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

10 NOEL A. SIMONELLI,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,¹

14 Defendant.
15

CASE NO. 3:16-CV-05803-DWC

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

16 Plaintiff Noel A. Simonelli filed this action, pursuant to 42 U.S.C. § 405(g), for judicial
17 review of Defendant's denial of Paula Rachele Simonelli's² application for disability insurance
18 benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local
19 Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate
20 Judge. *See* Dkt. 4.
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23 ¹ Nancy A. Berryhill became the Acting Commissioner of Social Security on January 23, 2017, and is
substituted as Defendant for former Acting Commissioner Carolyn W. Colvin. 42 U.S.C. § 405(g); Fed. R. Civ. P.
25(d)(1).

24 ² Paula Rachele Simonelli died and Plaintiff, Noel A. Simonelli, filed form HA-539 entitled Notice
Regarding Substitution of Party Upon Death of Claimant. *See* Dkt. 9, p. 2; AR 5-7.

ORDER REVERSING AND REMANDING
DEFENDANT'S DECISION TO DENY BENEFITS

1 After considering the record, the Court concludes the Administrative Law Judge (“ALJ”)
2 erred when he failed to properly consider the opinions of state agency psychologist Dr. Edward
3 Beaty, Ph.D. and examining physician Dr. Ronald Nielsen, M.D. Had the ALJ properly
4 considered these doctors’ opinions, the residual functional capacity (“RFC”) assessment may
5 have included additional limitations. The ALJ’s errors are therefore not harmless, and this matter
6 is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Acting
7 Commissioner for further proceedings consistent with this Order.

8 FACTUAL AND PROCEDURAL HISTORY

9 On July 16, 2013, Paula Rachele Simonelli (“Ms. Simonelli”) filed an application for
10 DIB, alleging disability as of March 19, 2010. See Dkt. 7, Administrative Record (“AR”) 18. The
11 application was denied upon initial administrative review and on reconsideration. See AR 18. A
12 hearing was held before ALJ Robert Kingsley on December 9, 2014. See AR 32-56. In a decision
13 dated March 25, 2015, the ALJ determined Ms. Simonelli to be not disabled. See AR 18-27. Ms.
14 Simonelli sought review of the ALJ’s decision by the Appeals Council; however, she died while
15 the request for review was pending. See AR 5. Plaintiff filed a Notice Regarding Substitution of
16 Party Upon Death of Claimant. See Dkt. 9; AR 5-7. On July 25, 2016, the Appeals Council
17 denied the request for review, making the ALJ’s decision the final decision of the Commissioner.
18 See AR 1-4; 20 C.F.R. § 404.981, § 416.1481.

19 In Plaintiff’s Opening Brief, Plaintiff maintains the ALJ committed harmful error by
20 failing to properly evaluate the opinions of Dr. Edward Beaty, Ph.D. and Dr. Ronald Nielsen,
21 M.D. See Dkt. 9, p. 1.³

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24 ³ Plaintiff also alleged the ALJ erred in assessing Ms. Simonelli’s subjective symptom testimony, but did
not include argument regarding this alleged error and concedes the issue has been waived. See Dkt. 9, 14.

1 (“Substantial evidence” is more than a scintilla, less than a preponderance, and is such “relevant
2 evidence as a reasonable mind might accept as adequate to support a conclusion”).

3 A. Dr. Beaty

4 Plaintiff alleges the ALJ failed to properly consider the opinion of state agency
5 consultative physician, Dr. Edward Beaty, Ph.D. Dkt. 9, pp. 2-5. Dr. Beaty completed a Mental
6 RFC assessment of Ms. Simonelli on September 17, 2013. AR 65-67. Dr. Beaty found Ms.
7 Simonelli was moderately limited in her ability to understand and remember detailed
8 instructions, carry out detailed instructions, and maintain attention and concentration for
9 extended periods. AR 65-66. He noted Ms. Simonelli’s psychiatric symptoms and medication
10 use reduced her ability to have extended focus. AR 66. Dr. Beaty opined Ms. Simonelli could
11 maintain attention and concentration for at least two hour intervals on simple and complex recent
12 or well-learned tasks. AR 66. He found Ms. Simonelli could not return to her past relevant work
13 because semi-skilled work was not compatible with her mental RFC limitations. AR 67.

