

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

Oct 05, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALEXIS V.,¹

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner
of Social Security,

Defendant.

No. 4:20-CV-5010-EFS

**ORDER GRANTING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND DENYING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.²

Plaintiff Alexis V. appeals the denial of benefits by the Administrative Law Judge (ALJ). She alleges the ALJ erred by 1) improperly weighing the medical opinions, 2) discounting Plaintiff's symptom reports, and 3) improperly assessing Plaintiff's residual functional capacity and therefore relying on an incomplete hypothetical at

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." *See* LCivR 5.2(c).

² ECF Nos. 16 & 17.

1 step five. In contrast, Defendant Commissioner of Social Security asks the Court to
2 affirm the ALJ's decision finding Plaintiff not disabled. After reviewing the record
3 and relevant authority, the Court grants Plaintiff's Motion for Summary
4 Judgment, ECF No. 16, and denies the Commissioner's Motion for Summary
5 Judgment, ECF No. 17.

6 I. Five-Step Disability Determination

7 A five-step sequential evaluation process is used to determine whether an
8 adult claimant is disabled.³ Step one assesses whether the claimant is currently
9 engaged in substantial gainful activity.⁴ If the claimant is engaged in substantial
10 gainful activity, benefits are denied.⁵ If not, the disability-evaluation proceeds to
11 step two.⁶

12 Step two assesses whether the claimant has a medically severe impairment,
13 or combination of impairments, which significantly limits the claimant's physical
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19 ³ 20 C.F.R. §§ 404.1520(a), 416.920(a).

20 ⁴ *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

21 ⁵ *Id.* §§ 404.1520(b), 416.920(b).

22 ⁶ *Id.* §§ 404.1520(b), 416.920(b).

1 or mental ability to do basic work activities.⁷ If the claimant does not, benefits are
2 denied.⁸ If the claimant does, the disability-evaluation proceeds to step three.⁹

3 Step three compares the claimant's impairments to several recognized by the
4 Commissioner to be so severe as to preclude substantial gainful activity.¹⁰ If an
5 impairment meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled.¹¹ If an impairment does not, the disability-
7 evaluation proceeds to step four.

8 Step four assesses whether an impairment prevents the claimant from
9 performing work she performed in the past by determining the claimant's residual
10 functional capacity (RFC).¹² If the claimant is able to perform prior work, benefits
11 are denied.¹³ If the claimant cannot perform prior work, the disability-evaluation
12 proceeds to step five.

13 Step five, the final step, assesses whether the claimant can perform other
14 substantial gainful work—work that exists in significant numbers in the national
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16 ⁷ 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

17 ⁸ *Id.* §§ 404.1520(c), 416.920(c).

18 ⁹ *Id.* §§ 404.1520(c), 416.920(c).

19 ¹⁰ *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

20 ¹¹ *Id.* §§ 404.1520(d), 416.920(d).

21 ¹² *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

22 ¹³ *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

1 economy—considering the claimant’s RFC, age, education, and work experience.¹⁴
2 If so, benefits are denied. If not, benefits are granted.¹⁵

3 The claimant has the initial burden of establishing entitlement to disability
4 benefits under steps one through four.¹⁶ At step five, the burden shifts to the
5 Commissioner to show that the claimant is not entitled to benefits.¹⁷

6 II. Factual and Procedural Summary

7 Plaintiff filed Title II and XVI applications, alleging a disability onset date of
8 April 5, 2015.¹⁸ Her claims were denied initially and upon reconsideration.¹⁹ An
9 administrative hearing was held before Administrative Law Judge Moira
10 Ausems.²⁰

11 In denying Plaintiff’s disability claims, the ALJ made the following findings:

14 ¹⁴ 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496,
15 1497-98 (9th Cir. 1984).

16 ¹⁵ 20 C.F.R. §§ 404.1520(g), 416.920(g).

17 ¹⁶ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

18 ¹⁷ *Id.*

19 ¹⁸ AR 167-85 & 196-202. Her Title II claim was escalated to the hearing level and
20 joined with the Title XVI claim. AR 17.

21 ¹⁹ AR 100-03 & 107-09.

