

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Kathleen Mary Atkins v. Commissioner of Social Security
Administration

Atkins · No. CV-25-00020-TUC-JGZ · Decided March 24, 2026

SUMMARY

The United States District Court for the District of Arizona reviewed objections to a magistrate judge’s report and recommendation in a Social Security disability benefits action. The court held that the ALJ failed to provide legally sufficient reasons for rejecting the plaintiff’s physical symptom testimony and treating nurse practitioner’s medical opinion. Applying the credit-as-true rule, the court reversed the Commissioner’s decision and remanded for calculation and payment of benefits.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Jennifer G. Zipps
JURISDICTION	United States District Court for the District of Arizona
DECIDED	March 24, 2026
DOCKET	CV-25-00020-TUC-JGZ
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review of the Commissioner's denial of Social Security disability insurance benefits. After a magistrate judge recommended reversal and remand for further proceedings, Plaintiff objected and requested remand for calculation and payment of benefits.
STANDARD OF REVIEW	The district court reviews objected-to portions of a magistrate judge's report and recommendation de novo. It sets aside the denial of Social Security benefits when the ALJ's decision is based on legal error or is unsupported by substantial evidence. The court may not substitute its judgment for the ALJ's when the evidence supports either outcome.
PRECEDENTIAL VALUE	Unpublished district-court order; precedential status not stated in the opinion.
PARTIES	Kathleen Mary Atkins v. Commissioner of Social Security Administration

TOPICS

judicial review of agency action

administrative law

remedies

civil procedure

PRACTICE AREAS

Social Security

administrative law

civil procedure

disability benefits

QUESTIONS PRESENTED

1. Whether the ALJ provided legally sufficient, substantial-evidence-supported reasons for rejecting Plaintiff's physical symptom testimony.
2. Whether the ALJ adequately explained the rejection of Nurse Practitioner Castillo's opinion concerning Plaintiff's mental functional limitations.
3. Whether the ALJ's alternative step-five analysis rendered the error concerning Castillo's opinion harmless.
4. Whether the case should be remanded for further proceedings or for calculation and payment of benefits under the credit-as-true rule.

HOLDINGS

1. The ALJ erred by failing to provide specific, clear, and convincing reasons supported by substantial evidence for rejecting Plaintiff's physical symptom testimony.
2. The ALJ did not provide an explanation supported by substantial evidence for rejecting Castillo's opinion as unsupported and inconsistent with the record.
3. The alternative step-five finding did not make the ALJ's rejection of Castillo's opinion harmless.
4. Remand for calculation and payment of benefits was appropriate under the credit-as-true rule.

KEY QUOTATIONS

“The Court adopts Judge Marner’s findings and recommendation that reversal is warranted because the ALJ failed to provide specific, clear and convincing reasons supported by substantial evidence to reject Plaintiff’s physical symptom testimony.” (at 3)

“In sum, the ALJ did not provide an explanation supported by substantial evidence when she rejected NP Castillo’s treating opinion as unsupported and inconsistent.” (at 9)

“The Court may remand to the agency with instructions to calculate and award benefits if the three conditions of the credit-as-true rule are met” (at 10)

FACTUAL BACKGROUND

Plaintiff alleged disability beginning March 31, 2022, based on seizure disorder, migraines, mental-health conditions, obesity, and physical impairments. The ALJ found lumbosacral spondylosis severe, found several mental impairments non-severe or not medically determinable, discounted Plaintiff's physical symptom testimony and the opinion of psychiatric nurse practitioner Castillo, and found Plaintiff capable of past relevant

work. The record showed extensive psychiatric medication management, medication changes in response to symptoms and side effects, psychotherapy, persistent physical pain, and treatment that eventually included lumbar nerve ablation.

PROCEDURAL HISTORY

Plaintiff's Title II application was denied initially and on reconsideration. An ALJ issued an unfavorable decision on March 28, 2024, and the Social Security Administration Appeals Council denied review on November 27, 2024. Magistrate Judge James E. Marnier recommended reversal and remand for further proceedings. On de novo review of the objections, the district court adopted the recommendation that the ALJ improperly rejected Plaintiff's physical symptom testimony, rejected the recommendation concerning the mental-impairment opinion and remedy, and remanded for calculation and payment of benefits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Commissioner must calculate and pay Plaintiff's Social Security benefits. The Clerk must enter judgment and close the file.

