

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 \* \* \*

4 DAVID LOVELL JEFFERSON,

Case No. 2:22-cv-01007-EJY

5 Plaintiff,

6 v.

**ORDER**7 KILOLO KIJAKAZI, Acting Commissioner of  
8 Social Security,

9 Defendant.

10 Plaintiff David Lovell Jefferson (“Plaintiff”) seeks judicial review of the final decision of the  
11 Commissioner of the Social Security Administration (“Commissioner”) denying his application for  
12 disability insurance (“DIB”) and Supplemental Security Income (“SSI”).<sup>1</sup> ECF No. 18. For the  
13 reasons stated below, the Commissioner’s decision is affirmed.

14 **I. BACKGROUND**

15 Plaintiff filed an application for DIB and SSI on June 22, 2018, alleging disability beginning  
16 on April 2, 2015 due to schizophrenia, post-traumatic stress disorder (“PTSD”), an anxiety disorder,  
17 and depressive disorder. Administrative Record (“AR”) 232-244. The Social Security  
18 Administration denied Plaintiff’s claim initially and upon reconsideration (AR 114-117), followed  
19 by a hearing before an Administrative Law Judge (“ALJ”). AR 54-77. Plaintiff was represented by  
20 counsel at the hearing. AR 54. On May 21, 2021, the ALJ issued a decision finding Plaintiff not  
21 disabled. AR 28-47. The appeals council denied Plaintiff’s request for review. AR 1-6. Plaintiff  
22 now seeks judicial review of the Commissioner’s decision pursuant to 42 U.S.C. §§ 405(g),  
23 1383(c)(3).

24 **II. STANDARD OF REVIEW**

25 The reviewing court shall affirm the Commissioner’s decision if the decision is based on  
26 correct legal standards and the legal findings are supported by substantial evidence in the record. 42

27 <sup>1</sup> Plaintiff applied for Title II or Disability Insurance Benefits under Title XVI or Supplemental Security Income.  
28 Titles II and XVI regulations relevant to this case are virtually identical. For this reason, only Title II regulations will  
be cited in this Order.

1 U.S.C. § 405(g); *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).  
2 Substantial evidence is “more than a mere scintilla.” It means “such relevant evidence as a  
3 reasonable mind might accept as adequate to support a conclusion.” *Ford v. Saul*, 950 F.3d 1141,  
4 1154 (9th Cir. 2020) (quoting *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019)). In reviewing the  
5 Commissioner’s alleged errors, the Court must weigh “both the evidence that supports and detracts  
6 from the [Commissioner’s] conclusion.” *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986)  
7 (internal citations omitted).

8 “When the evidence before the ALJ is subject to more than one rational interpretation, we  
9 must defer to the ALJ’s conclusion.” *Batson*, 359 F.3d at 1198, citing *Andrews v. Shalala*, 53 F.3d  
10 1035, 1041 (9th Cir. 1995). However, a reviewing court “cannot affirm the decision of an agency  
11 on a ground that the agency did not invoke in making its decision.” *Stout v. Comm’r Soc. Sec.*  
12 *Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006) (internal citation omitted). And, a court may not reverse  
13 an ALJ’s decision based on a harmless error. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)  
14 (internal citation omitted). “[T]he burden of showing that an error is harmful normally falls upon  
15 the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

### 16 **III. DISCUSSION**

#### 17 **A. Establishing Disability Under the Act.**

18 To establish whether a claimant is disabled under the Social Security Act, there must be  
19 substantial evidence that:

- 20 1. the claimant suffers from a medically determinable physical or mental impairment that can  
21 be expected to result in death or that has lasted or can be expected to last for a continuous  
22 period of not less than twelve months; and
- 23 2. the impairment renders the claimant incapable of performing the work that the claimant  
previously performed and incapable of performing any other substantial gainful employment  
that exists in the national economy.

