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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 MICHAEL MATTHIAS STILLER,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting  
10 Commissioner of Social Security,<sup>1</sup>

11 Defendant.

Case No. 2:16-cv-01470-RBL

ORDER AFFIRMING DEFENDANT'S  
DECISION TO DENY BENEFITS

12 THIS MATTER is before the Court on Plaintiff Stiller's Complaint [Dkt. 3] for review of  
13 the Social Security Commissioner's denial of his application for disability insurance benefits.  
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15 Stiller suffers from a neck/back disorder. *See* Dkt. 7, Administrative Record 14. He  
16 applied for disability insurance benefits in April 2013, alleging he became disabled beginning in  
17 May 2010. *See* AR 11. That application was denied upon initial administrative review and on  
18 reconsideration. *See id.* A hearing was held before Administrative Law Judge Wayne N. Araki in  
19 November 2014. *See id.* Stiller, represented by counsel, appeared and testified, as did a  
20 vocational expert. *See* AR 28-73.

21 The ALJ determined Stiller to be not disabled. *See* AR 8-27. The Appeals Council denied  
22 Stiller's request for review, making the ALJ's decision the final decision of the Commissioner of  
23

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26 <sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin as Defendant in this suit. The Clerk is directed to update the docket, and all future filings by the parties should reflect this change.

1 Social Security. *See* AR 1-6; 20 C.F.R. § 404.981. In September 2016, Stiller filed a complaint in  
2 this Court seeking judicial review of the Commissioner’s final decision. *See* Dkt. 3.

3 Stiller argues that the Commissioner’s decision to deny benefits should be reversed and  
4 remanded for further administrative proceedings because the ALJ erred in finding that Stiller’s  
5 impairments did not meet a listing at step three of the sequential evaluation process.

6 The Commissioner argues that Stiller waived his argument at the hearing, or alternatively  
7 that the ALJ did not err in finding that Stiller’s impairments did not meet a listing, so the ALJ’s  
8 finding that Stiller was not disabled was supported by substantial evidence and should be  
9 affirmed.  
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## 11 DISCUSSION

12 The Commissioner’s determination that a claimant is not disabled must be upheld by the  
13 Court if the Commissioner applied the “proper legal standards” and if “substantial evidence in  
14 the record as a whole supports” that determination. *See Hoffman v. Heckler*, 785 F.2d 1423, 1425  
15 (9th Cir. 1986); *see also Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir.  
16 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) (“A decision supported by  
17 substantial evidence will, nevertheless, be set aside if the proper legal standards were not applied  
18 in weighing the evidence and making the decision.”) (citing *Brawner v. Sec’y of Health and*  
19 *Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).  
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21 Substantial evidence is “such relevant evidence as a reasonable mind might accept as  
22 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation  
23 omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if  
24 supported by inferences reasonably drawn from the record.”). “The substantial evidence test  
25 requires that the reviewing court determine” whether the Commissioner’s decision is “supported  
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1 by more than a scintilla of evidence, although less than a preponderance of the evidence is  
2 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence  
3 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
4 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
5 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
6 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).<sup>2</sup>

8 Stiller asserts that the ALJ erred by failing to find that he met the requirements found in  
9 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04(A), before his date last insured of December  
10 31, 2011. *See* Dkt. 11 at 4-8. At step three of the sequential disability evaluation process, the ALJ  
11 must evaluate the claimant’s impairments to see if they meet or medically equal any of the  
12 impairments listed in 20 C.F. R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R § 404.1520(d);  
13 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If any of the claimant’s impairments meet  
14 or medically equal a listed impairment, he is deemed disabled. *See* 20 C.F.R. § 404.1520(d). The  
15 burden of proof is on the claimant to establish that his impairments meet or equal a listing. *See*  
16 *Tackett*, 180 F.3d at 1098.

18 Listing 1.04(A) requires:

19 Evidence of nerve root compression characterized by neuro-anatomic distribution  
20 of pain, limitation of motion of the spine, motor loss (atrophy with associated  
21 muscle weakness or muscle weakness) accompanied by sensory or reflex loss and,

22 \_\_\_\_\_  
23 <sup>2</sup> As the Ninth Circuit has further explained:

24 . . . It is immaterial that the evidence in a case would permit a different conclusion than that  
25 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by  
26 substantial evidence, the courts are required to accept them. It is the function of the  
[Commissioner], and not the courts to resolve conflicts in the evidence. While the court may  
not try the case de novo, neither may it abdicate its traditional function of review. It must  
scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are  
rational. If they are . . . they must be upheld.

*Sorenson*, 514 F.2d at 1119 n.10.

1 if there is involvement of the lower back, positive straight-leg raising test (sitting  
2 and supine).

3 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04(A). The ALJ found that the medical evidence  
4 did not support that Stiller met all of the requirements of listing 1.04(A). *See* AR 15.

5 The Commissioner argues that Stiller waived the argument that he met a listing during  
6 the hearing, so the Court should not consider it. *See* Dkt. 12 at 2-3. Claimants, when represented  
7 by council, are required to “raise all issues and evidence at their administrative hearings in order  
8 to preserve them on appeal.” *See Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999).

9 Here, Stiller, through his attorney, stated in his opening argument at the hearing that  
10 though he was “close to a listed impairment,” he was missing “any significant atrophy.” *See* AR  
11 31. Stiller argues in his reply brief that he only conceded a lack of atrophy at the hearing and did  
12 not concede that he could not otherwise meet listing 1.04(A). *See* Dkt. 13 at 1-2. In support of  
13 this claim, Stiller notes that the motor loss requirement of listing 1.04(A) is described as atrophy  
14 with associated muscle weakness or muscle weakness. *See id.* (citing 20 C.F.R. Part 404, Subpart  
15 P, Appendix 1, § 1.04(A)). Therefore, Stiller argues, he did not necessarily need proof of atrophy  
16 to meet the listing and was not in fact conceding at the hearing that he did not meet a listing. *See*  
17 *id.*

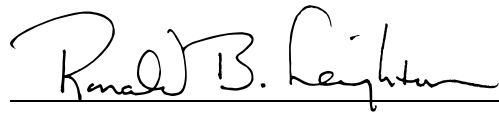
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20 However, considering Stiller’s opening statement at the hearing as a whole, the Court  
21 cannot reasonably infer that he did not concede that he did not meet a listing when Stiller stated  
22 that though he was “close” to a listing, he was “missing” one element. *See* AR 31. Stiller went on  
23 to state that he had “all the other aspects” of listing 1.04(A), again implying that he did not meet  
24 all the required elements. *See id.* He then concluded that the medical evidence showed that he  
25 had the residual functional capacity to perform work only if it were at the sedentary level. *See*  
26 AR 31-32. A residual functional capacity is only relevant to the disability determination where a

1 claimant does not meet a listing. *See* Social Security Ruling 96-8p, 1996 WL 374184 at \*2. The  
2 Court cannot reasonably infer from this opening statement that Stiller was in fact making the  
3 argument that he could still meet the motor loss requirement of listing 1.04(A) despite the lack of  
4 any atrophy. Therefore, the ALJ found that the medical evidence did not support that Stiller met  
5 all of the requirements of listing 1.04(A), and the Court will not reconsider the issue, which was  
6 waived.  
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### 8 CONCLUSION

9 Based on the foregoing discussion, the Court hereby finds that the ALJ properly  
10 concluded Stiller was not disabled. Accordingly, the Commissioner's decision to deny benefits is  
11 AFFIRMED.

12 DATED this 20<sup>th</sup> day of March, 2017.  
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17 Ronald B. Leighton  
18 United States District Judge  
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