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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ADELAIDO A. JACINTO,

CASE NO. 1:11-cv-01114-SMS

Plaintiff,

v.

ORDER AFFIRMING IN PART AND  
REVERSING IN PART THE AGENCY’S  
DENIAL OF BENEFITS AND DIRECTING  
ENTRY OF JUDGMENT

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

Plaintiff Adelaido Jacinto, by his attorneys, Law Offices of Lawrence D. Rohlfig, seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his application for disability insurance benefits under Title II, and Supplemental Security Income (SSI) under Title XVI, of the Social Security Act (42 U.S.C. § 301 *et seq.*) (the “Act”). The matter is currently before the Court on the parties’ cross-briefs, which were submitted, without oral argument, to the Honorable Sandra M. Snyder, United States Magistrate Judge. Following a review of the complete record and applicable law, this Court affirms the Commissioner’s decision for the time period from July 25, 2008, through December 15, 2010, and reverses the Commissioner’s decision for the time period beginning December 16, 2010.

**I. Administrative Record**

**A. Procedural History**

On January 25, 2006, Plaintiff applied for disability benefits pursuant to Title II of the Social Security Act, alleging disability beginning September 21, 2005. His claims were initially

1 denied on June 29, 2006, and upon reconsideration, on January 25, 2007. On February 28, 2007,  
2 Plaintiff filed a timely request for a hearing. Plaintiff appeared and testified at a hearing on May  
3 13, 2008. On July 24, 2008, Administrative Law Judge Michael J. Haubner denied Plaintiff's  
4 application. The Appeals Council denied review on May 24, 2010. On August 10, 2010,  
5 Plaintiff filed a complaint seeking District Court review. *Jacinto v. Astrue*, Doc. 1 (E.D.Cal.)  
6 (No. 1:10-cv-01475-SMS). The District Court affirmed the Commissioner's decision on October  
7 21, 2011. *Jacinto v. Astrue*, Doc. 16 (E.D.Cal. October 21, 2011) (No. 1:10-cv-01475-SMS).

8         Meanwhile, on September 3, 2006, Plaintiff again applied for disability benefits pursuant  
9 to Title II of the Social Security Act, alleging disability beginning July 25, 2008. On September  
10 15, 2008, he added a claim for Supplemental Security Income (SSI), also alleging disability  
11 beginning July 25, 2008. His claims were initially denied on January 14, 2009, and upon  
12 reconsideration, on April 20, 2009. On June 1, 2009, Plaintiff filed a timely request for a  
13 hearing. Plaintiff appeared and testified at a hearing on October 7, 2010. On October 25, 2010,  
14 Administrative Law Judge Christopher Larsen denied Plaintiff's application. The Appeals  
15 Council denied review on May 31, 2011. On July 5, 2011, Plaintiff filed a complaint seeking  
16 District Court review.

17         **B.         The Agency Record**

18         **Plaintiff's testimony.** Plaintiff (born December 16, 1960) attended school in Mexico  
19 through the second grade. He had been a field worker for twenty-five years when he had open  
20 heart surgery in 2005. Thereafter, his incision became infected, and he did not return to work.  
21 He had knee surgery in 2006 and shoulder surgery in 2010. He was always in pain in his chest,  
22 knees, and back. At the hearing, Plaintiff's left arm was supported by a sling following rotator  
23 cuff surgery. He walked with a cane.

24         Plaintiff lived with his wife and his father-in-law. On a typical day, he awoke at about  
25 6:00 a.m. When he was not recovering from shoulder surgery, he was able to perform his own  
26 personal care and dress himself. He could fix simple meals. When he was able, he helped with  
27 household chores, such as dusting and laundry. Outside, he watered plants or trimmed dry leaves.

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1 Plaintiff watched television about three hours a day. He visited his mother, who lived nearby,  
2 once a week.

3 Plaintiff estimated that he could stand for an hour before needing to sit. He could sit for  
4 twenty or thirty minutes. He could lift about ten pounds. Plaintiff was five feet, seven inches tall,  
5 and weighted 226 pounds. (Plaintiff had gained about 25 pounds due to inactivity following his  
6 recent shoulder surgery.)

