

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 14, 2024

SEAN F. MCAVOY, CLERK

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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JERALD A. A.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL
11 SECURITY,

12 Defendant.

NO: 2:22-CV-0315-RMP

ORDER GRANTING PLAINTIFF'S
BRIEF AND REMANDING FOR
ADDITIONAL PROCEEDINGS

13 BEFORE THE COURT, without oral argument, are briefs from Plaintiff
14 Jerald A.A.¹, ECF No. 11, and Defendant the Commissioner of Social Security (the
15 "Commissioner"), ECF No. 15. Plaintiff seeks judicial review, pursuant to 42
16 U.S.C. §§ 405(g) and 1383(c)(3), of the Commissioner's denial of his claim for
17 Disability Insurance Benefits ("DIB") under Title II of the Social Security Act (the
18 "Act"). *See* ECF No. 11 at 2.
19

20 _____
21 ¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first
name and middle and last initials.

ORDER GRANTING PLAINTIFF'S BRIEF AND REMANDING FOR
ADDITIONAL PROCEEDINGS ~ 1

1 Having considered the parties' briefs, ECF Nos. 11 and 15; Plaintiff's reply,
2 ECF No. 16; the administrative record; and the applicable law; the Court is fully
3 informed. For the reasons set forth below, the Court grants judgment for Plaintiff,
4 reverses the decision of the Commissioner, and remands the case for further
5 administrative proceedings consistent with this decision.

6 BACKGROUND

7 *General Context*

8 Plaintiff protectively filed for DIB on approximately June 17, 2019, alleging
9 an onset date of May 19, 2019. *See* Administrative Record ("AR")² 39, 250–51.
10 Plaintiff was 44 years old on the alleged disability onset date and asserted that he
11 was unable to work due to a prior head injury that caused a brain bleed, bleeding
12 disorders, complications from childhood leukemia, depression, chronic liver disease,
13 hepatitis C, and heart murmur. AR 276. Plaintiff alleged that he stopped working
14 prior to the alleged onset date due to his conditions. AR 276. Plaintiff's application
15 was denied initially and upon reconsideration, and Plaintiff requested a hearing. AR
16 153–55, 156–58, 160–61. Administrative Law Judge ("ALJ") Marie Palachuk heard
17 Plaintiff's claim on October 19, 2021. *See* AR 84–86. Plaintiff was present and
18 represented by attorney Jacqueline Justice. AR 86. The ALJ heard from vocational
19 expert ("VE") Franklin Corbin; medical expert regarding Plaintiff's physical
20

21 ² The AR is filed at ECF No. 9.

1 limitations, Nicholas Geneve, D.O.; medical expert regarding Plaintiff’s mental
2 health limitations, Tonia Porchia, Psy.D.³, and from Plaintiff. AR 86–115. ALJ
3 Palachuk issued an unfavorable decision on November 26, 2021. AR 15–30.

4 ***ALJ’s Decision***

5 Applying the five-step evaluation process, ALJ Palachuk found:

6 **Step one:** Plaintiff meets the insured status requirements of the Social
7 Security Act through December 31, 2024. AR 41. Plaintiff has not engaged in
8 substantial gainful activity since May 19, 2019, the alleged onset date. AR 41
9 (citing 20 C.F.R. § 404.1571 *et seq*).

10 **Step two:** Plaintiff has the following severe impairments, pursuant to 20
11 C.F.R. §§ 404.1520(c): acute deep venous thrombosis (“DVT”); liver cirrhosis;
12 chronic hepatitis C; degenerative disc disease of lumbar spine, mild, new onset
13 March 2021; anemia; obesity with a body mass index of 35; and depressive disorder.
14 AR 41–42. In addition, the ALJ recognized that “throughout the course of treatment
15 and evaluations, [Plaintiff] has exhibited a constellation of symptoms that resulted in
16 varying mental diagnoses or assessment instead of, or in addition to, the above-listed
17 severe impairments depending on his presentation.” AR 41–42. The ALJ
18 memorialized that she considered Plaintiff’s psychological symptoms and their

19
20 ³ While the transcript refers to this medical expert as “Tanya Porchay,” her
21 curriculum vitae indicates that her name is “Tonia Porchia.” *Compare* AR 96 with
1397.

