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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 MARI J. HALL-GOULD,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,<sup>1</sup>

12 Defendant.

CASE NO. C12-5148 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATIONS

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14 This matter comes before the Court on the Report and Recommendation (“R&R”)  
15 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 23), and  
16 Plaintiff Mari J. Hall-Gould’s (“Hall-Gould”) objections to the R&R (Dkt. 24). The  
17 Court has considered the R&R, Hall-Gould’s objections and Defendant Michael J.  
18 Astrue’s (“Astrue”) response to the objections, and the remaining record, and hereby  
19 adopts the R&R for the reasons stated herein.  
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22 <sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of Social Security on February  
14, 2013. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is  
substituted for Michael J. Astrue as the defendant in this suit.



1 modify the recommended disposition; receive further evidence; or return the matter to the  
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 **B. Objections to the R&R**

4 In significant part, Hall-Gould maintains that “an erroneous belief that [she] left  
5 work [at Panorama City] in July, 2009, to follow her boyfriend to Oregon has colored the  
6 adjudication of this claim at every level.” Dkt. 24 at 3. At the hearing level, she  
7 maintains that the ALJ seized on this apparent discrepancy in why she left work in 2009  
8 and relied upon it to discredit her testimony, that of her mother’s, as well as Dr. Neim’s  
9 2009 and 2010 reports. *Id.* For reasons discussed below, Judge Strombom found that the  
10 erroneous information regarding why Hall-Gould left her job in 2009 ultimately had no  
11 impact on her decision to recommend affirming the ALJ’s determination to deny benefits.  
12 Hall-Gould argues that her conclusion was in error.

13 **1. Dr. Neim’s Opinions**

14 Judge Strombom recommends upholding the ALJ’s rejection of Dr. Neim’s  
15 opinions. Dkt. 23 at 6-9. Judge Strombom found, contrary to Hall-Gould’s assertions,  
16 that the ALJ did not reject Dr. Neim’s opinions based on a misunderstanding of the  
17 evidence regarding why Hall-Gould left her job in 2009, when she filed for benefits. *Id.*  
18 at 6. A review the ALJ’s decision reveals that Judge Strombom was correct, the ALJ did  
19 not rely on misperception of the facts in rejecting Dr. Neim’s opinion. *See* Dkt. 11-2 at  
20 29 (AR 29).

21 Furthermore, in relevant part, Judge Strombom also found that the ALJ’s reasons  
22 for rejecting Dr. Neim’s opinions were proper; that the overall record supports the ALJ’s

1 determination, specifically his 2009 opinion, which was largely unremarkable and thus  
2 failed to support the severity of his conclusions, as well as his 2010 opinion where the  
3 mental status examination results were fairly normal overall, and the mental health clinic  
4 records showed stability in Hall-Gould's mental health condition and significant  
5 improvement of her symptoms over time. Dkt. 23 at 8. Finally, Judge Strombom found  
6 that the "much less severe mental health functional limitation" found in the reports of  
7 state experts in social security disability, "Drs. Lewis and Eather[,] are not inconsistent  
8 with the above objective medical evidence, [and] the ALJ also did not err in relying on  
9 the opinion of those two psychologists in this case, as [their opinions] constitute[]  
10 substantial evidence." *Id.* at 9.

11 The Court agrees with Judge Strombom's thorough review of the record and well-  
12 reasoned analysis and concludes that, based on a review of the record as a whole,  
13 substantial evidence exists to support the ALJ's decision to reject the opinions of Dr.  
14 Neims. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (non-examining  
15 physician's opinion may constitute substantial evidence if "it is consistent with other  
16 independent evidence in the record"). Therefore, the Court adopts the R&R on this basis.

## 17 **2. Credibility Assessments of Hall-Gould and Barbara Rea**

18 Hall-Gould's objections to Strombom's recommendations affirming the ALJ's  
19 credibility determinations are based on her objection to the ALJ's allegedly improper  
20 evaluation of medical evidence. Dkt. 24 at 10. Additionally, she argues that her daily  
21 activities are consistent with her testimony and are not transferable to work skills. *Id.*  
22

1 Further, she maintains none of the ALJ’s reasons for rejecting her testimony are specific,  
2 clear, and convincing. *Id.* For those reasons, the Court should find them legally  
3 erroneous and not supported by substantial evidence. *Id.*

4 As the Court determined above, the ALJ did not err in evaluating the medical  
5 evidence. *See supra.* Therefore, what follows is a review of the ALJ’s determinations  
6 regarding the credibility of Hall-Gould and Barbara Rae.

