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NOT FOR PUBLICATION

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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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9 Chase Michael Sutton,

No. CV-15-00744-PHX-JJT

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Plaintiff,

**ORDER**

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v.

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Carolyn W. Colvin,

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Defendant.

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**I. BACKGROUND**

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At issue is the denial of Plaintiff Chase Michael Sutton's Application for Supplemental Security Income ("SSI") by the Social Security Administration ("SSA") under the Social Security Act ("the Act"). Plaintiff filed a Complaint (Doc. 1) with this Court seeking judicial review of that denial, and the Court now considers Plaintiff's Opening Brief (Doc. 14, "Pl.'s Br."), Defendant Social Security Administration Commissioner's Opposition (Doc. 18, "Def.'s Br."), and Plaintiff's Reply (Doc. 22, "Pl.'s Reply").

Plaintiff filed an SSI Application under the Act on January 4, 2012, for a Period of Disability beginning November 17, 2011. (Doc. 11, R. at 193.) Plaintiff's claim was denied initially on July 3, 2012 (R. at 76-77); and on reconsideration on December 12, 2012 (R. at 97-98). Plaintiff testified at a hearing held before an Administrative Law Judge ("ALJ") on September 26, 2013. (R. at 32-62.) On November 15, 2013, the ALJ issued a decision denying Plaintiff's claim. (R. at 13-31.) The Appeals Council ("AC")

1 denied Plaintiff's request for review on February 24, 2015, making the ALJ's decision  
2 the final decision of the Commissioner. (R. at 1-3.) The present appeal followed.

3 The Court has reviewed the medical evidence in its entirety and provides a short  
4 summary here. Plaintiff has been diagnosed with Crohn's disease, which is characterized  
5 by abdominal pain, diarrhea, bloody stool, and fatigue, and is treated with topical anti-  
6 inflammatory medication, corticosteroids, and immune modulators. (Pl.'s Br. at 2 n.1  
7 (citing *Goldman's Cecil Med.*, 24th ed. 2012, at 913-17).) The record shows that Plaintiff  
8 visited various emergency rooms reporting Crohn's disease episodes, or "flares," twice in  
9 2011 and 11 times in 2012. (R. at 301-02, 330-31, 368-69, 509-10, 577-79, 584-85, 609-  
10 14, 615-27, 642-43, 661-64, 725-26.) In each visit, the hospitals prescribed Plaintiff pain  
11 medications—including Vicodin, Ultram (Tramadol), Percocet, Norco, and morphine—  
12 among other medications. In February 2012, Dr. Frederick Kogan, a gastroenterologist,  
13 examined Plaintiff. He noted that, though Plaintiff's Crohn's disease was in remission,  
14 Plaintiff had "unfortunately gotten into a drug-seeking behavior where he has been to  
15 every emergency room in the west of Phoenix, in the north quarter, mid-quarter north,  
16 and John C. Lincoln Hospital. He has also been down to Estrella with abdominal pain,  
17 receiving narcotics." (R. at 371.) Dr. Kogan was "unsure if this is gastroenteritis" and  
18 "not convinced that this could be a Crohn's exacerbation," so he ordered tests. (R. at 372)

19 Later in 2012, Plaintiff also made three visits to Dr. Joseph B. Fares, a  
20 gastroenterologist, and Dr. Fares noted among other things that Plaintiff "reports doing  
21 fairly well with no significant GI complaints," (R. at 496), and "reports some  
22 improvement in his symptoms," (R. at 487). Dr. Fares conducted a colonoscopy on  
23 October 12, 2012, and Plaintiff's colon appeared normal and biopsies showed mild  
24 nonspecific subacute inflammation but no evidence of colitis. (R. at 557.) Dr. Fares  
25 planned to taper Plaintiff off steroids. Dr. Hugo Pinillos examined Plaintiff on  
26 October 30, 2012, and found that Plaintiff was improving and that it was uncertain from  
27 his symptoms whether Crohn's disease was active and, if so, where. (R. at 558.) Plaintiff  
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1 reported to the emergency room again in April 20, 2013, stating he had not had a Crohn's  
2 disease flare since 2012 and had not taken steroids since then. (R. at 717.)

