

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KRISTINE PAHRMANN,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No. 3:16-cv-05424-KLS  
  
ORDER AFFIRMING DEFENDANT’S  
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant’s denial of her applications for disability insurance and supplemental security (SSI) benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court finds defendant’s decision to deny benefits should be affirmed.

FACTUAL AND PROCEDURAL HISTORY

On August 31, 2011, plaintiff filed an application for disability insurance benefits and another one for SSI benefits, alleging in both applications that she became disabled beginning August 1, 2006. Dkt. 9, Administrative Record (AR) 19. Both applications were denied on initial administrative review and on reconsideration. *Id.* A hearing was held before an Administrative Law Judge (ALJ), at which plaintiff appeared and testified, as did a vocational expert. AR 118-57.

In a written decision dated January 31, 2013, the ALJ found that plaintiff could perform

1 other jobs existing in significant numbers in the national economy, and therefore that she was not  
2 disabled. AR 205-15. The Appeals Council granted plaintiff's request for review of that decision,  
3 remanding the matter for further administrative proceedings. AR 222-24.

4 On remand, another hearing was held before the same ALJ at which plaintiff appeared  
5 and testified, as did a different vocational expert. AR 44-105. In a written decision dated January  
6 6, 2016, the ALJ again found that plaintiff could perform other jobs existing in significant  
7 numbers in the national economy, and therefore that she was not disabled. AR. 19-35. The  
8 Appeals Council denied plaintiff's request for review of the ALJ's decision, making it the final  
9 decision of the Commissioner, which plaintiff appealed to this Court. AR 1; Dkt. 3; 20 C.F.R. §  
10 404.981, § 416.1481.  
11

12 Plaintiff seeks reversal of the ALJ's decision and remand for further administrative  
13 proceedings, arguing the ALJ erred in finding she did not have a severe mental impairment. For  
14 the reasons set forth below, however, the Court disagrees that the ALJ erred as alleged, and thus  
15 finds the decision to deny benefits should be affirmed.  
16

#### 17 DISCUSSION

18 The Commissioner's determination that a claimant is not disabled must be upheld if the  
19 "proper legal standards" have been applied, and the "substantial evidence in the record as a  
20 whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);  
21 *see also Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v.*  
22 *Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). "A decision supported by substantial  
23 evidence nevertheless will be set aside if the proper legal standards were not applied in weighing  
24 the evidence and making the decision." *Carr*, 772 F.Supp. at 525 (citing *Browner v. Sec'y of*  
25 *Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is "such  
26

1 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”

2 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at  
3 1193.

4 The Commissioner’s findings will be upheld “if supported by inferences reasonably  
5 drawn from the record.” *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to  
6 determine whether the Commissioner’s determination is “supported by more than a scintilla of  
7 evidence, although less than a preponderance of the evidence is required.” *Sorenson v.*

8 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence admits of more than one  
9 rational interpretation,” that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th  
10 Cir. 1984). That is, “[w]here there is conflicting evidence sufficient to support either outcome,”  
11 the Court “must affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*  
12 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

13  
14 Defendant employs a five-step “sequential evaluation process” to determine whether a  
15 claimant is disabled. 20 C.F.R. § 404.1520, § 416.920. If the claimant is found disabled or not  
16 disabled at any step thereof, the disability determination is made at that step, and the sequential  
17 evaluation process ends. *Id.* At step two of the evaluation process, the ALJ must determine if an  
18 impairment is “severe.” 20 C.F.R. § 404.1520, § 416.920. An impairment is “not severe” if it  
19 does not “significantly limit” a claimant’s mental or physical abilities to do basic work activities.  
20 20 C.F.R. § 404.1520(a)(4)(iii), § 416.920(a)(4)(iii); Social Security Ruling (SSR) 96-3p, 1996  
21 WL 374181, at \*1. Basic work activities are those “abilities and aptitudes necessary to do most  
22 jobs.” 20 C.F.R. § 404.1521(b), § 416.921(b); SSR 85- 28, 1985 WL 56856, at \*3.

23  
24 An impairment is not severe only if the evidence establishes a slight abnormality that has  
25 “no more than a minimal effect on an individual[’]s ability to work.” SSR 85-28, 1985 WL  
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1 56856, at \*3; *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996); *Yuckert v. Bowen*, 841 F.2d  
2 303, 306 (9th Cir.1988). Plaintiff must prove that his “impairments or their symptoms affect her  
3 ability to perform basic work activities.” *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir.  
4 2001); *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1998). The step two inquiry described above,  
5 however, is a *de minimis* screening device used to dispose of groundless claims. *Smolen*, 80 F.3d  
6 at 1290.

7  
8 The ALJ in this case found plaintiff’s mental impairments did not cause more than  
9 minimal limitations, and therefore were not severe. AR 22-26. Plaintiff argues the ALJ erred in  
10 so finding, because he relied on older medical evidence in the record to the exclusion of newer  
11 evidence that her mental health condition had worsened. But the ALJ’s discussion of the medical  
12 evidence was not limited to the older evidence plaintiff references. *See id.* Further, while there  
13 may have been some waxing and waning in symptoms over that time period as plaintiff asserts,  
14 there is no indication that her condition necessarily worsened. *See* AR 641-43, 651-62, 667-77,  
15 833-34, 914-26, 932-37, 942-44, 947-50, 952-54, 1001-1003, 1007-1015; *Reddick v. Chater*, 157  
16 F.3d 715, 722 (9th Cir. 1998) (the ALJ is responsible for determining credibility and resolving  
17 ambiguities and conflicts in the medical evidence).

