

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 SUCHAYA SUWANCHATREE,

9 Plaintiff,

10 v.

11 NANCY A. BERRYHILL, Deputy  
Commissioner of Social Security for  
Operations,

12 Defendant.

CASE NO. C17-1762-MAT

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

13  
14 Plaintiff Suchaya Suwachatree proceeds through counsel in her appeal of a final decision  
15 of the Commissioner of the Social Security Administration (Commissioner). The Commissioner  
16 denied plaintiff's application for Supplemental Security Income (SSI) after a hearing before an  
17 Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative  
18 record (AR), and all memoranda of record, this matter is AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1975.<sup>1</sup> She graduated high school and attended college for  
21 two years, both while living in Thailand. (AR 37.) She has past relevant work as a cook. (AR  
22 23-24.)

23  

---

<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 Plaintiff filed an SSI application in April 2014, alleging disability beginning March 24,  
2 2014. (AR 141.) The application was denied at the initial level and on reconsideration.

3 On April 19, 2016, ALJ Mary Gallagher Dilley held a hearing, taking testimony from  
4 plaintiff and a vocational expert (VE). (AR 30-59.) On August 1, 2016, the ALJ issued a decision  
5 finding plaintiff not disabled. (AR 13-25.)

6 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review on  
7 September 18, 2017 (AR 1), making the ALJ's decision the final decision of the Commissioner.  
8 Plaintiff appealed this final decision of the Commissioner to this Court.

### 9 **JURISDICTION**

10 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

### 11 **DISCUSSION**

12 The Commissioner follows a five-step sequential evaluation process for determining  
13 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
14 be determined whether the claimant is gainfully employed. The ALJ found plaintiff had not  
15 engaged in substantial gainful activity since April 1, 2014, the SSI application date. At step two,  
16 it must be determined whether a claimant suffers from a severe impairment. The ALJ found  
17 plaintiff's lumbar degenerative disc disease, depression, and posttraumatic stress disorder (PTSD)  
18 severe. Step three asks whether a claimant's impairments meet or equal a listed impairment. The  
19 ALJ found plaintiff's impairments did not meet or equal the criteria of a listed impairment.

20 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
21 residual functional capacity (RFC) and determine at step four whether the claimant has  
22 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to perform  
23 light work as defined in 20 C.F.R. § 416.967(b), with the following limitations: she can lift and/or

1 carry twenty pounds occasionally and ten pounds frequently; she can stand and/or walk and can  
2 sit for about six hours in an eight-hour day, but must be able to alternate between sitting and  
3 standing briefly every hour; she cannot climb ladders, ropes, or scaffolds, and can occasionally  
4 stoop and crouch; she must avoid concentrated exposure to vibration; and she can perform simple,  
5 routine tasks and can have occasional and superficial contact with coworkers. With that  
6 assessment, the ALJ found plaintiff unable to perform her past relevant work.

7 If a claimant demonstrates an inability to perform past relevant work, or has no past  
8 relevant work, the burden shifts to the Commissioner to demonstrate at step five that the claimant  
9 retains the capacity to make an adjustment to work that exists in significant levels in the national  
10 economy. With the assistance of the VE, the ALJ found plaintiff capable of performing other jobs,  
11 such as work as an assembler, basket filler, and egg sorter/handler.

12 This Court's review of the ALJ's decision is limited to whether the decision is in  
13 accordance with the law and the findings supported by substantial evidence in the record as a  
14 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). *Accord Marsh v. Colvin*, 792 F.3d  
15 1170, 1172 (9th Cir. 2015) ("We will set aside a denial of benefits only if the denial is unsupported  
16 by substantial evidence in the administrative record or is based on legal error.") Substantial  
17 evidence means more than a scintilla, but less than a preponderance; it means such relevant  
18 evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v.*  
19 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of  
20 which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
21 F.3d 947, 954 (9th Cir. 2002).

22 Plaintiff argues the ALJ erred in assessing medical opinions. She also asserts error in the  
23 RFC assessment and conclusion at step five. Plaintiff requests remand for an award of benefits or,

1 in the alternative, for further administrative proceedings. The Commissioner argues the ALJ's  
2 decision has the support of substantial evidence and should be affirmed.

### 3 Medical Opinion Evidence

4 Plaintiff avers error in the ALJ's consideration of medical opinions from examining  
5 psychologist Dr. Don Schimmel, treating psychiatrist Dr. John Sindorf, and mental health  
6 counselor Dawn Finney. In general, more weight should be given to the opinion of a treating  
7 physician than to a non-treating physician, and more weight to the opinion of an examining  
8 physician than to a non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).  
9 Because the record in this case contained contradictory physician opinions, the ALJ was required  
10 to give "specific and legitimate reasons' supported by substantial evidence in the record" for  
11 rejecting the opinions of Drs. Schimmel and Sindorf. *Id.* at 830-31 (quoting *Murray v. Heckler*,  
12 722 F.2d 499, 502 (9th Cir. 1983)). The opinions of Finney were entitled to less weight, *Gomez*  
13 *v. Chater*, 74 F.3d 967, 970 (9th Cir. 1996), and could be rejected with germane reasons, *Molina*  
14 *v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

#### 15 A. Dr. Don Schimmel

16 Dr. Schimmel conducted a psychological evaluation of plaintiff on March 18, 2014. (AR  
17 275-82.) He assessed plaintiff as markedly impaired in relation to very short and simple  
18 instructions, performing activities in a schedule, maintaining attendance and punctuality, learning  
19 new tasks, making simple work-related decisions, asking simple questions or requesting  
20 assistance, communicating, performing effectively, and maintaining appropriate behavior in a  
21 work setting, and setting realistic goals and planning independently. (AR 277.) He assessed severe  
22 impairments in relation to detailed instructions, performing routine tasks without supervision,  
23 adapting to changes in a work setting, and completing a normal work day and week without

1 interruptions. Dr. Schimmel indicated the duration of impairment would last nine to twelve  
2 months, and recommended therapy and medication evaluation. (AR 278.) He further opined:  
3 “While this individual is apparently able to participate in part time volunteer work, my impression  
4 is that she is clearly unable to manage a full time job at this time. However, with assistance and  
5 mental health treatment, she should be eventually able to return to work.” (*Id.*)

6 The ALJ gave Dr. Schimmel’s opinions little weight. (AR 22.) His suggestion plaintiff  
7 was not capable of managing a full time job is an issue reserved to the Commissioner. He did not  
8 provide any basis or support for his opinions of marked and severe impairments in almost all job-  
9 related functions. The opinion was also inconsistent with plaintiff’s minimal psychiatric  
10 symptoms, her presentation and performance on mental status examinations (MSE) conducted by  
11 Dr. Sindorf, and her activities. Contrary to plaintiff’s contentions, this reasoning has the support  
12 of substantial evidence.

13 The question whether a claimant is disabled or unable to work is an issue reserved to the  
14 Commissioner, and an opinion on such an issue is not entitled to any specific significance. 20  
15 C.F.R. § 416.927(d). The ALJ here accurately described Dr. Schimmel’s statement regarding an  
16 inability to manage a full time job as infringing on an issue reserved to the Commissioner.

17 The more explanation provided in support of a medical opinion, the more weight that  
18 opinion will be given. § 416.927(c)(3); *accord Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th  
19 Cir. 2001). *See also Molina*, 674 F.3d at 1111 (“[T]he ALJ may ‘permissibly reject[ ] . . . check-  
20 off reports that [do] not contain any explanation of the bases of their conclusions.’”) (quoting  
21 *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)). The ALJ here reasonably considered that Dr.  
22 Schimmel provided no explanation for the numerous marked and severe impairments assessed.  
23 While Dr. Schimmel conducted a clinical interview and MSE, he did not point to either as the basis

1 for the conclusions reached. Nor did he otherwise provide a supportive narrative discussion  
2 beyond conveying his impression of plaintiff's inability, at that time, to manage a full time job.  
3 Plaintiff objects to the ALJ faulting Dr. Schimmel's opinions on this basis, but not the contrary  
4 opinions of non-examining State agency consultants Dr. Beth Fitterer and Dr. John Gilbert. Yet,  
5 Drs. Fitterer and Gilbert did provide narrative explanations. (AR 68-69, 80-81 (finding no  
6 understanding and memory limitations based on intact cognition, some higher education learning,  
7 and fact previously owed a business; finding no social limitations because: "Pleasant &  
8 cooperative although with a depressed mood/affect. Regardless, able to volunteer PT at a doctor's  
9 office at the front desk.))) They also explained why they found plaintiff more limited than assessed  
10 by Dr. Schimmel. (AR 70, 82.) The ALJ, in any event, only gave the opinions of the non-  
11 examining physicians some weight and found plaintiff more significantly limited than they  
12 assessed. (AR 22.)

13 An ALJ may also reject a physician's opinions due to inconsistencies between the opinions  
14 and the medical record. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ here  
15 reasonably found inconsistency between the opinions of Dr. Schimmel and the medical evidence.  
16 The ALJ provided a detailed discussion of such evidence, describing regular notations in treatment  
17 notes of normal psychiatric observations; presentation as pleasant and cooperative even when  
18 depressed; descriptions of good grooming, contrary to alleged difficulty of personal care; and Dr.  
19 Sindorf's regular description of plaintiff as neatly dressed and groomed, with normal speech,  
20 pleasant and appropriate, cooperative, and with good eye contact, in spite of occasionally  
21 depressed affect and tearfulness. (AR 21 (citing AR 314, 384, 387, 390, 392, 394, 397, 402).) She  
22 described inconsistencies between plaintiff's allegations and MSE performance, including Dr.  
23 Schimmel's MSE, other MSEs in which plaintiff demonstrated no difficulties with memory and

1 sometimes demonstrated no abnormalities whatsoever, and Dr. Sindorf's routine indication  
2 plaintiff's "memory appeared to be intact and that attention and concentration were 'not subjects  
3 of complaint or treatment.'" (*Id.* (citing AR 278-79, 320, 324, 333, 337, 365-71, 375, 377, 384,  
4 387, 390, 392, 394, 397).) She described the record as indicating plaintiff's most significant  
5 symptoms occurred in the context of a difficult divorce and improved after the divorce, when she  
6 was able to begin a new relationship and spend more time with her children. (AR 19 (citing AR  
7 361-77, 384-406).) She reasonably construed the evidence to show plaintiff's heightened or  
8 exacerbated symptoms as resulting from these situational stressors, inconsistent with her  
9 allegations of severe anxiety symptoms throughout the relevant period, and not indicative of  
10 baseline functioning.

11 Plaintiff takes issue with the ALJ's failure to identify specific inconsistencies in the portion  
12 of the decision addressing Dr. Schimmel's opinions. However, the Court considers the ALJ's  
13 decision as a whole, not solely the portion of the decision addressing a physician's opinion, the  
14 weight assigned the opinion, and the reasons for the weight assignment. *See Rice v. Barnhart*, 384  
15 F.3d 363, 370 n.5 (7th Cir. 2004) (court properly reads the ALJ's decision as a whole and the  
16 repeating of "substantially similar factual analyses" at multiple steps in the decision would be a  
17 "needless formality"). Moreover, in conducting its review, the Court is able to draw "specific and  
18 legitimate inferences from the ALJ's opinion." *Magallanes*, 881 F.2d at 755. Indeed, even when  
19 explained with "less than ideal clarity," the decision must be upheld if the path of reasoning "may  
20 reasonably be discerned." *Molina*, 674 F.3d at 1121 (internal quotation marks and quoted sources  
21 omitted). In this case, the ALJ's identification of inconsistencies is clearly based on the prior  
22 detailed and thorough discussion of the record.

23 Plaintiff otherwise offers an alternative interpretation of the evidence, but fails to

1 demonstrate the ALJ's interpretation was not at least equally rational. "Where the evidence is  
2 susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld."

3 *Morgan v. Commissioner of the SSA*, 169 F.3d 595, 599 (9th Cir. 1999).

4 Finally, an ALJ may reject the opinions of a physician based on inconsistency with a  
5 claimant's level of activity. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). Plaintiff  
6 shared custody of her three children with her ex-husband and provided the children care, including  
7 preparing meals and driving to pick them up and drop them off, only sometimes with the assistance  
8 of her boyfriend. (AR 19-20.) The ALJ found the ability to provide this care suggested the ability  
9 to handle at least routine stressors and responsibilities, and to make simple judgments and  
10 decisions. Plaintiff attended temple twice a month, spent time interacting with others, and told  
11 providers she attended her children's sporting events on a regular basis and that the time spent  
12 with her children played a significant role in decreasing her anxiety and depression, as her role as  
13 a mother was important. (*Id.* (citing AR 201, 361, 365-66).) She also traveled to Thailand during  
14 the relevant period and denied experiencing any mental health symptoms while there. (*Id.* (citing  
15 AR 362).) "Such travel requires navigating airports and security lines, and a significant amount  
16 of exposure to the public." (*Id.*) The ALJ found the ability to drive and engage in other activities  
17 required a level of attention, decision making, and ability to react quickly to unexpected obstacles  
18 and hazards inconsistent with severe deficits in focus and concentration.

19 Again, while plaintiff takes a contrary view of the significance of the activities identified,  
20 the ALJ rationally interpreted the evidence as inconsistent with the marked and severe limitations  
21 assessed by Dr. Schimmel. The ALJ, as such, properly provided several specific and legitimate  
22 reasons for assigning little weight to the opinions of Dr. Schimmel.

23 ///



1 B. Dr. John Sindorf

2 In a letter dated February 15, 2016, treating psychiatrist Dr. Sindorf stated plaintiff's major  
3 depressive disorder, PTSD, and insomnia were disabling and prevented her from working at that  
4 time. (AR 360.) He added: "Obviously, this might change in the future, but the future is not here  
5 yet, and in any case we do not know what the future will bring." (*Id.*) In an April 2016  
6 questionnaire, Dr. Sindorf found mild limitations in daily activities and social relationships, and  
7 marked limitations in concentration, persistence, or pace and in extended episodes of  
8 decompensation. (AR 408.) Plaintiff had a mental disorder of at least two years duration causing  
9 more than minimal limitation in relation to basic work activities; repeated extended episodes of  
10 decompensation; a residual disease process resulting in such marginal adjustment that even a  
11 minimal increase in mental demands or change in environment would cause decompensation; and  
12 one or more years' inability to function outside a highly supportive living arrangement and the  
13 need to continue such an arrangement. (AR 408-09.) In a September 2016 form, Dr. Sindorf  
14 assessed, *inter alia*, marked-to-severe limitations in relation to detailed instructions and marked  
15 limitations in relation to short and simple instructions or tasks, working in coordination with or  
16 proximity to others, accepting instructions and responding appropriately to supervisor criticism  
17 and unexpected changes in setting and routine, and traveling in unfamiliar settings and using public  
18 transportation. (AR 410-11.) He indicated there would be effects from various workplace  
19 stressors, including in a routine, repetitive, simple, entry-level job. (AR 411.)

20 The ALJ gave little weight to Dr. Sindorf's opinions. (AR 22.) The suggestions of  
21 plaintiff's inability to work addressed an issue reserved to the Commissioner. His opinions were  
22 inconsistent with the medical record. For example, while he opined plaintiff experiences three  
23 episodes of decompensation a year, lasting two weeks at a time, the medical record did not

1 demonstrate any such episodes. Dr. Sindorf's opinions were also inconsistent with his own  
2 treatment records. For example, while opining marked difficulty with concentration, persistence,  
3 or pace, Dr. Sindorf routinely documented that attention and concentration were not subjects of  
4 complaint. In addition, Dr. Sindorf's April 2016 opinion was inconsistent with treatment notes  
5 from the previous month observing plaintiff had experienced a "remarkable turnaround" and was  
6 feeling much better." (*Id.* (citing AR 384).) The ALJ found the opinions of Dr. Sindorf further  
7 inconsistent with plaintiff's minimal psychiatric symptoms, MSEs, and activities.

8 The ALJ's conclusions regarding opinions on an issue reserved to the Commissioner,  
9 inconsistency with the medical evidence, and inconsistency with plaintiff's activities were  
10 appropriate and reasonable for the same reasons discussed in relation to the opinions of Dr.  
11 Schimmel. *See supra* at 5-9. Plaintiff posits Dr. Sindorf was best positioned to opine as to  
12 decompensations and that he need not have personally witnessed or documented such episodes.  
13 However, she does not point to any evidence in the record supportive of the opinion the episodes  
14 had occurred, either at the frequency opined by Dr. Sindorf or ever.

15 The ALJ also reasonably interpreted the record as showing inconsistency between Dr.  
16 Sindorf's opinions and his own treatment notes. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th  
17 Cir. 2005) (rejecting physician's opinion due to discrepancy or contradiction between opinion and  
18 the physician's own notes or observations is "a permissible determination within the ALJ's  
19 province.") Plaintiff construes the records from Dr. Sindorf as simply reflecting issues of  
20 concentration, persistence, or pace were not Dr. Sindorf's or plaintiff's focus. However, the ALJ's  
21 interpretation of inconsistency between the identification of marked limitations in this area and the  
22 content of Dr. Sindorf's treatment records was at least equally rational and is appropriately upheld.  
23 *Morgan*, 169 F.3d at 599. *See also Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098

1 (9th Cir. 2014) (“[W]e leave it to the ALJ to determine credibility, resolve conflicts in the  
2 testimony, and resolve ambiguities in the record.”) The ALJ also rationally interpreted the medical  
3 record, including Dr. Sindorf’s own treatment notes, as inconsistent with the degree of impairment  
4 he opined, rather than showing no more than an occasional fluctuation of symptoms as suggested  
5 by plaintiff. Plaintiff, for all of these reasons, fails to undermine the specific and legitimate reasons  
6 provided by the ALJ in relation to Dr. Sindorf.