22 ²⁰ AR 35-72.

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- Step one: Twenty-one-year-old Plaintiff had not engaged in substantial gainful activity since April 4, 2015, the alleged onset date, through her date last insured of September 30, 2018;
 - Step two: Plaintiff had the following medically determinable severe impairments: specific learning disorder, unspecified anxiety disorder, and adjustment disorder with depressed mood;
 - Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments;
 - RFC: Plaintiff had the RFC to perform a full range of work at all exertional levels but with the following nonexertional limitations:

[Plaintiff] is limited [to] work that does not require the performance of more than simple routine tasks at a GED level of more [than] 1 or 2 from the Dictionary of Occupational Title (DOT), and would not be dependent on the ability to engage in verbal communication with the general public in a clear audible manner. In other words, she would not be able to perform a job that would require her to be on the phone, dealing with customer service, or dealing with irate customers. Further, [Plaintiff] would be limited to brief superficial interaction and verbal communication with the general public.

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- Step four: Plaintiff had no past relevant work; and
 - Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant

1 numbers in the national economy, such as laundry worker, kitchen
2 helper, and auto detailer.²¹

3 When assessing the medical-opinion evidence, the ALJ gave:

- 4 • great weight to the reviewing opinions of John Gilbert, Ph.D. and
5 Diane Fligstein, Ph.D.; and
- 6 • little weight to the examining opinion of Kris Marks, Ph.D. and the
7 reviewing opinion of Holly Petaja, Ph.D.²²

8 The ALJ also found that Plaintiff's medically determinable impairments
9 could reasonably be expected to cause some of the alleged symptoms, but that her
10 statements concerning the intensity, persistence, and limiting effects of those
11 symptoms were not entirely consistent with the medical evidence and other
12 evidence in the record.²³

13 Plaintiff requested review of the ALJ's decision by the Appeals Council,
14 which denied review.²⁴ Plaintiff timely appealed to this Court.

18 ²¹ AR 14-33.

19 ²² AR 25-26. The ALJ mistakenly referred to female Dr. Marks as a "he," and
20 misspelled Dr. Petaja.

21 ²³ AR 22-25.

22 ²⁴ AR 1-9.

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III. Standard of Review

A district court’s review of the Commissioner’s final decision is limited.²⁵ The Commissioner’s decision is set aside “only if it is not supported by substantial evidence or is based on legal error.”²⁶ Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁷ Moreover, because it is the role of the ALJ and not the Court to weigh conflicting evidence, the Court upholds the ALJ’s findings “if they are supported by inferences reasonably drawn from the record.”²⁸ The Court considers the entire record as a whole.²⁹

²⁵ 42 U.S.C. § 405(g).

²⁶ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

²⁷ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

²⁸ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

²⁹ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion,” not simply the evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

1 Further, the Court may not reverse an ALJ decision due to a harmless
2 error.³⁰ An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
3 nondisability determination.”³¹ The party appealing the ALJ’s decision generally
4 bears the burden of establishing harm.³²

5 IV. Analysis

6 A. Medical Opinions: Plaintiff establishes consequential error.

7 Plaintiff challenges the ALJ’s assignment of little weight to the opinions of
8 Dr. Marks and Dr. Petaja. The Court determines the ALJ erred because her
9 weighing of these medical opinions is neither supported by substantial evidence
10 nor meaningful explanation.

11 1. Standard

12 The weighing of medical opinions is dependent upon the nature of the
13 medical relationship, i.e., 1) a treating physician, 2) an examining physician who
14 examines but did not treat the claimant, and 3) a reviewing physician who neither
15 treated nor examined the claimant.³³ Generally, more weight is given to the
16 opinion of a treating physician than to an examining physician’s opinion and both
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19 ³⁰ *Molina*, 674 F.3d at 1111.

20 ³¹ *Id.* at 1115 (quotation and citation omitted).

