

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Danny A. N. v. Frank Bisignano, Commissioner of Social Security

Danny A. N. v. Bisignano, Case No. EDCV 25-00576-AS (C.D. Cal. Nov. 21, 2025) · No. EDCV 25-00576-AS
· Decided November 21, 2025

SUMMARY

The United States District Court for the Central District of California reviewed the denial of the plaintiff's applications for disability insurance benefits and supplemental security income. The court held that the administrative law judge failed to provide legally sufficient reasons for discounting the plaintiff's testimony and statements concerning his physical limitations. The matter was remanded for further administrative action pursuant to Sentence Four of 42 U.S.C. § 405(g).

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA – EASTERN DIVISION 10 11 DANNY A. N.,¹ Case No. EDCV 25-00576-AS 12
Plaintiff, MEMORANDUM OPINION 13 v. AND ORDER OF REMAND 14 FRANK
BISIGNANO, Commissioner of Social Security,² 15 Defendant. 16 17 18 For the reasons
discussed below, IT IS HEREBY ORDERED that, 19 pursuant to Sentence Four of 42 U.S.C. §
405(g), this matter is 20 remanded for further administrative action consistent with this 21
Opinion.

22 23 24 1 Plaintiff's name is partly redacted in accordance with Federal Rule of Civil Procedure
5.2(c)(2)(B) and the recommendation 25 of the Committee on Court Administration and Case
Management of the Judicial Conference of the United States. 26 2 Pursuant to Rule 25(d) of the
Federal Rules of Civil 27 Procedure, Frank Bisignano, Commissioner of Social Security, is hereby
substituted as the Defendant in this action.

28 1 PROCEEDINGS 2 3 On March 5, 2025, Plaintiff filed a Complaint seeking review 4 of the
Commissioner's denial of Plaintiff's applications for 5 disability insurance benefits and
supplemental security income 6 under Titles II and XVI of the Social Security Act, respectively. 7
(Dkt. No. 1).

On May 5, 2025, Defendant filed an Answer consisting 8 of the Administrative Record ("AR").
(Dkt. No. 10). The parties 9 subsequently filed opposing briefs setting forth their respective 10
positions regarding Plaintiff's claims ("Pl. Brief," "Def. Brief," 11 and "Pl. Reply"). (Dkt Nos. 11-
13).

The parties have consented to 12 proceed before a United States Magistrate Judge. (Dkt. Nos. 6, 8). 13 14 The Court has taken this matter under submission without oral 15 argument. See C.D. Cal. C. R. 7-15. 16 17 BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION 18 19 On or about April 1, 2022, Plaintiff filed applications for 20 disability insurance benefits and supplemental security income 21 alleging disability since June 5, 2018, (AR 17, 253-62), alleging 22 disability based on a back injury, diabetes, depression, vertigo, 23 high blood pressure, and neuropathy.

(AR 276). 24 25 Plaintiff's applications were denied, initially on September 26 22, 2022, and on reconsideration on March 2, 2023. (AR 142-46, 149- 27 54). On December 1, 2023, Plaintiff, who was represented by 28 counsel, testified at a video hearing before Administrative Law 1 Judge ("ALJ") MaryAnn Lundeman. (AR 35-59).

The ALJ also heard 2 testimony from vocational expert ("VE") Tracy Remas. (AR 53-58). 3 On April 12, 2024, the ALJ denied Plaintiff's applications. (AR 4 17-29). 5 6 The ALJ applied the requisite five-step process to evaluate 7 Plaintiff's case. (AR 18-28). At step one, the ALJ found that 8 Plaintiff had not engaged in substantial gainful activity since 9 the June 5, 2018, alleged onset date.

(AR 19). At step two, the 10 ALJ found that Plaintiff has the following severe impairments: 11 cervical degenerative disc disease, diabetes, neuropathy, and 12 vertigo. (AR 20-22). At step three, the ALJ determined that 13 Plaintiff's impairments did not meet or equal a listing found in 14 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 22-23). 15 16 Next the ALJ found the Plaintiff has a residual functional 17 capacity ("RFC")³ for light work as defined in 20 C.F.R. §§ 18 404.1567(b) and 416.967(b), limited to: (1) occasional postural 19 activities (i.e., balancing, stooping, kneeling, crouching, and 20 crawling); and (2) no climbing ladders, ropes, or scaffolds, or 21 working on uneven terrain or at or around unprotected heights and 22 hazards, such as moving machinery.

See AR 23-26 (adopting a 23 functional capacity more restrictive than the consultative 24 examiners and state agency physicians found, and finding these 25 medical opinions were "somewhat persuasive"). The ALJ rejected ALJ 26 Plaintiff's testimony and statements suggesting greater limits than 27 3 A residual functional capacity is what a claimant can still do despite existing exertional and nonexertional limitations.

See 28 1 the ALJ found to exist. (AR 23-26). 2 3 At step four, the ALJ found that Plaintiff was unable to 4 perform any past relevant work. (AR 26). At step five, based on 5 Plaintiff's age, education, work experience, RFC, and the VE's 6 testimony, the ALJ determined that Plaintiff could perform certain 7 light and sedentary jobs. (AR 27-28 (adopting VE's testimony at AR 8 54-58)).

The ALJ concluded that Plaintiff had not been disabled 9 since the June 5, 2018, alleged onset date. (AR 28). 10 11 On January 27, 2025, the Appeals Council denied Plaintiff's 12 request to review the ALJ's decision. (AR 1-3). Plaintiff now seeks 13 judicial review of the ALJ's decision, which stands as the final 14 decision of the Commissioner. See 42 U.S.C. § 405(g).

15 16 STANDARD OF REVIEW 17 18 This Court reviews the Commissioner's decision to determine 19 if it is free of legal error and supported by substantial evidence. 20 See *Brewes v. Comm'r*, 682 F.3d 1157, 1161 (9th Cir. 2012). 21 "Substantial evidence" is more than a mere scintilla, but less than 22 a preponderance. *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir.

23 2014). "It means such relevant evidence as a reasonable mind might 24 accept as adequate to support a conclusion." *Revels v. Berryhill*, 25 874 F.3d 648, 654 (9th Cir. 2017) (citation and internal quotation 26 omitted). 27 28 1 To determine whether substantial evidence supports a finding, 2 "a court must consider the record as a whole, weighing both evidence 3 that supports and evidence that detracts from the [Commissioner's] 4 conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.

