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

10 TONYA E. MCQUESTION,

11 Plaintiff,

12 v.

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

15 Defendant.
16

CASE NO. 14-cv-06007 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. 13, 16, 17).

21 After considering and reviewing the record, the Court concludes that the ALJ
22 erred in failing to include in plaintiff's residual functional capacity ("RFC") finding all of
23 the limitations assessed by plaintiff's mother, Darlene McQuestion and the ALJ failed to
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1 provide a germane reason supported by substantial evidence to discount her testimony.
2 Because the RFC should have included additional limitations, and because these
3 additional limitations may have affected the ultimate disability determination, the error is
4 not harmless.

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

7 BACKGROUND

8 Plaintiff, TONYA E. MCQUESTION, was born in 1983 and was 26 years old on
9 the alleged date of disability onset of July 1, 2009 (*see* AR. 191-93, 194-200). At the time
10 of the hearing, plaintiff was taking some college classes through a grant program (AR.
11 37-40). Plaintiff has work experience cleaning houses and eBay sales (AR. 46-47).
12 Plaintiff lost her house cleaning accounts because she “was acting really weird” (AR. 47).

13 According to the ALJ, plaintiff has at least the severe impairments of “marijuana
14 abuse; alcohol abuse; opiate abuse; and bipolar disorder (20 CFR 404.1520(c) and
15 416.920(c))” (AR. 12).

16 At the time of the hearing, plaintiff was living with her mother (AR. 34).

17 PROCEDURAL HISTORY

18 Plaintiff’s applications for disability insurance (“DIB”) benefits pursuant to 42
19 U.S.C. § 423 (Title II) and Supplemental Security Income (“SSI”) benefits pursuant to 42
20 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and
21 following reconsideration (*see* AR. 56-64, 65-73, 74-83, 84-93, 96-107, 108-19).
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23 Plaintiff’s requested hearing was held before Administrative Law Judge Paul G. Robeck
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1 (“the ALJ”) on June 11, 2013 (*see* AR. 31-53). On July 8, 2013, the ALJ issued a written
2 decision in which the ALJ concluded that plaintiff was not disabled pursuant to the Social
3 Security Act (*see* AR. 7-25).

4 In plaintiff’s Opening Brief, plaintiff raises the following issues: (1) Whether or
5 not the ALJ properly evaluated the medical evidence; (2) Whether or not the ALJ
6 properly evaluated plaintiff’s testimony; (3) Whether or not the ALJ properly evaluated
7 the lay evidence; (4) Whether or not the ALJ properly assessed plaintiff’s residual
8 functional capacity; and (5) Whether or not the ALJ erred by basing his step five finding
9 on a residual functional capacity assessment that did not include all of plaintiff’s
10 limitations (*see* Dkt. 13, p. 1). Because this Court reverses and remands the case based on
11 issues 3, 4, and 5, the Court need not further review other issues and expects the ALJ to
12 reevaluate the record as a whole in light of the direction provided below.

14 STANDARD OF REVIEW

15 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s
16 denial of social security benefits if the ALJ’s findings are based on legal error or not
17 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
18 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
19 1999)).

21 DISCUSSION

22 (1) **Whether or not the ALJ properly evaluated the lay evidence.**

1 Plaintiff contends that the ALJ erred by failing to include in the RFC all of the
2 functional limitations opined by plaintiff's mother, Darlene McQuestion (*see* Opening
3 Brief, Dkt. 13, pp. 15-16).

4 In determining whether or not "a claimant is disabled, an ALJ must consider lay
5 witness testimony concerning a claimant's ability to work." *Stout v. Commissioner,*
6 *Social Security Administration*, 454 F.3d 1050, 1053 (9th Cir. 2006) (*citing Dodrill v.*
7 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993); 20 C.F.R. §§ 404.1513(d)(4) and (e),
8 416.913(d)(4) and (e)). An ALJ may disregard opinion evidence provided by other
9 sources such as friends and family members only "if the ALJ 'gives reasons germane to
10 each witness for doing so.'" *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th
11 Cir. 2010) (*quoting Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)); *see also Nguyen v.*
12 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996).

14 On September 19, 2011, Ms. McQuestion completed a third-party function report
15 assessing plaintiff's capabilities (*see* AR. 253-60). In her report, Ms. McQuestion stated
16 that plaintiff's impairments limit her ability to work because she is uncomfortable around
17 people and has anxiety attacks (*see* AR. 253). Ms. McQuestion indicated that plaintiff's
18 impairments affect her ability to get along with others, stating that she is very paranoid of
19 people (*see* AR. 258). Specifically, Ms. McQuestion stated that plaintiff has problems
20 getting along with family, friends, neighbors, and others because she does not like to be
21 around crowds and gets anxiety around people (*see id.*). Ms. McQuestion added that
22 plaintiff was previously able to run a business and manage clients but that her
23 impairments prevent her from doing so now (*see* AR. 254). Ms. McQuestion stated that
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1 | plaintiff now spends no time with others and has no regular social activities (*see* AR.
2 | 257).

3 | The ALJ noted Ms. McQuestion’s report and the limitations she identified, and
4 | then stated,

5 | However, she also noted the claimant works around the house, makes
6 | crafts, and the claimant helps to care for her mother. I have considered this
7 | evidence and give it some weight because it supports the overall record that
8 | while the claimant has some mental limitations she is also able to engage in
9 | a wide range of activities. This evidence does not support any limitations
 on functional capacity greater than that accounted for in the residual
 functional capacity finding.

10 | (AR. 18). The ALJ assessed plaintiff with an RFC that limited plaintiff to “only
11 | occasional public contact” and “no working with more than two coworkers at a time”
12 | (AR. 14).

13 | The ALJ’s finding that the lay witness evidence did not support any greater
14 | limitations than those accounted for in the RFC is not supported by substantial evidence.
15 | Ms. McQuestion’s testimony that plaintiff has problems getting along with others
16 | because of her anxiety attacks is not compatible with an RFC that requires plaintiff to be
17 | working with coworkers all day. Even inferring that the ALJ was actually discrediting
18 | part of Ms. McQuestion’s testimony because it was inconsistent with other parts of her
19 | testimony, this reason is not supported by substantial evidence. That plaintiff could work
20 | around the house, make crafts, and help to care for her mother does not contradict Ms.
21 | McQuestion’s opinion that plaintiff cannot get along with others in a workplace setting.
22 | *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (“[D]isability claimants should
23 | not be penalized for attempting to lead normal lives in the face of their limitations.”).
24 |

1 Therefore, the ALJ erred by failing to include in plaintiff’s RFC all of the limitations
2 assessed by Ms. McQuestion or to give germane reasons supported by substantial
3 evidence for discrediting the testimony.

4 The Ninth Circuit has “recognized that harmless error principles apply in the
5 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
6 (citing *Stout, supra*, 454 F.3d at 1054 (collecting cases)). The Ninth Circuit noted that “in
7 each case we look at the record as a whole to determine [if] the error alters the outcome
8 of the case.” *Id.* The court also noted that the Ninth Circuit has “adhered to the general
9 principle that an ALJ’s error is harmless where it is ‘inconsequential to the ultimate
10 nondisability determination.’” *Id.* (quoting *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533
11 F.3d 1155, 1162 (9th Cir. 2008)) (other citations omitted). Here, because the ALJ
12 improperly omitted limitations opined by Ms. McQuestion in forming the RFC without
13 providing a germane reason for doing so, and plaintiff was found to be capable of
14 performing work based on that RFC, the error affected the ultimate disability
15 determination and is not harmless.

17 The Court may remand this case “either for additional evidence and findings or to
18 award benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when
19 the Court reverses an ALJ’s decision, “the proper course, except in rare circumstances, is
20 to remand to the agency for additional investigation or explanation.” *Benecke v.*
21 *Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). Thus, it is “the unusual
22 case in which it is clear from the record that the claimant is unable to perform gainful
23 employment in the national economy,” and that “remand for an immediate award of
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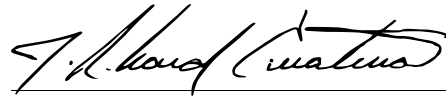
1 benefits is appropriate.” *Id.* Here, the outstanding issue is whether or not a vocational
2 expert may still find an ability to perform other jobs existing in significant numbers in the
3 national economy despite additional limitations. Accordingly, remand for further
4 consideration is warranted in this matter.

5
6 CONCLUSION

7 Based on these reasons and the relevant record, the Court **ORDERS** that this
8 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
9 405(g) to the Acting Commissioner for further consideration consistent with this order.

10 **JUDGMENT** should be for plaintiff and the case should be closed.

11 Dated this 9th day of September, 2015.

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14 J. Richard Creatura
15 United States Magistrate Judge
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