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

10 DAVINA H.,

11 Plaintiff,

12 v.

13 NANCY A BERRYHILL, Deputy
14 Commissioner of Social Security for
Operations,

15 Defendant.

CASE NO. 3:18-CV-05279-DWC

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

16 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's
17 denial of Plaintiff's applications for supplemental security income ("SSI") and 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. 5.

21 After considering the record, the Court concludes the Administrative Law Judge ("ALJ")
22 erred when she failed to give legally sufficient reasons to reject opinion evidence from Dr. James
23 D. Czysz, Psy. D., and Mr. Erran Sharpe, LMHC. Had the ALJ properly considered this evidence,
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1 the residual functional capacity (“RFC”) may have included additional limitations. The ALJ’s error
2 is therefore not harmless, and this matter is reversed and remanded pursuant to sentence four of 42
3 U.S.C. § 405(g) to the Deputy Commissioner of Social Security for Operations (“Commissioner”)
4 for further proceedings consistent with this Order.

5 FACTUAL AND PROCEDURAL HISTORY

6 On September 11, 2014, Plaintiff filed applications for SSI and DIB, alleging disability as
7 of December 1, 2004. *See* Dkt. 8, Administrative Record (“AR”) 18. The application was denied
8 upon initial administrative review and on reconsideration. *See* AR 18. ALJ Ilene Sloan held a
9 hearing on September 7, 2016. AR 40-76. At the hearing, Plaintiff amended her alleged onset date
10 of disability to January 1, 2012. *See* AR 18, 44, 65-66. In a decision dated January 20, 2017, the
11 ALJ determined Plaintiff to be not disabled. AR 40-76. The Appeals Council denied Plaintiff’s
12 request for review of the ALJ’s decision, making the ALJ’s decision the final decision of the
13 Commissioner. *See* AR 1-6; 20 C.F.R. § 404.981, § 416.1481.

14 In Plaintiff’s Opening Brief, Plaintiff maintains the ALJ erred by failing to properly
15 consider: (1) opinion evidence from Dr. Czysz and Mr. Sharpe, as well as Dr. Patricia Kraft, Ph.D.,
16 Dr. John Robinson, Ph.D., and Dr. Renee Eisenhauer, Ph.D.; and (2) Plaintiff’s subjective
17 symptom testimony. Dkt. 10, pp. 3-13.

18 STANDARD OF REVIEW

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

2 **I. Whether the ALJ properly considered the medical opinion evidence.**

3 Plaintiff contends the ALJ failed to properly consider medical opinion evidence from Dr.
4 Czysz, Mr. Sharpe, Dr. Kraft, Dr. Robinson, and Dr. Eisenhower. Dkt. 10, pp. 3-11.

5 A. Dr. Czysz

6 Plaintiff argues the ALJ failed to provide specific and legitimate reasons for rejecting Dr.
7 Czysz’s medical opinion. Dkt. 10, pp. 6-8.

8 In assessing an acceptable medical source, an ALJ must provide “clear and convincing”
9 reasons for rejecting the uncontradicted opinion of either a treating or examining physician. *Lester*
10 *v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir.
11 1990)); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining
12 physician’s opinion is contradicted, the opinion can be rejected “for specific and legitimate reasons
13 that are supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews*
14 *v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.
15 1983)). The ALJ can accomplish this by “setting out a detailed and thorough summary of the facts
16 and conflicting clinical evidence, stating [her] interpretation thereof, and making findings.”
17 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747,
18 751 (9th Cir. 1989)).

19 Dr. Czysz completed a psychological/psychiatric evaluation of Plaintiff on August 20,
20 2014. AR 382-88. As part of the evaluation, Dr. Czysz conducted a clinical interview and mental
21 status examination. AR 382-88. Dr. Czysz opined Plaintiff had moderate limitations in her ability
22 to make simple work-related decisions, and understand, remember, and persist in tasks by
23 following detailed instructions. AR 384. Likewise, Dr. Czysz found Plaintiff moderately limited in
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1 her ability to be aware of normal hazards and take appropriate precautions, ask simple questions or
2 request assistance, maintain appropriate behavior in a work setting, and set realistic goals and plan
3 independently. AR 384. Dr. Czysz further determined Plaintiff had marked limitations in her
4 ability to learn new tasks, adapt to changes in a routine work setting, and communicate and
5 perform effectively in a work setting. AR 384. Additionally, Dr. Czysz opined Plaintiff was
6 markedly limited in her ability to perform activities within a schedule, maintain regular attendance,
7 and be punctual within customary tolerances without special supervision. AR 384. Dr. Czysz
8 similarly found Plaintiff had a marked limitation in her ability to complete a normal work day and
9 work week without interruptions from psychologically based symptoms. AR 384.