3 Plaintiff also states he suffers from headaches. The record shows that Plaintiff  
4 reported to the emergency room a multitude of times in 2011 reporting headaches, and  
5 the hospital prescribed Ultram (Tramadol), a narcotic pain medication. (R. at 328, 334.)  
6 On March 20, 2011, Arrowhead Hospital noted that it was Plaintiff's fifth visit in 30 days  
7 for a headache, that he reported he was out of Ultram, and that it was the "only thing that  
8 works." (R. at 334.) Plaintiff visited Dr. Mark Winograd five times in 2012 to address his  
9 headaches. (R. at 455-69, 713-16.) Plaintiff reported that Tramadol and Valium seem to  
10 be effective to fight his headaches. (*E.g.*, R. at 467.) Dr. Winograd also prescribed  
11 Imitrex, among other medications, for Plaintiff to take if he felt a headache coming on.  
12 (*E.g.*, R. at 458.)

13 In October 2011, within one week of visiting the emergency room for a headache,  
14 for which he was prescribed Ultram, Plaintiff went back to the emergency room to report  
15 dental pain, at which point the hospital noted Plaintiff was already under a pain protocol.  
16 (R. at 326-29.) Plaintiff went to the emergency room again for dental pain two weeks  
17 later, at which point the hospital noted that Plaintiff had filled nine prescriptions for  
18 Vicodin in the past 30 days. (R. at 324-25.)

19 Plaintiff has overdosed on pain medications several times. On July 1, 2011,  
20 Plaintiff saw Dr. Armaghan Kimbell for a follow-up after a visit to the emergency room  
21 for Tramadol overuse. (R. at 383.) Plaintiff stated that he had not taken Tramadol for a  
22 few days and as a result was sleeping better but had some nausea. (R. at 383.) Plaintiff  
23 reported he went to a drug rehab facility but did not like it and called his wife to pick him  
24 up, and he therefore did not want to try rehab again. (R. at 383.) He admitted taking three  
25 to four pain pills every six hours instead of just one, as prescribed. (R. at 383.)  
26 Dr. Kimbell stated that he would make a note in Plaintiff's chart "that he cannot and may  
27 not be prescribed any more narcotics for symptoms."<sup>1</sup> (R. at 383.) Plaintiff also requested

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28 <sup>1</sup> The chart to which Dr. Kimbell referred was presumably at Banner Health

1 his medical records to apply for disability benefits on account of Crohn’s disease, and Dr.  
2 Kimbell noted that Plaintiff’s “Crohn’s has been in remission for some time now” but  
3 advised him to speak to his gastroenterologist. (R. at 383.)

4 On February 11, 2012, Plaintiff went to the emergency room after a seizure  
5 apparently caused by Tramadol overuse. (R. at 710.) Dr. Jana Lee noted that Plaintiff had  
6 also reported on January 31, 2012, after a seizure, at which time the attending physician  
7 had advised Plaintiff to stop taking Tramadol and Benadryl. (R. at 710.)

8 The record shows Plaintiff visited his primary care physician, Dr. Michael P.  
9 Brown, three times in 2012. On July 1, 2012, Plaintiff saw Dr. Brown complaining of  
10 right knee pain. (R. at 549.) Dr. Brown noted that a physician’s assistant had prescribed  
11 30 Vicodin to Plaintiff on June 25, 2012, but Plaintiff reported it made him constipated.  
12 (R. at 549, 553.) He then reported to urgent care, which prescribed Ultram for him. (R. at  
13 549.) Because no x-ray of Plaintiff’s knee had yet been taken, Dr. Brown did not  
14 prescribe additional medication and recommended a follow-up a week later. (R. at 550.)  
15 Plaintiff reported to the physician’s assistant four days later, who prescribed Ultram for  
16 Plaintiff’s reported knee pain. (R. at 547.) He reported to the physician’s assistant again  
17 three weeks later and stated he still had not obtained an x-ray of his right knee, even  
18 though he said it continued to be painful. (R. at 544.) Plaintiff received another  
19 prescription of Ultram, and the physician’s assistant noted that she “talked to him about  
20 Tramadol use” and “may need to send to pain management.” (R. at 544.) On  
21 September 5, 2012, Plaintiff saw Dr. Brown again for reported knee pain. (R. at 541.)  
22 Plaintiff had still not obtained an x-ray of his knee, but Dr. Brown gave him a new  
23 prescription of Ultram. (R. at 541-42.)

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26 Center in Peoria, Arizona, where Dr. Kimbell worked. (R. at 383.) The Court notes that  
27 Plaintiff’s visits to emergency rooms after his July 2011 examination by Dr. Kimbell were  
28 to other hospitals, including Arrowhead Hospital (*e.g.*, R. at 324-27), Phoenix Baptist  
Hospital (*e.g.*, R. at 368), and Banner Thunderbird Medical Center (*e.g.*, R. at 642), all of  
which regularly prescribed narcotic pain medications to Plaintiff after Dr. Kimbell’s  
examination.

1           Finally, Dr. Brown saw Plaintiff on October 29, 2012. (R. at 536.) Dr. Brown  
2 made no mention of Plaintiff’s previously reported knee pain—the subject of the balance  
3 of Plaintiff’s visits to his office in 2012—but instead noted that Plaintiff had recently  
4 been to the hospital for abdominal pain.<sup>2</sup> (R. at 536.) Plaintiff reported to Dr. Brown that  
5 the hospital mentioned he had “narcotic seeking behavior.” (R. at 536.) He also asked  
6 Dr. Brown to fill out a form for him to apply for SSI benefits, stating that he had a hard  
7 time keeping a job due to “anxiety, stress and recurrent episodes of abdominal pain  
8 associated with Crohn’s.” (R. at 536.) Dr. Brown filled out a Medical Assessment of  
9 Ability to Do Work-Related Physical Activities the same day, in which he concluded in  
10 checkbox form that, on account of Crohn’s disease, Plaintiff had moderate limitations to  
11 being around moving machinery and mild or no limitations in any other activity, but that  
12 Plaintiff had a moderate overall degree of restriction, observing that “most of patient’s  
13 symptoms are subjective.” (R. at 534.)

14           On June 20, 2012, Dr. Greg Peetoom completed a psychological evaluation and  
15 testing on behalf of the Arizona Department of Economic Security to assess Plaintiff’s  
16 functional abilities. (R. at 471-78.) While Plaintiff’s composite intelligence scores were  
17 low, Dr. Peetoom observed that Plaintiff felt rushed through the testing because his  
18 mother, who was with him, had to go to work, and the results were therefore  
19 underestimates of his true abilities. (R. at 471, 473, 477.) Dr. Peetoom found that Plaintiff  
20 is capable of understanding, remembering and carrying out simple work-related  
21 instructions, though he “seemed to work in a somewhat rushed manner,” he is able to  
22 sustain casual social interaction, and he is able to recognize and respond appropriately to  
23 normal workplace hazards. (R. at 477.) Two physicians reviewed Plaintiff’s medical  
24 records (R. at 68-77, 79-98), from which they performed Residual Functional Capacity  
25 (RFC) assessments and opined that Plaintiff had no significant restrictions in his ability to  
26 move around and perform ordinary daily activities.

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28           <sup>2</sup> In fact, according to the record but not Dr. Brown’s notes, the recent visit to the  
hospital for abdominal pain was Plaintiff’s ninth visit in 2012 alone.

1     **II. ANALYSIS**

2             The district court reviews only those issues raised by the party challenging the  
3     ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court  
4     may set aside the Commissioner’s disability determination only if the determination is  
5     not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d  
6     625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, but less than a  
7     preponderance; it is relevant evidence that a reasonable person might accept as adequate  
8     to support a conclusion considering the record as a whole. *Id.* In determining whether  
9     substantial evidence supports a decision, the court must consider the record as a whole  
10    and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*  
11    As a general rule, “[w]here the evidence is susceptible to more than one rational  
12    interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be  
13    upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

14            To determine whether a claimant is disabled for purposes of the Act, the ALJ  
15    follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of  
16    proof on the first four steps, but the burden shifts to the Commissioner at step five.  
17    *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ  
18    determines whether the claimant is presently engaging in substantial gainful activity.  
19    20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.*  
20    At step two, the ALJ determines whether the claimant has a “severe” medically  
21    determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the  
22    claimant is not disabled and the inquiry ends. *Id.* At step three, the ALJ considers whether  
23    the claimant’s impairment or combination of impairments meets or medically equals an  
24    impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R.  
25    § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled. *Id.* If not,  
26    the ALJ proceeds to step four. *Id.* At step four, the ALJ assesses the claimant’s RFC and  
27    determines whether the claimant is still capable of performing past relevant work.  
28    20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends.

1 *Id.* If not, the ALJ proceeds to the fifth and final step, where he determines whether the  
2 claimant can perform any other work in the national economy based on the claimant's  
3 RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the  
4 claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

5 **A. The ALJ Properly Weighed Plaintiff's Testimony**

6 Plaintiff disputes the ALJ's finding that when considering the combination of  
7 Plaintiff's impairments, Plaintiff's RFC allowed him to perform light work. Plaintiff's  
8 first argument is that the ALJ erred in his consideration of Plaintiff's symptom testimony.  
9 (Pl.'s Br. at 6-15.) While credibility is the province of the ALJ, an adverse credibility  
10 determination requires the ALJ to provide "specific, clear and convincing reasons for  
11 rejecting the claimant's testimony regarding the severity of the claimant's symptoms."  
12 *Treichler v. Comm'r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (citing *Smolen v.*  
13 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)).

14 At the hearing, Plaintiff testified that Crohn's disease is the biggest problem  
15 preventing him from working and that he has Crohn's disease flares six or more times a  
16 year, requiring hospitalization. (R. at 52.) He also testified he vomits eight times every  
17 twelve hours on bad days and twice a day on normal days. (R. at 43, 45, 48.) On a  
18 Headache Questionnaire, Plaintiff testified he gets headaches that last up to several  
19 weeks, at which time he must isolate himself in a dark quiet, room. (R. at 240-41.) At the  
20 hearing, Plaintiff's attorney represented that "those have alleviated with time." (R. at 38.)

21 To begin with, as the ALJ observed, the evidence is not just substantial but  
22 overwhelming that Plaintiff continuously engaged in drug-seeking behavior in 2011 and  
23 2012. This is an entirely appropriate basis to conclude that Plaintiff lacks credibility in  
24 his symptom testimony. *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001); *see*  
25 *also Anderson v. Barnhart*, 344 F.3d 809, 815 (8th Cir. 2003). He overdosed on  
26 Tramadol at least in July 2011 and January and February 2012. (R. at 383, 710.) In July  
27 2011, Plaintiff stated that he understood and agreed with Dr. Kimbell that he "cannot and  
28 may not be prescribed any more narcotics for symptoms." (R. at 383.) Yet, by February

1 2012, Dr. Kogan noted that Plaintiff had “gotten into a drug-seeking behavior where he  
2 has been to every emergency room in the west of Phoenix” seeking narcotics. (R. at 371.)

3 An examination of the record reveals the vast amount of pain medication Plaintiff  
4 accumulated by regularly visiting different medical providers, often within days of one  
5 another. For example, Plaintiff visited different hospital emergency rooms 11 times in  
6 2012 with reports of abdominal pain due to Crohn’s diseases flares, receiving  
7 prescriptions for Tramadol (January 3), Vicodin (February 24), Ultram (March 19),  
8 Percocet (May 10), Norco (June 13), Vicodin (August 30, September 15, October 8,  
9 October 22, November 12), and morphine and Vicodin (December 16). (R. at 301-02,  
10 330-31, 368-69, 509-10, 577-79, 584-85, 609-14, 615-27, 642-43, 661-64, 725-26.) As  
11 the Court will address more fully below, the objective medical findings do not support  
12 Plaintiff’s subjective reports of Crohn’s disease flares, or at least their intensity.  
13 Meanwhile, Plaintiff visited Dr. Brown and his physician’s assistant at least six times in  
14 2012 with reports of knee pain, receiving prescriptions for Ultram. (R. at 535-55.)  
15 Nowhere do those records state that Dr. Brown and his assistant were aware Plaintiff was  
16 regularly reporting to emergency rooms and receiving narcotics from them. The record  
17 also contains no objective evidence that Plaintiff’s knee was injured—it appears he never  
18 obtained the x-ray that Dr. Brown repeatedly ordered—and instead Plaintiff obtained the  
19 prescriptions based on his subjective reports. Simultaneously, Plaintiff visited  
20 Dr. Winograd at least five times throughout 2012 reporting headaches—again without  
21 mentioning the narcotic pain medications he was taking for his other apparent conditions,  
22 according to the record—and Dr. Winograd provided Plaintiff with separate pain  
23 medication prescriptions. (R. at 455-69, 713-16.) The ALJ pointed to much of this and  
24 other evidence to support his conclusion that Plaintiff engaged in continuous drug-  
25 seeking behavior in 2011 and 2012 and thus was not credible as to his symptoms (R. at  
26 17-19), and the ALJ’s reason for making an adverse credibility determination was  
27 specific, clear and convincing. *See Edlund*, 253 F.3d at 1157.

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1 As the ALJ also stated, Plaintiff's reports of symptoms do not stand up against the  
2 objective medical evidence, either. (R. at 17-20.) Aside from Plaintiff's subjective  
3 reports, the medical examinations revealed that, in April and May 2011, Plaintiff's  
4 Crohn's disease was in remission by prior colonoscopy and the cause of his reported  
5 abdominal pain could not be determined by physical examination. (R. at 399-401, 416-  
6 18.) In August 2011, a physical examination could only confirm "mild gastritis." (R. at  
7 313-14.) No physical examination in the following year was able to corroborate  
8 Plaintiff's subjective reports; the records simply state such things as "unclear etiology" or  
9 "no diagnosis found." (R. at 301, 348, 510, 521, 675, 706.) In February 2012,  
10 Dr. Nooman Gilani, a gastroenterologist, noted that Plaintiff's reported symptoms were  
11 "not consistent with flare of his suspected inflammatory bowel disease" and the  
12 "[p]ossibility of viral syndrome or narcotic-seeking behavior can be considered." (R. at  
13 678-80.) In October 2012, Dr. Fares conducted a colonoscopy and found that Plaintiff's  
14 colon appeared normal and biopsies showed mild nonspecific subacute inflammation but  
15 no evidence of colitis. (R. at 557.) The ALJ referred to the substantial and objective  
16 medical evidence (R. at 17-19) and provided another specific, clear and convincing  
17 reason to find that Plaintiff's testimony regarding the severity and frequency of his  
18 symptoms was not credible. *See Edlund*, 253 F.3d at 1157.

19 The Court finds no merit to Plaintiff's argument that the ALJ's reasons for  
20 discounting Plaintiff's subjective reports were not sufficiently specific. The ALJ reached  
21 a clear and convincing credibility determination by referring to specific and substantial  
22 evidence in the record, as discussed above, and the ALJ properly applied that  
23 determination to all of Plaintiff's symptom testimony. *Turner v. Comm'r, Soc. Sec.*  
24 *Admin.*, 613 F.3d 1217, 1225 (9th Cir. 2010); *Burch v. Barnhart*, 400 F.3d 676, 680 (9th  
25 Cir. 2005).