7 **Wife's testimony.** Josie Jacinto had been married to Plaintiff for sixteen years. She  
8 testified that now, he was always in pain. He sometimes became light-headed. She had been  
9 helping Plaintiff dress since he had open heart surgery in 2005. He became easily frustrated and  
10 irritable with himself and others when he attempted to perform household tasks and experienced  
11 pain in his back, arms, or knees. He often volunteered to perform gardening, sweeping, or  
12 vacuuming even though his frequent rests meant the task took a long time. Mrs. Jacinto would  
13 prefer that Plaintiff rest and let her perform the household tasks, particularly since she feared that  
14 he would become lightheaded, fall, and hurt himself.

15 **Exertion questionnaire.** Plaintiff submitted an exertion questionnaire on a form  
16 apparently prepared by his attorney. He reported constant pain, nausea, fatigue, and shortness of  
17 breath. Although he was able to drive his automatic car, he only did so when he wife could not  
18 arrange to drive for him. Although he could sit and water the garden, he could no longer cut or  
19 edge the lawn nor prune plants. His medications included Warfarin (blood thinner), Lipitor  
20 (cholesterol), Diovan (blood pressure), aspirin (blood thinner), Gabapentin (pain), Lovaza  
21 (cholesterol), Celebrex (pain), fibercon (constipation), Hydrochlorothiazide (taken with Diovan),  
22 Lexapro (depression), and Nitroquick (as needed for chest pain).

23 **Medical records.** Doctors' reports indicated that Plaintiff's weight ranged from 238 to  
24 267 pounds.

25 Plaintiff was examined at Bautista Medical Group on August 13, 2007, and August 19,  
26 2008. (On another occasion, Plaintiff left before seeing the doctor.) The medical notes  
27 documented Plaintiff's complaints of chest pain, knee pain, shoulder pain, low back pain, and  
28 high blood pressure.

1 In September 2008, University Medical Center began to provide follow-up care for  
2 Plaintiff's aortic valve replacement. Doctors there also regularly monitored his blood since he  
3 was taking anticoagulants. At the initial appointment, Plaintiff complained of fatigue, shortness  
4 of breath, and chest pain radiating to his jaw and arm.

5 Interpretation of an electrocardiogram administered on October 1, 2008, was technically  
6 limited by Plaintiff's obesity. Cardiologist Ralph J. Wessel, M.D., concluded:

7 The left ventricular chamber size is normal.  
8 Mild concentric left ventricular hypertrophy is observed.  
9 There is normal left ventricular systolic function.  
10 The estimated ejection fraction is 55-60 %.  
11 The left atrium is mildly dilated.  
12 The mechanical aortic valve appears well seated with normal function.

13 AR 217.

14 Wessel reached the same conclusions following a repeat echocardiogram on June 15,  
15 2010.

16 A myocardial infusion study, performed November 3, 2008, showed no evidence of a prior  
17 infarction or significantly reduced coronary artery perfusion reserve. At 65 percent, the left  
18 ventricular ejection fraction was within normal limits. No wall motion abnormality was  
19 identified. A stress test performed the same day was negative for both ischemia and angina.

20 **Dr. Damania's opinion.** On November 4, 2008, internist Rustom F. Damania, M.D.,  
21 examined Plaintiff as an agency consultant. Plaintiff complained of chest wall pain since his  
22 valve replacement, chest pains on two occasions in the past two weeks, pain in the right knee and  
23 left shoulder, hypertension, and hyperlipidemia. Plaintiff denied any psychiatric history. He  
24 walked with a cane.

25 The examination was generally unremarkable. Plaintiff's range of motion was within  
26 normal limits in all respects except for limited motion in his left shoulder. He displayed slight  
27 tenderness of his left shoulder and chest wall. Motor strength was 5/5 in all upper and lower  
28 extremities.

