

01  
02  
03  
04  
05  
06  
07  
08  
09  
10  
11  
12

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KARYN BROBYSKOV,	)	
	)	CASE NO. C14-1552-RAJ
Plaintiff,	)	
	)	
v.	)	
	)	ORDER RE: SOCIAL SECURITY
CAROLYN W. COLVIN, Acting	)	DISABILITY APPEAL
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

13 Plaintiff Karyn Brobyskov proceeds through counsel in her appeal of a final decision  
14 of the Commissioner of the Social Security Administration (Commissioner). The  
15 Commissioner denied Plaintiff’s application for Disability Insurance Benefits (DIB) after a  
16 hearing before an Administrative Law Judge (ALJ). Having considered the ALJ’s decision,  
17 the administrative record (AR), and all memoranda of record, this matter is REVERSED and  
18 REMANDED for further proceedings.

**FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1959.<sup>1</sup> She completed high school and one year of

21 \_\_\_\_\_  
22 <sup>1</sup> Plaintiff’s date of birth is redacted back to the year of birth in accordance with Federal Rule  
of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic

01 college. (AR 377.) She has worked as a waitress, an automotive accessories salesperson, a  
02 flagger, and an industrial cleaner. (AR 20, 526.)

03 Plaintiff applied for DIB and Supplemental Security Income (SSI) on September 14,  
04 2010. (AR 232-44.) The applications were denied. (AR 65-76, 77-88.) Upon  
05 reconsideration, Plaintiff was granted SSI with an onset date established as September 14,  
06 2010, which was her filing date. (AR 130.) But, because her date of last insured (DLI) was  
07 December 31, 2009, her DIB was again denied. (AR 102-109.) Plaintiff timely requested a  
08 hearing. (AR 167-68.)

09 On April 25, 2012, ALJ Ilene Sloan held a hearing in Seattle, Washington taking  
10 testimony from Plaintiff, and a vocational expert. (AR 30-62.) On May 11, 2012, the ALJ  
11 issued a decision finding that Plaintiff was not disabled prior to her DLI. (AR 11-22.) The  
12 Appeals Council denied review. (AR 1-5.) Plaintiff timely appealed. The parties agreed to a  
13 stipulated remand. (AR 577.) The Appeals Council vacated the ALJ's decision and  
14 remanded for further proceedings. (AR 590-92.)

15 ALJ Sloan conducted a new hearing on July 16, 2014, but heard no additional  
16 testimony. (AR 515, 536-40.) On July 24, 2014, the ALJ issued a decision once again  
17 finding Plaintiff not disabled before her DLI. (AR 515-528.) This decision is now the final  
18 decision of the Commissioner.

19 **JURISDICTION**

20 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §

21 \_\_\_\_\_  
22 Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 405(g).

02 **DISCUSSION**

03 The Commissioner follows a five-step sequential evaluation process for determining  
04 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
05 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had  
06 not engaged in substantial gainful activity since her amended onset date of May 1, 2009, and  
07 established her DLI as December 31, 2009. (AR 518.) At step two, it must be determined  
08 whether a claimant suffers from a severe impairment. The ALJ found Plaintiff's cognitive  
09 disorder NOS, degenerative arthritis of the left knee, status-post strokes, and epilepsy to be  
10 severe impairments. (AR 518.) Step three asks whether a claimant's impairments meet or  
11 equal a listed impairment. The ALJ found that Plaintiff's impairments did not meet or equal  
12 the criteria of a listed impairment. (AR 518-20.)

13 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
14 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
15 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
16 performing medium work with additional limitations: she would need to take seizure  
17 precautions including avoiding exposure to moving parts or blade, unprotected heights, large  
18 bodies of water, vats, and liquids, and use of motorized vehicle. She would have the ability to  
19 understand, remember, and carry out simple one and two-step instructions, involving no more  
20 than SVP 2. She can maintain concentration and attention for two hour intervals before  
21 requiring a 15 minute break to refocus. She can accept instruction from supervisors and work  
22 with co-workers. However, dealing with the general public should not be an essential element

01 of the task, although incidental contact would not be precluded. (AR 520.) With that  
02 assessment, the ALJ found Plaintiff able to unable to perform her past relevant work. (AR  
03 526.)

04 If a claimant demonstrates an inability to perform past relevant work, the burden shifts  
05 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
06 an adjustment to work that exists in significant levels in the national economy. Based on  
07 testimony from a vocational expert, the ALJ found Plaintiff able to perform the representative  
08 occupations of hand packager, small products assembler, and inspector/hand packager. (AR  
09 527.) Therefore, the ALJ found Plaintiff not disabled prior to her DLI of December 31, 2009.  
10 (AR 528.)

11 This Court's review of the ALJ's decision is limited to whether the decision is in  
12 accordance with the law and the findings supported by substantial evidence in the record as a  
13 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
14 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
15 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
16 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
17 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
18 F.3d 947, 954 (9th Cir. 2002).

19 Plaintiff argues the ALJ erred by (1) improperly evaluating the opinion of examining  
20 physician Dan Phan, M.D., (2) failing to properly determine the onset date of her disability,  
21 (3) improperly discounting her opinion, and (4) rejecting lay testimony without germane  
22 reasons. Dkt 17-1 at 1. According to Plaintiff, these errors should be remedied by a remand

01 for payment of benefits, not additional proceedings. Dkt. 17-1 at 18. The Commissioner  
02 argues that the ALJ's decision is free of legal error, supported by substantial evidence and  
03 should be affirmed. Dkt. 19 at 13.

04 Medical Evidence

05 Plaintiff contends that the ALJ failed to properly evaluate the opinion of examining  
06 physician Dan V. Phan, M.D. Dr. Phan evaluated Plaintiff in May 2009. (AR 384-86.) In  
07 addressing Plaintiff's functional limitations, Dr. Phan stated, "[w]ith the knee problem, she  
08 should avoid works requiring prolonged walking, and frequent kneeling and squatting." (AR  
09 386.) In her first decision, the ALJ gave this opinion "great weight" and assessed the RFC at  
10 the medium exertion level. (AR 16-17.) The Appeals Council determined that this  
11 assessment was problematic:

12 The Administrative Law Judge assigned "great weight" to the opinion of Dan  
13 V. Phan, M.D. However, the Administrative Law Judge found the claimant  
14 capable of performing medium work despite Dr. Phan's opinion that the  
15 claimant should avoid prolonged walking due to her left knee impairment.  
16 "Medium" exertional work requires standing or walking, off and on, for a total  
17 of approximately six hours in an eight-hour workday. (AR 590.)

18 The Appeals Council directed the ALJ to resolve this inconsistency on remand. (AR 590.)

19 In her second decision, the ALJ accorded "partial" weight to Dr. Phan's opinion and  
20 acknowledged his assessment that Plaintiff needed to avoid prolonged walking. (AR 524.)

21 According to the ALJ, "[w]hile the claimant may not be able to stand and/or walk for an  
22 entire 8-hour day, I find that Dr. Phan's examination findings support a conclusion that she  
could stand and/or walk for 6 hours in an 8-hour workday." (AR 524.) In support of this  
finding, the ALJ noted that Dr. Phan's examination showed full flexion and extension of the

01 knee; no redness, swelling, or deformity; full motor strength, normal gait, and no need for an  
02 assistive device; Plaintiff could walk about one mile, and denied any limitations on standing.  
03 (AR 524.)

04         The ALJ only gave “partial” weight to Dr. Phan’s opinion in this decision, but failed  
05 to provide any reason to discount the opinion. This is error. The ALJ must provide “clear and  
06 convincing” reasons for rejecting the uncontradicted opinion of a treating physician. *Lester v.*  
07 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Even when a treating physician’s opinion is  
08 contradicted, that opinion “can only be rejected for specific and legitimate reasons that are  
09 supported by substantial evidence in the record.” *Id.* at 830-31. Here, the ALJ failed to  
10 provide any reason for giving only “partial” weight to Dr. Phan’s opinion.

11         Furthermore, the ALJ once again found Plaintiff capable of medium work without  
12 reconciling that exertion level with Dr. Phan’s opinion. Medium exertion “require[s] the  
13 worker to stand or walk most of the time.” Social Security Ruling 83-14. The ALJ provides  
14 no explanation as to how an opinion that specifically noted the need to avoid “prolonged”  
15 walking supports a medium exertional level requiring six hours of walking/standing. SSR 83-  
16 10. The Commissioner urges the Court that “because medium work involves alternating  
17 between walking and standing ‘off and on’ for six hours a day, Plaintiff has not shown that it  
18 actually requires ‘prolonged walking.’” Dkt. 19 at 3. But, the ALJ did not differentiate  
19 between standing and walking in the RFC. Without additional limitations, “medium exertion”  
20 could include a majority of walking over the course of six hours, which would be inconsistent  
21 with Dr. Phan’s opinion. Thus, ALJ failed to resolve the inconsistency highlighted by the  
22 Appeals Council, and once again established an RFC seemingly at odds with Plaintiff’s

01 assessed capabilities. This results in an RFC that may not properly reflect Plaintiff's true  
02 capacity and undermines the ALJ's step five finding that Plaintiff can perform gainful work.

03 The Commissioner bears the burden at step five to show that Plaintiff can perform  
04 gainful work. *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999). To meet this burden, the  
05 ALJ solicited testimony from a VE through hypothetical questions. *Id.* at 1100-1101, (AR 54-  
06 55.) "Hypothetical questions posed to the vocational expert must set out *all* the limitations  
07 and restrictions of the particular claimant." *Embrey v. Bowen*, 849 F.3d 418, 422-23 (9th Cir.  
08 1988). When the hypothetical is not supported by the record and does not include all the  
09 limitations, the testimony of the VE has no evidentiary value. *Id.* In this case, the VE was  
10 posed a hypothetical with medium exertion level. (AR 54-55.) Because the VE identified  
11 jobs compatible with this RFC, which may not fully account for Plaintiff's need to avoid  
12 prolonged walking, the testimony has no evidentiary value and the case must be reversed.

#### 13 Onset Date

14 To receive DIB, a claimant "must prove that she was either permanently disabled or  
15 subject to a condition which became so severe as to disable her prior to the date upon which  
16 her disability insured status expires." *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995).  
17 In this case, Plaintiff's DLI was December 31, 2009. (AR 65.) The ALJ found that Plaintiff  
18 "retained the cognitive ability to perform simple, 1 to 2-step tasks before December 31,  
19 2009," and she was not disabled prior to her DLI. (AR 526, 528.) Plaintiff alleges legal error  
20 because the ALJ failed to call a medical expert to establish her onset date. The Court agrees.

21 The ALJ relied heavily upon a May 2009 psychological evaluation conducted by  
22 Rodger I. Meinz, Ph.D. (AR 525, 376-82.) Dr. Meinz reported that Plaintiff was anxious,

01 fearful, and embarrassed about her memory problems. (AR 379.) Plaintiff was oriented, but  
02 had to look at her referral sheet to remember the day of the month. (AR 379.) She could  
03 recall three out of three objects after five minutes; recall six digits forward but only three  
04 digits backward; and slowly completed serial threes from 20 by using her fingers to count.  
05 (AR 380.) Her memory scores ranged between average, borderline, and extremely low. (AR  
06 380.) These scores “corroborate her self-report” of poor memory since suffering the two  
07 strokes. (AR 381.) Dr. Mainz concluded that Plaintiff “might be capable of light bench  
08 assembly...where any memory problems could be accommodated by the routine nature of the  
09 work. Whether she could perform at a competitive rate at such work is unknown.” (AR 382.)

10 The ALJ summarized Dr. Mainz’ opinion:

11 Dr. Mainz opined in May 2009 that the claimant could retain the ability to  
12 absorb and perform simple sets of auditory and visual data. Dr. Mainz added  
13 that the claimant might be capable of light bench assembly work, where her  
memory problem could be accommodated by the routine nature of her work.  
(AR 525.)

14 The ALJ accorded this opinion significant weight because Dr. Mainz conducted psychometric  
15 and mental status testing in addition to an interview. (AR 525.)

16 The ALJ accepted Dr. Mainz’ opinion over Plaintiff’s treating physician, Sam  
17 Eggertsen, M.D. Dr. Eggertsen began seeing Plaintiff in November 2009. (AR 489.) He  
18 completed a physical evaluation on January 25, 2010 in which he asserted that her main issues  
19 were cognitive. (AR 425-28.) He opined that her cognitive deficits are “marked” and rated  
20 them as severe. (AR 427.) He arrived at this conclusion based on results showing her unable  
21 to remember three objects after three minutes, draw a clock face accurately, and subtract  
22 seven from one hundred. (AR 426.) The ALJ gave minimal weight to Dr. Eggertsen’s



01 opinion because he based it on an abridged mental status examination. (AR 525.)

02 Generally, medical opinions of treating physicians are accorded special weight.  
03 *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988). “The ALJ must either accept the  
04 opinions of...treating physicians or give specific and legitimate reasons for rejecting them.”  
05 *Id.* at 422 n.3. Here, the ALJ gave greater weight to Dr. Mainz’ opinion, because he  
06 conducted significantly more testing and “considered claimant’s work history and vocational  
07 certifications after her last stroke.” (AR 525.) But, Dr. Eggertsen conducted objective  
08 testing, in the form of the abbreviated mental status exam, and provided the results. Dr.  
09 Eggertsen gave his assessment and specifically noted the objective results that led to his  
10 conclusions. (AR 425-28.)

11 Dr. Eggertsen gave his opinion eight months after Dr. Mainz opined that Plaintiff  
12 could possibly perform light bench work, and less than one month after her DLI. (AR 382,  
13 425.) Given the progressive nature of Plaintiff’s dementia and the proximity in time to her  
14 DLI, Dr. Eggertsen’s assessment was the most relevant to her actual functional level at her  
15 DLI. The timing of the opinion and the nature of the treating physician relationship give  
16 weight to Dr. Eggertsen’s assessment.

17 As a result of the opinions given by Drs. Mainz and Eggertsen, Plaintiff’s onset date is  
18 unclear. When evidence of the onset of mental impairment is ambiguous, “the ALJ should  
19 determine the date based on an informed inference. Such an inference is not possible without  
20 the assistance of a medical expert.” *Morgan v. Sullivan*, 945 F.2d 1079, 1082-83 (9th Cir.  
21 1991). Under Social Security Regulation (“SSR”) 83-20, determination of an onset date  
22 requires a “legitimate medical basis” which is established by calling a medical advisor at the

01 hearing.

02 How long the disease may be determined to have existed at a disabling level of  
03 severity depends on an informed judgment of the facts in a particular case.  
04 This judgment, however, must have a legitimate medical basis. At a hearing,  
05 the administrative law judge (ALJ) should call on the services of a medical  
06 advisor when onset must be inferred.

07 SSR 83-20 has been interpreted to *require* a medical advisor if the “medical evidence is not  
08 definite concerning the onset date and medical inferences need to be made.” *Delorme v.*  
09 *Sullivan*, 924 F.2d 841, 848 (9th Cir. 1991). In such cases, the ALJ must call a medical  
10 expert to assist in determining the onset date. *Armstrong v. Comm’r of Soc. Sec. Admin.*, 160  
11 *F.3d 587, 590 (9th Cir. 1998).*

12 In this case, the onset date is unclear. In May 2009, Dr. Mainz opined that Plaintiff  
13 “might” be capable of light bench assembly, but was unsure if she could perform at a  
14 competitive rate. (AR 382.) By January 2010, less than one month after DLI, Plaintiff’s  
15 treating physician found her to have severe cognitive deficiencies. In a case, such as this,  
16 where onset date is ambiguous but critical to the claim, the ALJ was required to call a medical  
17 expert to make the necessary medical inferences and establish the onset date. Failure to  
18 obtain assistance from a medical expert was legal error. Because onset date is central to the  
19 DIB determination, the error in establishing that date was harmful and requires reversal.

#### 20 Plaintiff’s Credibility

21 The ALJ found that Plaintiff’s statements concerning the intensity, persistence, and  
22 limiting effects of her symptoms were not entirely credibility. (AR 521.) The ALJ cited the  
23 Plaintiff’s activities of daily living, work history, and lack of objective medical evidence as

01 reasons to discount her testimony. (AR 522-23.) Plaintiff contends that the ALJ improperly  
02 rejected her testimony.

03         The ALJ is responsible for determining credibility. *Andrews v. Shalala*, 53 F.3d  
04 1035, 1039 (9th Cir. 1995). Unless there is affirmative evidence showing that the claimant  
05 is malingering, the ALJ must provide clear and convincing reasons for rejecting the  
06 evidence. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). The ALJ “may not discredit  
07 the claimant’s testimony as to subjective symptoms merely because they are unsupported by  
08 objective evidence.” *Id.* However, “[in] determining credibility, an ALJ may engage in  
09 ordinary techniques of credibility evaluation, such as considering claimant's reputation for  
10 truthfulness and inconsistencies in claimant's testimony.” *Burch v. Barnhart*, 400 F.3d 676,  
11 680 (9th Cir. 2005). Additionally, the ALJ may consider a claimant’s work record and  
12 observations of physicians and other third parties regarding the nature, onset, duration, and  
13 frequency of symptoms. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996).

14         The ALJ stated that Plaintiff’s activities of daily living prior to her DLI are not  
15 consistent with her allegations of disability. “[T]he claimant told Dr. Phan and Dr. Meinz that  
16 she lived alone and that she was able to independently perform her activities of daily living,  
17 including showering daily, preparing her own meals, and keeping her apartment clean.” (AR  
18 523.) Plaintiff contends that these activities do not support an adverse credibility  
19 determination.

20         “Daily activities may be grounds for an adverse credibility finding ‘if a claimant is  
21 able to spend a substantial part of his day engaged in pursuits involving the performance of  
22 physical functions that are transferable to a work setting.’” *Orn v. Mastrue*, 495 F.3d 625,

01 639 (9th Cir. 2007)(citing *Fair v. Bowen*, 885 F.2d 597, 603 (Cir. 9th 1989)). Daily activities  
02 may also have bearing on credibility if they are inconsistent with claimed limitations.  
03 *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). In this case, Plaintiff’s ability to  
04 perform the basic tasks of showering, preparing her meals, and keeping her house clean is not  
05 inconsistent with her knee pain or mental impairments. Nor are these activities transferable to  
06 a work setting. *Orn*, 495 F.3d at 639.

07 Furthermore, the ALJ mischaracterizes Plaintiff’s activities of daily living from the  
08 period after her DLI. The ALJ found that “claimant’s more recent activities suggest that her  
09 functioning was likely greater than alleged prior to her date last insured.” (AR 523.) The  
10 ALJ elaborated:

11 she reported living with a disabled friend, whom she helped get dressed and  
12 reminded to take medications. She stated that she could care for her personal  
13 hygiene and grooming, prepare simple meals, attends appointments, go out  
14 alone, take the bus, and shop for groceries. At the hearing she testified that she  
was able to do her own grocery shopping, but limited her shopping to one store  
that was close to her home. She testified that she lives alone and is able to care  
for herself and her apartment. (AR 523.)

15 But, this description of Plaintiff’s ability to care for herself omits several key details. For  
16 example, Plaintiff limited her shopping to a single location because she knew how to walk to  
17 that store and back and would not get lost. (AR 43.) At the store, she often had difficulty  
18 remembering what she needed to purchase, so she would buy “a little bit of everything. Like  
19 lots of soups.” (AR 43.) She cooked only basic foods using the microwave because she  
20 would forget that she had put food in the oven. (AR 41.) And, although Plaintiff took the bus,  
21 she would become confused and need to call someone or get assistance from the bus driver.  
22 (AR 42.) She would forget which bus she needed or get off at the wrong location. (AR 42.)

01 As seen by these examples, Plaintiff ability to perform basic activities was hampered  
02 by her mental impairment. Her recent functioning does not demonstrate greater capacity prior  
03 to her DLI. The ALJ's finding that her ability to accomplish these activities negated her  
04 credibility was not supported by substantial evidence in the record.

05 Similarly, the ALJ's depiction of Plaintiff's prior work history is unsupported by the  
06 evidence in the record. The ALJ cited Plaintiff's work history to discredit her testimony.

07 [A]fter her second stroke, the claimant was able to return to substantial fanciful  
08 activity as a sales person at Sears, where she worked from 1996 through  
09 2002...She later worked at Labor Ready, doing temporary jobs as a flagger and  
10 performing pickup and cleanup, from 2006 through 2008. At the hearing, she  
11 testified that she was able to follow simple instructions and to perform simple  
12 tasks without any issues when she worked at Labor Ready. Her struggles were  
13 primarily with performing jobs that required her to follow and perform  
14 complex instructions. (AR 523)

