

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

Amanda W. v. Commissioner of Social Security

Amanda W. · No. 3:25-cv-05396-DWC · Decided January 7, 2026

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF
WASHINGTON AT TACOMA 9 10 AMANDA W., CASE NO. 3:25-cv-05396-DWC 11 Plaintiff,
v. ORDER RE: SOCIAL SECURITY 12 DISABILITY APPEAL COMMISSIONER OF SOCIAL
13 SECURITY, 14 Defendant. 15 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for
judicial review of the denial 16 of her application for Supplemental Security Income (SSI)
benefits.

Pursuant to 28 U.S.C. § 17 636(c), Fed. R. Civ. P. 73, and Local Rule MJR 13, the parties have
consented to proceed before 18 the undersigned. After considering the record, the Court finds no
reversible error and affirms the 19 Commissioner's decision to deny benefits. 20 I.
BACKGROUND 21 Plaintiff applied for SSI on April 19, 2019. Administrative Record (AR)
9315.

Her 22 requested hearing was held before an Administrative Law Judge (ALJ) on April 6, 2021.
AR 47– 23 95. The ALJ issued an unfavorable decision the following month. AR 26–46. On
appeal to this 24 1 Court, the ALJ's decision was reversed pursuant to a stipulation by the parties
in April 2023. AR 2 9416–17. A second hearing was held on February 13, 2024. AR 9343–81.

The ALJ issued a 3 decision finding Plaintiff not disabled on May 10, 2024. AR 9312–42. The
Appeals Council 4 declined to consider Plaintiff's exceptions to the decision, making the decision
the final decision 5 of the Commissioner subject to judicial review. AR 9305–06.

On May 13, 2025, Plaintiff filed a 6 Complaint in this Court seeking judicial review of the ALJ's
decision. Dkt. 5. 7 II. STANDARD 8 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the
Commissioner's denial of 9 benefits if, and only if, the ALJ's findings are based on legal error or
not supported by 10 substantial evidence in the record as a whole.

Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th 11 Cir. 2005) (citing Tidwell v. Apfel, 161 F.3d
599, 601 (9th Cir. 1999)). 12 III. DISCUSSION 13 In her opening brief, Plaintiff argues the ALJ
erred in considering the medical opinion 14 evidence, her subjective testimony, and several lay
witness statements. Dkt. 18.1 15 A. Medical Opinion Evidence 16 ALJs are required to articulate
how they considered medical opinions.

See 20 C.F.R. § 404.1520c. “A medical opinion is a statement from a medical source about what [a claimant] can still do despite [his] impairment(s) and whether [he has] one or more impairment-related limitations or restrictions” in a set of abilities. 20 C.F.R. § 404.1513(a)(2).

For applications, like Plaintiff’s, filed after March 27, 2017, ALJs need not “defer or give any specific evidentiary weight, including controlling weight, to” particular medical opinions, including those of treating Plaintiff also contends the ALJ’s RFC assessment was erroneous because it did not include limitations supported by the evidence she contends was improperly evaluated.

Dkt. 18 at 18–19. Because the Court concludes the ALJ did not err in considering that evidence, the Court rejects this argument. 1 or examining sources. See 20 C.F.R. § 404.1520c(a). Rather, ALJs must consider every medical 2 opinion in the record and evaluate each opinion’s persuasiveness, considering each opinion’s 3 “supportability” and “consistency,” and, under some circumstances, other factors.

Woods v. Kijakazi, 32 F.4th 785, 791 (9th Cir. 2022); 20 C.F.R. § 404.1520c(b)–(c). 5 Plaintiff challenges the ALJ’s consideration of several statements and some of the 6 medical evidence. See Dkt. 18 at 3–13. 7 First, Plaintiff challenges the ALJ’s assessment of a letter submitted by Ruth Dekker, 8 ARNP, in September 2020 (AR 9251). Dkt. 18 at 3.

