

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Pa Vang v. Commissioner of Social Security

Vang · No. 1:24-cv-01293-EPG · Decided May 16, 2025

SUMMARY

The United States District Court for the Eastern District of California reviewed Plaintiff Pa Vang’s challenge to the Commissioner of Social Security’s denial of disability benefits. The court held that the ALJ provided sufficient reasons for evaluating Vang’s subjective complaints and medical opinions, and that the decision was supported by substantial evidence. The court affirmed the Commissioner’s decision, entered judgment for the Commissioner, and closed the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 16, 2025
DOCKET	1:24-cv-01293-EPG
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff sought judicial review under 42 U.S.C. § 405(g) of the Commissioner of Social Security's unfavorable decision denying her application for disability benefits.
STANDARD OF REVIEW	The court reviewed factual findings, including the residual functional capacity assessment and evaluation of subjective complaints and medical opinions, for substantial evidence and reviewed the agency's legal conclusions for legal error. Substantial evidence means more than a mere scintilla but less than a preponderance and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
PRECEDENTIAL VALUE	unpublished district court opinion; precedential status unknown
PARTIES	Pa Vang v. Commissioner of Social Security

TOPICS

- judicial review of agency action
- administrative law
- ada / disability

PRACTICE AREAS

Social Security disability benefits

administrative law

judicial review of agency action

QUESTIONS PRESENTED

1. Whether the ALJ provided legally sufficient, clear and convincing reasons supported by substantial evidence for discounting Pa Vang's subjective symptom testimony.
2. Whether the ALJ properly evaluated treating psychologist Mark Popper's medical-source opinions under the revised Social Security regulations.
3. Whether the ALJ properly evaluated the prior administrative medical findings of the state-agency consultants under the revised Social Security regulations.
4. Whether the Commissioner's decision was supported by substantial evidence.

HOLDINGS

1. Because the record contained no affirmative evidence of malingering and the ALJ found that Vang's medically determinable impairments could reasonably be expected to cause the alleged symptoms, the ALJ was required to provide clear and convincing reasons supported by substantial evidence to discount her testimony. The ALJ satisfied that requirement by identifying inconsistencies and evidentiary shortcomings concerning her hearing loss, daily activities, mental-health treatment, suicidal ideation, and memory complaints.
2. For claims governed by the revised regulations, an ALJ need not give special deference to treating or examining physicians or provide the former specific-and-legitimate-reasons explanation based solely on the source relationship. The ALJ's decision to discount a medical opinion must instead be supported by substantial evidence, including an explanation of the opinion's supportability and consistency.

KEY QUOTATIONS

"A claimant's RFC is 'the most [a claimant] can still do despite [her] limitations.'" (at 2)

"Unless there is affirmative evidence showing that the claimant is malingering, the Commissioner's reasons for rejecting the claimant's testimony must be 'clear and convincing.'" (at 3)

"The revised social security regulations are clearly irreconcilable with our caselaw according special deference to the opinions of treating and examining physicians on account of their relationship with the claimant." (at 9)

FACTUAL BACKGROUND

Pa Vang alleged that hearing loss, depression, memory problems, and other mental-health symptoms prevented her from working. The ALJ found that she could perform work at all exertional levels subject to moderate noise, low-stress, simple-task, and limited-interaction restrictions, including no interaction with the public. The ALJ discounted the severity of Vang's subjective complaints based on inconsistencies with her work history, hearing-aid results, activities of daily living, treatment records, and mental-status and memory testing. The ALJ also

found treating psychologist Mark Popper's extreme limitations unpersuasive and found the state-agency consultants' opinions persuasive or mostly persuasive.

PROCEDURAL HISTORY

The Commissioner issued an unfavorable disability-benefits decision after administrative proceedings before an ALJ. Pa Vang filed a complaint seeking judicial review, and the parties consented to entry of final judgment by a United States Magistrate Judge under 28 U.S.C. § 636(c). The court reviewed the administrative record and affirmed the Commissioner's decision.