5 2001) (internal quotation omitted). As a result, "[i]f the evidence 6 can support either affirming or reversing the ALJ's conclusion, [a 7 court] may not substitute [its] judgment for that of the ALJ." 8 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). 9 10 DISCUSSION 11 12 Plaintiff contends in part that the ALJ failed to provide 13 adequate reasons for rejecting his testimony and statements 14 regarding his physical limitations.

(Pl. Brief at 2-10; Pl. Reply 15 at 1-5). After consideration of the record as a whole, the Court 16 agrees. Remand for further consideration of Plaintiff's testimony 17 and statements is warranted. 18 19 A. Summary of the Relevant Medical Record 20 21 The available treatment record dates back to the alleged onset 22 date and consists mostly of primary care treatment notes, some 23 specialist consultations, a hospital stay for treatment following 24 25 4 Because Plaintiff challenges only the ALJ's 26 consideration of his testimony and statements concerning his physical impairments, the Court summarizes the medical evidence 27 and Plaintiff's testimony and statements concerning Plaintiff's physical impairments.

28 1 a car accident in 2019, and monthly pain management treatment after 2 the accident. The Court summarizes each below. 3 4 1. Primary Care, Specialist, and Hospital Treatment Notes 5 6 On June 4, 2018, Plaintiff saw a doctor at Kaiser Permanente 7 to discuss disability and was advised to see his primary care 8 doctor. (AR 379).

The next day Plaintiff saw his primary care 9 doctor complaining of numbness in his feet and ongoing moderate to 10 severe hand cramps and numbness which was worsening for the past 11 two months. (AR 380). He told his doctor that he was not sure if 12 he was taking his medications

right—his hemoglobin A1c was up. 13 (Id.). He had foot or leg pain which is a symptom of hyperglycemia.

14 (AR 383). Plaintiff asked to be off work. (AR 380). 15 16 The limited physical examination at the time noted no 17 abnormalities. (AR 380-81). Plaintiff was assessed with obesity 18 and diabetes with peripheral neuropathy which would be treated with 19 Hydrocodone-Acetaminophen (Norco) and lifestyle modifications, he 20 was to work with a diabetic educator, and he was given a temporary 21 off work order for two weeks.

(AR 381). His diabetic management 22 plan was to not go more than five hours between meals, check his 23 blood sugar four times a day, and report back with his readings 24 for possible medication adjustment. (AR 383).5 Plaintiff stated 25 26 5 Plaintiff did not follow this plan. He reported blood sugar readings the next week for mostly one or two checks per day.

27 (A.R. 384). He did not respond to follow up requests for two diabetic check-ins. (AR 387-89). 28 1 that he could not eat while working, it was not possible, and 2 declined suggestions for how to manage his eating. (Id.). 3 4 In August 2018, Plaintiff saw a new primary care doctor. (AR 5 389). He reported tingling in both legs for years. (AR 390).

On 6 examination, he had moderate monofilament sensory loss. (Id.). He 7 was noncompliant with his medication regimen. (AR 392). His doctor 8 explained the risks of uncontrolled diabetes and ordered a diabetic 9 foot examination and hemoglobin A1c monitoring. (Id.). 10 11 The next reported visit is in May 2019,6 when Plaintiff 12 requested medication refills including Norco.

(AR 392-93). It was 13 noted that he was exercising 300 minutes per week at a moderate to 14 strenuous level, (AR 393), and noncompliant with his medication 15 regimen. (AR 394). Plaintiff's physical examination was normal, 16 and Plaintiff refused to have a diabetic case manager consultation 17 for his uncontrolled hemoglobin A1c. (Id.). His provider ordered 18 hemoglobin A1c monitoring and told Plaintiff to make an appointment 19 with his primary care doctor.

(AR 394-95). 20 21 Plaintiff returned in July 2019, complaining of right wrist 22 pain from accidentally striking his wrist against metal four days 23 earlier for which he was given a Toradol injection. (AR 395-96). 24 He had no tenderness and full sensation/range of motion. (AR 395). 25 26 6 During a visit in October 2019, Plaintiff explained that 27 he treated at Kaiser Permanente a year earlier and had no medical insurance then.

(AR 716). 28 1 Plaintiff was hospitalized in August 2019, after having a roll 2 over car accident in which his car caught fire. (AR 399-452, 457- 3 550, 555-91). Plaintiff had multiple right rib fractures, thoracic 4 spine transverse process fractures, a pneumothorax and small 5 effusion in his lungs, a nasal bone fracture, a zygomatic arch 6 fracture, and some contusions, lacerations, abrasions, and second 7 degree burns to his right upper arm, left shoulder, and right lower 8 leg.

(AR 400, 411-13, 418-20, 458, 464, 473). It was noted that he 9 was intoxicated, his blood glucose was 578 consistent with diabetic 10 ketoacidosis with hyperkalemia, and he had been noncompliant with 11 his home insulin medication. (AR 461-62, 464, 473). An internal 12 medicine consultation reported normal gait and speech, and 5/5 13 strength in his extremities.

(AR 556). Occupational therapy testing 14 during his hospital stay showed grip strength of 4/5 in both hands. 15 (AR 547), and noted to have a normal gait without an assistive 16 device during physical therapy. (AR 545).

After two weeks, 17 Plaintiff was discharged in stable condition, ambulating, 18 tolerating his diet, eager to go home, and able to resume normal 19 activity. (AR 471). It was noted that would need a shower chair 20 for safety at home, but it is not apparent that Plaintiff was 21 discharged with a cane or other assistive device. (AR 470-72, 545, 22 548). 23 24 In September 2019, Plaintiff requested pain medication for 25 low back and right-sided rib pain from his car accident.

(AR 634). 26 He had been discharged from the hospital after the accident with 27 no pain medication. (AR 634). He was then ambulatory with no mention 28 of a cane. (AR 634-35). Later in September, Plaintiff went to the 1 hospital for a right foot ulcer and was again noted to be 2 ambulatory with no mention of a cane. (AR 631-33). 3 4 Plaintiff began seeing primary care doctor, Dr. Hemanshu 5 Patel, in October 2019.