1 effect on Plaintiff's functioning together, regardless of any diagnostic label attached
2 to them, and found that depressive disorder "best represents" Plaintiff's severe
3 mental symptoms and impairment. AR 42. The ALJ further found that Plaintiff has
4 several non-severe impairments that have not severely limited Plaintiff's ability to
5 perform basic work activities for a period lasting at least twelve consecutive months:
6 hypertension; history of subdural hematoma (head injury in fall with bleeding in the
7 brain) and treatment with surgery; and a remote history of juvenile leukemia, in
8 remission. AR 42.

9 **Step three:** The ALJ concluded that Plaintiff does not have an impairment or
10 combination of impairments that meet or medically equal the severity of one of the
11 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR 43 (citing 20
12 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526). The ALJ memorialized that
13 Plaintiff's acute DVT and related symptoms do not meet the criteria under listing
14 4.11 for chronic venous insufficiency of a lower extremity with incompetency or
15 obstruction of the deep venous system. AR 43. Next, the ALJ found no evidence in
16 the record that Plaintiff has anemia with a severity meeting the listing 7.05 criteria
17 for hemolytic anemias. AR 43. Nor does the record establish that Plaintiff's liver
18 cirrhosis and/or chronic hepatitis C meet any listing under section 5.00 for digestive
19 system impairments, including listing 5.05 for chronic liver disease. AR 43. The
20 ALJ further found that Plaintiff's "impairment secondary to lumbar spine
21 degenerative disc disease with low back pain" does not meet listing 1.15 for

1 disorders of the skeletal spine resulting in compromise of a nerve root(s) or 1.16 for
2 lumbar spinal stenosis resulting in a compromise of the cauda equina. AR 44. The
3 ALJ further considered whether the functional limitations caused by obesity
4 medically equal a listing, considered alone or in combination with other impairments
5 and found that Plaintiff's physical examinations have not shown complications or
6 limitations stemming from Plaintiff's weight being at obesity classification level.
7 AR 44–45. The ALJ cited to the record in considering each of Plaintiff's physical
8 impairments and noted that “board-certified osteopathic physician and impartial
9 medical expert” Dr. Geneve testified at the hearing that Plaintiff's physical
10 impairments, considered individually and in combination” do not meet or equal any
11 listing. AR 45.

12 Regarding Plaintiff's mental impairments, the ALJ considered listing 12.04
13 for depressive, bipolar, and related disorders. AR 45. The ALJ considered whether
14 Plaintiff's impairments satisfy the “paragraph B” criteria, requiring at least one
15 extreme or two marked limitations in four broad areas of functioning. AR 45–46.
16 The ALJ found Plaintiff moderately limited in understanding, remembering, or
17 applying information; in concentrating, persisting, or maintaining pace; and in
18 adapting or managing oneself. AR 45–46. The ALJ found Plaintiff only mildly
19 limited in interacting with others. AR 45–46. Therefore, the ALJ found that the
20 “paragraph B” criteria are not satisfied and further found that the “paragraph C”
21 criteria are not present. AR 46.

1 **Residual Functional Capacity (“RFC”)**: The ALJ found that Plaintiff,
2 through the date last insured, had the RFC to perform light work as defined in 20
3 C.F.R. § 404.1567(b), with the following exceptions:

4 He is limited to occasional operation of foot control pedals/push/pull
5 with the left lower extremity and frequent operation of foot controls
6 with the right lower extremity. He can never climb ladders, ropes[,] or
7 scaffolds, only occasionally stoop, kneel, and crawl, and frequently
8 balance, crouch, and climb ramps/stairs. He must avoid concentrated
9 exposure to extreme temperatures, humidity, vibration, and respiratory
10 irritants, and avoid more than moderate exposure to hazards such as
11 unprotected heights and moving mechanical parts. He is able to
12 understand, remember and carry out simple, routine tasks. He is able to
13 maintain concentration, persistence[,] and pace on simple routine tasks
14 for 2-hour intervals between regularly scheduled breaks. He needs a
15 predictable environment with simple routine changes.