24 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999), citing 42 U.S.C. § 423(d)(2)(A). “If a claimant  
25 meets both requirements, he or she is disabled.” *Id.*

26 The ALJ uses a five-step sequential evaluation process to determine whether a claimant is  
27 disabled within the meaning of the Act. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); 20 C.F.R. §  
28 404.1520(a). Each step is potentially dispositive and “if a claimant is found to be ‘disabled’ or ‘not-

1 disabled' at any step in the sequence, there is no need to consider subsequent steps." *Tackett*, 180  
2 F.3d at 1098 (internal citation omitted); 20 C.F.R. § 404.1520. The claimant carries the burden of  
3 proof at steps one through four, and the Commissioner carries the burden of proof at step five.  
4 *Tackett*, 180 F.3d at 1098.

5 The five steps consider:

6 Step 1. Is the claimant presently working in a substantially gainful activity? If so, then the  
7 claimant is "not disabled" within the meaning of the Social Security Act and is not entitled  
8 to disability insurance benefits. If the claimant is not working in a substantially gainful  
9 activity, then the claimant's case cannot be resolved at step one and the evaluation proceeds  
10 to step two. *See* 20 C.F.R. § 404.1520(b).

11 Step 2. Is the claimant's impairment severe? If not, then the claimant is "not disabled" and  
12 is not entitled to disability insurance benefits. If the claimant's impairment is severe, then  
13 the claimant's case cannot be resolved at step two and the evaluation proceeds to step three.  
14 *See* 20 C.F.R. § 404.1520(c).

15 Step 3. Does the impairment "meet or equal" one of a list of specific impairments described  
16 in the regulations? If so, the claimant is "disabled" and therefore entitled to disability  
17 insurance benefits. If the claimant's impairment neither meets nor equals one of the  
18 impairments listed in the regulations, then the claimant's case cannot be resolved at step three  
19 and the evaluation proceeds to step four. *See* 20 C.F.R. § 404.1520(d).

20 Step 4. Is the claimant able to do any work that he or she has done in the past? If so, then the  
21 claimant is "not disabled" and is not entitled to disability insurance benefits. If the claimant  
22 cannot do any work he or she did in the past, then the claimant's case cannot be resolved at  
23 step four and the evaluation proceeds to the fifth and final step. *See* 20 C.F.R. § 404.1520(e).

24 Step 5. Is the claimant able to do any other work? If not, then the claimant is "disabled" and  
25 therefore entitled to disability insurance benefits. *See* 20 C.F.R. § 404.1520(f)(1). If the  
26 claimant is able to do other work, then the Commissioner must establish that there are a  
27 significant number of jobs in the national economy that claimant can do. There are two ways  
28 for the Commissioner to meet the burden of showing that there is other work in "significant  
numbers" in the national economy that claimant can do: (1) by the testimony of a vocational  
expert [{"VE"}], or (2) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt.  
404, subpt. P, app. 2. If the Commissioner meets this burden, the claimant is "not disabled"  
and therefore not entitled to disability insurance benefits. *See* 20 C.F.R. §§ 404.1520(f),  
404.1562. If the Commissioner cannot meet this burden, then the claimant is "disabled" and  
therefore entitled to disability benefits. *See id.*

### 23 **B. Summary of ALJ Findings.**

24 In her decision, the ALJ found Plaintiff had a date last insured of December 31, 2020. AR  
25 31. Plaintiff had not engaged in substantial gainful activity since April 2, 2015, his alleged onset  
26 date. *Id.* The ALJ next found Plaintiff had severe impairments of major depressive disorder with  
27 psychosis, PTSD, diabetes mellitus I, bilateral flat feet and bunions, and cervical spine degenerative  
28 disc disease with cervicgia. *Id.* The ALJ also found Plaintiff did not have an impairment or

1 combination of impairments that met or medically equaled the severity of one of the listed  
2 impairments in 20 C.F.R. Part 404, Subpart P, Appendix I. AR 32. The ALJ found Plaintiff had a  
3 residual functional capacity (“RFC”) to:

