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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 DEBRA A. YOST,
7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN, Acting
10 Commissioner of the Social Security
Administration,
Defendant.

C15-1279 TSZ

ORDER

11 THIS MATTER comes before the Court on appeal from a final decision of the
12 Acting Commissioner of the Social Security Administration (“Commissioner”) denying
13 plaintiff Debra A. Yost’s applications for disability insurance benefits (“DIB”) and
14 supplemental security income (“SSI”) benefits under Titles II and XVI, respectively, of
15 the Social Security Act, 42 U.S.C. §§ 401-434 and 1381-1383f. Having reviewed all
16 papers filed in connection with the appeal, the Court enters this order.

17 **Background**

18 Plaintiff was born in 1964, completed high school, and worked as a receptionist
19 for many years. AR 35, 43, 296-301. She has not, however, engaged in substantial
20 gainful activity since August 2, 2008, which she alleges was the onset date of her
21 disability. AR 19. Plaintiff applied for DIB and SSI benefits in 2012. AR 284-92. In
22 denying her application, Administrative Law Judge (“ALJ”) Tom L. Morris determined
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1 that plaintiff has the following severe impairments: “degenerative disc disease of the
2 thoracic and cervical spines, right wrist de Quervain’s tenosynovitis,¹ an affective
3 disorder, and generalized anxiety disorder.” AR 19. ALJ Morris further concluded that
4 plaintiff has the residual functional capacity to perform, with certain limitations, a range
5 of “light work” as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b). AR 21.

6 According to ALJ Morris, although plaintiff’s residual functional capacity does not
7 enable her to engage in past relevant work, she can make an adjustment to other
8 occupations (for example, document preparer, final assembler, or patcher) as to which a
9 significant number of jobs exist in the national and regional economy. AR 25-26.

10 As a result, ALJ Morris ruled that plaintiff “has not been under a disability . . . from
11 August 2, 2008, through the date of [his] decision,” which was issued on January 31,
12 2014. AR 26-27. The Appeals Council denied plaintiff’s request for review. AR 1-4.

13 Plaintiff now seeks judicial review pursuant to 42 U.S.C. §§ 405(g) and
14 1383(c)(3). She presents six issues for the Court’s consideration: (1) whether the
15 administrative record is complete;² (2) whether ALJ Morris properly declined to recuse;

17 ¹ Plaintiff also has de Quervain’s tenosynovitis in her left wrist, see AR 386-88, but ALJ Morris deemed it
18 “nonsevere” because “her symptoms resolved following an injection,” AR 19. See also AR 52 (plaintiff
testified that she “got a cortisone shot and it was better”).

19 ² Plaintiff asserts that the administrative record is deficient in two ways: (i) the omission of exhibits
20 attached to her attorney’s letter dated September 20, 2013 (the letter itself is included at AR 250-82); and
21 (ii) the omission of a letter from her mother. As to the latter item, which ALJ Morris did not mention in
22 his decision, the Commissioner has indicated that plaintiff is herself responsible for the oversight;
although plaintiff might have intended to submit a letter from her mother, she apparently never did so.
23 Plaintiff replies that the transcript of the hearing proves she proffered her mother’s letter, but the first
page cited by plaintiff merely mentions two letters that “have not been exhibited” and that ALJ Morris
indicated he would review, without identifying their authors, see AR 36, and the other pages cited by
plaintiff, which contain a colloquy between plaintiff and her attorney regarding her mother’s letter,

1 (3) whether ALJ Morris appropriately exercised his discretion in refusing to subpoena
2 Howard Platter, M.D.; (4) whether ALJ Morris gave due weight to the opinion of Angel
3 Lin, M.D.; (5) whether ALJ Morris gave due weight to the opinion of Linda Jansen,
4 Ph.D.; and (6) whether ALJ Morris expressed a sufficient basis for discrediting plaintiff's
5 testimony. Plaintiff has departed from the traditional manner of challenging a denial of
6 social security benefits, which usually targets the conclusions reached at one or more of
7 the five steps in the sequential process for determining whether a claimant is disabled
8 within the meaning of the Social Security Act.³ The Court, however, treats plaintiff's

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10 establish only that ALJ Morris did not hear counsel's question, and that plaintiff had read and was upset
11 by the letter, *see* AR 54-55. Plaintiff further asserts that the duplication in the administrative record of the
12 first page of her ex-husband's declaration, which appears as both Exhibit 9E, AR 340, and Exhibit 11E,
13 AR 342, demonstrates that her mother's one-page letter is missing, but such observation does not
14 establish that either the ALJ or the Commissioner, as opposed to plaintiff, is at fault for failing to include
15 it. Plaintiff has not described the contents of her mother's letter or indicated how it might have affected
16 ALJ Morris's analysis, and she has not demonstrated that her mother's missing letter constitutes a basis
17 for remand.

18 ³ Step one of the sequential evaluation process inquires whether the claimant is presently engaged in
19 "substantial gainful activity." 20 C.F.R. §§ 404.1520(a)(4)(i) & 416.920(a)(4)(i). If so, the claimant is
20 not entitled to disability benefits, and no further evaluative steps are required. *Id.* at §§ 404.1520(b) &
21 416.920(b); *see also id.* at § 404.1572 (defining "substantial gainful activity" as "significant physical or
22 mental activities" done or usually done for "pay or profit"). Step two asks whether the claimant has a
23 severe impairment, or a combination of impairments, that significantly limits the claimant's physical or
24 mental ability to do basic work activities. *See id.* at §§ 404.1520(a)(4)(ii)&(c) and 416.920(a)(4)(ii)&(c).
25 If not, the claimant is not entitled to disability benefits, and again, additional analysis is not required. *Id.*
26 Step three involves a determination of whether any of the claimant's severe impairments is equivalent to
27 one that is listed in the regulations. *Id.* at §§ 404.1520(a)(4)(iii) & 416.920(a)(4)(iii). A claimant with an
28 impairment that "meets or equals" a listed impairment for the requisite twelve-month duration is "per se"
29 disabled and qualifies for benefits. *See id.* at §§ 404.1520(d) & 416.920(d). If the claimant is not "per
30 se" disabled, then the question under step four is whether the claimant's "residual functional capacity"
31 enables the claimant to perform past relevant work. *Id.* at §§ 404.1520(a)(4)(iv) & 416.920(a)(4)(iv). If
32 the claimant can still perform past relevant work, then the claimant is not entitled to disability benefits
33 and the inquiry ends there. *Id.* at §§ 404.1520(e)-(f) & 416.920(e)-(f). On the other hand, if the opposite
34 conclusion is reached, the burden shifts to the Commissioner at step five to prove that the claimant can
35 make an adjustment to other work, taking into account the claimant's age, education, and work
36 experience. *Id.* at §§ 404.1520(a)(4)(v) & 416.920(a)(4)(v); *see id.* at §§ 404.1560(c)(2) & 416.960(c)(2).
37 If the claimant cannot make such adjustment to other work, disability benefits may be awarded. *Id.* at
38 §§ 404.1520(g) & 416.920(g).

1 arguments, which primarily involve the assessment of her residual functional capacity, as
2 challenging ALJ Morris’s findings at steps four and five of the sequential evaluation
3 process. Plaintiff does not appear to separately attack ALJ Morris’s determination, at
4 step three, that she is not “per se” disabled, or the vocational expert’s estimates, at step
5 five, concerning the number of jobs available for persons with the residual functional
6 capacities described in the various hypotheticals posed by ALJ Morris.