DISPOSITION

affirmed

CASES CITED

- Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)
- Richardson v. Perales, 402 U.S. 389, 401-02 (1971)
- Sorenson v. Weinberger, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975)
- Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991) (en banc)
- Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986)
- Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)
- Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995), as amended (Apr. 9, 1996)
- Smartt v. Kijakazi, 53 F.4th 489, 499 (9th Cir. 2022)
- Johnson v. Shalala, 60 F.3d 1428, 1433 (9th Cir. 1995)
- Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008)
- Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002)
- Orn v. Astrue, 495 F.3d 625, 639 (9th Cir. 2007)
- Woods v. Kijakazi, 32 F.4th 785, 787, 791-92 (9th Cir. 2022)
- Cuyson v. Berryhill, No. 2:16-CV-01913 AC, 2017 WL 3913874, at *5 (E.D. Cal. Sept. 7, 2017)
- Holohan v. Massanari, 246 F.3d 1195, 1207 (9th Cir. 2001)
- Maliha K. v. Saul, No. 8:19-CV-00877-MAA, 2020 WL 2113671, at *6 (C.D. Cal. May 4, 2020)
- Hilao v. Est. of Marcos, 103 F.3d 767, 778 n.4 (9th Cir. 1996)

OPINION

2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8 9
PA VANG, Case No. 1:24-cv-01293-EPG 10 Plaintiff, FINAL JUDGMENT AND ORDER 11
REGARDING PLAINTIFF'S SOCIAL v. SECURITY COMPLAINT 12 COMMISSIONER OF
SOCIAL SECURITY, (ECF Nos. 1, 13) 13 Defendant. 14 15 This matter is before the Court on
Plaintiff's complaint for judicial review of an 16 unfavorable decision by the Commissioner of the
Social Security Administration regarding her 17 application for disability benefits.

The parties have consented to entry of final judgment by the 18 United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c) with any appeal to the 19 Court of Appeals for the Ninth Circuit. (ECF No. 9). 20 Plaintiff argues as follows: 21 1.

The ALJ erred by rejecting Plaintiff's testimony without giving specific, clear 22 and convincing reasons. 23 2. The ALJ erred by improperly evaluating the treating clinical psychologists' medical source statements. 24 3.

The ALJ erred in finding the prior psychological administrative medical 25 findings persuasive. 26 (ECF No. 13, pp. 1-2). 27 Having reviewed the record, administrative transcript, the parties' briefs, and the 28 applicable law, the Court finds as follows. 2 A. Subjective Complaints 3 Plaintiff argues that the ALJ erred by discounting her testimony. (ECF No. 13, p. 13).

4 Defendant argues that the ALJ gave multiple sufficient reasons to discount her testimony. (ECF 5 No. 14, p. 16). 6 As this claim ultimately concerns the RFC, the Court begins by noting the following legal 7 standards. A claimant's RFC is "the most [a claimant] can still do despite [her] limitations." 20 8 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1); see also 20 C.F.R. Part 404, Subpart P, Appendix 2, 9 § 200.00(c) (defining an RFC as the "maximum degree to which the individual retains the 10 capacity for sustained performance of the physical-mental requirements of jobs"). "In 11 determining a claimant's RFC, an ALJ must consider all relevant evidence in the record, 12 including, inter alia, medical records, lay evidence, and the effects of symptoms, including pain, 13 that are reasonably attributed to a medically determinable impairment." *Robbins v. Soc.*

Sec. 14 Admin., 466 F.3d 880, 883 (9th Cir. 2006) (internal quotation marks and citations omitted). In 15 reviewing findings of fact with respect to RFC assessments, this Court determines whether the 16 decision is supported by substantial evidence. 42 U.S.C. § 405(g). Substantial evidence means 17 "more than a mere scintilla," *Richardson v. Perales*, 402 U.S. 389, 402 (1971), but less than a 18 preponderance.

Sorenson v. Weinberger, 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is "such 19 relevant evidence as a reasonable mind might accept as adequate to support a conclusion." 20 *Richardson*, 402 U.S. at 401 (internal citation omitted). 21 Here, the ALJ formulated the following RFC: 22 After careful consideration of the entire record, I find that the claimant has the residual functional capacity to perform a full range of work at all exertional levels 23 but with the following nonexertional limitations: she can perform work at a moderate noise level; she can perform low-stress jobs, defined as those having 24 only occasional decision making required and only occasional changes in the work 25 setting; she can understand and perform simple, routine tasks; and she can have occasional interaction with supervisors and coworkers, but no interaction with the 26 public.

