

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON**

Remi S. v. Commissioner of Social Security

No. 2:23-CV-1373-DWC (W.D. Wash. Dec. 17, 2025) · No. 2:23-CV-1373-DWC · Decided December 17, 2025

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 WESTERN DISTRICT OF
WASHINGTON AT TACOMA 9 10 REMI S., CASE NO. 2:23-CV-1373-DWC 11 Plaintiff, v.
ORDER RE: SOCIAL SECURITY 12 DISABILITY APPEAL COMMISSIONER OF SOCIAL
13 SECURITY, 14 Defendant. 15 Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for
judicial review of the denial 16 of his applications for Supplemental Security Income (SSI)
benefits and Disability Insurance 17 Benefits (DIB).

Pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and Local Rule MJR 13, the 18 parties have
consented to proceed before the undersigned. After considering the record, the Court 19 concludes
that this matter must be reversed and remanded pursuant to sentence four of 42 U.S.C. 20 § 405(g)
for further proceedings consistent with this Order. 21 I. BACKGROUND 22 Plaintiff applied for
SSI and DIB on July 6, 2022.

Administrative Record (AR) 17. His 23 amended alleged date of disability onset is June 1, 2022.
Id. His requested hearing was held 24 1 before an Administrative Law Judge (ALJ) on August 6,
2024. AR 41–62. The ALJ issued a 2 written decision finding Plaintiff not disabled on August 21,
2024. AR 14–35.

The Appeals 3 Council declined Plaintiff’s timely request for review, making the ALJ’s decision
the final 4 agency action subject to judicial review. AR 1–6. On July 23, 2025, Plaintiff filed a
Complaint in 5 this Court seeking judicial review of the ALJ’s decision. Dkt. 5. 6 II. STANDARD
7 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of 8 benefits
if, and only if, the ALJ’s findings are based on legal error or not supported by 9 substantial
evidence in the record as a whole.

Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th 10 Cir. 2005) (citing Tidwell v. Apfel, 161 F.3d
599, 601 (9th Cir. 1999)). 11 III. DISCUSSION 12 In his opening brief, Plaintiff contends the ALJ
erroneously assessed (1) his subjective 13 symptom testimony, (2) a medical opinion, (3) the
Residual Functional Capacity (RFC), and (4) 14 several lay witness statements.

Dkt. 9. 15 A. Subjective Testimony 16 Plaintiff testified he has periodic panic attacks. See AR 51–
52. They stem from his 17 seizure disorder—although he has not had a seizure since 2019, his

panic attacks result from a 18 fear of recurrence. *Id.* The panic attacks are unpredictable, but can occur every day in a week, 19 and he has not gone a full month without having one.

AR 57. They make it difficult to leave his 20 home. AR 56. He takes a seizure medication and sleeps for several hours after having one. AR 21 52. He also stated that, due to his depression, he has social issues and is prone to anger. AR 54. 22 Where (as is the case here) the ALJ finds Plaintiff has presented evidence of one or more 23 impairments which could be reasonably expected to cause his alleged symptoms and there is no 24 1 affirmative evidence of malingering, the ALJ must give specific, clear, and convincing reasons 2 for discounting Plaintiff's testimony.

Garrison v. Colvin, 759 F.3d 995, 1014–15 (9th Cir. 2014) 3 (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). In so doing, "[t]he ALJ must state 4 specifically which symptom testimony is not credible and what facts in the record lead to that 5 conclusion." *Smolen*, 80 F.3d at 1284.

The Court is "constrained to review the reasons the ALJ 6 asserts." *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). 7 The ALJ discounted Plaintiff's testimony because it was purportedly inconsistent with 8 the medical evidence, his course of treatment, and his activities of daily living. See AR 26.

The 9 Court finds these were not specific, clear, and convincing reasons supported by substantial 10 evidence for rejecting the entirety of Plaintiff's testimony. 11 First, the ALJ found Plaintiff's testimony inconsistent with the frequency of his seizures, 12 the frequency of his panic attacks reflected in the medical evidence, and several normal mental 13 evaluations.

