

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 27, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHELLY W.,

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner  
of Social Security,

Defendant.

NO: 1:24-CV-3103-TOR

ORDER DENYING PLAINTIFF'S  
BRIEF AND GRANTING  
DEFENDANT'S BRIEF

BEFORE THE COURT are the parties' briefs seeking judgment in this case. ECF Nos. 10, 13, 14. The briefing was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, Plaintiff's request for remand, ECF No. 10, is DENIED, and Defendant's request for affirmance, ECF No. 13, is GRANTED.

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ORDER DENYING PLAINTIFF'S BRIEF  
AND GRANTING DEFENDANT'S BRIEF ~ 1

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## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

## STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means relevant evidence that “a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted). Further, a district court “may not reverse an ALJ’s decision on account of an error

1 that is harmless.” *Id.* An error is harmless “where it is inconsequential to the  
2 [ALJ’s] ultimate nondisability determination.” *Id.* at 1115 (quotation and citation  
3 omitted). The party appealing the ALJ’s decision generally bears the burden of  
4 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

### 5 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

6 A claimant must satisfy two conditions to be considered “disabled” within  
7 the meaning of the Social Security Act. First, the claimant must be “unable to  
8 engage in any substantial gainful activity by reason of any medically determinable  
9 physical or mental impairment which can be expected to result in death or which  
10 has lasted or can be expected to last for a continuous period of not less than twelve  
11 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be  
12 “of such severity that he is not only unable to do his previous work[,] but cannot,  
13 considering his age, education, and work experience, engage in any other kind of  
14 substantial gainful work which exists in the national economy.” 42 U.S.C.  
15 § 423(d)(2)(A).

16 The Commissioner has established a five-step sequential analysis to  
17 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
18 404.1520(a)(4)(i)–(v). At step one, the Commissioner considers the claimant’s  
19 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in  
20 “substantial gainful activity,” the Commissioner must find that the claimant is not

1 disabled. 20 C.F.R. § 404.1520(b).

2 If the claimant is not engaged in substantial gainful activities, the analysis  
3 proceeds to step two. At this step, the Commissioner considers the severity of the  
4 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers  
5 from “any impairment or combination of impairments which significantly limits  
6 [his or her] physical or mental ability to do basic work activities,” the analysis  
7 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment  
8 does not satisfy this severity threshold, however, the Commissioner must find that  
9 the claimant is not disabled. *Id.*

10 At step three, the Commissioner compares the claimant’s impairment to  
11 several impairments recognized by the Commissioner to be so severe as to  
12 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §  
13 404.1520(a)(4)(iii). If the impairment is as severe, or more severe than one of the  
14 enumerated impairments, the Commissioner must find the claimant disabled and  
15 award benefits. 20 C.F.R. § 404.1520(d).

16 If the severity of the claimant’s impairment does meet or exceed the severity  
17 of the enumerated impairments, the Commissioner must pause to assess the  
18 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
19 defined generally as the claimant’s ability to perform physical and mental work  
20 activities on a sustained basis despite his or her limitations (20 C.F.R. §

1 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

2 At step four, the Commissioner considers whether, in view of the claimant's  
3 RFC, the claimant is capable of performing work that he or she has performed in  
4 the past ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is  
5 capable of performing past relevant work, the Commissioner must find that the  
6 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of  
7 performing such work, the analysis proceeds to step five.

8 At step five, the Commissioner considers whether, in view of the claimant's  
9 RFC, the claimant is capable of performing other work in the national economy.  
10 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner  
11 must also consider vocational factors such as the claimant's age, education and  
12 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
13 Commissioner must find that the claimant is not disabled. 20 C.F.R. §  
14 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the  
15 analysis concludes with a finding that the claimant is disabled and is therefore  
16 entitled to benefits. *Id.*

17 The claimant bears the burden of proof at steps one through four above.  
18 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). If the  
19 analysis proceeds to step five, the burden shifts to the Commissioner to establish  
20 that (1) the claimant is capable of performing other work; and (2) such work