27 (A.R. 15). 28 2 on her subjective complaints, but generally indicates that the RFC should have incorporated 3 further restrictions regarding her hearing loss, mental health symptoms, and memory problems. 4 (ECF No. 13, pp. 14-15). 5 As to a plaintiff's subjective complaints, the Ninth Circuit has concluded as follows: 6 Once the claimant produces medical evidence of an underlying impairment, the Commissioner may not discredit the claimant's testimony as to subjective 7 symptoms merely because they are unsupported by objective evidence.

Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); see also Cotton v. Bowen, 8 799 F.2d 1403, 1407 (9th Cir. 1986) ("it is improper as a matter of law to discredit 9 excess pain testimony solely on the ground that it is not fully corroborated by objective medical findings"). Unless there is affirmative evidence showing that the 10 claimant is malingering, the Commissioner's reasons for rejecting the claimant's 11 testimony must be "clear and convincing." Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir.

1989). General findings are insufficient; rather, the ALJ must identify 12 what testimony is not credible and what evidence undermines the claimant's complaints. 13 Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995), as amended (Apr. 9, 1996). 14 However, "[t]he standard isn't whether [the] court is convinced, but instead whether the 15 ALJ's rationale is clear enough that it has the power to convince." Smartt v. Kijakazi, 53 F.4th 16 489, 499 (9th Cir.

2022). An ALJ's reasoning as to subjective testimony "must be supported by 17 substantial evidence in the record as a whole." Johnson v. Shalala, 60 F.3d 1428, 1433 (9th Cir. 18 1995); see Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008) 19 ("Accordingly, our next task is to determine whether the ALJ's adverse credibility finding of 20 Carmickle's testimony is supported by substantial evidence under the clear-and-convincing 21 standard.").

22 Here, the ALJ concluded that Plaintiff's "medically determinable impairments could 23 reasonably be expected to cause the alleged symptoms." (A.R. 16). Accordingly, because there is 24 no affirmative evidence showing that Plaintiff was malingering, the Court looks to the ALJ's 25 decision for clear and convincing reasons, supported by substantial evidence, for not giving full 26 weight to Plaintiff's symptom testimony.

27 The ALJ summarized Plaintiff's subjective complaints as follows: 28 children. She had a driver's license. She last drove 2 years ago. Her relatives drove 2 her places. The claimant last worked as a material handler at Logic PD. She was laid off.

The claimant testified that her ability to work was limited by her hearing 3 and forgetfulness. She treated with Dr. Popper for 2 years. She saw him once a week. Concerning her depression, she did not want to live because she could not 4 hear well. Her family reminded her of appointments and to take her medicine. She 5 could not cook or help around the house.

The claimant asked what she did on an average day, and she responded that she did not do anything. She stayed in her 6 room by herself. 7 (A.R. 16). 8 Thereafter, the ALJ provided a summary of the evidence, including Plaintiff's subjective 9 complaints, and concluded that "the record supports no more than moderate functional 10 limitations." (A.R. 17).

As explained below, the ALJ discounted Plaintiff's subjective complaints 11 as being inconsistent or otherwise unsupported by the record. 12 Beginning with Plaintiff's claim about not being able to work because of her hearing loss, 13 the ALJ noted that, "[w]hile [Plaintiff] alleged that she could not work due to her hearing loss, the 14 record demonstrates that she was able to work at substantial gainful activity levels despite her 15 history of hearing loss and use of hearing aids." (A.R.

17). Similarly, the ALJ observed that the 16 reason that Plaintiff reportedly stopped working—her alleged impairments, including hearing 17 loss—was inconsistent with her later testimony and documents in the record demonstrating that 18 she was laid off due to the pandemic. (A.R. 17, referring to A.R. 47 (Plaintiff's testimony that her 19 employer "laid [her] off"); A.R.

549 (report stating that Plaintiff "worked as a material handler 20 for 3 years before being laid off in 2020 due to the Covid-19 pandemic")). Next, the ALJ noted 21 that Plaintiff's "hearing loss was treated with hearing aids, which improved her word 22 discrimination score to 95% on the right," although the ALJ acknowledged that Plaintiff had 23 profound hearing loss on the left.

(A.R. 16, 17). After the evaluation showing 95% word 24 discrimination on the right side, Plaintiff "did not require any follow up for worsening hearing or 25 problems with her hearing aids." (A.R. 16). Lastly, the ALJ noted that, at the hearing, while 26 Plaintiff "needed questions repeated at times (see Testimony and Exhibit 4F/4), she was generally 27 able to engage in sustained conversation without the need for hearing assistance (see e.g. 28 Testimony and Exhibit 5F/2)." (A.R.

17). 2 partially supported by the record." (A.R. 17). The ALJ concluded that Plaintiff's allegations about 3 her symptoms were inconsistent. For example, "[a]t the hearing, the claimant alleged that she 4 stayed in her room all day and did not do anything." (A.R. 17, referring to A.R. 54 (Plaintiff's 5 testimony stating, "I stay in my room all by myself [every day]")).

However, the ALJ noted that 6 the record otherwise contradicted this assertion: 7 [I]n the Function Report completed in June 2021, the claimant reported going outside daily for sunshine, driving at times, and shopping in stores weekly. 8 (Exhibit 5E). Likewise, at the psychological consultative examination, she reported ability to perform self-care independently; she could complete simple 9 household tasks, shop, and cook simple meals; she was able to pay bill bills and/or 10 handle cash appropriately; she could go out alone; and she enjoyed needlework.

(Exhibit 5F/3). 11 (A.R. 17). 12 Additionally, the ALJ noted that, while Plaintiff's mental health treatment notes showed 13 symptoms like anxiety, depression, and abnormal mood, "the treatment notes do not support more 14 than moderate limitations, as the claimant did not routinely demonstrate serious deficits or 15 abnormalities in memory, attention, concentration, thought content, goal-direct thought process, 16 cognitive functioning, hallucinations, suicidal ideation, or homicidal ideation." (A.R.

17). 17 Elsewhere, the ALJ concluded that Plaintiff's symptoms were not as severe as she claimed 18 because she never required "emergent care or inpatient psychiatric hospitalization for any mental 19 impairment."1 (A.R. 17). 20 Lastly, the ALJ concluded that Plaintiff's "allegations concerning her memory issues 21 [were] not entirely supported by the record." (A.R.

17). 22 At the hearing, the claimant testified that her ability to work was limited by her 23 forgetfulness, and explained that she provided inaccurate answers on her 24 educational history due to her memory issues. (Testimony).

However, the Medical Disorder Questionnaire Form shows the claimant was able to provide a detailed 25 description of her family, environmental, and educational history to her 26 1 The ALJ also noted that Plaintiff did not take any psychotropic medication, but as Plaintiff points out, 27 and as Defendant does not contest, this is inaccurate. (A.R. 17; ECF No. 15, p. 3).

Accordingly, the Court will not consider this as a valid reason to discount Plaintiff's allegations. However, as explained below, the 28 other reasons that the ALJ relied on are independently sufficient to discount Plaintiff's complaints. memory functioning was in the borderline range for her age group, the examiner 2 noted that she gave inconsistent responses and there was poor effort.

(Exhibit 5F/5-6). The contemporaneous mental status examination also showed her 3 memory was unimpaired. Id. at 4. 4 (A.R. 17-18). 5 Plaintiff contends that some of the ALJ's reasoning is flawed. For example, she argues 6 that her subjective complaints about disabling hearing loss and mental health issues are supported 7 by notes from her treating psychologist, which recorded hearing difficulties in almost every visit 8 along with mental symptoms, e.g., depression.

(ECF No. 13, p. 7). 9 Upon review of the evidence, the Court concludes that the ALJ's determination—that 10 Plaintiff's symptoms were not pervasive or severe enough to be totally disabling—is a reasonable 11 interpretation of the record. 12 The ALJ relied, in part, on the fact that the treatment notes did not routinely demonstrate 13 serious problems related to Plaintiff's "suicidal ideation." (A.R.

17). This is supported by the 14 record. In the numerous treatment notes at issue, there are only isolated references to Plaintiff 15 having suicidal ideation, and none indicate that Plaintiff had the intent to act on such thoughts. 16 (A.R. 547 ("Plaintiff was positive for suicidal thoughts with no

intent or plan”); A.R. 553 17 (“Patient noted having intense anxiety with thoughts of death and dying (due to, a recent discord 18 with a friend due to her condition))”; A.R.

586 (noting “thoughts of death and suicide (with no 19 intent or plan))”). Thus, while this is certainly a symptom of Plaintiff’s mental health issues, the 20 record does not indicate that it was so pervasive or severe as to render Plaintiff disabled.

In short, 21 while Plaintiff may wish for the ALJ to have provided more restrictions based on her treatment 22 record, this amounts, at most, to another rational interpretation of the evidence, which is not 23 sufficient to conclude that the ALJ erred. See *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 24 2002) (“Where the evidence is susceptible to more than one rational interpretation, one of which 25 supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”).

26 It was also proper for the ALJ to find Plaintiff’s hearing testimony—that she stayed in her 27 room by herself every day (A.R. 54)—inconsistent with evidence regarding her “ability to 28 perform self-care independently; she could complete simple household tasks, shop, and cook 2 alone; and she enjoyed needlework.” (A.R. 17, citing A.R. 478). While Plaintiff argues that “the 3 ALJ does not provide any analysis regarding how Plaintiff’s limited activities translate to the 4 ability to maintain full-time employment on a regular and continuing basis,” (ECF No. 13, p. 9) 5 the fact that Plaintiff’s testimony on this subject was inconsistent with other evidence is a valid 6 basis to discount subjective complaints.

See *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) 7 (noting transferability-to-work-setting and inconsistency as two grounds to discount subjective 8 complaints). 9 The ALJ also properly relied on previous testing from a consultative examiner that found 10 her memory unimpaired. Plaintiff argues that the ALJ should not have relied on this testing 11 because the ALJ ultimately found this examiner’s opinion unpersuasive.

(ECF No. 13, p. 15). 12 However, the reasons that the ALJ gave for finding the consultative examiner’s opinions 13 unpersuasive, that it was “not supported by her examination of the claimant, nor is it consistent 14 with the overall record, as she did not have the opportunity to review the subsequently submitted 15 mental health treatment notes or consider the claimant’s testimony,” did not call into question the 16 validity of the memory tests.

(A.R. 19). During that testing, Plaintiff “was able to recall 3 out of 3 17 words (ear, wagon, blue) in an immediate mode and remotely,” “was able to recall what was had 18 for breakfast,” “was able to recall date and place of birth,” and “was also able to recall family 19 history.” (A.R. 479).

The ALJ was correct to rely on such testing despite questioning Plaintiff’s 20 “inconsistent responses and poor effort” regarding other testing and discounting the examiner’s 21 ultimate opinion. (A.R. 18, 480). 22 The Court thus finds that the ALJ gave sufficient reasons for

discounting Plaintiff's 23 subjective complaints in formulating the RFC. 24 B. Medical Opinion 25 1.

Legal Standards 26 Plaintiff also challenges the ALJ's analysis of various medical opinions. The following 27 standards apply to these arguments. 28 Because Plaintiff applied for benefits in 2021, certain regulations concerning how ALJs 2 C.F.R. §§ 404.1520c, 416.920c. (A.R. 10). These regulations set "supportability" and 3 "consistency" as "the most important factors" when determining an opinion's persuasiveness.

20 4 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). And although the regulations eliminate the "physician 5 hierarchy," deference to specific medical opinions, and assignment of specific "weight" to a 6 medical opinion, the ALJ must still "articulate how [he or she] considered the medical opinions" 7 and "how persuasive [he or she] find[s] all of the medical opinions." 20 C.F.R. §§ 404.1520c(a)- 8 (b); 416.920c(a)-(b).

9 As for the case authority preceding the new regulations that required an ALJ to provide 10 clear and convincing or specific and legitimate reasons for rejecting certain medical opinions, the 11 Ninth Circuit has concluded that it does not apply to claims governed by the new regulations: 12 The revised social security regulations are clearly irreconcilable with our caselaw according special deference to the opinions of treating and examining physicians 13 on account of their relationship with the claimant.

