

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Rivera Velez v. O'Malley, Commissioner of Social Security

Rivera Velez · No. 24-cv-04005-RMI · Decided September 3, 2025

SUMMARY

The United States District Court for the Northern District of California reviewed the Commissioner of Social Security’s decision finding the plaintiff no longer disabled. The court held that the ALJ erred by failing to properly consider obstructive sleep apnea at Step Two, Step Three, and in formulating the residual functional capacity, and by discounting psychological evaluations. The court reversed the decision and remanded for further proceedings to develop the record and reconsider the plaintiff’s impairments and functional limitations.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Bert M. Illman
JURISDICTION	United States District Court for the Northern District of California
DECIDED	September 3, 2025
DOCKET	24-cv-04005-RMI
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought judicial review under 42 U.S.C. §§ 405(g) and 1383(c) (3) of an administrative law judge's decision determining that he was no longer disabled and denying benefits. The parties consented to magistrate-judge jurisdiction and filed cross-briefs.
STANDARD OF REVIEW	The court reviewed the Commissioner's factual findings for substantial evidence and reviewed the decision for legal error, considering the administrative record as a whole and only the reasons provided by the ALJ.
PRECEDENTIAL VALUE	unknown
PARTIES	Dominic R. V., Rivera Velez v. Martin O'Malley, Commissioner of Social Security, Social Security Administration

TOPICS

judicial review of agency action

administrative law

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remedies

PRACTICE AREAS

Social Security disability

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judicial review of agency action

QUESTIONS PRESENTED

1. Whether the ALJ erred by finding Plaintiff's obstructive sleep apnea non-severe at Step Two.
2. Whether the ALJ adequately considered Plaintiff's sleep apnea and resulting fatigue at Step Three and in formulating the residual functional capacity.
3. Whether the ALJ improperly discounted the psychological opinions of Dr. Rosemarie Ratto and Dr. Lara San Pedro based on Plaintiff's sleepiness and allegedly inconsistent activities.
4. Whether the Step Two, Step Three, and opinion-evaluation errors were harmless.

HOLDINGS

1. The ALJ erred by treating Plaintiff's obstructive sleep apnea as a non-severe impairment subject to dismissal as patently groundless or merely minor.
2. The ALJ failed to adequately consider Plaintiff's sleep apnea and its effects at Step Three and in the residual-functional-capacity analysis.
3. The ALJ erred by discounting the findings of Dr. Ratto and Dr. San Pedro based on Plaintiff's sleepiness without adequately considering that sleepiness was itself a reported symptom of his impairments.
4. The ALJ failed to fully and fairly develop the record regarding the functional effects of Plaintiff's sleep apnea.

KEY QUOTATIONS

“A district court has limited scope of review and can only set aside a denial of benefits if it is not supported by substantial evidence or if it is based on legal error.” (at 3)

“Step Two’s evaluation is a de minimus test intended to weed out patently groundless claims and the most minor of impairments.” (at 5)

“An impairment is non-severe at Step Two only if the evidence establishes a slight abnormality that has only a minimal effect on an individual’s ability to work.” (at 5)

“In short, the court determines that it was error for the ALJ to find Plaintiff’s sleep apnea as non-severe at Step Two, and for the ALJ to discount the findings of Dr. Ratto and Dr. San Pedro as inconsistent with the record.” (at 7)

FACTUAL BACKGROUND

Plaintiff had longstanding ADHD, learning and reading disorders, autism spectrum disorder, depression, anxiety, obesity, visual impairments, and obstructive sleep apnea. He reported daily fatigue and falling asleep involuntarily, and he had stopped using his CPAP machine after it was recalled. The ALJ recognized several

severe impairments but found sleep apnea non-severe, discounted psychological evaluations that described marked or extreme limitations, and determined that Plaintiff could perform a reduced range of light work. The vocational expert testified that being off task more than 15 percent of the workday would preclude the identified jobs.

PROCEDURAL HISTORY

Plaintiff had previously been found disabled, including at the 2005 comparison point decision. Following a continuing disability review, the Agency found him no longer disabled as of March 23, 2015. After Appeals Council proceedings and remand, the ALJ issued a June 13, 2023 decision finding Plaintiff not disabled. The district court reversed the ALJ's decision and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The ALJ must develop the record concerning the effects of Plaintiff's sleep apnea and its interaction with his other impairments on his ability to function in the workplace. The ALJ must reconsider whether Plaintiff satisfies any paragraph B criteria in light of the findings of Dr. Ratto and Dr. San Pedro, or order further testing as needed, and must conduct further proceedings consistent with the order.

CASES CITED

- *Flaten v. Secretary of Health & Human Services*, 44 F.3d 1453, 1457 (9th Cir. 1995)
- *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019)
- *Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938)
- *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998)
- *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)
- *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014)
- *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987)
- *Edlund v. Massanari*, 253 F.3d 1152, 1158 (9th Cir. 2001)
- *Smolen v. Chater*, 80 F.3d 1273, 1288, 1290 (9th Cir. 1996)
- *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005)
- *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007)
- *Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012)