

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

8 TRISHA C.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C23-0822-SKV

ORDER AFFIRMING THE
COMMISSIONER'S DECISION

13 Plaintiff seeks review of the denial of her applications for Supplemental Security Income
14 (SSI) and Disability Insurance Benefits (DIB). Having considered the ALJ's decision, the
15 administrative record (AR), and all memoranda of record, the Court **AFFIRMS** the
16 Commissioner's final decision and **DISMISSES** the case with prejudice.

17 **BACKGROUND**

18 Plaintiff was born in 1980, has a high school education, and has worked as a babysitter.
19 AR 105, 107, 117. Plaintiff was last gainfully employed in July 2012. AR 107, 367.

20 On June 12, 2017, Plaintiff applied for benefits, alleging disability as of February 1,
21 2012. AR 345, 347. Plaintiff's applications were denied initially and on reconsideration, *see* AR
22 81, and Plaintiff requested a hearing. At a hearing conducted by the ALJ on March 23, 2022,
23 Plaintiff amended her onset date to August 1, 2012. AR 98-122. On March 30, 2022, the ALJ
issued a decision finding Plaintiff not disabled. AR 81-91.

1 **THE ALJ'S DECISION**

2 Utilizing the five-step disability evaluation process,¹ the ALJ found:

3 **Step one:** Plaintiff has not engaged in substantial gainful activity since August 1, 2012.

4 **Step two:** Plaintiff has the following severe impairments: hepatitis C, spine disorder,
5 substance abuse (both drugs and alcohol), substance induced mood disorders, affective
6 disorder, anxiety disorder, trauma and stressor related disorder, and obsessive compulsive
7 disorder.

8 **Step three:** These impairments do not meet or equal the requirements of a listed
9 impairment.²

10 **Residual Functional Capacity:** Plaintiff can perform light work with additional
11 limitations. She can lift or carry 20 pounds occasionally and 10 pounds frequently. She
12 can stand and/or walk for 4 hours in an 8-hour workday, and can sit for 6 hours in an 8-
13 hour workday. She can push and pull in the limits for lifting and carrying. She can
14 occasionally use ramps and stairs, cannot use ladders, ropes, or scaffolds, can frequently
15 stoop and kneel, and can occasionally crouch and crawl. She can do frequent overhead
16 reaching, handling, fingering, and feeling. She should avoid concentrated exposure to
17 extreme cold, vibration, and hazards. She should not work where blood contamination
18 might harm others due to hepatitis C, such as in food service or the medical field. She
19 can understand, remember, and carry out simple work instructions and tasks at an SVP 2
20 level. She can have occasional contact with coworkers, supervisors, and the public, but
21 should not work with the public as a primary job duty. She should not work around
22 controlled substances.

23 **Step four:** Plaintiff cannot perform past relevant work.

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

AR 84-91.

The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the
Commissioner's final decision. AR 1-7. Plaintiff appealed the final decision of the
Commissioner to this Court. Dkt. 4.

///

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P., App. 1.

LEGAL STANDARDS

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

Substantial evidence is “more than a mere scintilla. It means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

DISCUSSION

Plaintiff argues the ALJ erred by improperly rejecting the opinions of physical consultative examiners Lynn Staker, M.D., and Mark Heilbrunn, M.D. The Commissioner argues the ALJ’s decision is free of harmful legal error, supported by substantial evidence, and should be affirmed.

1 Under regulations applicable to this case, the ALJ is required to articulate the
2 persuasiveness of each medical opinion, specifically with respect to whether the opinions are
3 supported and consistent with the record. 20 C.F.R. § 404.1520c(a)-(c). An ALJ’s consistency
4 and supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*,
5 32 F.4th 785, 792 (9th Cir. 2022).

6 In this case, the ALJ found that the opinions of Drs. Staker and Heilbrunn were not
7 persuasive. AR 89. The ALJ noted that Dr. Staker’s evaluation was conducted for Medicaid
8 purposes and did not use the same standards or definitions of disability used by the Social
9 Security Administration. *Id.* The ALJ found the evaluations of Dr. Staker and Dr. Heilbrunn
10 “not detailed and rather vague, as they do not specify functional limitations[,]” that they lacked
11 any explanation or citation to evidence to support the opinions, and that they failed to account for
12 Plaintiff’s substance abuse. *Id.* The ALJ further found that no other medical opinion of record
13 supported the assessments, that they were inconsistent with the prior administrative medical
14 findings regarding physical limitation, and that they nonetheless “overall indicate that the
15 claimant can work.” *Id.*

