

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

G.P. v. Leland Dudek, et al.

G.P. v. Leland Dudek, No. 24-cv-00088-VKD (N.D. Cal. Mar. 28, 2025) · No. 24-cv-00088-VKD · Decided
March 28, 2025

SUMMARY

The United States District Court for the Northern District of California grants G.P.’s appeal from the denial of Social Security benefits. The court concludes that the administrative law judge failed to explain why portions of medical opinions deemed persuasive were omitted from the residual functional capacity assessment, and that the record establishes disability even without substance use. The court reverses the administrative decision and remands for determination of the disability onset date and calculation of benefits.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 28, 2025
DOCKET	24-cv-00088-VKD
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision denying child disability insurance benefits and supplemental security income. The parties agreed that the administrative law judge committed reversible error but disputed whether remand should be for further proceedings or calculation and payment of benefits.
STANDARD OF REVIEW	The court reviews the Commissioner's decision for substantial evidence and legal error, considering the administrative record as a whole. Where the evidence permits more than one rational interpretation, the court defers to the Commissioner's decision.
PRECEDENTIAL VALUE	unpublished district court order; persuasive rather than precedential
PARTIES	G.P. v. Leland Dudek, Acting Commissioner of Social Security, et al.

TOPICS

judicial review of agency action

administrative law

remedies

PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

QUESTIONS PRESENTED

1. Whether the ALJ committed reversible error by adopting an RFC that omitted limitations identified in medical opinions the ALJ found persuasive.
2. Whether the record was sufficiently developed to warrant remand for an award and calculation of benefits rather than further administrative proceedings.
3. Whether G.P.'s substance use was material to the disability determination when the limitations identified during a period of sobriety were fully credited.
4. Whether remand was necessary to determine the disability onset date before calculating benefits.

HOLDINGS

1. The ALJ committed reversible error by relying on the opinions of Drs. Mary Ann Vigilanti and Nadine J. Genece while omitting limitations those opinions identified, including limitations concerning workplace stress, reliable attendance, and other work-related functioning, without explanation.
2. Remand for calculation and payment of benefits was warranted because the record was sufficiently developed, the vocational-expert testimony established that the additional limitations would eliminate all employment, and no further administrative proceedings were necessary to resolve the materiality issue.
3. Substance use was not material to the disability determination on the record presented because, even during a period of sobriety, G.P. would remain unable to perform work in the national economy if the persuasive medical opinions were fully credited.
4. The matter had to be remanded for determination of the disability onset date because the ALJ rejected or failed to adopt the alleged March 31, 2004 onset date but made no alternative onset-date finding.

KEY QUOTATIONS

“Thus, because G.P. would be disabled even in the absence of substance use, his substance use is not material to the disability determination in this case according to the applicable regulations.” (at 8 of Discussion)

“For the reasons explained above, G.P.’s appeal is granted. The Court reverses the ALJ’s decision and remands the matter for determination of the date of onset of G.P.’s disability and for calculation of benefits.” (Conclusion)

FACTUAL BACKGROUND

G.P. applied for child disability insurance benefits and SSI, alleging disability beginning March 31, 2004 based on numerous physical and mental impairments, including bipolar disorder, epilepsy, heart and organ failure, and

substance-use-related conditions. The ALJ found that G.P.'s impairments met a listing when substance use was included, but concluded that he would not be disabled if he stopped using substances. The ALJ adopted an RFC that included one absence per month and limited public interaction, but did not incorporate all limitations identified by medical opinions the ALJ deemed persuasive. The record included vocational-expert testimony that either two absences per month or no interaction with the general public would eliminate all employment.

PROCEDURAL HISTORY

G.P.'s applications were denied initially and on reconsideration. After a September 16, 2022 hearing, the ALJ issued an unfavorable decision on January 18, 2023, and the Appeals Council denied review. G.P. filed this action, and the parties agreed that remand was required. The court granted the appeal, remanded for determination of the disability onset date and calculation of benefits, and directed the clerk to enter judgment and close the case.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for determination of the date of disability onset and calculation of benefits consistent with the order. No further development of the record or additional administrative proceedings were required on the RFC and substance-use materiality issues.