15 But, this description of Plaintiff's work history ignored that Plaintiff had difficulty performing  
16 and keeping several jobs. In 2003, she lost her long-time job at Sears automotive because she  
17 could not perform her tasks quickly enough, despite trying her hardest. (AR 40.) She was  
18 fired from a restaurant hostess position and a retail job because she could not remember  
19 important codes. (AR 39-40.) And when performing temporary work with Labor Ready,  
20 employers often sent her back because she became disoriented at job sites. (AR 38-39.) "I  
21 was just supposed to clean certain rooms before they got into another project of that room,  
22 and then I'd get lost in the room trying to get back to the main place we all met. And I'd just  
be wandering." (AR 39.) Plaintiff testified that she could perform the clean up tasks  
assigned, but anything more complicated and the employers "would get nervous" and send  
her back to Labor Ready. (AR 39, 47.) All of these employment struggles occurred prior to

01 Plaintiff's DLI. Rather than support the ALJ's credibility determination, the record  
02 demonstrates significant functional difficulties consistent with Plaintiff's alleged disability.

03 Finally, the ALJ insinuated that the lack of objective medical evidence undermined  
04 Plaintiff's testimony. (AR 521-23.) But, as noted above, the ALJ "may not discredit the  
05 claimant's testimony as to subjective symptoms merely because they are unsupported by  
06 objective evidence." *Lester*, 81 F.3d at 834. Here, the ALJ's reliance on Plaintiff's  
07 activities of daily living and work history is unsupported by the record. The dearth of  
08 medical evidence is the only remaining reason to discount Plaintiff's testimony and does not  
09 provide legally sufficient reason to discredit Plaintiff. The ALJ failed to provide clear and  
10 convincing reasons based on substantial evidence in the record to reject Plaintiff's  
11 testimony. Reversal is required.

#### 12 Lay Witness Testimony

13 Plaintiff's mother, Margaret Faltys, provided a third party function report in  
14 November 2010 that detailed Plaintiff's difficulties. (AR 312-19.) "Descriptions by friends  
15 and family members in a position to observe a claimant's symptoms and daily activities have  
16 routinely been treated as competent evidence." *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th  
17 Cir. 1987). A germane reason is required to reject such evidence. *Dodrill v. Shalala*, 12 F.3d

18 Plaintiff alleges that the ALJ improperly rejected this testimony because Plaintiff had  
19 demonstrated a functional ability to work, and Ms. Faltys did not differentiate between  
20 Plaintiff's functioning before and after her DLJ. Dkt. 17-1 at 18. However, this argument  
21 references the reasoning provided in the first ALJ decision, since vacated by the Appeals  
22 Council. (AR 20, 590-92.) Plaintiff's argument is inapplicable to the current decision.

01 Disposition

02 This case is rife with harmful errors requiring reversal. Plaintiff asserts that the proper  
03 remedy is remand for award of benefits. The Court may remand for an award of benefits  
04 where:

05 the record has been fully developed and further administrative proceedings  
06 would serve no useful purpose; (2) the ALJ has failed to provide legally  
07 sufficient reasons for rejecting evidence, whether claimant testimony or  
08 medical opinion; and (3) if the improperly discredited evidence were  
09 credited as true, the ALJ would be required to find the claimant disabled on  
10 remand.

11 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). The Court abuses its discretion by  
12 remanding for further proceedings where the record establishes no basis for serious doubt that  
13 the claimant is in fact disabled. *Id.* at 1023. However, remand for award of benefits occurs in  
14 rare circumstances. *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir.  
15 2014).

16 Although this case has already been remanded once and has been pending for several  
17 years, this is not the rare circumstance requiring remand for benefits. The main issue remains  
18 whether Plaintiff was disabled prior to her DLI. As discussed earlier, a medical expert is  
19 required when “medical evidence is not definite concerning the onset date and medical  
20 inferences need to be made.” *Delorme*, 924 F.2d at 848. This Court is no more capable than  
21 the ALJ of making the required medical inferences necessary to properly establish Plaintiff’s  
22 onset date.

23 The case must be remanded for further proceedings. On remand, the ALJ should take  
24 medical expert testimony to assist in the establishment of Plaintiff’s disability onset date.

01 Additionally, the ALJ should reconsider Dr. Phan's opinion, give weight to Plaintiff's  
02 testimony, further develop the record as necessary, reassess the RFC, and proceed with steps  
03 four and five of the sequential evaluation process as needed.

04 **CONCLUSION**

05 For the reasons set forth above, this matter is REVERSED and REMANDED for  
06 further proceedings.

07 DATED this 27th day of July, 2015.

08  
09 

10 The Honorable Richard A. Jones  
11 United States District Judge