

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Tammy A. v. Frank Bisignano

Tammy A. v. Bisignano, No. 24cv1452-CAB (MSB) (S.D. Cal. June 13, 2025) (report and recommendation) ·
No. 24cv1452-CAB (MSB) · Decided June 13, 2025

SUMMARY

This Report and Recommendation addresses a Social Security claimant’s challenge under 42 U.S.C. § 405(g) to an administrative denial of disability benefits. The court analyzes whether the ALJ properly evaluated vestibular migraines, medical equivalence to Listing 11.02B, the residual functional capacity, and depression and anxiety. The excerpt concludes that the ALJ did not err in evaluating the migraines and that substantial evidence supported the related findings.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michael S. Berg
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 13, 2025
DOCKET	24cv1452-CAB (MSB)
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Report and recommendation on Plaintiff's action under 42 U.S.C. § 405(g) seeking judicial review of the Commissioner's denial of disability benefits.
STANDARD OF REVIEW	The Commissioner's decision will not be disturbed if it is supported by substantial evidence and free of legal error. Where the evidence is susceptible to more than one rational interpretation, the ALJ's decision must be upheld, and harmless errors do not warrant reversal.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Tammy A. v. Frank Bisignano, Commissioner of Social Security

TOPICS

- judicial review of agency action
- administrative law
- agency adjudication

PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

QUESTIONS PRESENTED

1. Whether the ALJ adequately evaluated Plaintiff's vestibular migraines at step three and properly accounted for migraine-related limitations in the RFC.
2. Whether substantial evidence supported the ALJ's finding that Plaintiff's depression and anxiety were non-severe.
3. Whether the ALJ committed reversible error by failing to discuss Plaintiff's non-severe mental impairments in the RFC assessment.

HOLDINGS

1. The ALJ did not err by failing to specifically compare Plaintiff's impairments to Listing 11.02B because Plaintiff did not present that equivalency argument to the ALJ, and she did not meet her burden of showing that her migraines were medically equivalent to the listing.
2. The ALJ committed reversible error by failing to discuss Plaintiff's medically determinable mental impairments in the RFC assessment or explain why they imposed no functional limitations, even though the ALJ correctly found those impairments non-severe at step two.

KEY QUOTATIONS

"The ALJ's failure to include a discussion of Plaintiff's mild impairments in the RFC assessment precludes this Court from properly determining whether the RFC was supported by substantial evidence" (AR 108-13)

"For the foregoing reasons, the Court RECOMMENDS that judgment be entered REVERSING the decision of the Commissioner and REMANDING this matter for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g)." (Conclusion)

FACTUAL BACKGROUND

Plaintiff alleged disability beginning August 30, 2017, based principally on vestibular disturbance syndrome with migraines and adjustment disorder with depression and anxiety. The ALJ found the physical impairments severe but found the mental impairments non-severe, assessed a light-work residual functional capacity with physical and environmental restrictions, and concluded Plaintiff could perform past relevant work. Although the ALJ discussed Plaintiff's mental impairments at step two, the RFC assessment did not discuss them or explain why no mental limitations were included.

PROCEDURAL HISTORY

Plaintiff applied for disability insurance benefits and supplemental security income, and the Commissioner denied the applications initially and on reconsideration. After an administrative hearing, the ALJ issued an unfavorable decision, and the Appeals Council denied review. Plaintiff then filed this civil action and moved for

reversal; the Commissioner opposed, and Plaintiff replied. The magistrate judge recommended reversal and remand for further administrative proceedings, subject to objections and review by the district judge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse and remand under sentence four of 42 U.S.C. § 405(g). The ALJ must address Plaintiff's mental impairments in the RFC analysis and conduct a new five-step sequential evaluation because a new RFC determination could affect other findings.

CASES CITED

- Buck v. Berryhill, 869 F.3d 1040, 1048 (9th Cir. 2017)
- Molina v. Astrue, 674 F.3d 1104, 1110-11 (9th Cir. 2012)
- Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019)
- Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938)
- Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008)
- Burch v. Barnhart, 400 F.3d 676, 679, 683 (9th Cir. 2005)
- Lewis v. Apfel, 236 F.3d 503, 509, 513 (9th Cir. 2001)
- Rounds v. Comm'r Soc. Sec. Admin., 807 F.3d 996, 1002, 1006 (9th Cir. 2015)
- Young v. Sullivan, 911 F.2d 180, 183-84 (9th Cir. 1990)
- Sullivan v. Zebley, 493 U.S. 521, 530 (1990)
- Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990)
- Kennedy v. Colvin, 738 F.3d 1172, 1178 (9th Cir. 2013)
- Gonzalez v. Sullivan, 914 F.2d 1197, 1200-01 (9th Cir. 1990)
- Abreu v. Astrue, 303 F. App'x 556, 557 (9th Cir. 2008)
- DuBois v. Berryhill, No. 1:17-CV-00076-JDL, 2017 WL 6000340, at *3 (D. Me. Dec. 3, 2017)
- Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008)
- Garrison v. Colvin, 759 F.3d 995, 1010-11 (9th Cir. 2014)
- Chaudhry v. Astrue, 688 F.3d 661, 670 (9th Cir. 2012)
- Valentine v. Comm'r Soc. Sec. Admin.
- Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595 (9th Cir. 1999)
- Christopherson v. Comm'r of Soc. Sec. Admin., 460 F. App'x 631, 633 (9th Cir. 2011)
- Owen v. Saul, 808 F. App'x 421, 423 (9th Cir. 2020)
- Hutton v. Astrue, 491 F. App'x 850, 850 (9th Cir. 2012)
- Mercado v. O'Malley, No. 2:22-CV-02155 AC, 2024 WL 967619, at *4 (E.D. Cal. Mar. 6, 2024)
- Jane B. for Judith F. v. O'Malley, No. 22-CV-1183-MMP, 2024 WL 1318858, at *9 (S.D. Cal. Mar. 27, 2024)

- Victor R. v. O'Malley, No. 23-CV-00501-GPC-BGS, 2024 WL 1257277, at *9 (S.D. Cal. Mar. 25, 2024)
- Curtis v. Comm'r of Soc. Sec. Admin., 584 F. App'x 390, 391 (9th Cir. 2014)
- Woods v. Kijakazi, 32 F.4th 785, 794 (9th Cir. 2022)
- Darren Jeffrey C. v. Kijakazi, No. 3:21-CV-01012-AHG, 2022 WL 4474261, at *10 (S.D. Cal. Sept. 26, 2022)
- Medlock v. Colvin, No. CV 15-9609-KK, 2016 WL 6137399, at *5 (C.D. Cal. Oct. 20, 2016)
- Marsh v. Colvin, 792 F.3d 1170, 1173 (9th Cir. 2015)
- Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055-56 (9th Cir. 2006)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153, 1157 (9th Cir. 1991)

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