21 ³² *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

22 ³³ *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).
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1 treating and examining opinions are to be given more weight than the opinion of a
2 reviewing physician.³⁴

3 When a treating physician's or evaluating physician's opinion is not
4 contradicted by another physician, it may be rejected only for "clear and
5 convincing" reasons, and when it is contradicted, it may be rejected for "specific
6 and legitimate reasons" supported by substantial evidence.³⁵ A reviewing
7 physician's opinion may be rejected for specific and legitimate reasons supported by
8 substantial evidence, and the opinion of an "other" medical source³⁶ may be
9 rejected for specific and germane reasons supported by substantial evidence.³⁷ The
10 opinion of a reviewing physician serves as substantial evidence if it is supported by
11 other independent evidence in the record.³⁸

12 2. Kris Marks, Ph.D. and Holly Petaja, Ph.D.

13 On June 25, 2015, Dr. Marks psychologically evaluated then-18-year-old
14 Plaintiff and reviewed Plaintiff's records, including Plaintiff's individualized
15 education program plans and a school reevaluation.³⁹ Dr. Marks diagnosed
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17 ³⁴ *Id.*; *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

18 ³⁵ *Lester*, 81 F.3d at 830.

19 ³⁶ *See* 20 C.F.R. § 404.1502.

20 ³⁷ *Molina*, 674 F.3d at 1111; *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009).

21 ³⁸ *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

22 ³⁹ AR 313-17.
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1 Plaintiff with a specific learning disorder with impairment in mathematics,
2 reading, and written expression, listening comprehension deficits as either a
3 learning disability or a communication disorder (moderate to severe), a speech
4 sound disorder (mild), and unspecified anxiety disorder (moderate). Dr. Marks
5 opined that Plaintiff was:

- 6 • moderately limited in her abilities to adapt to changes in a routine work
7 setting, make simple work-related decisions, be aware of normal hazards
8 and take appropriate precautions, and perform activities within a
9 schedule, maintain regular attendance, and be punctual within
10 customary tolerances without special supervision; and
- 11 • markedly limited in her abilities to understand, remember, and persist in
12 tasks by following detailed instructions, learn new tasks, ask simple
13 questions or request assistance, communicate and perform effectively in a
14 work setting, maintain appropriate behavior in a work setting, and set
15 realistic goals and plan independently.

16 Dr. Marks opined that Plaintiff's overall severity rating was marked.

17 In July 2015, Dr. Petaja agreed with Dr. Marks' assessed limitations.⁴⁰

18 The ALJ gave little weight to Dr. Marks' and Dr. Petaja's opinions, namely
19 the narrative opinions, because 1) the psychologists overly relied on Plaintiff's
20 subjective complaints, which were not fully consistent with the objective medical

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22 ⁴⁰ AR 375-84.

1 evidence, and 2) the opined limitations were inconsistent with Plaintiff's ability to
2 perform duties of cashier at McDonalds and Dollar Tree, albeit with some reported
3 difficulties.⁴¹

4 As to the ALJ's first reason for discounting these opinions (that the
5 psychologists overly relied on Plaintiff's subjective complaints, which were not fully
6 consistent with the objective medical evidence), an ALJ is to consider whether an
7 opinion is well-explained and consistent with and supported by the medical
8 evidence.⁴² Here, Dr. Marks' and Dr. Petaja's opinions were not based solely on
9 Plaintiff's subjective complaints but also on school records related to Plaintiff's
10 learning disorders and Dr. Marks' psychological examination, which included a
11 clinical interview and a mental status examination. Dr. Marks relied on
12 information obtained from each of these aspects of her evaluation, as is indicated in
13 her symptom notes related to Plaintiff's learning disability:

14 This is well documented in [Plaintiff's] available medical records. She
15 received special education services from the time she was a
16 preschooler until high school. She had continued speech and language
17 and learning needs up through high school. [Plaintiff] has described
having difficulties with understanding what she hears and with
expressing herself. She continued to demonstrate a noticeable but

18 ⁴¹ AR 26.

19 ⁴² See *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009)
20 (recognizing that a medical opinion may be rejected if it is conclusory or
21 inadequately supported); *Lingenfelter*, 504 F.3d at 1042 (recognizing that the ALJ
22 is to consider the consistency of the medical opinion with the record as a whole).

