanari*, 261 F.3d 853, 857
14 (9th Cir. 2001) (affirming ALJ’s credibility determination even where the
15 claimant’s testimony was somewhat equivocal about how regularly she was able to
16 keep up with all of the activities and noting that the ALJ’s interpretation “may not
17 be the only reasonable one”).

18 2. *Plaintiff’s Statements Regarding Perceived Abilities*

19 The ALJ also acknowledged that Plaintiff’s own testimony as to her
20 limitations did not focus upon her mental impairments and Plaintiff testified she

1 believed she could perform a sit-down job fulltime. Tr. 23. Plaintiff faults the
2 ALJ for having credited Plaintiff's testimony, specifically her statements
3 concerning her perceived ability to work. ECF No. 16 at 10. Plaintiff claims the
4 findings of Dr. Mabee and Dr. Arnold of "fair to poor insight" and limited abstract
5 thinking "clearly indicate that Ms. Barnes' perception regarding her ability to rate
6 her own functioning and forecast her ability to function is not reliable." *Id.*

7 In his credibility evaluation, the ALJ is seeking evidentiary factors which are
8 relevant to a determination of whether Plaintiff's allegation of disabling symptoms
9 are credible. Federal courts have long recognized that, in the context of mental
10 illness, insight can play an important role in evaluating the claimant's credibility;
11 and, by definition, a claimant with poor insight cannot be expected to understand
12 the true nature of her impairments. *See Nguyen v. Chater*, 100 F.3d 1462, 1465
13 (9th Cir. 1996) (recognizing that claimant's delay in seeking treatment for
14 depression was not a sufficient basis to reject medical opinion diagnosing
15 depression because "those afflicted [with depression] often do not recognize that
16 their condition reflects a potentially serious mental illness"). There is no indication
17 in the record of a tendency to overstate Plaintiff's abilities or that the ALJ failed to
18 take into consideration the Plaintiff's limited insight. Plaintiff's testimony
19 regarding her perceived ability to work, even if an optimistic self-assessment, is
20 significant to the extent that the Plaintiff is willing and able to work, as that belief

1 indicates her allegation of symptoms precluding work are not credible. It is the
2 province of the ALJ, not the reviewing court, to evaluate credibility. The ALJ is
3 required to take the claimant's reports into account. The Court finds no error in the
4 ALJ's acknowledgement of the Plaintiff's testimony about her own perceived
5 limitations.

6 *3. Lack of Treatment*

7 Finally, the ALJ reasoned that Plaintiff's "failure to obtain any mental health
8 treatment (or even mental health evaluation during the adjudicative period)
9 suggests her mental health issues are not particularly serious." Tr. 23. When a
10 claimant receives only conservative or minimal treatment, it supports an adverse
11 inference as to the claimant's credibility regarding the severity of her subjective
12 symptoms. *Parra v. Astrue*, 481 F.3d 742, 750–51 (9th Cir. 2007); *Meanal v.*
13 *Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999). Unexplained, or inadequately
14 explained, failure to seek treatment or follow a prescribed course of treatment may
15 be the basis for an adverse credibility finding unless there is a showing of a good
16 reason for the failure. *See Orn*, 495 F.3d at 638. Where the evidence suggests lack
17 of mental health treatment is part of a claimant's mental health condition, it may be
18 inappropriate to consider a claimant's lack of mental health treatment as evidence
19 of a lack of credibility. *See Nguyen*, 100 F.3d at 1465. However, when there is no
20 evidence suggesting a failure to seek treatment is attributable to a mental

1 impairment rather than personal preference, it is reasonable for the ALJ to
2 conclude that the level or frequency of treatment is inconsistent with the alleged
3 severity of complaints. *Molina*, 674 F.3d at 1113-14.

4 Plaintiff testified she was in counseling as a juvenile and for a year thereafter
5 at Frontier Behavioral Health until she was told she “didn’t have to go back.” Tr.
6 61-62; *see also* Tr. 327 (medical record reference to ongoing counseling). No
7 records from Frontier Behavioral Health are part of the record, though there are
8 references to counseling in the medical record. *See* Tr. 70; *see also* Tr. 40; Tr. 61-
9 70; Tr. 205 (noting “difficulties with last counselor”); Tr. 259 (noting did not like
10 counseling as a juvenile because “she felt that they only listened to her mother’s
11 side of the story.”); Tr. 327-28; Tr. 330 (Jan. 27, 2015 note stating Plaintiff was not
12 seeing a counselor and “not sure if she wants to do that again”); Tr. 336 (May 18,
13 2015 provider recommendation for counseling for depression and anxiety).

