

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 21-1619

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Shirley Bonnett

*Plaintiff - Appellant*

v.

Kilolo Kijakazi,<sup>1</sup> Acting Commissioner of Social Security Administration

*Defendant - Appellee*

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Appeal from United States District Court  
for the Western District of Arkansas - El Dorado

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Submitted: September 15, 2021

Filed: September 20, 2021

[Unpublished]

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Before SHEPHERD, GRASZ, and KOBES, Circuit Judges.

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PER CURIAM.

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<sup>1</sup>Kilolo Kijakazi has been appointed to serve as Acting Commissioner of Social Security, and is substituted as appellee pursuant to Federal Rule of Appellate Procedure 43(c).

Shirley Bonnett appeals the district court's order affirming the denial of disability insurance benefits, after her hearing before an Administrative Law Judge (ALJ). After careful review, see Kraus v. Saul, 988 F.3d 1019, 1023-24 (8th Cir. 2021) (de novo review of district court's judgment; Commissioner's decision will be affirmed if it is supported by substantial evidence on record as whole and ALJ made no legal error), we conclude that remand is required for further consideration of the opinion of Bonnett's physician, Barry Thompson, M.D. Specifically, while the ALJ adequately evaluated the supportability of Dr. Thompson's opinion, she did not address whether his opinion was consistent with the other evidence of record, as required by the applicable regulation. See Lucus v. Saul, 960 F.3d 1066, 1069-70 (8th Cir. 2020) (remanding where ALJ discredited physician's opinion without discussing factors contemplated in regulation, as failure to comply with opinion-evaluation regulation was legal error); 20 C.F.R. § 404.1520c (in evaluating persuasiveness of medical opinion, ALJ considers supportability and consistency of opinion, and other factors; ALJ must explain how both supportability and consistency factors are considered). While the Commissioner argues that Dr. Thompson's opinion was not consistent with specific other evidence in the record, we will not affirm on this basis, as the ALJ made no such findings. See SEC v. Chenery Corp., 318 U.S. 80, 87 (1943) (reviewing court may not uphold agency decision based on reasons not articulated by agency itself in its decision). Accordingly, we reverse the judgment of the district court, and we remand with instructions to remand to the Commissioner for further evaluation of Dr. Thompson's opinion under 20 C.F.R. § 404.1520c.

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