Dr. Damania summarized:

The patient is a 47-year-old male. The patient should be able to lift and carry 20  
pounds occasionally and 10 pounds frequently. The patient should be able to stand

1 and walk six hours out of a normal eight hour workday with appropriate breaks.  
2 The patient should be able to sit six hours. There was no objective evidence found  
3 to justify the need for an assistive device. No postural limitations to bending  
4 stooping, crouching or kneeling. No manipulative limitations, however, he would  
5 have difficulty reaching above the level of the left shoulder on the left side. Please  
6 correlate with x-rays and MRI's which were done in the past. No relevant visual or  
7 communicative impairments.

8 AR 227.

9 **Dr. Fast's opinion.** Agency physician R. Fast, M.D., prepared a residual functional  
10 capacity assessment on November 20, 2008. Based on the consultant's examination, Fast opined  
11 that Plaintiff could lift twenty pounds occasionally and ten pounds frequently; could stand or walk  
12 about six hours in an eight-hour work day; had limited ability to push and pull with his lower  
13 extremities; could occasionally climb, balance, stoop, kneel, crouch, and crawl. He had no visual,  
14 communicative, or manipulative limitations. Plaintiff generally could have unlimited exposure to  
15 environmental factors except that he should avoid concentrated exposure to hazards such as  
16 machinery and heights.

17 **Dr. Michiel's evaluation.** On December 27, 2008, psychiatrist Ekram Michiel, M.D.,  
18 prepared a psychiatric evaluation of Plaintiff. Plaintiff told Michiel that he felt depressed due to  
19 pain since his valve replacement surgery. He had no prior psychiatric hospitalization or mental  
20 health treatment: his primary care physician prescribed an antidepressant. Dr. Michiel opined:

21 Based upon the evaluation and observation throughout the interview, I believe that  
22 the claimant is able to maintain attention and concentration and to carry out simple  
23 job instructions,

24 The claimant is able to relate and interact with coworkers, supervisors and the  
25 general public.

26 The claimant is unable to carry out an extensive variety of technical and/or  
27 complex instructions.

28 AR 241.

29 **Opinion of Dr. Foster-Valdez.** On January 13, 2009, Jaine Foster-Valdez, M.D.,  
30 performed the psychiatric review technique. She opined that Plaintiff had an affective disorder,  
31 depression, that was not severe. Dr. Foster-Valdez opined that Plaintiff had mild restriction of  
32 activities or daily living, and mild difficulties in maintaining concentration, persistence, or pace,  
33 but no difficulties maintaining social functioning and no episodes of decompensation. She

1 concluded that Plaintiff's psychiatric allegations were not fully credible and that the evidence as a  
2 whole did not support a conclusion that Plaintiff experienced significant work-related limitations  
3 as a result of depression.

4 **Dr. Lee's opinion.** On September 23, 2010, internist Chris Lee opined that, because of  
5 neck and shoulder pain resulting from his torn rotator cuff, Plaintiff was unable to perform full  
6 time work at any level of exertion and had been unable to do so since 2005. Nonetheless, Lee  
7 opined that no limit applied to Plaintiff's ability to sit, stand, or walk at one time. In an eight-hour  
8 work day, Plaintiff was able to sit for eight hours and stand or walk for four hours.

9 **Vocational expert testimony.** Jose Chaparro testified as vocational expert. He  
10 characterized Plaintiff's former work as a farm machine operator, which is heavy and semi-skilled  
11 with SVP-3. The job was medium work as Plaintiff performed it.

12 For the first hypothetical question, the ALJ directed Chaparro to assume a worker of  
13 Plaintiff's age, education, and work experience, who could perform light physical exertion as  
14 defined in the regulations, but could only occasionally climb, balance, stoop, kneel, crouch, and  
15 crawl. The worker must avoid concentrated exposure to hazards. He could occasionally reach  
16 overhead with his nondominant arm and could occasionally push or pull with his lower  
17 extremities. Chaparro opined that the hypothetical worker could not perform Plaintiff's prior job.  
18 The worker could perform the work of a household cleaner (DOT 323.687-014; light; unskilled)  
19 with 237,000 jobs nationally and 25,000 jobs in California; ham rolling machine operator (DOT  
20 529.685-138; light; unskilled) with 20,000 jobs nationally and 2600 jobs in California; and paper  
21 pattern folder (DOT 794.687-034; light; unskilled) with 11,700 jobs nationally and 1600 jobs in  
22 California.

