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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MACKENZIE T. MORGAN, ET AL.,)	NO. 2:14-CV-06165- KS
Plaintiffs,)	
v.)	MEMORANDUM OPINION AND ORDER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social Security,)	
Defendant.)	

INTRODUCTION

On August 12, 2014, Mackenzie T. Morgan and C.V.M, a minor¹, through his guardian ad litem Gary D. Morgan (“Morgan”), filed a Complaint seeking judicial review of a decision by the Commissioner of Social Security denying their application for Child’s Insurance Benefits (“CIB”) following the death of their stepmother Dawn A. Bucks (“Bucks”). (Complaint, ECF No. 2.) On the same date, the Court granted C.V.M.’s petition seeking Morgan’s appointment as C.V.M’s guardian ad litem. (ECF

¹ “C.V.M” refers to Connor V. Morgan. (See A.R. at 5.) Because Connor was a minor acting through his father, Gary Morgan, as guardian ad litem, the minor is identified in the caption only by his initials.

1 No. 1.) On August 17, 2016, the parties consented, pursuant to 28 U.S.C. § 636(c), to
2 proceed before the undersigned United States Magistrate Judge. (Consents, ECF Nos.
3 26, 27.) On November 23, 2015, Defendant filed an Answer to the Complaint and a
4 Certified Administrative Record (“A.R.”). (ECF Nos. 34, 35.) On February 11, 2016,
5 Mackenzie T. Morgan, Connor, and Morgan (together, “Plaintiffs”), through their
6 respective counsel, filed a joint motion pursuant to Federal Rule of Civil Procedure
7 42(A), to consolidate the cases *Mackenzie T. Morgan et al., v. Carolyn W. Colvin*,
8 Case No. CV-06165-KS and *Gary D. Morgan v. Carolyn W. Colvin*, CV-05905-KS.
9 (ECF No. 38.) In case number CV-05905, Morgan seeks Father’s Insurance Benefits
10 (“FIB”). On February 12, 2016, the Court granted the motion to consolidate the cases,
11 ordering the two actions to continue as one case under case number CV 14-6165. (ECF
12 No. 39.)
13

14
15 On April 26, 2016, the parties filed a Joint Stipulation (“Joint Stip.”), whereby
16 Plaintiffs seek an order reversing the Commissioner’s decision that they are not
17 eligible for CIB and FIB, and awarding survivors’ benefits or, in the alternative,
18 remanding the matter for further administrative proceedings, and Defendant seeks an
19 order affirming the Commissioner’s decision. (Joint Stip., ECF No. 40). The Court
20 has taken the Joint Stipulation under submission without oral argument.
21

22 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

23

24 On October 31, 2011, Plaintiffs filed applications for CIB (Mackenzie and
25 Connor) and FIB (Gary), following the death of Dawne Bucks on October 29, 2011.
26 (A.R. 74; *see also* Joint Stip. at 2.) The Social Security Administration denied the
27 Plaintiffs’ applications for CIB and FIB initially and upon reconsideration, finding that
28

1 the “claimant had failed to establish that he had been married to [Bucks] for at least
2 nine months prior to her death.” (A.R. 78.) On February 28, 2012, Plaintiffs requested
3 a hearing before an Administrative Law Judge (“ALJ”). (A.R. 153-54.) On September
4 24, 2012, a hearing was held before ALJ Sally Reason. (A.R. 216-32.) Gary Morgan
5 attended and testified at the hearing without representation. (*Id.*) Mackenzie and
6 Connor did not attend the hearing. (*Id.*) On September 27, 2012, the ALJ issued an
7 unfavorable decision denying Plaintiffs survivors’ benefits. (A.R. 74.) Plaintiffs
8 requested review of the ALJ’s decision. (A.R. 182.) The Appeals Council denied the
9 request for review on May 16, 2014. (A.R. 5-17.) This timely appeal followed.

