

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Andrea Macias v. Commissioner of Social Security

No. 2:23-cv-1983-SCR · No. 2:23-cv-1983-SCR · Decided April 3, 2025

SUMMARY

The United States District Court for the Eastern District of California reviewed the Commissioner of Social Security’s denial of Andrea Macias’s applications for disability insurance benefits and supplemental security income. The court found the administrative record incomplete and identified unresolved conflicts and ambiguities concerning medical opinions and the claimant’s physical and mental impairments. It granted both parties’ summary judgment motions in part, vacated the Commissioner’s decision, and remanded for further proceedings and development of the record.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 3, 2025
DOCKET	2:23-cv-1983-SCR
DISPOSITION	vacated
PROCEDURAL POSTURE	Plaintiff sought judicial review of the Commissioner's final denial of her applications for disability insurance benefits and Supplemental Security Income. The parties filed cross-motions for summary judgment and agreed that the ALJ committed legal error, disputing only whether the case should be remanded for an award of benefits or for further administrative proceedings.
STANDARD OF REVIEW	The Commissioner's decision is upheld if supported by substantial evidence and based on the correct legal standards. Substantial evidence is more than a mere scintilla but less than a preponderance. The court reviews the record as a whole, may not substitute its judgment for the Commissioner's, and may affirm only on grounds stated by the ALJ. Harmless error applies only when it is clear that the error was inconsequential to the ultimate nondisability determination.
PRECEDENTIAL VALUE	Unknown; district court amended order with no reporter citation.

PARTIES

Andrea Macias v. Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

summary judgment

remedies

civil procedure

PRACTICE AREAS

Social Security disability

administrative law

federal civil procedure

QUESTIONS PRESENTED

1. Whether the Commissioner's second unfavorable disability decision should be remanded for an award of benefits or for further administrative proceedings after the parties agreed that the ALJ committed legal error.
2. Whether the record was sufficiently developed and free from conflicts and ambiguities to permit the court to credit improperly rejected evidence as true and direct an award of benefits.

HOLDINGS

1. Remand for an award of benefits was not appropriate because the administrative record was incomplete and contained unresolved conflicts and ambiguities concerning both Plaintiff's physical and mental impairments.
2. Further administrative proceedings were required to develop the record concerning Plaintiff's physical limitations and mental impairments.
3. Conflicts between the State agency medical consultants' functional assessments and Dr. Romanowski's more restrictive assessment could not be resolved on the incomplete record and precluded an immediate award of benefits.

KEY QUOTATIONS

"The claimant bears the burden of proof in the first four steps of the sequential evaluation process." (at 5)

"Essentially, the court cannot direct the Commissioner to provide benefits unless "further administrative proceedings would serve no useful purpose[.]"" (at 7)

"The record is insufficient as to both Plaintiff's physical limitations and her mental impairments." (at 8)

"The record contains a conflict between medical opinions that the Court cannot resolve at this point in time." (at 10)

FACTUAL BACKGROUND

Plaintiff alleged disability beginning July 11, 2018, based on serious burns and resulting skin grafts, impaired mobility, upper-body pain, depression, and anxiety. The ALJ found severe physical and mental impairments but determined that Plaintiff retained the residual functional capacity for restricted light work and could perform jobs existing in significant numbers in the national economy. The administrative record contained evidence both

supporting and contradicting the claimed severity of Plaintiff's limitations, including conflicting medical opinions concerning her ability to sit, stand, and walk.

PROCEDURAL HISTORY

Plaintiff applied for DIB and SSI in July 2019, and the applications were denied initially and on reconsideration. After an unfavorable ALJ decision and Appeals Council denial, Plaintiff filed a prior federal action, which was remanded by stipulation in February 2022 for reevaluation of the medical record and residual functional capacity. Following a second hearing, the ALJ again found Plaintiff not disabled, and the Appeals Council denied review. Plaintiff then filed this action; the district court granted both cross-motions for summary judgment in part, vacated the Commissioner's decision, and remanded for further proceedings.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The Commissioner's final decision was vacated and remanded for further proceedings, including further development of the administrative record concerning Plaintiff's physical limitations and mental impairments and reconsideration of the conflicting evidence and medical opinions.

