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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 5:15-CV-01430 (VEB)

WILLIAM L. QUEEN,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

**I. INTRODUCTION**

In December of 2012, Plaintiff William L. Queen applied for Disability Insurance Benefits under the Social Security Act. The Commissioner of Social Security denied the application. Plaintiff, represented by The Law Offices of Bill LaTour, Jessica Williams-Bronner, Esq., of counsel, commenced this action seeking

1 judicial review of the Commissioner’s denial of benefits pursuant to 42 U.S.C. §§  
2 405 (g) and 1383 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.  
4 (Docket No. 23, 24). On May 2, 2016, this case was referred to the undersigned  
5 pursuant to General Order 05-07. (Docket No. 22).

6 On June 16, 2016, this Court entered a Decision and Order reversing the  
7 Commissioner’s decision and remanding this case for calculation of benefits.  
8 (Docket No. 25). Judgment was entered in Plaintiff’s favor on the same date.  
9 (Docket No. 26).

10 On July 14, 2016, the Commissioner filed a Motion to Alter or Amend  
11 Judgment pursuant to Rule 59 (e) of the Federal Rules of Civil Procedure. (Docket  
12 No. 27). Plaintiff filed an opposition response on August 8, 2016. (Docket No. 28).

13 Familiarity with this Court’s prior Decision and Order is presumed. For the  
14 following reasons, the Commissioner’s motion is granted, in part.

## 16 II. DISCUSSION

### 17 A. Rule 59 (e) Standard

18 A court may alter or amend a judgment under Rule 59(e) of the Federal Rules  
19 of Civil Procedure if “(1) the district court is presented with newly discovered

1 evidence, (2) the district court committed clear error or made an initial decision that  
2 was manifestly unjust, or (3) there is an intervening change in controlling law.”  
3 *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001). However, a  
4 motion for reconsideration is not appropriately brought to present arguments already  
5 considered by the court. *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir.1985).

6 In this case, the Commissioner does not argue that there is newly discovered  
7 evidence or that controlling law has changed. Rather, the Commissioner contends  
8 that this Court committed clear error by remanding for calculation of benefits, as  
9 opposed to remanding for further proceedings.

#### 10 **B. Remand**

11 In a case where the ALJ's determination is not supported by substantial  
12 evidence or is tainted by legal error, the court may remand the matter for additional  
13 proceedings or an immediate award of benefits. A remand for calculation of benefits  
14 is warranted where “(1) the ALJ failed to provide legally sufficient reasons for  
15 rejecting the evidence; (2) there are no outstanding issues that must be resolved  
16 before a determination of disability can be made; and (3) it is clear from the record  
17 that the ALJ would be required to find the claimant disabled were such evidence  
18 credited.” *Harman v. Apfel*, 211 F.3d 1172, 1178 (9<sup>th</sup> Cir. 2000)(quoting *Smolen v.*  
19 *Chater*, 80 F.3d 1273, 1292 (9<sup>th</sup> Cir. 1996).

1 **C. Analysis**

2 In sum, this Court found that the ALJ erred by failing to consider Listing  
3 §5.05 (Chronic Liver Disease), which – although inexplicably not raised by  
4 claimant’s counsel at the administrative level – was clearly suggested by the medical  
5 record. The Commissioner’s contentions in the Joint Stipulation primarily focused  
6 on the argument that Plaintiff had waived this issue by failing to present it at the  
7 administrative level. This Court found that argument unpersuasive for the reasons  
8 stated in the Decision and Order.

9 In the Joint Stipulation, the Commissioner offered this Court very little  
10 argument or analysis on the merits of this question – i.e. on the issue of whether  
11 substantial evidence would support a conclusion that Plaintiff’s impairments did not  
12 meet or medically equal Listing §5.05A. Instead, the Commissioner provided only a  
13 single conclusory paragraph in rebuttal to Plaintiff’s detailed summary of the  
14 evidence supporting his claim that Listing § 5.05A was satisfied. (Docket No. 21, at  
15 p. 12).

16 Now, upon this motion, the Commissioner offers a very detailed explanation  
17 as to why a remand for further proceedings should be ordered (as opposed to a  
18 remand for calculation of benefits)(Docket No. 27). Plaintiff offers a conclusory,  
19 one-paragraph response (Docket No. 28) stating agreement with this Court’s

1 Decision and Order, but without addressing substantively the new concerns raised by  
2 the Commissioner. This Court certainly would have appreciated having the benefit  
3 of the Commissioner's arguments presented here when it was originally presented  
4 with this case.

5 Although this Court is frustrated by the briefing decisions of both attorneys  
6 (by the Commissioner's counsel in the original briefing and Plaintiff's counsel with  
7 respect to the instant motion) and concerned about allowing essentially new  
8 arguments to be presented on a reconsideration motion, this Court nevertheless feels  
9 constrained to grant the requested relief, in part, and modify, in part, its original  
10 Decision and Order.

11 In particular, it appears that further analysis is required to determine the  
12 duration of Plaintiff's disability.

13 In sum, Listing §5.05A provides that the claimant who satisfies the other  
14 requirements of the Listing is presumed disabled for a period of 1 year following the  
15 last documented blood transfusion, with disability thereafter to be determined by the  
16 ALJ. Thus, although Plaintiff's impairments satisfy the requirements of Listing  
17 §5.05A in all other respects, further analysis is required to determine the residual  
18 impairment following the one-year period of presumptive disability. The  
19 Commissioner has not had the opportunity to perform this analysis and makes a

1 compelling case (albeit for the first time on reconsideration), that benefits cannot be  
2 calculated without such findings. As such, to that limited extent and to allow for  
3 that review and determination, the motion is granted and this Court's Decision and  
4 Order is modified.

5 However, to the extent the Commissioner seeks to revisit this Court's decision  
6 that Plaintiff's impairments met or medically equaled Listing § 5.05 (A), that request  
7 is denied for the reasons stated in the original Decision and Order.

### 8 **III. ORDERS**

9 IT IS THEREFORE ORDERED that:

10 The Commissioner's Motion to Alter or Amend Judgment (Docket No. 27) is  
11 GRANTED, in part, and

12 This case is REMANDED for further proceedings consistent with this Court's  
13 original Decision and Order (Docket No. 25), as modified by this Decision and  
14 Order; and

15 An Amended Judgment shall be entered to that effect.

16 DATED this 12<sup>th</sup> of December, 2016,

17 /s/Victor E. Bianchini  
18 VICTOR E. BIANCHINI  
19 UNITED STATES MAGISTRATE JUDGE