

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Crystal M. R. v. Bisignano

No. ED CV 25-405-E, United States District Court for the Central District of California (July 1, 2025)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 11 CRYSTAL M. R., Case No. ED CV 25-405-E 12 Plaintiff, 13 v.
MEMORANDUM OPINION 14 FRANK BISIGNANO, 15 Commissioner of Social Security, 16
Defendant. 17 18 19 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS HEREBY 20
ORDERED that the matter is remanded for further administrative action consistent 21 with this
Opinion.

22 23 PROCEEDINGS 24 25 Plaintiff filed a complaint on February 13, 2025, seeking review of
the 26 Administration’s denial of disability benefits. The parties consented to proceed 27 before a
United States Magistrate Judge on March 4, 2025. Plaintiff filed 28 “Plaintiff’s Opening Brief” on
May 15, 2025. Defendant filed “Defendant’s Brief” 1 on June 16, 2025.

Plaintiff filed “Plaintiff’s Reply, etc.” on June 26, 2025. 2 3 STANDARD OF REVIEW 4 5 Under
42 U.S.C. section 405(g), this Court reviews the Administration’s 6 decision to determine if: (1)
the Administration’s findings are supported by 7 substantial evidence; and (2) the Administration
used correct legal standards. See 8 *Carmickle v. Comm’r*, 533 F.3d 1155, 1159 (9th Cir.

2008); *Hoopai v. Astrue*, 499 9 F.3d 1071, 1074 (9th Cir. 2007); see also *Brewes v. Comm’r of*
Soc. Sec. Admin., 10 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is “such relevant
11 evidence as a reasonable mind might accept as adequate to support a conclusion.” 12
Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted); 13 see
Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir.

2006). 14 15 INTRODUCTION 16 17 In 2023, this Court reversed and remanded a previous
administrative decision 18 against Plaintiff (Administrative Record (“A.R.”) 785-95). The Court
did so 19 because the Administration materially erred in regard to the opinion by Dr. 20
Chronister that Plaintiff’s ability to maintain regular workplace attendance “is 21 moderately
impaired” (id.).

22 23 Following remand, the Administration again materially erred in regard to the 24 opinion of
Dr. Chronister that Plaintiff’s ability to maintain regular workplace 25 attendance “is moderately
impaired.” Another remand is appropriate. 26 /// 27 /// 28 /// 1 DISCUSSION 2 3 The Court’s
2023 rulings included a ruling that the prior Administrative Law 4 Judge (“ALJ”) materially erred

by failing to seek clarification from Dr. Chronister 5 regarding the doctor's intended meaning in using the arguably ambiguous phrase 6 "moderately impaired." The Court then stated: 7 8 At a minimum, the uncertainty regarding the meaning of the 9 operative terms in Dr. Chronister's report should have prompted the 10 ALJ to seek clarification from Dr. Chronister.

Only Dr. Chronister 11 knows for certain the intended meaning of those arguably ambiguous 12 terms. "The ALJ has a special duty to fully and fairly develop the 13 record and to assure that the claimant's interests are considered. This 14 duty exists even when the claimant is represented by counsel." *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983); accord *Garcia v. Comm'r*, 768 F.3d 925, 930 (9th Cir.

2014); see also *Sims v. Apfel*, 17 530 U.S. 103, 110-11 (2000) ("Social Security proceedings are 18 inquisitorial rather than adversarial. It is the ALJ's duty to investigate 19 the facts and develop the arguments both for and against granting 20 benefits...."); *McLeod v. Astrue*, 640 F.3d at 885 (ALJ must develop 21 record when there is ambiguous evidence).

Here, the ALJ's failure to 22 seek clarification constituted additional error. See *id.*; *Robin R.A. v. Kijakazi*, 2022 WL 1599839, at *3 (C.D. Cal. Apr. 5, 2022) ("The 24 ambiguity in Dr. Chronister's opinion [regarding a 'moderate' 25 impairment in maintaining attendance]... should have prompted the 26 ALJ to seek clarification from Dr. Chronister"); see also *Widmark v. Barnhart*, 454 F.3d 1063, 1068 (9th Cir.

2006) (while it is a claimant's 28 duty to provide the evidence to be used in making a residual 1 functional capacity determination, "the ALJ should not be a mere 2 umpire during disability proceedings") (citations and internal 3 quotations omitted). 4 5 (A.R. 792-93). 6 7 Nevertheless, on remand, the ALJ again failed to seek clarification from Dr. 8 Chronister.

Again, this failure constituted error. 9 10 Defendant appears to contend that any error was harmless, arguing that a 11 "moderate" impairment has no material impact on work functioning. Defendant's 12 argument fails for the same reasons that the same or similar argument by Defendant 13 failed in 2023.