16 Plaintiff first argues that, whether or not a Medicaid evaluation uses different standards,
17 neither Dr. Staker, nor Dr. Heilbrunn suggested Plaintiff is disabled, and instead assessed
18 specific functional limitations and relied upon their examinations and imaging results to support
19 their opinions. Plaintiff next denies that her substance use impacted her physical impairments
20 and notes the absence of a drug abuse and alcoholism (DAA) analysis, while adding that, given
21 the absence of any impact, the failure to perform that analysis is likely harmless. Plaintiff also
22 argues that the opinion of Dr. Staker provides support for the opinion of Dr. Heilbrunn, and vice
23 versa, asserts the ALJ’s failure to explain how these opinions are inconsistent with their own or

1 any other examinations, and asserts that the mere existence of the State agency physician
2 opinions does not suffice as a basis to reject the opinions of the examining physicians. Plaintiff,
3 finally, asserts that the ALJ offers no evidence to back up the statement that the opinions of Drs.
4 Staker and Heilbrunn indicate Plaintiff can work.

5 The Court, with consideration of these arguments and the ALJ's reasoning, addresses
6 each disputed opinion in turn.

7 **A. The ALJ Did Not Harmfully Err in Addressing Dr. Staker's Opinion**

8 Dr. Staker conducted a consultative examination of Plaintiff for DSHS on August 6,
9 2014, and completed both a DSHS form and narrative report. AR 552-68. Dr. Staker diagnosed
10 early degenerative arthritis of the left hip causing anterior hip and groin pain, some mild
11 degenerative disc disease of the spine at the L5-S1, and a mild thoracolumbar scoliosis. AR 561.
12 Dr. Staker opined that, because of the hip pain, Plaintiff would have problems with prolonged
13 standing, walking, and ambulating, and pointed to findings of "some mild degenerative disc [sic]
14 of the lower lumbar spine, otherwise things [sic] mainly soft tissue inflammation." *Id.* Dr.
15 Staker also opined that Plaintiff would "[m]ost likely, . . . be at a sedentary to very light duty
16 type of work level with limited bending, prolonged walking or standing." AR 562.

17 The Commissioner does not defend the ALJ's observation as to a distinction between
18 DSHS and Social Security disability eligibility, and the Court does not find this observation to
19 serve as a valid critique. Dr. Staker's opinion is relevant for the ALJ's purposes and any
20 unspecified distinctions between applicable policies or disability criteria do not undermine its
21 persuasiveness. The Court also finds invalid any critique of the opinion of Dr. Staker or Dr.
22 Heilbrunn based on a failure to consider substance use. That is, the ALJ found Plaintiff's use of
23 substances did not impact her ability to perform the functional limitations assessed, *see* AR 88,

1 and there is no basis for finding the opinions of these physicians undermined due to a failure to
2 consider that same use of substances.³ The Court, in any event, finds these errors harmless given
3 the ALJ's assessment of supportability and consistency, as discussed below.

4 The "supportability" factor addresses the relevance of the objective evidence presented in
5 support of an opinion, as well as the "supporting explanations" provided by the medical source.
6 20 C.F.R. § 404.1520c(c)(1). Here, as the ALJ observes, Dr. Staker's opinions were vague and
7 lacked sufficient detail or specific functional limitations. Dr. Staker did not specify the length of
8 time Plaintiff could stand and walk at one time or in total during an eight-hour workday or the
9 extent to which she was limited in her ability to bend. Dr. Staker opined that Plaintiff would
10 "most likely" be limited to an undefined category of "sedentary to very light duty type of
11 work[.]" AR 561-62. The ALJ's consideration of supportability was thus appropriate. *See, e.g.,*
12 *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) ("Here, the ALJ found that Dr. Zipperman's
13 descriptions of Ford's ability to perform in the workplace as 'limited' or 'fair' were not useful
14 because they failed to specify Ford's functional limits. Therefore, the ALJ could reasonably
15 conclude these characterizations were inadequate for determining RFC."); *Bissmeyer v. Kijakazi*,
16 No. C21-0209, 2023 WL 1099161, at *7 (E.D. Cal. Jan. 30, 2023) ("As to apparent
17 supportability, the ALJ also found Dr. Serra's sitting limitation 'somewhat vague' because Dr.
18 Serra did not specify whether Plaintiff was limited to sitting up to four hours at one time or four
19 hours total in an eight-hour workday.").

