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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALICIA MANN,  
Plaintiff,

v.

KILOLO KIJAKAZI,  
Defendant.

Case No. [21-cv-05630-RS](#)

**ORDER AFFIRMING DECISION OF  
THE COMMISSIONER OF SOCIAL  
SECURITY**

I. INTRODUCTION

Plaintiff Alicia Mann challenges the decision of the Commissioner of Social Security denying her disability benefits under the Social Security Act. An Administrative Law Judge (ALJ) reviewed Mann’s application and determined she was not disabled and thus not eligible for benefits. Upon consideration of the parties’ cross-motions for summary judgment, the Commissioner’s motion will be granted, and Mann’s denied. Mann has not shown the ALJ erred.

II. BACKGROUND

Mann was born in April of 1967. She has a high school degree and a substantial number of college credits in early childhood education. She previously worked as a teacher in a day care center, and as a counselor. In September of 2017, she suffered nearly complete vision loss in her right eye, allegedly as the result of a stroke.<sup>1</sup> Based on that vision loss and high blood pressure,

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<sup>1</sup> The Commissioner contends the record does establish the vision loss was caused by stroke. As

1 Mann first applied for disability benefits in April of 2018. See Administrative Record (AR) 88.  
2 That application was denied the following month. *Id.*

3 Mann again applied for benefits in April of 2019, asserting she suffered from severe high  
4 blood pressure, loss of vision in her right eye as of September of 2017, and “stroke.” AR 87.  
5 Following denial of that application, Mann sought reconsideration, adding, among other things,  
6 that beginning around July of 2019, she experienced forgetfulness, anxiety, and impaired  
7 comprehension. AR 98. Although the decision on reconsideration, unlike the initial determination,  
8 found Mann had limitations that prevented her from performing the work she had done in the past,  
9 it stated her residual functional capacity (RFC) was sufficient to preclude a finding of disability.  
10 AR 111.

11 Mann then sought and received a hearing before an ALJ. At the hearing, Mann testified  
12 that she can drive, but only locally. AR 44- 45. Her loss of vision in the right eye causes  
13 clumsiness; she often bumps into objects because she cannot see to her right and has to be very  
14 cautious if she is carrying something. AR 57. Her blood pressure medications tend to cause  
15 drowsiness or dizziness, and when she takes them she is in “a sedated state.” AR 60. Mann was  
16 written up for falling asleep at work. AR 61. She also had to take multiple restroom breaks during  
17 work because of the diuretic medication she takes. *Id.*

18 Mann’s doctor referred her to mental health counseling because he was concerned she was  
19 not taking her severe high blood pressure seriously, but she was unable to go because of a lack of  
20 insurance coverage AR 62-63. Mann has discussed her anxiety with her pastor on occasion. AR  
21 63. Mann explained the anxiety causes her difficulty with multitasking. AR 64.

22 The ALJ’s written decision found that Mann had not engaged in substantial gainful activity  
23 (SGA) during the relevant period. As the Commissioner points out, Mann had maintained  
24 employment at an SGA level following her loss of vision and after her initial disability claim, up  
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26 \_\_\_\_\_  
27 there is no dispute, however, that Mann suffered the vision loss beginning in 2017, and that it is  
28 permanent, the precise cause is not material.

1 until shortly before filing her second claim. There is no dispute, however, that her limited work  
2 thereafter never rose to the SGA level. At the time of the hearing, she was earning only small sums  
3 caring for a relative’s child on a part-time basis. AR 48.

4 The ALJ further found that Mann has a central retinal arterial occlusion with resulting  
5 vision loss in the right eye, and an adjustment disorder with depressed mood. The ALJ concluded  
6 these impairments are severe, but do not meet or equal the listed impairments. The ALJ then  
7 determined Mann has the following RFC:

8 [A] full range of work at all exertional levels but with the following non-exertional  
9 limitations: the claimant can perform tasks that require only occasional need for  
10 depth perception; however, she is able to operate a motor vehicle. Additionally, the  
11 claimant is able to frequently as opposed to constantly, stoop or bend. In terms of  
12 mental limitations, she is able to perform simple and routine tasks in a low stress  
13 work environment. For the purposes of this determination, a ‘low stress work  
14 environment’ is defined as one with few changes in tasks or  
environment/surroundings; requiring little independent judgment or decision-  
making; only occasional interaction with supervisors, coworkers, and the general-  
public; no fast-pace production, such as that performed on an assembly line; and no  
high production quotas, such as those found in piecemeal work.

15 The ALJ found, given the RFC limitations, Mann could not return to her past relevant work.  
16 Relying on the testimony of a vocational expert (VE), the ALJ found that Mann could perform the  
17 occupations of Marker, Marker II, and Ticket Taker, and that she therefore is not disabled. The  
18 the Appeals Council denied Mann’s request for review and this action followed.

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20 **III. LEGAL STANDARD**

21 Under 42 U.S.C. § 405(g), a district court has jurisdiction to review the Commissioner’s  
22 final decision denying benefits under the SSA. An ALJ’s decision must be affirmed if it is  
23 supported by substantial evidence and is free of legal error. *Beltran v. Astrue*, 700 F.3d 386,  
24 388 (9th Cir. 2012). Substantial evidence is defined as “more than a mere scintilla but less than a  
25 preponderance—it is such relevant evidence that a reasonable mind might accept as adequate to  
26 support the conclusion.” *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995). In determining  
27 whether a decision is supported by substantial evidence, the court must examine the administrative  
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1 record as a whole, considering all of the facts. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir.  
2 1992). If the evidence supports more than one rational interpretation, the court must defer to the  
3 ALJ’s decision. *Id.* at 1258. In Social Security cases, federal courts “are not triers of fact” and a  
4 court “may not substitute its judgment for that of the [ALJ].” *Fair v. Bowen*, 885 F.2d 597, 604  
5 (9th Cir. 1989).

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7 IV. DISCUSSION

8 A person is “disabled” for the purposes of receiving Social Security benefits if she is  
9 unable to engage in any substantial gainful activity due to a medically determinable physical or  
10 mental impairment which is expected to result in death or which has lasted or can be expected to  
11 last for a continuous period of not less than twelve months. 42 U.S.C. § 423(d)(1)(A). In  
12 evaluating whether a claimant is disabled, the Commissioner must follow the five-step sequential  
13 inquiry. 20 C.F.R. §§ 404.1520, 416.920; *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995).  
14 The burden rests on the claimant to prove: (1) she is not working; (2) she has a severe medically  
15 determinable impairment that is expected to last more than twelve months; and either (3) that  
16 impairment is severe enough to meet or equal an impairment listed as *a priori* disabling without  
17 further vocational-medical evidence; or (4) the impairment causes such functional limitations that  
18 she cannot do her past relevant work. 20 C.F.R. § 404.1520(a)(4)(i)–(iv).

19 If the claimant successfully proves she cannot do her past work, then the burden shifts to  
20 the Commissioner to show at step five that the claimant can perform other work that exists in  
21 significant numbers in the economy; otherwise, the claimant will be found disabled. *Bray v.*  
22 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). Moreover, if the claimant’s  
23 impairment does not meet or equal a listed impairment under step three, the ALJ must determine  
24 the claimant’s RFC and apply it during steps four and five to make a final disability determination.  
25 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1034 (9th Cir. 2007) (citing 20 C.F.R. § 404.1520(a)(4). An  
26 individual’s RFC is the most she can still do despite her limitations. See 20 C.F.R. §  
27 416.945(a)(1).

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1           1. Opinion of Dr. Patricia Spivey

2           Mann contends the ALJ erred in finding the medical opinion of Dr. Patricia Spivey  
3           unpersuasive, in part. The Commissioner emphasizes this case is governed by new regulations  
4           applicable to disability benefits applications filed on or after March 27, 2017. The Ninth Circuit  
5           has held the amended regulations displace prior case law that required an ALJ to provide “specific  
6           and legitimate” reasons for rejecting an examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th  
7           785, 787 (9th Cir. 2022).

8                           For claims subject to the new regulations, the former hierarchy of  
9                           medical opinions—in which we assign presumptive weight based on  
10                          the extent of the doctor’s relationship with the claimant—no longer  
11                          applies. Now, an ALJ’s decision, including the decision to discredit  
12                          any medical opinion, must simply be supported by substantial  
13                          evidence.

14           *Id.*

15           Dr. Spivey, a Doctor of Psychology, personally examined Mann to prepare a Mental Status  
16           Disability Report. AR 439-441. Dr. Spivey evaluated Mann’s level of impairment in eleven  
17           specific categories of work-related abilities. Dr. Spivey opined Mann had no impairments in  
18           following simple instructions, maintaining adequate attention/concentration, and communicating  
19           effectively with others verbally. Dr. Spivey asserted Mann had mild impairments in her ability to  
20           follow complex instructions, to communicate effectively in writing, and to interact appropriately  
21           with co-workers, supervisors and the public on a daily basis. Dr. Spivey found “mild/moderate”  
22           impairment in Mann’s ability to maintain adequate pace or persistence to complete 1-2 step simple  
23           repetitive tasks, and “moderate/marked” impairment as to completing complex tasks. Mann was  
24           judged to suffer moderate impairment in her ability to adapt to changes in job routine and to  
25           maintain emotional predictability. Finally, Dr. Spivey opined Mann had marked impairment in her  
26           ability to withstand the stress of a routine workday. AR 441.

27           The ALJ appears to have accepted most of these findings and incorporated them into her  
28           conclusions that Mann could not perform her past relevant work and the RFC that limited her to  
29           simple and routine tasks in a low stress work environment. Mann does not argue otherwise. Mann

1 contends, however, that the ALJ erred to the extent she disregarded Dr. Spivey’s assessment that  
2 Mann had marked impairment in her ability to withstand the stress of a routine workday. Mann  
3 argues the testimony of the VE established that the “marked” limitation in withstanding the stress  
4 of a routine workday would preclude competitive employment.<sup>2</sup>

5 Under the current regulations, “the two most important factors” used to evaluate the  
6 persuasiveness of medical opinions are supportability and consistency. 20 C.F.R. § 404.1520c(a).  
7 Supportability means “[t]he more relevant the objective medical evidence and supporting  
8 explanations presented by a medical source are to support his or her medical opinion(s) . . . the  
9 more persuasive the medical opinions . . . will be. § 404.1520c(c)(1). Consistency means “[t]he  
10 more consistent a medical opinion . . . is with the evidence from other medical sources and  
11 nonmedical sources in the claim, the more persuasive the medical opinion . . . will be.”  
12 § 404.1520c(c)(2).

13 Here, Dr. Spivey’s own examination finding showed that Mann was oriented, had  
14 unremarkable and rational thought content, and linear, goal directed, and organized thought  
15 process, and good insight. Dr. Spivey asserted Mann had a marked limitation in her ability to  
16 withstand the stress of a workday but included no explanation of why she believed that to be so.  
17 The ALJ set out in detail why, in light of the complete record, she found Dr. Spivey’s opinion  
18 unpersuasive to the extent it suggested greater limitations than those reflected in the RFC. The  
19 ALJ did not err in relying on Dr. Spivey’s failure to support her conclusions with her own findings  
20 and diagnosis.

21 Mann places heavy emphasis on a supposed failure by the ALJ to consider her lack of  
22 medical insurance as an excuse for not having sought mental health treatment. Although the ALJ  
23 did discuss whether Mann had adequately shown she availed herself of all possible sources of  
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25 <sup>2</sup> The VE was asked to assume that a marked limitation in this arena meant a person would be  
26 “unproductive, or performing a task incorrectly” at least 15 percent of the workday. AR 82. The  
27 VE responded that “no work in the national economy would tolerate” an employee being “off-  
28 task because of the marked limitations at 15 percent.” *Id.*

1 assistance, the more important point was the lack of objective medical evidence showing any  
2 mental impairment requiring greater limitations in the RFC. See AR 23. Indeed, the ALJ  
3 effectively accepted Mann’s “rationale” for not having sought treatment (AR 24), but that does not  
4 translate into a basis for finding disability. *Cf.* SSR 18-3p (explaining the circumstances under  
5 which a claimant who otherwise is eligible for disability will not be *disqualified* for having failed  
6 to follow prescribed treatment that could be expected to restore the ability to engage in SGA.)  
7 Accordingly, the ALJ did not err in assessing Dr. Spivey’s opinion.

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9 2. Mann’s testimony

10 Mann contends the ALJ should have given more weight to the testimony she presented at  
11 the hearing regarding the extent of her impairment. The ALJ, however, properly considered the  
12 record and gave clear reasons supported by substantial evidence for the findings she made.

13 The Act and the regulations prohibit granting benefits based solely on a claimant’s  
14 subjective complaints. See 42 U.S.C. § 423(d)(5)(A) (“[a]n individual’s statement as to pain or  
15 other symptoms shall not alone be conclusive evidence of disability”); 20 C.F.R. § 416.929(a)  
16 (“statements about your pain or other symptoms will not alone establish that you are disabled”).  
17 Thus, where the claimant has provided objective medical evidence of an impairment that could  
18 reasonably produce the alleged symptoms, the ALJ evaluates the intensity and persistence of the  
19 symptoms. See Social Security Ruling (SSR) 16-3p. The ALJ must then determine whether her  
20 statements about symptoms are consistent with (1) the objective medical evidence, and (2) the  
21 other evidence in the record. See 20 C.F.R. § 416.929(c)(2)-(3); SSR 16-3p. An ALJ must make  
22 specific findings about a claimant’s allegations, properly supported by the record and sufficiently  
23 specific, to ensure a reviewing court that she did not “arbitrarily discredit” a claimant’s subjective  
24 testimony. *See Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (citing *Bunnell v. Sullivan*,  
25 947 F.2d 341, 345-46 (9th Cir. 1991) (en banc)).

26 As an initial matter, Mann has identified no clear assertions or express claims she made in  
27 her testimony that, even if fully credited, would establish that the limitations in the RFC do not  
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1 sufficiently address her physical and mental impairments. To the extent Mann’s testimony should  
2 nevertheless be more broadly understood at least to imply an inability to work at an SGA level, the  
3 ALJ did not err in declining to credit the degree to which she claimed her symptoms are disabling.

4 As directed in the regulations, the ALJ considered the objective medical evidence in  
5 determining the RFC and how consistent Mann’s statements were with that evidence. See 20  
6 C.F.R. 416.929(c)(2); 20 C.F.R. § 416.945(a)(3) (“We will assess your residual functional  
7 capacity based on all of the relevant medical and other evidence”). While the ALJ could not reject  
8 Mann’s express or implied characterizations of her limitations solely based on the medical  
9 evidence, it was a relevant factor to consider. 20 C.F.R. 416.929(c)(2); *see also Rollins v.*  
10 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (while a claimant’s subjective statements about  
11 symptoms “cannot be rejected on the sole ground that it is not fully corroborated by objective  
12 medical evidence, the medical evidence is still a relevant factor.”).

13 The ALJ also evaluated Mann’s testimony regarding her alleged symptoms and limitations  
14 in light of her reported daily activities. 20 C.F.R. § 416.929(c)(3)(i); *Tommasetti v. Astrue*, 533  
15 F.3d 1035, 1039 (9th Cir. 2008) (an ALJ may consider many factors in weighing a claimant’s  
16 testimony, including daily activities); *Molina*, 674 F.3d at 1112 (ALJ may consider “whether the  
17 claimant engages in daily activities inconsistent with the alleged symptoms”). Throughout the  
18 relevant period, Mann was able to drive, attend church, prepare meals, dress and feed herself  
19 without difficulty. AR 21-22. Additionally, Mann continued to work, albeit not at an SGA level.<sup>3</sup>  
20 Mann correctly observes that one need not “vegetate in a dark room excluded from all forms of  
21 human and social activity” to be found disabled. *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir.  
22 1987). The ALJ, nevertheless was entitled to conclude Mann’s daily activities undermined her

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<sup>3</sup> Mann faults the ALJ for stating she had still been able to “go to work on a regular basis” and contends she in fact has not worked since her alleged onset date. She testified, however, that she went back to work at the school in the fall at reduced hours after filing her second disability claim (AR 68-69), and that she was continuing to earn money for childcare at the time of the hearing, in a small amount. AR 46-48.



1 assertions regarding the degree of her symptoms.

2 The ALJ acknowledged the evidence in the record showing Mann has a number of  
3 significant limitations. Substantial evidence, however, supports her conclusion that no greater  
4 limitations than those captured in the RFC were warranted. *See Burch*, 400 F.3d at 680 (finding  
5 the ALJ properly discounted credibility where the claimant’s activities suggested higher  
6 functionality, including caring for personal needs, cooking, cleaning, shopping, interacting with  
7 family, and managing her finances); *Fair*, 885 F.2d at 604 (affirming the ALJ’s decision where the  
8 claimant’s allegations were inconsistent with activities of personal care, shopping, chores, using  
9 public transportation, and driving).

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11 3. Vision limitation

12 Mann contends the ALJ erred by including nothing in the RFC directly addressing the  
13 blindness in her right eye other than the limitation that she should have only “occasional” need for  
14 depth perception. Mann does not explain, however, what additional express limitation in the RFC  
15 would be warranted, or what evidence would support it. Mann previously argued to the ALJ that  
16 her loss of vision worked in combination with her mental conditions to limit her ability to  
17 function. While that may be, she has not shown how the existing limitation in the RFC to a low  
18 stress work environment is insufficient.

19 Mann does argue that the jobs identified by the ALJ (based on the VE’s testimony) require  
20 “near vision” or “frequent near visual acuity,” according to the Dictionary of Occupational Titles  
21 and the Bureau of Labor Statistics. She has presented nothing, however, to suggest that near visual  
22 acuity in *both* eyes is required, and such a conclusion is not otherwise intuitive. There is no basis  
23 to find the ALJ erred on this point.

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25 4. Lay witness

26 Finally, Mann argues the ALJ committed reversible error by failing even to mention a third  
27 party “function report” submitted by her adult son, Byron Thomas, who lives with her. Thomas’

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1 descriptions of his mother’s limitations, abilities, and activities was consistent with her testimony  
2 at the hearing. Thomas noted Mann’s vision, energy, and concentration deficits. AR 243-250.  
3 Thomas also reported, however, that Mann went to work daily (AR 244) and that on a “regular  
4 basis” she goes to “church, work, grocery store, laundry mat.” AR 247.

5 Mann does not counter the Commissioner’s showing that under the current regulations, the  
6 ALJ has no obligation expressly to “articulate” how evidence from nonmedical sources was  
7 considered. *See* 20 C.F.R. § 404.1520c(d). Although Thomas’s statements generally supported his  
8 mother’s contentions, they added nothing that required separate express analysis or that would  
9 support a different result.

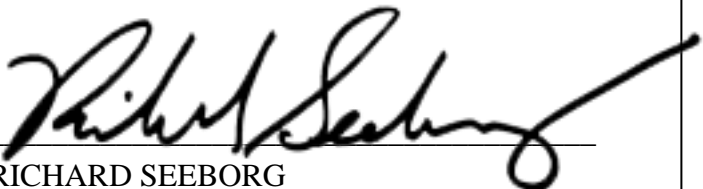
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V. CONCLUSION

Mann’s motion for summary judgment is denied, and the Commissioner’s motion is granted. The ruling that Mann failed to establish disability is upheld.

**IT IS SO ORDERED.**

Dated: December 11, 2023

  
RICHARD SEEBORG  
Chief United States District Judge