The Court then stated: 14 15 Defendant argues that the moderate impairment in Plaintiff's 16 ability to maintain regular workplace attendance found to exist by Dr. 17 Chronister would not materially affect Plaintiff's ability to maintain 18 regular workplace attendance. Defendant appears to argue that a 19 "moderate" impairment always permits the impaired person to 20 "function satisfactorily," citing Social Security Form HA-1152-U3.

21 Defendant's argument cannot be accepted on the present record. Dr. 22 Chronister did not define the operative terms in the doctor's report. 23 Dr. Chronister did not employ Social Security Form HA-1152-U3. 24 Examining physicians do not always ascribe to a "moderate" 25

impairment the meaning for which Defendant argues. See, e.g., 26 *Bisconer v. Berryhill*, 2018 WL 1041316, at *4 (D.

Or. Feb. 1, 2018), 27 adopted, 2018 WL 1040089 (D. Or. Feb. 23, 2018) (“The word 28 ‘moderate’ is ambiguous in the context of work attendance, and 1 neither Dr. Strabinger nor the ALJ clarified the effects of a ‘moderate’ 2 impairment....

As it stands, therefore, the record is ambiguous as to 3 whether [the claimant’s] moderate impairment translates into more 4 than two missed workdays per month, and the ALJ failed to address 5 the ambiguity in his opinion”); *Johnson v. Colvin*, 2015 WL 1501789, 6 at *2 (N.D. Cal. March 31, 2015) (in a follow-up questionnaire, the 7 doctor stated that a moderate limitation on the claimant’s ability to 8 maintain regular work attendance is likely to cause the claimant to be 9 absent from work more than four days per month); *Colon v. Colvin*, 10 2014 WL 6685474, at *6 (N.D.N.Y.

Nov. 26, 2014) (“terms like 11 ‘moderate’ are inherently vague and the Commissioner has provided 12 no specific definitions, other than to explain that ‘moderately limited’ 13 means only that a claimant’s capacity is impaired; it does not indicate 14 the degree and extent of the limitation”) (citations and quotations 15 omitted); see also *Grisham v. Colvin*, 2014 WL 7140980, at *3 (E.D.

16 Cal. Dec. 12, 2014) (when a doctor renders a narrative opinion, and 17 does not use Form HA-1152-U3, the form’s definition of “moderate” 18 should not be imputed to the doctor).[1] 19 20 (A.R. 791-92). 21 22 The Court also explained in its 2023 rulings that the ALJ could not properly 23 reject Dr. Chronister’s opinion implicitly, and that any explicit rejection of the 24 opinion must be explained.

The Court then stated: 25 [1] In any event, the ALJ’s failure to rely on the definition of “moderate” in 26 Form HA-1152-U3 would preclude this Court from utilizing that definition to 27 affirm the ALJ’s decision. See *Vasquez v. Berryhill*, 2017 WL 2633413, at *7 (E.D. Cal. June 16, 2017) (and cases cited therein). 28 1 If, contrary to Defendant’s argument, the ALJ actually rejected 2 Dr. Chronister’s opinion regarding the impairment of regular 3 workplace attendance (in favor of Dr. Paxton’s contrary opinion or 4 otherwise), the ALJ erred by failing to explain the rejection.

See 5 Social Security Ruling (“SSR”) 96-8P (“If the [residual functional 6 capacity] assessment conflicts with an opinion from a medical source, 7 the adjudicator must explain why the opinion was not adopted”; “The 8 adjudicator must also explain how any material inconsistencies or 9 ambiguities in the evidence in the case record were considered and 10 resolved”);¹ accord *Millsap v. Kijakazi*, 2023 WL 4534341, at *5 11 (applying SSR 96-8P to implicit rejection of an

impairment in the 12 claimant's capacity to maintain regular attendance); see also *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir.

2022) (under the new 14 regulations, the ALJ need not state specific, legitimate reasons for 15 rejecting the opinion of an examining physician, but still must provide 16 some explanation for the rejection); *Heather R. v. Saul*, 2021 WL 17 3080331, at *22-23 (D. S.D. July 21, 2021) (ALJ erred by appearing 18 implicitly to reject doctor's opinion that claimant would be 19 moderately impaired in maintaining regular attendance, although the 20 ALJ purportedly had given "great weight" to other opinions by the 21 same doctor); *Wiles v. Berryhill*, 2017 WL 5186333, at *3 (ALJ erred 22 by failing to state reasons for implicitly rejecting doctor's opinion that 23 claimant would have moderate limitations in maintaining regular 24 attendance).