CASES CITED

- Ahearn v. Saul, 988 F.3d 1111, 1115-16 (9th Cir. 2021)
- Morgan v. Commissioner of Social Security Administration, 169 F.3d 595, 599 (9th Cir. 1999)
- Biestek v. Berryhill, 587 U.S. 97, 103 (2019)
- Molina v. Astrue, 674 F.3d 1104, 1110-11 (9th Cir. 2012)
- Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)
- Ghanim v. Colvin, 763 F.3d 1154, 1160 (9th Cir. 2014)
- Mercado v. Berryhill, No. 16-cv-04200-BLF, 2017 WL 4029222, at *4 (N.D. Cal. Sept. 13, 2017)
- Bray v. Commissioner of Social Security Administration, 554 F.3d 1219, 1222 (9th Cir. 2009)
- Bustamante v. Massanari, 262 F.3d 949, 955 (9th Cir. 2001)
- Jessie L. v. Kijakazi, No. 20-cv-09305-DMR, 2022 WL 2222964, at *2 (N.D. Cal. June 21, 2022)
- Parra v. Astrue, 481 F.3d 742, 744-45, 747 (9th Cir. 2007)
- Leon v. Berryhill, 880 F.3d 1041, 1044-45 (9th Cir. 2017)
- Ryan B. v. O'Malley, No. 23-cv-03644-SI, 2024 WL 4227590, at *3, *6 (N.D. Cal. Sept. 17, 2024)
- Treichler v. Commissioner of Social Security Administration, 775 F.3d
- Tennille S. v. Kijakazi, No. 21-cv-09779-SI, 2023 WL 122396, at *13 (N.D. Cal. Jan. 6, 2023)
- Albert B. v. Kijakazi, No. 5:22-cv-00865-EJD, 2023 WL 6462856, at *7 (N.D. Cal. Sept. 29, 2023)

- Nixon v. Astrue, No. 07-cv-1234 BTM (CAB), 2008 WL 2705164, at *6 (S.D. Cal. July 8, 2008)

OPINION

Padua v. O'Malley

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 G.P., Case No. 24-cv-00088-VKD 9 Plaintiff,

ORDER GRANTING PLAINTIFF'S

10 v. SOCIAL SECURITY APPEAL;

REMANDING ACTION FOR

11 LELAND DUDEK¹, et al., DETERMINATION OF ONSET DATE

AND CALCULATION OF BENEFITS

Defendants. 12 Re: Dkt. Nos. 19, 22 13 14 15 Plaintiff G.P.² challenges a final decision of the Commissioner of Social Security 16 ("Commissioner") denying his applications for child disability insurance benefits³ under Title II of 17 the Social Security Act ("Act"), 42 U.S.C. § 423 et seq., and supplemental security income 18 ("SSI") under Title XVI of the Act, 42 U.S.C. § 1381 et seq. G.P.'s primary contentions are that 19 the administrative law judge ("ALJ") failed to properly assess the materiality of his substance use 20 disorder; disregarded or failed to fully credit several medical opinions; incorrectly assessed the 21 22 1 Leland Dudek, the current acting Commissioner of the Social Security Administration, is substituted for his predecessor pursuant to Federal Rule of Civil Procedure 25(d). 23 2 Because orders of the Court are more widely available than other filings, and this order contains 24 potentially sensitive medical information, this order refers to the plaintiff only by his initials. This order does not alter the degree of public access to other filings in this action provided by Rule 25 5.2(c) of the Federal Rules of Civil Procedure and Civil Local Rule 5-1(c)(5)(B)(i). 26 3 The ALJ found that G.P. did not qualify for the child disability benefits requested because of his age at the time of the first record of treatment. AR 22. The remainder of the ALJ's decision 27 focused on G.P.'s entitlement to SSI. G.P. does not challenge the ALJ's determination regarding 1 severity of his mental impairments; and improperly rejected his subjective testimony. G.P. 2 appeals the ALJ's decision, seeking remand for payment of benefits. Dkt. No. 19. The 3 Commissioner agrees that remand is appropriate but contends that remand should be for further 4 administrative proceedings, rather than award of benefits. Dkt. No. 22. G.P. did not file any 5 reply. As both parties agree that remand in some form is appropriate, the sole question before the 6 Court is the nature of the remand. 7 Upon consideration of the moving and responding papers and the relevant evidence of 8 record, for the reasons set forth below, the Court grants G.P.'s appeal and remands this case for 9 determination of the disability onset date