4 lift and carry 50 pounds occasionally and 25 pounds frequently, in medium work  
5 as defined in 20 CFR 404.1567(c) and 416.967(c), except he can stand and/or walk  
6 for approximately 6 hours and sit for 6 or more hours, in an 8 hour workday, with  
7 normal breaks. The claimant can occasionally climb ladders, ropes and scaffold  
8 and can frequently climb stairs and ramps. The claimant can frequently balance,  
9 stoop, kneel and crouch and can occasionally crawl. The claimant can understand,  
10 remember and carry out simple, routine and repetitive instructions and tasks. The  
11 claimant is limited to isolated work, which involves no public contact and  
12 occasional direct coworker and supervisor interaction, with no group tasks.  
Supervisor contact should generally be limited to providing work assignments and  
answering questions, then leaving the individual alone to complete tasks  
independently. The claimant should perform only low stress work, which is defined  
as requiring only occasional changes in work setting, occasional changes in work  
duties and no work on a moving conveyor belt. The claimant should have no  
exposure to moving mechanical parts and high, exposed place hazards, as rated by  
the Dictionary of Occupational Titles (DOT).

13 AR 35-36.

14 The Vocational Expert testified Plaintiff could not perform his past relevant work, but there  
15 were other jobs in the national economy Plaintiff could perform including salvage laborer, industrial  
16 cleaner, and cleaner. AR 72-73. Thereafter the ALJ found Plaintiff could perform these jobs and,  
17 thus, Plaintiff was not disabled. AR 45-47.

18 **C. Parties Arguments.**

19 1. Plaintiff’s Argument.

20 Plaintiff argues “the ALJ’s mental health RFC limitations are not supported by substantial  
21 evidence because the ALJ failed to properly consider the mental health opinion” of Dr. Danielle  
22 Chipchura, a mental health clinical pharmacy specialist, MBA, and PharmD. ECF No. 18 at 9.  
23 Plaintiff complains the ALJ erroneously rejected Dr. Chipchura’s opinions regarding Plaintiff’s  
24 limitations as not supported by Plaintiff’s “mental health examination records from the Department  
25 of Veteran Affairs and [as] inconsistent with ... [Plaintiff’s] activities of daily living[] such as  
26 engaging in open mic performance[s], running errands, traveling, and completing a work programs.”  
27 *Id.* at 10 *citing* AR 43. Plaintiff says the ALJ did not address Dr. Chipchura’s opinions regarding  
28 Plaintiff’s limitations identified by Dr. Sunshine Collins (Psy.D.) and Dr. Chipchura. ECF No. 18

1 at 10-11. Plaintiff also says that Dr. Chipchura’s opinions are consistent with the opinions of  
2 consultive examiner Dr. Collins. For these reasons, Plaintiff argues remand is warranted. *Id.* at 11.

3           2.       The Commissioner’s Argument.

4           The Commissioner argues the ALJ reviewed the entire medical record including opinions of  
5 medical consultants Joseph Ceniti, Ph.D. and Brady Dalton, Psy.D., and examining psychologist Dr.  
6 Collins. ECF No. 19 at 4-5; AR 42. The Commissioner correctly points out that Plaintiff does not  
7 take issue with the analysis, findings or opinions of these three doctors. *Id.* at 4. The Commissioner  
8 contends Dr. Chipchura’s opinions “were outside ‘the scope of her practice under State or Federal  
9 Law.’ ... [They] therefore did not constitute a medical opinion.” *Id.* at 4 *citing* 20 C.F.R. §  
10 404.1502(d) and 20 C.F.R. § 1513(a)(2). Social Security Regulations require an ALJ to explain how  
11 she considered consistency and supportability when assessing medical opinions, but not evidence  
12 from nonmedical sources. *Id.* at 4-5 *citing* 20 C.F.R. §§ 404.1520c(b)(2), 404.1520c(d) (an ALJ is  
13 “not required to articulate how” he or she “considered evidence from nonmedical sources”). The  
14 Commissioner notes that “[f]or claims subject to the new regulations, the former hierarchy of  
15 medical opinions—in which [the Social Security Administration] ... assign[ed] presumptive weight  
16 based on the extent of the doctor’s relationship with the claimant—no longer applies.” *Id.* at 6 *citing*  
17 *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022).<sup>2</sup> Further, the Commissioner argues that the  
18 ALJ may discredit any medical opinion so long as it is supported by substantial evidence. *Id. citing*  
19 *id.*

