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

Mar 14, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDREA R,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 4:18-CV-5020-FVS

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

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 12, 13. This matter was submitted for consideration without oral argument. Plaintiff is represented by attorney Cory J. Brandt. Defendant is represented by Special Assistant United States Attorney Jeffrey E. Staples. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, Plaintiff's Motion, ECF No. 12, is denied and Defendant's Motion, ECF No. 13, is granted.

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT~ 1

1 **JURISDICTION**

2 Plaintiff Andrea R.¹ (Plaintiff), filed for supplemental security income on
3 January 14, 2014, alleging an onset date of February 1, 1991.² Tr. 148-51. Benefits
4 were denied initially, Tr. 72-75, and upon reconsideration, Tr. 82-83. Plaintiff
5 appeared at a hearing before an administrative law judge (ALJ) on June 13, 2016.
6 Tr. 34-50. On July 25, 2016, the ALJ issued an unfavorable decision, Tr. 20-27, and
7 on December 6, 2017, the Appeals Council denied review. Tr. 1-5. The matter is
8 now before this Court pursuant to 42 U.S.C. § 1383(c)(3).

9 **BACKGROUND**

10 The facts of the case are set forth in the administrative hearing and transcripts,
11 the ALJ’s decision, and the briefs of Plaintiff and the Commissioner, and are
12 therefore only summarized here.

13 Plaintiff was 30 years old at the time of the hearing. Tr. 36. She left school in
14 the ninth grade. Tr. 36. At the time of the hearing, she was working on her GED
15 and was employed as a caregiver in an adult family home around 14 hours per week.

16 _____
17 ¹In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first
18 name and last initial, and, subsequently, Plaintiff’s first name only, throughout this
19 decision.

20 ²Under Title XVI, benefits are not payable before the date of application. 20
21 C.F.R. §§ 416.305, 416.330(a); S.S.R. 83-20.

1 Tr. 36, 38. She also has work experience performing housekeeping at a hotel and in
2 fast food service. Tr. 40.

3 Plaintiff testified that she has a hard time keeping a job. Tr. 42. She has been
4 told she is not fast enough, and she does not remember everything she needs to
5 know. Tr. 42. She has lost jobs because she was late and because she was not fast
6 enough at organizing. Tr. 43. She has a hard time being organized at home and gets
7 overwhelmed. Tr. 43. She gets distracted and loses things a lot. Tr. 43, 45. She
8 sometimes has a hard time keeping track of dates and appointments. Tr. 45. She has
9 experienced depression which causes her to stay at home. Tr. 47.

10 **STANDARD OF REVIEW**

11 A district court's review of a final decision of the Commissioner of Social
12 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
13 limited; the Commissioner's decision will be disturbed "only if it is not supported by
14 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158
15 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable
16 mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and
17 citation omitted). Stated differently, substantial evidence equates to "more than a
18 mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted).
19 In determining whether the standard has been satisfied, a reviewing court must
20 consider the entire record as a whole rather than searching for supporting evidence in
21 isolation. *Id.*

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156
3 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
4 rational interpretation, [the court] must uphold the ALJ’s findings if they are
5 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
6 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an ALJ’s
7 decision on account of an error that is harmless.” *Id.* An error is harmless “where it
8 is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115
9 (quotation and citation omitted). The party appealing the ALJ’s decision generally
10 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.
11 396, 409-10 (2009).

12 **FIVE-STEP EVALUATION PROCESS**

13 A claimant must satisfy two conditions to be considered “disabled” within
14 the meaning of the Social Security Act. First, the claimant must be “unable to
15 engage in any substantial gainful activity by reason of any medically determinable
16 physical or mental impairment which can be expected to result in death or which
17 has lasted or can be expected to last for a continuous period of not less than twelve
18 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
19 “of such severity that he is not only unable to do his previous work[,] but cannot,
20 considering his age, education, and work experience, engage in any other kind of
21

1 substantial gainful work which exists in the national economy.” 42 U.S.C. §
2 1382c(a)(3)(B).

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

1 enumerated impairments, the Commissioner must find the claimant disabled and
2 award benefits. 20 C.F.R. § 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
8 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

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

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

1 adjusting to other work, analysis concludes with a finding that the claimant is
2 disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
6 capable of performing other work; and (2) such work “exists in significant
7 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
8 700 F.3d 386, 389 (9th Cir. 2012).