and calculation of benefits consistent with this order.⁴

10 I. BACKGROUND

11 A. G.P.'s Relevant History 12 G.P. applied for child disability insurance benefits and SSI in 2020 at the age of 34, 13 asserting the following conditions: bipolar disorder, epilepsy, congestive heart failure, acute renal 14 failure, acute liver failure, slurred speech, cardiogenic shock, and left-ventricular-thrombus. AR 15 29, 185, 190, 311, 318, 320, 330, 359. He alleged a disability onset date of March 31, 2004. AR 16 104. 17 G.P. attended high school through the 11th grade and has not obtained a GED. AR 60-61. 18 He does not have past relevant work. Dkt. No. 19 at 2. He lost his mother in the sixth grade and 19 currently lives with his father. AR 1002-03; Dkt. No. 19 at 2. G.P. has a history of alcohol and 20 methamphetamine use and was hospitalized in November 2018 for congestive heart failure and 21 liver failure attributed to methamphetamine use. AR 715. In 2021, he lost his twin brother to 22 heart failure. AR 1002, 1222. 23 G.P.'s applications were denied initially on December 29, 2020 and again on 24 reconsideration on November 12, 2021. AR 182-83, 185, 190. G.P. subsequently requested a 25 hearing before an administrative law judge and appeared at a telephonic hearing before 26 27 4 All parties have expressly consented that all proceedings in this matter may be heard and finally 1 Administrative Law Judge David LaBarre on September 16, 2022. AR 54. The ALJ issued an 2 unfavorable decision on January 18, 2023. AR 18-30. 3 B. ALJ's Decision 4 The ALJ found that G.P. has not engaged in substantial gainful activity since March 31, 5 2004, his alleged disability onset date. AR 21. However, focusing on the time period for which 6 G. P. provided treatment records, beginning in October 2011, the ALJ determined that G.P. has the 7 following severe impairments: 8 seizures/epilepsy; congestive heart failure, acute renal failure and cardiomegaly, all due to methamphetamine; left ventricular 9 thrombus, due to methamphetamine use; major depressive disorder; 10 other specified trauma- and stressor-related disorder; persistent bereavement disorder; generalized anxiety disorder; somatic 11 symptom disorder, persistent, moderate; unspecified schizophrenia spectrum and other psychotic disorder; and poly-substance use 12 disorder (alcohol and methamphetamine) 13 AR 22. The ALJ concluded that, with the substance use, G.P.'s mental impairments met "the 14 criteria of section 12.04 of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 15 and 416.936)." Id. In making this determination, the ALJ considered the four broad areas of 16 mental functioning described in the regulations for evaluating mental impairments, known as the 17 paragraph B criteria: (1) understanding, remembering, or applying information; (2) interacting 18 with others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing 19 oneself. Id.; see also 20 C.F.R. § 404.1520a(c)(3) (citing 20 C.F.R. pt. 404, subpt. P, App. 1-Part- 20 A2, § 12.00E). The ALJ found that G.P. had moderate limitations in understanding, remembering, 21 or applying information, and in adapting or managing oneself. Id. He further found marked 22 limitations in interacting with others and in concentrating, persisting, or maintaining pace. Id. 23 The ALJ also determined that if G.P. stopped the substance use, then during the relevant 24 time period, he would continue to have severe impairments, but not any impairment that met or 25