14 Plaintiff testified she had talked to her doctor about resources for the homeless and
15 was referred for counseling. Tr. 63. As Defendant points out, the majority of
16 treatment records are for Plaintiff’s physical complaints, not her mental health
17 impairments. ECF No. 17 at 8-9.

18 Plaintiff does not challenge the ALJ’s finding that Plaintiff did not obtain
19 any mental health treatment. Instead, Plaintiff suggests lack of insight and lack of
20 funds explain her failure to obtain treatment. ECF No. 16 at 12. The reason for

1 lack of mental health treatment is not obvious. Indeed, Plaintiff's somatoform
2 disorder diagnosis would appear to increase the likelihood that Plaintiff would seek
3 medical treatment, regardless of insight into the impairment. The fact that she did
4 not continue to seek mental health treatment, despite the recommendations of her
5 providers and her ability to do so, supports the ALJ's conclusions regarding
6 Plaintiff's assertion of disabling symptoms. Alternatively, even if the failure to
7 pursue mental health treatment was related to her limited resources and insight and
8 would alone be insufficient to sustain an adverse credibility finding, any error is
9 harmless because it does not invalidate the overall analysis of Plaintiff's
10 symptoms. *See, e.g., Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197
11 (9th Cir. 2004) (upholding ALJ's credibility determination even though one reason
12 may have been in error).

13 *4. Lack of Objective Medical Evidence*

14 Finally, the ALJ found that as to Plaintiff's depression, somatoform disorder
15 and personality disorder, the objective medical evidence and evidence in the record
16 overall did not suggest a greater restriction than imposed by the ALJ in his RFC.
17 Tr. 23. Plaintiff contends the ALJ improperly relied upon the lack of objective
18 evidence and the opinions of Dr. Arnold and Dr. Mabee undermine the ALJ's
19 conclusion. ECF No. 16 at 12. Minimal objective evidence is a factor which may
20 be relied upon in discrediting a claimant's testimony, although it may not be the

1 only factor. *See Burch*, 400 F.3d at 680. Here, the Court notes that the ALJ set
2 out, in detail, the medical evidence contradicting Plaintiff’s claims of disabling
3 mental and physical limitations; and ultimately concluded that the assessed RFC
4 accounts for Plaintiff’s restrictions in concentration, comprehension, and
5 persistence. Tr. 22-25; *see also* Tr. 205 (June 2012 assessment by Dr. Arnold
6 estimating impairment lasting six months and recommending among other
7 interventions, counseling, medication consultation and management, and
8 vocational rehabilitation); Tr. 251 (November 2012 provider notes reflecting
9 Plaintiff was in no acute physical distress and was mentally “oriented to time,
10 place, person and situation); Tr. 255 (normal abdominal ultrasound); Tr. 257
11 (provider impression indicating “abdominal pain unexplained by any colonoscopic
12 abnormality, without evidence of inflammatory bowel disease”); Tr. 274 (March
13 2013 provider note indicating Plaintiff and her mother advised Plaintiff had
14 stopped taking her medications); Tr. 275-76 (March 2013 provider note
15 recommending treatment for depression while noting in psychiatric remarks that
16 Plaintiff “appears comfortable” and has “normal attention span and
17 concentration”); Tr. 305 (May 2013 imaging report noting “[p]atient needs
18 disability determination xrays” and impression of right knee negative); 306
19 (imaging of lumbar spine showing “mild” left convex scoliosis; “[o]therwise
20 unremarkable”); Tr. 310 (May 2013 consultative physical examination

1 “unremarkable”); Tr. 327-28 (October 2014 provider note noting depression since
2 birth of baby and medication management issues; listing medications in
3 conjunction with depression including Wellbutrin (150 mg) and Zoloft (increased
4 dosage from 50 mg to 100 mg), and with insomnia including Desyrel (50 mg)); Tr.
5 330 (January 2015 provider note stating that patient indicates depression
6 medication works well, but not seeing counselor and still has some episodes of
7 feeling “down”). In this case, the lack of objective evidence belies Plaintiff’s
8 claimed degree of disability.

9 Accordingly, the Court concludes that the ALJ articulated specific, clear and
10 convincing reasons supported by substantial evidence for discrediting Plaintiff’s
11 symptom complaints.