10 The ALJ assigned “minimal weight” to Dr. Czysz’s opinion for five reasons: (1) Dr. Czysz
11 “provided no specific explanation” for the opined limitations; (2) Dr. Czysz examined Plaintiff one
12 time, with no supporting clinical notes; (3) Plaintiff’s homelessness contradicted parts of Dr.
13 Czysz’s opinion; (4) Plaintiff’s purported part-time work contradicted parts of Dr. Czysz’s opinion;
14 and (5) Dr. Czysz’s mental status examination did not support his opinion. AR 30. While the ALJ
15 gave a lengthy explanation of Dr. Czysz’s opinion, each the ALJ’s reasons was legally insufficient.

16 First, the ALJ rejected Dr. Czysz’s opinion because she found it lacked “specific
17 observations or narrative associated with the checked boxes.” AR 30. An ALJ may “permissibly
18 reject[] ... check-off reports that [do] not contain any explanation of the bases of their
19 conclusions.” *Molina v. Astrue*, 674 F.3d 1104, 1111-12 (9th Cir. 2012) (internal quotation marks
20 omitted) (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir.1996)). But “opinions in check-box
21 form can be entitled to substantial weight when adequately supported.” *Neff v. Colvin*, 639 Fed.
22 Appx. 459 (9th Cir. 2016) (internal quotation marks omitted) (citing *Garrison v. Colvin*, 759 F.3d
23 995, 1013 (9th Cir. 2014)).

1 In this case, Dr. Czysz furnished his opinion on a Washington State Department of Social
2 and Health Services evaluation form. *See* AR 382-88. Although Dr. Czysz opined to several
3 limitations in “check-off” format, Dr. Czysz’s opinion includes notes from his clinical interview
4 and mental status examination with Plaintiff, as well as his clinical findings. *See* AR 382-88. For
5 instance, in his clinical findings, Dr. Czysz noted Plaintiff’s “[a]nxiety,” “hypervigilance,”
6 “exaggerated startle response,” and “general mistrust” would “likely make it difficult for [Plaintiff]
7 to trust or collaborate with co-workers or supervisors.” AR 383. Dr. Czysz also wrote Plaintiff’s
8 anxiety symptoms would make it “difficult to sustain concentration over the work day.” AR 383.
9 Similarly, Dr. Czysz noted Plaintiff “occasionally hears voices,” which “would make it difficult”
10 for her to interact “in even a minimally appropriate manner with coworkers, supervisors, or the
11 public.” AR 383. Dr. Czysz provided several other pertinent notes throughout his report that
12 support the opined limitations. *See* AR 382-86.

13 Hence, Dr. Czysz’s opinion was not merely a check-box form, as it provided testing and
14 results that are relevant to the opined limitations. Therefore, the ALJ’s finding that Dr. Czysz’s
15 opinion was merely a check-box form with no observations or narrative was not supported by
16 substantial evidence in the record. *See Smith v. Astrue*, 2012 WL 5511722, at *6 (W.D. Wash. Oct.
17 25, 2012) (holding an ALJ erred by rejecting an examining physician’s opinion as a “check-off”
18 report where the physician “conducted a clinical interview, [and] report[ed] his findings and
19 observations” in the report).

20 Second, the ALJ rejected Dr. Czysz’s opinion because “this was a one-time examination”
21 without supporting clinical notes to explain Dr. Czysz’s findings. AR 30. An examining physician,
22 by definition, does not have a treating relationship with the claimant and usually only examines a
23 claimant one time. *See* 20 C.F.R. § 404.1527(c) (effective Aug. 24, 2012 to Mar. 26, 2017). “When
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1 | considering an examining physician’s opinion . . . it is the quality, not the quantity of the
2 | examination that is important. Discrediting an opinion because the examining doctor only saw
3 | claimant one time would effectively discredit most, if not all, examining doctor opinions.” *Yeakey*
4 | *v. Colvin*, 2014 WL 3767410, at *6 (W.D. Wash. July 31, 2014). Furthermore, as discussed above,
5 | Dr. Czysz’s opinion contains clinical interview notes, mental status examination results, and
6 | detailed clinical findings. *See* AR 382-88. Clinical interviews and mental status examinations “are
7 | objective measures” that support psychiatric findings. *See Buck v. Berryhill*, 869 F.3d 1040, 1049
8 | (9th Cir. 2017). Accordingly, rejecting Dr. Czysz’s opinion merely because he was an examining
9 | physician was not specific and legitimate. *See id.*; *see also Yeakey*, 2014 WL 3767410, at *6.

