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

6 SHEILA M. OWEN,

7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN, Acting
10 Commissioner of Social Security,

11 Defendant.

Case No. 3:15-cv-05933-KLS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

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13 Plaintiff has brought this matter for judicial review of defendant's denial of her
14 applications for disability insurance and supplemental security income (SSI) benefits. The parties
15 have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. §
16 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below,
17 the Court finds that defendant's decision to deny benefits should be reversed, and that this matter
18 should be remanded for further administrative proceedings.
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20 FACTUAL AND PROCEDURAL HISTORY

21 On November 9, 2012, plaintiff filed an application for SSI benefits, alleging she became
22 disabled beginning September 30, 2010. Dkt. 9, Administrative Record (AR), 16. Plaintiff also
23 sought to file an application for disability insurance benefits on November 9, 2012, alleging the
24 same onset date of disability. AR 17. The application for SSI benefits was denied on initial
25 administrative review and on reconsideration. AR 16. The application for disability insurance
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1 benefits “was not accepted at the field office because [plaintiff’s] date last insured had already
2 passed and been determined.” AR 17. At a hearing held before an Administrative Law Judge
3 (ALJ), plaintiff appeared and testified, as did a vocational expert. AR 37-67.

4 In a written decision, the ALJ found the prior adverse administrative determinations were
5 final and thus subject to *res judicata*. AR 16-17. The ALJ also found that plaintiff could perform
6 jobs existing in significant numbers in the national economy, and that therefore she was not
7 disabled since November 9, 2012, the date she filed her application for SSI benefits. AR 16-31.
8 The Appeals Council denied plaintiff’s request for review of the ALJ’s decision, making that
9 decision the final decision of the Commissioner, which plaintiff then appealed to this Court. AR
10 6; Dkt. 3; 20 C.F.R. § 416.1481.

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12 Plaintiff seeks reversal of the ALJ’s decision and remand for further administrative
13 proceedings, arguing the ALJ erred:

- 14 (1) in refusing to reopen the prior adverse disability determinations and to
15 consider evidence from the period covered by that determination;
- 16 (2) in evaluating the medical evidence in the record, including the opinion
17 evidence from Keith J. Krueger, Ph.D.;
- 18 (3) in evaluating plaintiff’s testimony;
- 19 (4) in assessing plaintiff’s residual functional capacity (RFC); and
- 20 (5) in finding plaintiff could perform other jobs existing in significant
21 numbers in the national economy.

22 For the reasons set forth below, the Court agrees that the ALJ erred in evaluating the opinion
23 evidence from Dr. Krueger, and therefore in assessing plaintiff’s RFC and in finding she could
24 perform other jobs. Thus, remand for further administrative proceedings is warranted.

25 DISCUSSION

26 The Commissioner’s determination that a claimant is not disabled must be upheld if the
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1 “proper legal standards” have been applied, and the “substantial evidence in the record as a
2 whole supports” that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);
3 *see also Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v.*
4 *Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). “A decision supported by substantial
5 evidence nevertheless will be set aside if the proper legal standards were not applied in weighing
6 the evidence and making the decision.” *Carr*, 772 F.Supp. at 525 (citing *Brawner v. Sec’y of*
7 *Health and Human Sers.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is “such
8 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
9 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at
10 1193.
11

12 The Commissioner’s findings will be upheld “if supported by inferences reasonably
13 drawn from the record.” *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to
14 determine whether the Commissioner’s determination is “supported by more than a scintilla of
15 evidence, although less than a preponderance of the evidence is required.” *Sorenson v.*
16 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one
17 rational interpretation,” that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th
18 Cir. 1984). That is, “[w]here there is conflicting evidence sufficient to support either outcome,”
19 the Court “must affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*
20 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).
21

22 I. The ALJ’s Evaluation of Dr. Krueger’s Opinion

23 The ALJ is responsible for determining credibility and resolving ambiguities and
24 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where
25 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions
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1 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,
2 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d
3 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or
4 are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical
5 opinions “falls within this responsibility.” *Id.* at 603.

6
7 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
8 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this
9 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
10 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences
11 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may
12 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881
13 F.2d 747, 755, (9th Cir. 1989).