medically equaled the severity of a listed impairment. *Id.* The ALJ found that, in the absence of 26 substance use, G.P. would have only moderate limitations in each of the four paragraph B 27 functional areas. AR 23. Based on this assessment, the ALJ found that G.P. had the residual 1 following limitations: 2 [G.P.] can never climb ladders, ropes or scaffolds. The claimant should avoid hazards such as unprotected heights and dangerous 3 machinery. In addition, the claimant should avoid exposure to 4 vibration; and avoid concentrated exposure fumes, dust, odors, gases and poor ventilation. The claimant can perform low stress work, 5 which is defined as simple, routine instructions and tasks involving simple work-related decisions and occasional workplace changes; 6 brief, occasional interaction with co-workers and no interaction [with] the general public; no fast-paced work, i.e. assembly line 7 work; and cannot perform work that requires the claimant to be 8 responsible for the safety of others. He can tolerate a moderate noise intensity level as defined in the Dictionary of Occupational 9 Titles/Selected Characteristics of Occupations in the DOT. He must avoid concentrated exposure to extreme heat. Finally, he would be 10 absent once per month. 11 AR 24. The ALJ found that G.P. has no past relevant work but that, if he stopped the substance 12 use, he can perform at least three jobs that exist in significant numbers in the national economy: 13 hospital cleaner, photocopying machine operator, and advertising material distributor. AR 29. 14 The ALJ concluded that G.P. “would not be disabled if he stopped the substance use,” and that his 15 “substance use disorder is a contributing factor material to the determination of disability,” and 16 that he had not been disabled “at any time from the alleged onset date through the date of this 17 decision.” AR 30; see 42 U.S.C. § 1382c(a)(3)(J) (“[A]n individual shall not be considered to be 18 disabled . . . if alcoholism or drug addiction would . . . be a contributing factor material to the 19 Commissioner’s determination that the individual is disabled.”). 20 The Appeals Council denied G.P.’s request for review of the ALJ decision. AR 1. G.P. 21 then filed the present action seeking judicial review of the decision denying his applications for 22 benefits. See Dkt. No. 1.

23 II. LEGAL STANDARD

24 Pursuant to 42 U.S.C. § 405(g), this Court has the authority to review the Commissioner’s 25 decision to deny benefits. The Commissioner’s decision will be disturbed only if it is not 26 supported by substantial evidence or if it is based upon the application of improper legal 27 standards. *Ahearn v. Saul*, 988 F.3d 1111, 1115 (9th Cir. 2021) (citation omitted); *Morgan v.* 1 the term “substantial evidence” means “more than a mere scintilla” but “less than a 2 preponderance” and is “such relevant evidence as a reasonable mind might accept as adequate to 3 support a conclusion.” *Ahearn*, 988 F.3d at 1115 (quoting *Biestek v. Berryhill*, 587 U.S. 97, 103 4 (2019) and *Molina v. Astrue*, 674 F.3d 1104, 1110-11 (9th Cir. 2012), superseded by regulation on 5 other grounds); see also *Morgan*, 169 F.3d at 599 (citation omitted). When determining whether 6 substantial evidence exists to support the Commissioner’s decision, the Court examines the 7 administrative record as a whole, considering adverse as well as supporting evidence. *Ahearn*, 8 988 F.3d at 1115 (citation omitted); *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989). 9

