

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ottem v. Bisignano

Ottem · No. 1:24-cv-00412-JLT-BAM · Decided May 30, 2025

SUMMARY

The document contains findings and recommendations by a United States Magistrate Judge in a Social Security disability benefits appeal. The court recommends granting Plaintiff Cynthia Marie Ottem’s appeal, reversing the agency’s denial of benefits, and entering judgment in her favor because the ALJ’s decision was not supported by substantial evidence and applied improper legal standards. The court directs the ALJ on remand to further address Plaintiff’s subjective symptom testimony.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 30, 2025
DOCKET	1:24-cv-00412-JLT-BAM
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review of the Commissioner's denial of Disability Insurance Benefits and Supplemental Security Income and moved for summary judgment. The magistrate judge issued findings and recommendations recommending that the appeal be granted, the denial of benefits be reversed, and the matter be returned to the agency for further proceedings.
STANDARD OF REVIEW	The court reviews the Commissioner's factual findings for substantial evidence and determines whether the agency applied the proper legal standards. Substantial evidence is more than a mere scintilla but less than a preponderance and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The record as a whole must be considered, including evidence supporting and detracting from the Commissioner's conclusion.
PRECEDENTIAL VALUE	unpublished

PARTIES

Cynthia Marie Ottem v. Frank Bisignano, Acting Commissioner of Social Security

TOPICS

judicial review of agency action

summary judgment

administrative law

remedies

civil procedure

PRACTICE AREAS

Social Security disability

administrative law

civil procedure

QUESTIONS PRESENTED

1. Whether the ALJ applied the proper legal standard and gave sufficiently specific, clear, and convincing reasons for discounting Ottem's subjective symptom testimony.
2. Whether the ALJ's residual functional capacity finding limiting Ottem to medium work was supported by substantial evidence.
3. Whether the ALJ erred by failing to adopt Dr. Roger Wagner's limitation that Ottem required a cane.

HOLDINGS

1. The ALJ erred by failing to provide legally sufficient reasons, beyond the lack of supporting medical evidence, for discounting Ottem's subjective symptom testimony. Evidence of temporary relief from epidural injections did not establish sustained improvement sufficient to undermine her allegations.
2. Remand for further administrative proceedings was appropriate because it was not clear that further proceedings would serve no useful purpose.

KEY QUOTATIONS

“As the record indicates “ups and downs” rather than sustained improvement, effective treatment was not an appropriate basis for discounting Plaintiff’s symptoms testimony.” (at 8)

“As the ALJ failed to utilize or articulate proper bases for evaluating Plaintiff’s symptoms testimony beyond the lack of supporting medical evidence, the ALJ erred in assessing Plaintiff’s symptoms.” (at 10)

FACTUAL BACKGROUND

Ottem alleged disability based principally on back and lower-extremity symptoms, including pain associated with degenerative disc disease, scoliosis, spinal stenosis, spondylolisthesis, and a left knee meniscus tear. The ALJ found that she could perform medium work with postural and hazard limitations and relied in part on generally normal gait, strength, reflexes, and examinations in which she did not use a cane. Although epidural injections sometimes produced substantial short-term pain relief, the medical record described continuing pain and an overall pattern of ups and downs rather than sustained improvement.

PROCEDURAL HISTORY

Ottem applied for Title II and Title XVI benefits, alleging disability beginning June 8, 2013. The applications were denied initially and on reconsideration. After an administrative hearing, ALJ Charlie M. Johnson denied benefits on January 16, 2023, and the Appeals Council denied review. Ottem then filed this action, and the magistrate judge recommended reversal and remand because the ALJ improperly evaluated her subjective symptom testimony.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

On remand, the ALJ should specifically address Ottem's subjective symptom testimony. The findings and recommendations were subject to objections and required adoption by the assigned district judge before becoming a final judgment.

