

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

Sep 08, 2022

SEAN F. MCAVOY, CLERK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KATHRYN A.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 4:21-cv-5098-EFS

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

Plaintiff Kathryn A. appeals the denial of benefits by the Administrative Law Judge (ALJ). Because the ALJ's decision failed to adequately address probative evidence, the Court reverses the decision and remands this matter for further proceedings.

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¹ For privacy reasons, the Court refers to Plaintiff by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 **I. Five-Step Disability Determination**

2 A five-step evaluation determines whether an adult claimant is disabled.²

3 Step one assesses whether the claimant is engaged in substantial gainful activity.³

4 If the claimant is engaged in substantial gainful activity, benefits are denied.⁴ If
5 not, the disability evaluation proceeds to step two.⁵

6 Step two assesses whether the claimant has a medically severe impairment
7 or combination of impairments that significantly limit the claimant’s physical or
8 mental ability to do basic work activities.⁶ If the claimant does not, benefits are
9 denied.⁷ If the claimant does, the disability evaluation proceeds to step three.⁸

10 Step three compares the claimant’s impairment or combination of
11 impairments to several recognized by the Commissioner as so severe as to preclude
12 substantial gainful activity.⁹ If an impairment or combination of impairments

15 ² 20 C.F.R. §§ 404.1520(a), 416.920(a).

16 ³ *Id.* §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

17 ⁴ *Id.* §§ 404.1520(b), 416.920(b).

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

19 ⁶ *Id.* C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

20 ⁷ *Id.* §§ 404.1520(c), 416.920(c).

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

22 ⁹ *Id.* §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

1 meets or equals one of the listed impairments, the claimant is conclusively
2 presumed to be disabled.¹⁰ If not, the disability evaluation proceeds to step four.

3 Step four assesses whether an impairment prevents the claimant from
4 performing work she performed in the past by determining the claimant's residual
5 functional capacity (RFC).¹¹ If the claimant can perform past work, benefits are
6 denied.¹² If not, the disability evaluation proceeds to step five.

7 Step five, assesses whether the claimant can perform other substantial
8 gainful work—work that exists in significant numbers in the national economy—
9 considering the claimant's RFC, age, education, and work experience.¹³ If so,
10 benefits are denied. If not, the claimant is found disabled.¹⁴

11 The claimant has the initial burden of establishing she is entitled to
12 disability benefits under steps one through four.¹⁵ At step five, the burden shifts to
13 the Commissioner to show the claimant is not entitled to benefits.¹⁶

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15 ¹⁰ 20 C.F.R. §§ 404.1520(d), 416.920(d).

16 ¹¹ *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

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

18 ¹³ *Id.* §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497–98
19 (9th Cir. 1984).

20 ¹⁴ 20 C.F.R. §§ 404.1520(g), 416.920(g).

21 ¹⁵ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

22 ¹⁶ *Id.*

1 Even if the claimant is found disabled, however, where the records contains
2 medical evidence of drug or alcohol addiction, the ALJ must then determine
3 whether such use is a material factor contributing to the disability.¹⁷ To determine
4 whether drug or alcohol use is a material factor contributing to the disability, the
5 ALJ evaluates which of the current limitations would remain if the claimant
6 stopped using drugs or alcohol and then determines whether any or all of the
7 remaining limitations would be disabling.¹⁸ Social Security claimants may not
8 receive benefits if the remaining limitations without drug or alcohol use would *not*
9 be disabling.¹⁹ The claimant has the burden of showing that her drug or alcohol
10 use is not a material contributing factor to disability.²⁰

11 II. Factual and Procedural Summary

12 In January 2014, Plaintiff filed a Title 2 application for Disability Insurance
13 Benefits, alleging disability since April 2012 due to major depressive disorder with
14 psychosis.²¹ The application was denied initially and upon reconsideration.²²

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16 ¹⁷ 20 C.F.R. §§ 404.1535(a), 416.935(a).

17 ¹⁸ *Id.* §§ 404.1535(b)(2), 416.935(b)(2).