23 For the second hypothetical question, the ALJ directed Chaparro to assume a second  
24 worker of Plaintiff's age, education, and work experience, who could stand and walk two hours,  
25 and sit three to four hours, in an eight-hour work day, but would require time to lie down and rest  
26 for two to three hours per day. Chaparro opined that no jobs would be available for such a  
27 worker.

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1 Plaintiff's attorney then directed Chaparro to consider the worker in the first hypothetical,  
2 but with the ability to occasionally push and pull with his left arm, and who spoke only Spanish.  
3 Chaparro opined that such a person could still perform the jobs noted for the individual in the first  
4 hypothetical question.

5 The attorney then directed Chaparro to assume that the person in her prior question also  
6 needed take unscheduled breaks throughout the day to elevate his legs. Chaparro opined that no  
7 jobs would be available for such a person.

8 **II. Legal Standards**

9 To qualify for benefits, a claimant must establish that he or she is unable to engage in  
10 substantial gainful activity because of a medically determinable physical or mental impairment  
11 which has lasted or can be expected to last for a continuous period of not less than twelve months.  
12 42 U.S.C. § 1382c (a)(3)(A). A claimant must demonstrate a physical or mental impairment of  
13 such severity that he or she is not only unable to do his or her previous work, but cannot,  
14 considering age, education, and work experience, engage in any other substantial gainful work  
15 existing in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9<sup>th</sup> Cir. 1989).

16 To encourage uniformity in decision making, the Commissioner has promulgated  
17 regulations prescribing a five-step sequential process for evaluating an alleged disability. 20  
18 C.F.R. §§ 404.1520 (a)-(f); 416.920 (a)-(f). The process requires consideration of the following  
19 questions:

- 20 Step one: Is the claimant engaging in substantial gainful activity? If so, the  
21 claimant is found not disabled. If not, proceed to step two.
- 22 Step two: Does the claimant have a "severe" impairment? If so, proceed to  
23 step three. If not, then a finding of not disabled is appropriate.
- 24 Step three: Does the claimant's impairment or combination of impairments  
25 meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P,  
26 App. 1? If so, the claimant is automatically determined disabled. If  
27 not, proceed to step four.
- 28 Step four: Is the claimant capable of performing his past work? If so, the  
claimant is not disabled. If not, proceed to step five.

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1 Step five: Does the claimant have the residual functional capacity to perform  
2 any other work? If so, the claimant is not disabled. If not, the  
3 claimant is disabled.

4 *Lester v. Chater*, 81 F.3d 821, 828 n. 5 (9<sup>th</sup> Cir. 1995).

5 In addition, when an applicant has one or more previous denials of applications for  
6 disability benefits, he or she must overcome a presumption of nondisability. The principles of *res*  
7 *judicata* apply to administrative decisions, although the doctrine is less rigidly applied to  
8 administrative proceedings than in court. *Chavez v. Bowen*, 844 F.2d 691, 693 (9<sup>th</sup> Cir. 1988);  
9 *Gregory v. Bowen*, 844 F.2d 664, 666 (9<sup>th</sup> Cir. 1988). Social Security Acquiescence Ruling  
10 (“SSR”) 96-4(9), adopting *Chavez*, applies to cases involving a subsequent disability claim with  
11 an adjudicated period arising under the same title of the Social Security Act as a prior claim in  
12 which there has been a final administrative decision that the claimant is not disabled. A previous  
13 final determination of nondisability creates a presumption of continuing nondisability in the  
14 unadjudicated period. *Lester*, 81 F.3d at 827. The presumption may be overcome by a showing  
15 of changed circumstances, such as new and material changes to the claimant’s residual functional  
16 capacity, age, education, or work experience. *Id.* at 827-28; *Chavez*, 844 F.2d at 693.

