

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DANIELLE K.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C22-5063-BAT

**ORDER REVERSING AND
REMANDING FOR FURTHER
PROCEEDINGS**

13 Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ
14 misevaluated the medical opinion evidence and her testimony, and the ALJ's residual functional
15 capacity ("RFC") determination and step-five findings are thus erroneous. Dkt. 15 at 2. For the
16 reasons below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the
17 case for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

18 **BACKGROUND**

19 After Plaintiff's 2018 benefits application was denied, the ALJ held a hearing in
20 September 2020, Tr. 112-46, and subsequently issued a decision finding Plaintiff not disabled.
21 Tr. 44-58. As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
22 Commissioner's final decision. Tr. 1-7.

23
ORDER REVERSING AND REMANDING FOR FURTHER
PROCEEDINGS - 1

DISCUSSION

A. Medical Opinion Evidence

Under 20 C.F.R. § 404.1520c(a)-(c), the ALJ must articulate the persuasiveness of each medical opinion, and specifically whether the opinions are supported, and consistent with the record. An ALJ’s findings must also be supported by substantial evidence. *See Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Plaintiff contends these regulations are invalid because they “purport to relieve an ALJ of the duty to *fully* articulate how he is weighing the medical opinion evidence[.]” Dkt. 15 at 6. The Court finds the regulations do not relieve the ALJ of making findings that may be judicially reviewed in a meaningful way. Indeed the regulations require the ALJ to articulate the basis of a finding with sufficient particularity and explicitly address whether medical opinions are supported and consistent with the record, and permit ALJs to address other factors as necessary. *See* 20 C.F.R. § 404.1520c(c). Plaintiff thus fails to show the regulations relieve an ALJ from articulating his or her reasoning.

Plaintiff argues the ALJ misevaluated several medical opinions. She first contends the ALJ erred with respect to the opinions of Joshua Johnston, M.D. Dr. Johnston, Plaintiff’s treating physician, wrote a letter in August 2019 requesting Plaintiff be assigned a close parking spot at school and receive extended time to reach her classes, due to her walking limitations. Tr. 1203. The ALJ noted this letter is not constitute a medical opinion because it does not address Plaintiff’s work-related functional limitations. Tr. 55-56. The ALJ also found it was inconsistent with the evidence of Plaintiff’s improvement after her hip surgery in January 2019 and that a sedentary RFC would account for Dr. Johnston’s opinions, in any event. *Id.*

Plaintiff argues the ALJ erred in focusing on the evidence of her post-surgery improvement without acknowledging Dr. Johnston also indicated Plaintiff would never be

1 completely pain-free. Dkt. 15 at 7 (citing Tr. 1023). But the ALJ did not suggest Plaintiff
2 improved to the point that she was completely pain-free. Instead the ALJ's noted evidence
3 showing Plaintiff's functionality improved in the months after surgery, citing many normal
4 physical examinations, also acknowledging Plaintiff continued to report some degree of pain
5 persisting even after surgery. *See* Tr. 52. Further, Plaintiff does not dispute Dr. Johnston does not
6 describe any workplace functional limitations, and thus the ALJ properly found that it does not
7 constitute a medical opinion under the applicable regulations. *See* 20 C.F.R. § 404.1513(a)(2).

8 Plaintiff next contends the ALJ erred in assessing the opinions of Philip Gibson, Ph.D.
9 Dr. Gibson examined Plaintiff in March 2019 and opined Plaintiff would have difficulty with
10 certain workplace functions. Tr. 1039-42. The ALJ found Dr. Gibson's opinion to be "only
11 somewhat persuasive" because it did not identify specific work limitations and was inconsistent
12 with the doctor's normal mental status examination (MSE) findings and was also inconsistent
13 with Plaintiff's mental health treatment notes and activities. Tr. 55. The ALJ found Dr. Gibson's
14 opinion was consistent with Plaintiff's self-reported anxiety symptoms. *Id.*

15 The ALJ's finding Dr. Gibson is vague and failed to identify work limitations is not
16 supported by substantial evidence. Dr. Gibson opined Plaintiff would have difficulty (1)
17 accepting instructions from supervisors; (2) performing work activates without special or
18 additional instructions; (3) minting regular attendance and completing a normal workday and
19 workweek; and (4) dealing with the usual stress in the workplace. Tr. 1042. To the extent these
20 limitations were unclear to the ALJ, the ALJ should have developed the record rather than
21 simply reject the opinions outright.

22 The ALJ's finding Dr. Gibson's opinion is inconsistent with his MSE findings and intact
23 psychiatric functioning, historically, is also not supported by the record. Dr. Gibson did not opine

1 Plaintiff's limitations are caused by lack of intelligence, cognitive functioning or judgment which
2 appear to be within normal bounds per the MSE. Rather the doctor opined Plaintiff ,who he
3 diagnosed with posttraumatic stress disorder and major depressive disorder, has functional
4 limitations related to hypervigilance and inability to tolerate stress. *Id.* The ALJ accordingly
5 erred in discounting the doctor's opinions.