CASES CITED

- Richardson v. Perales, 402 U.S. 389, 401-02 (1971)
- Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975)
- Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985)
- Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988)
- Sanchez v. Secretary of Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987)
- Quang Van Han v. Bowen, 882 F.2d 1453, 1456 (9th Cir. 1989)
- Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 1990)
- Garrison v. Colvin, 759 F.3d 995, 1014-15 (9th Cir. 2014)
- Batson v. Commissioner, 359 F.3d 1190, 1196 (9th Cir. 2004)
- Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005)
- Warre v. Commissioner of Social Security Administration, 439 F.3d 1001, 1006 (9th Cir. 2006)
- Attmore v. Colvin, 827 F.3d 872, 878 (9th Cir. 2016)
- Jana D. R. v. Saul, No. 5:20-CV-01098-AFM, 2021 WL 2826436, at *4 (C.D. Cal. July 7, 2021)
- Diana L. v. Commissioner of Social Security, No. C23-5019-SKV, 2023 WL 4840047, at *4 (W.D. Wash. July 28, 2023)
- Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)
- Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000)
- Dominguez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
- Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir. 2012)
- Augustine ex rel. Ramirez v. Astrue, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008)
- Marcia v. Sullivan, 900 F.2d 172, 177 n.6 (9th Cir. 1990)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 CYNTHIA MARIE OTTEM, Case No. 1:24-cv-00412-JLT-BAM 12
Plaintiff, FINDINGS AND RECOMMENDATIONS 13 v. REGARDING PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT 14 FRANK BISIGNANO, Acting 15 Commissioner of
Social Security,¹ (Docs. 11, 14, 15) 16 Defendant. 17 18 19 INTRODUCTION 20 Plaintiff
Cynthia Marie Ottem (“Plaintiff”) seeks judicial review of a final decision of the 21 Commissioner
of Social Security (“Commissioner”) denying her application for Disability Insurance 22 Benefits
under Title II of the Social Security Act and Supplemental Security Income under Title XVI 23 of
the Social Security Act.

The parties’ briefing on the motion was submitted, without oral argument, 24 to Magistrate Judge
Barbara A. McAuliffe for findings and recommendations. (Docs. 11, 14, 15.) 25 Having
considered the parties’ briefs, along with the entire record in this case, the Court finds that the 26
27 1 Frank Bisignano became the Acting Commissioner of Social Security in May 2025.

Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Leland Dudek is substituted for
Martin O’Malley 28 as Defendant in this suit. 1 decision of the Administrative Law Judge (“ALJ”)
was not supported by substantial evidence in the 2 record and was not based upon proper legal
standards.

Accordingly, this Court will recommend 3 reversing the agency’s determination to deny benefits. 4
FACTS AND PRIOR PROCEEDINGS 5 Plaintiff applied for Title II Disability Insurance Benefits
and Title XVI Supplemental Security 6 Income on January 26, 2021, alleging that she became
disabled on June 8, 2013. AR 321-341.2 The 7 claim was denied initially on May 18, 2021 (AR
207-216) and on reconsideration on September 29, 8 2021.

AR 207-216, 224-234. Plaintiff requested a hearing before an administrative law judge 9 (“ALJ”)
and ALJ Charlie M. Johnson held a hearing on February 11, 2021. AR 78-109. ALJ Johnson 10
issued an order denying benefits on the basis that Plaintiff was not disabled on January 16, 2023.
AR 11 18-37. Plaintiff sought review of the ALJ’s decision, which the Appeals Council denied.

AR 5-10. 12 This appeal followed. 13 Medical Record 14 The relevant medical record was
reviewed by the Court and will be referenced below as 15 necessary to this Court’s decision. 16
The ALJ’s Decision 17 Using the Social Security Administration’s five-step sequential evaluation
process, the ALJ 18 determined that Plaintiff was not disabled under the Social Security Act.

