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

10 DENNIS J. ROBINSON,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.
16

CASE NO. 3:16-cv-06002 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

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18 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
19 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
20 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States
21 Magistrate Judge, Dkt. 6). This matter has been fully briefed. *See* Dkt. 13, 17, 18.

22 The ALJ found that plaintiff is disabled when his substance use disorders are
23 considered. AR. 20. However, the ALJ also found that plaintiff “would not be disabled if
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1 he stopped the substance use,” and hence, plaintiff is not “disabled within the meaning of
2 the Social Security Act.” AR. 26.

3 The Social Security Act prohibits the award of disability benefits when drug
4 addiction and/or alcoholism is a contributing factor material to the determination of
5 disability. *See* 42 U.S.C. §§ 423 (d)(2)(C), 1382c(a)(3)(J); *Sousa v. Callahan*, 143 F.3d
6 1240, 1245 (9th Cir. 1998).

7 After considering and reviewing the record, although the ALJ used the correct
8 standard when reviewing plaintiff’s claimed disability, the ALJ erred by failing to discuss
9 the significant, probative evidence provided by a reviewing doctor. The reviewing doctor,
10 Dr. Phyllis N. Sanchez, Ph.D., issued opinions directly relevant to the important findings
11 providing the basis for the ALJ’s ultimate decision regarding disability in this matter,
12 including whether plaintiff would be disabled if he stopped the substance use.

14 Therefore, this matter is reversed and remanded pursuant to sentence four of 42
15 U.S.C. § 405(g) to the Acting Commissioner for further consideration consistent with this
16 order.

17 BACKGROUND

18 Plaintiff, DENNIS J. ROBINSON, was born in 1985 and was 27 years old on the
19 alleged date of disability onset of March 21, 2013. *See* AR. 211-17, 218-24. Plaintiff
20 completed high school. AR. 52. Plaintiff has some work history as a food warehouse
21 stocker, in telecommunications and in customer service. AR. 279-90. He was let go from
22 his last job for tardiness. AR. 42-43
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1 According to the ALJ, plaintiff has at least the severe impairments of
2 “schizoaffective disorder, bipolar affective disorder, poly substance abuse and antisocial
3 personality disorder (20 CFR 404.1520(c) and 416.920(c)).” AR. 15

4 At the time of the hearing, plaintiff was living in a house with his grandmother,
5 aunt and cousin. AR. 38.

6 PROCEDURAL HISTORY

7 Plaintiff’s applications for disability insurance benefits (“DIB”) pursuant to 42
8 U.S.C. § 423 (Title II) and Supplemental Security Income (“SSI”) benefits pursuant to 42
9 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and
10 following reconsideration. *See* AR. 90, 91, 112, 113. Plaintiff’s requested hearing was
11 held before Administrative Law Judge Robert P. Kingsley (“the ALJ”) on November 26,
12 2014. *See* AR. 32-66. On May 21, 2015, the ALJ issued a written decision in which the
13 ALJ concluded that plaintiff was not disabled pursuant to the Social Security Act. *See*
14 AR. 9-31.

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16 In plaintiff’s Opening Brief, plaintiff raises the following issues: (1) Whether the
17 ALJ properly evaluated the medical evidence; (2) Whether the ALJ properly evaluated
18 plaintiff’s testimony; (3) Whether the ALJ properly evaluated the lay evidence; (4)
19 Whether the ALJ properly assessed plaintiff’s residual functional capacity (“RFC”) in the
20 absence of substance abuse (“DAA”) and erred by basing the step four and five findings
21 on his erroneous RFC assessment; and (5) Whether the ALJ erred by improperly
22 concluding that plaintiff’s DAA was a factor material to his disability. *See* Dkt. 13, p. 2.
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1 them.” *Marsh v. Colvin*, 792 F.3d 1170, 1172-73 (9th Cir. 2015) (citing *Garrison v.*
2 *Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014)).

3 Dr. Phyllis N. Sanchez, Ph.D., did not examine plaintiff, but reviewed some of the
4 medical evidence on June 4, 2013, including medical reports dated January 22, 2010;
5 February 2, 2011; March 7, 2013; and May 21, 2013. *See* AR. 353-56. She opined that
6 plaintiff suffered from many marked limitations. *See* AR. 355. Dr. Sanchez also opined
7 that the limitations on plaintiff’s ability to perform work were not primarily due to
8 alcohol or drug abuse/addiction. *See* AR. 356.

9
10 The Court agrees with defendant’s concession that the ALJ erred by failing to
11 discuss the opinions of Dr. Sanchez, because her opinion clearly is significant, probative
12 evidence. *See Flores, supra*, 49 F.3d at 571. Therefore, the next question to be decided is
13 whether or not this error is harmless.

14 The Ninth Circuit has concluded that it is not harmless error for the ALJ to fail to
15 discuss a medical opinion. *Hill v. Astrue*, 698 F.3d 1153, 1160 (9th Cir. 2012) (“the
16 ALJ’s disregard for Dr. Johnson’s medical opinion was not harmless error and Dr.
17 Johnson’s opinion should have been considered”) (citing 20 C.F.R. § 404.1527(c) (noting
18 that this Ruling requires the evaluation of “every medical opinion” received)).