9 **ALJ’S FINDINGS**

10 At step one, the ALJ found Plaintiff did not engage in substantial gainful
11 activity since January 14, 2014, the alleged onset date. Tr. 22. At step two, the ALJ
12 found that Plaintiff has the following medically determinable impairments: attention
13 deficit disorder (ADD)/attention deficit hyperactivity disorder (ADHD), learning
14 disorder, and affective disorder. Tr. 22. The ALJ then found that Plaintiff does not
15 have an impairment or combination of impairments that significantly limited (or was
16 expected to significantly limit) her ability to perform basic work-related activities
17 for 12 consecutive months. Tr. 22. Therefore, the ALJ found Plaintiff does not have
18 a severe impairment or combination of impairments. Tr. 22.

19 Thus, the ALJ concluded that Plaintiff had not been under a disability, as
20 defined in the Social Security Act, since January 14, 2014, the date the application
21 was filed. Tr. 26.

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 supplemental security income under Title XVI of the Social Security Act. ECF No.

4 12. Plaintiff raises the following issues for review:

- 5 1. Whether the ALJ properly evaluated Plaintiff’s subjective complaints;
6 2. Whether the ALJ properly considered the medical opinion evidence;
7 and
8 3. Whether the ALJ made a proper step two finding.

9 ECF No. 12 at 6.

10 **DISCUSSION**

11 **A. Symptom Claims**

12 Plaintiff contends the ALJ improperly rejected her subjective complaints.
13 ECF No. 12 at 16-20. An ALJ engages in a two-step analysis to determine whether
14 a claimant’s testimony regarding subjective pain or symptoms is credible. “First,
15 the ALJ must determine whether there is objective medical evidence of an
16 underlying impairment which could reasonably be expected to produce the pain or
17 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks
18 omitted). “The claimant is not required to show that her impairment could
19 reasonably be expected to cause the severity of the symptom she has alleged; she
20 need only show that it could reasonably have caused some degree of the

1 symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal
2 quotation marks omitted).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
7 citations and quotations omitted). “General findings are insufficient; rather, the
8 ALJ must identify what testimony is not credible and what evidence undermines
9 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
10 Cir. 1995); *see also Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he
11 ALJ must make a credibility determination with findings sufficiently specific to
12 permit the court to conclude that the ALJ did not arbitrarily discredit claimant’s
13 testimony.”). “The clear and convincing [evidence] standard is the most
14 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
15 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
16 924 (9th Cir. 2002)).

17 In assessing a claimant’s symptom complaints, the ALJ may consider, *inter*
18 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
19 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s
20 daily living activities; (4) the claimant’s work record; and (5) testimony from
21

1 physicians or third parties concerning the nature, severity, and effect of the
2 claimant's condition. *Thomas*, 278 F.3d at 958-59.

3 This Court finds that the ALJ provided specific, clear, and convincing
4 reasons for finding Plaintiff's statements concerning the intensity, persistence, and
5 limiting effects of her symptoms not credible. Tr. 25.

6 First, the ALJ found the objective medical evidence does not fully support
7 the level of limitation claimed. Tr. 23-24. An ALJ may not discredit a claimant's
8 testimony and deny benefits solely because the degree of symptoms alleged is not
9 supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857
10 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v.*
11 *Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence is a
12 relevant factor in determining the severity of a claimant's symptoms and their
13 disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 416.929(c)(2) (2011).
14 Minimal objective evidence is a factor which may be relied upon in discrediting a
15 claimant's testimony, although it may not be the only factor. *See Burch v.*
16 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

17 The ALJ cited numerous records supporting the conclusion that Plaintiff's
18 allegations are not well-supported in the record. Tr. 23-25. For example, Plaintiff
19 reported to her counselor in December 2013 that, "I can work just not anything that
20 is too stressful," and her counselor agreed. Tr. 23, 323. In January 2014,
21 Plaintiff's counselor asked her to make new goals "as she has not been depressed

1 lately and this goal seems to be taken care of at this time.” Tr. 24, 317. In March
2 2014, Cheta Nand, M.D., a psychiatrist, indicated that Plaintiff reported “she is
3 happy and has no depression with the current medications. Her attention is getting
4 better. Her forgetting is better,” and there were no changes in June and July. Tr.
5 24, 367, 406, 409. Similarly, in March 2015 she was not depressed or anxious and
6 she was “very happy about her condition.” Tr. 24, 470. In December 2015
7 Plaintiff was feeling “stable and happy” and reported “no problems at this time” in
8 January 2016. Tr. 24, 462, 472. By April 2016, Plaintiff was looking for a job,
9 reported no depression, had no problems with her ex-boyfriend, was sleeping well,
10 was cooking new foods, and was working on her driving skills. Tr. 24, 458. In
11 June 2016, Plaintiff reported having a full-time job which interfered with her
12 ability to attend her GED classes. Tr. 24, 479. These findings reasonably support
13 the ALJ’s conclusion that the alleged severity of Plaintiff’s mental health claims is
14 not consistent with the overall record.