CASES CITED

- United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
- United States v. Ramos, 65 F.4th 427, 433 (9th Cir. 2023)
- Wang v. Masaitis, 416 F.3d 992, 1000 (9th Cir. 2005)
- Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017)
- Biestek v. Berryhill, 587 U.S. 97, 102-03 (2019)
- Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)
- Matney ex rel. Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)
- Buck v. Berryhill, 869 F.3d 1040, 1048-49 (9th Cir. 2017)
- Woods v. Kijakazi, 32 F.4th 785, 792 (9th Cir. 2022)
- Moreno v. Comm'r of Soc. Sec. Admin., No. CV-22-00319-PHX-DLR, 2023 WL 4926258, at *4, *7 (D. Ariz. Aug. 2, 2023)
- P.E. v. Saul, 445 F. Supp. 3d 306, 334-35 (N.D. Cal. 2020)
- Jones v. O'Malley, No. 23-16136, 2024 WL 3963835, at *2 (9th Cir. Aug. 28, 2024)
- Morris v. Berryhill, 358 F. Supp. 3d 875, 882-83 (D. Ariz. 2019)
- Ghanim v. Colvin, 763 F.3d 1154, 1162, 1164 (9th Cir. 2014)
- Bogner v. Comm'r of Soc. Sec. Admin., No. CV-22-01908-PHX-DMF, 2023 WL 4734120, at *4 (D. Ariz. July 25, 2023)
- Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996)

- *Ain v. Comm'r of Soc. Sec. Admin.*, No. CV-24-00008-DLR (ESW), 2024 WL 4529376, at *5 (D. Ariz. Sept. 30, 2024), report and recommendation adopted, No. CV-24-00008-PHX-DLR, 2024 WL 4528444 (D. Ariz. Oct. 18, 2024)
- *Miller v. Comm'r of Soc. Sec. Admin.*, No. CV-23-00664-PHX-SPL (DMF), 2024 WL 4291443, at *4 (D. Ariz. Jan. 3, 2024), report and recommendation adopted, No. CV-23-00664-PHX-SPL, 2024 WL 4290779 (D. Ariz. Sept. 25, 2024)
- *Gerstner v. Berryhill*, 879 F.3d 257, 262 (7th Cir. 2018)
- *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099-1100 (9th Cir. 2014)
- *Garrison v. Colvin*, 759 F.3d 995, 1020-22 & n.28 (9th Cir. 2014)

OPINION

Atkins

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Kathleen Mary Atkins, No. CV-25-00020-TUC-JGZ 10 Plaintiff, ORDER 11 v. 12
 Commissioner of Social Security Administration, 13 Defendant. 14 15 On October 30, 2025,
 Magistrate Judge James E. Marner issued a Report and 16 Recommendation (“R&R”)
 recommending the Court reverse the Administrative Law 17 Judge’s (“ALJ”) decision and remand
 to the Commissioner for further proceedings. (Doc. 18 21.) Plaintiff Kathleen Mary Atkins filed a
 timely Objection to the R&R, and the 19 Commissioner filed a Response. (Docs. 22, 23.) Having
 reviewed the record, the R&R, and 20 the arguments raised in Plaintiff’s Objection, the Court will
 adopt in part and reject in part 21 the Recommendation and remand to the agency for calculation
 of benefits. 22 I. R&R Standard of Review 23 When reviewing a magistrate judge’s R&R, this
 Court “may accept, reject, or 24 modify, in whole or in part, the findings or recommendations
 made by the magistrate 25 judge.” 28 U.S.C. § 636(b)(1). “[T]he district judge must review the
 magistrate judge’s 26 findings and recommendations de novo if objection is made, but not
 otherwise.” *United 27 States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). The
 party seeking 28 de novo review must provide “specific written objections to the proposed
 findings and 1 recommendations” of the magistrate judge. Fed. R. Civ. P. 72(b)(2). “[D]istrict
 courts 2 conduct proper de novo review [of a magistrate judge’s findings and recommendations] 3
 where they state they have done so, even if the order fails to specifically address a party’s 4
 objections.” *United States v. Ramos*, 65 F.4th 427, 433 (9th Cir. 2023) (citing *Wang v. 5 Masaitis*,
 416 F.3d 992, 1000 (9th Cir. 2005)). 6 II. Factual & Procedural History 7 Since neither party
 objects to the Magistrate Judge’s summary of the factual and 8 procedural background, the Court
 adopts this section of the R&R in its entirety. (Doc. 21 9 at 2–8.) The Court summarizes below the
 facts and procedural history relevant to the 10 Objection. On August 2, 2022, Plaintiff filed a Title
 II application for disability insurance 11 benefits, alleging disability as of March 31, 2022 due to