10 | Third, the ALJ discounted Dr. Czysz’s opinion because she found “the larger record”
11 | inconsistent with Dr. Czysz’s opined limitations. AR 30. The ALJ specifically noted Plaintiff’s
12 | homelessness was inconsistent with Dr. Czysz’s opinion that Plaintiff was limited in her ability to
13 | adapt, be aware of normal hazards, and take appropriate precautions. An ALJ may discount a
14 | physician’s opinion which is inadequately supported “by the record as a whole.” *Batson v. Comm’r*
15 | *of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004) (citation omitted). Regardless, ALJ
16 | cannot reject a physician’s opinion in a vague or conclusory manner; rather, the ALJ “must set
17 | forth his own interpretations and explain why they, rather than the doctors’, are correct.” *Embrey*,
18 | 849 F.2d at 421. Moreover, an ALJ’s findings must be supported by substantial evidence in the
19 | record. *Bayliss*, 427 F.3d at 1214 n.1 (citation omitted).

20 | In this case, the record reflects the ALJ accurately found Plaintiff experienced
21 | homelessness during the relevant period. *See, e.g.*, AR 45, 382, 398, 410. But the ALJ failed to
22 | explain how Plaintiff’s experiences with homelessness contradicted Dr. Czysz’s opinion that
23 | Plaintiff was limited in the workplace in her ability to adapt, be aware of normal hazards, and take
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1 appropriate precautions “*over a normal workday and workweek* on an ongoing, appropriate, and
2 independent basis.” *See* AR 30, 384 (emphasis added). Furthermore, this Court has previously
3 held:

4 Homelessness is not a sign of success. Homelessness, generally, is not a condition of
5 one’s choosing. To the contrary, being homeless may very well demonstrate that a
6 person is incapable of tolerating the pressures and expectations of a work
environment. And attributing certain skills to homelessness is hardly a legitimate
reason for discounting [a physician’s] opinion.

7 *Pletcher v. Colvin*, 2014 WL 3440730, at *3 (W.D. Wash. July 11, 2014).

8 As in *Pletcher*, Plaintiff’s homelessness here is not a sign of her success, and the record
9 does not support the ALJ’s finding that Plaintiff’s homelessness shows she can adapt, be aware of
10 normal hazards, and take appropriate precautions. To the contrary, the references in the record to
11 Plaintiff’s homelessness are vague, and do not show Plaintiff was not limited in these basic work
12 activities. *See, e.g.*, 45, 382, 398, 410. Hence, in light of the ALJ’s lack of explanation, and the
13 relevant case law and record, Plaintiff’s experience with homelessness was not a specific,
14 legitimate reason to discount Dr. Czynsz’s opinion.

15 Fourth, the ALJ assigned minimal weight to Dr. Czynsz’s opinion because she found Dr.
16 Czynsz’s opinions about Plaintiff’s limitations in attendance, punctuality, ability to learn new tasks,
17 and communication inconsistent with Plaintiff’s “successful performance of part time work[.]” AR
18 30. Yet the ALJ failed to cite any records showing Plaintiff indeed performed part-time work after
19 her alleged onset date of disability. *See* AR 30; *see also* AR 22 (ALJ purporting at Step Three that
20 Plaintiff performed part-time work but failing to provide any record citation). At the hearing,
21 Plaintiff’s counsel indicated Plaintiff stopped working in 2011 – prior to Plaintiff’s alleged onset
22 date of disability of January 1, 2012. AR 44. Given the ALJ’s lack of record citation showing
23 Plaintiff performed any work during the relevant period, the Court cannot determine the ALJ’s
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1 fourth reason for discounting Dr. Czysz's opinion was supported by substantial evidence in the
2 record. *See Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) ("We require the ALJ to build an
3 accurate and logical bridge from the evidence to her conclusions so that we may afford the
4 claimant meaningful review of the SSA's ultimate findings.").

5 Defendant concedes "the ALJ failed to cite to specific records in discussing the part-time
6 work," but argues the "Court can reasonably identify the substantial evidence supporting the ALJ's
7 finding[.]" Dkt. 13, p. 14. To support this argument, Defendant cites two records: One record from
8 September 2014, which Defendant contends shows Plaintiff "was offered a position to work four
9 days per month," and another record from April 2015, in which Plaintiff "described a work
10 incident with her boss." *Id.* (citing AR 398, 563). The September 2014 record – a mental health
11 counseling record – states Plaintiff reported in a counseling session that she received a job offer to
12 work four days per month. AR 398. However, Plaintiff expressed concern that working would
13 impact her disability claim. *See* AR 398. The record does not indicate whether Plaintiff accepted
14 the potential employment opportunity. *See* AR 398.

