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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HAROLD DWANE GIBBONS,

Plaintiff,

No. 2:10-cv-02880 KJN

v.

COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,

Defendant.

ORDER

\_\_\_\_\_/

Plaintiff Harold Dwane Gibbons (“plaintiff”), who is representing himself in this action, seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “defendant”) denying plaintiff’s request for retroactive payment of additional Title II benefits.<sup>1</sup> Plaintiff argues he is entitled to these additional payments because the Social Security Administration improperly withheld them based on the belief that plaintiff was married to another Social Security benefits recipient, namely, Ms. Rebecca Diskin. Plaintiff argues that he and Ms. Diskin were housemates but were not married, such that his benefits payments should not have been reduced. Plaintiff further argues that a Social Security

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<sup>1</sup> This case was referred to the undersigned pursuant to Eastern District of California Local Rule 302(c)(15) and 28 U.S.C. § 636(c), and both parties voluntarily consented to proceed before a United States Magistrate Judge (Dkt. Nos. 13, 18). 28 U.S.C. § 636(c)(1); Fed. R. Civ. P. 73; E. Dist. Local Rule 301.

1 Administration employee told plaintiff and Ms. Diskin that they could not receive any benefits  
2 unless they claimed to be married, and that as a result of the employee's coercion, plaintiff and  
3 Ms. Diskin reluctantly claimed they were married. (See generally Pl.'s Mot. for Summ. J., Dkt.  
4 No. 19-1.)

5 In his motion for summary judgment, plaintiff argues that the administrative law  
6 judge ("ALJ") in this case erred in determining that plaintiff and Ms. Diskin held themselves out  
7 as married.<sup>2</sup> (See generally Pl.'s Mot. for Summ. J.) Defendant filed an opposition to plaintiff's  
8 motion and a cross-motion for summary judgment. (Def.'s Opp'n & Cross-Motion for Summ. J.,  
9 Dkt. No. 20.) For the reasons stated below, the court denies plaintiff's motion for summary  
10 judgment and grants the Commissioner's cross-motion for summary judgment.

11 I. BACKGROUND<sup>3</sup>

12 Plaintiff filed applications for Supplemental Security Income and Disability

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14 <sup>2</sup> The issue before the ALJ was whether plaintiff and Ms. Diskin held themselves out as a  
15 married couple under the applicable rules such that the reduction in Mr. Diskin's benefits payments  
16 was proper. (AR 433 (Plaintiff's Request for Reconsideration filed Feb. 8, 2007, seeking  
17 reconsideration on grounds that "I have never been married to Ms. Diskin and never will be."); see  
18 also AR 449-51 (Notice of Reconsideration dated Feb. 27, 2007 ("You are disputing the marital  
19 status determination" and "[W]e find the decision that you and Ms. Diskin were a married couple  
20 for SSI purposes to be correct."); AR 438 ("Rebecca A. Diskin and I were never married at any time"  
21 and were "not married," had a "friendship relationship" only, and were "room-mates" only)  
22 (emphases in original).) Likewise, plaintiff's moving papers frame the issues currently before the  
23 court as: (1) improper invocation of the "Windfall Offset Provision," and (2) the agency's improper  
24 determination that plaintiff and Ms. Diskin were married "at the time of [plaintiff's] filing for SSDI  
benefits in 2003. (Pl.'s Mot. for Summ. J. at 1.) Defendant notes that plaintiff's moving papers also  
mention in passing, and with no citations to supporting evidence, that plaintiff was never allowed  
to see his "complete personal SSA file." (Pl.'s Mot. for Summ. J. at 2-3 (plaintiff's "complete  
personal SSA file has been missing and unavailable to him up until said file was sent to [plaintiff]  
with the Defendant's answer to this complaint").) However, plaintiff's moving papers fail to explain  
when plaintiff sought his file and how plaintiff's alleged inability to review his complete file bears  
on the issues of his marital status and/or reduced benefits payments. Further, as defendant correctly  
notes (Def.'s Opp'n & Cross-Motion for Summ. J. at 10 n.8), plaintiff did not raise the issue of the  
availability of plaintiff's file before the ALJ (AR 479-502), and the ALJ did not make any factual  
determinations about the availability of the file. In any event, plaintiff confirms that he now has a  
copy of his file. (Pl.'s Mot. for Summ. J. at 2-3.)