1 slight speech impediment today. [Plaintiff's] inability to understand
2 what is said to her as well as weak skills in reading, math and written
3 language will likely continue to limit her employability. At this point,
4 she can't seem to even make through an interview. She would need a
5 fair amount of accommodations on any job, if she was hired. To date
6 this has not been a successful endeavor however. Her learning
7 disabilities are not likely to spontaneously correct and this is likely
8 going to be a lifelong problem for her.⁴³

9 Similarly, Dr. Marks' finding that Plaintiff's memory, fund of knowledge, and
10 abstract thought were not within normal limits was based not merely on Plaintiff's
11 self-reports but on Dr. Marks' review of the medical and education records,
12 observations, and testing.⁴⁴ Based on simple testing, Dr. Marks found that
13 Plaintiff's:

14 results suggest adequate short-term auditory memory but very poor
15 long-term memory and extremely poor working memory. She cannot
16 recall complex verbal directives although she can follow simple verbal
17 directives especially if they are familiar activities such as writing her
18 own name. Some of this may be due to poor listening comprehension.⁴⁵

19 Likewise, Dr. Marks found that Plaintiff's extremely low abstract thought was
20 "obviously affected by her poor auditory comprehension as well," commenting that
21 Plaintiff needed to have questions repeated a few times.⁴⁶ During the testing,

22 ⁴³ AR 315.

23 ⁴⁴ AR 317.

⁴⁵ *Id.*

⁴⁶ *Id.*

1 Plaintiff showed “generally poor retention of verbal information.”⁴⁷ For instance,
2 when asked to write a simple sentence and draw three triangles, two squares, and
3 a circle, she wrote “I love my daughter” and drew only a circle and a triangle. And
4 when asked to write the current date and the date of Christmas last year, Plaintiff
5 forgot to write the current date and wrote only the date of Christmas last year.⁴⁸
6 Plaintiff’s observed cognitive challenges are consistent with her academic records.
7 In 2014, Plaintiff performed poorly on the Wechsler Individual Achievement Test
8 III: .1% for basic reading, 1% for reading comprehension, 7% for numerical
9 operations, 3% for math reasoning, and 1% for written expression.⁴⁹

10 Notwithstanding Dr. Marks’ findings, the ALJ discounted Dr. Marks’
11 opinion that Plaintiff would be somewhat distractible, make mistakes, and have
12 difficulty finding a job. The ALJ discounted these opined limitations because they
13 were based in part on Plaintiff’s distractibility due to her anxiety. The ALJ found
14 Dr. Marks’ anxiety-related limitations were inconsistent with the medical records
15 wherein Plaintiff rarely exhibited anxiety symptoms, but instead exhibited a
16 normal mood, affect, and behavior. Yet, the medical records cited by the ALJ solely
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20 ⁴⁷ *Id.*

21 ⁴⁸ *Id.*

22 ⁴⁹ AR 280.

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pertain to medical visits for physical-health conditions.⁵⁰ On this record, which documents severe cognitive disorders, the ALJ did not meaningfully explain why Plaintiff's normal mental status examinations during these relatively short duration medical visits for physical-health conditions were a legitimate reason to discount Dr. Marks' opinion pertaining to Plaintiff's anxiety, which was primarily based on her learning/comprehension struggles.⁵¹ For instance, Plaintiff's learning/comprehension-related anxiety was discussed in the 2014 high-school reevaluation, wherein Plaintiff was very emotional and depressed as a result of her

⁵⁰ AR 26 (citing AR 408 (postpartum appointment); AR 417 (cold symptoms); AR 424 (urinary symptoms); AR 444 (cold symptoms); AR 454, 457, & 481 (feminine care); AR 462 (facial swelling); & AR 466 (upper respiratory infection).

⁵¹ *See Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) (requiring that the ALJ reject an opinion for a reason that is responsive to the basis for the opined limitation); *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988) (requiring the ALJ to identify the evidence supporting the found conflict to permit the Court to meaningfully review the ALJ's finding); *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) ("We require the ALJ to build an accurate and logical bridge from the evidence to her conclusions so that we may afford the claimant meaningful review of the SSA's ultimate findings.").

