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2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 CINDY HOOKANO,

6 Plaintiff,

7 v.

8 CAROLYN COLVIN, Acting
Commissioner of Social Security,

9 Defendant.

CASE NO. C14-5641 BHS

ORDER ADOPTING IN PART
AND DECLINING TO ADOPT IN
PART REPORT AND
RECOMMENDATION

10 This matter comes before the Court on the Report and Recommendation (“R&R”)
11 of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 18), and
12 Plaintiff Cindy Hookano’s (“Hookano”) objections to the R&R (Dkt. 19).
13

14 On May 4, 2015, Judge Christel issued the R&R recommending that the Court
15 affirm the Administrative Law Judge’s (“ALJ”) decision that Hookano was not disabled.
16 Dkt. 18. On May 18, 2015, Hookano filed objections. Dkt. 19. On May 26, 2015, the
17 Government responded. Dkt. 20. Hookano did not file a reply.

18 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge’s
19 recommended disposition. Rule 72(b) provides as follows:

20 The district judge must determine de novo any part of the magistrate
21 judge’s disposition that has been properly objected to. The district judge
may accept, reject, or modify the recommended disposition; receive further
evidence; or return the matter to the magistrate judge with instructions.

22 Fed. R. Civ. P. 72(b)(3).

1 Hookano objects to Judge Christel’s recommended disposition on three grounds.
2 First, Hookano argues that Judge Christel improperly concluded that the ALJ provided
3 clear and convincing reasons for discrediting her testimony. Dkt. 19 at 1–2. The ALJ
4 found Hookano’s alleged impairments and functional limitations not fully persuasive and
5 inconsistent with the medical evidence. AR 29–30. As Judge Christel discussed, the
6 ALJ’s findings are supported by substantial evidence. *See* Dkt. 18 at 4–5; AR 360–61,
7 456, 469, 473, 525–26, 537, 539, 661–62. The Court therefore agrees with Judge
8 Christel that the ALJ provided clear and convincing reasons for discrediting Hookano’s
9 testimony.

10 Second, Hookano objects to Judge Christel’s conclusion that the ALJ provided
11 specific and legitimate reasons for discounting Dr. Nicacio’s opinion. Dkt. 19 at 3.
12 Hookano contends that Judge Christel improperly attributed a rationale to the ALJ that
13 she did not rely upon. *Id.* The Court agrees. Judge Christel stated that the ALJ gave
14 limited weight to Dr. Nicacio’s opinion because it was inconsistent with her treatment
15 notes. Dkt. 18 at 6. The ALJ, however, did not invoke this reason when she rejected Dr.
16 Nicacio’s opinion.¹ *See* AR 30–31. The Court therefore declines to adopt the R&R on
17 this point. *See Pinto v. Massanari*, 249 F.3d 840, 847 (9th Cir. 2001) (“We cannot affirm
18 the decision of an agency on a ground that the agency did not invoke in making its
19 decision.”). Notwithstanding this error, the Court agrees with Judge Christel’s
20 conclusion that the ALJ provided specific and legitimate reasons for discounting Dr.

21
22 ¹ The ALJ stated that Dr. Hurley’s opinion failed to account for treatment notes. AR 31.

1 Nicacio’s opinion. The ALJ gave limited weight to Dr. Nicacio’s opinion because it was
2 inconsistent with objective medical evidence and largely based on Hookano’s subjective
3 complaints. AR 30–31. These reasons are supported by substantial evidence in the
4 record. *See* AR 30–31, 519–20, 560–62, 569–70, 664–67. Accordingly, the ALJ did not
5 err by discounting Dr. Nicasio’s opinion.

6 Finally, Hookano argues that Judge Cristel improperly determined that the ALJ
7 committed harmless error by rejecting the testimony of Hookano’s daughter. Dkt. 19 at
8 4. Although the ALJ found Hookano’s daughter to be generally credible, the ALJ
9 considered the daughter’s observations with “great caution” because the daughter did not
10 “possess the expertise nor the motivation to offer an objective or functional assessment”
11 and her opinion “appear[ed] to be colored by affection” for Hookano. AR 31. The Court
12 agrees with Judge Christel that these two reasons are not germane. *See* Dkt. 18 at 8–9.
13 First, a lay witness’s lack of medical expertise is not a legitimate basis for discrediting
14 testimony. *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009); 20 C.F.R.
15 § 404.1513(d)(4). Second, testimony from family members may not be disregarded
16 simply because of their relationship to the claimant. *Valentine v. Comm’r Soc. Sec.*
17 *Admin.*, 573 F.3d 685, 694 (9th Cir. 2009). In this case, the ALJ did not point to any
18 evidence to support a finding that Hookano’s daughter was biased. *See* AR 31. In the
19 absence of such evidence, the daughter’s assumed affection for Hookano is an
20 insufficient reason to discredit the daughter’s testimony. *See Valentine*, 573 F.3d at 694.

21 Although the ALJ erred in considering the daughter’s testimony with “great
22 caution,” the Court agrees with Judge Christel that the ALJ’s error was harmless.

1 Hookano's daughter did not describe any limitations beyond those described by
2 Hookano. *Compare* AR 61 & 71, *with* AR 288. As discussed above, the ALJ validly
3 rejected the limitations described by Hookano. Because the daughter's testimony does
4 not alter the ultimate nondisability determination, the ALJ's error was harmless. *See*
5 *Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012) ("Because the ALJ had validly
6 rejected all the limitations described by the lay witnesses in discussing [the claimant's]
7 testimony . . . the ALJ's failure to give specific witness-by-witness reasons for rejecting
8 the lay testimony did not alter the ultimate nondisability determination. Accordingly, the
9 ALJ's error was harmless.").

10 Therefore, the Court having considered the R&R, Hookano's objections, and the
11 remaining record, does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED in part** and **DECLINED in part**;
13 (2) The ALJ's decision is **AFFIRMED**; and
14 (2) This action is **DISMISSED**.

15 **IT IS SO ORDERED.**

16 Dated this 20th day of July, 2015.

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19 BENJAMIN H. SETTLE
United States District Judge