CASES CITED

- Bowen v. City of New York, 476 U.S. 467, 470 (1986)
- Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler, 537 U.S. 371, 375 (2003)
- Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003)
- Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)
- Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
- Richardson v. Perales, 402 U.S. 389, 401 (1971)
- Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006)
- Desrosiers v. Secretary of Health and Human Services, 846 F.2d 573, 576 (9th Cir. 1988)
- Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985)
- Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001)
- Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002)
- Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007)
- Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)
- Robbins v. Social Security Administration, 466 F.3d 880, 885 (9th Cir. 2006)
- Stout v. Social Security Administration, 454 F.3d 1050, 1055 (9th Cir. 2006)
- Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)
- Bowen v. Yuckert, 482 U.S. 137, 140, 146 n.5 (1987)

- Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003)
- Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012)
- Dominguez v. Colvin, 808 F.3d 403, 407-08 (9th Cir. 2016)
- Garrison v. Colvin, 759 F.3d 995, 1021-22 (9th Cir. 2014)
- Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir. 2004)
- Stacy v. Colvin, 825 F.3d 563, 567 (9th Cir. 2016)
- Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ANDREA MACIAS, No. 2:23-cv-1983-SCR 12 Plaintiff, 13 v. AMENDED
ORDER 14 COMMISSIONER OF SOCIAL SECURITY, 15 Defendant. 16 17 18 Plaintiff seeks
judicial review of a final decision of the Commissioner of Social Security 19 (“Commissioner”),
denying her application for disability insurance benefits (“DIB”) under 20 Title II of the Social
Security Act, 42 U.S.C. §§ 401-34, and for Supplemental Security Income 21 (“SSI”) under Title
XVI of the Social Security Act (“the Act”), 42 U.S.C. §§ 1381-1383f.1 The 22 parties agree that
the ALJ erred in the administrative proceedings below, but disagree on the 23 remedy.

For the reasons that follow, the Court will GRANT IN PART both cross-motions for 24 summary
judgment, and remand for further proceedings. 25 1 DIB is paid to disabled persons who have
contributed to the Disability Insurance Program, and who suffer from a mental or physical
disability. 42 U.S.C. § 423(a)(1); *Bowen v. City of New* 26 *York*, 476 U.S. 467, 470 (1986).

SSI is paid to financially needy disabled persons. 42 U.S.C. § 1382(a); *Washington State Dept. of*
Social and Health Services v. Guardianship Estate of 27 *Keffeler*, 537 U.S. 371, 375 (2003) (“Title
XVI of the Act, § 1381 et seq., is the Supplemental Security Income (SSI) scheme of benefits for
aged, blind, or disabled individuals, including 28 children, whose income and assets fall below
specified levels...”).

1 I. PROCEDURAL BACKGROUND 2 Plaintiff protectively applied for DIB on July 17, 2019
and for SSI on July 22, 2019. 3 Administrative Record (“AR”) 15.2 The disability onset date for
both applications was alleged to 4 be July 11, 2018. AR 15.

The applications were disapproved initially on September 9, 2019 and 5 on reconsideration on
December 17, 2019. AR 15. On October 16, 2020, ALJ Vincent Misenti 6 presided over the first
telephonic hearing on Plaintiff’s challenge to the disapprovals. AR 30- 7 57 (transcript). Plaintiff
appeared with counsel and testified at the hearing with the assistance of a 8 Spanish interpreter.

AR 15, 31, 34-35. A vocational expert (“VE”) also testified. AR 15, 31, 50. 9 On November 4,
2020, the ALJ issued an unfavorable decision, finding Plaintiff “not 10 disabled” under Sections

216(i) and 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d), and 11 Section 1614(a)(3)(A) of Title XVI of the Act, 42 U.S.C. § 1382c(a)(3)(A). AR 15-24 (decision), 12 24-29 (exhibit list).

The Appeals Council denied Plaintiff's request for review. 13 On June 28, 2021, Plaintiff challenged the denial in *Macias v. Commissioner of Social Security*, Case No. 2:21-cv-1136-JDP. On February 17, 2022, pursuant to the parties' stipulation, 15 the matter was remanded to the Commissioner for reevaluation of the medical record and 16 Plaintiff's maximum residual functional capacity ("RFC").