See *id.* "When objective medical evidence in the record is inconsistent with the 14 claimant's subjective testimony, the ALJ may indeed weigh it as undercutting such testimony." 15 *Smartt v. Kijakazi*, 53 F.4th 489, 498 (9th Cir. 2022) (emphasis in original). But "an ALJ cannot 16 insist on clear medical evidence to support each part of a claimant's subjective pain testimony." 17 *Id.* (citing *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir.

2005)). 18 The frequency of Plaintiff's seizures has little bearing upon Plaintiff's anxiety from his 19 fears of seizures; one can have anxiety over seizures without experiencing seizures. As for the 20 frequency of Plaintiff's panic attacks, the record is not inconsistent with Plaintiff's testimony. 21 Although few treatment notes suggest a particular frequency with which he had panic attacks, the 22 record corroborates his testimony of having them and it does not suggest he had the attacks less 23 frequently than alleged.

See AR 416, 1350, 1463. Additionally, one treatment note indicates he 24 1 had "multiple panic attacks in a day." AR 1337. Defendant points to a treatment note from July 2 2022 indicating Plaintiff had only experienced anxiety symptoms for one month prior (Dkt. 11 at 3 4, citing AR

668), but this is consistent with Plaintiff's June 2022 onset date. 4 The ALJ also noted Plaintiff exhibited intact cognition, fund of knowledge, and memory 5 on examination.

AR 26. Such evidence is reasonably found inconsistent with allegations that 6 Plaintiff had poor reasoning skills or memory issues, but it is not a reason specific to Plaintiff's 7 testimony about his panic attacks. 8 Second, the ALJ discounted Plaintiff's testimony because his course of treatment was 9 purportedly conservative. *Id.* As the ALJ described it, Plaintiff was treated with medication 10 management, receiving medication for seizures and anxiety, along with counseling sessions.

See 11 *id.* The parties disagree over whether such a course of treatment is conservative. See Dkt. 9 at 6; 12 Dkt. 11 at 6. Such a question is not considered in the abstract; rather, the relevant inquiry for 13 whether a claimant's treatment was conservative turns not on whether the treatment sought was 14 conservative in the abstract but whether a claimant experiencing the symptoms testified to would 15 be expected to seek further treatment.

See *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) 16 (conservative treatment appropriate basis to reject testimony because it suggests alleged pain was 17 "not severe enough to motivate [the claimant]" to seek further treatment); SSR 16-3p (ALJ may 18 discount testimony where the "extent of the treatment sought by [the claimant] is not comparable 19 with the degree of the individual's subjective complaints.").

20 Here, Plaintiff's course of treatment is not inconsistent with his testimony. "[A]ny 21 evaluation of the aggressiveness of a treatment regimen must take into account the condition 22 being treated." *Revels v. Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017). Plaintiff alleges panic 23 attacks due to fears of seizures.

The record does not indicate a treatment regimen for such a 24 1 condition beyond psychiatric anxiety medications, seizure medications, and counseling. "A 2 claimant cannot be discredited for failing to pursue non-conservative treatment options where 3 none exist." *Lapeirre-Gutt v. Astrue*, 382 F. App'x 662, 664 (9th Cir. 2010) (unpublished 4 opinion). 5 Finally, the ALJ noted Plaintiff was able to shop, do chores, and groom himself.

AR 26. 6 Activities of daily living are a valid reason to discount Plaintiff's testimony if they are either 7 transferrable to a work setting or inconsistent with her alleged symptoms. See *Orn v. Astrue*, 495, 8 F.3d 623, 639 (9th Cir. 2007).

The cited activities are not necessarily inconsistent with Plaintiff's 9 allegations of isolated panic attacks. Plaintiff could both have panic attacks while doing chores, 10 shopping, and grooming himself when he did not have such attacks. See *Ferguson v. O'Malley*, 11 95 F.4th 1194, 1203 (9th Cir. 2024) ("[The claimant] can both do nothing when he has severe 12 headaches and engage in his daily activities when he does not."); *Smolen v. Chater*, 80 F.3d 13 1273, 1284 n.7 (9th Cir.