18  
19 More importantly, plaintiff has not shown her mental health impairments resulted in  
20 actual functional limitations more significant than those the ALJ found, as opposed to solely  
21 *symptoms* resulting therefrom. *See* AR 641-43, 651-62, 667-77, 833-34, 914-26, 932-37, 942-44,  
22 947-50, 952-54, 1001-1003, 1007-1015; *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993)  
23 (mere existence of an impairment is insufficient proof of disability); *see also Gentle v. Barnhart*,  
24 430 F.3d 865, 868 (7th Cir 2005) (noting “[c]onditions must not be confused with disabilities,”  
25 “[t]he social security disability benefits program is not concerned with health as such, but rather  
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1 with ability to engage in full-time gainful employment,” and “[a] person can [experience mental  
2 health symptoms,] yet still perform full-time work”); *Higgs v. Bowen*, 880 F.2d 860, 863 (6th  
3 Cir. 1988) (noting “[t]he mere diagnosis of [an impairment] . . . says nothing about the severity  
4 of the [diagnosed] condition,” and upholding finding of non-severity where doctors reports were  
5 silent as to any limitations that may stem from that impairment).

6  
7 Plaintiff argues the ALJ was under a duty to supplement the record with a medical expert  
8 opinion as to her mental health impairments, because the record contains no medical source  
9 evaluation of those impairments other than one performed by William Chalstrom, Ph.D., in May  
10 2012.<sup>1</sup> Dr. Chalstrom at the time offered “no psychiatric diagnoses, since any symptoms that she  
11 has are transient and expectable reactions to her psychosocial stressors related to her medical  
12 condition.” AR 643-44. The ALJ gave Dr. Chalstrom’s opinion significant weight. AR 25. But as  
13 discussed above, the record overall fails to show plaintiff’s impairments resulted in any greater  
14 mental health limitations. In addition, the duty to supplement the record “is triggered only when  
15 there is ambiguous evidence or when the record is inadequate to allow for proper evaluation of  
16 the evidence.” *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001). The fact that the medical  
17 evidence does not support plaintiff’s assertion that she has a severe mental health impairment, as  
18 in this case, is not at all the same as the record being ambiguous or inadequate.

19  
20 Plaintiff also challenges the ALJ’s determination that she was only mildly limited in the  
21 areas of activities of daily living, social functioning, and concentration, persistence, or pace. AR  
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23  
24 <sup>1</sup> The record also contains a medical source statement indicating plaintiff had mostly marked to severe limitations in  
25 a number of mental functional areas completed by Jeanette Sayers, MHP, in September 2012. AR 663-65. The ALJ  
26 rejected Ms. Sayers’ assessment because it was unsupported by any objective findings in the record and inconsistent  
with Dr. Chalstrom’s opinion. AR 24, 209. Plaintiff does not challenge this determination, nor does the Court find it  
to be unsupported or in error. *See* AR 663-65; *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.  
2004) (an ALJ need not accept a medical opinion if “inadequately supported by clinical findings” or “by the record  
as a whole”); *see also Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144,  
1149 (9th Cir. 2001).

1 25-26. Specifically, plaintiff argues that determination is not supported by her self-reporting and  
2 testimony concerning her ability to function in these areas. Even though some aspects of those  
3 reports and that testimony may not be completely consistent with the ALJ's determination, as  
4 defendant points out, the ALJ found plaintiff to be less than fully credibility concerning her  
5 symptoms and limitations, a finding plaintiff has not challenged.

6  
7 The ALJ, furthermore, noted that a Cooperative Disability Investigations Unit (CDIU)  
8 investigation of her was conducted by a police officer in December 2014, which the ALJ noted  
9 revealed the following findings:

10 This officer interviewed a recent neighbor of the claimant, who told the  
11 officer the claimant "was very busy on a daily basis." The officer then  
12 interviewed the claimant, who said she performed all the household shopping,  
13 cleaning, and cooking. She stated "I do get help at time [sic] but for the most  
14 part I do all the womanly duties." She said she enjoyed cleaning and cooking  
15 "and she did it all the time." She told the officer she regularly went to casinos,  
16 including by herself. She consistently appeared relaxed and focused during the  
17 interview, which lasted three hours. The officer then interviewed another  
18 witness, who had known the claimant for over twenty years. This witness  
19 declared that the claimant was always happy and upbeat, and was constantly  
20 planning event [sic] and things for her family to do. . . .

21 AR 23 (citations omitted); *see also* AR 25-26, 901-13. Plaintiff argues this investigation was  
22 conducted under false pretenses, where the witnesses were not under any obligation to discuss  
23 her impairments and limitations or their observations in a truthful manner, and where plaintiff  
24 herself was not obligated to admit to the investigator that she had difficulty functioning on her  
25 own when that had no bearing on the matter under investigation.