14 Regarding Dr. Beaty’s opinion, the ALJ stated, in full:

15 I give little weight to the mental assessment performed by state agency
16 psychological consultant Edward Beaty, Ph.D. His finding that the claimant had
17 mild limitations in her ability to perform activities of daily living and in her social
18 functioning, and moderate limits in her ability to maintain concentration,
19 persistence, and pace, is (1) inconsistent with the record as a whole and (2) with
20 the claimant’s demonstrated functioning, as discussed above.

21 AR 25 (numbering added).

22 First, the ALJ found Dr. Beaty’s opinion was inconsistent with the record as a whole. AR
23 25. An ALJ need not accept an opinion which is inadequately supported “by the record as a
24 whole.” *See Batson v. Commissioner of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004).
However, a conclusory statement finding an opinion is inconsistent with the overall record is
insufficient to reject the opinion. *See Embrey*, 849 F.2d at 421-22. Here, the ALJ failed to

1 identify any specific evidence contained within the record which failed to support Dr. Beaty's
2 opinion. *See* AR 25. Without more, the ALJ has failed to meet the level of specificity required,
3 and the ALJ's conclusory statement finding "the record as a whole" as inconsistent with Dr.
4 Beaty's opinion is not sufficient. *See Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014)
5 ("an ALJ errs when he rejects a medical opinion or assigns it little weight while doing nothing
6 more than ignoring it, asserting without explanation that another medical opinion is more
7 persuasive, or criticizing it with boilerplate language that fails to offer a substantive basis for
8 his conclusion").

9 Second, the ALJ gave little weight to Dr. Beaty's opinion because it is inconsistent with
10 Ms. Simonelli's "demonstrated functioning, as discussed above." AR 25. The Court notes it is
11 unclear what "functioning" the ALJ is referencing. *See id.* The ALJ's decision contains a
12 summary of the medical evidence, including Plaintiff's activities of daily living. *See* AR 24-25.
13 The ALJ's decision, however, does not identify what evidence is contradictory to Dr. Beaty's
14 findings or explain how Dr. Beaty's opinion is inconsistent with Plaintiff's "demonstrated
15 functioning." Without an adequate explanation, the Court cannot determine if the ALJ's decision
16 to give little weight to Dr. Beaty's opinion is supported by specific, substantial evidence. *See*
17 *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("the agency [must] set forth the
18 reasoning behind its decisions in a way that allows for meaningful review"); *Blakes v. Barnhart*,
19 331 F.3d 565, 569 (7th Cir. 2003) ("We require the ALJ to build an accurate and logical bridge
20 from the evidence to her conclusions so that we may afford the claimant meaningful review of
21 the SSA's ultimate findings.").

1 For the above stated reasons, the Court finds the ALJ did not provide specific reasons
2 supported by substantial evidence for giving little weight to Dr. Beaty’s opinion. Accordingly,
3 the ALJ erred.

4 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*, 674
5 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the
6 claimant or “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v.*
7 *Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674
8 F.3d at 1115. The determination as to whether an error is harmless requires a “case-specific
9 application of judgment” by the reviewing court, based on an examination of the record made
10 “‘without regard to errors’ that do not affect the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at
11 1118-1119 (*quoting Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)).

12 Dr. Beaty found Ms. Simonelli was unable to perform semi-skilled work and would be
13 unable to perform her past relevant work. AR 67. The ALJ, however, did not assess any mental
14 limitations in the RFC and found Ms. Simonelli capable of performing her past relevant work.
15 *See* AR 22-23, 26. Had the ALJ properly considered Dr. Beaty’s opinion, the RFC and the
16 hypothetical question posed to the vocational expert, Joseph Moisan, may have included
17 additional limitations and the ultimate disability determination may have changed. Accordingly,
18 ALJ’s error is not harmless and requires reversal.

19 B. Dr. Nielsen

20 Plaintiff contends the ALJ erred when he failed to discuss significant, probative evidence
21 contained in the opinion of examining physician Dr. Ronald Nielsen, M.D. Dkt. 9, pp. 5-6.
22 Specifically, Plaintiff alleges the ALJ failed to consider Dr. Nielsen’s opinion regarding Ms.
23 Simonelli’s (1) diagnosis and prognosis and (2) daytime sedation. *Id.* The ALJ “need not discuss
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1 all evidence presented.” *Vincent ex rel. Vincent v. Heckler*, 739 F.3d 1393, 1394-95 (9th Cir.
2 1984). However, the ALJ “may not reject ‘significant probative evidence’ without explanation.”
3 *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (*quoting Vincent*, 739 F.2d at 1395). The
4 “ALJ’s written decision must state reasons for disregarding [such] evidence.” *Flores*, 49 F.3d at
5 571.

