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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KRISTY LENA WILLIAMS,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security¹,

Defendant.

CASE NO. C16-5867-MAT

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

Plaintiff Kristy Lena Williams proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for further administrative proceedings.

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¹ Nancy Berryhill is now the acting Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. The Clerk is directed to update the docket, and all future filings by the parties should reflect this change.

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1 **FACTS AND PROCEDURAL HISTORY**

2 Plaintiff was born on XXXX, 1985.² She graduated from high school and has some college
3 education as well as training as an emergency medical technician, and has worked as an in-home
4 caregiver, firefighter, emergency medical technician, restaurant cook/server, and bartender. (AR
5 312.)

6 Plaintiff protectively applied for DIB and SSI on September 11, 2012. (AR 275-92.) That
7 application was denied initially and upon reconsideration, and Plaintiff timely requested a hearing.
8 (AR 164-78, 181-95.)

9 On January 12, 2015, ALJ Robert F. Campbell held a hearing, taking testimony from
10 Plaintiff and a vocational expert (VE). (AR 48-81.) On March 23, 2015, the ALJ issued a decision
11 finding Plaintiff not disabled. (AR 19-40.) Plaintiff timely appealed. The Appeals Council denied
12 Plaintiff's request for review on August 11, 2016 (AR 1-4), making the ALJ's decision the final
13 decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this
14 Court.

15 **JURISDICTION**

16 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

17 **DISCUSSION**

18 The Commissioner follows a five-step sequential evaluation process for determining
19 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
20 be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not
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22 ² Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of
23 Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case Files,
pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

1 engaged in substantial gainful activity since the alleged onset date. (AR 21.) At step two, it must
2 be determined whether a claimant suffers from a severe impairment. The ALJ found severe
3 Plaintiff's polysubstance abuse (of cannabis, methamphetamine, and alcohol), major depressive
4 disorder, post-traumatic stress disorder (PTSD), bipolar disorder, and personality disorder. (AR
5 22-27.) Step three asks whether a claimant's impairments meet or equal a listed impairment. The
6 ALJ found that Plaintiff's impairments, including the substance abuse disorders, met the criteria
7 of Listings 12.04, 12.06, and 12.09. (AR 28-29.)

8 The ALJ then separated out the effects of Plaintiff's substance abuse, and found that if
9 Plaintiff stopped substance use, she would still have severe impairments, but they would not meet
10 or equal a listed impairment. (AR 29-30.) The ALJ next assessed Plaintiff's residual functional
11 capacity (RFC), assuming she stopped using substances, to determine at step four whether the
12 claimant has demonstrated an inability to perform past relevant work. The ALJ found Plaintiff
13 capable of performing a full range of work at all exertional levels, with the following non-
14 exertional limitations: she is limited to simple, routine work. She can have occasional superficial
15 contact with a supervisor for daily quality checks on work, and can have superficial contact with
16 coworkers, but no teamwork or collaboration with them. She cannot have public contact. (AR
17 30.) With that assessment, the ALJ found that if Plaintiff stopped using substances, she would be
18 unable to perform past relevant work. (AR 38-39.)

19 If a claimant demonstrates an inability to perform past relevant work, the burden shifts to
20 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an
21 adjustment to work that exists in significant levels in the national economy. The ALJ found that
22 if Plaintiff stopped using substances, she could transition to other representative occupations,
23 including janitor and laundry worker. (AR 39-40.)

1 This Court's review of the ALJ's decision is limited to whether the decision is in
2 accordance with the law and the findings supported by substantial evidence in the record as a
3 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more
4 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
5 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
6 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's
7 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
8 2002).

9 Plaintiff argues the ALJ erred in (1) failing to account for all limitations indicated by the
10 State agency consultants, whose opinions were purportedly credited; (2) discounting the opinions
11 of three psychologists; (3) discounting Plaintiff's subjective testimony; and (4) failing to include
12 all RFC assessment limitations in the VE hypothetical. The Commissioner argues that the ALJ's
13 decision is supported by substantial evidence and should be affirmed.

14 State agency opinion

15 The ALJ gave significant weight to State agency psychological opinions regarding
16 Plaintiff's mental limitations. (AR 36.) State agency consultants opined that Plaintiff would
17 require a "predictable structured work setting" in order to perform simple work. (AR 139, 155.)
18 With regard to supervisor interaction, State agency consultants opined that Plaintiff "would need
19 to work with timely constructive feedback from a patient respectful supervisor." (AR 140, 156.)
20 State agency consultants also indicated that Plaintiff "will have occasional difficulty responding
21 to change and would benefit from having extra time to adjust to changes." (*Id.*)

22 None of these restrictions explicitly appear in the ALJ's RFC assessment, even though the
23 ALJ directly acknowledged them in the decision. (AR 30.) The Commissioner nonetheless argues

1 that the ALJ's RFC assessment adequately accounts for the State agency opinion, even if not
2 explicitly. The Commissioner states that the ALJ's restricting Plaintiff to "simple routine work"
3 accommodated the need for a "predictable structured work setting." Dkt. 13 at 13. But the ALJ's
4 restriction pertains to the type of work performed, whereas the State agency opinion addressed
5 qualities of the work setting, and therefore the ALJ did not necessarily entirely address the State
6 agency opinion.

