

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

**Kenneth Torres A. v. Leland Dudek, Acting Commissioner of Social
Security**

No. 5:24-cv-00427-PD (C.D. Cal. Mar. 17, 2025) · No. 5:24-cv-00427-PD · Decided March 17, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 11 Case No. 5:24-cv-00427-PD KENNETH TORRES A.,¹ 12 Plaintiff,
MEMORANDUM OPINION 13 v. AND ORDER REVERSING 14 LELAND DUDEK, ACTING
AGENCY DECISION AND 15 COMMISSIONER OF SOCIAL SECURITY,² REMANDING 16
Defendant. 17 18 Plaintiff seeks review of the Commissioner’s final decision denying his 19
application for Social Security Disability Insurance Benefits (“SSDI”) and 20 Supplemental
Security Income Benefits (“SSI”).

For the reasons stated below, 21 the decision of the Administrative Law Judge is reversed, and the
Court 22 remands this matter on an open record for further proceedings. 23 24 1 Plaintiff’s name
is partially redacted in accordance with Federal Rule of Civil 25 Procedure 5.2(c)(2)(B) and the
recommendation of the United States Judicial 26 Conference Committee on Court Administration
and Case Management.

27 2 Leland Dudek became the Acting Commissioner of Social Security on February 18, 2025,
and is substituted as Defendant in this suit. See 42 U.S.C. § 405(g). 28 1 I. Pertinent Procedural
History and Disputed Issue 2 In a September 26, 2013 determination, Plaintiff was found disabled
3 beginning June 1, 2010. [Administrative Record (“AR”) 84.]

On May 4, 2017, 4 the Commissioner found that he was no longer disabled as of May 1 of that 5
year. [Id.] On July 20, 2021, Plaintiff filed new applications for DIB and SSI, 6 alleging that he
had been unable to work since November 18, 2020 [AR 299, 7 320], because of depression,
“[a]phelotic [sic],” diabetes, seizures, insomnia, 8 and “[o]ptisum [sic].” [AR 326.]

9 After his most recent applications were denied initially [AR 147-48] and 10 on reconsideration
[AR 209-10], he requested a hearing before an 11 Administrative Law Judge [AR 225]. A hearing
was held on February 1, 12 2023, at which Plaintiff, represented by counsel, testified, as did a
vocational 13 expert. [AR 42-80.]

In a written decision issued May 31, 2023, the ALJ found 14 him not disabled. [AR 17-35.] 15
Specifically, the ALJ found that under Chavez v. Bowen, 844 F.2d 691 (9th Cir. 1988), Plaintiff
had rebutted the presumption of continuing 16 nondisability by showing a “changed circumstance

affecting the issue of 17 disability.” [AR 17.] She found “new and material evidence related to 18 findings concerning whether [Plaintiff] ha[d] an impairment or combination of 19 impairments that [were] severe, and regarding [Plaintiff’s] residual functional 20 capacity.” [AR 18.]

Accordingly, she “d[id] not adopt all such findings from 21 the final decision on the prior claim in determining whether [Plaintiff] [was] 22 disabled with respect to the unadjudicated period.” [Id.] She then followed 23 the requisite five-step sequential evaluation process to assess whether he was 24 disabled under the Social Security Act (“SSA”). *Lester v. Chater*, 81 F.3d 821, 25 828 n.5 (9th Cir.

1996) (as amended), superseded on other grounds by 26 regulation as stated by *Farlow v. Kijakazi*, 53 F.4th 485 (9th Cir. 2022); 20 27 28 1 C.F.R. §§ 404.1520(a), 416.920(a). 2 At step one, the ALJ found that Plaintiff had not engaged in substantial 3 gainful activity since November 18, 2020, the alleged onset date. [AR 20.] 4 His date last insured was September 30, 2022.

[Id.] 5 At step two, the ALJ determined that Plaintiff had severe impairments 6 of “insulin-dependent diabetes mellitus,” seizures, depression, anxiety, 7 attention deficit hyperactivity disorder, and “possible learning disability 8 versus possible intellectual disability.” [Id.] She concluded that his carpal- 9 tunnel syndrome was not severe because it did “not significantly limit the 10 ability to perform basic work activities.” [Id.]