15 The April 2015 record Defendant cites is also a mental health counseling record, in which
16 Plaintiff described an incident "at the shelter" and stated her "case manager" reprimanded her for
17 her actions. AR 563. Plaintiff stated she was questioned by her case manager, as well as "her
18 boss." AR 563. It is unclear from the record whether "her boss" referred to Plaintiff's boss or the
19 case manager's boss. *See* AR 563. Nevertheless, this record indicates the incident occurred at the
20 shelter Plaintiff was living in at the time. *See* AR 563. The record does not indicate whether
21 Plaintiff was also working a job at the shelter. *See* AR 563. As such, Defendant's post hoc
22 rationalization is unpersuasive. *See Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1225-26
23 (9th Cir. 2009) (emphasis in original) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947))

1 (other citation omitted) (“Long-standing principles of administrative law require us to review the
2 ALJ’s decision based on the reasoning and actual findings offered by the ALJ – not *post hoc*
3 rationalizations that attempt to intuit what the adjudicator may have been thinking.”). The ALJ’s
4 fourth reason for discounting Dr. Czysz’s opinion was therefore legally insufficient.

5 Fifth, the ALJ rejected Dr. Czysz’s opinion because she found Dr. Czysz’s opined
6 limitations were unsupported by the mental status examination he conducted. AR 30. The ALJ
7 noted that “[t]esting revealed deficits in memory and concentration as well as slowing of thought
8 process and rumination, but the claimant’s capacity was apparently sufficient for simple tasks.” AR
9 30. Yet the ALJ failed to provide rationale as to why she found these abnormal findings
10 insufficient to explain Dr. Czysz’s opined limitations. *See* AR 30. Instead, the ALJ “merely states”
11 these facts “point toward an adverse conclusion” and “makes no effort to relate any of these” facts
12 to “the specific medical opinions and findings [she] rejects.” *Embrey*, 849 F.2d at 421. “This
13 approach is inadequate.” *Id.*

14 Moreover, although the ALJ claimed Dr. Czysz “did not relate any of these test results to
15 the boxes he checked,” the ALJ overlooked abnormal findings contained throughout Dr. Czysz’s
16 report which support his findings, such as the detailed notes on symptoms and associated clinical
17 findings previously discussed. *See* AR 383; *see also* AR 382 (clinical interview), 385 (remainder
18 of the mental status examination). Thus, given the ALJ’s lack of explanation and selective record
19 reliance, this was not a specific, legitimate reason, to reject Dr. Czysz’s opinion. *See Attmore v.*
20 *Colvin*, 827 F.3d 872, 875 (9th Cir. 2016) (quoting *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
21 1999) (the Court “cannot affirm . . . ‘simply by isolating a specific quantum of supporting
22 evidence,’ but ‘must consider the record as a whole, weighing both evidence that supports and
23 evidence that detracts from the [Commissioner’s] conclusion”)).

1 The ALJ failed to provide any specific and legitimate reason, supported by substantial
2 evidence, for giving Dr. Czysz's opinion little weight. Accordingly, the ALJ erred.

3 Harmless error principles apply in the Social Security context. *Molina*, 674 F.3d at 1115.
4 An error is harmless only if it is not prejudicial to the claimant or "inconsequential" to the ALJ's
5 "ultimate nondisability determination." *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055
6 (9th Cir. 2006); *see also Molina*, 674 F.3d at 1115. The determination as to whether an error is
7 harmless requires a "case-specific application of judgment" by the reviewing court, based on an
8 examination of the record made "'without regard to errors' that do not affect the parties'
9 'substantial rights.'" *Molina*, 674 F.3d at 1118-1119 (quoting *Shinseki v.*, 556 U.S. at 407 (quoting
10 28 U.S.C. § 2111)).

11 In this case, the RFC and the hypothetical questions posed to the vocational expert ("VE")
12 may have included additional limitations with proper consideration of Dr. Czysz's opinion. For
13 example, the RFC and hypothetical questions may have contained greater task and social
14 limitations in light of Dr. Czysz's opinion that Plaintiff was markedly limited in her ability learn
15 new tasks and communicate effectively in a working setting. The RFC and hypothetical questions
16 may have also reflected Dr. Czysz's opinion that Plaintiff was markedly limited in her ability to
17 perform activities within a schedule, maintain regular attendance, and be punctual within
18 customary tolerances without special supervision. The RFC and hypothetical questions posed to
19 the VE did not contain such limitations. *See* AR 24, 70-75. The ALJ's errors were therefore not
20 harmless and require reversal.