16 AR 47.

17 In determining Plaintiff’s RFC, the ALJ found that Plaintiff’s medically
18 determinable impairments could reasonably be expected to cause some of the alleged
19 symptoms, “[h]owever, the claimant’s statements concerning the intensity,
20 persistence and limiting effects of these symptoms are not entirely consistent with
21 the medical evidence and other evidence in the record for the reasons explained in
this decision.” AR 48.

Step four: The ALJ found that Plaintiff is unable to perform any past relevant
work. AR 58 (citing 20 C.F.R. § 404.1565).

Step five: The ALJ found that Plaintiff has at least a high school education;
was 44 years old, which is defined as a younger individual, age 18-49, on the alleged

1 onset date; and that transferability of job skills is not material to the determination of
2 disability because Plaintiff's past relevant work is unskilled. AR 58 (citing 20
3 C.F.R. §§ 404.1569 and 404.1569a). The ALJ found that given Plaintiff's age,
4 education, work experience, and RFC, there are jobs that exist in significant
5 numbers in the national economy that Plaintiff can perform. AR 58. Specifically,
6 the ALJ recounted that the VE identified the following representative occupations
7 that Plaintiff could have performed with the RFC: bench assembler (light, unskilled,
8 with around 100,000 jobs nationally); bakery worker (light, unskilled, with around
9 40,000 jobs nationally); and bottle line attendant (light, unskilled work, with around
10 65,000 jobs nationally). AR 59. The ALJ concluded that Plaintiff was not under a
11 disability within the meaning of the Act from the alleged onset date of October 28,
12 2013, through the date last insured. AR 37.

13 Plaintiff sought review of the ALJ's decision in this Court, represented by
14 attorney Rosemary Schurman. ECF No. 1.

15 **LEGAL STANDARD**

16 ***Standard of Review***

17 Congress has provided a limited scope of judicial review of the
18 Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the
19 Commissioner's denial of benefits only if the ALJ's determination was based on
20 legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d
21 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's]

1 determination that a claimant is not disabled will be upheld if the findings of fact are
2 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
3 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere
4 scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
5 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir.
6 1989). Substantial evidence “means such evidence as a reasonable mind might
7 accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389,
8 401 (1971) (citations omitted). “[S]uch inferences and conclusions as the
9 [Commissioner] may reasonably draw from the evidence” also will be upheld. *Mark*
10 *v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the
11 record, not just the evidence supporting the decisions of the Commissioner.
12 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

13 A decision supported by substantial evidence still will be set aside if the
14 proper legal standards were not applied in weighing the evidence and making a
15 decision. *Brawner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.
16 1988). Thus, if there is substantial evidence to support the administrative findings,
17 or if there is conflicting evidence that will support a finding of either disability or
18 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,
19 812 F.2d 1226, 1229–30 (9th Cir. 1987).

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1 ***Definition of Disability***

2 The Social Security Act defines “disability” as the “inability to engage in any
3 substantial gainful activity by reason of any medically determinable physical or
4 mental impairment which can be expected to result in death, or which has lasted or
5 can be expected to last for a continuous period of not less than 12 months.” 42
6 U.S.C. § 423(d)(1)(A). The Act also provides that a claimant shall be determined to
7 be under a disability only if the impairments are of such severity that the claimant is
8 not only unable to do their previous work, but cannot, considering the claimant’s
9 age, education, and work experiences, engage in any other substantial gainful work
10 which exists in the national economy. 42 U.S.C. § 423(d)(2)(A). Thus, the
11 definition of disability consists of both medical and vocational components. *Edlund*
12 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

13 ***Sequential Evaluation Process***

14 The Commissioner has established a five-step sequential evaluation process
15 for determining whether a claimant is disabled. 20 C.F.R. § 404.1520. Step one
16 determines if they are engaged in substantial gainful activities. If the claimant is
17 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §
18 404.1520(a)(4)(i).

19 If the claimant is not engaged in substantial gainful activities, the decision
20 maker proceeds to step two and determines whether the claimant has a medically
21 severe impairment or combination of impairments. 20 C.F.R. § 404.1520(a)(4)(ii).

1 If the claimant does not have a severe impairment or combination of impairments,
2 the disability claim is denied.

3 If the impairment is severe, the evaluation proceeds to the third step, which
4 compares the claimant's impairment with listed impairments acknowledged by the
5 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §
6 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If the impairment
7 meets or equals one of the listed impairments, the claimant is conclusively presumed
8 to be disabled.