18 ¹⁹ 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. §§ 404.1535, 416.935; *Sousa v. Callahan*, 143
19 F.3d 1240, 1245 (9th Cir. 1998).

20 ²⁰ *Parra*, 481 F.3d at 748.

21 ²¹ AR 81.

22 ²² AR 109–15, 117–21.

1 **A. The 2016 Hearing and Decision**

2 In March 2016, Administrative Law Judge (ALJ) Tom Morris held a hearing
3 and, in June 2016, issued an unfavorable decision.²³ The Appeals Council denied
4 Plaintiff's request for review, and Plaintiff sought review by this Court. In
5 May 2018 the Court issued a judgment and order granting the parties' stipulated
6 motion for remand.²⁴

7 While the original claim was pending in this Court, Plaintiff filed a second
8 application for Disability Insurance Benefits under Title 2, along with an
9 application for Supplemental Security Income under Title 16.²⁵ Upon remand from
10 the Court, the Appeals Council consolidated Plaintiff's original application with the
11 new applications.²⁶

12 **B. The 2018 Hearing and 2019 Decision**

13 In December 2018, on remand, ALJ Marie Palachuk held a second hearing.²⁷
14 In February 2019, she issued an unfavorable decision.²⁸ Plaintiff did not file a
15 request for review with the Appeals Council and the Appeals Council did not take
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17 ²³ AR 20–31.

18 ²⁴ AR 886.

19 ²⁵ AR 1021–27.

20 ²⁶ AR 904, 925.

21 ²⁷ AR 788–829.

22 ²⁸ AR 763–78.

1 its own review. Plaintiff again appealed to this Court, and in May 2020, the Court
2 reversed the 2019 ALJ decision and remanded for further proceedings.²⁹

3 On remand, the Court instructed the ALJ to “reevaluate the medical
4 evidence and Plaintiffs subjective complaints, formulate a new RFC, obtain
5 supplemental testimony from a vocational expert, if necessary, and take into
6 consideration any other evidence or testimony relevant to Plaintiff’s disability
7 claim.”³⁰

8 **C. The 2021 Hearing and Decision**

9 In April 2021, on remand, ALJ Palachuk held a third administrative hearing
10 by telephone. Plaintiff failed to appear at this hearing but was represented by
11 counsel, and the ALJ received testimony from medical expert Michael A. Lace,
12 PsyD., and vocational expert Susan Foster.³¹ After the hearing, the ALJ issued a
13 decision again denying Plaintiff’s disability applications.

14 1. The ALJ’s Underlying Five-Step Findings

15 In conducting the five-step sequential evaluation process, the ALJ made the
16 following findings:

- 17 • Step one: Plaintiff has not engaged in substantial gainful activity since
18 April 26, 2012, the alleged onset date. However, Plaintiff worked at
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20 ²⁹ AR 1962–73.

21 ³⁰ AR 1973.

22 ³¹ AR 1900–1925.

1 substantial gainful activity levels in the 3rd and 4th quarters of 2020, so
2 the decision “concerns the period without the substantial gainful
3 activity.”³²

- 4 • Step two: Plaintiff has the following medically determinable severe
5 impairments: major depressive disorder, generalized anxiety disorder,
6 borderline personality disorder, and polysubstance abuse/addiction
7 (heroin and alcohol).

- 8 • Step three: Including Plaintiff’s substance use, the severity of her
9 impairments meets the criteria of listings 12.04, 12.06, and 12.08.

10 “However, the claimant’s impairments would improve if she were to stop
11 using substances, would impose only mild to moderate limitations, and
12 would not meet or medically equal any of the impairments listed. . . .”³³

- 13 • RFC: If Plaintiff stopped the substance use, she would have the RFC to
14 perform a full range of work at all exertional levels but with the following
15 nonexertional limitations:
 - 16 ○ “able to understand, remember and carry out simple, routine and
17 repetitive tasks/instructions”;
 - 18 ○ able to maintain attention and concentration on simple, routine tasks
19 for two-hour intervals between regularly scheduled breaks”;

21 ³² AR 1874.

