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

Sep 13, 2019

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

RICHARD B.,¹
Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 4:18-cv-05168-MKD

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION FOR
RECONSIDERATION

ECF No. 22

Before the Court is Defendant’s motion for reconsideration. ECF No. 22. Plaintiff has filed a response to Defendant’s motion, ECF No. 23, and Defendant has filed a reply, Tr. 24. The parties have consented to proceed before a magistrate judge. ECF No. 7.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them only by their first names and the initial of their last names.

1 **BACKGROUND**

2 On September 25, 2012, Plaintiff protectively filed applications for Title II
3 disability insurance benefits and Title XVI supplemental security income benefits,
4 alleging a disability onset date of December 28, 2011. Tr. 191-202. The
5 applications were denied initially, Tr. 139-46, and on reconsideration, Tr. 148-52.
6 Plaintiff appeared at a hearing before an administrative law judge on October 29,
7 2014. Tr. 36-85. On December 22, 2014, the ALJ denied Plaintiff’s claims. Tr.
8 16-35. On appeal, this Court remanded the case to the Social Security
9 Administration and instructed it to supplement the record with any outstanding
10 evidence, take testimony from psychological, medical, and vocational experts,
11 reassess whether Plaintiff met Listing 12.05C, reassess Plaintiff’s symptom
12 reports, reweigh the medical opinions in the file, and form a new RFC
13 determination considering the new evidence in the record. Tr. 753-71.

14 On June 22, 2018, Plaintiff appeared before an ALJ for a second hearing.
15 Tr. 660-719. On August 16, 2018, the ALJ denied Plaintiff’s claims. Tr. 628-59.
16 On July 31, 2019, this Court entered an Order Granting Plaintiff’s Motion for
17 Summary Judgment and Denying Defendant’s Motion for Summary Judgment
18 (Court’s Order) and remanded the case for an immediate calculation and award of
19 benefits. ECF No. 20. Judgment was entered in favor of Plaintiff on the same
20 date. ECF No. 21. On August 28, 2019, Defendant moved for reconsideration of

1 the Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. ECF
2 No. 22. On September 3, 2019, Plaintiff filed a response to Defendant’s motion.
3 ECF No. 23. On September 11, 2019, Defendant filed a reply in support of its
4 motion. ECF No. 24.

5 **STANDARD OF REVIEW**

6 A court may alter or amend a judgment under Rule 59(e) of the Federal
7 Rules of Civil Procedure. Fed.R.Civ.P. 59(e). Rule 59(e) offers “an extraordinary
8 remedy, to be used sparingly in the interests of finality and conservation of judicial
9 resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir.2003). A Rule 59(e)
10 motion may be granted if: “(1) the district court is presented with newly discovered
11 evidence, (2) the district court committed clear error or made an initial decision
12 that was manifestly unjust, or (3) there is an intervening change in controlling
13 law.” *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001).

14 **ISSUES**

15 Defendant requests that the Court modify its judgment and remand for
16 further proceedings. ECF No. 22 at 2. Alternatively, Defendant requests that the
17 Court find Plaintiff disabled for limited periods before and after he worked at a
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1 substantial gainful activity level, with reference to his date last insured for Title II
2 benefits. ECF No. 22 at 2.

3 DISCUSSION

4 A. Remand for Further Proceedings

5 Defendant seeks a remand for further proceedings, but such a remand would
6 serve no useful purpose. Administrative proceedings are generally useful where
7 the record “has [not] been fully developed,” *Garrison*, 759 F.3d at 1020, there is a
8 need to resolve conflicts and ambiguities, *Andrews*, 53 F.3d at 1039, or the
9 “presentation of further evidence ... may well prove enlightening” in light of the
10 passage of time, *I.N.S. v Ventura*, 537 U.S. 12, 18 (2002). *Cf. Nguyen*, 100 F.3d at
11 1466–67 (remanding for ALJ to apply correct legal standard, to hear any additional
12 evidence, and resolve any remaining conflicts); *Byrnes v. Shalala*, 60 F.3d 639,
13 642 (9th Cir. 1995) (same); *Dodrill*, 12 F.3d at 918-19 (same); *Bunnell*, 947 F.2d at
14 348 (same). Here, as discussed in this Court’s Order, the record has been fully
15 developed. ECF No. 20 at 60. The record contains several years’ worth of
16 treatment records, including notes from treating and examining specialists, opinion
17 evidence from treating and examining specialists, Plaintiff, and several of his
18 friends and family members. Two administrative hearings have been held and
19 medical experts have testified at both hearings after reviewing the longitudinal
20 record. Further proceedings are not necessary.

1 Defendant contends that the “Court awarded benefits by crediting evidence
2 that did not directly address the period during which [Plaintiff] worked and was not
3 disabled.” ECF No. 22 at 4. As discussed in this Court’s Order, the ALJ did not
4 provide legally sufficient reasons for rejecting opinion evidence from three of
5 Plaintiff’s examining providers concerning both physical and mental limitations.
6 ECF No. 20 at 20, 24, 40. Further, three of the four reasons identified by the ALJ
7 for discounting Plaintiff’s symptom complaints were not supported by substantial
8 evidence, and the ALJ’s analysis of the lay witness statements suffered the same
9 defects. ECF No. 20 at 56-57. Under these circumstances “[a]llowing the
10 Commissioner to decide the issue again would create an unfair ‘heads we win;
11 tails, let’s play again’ system of disability benefits adjudication.” *Benecke v.*
12 *Barnhart*, 379 F.3d 587, 595 (9th Cir. Cal. 2004). The Court finds no clear error in
13 its decision to remand for an immediate calculation and award of benefits, other
14 than the need to clarify that Plaintiff is not entitled to disability benefits during the
15 time that he performed substantial gainful activity.

16 **B. Clarification of Order**

17 Defendant contends this Court committed clear error by failing to clarify that
18 Plaintiff was precluded from a finding of disability during the time period the ALJ
19 determined, and the Court affirmed, that Plaintiff worked at a substantial gainful
20 activity level. ECF No. 22 at 1-2. If the claimant is engaged in “substantial

1 gainful activity,” the ALJ must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b); 416.920(b). Here, the ALJ determined that Plaintiff performed work
3 that constituted substantial gainful activity between November 2015 and January
4 2017, and therefore, Plaintiff “cannot be considered disabled during that period.”²
5 Tr. 634. The Court affirmed this finding. ECF No. 20 at 12 (“Substantial evidence
6 supports the ALJ’s conclusion that Plaintiff’s work between November 2015 and
7 January 2017 constituted substantial gainful activity.”).

8 The Court remanded the matter to the Commissioner of Social Security for
9 an immediate calculation and award of benefits without specifically stating in its
10 remand instructions that Plaintiff was not eligible to receive an award of benefits
11 during the period that he was engaged in substantial gainful activity and thus, not
12 disabled. ECF No. 20 at 62. Defendant requests that the Court find Plaintiff: (1)
13 disabled between his December 28, 2011 alleged onset date and the
14 commencement of his work at the substantial gainful activity level in November
15 2015; (2) not disabled between November 2015 and January 2017 while he was

17 ² The ALJ found that “[Plaintiff] testified at the hearing that he worked full time
18 for one security company between Thanksgiving 2015 and May 2016, followed by
19 full-time work for a second security company after a weeklong break until January
20 12, 2017.” Tr. 634.

1 engaged in substantial gainful activity; and (3) disabled under Title XVI only for
2 any period commencing after January 2017. ECF No. 22 at 8. Plaintiff does not
3 oppose Defendant's suggestion to clarify that Plaintiff is eligible to be paid
4 benefits from December 28, 2011 to November 25, 2015 and then again beginning
5 January 13, 2017, consistent with this Court's Order. ECF No. 23 at 2-3 n.1. The
6 Court grants Defendant's request to amend the Court's Order to clarify that
7 Plaintiff was not disabled, and thus cannot receive disability benefits, from
8 November 26, 2015 through January 12, 2017.

9 **C. Calculation of Title II Benefits**

10 Defendant argues that Plaintiff's Title II eligibility ended on his September
11 30, 2014 date last insured and any secondary disability period arising after that
12 date establishes only Title XVI benefits. ECF No. 22 at 6. Plaintiff asserts that the
13 payment center calculates Plaintiff's benefits upon remand for an immediate
14 calculation and award of benefits. ECF No. 23 at 4-5. The Court declines to
15 engage in a calculation of benefits, as this matter has been remanded to the
16 Commissioner of Social Security for the calculation and award of benefits. ECF
17 No. 20 at 62.

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1 **CONCLUSION**

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Defendant’s Motion for Reconsideration, ECF No. 22, is **GRANTED IN**
4 **PART AND DENIED IN PART.**

5 2. The Court’s Order Granting Plaintiff’s Motion for Summary Judgment
6 and Denying Defendant’s Motion for Summary Judgment, ECF No. 20,
7 is **AMENDED** as follows:

8 3. Plaintiff’s Motion for Summary Judgment, ECF No. 14, is **GRANTED.**

9 4. Defendant’s Motion for Summary Judgment, ECF No. 17, is **DENIED.**

10 5. The Court enter **JUDGMENT** in favor of Plaintiff **REVERSING** and
11 **REMANDING** the matter to the Commissioner of Social Security for
12 immediate calculation and award of benefits consistent with this Order,
13 and consistent with this Court’s Order Granting Plaintiff’s Motion for
14 Summary Judgment and Denying Defendant’s Motion for Summary
15 Judgment, ECF No. 20. Specifically, when calculating benefits, the
16 Commissioner shall consider that Plaintiff performed work at a
17 substantial gainful activity level from November 26, 2015 through
18 January 12, 2017, and thus, was not disabled and is not eligible to receive
19 disability benefits for that time period. The Court finds that Plaintiff was
20 disabled from December 28, 2011 to November 25, 2015 and then again

1 beginning January 13, 2017. Further, when calculating benefits, the
2 Commissioner shall determine whether Plaintiff's date last insured has
3 changed due to his split period of disability and shall compute Plaintiff's
4 Title II benefits based on any new date last insured.

5 The District Court Executive is directed to file this Order, provide copies to
6 counsel, and **CLOSE THE FILE.**

7 DATED September 13, 2019.

8 s/Mary K. Dimke
9 MARY K. DIMKE
10 UNITED STATES MAGISTRATE JUDGE