His alleged autism was not a 11 medically determinable impairment because the record lacked “objective 12 medical signs or laboratory findings from an acceptable medical source.” [AR 13 22; see AR 22-23.] 14 At step three, she found that Plaintiff’s impairments did not meet or equal any of the impairments in the Listing. [AR 23-24.] 15 At step four, she determined that he had the RFC to perform light work 16 except that he could 17 occasionally lift, carry, push or pull up to 20[]lbs, 10[]lbs or less 18 frequently; stand and/or walk 6 out of 8 hours and sit 6 out of 8 19 hours.

Frequent balance, frequent all other postural activities except no climbing ladders, ropes or scaffolds. No work at 20 unprotected heights or on dangerous moving machinery or other 21 hazards such as open bodies of water. Frequent fine and gross manipulation bilaterally. He can understand, remember and 22 carry out simple routine tasks for up to 2 hours [sic] periods of 23 time with occasional interaction with the general public.

There should be minimal changes in workplace setting or routine. No 24 fast paced production or assembly line type work. 25 [AR 24-25.] 26 The ALJ concluded that Plaintiff was unable to perform his past 27 relevant work but could work as a merchandise marker, housekeeper, or mail 28 1 sorter, positions that “exist[ed] in significant numbers in the national 2 economy.” [AR 34; see AR 33-34.]

Accordingly, she found that he did not 3 meet the SSA's definition of disability from the alleged onset date through his 4 DLI. [AR 35.] 5 Plaintiff raises three issues: 6 (1) Whether the ALJ erred in not finding that his seizure disorder 7 met Listing 11.02(B). 8 (2) Whether the ALJ considered all relevant evidence in formulating 9 his RFC. 10 (3) Whether the ALJ properly evaluated his subjective symptom 11 statements and testimony.

12 [See Dkt. No. 13 at 3-22.] 13 II. Standard of Review 14 Under 42 U.S.C. § 405(g), a district court may review the agency's 15 decision to deny benefits. A court will vacate the agency's decision "only if the 16 ALJ's decision was not supported by substantial evidence in the record as a 17 whole or if the ALJ applied the wrong legal standard." *Coleman v. Saul*, 979 18 F.3d 751, 755 (9th Cir.

2020) (citation and internal quotation marks omitted). 19 "Substantial evidence means more than a mere scintilla but less than a 20 preponderance; it is such relevant evidence as a reasonable person might 21 accept as adequate to support a conclusion." *Id.* (citation and internal 22 quotation marks omitted); *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (same).

23 It is the ALJ's responsibility to determine credibility and to resolve 24 conflicts in the medical evidence and ambiguities in the record. *Ford v. Saul*, 25 950 F.3d 1141, 1149 (9th Cir. 2020). "Where evidence is susceptible to more 26 than one rational interpretation," the ALJ's reasonable evaluation of the proof 27 should be upheld. *Ryan v. Comm'r of Soc.*

Sec., 528 F.3d 1194, 1198 (9th Cir. 28 1 2008); *Tran v. Saul*, 804 F. App'x 676, 678 (9th Cir. 2020).3 2 Error in Social Security determinations is subject to harmless error 3 analysis. *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is 4 harmless if it is "inconsequential to the ultimate nondisability determination" 5 or, despite the legal error, "if the agency's path may reasonably be discerned." 6 *Treichler v. Comm'r of Soc.*

Sec. Admin., 775 F.3d 1090, 1099 (9th Cir. 2014) 7 (citation and internal quotation marks omitted). 8 III. Discussion 9 A. The ALJ Properly Found that Plaintiff's Seizure 10 Disorder Did Not Meet or Equal Listing 11.02(B) 11 1. Applicable Law At step three of the disability-evaluation process, the ALJ must consider 12 whether the claimant's impairments meet or medically equal any of the 13 impairments in the Listings.

See §§ 404.1520(d), 416.920(d); *Tackett v. Apfel*, 14 180 F.3d 1094, 1098 (9th Cir. 1999). Listed impairments are those that are 15 "so severe that they are irrebuttably presumed disabling, without any specific 16 finding as to the claimant's ability to perform his past relevant work or any 17 other jobs." *Lester*, 81 F.3d at 828 (citing § 404.1520(d)). 18 The claimant has the burden of proving that an impairment meets or 19 equals a Listing.

Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012); *Burch 20 v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005). "To meet a listed impairment, 21 a claimant must establish that he or she meets

each characteristic of a listed impairment relevant to his or her claim.” Tackett, 180 F.3d at 1099 (emphasis 23 24 25 3 Although statements in unpublished Ninth Circuit opinions “may prove useful [] as examples of the applications of settled legal principles,” the Ninth Circuit has 26 cautioned lower courts not to rely heavily on such memorandum dispositions particularly as to issues of law.

Grimm v. City of Portland, 971 F.3d 1060, 1067 (9th Cir. 2020) (“a nonprecedential disposition is not appropriately used... as the pivotal 28 basis for a legal ruling by a district court”). 1 in original). “To equal a listed impairment, a claimant must establish 2 symptoms, signs and laboratory findings ‘at least equal in severity and 3 duration’ to the characteristics of a relevant listed impairment[.]” Id. (quoting 4 § 404.1526) (emphasis in original). “An ALJ must evaluate the relevant 5 evidence before concluding that a claimant’s impairments do not meet or 6 equal a listed impairment.” Lewis v. Apfel, 236 F.3d 503, 512 (9th Cir.

2001). 7 Under Listing 11.02(B), a plaintiff must be found disabled if he shows 8 that he has had “dyscognitive seizures” at least once a week for at least three 9 consecutive months despite adherence to prescribed treatment. 20 C.F.R. pt. 10 404, subpt. P, app. 1 § 11.02(B). 11 Dyscognitive seizures are characterized by alteration of 12 consciousness without convulsions or loss of muscle control.

13 During the seizure, blank staring, change of facial expression, and automatisms (such as lip smacking, chewing or swallowing, or 14 repetitive simple actions, such as gestures or verbal utterances) 15 may occur. During its course, a dyscognitive seizure may progress into a generalized tonic-clonic seizure. 16 Id. § 11.00H(1)(b). 17 18 2.

The ALJ’s Decision The ALJ found that “a review of the medical records and the discussion 19 below demonstrates [Plaintiff’s] impairments do not meet the requirements of 20 Listing 11.02.” [AR 23.] 21 22 3. Analysis The ALJ properly found that Plaintiff’s impairments did not meet or 23 equal Listing 11.02(B).

First, to meet Listing 11.02(B), Plaintiff’s dyscognitive 24 seizures had to have occurred at least once a week for at least three 25 consecutive months despite adherence to prescribed treatment, as he 26 acknowledges. [See Dkt. No. 13 at 3.] He points to no three-month period 27 during which he met this standard. See *Carvalho v. Kijakazi*, No. 2:21-cv- 28 1 01099 CKD (SS), 2023 WL 4848493, at *6 (E.D.

Cal. July 28, 2023) (finding 2 that Plaintiff did “not show[] harmful error with respect to” ALJ’s finding that 3 she did not meet Listing 11.02 because she did not show that she had seizures 4 for “at least 3 consecutive months”). He testified at the February 2023 5 hearing that he had “jerk” seizures about once a week and “sit-down” seizures 6 about once a month [AR 58-59], but he did not indicate how long that had 7 been the case.

In May 2020, he reported that he “average[d] 7 sit downs a 8 month, and 15-20 jerks a month.” [AR 728.] But again, he did not indicate 9 how long that frequency had persisted. Similarly, he reported in May 2021 10 that he had “dark like movements 2-3 times a week,” but he didn’t state how 11 long that had been the case. [AR 710.] 12 This is significant because there were times when Plaintiff’s seizures 13 were less frequent and when he was not adhering to treatment, as the ALJ 14 noted.