11 SUMMARY OF ADMINISTRATIVE DECISION

13 A. The Morgan/Bucks Family History

14
15 Gary D. Morgan and Dawne A. Bucks were married on August 6, 2011. (A.R.
16 225.) Bucks died of cancer on October 29, 2011. (*Id.*) Mackenzie and Connor are
17 Morgan’s children by a prior marriage.² (A.R. 218.) Bucks was neither their
18 biological nor adoptive parent. (A.R. 221-22.) The couple had been married less than
19 three months when Bucks died. (A.R. 225.) However, their family relationship began
20 more than a year earlier. In July 2010, Morgan and Bucks signed a Declaration of
21 Domestic Partnership that Morgan submitted to the City of Los Angeles’ Department
22 of Fire and Police Pensions on or about July 28, 2010. (A.R. 140.)³ After Bucks’
23 death, based on the domestic partnership declaration and their marriage a year later,
24 Morgan applied for FIB and his children applied for CIB as Bucks’ stepchildren.
25 (A.R. 78.) At the hearing, Morgan submitted additional documents concerning his

26
27 ² Mackenzie was a minor at the time her application for CIB was filed, but she was 18 years old by the time of the
hearing, and Connor was 15. (A.R. 218.)

28 ³ Morgan retired from the Los Angeles Fire Department (“LAFD”) in 2004. (A.R. at 223-24.)

1 and his children's claims, which the ALJ received as exhibits to be added to the record.
2 (A.R. 230.)

3
4 At the outset of her decision, the ALJ noted that the record did not contain a
5 copy of Gary's application for FIB, but she reasoned that "because the Social Security
6 Administration has already made determinations on the issue of Mr. Morgan's
7 entitlement to Father's Insurance Benefits, and because the issue of entitlement to such
8 benefits is critical to a determination of whether surviving Child's Insurance Benefits
9 can be paid to Mackenzie or Connor, the [ALJ] will proceed to the merits of this
10 claim." (A.R. 78.)

11
12 Next, the ALJ identified the issues to be determined as "whether the claimants
13 satisfy the criteria for eligibility for [FIB and CIB] benefits as specified in the Social
14 Security Act as well as in Social Security Regulations 20 CFR 404.335, 404.339,
15 404.350, and 404.357." (A.R. 79.)

16 17 **B. Applicable Laws and Regulations**

18
19 Social Security Act (the "Act") section 202(d) and 20 CFR 404.350 provides
20 that a person is entitled to child's benefits on the earnings record of an insured person
21 who has died if they "are the insured person's child, based upon a relationship
22 described in §§ 404.355 through 404.359," are dependent on the insured as defined in
23 the regulations, are unmarried, and are under age 18. 20 CFR 404.350 (a)(1)-(5).

24
25 Pursuant to Section 216(e) of the Act and 20 CFR 404.357, to be eligible for
26 benefits as the insured's stepchild, "the marriage between the insured and your parent
27 must be a valid marriage under State law" and if the insured is not alive when you
28 apply, *you must have been his or her stepchild for at least 9 months immediately*

1 preceding the day the insured died.” 20 CFR 404.357 (emphasis added). The 9-month
2 requirement does not have to be met if the marriage lasted less than 9-months, and “at
3 the time of [the marriage] the insured was reasonably expected to live for 9 months,
4 and the death of the insured was accidental. The death is accidental if it was caused by
5 an event that the insured did not expect, [and] it was the result of bodily injuries
6 received from violent and external causes[.]” 20 CFR 404.335.

7
8 A surviving spouse may be entitled to FIB on the earning record of a deceased
9 insured if the “widower was married to the insured wage earner for at least nine
10 months immediately before the insured wage earner died” or if one of the exceptions in
11 20 CFR 404.335(a) applies, i.e. the insured spouse was reasonably expected to live for
12 nine months and her death was accidental. 20 CFR 335(a)(2)

13 14 **C. The ALJ’s Analysis**

15
16 After reviewing the documentary evidence and hearing testimony, the ALJ
17 concluded that Morgan did not meet the criteria for entitlement to FIB and Mackenzie
18 and Connor did not satisfy the criteria for entitlement to CIB as stepchildren. (A.R.
19 73.) The ALJ based her conclusion on the fact that Morgan was not married to Bucks
20 for nine months prior to her death, therefore, Mackenzie and Connor “were also clearly
21 not the stepchildren of the insured wage earner for nine months prior to her death.”
22 (*Id.*)

23
24 The ALJ further found that although Morgan and Bucks executed a domestic
25 partnership declaration in July 2010, the document was irrelevant to Plaintiffs’ FIB and
26 CIB applications because a domestic partnership and a marriage are “considered
27 separate and distinct legal relationships under California law.” (*Id.* (*citing* 20 CFR
28 404.344, 404.345 and Cal. Fam. C. sections 300-310 and 297-297.5).) To be

