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

10 KENNETH E. SMITH,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting  
14 Commissioner of the Social Security  
Administration,<sup>1</sup>

15 Defendant.  
16

CASE NO. 3:16-cv-05712 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  
20  
21

22 <sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to  
23 Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Acting  
24 Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be  
taken, pursuant to the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. §  
405(g).

1 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States  
2 Magistrate Judge, Dkt. 6). This matter has been fully briefed. *See* Dkt. 12, 13, 14.

3 Plaintiff endured three deaths of women close to him -- his grandmother, mother,  
4 and fiancé -- all within a two-month time span, September through November 2012. *See*  
5 AR. 433. Plaintiff contends that when he filed his disability applications, the Social  
6 Security Agent selected his alleged date of disability onset in 2010, with “no contact with  
7 claimant.” AR. 336. However, in his briefing, plaintiff contends that his disability began  
8 in December, 2012, shortly after the deaths of these three women. *See* Dkt. 12, p. 11.

9  
10 On three different occasions, December 20, 2012; July 23, 2013; and November 4,  
11 2014, two different examining doctors both opined that plaintiff suffered from a severe  
12 limitation in his ability to complete a normal workday and workweek without  
13 interruptions from psychologically-based symptoms. *See* AR. 435 (Dr. Wheeler), 544  
14 (Dr. Krueger), 642 (Dr. Krueger again). “Severe” means inability to perform the  
15 particular activity in regular competitive employment or outside of a sheltered workshop.  
16 *See id.*

17 The ALJ failed to credit fully these opinions with a finding that they were based  
18 heavily on plaintiff’s subjective complaints, however neither the ALJ nor defendant cites  
19 anything from the record demonstrating as such. *See* AR. 90. The ALJ also provided her  
20 own interpretation of the mental status examinations, finding that plaintiff’s performance  
21 was “normal,” however that was not the interpretation provided by the psychologists who  
22 performed the examinations and the finding by the ALJ is not supported by substantial  
23 evidence in the record as a whole. Although the ALJ also noted plaintiff’s activities of  
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1 daily living of getting along with others, being able to socialize with his family, and visit  
2 public places, none of these activities demonstrate that plaintiff was able to complete a  
3 normal workday and workweek without interruptions from psychologically-based  
4 symptoms, nor do they demonstrate that plaintiff was able to maintain attention and  
5 concentration two hours at a time, eight hours per day, five days per week.

6 Therefore, the Court concludes that the ALJ failed to offer specific and legitimate  
7 reasons based on substantial evidence in the record as a whole for her failure to credit  
8 fully the opinions of plaintiff's examining doctors, Dr. Wheeler and Dr. Krueger.

9 After considering and reviewing the record, the Court concludes that this matter  
10 should be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the  
11 Acting Commissioner for further administrative proceedings consistent with this Order.  
12

### 13 BACKGROUND

14 Plaintiff, KENNETH E. SMITH, was born in 1968 and was 42 years old on the  
15 alleged date of disability onset of May 31, 2010. *See* AR. 293-99, 300-305. Plaintiff  
16 completed high school and attended college, but did not obtain a degree. AR. 104. He  
17 has work experience as a truck driver, transportation manager, plant supervisor and  
18 dispatcher. AR. 415-16. Plaintiff's last job was as a transportation manager for a  
19 trucking company, but the job ended when the company went out of business. AR. 105-  
20 106.

