



1 both the evidence that supports and detracts from the Commissioner's conclusion, must be  
2 considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones v.  
3 Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner's  
4 decision simply by isolating a specific quantum of supporting evidence. See Hammock v. Bowen,  
5 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative findings, or  
6 if there is conflicting evidence supporting a particular finding, the finding of the Commissioner is  
7 conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Therefore, where the  
8 evidence is susceptible to more than one rational interpretation, one of which supports the  
9 Commissioner's decision, the decision must be affirmed, see Thomas v. Barnhart, 278 F.3d 947,  
10 954 (9th Cir. 2002), and may be set aside only if an improper legal standard was applied in  
11 weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

12 For the reasons discussed below, the Commissioner's final decision is affirmed.

## 13 14 **I. THE DISABILITY EVALUATION PROCESS**

15 To achieve uniformity of decisions, the Commissioner employs a five-step  
16 sequential evaluation process to determine whether a claimant is disabled. See 20 C.F.R.  
17 §§ 404.1520 (a)-(f) and 416.920(a)-(f). The sequential evaluation proceeds as follows:

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|----|--------|---|
| 18 | Step 1 | Determination whether the claimant is engaged in                |
| 19 |        | substantial gainful activity; if so, the claimant is presumed   |
|    |        | not disabled and the claim is denied;                           |
| 20 | Step 2 | If the claimant is not engaged in substantial gainful activity, |
| 21 |        | determination whether the claimant has a severe                 |
| 22 |        | impairment; if not, the claimant is presumed not disabled       |
|    |        | and the claim is denied;  |
| 23 | Step 3 | If the claimant has one or more severe impairments,             |
| 24 |        | determination whether any such severe impairment meets or       |
| 25 |        | medically equals an impairment listed in the regulations; if    |
|    |        | the claimant has such an impairment, the claimant is            |
| 26 | Step 4 | presumed disabled and the claim is granted;                     |
| 27 |        | If the claimant's impairment is not listed in the regulations,  |
| 28 |        | determination whether the impairment prevents the claimant      |
|    |        | from performing past work in light of the claimant's residual   |
|    |        | functional capacity; if not, the claimant is presumed not       |
|    |        | disabled and the claim is denied;                               |

1 Step 5 If the impairment prevents the claimant from performing  
2 past work, determination whether, in light of the claimant's  
3 residual functional capacity, the claimant can engage in  
4 other types of substantial gainful work that exist in the  
national economy; if so, the claimant is not disabled and the  
claim is denied.

5 See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f).

6 To qualify for benefits, the claimant must establish the inability to engage in  
7 substantial gainful activity due to a medically determinable physical or mental impairment which  
8 has lasted, or can be expected to last, a continuous period of not less than 12 months. See 42  
9 U.S.C. § 1382c(a)(3)(A). The claimant must provide evidence of a physical or mental impairment  
10 of such severity the claimant is unable to engage in previous work and cannot, considering the  
11 claimant's age, education, and work experience, engage in any other kind of substantial gainful  
12 work which exists in the national economy. See Quang Van Han v. Bower, 882 F.2d 1453, 1456  
13 (9th Cir. 1989). The claimant has the initial burden of proving the existence of a disability. See  
14 Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 1990).

15 The claimant establishes a prima facie case by showing that a physical or mental  
16 impairment prevents the claimant from engaging in previous work. See Gallant v. Heckler, 753  
17 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant  
18 establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant  
19 can perform other work existing in the national economy. See Burkhart v. Bowen, 856 F.2d 1335,  
20 1340 (9th Cir. 1988); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); Hammock v.  
21 Bowen, 867 F.2d 1209, 1212-1213 (9th Cir. 1989).

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1 **II. THE COMMISSIONER’S FINDINGS**

2 Plaintiff applied for social security benefits on January 13, 2014. See CAR 31.<sup>1</sup> In  
3 the application, plaintiff claims disability began on January 8, 2014. See id. Plaintiff’s claim was  
4 initially denied. Following denial of reconsideration, plaintiff requested an administrative hearing,  
5 which was held on May 5, 2016, before Administrative Law Judge (ALJ) Mark C. Ramsey. In a  
6 May 31, 2016, decision, the ALJ concluded plaintiff is not disabled based on the following  
7 relevant findings:

- 8 1. The claimant has the following severe impairment(s): diabetes  
9 mellitus, hypertension, obesity, and bipolar disorder;
- 10 2. The claimant does not have an impairment or combination of  
11 impairments that meets or medically equals an impairment listed in  
12 the regulations;
- 13 3. The claimant has the following residual functional capacity: the  
14 claimant can perform medium work; he can lift 50 pounds  
15 occasionally and 25 pounds frequently; he can sit/stand/walk for  
16 eight hours out of an eight-hour day; the claimant is limited to  
17 simple unskilled non-public work with only occasional fellow  
18 employee contact; he is limited to jobs with little or no change in  
work routine;
- 19 4. Considering the claimant’s age, education, work experience,  
residual functional capacity, and vocational expert testimony, there  
are jobs that exist in significant numbers in the national economy  
that the claimant can perform.

20 See id. at 33-43.

21 After the Appeals Council declined review on September 27, 2017, this appeal followed.

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<sup>1</sup> Citations are the to the Certified Administrative Record (CAR) lodged on  
November 6, 2018 (ECF No. 14).

1 **III. DISCUSSION**

2 In his two-page pro se opening brief, plaintiff begins by citing § 405(g) regarding  
3 remand sought by the Commissioner for consideration of new evidence. See ECF No. 14, pg. 1.  
4 In support of an apparent request that the matter be remanded for consideration of new evidence,  
5 plaintiff states:

6 1. The records of Dr. Andres [Sciolla], M.D., Jeffrey Grey, M.D., and  
7 Amy Jensen were not introduced into evidence before the Administrative  
8 Law Judge or the Appeals Council since said records were not available  
9 while the case was pending before the Social Security Administration.  
10 Said records are attached hereto as Exhibits A and B to this motion.  
11 Plaintiff further seeks leave to submit an additional medical report before  
12 the hearing on this motion. (This motion is filed in some haste, in  
13 response to this Honorable Court’s Order to Show Cause, of January 16,  
14 2019).

15 2. The said medical evidence if [sic] new and material and relates to the  
16 issues pending before the Administrative Law Judge and/or Appeals  
17 Council and, in addition, there is good cause to obtain a remand order  
18 since said records were unavailable while the Plaintiff’s application for  
19 disability benefits was pending before the Social Security Administration,  
20 and there is a “reasonable possibility”; or, in the alternative, it is  
21 “reasonably likely” that the said evidence would have changed the  
22 outcome of the Defendant’s decision to deny benefits to the Plaintiff.

23 Id. at pg. 2.

24 While there is no “Exhibit A” or “Exhibit B” attached to plaintiff’s brief, the following documents  
25 are attached:

26 - An October 24, 2018, letter “written at the request of the client” from  
27 Jeffrey Gray, M.D., plaintiff’s treating psychiatrist. Dr. Gray states:

28 Mohd Abdullah (DOB: 09/05/1960) is currently a  
patient of Northgate Point (NGP) – RST Mental Health  
since 09/09/2014 with DSM-V Axis I F3.9 Bipolar  
disorder, most recent episode unspecified. Mr. Abdullah  
comes in for doctor’s appointment once every three months  
for medication management and meets with his Personal  
Service Coordinator once every three months or more as  
needed for support with case management and  
rehabilitation counseling. . . .

- A February 11, 2019, letter from Amy Jensen, program director at  
Northgate Point. Ms. Jensen’s statement is identical to Dr. Gray’s  
statement.

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1 - A “Medical Source Statement of Ability to Do Work-Related Activities  
2 (Mental)” prepared by treating psychiatrist, Andres Sciolla, M.D., on  
September 9, 2016.

3 See id. at pgs. 4-14.

4 A case may be remanded to the agency for the consideration of new evidence if the  
5 evidence is material and good cause exists for the absence of the evidence from the prior record.  
6 See Sanchez v. Secretary of Health and Human Services, 812 F.2d 509, 511-12 (9th Cir. 1987)  
7 (citing 42 U.S.C. § 405(g)). In order for new evidence to be “material,” the court must find that,  
8 had the agency considered this evidence, the decision might have been different. See Clem v.  
9 Sullivan, 894 F.2d 328, 332 (9th Cir. 1990). The court need only find a reasonable possibility that  
10 the new evidence would have changed the outcome of the case. See Booz v. Secretary of Health  
11 and Human Services, 734 F.2d 1378, 1380-81 (9th Cir. 1984). The new evidence, however, must  
12 be probative of the claimant’s condition as it existed at or before the time of the disability hearing.  
13 See Sanchez 812 F.2d at 511 (citing 42 U.S.C. § 416(i)(2)(G)). In Sanchez, the court concluded  
14 that the new evidence in question was not material because it indicated “at most, mental  
15 deterioration after the hearing, which would be material to a new application, but not probative of  
16 his condition at the hearing.” Id. at 512 (citing Ward v. Schweiker, 686 F.2d 762, 765-66 (9th  
17 Cir. 1982)).

18 Dr. Sciolla’s medical source statement was submitted for the first time to the  
19 Appeals Council when plaintiff requested review of the ALJ’s denial. See CAR 4. As to Dr.  
20 Sciolla’s statement, the Appeals Council stated:

21 You submitted records from Dr. Andres Sciolla dated September 9, 2016  
22 (9 pages). The Administrative Law Judge decided your case through May  
31, 2016. This additional evidence does not relate to the period at issue.  
23 Therefore, it does not affect the decision about whether you were disabled  
beginning on or before May 31, 2016.

24 If you want us to consider whether you were disabled after May 31, 2016,  
25 you need to apply again. If you file a new claim for disability insurance  
benefits within 6 months and a new claim for supplemental security  
26 income within 60 days after you receive this letter, we can use July 14,  
2016, the date of your request for review, as the date of your new claims.  
27 The date you file a new claim can make a difference in the amount of  
benefits we can pay.

28 Id.

1 The letters from Dr. Gray and Ms. Jensen are submitted for the first time in this action for judicial  
2 review.

3 The letters from Dr. Gray and Jensen, dated October 24, 2019, and February 11,  
4 2019, respectively, are not material because they post-date the May 2016 hearing and decision.  
5 Similarly, as the Appeals Council noted, Dr. Sciolla's September 2016 medical source statement  
6 is not material. The court finds a remand to consider new evidence is not warranted.

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**IV. CONCLUSION**

9 Based on the foregoing, the court concludes that the Commissioner's final decision  
10 is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY  
11 ORDERED that:

- 12 1. Plaintiff's motion for summary judgment (Doc. 16) is denied;
- 13 2. Defendant's motion for summary judgment (Doc. 20) is granted;
- 14 3. The Commissioner's final decision is affirmed; and
- 15 4. The Clerk of the Court is directed to enter judgment and close this file.

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18 Dated: August 7, 2019



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE

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