6 Plaintiff next contends the ALJ erred in discounting the opinion of Kimberly Newell,
7 ARNP. In 2019, Ms. Newell, Plaintiff's treating provider opined Plaintiff's impairments
8 "impact[] her ability to walk far distances, carry heavy objects, sit in hard and unsupportive
9 chairs." Tr. 1202. The ALJ found the opinion was vague because it fails to identify any
10 particular functional limitations. Tr. 55. The ALJ found the letter to be consistent with Plaintiff's
11 history of hip issues, but inconsistent with her improvement after surgery in January 2019. *Id.*
12 The ALJ stated the RFC determination accommodates Ms. Newell's opinion because it limits
13 Plaintiff to less than the full range of sedentary work. *Id.*

14 Plaintiff concedes Ms. Newell's opinion is "indeed somewhat vague," but argues the
15 opinion is nonetheless supported by clinical findings contained in the treatment notes. Dkt. 15 at
16 10. Plaintiff also argues, without explanation, the ALJ's RFC assessment "does not fully
17 accommodate the findings and opinion of Ms. Newell." Dkt. 15 at 10. Failing to identify any
18 inconsistency is fatal to Plaintiff's argument because Plaintiff bears the burden to show that an
19 ALJ's error is harmful. The ALJ's RFC assessment contains significant limitations as to
20 Plaintiff's sitting, walking, and lifting abilities, and Plaintiff has failed to show that these
21 restrictions do not fully account for the vague limitations listed in Ms. Newell's letter.
22 Accordingly, Plaintiff has failed to show the ALJ harmfully erred in assessing Ms. Newell's
23 letter.

1 Plaintiff also argues the ALJ erred in finding the State agency medical consultants'
2 opinions were persuasive because she also partially rejected them, finding Plaintiff to be more
3 limited. Dkt. 15 at 12. Plaintiff fails to identify any harm flowing from the ALJ's inclusion of
4 additional limitations and thus fails to meet her burden to establish harmful error.

5 Plaintiff further argues the ALJ erred in finding the State agency psychological
6 consultants' opinions to be persuasive, because the ALJ should have found them to be
7 inconsistent with Dr. Gibson's opinion. Tr. 55. Plaintiff disregards the fact the ALJ found
8 Plaintiff to be more limited than the State agency psychological consultants (*id.*), which, again,
9 undercuts any argument the ALJ harmfully erred.

10 The Court notes many pages of Plaintiff's opening brief is a summary of miscellaneous
11 medical findings that does not establish the ALJ harmfully erred. Dkt. 15 at 10-12.

12 The Court also notes Plaintiff submitted evidence to the Appeals Council (Tr. 8-19, 30-
13 39, 65-111), and argues the Appeals Council evidence "provides further support" for her
14 testimony and for the opinions of Drs. Johnston, Gibson, and Ms. Newell. Dkt. 15 at 14. The
15 Court has already found the ALJ erred as to Dr. Gibson and finds the new evidence does not
16 undermine the ALJ's assessment of Drs. Johnston or Ms. Newell.

17 **B. Plaintiff's Testimony**

18 The ALJ discounted Plaintiff's testimony on the grounds (1) Plaintiff's hip symptoms
19 improved after surgery, (2) Plaintiff's objective findings and activities are inconsistent with her
20 alleged physical and mental limitations, and (3) Plaintiff refused to take antidepressant
21 medication. Tr. 51-54. Absent evidence of malingering, an ALJ must provide clear and
22 convincing reasons to discount a claimant's testimony. *See Burrell v. Colvin*, 775 F.3d 1133,
23 1136-37 (9th Cir. 2014).

1 Plaintiff argues the ALJ erred in relying on a lack of corroboration from objective
2 evidence to discount her testimony. Dkt. 15 at 15. But the ALJ did not solely rely on the lack of
3 objective and instead provided other reasons. Thus the ALJ cannot be deemed to have harmfully
4 erred. Next, Plaintiff contends the record shows she has impairments that can reasonably be
5 expected to cause her symptoms and limitations. Dkt. 15 at 15-18. But the ALJ agreed and
6 explicitly found Plaintiff's "medically determinable impairments could reasonably be expected
7 to cause [her] alleged symptoms[.]" Tr. 51. The ALJ further found the limiting effects of
8 Plaintiff's symptoms were not entirely consistent with the record. Thus the Court cannot say the
9 ALJ was unreasonable in discounting Plaintiff's claimed physical limitations; however as noted
10 above, the ALJ erred in discounting Dr. Gibson's opinions about Plaintiff's mental limitations.
11 The Court thus will not disturb the ALJ's findings as to Plaintiff's physical limitations but directs
12 that on remand the ALJ reassess Plaintiff's claims about her mental limitations.

13 **CONCLUSION**

14 For the foregoing reasons, the Commissioner's final decision is **REVERSED**, and the
15 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
16 405(g). On remand the ALJ shall reevaluate the opinions of Dr. Gibson and Plaintiff's testimony
17 regarding her mental limitations, develop the record and redetermine RFC as needed, and
18 proceed to the remaining steps of the five step disability determination process.

19 DATED this 15th day of September, 2022.

20
21 
22 _____
23 BRIAN A. TSUCHIDA
United States Magistrate Judge