

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

Lauretta P. v. Commissioner of Social Security

No. 2:25-CV-1413-DWC (W.D. Wash. Dec. 17, 2025) · No. 2:25-CV-1413-DWC · Decided December 17, 2025

OPINION

Perkins

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8

WESTERN DISTRICT OF WASHINGTON

AT TACOMA

9

10 LAURETTA P.,

CASE NO. 2:25-CV-1413-DWC

11 Plaintiff, v.

ORDER RE: SOCIAL SECURITY

12 DISABILITY APPEAL

COMMISSIONER OF SOCIAL

13 SECURITY,

14 Defendant. 15 Plaintiff, proceeding pro se, filed this action, pursuant to 42 U.S.C. § 405(g), for
judicial

16 review of the denial of her application for Disability Insurance Benefits (DIB). Pursuant to 28
17 U.S.C. § 636(c), Fed. R. Civ. P. 73, and Local Rule MJR 13, the parties have consented to 18
proceed before the undersigned. After considering the record, the Court finds no reversible error
19 and affirms the Commissioner's decision to deny benefits.

20 I. BACKGROUND

21 Plaintiff applied for DIB on June 23, 2022. Administrative Record (AR) 19. Her alleged 22
date of disability onset is January 8, 2021. Id. Her requested hearing was held before an 23
Administrative Law Judge (ALJ) on July 9, 2024. AR 39–70. On July 17, 2024, the ALJ issued a
24 1 written decision finding Plaintiff not disabled. AR 16–38. The Appeals Council declined 2
Plaintiff's timely request for review, making the ALJ's decision the final agency action subject 3
to judicial review. AR 1–5. On August 1, 2025, Plaintiff filed a Complaint in this Court seeking 4
judicial review of the ALJ's decision. Dkt. 6.

5 II. STANDARD

6 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of 7 benefits if, and only if, the ALJ’s findings are based on legal error or not supported by 8 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Substantial evidence “is a 10 highly deferential standard of review.” *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 11 690 (9th Cir. 2009). The Supreme Court describes it as “more than a mere scintilla.” *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229, 13 (1938)). “It means—and means only—such relevant evidence as a reasonable mind might accept 14 as adequate to support a conclusion.” *Id.* (quoting *Consol. Edison*, 305 U.S. at 229) (internal 15 quotations omitted).

16 III. DISCUSSION

17 In her decision, the ALJ found Plaintiff was not disabled at step five of the sequential 18 evaluation process. See AR 31–32. That is, the ALJ found Plaintiff retained a Residual 19 Functional Capacity that permitted her to perform work existing in significant numbers in the 20 national economy. See *id.* 21 In her opening brief, Plaintiff asserts that the ALJ overlooked deductions for her 22 Impairment-Related Work Expenses and asserts that she is disabled under the five-step 23 sequential evaluation process. See Dkt. 13 at 2–3. She also attached three pages of medical 24 1 records, although she did not address their significance in her Opening Brief. *Id.* at 4–6. In her 2 Reply Brief, she argued that evidence justifies a remand under sentence six of 42 U.S.C. § 3 405(g), and also contended she was deprived of her due process rights because her attorney 4 representing her before the agency was deficient. See Dkt. 17 at 2–3. The Court considers and 5 rejects each of these arguments in turn. 6 A. Impairment-Related Work Expenses 7 At step one of the sequential evaluation process, an ALJ considers whether a claimant has 8 performed substantial gainful activity (SGA) during the relevant time period. See 20 C.F.R. §§ 9 404.1520(a)(4)(i), 404.1571. In doing so, the ALJ considers a claimant’s earnings, and if those 10 earnings meet a particular threshold, the claimant will be presumed to have engaged in SGA. See 11 20 C.F.R. § 404.1574(a). In making this calculation, the ALJ deducts impairment-related work 12 expenses. See 20 C.F.R. § 404.1576(a). Impairment-related work expenses (IRWEs) are the cost 13 of “certain items and services which, because of [the claimant’s] impairment(s), [the claimant] 14 need[s] and use[s] to enable [her] to work.” *Id.* For instance, if a claimant’s impairments require 15 modifications to her vehicle or the use of hired vehicles for transportation, or if the impairments 16 require using special equipment at work which the claimant pays for, related expenses will be 17 deducted from the claimant’s earnings at step one. See 20 C.F.R. § 404.1576(c)(4), (c)(6)(iii). 18 Here, the ALJ discussed Plaintiff’s earnings at step one and found they likely showed 19 Plaintiff engaged in SGA during the relevant period. See AR 22–23. However, because there 20 were some ambiguities related to the dates that Plaintiff engaged in SGA, the ALJ proceeded to 21 the remaining steps of the sequential evaluation process. See *id.* The ALJ did not discuss 22 Plaintiff’s potential impairment-related work expenses. See *id.* 23 24 1