14
15 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
16 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
17 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can
18 only be rejected for specific and legitimate reasons that are supported by substantial evidence in
19 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or
20 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
21 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence
22 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
23 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

24
25 In general, more weight is given to a treating physician’s opinion than to the opinions of
26 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need

1 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and
2 inadequately supported by clinical findings” or “by the record as a whole.” *Batson v. Comm’r of*
3 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v. Barnhart*, 278 F.3d
4 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). An
5 examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining
6 physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may constitute
7 substantial evidence if “it is consistent with other independent evidence in the record.” *Id.* at
8 830-31; *Tonapetyan*, 242 F.3d at 1149.

10 The record contains a psychological/psychiatric evaluation form completed by Keith J.
11 Krueger, Ph.D., on April 26, 2012, who opined that “[a]t present, lacking enough daily structure,
12 self-confidence, adequate motivation [sic] to be able to sustain [sic] normal workday.” AR 277.
13 Dr. Krueger further opined that “[w]ith improvement in depression mgt, would expect she could
14 do past work for which she is physically capable.” AR 277-78. Plaintiff argues the ALJ erred in
15 failing to discuss this opinion evidence in his decision. The Court agrees.

17 Clearly, given Dr. Krueger’s opinion regarding plaintiff’s inability to sustain a normal
18 workday constitutes significant probative evidence of her ability to function that the ALJ should
19 have considered and discussed. As defendant points out, the ALJ acknowledged that the record
20 contained Dr. Krueger’s opinion, but gave it little weight because it did not discuss plaintiff’s
21 level of functioning “during the period at issue.” AR 17 (referencing Exhibit 1F, which contains
22 Dr. Krueger’s opinion). The Court finds, however, that Dr. Krueger’s opinion does concern the
23 time period at issue, and therefore the ALJ should have discussed it as it pertains to the post *res*
24 *judicata* period.

26 The ALJ found that because the April 25, 2012 reconsideration determination “was

1 administratively final and was not appealed, the previously adjudicated period from September
2 30, 2010, to April 25, 2012, is res judicata.” AR 16. The ALJ then went on to note that although
3 plaintiff had filed an application for disability insurance benefits along with her application for
4 SSI benefits, the former application was not accepted because plaintiff’s date last insured already
5 had passed. AR 17. The ALJ thus found the period at issue was from plaintiff’s “protective filing
6 date of November 9, 2012, through the date of this decision, and is limited to [the] evaluation” of
7 plaintiff’s application for SSI benefits. *Id.*

9 Citing 20 C.F.R. § 416.335, defendant argues the ALJ properly used November 9, 2012,
10 as both plaintiff’s alleged onset date of disability *and* the start of the relevant period for purposes
11 of this case. But that regulation pertains to when a claimant can first claim SSI benefits should he
12 or she be found disabled. *See id.* (“When you file an application in the month that you meet all
13 the other requirements for eligibility, the earliest month for which we can pay you benefits is the
14 month following the month you filed the application.”). It says nothing about when a claimant’s
15 disability actually begins.
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17 Here, plaintiff alleges September 30, 2010, as her alleged onset date of disability. Thus,
18 while plaintiff cannot receive any paid benefits prior to the month following the month she filed
19 her application, she could be found to be disabled prior thereto, or at least starting from the date
20 immediately after the previously administratively adjudicated period. As the ALJ acknowledged,
21 that previously adjudicated period is from September 30, 2010, until April 25, 2012. However,
22 Dr. Krueger’s opinion is dated the day after that period ended, April 26, 2012. Accordingly, it
23 concerns a period that has not been found to be administratively final. Further, as plaintiff notes
24 the Commissioner is required to “develop [a claimant’s] complete medical history for at least the
25 12 months preceding the month in which [the claimant] files [his or her] application.” 20 C.F.R.
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1 § 416.912(d). Since the limitations Dr. Krueger assessed *could* support a finding of disability as
2 of at least April 26, 2012, and which *could* conceivably last at least through November 9, 2012,
3 it constitutes significant probative evidence the ALJ should have properly evaluated. He failed to
4 do so, and that failure constitutes reversible error.