Where evidence exists to support more than one rational interpretation, the Court must defer to the 10 decision of the Commissioner. *Ahearn*, 988 F.3d at 1115-16 (citation omitted); *Morgan*, 169 F.3d 11 at 599 (citation omitted). 12 “To determine whether a claimant is disabled, an ALJ is required to employ a five-step 13 sequential analysis, determining: (1) whether the claimant is doing substantial gainful activity; (2) 14 whether the claimant has a severe medically determinable physical or mental impairment or 15 combination of impairments that has lasted for more than 12 months; (3) whether the impairment 16 meets or equals one of the listings in the regulations; (4) whether, given the claimant's residual 17 functional capacity, the claimant can still do his or her past relevant work; and (5) whether the 18 claimant can make an adjustment to other work.” *Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th 19 Cir. 2014) (citations and quotations omitted). The claimant bears the burden of proof at “steps one 20 through four, but [the burden] shifts to the Commissioner at step five.” *Mercado v. Berryhill*, No. 21 16-cv-04200-BLF, 2017 WL 4029222, at *4 (N.D. Cal. Sept. 13, 2017) (quoting *Bray v. Comm'r 22 of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009)). 23 In cases involving substance use, the ALJ is required to apply the five-step sequential 24 disability analysis twice. Social Security Ruling (“SSR”) 13-2p, 2013 WL 621536, at *6 (Feb. 20, 25 2013); *Bustamante v. Massanari*, 262 F.3d 949, 955 (9th Cir. 2001). At the first stage of the 26 analysis, the ALJ conducts the five-step sequential analysis and determines whether the claimant is 27 disabled based on all of the claimant’s medically determinable impairments, including substance 1 that the claimant is disabled, then the ALJ applies the five-step sequential inquiry a second time to 2 determine whether substance use is “material” to the disability determination. “‘Materiality’ is the 3 degree to which an individual would still be found disabled if they stopped using drugs or 4 alcohol.” *Jessie L. v. Kijakazi*, No. 20-cv-09305-DMR, 2022 WL 2222964, at *2 (N.D. Cal. June 5 21, 2022); 20 C.F.R. § 416.935(b). Implementing regulations require an ALJ to “determin[e] 6 which of the claimant’s disabling limitations would remain if the claimant stopped using drugs or 7 alcohol.” *Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007); see also 20 C.F.R. § 416.935(b)(1) 8 (“The key factor we will examine in determining whether drug addiction or alcoholism is a 9 contributing factor material to the determination of disability is whether we would still find you 10 disabled if you stopped using drugs or alcohol.”); SSR 13-2p, 2013 WL 621536, at *4 (same). 11 If the Court determines that there has been reversible legal error, the Court must then 12 decide whether to remand for further proceedings or for an automatic award of benefits. “An 13 automatic award of benefits in a disability benefits case is a rare and prophylactic exception to the 14 well-established ordinary remand rule.” *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). 15 The Court may remand for an immediate award of benefits under the credit-as-true standard only 16 where (1) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether 17 claimant testimony or medical evidence; (2) there are no outstanding issues that must be resolved 18 before a determination of disability can be made; and (3) it is clear from the record

that the ALJ 19 would be required to find the claimant disabled were such evidence credited. *Id.* at 1045. Even 20 when all three conditions are satisfied and the evidence in question is credited as true, it is within 21 the district court’s discretion whether to make a direct award of benefits or to remand for further 22 proceedings, when the record as a whole creates serious doubt as to disability. *Id.*

23 III. DISCUSSION

24 The parties agree that this matter should be remanded because the ALJ’s opinion contains 25 reversible error. *Ryan B. v. O’Malley*, No. 23-cv-03644-SI, 2024 WL 4227590, at *3 (N.D. Cal. 26 Sept. 17, 2024). The parties disagree about whether the matter should be remanded for further 27 proceedings, as the Commissioner contends, or whether this is the rare case which merits the 1 F.3d at 1044. 2 A. Legally Sufficient Reasons for Rejecting Evidence 3 The parties agree that the ALJ erred by adopting, without explanation, an RFC that does 4 not fully account for the medical opinions that he found persuasive—specifically, the medical 5 opinions of Dr. Mary Ann Vigilanti, an independent psychological consultant, and Dr. Nadine J. 6 Genece, an agency medical consultant.⁵ Dkt. No. 19 at 8-11, 18-19; Dkt. No. 22 at 4-5. 7 Dr. Vigilanti conducted a psychological evaluation of G.P. on September 1, 2021, after 8 which she diagnosed him with major depressive disorder, generalized anxiety disorder, somatic 9 symptom disorder, and another trauma-related disorder. AR 1002-05. She observed that “[h]e did 10 not present as under the influence of substances” but “was alert and aware.” AR 1003. Dr. 11 Vigilanti found that G.P. had the following limitations: (1) moderate to severe impairment in 12 persistence and pace in a work setting; (2) moderate impairment in “respond[ing] appropriately to 13 coworkers, the public, and supervisors”; (3) severe impairment regarding the “ability to tolerate 14 routine changes in a work setting, the stress of an 8-hour workday and respond with flexibility”; 15 and (4) anticipated unreliable attendance in the workplace. AR 1004. 16 Dr. Genece conducted an assessment of G.P. through a psychiatric review technique (PRT) 17 on November 8, 2021 as part of the reconsideration process of G.P.’s application for benefits. AR 18 143. Dr. Genece considered three listed disorders—12.04 (depressive, bipolar, and related 19 disorders); 12.06 (anxiety and obsessive-compulsive disorders) and 12.15 (trauma and stressor- 20 related disorders)—but concluded that G.P.’s “medically determinable impairment” did not 21 “precisely satisfy the diagnostic criteria” for any of them. *Id.* Applying the paragraph B criteria, 22 Dr. Genece found that G.P. had mild limitations in understanding, remembering or applying and 23 moderate limitations in interacting with others, concentration, persistence and pace, and the ability 24 to adapt and manage himself. AR 143-44. She also found that G.P. had moderate limitations in 25 26 G.P. also argues that the ALJ erred in rejecting the opinion of Dr. Nicole Kirsch, an independent psychological consultant. Dkt. No. 19 at 11-14. The Commissioner does not respond to this 27 argument. Regardless, given the Court’s determination that the opinions of Dr. Vigilanti and Dr. 1 his ability to “perform activities within a schedule, maintain regular attendance, and be punctual 2 within customary tolerances”; “complete a normal workday and workweek”; “perform at a 3