15 Plaintiff contends the ALJ focused on activities that suggest nondisability
16 and made an inaccurate characterization of the evidence, and that the ALJ
17 improperly rejected her symptom testimony based on waxing and waning
18 symptoms. ECF No. 12 at 18-19. Plaintiff cites only one example purportedly
19 indicating that the ALJ mischaracterized or selectively considered the record. ECF
20 No. 12 at 18. A June 2015 counseling record indicates, “[Plaintiff] was asked
21 about employment, she reports that she got the job at Wendy’s and for a while had

1 two part times. She gave her two weeks at Burger King and right after she was let
2 go at Wendy's due to a conflict with her schedule but also because she was not
3 able to do the job." Tr. 513. The ALJ noted that Plaintiff "reported that she was
4 holding down 2 part-time jobs as a server and dishwasher, which contradicts her
5 claims of having disabling problems with her abilities to maintain pace and
6 remember information." ECF No. 12 at 18; Tr. 24. Plaintiff characterizes the
7 record cited by the ALJ as "showing the opposite" and quotes only Plaintiff's
8 statement that she was let go "because she was not able to do the job." ECF No.
9 12 at 18 (citing Tr. 513). Plaintiff omits the statement that she was let go "due to a
10 conflict in her schedule" from her argument, which is itself selective and
11 misleading. ECF No. 12 at 18.

12 The ALJ's statement was accurate and the conclusion drawn was reasonable
13 based on the record. To the extent the record could be interpreted differently, it is
14 the ALJ's duty to resolve the ambiguity. *See Morgan v. Comm'r of Soc. Sec.*
15 *Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999). The Court will not reverse an
16 ALJ's findings regarding Plaintiff's symptom claims based on contradictory or
17 ambiguous evidence. *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)
18 (citing *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir.1984)). Even if this citation by
19 the ALJ was incomplete or mischaracterized (and the Court does not so find),
20 Plaintiff failed to demonstrate that the ALJ's conclusion about the record overall is
21 otherwise based on error.

1 Second, the ALJ found is capable of high functioning activities of daily
2 living. Tr. 24. It is reasonable for an ALJ to consider a claimant's activities which
3 undermine claims of totally disabling pain in assessing a claimant's symptom
4 complaints. *See Rollins*, 261 F.3d at 857. However, it is well-established that a
5 claimant need not "vegetate in a dark room" in order to be deemed eligible for
6 benefits. *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987). Notwithstanding, if
7 a claimant is able to spend a substantial part of her day engaged in pursuits
8 involving the performance of physical functions that are transferable to a work
9 setting, a specific finding as to this fact may be sufficient to discredit an allegation
10 of disabling excess pain. *Fair*, 885 F.2d at 603. Furthermore, "[e]ven where
11 [Plaintiff's daily] activities suggest some difficulty functioning, they may be
12 grounds for discrediting the claimant's testimony to the extent that they contradict
13 claims of a totally debilitating impairment." *Molina*, 674 F.3d at 1113.

14 The ALJ observed Plaintiff testified she was taking classes four days per
15 week for two hours per day to earn her GED and was working part-time as a
16 caregiver at the time of the hearing. Tr. 24, 37-38. She had recently passed the
17 written driving test and was planning to take the driving portion soon. Tr. 24, 37.
18 She reported she was able to take the bus, clean, do laundry, shop, prepare meals,
19 handle personal care without problems, watch movies, use the internet, and
20 maintain a few friendships. Tr. 24, 162-69, 211-18. The ALJ concluded that these
21 activities suggest Plaintiff should be able to sustain full-time employment. Tr. 24.

