

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Manuel McNeely Jr. v. Frank J. Bisignano, Commissioner of Social
Security**

McNeely · No. 24-cv-1435-BEN · Decided August 27, 2025

OPINION

McNeely Jr. v. Commissioner of Social Security

PER CURIAM.

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10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 13 Manuel McNeely Jr. Case No.: 24-cv-1435-BEN 14 Plaintiff,

15 v. ORDER VACATING DECISION OF

THE COMMISSIONER AND

16 Frank J. Bisignano, Commissioner of

REMANDING FOR

Social Security,¹

17 RECONSIDERATION

Defendant. 18 19 20 A Social Security disability benefits applicant may seek judicial review of a
final 21 agency decision pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3). Plaintiff filed this action 22
seeking judicial review of the Social Security Commissioner’s denial of his application 23 for
disability insurance benefits. 24 25 26 27 1 Frank J. Bisignano is now the Commissioner of Social
Security. Pursuant to Rule 25(d) 28 1 Plaintiff applied for disability and supplemental security
benefits claiming he was 2 unable to work as of September 2021. Plaintiff alleged disability
beginning on

3 September 2, 2021 due to episodes of blindness, degenerative disc disease, PTSD, knee

4 problem, and anxiety disorder. AR 51, 238. His claim was denied initially on March 3, 5 2022
(AR 150-154), and upon reconsideration on August 12, 2022 (159-163). After a 6 video hearing
held on July 6, 2023 (AR 122-144), Administrative Law Judge (“ALJ”) 7 Elias Xenos issued an
unfavorable decision dated October 19 2023. AR 30-49. The 8 Appeals Council denied review of
the ALJ’s decision, and the ALJ’s decision became 9 final. 10 Plaintiff suffers from a number of
severe orthopedic impairments. Important for 11 this appeal, Plaintiff also suffers from significant
vision impairments from glaucoma.² 12 The ALJ acknowledged Plaintiff’s manifold orthopedic
impairments in asking the 13 vocational expert whether he retained the residual functional
capacity to work. The 14 vocational expert opined that there were three jobs that Plaintiff can still

perform: 15 agricultural nut inspector, wooden dowel inspector, and glasses nosepiece assembler. AR 16 38. But the ALJ did not include Plaintiff's visual impairments when he posed the 17 question to the vocational expert. This was error. 18 At the hearing, Plaintiff recounted that he had suffered and continues to suffer 19 from serious glaucoma in both eyes. His intraocular pressures are poorly controlled 20 21 22 23 24 2 "Glaucoma develops when the optic nerve is damaged and can cause blind spots. The 25 damage to the optic nerve is usually the result of increased pressure in the eye." Shanaz K. v. O'Malley, No. 22-CV-1610-DDL, 2024 WL 913831, at *1 (S.D. Cal. Mar. 4, 2024) 26 (citing Mayo Clinic, "Glaucoma," <https://www.mayoclinic.org/diseases-conditions/glaucoma/symptoms-causes/syc-20372839>). It is a progressive disease. 28 1 despite his prescribed medications. He describes suffering from episodes of sudden 2 blindness lasting up to an hour or more.3 3 In September 2021, Plaintiff's treating physician, Dr. Dominguez, MD, made a 4 referral to an ophthalmologist for glaucoma of both eyes noting that Plaintiff has had this 5 disorder for many years. In December 2022, Dr. Dominguez, MD, noted that Plaintiff 6 has had glaucoma for a long time and "decreasing vision." AR 599. In March 2023, Dr. 7 Dominguez, MD, observed that Plaintiff is 100% disabled, partly because Plaintiff has 8 suffered from periods of blindness throughout his life which dramatically increased in 9 frequency from around July 2021. AR 593-94. 10 On January 13, 2023, he was seen by an ophthalmologist, Dr. Gitane Patel, MD, 11 and diagnosed with Primary Open-Angle Glaucoma, bilateral, moderate stage. AR 580. 12 On April 5, 2023, he was seen by a second ophthalmologist, Dr. Christopher Hsu, MD, 13 and again diagnosed with Primary Open-Angle Glaucoma, bilateral, moderate stage. AR 14 586. Dr. Hsu noted that Plaintiff requested a new doctor because his interocular 15 pressures were still uncontrolled "with VF loss OD on 2 meds." He was referred to 16 another specialist at the University of California, San Diego's Shiley Eye Center. 17 Ophthalmologist, Dr. Robert Neal Weinreb, MD,4 provides the most recent medical 18 record in the administrative record. 19 Dr. Weinreb examined Plaintiff on May 31, 2023, approximately six weeks before 20 the ALJ hearing, and diagnosed Plaintiff with Primary Open-Angle Glaucoma (POAG) of 21 both eyes, severe stage. AR 728. On June 6, 2023, Plaintiff underwent visual testing. 22 Just two weeks before the hearing, on June 20, 2023, Dr. Weinreb noted "Intraocular 23 pressure above goal despite [] with significant risk of progressive vision or visual field 24 loss and/or confirmed progression of vision or visual field loss." AR 748. He discussed 25 26 27 3 A report from Plaintiff's aunt dated January 2021 confirms that Plaintiff goes blind and takes medications for it. AR 266. 28 1 possible laser surgery to lower intraocular pressure and that Plaintiff elected to proceed 2 with selective laser trabeculoplasty in the right eye. AR 748-49. 3 The ALJ discounted all of this evidence of significant visual impairments. 4 The single medical opinion finding Plaintiff not disabled came from the 5 government medical consultant. However, as even the ALJ correctly points out, the 6 government consulting physician did not have the benefit of any of the treatment notes 7 associated with Plaintiff's glaucoma and retinopathy. AR 136. Thus, the ALJ correctly 8 found the government consultant's opinion of non-disability to be unpersuasive. AR 136. 9 Dr. Dominguez,

