

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

Nov 25, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SAMUEL F.,

Plaintiff,

v.

MARTIN O’MALLEY, Commissioner
of Social Security Administration,

Defendant.

NO: 4:24-CV-5055-TOR

ORDER OF REMAND

BEFORE THE COURT are the Plaintiffs Opening Brief (ECF No. 9) and
Commissioner’s Brief (ECF Nos. 13). The Court has reviewed the administrative
record and the parties’ completed briefing and is fully informed. For the reasons
discussed below, the Court **VACATES** and **REMANDS** the Commissioner’s
decision for further administrative proceedings.

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2 **JURISDICTION**

3 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
4 1383(c)(3).

5 **STANDARD OF REVIEW**

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

17 In reviewing a denial of benefits, a district court may not substitute its
18 judgment for that of the Commissioner. If the evidence in the record “is
19 susceptible to more than one rational interpretation, [the court] must uphold the
20 ALJ’s findings if they are supported by inferences reasonably drawn from the

1 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
2 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
3 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
4 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
5 The party appealing the ALJ’s decision generally bears the burden of establishing
6 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
14 “of such severity that he is not only unable to do his previous work[,] but cannot,
15 considering his age, education, and work experience, engage in any other kind of
16 substantial gainful work which exists in the national economy.” 42 U.S.C.
17 § 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
20 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s

1 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in
2 “substantial gainful activity,” the Commissioner must find that the claimant is not
3 disabled. 20 C.F.R. § 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
7 “any impairment or combination of impairments which significantly limits [his or
8 her] physical or mental ability to do basic work activities,” the analysis proceeds to
9 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
10 this severity threshold, however, the Commissioner must find that the claimant is
11 not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
15 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
16 enumerated impairments, the Commissioner must find the claimant disabled and
17 award benefits. 20 C.F.R. § 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R.
3 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
7 capable of performing past relevant work, the Commissioner must find that the
8 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
9 performing such work, the analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
13 must also consider vocational factors such as the claimant's age, education and
14 work experience. *Id.* If the claimant is capable of adjusting to other work, the
15 Commissioner must find that the claimant is not disabled. 20 C.F.R.
16 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
17 analysis concludes with a finding that the claimant is disabled and is therefore
18 entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If

1 the analysis proceeds to step five, the burden shifts to the Commissioner to
2 establish that (1) the claimant is capable of performing other work; and (2) such
3 work “exists in significant numbers in the national economy.” 20 C.F.R.
4 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 Plaintiff applied for supplemental security income (SSI) benefits on March
7 15, 2022, alleging an onset date of February 15, 2017. ECF No. 6 at 21. Plaintiff
8 appeared for a hearing before an administrative law judge (“ALJ”) on October 25,
9 2023. *Id.* The ALJ issued a decision on November 17, 2023, finding that Plaintiff
10 was not disabled under the Social Security Act. ECF No. 6.

11 At step one, the ALJ found that Plaintiff had not engaged in substantial
12 gainful activity since March 15, 2022, the alleged onset date. *Id.* at 23. At step
13 two, the ALJ found that Plaintiff had medically determinable impairments
14 consisting of depression, anxiety, post-traumatic stress disorder (“PTSD”), ulnar
15 neuropathy, sleep apnea, and asthma, that significantly limited Plaintiff’s ability to
16 perform basic work activities. *Id.* The ALJ also found Plaintiff had nonsevere
17 gastrointestinal reflux disease. At step three, the ALJ found Plaintiff’s
18 impairments or combination of impairments did not meet or medically equal the
19 severity of one of the listed impairments of 20 C.F.R. 404, Subpart, P, Appendix 1.

1 *Id.* at 23. The ALJ then found that Plaintiff had the RFC to perform light work as
2 defined in 20 C.F.R. 416.967(b) with certain exceptions:

3 he can perform frequent, but not repetitive handling and fingering. He
4 must avoid a concentrated exposure to pulmonary irritants such as
5 dust and fumes. He must avoid unprotected height and dangerous
6 moving machinery. He can perform simple, routine, and repetitive
7 tasks. He can have no interaction with the general public. He can have
8 only occasional interactions with supervisors and coworkers. He can
9 have no work requiring a specific production rate or hourly quotas,
10 but can work in proximity to, but not on joint or shared tasks. He can
11 respond to only occasional changes in the work setting.

12 ECF No. 6 at 25.

13 At step four, the ALJ found that Plaintiff has no past relevant work. *Id.* at
14 27. At step five, the ALJ found that after considering Plaintiff's age, education,
15 work experience, RFC, and testimony from a vocational expert, there were other
16 jobs that existed in significant numbers in the national economy that Plaintiff could
17 perform, such as a housekeeper/cleaner, inspector, and packager. *Id.* 28-29. The
18 ALJ concluded Plaintiff was not under a disability, as defined in the Social
19 Security Act, from March 15, 2022, to the date of the ALJ's decision. *Id.* at 29.

20 On April 8, 2024, the Appeals Council denied review (ECF No. 6 at 5),
making the ALJ's decision the Commissioner's final decision for purposes of
judicial review. *See* 42 U.S.C. § 1383(c)(3).

ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying

1 his supplemental security income under Title XVI of the Social Security Act.

2 Plaintiff raises the following issues for this Court’s review:

- 3 1. Whether the ALJ improperly discredited Plaintiff’s testimony;
- 4 2. Whether the ALJ failed to properly consider and weigh the medical
5 opinion evidence; and
- 6 3. Whether the ALJ failed to properly consider Plaintiff’s obesity.

7 ECF No. 9 at 2.

8 **DISCUSSION**

9 **A. Plaintiff’s testimony**

10 Plaintiff contends the ALJ erred by failing to provide specific findings with
11 clear and convincing reasons for discrediting his symptom claims. ECF No. 9 at 5.
12 Plaintiff also contends the ALJ erred in failing to properly assess Plaintiff’s
13 testimony regarding his limitations. ECF No. 9 at 9-12.

14 An ALJ engages in a two-step analysis to determine whether to discount a
15 claimant’s testimony regarding subjective symptoms. SSR 16-3p, 2016 WL
16 1119029, at *2. “First, the ALJ must determine whether there is ‘objective
17 medical evidence of an underlying impairment which could reasonably be
18 expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at
19 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The
20 claimant is not required to show that [the claimant’s] impairment ‘could reasonably

1 be expected to cause the severity of the symptom [the claimant] has alleged; [the
2 claimant] need only show that it could reasonably have caused some degree of the
3 symptom.” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d
4 1028, 1035-36 (9th Cir. 2007)).

5 Second, “[i]f the claimant meets the first test and there is no evidence of
6 malingering, the ALJ can only reject the claimant’s testimony about the severity of
7 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
8 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
9 omitted). General findings are insufficient; rather, the ALJ must identify what
10 symptom claims are being discounted and what evidence undermines these claims.
11 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
12 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
13 explain why he or she discounted claimant’s symptom claims). “The clear and
14 convincing [evidence] standard is the most demanding required in Social Security
15 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
16 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

17 Factors to be considered in evaluating the intensity, persistence, and limiting
18 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
19 duration, frequency, and intensity of pain or other symptoms; (3) factors that
20 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and

1 side effects of any medication an individual takes or has taken to alleviate pain or
2 other symptoms; (5) treatment, other than medication, an individual receives or has
3 received for relief of pain or other symptoms; (6) any measures other than
4 treatment an individual uses or has used to relieve pain or other symptoms; and (7)
5 any other factors concerning an individual's functional limitations and restrictions
6 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7-*8; 20
7 C.F.R. § 416.929(c). The ALJ is instructed to "consider all of the evidence in an
8 individual's record," "to determine how symptoms limit ability to perform work-
9 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

10 Here, the ALJ found that while Plaintiff's medically determinable
11 impairments could reasonably cause the alleged symptoms, Plaintiff's subjective
12 testimony on the intensity, persistence and limiting effects of the symptoms were
13 inconsistent with medical evidence and other evidence in the record. ECF No. 6 at
14 7. After noting several specific inconsistencies from the record, the ALJ gave four
15 justifications in discounting the extent of Plaintiff's claimed symptoms. First, the
16 ALJ stated:

17 As an initial matter, the claimant had a limited work history prior to
18 his onset date (Exhibit 5D). This shows that factors other than severe
19 impairments may have prevented the claimant from working. One of
those factors may have been the claimant's incarceration history
testified to during the hearing (hearing testimony).

20 ECF No. 6 at 27.

1 Plaintiff argues the ALJ's justification in discounting Plaintiff's testimony is
2 unsustainable because it does not take into consideration that Plaintiff was found
3 disabled under the SSA at the age of 24, with an onset at 20, all the way up until
4 2020 when Plaintiff was incarcerated. ECF No. 9 at 5. Defendant argues the ALJ
5 reasonably considered Plaintiff's sporadic work history when he was neither
6 disabled nor incarcerated in concluding it suggested something other than a severe
7 impairment prevented Plaintiff from working. ECFR No. 13 at 6-7.

8 An ALJ may use evidence of poor work history in assessing a claimant's
9 credibility. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002). Here, the ALJ
10 referenced a limited work history prior to Plaintiff's onset date and stated
11 Plaintiff's prior incarceration as a factor, but failed to mention the prior sixteen
12 years where Plaintiff was disabled as an additional factor. ECF No. 6 at 27. As
13 such, the ALJ relying solely on Plaintiff's poor work history as the primary basis to
14 discredit Plaintiff's testimony would have been extremely questionable under the
15 substantial evidence review. However, such error is harmless, and not a basis for
16 remand, where "it is inconsequential to the [ALJ's] ultimate nondisability
17 determination." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Here, the
18 ALJ identified other primary reasons in discrediting Plaintiff's testimony. First,
19 the ALJ noted Plaintiff's symptoms from his testimony.

20 The claimant testified that he is disabled from depression, anxiety,
PTSD, ulnar neuropathy, asthma, and sleep apnea (hearing testimony).

1 The claimant testified to anger and difficult dealing with people
2 (hearing testimony). The claimant testified to memory deficits, easy
3 anger, and exploding often (hearing testimony).

4 ECF No. 6 at 26.

5 In discrediting Plaintiff's mental status testimony, the ALJ stated, "mental
6 status examinations in the record were unremarkable, even when the claimant
7 could not afford medication (Exhibit 12F/1-19)." *Id.* at 27. Plaintiff first argues
8 that the ALJ cannot reject the testimony solely because it could not be supported
9 by objective evidence. ECF No. 9 at 6. However, the ALJ did not discredit
10 Plaintiff's testimony on the basis it was not supported by objective evidence but,
11 rather, stated that the testimony was "not entirely consistent with the medical
12 evidence and other evidence in the record" because the mental status examinations
13 in the record were unremarkable. ECF No. 6 at 27. "When objective medical
14 evidence in the record is *inconsistent* with the claimant's subjective testimony, the
15 ALJ may indeed weigh it as undercutting such testimony." *Smartt v. Kijakazi*, 53
16 F.4th 489, 498 (9th Cir. 2022). The ALJ cited to mental status evaluations in the
17 record that frequently revealed a normal mood and affect, intact associations, linear
18 thoughts, and cooperative behavior which the ALJ reasonably found to be
19 somewhat inconsistent with Plaintiff's testimony. ECF No. 6 at 26.

20 Plaintiff next argues that the ALJ's statement that Plaintiff had unremarkable
mental status "even when the claimant could not afford medication" is

1 unsustainable because the record shows Plaintiff was consistently taking
2 medication. ECF No. 9 at 6-7. Plaintiff appears to interpret the ALJ’s statement as
3 a finding Plaintiff’s mental status was “unremarkable” exclusively while not on
4 medication. However, the Court interprets the ALJ’s statement to mean Plaintiff’s
5 mental examinations were unremarkable while being treated with medication
6 *including* when he couldn’t afford the medication. Indeed, the ALJ had previously
7 stated, “the record shows stable psychological functioning and mental status
8 examinations with treatment. . . . In January 2023, the claimant reported doing well
9 until he could not afford medication (Exhibit 12F/17). Nonetheless, the claimant
10 had a good mood, and no significant mental status abnormalities (Exhibit 12F/19).”
11 ECF No. 6 at 26. The cited medical record page, 12F/17, noted on a particular
12 visit Plaintiff reported doing well on medication but was struggling after recently
13 finding out he had to vacate his residency with nowhere else to go. *Id.* at 573.
14 Plaintiff did not explicitly say he could not afford his medication as the ALJ stated,
15 and it appears he was continuing his medication at that time. *Id.* However, the
16 Court disagrees with Plaintiff’s attenuated contention that the ALJ was exclusively
17 referring to Plaintiff’s mental status “unremarkable” when he was off medication.
18 The ALJ repeatedly discussed Plaintiff’s mental status and his treatment with
19 references to the record that discussed Plaintiff’s medications. ECF No. 6 at 26-
20 27.

1 Plaintiff also argues the ALJ failed to properly consider other evidence in
2 the record that supported Plaintiff's symptom testimony, such as reports of
3 Plaintiff presenting as anxious, angry/irritable, worried, needing help to
4 concentrate, with a flat or restricted affect, and grooming/hygiene impairments.
5 ECF No. 9 at 6-7. While the evidence could present a viable interpretation that
6 Plaintiff was experiencing the symptoms expressed in his testimony, it is not the
7 Court's role to second guess the ALJ's finding if it is nonetheless supported by
8 substantial evidence in the record. *Thomas*, 278 F.3d at 959; *Smartt*, 53 F.4th at
9 494 ("Where the interpretation of the evidence is susceptible to more than one
10 rational interpretation, the ALJ's decision must be affirmed.").

11 For the third third justification in discrediting Plaintiff's testimony, the ALJ
12 stated that "recent physical testing was normal after the claimant's release surgery
13 (Exhibit 11F/10-16). Additionally, the record does not show frequent asthma
14 exacerbations (*See* Exhibit 1F-13F)." Plaintiff argues the ALJ failed to explain
15 what testimony was being discredited with those findings and how it contradicted
16 allegations related to Plaintiff's mental impairments. ECF No. 9 at 7-8. However,
17 the ALJ pointed to Plaintiff's testimony that he suffered from ulna neuropathy and
18 asthma before citing the record in detail of treatments and diagnoses related to
19 those impairments. ECF No. 6 at 26. As to Plaintiff's second point, identifying
20 inconsistencies in testimony goes to the general credibility of the claimant. *See*

1 *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995) (“Factors that the adjudicator
2 may consider when making such credibility determinations include the claimant’s
3 daily activities, inconsistencies in testimony, effectiveness or adverse side effects
4 of any pain medication, and relevant character evidence.”). Thus, inconsistencies
5 on issues not pertinent to the underlying claimed cause of a disability may still
6 detract from a claimant’s overall credibility.

7 Finally, the ALJ concluded Plaintiff’s impairments were not disabling due to
8 the fact “the claimant is still able to perform activities of daily living, as the
9 claimant reported cooking short meals, cleaning up, doing laundry, driving,
10 shopping, paying bill, and watching television (Exhibit 4E).” Plaintiff correctly
11 notes that a claimant’s daily activities may not detract from the claimant’s
12 credibility as to the disability unless it is used to contradict the claimant’s
13 testimony, or the activities qualify as transferable work skills. *Orn v. Astrue*, 495
14 F.3d 625, 639 (9th Cir. 2007). Plaintiff argues the ALJ failed to show either
15 criterion was met. The Court agrees the ALJ failed to provide clear and
16 convincing evidence as to how Plaintiff’s daily activities contradict Plaintiff’s
17 testimony or meet the threshold as transferable work skills. Defendant’s argument
18 that the ALJ identified the daily activities as contrary to Plaintiff’s reported
19 cognitive and social limitations is not adequately reflected in the ALJ’s decision.

1 Plaintiff makes an additional argument that the ALJ failed to consider other
2 significant limitations listed in the functions report in her decision. ECF No. 9 at
3 9. It is not the Court’s duty to reweigh the evidence or substitute its judgment for
4 that of the ALJ, but review whether the ALJ’s findings were supported by
5 substantial evidence. The Court finds that even without considering Plaintiff’s
6 daily activities as detracting from his credibility, the above statements qualify as
7 specific, clear and convincing reasons for rejecting Plaintiff’s asserted limitations.
8 Thus, the ALJ did not err in rejecting Plaintiff’s testimony.

9 **B. Opinions of treating physicians**

10 Plaintiff argues the ALJ improperly disregarded, considered, or ignored
11 certain medical opinions, specifically Dr. Morgan, Ph.D., Dr. Harmon, Ph.D., A.
12 Suansilppongse, M.D., and J. Gilbert, Ph.D.

13 Under the new Social Security regulations, the ALJ will no longer “give any
14 specific evidentiary weight . . . to any medical opinion(s).” Revisions to Rules,
15 2017 WL 168819, 82 Fed. Reg. 5844-01, 5867–68. Instead, an ALJ must consider
16 and evaluate the persuasiveness of all medical opinions or prior administrative
17 medical findings from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b),
18 416.920c(a)–(b). The factors for evaluating the persuasiveness of medical
19 opinions and prior administrative medical findings include supportability,
20 consistency, relationship with the claimant, specialization, and “other factors that

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

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

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

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

19 20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

20 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 opinions
or prior administrative findings “about the same issue are both equally well-
supported . . . and consistent with the record . . . but are not exactly the same,” the

1 ALJ is required to explain how “the most persuasive factors” were considered. 20
2 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

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

8 i. Dr. Morgan

9 In referencing Dr. Morgan’s evaluation, the ALJ stated:

10 Dr. Morgan Ph.D. found multiple marked psychological limitations
11 (Exhibit 2F/3, 8). This opinion is not persuasive, as it is not supported
12 by references to the record or evidence that would support this level of
13 marked limitations (Exhibit 2F). This opinion is further inconsistent
14 with record that showed the claimant was doing ok on medication
(Exhibit 6F/8). This opinion is inconsistent with mental status
15 examinations in the record that were unremarkable, even when the
16 claimant could not afford medication (Exhibit 12F/1-19).

15 ECF No. 6 at 28. Plaintiff contends the ALJ found Dr. Morgan’s opinion to be
16 unsupported without proper explanation on the basis for such conclusion. ECF No.
17 9 at 13. “Supportability focuses on whether ‘a medical source supports a medical
18 opinion by explaining the relevant objective medical evidence.’” *Stiffler v.*
19 *O’Malley*, 102 F.4th 1102, 1106 (9th Cir. 2024) (quoting *Woods v. Kijakazi*, 32
20 F.4th 785, 791-92 (9th Cir. 2022)).

1 Substantial evidence supports the ALJ's finding that Dr. Morgan's opinion
2 regarding Plaintiff's mental impairments was not persuasive. The ALJ correctly
3 observed that Dr. Morgan's report made no reference to any outside record or
4 evidence in support of the concluded limitations. ECF No. 6 at 281-285. The
5 report had little foundation beyond Plaintiff's subjective reports during an
6 examination of limited contact with Dr. Morgan. *Id.* at 281-282, 287. Further, as
7 the ALJ stated, the report was inconsistent with the record indicating Plaintiff was
8 responding well to medication. *Id.* at 281. Dr. Morgan reported Plaintiff was "not
9 currently engaged in formal mental health treatment and [was] not taking
10 prescription psychiatric medication." *Id.* No other evaluation was conducted by
11 Dr. Morgan after Plaintiff began treatment and medication; thus, the opinion was
12 inconsistent with the record indicating Plaintiff was doing better on medication.
13 Finally, the ALJ adequately supported the statement the mental status examinations
14 in the opinion were inconsistent with those of the record. Plaintiff's evaluations in
15 the record were regularly mild and unremarkable. ECF No. 6 at 557-594.

16 ii. Dr. Harmon

17 Plaintiff next argues the ALJ erred in failing to consider Dr. Harmon's
18 opinion. Specifically, Plaintiff contends Dr. Harmon's evaluation compels
19 disability thereby requiring the ALJ to have explicitly addressed why it was
20 rejected. ECF No. 9 at 17. Plaintiff argues Dr. Harmon's report was probative of

1 Plaintiff's disability because it confirmed Dr. Morgan's assessment of limitations,
2 agreed with his diagnoses, and reported Dr. Morgan's severity ratings seemed
3 realistic. *Id.* Defendant argues Dr. Harmon's report did not qualify as a medical
4 opinion as a matter of law, and therefore, the ALJ was not required to evaluate its
5 persuasiveness. ECF No. 13 at 14.

6 Under 20 C.F.R. § 416.913(a)(2), a medical opinion is defined as a
7 "statement from a medical source about what [a claimant] can still do despite [his]
8 impairment(s) and whether [the claimant has] one or more impairment-related
9 limitations or restrictions" in abilities to perform mental and physical demands of
10 work. 20 C.F.R. § 416.913(a)(2). Dr. Harmon's report was a two-page review of
11 medical evidence, specifically Dr. Morgan's referral. ECF No. 6 at 287. Dr.
12 Harmon described Dr. Morgan's assessment of Plaintiff and noted his severity
13 ratings seemed realistic but never described Plaintiff's limitations or restrictions
14 related to any impairments. *Id.* at 287-288. Nor did Dr. Harmon describe
15 Plaintiff's work-related abilities with any specificity other than, "Sam would be
16 likely to function more successfully and perhaps able to reconnect to the workforce
17 if he remains abstinent from drugs and alcohol and engages in treatment." *Id.* at
18 288. Additionally, Dr. Harmon stated:

19 It would be helpful to have more complete information, though, such
20 as treatment, medical, or DOC records, objective mental health testing
with the MMPI, PAI, or MCMI, or similar objective medical

1 evidence. All the information in this referral is based just on Sam's
2 self-report and Dr. Morgan had limited contact with him.

3 After reviewing the record, the Court agrees with Defendant that Dr.
4 Harmon's report does not qualify as a medical opinion pursuant 20 C.F.R.
5 § 416.913(a)(2), therefore, the ALJ did not err in failing to consider it.

6 iii. Dr. Suansilppongse and Dr. Gilbert

7 Plaintiff next argues the ALJ committed several errors in finding Dr.
8 Suansilppongse and Dr. Gilbert's opinions "generally persuasive". ECF No. 9 at
9 17. Plaintiff first contends the ALJ failed to consider Dr. Suansilppongse's finding
10 that Plaintiff's "bipolar mood, anxiety reaction, infrequent distraction, and alleged
11 pain would occasionally interfere with his ability for sustained concentration,
12 persistence or for task completion" in the RFC. *Id.* at 18. Plaintiff argues the term
13 "occasionally" is a vocational term denoting a condition exists up to one-third of
14 the time, yet the ALJ did not account for this finding in the RFC. *Id.* However,
15 the guide Plaintiff cites to, POMS DI 25001.001, defines the term "occasionally"
16 as used in Selected Characteristics of Occupations ("SCO") or an RFC, not a
17 medical opinion. POMS DI 25001.001(54).

18 Plaintiff further argues that the ALJ failed to include Dr. Suansilppongse's
19 recommendation of limiting Plaintiff to one- and two-step tasks in the hypothetical
20 to the Vocational Expert ("VE") and the RFC, but instead concluded Plaintiff

1 could adjust to jobs with a reasoning level of two. ECF No. 9 at 18. Plaintiff cites
2 to *Rounds v. Commissioner of Social Security Administration*, 807 F.3d 996 (9th
3 Cir. 2015) in arguing a limitation to one- and two-step tasks conflict with jobs
4 requiring level two reasoning, thereby, requiring remand. *Id.* This is an over
5 generalization of the Ninth Circuit's reasoning in that case. The issue in *Rounds*
6 was that the ALJ limited the plaintiff to performing one- and two-step tasks in the
7 RFC but ultimately concluded the plaintiff could perform jobs requiring level two
8 Reasoning based on the VE's testimony. *Rounds*, 807 F.3d at 1002. The court
9 held the ALJ's failure to resolve this apparent conflict required remand. *Id.* at
10 1004. No such discrepancy exists here. Additionally, as Defendant notes, Dr.
11 Suansilppongse concluded Plaintiff was limited to one- to two-step tasks but listed
12 available occupations with level two or three reasoning. ECF No. 6 at 65, 67.
13 Thus, the ALJ did not err in failing to account for Dr. Suansilppongse's one- to
14 two-step task limitations.

15 As to Dr. Gilbert's report, Plaintiff argues the findings contradicted Dr.
16 Suansilppongse's report because Dr. Gilbert concluded Plaintiff could perform
17 complex tasks. ECF No. 9 at 19. As such, Plaintiff contends both reports cannot
18 be considered persuasive. The Court disagrees, both reports concluded Plaintiff is
19 capable of performing tasks that is transferable to a work setting. ECF No. 6 at 65,
20 76. Additionally, Plaintiff cites to no support prohibiting an ALJ from finding

1 reports with different conclusions on a claimant's limitations to be persuasive.

2 Finally, Plaintiff challenges the ALJ's supportability and consistency
3 explanations in concluding Dr. Suansilppongse and Dr. Gilbert's opinions were
4 persuasive. ECF No. 9 at 19-20. The ALJ stated:

5 The state psychological consultants found the claimant could perform
6 unskilled work, with infrequent contact with others, and occasional
7 workplace changes and decisions made (Exhibit 1A, Exhibit 4A).
8 Their opinions are generally persuasive, as they are supported by
9 records reviewed that showed the claimant was doing ok on
10 medication (Exhibit 6F/8). Their opinions are consistent with recent
11 mental status examinations in the record that were unremarkable, even
12 when the claimant could not afford medication (Exhibit 12F/1-19).

13 Plaintiff first contends the ALJ failed to properly address the supportability factor.

14 The Court agrees. The ALJ must "'articulate ... how persuasive' it finds 'all of the
15 medical opinions' from each doctor or other source and 'explain how [it]
16 considered the supportability and consistency factors' in reaching these findings."

17 *Woods*, 32 F.4th at 792 (internal citations omitted); 20 C.F.R § 404.1520c(b)(2).

18 Here, the ALJ only cited to one page in the record in support of explaining the
19 medical opinions were adequately supported. Defendant argues the ALJ
20 adequately addressed the supportability factor because the medical opinions show
Dr. Suansilppongse and Dr. Gilbert reviewed records showing Plaintiff was doing
ok on medication. ECF No. 13 at 16. Even if the medical opinions are sufficiently
supported by reference to the record, the ALJ's decision must be "supported by the

1 inferences reasonably drawn from the record.” *Molina*, 674 F.3d at 1111. The
2 Court “cannot substitute [its own] conclusions for the ALJ’s, or speculate as to the
3 grounds for the ALJ’s conclusions.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 495
4 (9th Cir. 2015). Therefore, the ALJ’s decision must be remanded on this issue.
5 *See, e.g., Scholes v. O’Malley*, at *8 (D. Haw. July 16, 2024) (explaining ALJ’s
6 inadequate supportability analysis in rejecting medical opinions constituted legal
7 error); *Boeche v. Kijakazi*, 2024 WL 3430576, at *9 (S.D. Cal. July 15, 2024)
8 (finding reversible error where ALJ failed to analyze supportability of doctor’s
9 opinion even though doctor provided evidence of supportability); *Katherine D. v.*
10 *Comm’r, Soc. Sec. Administration*, 2024 WL 244625, at *6 (D. Or., Jan. 23, 2024)
11 (“[r]egarding ‘supportability,’ the ALJ erred by failing to discuss the strength of
12 the evidence underlying Dr. Hallenburg's conclusions.”).

13 As to the consistency factor, Plaintiff argues the ALJ improperly found Dr.
14 Suansilppongse and Dr. Gilbert’s medical opinions consistent with the record
15 showing “unremarkable” mental status even when the Plaintiff was not on
16 medication, because Plaintiff was on medication. ECF No. 9 at 20. The Court
17 interprets the ALJ’s explanation to mean the record showed “unremarkable”
18 mental status while Plaintiff was being treated. The ALJ sufficiently cited to the
19 portion of the record supporting the consistency factor.

20 //

1 **C. Plaintiff’s obesity**

2 Plaintiff’s last argument that the ALJ reversibly erred is that the ALJ failed
3 to consider Plaintiff’s obesity. Defendant contends that because Plaintiff failed to
4 raise this issue as a basis for disability at the administrative hearing, it is forfeited.
5 ECF No. 13 at 20-21. The Court agrees.

6 “[W]hen claimants are represented by counsel, they must raise all issues and
7 evidence at their administrative hearings in order to preserve them on appeal.”

8 *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999). Plaintiff cites to the Ninth
9 Circuit case, *Celaya v. Halter*, 332 F.3d 1177, 1182 (9th Cir. 2003), as support that
10 the ALJ was required to consider the effect of Plaintiff’s obesity on his other
11 impairments, despite him not raising the issue at the hearing. ECF No. 9 at 21.

12 But that holding is distinguishable. The court there concluded the ALJ was
13 required to consider claimant’s obesity in making his decision for three reasons:

14 (1) it was implicitly raised by the symptoms she reported, (2) the obesity was close
15 to the listing criterion and could exacerbate her reported illnesses (diabetes and
16 hypertension), and (3) the claimant’s pro se status. *Celaya*, 332 F.3d at 1182. But
17 more notably, the court concluded, “[t]he ALJ’s exclusion of obesity from analysis
18 is error in that he was addressing an illiterate, unrepresented claimant who very
19 likely never knew that she *could* assert obesity as a partial basis for her disability.”

20 *Id.* at 1183.

1 Here, Plaintiff testified his disability stemmed from depression, anxiety,
2 PTSD, ulnar neuropathy, asthma, and sleep apnea. ECF No. 6 at 26. But more
3 significantly, Plaintiff was represented by counsel during the administrative
4 hearing. Therefore, Plaintiff failed to preserve the obesity issue for appeal by not
5 addressing it at the administrative hearing.

6 //

7 //

8 **CONCLUSION**

9 For the foregoing reasons, the Commissioner's final decision is **VACATED**
10 and **REMANDED** for further administrative proceedings. On remand, the ALJ
11 shall adequately evaluate the supportability factor in concluding Dr.
12 Suansilppongse and Dr. Gilbert's medical opinions to be persuasive.


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

- 14 1. Plaintiffs Opening Brief (ECF No. 9) is **GRANTED** in part.
- 15 2. The Commissioner's Brief (ECF Nos. 13) is **DENIED** in part.
- 16 3. The Court enters **JUDGMENT** in favor of Plaintiff **VACATING** and
17 **REMANDING** the matter to the Commissioner of Social Security for
18 further proceedings consistent with this Order pursuant to sentence four
19 of 42 U.S.C. § 405(g).

1 The District Court Executive is hereby directed to file this Order, enter
2 **JUDGMENT** for Plaintiff, provide copies to counsel, and **CLOSE** the file.

3 **DATED** November 25, 2025.



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6 THOMAS O. RICE
7 United States District Judge

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