1 Without citing the ALJ's decision, Plaintiff contends the ALJ "overstated"
2 her activities. ECF No. 12 at 19. However, the ALJ accurately cited Plaintiff's
3 testimony and report of her own abilities in considering her daily activities. Tr. 24.
4 Furthermore, as noted *supra*, despite Plaintiff's assertion to the contrary, even if
5 some of the activities cited by the ALJ do not translate directly to full-time work,
6 they reasonably demonstrate abilities inconsistent with Plaintiff's claimed
7 limitation and undermine the degree of limitation alleged. *See Molina*, 674 F.3d at
8 1113.

9 Third, the ALJ found inconsistencies regarding Plaintiff's reported
10 functioning and the medical evidence. Tr. 25. In evaluating a claimant's symptom
11 claims, an ALJ may consider the consistency of an individual's own statements
12 made in connection with the disability review process with any other existing
13 statements or conduct made under other circumstances. *Smolen v. Chater*, 80 F.3d
14 1273, 1284 (9th Cir. 1996) (The ALJ may consider "ordinary techniques of
15 credibility evaluation," such as reputation for lying, prior inconsistent statements
16 concerning symptoms, and other testimony that "appears less than candid.");
17 *Thomas*, 278 F.3d at 958-59. The ALJ noted a report by the Cooperative Disability
18 Investigations Unit (CDIU) generated after the Disability Determination Services
19 (DDS) office found inconsistencies in Plaintiff's allegations and presentation
20 throughout the record. Tr. 25, 416-23. An investigator interviewed Plaintiff and
21 one of her friends and noted information regarding her activities, the effectiveness

1 of her medications, her memory, and observations regarding her communication
2 during the interview. Tr. 25, 418-22. Plaintiff does not acknowledge or address
3 the ALJ's consideration of the CDIU report or the inconsistencies which triggered
4 the investigation. The contents of the report were reasonably characterized as
5 undermining Plaintiff's symptom claims, and the inconsistency is a clear and
6 convincing reason supported by substantial evidence.

7 Lastly, Plaintiff contends the ALJ "appeared to conflate the step two and
8 credibility analyses, and engaged in a general review of the medical evidence and
9 Plaintiff's activities in discounting her subjective complaints, with no specificity as
10 to what testimony was discredited or why." ECF No. 12 at 18; *see also* ECF No. 14
11 at 7-8 ("the ALJ and Commissioner offer little more than vague assertions that the
12 claimant's allegations are inconsistent with the evidence of record"). Indeed,
13 general findings are an insufficient basis for a credibility finding. *Holohan v.*
14 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). The ALJ must state which
15 testimony is not credible and what evidence suggests the complaints are not credible.
16 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

17 Plaintiff testified that she has a hard time keeping a job because she is not fast
18 enough and she does not remember instructions. Tr. 42. Contrary to Plaintiff's
19 argument that the ALJ was unspecific and vague, the ALJ identified the testimony
20 that was discredited and evidence undermining it. For example, the ALJ noted,
21 "[t]he November 2013 psychological evaluation reflected good cognitive abilities,

1 *which conflicts with the claimant's report of ongoing difficulty with retaining*
2 *information.* Tr. 23. Similarly, the ALJ stated, “[t]he claimant is alleging disability
3 based on mental health symptoms *that she testified affect her pace and memory on*
4 *the job,*” and went on to note evidence in the record undermining that claim. Tr. 23.
5 The ALJ observed, “[t]he claimant even reported that she was holding down 2 part-
6 time jobs as a server and dishwasher, *which contradicts her claims of having*
7 *disabling problems with her abilities to maintain pace and remember information.*”
8 Tr. 24. These findings are sufficiently specific to ensure the ALJ’s conclusions were
9 not general or arbitrary.

10 **B. Opinion Evidence**

11 Plaintiff contends the ALJ improperly rejected the opinions of examining
12 psychologist Tae-Im Moon, Ph.D., and reviewing psychologist Renee Eisenhauer,
13 Ph.D., as well as GAF scores throughout the record. ECF No. 12 at 6-14.

14 There are three types of physicians: “(1) those who treat the claimant
15 (treating physicians); (2) those who examine but do not treat the claimant
16 (examining physicians); and (3) those who neither examine nor treat the claimant
17 but who review the claimant’s file (nonexamining or reviewing physicians).”
18 *Holohan*, 246 F.3d at 1201-02 (brackets omitted). “Generally, a treating
19 physician’s opinion carries more weight than an examining physician’s, and an
20 examining physician’s opinion carries more weight than a reviewing physician’s.”
21 *Id.* “In addition, the regulations give more weight to opinions that are explained

1 than to those that are not, and to the opinions of specialists concerning matters
2 relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

3 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
4 reject it only by offering “clear and convincing reasons that are supported by
5 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
6 “However, the ALJ need not accept the opinion of any physician, including a
7 treating physician, if that opinion is brief, conclusory and inadequately supported
8 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
9 (internal quotation marks and brackets omitted). “If a treating or examining
10 doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only
11 reject it by providing specific and legitimate reasons that are supported by
12 substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-31).