7 **a. Hall-Gould**

8 Judge Strombom found the ALJ properly discounted Hall-Gould’s credibility in  
9 relevant part on the basis that the objective medical evidence in the record “reflect[s] far  
10 less disabling limitations” than she alleged. Dkt. 23 at 10. The Court agrees with Judge  
11 Strombom. *See Regennitter v. Commissioner of SSA*, 166 F.3d 1294, 1297 (9th Cir.  
12 1998) (determination that claimant’s subjective complaints are “inconsistent with clinical  
13 observations” can satisfy clear and convincing requirement).

14 Judge Strombom also found the ALJ properly discredited Hall-Gould’s credibility  
15 on the basiss that she did not seek mental health treatment until late in 2009, even though  
16 she alleged disability at the beginning of July 2009. Dkt. 23 at 10 (*citing* AR 24-25).  
17 The Court agrees this was proper. *See Fair v. Bowen*, 885 F.2d 596, 603 (9th Cir. 1998)  
18 (failure to assert a good reason for not seeking treatment or for following a prescribed  
19 treatment “can cast doubt on the sincerity of the claimant’s pain testimony”).

20 Judge Strombom further found that the ALJ properly discounted Hall-Gould’s  
21 credibility on other bases as well. Dkt. 23 at 11-13. The ALJ found her daily activities,  
22 such as performing household chores, running errands by herself, going to church

1 regularly and frequently with her family and friends, were inconsistent with her  
2 statements that she has panic attacks almost every time she goes out and that she cannot  
3 be in a room with more than five people. These activities undermined Hall-Gould's  
4 credibility to the extent they "believe the extent of her alleged symptoms and limitations."  
5 *Id.* at 11-12 (*citing* AR 25-26).

6 The Court agrees with Judge Strombom's assessment. *Orn v. Astrue*, 495 F.3d  
7 625, 639 (9th Cir. 2007) (recognizing two grounds for using daily activities to form  
8 adverse credibility determinations: finding activities that meet the threshold requirement  
9 for transferable work skills and those that contradict his or her other testimony).

10 Therefore, the Court adopts the R&R on this basis.

11 Additionally, the ALJ found Hall-Gould not to be entirely credible because her  
12 contention that she was severely impaired conflicted with the information in the record  
13 that showed improvement in her condition, including, but not limited to, notes from her  
14 BHR therapist that she was making "extraordinary progress"; she reported she was doing  
15 well; she was taking her medications as prescribed; she denied any increase in triggers,  
16 anxiety or depression; she stated she wanted to attend counseling only one time per  
17 month; and she missed several counseling sessions and was ultimately terminated from  
18 counseling in October 2010. Dkt. 23 at 11 (*citing* AR 25). The Court adopts the R&R on  
19 this basis.

20 Like Judge Strombom, the Court finds that the ALJ's credibility assessment was  
21 proper. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (upholding ALJ's  
22 decision discounting claimant's credibility in part due to lack of consistent treatment, and

1 | noting that fact that claimant’s pain was not sufficiently severe to motivate her to seek  
2 | treatment, even if she had sought some treatment, was powerful evidence regarding  
3 | extent to which she was in pain); *Morgan v. Social Security Commissioner*, 169 F.3d, 595  
4 | 599 (9th Cir. 1999) (ALJ may discount claimant’s credibility on basis of medical  
5 | improvement); *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1998). The Court adopts the  
6 | R&R on this basis.

7 |         Finally, as Hall-Gould observes, the ALJ relied on mistaken information about  
8 | why she left her job in 2009 to question her credibility (AR at 25-26). However, as Judge  
9 | Strombom found, although “it can be said that the ALJ erred in discounting the plaintiff’s  
10 | credibility on the basis of ... her reasons for leaving her past work,” the ALJ provided  
11 | other independent valid basis for discounting Hall-Gould’s credibility. The Court agrees  
12 | with Judge Strombom’s conclusion based on the ALJ’s independent reasons discussed  
13 | above. *See Bray v. Commissioner of Social Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir.  
14 | 2009) (while ALJ relied on improper reason for discounting claimant’s credibility, he  
15 | presented other valid, independent bases for doing so, each with “ample support in the  
16 | record”). The Court adopts the R&R on this basis.