1 recognized under California law, a “registered domestic partnership” must be
2 registered with the California Secretary of State. Morgan and Bucks’ domestic
3 partnership document was submitted to the Department of Fire and Police Pensions in
4 the City of Los Angeles. Morgan and Bucks never registered with the California
5 Secretary of State. The ALJ also determined that none of the exceptions listed in 20
6 CFR 404.334(a) (2) that might entitle Morgan to FIB based on a marriage of less than
7 9 months apply here. (A.R. 80.) Bucks’ death did not qualify as “accidental” within
8 the meaning of the regulation because her death from cancer, while certainly
9 unexpected at the time she and Gary married, was not the result of “bodily injuries
10 received from violent and external causes.” (*Id.*)
11

12 In addition, with respect to Mackenzie and Connor’s claim for CIB, the ALJ
13 found Gary’s reliance on Acquiescence Rule 86-12(9) “misplaced” because “the Social
14 Security Administration has never denied that Mackenzie and Connor were the insured
15 wage earner’s stepchildren. However they were clearly not the insured wage earner’s
16 stepchildren for at least nine months prior to her death, and therefore do not satisfy the
17 applicable durational requirement in this situation.” (*Id.*)
18

19 STANDARD OF REVIEW

20
21 Under 42 U.S.C. § 405(g), this Court reviews the ALJ’s decision to determine
22 whether it is free from legal error and supported by substantial evidence in the record
23 as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is
24 more than a mere scintilla but less than a preponderance; it is such relevant evidence as
25 a reasonable mind might accept as adequate to support a conclusion.” *Gutierrez v.*
26 *Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal quotation marks
27 and citations omitted). “Even when the evidence is susceptible to more than one
28

1 rational interpretation, [reviewing courts] uphold the ALJ’s findings if they are
2 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
3 F.3d 1104, 1110 (9th Cir. 2012). The Court will also not reverse the Commissioner’s
4 decision “[w]here evidence is susceptible to more than one rational interpretation,”
5 even if it were to disagree with the ALJ’s conclusions. *Burch v. Barnhart*, 400 F.3d
6 676, 679 (9th Cir. 2005).

7
8 Although this Court cannot substitute its discretion for that of the ALJ, it must
9 nonetheless review the record as a whole, “weighing both the evidence that supports
10 and the evidence that detracts from the Commissioner’s conclusion.” *Lingenfelter v.*
11 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation
12 omitted). “The ALJ is responsible for determining credibility, resolving conflicts in
13 medical testimony, and for resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035,
14 1039 (9th Cir. 1995).

15
16 The Court may review only the reasons stated by the ALJ in her decision “and
17 may not affirm the ALJ on a ground upon which [s]he did not rely.” *Orn*, 495 F.3d at
18 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). However, the
19 Court will not reverse the Commissioner’s decision if it is based on harmless error,
20 which exists when it is “clear from the record that an ALJ’s error was ‘inconsequential
21 to the ultimate nondisability determination.’” *Robbins v. Soc. Sec. Admin.*, 466 F.3d
22 880, 885 (9th Cir. 2006) (quoting *Stout v. Comm’r of Soc. Sec.*, 454 F.3d 1050, 1055
23 (9th Cir. 2006).)

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1 **DISPUTED ISSUES**

2
3 Plaintiffs challenge the Commissioner’s decision, raising the following five
4 issues, whether:

- 5
6 (1) The ALJ properly considered Plaintiffs’ status as Dawne Bucks’ stepchildren
7 in determining their eligibility for CIB;
8
9 (2) The ALJ properly considered the Domestic Partnership of Morgan and
10 Dawne Bucks in determining Morgan’s application for FIB;
11
12 (3) The ALJ properly developed the record and issued a legally insufficient
13 decision;
14
15 (4) Plaintiffs were denied their rights of due process; and
16
17 (5) Remand is appropriate pursuant to 42 U.S.C. § 405(g) based on a showing of
18 new evidence.
19

20
21 For the following reasons, the Court finds that the ALJ did not err her
22 determination that Mackenzie and Connor Morgan are not entitled to Child Insurance
23 Benefits as Bucks’ stepchildren, and Morgan is not entitled to Father’s Insurance
24 Benefits because the Morgan/Bucks’ married failed to meet the durational requirement
25 necessary for Plaintiffs to receive such benefits. Accordingly, while the
26 circumstances of this case are unfortunate, the ALJ’s decision is free of legal error and
27 must be affirmed.
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DISCUSSION

1. The ALJ Properly Considered the Status of Mackenzie and Connor Morgan under California Law as Stepchildren of Dawne Bucks.