20           The Commissioner says as a licensed pharmacist, Dr. Chipchura’s scope of practice is  
21 defined by NRS 639.0124. *Id.* at 5. The Commissioner points out the practice of pharmacy “does  
22 not include the changing of a prescription by a pharmacist or practitioner without the consent of the  
23 prescribing practitioner” and is excluded from the definition of a medical source under the applicable  
24 Social Security Regulation. *Id. citing* NRS 639.0124(d) (noting exceptions that do not apply here)<sup>3</sup>;

25 <sup>2</sup> The new regulations govern application for DIB and SSI filed after March 27, 2017. *See*  
26 <https://www.ssa.gov/disability/professionals/bluebook/revisions-rules.htm>.

27 <sup>3</sup> NRS 639.0124(d) states: 1. “‘Practice of pharmacy’ includes, but is not limited to, the: (a) Performance or  
28 supervision of activities associated with manufacturing, compounding, labeling, dispensing and distributing of a drug,  
including the receipt, handling and storage of prescriptions and other confidential information relating to patients. (b)  
Interpretation and evaluation of prescriptions or orders for medicine. (c) Participation in drug evaluation and drug  
research. (d) Advising of the therapeutic value, reaction, drug interaction, hazard and use of a drug. (e) Selection of the

1 20 C.F.R. § 404.1502(d).<sup>4</sup> The Commissioner adds that as a pharmacist, Dr. Chipchura was not  
 2 licensed to evaluate Plaintiff's physical or mental conditions. *Id.* at 4-5. Because Dr. Chipchura is  
 3 not a medical source, any opinion she articulated were non-medical opinions. *Id.* The Commissioner  
 4 contends Plaintiff argued Dr. Chipchura specializes in mental health medication management, but  
 5 he does not establish Dr. Chipchura qualifies as a medical source. *Id.* at 6 *citing* ECF No. 18 at 12.

6 The Commissioner repeats that the Social Security Regulations applicable to Plaintiff, who  
 7 filed an application for benefits after March 27, 2017, only require the ALJ to explain how she  
 8 considered consistency and supportability in assessing medical opinions and prior administrative  
 9 medical findings, and need not explain how she considered any other enumerated factor under the  
 10 new regulatory scheme under 20 C.F.R. § 404.1520c(c).<sup>5</sup> *Id.* at 3, 7-8 *citing* 20 C.F.R. §  
 11 404.1520c(b)(2).<sup>6</sup> The Commissioner cites to two district court decisions from Ninth Circuit courts  
 12 holding "that the new regulations absolve ALJs of the court-created requirement to give 'germane  
 13 reasons' for disagreeing with lay witnesses." *Id.* at 5 n.4 *citing* *Wendy J.C. v. Saul*, No. 3:19-cv-  
 14 01434-AC, 2020 WL 6161402, at \*12 n.9 (D. Or. October 21, 2020) ("The new regulations provide  
 15 the ALJ is 'not required to articulate how [they] considered evidence from nonmedical sources ....'