(AR 716). Plaintiff reported that he had 6 been in a car accident and that no “etoh” (alcohol) was involved 7 as he remembered, but he did not remember the accident. (AR 716). 8 Although he had diabetes since age 17, he admitted that he did not 9 check his blood sugars. (Id.). Plaintiff was using a cane, limping, 10 and had a slow, cautious, and stiff gait.

(AR 717). He had thoracic 11 tenderness on examination. (Id.). Dr. Patel diagnosed rib fractures 12 and uncontrolled diabetes, and prescribed Lidocaine patches, Mobic, 13 and Acetaminophen. (AR 718). 14 15 Later, in October 2019, a physical therapist messaged Dr. 16 Patel requesting a hospital bed, standard wheelchair, and a pain 17 management referral for Plaintiff.

(AR 664).7 Plaintiff had 18 complained of severe pain and had difficulty moving from sitting 19 to standing or from supine to sitting. (AR 665). Plaintiff reported 20 severe guarding and severe pain to mild palpation. (AR 666). He 21 was nervous about movement, not yet ready for physical therapy, 22 and it was noted that he might require additional time for healing 23 his injuries.

(AR 665-66). His gait was guarded secondary to pain, 24 and he was using a cane. (AR 668). 25 26 7 As detailed below, Plaintiff underwent monthly pain 27 management treatments after his initial pain management evaluation in November 2019. (AR 935). 28 1 In November 2019, Plaintiff went to the hospital complaining 2 of dizziness and stayed overnight for evaluation.

(AR 598, 601). 3 He reported that he had been more active recently and was 4 experiencing positional dizziness for 5-10 seconds upon standing 5 or turning in bed. (AR 611). At the time, his gait was abnormal, 6 and he required the use of a cane. (AR 602). His dizziness resolved 7 with Meclizine. (AR 598). He was discharged in stable condition 8 with stable gait, intact sensation and 5/5 strength in his 9 extremities, (AR 598, 613-14), with likely positional dizziness 10 due to post-concussion syndrome and chronic low back pain since 11 his car accident.

(AR 599, 615). He had no activity restrictions, 12 and his “functional status” reported no assistive devices. (AR 13 731). 14 15 Plaintiff followed up with Dr. Patel’s physician’s assistant 16 after his hospital visit, complaining of uncontrolled pain 17 everywhere due to healing fractures from his car accident. (AR 18 712). He reported that he was unable to work, used a wheelchair 19 most of the time, had to move in with his mother after his accident, 20 and needed transportation assistance.

(Id.). He was using a 21 wheelchair at the appointment. (AR 713). He had not received 22 diabetes supplies to test his blood sugar, had hypertension when 23 he was discharged from the hospital, and reported continued 24 dizziness. (AR 714). Plaintiff was referred to neurology, 25 cardiology, and given an order for a blood pressure machine, 26 glucometer and testing supplies, home health, and transportation 27 assistance.

(Id.). 28 1 In January 2020, Plaintiff had a cardiology consultation with 2 a nurse practitioner. (AR 695). He complained of nausea, dizziness, 3 and imbalance issues, shoulder pain and weakness making him unable 4 to lift objects, and was observed to have an unsteady gait for 5 which he needed a cane. (AR 695-96). He had decreased range of 6 motion in his neck and shoulders and mid and upper back pain.

(AR 7 696). The nurse practitioner ordered shoulder MRIs, approval for a 8 head trauma program for concussion syndrome, referred Plaintiff 9 for occupational therapy, and sought approval for a wheelchair rack 10 for Plaintiff’s car. (Id.). Plaintiff’s partner was told to inquire 11 about getting in-home health authorization for her to care for 12 Plaintiff.

(Id.). 13 14 In March 2020, Plaintiff underwent a neurology consultation 15 for his dizziness. (AR 724). Plaintiff reportedly had slow 16 mentation and stuttering, was unable to lift his upper extremities 17 above shoulder level, had 3/5 strength in his upper extremities, 18 was using a cane for ambulation, and it was noted that he was 19 unsteady and at risk for falling down.

(AR 724-25). Shoulder MRIs 20 showed labral tears, tendinosis, and mild to moderate 21 acromioclavicular joint arthropathy in both shoulders, and bursitis 22 in the right shoulder. (AR 724). The neurologist diagnosed memory 23 loss, posttraumatic headache, a tear of the left supraspinatus 24 tendon, and right shoulder labral tear, ordered a brain MRI and 25 EEG, and referred Plaintiff to an orthopedic surgeon.

(AR 724-25). 26 The brain MRI showed signal abnormality in the frontal white 27 matter, and it is noted that Plaintiff's chronic balance problems 28 1 resulting in falls and gait abnormalities were from a combination 2 of his head injury and local trauma. (AR 1203).8 3 4 Later, in March 2020, Plaintiff followed up with Dr. Patel to 5 discuss his consultations.

(AR 708). It was noted that he had been 6 non-adherent to most medical recommendations. (Id.). Plaintiff 7 complained of severe vertigo with nausea, ongoing weakness in his 8 hands causing him to be unable to get a proper grip and to drop 9 things easily, and difficulty forming sentences to express what he 10 is thinking. (Id.). He reported having a hard time using pen needles 11 for insulin, was upset about his diabetes status, and indicated 12 his neuropathy was starting to flare and cause significant pain.

13 (Id.). He stated that was no longer was drinking alcohol and was 14 unable to hold a job. (Id.). On examination, Plaintiff was using a 15 wheelchair and was stiff and unsteady, he had decreased range of 16 motion and tenderness in his neck, his hand strength was 4/5, he 17 had thoracic tenderness, and he was angry and agitated. (AR 709). 18 Dr. Patel diagnosed post syncope injury possibly related to a 19 concussion, an "obvious" balance disorder, uncontrolled diabetes 20 8 It is not clear if Plaintiff ever had an EEG study.

The 21 only orthopedic visit in the record is from July 2021, when Plaintiff presented to an orthopedist complaining of right arm pain 22 and numbness following a recent fall. (AR 1010). He reported balance issues, was unemployed, and felt deconditioned and unable 23 to do his activities of daily living. (AR 1010).

On examination, he had positive O'Brien and speed tests, limited range of motion 24 and strength of 3/5 abduction and 4/5 flexion. (AR 1010). A MRI 25 showed a labral tear. (AR 1010). The orthopedist ordered physical therapy, noting that surgery would be considered if Plaintiff's 26 condition did not improve. (AR 1009, 1011). When Plaintiff followed up in September 2021, it was noted that he also had cervicalgia.

27 (AR 1006). There appear to be no treatment notes for any physical therapy for Plaintiff's shoulders. 28 1 with neuropathy, and alcoholism in remission, and prescribed 2 Gabapentin for the neuropathy. (AR 710). 3 4 In May 2020, Plaintiff followed up complaining of depression 5 and memory problems for which Dr. Patel prescribed Amitriptyline. 6 (AR 994). It was noted that Plaintiff was not completing labs for 7 his diabetes as instructed.

(Id.). In August 2020, Plaintiff 8 returned for diabetic foot care. (AR 986-87, 991-92). At another 9 visit in August 2020, Plaintiff reported no improvement in his 10 walking which was not straight because he felt like the room was 11 spinning, agitation, frustration, and worsening memory issues. (AR 12 988). He had a gait and station with normal posture but was using 13 an assistive device and was unsteady.

(AR 989). 14 15 In July 2021, Plaintiff reported that his balance and thinking 16 had only slightly improved since his last visit, and he recently 17 had a fall and injured his left shoulder. (AR 973). He had a gait 18 and station with normal posture but was using an assistive device 19 and had a slow, cautious, stiff, and unsteady gait. (AR 975). 20 21 In February 2022, Plaintiff complained of right arm numbness 22 and weakness from a herniated disc in his neck.

(AR 965). He had a 23 gait and station with normal posture but it was noted that he was 24 using an assistive device, with a slow, cautious, stiff and 25 unsteady gait. (AR 966). Dr. Patel prescribed Mobic for bursitis, 26 Wellbutrin for depression, and discussed taking fall precautions 27 due to recent falls. (AR 967). 28 1 Diabetes management visits in March and June 2022, noted that 2 Plaintiff's diabetes continued to be uncontrolled.

(AR 956-64). 3 The next note, from April 2023, reported a telephone visit during 4 which Plaintiff complained of shortness of breath, snoring, and 5 fatigue for the last seven months, and back and neck pain. (AR 6 1157). He was prescribed Albuterol, referred to pulmonology, and 7 told to follow up with his primary care doctor in a week. (AR 8 1158). 9 10 In June, August, and November 2023, and in February 2024, 11 Plaintiff followed up to discuss lab results, and his diabetes 12 remained uncontrolled.

(AR 1148-55, 1174-77, 1179-81). At the June 13 2023 visit, he reported normal gait, station, and posture, and was 14 not using an assistive device. (AR 1154). At the November 2023 15 visit, his diabetes remained uncontrolled but it was noted that he 16 was "doing so much better" with "big improvement" and had changed 17 his diet. (AR 1180). At the February 2024 visit, he reported that 18 he has pain and tingling in this hands from neuropathy when he 19 "tries to grab a sup or drive." (AR 1174).9 20 21 2.

Pain Management 22 23 Plaintiff saw a pain management doctor monthly from November 24 2019, through at least September 2023, for mid-back and chest wall 25 pain from his multiple rib and thoracic spine fractures, lumbar 26 27 9 It is not clear whether the reference to "sup" refers to a stand up paddle for paddleboarding or something else. (AR 1174). 28 1 and cervical radiculopathy, cervical myelopathy, and shoulder pain.

2 (AR 746-946, 1043-1132). At his initial evaluation in November 3 2019, Plaintiff reported that his pain severely limited his 4 functioning. (AR 935). On examination, he was able to transition 5 from seated to standing position and to the examination table with 6 mild to moderate difficulty, he had tenderness in his ribs, 7 decreased range of motion and tenderness to the thoracic spine, 8 5/5 strength in all extremities and intact sensation, and his gait 9 was antalgic with no mention of an assistive device.

(AR 937-38). 10 His doctor prescribed Norco three times a day. (AR 939). 11 12 In December 2019, Plaintiff reported 50 percent benefit from 13 Norco, but that each pill only lasted about four

hours. (AR 929). 14 He was able to perform activities of daily living including 15 preparing meals with the assistance of his medication. (Id.). His 16 examination findings were the same as the prior visit.

(AR 931). 17 Plaintiff's Norco was increased to four times a day. (AR 933). 18 19 In January 2020, Plaintiff complained of bilateral shoulder 20 pain and reported 50 percent benefit from taking Norco. (AR 923). 21 His examination findings were unchanged. (AR 925). His doctor 22 continued Plaintiff's Norco, prescribed Naloxone nasal spray, and 23 ordered bilateral shoulder MRIs.

(AR 926-27; see also AR 913-16 24 (MRI studies showing tendinosis, labral tears, mild osteoarthritis, 25 mild to moderate acromioclavicular joint arthropathy, and right 26 partial tearing of tendons)). 27 28 1 In February 2020, Plaintiff reported that his pain was worse 2 after a fall earlier that month, he was having more falls and was 3 seeing a neurologist who wanted Plaintiff to use his wheelchair 4 more often.

(AR 917). He was walking with a cane at his visit. 5 (Id.). He reported 30-40 percent benefit from taking Norco. (Id.). 6 His examination findings were unchanged from prior visits except 7 for the notation that he was using a cane and reported using a 8 wheelchair in the community. (AR 919). His Norco was continued. 9 (AR 921). 10 11 In March 2020, Plaintiff reported 50 percent benefit from 12 taking Norco.

(AR 908). He reported that he was still able to 13 perform activities of daily living with his medications. (Id.). 14 Examination findings were unchanged from the prior visit with a 15 note that he then was using a cane. (AR 910). His Norco was 16 continued. (AR 911). 17 18 Subsequent appointments were by telephone due to the Covid-19 19 pandemic. At monthly appointments from April 2020, until September 20 2023, Plaintiff's Norco was continued, and he also was given trials 21 of Medrol for increasing back pain twice, and Narcan spray.