Plaintiffs argue that the ALJ did not give proper consideration to Mackenzie’s and Connor’s status as Bucks’ stepchildren in concluding that the children were not eligible to receive CIB. (Joint Stip. at 4-8.) Defendant responds that under the Act, Mackenzie and Connor could only be eligible for CIB if they had been stepchildren “not less than nine months immediately preceding the day on which [the insured] individual died.” (Joint Stip. at 8, (*citing* Soc. Sec. Act § 216(e) (2); 42U.S.C. § 416(e)(2)).) Defendant’s analysis is correct.

Plaintiffs concede that stepchildren are only entitled to CIB if the criteria of 20 C.F.R. 404.340(a)(1)-(5) are satisfied. (Joint Stip. at 4.) However, 20 C.F.R. § 404.357 also requires that to receive survivor benefits, such children must have been “stepchildren” of the insured for at least nine months prior to the insured’s death. Plaintiffs argue that even though Morgan and Bucks were not married until August 6, 2011 (A.R. 208) and she died on October 29, 2011 (A.R. 225), Mackenzie and Connor should qualify for CIB as stepchildren within the meaning of 20 C.R.F. 404.350 based on the 15 month period after Morgan and Dawn submitted a domestic partnership declaration to Morgan’s LAFD pension plan in July 2010. In support of their argument, Plaintiffs rely on broad principles outlined in California’s Uniform Parentage Act (“UPA”) and the Agency’s Acquiescence Ruling 86-12(9) (“AR 86-12(9)”). (Joint Stip. at 5-8.) In so doing, however, Plaintiffs wholly ignore more specific California law governing how parent-child relationships are established, as

1 well as California’s statutory requirements for establishing a registered domestic
2 partnership.

3
4 As an initial matter, AR 86-12(9) does not, as Plaintiffs appear to believe,
5 mandate that Mackenzie and Connor are entitled to CIB benefits. (*See* Joint Stip. at 4.)
6 The ruling rests on the Ninth Circuit’s holding in *Hutcheson v. Califa*, 638 F.2d 96
7 (9th Cir. 1981) and provides that because the term “stepchild” is not specifically
8 defined in the Social Security Act, the definition of “stepchild” is governed by State
9 law. AR 86-12(9). California law does not recognize an automatic parental
10 relationship between a parent and stepchildren. While an adopted child and their
11 adoptive parents are accorded the legal relation of parent and child under California
12 law, “no such fundamental bond is recognized, on the other hand, in the stepparent-
13 stepchild relationship.” *In re Jodi B.*, 227 Cal. App. 3d 1322, 1328 (1991).⁴ Thus, the
14 ALJ correctly found that Plaintiffs’ reliance on AR 86-12(9) is misplaced.

15
16 The issue here for the purpose of entitlement to CIB was not whether Mackenzie
17 and Connor were Bucks’ stepchildren when she died. In fact, the ALJ noted that “the
18 Social Security Administration has never denied that Mackenzie and Connor were the
19 insured wage earner’s stepchildren.” (A.R. 73.) But, the ALJ went on to explain,
20 under Social Security regulations, unless one of the exceptions applies, stepchildren
21 may only receive CIB if they were stepchildren of the insured for at least nine months
22 before the insured’s death. (*Id.*) Based on Morgan and Bucks’ marriage of less than
23 three months before her death from cancer, Mackenzie and Conner were not Bucks’
24 stepchildren for at least nine months before she died.

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⁴ California law defines a “natural parent” as a “nonadoptive parent . . . whether biologically related to the child or not.” Cal. Fam. Code § 7601(a). The statute also defines the “parent and child relationship to mean “the legal relationship existing between a child and the child’s natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations.” (Cal. Fam. Code § 7601(b). The law “does not preclude a finding that a child has a parent and child relationship with more than two parents.” (Cal. Fam. Code § 7601(c).)