16 \_\_\_\_\_  
 17 source, storage and distribution of a drug. (f) Maintenance of proper documentation of the source, storage and  
 18 distribution of a drug. (g) Interpretation of clinical data contained in a person's record of medication. (h) Development  
 19 of written guidelines and protocols in collaboration with a practitioner which authorize collaborative drug therapy  
 20 management. .... (i) Implementation and modification of drug therapy, administering drugs and ordering and performing  
 21 tests in accordance with a collaborative practice agreement. (j) Prescribing, dispensing and administering of drugs for  
 22 preventing the acquisition of human immunodeficiency virus and ordering and conducting laboratory tests necessary for  
 23 therapy that uses such drugs pursuant to the protocol prescribed pursuant to NRS 639.28085. (k) Dispensing a self-  
 24 administered hormonal contraceptive pursuant to NRS 639.28078. 2. The term does not include the changing of a  
 25 prescription by a pharmacist or practitioner without the consent of the prescribing practitioner, except as otherwise  
 26 provided in NRS 639.2583, 639.28078 and 639.28085."

27 <sup>4</sup> This Social Security Regulation states: "Medical source means an individual who is licensed as a healthcare  
 28 worker by a State and working within the scope of practice permitted under State or Federal law, or an individual who  
 is certified by a State as a speech-language pathologist or a school psychologist and acting within the scope of practice  
 permitted under State or Federal law."

<sup>5</sup> 20 C.F.R. § 404.1520(c)(c) lists supportability, consistency, relationship with the claimant (with subcategories),  
 specialization, and "other factors" when considering medical opinions.

<sup>6</sup> This section of the CFR states: "The factors of supportability (paragraph (c)(1) of this section) and consistency  
 (paragraph (c)(2) of this section) are the most important factors we consider when we determine how persuasive we find  
 a medical source's medical opinions or prior administrative medical findings to be. Therefore, we will explain how we  
 considered the supportability and consistency factors for a medical source's medical opinions or prior administrative  
 medical findings in your determination or decision. We may, but are not required to, explain how we considered the  
 factors in paragraphs (c)(3) through (c)(5) of this section, as appropriate, when we articulate how we consider medical  
 opinions and prior administrative medical findings in your case record." Plaintiff cites this same standard. ECF No. 18  
 at 8.

1 20 C.F.R. § 404.1520c(d). As such, the ALJ is no longer required to provide reasons germane to lay  
2 witnesses to reject their testimony.”); *Kyra H. v. Comm’r of Soc. Sec. Admin.*, Case No. 6:18-cv-  
3 01979-AC, 2020 WL 2216912, at \*19 n.8 (D. Or. May 7, 2020) (same).

4 The Commissioner argues the ALJ also met the substantial evidence requirement to discredit  
5 a medical source as applied to Dr. Chipchura even though she is not a medical source. ECF No. 19  
6 at 7.<sup>7</sup> The Commissioner argues there are three reasons Plaintiff’s argument regarding the ALJ’s  
7 failure to discuss his three antipsychotic medications fails. *Id.* at 10-12. First, the ALJ designed a  
8 highly restrictive RFC limiting Plaintiff to isolated work involving no contact with the public and  
9 only occasional contact with coworkers and supervisors. *Id.* at 11. Second, the ALJ found Dr.  
10 Chipchura provided no useful statements regarding Plaintiff’s ability to interact with others that  
11 could be compared to the record. *Id.* at 11-12. Third, the Commissioner points to the ALJ’s  
12 discussion of Plaintiff’s admissions that he plays “his guitars on” public streets, at his wife’s church,  
13 and at an open mic night, all of which Plaintiff said he enjoys. *Id.* at 12 *citing* AR 131, 1512, 1543.  
14 Plaintiff successfully participated in and successfully completed a work program, overall exceeding  
15 expectations, and was looking for jobs at the conclusion of the program. *Id. citing* AR 1433-1435,  
16 1445, 1451-52, 1460-61, 1471, 1473-75, 1478, 1491-94, 1511, 1574, 1982-85. The Commissioner  
17 further notes the ALJ cited to facts demonstrating Plaintiff’s unemployment was “unrelated to ...  
18 [his] inability to sustain work due to medical impairments.” *Id. citing* AR 41. Plaintiff reported that  
19 he would “begin work soon,” but that his felon status would interfere with a job at the VA, so was  
20 getting help finding a non-VA position. *Id. citing, inter alia*, 1512. The Commissioner says the  
21 ALJ found Plaintiff also was not being hired for work he could otherwise do because of employer  
22 hiring practices and Plaintiff’s lifetime parole status. *Id. citing* 1445. The Commissioner argues,  
23 referring to the admissions made by Plaintiff, that Dr. Chipchura’s statements regarding Plaintiff’s  
24 inability to interact or deal with others is simply not consistent with the record. *Id.* at 13.