1 “exists in significant numbers in the national economy.” 20 C.F.R. § 416.1560(c);  
2 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

3 Determination of whether a person’s eligibility has ended for disability  
4 benefits involves an eight-step process under Title II. 20 C.F.R. §§ 404.1594(f)(1)-  
5 (8). The first step addresses whether the claimant is engaging in substantial gainful  
6 activity. 20 C.F.R. § 404.1594(f)(1). If not, step two determines whether the  
7 claimant has an impairment or combination of impairments that meet or equal the  
8 severity of listed impairments set forth at 20 C.F.R. pt. 404, subpt. P, app. 1. 20  
9 C.F.R. §§ 404.1520(d), 404.1594(f)(2).

10 If the impairment does not equal a listed impairment, the third step addresses  
11 whether there has been medical improvement in the claimant’s condition. 20  
12 C.F.R. § 404.1594(f)(3). Medical improvement is “any decrease in the medical  
13 severity” of the impairment that was present at the time the individual was disabled  
14 or continued to be disabled. 20 C.F.R. § 404.1594(b)(1).

15 If there has been medical improvement, at step four, a determination is made  
16 whether such improvement is related to the claimant’s ability to perform work—  
17 that is, whether there has been an increase in the individual’s residual functional  
18 capacity. 20 C.F.R. § 404.1594(f)(4). If the answer to step four is yes, the  
19 Commissioner skips to step six and inquires whether all of the claimant’s current  
20 impairments in combination are severe.

1           If there has been no medical improvement or medical improvement is not  
2 related to the claimant’s ability to work, the evaluation proceeds to step five. At  
3 step five, consideration is given to whether the case meets any of the special  
4 exceptions to medical improvement for determining that disability has ceased. 20  
5 C.F.R. § 404.1594(f)(5).

6           At step six, if medical improvement is shown to be related to the claimant’s  
7 ability to work, a determination will be made to assess whether the claimant’s  
8 current impairments in combination are severe—that is, whether they impose more  
9 than a minimal limitation on her physical or mental ability to perform basic work  
10 activities. 20 C.F.R. § 404.1594(f)(6). If the answer to that inquiry is yes, at step  
11 seven the ALJ must determine whether the claimant can perform past relevant  
12 work. 20 C.F.R. §§ 404.1520(e), 404.1594(f)(7).

13           Finally, at step eight, if the claimant cannot perform past relevant work, a  
14 limited burden of production shifts to the Commissioner to prove there is  
15 alternative work in the national economy that the claimant can perform given her  
16 age, education, work experience, and residual functional capacity. 20 C.F.R. §  
17 404.1594(f)(8). If the claimant cannot perform a significant number of other jobs,  
18 she remains disabled despite medical improvement; if, however, she can perform a  
19 significant number of other jobs, disability ceases. *Id.*

1 Prior to the final step, the burden to prove disability and continuing  
2 entitlement to disability benefits is on the claimant. 20 C.F.R. § 404.1594; *cf.*  
3 *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987). The Commissioner must consider  
4 all evidence without regard to prior findings and there must be substantial evidence  
5 that medical improvement has occurred. 42 U.S.C. §§ 423(f)(1), 1382c(a)(4). The  
6 Commissioner views the evidence in a continuing disability review from a neutral  
7 perspective, without any initial inference as to the existence of disability being  
8 drawn from a prior finding of disability. 42 U.S.C. §§ 423(f)(1), 1382c(a)(4).

9 If the analysis proceeds to step eight, the burden shifts to the Commissioner  
10 to establish that (1) the claimant is capable of performing other work; and (2) such  
11 work “exists in significant numbers in the national economy.” *Cf. Bowen v.*  
12 *Yuckert*, 482 U.S. at 146 n.5; and *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.  
13 2012) (applying the same burden at the initial disability determination).

#### 14 **ALJ’S FINDINGS**

15 Plaintiff applied for supplemental security income (“SSI”) benefits on June  
16 25, 2021, alleging an onset date of January 1, 2005.<sup>1</sup> Tr. 17. The claim was

17  
18 <sup>1</sup> Regardless, Plaintiff is not eligible for SSI disability benefits for any month prior  
19 to the month following the month he protectively filed his SSI disability benefits  
20 application. 20 C.F.R. §§ 416.330, 416.335.