1 Accordingly, the Court finds that the ALJ’s decision regarding Mackenzie and
2 Connor’s ineligibility for CIB and, therefore, Morgan’s ineligibility for FIB is free of
3 legal error and supported by substantial evidence.
4

5 **2. The ALJ Did Not Err in Evaluating Morgan’s and Bucks’ Domestic**
6 **Partnership.**
7

8 Plaintiffs argue that the appropriate time frame for the commencement of
9 Plaintiffs’ status as “stepchildren” should be measured from July 2010, when Gary
10 Morgan and Bucks signed a declaration of domestic partnership with the Los Angeles
11 Department of Fire and Police Pensions. (Joint Stip. at 6; *see also* A.R. at 140
12 (Declaration of Domestic Partnership).) While this document may have been
13 sufficient to assure Bucks’ entitlement to benefits under Morgan’s LAFD pension plan,
14 it did not establish a registered domestic partnership with the State of California.
15 California law requires that “[a] domestic partnership shall be established in California
16 when both persons file a Declaration of Domestic Partnership with the Secretary of
17 state pursuant to this division . . . [.]” Cal. Fam. Code § 297 (b); (*see also* A.R. at 60.)
18

19 Social Security Administration Program Operations Manual (“POMS”)⁵
20 recognizes that a stepchild relationship may arise from same sex relationships and non-
21 marital legal relationships (“NMLRs”). POMS GN 00210.001. Under this provision,
22 a claimant is recognized as a stepchild of the wage earner if the wage earner and the
23 claimant’s parent entered into either a valid marriage or an NMLR, but the NMLR
24 must be valid under the applicable state law. POMS GN 00210.004. California’s
25 Domestic Partner Rights and Responsibilities Act confers certain rights, including
26 rights of inheritance on domestic partners, but only if the domestic partnerships is
27

28 ⁵ The Social Security Administration website describes POMS as “a primary source of information used by Social Security employees to process claims for Social Security benefits.” *See* <https://secure.ssa.gov/poms.nsf/home!readform>.

1 registered with the California Secretary of State after January 1, 2001. Cal. Fam. C.
2 § 299.3. Courts have upheld that registration is a prerequisite to pursuing domestic
3 partnership rights under California law and domestic partnerships registered with city
4 or county agencies do not confer the benefits afforded under state law. *Valez v. Smith*,
5 142 Cal. App. 4th 1154, 1167 (2006).

6
7 Plaintiffs do not dispute that Morgan and Bucks never filed any documents with
8 the California Secretary of State for a registered domestic partnership, but only
9 submitted a declaration in connection with Morgan’s LAFD pension benefits. (A.R.
10 24, 140.) In fact, Morgan and Bucks were precluded by statute from registering their
11 relationship as a domestic partnership. In California, registered domestic partnerships
12 are only permitted between persons of the same sex, or between persons of the
13 opposite sex when “one or both of the persons are over the age of 62.” Cal. Fam. Code
14 § 297 (b) (5). Morgan and Bucks did not meet either of these requirements. Bucks
15 was only 50 years old when she died (*see* A.R. 52) and at the hearing, Morgan testified
16 that he was 60 years old (A.R. at 223). Indeed, Plaintiffs concede the “flaws in the
17 July 28, 2010 domestic partnership.” (Joint Stip. 16.)

18
19 Nevertheless, Morgan asserts that because “[he] and their children lived together
20 as a family for nearly two years[,] [t]he requisite stepchild-stepparent relationships
21 were formed well before Ms. Bucks[’] passing, thereby satisfying the durational
22 requirement.” (A.R. at 214.) Unfortunately, as the ALJ explained in her decision,
23 entitlement to survivor benefits for stepchildren is determined by the express
24 provisions of Social Security regulation 20 C.F.R. 404.357, not by the total amount of
25 time that the wage earner and the children’s natural parent may have resided together
26 as a family while supporting the children. The regulation unequivocally provides that
27 a stepchild relationship arises based on a valid marriage under State law or a marriage
28 which would be valid except for a legal impediment” and except in the case of the

1 wage-earner’s accidental death, the stepchild-stepparent relationship must exist for at
2 least nine months before the insured step parent’s death for a stepchild to qualify for
3 CIB.⁶ 20 C.R.F. 404.357.

4
5 Consequently, the ALJ did not err in finding that the only relevant time frame
6 for the durational requirement in assessing Plaintiffs’ eligibility for CIB and FIB was
7 the tragically short duration of Morgan and Bucks’ marriage, i.e. August 6, 2011 –
8 October 29, 2011, less than three months.

