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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 CHARQUELLA G.,

9 Plaintiff,

Case No. C20-1148-MLP

10 v.

ORDER

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

13  
14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of her application for Supplemental Security Income.  
16 Plaintiff contends the administrative law judge (“ALJ”) erred by failing to comply with a prior  
17 court remand order, and in discounting certain medical opinions. (Dkt. # 12 at 1.) As discussed  
18 below, the Court REVERSES the Commissioner’s final decision and REMANDS the matter for  
19 further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

20 **II. BACKGROUND**

21 Plaintiff was born in 1993, has a high school diploma, and previously worked as a hotel  
22 cleaner and fast-food cashier. AR at 926. Plaintiff was last gainfully employed in 2017. *Id.* at  
23 712, 926.

1 In September 2013, Plaintiff applied for benefits, alleging disability as of August 1, 2012.  
2 AR at 281-89. Plaintiff's application was denied initially and on reconsideration, and Plaintiff  
3 requested a hearing. *Id.* at 169-77, 179-85. After the ALJ conducted a hearing in February 2016  
4 (*id.* at 35-63), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 15-29.

5 The Appeals Council denied review (AR at 753-56), but the U.S. District Court for the  
6 Western District of Washington reversed the ALJ's decision and remanded for further  
7 administrative proceedings. *Id.* at 795-804. A different ALJ held a hearing on remand (*id.* at 708-  
8 52), and subsequently issued a decision finding Plaintiff not disabled. *Id.* at 682-700.

9 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

10 Step one: Plaintiff has not engaged in substantial gainful activity since the application  
11 date.

12 Step two: Plaintiff has the following severe impairments: learning disorder/borderline  
13 intellectual functioning, affective disorder, and anxiety disorder.

14 Step three: These impairments do not meet or equal the requirements of a listed  
15 impairment.<sup>2</sup>

16 Residual Functional Capacity ("RFC"): Plaintiff can perform full range of work at all  
17 exertional levels, with the following non-exertional limitations: she can understand,  
18 remember, and carry out simple instructions, and exercise simple workplace judgment.  
19 She can perform work that is learned on the job in less than 30 days by short  
20 demonstration and practice or repetition. She can respond appropriately to supervision,  
21 but should not be required to work in close coordination with coworkers where teamwork  
22 is required. She can work in jobs that require only casual or superficial interaction or  
23 contact with the general public.

24 Step four: Plaintiff has no past relevant work.

25 Step five: As there are jobs that exist in significant numbers in the national economy that  
26 Plaintiff can perform, Plaintiff is not disabled.

27 AR at 682-700.

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<sup>1</sup> 20 C.F.R. § 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 Plaintiff appealed this final decision of the Commissioner to this Court. (Dkt. # 4.)

### 2 III. LEGAL STANDARDS

3 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social  
4 security benefits when the ALJ’s findings are based on legal error or not supported by substantial  
5 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a  
6 general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the  
7 ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
8 (cited sources omitted). The Court looks to “the record as a whole to determine whether the error  
9 alters the outcome of the case.” *Id.*

10 “Substantial evidence” is more than a scintilla, less than a preponderance, and is such  
11 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
12 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
13 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
14 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
15 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
16 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*  
17 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
18 rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

### 19 IV. DISCUSSION

#### 20 A. The ALJ Erred With Respect to the Prior Court Remand Order

21 The prior court remand order focused on one part of a 2012 opinion written by examining  
22 psychologist Patricia Fantoni-Salvador, Ph.D.:

23 [Plaintiff] exhibit[ed] mild deficits in her SMMSE performance (26/30). She  
behaves immaturely with peers and figures of authority; she exhibits anxiety

1 symptoms, helplessness, low motivation and marginal adaptive functioning. If  
2 properly encouraged and taught, she may develop the ability to become  
3 appropriately self-sufficient and successfully obtain and maintain unskilled to  
4 skilled employment. She exhibits good social skills, but presents naïve and  
5 vulnerable. She may require assistance in developing adequate coping skills to  
6 resolve the stressors in her life. There was slight evidence of exaggerated  
7 information by [Plaintiff]. She would benefit from counseling focused on easing  
her transition into the workforce and vocational counseling focused on increasing  
her future employment options and motivation to follow her own plans. She may  
also benefit from educational therapy focused on learning disorders to help  
resolve her anxiety issues regarding her current abilities. [Plaintiff] seems to be  
working at her full intellectual capacity; she is likely to need assistance to  
maintain it.