1 B. Mr. Sharpe

2 Next, Plaintiff contends the ALJ failed to provide any germane reason for rejecting the
3 September 2016 opinion of Mr. Sharpe, Plaintiff’s treating mental health counselor. Dkt. 10, pp. 3-
4 5.

5 Pursuant to federal regulations, medical opinions from “other” medical sources, such as
6 mental health counselors, must be considered. *See* 20 C.F.R. § 404.1513(d) (effective Sept. 3, 2013
7 to Mar. 26, 2017);¹ *see also* *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1223-24 (9th Cir.
8 2010) (citing 20 C.F.R. § 404.1513(a), (d)); Social Security Ruling 06-3p, 2006 WL 2329939.
9 “Other medical source” testimony, which the Ninth Circuit treats as lay witness testimony, “is
10 competent evidence an ALJ must take into account,” unless the ALJ “expressly determines to
11 disregard such testimony and gives reasons germane to each witness for doing so.” *Lewis v. Apfel*,
12 236 F.3d 503, 511 (9th Cir. 2001); *Turner*, 613 F.3d at 1224. In rejecting lay testimony, the ALJ
13 need not cite the specific record as long as “arguably germane reasons” for dismissing the
14 testimony are noted. *Lewis*, 236 F.3d at 512.

15 Mr. Sharpe has provided Plaintiff with mental health counseling since April 2016. *See* AR
16 651-58. On September 6, 2016, Mr. Sharpe completed a “Medical Source Statement of Ability to
17 do Work-Related Activities (Mental)” – a check-off form from the Social Security Administration.
18 *See* AR 648-50. Mr. Sharpe wrote that the assessment applied from April to September 2016. AR
19 648. Mr. Sharpe attached treatment notes from his counseling sessions with Plaintiff to his opinion
20 form. *See* AR 651-58.

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24 ¹ These regulations apply for claims, such as Plaintiff’s claim, filed before March 27, 2017. *See* 20 C.F.R. §
404.1513(a).

1 With respect to Plaintiff’s “ability to understand, remember, and carry out instructions,”
2 Mr. Sharpe opined Plaintiff had a slight limitation in her ability to understand and remember short,
3 simple instructions. AR 648. Further, Mr. Sharpe wrote Plaintiff had a moderate limitation in her
4 ability to carry out short, simple instructions. AR 648. Mr. Sharpe also determined Plaintiff was
5 markedly limited in her ability to understand and remember detailed instructions, and make
6 judgments on simple work-related decisions. AR 648. Mr. Sharpe found Plaintiff had an extreme
7 limitation in in her ability to carry out detailed instructions. AR 648. Mr. Sharpe wrote that he
8 opined these limitations because Plaintiff “is verbally and physically disorganized” in counseling
9 sessions. AR 648.

10 Regarding Plaintiff’s “ability to respond appropriately to supervisors, co-workers, and
11 work pressures in a work setting,” Mr. Sharpe opined Plaintiff had a moderate limitation in her
12 ability to respond appropriately to changes in a routine work setting. AR 649. Mr. Sharpe
13 additionally determined Plaintiff had marked restrictions in her ability to interact appropriately
14 with the public, supervisors, and co-workers. AR 649. Likewise, Mr. Sharpe found Plaintiff
15 markedly limited in her ability to respond appropriately to work pressures in a work setting. AR
16 649.

17 The ALJ assigned “minimal weight” to Mr. Sharpe’s opinion for six reasons:

- 18 (1) The only explanation she² provided was her conclusion that the claimant was
19 “verbally and physical [sic] disorganized in our sessions.” Given the transcript
20 like appearance of Ms. Sharpe’s clinical notes, such disorganization does not
21 appear obvious. While the claimant appeared to switch topics during sessions,
22 this may be in response to Ms. Sharpe’s apparent lack of direction during therapy.
23 (2) Further, the ideas expressed in these clinical notes are dissimilar to the prior
24 two years of mental health treatment, indicating such ideation and behavior was
not indicative of the claimant’s functioning throughout the period at issue. (3) I
also note that the claimant was not medicated during the two months of treatment
by Ms. Sharpe. (4) Ms. Sharpe also checked boxes indicating that the claimant’s

² Although the ALJ referred to Mr. Sharpe with female pronouns, the record indicates he is male.

1 abilities to interact with others and respond appropriately to work pressures were
2 markedly limited. However, as detailed above, the claimant has engaged in
3 interactions with a variety of others without such limitations. (5) Finally, Ms.
4 Sharpe opined that the claimant was moderately limited in her ability to respond
5 appropriately to changes in a work setting, yet, the claimant has demonstrated
6 significant flexibility in navigating extensive periods of homelessness. (6) I also
7 note that she was able to perform a social job on a part time basis during the
8 period at issue. While there appeared to be some conflict with management, this
9 was later attributed to inconsistencies between management members, rather than
10 attributed to the claimant.