20 The ALJ also properly considered the absence of supportive evidence or explanation.
21 Dr. Staker attributes the assessed problems with prolonged standing and walking to "pain in the
22

23 ³ In addition, although the ALJ did not make any distinction as to its applicability, this reasoning
was offered in relation to the opinions of multiple physicians, including a consultative psychological
examiner who noted that Plaintiff denied any use or abuse of drugs or alcohol. AR 89, 531-50.

1 hip,” while describing associated findings of only “some mild degenerative disc of the lower
2 lumbar spine, otherwise things mainly soft tissue inflammation.” AR 561. Neither the evidence
3 cited, nor the largely mild and normal findings on examination and in imaging provide adequate
4 corroboration of or explanation for the degree of limitation assessed. *See id.* (describing
5 examination findings of tenderness at L3 to S1, a positive Trendelenburg test on the left, mild
6 lumbar asymmetry, no motor or sensory deficit, full range of motion of the right hip, mild
7 limitations of the left hip, and imaging showing only a very mild scoliosis, marked sclerosis and
8 irregularity of the joint surface on the left hip but with no significant narrowing, lumbar spine
9 showing mild degenerative spur and some sclerosis at L5-S1, very mild thoracolumbar scoliosis,
10 and otherwise x-rays within normal limits).

11 The ALJ also addressed consistency. This factor examines the consistency of the opinion
12 with evidence from other medical and nonmedical sources. 20 C.F.R. §§ 404.1520c(c)(2),
13 416.920c(c)(2). The ALJ here found no other medical opinions of record supported the
14 sedentary-work assessments of Drs. Staker and Heilbrunn, and found the opinions inconsistent
15 with administrative medical findings regarding physical limitations. The ALJ observed that the
16 State agency physicians, in October 2017 and September 2020, opined Plaintiff could perform
17 light work with postural, manipulative, and environmental limitations, as well as with limitations
18 in standing and walking. AR 87. The ALJ found these opinions persuasive because they were
19 “generally consistent with the overall medical evidence, near normal physical examinations, the
20 objective findings on imaging, and the claimant’s treatment notes indicating improvement in
21 symptoms with medication.” AR 87, 89. The ALJ further found Plaintiff’s daily living
22 activities, including her ability to prepare meals, do laundry, care for her special needs children,
23

1 and shop, supported the opinions of the State agency physicians, and noted their unique, expert
2 training in the evaluation of disability claims. AR 89.

3 Plaintiff, as noted above, points to consistency between the opinions of Drs. Staker and
4 Heilbrunn, asserts a failure to explain any alleged inconsistency, rejects the ALJ's purported
5 reliance on the mere existence of the State agency physician opinions, and asserts an absence of
6 support for the assertion that the opinions of Drs. Staker and Heilbrunn indicate Plaintiff can
7 work. It is, however, the Court's obligation to determine whether the record contains substantial
8 evidence supporting the ALJ's findings of fact. *See, e.g., Woods*, 32 F.4th at 788 ("Under the
9 substantial-evidence standard, we look to the existing administrative record and ask whether it
10 contains sufficient evidence to support the agency's factual determinations.") (cleaned up). The
11 Court here finds the ALJ's assessment of consistency to have the support of substantial evidence.

12 The ALJ did not merely assert reliance on the opinions of the State agency physicians.
13 Prior to finding those opinions consistent with the medical evidence and with Plaintiff's
14 activities, the ALJ assessed the medical record as a whole. *See* AR 86-89. The ALJ found that,
15 despite complaints of back and hip pain, Plaintiff had had very little treatment for pain. AR 86.
16 The ALJ noted that, in May 2013, Plaintiff reported she had not been treated for a year, lost her
17 insurance but had not been out of medication, and had an essentially normal examination, and
18 that, in November 2013, she complained of low back pain with numbness into her right hip to
19 her foot, but had a negative straight leg raise test on examination. AR 86-87 (citing AR 516-17
20 (back normal on examination, with no muscle spasm) and AR 510-11 (reporting pain for many
21 years, that comes and goes, and is minimal; spine tender on palpation, but normal appearance
22 and negative straight leg raise test)). The ALJ found, and a review of the record shows, that
23 there was "not much more treatment for pain." AR 87; *see* AR 697-701 (October 11, 2016

1 presentation with moderate left hip pain, worsening and occurring occasionally; “Has had this
2 problem for years, ibuprofen is not helping as much as it used to.”; tenderness and mildly
3 reduced range of motion on examination; added Lyrica for help with pain); AR 722-23, 792-93
4 (July 13, 2017 presentation with lumbosacral pain and numbness/lower back pain; normal results
5 on musculoskeletal examination). *See also* AR 854-59 (December 10, 2020 appointment for
6 hepatitis C with report of positive for back pain and normal range of motion on examination);
7 AR 889-92 (January 26, 2021 hepatitis C follow-up with report of positive for back pain and
8 normal musculoskeletal examination); AR 907-10 (March 2, 2021 hepatitis C follow-up with
9 report of negative for back pain).

10 The ALJ also addressed the evidence from Dr. Staker and Dr. Heilbrunn in reviewing the
11 medical record. *See* AR 86-87. Specifically, the record did not show that Plaintiff had followed
12 Dr. Staker’s recommendation to obtain physical therapy and medical follow-up, and reported to
13 Dr. Heilbrunn having back and neck pain, but that she did not need an assistive device to walk
14 and that she shops and can climb fifteen stairs. AR 87. The ALJ reasoned that medical reports
15 showing only minimal problems discounted Plaintiff’s subjective complaints, and observed that
16 Plaintiff “did not take any prescription medication for her pain, just Excedrin.” AR 87.

17 The ALJ, in sum, properly examined the consistency of the opinions of both Dr. Staker
18 and Dr. Heilbrunn with evidence from other medical sources of record, and reasonably found
19 their opinions inconsistent with the opinions of the State agency physicians and with the medical
20 record as a whole. Because substantial evidence supports both the supportability and consistency
21 findings in relation to Dr. Staker, Plaintiff does not show that the ALJ erred in finding that Dr.
22 Staker’s opinion was not persuasive.

1 **B. The ALJ Did Not Harmfully Err in considering Dr. Heilbrunn’s Opinion**

2 Dr. Heilbrunn examined Plaintiff on September 18, 2017 and issued a narrative report.
3 AR 738-43. Dr. Heilbrunn diagnosed lumbar strain/degenerative disc disease, hip osteoarthritis,
4 bilateral knee osteoarthritis, cervical osteoarthritis, and hypertension. AR 742.

5 The ALJ’s supportability finding with respect to Dr. Heilbrunn is inaccurate in part. Dr.
6 Heilbrunn did specify functional limitations, including the ability to lift/carry “0-0-10 pounds
7 with either hand/arm on an occasional basis.” AR 743. However, the report is also reasonably
8 depicted as vague and lacking sufficient detail. Dr. Heilbrunn, for example, provided a
9 confusing assessment of the extent to which Plaintiff would be able to walk and stand, stating:
10 “She will be able to walk/stand for up to 20 minutes uninterrupted before giving to [sic] length of
11 time of 4 out of 8 hours. There are no —for out of 8 hours.” *Id.*

12 Dr. Heilbrunn also cited some evidence and explanation in support of his opinion. In the
13 functional assessment, Dr. Heilbrunn pointed to Plaintiff’s left hip pain as her most limiting
14 condition, noted a finding on examination of moderately decreased lumbar range of motion, and
15 explained the lifting/carrying capacity “as measured in examination[.]” AR 742-43. The report
16 included examination findings of tenderness in the lumbar midline from L3-S1 and paraspinous
17 lower lumbar tenderness consistent with degenerative disc disease and decreased range of motion
18 in the left hip consistent with degenerative joint disease, and described July 2017 lumbar spine
19 imaging as showing L3-4 and L4-5 degenerative disc changes and L5-S1, bilateral degenerative
20 facet changes. AR 738, 741-42. Dr. Heilbrunn does not, however, cite to any other objective
21 evidence or explain how the evidence cited or contained in the report supports the degree of
22 limitation assessed.

Moreover, and as discussed above, the ALJ properly and reasonably found Dr. Heilbrunn's opinion not persuasive with consideration of consistency. Any error in the ALJ's other lines of reasoning is therefore harmless. *See Woods*, 32 F.4th at 793 n.4 (finding that, even if an opinion is supported, an ALJ may properly find it unpersuasive because it is inconsistent with the record). Because the ALJ provided at least one legally sufficient reason to discount Dr. Heilbrunn's opinion, the ALJ's assessment of the opinion is affirmed.

CONCLUSION

For the reasons set forth above, the Commissioner's final decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

Dated this 14th day of November, 2023.

Steve Vaughan

S. KATE VAUGHAN
United States Magistrate Judge