

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Benjamin R. v. Frank Bisignano, Commissioner of Social Security

Benjamin R. · No. 24-cv-1731-LL-MMP · Decided August 7, 2025

SUMMARY

This document is a Report and Recommendation from the United States District Court for the Southern District of California concerning a pro se plaintiff’s appeal of the Commissioner of Social Security’s denial of disability insurance benefits. The magistrate judge recommends affirming the denial, concluding that the ALJ’s findings regarding diabetic retinopathy, the residual functional capacity, and other challenged opinions were supported by substantial evidence and that remand for consideration of new evidence was unwarranted.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michelle M. Pettit, United States Magistrate Judge
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 7, 2025
DOCKET	24-cv-1731-LL-MMP
DISPOSITION	other
PROCEDURAL POSTURE	Report and Recommendation on Plaintiff's merits brief in a Social Security disability benefits appeal. The magistrate judge recommends affirming the Commissioner's final decision denying disability insurance benefits.
STANDARD OF REVIEW	The Commissioner's decision may be disturbed only if it is not supported by substantial evidence or is based on legal error. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The court reviews the administrative record as a whole, considers both supporting and detracting evidence, reviews only the reasons provided by the ALJ, and must uphold the ALJ's rational interpretation where the evidence is susceptible to more than one rational interpretation. Legal error is subject to harmless-error review.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Benjamin R. v. Frank Bisignano, Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

standard of review

appellate procedure

harmless error

PRACTICE AREAS

social security disability

administrative law

federal appellate and judicial review procedure

QUESTIONS PRESENTED

1. Whether the ALJ erred by finding Plaintiff's diabetic retinopathy non-severe.
2. Whether the ALJ's residual functional capacity assessment adequately incorporated Dr. Shertock's moderate limitations in concentration, persistence, and pace and ability to withstand an eight-hour workday.
3. Whether substantial evidence supported the ALJ's rejection of driving restrictions assessed by a state-agency medical consultant and Dr. Tran.
4. Whether the ALJ provided specific, clear, and convincing reasons for discounting Plaintiff's subjective statements concerning his inability or unwillingness to drive.
5. Whether the ALJ properly evaluated Dr. Campbell's medical opinion.
6. Whether Plaintiff was entitled to a sentence-six remand for consideration of evidence outside the certified administrative record.

HOLDINGS

1. A sentence-six remand requires new evidence that is material to determining disability and good cause for failing to submit it during the prior administrative proceeding. Plaintiff's proffered evidence did not satisfy those requirements.
2. Substantial evidence supported the ALJ's finding that Plaintiff's diabetic retinopathy was not a severe impairment.
3. The ALJ's RFC limitation to simple, routine tasks and simple work-related decisions adequately accounted for the moderate limitations in concentration, persistence, and pace identified by Dr. Shertock.
4. Substantial evidence supported the ALJ's rejection of the proposed restrictions on Plaintiff's driving.
5. The ALJ gave a specific, clear, and convincing reason supported by substantial evidence for discounting Plaintiff's statements concerning his inability or unwillingness to drive.
6. Substantial evidence supported the ALJ's finding that Dr. Campbell's opinion was only partially persuasive.

KEY QUOTATIONS

“The Commissioner’s decision will be disturbed only if “it is either not supported by substantial evidence or

is based upon legal error.”” (Section III)

“The Court finds the ALJ’s rationale that Plaintiff drove and worked driving to deliver food the month leading up to the hearing is a specific, clear, and convincing reason supporting the ALJ’s conclusion to discredit Plaintiff’s statements regarding his inability and unwillingness to drive.” (Section IV.F.2)

“IT IS HEREBY RECOMMENDED the District Judge issue an Order: (1) approving and adopting this Report and Recommendation, and (2) affirming the Commissioner’s decision.” (Conclusion and Recommendation)

FACTUAL BACKGROUND

Plaintiff alleged disability from diabetes and related complications, including peripheral neuropathy, gastroparesis, diabetic retinopathy, back pain, arthritis, and mental impairments. The ALJ found several severe impairments, including type I diabetes with peripheral neuropathy, hypothyroidism, gastroparesis, bilateral carpal tunnel syndrome, ADHD, OCD, and generalized anxiety disorder, but found diabetic retinopathy and several other conditions non-severe. The ALJ determined that Plaintiff retained the capacity for limited light work and could perform representative occupations such as price marker, office helper, and counter clerk. The magistrate judge concluded that the record supported the ALJ's findings and that any error concerning diabetic retinopathy would be harmless.