The letter stated that Plaintiff “has 9 uncontrolled epilepsy, which may cause difficulty obtaining and maintaining gainful 10 employment.” *Id.* Statements that a claimant is or is not “disabled, blind, able to work, or able to 11 perform regular or continuing work” are statements on issues reserved to the Commissioner 12 which the ALJ is not required to address.

20 C.F.R. § 404.1520b(c)(3)(i). To the extent ARNP 13 Dekker’s letter expressed an opinion that Plaintiff would be unable to obtain or maintain gainful 14 employment, it was a statement on an issue reserved to the Commissioner which the ALJ was 15 not required to address.² 16 Second, Plaintiff challenges the ALJ’s assessment of the medical opinion of J. Keith 17 Peterson, PhD, rendered in April 2017 (AR 309–14).

Dr. Peterson completed several tests and 18 then concluded Plaintiff required work that did not stress cognitive function and that her PTSD 19 would cause several problems in the workplace. AR 313. 20 To the extent Dr. Peterson’s opinion was inconsistent with the RFC, the ALJ found the 21 opinion unpersuasive because it was rendered two years prior to the start of the relevant period.

22 2 Plaintiff had also suggested to the ALJ that ARNP Dekker “did not want her working because she would be a 23 danger to herself and others,” but the ALJ found there was no evidence in the record to support this statement from ARNP Dekker. AR 9331.

Although the ALJ cited for this proposition an irrelevant treatment note (AR 4156), 24 Plaintiff has not shown the statement attributed to ARNP Decker appeared in the record. See Dkt. 18 at 3. 1 See AR 9332–33. This was a proper basis for rejecting the opinion. See *Carmickle v. Comm’r, 2 Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008) (“Medical opinions that predate the 3 alleged onset of disability are of limited relevance.”) (citation omitted).

The ALJ also noted 4 Plaintiff demonstrated intact cognitive functioning on examination. See AR 9332. The ALJ could 5 reasonably find normal mental status examinations from the relevant period were more probative 6 of Plaintiff’s functioning than Dr. Peterson’s examination from outside the relevant period. 7 Third, Plaintiff argues the ALJ erred in failing to specifically address a statement of 8 Laura Lynam, MD, wherein she described Plaintiff’s seizures, their relevant symptoms, and her 9 treatment (AR 2701–02).

But such descriptions do not describe what Plaintiff can do and how 10 she is restricted by her impairments. Dr. Lynam’s opinion is thus not a medical opinion. See 20 11 C.F.R. § 404.1513(a) (2). Rather, descriptions of the nature and severity of impairments 12 constitute other medical evidence. *Id.* § 404.1513(a)(3). 13 Fourth, Plaintiff contends the ALJ erred in assessing letters from Laura Hershkowitz, 14 DO, and Dr. Lynam.

Both sources wrote Plaintiff “would greatly benefit from having a 15 companion animal.” AR 2800, 9332. Such statements do not suggest Plaintiff would be unable to 16 work without a companion animal, so they do not suggest Plaintiff has further limitations which 17 would need to be included in the Residual Functional Capacity. See 20 C.F.R. § 404.1545(a)(1) 18 (“Your residual functional capacity is the most you can still do despite your limitations.”).

19 Fifth, Plaintiff also summarizes some of the rest of the medical evidence but fails to raise 20 any argument in doing so, aside from an assertion that it supports Plaintiff’s claim that she is 21 unable to work. See Dkt. 18 at 6–12.

The Court declines to assess this evidence. The Court will 22 not consider matters that are not “specifically and distinctly” argued in Plaintiff’s opening brief. 23 *Carmickle*, 533 F.3d at 1161 n.2 (quoting *Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 24 1 1145, 1164 (9th Cir. 2003)). Plaintiff’s bare assertion that the evidence supports her claim does 2 not demonstrate legal error in the ALJ’s assessment of the evidence or show the ALJ’s decision 3 was not supported by substantial evidence.