AR 18-37. Specifically, the 19 ALJ found that Plaintiff had not engaged in substantial gainful
activity since the alleged onset date of 20 June 8, 2013. AR 24. The ALJ identified the following
severe impairments: degenerative disc 21 disease, scoliosis, medial meniscus tear of the left knee,
and obesity. Id. The ALJ also identified the 22 nonsevere impairment of diabetes mellitus, kidney

cysts, left adrenal myelolipoma, hypertension, 23 hyperlipidemia, gastroesophageal reflux disease (GERD), toenail fungus, visual impairments, and mild 24 diastolic dysfunction.

AR 24-25. The ALJ further determined that Plaintiff did not have an 25 26 27 2 References to the Administrative Record will be designated as “AR,” followed by the appropriate 28 page number. 1 impairment or combination of impairments that met or medically equaled any of the listed 2 impairments. AR 26. 3 Based on a review of the entire record, the ALJ found that Plaintiff retained the residual 4 functional capacity (“RFC”) to perform medium work with the limitations that Plaintiff: was limited to 5 occasional stooping and balancing; was limited to frequent kneeling, crouching, crawling, and 6 climbing; and must avoid hazards such as unprotected heights and dangerous moving machinery.

AR 7 26. The ALJ considered “all symptoms and the extent to which these symptoms can reasonably be 8 accepted as consistent with the objective medical evidence and other evidence,” as well as “medical 9 opinion(s) and prior administrative medical finding(s).” Id. 10 The ALJ found that Plaintiff had no past relevant work; that Plaintiff was an individual closely 11 approaching advanced age on the alleged disability date and subsequently became an individual 12 approaching retirement age; that Plaintiff had at least a high school education; and that transferability 13 of job skills was not an issue because Plaintiff did not have past relevant work.

AR 29-30. Given 14 Plaintiff’s age, education, work experience, and residual functional capacity, the ALJ found that there 15 were jobs that existed in significant numbers in the national economy that Plaintiff could perform. AR 16 30.

The ALJ noted that examples of jobs consistent with Plaintiff’s age, education, work experience, 17 and residual functional capacity included: (1) Hand Packer (DOT No. 920.687-066, unskilled, 18 medium, with approximately 164,000 positions nationally); (2) Assembler (DOT No. 739.687-186, 19 unskilled, medium, with approximately 90,000 positions nationally); and (3) Inspector (DOT No. 20 651.687-010, unskilled, medium, with approximately 15,000 positions nationally).

Id. The ALJ 21 therefore concluded that Plaintiff had not been disabled from the alleged onset date of June 8, 2013, 22 through the date of the decision. AR 31. 23 SCOPE OF REVIEW 24 Congress has provided a limited scope of judicial review of the Commissioner’s decision to 25 deny benefits under the Act.

In reviewing findings of fact with respect to such determinations, this 26 Court must determine whether the decision of the Commissioner is supported by substantial evidence. 27 42 U.S.C. § 405(g). Substantial evidence means “more than a mere scintilla,” *Richardson v. Perales*, 28 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1 1119, n. 10 (9th Cir.

1975). It is “such relevant evidence as a reasonable mind might accept as 2 adequate to support a conclusion.” Richardson, 402 U.S. at 401. The record as a whole must be 3 considered, weighing both the evidence that supports and the evidence that detracts from the 4 Commissioner’s conclusion. Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985).

In weighing the 5 evidence and making findings, the Commissioner must apply the proper legal standards. E.g., 6 Burkhardt v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner’s 7 determination that the claimant is not disabled if the Commissioner applied the proper legal standards, 8 and if the Commissioner’s findings are supported by substantial evidence.

See Sanchez v. Sec’y of 9 Health and Human Servs., 812 F.2d 509, 510 (9th Cir. 1987). 10 REVIEW 11 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in 12 substantial gainful activity due to a medically determinable physical or mental impairment which has 13 lasted or can be expected to last for a continuous period of not less than twelve months.

42 U.S.C. § 14 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such 15 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or 16 her age, education, and work experience, engage in any other kind of substantial gainful work which 17 exists in the national economy. Quang Van Han v. Bowen, 882 F.2d 1453, 1456 (9th Cir.

