UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Raymond Bachmann v. Commissioner of Social Security

Bachmann · No. CV-25-00087-TUC-RCC (EJM) · Decided February 18, 2026

OPINION

Bachmann

PER CURIAM.

1 WO 2 3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Raymond Bachmann, No. CV-25-00087-TUC-RCC (EJM) 10 Plaintiff,

11 v. REPORT AND RECOMMENDATION

12 Commissioner of Social Security, 13 Defendant. 14 Currently pending before the Court is Plaintiff Raymond Bachmann's Opening 15 Brief (Doc. 16). Defendant filed his Answering Brief ("Response") (Doc. 20), and Plaintiff 16 replied ("Reply") (Doc. 21). Plaintiff brings this cause of action for review of the final 17 decision of the Commissioner for Social Security pursuant to 42 U.S.C. §§ 405(g) and 18 1383(c)(3). Compl. (Doc. 1). 19 Pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure,1 this matter 20 was referred to Magistrate Judge Markovich for Report and Recommendation. Based upon 21 the pleadings of the parties and the administrative record submitted to the Court, the 22 Magistrate Judge recommends that the District Judge reverse and remand the 23 Commissioner's decision. 24 25 26 27 28 1 Rules of Practice of the United States District Court for the District of Arizona.

1 I. BACKGROUND

2 A. Procedural History 3 On October 4, 2021, Plaintiff protectively filed a Title II application for Social 4 Security Disability Insurance Benefits ("DIB"), as well as a Title XVI application for 5 Supplemental Security Income ("SSI"), alleging disability as of February 15, 2021, due to

6 Type 2 Diabetes; chronic bilateral knee pain; hypertension; anxiety; left-sided weakness

7 secondary to possible stroke; left-sided neuropathy and pain; and solar urticaria. See 8 Administrative Record (AR) at 18, 57–59, 68–70, 79–80, 91, 102, 219, 265. The Social 9 Security Administration (SSA) denied these applications on August 9, 2022. Id. at 16, 57– 10 78, 108–27. On May 19, 2023, SSA denied Plaintiff's application upon reconsideration.

11 Id. at 16, 79–102, 129–44. On May 25, 2023, Plaintiff filed his request for hearing. Id. at

12 16, 145–46. On January 25, 2024, a telephonic hearing was held before Administrative 13 Law Judge ("ALJ") Laura S. Havens. Id. at 16, 31–56, 374–95. On March 19, 2024, the 14 ALJ issued an unfavorable decision. AR at 13–25. On March 19, 2024, Plaintiff requested 15 review of the ALJ's decision by the Appeals Council, and on February 7, 2025, review was 16 denied. Id. at 1–

12, 222–23. On February 20, 2025, Plaintiff filed this cause of action. 17 Compl. (Doc. 1). 18 B. Factual History 19 Plaintiff was forty-seven (47) years old at the time of the alleged onset of his 20 disability and fifty (50) years old at the time of the administrative hearing. AR at 16, 24– 21 25, 35, 57–59, 69–70, 79–80, 91, 219, 224, 227, 273, 318, 336. Plaintiff has a high school 22 education, having graduated and received a diploma. Id. at 25, 35, 67, 68, 79, 102, 266. 23 Prior to his alleged disability, Plaintiff worked as a security officer. Id. at 37, 225, 254, 24 267. 25 . . . 26 . . . 27 . . . 28 . . . 1 1. Plaintiff's Medical Treatment Records2 2 On January 12, 2021, Plaintiff presented to the Emergency Department (ED) at 3 Banner University Medical Center (Banner UMC). AR at 452–59, 694–701. Plaintiff 4 complained of "swelling of his neck" having noticed red bumps the previous week. Id. at 5 452, 694. The bumps resolved, but the felling of fullness remained. Id. Plaintiff's blood 6 pressure and diabetes numbers were extremely elevated. Id. Plaintiff reported that he had 7 gone to urgent care regarding his neck, but after checking his blood pressure and blood 8 sugar, the urgent care staff directed him to emergency medicine. Id. Plaintiff further 9 reported that he has lacked insurance for several years and is unable to afford medications 10 for either condition. AR at 452, 454, 694, 696. Plaintiff's physical examination and an 11 ultrasound of his neck were generally unremarkable. Id. at 453–54, 695–96. Plaintiff 12 continued to complain of severe neck pain and was given a dose of Toradol, after which he 13 was fine. Id. at 454, 696. 14 On March 1, 2021, Plaintiff saw Cheryl Webb, F.N.P., at Health on University for 15 a check-up regarding his high blood pressure. Id. at 531–34. FNP Webb assessed Type 2 16 diabetes, essential hypertension, obesity, and anxiety and depression. Id. at 531. FNP 17 Webb's review of Plaintiff's systems was generally unremarkable, but positive for anxiety, 18 depression, and joint pain. AR at 533. Plaintiff's physical examination was similarly 19 unremarkable, but noted Plaintiff appeared anxious and had Velcro knee braces. Id. at 20 533–34. On the same date, Plaintiff had chest radiographs for his essential hypertension.
21 Id. at 499. Michael Baker, M.D. read the films, which were unremarkable. Id. The same
22 evening, Plaintiff presented to Banner UMC ED due to increasing episodes of chest pain 23 24
2 Plaintiff presents two arguments in his Opening Brief—(1) his past work as an "insurance customer service representative" cannot qualify as "past relevant work" at Step 4 because it is not 25 recent enough; and (2) the ALJ improperly rejected examining neurologist Robert B. Barlow, M.D.'s opinion. See Opening Br. (Doc. 16). The rejection of Dr. Barlow's opinion relies, in part, 26 on its consistency with other medical records. As such, the Court will provide a summary of 27 Plaintiff's medical records and opinions, but has not included a detailed summary of the administrative forms and testimony given by Plaintiff. Additionally, although the Court has 28 reviewed Plaintiff's entire medical record, the summary focuses on those relevant to the conditions in his disability claim, from his alleged onset date to the present. 1 since December. Id. at 428–447, 671–90. Plaintiff described his pain as occurring in the 2 center of his chest, radiating towards the back of his shoulders, and reported nausea and 3 vomiting. AR at 428, 671. Plaintiff noted that these episodes have become more frequent 4 as conversations with his spouse have

been causing him grief and anxiety. Id. at 432, 675. 5 On the same day, Plaintiff underwent an echocardiogram study. Id. at 420–21, 667–68. 6 The echocardiogram was generally unremarkable, but records reflect "mitral valve inflow 7 pattern demonstrates grade I diastolic dysfunction (impaired relaxation)"; the presence of 8 trace mitral regurgitation; mild pulmonic regurgitation; and trace tricuspid regurgitation.