13 1. *Tae-Im Moon, Ph.D.*

14 Dr. Moon examined Plaintiff and completed a DSHS
15 Psychological/Psychiatric Evaluation form in November 2013. Tr. 260-64. He
16 diagnosed attention deficit hyperactivity disorder predominantly inattentive type;
17 learning disorder NOS by history; and depressive disorder NOS. Tr. 262. He
18 assessed marked limitations, defined as very significant limitations on the ability to
19 perform one or more basic work activities, in four functional areas: the ability to
20 understand, remember and persist in tasks following detailed instructions; the ability
21 to perform activities within a schedule, maintain regular attendance, and be punctual

1 within customary tolerances without special supervision; the ability to communicate
2 and perform effectively in a work setting; and the ability to set realistic goals and
3 plan independently. Tr. 263. Dr. Moon also assessed moderate limitations in eight
4 functional areas. Tr. 262-63.

5 Because Dr. Moon's opinion was contradicted by the opinion of Dr.
6 Robinson, Tr. 67-68, the ALJ was required to provide specific and legitimate
7 reasons for rejecting Dr. Moon's opinion. *Bayliss*, 427 F.3d at 1216.

8 The ALJ gave little weight to Dr. Moon's opinion because Plaintiff does not
9 have significant difficulty in the functional areas for which Dr. Moon assessed
10 marked limitations. Tr. 25. An ALJ may discount a medical source opinion to the
11 extent it conflicts with the claimant's daily activities. *Morgan*, 169 F.3d at 601-02.
12 The ALJ observed that Plaintiff was taking classes, worked part-time, and cared for
13 her young daughter. Tr. 25-26. The ALJ also noted Plaintiff reported being able to
14 handle her own finances. Tr. 26, 168, 214. These activities reasonably contradict
15 the marked or "very significant" limitations assessed by Dr. Moon regarding
16 Plaintiff's abilities to follow instructions, maintain attendance, communicate and
17 perform, and set goals and plan.

18 Plaintiff first argues that the ALJ's finding is conclusory and "boilerplate."
19 ECF No. 12 at 9. The finding is not boilerplate because the ALJ referred to the
20 record and specific findings inconsistent with Dr. Moon's conclusions. Tr. 24-25.
21 Furthermore, the finding is not conclusory because the inconsistency between

1 Plaintiff's activities and the limitations assessed by Dr. Moon is apparent. "As a
2 reviewing court, we are not deprived of our faculties for drawing specific and
3 legitimate inferences from the ALJ's opinion. It is proper for us to read the
4 paragraph discussing [a doctor's] findings and opinion, and draw inferences relevant
5 to [that doctor's] findings and opinion, if those inferences are there to be drawn."
6 *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989). The ALJ's finding
7 regarding Dr. Moon's opinion is sufficiently specific.

8 Plaintiff further argues that the ALJ "appears to overstate" Plaintiff's
9 functioning. ECF No. 12 t 9. To the contrary, the ALJ cited Plaintiff's own
10 testimony and reported activities in evaluating Dr. Moon's opinion. Tr. 24-25.
11 Plaintiff asserts the ALJ's conclusions are flawed because her testimony did not
12 establish how she is doing in her GED classes, ECF No. 12 at 10, notwithstanding
13 that Plaintiff's counsel could have elicited such testimony. Furthermore, Plaintiff
14 contends, "the records shows that Plaintiff has been unsuccessful in obtaining her
15 GED," characterizing it as "an ongoing struggle," because she has been working
16 toward it since January 2014. ECF NO. 12 at 10. To the extent this could be a
17 reasonable characterization of the record, the ALJ's finding that Plaintiff's
18 attendance at GED classes contradicts Dr. Moon's assessment is also reasonable.
19 When the evidence conflicts or is ambiguous, the ALJ is the arbiter. *Magallanes*,
20 881 F.2d at 751; *see also Sprague v. Bowen*, 812 F.2d 1226, 1229 (9th Cir.1987)
21 (concluding the existence of a legally supportable alternative resolution of the

1 evidence does not provide a sufficient basis for reversing an ALJ's decision which
2 is supported by substantial evidence).