1 academic testing.⁵² And Plaintiff testified that her learning/comprehension
2 disorders negatively impacted her ability to perform part-time work at McDonalds
3 and Dollar Tree as she would make mistakes due to her learning/comprehension
4 difficulties.⁵³

5 Moreover, the medical records related to Plaintiff's mental-health care and
6 cognitive abilities indicate:

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- 8 • “She has possible hearing impairment. Affect was broad. The patient
9 appeared calm. The patient was orientated x2. She recalled 3 out of 3
10 unrelated words immediately and after 5 minutes. . . . She has a possible
11 learning disability and had difficulties with math section of the MSE.”⁵⁴
 - 12 • “She was able to score 1/9 points for answering basic questions about the
13 short paragraphs she heard. . . . [Plaintiff] presents with significant

14 ⁵² AR 333 (“Current intelligence testing was proposed, but it was cancelled due to
15 [Plaintiff's] reaction to academic testing. [Plaintiff was very emotional, crying, and
16 feeling bad about herself at the conclusion of the WAIT-III testing. The testing,
17 again, put her academic struggles in the limelight.”). *See also* AR 296 (“[Plaintiff] is
18 delayed in basic concept development (identification of familiar obj[ects] by use &
19 big/little) & her language skills interfere with her ability to respond to some test
20 items. Her perceptual discrimination skills also reflect a delay.”).

21 ⁵³ AR 52-56.

22 ⁵⁴ AR 353.

1 delayed skills in speech and language as characterized by immature
2 speech patterns compared to age-matched peers as well as difficulty
3 understanding verbal and written information.”⁵⁵

- 4 • “Her appearance was slightly disheveled. . . Her attitude was reserved,
5 anxious, and worried. . . Her affect was sad, down, anxious. She was
6 tearful throughout most of the evaluation. Her speech was slightly
7 pressured, fearful. Her thought processes were anxious, overwhelming,
8 disorganized.”⁵⁶

- 9 • “Her hair was unkempt. . . Speech was hal[t]ing at times and she
10 struggles to identify words several times. Rhythm and rate are regular.
11 Behavior is fidgety and she pauses to scratch and sniff often. Affect is
12 labile. Mood alternates between normal and tearful . . . Insight and
13 judgment are poor.”⁵⁷

14 Plaintiff’s academic and mental-health records reflect that Plaintiff’s cognitive
15 disorders caused and/or compounded her anxiety and depression. On this record,
16 Dr. Marks’ and Dr. Petaja’s opinions that Plaintiff’s ability to sustain full-time
17 work was markedly limited cannot be discounted as being overly reliant on
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20 ⁵⁵ AR 431.

21 ⁵⁶ AR 392.

22 ⁵⁷ AR 390.

1 Plaintiff's self-reports without a more meaningful explanation supported by
2 substantial evidence.⁵⁸

3 The Commissioner argues that, because such checked-box opinions were
4 vague, the ALJ need not have explained why she discounted Dr. Marks' checked-
5 box marked limitations, i.e., that Plaintiff was markedly limited in her abilities to
6 understand, remember, and persist in tasks by following detailed instructions,
7 learn new tasks, ask simple questions or request assistance, communicate and
8 perform effectively in a work setting, maintain appropriate behavior in a work
9 setting, and set realistic goals and plan independently. But these checked-box
10 marked limitations must be considered in the context of Dr. Marks' (and Dr.
11 Petaja's) entire report. When read in their full context with Dr. Marks'
12 observations and noted findings, these checked-box opinions are not vague.

14 ⁵⁸ See *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) ("Psychiatric
15 evaluations may appear subjective, especially compared to evaluation in other
16 medical fields. Diagnoses will always depend in part on the patient's self-report, as
17 well as on the clinician's observations of the patient. But such is the nature of
18 psychiatry."); *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (recognizing
19 that psychological opinions are generally based on self-reports, clinical
20 observations, and mental examinations, and that an ALJ must explain why an
21 opinion was based more heavily on self-reports than the provider's observations,
22 diagnoses, and prescriptions).