4 Finally, Plaintiff argues the ALJ erred in finding the opinions of the state agency sources 5 persuasive because they were rendered near the beginning of the relevant time period and they 6 were inconsistent with some of the other evidence of record, including the other statements 7 Plaintiff challenged and Plaintiff’s subjective testimony. Dkt. 18 at 12–13.

Plaintiff has not established error. The regulations do not require a source be discounted simply because that source did not consider all evidence. See 20 C.F.R. § 404.1520c(b)(2), 404.1520c(c)(5) (extent source familiar with evidence is valid consideration but not one of “most important factors” they must articulate their analysis of); see also *Else v. Saul*, 782 F. App’x 636, 637 (9th Cir.

2019) (unpublished) (“The [pre-2017] regulations require that an ALJ evaluate the degree to which a non-examining source considers the evidence, not that a failure to consider all evidence requires the source to be discounted.”).

The Court has found the ALJ properly assessed the evidence Plaintiff relies on in arguing the opinions were lacking in consistency. Nevertheless, “the report of a nonexamining, nontreating physician need not be discounted when it is not contradicted by all other evidence in the record.” See *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (quotation omitted, emphasis in original).

In sum, Plaintiff has not shown error in the ALJ’s assessment of the medical opinion evidence. B. Subjective Symptom Testimony Plaintiff testified at the first hearing that she continued to have one to two seizures per month. AR 60–61. She testified at the second hearing that, after her vagus nerve stimulator was implanted, she had about four seizures per year.

AR 9368. She testified that the seizures could inhibit her from talking or walking for several hours (AR 61–62) and that she would black out for up to several hours (AR 9369). She also testified to having traumatic flashbacks and panic attacks which were debilitating, preventing her from social interaction or productivity. See AR 5 65–66, 79–80, 9371.

Where (as is the case here) the ALJ finds Plaintiff has presented evidence of one or more impairments which could be reasonably expected to cause her alleged symptoms and there is no affirmative evidence of malingering, the ALJ must give specific, clear, and convincing reasons for discounting Plaintiff’s testimony. *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir.

2014) (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). The ALJ discounted Plaintiff’s testimony about her seizures because the evidence suggested her symptoms “would be much better controlled if [she] were more compliant with her treatment recommendations, including taking her medications regularly, avoiding marijuana, and avoiding alcohol.” AR 9329 (citing AR 2958, 2974).

As the ALJ noted, Plaintiff was told to avoid alcohol and marijuana because they could trigger seizures, but Plaintiff did not abide by that recommendation. See AR 9331 (citing AR 9201). An ALJ can consider an “unexplained or inadequately explained failure to... follow a prescribed course of treatment.” *Molina v. Astrue*, 18 674 F.3d 1104, 1112 (9th Cir.

2012). 19 Plaintiff offered some explanations for her failure to follow treatment recommendations, 20 but the ALJ properly considered them. See AR 2330–31. She suggested her failure to regularly 21 take medication was related to memory issues, but the ALJ reasonably rejected this contention 22 because mental status examinations regularly showed she had normal cognitive functioning.

AR 23 9329. Plaintiff points to Dr. Peterson’s examination as evidence of memory deficits but as 24 1 discussed, the ALJ could reasonably conclude that examination was not probative given it was 2 administered before the relevant period. Similarly, although Plaintiff reported hallucinations as 3 side effects to some medications, the ALJ properly discounted this because she had reported 4 elsewhere in the record she had hallucinations only for a few weeks.

AR 9329 (citing AR 2551). 5 The ALJ also discounted Plaintiff’s testimony because the alleged extent and frequency 6 of her seizures were not borne out by the record. See AR 9328–29. “Although lack of medical 7 evidence cannot form the sole basis for discounting pain testimony, it is a factor that the ALJ can 8 consider in his credibility analysis.” *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.

2005). 9 As the ALJ noted, no evidence suggested Plaintiff had significant difficulties after her 10 seizures. See AR 9329. Although she testified she would black out for up to several hours, she 11 told a provider the longest this occurred would be several seconds. AR 9330 (citing AR 9678). 12 As for the frequency of her seizures, the ALJ noted Plaintiff had several months in a row without 13 seizures prior to the 2021 hearing, despite testifying the seizures were a regular occurrence.