25 <sup>3</sup> Because the parties are familiar with the factual background of this case, the undersigned  
26 does not exhaustively relate those facts here. The facts will be addressed only insofar as they are  
relevant to the issues presented by the parties' respective motions.

1 Insurance Benefits in August of 2003. (Admin. Record (“AR”) 66-68, 389-401.) An ALJ issued  
2 a decision dated August 13, 2005, finding that plaintiff was disabled.<sup>4</sup> (AR 27-35.) The agency  
3 determined that plaintiff was entitled to retroactive benefits, and plaintiff requested  
4 reconsideration of the amount of his retroactive benefits (AR 433) and requested a hearing before  
5 an ALJ (AR 435), on the grounds that he had not received the proper payment amounts due to the  
6 agency’s belief that plaintiff was married to Ms. Diskin. The ALJ conducted a hearing regarding  
7 plaintiff’s claim on December 10, 2007. (AR 479-502.) Plaintiff was represented by counsel at

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9 <sup>4</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
10 Social Security program, 42 U.S.C. §§ 401 et seq. Generally speaking, Supplemental Security  
11 Income is paid to disabled persons with low income. 42 U.S.C. §§ 1382 et seq. Under both benefit  
12 schemes, the term “disability” is defined, in part, as an “inability to engage in any substantial gainful  
13 activity” due to “any medically determinable physical or mental impairment which can be expected  
14 to result in death or which has lasted or can be expected to last for a continuous period of not less  
15 than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A five-step sequential evaluation  
16 governs eligibility for benefits. See 20 C.F.R. §§ 404.1520, 404.1571-1576, 416.920, 416.971-976;  
17 see also Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). The Ninth Circuit Court of Appeals has  
18 summarized the sequential evaluation as follows:

14 Step one: Is the claimant engaging in substantial gainful  
15 activity? If so, the claimant is found not disabled. If not, proceed to  
16 step two.

16 Step two: Does the claimant have a “severe” impairment? If  
17 so, proceed to step three. If not, then a finding of not disabled is  
18 appropriate.

18 Step three: Does the claimant’s impairment or combination  
19 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.  
20 404, Subpt. P, App.1? If so, the claimant is automatically determined  
21 disabled. If not, proceed to step four.

21 Step four: Is the claimant capable of performing his past  
22 work? If so, the claimant is not disabled. If not, proceed to step five.

22 Step five: Does the claimant have the residual functional  
23 capacity to perform any other work? If so, the claimant is not  
24 disabled. If not, the claimant is disabled.

24 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

25 The claimant bears the burden of proof in the first four steps of the sequential evaluation  
26 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential  
evaluation process proceeds to step five. Id.

1 the hearing and testified. (Id.)

2 In a written decision dated February 7, 2008, the ALJ found that the agency  
3 properly determined plaintiff's retroactive benefit amount, on the grounds that plaintiff and Ms.  
4 Diskin held themselves out as a married couple under the applicable rules from May 2003  
5 through December 2006. (AR 16-21.) The ALJ's decision became the final decision of the  
6 Commissioner when the Appeals Council denied plaintiff's request for review. (AR 7-10.)  
7 Plaintiff subsequently filed this action.

8 B. Summary of the ALJ's Findings

9 This case differs from the typical Social Security case in that plaintiff is not  
10 challenging a finding that he is not disabled or claiming that the ALJ did not properly conduct the  
11 requisite five-step analysis. See Lester, 81 F.3d at 828 n.5 Instead, plaintiff challenges the  
12 agency's determination of his marital status. Stated differently, plaintiff challenges the ALJ's  
13 finding that plaintiff and Ms. Diskin held themselves out as married, which resulted in a  
14 reduction of plaintiff's retroactive benefits under the applicable regulations. (AR 19-21.)

15 In his decision, the ALJ described plaintiff's hearing testimony, discussed the  
16 applicable law regarding whether a claimant is "married" for the agency's purposes, described  
17 several specific documents in the record whereby plaintiff identified Ms. Diskin as his spouse,  
18 noted generally the "multiple documents" in the record whereby plaintiff and/or Ms. Diskin  
19 indicated they were married to each other. (AR 20-21.) The ALJ also noted that the lack of *any*  
20 documents in the record suggesting that plaintiff had been "coerced" into describing Ms. Diskin  
21 as his spouse and/or that he disputed being married.<sup>5</sup> (AR 21.) The ALJ then concluded that,  
22 after "careful consideration of the evidence of record," plaintiff and Ms. Diskin held themselves  
23 out as married from May 2003 through December 2006. (Id.) The ALJ also concluded that, as a

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25 <sup>5</sup> The record contains documents related to plaintiff's request for a hearing and request for  
26 reconsideration wherein plaintiff raises these issues, none of the documents protesting alleged  
"coercion" bears a date within the relevant period of retroactive benefits payments, namely, May  
2003 through December 2006.

1 result, the agency’s correctly applied the “windfall offset provision”<sup>6</sup> to plaintiff. (Id.)

2 II. STANDARDS OF REVIEW

3 The court reviews the Commissioner’s decision to determine whether it is (1) free  
4 of legal error, and (2) supported by substantial evidence in the record as a whole. Bruce v.  
5 Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009); accord Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th  
6 Cir. 2009). This standard of review has been described as “highly deferential.” Valentine v.  
7 Comm’r of Soc. Sec. Admin., 574 F.3d 685, 690 (9th Cir. 2009). “Substantial evidence means  
8 more than a mere scintilla but less than a preponderance; it is such relevant evidence as a  
9 reasonable mind might accept as adequate to support a conclusion.” Bray v. Comm’r of Soc.  
10 Sec. Admin., 554 F.3d 1219, 1222 (9th Cir. 2009) (citing Andrews v. Shalala, 53 F.3d 1035,  
11 1039 (9th Cir. 1995)); accord Valentine, 574 F.3d at 690. “The ALJ is responsible for  
12 determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities.”  
13 Andrews, 53 F.3d at 1039; see also Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008)  
14 (“[T]he ALJ is the final arbiter with respect to resolving ambiguities in the medical evidence.”).  
15 Findings of fact that are supported by substantial evidence are conclusive. 42 U.S.C. § 405(g);  
16 see also McCarthy v. Apfel, 221 F.3d 1119, 1125 (9th Cir. 2000). “Where the evidence as a  
17 whole can support either a grant or a denial, [the court] may not substitute [its] judgment for the  
18 ALJ’s.” Bray, 554 F.3d at 1222; see also Ryan v. Comm’r of Soc. Sec., 528 F.3d 1194, 1198  
19 (9th Cir. 2008) (“Where evidence is susceptible to more than one rational interpretation,’ the  
20 ALJ’s decision should be upheld.”) (quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir.  
21 2005)). However, the court “must consider the entire record as a whole and may not affirm  
22 simply by isolating a ‘specific quantum of supporting evidence.’” Ryan, 528 F.3d at 1198  
23 (quoting Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)); accord Lingenfelter v.  
24 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). “To determine whether substantial evidence

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26 <sup>6</sup> See 42 U.S.C. § 1320a-6(a); 20 C.F.R. § 404.408b; see also 20 C.F.R. § 416.1801(c); 20  
C.F.R. § 416.1802(b); 20 C.F.R. 41.1806.

1 supports the ALJ’s decision, [a court] review[s] the administrative record as a whole, weighing  
2 both the evidence that supports and that which detracts from the ALJ’s conclusion.” Andrews,  
3 53 F.3d at 1039.

4 “If additional proceedings can remedy defects in the original administrative  
5 proceedings, a social security case should be remanded.” Lewin v. Schweiker, 654 F.2d 631, 637  
6 (9th Cir. 1981). However, the court’s review is constrained to the reasons asserted by the ALJ in  
7 the ALJ’s decision. Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007) (“We review only the  
8 reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a  
9 ground upon which he did not rely.”); accord Tommasetti, 533 F.3d at 1039 n.2 (declining to  
10 review reasons provided by the district court in support of the ALJ’s credibility decision that  
11 were not “expressly relied on” by the ALJ during the administrative proceedings); accord Pinto v.  
12 Massanari, 249 F.3d 840, 847 (9th Cir. 2001) (noting that the Court “cannot affirm the decision  
13 of an agency on a ground that the agency did not invoke in making its decision”); Gonzalez v.  
14 Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990) (“[W]e are wary of speculating about the basis of  
15 the ALJ’s conclusion – especially when his opinion indicates that the conclusion may have been  
16 based exclusively upon an improper reason.”); Barbato v. Comm’r of Soc. Sec. Admin., 923 F.  
17 Supp. 1273, 1276 n.2 (C.D. Cal. 1996) (remand is appropriate when a decision does not  
18 adequately explain how a decision was reached, “[a]nd that is so even if [the Commissioner] can  
19 offer proper post hoc explanations for such unexplained conclusions,” because “the  
20 Commissioner’s decision must stand or fall with the reasons set forth in the ALJ’s decision, as  
21 adopted by the Appeals Council”) (citation omitted).

### 22 III. DISCUSSION

#### 23 A. The ALJ Did Not Commit Legal Error

24 As described above, plaintiff applied for benefits under two separate titles of the  
25 Act, Title II and Title XVI. (AR 66-68, 389-401.) If an individual is found to be disabled and to  
26 be owed retroactive benefits for previous months, the agency will not pay that individual the full

1 Title II *and* Title XVI benefits for those months. Instead, the agency reduces the retroactive Title  
2 II benefit payment amount for those previous months by the amount of any Title XVI payments  
3 that the individual has already received. See 42 U.S.C. § 1320a-6; 20 C.F.R. § 404.408b,  
4 416.1123(d)(1). For a married couple, the agency will reduce the retroactive Title II benefits by  
5 the Title XVI payments received by both spouses. 42 U.S.C. § 1320a-6; 20 C.F.R. § 404.408b;  
6 see also Soc. Sec. Admin., Program Operations Manual System (“POMS”) § GB  
7 02610.014(C)(1)<sup>7</sup> (stating that the agency will use Title XVI payments made to the “couple” in  
8 determining offset) (available at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0202610014> (last  
9 visited March 20, 2012).

10           The agency looks to state law in determining whether an individual is married, *but*  
11 “if a man and woman are found to be holding themselves out to the community in which they  
12 reside as husband and wife, they shall be so considered for purposes of this title notwithstanding  
13 any other provision of this section.” 42 U.S.C. § 1382c(d)(2). Under the applicable regulations,  
14 the agency “will consider someone to be your spouse (and therefore consider you to be married)  
15 for SSI purposes if [ . . . ] [y]ou and an unrelated person of the opposite sex are living together in  
16 the same household at or after the time you apply for SSI benefits, and you both lead people to  
17 believe that you are husband and wife.” 20 C.F.R. § 416.1806(a)(3). If more than one person  
18 can be considered an individual’s spouse based on the Act and the agency’s regulations, the  
19 agency “will consider the person you are presently living with to be your spouse for SSI  
20 purposes.” 20 C.F.R. § 416.1806(b). Further, the applications provide that when a claimant  
21 applies for SSI benefits, the “general rule” is that “proof is unnecessary” when it comes to marital  
22 status. 20 C.F.R. § 1821(a) (“If you tell us you are married we will consider you married unless  
23 we have information to the contrary. We will also consider you married, on the basis of your  
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25           <sup>7</sup> The Ninth Circuit Court of Appeals has stated that “[t]he POMS does not have the force  
26 of law, but it is persuasive authority.” Warre v. Comm’r of Soc. Sec. Admin., 439 F.3d 1001, 1005  
(9th Cir. 2006).

1 statement, if you say you are living with an unrelated person of the opposite sex and you both  
2 lead people to believe you are married.”)

3 Properly applying the above authorities, the ALJ determined that because plaintiff  
4 and Ms. Diskin held themselves out as married — a factual finding analyzed separately below —  
5 plaintiff’s retroactive benefits payments were properly reduced. (AR 19-21.) As the ALJ  
6 explained,

7 [S]ection 1614(d)(2) of the Social Security Act [now 42  
8 U.S.C. § 1382c(d)(2)] provides that in determining  
9 whether two individuals are husband and wife for the  
10 purposes of this title [Title XVI of the Act], appropriate  
11 state law shall be applied; except that — (2) if a man and  
12 woman are found to be holding themselves out to the  
13 community as husband and wife, they shall be so  
14 considered for the purposes of this title notwithstanding  
any other provision of this section. Section 416.1806(a)  
provides that an individual will be considered married if  
he or she is legally married under the laws of the State of  
their home *or* if two unrelated people of the opposite sex  
are living in the same household at or after the SSI  
application is filed, and both lead people to believe they  
are husband and wife.

15 (AR 20 (emphasis added).)

16 To the extent plaintiff argues that the ALJ committed legal error by applying the  
17 above authorities to plaintiff, plaintiff’s argument is not well-taken. Specifically, plaintiff argues  
18 that he could not possibly be considered Ms. Diskin’s spouse because she was legally married to  
19 another man. (Pl.’s Mot. for Summ. J. at 1.) Under the applicable regulations cited above,  
20 however, a person can be considered the spouse of more than one individual, and the agency will  
21 consider the person with whom one is living as his spouse. See 20 C.F.R. § 416.1806(b). The  
22 agency previously explained this rule to plaintiff. (AR 436 (Notice of Reconsideration dated  
23 Feb. 27, 2007).) Plaintiff’s disagreement with this regulation and other applicable rules does not  
24 mean the ALJ committed legal error by applying those rules, and the ALJ explained as much.  
25 (See AR 21 (“[w]hile the claimant may feel the Social Security Regulations are unfair, the  
26 undersigned has no authority to change or amend them in order to arrive at a decision desired by



1 a claimant.”) Accordingly, plaintiff has not shown the ALJ to have committed legal error by  
2 analyzing plaintiff’s circumstances under the above-cited authorities. See Bruce, 557 F.3d at  
3 1115.

4 B. The ALJ’s Finding That Plaintiff And Ms. Diskin Held Themselves Out As  
5 Married Was Supported By Substantial Evidence

6 In making the factual determination that plaintiff and Ms. Diskin held themselves  
7 out as married during the relevant time period, the ALJ described specific documents in the  
8 record wherein plaintiff indicated that Ms. Diskin was his wife. (AR 20.) For instance, the ALJ  
9 described an Application for Supplemental Security Income filed August 13, 2003, whereby  
10 plaintiff identified “Rebecca Gibbons” as his “spouse.”<sup>8</sup> (AR 20 (citing AR 389.) The ALJ also  
11 cited to a Statement of Claimant or Other Person dated August 3, 2006, a document signed by  
12 plaintiff *and* “Rebecca Diskin Gibbons” — with Ms. Diskin using plaintiff’s surname — under  
13 penalty of perjury. (AR 20 (citing AR 406-07).) The ALJ also cited a Statement for Determining  
14 Continuing Eligibility For Supplemental Security Income Payments dated August 3, 2006, which  
15 identifies “Rebecca Gibbons” as plaintiff’s “spouse” and “Rebecca” as plaintiff’s “spouse living  
16 with” plaintiff. (AR 20 (citing AR 408-15).)

17 Aside from these specific documents, the ALJ also broadly referenced “multiple  
18 documents” in the record plaintiff “signed indicating [Ms. Diskin] was his wife.” (AR 21.) The  
19 record indeed contains numerous such documents. (See AR 21; AR 389-400 (Application for  
20 Supplemental Security Income dated August 13, 2003, and signed by plaintiff and “Rebecca  
21 Gibbons,” checking the “Yes” box in response to “Are you and your spouse living together” and  
22 other boxes referring to each other as “spouses”); AR 370-74 (Application for Supplemental  
23 Security Income dated August 29, 2003, and signed by both plaintiff and Ms. Diskin under  
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25 <sup>8</sup> Plaintiff does not dispute that he and Ms. Diskin lived together during the relevant time  
26 period. (Pl.’s Mot. for Summ. J. at 1 (confirming plaintiff lived with Ms. Diskin from 2003 to 2007  
and was payee for her benefits from 2003 to 2006).

1 penalty of perjury, wherein Ms. Diskin identified herself as “married to Harold Dwane Gibbons,”  
2 and wherein plaintiff identifies himself as “married to Rebecca Anne Diskin.”.) The ALJ also  
3 considered all the “evidence of record” (AR 21), which contains documents whereby Ms. Diskin  
4 identified herself as married to plaintiff. (See AR 386-88 (SSI Monthly Manual Payment  
5 Computation Summary identifying Ms. Diskin as “Rebecca Gibbons”); AR 407 (signing under  
6 penalty of perjury as “Rebecca Diskin Gibbons”).) In sum, documents in the record support the  
7 ALJ’s finding that plaintiff and Ms. Diskin held themselves out as married.<sup>9</sup>

8 Further, while plaintiff testified that Social Security employees coerced and  
9 misled him and Ms. Diskin into representing that they were married (AR 485), the ALJ did not  
10 credit this testimony.<sup>10</sup> (AR 21.) Instead, the ALJ specifically explained that the record lacks a  
11 single document from the relevant period suggesting that plaintiff ever indicated having been  
12 “coerced into saying or signing documents” reflecting that he “was married to Rebecca Diskin or  
13 holding out as husband and wife.” (AR 21.) The ALJ explained, “there is no evidence in the  
14 record that [plaintiff] ever disputed being married to [Ms. Diskin]; there is no evidence in the  
15 record that Social Security told Ms. Diskin she had to use [plaintiff’s] last name; and there is no  
16 evidence that [plaintiff] was misled by Social Security.” (AR 21.)

17 In sum, and as described above, the ALJ relied on specific documentary evidence  
18 in the record to support his finding that plaintiff and Ms. Diskin indeed held themselves out as

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19 <sup>9</sup> Defendant also highlights numerous documents in the record indicating that plaintiff told  
20 his physicians that he was married during the period he was living with Ms. Diskin. (Def.’s Opp’n  
21 & Cross-Motion for Summ. J. at 8-9 (citing AR 271, 318, 157, 162, 260, 287.) Defendant argues  
22 that plaintiff “informed third parties, including his doctors” that he was married to Ms. Diskin, such  
23 that even if plaintiff’s claims of “coercion” by agency employees were true, this would not explain  
24 “why [p]laintiff told his doctors that he and Ms. Diskin were married.” (Id. at 9-10.) Because the  
25 court’s review is limited to the grounds stated in the ALJ’s decision, however, see Tommasetti, 533  
26 F.3d at 1039 n.2, and because the ALJ did not specifically note plaintiff’s representations to his  
27 physicians, the undersigned did not consider these medical documents in analyzing whether the  
28 ALJ’s finding is supported by substantial evidence.

29 <sup>10</sup> In his moving papers, plaintiff claims that during the hearing, the ALJ “said time and time  
30 again that ‘They can’t do this,’” and “‘Why are they doing these things.’” (Pl.’s Mot. for Summ. J.  
31 at 2.) The hearing transcript does not corroborate plaintiff’s version of events. (AR 481-502.)

1 married. Similarly, the ALJ relied on the record's utter *lack* of documents suggesting that  
2 plaintiff was "coerced" into describing himself as married, coerced into describing himself as  
3 Ms. Diskin's "spouse," or that plaintiff made such representations begrudgingly or under protest.  
4 There is more than a mere "scintilla" of evidence supporting the ALJ's determination that  
5 plaintiff and Ms. Diskin held themselves out as married during the relevant period. See Bray,  
6 554 F.3d at 1222 ("[s]ubstantial evidence means more than a mere scintilla but less than a  
7 preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to  
8 support a conclusion.") Plaintiff has not shown that the ALJ's finding that plaintiff and Ms.  
9 Diskin held themselves out as married is unsupported by substantial evidence.

10 V. CONCLUSION

11 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's motion for summary judgment (Pl.'s Mot. for Summ. J., Dkt.  
13 No. 19-1) is denied;
- 14 2. Defendant's cross-motion for summary judgment (Def.'s Opp'n & Cross-  
15 Motion for Summ. J., Dkt. No. 20) is granted; and
- 16 3. The Clerk of Court is directed to enter judgment in the Commissioner's  
17 favor.

18 IT IS SO ORDERED.

19 DATED: March 22, 2012

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22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE  
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26