1 Second, the ALJ discounted Dr. Marks’ and Dr. Petaja’s opinions because
2 they were inconsistent with Plaintiff’s ability to perform (with some reported
3 difficulties) the duties of cashier on a part-time basis at McDonalds and Dollar
4 Tree.⁵⁹ An ALJ may discount a medical opinion that is inconsistent with the
5 claimant’s level of activity, including part-time work because working with an
6 impairment can indicate an ability to sustain full-time work.⁶⁰ Here, following Dr.
7 Marks’ evaluation, Plaintiff worked part-time at McDonalds (six hours a day about
8 four days a week) and on a sporadic on-call, part-time (four hours a day) basis for
9 Dollar Tree. The ALJ recognized that Plaintiff’s earnings briefly rose above
10 substantial gainful activity levels in the first quarter of 2018 (\$3,900), but
11 otherwise were below substantial-gainful-activity levels.⁶¹ Plaintiff did not sustain
12 either of these part-time jobs: ceasing her part-time work at McDonalds after her
13 hiring, supportive supervisor left McDonalds and not getting any phone calls from
14 Dollar Tree to resume her on-call position.⁶² The ALJ fails to meaningfully explain

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16 ⁵⁹ AR 26.

17 ⁶⁰*Cf. Gatliff v. Comm’r Soc. Sec. Admin.*, 172 F.3d 690, 694 (9th Cir. 1999). *See also*
18 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (“Several courts, including this
19 one, have recognized that disability claimants should not be penalized for
20 attempting to lead normal lives in the face of their limitations.”).

21 ⁶¹ AR 19-20.

22 ⁶² AR 50-54.

1 how these part-time positions were inconsistent with Dr. Marks' and Dr. Petaja's
2 opinions that Plaintiff is markedly limited in her ability to sustain full-time work
3 on an ongoing, appropriate, and independent basis due to her cognitive disorders,
4 which worsened her anxiety and depression, causing her to make more mistakes or
5 to be distracted. On this record, which reflects Plaintiff's life-long cognitive
6 disorders and anxiety-related reactions thereto, that Plaintiff was able to engage in
7 part-time, unsustained work was not a legitimate basis supported by substantial
8 evidence or meaningful explanation to discount Dr. Marks' and Dr. Petaja's
9 opinions.

10 The ALJ's discounting of Dr. Marks' and Dr. Petaja's opinions was
11 consequential. First, the ALJ discounted their opinions that Plaintiff would be
12 markedly limited in her ability to sustain full-time employment due to her
13 limitations. Second, the vocational expert testified that an individual who requires
14 the support of a special supervisor to ensure she stays on task with simple, routine
15 tasks would not be able to hold competitive employment.⁶³ Third, the RFC permits
16 performing simple routine tasks at a GED level of 1 or 2 from the Dictionary of
17 Occupational Title.⁶⁴ A GED level of 1 requires:

- Reasoning development (apply commonsense understanding to carry out
18 simple one- or two-step instructions; and deal with standardized
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21 ⁶³ AR 70-71.

22 ⁶⁴ AR 21.

1 situations with occasional or no variables in or from these situations
2 encountered on the job);

- 3 • Mathematical development (add and subtract two-digit numbers;
4 multiply and divide 10s and 100s by 2, 3, 4, and 5; perform the four basic
5 arithmetic operations with coins as part of a dollar; perform operations
6 with units such as cup, pint, and quart; inch, foot, and yard; and ounce
7 and pound); and
- 8 • Language development (recognize meaning of 2,500 (two- or three-
9 syllable) words; read at rate of 95-120 words per minute; compare
10 similarities and differences between words and between series of
11 numbers; print simple sentences containing subject, verb, and object, and
12 series of numbers, names, and addresses; speak simple sentences, using
13 normal word order, and present and past tenses).

14 Based on Dr. Marks' observation that Plaintiff had difficulties with math
15 problems and with following simple instructions, along with Plaintiff's documented
16 learning disorders at school, substantial evidence is lacking to support the RFC.

17 The ALJ failed to explain how Dr. Marks' finding that Plaintiff could "follow simple
18 verbal directives especially if they are familiar activities such as writing her own
19 name" supported a finding that Plaintiff could perform work requiring a GED level
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1 of 1 or 2.⁶⁵ Each of the three identified available jobs (laundry worker, kitchen
2 helper, and auto detailer) were an SVP-2 with the following GED reasoning, math,
3 and language levels: 1, 2, and 1 (laundry worker), and 2, 1, and 1 (kitchen helper
4 and auto detailer), respectively.⁶⁶ The ALJ must more meaningfully explain what
5 substantial evidence supports the finding that Plaintiff can sustain the identified
6 SVP-2 jobs with these GED levels.