25 \_\_\_\_\_  
26 <sup>7</sup> Among other arguments made in the Commissioner’s brief, the Commissioner says the box-check form Dr.  
27 Chipchura completed was unsupported by “useful explanation[s].” *Id.* at 7, 9, 10 (*citing Woods*, 32 F.4th at 794). The  
28 Commissioner also (1) explains how the ALJ accounted for Plaintiff’s mental health limitations in the RFC, (2) argues  
Plaintiff does not challenge the ALJ’s supportability analysis (thus, waiving this argument), and (3) states that even  
assuming Dr. Chipchura’s opinions were consistent with Dr. Collins’ opinions (a conclusion with which the  
Commissioner disagrees), the ALJ found Dr. Collins’ opinion unpersuasive. *Id.* at 9-12.

1 The Commissioner concludes that Dr. Chipchura provided an opinion outside the scope of  
2 her practice, Plaintiff's arguments applied the wrong standard, and the ALJ explained why she  
3 discounted Dr. Chipchura's opinion under the standard applicable to medical opinions even though  
4 Dr. Chipchura is not a medical source. *Id.* at 14.

5 **D. Analysis.**

6 The opinions of non-medical sources are treated as lay testimony, which "is competent  
7 evidence that an ALJ must take into account," unless the ALJ "expressly determines to disregard  
8 such testimony and gives reasons germane to each witness for doing so." *Turner v. Commissioner*  
9 *of Social Security*, 613 F.3d 1217, 1223–24 (9th Cir. 2010); *Lewis v. Apfel*, 236 F.3d 503, 511 (9th  
10 Cir. 2001). In rejecting lay testimony, the ALJ need not cite the specific record as long as "arguably  
11 germane reasons" for dismissing the testimony are noted, even though the ALJ does "not clearly link  
12 his determination to those reasons," and substantial evidence supports the ALJ's decision. *Lewis*,  
13 236 F.3d at 512. The ALJ also may "draw inferences logically flowing from the evidence." *Sample*  
14 *v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

15 In this case, Dr. Chipchura is indisputably not a medical doctor, but a Doctor of Pharmacy  
16 who has specified authority as a matter of law. 20 C.F.R. § 404.1502(d); NRS 639.0124(d). As  
17 such Dr. Chipchura is not treated as an acceptable medical source. *Mette v. Commissioner of Social*  
18 *Security*, Case No. 1:16-CV-03142-JTR, 2017 WL 5146024, at \*6 (E.D. Wash Aug. 31, 2017) ("Dr.  
19 Ballasiotes is a pharmacist, not a medical doctor, and, therefore, is not an acceptable medical  
20 source.") (citations omitted). *See also Choate v. Astrue*, Case No. C12-0311-MAT, 2012 WL  
21 3240318, at \*5 n.2 (W.D. Wash. Aug. 7, 2012) ("As a pharmacist, Ms. Coffey is not an 'acceptable  
22 medical source' as defined in the Social Security regulations.") (internal citations omitted); *Jackson*  
23 *v. Astrue*, Case No. CV-10-03075-CI, 2012 WL 1185976, at \*6 (E.D. Wash. Apr. 9, 2012)  
24 ("Contrary to Plaintiff's assertions, as a pharmacist, Ms. Coffey is not an 'acceptable medical source'  
25 as that term is used in the Social Security regulations. *See* 20 C.F.R. 416.913(a). Physician's  
26 assistants, nurse practitioners, and chiropractors and similar providers are medical professionals, but  
27 they are not considered 'acceptable medical sources,' under the Social Security regulations. 20  
28 C.F.R. § 404.1513(d)(1), 416.913(d)(1). Rather, these medical professionals are considered "other