Plaintiff states in her opening brief that the ALJ “overlook[ed] deductions for Impairment 2 Related Work Expenses, [as] transportation is needed to enable [her] to work.” Dkt. 13 at 2. But 3 Plaintiff has identified no evidence in the record indicating she had impairment-related 4 transportation expenses. To the contrary, Plaintiff indicated in her function report she can drive 5 (AR 538) and testified that one of her part-time roles involved driving different vehicles for car 6 auctions (AR 45). Neither statement was qualified by any indication that she had impairment- 7 related difficulties in driving. This evidence suggests Plaintiff did not require vehicular 8 modifications (as she was able to drive cars which were not her own) and that she did not require 9 use of a hired vehicle. Nor is there evidence any other basis for finding impairment-related work 10 expenses was present. See 20 C.F.R. § 404.1576(c)(6)(iii)(C). 11 Further, Plaintiff cannot show prejudice from the ALJ’s failure to discuss her potential 12 IRWEs. The Court “may not reverse an ALJ’s decision on account of an error that is harmless.” 13 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). If the ALJ’s decision remains supported 14 by substantial evidence and the error does not “negate the validity of the ALJ’s ultimate 15 conclusion,” it is harmless. See *id.* (quoting *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 16 1190, 1197 (9th Cir. 2004)). “The burden of showing that an error is harmful normally falls upon 17 the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009). 18 Because the ALJ proceeded through the remaining steps of the sequential evaluation 19 process, her purported omission at step one of any discussion of Plaintiff’s IRWEs would be 20 harmless error. The Court finds the ALJ did not err at step five. Therefore, the ALJ’s ultimate 21 determination that Plaintiff was not disabled is unaffected by any error at step one. 22 23 24 1 B. The Listings and Residual Functional Capacity Findings 2 In her opening brief, Plaintiff asserts that she should have been found disabled under the 3 Listings of Impairments (20 C.F.R. Pt. 404, Subpt. P, App. 1), and that she has no residual 4 functional capacity (RFC) to perform additional work. See Dkt. 13 at 2–3. However, these 5 conclusory allegations do not show error. The Court finds the ALJ’s decision was supported by 6 substantial evidence. 7 With respect to the Listings, the ALJ found Plaintiff had the severe impairments of 8 degenerative disc disease, migraines, and obesity. AR 23. At step three, an ALJ determines 9 whether a claimant’s impairments meet or medically equal a Listing. See 20 C.F.R. § 10 404.1520(a)(4)(iii). It is the claimant’s burden to produce evidence showing disability at step 11 three. See *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005) (citing *Swenson v. Sullivan*, 876 12 F.2d 683, 687 (9th Cir. 1989)). 13 As the ALJ noted, the Listing pertaining to degenerative disc disease (Listing 1.15, see 14 Listings 1.00(F)(1)) requires that a claimant produce evidence of a medical need for one of 15 several enumerated assistive devices or an inability to do work involving fine or gross 16 movements. See Listing 1.15, criteria D; AR 25. Plaintiff did not produce such evidence. Indeed, 17 she testified she has not used a cane or walker. See AR 44. Thus, the ALJ did not err in finding 18 she did not meet the Listing for degenerative disc disease. 19 As the ALJ noted, there are no specific listings for migraines and obesity, but the 20 claimant may still show those impairments

