NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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U.S. COURT OF APPEALS

STELLA L. CARTER, Plaintiff - Appellant, V. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant - Appellee.	No. 07-15956 D.C. No. CV-05-2358 KJM MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, Magistrate Judge, Presiding

Submitted November 21, 2008**
San Francisco, California

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Before: CANBY and WARDLAW, Circuit Judges, and MILLS,[***] District Judge.

Stella L. Carter ("Carter") seeks Title II Disability Insurance Benefits. An Administrative Law Judge ("ALJ") denied benefits, and the district court affirmed.

On appeal, Carter challenges the ALJ's Residual Functional Capacity ("RFC") analysis. She argues that the ALJ erred by failing to mention the records or findings of Dr. Malabed, a treating physician who found that Carter suffered from a range of motion limitation and degenerative disc disease. An ALJ has an obligation to explain why significant probative evidence has been rejected. *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). When the probative evidence takes the form of a treating physician's contradicted medical findings, an ALJ must articulate specific and legitimate reasons for the rejection. *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). In light of these standards, the ALJ's failure to mention Dr. Malabed's findings was erroneous.

Further, the ALJ's error pervades the entire RFC assessment. Dr. Malabed's opinion contains objective medical evidence of Carter's impairments. The ALJ relied on a lack of such evidence to reject the functional limitations found by Dr. Wiggins and to discount Carter's credibility. Therefore, remand is necessary for the ALJ to

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[***] The Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

consider Dr. Malabed's records and to perform a new RFC analysis.[1]

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

[1]Since a new RFC analysis is necessary, we do not address Carter's other challenges to the RFC calculation or her allegation that the ALJ improperly relied on the grids.