11 AR 29-30 (internal citations omitted) (numbering added).

12 First, the ALJ discounted Mr. Sharpe’s opinion because of the lack of explanation from Mr.
13 Sharpe on the opinion form and lack of support from the record. AR 29. An ALJ may reject an
14 opinion that is “brief, conclusory, and inadequately supported by clinical findings.” *Bayliss*, 427
15 F.3d at 1216 (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)). But an ALJ
16 cannot reject a source’s opinion in a conclusory manner, and must provide rationale for her
17 findings. *Embrey*, 849 F.2d at 421. An ALJ also cannot discount a treating source’s opinion for
18 being unsupported by the record where the opinion is supported by the source’s own treatment
19 notes contained in the record. *See Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014).

20 Here, the ALJ noted the only explanation Mr. Sharpe gave for some of the opined
21 limitations was that Plaintiff was “verbally and physical[ly] disorganized,” and speculated that
22 such disorganization may have been because Mr. Sharpe “lack[ed] direction.” AR 29. However,
23 the ALJ failed to explain how he made this finding, or what about Mr. Sharpe’s treatment notes
24 indicate he lacked direction. *See* AR 29. Further, even assuming Mr. Sharpe’s counseling lacked
direction, this would not necessarily contradict Mr. Sharpe’s finding that Plaintiff herself was
verbally disorganized. A lack of direction from Mr. Sharpe also would not undermine his finding
that Plaintiff was physically disorganized.

1 Moreover, despite the ALJ’s finding that such disorganization was not “obvious,” a review
2 of Mr. Sharpe’s treatment notes shows Plaintiff regularly moved discussions between unrelated
3 topics during counseling sessions. AR 658. For example, on April 18, 2016, Plaintiff went from
4 discussing nightmares and flashbacks to reporting multiple personalities, and then discussing her
5 panic attacks and homelessness. AR 658. Likewise, on June 17, 2016, Mr. Sharpe’s treatment
6 notes show Plaintiff led the conversation from her nightmares to her lack of interests. AR 657.
7 Treatment notes from both June 28, 2016 and July 14, 2016 similarly show Plaintiff’s reports
8 moved between her flashbacks to the issues she was having with her multiple personalities. *See* AR
9 655-57. Mr. Sharpe noted on July 14, 2016 that Plaintiff’s “[v]erbal content . . . skipped a lot of
10 connections.” AR 656. Mr. Sharpe’s treatment notes support his finding that Plaintiff was
11 “physically disorganized,” as well. *See, e.g.*, AR 653 (“[Plaintiff] sat calmly but became somewhat
12 distressed” and “teary”); AR 655 (“[s]ome restless part of [Plaintiff] could not sit down . . .
13 today”).

14 Thus, in light of the ALJ’s lack of explanation and a review of the relevant treatment notes,
15 the ALJ’s first reason for discounting Mr. Sharpe’s opinion was not germane nor supported by
16 substantial evidence in the record. *See Burrell*, 775 F.3d at 1140 (ALJ erred in finding a treating
17 source’s opinion was supported by “little explanation,” as the ALJ overlooked relevant treatment
18 notes); *see also Reddick*, 157 F.3d at 722-23 (an ALJ must not “cherry-pick” certain observations
19 without considering their context).

20 Second, the ALJ rejected Mr. Sharpe’s opinion because she found “the ideas expressed” in
21 Mr. Sharpe’s treatment notes dissimilar to treatment notes from the previous two years, “indicating
22 such ideation and behavior was not indicative of the claimant’s functioning throughout the period
23 at issue.” AR 29. Inconsistency with the medical record is a germane reason to discount a lay
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1 opinion. *Bayliss*, 427 F.3d at 1218 (citing *Lewis*, 236 F.3d at 511). Yet as previously explained, an
2 ALJ cannot reject a source’s opinion in a vague or conclusory manner. *Embrey*, 849 F.2d at 421.
3 Here, although the ALJ stated Plaintiff’s behavior with Mr. Sharpe was dissimilar to her behavior
4 in treatment from the previous two years, the ALJ failed to explain how Plaintiff’s behaviors
5 differed. *See* AR 29. Further, the ALJ’s conclusory reasoning overlooks the fact that Mr. Sharpe
6 wrote that his opinion applied only from April to September 2016; hence, treatment notes from the
7 prior two years may not necessarily contradict Mr. Sharpe’s findings for this particular time period.
8 Given that the ALJ failed to explain how the earlier treatment notes could invalidate Mr. Sharpe’s
9 opinion, the ALJ erred. *See Garrison*, 759 F.3d at 1012-13 (an ALJ “errs when [she] rejects a
10 medical opinion or assigns it little weight while . . . asserting without explanation that another
11 medical opinion is more persuasive”).