9 Id. at 421, 667. Plaintiff also underwent an electrocardiogram (EKG) which showed

10 Plaintiff was afebrile but had some tachycardia, which resolved while he was in the ED.

11 Id. at 422–27, 429, 450–51, 669–70. ED doctors found Plaintiff's symptoms most

12 consistent with Acute Coronary Syndrome (ACS). AR at 429. Plaintiff had chest 13 radiographs taken. Id. at 434, 446, 677, 689–90. His chest films were unremarkable. Id. 14 Doctors ultimately reported Plaintiff's chest pain was more likely a result of acute stress 15 and anxiety attack. Id. at 435, 678. 16 On March 19, 2021, Plaintiff saw Katherine E. Perona, F.N.P., at El Rio Health 17 Center to establish care. Id. at 523–30. FNP Perona assessed Type 2 diabetes, generalized 18 anxiety disorder with panic attacks, essential hypertension, bilateral primary osteoarthritis 19 of knee, Class 1 obesity, and ordered vaccinations and blood work. AR at 523–25. 20 Plaintiff's diabetes and hypertension were not well-controlled. Id. at 526. Plaintiff 21 reported difficulty functioning due to anxiety, and that conflict or stress, lack of sleep, and 22 social interactions are aggravating factors. Id. at 526–27. Plaintiff further reported 23 constant knee pain, described as piercing, sharp, and throbbing. Id. at 527. Plaintiff was 24 previously informed that he would need knee replacement surgery. Id. FNP Perona's 25 review of Plaintiff's systems was positive for pain; nocturnal pain; restlessness; difficulty 26 falling and staying asleep; anxiety with difficulty concentrating, excessive worry, little 27 interest or pleasure in doing things, and racing thoughts; and decreased mobility, with joint 28 instability, joint locking, joint tenderness, limping, and weakness. Id. at 528–29. 1 Plaintiff's physical examination was unremarkable. AR at 529–30. 2 On April 14, 2021, Plaintiff returned to FNP Perona at El Rio Health Clinic for a 3 follow-up regarding his anxiety. Id. at 516–22. FNP Perona assessed Type 2 diabetes, 4 generalized anxiety disorder with panic attacks, essential hypertension, chest pressure, and

5 Class 1 obesity. Id. at 516–17. Plaintiff reported difficulty functioning due to

6 anxious/fearful thoughts, depressed mood, difficulty concentrating, difficulty falling and 7 staying asleep, diminished interest or pleasure, easily startled, excessive worry, fatigue, 8 feelings of guilt, as well as racing thoughts and restlessness. Id. at 518. Plaintiff further 9 reported chest discomfort with sudden onset, occurring intermittently. Id. at 519. FNP 10 Perona's review of Plaintiff's systems noted fatigue, pain, restlessness, chest 11 pressure/discomfort, nausea, diaphoresis, and anxiety with symptoms as described by 12 Plaintiff. AR at 521. Physical examination of Plaintiff was unremarkable. Id. at 522. 13 On May 27, 2021, Plaintiff had a telehealth appointment with Tammy Timmons, 14 M.D., at El Rio Health Center. Id. at 509–15. Dr. Timmons's assessment included 15 essential hypertension, Type 2 diabetes, anxiety, and