3 Plaintiff notes that her part-time position as a caregiver requires enrollment
4 in CNA classes which she testified she was unable to find at the time. ECF No. 12
5 at 10; Tr. 38-39. Plaintiff extrapolates that "it appears doubtful that she would
6 qualify for CNA training, let alone possess the aptitude for it if enrolled." ECF
7 No. 12 at 10. This assertion is without basis in the record. The reasons for
8 Plaintiff's departure from school in the ninth grade are not established in the
9 record, Tr. 261 ("she was pulled out of school but could not recall why") and there
10 is no evidence supporting the conclusion that Plaintiff's GED efforts are impeded
11 by any impairment. In fact, Plaintiff reported missing GED classes due to
12 appointments and full-time work. Tr. 494, 479.

13 Plaintiff additionally contends that she receives "considerable parenting
14 help" from her daughter's grandmother. ECF No. 12 at 10. This is itself an
15 overstatement of the record. When asked how often the grandmother helps with
16 her daughter, Plaintiff testified that "[s]he's willing to watch [my daughter] all the
17 time so pretty much all the time." Tr. 48-49. It is reasonable to expect that if
18 Plaintiff is going to school and working part-time she would require assistance
19 with child care which does not reasonably suggest a functional limitation. Plaintiff
20 also asserts "deficits in parenting" exist based on a "CPS report made against her."
21 ECF No. 12 at 10. Even if "parenting deficits" were established in the record,

1 there is no evidence that they would be due to a mental health impairment or
2 functional limitation.

3 Lastly, Plaintiff argues the ALJ failed to address the moderate limitations
4 also assessed by Dr. Moon. ECF No. 12 at 11. While the ALJ found the marked
5 limitations assessed by Dr. Moon were inconsistent with Plaintiff's activities, the
6 ALJ did not specifically mention the moderate limitations in rejecting Dr. Moon's
7 opinion. Tr. 24. Notwithstanding, the ALJ noted Dr. Moon's cognitive findings
8 were within normal limits and there were no issues with memory or concentration.
9 Tr. 25, 264. Similarly, the ALJ found the GAF score of 51-55³ assessed by Dr.
10 Moon is inconsistent with her appearance, report of activities, and performance on
11 testing. Tr. 25. The ALJ gave little weight to Dr. Moon's report. Tr. 25. Specific
12 language indicating the moderate limitations were also rejected is not required; the
13 court may draw reasonable inferences from the ALJ's discussion of a physician's
14 report. *See Magallanes*, 881 F.2d at 755. It is apparent that the ALJ rejected the
15 limitations assessed by Dr. Moon given the ALJ's discussion of Dr. Moon's
16 findings and the record overall.

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19 ³ A GAF score of 51-60 indicates moderate symptoms or any moderate impairment
20 in social, occupational or school functioning. DIAGNOSTIC AND STATISTICAL
21 MANUAL OF MENTAL DISORDERS, at 32 (Am. Psychiatric Ass'n 4th ed.) (1994).

1 Additionally, Plaintiff argues the ALJ “substituted his opinion for that of a
2 trained psychologist.” ECF No. 12 at 11; ECF No. 14 at 4. It is improper for an
3 ALJ to act as his own medical expert and substitute his opinion for the opinion of a
4 medical doctor. *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir.1975).
5 Plaintiff’s argument overlooks the opinion John F. Robinson, Ph.D., a reviewing
6 psychologist whose opinion was given great weight by the ALJ, and who reviewed
7 Dr. Moon’s opinion and the CDIU report and found no severe impairment. Tr. 25,
8 67-68. The ALJ found Dr. Robinson’s opinion was supported by the treatment
9 record showing improvement with counseling and medication and by the level of
10 function required by Plaintiff’s activities. Tr. 25. The ALJ did not impermissibly
11 “play doctor” as the findings were based in part on Dr. Robinson’s opinion. Based
12 on the foregoing, the ALJ provided specific, legitimate reasons supported by
13 substantial evidence for giving little weight to Dr. Moon’s opinion.