12 Moreover, in contrast to the ALJ’s finding, treatment notes from the previous two years
13 include similar symptoms as Plaintiff reported to Mr. Sharpe, such as her allegations of multiple
14 personalities, loss of interest, flashbacks, and hallucinations. *See, e.g.*, AR 394-95 (symptoms of
15 psychosis; racing thoughts; auditory hallucinations; discussing multiple personalities); AR 401
16 (flashbacks with smells; hearing voices); AR 494 (auditory hallucinations; discussing psychosis);
17 AR 558 (feeling hopeless and overwhelmed). In all, this was not a germane reason to reject Mr.
18 Sharpe’s opinion, as it was vague and unsupported by substantial evidence in the record.

19 Third, the ALJ gave Mr. Sharpe’s opinion minimal weight because she found Plaintiff was
20 not medicated while Mr. Sharpe treated her. AR 29. Defendant concedes this was an inaccurate
21 finding. Dkt. 13, p. 17. The Court agrees. *See, e.g.*, AR 57, 591-95 (Plaintiff’s mental health
22 medications during the relevant period).

1 Fourth, the ALJ rejected Mr. Sharpe’s opinion about Plaintiff’s social limitations because
2 as the ALJ “detailed above,” Plaintiff engaged in social interactions without limitations. AR 29. An
3 ALJ may reject lay witness evidence if the claimant’s activities are inconsistent with the lay
4 witness’s opinion. *See Carmickle v. Comm’r of. Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir.
5 2008) (ALJ’s rejection of lay witness evidence because it was inconsistent with claimant’s
6 successful completion of continuous full-time coursework constituted reason germane to the lay
7 witness). But “[t]he ALJ must provide an explanation for [her] determination.” *McCann v. Colvin*,
8 111 F.Supp.3d 1166, 1175 (W.D. Wash. 2015) (citing *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th
9 Cir. 1996)).

10 In this case, the ALJ described Plaintiff’s “social functioning” earlier in her decision. AR
11 22. Yet in rejecting Mr. Sharpe’s opinion, the ALJ failed to explain what aspects of Plaintiff’s
12 social functioning undermined this opinion. *See* AR 29. As the ALJ failed to provide any
13 explanation regarding her findings, the Court cannot determine whether she provided a germane
14 reason, supported by substantial evidence, for giving Mr. Sharpe’s opinion little weight. *See*
15 *McCann*, 111 F.Supp.3d at 1175 (finding the ALJ failed to provide specific, germane reasons for
16 discounting a lay opinion when the ALJ provided no explanation as to how the opinion was
17 inconsistent with the overall medical record, the claimant’s daily activities, and his work history);
18 *Gilbert v. Colvin*, 2015 WL 4039338, * 5 (W.D. Wash. July 2, 2015) (finding the ALJ did not
19 provide a sufficiently specific reason to discredit lay testimony when the ALJ did not give “any
20 idea as to what in the medical evidence was inconsistent” with the opinion); *see also Brown-*
21 *Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (“the agency [must] set forth the reasoning
22 behind its decisions in a way that allows for meaningful review”).
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24

1 The ALJ's final two reasons for rejecting Mr. Sharpe's opinion are similar to reasons she
2 gave for rejecting Dr. Czynsz's opinion – that is, that Mr. Sharpe's opinion was undermined by
3 Plaintiff's homelessness and ability to perform a part-time job. AR 29-30. Nonetheless, as the
4 Court explained with respect to Dr. Czynsz's opinion, the record does not support the ALJ's
5 findings about Plaintiff's homelessness, as the references in the record to homelessness are vague
6 and do not show Plaintiff was not limited in basic work activities. Likewise, as the Court also
7 previously explained, the record is unclear as to whether Plaintiff indeed performed part-time work
8 during the relevant period. Given the lack of support from the record, the ALJ's final two reasons
9 for rejecting Mr. Sharpe's opinion are not germane or supported by substantial evidence.

10 Although the ALJ provided six reasons for assigning minimal weight to Mr. Sharpe's
11 opinion, none of her reasons were germane or supported by substantial evidence in the record.³
12 Accordingly, the ALJ erred in her consideration of Mr. Sharpe's opinion. Mr. Sharpe opined to
13 more severe limitations than the limitations contained in the RFC. *See* AR 24, 70-75, 648-50. Had
14 the ALJ properly considered Mr. Sharpe's opinion, the RFC may have included further limitations
15 on the instructions Plaintiff can understand, remember, and carry out, as well as additional social
16 limitations. *See* AR 648-49. As such, the ALJ's error is not harmless and requires remand. *See*
17 *Molina*, 674 F.3d at 1115-17.

