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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 CAROL YOUNG,

12 Plaintiff,

13 v.

14 CAROLYN W COLVIN,

15 Defendant.

CASE NO. 3:14-cv-05287

ORDER ADOPTING REPORT AND  
RECOMMENDATION

16 This matter comes before the court on United States Magistrate Judge John L.  
17 Weinberg's Report and Recommendation. Dkt. 22. The Court has considered the Report and  
18 Recommendation, objections and responses thereto, and the file herein.

19 Plaintiff filed this case for review of the Commissioner's decision that plaintiff is not  
20 disabled within the Social Security Act's meaning. Plaintiff alleges that the ALJ erroneously  
21 rejected plaintiff's medical exhibits; that, because the medical exhibits credited should be  
22 credited as true, plaintiff is disabled within the Social Security Act's meaning; and that the Court  
23 should remand for an award of benefits. Dkt. 13.

1 In response, the Commissioner concedes that the ALJ erroneously rejected plaintiff's  
2 medical exhibits. Dkt. 19. However, the Commissioner argues that the Court should remand this  
3 case for further proceedings, not for an award of benefits, as the ALJ needs to evaluate not only  
4 the medical exhibits in question, but also whether plaintiff is, in fact, disabled. *Id.*

5 Magistrate Judge Weinberg recommends that the Court reverse and remand for  
6 evaluation of, *inter alia*, the erroneously rejected medical records; plaintiff's mental  
7 impairments; and whether plaintiff's impairments, if any, meet a Listing. *Id.*

8 The Court has reviewed the record *de novo* and agrees with Magistrate Judge Weinberg's  
9 analysis and conclusion. Under *Garrison*, a remand for an award of benefits is appropriate when  
10 each part of the three-part standard is satisfied: (1) the record has been fully developed and further  
11 administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally  
12 sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if  
13 the improperly discredited evidence were credited as true, the ALJ would be required to find the  
14 claimant disabled on remand. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). This rule may  
15 not be dispositive of a remand for an award of benefits in all cases, however. *Id.* A court is  
16 required to remand for further proceedings, not an award of benefits, when an evaluation of the  
17 record as a whole creates serious doubt that a claimant is, in fact, disabled, even though all  
18 conditions of this rule are satisfied. *Id.* at 1021.

19 Here, plaintiff has met only the second element of the three-part standard: the  
20 Commissioner has conceded that the ALJ erroneously rejected plaintiff's medical exhibits. As to  
21 the first element, Magistrate Judge Weinberg concluded that, when the ALJ excluded plaintiff's  
22 medical exhibits, the ALJ never reached their merits; as a result, the record has not been fully  
23 developed and further administrative proceedings are necessary to allow the ALJ to consider the  
24 merits of plaintiff's medical exhibits. As to the third element, it is not clear that, if plaintiff's

1 medical exhibits were credited as true, the ALJ would be required to find plaintiff disabled on  
2 remand. The Court agrees with Magistrate Judge Weinberg's conclusion that the ALJ would  
3 need to consider whether plaintiff's claimed impairments, in fact, meet the requirement of a  
4 Listing after considering the record as a whole, including the improperly excluded medical  
5 exhibits. Accordingly, plaintiff has met only one element of the *Garrison* three-part standard,  
6 and the Court should remand for further proceedings, not for an award of benefits.

7 In her objections to Magistrate Judge Weinberg's Report and Recommendation, plaintiff  
8 argues that the Court would thwart the *Garrison* standard's purposes by remanding this case for  
9 further proceedings, and not for an award of benefits. Specifically, plaintiff argues that the Court  
10 would incentivize ALJs to ignore evidence that compels an outcome contrary to their conclusion, a  
11 result that would effectively "vitiate" the *Garrison* three-part standard. Dkt. 23. In support,  
12 plaintiff cites *Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396 (9th Cir. 1988) and  
13 *Garrison*.

14 *Varney II* and *Garrison* and are distinguishable from the present case, however. Although  
15 the *Varney II* court declined to remand Varney's case for further proceedings, the court noted  
16 that the record had been "thoroughly developed" and that "there [was]" no need to remand for  
17 further proceedings." *Id.* at 1401. Indeed, Varney, whose testimony the ALJ found doubtful, had  
18 already testified. *Id.* at 1397. Similarly, in *Garrison*, where the court remanded for an award of  
19 benefits, the court concluded that "there [was] no need to develop the record or convene further  
20 administrative proceedings." *Garrison*, 759 F.3d at 1021. The *Garrison* court declined to allow  
21 the ALJ to "revisit the medical opinions and testimony that [the ALJ] rejected for legally  
22 insufficient reasons." *Id.* (emphasis added). To support her disability claim, Garrison testified  
23 and presented extensive medical records and vocational expert testimony. *Id.* at 999. As a result,  
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1 the *Garrison* court concluded that the ALJ need not have a “mulligan” and remanded for an  
2 award of benefits. *Id.* at 1021.

3 Here, unlike in *Varney II* and *Garrison*, the record has not been fully developed because  
4 the ALJ never reached the merits of plaintiff’s medical exhibits. The ALJ neither “visited” the  
5 medical exhibits nor heard testimony pertaining thereto. Based on a Cooperative Disability  
6 Investigations Unit (“CDIU”) report, the ALJ found that plaintiff knowingly made incorrect  
7 statements and knowingly provided false material information. Tr. 23. As a result, the ALJ  
8 excluded all plaintiff’s subjective complaints and all findings based thereupon. *Id.* The  
9 Commissioner conceded that the ALJ erroneously excluded all medical exhibits because these  
10 medical exhibits contained medical opinions not based on plaintiff’s subjective complaints but  
11 derived, at least in part, from objective evidence contained in mental status exams, mini-mental  
12 state exams, and the observations of trained mental health professionals. In short, unlike in  
13 *Varney II* and *Garrison*, the ALJ never reached the merits of the medical exhibits in question,  
14 and plaintiff, in fact, concedes to that effect. Dkt. 23, at 3. Therefore, *Varney II* and *Garrison* are  
15 not only distinguishable from the present case, but also consistent with a remand for further  
16 administrative proceedings.

17 Finally, even if plaintiff has met the three-part standard, the Court should remand for  
18 further proceedings, not an award of benefits, because a serious doubt exists as to whether  
19 plaintiff is, in fact, disabled. As stated, based on the CDIU report, the ALJ found that plaintiff  
20 had knowingly given false statements about her symptoms and functional capacity. Although  
21 plaintiff raises several issues as to the report’s validity, a remand for further proceedings is  
22 proper to determine whether plaintiff is, in fact, disabled.

1 The Court, having reviewed Magistrate Judge Weinberg's Report and Recommendation,  
2 and the remaining record, does hereby find and **ORDER**:

3 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 22) and **REVERSES** the  
4 Commissioner's decision;

5 (2) The Court **REMANDS** for further proceedings consistent with the Report and  
6 Recommendation;

7 (3) The ALJ should make a new analysis and determination, which shall include but not  
8 necessarily be limited to:

9 a. Evaluation of the merits of the erroneously rejected medical records;

10 b. Evaluation of plaintiff's mental impairments, with the assistance of a medical  
11 expert if needed;

12 c. Determination of whether plaintiff's impairments meet a Listing; and

13 d. Development of a new Residual Functional Capacity ("RFC") and testimony by  
14 a vocational expert, if necessary;

15 (4) The Clerk shall direct copies of this Order to all counsel and to Magistrate Judge  
16 Weinberg.

17 Dated this 2nd day of February, 2015.

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19 ROBERT J. BRYAN  
20 United States District Judge  
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