9 If the impairment is not one conclusively presumed to be disabling, the
10 evaluation proceeds to the fourth step, which determines whether the impairment
11 prevents the claimant from performing work that they have performed in the past. If
12 the claimant can perform their previous work, the claimant is not disabled. 20
13 C.F.R. § 404.1520(a)(4)(iv). At this step, the claimant's RFC assessment is
14 considered.

15 If the claimant cannot perform this work, the fifth and final step in the process
16 determines whether the claimant is able to perform other work in the national
17 economy considering their residual functional capacity and age, education, and past
18 work experience. 20 C.F.R. § 404.1520(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137,
19 142 (1987).

20 The initial burden of proof rests upon the claimant to establish a prima facie
21 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th

1 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
2 is met once the claimant establishes that a physical or mental impairment prevents
3 them from engaging in their previous occupation. *Meanel*, 172 F.3d at 1113. The
4 burden then shifts, at step five, to the Commissioner to show that (1) the claimant
5 can perform other substantial gainful activity, and (2) a “significant number of jobs
6 exist in the national economy” which the claimant can perform. *Kail v. Heckler*, 722
7 F.2d 1496, 1498 (9th Cir. 1984).

8 **ISSUES ON APPEAL**

9 Plaintiff’s brief raises the following issues regarding the ALJ’s decision:

- 10 1. Did the ALJ fail to properly develop the record in declining to order
11 neurocognitive testing?
- 12 2. Did the ALJ erroneously evaluate medical source opinions?
- 13 3. Did the ALJ erroneously discount Plaintiff’s subjective symptom
14 statements?

14 ***Duty to Develop the Record***

15 Plaintiff argues that the ALJ failed to properly develop the record by
16 neglecting to order neurocognitive testing for Plaintiff. ECF No. 11 at 6. Plaintiff
17 asserts that both Dr. Porchia and examining psychologist Terilee Wingate, PhD both
18 opined that neurocognitive testing was needed to properly evaluate the effects of
19 Plaintiff’s cerebrovascular incident. *Id.* (citing AR 97, 100, and 1374–75). Plaintiff
20 adds that the ALJ “cited to the lack of formal memory testing to reject Dr. Porchia’s
21

1 and Dr. Wingate’s opinions about the possibility of a neurocognitive disorder.” *Id.*
2 (citing AR 55, 57).

3 The Commissioner responds that the ALJ’s duty to further develop the record
4 was not triggered here because there was no ambiguous evidence, and the record
5 was sufficient to allow for proper evaluation of the evidence. ECF No. 15 at 3. The
6 Commissioner elaborates that Dr. Wingate’s June 2020 “provisional” diagnosis was
7 the only indication or assessment of neurocognitive disorder in the record, and in
8 October 2020 a consultative examiner, Ryan Agostinelli, P.A.-C., described Plaintiff
9 as having intact memory, concentration, and general fund of knowledge. *Id.* at 5–6
10 (citing AR 1379). The Commissioner continues that Dr. Porchia testified that a
11 review of Plaintiff’s longitudinal record led her to conclude that Plaintiff “really
12 didn’t have any psychiatric problems going on” and that with respect to
13 neurocognitive disorder, Dr. Porchia merely opined that Plaintiff could “‘perhaps’
14 have ‘mild neurocognitive disorder,’ but there had been no testing to support that”
15 and, further, that Plaintiff’s record showed no psychiatric history and no psychiatric
16 medication for complaints related to memory, concentration, or any other related
17 symptoms *Id.* at 6 (citing AR 97–98). Moreover, the Commissioner asserts that “it
18 was Plaintiff’s responsibility to prove his claim and to provide any supporting
19 evidence.” *Id.* at 3 (citing 20 C.F.R. § 404.1512; *Tidwell v. Apfel*, 161 F.3d 599, 601
20 (9th Cir. 1999) (“At all times, the burden is on the claimant to establish her
21 entitlement to disability insurance benefits.”)).

1 Plaintiff replies that Dr. Wingate’s provisional diagnosis, Dr. Wingate’s
2 recommendation for testing, and Dr. Porchia’s agreement with Dr. Wingate all
3 demonstrate that the record was not fully and fairly developed. ECF No. 16 at 2.
4 Plaintiff maintains that Ninth Circuit authority establishes that “an ALJ’s duty to
5 develop the record further is triggered by a medical expert’s concerns that the record
6 is not adequate or fully developed.” *Id.* at 2 (citing *Webb v. Barnhart*, 433 F.3d 683,
7 687 (9th Cir. 2005); *Tonapetyan v. Halter*, 242 F.3d 1144, 1050–51 (9th Cir. 2001)).

8 “Social Security proceedings are inquisitorial rather than adversarial. It is the
9 ALJ’s duty to investigate the facts and develop the arguments both for and against
10 granting benefits[.]” *Sims v. Apfel*, 530 U.S. 103, 110–11, (2000). The ALJ has an
11 affirmative duty to assist the claimant in developing the record when the record is
12 ambiguous or “inadequate to allow for proper evaluation of the evidence.”

13 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2021); *see also Brown v.*
14 *Heckler*, 713 F.2d 441, 443 (9th Cir. 1983) (per curiam) (“In Social Security cases
15 the ALJ has a special duty to fully and fairly develop the record and to assure that
16 the claimant’s interests are considered.”) (citation omitted). “This duty extends to
17 the represented as well as to the unrepresented claimant.” *Tonapetyan*, 242 F.3d at
18 1150. However, “if the record includes ‘specific and sufficient’ evidence to
19 evaluate a claim, the record is neither ambiguous nor inadequate.” *Slate v.*

20 *O’Malley*, Case No. 1:23-cv-92-SKO, 2024 U.S. Dist. LEXIS 39281, *15, 2024
21 WL 967661 (E.D. Cal. Mar. 6, 2024) (quoting *Gurin v. Saul*, 842 F. App’x 45, 58

1 (9th Cir. 2021)). An ALJ may discharge her duty by subpoenaing or submitting
2 questions to claimant’s doctors, continuing the hearing, or keeping the record open
3 after the hearing to allow supplementation of the record. *Tonapetyan*, 242 F.3d at
4 1150.

5 Dr. Wingate completed a psychological evaluation of Plaintiff on June 17,
6 2020, and diagnosed Plaintiff with “Neurocognitive Disorder, likely due to cerebral
7 vascular accident (provisional).” AR 1374. Dr. Wingate explained the diagnosis as
8 follows:

9 [Plaintiff’s] mental status examination reveals memory difficulties and
10 impairment in abstract reasoning. It is likely that his cognitive
11 impairment is due to the [cerebral vascular accident (“CVA”)], but he
12 needs memory testing to fully assess his cognitive functioning. The
13 diagnosis of neurocognitive disorder is therefore given provisionally.
14 In addition, he appears to have persistent depressive symptoms. The
15 depression began prior to the CVA, after he was arrested for theft on
16 his job. He continues to report depressed mood, with early morning
17 awakening and low energy. He reported lack of motivation and poor
18 appetite. He tried medications for sleep, but he has not obtained
19 behavioral health intervention for the depression. He would benefit
20 from supportive counseling to address his chronic depression. He also
21 needs memory testing and he may benefit from cognitive rehabilitation
services, physical therapy, and occupational therapy. At this time, he
doesn’t appear capable of working, but further testing is highly
recommended.

AR 1374–75.

18 Testifying medical expert Dr. Porchia acknowledged that Plaintiff’s medical
19 record supports that he has “unspecified depressive disorder” but further testified:

20 My issue with the case is that I do agree with the psych eval that was
21 conducted in June of 2020, which is 9F, but we don't have objective

1 memory testing to fully assess his cognitive functioning. So, some of
2 the claimant's problems with his memory and some of the mood
3 disturbance could have been, you know, related to the – the
4 cerebrovascular accident, like a stroke. And perhaps, he – he could have
5 a mild neurocognitive disorder, but I wouldn't exactly say that, because
6 this psych eval is only one occasion in which the claimant was
7 observed, and there isn't any psych testing to really determine the
8 severity of the claimant's cognitive functioning.