17 In the prior action, the ALJ found that Plaintiff had not engaged in substantial gainful  
18 activity since September 21, 2005. His severe impairments included history of minimally  
19 invasive aortic valve replacement, history of right medial and lateral meniscus tear, obesity, and a  
20 small tear of the left shoulder rotator cuff. His impairments did not meet or medically equal one  
21 of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. He was unable to  
22 perform any past relevant work. Plaintiff had the residual functional ability to perform a wide  
23 range of light work. The ALJ concluded that Plaintiff was not disabled from the alleged onset  
24 date to the date of the decision.

25 The sole issue in Plaintiff’s prior appeal to the District Court was whether the ALJ erred in  
26 failing to consider a physician’s opinion that Plaintiff, who took anti-coagulant medicine, should  
27 avoid working in proximity to sharp objects. Finding that the ALJ’s determination was reasonable

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1 and supported by substantial evidence, the District Court affirmed the Commissioner's denial of  
2 disability insurance benefits.

3 The agency determined that Plaintiff's second application was not subject to *Chavez* due  
4 to Plaintiff's allegation of a psychiatric impairment.

5 In this case, the ALJ found that Plaintiff had not engaged in substantial gainful activity  
6 since July 25, 2008. His severe impairments included status post aortic valve replacement, tears  
7 of the medial and lateral menisci of the right knee, left rotator cuff tear status post acromioplasty  
8 and surgical repair, and obesity. His impairments did not meet or medically equal one of the  
9 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. Plaintiff could not perform his  
10 past relevant work.

11 The ALJ determined that Plaintiff had the residual functional capacity to lift and carry  
12 twenty pounds occasionally and ten pounds frequently; to stand, walk, or sit for six hours in an  
13 eight-hour work day; to occasionally climb, balance, stoop, kneel, crouch, and crawl; to  
14 occasionally reach overhead with his non-dominant left arm; and to occasionally push or pull with  
15 his lower extremities. He applied the Medical-Vocational Guidelines (commonly known as "the  
16 Grids") and found that Plaintiff's age had advanced from that of a younger individual aged 18 to  
17 49 years to that of an individual closely approaching advanced age (50 to 54 years). Because  
18 Plaintiff could not communicate in English, the ALJ classified him as illiterate in English.  
19 Finally, the ALJ found that transferability of skills was not a relevant consideration since the  
20 Grids indicated that Plaintiff was not disabled whether or not he had transferable skills. Because  
21 Plaintiff could not perform the full range of light employment, the ALJ relied on the vocational  
22 expert's testimony and concluded that Plaintiff was capable of performing jobs that exist in  
23 significant numbers in the national economy. Accordingly, he concluded that Plaintiff was not  
24 disabled under the Act.

### 25 **III. Scope of Review**

26 Congress has provided a limited scope of judicial review of the Commissioner's decision  
27 to deny benefits under the Act. In reviewing findings of fact with respect to such determinations,  
28 a court must determine whether substantial evidence supports the Commissioner's decision. 42

1 U.S.C. § 405(g). Substantial evidence means “more than a mere scintilla” (*Richardson v. Perales*,  
2 402 U.S. 389, 402 (1971)), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d  
3 1112, 1119 n. 10 (9<sup>th</sup> Cir. 1975). It is “such relevant evidence as a reasonable mind might accept  
4 as adequate to support a conclusion.” *Richardson*, 402 U.S. at 401. The record as a whole must  
5 be considered, weighing both the evidence that supports and the evidence that detracts from the  
6 Commissioner’s decision. *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir. 1985).