seizure disorder, migraine 12 headaches, major depressive disorder, posttraumatic stress disorder (“PTSD”), bipolar 13 disorder, schizoaffective disorder, attention deficit hyperactivity disorder, anxiety disorder, 14 and obesity. (Id. at 2); AR 17–18. Plaintiff’s application was denied initially and on 15 reconsideration. (Doc. 21 at 2.) On March 28, 2024, ALJ Amy Benton issued an 16 unfavorable decision. (Id.) On November 27, 2024, the Social Security Administration 17 (“SSA”) Appeals Council denied Plaintiff’s request for review and adopted the ALJ’s 18 unfavorable decision as the agency’s final decision. (Id.) This appeal followed. 19 In the unfavorable decision, the ALJ determined that Plaintiff had not engaged in 20 substantial gainful activity since May 9, 2022; suffers from the severe impairment of 21 lumbosacral spondylosis; and does not have an impairment or combination of impairments 22 that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. 23 Part 404, Subpart P, Appendix 1. (Id. at 2–3.) The ALJ found Plaintiff’s seizure disorder, 24 migraine headaches, and obesity were medically determinable but not severe. AR 18. The 25 ALJ found most of Plaintiff’s alleged mental health disorders not medically determinable 26 because “they are not established by diagnosis from and evidence from acceptable medical 27 sources.” Id. The ALJ found two of Plaintiff’s mental health disorders—schizoaffective 28 disorder – bipolar type and PTSD—medically determinable but non-severe because they 1 do not cause more than minimal limitation in the claimant’s ability to perform basic mental 2 work activities. Id. The ALJ considered the four areas of mental functioning, the Paragraph 3 B criteria, and found Plaintiff had mild limitation in each. Id. 4 In finding Plaintiff’s schizoaffective disorder and PTSD non-severe, the ALJ 5 reasoned that the record indicated the disorders were chronic and had not previously 6 precluded employment; although Plaintiff subjectively reported extreme mental health 7 symptoms, her treatment had stayed routine, conservative, and outpatient; and given 8 Plaintiff’s longitudinal examination presentation, which typically involved normal and 9 intact functioning, there was little objective support for more than mild limitation in any of 10 the Paragraph B criteria. Id. at 18–19. Citing the same reasons, the ALJ found the opinions 11 of the State agency psychological consultants and Nurse Practitioner (“NP”) Castillo’s¹ 12 treating medical opinion² unsupported and inconsistent with the record as a whole, and 13 therefore, unpersuasive. Id. at 19–20. The ALJ found Plaintiff’s Paragraph B limitations, [S]o slight that they do not cause any measurable loss of function in mental 14 abilities to understand, remember or carry out instructions, to make work related decisions, or to respond appropriately to supervisors, coworkers, 15 usual work situations, changes in work setting, or work pressures in a work setting. Thus, the following residual functional capacity assessment does not 16 reflect any limitation in mental abilities.