7 **Discussion**

8 This Court’s review is limited to assessing whether the ultimate denial of benefits
9 is free of legal error and based on factual findings that are supported by substantial
10 evidence. *See Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1998); *see also* 42 U.S.C.
11 § 405(g). Substantial evidence means “more than a mere scintilla, but less than a
12 preponderance” of evidence; it is “such relevant evidence as a reasonable person might
13 accept as adequate to support a conclusion.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035
14 (9th Cir. 2007). In determining whether the factual findings are supported by substantial
15 evidence, the Court must “review the administrative record as a whole, weighing both
16 the evidence that supports and the evidence that detracts from the Commissioner’s
17 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). The Court “may not
18 affirm simply by isolating a specific quantum of supporting evidence.” *Jones v. Heckler*,
19 760 F.2d 993, 995 (9th Cir. 1985). If, however, the evidence reasonably supports both
20 affirming and reversing the denial of benefits, the Court may not substitute its judgment
21 for that of the ALJ. *See Reddick*, 157 F.3d at 720-21; *see also Thomas v. Barnhart*, 278
22 F.3d 947, 954 (9th Cir. 2002) (if “the evidence is susceptible to more than one rational
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1 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be
2 upheld”).

3 **A. Administrative Record**

4 Ordinarily, the administrative record for a matter brought before the Court under
5 42 U.S.C. §§ 405(g) and/or 1383(c) contains materials pertaining only to the individual
6 seeking judicial review. *See* 20 C.F.R. § 405.360 (“The official record will include the
7 applications, written statements, certificates, reports, affidavits, medical records, and
8 other documents that were *used in making the decision under review* The official
9 record of *your claim* will contain all of the marked exhibits and a verbatim recording of
10 all testimony offered at the hearing; it also will include any prior initial determinations or
11 decisions on *your claim*.” (emphasis added)); *see also id.* at § 404.1512 (“Evidence is
12 anything you or anyone else submits to us or that we obtain that relates to *your claim*.”
13 (emphasis added)). In this case, however, plaintiff contends that the administrative
14 record should include redacted copies of 49 decisions issued by ALJ Morris between
15 September 27, 2012, and July 15, 2013, concerning other applicants for DIB and/or SSI
16 benefits, as well as copies of psychological or psychiatric evaluations performed in
17 twelve of those cases. *See* Compl. at ¶ 3.1 (docket no. 1).⁴

19 ⁴ Plaintiff also asserts that the administrative record should contain letters from Keith Sonnanburg, Ph.D.,
20 and James Czysz, Ph.D., which were attached to plaintiff’s counsel’s letter dated September 20, 2013,
21 addressed to ALJ Morris and Chief ALJ David DeLaitre. *See* Compl. at ¶ 3.1 (docket no. 1); *see also*
22 AR 262, 268-69, 272-74 (citing Sonnanburg’s letter as Exhibit 8 to counsel’s letter); AR 270, 276-77
23 (citing Czysz’s letter as Exhibit 13 to counsel’s letter). Plaintiff’s counsel quoted extensively from
Sonnanburg’s and Czysz’s letters in his own letter to ALJ Morris and Chief ALJ DeLaitre, which is
already part of the administrative record, and thus, the substance of those documents is before the Court.
Plaintiff makes no assertion that Sonnanburg’s and/or Czysz’s letters contain relevant information beyond

1 Plaintiff's position is without merit. ALJ Morris's rulings, and psychological or
2 psychiatric evaluations, about claimants other than plaintiff may not be used to make a
3 determination concerning whether plaintiff is disabled within the meaning of the Social
4 Security Act, and thus, such rulings and evaluations do not constitute "evidence," as
5 defined by regulation, and are not properly made part of the "official record." *See* 20
6 C.F.R. §§ 404.1512 & 405.360; *see also* Hearings, Appeals, and Litigation Law Manual
7 [HALLEX] I-3-9-40(E) (available at https://www.ssa.gov/OP_Home/hallex/hallex.html)
8 (enumerating as an example of "error on the face of the evidence" an adjudicator's
9 reliance on "the wrong person's" records). Moreover, a non-random⁵ assortment of prior
10 decisions by ALJ Morris does not establish bias or a reason requiring him to recuse.
11 Plaintiff does not suggest that all (or even any) of the 49 decisions at issue were reversed
12 or otherwise called into question upon administrative or judicial review.⁶ Rather,
13 plaintiff advances three arguments for how this small sample of decisions allegedly

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15 the lengthy passages reproduced from them in counsel's letter to ALJ Morris and Chief ALJ DeLaitre,
16 and thus, she has not established that a remand is necessary for the purpose of incorporating those letters
17 into the administrative record.

18 ⁵ The 49 decisions at issue involve claimants represented by a small number of law firms, including
19 Schroeter, Goldmark & Bender. None of the decisions involve claimants who appeared pro se. Plaintiff
20 has not described how the demographics of claimants represented by the law firms in question compare
21 with the demographics of claimants concerning whom ALJ Morris issued decisions during the time
22 period at issue, has not identified the other law firms involved, and has not indicated what portion of the
23 49 decisions concern clients of Schroeter, Goldmark & Bender; her attorney has merely stated that, to the
best of his knowledge, the 49 decisions at issue represent all rulings by ALJ Morris received by the law
firms in question during the described time period. AR 252.

⁶ Plaintiff apparently submitted to ALJ Morris and Chief ALJ David DeLaitre declarations from
attorneys Ann Cook, Anne Kysar, Peter McKee, Matthew Rovner, and Sandra Widlan. *See* AR 252.
Whether these declarations discuss the results of any administrative or judicial review in the 49 cases in
question is unknown. Moreover, in neither her pleading nor her opening brief does plaintiff make any
allegation or argument that such declarations should have been incorporated into the administrative record
in this case. *See* Compl. at ¶ 3.1 (docket no. 1); Pla.'s Brief (docket no. 10).

1 evidences ALJ Morris’s “bias” against “welfare” recipients, routine misapplication of
2 law, and repeatedly improper assessments of claimant credibility,⁷ namely: (i) by
3 representing a lower rate of favorable decisions than the nationwide average; (ii) by
4 revealing different rates of favorable outcomes depending on whether the phrases
5 “Department of Social and Health Services” or “Global Assessment of Functioning” (or
6 their acronyms) appeared in the decision; and (iii) by referring to “welfare” benefits when
7 drawing conclusions about a claimant’s motivation to seek employment. Plaintiff’s
8 statistical and substantive analysis is flawed.

9 **1. Comparisons to Peers**

10 Contrary to plaintiff’s assertion, any disparity between ALJ Morris’s and his
11 colleagues’ statistics does not itself demonstrate “bias.” With respect to the 49 decisions
12 issued by ALJ Morris between September 27, 2012, and July 15, 2013, concerning
13 claimants represented by certain law firms, including Schroeter, Goldmark, & Bender,
14 13 (26.5%) were favorable. This rate is consistent with (and indeed higher than) the
15 percentage of favorable decisions (20%) that were issued by ALJ Morris during roughly
16 the same timeframe, without regard to legal representation. *See* AR 251 (stating that 44
17 of 220 decisions between September 29, 2012, and June 28, 2013, were favorable).

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19 ⁷ Plaintiff does not explain how the Court could possibly review ALJ Morris’s legal analysis and/or
20 credibility findings in other cases without access to the administrative record in each proceeding, which
21 plaintiff has never proffered, or how the Court’s consideration of such collateral challenges to decisions
22 involving other claimants would be in any way consistent with either the provisions or purposes of the
23 Social Security Act. *See* 42 U.S.C. § 405(h) (“No findings of fact or decision of the Commissioner of
Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein
provided.”); *see also* *Heckler v. Ringer*, 466 U.S. 602, 614-15 (1984) (Section 405(h) “provides that
§ 405(g), to the exclusion of 28 U.S.C. § 1331, is the sole avenue of judicial review”); *Weinberger v.*
Salfi, 422 U.S. 749, 760-64 (1975).