(AR 22 746-907, 1043-1132). In December 2020, Plaintiff reported 23 improvement in his range of motion and activities of daily living 24 with his medication regimen without side effects, and mild 25 limitation in functioning due to pain. (AR 857).

In January, 26 February, March, April, May, and June 2021, Plaintiff continued to 27 report pain relief and functional improvement. (AR 824, 830, 835, 28 841, 844, 847, 852). In July 2021, he reported "significant relief" 1 in pain symptoms and increased activity level, despite a recent 2 fall due to vertigo. (AR 818; but see AR 815-16 (noting his pain 3 was moderate to severe with his current regimen but relieved 4 significantly to 7/10); AR 810, 813 (August 2021 note reporting 5 significant relief and increased activity but that Plaintiff's pain 6 had gotten much worse in the past month); AR 802, 807 (September 7 and October 2021 notes reporting Plaintiff had significant relief 8 from symptoms and increased activity)).

In May 2022, it was noted 9 that Plaintiff “display[ed]” improvement in his activities of daily 10 living. (AR 747). In August, September, and October 2022, Plaintiff 11 was reported to be functional and independent with activities of 12 daily living with pain medication. (AR 1097, 1105, 1113).

The 13 October 2022 note reported that Plaintiff uses a cane for 14 ambulation. (AR 1098). His doctor requested an EMG for Plaintiff’s 15 lower extremity weakness and a history of falls. (AR 1098). The 16 EMG study reportedly showed diabetic neuropathy. (AR 980). At 17 Plaintiff’s appointments in December 2022, and February and April 18 2023, Plaintiff reported that he was doing well with his 19 medications and was able to perform his activities of daily living.

20 (AR 1070-71, 1077-78, 1092). 21 22 3. The Opinion Evidence 23 24 Consultative examiner, Dr. David Hunt, prepared an internal 25 medicine consultation dated August 5, 2022. (AR 1019-22). Dr. Hunt 26 reviewed no medical records. (AR 1021). Dr. Hunt did review a 27 cervical spine x-ray showing minimal degenerative disease, and a 28 limited lumbar spine x-ray that was normal.

(AR 1018). Plaintiff 1 complained of neck and back pain and diabetic polyneuropathy. (AR 2 1019). On examination, he was able to generate only 20 pounds of 3 force with his right hand and zero pounds of force with his left, 4 he had normal gait and balance and did not require an assistive 5 device for ambulation, he had minimal back tenderness and some 6 limited range of motion, his sensation was intact, and he had 7 normal muscle bulk and tone and strength of 5/5 in his extremities.

8 (AR 1020-21). Dr. Hunt diagnosed, inter alia, diabetic 9 polyneuropathy and cervical and lumbar disc disease, and opined 10 that Plaintiff would be capable of medium work with frequent 11 pushing and pulling, frequent postural movements and activities 12 requiring agility, and no manipulative limitations or need for an 13 assistive device. (AR 1022). 14 15 State agency physicians reviewed the record in September of 16 2022, and February 2023, and found Plaintiff capable of a range of 17 medium work with frequent climbing of ramps and stairs, frequent 18 stooping, kneeling, crouching and crawling, occasional climbing of 19 ladders ropes and scaffolds, and no concentrated exposure to 20 hazards.

(AR 60-141). The state agency physicians expressly 21 considered Plaintiff’s shoulder MRIs showing mild to moderate 22 issues, and Plaintiff’s reduced grip strength noted in Dr. Hunt’s 23 consultative examination, but found that Plaintiff would have no 24 manipulative limitations. (AR 66-67, 74, 85-87, 92, 107-08, 113- 25 14, 127-28, 133-34). They reasoned that Plaintiff’s decreased grip 26 strength was likely secondary to poor effort (not noted by Dr. 27 Hunt).

(AR 75, 94, 115, 135). The state agency physician noted, on 28 reconsideration review that, there was no evidence of myopathy, 1 radiculopathy, or sensory polyneuropathy, no evidence of isolated

2 nerve injury, and Plaintiff's light sensation was intact at his 3 consultative examination. (AR 108, 128).

The state agency 4 physicians also noted that Plaintiff had an antalgic gait and was 5 using a cane at one appointment in February 2020 (and did not 6 mention any other appointments), but did not find that Plaintiff 7 would not need an assistive device. (AR 68, 72-75, 86, 91-94, 107, 8 112-15, 127, 132-35). 9 10 B. The ALJ Failed to Provide Legally Sufficient Reasons for 11 Discounting Plaintiff's Testimony and Statements About His 12 Physical Limitations 13 14 Plaintiff argues that the ALJ erred in determining his RFC by 15 failing to provide legally sufficient reasons for discounting his 16 testimony and statements suggesting greater limitations from 17 physical impairments.

Specifically, Plaintiff argues that the ALJ 18 relied solely on a lack of supporting objective medical findings 19 to support greater RFC restrictions, and relied on only a small 20 portion of the medical evidence in so finding. See Pl. Brief at 2- 21 10; Pl. Reply at 1-5.

The Court agrees. 22 23 1. Plaintiff's Statements 24 25 Plaintiff testified that he lived with his mother, and his 26 two children who were then between 9 and 13 years old. (AR 41). He 27 said he stopped working in 2018 because he developed diabetic 28 neuropathy and his hands started cramping severely which made it 1 hard to use them. (AR 43, 51). He would drop things.

(AR 52). He 2 said he was unable to work because he is in a lot of pain in his 3 neck, back, shoulders, legs and ankles, it is hard for him to move 4 around, and he gets dizzy because he cannot control his diabetes. 5 (AR 46, 48). Plaintiff said he could not drive because it is hard 6 for him to move his neck to change lanes and it is hard to sit in 7 a car.

(AR 41-42). He spent about 16 hours a day in bed, tried to 8 talk to his kids and help them with their homework, dressed himself, 9 and cared for his personal needs. (AR 48-49). His mother did all 10 the housework. (AR 48-49). 11 12 Plaintiff said he could lift only one pound due to his neck 13 injury, spasms in his right arm, and lack of strength in his hands.