1989). The 18 burden is on the claimant to establish disability. Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 19 1990). 20 DISCUSSION3 21 Plaintiff argues that the ALJ erred by failing to adopt Dr. Roger Wagner’s limitation that 22 Plaintiff required the use of a cane. (Doc. 11 at 8-11.) Plaintiff further argues that Plaintiff’s RFC 23 limitation to medium work was also not supported by substantial evidence.

(Doc. 11 at 11-15, Doc. 15 24 at 2-4.) Finally, Plaintiff argues that the ALJ erred by failing to provide clear and convincing reasons 25 for discounting Plaintiff’s subjective symptoms. (Doc. 11 at 15-19, Doc. 15 at 4-9.) 26 27 3 The parties are advised that this Court has carefully reviewed and considered all of the briefs, including arguments, points and authorities, declarations, and/or exhibits.

Any omission of a reference to any specific 28 argument or brief is not to be construed that the Court did not consider the argument or brief. 1 A. Plaintiff’s Subjective Complaints 2 Plaintiff argues that the ALJ erred by failing to provide clear and convincing reasons for 3 discounting Plaintiff’s subjective symptoms. (Doc. 11 at 15-19, Doc. 15 at 4-9.)

In deciding whether 4 to admit a claimant’s subjective complaints, the ALJ must engage in a two-step analysis. Garrison v. 5 Colvin, 759 F.3d 995, 1014 (9th Cir. 2014); Batson v. Comm’r, 359

F.3d 1190, 1196 (9th Cir. 2004). 6 First, the claimant must produce objective medical evidence of her impairment that could reasonably 7 be expected to produce some degree of the symptom or pain alleged.

Garrison, 759 F.3d at 1014. If 8 the claimant satisfies the first step and there is no evidence of malingering, the ALJ may reject the 9 claimant's testimony regarding the severity of her symptoms only by offering specific, clear and 10 convincing reasons for doing so. Id. at 1015. 11 Here, the ALJ found that Plaintiff's medically determinable impairments could reasonably be 12 expected to cause the alleged symptoms.

AR 27. However, the ALJ discounted Plaintiff's statements 13 concerning the intensity, persistence, and limiting effects of those symptoms, noting that the 14 statements were not consistent with medical evidence and other evidence in the record. Id. The ALJ 15 was therefore required to provide specific, clear and convincing reasons for discounting Plaintiff's 16 subjective complaints.

17 First, the ALJ found that Plaintiff's allegations were not fully consistent with the medical 18 records. AR 27-28. Although lack of supporting medical evidence cannot form the sole basis for 19 discounting testimony, it is a factor that the ALJ can consider. See Burch v. Barnhart, 400 F.3d 676, 20 681 (9th Cir. 2005). 21 Here, the ALJ noted: 22 The treatment records describe symptoms of low back pain radiating to the lower extremities, as well as occasional complaints of left knee pain 23 (see, e.g., 7F/6, 23; 11F/144).

A lumbar MRI study on October 5, 2018 showed multilevel degenerative disc disease causing narrowing of the 24 central canal, while a left knee MRI on that date showed a degenerative 25 medial meniscus tear (6F/40). A lumbar MRI study on July 10, 2020 showed congenital spinal stenosis exacerbated by multilevel 26 degenerative change, as well as L5-S1 grade-2 spondylolisthesis and bilateral spondylolysis (5F/8-9).

The claimant was also noted on 27 examination to have lumbar scoliosis (see, e.g., 7F/2, 7, 24)... 28 1 The results of the April 13, 2021 internal medicine consultative examination support a finding that the claimant could perform medium 2 work within the restrictions described above. At that examination, the claimant was able to easily get out of her chair in the waiting room 3 (14F).

She sat comfortably and was able to get on and off exam table 4 and easily bend at the waist to take off her shoes and socks and put them back on, demonstrating good dexterity and flexibility in bringing her 5 ankles to her knees to take off her socks. She was able to walk on her toes and heels while holding the examiner's fingertips, and she exhibited 6 normal station and gait.