7 In weighing the evidence and making findings, the Commissioner must apply the proper  
8 legal standards. *See, e.g., Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9<sup>th</sup> Cir. 1988). This Court  
9 must uphold the ALJ’s determination that the claimant is not disabled if the ALJ applied the  
10 proper legal standards, and if the ALJ’s findings are supported by substantial evidence. *See*  
11 *Sanchez v. Secretary of Health and Human Services*, 812 F.2d 509, 510 (9<sup>th</sup> Cir. 1987). “Where  
12 the evidence as a whole can support either outcome, we may not substitute our judgment for the  
13 ALJ’s.” *Key v. Heckler*, 754 F.2d 1545, 1549 (9<sup>th</sup> Cir. 1985).

#### 14 **IV. Discussion**

15 Plaintiff’s sole claim on appeal is that the ALJ erred in applying Medical-Vocational Rules  
16 202.11 and 202.18. Rule 202 (20 C.F.R. Pt. 404, Subpt. P., App. 2, § 202) addresses claimants  
17 whose maximum sustained work capacity is limited to light work as a result of a severe medically  
18 determinable impairment. Rule 202.11 (20 C.F.R. Pt. 404, Subpt. P., App. 2, § 202.11) provides  
19 that persons closely approaching advanced age (50 to 54 years old), who are limited to light work,  
20 have limited or less education, whose prior work was skilled or semi-skilled, and whose skills are  
21 not transferable, are not disabled. Rule 202.18 (20 C.F.R. Pt. 404, Subpt. P., App. 2, § 202.18)  
22 provides that younger individuals (18 to 49 years old), who are limited to light work, have limited  
23 or less education, whose prior work was skilled or semi-skilled, and whose skills are not  
24 transferable, are not disabled.

25 The ALJ found that, although Plaintiff was a younger individual aged 18 to 49 on the  
26 alleged disability onset date, by the date of the hearing decision, he had reached the category of  
27 closely approaching advanced age (50 to 54 years). Because Plaintiff could not communicate in  
28 English, the ALJ considered him to be a person illiterate in English. Citing SSR 82-31 and 20

1 C.F.R. Pt. 404, Subpt. P., App. 2, Rules 202.11 and 202.18, the ALJ disregarded the absence of  
2 transferable job skills, since Rules 202.12 and 202.19, which address the same claimants *with*  
3 transferable skills would produce that same result: that Plaintiff was not disabled. Because  
4 Plaintiff was not able to perform the full range of light jobs, however, the ALJ proceeded to  
5 Chaparro’s testimony that jobs that Plaintiff was capable of performing existed in significant  
6 numbers. He then concluded that Plaintiff was not disabled.

7 Plaintiff contends that Rules 202.11 and 202.18 do not properly apply to an individual who  
8 is illiterate (in that he cannot communicate in English) and who previously worked in a semi-  
9 skilled position. Relying on *Silviera v. Apfel*, 204 F.3d 1257, 1260 (9<sup>th</sup> Cir. 2000), Plaintiff argues  
10 that the ALJ should have applied Rules 202.09 and 202.16, which apply to claimants who are  
11 illiterate or unable to communicate in English and whose prior work was unskilled or nonexistent.  
12 As Mr. Silviera did, Plaintiff argues that if a non-English-speaking claimant’s prior skills are not  
13 transferable, his situation is the same as that of a non-English speaker with no skills.

14 Addressing claimants who are illiterate or unable to communicate in English in *Silviera*,  
15 the Ninth Circuit held:

16 The grid rules are ambiguous with regard to the treatment of skilled or semi-skilled  
17 work histories with no transferable skills. We hold that, as a matter of  
18 interpretation, in applying the grid rules the Commissioner must treat a skilled or  
19 semiskilled work history with no transferable skills as equivalent to an unskilled  
20 work history.

21 204 F.3d at 1260.