14 (AR 49-50). He could sit for 10 minutes, walk for 55 feet, and 15 needed to use a cane - which was prescribed by his primary doctor 16 when he had his 2019 car accident - while walking for balance. (AR 17 46, 50-51). 18 19 In a Function Report form dated June 9, 2022, Plaintiff 20 reported that he has a hard time standing, walking, bending, and 21 lifting for long periods of time.

(AR 318). He spent his days 22 checking his blood sugar, eating breakfast, reading books, watching 23 television for 10 hours, and showering. (AR 319, 322). He could 24 manage his personal care but could not move fast bending to dress 25 himself because he gets dizzy. (AR 319). He did no household work 26 apart from making his bed with help. (AR 320). He stated that "it 27 hurts [him] to move." (Id.).

He could go outside every day for 28 sunshine and fresh air and ride in a car, but he could not go out 1 alone due to anxiety, dizziness, difficulty walking, communicating, 2 and standing. (AR 321-22). He did not drive because he was scared 3 after his 2019 car accident. (AR 321). He reported that he could 4 not stand people—he only put up with his immediate family.

(AR 5 322). He could not lift, squat, bend, stand, reach, walk kneel, or 6 use his hands for a long period of time due to dizziness. (AR 323). 7 He also had a hard time seeing, talking, and understanding. (Id.). 8 He estimated that he could walk twenty feet before needing to rest 9 for three minutes, pay attention for two minutes, and that he did 10 not finish what he started, did not follow instructions well, did 11 not handle change well, and is paranoid being around people.

(AR 12 323-24). He used a cane, wheelchair, and glasses daily. (AR 324). 13 His medications caused him to be disoriented, confused, dizzy, 14 drowsy, have blurred vision, mood changes, trouble concentrating, 15 trouble sleeping, anxiety, headaches, weakness, anger, and 16 aggression. (AR 325).10 17 18 10 In a third-party Function Report form dated May 31, 2022, 19 Plaintiff's significant other reported that she helped Plaintiff take his medications, and prepared his meals.

(AR 285-92). She 20 stated that Plaintiff had burns to his arms that caused a lot of 21 nerve damage, severe dizzy spells that cause him to lose his balance “alot,” and diabetes, shoulder and back injuries. (AR 285). She 22 reported the same daily activities reported by Plaintiff, but noted that Plaintiff watches his children while they are home from 23 school, and drives but not “much often due to his illness.” (AR 286-89).

She reported that: (1) Plaintiff has difficulty lifting 24 due to pain in his arms; (2) squatting, bending and standing cause 25 dizziness; (3) reaching affects his shoulders; (4) walking causes dizziness; (5) diabetes affects his vision; and (6) he had a hard 26 time completing tasks or understanding. (AR 290). She estimated that Plaintiff could walk less than half a mile before needing to 27 rest for up to an hour.

(Id.). She indicated that Plaintiff uses a walker, cane, brace/splint, and glasses, but did not indicate that 28 1 In Disability Report – Appeal forms, Plaintiff reported that 2 his mobility and fatigue had worsened, and that if he sits or 3 stands for long periods of time, his legs feel numb and start 4 shaking, and that he could walk about 25 feet before running out 5 of air and having pain.

(AR 328-35, 347-54). He reported that he 6 had stopped doing activities with his children. (AR 352). 7 8 2. Applicable Law 9 10 An RFC assessment requires the ALJ to consider a claimant's 11 impairments and any related symptoms that may “cause physical and 12 mental limitations that affect what [he] can do in a work setting.” 13 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

In determining a 14 claimant's RFC, the ALJ considers all relevant evidence, including 15 a claimant's statements and residual functional capacity 16 assessments made by consultative

examiners, state agency 17 physicians, and medical experts. 20 C.F.R. §§ 404.1513, 18 404.1545(a)(3), 416.913, 416.945(a)(3). 19 20 When assessing a claimant's credibility regarding subjective 21 pain or intensity of symptoms, the ALJ must engage in a two-step 22 analysis.

Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017). 23 First, the ALJ must determine if there is medical evidence of an 24 impairment that could reasonably produce the symptoms alleged. 25 *Garrison*, 759 F.3d at 1014. "In this analysis, the claimant is not 26 he uses a wheelchair. (AR 291). She reported that his medications 27 cause him to be dizzy, anxious, drowsy, and have mood swings.

(AR 292). 28 1 required to show that her impairment could reasonably be expected 2 to cause the severity of the symptom she has alleged; she need only 3 show that it could reasonably have caused some degree of the 4 symptom." *Id.* (emphasis in original) (citation omitted). "Nor must 5 a claimant produce objective medical evidence of the pain or 6 fatigue itself, or the severity thereof." *Id.* (citation omitted).

7 8 If the claimant satisfies this first step, and there is no 9 evidence of malingering, the ALJ must provide specific, clear and 10 convincing reasons for rejecting the claimant's testimony about 11 the symptom severity. *Id.* at 1014-15; see also *Robbins*, 466 F.3d 12 at 883 ("[U]nless an ALJ makes a finding of malingering based on 13 affirmative evidence thereof, he or she may only find an applicant 14 not credible by making specific findings as to credibility and 15 stating clear and convincing reasons for each."). "This is not an 16 easy requirement to meet: The clear and convincing standard is the 17 most demanding required in Social Security cases." *Garrison*, 759 18 F.3d at 1015 (citation omitted).

The ALJ must evaluate "the 19 intensity and persistence of those symptoms to determine the extent 20 to which the symptoms limit [the claimant's] ability to perform 21 work-related activities for an adult." Soc. Sec. Ruling ("SSR") 22 16-3p, 2017 WL 5180304, at *3. 23 24 While the ALJ cannot "delve into wide-ranging scrutiny of the 25 claimant's character and apparent truthfulness," *Trevizo*, 871 F.3d 26 at 678 n.5, the ALJ may consider "prior inconsistent statements 27 concerning the symptoms, and other testimony by the claimant that 28 appears less than candid; unexplained or inadequately explained 1 failure to seek treatment or to follow a prescribed course of 2 treatment; and the claimant's daily activities." *Ghanim v. Colvin*, 3 763 F.3d 1154, 1163 (9th Cir.