While a Romberg test was positive, she 7 demonstrated normal finger-to-nose testing. Straight leg raising was negative in a seated position, though slightly positive on the left at 60 8 degrees in a supine position.

The claimant's knees appeared normal, and she demonstrated full grip strength, full strength in all extremities, 9 normal muscle bulk and tone, intact sensation, and normal reflexes. She 10 carried a cane, but she touched it down once every third or fourth step without leaning on it, and she walked at a normal speed to the 11 examination room without using her cane, which suggests that the cane was not necessary.

12 Similarly, physical examinations findings in the treatment records 13 describe negative straight leg raising and normal gait, strength, and 14 reflexes, despite occasional findings of spinal tenderness (see, e.g., 4F/2, 16, 18, 24, 26; 6F/3; 7F/2, 7, 24, 31; 11F/90, 99, 120, 245; 26F/54-55), 15 which also supports a finding that the claimant would be able to perform work at a medium exertional level.

While she appeared with a cane at a 16 September 12, 2022 examination with Karthikeya Devireddy, M.D., she 17 appeared without a cane or other assistive device at numerous other examinations with her treating providers (see, e.g., 11F/99; 26F/27, 18 68)... 19 AR 27-28.

In doing so, the ALJ appropriately contrasted the medical record with Plaintiff's more 20 extreme allegations. For instance, the ALJ highlighted relatively normal findings related to straight 21 leg raising tests, gait, strength, and reflexes. AR 28; 569 (March 2016 visit report noting normal 22 muscle strength and tone, extremities findings); 690 (September 2020 visit report noting normal 23 extremities motor findings, normal gait and lift, but abnormal lumbosacral spine with scoliosis).

The 24 ALJ also highlighted that Plaintiff appeared without a cane at some examinations and was able to walk 25 without it. AR 28; 1822 (October 2022 report noting "Gait and Station: Appearance: normal gait, no 26 limp, and ambulating with no assistive devices"); 1863 (December 2021 report noting "Gait and 27 Station: Appearance: normal gait, no limp, and ambulating with no assistive devices."); 1400 (April 28 1 2021 visit report noting normal motor strength/muscle bulk and tone and negative seated straight leg 2 raising test with "slightly positive supine on the left at 60 degrees with the claimant having a bit of 3 pulling in the low back without radiation.") The ALJ therefore appropriately used the lack of 4 supporting medical evidence as one factor in discounting Plaintiff's symptoms testimony.

5 Second, the ALJ noted that the "medical evidence indicates that the claimant's treatment, 6 particularly epidural steroid injections, were successful in decreasing her pain symptoms." AR 27. 7 "Impairments that can be controlled effectively with medication are not disabling." *Warre v. Comm'r* 8 of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006); see also 20 C.F.R. § 404.1529(c)(3)(iv), (v) 9 (medication effectiveness and treatment history are relevant factors for evaluating a claimant's 10 symptom testimony).

However, the Ninth Circuit has cautioned that ALJs err where they rely on 11 individual points of improvement rather than a record of sustained improvement. *Attmore v. Colvin*, 12 827 F.3d 872, 878 (9th Cir. 2016) (“Although the ALJ pointed to isolated signs of improvement, the 13 ALJ could not find medical improvement on that basis unless the ups and the downs of [plaintiff’s] 14 development showed sustained improvement.”); *Garrison v. Colvin*, 759 F.3d 995, 1018 (9th Cir.