21 According to the ALJ, plaintiff has at least the severe impairments of "major  
22 depressive disorder; posttraumatic stress disorder ["PTSD"]; [and] personality disorder  
23 (20 CFR 404.1520(c) and 416.920(c)." AR. 82.  
24

1 At the time of the hearing, plaintiff was living alone in a mobile home on his  
2 sister's property. AR. 115-16.

### 3 PROCEDURAL HISTORY

4 Plaintiff's applications for disability insurance benefits ("DIB") pursuant to 42  
5 U.S.C. § 423 (Title II) and Supplemental Security Income ("SSI") benefits pursuant to 42  
6 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and  
7 following reconsideration. *See* AR. 135-44, 146-55, 157-67, 169-79. Plaintiff's requested  
8 hearing was held before Administrative Law Judge Kelly Wilson ("the ALJ") on January  
9 26, 2015. *See* AR. 99-133. On February 27, 2015, the ALJ issued a written decision in  
10 which the ALJ concluded that plaintiff was not disabled pursuant to the Social Security  
11 Act. *See* AR. 77-98.

13 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) The ALJ  
14 failed to provide legitimate reasons for rejecting the medical opinions of examining  
15 psychologists Dr. Wheeler and Dr. Krueger; (2) The ALJ did not provide any reasons  
16 germane to Cheryl Smith for rejecting her lay evidence; (3) The ALJ did not provide  
17 clear or convincing reasons for finding plaintiff not credible; and (4) The ALJ's residual  
18 functional capacity assessment was incomplete, as it did not include any limitations  
19 related to plaintiff's daytime somnolence. *See* Dkt. 12, p. 1.

### 20 STANDARD OF REVIEW

21 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
22 denial of social security benefits if the ALJ's findings are based on legal error or not  
23 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
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1 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
2 1999)).

### 3 DISCUSSION

#### 4 (1) **The ALJ failed to provide legitimate reasons for rejecting the medical** 5 **opinions of examining psychologists Dr. Wheeler and Dr. Krueger.**

6 Plaintiff contends that the ALJ erred by failing to credit fully medical opinions  
7 from examining doctors, Drs. Wheeler and Krueger. *See* Dkt. 12, p. 3. Defendant  
8 contends that the ALJ properly weighed the medical evidence, arguing that the ALJ  
9 properly relied on a finding that both of these doctors relied heavily on plaintiff's  
10 subjective complaints regarding the severity of impairments. *See* Dkt. 13, p. 13.

11 When an opinion from an examining doctor is contradicted by other medical  
12 opinions, the examining doctor's opinion can be rejected only "for specific and legitimate  
13 reasons that are supported by substantial evidence in the record." *Lester v. Chater*, 81  
14 F.3d 821, 830-31 (9th Cir. 1996) (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir.  
15 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)); *see also* 20 C.F.R. §§  
16 404.1527(a)(2) ("Medical opinions are statements from physicians and psychologists or  
17 other acceptable medical sources that reflect judgments about the nature and severity of  
18 your impairment(s), including your symptoms, diagnosis and prognosis, what you can  
19 still do despite impairment(s), and your physical or mental restrictions").

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 self-reports that have been properly  
23 discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)

1 (quoting *Morgan v. Comm’r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (citing  
2 *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989))). This situation is distinguishable from  
3 one in which the doctor provides his own observations in support of his assessments and  
4 opinions. *See Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir.  
5 2008); *see also Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001). According to  
6 the Ninth Circuit, “when an opinion is not more heavily based on a patient’s self-reports  
7 than on clinical observations, there is no evidentiary basis for rejecting the opinion.”  
8 *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing *Ryan*, 528 F.3d at 1199-  
9 1200).

10  
11 Dr. Kimberly Wheeler, Ph.D. examined plaintiff on December 20, 2012. She  
12 noted that plaintiff was “overwhelmed with grief, sadness; frequently tearful; unable to  
13 stop thinking about [recent deaths]; marked severe.” AR. 434. Dr. Wheeler performed a  
14 mental status examination (“MSE”). *See* AR. 436-37. She observed that plaintiff’s  
15 attitude and behavior were guarded and reserved; his mood was severely depressed; and  
16 his affect was constricted. *See* AR. 436. She provided additional details, observing that  
17 his thought process and content were organized, but labored and slowed. *See id.*  
18 Regarding plaintiff’s speech and motor slowing, she observed that he was demonstrating  
19 “rather significant motor retardation.” AR. 434. Dr. Wheeler diagnosed plaintiff with  
20 “Major Depression, recurrent, severe with possible psychotic symptoms [and]  
21 Bereavement x3.” *Id.*

22  
23 Regarding specific functional limitations, Dr. Wheeler opined that plaintiff  
24 suffered from a severe limitation in his ability to complete a normal workday and

1 | workweek without interruptions from psychologically-based symptoms. AR. 435.