1 denied initially on November 1, 2021, and upon reconsideration on February 21,  
2 2022. *Id.* Plaintiff requested a hearing. *Id.* A telephonic hearing was held before  
3 an administrative law judge (“ALJ”) on May 4, 2023. *Id.* On July 21, 2023, the  
4 ALJ denied Plaintiff’s claim of disability. Tr. 26. The Appeals Council denied  
5 review on May 17, 2024. Tr. 1.

6 At step one, the ALJ found that Plaintiff had not engaged in substantial  
7 gainful activity since June 25, 2021. Tr. 19. At step two, the ALJ found that  
8 Plaintiff had the following severe impairments: post-traumatic stress disorder  
9 (“PTSD”), depressive disorder, and substance abuse disorder. Tr. 20. At step three,  
10 the ALJ found Plaintiff did not have an impairment or combination of impairments  
11 that meets or medically equals the severity of one of the listed impairments. *Id.*  
12 The ALJ then determined Plaintiff had the residual functional capacity to perform  
13 a full range of work at all exertion levels with the following nonexertional  
14 limitations:

15 The claimant is able to understand, remember, and carry out simple, routine,  
16 and repetitive tasks. The claimant is able to have occasional, superficial  
interaction with the public and coworkers.

17 Tr. 21.

18 At step four, the ALJ found Plaintiff did not have any past relevant work.  
19 Tr. 25. Finally, at step five, the ALJ determined jobs existed in significant  
20

1 numbers in the national economy that the Plaintiff could have performed including  
2 hand packager, hospital housekeeper and marker. *Id.*

### 3 ISSUES

4 Plaintiff seeks judicial review of the ALJ’s final decision denying her  
5 supplemental security income under Title XVI of the Social Security Act. Plaintiff  
6 raises the following issues:

- 7 1. Whether the ALJ erred in consideration of the medical opinion evidence;
- 8 2. Whether the ALJ erred in evaluating Plaintiff’s testimony

9 ECF No. 10 at 3,16.

### 10 DISCUSSION

#### 11 **A. Whether the ALJ erred in consideration of the medical opinion** 12 **evidence**

13 Plaintiff argues the ALJ’s findings did not properly consider the medical  
14 opinion evidence of Dr. David Morgan and Dr. William Brashear. Under the new  
15 Social Security regulations, the ALJ will no longer “give any specific evidentiary  
16 weight . . . to any medical opinion(s).” Revisions to Rules, 2017 WL 168819, 82  
17 Fed. Reg. 5844-01, 5867–68. Instead, an ALJ must consider and evaluate the  
18 persuasiveness of all medical opinions or prior administrative medical findings  
19 from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b). The  
20 factors for evaluating the persuasiveness of medical opinions and prior

1 administrative medical findings include supportability, consistency, relationship  
2 with the claimant, specialization, and “other factors that tend to support or  
3 contradict a medical opinion or prior administrative medical finding,” including  
4 but not limited to “evidence showing a medical source has familiarity with the  
5 other evidence in the claim or an understanding of our disability program's policies  
6 and evidentiary requirements.” 20 C.F.R. §§ 404.1520c(c)(1)–(5), 416.920c(c)(1)–  
7 (5).

8           The ALJ is required to explain how the most important factors,  
9 supportability and consistency, were considered. 20 C.F.R. §§ 404.1520c(b)(2),  
10 416.920c(b)(2). Those factors are defined as follows:

11           (1) Supportability. The more relevant the objective medical evidence  
12 and supporting explanations presented by a medical source are to  
13 support his or her medical opinion(s) or prior administrative  
14 medical finding(s), the more persuasive the medical opinions or  
15 prior administrative medical finding(s) will be.

16           (2) Consistency. The more consistent a medical opinion(s) or prior  
17 administrative medical finding(s) is with the evidence from other  
18 medical sources and nonmedical sources in the claim, the more  
19 persuasive the medical opinion(s) or prior administrative medical  
20 finding(s) will be.