22 ³³ AR 1875.

1 evidence of record. The ALJ explained, “Of particular significance, the claimant
2 has consistently misrepresented her drug and alcohol abuse to treating providers,
3 making it difficult for them to provide a correct diagnosis/treatment.”³⁵ The ALJ
4 further noted records that “document ongoing issues with medical non-compliance,
5 inconsistent statements/presentation, and continued misrepresentations regarding
6 substance use.”³⁶

7 3. The ALJ’s Medical-Opinion Findings

8 In assessing the medical opinions, the ALJ assigned weight as follows:

- 9 • “little weight” to the November 2015 opinions of Plaintiff’s treating
10 physician, Benjamin F. Gonzalez, MD;
- 11 • “little weight” to the November 2015 opinions of Plaintiff’s treating
12 counselor, David Lowe, LMHC;
- 13 • “some weight” to the December 2018 testimony by reviewing medical
14 expert Jay Toews, EdD, except “no weight” was given the portion in
15 which Dr. Toews said he would defer to Dr. Gonzalez and Mr. Lowe
16 regarding Plaintiff’s likely rate of workplace absenteeism;³⁷ and

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19 ³⁵ AR 1880.

20 ³⁶ AR 1880. Plaintiff does not challenge these findings.

21 ³⁷ It appears that Dr. Toews is also referred to in the record as a “Dr. Jerry M.
22 Tabes.” See AR 1978.

- 1 • “great weight” to the April 2021 testimony by reviewing medical expert
2 Michael A. Lace, PsyD.

3 4. Plaintiff’s Appeal

4 Plaintiff did not file a request for review with the Appeals Council and the
5 Appeals Council did not undertake its own review; the ALJ’s 2021 decision thus
6 became the final, appealable decision of the Commissioner.³⁸ Plaintiff then timely
7 appealed to the Court.³⁹

8 **III. Standard of Review**

9 A district court’s review of the Commissioner’s final decision is limited.⁴⁰
10 The Commissioner’s decision is set aside “only if it is not supported by substantial
11 evidence or is based on legal error.”⁴¹ Substantial evidence is “more than a mere
12 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
13 mind might accept as adequate to support a conclusion.”⁴² Moreover, because it is
14 the role of the ALJ—and not the Court—to weigh conflicting evidence, the Court
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18 ³⁸ See 42 U.S.C. § 405(g).

19 ³⁹ See 20 C.F.R. §§ 404.981, 422.201.

20 ⁴⁰ 42 U.S.C. § 405(g).

21 ⁴¹ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 ⁴² *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).
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1 upholds the ALJ’s findings “if they are supported by inferences reasonably drawn
2 from the record.”⁴³ The Court considers the entire record.⁴⁴

3 Further, the Court may not reverse an ALJ decision due to a harmless
4 error.⁴⁵ An error is harmless “where it is inconsequential to the ultimate
5 nondisability determination.”⁴⁶

6 IV. Analysis

7 Plaintiff contends that the ALJ erred by rejecting certain medical opinions
8 and by failing to provide sufficient findings regarding the paragraph C criteria.”⁴⁷
9 Underlying each of Plaintiff’s arguments, however, is her assertion that the ALJ
10 failed to “properly evaluate the claimant’s functioning in the absence of substance
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13 ⁴³ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

14 ⁴⁴ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must
15 consider the entire record as a whole, weighing both the evidence that supports and
16 the evidence that detracts from the Commissioner’s conclusion,” not simply the
17 evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383,
18 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that
19 such evidence was not considered[.]”).

20 ⁴⁵ *Molina*, 674 F.3d at 1111.

21 ⁴⁶ *Id.* at 1115 (cleaned up).

22 ⁴⁷ ECF No. 13 at 8.
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1 use.”⁴⁸ For the reasons that follow, the Court finds that the ALJ once again failed
2 to adequately address significant probative evidence tending to support Plaintiff’s
3 claims.

4 **A. DAA Findings: Plaintiff establishes consequential error.**

5 Plaintiff argues that the ALJ “failed to address the updated medical record,”
6 asserting that the overall record shows “ongoing severe symptomology even during
7 times of sobriety.”⁴⁹ In doing so, Plaintiff challenges the ALJ’s DAA determination
8 that, overall, the medical records “clearly show that the claimant’s substance abuse
9 has been the material cause of her most significant mental symptoms and
10 limitations.”⁵⁰

11 1. The ALJ’s DAA Findings

12 The ALJ provided an extensive, largely unchallenged summary and analysis
13 of Plaintiff’s treatment history, which included several of the newly received
14 medical records. The ALJ’s analysis connected Plaintiff’s functional limitations to
15 her substance use by highlighting positive drug tests and evidence of Plaintiff
16 giving inconsistent—if not plainly false—reports regarding her substance use. The
17 ALJ interpreted the evidence to show that Plaintiff “has experienced a significant
18 improvement in her overall mental health condition with medication compliance
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20 ⁴⁸ ECF No. 13 at 8; *see generally* ECF No. 13.

21 ⁴⁹ ECF No. 13 at 10, 15; *see also id.* at 11, 13, 19–20 (asserting similar arguments).

22 ⁵⁰ AR 1879.
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1 and abstinence from drugs and alcohol,”⁵¹ finding that the treatment records
2 “document no significant suicidal ideations, paranoia or hallucinations, during
3 periods of sobriety and medication compliance.”⁵²

4 2. Plaintiff’s Citations to Probative Medical Evidence

5 As support for her argument that the record shows she experiences severe
6 symptoms even in the absence of substance use, Plaintiff cites to two mental-health
7 episodes that she contends the ALJ failed to properly consider.⁵³ First, the medical
8 records show that in June 2019, Plaintiff reported suicidal ideation with a plan. A
9 corresponding treatment note stated, “She reports attempting to harm herself in
10 the past but only when drinking alcohol. She indicated this time she had not been
11 drinking and has been sober for 11 months and this scared her.”⁵⁴ Second, in
12 October 2019, Plaintiff was psychiatrically hospitalized with reports of suicidal
13 thoughts, which occurred, Plaintiff contends, “despite ongoing abstinence from
14 alcohol and a diagnosis of sustained remission.”⁵⁵

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17 ⁵¹ AR 1879.

18 ⁵² AR 1880. *See also* AR 1877 (finding that “the claimant has not had any
19 psychiatric hospitalizations during periods of sobriety”).

20 ⁵³ *See* ECF No. 13 at 11.

21 ⁵⁴ ECF No. 13 at 5–6 (citing AR 2475).

22 ⁵⁵ ECF No. 13 at 6, 11, 16 (each time citing AR 3492–98).
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1 a. The ALJ erred by failing to address the June 2019 records.

2 Though the ALJ summarized much of the rest of 2019, she made no mention
3 of Plaintiff's 2019 admission to the transitions unit or the contemporaneous
4 treatment notes. Plaintiff consistently reported that, at that point, she had been
5 sober since July 2018—about 11 months.⁵⁶ Yet, after seeming to improve for much
6 of that period,⁵⁷ around the end of May 2019 she started reporting worsening
7 moods, and by June 2019, she was expressing suicidal ideations about drowning
8 herself in the river.⁵⁸ Throughout that entire period, Plaintiff consistently reported
9 maintaining her sobriety, and the record reveals no reports or other evidence
10 indicating otherwise.

11 The medical records from June 2019 appear to contradict the ALJ's findings
12 that the treatment records “document no significant suicidal ideations, paranoia or
13 hallucinations, during periods of sobriety and medication compliance.”⁵⁹ Such
14 severe symptoms absent substance use would also tend to suggest that the
15 documented cycles of Plaintiff's improvement and regression might be tied more
16 closely to her non-DAA mental impairments than was found by the ALJ. After all,

18 ⁵⁶ See, e.g., AR 3010, 3022, 3068.

19 ⁵⁷ See, e.g., AR 3022, 3060, 3068.