17 Id. at 20.

18 The ALJ determined Plaintiff’s residual functional capacity (“RFC”) as the ability 19 to perform light work as defined in 20 C.F.R. § 404.1527(b) except that she can 20 occasionally climb ramps or stairs but never climb ladders, ropes or scaffolds; occasionally 21 stoop, kneel, crouch, and crawl; and occasionally be exposed to hazards, such as 22 unprotected heights and

moving mechanical parts, and industrial types of vibration. (Doc. 23 21 at 3.) In determining Plaintiff's RFC, the ALJ discounted Plaintiff's physical symptom 24 25 1 Castillo is a psychiatric mental health nurse practitioner ("PMHNP"). 2 NP Castillo's "Medical Source Assessment (Mental)" suggested three tasks or functions 26 that Plaintiff would have noticeable difficulty with from 11 to 20 percent of the work day or work week: (a) maintaining attention and concentration for extended periods of time; 27 (b) working in coordination with or proximity to others without being distracted by them; and (c) completing a normal workday and workweek without interruptions from 28 psychological based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. AR 1149. 1 testimony as inconsistent with medical evidence and other evidence in the record. AR 22– 2 24. 3 At step four, relying on the vocational expert's ("VE") testimony from the hearing 4 on March 5, 2024, the ALJ found Plaintiff capable of performing past relevant work as a 5 911 dispatcher, plumbing dispatcher, and call-center representative, and that such work 6 does not require the performance of work-related activities precluded by her RFC. (Doc. 7 21 at 3); AR 65. Therefore, the ALJ found Plaintiff not disabled at step four. 8 The ALJ made an alternative finding that Plaintiff would not be disabled at step- 9 five even if the ALJ found Plaintiff's mental disorders severe and included the following 10 mild mental functioning limitations: (a) limited to understanding, remembering, and 11 carrying out simple instructions; (b) occasional interaction with supervisors, coworkers, 12 and the public; (c) make only simple work-related decisions; (d) tolerate only occasional 13 change in work location; and (e) unable to work at a strict production-rate, such as the rate 14 required to work on an assembly line. AR 26–27. The VE testified that if Plaintiff's RFC included these mild mental functioning limitations, Plaintiff could not perform her past 15 work but could perform other jobs that exist in significant numbers in the national 16 economy, including mail room clerk, cleaner, and price marker. AR 65–66. 17 The VE also testified that, if a person with Plaintiff's RFC (including the mild 18 mental functioning limitations) would be absent from work, late to work, or would need to 19 leave work early due to health concerns approximately once per week, they would be 20 unable to perform any work in the national economy. AR 66. The VE testified that a worker 21 with the mental functioning limitations assessed by NP Castillo, see supra note 2, would 22 be unable to perform Plaintiff's past work or the jobs the ALJ based her step-five finding 23 on—mail room clerk, cleaner, and price marker. AR 68–69. 24 III. Discussion 25 In her appeal to this Court, Plaintiff argued the ALJ committed reversible error by: 26

(1) concluding Plaintiff's mental impairments were not severe but failing to sufficiently 27 explain that conclusion and improperly rejecting medical opinions; and (2) rejecting 28 Plaintiff's physical symptom testimony. (Doc. 14 at 13, 20.) 1 In his R&R, Magistrate Judge Marner concluded the ALJ did not err at step two in 2 finding Plaintiff's mental impairments non-severe but recommends this Court remand for 3 further proceedings because the ALJ failed to provide clear and convincing reasons for 4 rejecting Plaintiff's symptom testimony. (Doc. 21 at 13, 22–23.) The Commissioner does 5 not object to the R&R's conclusion regarding Plaintiff's