PROCEDURAL HISTORY

Plaintiff applied for disability insurance benefits alleging disability beginning March 1, 2020. The application was denied initially and on reconsideration; following an October 3, 2023 hearing, the ALJ issued an unfavorable decision on January 26, 2024, and the Appeals Council denied review on July 25, 2024. Plaintiff sought review under 42 U.S.C. § 405(g), and the magistrate judge recommends that the district judge adopt the Report and Recommendation and affirm the Commissioner's decision.

DISPOSITION

other

CASES CITED

- Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999)
- Woods v. Kijakazi, 32 F.4th 785, 788 (9th Cir. 2022)
- Luther v. Berryhill, 891 F.3d 872, 875 (9th Cir. 2018)
- Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019)
- Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017)
- Kitchen v. Kijakazi, 82 F.4th 732, 738 (9th Cir. 2023)
- Rounds v. Commissioner, 807 F.3d 996, 1002, 1006 (9th Cir. 2015)
- Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)
- Garrison v. Colvin, 759 F.3d 995, 1009-10, 1014-15 (9th Cir. 2014)
- Ferguson v. O'Malley, 95 F.4th 1194, 1199, 1203 (9th Cir. 2024)

- *Garcia v. Commissioner of Social Security*, 768 F.3d 925, 929, 932 (9th Cir. 2014)
- *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)
- *Woods v. Carey*, 525 F.3d 886, 889-90 (9th Cir. 2008)
- *Nault v. Colvin*, 593 F. App'x 722, 722 n.1 (9th Cir. 2015)
- *Toriello v. Colvin*, No. 13-cv-0653-LDG, 2014 WL 2919158, at *1 (D. Nev. June 25, 2014), *aff'd*, 656 F. App'x 845 (9th Cir. 2016)
- *Bruton v. Massanari*, 268 F.3d 824, 827 (9th Cir. 2001), as amended (Nov. 9, 2001)
- *Miller v. Berryhill*, 732 F. App'x 526, 528 (9th Cir. 2018)
- *Medina v. Colvin*, No. 16-cv-215-GPC-KSC, 2016 WL 4705571, at *1-2 (S.D. Cal. Sept. 8, 2016)
- *Chaney v. Schweiker*, 659 F.2d 676, 679 (5th Cir. 1981)
- *Petersen v. Berryhill*, 737 F. App'x 329, 332 (9th Cir. 2018)
- *Brewes v. Commissioner of Social Security Administration*, 682 F.3d 1157, 1162 (9th Cir. 2012)
- *Tonyette O. v. Bisignano*, No. 24-cv-00333-AJR, 2025 WL 1455958, at *8 (C.D. Cal. May 21, 2025)
- *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996)
- *Carmickle v. Commissioner, Social Security Administration*, 533 F.3d 1155, 1164 (9th Cir. 2008)
- *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020)
- *Shaibi v. Berryhill*, 883 F.3d 1102, 1108 (9th Cir. 2017)
- *Valentine v. Commissioner of Social Security Administration*, 574 F.3d 685, 690 (9th Cir. 2009)
- *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005)
- *Hill v. Astrue*, 698 F.3d 1153, 1161 (9th Cir. 2012)
- *Dunn v. Berryhill*, 722 F. App'x 684, 685 (9th Cir. 2018)
- *Mitchell v. Colvin*, 642 F. App'x 731, 733 (9th Cir. 2016)
- *Ferguson v. Berryhill*, No. 17-cv-00161-KES, 2017 WL 5054690, at *5 (C.D. Cal. Nov. 1, 2017)
- *Tamra W. v. O'Malley*, No. 22-cv-9098-JPR, 2024 WL 283684, at *4-5 (C.D. Cal. Jan. 25, 2024)
- *Sandra S. v. Kijakazi*, No. 21-cv-1248-AJB-MDD, 2022 WL 3355803, at *8 (S.D. Cal. Aug. 12, 2022), report and recommendation adopted, 2022 WL 4180973 (S.D. Cal. Sept. 12, 2022)
- *Rector v. Colvin*, No. 13-cv-00168-BEN-BGS, 2014 WL 794636, at *7 (S.D. Cal. Feb. 26, 2014)
- *Nadon v. Bisignano*, No. 24-3506, 2025 WL 2089066, at *3 (9th Cir. July 25, 2025)
- *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022)
- *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)
- *Ghanim v. Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014)
- *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035, 1040 (9th Cir. 2007)

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