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

10 STEVEN ROBERT ANGELONIS,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.
16

CASE NO. 14-cv-05863 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
19 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States
20 Magistrate Judge, Dkt. 6). This matter has been fully briefed (*see* Dkt. 14, 21, 22).

21 After considering and reviewing the record, the Court concludes that the ALJ
22 erred in failing to include in her residual functional capacity (“RFC”) finding all of the
23 limitations assessed by Dr. John M. Haroian, Ph.D. Because the RFC should have
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1 included additional limitations, and because these additional limitations may have
2 affected the ultimate disability determination, the error is not harmless.

3 Therefore, this matter is reversed and remanded pursuant to sentence four of 42
4 U.S.C. § 405(g) to the Acting Commissioner for further consideration.

5 BACKGROUND

6 Plaintiff, STEVEN ROBERT ANGELONIS, was born in 1992 and was 19 years
7 old on the amended alleged date of disability onset of April, 11, 2012 (*see* AR. 12, 151-
8 56). Plaintiff graduated from high school (AR. 34). He has no work history (*id.*).
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10 According to the ALJ, plaintiff has at least the severe impairments of “borderline
11 intellectual functioning, oppositional defiant disorder, anxiety disorder not otherwise
12 specified (NOS), cannabis related disorder NOS, and status post left knee repair (20 CFR
13 416.920(c))” (AR. 14).

14 At the time of the hearing, plaintiff was living with his mom, brother, and fiancée
15 (AR. 33).

16 PROCEDURAL HISTORY

17 Plaintiff’s application for Supplemental Security Income (“SSI”) benefits pursuant
18 to 42 U.S.C. § 1382(a) (Title XVI) of the Social Security Act was denied initially and
19 following reconsideration (*see* AR. 65-75, 77-88). Plaintiff’s requested hearing was held
20 before Administrative Law Judge Stephanie Martz (“the ALJ”) on March 19, 2013 (*see*
21 AR. 27-63). On April 17, 2013, the ALJ issued a written decision in which the ALJ
22 concluded that plaintiff was not disabled pursuant to the Social Security Act (*see* AR. 9-
23 26).
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1 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Did the ALJ
2 err in assessing the medical evidence in the record; (2) Did the ALJ err by rejecting the
3 lay witness evidence from plaintiff's mother; and (3) Did the ALJ err in assessing
4 plaintiff's RFC (*see* Dkt. 14, p. 1).

5 STANDARD OF REVIEW

6 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
7 denial of social security benefits if the ALJ's findings are based on legal error or not
8 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
9 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
10 1999)).
11

12 DISCUSSION

13 (1) **Did the ALJ err in assessing the medical evidence in the record?**

14 Plaintiff argues that the ALJ did not give specific and legitimate reasons supported
15 by substantial evidence in the record for rejecting the limitations assessed by Dr. Haroian
16 (*see* Opening Brief, Dkt. 14, pp. 9-12).

17 Dr. Haroian performed a Psychological/Psychiatric Evaluation, including a Mental
18 Status Examination ("MSE"), on March 12, 2012 (*see* AR. 258-67). Dr. Haroian assessed
19 plaintiff as markedly or severely limited in his ability to adapt to changes in a routine
20 work setting, make simple work-related decisions, be aware of normal hazards and take
21 appropriate precautions, communicate and perform effectively in a work setting with
22 limited public contact, maintain appropriate behavior in a work setting, and complete a
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1 normal workday and workweek without interruptions from psychologically-based
2 symptoms (AR. 260).

3 The ALJ must provide “clear and convincing” reasons for rejecting the
4 uncontradicted opinion of either a treating or examining physician or psychologist.
5 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d
6 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). But when
7 a treating or examining physician’s opinion is contradicted, that opinion can be rejected
8 “for specific and legitimate reasons that are supported by substantial evidence in the
9 record.” *Lester, supra*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043
10 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can
11 accomplish this by “setting out a detailed and thorough summary of the facts and
12 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
13 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881
14 F.2d 747, 751 (9th Cir. 1989)).