2014) (citation omitted). 4 Inconsistencies between a claimant's testimony and conduct, or 5 internal contradictions in the claimant's testimony, also may be 6 relevant. *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014). 7 8 In addition, the ALJ may consider the observations of treating 9 and examining physicians regarding, among other matters, the 10 functional restrictions caused by the claimant's symptoms.

Smolen 11 v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996); accord Burrell, 775 12 F.3d at 1137. However, it is improper for an ALJ to reject 13 subjective testimony based “solely on a lack of objective medical 14 evidence to fully corroborate the claimant’s allegations.” Bray v. 15 Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) 16 (citation omitted); see also Smartt v. Kijakazi, 53 F.4th 489, 498 17 (9th Cir.

2022) (reaffirming same but observing that inconsistency 18 with the medical evidence is a factor that can be considered; “When 19 objective medical evidence in the record is inconsistent with the 20 claimant’s subjective testimony, the ALJ may indeed weigh it as 21 undercutting such testimony.”) (emphasis original); SSR 16-3p, 2017 22 WL 5180304, at *5 (“Objective medical evidence is a useful 23 indicator to help make reasonable conclusions about the intensity 24 and persistence of symptoms, including the effects those symptoms 25 may have on the ability to perform work-related activities...”).

26 27 The ALJ must make a credibility determination with findings 28 that are “sufficiently specific to permit the court to conclude 1 that the ALJ did not arbitrarily discredit claimant’s testimony.” 2 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008) (citation 3 omitted); see Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 4 2015) (“A finding that a claimant’s testimony is not credible must 5 be sufficiently specific to allow a reviewing court to conclude 6 the adjudicator rejected the claimant’s testimony on permissible 7 grounds and did not arbitrarily discredit a claimant’s testimony 8 regarding pain.” (citation omitted).

Although an ALJ’s 9 interpretation of a claimant’s testimony may not be the only 10 reasonable one, if it is supported by substantial evidence, “it is 11 not [the court’s] role to second-guess it.” Rollins v. Massanari, 12 261 F.3d 853, 857 (9th Cir. 2001). 13 14 3.

The ALJ’s Evaluation of the Subjective Statements 15 16 In determining Plaintiff’s RFC, the ALJ summarized Plaintiff’s 17 subjective statements and testimony, and found that Plaintiff’s 18 “medically determinable impairments reasonably might be expected 19 to cause the alleged symptoms[,]” but his “statements concerning 20 the intensity, persistence and limiting effects of these symptoms” 21 were “not entirely consistent with the medical evidence and other 22 evidence in the record.” (AR 23-24).

23 24 The ALJ then discussed the medical record as follows: 25 Plaintiff had a visit on the June 5, 2018, alleged onset date, 26 where he complained of cramping and numbness in the hands and feet, 27 but had only obesity noted on examination. (AR 24 (citing AR 380)). 28 There was little evidence of medical care after this visit until 1 Plaintiff’s car accident in August 2019, when he was hospitalized 2 for two weeks to treat his injuries.

(Id. (citing AR 562)). After 3 the accident, Plaintiff began complaining of dizziness, imbalance, 4 headaches, nausea, and difficulty lifting objects, reporting 5 frequent use of a cane, but his

problems improved with fewer 6 residual symptoms being reported over time. See Id. (citing AR 695 7 (January 2020 note for cardiology consultation, where Plaintiff 8 was observed to have an unsteady gait for which he needed a cane, 9 and was not yet eligible for physical therapy due to thoracic and 10 lumbar fractures from his accident); AR 708 (March 2020 note 11 reporting multiple symptoms since Plaintiff's car accident, where 12 Plaintiff was using a wheelchair and was stiff and unsteady); AR 13 973 (July 2021 note for follow up after shoulder MRI where Plaintiff 14 reported his balance had only slightly improved since the last year 15 and that he had a recent fall due to his balance issues)).

The ALJ 16 found that Plaintiff had a "reduced need for ongoing care" 17 throughout 2022, and spine "imaging" revealed "minimal" 18 degenerative disc disease at C5-C6, and a normal lumbar spine. See 19 Id.(citing AR 1018 (August 2022 spine x-rays Dr. Hunt reviewed)). 20 The ALJ noted that Dr. Hunt reported that Plaintiff had normal gait 21 and balance without the use of an assistive device, and normal 22 muscle strength except in the left hand.

Id. (citing AR 1021 23 (reporting normal strength except for grip strength)). While 24 Plaintiff recently complained of shortness of breath, feeling 25 winded after talking too much, and wheezing, his examination at 26 the time of the visit reported no evidence of audible wheezing and 27 that Plaintiff was able to speak in clear full sentences. See Id. 28 (citing AR 1191-92 (April 2023 note for telephone visit reporting 1 that it was difficult to diagnose the cause of Plaintiff's symptoms 2 via a phone visit, and referring Plaintiff to a pulmonologist)).

3 The ALJ noted that the most recent evidence reported "very minimal" 4 ground glass interstitial changes in the middle lobe, and 5 subjective complaints of neuropathy and numbness in Plaintiff's 6 hands, but physical examination findings remained normal, and the 7 record confirmed that Plaintiff was able to drive. See AR 24-25 8 (citing AR 1174-75 (February 2024 note for lab test follow up visit 9 reflecting the same except Plaintiff reported that he has pain and 10 tingling when he "tries to" drive) (emphasis added)).

11 12 The ALJ adopted a more limited RFC than all the medical 13 opinions in the record had found, explaining: 14 15 Ultimately, considering the established physical 16 impairments and the consistent complaints of the claimant 17 I find these in combination warrant limiting assigned 18 work to the exertional level of light with additional 19 nonexertional postural limitations which accommodate the 20 mild degenerative changes in the spine and then 21 considering the exacerbating effects of obesity, the 22 assigned work should not involve working around 23 unprotected heights and considering the reports of 24 dizziness due to vertigo there should be no assigned work 25 around hazards and moving dangerous machinery.

26 27 * * * 28 1 Based on the foregoing, I find the residual functional 2 capacity as assessed for the Claimant in this decision 3 is supported by the totality of the evidence. While the 4 Claimant alleged significant limitations affecting a 5 wide range of functioning and considering the

claimant's 6 clinical presentation and the minimal findings on upon 7 examination, I find the reported pain and symptoms not 8 entirely consistent with the claimant's subjective 9 complaints and reports of pain and symptoms.