18 C. Drs. Kraft, Robinson, and Eisenhauer

19 Plaintiff further asserts the ALJ erred with respect to the opinion evidence from non-
20 examining physicians, Drs. Kraft, Robinson, and Eisenhauer. Dkt. 10, pp. 8-11. Specifically,
21 Plaintiff argues the ALJ erred by (1) giving greater weight to Drs. Kraft and Robinson over the
22

23 ³ Plaintiff suggests the ALJ may have also rejected Mr. Sharpe's opinion because it was supplied by
24 Plaintiff's representative. Dkt. 10, p. 4. Defendant concedes, however, that the ALJ did not discount Mr. Sharpe's
opinion on this basis. Dkt. 13, p. 17. Therefore, the Court does not assess this statement from the ALJ.

1 examining and treating sources, and (2) rejecting Dr. Kraft and Dr. Robinson’s shared opinion that
2 Plaintiff’s attention and concentration “may be disrupted at time [sic] [.]” *Id.* Plaintiff also
3 contends the ALJ erred by failing to properly consider Dr. Eisenhauer’s opinion, which the ALJ
4 rejected for reviewing only Dr. Czysz’s opinion and another psychological examination. *Id.* at 8.

5 The “opinion of a non-examining medical expert . . . may constitute substantial evidence
6 when it is consistent with other independent evidence in the record.” *Tonapetyan*, 242 F.3d at 1149
7 (citing *Magallanes*, 881 F.2d at 752). Thus, given that proper consideration of the medical opinion
8 evidence of Dr. Czysz and Mr. Sharpe may impact the ALJ’s treatment of non-examining
9 physicians Drs. Kraft, Robinson, and Eisenhauer, the ALJ is directed to reassess the opinions of
10 these non-examining physicians as necessary on remand, as well.

11 Regarding Dr. Kraft’s opinion in particular, Defendant argues the ALJ’s reasoning was
12 supported by the record because a “detailed and thorough summary preceded the ALJ’s discussion
13 of Dr. Kraft’s opinion.” Dkt. 13, p. 11. Contrary to Defendant’s argument, the Ninth Circuit has
14 repeatedly held that, if an ALJ intends to reject an opinion for being unsupported by the record, she
15 must explain how the record specifically contradicts that opinion. *See Garrison*, 759 F.3d at 1012-
16 13 (citing *Nguyen*, 100 F.3d at 1464) (“Where an ALJ does not explicitly . . . set forth specific,
17 legitimate reasons for crediting one medical opinion over another, [she] errs.”); *Embrey*, 849 F.2d
18 at 421-22 (“To say that medical opinions are not supported by sufficient objective findings or are
19 contrary to the preponderant conclusions mandated by the objective findings does not achieve the
20 level of specificity our prior cases have required, even when the objective factors are listed
21 seriatim.”). Hence, Defendant’s argument is unpersuasive.

22 Thus, if the ALJ intends to reject any parts of these opinions, she is directed to explain her
23 reasoning for doing so. *See Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (quoting *Vincent*

1 v. Heckler, 739 F.2d 1393, 1395 (9th Cir. 1984) (the ALJ “may not reject ‘significant probative
2 evidence’ without explanation. . . . the ALJ’s written decision must state reasons for disregarding
3 evidence of that nature.”).

4 **II. Whether the ALJ properly assessed Plaintiff’s subjective symptom testimony.**

5 Plaintiff asserts the ALJ failed to provide any specific, clear and convincing reason to reject
6 Plaintiff’s subjective symptom testimony. Dkt. 10, pp. 11-13.

7 Because Plaintiff will be able to present new evidence and testimony on remand, and
8 because proper consideration of the medical opinion evidence may impact the ALJ’s assessment of
9 Plaintiff’s subjective symptom testimony, the Court declines to consider whether the ALJ erred
10 with respect to Plaintiff’s testimony. Instead, the Court directs the ALJ to reweigh Plaintiff’s
11 subjective symptom testimony as necessary on remand.

12 CONCLUSION

13 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
14 Plaintiff was not disabled. Accordingly, Defendant’s decision to deny benefits is reversed and this
15 matter is remanded for further administrative proceedings in accordance with the findings
16 contained herein. The Clerk is directed to enter judgment for Plaintiff and close the case.

17 Dated this 26th day of October, 2018.

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19 _____
20 David W. Christel
21 United States Magistrate Judge
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