26 As the Ninth Circuit has expressly noted, however, "[t]he Social Security Act expressly  
authorizes the Commissioner to 'conduct such investigations and other proceedings as the  
Commissioner may deem necessary or proper.'" *Elmore v. Colvin*, 617 Fed. Appx. 755, 757 (9th  
Cir. July 10, 2015) (quoting 42 U.S.C. § 405(b)(1)). The Ninth Circuit in *Elmore* rejected the

1 plaintiff's assertion that "the CDIU's use of a pretext interview was both inconsistent with the  
2 broad remedial purpose of the Social Security Act and the type of arbitrary government action  
3 that 'shocks the conscience.'" *Id.* It went on to specifically note that "[g]overnment agents are  
4 permitted to assume false identities in order to gain the confidence of their targets." *Id.* (quoting  
5 *Shaw v. Winters*, 796 F.2d 1124, 1125 (9th Cir. 1986)). Here, too, there is nothing in the CDIU  
6 investigation report that shocks the conscience or that indicates actions on the part of the police  
7 officer that a government agent is prohibited from doing.  
8

9 Plaintiff cites *Elmore* for the proposition that CDIU reports have been accepted as a basis  
10 for an ALJ to discount a claimant's testimony, and a more recent decision of this Court (*Yeakey*  
11 *v. Colvin*, 2016 WL 4649653 (W.D. Wash. September 7, 2016) for the further proposition that  
12 they have not been accepted as a basis to find that a claimant does not have a severe impairment  
13 when there is no medical evidence to the contrary. First, *Elmore* merely rejected the idea that an  
14 ALJ may not rely on evidence obtained from a CDIU report. There is no indication that the Ninth  
15 Circuit limited that finding to discounting a claimant's testimony. *See Elmore*, 617 Fed. Appx. at  
16 757. Second, in *Yeakey* the Court merely found that in offering "one blanket reason" for rejecting  
17 a medical source's opinion – that the CDIU investigator contradicted that source's opinion – and  
18 not citing to specific evidence in the medical record to discount that opinion, the ALJ offered an  
19 insufficient basis for rejecting it. *Yeakey*, 2016 WL 4649653, at \*6-\*7. Third, as discussed above,  
20 there *is* medical evidence indicating plaintiff does not have a severe mental impairment, namely  
21 the opinion of Dr. Chalstrom. The ALJ, therefore, did not err here.  
22

23  
24 Plaintiff also argues the ALJ improperly relied on her substance use to find her mental  
25 impairments were non-severe. She asserts no treatment provider has suggested that her mental  
26 symptoms were a result of or exacerbated by such use. But neither did the ALJ. *See* AR 23-24.

1 Next, plaintiff asserts that to the extent the ALJ determined her mental impairments to be non-  
2 severe as a result of her substance use, he erred. A claimant may not be found disabled if drug  
3 addiction or alcoholism (DAA) would be “a contributing factor material to the Commissioner’s  
4 determination” that the claimant is disabled. *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th  
5 Cir. 2001) (citing 42 U.S.C. §§ 423(d)(2)(C), 1382c(a)(3)(J)).

6  
7 To determine whether alcoholism or drug addiction is a materially contributing factor, the  
8 ALJ first must conduct the five-step sequential disability evaluation process “without separating  
9 out the impact of alcoholism or drug addiction.” *Id.* at 955. If the claimant is found to be not  
10 disabled, he or she “is not entitled to benefits.” *Id.* If the claimant is found to be disabled “and  
11 there is ‘medical evidence of drug addiction or alcoholism,’” the ALJ proceeds “to determine if  
12 the claimant ‘would still [be found] disabled if [he or she] stopped using alcohol or drugs.’” *Id.*  
13 (citing 20 C.F.R. § 416.935). If a claimant’s current limitations “would remain once he [or she]  
14 stopped using drugs and alcohol,” and those limitations are disabling, “then drug addiction or  
15 alcoholism is not material to the disability, and the claimant will be deemed disabled.” *Ball v.*  
16 *Massanari*, 254 F.3d 817, 821 (9th Cir. 2001).

17  
18 Here, the ALJ considered *both* the medical evidence concerning plaintiff’s mental health  
19 impairments and the evidence regarding her substance use in determining that plaintiff had no  
20 severe mental health impairment at step two of the sequential disability evaluation process. 22-  
21 26. That is, the ALJ conducting the sequential evaluation process without first separating out the  
22 evidence of DAA. The Court thus finds the ALJ did not improperly separate out the substance  
23 use. As plaintiff herself acknowledges, furthermore, there is no indication in the record that such  
24 use exacerbated her symptoms or that it otherwise impacted her mental functioning. The ALJ’s  
25 step two determination thus must be upheld.  
26



1 CONCLUSION

2 Based on the foregoing discussion, the Court finds the ALJ properly determined plaintiff  
3 to be not disabled. Defendant's decision to deny benefits therefore is AFFIRMED.

4 DATED this 20th day of December, 2016.

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8 Karen L. Strombom  
9 United States Magistrate Judge