His seizures were noted to be “under control” in January 2021. [AR 15 26-27 (citing AR 742).] On November 18, 2021, he reported that his last 16 seizure was a month earlier, as the ALJ noted. [AR 28 (citing AR 1095).] 17 During office visits with a physician’s assistant in August and November 18 2022, he reported “no new seizures” and said his last one had been on October 19 18, 2021.

[AR 1700, 1703.] At the November visit, he reported “occasional” 20 jerk movements, but he didn’t clarify how frequent “occasional” meant or state 21 how long they had been occurring. [AR 1703.] Therefore, the ALJ did not err 22 in finding that Plaintiff did not meet the frequency and duration 23 requirements of Listing 11.02(B). See *Carvalho*, 2023 WL 4848493, at *6.

24 Moreover, even if Plaintiff had shown that his dyscognitive seizures 25 were occurring with the requisite frequency and duration, he hasn’t 26 demonstrated that they happened “despite adherence to prescribed 27 treatment,” as required by Listing 11.02(B).

In May 2021, he went to the 28 1 emergency room for a seizure and admitted that he had “r[u]n out of” his 2 seizure medication and was not taking his normal dose, as the ALJ noted. 3 [AR 27 (citing AR 710).] And the ALJ correctly noted that during an 4 emergency-room visit for seizures in October 2021, staff observed that he had 5 been “non-compliant” with his seizure medications and had “forgot[ten] to 6 take his [seizure] medications for three days.” [Id. (citing AR 882).]

At a 7 follow-up visit with neurology the following month, a physician’s assistant 8 noted Plaintiff’s “[q]uestionable compliance” with seizure medication, as the 9 ALJ observed. [AR 27-28 (citing AR 1096).] Accordingly, the ALJ did not err 10 in finding that Plaintiff failed to show that his seizures occurred “despite 11 adherence to prescribed treatment.” See *Melissa M. v. Comm’r Soc.*

Sec. 12 Admin., No. 2:24-cv-00528-JR, 2024 WL 4948851, at *1 (D. Or. Dec. 2, 2024) 13 (“ALJ did not err in finding plaintiff d[i]d not meet Listing 11.02(A) or 14 11.02(B) [because] even if plaintiff were to sufficiently prove that she me[t] 15 the frequency and duration requirements for either 11.02 listing, she c[ould] 16 not] show that she did so while compliant with medical treatment.”).

Plaintiff 17 makes no argument that his seizure disorder equaled Listing 11.02(B) despite 18 not having met it. For all these reasons, the ALJ did not err in finding that 19 he failed to meet or

equal Listing 11.02(B). 20 B. The ALJ Erred in Formulating Plaintiff's RFC 21 22 Plaintiff alleges that the ALJ erred in assessing his RFC by failing to 23 properly consider the medical evidence and opinions concerning his seizure 24 disorder, mental conditions, and hand limitations.

[Dkt. No. 13 at 8-16.] 25 Because the ALJ erred in assessing his hand limitations, remand is required. 26 27 28 1 1. Applicable Law 2 An RFC is "an assessment of an individual's ability to do sustained 3 work-related physical and mental activities in a work setting on a regular and 4 continuing basis." SSR 96-8p, 1996 WL 374184, at *1 (1996). It reflects the 5 most a claimant can do despite existing limitations.

Smolen v. Chater, 80 6 F.3d 1273, 1291 (9th Cir. 1996). An RFC determination must be based on all 7 the relevant evidence, including the diagnoses, treatment, observations, and 8 opinions of medical sources. §§ 404.1545, 416.945.

The ALJ is responsible for 9 translating and incorporating supported medical evidence into a succinct 10 RFC. Rounds v. Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) 11 (as amended). It is the ALJ's responsibility to resolve conflicts in the medical 12 evidence and ambiguities in the record. Ford, 950 F.3d at 1149. When this 13 evidence is "susceptible to more than one rational interpretation," the ALJ's 14 reasonable evaluation should be upheld.

Ryan, 528 F.3d at 1198. 15 An ALJ must consider and evaluate the persuasiveness of all medical 16 opinions or prior administrative medical findings from medical sources. 17 §§ 404.1520c(a) & (b), 416.920c(a) & (b). The factors for evaluating their 18 persuasiveness include supportability, consistency, relationship with the 19 claimant (including length of treatment, frequency of examinations, purpose 20 of treatment, extent of treatment, and existence of an examination), 21 specialization, and "other factors that tend to support or contradict a medical 22 opinion or prior administrative medical finding" (including, but not limited to, 23 "evidence showing a medical source has familiarity with the other evidence in 24 the claim or an understanding of [the] disability program's policies and 25 evidentiary requirements"). §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

26 Supportability and consistency are the most important factors when 27 determining persuasiveness. Woods v. Kijakazi, 32 F.4th 785, 791 (9th Cir. 28 1 2022). Supportability and consistency are explained in the regulations: 2 (1) Supportability.

The more relevant the objective medical evidence and supporting explanations presented by a medical 3 source are to support his or her medical opinion(s) or prior 4 administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will 5 be. 6 (2) Consistency.

The more consistent a medical opinion(s) or prior administrative medical finding(s) is with the evidence 7 from other medical sources and nonmedical sources in the claim, 8 the more

persuasive the medical opinion(s) or prior administrative medical finding(s) will be. 9 §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2).

The ALJ may, but is not 10 required to, explain how the other factors were considered. 11 §§ 404.1520c(b)(2), 416.920c(b)(2). 12 2. Medical evidence and opinions concerning Plaintiff's impairments 13 a) Seizure disorder 14 15 Plaintiff complains that the ALJ failed to properly consider medical 16 evidence documenting his seizure disorder, but he makes no additional 17 argument and cites no additional evidence; he simply references his argument 18 that his seizure disorder met Listing 11.02(B).

[See Dkt. No. 13 at 9.] As 19 noted, the ALJ properly considered the evidence of Plaintiff's seizure disorder 20 and found it to be a severe impairment. But the ALJ also correctly noted that 21 Plaintiff frequently failed to comply with his medication schedule. [AR 27 22 (citing AR 710, 882, 1096).] And when he did comply, his seizure disorder was 23 well controlled, as the ALJ noted.

[Id. (citing AR 742); AR 28 (citing AR 1095, 24 1700, 1703).] Moreover, the ALJ accounted for Plaintiff's seizure disorder by 25 limiting him to "no climbing ladders, ropes or scaffolds" and "[n]o work at 26 unprotected heights or on dangerous moving machinery or other hazards such 27 as open bodies of water." [AR 24.] Plaintiff neither addresses the limitations 28 1 the ALJ assessed nor identifies what additional limitations should have been 2 included or what evidence would support such limitations.

See Burch, 400 3 F.3d at 683-84 (ALJ adequately considered plaintiff's impairment in RFC 4 determination because plaintiff did not "point[] to any evidence of functional 5 limitations due to [impairment] which would have impacted the ALJ's 6 analysis" and "there [was] no evidence... of any functional limitations as a 7 result of her [impairment] that the ALJ failed to consider").

Therefore, the 8 ALJ did not err in assessing Plaintiff's seizure disorder. 9 b) Hand limitations 10 11 Plaintiff argues that the ALJ did not adequately account for his hand 12 limitations. [Dkt. No. 13 at 8-9, 14-15.] Specifically, he contends that the 13 ALJ's finding that his hand impairments were "not significantly limiting his 14 ability to perform basic work activities[] is clearly not consistent with or 15 supported by the medical evidence of record." [Id. at 14 (citation omitted).]

16 Indeed, for the reasons discussed below, the ALJ erred in not finding his hand 17 impairments to be severe, and the error was not harmless. 18 The ALJ noted that the medical records showed "complaints of hand 19 pain" and "notes of" carpal-tunnel syndrome, osteoarthritis, and tendonitis. 20 [AR 20-21.]

For example, at an emergency-room visit in December 2021, 21 Plaintiff complained of bilateral hand pain for a week. [AR 21 (citing AR 22 1709); see AR 1708.] He continued to complain of hand pain, and in February 23 2022, he showed a positive Tinel's sign and tenderness, with

decreased 24 sensation of all five digits but otherwise intact motor strength and sensation 25 of the bilateral upper extremities.

[AR 21 (citing AR 1670).] An EMG study 26 showed “moderate to severe bilateral median neuropathy at the bilateral 27 wrists” [id. (citing AR 1679)], “as is typically seen in carpal tunnel syndrome” 28 1 [AR 1679]. 2 In July 2022, Plaintiff went to the emergency room complaining of hand 3 pain, and examination showed moderate tenderness and limited range of 4 motion in the left hand.

[AR 21 (citing AR 1750).] At an emergency-room 5 visit in August 2022, he showed swelling and a positive Phalen’s test but was 6 negative for limited range of motion. [Id. (citing AR 1760).] And in October 7 2022, he went to the emergency room complaining of left-hand pain for two 8 weeks and reported that he was getting surgery for carpal-tunnel syndrome. 9 [Id. (citing AR 1764).]

An examination showed moderate wrist tenderness but 10 negative left-wrist swelling, deformity, and limited range of motion. [Id. 11 (citing AR 1767).] In January 2023, he underwent left carpal-tunnel release. 12 [Id. (citing AR 1695).]

The following month, he complained that pain from 13 carpal-tunnel syndrome “keeps him awake sometimes.” [AR 1848.] 14 The ALJ found that Plaintiff’s alleged hand impairment didn’t 15 significantly limit his ability to perform basic work activities. [AR 20.] But 16 she nonetheless — and contradictorily, given that none of the other 17 impairments she found to be severe would cause manipulative limitations — 18 formulated an RFC limiting him to pushing or pulling 20 pounds occasionally 19 and 10 pounds frequently and performing “frequent fine and gross 20 manipulation bilaterally.” [AR 24.]

Those RFC findings are incompatible 21 with her finding Plaintiff’s hand impairment nonsevere. The nonsevere 22 finding was also inconsistent with the significant medical findings and 23 treatment for carpal-tunnel syndrome — including surgery — in the record. 24 [See AR 1670, 1679, 1695, 1708-09, 1750, 1760, 1767, 1774, 1848.]

Therefore, 25 the ALJ erred in finding that his carpal-tunnel syndrome wasn’t a severe 26 impairment. 27 True, “an error at step two may be considered harmless where, as here, 28 1 the ALJ moves to the next step in the analysis” and the decision reflects that 2 the ALJ adequately considered any limitations posed by the impairment at 3 step four or five. *Tadesse v. Kijakazi*, No. 20-16064, 2021 WL 5600149, at *1 4 (9th Cir.

Nov. 30, 2021) (unpublished). But that is not the case here. 5 Although the ALJ discussed Plaintiff’s complaints of hand pain at step two 6 [see AR 21], she did not analyze them in any detail at step four or five [see AR 7 24-34].

In particular, the ALJ did not explain what evidence supported the 8 finding that he could frequently perform “fine and gross manipulation 9 bilaterally” [AR 24] despite findings of “decreased sensation of all five digits” 10 [AR 21 (citing AR 1670)] and “moderate to severe bilateral median neuropathy 11 at the bilateral wrists” [id. (citing AR 1679)], which ultimately required 12 surgical intervention in January 2023 [see AR 1695].

Because the ALJ failed 13 to explain the inconsistency, it is unclear how she would have weighed the 14 other evidence of Plaintiff’s hand impairment if she had analyzed it as severe. 15 Accordingly, the Court can’t trust the accuracy of the ALJ’s assessment of his 16 RFC. See *Perez v. Astrue*, 250 F. App’x 774, 776 (9th Cir. 2007) (remanding in 17 part because ALJ’s findings were “internally inconsistent” and thus “not 18 supported by substantial evidence”); *Gutierrez v. Colvin*, No. ED CV 15-889-E, 19 2016 WL 67680, at *1 n.1 (C.D.