AR 993, 995, 997-98. After 17 obtaining additional evidence from a VE, the ALJ presided over a second telephonic hearing on 18 January 12, 2023. AR 939-54 (transcript). Plaintiff appeared with counsel and testified with the 19 assistance of a Spanish interpreter. AR 939-40, 946. A VE also testified. AR 940, 950. 20 On February 24, 2023, the ALJ issued an unfavorable decision, again finding Plaintiff 21 "not disabled" under the relevant statutes (the "Second ALJ Decision").

AR 919-32 (decision), 22 933-38 (exhibit list). The Appeals Council denied Plaintiff's request for review, leaving the 23 ALJ's decision as the final decision of the Commissioner. AR 907-09 (decision). 24 Plaintiff filed this action on September 13, 2023. ECF No. 1.

The parties consented to the 25 jurisdiction of the magistrate judge. ECF Nos. 7, 12. The parties' cross-motions for summary 26 judgment, based upon the Administrative Record filed by the Commissioner, have been fully 27 briefed. ECF Nos. 18 (Plaintiff's motion), 24 (Commissioner's motion), 25 (Plaintiff's reply). 28 2 The AR is electronically filed as ECF Nos. 11-1 and 11-2 (AR 1 to AR 1178).

1 The Commissioner believes that remand pursuant to sentence four of 42 U.S.C. § 405(g) is 2 appropriate. ECF No. 24 at 4. 3 II. FACTUAL BACKGROUND 4 Plaintiff was born in 1974, and was, at 43 years old, deemed a younger individual under 5 the regulations as of the alleged disability onset date. AR 199, 931; see 20 C.F.R §§ 404.1563(c), 6 416.963(c) (same).

Plaintiff has a GED and can communicate in English. AR 201, 203, 931. 7 She worked at different restaurants from October 2007 to September 2008, from October 2008 to 8 July 2019, and from July 2014 to February 2017. AR 203. She also worked at one medical office 9 from June 2016 to June 2017, and another from June 2017 to February 2018. AR 203. Plaintiff's 10 asserted conditions include third degree burns on her neck, trunk, chest, and right arm; skin grafts, 11 lack of mobility, and pain in the upper body; depression; and anxiety.

AR 202. 12 III. LEGAL STANDARDS 13 The Commissioner's decision that a claimant is not disabled will be upheld "if it is 14 supported by substantial evidence and if the Commissioner applied the correct legal standards." 15 *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1011 (9th Cir. 2003). "'The findings of the 16 Secretary as to any fact, if supported by substantial evidence, shall be conclusive....'" *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.

1995) (quoting 42 U.S.C. § 405(g)). 18 Substantial evidence is “more than a mere scintilla,” but “may be less than a 19 preponderance.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). “It means such relevant 20 evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. 21 Perales*, 402 U.S. 389, 401 (1971) (internal quotation marks omitted). “While inferences from 22 the record can constitute substantial evidence, only those ‘reasonably drawn from the record’ will 23 suffice.” *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir.

2006) (citation omitted). 24 Although this court cannot substitute its discretion for that of the Commissioner, the court 25 nonetheless must review the record as a whole, “weighing both the evidence that supports and the 26 evidence that detracts from the [Commissioner’s] conclusion.” *Desrosiers v. Secretary of HHS*, 27 846 F.2d 573, 576 (9th Cir. 1988); *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.

1985) (“The 28 /// 1 court must consider both evidence that supports and evidence that detracts from the ALJ’s 2 conclusion; it may not affirm simply by isolating a specific quantum of supporting evidence.”). 3 “The ALJ is responsible for determining credibility, resolving conflicts in medical 4 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th 5 Cir.

2001). “Where the evidence is susceptible to more than one rational interpretation, one of 6 which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 7 278 F.3d 947, 954 (9th Cir. 2002).

However, the court may review only the reasons stated by the 8 ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn 9 v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007); *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 10 2003) (“It was error for the district court to affirm the ALJ’s credibility decision based on 11 evidence that the ALJ did not discuss”).

12 The court will not reverse the Commissioner’s decision if it is based on harmless error, 13 which exists only when it is “clear from the record that an ALJ’s error was ‘inconsequential to the 14 ultimate nondisability determination.’” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir. 15 2006) (quoting *Stout v. Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir.

