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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

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8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL  
11 SECURITY,

12 Defendant.

NO: 4:21-CV-5069-TOR

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

13 BEFORE THE COURT are the parties' cross motions for summary  
14 judgment (ECF Nos. 12, 13). The motions were submitted for consideration  
15 without oral argument. The Court has reviewed the administrative record and the  
16 parties' completed briefing and is fully informed. For the reasons discussed below,  
17 Plaintiff's Motion for Summary Judgment (ECF No. 12) is DENIED, and  
18 Defendant's Motion for Summary Judgment (ECF No. 13) is GRANTED.

19 **JURISDICTION**

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

1 **STANDARD OF REVIEW**

2 A district court’s review of a final decision of the Commissioner of Social  
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
4 limited: the Commissioner’s decision will be disturbed “only if it is not supported  
5 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,  
6 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means  
7 relevant evidence that “a reasonable mind might accept as adequate to support a  
8 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently,  
9 substantial evidence equates to “more than a mere scintilla[,] but less than a  
10 preponderance.” *Id.* In determining whether this standard has been satisfied, a  
11 reviewing court must consider the entire record as a whole rather than searching  
12 for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its  
14 judgment for that of the Commissioner. If the evidence in the record “is  
15 susceptible to more than one rational interpretation, [the court] must uphold the  
16 ALJ’s findings if they are supported by inferences reasonably drawn from the  
17 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted).  
18 Further, a district court “may not reverse an ALJ’s decision on account of an error  
19 that is harmless.” *Id.* An error is harmless “where it is inconsequential to the  
20 [ALJ’s] ultimate nondisability determination.” *Id.* at 1115 (quotation and citation

1 omitted). The party appealing the ALJ’s decision generally bears the burden of  
2 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

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

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

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

20 If the claimant is not engaged in substantial gainful activities, the analysis

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

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

14 If the severity of the claimant's impairment does meet or exceed the severity  
15 of the enumerated impairments, the Commissioner must pause to assess the  
16 claimant's "residual functional capacity." Residual functional capacity ("RFC"),  
17 defined generally as the claimant's ability to perform physical and mental work  
18 activities on a sustained basis despite his or her limitations (20 C.F.R. §  
19 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

20 At step four, the Commissioner considers whether, in view of the claimant's

1 RFC, the claimant is capable of performing work that he or she has performed in  
2 the past (“past relevant work”). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is  
3 capable of performing past relevant work, the Commissioner must find that the  
4 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of  
5 performing such work, the analysis proceeds to step five.

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

15 The claimant bears the burden of proof at steps one through four above.  
16 *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009). If the  
17 analysis proceeds to step five, the burden shifts to the Commissioner to establish  
18 that (1) the claimant is capable of performing other work; and (2) such work  
19 “exists in significant numbers in the national economy.” 20 C.F.R. § 404.1560(c);  
20 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

1 **ALJ’S FINDINGS**

2 Plaintiff applied for a period of disability and disability insurance benefits  
3 (Title II) on August 7, 2019, alleging disability beginning January 1, 2010. Tr. 20.  
4 The claim was denied initially on November 1, 2019, and upon reconsideration on  
5 February 7, 2020. *Id.* Plaintiff requested a hearing. *Id.* A telephonic hearing was  
6 held before an administrative law judge (“ALJ”) on December 21, 2020. *Id.* On  
7 January 15, 2021, the ALJ denied Plaintiff’s claim. Tr. 24. The Appeals Council  
8 denied review on February 23, 2021. Tr. 1. The ALJ’s decision became the final  
9 decision and is subject to judicial review. 20 C.F.R. § 404.981.

10 As a threshold matter, the ALJ found Plaintiff met the insured status  
11 requirements of the Social Security Act through December 31, 2013. Tr. 22. At  
12 step one, the ALJ found that Plaintiff had not engaged in substantial gainful  
13 activity since January 1, 2010, the alleged onset date. *Id.* At step two, the ALJ  
14 found that there were no medical signs or laboratory findings to substantiate the  
15 existence of a medically determinable impairment. *Id.* The ALJ did not address  
16 the remaining sequential steps and determined that Plaintiff has not been under a  
17 disability from January 1, 2010 through December 31, 2013. Tr. 23.

18 **ISSUES**

19 Plaintiff seeks judicial review of the ALJ’s final decision denying her  
20 disability insurance benefits under Title II of the Social Security Act. Plaintiff

1 raises the following issues:

- 2 1. Whether the ALJ erred by failing to determine an established onset date  
3 pursuant to SSR 18-1p;
- 4 2. Whether the ALJ erred by rejecting Plaintiff's impairments at step two;
- 5 3. Whether the ALJ conducted a proper analysis at step three;
- 6 4. Whether the ALJ erred by rejecting lay witness testimony;
- 7 5. Whether the ALJ erred by rejecting Plaintiff's subjective symptom  
8 testimony; and
- 9 6. Whether the ALJ conducted a proper analysis at step five.

10 ECF No. 19 at 2.

## 11 **DISCUSSION**

### 12 **A. Step Two; Established Onset Date**

13 Plaintiff argues the ALJ erred at step two by rejecting Plaintiff's  
14 impairments as not severe and also by failing to determine Plaintiff's established  
15 onset date (EOD) in accordance with SSR 18-1p.

16 At step two of the sequential process, the ALJ must determine whether a  
17 claimant suffers from a "severe" impairment, i.e., one that significantly limits her  
18 physical or mental ability to do basic work activities. 20 C.F.R. § 404.1520(c). To  
19 show a severe impairment, the claimant must first prove the existence of a physical  
20 or mental impairment by providing medical evidence consisting of signs,

1 symptoms, and laboratory findings; the claimant’s own statement of symptoms  
2 alone will not suffice. 20 C.F.R. § 404.1521.

3 An impairment may be found non-severe when “medical evidence  
4 establishes only a slight abnormality or a combination of slight abnormalities  
5 which would have no more than a minimal effect on an individual’s ability to work  
6 . . . .” Social Security Ruling (SSR) 85-28, 1985 WL 56856, at \*3. Similarly, an  
7 impairment is not severe if it does not significantly limit a claimant’s physical or  
8 mental ability to do basic work activities, which include walking, standing, sitting,  
9 lifting, pushing, pulling, reaching, carrying, or handling; seeing, hearing, and  
10 speaking; understanding, carrying out and remembering simple instructions;  
11 responding appropriately to supervision, coworkers and usual work situations; and  
12 dealing with changes in a routine work setting. 20 C.F.R. § 404.1522; *see also*  
13 SSR 85-28.

14 Step two is “a de minimis screening device to dispose of groundless claims.”  
15 *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (citation omitted). “Thus,  
16 applying our normal standard of review to the requirements of step two, [the  
17 Court] must determine whether the ALJ had substantial evidence to find that the  
18 medical evidence clearly established that [Plaintiff] did not have a medically  
19 severe impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d  
20 683, 687 (9th Cir. 2005).



1 Here, the ALJ concluded there were no medical signs or laboratory findings  
2 to substantiate a medically determinable impairment through the date of last  
3 insured because the record did not contain any medical records from the relevant  
4 time period. Tr. 23. Plaintiff concedes that no medical records exist from the  
5 relevant time period, nor are there any other documentations of Plaintiff's  
6 conditions that are contemporaneous with the date of last insured. ECF No. 12 at  
7 8; Tr. 34–35, 39. Rather, Plaintiff argues the ALJ should infer Plaintiff's disability  
8 based on Plaintiff's own statements to mental health counselors at the end 2014  
9 and a third-party function report filled out by Plaintiff's husband in 2019. Tr. 38–  
10 39.

11 Plaintiff further argues the hearing testimony from an impartial  
12 psychological medical expert supports an inference that Plaintiff established  
13 disability prior to the date of last insured. ECF No. 12 at 10. However, the  
14 psychological expert testified that such an inference would be “a huge  
15 generalization, and I don't think I'd be willing to go quite that far.” Tr. 44. The  
16 expert further stated that an inference connecting the 2014 treatment notes to the  
17 date of last insured was “difficult” due to the “extremely meager” information and  
18 the lack context. *Id.* When pressed by Plaintiff's attorney as to whether an  
19 inference reaching ten months into the past, from October 2014 to December 2013,  
20 was such a “big jump,” the expert stated, “Yes. It is.” *Id.*

1 The ALJ considered the psychological expert’s testimony and all of the  
2 record evidence and concluded there were no objective medical findings that  
3 supported a medically determinable impairment through the date of the last  
4 insured. Once the ALJ concluded Plaintiff did not suffer from a severe  
5 impairment, the ALJ’s inquiry ended because Plaintiff could not meet the statutory  
6 definition of disability. Consequently, the ALJ was not obligated to determine the  
7 established onset date. *See Social Security Ruling (SSR) 18-01p; Titles II & XVI:*  
8 *Determining the Established Onset Date (EOD) in Disability Claims*, 2018 WL  
9 4945639, \*2 (Oct. 2, 2018) (stating a claimant must first meet the statutory  
10 definition of disability and the non-medical requirements during the covered period  
11 before the established onset date can be determined).

12 The Court finds the ALJ’s determination that Plaintiff did not suffer a severe  
13 impairment, and is therefore, not disabled, is supported by the lack of any objective  
14 medical evidence from the relevant time period. The Court need not address  
15 Plaintiff’s remaining issues because the five-step analysis ends when a claimant is  
16 determined not disabled at step two. 20 C.F.R. § 404.1520(c).

### 17 **CONCLUSION**

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

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

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 12) is **DENIED**

3 2. Defendant's Motion for Summary Judgment (ECF No. 13) is

4 **GRANTED.**

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

7 DATED April 11, 2022.



9 *Thomas O. Rice*  
10 THOMAS O. RICE  
11 United States District Judge  
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