1996) (Plaintiff need not “be utterly incapacitated to be eligible for 14 benefits.”). 15 In sum, the ALJ failed to provide specific, clear, and convincing reasons for rejecting 16 Plaintiff’s testimony about the extent of his panic attacks.

Because Defendant does not contend 17 such an error is harmless, the Court reverses. See Ferguson, 95 F.4th at 1204. 18 B. Lay Witness Statements 19 The ALJ found unpersuasive the lay witness statements of Plaintiff’s aunt (AR 332–36), 20 mother (AR 353–57), sister (AR 348–52), father (AR 323–28), brother (AR 342–47), and 21 roommate (AR 337–41). See AR 23.

The ALJ was required to provide germane reasons for 22 rejecting these statements. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). The new 23 regulations did not remove the requirement that an ALJ consider a lay witness statement, and this 24 1 requirement is the genesis of the germane reasons standard. See *Rhea L. v. Comm’r of Soc. Sec.*, 2 No. 2:24-CV-870, 2024 WL 5244402, at *4–5 (W.D.

Wash. Dec. 30, 2024) (citing *Dodrill*, 12 3 F.3d at 919; 20 C.F.R. §§ 404.1545(a)(3), 404.1529(a); SSR 96-8p). 4 The ALJ indicated the statements were unpersuasive because the witnesses were not 5 acceptable medical sources and they have “close, personal proximity to the claimant.” AR 24. 6 These were not germane reasons for rejecting the statements. See *Bruce v. Astrue*, 557 F.3d 7 1113, 1116 (9th Cir.

2009) (“A lay person, Bruce’s wife, though not a vocational or medical 8 expert, was not disqualified from rendering an opinion as to how her husband’s condition affects 9 his ability to perform basic work activities.”); *Diedrich v. Berryhill*, 874 F.3d 634, 640 (9th Cir. 10 2017) (“personal relationship” with claimant “not a valid reason to discount [lay witness’s] 11 observations”).

Although such an error may be harmless where it is duplicative of properly- 12 discounted subjective testimony, see *Molina v. Astrue*, 674 F.3d 1104, 1116–22 (9th Cir. 2012), 13 the Court has found the ALJ has not properly addressed Plaintiff’s subjective testimony. 14 Accordingly, the ALJ must reassess the lay witness statements on remand. 15 C. Remaining Issues 16 Plaintiff also challenges the ALJ’s assessment of the medical opinion of Margaret 17 Cunningham, MD. Dkt.

9 at 15–18. In particular, Plaintiff contends the ALJ failed to give proper 18 reasons for rejecting Dr. Cunningham’s marked limitations and that the RFC did not adequately 19 capture Dr. Cunningham’s moderate limitations. See *id.* Having found reversible error, the Court 20 need not consider this issue. Rather, on remand, the ALJ is directed to reassess the medical 21 evidence, and, if appropriate, reassess her RFC finding and his finding at step five of the 22 sequential evaluation process.

23 24 1 Plaintiff contends the ALJ’s RFC assessment was deficient because he failed to 2 adequately explain how the RFC captured his panic attack-related symptoms and failed to 3

explain why he excluded an absenteeism limitation. Dkt. 9 at 9–10. Plaintiff contends this 4 violated Social Security Ruling 96-8p. Id. Having found the ALJ erred in assessing the evidence 5 related to his panic attacks, the Court directs the ALJ to reassess the RFC as appropriate based on 6 her assessment of the relevant evidence.

7 IV. CONCLUSION 8 For the foregoing reasons, the Court REVERSES and REMANDS the decision pursuant 9 to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with this 10 Order. 11 Dated this 17th day of December, 2025. 12 A 13 David W. Christel United States Magistrate Judge 14 15 16 17 18 19 20 21 22 23 24