5 II. The ALJ's RFC Assessment

6 The Commissioner employs a five-step "sequential evaluation process" to determine
7 whether a claimant is disabled. 20 C.F.R. § 416.920. If the claimant is found disabled or not
8 disabled at any particular step thereof, the disability determination is made at that step, and the
9 sequential evaluation process ends. *See id.* A claimant's RFC assessment is used at step four of
10 the process to determine whether he or she can do his or her past relevant work, and at step five
11 to determine whether he or she can do other work. SSR 96-8p, 1996 WL 374184 *2. It is what
12 the claimant "can still do despite his or her limitations." *Id.*

13 A claimant's RFC is the maximum amount of work the claimant is able to perform based
14 on all of the relevant evidence in the record. *Id.* However, an inability to work must result from
15 the claimant's "physical or mental impairment(s)." *Id.* Thus, the ALJ must consider only those
16 limitations and restrictions "attributable to medically determinable impairments." *Id.* In assessing
17 a claimant's RFC, the ALJ also is required to discuss why the claimant's "symptom-related
18 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the
19 medical or other evidence." *Id.* at *7.

20 The ALJ found plaintiff had the RFC:

21 **to perform light work . . . that does not require more than occasional**
22 **climbing, balancing, stooping, kneeling, crouching, or crawling; that does**
23 **not require concentrated exposure to vibrations; that does not**
24 **requirement [sic] exposure to hazards such as machinery and heights;**
25 **that consists of simple, routine, tasks; that do [sic] not require interaction**
26 **with the general public; that is performed in a place where the general**

1 **public is typically not present.**

2 AR 22 (emphasis in the original). But because as discussed above the ALJ erred in failing to
3 properly evaluate the medical opinion evidence from Dr. Krueger, the ALJ's RFC assessment
4 cannot be said to completely and accurately describe all of plaintiff's functional limitations.

5 Accordingly, the ALJ erred here as well.

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7 **III. The ALJ's Step Five Determination**

8 If a claimant cannot perform his or her past relevant work, at step five of the sequential
9 disability evaluation process the ALJ must show there are a significant number of jobs in the
10 national economy the claimant is able to do. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir.
11 1999); 20 C.F.R. § 416.920(d), (e). The ALJ can do this through the testimony of a vocational
12 expert. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.
13 An ALJ's step five determination will be upheld if the weight of the medical evidence supports
14 the hypothetical posed to the vocational expert. *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir.
15 1987); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's
16 testimony therefore must be reliable in light of the medical evidence to qualify as substantial
17 evidence. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's
18 description of the claimant's functional limitations "must be accurate, detailed, and supported by
19 the medical record." *Id.* (citations omitted).

20
21 The ALJ found that plaintiff could perform other jobs existing in significant numbers in
22 the national economy, based on the vocational expert's testimony offered at the hearing in
23 response to a hypothetical question concerning an individual with the same age, education, work
24 experience and RFC as plaintiff. AR 30-31. But because as discussed above the ALJ erred in
25 assessing plaintiff's RFC, the hypothetical question the ALJ posed to the vocational expert – and
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1 thus that expert’s testimony and the ALJ’s reliance thereon – cannot be said to be supported by
2 substantial evidence or free of error.

3 IV. Remand for Further Administrative Proceedings

4 The Court may remand this case “either for additional evidence and findings or to award
5 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
6 reverses an ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the
7 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
8 Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record
9 that the claimant is unable to perform gainful employment in the national economy,” that
10 “remand for an immediate award of benefits is appropriate.” *Id.*

11 Benefits may be awarded where “the record has been fully developed” and “further
12 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*
13 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:
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15 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
16 claimant’s] evidence, (2) there are no outstanding issues that must be resolved
17 before a determination of disability can be made, and (3) it is clear from the
18 record that the ALJ would be required to find the claimant disabled were such
19 evidence credited.

20 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

21 Because issues remain in regard to the medical opinion evidence, plaintiff’s RFC, and her ability
22 to perform other jobs existing in significant numbers in the national economy, remand for further
23 consideration of those issues is warranted.

24 CONCLUSION

25 Based on the foregoing discussion, the Court finds the ALJ improperly determined
26 plaintiff to be not disabled. Defendant’s decision to deny benefits therefore is REVERSED and

1 this matter is REMANDED for further administrative proceedings.

2 DATED this 18th day of October, 2016.

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6 Karen L. Strombom
7 United States Magistrate Judge
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