The 10 Claimant's complaints and reports of pain and symptoms 11 throughout this record are consistent and when these are 12 considered in combination with the limitations resulting 13 from the established impairments, the Claimant certainly 14 would not be able to return to their past relevant work. 15 However, the objective findings upon examination 16 throughout this record fully support finding the claimant 17 retains sufficient residual functional capacity to 18 engage in less demanding work at the light exertional 19 level with additional nonexertional limitations as 20 incorporated into the residual functional capacity in 21 this decision.

The residual functional capacity as 22 assessed for the Claimant in this decision fully 23 accommodates both for the limitations resulting from the 24 established impairment and the Claimant's reported pain 25 and symptoms and the residual functional capacity as 26 assessed in this decision incorporated specific 27 protections to address symptoms due to vertigo.

28 1 (AR 25). 2 3 4. Analysis 4 5 The ALJ's reasoning in this case is not sufficiently specific 6 for the Court to conclude that the ALJ rejected Plaintiff's 7 testimony and statements suggesting greater physical limitations 8 on permissible grounds. *Brown-Hunter v. Colvin*, 806 F.3d at 493. 9 The ALJ appears to have relied solely on a lack of supporting 10 medical evidence which the ALJ could not do, *Smartt*, 53 F.4th at 11 498; *Bray*, 554 F.3d at 1227, and the ALJ's characterization of the 12 evidence does not include significant findings in the record.

In 13 particular, the ALJ did not acknowledge the observations in the 14 record (discussed above) that Plaintiff had ongoing balance issues 15 and was a fall risk, or that Plaintiff had any shoulder impairments. 16 17 Defendant asserts that the ALJ also relied on asserted 18 inconsistencies between what Plaintiff reported and the medical 19 record, and a lack of consistent treatment commensurate with 20 Plaintiff's complaints.

See Def. Brief at 4-5. This Court is 21 constrained to consider only the reasoning the ALJ actually 22 provided. See *Brown-Hunter v. Colvin*, 806 F.3d at 494 (court is 23 constrained to review only the reasons the ALJ specifically 24 identified); cf. *Pinto v. Massanari*, 249 F.3d 840, 847 (9th Cir. 25 2001) (the court "cannot affirm the decision of an agency on a 26 ground that the agency did not invoke in making its decision"); 27 see also *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir.

2003) 28 (reversing district court's decision where the district court had 1 affirmed on the basis of reasons supported by the record but 2 unstated by the ALJ). Although the ALJ did not cite specifically a 3 lack of consistent treatment commensurate with Plaintiff's 4 complaints as a reason to discount his statements, this would not 5 have been particularly convincing, given the

ALJ's failure to cite 6 or discuss Plaintiff's consistent monthly pain management treatment 7 for almost a four-year period during which he was prescribed Norco 8 for his pain.

9 10 While the ALJ generally (and confusingly) referred Plaintiff's 11 "reported pain and symptoms" as "not entirely consistent with 12 [Plaintiff's] subjective complaints and reports of pain and 13 symptoms" (see AR 26), the ALJ did not identify any specific 14 inconsistencies on which to discount Plaintiff's statements and 15 testimony. (AR 23-26).

The only possible inconsistency between 16 Plaintiff's testimony and statements about his limitations and the 17 evidence that the ALJ mentioned with any specificity was 18 Plaintiff's reported normal gait and balance at his consultative 19 examination without the use of an assistive device, and Plaintiff's 20 testimony that he must use a cane to walk due to balance issues.

21 See AR 24 (citing AR 1021). However, this reference, alone, is not 22 a clear and convincing reason for rejecting Plaintiff's testimony 23 in its entirety, especially in light of the record suggesting that, 24 whether or not Plaintiff may require the use of an assistive device, 25 he has ongoing balance issues and other limitations with varying 26 degrees of support in the record.

27 28 1 The Court notes that Plaintiff's argument that the ALJ erred 2 by failing to consider a purported "medical opinion" from nurse 3 practitioner Ashley Morello is not well taken. See Pl. Brief at 4 10-12; Pl. Reply at 5-6. Ms. Morello provided an "Application for 5 Disabled Person Placard or Plates" for Plaintiff dated November 6 17, 2023, indicating that Plaintiff was eligible for a temporary 7 placard for six months (until May 17, 2024), based on: (1) "A 8 diagnosed disease or disorder which substantially impairs or 9 interferes with mobility," and (2) "A significant limitation in 10 the use of lower extremities," due to "cervical cord compression 11 with myelopathy[,] and lumbar radiculopathy causing severe pain 12 when walking." (AR 360-61).

Under applicable regulations, such an 13 indication is not a "medical opinion" the ALJ was required 14 expressly to consider. See 20 C.F.R. §§ 404.1513(a)(2), 15 416.913(a)(2) (defining a "medical opinion" as a statement about 16 what a claimant can still do despite impairments). 17 For the foregoing reasons, the Court finds the ALJ failed to 18 adequately consider Plaintiff's subjective testimony and 19 complaints regarding his physical impairments.

20 21 C. Remand Is Warranted 22 23 The decision whether to remand for further proceedings or 24 order an immediate award of benefits is within the district court's 25 discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 26 2000). Where no useful purpose would be served by further 27 administrative proceedings, or where the record has been fully 28 1 developed, it is appropriate to exercise this discretion to direct 2 an immediate award of benefits.

Id. at 1179 ("[T]he decision of 3 whether to remand for further proceedings turns upon the likely 4 utility of such proceedings."). However, where, as here, the 5 circumstances of the case suggest

that further administrative review could remedy the Commissioner's errors, remand is appropriate. *McLeod v. Astrue*, 640 F.3d 881, 888 (9th Cir. 2011); *8 Harman*, 211 F.3d at 1179-81.

Since the ALJ failed to properly assess Plaintiff's testimony and statements regarding his physical impairments in the context of the medical record as a whole, remand is appropriate. For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY. Dated: November 21, 2025
_____/s/_____
ALKA SAGAR UNITED STATES MAGISTRATE JUDGE
The Court has not reached any other issue raised by Plaintiff except to determine that reversal with a directive for the immediate payment of benefits would not be appropriate at this time.

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