2 | “Severe” is defined on the form filled out by Dr. Wheeler as an “inability to perform the  
3 | particular activity in regular competitive employment or outside of a sheltered  
4 | workshop.” *See id.*

5 | Dr. Keith J Krueger, Ph.D., first examined plaintiff on July 23, 2013. AR. 541-52.

6 | Dr. Krueger also performed an MSE. AR. 547-52. He observed that plaintiff’s posture  
7 | was occasionally lethargic, his speech was frequently blocked, and his motor activity was  
8 | occasionally slowed. AR. 548. Dr. Krueger opined that plaintiff’s judgment and  
9 | comprehension were fair and his level of insight was marginal. *Id.* He also opined that  
10 | plaintiff’s memory and concentration were fair. *Id.* Dr. Krueger diagnosed plaintiff with  
11 | major depression, recurrent, with psychotic features, as well as the rule out diagnoses of  
12 | PTSD and Schizotypal personality disorder. AR. 543.

14 | Like Dr. Wheeler, regarding specific functional limitations, Dr. Krueger opined  
15 | that plaintiff suffered from a severe limitation in his ability to complete a normal  
16 | workday and workweek without interruptions from psychologically-based symptoms.  
17 | AR. 435. “Severe” is defined on the form filled out by Dr. Krueger as an “inability to  
18 | perform the particular activity in regular competitive employment or outside of a  
19 | sheltered workshop,” just as it was defined on the form filled out by Dr. Wheeler. *See id.*

20 | Dr. Krueger also evaluated plaintiff on November 4, 2014. AR. 639-50. The  
21 | personality assessment inventory (“PAI”) that Dr. Krueger again performed on plaintiff  
22 | showed “no change at all.” AR. 639. Regarding the results of the PAI, Dr. Krueger noted  
23 | that plaintiff demonstrated “consistency in answering and validity [regarding the] extent  
24 |

1 of PTSD and sometimes confused thought processes (including hallucinations).” AR.  
2 640. The PAI also revealed a “significant level” of depression, and a tendency “to be  
3 isolated and avoidant, trouble with trust.” *Id.* Again, Dr. Krueger opined that plaintiff  
4 suffered from a severe limitation in his ability to complete a normal workday and  
5 workweek without interruptions from psychologically-based symptoms. AR. 642. Dr.  
6 Krueger again conducted a MSE. AR. 643-50. He observed that plaintiff’s posture was  
7 occasionally tense, his speech was occasionally blocked, and his motor activity was  
8 occasionally restless, noting that his “legs [were] bouncing constantly.” AR. 644. Again,  
9 plaintiff’s judgment and comprehension were fair and his level of insight was marginal.  
10 *Id.* Dr. Krueger assessed that plaintiff’s memory and concentration were fair. *Id.*

12 The ALJ gave “minimal weight to the opinions of Dr. Wheeler and Dr. Krueger  
13 because they rely heavily on the claimant’s subjective complaints regarding the severity  
14 of his impairments, which I found to be less than fully credible.” AR. 90. However, the  
15 ALJ does not cite anything from the record to support this finding, and it is not supported  
16 by substantial evidence in the record as a whole. *See Ghanim*, 763 F.3d at 1162 (citing  
17 *Ryan*, 528 F.3d at 1199-1200) (“when an opinion is not more heavily based on a patient’s  
18 self-reports than on clinical observations, there is no evidentiary basis for rejecting the  
19 opinion”). The Court already has noted in the preceding paragraphs many of the doctors’  
20 own observations and MSE test results.

