

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

Oct 10, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 2:19-cv-00017-SAB

MATTHEW S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant.

**ORDER GRANTING
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT;
DENYING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Plaintiff’s Motion for Summary Judgment, ECF No. 11, and Defendant’s Cross-Motion for Summary Judgment, ECF No. 12. The motions were heard without oral argument. Plaintiff is represented by David L. Lybbert; Defendant is represented by Assistant United States Attorney Timothy Durkin and Special Assistant United States Attorney Ryan Ta Lu.

Jurisdiction

On April 30, 2015, Plaintiff filed an application for Title II disability insurance benefits as well as a Title XVI application for supplemental security income. Plaintiff alleges an onset date of February 7, 2013.

Plaintiff’s application was denied initially and on reconsideration. On July

**ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT; DENYING DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT ~ 1**

1 12, 2017, Plaintiff appeared and testified at a video hearing in which he
2 participated in Wenatchee, Washington before an ALJ presiding in Seattle,
3 Washington. William H. Weiss, vocational expert, provided testimony as well as
4 Plaintiff's mother, Joan Schauerman. The ALJ issued a decision on March 5, 2018.
5 finding that Plaintiff was not disabled. Plaintiff timely requested review by the
6 Appeals Council, which denied the request on November 15, 2018. The Appeals
7 Council's denial of review makes the ALJ's decision the final decision of the
8 Commissioner.

9 Plaintiff filed a timely appeal with the United States District Court for the
10 Eastern District of Washington on January 11, 2019. The matter is before this
11 Court under 42 U.S.C. § 405(g).

12 **Sequential Evaluation Process**

13 The Social Security Act defines disability as the "inability to engage in any
14 substantial gainful activity by reason of any medically determinable physical or
15 mental impairment which can be expected to result in death or which has lasted or
16 can be expected to last for a continuous period of not less than twelve months."

17 42 U.S.C. § 1382c(a)(3)(A). A claimant shall be determined to be under a
18 disability only if his impairments are of such severity that the claimant is not only
19 unable to do his previous work, but cannot, considering claimant's age, education,
20 and work experiences, engage in any other substantial gainful work which exists
21 in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

22 The Commissioner has established a five-step sequential evaluation process
23 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
24 *Yuckert*, 482 U.S. 137, 140-42 (1987).

25 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.
26 § 404.1520(b). Substantial gainful activity is work done for pay and requires
27 compensation above the statutory minimum. *Id.*; *Keyes v. Sullivan*, 894 F.2d 1053,
28 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity, benefits are

1 denied. 20 C.F.R. § 404.1520(b). If he is not, the ALJ proceeds to step two.

2 Step 2: Does the claimant have a medically-severe impairment or
3 combination of impairments? 20 C.F.R. § 404.1520(c). If the claimant does not
4 have a severe impairment or combination of impairments, the disability claim is
5 denied. A severe impairment is one that lasted or must be expected to last for at
6 least 12 months and must be proven through objective medical evidence. 20 C.F.R.
7 § 404.1509. If the impairment is severe, the evaluation proceeds to the third step.

8 Step 3: Does the claimant's impairment meet or equal one of the listed
9 impairments acknowledged by the Commissioner to be so severe as to preclude
10 substantial gainful activity? 20 C.F.R. § 404.1520(d); 20 C.F.R. § 404 Subpt. P.
11 App. 1. If the impairment meets or equals one of the listed impairments, the
12 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
13 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.
14 Before considering Step 4, the ALJ must first determine the claimant's residual
15 functional capacity. 20 C.F.R. § 404.1520(e). An individual's residual functional
16 capacity is his ability to do physical and mental work activities on a sustained
17 basis despite limitations from his impairments.

18 Step 4: Does the impairment prevent the claimant from performing work he
19 has performed in the past? 20 C.F.R. § 404.1520(f). If the claimant is able to
20 perform his previous work, he is not disabled. *Id.* If the claimant cannot perform
21 this work, the evaluation proceeds to the fifth and final step.