physical symptom testimony and 6 asks the Court “to adopt the R&R’s recommendation for remand for further proceedings.” 7 (Doc. 23 at 2.) The Court has reviewed the record and the parties’ positions on this issue 8 and agrees with the R&R’s findings on this issue. See Reyna-Tapia, 328 F.3d at 1121. 9 Thus, the Court adopts Judge Marner’s findings and recommendation that reversal is 10 warranted because the ALJ failed to provide specific, clear and convincing reasons 11 supported by substantial evidence to reject Plaintiff’s physical symptom testimony. 12 Plaintiff objects to the R&R’s conclusion that the ALJ properly found Plaintiff’s 13 mental impairments were not severe and objects to the recommendation to remand for 14 further proceedings, rather than remanding for an award of benefits. (Doc. 22 at 2.) The Court will address the objections in turn. 15 A. Legal Standard 16 The Court will “set aside a denial of Social Security benefits only when the ALJ[s] 17 decision is based on legal error or not supported by substantial evidence in the record.” 18 *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017) (emphasis added). “Under the 19 substantial-evidence standard, a court looks to the existing administrative record and asks 20 whether it contains ‘sufficien[t] evidence’ to support the agency’s factual determinations.” 21 *Biestek v. Berryhill*, 587 U.S. 97, 102–03 (2019) (citation omitted) (alterations in original). 22 Substantial evidence is not a high standard and “means only —‘such relevant evidence as a 23 reasonable mind might accept as adequate to support a conclusion.’” *Id.* at 103 (quoting 24 *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The ALJ “must resolve conflicts 25 in the evidence, and if the evidence can support either outcome, the court may not substitute 26 its judgment for that of the ALJ.” *Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1019 27 (9th Cir. 1992). 28 // 1 B. The ALJ’s Finding that Plaintiff’s Mental Impairments were not Severe 2 At Step Two of the sequential evaluation process, the SSA considers the medical 3 severity of the claimant’s impairments. 20 C.F.R. § 404.1520(a)(4)(ii). “Step two is merely 4 a threshold determination meant to screen out weak claims. . . . It is not meant to identify 5 the impairments that should be taken into account when determining the RFC.” *Buck v. 6 Berryhill*, 869 F.3d 1040, 1048–49 (9th Cir. 2017). The ALJ must consider limitations 7 arising from both the claimant’s severe and non-severe impairments in determining the 8 RFC. *Id.* at 1049. Here, the ALJ found Plaintiff’s mental impairments not only non-severe, 9 but also so slight that they do not cause any measurable limitations in mental functioning, 10 and therefore, the RFC did not reflect limitations from mental impairments. AR 20, 22–24. 11 The Magistrate Judge found that the ALJ did not err in finding Plaintiff’s mental 12 impairments non-severe because the ALJ performed an alternative step-five analysis and 13 found her non-disability finding would be supported even if she found Plaintiff’s mental 14 impairments were severe and caused mild functional limitations. (Doc. 21 at 12–13 (citing 15 AR 27).) Plaintiff objects on the basis that, by relying on the alternative step-five analysis, 16 the R&R failed to address her argument that the ALJ failed to provide a sufficient rationale 17 to reject NP Castillo’s treating medical opinion. (Doc. 22 at 4.) Plaintiff maintains the 18 ALJ’s error was not harmless because the VE testified that an RFC with the limitations 19 assessed by NP Castillo would preclude

Plaintiff from performing her past work and the 20 jobs in the national economy identified in the step-five analysis. (Id. (citing AR 68–69).) 21 The Court agrees with Plaintiff that the alternative step-five finding did not necessarily 22 render the ALJ’s rejection of NP Castillo’s medical opinion harmless because the ALJ’s 23 alternative step-five finding was based on an RFC with milder mental functioning 24 limitations than assessed by NP Castillo. (See Doc. 14 at 20 n.6; Doc. 22 at 4). Thus, the 25 Court will review de novo whether the ALJ erred in rejecting NP Castillo’s medical 26 opinion. 27 // 28 1 1. ALJ’s Rejection of NP Castillo’s Treating Medical Opinion 2 ALJs must consider medical opinions and articulate the opinions’ persuasiveness 3 using five factors: (1) supportability; (2) consistency; (3) relationship with the claimant; 4 (4) specialization; and (5) other factors. 20 C.F.R. § 404.1520c(a)–(c). The most important 5 factors are supportability—the extent to which the medical source’s objective medical 6 evidence and supporting explanations back up their opinion—and consistency—whether 7 the medical source’s opinion is corroborated by evidence from other sources. Id. 8 § 404.1520c(c)(1)–(2). When rejecting a treating medical opinion as unsupported or 9 inconsistent, the ALJ must provide an explanation, supported by substantial evidence, of 10 how she considered the supportability and consistency factors. *Woods v. Kijakazi*, 32 F.4th 11 785, 792 (9th Cir. 2022) (citing 20 C.F.R. § 404.1520c(b), c(b)(2)). 12 Regarding supportability, here the ALJ found the “suggested areas of essentially 13 moderate limitation” were “only marginally supported by Nurse Castillo’s own records,” 14 because her records “document extensive subjective symptoms but typically document 15 normal objective mental status examination findings and stable medication management.” 16 AR 20. Regarding consistency, the ALJ found NP Castillo’s opinion inconsistent with the 17 record as a whole because: (1) Plaintiff’s mental health treatment “remains routine, 18 conservative, and entirely outpatient, a level of care not indictive [sic] of severe mental 19 health impairments”; and (2) given Plaintiff’s longitudinal examination presentation, 20 which typically revealed normal and intact functioning, “there is little objective support for 21 significant mental functioning limitations.” AR 20. 22 First, the ALJ’s finding that Plaintiff’s mental health treatment was conservative is 23 not supported by substantial evidence. “[M]edication for the treatment of psychiatric 24 disorders is generally not considered to be ‘conservative treatment,’” *Moreno v. Comm’r 25 of Soc. Sec. Admin.*, No. CV-22-00319-PHX-DLR, 2023 WL 4926258, at *4 (D. Ariz. Aug. 26 2, 2023), and “psychiatric hospitalization is not a benchmark for conservative treatment,” 27 P.E. v. Saul, 445 F. Supp. 3d 306, 334–35 (N.D. Cal. 2020). From October 21, 2022 to 28 February 9, 2024, NP Castillo prescribed Plaintiff Seroquel, lamotrigine, hydroxyzine HCl, 1 prazosin, Latuda, buspirone, and guanfacine to treat her mental disorders and symptoms. 2 AR 550, 555, 562, 589, 621, 1089.3 The ALJ cited “stable medication management” as a 3 reason NP Castillo’s opinion was not supported. AR 20. However, NP Castillo prescribed 4 new medications, canceled previously prescribed medications, and adjusted medication 5 dosages on nine occasions during the relevant timeframe in response to reported side 6 effects and symptoms. AR 561–63, 593, 621–23, 925–26, 936, 1062, 1071, 1079–80, 7 1088–89. Thus, the ALJ erred in relying on

Plaintiff's mental health treatment to find NP 8 Castillo's opinion unsupported and inconsistent. 9 Second, the ALJ failed to sufficiently explain her finding that objective mental 10 status examination findings rendered NP Castillo's opinion unsupported and inconsistent 11 with the record as a whole. As to supportability, the ALJ did not explain why the cited 12 mental status examination findings in NP Castillo's records conflicted with her assessed 13 limitations regarding Plaintiff's sustained attention and concentration, ability to work with 14 others without distraction, and ability to complete a workday without interruptions from 15 psychologically based symptoms. See *Jones v. O'Malley*, No. 23-16136, 2024 WL 16 3963835, at *2 (9th Cir. Aug. 28, 2024). Without elaboration, the ALJ cited 438 pages of 17 treatment records and concluded NP Castillo's records "typically document normal 18 objective mental status examination findings . . . inconsistent with the suggested areas of 19 functioning with difficulty from eleven to twenty percent of the workday or work week." 20 AR 20; see *Morris v. Berryhill*, 358 F. Supp. 3d 875, 882 (D. Ariz. 2019) ("Listing some 21 general mental status findings and then citing generally to a 300-page exhibit is not 22 sufficiently specific.").⁴ Thus, "[b]y focusing on a few normal findings observations 23 3 Medication was not the only treatment Plaintiff sought to alleviate her mental disorders. NP Castillo also stated Plaintiff was "engaging in intense psychotherapy," AR 1150, which 24 is supported by the record. See, e.g., AR 432, 467, 532, 534, 538, 540. 4 Additionally, the ALJ appears to have discounted NP Castillo's opinion because it was 25 based on Plaintiff's self-reports, but the ALJ never explicitly found Plaintiff's self-reports not credible or explained her basis for concluding that NP Castillo's opinion was based 26 more heavily on Plaintiff's self-reports than on her own clinical observations. See *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014); *Bogner v. Comm'r of Soc. Sec. Admin.*, No. 27 CV-22-01908-PHX-DMF, 2023 WL 4734120, at *4 (D. Ariz. July 25, 2023) (citing *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)) ("[A]n ALJ typically cannot reject 28 a treating physician's opinion on the basis that it does not contain explanations or is based in part on a claimant's subjective complaints."). 1 without comprehensively addressing the objective medical evidence and NP [Castillo]'s 2 own treatment notes that could corroborate or detract from her assessed limitations, the 3 ALJ's decision lacks a sufficient analysis of the supportability factor." *Ain v. Comm'r of Soc. Sec. Admin.*, No. CV-24-00008-DLR (ESW), 2024 WL 4529376, at *5 (D. Ariz. Sept. 5 30, 2024), report and recommendation adopted, No. CV-24-00008-PHX-DLR, 2024 WL 6 4528444 (D. Ariz. Oct. 18, 2024). 7 As to consistency, again the ALJ relied on mental status examination findings from 8 Plaintiff's appointments with various providers and generally cited 16 exhibits covering 9 796 pages of medical records. AR 20. Although the ALJ cited specific findings—e.g., 10 Plaintiff presented as alert, attentive, calm, polite, fully oriented, with intact cognition— 11 the ALJ did not explain how any of those findings were inconsistent with NP Castillo's 12 assessed limitations. See *Miller v. Comm'r of Soc. Sec. Admin.*, No. CV-23-00664-PHX- 13 SPL (DMF), 2024 WL 4291443, at *4 (D. Ariz. Jan. 3, 2024), report and recommendation 14 adopted, No. CV-23-00664-PHX-SPL, 2024 WL 4290779 (D. Ariz. Sept. 25, 2024). 15 "Moreover, 'the affect and mood notes

the ALJ emphasized simply described how 16 [Plaintiff] presented on the days of her appointments. They were not general assessments.” 17 *Morris*, 358 F. Supp. 3d at 882 (quoting *Gerstner v. Berryhill*, 879 F.3d 257, 262 (7th Cir. 18 2018)). And “observations of cognitive functioning during therapy sessions do not 19 contradict [Plaintiff]’s reported symptoms of depression and social anxiety.” *Ghanim*, 763 20 F.3d at 1164 (reasoning treatment notes discussing claimant’s good eye contact, organized 21 and logical thought content, and focused attention did not undermine reported systems of 22 frequent nightmares, hallucinations, social anxiety, difficulty sleeping, and feelings of 23 hopelessness); see also *Morris*, 358 F. Supp. 3d at 882–83 (rejecting ALJ’s inconsistency 24 finding because treating provider’s assessed limitations “were not limited to cognition 25 issues, but included limitations that flowed from plaintiff’s depressive and schizoaffective 26 disorders”). 27 In sum, the ALJ did not provide an explanation supported by substantial evidence 28 when she rejected NP Castillo’s treating opinion as unsupported and inconsistent. See 1 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). As discussed above, this error was 2 not harmless because the ALJ’s alternative step-five non-disability finding was based on 3 an RFC with less restrictive mental limitations than NP Castillo assessed. Therefore, 4 reversal is warranted for this additional reason. 5 C. Remand for Calculation of Benefits Is Appropriate 6 Plaintiff asks the Court to reject the R&R’s recommendation to remand for further 7 proceedings and, instead, remand for calculation and payment of benefits. (Doc. 22 at 7– 8 9.) Ordinarily, where a court determines the agency erred in reaching its decision to deny 9 benefits, the court will remand to the agency for further proceedings. *Treichler v. Comm’r 10 of Soc. Sec. Admin.*, 775 F.3d 1090, 1099–100 (9th Cir. 2014). The Court may remand to 11 the agency with instructions to calculate and award benefits if the three conditions of the 12 credit-as-true rule are met: 13 (1) the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide 14 legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were 15 credited as true, the ALJ would be required to find the claimant disabled on remand. 16 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). Even where all three conditions 17 are met, the Court must remand for further proceedings if “an evaluation of the record as a 18 whole creates serious doubt that a claimant is, in fact, disabled.” *Id.* at 1021. 19 Here, Plaintiff satisfies all three conditions of the credit-as-true rule. First, the record 20 is fully developed, and further administrative proceedings would not be useful. “There are 21 no ambiguities or gaps in the record, nor are there material issues that necessitate additional 22 fact-finding.” *Moreno*, 2023 WL 4926258, at *7. Second, for the reasons described above 23 and in the R&R, the ALJ failed to provide legally sufficient reasons for rejecting NP 24 Castillo’s medical opinion and Plaintiff’s physical symptom testimony. Third, if the 25 improperly discredited evidence were credited as true, the ALJ would be required to find 26 Plaintiff disabled on remand. When asked questions describing a hypothetical person with 27 the RFC that Plaintiff would possess were NP Castillo’s opinion and Plaintiff’s symptom 28 testimony taken as true, the VE