See 20 C.F.R. § 404.1520c(a) ("We will not defer or give any specific evidentiary weight, including controlling 14 weight, to any medical opinion(s)..., including those from your medical 15 sources."). Our requirement that ALJs provide "specific and legitimate reasons" for rejecting a treating or examining doctor's opinion, which stems from the 16 special weight given to such opinions, see *Murray*, 722 F.2d at 501–02, is likewise 17 incompatible with the revised regulations.

Insisting that ALJs provide a more robust explanation when discrediting evidence from certain sources necessarily 18 favors the evidence from those sources—contrary to the revised regulations. 19 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). 20 Accordingly, under the new regulations, "the decision to discredit any medical opinion, 21 must simply be supported by substantial evidence." *Id.* at 787.

22 In conjunction with this requirement, "[t]he agency must 'articulate.... how persuasive' 23 it finds 'all of the medical opinions' from each doctor or other source, 20 C.F.R. § 404.1520c(b), 24 and 'explain how [it] considered the supportability and consistency factors' in reaching these 25 findings, *id.* § 404.1520c(b)(2)." *Woods*, 32 F.4th at 792. 26 Supportability means the extent to which a medical source supports the medical opinion by explaining the "relevant... objective medical evidence.

Id. 27 § 404.1520(c)(1). Consistency means the extent to which a medical opinion is “consistent... with the evidence from other medical sources and nonmedical 28 Id. at 791-92. 2 2. Discussion 3 a. Dr. Popper 4 Plaintiff challenges the ALJ’s decision to find the opinion of her psychologist, Dr. Mark 5 Popper, not persuasive. (ECF No. 13, p. 7).

The ALJ discussed this opinion as follows: 6 In November 2022, Mark Popper, Ph.D. opined that the claimant’s impairments 7 precluded performance of 15% or more of an 8-hour day in all areas; she would be absent 5 days or more a month; and she would be unable to complete a workday 5 8 days or more a month. (Exhibit 11F; see Exhibit 13F; 15F).

In April 2024, Dr. 9 Popper opined that the claimant’s capacity in all paragraph b functional areas was poor. (Exhibit 17F). I find this opinion not persuasive. 10 Dr. Popper’s opinion is not supported by his own treatment notes.

As discussed 11 above, the claimant presented as anxious and depressed; she was poorly dressed; she was poorly groomed with body odor; mood and affect were abnormal; she had 12 difficulty hearing and comprehending questions; she spoke rapidly and excessively 13 with a noted stutter; and she made minimal eye contact. (See e.g. Exhibit 17F/8, 10, 34). Otherwise, Dr. Popper’s treatment notes do not support his opinion, as the 14 claimant did not routinely demonstrate serious deficits or abnormalities in memory, attention, concentration, thought content, goal-direct thought process, 15 cognitive functioning, hallucinations, suicidal ideation, or homicidal ideation.

Id. 16 While I recognize that Dr. Popper stated in the Medical Disorder Questionnaire Form that there were findings of delusions, paranoid ideation, poor concentration, 17 poor memory and suicidal ideation (Exhibit 17F/3), his treatment notes do not outline such findings (Exhibit 17F/7-60). 18 Dr. Popper’s opinion is also inconsistent with the overall record.

As discussed 19 above, the claimant did not require emergent care or inpatient psychiatric 20 hospitalization for any mental impairment, nor was she taking any psychotropic medication.² (See Exhibit 24E). Moreover, Dr. Popper’s opinion is inconsistent 21 with the claimant’s ability to perform a wide range of activities of daily living.

In the Function Report completed in June 2021, the claimant reported going outside 22 daily for sunshine, driving at times, and shopping in stores weekly. (Exhibit 5E). 23 Likewise, at the psychological consultative examination, she reported ability to perform self-care interpedently; she could complete simple household tasks, shop, 24 and cook simple meals; she was able to pay bill bills and/or handle cash appropriately; she could go out alone; and she enjoyed needlework.

(Exhibit 5F/3). 25 (A.R. 20-21). 26 27 2 As noted above, there is evidence that Plaintiff was taking psychotropic medication. Accordingly, the Court does not consider this as a reason to discount Dr. Popper’s opinion.