1 Both of the above-recited rates, however, are substantially less than the median rate of
2 favorable decisions for the 1,336 ALJs across the country who each issued more than
3 200 rulings during the period at issue, which was roughly 55%. AR 252. Plaintiff’s
4 contention that ALJ Morris’s below-median rate of favorable decisions somehow shows
5 “bias” ignores the fact that ALJs hear a matter only after benefits have already been
6 denied on initial determination and after reconsideration. *See* 20 C.F.R. §§ 404.900(a) &
7 416.1400(a). ALJ Morris’s lower rate of favorable decisions (or reversals) might simply
8 reflect that determinations made initially and/or on reconsideration in this region are of
9 higher quality than elsewhere in the nation, and thus, does not itself substantiate any
10 parsimony or “bias” on the part of ALJ Morris.

11 **2. Comparisons Among 49 Prior Decisions**

12 Plaintiff’s attempt to correlate certain terms with particular results among the 49
13 decisions at issue is premised on improper assumptions. Plaintiff focuses on 34 of the 49
14 previous decisions by ALJ Morris in which the agency name “Department of Social and
15 Health Services” and/or the acronym “DSHS” appears. *See* AR 255. Plaintiff casts
16 aspersions against ALJ Morris because he issued favorable decisions in only five of the
17 34 decisions mentioning DSHS, or in roughly 15% of them. *Id.* Plaintiff contrasts this
18 figure with the rate of favorable outcomes (53%) among the remaining 15 decisions,⁸
19 eight of which were favorable. *Id.* Plaintiff, however, makes no representation

21 ⁸ Plaintiff’s counsel’s letter dated September 20, 2013, to ALJ Morris and Chief ALJ DeLaitre, indicates
22 that eight of the “remaining 16 decisions” were favorable. AR 255. The Court will assume that the letter
23 correctly reported the number of favorable rulings, but miscalculated the difference between 49 and 34.

1 concerning whether the claimants in those other 15 cases were receiving DSHS benefits
2 even though ALJ Morris’s decision did not specifically refer to DSHS, and the Court
3 declines to draw from the mere absence of the agency name or its acronym the inferences
4 suggested by plaintiff, namely that the other 15 cases involved claimants who were not
5 poor and/or not receiving benefits from DSHS.

6 With regard to Global Assessment of Functioning (“GAF”),⁹ the Court reaches a
7 similar conclusion. According to plaintiff, of the 49 prior decisions at issue, 17 involved
8 claimants who had sought or received DSHS benefits and submitted evidence of a GAF
9 score. *See* Pla.’s Brief at 9 (docket no. 10 at 14). Plaintiff criticizes ALJ Morris because,
10 of those 17 decisions, only one was favorable (6%), while of the other 32 decisions,
11 twelve were favorable (38%). *Id.* Plaintiff does not, however, indicate whether the
12 claimants in the twelve other favorable decisions received DSHS benefits or had GAF
13 evaluations, regardless of whether ALJ Morris explicitly discussed them.¹⁰

15 ⁹ Global Assessment of Functioning, which had been Axis V in a multi-axial system for assessing mental
16 disorders, is no longer in widespread use. *See* Am. Psychiatric Ass’n, DIAGNOSTIC & STATISTICAL
17 MANUAL OF MENTAL DISORDERS 16 (5th ed. 2013) [“DSM-5”]. The GAF scale had ranged from 0 to
18 100, with each 10-point increment having both a symptom severity and a functioning component; a
19 GAF rating would fall within particular decile (*e.g.*, 1-10, 11-20, etc.) if either the symptom severity or
20 the level of functioning met the criteria. Am. Psychiatric Ass’n, DIAGNOSTIC & STATISTICAL MANUAL
21 OF MENTAL DISORDERS 32 (4th ed. (Text Revision) 2000) [“DSM-IV-TR”]; *see id.* at 33 (indicating that,
22 when an “individual’s symptom severity and level of functioning [were] discordant, the final GAF rating
23 always reflect[ed] the worse of the two”). The GAF methodology was considered “useful in tracking the
clinical progress of individuals in global terms, using a single measure” with respect to “psychological,
social, and occupational functioning,” but not as to physical impairments or environmental limitations.
Id. at 32. The DSM-5 has moved away from the axial diagnosis method and discarded the GAF scale
because of “its conceptual lack of clarity” and “questionable psychometrics in routine practice.” DSM-5
at 16.

¹⁰ Plaintiff has separately stated that five of ALJ Morris’s thirteen favorable decisions during the period at
issue referred to DSHS. Thus, of the twelve comparator decisions, four must have mentioned DSHS, and
whether other favorable decisions involved claimants receiving DSHS benefits is unknown. In a different

1 Plaintiff simply has not provided sufficient information from which to insinuate,
2 on the basis of outcome ratios, hostility on the part of ALJ Morris toward applicants for,
3 or recipients of, DSHS benefits and/or persons measured on the now-obsolete GAF scale.
4 In addition, given the small sample sizes at issue (*i.e.*, 5 of 34 versus 8 of 15, and 1 of 17
5 versus 12 of 32), the variations plaintiff has calculated in the rates of ALJ Morris's
6 favorable decisions are not statistically significant. Moreover, plaintiff's argument that
7 the 49 prior decisions would, if added to the administrative record in this case,
8 demonstrate "bias" against her on the basis of "DSHS/GAF" status is meritless given
9 that plaintiff does not even allege that ALJ Morris improperly used or ignored her
10 GAF score.¹¹ *See id.* at 7 & 9 (docket no. 10 at 12 & 14).

11 **3. References to "Welfare"**

12 Plaintiff challenges specific language contained in three of the 49 prior decisions.
13 Two of the three decisions issued by ALJ Morris included a finding, based in part on the
14 receipt of "food stamps," that the claimant might lack "motivation and a sense of urgency
15 to find work." *See* AR 256 (quoting Decisions Nos. 7 and 17). The other decision at
16 issue had similar language, but was based in part on the claimant's receipt of General

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18 context, plaintiff represented that, in "more than 20" of the 49 decisions at issue, GAF measurements
19 were used. Pla.'s Brief at 7 (docket no. 10 at 12). Thus, in addition to the 17 decisions relating to persons
20 that plaintiff describes as "DSHS/GAF" claimants, at least three other decisions discussed GAF scores.
Plaintiff has not indicated whether these three (or more) cases in which GAF figures were mentioned had
favorable or unfavorable outcomes.

21 ¹¹ An examining psychologist graded plaintiff as a 55 on the GAF scale, *see* AR 433, which was within
22 the range reserved for "[m]oderate symptoms (e.g., flat affect and circumstantial speech, occasional
panic attacks) **OR moderate difficulty in social, occupational, or school functioning** (e.g., few friends,
23 conflicts with peers or co-workers)," DSM-IV-TR at 34 (emphasis in original). ALJ Morris's decision
does not mention plaintiff's GAF score or its ramifications.

1 Assistance – Unemployable (“GAU”) benefits. See AR 256-57 (quoting Decision No. 4).
2 In reproaching ALJ Morris for improperly drawing inferences from the receipt of food
3 stamps or GAU benefits, plaintiff reasons that “welfare” is provided only to poor
4 individuals who are determined by DSHS to be “disabled,” and that the inability of an
5 individual to work, as a result of a “disability,” cannot logically support the conclusion
6 that the person lacks motivation to find employment.