MD, the treating internal medicine physician, did find Plaintiff to be disabled. However, the ALJ also found Dr. Dominguez's opinion to be "unpersuasive." AR 136. The ALJ offered an explanation: "his diagnoses of 'blindness' is inconsistent with records from multiple orthopedic [sic] specialists indicating that, despite having severe stage glaucoma, the claimant retains good corrected visual acuity bilaterally and visual field index scores of 65% on the right and 98% on the left." AR 15 136. Yet, none of the reports actually describe Plaintiff's acuity as "good." And medical literature suggests that a visual field index of 65% represents a total loss of vision in 35% of the visual field – a limitation that may fall to the level of an unacceptable impairment for an employer hiring for the position of nut or dowel inspector or glasses assembler. Ophthalmologists Weinreb, Hsu, and Patel, expressed no opinions regarding Plaintiff's ability to work or how Plaintiff's vision loss would impair his ability to work. Unfortunately, the ALJ did not solicit opinions from these treating ophthalmologists nor did he seek an updated opinion regarding vision limitations from the government's In rejecting the opinion of Dr. Dominguez, MD, the ALJ seems to have skipped over the post-2017 federal regulations for evaluating medical opinions. See 20 C.F.R. §404.1520c. For example, the ALJ did not recognize the length of the treatment relationship spanning at least two years. Nor was the frequency of examinations noted. And the ALJ did not consider that Dr. Dominguez, MD, was an examining physician as a consulting physician. In discussing Plaintiff's testimony, the ALJ did acknowledge some vision loss finding "deficits associated with the claimant's glaucoma and retinopathy could reasonably impose some degree of visually related work restrictions," (AR 137), but curiously did not mention any visual limitations in posing the hypothetical residual functional capacity question to the vocational expert. AR 36-37. The ALJ also discounted Plaintiff's own testimony about his visual impairments. Before a claimant's testimony can be rejected, where (as is the case here) there is objective medical evidence of an underlying impairment and there is no evidence of malingering, the ALJ must provide specific, clear, and convincing reasons. *Brown-Hunter v. Colvin*, 806 F.3d 487, 488 (9th Cir. 2015) ("When an Administrative Law Judge (ALJ) determines that a claimant for Social Security benefits is not malingering and has provided objective medical evidence of an underlying impairment which might reasonably produce the pain or other symptoms she alleges, the ALJ may reject the claimant's testimony about the severity of those symptoms only by providing specific, clear, and convincing reasons for doing so."). The ALJ here provided reasons for disbelieving the Plaintiff's vision testimony, but the reasons are not convincing. For one thing, a person may be disabled from a severe impairment while symptoms wax and wane. *Taylor v. Commissioner*, 659 F.3d 1228, 1234 (9th Cir. 2011) (quoting *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) ("one does not need to be utterly incapacitated in order to be disabled"). At the hearing, Plaintiff describes his sudden vision loss as episodic rather than continuous. He does not drive a car because "Yes. According to my doctor . . . he told me there's nothing he can do. He said the vision is gone. The only treatments and stuff that I'm having is

to, I guess, slow down 25 the process. 26 It's – completely lose the vision. I can't see anything and, I mean, that's the only way to 27 describe it. I can't see anything. 28 1 of the risk of danger from sudden blindness. AR 19-20, 24. The ALJ found his 2 testimony "contradictory" because he also reports being able to watch television, handle 3 money, shop in stores, etc. AR 137. It could be error to reject a claimant's testimony on 4 this basis. *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014) ("[I]t is error to reject 5 a claimant's testimony merely because symptoms wax and wane in the course of 6 treatment."). 7 No one has suspected Plaintiff of malingering and neither the treating physicians, 8 nor the Commissioner's consulting physician, suggest that Plaintiff's recurring vision 9 loss is fabricated or exaggerated. Consequently, the ALJ has not provided convincing 10 reasons for rejecting Plaintiff's vision loss testimony. *Brown-Hunter*, 806 F.3d at 493. 11 That is not to say that the ALJ's decision was careless. His decision demonstrates a 12 thorough review of the medical record and a reasoned consideration of the case. 13 Nevertheless, the reasons must be also convincing to this Court in order to withstand 14 review. 15 Moreover, an ALJ has a duty to develop the record of evidence for a claimant. 16 "The ALJ in a social security case has an independent duty to fully and fairly develop the 17 record and to assure that the claimant's interests are considered[.]" *Tonapetyan v. Halter*, 18 242 F.3d 1144, 1150 (9th Cir. 2001) (citations and internal quotations omitted). The ALJ 19 rejected Plaintiff's vision testimony at step five of the well-known disability evaluation 20 process. But the ALJ did not consider vision limitations at step five perhaps because no 21 medical source had opined on those vision limits. In order to determine Plaintiff's 22 23 24 25 I mean, it happens all the time. Sometimes I have to call the ambulance and the ambulance [to] pick me up at the hospital, I'm usually at the hospital – maybe, actually it 26 probably does last maybe longer than an hour sometimes. From when the ambulance 27 picks me up and takes me to the hospital and see what they can do. Then, you know, by the time I'm gaining – they're giving me treatments and stuff and I'm gaining my vision 28 1 residual functional capacity at step five, the opinion of a vision specialist was needed to 2 describe Plaintiff's vision impairments. 3 While the ALJ is responsible for assessing a plaintiff's residual functional 4 capacity, "[b]arring a few exceptions, an ALJ must have a doctor's opinion of a 5 claimant's functional capacity in order for there to be substantial evidence supporting the 6 decisions." *Id.* (quoting *Duarte v. Saul*, No. 2:19-cv-01019 AC, 2020 WL 5257597, at *5 7 (E.D. Cal. Sept. 3, 2020)). "In formulating an RFC, an ALJ cannot interpret raw medical 8 data." *Id.* (citing *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975) (noting the 9 ALJ was not qualified as a medical expert)). An ALJ cannot "substitute his own 10 interpretations of medical records and data for medical opinions" when determining a 11 claimant's residual functional capacity. *Mack v. Saul*, No. 18-cv-01287-DAD-BAM, 12 2020 WL 2731032, at *2 (E.D. Cal. May 26, 2020). 13 Here, Plaintiff's vision test results and treatment records are the type of raw 14 medical data that is difficult for the lay person to interpret. Unfortunately, there is no 15 medical opinion in the record that interprets the vision testing data in regard to work 16 limitations. As it was in the case of *Howell v. Kijakazi*, it is the also the case

here. 17 “Because the record was inadequate to establish Plaintiff’s current function-by-function 18 capabilities, the ALJ had a duty to further develop the record. His failure to do so was an 19 error.” Howell, No. 20-cv-2517-BLM, 2022 WL 2759090, at *10 (S.D. Cal. July 14, 20 2022) (citation omitted). The ALJ’s duty to further develop the record warrants either a 21 consultative examination or medical expert opinion by a physician who has access to 22 23 24 25 7 A claimant’s RFC “is the most [he] can still do despite [his] limitations” and is determined by the ALJ after assessing all the relevant evidence. 20 C.F.R. § 26 404.1545(a)(1). “An RFC is ... based upon all relevant evidence in the record, including 27 medical records, medical source statements, and symptom testimony.” Howell v. Kijakazi, No. 20-cv-2517-BLM, 2022 WL 2759090, at *7 (S.D. Cal. July 14, 2022) 28 1 Plaintiff’s ophthalmologic records through July 2023. Id. (citing Banks v. Barnhart, 434 2 F. Supp. 2d 800, 805 (C.D. Cal. 2006)). 3 The ALJ also has a duty to pose to a vocational expert a hypothetical with all of a 4 claimant’s medical limitations. “If the hypothetical does not reflect all the claimant’s 5 limitations, we have held that the expert’s testimony has no evidentiary value to support a 6 finding that the claimant can perform jobs in the national economy.” DeLorme v. 7 Sullivan, 924 F.2d 841, 850 (9th Cir. 1991) (citing Embrey v. Bowen, 849 F.2d 418, 423 8 (9th Cir. 1988)); Anderson v. Bisignano, No. 5:24-cv-09503-BLF, 2025 WL 2447960 9 (N.D. Cal. Aug. 19, 2025) (“If the hypothetical ‘does not reflect all the claimant’s 10 limitations, then the expert’s testimony has no evidentiary value’”) (quoting Hill v. 11 Astrue, 698 F.3d 1153, 1162 (9th Cir. 2012). No limits or vision impairments were put to 12 the vocational expert in Plaintiff’s case; none were considered. Had the ALJ posed to the 13 vocational expert a hypothetical which included Plaintiff’s vision limitations (as informed 14 by a medical expert), it is likely that the vocational expert would have offered a much 15 different opinion of Plaintiff’s ability (or inability) to perform substantial gainful work. 16 Remand is necessary to provide the Commissioner with an opportunity to develop 17 the record. The Commissioner should obtain an opinion from a medical specialist about 18 limitations on work which will result from Plaintiff’s Primary Open-Angle Glaucoma. 19 Then, the ALJ will be equipped to pose a hypothetical to a vocational expert which will 20 include all of Plaintiff’s limitations. Only then will the ALJ be in a position to decide 21 whether Plaintiff retains the residual functional capacity to perform substantial gainful 22 employment in the national economy. See e.g. Barrow v. Colvin, No. 2:14-CV-269- 23 RHW, 2016 WL 737923, at *9 (E.D. Wash. Feb. 23, 2016) (“In this instance, the record 24 is underdeveloped glaucoma is a progressive disease, particularly when left 25 untreated. . . . The Court remands this claim to the Commissioner to have an ALJ 26 reevaluate Mr. Barrow’s claim. A consultative exam would be useful to shed light on Mr. 27 Barrow’s conditions and residual functional capacity, and the Court recommends that the 28 ALJ order one.”). 1 IT IS THEREFORE ORDERED that the final decision of the Commissioner of 2 || Social Security is reversed and the case is remanded for further consideration. 3 . 4 Dated: August 27, 2025

5 ON. ROGER T. BENITE

6 United States District Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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