14 2. *Renee Eisenhauer, Ph.D.*

15 Plaintiff contends the ALJ erred by failing to properly consider Dr.
16 Eisenhauer’s opinion. ECF No. 12 at 13-14. In April 2014, Dr. Eisenhauer
17 reviewed the record and identified the severe impairments of ADD/ADHD, learning
18 disorder, affective disorders, and anxiety disorders. Tr. 56. She assessed a marked
19 limitation in the ability to follow detailed instructions and nine moderate limitations.
20 Tr. 58-59. Dr. Eisenhauer opined that Plaintiff can follow, understand and execute
21 simple, routine tasks; can maintain concentration, persistence, and pace for simple,

1 routine tasks; would do better in smaller groups of familiar people; and would likely
2 need some additional time to make adaptations to her routine and would benefit
3 from help with planning and goal setting. Tr. 58-59. The ALJ gave no weight to Dr.
4 Eisenhower's opinion. Tr. 25.

5 Because Dr. Eisenhower's opinion was contradicted by the opinion of Dr.
6 Robinson, Tr. 67-68, the ALJ was required to provide specific and legitimate
7 reasons for rejecting Dr. Eisenhower's opinion. *Bayliss*, 427 F.3d at 1216.

8 The ALJ rejected Dr. Eisenhower's opinion because it is inconsistent with
9 Plaintiff's activities, course of treatment, and the contents of the CDIU report,
10 which were all reasonably interpreted by the ALJ as discussed *supra*. Tr. 25.

11 Plaintiff contends the ALJ's finding is improperly conclusive and boilerplate. ECF
12 No. 12 at 13. However, the ALJ discussed the basis for each of these reasons
13 elsewhere in the decision, and the ALJ need not explicitly re-discuss Dr.

14 Eisenhower's report in the context of these reasons. *See Lewis v. Apfel*, 236 F.3d
15 503, 512-13 (9th Cir. 2001). All reasons discussed by the ALJ constitute "grounds
16 invoked by the agency," *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947), or
17 "reasons the ALJ assert[ed]," *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir.
18 2003). Additionally, the ALJ credited the opinion of Dr. Robinson which
19 contradicts Dr. Eisenhower's findings and concludes there is no severe impairment.
20 Tr. 25, 67-68.

1 Plaintiff does not allege any other error or otherwise discuss the ALJ's
2 consideration of Dr. Eisenhauer's opinion. *See Carmickle v. Comm'r of Soc. Sec.*
3 *Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2007) (noting the court may decline to
4 address issues not argued with specificity). The ALJ's reasons for giving no
5 weight to Dr. Eisenhauer's opinion are specific, legitimate, and supported by
6 substantial evidence.

7 3. GAF Scores

8 Plaintiff contends the ALJ committed legal error by rejecting numerous GAF
9 scores indicating serious impairment "across the longitudinal record." ECF No. 12
10 at 12. Clinicians use a GAF to rate the psychological, social, and occupational
11 functioning of a patient. The scale does not evaluate impairments caused by
12 psychological or environmental factors. *Morgan*, 169 F.3d at 598. The
13 Commissioner has explicitly disavowed use of GAF scores as indicators of
14 disability. "The GAF scale . . . does not have a direct correlation to the severity
15 requirements in our mental disorder listing." 65 Fed. Reg. 50746-01, 50765 (August
16 21, 2000). Moreover, the GAF scale is no longer included in the DSM-V.
17 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (Am. Psychiatric
18 Ass'n 5th ed.) (2013).

19 The ALJ gave little weight to the GAF scores in records from Catholic Family
20 Services from September 2014 to June 2016, consisting primarily of therapy
21 progress notes. Tr. 26, 472-520. The ALJ noted the GAF scores tended to be lower

1 assessments of functioning than Plaintiff's activities indicated. Tr. 26. For
2 example, the ALJ noted that in September 2014 Dr. Nand assessed a GAF score of
3 50, indicating a "serious impairment" in functioning,⁴ yet Plaintiff reported "feeling
4 good" and was working two jobs at that time. Tr. 477. Similarly, in December
5 2014 a GAF score of 45 was assessed but Plaintiff was "doing well" and was "very
6 happy," felt no depression, and was looking for work. Tr. 474. Again, in January
7 2016, as GAF score of 45 was assessed despite Plaintiff's report that she was doing
8 well and had "no problems." Tr. 26. Plaintiff contends that "even during times of
9 decreased symptoms of depression and anxiety, she is unable to maintain even part-
10 time work due to learning disorder and ADD/ADHD, which results in visible
11 deficits in concentration and focus." ECF No. 12 at 12 (citing Tr. 305, 312, 464,
12 513). This assertion is not supported by the records cited by Plaintiff, which
13 indicates that she left one job voluntarily and another at least in part due to a conflict
14 in her schedule. Tr. 464, 513. The ALJ reasonably rejected the GAF scores
15 assessed in light of Plaintiff's actual functioning.