17 |                 **b.     Barbara Rae**

18 |         Judge Strombom found that the ALJ did not err in discounting Hall-Gould’s  
19 | mother’s testimony. Dkt. 23 at 13-14. Hall-Gould objects that Barbara Rae’s testimony  
20 | was improperly discredited because it was similar to her testimony, which itself was  
21 | improperly discredited. Dkt. 24 at 11. Further, like Hall-Gould’s testimony, she argues  
22 |

1 her mother's testimony was tainted by the ALJ's improper evaluation of medical  
2 evidence. *Id.*

3 Because the Court has found that the ALJ neither improperly evaluated the  
4 medical evidence nor improperly discredited Hall-Gould's credibility, it concludes that  
5 the ALJ did not improperly discounting Barbara Rae's testimony, as, in relevant part, it is  
6 substantially similar to Hall-Gould's. *Valentine v. Commissioner of Social Security*  
7 *Administration*, 574 F.3d 685, 694 (9th Cir. 2009) (ALJ gave germane reasons for  
8 discounting testimony of claimant's spouse where husband's complaints were subjective  
9 and the same as lay witness wife's testimony). The Court adopts the R&R on this basis.

### 10 3. Step Four

11 Judge Strombom determined that the ALJ did not err in evaluating the evidence  
12 regarding Hall-Gould's RFC or in making the step four decision. Dkt. 23 at 16-17. A  
13 claimant's RFC assessment is used at step four to determine whether he or she can do his  
14 or her past relevant work, and at step five to determine whether he or she can do other  
15 work. *See* Social Security Ruling ("SSR") 96-8p, 1996 WL 374184\*2. The ALJ found  
16 that Hall-Gould had the residual functional capacity:

17 **... to perform a full range of work at all exertional levels but with the**  
18 **following nonexertional limitations: The claimant can understand and**  
19 **carry out both simple and complex tasks for a minimum of two hours**  
20 **but should not work with the public.**

21 AR 22-23 (emphasis in original). Thus, the ALJ concluded at step four that Hall-Gould  
22 was capable of performing her past relevant work as a housekeeper, as that position did  
not require performing work-related tasks precluded by her RFC assessment. *See* AR 29.



1 Judge Strombom found that both the ALJ's RFC assessment and step four conclusion  
2 were not in error.

3 Hall-Gould objects to the ALJ step four findings and conclusion on the basis that  
4 the ALJ improperly rejected the medical opinions of Dr. Neims, the testimony of Hall-  
5 Gould and her mother (Dkt. 24 at 10-11), and he assessed her RFC without a vocational  
6 expert. Dkt. 24 at 10-11. As the Court found earlier, the ALJ did not err in his  
7 assessment of Dr. Neim's opinions, nor his assessment of Hall-Gould and her mother's  
8 credibility. *See supra*. Further, as Judge Strombom noted (Dkt. 23 at 17), it is within the  
9 ALJ's discretion to determine whether a vocational expert is needed to assess the RFC.  
10 *See* 20 C.F.R. § 404.1560(b)(2), § 416.960(b)(2)). The Court adopts the R&R on this  
11 basis.

#### 12 **4. Step Five**

13 Hall-Gould objects to the ALJ's determination at step five on the same basis she  
14 challenges the ALJ's decision at step four. Dkt. 24 at 11-12. Therefore, for the reasons  
15 set forth above, the Court finds that the ALJ did not err at step five and adopts Judge  
16 Strombom's well-reasoned R&R on this basis.

1 **IV. ORDER**

2 Therefore, the Court does hereby find and order as follows:

- 3 (1) The R&R is **ADOPTED**;
- 4 (2) The ALJ's decision to deny benefits is **AFFIRMED**; and
- 5 (3) This action is **DISMISSED**.

6 Dated this 21st day of March, 2013.

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BENJAMIN H. SETTLE  
United States District Judge

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