

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

Feb 09, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID JOSEPH M.,

Plaintiff,

v.

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

No. 2:20-cv-00103-SMJ

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff David Joseph M. appeals the Administrative Law Judge's (ALJ) denial of his application for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI). He alleges that the ALJ erred by (1) failing to identify that he had severe mental impairments, (2) finding his substance abuse was a material factor contributing to the disability, (3) failing to order a consultative psychological examination, including cognitive testing, and (4) failing to assign his subjective testimony about his functional limitations significant weight. ECF No. 15 at 10, 13. The Commissioner of Social Security ("Commissioner") disputes these contentions and asks the Court to affirm the ALJ's determination. ECF No. 16 at 14, 18.

Before the Court, without oral argument, are the parties' cross-motions for

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT – 1

1 summary judgment. ECF Nos. 15, 16. After reviewing the administrative record,
2 the parties' briefs, and the relevant legal authority, the Court is fully informed. For
3 the reasons discussed below, the Court agrees with the Commissioner and affirms.

4 **PROCEDURAL HISTORY¹**

5 Plaintiff applied for DIB and SSI benefits in April 2015 and filed another
6 claim for disability benefits in December 2017, alleging his disability began in
7 August 2011. AR 193–199, 200–207, 991 & 1149. The ALJ conducted a hearing,
8 finding Plaintiff not disabled and entered an unfavorable decision denying his
9 application for DIB and SSI benefits. AR 1083–103. Plaintiff appealed that
10 decision, but the Appeals Council found that the reasons submitted did not provide
11 a basis for changing the ALJ's decision and denied his request for review. AR 1104–
12 10. Plaintiff thus sought relief and filed a complaint in this Court. AR 1111–13. On
13 review, this Court granted in part Plaintiff's motion for summary judgment, denied
14 the Commissioner's motion for summary judgment, and remanded the matter to the
15 Commissioner for additional proceedings under 42 U.S.C. § 405(g). AR 1118–46.

16 Pursuant to this Court's remand order, the Appeals Council directed the ALJ
17

18 ¹ The facts of the case are set forth in the administrative hearing transcripts, the
19 ALJ's decisions, and the parties have also incorporated the relevant facts by
20 reference in their respective cross-motions for summary judgment, *see* ECF No. 15
at 2 & ECF No. 16 at 4–5, and discussed any additional relevant facts in their
briefing on those motions. *See generally id.* The Court thus provides only a short
procedural summary here.

1 to readdress step 2 of the sequential evaluation process and reevaluate whether
2 Plaintiff's substance use is a material factor contributing to his disability. AR 991.
3 The ALJ thus conducted a second hearing, and Plaintiff appeared and testified. AR
4 1048–1082. Following the hearing, the ALJ again found Plaintiff not disabled
5 within the meaning of the Social Security Act due to his polysubstance use disorder
6 and entered an unfavorable decision denying his application for benefits. AR 988–
7 1011.

8 Plaintiff again sought review in this Court, leading to the instant cross-
9 motions for summary judgment. ECF Nos. 1, 15 & 16.

10 **DISABILITY DETERMINATION**

11 A “disability” is defined, for the purposes of receiving SSI and DBI benefits,
12 as the “inability to engage in any substantial gainful activity by reason of any
13 medically determinable physical or mental impairment which can be expected to
14 result in death or which has lasted or can be expected to last for a continuous period
15 of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
16 ALJ uses a five-step sequential evaluation process to determine whether a claimant
17 qualifies for disability benefits. 20 C.F.R. §§ 404.1520, 416.920.

18 At step one, the ALJ considers the claimant's work activity, if any. 20 C.F.R.
19 §§ 404.1520(a)(4)(i), (b), 416.920(a)(4)(i), (b). If the claimant is doing any
20 substantial gainful activity, the ALJ will find the claimant not disabled and deny

1 their claim. *Id.* If the claimant is not doing any substantial gainful activity, the
2 evaluation proceeds to step two.

3 At step two, the ALJ considers the medical severity of the claimant's
4 impairment(s). 20 C.F.R. §§ 404.1520(a)(4)(ii), (c), 416.920(a)(4)(ii), (c). If they
5 do not have a severe medically determinable physical or mental impairment that
6 meets the twelve month duration requirement in Section 404.1509, or a combination
7 of impairments that is severe and meets the duration requirement, the ALJ will find
8 the claimant not disabled and deny their claim. *Id.* If the claimant does have a severe
9 physical or mental impairment, the evaluation proceeds to step three.

10 At step three, the ALJ also considers the medical severity of the claimant's
11 impairment(s). 20 C.F.R. §§ 404.1520(a)(4)(iii), (d), 416.920(a)(4)(iii), (d). If they
12 have an impairment(s) that meets or equals one of the Social Security
13 Administration's listings in appendix 1 of this subpart and meets the duration
14 requirement, the ALJ will find the claimant disabled. *Id.*; 404 Subpt. P App. 1. If
15 their impairment(s) does not meet or equal a listed impairment, the evaluation
16 proceeds to step four.

17 At step four, the ALJ considers the claimant's residual functional capacity
18 and their past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv), (e),
19 416.920(a)(4)(iv), (e). If they can still do their past relevant work, the ALJ will find
20 the claimant not disabled and deny their claim. *Id.*; *see also* §§ 416.920(f), (h),

1 416.960(b). If they cannot, the evaluation proceeds to step five.

2 At the fifth and final step, the ALJ considers the claimant's residual
3 functional capacity and their age, education, and work experience to see if they can
4 adjust to other work. 20 C.F.R. §§ 404.1520(a)(4)(v), (f), 416.920(a)(4)(v), (f). If
5 they can adjust to other work, the ALJ will find the claimant not disabled and deny
6 their claim. *Id.* If they cannot, the ALJ will find the claimant disabled and grant
7 their claim. *Id.*; *see also* §§ 404.1520(g), (h), 404.1560(c).

8 In cases involving “drug addiction and alcoholism” (DAA), Social Security
9 Ruling (SSR) 13-2p, No. SSA-2012-0006, 2013 WL 621536 (Feb. 20, 2013),
10 provides guidance for evaluating whether a claimant's substance use is material to
11 the disability determination. It instructs adjudicators to “apply the appropriate
12 sequential evaluation process twice. First, apply the sequential process to show how
13 the claimant is disabled. Then, apply the sequential evaluation process a second
14 time to document materiality.” *Id.* at *6.

15 The burden shifts during this sequential disability analysis. The claimant has
16 the initial burden of establishing a prima facie case of entitlement to benefits.
17 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971). If the claimant makes such
18 a showing, the burden then shifts to the Commissioner to show work within the
19 claimant's capabilities. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984); *see*
20 *also* SSR 13-2P, 2013 WL 621536, at *4 (“The claimant has the burden of proving

1 disability throughout the sequential evaluation process. Our only burden is limited
2 to producing evidence that work the claimant can do exists in the national economy
3 at step 5 of the sequential evaluation process.”). To find a claimant disabled, their
4 impairments must not only prevent them from doing their previous work, but also
5 (considering their age, education, and work experience) prevent them from doing
6 any other substantial gainful work that exists in the national economy. *Id.*; 42 U.S.C.
7 §§ 423(d)(2)(A), 1382c(a)(3)(B).

8 **ALJ FINDINGS**

9 At step one, the ALJ found that Plaintiff had “not engaged in substantial
10 gainful activity since August 31, 2011, the alleged onset date.” AR 994.

11 At step two, the ALJ found that Plaintiff had only the one severe impairment:
12 “polysubstance use disorder (20 CFR 404.1520(c) and 416.920(c)).” *Id.*

13 At step three, the ALJ found that Plaintiff did “not have an impairment or
14 combination of impairments that meets or medically equals the severity of one of
15 the listed impairments.” AR 998.

16 At step four, the ALJ found that Plaintiff had

17 the residual functional capacity to perform a full range of work at all
18 exertional levels but with the following nonexertional limitations: he is
19 limited to simple, routine, repetitive tasks; he can have no interaction
20 with the public and limited contact with co-workers and supervisors;
and he would be “off task” 10 percent of the workday and miss more
than two days of work per month.

1 AR 999. Plaintiff “has past relevant work as a welder and research assistant,” but
2 the ALJ found “that the claimant is unable to perform past relevant work as actually
3 or generally performed when his polysubstance use disorder is a factor.” AR 1001.

4 At step five, the ALJ considered Plaintiff’s age, education, and work
5 experience and found “no jobs that exist in significant numbers in the national
6 economy that the claimant can perform” when considering his polysubstance use
7 disorder. AR 1000. “A finding of ‘disabled’ is therefore appropriate under the
8 framework of section 204.00 in the Medical-Vocational Guidelines.” *Id.* Still, the
9 ALJ determined, “[i]f the claimant abstained from his substance use, he would have
10 no medically determinable mental impairment, and no severe physical impairment.”
11 AR 1000–01.

12 STANDARD OF REVIEW

13 Reviewing courts must uphold an ALJ’s disability determination if it applied
14 the proper legal standards and supported its decision with substantial evidence in
15 the record. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012), *superseded by*
16 *regulation on other grounds*. “Substantial evidence ‘means such relevant evidence
17 as a reasonable mind might accept as adequate to support a conclusion.’” *Id.*
18 (quoting *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)).
19 “[W]hatever the meaning of ‘substantial’ in other contexts, the threshold for such
20

1 evidentiary sufficiency is not high.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153
2 (2019). The ALJ must base its determination on “more than a mere scintilla” of
3 evidence, *id.* at 1154, but need not support its decision by a preponderance of the
4 evidence. *Molina*, 674 F.3d at 1111. If the evidence supports more than one rational
5 interpretation, and the ALJ has supported its decision with inferences drawn
6 reasonably from the record, the Court must uphold its decision. *Id.*; *Allen v. Heckler*,
7 749 F.2d 577, 579 (9th Cir. 1984). Moreover, the Court will not reverse an ALJ’s
8 decision if it committed harmless error. *Molina*, 674 F.3d at 1111. The burden to
9 show harmful error lies with the party challenging the ALJ’s determination. *See*
10 *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

11 ANALYSIS

12 **A. Substantial Evidence Supports the ALJ’s Finding that Polysubstance** 13 **Use Disorder Was Plaintiff’s Only Severe Impairment Within the** 14 **Meaning of the Social Security Act**

15 Plaintiff argues the ALJ erred by concluding he has no severe mental
16 impairments other than substance abuse. ECF No. 15 at 10–14. The Court disagrees.

17 “An individual shall not be considered to be disabled for purposes of this
18 subchapter if alcoholism or drug addiction would . . . be a contributing factor
19 material to the Commissioner’s determination that the individual is disabled.” 42
20 U.S.C. §§ 423(d)(2)(C), 1382c(a)(3)(J). The Ninth Circuit has recognized that
Congress aimed ““to discourage alcohol and drug abuse, or at least not to encourage

1 it with a permanent government subsidy.” *Parra v. Astrue*, 481 F.3d 742, 747 (9th
2 Cir. 2007) (quoting *Ball v. Massanari*, 254 F.3d 817, 824 (9th Cir. 2001)). “Under
3 the implementing regulations, the ALJ must conduct a drug abuse and alcoholism
4 analysis (“DAA Analysis”) by determining which of the claimant’s disabling
5 limitations would remain if the claimant stopped using drugs or alcohol.” *Parra v.*
6 *Astrue*, 481 F.3d 742, 747 (9th Cir. 2007) (citing 20 C.F.R. § 404.1535(b)); *see also*
7 SSR 13-2P, 2013 WL 621536.

8 The key factor when evaluating whether DAA is material to the
9 determination of disability is whether the ALJ would still find the claimant disabled
10 if they stopped using drugs or alcohol. 20 C.F.R. § 404.1535(b)(1). In making this
11 determination, the ALJ evaluates which of the claimant’s current physical and
12 mental limitations would remain if the claimant stopped using drugs or alcohol. *Id.*
13 § 404.1535(b)(2). The ALJ then determines whether any or all the claimant’s
14 remaining limitations would be disabling. *Id.* If the ALJ determines that the
15 claimant’s remaining limitations would not be disabling, they will find that the
16 claimant’s DAA material to the determination of disability. *Id.* § 404.1535(b)(3). If
17 the ALJ determines that the claimant’s remaining limitations are disabling, the
18 claimant is disabled independent of their DAA, and the ALJ will find their DAA
19 immaterial to the determination of disability. *Id.* § 404.1535(b)(4). “[T]he claimant
20 bears the burden of proving that drug or alcohol addiction is not a contributing factor

1 material to his disability.” *Parra*, 481 F.3d at 748.

2 To begin with, the ALJ here “acknowledge[d] that the medical evidence the
3 claimant submitted includes diagnoses of schizoaffective disorder, major
4 depressive disorder, unspecified mood disorder, unspecified anxiety disorder, post-
5 traumatic stress disorder, attention-deficit hyperactivity disorder, learning disorder,
6 anti-social personality disorder, panic disorder, and bipolar disorder by acceptable
7 medical sources.” AR 994. But the ALJ then emphasized the medical evidence also
8 documents a history of substance abuse. *Id.* For example,

9 Elizabeth Koenig, M.D., diagnosed the claimant with polysubstance
10 use and dependence in addition to other mental impairments, and she
11 stated that he “clearly has numerous challenges, not all of which can
12 be explained by illicit drug use” (5F). John Arnold, Ph.D., also
13 diagnosed the claimant with a severe opioid use disorder along with
14 other mental impairments, and he opined that the substance use
“probably had a significant impact on his mental health and ability to
function” (9F). The psychological evaluators at the state agency level
of disability determination likewise listed substance addiction
disorders with other mental impairments as the claimant’s severe
impairments.

15 AR 994–95. The ALJ concluded that while “[t]he evidence from Drs. Koenig,
16 Arnold, and the psychological evaluators at the state agency level suggest the
17 presence of a medically determinable impairment, . . . the statements of Glenn
18 Griffin, Ph.D., and Dana Harmon, Ph.D., indicate that the claimant’s substance use
19 precludes a finding that he has a medically determinable mental impairment at all.”

20 AR 995.

1 “Dr. Harmon concluded in October 2015 that there was ‘no reliable evidence
2 of a mental disorder distinct from the impacts of [the claimant’s] chemical
3 dependency.’” *Id.* (record citation omitted). And Dr. Griffin testified at Plaintiff’s
4 “first hearing that the diagnoses from the acceptable medical sources listed above
5 could not be accurately made without excluding the effects of substance use. He
6 stated that the claimant’s ongoing substance use precluded exclusion of substance
7 use as the cause of symptoms, thereby rendering the diagnoses unsupportable.” *Id.*

8 At the second hearing on remand, the ALJ questioned Dr. Griffin again. *Id.*
9 “[Dr. Griffin] noted that the claimant continued to abuse substances, as his drug
10 screens from November 2018, June 2019, and September 2019, among others, were
11 positive for amphetamines and benzodiazepine.” AR 995. The ALJ thoroughly
12 analyzed Dr. Griffin’s reasoning about why Plaintiff’s substance abuse precluded
13 definitive diagnoses of the several documented mental disorders and asked him
14 pointed questions clarifying the apparent discrepancy between his medical opinion
15 and that of several other doctors. *See id.* Among other things, the ALJ thoroughly
16 addressed why the opinions of Drs. Griffin and Harmon deserve great weight and,
17 on the other hand, why the opinions of Drs. Koenig, Arnold, Arrienda, and Metoyer
18 deserve little weight. *See generally* AR 994–1003. The ALJ likewise notes and cites
19 medical evidence in the record establishing

20 [t]he claimant had positive drug screens in October, November, and

1 December 2016 (9A/12). He also asserted at the most recent hearing in
2 January 2020 that he had not used amphetamines or opiates since the
3 February 2017 hearing, but his toxicology screens are positive for
4 amphetamines and/or opiates each month from December 2017 through
5 September 2018, January 2019 through March 2019, and May 2019
6 through July 2019 (34F/26-28, 30, 32, 33, 37-39, 41-45, 47).

7 AR 997–98. The ALJ thus determined Plaintiff’s “reports of sobriety are unreliable
8 unless confirmed by testing.” AR 998. He also concluded “that portions of SSR 13-
9 2p relating to evaluation of psychiatric disorders that co-occur with a substance use
10 disorder are inapplicable.” AR 996. The ALJ ultimately found Plaintiff’s “only
11 medically determinable impairment is his polysubstance use disorder.” AR 998.

12 “[W]hen DAA is the only impairment adjudicators can go directly to step
13 three and deny the claim because DAA is material.” SSR 13-2P, 2013 WL 621536,
14 at *5. This Court agrees with the ALJ that the record offers no evidence supporting
15 the notion that Plaintiff’s mental disabilities would remain if he stopped abusing
16 methamphetamine, opioids, and other drugs. *See generally* 20 C.F.R. §
17 404.1535(b); AR 994–1003. Moreover, this Court respects that “the ALJ is the final
18 arbiter with respect to resolving ambiguities in the medical evidence.” *Tommasetti*
19 *v. Astrue*, 533 F.3d 1035, 1041–42 (9th Cir. 2008) (citing *Andrews v. Shalala*, 53
20 F.3d 1035, 1039–40 (9th Cir.1995) (“The ALJ is responsible for determining
credibility, resolving conflicts in medical testimony, and for resolving
ambiguities.”)).

1 In sum, Plaintiff failed to meet his burden of proving that his polysubstance
2 use disorder was not a contributing factor material to his mental health-related
3 disabilities. *See Parra*, 481 F.3d at 750. The ALJ applied the proper legal standards
4 and supported his decision with substantial evidence in the record. *See Molina*, 674
5 F.3d at 1110. He made reasonable inferences supported by the record and relied on
6 substantial evidence to support his conclusion on DAA materiality. Just because
7 “the ALJ *could* have come to a different conclusion,” does not mean the ALJ erred.
8 *Shaibi v. Berryhill*, 883 F.3d 1102, 1108 (9th Cir. 2018) (emphasis in original). For
9 these reasons, this Court finds no error and Plaintiff’s argument fails.

10 **B. The ALJ Properly Denied Plaintiff’s Request for an Additional**
11 **Consultative Exam**

12 Plaintiff next argues the ALJ erred by failing to order an additional
13 psychological evaluation. ECF No. 15 at 13. This Court disagrees.

14 “An ALJ’s duty to develop the record further is triggered only when there is
15 ambiguous evidence or when the record is inadequate to allow for proper evaluation
16 of the evidence.” *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) (quoting *Mayes*
17 *v. Massanari*, 276 F.3d 453, 459–60 (9th Cir. 2001)).

18 Plaintiff underwent three consultative psychological evaluations (performed
19 by Dr. Arnold, AR 436–41; Dr. Koenig, AR 351–61; and Dr. Metoyer, AR 1366–
20 70) before the ALJ found Plaintiff’s “only medically determinable impairment is

1 his polysubstance use disorder.” AR 998. Moreover, Dr. Harmon reviewed the
2 medical records for the State, highlighting there was “no reliable evidence of mental
3 disorder distinct from the impacts of [Plaintiff’s] chemical dependency.” AR 982.

4 This Court finds the record was neither ambiguous nor inadequate for the
5 ALJ to properly evaluate of the evidence. *See Ford*, 950 F.3d at 1156. Given that
6 the ALJ had years of Plaintiff’s mental health records and multiple opinions from
7 several doctors to inform his decision, he had no duty to develop the record further.

8 *See id.*

9 **C. Because the ALJ Properly Denied Plaintiff’s Claim Based on DAA**
10 **Materiality, This Court Need Not Address Plaintiff’s Arguments**
11 **Concerning Later Steps in the Sequential Analysis**

12 Plaintiff contends that the ALJ should have afforded significant weight to his
13 subjective testimony when addressing his functional limitations. ECF No. 15 at 13.
14 But because substantial evidence supported the ALJ’s finding (that Plaintiff’s only
15 medically determinable impairment is his polysubstance use disorder) at step two
16 of the sequential analysis, this Court need not proceed to address whether the ALJ
17 erred later in the sequential analysis. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th
18 Cir. 1999) (citing 20 C.F.R. § 404.1520(a)(4) (“If [the Commissioner] can find that
19 you are disabled or not disabled at a step, we make our determination or decision
20 and we do not go on to the next step.”)).

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

- 2 1. Plaintiff's motion for summary judgment, **ECF No. 15**, is **DENIED**.
- 3 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is
- 4 **GRANTED**.
- 5 3. The Clerk's Office shall **ENTER JUDGMENT** for **DEFENDANT**
- 6 and **CLOSE** the file.

7 **IT IS SO ORDERED.** The Clerk's Office shall enter this Order and provide

8 copies to all counsel.

9 **DATED** this 9th day of February 2021.

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11 SALVADOR MENDOZA, JR.
12 United States District Judge

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