8 AR at 495-96. The prior ALJ decision gave great weight to Dr. Fantoni-Salvador’s opinion, yet  
9 the reviewing court found that the ALJ’s RFC assessment did not fully account for Dr. Fantoni-  
10 Salvador’s opinion, which it interpreted to mean that Plaintiff was not currently able to work. *See*  
11 *id.* at 799-800.

12 On remand, the ALJ discussed Dr. Fantoni-Salvador’s opinion in greater detail, and  
13 explained that although the district court had interpreted it to mean that Dr. Fantoni-Salvador  
14 believed Plaintiff was unable to work at that time, the ALJ did not agree: the ALJ emphasized  
15 that Dr. Fantoni-Salvador did not “opine that the claimant had a limitation rendering her  
16 incapable of all work activity” (AR at 694), and also found that it appears that Plaintiff “was, in  
17 fact, encouraged and taught by her family and her mental health providers” to handle her  
18 personal care independently, heed reminders, follow simple directions, work, and graduate from  
19 high school. *Id.* at 695. The ALJ also indicated that an RFC assessment does not factor in  
20 motivation problems, and his RFC assessment nonetheless permits Plaintiff to be taught how to  
21 perform a job, and thus “adequately accounts for any learning [she] may need[.]” *Id.* For these  
22 reasons, the ALJ found that Dr. Fantoni-Salvador’s opinion did not describe any disabling  
23 limitations and was fully accounted for in the RFC assessment. *Id.*

1 Plaintiff argues that the ALJ did not comply with the court remand order because the ALJ  
2 disputed the court’s interpretation of Dr. Fantoni-Salvador’s opinion, even though the court was  
3 not simply “offering its advice to the ALJ, or offering to engage in a debate[.]” (Dkt. # 12 at 4.)  
4 This is a fair characterization of the ALJ’s response to the court remand order. Even if the ALJ  
5 or this Court were to disagree with the prior court’s interpretation of Dr. Fantoni-Salvador’s  
6 opinion, the court remand order is not up for debate at this time and instead represents the law of  
7 the case. *See Stacy v. Colvin*, 825 F.3d 563, 567 (9th Cir. 2016) (“The law of the case doctrine  
8 generally prohibits a court from considering an issue that has already been decided by that same  
9 court or a higher court in the same case.” (citing *Hall v. City of Los Angeles*, 697 F.3d 1059,  
10 1067 (9th Cir. 2012))).

11 Furthermore, it appears that much of the ALJ’s reasoning explains why the ALJ could  
12 have *discounted* Dr. Fantoni-Salvador’s opinion as interpreted in the court remand order, yet the  
13 ALJ stated that he gave significant weight to Dr. Fantoni-Salvador’s opinion and maintained that  
14 he incorporated this opinion into the RFC assessment. Indeed, the Commissioner’s brief  
15 emphasizes that because Plaintiff worked after the time of Dr. Fantoni-Salvador’s evaluation,  
16 Plaintiff must have become self-sufficient after the time of the evaluation. (Dkt. # 13 at 2.)  
17 Plaintiff did work after the time of Dr. Fantoni-Salvador’s opinion, but none of this work  
18 constituted substantial gainful activity and thus does not demonstrate that Plaintiff was able to  
19 “obtain and *maintain* unskilled to skilled employment” in contravention of Dr. Fantoni-  
20 Salvador’s opinion. *See* AR at 495 (emphasis added).

21 The ALJ also found that Dr. Fantoni-Salvador’s suggestion that Plaintiff would need to  
22 be “properly encouraged and taught” to become self-sufficient and work does not pertain to a  
23 “medical factor used in the finding of disability[.]” because an RFC represents the most a

1 claimant can do regardless of, *inter alia*, motivation. *Id.* (citing 20 C.F.R. § 416.945, Social  
2 Security Ruling 96-8p). Although the ALJ purported to quote either/both a regulation and a  
3 Social Security Ruling for the proposition that motivation is not an RFC factor, neither of these  
4 authorities contains the sentence quoted nor does either identify motivation as an improper RFC  
5 factor. *Id.* The Commissioner does not defend this line of the ALJ’s reasoning. (Dkt. # 13 at 2.)

6 Because the ALJ purported to credit Dr. Fantoni-Salvador’s opinion, and yet did not craft  
7 an RFC assessment consistent with the prior court remand order’s instructions, the ALJ  
8 perpetuated the error identified in the prior court remand order. On remand, the ALJ shall either  
9 fully credit Dr. Fantoni-Salvador’s opinion in accordance with the prior court remand order and  
10 find Plaintiff disabled, or shall provide legally sufficient reasons supported by substantial  
11 evidence to discount the opinion.