25 /// 26 27 1 SSRs are binding on the Administration. See *Terry v. Sullivan*, 903 F.2d 1273, 1275 n.1 (9th Cir. 1990). 28 1 (A.R. 789-90). 2 3 The entirety of the ALJ's discussion of Dr. Chronister's opinion on remand is 4 indented below: 5 6 The opinion by the psychological CE at Exhibit 7F is found 7 somewhat persuasive.

The CE opined the claimant has moderate 8 limitation in maintaining regular attendance and completing a 9 normal workday and workweek without psychiatric interruptions, yet 10 also found only mild limitation in performing simple and repetitive 11 tasks, accepting instructions from supervisors, and performing work 12 activities on a consistent basis without special or additional 13 instructions.

As noted above, the undersigned finds that despite 14 moderate mental limitations, the claimant is able to maintain 15 attendance and sustain work activity consistent with the RFC detailed 16 above. Therefore, based on supportability with medical signs and 17 laboratory findings, consistency with the objective medical record as 18 discussed herein, and area of specialization, the undersigned finds the 19 psychological CE's opinion is somewhat persuasive.

20 21 (A.R. 755). 22 23 Thus, the ALJ's oblique rejection of Dr. Chronister's "moderately impaired" 24 opinion on remand² was less than explicit and was explained only with generalized, 25 26 2 The prior ALJ purported to have been "highly persuaded" by Dr. 27 Chronister's opinions, although the prior ALJ failed properly to translate any moderate impairment into the residual functional capacity assessment (A.R.

786- 28 89). 1 conclusory references. 2 3 Again, the Court is unable to find these errors to have been harmless. As the 4 Court stated in 2023: 5 6 "[A]n ALJ's error is harmless where it is inconsequential to the 7 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 8 1104, 1115 (9th Cir. 2012) (citations and quotations omitted), 9 superseded by regulation on other grounds as stated in *Sisk v. Saul*, 10 820 Fed.

App'x 604, 606 (9th Cir. 2020); see *McLeod v. Astrue*, 640 F.3d 881, 887 (9th Cir. 2011) (error not harmless where “the 12 reviewing court can determine from the ‘circumstances of the case’ 13 that further administrative review is needed to determine whether 14 there was prejudice from the error”).

Here, the vocational expert 15 testified that a person absent from the workplace even as infrequently 16 as twice each month could not perform any job (A.R. 39).³ 17 18 (A.R. 790-91). 19 20 Remand again is appropriate because the circumstances of this case continue 21 to suggest that further development of the record and further administrative review 22 could remedy the ALJ's errors.

See *Treichler v. Comm'r*, 775 F.3d 1090, 1105 (9th Cir. 2014) (“Where, as in this case, an ALJ makes a legal error, but the record is 24 uncertain and unambiguous, the proper approach is to remand the case to the 25 agency”); *McLeod v. Astrue*, 640 F.3d at 888; see also *INS v. Ventura*, 537 U.S. 12, 26 27 3 At the hearing following remand, a vocational expert testified that a person having “two to three work absences each month” could not perform any job (A.R.

28 778). 1 || 16 (2002) (upon reversal of an administrative determination, the proper course is 2 || remand for additional agency investigation or explanation, except in rare 3 || circumstances); *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017) (reversal 4 || with a directive for the immediate calculation of benefits is a “rare and prophylactic 5 || exception to the well-established ordinary remand rule”); *Dominguez v. Colvin*, 6 || 808 F.3d 403, 407 (9th Cir.

2015) (“Unless the district court concludes that further 7 || administrative proceedings would serve no useful purpose, it may not remand with 8 || a direction to provide benefits”); *Harman v. Apfel*, 211 F.3d 1172, 1180-81 (9th 9 || Cir.), cert. denied, 531 U.S. 1038 (2000) (remand for further proceedings rather 10 || than for the immediate payment of benefits is appropriate where there are 11 || “sufficient unanswered questions in the record”); compare *Brown-Hunter v. Colvin*, 12 || 806 F.3d 487, 495-96 (9th Cir.

2015) (discussing the narrow circumstances in 13 || which a court will order a benefits calculation rather than further proceedings). 14 || There remain significant unanswered questions in the present record. 15 16 CONCLUSION 17 18 For the foregoing reasons, the decision of the Administration is reversed in 19 || part and the matter is remanded for further administrative action consistent with this 20 || Opinion.

21 22 LET JUDGMENT BE ENTERED ACCORDINGLY. 23 24 DATED: July 1, 2025 (LEA ELLZ= —____CHARLES F. FICK. 27 UNITED STATES MAGISTRATE JUDGE 28