20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

          The ALJ may, but is not required to, explain how “the other most  
persuasive factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R.  
§§ 404.1520c(b)(2); 416.920c(b)(2). However, where two or more medical

1 opinions or prior administrative findings “about the same issue are both equally  
2 well-supported . . . and consistent with the record . . . but are not exactly the same,”  
3 the ALJ is required to explain how “the most persuasive factors” were considered.  
4 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

5 These regulations displace the Ninth Circuit’s standard that require an ALJ  
6 to provide “specific and legitimate” reasons for rejecting an examining doctor’s  
7 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the  
8 ALJ’s decision for discrediting any medical opinion “must simply be supported by  
9 substantial evidence.” *Id.*

10 *i. Dr. Morgan*

11 Dr. Morgan performed a psychological/psychiatric evaluation on Plaintiff  
12 June 18, 2021. Tr. 776. Dr. Morgan listed Plaintiff’s PTSD and chemical  
13 dependency as mental health symptoms that affect Plaintiff’s ability to work. The  
14 ALJ states that Dr. Morgan opined that Plaintiff “was able to understand,  
15 remember, and carry out short instructions, with moderate limitations in adapting  
16 to routine changes and marked limitations in completing activities within a  
17 schedule.” Tr. 24.

18 The ALJ found the opined limitation to short instructions persuasive because  
19 it was supported by Dr. Morgan’s internal mental status findings. However, she  
20 found the remainder of the opinion unpersuasive as inconsistent with the evidence

1 received at the hearing level. *Id.* Specifically, she found the hearing evidence did  
2 “not contain objective findings to indicate this degree of limitation, including  
3 primary care records reporting no mental health problems and the claimant’s own  
4 admission of improvement with psychotropic medication management and change  
5 in life circumstances . . . .” Substantial evidence supports the ALJ’s inconsistency  
6 finding.

7 Plaintiff argues the ALJ improperly rejected the latter portion of Dr.  
8 Morgan’s opinion because it is adequately supported by the record. ECF No. 10 at  
9 4-9. Plaintiff first argues the reason the primary care records do not contain any  
10 reporting of mental health problems was because Plaintiff was attending a dual  
11 diagnosis program at Comprehensive Healthcare for mental impairments and  
12 substance abuse. ECF No. 10 at 6. She argues the primary care doctors were  
13 aware of this and thus only treated her for physical conditions that arose  
14 intermittently. *Id.*

15 Indeed, a review of the record reveals four primary care visits between  
16 February 22, 2021 and May 13, 2021 noting that Comprehensive Healthcare was  
17 handling Plaintiff’s psych medications. Tr. 315, 318, 322, 325. Further, a visit  
18 with a primary care physician on March 29, 2021 lists Plaintiff’s chief complaint  
19 including an increase in PTSD triggers and worsening anxiety around people. Tr.  
20 318. Thus, ALJ’s finding that the primary care records show no history of mental

1 health issues is a mischaracterization of the evidence. Additionally, the  
2 significance of the inconsistencies with the two primary care records the ALJ cited  
3 are also somewhat undermined by the fact Plaintiff's primary reasons for the  
4 appointments were to address painful cysts on her wrist and ongoing pelvic  
5 cramping, not mental health problems. Tr. 577, 788. However, the ALJ did not  
6 solely rely on these records in supporting her reasoning.

7 In support of the ALJ's finding that the Plaintiff admitted to improvement  
8 with psychotropic medication management and change in life circumstances, the  
9 ALJ cited three Comprehensive Healthcare records (Tr. 867, 1036, 1109). The  
10 first from March 23, 2022 reports Plaintiff as having a dysphoric and anxious  
11 affect, poor concentration, insight and judgment, and feelings including  
12 worthlessness, hopelessness, and helplessness, but with fair memory. Tr. 868. She  
13 reported ongoing and worsening depression, anxiety, and irritability over the  
14 previous weeks. Tr. 864. However, treatment notes also indicated Plaintiff  
15 reported that she stopped working in January 2021 due to her substance abuse but  
16 reported her last illicit substance use to be January 12, 2021. Tr. 866, 867.