22 The Ninth Circuit relied, in part, on the Commissioner’s own language in 20 C.F.R. §§  
23 404.1565(a) and 416.965(a): “If you cannot use your skills in other skilled or semi-skilled work,  
24 we will consider your work background the same as unskilled.” 204 F.3d at 1260. It also noted  
25 language in SSR 82-41 which stated:

26 [A] person has no special advantage if he or she is skilled or semiskilled but can  
27 qualify only for an unskilled job because his or her skills cannot be used to any  
28 significant degree in other jobs. *The table rules in Appendix 2 are consistent with  
the provisions regarding skills because the same conclusion is directed for  
individuals with an unskilled work background and for those with a skilled or  
semiskilled background whose skills are not transferable.*

204 F.3d at 1260, quoting with added emphasis, S.S.R. 82-41 at ¶ 2(a).

1 The Ninth Circuit’s unequivocal ruling applies here. Accordingly, this Court must conclude that  
2 the ALJ erred in applying 20 C.F.R. Pt. 404, Subpt. P., App. 2, Rules 202.11 and 202.18, instead  
3 of Rules 202.09 and 202.16.

4 Because Plaintiff’s age category changed during the pendency of this appeal, his disability  
5 status varies according to time. After Plaintiff’s fiftieth birthday on December 16, 2010, Rule  
6 202.09 provides that Plaintiff is presumed not to be disabled. Accordingly, this Court determines  
7 that Plaintiff was disabled as of December 16, 2010.

8 For the period from the alleged onset date of July 25, 2008, through December 15, 2010,  
9 applying Rule 202.16 results in a presumption that Plaintiff was not disabled. Since Plaintiff  
10 cannot perform the full range of light work, however, the ALJ was required to consider the  
11 presumption in light of the vocational expert’s testimony. ALJ Larsen did not here, finding that  
12 Chaparro’s testimony supported a conclusion that Plaintiff was capable of performing jobs  
13 available in significant numbers in the national economy. The ALJ’s determination being  
14 supported by substantial evidence in this regard, this Court concludes that Plaintiff was not  
15 disabled from July 25, 2008, through December 15, 2010, and is not entitled to disability  
16 insurance benefits or SSI for that time period.

17 **V. Conclusion**

18 “The court shall have the power to enter, upon pleadings and transcript of record, a  
19 judgment affirming, modifying, or reversing the decision of the Secretary, with or without  
20 remanding the cause for a rehearing.” 42 U.S.C. § 405(g). In social security cases, the decision to  
21 remand to the Commissioner to award benefits is within the court’s discretion. *McAllister v.*  
22 *Sullivan*, 888 F.2d 599, 603 (9<sup>th</sup> Cir. 1989). “If additional proceedings can remedy defects in the  
23 original administrative proceedings, a social security case should be remanded. Where, however,  
24 a rehearing would simply delay receipt of benefits, reversal and an award of benefits is  
25 appropriate.” *Id.* (citation omitted). If the record is fully developed and further administrative  
26 proceedings will serve no useful purpose, a reviewing court should simply reverse and award  
27 benefits. *Varney v. Secretary of Health and Human Services*, 859 F.2d 1396, 1399 (9<sup>th</sup> Cir. 1988).

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1 Accordingly, this Court hereby ORDERS that:

- 2 1. With regard to the time period from the alleged onset date of July 25, 2008,  
3 through December 15, 2010, the administrative determination that Plaintiff  
4 Adelaido A. Jacinto is not entitled to disability insurance benefits or  
5 supplemental security income be AFFIRMED;
- 6 2. With regard to the time period on and after December 16, 2010, the  
7 administrative determination that Plaintiff Adelaido A. Jacinto is not  
8 entitled to disability insurance benefits or supplemental security income be  
9 REVERSED, and the case REMANDED for payment of benefits beginning  
10 December 16, 2010; and
- 11 3. The Clerk of Court is hereby directed to ENTER JUDGMENT in favor of  
12 Defendant Michael J. Astrue, Commissioner of Social Security, and against  
13 Plaintiff Adelaido A. Jacinto for the time period from July 25, 2008,  
14 through December 15, 2010; and in favor of Plaintiff Adelaido A. Jacinto  
15 and against Defendant Michael J. Astrue, Commissioner of Social Security,  
16 for the time period beginning December 16, 2010.

17  
18 IT IS SO ORDERED.

19 **Dated:** October 9, 2012

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE