UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WESLEY PATTON,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

CASE NO. C16-1095-BAT

ORDER DENYING DEFENDANT'S MOTION TO ALTER THE JUDGMENT

Defendant moves under Federal Rule 59(e) to alter the judgment, contending the Court committed clear error of law by misapplying the substantial evidence standard, "holding the ALJ to higher standard than required under Ninth Circuit law," and addressing issues that were assertions of error not specifically raised by plaintiff. Dkt. 19 at 1-2. None of these arguments hold water. The ALJ failed to address DAA properly, and failed to make required DAA findings as required by law. Defendant's arguments to the contrary rely upon arguments based on her interpretation of the record, not what the ALJ found. The arguments thus incorrectly sidestep the ALJ's failure to adequately address DAA findings. The Commissioner implicitly recognizes this by arguing the ALJ's failure is harmless. Dkt. 19 at 5. This argument improperly renders the ALJ's reasoning superfluous and bars meaningful review. *See Treichler v. Comm'r of Social Sec. Admin.*, 775 F.3d 1090 1102 (9th Cir. 2014). Defendant also argues the Court reversed the

ALJ's decision addressing DAA issues not raised by plaintiff. Plaintiff argued in his opening brief the DAA analysis is "legally improper"; defendant was therefore not unfairly blindsided by the issue. Dkt. 11 at 5. Additionally the Court must assess the record as a whole to determine whether the ALJ's decision is supported by substantial evidence and free of legal error. That is what the Court did in reviewing the findings the ALJ is required to make regarding DAA at each of the five mandatory disability determination steps. And finally the Commissioner argues the ALJ properly accounted for DAA in assessing plaintiff's RFC. The argument it is not based upon what the ALJ found, but upon defendant's post-hoc claims. The Court accordingly **DENIES** the Commissioner's motion to alter the judgment. Dkt. 19.

DATED this 14th day of April, 2017.

BRIAN A. TSUCHIDA
United States Magistrate Judge