7 **B. Other Steps: The ALJ must reevaluate.**

8 Plaintiff argues the ALJ also misweighed Plaintiff's symptom reports and
9 erred at step five. Because the ALJ's weighing of Plaintiff's symptom reports and
10 the RFC were based on an erroneous weighing of the medical evidence, the ALJ on
11 remand is to reassess Plaintiff's symptom reports and proceed with a new step-five
12 analysis. When reassessing Plaintiff's symptom reports, the ALJ is to consider
13 whether Plaintiff's decision to decline psychiatric medication and speech therapy is
14 a legitimate basis to discount Plaintiff's symptom reports if there is no evidence
15 indicating that her psychiatric symptoms would improve with such treatment or
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17 ⁶⁵ AR 317. *See Wilson v. Colvin*, No. 16-cv-1971-WHO, 2017 WL 1861839 at *3-4
18 (N.D. Cal. May 9, 2017) (discussing *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d
19 996, 1003 (9th Cir. 2015), and subsequent cases distinguishing between a
20 limitation to one-and-two step instructions with the ability to perform simple,
21 repetitive tasks).

22 ⁶⁶ AR 27 & 69-70.

1 that her limitations are correlated to her speech difficulties.⁶⁷ Moreover, the ALJ
2 must be mindful that a claimant can arrange daily living activities, including child
3 care, to accommodate limitations resulting from symptoms, but that full-time work
4 may not similarly accommodate such limitations.⁶⁸ To discount Plaintiff's symptom
5 reports on the basis of child-care activities, the ALJ must more meaningfully
6 explain how Plaintiff's care for her children is consistent with the ability to sustain
7 full-time work.⁶⁹

8 **C. Remand for Further Proceedings**

9 As explained above, the ALJ's decision is not supported by substantial
10 evidence. Plaintiff submits a remand for payment of benefits is therefore
11 warranted.

12 The decision whether to remand a case for additional evidence, or simply to
13 award benefits is within the discretion of the court."⁷⁰ When the court reverses an
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16 ⁶⁷ SSR 82-59.

17 ⁶⁸ See *Molina*, 674 F.3d at 1112-13.

18 ⁶⁹ See *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th Cir. 2017) (“[T]he mere fact that
19 she cares for small children does not constitute an adequately specific conflict with
20 her reported limitations.”).

21 ⁷⁰ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
22 761 F.2d 530 (9th Cir. 1985)).
23

1 ALJ's decision for error, the court "ordinarily must remand to the agency for
2 further proceedings."⁷¹

3 The Court finds that further development is necessary for a proper disability
4 determination. Consistent with Dr. Petaja's suggestion,⁷² on remand the ALJ is to
5 order that Plaintiff participate in a Wechsler Adult Intelligence Scale test (or other
6 cognitive intelligence test). The ALJ shall then reevaluate each of the medical
7 opinions, consider any additional evidence presented, and make findings at each of
8 the five steps of the sequential evaluation process.

9 V. Conclusion

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

- 11 1. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is
12 **GRANTED.**
- 13 2. The Commissioner's Motion for Summary Judgment, **ECF No. 17**, is
14 **DENIED.**
- 15 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff
16 **REVERSING** and **REMANDING** the matter to the Commissioner of
17

18
19 ⁷¹ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379
20 F.3d 587, 595 (9th Cir. 2004) ("[T]he proper course, except in rare circumstances, is
21 to remand to the agency for additional investigation or explanation.").

22 ⁷² AR 375.

1 Social Security for further proceedings consistent with this
2 recommendation pursuant to sentence four of 42 U.S.C. § 405(g).

3 4. The case shall be **CLOSED**.

4 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and
5 provide copies to all counsel.

6 **DATED** this 5th day of October 2020.

7
8 s/Edward F. Shea

9 EDWARD F. SHEA
Senior United States District Judge