7 Likewise, although the Commissioner argues that the ALJ's restriction to "occasional
8 superficial contact with a supervisor for daily quality checks of work" accounts for the State
9 agency opinion that Plaintiff would "need to work with timely constructive feedback from a patient
10 respectful supervisor" (Dkt. 13 at 13), the State agency opinion instructs that the supervisor
11 feedback must be constructive and the supervisor him/herself must be patient and respectful — the
12 ALJ's restriction as to the depth and topics of conversation between Plaintiff and a supervisor do
13 not address the specific requirements mentioned by the State agency consultants.

14 The Court does not, however, find that the ALJ's RFC assessment is deficient with respect
15 to the State agency opinion that Plaintiff would "benefit from having extra time to adjust to
16 changes" because this limitation was not described as an imperative. An RFC assessment
17 describes the most a claimant can do. 20 C.F.R. §§ 404.1545(a), 416.945(a) (RFC "is the most
18 you can still do despite your limitations"). Because this aspect of the State agency opinion does
19 not identify the most Plaintiff can do, the opinion is not inconsistent with the ALJ's RFC
20 assessment.

21 Thus, the Court agrees with Plaintiff that the ALJ did not fully account for all aspects of
22 the State agency opinions that were purportedly assigned significant weight, and this is error. *See*
23 SSR 96-8p, 1996 WL 374184, at *7 (Jul. 2, 1996) ("If the RFC assessment conflicts with an

1 opinion from a medical source, the adjudicator must explain why the opinion was not adopted.”).
2 The Commissioner cites an unpublished District Court case holding that an ALJ’s RFC assessment
3 need not repeat each functional limitation verbatim, but this case does not address the type of
4 argument made here, which is that limitations purportedly credited should be accounted for in the
5 RFC assessment. *See* Dkt. 13 at 14 (citing *Estep v. Colvin*, 2016 WL 6988685, at *9 (E.D. Cal.
6 Nov. 28, 2016)).

7 *Estep* cites *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1173-74 (9th Cir. 2008), which
8 stands for the proposition that an ALJ may “translate” a functional deficit in concentration,
9 persistence, or pace into a restriction to simple work, if that assessment is consistent with the
10 medical evidence. *Id.* But in this case, the medical evidence indicated specific restrictions that
11 were purportedly credited but not accounted for. The Commissioner has not persuasively shown
12 that the ALJ’s RFC assessment actually accounts for all of the limitations identified by the State
13 agency consultants. Accordingly, on remand, the ALJ shall reconsider the State agency opinions
14 and either provide specific, legitimate reasons to discount them, or fully credit them in their
15 entirety.³

16 Other Medical Opinions

17 Plaintiff also challenges the ALJ’s assessment of three psychologists: examining
18 psychologist Charles Quinci, Ph.D.; examining psychologist Wendy Hartinger, Psy.D.; and non-
19 examining psychologist Steven Johansen, Ph.D. The Court will address each in turn.

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22 ³ Although Plaintiff requested that the ALJ’s errors be remedied by a remand for a finding of
23 disability, she has not shown that this remedy is warranted, particularly in light of the conflicts in the record.
Accordingly, the Court finds that further proceedings are appropriate. *See Dominguez v. Colvin*, 808 F.3d
403, 407-08 (9th Cir. 2015).

1 A. Legal standards

2 In general, more weight should be given to the opinion of a treating physician than to a
3 non-treating physician, and more weight to the opinion of an examining physician than to a non-
4 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted
5 by another physician, a treating or examining physician’s opinion may be rejected only for “clear
6 and convincing” reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).
7 Where contradicted, a treating or examining physician’s opinion may not be rejected without
8 “specific and legitimate reasons’ supported by substantial evidence in the record for so doing.”
9 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

10 B. Drs. Quinci & Johansen

11 Dr. Quinci examined Plaintiff in August 2012 and completed a DSHS form opinion. (AR
12 518-21.) Dr. Johansen reviewed Dr. Quinci’s opinion to determine the severity of Plaintiff’s
13 impairments. (AR 337-40.)

14 The ALJ discounted Dr. Quinci’s opinion because he described “largely unremarkable”
15 findings upon mental status examination, and did not describe any other basis for his conclusions
16 regarding Plaintiff’s functional limitations. (AR 37.) The ALJ also noted that Plaintiff did not
17 fully disclose her substance abuse to Dr. Quinci, and that other evidence shows that she retains
18 greater capabilities than indicated by Dr. Quinci. (*Id.*)

19 These reasons are specific and legitimate. Dr. Quinci’s lack of explanation to support his
20 opinion is a valid reason to discount it. *See Crane v. Shalala*, 76 F.3d 252, 253 (9th Cir. 1996)
21 (ALJ permissibly rejected three psychological evaluations “because they were check-off reports
22 that did not contain any explanation of the bases of their conclusions”). This reason is particularly
23 strong in light of the normal or mild findings upon mental status examination. Furthermore,

1 Plaintiff's failure to fully disclose the extent of her substance use is another valid reason to discount
2 Dr. Quinci's opinion, because Dr. Quinci did not have a full diagnostic picture of Plaintiff's
3 situation. *See, e.g., Oviatt v. Comm'r of Social Sec. Admin.*, 303 Fed. Appx. 519, 522 (9th Cir.
4 Dec. 16, 2008).