1 sources.” *Id.* As stated ... the ALJ may discount the opinion of a non-acceptable medical source by  
2 providing reasons that are “germane” to that source.”) (internal citation omitted); *Howard v. Astrue*,  
3 Case No. CV 09-1508-PK, 2011 WL 2222165, at \*12 (D. Ore. Apr. 26, 2011) (“pharmacist ... is  
4 not an ‘acceptable medical source’ as that term is used in the Social Security regulations.) (internal  
5 citation omitted).

6 When Dr. Chipchura offered evaluative opinions regarding Plaintiff’s physical capacity (*see*  
7 AR 524-26) she acted outside the scope of her pharmacological practice even given her subspeciality  
8 in mental health clinical pharmacy. Importantly, Plaintiff does not contest the physical capacity  
9 findings made by the ALJ. *See* ECF No. 18, generally. As to the form on which Dr. Chipchura  
10 checked boxes (AR 427-429) regarding Plaintiff’s mental health limitations, Plaintiff fails to  
11 overcome the records relied upon by the ALJ demonstrating substantially different mental capacity.  
12 AR 35, 40-41, 43 and citations to AR 131, 1433-1435, 1445, 1451-52, 1460-61, 1471, 1473-75,  
13 1478, 1491-94, 1511-12, 1543, 1574, 1982-85. In light of this substantial and germane evidence on  
14 which the ALJ relied to discount Dr. Chipchura’s opinions, the ALJ’s findings are supported and  
15 consistent with substantial record evidence. *See Frausto v. Commissioner Social Security*, Case No.  
16 1:21-cv-01132-SAB, 2022 WL 4793999, at \*6 (E.D. Cal. Oct. 3, 2022) (“The Court finds that while  
17 there may be overlap between the ALJ’s findings that could be applied to either the supportability  
18 or consistency factors, the Court finds the ALJ’s findings as to both supportability and consistency  
19 to be supported by substantial evidence in the record.”). Further, Social Security Regulation 20  
20 C.F.R. § 1502(d) is clear that the ALJ was “not required to articulate” how she “considered evidence  
21 from [Dr. Chipchura,] a non-medical source.”

22 The objective evidence of Plaintiff’s abilities—traveling, performing errands, performing  
23 music in public and successful completion of his work program after which Plaintiff admitted his  
24 inability to find work may be due to his status of being on lifetime parole—belies the conclusion  
25 that Plaintiff is unable to do any work at all. The ALJ relied on testimony of a vocational expert (in  
26 compliance with the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2) to  
27 establish there are available jobs Plaintiff can perform under the strict RFC the ALJ crafted. The  
28 ALJ, having met her burden, found Plaintiff is “not disabled” and therefore not entitled to disability

1 insurance benefits. 20 C.F.R. §§ 404.1520(f), 404.1562. Even assuming the “evidence is susceptible  
2 to more than one rational interpretation, the Court must accept the one which supports the ALJ’s  
3 decision.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008). Said slightly different,  
4 “[w]here the evidence is susceptible to more than one rational interpretation, one of which supports  
5 the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954  
6 (9th Cir. 2002).

7 **IV. ORDER**

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Reversal and Remand  
9 (ECF No. 18) is DENIED.

10 IT IS FURTHER ORDERED that Defendant’s Cross-Motion to Affirm (ECF No. 19) is  
11 GRANTED.

12 IT IS FURTHER ORDERED that the Clerk of Court must enter judgment in favor of  
13 Defendant and close this case.

14 DATED this 3rd day of May, 2023.

15   
16 ELAYNA J. YOUCHAK  
17 UNITED STATES MAGISTRATE JUDGE  
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