See 14 AR 9329. Although Plaintiff testified she had four seizures per year after her vagus nerve 15 implant, the ALJ noted there were no seizure- or neurology-related medical visits after December 16 2022. AR 9330. 17 Although only some of this evidence demonstrates an inconsistency between Plaintiff’s 18 testimony and the medical evidence, the ALJ nonetheless could properly consider the paucity of 19 evidence corroborating the frequency and severity of Plaintiff’s seizures in discounting her 20 testimony.

21 With respect to Plaintiff’s allegations of flashbacks and panic attacks, the ALJ discounted 22 this testimony because Plaintiff had not sought treatment for such symptoms. See AR 9330. This 23 was a proper basis on which to reject that testimony. “[E]vidence of ‘conservative treatment’ is 24 1 sufficient to discount a claimant’s testimony regarding severity of an impairment.” *Parra v. 2 Astrue*, 481 F.3d 742, 751 (9th Cir.

2007) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th 3 Cir. 1995)). 4 In sum, the ALJ properly rejected Plaintiff’s subjective symptom testimony. 5 C. Lay Witness Statements 6 Plaintiff also challenges the ALJ’s assessment of a statement from her father and 7 grandfather (AR 9646) and from her caregiver (AR 9670). Dkt. 18 at 18.

The ALJ was required 8 to provide germane reasons for rejecting these statements. *Dodrill v. Shalala*, 12 F.3d 915, 919 9 (9th Cir. 1993). The new regulations did not remove the requirement that an ALJ consider a lay 10 witness statement, and this requirement is the genesis of the germane reasons standard. See *Rhea 11 L. v. Comm’r of Soc. Sec.*, No. 2:24-CV-870, 2024 WL 5244402, at *4–5 (W.D.

Wash. Dec. 30, 12 2024) (citing *Dodrill*, 12 F.3d at 919; 20 C.F.R. §§ 404.1545(a)(3), 404.1529(a); SSR 96-8p). 13 However, an error in addressing a lay witness statement can be harmless where the statement is 14 duplicative of properly discounted testimony and the reasons given for rejecting that testimony 15 apply to the lay witness statement. See *Molina*, 674 F.3d at 1116–22.

16 Plaintiff’s father and grandfather described Plaintiff’s difficult pregnancy and some 17 symptoms of PTSD and indicated she required accommodations in school due to her learning 18 disability. AR 9646. The ALJ reiterated that there was insufficient evidence of a learning 19 disability. AR 9333; see also AR 9318 (finding no learning disability at step two).

Plaintiff has 20 not challenged this finding. Dkt. 18. Any error in assessing the statement’s discussion of 21 Plaintiff’s PTSD was harmless, as the ALJ properly considered Plaintiff’s similar testimony and 22 rejected it based on an inconsistency with Plaintiff’s course of treatment. 23 24 1 Plaintiff’s caregiver wrote that Plaintiff had nine grand mal seizures and fifteen absent 2 seizures from September 2023 to February 2024.

AR 9670. She also described some of 3 Plaintiff’s mental symptoms. *Id.* The ALJ properly found that the rate of seizures described was 4 incongruent with the medical evidence. AR 9333. Specifically, the ALJ found allegations of nine 5 grand mal seizures over six months inconsistent with Plaintiff’s lack of any seizure-related 6 treatment during that period. See *id.* This was a reasonable finding and provided a germane 7 reason for rejecting the statement.

As with the statement of Plaintiff’s father and grandfather, any 8 error in considering the mental components of the statement was harmless. 9 IV. CONCLUSION 10 For the foregoing reasons, the Court hereby AFFIRMS Defendant’s decision denying 11 benefits. 12 Dated this 7th day of January, 2026. 13 A 14 David W. Christel United States Magistrate Judge 15 16 17 18 19 20 21 22 23 24