19 The ALJ’s opinion differs from Dr. Sanchez’ opinion regarding whether or not
20 plaintiff’s substance abuse is a material factor contributing to plaintiff’s disability. The
21 ALJ found, at the initial steps in the evaluation process, that a “finding of ‘disability’ is []
22 appropriate” in this case when limitations from plaintiff’s substance use disorders are
23 considered. *See* AR. 20. Therefore, the question becomes “would the other impairments
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1 [other than substance abuse] improve to the point of non-disability in the absence of the
2 drug or alcohol abuse.” AR. 17 (citing SSR 12 – 2P).

3 In determining whether or not a claimant's alcoholism or drug addiction is material
4 pursuant to 42 U.S.C. § 423(d)(2)(C), the test is whether or not “an individual would still
5 be found disabled if [h]e stopped using alcohol or drugs.” *Sousa v. Callahan*, 143 F.3d
6 1240, 1245 (9th Cir. 1998) (quoting 20 C.F.R. § 404.1535(b)(1)).

7 Here, Dr. Sanchez opined that the limitations on plaintiff’s ability to perform work
8 were not primarily due to alcohol or drug abuse/addiction. *See* AR. 356. A logical
9 inference from this opinion is that in the absence of drug and alcohol abuse, plaintiff still
10 would suffer close to the same amount of limitations on his ability to work. *See id.*
11 Therefore, Court concludes that the opinion from Dr. Sanchez is contrary to and very
12 relevant to one of the most important findings by the ALJ, that is, that plaintiff “would
13 not be disabled if he stopped the substance use (20 C.F.R. §§ 404.1520(f), 404.1535,
14 416.920(f) and 416.935).” *See* AR. 26. Therefore, the Court cannot conclude with
15 confidence that no ALJ when fully crediting the opinion from Dr. Sanchez “could have
16 reached a different disability determination.” *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th
17 Cir. 2015) (quoting *Stout*, 454 F.3d at 1055-56).

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19 The Ninth Circuit has reaffirmed the explanation in *Stout* that “ALJ errors in
20 social security are harmless if they are ‘inconsequential to the ultimate nondisability
21 determination’ and that ‘a reviewing court cannot consider [an] error harmless unless it
22 can confidently conclude that no reasonable ALJ, when fully crediting the testimony,
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1 | could have reached a different disability determination.” *Marsh*, 792 F.3d at 1173
2 | (quoting *Stout*, 454 F.3d at 1055-56).

3 | Therefore, the Court concludes that it was not harmless error for the ALJ to fail to
4 | discuss the medical opinion from Dr. Sanchez. *See id.* Although plaintiff requests a
5 | remand with a direction to award benefits, the Court concludes based on the record as a
6 | whole, that further administrative proceedings would be useful in this case. *See Treichler*
7 | *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014) (citations
8 | omitted) (remand for benefits is not appropriate when further administrative proceedings
9 | would serve a useful purpose). The ALJ should evaluate the medical opinion of Dr.
10 | Sanchez in the first instance, and should have the opportunity to evaluate the new
11 | evidence plaintiff submitted to the Appeals Council. *See id.*; *see also* Dkt. 13, pp 8-11.
12 | Therefore, this matter is reversed and remanded to the administration for further
13 | administrative proceedings consistent with this opinion.
14 |

15 | **(2) Whether or not the ALJ properly evaluated plaintiff’s testimony.**

16 | The Court already has concluded that the ALJ erred in reviewing the medical
17 | evidence and that this matter should be reversed and remanded for further consideration,
18 | *see supra*, section 1. In addition, the evaluation of a claimant’s statements regarding
19 | limitations relies in part on the assessment of the medical evidence, some of which the
20 | ALJ did not have the opportunity to review. *See* 20 C.F.R. § 404.1529(c); SSR 16-3p,
21 | 2016 SSR LEXIS 4. Therefore, for this reason, plaintiff’s testimony and statements
22 | should be assessed anew following remand of this matter.
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1 (3) **Whether or not the ALJ properly evaluated the lay evidence and the**
2 **RFC in the absence of substance abuse (“DAA”), and erred by basing**
3 **the step four and five findings on his erroneous RFC assessment.**

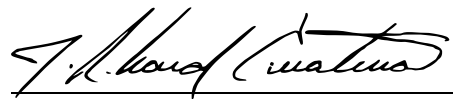
4 Similarly, the lay evidence and the RFC in the absence of substance abuse should
5 be evaluated anew following remand of this matter. As a consequence, the steps four and
6 five findings based on the RFC in the absence of substance abuse (“DAA”) should be
7 evaluated anew following remand of this matter, as should the issue of the materiality of
8 plaintiff’s DAA to his disability.

9 CONCLUSION

10 Based on the stated reasons and the relevant record, the Court **ORDERS** that this
11 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
12 405(g) to the Acting Commissioner for further consideration consistent with this order.

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

14 Dated this 21st day of November, 2017.

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16 J. Richard Creatura
17 United States Magistrate Judge