21 The Court notes that “experienced clinicians attend to detail and subtlety in  
22 behavior, such as the affect accompanying thought or ideas, the significance of gesture or  
23 mannerism, and the unspoken message of conversation. The Mental Status Examination  
24



1 allows the organization, completion and communication of these observations.” Paula T.  
2 Trzepacz and Robert W. Baker, *The Psychiatric Mental Status Examination* 3 (Oxford  
3 University Press 1993). “Like the physical examination, the Mental Status Examination is  
4 termed the *objective* portion of the patient evaluation.” *Id.* at 4 (emphasis in original).

5 In addition, the Ninth Circuit noted the following in an unpublished decision:

6 Moreover, mental health professionals frequently rely on the  
7 combination of their observations and the patient’s report of symptoms  
8 (as do all doctors); indeed the examining psychologist’s report credited  
9 by the ALJ also relies on those methods. To allow an ALJ to discredit a  
10 mental health professional’s opinion solely because it is based to a  
significant degree on a patient’s ‘subjective allegations’ is to allow an  
end-run around our rules for evaluating medical opinions for the entire  
category of psychological disorders.

11 *Ferrando v. Comm’r of SSA*, 449 Fed. Appx. 610, 612 n.2 (9th Cir. 2011) (unpublished  
12 memorandum opinion).

13 The ALJ also provided her own interpretation of the mental status examinations  
14 (“MSEs”), finding that plaintiff’s performance was “normal,” however that was not the  
15 interpretation provided by the psychologists who performed the examinations and the  
16 finding by the ALJ is not supported by substantial evidence in the record as a whole. The  
17 Court already has discussed many of the observations by these doctors when performing  
18 their MSEs that support their opinions, and demonstrate that plaintiff’s MSEs were not  
19 “normal.”  
20

21 The MSE generally is conducted by medical professionals skilled and experienced  
22 in psychology and mental health. Although “anyone can have a conversation with a  
23 patient, [] appropriate knowledge, vocabulary and skills can elevate the clinician’s  
24

1 ‘conversation’ to a ‘mental status examination.’” Trzepacz and Baker, *supra*, The  
2 Psychiatric Mental Status Examination 3. When an ALJ seeks to discredit a medical  
3 opinion, she must explain why her own interpretations, rather than those of the doctors,  
4 are correct. *Reddick, supra*, 157 F.3d at 725 (citing *Embrey v. Bowen*, 849 F.2d 418, 421-  
5 22 (9th Cir. 1988)); *see also Blankenship v. Bowen*, 874 F.2d 1116, 1121 (6th Cir. 1989)  
6 (“When mental illness is the basis of a disability claim, clinical and laboratory data may  
7 consist of the diagnosis and observations of professional trained in the field of  
8 psychopathology. The report of a psychiatrist should not be rejected simply because of  
9 the relative imprecision of the psychiatric methodology or the absence of substantial  
10 documentation”) (quoting *Poulin v. Bowen*, 817 F.2d 865, 873-74 (D.C. Cir. 1987)  
11 (quoting *Lebus v. Harris*, 526 F.Supp. 56, 60 (N.D. Cal. 1981))); *Schmidt v. Sullivan*, 914  
12 F.2d 117, 118 (7th Cir. 1990) (“judges, including administrative law judges of the Social  
13 Security Administration, must be careful not to succumb to the temptation to play doctor.  
14 The medical expertise of the Social Security Administration is reflected in regulations; it  
15 is not the birthright of the lawyers who apply them. Common sense can mislead; lay  
16 intuitions about medical phenomena are often wrong”) (internal citations omitted)).  
17

18 Although the ALJ also noted plaintiff’s activities of daily living of getting along  
19 with others, being able to socialize with his family, and visiting public places, none of  
20 these activities demonstrates that plaintiff was able to complete a normal workday and  
21 workweek without interruptions from psychologically-based symptoms, nor do they  
22 demonstrate that plaintiff was able to maintain attention and concentration for two hours  
23 at a time, eight hours per day, five days per week. Therefore, the Court concludes that  
24

1 this reason is not a legitimate rationale for failing to credit fully the opinions of plaintiff's  
2 examining doctors.

3 For the reasons stated, the Court concludes that the ALJ failed to offer specific and  
4 legitimate reasons based on substantial evidence in the record as a whole for her failure to  
5 credit fully the opinions of plaintiff's examining doctors, Dr. Wheeler and Dr. Krueger.  
6 The Court also concludes that the error is not harmless.

7 The Ninth Circuit has "recognized that harmless error principles apply in the  
8 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
9 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th  
10 Cir. 2006) (collecting cases)). Recently the Ninth Circuit reaffirmed the explanation in  
11 *Stout* that "ALJ errors in social security are harmless if they are 'inconsequential to the  
12 ultimate nondisability determination' and that 'a reviewing court cannot consider [an]  
13 error harmless unless it can confidently conclude that no reasonable ALJ, when fully  
14 crediting the testimony, could have reached a different disability determination.'" *Marsh*  
15 *v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015) (citing *Stout*, 454 F.3d at 1055-56). In  
16 *Marsh*, even though "the district court gave persuasive reasons to determine  
17 harmlessness," the Ninth Circuit reversed and remanded for further administrative  
18 proceedings, noting that "the decision on disability rests with the ALJ and the  
19 Commissioner of the Social Security Administration in the first instance, not with a  
20 district court." *Id.* (citing 20 C.F.R. § 404.1527(d)(1)-(3)).  
21  
22

23 Over the course of three examinations occurring over approximately two years,  
24 two examining doctors opined that plaintiff suffered from a severe limitation in his ability

1 to complete a normal workday and workweek without interruptions from  
2 psychologically-based symptoms. Because of the consistency of this opinion and because  
3 severe limitation means inability to perform that activity in regular competitive  
4 employment, the Court cannot conclude with confidence “that no reasonable ALJ, when  
5 fully crediting the testimony, could have reached a different disability determination.”  
6 *Marsh*, 792 F.3d at 1173 (citing *Stout*, 454 F.3d at 1055-56).

7  
8 Therefore, the error is not harmless. However, neither can the Court conclude with  
9 confidence that fully crediting these opinions would require a finding of disability. It is  
10 somewhat troubling that the evaluation forms provided by the Washington State  
11 Department of Social & Health Services request opinions regarding functional limitations  
12 that generally do not appear to equate with the opinions provided by vocational experts  
13 (“VEs”) during administrative hearings. For example, although both doctors opined that  
14 plaintiff suffered from a severe limitation in his ability to complete a normal workday and  
15 workweek without interruptions from psychologically-based symptoms, the VE did not  
16 testify as to the effect of this particular limitation on someone with plaintiff’s education,  
17 work history and other limitations, or if this particular functional limitation would render  
18 him disabled. It is unclear how long “interruptions” would last and what their effect  
19 would be. Instead, the VE testified that an individual with plaintiff’s background and the  
20 ALJ’s determination of plaintiff’s RFC would not be able to work in any jobs if “the  
21 individual would be absent from the job two days per month consistently” and would not  
22 be able to perform any work if “the individual would be off-task 20 percent of the  
23 workday due to memory and attention deficits.” AR. 131.  
24

1 Does an inability to complete a normal workday and workweek without  
2 interruptions from psychologically-based symptoms render an individual off-task 20  
3 percent of the workday, or result in absenteeism for two days per month consistently? To  
4 the Court, that appears to be the case, but it also is a question best left to the finder of  
5 fact. If the medical opinions on this are ambiguous, the ALJ will need to re-contact the  
6 examining doctors. *See Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001) (the  
7 ALJ's duty to supplement the record is triggered if there is ambiguous evidence).  
8

9 Therefore, this matter should be reversed and remanded for further administrative  
10 proceedings, as opposed to reversed and remanded with a direction to award benefits. *See*  
11 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (quoting *Smolen v. Chater*, 80  
12 F.3d 1273, 1292 (9th Cir. 1996)) (remand for benefits is not appropriate unless “it is clear  
13 from the record that the ALJ would be required to find the claimant disabled were such  
14 evidence credited”).

15 **(2) The ALJ did not provide any reasons germane to Cheryl Smith for**  
16 **rejecting her lay evidence.**

17 Disputed is the evaluation of the lay evidence provided by Ms. Cheryl Smith.

18 Pursuant to the relevant federal regulations, in addition to “acceptable medical  
19 sources,” that is, sources “who can provide evidence to establish an impairment,” 20  
20 C.F.R. § 404.1513 (a), there are “other sources,” such as friends and family members,  
21 who are defined as “other non-medical sources,” *see* 20 C.F.R. § 404.1513 (d). *See also*  
22 *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1223-24 (9th Cir. 2010) (citing 20 C.F.R.  
23 § 404.1513(a), (d)); Social Security Ruling “SSR” 06-3p, 2006 SSR LEXIS 5 at \*4-\*5,  
24

1 2006 WL 2329939. An ALJ may disregard opinion evidence provided by “other  
2 sources,” characterized by the Ninth Circuit as lay testimony, “if the ALJ ‘gives reasons  
3 germane to each witness for doing so.’” *Turner, supra*, 613 F.3d at 1224 (quoting *Lewis*  
4 *v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)); *see also Van Nguyen v. Chater*, 100 F.3d  
5 1462, 1467 (9th Cir. 1996).

6         The Court agrees with plaintiff that the fact that the lay evidence repeats similar  
7 limitations as plaintiff’s testimony leads to the inference that the testimony is accurate.  
8 Furthermore, the Court notes that the ALJ’s rejected the lay evidence with a finding that  
9 because Ms. Smith “is not medically trained to make exacting observations as to dates,  
10 frequencies, types and degrees of medical signs and symptoms, or of the frequency or  
11 intensity of unusual moods or mannerisms, the accuracy of the statements is  
12 questionable.” AR. 900. However, the Ninth Circuit has characterized lay witness  
13 testimony as “competent evidence.” *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009)  
14 (citing *Smolen v. Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996)). This suggests that an ALJ  
15 may not disregard lay evidence simply because the testimony is not from a medical  
16 source and is instead from one who “is not medically trained.” *See id.*; *see also* AR. 900.

17         In addition, although the ALJ found that the lay testimony was not consistent with  
18 the medical evidence, the Court already has concluded that the ALJ erred when  
19 evaluating the medical evidence, *see supra*, section 1.  
20

21         Therefore, the ALJ should re-evaluate the lay evidence following remand.  
22

23 //  
24

**(3) The ALJ did not provide clear or convincing reasons for finding plaintiff not credible and the ALJ’s residual functional capacity (“RFC”) assessment was incomplete, as it did not include any limitations related to plaintiff’s daytime somnolence.**

Similarly, the Court already has concluded that the ALJ erred in reviewing the medical evidence and that this matter should be reversed and remanded for further consideration, *see supra*, section 1. In addition, the evaluation of a claimant's statements regarding limitations relies in part on the assessment of the medical evidence. *See* 20 C.F.R. § 404.1529(c); SSR 16-3p, 2016 SSR LEXIS 4. Therefore, plaintiff's testimony and statements should be assessed anew following remand of this matter.

As this matter is being remanded, the RFC will need to be assessed anew following remand of this matter. The ALJ should take care to address properly plaintiff's daytime somnolence.

## CONCLUSION

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

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

Dated this 24th day of March, 2017.

*J. K. Handwritten*

J. Richard Creatura  
United States Magistrate Judge