2006)); see also *Burch v. 16 Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). 17 IV. RELEVANT LAW
18 Disability Insurance Benefits and Supplemental Security Income are available for every 19 eligible individual who is “disabled.” 42 U.S.C. §§ 423(a)(1)(E) (DIB), 1381a (SSI). Plaintiff is 20 “disabled” if she is “‘unable to engage in substantial gainful activity due to a medically 21 determinable physical or mental impairment....’” *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987) 22 (quoting identically worded provisions of 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A)).

23 The Commissioner uses a five-step sequential evaluation process to determine whether an 24 applicant is disabled and entitled to benefits. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); 25 Barnhart v. Thomas, 540 U.S. 20, 24-25 (2003) (setting forth the “five-step sequential evaluation 26 process to determine disability” under Title II and Title XVI).

The following summarizes the 27 sequential evaluation: 28 /// 1 Step one: Is the claimant engaging in substantial gainful activity? If so, the claimant is not disabled. If not, proceed to step two. 2 20 C.F.R. §§ 404.1520(a)(4)(i), (b) and 416.920(a)(4)(i), (b). 3 Step two: Does the claimant have a “severe” impairment? If so, 4 proceed to step three. If not, the claimant is not disabled.

5 Id., §§ 404.1520(a)(4)(ii), (c) and 416.920(a)(4)(ii), (c). 6 Step three: Does the claimant's impairment or combination of impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, 7 Subpt. P, App. 1? If so, the claimant is disabled. If not, proceed to step four. 8 Id., §§ 404.1520(a)(4)(iii), (d) and 416.920(a)(4)(iii), (d). 9 Step four: Does the claimant's residual functional capacity make him 10 capable of performing his past work?

If so, the claimant is not disabled. If not, proceed to step five. 11 Id., §§ 404.1520(a)(4)(iv), (e), (f) and 416.920(a)(4)(iv), (e), (f). 12 Step five: Does the claimant have the residual functional capacity 13 perform any other work? If so, the claimant is not disabled. If not, the claimant is disabled. 14 15 Id., §§ 404.1520(a)(4)(v), (g) and 416.920(a)(4)(v), (g).

16 The claimant bears the burden of proof in the first four steps of the sequential evaluation 17 process. 20 C.F.R. §§ 404.1512(a) (“In general, you have to prove to us that you are blind or 18 disabled”), 416.912(a) (same); Bowen, 482 U.S. at 146 n.5.

However, “[a]t the fifth step of the 19 sequential analysis, the burden shifts to the Commissioner to demonstrate that the claimant is not 20 disabled and can engage in work that exists in significant numbers in the national economy.” Hill 21 v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Bowen, 482 U.S. at 146 n.5. 22 V. THE ALJ's DECISION 23 In the Second ALJ Decision, the ALJ made the following findings: 24 1.

The claimant meets the insured status requirements of the Social Security Act through December 31, 2023 (Exhibit 11D/1). 25 2. The claimant has not engaged in substantial gainful activity since 26 July 11, 2018, the alleged onset date (20 CFR 404.1571 et seq., and 416.971 et seq.) (Exhibits 10D, 11D/1, testimony.). 27 3.

The claimant has the following severe impairments: burns to the 28 neck, chest, trunk, and right arm; depressive disorder; and anxiety 1 disorder (20 CFR 404.1520(c) and 416.920(c)). 2 4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the 3 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 4 416.926).

5 5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform 6 light work as defined in 20 CFR 404.1567(b) and 416.967(b) except that she can reach overhead on the right occasionally, perform all 7 other reaching on the right frequently; handle on the right frequently; climb ramps and stairs, balance, stoop, kneel, crouch, and crawl 8 occasionally; never climb ladders or scaffolds; never work around unprotected heights; must avoid concentrated exposure to moving 9 mechanical parts; must not work in or around environments where there is extreme heat; can understand, remember, and carry out 10 simple, routine, and repetitive tasks; and can use judgment limited to simple work-related decisions.

11 6. The claimant is unable to perform any past relevant work (20 CFR 12 404.1565 and 416.965). 13 7. The claimant was born on November 30, 1974 and was 43 years old, which is defined as a younger individual age 18-49, on the 14 alleged disability onset date. (20 CFR 404.1563 and 416.963). 15 8.

The claimant has at least a high school education (20 CFR 404.1564 and 416.964). 16 9. Transferability of job skills is not material to the determination of 17 disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is “not disabled,” 18 whether the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

19 10. Considering the claimant’s age, education, work experience, and 20 residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 21 CFR 404.1569, 404.1569a, 416.969, and 416.969a). 22 11.

The claimant has not been under a disability, as defined in the Social Security Act, from July 11, 2018, through the date of this 23 decision (20 CFR 404.1520(g) and 416.920(g)). 24 25 AR 921-32. 26 As noted, the ALJ concluded that plaintiff was “not disabled” under Sections 216(i) and 27 223(d) of Title II of the Act, 42 U.S.C. §§ 416(i), 423(d), and Section 1614(a)(3)(A) of Title XVI 28 of the Act, 42 U.S.C. § 1382c(a)(3)(A).

AR 932. 1 VI. ANALYSIS 2 The parties agree that the Second ALJ Decision involved legal error and should be 3 vacated and remanded. Plaintiff asserts errors as to the assessment of subjective evidence from 4 Plaintiff and third parties, development of the record, and assessment of medical opinion 5 evidence. ECF No. 18 at 7-21. Defendant does not identify which of these errors he agrees to 6 have occurred, and simply cites to sentence four of 42 U.S.C. § 405(g).

ECF No. 24 at 4; see 42 7 U.S.C. § 405(g) (courts have the power to “enter, upon the pleadings and transcript of the record, 8 a judgment affirming, modifying, or reversing the decision of the Commissioner... with or 9 without remanding the cause for a rehearing”). At issue is whether the

Court should remand with 10 instructions for the Commissioner to calculate benefits from the alleged disability onset date 11 (ECF No. 18 at 21) or for further proceedings (ECF No. 24 at 9).

12 A three-part test guides determinations whether to remand specifically for an award of 13 benefits, rather than for further proceedings. *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 14 2016). If the court (1) first finds that the ALJ made a “legal error,” it must then (2) ask whether 15 the record “is fully developed, is free from conflicts and ambiguities, and all essential factual 16 issues have been resolved.” *Id.* (citations and quotations omitted).

As part of this undertaking, 17 the court must determine whether there are “inconsistencies between [the claimant’s] testimony 18 and the medical evidence in the record” and “whether the government has pointed to evidence in 19 the record that the ALJ overlooked and explained how that evidence casts into serious doubt the 20 claimant’s claim to be disabled[.]” *Dominguez*, 808 F.3d at 407 ((citations and quotations 21 omitted)).

Essentially, the court cannot direct the Commissioner to provide benefits unless 22 “further administrative proceedings would serve no useful purpose[.]” *Dominguez*, 808 F.3d at 23 407. 24 If these first two parts of the test are met, the court must then (3) determine whether, upon 25 crediting as true any improperly discredited evidence, an ALJ would be required to find the 26 plaintiff disabled upon remand.

Id. If so, the district court may then remand the case for an 27 award of benefits rather than for further proceedings. *Id.* Even then, however, the court may 28 decline to do so because it need not “credit claimants’ allegations regarding the extent of their 1 impairments as true merely because the ALJ made a legal error in discrediting their testimony.” 2 *Id.* at 407-08 (citations and quotations omitted).

If “the record as a whole creates serious doubt as 3 to whether the claimant is, in fact, disabled[.]” remand for further proceedings may be 4 appropriate. *Dominguez*, 808 F.3d at 408 (citations and quotations omitted). 5 Without referencing any portion of the *Dominguez* framework, Plaintiff argues that 6 remanding for a third round of proceedings would start to “make a mockery” of her case.

ECF 7 No. 18 at 21. She cites Ninth Circuit case law disavowing any approach that would allow the 8 Commissioner to “create an unfair ‘heads we win; tails, let’s play again’ system of disability 9 benefits adjudication.” *Id.* (quoting *Garrison v. Colvin*, 759 F.3d 995, 1021-1022 (9th Cir. 2014) 10 (quoting *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004))).

11 A. The Record is Not Fully Developed 12 Defendant argues in favor of a remand for further proceedings with reference to Plaintiff’s 13 opening brief, which took the position that the record was not fully developed as of the Second 14 ALJ Decision. ECF No. 24 at 5. Plaintiff’s opening

brief did in fact argue that the ALJ had a duty to further develop the administrative record.³ ECF No. 18 at 14.

Plaintiff contends in reply 16 that Defendant's argument misrepresents the record because the basis for her disability claim 17 "obviously focuses on her permanent burn injuries." ECF No. 25 at 2. Regardless of the "focus" 18 of Plaintiff's disability claim, she asserts disability based on both physical and mental 19 impairments, and briefed her summary judgment motion as to both as well.

See ECF No. 18 at 20 14. Additionally, the ALJ found in the second step of the sequential evaluation process that 21 Plaintiff had both physical impairments like "burns to the neck, chest, trunk, and right arm" and 22 mental impairments like "depressive disorder[]" and anxiety disorder[.]" AR 927; see *Barnhart*, 23 540 U.S. 20, 24-25.

As the ALJ noted, finding the mental impairments severe was part of what 24 25 3 Plaintiff's opening brief argues that the ALJ should have developed the record after Plaintiff advised the ALJ at the January 12, 2023 hearing that efforts to obtain medical records from Dr. 26 Marisela Davidson, LMFT, regarding treatment for depression and anxiety had failed. ECF No. 18 at 14 (citing AR 943-45).

Instead of subpoenaing these treatment records when asked, the 27 ALJ issued a decision without collecting and considering the missing evidence. *Id.* (citing AR 1077). 28 1 distinguished this decision from his prior decision. AR 17-18, 927.

The ALJ therefore should 2 have ensured the record was complete as to both types of impairment. 3 The reply brief also ignores Plaintiff's alternate argument that the ALJ should have further 4 developed the record upon rejecting every medical opinion therein as "unpersuasive[.]" ECF No. 5 18 at 14 (citing AR 929-30). Plaintiff asserted in her opening brief that by failing to do so, the 6 ALJ improperly substituted professional opinions with "his own unqualified medical 7 speculations" when issuing the RFC.

ECF No. 18 at 14-15. Unlike psychiatric notes, the cited 8 opinions focus specifically on Plaintiff's physical limitations, like whether she "could sit, stand, 9 and walk for a maximum of 2 to 4 hours in an 8-hour workday" or how often she could "lift and 10 carry up to 10 pounds...twist and stoop...crouch...climb ladders...[and] climb stairs[.]" AR 929. 11 Defendant does not dispute that the record also requires further development in this regard.

See 12 generally ECF No. 24. 13 The record is insufficient as to both Plaintiff's physical limitations and her mental 14 impairments. This alone would preclude the Court from directing the Commissioner to award 15 disability benefits without further proceedings. 16 B. The Record is Not Free from Conflicts and Ambiguities 17 1. Treatment and Symptom History 18 Defendant

argues that in its current state, the record contains conflicting evidence 19 regarding the pain and limitations related to Plaintiff's impairments.

ECF No. 24 at 6. As to her 20 burn injuries, the accident at issue occurred on the alleged disability onset date of July 11, 2018. 21 AR 924. Defendant notes that by October 2019, Plaintiff reported a pain score of zero and being 22 able to walk for 45 minutes between 4-5 times a week. ECF No. 24 at 6 (citing AR 721-22). By 23 January 2020, Plaintiff had a non-antalgic gait and maximum strength in almost all upper 24 extremities, with any reduction thereof attributed to pain.

ECF No. 24 at 6-7; AR 812. Neck 25 flexibility continued to improve until reaching the full range of motion, and by July 2020 Plaintiff 26 had significant grip strength despite finding some chores either difficult or impossible. ECF No. 27 24 at 7; AR 752, 754, 844, 858. Defendant argues that these findings, among others, conflict with 28 Plaintiff's claims of disabling limitations related to her burns.

ECF No. 24 at 7. 1 Plaintiff argues that Defendant has taken these pieces of evidence out of context from a 2 voluminous record. ECF No. 25 at 2. She asserts that the overall diagnostic picture presented by 3 the record show that no treatment can completely resolve her permanent injuries. Id. at 3. 4 Clinical notes from December 2021 and June 2022, for example, assert that Plaintiff "continues to 5 have profound anterior neck contracture, limiting neck movement." AR 1107, 1153.

6 Despite Plaintiff arguing that her interpretation is a more holistic one, she takes the same 7 approach as Defendant. Both parties cite evidence from particular points in time to promote 8 conflicting interpretations of the record.

The ALJ must decide between these two based on a 9 complete record, after which the Court will only intervene if the ALJ's decision is irrational or 10 based on legal error. See Thomas, 278 F.3d at 954. 11 2. Medical Opinions 12 Defendant argues that conflicting evidence from medical sources also precludes an award 13 of benefits. Id. at 7-8. At both the initial and reconsideration stages, for example, State agency 14 medical consultants found Plaintiff capable of performing some degree of medium work.

Id. 15 (citing AR 64-65, 90-91). Defendant contrasts this against the findings of Dr. Kathleen 16 Romanowski, who concluded that Plaintiff could only perform less than sedentary work. ECF 17 No. 24 at 8 (citing AR 713-17). 18 Plaintiff's opening brief argued that the ALJ erred in finding Dr. Romanowski's opinion 19 unpersuasive. ECF No. 18 at 16-19. Plaintiff then noted in reply that no party had challenged the 20 ALJ's finding that the State agency opinions were unpersuasive.

ECF No. 25 at 2. Plaintiff 21 argues that the ALJ could not, on remand, find these opinions persuasive, thereby crediting any 22 conflict they may have with Dr. Romanowski's opinion. Id.

(citing Stacy v. Colvin, 825 F.3d 563, 23 567 (9th Cir. 2016); Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993)). 24 The ALJ did not completely discredit the State agency opinions.

He credited their 25 collective finding, for example, that Plaintiff “would be capable of sitting, standing, and walking 26 6 out of 8 hours per day” as consistent with the rest of the record. AR 929. Critically, this 27 credited portion of their opinion conflicts with Dr. Romanowski’s opinion that Plaintiff could sit, 28 stand, or walk for a total of four hours in an eight-hour workday.

AR 715, 929. The ability to sit, 1 stand, and walk determines whether someone can perform sedentary work, whereas it is assumed 2 that someone capable of medium work can also perform sedentary and light work. See 20 C.F.R. 3 §§ 404.1567(a), (c), 416.967(a), (c).

The part of the State Agency opinions that the ALJ found 4 persuasive directly conflicts with parts of Dr. Romanowski’s opinion that the ALJ found “overly 5 restrictive[.]” AR 929. 6 Nor can the Court resolve this conflict based on an incomplete record.

The most 7 important factors when evaluating medical opinions are supportability through objective medical 8 evidence and consistency with other medical and nonmedical sources. 20 C.F.R. §§ 9 404.1520c(a), (c). Consistency with other parts of the record will likely change because, as 10 discussed above, the record on medical opinions and Plaintiff’s impairment needs to be further 11 developed.

See supra VI.A. The record contains a conflict between medical opinions that the 12 Court cannot resolve at this point in time. 13 C. Conclusion 14 Defendant has demonstrated that the record is incomplete, and that substantial conflicts 15 and ambiguities arise from even the incomplete record.

The Court does not have discretion on 16 this record to direct the ALJ and Commissioner to award disability benefits to Plaintiff. The 17 Court need not discuss whether serious doubt exists as to Plaintiff’s overall disability. See ECF 18 No. 24 at 8-9. 19 VII. CONCLUSION 20 For the reasons set forth above, IT IS HEREBY ORDERED that: 21 1. Plaintiff’s motion for summary judgment (ECF No. 18), is GRANTED IN PART; 22 2.

The Commissioner’s cross-motion for summary judgment (ECF No. 24) is GRANTED 23 IN PART; 24 3. The Commissioner’s final decision in this matter is VACATED AND REMANDED for 25 further proceedings, including further development of the record in accordance with this decision; 26 and 27 //// 28 ////] 4.

The Clerk of the Court shall enter judgment and close this case. 2 | DATED: April 3, 2025 3 ° SEAN C. RIORDAN 6 UNITED STATES MAGISTRATE JUDGE 7 8 9 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 12