15
16 Here, the ALJ gave Dr. Haroian’s opinion no weight, explaining:

17 I accord no weight to this psychologist’s opinion as it relies largely on the
18 claimant’s self-report of anger problems, which is not found to be credible
19 as discussed above. Additionally, the degrees of severity implicated on the
20 evaluation form are inconsistent with the psychologist’s contemporaneous
21 mental status exam. For example, as discussed above, the claimant was able
22 to engage appropriately. While stream of mental activity was noted to be
23 slow and deliberate, it was for the most part, “well organized.” The
24 claimant had no difficulty following a 3-step command or following
conversation (Exhibit 4F.5).

(AR. 20). Neither of these reasons is legitimate.

1 First, the Court notes that “experienced clinicians attend to detail and subtlety in
2 behavior, such as the affect accompanying thought or ideas, the significance of gesture or
3 mannerism, and the unspoken message of conversation. The Mental Status Examination
4 allows the organization, completion and communication of these observations.” Paula T.
5 Trzepacz and Robert W. Baker, *The Psychiatric Mental Status Examination 3* (Oxford
6 University Press 1993). “Like the physical examination, the Mental Status Examination is
7 termed the *objective* portion of the patient evaluation.” *Id.* at 4 (emphasis in original).
8

9 The MSE generally is conducted by medical professionals skilled and experienced
10 in psychology and mental health. Although “anyone can have a conversation with a
11 patient, [] appropriate knowledge, vocabulary and skills can elevate the clinician’s
12 ‘conversation’ to a ‘mental status examination.’” Trzepacz and Baker, *supra*, *The*
13 *Psychiatric Mental Status Examination 3*. A mental health professional is trained to
14 observe patients for signs of their mental health not rendered obvious by the patient’s
15 subjective reports, in part because the patient’s self-reported history is “biased by their
16 understanding, experiences, intellect and personality” (*id.* at 4), and, in part, because it is
17 not uncommon for a person suffering from a mental illness to be unaware that her
18 “condition reflects a potentially serious mental illness.” *Nguyen v. Chater*, 100 F.3d
19 1462, 1465 (9th Cir. 1996) (citation omitted).
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21 According to the Ninth Circuit, “[an] ALJ may reject a treating physician’s
22 opinion if it is based ‘to a large extent’ on a claimant’s self-reports that have been
23 properly discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
24 2008) (*quoting Morgan v. Comm’r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)

1 (citing *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989))). This situation is
2 distinguishable from one in which the doctor provides his own observations in support of
3 his assessments and opinions. See *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194,
4 1199-1200 (9th Cir. 2008) (“an ALJ does not provide clear and convincing reasons for
5 rejecting an examining physician’s opinion by questioning the credibility of the patient’s
6 complaints where the doctor does not discredit those complaints and supports his ultimate
7 opinion with his own observations”); see also *Edlund v. Massanari*, 253 F.3d 1152, 1159
8 (9th Cir. 2001). Therefore, “when an opinion is not more heavily based on a patient’s
9 self-reports than on clinical observations, there is no evidentiary basis for rejecting the
10 opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing *Ryan, supra*,
11 528 F.3d at 1199-1200).

13 Here, Dr. Haroian performed an MSE, charting a number of results (see AR. 262-
14 67). Dr. Haroian observed that plaintiff’s mood was depressed and his affect flat, that he
15 displayed difficulties with attention and concentration, and that he had poor abstraction
16 skills (AR. 262). Dr. Haroian recorded that plaintiff could not complete Serial 7s and
17 failed a test of short-term recall (*id.*). Dr. Haroian also noted that plaintiff had “limited
18 insight regarding his current difficulties and demonstrated poor capacity to make good
19 decisions” (*id.*). Moreover, Dr. Haroian summarized the results of the MSE in a section
20 labeled, “OBJECTIVE DATA COLLECTED” (see AR. 261). Therefore, the record
21 shows that Dr. Haroian did not base an opinion of plaintiff’s limitations largely on self-
22 reported symptoms. Rather, Dr. Haroian provided a medical source statement that was
23 based on medical records, the doctor’s observations, the objective results of the MSE, and
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1 plaintiff's self-reported symptoms. Thus, the ALJ's finding that the doctor's assessment
2 was based largely on plaintiff's self-reported symptoms is not supported by substantial
3 evidence.

4 Second, discrepancies between a medical opinion source's functional assessment
5 and that source's clinical notes, recorded observations and other comments regarding a
6 claimants capabilities "is a clear and convincing reason for not relying" on the
7 assessment. *Bayliss, supra*, 427 F.3d at 1216; *see also Weetman v. Sullivan*, 877 F.2d 20,
8 23 (9th Cir. 1989). In this case, the ALJ also gave no weight to the opinion of Dr.
9 Haroian because it was allegedly inconsistent with the doctor's own examination, citing
10 plaintiff's ability to engage appropriately, his well-organized stream of mental activity,
11 and his ability to follow a three-step command and follow conversation (AR. 20).

12 However, that plaintiff could engage appropriately for the duration of the
13 interview does not necessarily indicate that he could maintain appropriate work behavior
14 during a full work schedule. That plaintiff's speech patterns and vocabulary usage and
15 recognition were described as "for the most part, well organized" (AR. 262) does not
16 contradict any of the marked or severe limitations assessed by Dr. Haroian. That plaintiff
17 could follow a three-step command and follow conversation does not undermine Dr.
18 Haroian's ultimate opinion that plaintiff has limitations performing routine tasks and
19 communicating effectively based on other observations of plaintiff failing at tasks and
20 then abandoning them (*see id.*). These alleged discrepancies between Dr. Haroian's
21 medical opinion and his exam findings are not true inconsistencies. The ALJ's finding of
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1 an internal inconsistency is not supported by substantial evidence for wholly rejecting the
2 opinion of Dr. Haroian.

3 The Ninth Circuit has “recognized that harmless error principles apply in the
4 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
5 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th
6 Cir. 2006) (collecting cases)). The Ninth Circuit noted that “in each case we look at the
7 record as a whole to determine [if] the error alters the outcome of the case.” *Id.* The court
8 also noted that the Ninth Circuit has “adhered to the general principle that an ALJ’s error
9 is harmless where it is ‘inconsequential to the ultimate nondisability determination.’” *Id.*
10 (quoting *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008))
11 (other citations omitted). Here, because the ALJ improperly rejected the opinion of Dr.
12 Haroian in forming the RFC and plaintiff was found to be capable of performing work
13 based on that RFC, the error affected the ultimate disability determination and is not
14 harmless.
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16 The Court may remand this case “either for additional evidence and findings or to
17 award benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when
18 the Court reverses an ALJ’s decision, “the proper course, except in rare circumstances, is
19 to remand to the agency for additional investigation or explanation.” *Benecke v.*
20 *Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). Thus, it is “the unusual
21 case in which it is clear from the record that the claimant is unable to perform gainful
22 employment in the national economy,” and that “remand for an immediate award of
23 benefits is appropriate.” *Id.* Here, the outstanding issue is whether or not a vocational
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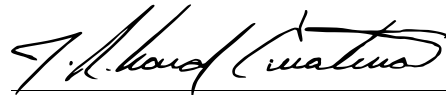
1 expert may still find an ability to perform other jobs existing in significant numbers in the
2 national economy despite additional limitations. Accordingly, remand for further
3 consideration is warranted in this matter.

4 CONCLUSION

5 Based on these reasons and the relevant record, the Court **ORDERS** that this
6 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
7 405(g) to the Acting Commissioner for further consideration consistent with this order.

8 **JUDGMENT** is for plaintiff and the case should be closed.

9 Dated this 15th day of June, 2015.

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12 J. Richard Creatura
13 United States Magistrate Judge
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