consistent pace without an unreasonable number and length of rest periods”; “interact 4 appropriately with the general public”; “get along with coworkers or peers without distracting 5 them or exhibiting behavioral extremes”; and “respond appropriately to changes in the work 6 setting.” AR 148-51. 7 The ALJ described both opinions as persuasive and relied heavily on them in his 8 assessment of G.P.’s disability claims, particularly regarding G.P.’s remaining impairments in the 9 absence of substance use. AR 27-28. In fact, the ALJ exclusively cited to Dr. Vigilanti’s opinion 10 in support of his assessment of the paragraph B criteria in the absence of substance use. AR 23. 11 Similarly, for the RFC determination, the ALJ explained that he “relie[d] for the most part on the 12 opinions of State agency medical consultant[] . . . Dr. Nadine Genece,” as well as “the assessment 13 of Dr. Vigilanti in reaching the mental RFC adopted herein.” AR 27-28. However, despite 14 indicating his reliance on these opinions, the ALJ did not include all of the limitations assessed by 15 Drs. Vigilanti and Genece in his determination of G.P.’s RFC. As both parties observe, the RFC 16 does not reflect G.P.’s inability to tolerate workplace stress and to reliably attend work, as found 17 by Dr. Vigilanti, or the moderate limitations found by Dr. Genece. Dkt. No. 19 at 8-11; Dkt. No. 18 22 at 5. The ALJ did not explain why these limitations are not incorporated into the RFC. 19 As the parties appear to agree that the ALJ’s opinion implicitly rejected certain aspects of 20 the medical opinions he found persuasive without providing legally sufficient reasons for doing 21 so, and therefore constitutes reversible error, the Court next considers whether there are any 22 outstanding matters that should be resolved by further administrative proceedings. 23

B. Whether Further Administrative Proceedings Are Warranted 24

In evaluating whether further proceedings are warranted, the Court “consider[s] whether 25 the record as a whole is free from conflicts, ambiguities, or gaps, whether all factual issues have 26 been resolved, and whether the claimant’s entitlement to benefits is clear under the applicable legal 27 rules.” *Ryan B.*, 2024 WL 4227590, at *6 (quoting *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 1 benefits because the record is well-developed and “there are no outstanding issues of fact which 2 would be resolved by another hearing.” Dkt. No. 19 at 20. The Commissioner argues that several 3 issues remain to be resolved on remand and suggests that the existing record casts doubt on 4 whether G.P. is disabled. Dkt. No. 22 at 5-7. G.P. did not reply to the Commissioner’s 5 arguments. 6

1. Vocational Expert Testimony 7

The Commissioner argues that even if the ALJ had adopted more restrictive limitations in 8 the RFC, there may still be jobs G.P. could perform. Dkt. No. 22 at 5. This argument is not 9 supported by the record. At the hearing, the vocational expert testified as follows: 10 Q: . . . And if you further add to the hypothetical that the hypothetical individual would be absent twice per month, and then can have no 11 interaction with the general public, can that hypothetical individual perform any work in the national economy? 12 A: No, Your Honor. . . . 13 Q: . . . And is what takes it out of the employability area, is it the absences or a combination of everything together? 14 A: Well, either of those factors or the two factors together would eliminate all employment, Judge. 15 16 AR 90-91. Thus, the vocational expert testified that with just one more absence per month, or 17 with a

restriction that he have no contact with the public, G.P. would not be able to maintain 18 employment. As the Commissioner concedes, one absence per month does not adequately capture 19 the limitations assessed by Dr. Vigilanti and Dr. Genece. Dkt. No. 22 at 5. On this point, at least, 20 the record is fully developed, and there is no dispute of fact to be resolved. While there may be 21 other factual disputes that bear on other aspects of the RFC, there is no need to remand for further 22 administrative proceedings if, as the record reflects, G.P.'s expected absences, in combination 23 with other limitations in the RFC, would render him unable to perform any work in the national 24 economy. See *Tennille S. v. Kijakazi*, No. 21-cv-09779-SI, 2023 WL 122396, at *13 (N.D. Cal.

25 Jan. 6, 2023) ("The Ninth Circuit has consistently remanded for an award of benefits in cases 26 where a VE was posed a hypothetical that included the RFC that a claimant would possess if 27 improperly discredited opinions or testimony were taken as true."). 1 2. Materiality of Substance Use 2 The Commissioner also argues that G.P. "has not effectively shown why the ALJ's 3 [substance use] analysis was incorrect" and that "[t]he record contains evidence that shows that 4 G.P.'s function both physically and mentally was better when sober."6 Dkt. No. 22 at 6. The 5 Commissioner contends that "[t]he impact of this substance use is critical to the disability 6 determination" and "cast[s] doubt over [G.P.'s] entitlement to benefits." *Id.* at 5-6. 7 The Court does not understand the Commissioner to argue that additional fact-finding or 8 development of the record is required to assess whether G.P.'s substance use is material to the 9 determination of disability. See *Albert B. v. Kijakazi*, No. 5:22-cv-00865-EJD, 2023 WL 10 6462856, at *7 (N.D. Cal. Sept. 29, 2023) (finding remand with benefits appropriate where, inter 11 alia, the record was "fully developed" and "neither party argue[d] that additional opinions would 12 be necessary to resolve" outstanding issues). Rather, the Commissioner appears to contend that 13 even if the medical opinions of Drs. Vigilanti and Genece were fully credited, the ALJ could still 14 reach the same conclusion regarding materiality if the matter were remanded for further 15 proceedings. Dkt. No. 22 at 5-6. 16 The Commissioner is correct that G.P. bears the burden of proving that his substance use is 17 not a material contributing factor to his disability. See *Parra v. Astrue*, 481 F.3d 742, 744-745 18 (9th Cir. 2007). However, to the extent the Commissioner suggests that improvements in G.P.'s 19 physical and mental health during periods of sobriety show, or at least could support a finding 20 that, G.P.'s substance use was material, the Court disagrees. Improvement alone is insufficient; 21 rather, the question is whether G.P.'s functioning during periods of sobriety improved to the point 22 that he would not be disabled. SSR 13-2p, 2013 WL 621536, at *8 ("DAA is material if the 23 claimant's other impairment(s) would improve to the point that the claimant would not be disabled 24 in the absence of DAA."). In considering this question, the ALJ must resolve "which of the 25 claimant's disabling limitations would remain if the claimant stopped using drugs or alcohol." 26 *Parra*, 481 F.3d at 747. "Especially in cases involving co-occurring mental disorders, the 27 1 documentation of a period of abstinence should provide information about what, if any, medical 2 findings and impairment-related limitations

remained after the acute effects of drug and alcohol use abated.” SSR 13-2p, 2013 WL 621536, at *12. “Adjudicators may draw inferences from such information based on the length of the period(s), how recently the period(s) occurred, and whether the severity of the co-occurring impairment(s) increased after the period(s) of abstinence ended.” 6 Id. 7 Here, the record reflects, and the parties appear to agree, that G.P. did not use drugs or alcohol for approximately two years from 2019 to 2021.7 Dkt. No. 19 at 2; Dkt. No. 22 at 5; see, 9 e.g., AR 1033 (12/1/2018) (“[G.P.] says he has not done meth since he was discharged.”); AR 10 1242 (9/11/2019) (“Former methamphetamine user, began [] around age 17-18, stopped 11 completely after 11/2018 (was in the ICU)”; AR 1232 (10/16/2019) (drug and alcohol use 12 disorder “in early or sustained remission”); AR 851 (4/7/2020) (“Pt denies using drugs now. 13 Denies using alcohol or smoking.”); AR 1297 (10/5/2020) (“Quit methamphetamine use since 14 11/2018 when he was hospitalized”); AR 1049 (5/28/2021) (“PT says he has not been doing drugs 15 now. No alcohol use now.”); AR 1003 (9/1/2021) (“[G.P.] did not present as under the influence of 16 substances.”). Indeed, the ALJ cited Dr. Vigilanti’s assessment that G.P. was not using 17 substances in relying on Dr. Vigilanti’s opinion to determine G.P.’s mental limitations in the 18 absence of substance use. AR 28 (“Most notably, in finding the limitations adopted herein, Dr. 19 Vigilanti noted the claimant did not appear to be under the influence of any substances. The 20 foregoing is consistent with the claimant’s report that he had been sober from amphetamine and 21 alcohol use at the time of the examination.”). 22 As explained above, if the two opinions the ALJ found persuasive—Dr. Vigilanti’s and Dr. 23 Genece’s—are fully credited and the limitations identified in those opinions are fully accounted 24 25 7 On G.P.’s disability determination explanation form at the reconsideration level, the findings of fact and conclusions of law contain an entry dated 8/6/2021 that appears to be notes from one of 26 the reviewers. AR 141. Among other notes, the reviewer states that G.P. “continues to use meth.” The ALJ does not refer to this record, and neither party addresses it. Moreover, it is not entirely 27 clear from the context of the reference whether this is referring to his past use of 1 for in the RFC, the record reflects that, even during his period of sobriety, there were no jobs G.P. 2 could perform in the national economy. Thus, because G.P. would be disabled even in the absence 3 of substance use, his substance use is not material to the disability determination in this case 4 according to the applicable regulations. See 20 C.F.R. § 416.935(b)(1); SSR 13-2p, 2013 WL 5 621536, at *4. 6 *** 7 Accordingly, the Court concludes that no further development of the record or other 8 administrative proceedings are necessary and denies the Commissioner’s request for remand on 9 this ground. 10 C. Time Period for Award of Benefits 11 One outstanding question remains to be addressed on remand: the time period for which 12 G.P. is entitled to an award of benefits. 13 G.P. alleged a disability onset date of March 31, 2004. However, the ALJ found that there 14 were “no medical signs or laboratory findings to substantiate the existence of a medically 15 determinable impairment” before the “first record of treatment . . . in October 2011.” AR 22. 16 While the ALJ appears to have rejected the disability onset date of March 31, 2004, he did not 17 make any finding regarding an alternative disability

onset date (with or without substance use), 18 and the parties do not address this issue in their respective briefs. While there is no indication that 19 the ALJ found the record ambiguous with respect to G.P.'s disability onset date, remand is 20 necessary so that the date of onset can be determined in the first instance. See *Nixon v. Astrue*,

21 No. 07-cv-1234 BTM (CAB), 2008 WL 2705164, at *6 (S.D. Cal. July 8, 2008); see also Social Security Ruling ("SSR") 18-01p, 2018 WL 4945639 (Oct. 2, 2018).

23 IV. CONCLUSION

24 For the reasons explained above, G.P.'s appeal is granted. The Court reverses the ALJ's 25 decision and remands the matter for determination of the date of onset of G.P.'s disability and for 26 calculation of benefits. 27 The Clerk shall enter judgment accordingly and close this file. 1 IT IS SO ORDERED. 2 Dated: March 28, 2025 3 Virginia K. DeMarchi 5 United States Magistrate Judge 6 7 8 9 10 11 12 13 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28