9 AR 97.

10 Dr. Porchia testified that the psychological evaluation was “basically” the
11 only record indicating “findings with regards to memory” “because the claimant
12 doesn't have a psych history, actually.” AR 97. Dr. Porchia explained that the
13 memory problems that Plaintiff reported “could be consistent with just having had
14 – you know, just knowing that you have medical problems.” AR 98. Dr. Porchia
15 cited some findings regarding memory within normal range in mental status
16 examinations, but she noted that there had not been any “true memory evaluation”
17 of Plaintiff. AR 99. Therefore, Dr. Porchia testified, she could not say “with
18 medical certainty” whether Plaintiff would have difficulty learning new complex
19 information. AR 99–100. When the ALJ asked Dr. Porchia to “do her best” with
20 the record as it was and evaluate the paragraph B criteria, Dr. Porchia gave
21 opinions as to Plaintiff's limitations in each functional category but qualified her
response by stating “But again, it – it would be great to have additional psych
testing, especially memory testing.” AR 100.

1 The ALJ found in her decision that Dr. Wingate’s “provisional” assessment
2 of neurocognitive disorder was the only “assessment or indication of possible
3 neurocognitive disorder in the record, and as the psychologist advised, further
4 memory testing would be required to fully assess/confirm the diagnosis.” AR 52
5 (citing AR 1373–74). With respect to Dr. Porchia, the ALJ recognized that Dr.
6 Porchia testified that Plaintiff had reported problems with memory and other
7 psychological issues, but the record lacked testing or evaluation to establish a
8 psychiatric condition aside from depressive symptoms. AR 52–53.

9 Both Dr. Wingate and Dr. Porchia highlighted that Plaintiff’s record lacked
10 testing or evaluation that would have allowed them to opine as to whether Plaintiff
11 has a condition affecting his memory and other cognitive functions, and both
12 medical sources identified the need to test Plaintiff’s memory. AR 97–100, 1373–
13 74. The ALJ also acknowledged the lack of memory testing in the record, but
14 nonetheless proceeded to formulate Plaintiff’s RFC without the supplementation
15 that Dr. Wingate and Dr. Porchia sought. Neither the ALJ’s decision nor the
16 Commissioner’s brief before this Court identifies specific and sufficient evidence
17 to evaluate Plaintiff’s claim with respect to potential memory issues following his
18 cerebrovascular incident. *See Gurin*, 842 F. App’x at 58.

19 Accordingly, the Court agrees with Plaintiff that Dr. Wingate’s report and
20 Dr. Porchia’s testimony establishes an inadequacy or ambiguity in Plaintiff’s
21 record. Furthermore, as the ALJ determined that Plaintiff is capable of

1 concentrating on and understanding, remembering, and carrying out simple,
2 routine tasks in his RFC, a more complete assessment by medical sources of
3 Plaintiff's memory and other cognitive abilities could have resulted in a revised
4 RFC and, potentially, a different disability determination. Therefore, the ALJ
5 legally erred by failing to fully develop the record, and the error is not harmless.
6 *See Ponce v. Colvin*, 2015 U.S. Dist. LEXIS 97070, 2015 WL 4511335, at *4
7 (C.D. Cal. July 24, 2015) (finding error not harmless where the record lacked
8 supplemental treatment records and the court could not "determine whether the
9 failure to develop the record was ultimately prejudicial"); *Sarah M.M. v. Kijakazi*,
10 Case No. CV 20-5273 PVC, 2022 U.S. Dist. LEXIS 14580, at *13–14 (C.D. Cal.
11 Jan. 26, 2022) (same).

12 Although Plaintiff also raises issues concerning the treatment of medical
13 source opinions, it is unnecessary to reach these arguments because the matter is
14 remanded for the alternative reason of further development of the record.
15 Nevertheless, on remand, the ALJ may consider Plaintiff's other arguments.

16 CONCLUSION

17 Having reviewed the record and the ALJ's findings, this Court concludes that
18 the ALJ's decision contains harmful legal error. Accordingly, **IT IS HEREBY**

19 ORDERED:

- 20 1. Plaintiff's Brief, **ECF No. 11**, is **GRANTED**.
- 21 2. Defendant the Commissioner's Brief, **ECF No. 15**, is **DENIED**.