6 Dr. Nielsen completed a Physical Disability Evaluation of Ms. Simonelli on November 3,
7 2013. AR 429-33. He found, in relevant part, Ms. Simonelli’s “clinical exam and laboratory data
8 are consistent with her diagnosis of Cirrhosis. Chronic fatigue and intermittent confusion are
9 symptoms of advanced Cirrhosis. Cirrhosis is generally a progressive disease with variable time
10 course from months to a few years.” AR 432. Dr. Nielsen also found Ms. Simonelli “is on
11 numerous medications that can cause daytime sedation consistent with her history.” AR 432.

12 The ALJ gave partial weight to Dr. Nielsen’s observations and opinion. AR 26. He
13 discussed Dr. Nielson’s findings regarding Ms. Simonelli’s diagnosis and prognosis, stating Dr.
14 Nielsen “reported that the clinical examination and lab data were consistent with the diagnosis of
15 cirrhosis, noting that chronic fatigue and intermittent confusion are symptoms of advanced
16 cirrhosis.” AR 26. The ALJ stated he gave this portion of Dr. Nielsen’s opinion significant
17 weight. The ALJ, however, does not explain how the RFC accounts for Dr. Nielsen’s opinions
18 regarding Ms. Simonelli’s diagnosis and prognosis, *see* AR 26, and the RFC does not expressly
19 contain mental functioning limitations or limitations which account for fatigue. *See* AR 22-23.
20 Additionally, the ALJ’s decision is silent as to Dr. Nielsen’s opinion that Ms. Simonelli is on
21 numerous medications which can cause daytime sedation. *See* AR 26. Without discussion of Dr.
22 Nielsen’s opinion regarding Ms. Simonelli’s daytime sedation, the Court cannot determine if the
23 ALJ properly considered this evidence.

1 As the ALJ failed to adequately explain his consideration of Dr. Nielsen’s opinion
2 regarding Plaintiff’s diagnosis, prognosis, and daytime sedation, the Court cannot determine if
3 the ALJ properly considered the findings or simply ignored the evidence. Accordingly, the ALJ
4 erred by failing to explain the weight given to all the limitations opined to by Dr. Nielsen. *See*
5 *Flores*, 49 F.3d at 571 (an “ALJ’s written decision must state reasons for disregarding
6 significant, probative evidence”); *Brown-Hunter*, 806 F.3d at 492; *Blakes*, 331 F.3d at 569.

7 As discussed above, “harmless error principles apply in the Social Security context.”
8 *Molina*, 674 F.3d at 1115. An ALJ’s failure to discuss a medical opinion is not harmless error.
9 *Hill v. Astrue*, 698 F.3d 1153, 1160 (9th Cir. 2012). When the ALJ ignores significant and
10 probative evidence in the record favorable to a claimant’s position, the ALJ “thereby provide[s]
11 an incomplete [RFC] determination.” *Id.* at 1161.

12 The ALJ’s failure to discuss portions of Dr. Nielsen’s opinion resulted in an incomplete
13 RFC. Dr. Nielsen found Plaintiff suffered from daytime sedation and noted cirrhosis causes
14 chronic fatigue and confusion. *See* AR 432. The ALJ did not limit Plaintiff’s work productivity
15 or attendance in the RFC. AR 22-23. Had the ALJ properly considered Dr. Nielsen’s opinion
16 regarding Plaintiff’s diagnosis, prognosis, and daytime sedation, the ALJ may have included
17 additional limitations in the RFC and in the hypothetical question posed to the vocational expert.
18 As the ultimate disability determination may change, the ALJ’s failure to discuss Dr. Nielson’s
19 entire opinion is not harmless and requires reversal.

20 CONCLUSION

21 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
22 Plaintiff was not disabled. Accordingly, Defendant’s decision to deny benefits is reversed and
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1 this matter is remanded for further administrative proceedings in accordance with the findings
2 contained herein.

3 Dated this 17th day of March, 2017.

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6 David W. Christel
7 United States Magistrate Judge
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