15 2014) (“ALJ erred in concluding that a few short-lived periods of temporary improvement in 16 [plaintiff’s] mental health symptoms undermined [plaintiff’s] testimony”); see also *Jana D. R. v. Saul*, 17 No. 5:20-CV-01098-AFM, 2021 WL 2826436, at *4 (C.D. Cal. July 7, 2021) (finding that ALJ erred 18 by discounting plaintiff’s testimony based upon effective treatment where the “record reflects that 19 Plaintiff’s treatment provided only limited periods of relief from her pain and did not effectively 20 control Plaintiff’s pain.”); *Diana L. v. Comm’r of Soc.*

Sec., No. C23-5019-SKV, 2023 WL 4840047, at 21 *4 (W.D. Wash. July 28, 2023) (finding the ALJ erred by pointing to evidence of improvement when 22 “no evidence in the record suggests that her condition improved to a degree that undermined her 23 allegations”). 24 Here, the ALJ explains: 25 The medical evidence indicates that the claimant’s treatment, particularly epidural steroid injections, were successful in decreasing her 26 pain symptoms.

For example, on June 1, 2017, the claimant reported that she continued to have 100% pain relief from injections that were 27 performed on May 22, 2017 (7F/27). On November 2017, she reported 28 75% pain relief from recent injections (7F/11).

On September 4, 2020, 1 she reported that naan epidural steroid injection on August 28, 2020 had provided 100% relief (7F/1). The claimant was also treated with a back 2 brace and physical therapy, which provided lesser relief (see, e.g., 7F/6; 8F/28). 3 4 AR 27. 5 While the ALJ’s summary of Plaintiff’s treatment indicates some improvement with 6 medication, the ALJ’s note that Plaintiff’s back brace and physical therapy provided lesser relief and 7 the record regarding Plaintiff’s continued pain suggest that Plaintiff’s improvements were not 8 sufficiently sustained to discount her allegations of disabling pain.

See AR 27. For instance, though 9 the ALJ notes that Plaintiff reported improvement soon after her steroid injections, the broader record 10 indicates that this relief was temporary. See AR 689 (September 2020 follow-up visit report noting 11 “patient is here with no pain and symptoms, feeling better since last visit” in late August 2020 when 12 she received steroid injections but that “In general, the current spine problem is one of ups and downs 13 or good days and bad days since its onset and pain is not improving.

The pain has affected the patient’s 14 activities of daily living.”); 699 (November 2017 report noting 75% pain relief but that Plaintiff still 15 experienced pain of “3/10 on a 0 to 10 pain scale.);

719 (June 2020 visit report noting “return of 16 symptoms” and “patient describes the pain as usually Radiating, aching and shooting.

The pain occurs 17 frequently. The pain currently is a 5/10 on a 0 to 10 pain scale. The pain is brought on and/or made 18 worse by standing to [sic] long.”). Additionally, as indicated by the ALJ, the physical therapy and 19 support brace did not provide significant relief. See AR 694 (September 2017 report noting continued 20 “pain that radiates down both legs,” “Patient has used a support brace that is not helping to manage 21 pain,” and “Physical therapy that provided less than 50% pain relief.”).

As the record indicates “ups 22 and downs” rather than sustained improvement, effective treatment was not an appropriate basis for 23 discounting Plaintiff’s symptoms testimony. See *Attmore*, 827 F.3d at 878; *Jana D.*, 2021 WL 24 2826436, at *4. 25 Defendant argues that Plaintiff mischaracterizes the medical record as showing insufficient 26 improvement. (Doc.

14 at 9.) Similarly to the ALJ, Defendant cites three reports in which Plaintiff 27 received 60 to 100 percent pain relief and that the relief lasted at follow-up appointments. (Id.) 28 However, these reports all note in the “Spine History” section that, despite pain relief with steroid 1 injections, “In general, the current spine problem is one of ups and downs or good days and bad days 2 since its onset and pain is not improving” and that the “pain has affected the patient's activities of daily 3 living.” AR 689, 699, 715.

Additionally, the follow-up appointments occurred approximately one to 4 two weeks after the injections, making it difficult to determine how sustained the improvement was. 5 See AR 689, 699, 715. Given the record of “ups and downs” rather than an unequivocal record of 6 sustained improvement, Defendant’s argument is unavailing. *Attmore*, 827 F.3d at 878. 7 Defendant further argues that a claimant does not need to be pain-free or symptom-free to be 8 able to work, citing a Ninth Circuit holding that “even where the claimant introduces medical evidence 9 showing that he has an ailment reasonably expected to produce some pain; many medical conditions 10 produce pain not severe enough to preclude gainful employment.” *Fair v. Bowen*, 885 F.2d 597, 603 11 (9th Cir.