medically equaled a listing. See AR 25; 20 C.F.R. § 21.404.1526. “An ALJ is not required to . . . compare [a claimant’s impairments] to any listing in an 22 equivalency determination, unless the claimant presents evidence in an effort to establish 23 equivalence.” Burch, 400 F.3d at 683 (citing *Lewis v. Apfel*, 236 F.3d 503, 514 (9th Cir. 2001)). 24 1 Because Plaintiff did not present evidence in an effort to establish equivalence, the ALJ did not 2 err in not finding such an equivalence. 3 As for Plaintiff’s RFC, the Court finds the ALJ’s RFC determination was supported by 4 substantial evidence. The ALJ discussed much of the medical evidence, set forth his 5 interpretation thereof, and discussed Plaintiff’s work experience and activity level. See AR 27– 6 29. He also relied, in part, upon the medical opinions of several state agency psychologists. AR 7 29–30. 8 The ALJ found Plaintiff was capable of light work with some additional modifications, 9 despite her degenerative disc disease, because most examinations revealed normal results, 10 showing she retained an ability to walk and stand. AR 27; see also *Quesada v. Colvin*, 525 F. 11 App’x 627, 629 (9th Cir. 2013) (unpublished) (affirming ALJ findings based on evidence of 12 normal gait and strength). She also noted imaging revealed mild and moderate degenerative disc 13 disease. AR 27; cf. Burch, 400 F.3d at 681 (mild imaging proper for consideration). 14 The ALJ also noted Plaintiff had performed part-time work during the relevant period 15 and wished to work full-time, suggesting she was capable of full-time work. AR 28; cf. *Bruton v. 16 Massanari*, 268 F.3d 824 (9th Cir. 2001) (statement that claimant left job for reasons unrelated to 17 impairment was “sufficient reason[]” for discrediting testimony). And as the ALJ noted, such 18 work activity is also inconsistent with Plaintiff’s allegations of debilitating migraines. See AR 19 27–28. 20 In sum, the RFC finding was supported by substantial evidence, and Plaintiff has not 21 shown the ALJ erred in finding she did not meet or equal a Listing. 22 23 24 1 C. New Evidence 2 In her Opening Brief, Plaintiff attaches three pages of notes. See Dkt. 13 at 4–6. They 3 describe lab results from July and August of 2025. Id. One indicates an MRI “shows changes in 4 [Plaintiff’s] thoracic spinebones that could indicate a spinal condition called DISH (diffuse 5 idiopathic skeletal hyperostosis) or an autoimmune/inflammatory condition called 6 spondyloarthritis.” Dkt. 13 at 4. The other notes indicate Plaintiff’s labs show “high 7 inflammatory markers, but no obvious autoimmune cause” and “no acute fracture or dislocation” 8 but “moderate bilateral hip osteoarthritis.” Dkt. 13 at 5, 6. 9 In her Reply Brief, Plaintiff requests the Court remand under sentence six of 42 U.S.C. § 10.405(g) based on this evidence. Sentence six permits remand where there is new, material 11 evidence which the claimant has good cause for failing to submit earlier. 12 The Court finds the evidence is not material. To show the evidence is material, Plaintiff 13 must show “there is a reasonable possibility that the new evidence would have changed the 14 outcome of the administrative hearing.” *Mayes v. Massanari*, 276 F.3d 453, 462 (9th Cir. 2001) 15 (citation and quotation omitted). 16 Here, the evidence does not suggest Plaintiff has any further limitations than the ALJ 17 found, as it does not describe any new symptoms. Indeed, the evidence confirms what the ALJ 18 described already: Plaintiff has a spinal impairment and imaging revealed it was moderate. See 19 AR 27. The evidence does not establish Plaintiff has

any new impairments; it only suggests 20 further testing may be necessary to find the underlying cause of changes in her spine. See 20 21 C.F.R. § 404.1521. 22 Moreover, the ALJ's decision only considered whether Plaintiff was disabled through

23 July 2024. See AR 33. But the new evidence pertains to Plaintiff's condition nearly a year later. 24 1 Even to the extent the evidence suggests Plaintiff's condition worsened, this is not relevant to 2 Plaintiff's functioning during the period evaluated by the ALJ. See *Mayes*, 276 F.3d at 462 3 (finding immaterial evidence of diagnosis six months after close of relevant period). 4 In sum, the Court declines to remand the matter under sentence six of § 405(g). 5 D. Ineffective Counsel 6 Plaintiff argues in her Reply Brief that her counsel at the hearing level was deficient 7 because he failed to argue she had impairment-related work expenses and "prevented the [ALJ] 8 from properly applying disability law (like the imperative rules, potentially referring to the Grid 9 Rules or specific regulations)." Dkt. 17 at 2. A claimant's right to counsel in an SSA proceeding 10 is a statutory one, rather than a constitutional one. See *Graham v. Apfel*, 129 F.3d 1420, 1422 11 (11th Cir. 1997); *Clark v. Schweiker*, 652 F.2d 399, 403 (5th Cir. 1981); *Thompson v. Sullivan*, 12 933 F.2d 581, 584 (7th Cir. 1991). 13 Here, Plaintiff was represented by counsel at the hearing level and received notice of her 14 right to counsel; she alleges only that her counsel was ineffective. This is, however, not a proper 15 basis for remand. The regulations impose some obligations upon claimants' representatives. See 16 20 C.F.R. § 404.1570. But Plaintiff's counsel is not a party to this case, so a deficiency on his 17 part does not necessarily compel relief from the Commissioner. Rather, it is the ALJ's decision 18 that is reviewed. See 42 U.S.C. § 405(g). Because the regulations do not appear to oblige the ALJ 19 to enforce counsel's regulatory obligations, a deficiency in counsel likely does not show the 20 Commissioner committed legal error. See *Cornett v. Astrue*, 261 F. App'x 644, 651 (5th Cir. 21 2008) (unpublished) (finding ineffective counsel in social security proceeding does not create 22 cognizable claim); *Rosas v. Colvin*, No. CV 13-2756, 2014 WL 3736531, at *3 (C.D. Cal. July 23 24 1 28, 2014) (same); *Alvernaz v. Colvin*, No. 2:13-CV-0158, 2014 WL 1338314, at *8 (E.D. Cal.

2 Apr. 2, 2014) (same).

3 Even if ineffective assistance of counsel showed legal error, this would not be sufficient 4 to justify remand. The ALJ continues to have a duty to develop the record in social security 5 proceedings. *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). For this reason, the 6 absence of counsel is not a sufficient ground for remand; rather, a claimant must "demonstrate 7 prejudice or unfairness in the administrative proceedings." *Vidal v. Harris*, 637 F.2d 710, 713 8 (9th Cir. 1981) (citing *Hall v. Sec'y of Health, Educ., and Welfare*, 602 F.2d 1372, 1374 (9th Cir. 9 1979), *Cox v. Califano*, 587 F.2d 988, 991 (9th Cir. 1978)). The same is true of an ineffective 10 assistance claim—Plaintiff must show such a deficiency was prejudicial. See *Banta v. Chater*, 11 No. 95-6457, 1996 WL 477298, at *1 (10th Cir. 1996) (unpublished) ("[I]neffective 12 representation might require a remand where there has been a showing of 'clear prejudice or 13 unfairness[.]'" (citations omitted); cf. *Iturribarria v. INS*, 321 F.3d 889, 899–900 (9th Cir. 2003)

14 (right to counsel in deportation proceedings requires showing that proceeding was 15
“fundamentally unfair”). 16 Plaintiff’s assertions do not show an inadequacy of counsel, let alone
one that 17 demonstrates prejudice or unfairness in the administrative proceeding. To the contrary,
the 18 record shows Plaintiff’s counsel generally complied with his responsibilities as a
representative. 19 For instance, there is no contention that the 1800-page record was missing
medical evidence due 20 to counsel’s deficiencies. See 20 C.F.R. § 404.1740(b)(1)–(2)
(representative must provide 21 evidence). A review of the hearing transcript confirms her counsel
fulfilled his basic duties: he 22 summarized the medical evidence for the ALJ (AR 42–43) and
conducted examinations of both 23 the claimant (AR 48–56) and the vocational expert (AR 65–
69), showing a familiarity with the 24 1 relevant evidence. See 20 C.F.R. § 404.1740(b)(3)(i)
(representative must provide competent 2 representation by knowing the significant issues in the
claim). 3 Plaintiff’s examples of deficiencies do not show an inadequacy of counsel. As discussed,
4 the record belies any claim that Plaintiff’s impairments cause transportation-related expenses. 5
Plaintiff’s counsel did not prevent the ALJ from properly applying the regulations—the ALJ 6
applied the five-step sequential evaluation process with reference to those regulations. See AR 7
21–32. With respect to the Grids, the ALJ properly found they did not apply because Plaintiff’s 8
RFC permitted her to perform a reduced range of light work (see AR 32), and the Grids apply 9
only if a claimant’s RFC corresponds to a particular level of exertion, see 20 C.F.R. Pt. 404, 10
Subpt. P, App. 2, § 200.00. 11 In sum, Plaintiff has not shown the ALJ’s decision was unsupported
by substantial 12 evidence or the product of legal error. Hence, the ALJ’s decision is affirmed, and
Plaintiff’s 13 request that the Commissioner be directed to reconsider the decision is rejected.

14 IV. CONCLUSION

15 For the foregoing reasons, the Court hereby AFFIRMS Defendant’s decision denying 16
benefits. 17 Dated this 17th day of December, 2025. 18 A 19 David W. Christel United States
Magistrate Judge 20 21 22 23 24