12 **B. The ALJ Did Not Err in Discounting Other Medical Opinions**

13 Plaintiff also assigns error to the ALJ’s assessment of other medical opinions, each of  
14 which the Court will address in turn.

15 *1. Legal Standards*<sup>3</sup>

16 In general, more weight should be given to the opinion of a treating doctor than to a non-  
17 treating doctor, and more weight to the opinion of an examining doctor than to a non-examining  
18 doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted by another  
19 doctor, a treating or examining doctor’s opinion may be rejected only for “clear and  
20 convincing” reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).

21 Where contradicted, a treating or examining doctor’s opinion may not be rejected without  
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23 \_\_\_\_\_  
<sup>3</sup> Because Plaintiff applied for disability before March 27, 2017, the regulations set forth in 20 C.F.R. § 416.927 apply to the ALJ’s consideration of medical opinions.

1 “‘specific and legitimate reasons’ supported by substantial evidence in the record for so doing.”  
2 *Lester*, 81 F.3d at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

3 2. *Rahul Khurana, M.D.; Christina Diamonti, Psy.D.; & David Mashburn,*  
4 *Ph.D.*

5 Drs. Khurana, Diamonti, and Mashburn performed psychological evaluations of Plaintiff  
6 and wrote opinions describing her symptoms and limitations. AR at 502-08, 639-49, 656-65,  
7 986-92, 1098-1104. The ALJ gave little weight to all of these opinions, finding that they overly  
8 relied on Plaintiff’s self-reporting, which was discounted for unchallenged reasons stated earlier  
9 in the decision. *Id.* at 695-96. The ALJ explicitly found that Plaintiff’s reporting to these  
10 examiners was not accurate in at least some respects, thereby undermining the opinions rendered  
11 in reliance on this inaccurate information. *Id.*

12 Plaintiff argues that because the examiners conducted clinical examinations, there is  
13 nothing to suggest that they relied more heavily on Plaintiff’s self-reporting than on their own  
14 observations. The Court disagrees. The examiners did not have access to any of Plaintiff’s  
15 records, and quote extensively from her self-reporting throughout their opinions. *See, e.g.*, AR at  
16 504-05, 642, 644-46, 656-58, 661-63, 986-87, 1098-99. Furthermore, the ALJ detailed inaccurate  
17 and inconsistent statements Plaintiff made to examining providers and others (*id.* at 691-92), and  
18 Plaintiff has not shown that these findings are erroneous. Under these circumstances, Plaintiff  
19 has not shown that the ALJ erred in discounting examiners’ opinions due to their reliance on  
20 Plaintiff’s unreliable self-report. *See Bray v. Comm’r of Social Sec. Admin.*, 554 F.3d 1219, 1228  
21 (9th Cir. 2009) (“As the district court noted, however, the treating physician’s prescribed work  
22 restrictions were based on Bray’s subjective characterization of her symptoms. As the ALJ  
23 determined that Bray’s description of her limitations was not entirely credible, it is reasonable to  
discount a physician’s prescription that was based on those less than credible statements.”). Even

1 if, as Plaintiff argues, the ALJ's other lines of reasoning contain error, the Court finds that  
2 because the ALJ identified at least one specific and legitimate reason to discount the opinions of  
3 Drs. Khurana, Diamonti, and Mashburn, the Court will not disturb the ALJ's assessment of those  
4 opinions.

5                   3.       *Kathleen Andersen, M.D.*

6                   Dr. Andersen examined Plaintiff in September 2012 and wrote a narrative opinion  
7 describing Plaintiff's symptoms and limitations. AR at 486-91. Her medical source statement  
8 reads as follows, in its entirety:

9                   [Plaintiff] appears to have some intellectual impairments which would influence  
10 the type of employment she would be eligible for. She did poorly on a number of  
11 items on cognitive testing today and has history of being in special education  
12 classes. She also reports significant problems with attention, concentration, and  
13 other problems suggesting a diagnosis of ADHD, inattentive type. She potentially  
14 could benefit from a trial of medication for this. Also, she reports high levels of  
15 ongoing anxiety. Her anxiety seems to center around a sense [of] personal  
16 vulnerability. She worries about her physical well-being and dying from some  
17 undetected medical condition. This worry apparently fairly frequently leads to  
18 panic attacks. Again, I would recommend intervening early, with a combination  
19 of cognitive behavioral therapy and medications. She is young, and it would be  
20 best for her future if this were brought under control sooner rather than later. She  
21 seems to be developing a somewhat avoidant behavior pattern, and again, it would  
22 be best to address this aggressively now. She seems to avoid social situations,  
23 does not have close friends, and avoids group situations. This could also be  
addressed with cognitive behavioral therapy. She potentially could benefit from  
assistance through DVR to help sort out what type of work she likely would be  
successful at, if any. A combination of anxiety, attentional issues, avoidant  
behavior, and cognitive limitations would make finding a niche for her in terms of  
work, challenging. She would likely have mild to moderate difficulty learning  
simple, straightforward tasks. She would likely have marked difficulty learning  
tasks of a more complex or abstract nature. She would likely need special  
assistance in learning tasks. She would have significant limitations in using  
problem solving thinking to address unforeseen situations and problems in a work  
environment. She is not unpleasant or inappropriate, but she appears shy and  
avoidant in interactions with others, and would likely feel quite anxious, at least  
initially in interactions with coworkers and supervisors. She describes herself as  
being somewhat "lazy" and having somewhat of an anger management issue. She  
reported that she was "smart" with a former employer, and some job counseling  
might be beneficial to address proper behavior in a work setting. In any case, her

1 prognosis for transitioning smoothly to a work situation is fairly guarded, but  
2 would be optimized with treatment as described above. She does not appear to be  
capable of managing her own funds.

3 *Id.* at 490-91. The ALJ gave “little to no weight” to Dr. Andersen’s opinion because her opinion  
4 was based on Plaintiff’s self-report rather than objective testing, and because her medical source  
5 statement was not stated in functional terms. *Id.* at 696.

6 The ALJ did not err in discounting Dr. Andersen’s opinion. There a few functional  
7 limitations embedded in Dr. Andersen’s medical source statement (addressing Plaintiff’s ability  
8 to perform simple work, learn new tasks, and use workplace judgment), and the ALJ’s RFC  
9 assessment is consistent with those. *See* AR at 688. But the majority of the medical source  
10 statement describes Plaintiff’s presentation, self-report, or treatment options without reference to  
11 her functional workplace limitations, and the ALJ did not err in discounting the opinion on that  
12 basis. *See Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) (“Here, the ALJ found that Dr.  
13 Zipperman’s descriptions of Ford’s ability to perform in the workplace as ‘limited’ or ‘fair’ were  
14 not useful because they failed to specify Ford’s functional limits. Therefore, the ALJ could  
15 reasonably conclude these characterizations were inadequate for determining RFC.”).

16 Accordingly, the Court finds no harmful legal error in the ALJ’s assessment of Dr.  
17 Andersen’s opinion.

18 4. *Christina Giedt, M.D.*

19 Dr. Giedt, Plaintiff’s treating physician, wrote a number of opinions describing Plaintiff’s  
20 symptoms and limitations. *See* AR at 983-85, 1109-14. The ALJ gave little weight to Dr. Giedt’s  
21 opinions, finding them to be unexplained, failing to identify functional workplace limitations,  
22 and/or inconsistent with the record. *Id.* at 697.

23 The ALJ reasonably found Dr. Giedt’s checkbox opinions to be unexplained, and many

1 of the sections were left blank. *See* AR at 983-85, 1110-14. This is an appropriate basis on which  
2 to discount these opinions. *See* 20 C.F.R. § 416.927(c)(3) (“The more a medical source presents  
3 relevant evidence to support an opinion, particularly medical signs and laboratory findings, the  
4 more weight we will give that opinion. The better an explanation a source provides for an  
5 opinion, the more weight we will give that opinion.”).

6 The ALJ also reasonably found that Dr. Giedt’s narrative letter does not describe any  
7 particular functional limitations, and instead uses “vague undefined terms” that are not relevant  
8 to assessing RFC. *See* AR at 697, 1109. This is an appropriate basis on which to discount this  
9 opinion. *See Ford*, 950 F.3d at 1156.

10 Accordingly, the Court finds no harmful legal error in the ALJ’s assessment of Dr.  
11 Giedt’s opinions.

## 12 V. CONCLUSION

13 For the foregoing reasons, the Commissioner’s final decision is REVERSED and this  
14 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §  
15 405(g). On remand, the ALJ shall either fully credit Dr. Fantoni-Salvador’s opinion in  
16 accordance with the prior court remand order and find Plaintiff disabled, or shall provide legally  
17 sufficient reasons supported by substantial evidence to discount the opinion.

18 Dated this 26th day of April, 2021.

19 

20 MICHELLE L. PETERSON  
21 United States Magistrate Judge