20 ⁵⁸ AR 2467, 2475.

21 ⁵⁹ AR 1880. See also AR 1877 (finding that “the claimant has not had any
22 psychiatric hospitalizations during periods of sobriety”).
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1 the symptoms resulting from depressive and anxiety disorders are expected to wax
2 and wane.⁶⁰

3 Although an ALJ is not required to discuss every bit of evidence in the
4 record, the June 2019 medical records not only constitute “significant probative
5 evidence,” but they are also seemingly inconsistent with the ALJ’s findings; the
6 ALJ therefore erred by rejecting such evidence without explanation.⁶¹ Further, the
7 Court cannot say this error was harmless. The ALJ’s finding that the record
8 lacked any indication of such severe symptoms absent substance use was central to
9 the ALJ’s analysis and ultimate DAA conclusion. Remand is required to address
10 this error and any ambiguity regarding whether Plaintiff had severe symptoms
11 even absent substance use.

12 *b. The ALJ overstates the October 2019 evidence of drug use.*

13 Unlike those from June 2019, the ALJ specifically mentioned medical
14 records from October 2019. In her summary of the newly received evidence, the
15 ALJ said, “In October 2019, the claimant was seen in the ER with suicidal ideation
16 and she tested positive for methamphetamine.”⁶² The contemporaneous treatment
17 notes, however, do not support such a finding. First, the record cited by the ALJ
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19 ⁶⁰ See *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) (“Cycles of
20 improvement and debilitating symptoms are a common occurrence. . .”).

21 ⁶¹ *Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th Cir. 1984).

22 ⁶² AR 1881.

1 states only that a urine test was positive for “Amp/Methamphetamine,” a class of
2 stimulants broader than just methamphetamine.⁶³ Additionally, contemporaneous
3 treatment notes further explained that this drug screen “was positive for
4 amphetamines, which is a potential false positive due to Wellbutrin.”⁶⁴ Plaintiff
5 had been taking prescribed Wellbutrin for years.⁶⁵ And none of the other medical
6 records from that period suggest that Plaintiff was using methamphetamine or any
7 other non-prescribed substance at the time.⁶⁶

8 Again, when Plaintiff expressed suicidal ideation in October 2019, she
9 consistently reported ongoing sobriety since July 2018. If true, this would further
10 support Plaintiff’s claims that she experienced severe mental-health symptoms
11 even absent substance use. Additionally, because the ALJ did not address the
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13 ⁶³ See AR 1881 (citing lab result at AR 3243).

14 ⁶⁴AR 3492 (explaining potential false positive due to prescribed medication).

15 ⁶⁵ See AR 739–40, 1131.

16 ⁶⁶ The Court notes that there is also cause to question the evidence that the ALJ
17 relied upon in finding that “[i]n January 2021, the claimant was suicidal and tested
18 positive for PCP.” AR 1882. This finding is supported by treatment notes. See AR
19 3530 (Dec. 2020: “Later returning lab showed was positive for PCP.”); AR 3552
20 (Jan. 2021: “UDS [from late December 2020] was positive for PCP.”). However, the
21 only lab results of record for that episode showed negative on the phencyclidine
22 screen. See AR 3252, 3258.

1 issue, the potential for amphetamine false positives also brings into question the
2 ALJ's other references to positive tests for methamphetamine and/or
3 amphetamines.⁶⁷ This is especially true given that the medical expert at the 2018
4 hearing specifically confirmed that Plaintiff had "never used methamphetamines"
5 and the drug results referred to at that hearing by the ALJ were instead positive
6 for amphetamines because Plaintiff "had overused her Adderall."⁶⁸

7 3. Plaintiff's Treatment and Improvement

8 Because this matter is already being remanded, to provide additional
9 guidance on remand, the Court notes that the ALJ must provide clear explanations
10 when evaluating any improvement in Plaintiff's symptoms and the significance of
11 such improvement. First, as mentioned, it is common for the kind of mental-health
12 symptoms at issue to wax and wane.⁶⁹ Additionally, marked improvement—
13 particularly measured shortly after inpatient care—does not necessarily indicate
14 substance use was to blame. To the contrary, the Commissioner has specifically
15 noted that "a record of multiple hospitalizations, emergency department visits, or
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17 ⁶⁷ See AR 1880 (finding Plaintiff "has also denied ever using meth/speed, but her
18 urine drug screen in 2016 was positive for amphetamines and records from 2017
19 document ongoing amphetamine use").