9
10 Accordingly, while the Court recognizes the result that flows from the
11 application of these legal rules may seem harsh to Plaintiffs, the Court finds the ALJ
12 did not err in evaluating Morgan and Bucks’ domestic partnership status as it relates to
13 Plaintiffs’ eligibility for survivor benefits and the decision is supported by substantial
14 evidence.

15
16 **3. The ALJ Properly Developed the Record and Her Decision is Legally**
17 **Sufficient.**

18
19 Plaintiffs concede that “the durational requirement for all plaintiffs is the sole
20 issue[]” in regards to the CIB/FIB eligibility determination. (Joint Stip. at 26.) Still,
21 they contend that in making the adverse eligibility decision, the ALJ failed to
22

23 ⁶ California law does not recognize common law marriage. *Menchaca v. Farmers Ins. Exch.*, 59 Cal. App. 3d 117, 128
24 (1976) (“In California, the common-law marriage is not recognized[.]”); *see also Elden v. Sheldon*, 46 Cal.3d 267, 275
25 (1988). However, California does recognize a “putative spouse” in circumstances where a marriage is void or voidable
26 and the couple believed in good faith that their marriage was valid. Cal. Fam. C. § 2251; *see also Ceja v. Rudolph &*
27 *Sletten, Inc.*, 56 Cal.4th 1113, 1122 (2013). The doctrine is inapplicable here, where the record clearly establishes that
28 Morgan and Bucks knew they were not legally married in 2010 because they executed the declaration of domestic
partnership with the LAFD and Morgan admitted that they postponed their initial wedding date. (A.R. 24.) Nor is there
any evidence that before their actual marriage on August 6, 2011, the couple “went through a marriage ceremony . . . that
would have resulted in a valid marriage except for a legal impediment.” 20 C.F.R. § 404.346.

1 adequately develop the record and make findings “in accordance with the Act, agency
2 regulations, rulings and policy.” (Joint Stip. at 23.) Defendant responds that the
3 “ALJ properly disregarded the declaration of domestic partnership filed with the Los
4 Angeles Department of Fire and Police Pensions.” (Joint Stip. at 25.)

5
6 The Ninth Circuit has held that “in interpreting the evidence and developing the
7 record, the ALJ does not need to ‘discuss every piece of evidence.’” *Howard Ex Rel.*
8 *Wolff v. Barnhart*, 341 F. 3d 1006, 1012 (9th Cir. 2003) (citing *Black v. Apfel*, 143
9 F.3ds 383, 386 (8th Cir. 1998).) The ALJ “is not required to discuss evidence that is
10 neither significant nor probative.” (*Id.*) Here, the ALJ properly disregarded the
11 LAFD declaration of domestic partnership because it did not establish that Plaintiffs
12 satisfied the durational requirements to be entitled to benefits since Mackenzie and
13 Connor were not Bucks’ stepchildren for at least nine months prior to her death. (A.R.
14 80.)

15
16 As discussed above, Morgan and Bucks did not register as a domestic
17 partnership with the California Secretary of State, nor could they because under the
18 California statute, registered domestic partnerships are recognized only between same-
19 sex couples or, in the case of heterosexual couples, where one partner is age 62 or
20 older. *See* Cal. Fam. Code § 297 (b) (5). Thus, the only time frame relevant for the
21 ALJ’s eligibility analysis is the very brief period of the Morgan/Bucks marriage:
22 August 6, 2011 to October 29, 2011, just under three months.

23
24 In the Joint Stipulation and in a supplemental briefing submitted to the Appeals
25 Council in May 2014, Plaintiffs argue that the United States Supreme Court’s decision
26 in *United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675 (2013) provides a legal
27 basis to find Plaintiffs eligible for survivor benefits. (*See* A.R. 210.) Plaintiffs’
28 argument that *Windsor* “directly affects [the Morgans’] appeal” is misguided. (A.R.

1 213.) The Supreme Court’s ruling in *Windsor* declaring Section 3 of the Defense of
2 Marriage Act unconstitutional is irrelevant here. Nothing in *Windsor* pertains to the
3 duration of a stepchild-stepparent relationship for purposes of determining a
4 stepchild’s eligibility for survivor’s benefits. Accordingly, the ALJ did not err in
5 failing to consider *Windsor* in her determination that Plaintiffs did not meet the
6 eligibility requirements under Agency regulations for CIB and FIB.