7 Plaintiff relies on a false premise. Many DSHS or “welfare” benefits are available
8 to individuals who are poor, but who are not “disabled.” See WAC Chapter 388-400
9 (summarizing assistance programs). For example, Washington’s Basic Food program
10 subsidies (*i.e.*, “food stamps”) can be obtained by those who satisfy citizenship or alien
11 status, residency, income, and work requirements. WAC 388-400-0040. Disability is not
12 among the eligibility criteria for food stamps, but disability can serve as a basis for an
13 exemption from the income and work requirements. *Id.*; see WAC 388-444-0010(7).
14 Other grounds for exemption from work requirements include enrollment in an accredited
15 school, training program, or institution of higher education, caring for a dependent child
16 under the age of six or for an incapacitated adult, and regular participation in a drug
17 addiction or alcoholic treatment and rehabilitation program. WAC 388-444-0010(2), (6),
18 & (8). Thus, the receipt of food stamps is not necessarily tied to the presence of a
19 “disability.”

20 In addition, under the GAU program, which was in effect until 2010, an individual
21 could receive benefits if he or she was merely “incapacitated,” meaning he or she could
22 not be gainfully employed as a result of a physical or mental impairment that was
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1 expected to continue for only 90 or more days (as opposed to the twelve or more months
2 required under the Social Security Act to establish “disability”). See WAC 388-448-0001
3 (2009).¹² GAU benefits could continue, even when SSI benefits were never sought, if
4 the recipient demonstrated “no material improvement” in his or her “medical or mental
5 condition.” See RCW 74.04.005(6)(g) (2009).¹³ Thus, plaintiff’s argument depends on a
6 fallacy, namely that all “welfare” recipients are “disabled,” and she therefore fails to
7 establish that the correlation between the receipt of either food stamps or GAU benefits
8 and a lack of motivation to seek work, which was drawn by ALJ Morris, constitutes
9 evidence of “bias.” More importantly, because ALJ Morris did not, in plaintiff’s case,
10 render any findings concerning possible disincentives for plaintiff to obtain employment,
11 plaintiff has not shown that any such alleged “bias” played a role in the denial of benefits
12 at issue here.

13 **4. Plaintiff’s Citations Are Inapposite**

14 Plaintiff’s reliance on Varney v. Sec’y of Health & Human Servs., 846 F.2d 581,
15 modified by 859 F.2d 1396 (9th Cir. 1988), as support for her request to augment the
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17 ¹² In contrast, to qualify under the current system for the DSHS benefit known as aged, blind, or disabled
18 (“ABD”) cash assistance, a person must be (i) 65 years of age or older, (ii) blind, or (iii) “likely to be
19 disabled.” WAC 388-400-0060(1)(a). For purposes of the ABD program, the term “disabled” or
20 “disability” has essentially the same meaning as under the Social Security Act, namely “the inability to
engage in any substantial gainful activity” because of a “medically determinable physical or mental
impairment” that can be expected to result in death or to last for a continuous period of at least twelve
months. WAC 388-449-0001(1)(c); compare 42 U.S.C. §§ 416(i)(1) & 1382c(a)(3).

21 ¹³ The ABD program, now in effect, terminates cash assistance after a final decision (favorable or not)
22 is made concerning SSI benefits, see RCW 74.62.030(1)(b); WAC 388-449-0150(3), and its immediate
predecessor, Disability Lifeline, imposed a cap on the length of time (24 months in a 60-month period) an
individual could receive benefits, see RCW 74.04.005(5)(h) (2010); see also Elkins v. Dreyfus, 2010 WL
3947499 at *1-*2 (W.D. Wash. Oct. 6, 2010) (summarizing the statutory scheme).

1 administrative record, is misplaced. Plaintiff asserts that she has met both of Varney's
2 "alternative tests" for remand. Pla.'s Brief at 4 (docket no. 10). Varney, however, did
3 not adopt any test. In Varney, the social security claimant sought remand because the
4 first 260 units of the tape recording of her hearing could not be transcribed and another
5 26 passages in the transcript were marked "inaudible." 846 F.2d at 583. The district
6 court denied the claimant's request for remand because she had failed to make a showing
7 that "material evidence was missing from the record." Id.; see also McGlone v Heckler,
8 791 F.2d 1119, 1120 (4th Cir. 1986) ("Whether the transcript is inadequate depends upon
9 the materiality of the omissions. The plaintiff shoulders the burden of showing that some
10 material evidence was not reported or was so incompletely reported that its effect is
11 obscured."). On appeal, the claimant argued that the standard applied by the district
12 court, which came from McGlone, improperly placed on the claimant the burden of
13 producing a complete record, and she asserted that the appropriate test is "whether the
14 record is adequate to allow judicial review." 846 F.2d at 583 (citing Ward v. Heckler,
15 786 F.2d 844, 848 (8th Cir. 1986) (indicating that, "[a]lthough distracting, the gaps [in
16 the transcript] did not interfere with comprehension of the testimony to an extent that
17 would hinder fair review")). The Ninth Circuit did "not decide which of these two
18 standards is the more appropriate because under either one, Varney's argument fail[ed]."
19 Id.

20 Not only did Varney not adopt or articulate a standard for when remand is needed
21 to shore up the administrative record, Varney also involved a specific component of the
22 administrative record, namely the transcript of the hearing, which is not at issue in this
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1 case. The district court cases on which plaintiff relies are similarly distinguishable.
2 In each of the district court cases that plaintiff cites, the items missing from the
3 administrative record were either a sufficiently complete transcript of the hearing or an
4 opinion or exhibit relating specifically to the claimant and on which the ALJ relied in
5 making his or her decision. *See Reynolds v. Colvin*, 2014 WL 5286865 at *6-*7 (N.D.
6 Ind. Oct. 15, 2014); *Parks v. Astrue*, 2011 WL 6211003 at *8 (E.D. Cal. Dec. 14, 2011);
7 *Hill v. Astrue*, 526 F. Supp. 2d 1223, 1230 (D. Kan. 2007); *Barnes v. Barnhart*, 251 F.
8 Supp. 2d 973 (D. Me. 2003); *Bailey v. Heckler*, 576 F. Supp. 621 (D.D.C. 1984); *Stewart*
9 *v. Harris*, 509 F. Supp. 31, 33-34 (N.D. Cal. 1980). These authorities do not support
10 plaintiff's contention that the 49 decisions by ALJ Morris and the twelve psychological
11 or psychiatric evaluations at issue should have been incorporated into the administrative
12 record,¹⁴ and plaintiff's motion for remand to add such items to the administrative record
13 is DENIED.

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17 ¹⁴ In her reply brief, plaintiff discusses an order issued by Magistrate Judge J. Richard Creatura in another
18 case being handled by Schroeter, Goldmark & Bender, namely *Cope v. Colvin*, Case No. C15-1744 JRC.
19 In *Cope*, which seeks review of ALJ Larry Kennedy's denial of social security benefits, 54 prior decisions
20 by ALJ Kennedy were included in the administrative record; the Commissioner's motion to remand the
21 matter to remove the 54 decisions was denied. Order (C15-1744, docket no. 13). *Cope* is not on point.
22 A decision denying remand for the purpose of removing items from the administrative record sheds no
23 light on the question of whether a matter should be remanded with the aim of supplementing the record.
In the order cited by plaintiff, Magistrate Judge Creatura made no ruling concerning whether the 54 prior
decisions at issue support the allegation in *Cope* that ALJ Kennedy is "biased," and if those decisions are
later deemed irrelevant, Magistrate Judge Creatura may simply ignore them. As he observed, "[t]he fact
that there may be extra information in the record does not preclude this Court from conducting a proper
review." *Id.* at 6. Because *Cope* is distinguishable, the Commissioner's motion to strike, docket no. 14,
portions of plaintiff's reply, or in the alternative to permit a surreply, is STRICKEN as moot.