7 C. Dawn Finney, LICSW

8 Plaintiff’s therapist, Dawn Finney, provided opinions in April 2016. In a letter, Finney  
9 stated plaintiff’s depressive symptoms impaired her ability to function adequately “or even close  
10 to her baseline functioning.” (AR 378.) These “disabling symptoms” would likely interfere with  
11 plaintiff’s ability to maintain regular attendance, even on a part time basis, as well as her capacity  
12 to sustain concentration and pace for two consecutive hours. (*Id.*) Her symptoms occurred daily  
13 and included diminished ability to concentrate and make daily decisions, fatigue, significantly  
14 diminished interest in almost all activities, sleep difficulty, and lack of motivation and task  
15 initiation. On forms attached to the letter, and in addition to various moderate impairments, Finney  
16 assessed marked impairments in relation to detailed tasks and instructions, attention and  
17 concentration, sustaining ordinary routine without special supervision, completing a normal work  
18 day and week, performing at a consistent pace, responding appropriately to unexpected changes in  
19 setting and routine, setting realistic goals and planning independently, and traveling in unfamiliar  
20 settings and using public transportation. (AR 379, 381 (also identifying impact with a variety of  
21 work-related stressors).) She also opined plaintiff would have marked difficulties maintaining  
22 concentration, persistence, or pace. (AR 382.) Finney elsewhere identified symptoms of poor  
23 memory, sleep disturbance, difficulty thinking or concentrating, social withdrawal or isolation,

1 and decreased energy. (AR 380.) These symptoms appeared to be a significant change from  
2 plaintiff's previous level of functioning for several years prior.

3 The ALJ assigned Finney's opinions little weight. (AR 23.) The ALJ noted the absence  
4 of any basis or support for the suggestion plaintiff could not work due to inability to concentrate  
5 other than a description of plaintiff's subjective complaints. "As an example, [Finney] specifically  
6 indicates the claimant's symptoms appear to have worsened over several years, while also  
7 indicating she had been treating the claimant for one year." (*Id.* (citing AR 380).) The ALJ pointed  
8 to her earlier finding that plaintiff's subjective complaints were inconsistent with the medical  
9 evidence of record. The ALJ also found Finney's opinions inconsistent with plaintiff's minimal  
10 psychiatric symptoms, MSEs, and activities.

11 Plaintiff does not demonstrate error. An ALJ may reject a medical opinion upon  
12 concluding it relied to a large extent on a claimant's properly discounted subjective reports.  
13 *Tommasetti*, 533 F.3d at 1041 (applying to a treating physician's opinion). The ALJ's reasoning  
14 was germane to Finney and finds support in both the absence of narrative explanations in either  
15 the letter or forms completed, as well as a specific example showing reliance on plaintiff's  
16 reporting as to her condition in the years prior to Finney's treatment. *Cf. Ryan v. Comm'r of Soc.*  
17 *Sec.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008) (an ALJ does not provide clear and convincing  
18 reasons for rejecting the uncontradicted opinions of a physician "by questioning the credibility of  
19 the patient's complaints where the doctor does not discredit those complaints and *supports his*  
20 *ultimate opinion with his own observations.*") (emphasis added). The ALJ also reasonably found  
21 the opinions of Finney inconsistent with the medical evidence and evidence of plaintiff's activities.  
22 *See supra* at 6-9. These additional germane reasons have the support of substantial evidence and  
23 will not be disturbed.

1 Steps Four and Five

2 Plaintiff contends the ALJ's RFC is not supported by substantial evidence and that  
3 erroneously dismissed evidence demonstrates she is incapable of sustaining any work. However,  
4 these contentions essentially restate plaintiff's assignments of error in the evaluation of the medical  
5 opinion evidence and, therefore, also fail to establish error at step four or step five. *See Stubbs-*  
6 *Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

7 CONCLUSION

8 For the reasons set forth above, this matter is AFFIRMED.

9 DATED this 29th day of August, 2018.

10   
11 \_\_\_\_\_  
12 Mary Alice Theiler  
13 United States Magistrate Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23