12 **B. Medical Opinion Evidence**

13 Plaintiff faults the ALJ for discounting the opinions of examining
14 psychologists W. Scott Mabee, Ph.D. and Dr. John Arnold, Ph.D, both of whom
15 performed psychological/psychiatric evaluations for the State Department of Social
16 and Health Services prior to Plaintiff’s application for supplemental security
17 income benefits. ECF No. 16 at 14-15.

18 There are three types of physicians: “(1) those who treat the claimant
19 (treating physicians); (2) those who examine but do not treat the claimant
20 (examining physicians); and (3) those who neither examine nor treat the claimant

1 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”
2 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted).
3 Generally, a treating physician's opinion carries more weight than an examining
4 physician's, and an examining physician's opinion carries more weight than a
5 reviewing physician's. *Id.* at 1202. If a treating or examining physician's opinion
6 is uncontradicted, the ALJ may reject it only by offering “clear and convincing
7 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
8 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any
9 physician, including a treating physician, if that opinion is brief, conclusory and
10 inadequately supported by clinical findings.” *See Bray v. Comm'r of Soc. Sec.*
11 *Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (internal quotation marks and
12 brackets omitted). “If a treating or examining doctor's opinion is contradicted by
13 another doctor's opinion, an ALJ may only reject it by providing specific and
14 legitimate reasons that are supported by substantial evidence.” *Bayliss*, 427 F.3d at
15 1216 (citing *Lester*, 81 F.3d at 830–31).

16 *I. W. Scott Mabee, Ph.D.*

17 In January and February 2013, Dr. Mabee performed a psychological/
18 psychiatric evaluation, Tr. 258-269, and diagnosed undifferentiated somatoform
19 disorder, generalized anxiety disorder with depressive features, borderline
20 personality disorder, and borderline intellectual functioning. Tr. 261. Regarding

1 Plaintiff's functioning, Dr. Mabee specifically opined that Plaintiff was severely
2 limited in two major areas: (1) the ability to perform activities within a schedule,
3 maintain regular attendance, and to be punctual within customary tolerances, and
4 (2) the ability to complete a normal work day and work week without interruptions
5 from psychologically based symptoms. Tr. 262. Dr. Mabee found Plaintiff was
6 markedly impaired in (1) understanding, remembering and persisting in tasks by
7 following detailed instructions; and (2) communicating and performing effectively
8 in a work setting. *Id.* There were seven other areas where she would have
9 moderate limitations for work related activities. *Id.* The vocational expert testified
10 there would be no work for an individual with these limitations. Tr. 69-70. The
11 ALJ gave this opinion little weight. Tr. 24. Because Dr. Mabee's opinion was
12 contradicted by state agency psychological consultant, Diane Fligstein, Tr. 92-94,
13 the ALJ was required to provide specific and legitimate reasons for rejecting Dr.
14 Mabee's opinion. *Bayliss*, 427 F.3d at 1216.

15 First, the ALJ assigned little weight to Dr. Mabee's opinion because in
16 analyzing the MMPI-2-RF psychological test, Dr. Mabee found Plaintiff "appeared
17 to have some True response inconsistency" and stated that it was "likely that she
18 reported more symptoms than [were] objectively present." Tr. 24; *see* Tr. 260. Dr.
19 Mabee concluded this invalidated Plaintiff's scores on the somatic scales and
20 deemed Plaintiff's MMPI-2-RF profile "questionably valid." Tr. 260. The ALJ

1 also noted that she also scored “very low” on the WAIS-IV and WMS-IV tests, Tr.
2 23, and that IQ testing performed earlier in life yielded scores much higher
3 “casting further doubt on the validity” of her later IQ test. Tr. 22. Evidence that a
4 claimant exaggerated her symptoms is a specific, legitimate reason to reject the
5 doctor’s conclusions. *Thomas*, 278 F.3d at 958. This alone was a specific and
6 legitimate reason supported by the record for giving Dr. Mabee’s opinion little
7 weight.

8 Second, the ALJ noted that Dr. Mabee had examined Plaintiff on only one
9 occasion. Tr. 24. When considering the medical evidence, the ALJ will consider
10 the length and extent of the treatment relationship. 20 C.F.R. § 416.927(c)(2) (eff.
11 Aug. 24, 2012). However, generally, the opinion of an examining physician is
12 entitled to greater weight than the opinion of a nonexamining physician. *Andrews*
13 *v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995). The frequency of examination is a
14 factor the ALJ could consider, however, it is not a legitimate reason to reject Dr.
15 Mabee’s opinion in favor a nonexamining source who has no examining or treating
16 relationship with Plaintiff. Here, the error was harmless because the ALJ gave
17 other specific and legitimate reasons supported by substantial evidence.

18 Third, the ALJ opined that Dr. Mabee’s limitations were “not in line with the
19 objective medical evidence of claimant’s mental impairments.” Tr. 24. An ALJ
20 may discredit a physician’s opinions that are unsupported by objective medical

1 findings. *See Batson*, 359 F.3d at 1195 (noting that “an ALJ may discredit treating
2 physicians’ opinions that are conclusory, brief, and unsupported by the record as a
3 whole, . . . or by objective medical findings”). The objective evidence of
4 Plaintiff’s mental impairments, including the mental exam findings of Dr. Arnold
5 and clinical observations of Plaintiff’s treating providers, support the ALJ’s
6 conclusion. *See, e.g.*, Tr. 205 (Dr. Arnold’s findings that Plaintiff could
7 “remember locations and simple work like tasks”; “understand, remember and
8 carryout simple verbal and written instructions”; “concentrate and attend for short
9 to moderate periods”; “ask simple questions, request assistance and accept
10 instructions”; “adhere to basic standards of neatness and cleanliness”; and “use the
11 bus.”); Tr. 315 (treatment provider noting “[n]ormal insight”); Tr. 275 (treatment
12 note indicating “normal attention span and concentration”). The Court concludes
13 that despite the relatively limited objective evidence available, this was a specific
14 and legitimate reason, supported by substantial evidence in the record.

15 Finally, the ALJ rejected Dr. Mabee’s opinion because there was “little
16 support” for the limitations assessed either within Dr. Mabee’s evaluation or the
17 medical record as a whole. The ALJ need not accept the opinion of any physician,
18 including a treating physician, if that opinion is brief, conclusory and inadequately
19 supported by clinical findings. *Bray*, 554 F.3d at 1228. An ALJ is not obliged to
20 credit medical opinions that are unsupported by the medical source’s own data.

1 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Here, the ALJ
2 properly concluded that Dr. Mabee’s extreme limitations were unsupported by his
3 evaluation and clinical findings. For example, Dr. Mabee’s mental status
4 examination (MSE) observed largely normal results, with limitations noted in
5 memory, fund of knowledge, and abstract thought. Tr. 263–65. While the MSE
6 results are not necessarily inconsistent with Dr. Mabee’s assessed limitations,
7 neither the MSE nor Dr. Mabee’s narrative based upon the clinical interview, Tr.
8 259-60, explain, for example, the assessed “severe” limitation in the ability to
9 persist without interruption from psychologically based symptoms. Furthermore,
10 the record supports the ALJ’s conclusion that the record contains little evidence
11 that Plaintiff’s mental impairments are disruptive to the Plaintiff’s ability to work.
12 Tr. 23. For instance, the medical record reflects Plaintiff was prescribed
13 medication to treat depression after the birth of her baby, Tr. 327, and while it
14 worked for a while she still reported episodes where she felt “down.” Tr. 330.
15 Plaintiff was not seeing a counselor and she was uncertain whether she wanted
16 to participate in future counseling. Tr. 330. Plaintiff reported she did not like her
17 mental health provider. Tr. 332. The ALJ also gave substantial weight to the July
18 8, 2013 opinion of Diane Fligstein, Ph.D., Tr. 92-94, who after review of the
19 record, opined Plaintiff had moderate limitations, but was capable of simple,
20 routine tasks. Tr. 24.

1 Overall, regardless of evidence that could be interpreted more favorably to
2 Plaintiff, it is susceptible to more than one rational interpretation, and therefore the
3 ALJ's ultimate conclusion must be upheld. *See Burch*, 400 F.3d at 679. The lack
4 of overall support in the record was a specific and legitimate reason to accord Dr.
5 Mabee's opinion less weight. *See Tommasetti*, 533 F.3d at 1041 (noting that an
6 "incongruity" between a doctor's opinion and his medical records may suffice as a
7 specific and legitimate reason for rejecting that doctor's opinion); *Tonapetyan v.*
8 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (a contrary opinion of a non-
9 examining medical expert may constitute substantial evidence when it is consistent
10 with other independent evidence in the record).

11 *2. John Arnold, Ph.D.*

12 On June 1, 2012, ten months prior to date of Plaintiff's application, Dr.
13 Arnold also completed a psychological/psychiatric evaluation of Plaintiff for the
14 state Department of Social and Health Services. Tr. 204-213. The PAI test results
15 were deemed invalid because Plaintiff's "score exceeded the cutoff for profile
16 validity." Tr. 207. Dr. Arnold remarked that Plaintiff's "psychological insight,"
17 comprehension, and concentration are "low." Tr. 205, 207. Dr. Arnold opined
18 that, for a period of 6 months, Plaintiff's symptoms "will negatively impact her
19 overall job performance," Tr. 205, yet he believed vocational training or services
20 would minimize or eliminate barriers to employment. *Id.* As for Plaintiff's

1 functional capacity, Dr. Arnold opined Plaintiff could: “remember locations and
2 simple work like tasks”; “understand, remember and carryout simple verbal and
3 written instructions”; “concentrate and attend for short to moderate periods”; “ask
4 simple questions, request assistance and accept instructions”; “adhere to basic
5 standards of neatness and cleanliness”; and “use the bus.” Tr. 205. Dr. Arnold
6 recommended counseling, medication management, a physical exam, IQ testing,
7 and vocational rehabilitation because in his opinion, “without intervention it is not
8 likely she will improve to any significant degree.” Tr. 205.

9 Plaintiff contends the ALJ erred by failing to assign weight to Dr. Arnold’s
10 opinion. ECF No. 16 at 15. The ALJ’s failure to explicitly assign weight to Dr.
11 Arnold’s opinion is harmless. Plaintiff fails to adequately explain how, if assigned
12 weight, this opinion would have changed the ALJ’s ultimate determination. *See*
13 ECF No. 18 at 7. For example, Plaintiff has not identified any limitation assessed
14 by Dr. Arnold that was not incorporated into the RFC. This Court will decline to
15 reverse an ALJ’s decision on account of harmless error, which is defined as an
16 error that is “inconsequential to the [ALJ’s] ultimate nondisability determination.”
17 *Molina*, 674 F.3d at 1111, 1115. Although the ALJ did not explicitly state the
18 weight given to Dr. Arnold’s assessment, the ALJ specifically referred to Dr.
19 Arnold’s opinion and summarized a portion of it in his step two analysis. Tr. 20.
20 The ALJ reasonably recognized Dr. Arnold’s 2012 opinion was that Plaintiff

1 would be impaired for six months. Tr. 20. Moreover, while the ALJ could have
2 explained his reasoning more thoroughly, it is reasonable to infer that the ALJ
3 considered Dr. Arnold's opinion when he formulated Plaintiff's RFC, because the
4 RFC is consistent with Dr. Arnold's opinion. Tr. 22 (finding Plaintiff capable of
5 performing simple, repetitive, and routine tasks and simple decision-making); *see*
6 *Monguer v. Heckler*, 722 F.2d 1033, 1040 (2d Cir. 1983) (holding that, where the
7 ALJ discusses a piece of evidence in a manner which indicates that he is aware of
8 the evidence, it is reasonable to infer that he considered that evidence in forming
9 his conclusions regarding the plaintiff's ability to work). Therefore, because
10 Plaintiff has failed to explain how Dr. Arnold's opinion, if assigned any weight,
11 would have changed the ALJ's ultimate findings, the Court declines to find error.

12 **C. Listing 12.05**

13 Plaintiff admits her challenge to the ALJ's determination that Plaintiff did
14 not meet Listing 12.05 is contingent upon a finding of harmful error in regard to
15 the aforementioned issues. ECF No. 18 at 7. Accordingly, it lacks merit. *See*
16 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

17 **CONCLUSION**

18 After review, the Court finds that the ALJ's decision is supported by
19 substantial evidence and free of harmful error.

20 **IT IS ORDERED:**

1 1. Plaintiff's Motion for Summary Judgment (ECF No. 16) is **DENIED**.

2 2. Defendant's Motion for Summary Judgment (ECF No. 17) is

3 **GRANTED.**

4 The District Court Executive is directed to file this Order, enter

5 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**

6 **THE FILE.**

7 DATED January 24, 2018.

8 *s/Mary K. Dimke*

MARY K. DIMKE

9 UNITED STATES MAGISTRATE JUDGE