Cal. Jan. 4, 2016) (finding that remand was 20 appropriate because ALJ’s decision contained “internally inconsistent” 21 statements concerning whether plaintiff had “severe medically determinable 22 hearing impairment”); *Bridges v. Colvin*, No. CV 13-5618-E., 2014 WL 23 1370369, at *3 (C.D. Cal. Apr. 8, 2014) (“Material ambiguities and 24 inconsistencies in an ALJ’s decision generally warrant remand.”) (citation 25 omitted).

26 27 28 1 C. Remand for Further Proceedings Is Appropriate 2 Plaintiff also challenges the ALJ’s evaluation of the mental-health 3 evidence and of his subjective symptom statements. [Dkt. No. 13 at 15-22.] 4 The ALJ should reevaluate those once she has properly considered Plaintiff’s 5 severe hand limitation and how that severity might have impacted his mental 6 health and symptom statements, so the Court does not address those 7 arguments.

See *Negrette v. Astrue*, No. EDCV 08-0737 RNB., 2009 WL 8 2208088, at *2 (C.D. Cal. July 21, 2009) (finding it unnecessary to address 9 further disputed issues when court found that ALJ failed to properly consider 10 treating doctor’s opinion and lay-witness testimony).

On remand, the ALJ 11 should reassess Plaintiff’s RFC and his hand impairment, considering when 12 the hand impairment became severe. For the DIB claim, the ALJ should 13 assess the RFC only up to his date last insured of September 30, 2022.

For 14 the SSI claim, she must assess whether his surgery resolved his hand issues. 15 The decision whether to remand for further proceedings or order an 16 immediate award of benefits is within the district court’s discretion. *Harman 17 v. Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000) (as amended). “When the ALJ 18 denies benefits and the court finds error, the court ordinarily must remand to 19 the agency for further proceedings before directing an award of benefits.” 20 *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir.

2017) (as amended). Indeed, 21 Ninth Circuit case law “precludes a district court from remanding a case for 22 an award of benefits unless certain prerequisites are met.” *Dominguez v. 23 Colvin*,

808 F.3d 403, 407 (9th Cir. 2015) (as amended Feb. 5, 2016) (citations 24 omitted). 25 The district court must first determine that the ALJ made a legal error, such as failing to provide legally sufficient reasons for 26 rejecting evidence.

If the court finds such an error, it must next 27 review the record as a whole and determine whether it is fully developed, is free from conflicts and ambiguities, and all essential 28 1 factual issues have been resolved. 2 Id. at 407 (citation omitted). 3 The issues concerning the assessment of Plaintiff's severe hand 4 impairment and his mental health, his subjective symptom statements and 5 testimony, and the RFC "should be resolved through further proceedings on 6 an open record before a proper disability determination can be made by the ALJ in the first instance." See *Brown-Hunter v. Colvin*, 806 F.3d 487, 496 8 (9th Cir.

2015) (as amended); see also *Treichler*, 775 F.3d at 1101 (remand for 9 award of benefits is inappropriate when "there is conflicting evidence, and not 10 all essential factual issues have been resolved" (citation omitted)); *Strauss v. Comm' Soc. Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir. 2011) (same when the record does not clearly demonstrate claimant is disabled within meaning of Is SSA).

If the ALJ again finds no additional hand limitations, she can then provide an adequate discussion of the medical evidence justifying her doing 15 so. Accordingly, the appropriate remedy is a remand for further 16 administrative proceedings. IV. Order 18 19 Consistent with the foregoing and under sentence four of 42 U.S.C. § 405(g), IT IS ORDERED that judgment be entered REVERSING the Acting Commissioner's decision, GRANTING Plaintiffs request for remand, and REMANDING this action for further proceedings consistent with this memorandum decision.

A separate judgment will issue. 24 || IT IS SO ORDERED. 78 Palace Marna hoe 2¢ || Dated: March 17, 2025 27 PATRICIA DONAHUE 98 UNITED STATES MAGISTRATE JUDGE 15