mixed hyperlipidemia. Id. at 509. 16 Plaintiff reported that he is divorced and endorsed anxiety around his ex-wife and the child 17 custody arrangement. Id. at 511–12. Treatment records reflect mild depression and 18 fatigue, with a referral to behavioral health. AR at 509, 511. 19 On June 13, 2021, Plaintiff went to the ED at St. Joseph's Hospital with chest pain 20 that had begun the previous day. Id. at 403–12. Plaintiff reported intermittent tightness in 21 his upper chest with radiation to his back. Id. at 403. Plaintiff further reported nausea, 22 vomiting, and diaphoresis. Id. Records reflect his EKG did not show any acute signs of 23 ischemia. Id. at 407. Pain medication and intravenous fluids relieved his pain. AR at 407. 24 A chest x-ray was unremarkable. Id. at 412. After laboratory analysis of Plaintiff's blood 25 work and physical examination, Plaintiff was diagnosed with acute costochondritis. Id. at 26 407. 27 On August 2, 2021, Plaintiff saw Nikki G. Nakovic, N.P. at Health on Broadway 28 for an examination. Id. at 502–08. Plaintiff reported left-sided numbness, which began 1 ten (10) days prior. Id. at 504. Treatment records reflect that he went to the Emergency 2 Department on July 29, 2021, for this but left prior to being seen. Id. NP Nakovic also 3 assessed hyperlipidemia, hypertension, and diabetes. AR at 502, 504–05. NP Nakovic's 4 review of Plaintiff's systems was unremarkable, as was his physical examination. Id. at 5 506–07. On August 18, 2021, Plaintiff received a diabetic eye examination, which was 6 unremarkable. Id. at 463–67, 536–37. On September 23, 2021, Plaintiff was seen by Adam 7 Reynolds, M.D. regarding "sudden onset left-sided numbness" that began in August. Id. 8 at 468–70. Plaintiff reported intermittent involvement of his face, but constant left arm 9 and leg involvement, with mild weakness in addition to the numbness. Id. at 468. On 10 examination, Plaintiff exhibited motor strength of 4/5 throughout the left half of his body. 11 AR at 469. Records reflect his physical "[e]xam notable for mild to moderate left 12 hemiparesis." Id. Plaintiff also had an antalgic gait. Id. On October 6, 2021, Plaintiff 13 received vaccinations at El Rio Health Center. Id. at 500–01. 14 On March 15, 2022, Plaintiff had Magnetic Resonance Imaging (MRI) scans with 15 and without contrast. Id. at 472–73. Ethan Neufeld, M.D. assessed "[n]o active intracranial 16 process[,] [n]o acute/recent infarction or discrete prior infarction[,] [and] [n]o pathological 17 intracranial enhancement"[;] [however,] [he noted] [s]upratentorial white matter lesions in 18 a pattern compatible with chronic microvascular alterations, greater than expected for age." 19 AR at 472. 20 On April 12, 2022, Plaintiff had a well-examination with NP Perona at El Rio Health 21 Center, as well as laboratory analyses. Id. at 470–98. Plaintiff reported family issues had 22 resulted in inconsistency with medication compliance. Id. at 480. NP Perona reviewed 23 Plaintiff's systems noting fatigue, cough and shortness of breath—Plaintiff reported a dry 24 cough with Lisinopril, numbness—left-side, as well as nervousness and anxiety. Id. 25 Plaintiff's blood pressure was high, but his physical examination was otherwise 26 unremarkable. Id. at 481. NP Perona noted Plaintiff's numbness to be chronic and 27 unchanged, directing follow-up with Dr. Reynolds. AR at 483. 28 On June 1, 2022, Plaintiff saw Hannah Magness, Pharm.D., at El Rio Health Center 1 for diabetes support. Id. at 603–11. Plaintiff reported blood sugar levels without 2 hypoglycemic events. Id. at 603. Plaintiff provided updated

information regarding his 3 food intake. Id. at 603–04. Plaintiff stated that he walks while running errands, estimating 4 approximately thirty (30) minutes, two (2) to three (3) times per week. Id. at 604. He 5 confirmed bilateral knee pain, and the continued use of knee braces. AR at 604. Dr. 6 Magness's review of Plaintiff's systems was positive for fatigue (attributed to 7 hyperglycemia), chest tightness, polydipsia and polyuria, arthralgias, and frequent 8 urination. Id. Plaintiff's blood pressure was high. Id. Dr. Magness noted high A1C levels, 9 attributable to inconsistent medication compliance, stress, and diet regression—all due to 10 job loss, difficulty obtaining insurance and medications, and food insecurity. Id. at 605. 11 On September 20, 2022, Plaintiff saw NP Perona for a diabetes checkup. Id. at 596– 12 600. Treatment records reflect that Plaintiff was compliant with his diabetes medications 13 and reported improvement in his sugar levels. AR at 596. Plaintiff further reported 14 dizziness when bending over, as well as a burning sensation and random pain throughout 15 his body which resolve on their own. Id. Plaintiff also reported intense, radiating pain in 16 his left wrist which was helped by a wrist brace. Id. at 596–97. Plaintiff confirmed that 17 his left-sided numbness remained unchanged. Id. at 597. Plaintiff described increased 18 daytime fatigue, requiring multiple naps during the day, as well as continued anxiety flare- 19 ups. Id. Plaintiff's blood pressure remained high, although his chest pain had improved. 20 AR at 597. NP Perona's review of Plaintiff's systems noted congestion, myalgias, 21 dizziness, and nervousness/anxiety. Id. Plaintiff's physical examination was generally 22 unremarkable; however, his blood pressure was high. Id. at 598. NP entered orders 23 addressing Plaintiff's concerns. Id. at 598–99. 24 On December 22, 2022, Plaintiff had a telehealth appointment with NP Perona 25 regarding bilateral knee and leg pain, as well as pain in right hand. Id. at 584–86. Plaintiff 26 reported the pain had been ongoing for a month and denied a family history of autoimmune 27 disease. AR at 584. NP Perona's review of Plaintiff's systems was generally 28 unremarkable, but was positive for arthralgias, myalgias, and gait problems. Id. at 585. 1 NP Perona ordered blood work to screen for autoimmune diseases. Id. 2 On April 19, 2023, Plaintiff saw Courtney Rhoades, NP at El Rio Health Center to 3 establish care. Id. at 636–48. Plaintiff reported productive cough for the last four (4) 4 months. Id. at 636. Plaintiff further reported lower back and bilateral knee pain, as well 5 as difficulty focusing. AR at 636. Plaintiff conveyed that he was checking his blood sugar 6 approximately twice per week, and it is improved, although still high. Id. at 637. NP 7 Rhoades review of Plaintiff's systems noted arthralgias, back pain, and gait problems. Id. 8 at 637, 644–45. On physical examination, Plaintiff's blood pressure was high, and he 9 exhibited tenderness in the lumbar spine, as well as both knees. Id. at 637–38, 645. NP 10 Rhoades noted Plaintiff was anxious and agitated. AR at 638, 646. On the same date, 11 Plaintiff had radiographs taken of his lumbar spine and both knees. Id. at 634–36. His 12 lumbar spine showed "mild degenerative disc and degenerative facet changes . . . at the 13 L5-S1 level." Id. at 634. Radiographs of Plaintiff's knees were normal bilaterally. Id. at 14 635–36. On April 23, 2023, Plaintiff sought treatment at the Banner UMC ED due to chest 15 pain and shortness of breath. Id. at 655–63. Plaintiff reported "having substernal

sharp 16 chest pain that radiated to the bilateral ribs[,] . . . associated with shortness of breath." AR 17 at 657. An initial EKG "demonstrate[d] sinus tachycardia"; however, this resolved upon 18 subsequent testing. Id. at 658. Ultimately, a pulmonary embolism was ruled out. Id. 19 Radiographs were taken, showing "[n]o acute cardiopulmonary process." Id. at 663. 20 Treatment records reflect anxiety was considered a more likely cause than pleurisy, or 21 possibly gastroesophageal reflux disease (GERD). Id. at 660. 22 2. Examining Physicians 23 a. Noelle Rohen, Ph.D. 24 On July 15, 2022, Noelle Rohen, Ph.D. saw Plaintiff for a psychiatric consultation 25 upon referral from the Arizona Department of Economic Security ("AZDES"). AR at 551– 26 56. Plaintiff reported that the primary reason he is seeking disability benefits is due to his 27 chronic bilateral knee pain, initially diagnosed by the Army. Id. at 551. Plaintiff further 28 reported that he has dealt with the pain while working in security for more than twenty (20) 1 years; however, his pain is such that he can no longer climb stairs or wear his gun belt. Id. 2 Plaintiff observed that beginning in 2020, "everything started to rapidly go down, with 3 chest pain[] [and] breathing difficulty." Id. Plaintiff noted his blood sugar was at 400 and 4 blood pressure was very high. Id. Plaintiff reported left-sided numbness, and "[t]hey think 5 I may have had a ministroke because I seem to have lost some strength on my left side." 6 AR at 551. Plaintiff described having daily pain, needing to use a cane, shortness of breath, 7 and chest pain Id. Plaintiff stated that aside from "some tachycardia" his heart was 8 otherwise good, and his care team things that the chest pain and shortness of breath are due 9 to his anxiety. Id. Plaintiff likened his anxiety to post-traumatic stress disorder (PTSD), 10 where it is trigger based by stressors such as his ex-wife and daughter. Id. 11 Dr. Rohen noted that Plaintiff "has been dealing with anxiety since he began having 12 conflict with his ex over their daughter." Id. at 552. Dr. Rohen observed Plaintiff tearing 13 up while talking about the relationship with his ex and his anxiety. AR at 552. Dr. Rohen 14 observed that Plaintiff's anxiety began approximately thirteen (13) years prior during his 15 relationship with his then-girlfriend. Id. Plaintiff reported that he would get upset for no 16 reason and have trouble calming down. Id. He explained that as his stress level rose, and 17 more recently with his medial scares, Plaintiff finds himself more irritable which leave him 18 stuck—unable to get up out of his seat—or suffering chest pains "because of his ex's 19 controlling and manipulative behavior." Id. Plaintiff reported "sleeping poorly because of 20 pain in his body – it awakens him." Id. Plaintiff conveyed that his stamina is poor, 21 although his daytime energy level is fair, and his motivation and interest are good. AR at 22 552. Plaintiff observed that he has some depression, and was tearful relaying what he is 23 unable to do with his daughter. Id. Plaintiff reported that his appetite is intact, has not had 24 suicidal ideations, and no hallucinations or manic episodes. Id. 25 Dr. Rohen noted Plaintiff's past work as a security guard, which "he had to resign 26 after becoming quite ill." Id. Dr. Rohen recorded Plaintiff's military service from 1995 to 27 1996; however, he was injured during training and unable to receive his Military 28 Occupational Specialty (MOS). Id. Plaintiff "was given a general discharge under medical 1 conditions." AR at 552. Dr. Rohen reported that Plaintiff earned a high school diploma;

2 studied a year and a half at community college, but could not afford to continue; and went 3 to design school but was expelled halfway through along with several others, because they 4 protested a broadly applied punishment. Id. Plaintiff denied the use of alcohol, as well as 5 other recreational drugs or medical marijuana, and does not have a history of substance 6 abuse. Id. at 552–53. 7 Plaintiff reported living with his sister and mother, with his 12-year-old daughter 8 staying with them on weekends, when he feels okay. Id. at 553. Plaintiff further reported 9 having chest pains, which will cause him to sleep for several hours. Id. Plaintiff's sister 10 is employed full-time, and Plaintiff tries to help his mother with household tasks AR at 11 553. Plaintiff helps with dishes, but is limited on standing and uses a stool, tries to help 12 with laundry but has difficulty with the basket, and accompanies his mother to the grocery 13 store. Id. Plaintiff is able to drive and manage money. Id. 14 Dr. Rohen described Plaintiff "to be of average height and well-nourished," casually 15 dressed for the appointment, with bilateral knee braces, as well as appropriate hygiene and 16 grooming. Id. Dr. Rohen reported Plaintiff's "[a]ffect was full range, animated most of 17 the time, but tearful when talking about the frustration with his ex, and his sadness about 18 what he cannot do with his daughter." Id. Dr. Rohen further described Plaintiff's thoughts 19 as "linear and coherent, and retrograde memory appeared adequate to provide history[,] 20 with an average fund of knowledge. AR at 553. Dr. Rohen observed the rate and flow of 21 Plaintiff's speech to be within normal limits, with his responses often overelaborated. Id. 22 Plaintiff relied on a small-point quad cane for ambulation, and twice, when he became 23 upset, Dr. Rohen noted a coarse tremor in his left hand. Id. 24 Dr. Rohen administered the Folstein Mini Mental Status Examination, with Plaintiff 25 scoring a 28 out of a possible 30. Id. Dr. Rohen reported that he was "alert and oriented 26 to four spheres[,] . . . succeeded in reversing the spelling of a common word . . . [and] was 27 able to register three unrelated words presented verbally after one exposure, and recall two 28 of them after a brief delay and interference task." Id. Dr. Rohen noted that Plaintiff "read 1 but did not follow a brief instruction." AR at 553. 2 Based upon her clinical interview and available medical records, Dr. Rohen 3 diagnosed Plaintiff with an Unspecified Anxiety Disorder. Id. at 554. Dr. Rohen did not 4 find clinical depression and observed that although his "[a]nxiety negatively impacts his 5 quality of life, and may contribute to some of his health conditions[,]" she did not see a 6 clear impairment. Id. Dr. Rohen opined that Plaintiff would be able to manage any 7 benefits, if awarded. Id. at 554–55. Dr. Rohen further opined that Plaintiff's conditions 8 would not impose any limitations for twelve (12) months. Id. at 555. 9 b. Robert Barlow, M.D. 10 On July 23, 2022, Plaintiff was examined by Robert Barlow, M.D. upon referral 11 from the AZDES. AR at 558–71. Dr. Barlow listed Plaintiff's conditions, including 12 diabetes; chronic bilateral knee pain; hypertension; left-sided weakness and neuropathy; 13 solar urticaria; and anxiety. Id. at 558–59. Following a physical examination of Plaintiff, 14 Dr. Barlow assessed the following: 15 [T]he patient has mild left-sided weakness, peripheral neuropathy in the left hand and foot, and impaired balance. Patient otherwise has no overt evidence 16 of acute of chronic physical illness and patient's mental status was otherwise 17

stable today. Other than the above, the patient's musculoskeletal examination reveals intact ranges of motion and strengths. 18

19 Id. at 566. Regarding Plaintiff's left-sided weakness and neuropathy, specifically, Dr.

20 Barlow reported: 21 Patient has had left-sided weakness and neuropathy since 2020 and has seen a physician for these conditions. His symptoms include left-sided tingling 22 and lack of strength, and random failure to operate his left hand or knee. This 23 condition is currently untreated. During the physical examination, the patient was able to perform most of the requested maneuvers while using his cane 24 for stability, but a couple of them he could not perform due to impaired 25 balance, even while using his cane for stability. There was mild left-sided weakness, and decreased sensation to vibration, pinprick, and light touch in 26 the left hand and foot. When asked about his pain, he said it was 2/10 in his 27 knees at the beginning of the exam, and 4/10 at the end. He was in no acute distress. 28 1 Id. Dr. Barlow opined that Plaintiff's conditions would impose limitations for 12 2 continuous months. Id. at 569. He reported that Plaintiff could occasionally lift or carry 3 up to 10 pounds, and frequently lift or carry less than 10 pounds. AR at 569. Dr. Barlow 4 based these conclusions on Plaintiff's "mild left-sided weakness, peripheral neuropathy in 5 the left hand and foot, and impaired balance, and cannot lift or carry heavy objects." Id. 6 Dr. Barlow further opined that Plaintiff had restrictions in standing and/or walking 7 limiting the same to between 2 and 4 hours per day. Id. In support of this conclusion, Dr. 8 Barlow reiterated, Plaintiff has "mild left-sided weakness, peripheral neuropathy in the left 9 hand and foot, and impaired balance, and cannot stand or walk for long periods of time." 10 Id. Dr. Barlow confirmed that Plaintiff uses an assistive device for balance, it is necessary 11 for all terrains, and is medically necessary. Id. at 570. Dr. Barlow observed that Plaintiff 12 "uses a cane for stability while ambulating, as well as hard knee braces." AR at 570. Dr. 13 Barlow opined that Plaintiff did not have any limitations in sitting, noting that he could sit 14 between 6 and 8 hours per day, and was also unlimited in his ability to see, hear, and speak. 15 Id. 16 Dr. Barlow opined that Plaintiff could occasionally climb ramps and stairs; reach 17 with the right but could never reach with the left; and handle, finger, or feel with the left 18 but was unlimited on the right. Id. Dr. Barlow further opined that Plaintiff could never 19 climb ladders, ropes, and scaffolds; stoop; kneel; crouch; crawl; or reach with his left. Id. 20 Dr. Barlow reported these findings were based on Plaintiff's "mild left-sided weakness, 21 peripheral neuropathy in the left hand and foot, impaired balance, and uses a cane for 22 stability while ambulating, and is limited in performing" these activities. Id. Dr. Barlow 23 also opined that Plaintiff should not work around heights or moving machinery, but was 24 able to work around extremes in temperature; with or around chemicals; around dust/fumes 25 or gases; and around excessive noise. AR at 570. Dr. Barlow reiterated his findings 26 regarding Plaintiff's left-sided weakness, peripheral neuropathy in the left hand and foot, 27 impaired balance, and cane use, as the basis for his opinion. Id. 28 . . . 1 3. Reviewing Physicians 2 a. Andres Kerns, Ph.D. 3 On August 9, 2022, Dr. Kerns performed an initial review of Plaintiff's medical 4 records. AR at 61–62, 72-73. Dr. Kerns opined that Plaintiff

had “no significant 5 limitations due to a medically determinable mental impairment that interfere[s] with 6 sustained activities in a competitive, remunerative work context.” Id. 7 b. Keith Shelman, M.D. 8 On August 9, 2022, Dr. Shelman performed an initial review of Plaintiff’s medical 9 records and completed a physical residual functional capacity (RFC) assessment. AR at 10 59–61, 64–67, 73–76. Dr. Shelman found Plaintiff to have medically determinable 11 impairments including musculoskeletal system—other and unspecified arthropathies— 12 severe; neurological disorders—peripheral neuropathy—severe; and mental disorders— 13 anxiety and obsessive-compulsive disorders—not severe. Id. at 61. Dr. Shelman found 14 that Plaintiff’s symptoms of pain and loss of sensation were reasonably expected to produce 15 his pain or other symptoms, but opined that Plaintiff’s “[s]ubjective complaints are 16 disproportionate to objective observations.” Id. at 63, 74. Dr. Shelman further opined that 17 Dr. Barlow’s “opinion is an overestimate of the severity of the individual’s 18 restrictions/limitations.” Id. at 64, 75. 19 Dr. Shelman found Plaintiff to have exertional limitations. Id. Dr. Shelman opined 20 that Plaintiff could lift and/or carry (including upward pulling) twenty (20) pounds 21 occasionally and ten (10) pounds frequently. AR at 64, 75. Dr. Shelman further opined 22 that Plaintiff was unlimited in his ability to push and/or pull—other than lifting or 23 carrying—with his upper and lower extremities. Id. Dr. Shelman estimated that Plaintiff 24 could stand and/or walk for a total of six (6) hours in and eight (8) hour workday, with “[a] 25 medically required hand-held assistive device [] necessary for ambulation[.]” Id. Dr. 26 Shelman also opined that Plaintiff could sit, with normal breaks, for more than six (6) 27 hours on a sustained basis in an eight (8) hour workday. Id. Dr. Shelman confirmed that 28 “[a] cane is required for balance on all terrains.” Id. Dr. Shelman also confirmed that 1 Plaintiff has postural limitations. AR at 64, 75. Dr. Shelman opined that Plaintiff could 2 occasionally climb ramps or stairs; balance; stoop; kneel; crouch; and crawl. Id. Dr. 3 Shelman noted, however, Plaintiff could never climb ladders, ropes, or scaffolds. Id. Dr. 4 Shelman further opined that Plaintiff did not have any limitations on his ability to 5 manipulate items, see, or communicate. Id. Regarding environmental limitations, Dr. 6 Shelman opined that Plaintiff was unlimited in his ability to be exposed to extreme heat or 7 cold, wetness, humidity, noise, vibration, or fumes, odors, dusts, gases, and poor 8 ventilation. Id. at 64, 76. Dr. Shelman reported Plaintiff should avoid concentrated 9 exposure to hazards. Id. 10 c. Raymond Novak, M.D. 11 On May 19, 2023, on reconsideration, Dr. Novak noted that Plaintiff “indicate[d] 12 no worsening, no new conditions, and no psych or cognition issues cited as interfering with 13 accomplishing daily activities.” AR at 82–84, 93–95. Dr. Novak further “[c]oncur[red] 14 with initial claim [psych] [medical consultant] assessment…mild limitations across 15 functional domains[.]” Id. at 84, 95 (ellipsis in original). 16 d. Carol Hutchinson, D.O. 17 On May 19, 2023, on reconsideration, Dr. Hutchinson noted “[s]ome changes to the 18 initial assessment based on re-review and new and material [medical evidence of record].” 19 AR at 88, 99; see AR at 81–83, 85–90, 93–94, 95–101. Dr. Hutchinson’s physical RFC 20 concurred with Dr. Shelman’s exertional and postural limitations. Id. at 86, 96–97. 21 Regarding environmental limitations, Dr.

Hutchinson opined that Plaintiff was unlimited 22 in his ability to be exposed to humidity, noise, or fumes, odors, dusts, gases, and poor 23 ventilation. Id. Dr. Shelman reported Plaintiff should avoid concentrated exposure to 24 extreme heat or cold, wetness, vibration, or hazards. Id. at 86–87, 97–98. 25

26 II. STANDARD OF REVIEW

27 The factual findings of the Commissioner shall be conclusive so long as they are 28 based upon substantial evidence and there is no legal error. 42 U.S.C. §§ 405(g), 1 1383(c)(3); Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008). This Court may 2 "set aside the Commissioner's denial of disability insurance benefits when the ALJ's 3 findings are based on legal error or are not supported by substantial evidence in the record 4 as a whole." Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999) (citations omitted); see 5 also Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1098 (9th Cir. 2014). 6 Substantial evidence is "'more than a mere scintilla[,] but not necessarily a 7 preponderance.'" Tommasetti, 533 F.3d at 1038 (quoting Connett v. Barnhart, 340 F.3d 8 871, 873 (9th Cir. 2003)); see also Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). 9 Further, substantial evidence is "such relevant evidence as a reasonable mind might accept 10 as adequate to support a conclusion." Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). 11 Where "the evidence can support either outcome, the court may not substitute its judgment 12 for that of the ALJ." Tackett, 180 F.3d at 1098 (citing Matney v. Sullivan, 981 F.2d 1016, 13 1019 (9th Cir. 1992)); see also Massachi v. Astrue, 486 F.3d 1149, 1152 (9th Cir. 2007). 14 Moreover, the court may not focus on an isolated piece of supporting evidence, rather it 15 must consider the entirety of the record weighing both evidence that supports as well as 16 that which detracts from the Secretary's conclusion. Tackett, 180 F.3d at 1098 (citations 17 omitted). Additionally, the Court will only review issues raised by Plaintiff in this cause 18 of action. See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 n.2 (9th Cir. 19 2008). 20

21 III. ANALYSIS

22 A. The Five-Step Evaluation 23 The Commissioner follows a five-step sequential evaluation process to assess 24 whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4). This process is defined as 25 follows: Step One asks is the claimant "doing substantial gainful activity[?]" 20 C.F.R. § 26 404.1520(a)(4)(i). If yes, the claimant is not disabled. Step Two considers if the claimant 27 has a "severe medically determinable physical or mental impairment[.]" 20 C.F.R. § 28 404.1520(a)(4)(ii). If not, the claimant is not disabled. Step Three determines whether the 1 claimant's impairments or combination thereof meet or equal an impairment listed in 20 2 C.F.R. Pt. 404, Subpt. P, App.1. 20 C.F.R. § 404.1520(a)(4)(iii). If not, the claimant is 3 not disabled. Step Four considers the claimant's residual functional capacity and past 4 relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If claimant can still do past relevant work, 5 then he or she is not disabled. Step Five assesses the claimant's residual functional 6 capacity, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If it is 7 determined that the claimant can make an adjustment to other work, then he or she is not 8 disabled. Id. 9 In the instant case, the ALJ found