However, as explained in this 28 order, the ALJ's other reasons are sufficient to discount Dr. Popper's opinion. 2 conclusions, that her lack of emergent care or hospitalization is not a valid reason to reject Dr. 3 Popper's opinion, and that the ALJ "cherry-picks" the record regarding her daily activities. (ECF 4 No. 13, pp. 7-11). Defendant argues that the ALJ properly found Dr. Popper's opinion to be not 5 persuasive based on the supportability and consistency factors.

(ECF No. 14, pp. 12-14). 6 Upon review of the parties' arguments and the record as a whole, the Court agrees with 7 Defendant. 8 Beginning with the supportability of Dr. Popper's opinion, the ALJ acknowledged the 9 symptoms recorded in Dr. Popper's treatment notes, e.g., Plaintiff's difficulty hearing, 10 depression, and poor grooming.

However, the ALJ ultimately found the disabling limitations 11 opined by Dr. Popper not persuasive, concluding instead that moderate limitations were 12 warranted in the RFC. Notably, the ALJ concluded that the treatment records did not show 13 routine nor serious enough symptoms to find Plaintiff disabled. (A.R. 21).

As already discussed 14 above in connection with Plaintiff's subjective complaints, the ALJ reasonably concluded that the 15 treatment notes did not warrant more restrictive limitations in the RFC, thus the ALJ's 16 interpretation of the record must prevail. 17 Likewise, as to consistency, the ALJ did not err by discounting Dr. Popper's opinion 18 based on Plaintiff not requiring emergent care of hospitalization for her mental health issues.

Dr. 19 Popper assessed the most restrictive limitations possible for Plaintiff in every single mental 20 category. (A.R. 517-19). It was reasonable for the ALJ to reject such extreme limitations, among 21 many other reasons, because more significant mental health care would normally be expected for 22 a person with such limitations. *Cuyson v. Berryhill*, No. 2:16-CV-01913 AC, 2017 WL 3913874, 23 at *5 (E.D.

Cal. Sept. 7, 2017) (finding no error in ALJ's reliance on lack of hospitalization, 24 among other considerations, to reject subjective testimony). 25 Regarding Plaintiff's daily activities, Plaintiff contends that the ALJ "cherry-picks" 26 evidence about Plaintiff's abilities. (ECF No. 13, p. 10). True, an ALJ is not permitted to 27 "selectively" rely on evidence to find a claimant not disabled, while "ignor[ing]" evidence 28 favorable to the claimant.

Holohan v. Massanari, 246 F.3d 1195, 1207 (9th Cir. 2001). However, 2 properly drew a contrast between Dr. Popper's extreme limitations and Plaintiff's daily activities 3 that undercut them, including her going outside, driving, and shopping. 4 Lastly, the Court notes that the ALJ also based on the RFC, in part, on medical opinions 5 from state agency consultants, who, contrary to Dr. Popper, concluded that Plaintiff was not 6 disabled.

(A.R. 18-19). The Court addresses those opinions below. 7 In short, the Court concludes that the ALJ's review of Dr. Popper's opinion was supported 8 by substantial evidence after consideration

of the supportability and consistency factors. 9 b. State Agency Consultants 10 Plaintiff next challenges the ALJ's decision to mostly credit the opinions of state agency 11 consultants.

(ECF No. 13, pp. 11-12). The ALJ discussed these opinions as follows: 12 I have considered the prior administrative medical findings of the State agency medical consultants A. Dipsia, M.D. and D. Tayloe, M.D. and find these 13 persuasive. (Exhibit 1A; 3A). Their finding is supported by their review of the record, which included the claimant's subjective reports, the medical evidence, and 14 her treatment history.

Their finding is also consistent with the overall record. As 15 discussed above, the claimant's hearing loss was treated with hearing aids, which improved her word discrimination score to 95% on the right. (Exhibit 6F/9). 16 Otherwise, the claimant did not require any follow up for worsening hearing or 17 problems with her hearing aids after she received her replacement hearing aids.

(See e.g. Exhibit 32E). While the claimant needed questions repeated at times (see 18 Testimony and Exhibit 4F/4), she was generally able to engage in sustained conversation without the need for hearing assistance (see e.g. Testimony and 19 Exhibit 5F/2). 20 As for the prior administrative medical findings of the State agency psychological consultants Jennifer Duffy, Ph.D. and Stephen Saxby, Ph.D., I find these mostly 21 persuasive.

