

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
TEXAS, SHERMAN DIVISION

Byron Keith Tatum, II v. Frank Bisignano, Commissioner, Social
Security Administration

No. 4:23-CV-00658-BD (E.D. Tex.) · No. No. 4:23-CV-00658-BD · Decided March 23, 2026

SUMMARY

The United States District Court for the Eastern District of Texas reviews the denial of Byron Keith Tatum II’s claim for Social Security disability insurance benefits. Tatum challenges the ALJ’s rejection of ophthalmologist Dr. Stephanie Fleming’s visual-acuity findings under Listing 2.02 and the issuance of the decision by an ALJ who did not conduct the hearing. The court concludes that the Commissioner’s decision should be affirmed.

CASE DETAILS

COURT	United States District Court for the Eastern District of Texas, Sherman Division
WRITING FOR THE COURT	Bill Davis
JURISDICTION	United States District Court for the Eastern District of Texas, Sherman Division
DECIDED	March 23, 2026
DOCKET	No. 4:23-CV-00658-BD
DISPOSITION	affirmed
PROCEDURAL POSTURE	Judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision denying disability insurance benefits.
STANDARD OF REVIEW	The court reviewed whether the Commissioner's decision was supported by substantial evidence and whether the Commissioner applied the proper legal standards. The review was highly deferential; the court could not reweigh the evidence or substitute its judgment for that of the Commissioner.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion; precedential status unknown
PARTIES	Byron Keith Tatum, II v. Frank Bisignano, Commissioner, Social Security Administration

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the ALJ's determination that Tatum did not meet or equal Social Security Listing 2.02 for loss of central visual acuity.
2. Whether the Commissioner violated HALLEX by issuing a decision after the hearing ALJ became unavailable without documenting an assessment of whether a supplemental hearing was necessary.
3. Whether any alleged HALLEX violation prejudiced Tatum and warranted remand.

HOLDINGS

1. The ALJ permissibly found Dr. Fleming's opinion unpersuasive and substantial evidence supported the determination that Tatum did not meet Listing 2.02.
2. Tatum failed to show that HALLEX required ALJ Shilling to expressly document in the decision an assessment of whether a fourth hearing was necessary.
3. Tatum failed to establish either a HALLEX violation or resulting prejudice, so remand was unwarranted.

KEY QUOTATIONS

"The ALJ considered the supportability and consistency of Dr. Fleming's opinion, satisfying the requirements of that provision, and found it lacking." (Analysis I)

"It is ORDERED that the Commissioner's decision is AFFIRMED." (Conclusion)

FACTUAL BACKGROUND

Tatum alleged disability based principally on congenital nystagmus and fluctuating visual impairment, along with musculoskeletal and mental impairments. After multiple administrative proceedings, Dr. Stephanie Fleming reported visual acuity of 20/200 in both eyes, which Tatum contended satisfied Listing 2.02. The ALJ found Fleming's report unpersuasive because it was unsupported and inconsistent with the record, including unexplained findings concerning optic nerve atrophy and failure to address nystagmus, and concluded that Tatum did not meet Listing 2.02.

PROCEDURAL HISTORY

The Social Security Administration denied Tatum's application initially and on reconsideration. After three administrative hearings and two Appeals Council remands, an ALJ again denied benefits, and the Appeals

Council denied review. Tatum timely sought review in the district court, which affirmed the Commissioner's decision.

DISPOSITION

affirmed

CASES CITED

- Newton v. Apfel, 209 F.3d 448, 452-53, 459 (5th Cir. 2000)
- Selders v. Sullivan, 914 F.2d 614, 618 (5th Cir. 1990)
- Perez v. Barnhart, 415 F.3d 457, 464 (5th Cir. 2005)
- Boyd v. Apfel, 239 F.3d 698, 704 (5th Cir. 2001)
- Hollis v. Bowen, 837 F.2d 1378, 1383 (5th Cir. 1988)
- Harris v. Apfel, 209 F.3d 413, 417 (5th Cir. 2000)
- Carry v. Heckler, 750 F.2d 479, 482 (5th Cir. 1985)
- Washington v. Barnhart, 413 F. Supp. 2d 784, 791 (E.D. Tex. 2006)
- Carey v. Apfel, 230 F.3d 131, 135 (5th Cir. 2000)
- Falco v. Shalala, 27 F.3d 160, 162 (5th Cir. 1994)
- Whitehead v. Colvin, 820 F.3d 776, 780-81 (5th Cir. 2016)
- Grennan v. Commissioner of Social Security, No. 4:21-cv-00645-O-BP, 2022 WL 2056277, at *4 (N.D. Tex. May 23, 2022)
- Martinez v. Chater, 64 F.3d 172, 176 (5th Cir. 1995)
- Bradley v. Bowen, 809 F.2d 1054, 1057 (5th Cir. 1987)
- Strickland v. Harris, 615 F.2d 1103, 1110 (5th Cir. 1980)
- Webster v. Kijakazi, Webster v. Kijakazi, 19 F.4th 715, 718-19 (5th Cir. 2021)
- McAdams v. Commissioner of Social Security, No. 3:21-CV-00203, 2022 WL 17096166, at *3 (S.D. Tex. Nov. 21, 2022)
- Morgan v. Colvin, 803 F.3d 773, 775-78 (5th Cir. 2015)
- Fabian v. Berryhill, 734 F. App'x 239, 243 n.14 (5th Cir. 2018)
- Cloute v. Barnhart, No. 03-C-0737-C, 2004 WL 1469374, at *9 (W.D. Wis. June 25, 2004)
- SEC v. Chenery Corp., 332 U.S. 194, 196-97 (1947)
- Schofield v. Saul, 950 F.3d 315, 321 (5th Cir. 2020)
- Shave v. Apfel, 238 F.3d 592, 597 (5th Cir. 2001)
- Shinseki v. Sanders, 556 U.S. 396, 409 (2009)
- Lacher v. Commissioner, SSA, No. 4:23-CV-00551-ALM-AGD, 2024 WL 4206749, at *6-7 (E.D. Tex. Aug. 26, 2024)