20 ⁶⁸ AR 803.

21 ⁶⁹ See *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) ("Cycles of
22 improvement and debilitating symptoms are a common occurrence. . .").
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1 other treatment for the co-occurring mental disorder—with or without treatment
2 for DAA—is an indication that DAA may *not* be material even if the claimant is
3 discharged in improved condition after each intervention.”⁷⁰

4 It must also be remembered that while Plaintiff was being treated for
5 substance use, she was also being treated for her other mental-health disorders.
6 “Improvement in a co-occurring mental disorder in a highly structured treatment
7 setting, such as a hospital or substance abuse rehabilitation center, may be due at
8 least in part to treatment for the co-occurring mental disorder, not (or not entirely)
9 the cessation of substance use.”⁷¹ Even where a claimant receiving mixed
10 treatment improves from being disabled while using substances to becoming
11 gainfully employed while sober, this, by itself, does not establish that substance
12 use was a material factor to the initial disability. After all, the claimant’s
13 functional improvement may instead be attributable to the successful treatment of
14 her other mental-health disorders. “If the evidence in the case record does not
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19 ⁷⁰ SSR 13-2p, *Titles II & XVI: Evaluating Cases Involving Drug Addiction &*
20 *Alcoholism (DAA)* (S.S.A. Feb. 20, 2013) (emphasis added).

21 ⁷¹ SSR 13-2p, *Titles II & XVI: Evaluating Cases Involving Drug Addiction &*
22 *Alcoholism (DAA)* (S.S.A. Feb. 20, 2013).
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1 demonstrate the separate effects of the treatment for DAA and for the co-occurring
2 mental disorder(s), [the Commissioner] will find that DAA is *not* material.”⁷²

3 V. Conclusion

4 The ALJ failed to address medical evidence that appears to support
5 Plaintiff’s allegations of experiencing severe mental-health symptoms and having
6 related limitations even absent substance use. Such evidence is relevant to nearly
7 every aspect of the ALJ’s analysis and DAA findings, including the evaluation of
8 medical opinions and Plaintiff’s symptom reports. Though it is unfortunate that so
9 much time has already elapsed since Plaintiff first filed her claims, remand is once
10 more necessary because the record does not clearly establish whether Plaintiff is
11 disabled.⁷³ Having already determined remand is required, the Court need not
12 address Plaintiff’s other arguments.

13 On remand, the ALJ shall conduct anew the disability evaluation, beginning
14 at step two, and specifically address the medical evidence identified above as well
15 as any other medical evidence that suggests Plaintiff experienced severe mental-
16 health symptoms absent substance use. To assist the ALJ in parsing out the
17 impact of Plaintiff’s substance use versus her other mental disorders on not only
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19 ⁷² SSR 13-2p, *Titles II & XVI: Evaluating Cases Involving Drug Addiction &*
20 *Alcoholism (DAA)* (S.S.A. Feb. 20, 2013) (emphasis added).

21 ⁷³ See *Leon v. Berryhill*, 800 F.3d 1041, 1045 (9th Cir. 2017); *Garrison v. Colvin*,
22 759 F.3d 995, 1020 (9th Cir. 2014).

1 her limitations, but also any subsequent improvements, the Court strongly
2 encourages the ALJ on remand to supplement the record with opinions from
3 Plaintiff's current mental-health treatment providers and/or a medical expert
4 specializing in dual diagnoses of substance-use disorders and co-occurring mental
5 disorders.

6 Accordingly, IT IS HEREBY ORDERED:

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

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

18 DATED this 8th day of September 2022.

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