5 Because the ALJ provided valid reasons to discount Dr. Quinci's opinion, the ALJ did not
6 err in discounting Dr. Johansen's opinion, which was based entirely upon Dr. Quinci's opinion.

7 C. Dr. Hartinger

8 Dr. Hartinger examined Plaintiff in June 2014 and wrote a DSHS opinion describing her
9 symptoms and limitations. (AR 1209-13.) Dr. Hartinger performed personality testing, which
10 "indicate[d] an attempt to exaggerate symptoms of mental illness, essentially attempting to 'fake
11 bad.'" (AR 1210.)

12 The ALJ summarized Dr. Hartinger's findings regarding Plaintiff's functional limitations,
13 and assigned the opinion little weight because it was inconsistent with the unremarkable mental
14 status examination findings. (AR 36-37.) The ALJ indicated that Dr. Hartinger's reliance on
15 Plaintiff's self-report was problematic in light of the unreliability of her subjective testimony, as
16 well as Dr. Hartinger's own testing revealing exaggeration. (AR 37.) The ALJ also found Dr.
17 Hartinger's opinion to be internally inconsistent, because she described Plaintiff's ability to
18 independently perform daily tasks and maintain a schedule, which contradicted the functional
19 limitations described. (*Id.*)

20 The ALJ's reasoning is specific and legitimate. Particularly because Dr. Hartinger herself
21 found that Plaintiff had exaggerated her symptoms, the ALJ was entitled to discount Dr.
22 Hartinger's opinion offered in reliance on Plaintiff's self-report. *See Thomas*, 278 F.3d at 958
23 (affirming an ALJ's rejection of a report where "[i]n discrediting the report, the ALJ reasoned that

1 a one-hour physical capacity evaluation relies almost entirely on subjective information, and when
2 a claimant exaggerates symptoms, the results cannot be valid”). Dr. Hartinger’s report
3 demonstrates reliance on Plaintiff’s self-report that conflicts with other statements in the record.
4 *See, e.g.*, AR 1210 (regarding substance use and the reasons why Plaintiff stopped working as an
5 EMT). These are sufficient reasons to discount Dr. Hartinger’s opinion.

6 Plaintiff’s subjective testimony

7 The ALJ provided a number of reasons to discount Plaintiff’s testimony: (1) medical
8 evidence showed that Plaintiff’s symptoms improve with sobriety and treatment, and that Plaintiff
9 exaggerated her symptoms; (2) Plaintiff’s activities contradict her alleged limitations; (3) Plaintiff
10 stopped working for reasons other than her impairments; and (4) Plaintiff made inconsistent reports
11 regarding her substance use. (AR 31-36.) Plaintiff argues that these reasons are not clear and
12 convincing, as required in the Ninth Circuit. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th
13 Cir. 2014).

14 Plaintiff’s arguments are not persuasive. As summarized by the ALJ, the medical evidence
15 is replete with examples of Plaintiff’s drug-seeking behavior and symptom exaggeration. (*See AR*
16 *22-25, 31-35.*) This evidence constitutes a clear and convincing reason to discount Plaintiff’s
17 subjective testimony. *See Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001), *as amended*
18 *on reh’g* (Aug. 9, 2001); *Gray v. Comm’r of Social Sec. Admin.*, 365 Fed. Appx. 60, 63 (9th Cir.
19 Feb. 8, 2010).

20 The ALJ also outlined multiple examples of Plaintiff’s inaccurate reporting regarding her
21 substance use. (AR 36.) This evidence also undermines the reliability of Plaintiff’s self-report.
22 *Thomas*, 278 F.3d at 959.

23 Even if the ALJ’s other reasons were not clear and convincing, any error would be harmless

1 in light of the strong, well-supported reasons related to Plaintiff's drug-seeking behavior, symptom
2 exaggeration, and inconsistent statements. *See Carmickle v. Comm'r of Social Sec. Admin.*, 533
3 F.3d 1155, 1162-63 (9th Cir. 2008). Accordingly, the ALJ's findings regarding Plaintiff's
4 testimony are affirmed.

5 RFC

6 Plaintiff argues that the ALJ erred in crafting a VE hypothetical, and in relying on VE
7 testimony that was inconsistent with the Dictionary of Occupational Titles. Dkt. 12 at 3-5.
8 Because this case will be remanded for the ALJ to reconsider medical opinion evidence, which
9 could result in a modification of the RFC assessment, the Court need not address issues related to
10 the RFC assessment and/or vocational testimony at this time.

11 CONCLUSION

12 For the reasons set forth above, this matter is REVERSED and REMANDED for further
13 administrative proceedings.

14 DATED this 11th day of May, 2017.

15 

16 Mary Alice Theiler
17 United States Magistrate Judge