that Plaintiff had not engaged in substantial 10 gainful activity since his alleged onset date of February 15, 2021. AR at 18. At step two 11 of the sequential evaluation, the ALJ found that "[t]he claimant has the following severe 12 impairments: diabetes with neuropathy, obesity, dysfunction of the bilateral knees, and 13 hypertension[.]" Id. (citing 20 CFR 404.1520(c), 416.920(c)). At step three, the ALJ 14 further found that "[t]he claimant does not have an impairment or combination of 15 impairments that meets or medically equals the severity of one of the listed impairments in 16 20 CFR Part 404, Subpart P, Appendix 1[.]" Id. at 20 (citing 20 CFR 404.1520(d), 17 404.1525, 404.1526, 416.920(d), 416.925, 416.926). Prior to step four and "[a]fter careful 18 consideration of the entire record," the ALJ determined that "the claimant has the residual 19 functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) 20 except he can sit, stand, and walk for six hours in an eight-hour day[;] . . . requires a single- 21 point cane for ambulation[;] . . . can occasionally lift and/or carry 20 pounds and frequently 22 lift and carry 10 pounds[;] . . . occasionally climb stairs but never climb ladders[;] . . . 23 occasionally stoop, kneel, crouch, and crawl[;] . . . [and] have only occasional exposure to 24 heights, moving machinery, wetness, humidity, temperature extremes, and vibrations." Id. 25 At step four, the ALJ found that "[t]he claimant is capable of performing past relevant work 26 as a customer service representative, insurance[.] Id. at 23. The ALJ further found that 27 "[t]his work does not require the performance of work-related activities precluded by the 28 claimant's residual functional capacity." AR at 23 (citing 20 CFR 404.1565 and 416.965). 1 At step five, the ALJ determined that "[b]ased on the testimony of the vocational expert . . 2 . [and] considering the claimant's age, education, work experience, and residual functional 3 capacity, the claimant is capable of making a successful adjustment to other work that 4 exists in significant numbers in the national economy." Id. at 25. Accordingly, the ALJ 5 determined that Plaintiff was not disabled. Id. 6 B. Medical Source Opinion 7 Plaintiff asserts that the ALJ's "rejection of the opinion of Agency examining 8 neurologist Dr. Barlow" was not supported by substantial evidence. Opening Br. (Doc. 9 16) at 1, 12–24. Plaintiff urges that the ALJ lacked legally sufficient reasons for rejecting 10 Dr. Barlow's findings regarding Plaintiff's ability stand and/or walk during the workday, 11 as well as those related to Plaintiff's ability to handle and finger with his left hand. See id. 12 12–24. Defendant argues (1) Dr. Barlow's opinion regarding Plaintiff's reaching and 13 manipulative problems were inconsistent with his own findings; (2) "[t]he ALJ recognized 14 that Dr. Barlow supported . . . [his standing and walking] opinion with examination 15 findings, but . . . looked to the broader record"; and (3) focused on the "primary complaint" 16 Plaintiff presented to Dr. Barlow. Response (Doc. 20) at 5–8. Plaintiff counters that the 17 Commissioner improperly relies on post hoc rationalizations. Reply (Doc. 21) at 5–6. The 18 Court agrees with Plaintiff. 19

1. Legal Standard

20 Section 404.1520c, 20 C.F.R., governs the analysis of medical opinions for

21 disability claims filed on or after March 27, 2017. "Under the revised regulations, 'there 22 is not an inherent persuasiveness to evidence from [government consultants] over [a 23 claimant's]

own medical source(s), and vice versa.’”3 Woods v. Kijakazi, 32 F.4th 785, 24 791 (9th Cir. 2022) (alterations in original) (quoting Revisions to Rules Regarding the 25 Evaluation of Medical Evidence, 82 Fed. Reg. at 5844)). Rather, medical opinions are 26 27 3 The Ninth Circuit Court of Appeals has held that its previous “requirement that ALJs provide ‘specific and legitimate reasons’ for rejecting a treating or examining doctor’s opinion . . 28 . is . . . incompatible with the revised regulations. Woods v. Kijakazi, 32 F.4th 785, 792 (9th Cir. 2022). 1 evaluated pursuant to the factors set forth in Section 404.1520c(c)(1)–(5), with the most 2 important factors being supportability and consistency: 3 (1) Supportability. The more relevant the objective medical evidence and supporting explanations presented by a medical 4 source are to support his or her medical opinion(s) or prior 5 administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical findings(s) 6 will be. 7 (2) Consistency. The more consistent a medical opinion(s) 8 or prior administrative medical fining(s) is with the evidence from other medical sources and nonmedical sources in the 9 claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be. 10 11 20 C.F.R. § 404.1520c(c); see also 20 C.F.R. § 404.1520c(b)(2). The regulations 12 specifically require the ALJ to explain how he or she considered supportability and 13 consistency in evaluating medical opinions and making the disability determination. 20 14 C.F.R. § 404.1520c(b)(2); see Kitchen v. Kijakazi, 82 F.4th 732, 739–40 (9th Cir. 2023). 15 Additionally, the ALJ may, but is not required to, consider other factors such as the medical 16 source’s relationship with the claimant, the medical source’s area of specialization, or 17 “evidence showing a medical source has familiarity with the other evidence in the claim or 18 an understanding of our disability program’s policies and evidentiary requirements.” 20 19 C.F.R. 404.1520c(c)(3)–(5). 20 2. Analysis 21 “Long-standing principles of administrative law require us to review the ALJ’s 22 decision based on the reasoning and factual findings offered by the ALJ–not post hoc 23 rationalizations that attempt to intuit what the adjudicator may have been thinking.” Bray 24 v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1225–26 (9th Cir. 2009) (citations omitted). 25 In the instant case, the ALJ discussed Dr. Barlow’s findings, as follows: 26 Dr. Barlow supported his opinions with evidence from his examination of the claimant. ([AR at 566, 569]). His opinion that the claimant requires a 27 cane is consistent with the evidence showing intermittent, mild left-sided 28 weakness. However, the opinion that the claimant can only occasionally reach, handle, finger, and feel with his left upper extremity is not supported 1 by his examination. His examination showed only mild weakness but full range of motion and good manipulative ability. ([AR at 563, 564]). It is also 2 not consistent with the treatment record which showed no significant 3 manipulative or reaching limitations. The finding that [t]he claimant can stand or walk no more than four hours per day is not consistent with the 4 treatment record showing normal knee x-rays, normal range of motion in the 5 knees, and frequent unremarkable examinations. 6 AR at 23. Contrary to Defendant’s contention, the ALJ did not discount Dr. Barlow’s 7 opinion because of Plaintiff’s neuropathy. See id. Nor did the ALJ recognize that Dr. 8 Barlow relied on Plaintiff’s “mild left-sided weakness, peripheral neuropathy