(Exhibit 1A; 3A). Their finding for no more than moderate limitation 22 is supported by their review of the record, which included the claimant's subjective reports, the psychological consultative examination, and her reported 23 activities of daily living. Their finding of no more than moderate limitation is also consistent with the overall record.

As discussed above, the claimant did not require 24 emergent care or inpatient psychiatric hospitalization for any mental impairment, 25 nor was she taking any psychotropic medication. (See Exhibit 24E). Rather, her treatment was limited to therapy, which began 2 years after the alleged onset date 26 and the mental status examinations showed no more than moderate findings.

(Exhibit 17F). Nonetheless, I have adjusted the paragraph b ratings along with the 27 associated limitations based on the mental health treatment records submitted at 28 17F). 2 (A.R. 18-19). 3 Plaintiff argues that the ALJ's findings are not supported by substantial evidence.

First, 4 Plaintiff notes that Dr. Popper's treatment notes consistently reported her hearing difficulties. 5 (ECF No. 13, p. 12). However, as explained above, the ALJ reasonably concluded that Plaintiff's 6 hearing loss was not disabling based on various considerations, including Plaintiff's ability to 7 work before the relevant period despite her hearing problems and the fact that Plaintiff had a 8 hearing test with a 95% word discrimination score.

Second, Plaintiff contends that, “contrary to 9 the ALJ’s assertion, Plaintiff’s hearing testimony reflects significant hearing and speaking 10 limitations. Plaintiff needed questions repeated multiple times throughout the hearing.” (ECF No. 11 13, p. 12).

The Court has reviewed the hearing transcript and the ALJ accurately concluded that 12 Plaintiff was “generally able to engage in sustained conversation without the need for hearing 13 assistance.”³ (A.R. 18).⁴ 14 Third, Plaintiff generally criticizes the ALJ’s opinion because the state agency consultants 15 did not review all the records.

However, the fact that they did not review all the records is not a 16 reason, by itself, to reject their opinions. See *Maliha K. v. Saul*, No. 8:19-CV-00877-MAA, 2020 17 WL 2113671, at *6 (C.D. Cal. May 4, 2020) (“But the fact that a non-examining state agency 18 physician fails to review the entire record does not, by itself, mean that his or her opinion cannot 19 serve as substantial evidence.”).

Notably, Plaintiff does not contest that the ALJ reviewed all the 20 relevant records at issue, including her often cited treatment notes from Dr. Popper. 21 In short, the Court concludes that the ALJ’s review of the state agency opinions was 22 supported by substantial evidence after consideration of the supportability and consistency 23 factors.⁵ 24 25 3 The Court presumes that the ALJ meant that Plaintiff did not need “hearing assistance” beyond her hearing aids.

26 4 The Court also notes that Plaintiff testified with the assistance of an interpreter at the hearing, which may have contributed to any communication difficulties. 27 5 Plaintiff’s brief contains two footnotes appearing to also challenge the ALJ’s treatment of the opinions of Dr. Pushpa Guarashani. (ECF No. 13, pp. 11-12 n. 7&8). Plaintiff’s argument is not developed and need 28 not be addressed by the Court.

See *Hilao v. Est. of Marcos*, 103 F.3d 767, 778 n.4 (9th Cir. 1996) (“The enn ene I IIE III IIR IS ISI IIIS, GUS INOER IIE ES 1 } IL CONCLUSION AND ORDER 2 Based on the above reasons, the decision of the Commissioner of Social Security is 3 | affirmed.

The Clerk of Court is directed to enter judgment in favor of the Commissioner of Social 4 | Security and to close this case. 5 6 IT IS SO ORDERED. 7] Dated: _May 16, 2025 [Je hey — 8 UNITED STATES MAGISTRATE JUDGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 || summary mention of an issue in a footnote, without reasoning in support of the appellant’s argument, is insufficient to raise the issue on appeal.”).

Nor do Plaintiff’s arguments as to Dr. Popper’s opinion on her 27 || mental limitations necessarily apply to the opinion of Dr. Gurashani, which mostly concerned □□□□□□□□□□ physical limitations and was rejected in part because “the record does not demonstrate that he specializes 28 | in psychiatry or another mental health field.” (A.R. 20). 13