1 **B. Recusal**

2 ALJs are presumed to be unbiased. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th
3 Cir. 2001). This presumption can be rebutted, *id.* at 857-58, but disqualification of an
4 ALJ requires a showing of “actual bias.” *Bunnell v. Barnhart*, 336 F.3d 1112, 1114-15
5 (9th Cir. 2003) (holding that the “appearance of impropriety” standard applicable to
6 federal judges, *see* 28 U.S.C. § 455(a), does not govern ALJs, who are employed by the
7 agency whose actions they review, and who would be required to recuse in every case if
8 “appearance of impropriety” was the measure). Actual bias exists if an ALJ “is
9 prejudiced or partial with respect to any party or has any interest in the matter pending for
10 decision.” 20 C.F.R. §§ 404.940 & 416.1440. Prejudice is demonstrated if “the ALJ’s
11 behavior, in the context of the whole case, was ‘so extreme as to display clear inability to
12 render fair judgment,’” but expressions of “impatience, dissatisfaction, annoyance, or
13 even anger,” which are “within the bounds of what imperfect men and women . . .
14 sometimes display,” do not themselves establish bias. *Rollins*, 261 F.3d at 858 (quoting
15 *Liteky v. United States*, 510 U.S. 540, 551, 555-56 (1994)).

16 Plaintiff contends that ALJ Morris should have recused, but she points to no
17 instances in which ALJ Morris manifested a lack of impartiality. Indeed, the transcript of
18 the hearing reveals that ALJ Morris did not utter even a harsh word, and it contains no
19 evidence of bias. In his decision, ALJ Morris indicated that he did not have a personal
20 interest in this matter, was not acquainted with plaintiff, did not know anyone in common
21 with her, and did not learn about her from an extrajudicial source. AR 16. Plaintiff does
22 not dispute the accuracy of these representations.

1 Instead, plaintiff asserts that ALJ Morris misinterpreted Section I-2-1-60 of the
2 Hearings, Appeals, and Litigation Law Manual. This provision recites concrete examples
3 of proper grounds for recusal, including situations in which an ALJ and a claimant are
4 acquainted with the same third person or an ALJ has knowledge about a claimant from an
5 extrajudicial source. The provision also indicates that an ALJ may withdraw from a case
6 if the “ALJ believes his or her participation in the case would give an appearance of
7 impropriety.” HALLEX I-2-1-60(A). Plaintiff assigns error to ALJ Morris’s exclusive
8 focus on the specific criteria for recusal and his silence regarding the more general
9 “appearance of impropriety” basis for disqualification. Plaintiff does not, however,
10 explain why ALJ Morris was required to discuss the “appearance of impropriety” test
11 when the Ninth Circuit has indicated that it does not apply. *See Bunnell*, 336 F.3d at
12 1114-15. Moreover, plaintiff’s argument that ALJ Morris was required to recuse on
13 “appearance of impropriety” grounds lacks merit for the same reason that her motion
14 for remand to expand the administrative record was denied. Plaintiff’s request that
15 ALJ Morris’s decision be reversed on the basis of disqualification is DENIED.

16 **C. Subpoena**

17 Plaintiff assigns error to ALJ Morris’s refusal to subpoena Howard Platter, M.D., a
18 non-examining medical consultant for the Division of Disability Determination Services
19 (“DDS”), a state agency that, pursuant to federal regulations, makes initial assessments
20 concerning eligibility for DIB and SSI benefits and processes reconsideration requests.
21 Dr. Platter became involved with plaintiff’s case when she, without legal representation,
22 sought reconsideration of the initial denial of benefits. *See* AR 98-107 (Ex. 7A) & 108-
23

1 20 (Ex. 8A). In conjunction with DDS examiner Jeffrey Petruso, Dr. Platter concluded,
2 based on the medical evidence in the record, that plaintiff had the residual functional
3 capacity to lift and/or carry 20 pounds occasionally (meaning “cumulatively 1/3 or less
4 of an 8-hour day”) and 10 pounds frequently (meaning “cumulatively more than 1/3 [and]
5 up to 2/3 of an 8-hour day”), to stand about six hours in an 8-hour workday, and to sit
6 about six hours in an 8-hour workday. AR 104, 114-15; see 20 C.F.R. §§ 404.1527(e) &
7 416.927(e) (outlining the procedures applicable when a state agency examiner makes an
8 initial or reconsideration determination alone or in conjunction with a state agency
9 medical or psychological consultant).

10 Although ALJ Morris was required to consider Dr. Platter’s views, he was not
11 bound by them. 20 C.F.R. §§ 404.1527(e)(2)(i) & 416.927(e)(2)(i). ALJ Morris assigned
12 “some evidentiary weight” to Dr. Platter’s assessment because it was “largely consistent
13 with the claimant’s longitudinal treatment history and performance on physical
14 examinations,” AR 24, but he added more restrictions in light of (i) plaintiff’s right wrist
15 de Quervain’s tenosynovitis, which was diagnosed after Dr. Platter issued his opinion,
16 see AR 21 (finding that plaintiff could lift or carry 20 pounds occasionally and 10 pounds
17 frequently with her left hand, but only “docket files, ledgers, and small tools” with her
18 right hand), and (ii) plaintiff’s complaints of pain and the views of her treatment
19 provider, see id. at 21 & 24 (concluding that plaintiff could stand or walk for only four
20 hours, rather than six hours, in an 8-hour workday). Plaintiff has not quarreled with
21 ALJ Morris’s adjustment concerning the amount of time she can stand or walk each day,
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1 or with the assessments of ALJ Morris and Dr. Platter (as well as the DDS examiner)
2 regarding her ability to sit for six hours in an 8-hour shift.

3 Plaintiff's assertion that ALJ Morris should have subpoenaed Dr. Platter relates
4 solely to the quantum of weight she was deemed capable of lifting or carrying with her
5 left hand. Plaintiff argues that ALJ Morris's conclusion she can lift or carry 20 pounds
6 occasionally and 10 pounds frequently with her left hand, which would be consistent with
7 the physical exertion requirements for "light work," see 20 C.F.R. §§ 404.1567(b) &
8 416.967(b), is contradicted by her treatment provider's evaluation concerning her lifting
9 and carrying strength, see AR 441-42 (Ex. 10F). Plaintiff does not, however, challenge
10 ALJ Morris's conclusion that she can lift and carry "docket files, ledgers, and small
11 tools," which meets the lifting and carrying criteria for "sedentary work." See 20 C.F.R.
12 §§ 404.1567(a) & 416.967(a). Because ALJ Morris based his decision that plaintiff can
13 make an adjustment to other work on the number of "sedentary," as opposed to "light
14 work," jobs available in the national economy for someone of her age, education, work
15 experience, and residual functional capacity, see AR 26, plaintiff fails to show that any
16 error in not subpoenaing Dr. Platter was prejudicial.

17 In addition, plaintiff has not demonstrated that she was entitled to have Dr. Platter
18 subpoenaed. When "necessary for the full presentation of a case," an ALJ may either
19 sua sponte or at the request of a party issue subpoenas for the appearance and testimony
20 of witnesses and/or the production of documents. 20 C.F.R. §§ 404.950(d)(1) &
21 416.1450(d)(1). An ALJ has discretion to decide when a subpoena and related cross-
22 examination is warranted. Solis v. Schweiker, 719 F.2d 301, 302 (9th Cir. 1983); see
23

1 Tarter v. Astrue, 2012 WL 1631968 at *3 (W.D. Wash. Apr. 17, 2012) (report and
2 recommendation to reverse and remand), adopted 2012 WL 1631887 (W.D. Wash.
3 May 9, 2012). An ALJ abuses such discretion, and violates the claimant’s procedural
4 due process rights, if he or she does not subpoena or permit cross-examination of an
5 examining physician who is a “crucial witness” and “whose findings substantially
6 contradict the other medical testimony.” Solis, 719 F.2d at 301. ALJ Morris did not
7 abuse his discretion or violate plaintiff’s procedural due process rights in refusing to
8 subpoena Dr. Platter.