in the left 9 hand and foot, and impaired balance" as the basis for his findings. Compare id., with AR 10 at 569. "Even under the new regulations, an ALJ cannot reject an examining or treating 11 doctor's opinion as unsupported or inconsistent without providing an explanation 12 supported by substantial evidence." Woods v. Kijakazi, 32 F.4th 785, 792 (9th Cir. 2022). 13 Here, the ALJ did not acknowledge the basis for Dr. Barlow's opinion, let alone provide 14 an explanation for rejecting it. See AR at 23. 15 Defendant also urges that "[i]t was entirely reasonable for the ALJ to focus on a 16 'primary complaint' Bachmann made to Dr. Barlow when evaluating the persuasiveness of 17 that opinion." Response (Doc. 20) at 8. As an initial matter, Dr. Barlow noted "[t]he 18 patient's primary complaint is L sided weakness/neuropathy[.]" AR at 559. He found this 19 for each of the conditions Plaintiff listed on his application for disability benefits. See id. 20 at 558–59 (noting diabetes, chronic bilateral knee pain, hypertension, left sided 21 weakness/neuropathy, solar urticaria, and anxiety are "the patient's primary complaint"). 22 Even if Defendant's contention was correct, the ALJ must state that is what she is doing. 23 The Court is not required to guess what the ALJ was thinking when she wrote her decision. 24 See Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d at 1225–26 (courts are required to 25 "review the ALJ's decision based on the reasoning and factual findings offered by the 26 ALJ"). Accordingly, the Court finds that the ALJ committed legal error in rejecting Dr. 27 28 1 Barlow's opinions regarding Plaintiff's ability to stand and/or walk.4 2 D. Remand 3 "'[T]he decision whether to remand the case for additional evidence or simply to 4 award benefits is within the discretion of the court.'" Rodriguez v. Bowen, 876 F.2d 759, 5 763 (9th Cir. 1989) (quoting Stone v. Heckler, 761 F.2d 530, 533 (9th Cir. 1985)). "Remand 6 for further administrative proceedings is appropriate if enhancement of the record would 7 be useful." Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004) (citing Harman v. 8 Apfel, 211 F.3d 1172, 1178 (9th Cir. 2000)). Conversely, remand for an award of benefits 9 is appropriate where: 10 (1) the ALJ failed to provide legally sufficient reasons for rejecting the evidence; (2) there are no outstanding issues that must be resolved before a 11 determination of disability can be made; and (3) it is clear from the record 12 that the ALJ would be required to find the claimant disabled were such evidence credited. 13 14 Benecke, 379 F.3d at 593 (citations omitted). Where the test is met, "we will not remand 15 solely to allow the ALJ to make specific findings. . . . Rather, we take the relevant testimony 16 to be established as true and remand for an award of benefits." Id. (citations omitted); see 17 also Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995). "Even if those requirements are 18 met, though, we retain 'flexibility' in determining the appropriate remedy." Burrell v. 19 Colvin, 775 F.3d 1133, 1141 (9th Cir. 2014). 20 Here, the ALJ committed legal error in assessing Dr. Barlow's medical opinion. 21 The Court has concerns that "[a]llowing the Commissioner to decide the issue again would 22 create an unfair 'heads we win; tails, let's play again' system of disability benefits 23 adjudication." Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). 24 There are two issues, however, which tip this matter in favor of remand. First, Plaintiff 25 requests reversal and remand for further proceedings. Opening Br. (Doc. 16) at 23. 26 27 4 Because the

Court determines that the ALJ committed legal error regarding Dr. Barlow's opinion about Plaintiff's ability to stand/walk, it does not address Plaintiff's arguments regarding 28 his manipulative abilities or the propriety of the ALJ's use of Plaintiff's prior work as an insurance customer service representative. Second, based on the record, it is not obvious to the Court that Plaintiff is disabled. □□ Correcting the ALJ's error requires reconsideration of the evidence in this case. This || analysis may require reconsideration of the medical opinion evidence, as well as other evidence in the record. The ALJ may also require additional vocational expert testimony 5 || and to hold another hearing. Furthermore, the ALJ should reassess all of her findings 6|| regarding Dr. Barlow's opinion, not just those discussed in this report and 7 || recommendation, as well as correct any errors regarding Plaintiff's past relevant work. 8

IV. CONCLUSION

10 Based on the foregoing, the Court finds the ALJ committed legal error in assessing 11 |} the medical opinion evidence of Robert Barlow, M.D. The Court will recommend || remanding for reanalysis and rehearing. 13

14] V. RECOMMENDATION

15 For the reasons delineated above, the Magistrate Judge recommends that the District Judge enter an Order REVERSING and REMANDING the Commissioner's decision for || reanalysis and rehearing. 18 Any written objections to this Report and Recommendation shall be filed and served 19|| onor before February 27, 2026. Any response to another party's objections shall be filed □□ and served on or before March 6, 2026. No replies shall be filed unless leave is granted from the District Court. No replies shall be filed unless leave is granted from the Hon. Raner C. Collins. If objections are filed, the parties should use the following case number: 23 || CV-25-00087-TUC-RCC. 24 Failure to file timely objections to any factual or legal determination of the || Magistrate Judge may result in waiver of the right of review. 26 Dated this 18th day of February, 2026. 28 _ Enric J. Makovich United States Magistrate Judge -21-