1           **B.     The ALJ Assigned Proper Weight to the Assessments of Plaintiff’s**  
2           **Treating Physicians and Properly Considered the Record as a Whole**

3           Plaintiff argued the ALJ committed reversible error by assigning inadequate  
4 weight to the assessment of one of Plaintiff’s medical care providers, Dr. Brown. (Pl.’s  
5 Br. at 16-19.) An ALJ “may only reject a treating or examining physician’s  
6 uncontradicted medical opinion based on ‘clear and convincing reasons.’” *Carmickle v.*  
7 *Comm’r of Soc. Sec.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citing *Lester v. Chater*, 81 F.  
8 3d 821, 830-31 (9th Cir. 1996)). “Where such an opinion is contradicted, however, it may  
9 be rejected for specific and legitimate reasons that are supported by substantial evidence  
10 in the record.” *Id.*

11           In this instance, the ALJ found that the Medical Assessment of Ability to Do  
12 Work-Related Physical Activities completed by Plaintiff’s primary care physician,  
13 Dr. Brown (R. at 533-34), was contradicted by all the other medical evidence in the  
14 record, including some of Dr. Brown’s own treatment notes. (R. at 18, 22.) The Court  
15 must therefore examine whether the ALJ provided specific and legitimate reasons for  
16 discounting Dr. Brown’s assessment, supported by substantial evidence when examining  
17 the record as a whole. *See Carmickle*, 533 F.3d at 1164.

18           As the ALJ noted (R. at 22), even in Dr. Brown’s assessment, he remarks that the  
19 limitations he records cannot be expected to result from the objective clinical or  
20 diagnostic findings and that “most of patient’s symptoms are subjective,” (R. at 534).  
21 Indeed, as the ALJ also notes (R. at 22), Dr. Brown’s remark that Plaintiff has one to two  
22 Crohn’s disease flares per month lasting two to three days each (R. at 533) is not  
23 supported by any objective medical evidence, including CT scans, x-rays and physical  
24 examinations, as the Court discussed above. Moreover, the symptoms Plaintiff  
25 subjectively reports and upon which Dr. Brown explicitly relies in his assessment may be  
26 secondary to Plaintiff’s narcotic pain medication abuse, as was noted throughout the  
27 medical record, and not Crohn’s disease flares. The ALJ provided specific and legitimate  
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1 reasons supported by substantial evidence in the record to disregard Dr. Brown's  
2 assessment and thus did not err in doing so.

3 Plaintiff also argues that the ALJ erred when he gave significant weight to the  
4 psychological assessment of Dr. Peetoom, the state examiner, but then "ignored"  
5 something Dr. Peetoom stated in his report. (Pl.'s Br. at 19-20.) The Court disagrees. The  
6 ALJ interpreted Dr. Peetoom's assessment in detail, pointing out—not ignoring—the fact  
7 that Plaintiff exhibited low intelligence in testing but that the results were an  
8 underestimate because Plaintiff felt rushed and that Plaintiff's "true mental capacity was  
9 indicated to be greater than suggested, as the claimant was able to respond to questions  
10 during the examination, maintain eye contact, interact appropriately, comprehend and  
11 remember instructions during the evaluation, maintain his personal hygiene  
12 independently, and . . . transition from task-to-task." (R. at 22.) Again, the ALJ provided  
13 specific and legitimate reasons supported by substantial evidence in the record to credit  
14 portions of Dr. Peetoom's assessment and thus did not err in doing so. The ALJ also  
15 properly weighed the state examining physicians' opinions (R. at 68-77, 79-98) in  
16 conjunction with the medical evidence in determining Plaintiff's RFC. (R. at 21-22.)

17 **III. CONCLUSION**

18 Plaintiff raises no error on the part of the ALJ, and the SSA's decision denying  
19 Plaintiff's Application for Supplemental Security Income benefits under the Act was  
20 supported by substantial evidence in the record.

21 IT IS THEREFORE ORDERED affirming the November 15, 2013 decision of the  
22 Administrative Law Judge, (R. at 13-31), as upheld by the Appeals Council on  
23 February 24, 2015, (R. at 1-3).

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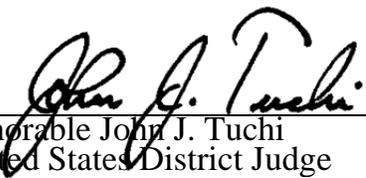
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IT IS FURTHER ORDERED directing the Clerk to enter final judgment consistent with this Order and close this case.

Dated this 26<sup>th</sup> day of September, 2016.

  
\_\_\_\_\_  
Honorable John J. Tuchi  
United States District Judge