9 Dr. Platter was not a “crucial witness.” He neither treated nor examined plaintiff.
10 He merely reviewed the medical evidence in the record and formulated opinions that
11 ALJ Morris could and did (in part) disregard. See 20 C.F.R. §§ 404.1527(e)(2) &
12 416.927(e)(2). Cross-examination of Dr. Platter would have produced no evidence
13 concerning plaintiff’s lifting and carrying abilities, and would have instead focused
14 primarily on a form completed by plaintiff’s treating physician, which ALJ Morris could
15 (and did) himself interpret. The form, which was signed in April 2011 by Angel Lin,
16 M.D., indicated that plaintiff’s impairment was expected to last three months or “possibly
17 longer,” that plaintiff could lift “0-5 pounds” occasionally and frequently, and that she
18 had “some weakness in ® arm,” making her “unable to lift more than 5 lbs.” AR 441-42
19 (Ex. 10F).

20 Dr. Platter’s findings did not “substantially contradict” the form in question or the
21 other medical testimony. Dr. Platter reached his conclusions in late October 2012,
22 AR 105 & 116, over a year after the period during which Dr. Lin predicted plaintiff’s
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1 right arm weakness would persist. Although the April 2011 form offers no explanation,
2 the office visit notes from approximately the same timeframe indicate that plaintiff was
3 complaining of right shoulder pain, *see* AR 407-11, as opposed to the symptoms of
4 de Quervain’s tenosynovitis, which was not diagnosed in her left wrist until early 2012,
5 AR 386-89, and which did not develop in her right wrist until 2013, *see* AR 455-56,
6 458-60. In July and again in September 2011, Dr. Lin referred plaintiff to physical
7 therapy to address lower back and neck pain and tingling in her left hand and foot.
8 AR 401-03; *see* AR 390-92. No further mention was made of right shoulder pain or right
9 arm weakness, and Dr. Platter could have reasonably inferred that the issue had resolved
10 as anticipated within the three-month period between April and July 2011.

11 Plaintiff commenced physical therapy in October 2011, but in November 2011,
12 she telephonically requested to cancel future appointments and be discharged from
13 physical therapy. AR 361-68. As a result, plaintiff’s physical therapist issued a
14 discharge report; according to the report, at the end of the last physical therapy session
15 in late October 2011, plaintiff “reported no pain or tingling in [her] fingers” and
16 demonstrated an increased range of motion in her shoulders and thoracic spine. AR 362.
17 This evidence does not “substantially contradict,” but rather supports, Dr. Platter’s
18 estimate that plaintiff can lift and carry the amount of weight associated with “light
19 work.” Plaintiff’s argument that she was not afforded procedural due process because
20 Dr. Platter was not subpoenaed lacks merit.

1 **D. Dr. Lin's Opinion**

2 For similar reasons, plaintiff cannot prevail on her assertion that ALJ Morris gave
3 insufficient weight to the form Dr. Lin completed in April 2011. With regard to lifting
4 and carrying restrictions, ALJ Morris discounted Dr. Lin's opinion only with respect to
5 plaintiff's left upper extremity; he did so in light of medical evidence, see AR 455, and
6 plaintiff's testimony, see AR 52, that the de Quervain's tenosynovitis on her left side had
7 resolved. AR 24. The Court is satisfied that Dr. Lin's assessment concerning plaintiff's
8 lifting and carrying strength had expired on its own terms and was contradicted by more
9 recent evidence, and that ALJ Morris articulated "specific and legitimate reasons" based
10 on "substantial evidence in the record" for disregarding in part the April 2011 form. See
11 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).

12 The Court is also persuaded that, even if ALJ Morris misjudged how much
13 plaintiff can lift and carry with her left hand, such overestimate is harmless because
14 ALJ Morris considered only "sedentary" occupations in his step five analysis. See
15 AR 26. As he observed, if plaintiff had the residual functional capacity "to perform the
16 full range of light work, a finding of 'not disabled' would be directed by Medical-
17 Vocational Rule 202.21," but plaintiff's "ability to perform all or substantially all of the
18 requirements of this level of work has been impeded by additional limitations." Id.
19 Accordingly, ALJ Morris tailored the questions he posed to the vocational expert. See
20 AR 64-66 (framing hypotheticals that included, alternatively, sedentary-level lift-and-
21 carry restrictions for the right hand, and reduced "light work" lift-and-carry limits of ten
22 pounds occasionally and five pounds frequently). In response to plaintiff's counsel's
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1 inquiry, the vocational expert explained that the “sedentary” jobs he had identified in his
2 answers to ALJ Morris would also fit a situation in which an individual could lift and
3 carry only five pounds or less. AR 72. ALJ Morris’s treatment of Dr. Lin’s April 2011
4 opinion is simply not a ground for reversal.

5 **E. Dr. Jansen’s Opinion**

6 Plaintiff was examined in mid-October 2012 by Linda Jansen, Ph.D., a consulting
7 psychologist for DDS, after failing to appear on three prior occasions. *See* AR 423, 428,
8 & 429 (Exs. 4F, 6F, & 7F). Dr. Jansen observed that plaintiff (i) had “fair” eye contact,
9 (ii) had a generally normal rate and volume of speech, although at times she spoke
10 rapidly, (iii) exhibited a “generally linear” stream of mental activity, (iv) was able to
11 follow the conversation, although her answers were often indirect and her responses
12 sometimes rambling and repetitive, (v) was alert and oriented to person, place, and time,
13 although she was unsure of the exact date, (vi) properly identified the current season as
14 “fall” and correctly named the current and previous presidents, as well as the current
15 governor, (vii) registered three of three objects and recalled them four minutes later,
16 (viii) correctly spelled the word “world” backwards and accurately subtracted serial 7s,
17 (ix) followed a simple three-step command, and (x) performed in the average range for
18 her age on Trail Making tasks. AR 430-31. According to Dr. Jansen, plaintiff’s
19 performance on the Trail Making tasks, one of which required “making cognitive shifts”
20 or “being mentally flexible,” suggested that plaintiff “has little difficulty with attention
21 and concentration.” AR 431.

1 Dr. Jansen described plaintiff's prognosis as "guarded." AR 433. Relying on
2 plaintiff's complaints of chronic pain (historically managed with narcotics), homelessness
3 (forcing her to stay with her ex-husband), and symptoms of depression and anxiety
4 (*i.e.*, lack of energy, loss of sleep and appetite, anhedonia, restlessness, irritability, poor
5 concentration, self-isolation, rumination, perseveration, and hopelessness), Dr. Jansen
6 concluded that plaintiff "would have difficulty performing complex work tasks," that
7 plaintiff's tendency to isolate herself "would interfere with [her] ability to work with the
8 public or with co-workers on a continual basis," that plaintiff "would be unable to cope
9 with the usual stress encountered in a competitive work setting," and that plaintiff's
10 "chances for a return to employment are not likely to improve without improvement in
11 pain management." AR 432-34.

12 In his description of plaintiff's residual functional capacity, ALJ Morris included
13 some of the limitations outlined by Dr. Jansen. ALJ Morris concluded that plaintiff
14 "must avoid public contact," but could have "frequent contact with five or fewer
15 coworkers." AR 21. He further indicated that plaintiff can "understand and remember
16 short simple instructions," as opposed to complex ones, and can "perform tasks with an
17 emphasis on objects and things rather than people." *Id.* ALJ Morris, however, assigned
18 "little weight," AR 24, to Dr. Jansen's opinion that depression and pain "contribute to
19 difficulty with attention, concentration, and cognitive flexibility, which would interfere
20 with [plaintiff's] ability to persist through a normal work day or to respond appropriately
21 to changes in the workplace," AR 433. As a result, ALJ Morris assessed plaintiff as
22 having the residual functional capacity to tolerate "occasional changes in the work
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1 environment.” AR 21. ALJ Morris also discounted Dr. Jansen’s prediction that plaintiff
2 would be unable to cope with typical work stresses and would be unlikely to return to
3 employment without better pain management. AR 24.

4 Plaintiff asserts that ALJ Morris erred in disregarding in part Dr. Jansen’s opinion.
5 The Court disagrees. As indicated by ALJ Morris, the record reveals “very little if any
6 treatment” for mental health issues. See AR 23. In September 2011, plaintiff was seen
7 by a naturopathic doctor, Jo Ann M. Dechant, ND, for menopausal symptoms, which
8 included mood swings, “crying over nothing,” being easily irritated, and experiencing
9 anxiety shortly before menses. AR 393-95. At that time, Dr. Dechant observed “[n]o
10 unusual anxiety or evidence of depression.” AR 394. Although depression was
11 mentioned in the reports concerning plaintiff’s visits to Valley Medical Center (“VMC”)
12 in September 2008 and October 2009, plaintiff’s chief complaint on each of those
13 occasions was back pain, and neither of the treatment providers involved actually
14 evaluated plaintiff’s mental health; they merely noted plaintiff’s “history” of depression.
15 AR 357-60.

16 In September 2008, VMC emergency room (“ER”) physician James R.
17 Fackelman, M.D. wrote that plaintiff’s “mother and sister are getting a prescription
18 for Zoloft, and giving the medicine to her.” AR 359. Plaintiff apparently told
19 Dr. Fackelman that her “own last personal prescription of Zoloft was ‘6 to 7 months
20 ago.’” Id. In October 2009, VMC ER physician Danielle C. Schindler, M.D. indicated
21 that plaintiff “requested a refill on her Celexa as she is currently having trouble finding a
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1 primary care physician.” AR 358.¹⁵ Given Dr. Dechant’s assessment in 2011 that
2 plaintiff showed no signs of suffering from depression, and Dr. Fackelman’s and
3 Dr. Schindler’s notations, which both indicated essentially that plaintiff had not, as of
4 September 2008 and October 2009, been receiving any medical care for depression,
5 Dr. Jansen’s opinion concerning the potentially debilitating effects of depression was not
6 “uncontradicted.” Thus, rather than being required to provide “clear and convincing”
7 reasons for rejecting Dr. Jansen’s views, ALJ Morris needed to articulate only “specific
8 and legitimate reasons” for doing so, which are supported by “substantial evidence in the
9 record.” *See Lester*, 81 F.3d at 830-31.

10 The Court is satisfied, however, that ALJ Morris met both standards. ALJ Morris
11 aptly observed that Dr. Jansen’s opinion was internally inconsistent. Dr. Jansen’s
12 findings that plaintiff tested within the average range for her age on Trail Making tasks
13 and exhibited little difficulty with attention and concentration cannot be reconciled with
14 her conclusion that plaintiff’s inability to pay attention and concentrate, as a result of
15 depression and pain, would inhibit her from persisting through a normal work day or
16 responding appropriately to changes in the workplace. *See Bayliss v. Barnhart*, 427 F.3d
17 1211, 1216 (9th Cir. 2005) (holding that a discrepancy between the clinical findings and
18 the opinion of a treating or examining physician constitutes a “clear and convincing”
19 reason for not relying on the opinion). In addition, as ALJ Morris noted, Dr. Jansen’s
20 views about the severity of plaintiff’s mental health issues were out of proportion to, and

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22 ¹⁵ Dr. Fackelman prescribed a one-month supply of the antidepressant Zoloft, AR 359, but Dr. Schindler
23 appears to have declined plaintiff’s refill request as to the antidepressant Celexa, *see* AR 357-58.

1 actually contraindicated by, the scant evidence concerning any diagnosis of, or treatment
2 for, anxiety or depression. *See Chilcote v. Astrue*, 2013 WL 2033540 at *5 (D. Ore.
3 Apr. 8, 2013) (“Specific, legitimate reasons for disregarding a treating or examining
4 physician’s opinion include the absence of regular medical treatment during the alleged
5 period of disability” (citing *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d
6 1453, 1464 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989))).

7 Finally, ALJ Morris appropriately recognized that Dr. Jansen’s assessment was
8 based, perhaps in large part, on plaintiff’s complaints of pain and an insufficient pain
9 management plan,¹⁶ about which Dr. Jansen, as a psychologist, was not qualified to
10 opine, as she herself acknowledged, *see* AR at 434 (“This examiner defers to the medical
11 provider as to Ms. Yost’s physical limitations due to pain”). *See also Jason v.*
12 *Colvin*, 2015 WL 509804 at *12 (W.D. Wash. Feb. 6, 2015) (“Where a provider renders
13 an opinion that is outside the scope of her treatment expertise and/or specialty, the ALJ
14 does not err in according that opinion little or no weight.”). ALJ Morris gave
15 Dr. Jansen’s opinion its proper weight.¹⁷

16 Plaintiff told Dr. Jansen that “pain interferes with doing most things,” but that she had not recently seen
19 her primary care physician about her pain, having taken a “why bother” attitude. AR 433.

20 ¹⁷ ALJ Morris also suggested that Dr. Jansen’s reliance on plaintiff’s self-reporting constituted a basis for
21 ascribing “little weight” to her opinion because ALJ Morris found plaintiff “not entirely credible.” *See*
22 AR 25. Although an ALJ may reject a medical opinion “if it is based ‘to a large extent’ on a claimant’s
23 self-reports that have been properly discounted as incredible,” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041
(9th Cir. 2008), the Court declines to address whether such reason was sound in this case in light of the
other three grounds for discounting Dr. Jansen’s opinion that were articulated by ALJ Morris, as well as
plaintiff’s challenge to ALJ Morris’s assessment of her credibility.

1 **F. Plaintiff's Credibility**

2 ALJ Morris concluded that plaintiff's "medically determinable impairments could
3 reasonably be expected to cause some of the alleged symptoms," but that "her statements
4 concerning the intensity, persistence, and limiting effects of these symptoms are not
5 entirely credible" for four reasons: (i) such statements are inconsistent with plaintiff's
6 "independent daily activities and social interaction," (ii) such statements are not
7 substantiated by medical evidence, (iii) plaintiff appeared to have been engaged in
8 drug-seeking behavior, and (iv) plaintiff misrepresented her use of substances. AR 22-24.
9 Plaintiff does not directly challenge these grounds for discounting her credibility, but
10 instead argues that ALJ Morris failed to sufficiently catalog which statements regarding
11 which symptoms he found not credible, citing *Brown-Hunter v. Colvin*, 806 F.3d 487
12 (9th Cir. 2015).¹⁸ Plaintiff's reliance on *Brown-Hunter* is misplaced.

13 In *Brown-Hunter*, the Ninth Circuit reiterated that, "[t]o ensure that our review of
14 the ALJ's credibility determination is meaningful, and that the claimant's testimony is
15 not rejected arbitrarily, we require the ALJ to specify which testimony she finds not
16 credible, and then [in the absence of a conclusion that the claimant is malingering]
17 provide clear and convincing reasons, supported by the evidence in the record, to support
18 that credibility determination." *Id.* at 489; *see id.* at 492-93. In *Brown-Hunter*, the ALJ
19 did not specifically identify any inconsistencies between the claimant's testimony and the
20 record; rather, "she simply stated her non-credibility conclusion and then summarized the

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22 ¹⁸ Plaintiff cited a version of the opinion in *Brown-Hunter* (798 F.3d 749) that was withdrawn and
23 superseded on denial of rehearing at least two months before she filed her opening brief.

1 medical evidence supporting her [residual functional capacity] determination.” *Id.* at
2 494. ALJ Morris has done so much more.

3 ALJ Morris described in detail plaintiff’s various activities of daily living,¹⁹ which
4 he concluded were inconsistent with her assertion that she has disabling functional
5 limitations. *See* AR 20-21. He also highlighted medical evidence from throughout the
6 period of alleged disability indicating that plaintiff exhibited no loss of muscle strength or
7 decrease in her range of motion, was able to ambulate without assistance, experienced
8 complete resolution of the de Quervain’s tenosynovitis in her left wrist, was discharged
9 from physical therapy prescribed for back and neck pain at her own request, suggesting
10 that her symptoms are less severe than she alleges, and displayed no signs of unusual
11 anxiety or evidence of depression. *See* AR 22-23.²⁰ In addition, ALJ Morris referred to
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13 ¹⁹ The Court agrees with plaintiff that ALJ Morris’s finding about her “taking care of her elderly
14 grandmother and selling Avon,” AR 20, misstates what plaintiff told Dr. Jansen during the psychological
15 diagnostic interview. Plaintiff explained to Dr. Jansen that her mother, who generally tended to her
16 grandmother and sold Avon products, had been admitted to the hospital, and that, as a result, plaintiff had
17 been delivering Avon products for her mother. AR 431. ALJ Morris’s misunderstanding is harmless;
18 although plaintiff was not “selling” Avon products, she was delivering them for her mother, which is
19 consistent with plaintiff’s testimony that she is able to drive, that she sees her mother, who lives about
20 10-15 minutes away, every other day, that she drives, about once a month, when she gets her food stamps,
21 to the Fred Meyer near her ex-husband’s house in Renton, where she was staying, and that she visits her
22 sister, who lives in the Northgate area, on occasion, for an entire day at a time, but does not go often
23 because she “can’t afford the gas” and doesn’t “want to be driving on the freeway.” AR 54, 56-58, 60-61.

²⁰ As summarized by ALJ Morris, the record reflects that, in September 2008, plaintiff had “normal motor
strength and reflexes” and “no back pain with sitting.” AR 22; *see* AR 359. In October 2010, although
plaintiff complained of back pain, “she denied loss of muscle strength or motor control.” AR 22; *see*
AR 355; *see also* AR 356 (“The patient moves all of her extremities, ambulates without assistance, [and
is] able to ambulate on her heels and toes. Muscle strength is 5/5 and equal in both upper and lower
extremities.”). In December 2010, plaintiff “moved all extremities with no arm weakness or neurologic
findings.” AR 22; *see* AR 353. In April 2011, plaintiff had “4+/5 strength in her right upper extremity
and 5/5 strength in her left upper extremity with full range of motion in her shoulders, elbows, and
hands.” AR 22; *see* AR 405-06. In July 2011, plaintiff reported back pain and tingling in her left hand

1 plaintiff's own admissions to treatment providers concerning drug-seeking behavior,²¹
2 AR 23-24, and relied on laboratory results contradicting plaintiff's denial of cocaine use,
3 AR 24.²² ALJ Morris provided specific, clear and convincing reasons, supported by
4 medical evidence, for doubting plaintiff's credibility.

6 and foot, but the result of a "neurovascular examination was normal with no numbness or weakness."
7 AR 22; *see* AR 401-03. In September 2011, plaintiff's back pain was described as "mild, non-radiating,
8 and stable." AR 22; *see* AR 390-92. Plaintiff's brief period of physical therapy was preceded by an
9 emergency room visit in October 2011 for shoulder pain, during which the treatment provider "elected not
10 to prescribe narcotics." AR 22-23; *see* AR 349-50. After two physical therapy sessions in October 2011,
11 plaintiff reported no pain or tingling in her fingers and only slight restriction of joint mobility; she later
12 cancelled all future appointments. AR 23; *see* AR 362-64. The de Quervain's tenosynovitis in plaintiff's
13 left wrist was diagnosed in February 2012, treated with an injection, and resolved by April 2013, when
14 the same symptoms appeared in plaintiff's right wrist. *See* AR 23; *see also* AR 386-89, 445-48. In
15 April 2013, plaintiff was treated for a wound in her left armpit, as well as the right wrist de Quervain's
16 tenosynovitis; at that time, her right wrist "had full range of motion without inflammation, erythema,
17 warmth, or weakness." AR 23; *see* AR 445-51. Although the report from the first of plaintiff's two visits
18 with Dr. Lin in April 2013 mentions a depressive disorder not otherwise specified, the report contains no
19 discussion other than an indication that the disorder is considered chronic and that a refill was provided
20 for the antidepressant citalopram (Celexa). AR 449. In June 2013, plaintiff told a treatment provider that,
21 for a few months, she had been taking 1.5 times the regular dosage of Celexa. AR 467. In July 2013,
22 plaintiff reported that she had decreased her intake of Celexa to the prescribed amount of 40 mg per day
23 and had not experienced any increased depression. AR 464; *see* AR 23. The treatment notes from both
June and July 2013 indicate that plaintiff exhibited "no unusual anxiety or evidence of depression." *See*
AR 23; *see also* AR 465, 469.

21 ²¹ In addition to plaintiff's admission to Dr. Fackelman that she was taking Zoloft prescribed to her
22 mother and sister, AR 359, ALJ Morris cited plaintiff's statement to Dr. Lin in September 2010 that she
23 had self-medicated with her mother's Vicodin and her sister's Xanax. *See* AR 23-24; *see also* AR 412.
In addition, ALJ Morris referenced plaintiff's failed attempt in January 2011 to obtain a new prescription
for Percocet and an injection of Toradol (ketorolac tromethamine), a nonsteroidal anti-inflammatory drug
("NSAID"). AR 24; *see* AR 407-08. In January 2011, plaintiff told a nurse that she had been taking
double the dose of Percocet because the prescribed amount of one tablet every six hours "did not help."
AR 407. Pursuant to Dr. Lin's direction, plaintiff was asked to provide a urine sample for toxicology
screening, but plaintiff instead left the clinic, stating that she would "go to emergency room." AR 408.

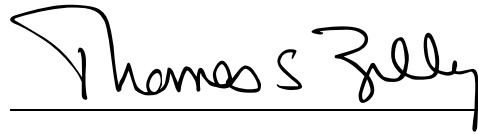
21 ²² In November 2009, plaintiff had her first appointment with Dr. Lin, who made the observation that
22 plaintiff, who was seeking a "refill of narcotics," exhibited "exaggerated pain behavior." *See* AR 22; *see*
23 *also* AR 416-17. A urine toxicology screening was performed that day, and plaintiff tested positive for
cocaine and opiates. AR 418. A little less than three years later, during the psychological diagnostic
interview with Dr. Jansen in October 2012, plaintiff indicated that she had used cocaine only during her
first marriage, AR 432, which ALJ Morris calculated as being more than a decade ago, *see* AR 24; *see*
also AR 431 (indicating that plaintiff's first marriage lasted four years and her second marriage lasted
seventeen years).

1 **Conclusion**

2 For the foregoing reasons, the Commissioner's denial of DIB and SSI benefits is
3 **AFFIRMED**. The Clerk is **DIRECTED** to enter judgment accordingly and to send a copy
4 of this Order to all counsel of record.

5 **IT IS SO ORDERED.**

6 **DATED** this 24th day of May, 2016.

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9 Thomas S. Zilly
10 United States District Judge
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