answered that such a person would be unable to work. See 1 Garrison, 759 F.3d at 1021 n.28; AR 65–66, 68–69. 2 The Commissioner argues the record as a whole creates doubt that Plaintiff is 3 disabled. (Doc. 23 at 4–6.) The Court disagrees. Plaintiff’s physical symptoms and 4 limitations are supported by the record, including examination findings, diagnoses, and an 5 aggressive course of treatment. (See Doc. 21 at 3–8, 18–19); AR 780–81, 783–84, 789, 6 793, 828, 831, 840, 844, 1214. Although, as the Commissioner notes, Plaintiff reported 7 periods of improvement in her back pain after receiving injections, see AR 801–02, 805– 8 07, Plaintiff’s pain was persistent, did not respond to various medications, and eventually 9 required lumbar nerve ablation. See, e.g., AR 788, 1165, 1213. With respect to Plaintiff’s 10 mental impairments, the Commissioner relies entirely on the unremarkable mental status 11 examination findings the ALJ also relied on to discount NP Castillo’s opinion. For the 12 reasons discussed above, that evidence does not create serious doubt that Plaintiff is 13 disabled, and the Commissioner does not point to, nor does the record contain, any medical 14 opinions on Plaintiff’s mental impairments that contradict NP Castillo’s limitations 15 assessment.⁵ See Garrison, 759 F.3d at 1021–22 (reasoning courts should not “remand for 16 the purpose of allowing the ALJ to have a mulligan” where the conditions of the credit-as- 17 true rule are met). Thus, remand for an award of benefits is appropriate. 18 Accordingly, 19 // 20 // 21 // 22 // 23 // 24 5 The ALJ also considered the State agency psychological consultants’ opinion regarding Plaintiff’s mental impairments and limitations. AR 19. The State agency psychological 25 consultants found Plaintiff had moderate limitation in the same, or similar, areas of mental functioning as NP Castillo: (1) the ability to maintain attention and concentration for 26 extended periods; (2) the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; and (3) the ability to complete a 27 normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length 28 of rest periods. AR 78–80, 82. The ALJ rejected that opinion for the same reasons she rejected NP Castillo’s opinion. Id.

1 IT IS ORDERED

2 1. Magistrate Judge Marner’s R&R (Doc. 21) is adopted in part and rejected // in part. The Court adopts the R&R’s finding that the ALJ erred in discounting Plaintiff’ s 4// physical symptom testimony but rejects the R&R’s findings that (a) the ALJ did not err in 5 // discounting NP Castillo’s medical opinion and finding Plaintiff’s mental impairments non- 6 // severe, and (b) remand for further proceedings is the appropriate remedy. 7 2. The final decision of the Commissioner is reversed and remanded for the 8 // calculation and payment of benefits. 9 3. The Clerk of Court shall enter judgment accordingly and close the file in this 10] matter. 11 Dated this 24th day of March, 2026. 12 14 f Jennifer G. Z&ps 15 Chiet United States District Judge 16 17 18 19 20 21 22 23 24 25 26 27 28 -12-