7
8 Plaintiffs also contend that the ALJ erred in failing to consider Morgan’s status
9 as a widower during their period as domestic partners under the rules of intestate
10 succession pursuant to California Probate Code Section 6401. (Joint Stip. at 20, 23.)
11 These succession rules are inapplicable and irrelevant to the Social Security eligibility
12 determinations at issue. While the Probate Code provides that California’s rules of
13 intestate succession apply equally to spouses and domestic partners, the Probate Code
14 does not in any way abrogate the requirements of California Family Code § 297(b)(5)
15 for the formation of a valid registered domestic partnership in California. Morgan and
16 Bucks were ineligible under California law to register for a domestic partnership.

17
18 Consequently, the Court that the ALJ adequately developed the record with
19 respect to the eligibility determination and the decision is without legal error.

20 21 **4. Plaintiffs Were Not Denied Due Process.**

22
23 Plaintiffs also contend that they were denied a fair judicial proceeding in
24 violation of the Due Process Clause of the Fifth Amendment. (Joint Stip. at 27.)
25 Specifically, Plaintiffs argue, based on the same reasoning and authorities offered on
26 their previous issues, that the ALJ’s “insufficient reasoning and a misinterpretation of
27 California domestic partnership law . . . resulted in a deprivation of Plaintiffs’ Due
28 Process Rights.” (*Id.* at 29.) However, as discussed above, the Court finds no error

1 in the ALJ's determination that Plaintiffs' reliance on the AR 86-12(9) was
2 "misplaced." The Acquiescence Ruling did not change California law with respect to
3 the stepchild-stepparent relationships; did not curtail the nine month duration
4 requirement to make Mackenzie and Connor eligible for CIB and Morgan, as a result,
5 eligible for FIB, under Agency regulations; and did not change any of the
6 requirements under California law to establish a registered domestic partnership.

7
8 Plaintiffs also assert that the decision should be reversed and remanded because
9 of alleged personal bias by the ALJ. (A.R. 30-31.) But Plaintiffs point to no evidence
10 in the record that demonstrates bias or prejudice on the ALJ's part. Morgan attended
11 the hearing on September 24, 2012 without a representative. At the outset of the
12 hearing, the ALJ asked Morgan if he wished "to have additional time if you want to try
13 and secure a representative." (A.R. 221.) Morgan indicated that he had "made
14 numerous attempts" to secure counsel but found it difficult in a case that did not
15 involve disability. (A.R. 221.) The ALJ then noted "Well, you know, the other issue,
16 sir, is that you have to have a prospect of being successful. And in your case, you're
17 filing for children's benefits where there was no biological relationship. So they're not
18 entitled to your wife's benefits." (A.R. 222.) Still, the ALJ allowed Morgan to present
19 his position on the issue of his children's eligibility as stepchildren, including
20 references to "the *Hutchinson* case in AR 86-12(9)," and "general federal common law
21 relating to family relationships." (*Id.*) The ALJ pointed out that Morgan's
22 interpretation of the regulations was incorrect. (A.R. 223.)

23
24 Plaintiffs assert that the ALJ did not allow Morgan to present his position. The
25 record does not support this assertion. The ALJ was careful to confirm that Morgan
26 wished to proceed without representation, she questioned Morgan regarding his
27 relationship with Bucks, and allowed Morgan to present his view, albeit incorrect, on
28 why he believed his children should be entitled to CIB. (A.R. 218-31.) Moreover, she

1 explained on the record in detail why Plaintiffs did not meet the eligibility
2 requirements. (A.R. 223-25.) Morgan brought additional documents to the hearing
3 that he believed supported his and his children’s applications for survivor benefits.
4 (A.R. at 228.) The ALJ received the documents and added them to the record as
5 exhibits. (A.R. 231.) While the hearing was brief and the ALJ issued her decision just
6 three days after the hearing, the Court finds no evidence of personal bias or prejudice
7 in the record.⁷

8
9 **5. Remand is Not Warranted Under Sentence Six of Section 405(g).**

10
11 Plaintiffs’ final argument is that remand is warranted under sentence six of 42
12 U.S.C. § 405(g) because of a showing of new evidence. (Joint Stip. at 343-36.)
13 Plaintiffs point to the U.S. Supreme Court decisions in *Windsor* and *Obergefell v.*
14 *Hodges*, __U.S. __, 135 S. Ct. 2071 (2015), and Social Security Administration policy
15 changes under POMS GN 00305.005, and POMS GN 00210.505 that Plaintiffs
16 contend “may affect the outcome of this case.” (Joint Stip. at 34-35.) Defendants
17 respond that a sentence six remand is not appropriate where there is merely a change
18 of law and Plaintiffs do not cite any new evidence that is material to the durational
19 question at the heart of this case. (*Id.* at 37.) The Court agrees.

20
21 Sentence six of 42 U.S.C. § 405(g) provides that :

22
23
24 ⁷ It is difficult to discern tone from a written transcript, but it seems to the Court that the ALJ may have grown
25 somewhat impatient with Morgan’s questions and his repeated efforts to argue points directly contrary to the governing
26 regulations. (*See, e.g.*, A.R. 226 (exchange where Morgan is describing events leading up to Bucks’ cancer diagnosis and
27 the ALJ responds “Sir, just tell me about the death.”); 229 (Morgan asks for further explanation of why Bucks’ death did
28 not fall into the “accidental” exception to the nine-month rule about marriage and the ALJ responds: “No sir. I’m not here
to make—to explain. My position is to make a decision., sir. I’ll take everything you say into consideration, but I don’t
advise.”)) Even so, there is nothing in the record to suggest that the ALJ’s adverse decision regarding Plaintiffs’
eligibility is based on anything other than an accurate application of the law and agency policies and regulations to the
facts of the case.

1 The court may,[] at any time order additional evidence to be taken
2 before the [Commissioner], but only upon a showing that there is new
3 evidence which is material and that there is good cause for the failure to
4 incorporate such evidence into the record in a prior proceeding[.]
5

6 42 U.S.C. § 405(g) (emphasis added).
7

8 Subsequent to the ALJ’s September 2012 adverse decision in this case, and in
9 response to the *Windsor* decision, the Social Security Administration adopted new
10 guidelines governing “when entitlement to benefits as a stepchild depend on the
11 [insured’s] same-sex marriage or [NMLR] with the child’s parent or adoptive parent.”
12 POMS GN 00210.505. In the case of an NMLR, the guidelines direct agency
13 personnel to consult GN 00210.004 , which in turn advises that “to determine if a
14 claimant’s NMLR is recognized for benefit purposes, you must determine that the
15 NMLR[] was valid in the state where it was established.” POMS GN 00210.004(C)
16 (emphasis added).⁸ Thus, the newly enacted guidelines are not helpful to Plaintiffs
17 because they did not change California law with respect to the State’s requirements for
18 registered domestic partnerships. Nor do they change the durational requirements for
19 entitlement to CIB benefits. In fact, the guidelines expressly specify that in the case of
20 NMLRs, to obtain child’s benefits based on a stepchild relationship, “The parent and
21 stepparent of a child filing for stepchild benefits must meet the nine-month duration of
22 marriage requirement if the [stepparent] is deceased[.]” POMS GN
23 00210.004(E)(1)(b).
24

25 Plaintiffs do not present any new evidence that establishes that Mackenzie and
26 Connor were stepchildren within the Social Security Administration regulations for at
27

28 ⁸ Available at [www.https://secure.ssa.gov/apps10/poms.nsf/lnx/020021000](https://secure.ssa.gov/apps10/poms.nsf/lnx/020021000).

1 least nine months before Bucks' death. Subsequent changes in agency policies and
2 guidelines pertaining to NMLRs, and the U.S. Supreme Court's decisions concerning
3 same-sex marriage and non-marital relationships do not cure this fatal flaw in
4 Plaintiffs' applications for survivor benefits.

5
6 For all the reasons discussed above, the Court finds no legal error in the ALJ
7 determination and that the decision is supported by substantial evidence. On that basis,
8 remand is not warranted.

9
10 **CONCLUSION**

11
12 For the reasons stated above, IT IS ORDERED that the decision of the
13 Commissioner is AFFIRMED.

14
15 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of
16 this Memorandum Opinion and Order and the Judgment on counsel for Plaintiffs and
17 for Defendant.

18
19 LET JUDGEMENT BE ENTERED ACCORDINGLY.

20
21 DATED: May 12, 2016

22
23 

24
25

KAREN L. STEVENSON
26 UNITED STATES MAGISTRATE JUDGE
27
28