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19 ⁴ A GAF score of 41-50 indicates serious symptoms or any serious impairment in
20 social, occupation, or school functioning. DIAGNOSTIC AND STATISTICAL MANUAL
21 OF MENTAL DISORDERS, at 32 (Am. Psychiatric Ass'n 4th ed.) (1994).

1 **C. Step Two**

2 Plaintiff contends the ALJ improperly rejected her impairments at step two
3 and therefore failed to complete the sequential process. ECF No. 12 at 14-16. At
4 step two of the sequential process, the ALJ must determine whether Plaintiff
5 suffers from a “severe” impairment, i.e., one that significantly limits his or her
6 physical or mental ability to do basic work activities. 20 C.F.R. § 416.920(c). To
7 satisfy step two’s requirement of a severe impairment, the claimant must prove the
8 existence of a physical or mental impairment by providing medical evidence
9 consisting of signs, symptoms, and laboratory findings; the claimant’s own
10 statement of symptoms alone will not suffice. 20 C.F.R. § 416.908 (1991). “Step
11 two is merely a threshold determination meant to screen out weak claims. It is not
12 meant to identify the impairments that should be taken into account when
13 determining the RFC.” *Buck v. Berryhill*, 869 F.3d 1040, 1048-49 (9th Cir. 2017)
14 (citation omitted). The fact that a medically determinable condition exists does not
15 automatically mean the symptoms are “severe” or “disabling” as defined by the
16 Social Security regulations. *See e.g. Edlund*, 253 F.3d at 1159-60; *Fair*, 885 F.2d
17 at 603; *Key v. Heckler*, 754 F.2d 1545, 1549050 (9th Cir. 1985).

18 The ALJ found that Plaintiff has the medically determinable impairments of
19 ADD/ADHD, learning disorder, and affective disorder, but has no severe
20 impairment. Tr. 22. Plaintiff again contends the ALJ “appeared to conflate” the
21 analysis and “relied on invalid boilerplate language.” ECF No. 12 at 15. This

1 contention is without merit as the ALJ specifically considered the evidence in
2 considering the “B criteria” for evaluating mental impairments. Tr. 26. The
3 regulations provide that a “special technique” is used in evaluating the severity of
4 mental impairments. 20 C.F.R. § 416.920a (2011). Once a medically
5 determinable impairment is established, the ALJ rates the degree of limitation
6 resulting from the impairment in four functional areas (the “B criteria” of the
7 listings) based on the relevant evidence. 20 C.F.R. § 416.920a(b)-(c). The ALJ
8 discussed the evidence and cited the record in evaluating the four functional areas
9 and therefore did not rely on boilerplate language or a conflated analysis. Tr. 26.
10 Based on the record, the ALJ found Plaintiff has only mild limitations in three of
11 the four functional areas, and pursuant to the regulations, Plaintiff’s limitations are
12 nonsevere. Tr. 26; 20 C.F.R. 416.920a(d)(1).

13 Plaintiff cites records noting symptoms of her medically determinable
14 impairments, ECF No. 12 at 15, but Plaintiff has not established any functional
15 limitations resulting from those impairments based on the record. As discussed
16 *supra*, the ALJ reasonably evaluated the record and made legally sufficient
17 findings based on substantial evidence in rejecting the opinions of Dr. Moon and
18 Dr. Eisenhauer, and properly credited the opinion of Dr. Robinson which supports
19 the step two determination. Further, Plaintiff does not acknowledge or address the
20 basis for the ALJ’s findings regarding the B criteria, and thus fails to identify any
21 error in those findings. ECF No. 12 at 15-16. For these reasons, the ALJ’s step

1 two finding is supported by substantial evidence and there was no need to continue
2 the sequential evaluation.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ's findings, this Court concludes the
5 ALJ's decision is supported by substantial evidence and free of harmful legal error.

6 Accordingly,

7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

8 2. Defendant's Motion for Summary Judgment, **ECF No. 13**, is

9 **GRANTED**.

10 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
11 Order and provide copies to counsel. Judgment shall be entered for Defendant and
12 the file shall be **CLOSED**.

13 **DATED** March 14, 2019.

14
15 *s/ Rosanna Malouf Peterson*
16 ROSANNA MALOUF PETERSON
17 United States District Judge
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