17 The second record from November 8, 2022 (Tr. 1030) likewise presents  
18 Plaintiff as dysphoric, anxious, feelings of worthlessness and helplessness, poor  
19 insight and judgment, poor concentration, but with fair memory. Tr. 1035-1036.  
20 Further, she reported "worsening [symptoms] of depression and mood swings due

1 to nightmares, poor sleep, and negative racing thoughts.” Tr. 1030. However, the  
2 record also notes Plaintiff acknowledged her living situation was not helping  
3 because her partner’s uncle, whom they lived with, was deteriorating in health  
4 which was sad. *Id.* Additionally, Plaintiff did not mention ongoing or increased  
5 issues with going out in public or paranoid feelings of being watched by others and  
6 seemed to be “somewhat stable” at that visit. Tr. 1030-1031, 1039l.

7 The last cited Comprehensive Healthcare record from February 23, 2023,  
8 reported Plaintiff with ongoing symptoms of depression, anxiety and irritability but  
9 a marked improvement in the depressive symptoms and daytime racing thoughts  
10 and irritability. Tr. 1109. Plaintiff reported this improvement was due to an  
11 increase in psychotropic medication, the fight with social security being almost  
12 over and her and her daughter’s upcoming weddings. Tr. 1109. Her mental status  
13 exam also presented Plaintiff as anxious with poor concentration, but with fair  
14 insight and judgment, and memory. Tr. 1114-1115.

15 The Court finds the ALJ’s evaluation of the consistency factor as to Dr.  
16 Morgan’s opinion supported by substantial evidence.

17 *ii. William Brashear (SUDP)*

18 William Brashear (“Brashear”), a substance abuse disorder professional,  
19 provided two separate medical opinions on May 26, 2022 and May 2, 2023  
20 respectively. The ALJ stated:

1 William Brashear, SUDP, opined in two separate statements that the  
2 claimant had a moderate to marked limitation in performing short and  
3 simple instructions, a marked limitation in sustaining ordinary routine  
4 and working in coordination with or proximity to others, severe  
5 limitations in completing a normal workday or workweek, and would  
6 be off-task for over 30% of the workday with four or more absences  
7 each month (9F, 12F).

8 Tr. 24.

9 The ALJ found this opinion unpersuasive for several reasons. First she  
10 found Brashear to not be an acceptable medical source as a substance use disorder  
11 professional nor did he indicate having any particular knowledge of the laws and  
12 regulations of the Social Security Administration's program. Tr. 24. Next, the  
13 ALJ found that the need for some mental limitations was supported by Brashear's  
14 internal findings and observations of Plaintiff during abuse counseling sessions.  
15 Tr. 24. However, the ALJ found the degree of limitation indicated, including the  
16 off-task limitation, to be overall inconsistent with the general record such as the  
17 primary care records reporting no mental health problems, Plaintiff's reported  
18 improvement with psychotropic medication management and change in life  
19 circumstances, and Plaintiff's reported daily living activities. *Id.* In support, the  
20 ALJ cited to two primary care records, the hearing testimony, and two Function  
Reports. *Id.*

Plaintiff argues, and Defendant appears to concede, that Brashear is an  
acceptable medical source pursuant to 20 C.F.R. § 416.902(a). ECF Nos. 10 at 12,



1 13 at 5-6. However, Defendant does argue that any error was harmless because the  
2 ALJ appropriately addressed the consistency and supportability of the opinion  
3 regardless. ECF No. 13 at 6. The Court will treat Brashear's reports as from a  
4 proper medical source pursuant to 20 C.F.R. § 416.902(a) that required the ALJ to  
5 address the supportability and consistency factors.

6 Next, Plaintiff again argues the primary care treatment records do not  
7 address mental health problems for the reasons stated prior. The ALJ pointed to  
8 two primary care records dated 12/9/2021 and 12/13/2022. *Id.* The former  
9 reported Plaintiff as awake, alert and oriented, cooperative and with appropriate  
10 mood and affect at the time of the appointment. Tr. 577. And the latter reported  
11 no anxiety or depression. Tr. 788. As previously discussed, the ALJ's conclusion  
12 that none of the primary care records reported mental health problems is a  
13 mischaracterization of the records. Several primary care records mention  
14 Comprehensive Health as handling Plaintiff's psych medications addressing  
15 mental health problems. Tr. 315, 318, 322, 325. However, any such error was  
16 harmless for the reasons stated below.

17 Plaintiff next argues that Brashear's reports were not inconsistent with  
18 Plaintiff's medical records nor her reported daily activities from the two Function  
19 Reports the ALJ cited to (Tr. 226-241). ECF No. 10 at 13-15. In both Function  
20 Reports, dated September 30, 2021 and December 1, 2021 respectively, Plaintiff

1 reported being able to complete daily tasks such as household chores, preparing  
2 meals, and attending Narcotics Anonymous (“NA”) meetings. Tr. 226-240. She  
3 also reported in the December 1, 2021 Function Report that she is capable of  
4 paying attention if it is only one person talking to her, and that she can follow  
5 written and spoken instructions if not interrupted and any spoken instructions are  
6 explained clearly. Tr. 239. However, as Plaintiff points out, she also reported  
7 anxiety when dealing with other people and a resulting reluctance to leave the  
8 house, and issues with memory, completing tasks, following instructions,  
9 concentration, and understanding. Tr. 238-239.

10 The Court finds the ALJ’s reasoning and citations to the record support  
11 finding that the degree of Bashear’s checked limitations were inconsistent with the  
12 record. Therefore, the Court finds the ALJ adequately addressed the consistency  
13 and supportability factors in finding Brashear’s opinion unpersuasive.

14 Plaintiff makes an additional argument that the ALJ erred in giving greater  
15 weight to the state agency medical consultants’ opinions rather than Dr. Morgan  
16 and Brashear’s opinions because they did not examine Plaintiff, did not review all  
17 the records in Plaintiff’s exhibit file at the time of the ALJ’s decision, and did not  
18 address the significant limitations addressed by Dr. Morgan and Brashear. ECF  
19 No. 10 at 15. The revised social security regulations no longer give deference to  
20 treating and examining physicians. *See* 20 C.F.R. § 404.1520c(a) (“We will not

1 defer or give any specific evidentiary weight, including controlling weight, to any  
2 medical opinion(s) ..., including those from your medical sources.”). The ALJ did  
3 not err.

4 **B. Whether the ALJ erred in evaluating Plaintiff’s testimony**

5 Plaintiff argues the ALJ failed to provide clear and convincing reasons for  
6 rejecting Plaintiff’s testimony as to her symptoms and functional limitations. ECF  
7 No. 10 at 16.

8 An ALJ engages in a two-step analysis to determine whether to discount a  
9 claimant’s testimony regarding subjective symptoms. SSR 16-3p, 2016 WL  
10 1119029, at \*2. “First, the ALJ must determine whether there is ‘objective  
11 medical evidence of an underlying impairment which could reasonably be  
12 expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at  
13 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The  
14 claimant is not required to show that [the claimant’s] impairment ‘could reasonably  
15 be expected to cause the severity of the symptom [the claimant] has alleged; [the  
16 claimant] need only show that it could reasonably have caused some degree of the  
17 symptom.’” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d  
18 1028, 1035-36 (9th Cir. 2007)).

19 Second, “[i]f the claimant meets the first test and there is no evidence of  
20 malingering, the ALJ can only reject the claimant’s testimony about the severity of

1 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
2 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
3 omitted). General findings are insufficient; rather, the ALJ must identify what  
4 symptom claims are being discounted and what evidence undermines these claims.  
5 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*  
6 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
7 explain why he or she discounted claimant’s symptom claims). “The clear and  
8 convincing [evidence] standard is the most demanding required in Social Security  
9 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
10 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

11 Factors to be considered in evaluating the intensity, persistence, and limiting  
12 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,  
13 duration, frequency, and intensity of pain or other symptoms; (3) factors that  
14 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and  
15 side effects of any medication an individual takes or has taken to alleviate pain or  
16 other symptoms; (5) treatment, other than medication, an individual receives or has  
17 received for relief of pain or other symptoms; (6) any measures other than  
18 treatment an individual uses or has used to relieve pain or other symptoms; and (7)  
19 any other factors concerning an individual’s functional limitations and restrictions  
20 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7-\*8; 20

1 C.F.R. § 416.929(c). The ALJ is instructed to “consider all of the evidence in an  
2 individual’s record,” “to determine how symptoms limit ability to perform work-  
3 related activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

4 Here, the ALJ found that while Plaintiff’s medically determinable  
5 impairments could reasonably cause the alleged symptoms, Plaintiff’s subjective  
6 testimony on the intensity, persistence and limiting effects of the symptoms were  
7 not entirely consistent with medical evidence and other evidence in the record. Tr.  
8 22.

9 First, the ALJ noted that despite Plaintiff’s reported mental symptoms,  
10 “examinations showed a mixture of both normal and abnormal clinical findings of  
11 memory, insight, judgment, speech, concentration, thought process, thought  
12 content, mood, and affect.” *Id.* The ALJ cited to two primary care records that  
13 presented Plaintiff as cooperative, of appropriate mood and affect, and without  
14 anxiety or depression. Tr. 577,788. As previously discussed, these primary  
15 records are not particularly persuasive as an indicator of the degree Plaintiff’s  
16 mental health symptoms, however, the ALJ also provided additional support.

17 The ALJ also found that while Plaintiff testified anxiety and difficulty with  
18 instructions prevented her from returning to work, her treatment notes reflect  
19 normal findings of behavior and “fair” findings of memory. Tr. 23. Further, the  
20 ALJ reasoned that Plaintiff’s ability to “manage her own personal care, live with

1 others, perform household chores, shop in store, manage her own financial affairs,  
2 maintain contact with her granddaughter through Facebook video, and attend NA  
3 meetings up to three times a week” was also inconsistent with Plaintiff’s  
4 allegations that she could not return to work due to anxiety in dealing with people.  
5 Tr. 23.

6 The ALJ also cites Plaintiff’s ability to maintain sobriety for two years, her  
7 reported marked improvement in certain mental health symptoms with effective  
8 treatment in a more recent treatment record, and her anticipated marriage and  
9 adjustment to a new living situation as evidence that she can perform work  
10 consistent with the determined residual function capacity. Tr. 23.

11 The Court finds the ALJ adequately articulated clear and convincing reasons  
12 why she found Plaintiff’s alleged degree of limitations as inconsistent with other  
13 evidence of the record. The ALJ determined in the residual function capacity that  
14 Plaintiff could “understand, remember, and carry out simple, routine, and repetitive  
15 tasks” and could have “occasional, superficial interaction with the public and  
16 coworkers.” Tr. 21. Plaintiff argues that variations in mental status examinations  
17 is not a reason to discount her subjective testimony, nor did her discussed activities  
18 undermine her testimony. ECF No. 10 at 17-19. “The standard isn’t whether our  
19 court is convinced, but instead whether the ALJ’s rationale is clear enough that it

1 has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

2 The Court finds the ALJ has provided such a rationale here.

3 **CONCLUSION**

4 Having reviewed the record and the ALJ’s findings, this Court concludes  
5 that the ALJ’s decision is supported by substantial evidence and free of harmful  
6 legal error.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 8 1. Plaintiff’s Brief (effectively a motion for summary judgment), ECF No.  
9 10, is **DENIED**  
10 2. Defendant’s Brief (effectively a motion for summary judgment), ECF  
11 No. 13, is **GRANTED**.

12 The District Court Executive is directed to file this Order, enter Judgment  
13 for Defendant, provide copies to counsel, and **CLOSE** this file.

14 DATED January 27, 2025.



17  
18  
19  
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge