

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

Sep 26, 2022

SEAN F. McAVOY, CLERK

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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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10 SHANNON H.¹,

11 Plaintiff,

12 v.

13 COMMISSIONER OF SOCIAL
14 SECURITY ADMINISTRATION,

15 Defendant.
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17
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No. 4:21-CV-00333-SAB

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

19 Before the Court are Cross-Motions for Summary Judgment. ECF Nos. 14,
20 16. The motions were heard without oral argument. Plaintiff is represented by D.
21 James Tree; Defendant is represented by Jeffrey McClain and Brian M. Donovan.

22 Plaintiff brings this action seeking judicial review of the Commissioner of
23 Social Security's final decision denying her application for Disability Income
24 Benefits under Title II and Supplemental Security Income (SSI) under Title XVI of
25

26 ¹Pursuant to the recommendation of the Committee on Court Administration and
27 Case Management of the Judicial Conference of the United States, Plaintiff's name
28 is partially redacted.

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

1 the Social Security Act, 42 U.S.C. §§ 1382. After reviewing the administrative
2 record and briefs filed by the parties, the Court is now fully informed. For the
3 reasons set forth below, the Court denies Plaintiff’s Motion for Summary
4 Judgment, ECF No. 14, and grants Defendant’s Motion for Summary Judgment,
5 ECF No. 16.

6 **I. Jurisdiction**

7 On September 11, 2019, Plaintiff filed an application for disability income
8 benefits, as well as supplemental security income. Plaintiff’s application was
9 denied initially and on reconsideration. On March 8, 2021, Plaintiff appeared and
10 testified by telephone before ALJ Penny Loucas, with the assistance of her
11 counsel, Shane Smith. Brett Salkin, vocational expert, also participated. The ALJ
12 issued a decision on April 6, 2021, finding Plaintiff was not disabled.

13 Plaintiff requested review by the Appeals Council; the Appeals Council
14 denied the request on September 13, 2021. The Appeals Council’s denial of review
15 makes the ALJ’s decision the “final decision” of the Commissioner of Social
16 Security, which this Court is permitted to review. 42 U.S.C. § 405(g),
17 1383(c)(1)(3).

18 Plaintiff filed a timely appeal with the United States District Court for the
19 Eastern District of Washington on November 29, 2021. ECF No. 1. The matter is
20 before this Court pursuant to 42 U.S.C. § 405(g).

21 **II. Five-Step Sequential Evaluation Process**

22 The Social Security Act defines disability as the “inability to engage in any
23 substantial gainful activity by reason of any medically determinable physical or
24 mental impairment which can be expected to result in death or which has lasted or
25 can be expected to last for a continuous period of not less than twelve months.” 42
26 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
27 under a disability only if their impairments are of such severity that the claimant is
28 not only unable to do their previous work, but cannot, considering claimant’s age,

1 education, and work experiences, engage in any other substantial gainful work that
2 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The
3 Commissioner has established a five-step sequential evaluation process to
4 determine whether a person is disabled in the statute. See 20 C.F.R. §§
5 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v).

6 **Step One:** Is the claimant engaged in substantial gainful activities? 20
7 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work
8 done for pay and requires compensation above the statutory minimum. *Keyes v.*
9 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
10 substantial activity, benefits are denied. 20 C.F.R. § 404.1520(b), 416.920(b). If
11 the claimant is not, the ALJ proceeds to step two.

12 **Step Two:** Does the claimant have a medically-severe impairment or
13 combination of impairments? 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A
14 severe impairment is one that lasted or must be expected to last for at least 12
15 months and must be proven through objective medical evidence. *Id.* §§ 404.1509,
16 416.909. If the claimant does not have a severe impairment or combination of
17 impairments, the disability claim is denied. *Id.* § 404.1520(a)(4)(ii),
18 416.920(a)(4)(ii). If the impairment is severe, the evaluation proceeds to the third
19 step.

20 **Step Three:** Does the claimant's impairment meet or equal one of the listed
21 impairments acknowledged by the Commissioner to be so severe as to preclude
22 substantial gainful activity? 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If
23 the impairment meets or equals one of the listed impairments, the claimant is
24 conclusively presumed to be disabled. 20 C.F.R. §§ 404.1520(d), 416.920(d). If the
25 impairment is not one conclusively presumed to be disabling, the evaluation
26 proceeds to the fourth step.

27 Before considering to the fourth step, the ALJ must first determine the
28 claimant's residual functional capacity. An individual's residual functional

1 capacity is their ability to do physical and mental work activities on a sustained
2 basis despite limitations from their impairments. 20 C.F.R. §§ 404.1545(a)(1),
3 416.945(a)(1). The residual functional capacity is relevant to both the fourth and
4 fifth steps of the analysis.

5 **Step Four:** Does the impairment prevent the claimant from performing work
6 they have performed in the past? 20 C.F.R. §§ 404.1520(a)(4)(iv),
7 416.920(a)(4)(iv). If the claimant is able to perform their previous work, they are
8 not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant cannot perform
9 this work, the evaluation proceeds to the fifth and final step.

10 **Step Five:** Is the claimant able to perform other work in the national
11 economy in view of their age, education, and work experience? 20 C.F.R. §§
12 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the
13 claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*
14 *v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant
15 establishes that a physical or mental impairment prevents him from engaging in her
16 previous occupation. *Id.* At step five, the burden shifts to the Commissioner to
17 show that the claimant can perform other substantial gainful activity. *Id.*

18 **III. Standard of Review**

19 The Commissioner's determination will be set aside only when the ALJ's
20 findings are based on legal error or are not supported by substantial evidence in the
21 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing
22 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"
24 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial
25 evidence is "such relevant evidence as a reasonable mind might accept as adequate
26 to support a conclusion." *Richardson*, 402 U.S. at 401.

27 A decision supported by substantial evidence will be set aside if the proper
28 legal standards were not applied in weighing the evidence and making the decision.

1 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).
2 An ALJ is allowed “inconsequential” errors as long as they are immaterial to the
3 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d
4 1050, 1055 (9th Cir. 2006). The Court must uphold the ALJ’s denial of benefits if
5 the evidence is susceptible to more than one rational interpretation, one of which
6 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d
7 1190, 1193 (9th Cir. 2004). It “must consider the entire record as a whole,
8 weighing both the evidence that supports and the evidence that detracts from the
9 Commissioner’s conclusion, and may not affirm simply by isolating a specific
10 quantum of supporting evidence.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
11 2017) (quotation omitted). “If the evidence can support either outcome, the court
12 may not substitute its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019.

13 **IV. Statement of Facts**

14 The facts have been presented in the administrative record, the ALJ’s
15 decision, and the briefs to this Court. Only the most relevant facts are summarized
16 herein.

17 At the hearing, Plaintiff indicated she was unable to work because of neck
18 pain and back pain, type I diabetes, migraines, and carpal tunnel syndrome. She
19 uses Botox to treat her migraines with good results. She also began using a
20 Dexcom, which measures her blood sugars, provides results on her cell phone and
21 helps her control her diabetes.

22 Plaintiff testified that she spends her summers in Alaska with her boyfriend.
23 She previously worked as a bartender.

24 **V. The ALJ’s Findings**

25 The ALJ issued an opinion affirming denial of benefits. AR 15-25. The ALJ
26 found that Plaintiff met the insured status requirements of the Social Security Act
27 through December 31, 2023. At step one, the ALJ found that Plaintiff has not
28 engaged in substantial gainful activity since September 10, 2019, the alleged onset

1 date. AR 17.

2 At step two, the ALJ identified the following severe impairments: Type one
3 diabetes mellitus; degenerative disc disease of the cervical spine and lumbar spine;
4 carpal tunnel syndrome; and migraines. AR 18.

5 At step three, the ALJ found that Plaintiff did not have an impairment or
6 combination of impairments that meets or medically equals the severity of one of
7 the listed impairments. AR 18. Ultimately, the ALJ concluded that Plaintiff has a
8 residual function capacity (“RFC”) to perform:

9 light work as defined in 20 CFR 404.1567(b) and 416.967(b) except
10 the claimant can occasionally climb ladders, ropes and scaffolds and
11 crawl; the claimant can frequently stoop; occasionally crawl; the
12 claimant can frequently handle and finger bilaterally; the claimant
13 should avoid concentrated exposure to hazards, which specifically
14 involves avoiding using dangerous moving equipment such as power
saws and jack hammers; and the claimant should avoid concentrated
exposure to loud noise such as found in a warehouse/factory setting.

15 AR 19.

16 At step four, the ALJ found that Plaintiff had no past relevant work. AR 23.

17 At step five, the ALJ found that Plaintiff was not disabled and capable of
18 performing work that exists in significant numbers in the national economy, such
19 as sales attendant, food service worker, and housekeeper. AR 24.

20 **VI. Issues for Review**

21 1. Whether the ALJ properly evaluated Plaintiff’s symptom testimony.

22 **VII. Discussion**

23 Plaintiff argues the ALJ erred in rejecting her testimony that she is unable to
24 work.

25 In determining whether a claimant’s testimony regarding subjective pain or
26 symptoms is credible, the ALJ engages in a two-step analysis. *Garrison v. Colvin*
27 759 F.3d 995, 1014 (9th Cir. 2014). “First, the ALJ must determine whether the
28 claimant has presented objective medical evidence of an underlying impairment

1 which could reasonably be expected to produce the pain or other symptoms
2 alleged.” *Id.* (citation and quotation omitted). If the claimant satisfies the first step
3 of the analysis, and there is no evidence of malingering, the ALJ can reject the
4 claimant’s testimony about the severity of their symptoms “only by offering
5 specific, clear and convincing reasons for doing so.” *Id.* (citation and quotation
6 omitted). “This is not an easy requirement to meet: The clear and convincing
7 standard is the most demanding required in Social Security cases.” *Id.* (citation and
8 quotation omitted). That said, if the ALJ’s credibility finding is supported by
9 substantial evidence in the record, the reviewing court “may not engage in second-
10 guessing.” *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

11 In recognition of the fact that an individual’s symptoms can sometimes
12 suggest a greater level of severity of impairment than can be shown by the
13 objective medical evidence alone, 20 C.F.R. §§ 404.1529(c) and 416.929(c)
14 describe the kinds of evidence, including the factors below, that the ALJ must
15 consider in addition to the objective medical evidence when assessing the
16 credibility of an individual’s statements:

- 17 1. Daily activities; 2. The location, duration, frequency, and intensity of
- 18 pain or other symptoms; 3. Factors that precipitate and aggravate the
- 19 symptoms; 4. The type, dosage, effectiveness, and side effects of any
- 20 medication an individual takes or has taken to alleviate pain or other
- 21 symptoms; 5. Treatment, other than medication, an individual receives or
- 22 has received for relief of pain or other symptoms; 6. Any measures other
- 23 than treatment an individual uses or has used to relieve pain or other
- 24 symptoms (e.g., lying flat on his or her back, standing for 15 to 20
- minutes every hour, or sleeping on a board); and 7. Any other factors
- concerning an individual’s functional limitations and restrictions due to
- pain or other symptoms.

25 SSR 16-3P, 2017 WL 5180304. Daily activities may be grounds for an adverse
26 credibility finding if (1) Plaintiff’s activities contradict her other testimony, or (2)
27 Plaintiff “is able to spend a substantial part of [her] day engaged in pursuits
28 involving the performance of physical functions that are transferable to a work

1 setting.” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*,
2 885 F.2d 597, 603 (9th Cir. 1989)).

3 The ALJ discounted Plaintiff’s symptom testimony, finding that while
4 Plaintiff’s medically determinable impairments could reasonably be expected to
5 cause the alleged symptoms, her statements concerning the intensity, persistence
6 and limiting effects of these symptoms are not entirely consistent with the medical
7 evidence and other evidence in the record. The ALJ provided clear and convincing
8 reasons for discounting Plaintiff’s testimony.

9 First, the ALJ noted Plaintiff had conservative treatments for her
10 impairments. It noted that Plaintiff’s migraines have been effectively treated with
11 Botox injections. It noted that while Plaintiff has degenerative disc disease, her
12 clinical examination findings have not shown any significant motor strength,
13 sensation or reflex deficits on examination. It noted that with her diabetes, Plaintiff
14 has been able to manage it with insulin therapy and episodes of fluctuating blood
15 sugar has resolved quickly with treatment. Moreover, the record shows that
16 Plaintiff is able to drive, handle her personal care needs, watch her grandchildren,
17 and perform some household chores. These findings are supported by substantial
18 evidence in the record and are clear and convincing.

19 **VIII. Conclusion**

20 Here, the ALJ’s determination that Plaintiff was not disabled is supported by
21 substantial evidence the record.

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

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 14, is **DENIED**.

3 2. Defendant's Motion for Summary Judgment, ECF No. 16, is

4 **GRANTED.**

5 3. The decision of the Commissioner is **affirmed**.

6 4. Judgment shall be entered in favor of Defendant and against Plaintiff.

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

9 **DATED** this 26th day of September 2022.



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

15 Stanley A. Bastian
16 Chief United States District Judge
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