22 Step 5: Is the claimant able to perform other work in the national economy
23 in view of his age, education, and work experience? 20 C.F.R. § 404.1520(g).
24 The initial burden of proof rests upon the claimant to establish a prima facie case
25 of entitlement to disability benefits. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
26 1999). This burden is met once a claimant establishes that a physical or mental
27 impairment prevents him from engaging in his previous occupation. *Id.* At step
28 five, the burden shifts to the Commissioner to show that the claimant can perform

1 other substantial gainful activity. *Id.*

2 **Standard of Review**

3 The Commissioner's determination will be set aside only when the ALJ's
4 findings are based on legal error or are not supported by substantial evidence in
5 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
6 (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
8 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial
9 evidence is "such relevant evidence as a reasonable mind might accept as
10 adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must
11 uphold the ALJ's denial of benefits if the evidence is susceptible to more than one
12 rational interpretation, one of which supports the decision of the administrative
13 law judge. *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). The Court
14 reviews the entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). "If
15 the evidence can support either outcome, the court may not substitute its judgment
16 for that of the ALJ." *Matney*, 981 F.2d at 1019.

17 A decision supported by substantial evidence will be set aside if the proper
18 legal standards were not applied in weighing the evidence and making the
19 decision. *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th
20 Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are
21 immaterial to the ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec.*
22 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

23 **Statement of Facts**

24 At the time of the hearing, Plaintiff was 38 years old. He has not worked
25 since 2013, when he was involved in a single car accident in which he lost
26 consciousness and dislocated his hip. He had surgery on his hip and was released
27 to a rehabilitation facility for a period of time. Plaintiff is morbidly obese. He
28 gained significant weight since his accident. He weighs over 300 lbs. He asserts

1 he is unable to work due to the constant pain in his hip and back. He has trouble
2 standing and sitting.

3 Prior to his accident, he worked as a carpet cleaner and forklift driver, as
4 well as a few temporary jobs with a temp agency. He has had five or six serious
5 car accidents—four of them rollovers—in which he lost consciousness. At the
6 hearing, he denied having any head injuries, but he indicated he has difficulty
7 focusing and concentrating because of the pain. When questioned he denied
8 getting upset and yelling at his mom.

9 Plaintiff lives alone. His mother purchased the house for him, and family
10 members help with the bills. He testified that he can spend only five minutes at a
11 time on housework and he can no longer do yardwork. He admitted that trash and
12 garbage have accumulated in his house and admitted to going for days without a
13 bath because of the condition of the house, but stated he tries to take regular baths.

14 He testified he can drive, but has trouble getting in and out of his car. He
15 would like to use a cane, but he had to return the one he had to the charity that had
16 loaned it to him after his accident. He spends most of his day in bed. He can only
17 sit for five minutes. He can microwave food, but not much more than that.

18 His mother testified at the hearing outside the presence of Plaintiff. AR 50.
19 She stated that she sees Plaintiff every two to three weeks, or two to three months,
20 when she travels. She stated that Plaintiff is not welcome in most places and he
21 never goes to see anyone so she always goes to see him. She testified that
22 sometimes Plaintiff showers and then there are times when he goes two to three
23 weeks without showering. She testified that he did not have hot water in his house.
24 She explained that when he does laundry, it is usually about 4 to 5 items at a time,
25 since the unit is small. She introduced pictures that showed Plaintiff's bed, which
26 consisted of two mattresses and two box springs on the floor. While the ALJ
27 characterized the pictures as "kind of a poor housekeeping," Plaintiff's mother
28 characterized it as a "landfill" and explained that there were recluse spiders, black

1 widows, and black flies in the house. AR 55. She hired someone to go into the
2 house to empty it of all the trash. So far, they had accumulated nearly 50 yards of
3 trash, along with four trailer loads. She testified that Plaintiff reacts badly to
4 criticism. He yells, screams, curses, and battles, and makes accusations that it is
5 always his mother's fault. He told her she was not welcome in his house. She
6 finally demanded that she be let in or she was going to evict him. When she got in,
7 she took the pictures and then took action to clean the house out.

8 She stated that Plaintiff's statements to Dr. Genthe that he was taking care
9 of himself were not accurate, especially given that the pictures she took were in
10 December 2016, and Dr. Genthe examined Plaintiff in November 2016. She stated
11 that in order to get out of bed, he must get on his hands and knees and crawl to the
12 wall.

13 She explained that while Plaintiff has always had trouble staying on task
14 and problems socializing his entire life, these problems became much worse after
15 his latest car accident. She tried to take him to the doctor for mental health
16 treatment on numerous occasions, but when they start asking personal questions,
17 he gets up and leaves. She has been trying to get him to seek mental health
18 treatment for years, but he refuses. She does not believe Plaintiff to be honest with
19 his treatment providers regarding his mental health struggles.

20 She described that it can be difficult to have a conversation with Plaintiff
21 because he is interacting with someone in his head with whom he is talking and to
22 whom he listens. Plaintiff has described it to her as having a storyline of a TV
23 show in his head in which he believes he was raped when he was a child and that
24 ever since then, he has been filmed 24/7. Plaintiff has told her that he cannot do
25 things because it is not in the script.

26 Plaintiff's mother explained to the ALJ that she was at Dr. Genthe's
27 examination and that Plaintiff was not upfront with the doctor regarding his
28 depression and other issues, including the running TV script in his head. He does

1 not divulge this type of information to others. She specifically testified that
2 Plaintiff's statements to Dr. Genthe that he was taking good care of his hygiene,
3 taking regular baths and showers, brushing his teeth, able to prepare his own
4 meals and feed himself, independently washing dishes, doing laundry, vacuuming,
5 and dusting were not true. AR 57-58.

6 **The ALJ's Findings**

7 The ALJ found that Plaintiff met the insured status requirements of the
8 Social Security Act through December 31, 2017. AR 17. At step one, the ALJ
9 found Plaintiff has not engaged in substantial gainful activity since February 7,
10 2013. AR 17.

11 At step two, the ALJ found Plaintiff has the following severe impairments:
12 obesity, status post motor vehicle accidents with left hip degenerative joint disease
13 and left lower extremity fracture with open reduction internal fixation, status post
14 cerebral trauma, and degenerative disc disease. AR 17.

15 At step three, the ALJ found that Plaintiff's impairments or combination of
16 impairments do not meet or medically equal any Listing. AR 22.

17 The ALJ concluded that Plaintiff has the residual functional capacity to
18 perform sedentary work, as defined in 20 CFR § 4567(a) and § 416.967(a), with
19 some exceptions. He can frequently balance and stoop, occasionally climb ramps,
20 kneel, crouch, and crawl, and cannot climb ladders, ropes or scaffolds. He must
21 avoid concentrated exposure to extreme heat and cold, and to vibrations and
22 hazards. AR 22. At step four, the ALJ found that Plaintiff is incapable of
23 performing any past relevant work. AR 29.

24 At step five, the ALJ found Plaintiff was not disabled on the basis that he
25 could perform other work which exists in significant numbers in the national
26 economy, including positions such as production assembler, electronics worker,
27 and packing line worker. AR 30.

28 //

1 **Discussion**

2 In denying benefits, the ALJ relied primarily the following conclusions: (1)
3 Plaintiff’s most serious mental health symptoms were observed in the context of
4 his efforts to obtain and maintain state benefits or shortly after the motor vehicle
5 accident; (2) a March 2015 orthopedic examination was generally unremarkable,
6 (3) lack of treatment records and (4) Dr. Genthe’s mental health examination that
7 indicates Plaintiff functions in the average or low average range in most of the
8 testing with mild limitations.

9 The ALJ found that the testimony and statements of Plaintiff’s mother were
10 inconsistent with the evidence in the record. This was in error. The ALJ does not
11 address the photographs that were taken of the condition of Plaintiff’s house that
12 suggest that Plaintiff is unable to live independently. Plaintiff’s mother stated that
13 Plaintiff will yell, scream and curse in response to criticism. This is supported by
14 the record. Dr. Genthe reported that during the examination, Plaintiff addressed
15 his mother with profanity. AR 619. There are other instances in the record where
16 it was reported that Plaintiff cursed at his mother. AR 353. Also, in 2015 Plaintiff
17 abruptly left treatment even though he was suffering from bronchitis. AR 64.
18 Plaintiff’s mother’s testimony is adequately supported by the record and the ALJ
19 should have taken it into account. *See Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir.
20 2001) (“Lay testimony as to a claimant’s symptoms is competent evidence that an
21 ALJ must take into account, unless he or she expressly determines to disregard
22 such testimony and gives reasons germane to each witness for doing so.”).

23 The ALJ did not address the apparent lack of insight on the part of Plaintiff.
24 For instance, Dr. Genthe reported that Plaintiff told him that he does not have any
25 mental health problems. AR 615. Yet the record is replete with specific instances
26 where Plaintiff was mumbling, had circular reasoning, and various health
27 providers expressed concern for his mental health. AR 411, 414. Dr. Genthe noted
28 that Plaintiff frequently talked about subjects that had nothing to do with the

1 question asked or made up answers. AR 619. Dr. Genthe believed Plaintiff was
2 acting immature and was argumentative. AR 619. The ALJ failed to address
3 whether these behaviors would be accepted in the workplace.

4 Notably, the ALJ indicated he would order a consultative examination in
5 which Plaintiff's impulsivity and immaturity, his ability to deal with distraction,
6 and his ability to focus and concentrate would be evaluated. AR 66. This was
7 never done.

8 At the minimum, the ALJ should have followed through with a consultative
9 examination to evaluate Plaintiff's ability to deal with distraction as well as his
10 ability to focus and concentrate, given the inconsistencies and ambiguities in the
11 record and to determine whether Plaintiff suffers from a personality disorder. An
12 ALJ has the duty "to fully and fairly develop the record and to assure that the
13 claimant's interests are considered." *Tonapetyan v. Halter*, 242 F.3d 1144, 1150
14 (9th Cir. 2001) (citations omitted). "Ambiguous evidence, or the ALJ's own
15 finding that the record is inadequate to allow for proper evaluation of the evidence,
16 triggers the ALJ's duty to conduct an appropriate inquiry." *Id.* (citations omitted).
17 Here, given Plaintiff's tendency to not be forthright with his treatment providers,
18 his impulsivity, and his history of walking out of examinations when personal
19 questions are asked, effort must be taken to ensure that the record is complete.

20 Thus, it is necessary to remand this case so a consultative examination can
21 take place to address Plaintiff's mental condition, including evaluation of
22 Plaintiff's ability to deal with distraction, his ability to focus and concentrate,
23 whether he is hearing voices in his head and whether Plaintiff suffers from a
24 personality disorder. In remanding, care should be given to evaluate Plaintiff's
25 statements due to lack of insight or his refusal to be forthright with his evaluators.
26 The consultative examiner should consider Plaintiff's mother's statement and/or
27 consult with Plaintiff's mother outside the presence of Plaintiff.

28 //

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 11, is **GRANTED**.

3 2. Defendant's Motion for Summary Judgment, ECF No. 12, is **DENIED**.

4 3. The decision of the Commissioner is **reversed** and **remanded** for
5 further administrative proceedings consistent with this Order. On
6 remand, the ALJ shall offer Plaintiff an opportunity for a new
7 consultative examination, further develop the record, and issue a new
8 decision. This remand is made pursuant to sentence four of 42 U.S.C. §
9 405(g).

10 4. The District Court Executive is directed to enter judgment in favor of
11 Plaintiff and against Defendant.

12 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
13 file this Order, provide copies to counsel, and close the file.

14 **DATED** this 10th day of October 2019.



18
19

A handwritten signature in blue ink that reads "Stanley A. Bastian".

20 Stanley A. Bastian
21 United States District Judge
22
23
24
25
26
27
28