1989). But the issue here is not whether Plaintiff is pain-free but whether the ALJ 12 highlighted evidence of sustained improvement that undermined Plaintiff’s symptoms allegations. 13 *Attmore*, 827 F.3d at 878; *Garrison*, 759 at 1018.

As the Court has determined that the ALJ did not 14 point to sufficient evidence of effective treatment, Plaintiff’s citation is inapposite. Thus, Defendant’s 15 argument that the ALJ used effective control of impairments to discount Plaintiff’s symptoms 16 testimony is unavailing. 17 As the ALJ failed to utilize or articulate proper bases for evaluating Plaintiff’s symptoms 18

testimony beyond the lack of supporting medical evidence, the ALJ erred in assessing Plaintiff's 19 symptoms.

Burch, 400 F.3d at 681. 20 B. Remedy 21 The decision whether to remand for further proceedings or order an immediate award of 22 benefits is within the Court's discretion. See Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 23 2000). Unless "the record has been fully developed and further administrative proceedings would 24 serve no useful purpose," remand for further proceedings is warranted.

Garrison v. Colvin, 759 F.3d 25 995, 1020 (9th Cir. 2014). As it is not clear that "further administrative proceedings would serve no 26 useful purpose," remand for further proceedings is appropriate. Id.; see also Dominguez v. Colvin, 808 27 F.3d 403, 407 (9th Cir. 2015) ("A district court may reverse the decision of the Commissioner of 28 Social Security, with or without remanding the cause for a rehearing, but the proper course, except in 1 rare circumstances, is to remand to the agency for additional investigation or explanation.") (internal 2 quotes and citations omitted).

On remand, the ALJ should specifically address Plaintiff's symptoms 3 testimony. 4 Having found that remand is warranted, the Court declines to address Plaintiff's remaining 5 arguments that the ALJ erred in determining Plaintiff's RFC or in rejecting Dr. Wagner's limitation. 6 See Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir. 2012) ("Because we remand the case to the ALJ for 7 the reasons stated, we decline to reach [plaintiff's] alternative ground for remand."); see also Augustine 8 ex rel.

Ramirez v. Astrue, 536 F.Supp.2d 1147, 1153 n.7 (C.D. Cal. 2008) ("[The] Court need not 9 address the other claims plaintiff raises, none of which would provide plaintiff with any further relief 10 than granted, and all of which can be addressed on remand."); Marcia v. Sullivan, 900 F.2d 172, 177 11 n.6 (9th Cir. 1990) ("Because we remand for reconsideration of step three, we do not reach the other 12 arguments raised.").

13 /// 14 /// 15 /// 16 /// 17 /// 18 /// 19 /// 20 /// 21 /// 22 /// 23 /// 24 /// 25 /// 26 /// 27 /// 28 /// 1
CONCLUSION AND RECOMMENDATION 2 Based on the foregoing, the Court finds that the ALJ's decision is not supported by substantial 3 evidence in the record as a whole and is not based on proper legal standards.

Accordingly, IT IS 4 HEREBY RECOMMENDED as follows: 5 1. Plaintiff's appeal from the administrative decision of the Commissioner of Social 6 Security be GRANTED; 7 2. The agency's determination to deny benefits be REVERSED; and 8 3.

The Clerk of this Court be directed to enter judgment in favor of Plaintiff Cynthia 9 Marie Ottem and against Defendant Frank Bisignano, Commissioner of Social Security. 10 These Findings and Recommendations will be submitted to the United States District Judge 11 assigned to the case, as

required by 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, the parties may file written objections with the Court.

The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page number if already in the record before the Court. Any pages filed in excess of the 15-page limit may not be considered.

The parties are advised that the failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 19 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED. Dated: May 30, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE