

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

Apr 02, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RUSSELL Z.,

Plaintiff,

v.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:19-CV-00209-RHW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING
FOR FURTHER PROCEEDINGS**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 13 & 17. Plaintiff brings this action seeking judicial review of the Commissioner's final decision denying his application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C. §§1381-1383f. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court **GRANTS, in part,** Plaintiff's Motion for Summary Judgment, **DENIES** Defendant's Motion for Summary Judgment, and **REMANDS** the matter back to the Commissioner for additional proceedings.

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND REMANDING FOR FURTHER PROCEEDINGS ~ 1**

1 **I. Jurisdiction**

2 Plaintiff filed an application for Supplemental Security Income on April 10,
3 2015. AR 79. He alleged a disability onset date of January 2, 2012. AR 229.
4 Plaintiff’s application was initially denied on August 6, 2015, AR 109-12, and on
5 reconsideration on March 11, 2016, AR 121-27.

6 Administrative Law Judge (“ALJ”) Kimberly Boyce held a hearing on April
7 23, 2018 and heard testimony from Plaintiff and vocational expert Michael
8 Swanson. AR 37-63. On May 14, 2018, the ALJ issued a decision finding
9 Plaintiff ineligible for disability benefits. AR 15-31. The Appeals Council denied
10 Plaintiff’s request for review on April 15, 2019. AR 1-5. Plaintiff sought judicial
11 review by this Court on June 12, 2019. ECF No. 1. Accordingly, Plaintiff’s
12 claims are properly before this Court pursuant to 42 U.S.C. §§ 405(g); 1383(c).

13 **II. Sequential Evaluation Process**

14 The Social Security Act defines disability as the “inability to engage in any
15 substantial gainful activity by reason of any medically determinable physical or
16 mental impairment which can be expected to result in death or which has lasted or
17 can be expected to last for a continuous period of not less than twelve months.” 42
18 U.S.C. § 1382c(a)(3)(A).

19 The Commissioner has established a five-step sequential evaluation process
20 for determining whether a claimant is disabled within the meaning of the Social

1 Security Act. 20 C.F.R. § 416.920(a)(4); *Lounsbury v. Barnhart*, 468 F.3d 1111,
2 1114 (9th Cir. 2006). In steps one through four, the burden of proof rests upon the
3 claimant to establish a prima facie case of entitlement to disability benefits.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999). This burden is met once
5 the claimant establishes that physical or mental impairments prevent him from
6 engaging in his previous occupations. 20 C.F.R. § 416.920(a). If the claimant
7 cannot engage in his previous occupations, the ALJ proceeds to step five and the
8 burden shifts to the Commissioner to demonstrate that (1) the claimant is capable
9 of performing other work; and (2) such work exists in “significant numbers in the
10 national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,
11 388-89 (9th Cir. 2012).

12 III. Standard of Review

13 A district court’s review of a final decision of the Commissioner is governed
14 by 42 U.S.C. § 405(g). 42 U.S.C. § 1383(c)(3). The scope of review under §
15 405(g) is limited, and the Commissioner’s decision will be disturbed “only if it is
16 not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*,
17 698 F.3d 1153, 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence
18 means “more than a mere scintilla but less than a preponderance; it is such relevant
19 evidence as a reasonable mind might accept as adequate to support a conclusion.”
20 *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v.*

1 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted).

2 In determining whether the Commissioner’s findings are supported by substantial
3 evidence, “a reviewing court must consider the entire record as a whole and may
4 not affirm simply by isolating a specific quantum of supporting evidence.”

5 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock*
6 *v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)).

7 In reviewing a denial of benefits, a district court may not substitute its
8 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
9 1992). “The court will uphold the ALJ’s conclusion when the evidence is
10 susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533
11 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s
12 decision on account of an error that is harmless. *Id.* An error is harmless where it
13 is “inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.*
14 (quotation and citation omitted). The burden of showing that an error is harmful
15 generally falls upon the party appealing the ALJ’s decision. *Shinseki v. Sanders*,
16 556 U.S. 396, 409-10 (2009).

17 **IV. Statement of Facts**

18 The facts of the case are set forth in detail in the transcript of proceedings
19 and only briefly summarized here. Plaintiff was 41 years old at the date of
20 application. AR 229. Plaintiff alleged that the following conditions limited his

1 ability to work: left shoulder injury; bipolar disorder; allergies; asthma; and
2 MRSA. AR 257. Plaintiff completed his GED in November of 2008. AR 258. At
3 the time of application, Plaintiff stated that he had previously worked as a
4 landscaper and a mechanic. *Id.* Plaintiff reported that he stopped working on
5 September 1, 2012 because he was laid off. AR 257.

6 **V. The ALJ's Findings**

7 The ALJ determined that Plaintiff was not under a disability within the
8 meaning of the Act from the date of application, April 10, 2015, through the date
9 of the decision. AR 15-31.

10 **At step one**, the ALJ found that Plaintiff had not engaged in substantial
11 gainful activity since his alleged date of onset. AR 17 (citing 20 C.F.R. § 416.971
12 *et seq.*).

13 **At step two**, the ALJ found that Plaintiff had the following severe
14 impairments: status post cervical fusion with residual left arm weakness; carpal
15 tunnel syndrome; learning disorder; affective disorder; antisocial personality
16 disorder; and substance addiction disorder (citing 20 C.F.R. § 416.920(c)). AR 17.

17 **At step three**, the ALJ found that Plaintiff did not have an impairment or
18 combination of impairments that met or medically equaled the severity of one of
19 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 19 (citing 20
20 C.F.R. § 416.920(d)).

1 **At step four**, the ALJ found Plaintiff had the residual functional capacity
2 (RFC) to perform work at the medium exertional level with the following
3 limitations:

4 The claimant can occasionally climb ladders and scaffolds and can
5 frequently climb ramps and stairs, balance, stoop, kneel, crouch and
6 crawl. He can frequently reach, handle, and finger with the right upper
7 extremity, can frequently reach with the left upper extremity, and can
8 occasionally handle, finger and feel with the non-dominant left upper
9 extremity. In order to meet ordinary and reasonable employer
10 expectations the claimant can understand, remember, and carry out
11 unskilled, routine, and repetitive work that can be learned by
demonstration, and in which tasks to be performed are predetermined
by the employer. The claimant can cope with occasional work setting
change and occasional interaction with supervisors, can work in
proximity to coworkers, but not in a team or cooperative effort, and can
perform work that does not require interaction with the general public
as an essential element of the job, but occasional incidental contact with
the general public is not precluded.

12 AR 21 (citing 20 C.F.R. § 416.967(c)). The ALJ found that Plaintiff did not have
13 past relevant work. AR 29.

14 **At step five**, the ALJ found that, in light of his age, education, work
15 experience, and RFC, there were jobs that exist in significant numbers in the national
16 economy that Plaintiff could perform, including the jobs of auto detailer, shores
17 laborer or warehouse worker, and laundry worker. AR 30. Based on this step five
18 determination, the ALJ found that Plaintiff had not been under a disability, as
19 defined in the Act, from April 10, 2015, through the date of her decision. AR 31
20 (citing 20 C.F.R. § 416.920(g)).

1 **VI. Issues for Review**

2 Plaintiff argues that the Commissioner’s decision is not free of legal error
3 and not supported by substantial evidence. Specifically, he argues that the ALJ
4 erred by: (1) failing to properly weigh the medical opinion evidence; (2) failing to
5 properly consider Plaintiff’s symptom statements; and (3) failing to properly weigh
6 statements from Plaintiff’s mother. ECF No. 13.

7 **VII. Discussion**

8 **A. Medical Opinions**

9 Plaintiff challenges the weight the ALJ gave to the opinions of CeCilia
10 Cooper, Ph.D., N.K. Marks, Ph.D., and Tae-Im Moon, Ph.D. ECF No. 13 at 5-16.

11 The Ninth Circuit has distinguished between three classes of medical
12 providers in defining the weight to be given to their opinions: (1) treating
13 providers, those who actually treat the claimant; (2) examining providers, those
14 who examine but do not treat the claimant; and (3) non-examining providers, those
15 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830
16 (9th Cir. 1996) (as amended).

17 A treating provider’s opinion is given the most weight, followed by an
18 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
19 absence of a contrary opinion, a treating or examining provider’s opinion may not
20 be rejected unless “clear and convincing” reasons are provided. *Id.* at 830. If a

1 treating or examining provider’s opinion is contradicted, it may be discounted for
2 “specific and legitimate reasons that are supported by substantial evidence in the
3 record.” *Id.* at 830-31.

4 Plaintiff asserts that the lessor standard of specific and legitimate applies to
5 the opinions of Dr. Cooper, Dr. Marks, and Dr. Moon. ECF No. 13 at 14.

6 **1. CeCilia Cooper, Ph.D.**

7 On February 24, 2016, Dr. Cooper completed a psychological evaluation of
8 Plaintiff and diagnosed him with cannabis use disorder, other specificized bipolar
9 disorder, somatic symptom disorder, and antisocial personality disorder. AR 407-
10 08. She further found that he may have some learning disabilities. AR 408. She
11 then provided the following Medical Source Statement:

12 [Plaintiff]’s ability to reason is mildly impaired. His ability to
13 understand what is said is impaired because of erratic encoding. His
14 immediate retention of what is said is poor. His ability to persist is
15 moderately impaired. He needed accommodation to complete this
16 evaluation. His ability to maintain appropriate social interactions is
17 poor. His ability to respond appropriately to normal hazards is poor
18 due to inability to stay focused on important aspects. His ability to
19 adapt to change is poor because of mistrust and impulsivity. He would
20 require close supervision at worksites. His relationships at worksites
would be strained because of his personality traits. His general
appearance would be acceptable in many causal settings. He would try
to keep his surroundings in good order.

19 AR 408. His prognosis was considered poor because he was using marijuana and
20 alcohol regularly, he had recently used methamphetamine, he was consuming large

1 quantities of caffeine, he was not taking his prescribed psychotropic medications,
2 and he was not receiving any mental health assistance. *Id.*

3 The ALJ gave the opinion little weight, stating that “[t]hese limitations are
4 also inconsistent with the normal psychiatric observations, the lack of serious
5 problems on mental status examinations, and the minimal mental health treatment
6 as discussed above.” AR 28. The specific and legitimate standard can be met by
7 the ALJ setting out a detailed and thorough summary of the facts and conflicting
8 clinical evidence, stating her interpretation thereof, and making findings.

9 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to
10 do more than offer her conclusions, she “must set forth [her] interpretations and
11 explain why they, rather than the doctors’, are correct.” *Embrey v. Bowen*, 849
12 F.2d 418, 421-22 (9th Cir. 1988).

13 Here, the ALJ failed to specifically identify evidence that undermined a
14 specific portion of the opinion. Such a general conclusion is not a sufficiently
15 specific reason for rejecting the opined limitations. Therefore, the case is
16 remanded for the ALJ to properly address the opinion.

17 **2. N.K. Marks, Ph.D.**

18 On October 23, 2016, Dr. Marks completed a Psychological Psychiatric
19 Evaluation for the Washington Department of Social and Health Services (DSHS)
20 following an evaluation on October 6, 2016. AR 521-25. She diagnosed Plaintiff

1 with unspecified alcohol-related disorder, unspecified amphetamine or other
2 stimulant-related disorder, unspecified cannabis-related disorder, unspecified
3 anxiety disorder, unspecified attention-deficit/hyperactivity disorder, borderline
4 intellectual functioning disorder, and antisocial personality disorder. AR 524. She
5 opined that Plaintiff had a severe limitation in the abilities to communicate and
6 perform effectively in a work setting, to maintain appropriate behavior in a work
7 setting, and to set realistic goals and plan independently. AR 525. She further
8 opined that Plaintiff had a marked limitation in the ability to complete a normal
9 work day and work week without interruptions from psychologically based
10 symptoms and a moderate limitation in the abilities to understand, remember, and
11 persist in tasks by following detailed instructions, to perform activities within a
12 schedule, maintain regular attendance, and be punctual within customary
13 tolerances without special supervision, to adapt to changes in a routine setting, to
14 make simple work-related decisions, and to ask simple questions or request
15 assistance. AR 524-25.

16 The ALJ gave the opinion little weight stating that “[t]hese limitations are
17 also inconsistent with the normal psychiatric observations, the lack of serious
18 problems on mental status examinations, and the minimal mental health treatment
19 as discussed above.” AR 28. This is the identical language used to reject the
20 opinion of Dr. Cooper. *Id.*

1 As discussed above, such a general conclusion is not a sufficiently specific
2 reason for rejecting the opined limitations. *See Magallanes*, 881 F.2d at 751;
3 *Embrey*, 849 F.2d at 421-22. Therefore, the case is remanded for the ALJ to
4 properly address the opinion.

5 3. Tae-Im Moon, Ph.D.

6 On April 23, 2015, Dr. Moon completed a Psychological/Psychiatric
7 Evaluation for DSHS diagnosing Plaintiff with bipolar I disorder, ADHD, and
8 learning disorder with impairment in mathematics, reading, and written
9 expression. AR 345. She opined that Plaintiff had a moderate limitation in the
10 abilities to understand, remember, and persist in tasks by following detailed
11 instructions, to learn new tasks, to adapt to changes in a routine work setting, and
12 to be aware of normal hazards and take appropriate precautions, and to
13 communicate and perform effectively in a work setting, to maintain appropriate
14 behavior in a work setting, to complete a normal work day and work week without
15 interruptions from psychologically based symptoms, and to set realistic goals and
16 plan independently. AR 346. She recommended “assistance in finding
17 employment. He has a [history] of learning disability, ADHD and mood disorder.
18 The [claimant] would benefit from being in a sheltered work situation where he
19 can have necessary support to be successful.” *Id.* The ALJ gave the opinion
20 “significant weight,” stating that “Dr. Moon indicated the claimant has no more

1 than moderate limitation in any work related activity, specifically recommended
2 the claimant receive assistance finding employment.” AR 27.

3 Plaintiff argues that the ALJ misapprehended the significance of the
4 moderate limitations and failed to address the limitation to sheltered work. ECF
5 No. 13 at 14-16. He relies upon Social Security Ruling (S.S.R.) 85-15, which
6 defines “basic work demands” of unskilled work as the abilities to understand,
7 carry out, and remember simple instructions; to respond appropriately to
8 supervision, coworkers, and unusual work situations; and to deal with changes in a
9 routine work setting. *Id.* at 15. The S.S.R. goes on to state that “[a] substantial
10 loss to meet any of these basic work-related activities would severity limit the
11 potential occupational base.” S.S.R. 85-15.

12 Here, Dr. Moon opined moderate limitations in multiple areas of mental
13 functioning. AR 346. Moderate is defined as “there are significant limits on the
14 ability to perform one or more basic work activity,” AR 345, which appears to fall
15 under the language of S.S.R. 85-15 cited by Plaintiff. However, the Ninth Circuit
16 has clearly stated that S.S.R. 85-15 does not apply to claimants that have both
17 exertional and non-exertional impairments. *Roberts v. Shalala*, 66 F.3d 179, 183
18 (9th Cir. 1995) (as amended), *cert. denied*, 116 S.Ct. 1356 (1996). Exertional
19 limitations “affect only your ability to meet the strength demands of jobs (sitting,
20 standing, walking lifting, carrying, pushing, and pulling).” 20 C.F.R. §

1 416.969a(b). Nonexertional limitations “affect only your ability to meet the
2 demands of jobs other than strength demands.” 20 C.F.R. § 416.969a(c). Here,
3 Plaintiff’s impairments resulted in both exertional and nonexertional limitations.
4 His exertional limitations reduced his RFC to medium work, which limited his
5 lifting to no more than 50 pounds and his frequent lifting or carrying to 25 pounds
6 under 20 C.F.R. § 416.967(c). AR 21. The nonexertional limitations included the
7 remaining limitations identified in the RFC determination. *Id.* Therefore, S.S.R.
8 85-15 is not applicable to this case.

9 However, the ALJ erred in finding that Dr. Moon “recommended the
10 claimant receive assistance finding employment.” AR 27. Dr. Moon
11 “[r]ecommend[ed] assistance in finding employment. He has a [history] of
12 learning disability, ADHD, and mood disorder. The [claimant] would benefit from
13 being in a sheltered work situation where he can have necessary support to be
14 successful.” AR 346. “[A] claimant’s ability to perform sheltered work does not
15 necessarily establish an ability to engage in substantial gainful work.” of the Social
16 Security Act. *Barker v. Sec’y of Health & Human Servs.*, 882 F.2d 1474, 1479 (9th
17 Cir. 1989).

18 Here, Dr. Moon’s opinion that Plaintiff would benefit from sheltered work
19 because of the level of support that he required demonstrates that the ALJ’s
20 characterization of the opinion, that Dr. Moon “indicated the claimant has no more

1 than moderate limitation in any work related activity, specifically recommend the
2 claimant receive assistance finding employment,” AR 27, is not accurate.

3 The case is being remanded to address the opinions of Dr. Cooper and Dr.
4 Marks. The ALJ will readdress the opinion of Dr. Moon and specifically address
5 the statement regarding sheltered work.

6 **B. Plaintiff’s Symptom Statements**

7 Plaintiff challenges that ALJ’s determination that his symptom statements are
8 unreliable. ECF No. 13 at 16-20.

9 An ALJ engages in a two-step analysis to determine whether a claimant’s
10 testimony regarding subjective symptoms is reliable. *Tommasetti*, 533 F.3d at 1039.
11 First, the claimant must produce objective medical evidence of an underlying
12 impairment or impairments that could reasonably be expected to produce some
13 degree of the symptoms alleged. *Id.* Second, if the claimant meets this threshold,
14 and there is no affirmative evidence suggesting malingering, “the ALJ can reject the
15 claimant’s testimony about the severity of [his] symptoms only by offering specific,
16 clear and convincing reasons for doing so.” *Id.*

17 The ALJ found Plaintiff’s “statements concerning the intensity, persistence,
18 and limiting effects of these symptoms are not entirely consistent with the medical
19 evidence and other evidence in the record for the reasons explained in this
20 decision.” Tr. 22. The evaluation of a claimant’s symptom statements and their

1 resulting limitations relies, in part, on the assessment of the medical evidence. See
2 20 C.F.R. § 416.929(c); S.S.R. 16-3p. Therefore, in light of the case being
3 remanded for the ALJ to properly evaluate to opinion of Dr. Marks, Dr. Cooper,
4 and Dr. Moon, the ALJ will also readdress Plaintiff's symptom statements on
5 remand.

6 **C. Plaintiff's Mother**

7 Plaintiff challenges the weight the ALJ gave a statement from her mother.
8 ECF No. 13 at 20-21. Since this case is being remanded for the ALJ to readdress
9 the medical opinions, the ALJ will also readdress the weight assigned to this
10 statement.

11 **VIII. Conclusion**

12 Plaintiff requests that the credit-as-true rule be applied and the case be
13 reversed for an immediate award of benefits. ECF No. 13 at 14.

14 The decision whether to remand for further proceedings or reverse and
15 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
16 888 F.2d 599, 603 (9th Cir. 1989). Reversing and awarding benefits is appropriate
17 when (1) the record has been fully developed and further administrative
18 proceedings would serve no useful purpose; (2) the ALJ has failed to provide
19 legally sufficient reasons for rejecting evidence, whether claimant testimony or
20 medical opinion; and (3) if the improperly discredited evidence were credited as

1 true, the ALJ would be required to find the claimant disabled on remand, the Court
2 remands for an award of benefits. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir.
3 2017). But where there are outstanding issues that must be resolved before a
4 determination can be made, and it is not clear from the record that the ALJ would
5 be required to find a claimant disabled if all the evidence were properly evaluated,
6 remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir.
7 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

8 In this case, it is not clear from the record that the ALJ would be required to
9 find a claimant disabled if all the evidence were properly evaluated. Multiple
10 providers have diagnosed Plaintiff with substance abuse disorders, including Dr.
11 Marks and Dr. Cooper. Therefore, even if these opinions were credited as true, the
12 ALJ would have to address whether the substance abuse disorders are a
13 contributing factor material to the claim. 20 C.F.R. § 416.935; *see Bustamante v.*
14 *Massanari*, 262 F.3d 949 (9th Cir. 2001). Further proceedings are necessary for
15 the ALJ to properly address the medical evidence, Plaintiff's symptom statements,
16 and the statement from Plaintiff's mother. Additionally, the ALJ will supplement
17 the record with any outstanding evidence and call a vocational expert to testify at a
18 remand hearing.

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1 Accordingly, **IT IS ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **GRANTED**,
3 **in part.**

4 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is **DENIED.**

5 3. This matter is **REMANDED** to the Commissioner for further proceedings
6 consistent with this Order.

7 4. Judgment shall be entered in favor of **Plaintiff** and the file shall be
8 **CLOSED.**

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
10 Order, forward copies to counsel and **close the file.**

11 **DATED** April 2, 2021.

12
13 *s/ Robert H. Whaley*
14 ROBERT H. WHALEY
15 Senior United States District Judge
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